The Importance of Trade

Trade: President needs fast-track authority

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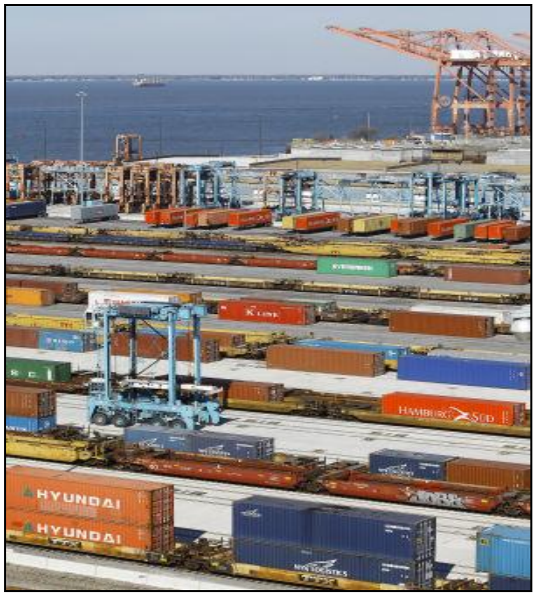

The Port of Virginia in Norfolk benefits from expanded international trade.

Unlike the very broad foreign affairs powers of the president, reinforced by his powers as commander in chief, the president's authority in trade is significantly different and significantly less.

The Constitution gives the exclusive authority to Congress to regulate international trade. The principles of delegation of authority and separation of powers are at work here. Even though the Reciprocal Trade Agreements Act of the 1930s and the 1974 Trade Act granted increased delegated authority to the president (the latter first authorized "Fast Track") Congress still has the last word in trade relations. "Fast Track" has been periodically renewed and is now up for renewal again.

"Fast Track," also known as trade promotion authority (TPA), is a set of provisions that authorizes the president to negotiate international trade agreements pursuant to

congressionally established objectives. It provides for an up-or-down vote in each house of Congress to approve these and their implementing legislation. No amendments are allowed.

This procedure gives comfort to countries because, once agreements are made, Congress cannot rewrite them. It provides a finality to bilateral and multilateral trade negotiations. Technically, these international trade agreements are executive agreements, not formal treaties, under the United States Constitution. However, by Supreme Court precedent, they are considered equivalent to formal treaties and therefore "the Supreme Law of the Land" under Article VI of the Constitution. Thus, these agreements overrule all inconsistent state laws and prior federal legislation.

In this century, foreign affairs are now more centered on foreign trade than ever before; certainly more than during the 1780s. This constitutional framework may seem to be a historical anachronism. Nevertheless, this is the situation for the United States as it conducts global trade relations and trade diplomacy today.

What does this mean for President Obama's negotiations with Asia and Europe over the TransPacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP)? What do these negotiations mean in the broader context of geopolitical and geoeconomic concerns?

They mean very simply that Congress has the absolute authority and thus leverage to grant "Fast Track" and that the president needs to convince Congress to grant it. Otherwise, no country is going to continue to negotiate with the United States over pending trade agreements. No country is going to put the results of its negotiations in the hands of Congress and have it nitpick the agreement to death. It would be much too uncertain. "Fast Track" allows only an up or down vote with no amendments.

These trade negotiations can be saved only by the president if he gets out in front and aggressively makes a case to Congress and the American people. Specifically, the president needs to deal with politicians from his own party and the Tea Party. He needs to explain to all interest groups the benefits of globalization and trade agreements in terms of U.S. business, economics, foreign policy and national security.

A vibrant foreign trade policy backed by the administration is essential to states and cities. Governors, mayors and county officials understand this proposition. States and cities often take the lead in trade promotion. They are the ones directly concerned with promoting economic development and jobs. While the principle of federalism and the corollary doctrine of preemption allocate the primary role in global trade to the federal government, states and local governments have a significant amount of leeway in promoting exports and inbound investment as long as they are not contrary to federal actions.

In particular, the TPP and TTIP are important to states. Export-related jobs linked to global trade pay significantly more than other jobs. These negotiations are addressing newer trade issues concerning labor, the environment and intellectual property rights. Most important, these agreements are proposing new-style provisions related to encouraging foreign direct investment. Older trade treaties, such as the World Trade Organization (WTO) and bilateral trade agreements, do not. Investment is traditionally viewed as an area distinct from trade. But events have challenged that outmoded notion.

Direct investment leads to the establishment of foreign-owned companies that sell to the domestic market and abroad. These investments, often called "greenfield investments," lead to new jobs. Even when foreign direct investments are made into existing corporate operations, they lead to expanded and revitalized economic opportunities. For example, Virginia received nearly $5 billion in foreign direct investment between 2008 and 2012. Virginia has more than 700 foreign-owned firms. These firms provide thousands of jobs that would not exist without such foreign investment.

While the federal government often gets lost in policy, polemics and political debates, states do not have that luxury. They have to balance budgets and have a direct responsibility to their citizens. Trade is an essential aspect of economic development programs. States have grabbed at international trade and investment as crucial to their economic development plans. They need a federal government and administration to effectively implement their obligations and to become effective partners with states. This has not happened in a very long time.

Trade is an intricate aspect of U.S. foreign policy and U.S. national security interests. We need an aggressive president and an aggressive position in global trade for both economic and political reasons, domestically and internationally. The United States needs to remain actively engaged in the global arena. This means the United States needs to be actively engaged in global trade negotiations. This would significantly assist states and cities with job creation.

President Clinton revitalized the role of the United States in global trade relations with his leadership in getting Congress to accept and implement NAFTA and the WTO. President Obama should do this for TTP and TTIP.

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