



July 25, 2013

Dear Rep. Jones:

Thank you for your letter of July 11 regarding what is known as “Fast Track” trade negotiating authority. You have asked for my perspective on this issue and I am pleased to mention that I have always been strongly opposed to what is cynically referred to as “Trade Promotion Authority.” Fast track is an unconstitutional usurpation of Congress’s authority by the president. I wrote about “fast track” authority in my 2011 book, *Liberty Defined*:

“Today, trade policy has been taken over by the executive branch and Congress graciously cedes this power. Transferring authority under fast-track legislation defies the intent of the Constitution. Trade treaties are not entered into, since senatorial approval by two-thirds would be required and more difficult to pass. This has led to international trade agreements such as WTO, NAFTA, and CAFTA that sacrifice national sovereignty to international government organizations. These agreements can supersede state laws as well. The Constitution assigns to the Congress the responsibility of regulating foreign trade. If the people and the Congress preferred that the President and international government entities control trade, the Constitution should have been amended. Ignoring the Constitution on these issues or any issue serves to undermine constitutional legitimacy.”

–*Liberty Defined*, by Rep. Ron Paul, p.111-112 Apr 19, 2011

As my attached 1998 floor statement describes, “fast track” is both unconstitutional and unnecessary for expanding real free trade. It eliminates a critical check and balance that our founding fathers wisely included in the Constitution. It also concentrates vast powers in the hands of a president to “diplomatically legislate” policies via trade agreement that many members would oppose under normal procedures because they undermine our nation’s sovereignty and solvency.

Sincerely,

Ron Paul, MD

Congressional Record H8795 (1998)

Rep. RON PAUL:

Mr. PAUL. Mr. Speaker, today, the House is asked to vote to approve H.R. 2621, a fast-track procedure under which international agreements might be approved as far into the future as October 1, 2005. The 'fast track' procedure requires the President to submit draft international agreements, implementing legislation, and a statement of administrative action for congressional approval. Amendments to the legislation in Congress are not permitted once the bill is introduced and committee and floor action votes may consist only of 'yes' or 'no' votes on any potential agreement as it is introduced.

The fast-track procedure bill, in addition to creating an extra-constitutional procedure by which international agreements become ratified, sets general international economic policy objectives, re-authorizes 'Trade Adjustment Assistance' welfare for workers who lose their jobs and for businesses which fail, and creates a new permanent position of Chief Agriculture Negotiator within the office of the United States Trade representative. The bill would reestablish the President's extra-constitutional 'executive authority' to negotiate 'side agreements' such as those dealing with environmental and labor issues.

The Constitution clearly allows for international agreements and clearly specifies the means by which they are to be accomplished. Treaties, quite clearly are to be negotiated by the President with advice and consent of the Senate and can only become effective upon being ratified by a two-thirds majority of the Senate. The Constitution, however, does not expressly confer authority to make international agreements other than by treaties and, of course, the tenth amendment specifies that 'powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States, respectively, or to the people.' To ignore or allow the one branch of the federal government to delegate its powers to others destroys the liberty-protecting ability inherent to the Constitutional separation of powers.

Congress does have, amongst its enumerated powers, regulation of commerce with foreign nations. Imposing import tariffs, quotas, and embargoes, however economically detrimental to the macro economy of the United States, are, at least, amongst powers delegated to Congress by Article I of the Constitution. Regulating commerce, of course, refers to enacting domestic laws which effect voluntary exchanges between trading partners who happen to be citizens of different governments. International agreements between the governments of those trading partners cannot be construed to escape the stringent treaty ratification process established by the document's framers just by suggesting Congress has the power to enact domestic regulation regarding foreign commerce. If this were an allowable justification for bypassing the constitutionally-mandated treaty process, Article I Congressional powers would almost completely undermine the necessity for the Constitutionally-mandated treaty process. Treaties regarding everything from international monetary policy to military policy would suddenly become 'ripe' for the 'treaty-making' power of the President and Congress. Instead, a bright line process exists whereby entering into agreements with foreign nations under which the U.S. government will do 'X' if the government of Ruritania does 'Y' must be understood to constitute an international agreement and, as such, require the more restrictive treaty process.

Congressional Record H8795 (1998) p. 2

Moreover, because international courts regard 'treaties' and 'agreements' as equally binding on signatory governments, a stronger case is made that they must be made subject to the same constitutional process. Insofar as H.R. 2621 ignores the lack of a congressional role in the international treaty process and instead attempts to make Congress an integral part of a procedure for which it lacks any constitutional authority, this bill can be opposed on constitutional grounds alone.

Even if the procedure advocated by the bill were able to survive what should always be the Congressman's initial threshold of constitutionality, the bill contains provisions which will likely continue our country down the ugly path of internationally-engineered, 'managed trade' rather than that of free trade. As explained by economist Murray N. Rothbard: [G]enuine free trade doesn't require a treaty (or its deformed cousin, a 'trade agreement'; NAFTA is called an agreement so it can avoid the constitutional requirement of approval by two-thirds of the Senate). If the establishment truly wants free trade, all it has to do is to repeal our numerous tariffs, import quotas, anti-dumping laws, and other American-imposed restrictions of free trade. No foreign policy or foreign maneuvering is necessary...

Fast track is merely a procedure under which the United States can more quickly integrate and cartelize government in order to entrench the interventionist mixed economy. In Europe, this process culminated in the Maastricht Treaty, the attempt to impose a single currency and central bank and force relatively free economies to ratchet up their regulatory and welfare states. In the United States, it has instead taken the form of transferring legislative and judicial authority from states and localities and to the executive branch of the federal government. Thus, agreements negotiated under fast track authority (like NAFTA) are, in essence, the same alluring means by which the socialist Eurocrats have tried to get Europeans to surrender to the super-statism of the European community. And just as Brussels has forced low-tax European countries to raise their taxes to the European average or to expand their respective welfare states in the name of 'fairness,' a 'level playing field,' and 'upward harmonization,' so too will the international trade governors and commissions be empowered to 'upwardly harmonize,' internationalize, and otherwise usurp laws of American state governments...

Because H.R. 2621 enacts an unconstitutional foreign policy procedure, furthers our nation down the internationally-managed (rather than free trade) path, sets general international economic policy objectives, re-authorizes 'Trade Adjustment Assistance' welfare for workers who lose their jobs and for businesses which fail, potentially undermines U.S. sovereignty through MAI, and preserves the President's executive authority to negotiate 'side agreements.' As such, I must oppose the bill.