

Trade Pacts Under “Fast Track” Undermine State Sovereignty



Trade is no longer simply a federal matter. Today’s international trade agreements delve deeply into matters of state law. Pacts like the North American Free Trade Agreement (NAFTA) and the World Trade Organization’s (WTO) General Agreement on Trade in Services (GATS) contain numerous policy obligations and constraints to which U.S. federal, state and local governments are bound to conform their domestic policies. These types of “trade” agreements, which were passed in the United States using an extremely outdated trade negotiating process called Fast Track Trade Authority, undermine state regulatory authority in three major areas:

Government Procurement

The government procurement rules contained in trade pacts such as the WTO’s Government Procurement Agreement (GPA) and the Central America Free Trade Agreement (CAFTA) threaten a variety of common state purchasing policies, including:

- Measures to prevent offshoring of state jobs;
- “Buy Local or “Buy America” policies;
- Preferences for recycled content, renewable energy, fuel efficient vehicles and more.

Investment

Under NAFTA, not only can countries challenge state laws as barriers to trade, but corporations can also launch trade suits against state policies in trade tribunals. Corporate investors have used NAFTA’s Chapter 11 investor-state enforcement system to challenge domestic state court rulings, state environmental laws, local land use policies, public health measures and even the provision of public postal services.

Services

The WTO’s GATS provides a platform for offshoring services jobs in scores of different service sectors. The convoluted rules of the GATS also threaten innovative state programs, such as efforts to expand low-cost health care coverage to the uninsured. In 1995, the federal government bound many service sectors to the GATS rules without consulting states, including:

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| ▪ financial services | ▪ transportation | ▪ telecommunication services |
| ▪ health insurance | ▪ distribution | ▪ services related to mining, fishing, forestry and energy |
| ▪ gambling | ▪ information services | ▪ higher education might be next! |

What happens if my state laws conflict with international trade agreement rules?

- Other nations that are party to the agreement are empowered to challenge a nonconforming state policy as a violation of the agreement. The case is heard in a binding, closed-door dispute resolution system established in the text of the agreement.
- State government officials have no standing before these tribunals and must rely on the federal government to defend a challenged law.
- Policies judged to violate the rules of the agreement must be changed or trade sanctions can be imposed on the United States.
- The federal government is obliged to use all constitutionally-available powers – for instance, preemptive legislation, lawsuits and cutting off funding – to force state and local government compliance with the tribunal rulings.

States Lead the Fight for Fairer Trade Policies

Services: Alarmed at the role the WTO’s GATS has already had in accelerating the offshoring of service-sector jobs and worried about the problems the agreement could pose for quality health care and higher education, in 2006 four state governors took decisive action to safeguard their states from the worst aspects of the GATS. Governors Baldacci of Maine, Kulongoski of Oregon, Granholm of Michigan and Vilsack of Iowa wrote to the U.S. Trade Representative (USTR) demanding that their states be carved out of prior and future U.S. GATS commitments.

Procurement: Due to the growing awareness that states have much to lose and little to gain by signing up to the restrictive procurement rules of trade agreements, 31 states rejected CAFTA’s procurement provisions in 2005. In the recent trade agreements with Peru and Colombia, all but eight governors declined to sign up to the agreements’ procurement rules. State legislators, who are authorized with setting procurement policy in the state, have been active in weighing in with governors. In 2005, two state legislatures took the extra step of clarifying the legal procedure at the state level regarding trade agreements’ procurement provisions. Maryland and Rhode Island both passed laws that ensured the power to sign up to the procurement terms of any trade agreement rested exclusively with the state legislature and not with the governor.

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 – state and local governments have no leverage to hold U.S. Trade Representative (USTR) accountable to their concerns and respect official state requests.

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 without states opting in, and alerting them 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.