

TPP Vote Timeline

Even if a Deal Is Announced Imminently, Under Fast Track Rules a U.S. Congressional Vote Can Only Be Held Next Year When TPP Approval Would be Imperiled by 2016 Election Politics

TPP proponents were eager for Congress to vote on a Trans-Pacific Partnership (TPP) deal in late 2015. But to do so while following past practice for Fast-Track trade pacts, given Fast Track's statutorily-required timeframe of notice periods and pre-vote reports, TPP negotiations and the TPP text itself had to have been completed at the end of Maui ministerial in late July 2015.

Moreover, if the Obama administration does not provide Congress notice of intent to sign the TPP by September 24, a congressional vote in 2015 is not possible under Fast Track even if the Obama administration exploits every ambiguity in the Fast Track statute. That is the case because even if congressional leaders were inclined to allow the Obama administration to manipulate every flexibility in the Fast Track statute, it requires minimally 91 days from the time Congress is give notice of a final deal until a congressional vote may be held. There is some speculation that the administration would attempt to compress the timeline set out in the Fast Track legislation and seek Republican congressional leaders' approval to abandon past practice, given the increased political peril of a TPP vote at any point in the 2016 Presidential election year. **But given the next TPP ministerial was announced for September 30-October 2, even if a deal were announced there it could not obtain a U.S. congressional vote in 2015 and any deal struck would thus become embroiled in the 2016 U.S. elections in which a new president, the entire House of Representatives and one-third of the Senate must be chosen.**

If the Fast Track statute is followed according to past practice, the quickest timeline for a TPP vote would be about four and one half months after Congress is given notice of intent to sign a deal. This would assume that somehow the statutorily-required International Trade Commission (ITC) report on TPP impacts could be completed faster than has ever occurred for past pacts* and/or is done in a shoddy fashion.

Thus, if somehow a deal is reached by October 2 and TPP leaders find some time to meet to sign a deal in January, the earliest a final TPP vote could be held would be in mid-February 2016 – right in the most politically perilous moment in U.S. politics.

The political costs of an unpopular “yes” vote for the TPP would increase with every passing week in 2016. Presidential primary elections will be held from February 1 to the middle of June 2016. The Republican and Democratic conventions (where each party's candidates are officially selected) will be in late July 2016, and the general election frenzy will last until Election Day on November 4, 2016. Already Democratic and Republican presidential candidates have begun attacking the TPP, and their public criticism is generating public attention on the pact's potential threats of job loss and more. A 2016 TPP vote also would increase the risk that voters could punish those who vote “yes” on the TPP during the November 2016 congressional election.

Timeframe if Fast Track Statute Is Implemented According to Past Practice: 4.5 Months between End of Negotiations and Votes in Congress

This ***hypothetical timeline*** assumes speedier turnaround at key points than has occurred for past trade deals, some ‘bending’ of the Fast Track timelines and no congressional meltdowns, objections or courtesies. This is the likely timeline to a TPP vote under the Fast Track statute. (*Citations refer to provisions of [the 2015 Fast Track bill](#).*) However, as noted above, if both House and Senate leaders agreed, and the Obama administration cut every corner made possible by ambiguities in the Fast Track statute, a TPP vote could be held shortly after a deal would be signed – 91 days after notice is given to Congress of intent to enter the deal. If a deal had been reached in September, such maneuvers would have been expected to try to squeeze in a vote in 2015. However, given there is no chance for a 2015 vote, the likely timeline is:

- **If a TPP “Deal” Is Announced October 2...** Even if a final “deal” is announced, is it really a final text? While the main issues that led to the Maui ministerial’s failure related to autos, dairy and monopoly-periods for biologic medicines, other issues remained outstanding as well. Were all the contested textual provisions in Intellectual Property and other key chapters resolved? Were *all* the market access issues (tariffs and tariff-rate quotas) and rule of origin issues resolved? How about if the schedules of exceptions and commitments are complete for chapters such as Investment, State Owned Enterprises, Services and Procurement (which remained outstanding after Maui)? If not, a final text would not be available to be initialed (locked with only legal scrubbing changes allowed going forward). Thus Congress could not be given notice of intent to sign a text, as no text exists. But for the moment, assume that there is a text and notice can be given...
- **If a text is done and notice is given to Congress by October 3 of intent to sign...** Assuming the shortest possible timeframe for concluding negotiations and that somehow a text materializes, a text would have to be initialed by October 3 and the 90-day notice given of intent to sign for President Obama to sign the deal on January 1. It seems unlikely that the President would choose to sign such a controversial agreement right as the primary season begins (the famous Iowa caucus in on February 1 and the New Hampshire primary is on February 9), thus forcing Hillary Clinton and other Democratic presidential and Congressional candidates to have to respond to angry Democratic voters. But assuming he did...
 - **Minimum interval before signing: 90 calendar days.** Fast Track requires the president to give Congress at least 90 days’ notice before signing an agreement. (Sec. 106(a)(1)(A)) Also, at least 90 calendar days before signing the TPP, President Obama must provide the ITC with details of the agreement “as it exists at that time” and request the ITC to prepare an assessment of the probable economic effect of the agreement. (Sec. 105(c)(1)) The Obama administration has already requested the ITC to do its assessment even though it cannot provide final details. While the ITC refuses to answer whether it is fulfilling the administration’s request to perform its assessment without a final TPP deal, *Inside U.S. Trade [reports](#)* that “informed sources” believe this to be the case.
- **If that text is made public on November 1...** The Fast Track statute requires public posting of a text 30 days after the 90-day notice of intent to sign. This means that there are only 30 days of “cheating” time when the Office of the U.S. Trade Representative (USTR) can claim that it has a final text and give notice, but not really have a text. And, fudging in this way would require denying Congress access for 30 days to the text for which notice of intent to sign was given. That is to say that a final text probably will need to be done before notice of intent to sign can be given.

- Minimum interval before text must be publicly posted: 30 days after completion and notice of intent to sign. (Sec. 106(a)(1)(B)) Also, within 30 days after the president notifies Congress of his intent to sign the TPP the official trade advisory committees must report their views on the pending agreement to the president, Congress and USTR. (Sec. 105(b)(4))
- **If the TPP text is signed on January 1...** That would require the legal scrub of the final text taking only 90 days or less, which might be possible if the current disagreement about which language versions would be official text is resolved with only English and Spanish being counted. Legal experts have been working on the legal scrub of completed TPP chapters in English [amid negotiations](#) in effort to reduce the legal scrub time needed after the conclusion of negotiations. The legal scrub of U.S. trade agreements typically takes a few months. Given that work on the legal scrub has been ongoing, but also that there may be additional language in legal binding texts, it is unclear how much more time would be required after negotiations conclude. If a final scrubbed text were signed on January 1, that could start the 30-day countdown towards submitting implementing legislation.
 - Minimum interval before TPP implementing legislation could be submitted: 30 calendar days. Fast Track requires the president to wait at least 30 days after sending Congress the final signed legal text of the agreement to submit a pact's implementing legislation. (That said, the way the statute is drafted, the expedited consideration of Fast Track is not automatically removed if this obligation is violated, which is why we note at the start of this memo that the absolutely shortest timeline is 91 days from notice. That said, breaking this rule would require acquiescence by congressional leaders and they would come under considerable pressure by rank and file members if they considered waiving this requirement.) The Fast Track statute states that any time [after signing the TPP](#), the president may submit to Congress a "copy of the final legal text" and a draft statement of administrative action proposed to implement the agreement. (Sec. 106(a)(1)(D)) Thirty days after the president submits to Congress a copy of the final legal text of the TPP, he may submit to Congress an implementing bill for the agreement, an explanation of how the implementing bill would change U.S. laws to conform to the terms of the agreement, a final statement of administrative action proposed to implement the agreement, reports on projected environmental and employment impacts, a plan for implementing and enforcing the agreement and other supporting information. (Sec. 106(a)(1)(E), Sec. 105(d)(1 and 2), and Sec. 105(e))
- **If the TPP implementing legislation were submitted on February 1...** That would require the ITC to finish its statutorily required report on the TPP's projected U.S. economic impacts in record time. While it is not statutorily required, Congress has always waited for the ITC's report before considering a trade pact. Additionally, the Senate must also be in session on February 1, as implementing legislation can only be submitted when both chambers are in session.
- **If Congress acted in half the time it took to vote on the least controversial existing U.S. trade deal... THEN, a final TPP vote could occur during the week of February 15, 2016.** This approximately two-week timeframe also happens to be the median interval between submission of a Free Trade Agreement's (FTA) implementing legislation and votes on such legislation. The range is from seven calendar days (for the Morocco FTA) to 85 days (for the Oman FTA). The median number of calendar days is 16 days if one considers all existing U.S. FTAs. It took 27 calendar days for implementing legislation for the Bahrain FTA – the least controversial existing U.S. FTA by number of "no" votes – to go from introduction (also in November) to passage in both houses of Congress under Fast Track. While it is technically possible that the TPP vote could take *less* time,

it is more likely that the TPP vote would take *more* time, given that the pact is significantly more controversial. This would include, minimally, committee “un-mark-ups” of the implementing bill.

- Maximum duration for congressional consideration of the TPP: Within 45 legislative days of the introduction of the TPP implementing legislation, the House Ways and Means Committee must report the bill or it is automatically discharged. (19 USC 2191(e)(1)) Within 15 legislative days of the TPP implementing bill leaving the House Ways and Means Committee, the full House must vote on the bill. (19 USC 2191(e)(1)) Within 15 legislative days of the House vote on the bill, the Senate Finance Committee must report the bill or it is automatically discharged. (19 USC 2191(e)(2)) Within 15 legislative days of the bill leaving the Senate Finance Committee, the full Senate must vote on the bill. (19 USC 2191(e)(2)) Any time after both houses of Congress pass the implementing bill, the president may sign the implementing legislation into law. At least 30 days before the TPP takes effect, the president must notify Congress that all other countries in the agreement have altered their domestic laws to conform to the terms of the pact to the satisfaction of the president. (Sec. 106(a)(1)(G))

***A note on the required ITC report:** Within 105 calendar days after the president signs the TPP, the ITC must submit to the president and Congress a report on the probable economic effects of the agreement. (Sec. 105(c)(2)) All recent U.S. FTAs have been voted on by Congress only after the ITC completed its report. In February 2015, USTR Michael Froman [asked the ITC to begin its assessment](#), though the text was still under negotiation, and to conclude the assessment by summer 2015. The previous ITC chairman Irving Williamson thought it would take at least five months to do a TPP assessment. It is unclear when the ITC will finish its assessment, especially since key market access provisions which would certainly influence the outcome of the probably economic effects of the agreement, remain some of the most controversial sticking points in the negotiation. However, if congressional leaders were willing to dispense with past practice and the clear intent of the Fast Track statute and accept a superficial ITC report, then the Fast Track statute would provide latitude for such corner cutting.