

# What Future Does Trade Promotion Authority Have in a Biden Administration?

An Undergraduate Briefing Paper

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## Introduction

The election of Joe Biden as the next president of the United States comes as Trade Promotion Authority (TPA), a power granted by Congress to the president to negotiate trade deals, is set to expire on June 30, 2021. TPA has been utilized over the past fifty years to negotiate trade deals between the United States and foreign economic partners. As TPA is set to expire, it will be up to the next administration to decide whether expending valuable legislative clout to renew TPA is necessary in order to achieve foreign policy and trade objectives.

## Background

Article 1 Section 8 of the United States Constitution grants Congress the ability to “regulate Commerce with foreign nations.” Similarly, the constitution also gives the president powers to “make treaties” with foreign nations. These similar duties assigned to both Congress and the president have created tensions as modern trade deals are a form of diplomacy and foreign commerce. Trade negotiations require confidence between negotiating countries in the ability of each country to uphold their commitments under a trade deal. Forcing countries to negotiate with the legislative branch would prove an arduous task as Congress, which includes hundreds of individual members, is often known for notoriously slow processes and divisive partisan debates, all of which could threaten the negotiation process.

The Trade Act of 1974 granted temporary new trade negotiation powers to the president by creating fast track authority.<sup>1</sup> This law authorized the president to submit to Congress trade deals that could be neither amended nor filibustered, therefore boosting the president’s credibility amongst international counterparts and ensuring that trade deals negotiated with foreign leaders will be not be altered by Congress during the ratification process. Fast track authority requires presidential administrations to adhere to strict timelines and routinely update Congress on negotiations.

It is important to note that the authorization for fast tracking and the delegation of power from Congress to the presidency is nonpermanent and legislation establishes expiration dates each time authority is renewed. Congress initially implemented fast track authority in order to expedite legislative approval of trade deals and prevent any form of amendment that could potentially stall negotiations. Congress reauthorized fast track authority in the Trade Act of 2002 during the administration of President George W. Bush. This authorization was foundationally and legally the same to the authorization in 1974 but was renamed to Trade Promotion Authority (TPA).<sup>2</sup> The most recent authorization was in 2015 when the Obama administration sought TPA from the Senate in order to negotiate the Trans-Pacific Partnership. The 2015 authorization is set to expire in June 2021.

**Table 1. Trade Promotion Authority Snapshot**

Year Authorized <sup>3</sup>	Congressional Vote	Year Set to Expire	Legislation Name	Notable Trade Deals Negotiated with Fast Track Authority
1974	House: 272-140 Senate: 77-4	1980 but was reauthorized for 8 years in 1979	Trade Act of 1974	<ul style="list-style-type: none"> <li>- Tokyo Round of multilateral trade negotiations</li> <li>- US-Israel Free Trade Area</li> <li>- US-Canada Free Trade Agreement</li> </ul>
1988	House: 376-45 Senate: 85-11	1993 but was extended to 1994	Omnibus Trade and Competitiveness Act of 1988	<ul style="list-style-type: none"> <li>- Uruguay Round Agreements Act of 1994</li> <li>- North American Free Trade Agreement</li> </ul>
2002	House: 215-212 Senate: 64-34	July 1, 2007	Trade Act of 2002*  *Renamed Fast Track Authority to Trade Promotion Authority	<ul style="list-style-type: none"> <li>- US-Chile Free Trade Agreement</li> <li>- US-Singapore Free Trade Agreement</li> <li>- Australia-US Free Trade Agreement</li> </ul>
2015	House: 219-211 Senate: 62-37	2018 but was extended to 2021	Congressional Trade Priorities and Accountability Act of 2015	<ul style="list-style-type: none"> <li>- Trans-Pacific Partnership</li> <li>- US-Mexico-Canada Agreement</li> </ul>

**Analysis**

TPA's functionality is reliant on and requires communication between the executive branch negotiators and members of Congress in order to ensure Congress is up to date and informed about the negotiations. When granting TPA to the executive branch, Congress establishes negotiating objectives that must be met from the time of entering into a trade negotiation until the ratification of the deal. TPA creates timelines for when the legislative branch is updated on trade negotiations, establishes requirements regarding the submission of economic impact reports to Congress, and sets rules as to when the president can sign a deal in relation to when congressional leaders have had time to review the complete deal in its entirety.<sup>4</sup>

After negotiations are complete, Congress must vote on the trade deal. The rules of TPA ensure that a proposed trade deal cannot be amended, and Congress must vote on the deal as is. This necessitates clear communication between the executive branch negotiators and congressional

members. If members of Congress receive few updates about the negotiations, they may feel less inclined to vote in favor of the trade deal when it comes to a vote on the floor.

The 2021 expiration will impact only negotiators actively negotiating a new trade deal. If there is a trade deal under negotiation at the time of expiration, the sitting president can push for the reauthorization of TPA in order to assure allies of the United States' commitment to the deal. TPA's authorization does more to reassure trade negotiations with foreign entities than make actual impact on US importers and exporters.<sup>5</sup> TPA does not guarantee the passage of a new trade deal through Congress, but rather paves the way for Congress to consider implementing legislation to enact the deal under expedited procedures.

It is unlikely that President-elect Joe Biden will prioritize the reauthorization of TPA as his campaign released no plans to negotiate new trade agreements as a part of its platform. The campaign has instead prioritized encouraging domestic growth and new jobs within the United States' manufacturing and energy sectors.<sup>6</sup> Focusing on expanding domestic growth through ways other than trade will likely mean no new trade deal will be negotiated in Biden's first year; therefore, TPA reauthorization will likely not be a legislative priority for the Biden administration.

Trade deals can be and often are modified after official signing ceremonies, even with TPA in effect.<sup>7</sup> TPA allows for the main foundational pieces of a trade agreement to be expedited in the negotiation process but smaller details are often negotiated for months following official signings. An example includes the United States-Panama Trade Promotion Agreement that was signed and negotiated under President George W. Bush but was officially and entirely put into place under the Obama administration. This delay occurred as the incoming Obama administration was not satisfied with Panamanian labor laws and was able to halt some aspects of the trade deal's implementation.<sup>8</sup>

It is important to note, however, that TPA has not been utilized for every trade deal negotiated by the United States since its first application in 1974. Presidential administrations have the opportunity to begin negotiating new trade deals if the administration believes it has the confidence of the negotiating partner and the votes in Congress. This happened with the United States-Jordan Free Trade Agreement as it was passed by a voice vote, indicating its widespread popularity, in December 2001 without TPA in place. This free trade agreement further exemplifies the practice of treaty implementation spanning multiple years and presidential administrations as the agreement was not fully implemented until January 1, 2010.

## **Outlook**

The Trump administration drew upon existing U.S. law to enter into trade negotiations without congressional approval. If President-elect Biden is looking to revisit some aspects of U.S. trading relationships, his administration can cite recent precedent to do so due to his predecessor's use of the powers granted under Section 301 of the Trade Act of 1974. The Biden administration may also explore the possibility of engaging in 'mini trade deals' following President Trump's Phase One Agreement with China. These deals do not require congressional approval and would, therefore, have no need for TPA.

President-elect Biden has announced his intention to nominate Katherine Tai for United States trade representative (USTR). Tai's nomination received bipartisan praise from Congress with former

USTR Senator Rob Portman (R-OH) specifically pledging his support not only to her nomination, but to the renewal of TPA as well.<sup>9</sup> Tai has given little indication regarding where the incoming administration stands on the renewal of TPA.

The first 100 days after inauguration is the most effective time for a new administration to work with Congress to pass legislation pertaining to campaign platform promises. Biden campaigned on a platform that focuses little on revamping trade policy and more on issues of healthcare, climate change, and minimum wage increases. As evidenced in the table above, the two most recent rounds of TPA authorization have been contested and partisan, requiring maneuvering from an administration. These platform points will take tremendous amounts of legislative clout and action, and bogging Congress down with the reauthorization of TPA will likely not be a fight the administration is willing to have.

## Endnotes

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<sup>1</sup> “Trade Act of 1974,” *United States Publishing Office*, accessed December 30, 2020.

<https://www.govinfo.gov/content/pkg/STATUTE-88/pdf/STATUTE-88-Pg1978-2.pdf>

<sup>2</sup> Phillip Crane, “H.R. 3009 – Trade Act of 2002,” accessed December 8, 2020. <https://www.congress.gov/bill/107th-congress/house-bill/3009>

<sup>3</sup> Ian Ferguson and Christopher Davis, “Trade Promotion Authority (TPA) Frequently Asked Questions,” *Congressional Research Service*, <https://fas.org/sgp/crs/misc/R43491.pdf>

<sup>4</sup> “Bipartisan Congressional Trade Priorities and Accountability Act of 2015” Accessed January 1, 2021 [www.congress.gov/114/plaws/publ26/PLAW-114publ26.pdf](http://www.congress.gov/114/plaws/publ26/PLAW-114publ26.pdf)

<sup>5</sup> “Trade Promotion Authority (TPA),” *Congressional Research Service*, <https://crsreports.congress.gov/product/pdf/IF/IF10038>

<sup>6</sup> Eduardo Porter, “Trump, Biden and ‘Made in U.S.A.’: Same Refrain, Varying Notes,” *The New York Times*, September 28, 2020, <https://www.nytimes.com/2020/09/28/business/economy/biden-trump-made-in-usa.html>

<sup>7</sup> William Reinsch, “Does the United States Renegotiate Its Trade Agreements after They Are Signed,” *Center for Strategic & International Studies*, September 12, 2019, <https://www.csis.org/analysis/does-united-states-renegotiate-its-trade-agreements-after-they-are-signed>

<sup>8</sup> Ibid

<sup>9</sup> “On Former U.S. Trade Representatives Panel, Portman Highlights Importance of Renewing Trade Promotion Authority, Proposes ‘Supercharging’ American Competitiveness,” Office of Senator Rob Portman, [www.portman.senate.gov/newsroom/portman-difference/former-us-trade-representatives-panel-portman-highlights-importance](http://www.portman.senate.gov/newsroom/portman-difference/former-us-trade-representatives-panel-portman-highlights-importance)