

CANADIAN COMPETITION RECORD

REGULATORY AND TRADE DEVELOPMENTS

THE FAST TRACK DEBATE SURROUNDING THE U.S. URUGUAY ROUND IMPLEMENTING LEGISLATION

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Over the past several months, the U.S. has been in the process of finalizing legislation to implement the Uruguay Round Agreement of the Multilateral Trade Negotiations under the General Agreement on Tariffs and Trade ("GATT") which was signed by 125 countries in Marrakesh on April 15, 1994. One of the most contentious issues surrounding the Uruguay Round implementing bill has been the Administration's proposal for renewing fast track negotiating authority which expired on April 15th. Under fast track, the President presents to Congress legislation to implement a trade agreement that was negotiated by the Administration. Congress then has a specific number of days in which to vote for or against the bill without amendments. It is intended to speed complex trade agreements through Congress. However, the Administration's proposal for this authority to be included with the Uruguay Round implementing legislation launched a debate among the various sides involved with trade policy and put forth questions regarding the direction of future U.S. trade policy in the post-Uruguay Round era.

In March 1994, the Administration first discussed its plan of requesting fast track negotiating authority as part of the legislation it planned to propose later in the year to implement the Uruguay Round Agreement. Upon completion of the Agreement last December, the U.S. began looking towards freer trade in the new emerging markets of Latin America and the Asia-Pacific region. In particular, the Administration wanted fast track authority in place when U.S. officials meet with Asian leaders in Jakarta in November at the Asia-Pacific Economic Cooperation ("APEC") forum as well as when the U.S. hosts the Summit of the Americas meeting in Miami in December. The APEC program has become increasingly ambitious over the past year with talks of regional free trade areas. Similarly, in Latin America, the U.S. is in its initial stages of pursuing a free trade deal with Chile as well as promoting further hemispheric economic integration.

Countries are also looking towards the U.S. for trade opportunities. Under fast track, U.S. trading partners are more assured that the U.S. Administration has the authority to negotiate. Without fast track, foreign countries would hesitate to make trade concessions to the U.S. during negotiations because they would know that Congress, reacting to special interest groups, could later demand more changes in the agreement once the bill was submitted by the President.

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Even though trade negotiations would not begin until 1995, the Administration feels that its commitment towards these negotiations would be more credible with fast track authority. Thus, the fast track authority which was used to complete the North American Free Trade Agreement ("NAFTA") and the Uruguay Round Agreement is now being sought by the Administration for specific trade agreements or for a range of agreements possibly being negotiated over the next few years.

On June 16, 1994, President Clinton asked Congress to include the Administration's proposed fast track negotiating authority provisions in the Uruguay Round implementing legislation by submitting its proposal to the House Ways & Means Committee. The Administration's proposal extended fast track for both bilateral and multilateral trade agreements for seven years, i.e. to December 15, 2001. U.S. Trade Representative Mickey Kantor requested this time period because the uncertainty of Western hemispheric integration required a "...substantial length of time...", particularly since many of the countries which are seeking trade agreements with the U.S. through NAFTA or bilateral agreements are at different levels of economic development.¹ The President would be required to provide written notice of his intent to enter into a trade agreement at least 60 days before starting formal negotiations. After negotiations begin, the President would then notify Congress at least 120 calendar days in advance of his intention to enter into the agreement.

The proposal also requires the President to submit certain documentation to Congress after entering into the agreement, including the final legal text, the draft implementing bill, a Statement of Administrative Action ("SAA") and a statement on environmental consequences of the agreement. This last required

document is a departure from previous fast track procedures which have never included statements on the environment. The proposal also reduced the time that Congress has to approve an agreement after it is submitted from 90 legislative days to 60 legislative days.

Most controversial about the Administration's proposal are the specific U.S. negotiating objectives which must be listed in the President's notice of intent to enter into a trade agreement. The proposal lists broad negotiating objectives which include reducing barriers to trade in services and financial services, eliminating artificial or trade distorting barriers to foreign direct investment and promoting intellectual property protection. Additionally, the Administration has chosen to include labour standards as well as trade and the environment objectives. For example, this would include the promotion of internationally recognized labour standards and ensuring that their denial is not used to gain a competitive advantage in trade, as well as ensuring the compatibility of international trade rules with environmental protection and seeking further responsibility of the trading system to national and international objectives for improving the environment. The Administration's inclusion of labour and environmental language brought forth reaction from all sides of the trade debate regarding whether trade should be linked with these issues.

Congressional Democrats had sought to include the language which appeared in the Administration's proposal and therefore, the majority of Democrats supported it. Earlier this year, House Majority Leader Richard Gephardt (D-MO) had already called for fast track negotiating authority for legislation implementing a future U.S.-Chile free trade agreement if the agreement includes labour and

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environmental provisions. Representative Gephardt was seeking to define in advance what acceptable provisions would be in the worker rights and environmental areas. He described worker rights as including worker health and safety, child labour issues, hours of work, right to strike, etc. Additionally, Gephardt stated that environmental provisions should include a party's right to enforce its environmental laws and should seek steps to adopt "...appropriate higher environmental standards...".²

Overall, U.S. business groups have strongly supported the ratification of the Uruguay Round implementing legislation. However, they are opposed to the Administration's proposal that labour and environmental standards be a part of the negotiating objectives of future free trade agreements. Business groups reject creating a stronger linkage between trade and "social objectives" and the enforcement of these goals through trade sanctions. Companies interested in doing business in the newly emerging markets oppose fast track authority that would set a precedent for linking labour and environmental provisions in future free trade agreements which would open the door to extraterritorial application of U.S. standards under the threat of sanctions. However, even though these groups all rejected the Administration's proposal, they were split over whether to call for weaker wording on labour and environment provisions, the elimination of labour and environment provisions or the removal of fast track altogether from the legislation. Some groups were even considering opposing the entire implementing bill if the Administration included such strong labour and environmental language.

In Congress, both Senate and House Republicans also strongly criticized the Administration's proposal

of linking trade to labour and environment issues. The Republicans argued that the U.S. should base trade negotiations on economic expansion and job creation and not on social ideology. They believe that the U.S. is not responsible for enforcing global labour and environmental standards through trade sanctions. House Republicans preferred to modify the fast track proposal and keep it in the trade bill by offering amendments that would eliminate labour and environmental negotiating objectives from the proposal, specify that the Administration would not be able to make proposals under fast track agreements that would change U.S. labour and environmental laws and forbid the Administration from bringing to Congress a trade agreement that includes unilateral trade sanctions for enforcement of labour and environmental laws.

Therefore, because of the importance which the Administration attaches to gaining fast track authority, the Administration moved to appease the business groups and members of Congress who opposed the negotiating objectives on labour and environment standards contained in the current fast track proposal. In other words, the Administration would rather make changes in the proposal than remove the fast track extension from the bill.

Finally, as a result of the pressure from business groups and Republicans, the Administration unveiled its revised proposal aimed at winning bipartisan support for including fast track as part of the Uruguay Round. Specifically, the proposal dropped a previous request for seven years to 2 1/2 years with an optional two year extension. Most importantly, it denied fast track treatment for any measure that would change domestic labour and environmental laws. However, it did not renounce the use of trade sanctions to enforce labour and

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environmental agreements. The Administration offered SAA language that it does not intend to use trade sanctions in absence of congressional support. Therefore, the proposal did not explicitly seek nor prohibit any linkage between trade and labour and the environment.

Yet, this move by the Administration to satisfy the Republicans with weaker labour and environmental provisions alienated Democratic supporters. Labour groups also generated strong opposition towards the proposal since it drops any reference to worker rights in the principal negotiating objectives for trade agreements. Labour groups were outraged by the Administration's willingness to weaken language on making trade rules compatible with labour and the environment. As a result, they decided to play a more significant and active role in opposition to the Uruguay Round implementing legislation if fast track stayed in the bill.

For business groups, the amended fast track proposal accommodated most major concerns by removing labour and environmental issues as principal negotiating objectives, by conceding that there was no consensus domestically and internationally on how to address labour and environmental linkages to trade and that a multilateral consensus was the greatest promise for progress in labour and environmental areas, and finally, that labour and environmental goals for future trade agreements should be worked out before the start of negotiations with Congress and the private sector. Therefore, the new proposal met the business groups' goals of excluding or limiting inclusions of labour and environment issues in future free trade agreements. However, some businesses still opposed the proposal even after these changes since they felt that the language did not go far enough to prohibit the use

of trade sanctions to respond to labour and environmental practices abroad.

However, in spite of this opposition to the Administration's proposal, the House Ways and Means Committee approved the new proposal on August 17, 1994 to extend fast track negotiating authority until December 15, 1997 unless the President requests an extension to December 15, 2000. In an effort to weaken the link between trade negotiations and worker rights and the environment, the proposal placed conditions on the use of fast track procedures for trade agreements. Primarily, it limited the ability of the Administration to enforce labour and environmental provisions with trade sanctions by stating that fast track is available for a trade agreement's implementing bill only if any sanctions it authorizes "...are necessary to carry out the principal trade negotiating objectives, are contained in an agreement submitted under this authority and are not intended to create new restrictions on trade..."³ Additionally, the provisions of the implementing bill must be "...substantially related..." to the principal negotiating objectives.⁴ Thus, this language would allow the U.S. to impose trade sanctions in response to objectionable environmental and labour practices of other countries if these practices are barriers to trade. Also, it keeps the option open to the Administration and future Administrations by not prohibiting them from raising labour and environmental issues in trade negotiations.

Once again business reaction to the House Ways and Means proposal was mixed. Some groups recognized that the Administration had made major concessions to business while others felt that the proposal still allowed for the use of trade sanctions to enforce labour and environmental agreements. At

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this stage businesses saw two options. They could either support the House Ways and Means fast track proposal, or continue to press for further changes to the language during the House - Senate Conference on the Uruguay Round bill, especially on trade sanctions provisions and the relationship between trade and labour rights. Although business groups usually support fast track since it helps speed trade agreements through Congress, they did not believe that the addition of environmental and labour rights provisions to trade agreements into the implementing legislation was in their best interests.

At the same time, since the Congressional Democrats had sought to include stronger labour and environmental language in the fast track proposal, they felt betrayed by the Administration after the House Ways and Means Committee approved the draft fast track proposal. They came to the realization that the improvements they were seeking were not likely to be made. Therefore, the Congressional Democrats' options were to accept the fast track language negotiated by the Administration and the House Republicans or drop the fast track proposal from the implementing legislation altogether.

As a result of the reaction by both the business groups and Congressional Democrats, the Administration began to acknowledge that the continued controversy over fast track renewal might force it to drop its fast track proposal from the Uruguay Round implementing bill. The conflict over labour and the environment was too difficult to work out an agreement which would be accepted by these groups, as well as by the Senate which had not even included fast track in its draft implementing proposal. The controversy had reached a point where it threatened to hold up the vote on GATT until

next year. Therefore, several weeks after the House Ways and Means Committee approved the draft proposal, the Administration decided to remove future fast track authority from the legislation in return for bipartisan Congressional support in approving the Uruguay Round implementing legislation before adjournment in mid-October. However, the Administration still wanted assurance from Congress that fast track would be taken up as a separate matter next session. Therefore, in a meeting between Mickey Kantor and Senate leaders, it was decided that fast track would be considered in a separate bill by Congressional committees at the beginning of the next Congress.

Although the Administration had vigorously pushed for the inclusion of fast track in the Uruguay Round implementing legislation, it was finally forced to sacrifice fast track in order to boost prospects for the world trade pact. It became increasingly apparent that it would be less damaging to postpone the fast track issue to next year than create a major delay in ratifying the GATT. The Administration was also facing the practical problem that other countries such as Japan and those in the European Community are waiting for the U.S. to ratify the GATT before they take up the matter with their own governments. In this respect, by the end of September only 26 countries out of 123 had approved the GATT. Although the formal deadline for the WTO to take effect is July 1, 1995, the U.S. and other major countries are pushing for January 1st. The Administration is now hoping that it will be easier for the bill to pass without fast track.

The Administration's dropping of fast track raises many questions regarding the United States' trade policy for the duration of the Clinton Administration. At this point, U.S. trade representatives must attend

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both the APEC meeting and the Summit of the Americas without fast track negotiating authority, the exact opposite position of what the Administration had intended. Thus, the future of U.S. trade negotiations with Chile and other countries, as well as the status of certain issues left unresolved in the Uruguay Round (i.e. financial services, telecommunications and maritime support) are now left open. Fast track has been granted to every U.S. president since 1974. However, the question now remains whether Congress will ever turn over to the Administration the kind of broad authority which has been given in the past. The stage is set for another trade bill in Congress' next session which would include new fast track authority. It may prove difficult for the Administration to impart momentum to any trade negotiation for the

balance of its term, although (as the Administration points out) the first two years of the Uruguay Round were completed without fast track authority. In any event, another congressional battle among Republicans, Democrats, business groups, environmental and labour groups is virtually guaranteed again next year.

Notes

¹ "U.S. to Seek Fast Track Authority For 'Substantial' Period of Time" (1994) 11 International Trade Reporter 503.

² "Fast Track Authority Request in GATT Bill Faces Opposition" (1994) 12 Inside U.S. Trade 18.

³ "House Ways & Means Revised Proposal For Fast Track Authority" (August 17, 1994), reprinted in (1994) 11 International Trade Reporter 1340, 1341.

⁴ *Ibid.*
