

Trade Promotion: When Authority is Tempered by Accountability

By William M. Christian

In the semantics of “fast track” legislation related to trade agreements, words matter. Historically referred to as “trade promotion authority” (TPA), the bill currently being considered by the Senate first and then the House establishes the parameters within which a president can negotiate a treaty with other nations. In exchange for this curb on the executive, the legislative branch agrees to limit its own prerogatives, as well. The Congress is bound to either approve or reject any such treaty with an “up or down” vote: it can be neither amended nor filibustered. Thus, it is “fast tracked.”

But the word that is creating the current sticking point (for many conservatives, anyway) is “authority.”

The Republican majorities in the Senate and the House of Representatives find themselves on the horns of a dilemma: The GOP is far more supportive of free trade than are Democrats, who are beholden to labor unions and other special interests long suspicious of treaties that open domestic markets to more competitive, less expensive goods. But it is a Democratic president that is leading the charge on this (typically Republican) issue.

To further complicate matters, Republicans in Congress don't much trust President Obama, believing that he has not followed the law on a number of issues. And the President has not exactly built up a reservoir of good will with his own party. So, on an issue that would normally be a “no-brainer,” many conservatives are loathe to grant any more “authority” to a chief executive that they think has a shocking record of overreach.

With these sensitivities in mind, Senate Finance Committee Chairman Orrin Hatch (R-Utah) and Ranking Member Ron Wyden (D-Ore.), along with House Ways and Means Committee Chairman Paul Ryan (R-Wisc.), have introduced identical legislation: The Bipartisan Congressional Trade Priorities and Accountability Act (S. 995/H.R. 1890). Notice the clever substitution of the word “accountability,” where authority would otherwise have been found. Proponents of free trade, and by extension the legislation necessary to implement it, understand the importance of messaging. Here, they are sending a clear message that they understand the concerns of President Obama's skeptics: “Trade Promotion Authority” has become “Trade Priorities and Accountability.”

The House Ways and Means Committee [website](#) notes that the legislation includes more than a dozen transparency and accountability objectives:

- It will allow every Member of Congress to read the negotiating text.
- It requires the U.S. Trade Representative's (USTR) office to brief any interested member on the status of negotiations at any time.
- It allows any Member to become a congressional advisor eligible to attend negotiating rounds.
- It creates House and Senate advisory groups to oversee negotiations and receive regular briefings, while any Member can submit views.
- It lays down guidelines on public engagement and sharing information with advisory committees.
- It requires the President to publish the text of a completed trade agreement 60 days before signing it.
- It creates a chief transparency officer at USTR that will consult with Congress and advise USTR on transparency policies.
- It sets Congressional priorities for trade agreements.
- It guarantees long-term oversight by extending trade promotion authority for six years.
- It protects U.S. sovereignty by affirming that Congress—and only Congress—can change U.S. law.
- It narrows the scope of implementation bills by stipulating that all implementing legislation include only provisions “necessary or appropriate” to enacting trade deals.
- It extends oversight to current negotiations, applying TPA requirements to ongoing negotiations, including oversight and consultation requirements.
- It strengthens oversight by applying expedited (“fast track”) procedures only to agreements finished in a specific timeframe and tightens entry-into-force procedures.
- It provides an “Off Switch,” a mechanism for Congress to turn off the expedited procedures if the administration fails to meet its TPA obligations.

This last provision, the “Off Switch,” is perhaps the most salient, and arguably the most unprecedented, safeguard in the bill. Under Section 6, “Implementation of Trade Agreements,” the bill’s authors crafted prescriptive language for consideration in the House of Representatives of a Consultation and Compliance Resolution (CCR).

If the House Ways and Means Committee reports a trade agreement without a favorable recommendation, and a Member has introduced a CCR with other than a favorable recommendation, then the committee is authorized to submit to the full House a specifically worded CCR: “That the President has failed or refused to notify or consult in accordance with the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 on negotiations with respect to [treaty] and, therefore, the trade authorities procedures under that Act shall not apply to any implementing bill submitted with respect to such trade agreement or agreements.” Essentially, if the Hatch-Wyden-Ryan bill becomes law, then any trade treaty

negotiated under these parameters would not be able to be considered under fast track authority. That decision can be made solely by the House of Representatives, without either the consent of the Senate or the approval of the President.

The message to the Republican-led Congress is that free trade is always a “no-brainer.” With the new safeguards in H.R. 1890 and S. 995, there is no excuse for any Republican (or Democratic) supporter of free trade to oppose a bill that includes a reasonable insurance policy against executive overreach in trade agreements, which are always a much-needed boon to both the U.S. and global economy.