

Fast Track *Revival*

BY GREG MASTEL

*Suddenly both U.S.
presidential contenders
are interested in
fast-track authority.*

Fast-track trade negotiating authority (also known sometimes as Trade Promotion Authority), which largely guarantees congressional votes on trade agreements, has been around since the 1970s. Fast track, however, has proven a divisive issue in recent years and the subject of several heated congressional debates. Congress last granted fast track authority in 2002. Although the final three free trade agreements—Colombia, Panama, and Korea—negotiated under it were only actually approved in 2011, the negotiating authority actually expired for new agreements during the Bush Administration.

The Obama Administration has made significant progress on a complex Pacific Basin trade agreement known as the Trans-Pacific Partnership without fast-track authority. It remains to be seen, however, if the negotiations can be concluded or the agreement approved by Congress without a new grant of fast-track authority. For his part, Republican presidential candidate Mitt Romney has also expressed an interest in launching new trade agreements and fast track. Discussions have already quietly begun in Congress and in the business community on possible new legislation. There is a strong possibility that both President Obama and Mitt Romney would choose to seek a new grant of fast-track authority from Congress if elected President in 2012.

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President **Barack Obama** attends a meeting with the Trans-Pacific Partnership at the APEC summit in Honolulu, Hawaii, November 12, 2011. At right is U.S. Trade Representative **Ron Kirk**. The Obama Administration has made considerable progress on the Trans-Pacific Partnership without fast track, but Obama (or President **Mitt Romney**) may need fast track to conclude and gain congressional support for the complex Pacific Basin trade agreement.

WHITE HOUSE PHOTO BY PETE SOUZA

WHAT IS FAST TRACK?

In essence, fast-track negotiating authority amounts to a bargain between the President and Congress. The President agrees to negotiate trade agreements in line with negotiating objectives approved by Congress and obtain approval from Congress before entering into specific trade negotiations. In return, Congress agrees to consider legislation implementing trade agreements meeting those objectives within a time certain (no filibuster) and without offering amendments (which would likely force renegotiation). At times, trading partners have refused (or at least threatened to refuse) to conclude negotiations with the United States until fast track was in place.

This bargain is necessitated on modern trade agreements because though Congress is assigned specific

responsibility for trade in the Constitution, only the President is able to negotiate with foreign countries. Thus, by their very nature trade agreements require an understanding between both ends of Pennsylvania Avenue.

Congress has extended fast-track authority a number of times and some residual fast-track authority to build on existing agreements is still in place, but the last grant of fast track was made in 2002. The three free trade agreements approved by Congress in 2011 were the last products of that fast track authority.

The specifics of a grant of fast track can vary in terms of length of grant, objectives imposed, the nature of required consultations, and many other features. At different times, both the President and Congress have accused each other of not holding to the agreed terms of the bargain. Still, at their core, past and future grants of fast track come down to a commitment to a congressional vote on a trade agreement in return for the President abiding by Congress' objectives.

IS FAST TRACK REALLY NECESSARY?

Critics have at times argued that fast track is not really necessary to negotiate trade agreements. This perspective is a bit suspect as the critics generally are also opposed to new trade agreements and trade liberalization. That said, the Obama Administration has made considerable progress on the sweeping Trans-Pacific Partnership without fast track. World Trade Organization accession agreements with both China and more recently Russia were negotiated without fast track. And one recent free trade agreement—the United

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It may well be, however, that President Obama (or President Romney) would need fast track to conclude and gain congressional support for the Trans-Pacific Partnership. In the past, fast track has been granted—as was the case in the Uruguay Round of WTO negotiations—while the negotiations were already nearing their conclusion. The WTO accession agreements for China and Russia were certainly complex, but Congress never had the opportunity to amend the specifics of the accession agreement; it simply voted whether or not to grant those countries permanent normal trade relations. Most new trade agreements require much more extensive implementing legislation. The United States-Jordan FTA was a complete free trade agreement requiring many changes in U.S. law, but it was approved in the aftermath of 9/11—a time when the entire country including Congress was eager to build ties with friendly Middle Eastern countries and willing to exercise great restraint, particularly with a small trading partner.

Congress has found it necessary to create special fast-track-like rules for other complex and controversial matters, like closing military bases and considering budget reductions. There is a good case that trade agreements present a situation where Congress must agree to limit its prerogatives in return for an outcome that is in the larger public interest. In practice, there seems little doubt that fast track makes the successful conclusion of trade agreements, which are widely seen as good for the U.S. economy, more likely.

WHY WOULD THE PRESIDENT WANT FAST TRACK?

Some have noted that gaining congressional approval for fast track really amounts to forcing two separate legislative fights on the same issue—the first for fast track and the second for the trade agreement. The president

can negotiate executive agreements with foreign countries whenever he desires—though he does need Congress's assent to change U.S. law which is typically required by trade agreements. The president also has the option of negotiating trade agreements as treaties rather than executive agreements, but those would require a two-thirds approval in the Senate—a high bar—and would be a break with precedent in the United States that would likely be controversial in some circles, such as the House of Representatives.

Still, over the last three decades, presidents from both political parties have sought fast track for trade negotiations. Obviously, the commitment of an up-or-down vote in Congress is attractive both to U.S. presidents and to U.S. trading partners. The assurance of fast track allows the president to push U.S. trading partners to get to a true bottom line as opposed to them holding out waiting to effectively negotiate with Congress. It also increases the likelihood of the president winning congressional support for the agreement he negotiates. The decision of the House of Representatives to effectively take the Colombia FTA off of fast track at the end of the Bush Administration demonstrates that the fast track bargain requires continuing work and good faith from both sides. In spite of that recent example (the Colombia FTA was ultimately approved, albeit under President Obama), fast track does seem to be generally a good bargain from the president's perspective.

WHY WOULD CONGRESS WANT FAST TRACK?

Fast track is a trickier proposition for Congress. Obviously, many members of Congress, particularly senators who have wider latitude to offer amendments, do give up something under fast track.

But Congress does get something back. The statement of negotiating objectives allows Congress to, in part, direct the president's negotiations. This is direction they would not be able to give in binding fashion if the president simply was negotiating executive agreements. Of course, the president does have some leeway in interpreting objectives, but it would be hard to argue that Congress' directions on labor and environmental issues and to protect the integrity of U.S. antidumping and countervailing duty laws have not had an impact on U.S. trade agreements. Congressional direction has also helped to shape the U.S. posture on newer issues like intellectual property, investment, and services.

The fast track process also guarantees Congress—or at least leaders of key committees—access to classified negotiating documents and the actual trade negotiations in a way they would likely not have outside of fast track.

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Finally, legislation to extend fast track also allows Congress the opportunity to pass and get a presidential signature on other trade legislation that may be difficult to pass otherwise. Recently, this has been legislation to expand trade adjustment assistance, but it could also touch upon many other priorities from foreign investment to import labeling.

Congress certainly does get back something for its concessions on amendments and filibusters. For members of Congress who believe in the benefits of trade agreements, there is reason to support a grant of fast track.

2013?

In addition to creating an understanding between the president and Congress, a congressional debate on fast track allows an opportunity for a thorough reconsideration and updating of U.S. trade policy. As noted, by the

time of the next presidential inauguration, it will have been more than a decade since Congress last had such a debate. International trade is increasingly important to the U.S. economy, but much has changed in international trade in the last decade. Issues such as manipulation of currency and regulation of internet content have gone from peripheral discussions to core discussions.

A second Obama Administration or a new Romney Administration both are likely to have an interest in new fast-track legislation. Many details of the process could be refined—more formal congressional power during the negotiations, limits on the length and coverage of fast track, and other ideas have all been suggested. Certainly, negotiating objectives need to be revised. But for those who believe properly negotiated trade agreements are in the best interest of both the U.S. economy and the world, 2013 is an excellent time to consider a new version of fast-track trade negotiating authority. ◆