

TRADE NEGOTIATING AUTHORITY ACT OF 2009

SUMMARY

The purpose of this draft bill is to initiate a debate over the appropriate authority for negotiating trade agreements and an efficient “fact track” process for congressional consideration of implementing legislation. The NFTC believes that this will be a major subject for debate in 2009.

Section 1. Findings and Purpose

This section characterizes the impact of global economic integration, how it has helped American companies and workers, and the challenges it poses for them, some of which can be addressed through trade negotiations:

- (1) Expansion of international trade and U.S. participation in trade negotiations serves our vital domestic, foreign policy and national security interest. This requires a national strategy;
- (2) Trade agreements should maximize opportunities for U.S. commerce, benefitting producers, workers and consumers;
- (3) Congress recognizes that the benefits of a trade policy designed to open markets and foster cross-border investment requires domestic policies that enhance U.S. competitiveness;
- (4) This in turn requires a multilateral trade regime that facilitates the development of global supply chains and preserves our key assets as a high-wage, high-productivity nation.

Section 2. Fundamental Objectives

Achieving that purpose requires reaching international agreement on institutions, rules and policies that will:

- (1) Continue to open markets, promote the rule of law, improve the protection of intellectual property rights, seek removal of barriers to foreign investment, and ensure the transparency and accessibility of regulatory regimes;
- (2) Ensure that U.S. producers can take full advantage of global supply chains;
- (3) Promote trade liberalization that combats climate change, reflects core ILO standards that ensure the ability of individuals to bargain freely for the fair value of their labor, and provides for the protection and the health and safety of consumers;
- (4) Ensure that temporary entry for high-skilled foreign individuals is improved;
- (5) Work in the World Trade Organization to ensure that unilateral economic sanctions proposals receive rigorous cost-benefit analysis.

Section 3. Multilateral Negotiating Objectives

Having a vital stake in the international trading system, the U.S. should:

- (1) Lead efforts to liberalize world trade and seek and support appropriate reforms in the WTO, including a two-track structure that permits countries willing to commit to liberalization on a sectoral basis do so, applying those benefits on a reciprocal basis rather than as a part of a “single undertaking,” thereby permitting others to join subsequently;
- (2) Encourage the WTO to adopt stricter rules about the scope of obligations assumed in free trade agreements that enable them to qualify as an exception to MFN obligations and harmonize the rules in those agreements;
- (3) Eliminate measures that contribute to chronic trade imbalances and undermine normal market forces as well as practices by governments and state-owned enterprises that distort markets and create productive capacity unwarranted by market conditions;
- (4) Strengthen WTO dispute settlement procedures and rules against trade distorting practices including strong multilateral and domestic remedies such as antidumping and countervailing duties that offset those practices;
- (5) Expand efforts to combat corruption and improve transparency.

Section 4. Regional and Bilateral Negotiating Objectives

Regional and bilateral trade agreements can reinforce the multilateral system if they:

- (1) Give priority to those countries at comparable levels of economic development with the greatest potential for expanded commerce and which have the capacity to implement those agreements;
- (2) Give priority to agreements with prospects of progress in new areas of negotiation such as investment, regulatory policy, environmental protection, expansion of competition, improved labor standards, and product and food safety;
- (3) Promote harmonization of existing free trade agreements and the negotiation of rules of origin and other measures to minimize conflict;
- (4) Ensure that the negotiation of FTAs to which the U.S. is not a party do not discriminate against American trade and investment.

Section 5. Environment

Congress recognizes the potential of trade liberalization to contribute to combating climate change. Trade policies and negotiations should:

- (1) Increase access to and reduce the cost of the means of increased energy efficiency and reduction of carbon emissions;
- (2) Liberalize services required by a global cap and trade system and improve the ability of all, especially the least developed countries, to participate;

Section 6. Trade Agreements Authority

This section extends trade negotiating authority through June 1, 2013, with a further four year extension subject to the same Congressional disapproval process in the now-expired law. Other existing procedures and reporting requirements are continued.

Section 7. Consultations and Assessment

This section details the steps the President must take to launch a negotiation. With respect to the reports and notifications required prior to entering into a negotiation, during a negotiation, and subsequent to reaching an agreement, there is little change from previous law. However, if the President notifies the Congress of his intent to enter into a bilateral or regional negotiation, he may not begin the negotiation until the Joint Committee on Trade (see section 10) has adopted a resolution of approval. The Committee is required to hold such a vote within 90 calendar days of receiving the President's notification.

Section 8. Implementation of trade agreements

This section prescribes the procedure for Congressional consideration of a trade agreement implementing bill once an agreement is concluded, the so-called "fast track" process. The draft bill does not materially change the existing process.

Section 9. Treatment of certain trade agreements for which negotiations have already begun

This section provides transition rules for agreements concluded but not acted on by the Congress prior to *sine die* adjournment. It provides that agreements initiated pursuant to previously existing authority but not acted upon by Congress, either because they were not submitted or because Congress adjourned before the clock expired, retain their "fast track" status and must be considered under those procedures in succeeding Congresses, should the President submit (or resubmit) them. In the short term, this means that pending agreements with Colombia, Panama, and Korea would be considered under "fast track" procedures if the Congress does not act on them in 2008, and the President submits them next year following enactment of this legislation. The section also preserves fast track status for implementing the Doha Round should it be concluded.

Section 10. Joint Committee on Trade

This section formally creates a Joint Committee on Trade in lieu of the Congressional Oversight Group. Its membership is largely the same – the chairman and ranking members of the Ways and Means and Finance Committees plus three additional members from each, and the chairman and ranking members of the following committees: Agriculture, Energy and Commerce, Financial Services, Foreign Affairs, Judiciary, Small Business, Banking, Commerce, and Foreign Relations, plus three additional members designated by each body's leadership, two from the majority and one from the minority. The Committee's duties include holding hearings and conducting briefings, acting on resolutions of approval for free trade agreement negotiations, conducting oversight on trade policy issues, receiving reports required of the President, providing information to other Members of Congress, issuing reports on trade agreements, and consulting with the Administration on trade negotiations.

Section 11. Additional implementation and enforcement requirements

Section 12. Application of certain provisions
Section 13. Definitions

These sections contain a number of miscellaneous provisions that are not significantly changed from previous law.

Additional Authorities to be added

The draft bill also proposes two additional items which have not been put in legislative language:

- 1) Authorize the President to eliminate duties of items where there is no domestic production. (This would obviate the need for many parts of miscellaneous tariff bills.)
- 2) Provide authority for “fast track” approval of changes in existing bilateral/regional agreements that are made solely for purposes of harmonization pursuant to section 4(b)(3) of the draft bill.