

TRADE PROMOTION AUTHORITY: FACTS AND ISSUES

EXECUTIVE SUMMARY

To negotiate international trade agreements, a U.S. president needs Trade Promotion Authority (TPA). TPA allows a president to finalize an agreement and put it before the U.S. Congress for an up-or-down vote. Without such authority, other countries would not conclude trade agreements with the United States, since amendments in Congress could scuttle the terms of previously agreed upon measures. Both the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (T-TIP) would yield significant economic gains to the U.S. economy and enhance American influence in Asia and Europe.

The fears raised by some that granting the president Trade Promotion Authority could lead to increased immigration are unfounded. The U.S. Trade Representative has already stated the United States will not make any new commitments to expand immigration in a Trans-Pacific Partnership agreement. Moreover, it is in the Obama Administration's interest to avoid adding provisions to a trade pact, such as new immigration measures, that may lose votes in Congress, since passage of a final trade agreement is not assured. Finally, the Obama Administration's track record on business immigration is not a positive one, with denial rates for L-1B petitions to transfer employees currently the highest on record, making it even less plausible the Administration would risk passage of the trade pact to add new immigration measures.

TRADE PROMOTION AUTHORITY: WHY IT IS IMPORTANT

Trade Promotion Authority (TPA), formerly known as "fast track" authority, is necessary for the United States to negotiate trade agreements with other countries. "TPA is the authority Congress grants to the President to enter into certain reciprocal trade agreements, and to have their implementing bills considered under expedited legislative procedures, provided the President observes certain statutory obligations," explains the Congressional Research Service. "TPA defines how Congress has chosen to exercise its constitutional authority over a particular aspect of trade policy, while affording the President added leverage to negotiate trade agreements by giving trading partners assurance that final agreements can receive consideration by Congress in a timely manner and without amendments."¹

Trade Promotion Authority enables a president to negotiate a trade pact and submit the agreement, via implementing legislation, for a vote of Congress. The House and Senate voting on a trade agreement without amendment is crucial for getting other nations to sign an agreement with the United States. Otherwise, it would be like agreeing to sell your house to a man at a particular price and then the man's spouse, father, brother and sister all have new stipulations they want to attach before the agreement becomes final. Nobody would do business with someone under such conditions. A recent article in *Forbes* noted, "It is unlikely that our trading partners will approve

¹ Ian Fergusson, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, Congressional Research Service, April 27, 2015. Research assistant Zachary Silverman provided valuable research to this NFAP policy brief.

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a free trade agreement with the U.S. knowing that the terms of that agreement could, and likely would, be endlessly changed or bottled up in Congressional committees due to amendments from any one of the 535 Members of Congress.”²

However, Congress plays an important role in international trade. “Under TPA, Congress lays out three basic requirements for the administration,” explain Rep. Paul Ryan (R-WI) and Sen. Ted Cruz (R-TX) in an op-ed in *The Wall Street Journal*. “First, it must pursue nearly 150 specific negotiating objectives, like beefing up protections for U.S. intellectual property or eliminating kickbacks for government-owned firms. Second, the administration must consult regularly with Congress and meet high transparency standards. And third, before anything becomes law, Congress gets the final say.”³

Ryan and Cruz write:

The Constitution vests all legislative power in Congress. So TPA makes it clear that Congress – and only Congress – can change U.S. law. If the administration meets all the requirements, Congress will give the agreement an up-or-down vote. But if the administration fails, Congress can hit the brakes, cancel the vote and stop the agreement.

Trade-promotion authority will hold the administration accountable both to Congress and to the American people. Under TPA, any member of Congress will be able to read the negotiating text. Any member will be able to get a briefing from the U.S. trade representative’s office on the status of the negotiations – at any time. Any member will get to be a part of negotiating rounds. And most important, TPA will require the administration to post the full text of the agreement at least 60 days before completing the deal, so the American people can read it themselves.⁴

Approving Trade Promotion Authority could help bring to a successful conclusion two trade negotiations – the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (T-TIP). Both agreements aim to eliminate many existing tariffs and reduce regulatory trade barriers. The economic implications of both agreements are substantial.

THE ECONOMIC CASE FOR TRADE PROMOTION AUTHORITY

As a general matter, expanding international trade increases specialization and improves standards of living. The benefits expected from increasing trade liberalization in Europe and the Asia-Pacific region are significant. “The Trans-Pacific Partnership (TPP) agreement, now in negotiation among nine Asia-Pacific countries, could yield annual global income gains of \$295 billion (including \$78 billion for the United States) and offers a pathway to free trade in the Asia-Pacific with potential gains of \$1.9 trillion,” according to the Peterson Institute for International

² Wayne Winegarden, “Congress Should Pass Trade Promotion Authority,” *Forbes*, May 4, 2015.

³ Paul Ryan and Ted Cruz, “Putting Congress in Charge on Trade,” *The Wall Street Journal*, April 21, 2015.

⁴ *Ibid.*

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Economics. “The TPP’s expected template promises to be unusually productive because it offers opportunities for the leading sectors of emerging-market and advanced economies.”⁵

The size and growth rates of the countries that would be included in an Asia-Pacific agreement are noteworthy. “A potential TPP FTA [free trade agreement] may present an opportunity for the United States to expand its trade and investment with a large and fast-growing regional market,” writes the Congressional Research Service. The combined population of TPP countries is 50 percent larger than the U.S. population “and several TPP economies have been growing rapidly over the past decades.”⁶

The benefits to the United States are both economic and strategic. Influence in the Asia-Pacific region is up for grabs, with America no longer assured of playing the leading role in the years ahead. “Even members of America’s armed forces are worried,” reports *The Economist*. “As one senior serving officer in the Pacific puts it, ‘the TPP unites countries that are committed to a trade-based future, transparency and the rule of law. It is the model that the United States and Europe have advanced versus that advanced by China. It is an opportunity to move the arc of Chinese development, or identify it as a non-participant.’”⁷

The United States would also benefit from a Transatlantic Trade and Investment Partnership agreement with the European Union. “A transatlantic free trade accord for goods would deliver significant gains to both economies,” concludes the European Center for International Political Economy in Brussels. “It is difficult to come up with any other bilateral trade deal that would deliver gains of similar magnitude.” Economists Fredrik Erixon and Matthias Bauer estimate gains to U.S. Gross Domestic Product of about 1 percent (0.99 to 1.33 percent) or about \$135 to \$181 billion.⁸

IMMIGRATION: THE DOG THAT DOESN’T BITE IN TPA

A controversy has emerged about whether granting the president Trade Promotion Authority would result in expanded immigration. Senator Jeff Sessions (R-AL), chair of the Senate’s immigration subcommittee, wrote, “There are numerous ways TPA could facilitate immigration increases above current law – and precious few ways anyone in Congress could stop its happening. For instance: language could be included or added into the TPP, as well as any future trade deal submitted for fast-track consideration in the next 6 years, with the clear intent to

⁵ Peter A. Petri and Michael G. Plummer, *The Trans-Pacific Partnership and Asia-Pacific Integration: Policy Implications*, Policy Brief, Peterson Institute for International Economics, June 2012.

⁶ Brock R. Williams, *Trans-Pacific Partnership (TPP) Countries: Comparative Trade and Economic Analysis*, Congressional Research Service, June 10, 2013.

⁷ “America’s Big Bet,” *The Economist*, November 15, 2014.

⁸ Fredrik Erixon and Matthias Bauer, *A Transatlantic Zero Agreement: Estimating the Gains from Transatlantic Free Trade in Goods*, European Centre for International Political Economy, 2010.

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facilitate or enable the movement of foreign workers and employees into the United States (including intracompany transfers), and there would be no capacity for lawmakers to strike the offending provision.”⁹

Several holes exist in the theory that granting Trade Promotion Authority will increase immigration. First, Trade Promotion Authority is not the final step in the legislative process. After an international agreement is negotiated, Congress must approve the agreement via implementing legislation. There is no evidence that including immigration provisions in an agreement would gain any votes in Congress. In fact, it appears more likely to lose votes, given at least some members antipathy towards immigration. Given that passage of any trade agreement is not guaranteed it would make no sense for the Obama Administration to attempt to “slip in” immigration provisions.

Making it even less likely is that the Obama Administration has made a specific commitment *not* to include in a Trans-Pacific Partnership agreement any provisions to expand immigration to the United States, including via temporary entry. In a letter to Senate Finance Chairman Orrin Hatch, U.S. Trade Representative Michael B. G. Froman wrote, “I appreciate your writing to me, and welcome the opportunity to clarify that the United States is not negotiating and will not agree to anything in TPP that would require any modification to U.S. immigration law or policy or any changes to the U.S. visa system.”¹⁰ Going back on that commitment is likely to lose votes in Congress.

Ambassador Froman notes, “While TPP will include a short chapter on temporary entry, which the United States supports, it is narrow in scope and does not change any aspect of U.S. immigration laws. This chapter will include good governance provisions on transparency with respect to visa processing and cooperation on border security . . . As I stated in the hearing before the Senate Finance Committee, other TPP Parties are negotiating temporary entry commitments with one another, but the United States is not. We will not be making offers or agreeing to anything in that area. No provision in TPP will require changes to U.S. immigration, regulations, policy or practice because our system is already operating in a manner that is consistent with the provisions in the temporary entry chapter.”¹¹

House Judiciary Committee Chairman Bob Goodlatte (R-VA) wrote a recent Dear Colleague letter to House members affirming that concerns about immigration provisions becoming part of an upcoming trade agreement are misplaced. “Whatever other countries participating in the TPP negotiations agree to regarding temporary entry, the U.S. will not be a signatory,” noted Goodlatte. “In addition, no one has been more vocal than me in their criticism of the Obama Administration’s attempt to unconstitutionally rewrite our immigration laws through the grant of

⁹ Daniel Halper, “Sessions: Trade Deal Opens Immigration Floodgates,” *The Weekly Standard*, May 3, 2015.

¹⁰ Letter to Senate Finance Chairman Orrin Hatch from U.S. Trade Representative (Ambassador) Michael B. G. Froman, April 22, 2015.

¹¹ *Ibid.*

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administrative legalization to millions of unlawful aliens. There is nothing in the current draft of the TPP that will in any way advance or facilitate this or any other unconstitutional action by the Administration.”¹²

A second factor that would make it unlikely for immigration measures to be included in a future trade agreement is that the Obama Administration has not been especially pro-business in its immigration policies. The denial rate for L-1B petitions to transfer employees with specialized knowledge into the United States reached an all-time high of 35 percent in FY 2014.¹³ Moreover, few observers think the Administration’s recent guidance on L-1B petitions will solve a problem that has grown worse each year during the Administration. On lower-skilled visas, the Obama Administration has promulgated restrictive regulations for H-2B visas, which a court ruled exceeded the authority of the Department of Labor to issue.¹⁴ On immigration, the Obama Administration has not been pro-business in its actions, making it unlikely to suddenly become so and risk a trade agreement in Congress.

CONCLUSION

President Ronald Reagan spoke eloquently in favor of free trade. He stated, “Our trade policy rests firmly on the foundation of free and open markets. I recognize . . . the inescapable conclusion that all of history has taught: The freer the flow of world trade, the stronger the tides of human progress and peace among nations.”¹⁵ The benefits of free trade have proven themselves over time. To move forward toward liberalized trade that will improve standards of living in America and elsewhere the president needs Trade Promotion Authority.

¹² Rep. Bob Goodlatte, *The Trans-Pacific Partnership is Not an Immigration Give-Away*, “Dear Colleague,” April 30, 2015.

¹³ *L-1 Denial Rates Increase Again for High Skill Foreign Nationals*, NFAP Policy Brief, National Foundation for American Policy, March 2015.

¹⁴ “Obama’s Visa Double Game,” *Review & Outlook*, *The Wall Street Journal*, April 7, 2015.

¹⁵ As cited in Daniel Griswold, “Reagan Embraced Free Trade and Immigration,” commentary, *The Cato Institute*, June 24, 2004.

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