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Fast-Track Legislative Procedures for Trade Agreements: The Great Debate of 1991

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Summary

The last debate on whether or not to grant the President authority to negotiate trade agreements with "fast-track" legislative procedures was in 1991. Many issues that were raised in that debate are the same as those still being considered, including the role of labor and the environment in trade negotiations and whether legislation to implement trade agreements should be amendable. The result of the debate in 1991 was that Congress allowed the President an extension of negotiating authority with fast-track legislative procedures. At the same time, however, it gave strong directives to the Administration on issues to be addressed in the negotiations and threatened to withdraw the fast-track procedures if its directives were not followed.

Background

Trade negotiating authority with fast-track legislative procedures was introduced in the Trade Act of 1974. It was approved for a given period principally for the Tokyo Round of multilateral trade negotiations (1973-1979). The fast-track legislative procedures were part of an understanding between the executive and legislative branches, whereby the Administration agreed to consult closely with Congress during trade negotiations, and Congress agreed to a definite up-or-down vote on the trade agreement without changes.

Trade negotiating authority with fast-track procedures was extended in the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418) (Trade Act of 1988) principally for the Uruguay Round of multilateral trade talks (1986-1994). The 1988 Act provided that if a trade agreement was signed before June 1, 1991, fast-track procedures would apply to implementing legislation. The June 1991 deadline was expected to be sufficient for the conclusion of the Uruguay Round. If negotiators were making progress but could not meet the deadline, the Act allowed a two-year extension for fast-track procedures.

The extension was automatic as long as the President requested it and neither House of Congress disapproved it by simple resolution.

By early 1991, it was clear that President Bush planned to request the two-year extension. The Uruguay Round could not be completed by the June 1st deadline. Further, subsequent to the 1988 Act, Mexico had requested talks on a North American Free Trade Agreement (NAFTA). On March 1, 1991, President Bush formally requested the two-year extension, and five days later, disapproval resolutions (H.Res. 101, S.Res. 78) were introduced in both houses.

There was widespread opposition to the talks with Mexico because of concern about possible adverse effects of a trade agreement on U.S. wage levels, working conditions, and environmental standards. On March 7, 1991, Senator Lloyd Bentsen, Chairman of the Senate Finance Committee, and Representative Dan Rostenkowski, Chairman of the House Ways and Means Committee, wrote a joint letter to the President asking how he intended to address these concerns. On March 27, House Majority Leader Richard Gephardt wrote to the President that worker and environmental issues should be objectives in the Uruguay Round and in a NAFTA. On May 1, the President responded with an extensive plan of action. The plan of action included labor-related provisions such as a possible worker adjustment program and future cooperation with Mexico on health and safety issues, and environment-related provisions such as design of a joint border environmental plan and appointment of environmental experts to trade advisory committees. On May 9, Majority Leader Gephardt introduced H.Res. 146, which expressed the sense of the House that on the basis of the commitments in the President's action plan and the expectation that the commitments would be carried out, fast-track procedures should be extended. The 1988 Trade Act required that if the two-year extension was to be disapproved, a vote on the resolutions of disapproval had to be taken before June 1, 1991.

Issues in the 1991 Debate

Several issues were raised during the 1991 debate on extension of fast-track authority. Among these were (1) differences in how Congress viewed the multilateral and regional trade negotiations; (2) anticipated effects of a trade agreement with Mexico; (3) concern over nontraditional topics such as worker rights and the environment; and (4) delegation of congressional authority to the executive branch.

Multilateral and Regional Trade Negotiations

The multilateral talks in the Uruguay Round and the bilateral/regional talks on the NAFTA were tied together procedurally. Under the 1988 Trade Act, the extension of fast-track procedures would apply to implementing legislation for trade agreements reached between June 1, 1991, and May 31, 1993. Therefore, if one house of Congress had disapproved the extension, fast-track procedures would have been denied in the case of a Uruguay Round agreement, a NAFTA agreement, and any other relevant trade agreement reached during that period. The 1988 statute did not allow separate votes to extend fast-track procedures for the Uruguay Round or NAFTA. Congress would have had to take procedural action to separate the two.

Although both sets of negotiations depended on the same vote on extension, it was the NAFTA, specifically trade with Mexico, that was the magnet for most congressional interest. From March to May 1991, the number of hearings on trade with Mexico exceeded those on the Uruguay Round by almost 10 to 1. Floor debate overwhelmingly dealt more with the effects of trade with Mexico than with the more than 100 trading nations in the General Agreement on Tariffs and Trade (GATT), the predecessor of the World Trade Organization.

One reason why there was so much concern over the bilateral, but not the multilateral, talks might have been that the United States had a different position going into each of the negotiations. In the case of the Uruguay Round, the United States was the chief proponent of the talks and was seen as pressing for concessions favorable to the United States. In the case of Mexico, the United States did not initiate the talks. In fact, some Members wanted the Administration to move slowly on the idea, because the United States was already absorbed in the Uruguay Round and because the proposal for talks with Mexico seemed to be opening the U.S. market to imports from a country that had a different set of rules. Another reason might have been that the potential effects of a bilateral agreement are more easily discernible compared to an agreement with over 100 countries. Further, the difference in U.S. and Mexican incomes was significant, and many feared U.S. jobs would be lost to Mexico.

Congress had not contemplated a NAFTA when it approved fast-track procedures in 1988. At that time, Congress had debated and voted on objectives and fast-track procedures for the Uruguay Round. The disapproval resolution votes and the vote on H.Res. 146 were an opportunity to debate the trade talks with Mexico.

There was some congressional interest in splitting the extension vote by providing separate ground rules for the Uruguay Round and the NAFTA. If the two had been split, the negotiations with Mexico might not have been granted fast-track procedures, given the opposition to those talks. However, Congress did not split the vote, so it was possible that opposition to one set of negotiations could have caused disapproval of fast-track procedures for all other negotiations. In such a case, it probably would have been the NAFTA that halted the Uruguay Round. A situation where multilateral trade negotiations in the GATT were threatened by domestic opposition to a U.S. bilateral trade initiative was unprecedented.

Effects of a Trade Agreement with Mexico

A central element of the opposition to a trade agreement with Mexico was based on the anticipated loss or deterioration of U.S. employment. During the debate, some Members argued that an agreement with Mexico would seriously harm the U.S. middle class. Some argued that manufacturing plants would move to Mexico and that the industrial base of America would suffer.

In support of an agreement with Mexico, some Members said that forming a trading bloc would give the countries of North America a competitive advantage against a unified Europe. Some said that the free-trade agreement with Canada had resulted in economic benefits for the United States, suggesting the same would be true of a free trade agreement with Mexico. Others said that an agreement would support U.S. export industries, aid the

border region, and help the U.S. energy sector. The Administration argued that exports were a major area of economic growth in recent years.

Economic studies available before the fast-track extension vote provided some understanding of the potential economic effects, but like all studies of this type, they did not provide precise forecasts of future events. Some major studies showed small but positive effects on the U.S. economy of a NAFTA and suggested that few sectors would be hurt by an agreement. However, a central problem was that a NAFTA was expected to have effects that were difficult to model, such as how greater protection under patent laws could affect bilateral trade flows. Another weakness was that the models might have been based on the best possible assumptions about the amounts and conditions of capital flows, but these assumptions might not have reflected the real world. Some research organizations at the time argued that capital flows would be a major factor in the effect of a NAFTA on the U.S. economy.

Several other subjects were discussed in the fast-track debate. One subject was the foreign relations aspect of Mexico's request for free-trade negotiations. Some Members argued that if the United States refused to negotiate with Mexico, or if Congress denied fast-track procedures, there would be political repercussions. Another subject was political reform in Mexico. Some Members said that a free-trade agreement would ensure economic improvement, which would lead to political reform, while others argued that the United States should use the trade negotiations to spur political reform and improved human rights in Mexico. The scope of the agreement was another subject: some Members argued that the negotiations should include illegal drugs and immigration, while other Members and the Administration said that the negotiations should be limited strictly to trade issues.

Expanded Talks to Include New Issues

Traditionally, labor unions and workers in import-competing industries have been among the strongest opponents of trade negotiations that open U.S. markets to foreign products. In 1991, these groups were joined by others with different concerns but the same goal--to stop the trade agreement with Mexico. They formed an effective opposition force that was new to the trade debate. The key groups in the broad coalition were labor unions, environmentalists, human rights groups, and consumer groups.

Labor unions argued that the economic effects of a NAFTA were not clearly understood and so the negotiations should be put on hold until more information was available. They feared the loss of wages and jobs for U.S. workers and advocated improvements in workers' conditions in Mexico. Environmentalists had become more active in the trade area during the Uruguay Round. They had called for those trade negotiations to take into account the environmental effects of the changes resulting from an agreement and pressed for inclusion of discussions on the environment in the Uruguay Round and in NAFTA. Human rights groups wanted improvements in the political process in Mexico. Consumer groups argued that health and safety standards in the United States would decline.

These groups influenced the agenda for the U.S.-Mexico talks. They appealed to Members of Congress to consider the differences in the U.S. and Mexican systems and the possible harmful results of such differences. Some of their arguments were economic:

lower environmental standards in Mexico were an economic incentive for companies to move factories there. Other arguments were more socially oriented: workers should have rights such as union participation and a safe workplace.

Congressional Delegation of Authority to the Executive Branch

Apart from the substance of the negotiations, Members also had concerns about delegation of authority under the fast-track process. They were concerned about retaining the right to amend legislation to implement trade agreements. They saw the formulation and full consideration of such legislation as a serious constitutional responsibility of the legislative branch, arguing that since the Constitution had given Congress the power to regulate foreign commerce, Congress should not delegate this authority to the executive branch.

The fast-track procedure is an exercise of the rulemaking power of either House and hence can be changed by either House with respect to its procedure for changing its rules. In several other ways, Congress indicated that, although it might delegate authority to the President to negotiate trade agreements with fast-track procedures, it still had the right to withdraw or modify those procedures. For example, in the 1988 Trade Act, Congress provided a means for terminating the fast-track authority delegated to the President. And, as mentioned earlier, H.Res. 146 tied fast-track procedures to the President's achieving commitments on labor and environmental issues.

Some Members introduced resolutions to modify fast-track procedures to allow amendments on certain issues. One resolution would have allowed amendments in the areas of labor standards, environmental protection, rules of origin, dispute settlement, and worker adjustment assistance. Other resolutions would have changed or modified the rules for consideration of legislation to implement trade agreements.

A few Members who argued for the prerogative to amend implementing legislation expressed suspicion about how the Administration would follow directives from Congress. They believed that the consultation process was inadequate. At least one Member said that the Administration had misled Congress during the free trade negotiations with Canada.

Some Members asserted that the fast-track process was the best process possible, given the need for U.S. negotiators to reach an agreement and then submit the agreement for a timely vote without changes that might undo the agreement package. Others said that Members should not deny fast-track procedures in advance, because they could decide later, after an agreement was reached, whether or not to approve the agreement and implementing legislation. They emphasized that Congress retains the ultimate right to approve or disapprove the agreement. Others pointed out, however, that it would be more difficult to vote against an agreement once it was reached. The sense of the discussion was that the question of delegated authority was an issue for continued debate.

Outcome

On May 23, 1991, the House voted down disapproval resolution H.Res. 101 and endorsed H.Res. 146, the resolution that set out goals for the negotiations. Although a large number of House Members opposed the NAFTA negotiations, if the talks were going to proceed, they wanted strong congressional guidelines for U.S. negotiators in the talks. On May 24, 1991, the Senate defeated disapproval resolution S.Res. 78, thereby assuring the extension of fast-track negotiating authority for another two years. The votes on the disapproval resolutions showed that opposition to the trade talks was stronger in the House. Neither the House vote nor the Senate vote was an endorsement of a NAFTA. Given the strong opposition expressed during the fast-track debate and the clear intent in the House to monitor the trade talks, any negotiations or final agreement probably would be scrutinized closely.

Negotiators from the United States, Canada, and Mexico formally began NAFTA talks in June 1991 and reached a final agreement in August 1992. In a campaign speech in October 1992, then-candidate Clinton said he wanted to negotiate supplemental agreements on the environment and on labor with Canada and Mexico. After the Clinton Administration began, negotiations on the environment, labor, and import surges were held from March through August 1993, and supplemental agreements on these three topics were signed in September 1993. Legislation to implement these agreements was enacted in December 1993, and the NAFTA went into effect January 1, 1994.

With the extension of fast-track procedures in May 1991, negotiators anticipated a Uruguay Round final text by the end of 1991. They did not reach an agreement by that time, nor by the mid-1993 deadline of the fast-track extension. In July 1993, Congress approved another extension of fast-track procedures for a Uruguay Round agreement, with a deadline for concluding the agreement by December 15, 1993. A final agreement was reached in time, and countries had the formal signing on April 15, 1994. Legislation to implement the Uruguay Round agreement was signed into law in December 1994, and the agreement went into effect January 1, 1995.

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