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Legislation to Provide Fast Track Trade Authority for President Obama Finally Introduced, But Can It Pass?

Considerable House Opposition on Day One, Tight Calendar in Election Year

WASHINGTON, D.C. – Legislation introduced today by U.S. Sen. Max Baucus (D-Mont.) and U.S. Rep. Dave Camp (R-Mich.), which would revive the controversial Fast Track trade authority, faces long odds for approval in the 113th Congress, Public Citizen said today. The legislation replicates the Fast Track mechanism found in the 2002 grant of Fast Track; however, the new legislation alters some previous negotiating objectives.

Both Democratic and GOP presidents have struggled to persuade Congress to delegate its constitutional trade authority via the Nixon-era Fast Track scheme. Fast Track has been in effect for only five years (2002-2007) of the 18 years since passage of the North American Free Trade Agreement (NAFTA) and the agreement that created the World Trade Organization (WTO).

With a large bloc of House Democrats and Republicans already having announced opposition to the old Fast Track process at the heart of Camp-Baucus bill, the prospects are limited for the Obama administration to secure passage in the first half of 2014 before lawmakers' attention turns to midterm elections. The first session of the 113th Congress was consumed with negotiations among Ways and Means and Finance Committee leaders that could not produce a consensus bill. Ways and Means Ranking Member Sandy Levin (D-Mich.) has announced that he wants changes to the old process to enhance Congress' role.

The legislation includes several negotiation objectives not found in the 2002 Fast Track; however, the underlying Fast Track process included in the bill ensures that these objectives are entirely unenforceable. Whether or not the president obtains the listed negotiating objectives, the bill would empower the president to sign a trade pact before Congress votes on it with a guarantee that the executive branch can write legislation to implement the pact and alter wide swaths of existing U.S. law and obtain both House and Senate votes within 90 days. That legislation is not subject to markup and amendment in committee, all amendments are forbidden during floor votes and a maximum of 20 hours of debate is permitted in the House and Senate.

“Congress’ willingness to support Fast Track has declined markedly because ‘trade’ agreements have increasingly invaded Congress’ domestic policymaking prerogatives,” said Lori Wallach, director of Public Citizen’s Global Trade Watch. “On top of that, Democratic and GOP

presidents alike have consistently ignored the negotiating objectives included in Fast Track, but the way the process is structured, Congress has given away its authority to do anything about it.”

The Trans-Pacific Partnership, for which President Barack Obama seeks Fast Track authority, includes chapters on patents, copyright, financial regulation, energy policy, procurement, food safety and more that would constrain the policies on these matters that Congress and state legislatures can maintain or establish.

President George W. Bush spent two years and extraordinary political capital to obtain the 2002-2007 Fast Track grant, which passed a Republican-controlled House by one vote and expired in 2007.

A two-year effort by President Bill Clinton to obtain Fast Track trade authority during his second term in office was voted down on the House floor in 1998 when 171 Democrats were joined by 71 GOP who bucked then-Speaker Newt Gingrich. Clinton did not have Fast Track for six of his eight years in office, but still implemented more than 130 trade agreements, including granting Most Favored Nation status to China, which led to China’s WTO access.

“Fast Track is outdated 1970s technology being applied to 21st century realities, which is causing serious damage,” said Wallach. “It’s rare these days that across the aisle, Congress agrees on anything, so it’s notable that a large bipartisan bloc insists on maintaining the exclusive constitutional authority over trade that the Founding Fathers wisely granted to Congress.”

Fast Track allowed a president to determine the contents of trade pacts, sign them before Congress votes and write expansive implementing legislation that is not subject to congressional committee amendment – all with a guarantee that Congress would vote on a completed agreement and the legislation within 90 days, with no floor amendments and limited debate.

A [letter](#) sent to Obama in November by 151 Democrats called for creation of a new mechanism for trade agreement negotiations and approval: “Congress, not the Executive Branch, must determine when an agreement meets the objectives Congress sets in the exercise of its Article I-8 exclusive constitutional authority to set the terms of trade,” the letter said. “For instance, an agreement that does not specifically meet congressional negotiating objectives must not receive preferential consideration in Congress.”

Further, “A new trade agreement negotiation and approval process that restores a robust role for Congress is essential to achieving U.S. trade agreements that can secure prosperity for the greatest number of Americans, while preserving the vital tenets of American democracy in the era of globalization,” the letter stated. “Twentieth Century ‘Fast Track’ is simply not appropriate for 21st Century agreements and must be replaced.”

Background:

Opposition to Fast Track authority in Congress has increased significantly since the time of NAFTA and the WTO.

Under President George H.W. Bush in 1991, Fast Track authority passed a Democratic-led House by a 27-vote margin. Clinton had Fast Track authority for only two of his eight years in office, and in 1998, the Democratic-led House emphatically rejected his request, with 71 GOP representatives joining 171 in the majority to vote “no.” Bush managed to obtain Fast Track authority by only one vote in the House after two years of effort, and Congress rebuffed Bush’s request for an extension when that delegation expired in 2007.

In 2008, during his presidential campaign, Obama promised to replace Fast Track with a more inclusive process. History seemed with him: A new system of trade authority delegation has been created every few decades since 1890.

But since capturing a second term in the White House, Obama has ramped up his demand that Congress once again cede its constitutional trade authority via Fast Track. Prior to Fast Track and starting with Franklin Roosevelt’s presidency, Congress gave Tariff Proclamation Authority (TPA) to presidents. But it covered only tariffs, not the broad subject matter included under Fast Track. The mechanism allowed the executive branch to implement reciprocal tariff cuts only within bounds set by Congress. (Notably, this “TPA” was entirely different than Fast Track, which is sometimes called Trade Promotion Authority (TPA), as it pertained only to tariffs.)

Before that, trade agreements were often approved as treaties by the Senate, with both chambers later also required to pass implementing legislation. Public Citizen’s 2013 book, [“The Rise and Fall of Fast Track Trade Authority,”](#) provides an in-depth history of U.S. trade authority.

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