

SENATE BILL REPORT

SJM 8011

As Reported by Senate Committee On:
Trade & Economic Development, February 4, 2014

Brief Description: Concerning international trade policy reforms.

Sponsors: Senators Chase, Hasegawa, Conway, McAuliffe, Cleveland, Keiser, McCoy and Eide.

Brief History:

Committee Activity: Trade & Economic Development: 1/30/14, 2/04/14 [DP, DNP].

SENATE COMMITTEE ON TRADE & ECONOMIC DEVELOPMENT

Majority Report: Do pass.

Signed by Senators Braun, Chair; Angel, Vice Chair; Chase, Ranking Member; Holmquist Newbry and Lias.

Minority Report: Do not pass.

Signed by Senator Pedersen.

Staff: Edward Redmond (786-7471)

Background: Under Article II, section 2 of the Constitution of the United States, the president has the authority to negotiate international trade agreements. If a trade agreement requires changes in U.S. statutory law, however, Congress must approve the implementing legislation.

Historically, Congress imposed tariffs on specific imports as a way of protecting domestic industries and generating income. In 1934 during President Franklin D. Roosevelt's first administration, Congress conceded authority to the president for making product-specific trade law. The 1934 Reciprocal Trade Agreement Act (RTAA) was passed by Congress believing that high tariffs had contributed to the Great Depression. The RTAA authorized the president to negotiate reductions in U.S. tariffs in exchange for concessions by US trading partners. Congress typically limited how much tariffs could be lowered, and after the reductions were negotiated, the president issued an order declaring the new tariff rates and they became U.S. law. This arrangement continued through the 1960s with Congress reauthorizing the RTAA through 11 successive Trade Agreement Extension Acts.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

By the 1970s, trade negotiations increasingly became focused on non-tariff barriers to trade, such as subsidies, technical standards, discriminatory procurement practices, and barriers to service exports. U.S. officials could not credibly negotiate on these issues because they lacked the power to implement any required changes in U.S. law. This limited authority was evidenced after the Kennedy Round of multilateral trade talks in 1967, when Congress rejected two non-tariff measures agreed on by negotiators. As a result, the U.S. Senate Finance Committee reached agreement on Fast Track, part of the Trade Act of 1974 signed by President Gerald Ford.

Fast Track restricts Congress to a yes-or-no vote on legislation required to implement the trade agreement; no amendments or changes are allowed. Parameters are imposed on the executive branch, however, when negotiating under Fast Track authority. As a stipulation to granting Fast Track authority, Congress sets guidelines, and negotiation objectives are specified in advance. In addition, the executive branch must meet certain requirements, such as consulting with congressional committees and private-sector advisers.

Proponents of Fast Track argue that without such authority, the power of the U.S. would be weakened in trade negotiations; other countries would know that any commitments made at the table could be altered or rejected by Congress. Opponents of Fast Track have expressed concerns, however, regarding a lack of transparency during the negotiation process of trade agreements. Moreover, opponents of Fast Track argue that states' rights, labor standards, workers' rights, food safety, and environmental safeguards must be addressed in trade negotiations. Such concerns were raised throughout the North American Free Trade Agreement negotiations and have been reiterated during the current Trans-Pacific Partnership and Transatlantic Trade and Investment Partnership negotiations.

Summary of Bill: The Washington State Legislature recognizes that existing trade agreements extend beyond tariffs and quotas. Such trade agreements have a far-reaching effect on state and local laws, and can undermine Washington's regulatory authority and constitutionally guaranteed authority to protect the public health, safety, and welfare. The Washington State Legislature also recognizes that the current process of consulting with states, including the intergovernmental policy advisory committee on trade and the state point of contact system, fails to allow states to meaningfully participate in the development of trade policy. The Washington State Legislature further recognizes that Fast Track does not adequately provide for the constitutionally required review and approval of treaties by the U.S. Senate.

A request is made to the President and Congress to: (1) improve the consultation process between the federal government and states regarding future trade policy reforms; (2) reject the use of Fast Track for the pending and future trade agreements; and (3) employ a consultation system that (i) provides transparency, (ii) promotes information sharing, (iii) allows for timely, frequent, and meaningful consultations, (iv) provides state-level trade data analysis, (v) provides legal analysis for states on the effects of trade on state laws, (vi) increases public participation, (vii) allows Congress to meet its constitutional requirements for treaty review and approval, and (viii) acknowledges and respects each state's sovereignty.

Copies of the memorial must be sent to the President of the United States, the United States Trade Representative, the President of the U.S. Senate, the Speaker of the House of Representatives, and each member of Congress from the state of Washington.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Staff Summary of Public Testimony: PRO: The Transpacific Partnership (TPP) is a trade agreement negotiated in secret by the United States Trade Representative (USTR) and their foreign counterparts with only selected corporate partners from our country included in the negotiations. Congressional Committees with jurisdiction touching on the issues covered in the negotiations have been excluded from the negotiations. There has been no consultation with state governments even though the proposed agreement covers many areas of state reserved policy prerogatives.

The TPP clauses cover issues related to labor, patent and copyright, land use, food, agriculture and product standards, natural resources, the environment, professional licensing, competition, state-owned enterprises, and government procurement policies, as well as financial, healthcare, energy, e-commerce, telecommunications, and other service sector regulations.

Congress is charged by our Constitution, Article 1–8, with the exclusive responsibility for determining when an agreement meets the objectives for trade set by Congress. One-hundred fifty one members of congress recently sent a letter to the president asking for inclusion in the process and announcing their decision to vote against Fast Track authorization until the USTR follows the Constitution.

Congress is deeply committed to transforming U.S. trade policy so that it reflects policies that incorporate the following:

- a tool for creating and retaining family-wage jobs in America;
- safeguarding the environment;
- maintaining consumer protection; and
- improving the quality of life throughout the country.

Under the United States Constitution, Congress, not the Executive Branch, has the authority to set the terms of trade.

The United States Constitution, Article 1, section 8, discussing the powers of congress:

"The congress shall have power...to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

The TPP contains binding obligations “that touch upon a wide swath of policy matters under the authority of Congress” and state’s constitutionally reserved powers of state government. The TPP challenges our basic foundations of federalism, the separation of powers between the branches of the federal government and the powers reserved to state governments.

The Washington State Constitution, adopted November, 1889, Article 12, section 7 specifically provides:

"No corporation organized outside the limits of this state shall be allowed to transact business within the state on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this state."

Now it is true that the federal government can preempt our state Constitution. However, it is worth noting that even the framers of the United States Constitution believed in states' rights. Amendment X of the United States Constitution specifically addresses Powers Reserved to states or the people:

"The 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."

In the current trade agreements, however, foreign corporations are able to appeal their disputes to the World Trade Organization (WTO) "court" in Geneva rather than our own domestic courts. We have many examples of foreign investors successfully conducting business in our state following our state regulations. However, a look at the WTO disputes between Boeing and Airbus gives ample examples of our own state laws being subjected to the jurisdiction of the WTO courts. Our solar incentives, biofuel, and agriculture regulations are also topics of the WTO courts.

The citizens of Washington State and the businesses domiciled here need an independent voice at the trade negotiation table advocating on their behalf. For these reasons, I urge the committee to adopt SJM 8011.

Persons Testifying: PRO: Senator Chase, prime sponsor.