Understanding Trade Promotion Authority (TPA)

What is Trade Promotion Authority (TPA)?

Trade Promotion Authority (TPA) is legislation that would grant authority to the President to negotiate trade agreements while setting the parameters for congressional procedures and amendments to the implementing legislation for those agreements. TPA is known as "fast track" because it would speed up the trade deal approval process by restricting congressional changes, which would drag out finalizing trade deals as well as change what has already been negotiated. Specifically, TPA: (1) gives the President the authority to negotiate trade deals, setting clear congressionally mandated negotiating objectives; (2) establishes consultation and access requirements before, during and after negotiations; and (3) requires Congress to vote, without the ability to amend the agreement, within 90 days after the President submits implementing legislation.

Is this new? Has Congress passed TPA Before?

Early versions of TPA were first enacted under the Reciprocal Trade Agreements Act of 1934 and were made more sophisticated in the Trade Act of 1974. TPA has been subsequently renewed and slightly amended since, most recently in 2002. Passage of a free trade agreement without TPA is not unprecedented, but has only been done once in 2001 with the U.S.-Jordan FTA.

Why do we need TPA?

TPA authority expired in July 2007. The United States Trade Representative (USTR) has been negotiating two trade agreements without TPA, the Trans-Pacific Partnership (TPP) and the Trans-Atlantic Trade and Investment Partnership (T-TIP) leaving future U.S. trading partners uneasy about coming to a final agreement. Thus, passage of TPA will strengthen the U.S.'s hand at successfully concluding these agreements, demonstrating to our trading partners that Congress will consider and most like pass implementing legislation without amending the agreement. It is unlikely that a complicated and controversial free trade agreement like the TPP could pass Congress without the disciplines of TPA.

What's in The TPA Bill in Congress: The Bipartisan Congressional Trade Priorities Act of 2014?

Introduced on January 9, 2014 concurrently in the House (H.R. 3830) and the Senate (S.1900) by outgoing Senate Finance Committee Chairman Max Baucus (D-MT), Ranking Member Orrin Hatch (R-UT) and House Ways and Means Chairman Dave Camp (R-MI) and the Bipartisan Congressional Trade Priorities Act of 2014 seeks re-establish, strengthen and improve the provisions of the 2002 Trade Act.

The negotiating objectives in the 2014 bill are different than those objectives contained in the 2002 bill in that it:

- Establishes new goods and services objectives for the digital age
- Strengthens rules for agriculture
- Maintains balanced objectives for investment
- Protects intellectual property
- Updates labor and environment
- Addresses currency manipulation
- Addresses the impact of state-owned enterprises (SOEs)
- Seeks improved regulatory practices
- Takes on unfair localization requirements
- Promotes global value chains
- Seeks strong enforcement
- Preserves trade remedies

The process for consideration of trade agreements under the 2014 trade bill remains largely unchanged. The bill maintains the requirement that the president notify Congress 90 days prior to starting negotiations. The bill also requires the administration to produce several reports prior to passage of any bill under TPA, including:

- A report to the House Ways and Means and Senate Finance Committees reports on the employment impact of the agreement. The report should be modeled after Executive Order 13141, which created the environmental review process for free trade agreements.
- A "meaningful" report on labor rights in any FTA country and "a description of any provisions that would require changes to the labor laws and labor practices of the United States."
- An annual publically released report on any enforcement action taken under the terms of an FTA. This language specifically covers labor and environment chapters, and would also cover measures such as safeguard actions.
- The International Trade Commission to release, one year after passage of the bill, a study examining the impacts of all prior free trade agreements. Additionally, the Department of Commerce must release a report on the WTO dispute settlement system.

Finally the bill greatly strengthens Congress' oversight over trade negotiations as well as requires the Administration to consult with the public. The bill ensures that every Member of Congress has access to the negotiating text, requires USTR to meet with Congress at any requested time, allows members to participate in negotiations and establishes a House and Senate Advisory group that requires regular meetings.

What is the Political Climate Surrounding this Bill?

The TPA bill was introduced in Congress by the two leaders of the Senate Finance Committee and the Chairman of the House Ways and Means Committee. Those supportive of the bill are critical of the White House for not being more involved in building Democratic support for the bill. Ways and Means Ranking Member Sander Levin and Trade Subcommittee Ranking Member Charlie Rangel both issued statements opposing the current draft for failing to adequately address currency manipulation or to provide enough of a role for Congress during the negotiation of trade agreements. While some other Democrats in the House have been neutral, most Democrats in that chamber, who will be under enormous pressure from the labor unions, will likely oppose the bill. A bicameral counter bill is expected to be introduced in the near future.

Most Republicans from both Chambers should be supportive of the bill, but there are many House members whom have never voted on a TPA bill. Some, mostly those who align with the Tea Party, have expressed concern over the constitutionality of providing the President fast track authority. Chairman Camp's staff has called upon the business community to educate these members, changing the focus to Congress's increased oversight of trade negotiations and final say of the implementation.

The Senate faces another dynamic as Senator Baucus leaves to become the U.S. ambassador to China. His replacement, Senator Ron Wyden (D-OR), whose staff did not see the language of the bill until just prior to introduction, will want to have more control over the contents of the bill as chairman of the Senate Finance Committee. Five Democrats on the Senate Finance Committee recently wrote a letter to the administration that was highly critical of the 2002 TPA and urged the administration to overhaul this bill. Senators Bob Casey (D-PA), Sherrod Brown (D-PA), Robert Menendez (D-NJ), Debbie Stabenow (D-MI) and Ben Cardin (D-MD) signed that letter. Just last week, Senate Majority Leader Harry Reid (D-NV) voiced his opposition to granting TPA to the President just a day after the State of the Union, dealing a blow to the bill's chances before November elections.

If Congress does not enact TPA by earlier summer we expect the vote to take place after the 2014 congressional elections, perhaps in a "lame duck" session of Congress that will likely take place in November and December.