



215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • [www.citizen.org](http://www.citizen.org)

## **Replacing Fast Track with an Inclusive, Democratic Trade Negotiating and Approval Process**

Fast Track was a U.S. procedure established in the 1970s by President Nixon for negotiating trade agreements that concentrated power in the president's hands. It delegated to the executive branch Congress' exclusive constitutional authority to "regulate Commerce with foreign nations." In particular, Fast Track allowed the executive branch to select countries for, set the substance of, and then negotiate and sign trade agreements — all before Congress had a vote on the matter.

As well, under Fast Track, normal congressional committee processes were circumvented and the executive branch was empowered to write lengthy implementing legislation for each pact on its own. Normal congressional committee processes, such as mark ups, were not allowed under Fast Track. The White House authored and submitted bills that could not be amended in committee or on the House or Senate floor. Yet, these executive-authored trade pact implementing bills altered wide swaths of U.S. law to conform domestic policy to each agreement's requirements. Fast Track was unique in that it empowered the executive branch to force a congressional vote on such implementing legislation and the related agreement within a set amount of time with no amendments allowed and only twenty hours of debate in each chamber.

Fast Track was used to push through Congress various trade pacts, including NAFTA, CAFTA and WTO, that did not enjoy broad public support. Fast Track renewal was last slipped through Congress at midnight in 2002 by only two votes. On June 30, 2007, the current grant of Fast Track, now called "Trade Promotion Authority" by its supporters, expired. Fast Track is not *needed* to approve trade agreements, a fact proven by the dozens of trade agreements that have been passed without its use. Fast Track unnecessarily creates a situation where negotiators cannot be held accountable by the public, and legislators are denied their constitutional authority to set the terms of trade agreements.

We need to replace the outdated Fast Track with a good process to get good trade agreements. Fast Track was designed over 30 years ago as a way to deal with traditional tariff and quota-focused trade deals. The Trade Reform Accountability Development and Employment (TRADE) Act cosponsored by 152 House members in the 111<sup>th</sup> Congress sets out a Fast Track replacement mechanism that enjoys broad support by small business, labor, consumer, family farm, faith, environmental and other groups.

### **Core Aspects of the Past Fast Track Trade-Authority Delegation**

- Allowed the executive branch to select countries for trade pacts. Ninety-day notice to Congress was required before talks were initiated, but no mechanism was provided for Congress to disapprove;
- Allowed the executive branch to set the substance of, negotiate and then sign trade agreements, all before Congress had a vote on the matter. The executive branch was required only to notify Congress 90 calendar days before signing and entering into an agreement.

- Empowered the executive branch to write implementing legislation for each pact, without committee mark ups. As a concession to congressional decorum, the executive branch agreed to participate in “non” or “mock” hearings and markups by the trade committees. However, this is a practice, not a requirement. In 2008, President Bush chose to ignore this practice and submitted the Colombia FTA without an informal agreement on timing or mock mark ups, despite congressional leaders’ objections to the pact’s submission at that time.
- Once the executive branch transferred such a bill, the agreement itself, and various supporting materials to Congress, the House and Senate were required to vote within 90 legislative days.
- Such bills were automatically referred to the House Ways & Means and Senate Finance Committees. (In the 2002 Fast Track bill, the House and Senate Agriculture committees also got a formal referral). If a committee failed to report out the bill within 45 legislative days from when it was submitted the legislation to Congress, the bill was automatically discharged to the floor for a vote.
- A House floor vote was required no later than 15 legislative days after the bill was reported or discharged from committee. Thus, within 60 legislative days, the House was required to vote on whatever agreement the president had signed and the implementing legislation.
- The Finance Committee was allowed an additional 15 days after the House vote, at which time the bill was automatically discharged to the Senate floor for a vote required within 15 legislative days.
- The floor votes in both the House and Senate were highly privileged. Normal congressional floor procedures were waived, including Senate unanimous consent, debate and cloture rules, and no amendments were allowed. Debate was limited to 20 hours – even in the Senate.
- Once the president provided Congress with notice of his intent to sign an agreement, he was authorized to sign after 90 calendar days. However, there was no mandatory timeline for submission of implementing legislation. Thus, an agreement’s legal text finalized just minutes before the delegation authority expired could be sent to Congress even years later with the extraordinary floor procedures still applying. This “hangover” effect is why Fast Track procedures still apply to the Free Trade Agreements President Bush signed with Panama and Korea in 2007.
- Once a president submitted an agreement under Fast Track, that agreement’s Fast Track treatment was “used up.” If Congress adjourned before the mandatory vote clock ran out or if Congress voted against the agreement, Fast Track for that agreement expired. If it were to be submitted again, normal congressional procedures would apply. Thus, whether Fast Track applies to the Colombia FTA is a contested matter, as most procedural experts believe Fast Track permitted only one submission under the privileged rules. In 2009 the Bush administration used Fast Track to try to force a vote. Then-Speaker Pelosi worked with the Rules Committee to alter the rule and the vote did not occur.
- An advisory-committee system was established to obtain private sector input on trade-agreement negotiations from presidentially-appointed advisors. This system is organized by sector and industry and included 700 advisors comprised mainly of industry representatives. Throughout trade talks, these individuals obtained special access to confidential negotiating documents to which most members of Congress and the public have no access. And, they have regular access to executive-branch negotiators and must file reports on proposed trade pacts. The Fast Track legislation listed committees for numerous sectors, but not consumer, health, environmental or other public interests.
- The 1974 Fast Track also elevated the Special Trade Representative (STR) to the cabinet level, and required the Executive Office to house the agency. While other cabinet-level positions tend to be responsive to a pre-defined constituency (Agriculture and farmers, for instance), the STR was unique in that its only real constituency was the president, the gatekeeper committees of Congress, and the hundreds of trade advisory committees. And its main goal was proliferation of trade negotiations. The 1979 Fast Track changed the name of the STR to the U.S. Trade Representative.
- The 2002 Fast Track created an additional requirement for 90-day notice to the gatekeeper committees before negotiations could begin, but neither the gatekeepers nor the executive were required to take any further action after receiving this notice.

- In 2002, during the last grant of Fast Track, the procedure was formally renamed “Trade Promotion Authority”. However, it is still commonly referred to as Fast Track.

## **To Obtain Better Trade Pacts, Congress Needs A Meaningful Role in Formative Aspects of Trade Negotiations and the Public Needs More Transparency**

Today’s “trade” agreements affect a broad range of domestic non-trade issues such as food safety, local prevailing wage laws, Buy-America procurement, zoning, and the environment. Fast Track should be relegated to a museum of outdated. Congress, state officials and the public need a new modern procedure for developing U.S. trade policy that takes into account the realities of 21st century globalization agreements. With a new forward-looking trade negotiating process, we can ensure U.S. trade expansion policy meets the needs of working families, farmers and small businesses. Many in Congress are unaware that Fast Track is just one – now outdated and inappropriate – way to do trade negotiations. We must replace Fast Track to ensure future pacts contain benefit most Americans. There are some key principles, included in the Fast Track replacement in the TRADE Act, for designing a new trade negotiating system that can deliver trade policy that works for the majority:

- **Readiness Criteria and Binding Goals: What Trade Partners and What Must and Must Not be in U.S. Trade Pacts:** Congress must set criteria to guide decisions about with which nations the U.S. negotiates. This is the system that the European Union uses to determine if new countries are ready to join the union. For prospective U.S. trade partners, certifying that a country meets ILO standards and human rights and democracy criteria will show a country to be ready for a win-win deal. The terms of future U.S. trade agreements must set new rules for the global economy. This will only happen if, when Congress delegates its trade authority, Congress sets mandatory goals on what must and must not be in trade pacts. These binding goals must include that U.S. trade deals require corporations to meet the many existing globally-agreed rules on labor, environment, human rights. We will face an endless race-to-the-bottom without imposing a floor of decency – specifying what standards must be met for the resulting commerce to enjoy trade benefits. These goals also must include states’ right to prior informed consent before being bound to meet pacts’ investment, procurement, service sector and other rules limiting their non-trade regulatory authority.
- **No Free Lancing: Systematic Briefings to Track Negotiations:** Today, executive branch negotiators regularly conduct trade talks with no real congressional oversight. Many in Congress and state legislatures are left with little information about what is happening during trade talks, even when negotiations directly affect their domestic jurisdiction. Official trade advisory committees, comprised of mainly big- business interests, have the official texts. Jurisdiction must be expanded to all congressional committees implicated by today’s expansive “trade” pacts. The expanded list of committees must be regularly briefed on negotiators’ progress in meeting Congress’ goals. Negotiators must regularly brief state legislative officials about proposals’ local effects. The trade advisor system must be reformed – requiring diverse participation and appointment of participants by Congress.
- **Certify that Trade Goals Were Actually Met in Negotiations:** Not only negotiators and business representatives with special access should determine if the goals Congress set have been met. Instead, when negotiators think they are done with talks, they must be required to give notice to all of the congressional committees with implicated jurisdiction and file an assessment of how their “finished” text meets Congress’ goals. Congress would then decide if negotiators really had met Congress’ goals. One way to give Congress this authority is to create a special super-committee of chairs and ranking Members of affected committees to certify mandatory goals were met. A supermajority vote by the special committee would certify that in fact negotiations have met the key

goals Congress listed. A super-committee certification would trigger a full-Congress vote on the agreement itself, binding the U.S. to the final text.

- **Congress Must Vote Before a Trade Agreement Can Be Signed and the U.S. Is “Bound”:** If the super-committee certifies that it is satisfied that indeed negotiators have met Congress’ goals, then their certification would trigger a congressional vote on a one-line resolution: “Congress authorizes the USTR to enter into the X agreement.” Only then could a deal be signed. This would shift Congress’ focus onto trade pacts’ actual texts at a time when changes can be made and give Congress leverage to control pacts’ contents. By inserting a congressional vote into the process early on, Congress would regain leverage to control the contents of the agreements.
- **The Debate Occurs Along the Way, so There Is Less Controversy Over Votes on Final Implementing Legislation:** The single most important change for any pro-democracy, pro-worker, pro-environment Fast Track replacement is to break up the pieces of Congress’ delegation. Congress must create opportunities – congressional votes –to ensure its goals are met. By front-loading roles for the public and Congress – and by providing states opt-in for non-trade terms - the tenets of U.S. democracy, such as checks and balances and federalism, would be preserved. This new process would give those who will live with the results a say in making U.S. trade policy. By moving adding votes earlier-on, the final vote to pass implementing legislation for trade deals would be less decisive of the outcomes and could be held under rules similar to final budget votes (limited amendments, privileged order).

