



BULLETIN

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Trade Promotion Authority: An Opportunity to Invigorate the TTIP Negotiations

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In June, U.S. President Barack Obama was finally granted Trade Promotion Authority (TPA), executive negotiating power on trade deals, which will give him leverage to secure his economic legacy. On the U.S. side, the Republican-Democrat divide leading up to the bill's adoption has been illustrative of the controversy surrounding ongoing U.S. negotiations on the Trans-Pacific and Transatlantic trade agreements. For the European Union, the signed TPA is a goodwill gesture from the U.S. and portends gains in momentum for TTIP, the Transatlantic trade deal.

On 29 June, U.S. President Barack Obama signed the unbundled Trade Promotion Authority (TPA), part of a comprehensive pro-trade package passed by the Senate on 24 June. Also known as “fast-track authority”, TPA allows Congress to cede negotiating authority under specifically defined parameters set forth in the bill. In its basic form, TPA delineates legislative and executive authority in trade deal talks, ostensibly ensuring the efficiency of negotiations. Though not explicitly necessary, since the initiation of TPA via the Trade Act of 1974 no major U.S. trade deal, including NAFTA, has been passed without it. Therefore, it has become understood that TPA is a necessary precursor to any trade agreement. In essence, it is a sign of goodwill to America's negotiating partners, assuring them that the final agreement will be given timely and un-amended consideration by Congress.

"ObamaTrade", a Harbinger of Further Partisan Division. In its nascent form, TPA was straightforward and bipartisan. Over the years, however, as interest group representation has sullied U.S. party politics, manifesting itself in candidate endorsements and campaign donations, the partisan split has widened and trade deals have become controversial. Democrats, in particular, are under pressure by groups—typically labour unions—to form staunch opposition to U.S. trade deals: some of the most powerful Democrat supporters are those who happen to be the most adversely affected by trade legislation. This time, in an attempt to assuage naysayers, Congress piggybacked TPA legislation with an accompanying proposal, TAA, or Trade Adjustment Assistance. The rationale is this: Inevitably, under changes to production ushered in by new trade deals, certain groups will suffer or be displaced by such strategies as outsourcing and offshoring. To offset the costs to these groups, the federal TAA programme helps workers, firms and communities adjust to sudden or long-term changes. At the beginning of June, TAA, tidily mixed in with TPA, passed the Senate, but the package struck a sour note in the House. On 12 June, TPA passed the House but, in an unprecedented split with the president, their party leader, Democrats torpedoed TAA, and then used the now out-of-sync bill as a tool to raise opposition to TPP and President Obama's trade agenda. Lawmakers and the president switched strategies, detaching TPA from TAA in an effort to win a second vote. They were successful: Hopes for ratification of the trade deal were resurrected with the new deal, which went on to pass the House and Senate.

The recently signed authority is particularly focused on the Trans-Pacific Partnership with 11 Pacific Rim Countries and the Transatlantic Trade and Investment Partnership with the EU, but it also allows the president to close any trade deal up to 2021. For President Obama, fast-track legislation is vital: it represents a decisive measure to close TPP, which he hopes will be a defining economic deal of his presidency. For the pro-trade Republican Party, too, the trade legislation is of the utmost importance, as the Republican-controlled Congress is looking first to show its willingness to cooperate

across party lines as the presidential election season begins and second to bolster a trade deal that holds steady the party's economic platform. The ones left out in the cold are Congressional Democrats, who remain torn between their support for the president and their loyalty to key party supporters who claim any U.S. trade deal will bring nothing but woe. To wit, these groups have vowed to withdraw candidate endorsements and financial support for any legislator who voting "yes" on the trade legislation. This has Democrat lawmakers quaking in their boots, particularly those from western states, which are anticipated to be heavily affected by TPP. Nevertheless, TPA will likely outlast the current political composition since it is valid until 2021, though Congress retains the right to cancel it up to 2018.

Now is the Time to Boost the TTIP Negotiations. With the Trans-Pacific agreement rumoured to be near conclusion, even in the coming weeks, this explains why it was at the forefront of the U.S. debate, and not its Transatlantic counterpart. Were TTIP closer to conclusion, fast-track authority would have been an easy victory for Obama. Regardless of the problems between the president and Congress, TPA can now be used to politically buttress the Transatlantic negotiations, nearly stalled after the initial exchange of bilateral interests. The lack of TPA has neither blocked negotiations nor deprived European politicians of optimism, but it has decreased their determination and commitment. It is a matter of credibility for the American negotiators. Without TPA, no concession from the U.S. side would be reliable, so Europeans would be reluctant to give any concessions from their side. Now, with TPA in hand, negotiators can enter the most difficult part of negotiations.

It's high time for both sides to progress, as another hurdle of uncertainty for negotiators approaches: the U.S. presidential elections. There is still time for effective negotiations to proceed, at least until the end of the first quarter of 2016—or the first half, if legislators are generous. After then, the Obama administration will be under tremendous pressure from Democrats running for office and will be skittish about deciding any thorny issues. If the TTIP negotiations are concluded before the 2016 presidential victor is inaugurated in January 2017, the new president will be obliged to put the negotiated text to Congress for a vote. However, if the negotiations are still open, they will depend to a great extent on the progress made in the talks hosted by the current administration and the willingness of the newly elected administration—possibly from a different party or a different agenda—to continue the work forged under President Obama. This is why the EU needs to take advantage of the moment to try to gain momentum from the newly passed TPA.

The outcome of the presidential elections won't be the only decisive factor for the TTIP negotiations; elections to the House of Representatives and Senate will play an important role in shaping the future trade deal. Since Republicans support free trade, it is most probable that their candidates will not object to TTIP. It is not as certain with Democrats. Even Hillary Clinton, who served as secretary of state in the Obama administration, has distanced herself from the president's trade agenda. However, it will be more important to see which party will constitute the majority in the House and Senate after the 2016 elections and whether the president will be from the same party. The extreme political fight on U.S. trade policy hints at the possibilities of TTIP's future.

Key EU Concerns: TPP and the 2016 Elections. The European Union must take into account that, if concluded, the treaty between the U.S. and its Pacific Rim partners, which constitutes 40% of global trade, will enter into force before TTIP. This exclusive trade agreement will decrease European competitiveness in these markets. Admittedly, the EU has its own free-trade agreements with several Pacific Rim countries and is in negotiations with a few as well. Therefore, European negotiators should be working industriously to finalise their own treaties as quickly as possible—not only TTIP with the U.S. but also the Economic Partnership Agreement with Japan. It is unknown if and how the conclusion of TPP negotiations will affect the U.S. position in the TTIP negotiations. With one "mega-trade agreement" secured, the U.S. could be less willing to make concessions, particularly those that may conflict with TPP.

Furthermore, the European Union should use the president's newly granted TPA as a source of momentum to smooth out its own procedural issues—the European Commission should submit a motion to the European Court of Justice to clarify whether TTIP will be a mixed agreement, requiring a ratification process in each of the 28 Member States, or a treaty, requiring only the consent of EU institutions. Instead of submitting this motion, a clear political statement from the EC and EU governments announcing their intention of how the ratification process would unfold should be considered. This week, the European Parliament plans to adopt a resolution on its stance on TTIP with the strongest possible majority, and European leaders should show their strong commitment and support of the negotiations with the U.S. before the 10th negotiating round starts on 13 July.

If it's not possible to conclude TTIP with the Obama administration, the EU negotiators must try to make as much progress as possible to prime the stage for the incoming president. At the same time, there must be space left for the new administration to "personalise" the treaty to avoid re-starting negotiations completely, forcing unforeseen concessions or facing fights from legislators on both sides. The internal fight in the U.S. on trade policy has given the EU a sneak peek at what to expect in future debates on TPP ratification, and thereby TTIP negotiations. Now is the opportunity to glean valuable information on the U.S. trade agenda, wagering what can be expected from the outcome of the 2016 elections, after which the TTIP negotiations will almost certainly be still up in the air.