

TPA 2015: can the US still do trade policy?

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Summary

The awarding of Trade Promotion Authority (TPA) to the Obama White House last week ends a seven year lapse in the special 'fast track' authority granted by Congress to the US president on trade policy. It is the latest staging post in a two year fight by the Obama administration to secure the Trans-Pacific Partnership negotiation and a number of other US trade deals including the Trans-Atlantic Trade and Investment Partnership (TTIP). TPA in 2014-15 became a vehicle for two big linked debates about how trade policy is made in the US, one about Congressional prerogatives, the other about trade policy substance. While TPA gives fresh impetus to the White House's agenda, the debate that produced it showed how politically divisive trade liberalisation remains in the US.

The awarding of Trade Promotion Authority (TPA) to the Obama White House last week ends a seven year lapse in the special 'fast track' authority granted by Congress to the US president on trade policy. It is the latest staging post in a two year fight by the Obama administration to secure the Trans-Pacific Partnership negotiation (TPP). Because TPA limits the scope for Congress to unpick (but not reject) trade agreements agreed by the White House it plays an important role in reassuring US trade partners that they can make final tactical concessions to US negotiators while being reasonably confident that Congress cannot send the White House back to ask for more. In TPP, this has been particularly important for the Abe administration in Japan which is treading into sensitive political territory in agricultural concessions to the US. In principle, the Obama administration can now move the TPP negotiation into its final phase.

This note looks at the most important features of the debate to secure TPA and what they suggest about Washington's ability to do trade policy. The legislation was a vehicle for two big linked debates about how trade policy is made in the US, one about Congressional prerogatives, the other trade policy substance. Both of these debates have interesting parallels in the EU, where the European Parliament has increasingly sought to flex its own muscle on the conduct and content of EU trade policy, although with much less institutional leverage. Both matter for TPP and for the future conduct of US trade policy.

Above all, TPA made it starkly clear how deeply ambivalent US Democrats remain about import competition from less developed countries than the US - in political terms the most striking thing about TPA was the fact that a Democratic administration relied almost exclusively

on Republican votes to secure it. Given the intensity of this debate TPP cannot be regarded as a sure thing, even with TPA in place. However by the same token the Trans-Atlantic Trade and Investment Partnership (TTIP) with the EU, which raises fewer of these issues of ‘social dumping’ is likely in time to prove a much easier sell in Congress.

Slowing down fast track

The 2015 renewal of TPA continued its evolution from a ‘fast-track’ trade negotiating license to the White House to a much more prescriptive mandate. Indeed, reframing TPA explicitly as a Congressional straightjacket for the president, rather than a deferral to the White House, was an important first step in convincing many Tea Party Republicans to back the idea of TPA at all. Congressional oversight of trade negotiations was beefed up in the 2002 Trade Act and the 2015 Act creates further Congressional Advisory Groups (CAG) in both chambers as official advisors to the USTR. The 2015 Act also subjects TPA to a mid-term review in 2018 and creates new powers for either Chamber of Congress to withdraw TPA commitments to expedite implementing legislation on trade deals if it resolves that it has not been sufficiently consulted.

The second set of debates around TPA were more fundamental and concerned the negotiating objectives of the White House and thus the aims of US trade policy. Here too the general aim has been to make TPA increasingly prescriptive for the White House. Needless to say, the line between using TPA to define Congressional expectations more prescriptively and using TPA as a vehicle for killing trade deals is inevitably a question of degree, as trade sceptics recognised. Democrats have generally pushed to have the US tie preferential trading access to specific conduct - minimum enforceable

labour, safety and environmental standards and the protection of intellectual property have all been perennials. Republicans have generally tried to leave more scope for closing deals and for keeping other policy objectives out of market access negotiations.

That rift has stalled US trade policy before, in the second Bush term, when Congressional majorities for trade deals with Korea, Panama and Columbia required a clearer stance on ‘linkages’. Since 2007 the US (like the EU) has required trading partners to be signatories to certain ILO conventions and multilateral environmental agreements, but successive administrations have resisted being more prescriptive and linking trade preferences to specific policies too tightly. The 2015 TPA includes language on all of these areas - with the addition of proscriptions on currency manipulation after a long campaign by the auto industry in particular - but no requirement that these US expectations should be linked to the possible sanction of withdrawing preferences.

Whether the narrow Congressional majority for TPA means a majority for TPP will depend on the detail of the deal presented to Congress and cannot be taken for granted. Congress played out implementing legislation for the US-Korea deal for four years to secure improvements, despite the existence of TPA commitments to expedite. The TPP text will be parsed closely and commitments from Vietnam, Malaysia and Japan all weighed carefully. Implementation debates are likely to be a rerun of the last year and the composition of Congress will obviously matter. Some of the Tea Party republican votes that balked at handing any kind of authority to the Obama White House might be more willing to support a final deal. 50 refused TPA to the White House, but only 21 Republicans rejected the US-

	Dem Yes	Dem No	Rep Yes	Rep No	Dem Votes	Rep Votes
NAFTA 1993	102	156	132	43	258	175
Trade Act 2002	25	183	190	27	208	217
CAFTA 2005	15	187	202	27	202	229
US-Korea FTA 2011	59	130	219	21	189	240
US-Panama FTA 2011	66	123	234	6	189	240
TPA 2015	28	158	190	50	186	240

Fig 1. Key House of Representative votes on US trade policy 1993-2015. Did not votes excluded.

Korea deal in 2011. The White House could expect to split the difference.

Congressional Democrats are likely to prove much harder to move, or even hold on to. The White House will fight to keep its 28 supporters and the most likely pool of further support is from 32 additional Democratic districts that supported KORUS in 2011 but voted against TPA. All of these members will be the target of intensive lobbying, and the large AFL-CIO union has threatened to run challengers against many of them in 2016. On these numbers a TPP package that secures Republican support in a Congress in which the Democrats remain in a minority looks relatively safe. But like TPA itself it will be a Democratic President's deal passed with Republican votes.

The House divided

The TPA debate obviously suggests a Congress that is as deeply divided on US trade policy as it has ever been, and broadly down party lines. After long period of relatively bipartisan support for TPA between the mid-70s and the mid-90s, fast track has only been granted twice by the House of Representatives since 1993. In both cases Republicans provided the majority of votes in the Senate and more than 90% of the votes in the House of Representatives. Just 25 Democrats backed TPA for George Bush in the 2002 Trade Act- only three fewer than were willing to grant it to a Democratic President this month.

This track record of Democratic ambivalence on trade stretches back to Japanese trade competition in the 1980s. Where this debate appeared in the early 90s to run down the centre of the Democratic Party (or at least the Democratic caucus in the House of Representatives), this is clearly not the case now. Around 60% of the Democrat caucus opposed NAFTA in 1993, while 68% of the caucus cast their vote against the EU-Korea FTA almost twenty years later in 2011. These were representatives of largely the same 130-150 districts. The Democrats provided 102 votes for NAFTA in 1993 because the Democratic caucus was seventy-odd seats larger and its ideological base arguably broader. Of the 102 Democratic Congressional seats that supported Bill Clinton on NAFTA, half are now represented by Republicans. 17 are represented by one of the 28 Democrats who supported Obama on TPA. The more the Democratic caucus shrinks towards the party's labour-dominated core geography, the more trade-sceptic the Congressional delegation is.

A widening US trade deficit over the last twenty years has no doubt reinforced this scepticism (Fig 2). US policy has also been focused for the last ten years on developing and emerging economies where - in the eyes of many Democrats - trade privileges from the US compound undercutting on labour and environmental standards or other advantages. The American public also seem to accept a big part of the Democratic critique, although less so than five years ago. The most recent Pew survey on attitudes to trade suggested a [majority of Americans](#) see US trade deals as good for the US economy in general but bad for wages and resulting in job losses. Republican voters are, in fact, narrowly more sceptical than Democratic ones and black, white and older voters the most sceptical. This sensitivity has helped condition the whole language of trade politics in the US. US politicians, like their European counterparts, have increasingly retreated into presenting US trade policy as the pursuit of new export markets, with little attempt to justify the value of import competition.

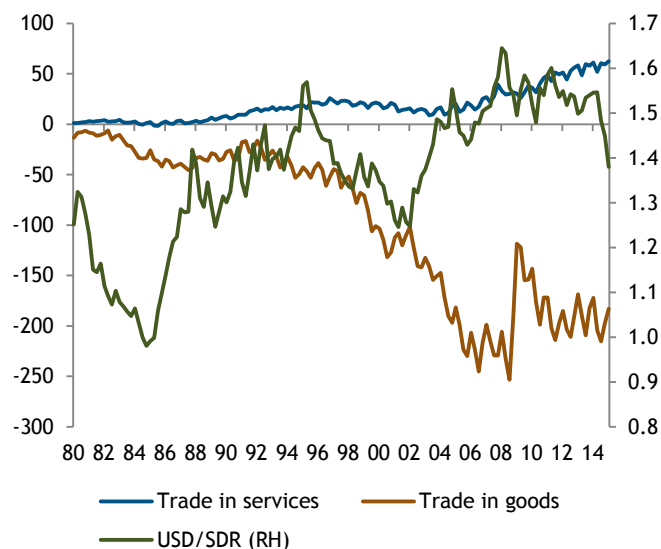


Fig 2: Quarterly US trade balance (USD bn)
Source: CEIC

There is no obvious political appetite among senior Democrats to try to reverse this scepticism. President Obama showed little interest in trade policy before 2013, and is arguably seeking TPA for TPP not because of its status as a trade deal, but because it is the centre-piece of a much bigger strategic 'realignment' of Washington's US foreign commercial policy towards Asia and part of an encirclement strategy for China, both of which he was co-opted into on arrival. Presumptive Democratic Presidential nominee Hilary Clinton has been very careful to leave her own position undefined but her campaign next year is likely

to be generally trade-sceptic as she lines up the Democratic base and secures her support among blue collar white men, who are the most sceptical on trade. Most likely is that the Democratic Party stabilises semi-permanently in a position of institutional scepticism on trade, in favour of linking US market access more explicitly to US standards and in favour of greater willingness to withdraw concessions from those who do not meet them.

While this means that the debate over TPP is likely to remain polarising and bitter, it is potentially better news for the Trans-Atlantic Trade and Investment Partnership (TTIP) with the EU, which TPA also covers. TTIP has not in general provoked the same less of Congressional concern over mismatched labour and environmental standards, and TTIP could be expected to win much wider Democratic support than TPP. But the TTIP negotiation now looks increasingly unlikely to be in any shape for conclusion until the next US Presidency and the appointment of a new US Trade Representative in 2017. America's uncomfortable debate on trade is no closer to being resolved, but TTIP could at least prove that the US can do bipartisan trade policy - with the right partner.

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