

Make Trade Work for States

A Once-in-a-Decade Opportunity to Replace Fast Track



Should federal trade negotiators have authority to bind your state to comply with international trade rules that:

- dictate how your state can spend its taxpayer dollars?
- prohibit certain types of policies your state can enact on health care, higher education or land use planning?
- allow foreign corporations to challenge your state laws in closed-door international tribunals?

Fast Track allows this sort of outrageous international preemption via trade agreements – which is just one reason Fast Track must be replaced.

Today's trade agreements are a backdoor form of international preemption to state regulatory authority. Agreements like the North American Free Trade Agreement (NAFTA) and the General Agreement on Trade in Services (GATS) at the World Trade Organization (WTO) contain numerous provisions that have nothing to do with trade and everything to do with what kinds of non-trade policies state and local governments can pursue.

How did we get into these types of trade agreements in the first place?

Bad process resulted in bad policy. Under the “Fast Track” trade negotiating process, Congress delegates away to the president its exclusive constitutional authority to set U.S. trade policy. Congress’ only role is a rubber stamp vote after a trade agreement is signed. Fast Track eliminates all leverage that state officials, or even Congress, would have in order to safeguard domestic policy space and regulatory authority.

Fast Track railroads democracy by delegating Congress’ constitutional authority over trade policy to the executive branch, sweeping away vital checks and balances. Not surprisingly, President Bush wants more “Fast Track” so he can stay the course on our disastrous trade policy, expanding the NAFTA-WTO model to cover more essential services, affecting your state’s regulation of services from health care and public education to land use and energy distribution.

“Despite the fact that an array of vital public services are under negotiation, state officials are not being consulted in these negotiations...If states are not allowed to protect our interests now, during negotiations, we will have no opportunity to do so after the negotiations due to the Fast Track procedure which does not allow for amendments.”

- Wisconsin state legislators on GATS negotiations, March 2003
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TAKE ACTION: REPLACE THE FAILED FAST TRACK SYSTEM

The good news is Fast Track sunsets on June 30, 2007, providing a unique opportunity for a new direction.

Congress will soon be deciding what happens after Fast Track expires. We have a once-in-a-decade opportunity to replace the archaic Fast Track system with a new process that respects the **principles of federalism, sets rules about what must and must not be in trade agreements** and **keeps trade policy-makers accountable** to elected officials and the public. Contribute to this critical national debate by taking action at both the federal and state level!

➤ **Federal Action: Tell Congress to respect state sovereignty in trade agreements.**

Join the wave of states passing a resolution this year calling for replacing Fast Track with a more democratic U.S. trade negotiating process – one that requires proof of states’ *prior informed consent* before they can be bound to comply with the terms of any trade agreement. This means trade negotiators cannot sign up states to comply with the services, investment and procurement rules in trade agreements without their explicit approval.

Also, write a letter to your entire congressional delegation urging them to replace Fast Track with a process that guarantees states cannot be bound to trade agreements unless they explicitly opt in, and alerting Congress to the fact that state regulatory authority and your state policies are being undermined by current trade pacts.

➤ **State Action: Make sure your state legislature, not only the governor, gets a say.**

Many state legislatures are working to pass a bill that provides for the state legislature, and not just the governor, to cast the deciding vote on whether or not the state will agree to comply with the services, investment and procurement terms of trade agreements. Without this process, governors can simply sign on unilaterally.

How does Fast Track work?

In one lump sum, Fast Track gives the executive branch and the U.S. Trade Representative (USTR) the power to:

- ❖ **Choose with which nations we will negotiate**, ignoring all labor or human rights problems.
- ❖ **Determine the contents of the agreement**, excluding labor rights and including drug patent extensions.
- ❖ **Sign and enter into an agreement *before* Congress votes on it**, as long as Congress is given 90 days written notice that the executive branch intends to sign a deal.
- ❖ **Write the implementing legislation and bypass the congressional committee process**. Not only is Congress stuck with pre-signed trade agreements, but there is no opportunity to tweak the agreement’s “implementing legislation” which could require the change of federal and state law to conform them to a trade agreement’s terms.
- ❖ **Ignore states’ requests to be carved out from the non-trade terms of trade pacts**. Under Fast Track, USTR has no obligation to respond to states’ concerns, and continues to bind states to the procurement, investment and service-sector rules of trade agreements without appropriate consultation.
- ❖ **Limit Congress’ role to a “yes” or “no” vote with no amendments, and allow only 20 hours of debate**. The floor procedures Congress is allowed to use during its consideration of final trade deals are effectively pre-set. Congress must vote on whatever the administration brings back (agreement and implementing legislation) within 90 days, and the normal Senate procedures that require super-majorities to close down debate are overruled.
- ❖ **Rely on “trade advisory committees” composed of approximately 500 business-sector advisors with privileged access to documents and negotiators**. Fewer than two dozen labor, environmental or public health advisors are included on a few of these committees. If it seems like U.S. trade policy is written by a few special interests in the business world, it’s because that is exactly how it is done!

What is Fast Track?

Fast Track is a procedure, established in law, by which Congress delegates away to the president its authority over trade policy making. The Constitution gives Congress exclusive authority to set U.S. trade policy and gives the executive branch authority to conduct international negotiations. This smart check and balance means the president cannot negotiate trade deals unless Congress gives authority to do so.

Different systems of cooperation were used over our nation’s history, until 1974 when then-President Nixon hatched Fast Track to grab all control. But back then trade deals were just about tariffs.

Fast Track was still in effect when President Bush I cooked up NAFTA and the WTO. Those “trade” pacts exploded the previous boundaries of what was in trade deals, adding in new privileges for companies that moved jobs out of the U.S., extending patents that jacked up our medicine prices and gutting longstanding food safety and environmental laws. Under Fast Track, these retrograde deals were signed and sealed *before* Congress had a vote.

Obviously, we need a new process that puts a steering wheel and brakes on the president’s trade negotiators and puts the public and Congress in the drivers seat.

Replacing Fast Track Ends the Erosion of State Sovereignty

Fast Track’s very design completely excludes any meaningful role for states in trade policy-making. State and local governments are not asked to consider the effect of trade deals on their state’s economy or sovereignty, and the concerns of state representatives and their constituents are largely ignored. State and local officials have long expressed a need for an official role and consultation mechanism beyond the existing state “single point of contact system” (SPOC) and the subfederal trade advisory committee, which have been inadequate in giving state officials the information and access they need in order to safeguard state and local sovereignty.

Given the diverse range of non-trade issues broadly affecting state authority that are now included in trade pacts, Fast Track is an outdated and inappropriate system for negotiating today’s international commercial agreements. To create trade pacts that deliver economic benefits to the majority of people in the United States, raise living standards worldwide and stay clear of imposing one-size-fits-all non-trade policies on federal, state and local governments, states must demand a new mechanism for making U.S. trade policy that respects the tenets of federalism as well as constitutional checks and balances.