Comment: Trade Politics—A Debate

John T Passé-Smith, *University of Central Arkansas*

The preceding study by Byron W. Daynes and Glen Sussman is valuable in that it points to the complexity of trade and of trade legislation, highlighting the role of presidential fast-track authority within that process. Unfortunately, the authors overstate the case for the waxing of presidential power, choosing to view the evolving relationship as a zero-sum game. The reality is that major trade deals such as those in which fast-track authority is utilized are so complex and politically sensitive that the White House and Congress must work together to achieve success. The evolving relationship is one of *managed conflict*, not open hostility. The fast-track mechanism does constitute a major change in the relationship between the legislative and executive branches, as the authors document, but change does not automatically mean that the executive is sacking the legislative.

Two very interesting hypotheses float to the surface in this article. The first is that the executive branch effectively has usurped the legislative branch's consitutional authority to regulate commerce. As Daynes and Sussman assert, fast track "create[s] an imbalance of powers to the point where Congress's opportunity to shape trade policy is emasculated." Second, fast track authority fundamentally undermines the ability of Congress to represent its constituents. Again, as the authors assert, "With the President so dominant over trade matters placed on the fast track, it is difficult for members of Congress to exercise formal representation by speaking for their constituents' interests in trade matters."

The most unfortunate aspect about this research is that rather than examine empirical evidence to determine if the data support their hypotheses, the authors assume what should be tested. This is particularly disappointing because the North American Free Trade Agreement (NAFTA) constitutes one of only four examples of the use of fast track powers.

Fast Track: Congressional Authority and Representation

Fast track authority is a strategy devised by the U.S. government for the negotiation of trade agreements. The executive branch must send word

---

JOHN T PASSÉ-SMITH is Assistant Professor of Political Science at the University of Arkansas.

The American Review of Politics, Vol. 15, Spring, 1994: 89-97

to the legislative branch that it intends to use fast-track authority to negotiate a trade deal. The decision to approve fast-track powers is separate from the decision to allow trade talks. Assuming Congress approves of the trade negotiations, it must act on the request for fast-track authority within 60 days or the executibe branch automatically receives those powers. The executive branch's United States Trade Representative (USTR) negotiates the trade agreements, presenting the final product to the House Ways and Means Committee and the Senate Finance Committee. These committees hold legislative veto power over the trade bill, having 45 days to consider the bill's fate. Then the Congress has fifteen additional days to consider the bill. Debate is limited to twenty hours, and the final vote either approves or rejects the proposed trade legislation; it cannot be amended.

The authors presented most of this information, but minimized Congress's input. The executive branch *must ask* Congress's permission to hold trade talks, and Congress must vote upon and approve such talks. Then the executive branch must request fast-track authority and Congress must approve this procedure. After these votes, the office of the USTR negotiates the agreement and then it is returned to the Congress for yet another vote. Even while the negotiations move ahead, Congress must be kept informed through the House Ways and Means Committee and the Senate Finance Committee. Here Congress does *not* play a passive role, as Daynes and Sussman would have us believe, as is evidenced by Carla Hill's promise to design the NAFTA agreement in concert with Congress (Farnsworth 13 March 1991). This is not the stuff of intimidation and dominance. Evidently the authors regard Congressional votes allowing fast-track authority as tantamount to abdication of power.

It is possible that Daynes and Sussman assume that Congress has been removed from the process because of the mistaken belief that Presidents are more free trade-oriented than the legislative branch. While there may be a grain of truth to this, the case certainly is overstated. The United States did not become one of the more open economies in the world as a result of Presidents riding roughshod over Congress, forcing free-trade down its throat. The degree of free trade that the United States endures is the result of managed conflict. As David Rosenbaum (9 April 1991) described it, "this is an age-old dance: lawmakers, prepared to accept a trade accord eventually, appease local interests by threatening to block the agreement. And Presidents, stepping in tune with the music, emphasize the Congressional threats when they try to win overall trade concessions from other countries." As shrill as the free trade debate has become, it must be kept in mind that if an ideologically free-trading executive branch truly had cut Congress out of the process, NAFTA would not have run to 2,000 pages. It would have

taken only six words to say "read my lips, no more tariffs," or a page to explain an across-the-board phasing out of tariff rates. In fact, the bulk of the text of the agreement does not discuss free trade, but exceptions to free trade (Weintraub 1993). Congress has had, and continues to have, a strong hand in molding trade policy.

In addition to the formal fast-track mechanism, the negotiations between the United States, Canada, and Mexico offer a relatively rare opportunity to examine the process closely. Daynes and Sussman failed to take advantage of the opportunity, perhaps for good reason. A cursory glance at the unfolding negotiations clearly reveals Congressional input. To narrow the amount of material, I copied and summarized articles concerning the trade talks that appeared in the *New York Times* between 1991 and 1993. During this time period there were approximately 250 articles dealing with Mexico, and most of them had to do with the trade accord. Most of the remaining articles had to do with Mexican elections and electoral fraud. These articles present a fascinating picture of the crafting of the trade legislation. Ultimately it shows that while the executive branch aggressively pursued the negotiations, Congress clearly helped mold the final agreement.

With respect to NAFTA, Congress has been quite vocal about its concerns: labor, and the environment. When Carla Hill testified in front of the Senate Finance Committee, Senator Don Riegle, Jr. expressed his concerns about the loss of jobs due to companies pulling up investments in the United States and moving to Mexico to take advantage of the average wage of 57 cents per hour, compared to $10.47 in the United States (Farnsworth 7 February 1991). Senator John B. Breaux (D-LA) asked Mrs. Hill why a chemical plant in Louisiana, hurt by the cost of complying with the previous year's Clean Air Act, would not move to Mexico, pollute there, and sell its product to the United States duty-free (Farnsworth 7 February 1991).

On 11 February 1991, the *New York Times* reported that 37 members of Congress had proposed a "social charter" to address their concerns about environmental, health, and labor issues (Farnsworth 11 February 1991). The Bush Administration opposed such a charter. However, sensing the growing hostility in Congress, Representative Dan Rostenkowski (D-IL) and Senator Lloyd Bentsen (D-TX) sent a letter to President Bush warning that if Congressional concerns about the environment, health, and labor were not taken into account, fast-track authority would not be extended (Farnsworth 13 March 1991). Within a week Carla Hill once again appeared before the House Ways and Means Committee, promising that the Bush Administration shared their concerns.

Specific concessions were proposed by the Bush Administration in a 2 May 1991 letter to Congress. The 150-page "action plan" offered four major concessions:

> To work with Congress to fashion an "adequately funded" program of assistance for workers dislocated as a result of increased foreign competition; to exclude changes in immigration policy from the trade pact; to prevent Mexican products that do not meet United States health or safety requirements from entering the country; to put in place an integrated environmental plan for the border between the United States and Mexico and appoint representatives of environmental organizations to official trade advisory bodies (Farnsworth 2 May 1991).

One issue not adequately addressed by Daynes and Sussman is the degree to which fast-track authority and NAFTA had become intertwined. Much of the antipathy that arose between the White House and Congress had little to do with the fast-track mechanism; from the very start, the battle was over the substance of NAFTA. For the most part, the fast-track vote was not seen as an issue separate from the negotiations with Mexico and Canada. Even the headlines reporting the fast-track vote read "Congress Panels Vote to Advance Free-Trade Plan," as if the NAFTA plan itself had been adopted (Clymer 14 May 1991). Even in Congress, the fast-track vote was treated as a preliminary vote for or against NAFTA. Senator Max Baucus (D-MT), chair of the Senate Finance Committee's Subcommittee on International Trade, made the linkage clear: "The Administration has demonstrated sensitivity to Congressional concerns. . . . A vote against fast-track extension is now clearly a vote for protectionism" (Farnsworth 1 May 1991). Senator Lloyd Bentsen, speaking to the issue of fast-track extension, said that President Carlos Salinas of Mexico was committed to closer ties with the United States, which was "an opportunity we must seize. . . . If we don't, we'll regret it well into the next century" (Bradsher 15 May 1991). The issues were not viewed separately. Congress saw the vote as part of a larger strategy and the eventual goal was having a free-trade agreement. It should not be taken too far, but one slightly cynical interpretation of the proceedings is that the President takes most of the heat of public opposition to any policy associated with him/her, freeing Congress members to vote as they see fit.

Beside the consultations that the executive branch was expected to hold with Congress over fast track, there appears to be a sense in Congress that fast track is not so powerful a tool versus Congress as Daynes and Sussman think. There is a feeling that if something unexpected occurred—if, for instance, the President did not keep his word and tried to back out of one of the side agreements—Congress still could shape the legislation. House Majority Leader Richard Gephardt (D-MO) expressed this sentiment when

he said that "under House rules . . . it would be possible to force changes in a Mexico free trade agreement after it had been negotiated, either by changing the fast-track legislation or by altering the legislation needed to put the agreement into effect in the United States" (Bradsher 10 May 1991). This certainly is not the voice of an institution cowed by the President.

The second hypothesis is that fast-track powers may be anti-democratic due to their impact upon representation. This is particularly true, it is argued, of members of Congress who oppose the agreement. This argument is, in fact, closely related to the first issue. If, as I have asserted, Congress is not turning over responsibility for trade to the President, then it would be hard to make the case that Congresspersons are prevented from representing their constituents. It is true that the Ways and Means Committee and the Finance Committee have become very powerful in such trade bills, but this generally is true of any committee considering legislation. The representatives who sit on the committees that consider a bill have more influence over it than those who do not. Perhaps if a bill remained under the firm control of Congress, an informal network would allow a representative to have influence over the writing of the bill that would not be available if the executive branch took control. In other words, the President would make promises to Congresspersons to get them to approve fast-track authority and then once those powers were extended the President would be able to ignore those promises.

The problem with this hypothesis is that it does not stand up tc the evidence. The North American Free Trade Agreement was voted upon by the House of Representatives on 17 November 1993. During the week prior to the vote, President Clinton doled out an estimated $50 billion in "pork" (Anderson and Silverstein 20 December 1993). A decent number of the promises and projects were related to the representatives' concerns about the impact of NAFTA: the opening of a $10 million Center for the Study of Trade in the Western Hemisphere; reductions of Canadian wheat imports unless Canada cuts back on wheat subsidies; the $250 million funding of the North American Development Bank; promises that the Administration will pressure Mexico to speed up reduction of tariffs on household appliances; trade protection for citrus, sugar, and vegetable producers in Texas and Florida at an estimated cost of $1.4 billion; and a promise to negotiate limits on peanut butter imports from Canada (Anderson and Silverstein 20 December 1993, 752-753).[1]

The point here is that the promises were extensive because Congress still has considerable power. Neither George Bush nor Bill Clinton felt as if the approval of fast-track authority had given them a "green light" to do as they pleased with the NAFTA talks. If the Congress had no input, then

there would be no reason for the president to buy votes. And while I do not condone pork projects and do not believe that they are the best way for representatives to represent their districts, it is one way they can serve that function. In the final analysis, it matters little whether the pork comes from Congresspersons trading votes, or from the President buying them: one trough is as good as the next.

I have shown in the first portion of this comment that Congress did shape the NAFTA legislation, forcing the President to include side agreements covering labor, health, and the environment. Nevertheless, it very well could be that a Congressperson did not feel that enough was done to protect American labor. I, for one, share that feeling, but democracy and representation cannot be gauged by its output. Winning is not part of the definition of democracy. In Mexico, PAN, the longest-lived opposition party, has come to measure democratizing reforms according to whether or not PRI wins the election: only if PRI loses was the election free and fair. The problem is that PAN officials are mostly right in saying that such reforms have not moved Mexico closer to democracy, and probably were not intended to do so, but how would anyone know if the elections were in fact democratic unless the ruling party lost? The fallacy herein is that PRI cannot win without fraud. Daynes and Sussman come dangerously close to using this kind of logic. Their argument almost seems to be that if NAFTA wins, the process was not democratic because NAFTA could not win if the President had not usurped the powers of Congress. Once again, a majority of the members of Congress approved the extension of fast-track authority and then voted upon and approved the North American Free Trade Agreement. I lost, but the process was democratic.

If the fast-track mechanism is not simply a way for the executive branch to steal away the legislative branch's duties, then what is the reason for creating such powers? The primary purpose for fast-track does not reside in domestic institutional power struggles. This process of managed conflict was created to wrestle the best foreign trade agreements that the United States could get by presenting a more unified front. This is not to say that the constant struggle between the President and Congress disappears and a cozy alliance forms. Both branches desire some degree of free trade, and managed conflict allows for the President and Congress to achieve such agreements in the face of protectionist pressures, both at home and abroad.

The free-trade orientation of the executive and legislative branches was challenged, according to Robert Gilpin (1987, 192), as early as the 1950s when the European Economic Community (EEC) formed. This trend only has strengthened over time as the Europeans moved closer than many thought possible to economic and political integration. As Giulpin (1987,

194) notes, "In the 1980s, due to the macroeconomic policy of the Reagan Administration and the overvalued dollar, the American competitive position deteriorated. . . . In the first part of 1986, the United States had achieved the impossible: it had a deficit with almost every one of its trade partners." Such exposure to foreign competition helped to crystallize the opposition to free trade. And it was the strength of the proponents of protectionism that necessitated the cooperation—or managed conflict—of the White House and the Congress.

In addition to the diminishing support for free trade, the GATT talks became ever more combative. During GATT's early years rather easy success was the norm, with each round lasting only about a year. The Kennedy round, however, would take five years to complete. The Tokyo round (1973-1979) would deal with such difficult issues as nontariff barriers, Japanese and "Baby Dragon" trade protectionism, export subsidies, and liberalized trade in agriculture (Gilpin 1987, 196). President Nixon thus realized that such trade talks would be politically sensitive, and requested fast-track powers to facilitate the negotiations. The real story of the Tokyo talks and even the preceding Kennedy round was that the GATT was running out of relatively easy tariff cuts, ones that were not painful to the industrialized countries. It was within this context that fast track became important. The legislative and executive branches have similar, though not identical interests in freer (if not free) trade. However, as freer trade initiatives became harder to come by, the two branches worked out a mechanism that would ease foreign concerns about the possibility of negotiating with the United States for a couple of years, only to have Congress rewrite the administration's bill in committee.

A final reason for fast-track authority came to light during the weeks that followed the end of the negotiations: the Mexican government became more and more suspicious of the United States' motives for "delaying" the accord's approval.[2] The feeling was that if the President of the United States really wanted the agreement approved, it would be approved (Canela [n.d.]). What students of American government consider the complexities of our legislative process can look like intrigue to foreign governments. It must be remembered that while all things "gringo" are regarded with less suspicion than in years past, that feeling is not buried too deeply in the Mexican psyche. A poll of Mexicans conducted not too long ago by *Excelsior* in Mexico City found that 59 percent of the respondents called the United States an "enemy country" (Hellman 1988, 271 n27). In fact, Mexicans are ever mindful that they lost half of their territory to the United States during the last century (Pastor and Castaneda 1989, 23-38). Mexico's wariness of the United States may be greater than that of other countries, but the

difference is one of degree, not of kind. Even the industrial countries have shown impatience with America's negotiating style. As Lang and Hines (1993, 57) point out, "The USA in recent years has used existing GATT measures to wave the big trade stick at a long list of countries, including: India, Brazil, China, The EC, Japan, Mexico, Venezuela, and Thailand." With such political sensitivity and suspicion confronting trade negotiators, it is no wonder that the President and Congress have worked out a cooperative arrangement. If trade talks are contentious, the last thing the USTR needs is to finish a battle at the negotiating table only to turn to do battle in Capitol Hill committee hearing rooms. Thus, a final reason for fast-track authority has been to assure the government of a country that the agreement they negotiate with USTR negotiators will not be rwritten by Congress.

Conclusion

The growing complexity of trade and trade legislation has induced a change in the relationship between the President and Congress. The contribution of Daynes and Sussman is to identify the potential dangers such change can bring about. They argued that the President has seized Congress's constitutional duty to regulate commerce and that this in turn has abrogated Congress's ability to represent constituents.

I have shown that Congress in fact did mold the NAFTA agreement. Their basic concerns were the protection of labor, health, and the environment. Prior to Senator Bentsen's and Congressman Rostenkowski's threat not to extend fast-track powers to President Bush, the President opposed these so-called side agreements. Within a week of receipt of the letter, President Bush sent Carla Hill to reassure Congress that the President would offer concessions. The 150-page "action plan" pledged to protect workers and the environment, and to maintain close contact with Congress during the process. As for representation, Congress retains the power to "just say no" to the President's request for fast-track authority as well as the ability to negotiate a trade agreement. Senator Gephardt even expressed the belief that if Congress were united it could make changes in the NAFTA even after it was negotiated. Finally, it should be remembered that having your way is not part of the definition of democracy. Showing that the President prevailed on a number of issues or that some Congresspersons did not think that workers were protected sufficiently does not mean that the process was not democratic.

NOTES

[1]A series of unrelated promises and pork also were extended (see, for example, Ifil 13 November 1993). Almost $60 billion in deals is enumerated in Bradsher (17 November 1993).

[2]There is an extensive literature on the tensions in Mexico-United States relations. A good overview is Pastor and Castaneda (1989).

REFERENCES

Anderson, Sarah and Ken Silverstein. 20 December 1993. Oink, Oink. *The Nation* 257, 21: 752-753.

Bradsher, Keith. 10 May 1991. Gephardt Backs Efforts on Trade with Mexico. *New York Times*, sect. D.

_____. 15 May 1991. Congress Panels Vote to Advance Free-Trade Plan. *New York Times*, sect. D.

_____. 17 November 1993. Clinton's Shopping List for Votes Has Ring of Grocery Buyer's List. *New York Times*, Sect. A.

Canela, Jose. n.d. [Ed: author could not be reached in Latin America]. Interview with author.

Clymer, Adam. 14 May 1991. Congress Panels Vote to Advance Free-Trade Plan. *New York Times*, sect. A.

Farnsworth, Clyde H. 7 February 1991. Job Security Is an Issue at Hearings on Trade. *New York Times*, sect. D.

_____. 11 February 1991. Environment versus Freer Trade. *New York Times*, sect. D.

_____. 13 March 1991. Administration to Address Fears Raised by Mexico Pact. *New York Times*, sect. D.

_____. 1 May 1991. Bush Offers Trade Pact Concessions. *New York Times*, sect. D.

_____. 2 May 1991. Bush Trade Concessions Pick Up Some Support. *New York Times*, sect. D.

Gilpin, Robert. 1987. *The Political Economy of International Relations*. Princeton, NJ: Princeton University Press.

Hellman, Judith Adler. 1988. *Mexico in Crisis*. New York: Holmes and Meier Publishers.

Ifil, Gwen. 13 November 1993. Clinton Extends an Unusual Offer to Republicans on the Pact. *New York Times*, Sect. A.

Lang, Tim and Colin Hines. 1993. *The New Protectionism: Protecting the Future Against Free Trade*. New York: The New Press.

Pastor, Robert A. and Jorge G. Castaneda. 1989. *Limits to Friendship: The United States and Mexico*. New York: Vintage Books.

Rosenbaum, David E. 9 April 1991. Trade Issues Enter Crucial Political Phase. *New York Times*, sect. D.

Weintraub, Sydney. 1993. The North American Free Trade Agreement as Negotiated: A U.S. Perspective. In Steven Globerman and Michael Walker, eds., *Assessing NAFTA: A Trinational Analysis*. Vancouver, BC: The Fraser Institute.