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ANALYSIS: Hatch Bill Would Revive Controversial 2002 Fast Track Mechanism that Faces Broad Congressional, Public Opposition

2015 Hatch Bill Replicates Language of Failed 2014 Fast Track Bill; Would Expand Same Broken Trade Model That Has Led to \$912 Billion Trade Deficit, Loss of Millions of Manufacturing Jobs, Attacks on Public Interest Policies

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The Hatch Fast Track bill introduced today would revive the controversial Fast Track procedures to which [nearly all](#) U.S. House of Representatives [Democrats](#) and a [sizable bloc](#) of House [Republicans](#) already have announced opposition.

Most of the text of the Hatch Fast Track bill replicates word-for-word the text of the 2014 Fast Track bill, which itself replicated much of the 2002 Fast Track bill.

The bill explicitly grandfathers in Fast Track coverage for the almost-completed Trans-Pacific Partnership (TPP) and would extend Fast Track procedures for three to six years. The bill would delegate away Congress' constitutional trade authority, even after the Obama administration dismissed bipartisan and bicameral demands that the TPP include enforceable currency manipulation disciplines.

Today's bill, sponsored by Senate Finance Committee Chair Orrin Hatch (R-Utah), House Ways and Means Chair Paul Ryan (R-Wis.) and Finance Committee Ranking Member Ron Wyden (D-Ore.) failed to attract a single House Democratic sponsor.

In the past 21 years, this form of Fast Track authority has only been authorized once by Congress – from 2002 to 2007. In 1998, the House of Representatives voted down Fast Track for President Bill Clinton with 71 GOP members joining 171 House Democrats.

Today's bill would:

- Empower the executive branch to unilaterally select partner countries for a trade pact, determine an agreement's contents through the negotiating process, and then sign and enter into an agreement – all *before* Congress voted to approve a trade pact's contents, *regardless of whether a pact met Congress' negotiating objectives*;
- Authorize the executive branch to write legislation containing any terms the White House decides are “necessary or appropriate” to implement the pact. Such legislation would not be subject to normal congressional committee review and markup, meaning this and future administrations could include in a Fast-Track trade bill whatever terms it desired;

- Require votes in both chambers within 90 days, forbidding any amendments and limiting debate to 20 hours, *whether or not Congress' negotiating objectives were met.*
- Instead of establishing a new “exit ramp,” the bill literally replicates the same impossible conditions from past Fast Track bills that make the “procedural disapproval” mechanism to remove an agreement from Fast Track unusable. A resolution to do so must be approved by both the Senate Finance and the House Ways and Means committees and then be passed by both chambers within 60 days. (Sec. 6(b)(1-2)) The bill’s only new feature in this respect is a new “consultation and compliance” procedure that would only be usable *after an agreement was already signed and entered into*, at which point changes to the pact could be made only if all other negotiating parties agreed to reopen negotiations and then agreed to the changes (likely after extracting further concessions from the United States). (Sec. 6(b)(3-4)) That process would require approval by 60 Senators to take a pact off of Fast Track consideration, even though a simple majority “no” vote in the Senate would have the same effect on an agreement. In contrast, the 1988 Fast Track empowered either the House Ways and Means or the Senate Finance committees to vote by simple majority to remove a pact from Fast Track consideration, with no additional floor votes required. And, such a disapproval action was authorized *before* a president could sign and enter into a trade agreement. (19 USC 2903(c)(2)(B))

Analysis of the Hatch Bill: Core Provisions Are Identical to 2002 Fast Track

Like the 2014 Hatch-Camp-Baucus Fast Track bill, the 2015 Hatch bill replicates the procedures included in the 2002 grant of Fast Track that expired in 2007:

- The president would be empowered to unilaterally select trade negotiating partners and commence negotiations on a pact for which Fast Track procedures would apply. Like the 2002 Fast Track, in the Hatch bill this authority is conditioned only on *pro forma* consultations and 90 calendar days’ notice being given to Congress before negotiations begin. Replicating the 2002 Fast Track, the bill provides no role for Congress in selecting with which countries negotiations subject to Fast Track treatment are initiated. (Sec. 3(d) and 5(a))
- The president would be empowered to unilaterally control the contents of an agreement. As with the 2002 Fast Track, congressional negotiating objectives in the Hatch bill are not enforceable. Whether or not U.S. negotiators obtain the listed negotiating objectives, the Hatch bill would empower the president to sign and enter into a trade pact before Congress votes on it, with a guarantee that the executive branch could write legislation to implement the pact and obtain House and Senate votes within 90 days, with all amendments forbidden and a maximum of 20 hours of debate permitted. (Sec. 3(b))
- Democratic and GOP presidents alike have [historically ignored negotiating objectives](#) included in Fast Track. The 1988 Fast Track used for the North American Free Trade Agreement (NAFTA) and the establishment of the World Trade Organization (WTO) included a negotiating objective on labor standards, but neither pact included such terms. The 2002 Fast Track listed as a priority the establishment of mechanisms to counter currency manipulation, but none of the pacts established under that authority included such terms.
- The president would be authorized to sign and enter into an agreement subject to expedited consideration conditioned only on *pro forma* consultations and providing Congress 90 calendar days’ notice prior to doing so. (Sec. 3(b) and 6(a)) The executive branch alone would determine when negotiations are “complete.” The congressional “consultation” mechanisms in the Hatch bill do not

provide Congress with any authority or mechanism to certify that its objectives were met before an agreement is signed.

- The president would be authorized to write expansive implementing legislation for a signed pact and submit it for consideration. (Sec. 3(b)) As with the 2002 Fast Track, such legislation would not be subject to congressional committee markup and amendment. The 2002 Fast Track states that this legislation can include any changes to U.S. law that the president deems “necessary or appropriate to implement such trade agreement or agreements.” (19 USC 3803(b)(3)(B)(ii)) Inclusion of the term “appropriate” in this section of past Fast Track authorities has been controversial, because it provides enormous discretion for the executive branch to include changes to existing U.S. law that Congress may or may not deem *necessary* to implement an agreement. Indeed, inclusion of the term “appropriate” has enabled Democratic and GOP administrations alike to insert extraneous changes to U.S. law into legislation that skirts committee mark up and is not subject to floor amendment. Rather than remove the term “appropriate,” the Hatch bill merely adds the superfluous modifier “strictly” in front of the same “necessary or appropriate” language found in the 2002 Fast Track. (Sec. 3(b)(3)(B)(ii)) As with the 2002 Fast Track, there is no point of order or other mechanism to challenge inclusion of overreaching provisions in the implementing bill.
- Like the 2002 Fast Track, the Hatch bill would require the House to vote on such legislation within 60 session days, with the Senate having an additional 30 days to vote thereafter. (Sec. 3(b)(3)(A))
- Like the 2002 Fast Track, the Hatch bill would forbid all amendments and permit only 20 hours of debate on such legislation in the House and Senate. Voting, including in the Senate, would be by simple majority. (Sec. 3(b)(3)(A))

The Hatch bill includes several negotiating objectives not found in the 2002 Fast Track authority, most of which were also in the 2014 bill. However, the Fast Track process that the legislation would re-establish ensures that these negotiating objectives are entirely unenforceable:

- Today’s bill includes a new negotiating objective related to human rights: “to promote respect for internationally recognized human rights.” (Sec. 2(a)(11)) But since the bill does not alter the fundamental Fast Track process, the president still would be able to unilaterally pick countries with serious human rights abuses as trade negotiating partners, initiate negotiations with them, conclude negotiations, and sign and enter into the trade agreement with the governments committing the abuses, with no opportunity for Congress to require the president to do otherwise.
- In addition to the Fast Track procedure applying whether or not objectives are met, some of the Hatch bill negotiating objectives advertised as “new” are in fact identical to what was in the 2014 bill and were referenced in the 2002 Fast Track. For example, the 2002 Fast Track included currency measures: “seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade.” (19 USC 3802(c)(12)) The so-called “new” text in the Hatch bill repeats word-for-word what was in the 2014 Fast Track bill: “The principal negotiating objective of the United States with respect to currency practices is that parties to a trade agreement with the United States avoid manipulating exchange rates in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other parties to the agreement, such as through cooperative mechanisms, enforceable rules, reporting, monitoring, transparency, or other means, as

appropriate.” (Sec. 2(b)(11)) Even if Congress had the power to ensure that this negotiating objective was met, the language of this negotiating objective itself does not require enforceable disciplines on currency manipulation to be included in the TPP or other deals obtaining Fast Track treatment. Despite the requests from bipartisan majorities of both houses of Congress that enforceable currency manipulation disciplines be included in the TPP, the Hatch negotiating objective lists “enforceable rules” as just one approach among several non-binding options for the TPP and other Fast Tracked deals.

- The bill’s negotiating objectives regarding labor and the environment replicate those of the 2014 fast Track bill, which in turn memorialize the provisions of the “May 10, 2007” deal that, according to recent government reports, have proven ineffective. (Sec. 2(b)(10)) While the May 10 provisions went beyond the 2002 Fast Track objectives regarding labor, a U.S. [Government Accountability Office \(GAO\) report](#) released in November 2014 found broad labor rights violations across five surveyed Free Trade Agreement (FTA) partner countries, regardless of whether or not the FTA includes the labor provisions of the May 10 deal.

Provisions touted as improving transparency would in fact provide a statutory basis for the unacceptable practice of requiring congressional staff to have security clearances to view any draft trade pact text and would fail to match even the level of transparency seen during the Bush administration’s trade negotiations:

- The Hatch bill would simply formalize the past practices of the Office of the U.S. Trade Representative (USTR) under the Bill Clinton and George W. Bush administrations. The bill would formally designate trade agreements as falling under the national security-related clearance system, requiring USTR to create guidelines that would bar access to any draft trade pact text for congressional staff without security clearances. The other “transparency” provisions in the Hatch bill would simply return to the status quo level of transparency under the Clinton and Bush administrations before the Obama administration’s anomalous steps backwards. For instance, during NAFTA negotiations, members of Congress had open access to the full draft composite NAFTA texts with a new version placed into a secure reading room in the U.S. Capitol after each round of negotiations. In the summer of 2013, the Obama administration finally responded to growing pressure by members of Congress for access to draft composite Trans-Pacific Partnership texts by bringing requested specific chapters to members’ offices for review when a member asked for such access, but forbade members’ staff (even those with security clearance) from being present or notes from being taken. Returning to the same degree of congressional access provided by the Bush administration while continuing to exclude public and press access to draft trade pact texts is hardly worth applauding. (Sec. 4(a)(3))
- As for public transparency, the Hatch bill actually fails even to reach the openness of the Bush administration. During negotiations for the Free Trade Area of the Americas under that administration, USTR released the draft composite negotiating text of the agreement on the USTR website for anyone to read. The Hatch bill includes no such requirement for the draft texts of Fast Tracked trade agreements to be released to the public. A close read of a new provision requiring USTR to post a trade agreement text on its website 60 days before signing reveals that this timing would be 30 days after the agreement was initialed and the text locked, meaning the text would only become public after it was too late for the public or Congress to demand changes. (Sec. 6(a)(1))

What is touted as “strengthen[ing] congressional oversight” is actually the renaming of the 2002 Congressional Oversight Group as the “House Advisory Group on Negotiations” and the “Senate Advisory Group on Negotiations.”

- The 2002 Fast Track established a Congressional Oversight Group (COG) comprised of members of Congress appointed by congressional leaders who were to obtain special briefings from USTR on the status of negotiations and to attend negotiations on an advisory basis. The Hatch bill renames the COG – delineating a “House Advisory Group on Negotiations” and a “Senate Advisory Group on Negotiations” and describing joint activities of the two – but includes the same appointment process and limited role for congressional trade advisory groups as found in the 2002 Fast Track. This exact language was also in the 2014 bill. (Sec. 4(c))
- The Hatch bill instructs USTR to write guidelines for its consultations with Congress, the public and private sector advisory groups. In effect, this provision merely requires USTR to put into writing how it will (or will not) relate to these interested parties. (Sec. 4(a)(3), Sec. 4(b)(3), Sec. 4(d) and Sec. 4(e))

The Hatch bill faces long odds for approval in the 114th Congress:

- Today’s Hatch bill makes only minor adjustments to the Hatch-Camp-Baucus Fast Track bill that was dead on arrival in the House when it was introduced on January 9, 2014. There were literally only a handful of House Democrats who supported the Hatch-Camp-Baucus bill: eight out of 201 members. And the House GOP leadership could not count more than 100 members as “yes” votes on the bill while 27 members, 20 of whom returned to the 114th Congress, signed letters against Fast Track in 2013. That is why the Hatch-Camp-Baucus bill never moved towards a floor vote. The 2014 congressional election did not change the House GOP leadership’s calculus – in January 2015 House Speaker John Boehner (R-Ohio) said he needed to see 50 firm Democrat votes before a Fast Track bill could move.
- Before their second month in Congress, 14 of the 17 current [freshmen Democrats in the House](#) signed letters opposing or expressing serious concerns with Fast Track (12 of the 15 elected in November 2014 and two elected in special elections in 2014). This occurred despite intense pressure from the administration to not take a public position against Fast Track. And, in contrast to past Congresses, a sizable bloc of freshmen GOP members has refused to declare support for Fast Track despite a corporate lobby push.
- A string of letters in November 2013 showed broad opposition to the 2002 Fast Track delegation mechanism that the Hatch bill would revive. A [letter](#) sent to President Obama by 151 Democrats opposed Fast Track authority and called for the creation of a new mechanism for trade agreement negotiations and approval. Twenty-seven Republicans also announced their opposition to Fast Track in [two letters](#) to Obama. And most Democratic members of the House Ways and Means Committee joined an additional [letter](#) noting that the old Fast Track process enjoys little support.
- Today’s bill comes despite broad and growing public opposition to Fast Track and the TPP. A 2015 bipartisan [poll](#) from the *Wall Street Journal* and *NBC News* shows that 75 percent of Americans think that the TPP should be rejected or delayed. In recent weeks, voters in Maryland, [Oregon](#), [Washington](#), [Connecticut](#), [Colorado](#) and other states protested against Fast Track, citing the devastating impact past Fast Tracked pacts have had on local jobs, small businesses and farmers. [Recent data](#) show that similar trade deals have already pushed the United States to the precipice of a historic \$1 trillion trade

deficit, contributed to the loss of five million American manufacturing jobs and increased U.S. income inequality.

- The Hatch Fast Track bill grandfathers in the TPP, the U.S.-EU Trans-Atlantic Free Trade Agreement (TAFTA) and the Trade in Services Agreement (TISA) negotiations. (Sec. 7) Fast Track for the TPP and TAFTA is especially controversial because these pacts would include chapters on patents, copyright, financial regulation, energy policy, procurement, food safety and more, constraining the policies that Congress and state legislatures could maintain or establish on these sensitive non-trade matters. Fast Track was designed in the 1970s when trade negotiations were narrowly focused on cutting tariffs and quotas, not the sweeping range of non-trade policies implicated by today's pacts.

Fast Track is an anomaly. It has only been in effect for five of the past 21 years:

- Both Democratic and GOP presidents have struggled to convince 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 21 years since passage of NAFTA and the agreement that created the WTO.
- 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 members 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 a hundred trade agreements.
- 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. Bush's efforts to obtain a new grant of Fast Track authority never gained sufficient support to move towards floor votes before he left office.