



INSIGHT

Congress Exercising Constitutional Trade Authority with New Taiwan Bill

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Executive Summary

- On June 21, the House of Representatives passed by voice vote a bill where Congress would formally approve of the first U.S.-Taiwan agreement under the U.S.-Taiwan Initiative on 21st Century Trade, as well as establish parameters for the negotiation of future agreements.
- This legislation is novel because it gives the president authority similar to Trade Promotion Authority (TPA) for negotiations with one country, which could set a precedent for how future trade authority is shared between Congress and the administration.
- This legislation would set a path for future U.S.-Taiwan agreements on trade issues, and hopefully set the stage for TPA for Taiwan and a future U.S.-Taiwan Free Trade Agreement, one that encompasses all bilateral trade and includes market access commitments.

Introduction

On June 21, 2023, the House of Representatives approved the United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act ([H.R. 4004](#)) with a voice vote, after the bill was approved unanimously by the House Ways and Means Committee just days before. This legislation comes on the heels of disagreement between Congress and the Biden Administration on the process for implementing executive agreements, especially those negotiated under the U.S.-Taiwan Initiative on 21st Century Trade (USTI).

In this legislation, Congress retroactively approves the Biden Administration's first agreement with Taiwan under the USTI. H.R. 4004 also establishes reporting and consultation requirements for the administration for any subsequent agreements under the USTI to ensure that Congress is involved in the process. This aspect of the bill is similar to legislation giving Trade Promotion Authority (TPA) to the executive; however, it is novel in the way the parameters are set for only one country.

The Senate will now be tasked with considering H.R. 4004. At the least, H.R. 4004 demonstrates Congress' intent to exercise its constitutional authority over trade and demand active involvement in trade negotiations. If passed, this bill would set an interesting precedent for how Congress and the administration balance shared powers over trade policy and how TPA is treated in the future. This legislation would also ensure the longevity of this and future agreements with Taiwan under the USTI.

Background

For decades, Congress and the administration have worked together to implement trade agreements that make it easier for Americans to exchange goods and services with the world. This cooperation was necessary because Congress holds the power to regulate trade under the Constitution, yet it was not sensible to have 535 members at the negotiating table. The United States has 14 trade agreements with 20 countries, all of which required Congress to pass implementing legislation to bring them into force.

[TPA](#) served as a crucial tool to facilitate an administration's efforts to pursue a trade agreement while respecting Congress' role in the process. TPA gives the president the ability to negotiate trade agreements on behalf of the United States and affords them expedited consideration in Congress as long as the administration follows certain negotiating objectives and consultation requirements. Since the expiration of TPA in 2021 and the Biden Administration's choice to seek executive agreements with other nations through various forums, a constant push and pull has existed between these two branches of government. Members have expressed frustration with the administration's interpretation of consultation with Congress, as well as its failure to pursue trade agreements that lower tariff barriers (also called market access).

For example, the Biden Administration is engaged in trade-related negotiations under a variety of bilateral and multilateral forums, including the [Indo-Pacific Economic Framework](#) (IPEF), the [USTI](#), and the [U.S.-EU Trade and Technology Council](#). It has also signed an [agreement on critical minerals](#) with Japan, which the administration contends is a trade agreement. The Biden Administration believes that the executive agreements currently being pursued under the aforementioned forums do not require legislative action to implement. In a [letter](#) to the chairman of the Senate Finance Committee, USTR Ambassador Katherine Tai and Commerce Secretary Gina Raimondo argue that "Congress has granted the Trade Representative authority in 19 U.S.C. § 2171 to defend and promote U.S. interests through the negotiation of trade agreements. For at least the last 30 years, USTR has negotiated and entered into numerous agreements pursuant solely to this authority."

Many in Congress disagree and members have vocally criticized the administration for its limited approach to congressional consultation with these forums and agreements. In a March 2023 [letter](#) to President Biden and Ambassador Tai, a group of 20 members of the House Ways and Means Committee said, “given Congress’s exclusive Constitutional authority over foreign commerce, you lack the ability to bind the United States in this area without congressional approval.” This tension is abundantly present in the context of U.S. negotiations with Taiwan.

U.S.-Taiwan Initiative on 21st-Century Trade

On June 1, 2022, the United States and Taiwan announced the formation of the USTI, a bilateral forum for the negotiation of 11 areas of economic and trade policy, ranging from agriculture regulations to standards for state-owned enterprises. The USTI was announced just days after Taiwan was left out of the United States’ launch of the IPEF with other countries in the region. Nine of the 11 areas for negotiation in the USTI overlap with those of IPEF. Two areas of negotiation included in the USTI have not been mentioned as part of the IPEF: state-owned enterprises and non-market economies.

One year later, the United States and Taiwan signed an [initial agreement](#) under the USTI. This agreement contains chapters on customs and trade facilitation, regulatory practices, anticorruption, and small and medium-sized enterprises. The most substantive [outcomes](#) from this agreement are commitments to “adopt paperless practices through the creation of digital filing practices” and to align U.S.-Taiwan anticorruption rules with the United States-Mexico-Canada Agreement. Some have called this an “early harvest” agreement because the more contentious issues – such as agriculture, labor, the environment, and state-owned enterprises – are not yet included.

The United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act

Absent TPA or other legislation, the legality of the Biden Administration’s executive agreements is likely an open question. To settle this dispute, however, Congress is quickly advancing the United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act. According to the bill’s sponsors, it [would](#) “approve the first trade agreement signed under the U.S.-Taiwan Initiative on 21st-Century Trade, and set robust transparency and consultation requirements for any future agreements negotiated under the initiative.”

H.R. 4004 has 43 cosponsors, with substantial bipartisan representation. It was passed unanimously by the House Ways and Means Committee and was approved by the full House by voice vote. Before the Senate recessed on June 22, Senator Ron Wyden (D-OR) attempted to have the Senate approve H.R. 4004 by unanimous consent, but Senator Tom Cotton (R-AR) [objected](#), saying that “the Senate should not be ramming through such agreements at the very last minute without time to review them.” While it is true that the

bill had only just been transmitted to the Senate, the agreement with Taiwan was signed three weeks prior, and USTR had publicly released the agreement text on May 18.

Ensuring the longevity of any trade-related agreements with Taiwan is essential to the bilateral economic relationship, as well as to the broader U.S. alliance with Taiwan. This legislation would advance those objectives, as well as set a path for future U.S.-Taiwan agreements on trade issues. It would also set the stage for TPA for Taiwan and a future U.S.-Taiwan Free Trade Agreement that encompasses all bilateral trade and includes market access commitments.