

The 21st Century Trade and Market Access Act

For too long, U.S. trade policy has benefited transnational corporations at the expense of workers' rights, consumer safety and the environment at home and abroad. The pending Trans-Pacific Partnership (TPP) represents the most significant opportunity to learn from the mistakes of past NAFTA-style trade agreements, and build a new international consensus around trade policy for the 21st Century.

First introduced by Senator Sherrod Brown of Ohio, the 21st Century Trade and Market Access Act would delegate authority to the President to negotiate the TPP and other trade agreements, while reasserting Congressional and public oversight into the substance of the negotiations. The legislation sets a number of binding negotiating requirements regarding labor rights, the environment, food safety and other trade provisions, while also establishing commonsense compliance reporting mechanisms and the streamlining of trade and export promotion activities in order to maximize the job creation potential of U.S. trade agreements.

The 21st Century Trade and Market Access Act's basic provisions:

Section 3 (Presidential Report): Requires the President to make findings to Congress on a country's form of government, labor standards, environmental standards, religious freedoms, human trafficking and currency manipulation prior to initiating trade negotiations with it (and within 30 days of the bill's enactment for any existing negotiations)

Section 4 (Market Assessment): Requires the U.S. International Trade Commission to assess the market access potential of any country prior to the President initiating trade negotiations with it (and within 30 days of the bill's enactment for any existing negotiations)

Section 5 (Access Commitments): Requires the U.S. Trade Representative to report annually to Congress on the market access commitments of countries with which the U.S. has trade agreements and how those obligations have been or will be met

Section 6 (Policymaking): A Sense-of-the-Congress provision that describes criteria for trade policymaking procedures that should replace Fast Track.

Section 7 (Standards): Sets mandatory criteria for what must and must not be included in trade agreements regarding labor, the environment, product safety, agriculture, public services, government procurement, investment, intellectual property, anti-dumping, dispute resolution, national security, states' rights and more.

Section 8 (Coordination): Amends the Export Enhancement Act of 1988 to improve coordination of export enhancement activities among federal agencies

Section 9 (Resource Allocation): Amends the Export Enhancement Act of 1988 to mandate a global assessment of the Foreign Commercial Service and redeploy personnel and other resources based on the assessment

Section 10 (Diplomacy): Amends the Foreign Service Act of 1980 in order to expand diplomatic efforts to reduce barriers to increased U.S. exports

The 21st Century Trade and Market Access Act's new standards:

Labor: Countries must adopt into domestic law and effectively enforce the International Labor Organization's core labor standards. Failure to do so subjects parties to dispute resolution and enforcement mechanisms that are at least as stringent as those for commercial claims.

Environment: Countries are prohibited from eliminating, weakening or failing to enforce domestic environmental protections for trade purposes. Trade in illegally-harvested resources is banned. Countries must fully implement and enforce all multilateral environmental agreements to which they are party. Failure to do so is subject to dispute resolution and enforcement.

Consumer Safety: Food, feed and all consumer products may only be imported into the U.S. if they meet or exceed U.S. safety standards. The FDA and CPSC are instructed to review the regulations of trading partners and ensure that products entering the U.S. meet this requirement.

Services: Trade agreements cannot be used to require privatization or deregulation of services.

Investment: Countries maintain the right to regulate foreign investment according to their own priorities, and to place restrictions on speculative capital. Foreign investors must not be given greater rights than domestic investors, and the concepts "investor," "investment," "expropriation" and "national treatment" are all clarified to protect governments' ability to regulate.

Procurement: Procurement provisions in trade agreements must not undermine prevailing wage, recycled content, sustainable harvest, renewable energy or human rights policies or project labor agreements. Procurement obligations cannot apply to local governments, and only to states that specifically agree.

Intellectual Property: Drug patenting requirements must not undermine the access to medicine standards set in the Declaration on the TRIPS Agreement and Public Health, and patents on traditional knowledge must be consistent with the Convention on Biological Diversity. Internet service providers may not be generally obligated to monitor electronic information that they transmit or store.

Agriculture: Countries are allowed to develop strategic agricultural reserves and enact policies allowing for fair remuneration for growers and farm workers. Countries may maintain anti-dumping policies and U.S. anti-trust laws cannot be preempted.

State-Owned Enterprises: Requires that countries party to a trade agreement report annually on state-owned enterprises that invest or conduct operations in other countries party to the agreement. Prohibits countries from giving subsidies or other benefits to these enterprises that provide a competitive advantage.

States' Rights: States can only be required to comply with procurement, services or investment provisions with their explicit prior informed consent.