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Trade Promotion Authority (TPA): Frequently Asked Questions

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Summary

Trade Promotion Authority (TPA), formerly called fast track, likely will be considered in the 114th Congress. TPA is the authority Congress has granted to the President for limited periods of time to enter into reciprocal trade agreements. The authority lays out U.S. trade negotiating objectives, procedures for congressional-executive notification and consultation, and expedited legislative procedures under which bills implementing trade agreements negotiated by the executive branch are to be considered. The most recent authority was enacted in December 2002 and expired as of July 1, 2007. Legislation to reauthorize TPA was introduced, but not considered, in the 113th Congress. The United States is engaged in several sets of trade agreement negotiations. The issue of TPA reauthorization has raised a number of questions regarding TPA itself and the pending legislation. This report addresses a number of those questions that are frequently asked, including the following:

- What is trade promotion authority?
- Is TPA necessary?
- What are trade negotiating objectives and how are they reflected in TPA statutes?
- What requirements does Congress impose on the President under TPA?
- Does TPA affect congressional authority on trade policy?

This report describes aspects of the legislation introduced in the 113th Congress as an example of potential provisions of a TPA bill. For more information on TPA, see CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by Ian F. Fergusson.

Contents

Contacts

Background on Trade Promotion Authority (TPA)

What is Trade Promotion Authority?

Trade promotion authority (TPA), sometimes called "fast track," is the authority Congress has granted to the President for limited periods to enter into reciprocal trade agreements to reduce or eliminate barriers to trade and have their implementing legislation considered under expedited legislative procedures. The authority lays out U.S. trade negotiating objectives, procedures for congressional-executive notification and consultation, and the expedited legislative procedures under which a bill to implement a trade agreement (an "implementing bill") is to be considered. More generally, TPA defines how Congress has chosen to exercise its constitutional authority over a particular aspect of trade policy, while affording the President added leverage to negotiate trade agreements by giving trading partners assurance that final agreements can receive consideration by Congress in a timely manner and without amendments.[1]

Why has the issue of TPA renewal been raised now?

The most recent TPA authorization was enacted on August 6, 2002, as the Bipartisan Trade Promotion Authority Act (part of P.L. 107-210),[2] and applied to trade agreements entered into (signed) before July 1, 2007. Therefore, Congress would have to renew TPA in order for it to apply to future trade agreements and those currently under negotiation. On July 30, 2013, President Obama, in a speech, requested that Congress reauthorize TPA. He and other Administration officials have reiterated the request since that time. Some Members of Congress and members of the business community, among others, have also called for TPA reauthorization, while critics of trade agreements and trade liberalization have raised concerns about TPA.

Was legislation introduced to renew TPA in the 113th Congress?

In the 113th Congress, bicameral legislation (H.R. 3830/S. 1900)—the Bipartisan Congressional Trade Priorities Act of 2014 (BCTPA)—was introduced by the chairman of the House Ways and Means Committee and the then-chairman and the ranking Member of the Senate Finance Committee on January 9, 2014. Like previous TPA authorizations, the BCPTA would have granted the authority for a limited time, and would permit a single extension if the President requests it and Congress does not disapprove.[3] The proposed BCTPA would have applied to trade agreements entered into (signed) before July 1, 2018, or before July 1, 2021, if the President requests the extension, subject to a congressional resolution of disapproval.[4] A revised version of this legislation or other legislation to reauthorize TPA or address certain aspects of TPA likely will

[1] For more detailed background and analysis of TPA, see CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by Ian F. Fergusson, and CRS Report IF00002, Trade Promotion Authority (TPA) (In Focus), by William H. Cooper.

[2] The Bipartisan Trade Promotion Authority Act of 2002 is Title XXI of the Trade Act of 2002 (P.L. 107-210), enacted on August 6, 2002.

[3] The last previous authorization, the Bipartisan Trade Promotion Authority Act of 2002, also granted the authority for three years with an option for a two-year extension.

[4] For detail on the disapproval process, see later discussion of the "extension disapproval resolution" under "How may Congress withdraw TPA procedures?"

be introduced in the 114th Congress. This report describes aspects of the BCTPA (below) as an example of potential provisions in such legislation.

What is Congress's responsibility for trade under the Constitution?

The U.S. Constitution assigns express authority over the regulation of foreign trade to Congress. Article I, Section 8, gives Congress the power to "regulate Commerce with foreign Nations…" and to "…lay and collect Taxes, Duties, Imposts, and Excises.…" In contrast, the Constitution assigns no specific responsibility for trade to the President. Under Article II, however, the President has exclusive authority to negotiate treaties and international agreements and exercises broad authority over the conduct of the nation's foreign affairs.

What authority does Congress grant to the President by enacting TPA legislation?

In a sense, TPA grants no new authority to the President. The President possesses inherent authority to negotiate with other countries to arrive at trade agreements. If any such agreement requires changes in U.S. law, however, it could only be implemented through legislation enacted by Congress. (In some cases, as well, Congress has enacted legislation authorizing the President in advance to implement certain kinds of agreements on his own authority. An example is the historical reciprocal tariff agreement authority described under the next question.) TPA legislation provides expedited legislative procedures (also known as "fast track" procedures) to facilitate congressional action on legislation to implement trade agreements of the kinds specified in the TPA statute. TPA legislation also establishes trade negotiating objectives and notification and consultation requirements described later.

Is TPA necessary?

The President has the authority to negotiate international agreements, including free trade agreements (FTAs), but the Constitution gives the U.S. Congress sole authority over the regulation of foreign commerce. For 150 years, Congress exercised this authority over foreign trade by setting tariff rates directly. This policy changed with the Reciprocal Trade Agreements Act of 1934, in which Congress delegated temporary authority to the President to enter into reciprocal trade agreements that reduced tariffs within pre-approved levels and implement them by proclamation without further congressional action. This authority was renewed a number of times until 1974.

In the 1960s, as international trade expanded, nontariff barriers, such as antidumping measures, safety and certification requirements, and government procurement practices, became subjects of trade negotiations and agreements. Congress altered the authority delegated to the President to require enactment of an implementing bill to authorize changes in U.S. law required to meet obligations of these new kinds. For trade agreements containing such provisions, pre-approval was no longer an option. Because an implementing bill faced potential amendment by Members of Congress that could alter a long-negotiated agreement, Congress adopted fast track authority in the Trade Act of 1974 to ensure that the implementing bill could receive floor consideration and to provide a procedure under which it could not be amended. The act also established negotiating objectives and attempted to ensure executive branch notification of and consultation with

Congress and the private sector. Fast track was renamed Trade Promotion Authority in the Bipartisan Trade Promotion Authority Act of 2002.

Many observers point out that U.S. trade partners might be reluctant to negotiate with the United States, especially on politically sensitive issues, unless they are confident that the U.S. executive branch and Congress speaks with one voice, that a trade agreement negotiated by the executive branch would receive timely legislative consideration, that it would not unravel by congressional amendments, and that the United States would implement the terms of the agreement reached. Others, however, have argued that because trade negotiations and agreements have become more complex and more comprehensive, bills to implement the agreements should be subject to amendment like other legislation. In practice, even though TPA is designed to ensure that Congress will act on implementing bills without amending them, it also affords Congress several procedural means to maintain its constitutional authority (for details, see section on "Expedited Procedures and the Congressional Role").

What requirements have been placed on the President under TPA?

In general, under TPA Congress has required the President to notify Congress and consult with Congress and with private sector stakeholders before, during and upon completion of trade agreement negotiations. Congress also has required the President to strive to adhere to general and specific principal trade negotiating objectives in any trade agreement negotiated under TPA. After signing the agreement, the President submits a draft implementing bill to Congress, along with the text of the trade agreement and a statement of administrative action required to implement it. (See detailed discussion of requirements below in the following sections: "Trade Negotiating Objectives", "Congressional Consultation and Advisory Requirements", and "Notification and Reporting Requirements".)

Is there a deadline for the President to submit a draft implementing bill to Congress?

No. If the United States enters into (signs) a trade agreement within a period for which TPA is provided, the President may submit the implementing bill to Congress at his discretion.

Along with the draft implementing bill, what other documents must the President submit to Congress for approval?

Along with a draft implementing bill, the President submits a Statement of Administrative Action (SAA) to Congress for approval. An SAA contains an authoritative expression of Administration views regarding the interpretation and application of the trade agreement for purposes of U.S. international obligations and domestic law. It describes significant administrative actions to be taken to implement the trade agreement. In addition, it contains an explanation of how the implementing bill and administrative action will change or affect U.S. law and contains a statement and that the administrative actions are necessary or appropriate to implement the trade agreement.

Furthermore, the President sends Congress supporting information to include an explanation of how the implementing bill and proposed administrative action will change existing U.S. law and a statement of that the trade agreement makes progress in achieving the "purposes, policies, priorities, and objectives under the TPA.

When was TPA/fast track first used?

Trade promotion authority was first enacted on January 1, 1975, under the Trade Act of 1974. It was used to enact the Tokyo Round Agreements Act of 1979, which implemented the 1974-1979 multilateral trade liberalization agreements reached under the Tokyo Round negotiations under the General Agreement on Tariffs and Trade (GATT), the predecessor to the World Trade Organization (WTO). Since that time it was renewed four times –1979, 1984, 1988, and 2002. In 1993, Congress provided a short-term extension to accommodate the completion of the GATT Uruguay Round negotiations.

How many times has TPA/fast track been used?

Since 1979, the authority has been used for 14 bilateral/regional free trade agreements (FTAs) and one additional set of multilateral trade liberalization agreements under the GATT (now the World Trade Organization [WTO])—the Uruguay Round Agreements Act of 1994. One FTA—the U.S.-Jordan FTA—was negotiated and approved by Congress without TPA.[5] That FTA was largely considered non-controversial and applies to only a small portion of U.S. total trade.

How has the lack of TPA affected current trade agreement negotiations?

The current effort to obtain a reauthorization of TPA has been motivated, in part, by the engagement of the United States in three sets of trade negotiations: the Trans-Pacific Partnership (TPP) agreement with 11 other countries; the Transatlantic Trade and Investment Partnership (TTIP) agreement with the 28-member European Union; and the Trade in Services Agreement (TISA) with 22 other trading partners, including the European Union (EU). Future agreements may be reached under the WTO. The Obama Administration has fulfilled the notification and consultation requirements under the most recent TPA for each of these sets of negotiations in anticipation that it would be renewed. Some trade partners have suggested that the lack of TPA has slowed progress in the negotiations on the TPP; however, it is unclear whether the lack of TPA will preclude a final agreement or whether the most sensitive issues are being left until the final stages of the negotiations.

Do other countries have a TPA-type legislative mechanism?

In some countries, the executive may possess authority to conclude trade agreements without legislative approval. In others, especially in parliamentary systems, the head of government is typically able to secure approval of any requisite legislation without amendment under regular

[5] In the House, many of these agreements were actually considered not under TPA procedures themselves, but under special rules from the Committee on Rules. This is explained below under "May Congress override the expedited procedures?"

legislative procedures. In addition, some countries prohibit amendments to trade agreement legislation and others treat trade agreements as treaties.

Will TPA legislation be considered like other bills or be subject to expedited procedures?

Legislation to reauthorize TPA is considered under standard legislative procedures. Therefore, regular rules on debate, amendments, and votes would apply.

Trade Negotiating Objectives

What are negotiating objectives?

Congress exercises its trade policy role, in part, by defining trade negotiating objectives in TPA legislation. The negotiating objectives are definitive statements of U.S. trade policy that Congress expects the Administration to honor, if the implementing legislation is to be considered under expedited rules. Since the original fast track authorization in the Trade Act of 1974, Congress has revised and expanded the negotiating objectives in succeeding TPA/fast track authorization statutes to reflect changing priorities and the evolving international trade environment. Since the last grant of TPA in 2002, new issues associated with state-owned enterprises, digital trade in goods and services, and localization policies have come to the forefront of U.S. trade policy and were included in the proposed BCTPA as principal negotiating objectives.

Under the 2002 Bipartisan Trade Promotion Authority Act, the most recent authorization, Congress established 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 fostering U.S. and global economic growth and obtaining more favorable market access for U.S. products and services. Principal objectives are more specific and are considered the most politically critical set of objectives. The proposed BCTPA would have used a similar structure.

Goods, Services, and Agriculture

What were some of the negotiating objectives for market access for goods?

The market access negotiating objectives under TPA seek to reduce or to eliminate tariff and non-tariff barriers and practices that decrease market access for U.S. products. One new provision in the proposed BCTPA would have considered the "utilization of global chains" in the goal of trade liberalization. It also calls for the use of sectoral tariff and non-tariff barrier elimination agreements to achieve greater market access. Agriculture (see below) and textiles and apparel are considered in separate negotiating objectives. For textiles and apparel, U.S. negotiators are to seek competitive export opportunities "substantially equivalent to the opportunities afforded foreign exports in the United States markets and to achieve fairer and more open conditions of trade" in the sector. Both the general market access provisions and the textiles provisions in the proposed BCTPA were the same as those in the 2002 Act.

Have U.S. negotiating objectives evolved on services trade?

Services have become an increasingly important element of the U.S. economy, and the sector plays a prominent role in U.S. trade policy.[6] The rising importance of services has been reflected in their treatment under TPA/fast track statutes as a negotiating objective beginning with the 1984 Trade Act.

Liberalization of trade in services was expressed in the 2002 Trade Act as a principal negotiating objective. It requires that U.S. negotiators strive to reduce or eliminate barriers to trade in services, including regulations that deny nondiscriminatory treatment to U.S. services and inhibit the right of establishment (through foreign investment) to U.S. service providers. The content of the negotiating objective on services had not changed appreciably over the years. (Because foreign direct investment is an important mode of delivery of services, negotiating objectives on foreign investment (see below) pertain to services as well.)

The proposed BCTPA would have expanded the principal negotiating objectives on services in the 2002 TPA by highlighting the role of services in global value chains and calling for the pursuit of liberalized trade in services through all means, including plurilateral trade agreements (presumably referring to the proposed Trade in Services Agreement (TISA)).

How did the negotiating objectives for agriculture differ from those laid out in the 2002 TPA Act?

The proposed BCTPA would have added three new agriculture negotiating objectives to the 18 previously listed in the 2002 Act. One lays out in greater detail what U.S. negotiators should achieve in negotiating robust trade rules on sanitary and phytosanitary (SPS) measures (i.e., those dealing with a country's food safety and animal and plant health laws and regulations). This increased emphasis aims to address the concerns expressed by U.S. agricultural exporters that other countries use SPS measures as disguised non-tariff barriers, which undercut the market access openings that the United States negotiates in trade agreements. The second calls for trade negotiators to ensure transparency in how tariff-rate quotas (TRQs)[7] are administered that may impede market access opportunities. The third seeks to eliminate and prevent the improper use of a country's system to protect or recognize geographical indications (GI). These are trademark-like terms used to protect the quality and reputation of distinctive agricultural products, wines and spirits produced in a particular region of a country. This new objective is intended to counter in large part the European Union's efforts to include GI protection in its bilateral trade agreements for the names of its products that U.S. and other country exporters argue are generic in nature or commonly used across borders, such as parma ham or parmesan cheese.

[6] For more information, please see CRS Report R43291, *U.S. Foreign Trade in Services: Trends and U.S. Policy Challenges*, by William H. Cooper and Rebecca M. Nelson.

[7] A TRQ is a trade policy tool used to protect a domestically-produced commodity or product from competitive imports. It combines two policy instruments that nations historically have used to restrict such imports: quotas and tariffs. In a TRQ, the quota component works together with a specified tariff level to provide the desired degree of import protection. Imports entering during a specific time period under the quota portion of a TRQ are usually subject to a lower, or sometimes a zero, tariff rate. Imports above the quota's quantitative threshold face a much higher (usually prohibitive) tariff.

Foreign Investment

How did TPA seek to protect U.S. investor rights with our trading partners?

The United States is the largest source and destination of foreign direct investment in the world. Both the 2002 Act and the proposed BCTPA would have included principal negotiating objectives on foreign investment and the objectives in each are the same.[8] The overall negotiating objectives on foreign investment are designed "to reduce or eliminate artificial or trade distorting barriers to foreign investment, while ensuring that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than domestic investors in the United States, and to secure for investors important rights comparable to those that would be available under the United States legal principles and practices.... " Like the 2002 TPA, the proposed BCTPA would have sought to accomplish these goals by including provisions establishing protections for U.S. foreign investment, such as non-discriminatory treatment, free transfer of investment related capital flows, reducing or eliminating local performance requirements, and established standards for compensation for expropriation consistent with U.S. legal principles and practices. These provisions are also part of the bilateral investments treaties (BIT) that the United States negotiates with other countries. The proposed BCTPA also sought to improve investor-state dispute resolution mechanisms.

To what extent did TPA address investor-state dispute settlement?

Investor-state dispute settlement (ISDS) allows for private foreign investors to seek international arbitration against host governments to settle claims over alleged violations of foreign investment provisions in FTAs. The 2002 TPA authority and the proposed BCTPA did not specifically mention an ISDS mechanism. They do state that trade agreements should provide meaningful procedures for resolving investment disputes; seek to improve mechanisms used to resolve disputes between an investor and a government through mechanisms to eliminate frivolous claims and to deter the filing of frivolous claims; provide procedures to ensure the efficient selection of arbitrators and the expeditious disposition of claims; provide procedures to enhance opportunities for public input into the formulation of government positions; and seek to provide for an appellate body or similar mechanism to provide coherence to interpretations of investment provisions in trade agreements.

How have these provisions evolved over time?

Two negotiating objectives relating to foreign investment were initially listed under the Omnibus Trade and Competitiveness Act of 1988 fast-track authority. The 2002 authority and the proposed BCTPA listed eight. In addition to TPA, U.S. investment negotiating objectives are shaped by the U.S. Model BIT, the template used to negotiate U.S. BITs and FTA investment chapters. The Model BIT has been revised periodically in an effort to balance investor protections and other policy interests. The 2004 Model BIT, for instance, narrowed the definitions of covered investment and minimum standard of treatment, and connected the definition of direct and indirect expropriation to "property rights or property interests," reflecting the U.S. Constitution's

[8] For more information, please see CRS Report R43052, *U.S. International Investment Agreements: Issues for Congress*, by Shayerah Ilias Akhtar and Martin A. Weiss.

Takings Clause and with possible implications for expropriation protection depending on foreign countries' definitions of property. It also clarified that only in rare cases do non-discriminatory regulatory actions by governments to protect legitimate public welfare objectives result in indirect expropriation. In response to global economic changes, the 2012 Model BIT, among other things, clarified that its obligations apply to state-owned enterprises, as well as to the types of financial services that may fall under a prudential exception (such as to address balance of payments problems). Other examples of revisions to the Model BIT over time include more detailed provisions on ISDS, stronger aspirational language on environmental and labor standards, and enhanced transparency obligations.

Will foreign investors be afforded "greater rights" than U.S. investors under U.S. trade agreements?

The 2002 TPA authority and the proposed BCTPA stated that no trade agreement is to lead to the granting of foreign investors in the United States greater rights than are granted to U.S. investors in the United States. Some have argued, however, that the use of ISDS itself does imply greater procedural rights.

Trade Remedies

How does TPA address trade remedies?

Trade remedy statutes, such as antidumping and countervailing duty laws, provide U.S. firms with the means to redress the unfair trade practices of foreign actors, whether firms or governments.[9] Safeguard provisions, which allow for temporary restraints on import surges not considered to be unfairly traded, are also included as trade remedies. The principal objective concerning trade remedies in TPA/fast track has been to "preserve the ability of the United States to rigorously enforce its trade laws" and to avoid concluding "agreements that weaken the effectiveness of domestic and international disciplines on unfair trade." Trade remedies have usually been addressed in the context of multilateral WTO negotiations. This objective reflects the perception by some Members of Congress that other WTO members have sought to weaken U.S. trade remedy laws. The proposed BCTPA also maintained notification provisions that require the President to notify Congress 180 days before signing (entering into) a trade agreement that included provisions affecting trade remedy laws.

Currency Issues

Have currency practices ever been addressed in a TPA authorization?

The extent to which some countries may use the value of their currency to gain competitive market advantage is a source of concern for certain industries and Members of Congress. In the 2002 TPA authorization statute, the President was to seek to establish consultative mechanisms with trading partners to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government has manipulated its currency to

[9] For more information, please see CRS Report RL32371, *Trade Remedies: A Primer*, by Vivian C. Jones.

promote a competitive advantage in international trade. This provision was contained in the "promotion of certain priorities section."

How were currency issues addressed under recent TPA renewal legislation?

The proposed BCTPA would have elevated the topic of currency manipulation to a principal U.S. negotiating objective. The proposed authority states that U.S. trade agreement partners "avoid manipulating exchange rates in order to prevent effective balance of payments adjustment or to gain unfair competitive advantage." It does not specifically define currency manipulation to include or exclude central bank intervention in the domestic economy. (It does not differentiate among the ways for a government to affect the value of its currency such as currency market intervention, or central bank activities such as an increase in the money supply to stimulate the domestic economy.) The language calls for multiple remedies, "as appropriate," including "cooperative mechanisms, enforceable rules, reporting, monitoring, transparency, or other means."

Intellectual Property Rights (IPR)

What were the key negotiating objectives concerning IPR?

The United States has long supported the strengthening of intellectual property rights through trade agreements, and Congress has placed IPR protection as a principal negotiating objective since the 1988 grant of fast-track authority.[10] The overall objectives on IPR under the 2002 TPA authority were: the promotion of adequate and effective protection of IPR; market access for U.S. persons relying on IPR; and respect for the WTO Trade-related Aspects of Intellectual Property Rights (TRIPS) Declaration on Public Health. These objectives were largely reflected in the five objectives in the proposed BCTPA. The promotion of adequate and effective protection of IPR through the negotiation of trade agreements that reflect a standard of protection similar to that found in U.S. law is a key provision, as are provisions for strong protection of new technologies, standards of protection that keep pace with technological developments, non-discrimination in the treatment of IPR, and strong enforcement of IPR. The proposed BCTPA also would have sought to ensure that agreements negotiated foster innovation and access to medicine.

Did the proposed BCTPA contain new IPR negotiating objectives?

A new objective in the proposed BCTPA would have sought to negotiate the prevention and elimination of government involvement in violations of IPR such as cybertheft or piracy. The enhanced protection of trade secrets and proprietary information collected by governments in the furtherance of regulations are contained in the negotiating objective on regulatory coherence.

What is the "May 10th Agreement"?

The May 10, 2007, agreement was a bipartisan statement of agreed principles between the President and the House leadership on labor, environment, IPR, foreign investment, and

[10] For additional information, please see CRS Report RL34292, *Intellectual Property Rights and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

government procurement to be applied to the four FTAs Congress would consider at that time: Colombia, Panama, Peru, and South Korea. The extent to which these provisions would be included in TPA negotiating objectives and future FTAs has been a source of debate among policy makers. (See the "May 10th Agreement" box below for more details.)

The "May 10th Agreement"

On May 10, 2007, a bipartisan group of congressional leaders and the Bush Administration released a statement on agreed principles in five policy areas: worker rights, environment protection, IPR, government procurement, and foreign investment. The principles were to be reflected in provisions in four U.S. FTAs—with Colombia, Panama, Peru, and South Korea, then being considered for ratification. Regarding worker rights, the May 10th Agreement (the Agreement) required the United States and FTA partners to commit to enforcing the five international labor principles enshrined in International Labour Organization's (ILO's) *1998 Declaration on Fundamental Principles and Rights At Work* and that the commitment be enforceable under the FTA. These rights are the freedom of association, the effective recognition of the right to collective bargaining, the elimination of all forms of compulsory or forced labor, the effective abolition of child labor, including the worst forms of child labor, and the elimination of discrimination in respect of employment and occupation.

The Agreement also required FTAs to adhere to seven major multilateral environmental agreements: The seven agreements are the Convention on International Trade in Endangered Species; the Montreal Protocol on Ozone Depleting Substances; the Convention on Marine Pollution; the Inter-American Tropical Tuna Convention; the Ramsar Convention on the Wetlands; the International Convention for the Regulation of Whaling; and the Convention on Conservation of Antarctic Marine Living Resources.

Furthermore, the parties are not to waive or otherwise derogate from their labor or environmental protection laws in a manner that would affect trade or investment with the FTA partner(s). In addition, the labor and environment provisions must be enforceable, if consultation and other avenues fail, through the same dispute settlement procedures that apply to the other provisions in the FTA.

The Agreement also required the FTAs to include provisions related to patents and approval of pharmaceuticals for marketing exclusivity with different requirements for developed and developing countries. Specifically, the Agreement requires provisions dealing with the effective period of data exclusivity—the restrictions on the use of test data produced for market approval by generic drug producers; patent extensions; linkage of marketing approval of generic drugs to determination of possible patent infringement; and reaffirmation of adherence to Doha Declaration on compulsory licensing of drugs to respond to public health crises.

Regarding foreign investment, the Agreement required each of the FTAs to state that none of its provisions would accord foreign investors greater substantive rights in terms of foreign investment protection than are accorded U.S. investors in the United States.

Were the provisions of the May 10th Agreement incorporated into the proposed BCTPA?

The proposed BCTPA would have incorporated the labor and environmental principles of the May 10th provision, including requirements that a negotiating party's labor and environmental statutes adhere to internationally recognized core labor standards and to obligations under common multilateral environmental agreements. While the May 10th patent language on pharmaceuticals was not specifically included in the proposed BCTPA language, it did seek to "ensure that trade agreements foster innovation and access to medicine."[11] The same investment language, "ensuring that foreign investors in the United States are not granted greater substantive rights with respect to investment protections than U.S. investors in the United States" was included.

[11] The language does not specifically refer to the patent protection provisions found in the May 10th Agreement provisions, which were designed to achieve greater access to medicine in developing country FTA partners. The included language seemingly could be used to justify including or excluding those provisions in future FTAs.

Labor and Environment

What were the negotiating objectives on labor under the 2002 TPA and how do they compare with the objectives on labor proposed under the proposed BCTPA?

Both the 2002 Authority and the proposed BCTPA included several negotiating objectives on labor issues and worker rights.[12] While similar, they also differ in some fundamental ways. For example, the 2002 authority states that trade agreements are to ensure that a trading partner does not fail effectively to enforce its own labor statutes. The proposed BCTPA would have required that the United States ensure not only that a trading partner not only enforce its own labor statutes but also that those statutes include internationally recognized core labor standards as defined in the bill to mean the "core labor standards only as stated in the International Labor Organization's (ILO) Declaration on Fundamental Principles and Rights to Work and its Follow-Up (1998)."[13]

In addition, the 2002 authority allowed some discretion on the part of a trading partner government in enforcing its laws and that the government would be considered fulfilling its obligations if it exercised discretion, either through action or inaction, reasonably. The proposed BCTPA, on the other hand, stated that while the government retains discretion in implementing its labor statutes, the exercise of that discretion is not a reason not to comply with its obligations under the trade agreement. The labor—and environmental—provisions also contained language to strengthen the capacity of trading partners to adhere to labor and environmental standards, as well as a provision to reduce or eliminate policies that unduly threaten sustainable development.

What are the environmental negotiating objectives under the proposed BCTPA, and how do they compare with the objectives on environment under the 2002 authority?

Like the labor objective, the proposed BCTPA would have provided not only that a party enforce its own environmental standards as in the 2002 Act, but also that those laws conform to seven internationally recognized multilateral environmental agreements (MEAs). The environmental objective contains language allowing a reasonable exercise of discretion in enforcement based on resources: language similar to, but seemingly more flexible than, that included in the labor provisions.

Would the labor and environmental provisions negotiated be subject to the same dispute settlement provisions as other parts of the agreement?

The proposed BCTPA would have committed negotiators "to ensure that enforceable labor and environmental standards are subject to the same dispute settlement and remedies as other

[12] For more information, please see CRS In Focus IF00018, CRS Report IF00018, *Worker Rights Provisions in Free Trade Agreements (FTAs) (In Focus)*, by Mary Jane Bolle and Ian F. Fergusson.

[13] The ILO declaration lists these core labor principles as: the freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor and the prohibition on the worst forms of child labor; and the elimination of discrimination in respect of employment and occupation.

enforceable provisions under the agreement." Under the most recent U.S. trade agreements, this could mean the withdrawal of trade concessions until the dispute is resolved. By contrast, the 2002 TPA provided separate remedies under dispute settlement, including the use of monetary penalties and technical assistance.

Regulatory Practices

How did the proposed BCTPA seek to address regulatory practices?

The regulatory practices objectives sought to reduce or eliminate the use of governmental regulations (non-tariff barriers)—such as discriminatory certification requirements or non-transparent health and safety standards—from impeding market access for U.S. goods, services, or investment. Like the 2002 TPA, it sought commitments in trade agreements that proposed regulations would be based on scientific principles, cost-benefit risk assessment, or other objective, non-discriminatory standards. It also sought more transparency and participation by affected parties in the development of regulations, consultative mechanisms to increase regulatory coherence, regulatory compatibility through harmonization or mutual recognition, and convergence in the standards-development process. A new provision in the proposed BCTPA would have limited governmental collection of undisclosed proprietary data—"except to satisfy a legitimate and justifiable regulatory interest"—and to protect that data against public disclosure.

Did the proposed BCTPA address drug pricing and reimbursement issues?

Yes, the regulatory practices negotiating objective also contained language applicable to a foreign country's drug pricing system. BCPTA sought to eliminate government price controls and reference prices "which deny full market access for United States products." The proposed BCTPA also sought to ensure that regulatory regimes adhere to principles of transparency, procedural fairness, and non-discrimination.

Dispute Settlement (DS)

What were the principal negotiating objectives on DS in FTAs?

The principal negotiating objectives on DS addressed DS mechanisms in FTAs negotiated by the United States and the application of DS at the WTO. TPA legislation has sought to establish DS mechanisms to resolve disputes, first through consultation, then by the withdrawal of benefits to encourage compliance with the agreement. The BCPTA also sought provisions to apply the principal negotiating objectives in TPA equally through equivalent access, procedures, and remedies. This obligation would, in practice, have allowed for full dispute settlement of labor and environmental disputes under the agreement.

How did TPA address DS at the WTO?

The proposed BCTPA, like its predecessors, also sought that WTO DS panels and the Appellate Body "apply the WTO Agreement as written, without adding to, or diminishing rights and obligations under the agreement," and to use a standard of review applicable to the Uruguay Round Agreement in question, "including greater deference, where appropriate, to the fact finding and technical expertise of national investigating authorities." These provisions addressed the perception by some Members of Congress that the WTO dispute settlement bodies have interpreted WTO agreements in ways not foreseen or reflected in the agreement.

New Issues Addressed in the proposed 2014 BCTPA

What new negotiating objectives were contained in the proposed BCTPA?

Digital Trade in Goods and Services and Cross-Border Data Flows

The Internet not only has become a facilitator of international trade in goods and services given its borderless nature, but also is itself a source of trade in digitally originated services such as search engines or data storage. At the same time, however, digital trade and cross-border data flows have increasingly become the target of trade restricting measures, especially in emerging markets. The digital trade provisions would have updated and expanded upon the e-commerce provisions from the 2002 TPA that called for trade in digital goods and services to be treated no less favorably than like-physical goods or services in terms of applicability of trade agreements, the classification of a good or service, or regulation. Aside from ensuring that governments refrain from enacting measures impeding digital trade in goods and services, the proposed BCTPA would have extended that commitment to cross-border data flows, data processing, and data storage. It also would have provided enhanced protection of trade secrets and proprietary information collected by governments in the furtherance of regulations. The promotion of strong IPR for technologies to facilitate digital trade was included in the IPR objectives, which also sought to extend the existing WTO moratorium on duties on electronic commerce transactions.

State-Owned Enterprises (SOE)

U.S. firms often face competition from state-owned or state-controlled firms. The proposed BCTPA sought to ensure that SOEs are not favored with discriminatory purchases or subsidies and that competition is based on commercial considerations in order that U.S. firms may compete on a "level playing field." While current TPP negotiations include countries, such as Malaysia, Singapore, and Vietnam, with a significant SOE presence, such language may also pertain to future negotiations covered under the proposed BCTPA, including possibly with other countries with large SOE sectors such as China or India.

Localization

The proposed BCTPA would have added a principal negotiating objective on "localization," the practice by which firms are required to locate facilities, intellectual property, services, or assets in a country as a condition of doing business. While localization can be motivated by privacy and security interests, there are concerns that such measures can be trade distorting and may be used for protectionist purposes. U.S. negotiators would have been directed to prevent and eliminate such practices, as well as the practice of indigenous innovation, where a country seeks to develop local technology by the enforced use of domestic standards. Localization provisions concerning the free flow of data were included in the digital trade objective above. Localization barriers were also addressed in the foreign investment chapter with provisions to restrict or eliminate performance requirements or forced technology transfers in the establishment or operation of U.S. investments abroad.

Congressional Consultation and Advisory Requirements

The consultative, notification, and reporting requirements of TPA/fast-track are designed to achieve greater transparency in trade negotiations and to maintain the role of Congress in shaping trade policy. Congress has required the executive branch to consult with Congress prior to and during trade negotiations, as well upon their completion and the signing of (entering into) a trade agreement. TPA/fast track statutes have required the USTR to meet and consult with the House Ways and Means Committee, the Senate Finance Committee, and other committees that would have jurisdiction over laws possibly affected by trade negotiations.

In addition, the Bipartisan Trade Promotion Authority Act of 2002 established the Congressional Oversight Group (COG). The COG consists of the chair and ranking Members of the House Ways and Means Committee and the Senate Finance Committee, and three Members from each of the two committees, no more than two of whom can be from the same political party. The COG also consists of the chair and ranking Member, or their designees, of House and Senate Committees that would have jurisdiction over laws that are possibly affected by the trade agreements. Under the Bipartisan Trade Promotion Act of 2002, the United States Trade Representative (USTR), as the chief trade negotiator for the President, is required to meet with members of the COG before and during negotiations if requested by a majority of its members. The COG is still a statutorily established entity, although reportedly it has met infrequently.

How did the provisions on consultations in proposed TPA renewal legislation compare with previous statutes?

The proposed 2014 BCTPA included consultation requirements similar to those under the 2002 Act and previous trade negotiating authorities. However, instead of the COG, the proposed BCTPA would have provided for the establishment of separate Congressional Advisory Groups on Negotiations (CAGs) for each house—a House Advisory Group on Negotiations (HAG), chaired by the chairman of the Ways and Means Committee, and a Senate Advisory Group on Negotiations (SAG), chaired by the chairman of the Finance Committee. The USTR would have been required to meet with either group upon the request of the majority of that group prior to launching negotiations or at any time during the negotiations.

The proposed BCTPA also would have required the USTR to develop guidelines on how to enhance consultation with Congress, including timely briefings on the negotiating objectives for any specific trade agreement, the status of the negotiations, and any changes in laws that might be required to implement the trade agreement. The USTR would have been required to develop the guidelines in consultation with the chairmen and ranking Members of the Senate Finance Committee and the House Ways and Means Committee, and to produce the guidelines no later than 120 days after the proposed BCTPA would have entered into force. In addition, the proposed BCTPA would have required the USTR to consult on trade negotiations with any Member of Congress who requests to do so.

Who would be Members of the House and Senate Advisory Groups?

Under the proposed 2014 BCTPA, the HAG would have consisted of the chairman and ranking Member of the House Ways and Means Committee plus three additional Members of the Committee, no more than two of whom could be of the same party. The HAG also would have included the chairman and ranking Member or their designees of any Committee with jurisdiction over laws affected by the proposed trade agreement. The SAG would consist of the chairman and ranking Member of the Senate Finance Committee plus three additional Members of the Committee, no more than two of whom could be Members of the same party. It would have included the chairman and ranking Member, or their designees, of any committee with jurisdiction over laws that would be affected by the proposed trade agreement.

Who are Designated Congressional Advisors?

Designated Congressional Advisors (DCAs) are Members of Congress who are accredited as official advisers to U.S. delegations to trade negotiations. Under Section 161 the Trade Act of 1974, as amended, the Speaker of the House selects five Members from the Ways and Means Committee (no more than three of whom are to be of the same political party), and the President Pro Tempore of the Senate selects five Members from the Senate Finance Committee (no more than three of whom can be of the same political party), as DCAs.[14] In addition, the Speaker and the Senate President Pro Tempore may each designate as DCAs Members of committees that would have jurisdiction over matters that are the subject of trade policy considerations or trade negotiations. Members of the COG are also DCAs.

Under the proposed 2014 BCTPA, in addition to the above, any Member of the House could have been designated by the Speaker as a DCA upon consultation with the chairman and ranking Member of the House Ways and Means Committee and the chairman and ranking Member of the committee from which the Member would be selected. Similarly, any Member of the Senate could be designated a DCA upon consultation with the President Pro Tempore and the chairman and ranking Member of the committee from which the Senator would be selected. In addition, Members of the HAG and SAG would be accredited as official trade advisers to U.S. trade negotiation delegations by the USTR.

Which Members of Congress have access to draft trade agreements and related trade negotiating documents?

Currently all Members of Congress have security clearances, and any Member may examine draft trade agreements and related trade negotiating documents, although this is not specifically spelled out under the most recent trade negotiating authority. The USTR classifies draft texts of trade agreements and related documents under Executive Order 13526.

[14] The appointment power of the President pro tempore of the Senate is subject to the conditions of 2 U.S.C. 199, which requires involvement of the majority and minority leaders if a statute specifies that the appointment is to be made on the basis of the appointee's affiliation with a political party, or if not, upon the joint recommendation of the Senate majority and minority leaders.

The proposed BCTPA would have expressly required that upon the request of any Member of Congress, the USTR provide that Member access to pertinent documents relating to trade negotiations, including classified materials.

What are the requirements to consult with the private sector and the public on trade policy?

In order to ensure that private and public stakeholders have a voice in the formation of U.S. trade policy, Congress established a three-tier advisory committee system under Section 135 of the Trade Act of 1974, as amended. These committees advise the President on negotiations, agreements and other matters of trade policy. At the top of the system is the 30-member Advisory Committee for Trade Policy and Negotiations (ACTPN) consisting of presidentially-appointed representatives from local and state governments and representatives from the broad range of U.S. industries and labor. At the second tier are five policy advisory committees—Trade and Environment Policy, Intergovernmental Policy, Labor Policy, Agriculture Policy, and Africa. The third tier consists of 17 sector-specific committees—one on agriculture and 16 on industry—which provide technical advice.[15] In addition to consultations with the advisory committees, the USTR solicits the views of stakeholders through Federal Register notices and hearings.

The TPA/fast track authorities under the Trade Act of 1974 and thereafter have required the President to submit reports from the various advisory committees on their views regarding the potential impact of an agreement negotiated under the TPA before the agreement is submitted for congressional approval. For example, the 2002 Trade Act requires the President to submit to Congress the reports of the advisory committees on a trade agreement no later than 30 calendar days after notifying Congress of his intent to enter into the trade agreement. Those reports would also be required under the proposed BCTPA.

The proposed BCTPA would have expanded the existing statutory requirements for consultation with the public. For example, the legislation would have required the USTR to develop guidelines for enhanced consultation with the public and to provide these guidelines no later than 120 calendar days after the legislation went into effect. The legislation also would have required the USTR to develop guidelines on consultations with the private sector advisory committees no later than 120 days after the legislation would go into effect. Furthermore, the legislation would have required the President to make public the U.S. International Trade Commission (USITC) assessment of the potential impact of the trade agreement, which is not the case under the previous authority. The President also would have been required to make public other mandated reports on the impact of future trade agreements on the environment, employment, and labor rights in the United States. (See question, "What is the role of the U.S. International Trade Commission?" below.)

[15] On February 18, USTR Froman announced the formation of a Public Interest Advisory Committee (PIAC) that will advise the Administration on issues of public health, consumer protection and transparency in trade negotiations.

Do specific import sensitive industries have special negotiation and consultation requirements?

Under the 2002 Trade Act and the proposed 2014 BCTPA, import sensitive products in the agriculture (i.e., products subject to a tariff rate quota [TRQ]), fishing and textile sectors have special assessment and consultation requirements before initiating negotiations.

Notification and Reporting Requirements

Another tool Congress has employed under TPA to ensure transparency of the negotiating process is to require the President to notify Congress prior to launching trade negotiations and prior to entering into (signing) a trade agreement.

What have been the congressional notification requirements and would they change under the pending legislation?

The Bipartisan Trade Promotion Authority Act of 2002 required the President to notify Congress 90 calendar days prior to initiating negotiations on a reciprocal trade agreement with a foreign country. The President was also required to notify Congress 90 calendar days prior to entering into (signing) a trade agreement and to notify Congress 60 days prior to entering into the agreement of any expected changes in U.S. law that would be required in order to be in compliance with the trade agreement. In addition, 180 calendar days prior to entering into a trade agreement, the President had to notify the House Ways and Means Committee and the Senate Finance Committee of any changes in U.S. trade remedy laws (antidumping, countervailing duty, and escape clause statutes) that would be required by the trade agreement. The 2002 Act also stipulated special notification and reporting requirements for agriculture, fishing industry, and textiles and apparel. The proposed BCTPA would maintain these requirements.

What is the role of the U.S. International Trade Commission?

Under the 2002 Authority, the President had to submit the details of the proposed agreement to the USITC 90 calendar days prior to entering into (signing) the agreement,. The USITC was required to produce an assessment of the potential economic impact of the agreement no later than 90 calendar days after the agreement was entered into. The BCTPA would have incorporated the same requirement, but would have extended the deadline for the USITC to produce the report by 15 calendar days to 105 days and required that the reports be made public.

Expedited Procedures and the Congressional Role

What have been the expedited legislative procedures? Would they be changed under the proposed BCTPA?

The proposed 2014 BCTPA would have made use of the existing expedited procedures prescribed in Section 151 of the Trade Act of 1974 (see the text box).

Expedited Legislative Procedures for Trade Agreement Implementing Bills

Under Section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the implementing bill submitted by the President is automatically introduced in both chambers and referred to the appropriate committees of jurisdiction (normally Ways and Means in the House and Finance in the Senate, perhaps among others). In each chamber, the committees have 45 session days to report the bill back to the floor, and they may not amend it or recommend amendments. If either committee does not report after 45 session days, it is discharged from considering the implementing bill, which makes the bill available for floor action (days on which the respective chamber does not meet are not counted toward the 45-day period.)

In each chamber, once the committee reports or is discharged, the implementing bill may be called up for consideration by a non-debatable motion, offered from the floor by any Member. In the House, this provision means that no special rule from the Committee on Rules is necessary in order to bring the bill to the floor; in the Senate, it means that Senators need not defer to the majority leader to call up the bill, and no super-majority vote is needed to limit debate on a motion to consider the legislation.

In each chamber, once the measure is under consideration, debate is limited to 20 hours, no amendments may be considered, and various potentially dilatory motions are prohibited. The limit on debate means that no super-majority vote will be needed in the Senate to overcome a filibuster. Each chamber can pass the implementing bill by a simple majority vote. If either chamber passes its bill, it sends the bill to the other; the other chamber then considers its own implementing bill under the expedited procedure, but takes its final vote on the bill received from the first. Because neither chamber could amend the implementing bill, the two bills must remain identical; as a result, if the chamber acting second passes the bill received from the other, this action clears the bill for the President's signature.

Most trade agreements affect tariffs, in which case the implementing bill will be a revenue bill, which, under the Constitution, must be enacted as a House bill. In this case the House must act first, and send its bill to the Senate, where it is referred to committee. The Senate committee is automatically discharged if it does not report the House bill within 15 session days beyond the 45 session days allowed for considering its own bill. After the committee reports the House bill or is discharged, the Senate then may consider it under the expedited procedure.

What is the purpose of the expedited procedures for considering implementing bills?

The expedited procedure of the TPA includes three core elements: a mechanism to ensure timely floor consideration, limits on debate, and a prohibition on amendment. The guarantee of floor consideration is intended to ensure that Congress will have an opportunity to consider and vote on the implementing bill whether or not the committees of jurisdiction or the leadership favor the legislation. Especially in the Senate, the limitation on debate helps ensure that opponents cannot prevent a final vote on an implementation bill by filibustering. The prohibition on amendments is intended to ensure that Congress will vote on the implementing bill in the form in which it is presented to Congress. In these ways, the expedited procedures help assure U.S. negotiating partners that the United States will act on the question of implementing the terms of the agreement reached, rather than their being compelled to renegotiate it or not reaching final agreement.

Why do the expedited procedures for implementing bills prohibit amendments?

As just noted, if Congress were to amend an implementing bill, the legislation ultimately enacted might fail to implement the terms of the agreement that had actually been agreed. In addition, however, if either house were to amend the implementing bill, it would probably become necessary to resolve the differences between the House and Senate versions of the bill through a conference committee (or through amendments between the houses). Since there is no way to force the two houses to reach an agreement on a single version, this prospect would make it impossible to ensure that Congress could complete action on the implementing bill expeditiously or, indeed, at all.

What can/should be included in a trade agreement implementing bill that receives expedited legislative consideration?

Because trade agreement implementing bills would receive expedited congressional consideration under TPA, Congress has imposed restrictions on what should be included in these bills. The 2002 TPA authority stated that the implementing bill should consist only of provisions that approve the trade agreement and a statement of administrative action and provisions "necessary or appropriate" to implement the agreement. What constitutes "necessary and appropriate" has been the subject of debate, with some Members arguing that the terms should not be interpreted too loosely, while others may argue for a broader interpretation. The proposed BCTPA would have included the same basic language except it would have required that the provisions be "*strictly* [italics added] necessary and appropriate."

How did the proposed 2014 BCTPA treat agreements reached under the sets of negotiations already launched?

For the TPP, the TTIP, and the TISA negotiations (see question, "How has the lack of TPA affected current trade agreement negotiations?" above), the proposed BCTPA would have waived the requirement of notification 90-calendar days prior to launching the negotiations for these negotiations, provided that the President notifies Congress of the negotiating objectives of the agreement and whether he is seeking a new agreement or changes in an existing agreement. (The Obama Administration has already been adhering to similar notification and consultation requirements of the expired 2002 authority.)

May Congress withdraw TPA procedures?

Under both the 2002 TPA authority and the proposed BCPTA, Congress may withdraw expedited legislative consideration from a particular implementing bill if it determines that the President has not adequately notified or consulted Congress on that agreement as provided by the act, or that the agreement "fails to make progress in achieving the purposes, policies, priorities, and objectives" of the act. If both houses, within 60 days of each other, adopt a "procedural disapproval resolution" (PDR) on the same implementing bill, neither can use the expedited procedure to consider that implementing bill.[16]

As already noted, the proposed BCTPA would have enabled Congress to deny TPA altogether for the period from July 1, 2018, through June 30, 2021). At any time through June 30, 2018, the President may request that TPA be extended through this period, but the extension is denied if, before that date, either house adopts an "extension disapproval resolution" (EDR). Earlier TPA statutes contained similar provisions for an extension and EDR.

[16] If a PDR becomes effective, the two houses could still consider the implementing bill under their general rules; see "May Congress override the expedited procedures?" later.

The proposed 2014 BCPTA legislation, similarly to previous grants of TPA, effectively placed the withdrawal of TPA by either of these means in the control of the Committee on Ways and Means and the Committee on Finance. Although any Member of the respective house could have introduced a PDR or an EDR, such a resolution could have been considered on the floor in each chamber only if the respective revenue committee reported it. If reported, however, the measure would have been considered under an expedited procedure of its own, making privileged a motion for consideration, limiting debate, and prohibiting amendment at any stage of the process.[17]

What is a "mock markup"?

Although not embedded in statute, a "mock markup" has been an informal, traditional method for the House Ways and Means Committee and Senate Finance Committee to provide advice on the contents of the implementing bill before the President formally sends the draft bill to both houses, thus triggering the expedited procedure for the bill. Under the statute, the President notifies Congress of his intention to enter into (sign) a trade agreement 90 calendar days prior to doing so.[18] This notification typically enables the committees to conduct hearings on a draft implementing bill sent by the White House, followed by the advisory "markup." If the House and Senate Committees have significant differences, they could hold a "mock conference."

This process is purely advisory, and it is at presidential discretion whether to accept the advice. The process is called a "mock" markup because the bill under consideration is only a draft. The action of the committees operates only as a signal of their preferences to the executive. Often, nevertheless, the implementing bill that the President later submits to Congress tracks the results of the mock markup. If the revenue committees are dissatisfied with the implementing bill as submitted, they retain the options of denying expedited consideration through the use of a PDR, as just described, or of bringing the bill to the floor under the general rules rather than the statutory expedited procedures, as described next.

Can Congress disapprove the President's launching trade negotiations with a trading partner?

Congress does not have the constitutional authority to prevent the President from entering into negotiations with a foreign government. Under the Trade and Tariff Act of 1984 and the Omnibus Trade and Competitiveness Act of 1988, however, a bill to implement a trade agreement could have been denied expedited consideration if, within a 60-day period after the President notified the House Ways and Means Committee and the Senate Finance Committee of his intention to begin negotiations, either committee voted to disapprove the negotiation. This provision was not included either in the 2012 TPA authority or in the proposed 2014 BCTPA.

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[17] Section 152(d) and (e) of the Trade Act of 1974, 19 U.S.C. 2192(d) and (e).

[18] *See* "Notification and Reporting Requirements," earlier.

May Congress override the TPA procedures?

As the TPA statutes acknowledge, the expedited procedures for which they provide operate as procedural rules of each house, and therefore each house retains full authority, under the Constitution, to change or override them at any point. Under this authority, either house could choose not to consider an implementing bill under the expedited procedure, but instead under its general rules, under which amendment might be permitted.[19]

In practice, the House usually does not consider implementing bills under the statutory expedited procedure, but pursuant to special rules, reported from the Committee on Rules. These special rules normally retain the statutory prohibition against amendment (thereby duplicating the conditions under which the House usually considers revenue bills). However, the House could adopt a special rule permitting amendments to an implementation bill, and it has also adopted a resolution prohibiting consideration of an implementing bill for a specified trade agreement.

The Senate normally considers implementing bills under the expedited procedure, because supporters thereby avoid the possible need to obtain a super-majority vote for cloture in order to limit debate. By unanimous consent, nevertheless, the Senate could agree to override any or all of the TPA procedures, including those that prohibit amendments to an implementing bill.

Does TPA constrain Congress's exercise of its constitutional authority on trade policy?

Even though the TPA procedures are designed to ensure that Congress will act on implementing bills, and will do so without amending them, TPA legislation affords Congress several procedural means to maintain arguably tight reins on the executive branch's exercise of the delegated trade authority. In the provisions of successive TPA statutes, Congress has developed several mechanisms for preserving its authority in relation to the content of implementing bills even when they are eligible for consideration under the expedited procedure. In practice, these mechanisms enable the House Committee on Ways and Means and the Senate Committee on Finance (the "revenue committees") to operate as agents of Congress as a whole in protecting congressional prerogatives.

TPA statutes include extensive, specific negotiating objectives to be pursued in covered trade agreements (see "Trade Negotiating Objectives," above). They also include extensive requirements for Congress to be notified of any trade agreement negotiations and consulted during their course. These requirements enable the revenue committees to monitor the negotiations actively and work to ensure that any trade agreements reached will be acceptable (see "Congressional Consultation and Advisory Requirements," and "Notification and Reporting Requirements," above).

The procedural mechanisms discussed in the preceding paragraphs, including the extension disapproval resolution, the procedural disapproval resolution, and the mock markup, enable Congress, and the two revenue committees in particular, to exercise a degree of control over the

[19] As noted earlier, under "Why does the expedited procedure prohibit amendments," if either house adopted amendments, a conference committee might be necessary to reach agreement on a version to send to the President.

content and consideration of covered trade agreements that is comparable, in many respects, to that which these panels generally exercise over other legislation within their jurisdiction.

In addition to these TPA-specific procedures, finally, each house retains the ability to consider implementing bills under its general rules rather than under the expedited procedure.

National Sovereignty and Trade Agreements

Can a trade agreement force the United States to change its laws?

Neither the 2002 TPA authority nor previous TPA/fast track authorities contained provisions addressing the issue of national sovereignty. The 2014 BCTPA proposal stated that no provision of any trade agreement entered into under the TPA inconsistent with any law of the United States, of any State, or any locality of the United States shall have any effect. Nor shall any provision of a trade agreement prevent the government of the United States, of any State, or any U.S. locality from amending its laws. This provision from the proposed BCTPA essentially provided that, for domestic purposes, any trade agreement adopted under the TPA authority is not self-executing. Therefore, any potential agreement adopted through the TPA procedures would not displace any federal, state, or local law without further action being taken by the appropriate legislature.

What happens if a U.S. law violates a U.S. trade agreement?

In general, if the United States does adopt an agreement with foreign countries, it would be bound by international law under the agreement. If a federal, state, or local law is found to be in violation of the free trade agreement, then the United States could be subject to removal of some benefits under the agreement, such as an increase in tariffs on its products, through a potential dispute resolution with a challenging country. The federal, state, or local government potentially would have to amend its laws that are inconsistent with the trade agreement in order for the United States to avoid removal of benefits under the international agreement.

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