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Hatch Bill Would Revive Controversial 2002 Fast Track Mechanism That Faces Broad Congressional, Public Opposition

Today's Proposal Replicates Language of Failed 2014 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

WASHINGTON, D.C. – The trade authority 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 this bill replicates word-for-word the text of the 2014 Fast Track bill, which itself replicated much of the 2002 Fast Track bill. Public Citizen calls on Congress to again oppose the outdated, anti-democratic Fast Track authority as a first step to replacing decades of “trade” policy that has led to the loss of millions of middle-class jobs and the rollback of critical public interest safeguards.

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

Today's 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. The trade authority proposal does not require negotiators to actually meet Congress' negotiating objectives in order to obtain the Fast Track privileges, making the bill's negotiating objectives entirely unenforceable.

“Congress is being asked to delegate away its constitutional trade authority over the TPP, even after the administration ignored bicameral, bipartisan demands about the agreement's terms, and then also grant blank-check authority to whomever may be the next president for any agreements he or she may pursue,” said Lori Wallach, director of Public Citizen's Global Trade Watch. “Rather than putting Congress in the driver's seat on trade, this bill is just the same old Fast Track that puts Congress in the trunk in handcuffs. I expect that Congress will say no to it.”

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. 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). 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.

"Chairman Hatch said he would never accept changes that make it possible for Congress to remove Fast Track from an agreement that does not measure up, and he got his way," said Wallach. "What is being advertised as a new safeguard is not an exit from Fast Track's confiscation of Congress' policymaking prerogatives, but new curtains hung over the same brick wall."

Today's bill faces long odds for approval. Members of Congress who supported past trade initiatives have been angered by the extreme secrecy of TPP negotiations and the administration's refusal to include currency disciplines in the pact.

The bill proposed today makes only minor adjustments to the Hatch-Camp-Baucus Fast Track bill that was dead on arrival in the House when it was introduced in 2014. At the time, only eight out of 201 House Democrats supported the bill and House GOP leaders could not count more than 100 members as "yes" votes. Since then, 14 of the 17 current freshman Democrats in the House have signed letters opposing Fast Track despite pressure from the administration. 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.

"This bill is a repeat of the Fast Track proposal that died a quick death one year ago," said Wallach. "The only difference is that that congressional opposition to the very concept of Fast Track authority has grown."

The bill comes despite broad and growing 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.

Today's bill, sponsored by U.S. 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. 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 Tracked trade bill whatever terms it desired;
- Require votes in both the House and Senate within 90 days, forbidding any amendments and limiting debate to 20 hours, *whether or not Congress' negotiating objectives were met*.

An analysis of today's bill shows that:

- 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. Whether or not Congress' negotiating objectives are met, the president could sign a pact before Congress approves it and obtain a yes or no vote in 90 days. 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 and the establishment of the World Trade Organization 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.
- 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.” 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.
- Provisions that are being touted as improving transparency, by empowering the Office of the U.S. Trade Representative (USTR) to develop standards for staff access to negotiating texts, 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. 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.

- Today's bill includes a new negotiating objective related to human rights: "to promote respect for internationally recognized human rights." 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.
- The bill's terms 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. While the May 10 provisions went beyond the 2002 Fast Track objectives regarding labor, a U.S. [Government Accountability Office 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 included the labor provisions of the May 10 deal.
- What the bill's co-sponsors are touting 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." This exact language was also in the 2014 bill.

For additional, in-depth analysis of the Hatch bill provisions, visit www.citizen.org/fast-track-2015.

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