

Trade Promotion Authority: A Road Map for Congress

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KEY TAKEAWAYS

Free trade agreements improve trade freedom for families, individuals, and businesses when the agreements focus on eliminating tariff and non-tariff barriers.

With Trade Promotion Authority (TPA) expiring on July 1, 2021, now is the perfect opportunity for Congress to evaluate the process and make improvements to it.

Congress should modify TPA so that future trade agreements focus on advancing trade freedom and allow cooperation between the executive branch and Congress.

Advancing trade freedom for Americans should be a key objective for the Biden Administration and Congress. When U.S. tariffs and non-tariff barriers are low, families, individuals, and businesses have access to more affordable and diverse products. New free trade agreements that lower barriers at home and abroad are an integral tool for advancing trade freedom. Congress has the power to regulate trade under the Constitution, but it has delegated some of its power to the executive branch to aid in the negotiation and passage of trade agreements.

In the past, Congress has only delegated the authority to modify tariff rates. However, in recent years, it has expanded the executive branch's authority through the passage of Trade Promotion Authority (TPA), which establishes a cooperative process between the two branches for entering into trade

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agreements. Under various iterations of TPA, Congress and the executive have worked together to pass 14 trade agreements since 1974. These have been a huge boon for Americans, as they have helped to decrease the average tariff rate they must pay in order to buy goods from abroad.

With TPA expiring on July 1, 2021, now is the perfect opportunity for Congress to evaluate the process and make improvements to it. Specifically, Congress should seek to strengthen its ability to influence the contents of a trade agreement, which it struggled to do during the approval process for the United States–Mexico–Canada Agreement (USMCA). Congress should ensure that the primary goal of trade agreements is to eliminate barriers, not erect new ones. The next TPA should also seek to rebalance power between the two branches by clarifying that only Congress can withdraw from trade agreements, as well as requiring mock markups. Additionally, Congress should approve TPA for individual agreements, not a blanket authority, and should require a vote for all tariff changes.

History of Trade Power Delegation

The U.S. Constitution is very clear about which branch of government holds authority over setting trade policy. Article I, Section 8 gives the “power to lay and collect taxes, duties, imposts and excises” to Congress.¹ The same section also explicitly grants the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes” to the legislative branch.²

At the same time, under Article II, Section 2, the President has the power to make treaties with advice and consent from the Senate.³ Trade agreements are very different from treaties because tariff rates and many non-tariff barriers, or regulations, are set in statute by Congress. Congress is the law-making branch of government; therefore, the President cannot implement a trade agreement without cooperation from Congress. Similarly, the President cannot unilaterally make changes to tariff rates without Congress delegating the power to the President.

Modern-day tariff-setting power, and thereby trade agreement powers, date back to 1934 when President Franklin D. Roosevelt requested that Congress delegate tariff-setting power as “part of an emergency program necessitated by the economic crisis” at the time.⁴ According to Douglas Irwin, senior fellow at the Peterson Institute for International Economics, “Democrats might simply have reduced import duties through legislation... [but] unilateral tariff reduction was politically impossible in the midst of the Depression.”⁵ Instead, they sought to delegate the power to the executive

TABLE 1

Tariff Delegation Actions, 1934–1973

President	Requested Authority	Received Authority	Legislative Authority—Public Law	Negotiations Undertaken or Concluded (date signifies conclusion)
Roosevelt	Yes	Yes	Reciprocal Trade Agreements Act of 1934; renewed 1937, 1940, 1943, and 1945	Trade agreements with 19 countries
Truman	Yes	Yes	Trade Agreements Extension Act of 1948; renewed 1949 and 1951	GATT negotiations: Geneva Round (1947); Annecy Round (1949); Torquay Round (1951)
Eisenhower	Yes	Yes	Trade Agreements Extension Act of 1953; renewed 1954, 1955, and 1958	GATT negotiations: Geneva Round (1959); Dillon Round (1962)
Kennedy	Yes	Yes	Trade Expansion Act of 1962	Kennedy Round
Johnson	Yes	Yes	Trade Expansion Act of 1962	Kennedy Round (1967)
Nixon	Yes	No	TAA lapsed 7/1/1967–1/3/1975; Nixon resigned 8/9/1974	

SOURCE: Congressional Research Service, “Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy,” July 2, 2015, https://www.everycrsreport.com/files/20150702_RL33743_80422d047ecdb2b4507eefe8e451a99e6f0c36eb.pdf (accessed April 20, 2021).

through the Reciprocal Trade Agreements Act (RTAA) of 1934, a move that Republicans strongly opposed. Republicans called the RTAA unconstitutional and said it “would create a ‘fascist dictatorship in respect to tariffs.’”⁶

Despite this opposition, Congress approved the three-page RTAA in just four months. It allowed the President to enter trade agreements and to reduce tariffs on a most-favored-nation (MFN)⁷ basis by up to 50 percent. The legislation described the authority given

as a means of assisting in the present emergency in restoring the American standard of living, in overcoming domestic unemployment and the present economic depression, in increasing the purchasing power of the American public, and in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce.⁸

The RTAA authority initially lasted three years, and Congress renewed it 12 times between 1934 and 1962.⁹ The Roosevelt Administration secured 19 bilateral tariff agreements between 1934 and 1939.¹⁰ Congress made

modifications to this authority along the way. The changes indicated below are not an exhaustive list of those modifications but include the most consequential ones. In the 1948 extension, Congress imposed a new requirement for the President to submit the list of items being considered for tariff reductions to the Tariff Commission (now called the International Trade Commission). The Tariff Commission then had 120 days to determine if any of the tariff changes would cause “domestic injury.” Congress also included a requirement that the President submit the text of a trade agreement and justification for tariff reductions under the agreement to Congress.¹¹

In 1949, Congress instructed the President to consult with “the national military establishment” for the first time when negotiating trade agreements.¹² The 1951 extension encouraged the President to withdraw tariff reductions for the USSR and Communist China.¹³ The extension in 1958 directed the President to consult with industry, agriculture and labor representatives for the first time and also extended the Tariff Commission’s evaluation deadline to six months.¹⁴ In addition to recovering from the Great Depression, America was a key leader in the development of the post-war Bretton Woods system, which led to the development of the General Agreement on Tariffs and Trade (GATT) in 1947. Between 1948 and 1962, the U.S. concluded five negotiating rounds for the GATT.¹⁵

Finally, in 1962, Congress passed the Trade Expansion Act. Among other things, this act gave trade agreement negotiating authority to the President for five years, created a provision for “safeguarding national security,” and created a new Cabinet-level position for a Special Representative for Trade negotiations.¹⁶ After the passage of the Trade Expansion Act, negotiations for the Kennedy Round of the GATT concluded in 1967.¹⁷ In 1967, the executive experienced its first pause in delegated trade authority since 1934. This meant that, aside from the President’s powers to negotiate treaties under Article II, the President could not eliminate tariffs without a vote in Congress. This pause lasted until 1974.

The Shift to Fast Track

In the past, trade agreements focused primarily on lowering and eliminating tariffs. The shift away from tariffs as a primary revenue source and the emergence of non-tariff barriers changed the contents of trade negotiations. Previous delegations of power on tariffs were not enough to accommodate new efforts to liberalize trade because the elimination of non-tariffs barriers—often created through regulation—required additional changes to U.S. law. There was also concern that other countries might be less willing

TABLE 2

Tariff Delegation Actions, 1974–Present

President	Requested Authority	Received Authority	Legislative Authority–Public Law	Negotiations Undertaken or Concluded (date signifies conclusion)
Ford	No	Yes	Trade Act of 1974	Tokyo Round
Carter	Yes	Yes	Trade Act of 1974	Tokyo Round (1979)
Reagan	Yes	Yes	Trade Agreements Act of 1979; Trade and Tariff Act of 1984	Uruguay Round; U.S.-Israel FTA (1985); U.S.-Canada FTA (1988)
H.W. Bush	No	Yes	Omnibus Trade and Competitiveness Act of 1988	Uruguay Round; NAFTA (1993)
Clinton	Yes	Yes	Omnibus of 1988; renewed 1993	Uruguay Round (1994); Jordan (2001–not considered under TPA)
G.W. Bush	Yes	Yes	Bipartisan Trade Promotion Authority Act of 2002	WTO Doha Round; FTAs with Chile (2003), Singapore (2003), Australia (2004), Morocco (2004), Dominican Republic-Central America (2005), Oman (2006), Peru (2007), Colombia (2011), Korea (2011), Panama (2011)
Obama	Yes	Yes	Bipartisan Congressional Trade Priorities and Accountability Act of 2015	Doha Round; TPP; TTIP; Trade in Services Agreement
Trump	Yes	Yes	2015 legislation extended in 2018 until 7/1/2021	USMCA (2019)

SOURCE: Congressional Research Service, “Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy,” July 2, 2015, https://www.everycrsreport.com/files/20150702_RL33743_80422d047ecdb2b4507eefe8e451a99e6f0c36eb.pdf (accessed April 20, 2021).

to negotiate new trade agreements with the U.S. if Congress could change, or indefinitely delay, the signed agreement during the approval process.

In response to these challenges, the Nixon Administration and Congress developed a new system for cooperation between the two branches for the negotiation and approval of trade agreements. Through the Trade Act of 1974,¹⁸ Congress delegated power to the President, then Gerald Ford, much as it had in the past for five years, but it secured more influence over the contents of trade agreements through negotiating objectives. If these objectives were followed, Congress would agree to special rules for the consideration of trade agreement implementation legislation, including the ability to amend the legislation.

This new process, often referred to as “fast track” allowed the legislation to move more quickly than the average bill. Congress has reauthorized fast

track five times since 1974,¹⁹ though there were two extensive pauses in authority, from 1994 to 2002 and from 2007 to 2015. Between 1974 and today, fast track has been used to approve 14 trade agreements, as well as the Uruguay Round, which led to the creation of the World Trade Organization (WTO) in 1994. The only U.S. trade agreement currently in effect to not use fast track was the U.S.–Jordan Free Trade Agreement in 2001.²⁰

First Fast Track Pause. Congress’s effort to renew fast track for President Bill Clinton failed in 1998, which the Congressional Research Service largely attributes to disagreements in Congress over negotiating objectives.²¹ At the same time, the pressure to approve a new fast track was lacking because of unsuccessful attempts at launching a new round of WTO negotiations in 1999. President George W. Bush was successful at securing fast track in 2002, where it was referred to as “trade promotion authority” for the first time. The Bipartisan Trade Promotion Authority (BTPA) Act of 2002 extended fast track for up to five years.²² The BTPA included a provision that, for the first time, extended fast track for agreements signed prior to the authority’s expiration. Eleven agreements were signed under the BTPA, but six were not approved by Congress until after the authority expired on July 1, 2007.²³ The six agreements considered by Congress after BTPA expired in 2007 were still afforded expedited procedures.

Second Fast Track Pause. In part due to the onset of the Great Recession, expanding trade was not a top priority for President Barack Obama following his election in 2008. At the same time, a Government Accountability Office report from November 2007 found that many trade staffers on Capitol Hill were unsatisfied with how the Bush Administration carried out consultations over the preceding five years. Furthermore, skepticism existed in Congress about the economic effects of some of the smaller trade agreements prioritized by the Bush Administration.²⁴ Negotiations for the Trans-Pacific Partnership (TPP) launched in 2011, but President Obama did not formally request that Congress revitalize fast track until 2013. In that same year, the Obama Administration kicked off negotiations for the Transatlantic Trade and Investment Partnership (TTIP).

In 2015, Congress passed the Bipartisan Congressional Trade Priorities and Accountability Act (TPA 2015), which extended fast track for up to six years.²⁵ Congress made significant changes to the negotiating objectives for TPA 2015,²⁶ but the general mechanics for negotiating and considering trade agreements remained the same as under the BTPA. The U.S. and 11 other countries signed the TPP in 2016, but then the Trump Administration pulled out of the agreement in 2017. TTIP negotiations were unsuccessful. TPA 2015 is set to expire on July 1, 2021. The Trump Administration

utilized this authority to get the USMCA approved by Congress.²⁷ The U.S. has ongoing trade agreement negotiations with the United Kingdom, Kenya, and Japan. Without TPA, the Biden Administration would struggle to conclude new trade agreements, including the ones currently under negotiation, approved by Congress. This is because trade agreements would no longer receive expedited procedures in the House and the Senate, which means that they could be held up indefinitely.

Challenges in the Current TPA Process

TPA and its predecessors have been helpful tools for advancing free trade and spreading its benefits to a greater number of Americans. Some of the most important efforts to liberalize trade were afforded expedited approval through these mechanisms, including the establishment of the WTO and the North American Free Trade Agreement (NAFTA). Average tariff rates for Americans dropped from 3.9 percent in 1990 to 1.6 percent in 2018.²⁸ Over the same period, U.S. total trade as a percentage of gross domestic product increased by more than seven percentage points.²⁹

While these developments have been a boon for Americans, TPA 2015 has its shortcomings. When Congress first began delegating authority, the objective was to lower and eliminate tariffs. However, over time that has evolved to cover non-tariff barriers and other issues unrelated to trade. TPA 2015 has the most expansive negotiating objectives of any trade delegation legislation, which led to agreements like the USMCA managing trade more than lowering barriers. Trade negotiations over the past few years have brought five key TPA challenges to light for Congress: (1) expansion to non-trade issues, (2) trade agreement withdrawal, (3) mark-ups and amending implementing bills, (4) turning off fast track, and (5) tariff elimination without Congress.

Expansion to Issues Unrelated to Trade. Legislation in recent years to extend fast track authority has included broad negotiating objectives on issues that have little to do with eliminating tariff and non-tariff barriers. For example, the overall objective of trade negotiations under the Trade Act of 1974 was “to obtain more open and equitable market access and the harmonization, reduction, or elimination of devices which distort trade or commerce.”³⁰ TPA 2015 has 15 overall objectives and 22 principle negotiating objectives.³¹ Among them are expansive objectives on labor and environmental policies that have allowed modern trade agreements to include social policy issues and wage requirements.

The USMCA is the latest trade agreement to be fast-tracked. The

agreement as originally negotiated substantially improved upon NAFTA regarding 21st-century trade issues, such as intellectual property rights and digital trade, but contained critical weaknesses in the areas of labor, the environment, government procurement, and rules of origin.³² While considering the USMCA, the Trump Administration held extensive, closed-door negotiations with Democratic Members of Congress. The Members involved in these exclusive negotiations were able to secure significant additional changes to labor and environmental rules that did not advance free trade. Following these meetings, some Members of Congress expressed frustrations about the effects of fast-tracking trade deals. Senator Pat Toomey (R-PA) described the USMCA as “an agreement that is meant to restrict trade”³³ and expressed displeasure with the labor rules added to the USMCA during the closed-door negotiations.³⁴

Trade Agreement Withdrawal. President Donald Trump threatened on multiple occasions in 2017 and 2018 to withdraw the U.S. from NAFTA. These threats sparked debate in Washington about whether the President has the authority to withdraw the U.S. from a trade agreement unilaterally. While TPA details the process for a trade agreement to become law, the inverse is not as clear. Article 2205 of NAFTA did include a withdrawal provision that permits the President to “provid[e] written notice of withdrawal to the other Parties.” Some believe that because of this, President Trump could have withdrawn from the agreement. According to Rob Scott, director at the Economic Policy Institute, President “Trump [could] withdraw from parts of NAFTA without the consent of Congress, but it would have limited effects on trade or investment with Mexico or Canada.”³⁵ Similarly, Todd Tucker, research fellow at the Roosevelt Institute, stated that President “Trump [could] readily notify the other parties, Canada and Mexico, of withdrawal.”³⁶ However, both experts acknowledge the limitations of such a move because as Tucker put it, “Much of what [was] in NAFTA [was] implemented by congressional statute.”³⁷

The National Taxpayers Union surveyed five legal experts in 2019 and found agreement among them, “that just as a President cannot enter into a new trade agreement without congressional approval, he also cannot withdraw from an existing trade agreement without congressional approval.”³⁸ According to Timothy Meyer, professor of law at Vanderbilt University:

The president may very well be able to withdraw from international agreements like NAFTA and [the U.S.-Korea Free Trade Agreement] without further congressional authorization. But the president cannot constitutionally ignore or cancel the domestic laws passed by Congress simply by withdrawing from

an international commitment. In other words, even if the United States leaves NAFTA, the president will still be bound to implement the agreement's rules on the terms dictated by Congress until Congress says otherwise.³⁹

Withdrawing from NAFTA would have had immense economic effects, and even the ambiguity surrounding the threat rattled the business community in the U.S., Canada, and Mexico.⁴⁰ The automotive sector was especially concerned about the effects of withdrawing from NAFTA. Jennifer Thomas, vice president of federal affairs at the Alliance of Automobile Manufacturers, stated that “pulling out of NAFTA would lead to a decrease in vehicle production, a decline in jobs and an increase in what our customers spend when buying a new vehicle. Not to mention this would also have an impact on our abilities to export vehicles to foreign markets.”⁴¹

Mock Markups. A mock markup is a process for recommending changes to legislation prior to a vote in committee. Using fast track means that Congress agrees to consider a clean implementing bill, without the chance for amendments, but the process does allow for an optional mock mark-up of the draft bill. In the past, the mock-markup process provided a fair and transparent venue for both parties to offer amendments. The Administration is not required to include the suggested changes in its final implementing legislation, but a mock markup does allow Congress a voice in the process. Senator John Cornyn (R-TX) criticized the lack of a mock markup for the USMCA, explaining that “if we aren’t going to follow our own rules...it’s going to make it harder and harder to pass these trade agreements in the future.”⁴²

Turning off Fast Track. There are three types of resolutions included in TPA that allow Congress to change how a trade agreement is considered.⁴³ Because TPA is only a set of procedural rules, Congress also “retains full authority, under the Constitution, to change or override them at any point.”⁴⁴ For example, “the House could adopt a special rule permitting amendments... [or] a resolution prohibiting consideration of an implementing bill.”⁴⁵ The Senate could also set new rules for considering an implementing bill by unanimous consent. Effectively, these options allow Congress to consider a trade agreement under a new set of rules, which could allow for amendments, filibusters, and other procedures afforded under the normal rules of Congress.

In 2008, House Speaker Nancy Pelosi (D-CA) held a vote to change the House rules pertaining to the consideration of the implementing legislation for the U.S.–Colombia Trade Promotion Agreement.⁴⁶ A rule under the TPA process at that time required Congress to vote on such legislation within

60 legislative days from the time that the President sent the legislation to Congress. Some lawmakers argued that rather than consulting Congress, President George W. Bush tried to force the hand of Congress. This move also affected the pending agreements with Panama and South Korea, delaying the votes of all three agreements for roughly three years.⁴⁷

Despite the existence of these mechanisms, it is very difficult to turn off TPA for a trade agreement. During the USMCA approval process in Congress, Senator Toomey argued that the agreement was not compliant with TPA rules and expressed frustration with the lack of a mock markup. According to Toomey, “for the sake of the integrity of TPA and for the legislative filibuster, [the Senate] should not consider [the USMCA] under TPA.”⁴⁸ His efforts were unsuccessful.

Changing Tariffs Under Section 103. Section 103 of TPA 2015 is essentially a carryover provision from the Reciprocal Trade Agreements Act of 1934. It allows the President to modify tariffs within certain margins without an act of Congress. Before fast track, this was how trade agreements were implemented, unless the agreements attempted to lower tariffs by more than the established margins. That practice has remained even though Congress must pass implementing legislation for trade agreements. The concept of unilateral tariff elimination by the President is one that does promote freer trade, but if those actions are not applied to all trading partners, or in conjunction with a full trade agreement, the U.S. could come into conflict with Article XXIV of its WTO obligations.

Trade agreements must include “substantially all trade” in order to be WTO compliant. The Trump Administration negotiated an agreement with Japan that lowered tariffs on roughly 3.4 percent of U.S. imports from Japan, and about 10 percent of Japanese imports from the U.S. According to the Kiel Institute for the World Economy, “The trade agreement between the USA and Japan clearly violates this [the trade-agreement] exemption from the most-favored nation principle.”⁴⁹ The Trump Administration argued that the U.S.–Japan Trade Agreement signed in 2019 was just phase one of a broader agreement. However, if the Biden Administration does not pursue additional negotiations with Japan, other trading partners could file a WTO dispute claiming that this deal is not in compliance.

A New Trade Promotion Authority Should Advance Trade Freedom

Trade freedom in the U.S. has been on the decline in recent years according to The Heritage Foundation’s annual *Index of Economic Freedom*. In

2020, the U.S. score fell below 80 of 100 (to “mostly free”) for the first time since 2005. The decline was due in large part to costly tariffs imposed on imports during the Trump Administration. Prior to this, the freedom of Americans to exchange with the world consistently received a grade near 87 (the “free” category).⁵⁰ U.S. trade policy has failed to advance trade freedom for Americans in recent years. Instead, trade agreements have shifted more toward managing trade flows. The USMCA is a prime example of this shift. Congress has also allowed trade laws, such as TPA, to be ambiguous and give expansive authority to the executive. As a result, the role of Congress today in setting and executing the trade agenda is much smaller than the Constitution intended.

TPA 2015 expires on July 1, 2021, which means that without new legislation, it will be very difficult for the Biden Administration to pursue new free trade agreements. President Biden has not requested a reauthorization of TPA, a move that is not required by statute, but it is common. Agriculture Secretary Tom Vilsack said that he hopes “Congress during the course of this year begins to get serious about resuming and extending Trade Promotion Authority,”⁵¹ but U.S. Trade Representative Katherine Tai has not indicated that the Administration will request a new TPA. For Congress, the expiration of TPA provides a unique and important opportunity to re-evaluate and refine the process.

Some Members have proposed legislation to make changes to TPA. For example, Senator John Thune (R-SD) introduced the Network Security Trade Act, which would add negotiating objective to TPA on communications infrastructure.⁵² According to Senator Thune, the change would “ensure that the security of the equipment and technology that create the global communications infrastructure is front and center in our trade negotiations.”⁵³ Trade agreements should be compliant with America’s WTO obligations, meaning that they cover substantially all trade. Currently, Section 103 allows the President to change some tariffs unilaterally. Congress should consider modifying this provision to ensure that the President is held accountable in using this tool correctly. The Global Trade Accountability Act (GTAA), introduced by Senator Mike Lee (R-UT), would address this issue by requiring Congress to vote on any tariff action proposed by the President under Section 103.⁵⁴

The next TPA should advance economic and trade freedom by ensuring that all U.S. trade agreements eliminate tariff and non-tariff barriers at home and abroad. Pursuing a free trade agenda is how all Americans will experience the greatest benefit from trade agreements. This also means that Congress should ensure that issues unrelated to trade stay out of TPA

and out of trade agreements. Furthermore, legislation for trade agreements should be clean and only include provisions to implement the agreement. Rebalancing trade authorities should also be a key priority for a new TPA. Congress should make it unequivocally clear that only Congress can withdraw from a trade agreement,⁵⁵ and ensure that it has a direct hand in setting the agenda for which trade agreements to negotiate.

Recommendations for Congress

Cooperation on trade agreements through TPA and its predecessors has generally led to improved trade freedom and economic benefits for Americans through greater choice and more competitively priced products. Without this tool, it will become more difficult for the Biden Administration to move new agreements through Congress. As Congress evaluates TPA and considers its renewal, it should:

- **Commit to eliminating tariff and non-tariff barriers at home and abroad through trade agreements.** Too often negotiators on both sides advocate to keep protectionist tariffs, subsidies, and regulations in place to benefit their domestic industries. Eliminating all barriers to trade should be the gold standard for bilateral and multilateral agreements.
- **Renew fast track for specific trade agreements.** Congress has little influence on which trade agreements the Office of the U.S. Trade Representative (USTR) pursues. To remedy this, Congress should renew TPA for specific agreements with negotiating objectives tailored to that trade relationship.
- **Allow the USTR to request TPA for a specific trade agreement.** Congress may not always prioritize the same trading relationships as the USTR. To ensure that determining a negotiating agenda is collaborative, the USTR should be able to formally request TPA for a specific agreement. Members of Congress have called on the USTR to negotiate a trade agreement with Taiwan many times, and this type of process could allow Congress to mandate that the U.S. pursue such an agreement.
- **Make mock markups mandatory.** Mock markups were customary before the process to approve the USMCA. Rather than a mock markup, negotiations to change the USMCA were conducted behind

closed doors and were not done in a bipartisan manner. Requiring mock markups will ensure that more Members have an opportunity to, transparently, evaluate and offer changes to a draft implementing bill.

- **Clarify that only Congress can withdraw from trade agreements.** Legal and trade scholars agree that only Congress can withdraw from a trade agreement, but the law does not expressly say this. To clear up the ambiguity and prevent uncertainty from being created in the future, Congress should make this point clear.
- **Require legislative approval for tariff modifications under Section 103.** Trade agreements should also be compliant with America's WTO obligations, meaning that they cover substantially all trade. The agreement with Japan in 2019, while it did benefit Americans, may not have been compliant. To ensure future compliance in tariff modifications, Congress should consider requiring its approval for changes to tariff rates.

Conclusion

Free trade agreements improve trade freedom for American families, individuals, and businesses when the agreements focus on eliminating tariff and non-tariff barriers. TPA is an important tool for advancing trade agreements that Congress should seek to renew, but changes are necessary. Congress should pursue modifications to TPA that ensure that future trade agreements focus on advancing trade freedom and allow cooperation between the executive branch and Members of Congress.

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Endnotes

1. U.S. Constitution, Art. I, § 8.
2. U.S. Constitution, Art. I, § 8.
3. U.S. Constitution, Art. II, § 2.
4. Douglas A. Irwin, *Clashing Over Commerce: A History of US Trade Policy* (Chicago: University of Chicago Press Books, 2017), p. 425.
5. *Ibid.*, p. 423.
6. *Ibid.*, p. 428.
7. According to the World Trade Organization (WTO), MFN status is “the principle of not discriminating between one’s trading partners.” It means that a trade concession given to one WTO member country must be given to all (as the WTO treats every member as an MFN), except in the case of preferential trade agreements.
8. “Reciprocal Tariff Act of 1934,” June 12, 1934, <https://fraser.stlouisfed.org/title/reciprocal-tariff-act-1934-5876> (accessed April 20, 2021).
9. The authority to negotiate trade agreements and modify tariffs was extended for three years at a time in 1937, 1940, 1945, 1949, and 1955. It was extended for one year in 1948, 1953, and 1954, for two years in 1943 and 1951, and for four years in 1958.
10. Office of the United States Trade Representative, “Eighty Years After the Reciprocal Trade Agreements Act,” June 2014, <https://ustr.gov/about-us/policy-offices/press-office/blog/2014/June/Eighty-years-of-the-Reciprocal-Trade-Agreements-Act> (accessed April 20, 2021).
11. Trade Agreements Extension Act of 1948, 62 Stat. 1053, Ch. 678, June 26, 1948.
12. Trade Agreements Extension Act of 1949, 63 Stat. 697, Ch. 585, September 26, 1949.
13. Trade Agreements Extension Act of 1951, 65 Stat. 72, Ch. 141, June 16, 1951.
14. Trade Agreements Extension Act of 1958, Public Law No. 85–686, 72 Stat. 673, August 20, 1958.
15. Congressional Research Service, “Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy,” July 2, 2015, https://www.everycrsreport.com/files/20150702_RL33743_80422d047ecdb2b4507eefe8e451a99e6f0c36eb.pdf (accessed April 20, 2021).
16. 19 U.S. Code 1801 note—Trade Expansion Act of 1962.
17. Congressional Research Service, “Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy.”
18. 19 U.S. Code 2101—Trade Act of 1974.
19. Fast track authority was extended in 1984 and 1988 for five years each time. It was extended again for one year in 1993. It was extended again in 2002 for up to five years, and in 2015 for up to six years.
20. Congressional Research Service, “Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy.”
21. The disagreements were in regards to negotiating objectives for labor and environmental issues. For more information, see Congressional Research Service, “Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy.”
22. The BTPA included a new provision that extended fast track initially for three years and allowed the authority to be continued for two additional years following a formal extension request by the President.
23. Congressional Research Service, “Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy,” p. 6.
24. U.S. Government Accountability Office, “International Trade: An Analysis of Free Trade Agreements and Congressional and Private Sector Consultations under Trade Promotion Authority,” November 2007, <https://www.gao.gov/assets/gao-08-59.pdf> (accessed April 20, 2021).
25. TPA 2015 includes the same provisions found in the BTPA for auto-renewal and treatment of trade agreements signed before the authority’s expiration date. For more information, see “Bipartisan Congressional Trade Priorities and Accountability Act of 2015,” Congress.gov, latest action May 12, 2015, <https://www.congress.gov/bill/114th-congress/senate-bill/995> (accessed April 20, 2021).
26. “Bipartisan Congressional Trade Priorities and Accountability Act of 2015,” Congress.gov, latest action May 12, 2015, <https://www.congress.gov/bill/114th-congress/senate-bill/995> (accessed April 20, 2021).
27. The USMCA replaced the North American Free Trade Agreement in 2019.
28. The World Bank, “Tariff Rate, Applied, Weighted Mean, All Products (%)—United States,” data for 1989 to 2019, <https://data.worldbank.org/indicator/TM.TAX.MRCH.WM.AR.ZS?locations=US> (accessed April 20, 2021).
29. The World Bank, “Trade (% of GDP)—United States,” data for 1970 to 2019, <https://data.worldbank.org/indicator/NE.TRD.GNFS.ZS?locations=US> (accessed April 20, 2021).
30. 19 U.S. Code § 2113—Overall Negotiating Objective (1975).
31. 19 U.S. Code Chapter 27—Bipartisan Congressional Trade Priorities and Accountability (2015).

32. Tori K. Smith and Gabriella Beaumont-Smith, "An Analysis of the United States–Mexico–Canada Agreement," Heritage Foundation *Backgrounders* No. 3379, January 28, 2019, <https://www.heritage.org/trade/report/analysis-the-united-states-mexico-canada-agreement>.
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