

Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy

July 2, 2015 (RL33743) CRS

A Short Guide to the Expedited Legislative Procedures for Passage of Trade Implementing Bills Under TPA⁴⁴

IV. **Each committee has 45 in session days to report the bill or it is automatically discharged and the bill is placed on the appropriate calendar.⁴⁶** An implementing bill subject to TPA procedures is likely to be a revenue bill, in which case the Constitution requires that the Senate ultimately act on the House bill. Under these conditions, the Senate Finance Committee has until the later of the 45th day of session after the Senate bill is introduced or the 15th day of session after the Senate receives the House bill.

V. The measure cannot be amended, and a motion or unanimous-consent request to suspend this restriction is not in order. If the chamber has not completed floor action by the 15th day after the bill is reported or discharged, any Member may bring it to a vote.

VI. **A bill passes by simple majority under the statute.** Whichever House acts second (typically the Senate assuming the bill is a revenue bill) considers and debates its own bill, but takes its final vote on the bill received from the other House (typically the House of Representatives).⁴⁷

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Implementation of Trade Agreements

In a trade implementing bill, Congress conveys to the President the authority to provide for the agreement to *enter into force* by presidential proclamation, after determining that the partner country(ies) has taken measures necessary

to comply with the provisions of the agreement. The requirements of this authority are defined in Section 2105 of the Trade Act of 2002 (see [Appendix B](#) for TPA timeline) under which an agreement may enter into force "if and only if":

- 1. at least 90 calendar days prior to signing the agreement, the President notifies Congress of his intention to do so (to provide opportunity for congressional review and possibly provide input before the agreement is signed, at which point it ostensibly can no longer be changed);¹⁹
- 2. within 60 calendar days of signing the agreement, the President provides Congress with a list of required changes to U.S. law needed to bring the United States into compliance with the agreement;
- 3. after entering into the agreement, on a day in which both houses of Congress are in session, the President transmits a copy of the final legal text of the trade agreement, a draft implementing bill, a statement of administrative action proposed to implement the agreement, and supporting statements on how the agreement meets various congressional priorities and objectives, changes existing agreements, and serves the purpose of U.S. commercial interests, and on how the implementing bill meets the statute's requirements for being an implementing bill (see section above); and
- 4. the implementing bill is enacted into law.

Expedited Legislative Procedures

Should the above requirements be fulfilled to the satisfaction of Congress, it has agreed to follow certain expedited legislative procedures as defined in Sections 151-154 of the Trade Act of 1974, as amended. In effect, these rules require that Congress *must* act on the bill sent over by the White House, and in other ways represent a significant departure from ordinary legislative procedures. The major rules are listed below (see [Appendix C](#) for greater detail):

- 1. mandatory introduction of the implementing bill in both houses of Congress and immediate referral to the appropriate committees (House Ways and Means, Senate Finance, and others);²⁰
- 2. automatic discharge from House and Senate Committees after a limited period of time;
- 3. limited floor debate; and
- 4. no amendment, meaning that each house must vote either up or down on the bill, which passes with a simple majority.

Negotiating Objectives

Congress exercises its trade policy role, in part, by defining trade negotiation objectives in TPA legislation. Through the negotiating objectives, Congress has made clear that trade is an important aspect of U.S. foreign economic and security policy because it generates broad benefits for the United States and the global economy. To take the fullest advantage of these benefits, Congress, drawing on its constitutional authority and historical precedent, defined the objectives that the President is to pursue in trade negotiations. Although the executive branch has some discretion over implementing these goals, they are definitive statements of U.S. trade policy that the Administration is expected to honor, if it expects trade agreement implementing legislation to be considered under expedited rules. For this reason, trade negotiating objectives stand at the center of the congressional debate on TPA.²¹

Congress establishes trade negotiating objectives in three categories: (1) overall objectives; (2) principal objectives; and (3) other priorities. These begin with broad goals that encapsulate the "overall" direction trade negotiations are expected to take, such as enhancing U.S. and global economies. Principal objectives are more specific and provide detailed goals that Congress expects to be integrated into trade agreements, such as reducing barriers and distortions to trade (e.g., goods, services, agriculture); protecting foreign investment and intellectual property rights; encouraging transparency; establishing fair regulatory practices; combating corruption; ensuring that countries enforce their environmental and labor laws; providing for an effective dispute settlement process; and protecting the U.S. right to enforce its trade remedy laws. Objectives also include an important obligation to consult Congress, discussed in detail below.

Notification and Consultation

The trade agreements authority is extended to the President provided he or his designee consults regularly with Congress. This requirement includes consultation with the Congressional Advisory Groups (CAG) in both chambers, created in TPA-2015, whose members are accredited as official advisors to the trade negotiation delegations.²² Notification and consultation requirements have been revised in each renewal of authority. The timing of these notifications is detailed in the timeline presented in [Appendix B](#). First, the President must conduct certain notifications and consultations before negotiations begin that include

- 1. notifying Congress in writing of his intention to enter into negotiations at least 90 calendar days prior to commencing negotiations;
- 2. consulting with the House Ways and Means, Senate Finance, other relevant committees, and the CAGs on the nature of the negotiations; and
- 3. providing special consultations on agriculture, import sensitive agricultural products, fishing and textile industries tariffs, and other issues.

The President must also conduct specific notifications and consultations before (and after) agreements are entered into (signed), to include

- 1. notifying Congress in writing of his intention to enter into an agreement at least 90 calendar days prior to doing so;
- 2. consulting with House Ways and Means, Senate Finance, other relevant committees, and the CAGs with respect to the nature of the agreement, how it achieves the purposes defined in TPA, and any potential effects it may have on existing laws;
- 3. notifying the revenue committees at least 180 calendar days prior to entering into the agreement of any potential changes to U.S. trade remedy laws that may be required;
- 4. submitting private sector advisory committee reports to Congress, the President, and the USTR no later than 30 calendar days after notifying Congress of his intention to enter into an agreement;²³
- 5. providing the U.S. International Trade Commission (USITC) with trade agreement details at least 90 days before entering into an agreement;
- 6. presenting to Congress no later than 105 calendar days after the President enters into the agreement, the USITC report on the impact of the agreement on the U.S. economy; and
- 7. releasing the text of the agreement 60 days prior to entering into an agreement.

The congressional consultation process is a long-standing precedent and an integral part of TPA. It reflects Congress's ongoing interest in ensuring that trade policy remains under the purview of the legislative branch by establishing in law opportunities to affect the nature and direction of trade negotiations. According to GAO's findings, however, many congressional staff indicated that despite the high quality of information and frequency of meetings with USTR officials, they often did not allow for sufficient time to provide input into the negotiation process, were often cast more as briefings than consultations (implying an exchange of views), and did not always include last minute changes to draft FTA texts. In short, staff expressed concern that the

consultation process did not satisfy many in Congress and may need to be amended to allow for greater and earlier congressional input into the drafting of FTAs.²⁵ Similar concerns have been raised concerning consultation with the Administration over TPP and other pending trade negotiations.

Sunset Provision

Each renewal of the trade agreements authority has provided the use of expedited procedures for trade agreement implementing bills for a limited time, a way to ensure congressional oversight over their use. The 2002 statute made these procedures available for trade agreements entered into before July 1, 2007.

Extension Disapproval

The TPA legislation has required that the President request an extension of the TPA authority after a certain period of time. The extension was granted unless either House of Congress adopted a disapproval resolution. Such a resolution of disapproval may not be considered unless it is reported out of either the House Ways and Means or Senate Finance Committees. Although such resolutions have been reported out of committee in the past, none has been passed in either House of Congress. This process is a reminder to the executive branch that the availability of expedited legislative procedures is a congressional prerogative that can be denied if Congress becomes dissatisfied with how the President has conducted trade agreement negotiations.

Procedural Disapproval

The requirement that the President fulfill consultation and reporting obligations also helps preserve the congressional role on trade agreements by giving Congress the opportunity to influence the agreement before it is finalized. **Should Congress determine that the President has failed to meet these requirements, it may decide that the implementing bill is not eligible to be considered under TPA rules. It would implement this decision by adopting a joint "procedural disapproval" resolution in both houses of Congress.**