



Free trade is not a free hand for the president

By Tom Schatz, May 19, 2015

In the semantics of trade negotiations, words matter. They also make a difference in legislation.

S. 995 and H.R. 1890, the Bipartisan Congressional Trade Priorities and Accountability Act (TPA), will be considered first in the Senate and then in the House. The bills establish the parameters within which a president can negotiate a treaty with other nations. In order to assure trading partners that these agreements will be approved forthwith, Congress must consider them under "fast-track" procedures and vote up or down without amendment or filibusters.

The last time Congress approved a fast-track trade bill was in 2002; it covered agreements through 2008. Therefore, the vast majority of representatives and senators have never considered a trade promotion bill. And therein lies the dilemma in particular for the Republican majorities in the House and Senate.

Many GOP members do not trust President Obama, believing that he has not followed the law on a number of issues. So, on an issue that would normally be a "no-brainer," many conservatives are loath to grant any more "authority" to a chief executive whom they think has a shocking record of overreach.

Hence, trade promotion authority, which has traditionally been the title of fast-track legislation, has become "Trade Priorities and Accountability."

If the name change is not sufficient to convince doubters about what Obama may or may not be able to do, perhaps a May 14 report from the Congressional Research Service (CRS) will do the trick.

CRS plainly stated that TPA does not give the president any authority whatsoever to change any laws: "The President possesses inherent authority to negotiate with other countries to arrive at trade agreements. If any such agreement requires changes in U.S. law, however, it could be implemented only through legislation enacted by Congress."

Clearly, the president does not and will not have the power (or superpower) to unilaterally change any law related to immigration, labor or the environment. Those are just a few of the scary words being used by some conservative skeptics.

If CRS's words are insufficient, the bill itself should extinguish any concerns about the president's "authority."

The legislation includes more than a dozen transparency and accountability provisions, including allowing every member of Congress to read the negotiating text and attend negotiating rounds. The completed agreement must be published 60 days before it is signed by the president. It specifically affirms that only Congress can change U.S. law. Finally, it provides an opportunity for Congress to stop the expedited consideration of a trade agreement with an off switch.

This unprecedented safeguard allows for consideration of a Consultation and Compliance Resolution (CCR) by the full House if the House Ways and Means Committee reports a trade agreement without a favorable recommendation or a member of Congress introduces a CCR with other than a favorable recommendation. The CCR would state that the president failed to comply or consult with Congress on trade negotiations in accordance with the TPA and therefore fast-track procedures would not apply to the bill to implement such a trade agreement. This decision can be made solely by the House, without the consent of the Senate or the approval of the president.

The U.S. Trade Representative (USTR) is currently negotiating two key trade agreements — the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (T-TIP) — both of which would be considered under the procedures set forth in the TPA legislation. Each provides opportunities for the U.S. to expand its reach into the global market while protecting and promoting U.S. goods overseas.

The TPP countries include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. According to the USTR, U.S. exports to TPP countries totaled \$698 billion (44 percent of U.S. goods exported overseas) in 2013.

The T-TIP agreement, being negotiated between the U.S. and the European Union (EU), seeks to increase economic growth on both sides, while adding to the 13 million-plus American and EU jobs already supported by transatlantic trade and investments.

Another reason to support the trade agreements is the inclusion of critical provisions to promote, protect and enforce intellectual property rights. In particular, the U.S. is seeking to enhance joint leadership with the EU on intellectual property rights issues, as well as new opportunities to advance and defend the interests of U.S. creators, innovators, businesses, farmers and workers, including their ability to compete in foreign markets.

Members of Congress have expressed various reasons to oppose TPA. However, any objection based on providing the president with too much "authority" should be dispelled by the plain words of the legislation and the CRS report. The enactment of TPA is too important to the U.S. and global economy to be sidelined by misleading and false claims about imaginary presidential powers.