

Presidential Authority to Address Tariff Barriers in Trade Agreements

The U.S. Constitution grants Congress the power to regulate trade with foreign nations and to lay and collect duties. Since the 1930s, Congress has periodically authorized the President to negotiate trade agreements and, among other actions, proclaim changes to U.S. tariff rates—known as Trade Promotion Authority (TPA). For example, Section 103(a) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA-2015) authorized the President to enter into trade agreements with foreign countries to reduce “duties or other import restrictions” that the President determines are “unduly burdening and restricting” the United States’ foreign trade and to proclaim limited changes to U.S. tariff rates without further congressional action. In December 2020, President Donald Trump implemented a trade agreement with the European Union regarding tariff barriers using his proclamation authority under Section 103(a) of TPA-2015.

TPA-2015 expired on July 1, 2021. Congress may consider whether to authorize tariff changes without congressional action in any future TPA legislation.

History of Authority

Section 103(a) of TPA-2015 was the most recent congressional delegation of authority to the executive branch to negotiate trade agreements and proclaim adjustments to customs duties. The first instance was the Reciprocal Trade Agreements Act of 1934 (RTAA). Passed during the Great Depression, the RTAA authorized the President “to enter into foreign trade agreements with foreign governments” and to proclaim, without further congressional action, limited modifications to U.S. customs duties and import restrictions. Over the next several decades, presidents negotiated dozens of bilateral trade agreements addressing tariff barriers and implemented those agreements by proclamation. While the RTAA was primarily used for bilateral agreements, President Harry Truman negotiated and implemented by proclamation the multilateral General Agreement on Tariffs and Trade (GATT—the precursor to the World Trade Organization) using RTAA authority.

By the late 1960s, nontariff barriers (e.g., regulatory barriers or subsidies) had become the focus of multilateral trade negotiations. Rather than authorize the President to proclaim nontariff-related changes to U.S. law, Congress included procedures in the Trade Act of 1974 through which the President could negotiate agreements addressing such barriers and obtain expedited consideration of implementing legislation if certain criteria were met. Alongside these new procedures, Congress continued to authorize the President to negotiate and implement

agreements addressing only tariff barriers without further congressional action.

Timeline of Changes to Presidential Trade Agreement Proclamation Authorities

- 1934** Section 350(a) of the Reciprocal Trade Agreements Act of 1934 authorized the President to negotiate bilateral, reciprocal trade agreements and proclaim changes to U.S. tariff rates of up to 50% of existing rates without further congressional action. Renewed 11 times.
- 1962** Section 201 of the Trade Expansion Act of 1962, like the RTAA, authorized the President to enter into trade agreements and proclaim changes to U.S. tariff rates of up to 50% of existing rates. Additionally, Section 201 placed no limits on presidential reductions in tariff rates that were already less than 5%.
- 1975** Section 101 of the Trade Act of 1974 authorized the President to proclaim reductions in U.S. tariff rates of up to 60% of existing rates (with no limits on rates already below 5%) and to increase tariffs by up to 20% of existing rates. While this authority expired in 1979, Section 124(a) provided limited residual authority for an additional two years.
- 1988** Section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988 authorized the President to proclaim reductions in U.S. tariff rates of up to 50% of existing rates (with no limits on rates already below 5%). The 1988 Act limited the President’s ability to increase tariffs as part of such an agreement. Several new technical limitations were also introduced.
- 2002** Section 2103(a) of the Trade Act of 2002 authorized the President to proclaim reductions in U.S. tariff rates of up to 50% of existing rates (with no limits on rates already below 5%). Several new technical limitations were also introduced.
- 2015** Section 103(a) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 authorizes the President to proclaim reductions in U.S. tariff rates of up to 50% of existing rates (with no limits on rates already below 5%). Several new technical limitations were also introduced.

The result was a bifurcation in trade negotiating authority between agreements affecting tariff barriers and those affecting both tariffs and nontariff barriers. Section 103(a) of TPA-2015 provided authority to negotiate agreements addressing tariff barriers and implement those agreements *without* congressional approval. Section 103(b) of TPA-2015 provided authority to negotiate agreements addressing tariff and nontariff barriers, and set out the procedures to implement those agreements *with* congressional approval.

Most recent U.S. FTAs have covered both tariff and nontariff barriers and have therefore been negotiated under Section 103(b)'s procedures.

Use of 103(a) and Precursor Authority

Since the Trade Act of 1974, Presidents have used their proclamation authority in the context of comprehensive agreements to implement changes to tariff barriers, while relying on implementing legislation to effect changes to nontariff barriers. For example, during the GATT Tokyo Round of multilateral trade negotiations (1973 to 1979), President Jimmy Carter relied upon his proclamation authority to implement preliminary and final agreements on tariffs (Proclamation 4707), but implemented agreements addressing nontariff barriers through the Trade Agreements Act of 1979 (P.L. 96-39).

Presidents have occasionally made use of their authority to negotiate and implement limited trade agreements addressing only tariff barriers. For example, in 1979, President Carter entered into a trade agreement with Canada to reduce tariff rates on certain live cattle imports and used his proclamation authority to implement that agreement (Proclamation 4808) without further congressional action.

Trade Agreements Implemented in Part with Proclamation Authority Since 1974

- 1978** GATT Tokyo Round Bilateral Agreements, Staged Reductions, and Geneva Protocol (U.S.-India, U.S.-Mexico, U.S.-Romania, U.S.-Hungary, U.S.-Taiwan, U.S.-Indonesia, U.S.-Trinidad and Tobago, U.S.-Cartagena Agreement Countries, U.S.-Switzerland, U.S.-European Communities) (Procl. 4600, 4694, 4707, 4711, 4768)
- 1978** U.S.-Finland (Procl. 4630)
- 1980** U.S.-Canada (Procl. 4808)
- 1981** U.S.-Japan (Procl. 4889)
- 1982** U.S.-Taiwan (Procl. 4980)
- 1989** Compact of Free Association with the Marshall Islands and the Federated States of Micronesia (Procl. 6030)
- 1992** Provisional Agreement on Certain Tropical Products (Procl. 6515)
- 1993** North American Free Trade Agreement (NAFTA) (Tariff Provisions Only) (Procl. 6641)
- 1994** Uruguay Round Agreements (Tariff Provisions Only) (Procl. 6763, 6780)
- 1995** Tariff-Rate Quota on Tobacco (Procl. 6821)
- 2006** Agreement on Duty-Free Treatment of Multi-Chip Integrated Circuits (Procl. 7995)
- 2015** Asia-Pacific Economic Cooperation Agreement on Environmental Goods (Procl. 9384)
- 2019** U.S.-Japan (Procl. 9974)
- 2020** U.S.-EU (Procl. 10128)

Recent Uses

Since the 1970s, Presidents have generally used Section 103(a) of TPA-2015 and its precursor authorities to modify tariff rates, as part of more comprehensive multilateral trade negotiations, such as the proposed United States-Mexico-

Canada Agreement (USMCA). Nevertheless, there have been recent instances of Presidents entering (or notifying Congress of their intent to enter) into limited bilateral trade agreements under Section 103(a).

Agreement on Duty-Free Treatment of Multi-Chip Integrated Circuits (2006)

In 2005, the European Union, Japan, South Korea, the United States, and Taiwan agreed to reduce the rate of all customs duties on multi-chip integrated circuits to zero on a most-favored-nation (MFN) basis (i.e., the principle that a country should not discriminate among its trading partners). President George W. Bush notified Congress of his intention to enter into the agreement, citing authority under Section 2103(a) of the Trade Act of 2002. On March 31, 2006, President Bush issued Proclamation 7995, which modified the U.S. Harmonized Tariff Schedule (HTS) to reflect the terms of the agreement.

Asia-Pacific Economic Cooperation Agreement on Environmental Goods (2015)

In 2012, leaders of the 21 Asia-Pacific Economic Cooperation (APEC) economies agreed to reduce applied tariff rates to 5% or less by the end of 2015 on 54 environmental goods on a MFN basis. On December 23, 2015, President Barack Obama issued Proclamation 9384, which modified the HTS to reflect the terms of the agreement. In the Proclamation, President Obama cited Section 103(a) of TPA-2015 and Section 502 of the Protecting Americans from Tax Hikes Act of 2015 as authority, the latter of which explicitly authorized the use of the proclamation authority provided for in Section 103(a) to implement an agreement by APEC members on environmental goods.

U.S.-Japan Trade Agreement (2019)

In October 2019, the United States entered into a trade agreement with Japan, which was negotiated and implemented under Section 103(a). U.S. commitments in the agreement included, among other things, the reduction or elimination of tariffs on 241 tariff lines, including 42 agricultural products (\$7.2 billion of U.S. imports), and, importantly, modifications to the U.S. global tariff-rate quota for imports of Japanese beef. Some Members of 116th Congress expressed concern over the agreement's scope and the use of 103(a) to implement it, which differs from prior U.S. FTA practice. Such concerns have focused on whether Section 103(a) authorizes the President to go beyond cutting tariff rates to modify quotas and create rules of origin.

U.S.-EU Trade Agreement (2020)

In November 2020, the United States entered into a trade agreement with the European Union, which was negotiated and implemented under Section 103(a) of TPA-2015. The agreement included the reduction of tariffs on 11 tariff lines, which include, among other products, certain prepared meals, certain crystal glassware, surface preparations, propellant powders, cigarette lighters, and lighter parts. The reductions were implemented on an MFN basis and are retroactive to August 1, 2020.

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