

Will the President get Trade Promotion Authority?



The debate on trade has very much been in the headlines since US Senate Finance Committee Chairman Orrin Hatch (R-Utah), Ranking Member Ron Wyden (D-Ore) and House Ways and Means Chairman Paul Ryan (R-Wis) introduced the long expected [Trade Promotion Authority legislation on 16 April](#). It is turning out to be one of the toughest political battles of this year, where the President has wide support from Republicans, but less from members of his own party. This was obvious last week when the Senate first blocked consideration of the bill on the floor, before a new agreement on how to proceed was found.

Trade Promotion Authority delegates the power to the President to negotiate trade agreements. It sets out the process and procedure for information and consultation with Congress before, during and after negotiations, and allows for trade deals to be submitted to Congress for an up-or-down vote without further amendments. The ability to submit completed trade deals - such as the TPP or the TTIP- to Congress for a single vote is seen as key for the possibility to conclude negotiations.

“It’s important to understand the benefits of trade as the United States is currently negotiating trade agreements with 11 Asia-Pacific countries, 28 member countries of the European Union, and 22 other countries for a Trade

in Services Agreement. Agreements with the Asian-Pacific and European nations alone would open markets to nearly 1 billion consumers. But to move forward with these agreements, Congress needs to pass what’s called “Trade Promotion Authority”, said Ways and Means Trade subcommittee Chairman Pat Tiberi in one of the many articles defending the proposal during the last few days. There are indeed increasing expectations that the negotiations on the Transpacific Partnership Agreement, which have been going on for five years, are soon to be concluded. At the same time, [there is an intense campaign against the fast-track](#) legislation, as TPA is also called. “The TPP is a secret trade agreement that rich corporations can read but the rest of us can’t. It will endanger American jobs and the environment. That’s why we are so opposed to fast-track legislation and urge all House Democrats to oppose it.” said Paul Hogarth, one of the campaign director against the proposal, in a recent interview.

While it took several months to negotiate and come forward with a legislative bi-partisan proposal on TPA, the process at the committee level was very quick. In less than a week after it was introduced, both the Senate Finance Committee and the House Ways & Means Committee had approved it . . . *continued on page 2* . . .

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The way forward is less clear, as could be seen in the Senate last week, and maybe even less so in the House, where it is far from obvious that the necessary 218 votes are there for the legislation to pass. Despite major efforts from the President to reach out to his fellow Democrats, it will most likely in the end be a very narrow result where every single vote will count, as has often been the case on trade in the US Congress. In 2002, [the House](#)

[passed the TPA with only 215-212.](#)

The Senate has now started the floor debate on this proposal, and will probably vote before the House. The authors have said the goal is to conclude the process before the end of May in the Senate, but it still remains to be seen whether this will be possible. The House is then likely to move ahead with the trade legislation in June, according to Speaker Boehner.

A closer look at the TPA

The legislation contains three main components:

- Congressionally-mandated negotiating objectives
- The process and procedure for information and consultation with the Congress before, during and after negotiations.
- The procedure for approval of a trade agreement in Congress

Among the objectives listed in the legislation, the authors stress that they are updating them compared to similar legislation in the past, to fit for the 21st Century. New provisions on [Cross-Border Data Flows](#), as well as on [Digital Trade and the Internet](#) are included among the objectives. The ability for U.S. firms to participate in global value chains and multi-sectoral commerce, intellectual property protection, the fight against currency manipulation are other issues addressed. As regards investment, the draft bill refers as an objective to provide "meaningful procedures for resolving disputes, including improved mechanisms for resolving disputes between an investor and a government that ensure the fullest measure of transparency".

The authors have also highlighted that it updates provisions on [labour and environmental standards](#), with the same dispute settlement and remedies as for other enforceable obligations, and recognizes the importance of trade agreements in advancing internationally recognized human rights.

As regards the procedure for approval of a trade agreement in Congress, the bill foresees that TPA is granted for any agreements entered into force before 1 July 2018, which can be extended by another three years by Congress.

The agreement on TPA came as part of a larger trade

WHAT TPA MEANS

Nothing stops a president from negotiating a trade agreement at any time – even without trade promotion authority. In fact, that’s one reason why TPA is so important. It provides accountability to an administration and ensures effective oversight throughout negotiations. Take a look at what these negotiations look like with – and without – TPA in place.

	Without TPA	With TPA
President Can Negotiate Trade Agreements	✓	✓
President Can Keep Congress and Public in the Dark	✓	✗
Congress Directs Negotiating Objectives	✗	✓
Members of Congress Entitled to Read Negotiating Text	✗	✓
Administration Required to Publish Updated Summaries throughout Negotiations	✗	✓
Administration Must Make Text of Trade Agreement Public for 60 Days Before Consenting	✗	✓
Good Agreement Can be Protected from Efforts to Kill It	✗	✓
Congress Has Final Say on an Agreement	✓	✓

Source: [www.http://waysandmeans.house.gov/trade/](http://waysandmeans.house.gov/trade/)

package, which also includes Trade Adjustment Assistance (TAA), a program for workers who have lost their job as a result of foreign trade, and the prolongation of GSP and AGOA, the preference program for Africa, the latter set to expire by the end of this year. In fact, the agreement to move the TPA in parallel with the TAA is crucial for the support of many Democrats.

TPA: Transparency

One of the main issues debated also in the US Congress is the need for increased transparency in trade negotiations, and particularly in relation to the Transpacific negotiations. Under TPA, every member of Congress will be able to:

- **Read Negotiating Text:** Allows every member of Congress to read the negotiating text.
- **Receive Detailed Briefings:** Requires the U.S. Trade Representative's office to brief any interested member on the status of negotiations at any time.
- **Attend Negotiating Rounds:** Allows any member to become a "congressional adviser" and as a result eligible to attend negotiating rounds.
- **Provide Guidance:** Creates House and Senate Advisory Groups to oversee negotiations and receive regular briefings. Any member can submit views.

- **Coordinate with Public and Advisory Committees:** Lays down guidelines on public engagement and sharing information with advisory committees.
- **Receive adequate time to review deal:** Requires the President to publish the text of a completed trade agreement 60 days before signing it.
- **Consult with a New Transparency Officer:** Creates a chief transparency officer at USTR that will consult with Congress and advise USTR on transparency policies

9th TTIP round in New York, 20-24 April

The ninth round of the TTIP negotiations took place in New York 20-24 April, far from the heated debates on the Hill on the TPA, the truth being that while TPA also has specific objectives for the TTIP, these negotiations are not yet at the forefront of the public debate.

At a briefing closing the round, US and EU negotiators indicated they had made progress on the regulatory aspect of the initiative in two key areas, with both sides creating a "consolidated text" on horizontal regulatory cooperation, the US tabling a new proposal on technical barriers to trade (TBT) and progress being made on talks of specific sectors such as pharmaceuticals, automobiles and medical devices.

Ignacio Garcia Berceo, the EU's lead negotiator in the TTIP talks, also acknowledged that the EU had tabled a [revised proposal on horizontal regulatory cooperation](#) that seeks to involve government regulators at the sub-central level.

On TBT, US TTIP chief negotiator Daniel Mullaney said that they had tabled a new proposal that would eliminate what he characterized as duplicative testing requirements for manufactured goods to ensure they comply with the US and EU rules and which would allow a US

manufacturer to certify that its products meet EU rules once in a US lab and not have to conduct that testing again in the EU -- and vice versa. Due to different processes of approving standards in the EU and the US, this might however not be as easy as it sounds, as European producers are not using third-party lab tests in the same extent.

Regarding the specific sectors regulatory talks, negotiators have been charged with making as much technical progress as possible in preparation for a "joint regulatory review" that would take place in September or October.

Energy and raw materials were also discussed at the round, addressing various elements that could become part of a chapter on this area, including access to infrastructure such as pipelines etc, without actually agreeing how to structure a final deal, nor if there will be a specific chapter on energy.

The next negotiating round will take place in Brussels before the summer break, in mid-July.

Congressional Opposition to TTIP

On 23 April, 31 House Democrats signed an [open letter to President Obama](#) outlining their concerns with TTIP. The representatives highlighted three major concerns that they view as disadvantageous to the well-being of the American economy and its working citizens. First, they noted their opposition to an investor-state dispute settlement system (ISDS). The representatives believe the inclusion of an ISDS would grant rights to private foreign corporations that are not allowed to U.S. companies, and "threaten actions taken by Congress and the Administration to protect U.S. consumers, businesses, and national interests." The stability of the U.S. financial system could also be at risk and new liabilities to taxpayers could emerge, according to their statements.

The representatives also asked that TTIP not weaken the ability for the Buy America provision to be enacted. Infringement by TTIP upon this provision will hinder federal, local, and state government ability to reinvest in

the domestic economy and workforce, they argued.

The third pillar of the letter demanded that TTIP should only strive for regulatory convergence between the U.S. and EU if TTIP "maintains high standards for consumer, environmental, and labor protections; while affording trading partners the autonomy to adopt stronger non-discriminatory protections." Additionally, it was stated that TTIP must not inhibit any participating country's ability to enforce its own standards and protections that are not included in the agreement. The final note of the letter briefly asked for greater transparency on trade negotiations, citing the need for free and open information, as the policies being debated affect "every American's daily life."

Malmström meets with Froman



Commissioner Malmström travelled to Washington on 4 May for the latest political stock-taking meeting with Ambassador Froman at USTR, and also addressed the future of EU Trade policy in an engaging event at CSIS. Her topics included TTIP, of course, but also the need to strategically plan for the future of EU trade policy globally.

"I'm here in Washington for meetings with Ambassador Froman on the Transatlantic Trade and Investment Partnership. We are assessing where we stand and making sure our negotiators are on track. It's actually the third time we've met this year, which is

more than I can even say about some of my family members! Why? Because we both take this negotiation very seriously," she said in her opening statement.

The Commissioner was supposed to discuss with her U.S. counterpart the EU's proposal for how to structure investment protections and investor-state dispute settlement (ISDS) in a trans-Atlantic trade deal, in a sign that negotiations on the sensitive issue are resuming after a year-and-a-half long pause.

Commissioner Malmström said she would float several ideas with Froman, essentially aimed at ensuring that the investment provisions in a Transatlantic Trade and Investment Partnership (TTIP) deal do not infringe on a government's right to regulate.

Their meeting in Washington comes as part of their commitment to communicate with each other after each round of the TTIP negotiations in an effort to increase the political oversight of the trade talks. Malmstrom also said she would press Froman on how the pending Trade Promotion Authority (TPA) bill and other trade legislation could impact U.S.-EU relations.

Atlantic Council Launches Trade and Security Initiative



US Secretary of State John Kerry was the keynote speaker at the Atlantic Council's launching of the Trade and Security Initiative on 23 April. Kerry defended the TPA, stating it is a "necessary prerequisite" to both the TPP and TTIP. He told the audience that he understands there is a fear of jobs moving overseas, but that the trade deals would "reinvent the mix of our economic base", and cited that the lack of a trade agreement will lead to the American economy being "blown away". Kerry spoke for 29 minutes at the outset of the Initiative, which also saw foreign ambassadors and US lawmakers in the audience.

The day's events also saw Atlantic Council President and CEO Frederick Kempe moderate a discussion on trade with Caroline Atkinson, Deputy National Security Advisor for International Economic Affairs at the White House, retired Marine Corps Gen James L. Jones, Jr., Chairman of the Atlantic Council's Brent Scowcroft Center on International Security, Paula J. Dobriansky, a Senior Fellow at Harvard's Belfer Center for Sciences and International Affairs, and Kim Beazley, Australia's Ambassador to the United States. Beazley and Atkinson both mentioned that the trade agreements provide the US with an opportunity to exert its influence in the international arena. Topics such as labour rights, the environment, and intellectual property rights are likely to evolve. American participation in the TPP would allow for it to help shape such values. If American does not absorb that role through the TPP, Beazley notes that China will inevitably push for their own version of a Pacific trade agreement. Dobriansky stated that the completion of TTIP will enhance transatlantic cooperation and strengthen NATO.

Americans warming up to free trade

For the first time since 1999, a plurality of the American public said that free trade benefits the country, according to [a poll published in The Wall Street Journal on 4 May](#). 37% of adults believe free trade has helped the U.S., while 31% believe free trade hurt the U.S. 32% of the public selected neither help nor hurt. 25% of respondents said that free trade has a negligible

impact, while the remaining 7% stated they are unsure. American sentiment towards free trade has improved significantly since the height of the recession in 2010. At that time 17% of Americans responded that free trade positively impacted the American economy, while 53% said it had negative impacts .



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