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ACTIVIST TALKING POINTS:

Replacing the Outdated “Fast Track” Trade Negotiating Authority to Steer a New Direction and Create Progressive Trade Agreements

Fast Track was renamed “Trade Promotion Authority” (TPA), but it’s still the same extraordinary Nixon-era White House power-grab procedure, which was necessary to stick us with NAFTA, WTO and other damaging trade pacts. Fast Track delegates away Congress’ constitutional authority to set U.S. trade policy, empowering the president to decide trade agreements’ terms and sign agreements before Congress even gets to vote. There is no way to “fix” Fast Track. Its very design forecloses public oversight and congressional control. It must be replaced to create trade pacts that deliver economic benefits to the majority worldwide and stay clear of imposing retrograde one-size-fits-all non-trade policies on federal, state and local governments. Such a new mechanism must put a steering wheel, and when necessary, brakes, on trade negotiators so Congress and the public are back in the driver’s seat and can turn towards a better model. Only by replacing the undemocratic, outdated Fast Track trade authority delegation system can Congress deliver on the public’s strong message in the 2006 election: No to staying the course on our failed trade policy.

1. THE JUNE 30, 2007 SUNSET OF FAST TRACK PROVIDES A ONCE-IN-A-DECADE OPPORTUNITY TO CHANGE OUR FAILED TRADE POLICY

- **Fast Track’s 2007 sunset provides a unique opportunity to improve *how* U.S. trade policy is made so we can change the course of our failed trade policy. Its time to get off the past track and on to a better future.** On June 30, 2007, “Fast Track” trade authority (cynically rebranded as ‘Trade Promotion Authority’ in 2002) will expire. First and foremost, we must ensure the outrageous Fast Track procedure is never again put into effect. But, if we seek to change U.S. trade policy, we also must seize the space created by Fast Track’s sunset to promote an alternative that suits our needs. If we fail to fill this vacuum, those interested in maintaining the status quo will. If we let our opponents frame this debate, they will offer a tweaked Fast Track with meaningless labor and environmental language and more funding for Trade Adjustment Assistance. They will be the ones with a plan and we will again be positioned as “anti-trade.” If we act now to frame the debate by offering a forward-looking new process (replacing Fast Track), our opponents become the naysayers – forced to argue why they would prefer a 30-year-old policy that has cost millions of U.S. jobs and promotes child labor, sweatshops and invasions of U.S. sovereignty by imposing retrograde non-trade policy undermining food safety, prevailing wage laws, a healthy environment, good land-use and zoning policy and healthcare reform.

- **The midterm elections show that most Americans understand that our current trade policy, symbolized by the Fast Track-enabled NAFTA and WTO, has failed.** From Florida to Hawaii and parts in between, pro-fair trade challengers beat anti-fair trade incumbents. Incumbents who had voted for NAFTA, WTO and Fast Track were replaced by fair traders rejecting these failed policies and advocating improvement in 37 congressional seats (7 Senate and 30 House.) Trade and off-shoring were wedge issues actively used in 115 congressional campaigns nationwide with more than 25 paid campaign ads on the issues. Election exit polls by CNN and *The New York Times* revealed that Americans’ anxiety about the economy and job security trumped Iraq war concerns. Only one congressman with a consistent fair-trade voting record was defeated. (Rep. John Hostettler of Indiana refused to run a “modern” campaign, hiring no campaign staff and buying no advertising.) He was replaced by fair trader and Democrat Brad Ellsworth. Not one single incumbent fair trader was beaten by an anti-fair trader. The only Democratic incumbents seeking higher office who lost were anti-fair traders Rep. Harold Ford, Jr., running for Tennessee’s open Senate seat, and Rep. Jim Davis, for Florida’s open governor slot. Many GOP anti-fair trade leaders were defeated in surprise upsets including Rep. Clay Shaw (R-Fla.), the Trade Subcommittee chair! In side-by-side districts, Democrats whose chances of victory were considered remote but who prioritized their pro-fair-trade stance often won, while those more favored in neighboring districts who avoided the issue did not.
- **We must make clear that replacing Fast Track is good policy and good politics.** The Democrats must demonstrate that the public’s “no to staying the course” election message is being translated into policy change or their majority will be short lived. If we can build unity in Democratic base groups around a new way to negotiate good trade agreements, we become the solution to a dangerous political problem. Our opponents could split the Democrats if they are allowed to come up with a tweaked Fast Track that provides enough cover for some New Democrats to cross party lines. This would blur the distinction between parties and eliminate a wedge issue leading voters to choose Democrats. This is exactly what occurred after NAFTA. If we provide a real alternative – setting a high bar that makes clear that NO version of Fast Track is acceptable – we blow the cover of that bloc of congresspeople who are always our hardest targets. Meanwhile, to improve their chances of reelection, the freshmen representatives and senators who are the “majority makers” MUST deliver on their campaign promises to turn course away from the middle class-killing trade status quo. This new bloc of fair trade votes also shifts the balance in Congress, making real change possible.
- **Most members of Congress were not in office before 1974 when Fast Track was established, so they do not know that trade delegation has been done in different ways over the years – with Congress having significantly more control prior to the development of Fast Track.** We must educate congresspeople that our demand for a new way to negotiate trade agreements is not only reasonable, but simply restores the balance of powers on trade established in the Constitution.¹
- **Politically, Congress needs a new procedure for trade negotiations because they are being held responsible for the damage.** Congress is often willing to delegate away authority over thorny issues, but only when representatives and senators will not be held accountable for the damage that ensues from dropping their duties. On trade, the political liability from the results of a failed policy has built a demand for a new system that gives Congress more control. We can offer a solution to the mismatch between the cavalier way in which “trade” agreements are negotiated now under Fast Track and the political reality haunting members of Congress that the resulting agreements affect our daily lives in numerous serious and devastating ways. We’re here to help.

2. THE INDICTMENT: THE LIVED EXPERIENCE OF FAST TRACK AND THE TRADE PACTS IT ENABLED *PROVES* IT MUST BE REPLACED

U.S. wages stagnate as trade deficits soar, displacing good U.S. jobs

- **The average American worker is only making a nickel more per hour in inflation-adjusted terms than in 1973, the year before Nixon's Fast Track was first used to grab Congress' constitutional trade authority.** In 1973, the average U.S. worker made \$16.06 hourly in today's dollars. That same worker only makes \$16.11 today despite U.S. workers' average productivity nearly doubling since 1973.² Better trade policy can do more for America's workers than this pathetic 0.28 percent raise. When we replace Fast Track and its trade pacts that allow corporations to pit U.S. workers in a race-to-the-bottom with poverty-wage workers worldwide, U.S. workers' wages will better track productivity increases. If a Fast Track replacement ensures future trade deals include binding labor standards, workers in developing nations can fight to raise their wages also.
- **Our Fast Track-enabled trade policy is suppressing U.S. wage levels.** Trade's downward pressure on U.S. wages comes from both the import of cheaper goods made by poorly-paid workers abroad (displacing the market for goods made by better paid U.S. workers) and the threats during wage bargaining of corporations moving overseas. The result is growing inequality with workers losing while the richest few make massive gains. The pro-Fast Track Institute for International Economics estimates that about 39 percent of the increase in U.S. wage inequality is attributable to trade.³ Such proponents of the status quo cite trade theory to say that even so, U.S. workers win when imports increase because when production is done by low-paid workers overseas, we all can buy cheaper goods. Yet, the non-partisan Center for Economic and Policy Research applied the actual data to the trade theory. They found that when you consider the lower prices of cheaper goods versus the income lost from low-wage competition, U.S. workers without college degrees (the vast majority of us) lost on net an amount equal to 12.2 percent of their current wages! That is to say, under our current policy the losses in wages from trade outweigh the gains in cheaper prices from trade. For a worker earning \$25,000 a year, this loss would be slightly more than \$3,000 per year!⁴ Talk about unfair trade. Thankfully, this disaster is not evitable and can be reversed if we create the tools necessary to create a new policy.

Good American jobs become Fast Track's main export

- **Over 3 million American manufacturing jobs – 1 in out of every 6 manufacturing jobs – have been lost during the Fast Track era.** The U.S. manufacturing sector has long been a source of innovation, productivity growth and good jobs – especially for the nearly 70 percent of Americans without a college degree.⁵ But by the end of 2006, the United States had only 14 million manufacturing jobs left – nearly 3 million down from our pre-NAFTA-WTO level.⁶
- **Job off-shoring is moving rapidly up the income and skills ladder.** Economy.Com estimates that nearly 1 million U.S. jobs have been lost to off-shoring since early 2001 alone, with 1 in 6 of those in information technology, engineering, financial services and other business services.⁷ The Progressive Policy Institute, a think-tank associated with the pro-NAFTA-WTO faction of the Democratic Party, found that 12 million information-based U.S. jobs – 54 percent paying better than the median wage – are highly susceptible to off-shoring.⁸ Independent academic studies put the number of jobs susceptible to off-shoring much higher. Alan S. Blinder, a former Fed vice-chairman, Princeton economics professor and NAFTA-WTO supporter, says that 28 to 42 million service sector jobs (or about 2 to 3 times the total number of current U.S. manufacturing jobs) could

be off-shored in the foreseeable future.⁹ Yet, if we even implemented the same policies Europe now uses that halt off-shoring of such jobs if our private health and financial data might be compromised, we could have the lower off-shoring rates of Europe.

Trade deficits explode under Fast Track, threatening global economic stability

- **Before Fast Track we had balanced trade and rising living standards; since then the U.S. trade deficit has exploded as imports surged.** In fact, in 1973, the United States had a slight trade surplus, as it had in nearly every year since World War II. But in every year since 1974 save one, the United States has run a trade deficit.
- **During the NAFTA-WTO era, the U.S. trade deficit jumped to historic levels, from \$130 billion (current dollars) in 1994 to more than \$717 billion in 2005, or nearly 6 percent of our national income. The 2006 Deficit is expected to be nearly \$800 billion!** Meanwhile, a trade deficit that is over even 4 percent of our national income is widely agreed to be unsustainable, putting the U.S. and global economy at risk of major crisis.

U.S. becomes a net food importer as American small farms go bankrupt

- **The United States lost 226,695 small farms during the NAFTA-WTO era, while average net cash farm income for the poorest farmers dropped an astounding 200 percent.**
- **Unbelievably, the United States is also becoming a net *food* importer.** American farmers were told by Fast Track supporters that they would be “breadbasket to the world” thanks to pacts like NAFTA and WTO. Instead, the amount of food imports into the United States beat out U.S. food exports starting in August 2006. Under the perverse trade rules that Fast Track allowed agribusiness and trading companies to create, America is now importing the very same foods we produce in such surplus that we are exporting the same food products we import. Only the handful of huge companies dominating trade in these “commodities” and the shipping firms are winning. They game the system they created to pay farmers worldwide less than it costs to produce crops and then hold the commodities until they can sell them for large margins. Free trade theory holds that consumers should benefit from lower prices when cheaper food can be imported. Yet, after NAFTA corn imports crashed the price paid Mexican farmers for their corn 80 percent, prices for tortillas made with corn rose 50 percent. Farmers and consumer were devastated while a few large agribusinesses reaped windfall profits.

Public interest laws attacked and weakened; Big Pharma gets to jack up drug prices

- **A long list of U.S. environmental, health and other public interest laws unrelated to trade have been challenged as “illegal trade barriers” under NAFTA and WTO.** At the threat of millions in trade sanctions, the United States has weakened numerous environmental policies after they were declared trade barriers. For instance, the United States weakened Clean Air Act rules and allowed imports of foreign-refined gasoline containing high levels of contaminants under WTO orders. Key U.S. dolphin protections were weakened after the U.S. lost a trade challenge to the Marine Mammal Protection Act. The United States weakened its Endangered Species Act sea turtle protections to comply with a WTO order.¹⁰ Thanks to a NAFTA challenge, the United States will soon allow Mexican-domiciled trucks to roll throughout the United States despite their failure to meet U.S. driver safety standards (such as hours of operation) and emissions standards. Increased trucking accidents, congestion and pollution are expected.¹¹ Most recently, U.S. laws regulating the gambling industry and preventing organized crime were put at risk after a WTO attack. Twenty-nine State Attorneys General have protested this outrageous WTO gambling ruling and have

demanded that federal trade officials withdraw U.S. gambling laws from WTO jurisdiction.¹²

- **Before WTO, countries that shipped beef, chicken and pork to the United States had to maintain *identical* meat safety and inspection standards. Under WTO rules, the United States is required to accept imports if the countries simply meet “equivalent” standards, meaning food is imported even if it does not meet our safety laws.** As required under WTO “equivalency determination” rules, the U.S. Department of Agriculture has declared dozens of countries to have meat inspection systems “equivalent” to that of the United States, even though the nations’ laws and performance clearly violate U.S. safety policy. For instance, many nations now ship meat to the U.S. which makes it onto supermarket shelves even though these nations allow company-paid meat inspectors in direct violation of U.S. policy that requires independent government meat inspectors.¹³
- **The United States was required to extend U.S. drug patent terms from the pre-WTO 17-year terms to the WTO-required 20-year terms, costing American consumers \$6 billion in higher drug costs.** This requirement was tucked into the WTO’s Trade Related Intellectual Property provisions. The University of Minnesota School of Pharmacy found that the WTO’s windfall patent extensions cost U.S. consumers at least \$6 billion in higher drug prices and increased Medicare and Medicaid costs nearly \$1.5 billion just for drugs then under patent.¹⁴ Because under Fast Track, Congress never had the ability to review, much less vote on the WTO text before it was signed, this and numerous other outrageous non-trade policy changes were bundled in with the trade terms.

Increased income inequality in the U.S. and worldwide

- **U.S. economic inequality is at astronomical levels not seen since the Robber Baron era.** The richest 10 percent of Americans are taking nearly half of the economic pie, while an even more elite group – the top one percent of the income distribution – is taking nearly a sixth of the pie.¹⁵ As noted, nearly all economists agree that our trade policy has partially driven this widening inequality.
- **American families are now less able to improve their own lot, as the Fast Track enabled NAFTA-WTO model undermined American workers’ ability to bargain for higher wages.** How could it come to pass that American workers’ wages stayed flat while American workers’ productivity doubled? Where did all those gains go? In the past, American workers were able to share in these gains. (And those with unions were able to bargain for the best gains.) But since the Fast Track-enabled NAFTA and WTO went into effect, as many as 62 percent of U.S. union drives face employer threats to relocate abroad, according to U.S. government-commissioned studies.¹⁶ The “trade” agreements include special “foreign investor” privileges for corporations that move out of the United States and indeed, the factory shut-down rate following successful union certifications tripled since NAFTA went into effect. The Fast Track-hatched trade agreements’ attack on America’s working families’ ability to lift themselves up has led increasing numbers to turn against *any* active expansion of international trade.¹⁷
- **The worldwide gulf between rich and poor has also widened since Fast Track.** When Congress was debating NAFTA and the WTO, we heard a lot of hype about how these Fast Tracked trade agreements would reduce poverty in the developing countries. Yet, the reality is that the corporate globalization era policies enabled by Fast Track have increased income inequality between developed and developing countries. Income inequality has also increased between rich and poor within many nations under these retrograde trade agreements. According to one United Nations study, the richest 5 percent of the world’s people receive 114 times the income of the poorest 5 percent, and the richest 1 percent receives as much as the poorest 57 percent.¹⁸ According to

another, “in almost all developing countries that have undertaken rapid trade liberalization, wage inequality has increased, most often in the context of declining industrial employment of unskilled workers and large absolute falls in their real wages, on the order of 20-30 percent in Latin American countries.”¹⁹ This trend is widening over time. In 1960, the 20 richest nations earned per capita incomes 16 times greater than non-oil producing, less developed countries. By 1999, the richest countries earned incomes 35 times higher, signifying a doubling of the income inequality.²⁰

Stagnant growth, poverty and hunger in poor countries

- **Progress on growth and social development in poor countries has slowed during the Fast Track era.** Increasing economic growth rates mean a faster expanding economic pie. With more pie to go around, the middle class and the poor have an opportunity to gain without having to “take” from the rich – often a violent and disruptive process. But the growth rates of developing nations slowed dramatically in the Fast Track period. For low- and middle-income nations, per capita growth between 1980 and 2000 fell to half that experienced between 1960 and 1980! The slowdown in Latin America was particularly harmful. Their income per person grew by 75 percent in the 1960-80 period, before the International Monetary Fund began imposing the same package of economic, investment, and trade policies found in NAFTA and WTO. Since adopting the policies, per capita income growth plunged to 6 percent in the 1980-2000 period. Even when taking into account the longer 1980-2005 period, there is no single 25-year window in the continent’s history that was worse in terms of rate of income gains. In other regions, growth also slowed dramatically, while in Sub-Saharan Africa, income per person actually shrank 15 percent after the nations adopted the policy package also required under the WTO and NAFTA!²¹ Improvement measured by human indicators – in particular life expectancy, child mortality, and schooling outcomes – also slowed for nearly all countries in the Fast Track period as compared with 1960-80.²²
- **Poverty, hunger and displacement are on the rise.** The share of the population living on less than \$2 a day in Latin America and the Caribbean rose following the implementation of the Fast Track-enabled NAFTA and WTO, while the share of people living on \$1 a day (the World Bank’s definition of extreme poverty) in the world’s poorest regions, including Sub-Saharan Africa and the Middle East, has increased during the same period.²³ According to the Food and Agriculture Organization, “Since the [1990] baseline period, progress [toward reducing hunger] has slowed significantly in Asia and stalled completely worldwide.”²⁴ From Mexico²⁵ to China²⁶ and beyond, the displaced rural poor in the Fast Track era have had little choice but to immigrate or join swelling urban workforces where the oversupply of labor suppresses wages, exacerbating the politically and socially destabilizing crisis of chronic under- and unemployment in the developing world’s cities that fuel instability. Many who have not fled rural areas are no longer with us. According to the Indian government, tens of thousands of farmers bankrupted by trade policies commit suicide, leaving their children and families without alternate means of support.²⁷
- **Developing countries that did not adopt the package fared better.** In sharp contrast, nations like China, India, Malaysia, Vietnam, Chile – and Argentina since 2002 – which chose their own economic mechanisms and policies through which to integrate into the world economy, had more economic success. These countries had some of the highest growth rates in the developing world over the past two decades – despite ignoring the directives of the WTO, IMF or World Bank.²⁸ It is often claimed that the successful growth record of countries like Chile was based on the pursuit of NAFTA-WTO-like policies. Nothing could be farther from the truth: Chile’s sustained rapid economic growth was based on the liberal use of export promotion policies and subsidies that are now considered WTO-illegal.²⁹

3. HOW FAST TRACK WORKS TO GET US INTO BAD TRADE PACTS

- **Under Fast Track, Congress, state officials and the public are handcuffed and cannot hold U.S. negotiators accountable *during* trade talks while a gang of corporate lobbyists call the shots.** By the time Congress has a formal say on a trade agreement under Fast Track, it is too late to change the agreement's contents. The result is retrograde trade agreements that are damaging to both our economic well-being and the principle and practice of democracy. The model of trade pacts generated under Fast Track are decimating the U.S. middle class and gutting the tax base that supports vital services throughout our country, while increasing poverty and instability overseas. The model of trade agreement generated under Fast Track operates like a very quiet, slow motion *coup d'état* against democratic governance by imposing top-down, one-size-fits-all non-trade policies to which every "trade" agreement signatory nation is required to conform its domestic laws.
- **While the U.S. Constitution gives Congress exclusive authority to "regulate commerce with foreign nations" (Article I-8), Fast Track delegates away to the executive branch Congress' constitutional authority to set the contents of U.S. trade agreements,** as well as other important powers. This means the branch of government closest to the people – the one we can hold most accountable - has been ejected from the driver's seat of our trade policy. Without Fast Track, we would not be suffering the consequences of NAFTA, WTO and other race-to-the-bottom deals. **Not surprisingly, it was Richard Nixon who initially cooked up Fast Track as a way for him to seize more power from Congress and the public.**
- **Adding new negotiating objectives to the existing Fast Track structure, for instance regarding labor and environmental issues, will not result in better trade agreements.** Fast Track's structural design ensures Congress cannot hold executive branch negotiators accountable to meet negotiating objectives Congress sets in Fast Track legislation. **In fact, the 1988 Fast Track used to negotiate and pass NAFTA and WTO explicitly required that labor rights be included in U.S. trade agreements. President Bush I and his negotiators simply ignored these objectives,** while satisfying the negotiating objectives desired by their business supporters. Under Fast Track, the Bush administration was empowered to sign such agreements despite failing to meet Congress' labor rights objectives and submit them for a no-amendments, expedited vote.
- **Fast Track ensures that Congress' role is performed *too late* to do any good: Congress only gets a "yes" or "no" vote on a trade agreement *after* it's been signed and "entered into."** That vote also "okay's" hundreds of changes to wide swaths of U.S. non-trade law to conform our policies to what the "trade" deals' requirements. By eliminating Congress' right to approve a pact's contents *before* it is signed, Fast Track also allows outrageous provisions to be "super glued" to actual trade provisions – such as the patent extensions in WTO that raised U.S. drug process over \$6 billion.
- **Federalism is also flattened by Fast Track.** In a form of international pre-emption, state officials also must conform our local laws to hundreds of pages of non-trade domestic policy restrictions in these "trade" pacts, yet state officials do not even get Congress' cursory role. While officials at the state and local levels find themselves bound to comply with many aspects of these agreements (such as service-sector privatization and deregulation requirements; limits on public health programs, land-use and zoning policy; constraints on procurement policy; limits on product safety and toxics policy; and the grant of new foreign investor rights), currently there is no mechanism in state or

federal law to systematically notify state legislators when agreements containing terms affecting state authority are under negotiation. **There is also no mechanism by which to obtain the consent of state legislators or municipal-level officials before federal negotiators offer to permanently bind state and local policy to comply with the terms of international “trade” agreements.**

Longstanding traditions regarding U.S. federalism notwithstanding, under Fast Track state and local officials are not afforded even the cursory role in the process that is provided to Congress – meaning Fast Track is a tool to promote international pre-emption in a way that drastically limits state and local officials’ authority and policy space.

- **Fast Track trashes the “checks and balances” that are essential to our democracy.** The U.S. Constitution gives Congress exclusive authority to set U.S. trade policy and gives the executive branch authority to conduct international negotiations. This design is one of many checks and balances built into the Constitution to avoid one branch of government from having absolute control over a vital policy area. This constitutional design means the president cannot negotiate trade deals unless Congress gives authority to do so. Historical documents from the time of the Constitution’s framing show that granting Congress the authority to regulate foreign commerce was an intentional decision to move away from the European model, which gave control of such matters to the “king,” and instead to put that power in the body “closest to the people.”
- **Fast Track trade legislation, which passes Congress in the form of a bill, is a mechanism that delegates away to the executive branch Congress’ trade authority and more.** In one lump sum, Fast Track:
 - Delegates away Congress’ ability to choose with which countries to launch negotiations, meaning President Bush could select Colombia – the world’s most deadly country for labor unionists – and Congress has no ability to even veto this outrageous choice.
 - Delegates away Congress’ constitutional authority to *set the substantive rules* for international commerce. Congress lists “negotiating objectives,” but these are not mandatory or enforceable and executive branch negotiators regularly ignore them. In fact, the 1988 Fast Track used for NAFTA and WTO explicitly required that labor rights be included in U.S. trade agreements.
 - Fast Track permits the executive branch to sign trade agreements *before* Congress votes on them, locking down the text and creating a false sense of crisis regarding congressional wishes to change provisions of a signed agreement.
 - Fast Track empowers the executive branch to write legislation (Congress’ constitutional role), circumvent normal congressional committee review, and suspend Senate cloture and other procedures. This means that under Fast Track, not only is Congress stuck with pre-signed trade agreements, but there is no opportunity even for Congress to tweak the agreement’s “implementing legislation” – legislation that could force the change of hundreds of existing U.S. laws to conform them to a trade agreement’s terms.
 - Fast Track guarantees “privileged” House and Senate floor votes 90 days after the president usurps one more congressional role by submitting legislation (Congress’ role). Fast Track pre-sets these extraordinary floor procedures even before negotiations on a deal have started.
 - Fast Track rules forbids all amendments and permits only 20 hours of debate on the signed deal and conforming changes to U.S. law.
- **All of these authorities are transferred to the executive branch conditioned only on the executive branch giving Congress 90-day notice of its intent to start negotiations** with a country and then another 90-day notice before it signs a completed pact. Fast Track does not allow Congress to revoke its delegation of authority if the executive branch ignores Congress’ negotiating

objectives. The closed rule, expedited procedures for consideration can only be revoked for failure to go through specific notices and formal consultations. Failure to listen is not actionable.

- **Fast Track establishes the “trade advisory committees” through which approximately 500 business-sector advisors have privileged access to documents and negotiators.** If it seems like U.S. trade pacts are written by a few big business special interests, it’s because that is exactly how it is done! Fewer than two dozen labor and environmental advisors are included on a few of these committees, but many have only business interests deciding what the “U.S.” position should be.

4. FAST TRACK CONCEPT IS OUTDATED, NOT APPROPRIATE TO THE EXPANSIVE SCOPE OF MODERN GLOBALIZATION PACTS

- **When Fast Track was established in 1974, the issues under consideration in trade negotiations were narrowly limited to traditional trade matters.** Trade deals only dealt with trade in goods – not investment, procurement, services or food safety. The 1970s era trade deals only set tariff levels (taxes charged at the border on imported goods) and quota levels (how much of an imported good is allowed into the country). For instance, the first use of Fast Track was for the 1979 General Agreement on Tariffs and Trade (GATT) Tokyo Round Agreement, which comprised a few dozen pages and an implementing bill of fewer than 50 pages. The second use of Fast Track was the U.S.-Israel Free Trade Agreement of 1985 – a deal with an implementing bill of less than four pages that only covered tariff cuts and rules on government procurement. Only with Fast Track’s third use, for the 1988 U.S.-Canada Free Trade Agreement (FTA), did the issues under discussion in “trade” talks begin to expand into new areas. The U.S.-Canada FTA made some changes to domestic agriculture, banking, investment, food inspection and other policies. This was the first trade agreement implementing bill that spanned over one hundred pages.
- **The 1993 NAFTA and 1994 WTO agreements exploded the boundaries of what was included in “trade” pacts.** Today’s “trade” agreements affect a broad range of domestic non-trade issues like local prevailing wage laws, “Buy America” procurement, food safety, zoning, the environment and even local tax laws. NAFTA and WTO also affected U.S. laws on the length and weight of trucks on U.S. highways, local banking rules, telecommunications laws, patent laws, federal procurement laws, consumer labeling laws and much more. Plus, the extensive trade and non-trade rules of NAFTA and WTO, and the other agreements that followed based on the NAFTA-WTO model, are uniquely enforceable. Past trade agreements, like GATT, had included a “sovereignty emergency brake” – typical of many international agreements – that allows any signatory country the ultimate right to block certain decisions. In contrast, the WTO and NAFTA permitted trade tribunals to issue *binding* rulings. These tribunals are empowered to rule whether any signatory country’s domestic national, state or local laws are out of compliance with the agreement’s requirements, and to authorize trade sanctions – to be imposed indefinitely – on any country that fails to follow WTO or NAFTA tribunal orders to change domestic laws.
- **Whether or not Fast Track was a suitable way to negotiate trade pacts in the past, this process clearly is no longer appropriate, given the increasing amount of *domestic* federal, state and local policy that is being determined in the context of “trade” negotiations.** Creative thinking about a better, modern U.S. trade policy-making process must start with the clearing up of a major misconception propagated by defenders of the status quo: Fast Track is not synonymous with “trade authority.” President Clinton was denied Fast Track authority for six of his eight years in office, but still the Clinton administration listed the hundred trade pacts it completed – without Fast Track.

5. PRINCIPLES FOR A GOOD U.S. TRADE NEGOTIATING PROCESS

Only a new, forward-looking trade negotiating process that inserts accountability over negotiators and binding rules about what can and cannot be in trade agreement can ensure that U.S. trade expansion policy meets the needs of working families, farmers and small businesses and safeguards our environment, health and safety – and the principle and practice of democracy. In considering what *we want* to replace Fast Track, there are some basic principles – building blocks – essential for a new trade negotiating system that can deliver trade policy that works for the majority.

- **Restoring Congress’s right to decide with which countries it is in our national interest to negotiate new agreements.** When the European Union (EU) considers which new countries it will invite to join the EU, it does so on the basis of reviewing whether prospective new partners meet certain pre-set *readiness criteria* regarding democracy, human rights, and environmental and health infrastructure. Congress has the ability to set such criteria to determine with which countries it will allow its constitutional trade authority to be used. Such criteria could include, for instance, that a country provides the core ILO rights for its workers, enforces basic environmental laws, and is not listed by the U.S. State Department as a human rights violator or suppressor of religious freedom or trafficker in human beings. Plus, under Fast Track, the president often selects countries based on foreign policy considerations, but Congress could require demonstration that there are prospects that an agreement would provide economic opportunities for American workers, farmers and firms.
- **Setting mandatory requirements for what MUST and MUST NOT be in every agreement.** If we want to ensure that future trade pacts create new rules for the global economy that mediate the current race-to-the-bottom, then Congress must *condition* its delegation of its constitutional trade authority on U.S. negotiators meeting certain mandatory objectives. This is how we ensure that every trade agreement contains the necessary labor and environmental standards and their equal enforcement and does not include the outrageous foreign investor privileges that incite off-shoring and attacks on domestic environmental, zoning and health laws. This is how we ensure that future trade deals do not undermine access to affordable drugs, require service sector privatization or deregulation or undermine our prevailing wage laws. U.S. federalism can be safeguarded by including a mandatory objective that states can only be bound to comply with rules on investment, procurement, service and other rules limiting non-trade regulatory authority if states opt in, explicitly agreeing to sign up for such obligations.
- **Requiring Congress to vote on a trade agreement’s contents before it can be signed.** Perhaps the most important principle for an improved trade negotiating system is ensuring that trade agreements cannot be signed and locked down unless Congress explicitly votes to authorize the president to do so. This would force the “big” debate over a trade agreement onto the contents of the actual pact at a stage when negotiators can easily be sent back to the table and make necessary changes. Requiring Congress to vote explicitly to authorize the signing of a trade agreement also would change the balance of power so that negotiators have notice from day one that if they do not meet Congress’ mandatory objectives or if they include provisions against the national interest, the agreement will not be signed.
- **No More freelance, secretive negotiations:** A new negotiating procedure must ensure that the many congressional committees whose work is implicated by today’s expansive “trade” pacts are regularly briefed on negotiators’ progress. That way, the trade committees can be assisted by the

Congresspeople with expertise on the many non-trade issues now implicated in negotiations to ensure negotiators are not using trade agreements to rewrite domestic policy. As well, a new process must require that negotiators regularly brief state legislative officials about proposed trade agreements' local effects, and share the actual draft documents on issues affecting state and local authority. A new process must provide more public access to negotiating texts and processes.

- **Regular reporting on the results of trade agreements, with built-in requirements to “repair” the problems.** A new negotiating system must include more oversight on how past agreements are actually working. Regular reports to Congress on the effects of agreements in force and a mechanism to ensure Congress can hold negotiators accountable to fix past problems is vital.
- **Reinserting checks and balances:** A vital aspect of any new trade negotiating procedure must be to break up the lump-sum delegation of authority that Congress provides to the executive branch in Fast Track. Only by inserting several accountability points – where negotiators’ ability to move on to the next step is conditioned on some sort of oversight or approval – can Congress, state and local officials and the public be sure that executive branch negotiators are representing our interests.

For more information on Fast Track or to get involved in creating a new, more democratic trade policy-making mechanism visit tradewatch.org or contact: Public Citizen’s Global Trade Watch at 202-546-4996.

¹ Historically, the way the branches have shared authority for international commercial rule-making has changed, as have the circumstances of international commerce. Prior to 1934, Congress maintained tight control over every detail of trade negotiations. Executive branch negotiators were allowed to negotiate agreements with foreign sovereigns only on specific tariff and quota rates approved by Congress. With the 1934 Reciprocal Trade Agreements Act, Congress delegated to the executive branch multi-year authority to *set* tariff and quota levels within a specified range, *without requiring further congressional approval*, called “tariff proclamation authority.” This procedure was used for the first five rounds of GATT negotiations. The next change was Fast Track in 1974. The issue was how to deal with the non-tariff issues then newly arising in negotiations. The executive branch only had tariff proclamation authority, but negotiators committed to provisions changing U.S. law. This move caused a turf fight between branches regarding how to coordinate negotiations that might require changes to domestic law, the sole jurisdiction of Congress. Nixon exploited the international embarrassment caused by the public U.S. inter-branch turf fight (Congress refused to approve the non-tariff paragraphs) to propose that Congress allow him simply to *proclaim* changes to law required to implement trade pacts. Besides being unconstitutional, this was politically unacceptable to Congress. Fast Track was the “compromise.”

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