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Camp-Baucus Bill Would Revive Controversial 2002 Fast Track Mechanism

The Camp-Baucus Fast Track bill replicates the procedures included in the 2002 grant of Fast Track that expired in 2007:

- The president would be empowered to unilaterally select trade negotiating partners and commence negotiations. Like the 2002 Fast Track, in the Camp-Baucus bill this authority is conditioned only on pro forma consultations and 90 calendar days' notice being given to Congress before negotiations begin. The Camp-Baucus bill provides no mechanism for Congress to veto a president's decision to enter into negotiations on a trade pact that would be subject to expedited floor procedures, nor any role in selecting with which countries such pacts are initiated. (Sec. 5(a))
- The president would be empowered to unilaterally control the contents of an agreement. As with the 2002 Fast Track, congressional negotiating objectives in the Camp-Baucus bill are not enforceable. Whether or not U.S. negotiators obtain the listed negotiating objectives, the Camp-Baucus bill would empower the president to sign a trade pact before Congress votes on it, with a guarantee that the executive branch could write legislation to implement the pact and obtain House and Senate votes within 90 days, with all amendments forbidden and a maximum of 20 hours of debate permitted. (Sec. 3(b)(3))
 - Democratic and GOP presidents alike have [historically ignored negotiating objectives](#) included in Fast Track. The 1988 Fast Track used for the North American Free Trade Agreement (NAFTA) and the establishment of the World Trade Organization (WTO) included a negotiating objective on labor standards, but neither pact included such terms. The 2002 Fast Track listed as a priority the establishment of mechanisms to counter currency manipulation, but none of the pacts established under that authority included such terms.
- The president would be authorized to sign and enter into an agreement subject to expedited consideration conditioned only on pro forma consultations and providing Congress 90 calendar days' notice prior to doing so. (Sec. 6(a)(1)) The executive branch alone would determine when negotiations are "complete." The congressional "consultation" mechanisms in the Camp-Baucus bill do not provide Congress with any authority or mechanism to formally dispute whether negotiations have indeed met Congress' goals and thus are complete, much less any means for Congress to certify that its objectives were met before an agreement may be signed.
- The president would be authorized to write expansive implementing legislation and submit it for consideration. (Sec. 6(a)(1)(C)) As with the 2002 Fast Track, such legislation would not be subject to congressional committee markup and amendment. The 2002 Fast Track states that this legislation can include any changes to U.S. law that the president deems "necessary or appropriate to implement such trade agreement or agreements." (19 USC 3803(b)(3)(B)(ii)) Inclusion of the term "appropriate" in this section of past Fast Track authorities has been controversial, because it provides enormous discretion for the executive branch to include changes to existing U.S. law that Congress may or may not deem *necessary* to implement an agreement. Indeed, inclusion of the term "appropriate" has enabled Democratic and GOP administrations alike to insert extraneous

changes to U.S. law into legislation that skirts committee mark up and is not subject to floor amendment. Rather than remove the term “appropriate,” the Camp-Baucus bill merely adds the superfluous modifier “strictly” in front of the same “necessary or appropriate” language found in the 2002 Fast Track. (Sec. 3(b)(3)(B)ii)) As with the 2002 Fast Track, there is no point of order or other mechanism to challenge inclusion of overreaching provisions in the implementing bill.

- Like the 2002 Fast Track, the Camp-Baucus bill would require the House to vote on such legislation within 60 session days, with the Senate having an additional 30 days to vote thereafter. (Sec. 3(b)(3))
- Like the 2002 Fast Track, the Camp-Baucus bill would forbid all amendments and permit only 20 hours of debate on such legislation in the House and Senate. Voting, including in the Senate, would be by simple majority. (Sec. 3(b)(3))
- The Camp-Baucus bill replicates the 2002 Fast Track with respect to limitations that could be placed on the application of the Fast Track process to a specific trade agreement. While the factsheet on the bill released by the Finance Committee suggests that it includes a “strong, comprehensive” disapproval process, in fact it replicates the 2002 Fast Track’s limited grounds for which a resolution to disapprove Fast Track can be offered. The Camp-Baucus bill also replicates the 2002 Fast Track’s procedures for consideration of such a resolution, which curtail the prospect that such a resolution would ever receive a vote. To obtain floor action, a resolution would have to be approved by the Ways and Means and Finance committees, and then the House and Senate would have to both pass the resolution within a 60-day period. (Sec. 6(b))

The Camp-Baucus bill includes several negotiating objectives not found in the 2002 Fast Track. However, the Fast Track process that this legislation would reestablish ensures that these objectives are entirely unenforceable:

- In addition, some of the Camp-Baucus bill negotiating objectives advertised as “new” are in fact referenced in the 2002 Fast Track. For example, the 2002 Fast Track included currency measures: “seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade.” (19 USC 3802(c)(12)) The so-called “new” text in the Camp-Baucus bill is: “The principal negotiating objective of the United States with respect to currency practices is that parties to a trade agreement with the United States avoid manipulating exchange rates in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other parties to the agreement, such as through cooperative mechanisms, enforceable rules, reporting, monitoring, transparency, or other means, as appropriate.” (Sec. 2(b)(11))

What is touted as “enhanced coordination with Congress” is actually the mere renaming of the Congressional Oversight Group from the 2002 Fast Track as “Congressional Advisory Groups on Negotiations,” while provisions ostensibly improving transparency merely formalize past practice:

- The 2002 Fast Track established a Congressional Oversight Group (COG) comprised of members of Congress appointed by congressional leaders who were to obtain special briefings from the U.S. Trade Representative’s (USTR) office on the status of negotiations and to attend negotiations on an

advisory basis. The Camp-Baucus bill renames the COG – delineating a “House Advisory Group on Negotiations” and a “Senate Advisory Group on Negotiations” and describing joint activities of the two – but includes the same appointment process and limited role for congressional trade advisory groups as found in the 2002 Fast Track. (Sec. 4(c))

- The Camp-Baucus bill instructs USTR to write guidelines for its consultations with Congress, the public and private sector advisory groups. In effect, this provision merely requires USTR to put into writing how it will (or will not) relate to these interested parties. (e.g. Sec. 4(a)(3) and Sec. 4(d)(1))
- The Camp-Baucus bill simply formalizes the past practices of USTR by requiring that any member of Congress be provided access to trade agreement documents. For instance, during NAFTA negotiations, members of Congress had open access to the full draft NAFTA texts with a new version placed into a secure reading room in the U.S. Capitol after each round of negotiations. In the summer of 2013, the Obama administration finally responded to growing pressure by members of Congress for access to draft TPP texts by bringing requested specific chapters to members’ offices for review when a member asked for such access. Rather than specifying that USTR must resume the practice of providing standing access for members of Congress to full draft trade agreement texts, the Camp-Baucus bill leaves to the discretion of USTR how it will provide text access to members of Congress if a member requests access. (Sec. 4(a)(1)(B))
- The Camp-Baucus bill also replicates the problematic language of the 2002 Fast Track that limits access to confidential trade agreement proposals and draft texts for congressional staff with the necessary security clearances to only committee staff, excluding personal staff with clearances. (Sec. 4(a)(3)(B)(ii))

The Camp-Baucus bill faces long odds for approval in the 113th Congress:

- With a large bloc of House Democrats and Republicans already having announced opposition to the old Fast Track process at the heart of Camp-Baucus bill, the prospects are limited for the Obama administration to secure passage in the first half of 2014 before lawmakers’ attention turns to midterm elections.
 - A [letter](#) sent to President Obama in November by 151 Democrats opposed Fast Track authority and called for the creation of a new mechanism for trade agreement negotiations and approval.
 - Twenty-seven Republicans have also announced their opposition to Fast Track in [two letters](#) to Obama.
 - Most Democratic Ways and Means Committee members joined an additional [letter](#) in November noting that the old Fast Track process enjoys little support.
- Even after repeated delays in introduction, the Camp-Baucus Fast Track bill failed to gain a House Democratic cosponsor. Ways and Means Ranking Member Sandy Levin (D-Mich.) has announced that he does not support the Camp-Baucus bill. Levin’s demands for changes to the 2002 Fast Track procedure to enhance Congress’ role in determining the contents of trade pacts were rebuffed by Ways and Means Committee Chair Dave Camp (R-Mich.), Finance Committee Chair Max Baucus (D-Mont.) and Finance Committee Ranking Member Orrin Hatch (R-Utah).
- The Camp-Baucus Fast Track grandfathers in the Trans-Pacific Partnership (TPP) and U.S.-EU Trans-Atlantic Free Trade Agreement (TAFTA) negotiations. (Sec. 7) Fast Track for the TPP and TAFTA is especially controversial because these pacts would include chapters on patents,

copyright, financial regulation, energy policy, procurement, food safety and more, constraining the policies that Congress and state legislatures could maintain or establish on these sensitive non-trade matters. Fast Track was designed in the 1970s when trade negotiations were narrowly focused on cutting tariffs and quotas, not the sweeping range of non-trade policies implicated by today's pacts.

Fast Track is an anomaly. It has only been in effect for five of the past 19 years:

- Both Democratic and GOP presidents have struggled to convince Congress to delegate its constitutional trade authority via the Nixon-era Fast Track scheme. Fast Track has been in effect for only five years (2002-2007) of the 19 years since passage of NAFTA and the agreement that created the WTO.
- A two-year effort by President Bill Clinton to obtain Fast Track trade authority during his second term in office was voted down on the House floor in 1998 when 171 Democrats were joined by 71 GOP members who bucked then-Speaker Newt Gingrich. Clinton did not have Fast Track for six of his eight years in office, but still implemented more than 130 trade agreements.
- President George W. Bush spent two years and extraordinary political capital to obtain the 2002-2007 Fast Track grant, which passed a Republican-controlled House by one vote, and expired in 2007.