

April 30, 1991

WHY BUSH NEEDS THE “FAST TRACK” FOR TRADE NEGOTIATIONS

INTRODUCTION

Congress must decide before June 1 whether to give George Bush a two-year extension of fast track authority for trade negotiations with other countries. Fast track negotiating procedures, authorized in the 1974 Trade Act, allow the President to conduct complex trade talks and to strike agreements with foreign countries with the confidence that Congress will not later unravel the agreement. This is because fast track puts the agreement on a special course when it is sent to Congress for approval. At that time, Congress can vote to approve or reject the agreement; Congress cannot amend the agreement.¹

Industries Seek Protection. Some members of Congress and special interest groups, such as industries seeking protection from foreign competition, are pushing to strip away fast track authority from the President. They charge that fast track procedures deny Congress the power to regulate foreign commerce and smother public debate over trade issues. They also argue that the President does not need fast track authority to negotiate the current Uruguay Round of the General Agreement on Tariffs and Trade (GATT) or the planned United States-Mexico Free Trade Agreement (FTA).

These fast track opponents are wrong. Fast track procedures do not rob Congress of the power to “regulate commerce with foreign nations,” as mandated by Article I in the Constitution. Indeed, Congress’s important role in trade negotiations is safeguarded by provisions in the fast track laws embodied in the 1988 Omnibus Trade and Competitiveness Act. Among them:

1 Trade agreements usually are not treaties. Treaties require approval by two-thirds of the Senate but not the House. Trade agreements, by contrast, are only signed by the executive branch and require Congress to pass legislation before they become law.

- ◆ Congress spells out in the Act specific objectives that the President must fulfill when he negotiates trade agreements.
- ◆ The President must obtain special permission from Congress to negotiate any non-GATT agreement, such as the planned U.S.-Mexico FTA, even if Congress has already given the President general fast track authority.
- ◆ The President must consult constantly with Congress during trade negotiations, or the House and Senate can rescind fast-track authority by a majority vote under what is known as “reverse fast track.”
- ◆ Congress ensured a public debate of trade agreements by creating private sector advisory groups made up of representatives from labor, business, agriculture, and government that consult with the President and report to Congress on the economic effect of every trade agreement that the President will negotiate under fast track.
- ◆ A simple rule change in either house of Congress can cancel the President’s fast track authority before, during, or after he negotiates an agreement.

Fast track negotiating authority has helped the U.S. lead the world in lowering trade barriers. Free trade lowers the price of goods Americans buy from abroad and increases American exports. Free trade also increases world production because investment and resources generally flow to the countries where they will be used most efficiently. America has persuaded other countries to open their markets to trade and investment during the last fifty years in large part because Congress has given the President the power he needs to negotiate trade agreements with other countries.

Without fast track authority, the President would lack sufficient negotiating power to convince other countries to lower trade barriers. Without fast track authority, the President probably would be unable to finish the GATT Uruguay Round, negotiate a Free Trade Agreement with Mexico, or promote more trade and investment in Latin America through the Enterprise for the Americas Initiative. Without fast track authority, the vision of a free trade zone from the Yukon to the Yucatan could be lost, and with it American economic competitiveness.

FAST TRACK’S RECORD OF SUCCESS

For the past seventeen years, Congress and the President have worked together under fast track procedures to promote worldwide free trade. This has opened opportunities for American companies to invest abroad, created jobs for Americans in export industries, and provided American consumers with cheaper foreign products. Congress first gave fast track authority to the President in the Trade Act of 1974 so that he would have the power and credibility with the leaders of other countries to conclude a series of trade negotiations known as the Tokyo Round of GATT.

The fast track procedures allow the President to negotiate a trade agreement with the guarantee that Congress will accept or reject the agreement as a package. In this sense, the term fast track may be misleading. It does not mean that a proposed trade accord will be dealt with hastily; it means only that it will be placed on a special legislative track that permits no amendments. There are several requirements for fast track authority. First, the President must ask Congress to apply fast track procedures to a trade agreement before he begins negotiating that agreement. Second, fast track procedures also require the President to consult constantly with Congress. Third, before, during, or after trade negotiations Congress has several opportunities to withdraw the fast track powers it has given the President if Congress no longer believes such an agreement will help the U.S.

Lowered Costs. By giving the President fast track authority in 1974, Congress guaranteed that GATT agreements made by the executive branch between 1974 and 1979 would be approved or rejected without amendment within ninety days after the President presented them to Congress. With this authority, first Gerald Ford and then Jimmy Carter negotiated the Tokyo Round of GATT, concluded in 1979. This agreement, approved by Congress that year, lowered the costs of foreign products to American consumers and increased investment and export opportunities for U.S. companies in other countries. In the 1979 Trade Agreements Act, Congress extended for nine more years the President's fast track authority to negotiate lower trade barriers with other countries. In 1984's Trade and Tariff Act, Congress gave Reagan specific authority to negotiate a free trade agreement with Israel. This Act also required the President to seek specific permission for any other bilateral agreement he wanted to negotiate under fast track. In the Omnibus Trade and Competitiveness Act of 1988, fast track authority was granted for three years, with a possible two-year extension. The authority expires on June 1 if Congress refuses the President's two-year extension request. The extension is needed to negotiate a conclusion to the Uruguay Round of GATT, a North American Free Trade Agreement (NAFTA), and other trade agreements with Latin American countries under the Enterprise for the Americas Initiative.

Some members of Congress criticize fast track as giving the President too much authority over trade negotiations while denying Congress the power to regulate foreign commerce. Senator Ernest Hollings, the South Carolina Democrat, wrote in *The New York Times* this March 26 that the fast track authority would "effectively nullify Congress's duty under the Constitution 'to regulate commerce with foreign nations.'"

Correct Antidote. Hollings seems to ignore the practice of more than a half-century. Since the 1930s, Congress has increased the President's power to negotiate trade agreements. This was a correct antidote to the disastrous 1930 Smoot-Hawley Tariffs that contracted world trade and did more than any other single factor to plunge the world into the Great Depression. By 1934 Congress and the White House formed a partnership to promote free trade and lower tariff barriers. To this end Congress passed the Reciprocal Trade Agreements Act of 1934, which gave the President authority to negotiate tariff reduction agreements and lower tariffs without further legislation from Congress. Since Congress could rescind

this power whenever it chose, it retained ultimate control over trade. This partnership between Congress and the President eventually succeeded in reducing tariffs worldwide and made the U.S. the world's foremost promoter of free trade.

Anti-Dumping. The Western nations in 1947 signed the General Agreement on Tariffs and Trade, which committed its signatories gradually to reduce their tariffs for products from other GATT countries. With the creation of the European Common Market in 1957 (now called the European Community), American lawmakers feared that Europe would raise trade barriers to countries outside the European Community if general rules were not established among GATT countries concerning tariff reductions. John Kennedy in 1962 asked Congress for the power not only to negotiate lowering tariffs with GATT countries, but also to lower them without further congressional action. Congress granted him this authority in the Trade Expansion Act of 1962. Kennedy and then Lyndon Johnson used this power to reduce tariffs among the GATT member countries in the Kennedy Round agreements of 1967. With this power the President also persuaded other GATT countries to agree to anti-dumping legislation, which prohibited companies involved in international trade from driving domestic companies out of business by arbitrarily lowering prices.

By the mid-1960s world trade grew more complex, and countries began to rely more on non-tariff barriers, such as government subsidies to exporting industries, and restrictions on foreign investment to protect domestic industries. In addition, Congress in 1966 began to undercut Lyndon Johnson's negotiating credibility in the Kennedy Round negotiations by passing a "sense of Congress" resolution opposing the anti-dumping agreement.

Rejecting Nixon. To increase the President's negotiating power in increasingly complex trade assignments, the Nixon Administration proposed legislation in 1973 that would give the executive branch authority to negotiate the upcoming Tokyo GATT Round and put in effect the ensuing agreement without legislative action. Congress did not want to give Nixon such sweeping powers over such non-tariff issues as investments and government subsidies. It thus rejected the Nixon Administration's proposal and instead put fast track procedures in the 1974 Trade Act. Armed with this fast track authority, the President was able to negotiate the increasingly complex issues in the Tokyo Round, but Congress retained the ultimate authority to approve or reject the final trade agreement.

Since 1974, fast track authority has allowed Presidents Ford, Carter, Reagan, and Bush to negotiate the Tokyo Round of GATT (1974-1979), the 1985 U.S.-Israel Free Trade Agreement and the 1988 U.S.-Canada Free Trade Agreement. With this authority, Bush has also been negotiating the Uruguay Round of GATT for the last two years. The broad-based congressional support for the agreements produced under fast track procedures confirms that fast track yields agreements good for America. In 1979 the House approved the Tokyo Round GATT legislation 395 to 7, while the Senate approved it 90 to 4. In 1985, the House approved the U.S.-Israel Free Trade Agreement 422 to 0, while the Senate support was so strong that only a voice vote took place. In 1988, the House approved the U.S.-

Canada Free Trade Agreement by a 366 to 40 vote, while the Senate approved it 83 to 9.

CONGRESSIONAL OPPOSITION TO RENEWAL OF FAST TRACK AUTHORITY

There has been growing opposition among some members in Congress to renewing fast track authority.² Representative Marcy Kaptur, the Ohio Democrat, voiced the concern of many FTA opponents in a letter to her colleagues on March 18: "Fast-track means that you, as a Member of Congress, will not be permitted to amend the agreement. How representative can that be?" AFL-CIO President Lane Kirkland wrote in a March 25 *Washington Times* op-ed that fast track dramatically limits congressional debate over trade issues.

Such arguments that fast track denies Congress the power to create and control U.S. trade policy are flawed. Congress itself created fast track procedures so that it could keep making ultimate trade policy decisions, while giving the President the power to negotiate increasingly complex trade agreements. Congress wanted this presidential-congressional partnership over foreign commerce to work as follows:

- 1) Congress would formulate policy in coordination with the President before and during the negotiation of a trade agreement by holding hearings, by requiring the President to investigate the effect of freer trade on the U.S. economy, and by pressuring the executive branch to adopt the congressional consensus on trade or force a possible withdrawal of fast track authority by Congress. Congress can influence the President by threatening to vote against the final trade agreement if the President refuses to follow congressional suggestions. This arrangement maintains Congress' power to "regulate commerce with foreign nations" as mandated by the Constitution.³
- 2) Congress would be required to vote for or against any trade agreement that the President negotiated without being able to amend that agreement. This would assure America's trading partners that any trade agreement they signed with the executive branch would not be altered by Congress. Prohibiting amendments also would prevent individual Congressmen from weakening the agreement by placing exceptions in the trade package to benefit industries in their home states.

2 The U.S. already has an FTA with Canada, signed in 1988. On February 6 Canada announced its willingness to join the U.S.-Mexico free trade talks, which are scheduled to begin in June of this year if fast track authority is extended by Congress.

3. U.S. Constitution Art. I, Sec. 8, Par. 3.

FORMULATING TRADE POLICY

Fast track authority gives Congress influence over trade policy during the planning, negotiation, and execution of a trade agreement. In the 1988 Trade Act for instance, Congress specified that when the President negotiates the GATT and other trade agreements, he eliminate agricultural subsidies, barriers to trade in services, and protect intellectual property rights. If these objectives are not met, Congress can rescind the authority with a majority vote in either the House or the Senate. Congress judges the President's performance by these guidelines and thus can ensure that its policy is carried out.

Short Leash. Since fast track authority must be renewed periodically, Congress keeps the executive branch on a short leash. The fast track serves as an incentive to the executive branch, which is likely to adjust its policies to mesh with the congressional consensus in hope of having the fast track authority renewed for future trade negotiations. Thus as the expiration of the 1988 Trade Act fast track authority nears, Congress has asked the President to explain specifically how he would use the authority were it extended two more years. When Bush requested the extension on March 1, he explained that he needed fast track authority to conclude the Uruguay Round of GATT, begin negotiating a U.S.-Mexico free trade agreement, and promote his Enterprise for the Americas Initiative, which envisions greater trade and investment between the U.S. and Latin American countries. If Congress does not agree with this trade agenda, it can disapprove general fast track authority with a majority vote in either the House or the Senate.

Special Permission. Even if Congress does approve general fast track authority, it can prohibit the President from using it for specific trade agreements under the "bilateral request" provision of the Trade and Tariffs Act of 1984. This requires the President to obtain special permission from Congress each time he wants to negotiate a bilateral agreement. As such, when Reagan wanted to begin negotiating a free trade agreement with Canada in 1986, he had to request specific authority for that agreement. Although Congress gave the Bush Administration general fast track authority in 1988, Bush had to request specific permission to use fast track "procedures" to enter negotiations with Mexico. He did this last September 25.

Once the President asks for specific authority to operate fast track procedures, the 1984 Trade Act gives the House Ways and Means and the Senate Finance Committees sixty legislative days to vote against the request for fast track procedures. During this time Congress could exert tremendous influence on the President to include issues in the coming trade discussions that it finds important. Example: during the sixty-legislative-day period after Bush requested fast track authority to negotiate the U.S.-Mexico free trade agreement, Congress held public hearings on a host of issues such as environmental problems along the U.S.-Mexico border, labor safety standards, and intellectual property rights protection. During this sixty-day period, too, Congress and the President can work out a negotiating strategy for the coming trade talks.

If Congress approves Bush's request for the two-year extension, he still will have to return to Congress for specific permission to negotiate trade agreements, using fast track procedures, with other Latin American countries under his Enterprise for the Americas Initiative.

THE REVERSE FAST TRACK OPTION

Another method by which Congress can control trade policy during the negotiation of a trade agreement is through a disapproval provision in the 1988 Trade Act known as "reverse fast track." By this Congress can deprive the President of fast track authority at any time during trade negotiations with another country. Congress thus can rescind fast track authority for the U.S.-Moscow free trade negotiations or the Uruguay Round of GATT if it believes the President has failed to consult with it during the negotiations.

Power to Rescind. To rescind fast track authority the Senate and the House of Representatives need only pass a resolution by a majority vote of each House within any sixty-day period. This power can be used at any time before, during, or after negotiations.

Congress has the power to formulate trade policy even during the final stages of negotiations. The 1988 Trade Act requires the President to notify Congress ninety days before he plans to sign any trade agreement. At the time of the notification, the President typically gives Congress a draft of the agreement. Congress can hold hearings during the ninety-day period and hear testimony from business, labor, environmental, and other groups. If Congress disagrees with provisions of the agreement, it can force the President to return to the negotiating table by threatening to reject the agreement. This is what happened when Carter, on January 4, 1979, notified Congress that he was planning to sign the Tokyo Round GATT agreement in which member countries had agreed to remove laws restricting who could bid on government contracts. During the ensuing ninety-day consultation period, the House Small Business Committee persuaded the Carter Administration's trade negotiators at GATT to obtain an exception to the agreement allowing minority small businesses in America to keep their minority set-aside programs. The Carter Administration went back to the negotiating table, and the agreement was altered to allow the set-aside programs.

Extensive Debate. In addition to the specific provisions allowing for congressional involvement in regulating foreign commerce, either the House or the Senate can make what is known as a "rules change" before, during, or after trade negotiations that withdraws fast track authority for any agreement, whether GATT or any free trade agreement. This rules change can be accomplished with a simple majority vote by either the House or the Senate.

Congress also controls trade policy through the Advisory Committee for Trade Policy and Negotiations (ACTPN). Created in the 1974 Trade Act, ACTPN is made up of industry, labor, agriculture, and government representatives who advise the President and Congress on trade issues. When Bush requested an extension of fast track authority on March 1, the law required ACTPN to give its

opinion on whether the extension should be granted. ACTPN also is required to assess the prospective impact of the Uruguay Round and the proposed U.S.-Mexico free trade agreement on the U.S. economy.

Taken together, ACTPN, the "reverse fast track" provision, the "bilateral request" provision, and the "rules change" provision, increase congressional power over trade negotiations. Since Bush asked for fast track reauthorization, there has been extensive debate in Congress on the costs and benefits of such an extension. Congressmen have sent numerous letters to Bush urging him to change U.S. negotiating strategy at trade talks. Representative Dan Rostenkowski of Illinois and Senator Lloyd Bentsen of Texas, both Democrats, sent a joint letter to President Bush on March 7 asking him to submit a plan by May to Congress on how he would deal with environmental, wage, and labor issues related to a U.S.-Mexico free trade agreement.

Representative Richard Gephardt, the Missouri Democrat, sent a similar letter to Bush on March 27, outlining his views on non-trade issues that Gephardt wants discussed during the trade negotiations with Mexico. If the policy recommendations included in these letters have broad support within Congress, then the President will be under considerable pressure to adopt them, or he will run the risk that Congress will revoke the fast track authority, or even reject the trade agreement that he eventually negotiates.

THE COSTS OF LOSING FAST TRACK AUTHORITY

Without fast track, Bush will have enormous difficulty negotiating the Uruguay Round of GATT or a North American Free Trade Agreement with Canada and Mexico. The President must have sufficient negotiating power to extract trade concessions from other nations. Fast track authority gives the President such power because he can assure those nations that whatever agreement they negotiate will not be changed by congressional amendments or subsequent legislation.

The Uruguay Round seeks to establish rules of free trade in areas not previously covered by GATT like agricultural subsidies, intellectual property rights protection, service industries, and foreign investment. America's GATT trading partners, including Mexico, have indicated privately they would not be willing to negotiate with the U.S. if they thought that any trade agreement they reached subsequently would be picked apart by Congress.

Bush's Credibility. Maintaining the President's credibility with other nations in negotiating today's complex trade agreements is an important enough reason for Congress to give the President fast track authority. It is even more convincing that Congress has shown that it is unable to legislate trade policy without fast track procedures.

The Caribbean Basin Initiative (CBI) typifies what happens when 535 Congressmen, acting individually, change a trade policy to suit their special interests. The Reagan Administration proposed the CBI in 1982 as a program to bolster fledgling democracies in Central America and the Caribbean by allowing them to sell their exports in the U.S. with fewer restrictions. Under the CBI, U.S. tariffs

and quotas on goods made in 28 Latin American democracies were to be eliminated. The CBI also was supposed to encourage U.S. investment in these countries by providing tax incentives for American corporations locating plants there.

Although Congress favored the CBI in principle, Reagan had no fast track authority to pursue the CBI since the CBI was not a bilateral agreement.⁴ Once Reagan presented the CBI to Congress in 1982, Congressional committees and individual Congressmen with special interest constituents undermined the CBI by attaching politically motivated amendments that defeated its purpose.

Modest Gains. By the time Congress passed the bill in July 1983, CBI had been changed dramatically. Most major exports from CBI countries like sugar, textiles, apparel, oil products, and leather goods, were excluded from the bill, as were several investment incentives for American companies. The final bill gave new duty-free status to less than 10 percent of the exports of the 28 nations.

As a result, CBI has promoted freer trade between Caribbean nations and the U.S. only modestly. It also has discouraged closer bilateral economic ties with many of these countries, whose governments promoted the creation of export industries and then realized they would not be allowed access to U.S. markets.

The CBI failed because Congress could not resist the temptation to amend an agreement that a majority of its members would have supported as originally proposed. Fast track authority would have forced Congress to vote either "yea" or "nay" on the CBI as a package. Congressmen then would have had to decide whether the package, taken as a whole, was good or bad for the U.S. economy, rather than being allowed to insert special laws for special interests that crippled the CBI and diluted its benefits.

Altered Drastically. If Congress alone attempts to negotiate and codify future trade agreements as it did the CBI, those agreements probably will fail. Without fast track procedures even trade agreements that enjoyed strong support in Congress inevitably would be altered drastically before they are voted on because of the ease with which individual members, especially those that head committees, can amend trade agreements. The sheer size of Congress, with its numerous committees, subcommittees, caucuses, and the special interests that they represent, prevents that body from effectively managing U.S. trade policy.

The GATT Uruguay Round negotiations cover fifteen areas of trade. Given the numerous congressional committees with jurisdiction in these areas (see chart), it would be extremely difficult to pass a GATT trade package without the committees changing parts of the trade agreement to protect the special interests of their

4 The CBI was not considered a trade agreement because the U.S. was making all the trade concessions. The CBI illustrates what happens when Congress makes individual decisions that have the collective effect of reversing a program Congress would support as a group.

| Congressional Committees Involved in GATT* | | | | |
|---|-------------------|----------------------|--------------|---------------------|
| GATT Areas | Committees | Subcommittees | Total | Membership** |
| Agriculture | 3 | 13 | | 256 |
| Energy and Natural Resources | 3 | 5 | | 169 |
| Intellectual Property and Legal Enforcements | 3 | 6 | | 141 |
| Investments and Monetary Coordination | 7 | 7 | | 352 |
| Technology and Manufacturing | 3 | 11 | | 195 |
| Tariffs and Trade | 8 | 11 | | 443 |
| Total | 27 | 53 | | — |

* General Agreement on Tariffs and Trade.
 ** The sum of voting members on committees and subcommittees.
 Note: All figures represent totals that include overlapping of committees and members.
 Source: Committee on House Administration, 1990, the Almanac of American Politics.

4/91 **Heritage DataChart**

members. The U.S.-Mexico-Canada Free Trade Agreement and the Enterprise for the Americas Initiative are expected to cover as many areas as the GATT.

CONCLUSION

Congress now is debating whether to give the President a two-year extension of fast track authority for negotiating trade agreements with other countries. Fast track negotiating procedures, which Congress authorized in the 1974 Trade Act, require Congress to vote for or against any trade agreement without offering any amendments to that agreement.

Some members of Congress and special interest groups, such as industries seeking protection from foreign competition, want to take away fast track authority from the President. They argue that fast track procedures deny Congress the power to regulate foreign commerce, and prevent debates over trade issues. They also charge that Bush does not need fast track authority to negotiate the current Uruguay Round of the General Agreement on Tariffs and Trade (GATT) or the planned U.S.-Mexico free trade agreement. They claim that they oppose fast track procedures, but not free trade.

The reality is, however, that the U.S. cannot effectively promote free trade unless the President can rely on fast track procedures when negotiating trade agreements. Fast track authority gives the President credibility when negotiating trade agreements with foreign leaders, while still guaranteeing Congress the final authority over "commerce with foreign nations," mandated by the Constitution. Since fast track procedures prohibit Congress from offering any amendments, in-

dividual members of Congress with special interests cannot weaken the agreement with exemptions, like special tariffs to protect inefficient industries located in their states.

The fast track procedures are necessary so Bush can continue to negotiate the Uruguay Round of GATT, and begin negotiations on a North American Free Trade Area. Without fast track the President cannot increase trade and investment opportunities in Latin America by first negotiating a free trade agreement with Mexico and then with other Latin American countries. If America is to continue leading the world toward free trade, and prevent countries from raising protectionist barriers as those that deepened the depression in the 1930s, the President needs fast track authority.

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