

Replacing Fast Track: America Needs a New Trade Authority Mechanism

On January 9, 2014 legislation was introduced to revive the controversial Fast Track trade authority mechanism. **“Fast Track” is not synonymous with “trade authority.” Rather, it is one form of trade authority among many different varieties that Congress has developed over the years.**

- **The Camp-Baucus bill (HR 3830/S 1900) replicates the broad delegation mechanism of the 2002 Fast Track.** Democratic and GOP presidents alike have struggled to convince Congress to provide Fast Track, which delegates away key congressional authorities. Fast Track has only been in effect for five of the past 20 years – from 2002-2007. Fast Track was only ever used 16 times among hundreds of U.S. trade agreements implemented since 1974. If this bill were enacted:
- **Fast Track was a form of trade authority established in 1974.** In 2002, as Congress’ support for the broad delegation of authority at the core of Fast Track had waned, Fast Track supporters tried to rename the process “Trade Promotion Authority.” *But by any name, the mechanism is the same:*
 - With 90 days notice to Congress, the executive branch could launch trade negotiations with any country it chooses. Congress has no mechanism to veto country selection or stop the launch.
 - The executive branch is empowered to control the contents of agreements. Congress sets negotiating objectives, but they are not enforceable.
 - Whether or not the executive branch meets Congress’ objectives, Fast Track empowers the executive branch to determine when negotiations are complete and, following another 90 days notice to Congress, to sign and enter into an agreement – all before Congress votes on a pact.
 - Whether or not the executive branch met Congress’ objectives, agreements signed in this manner are guaranteed a House vote within 60 days of the president submitting implementing legislation to enact the pact and makes changes to any U.S. law it deems “necessary or appropriate” to implement it. The Senate has an additional 30 days to vote.
 - The executive branch is empowered to write this implementing legislation, which is not subject to committee markup or amendment. Because Fast Track allowed any changes to U.S. law the executive branch deems “appropriate” and Congress cannot alter the bill, past Fast-Track trade agreement implementing bills have included extraneous provisions.
 - All floor amendments are forbidden during House and Senate votes on the implementing bill. Votes are by simple majority and debate is limited to 20 hours.
- **Some form of trade authority is needed because Congress has exclusive constitutional authority over the terms of trade, while the executive branch has exclusive authority to negotiate international agreements.** The Founding Fathers inserted a very intentional check and balance into the Constitution with respect to trade policy. After the experience of King George’s unilaterally imposition of tariffs on tea and other goods, the Founders wanted the “body closest to the people” to control trade policy. Article I-8 provides Congress with exclusive authority to “lay and collect Taxes, Duties, Imposts and Excises” and “to regulate Commerce with foreign Nations.”
- **Since the nation’s founding, there have been six distinct forms of trade authority.** As the subject matters of trade negotiations changed and Congress’ support for the old system faded, a trade authority mechanism has been created every few decades since 1890. *Until now.*
- **Fast Track was an anomaly among past U.S. trade authority mechanisms, in that it**

empowered executive branch negotiators to “diplomatically legislate” changes to non-trade policy while constraining Congress’ role in shaping the *content* of agreements. For 200 years, Congress created trade authority mechanisms that maintained tight control over executive branch negotiators, instructing them about what terms to negotiate with which countries. The first major delegation of Congress’ constitutional trade authority was in the 1934 Reciprocal Tariffs Act. It was called “Tariff Proclamation Authority.” It only covered tariffs, had to be renewed regularly and allowed executive branch negotiators to negotiate and implement tariff cuts within bands set by Congress. *This is the “TPA” that Fast Track supporters note Presidents since Roosevelt have had.*

- **Fast Track was designed in the 1970s when trade negotiations were focused on tariffs and quotas. Today’s pending “trade” pacts, such as the Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP), are much broader.** They set policy binding on Congress and state legislatures relating to patents and copyright, food safety, energy, government procurement, financial regulation, immigration, healthcare, the environment, and more. Such a broad delegation of Congress’ authority is simply inappropriate given the scope of today’s “trade” agreements and the implications for Congress’ core domestic policymaking prerogatives.
- **Replacing the outdated Past Track mechanism with a new trade authority mechanism is essential to obtain trade agreements that can harvest the benefits of expanded trade without undermining Congress’ authority over non-trade policy or promoting more American job offshoring.** Fast Track should be relegated to a museum of inappropriate technology. A new 21st Century trade authority would include the following elements:
 - A mechanism for a subset of congressional members, such as a bicameral Congressional Trade Advisors committee that includes members beyond the traditional committees of jurisdiction, to approve or disapprove trade negotiations before they begin. Restoring Congress’ role in selecting trade partners would ensure that U.S. negotiating resources are directed to nations that provide opportunities for the export of U.S. goods and services not investment and jobs.
 - The involvement of more Senate and House committees through a process where their views are received and reviewed by the committees of jurisdiction and Congressional Trade Advisors before negotiations begin to ensure Congress’ negotiating objectives are comprehensive and after the executive branch believes that an agreement is completed, but before it is signed.
 - A more open negotiating process with systematic consultation with all committees whose jurisdiction is implicated by pacts’ terms and public hearings and enhanced public access to information about U.S. negotiating proposals and pacts’ terms as they are being formulated.
 - Certification by Congressional Trade Advisors that a trade agreement has met Congress’ negotiating objectives before it can obtain expedited floor consideration. This would enhance Congress’ ability to ensure that negotiators meet congressional objectives.
 - A mechanism to allow a sizeable minority of Members of either chamber to obtain a privileged floor vote to prevent a pact from receiving expedited consideration for a variety of reasons.
- **Such a new 21st Century trade negotiating authority would provide Congress a more robust role in the formative stages of trade agreements.**

For more information on the history of U.S. trade authority, see *The Rise and Fall of Fast Track Trade Authority*, Public Citizen, 2013 available either as an e-book or a printed book at www.fasttrackhistory.org.