CHAPTER 3

HOW FAST TRACK WORKS

The fast-track provisions of the Trade Act of 1974 were renewed or revised in 1979, 1984, 1988, and 1993. The last incarnation of fast track, which expired on April 15, 1994, struck essentially the same balance between expedited review and enhanced congressional oversight that the 1974 Act did, but elaborated on a number of the original procedures. The Trade Act of 2002 revised these procedures slightly, as described in Chapter 4.

Fast-track legislative provisions can be loosely divided into three broad categories. First, there are a series of provisions designed to improve Congress’s ability to learn about and have input into trade negotiations. Second, there are provisions outlining the legislative procedures by which fast track operates. These include the anti-amendment, anti-bottling in Committee, and anti-delivering or anti-filibustering provisions that are at the heart of fast track. And, third, there are a number of ways Congress (or a House of Congress or a Committee) can withdraw application of fast track from certain agreements or in its entirety. These are the provisions that are least known, discussed, or understood about fast track provisions that make fast track a delicate and potentially unreliable mechanism for approving U.S. international agreements.

A. CONGRESSIONAL OVERSIGHT PROVISIONS

The essential steps that must be taken in order for fast track to apply may be summarized as follows:

5. Id.
10. For more on the fragility of fast track, see I.M. Destler, American Trade Politics, 212 (3d ed. 1995).
Negotiating Objectives. Incident to fast-track procedures, Congress enumerates "overall" and narrower (referred to as "principal") negotiating objectives to guide the President in concluding agreements.\textsuperscript{11} These objectives make clear that the Congress expects to see-or not see-certain types of provisions in the agreements the President submits for fast-track review. "Overall" objectives include obtaining "more open, equitable, and reciprocal market access"; "the reduction or elimination of [market] barriers"; and strengthened "international trading disciplines and procedures.\textsuperscript{12} "Principal" negotiating objectives include removing impediments to U.S. exports of certain industry-specific products (e.g., agricultural or high-tech products), as well as improved rules relating to services, foreign direct investment, transparency in trade laws and institutions, and dispute-settlement procedures.\textsuperscript{13} At most, these objectives establish priorities and give general direction, but they provide little detail and leave the President with broad discretion as to how such matters are to be addressed in agreements.

Consultation. Before entering into a trade agreement subject to fast-track procedures, the President is obligated to consult with the House Ways and Means Committee and the Senate Finance Committee, as well as any other congressional committees having jurisdiction over the subject matter of the agreement.\textsuperscript{14} Such consultations must cover not only the substance of the agreement but also how it would relate to Congress’s prescribed negotiating objectives and how it would be implemented under U.S. law.\textsuperscript{15} This requirement, however, does not specify the extent or depth of any such consultations, nor how often such consultations are to occur. A literal reading of the requirement would seem to allow the President to consult in a cursory fashion, just once, and perhaps even moments before he enters into an agreement. The Trade Act of 2002 has attempted to impose more structure on these consultations than past fast-track laws, as discussed in Chapter 4.

Congressional Advisers. The President’s chief trade negotiator, the U.S. Trade Representative, is required to designate members of Congress as "congressional advisers."\textsuperscript{16} These "congressional advisers" are charged with providing "advice on the development of trade policy and priorities for the

\textsuperscript{11} 19 U.S.C. § 2901.
\textsuperscript{12} 19 U.S.C. § 2901 (a)(1)-(3).
\textsuperscript{13} See generally 19 U.S.C. § 2901(b)(1)-(16).
\textsuperscript{14} 19 U.S.C. § 2112(c).
\textsuperscript{15} 19 U.S.C. § 2112(e) (2) (A)-(B).
\textsuperscript{16} 19 U.S.C. § 2211(a)(2).