



Rethinking the Roles of Congress and the President in "Fast Tracking" U.S. Trade Negotiations

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In January 2014, President Obama formally requested that Congress grant him Trade Promotion Authority – also known as “fast track” – to speed the negotiation of two treaties that could transform America’s relationship with international markets. The pending Transpacific Partnership would eliminate key trade barriers between the United States and eleven Asian countries, including Japan. Of even greater potential significance, the Transatlantic Trade and Investment Partnership would merge the world’s two largest markets, the United States and the European Union, into a single interdependent commercial zone.

If fast track authority were granted, Congress would have to vote on agreements negotiated by the President within ninety days, up or down with no amendments. But opposition erupted right after President Obama made his request. Many in Congress are no longer willing to grant presidents such latitude on trade agreements that impact jobs and worker rights, the environment, and a host of other societal concerns. The current impasse puts in stark relief the challenges faced by the United States government as it seeks to develop a coherent approach to increasingly globalized commerce. Presidential authority is more important than ever, but Congress is no longer willing to step back. New arrangements are needed.

The Origins and Limits of Fast Track

In the eighteenth century, trade policy was considered a source of revenue rather than an instrument of foreign policy, so the U.S. Constitution granted nearly complete authority to Congress. Congress remained in charge for more than a century, setting U.S. tariff levels by direct votes as on any other legislation. Difficulties came to a head with the infamous Smoot-Hawley Tariff of 1930, when a series of Congressional logrolls raised U.S. tariffs to extraordinary levels that sparked retaliation from Europe and, as most scholars agree, helped worsen the Great Depression.

In 1934, Congress granted greater authority to the executive branch in the Reciprocal Trade Agreements Act, for two main reasons:

- To limit interest group pressures that could drive tariffs to dangerous levels. Even if each member of Congress advocated for the protection of only one commodity made in his or her district, the logrolling process could add up to harmful overall outcomes. The President, hopefully, could better represent the national interest as a whole.
- To enable the President, as the agent of U.S. foreign policy, to use trade concessions as leverage to generate reciprocal concessions from trading partners.

Patterns of authority established by the 1934 law and its offshoots allowed the executive branch to negotiate U.S. tariff rates on commodities within certain ranges in exchange for concessions from America’s trading partners. The same concept of reciprocity informed the General Agreement on Tariffs and Trade (GATT) set up in 1947 to prevent the reemergence of harmful trade blocs. Mid-century arrangements through which Congress delegated authority within limits functioned well until the 1970s, when Congress created a new form of delegation.

By that point, international trade negotiations had moved beyond tariffs into more complex areas where pre-set limits were no longer feasible. In place of the older system, the Trade Act of 1974 created fast track authority, where Congress provides very general guidance on trade policy goals and rules for consultation, and agrees to put any agreement signed by the President to a prompt up or down vote. Overall, this delegates more authority to the executive branch to handle complex, contingent negotiations – yet it also limits the President’s authority to make adjustments after he signs an agreement and sends it to Congress.

The Need for Revisions in Fast Track Authority

Today, the fast track approach of the 1970s is under stress. Newly pressing issues such as intellectual property rights, environmental, health, and labor regulation, and domestic subsidies make it impossible for senators and representatives to remain uninvolved as negotiations proceed. An even stronger role for the executive branch is justified by its technical expertise, facility with secret international negotiation, and ability to speak for the United States as a whole. Yet how can representatives and senators remain uninvolved in discussions of politically salient matters such as labor rights and food safety, or ignore matters of national security that get drawn into trade negotiations (as with the extension of free trade to drug-violence-plagued Colombia or the exclusion of China from the Transpacific Partnership)?

Because it is highly unlikely that Congress will accept anything less than a more complete partnership, here are some ways the fast track approach could be revised and updated:

- Congress could narrow the authority it grants the President by specifying the countries, broad issues, and agreements to which fast track applies, rather than granting this authority for a fixed period of time. Specific guidelines could actually boost U.S. bargaining power, as research has shown that a strong legislature with veto power can toughen a country's negotiating stance.
- Congress could demand more regular consultation according to specific procedures. Given the fluidity of international negotiations, a small number of Congressional members would have to be authorized to meet regularly with negotiators.
- Congress could insist on more public access to information during ongoing negotiations.
- Congress could extend the 90 day voting period and enable amendments supported by supermajorities. Or it could require that Congress approve a draft trade agreement before the President signs it, enabling the revision of points that Congress finds objectionable.
- Congress can insist on legislation to more fully guide implementation after a pact is approved.

U.S. leadership in trade is critical to prosperity and security. Maintaining that leadership in ways commensurate with our democratic values requires rethinking the roles and relationship of Congress and the President in negotiating and implementing high-stakes trade agreements.