

Will Congress Renew Fast-Track Trade Authority?

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President Barack Obama has not yet asked for it, and congressional Democrats are not anxious to give it to him even when he does. But the President will reportedly request from Congress fast-track trade negotiating authority yet this year, according to the President’s chief trade negotiator.

Few Americans realize that the President does not have unilateral authority under the Constitution to negotiate trade agreements. But it is the Congress that has exclusive authority under our founding document to “regulate commerce with foreign nations.” As former U.S. Trade Representative Robert Zoellick put it, “Remember, under our Constitution the authority over trade belongs with the Congress. We have to borrow that authority and we have to give it back now and then.”¹

Since 1974, with some interruptions, that loan of authority from Congress to the Executive has been handled through what was then known as “fast track trade negotiating authority” and is now called Trade Promotion Authority (TPA). Under the terms of the law, if the President submits an “implementing bill” to either House of Congress with respect to one or more trade agreements, or with respect to an extension of the Uruguay Round Agreements Act, the bill must be introduced “by request” [of the President] by the majority and minority leaders of the House or the Senate, as the case may be (or by Members of the House or Senate designated by them).

The committees to which the bill is referred must report the measure within 45 days after its introduction, without change, or they are automatically discharged and the measure is placed on the calendar of that House. A motion to proceed to the bill’s consideration is highly privileged in both Houses, without debate; the measure is not subject to amendment; and debate is limited to 20 hours (meaning no Senate filibusters). A vote on final passage of the measure must be taken within 15 days after its placement on the calendar. The second House to receive the bill has 15 days to report it and another 15 days to bring it to a final vote—potentially a 90-day process altogether.²

Because such expedited procedures seem to run contrary to Congress’s natural inclination to fully debate and amend legislation, both in committee and on the floor, the question arises: Why would Congress ever grant such extraordinary authority to the President? The answer is a complex mix of explanations, not the least of which is Congress’s tendency to defer to Presidents, regardless of party, in the conduct of international affairs, and negotiating trade agreements with foreign

nations--something Congress is hardly equipped or inclined or equipped to do directly. Nevertheless, Congress expects prior and ongoing consultation throughout any such negotiations; and it often ties conditions to the granting of TPA, such as labor and environmental standards.

Finally, Congress participates at the committee level in drafting the implementing bill the administration will then submit. While this “informal” drafting exercise is not provided for in the Trade Act or in House or Senate rules, it is a very formalized process, considering its supposed informality. It is referred to as a “mock mark-up” because Members go through the same motions as if they were marking-up an actual bill—that is, offering, debating and voting on proposed amendments. The difference is that the mock session’s amendments are not considered binding on the President when he formally submits his implementing bill; they are merely advisory. But the President is well advised to heed those advisory amendments if he hopes to win approval of his bill.

Since the 1974 Trade Act was first enacted, the fast-track authority has been renewed on numerous occasions--right up to 1994—to cover an especially active period in the nation’s trade history. The authority was initially effective for six years, from 1975 to 1980. However, Congress renewed the authority for another eight years in 1979; and it was renewed again in 1988 until 1993 to accommodate the Uruguay Round of talks. It was then renewed again in April 1994 until those talks concluded with an agreement that transformed the General Agreements on Tariffs and Trade (GATT) into the World Trade Organization (WTO). Under the renewed authority, Congress approved trade agreement implementing legislation for the US-Israel Free Trade Area, the U.S. Canada Free Trade Agreement, the North American Free Trade Agreement (NAFTA) and the Uruguay Round of agreements (URAA).

However, the authority was allowed to lapse in 1994 under President Bill Clinton as political considerations came into play. Likewise, when it was renewed again in 2002, during the presidency of George W. Bush, the renewal bill narrowly passed the House, 215 to 212, with only 27 Democrats in support. During the most recent period in which the authority was in effect (2002 to 2007), roughly a dozen bilateral agreements and regional trade pacts were negotiated and approved by Congress. The most recent were in 2011 when Congress approved free trade agreements with Panama, South Korea and Colombia.³

President Barack Obama’s Trade Representative, Ron Kirk, recently told reporters that the President intends to ask Congress to renew his Trade Promotion Authority this year so that the U.S. can complete talks for a Trans-Pacific Partnership (TPP) with Australia, New Zealand, Vietnam, Chile and four other countries. Kirk hinted that the administration has other “ambitions” in using the

authority. House Ways and Means Committee Ranking Democrat Sander Levin expressed doubt that a TPA bill would be passed this year.⁴ (Kirk also urged Congress to restore “permanent normal trade relations” (PNTR) with Russia--previously called “Most Favored Nation status or MFN—something the Soviet Union lost with the 1974 Trade Act’s “Jackson-Vanik Amendment” that tied normal trade relations to a country’s emigration policies.⁵)

Republicans in both Houses have been urging the President from the beginning of his term to submit his request for Fast-Track Trade Negotiating Authority. Senate Republicans decided not to wait, offering an amendment to give the President trade promotion authority last September. The amendment, offered by Senate Republican Leader Mitch McConnell (R-Ky.) failed on a 45 to 55 vote September 20, 2011.⁶

McConnell justified offering the amendment on grounds it was vital to job creation. “Without trade authority, there will be no other trade agreements,” he said. “We all know that. And that’s why I’ve been a strong advocate for granting this president the same trade promotion authority that every other president has enjoyed since 1974.”⁷

The intersection of presidential and congressional election campaigns with trade issues may further complicate prospects for any action on TPA renewal this year--unless of course, it is done after the election, during a lame duck session. It would not be the first time a Congress found such timing propitious to accomplish important things.

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Endnotes

¹ Robert Zoellick, U.S. Trade Representative, April 24, 2003.

² “Fast Track” Procedures of the Trade Act of 1974 (19 U.S.C. 2191-94), Implementing Bills, sec. 151, as reprinted in the House Rules and Manual, One-Hundred Twelfth Congress, sec. 1130 (11D).

³ Although the authority had expired in 2007, because the three agreements had been reached prior to expiration that year, the fast-track procedures in Congress still applied.

⁴ Doug Palmer, “White House Wants Trade Promotion Authority: Kirk,” Reuters News Service, Feb. 29, 2012, accessed at <http://www.reuters.com/assets/print?aid=USTRE81S1FF20120229>, March 14, 2012.

⁵ Ibid.

⁶ The amendment was offered to H.R. 2832, a bill to extend the Generalized System of Preferences (regarding duty free treatment, and extend Trade Adjustment Assistance (TAA) for workers displaced by foreign imports. The amendment was considered under a unanimous consent agreement that would have required 60 votes for adoption. The bill was enacted into law Oct. 21, 2011 (Public Law 112-40).

⁷ Doug Palmer, “Senate Rejects Trade Promotion Authority for Obama,” Reuters News Service, Sept. 20, 2011, accessed at <http://www.reuters.com/assets/print?aid=USTRE78J6FU20110920> on March 14, 2012.