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Trade Promotion Authority: Top 10 Myths and Realities

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Myths are being spread about Trade Promotion Authority (TPA) that are not supported by the facts. The record needs to be set straight about TPA: what it is, how it works and why it is an important tool. Using Congressional provisions from past versions of TPA and legislation implementing U.S. trade agreements, their legislative histories, and other legal and policy sources, the following paper explains:

The Facts

#1 ***TPA is constitutional***. Congress and the President share constitutional authority over trade and international agreements, and TPA is an exercise of Congress's constitutional authority.

#2 ***TPA does not exclude Congress from playing a meaningful role in the negotiation and approval of trade agreements***. TPA is designed to empower Congress.

#3 ***TPA does not cede to the President the ability to set U.S. trade negotiating objectives and decide whether trade agreements meet Congressional priorities for international trade***. TPA enhances the power of Congress to make those decisions.

#4 ***TPA does not let the President enter into a trade agreement without Congress's consent***. The United States becomes a party to a trade agreement and is legally bound under the agreement only after Congress votes to approve the agreement.

#5 ***TPA does not result in the Executive Branch unilaterally writing legislation to implement a trade agreement***. Under TPA, Congress and the Executive Branch work together to draft legislation implementing trade agreements, reflecting their shared constitutional authorities.

#6 ***TPA does not force Congress to vote on trade agreements without first having input into them and being able to fully consider them***. TPA provides Congress with extensive opportunity to help shape a trade agreement during its negotiation and to consider legislation implementing the trade agreement before it is submitted to Congress for a vote.

#7 ***TPA does not undermine U.S. sovereignty***. TPA and legislation implementing U.S. trade agreements protect U.S. sovereignty in trade agreements negotiated under TPA and no foreign country or dispute settlement tribunal can force the United States to change its laws.

#8 ***TPA does not allow the negotiation of trade agreements that override U.S. consumer protection, health, environmental safety, security and financial standards***. Under TPA, Congress retains its authority to decide the appropriate standards for the United States.

#9 ***TPA does not undermine transparency in trade negotiations***. TPA helps ensure transparency in trade negotiations.

#10 ***TPA strengthens Congress's role in trade negotiations and the ability of U.S. trade negotiators to accomplish the objectives set by Congress***. This is why Congress has repeatedly passed special trade negotiating authority, through 2007, for every President since Franklin D. Roosevelt in the 1930s.

Myth #1

TPA is unconstitutional and amounts to Congress giving away its constitutional authority to the President.

Reality #1

Congress and the President share constitutional authority over trade and international agreements, and TPA is an exercise of Congress's constitutional authority, ensuring Congressional oversight and input on trade negotiations. TPA ensures that Congress retains the right to ultimately approve or reject a trade agreement. Since President Franklin D. Roosevelt in the 1930s, every President through 2007 has had such authority from Congress to negotiate trade agreements. Congress and others have evaluated the constitutionality of TPA procedures and concluded that they are constitutional.

Under the U.S. Constitution, Congress and the President share constitutional authority over trade and international agreements. Article I, Section 8 of the Constitution gives Congress the power to "regulate commerce with foreign nations …" and to "lay and collect taxes, duties, imposts, and excises … ." Under Article II of the Constitution, the President has the authority to negotiate treaties and international agreements and conducts the nation's foreign relations.

For their part, in 2002, the Senate and House committees with jurisdiction over trade – and who therefore had the most oversight authority to lose – evaluated whether TPA procedures were constitutional and concluded they were. According to the Senate Finance Committee:

> "Constitutionally, the power to regulate commerce with foreign nations rests squarely with Congress. In agreeing to fast track procedures, Congress retains this power, but modifies its use. In doing so, Congress recognizes that the Constitution vests the President with the power to speak to foreign leaders with one voice, and that the international trade interests of the United States can best be promoted by negotiating trade agreements with foreign nations. In short, trade authorities procedures represent a partnership between the legislative and executive branches of government. By forging this partnership, Congress and the President enhance the effectiveness of their constitutionally endowed powers to serve the best interests of the American people."[i]

Similarly, the House Ways and Means Committee reached the same conclusion in 2002:

> "The President and the Congress both have important [constitutional] powers with respect to trade and foreign affairs issues. Therefore, trade agreements do not readily fit into the legislative model used to consider other types of legislation. Trade promotion authority has been developed to assure that trade relations with other countries are handled expeditiously and efficiently with the involvement of the executive and legislative branches."[ii]

TPA and its negotiating objectives and procedures: (1) reflect this constitutional partnership between Congress and the Executive Branch on U.S. trade policy; and (2) constitute an exercise by Congress of its own constitutional authority, ensuring Congressional oversight and input on trade negotiations while retaining its right to ultimately approve or reject a trade agreement negotiated by the Executive Branch.

When the 2002 TPA legislation was being considered, former U.S. Attorney General Edwin Meese III and a colleague evaluated the constitutionality of TPA in a Legal Memorandum for the Heritage Foundation and determined that TPA was "clearly constitutional because Congress retains its authority to approve or reject all future trade agreements. It might be unconstitutional if Congress tried to delegate its authority to approve the final deal, but that is not at issue. Congress may always kill any future international trade agreement by withholding its final approval."[iii]

To reinforce Congress's constitutional authority under TPA, all legislation implementing trade agreements negotiated under TPA contains a provision which states explicitly that "Congress approves [the trade agreement] and the statement of administrative action proposed to implement the Agreement that was submitted to Congress … ."[iv] Bills implementing trade agreements go even further in protecting Congress's constitutional authority to legislate and include the following provisions:

> "No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect."[v]
>
> "Nothing in this Act shall be construed … to amend or modify any law of the United States, or … to limit any authority conferred under any law of the United States, unless specifically provided for in this Act."[vi]

Finally, it is important to recognize that TPA was not a grab of constitutional power by the Executive Branch. To the contrary, it was a legislative framework created in 1974 by Senator Russell Long (D-LA), then-Chairman of the Senate Finance Committee, in order to enhance the role of Congress in shaping trade negotiations and arm U.S. trade negotiators with the tools to help American workers and farmers competing for business in world markets. As the committee explained in its report:

> "U.S. trade policy has not been noted for its coherence or consistency. Throughout most of the postwar era, U.S. trade policy has been the orphan of U.S. foreign policy. Too often the Executive has granted trade concessions to accomplish political objectives."[vii]
>
> "The Finance Committee's amendments seek to establish appropriate and constitutionally-sound guidelines and criteria to govern the exercise of the authority granted by the bill. The intractable nature of modern barriers to trade, both tariff and nontariff, make this grant of extensive negotiating authority to the Executive necessary."[viii]

To help accomplish these objectives, the Trade Act of 1974 included, for the first time, specific negotiating objectives to direct U.S. trade negotiators, together with specific requirements for hearings and advice concerning the negotiations, including advice from the private sector, as well as specific provisions for Congressional oversight and consultation.

Myth #2

TPA excludes Congress from playing a meaningful role in the negotiation and approval of trade agreements.

Reality #2

TPA empowers Congress. Through TPA, Congress establishes the U.S. negotiating objectives for trade agreements, requires the Executive Branch to consult extensively with Congress during trade negotiations, and gives itself the final say in whether to approve an agreement.

To protect Congressional prerogatives on trade policy, TPA includes negotiating objectives written by Congress and mandatory notice and consultation provisions that require Executive Branch trade negotiators to seek Congressional input from all Congressional committees with jurisdiction over laws that would be affected by a trade agreement before, during and at the conclusion of trade negotiations. Ultimately, Congress retains the right to decide whether legislation implementing a trade agreement qualifies for TPA legislative procedures and to approve or reject the agreement.

For example, the 2002 TPA law required the Office of the U.S. Trade Representative (USTR) to "consult closely and on a timely basis with, and keep fully apprised of the negotiations, the Congressional Oversight Group … and all committees of the House of Representatives and the Senate with jurisdiction over laws that would be affected by a trade agreement resulting from the negotiations."[ix]

The 2002 TPA law also specifically required that, for a trade agreement to qualify for TPA treatment, the President must: (1) provide notice to Congress at least 90 days before starting the negotiation of the trade agreement; (2) consult with the relevant committees of jurisdiction before and after submitting the notice; (3) consult with them during the course of the negotiations and before signing the agreement; and (4) provide notice and consult again before entering into the agreement.[x]

The 2002 TPA law also provided that TPA treatment would not apply with respect to the legislation implementing a trade agreement if both chambers of Congress agreed to and passed "a procedural disapproval resolution for lack of notice or consultations with respect to such trade agreement."[xi]

These types of provisions guarantee that Congress is closely involved in overseeing and providing input into trade negotiations at all stages. For example, USTR has conducted the Trans-Pacific Partnership (TPP) negotiations using the notice and consultation requirements set out by Congress in the 2002 TPA law. As a consequence, USTR, in its own words, has consulted "hundreds of times" with the Congressional committees with jurisdiction over trade negotiations, and it has met with many other committees regarding particular TPP issues that fall within their jurisdiction.[xii]

Myth #3

TPA cedes to the President the ability to set U.S. trade negotiating objectives and decide whether trade agreements meet Congressional priorities for international trade.

Reality #3

TPA is the principal means through which Congress establishes a comprehensive set of trade negotiating objectives that reflect Congressional priorities for international trade and mandates detailed procedures to enhance and protect Congressional oversight.

When Congress drafts TPA bills, it typically includes a comprehensive and detailed set of negotiating objectives that the Executive Branch must pursue when it negotiates trade agreements that would benefit from TPA treatment. For example, the 2002 TPA law included a set of nine "overall trade negotiating objectives" and 17 "principal trade negotiating objectives," as well as 12 Congressional "priorities" that the President was required to seek. The objectives addressed the entire range of issues that are typically included in negotiations, from market access for goods and services to intellectual property rights and investment protections to labor and environmental protections.[xiii]

In addition, the 2002 TPA law required that, at the conclusion of negotiations, the President must submit a statement of administrative action to Congress explaining how and to what extent any trade agreement that would benefit from TPA treatment made progress in achieving Congress's negotiating objectives and priorities.

The 2002 law also provided that TPA treatment would not apply with respect to the implementation of the trade agreement if both chambers of Congress agreed to procedural disapproval resolutions for failure to make such progress.[xiv]

Myth #4

TPA is unconstitutional because it lets the President sign a trade agreement without Congress's consent.

Reality #4

Signing a trade agreement neither makes the United States a party to the agreement nor creates any legally binding obligations on the United States under that agreement. The United States becomes a party to a trade agreement and is legally bound under the agreement only after Congress votes to approve the agreement.

Under TPA, Congress retains all of its constitutional powers to "regulate foreign commerce." By signing the agreement, the President, after consulting with Congress pursuant to TPA, is simply signaling to the other parties to the negotiation that the agreement, in the President's opinion, meets U.S. negotiating objectives and is ready to be submitted to Congress for its approval or disapproval.

Accordingly, U.S. trade agreements include a provision stating that the agreement will not enter into force until the parties exchange written notification that they have completed their respective legal requirements and procedures.[xv] In the United States, the relevant requirements and procedures include Congressional passage of legislation to approve and implement the agreement.

In addition, the legislation implementing the trade agreement itself makes very clear that Congress, through the exercise of its constitutional power, has the final authority over the trade agreement. All bills implementing trade agreements negotiated under TPA contain a provision stating explicitly that "Congress approves [the trade agreement] and the statement of administrative action proposed to implement the Agreement that was submitted to Congress … ."[xvi]

Bills implementing trade agreements go even further in protecting Congress's constitutional authority to write laws. They include the following provisions:

> "No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect."[xvii]

> "Nothing in this Act shall be construed … to amend or modify any law of the United States, or … to limit any authority conferred under any law of the United States, unless specifically provided for in this Act."[xviii]

Myth #5

Under TPA, the Executive Branch unilaterally writes legislation implementing a trade agreement that Congress is then required to vote on.

Reality #5

Congress and the Executive Branch work together to draft bills implementing trade agreements, reflecting their shared constitutional authorities over trade and international agreements.

Before a trade agreement that is subject to TPA procedures can enter into force, the President must submit a draft bill to Congress to implement any aspects of the trade agreement that would require changes to U.S. law. As explained in detail by both the House Ways and Means and Senate Finance Committees in 2002, the text of an implementing bill is a collaborative process between the two branches, not a unilateral action by the Executive Branch.

Recognizing the importance of maintaining Congress's constitutional legislative powers, the 2002 Senate Finance Committee report emphasized the importance of the legislative and executive branches working together to write implementing legislation:

> "It is the expectation of the Committee that, for any agreement subject to the trade authorities procedures under the present bill, the draft implementing bill and statement of administrative action will be developed by the President in close collaboration with the Committees of jurisdiction in both Houses of Congress."[xix]

The 2002 House Ways and Means Committee report also highlighted the need for collaboration and explained in detail how it has put in place a mechanism to protect Congress's constitutional authority:

> "Consequently, before the formal introduction took place, the committees of jurisdiction would hold hearings, 'unofficial' or 'informal' mark-up sessions and a 'mock conference' with the Senate committees of jurisdiction in order to develop a draft implementing bill together with the

Administration and to make their concerns known to the Administration before it introduced the legislation formally."[xx]

Myth #6

TPA forces Congress to vote on trade agreements without first having input on them and being able to fully consider them.

Reality #6

TPA provides Congress with an extensive opportunity throughout trade negotiations to help shape and consider a trade agreement before negotiations are concluded and legislation implementing the trade agreement is submitted to Congress for a vote.

TPA includes mandatory notice and consultation provisions that require Executive Branch trade negotiators to seek Congressional input before, during and at the conclusion of trade negotiations.

TPA also requires the President to provide details of proposed trade agreements that would benefit from TPA treatment to the nonpartisan U.S. International Trade Commission (ITC) for an economic analysis before any Congressional vote takes place. For example, the 2002 TPA law required the ITC to prepare and provide to Congress – well in advance of any vote – a report assessing the likely impact of the trade agreement on the U.S. economy as a whole and on specific industry sectors, including the impact on the gross domestic product, exports and imports, aggregate employment and employment opportunities, and other issues of relevance to Congressional consideration.[xxi]

In addition, the committees of jurisdiction work with the Executive Branch to draft the implementing bills that are necessary to enact the trade agreements into law and conduct hearings on the proposed agreements and markups of the draft and final implementing bills. These proceedings provide further opportunity for Congress to consider the trade agreements' merits before it votes on whether to approve them.

Furthermore, TPA ensures that Congress has adequate time and information to meaningfully consider a potential trade agreement after the President submits the final implementing bill to Congress. For example, the 2002 TPA law required the President to accompany the implementing bill with a copy of the trade agreement itself, as well as a statement of any administrative action proposed to implement the agreement.[xxii] Once the bill was introduced, the committees of jurisdiction had a 45-day period to consider the bill before reporting it out of committee. Each House of Congress then had a 20-hour period (equally divided between the majority and minority) to debate the bill on the floor before submitting it for an "up or down" vote.

And finally, if Congress feels that it has not been adequately consulted, it retains the power under TPA and legislation implementing a trade agreement to remove the use of TPA procedures for any such implementing legislation.[xxiii]

In sum, TPA provides Congress with ample opportunity to help shape and examine all aspects of a trade agreement long before Congress votes on it.

Myth #7

TPA undermines U.S. sovereignty.

Reality #7

Congress always ensures U.S. sovereignty in trade agreements negotiated under TPA. Legislation implementing trade agreements ensures that the United States retains full authority over its domestic laws at all times. No foreign country or dispute settlement tribunal can force the United States to change its laws.

U.S. laws can be changed only by legislation passed by Congress and signed into law by the President – no trade agreement or foreign country or international tribunal can set or modify U.S. laws. TPA does nothing to change that fact.

Every bill implementing U.S. trade agreements includes language to the effect that "[n]o provision of [the trade agreement], nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect" and "[n]othing in this Act shall be construed … to amend or modify any law of the United States, or … to limit any authority conferred under any law of the United States, unless specifically provided for in this Act."[xxiv]

Congress reinforces this condition by including in TPA legislation a provision which states that "any agreement or other understanding with a foreign government" that related to a trade agreement enacted under TPA procedures has "no force and effect" under U.S. law unless disclosed to Congress before Congress voted to implement the agreement.[xxv]

Similarly, the dispute settlement panels that review disputes under U.S. trade agreements cannot override U.S. laws; they can only issue recommendations that have no force in U.S. law. Only the United States can decide whether to implement these recommendations, and only Congress can change U.S. law. The United States always has a choice about how to implement a dispute settlement report that finds a U.S. law to be inconsistent with the obligations in a U.S. trade agreement: the United States can: (1) revise the law if Congress acts; (2) offer compensation to the trade agreement partner country (by reducing tariffs or other barriers in an equivalent amount); or (3) do *nothing at all* and accept the risk that the other country may choose to impose sanctions on U.S. exports in an amount that is equivalent to the effect of the law on the country's trade.

When the 2002 TPA legislation was being considered, former U.S. Attorney General Edwin Meese III and a colleague evaluated TPA in a Legal Memorandum for the Heritage Foundation, concluding that TPA did not erode U.S. sovereignty. They reasoned, "The United States will always have the ultimate say over what its domestic laws provide. No future agreement could grant an international organization the power to change U.S. laws." They added that, "a ruling by an international tribunal that calls a U.S. law into question would have no domestic effect unless Congress changes the law to comply with the ruling." They concluded by arguing that, "the only action that will weaken overall U.S. sovereignty is for Congress to hobble the President's ability to negotiate trade deals with other nations by denying him enhanced trade promotion authority."[xxvi]

Finally, it is important to point out that the United States can withdraw from its trade agreements at any time. The United States participates in these agreements only because the Executive Branch and Congress have agreed that participation is in the U.S. national interest.

Myth #8

TPA allows the negotiation of trade agreements that override U.S. consumer protection, health, environmental, safety, security and financial standards.

Reality #8

Under TPA, Congress retains its authority to decide the appropriate consumer protection, health, environmental, safety, security and financial standards for the United States.

U.S. trade agreements explicitly recognize the right of all parties, including the United States, to set the levels of consumer protection, health, environmental, safety, security and financial standards that they deem appropriate, even if those levels of protection are higher than international standards.

To ensure that trade agreements do not change U.S. law without Congressional approval, implementing legislation includes the following provisions: "[n]o provision of [the trade agreement], nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect" and "[n]othing in this Act shall be construed … to amend or modify any law of the United States, or … to limit any authority conferred under any law of the United States, unless specifically provided for in this Act."[xxvii]

Congress reinforces this condition by including in TPA legislation a provision which states that "any agreement or other understanding with a foreign government" that is related to a trade agreement enacted under TPA procedures would have "no force and effect" under U.S. law unless disclosed to Congress before Congress voted to implement the agreement.[xxviii]

The only real requirement in these trade agreements is that the United States will not use these standards as a pretext for discrimination against its trade agreement partner countries and will not unfairly take the property of foreigners without compensation. The United States simply has to apply these policies with an even hand. But, even if a dispute settlement panel established under a trade agreement were to find that a particular U.S. consumer protection, health, environmental, safety, security or financial law or regulation treated a trade agreement partner country unfairly, the panel could not force the United States to change the law. Only Congress can change U.S. laws.

Myth #9

TPA undermines transparency in trade negotiations.

Reality #9

TPA helps ensure transparency in trade negotiations.

TPA bills typically include mandatory notice and consultation provisions that require Executive Branch trade negotiators to seek Congressional input before, during and at the conclusion of trade negotiations. These types of provisions – which exist only because of TPA – increase the transparency of trade negotiations and help ensure that Congress closely oversees and provides input throughout the negotiating process.

For example, USTR has devoted much attention to transparency efforts during the TPP negotiations. USTR, in its own words, has consulted "hundreds of times" with the Congressional committees with jurisdiction over international trade negotiations, and it has met with many other committees regarding particular TPP issues that fall within their jurisdiction. USTR has also conducted numerous direct engagements with outside stakeholders. At the March 2013 negotiating round in Singapore, for example, negotiators from the United States and other TPP partner countries met with over 300 global stakeholders at an event hosted by the Government of Singapore to provide information on the negotiations and exchange views. The stakeholders included representatives from academia, labor unions, the private sector, and non-governmental organizations.[xxix] USTR has also published notices in the Federal Register directly soliciting public input on the negotiations and has received several hundred comments.[xxx]

To reinforce transparency in trade negotiations, Congress included in the 2002 TPA law a provision empowering Congress to deny TPA procedures for approval of a trade agreement if Congress passes "a procedural disapproval resolution for lack of notice or consultations with respect to such trade agreement."[xxxi]

Ongoing efforts to update and pass TPA legislation create an important opportunity for Congress to consider whether and if so how it wants to update or further improve the 2002 TPA law, including its notice and consultation provisions, just as past Congresses have done since the 1930s to earlier versions of TPA.

Myth #10

TPA isn't needed. The normal legislative process is all that is necessary to implement trade agreements.

Reality #10

Congress has repeatedly recognized over the last 40 years that the negotiation and implementation of trade agreements requires special legislative procedures to ensure that U.S. trade negotiators can accomplish U.S. negotiating goals and get the best trade deals possible, that trade partner countries will even conclude a trade agreement with the United States, and that a U.S. trade agreement is timely implemented so the United States is not at a competitive disadvantage in selling its goods and services to trade partner countries.

Since President Franklin D. Roosevelt in the 1930s, every President through 2007 has had authority from Congress to negotiate trade agreements that open new markets for American companies and workers and help ensure a rules-based system for two-way trade. For decades, Congress has continually reviewed the need for such authority (known as Trade Promotion Authority or "fast-track" since 1974) and has repeatedly reached the same conclusion – it is essential. During consideration of the 2002 TPA bill, the Senate Finance Committee report explained in detail why TPA and its special legislative procedures are needed:

> "Implementation of trade agreements often requires the United States to enact legislation modifying tariffs and making other changes to U.S. law. Congressional consideration of such implementing legislation under ordinary rules of procedure carries several disadvantages. Under ordinary rules, a bill may be amended in a manner inconsistent with the underlying agreement, which may require

the President to re-open negotiation of the agreement. Ordinary rules do not require that a bill be voted on by a date certain, or that it be voted on at all. A trade agreement could be concluded and languish indefinitely."

"These aspects of ordinary legislative procedure pose difficulties for trade negotiations. A foreign country may be reluctant to conclude negotiations with the United States faced with uncertainty as to whether and when a trade agreement will come up for approval by Congress. Similarly, a country may be reluctant to make concessions, knowing that it may have to renegotiate following Congress's initial consideration of the agreement."

"Recognizing that the failure to implement certain agreements concluded during the Kennedy Round of multilateral negotiations had damaged U.S. negotiating credibility, and desiring to facilitate the negotiation and implementation of trade agreements, Congress enacted [these] special procedures for consideration of trade agreement implementing legislation in the Trade Act of 1974."[xxxii]

The House Ways and Means Committee reached the same conclusion in 2002:

"The Committee believes that the only way that the United States can negotiate these beneficial [trade] agreements is through the well-proven tool of trade promotion authority because it ensures certain and expeditious consideration of trade legislation … [and] gives U.S. trading partners confidence that an agreement agreed to by the United States will not be reopened during the implementing process."[xxxiii]

Reflecting the importance of TPA to advancing U.S. trade negotiations and getting the final trade agreements implemented by Congress, all U.S. trade agreements since 1973 except one (the U.S.-Jordan trade agreement in 2000) – 16 agreements – were concluded and signed when TPA was in effect. In short, TPA is a critical legislative tool for helping advance U.S. trade agreements, ensuring high-standard outcomes in such negotiations, opening foreign markets to sell more U.S. goods and services, and supporting American economic growth and jobs.

If Congress does not update and pass TPA, Congress will deny itself an important opportunity to: (1) establish and write into law 21st century negotiating objectives and direct the Executive Branch to achieve them in negotiating trade agreements; (2) mandate the right of Congress and private sector stakeholders to be closely consulted and provide input during all stages of trade negotiations; (3) consider whether and if so how Congress wants to update or further improve the 2002 TPA law's notice and consultation provisions; and (4) exercise its constitutional authority through TPA to shape solid outcomes in trade agreements to help open international markets and support U.S. growth and jobs.

The Trade Benefits America Coalition includes a wide range of associations and companies that are dedicated to the pursuit of U.S. international trade agreements that benefit American businesses, farmers, workers, and consumers. The Coalition believes that passage of updated Trade Promotion Authority (TPA) legislation is important to help ensure America continues to benefit from trade.

For more information on the Coalition, please contact: David Thomas, (202) 496-3262 or dthomas@brt.org.

[i] Senate Report 107-139, p. 3.
[ii] House Report 107-249, p. 39.
[iii] "Why Trade Promotion Authority is Constitutional," Legal Memorandum #4 (Nov. 28, 2001), Edwin Meese III and Todd F. Gaziano (The Heritage Foundation), http://www.heritage.org/research/reports/2001/11/why-trade-promotion-authority-is-constitutional.
[iv] United States-Colombia Trade Promotion Agreement Implementation Act, section 101(a).
[v] *Id.,* section 102(a)(1).
[vi] *Id.,* section 102(a)(2).
[vii] Senate Report 93-1298, p. 11.
[viii] *Id.,* pp. 14-15.
[ix] Bipartisan Trade Promotion Authority Act of 2002, section 2102(d)(1) ("2002 Act").
[x] 2002 Act, section 2104(a) and (d).
[xi] 2002 Act, section 2105(b).
[xii] *See, e.g.,* Office of the U.S. Trade Representative, *FACT SHEET: Transparency and the Trans-Pacific Partnership*, http://www.ustr.gov/about-us/press-office/fact-sheets/2012/june/transparency-and-the-tpp ("Transparency and the TPP").
[xiii] 2002 Act, section 2102.
[xiv] 2002 Act, section 2105(a)(2) and (b)(1).
[xv] *See, e.g.*, Free Trade Agreement Between The United States Of America And The Republic Of Korea, Article 24.5.
[xvi] *See, e.g.*, United States-Colombia Trade Promotion Agreement Implementation Act, section 101(a).
[xvii] *Id.,* section 102(a)(1).
[xviii] *Id.,* section 102(a)(2).
[xix] Senate Report 107-139, p. 51.
[xx] House Report 107-249, p. 42.
[xxi] 2002 Act, section 2104(f).
[xxii] 2002 Act, section 2105(a)(1).
[xxiii] 2002 Act, section 2105(b).
[xxiv] *See, e.g.*, United States-Colombia Trade Promotion Agreement Implementation Act, section 102(a)(1) and (a)(2).
[xxv] 2002 Act, section 2105(a)(4).
[xxvi] "Why Trade Promotion Authority is Constitutional," Legal Memorandum #4 (Nov. 28, 2001), Edwin Meese III and Todd F. Gaziano (The Heritage Foundation), http://www.heritage.org/research/reports/2001/11/why-trade-promotion-authority-is-constitutional.
[xxvii] *See, e.g.*, United States-Colombia Trade Promotion Agreement Implementation Act, section 102(a)(1) and (a)(2).
[xxviii] 2002 Act, section 2105(a)(4).
[xxix] *See, e.g.,* Office of the U.S. Trade Representative, *Direct Stakeholder Engagement,* http://www.ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/direct-stakholder-engagement.
[xxx] *See* Transparency and the TPP, http://www.ustr.gov/about-us/press-office/fact-sheets/2012/june/transparency-and-the-tpp.
[xxxi] 2002 Act, section 2105(b).
[xxxii] Senate Report 107-139, p. 2.
[xxxiii] House Report 107-249, p. 17.