



Washington, DC – October 30, 2003

About the Author

Richard R. Rivers, attorney-at-law (former partner, Akin Gump Strauss Hauer & Feld), Washington, DC was previously General Counsel, Office of the US Trade Representative.

Before that, Mr Rivers was Chief Trade Counsel, Committee on Finance, US Senate.

PAUSE FOR REFLECTION...

Deadlines Imposed by U.S. Trade Negotiating Authority

Richard Rivers

THE FAILURE to reach agreement in Cancún and the current efforts to restart the Doha Round negotiations necessitate a clear understanding of current U.S. "trade negotiating authority". The authority is currently scheduled to expire on June 1, 2005, unless it is extended until June 1, 2007. This note summarizes the approaching deadlines and issues concerning U.S. trade-negotiating authority that are likely to rekindle a heated debate in the Congress early in 2005.

Background

Congress, in the Trade Act of 2002 ("The Act"), reluctantly granted to President Bush something it had denied his predecessor: the authority to negotiate international trade agreements and submit them to the Congress under a procedural understanding that the agreements and implementing legislation would be voted up or down, without amendment, and within a time certain. This type of understanding between the Executive and the Congress dates from 1974 and is occasionally referred to as "Fast Track" or "Trade Promotion Authority". In essence, it represents an agreement between the Congress and the President as to how the former will consider international trade agreements, an arena in which constitutional powers must be dovetailed.

The Act (Public Law 107-210 of August 6, 2002) sets forth in painstaking detail the terms and conditions under which the Congress has agreed to consider certain trade agreements and implementing legislation during the ensuing years or, if necessary, during an additional two years.

Whoever is sworn in as President on January 20, 2005, he (or she) will soon find on the Oval Office desk a decision memo describing the status of the Doha Round negotiations and the urgent necessity for presidential decisions within the following weeks. The law



The **mockingbird** is the state bird of Tennessee. Cordell Hull represented a district of Tennessee in the Congress of the United States, and was elected a senator from there, before becoming U.S. Secretary of State (1933-44).

"The mockingbird is known for fighting for the protection of his home – falling, if need be, in its defense. Mockingbirds are not intimidated by animals larger than themselves and have been known to attack eagles"

– Diana Wells, *100 Birds and How They Got Their Names* (Chapel Hill, NC: Algonquin, 2002)

Trade Policy Analyses

Papers in the online series, *Trade Policy Analyses*, are published by the Cordell Hull Institute, which is a non-profit organization incorporated in Washington, DC, and is tax exempt under Section 501(c)(3) of the Internal Revenue Code.

The Institute's purpose is to promote independent analysis and public discussion of issues in international economic relations.

The interpretations and conclusions in its publications are those of their respective authors and do not purport to represent those of the Institute which, having general terms of reference, does not represent on any particular issue a consensus of opinion.

sets up an elaborate series of hurdles that the new President must consider almost immediately.

In general, the Act provides that the President "may enter into trade agreements" relating to both tariff and non-tariff measures with foreign countries before June 1, 2005, or, if trade-negotiating authority is extended, before June 1, 2007.

On the highly optimistic – but also highly unrealistic assumption – that the Doha Round negotiations can be successfully concluded in the coming year, the President at present possesses all the authority needed to enter into trade agreements and submit implementing legislation to the Congress by June 1, 2005, for its consideration and approval or disapproval. Such a package would contain the same provisions as set forth in the original Section 151 of the Trade Act of 1974 (approval for each agreement, a statement of administrative action, and such changes in domestic law as are necessary and appropriate.)

Extension of Negotiating Authority

If, however, as seems likely, the Doha Round negotiations cannot be concluded in the coming year or so, the Act contains provisions for extending the President's negotiating authority beyond the June 1, 2005, deadline. The joint decision by the President and the Congress to arrange such an extension seems likely to re-ignite debate over U.S. trade policy. Indeed, it could be the occasion for another attempt by opponents to derail the negotiations once and for all. The remainder of this note will explain the dates and procedures for obtaining such an extension.

Under the Act, the President may request a two-year extension of trade-agreement authority and obtain such authority provided neither the House nor the Senate adopts an "extension disapproval resolution" before June 1, 2005. Any member of either body may submit such a resolution and it will be automatically referred to the House Committee on Ways and Means or the Senate Committee on Finance. Not later than March 1, 2005, the President is required to submit a report to the Congress requesting such an extension, together with a detailed description of all trade agreements that have been negotiated and the anticipated schedule for submitting them to the Congress for approval, a description of the progress that has been made to obtain the negotiating goals of the United States and a statement of the reasons why an extension is needed to complete the negotiations. The Act also requires similar reports on the status of the negotiations from the President's Advisory Committee for Trade Policy and Negotiations and by the United States International Trade Commission.

The Act contains special provisions relating to the import-relief laws of the United States and other topics that are beyond the scope of this note, but are likely to be controversial.

**Copyright © 2004 by the
Cordell Hull Institute
and Richard Rivers**

Permission is granted to
quote from the paper, but
it would be appreciated if
the source could be ack-
nowledged in the usual
way.

It is a foregone conclusion that resolutions of disapproval will be introduced in both the House and the Senate. The resolutions will be voted upon in the late spring or early summer of 2005. If they are defeated in both bodies, the President will have two additional years in which to conclude the Doha Round negotiations. If either the House or the Senate adopts a resolution of disapproval, the President's authority to enter into agreements will expire on June 1, 2005.