

# **Replacing Fast Track: A Path to Middle Class Prosperity, Security & a Healthy Environment**

***When it comes to trade policy, “them that write the rules, rule...”***

**1. Since 1974, 16 of the most damaging U.S. trade pacts, including NAFTA and the WTO, were negotiated and passed using an extreme procedure called “Fast Track.”** When Richard Nixon was president, he cooked up Fast Track to seize power from Congress. **The U.S. Constitution gives Congress exclusive authority to “regulate commerce with foreign nations” (Art. I-8).** Fast Track was a mechanism that delegated away to the executive branch Congress’ authority to control the contents of U.S. trade pacts, as well as other important powers. Fast Track empowered executive branch trade negotiators, advised by more than 600 *official* trade advisors who mostly represent large corporations, to choose trade partners and negotiate and sign trade pacts, all before Congress voted. Once signed, Fast Track put such deals on a legislative luge run: no matter how many domestic *non-trade* policies were implicated or threatened by the deal, Fast Tracked agreements hurtled through Congress within a set number of days, with normal democratic checks and balances iced over. Fast Track ensured that Congress’ role came *too late* to influence trade pacts’ contents: Congress only got a yes or no vote *after* a pact was signed and “entered into.” That vote also OK’d *hundreds* of changes to U.S. non-trade law to conform our policies to “trade” deal terms. Federalism was also flattened by Fast Track via a form of international pre-emption: state officials had to conform local laws to expansive non-trade domestic policy restrictions in Fast Tracked “trade” pacts. State officials did not even get Congress’ cursory role.

**2. Fast Track removed the “checks and balances” that are essential to our democracy – handcuffing Congress, state officials and the public and making it impossible to hold U.S. negotiators accountable during trade negotiations, while empowering corporate trade advisors to call the shots.** In one lump sum, Fast Track:

- Delegated away Congress’ constitutional authority *to choose trade partners and set the substantive rules* for agreements. Congress listed “negotiating objectives,” but these were not mandatory or enforceable, so Congress’ instructions were repeatedly ignored. When negotiating NAFTA and the WTO, for example, the executive branch dismissed the 1988 Fast Track’s requirement to include labor rights provisions in the deals.
- Permitted the executive branch to **sign and enter into trade agreements before Congress voted on them.**
- Empowered the executive branch to write legislation that circumvented normal congressional committee review and amendment processes, suspend Senate cloture and other procedures, and have “privileged” guaranteed House and Senate floor votes 90 days after the president submitted the executive-authored legislation.
- Pre-set floor consideration rules: no amendments and only 20 hours of debate on a signed deal and all conforming changes to U.S. law. To get this extraordinary control, the executive branch only had to notify Congress of its actions (e.g. “USTR intends to start talks/sign a deal with nation X in 90 days”). Congress was unable to veto the executive branch’s decision.

**3. The result was retrograde trade agreements that are hurting the U.S. middle class while increasing poverty and instability overseas.** After nearly two decades of the NAFTA-WTO trade model that Fast Track delivered, we’ve lost nearly 5 million U.S. manufacturing jobs, the 1993 trade deficit of \$212 billion has exploded to \$898 billion, U.S. real median wages have remained flat at 1979 levels and median household income has actually declined the past four years. We have been flooded with unsafe imports and have been required to send tax dollars offshore thanks to the trade pact erosion of Buy American policies. Simultaneously, extreme poverty and hunger have increased in poor nations under this model.

**4. Congress should replace the outdated Past Track with a good process to get good trade agreements.** Fast Track was designed 40 years ago as a way to deal with traditional tariff and quota-focused trade deals. Today’s “trade” agreements affect a broad range of domestic non-trade issues like local prevailing wage laws, Buy American procurement, food safety, zoning, the environment and even local tax laws. Congress, state officials and the public need a new modern procedure for developing U.S. trade policy, one that matches the reality of 21<sup>st</sup>-century globalization agreements. **We need a mechanism that provides a steering wheel and emergency brakes to guide U.S. negotiators.** This is needed to ensure that future pacts contain terms beneficial to most Americans. See the other side of this page for some principles for designing such a new trade negotiating system that can deliver trade policy that works for the majority. With a new forward-looking trade negotiating process, we can ensure that U.S. trade expansion policy meets the needs of working families and small businesses.

## **To Get Good Trade Agreements that Benefit Most Americans, Congress Must Reassert Its Constitutional Role and *Replace* the Outdated Fast Track Procedure**

# Congress Must Replace Outdated Fast Track to Obtain Agreements that Benefit Most Americans

Fast Track was designed four decades ago by a president eager to seize congressional authority over trade agreements that focused on traditional tariff and quota issues and customs and dumping law. Today’s “trade” agreements affect a broad range of domestic non-trade issues like patents and copyright, immigration, financial regulation, energy policy, healthcare policy, food safety, procurement policy from prevailing wage laws to Buy American, zoning, the environment and more. Fast Track should be relegated to a museum of inappropriate technology. Congress, state officials and the public need a new modern procedure for developing U.S. trade policy, one that takes into account the realities of 21<sup>st</sup>-century globalization agreements. With a new, forward-looking trade negotiating process, we can ensure that 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 that future pacts benefit most Americans. Here are some key principles for designing a new trade negotiating system that can deliver trade policy that works for the majority.

<u>READINESS CRITERIA AND BINDING GOALS: WHO AND WHAT MUST OR MUST NOT BE IN TRADE PACTS</u>	<u>NO FREELANCING: SYSTEMATIC BRIEFINGS TO TRACK NEGOTIATIONS</u>	<u>CERTIFY TRADE GOALS WERE REALLY MET IN NEGOTIATIONS</u>	<u>CONGRESS MUST VOTE BEFORE A TRADE PACT CAN BE SIGNED</u>	<u>TAKE THE HEAT OFF THE FINAL IMPLEMENTING LEGISLATION</u>
<p><b>Congress must set criteria to guide decisions on the nations with which we will negotiate.</b> Certifying that a country meets ILO labor standards and human rights and democracy criteria will show a country to be ready for a win-win deal. The terms of our future trade agreements must also set <b>new rules for the global economy.</b> This will only happen if, when Congress delegates its trade authority, <b>Congress sets mandatory goals on what must and must not be in trade pacts:</b> no to more investment rules that incentivize offshoring and procurement rules that ban Buy American policies; yes to requiring that the many <i>existing</i> globally-agreed rules on labor, the environment and human rights must be met to obtain trade pact benefits. It’ll be an endless race-to-the-bottom without imposing such a <u>floor of decency</u>. Future deals must also respect <b>states’ right to prior informed consent</b> <i>before</i> being bound to pacts’ service sector, investment and procurement rules limiting their non-trade regulatory authority.</p>	<p>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. <b>Jurisdiction must be expanded to more congressional committees implicated by today’s expansive “trade” pacts.</b> The expanded list of committees must be <b>regularly briefed on negotiators’ progress in meeting Congress’ goals.</b> Negotiators must regularly brief state legislative officials about proposals’ local effects. The <b>trade advisor system must be reformed</b> to require diverse participation, rather than giving a select few access to texts unavailable to most in Congress or the public.</p>	<p>Not only negotiators and business reps 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 must be able to decide if negotiators really have met Congress’ goals. One way to give Congress this authority is to create a <b>special super-committee of chairs and ranking members of affected committees to certify mandatory goals were met.</b> A supermajority vote by the special committee would certify that in fact negotiations have met the key goals Congress listed. A super-committee certification could trigger a full-Congress vote on the agreement text.</p>	<p>Ensuring that Congress votes on a pact’s contents <i>before</i> it is signed is perhaps the most essential change to the Fast Track model. It is critical to ensure Congress has leverage over negotiators to meet Congress’ criteria and to make sure that agreements that do not serve the national interest are not signed and entered into. Under Fast Track, when the vote came after a presidential signature, Congress could be pressured to approve a bad deal at the risk of “undermining” U.S. foreign relations. Instead, Congress could vote on a simple <b>one-line resolution: “Congress authorizes the USTR to enter into the X agreement.” Only then could a deal be signed.</b> This would shift Congress’ focus onto pacts’ actual texts at a time when changes could still be made, restoring Congress’ constitutional duty to shape trade policy.</p>	<p>A pro-democracy, pro-worker, pro-environment Fast Track replacement would break into pieces Congress’ delegation of authority – with each subsequent step conditioned on satisfaction of Congress’ expectations. This would restore opportunities for Congress to hold executive branch negotiators accountable. By front-loading Congress’ role, providing more information to the public and providing states an opt-in for non-trade terms, the tenets of U.S. democracy, such as checks and balances and federalism, would be restored in trade pact policymaking. With a congressional vote required to sign a pact, <b>implementing bill votes would be less decisive of the outcomes – and less politically fraught</b> – and could be held under rules similar to final budget votes (e.g. limited amendments and privileged order).</p>

## Turning onto a Winning Path by Putting a Steering Wheel and Brakes on Trade Negotiators

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