

# Executive Authority in U.S. Trade Policy

Brendan Connell

January 2014

There has been an increasing discussion regarding the possibility of Congress granting the US presidency “fast track” authority in free trade agreements. But the shifting of trade authority to the executive has been a heated debate starting from the days of the Great Depression.

Both the history and specifics of executive authority in US trade agreements is crucial towards evaluating what potential positives and negatives “fast-track” legislation may bring.

## What is “Fast Track” Trade Authority?

- Fast track trade authority, sometimes referred to as Trade Promotion Authority (TPA), is a procedure allowing the President to unilaterally negotiate the lowering of both tariff and non-tariff barriers when import restrictions are deemed “unduly burdening or restricting the foreign trade of the United States”.<sup>1</sup>
- Under “fast track” powers, Congress can only accept or reject a trade agreement with an “up or down” vote and cannot amend or filibuster the proposed agreement.
- The fast track procedure has been modified through the years, requiring after 1984 the President to consult with the House Ways and Means Committee and the Senate Finance Committee prior to signing.<sup>2</sup>
- Fast track authority was first implemented under the Trade Act of 1974.
- The Trade Act of 2002—the most recently passed law delegating the President fast track authority—expired in July of 2007.



## Historical Perspective

- The shift of trade authority began with the Reciprocal Trade Agreements Act (RTAA) in 1934, which allowed the President to negotiate up to 50% reciprocal cuts in tariffs without prior congressional approval.<sup>3</sup>
- The RTAA as a law was both durable and effective in kick-starting free trade:
  - The renewal of the RTAA only required a simple majority in Congress, as opposed to a two-thirds super majority.<sup>4</sup>
  - The RTAA explicitly linked US tariff reductions with foreign tariff reductions. This empowered US export industries, that now had a stake in keeping domestic tariffs low and the RTAA in law.<sup>5</sup>
  - The shift of power in US trade policy from Congress to the executive helped shield legislators from the special interests of local constituencies that previously led to log-rolling and widespread protectionism.<sup>6</sup>
  - US exports between 1937-1939 were on average 3.6 percent of GNP and imports 2.7 percent, while US exports between 1945-47 were on average 5.4 percent of GNP and imports 2.2 percent.<sup>7</sup>
- The Trade Act of 1974 was the first law to delegate the President fast track authority on negotiating trade agreements. Importantly, this authority included power to negotiate non-tariff barriers (Subsidies, environmental regulations, quotas, etc.)
- Fast track authority was extended consecutively by Congress in 1979, 1984, and 1988.<sup>8</sup>
- Fast track rules under the Omnibus Trade and Competitiveness Act of 1988 were extended for three years in 1991 to accommodate US negotiations in the Uruguay Rounds and North American Free Trade Agreement (NAFTA).
- From 1994 until the Bipartisan Trade Promotion Authority Act of 2002, despite pleas from President Clinton and President Bush, the executive was without powers to enter into international treaties without congressional approval.<sup>9</sup>
- The Trade Act of 2002 granted the president fast track procedures again, under the name of Trade Promotion Authority (TPA).
- The TPA bill expired in 2007; however, trade agreements signed by the President before July 1, 2007 were still subject to fast track procedures. These free trade agreements were: Peru, Columbia, Panama, and South Korea.<sup>10</sup> All are currently in force.<sup>11</sup>

### List of US Multilateral and Bilateral Free Trade Agreements from 1975-2013

Trade Act of 1974  
Jan 3<sup>rd</sup>, 1975



1988 OTCA Expires  
Apr 16<sup>th</sup>, 1994



Trade Act of 2002  
Aug 6<sup>th</sup>, 2002



Trade Act of 2002 Expires  
July 1<sup>st</sup>, 2007



Present

Year Enacted	Congressional Bill
1985	US-Israel Free Trade Area Implementation Act of 1985
1988	US-Canada Free Trade Agreement Implementation Act of 1988
1993	North American Free Trade Agreement (NAFTA) Implementation Act
1994	Uruguay Rounds Agreement Act
2001	US-Jordan Free Trade Area Implementation Act
2003	US-Chile Free Trade Implementation Act
2003	US-Singapore Free Trade Implementation Act
2004	US-Australia Free Trade Implementation Act
2004	US-Morocco Free Trade Implementation Act
2005	Dominican Republic-Central America-United States FTA Implementation Act
2006	US-Bahrain Free Trade Implementation Act
2006	US-Oman Free Trade Implementation Act
2007	US-Peru Trade Promotion and Agreement Act
2011*	US-Panama Trade Promotion Agreement
2011*	US-Colombia Trade Promotion Agreement
2011*	US-Republic of Korea Free Trade Agreement

\*Treaties were signed prior to July 1<sup>st</sup>, 2007 and considered under TPA legislation (Trade Act of 2002).

## The Current Debate

- The Bipartisan Congressional Trade Priorities Act of 2014 was introduced in the Senate on January 9<sup>th</sup>, 2014 and aims to reinstitute fast track authority.<sup>12</sup>

The most recent 2014 Senate bill has been met by both supporters and critics. The viewpoints of both groups portray the many trade-offs within fast track trade authority—expediency versus accountability, aggregate economic gains of free trade versus the downsides of globalization.

- Common arguments for presidential trade promotion authority include:
  - The Effectiveness/Expediency of TPA would avoid congressional gridlock. Only one US free trade agreement has been signed without TPA (See chart above).
  - Congress would be no more accountable than the executive and will be susceptible to the special interests of local constituencies.
  - TPA would lead to free trade agreements that bring economic gains and increased American access to foreign markets.
- Common arguments against presidential trade promotion authority include:
  - TPA would mean a lack of accountability in the formulation of US Trade Policy.
  - TPA would be an anti-democratic process towards trade agreements that empowers special interests of large corporations at the expense of small businesses and US labor force.<sup>13</sup>

*Brendan Connell is a policy researcher and intern at the American Security Project, he is a graduate student studying International Affairs at American University's School of International Service (SIS).*



## Endnotes

1. United States Code. "[U.S. Trade Act of 1974.](#)" January 3<sup>rd</sup>, 1975.
2. Laura L. Wright. "Trade Promotion Authority: Fast Track for the Twenty-First Century." William & Mary Bill of Rights Journal. 2004.
3. Claude Schwob, "Did the Reciprocal Trade Agreements of 1934 initiate a Revolution in American Trade Policy?" Historical Social Research. 2009.
4. Douglas A. Irwin and Randall S. Kroszner, "Interests, Institutions, and Ideology in the Republican Conversion to Trade Liberalization, 1934-1945." NBER Working Paper No. 6112. 1997.
5. Ibid.
6. Douglas A. Irwin. "[From Smoot-Hawley to Reciprocal Trade Agreements: Changing the Course of U.S. Trade Policy in the 1930s.](#)" NBER Working Paper. 1998.
7. Douglas A. Irwin and Randall S. Kroszner, "Interests, Institutions, and Ideology in the Republican Conversion to Trade Liberalization, 1934-1945." NBER Working Paper No. 6112. 1997.
8. Carolyn Smith. "[Trade Promotion Authority and Fast-Track Negotiating Authority for Trade Agreements: Major Votes.](#)" U.S. Library of Congress, Congressional Research Service. January 12, 2011.
9. Laura L. Wright. "Trade Promotion Authority: Fast Track for the Twenty-First Century." William & Mary Bill of Rights Journal. 2004.
10. Carolyn Smith. "[Trade Promotion Authority and Fast-Track Negotiating Authority for Trade Agreements: Major Votes.](#)" U.S. Library of Congress, Congressional Research Service. January 12, 2011.
11. Zachary A. Goldfarb. "[Obama gets win as Congress passes free-trade agreements.](#)" Washington Post. October 12<sup>th</sup>, 2011.
12. U.S. Senate. "[Bipartisan Congressional Trade Priorities Act of 2014.](#)" January, 2014.
13. Maira Sutton. "[The Questions That Should Have Been Asked at Today's Fast Track Hearing.](#)" Electronic Frontier Foundation. January 16<sup>th</sup>, 2014.



## BOARD OF DIRECTORS



### **The Honorable Gary Hart, Chairman**

Senator Hart served the State of Colorado in the U.S. Senate and was a member of the Committee on Armed Services during his tenure.



### **Norman R. Augustine**

Mr. Augustine was Chairman and Principal Officer of the American Red Cross for nine years and Chairman of the Council of the National Academy of Engineering.



### **The Hon. Donald Beyer**

The Hon. Donald Beyer is the former United States Ambassador to Switzerland and Liechtenstein, as well as a former Lieutenant Governor and President of the Senate of Virginia.



### **Lieutenant General John Castellaw, USMC (Ret.)**

John Castellaw is President of the Crockett Policy Institute (CPI), a non-partisan policy and research organization headquartered in Tennessee.



### **Brigadier General Stephen A. Cheney, USMC (Ret.)**

Brigadier General Cheney is the Chief Executive Officer of ASP.



### **Lieutenant General Daniel Christman, USA (Ret.)**

Lieutenant General Christman is Senior Vice President for International Affairs at the United States Chamber of Commerce.



### **Robert B. Crowe**

Robert B. Crowe is a Partner of Nelson Mullins Riley & Scarborough in its Boston and Washington, DC offices. He is co-chair of the firm's Government Relations practice.



### **Lee Cullum**

Lee Cullum, at one time a commentator on the PBS NewsHour and "All Things Considered" on NPR, currently contributes to the Dallas Morning News and hosts "CEO."



### **Nelson W. Cunningham**

Nelson Cunningham is President of McLarty Associates.



### **Admiral William Fallon, USN (Ret.)**

Admiral Fallon has led U.S. and Allied forces and played a leadership role in military and diplomatic matters at the highest levels of the U.S. government.



### **Raj Fernando**

Raj Fernando is CEO and founder of Chopper Trading, a technology based trading firm headquartered in Chicago.



### **Vice Admiral Lee Gunn, USN (Ret.)**

Vice Admiral Gunn is the President of the Institute of Public Research at the CNA Corporation, a non-profit corporation in Virginia.



### **Lieutenant General Claudia Kennedy, USA (Ret.)**

Lieutenant General Kennedy was the first woman to achieve the rank of three-star general in the United States Army.



### **General Lester L. Lyles, USAF (Ret.)**

General Lyles retired from the United States Air Force after a distinguished 35 year career. He is presently Chairman of USAA, a member of the Defense Science Board, and a member of the President's Intelligence Advisory Board.



### **Dennis Mehiel**

Dennis Mehiel is the Principal Shareholder and Chairman of U.S. Corrugated, Inc.



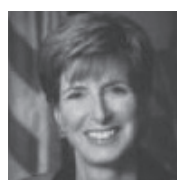
### **Stuart Piltch**

Stuart Piltch is the Co-Founder and Managing Director of Cambridge Advisory Group, an actuarial and benefits consulting firm based in Philadelphia.



### **Ed Reilly**

Edward Reilly is CEO of Americas of FD International Limited, a leading global communications consultancy that is part of FTI Consulting, Inc.



### **Governor Christine Todd Whitman**

Christine Todd Whitman is the President of the Whitman Strategy Group, a consulting firm that specializes in energy and environmental issues.

The American Security Project (ASP) is a nonpartisan organization created to educate the American public and the world about the changing nature of national security in the 21st Century.

Gone are the days when a nation's security could be measured by bombers and battleships. Security in this new era requires harnessing all of America's strengths: the force of our diplomacy; the might of our military; the vigor and competitiveness of our economy; and the power of our ideals.

We believe that America must lead in the pursuit of our common goals and shared security. We must confront international challenges with our partners and with all the tools at our disposal and address emerging problems before they become security crises. And to do this we must forge a bipartisan consensus here at home.

ASP brings together prominent American business leaders, former members of Congress, retired military flag officers, and prominent former government officials. ASP conducts research on a broad range of issues and engages and empowers the American public by taking its findings directly to them via events, traditional & new media, meetings, and publications.

We live in a time when the threats to our security are as complex and diverse as terrorism, nuclear proliferation, climate change, energy challenges, and our economic wellbeing. Partisan bickering and age old solutions simply won't solve our problems. America – and the world - needs an honest dialogue about security that is as robust as it is realistic.

ASP exists to promote that dialogue, to forge that consensus, and to spur constructive action so that America meets the challenges to its security while seizing the opportunities that abound.



American Security Project

[www.americansecurityproject.org](http://www.americansecurityproject.org)