# TRADE POLICY FREQUENTLY ASKED QUESTIONS

## Key Trade Terms and Current Issue

### What is "fast track"?

Since 1974, Congress has agreed to an expedited process known as "fast track" Trade Promotion Authority (TPA) for consideration and approval (or disapproval) of a trade agreement negotiated by the President (through the Office of the U.S. Trade Representative, or USTR). Under the TPA, Congress has only an up-or-down vote—no amendments are allowed to the trade agreement. These rules also establish timetables for voting on implementing legislation, limit debate and require USTR to brief certain Congressional committees during the negotiation of an agreement. Fast track is currently in effect; it has been renewed four times and most recently was reauthorized by Congress in 2015 under the Obama administration. It is in effect through July 1, 2021.

### What are tariffs? [1]

A tariff is a tax on imported goods. It is paid by the importing company (unless an alternative agreement is reached by the importing and exporting companies). Tariffs are adopted for a variety of reasons including: Protecting domestic employment from unfair competition; helping infant industries succeed; national security; retaliation. In general, the Harmonized Tariff Schedule (HTS) of the U.S. determines the tariffs (also known as duties) that are imposed on imported goods. The HTS uses a structure of tariff classification, based on standard commodity codes and descriptions developed by the World Customs Organization (WCO). The U.S. International Trade Commission publishes the HTS and keeps it up to date. U.S. Customs and Border Protection is responsible for interpreting and enforcing the tariff code. (For more on this topic, see FAQ on Tariffs)

### What is a "non-tariff barrier"?

Free trade agreements are increasingly aimed at preventing the adoption or continuation of domestic regulations that increase trade costs or that prevent products from being sold unless they meet certain health and safety or other rules – even if the rules apply to products without regard to where they originate and are not intended to discriminate against other countries' products. These domestic regulations, such as restrictions on the amount of pesticide residue that is allowed on food, or consumer food and product labeling requirements for nutrition, food additives or chemicals, are called "non-tariff barriers" by affected companies and trade negotiators.

### What are rules of origin?

Rules of origin (ROO) determine the "nationality" of imported products. ROO are important for several reasons, including determining admissibility of imports, assessing duty rates, and establishing eligibility for preferential trade programs and free trade agreements (FTAs). For example, ROO determine if goods can be labeled "Made in America" or qualify for "Buy America" preferences. Determining a product's origin can be relatively straightforward if the product's raw materials and parts are manufactured and assembled in a single country. However, in today's global economy, determining origin can be complex because goods such as autos, computers, and clothing are assembled with parts sourced from many countries. The U.S. negotiates different ROO within its FTAs to determine eligibility to receive an agreement's tariff benefits.

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### What is most-favored-nation (MFN) treatment?

Most-favored-nation treatment (MFN) is the fundamental principle of nondiscrimination in the multilateral trading system. MFN requires World Trade Organization (WTO) members to grant each other member country treatment at least as favorable as it grants to its most-favored trade partner—in other words, every member must treat all members equally. For example, if a country grants a trade benefit or concession to one country, such as lower tariffs, it would have to extend the same benefit to all other members. There are a number of permitted exceptions to MFN treatment, however. For example, countries can establish trade agreements with one another outside of the WTO, granting additional preferences to those in the agreement, provided certain conditions are met, including that they cover substantially all trade between those nations.

### Why do some countries receive "special and differential treatment"?

WTO rules provide for special and differential treatment for developing countries, allowing trading partners to offer them more favorable terms without violating MFN rules. They can include preferential market access for their exports and softer commitments on lowing trade protections on imports. There is currently controversy over whether some countries, notably larger economies like China or India, should still receive this special treatment, as their economies have grown but their average income per capita is still well below that in developed countries.

### What is national treatment?

National treatment is another fundamental principle of nondiscrimination in the multilateral trading system. It obligates each trading partner not to discriminate between domestic and foreign products. In other words, once an imported product enters a country, it must be treated no less favorably than a "like" product produced domestically. The same concept is also applied to foreign and domestic services and intellectual property rights.

### What is Investor-State Dispute Settlement?

Under ISDS (investor-state dispute settlement), companies can sue countries when they think that government decisions or court rulings – even those whose explicit aim is to protect people or the environment – affect their profits. These lawsuits bypass domestic courts and take place before an international tribunal of arbitrators: essentially three investment lawyers. ISDS cases may challenge federal, state and local government decisions and policies, as well as judicial decisions. ISDS has become hugely controversial as the number of cases has grown dramatically in recent years and because it has led to many decisions that are viewed as arbitrary and against the public interest. ISDS gives foreign corporations greater rights than domestic corporations; has built-in conflicts of interest; is very expensive (just to litigate a case averages $10 million, not counting costs of paying damages if on the losing end); and has been used to essentially blackmail governments not to adopt policies such as tobacco restrictions or environmental protections. ISDS is contained in a number of bilateral investment treaties, and in certain international trade treaties, such as the original NAFTA (chapter 11) and the Trans-Pacific Partnership (chapter 9).[2]

### What is the May 10 agreement?

The "May 10 agreement" was reached between the G.W. Bush administration and Democrats in Congress in 2007 concerning changes to the free trade agreements then pending with Panama, Peru, and (to a lesser degree) Korea. It required the renegotiation of those agreements to reflect additional provisions including environmental and labor protections, and access to medicines. The principles of the May 10 agreement have been incorporated into some subsequent FTAs and the agreement is often referenced as a starting point for future improvements.

### Endnotes

1. Note that the definitions for tariffs, rules of origin, national treatment, and most favored nation have been excerpted in part from U.S. Trade Policy Primer: Frequently Asked Questions. Congressional Research Service. Updated January 29, 2019. https://fas.org/sgp/crs/row/R45148.pdf

2. After the U.S. withdrew from the Trans Pacific Partnership (TPP), it was renamed by the remaining 11 parties as the "Comprehensive and Progressive Trans Pacific Partnership." The ISDS provisions of the TPP's Chapter 9 are largely unchanged in the final version of the agreement.