

Bipartisan Congressional Trade Priorities Act of 2014: Preserving U.S. Sovereignty

No Direct Effect on U.S. Law

- New provisions affirm that trade agreements cannot change U.S. law without Congressional action, nor prevent the United States from changing its law in the future.
- New provision confirms that U.S. law prevails in the event of a conflict.

Only Way to Change U.S. Law is Through Congressional Action

- Congress retains the ultimate authority to vote for – or reject – the final trade agreement.
- TPA confirms that trade agreements have no direct effect, and the Administration cannot unilaterally change U.S. law.

TPA Remains a Congressional Rulemaking Prerogative

- Congress can disqualify agreements from eligibility for special procedures through procedural disapproval resolution process.
- Each House of Congress retains the right to withdraw TPA through exercise of its normal rulemaking authority.

Congressionally-Mandated Objectives

- The Act directs the Administration to pursue Congressional trade prerogatives through Congressionally-mandated negotiating objectives.
- The Act includes a privileged disapproval resolution if the Administration fails or refuses to notify or consult with Congress or if the agreement fails to make progress in achieving the purposes, policies, priorities, or objectives of TPA.

More Robust Consultation and Access to Information Requirements

- The Administration must consult closely with Congress before, during, and after the negotiations.
- Before initiating negotiations, the Administration must submit written notice and consult at least 90 days prior to entering into negotiations.
- The Administration is required, throughout the negotiations and immediately prior to initialing the agreement, to consult with Congress.
- The Administration must consult, upon request, with any Member of Congress and provide access to pertinent documents relating to the negotiations.
- The Administration, prior to bringing a trade agreement into force, is required to consult with Congress concerning the measures a trading partner has taken to come into compliance with the agreement.

Clarifies Scope of Authority

- TPA includes provisions to ensure that implementing bills include “only such provisions as are strictly necessary or appropriate to implement” trade agreements.
- Any commitments that are not disclosed to the Congress before an implementing bill is introduced are not to be considered part of the Agreement approved by Congress and have no force of law.
- TPA clarifies that agreements must be concluded within the TPA time frame and that substantial modifications or additions after that date are not eligible for approval under TPA.

Legal Scholars Support TPA

- When Congress last considered TPA, Reagan Attorney General Ed Meese wrote, “The concern some lawmakers have expressed, that TPA would somehow diminish American sovereignty, is misplaced. If anything, the opposite is true.”
- In 1994, Judge Robert Bork wrote, “The sovereignty issue, in particular, is merely a scarecrow. Under our constitutional system, no treaty or international agreement can bind the United States if it does not wish to be bound. Congress may at any time override such an agreement or any provision of it by statute.”