Role of the US Congress in trade agreements

The 'Fast-Track' procedure
Since 1974, the United States Congress has several times enacted Trade Promotion Authority (TPA), defining the conditions and procedures for voting using a streamlined or expedited procedure, also known as the fast-track procedure, to pass implementing legislation in Congress for international trade agreements negotiated during a specific defined period of time. The 2015 TPA, passed in June 2015, contains the requirements and procedures for fast-track adoption of any international agreement entered into by the US before 1 July 2018 (with possible extension up to 1 July 2021) including any resulting from the ongoing Transatlantic Trade and Investment Partnership (TTIP) negotiations.
EXECUTIVE SUMMARY

Since 1974 the United States Congress has enacted Trade Promotion Authority (TPA) legislation to ensure speedy implementation of trade agreements in the United States, while maintaining a congressional hold on the objectives to be pursued by US negotiators. TPA defines a streamlined procedure (or expedited procedure) to vote in Congress on international trade agreements negotiated during a specific defined period of time. The current (2015) Trade Promotion Authority Act, which was finally passed in June 2015, sets out the rules for the expedited procedures applicable to any international agreement entered into by the US before 1 July 2018 (with possible extension up to 1 July 2021).

This expedited procedure (often referred to as 'fast-track') allows the implementing legislation to be passed on a yes/no vote without the possibility of amendments by Congress. Without this procedure, such legislation would follow the general rules of procedures, which would allow Congress to introduce amendments to the implementing legislation of the agreement and which therefore might require the reopening of negotiations with the counterparts.

The expedited procedure is authorised on the condition that the US President observes certain obligations in negotiating trade agreements, including negotiating objectives for the administration to follow, and notification and reporting requirements to Congress. Though the original TPA has evolved over time, Congress retains the authority to review and decide whether any proposed US trade agreement will be implemented. Equally the expedited procedure ensures the President's credibility in the complex negotiations needed for trade agreements by ensuring that a trade agreement, once signed by the executive, will not be changed by the legislative branch.
TABLE OF CONTENTS

1. Introduction to the Fast-Track Procedure ................................................................. 3
2. Historical developments and the current 2015 Trade Promotion Authority Act ........ 5
   3.1. Requirements for applying the expedited procedure ........................................... 8
      3.1.1. The substantive requirements ........................................................................ 8
      3.1.2. Negotiation of the agreement and consultation requirements ....................... 10
   3.2. The expedited procedure from signature to enactment of the implementing legislation .................................................................................................................. 12
   3.3. Procedures withdrawing fast-track application for a specific agreement ............ 13
      3.3.1. Procedural Disapproval Resolution ................................................................. 13
      3.3.2. Consultation and Compliance Resolution ..................................................... 14
      3.3.3. Other procedures: .......................................................................................... 14
4. Main references ............................................................................................................. 14
5. Annex: Principal and other trade objectives ............................................................... 15
Glossary

**Trade Promotion Authority (TPA):** Legislative process made available by Congress to the US executive to ensure an expedited procedure for the adoption of implementing legislation for trade agreements. It sets out the conditions for such an expedited procedure (trade objectives and notification requirements to be followed during negotiations).

**Expedited or Fast-Track Procedure:** Special legislative procedure adopted by Congress in the TPA to promote timely committee consideration and floor action on the draft implementing legislation and allowing adoption of the implementing legislation on the basis of a yes/no vote without amendments.\(^1\)

1. **Introduction to the Fast-Track Procedure**

The US Constitution grants Congress the authority to regulate commerce with foreign nations (Article I, section 8).\(^2\) The House Ways and Means Committee and the Senate Finance Committee (the so-called ‘revenue committees’) exercise primary responsibility over trade matters. Other committees may be involved too when they have jurisdiction over legislation that could be affected by the trade agreement. Constitutional authority over trade matters is also afforded to the US President, who retains the power to make treaties subject to the advice and consent of two thirds of the Senate (Article II, Section 2).

The origin of trade promotion authority dates back to 1934, under the Reciprocal Trade Agreement Act (RTAA),\(^3\) but has evolved significantly over recent decades. Originally, the President was given the power to negotiate because of the need to demonstrate strong leadership and a unified front when dealing with other nations. At that time, Congress temporarily delegated authority to the President to negotiate reductions in tariff barriers and implement them by presidential proclamation without passing legislation. Many reasons explain the shift towards the use of TPA, including the fact that negotiations on tariff reductions have gradually become less important in contrast to more complex negotiations on non-tariff barriers. These require changes to US domestic law. Thus Congress, fearing that the President would overstep the boundaries of his constitutional powers, decided to introduce legislation to ensure it would have greater oversight.\(^4\) With each extension of the act, Congress further refined the delegated powers. Though the scope of the powers granted to the executive has expanded, a number of conditions were introduced to limit this grant.

The modern form of TPA was born with the Trade Act of 1974.\(^5\) Implementation by enactment of legislation and the President’s consultation with Congress before and during negotiations were introduced to confirm Congress’s overall constitutional role in

---

the development and oversight of US trade policy. However, in order to reassure negotiating partners, Congress also introduced a new rapid and amendment-free procedure, commonly known as 'fast-track', which avoided many of the usual time-consuming legislative constraints and ensured quick passage of a trade agreement which met the statutory requirements outlined by Congress.

Prohibiting amendments is very important to facilitate trade agreements, indeed foreign trade partners have confidence in negotiating with the USA when they know that Congress may not amend the agreements they reach with the executive branch.

Conditionality is a key word to understand the interaction between the legislative and executive branches on trade promotion authority. The President is given the authority to enter into trade agreements, provided that:

- TPA negotiating objectives are considered and met;
- the President complies with reporting and information requirements to Congress; and
- the amendments to existing legislation introduced by implementing legislation are limited to the extent strictly necessary or appropriate to implement the agreement.

TPA also lays out the consequences if the administration falls short (namely a procedural disapproval resolution,6 or extension disapproval resolution7). Finally, either house can choose to consider the implementing bill under the general rules of procedure rather than under the expedited procedure.

In that context, some scholars8 have pointed out the inherent difficulty for Congress to reach the right balance between delegation of powers and oversight. On one hand, the delegation of power has to be broad enough to provide the President with the flexibility necessary to negotiate a broad variety of potential agreements, while on the other hand, it has to be precise enough to hold the executive accountable to Congress.

---

6 Congress may withdraw the TPA procedure if it considers that it has not been duly informed or consulted or, if the proposed agreement does not achieve the objectives and priorities set by Congress.

7 Under the 2015 Trade Promotion Authority Act, the Fast-Track Procedure would be available until 1 July 2018 and the President has the possibility to further extend it to 30 June 2021, unless Congress deny this by the adoption of an Extension Disapproval Resolution.

2. Historical developments and the current 2015 Trade Promotion Authority Act

Historically, the initial granting of fast-track by the Congress was not considered as problematic. A turning point was represented by the North American Free Trade Agreement (NAFTA).\(^9\) NAFTA attracted a lot of political attention because of its potential impact on the US economy and because of its wide coverage and the extent of legislative amendments required to implement it. NAFTA was covered by the 1988 Omnibus and Competitiveness Act,\(^10\) which expired in 1994. A bill for a resolution, disapproving the extension of fast-track to implement agreements entered into after 31 May 1991, and 31 May 1993 – which would have affected NAFTA – was introduced on 23 May 1991 but failed to pass the House; a similar bill was also rejected in the Senate on 24 May 1991.\(^11\) The Omnibus Trade and Competitiveness Act was then successfully extended to cover the implementation of the General Agreement on Tariff and Trade (GATT) Uruguay Round in 1994.

After 1994, the subsequent Trade Promotion Act was adopted in 2002\(^12\) and remained in force until 2007. This act also covered agreements that were concluded before 2007 but the implementing legislation for which was passed after the 2007 deadline; these agreements included: for example the agreements with Colombia, Panama and South Korea, signed respectively in 2006 and 2007, for which the implementing bills were passed only in 2011.

Figure 1 shows the yes/no voting distribution in percentage, first by chambers overall (left), and then by chambers and party (right) for the trade acts passed in 1979, 1988, 2002 and 2015.\(^13\) The figure shows first that the percentage of overall yes votes (dark grey) shrunk from 1979 to the 2002 vote (the decline in affirmative votes was particularly substantial for the House of Representatives).\(^14\) This could be indicative of the 'NAFTA effect' on TPA support after 1994. The second graph, showing the distribution of yes/no votes by house and party, reveals in particular the substantial reduction in Democrat support (dark blue colour) from 1979 to 2002. While some of this decrease in support in 2002 could be linked to political opposition as at that time the Congressional majority and the President were Republican, the rate of support among Democrats remained low in the more recent 2015 TPA vote, even though President Barack Obama is a Democrat.\(^15\)

---


\(^11\) Carolyn, C. Smith, Trade Promotion Authority and Fast-Track Negotiating Authority for Trade Agreements: Major Votes, CRS, 12 January 2011.

\(^12\) Trade Act of 2002.


\(^14\) Overall, 'yes' votes went down in the House of Representative from 98.26% of total votes in 1979 and 89.31% of votes in 1988, to 50.35% of votes in 2002 and finally to 51.17% of votes in 2015. The 'yes' vote also fell in the Senate but the fall was less drastic, going from 95.74% of votes in 1979 and 88.54% of votes in 1988 to 65.31% of votes in 2002 and 62.5% of votes in 2015.

\(^15\) Democrat support for trade authority acts shrunk in the House of Representatives from 61.44% of votes in 1979 to only 5.85% in 2002. Similarly, Democrat 'yes' votes amounted to 6.57% of votes in
Figure 1 – Voting distribution in favour of trade acts (1979, 1988, 2002)


As the 2002 TPA only covered agreements negotiated before 2007, President Obama requested a new Trade Promotion Authority bill from 2013 on in order to ensure the existence of an expedited procedure for the implementation of agreements negotiated after 2007 (including the Trans-Pacific Partnership, TPP and the Transatlantic Trade and Investment Partnership, TTIP). The new TPA was finally passed in June 2015.16 The 2015 TPA bill was passed with amendments, and presents some changes from previous TPA. It sets out the rules for expedited procedures applicable to any international agreements entered into by the US before 1 July 2018 (section 103, 2015 TPA). This authority can be extended to agreements concluded before 1 July 2021, if the President requests such extension and if neither of the houses of Congress passes an Extension Disapproval Resolution under section 103(c), 2015 TPA. The recently concluded TPP and the agreements currently being negotiated, including TTIP, Trade in Services Agreement (TiSA) Doha Round negotiations, will be covered by the rules of the 2015 TPA, if they comply with the TPA requirements.

The map below shows the percentage, by State, of votes in favour of the TPA within the House of Representatives as well as the votes of each senator. The map also shows the party that holds the majority of the States' seats in the House of Representatives as well as information on the party of each Senator. It highlights the States with greatest and least support for the 2015 TPA among their representatives in Congress.17 The map shows particularly low support for the TPA from north-eastern States (in particular Massachusetts, Maine, Rhode Island, Connecticut, New Hampshire, Vermont, New York, New Jersey, Delaware, Maryland and West Virginia). Democrat support is generally low. Only about 30% of Democrat Senators voted in favour, and an average of 22.4% of members of the House of Representatives from States with a Democrat majority voted ‘yes’. The only exception is support from House Representatives from Oregon (80% of members from that State voted in favour) and the State of Washington

---

16 *Bipartisan Congressional Trade Priorities and Accountability Act of 2015*.

17 The data were created using the roll call lists available on the *House of Representatives* and *Senate* website; information on the States of House Representatives were taken from the directory.
(70% of members from that State voted in favour).\textsuperscript{18} Stronger support in the House of Representative came from members from Arkansas, North and South Dakota, Utah, Montana, Nebraska and Kansas (100% of the House Representatives from these States voted in favour. However, these States have fewer members in the House).

**Figure 2 – Congressional votes in favour of the 2015 TPA**

Source: DG EPRS, 2015; data created from roll-call lists available on the House of Representatives and Senate website; information on the States of House Representatives were taken from the directory.

3. The 2015 Trade Promotion Authority Act: overview of the rules

The TPA\textsuperscript{19} provides for an expedited procedure for Congress to implement trade agreements. This procedure can only be followed if substantive and notification requirements are complied with. Congress always retains the right to withdraw the expedited procedure and apply the general procedural rules.

\textsuperscript{18} Oregon is a small state in population terms, being represented by only five members in the House of Representatives.

\textsuperscript{19} Bipartisan Congressional Trade Priorities and Accountability Act of 2015.
3.1. Requirements for applying the expedited procedure

3.1.1. The substantive requirements

The 2015 TPA imposes some substantive requirements in order for an agreement to be eligible for the expedited procedure/fast-track. It introduces some conditions for tariff liberalisation under agreements on tariff barriers (section 103(a)(3) to (7)). Following section 103(b)(2), agreements regarding both tariff and non-tariff barriers must instead make sufficient progress in meeting the objectives that the TPA provides under its section 102 (this will, inter alia, be applicable to TTIP). Agreements need not meet all the objectives stated in the TPA but prove they make progress towards those goals. To that end, during the course of negotiations regular contacts take place between the administration and Congress, at both staff and members level, to ensure that the legislative branch is fully informed and that the administration is on track to achieve the negotiating objectives. The degree of progress on individual objectives or particular issues may be raised by members of Congress in the context of hearings on the agreement and implementing bill (for more details, see section on consultation and notification requirements).

The objectives are divided into three categories. The trade objectives state the overall goals of US trade negotiations, including: to obtain reductions in barriers to trade and investment which decrease US market opportunities; to strengthen the system of international trade and investment disciplines, including dispute settlement; to foster economic growth and rising living standards, enhanced competitiveness and full employment in the US and to enhance the global economy; to ensure trade and environmental policies are mutually supportive; to promote respect for workers’ rights; to ensure equal access to trade opportunities to small and medium-sized enterprises; to promote universal ratification of the International Labour Organization (ILO) Convention concerning the prohibition of child labour; to ensure that trade agreements reflect the inter-relatedness and multi-sectoral nature of trade and investment; to recognise the growing significance of the digital economy; to take into account legitimate domestic objectives, such as protection of health, safety, security, consumer interests and the law and regulation thereto; as well as to take account of religious freedom of any party negotiating a trade agreement with the US.

Thereafter, the TPA details more specific objectives under the titles of principal objectives and other objectives. Principal objectives are considered politically critical. The table in the annex provides a summary of these specific objectives.
Specific objectives particularly relevant for the TTIP debate

Some objectives clearly address transatlantic issues and could constitute a constraint on the US Trade Representative’s negotiating position on TTIP.

- With respect to geographical indications, the TPA provides for ‘eliminating and preventing the undermining of market access for the United States’ products through improper use of a country’s system for protecting or recognizing geographical indications, including failing to ensure transparency and procedural fairness and protecting generic terms.’

- The issue of Sanitary and Phytosanitary (SPS) measures is also particularly highlighted in section 102 of the TPA, which requires a science-based justification for SPS measures if the measure is more restrictive than international standards. The TPA continues by asking to develop rules to eliminate practices that unfairly distort or decrease agricultural market access for US products and, inter alia, cites restrictions, such as labelling which affect new technology, including biotechnology.

- The paragraph dedicated to foreign investment is also of interest for the transatlantic negotiations. It seeks to establish standards for expropriation and compensation, as well as for fair and equitable treatment consistent with US legal practice.\(^{20}\) It also highlights the need for improvement in the mechanism to resolve disputes between the investor and the state, in particular mentioning the need to: eliminate frivolous claims, ensure efficient selection of arbitrators and expedited disposition of claims, procedures for public input into the formulation of government positions, providing for an appellate body or similar mechanism to ensure coherence of interpretation, ensure transparency of proceeding (inter alia via making hearings public and allowing amicus curiae, and also make requests, proceedings, submissions and findings public to the extent consistent with the need to protect classified information and confidential business information).

- With specific reference to TTIP, the TPA points out that the US must discourage actions that directly or indirectly bring prejudice to US-Israel commercial relations and that the US must seek the elimination and discourage boycotts and politically-motivated non-tariff barriers on Israeli goods.

Each TPA act has updated these negotiating objectives, taking into account the evolution of trade and trade agreements, and the need to tackle new issues. The 2015 TPA inserts three big new fields to be covered by US agreements. The first is particularly relevant for transatlantic relations and concerns data flows and digital trade in goods. In particular one of the principal objectives stated on this issue was ‘to ensure that governments refrain from implementing trade-related measures that impede digital trade in goods and services, restrict cross-border data flows or require local storage or processing of data’. However, the TPA also recognises there can be a legitimate policy objective that requires domestic regulation affecting digital trade and cross-border data flows, and in such cases requires commitments that any such regulation is the least restrictive possible, and is non-discriminatory and transparent. Another new objective seeks commitments regarding State-Owned-Enterprises, aimed at eliminating or preventing trade distortions and unfair competition favouring state-owned and state-controlled enterprises (particular attention is given here to discrimination and market-distorting subsidies). An additional novelty comes from the new objective concerning 'localisation’ aimed at preventing practices that require firms to locate facilities, intellectual property, services or assets in a country as a condition for doing business.

3.1.2. Negotiation of the agreement and consultation requirements

Under sections 104 and 105, the TPA imposes consultation requirements on the United States Trade Representative (USTR). Consultations mainly take the form of meetings between USTR officials and Congress staffers and members, in order to discuss the US’s negotiating priorities. However, the recent TPA has expanded consultation and coordination with Congress. The USTR has also issued guidelines for consultations with members of Congress, as required by the TPA.\(^{21}\)

The TPA stipulates some pre-negotiation notification and consultation requirements (section 105(a)). Indeed, 90 days before initiating negotiations, the President must notify Congress in writing of the intention to enter into negotiations. Prior to and after this notice, the administration must have consulted with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, as well as with the Advisory Groups on negotiations from both chambers. Section 107 of the TPA exempts from these pre-negotiation requirements the existing ongoing negotiations, which will however be covered by the 2015 TPA Act in other respects; these include the current WTO negotiations, as well as TPP and TTIP.

Consultations during the negotiations happen at different levels:

- **With any member of Congress:** throughout the negotiations, the USTR should meet upon request of any member of Congress regarding negotiating objectives, status of negotiations and the nature of any changes in law needed to implement it. On the request of any member of Congress, the USTR shall provide access to pertinent documents relating to the negotiations, including classified materials.

- **In Committees:** the USTR must consult regularly with and keep fully apprised about the negotiations the Committee on Ways and Means of the House and the Committee on Finance of the Senate. It should also consult closely and timeously with any committee of the House and the Senate with jurisdiction over laws that could be affected by the negotiations. On agricultural matters, the USTR should consult closely and in a timely manner with the Committee on Agriculture of the House and the Committee on Agriculture, Nutrition and Forestry of the Senate.

- **With Designated Congressional Advisers:** any member of Congress can request to become a Designated Congressional Adviser. Designated Congressional Advisers are designated: for the House of Representatives, by the Speaker after consultation with the Chairs and ranking members of the Committee on Ways and Means and of the committee from which the Member will be elected; for the Senate, by the President pro tempore of the Senate, after consulting with the Chairs and ranking members of the Committee on Finance and of the committee from which the Member is selected. Designated Congressional Advisers must be kept informed on a timely basis and be regularly consulted by the USTR. They shall also receive accreditation to act as an official adviser to the US delegations to international conferences, meetings and negotiating sessions relating to trade agreements.

- **Congressional Advisory Groups:** the TPA provides for the creation of two advisory groups, one for the House of Representatives (the House Advisory

---

\(^{21}\) [Guidelines for Consultation and Engagement](https://wwwustr.gov/), Office of the United States Trade Representative.
Group on Negotiations) and the second for the Senate (the Senate Advisory Group on Negotiations). The table below shows the members making up the advisory groups. The advisory groups are accredited to act as official advisers to the US delegation in negotiations. They act as consultants to the USTR, advising the latter on the formulation of specific objectives, negotiating strategies and positions as well as on compliance and enforcement issues related to the negotiated commitments.

<table>
<thead>
<tr>
<th>Advisory Group</th>
<th>Members</th>
</tr>
</thead>
</table>
| House          | - Chair, ranking members and three additional members (not more than two from the same party) of the Committee on Ways and Means;  
- the Chair, ranking members or designees of other committees that have jurisdiction over provisions of law which are affected by the agreement. |
| Senate         | - Chair, ranking members and three additional members (not more than two from the same political party) of the Committee on Finance;  
- the Chair, ranking members or designees of other committees that have jurisdiction over provisions of law which are affected by the agreement. |

Beyond consultations and notification requirements, the TPA requires the President to issue certain reports. The following reports must be submitted: environment review, employment impact review and report, a labour-rights report containing a description of the other country's law as well as changes required in US law, an implementation and enforcement report stating a plan for the implementation and enforcement of the agreement as well as forecasts regarding the need for personnel (customs, agencies...), infrastructure or other costs related to the implementation of the agreement at the federal level and also analysis of the impact on local and State governments.

The President’s subsequent budget submission has to include a request for the resources necessary to implement the plan (i.e. for implementing and enforcing the agreement). Any changes of US trade remedy law will also require the drafting of a report. Before entering into an agreement, a certain number of reports must be issued: the trade remedy report verifying the changes in US trade remedy law as a result of the agreement concluded, the advisory committee report analysing how the trade agreement would promote US interests and the objectives stated in the TPA. Finally no later than 105 days after the President enters into the agreement, the US International Trade Commission (ITC, an independent federal agency) is to submit to both the President and Congress an assessment of the agreement's likely impact on the US economy as a whole and on specific industry sectors (including its impact on GDP, exports and imports, employment opportunities etc.).

Negotiations regarding agriculture, the fishing industry and textiles have further requirements (see respectively section 105(a)(2), (3) and (4)).
3.2. The expedited procedure from signature to enactment of the implementing legislation

According to Section 6(e) of the 2015 TPA after entering into (i.e. signing) the agreement, the President submits to Congress a copy of the final legal text of the agreement; a draft of an implementing bill; a statement of any administrative action proposed to implement the trade agreement, and other supporting information. The draft implementing bill has to comply with certain requirements and, in particular it has to contain only those provisions that are 'strictly necessary or appropriate to implement such trade agreement or agreements'.

![Figure 3 – Congressional timeline](image)

Data source: CRS, 2015.

Subsection (a) specifies that:

- at least 90 days before entering into the agreement, the President must notify Congress of his intention to enter into that agreement and publish a notice in the Federal Register;
- at least 60 days before entering into the agreement, the President must publish the text of the agreement on the United States Trade Representative's website;
- within 60 days of entering into the agreement, the President must submit a description of changes to existing US law that would be required by the agreement;
- at least 30 days before formally submitting the trade agreement to Congress, the President must provide Congress with a copy of the final legal text of the agreement and a draft statement of administrative action proposed to implement the agreement.

The procedure under which the implementing bill is considered is laid down under section 151 of the Trade Act of 1974. For instance, the implementing bill submitted by the President must be introduced in each chamber and immediately referred to

---

22 Section 6, paragraph (2)A of 2015 Trade Promotion Authority Act.
23 Section 3 (b) 3 of 2015 Trade Promotion Authority Act.
24 Section 151(c)(1) clarifies who shall introduce the bill in the House of Representatives and in the Senate.
committees of jurisdiction. While there is no particular deadline for the President to submit the implementing bill, once submitted, Congress legislative action has to meet precise deadlines.

The committees have a limited time (45 session days) to consider the bill before it is automatically discharged for a vote. Timing for floor debate is limited to 20 hours and equally divided between the two party leaders in the Senate, and between supporters and opponents of the bill in the House. In both chambers, the motion to consider the implementing bill is privileged and non-debatable. Each chamber shall hold a straight up or down vote on the implementing legislation no more than 15 days after it leaves the committees. Because an identical bill is voted in both Chambers with no amendments allowed, no conference committee is required.

3.3. Procedures withdrawing fast-track application for a specific agreement

The TPA sets out a procedural rule for Congress; as such Congress maintains the authority to amend it or override it. However Congress can also decide simply not to grant the expedited procedure to a particular implementing bill. The TPA already presents some procedures for withdrawal of expedited procedures to an implementing bill (under section 106 of the Act). In case expedited procedure is withdrawn, the implementing legislation is considered under the general rules of procedures, and therefore can be subject to amendment by Congress. Trade agreements concluded after 1974 have all been implemented via the expedited procedure (with the only exception the US-Jordan Free Trade Agreement concluded in 2001).

3.3.1. Procedural Disapproval Resolution

The Procedural Disapproval Resolution (section 106(b)(1) and (2)) is a procedure that denies expedited consideration for a specific trade agreement. In order to be initiated it needs both houses to withdraw the expedited legislative consideration of an implementing bill on one of the following grounds: (1) failure to comply with the notification and consultation requirements, or (2) if the agreement does not make sufficient progress to achieve the objectives foreseen in the TPA. To do so both houses must, within 60 days of each other, adopt a 'procedural disapproval resolution' on the same bill. If a PDR is passed neither house can approve the implementing bill following the expedited procedure.

Mock mark-up

Because the fast-track process provides that there are no amendments to the implementing legislation, the revenue committees might held 'mock mark-ups' of the draft legislation, so that they can indicate the changes that need to be made before it will be acceptable to the committee. Although mock mark-ups are non-binding, they represent an important occasion for the committees to spell out their position in relation to the proposed legislation.

---

25 A committee mark-up is the process by which a committee or subcommittee moves through the content of a bill for it to advance to the floor. The committee chair usually decides which proposal will be submitted to committee for mark-up; members of Congress will have the opportunity to consider possible changes, offer (introduce) amendments and vote on them. The session is concluded when the committee agrees to report the bill to the chamber.

26 Conference Committees are composed of House and Senate conferees with the purpose of reconciling bicameral differences in legislation that has passed both chambers.

27 Expedited authority was not in place at that time, but considering the relatively small trade flows between the US and Jordan, as well as the FTA's foreign policy implications, it was not considered to be controversial.
3.3.2. Consultation and Compliance Resolution

The Consultation and Compliance Resolution (CCR) is a procedure that allows each house to withdraw expedited procedure to an implementing bill. The CCR is introduced in the Senate by the Committee on Finance, if it would not report favourably on the implementing bill, or if the USTR failed to comply with the notification and consultation requirements (section 106(b)(3)). Similarly, a consultation and compliance resolution can be introduced in the House of Representatives if the Committee on Ways and Means reports on the implementing bill with a non-favourable recommendation, or the USTR failed in its notification and consultation requirements (section 106(b)(4)). In the case of CCR it is possible that the expedited procedure is only inapplicable in one of the chambers (the one that adopted a CCR), whereas the other would continue to consider the implementing bill under the expedited procedure.

3.3.3. Other procedures:

Either chamber can adopt a simple resolution finding that changes in the trade remedy laws provided in the trade agreement implementing bill are inconsistent with statutory requirements. However, consequences of the adoption of such a resolution by one house are unclear.

4. Main references


Ian F. Fergusson, *Trade Promotion Authority (TPA) and the role of Congress in Trade Policy*, CRS, 18 June 2015.


## 5. Annex: Principal and other trade objectives

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade in goods</td>
<td>- provide fairer and more open conditions of trade reducing both tariff and non-tariff barriers;</td>
</tr>
<tr>
<td></td>
<td>- reciprocal tariff and non-tariff barriers elimination.</td>
</tr>
<tr>
<td>Trade in services</td>
<td>- provide fairer and more open conditions of trade, reducing barriers such as regulatory barriers that deny national treatment or unreasonably restrict the establishment and operations of suppliers services;</td>
</tr>
<tr>
<td></td>
<td>- provide high standard services commitments for both existing and new services.</td>
</tr>
<tr>
<td>Trade in agriculture</td>
<td>- ensure competitive opportunities for US exports in agricultural commodities equivalent to those afforded in the US for foreign exports;</td>
</tr>
<tr>
<td></td>
<td>- ensure robust sanitary and phytosanitary measures based on risk assessments and scientific evidence;</td>
</tr>
<tr>
<td></td>
<td>- improve coherence and appropriately recognise equivalence of health and safety protection systems of exporting countries;</td>
</tr>
<tr>
<td></td>
<td>- improve import checks, testing and certification requirements;</td>
</tr>
<tr>
<td></td>
<td>- reduce tariffs and other charges, in particular for products subject to substantially higher tariffs;</td>
</tr>
<tr>
<td></td>
<td>- provide reasonable adjustment periods for sensitive products;</td>
</tr>
<tr>
<td></td>
<td>- reduce or eliminate subsidies that unfairly distort markets;</td>
</tr>
<tr>
<td></td>
<td>- allow the preservation of programmes that support farms and rural commitments; develop disciplines for domestic support programmes so that production in excess is sold at world prices; maintaining <em>bona fide</em> food assistance programmes, market development programmes and export credit programmes;</td>
</tr>
<tr>
<td></td>
<td>- eliminate state-owned enterprises when possible; develop rules for unfair practices; develop rules against unjustified trade-restricting requirements (such as labelling affecting new technologies, including biotechnology); unjustified SPS measures not based on scientific evidence or contravening the Uruguay Round Agreements;</td>
</tr>
<tr>
<td></td>
<td>- eliminate practices affecting perishable goods;</td>
</tr>
<tr>
<td></td>
<td>- transparency in the management of tariff rate quotas;</td>
</tr>
<tr>
<td></td>
<td>- eliminate or prevent the undermining of market access through the improper use of geographical indication systems.</td>
</tr>
<tr>
<td>Foreign Investment</td>
<td>- reduce or eliminate exceptions to national treatment;</td>
</tr>
<tr>
<td></td>
<td>- free the transfer of funds relating to investments;</td>
</tr>
<tr>
<td></td>
<td>- reduce or eliminate performance requirements;</td>
</tr>
<tr>
<td></td>
<td>- seek to establish standards for expropriation, compensation for expropriation, fair and equitable standards, consistent with US legal principles;</td>
</tr>
<tr>
<td></td>
<td>- seek to improve dispute settlement mechanisms between investor and state, including eliminating frivolous claims, efficient selection of arbitrators and expeditious disposition of claims; providing for an appellate body; enhancing transparency and establishing mechanisms for <em>amicus curiae</em> submissions.</td>
</tr>
<tr>
<td>Objectives</td>
<td>Content</td>
</tr>
<tr>
<td>------------</td>
<td>---------</td>
</tr>
</tbody>
</table>
| Intellectual property | - promote adequate and effective protection of intellectual property rights inter alia via the accelerated implementation of TRIPS and ensuring that trade agreements reflect protection standards similar to those found in the US;  
- provide strong protection for new technologies;  
- prevent discrimination with respect to the availability, acquisition, scope, maintenance, use and enforcement of intellectual property;  
- ensure that rights-holders have the legal and technological means to control the use of their works through the internet and prevent unauthorised use of their works;  
- provide strong enforcement of intellectual property rights, including through civil, administrative and criminal enforcement mechanisms;  
- secure fair and equitable and non-discriminatory access to US persons relying on intellectual property rights;  
- respect the Declaration on TRIPS and Public Health, adopted at the Fourth Ministerial Conference in Doha, and ensure trade agreements foster innovation and promote access to medicines. |
| Digital trade | - ensure that disciplines in the WTO and trade agreements apply equally to digital trade;  
- ensure that electronically delivered goods are not treated less favourably than like products delivered in physical form;  
- ensure that governments refrain from implementing measures that impede digital trade and restrict data flows or require local storage or processing of data;  
- where legitimate domestic policies affect trade in digital goods and cross-border flows, ensure that such regulations are the least restrictive possible. |
| Regulatory practice | - require that proposed regulations be based on scientific data, risk assessments and cost-benefit analysis;  
- establish consultative mechanisms that seek to improve regulatory practices and promote regulatory coherence (including through transparent guidelines, rules and regulations, elimination of redundancies in testing and certification, early consultations on significant regulations, periodic review of existing regulations, application of good regulatory practices);  
- promote convergence of regulatory standards, regulatory compatibility (through harmonisation, equivalence or mutual recognition of different regulatory regimes);  
- demonstrate that the collection of undisclosed information is limited, disclosure only in exceptional circumstances to protect public interests, and ensure protection of such information against unfair competition. |
<p>| State-Owned Enterprises | - seek commitments aimed at eliminating or preventing trade distortions and unfair competition favouring state-owned and state-controlled enterprises (particular attention is given here to discrimination and market-distorting subsidies). |
| Localisation | - prevent practices that require firms to locate facilities, intellectual property, services or assets in a country as a condition for doing business. |</p>
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Content</th>
</tr>
</thead>
</table>
| Labour and Environment      | - ensure that a party to a trade agreement with the US implements internationally recognised core labour standards and implements its obligations under common multilateral environmental agreements;  
                              | - ensure that a party to a trade agreement with the US does not waive or derogate from its laws implementing core labour standards and from its environmental laws;  
                              | - strengthen the capacity of the US to promote core labour standards and environment protection;  
                              | - reduce government practices that threaten sustainable development;  
                              | - seek market access for US environmental technologies and, goods and services;  
                              | - ensure that labour, environment, health and safety regulations of the other parties to the trade agreement do not arbitrarily and unjustifiably discriminate against US exports as disguised barriers to trade;  
                              | - ensure that labour and environmental obligations are subject to dispute settlement provisions;  
                              | - ensure that a trade agreement is not construed as empowering the other party to undertake labour and environmental standards enforcement activities in the US. |
| Currency                    | - avoid that parties to a trade agreement manipulate exchange rates in order to prevent balance of payments adjustments or to gain unfair competitive advantage. |
| Foreign currency manipulation| - establish accountability through enforceable rules, transparency, reporting, monitoring, and cooperative mechanisms, to address exchange rate manipulation leading to protracted undervaluing of the foreign exchange rates, consistent with current obligations under the IMF and WTO. |
| WTO and multilateral trade agreements | - ensure full implementation of multilateral and plurilateral agreements;  
                                          | - extend countries' participation in the Information Technology Agreement, Government Procurement Agreement, and other plurilateral agreements of the WTO;  
                                          | - expand market opportunities through the negotiation of new multilateral and plurilateral agreements, such as the trade facilitation agreement;  
                                          | - make sure that regional trade agreements to which the US is not party comply with Article XXIV GATT and Article V GATS;  
                                          | - enhance compliance by WTO members, through active participation in the WTO;  
                                          | - encourage stronger cooperation between the WTO and other international organisations. |
| Trade institutions transparency | - obtain wider and broader application of the principle of transparency to the WTO as well as entities created in bilateral and regional trade agreements and other international trade fora. |
| Anti-corruption             | - obtain high standards and effective domestic enforcement mechanisms;  
                                          | - to ensure that such standards level the playing field for US persons in international trade;  
<pre><code>                                      | - seek commitments and to support anti-corruption and anti-bribery initiatives in international trade fora. |
</code></pre>
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Content</th>
</tr>
</thead>
</table>
| Dispute settlement               | - provide in trade agreements for effective, timely, transparent and equitable dispute settlement mechanisms with the goal of increasing compliance with the agreement;  
                                 | - seek to strengthen the Trade Policy Review Mechanism of the WTO; to seek adherence by panels and Appellate Body (AB) convened under the WTO Dispute Settlement Understanding to the mandate given to these panels/AB and the standard of review;  
                                 | - seek provisions that allow for early identification of cases and settlement via consultation;  
                                 | - seek provision of trade-expanding compensation if a party does not comply with its obligation under the agreement;  
                                 | - seek provisions to impose penalties upon a party to a dispute under the agreement, to encourage compliance;  
                                 | - seek provisions that ensure equal application of dispute settlement provisions (resort, procedures and remedies) to all the principal negotiating objectives of the US. |
| Trade remedy                     | - preserve the ability of the US to enforce its trade laws, including remedy laws;  
                                 | - address distortions that lead to subsidisation and dumping, including over-capacity, cartelisation and market access barriers.                                                                                                    |
| Border taxes                     | - obtain a revision of the WTO agreement with respect to border adjustments for internal taxes to redress disadvantage to countries relying primarily on direct taxes for revenue instead of indirect taxes. |
| Textile negotiations             | - obtain competitive opportunities for the textile and apparel industry in the US equivalent to those afforded by foreign exports in the US.                                                                                                    |
| Commercial partnerships (TTIP)   | - discourage actions by potential trading partners that directly or indirectly prejudice or otherwise discourage commercial activity solely between the United States and Israel;  
                                 | - discourage politically motivated actions to boycott, divest from, or sanction Israel and to seek the elimination of politically motivated nontariff barriers on Israeli goods, services, or other commerce imposed on the state of Israel;  
                                 | - seek the elimination of state-sponsored unsanctioned foreign boycotts against Israel or compliance with the Arab League boycott of Israel by prospective trading partners. |
| Good governance                  | - ensure the strengthening of the good governance and the effective functioning of the rule of law in trading partners of the US, through capacity-building and other appropriate means, to create more open democratic societies and to promote respect for internationally recognised human rights. |
| Capacity building and other priorities | - work to strengthen the capacity of partners to carry out their obligations under treaties with the US, including technical assistance, consultative mechanisms to develop and implement environmental and human health protection standards, promote consideration of multilateral environmental agreements and consult with parties to such agreements. |
Since 1974 the United States Congress has enacted several Trade Promotion Authority (TPA) acts to ensure speedy ratification of trade agreements in the United States, while maintaining a congressional hold on the objectives to be pursued by US negotiators. TPA defines the conditions and procedures for using a streamlined or expedited procedure, also known as the fast-track procedure, to vote in Congress on international trade agreements negotiated during a specific defined period of time. The current (2015) Trade Promotion Authority Act, which was finally passed in June 2015, sets out the rules for the expedited procedures applicable to any international agreement entered into by the US before 1 July 2018 (with possible extension up to 1 July 2021), covering inter alia the recently concluded Trans-Pacific Partnership and any agreement stemming from the ongoing Transatlantic Trade and Investment Partnership negotiations. The TPA requirements in terms of negotiating objectives and consultation have constantly evolved to match the rising political need of Congress to exert greater control over the outcomes of US trade negotiations.