

Congressional and Executive Authority Over Foreign Trade Agreements

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This report examines the constitutional powers of Congress and the President over foreign trade agreements, the respective roles the legislative and executive branches have played in selected trade agreements in the 2020s, and legal debates concerning the extent to which the executive branch may enter into or withdraw from trade agreements without congressional approval.

The Constitution grants Congress the power to regulate foreign commerce, impose tariffs, and collect revenue, while the President holds constitutional power to negotiate with foreign governments. U.S. Const. art. I, § 8, cls. 1, 3. Courts have only infrequently opined on the ways in which the United States may enter into foreign trade agreements based on this separation of powers. Nevertheless, policymakers and scholars broadly accept that the United States may enter into trade agreements with other countries via “congressional-executive agreements,” which are negotiated by the President and approved—either in advance or afterward—by Congress. By contrast, many have questioned whether the President may enter into trade agreements with other countries via “sole executive agreements,” which are not approved by Congress and for which the executive branch relies on the President’s independent constitutional powers. Presidents have, however, made various nonbinding trade commitments to other countries without congressional authorization based on their asserted authority to conduct foreign relations.

The 2020s have revealed a shift in the means by which the United States enters into trade agreements. Traditionally, Presidents negotiated many trade agreements—including free trade agreements and other agreements affecting tariffs—as congressional-executive agreements pursuant to trade promotion authority (TPA) legislation enacted by Congress. The last TPA authorization, Pub. L. No. 114-26, expired in 2021, leaving this vehicle for congressional-executive agreements unavailable for the time being. Meanwhile, scholars have noted an upswing in the President’s use of various trade agreements (sometimes called “mini-deals”) that are not specifically approved by Congress. Some commentators have questioned whether such agreements should be considered sole executive agreements, as it is not clear to what extent they are based on the President’s independent constitutional authority versus powers Congress has delegated to the executive branch. This report refers to these agreements as “hybrid” trade agreements given their mixed or uncertain legal foundations.

Some Members of Congress have questioned whether hybrid trade agreements are constitutionally permissible and have sought to reassert Congress’s role in the making of foreign trade agreements. This report evaluates some of the potential legal bases for the executive branch to enter into hybrid trade agreements without congressional approval, including powers that Congress has delegated to the U.S. Trade Representative (USTR) or to executive agencies that may have authority to implement certain trade agreements. By including an analysis of these executive agencies’ authorities, this report examines not only the President’s constitutional powers with respect to trade agreement-making but also ways in which the wider executive branch may claim authority to make trade agreements. The report also considers the extent to which possible congressional acquiescence may provide constitutional support for hybrid trade agreements.

Post-2020 trade agreements and nonbinding instruments concluded without advance approval by Congress include deals memorialized by the United States with the United Kingdom and European Union in 2025, a Critical Minerals Agreement between the United States and Japan in March 2023, and a trade agreement between the United States and Taiwan in June 2023. This report provides a legal overview of these agreements and initiatives, with a focus on the extent to which they create binding international obligations, the respective roles played in these agreements by Congress and the executive branch, and legal defenses and criticisms of the agreements.

Finally, this report analyzes constitutional issues raised by withdrawal from international trade agreements, specifically debates concerning whether the President may withdraw from such agreements without congressional approval. It also includes analysis of the joint review process for the U.S.-Mexico-Canada Agreement (USMCA), under which the parties to that agreement may decide to extend its term or allow it to expire.

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Introduction

The U.S. Constitution gives Congress the power to regulate foreign commerce¹ and impose tariffs,² and it gives the President the power to enter into treaties with the advice and consent of the Senate,³ but it does not address whether or how the United States may enter into foreign trade agreements outside of the treaty process. Congress and the President have sometimes contested their respective roles in trade agreement-making, but they have also sometimes reached accommodations giving both the legislative and executive branches a substantial role.

Congress has periodically exercised its authority over foreign trade agreements via legislation authorizing the President to negotiate certain trade agreements—particularly agreements affecting tariffs—approving those agreements, and/or implementing those agreements via changes to U.S. domestic law.⁴ In recent decades, however, the President and the U.S. Trade Representative (USTR) have increasingly entered into various trade agreements that Congress has not specifically authorized or approved.⁵ Under the Trump and Biden Administrations, for instance, the United States has entered into certain trade agreements that were not submitted to Congress for approval.⁶

This report begins by surveying the relevant powers the Constitution gives Congress and the President as well as how those powers may (or may not) permit various forms of foreign trade agreements.⁷ The report compares a prominent traditional model of U.S. trade agreements—free trade agreements (FTAs) and tariff proclamations authorized by Congress—with an increasingly used model of trade agreements that the President or USTR enters into without obtaining explicit congressional authorization or approval.⁸ The report considers various legal arguments about whether the executive branch may enter into trade agreements without congressional approval, including arguments regarding the authorities Congress has delegated to USTR, the executive branch’s power to implement certain U.S. trade agreements without the need for implementing legislation, and possible congressional acquiescence to the executive branch’s practice in this field.⁹

This report then surveys selected examples of recent U.S. trade agreements and initiatives, involving the United Kingdom, the European Union, Japan, and Taiwan.¹⁰ Finally, the report analyzes debates over whether congressional approval is legally required for the President to withdraw from existing trade agreements.

¹ See U.S. CONST. art. I, § 8, cl. 3.

² See *id.* art. I, § 8, cl. 1.

³ See *id.* art. II, § 2, cl. 2.

⁴ See, e.g., Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA-2015), Pub. L. No. 114-26, 129 Stat. 319 (codified at 19 U.S.C. §§ 4201–4210) (legislation giving President trade promotion authority); United States-Mexico-Canada Agreement Implementation Act (USMCA Implementation Act), Pub. L. No. 116-113, 134 Stat. 11 (2020) (codified in 19 U.S.C. §§ 4501–4732) (legislation approving and implementing United States-Mexico-Canada Agreement).

⁵ See Kathleen Claussen, *Trade’s Mini-Deals*, 62 VA. J. INT’L L. 315 (2022).

⁶ See *infra* “Trade Agreement Practice.”

⁷ See *infra* “Separation of Powers Regarding Foreign Trade.”

⁸ See *infra* “Trends in Legal Bases for Foreign Trade Agreements.”

⁹ See *infra* “Constitutionality of Hybrid Trade Agreements.”

¹⁰ See *infra* “Trade Agreement Practice.”

Separation of Powers Regarding Foreign Trade

Constitutional Framework

Congress and the President both hold constitutional powers relevant to international trade agreements. The Constitution gives Congress the power to regulate foreign commerce and to levy duties, or tariffs, on foreign imports.¹¹ Article I, Section 8 of the Constitution gives Congress the “Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States.”¹² It also gives Congress power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”¹³ As with all of its express constitutional powers, Congress has the accompanying authority to “make all Laws which shall be necessary and proper for carrying into Execution” these powers.¹⁴

The Constitution vests “[t]he executive Power” in the President¹⁵ and provides that the President “shall take Care that the Laws be faithfully executed.”¹⁶ The President’s constitutional powers pertaining to international trade agreements may include the powers that Article II expressly grants to the President as well as certain “inherent” powers not specifically provided by the Constitution.¹⁷ The Treaty Clause of the Constitution expressly gives the President the power to make treaties with the advice and consent of two-thirds of the Senate.¹⁸ In *Curtiss-Wright*, the Supreme Court stated in dicta that the President has broad authority over foreign affairs that is not limited to “affirmative grants of the Constitution,”¹⁹ such as the Treaty Clause, but also includes various powers inherent in his role as head of state.²⁰ Such inherent powers include “the power to make such international agreements as do not constitute treaties” and “the power to speak or listen as a representative of the nation,” including the power to negotiate on behalf of the United States.²¹ In another case, the Court stated that, while the President’s foreign affairs powers do not

¹¹ See *United States v. Yoshida Int’l, Inc.*, 526 F.2d 560, 571 (C.C.P.A. 1975) (“The people of the new United States, in adopting the Constitution, granted the power to ‘lay and collect duties’ and to ‘regulate commerce’ to the Congress, not to the Executive.” (quoting U.S. CONST. art. I, § 8, cls. 1, 3)).

¹² U.S. CONST. art. I, § 8, cl. 1; see Cong. Rsch. Serv., *Overview of Taxing Clause*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S8-C1-1-1/ALDE_00013387/ (last visited Sept. 23, 2025).

¹³ U.S. CONST. art. I, § 8, cl. 3; see Cong. Rsch. Serv., *Overview of Foreign Commerce Clause*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S8-C3-8-1/ALDE_00001057/ (last visited Sept. 23, 2025).

¹⁴ U.S. CONST. art. I, § 8, cl. 18; see Cong. Rsch. Serv., *Overview of Necessary and Proper Clause*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S8-C18-1/ALDE_00001242/ (last visited Sept. 23, 2025).

¹⁵ U.S. CONST. art. II, § 1, cl. 1; see Cong. Rsch. Serv., *Overview of Executive Vesting Clause*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artII-S1-C1-1/ALDE_00013790/ (last visited Sept. 23, 2025).

¹⁶ U.S. CONST. art. II, § 3; see Cong. Rsch. Serv., *Overview of Take Care Clause*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artII-S3-3-1/ALDE_00001160/ (last visited Sept. 23, 2025).

¹⁷ See *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 318 (1936).

¹⁸ U.S. CONST. art. II, § 2, cl. 2; see Cong. Rsch. Serv., *Overview of President’s Treaty-Making Power*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artII-S2-C2-1-1/ALDE_00012952/ (last visited Sept. 23, 2025).

¹⁹ 299 U.S. at 318.

²⁰ See *id.* at 318–19.

²¹ *Id.*

find “any textual detail” in the Constitution,²² the “executive power” includes the “vast share of responsibility for the conduct of our foreign relations.”²³

In *Zivotofsky v. Kerry*,²⁴ the Court called into question some dicta in *Curtiss-Wright* that might be read to limit Congress’s powers over foreign policy.²⁵ While observing that “[t]he President does have a unique role in communicating with foreign governments,” the *Zivotofsky* Court stated that, “whether the realm is foreign or domestic, it is still the Legislative Branch, not the Executive Branch, that makes the law.”²⁶ Thus, the Court stated, the President “is not free from the ordinary controls and checks of Congress merely because foreign affairs are at issue.”²⁷ Regarding foreign trade, the *Zivotofsky* Court expressed in dicta that “the easing of trade restrictions” is an example of action that would “require action by the Senate or the whole Congress”²⁸ and identified the Foreign Commerce Clause as an example of constitutional provisions establishing that “many decisions affecting foreign relations . . . require congressional action.”²⁹

Executive Agreements

Binding international agreements made by the President outside of the constitutionally prescribed treaty process are known as executive agreements, and they comprise the majority of agreements the United States has made with other countries.³⁰ Under international law, executive agreements are also considered “treaties.”³¹ The Supreme Court has recognized that some executive agreements can be a constitutional alternative to treaties receiving the requisite advice-and-consent of the U.S. Senate.³² However, the Constitution’s express grant of the foreign commerce and tariff powers to Congress may constrain the President’s ability to conclude foreign trade agreements via some kinds of executive agreements.

The President’s power to regulate foreign commerce via executive agreement may depend on whether or not the agreement is approved by Congress. Scholars and policymakers generally accept that Presidents may enter into trade agreements via “congressional-executive

²² *Am. Ins. Ass’n. v. Garamendi*, 539 U.S. 396, 414 (2003).

²³ *Id.* (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579, 610–611 (1952) (Frankfurter, J., concurring)).

²⁴ 576 U.S. 1 (2015).

²⁵ *See id.* at 20–21; *cf. Curtiss-Wright*, 299 U.S. at 320 (describing the President as “the sole organ of the federal government in the field of international relations”).

²⁶ *Zivotofsky*, 576 U.S. at 21.

²⁷ *Id.*

²⁸ *Id.* at 16.

²⁹ *Id.*

³⁰ *See* CRS Report RL32528, *International Law and Agreements: Their Effect upon U.S. Law*, by Stephen P. Mulligan (2023) [hereinafter *International Law and Agreements*]; STAFF OF S. COMM. ON THE FOREIGN RELS., 106TH CONG., REPORT ON TREATIES AND OTHER INTERNATIONAL AGREEMENTS: THE ROLE OF THE UNITED STATES SENATE 38 (Comm. Print 2001); CURTIS A. BRADLEY, *INTERNATIONAL LAW IN THE U.S. LEGAL SYSTEM* 96 (2d ed. 2015).

³¹ *See* Vienna Convention on the Law of Treaties, art. 2(1)(a), *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980) [hereinafter *Vienna Convention*] (defining “treaty” as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”).

³² *See, e.g., Garamendi*, 539 U.S. at 415 (“[O]ur cases have recognized that the President has authority to make ‘executive agreements’ with other countries, requiring no ratification by the Senate . . . this power having been exercised since the early years of the Republic.”); *United States v. Belmont*, 301 U.S. 324, 330 (1937) (“[A]n international compact . . . is not always a treaty which requires the participation of the Senate.”).

agreements,”³³ which Congress approves via legislation enacted through the bicameral process either before or after the President negotiates the agreements.³⁴ For example, as discussed below, all comprehensive U.S. FTAs—including the North American Free Trade Agreement (NAFTA) and its successor, the U.S.-Mexico-Canada Agreement (USMCA)³⁵—have been entered into via congressional-executive agreements, as was the agreement establishing the World Trade Organization (WTO).³⁶ While at least one lawsuit argued that NAFTA was void under U.S. law because it was not ratified in the manner the Constitution requires for treaties, a federal court of appeals dismissed this lawsuit, holding that “what constitutes a ‘treaty’ requiring Senate ratification presents a nonjusticiable political question.”³⁷

Since the Constitution vests Congress with the power to regulate foreign commerce and impose tariffs, it is doubtful that the President may enter into trade agreements via “sole executive agreements,” which are not approved by Congress but rather are based on the President’s independent powers granted expressly or inherently by the Constitution.³⁸ Some Members of Congress have claimed that sole executive agreements over foreign trade would be unconstitutional. For instance, a December 2022 letter from some Members of the Senate Finance Committee to the President states that “attempts to use sole executive agreements to bind the United States on broad matters of international trade . . . interfere with congressional authority under the Constitution.”³⁹

There is scant case law regarding the acceptability of sole executive agreements to regulate foreign trade. In a 1953 decision, the U.S. Court of Appeals for the Fourth Circuit invalidated an executive agreement intended to prevent the importation of foreign potatoes for domestic consumption as part of an effort to maintain U.S. potato prices.⁴⁰ The court reasoned that “the power to regulate interstate and foreign commerce is not among the powers incident to the presidential office, but is expressly vested by the Constitution in the Congress.”⁴¹ This reasoning was arguably dicta, however, because the court held that the executive order did not comply with a statutorily prescribed procedure for investigating economically harmful food imports.⁴² It is

³³ Harold Hongju Koh, *Triptych’s End: A Better Framework to Evaluate 21st Century International Lawmaking*, 126 YALE L.J. F. 338, 339 (2017) (“It was long ago settled that congressional-executive agreements should be treated as instruments legally interchangeable with Article II treaties . . .”).

³⁴ See *International Law and Agreements*, *supra* note 30.

³⁵ Agreement between the United States of America, the United Mexican States, and Canada, July 1, 2020 [hereinafter USMCA], <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between> [<https://perma.cc/MRJ7-SCZ2>].

³⁶ See Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809 (1994).

³⁷ *Made in the USA Found. v. United States*, 242 F.3d 1300, 1302 (11th Cir. 2001).

³⁸ See, e.g., U.S. DEP’T OF STATE, 11 FOREIGN AFFAIRS MANUAL (F.A.M.) § 723.2-2 (2006), <https://fam.state.gov/fam/11fam/11fam0720.html> [<https://perma.cc/V6NF-2KUU>] (“The President may conclude an international agreement on the basis of existing legislation, or subject to legislation to be adopted by the Congress, or upon the failure of Congress to adopt a disapproving joint or concurrent resolution within designated time periods.”).

³⁹ Letter from Members of the S. Fin. Comm. to President Joseph R. Biden, at *2 (Dec. 1, 2022) [hereinafter Senate Finance Letter], <https://www.finance.senate.gov/imo/media/doc/Letter%20to%20POTUS%20on%20IPEF%20Authority%20FINAL%2012.1.22.pdf> [<https://perma.cc/9ADM-9DTM>].

⁴⁰ *United States v. Guy W. Capps, Inc.*, 204 F.2d 655 (4th Cir. 1953), *aff’d on other grounds*, 348 U.S. 296 (1955).

⁴¹ *Id.* at 659.

⁴² See *id.* at 658–59 (“There was no pretense of complying with the requirements of the statute.”).

uncertain whether the court would have invalidated the executive agreement if Congress had not already mandated a different procedure.⁴³

Nonbinding Instruments

Even if Presidents lack constitutional authority to enter into sole executive agreements regarding foreign trade, they may have authority to enter into “nonbinding instruments” regarding foreign trade without congressional authorization. A nonbinding instrument makes “political commitments” or “soft law pacts”⁴⁴ to other countries but does not create legal rights or obligations under international or domestic law.⁴⁵ Although the Constitution does not expressly give the President authority to make nonbinding instruments, some scholars argue that the President’s power to negotiate and conduct diplomacy logically entails the power to make nonbinding instruments.⁴⁶

In the trade context, Presidents have entered into various nonbinding instruments with other countries that “form cooperative or non-binding obligations” without congressional approval.⁴⁷ As one example, in 2022 the United States and Canada executed a Memorandum of Understanding under which the United States committed to suspend tariffs on certain solar products originating from Canada to resolve claims Canada had asserted under the dispute resolution provisions of USMCA.⁴⁸ The memorandum provides that it “is not binding under international law.”⁴⁹

Some case law arguably supports the President’s authority to enter into nonbinding trade instruments. In its 1974 decision in *Consumers Union of United States, Inc. v. Kissinger*,⁵⁰ the U.S. Court of Appeals for the District of Columbia Circuit upheld certain “voluntary import restraint undertakings” that the executive branch had negotiated with foreign steel producer associations to reduce the amount of steel imported into the United States.⁵¹ Letters from the foreign producer associations undertook not to export more than specified quantities of steel to the United States, based on the understanding that the United States would not impose mandatory

⁴³ See *id.* at 659–60 (“[W]hatever the power of the executive with respect to making executive trade agreements regulating foreign commerce in the absence of action by Congress, it is clear that the executive may not through entering into such an agreement avoid complying with a regulation prescribed by Congress.”).

⁴⁴ See *International Law and Agreements*, *supra* note 30. As used in this report, the term *commitment* refers broadly both to legally binding and nonbinding agreements or undertakings.

⁴⁵ See *id.*; *Guidance on Non-Binding Documents*, U.S. DEP’T OF STATE, <https://2009-2017.state.gov/s/l/treaty/guidance/index.htm> [<https://perma.cc/W3HS-683H>] (last visited Sept. 23, 2025); Curtis Bradley et al., *The Rise of Nonbinding International Agreements: An Empirical, Comparative, and Normative Analysis*, 90 U. CHI. L. REV. 1281, 1289–91 (2023).

⁴⁶ See *Non-Binding Agreements: Episode Transcript*, U.C. BERKELEY, SCH. OF L. (Nov. 10, 2021), <https://www.law.berkeley.edu/podcast-episode/non-binding-agreements/> [<https://perma.cc/2WXE-2FVB>] (Jack Goldsmith arguing nonbinding agreements are “a function of the president’s diplomatic power”).

⁴⁷ Claussen, *supra* note 5, at 329.

⁴⁸ See Memorandum of Understanding Between the Government of the United States of America and the Government of Canada on Trade in Solar Products, Can.-U.S., July 8, 2022 [hereinafter *Solar Memorandum*], https://ustr.gov/sites/default/files/US-CA%20Solar%20Agreement_Signed_English_070822.pdf [<https://perma.cc/7QJ3-NRA6>]. For background information on this dispute, see CRS In Focus IF12995, *International Trade Agreements and U.S. Tariff Laws*, by Christopher T. Zirpoli, Christopher A. Casey, and Cathleen D. Cimino-Isaacs (2025).

⁴⁹ *Solar Memorandum*, *supra* note 48, at 4.

⁵⁰ 506 F.2d 136 (D.C. Cir. 1974), *cert. denied*, 421 U.S. 1004 (1975).

⁵¹ *Id.* at 138.

import restrictions under trade remedy statutes enacted by Congress.⁵² Plaintiffs sought an order declaring that the executive branch's actions in obtaining these undertakings were *ultra vires* (i.e., beyond the scope of its legal authority).⁵³ The court found that these voluntary undertakings “d[id] not purport to be enforceable, either as contracts or as governmental actions with the force of law.”⁵⁴ Finding that the undertakings were voluntary or “precatory” in nature, the court held that they were not preempted by Congress’s constitutional power over foreign commerce or by trade legislation enacted by Congress.⁵⁵ *Consumers Union* may have debatable implications for the President’s power to shape international trade commitments, since the court’s opinion arguably turned more on finding that the steel import undertakings were not enforceable domestically than on whether they created binding international commitments.⁵⁶

A dissenting opinion in *Consumers Union* appeared to characterize the undertakings as binding international agreements, observing that the undertakings “were the result of bilateral bargaining and agreement,” included “reciprocal undertakings” by the U.S. government to engage in consultations rather than unilaterally impose import quotas or tariffs on steel, and set forth “specific limitations” on the volume of imported steel.⁵⁷ While not conceding that the undertakings were unenforceable domestically,⁵⁸ the dissent argued that these undertakings created international obligations regardless of whether they were enforceable:

Even if judicial enforcement was not contemplated by the parties, the arrangements still embody a restraint. Trade agreements between foreign nations, and indeed many international agreements, may be ‘enforceable’ only in the sense that they depend for enforcement on ‘good faith’ performance by the parties. That does not make them any the less solemn agreements, that are both intended to affect the conduct of the parties and likely to have that result.⁵⁹

The dissent contended that the undertakings at issue were inconsistent both with congressional enactments regarding international trade agreements—which, it claimed, “represent[] Congress’s understanding that the Executive’s power in regard to the negotiation of trade agreements derives from statutory authorization by Congress”⁶⁰—and with “procedural safeguards” in statutes that give the President certain authorities to restrict U.S. imports.⁶¹ Thus, it concluded, the undertakings were inconsistent with “a comprehensive scheme occupying the field of import restraints” enacted by Congress.⁶² The dissent argued that, notwithstanding the President’s constitutional power to conduct diplomacy, “the executive cannot, through its communications,

⁵² See *id.* at 139.

⁵³ See *id.* at 140.

⁵⁴ *Id.* at 138, 143.

⁵⁵ *Id.* at 138, 143–44. The court stated: “There is no potential for conflict . . . between exclusive congressional regulation of foreign commerce—regulation enforced ultimately by halting violative importations at the border—and assurances of voluntary restraint given to the Executive.” *Id.* at 143.

⁵⁶ Cf. *id.* at 142 (stating in dicta that the President could not “impose mandatory import quotas” or alter tariff rates unless Congress delegated the authority to do so).

⁵⁷ *Id.* at 146, 149–51 (Leventhal, J., dissenting).

⁵⁸ See *id.* at 150 (“I fail to see why the courts would or should refrain from enforcement if sought.”).

⁵⁹ *Id.* at 151; see also *id.* at 152 (“A good faith agreement with the kind of specificity present here puts an obligation on the foreign producer, in any realistic assessment.”).

⁶⁰ *Id.* at 153.

⁶¹ *Id.* at 154.

⁶² *Id.* at 146.

manage foreign commerce in a manner lying outside a comprehensive, regulatory scheme Congress has enacted pursuant to its Article I, § 8 power.”⁶³

Trends in Legal Bases for Foreign Trade Agreements

This section discusses trends regarding how the legal authorities undergirding U.S. trade agreements may have shifted during the late 20th and early 21st centuries. During this period, the United States entered into a number of trade agreements expressly authorized or approved by Congress, thus fitting the traditional model of congressional-executive agreements described in the preceding section. At the same time, the United States entered into an increasing number of foreign trade agreements on various nontariff matters without express congressional authorization.

Trade Promotion Authority: A Traditional Model

The United States has often entered into foreign trade agreements via congressional-executive agreements.⁶⁴ Many of these congressional-executive trade agreements concern tariffs and have taken the form of either FTAs or presidential proclamations to reduce tariffs within limits established by Congress. Congress at various times in the last 50 years granted the President trade promotion authority (TPA), also known as “fast-track” trade authority, which established a comprehensive framework providing for both FTAs and tariff-reducing proclamations.⁶⁵ The most recent TPA, known as TPA-2015,⁶⁶ expired in July 1, 2021, leaving this framework for congressional-executive trade agreements unavailable unless Congress chooses to reauthorize it.

Free Trade Agreements (FTAs)

FTAs are generally defined as trade agreements that substantially eliminate tariffs between two or more countries.⁶⁷ This definition corresponds to the General Agreement on Tariffs and Trade (GATT), which allows two or more countries to form a “free trade area” in which “duties and other restrictive regulations of commerce [with some exceptions] are eliminated on substantially all the trade between the constituent territories.”⁶⁸ This allowance for free trade areas is an exception to GATT’s “most-favoured nation” (MFN) rule, which generally prohibits member states from extending preferential tariff reductions to some but not all member countries.⁶⁹ FTAs are the vehicle by which the United States has agreed to establish such free trade areas with other

⁶³ *Id.* at 149. Such action, the dissent argued, is outside the President’s power under the so-called *Youngstown* framework. See *id.* (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring)); see also *infra* notes 121–123 and accompanying text (summarizing the *Youngstown* framework).

⁶⁴ See BRADLEY, *supra* note 30, at 79–80.

⁶⁵ For background on TPA, see CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by Cathleen D. Cimino-Isaacs and Christopher A. Casey (2015); CRS In Focus IF10038, *Trade Promotion Authority (TPA)*, by Christopher A. Casey and Cathleen D. Cimino-Isaacs (2024).

⁶⁶ See TPA-2015, Pub. L. No. 114-26, 129 Stat. 319.

⁶⁷ See Claussen, *supra* note 5, at 325 n.27 (noting the term *FTA* is “typically reserved” for those agreements that “bring substantially all tariffs on goods between two or more countries down to zero”).

⁶⁸ General Agreement on Tariffs and Trade 1994, art. XXIV, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 190.

⁶⁹ See *id.*, art. I. For more information, see CRS In Focus IF12995, *International Trade Agreements and U.S. Tariff Laws*, by Christopher T. Zirpoli, Christopher A. Casey, and Cathleen D. Cimino-Isaacs (2025).

countries; for example, the first U.S. FTA, with Israel, was formally titled an “agreement on the establishment of a free trade area.”⁷⁰

Under TPA, Congress established rules committing both the House and Senate to approve or reject implementing legislation for U.S. FTAs without amendment or filibuster, using expedited procedures, if the executive branch adhered to certain requirements.⁷¹ The TPA framework allowed Congress to set negotiating objectives for FTAs and established a process for Congress simultaneously to give *ex post* approval for agreements meeting the statutory objectives and to implement them into domestic law.⁷²

The United States used the TPA framework to negotiate, approve, and implement several bilateral and regional FTAs. Between 1985 and 2020, the United States entered into 16 FTAs, including all 14 U.S. FTAs currently in force.⁷³ Congress approved and implemented all but one of these agreements via legislation passed under TPA.⁷⁴ The sole exception, the FTA between the United States and Jordan, was also approved and implemented via legislation passed by Congress, although not under TPA’s fast-track procedures.⁷⁵ Thus, all 16 of the “comprehensive” FTAs the United States has entered into have taken the form of congressional-executive agreements.⁷⁶ Congress approved and implemented the most recent comprehensive FTA, USMCA, pursuant to the last iteration of TPA, which expired shortly thereafter.⁷⁷

Scholars generally accept that the United States may enter into FTAs via congressional-executive agreements, including under TPA.⁷⁸ In addition to being supported by long-standing practice,⁷⁹ congressional-executive FTAs arguably find support in the Constitution’s text, which gives Congress—not only the Senate—power over foreign commerce, tariffs, and revenue.⁸⁰ Congressional-executive trade agreements might be seen as preferable to treaties to the extent that a treaty might be understood as circumventing the authority of the House of Representatives with

⁷⁰ See Agreement on the Establishment of a Free Trade Area between the Government of Israel and the Government of the United States of America, Isr.-U.S., Apr. 22, 1985, <https://ustr.gov/trade-agreements/free-trade-agreements/israel-fta> [<https://perma.cc/XM72-KNGR>].

⁷¹ See Trade Act of 1974, Pub. L. No. 93-618, § 151, 88 Stat. 1978 (1975) (codified at 19 U.S.C. § 2191) (establishing such fast-track procedures “as an exercise of the rulemaking power of the House of Representatives and the Senate”); see also TPA-2015 § 103(b) (codified at 19 U.S.C. § 4202) (applying “trade authority procedures from” Trade Act of 1974, 19 U.S.C. § 2191, to qualifying agreements under TPA-2015).

⁷² For more information, see CRS In Focus IF10038, *Trade Promotion Authority (TPA)*, by Christopher A. Casey and Cathleen D. Cimino-Isaacs (2024).

⁷³ See CRS Report R45846, *Congressional Votes on Free Trade Agreements and Trade Promotion Authority*, by Keigh E. Hammond (2025) (identifying 12 bilateral and 2 regional U.S. FTAs currently in force).

⁷⁴ See *id.*

⁷⁵ See *id.*; United States-Jordan Free Trade Area Implementation Act, Pub. L. No. 107-43, 115 Stat. 243 (2001) (codified at 19 U.S.C. § 2112 note).

⁷⁶ Sometimes Congress enacted legislation that simultaneously gave *ex post* approval to an FTA and implemented that agreement into federal law. See, e.g., USMCA Implementation Act, Pub. L. No. 116-113, 134 Stat. 11 (2020).

⁷⁷ See *id.*

⁷⁸ See Koh, *supra* note 33, at 339–40 (stating that debates around NAFTA established that “congressional-executive agreements should be treated as instruments legally interchangeable with Article II treaties . . . particularly where Congress is exercising its foreign commerce power”).

⁷⁹ Cf. Kathleen Claussen & Tim Meyer, *The President’s (and USTR’s) Trade Agreement Authority: From Fisheries to IPEF*, INT’L ECON. L. & POL’Y BLOG (July 15, 2022, at 6:58 ET), <https://worldtradelaw.typepad.com/ielpblog/2022/07/the-presidents-and-ustrs-trade-agreement-authority-from-fisheries-to-ipef.html> [<https://perma.cc/F6LS-PFZF>] (“[E]very presidential administration has likewise sought congressional consent to enter into significant bilateral, plurilateral, or multilateral trade agreements since at least the 1970s.”).

⁸⁰ See U.S. CONST. art. I, § 8, cls. 1, 3.

respect to foreign commerce, tariffs, or revenue.⁸¹ Consistent with this view, some Members of Congress contend that congressional-executive agreements are the *only* permissible form for FTAs.⁸² As a practical matter, courts may be unlikely to entertain claims that congressional-executive FTAs are an unconstitutional alternative to treaties, as at least one appellate court has dismissed such a lawsuit as presenting a “political question” to be decided by Congress and the President.⁸³

Tariff Proclamation Authority

In addition to creating a procedure for Congress to give *ex post* approval to FTAs negotiated by the President, TPA legislation has sometimes given the President limited *ex ante* authority to enter into and implement agreements making certain limited adjustments to tariffs by proclamation. TPA-2015, for example, authorized the President to enter into and implement trade agreements with foreign countries to reduce “duties or other import restrictions” if the President determined that such duties were “unduly burdening and restricting.”⁸⁴ The law permitted the President to reduce tariffs in effect as of June 29, 2015, by up to 50%, subject to certain limitations.⁸⁵ TPA-2015 required that the President notify Congress of his “intention to enter into an agreement” under this proclamation authority,⁸⁶ but it did not require congressional approval of such agreements or tariff reductions. The previous version of TPA, the Bipartisan Trade Promotion Authority Act of 2002,⁸⁷ gave the President similar authority to enter into and implement limited tariff reduction agreements without further congressional action.⁸⁸

The most recent use of such proclamation authority by the President came in December 2020, when President Donald Trump entered into and implemented a trade agreement with the European Union to reduce certain tariffs pursuant to his authority under TPA-2015.⁸⁹ President Trump also invoked this proclamation authority to enter into and implement the U.S.-Japan Trade Agreement in 2019.⁹⁰ The President currently lacks such statutory proclamation authority following the expiration of TPA-2015 in 2021.

⁸¹ Cf. *Whether the Uruguay Round Agreements Required Ratification as a Treaty*, 18 Op. O.L.C. 232 (Nov. 22, 1994) (noting potential tension between the Constitution’s treaty and foreign commerce provisions).

⁸² See Senate Finance Letter, *supra* note 39, at *1 (“There is no question that comprehensive free trade agreements that include reciprocal tariff reductions and dispute resolution mechanisms must be approved and implemented by Congress.”).

⁸³ See *Made in the USA Found. v. United States*, 242 F.3d 1300, 1302 (11th Cir. 2001) (dismissing action challenging constitutionality of NAFTA on the basis that “what constitutes a ‘treaty’ requiring Senate ratification presents a nonjusticiable political question”).

⁸⁴ TPA-2015, Pub. L. No. 114-26, § 103(a), 129 Stat. 319 (codified at 19 U.S.C. § 4202(a)). See CRS In Focus IF11400, *Presidential Authority to Address Tariff Barriers in Trade Agreements under Trade Promotion Authority (TPA)*, by Christopher A. Casey (2024).

⁸⁵ 19 U.S.C. § 4202(a)(1), (3).

⁸⁶ *Id.* § 4202(a)(2).

⁸⁷ Trade Act of 2002, Pub. L. 107-210, 116 Stat. 933 (codified at 19 U.S.C. § 3801–3813).

⁸⁸ 19 U.S.C. § 3803(a).

⁸⁹ See Press Release, Off. of the U.S. Trade Representative, Joint Statement of the United States and the European Union on a Tariff Agreement (Aug. 21, 2020), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/august/joint-statement-united-states-and-european-union-tariff-agreement> [<https://perma.cc/2WQM-EZVD>].

⁹⁰ See Trade Agreement Between the United States of America and Japan, Japan-U.S., Oct. 7, 2019, T.I.A.S. 20-101.2; Proclamation 9974, 84 Fed. Reg. 72187, 72188 (Dec. 26, 2019) (“I notified the Congress that I intended to enter into an agreement regarding tariff barriers with Japan under section 103(a) of the Trade Priorities Act.”).

Trade Agreements Not Approved by Congress: A Potential New Model

While the expiration of TPA-2015 has made the prospects for future congressional-executive trade agreements uncertain, some scholarship has highlighted the degree to which Presidents in recent decades have entered into trade deals without specific congressional approval or authorization. These trade deals have sometimes been referred to as “mini” or “skinny” trade deals or “trade executive agreements,” as distinguished from more comprehensive agreements such as FTAs.⁹¹ While these agreements do not alter tariff rates, they can create internationally binding obligations, as discussed in this section.

This report refers to these agreements as “hybrid” trade agreements because they are difficult to classify according to the traditional categories of congressional-executive and sole executive agreements. Unlike congressional-executive agreements, they are entered into without specific *ex ante* or *ex post* congressional approval. On the other hand, unlike sole executive agreements, they are not necessarily based on the President’s independent constitutional powers, but purport to rest at least partly on powers Congress has delegated by statute to the executive branch. Thus, one former State Department legal advisor claims that the United States enters into a “plethora” of agreements that are not truly sole executive agreements (which are, he claims, “extremely rare”).⁹² Similarly, one former USTR counsel argues that, although these agreements are not approved by Congress, “they are not sole executive agreements”⁹³ because they “do not rely solely on executive authority in most instances” but rather “are typically negotiated pursuant to delegated authority, even if stretching its limits.”⁹⁴

As one example of such practice, in 2022, the Biden Administration launched the Indo-Pacific Economic Framework for Prosperity (IPEF) with several trading partners in that region.⁹⁵ IPEF was divided into four issue areas, or “pillars,” comprising trade, supply chains, clean economy (clean energy, decarbonization, and infrastructure), and fair economy (tax and anticorruption).⁹⁶ Although the IPEF countries did not reach an agreement on the trade pillar,⁹⁷ they reached agreements regarding the supply chain, clean economy, and fair economy pillars, as well as an agreement on the collective operation of IPEF.⁹⁸ While the Biden Administration indicated a

⁹¹ Claussen, *supra* note 5, at 318, 320, 325.

⁹² Koh, *supra* note 33, at 341–42.

⁹³ Claussen, *supra* note 5, at 325.

⁹⁴ *Id.* at 325 n.28.

⁹⁵ See CRS In Focus IF12373, *Indo-Pacific Economic Framework for Prosperity (IPEF)*, by Cathleen D. Cimino-Isaacs, Kyla H. Kitamura, and Mark E. Manyin (2024). The other participating countries were Australia, Brunei Darussalam, Fiji, India, Indonesia, Japan, the Republic of Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, and Vietnam.

⁹⁶ *Indo-Pacific Framework for Economic Prosperity (IPEF)*, OFF. OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/trade-agreements/agreements-under-negotiation/indo-pacific-economic-framework-prosperity-ipef> [<https://perma.cc/A7D9-G7XB>] (last visited Sept. 23, 2025).

⁹⁷ See Erin L. Murphy, *IPEF: Three Pillars Succeed, One Falters*, CTR. FOR STRATEGIC AND INT’L STUDIES (Nov. 21, 2023), <https://www.csis.org/analysis/ipef-three-pillars-succeed-one-falters> [<https://perma.cc/V6DH-QG54>].

⁹⁸ Indo-Pacific Economic Framework for Prosperity Agreement Relating to Supply Chain Resilience, Nov. 23, 2023, T.I.A.S. 24-224; Indo-Pacific Economic Framework for Prosperity Agreement Relating to Clean Economy, June 6, 2024, T.I.A.S. 24-1011.1; Indo-Pacific Economic Framework for Prosperity Agreement Relating to Fair Economy, June 6, 2024, T.I.A.S. 24-1012; Agreement on Indo-Pacific Economic Framework for Prosperity, June 6, 2024, T.I.A.S. 24-1011.

desire to consult with Congress on IPEF,⁹⁹ it did not submit any IPEF agreements to Congress for approval or commit to doing so.¹⁰⁰ Some Members of Congress contended that such agreements required congressional approval, as they “regulate foreign commerce and reshape international trade flows.”¹⁰¹

As another example, in October 2019, the first Trump Administration entered into the U.S.-Japan Digital Trade Agreement.¹⁰² This agreement contained bilateral commitments regarding several aspects of digital trade, including customs duties and nondiscrimination, cross-border data flows and data localization, consumer protection and privacy, source code and technology transfer, liability for interactive computer services, cybersecurity, government data, and cryptography.¹⁰³ While the first Trump Administration cited TPA-2015 as its authority to enter into a separate, contemporaneous agreement between the United States and Japan to lower certain tariffs,¹⁰⁴ it did not identify the source of its authority for the Digital Trade Agreement, simply referring to it as an “executive agreement.”¹⁰⁵ Some Members of the House of Representatives requested that USTR identify “the authority the Administration is relying on to enter” the agreement.¹⁰⁶ Based on publicly available sources, it is unclear whether USTR provided a formal response.

Some commentators contend that hybrid trade agreements have assumed a larger role in U.S. trade policy compared with traditional FTAs.¹⁰⁷ According to one study, the use of these agreements has increased over time, especially since the 1990s.¹⁰⁸ These agreements have also expanded in scope in recent years.¹⁰⁹ Some reasons for these shifts may include political resistance to reauthorizing TPA or approving new FTAs, as illustrated by the United States not entering into the proposed Trans-Pacific Partnership (TPP),¹¹⁰ as well as procedural challenges in

⁹⁹ Rozanna Latiff & Liz Lee, *U.S. Says New Indo-Pacific Economic Framework Not Typical Trade Deal*, REUTERS (Nov. 18, 2021), <https://www.reuters.com/world/asia-pacific/us-malaysia-agree-transparency-semiconductor-manufacturing-supply-chains-2021-11-18/> [<https://perma.cc/3KAF-8QAX>].

¹⁰⁰ See Press Release, White House, On-the-Record Press Call on the Launch of the Indo-Pacific Economic Framework (May 23, 2022), <https://bidenwhitehouse.archives.gov/briefing-room/press-briefings/2022/05/23/on-the-record-press-call-on-the-launch-of-the-indo-pacific-economic-framework/> [<https://perma.cc/F5GT-KXHA>] (“Let’s see where these negotiations take us, and let’s see where the discussions go.”).

¹⁰¹ See Senate Finance Letter, *supra* note 39.

¹⁰² See Agreement Between the United States of America and Japan Concerning Digital Trade, Oct. 7, 2019, T.I.A.S. 20-101.1.

¹⁰³ See *id.*; see also CRS Report R46140, “*Stage One*” U.S.-Japan Trade Agreements, by Cathleen D. Cimino-Isaacs and Anita Regmi (2019) (summarizing components of 2019 United States-Japan agreements).

¹⁰⁴ See *supra* note 90 and accompanying text.

¹⁰⁵ Press Release, White House, Presidential Message to Congress Regarding the Notification of Initiation of United States-Japan Trade Agreement (Sept. 16, 2019), <https://trumpwhitehouse.archives.gov/briefings-statements/presidential-message-congress-regarding-notification-initiation-united-states-japan-trade-agreement/> [<https://perma.cc/RHW5-VCMR>].

¹⁰⁶ *Pascrell and Kildee Seek Answers on Japan Trade Agreements*, INSIDER.NJ, Nov. 27, 2019, <https://www.insidernj.com/press-release/pascrell-kildee-seek-answers-japan-trade-agreements/> [<https://perma.cc/4UFF-7ZX8>].

¹⁰⁷ See *Rumours of the Trade Deal’s Death Are Greatly Exaggerated*, THE ECONOMIST, June 13, 2024, <https://www.economist.com/finance-and-economics/2024/06/13/rumours-of-the-trade-deals-death-are-greatly-exaggerated> [<https://perma.cc/KXE4-KXDL>].

¹⁰⁸ See Claussen, *supra* note 5, at 342–43.

¹⁰⁹ See *id.* at 345.

¹¹⁰ See David J. Lynch, *Biden’s Course for U.S. on Trade Breaks with Clinton and Obama*, WASH. POST, Aug. 27, 2023, <https://www.washingtonpost.com/business/2023/08/27/biden-trade-trump/> [<https://perma.cc/86VD-E4P5>]; CRS In Focus IF12078, *CPTPP: Overview and Issues for Congress*, by Cathleen D. Cimino-Isaacs (2023).

obtaining congressional approval for trade deals.¹¹¹ A possible advantage of hybrid trade agreements is that they may be able to address numerous specific circumstances in U.S. trade relations that Congress cannot easily anticipate or address as a practical matter.¹¹²

Some Members of Congress have criticized these agreements as not falling within constitutionally permitted forms of treaties, congressional-executive agreements, or sole executive agreements.¹¹³ In addition, some commentators have criticized hybrid trade agreements for their seeming lack of transparency.¹¹⁴ Scholarly research and Freedom of Information Act requests have sought to reveal the extent to which the executive branch has used these agreements.¹¹⁵ One study identified 1,225 such agreements and noted that some were not publicly available or required subscription services to identify or obtain.¹¹⁶ Another criticism from some commentators is that the executive branch often does not identify the source of its authority to enter into these agreements, with some agreements apparently lacking or exceeding authority that Congress has delegated to the executive branch.¹¹⁷ The enactment of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (2023 NDAA),¹¹⁸ which expanded requirements for the executive branch to disclose international agreements and its purported legal authority to enter into them,¹¹⁹ may increase transparency surrounding hybrid trade agreements.¹²⁰

Constitutionality of Hybrid Trade Agreements

As described in the preceding sections, the proliferation of hybrid trade agreements has sparked debate about whether or not they are constitutional. Commentators, Members of Congress, and executive branch officials have advanced various arguments for and against the legality of these trade agreements. This section considers three arguments that proponents have advanced to support the constitutionality of hybrid trade agreements: (1) trade authorities that Congress has purportedly delegated to USTR; (2) existing laws that allow the executive branch to implement certain trade agreements without the need for new legislation; and (3) possible congressional acquiescence to these agreements.

¹¹¹ See Koh, *supra* note 33, at 340 (arguing that “the number of Senators needed to block consideration of such an agreement has declined” due to use of the filibuster and other practices).

¹¹² See Claussen, *supra* note 5, at 357–58 (“Congress sweeps in broad strokes and cannot be expected to anticipate every cross-border issue that may arise.”).

¹¹³ See Senate Finance Letter, *supra* note 39 (“There are only three constitutional mechanisms for binding the United States to an international agreement: invocation of the Treaty Clause of the Constitution; a ‘congressional-executive agreement,’ which requires approval of the majority of both houses of Congress; and a sole executive agreement covering matters reserved by Article II of the Constitution to the President.”).

¹¹⁴ See, e.g., Claussen, *supra* note 5, at 322 (“Ultimately, the biggest obstacle to studying [trade executive agreements] is finding them.”).

¹¹⁵ See Claussen, *supra* note 5, at 378–81; Oona A. Hathaway, Curtis A. Bradley & Jack L. Goldsmith, *The Failed Transparency Regime for Executive Agreements: An Empirical and Normative Analysis*, 134 HARV. L. REV. 629, 635, 673–74 (2020).

¹¹⁶ See Claussen, *supra* note 5, at 322.

¹¹⁷ *Id.* at 326 & n.36.

¹¹⁸ 2023 NDAA, Pub. L. No. 117-263, § 5947, 136 Stat. 2395, 3476–82 (2022) (codified at 1 U.S.C. §§ 112a–112b).

¹¹⁹ See CRS Legal Sidebar LSB11050, *International Agreements (Part III): Transparency Measures*, by Steve P. Mulligan (2023).

¹²⁰ See *Information Relating to International Agreements: Case Act Reporting*, U.S. DEP’T OF STATE (July 9, 2025), <https://foia.state.gov/Search/IRIA.aspx> [<https://perma.cc/C2AW-9EGQ>] (providing information pursuant to 1 U.S.C. § 112b on a monthly basis since October 2023).

Examination of these arguments may illuminate where hybrid trade agreements fall in the tripartite *Youngstown* framework the Supreme Court has sometimes used to determine the scope of executive power.¹²¹ Under this framework, presidential power is considered to be at its broadest where “the President acts pursuant to an express or implied authorization of Congress” (category 1); is less broad where there is neither “a congressional grant or denial of authority” (category 2); and is narrowest where the President acts contrary to “the expressed or implied will of Congress” (category 3).¹²² The Court has explained that executive action does not always fit neatly into one of these categories but rather may fall along “a spectrum running from explicit congressional authorization to congressional prohibition.”¹²³

U.S. Trade Representative Authorities

USTR typically plays a leading role in negotiating U.S. trade agreements.¹²⁴ The Biden Administration argued that Congress gave USTR the authority to enter into trade agreements by enacting USTR’s organic statute, 19 U.S.C. § 2171 (Section 2171), and that, “[f]or at least the last 30 years, USTR has negotiated and entered into numerous agreements pursuant solely to this authority.”¹²⁵ For instance, USTR took the position that an October 2024 trade agreement with Israel “was concluded under USTR’s general authority to negotiate and conclude agreements, including 19 U.S.C. § 2171 and relevant Executive Orders.”¹²⁶ In addition, USTR claimed both Section 2171 and Article II of the Constitution as providing legal authority to enter into the IPEF fair economy agreement.¹²⁷ If the executive branch’s interpretation of Section 2171 is correct, presidential power in this area might be at its maximum extent under the *Youngstown* framework.

Section 2171(c)(1) states in part that USTR “shall . . . have primary responsibility for developing, and for coordinating the implementation of, United States international trade policy.”¹²⁸ It also provides that USTR “shall . . . have lead responsibility for the conduct of, and shall be the chief representative of the United States for, international trade negotiations, including all negotiations on any matter considered under the auspices of the World Trade Organization.”¹²⁹ This language does not expressly give USTR authority to enter into trade agreements, prompting some

¹²¹ See *Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015) (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring)).

¹²² *Zivotofsky*, 576 U.S. at 10 (quoting *Youngstown*, 343 U.S. at 635, 637 (Jackson, J., concurring)).

¹²³ *Dames & Moore v. Regan*, 453 U.S. 654, 669 (1981).

¹²⁴ Claussen, *supra* note 5, at 333–36.

¹²⁵ Letter from Katherine Tai, U.S. Trade Representative, and Gina M. Raimondo, Sec’y of Com., to Ron Wyden, Chair, S. Comm. on Fin. (May 30, 2023), https://insidetrade.com/sites/insidetrade.com/files/documents/2023/jun/wto2023_0452a.pdf [https://perma.cc/G34A-LBAV]; *Biden Administration’s 2023 Trade Policy Agenda with United States Trade Representative, Ambassador Tai: Hearing Before the H. Comm. on Ways & Means*, 118th Cong. (2023), <http://waysandmeans.house.gov/wp-content/uploads/2023/07/FINAL-Website-Tai-Transcript.pdf> [https://perma.cc/38V6-N6HK] (USTR citing Section 2171 as authority to enter into certain agreements in response to questions for the record).

¹²⁶ Dep’t of State, Information Relating to International Agreements Reported to Congress (Nov. 27 2024), https://foia.state.gov/_docs/CaseAct/2024.11.27%20-%201%20USC112b.a.1.%20information%20-%20International%20Agreements.pdf [https://perma.cc/BQ2M-VTNS] (stating legal authority for “Agreement Between the United States of America and Israel Extending the Agreement on Certain Aspects of Trade in Agricultural Products of July 27, 2004, as extended”).

¹²⁷ See *id.* (stating legal authority for “Indo-Pacific Economic Framework for Prosperity Agreement Relating to a Fair Economy”). By contrast, USTR claimed Article II but not Section 2171 as legal authority for the IPEF clean economy and framework agreements. See *id.*

¹²⁸ 19 U.S.C. § 2171(c)(1)(A).

¹²⁹ *Id.* § 2171(c)(1)(C).

commentators to claim that “nothing about § 2171 gives the USTR the authority to enter into or bring into force trade-related agreements.”¹³⁰ USTR, however, appears to contend that Section 2171 implicitly gives it such authority.¹³¹

Separation of powers considerations may cut against interpreting Section 2171(c)(1) as implicitly giving USTR authority to enter into trade agreements without congressional approval. In giving USTR “responsibility” for “international trade policy” and “international trade negotiations,” the statute may simply give USTR responsibility for powers already held by the President—namely, the conduct of foreign relations and negotiations with foreign governments. In other words, Section 2171(c)(1) may be read simply as an administrative provision allocating responsibilities within the executive branch.¹³² Thus, it is unclear whether a court would view the statute’s assignment of these responsibilities to USTR as including an implicit authorization for USTR to enter into trade agreements.

The legislative history and statutory context of Section 2171(c)(1) might provide additional reason to doubt that the statute gives USTR authority to enter into trade agreements. Section 2171 was first enacted by the Trade Act of 1974,¹³³ and most of its current language was enacted by the Omnibus Trade and Competitiveness Act of 1988.¹³⁴ Both of these acts also authorized (or reauthorized) TPA,¹³⁵ which—as explained above—required congressional approval to enter into any FTAs and gave the President limited *ex ante* authority to proclaim tariff reductions. Thus, interpreting Section 2171(c)(1) to give USTR broad yet implicit authority to enter into trade agreements without any congressional approval would appear to conflict with the statutes’ other provisions and overall scheme, which strictly delineated the scope of the President’s authority to enter into certain kinds of trade agreements with and without further congressional action.

¹³⁰ Kathleen Claussen & Tim Meyer, *The New U.S.-Taiwan Trade Agreement and Its Approval*, INT’L ECON. L. & POL’Y BLOG (July 5, 2023), <https://ielp.worldtradelaw.net/2023/07/the-new-us-taiwan-trade-agreement-and-its-approval.html> [<https://perma.cc/7KfV-M755>].

¹³¹ See Claussen & Meyer, *supra* note 79 (“Relying on this statute to justify USTR’s approach concedes that Congress must consent, but rather than referring to Congress’s silence, proponents here point to the organic statute as an implicit delegation not only to negotiate, but also to conclude agreements.”).

¹³² Other parts of the Trade Act of 1974 expressly limit the President’s authority to make changes to domestic law without either new implementing legislation or existing statutory authority. See Pub. L. No. 93-618, § 121, 88 Stat. 1978, 1986–87 (1975) (“If the President enters into a trade agreement which establishes rules or procedures . . . and if the implementation of such agreement will change any provision of Federal law (including a material change in an administrative rule), such agreement shall take effect with respect to the United States only if the appropriate implementing legislation is enacted by the Congress unless implementation of such agreement is effected pursuant to authority delegated by Congress.”).

¹³³ See *id.* § 141 (stating, *inter alia*, that USTR shall “be the chief representative of the United States for each trade negotiation under this title”). The office of USTR—then called the Special Representative for Trade Negotiations—was established earlier, in 1962. See Trade Expansion Act of 1962, Pub. L. No. 87-794, § 241, 76 Stat. 872, 878 (1962). The Trade Expansion Act of 1962 created USTR to replace the State Department as “the lead agency for trade lawmaking in the United States.” Claussen, *supra* note 5, at 333.

¹³⁴ See Pub. L. No. 100-418, § 1601(a)(1), 102 Stat. 1107, 1260–61 (1988) (amending Section 2171(c)(1) to state that USTR has “primary responsibility for developing, and for coordinating the implementation of, United States international trade policy” and that USTR shall “have lead responsibility for the conduct of, and shall be the chief representative of the United States for, international trade negotiations”).

¹³⁵ See Pub. L. No. 93-618, §§ 101, 124 (presidential authority to enter into certain agreements and proclaim implementing tariff reductions without congressional approval); *id.* §§ 102, 151–154 (provisions concerning TPA); CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked Questions*, by Cathleen D. Cimino-Isaacs, Christopher A. Casey, and Christopher M. Davis (2019) (“Trade promotion authority was first enacted on January 1, 1975, under the Trade Act of 1974.”).

Certain constitutional doctrines might also caution against interpreting Section 2171(c)(1) as implicitly giving USTR authority to enter into trade agreements.¹³⁶ In recent years, the Supreme Court has increasingly employed one such doctrine—the major questions doctrine—to hold that statutes do not grant agencies certain regulatory authorities.¹³⁷ Under this doctrine, the Supreme Court has sometimes rejected agency claims of regulatory authority when it finds (1) the claimed authority concerns an issue of “vast ‘economic and political significance,’” and (2) Congress has not clearly delegated the authority to the agency.¹³⁸ Although this doctrine more commonly arises in cases of domestic regulation, it might weigh against interpreting Section 2171(c)(1) as giving USTR implicit authority to enter into trade agreements, given the economic and political significance of these agreements.

A related doctrine, the nondelegation doctrine, might also weigh against such an interpretation of Section 2171(c)(1). Under this doctrine, Congress may not delegate its legislative function to other branches of government.¹³⁹ In practice, the nondelegation doctrine typically requires that, when Congress authorizes federal agencies to carry out certain functions, it must provide an “intelligible principle” to guide the executive branch’s implementation of those functions.¹⁴⁰ In the case of Section 2171(c)(1), construing the statute to give USTR the authority to enter into foreign trade agreements might result in an unconstitutional delegation of Congress’s foreign commerce power, since Section 2171(c)(1) does not appear to provide guidance as to how or for what purpose USTR is supposed to exercise that authority. On the other hand, the Supreme Court has allowed Congress to delegate broader authority to the President in the area of foreign affairs, reasoning that the President requires greater latitude in this field.¹⁴¹

For the time being, there does not appear to be any published case law discussing the scope of USTR’s powers under Section 2171(c)(1). It is possible that courts would decline to adjudicate the question of whether Section 2171 authorized USTR to enter into trade agreements without congressional approval, as courts have sometimes declined to decide cases involving the permissibility of international agreements on grounds that they present as a political question.¹⁴² On the other hand, courts might be willing to decide the scope of USTR’s powers under Section 2171(c)(1) on the basis that doing so would resolve a question of statutory interpretation and not simply a constitutional debate.¹⁴³

¹³⁶ Cf. Claussen & Meyer, *supra* note 79 (“Constitutional scholars may find that construing that language to permit USTR to enter into trade agreements poses nondelegation doctrine or major questions doctrine problems.”).

¹³⁷ See CRS In Focus IF12077, *The Major Questions Doctrine*, by Kate R. Bowers (2022).

¹³⁸ See *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000)); see also *West Virginia v. EPA*, 597 U.S. 697, 700 (2022) (“Under this body of law, known as the major questions doctrine, given both separation of powers principles and a practical understanding of legislative intent, the agency must point to ‘clear congressional authorization’ for the authority it claims.”) (quoting *Utility Air*, 573 U.S. at 324).

¹³⁹ See CRS In Focus IF12292, *Recurring Constitutional Issues in Federal Legislation*, by Valerie C. Brannon, Victoria L. Killion, and Sean M. Stiff (2022).

¹⁴⁰ *Gundy v. United States*, 588 U.S. 128, 145–46 (2019).

¹⁴¹ *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 320–21 (1936) (rejecting a nondelegation challenge on the ground that “[c]ongressional legislation . . . which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved”).

¹⁴² See, e.g., *Made in the USA Found. v. United States*, 242 F.3d 1300, 1310–19 (11th Cir. 2001) (declining to decide whether NAFTA was properly entered into via congressional-executive agreement rather than by treaty).

¹⁴³ Cf. *Zivotofsky v. Clinton*, 566 U.S. 189, 195–96 (2012) (overturning lower court decision that a case concerning separation of powers with respect to foreign policy presented a political question where, to resolve case, courts had to (continued...))

Existing Laws and Regulatory Authorities

Some trade agreements may place binding obligations on the United States but do not require Congress to pass new legislation in order for the United States to fulfill those obligations. To the extent existing laws enacted by Congress allow the executive branch to implement a trade agreement without the need for new legislation, proponents argue that those existing laws may provide some support for presidential power to enter into the agreement under the *Youngstown* framework.¹⁴⁴

One example of such trade agreements and the debate surrounding them is the Anti-Counterfeiting Trade Agreement (ACTA), an agreement regarding enforcement of intellectual property rights signed by the United States and other countries in October 2011.¹⁴⁵ The Obama Administration argued that the United States would be able to fulfill all of its obligations under ACTA using existing U.S. copyright and trademark statutes.¹⁴⁶ Since it was unnecessary for Congress to pass legislation to implement ACTA, the Administration argued, the United States could enter into the agreement without congressional approval.¹⁴⁷ The Administration argued that ACTA was consistent with “a long line” of “many” trade-related agreements that “required no implementing legislation” and thus did not require congressional approval.¹⁴⁸

Another variation on trade agreements that do not require implementing legislation are agreements that commit the U.S. government to use existing rulemaking or regulatory authorities that Congress has already established.¹⁴⁹ Such hybrid trade agreements often serve a “problem solving” function, addressing discrete issues involving specific products or industries.¹⁵⁰ For instance, in early 2023, the U.S. Alcohol and Tobacco Tax and Trade Bureau issued a labeling rule to implement a 2020 agreement between the United States and Bolivia regarding certain alcoholic beverages produced by each country.¹⁵¹ As another example, a 2013 agreement between the United States and Japan requires the U.S. Department of Agriculture to take specified measures if Japan gives notice of U.S. noncompliance with certain beef export requirements.¹⁵² Neither of these agreements was submitted to Congress for approval.

conduct a “familiar judicial exercise” of “decid[ing] if [plaintiff’s] interpretation of the statute is correct, and whether the statute is constitutional”); *Japan Whaling Ass’n v. Am. Cetacean Soc.’y*, 478 U.S. 221, 229–30 (1986) (holding that political question doctrine did not prevent the Court from adjudicating a controversy requiring it to use “no more than the traditional rules of statutory construction,” notwithstanding that the case involved an international agreement).

¹⁴⁴ See Koh, *supra* note 33, at 345–49 (arguing that constitutionality of executive agreements under *Youngstown* framework may hinge in part on the “degree of congressional approval”); cf. *Dames & Moore v. Regan*, 453 U.S. 654, 678 (1981) (upholding executive agreement that was not “directly authorize[d]” by Congress in part due to “general tenor of Congress’s legislation in this area”).

¹⁴⁵ The Anti-Counterfeiting Trade Agreement, OFF. OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/acta> [<https://perma.cc/U82T-N9R7>] (last visited Sept. 23, 2025).

¹⁴⁶ OFF. OF THE LEGAL ADVISER, U.S. DEP’T OF STATE, DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 95 (CarrieLyn D. Guymon ed., 2012) [hereinafter 2012 INTERNATIONAL LAW DIGEST], <https://2009-2017.state.gov/documents/organization/211955.pdf> [<https://perma.cc/LF46-B7S5>].

¹⁴⁷ OFF. OF THE LEGAL ADVISER, U.S. DEP’T OF STATE, DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 110 (CarrieLyn D. Guymon ed., 2011), <https://2009-2017.state.gov/documents/organization/194113.pdf> [<https://perma.cc/EAQ9-ZGST>].

¹⁴⁸ *Id.*

¹⁴⁹ Claussen, *supra* note 5, at 330.

¹⁵⁰ See *id.* at 354–57.

¹⁵¹ See Addition of Singani to the Standards of Identity for Distilled Spirits, 88 Fed. Reg. 2224 (Jan. 13, 2023).

¹⁵² See Requirements for Beef and Beef Products to be Exported to Japan from the United States of America (Jan. 25, (continued...))

Some advocates of these hybrid trade agreements contend that congressional approval is unnecessary if a previous congressional enactment has already given the President domestic implementation authority and the agreement otherwise requires no changes to domestic law.¹⁵³ Some Members of Congress have criticized this paradigm, arguing that it “confuses the *implementation of an agreement*—which may not require congressional action because no domestic laws need to be altered—and the *ability to enter into a binding agreement* with other sovereign nations without congressional approval.”¹⁵⁴ Thus, some Members have argued that, because Article I of the Constitution commits power over foreign trade to Congress, congressional approval of foreign trade agreements is necessary regardless of whether the agreements require any new implementing legislation.¹⁵⁵

Some Members contend that, even if Congress has already conferred regulatory authority on an executive agency, Congress should retain the power to decide whether the United States will commit itself to exercising that authority in a specific way as a matter of international law. One Member, for example, noted that, under customary international law, an agreement such as ACTA can create binding obligations for the United States even if the agreement lacks congressional approval.¹⁵⁶ These obligations can usurp Congress’s ability to regulate foreign trade and place potential future congressional enactments at odds with U.S. international legal obligations.¹⁵⁷ On the other hand, executive branch officials have argued that, in the event Congress later passes legislation inconsistent with such trade agreements, the United States may be able to resolve such conflicts either by withdrawing from or by persuading other countries to amend the agreements.¹⁵⁸

Congressional Acquiescence

The executive branch might argue that congressional acquiescence has made hybrid trade agreements constitutionally permissible.¹⁵⁹ When there is a “systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned,” the Supreme Court sometimes treats the historical practice as a “gloss” that informs the scope of

2013), <https://ustr.gov/sites/default/files/Requirements%20for%20Beef%20and%20Beef%20Products%20to%20be%20Exported%20to%20Japan%20from%20the....pdf> [<https://perma.cc/EY9M-RERA>].

¹⁵³ See Koh, *supra* note 33, at 345–48; Daniel Bodansky & Peter Spiro, Executive Agreements+, 49 VAND. J. TRANSNAT’L L. 885, 927 (2016). Further, some proponents argue that, if an international agreement requires the United States to do something it was already required to do under domestic law, no congressional approval is required. See Koh, *supra* note 33, at 346 (“If the only international obligation that the Executive Branch assumes is to carry out domestic legal obligations that already exist, there seems little reason why new congressional approval should be required: the United States is only reaffirming an existing constitutional obligation to obey domestic law.”).

¹⁵⁴ Senate Finance Letter, *supra* note 39; see also Letter from Senator Ron Wyden to President Barack Obama (Oct. 12, 2011) [hereinafter Wyden Letter], <https://www.wyden.senate.gov/imo/media/doc/Wyden%20Letter%20to%20Obama%20ACTA%20Oct%202011.pdf> [<https://perma.cc/3V4A-PVUP>] (claiming the argument “confuses the issue by conflating two separate stages . . . : entry and implementation”).

¹⁵⁵ Wyden Letter, *supra* note 154.

¹⁵⁶ See *id.*

¹⁵⁷ See *id.*

¹⁵⁸ See 2012 INTERNATIONAL LAW DIGEST, *supra* note 146.

¹⁵⁹ Cf. Claussen, *supra* note 5, at 353 (“Speaking broadly, [trade executive agreements] operate in a zone of congressional approval verging on congressional acquiescence.”).

presidential power under the *Youngstown* framework.¹⁶⁰ In *Dames & Moore v. Regan*, for example, the Supreme Court upheld the constitutionality of an international agreement terminating certain claims against the Iranian government based, in part, on long-standing executive practice and congressional acquiescence.¹⁶¹

In 2008, the Supreme Court stated that congressional acquiescence supports only those assertions of executive power that fall in the second *Youngstown* category, where Congress has neither granted nor denied authority to the executive.¹⁶² Seven years later, the Court considered historical congressional acquiescence in upholding an assertion of presidential authority in the third *Youngstown* category, holding that the President has exclusive authority to recognize foreign states and striking down a statute that the Court determined to infringe on that authority.¹⁶³

Given the volume of hybrid trade agreements in existence today, the executive branch might argue that Congress has implicitly acquiesced to these agreements as a “consistent executive practice” that Congress “has essentially accepted.”¹⁶⁴ On the other hand, the Supreme Court has suggested that the *Dames & Moore* analysis regarding congressional acquiescence might be relevant only to a “narrow set of circumstances” where presidential action is supported by a “particularly longstanding practice” of congressional acquiescence.¹⁶⁵ Hybrid trade deals are largely a modern phenomenon and might not qualify as a “particularly longstanding practice.”¹⁶⁶

Relatedly, due to the lack of transparency surrounding hybrid trade agreements, Congress might not know about many of these agreements and thus might not be in a position to acquiesce to them.¹⁶⁷ As noted above, the disclosure requirements in the 2023 NDAA,¹⁶⁸ which took effect in September 2023, may give Congress greater visibility into—and ability to influence—these agreements.¹⁶⁹

Another potential response to the acquiescence argument is that Congress has *not* consistently acquiesced to hybrid trade agreements. As discussed below, Congress enacted legislation asserting that the President cannot enter into binding trade agreements without congressional authorization while giving *ex post* approval to one trade agreement.¹⁷⁰ Individual Members of Congress have also publicly registered their criticism of these agreements.¹⁷¹ Further, by periodically enacting TPA legislation—most recently in 2015—Congress arguably maintained a high degree of control over FTAs and tariff proclamations, potentially implying that Congress did *not* acquiesce to the conclusion of at least some kinds of trade agreements without its approval.¹⁷²

¹⁶⁰ See *Dames & Moore v. Regan*, 453 U.S. 654, 686 (1981) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610–11 (1952) (Frankfurter, J., concurring)).

¹⁶¹ *Id.* at 686.

¹⁶² See *Medellín v. Texas*, 552 U.S. 491, 528 (2008).

¹⁶³ *Zivotofsky v. Kerry*, 576 U.S. 1, 23–28 (2015).

¹⁶⁴ Koh, *supra* note 33, at 343.

¹⁶⁵ *Medellín*, 552 U.S. at 531–32.

¹⁶⁶ For background on the role of congressional acquiescence, see Curtis A. Bradley & Trevor W. Morrison, *Historical Gloss and the Separation of Powers*, 126 HARV. L. REV. 411 (2012).

¹⁶⁷ See Claussen & Meyer, *supra* note 79.

¹⁶⁸ 2023 NDAA, Pub. L. No. 117-263, § 5947, 136 Stat. 2395, 3476–82 (2022).

¹⁶⁹ See *International Law and Agreements*, *supra* note 30.

¹⁷⁰ See *infra* notes 243–245.

¹⁷¹ See, e.g., Senate Finance Letter, *supra* note 39; Wyden Letter, *supra* note 154; H.R. 4004, 118th Cong. (2023).

¹⁷² See Claussen & Meyer, *supra* note 79 (“The acquiescence argument carries even less weight in the context of far-reaching plurilateral or multilateral trade agreements: there are no examples of agreements of that sort coming into force without congressional consent.”).

Even if these actions did not expressly prohibit hybrid trade agreements, they arguably amount to implicit disapproval that could place some such trade agreements in the third *Youngstown* category, where executive power is at its lowest ebb and alleged congressional acquiescence might not support the practice in question.¹⁷³ In any event, the strength of the argument in favor of hybrid trade agreements from congressional acquiescence may not be static, but may wax or wane based on how Congress responds to these agreements in the future and any relevant judicial decisions.

Trade Agreement Practice Since 2020

This section summarizes legal characteristics of selected recent trade agreements and initiatives. At least some of the agreements discussed below may be considered hybrid trade agreements since the executive branch's authority to enter into them was unclear or debatable, although Congress did give *ex post* approval for one of these agreements (with Taiwan).¹⁷⁴

Second Trump Administration Tariff Deals

In 2025, President Trump increased tariffs on most imports into the United States,¹⁷⁵ claiming to rely on authorities Congress has delegated to the President by statute.¹⁷⁶ Administration officials announced that the President could negotiate “deals” with U.S. trading partners that would lower some of these tariffs on a country-specific basis.¹⁷⁷ Two resulting such deals, negotiated with the United Kingdom and the European Union, are analyzed below.¹⁷⁸

United States-United Kingdom Deal

On May 8, 2025, the White House announced that the United States and the United Kingdom had reached a “historic trade deal” (referred to in this report as the UK Deal) that would improve access to the UK market for U.S. exports while providing tariff relief for certain U.S. imports from the United Kingdom.¹⁷⁹

The primary text for the UK Deal, titled “General Terms for the United States of America and the United Kingdom of Great Britain and Northern Ireland Economic Prosperity Deal” (General Terms), states that “[b]oth the United States and the United Kingdom recognize that this

¹⁷³ See *Medellín v. Texas*, 552 U.S. 491, 528 (2008).

¹⁷⁴ See *infra* “U.S.-Taiwan Initiative on 21st Century Trade.”

¹⁷⁵ See CRS Report R48549, *Presidential 2025 Tariff Actions: Timeline and Status*, by Keigh E. Hammond and William F. Burkhardt (2025).

¹⁷⁶ For analysis of the President's legal authority to impose tariffs, see CRS Report R48435, *Congressional and Presidential Authority to Impose Import Tariffs*, by Christopher T. Zirpoli (2025). For discussion of legal challenges to certain tariffs imposed by President Trump, see CRS Legal Sidebar LSB11332, *Court Decisions Regarding Tariffs Imposed Under the International Emergency Economic Powers Act (IEEPA)*, by Christopher T. Zirpoli (2025).

¹⁷⁷ See, e.g., Aislinn Murphy, *Scott Bessent Says up to 70 Nations Want to Negotiate Over Trump's Tariffs*, FOX BUS., April 7, 2025, <https://www.foxbusiness.com/economy/scott-bessent-says-up-70-nations-want-negotiate-over-trumps-tariffs> [<https://perma.cc/U22F-JMEM>].

¹⁷⁸ This report adopts the term “deal” for these and other such arrangements because it is uncertain whether all of them will ultimately entail binding agreements.

¹⁷⁹ *Fact Sheet: U.S.-UK Reach Historic Trade Deal*, WHITE HOUSE (May 8, 2025), <https://www.whitehouse.gov/fact-sheets/2025/05/fact-sheet-u-s-uk-reach-historic-trade-deal/> [<https://perma.cc/6FQD-VKL4>]. For background on policy implications of this deal, see CRS In Focus IF11123, *U.S.-UK Trade Relations: Background and Select Issues*, by Shayerah I. Akhtar (2025).

document does not constitute a legally binding agreement.”¹⁸⁰ Many additional provisions in the General Terms refer to it simply as a “document,” while none refer to it as an agreement.¹⁸¹ The General Terms purport to “define the general terms” of a future “U.S.-UK Economic Prosperity Deal (EPD),” which is intended to “develop and formalize the proposals made in this document.”¹⁸² Thus, while the UK Deal does not appear to be binding, the parties may intend to negotiate and enter into a binding agreement regarding the topics identified in the nonbinding document.

The UK Deal contains various tariff-related concessions by both parties. The text states that the parties “will” make certain tariff concessions to one another, including mutual concessions on beef tariffs and UK tariffs on U.S. ethanol.¹⁸³ It also contains several commitments regarding tariffs that have already been or may be imposed by the United States under Section 232 of the Trade Expansion Act of 1962.¹⁸⁴ Regarding Section 232 tariffs on automobiles and auto parts, the General Terms provide that “[t]he United States will create a quota of 100,000 vehicles for UK automotive imports at a 10 percent tariff rate, and an accompanying arrangement for attendant auto parts for such autos.”¹⁸⁵ As for Section 232 tariffs on steel and aluminum, the General Terms provide that, on the basis of certain UK undertakings, “the United States will promptly construct a quota at most favored nation (MFN) rates for UK steel and aluminum and certain derivative steel and aluminum products.”¹⁸⁶ The General Terms also indicate the parties’ intent to negotiate preferential treatment for the United Kingdom regarding potential Section 232 tariffs on pharmaceuticals and other products.¹⁸⁷

On June 23, 2025, President Trump issued an executive order to implement the UK Deal by making certain adjustments to tariffs he had previously imposed.¹⁸⁸ The executive order does not determine a quota for other UK steel and aluminum imports to be imported at MFN rates but defers this determination to “a future time.”¹⁸⁹ In addition, the executive order exempts certain UK aerospace products from tariffs imposed under the International Emergency Economic

¹⁸⁰ General Terms for the United States of America and the United Kingdom of Great Britain and Northern Ireland Economic Prosperity Deal (May 8, 2025) [hereinafter General Terms], https://ustr.gov/sites/default/files/files/Press/fs/US%20UK%20EPD_050825_FINAL%20rev%20v2.pdf [<https://perma.cc/WS47-2SRL>] (last visited Sept. 23, 2025).

¹⁸¹ See, e.g., *id.* at 5 (“This document becomes operative on May 8, 2025.”). A USTR fact sheet on the UK Deal refers variously to an “agreement in principle,” “agreement,” “framework,” and “deal.” *USTR Fact Sheet: U.S.-UK Reach Historic Trade Deal*, OFF. OF THE U.S. TRADE REPRESENTATIVE (May 8, 2025), <https://ustr.gov/about/policy-offices/press-office/fact-sheets/2025/may/ustr-fact-sheet-us-uk-reach-historic-trade-deal> [<https://perma.cc/LJ9K-MBZN>].

¹⁸² General Terms, *supra* note 180, at 1.

¹⁸³ *Id.* at 2.

¹⁸⁴ Pub. L. No. 87-794, § 232(b)–(c), 76 Stat. 872, 877 (codified as amended at 19 U.S.C. §§ 1862(b)–(c)). For additional information, see CRS In Focus IF13006, *Section 232 of the Trade Expansion Act of 1962*, by Kyla H. Kitamura (2025).

¹⁸⁵ General Terms, *supra* note 180, at 2. For context, see CRS Insight IN12545, *Section 232 Automotive Tariffs: Issues for Congress*, by Kyla H. Kitamura (2025).

¹⁸⁶ General Terms, *supra* note 180, at 2. For context, see CRS Insight IN12519, *Expanded Section 232 Tariffs on Steel and Aluminum*, by Kyla H. Kitamura and Keigh E. Hammond (2025).

¹⁸⁷ See General Terms, *supra* note 180, at 2.

¹⁸⁸ Exec. Order No. 14,309, 90 Fed. Reg. 26419 (June 16, 2025).

¹⁸⁹ *Id.* at 26420–21.

Powers Act (IEEPA)¹⁹⁰ as well as Section 232 steel and aluminum tariffs.¹⁹¹ Although the General Terms do not specifically mention aerospace products, they express an intention “to adopt a structured, negotiated approach to other sectors that may be subject to Section 232 investigations or other tariff measures with a view to a significantly preferential outcome.”¹⁹² A more recent document published by the UK government, titled “Update on UK-US Economic Prosperity Deal,” states that “[t]he US commits to reducing tariffs on imports of aerospace goods from the UK from current levels back to MFN rates.”¹⁹³

United States-European Union Deal

In July 2025, the White House announced that President Trump had reached a “massive trade deal” with the European Union (referred to in this report as the EU Deal).¹⁹⁴ According to the European Union, this deal generally sets a 15% tariff “ceiling” on U.S. imports from the European Union, inclusive of any “most favoured nation (MFN)” tariffs;¹⁹⁵ actual or potential Section 232 tariffs on automobiles, pharmaceuticals, and semiconductors; and “reciprocal” tariffs imposed under IEEPA.¹⁹⁶ The White House stated that this ceiling would not apply to Section 232 tariffs on steel, aluminum, and copper, which would “remain unchanged.”¹⁹⁷ The European Union described the EU Deal as a “political agreement” that “is not legally binding.”¹⁹⁸

The United States and the European Union followed these announcements with a joint statement of a “Framework on an Agreement on Reciprocal, Fair, and Balanced Trade” (the Joint Statement).¹⁹⁹ The Joint Statement provides that “[t]he United States and the European Union, in line with their relevant internal procedures, will promptly document the Agreement on Reciprocal, Fair, and Balanced Trade to implement this Framework Agreement.”²⁰⁰ Thus, the

¹⁹⁰ Pub. L. No. 95-223, 91 Stat. 1626 (codified as amended at 50 U.S.C. §§ 1701–1710). For more information on the use of IEEPA to impose tariffs, see CRS Legal Sidebar LSB11332, *Court Decisions Regarding Tariffs Imposed Under the International Emergency Economic Powers Act (IEEPA)*, by Christopher T. Zirpoli (2025) and CRS Legal Sidebar LSB11281, *Legal Authority for the President to Impose Tariffs Under the International Emergency Economic Powers Act (IEEPA)*, by Christopher T. Zirpoli (2025).

¹⁹¹ See Exec. Order No. 14,309, 90 Fed. Reg. at 26420; see also Imports of Commercial Aircraft and Jet Engines Notice, 90 Fed. Reg. 20273 (May 13, 2025) (announcing the initiation of a Section 232 investigation into certain aerospace products on May 1, 2025).

¹⁹² General Terms, *supra* note 180, at 2–3.

¹⁹³ *Update on UK-US Economic Prosperity Deal*, UK DEP’T FOR BUS. & TRADE (June 20, 2025), <https://www.gov.uk/government/publications/us-uk-economic-prosperity-deal-epd/update-on-the-uk-us-economic-prosperity-deal-epd-web-accessible-version> [https://perma.cc/3C2B-FAJF].

¹⁹⁴ *Fact Sheet: The United States and European Union Reach Massive Trade Deal*, WHITE HOUSE (July 28, 2025) [hereinafter *EU Deal Fact Sheet*], <https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-the-united-states-and-european-union-reach-massive-trade-deal/> [https://perma.cc/F7UU-2FQ6].

¹⁹⁵ MFN tariff rates are also known as “bound” tariff rates, reflecting the commitment of WTO member countries not to raise tariffs above those rates, with some exceptions. See CRS In Focus IF12995, *International Trade Agreements and U.S. Tariff Laws*, by Christopher T. Zirpoli, Christopher A. Casey, and Cathleen D. Cimino-Isaacs (2025).

¹⁹⁶ *EU-US trade deal explained*, EUROPEAN COMM’N (July 29, 2025) [hereinafter *EU Deal Explained*], https://luxembourg.representation.ec.europa.eu/actualites-et-evenements/actualites/eu-us-trade-deal-explained-2025-07-29_en [https://perma.cc/Z748-A2P9].

¹⁹⁷ *EU Deal Fact Sheet*, *supra* note 194.

¹⁹⁸ *EU Deal Explained*, *supra* note 196.

¹⁹⁹ *Joint Statement on a United States-European Union Framework on an Agreement on Reciprocal, Fair, and Balanced Trade*, WHITE HOUSE (Aug. 21, 2025), <https://www.whitehouse.gov/briefings-statements/2025/08/joint-statement-on-a-united-states-european-union-framework-on-an-agreement-on-reciprocal-fair-and-balanced-trade/> [https://perma.cc/F8ZG-2AYS].

²⁰⁰ *Id.*

Joint Statement does not appear to be a binding agreement in itself but establishes a framework for an agreement.

Building on the parties' earlier announcements, the Joint Statement provides that the European Union "intends to eliminate tariffs on all U.S. industrial goods and to provide preferential market access for a wide range of U.S. seafood and agricultural goods."²⁰¹ For its part, the United States "commits to apply the higher of either the U.S. Most Favored Nation (MFN) tariff rate or a tariff rate of 15 percent, comprised of the MFN tariff and a reciprocal tariff, on originating goods of the European Union."²⁰² The United States also commits, effective September 1, 2025, to apply only the MFN tariff to "unavailable natural resources (including cork), all aircraft and aircraft parts, generic pharmaceuticals and their ingredients and chemical precursors" from the European Union.²⁰³ The Joint Statement also contains what appear to be nonbinding commitments relating to energy, investments, military procurement, and cooperation to address nontariff barriers, among other subjects.²⁰⁴

Regarding Section 232 tariffs, the Joint Statement provides that the United States "intends to promptly ensure that the tariff rate" (i.e., the combined MFN tariff rate and Section 232 tariff rate) will not exceed 15% on goods from the European Union that could potentially be subject to tariffs under pending Section 232 actions on pharmaceuticals, semiconductors, and lumber.²⁰⁵ It also provides that, "when the European Union formally introduces the necessary legislative proposal to enact the tariff reductions" to which it has committed, the United States will adjust Section 232 tariffs on automobiles and auto parts from the European Union so that they do not apply to any imports subject to an MFN rate of 15% or higher or, for imports subject to a lower MFN rate, the combined MFN and Section 232 rates does not exceed 15%.²⁰⁶ As for Section 232 tariffs on steel and aluminum, the Joint Statement provides that the parties "intend to consider the possibility to cooperate on ring-fencing their respective domestic markets from overcapacity, while ensuring secure supply chains between each other, including through tariff-rate quota solutions."²⁰⁷

Legal Authority for the UK Deal and the EU Deal

As indicated, the UK Deal and the EU Deal currently appear to be nonbinding. Thus, the President may have authority to enter into these deals as part of his inherent constitutional authority to conduct foreign negotiations, even if he would lack authority to enter into a binding agreement regarding the same subject matter.²⁰⁸ The commitments in these deals may be roughly analogous, for example, to the "voluntary import restraint undertakings" the U.S. Court of Appeals for the D.C. Circuit upheld in *Consumers Union v. Kissinger*.²⁰⁹ Opponents might argue

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *See id.*

²⁰⁵ *Id.*

²⁰⁶ *See id.*

²⁰⁷ *Id.* For discussion of pending Section 232 actions, see CRS Report R48549, *Presidential 2025 Tariff Actions: Timeline and Status*, by Keigh E. Hammond and William F. Burkhardt (2025).

²⁰⁸ *See supra* "Nonbinding Instruments."

²⁰⁹ *See* 506 F.2d 136, 138, 143–44 (D.C. Cir. 1974). Potentially weakening this analogy, the undertakings in *Consumers Union* were made with foreign producers' associations, not with foreign governments. *See id.* at 138–39. In addition, the court in that case did not squarely address the President's Article II power to make nonbinding agreements, but held that neither the Foreign Commerce Clause nor existing legislation had preempted the President's ability to do so in that case. *See id.* at 138, 143.

that the President’s designation of these deals as “nonbinding” instruments or “frameworks” may allow the President to circumvent Congress’s constitutional authority over foreign commerce and tariffs²¹⁰ given the specificity of some of the commitments in these deals, in light of the fact that many trade agreements containing specific tariff commitments have traditionally been approved by Congress.²¹¹

If the UK Deal or the EU Deal were succeeded by a binding agreement with similar commitments, it is debatable whether the President would have authority to enter into that agreement without specific congressional approval. Proponents of such an agreement might assert that Congress has already authorized at least some of its provisions via existing legislation, including Section 232. That statute specifies that, in addition to imposing tariffs, the President may address a finding that an “article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security” by “negotiation of an agreement which limits or restricts the importation into, or the exportation to, the United States of the article.”²¹² Thus, to the extent that a trade agreement includes provisions on Section 232 tariffs or quotas, proponents might argue that Congress provided *ex ante* authority for such provisions when it enacted Section 232. Opponents, on the other hand, might argue that Section 232’s allowance for the President to “negotiat[e]” agreements does not necessarily permit the President to enter into such agreements without specific congressional approval.²¹³

Proponents of the UK Deal or EU Deal might argue more broadly that, to the extent Congress has delegated authority to the President to raise and lower tariffs, it has also given the President authority to enter into international agreements concerning how he chooses to exercise that authority.²¹⁴ Opponents of this view might argue that, except where statutes expressly authorize the President to enter into international agreements, the authority Congress has delegated to the President to raise or lower tariffs under U.S. law does not imply any authority to enter into international agreements regarding those tariffs.²¹⁵

United States-Japan Critical Minerals Agreement

On March 28, 2023, the United States and Japan entered into an agreement on “Strengthening Critical Minerals Supply Chains” (CMA).²¹⁶ According to USTR, this agreement establishes several commitments and “areas for joint cooperation” regarding critical minerals supply chains for electric vehicle batteries.²¹⁷ Many provisions of the agreement either confirm existing

²¹⁰ Cf. *id.* at 150 (Leventhal, J., dissenting) (“To cast the steel restraints as unilateral undertakings rather than as agreements is to exalt form over substance.”).

²¹¹ See *supra* “Free Trade Agreements (FTAs).”

²¹² 19 U.S.C. § 1862(c)(3)(A)(i).

²¹³ Compare *id.* with 19 U.S.C. § 1862(c)(3)(A)(ii) (referring to agreements being “entered into,” as opposed to “negotiat[ed]” in (A)(i)). For comparison, another trade remedy statute, Section 301 of the Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978, 2041–43 (codified as amended at 19 U.S.C. § 2411) authorizes USTR to “enter into binding agreements with [a] foreign country” as well as impose tariffs. 19 U.S.C. § 2411(c)(1)(D).

²¹⁴ See *supra* “Existing Laws and Regulatory Authorities.”

²¹⁵ See *id.*

²¹⁶ See Agreement Between the Government of the United States of America and the Government of Japan on Strengthening Critical Minerals Supply Chains, Japan-U.S., Mar. 28, 2023, T.I.A.S. 23-328 [hereinafter U.S.-Japan CMA]; CRS Report R48676, *U.S.-Japan Critical Minerals Agreement: Background and Issues for Congress*, by Kyla H. Kitamura (2025).

²¹⁷ Press Release, Off. of the U.S. Trade Representative, United States and Japan Sign Critical Minerals Agreement (Mar. 28, 2023), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/march/united-states-and-japan-sign-critical-minerals-agreement> [<https://perma.cc/5BTF-A8E7>].

obligations or require the parties to “confer” or “cooperate,” as opposed to making specific new commitments.²¹⁸

The CMA provides a useful point of comparison to the congressional-executive FTAs discussed above.²¹⁹ USTR characterizes the CMA as “an agreement focusing on free trade in critical minerals,” in contrast to what it calls “comprehensive” FTAs in force with 20 other countries.²²⁰ Unlike those “comprehensive” FTAs, the CMA was not negotiated pursuant to TPA legislation, it was not submitted to Congress for approval, and it does not create a free trade area or otherwise reduce import tariffs between the partner countries.²²¹

In May 2024, the U.S. Department of the Treasury (Treasury) finalized regulations²²² under which the CMA is deemed a “free trade agreement” under Section 30D of the Internal Revenue Code²²³ as amended by P.L. 117-169, commonly referred to as the Inflation Reduction Act of 2022 (IRA).²²⁴ The IRA conditioned certain tax credits for “clean vehicles” on whether a requisite percentage of specific “critical minerals” in the vehicle battery were “extracted or processed” either in the United States or in a “country with which the United States has a free trade agreement in effect,” but it does not define the term “free trade agreement.”²²⁵ The May 2024 regulations list Japan among those “countries with which the United States currently has free trade agreements in effect,”²²⁶ thus qualifying critical minerals extracted or processed in Japan toward this percentage.

It is questionable whether the CMA should be considered an FTA within the meaning of the IRA, given that, unlike all prior U.S. FTAs, it does not create a “free trade area” under GATT (i.e., eliminating tariffs on substantially all trade between the partner countries).²²⁷ Some Members of Congress have argued that “the Administration does not have the authority to unilaterally enter into free trade agreements.”²²⁸ During its rulemaking, Treasury received comments arguing that its broader classification of FTAs “undercuts Congressional intent,” “impermissibly expand[s] the Secretary’s authority to define ‘free trade agreement,’” and “departs from [the] accepted meaning” of the term.²²⁹ Treasury argued, in response, that its broader definition of FTAs is

²¹⁸ See U.S.-Japan CMA, *supra* note 216. The agreement contains a specific commitment that the parties “maintain” their practice of not imposing export duties on critical minerals, although U.S. export duties are already prohibited by the U.S. Constitution. See U.S. CONST. art. I, § 9, cl. 5; Cong. Rsch. Serv., *Export Clause and Taxes*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S9-C5-1/ALDE_00013596/ (last visited Sept. 23, 2025).

²¹⁹ See *supra* “Free Trade Agreements (FTAs).”

²²⁰ See *Free Trade Agreements*, OFF. OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/trade-agreements/free-trade-agreements> (last visited Sept. 23, 2025).

²²¹ Cf. *id.* (characterizing the CMA as “an agreement focusing on free trade in critical minerals,” as opposed to “comprehensive free trade agreements” with other countries).

²²² Clean Vehicle Credits Rule, 89 Fed. Reg. 37706 (May 6, 2024) (codified at 26 C.F.R. pts. 1, 301).

²²³ 26 U.S.C. § 30D.

²²⁴ Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818.

²²⁵ *Id.* § 13401; see CRS In Focus IF12600, *Clean Vehicle Tax Credits*, by Donald J. Marples and Nicholas E. Buffie (2024).

²²⁶ Clean Vehicle Credits Rule, 89 Fed. Reg. at 37758 (codified at 26 C.F.R. § 1.30D-2(b)(13)).

²²⁷ See *supra* notes 67–70 and accompanying text.

²²⁸ Press Release, Richard Neal, Ranking Member, H. Ways & Means Comm., Neal, Wyden Statement on Biden Administration’s Go-It-Alone Trade Action (Mar. 28, 2023), <https://democrats-waysandmeans.house.gov/media-center/press-releases/neal-wyden-statement-biden-administration-go-it-alone-trade-action> [https://perma.cc/Z2JR-XAYX]. These Members further criticized the agreement for lacking “enforceable environmental or labor protections” which could have been included with greater congressional engagement. *Id.*

²²⁹ Clean Vehicle Credits Rule, 89 Fed. Reg. at 37725.

consistent with the IRA’s “statutory purposes,” including expanding incentives for taxpayers to purchase clean vehicles and for manufacturers to increase their reliance on supply chains “in countries with which the United States has reliable and trusted economic relationships.”²³⁰

Some Members of Congress responded to the CMA by introducing legislation that would have amended Section 30D to define “free trade agreement” as “an international agreement approved by Congress that eliminates duties and other restrictive regulations of commerce on substantially all the trade between the United States and 1 or more other countries,”²³¹ thus excluding the CMA. Others introduced joint resolutions of disapproval²³² of Treasury’s regulations under the Congressional Review Act (CRA),²³³ which provides special procedures for Congress to consider a joint resolution of disapproval to overturn final agency rules within a limited time.²³⁴

In July 2025, Congress enacted and the President signed into law the FY2025 reconciliation act, commonly referred to as the One Big Beautiful Bill Act, which terminated the Section 30D tax credits for vehicles “acquired after September 30, 2025.”²³⁵ Thus, whether the CMA is characterized as an FTA will not determine eligibility for any tax credits pertaining to vehicles acquired after that date.

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

In June 2022, USTR launched the U.S.-Taiwan Initiative on 21st Century Trade (the Taiwan Initiative) to “advance mutual trade priorities based on shared values.”²³⁶ The parties described the Taiwan Initiative as a “roadmap” for “reaching agreements with high-standard commitments.”²³⁷ The Taiwan Initiative included a number of “trade areas,” such as trade facilitation, good regulatory practices, agriculture, digital trade, labor, and environment.²³⁸ Other Taiwan Initiative trade areas included anticorruption, small and medium-sized enterprises (SMEs), standards, state-owned enterprises, and nonmarket policies and practices.²³⁹

On June 1, 2023, the United States and Taiwan signed their first agreement under the Taiwan Initiative (the First Taiwan Agreement).²⁴⁰ The First Taiwan Agreement includes chapters on

²³⁰ *Id.*

²³¹ H.R. 7983, 118th Cong. (2024).

²³² See H.R.J. Res. 148, 118th Cong. (2024); H.R.J. Res. 179, 118th Cong. (2024); S.J. Res. 87, 118th Cong. (2024).

²³³ 5 U.S.C. §§ 801–808.

²³⁴ See CRS In Focus IF12386, *Defining Final Agency Action for APA and CRA Review*, by Valerie C. Brannon (2023); CRS Report R43992, *The Congressional Review Act (CRA): Frequently Asked Questions*, by Maeve P. Carey and Christopher M. Davis (2021).

²³⁵ Pub. L. No. 119-21, § 70502(a), 139 Stat. 250 (2025) (codified at 19 U.S.C. § 30D(h)).

²³⁶ Press Release, Off. of the U.S. Trade Representative, United States and Taiwan Announce the Launch of the U.S.-Taiwan Initiative on 21st-Century Trade (June 1, 2022), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/june/united-states-and-taiwan-announce-launch-us-taiwan-initiative-21st-century-trade> [<https://perma.cc/3CMG-3PXQ>].

²³⁷ *Id.* Similarly, in Aug. 2022, the parties released a Negotiating Mandate “to commence formal negotiations for the purpose of reaching agreements with high-standard commitments.” U.S.-Taiwan Initiative on 21st Century Trade: Negotiating Mandate (Aug. 17, 2022) [hereinafter Negotiating Mandate], [https://ustr.gov/sites/default/files/2022-08/US-Taiwan%20Negotiating%20Mandate%20\(Final\).pdf](https://ustr.gov/sites/default/files/2022-08/US-Taiwan%20Negotiating%20Mandate%20(Final).pdf) [<https://perma.cc/3QZZ-BUTJ>].

²³⁸ Negotiating Mandate, *supra* note 237.

²³⁹ *Id.*

²⁴⁰ Agreement Between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States Regarding Trade Between the United States of America and Taiwan, Taiwan-U.S., June 1, 2023, <https://ustr.gov/sites/default/files/uploads/US-> (continued...)

customs administration and trade facilitation, regulatory practices, services regulation, anticorruption, and SMEs.²⁴¹ Although it is a binding agreement, it contains a mixture of binding and nonbinding commitments on these subjects.²⁴²

Although the executive branch did not submit the First Taiwan Agreement for congressional approval, Congress responded by enacting the United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act (the Taiwan Agreement Implementation Act).²⁴³ This legislation provided *ex post* approval for the First Taiwan Agreement, effectively converting it into a congressional-executive agreement. The Taiwan Agreement Implementation Act permits the First Taiwan Agreement to enter into force subject to the President conducting certain consultations with Congress and making certain certifications, and it requires USTR to provide Congress with a report on the implementation of the agreement.²⁴⁴ The act states that “[t]he President lacks the authority to enter into binding trade agreements absent approval from Congress.”²⁴⁵

The Taiwan Agreement Implementation Act also asserts various forms of congressional control over the process of making any further agreements with Taiwan relating to the Taiwan Initiative. The act provides that any such further agreement may not take effect unless Congress enacts legislation “expressly approving” the agreement and it is published on a publicly available website at least 60 days before the President enters into it.²⁴⁶ The act also requires USTR to provide texts of any such further agreement and accompanying briefings to certain congressional committees according to specified timelines.²⁴⁷ The act provides time for those committees to review any U.S. negotiating text before it is shared with Taiwan and allows certain Members of Congress to request up to 15 additional days for that review.²⁴⁸ Finally, the act provides for certain Members of Congress and their designees to be accredited as members of the U.S. delegation negotiating any such further agreement with Taiwan.²⁴⁹

In signing the Taiwan Agreement Implementation Act into law, President Biden released a signing statement claiming that the act’s requirements to provide negotiating texts to congressional committees, not to transmit proposed texts to Taiwan during congressional review, and to include Members of Congress in the U.S. negotiating delegation raised “constitutional concerns.”²⁵⁰ The President stated that he would disregard these provisions in cases where they would “impermissibly infringe upon [the President’s] constitutional authority to negotiate with a foreign

Taiwan%20Initiative%20on%2021st%20Century%20Trade%20First%20Agreement%20-%20June%202023.pdf [https://perma.cc/UJ6V-ZNTS].

²⁴¹ *See id.*

²⁴² *Compare, e.g., id.* art. 2.2 (providing that each party “shall” publish certain information online) *with id.* art. 2.6.1, para. 1 (providing that the parties “are encouraged” to eliminate paper forms).

²⁴³ United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act, Pub. L. No. 118-13, 137 Stat. 63 (2023).

²⁴⁴ *Id.* §§ 6(b)–(c).

²⁴⁵ *Id.* § 2(7).

²⁴⁶ *Id.* § 7(e).

²⁴⁷ *See id.* § 7(c).

²⁴⁸ *See id.*

²⁴⁹ *See id.* § 7(d) (referring to provisions of 19 U.S.C. § 4203(c)).

²⁵⁰ Press Release, White House, Statement from President Joe Biden on H.R. 4004, the United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act (Aug. 7, 2023), <https://www.bidenwhitehouse.gov/briefing-room/statements-releases/2023/08/07/statement-from-president-joe-biden-on-h-r-4004-the-united-states-taiwan-initiative-on-21st-century-trade-first-agreement-implementation-act/> [https://perma.cc/B7J5-58HN].

partner.”²⁵¹ The President further stated that the act’s provision allowing certain Members of Congress to increase the waiting period before negotiating texts could be shared with Taiwan violated Supreme Court precedent regarding the separation of legislative and executive powers.²⁵² The President did not, however, mention the act’s prohibition on entering into any further Taiwan Initiative agreements without congressional approval.

The Taiwan Agreement Implementation Act provides that the First Taiwan Agreement “does not constitute a free trade agreement for purposes of section 30D(e)(1)(A)(i)(II) of the Internal Revenue Code.”²⁵³ The act thus prevented the Treasury Department from treating the agreement similarly to the U.S.-Japan CMA for purposes of IRA electric vehicle tax credits, as discussed above.²⁵⁴

Authority to Withdraw from Trade Agreements

Scholars debate whether authority to withdraw from existing trade agreements is legally distinct from authority to enter into those agreements—in other words, whether the constitutional powers of Congress and the President over withdrawal are symmetrical with their powers over entry. As discussed below, presidential authority to withdraw unilaterally from trade agreements—and from international agreements in general—is contested by legal scholars and others, and there is scarce judicial precedent pertaining to the question.²⁵⁵ In the legislation implementing USMCA, Congress approved and implemented a joint review (or sunset) provision with potential ramifications for the President’s authority to withdraw from that particular agreement without congressional approval.²⁵⁶

Legal Background and Debates

It is uncertain whether the President has domestic legal authority to withdraw from treaties or congressional-executive agreements without congressional approval.²⁵⁷ While the Constitution specifies the process to enter into a treaty, it does not address how the United States may withdraw from treaties, nor does it mention entry or withdrawal from congressional-executive agreements.²⁵⁸ As discussed in another CRS report, Presidents have sometimes, though not always, obtained congressional or Senate approval to withdraw from treaties.²⁵⁹ Unilateral withdrawal from treaties by the President became common in the 20th century,²⁶⁰ and the Supreme

²⁵¹ *Id.*

²⁵² *Id.* (citing *INS v. Chadha*, 462 U.S. 919 (1983) (holding that provision of immigration statute allowing one-house veto of certain executive actions was unconstitutional)). On the other hand, some caselaw arguably provides support for the conclusion that a statutory provision allowing certain Members of Congress to increase the length of a required waiting period does not violate *Chadha*. See *Lear Siegler, Inc., Energy Prods. Div. v. Lehman*, 842 F.2d 1102, 1110 (9th Cir. 1988) (holding that a temporary stay provision that did not give a “legislative agent . . . control or ultimate authority in the disposition of a particular issue” did not violate *Chadha*).

²⁵³ Pub. L. No. 118-13, § 8(a)(2), 137 Stat. 63, 67 (2023).

²⁵⁴ See *supra* “United States-Japan Critical Minerals Agreement.”

²⁵⁵ See *infra* “Constitutional Framework.”

²⁵⁶ See *infra* “USMCA Joint Review Provision.”

²⁵⁷ See CRS Report R48524, *Congress and the Scope of the President’s Article II Foreign Policy Authorities*, by Karen Sokol (2025) at 14–18.

²⁵⁸ See U.S. CONST. art II, § 2.

²⁵⁹ See Sokol, *supra* note 257, at 16–17.

²⁶⁰ See *id.*

Court has not answered whether such unilateral withdrawal is permitted by the Constitution.²⁶¹ In a case in which certain Members of Congress challenged President Jimmy Carter’s unilateral withdrawal from a treaty with Taiwan, the Court ordered dismissal, with a four-justice plurality holding that the case presented a nonjusticiable political question.²⁶²

As a matter of international law, the President likely has the power to withdraw the United States from at least some international trade agreements without involving Congress. The Vienna Convention on the Law of Treaties, which the U.S. government regards as reflecting customary international law in many respects,²⁶³ provides that a country may withdraw from a treaty “in conformity with the provisions of the treaty” regarding withdrawal, among other permissible circumstances.²⁶⁴ Individual trade agreements sometimes contain such withdrawal provisions—for example, USMCA’s provision that a country may withdraw by providing written notice six months in advance.²⁶⁵ Neither customary international law nor these withdrawal provisions appear to require any involvement on Congress’s part for the President to withdraw the United States from an international agreement. The Vienna Convention provides that a country may effectuate its withdrawal by submitting written notice “signed by the Head of State, Head of Government or Minister for Foreign Affairs.”²⁶⁶

As a matter of U.S. domestic law, Congress’s constitutional powers to regulate foreign commerce and impose tariffs arguably require congressional approval to withdraw from international agreements on those subjects. Withdrawing from a trade agreement may affect the regulation of foreign commerce to the same degree as entering into the agreement. Thus, one might argue that if congressional authorization is required to enter into a binding trade agreement, so too may congressional authorization be required to withdraw from one. One legal scholar, for instance, has argued that “allocation of the power to terminate trade agreements to the President, acting alone, would be inconsistent with the substance of the Constitution’s allocation to Congress of control over both international and domestic commerce under the Commerce Clause of the Constitution.”²⁶⁷

Another legal scholar has argued, more broadly, that “the Constitution requires a ‘mirror principle,’ whereby the degree of legislative approval needed to exit an international agreement must parallel the degree of legislative approval originally required to enter it.”²⁶⁸ According to this argument, the degree of congressional approval required to withdraw from the agreement is informed both by the agreement’s subject matter, which may indicate “which branch of government has substantive constitutional prerogatives” implicated by withdrawal, and by the degree of congressional participation in entering the agreement.²⁶⁹ This scholar argues that Congress’s foreign commerce power may restrict or prohibit unilateral withdrawal from

²⁶¹ See *id.* at 15.

²⁶² See *Goldwater v. Carter*, 444 U.S. 996, 1002–05 (1979) (Rehnquist, J., concurring).

²⁶³ See *Vienna Convention on the Law of Treaties*, U.S. DEP’T OF STATE, <https://2009-2017.state.gov/s/l/treaty/faqs/70139.htm> [<https://perma.cc/8ERX-MTQF>] (last visited Sept. 23, 2025).

²⁶⁴ Vienna Convention, *supra* note 31, art. 54. The Vienna Convention also provides that treaties may be terminated “at any time by consent of all the parties after consultation with the other contracting States,” *id.*, and that a party may withdraw in some cases in which a treaty “contain[s] no provision regarding . . . withdrawal,” *id.* art. 56. Under international law, executive agreements are also considered treaties. See *supra* note 31.

²⁶⁵ See USMCA, *supra* note 35, art. 34.6.

²⁶⁶ Vienna Convention, *supra* note 31, arts. 65, 67.

²⁶⁷ See Joel P. Trachtman, *Power to Terminate U.S. Trade Agreements: The Presidential Dormant Commerce Clause Versus an Historical Gloss Half Empty*, 51 INT’L LAW. 445, 447 (2018).

²⁶⁸ Harold H. Koh, *Presidential Power to Terminate International Agreements*, 128 YALE L.J.F. 432, 432 (2018).

²⁶⁹ *Id.* at 462–63.

international trade agreements.²⁷⁰ In addition, under the mirror principle, the high level of congressional participation in making certain trade agreements—e.g., enacting TPA and subsequent legislation to approve and implement FTAs—could weigh in favor of requiring a commensurate degree of congressional participation to withdraw from such agreements.²⁷¹

In 2018, the Department of Justice’s Office of Legal Counsel (OLC)²⁷² published a memorandum arguing that the President had legal authority to withdraw the United States from NAFTA “without the need for any further legislative action.”²⁷³ OLC claimed that the President may unilaterally withdraw from congressional-executive agreements where, as with NAFTA, “an international agreement contains defined procedures for termination or withdrawal and Congress approves the agreement without limiting those procedures.”²⁷⁴ In such cases, OLC argued, the President is simply “implementing the laws that Congress has enacted and exercising his own foreign-affairs powers” by unilaterally invoking such termination procedures.²⁷⁵ OLC cited the historical practice of Presidents withdrawing from both treaties and executive agreements, including some regarding foreign trade matters, without specific congressional authorization.²⁷⁶ OLC’s memorandum did not address whether unilateral withdrawal would be lawful in the event that Congress enacted legislation expressly prohibiting it.²⁷⁷

OLC disputed the contention that Congress’s power over foreign commerce requires the President to obtain congressional approval to withdraw from trade agreements.²⁷⁸ OLC agreed with a legal scholar who has argued that Presidents have no less power to withdraw unilaterally from congressional-executive agreements, including FTAs and other trade agreements, than Article II treaties.²⁷⁹ This scholar observes that foreign commerce was historically regulated by Article II treaties as well as executive agreements and that Presidents have sometimes terminated such treaties unilaterally.²⁸⁰ In contrast to the mirror principle, this scholar maintains that Presidents may unilaterally withdraw from trade agreements even though the President’s lack of independent

²⁷⁰ See *id.* at 462–63, 480.

²⁷¹ See *supra* “Trade Promotion Authority: A Traditional Model.”

²⁷² Historically, the executive branch has relied on OLC to provide legal opinions that bind executive agencies. See Arthur H. Garrison, *The Opinions by the Attorney General and the Office of Legal Counsel: How and Why They Are Significant*, 76 Alb. L. Rev. 217, 237 (2012) (“The foundation of the OLC’s authority to issue binding opinions on the rest of the executive branch is based on the [statutory] authority of the Attorney General to issue such opinions, and administrative traditions within the Department of Justice and the executive branch.” (citing 28 U.S.C. § 512)).

²⁷³ Authority to Withdraw from the North American Free Trade Agreement, 42 Op. O.L.C. 133 (2018) [hereinafter OLC NAFTA Memo].

²⁷⁴ *Id.* at 137. The U.S. Court of Appeals for the D.C. Circuit in *Goldwater v. Carter* held, similarly, that the President could unilaterally withdraw from the treaty with Taiwan, since it “contained an explicit provision for termination” and “[t]he Senate, in the course of giving its consent, exhibited no purpose and took no action to reserve a role for itself . . . in the effectuation of this provision.” 617 F. 2d 697, 699 (D.C. Cir. 1979), *vacated*, 444 U.S. 996 (1979).

²⁷⁵ OLC NAFTA Memo, *supra* note 273, at 145.

²⁷⁶ See *id.* at 139–50.

²⁷⁷ See *id.*

²⁷⁸ *Id.* at 147 (“Given the President’s powers in this area, there is no good reason to believe that the Constitution preserves any greater role for Congress in the termination of a congressional-executive agreement on international trade than on any other subject matter.”).

²⁷⁹ See *id.* at 146–47 (citing Curtis A. Bradley, *Exiting Congressional-Executive Agreements*, 67 DUKE L.J. 1615, 1634 (2018)).

²⁸⁰ Bradley, *supra* note 279, at 1630.

Article II power over foreign commerce prevents the President from entering into such agreements without congressional authorization (i.e., via sole executive agreements).²⁸¹

Withdrawal Under the *Youngstown* Framework

The *Youngstown* framework²⁸² provides one lens through which to assess OLC's claims. OLC appears to argue that presidential withdrawal from FTAs falls within *Youngstown* category 1 (express or implied congressional authorization), placing presidential power at its zenith.²⁸³ For a category-one argument to succeed, legislation approving international trade agreements without placing express limits on the President's authority to invoke "defined procedures for termination or withdrawal"²⁸⁴ must be construed as implicitly authorizing the President to withdraw unilaterally.²⁸⁵ Some scholars question the soundness of this inference, in part because "[t]he implementing statutes [for trade agreements] provide other explicit authorization to the President to take specific actions, such as proclaiming tariffs consistent with the trade agreement," but do not expressly allow the President to withdraw from the FTA.²⁸⁶

If existing legislation is, instead, construed as neither approving nor prohibiting unilateral withdrawal from trade agreements, presidential power to take such action would fall into *Youngstown* category 2. In that category, the President may sometimes rely upon independent Article II powers, "but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain."²⁸⁷ One scholar has observed that, although the President has certain independent powers to conduct foreign affairs, "under the Commerce Clause, the lion's share of the substantive regulatory authority is assigned to Congress."²⁸⁸ Under this line of reasoning, one might argue that both the President and Congress might need to exercise these "co-dependent" powers to exit a trade agreement, precluding unilateral withdrawal by the President.²⁸⁹

Congressional acquiescence may also inform the extent of presidential powers in *Youngstown* category 2.²⁹⁰ OLC argues that, "[i]n view of . . . historical examples of presidential action, combined with what has usually been congressional acquiescence, there can no longer be serious

²⁸¹ See *id.* at 1632. This scholar rejects the symmetry of the mirror principle by analogizing to Article II treaties: "Just as presidents lack unilateral authority to regulate commerce and other subjects through sole executive agreements, they also lack the unilateral authority to conclude Article II treaties. And yet most commentators assume that they can terminate such treaties." *Id.* The scholar provides the following caveat: "This [argument] assumes . . . that presidents can legally withdraw the United States from Article II treaties. Substantial arguments support that assumption, but the Supreme Court has not dispositively resolved the issue. If that assumption falters, so too does the proposition that presidents can withdraw the United States from congressional-executive agreements." *Id.* at 1644.

²⁸² See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring).

²⁸³ See OLC NAFTA Memo, *supra* note 273, at 145 ("When the President invokes a termination provision in a congressional-executive agreement, he is implementing the laws that Congress has enacted and exercising his own foreign-affairs powers.").

²⁸⁴ *Id.* at 137.

²⁸⁵ Cf. Trachtman, *supra* note 267, at 461 ("The implicit delegation argument is that the inclusion of a termination provision in the treaty itself is evidence of an implicit intent to delegate termination power to the President.").

²⁸⁶ Trachtman, *supra* note 267, at 460–61.

²⁸⁷ *Youngstown*, 343 U.S. at 637 (Jackson, J., concurring).

²⁸⁸ See Trachtman, *supra* note 267, at 452.

²⁸⁹ See *id.*

²⁹⁰ See *Medellín*, 552 U.S. at 528 ("Under the *Youngstown* tripartite framework, congressional acquiescence is pertinent when the President's action falls within the second category.").

doubt that the President may terminate a treaty in accordance with its terms.”²⁹¹ Some scholars dispute that congressional acquiescence supports unilateral presidential withdrawal from trade agreements and certain other treaties, arguing that this practice has not been sufficiently long-standing, consistent, or accepted to count as a historical “gloss” on the Constitution.²⁹² One of these scholars, for instance, surveyed the ways in which the United States terminated over 80 trade agreements, finding that fewer than 5 were “terminated without some basis in Congressional action.”²⁹³

Congress may enact legislation prohibiting the President from withdrawing from certain trade agreements without congressional approval, thereby placing presidential power in *Youngstown* category 3, its “lowest ebb.”²⁹⁴ In that category, the President “can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.”²⁹⁵ Thus, even if the President has some inherent authority under Article II to withdraw unilaterally from a trade agreement absent congressional restriction, Congress could exercise its substantive authority over foreign commerce to prevent him from doing so, unless authority to withdraw from such agreements belongs exclusively to the President. Commentary to the *Restatement (Fourth) of the Foreign Relations Law of the United States* indicates that, while “structural and functional considerations” generally support the President’s unilateral withdrawal authority, they do not “suggest that Congress or the Senate lack the ability to limit suspension, termination, or withdrawal.”²⁹⁶ Thus, one legal scholar argues, Congress could “enact[] a ‘no unilateral exit’ statute” to prevent the President from withdrawing from an agreement on foreign commerce or other “zones” of congressional authority.²⁹⁷

Congress has arguably enacted such a “no unilateral exit” statute with respect to U.S. participation in the WTO. Section 125 of the Uruguay Round Agreements Act establishes expedited procedures for Congress to vote on a joint resolution to exit the WTO every five years, and provides that “[t]he approval of the Congress . . . of the WTO Agreement shall cease to be effective if, and only if, a joint resolution . . . is enacted into law”²⁹⁸ This provision arguably prohibits the President from withdrawing from the WTO without congressional approval as a matter of U.S. domestic law, although this interpretation is not free from doubt.²⁹⁹

²⁹¹ OLC NAFTA Memo, *supra* note 273, at 144.

²⁹² See Koh, *supra* note 268, at 448; Trachtman, *supra* note 267, at 454–55; see also *Youngstown*, 343 U.S. at 610–11 (Frankfurter, J., concurring) (“[A] systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned . . . may be treated as a gloss on ‘executive Power’.”).

²⁹³ See Trachtman, *supra* note 267, at 459.

²⁹⁴ *Youngstown*, 343 U.S. at 637 (Jackson, J., concurring).

²⁹⁵ *Id.*

²⁹⁶ RESTATEMENT (FOURTH) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 313, cmt. d (2024); see also *id.* at Reporter’s Note 6 (“Although historical practice supports a unilateral presidential power to suspend, terminate, or withdraw the United States from treaties, it does not establish that this is an exclusive presidential power.”). As noted, it is unclear whether past congressional acquiescence may support assertions of presidential power in *Youngstown* category 3. See notes 162 and 163 and accompanying text.

²⁹⁷ See Koh, *supra* note 268, at 449–50.

²⁹⁸ Pub. L. No. 103-465, § 125(b)(1), 108 Stat. 4809, 4833 (1994) (codified at 19 U.S.C. § 3535(b)(1)). For additional information, see CRS In Focus IF12997, *Congressional Review of U.S. Membership in the WTO*, by Cathleen D. Cimino-Isaacs, Christopher M. Davis, and Keigh E. Hammond (2025).

²⁹⁹ See Trachtman, *supra* note 267, at 463 (“While it does not necessarily mean that the President lacks independent termination authority, the ‘if, and only if’ language suggests an intent that this be an exclusive method of U.S. termination.”).

USMCA Joint Review Provision

USMCA, the successor to NAFTA, contains a “joint review” provision requiring the parties to consider whether to extend the term of the agreement starting in 2026.³⁰⁰ Stakeholders have expressed differing views on what role Congress must play in this joint review process.

The joint review (or sunset) provision provides that USMCA terminates after 16 years (i.e., in 2036) unless each party confirms it wishes to remain in the agreement.³⁰¹ The parties are to meet on the sixth anniversary of USMCA’s entry into force (i.e., on July 1, 2026) for a joint review of “any recommendations for action” submitted by the parties.³⁰² During the joint review, each party “shall confirm, in writing, through its head of government, if it wishes to extend the term” of USMCA for another 16 years.³⁰³ If each party confirms it wishes to extend the term, the term is “automatically” extended.³⁰⁴ Otherwise, the parties meet again annually for additional joint reviews until either the agreement terminates or the parties decide to extend its term.³⁰⁵ If the parties unanimously confirm their intention to extend the agreement, the process resets, and the next joint review occurs six years thereafter.³⁰⁶ (In addition to the joint review provision, USMCA contains a withdrawal provision stating that any country may withdraw from the agreement by providing six months’ notice.³⁰⁷)

Although USMCA provides that the “head of government” of each party (e.g., the U.S. President) communicates the party’s intention whether or not to extend the agreement, it does not specify what role, if any, other parts of government must play in that decision, a question left to the domestic law of each country. In the United States, the USMCA Implementation Act requires the President and USTR to engage in certain consultations with Congress, including reporting in advance of the joint review “the precise recommendation for action to be proposed at the review and the position of the United States with respect to whether to extend the term of the USMCA,” but it does not expressly require Congress to approve this decision.³⁰⁸

Some commentators regard the USMCA Implementation Act as leaving the “ultimate decision on [USMCA extension] entirely in the hands of the executive branch.”³⁰⁹ On the other hand, in its report on the USMCA Implementation Act, the Senate Finance Committee stated that the joint review provision “does not change the constitutional structure of the United States with respect to the conduct of trade policy” and that “the United States cannot withdraw from a congressionally approved trade agreement without the consent of Congress.”³¹⁰

³⁰⁰ USMCA, *supra* note 35, art. 34.7 (“Review and Term Extension”).

³⁰¹ *See id.* ¶ 1.

³⁰² *Id.* ¶ 2.

³⁰³ *Id.* ¶ 3.

³⁰⁴ *Id.*

³⁰⁵ *See id.* ¶ 4.

³⁰⁶ *See id.* ¶ 5.

³⁰⁷ *Id.* art. 34.6.

³⁰⁸ USMCA Implementation Act, Pub. L. No. 116-113, § 611, 134 Stat. 11, 79–80 (2020).

³⁰⁹ Simon Lester, *USMCA Implementing Legislation Provisions on the Sunset Clause*, INT’L ECON. L. & POL’Y BLOG (Dec. 14, 2019), <https://ielp.worldtradelaw.net/2019/12/usmca-implementing-legislation-provisions-on-the-sunset-clause.html> [<https://perma.cc/C9K3-UUWF>]; *see also* DAVID A. GANTZ, BAKER INST., IMPORTANT NEW FEATURES IN THE USMCA (2020), <https://www.bakerinstitute.org/research/important-new-features-usmca> [<https://perma.cc/AK39-RWLK>] (“Congress has no veto over any actions that are taken by the president to withdraw (or remain).”).

³¹⁰ S. REP. NO. 116-283, at 18 (2020).

The argument that Congress implicitly authorized the President to make a unilateral decision may be on firmer footing in the case of the USMCA joint review process than for withdrawal from FTAs more generally. As noted, the USMCA Implementation Act specifies how the President and USTR must engage with Congress in the joint review process, including certain consultation requirements. Thus, if Congress intended to retain authority to approve or disapprove the President's decision whether to extend USMCA's term, one might have expected Congress to include express language to that effect.³¹¹ Based on such reasoning, the fact that the law instead requires the executive branch only to consult with Congress might implicitly leave the ultimate decision to the President. In addition, whereas other FTAs may continue indefinitely without their withdrawal provisions being invoked, USMCA's joint review provision requires the parties to communicate their decisions regarding extension beginning in 2026. This fact may strengthen the inference that Congress intentionally left those decisions to the President by omitting any requirement for congressional approval.

If Congress wished to exercise greater control over USMCA's joint review process, it could consider enacting additional legislation requiring a greater level of congressional participation in advance of the 2026 joint review or—if the parties do not agree to extend the agreement at that time—subsequent joint reviews.

Considerations for Congress

Congress has broad powers that allow it to assert greater control over aspects of foreign trade agreement-making should it choose to do so. These powers include its authority to pass laws regulating foreign commerce and tariffs as well as its appropriations and oversight powers.³¹² Some of the specific tools that Congress has used in the past to control or influence trade agreement-making include laws delineating under what conditions the executive branch may enter into or withdraw from trade agreements and when they must be submitted to Congress for approval, “report-and-wait” laws that require the executive branch to submit proposed trade agreements to Congress before the agreement can take effect, additional transparency requirements, and various oversight and accountability mechanisms.³¹³ Congress could also consider legislation prohibiting entry into or withdrawal from certain trade agreements without congressional approval.

At least as a practical matter, the President may enjoy greater flexibility to make international trade deals without congressional approval where existing legislation grants the President authorities that can be used to bargain with or gain leverage over other countries. Recent trade deals with the United Kingdom and European Union, for example, have focused largely on the President's use of Section 232 and IEEPA to impose new tariffs on U.S. imports.³¹⁴ While

³¹¹ The interpretive principle, or “canon,” of *expressio unius est exclusio alterius* (the expression of one thing implies the exclusion of others) may support this reading. Cf. CRS Report R45153, *Statutory Interpretation: Theories, Tools, and Trends*, by Valerie C. Brannon (2023) at 51–52 (summarizing *expressio unius* canon). The Supreme Court has cautioned that this canon “does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an ‘associated group or series,’ justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence.” *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) (quoting *United States v. Vonn*, 535 U.S. 55, 65 (2002)).

³¹² See CRS Report R45442, *Congress's Authority to Influence and Control Executive Branch Agencies*, by Todd Garvey and Sean M. Stiff (2023).

³¹³ See *International Law and Agreements*, *supra* note 30.

³¹⁴ See *supra* “Second Trump Administration Tariff Deals.”

ongoing litigation has challenged the President's legal authority to impose some of these tariffs,³¹⁵ Congress also has the power to amend these statutory authorities and may consider the potential effects of such amendments on the President's ability to shape international trade deals.

The current lack of TPA authorization has arguably frustrated the pursuit of congressional-executive trade agreements, foreclosing a potential alternative to hybrid trade agreements and nonbinding instruments. Since the expiration of TPA-2015 in 2021, some Members of Congress have introduced legislation that would reauthorize some form of TPA. In the 119th Congress, one bill would establish fast-track authority for congressional approval of agreements establishing free trade in the critical minerals and rare earth sectors,³¹⁶ while others would provide fast-track authority for a possible FTA with the United Kingdom.³¹⁷ Such legislation could channel trade agreement-making through procedures over which Congress has greater control.

Another option is that Congress could consider targeted legislation, such as the Taiwan Agreement Implementation Act, that gives or withholds approval for agreements that the executive branch has already entered into or places conditions on future agreements. Congress could also consider passing legislation clarifying USTR's authority with respect to making foreign trade agreements or withholding funding for the implementation of agreements that are not submitted for approval to Congress.³¹⁸

Courts have sometimes declined to decide cases presenting political questions about the constitutional requirements for entering into and withdrawing from international agreements,³¹⁹ making it possible that at least some of the legal and constitutional debates surveyed in this report may unfold in the political sphere rather than being resolved by litigation. Nonetheless, Congress may use its powers to help shape the political answers to any such political questions.

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³¹⁵ CRS Legal Sidebar LSB11332, *Court Decisions Regarding Tariffs Imposed Under the International Emergency Economic Powers Act (IEEPA)*, by Christopher T. Zirpoli (2025).

³¹⁶ S. 429, 119th Cong. (2025).

³¹⁷ H.R. 1743, 119th Cong. (2025); S. 776, 119th Cong. (2025).

³¹⁸ See, e.g., Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Pub. L. No. 100-204, § 139, 101 Stat. 1331, 1347 (1987).

³¹⁹ See *Made in the USA Found. v. United States*, 242 F.3d 1300, 1302 (11th Cir. 2001).

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