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Will the Circle Be Unbroken? Chile's Accession to the NAFTA and the Fast-Track Debate

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WILL THE CIRCLE BE UNBROKEN? CHILE'S ACCESSION TO THE NAFTA AND THE FAST-TRACK DEBATE

I. INTRODUCTION

The process by which international trade agreements are negotiated, concluded, and implemented into United States law has undergone a significant transformation since the original framers first designated both the executive and legislative branches as the primary participants in the furtherance of United States trade relations abroad.[1] Until the latter part of the twentieth century, foreign trade agreements were accomplished through a series of steps which often proved to be inexpedient and unpredictable.[2] In addition, an atmosphere of distrust and a reluctance to cooperate evolved from the interactions between Congress and the executive branch in the formulation of foreign trade policy.[3]

In 1974, however, Congress implemented a new tool for formulating international trade agreements which marked the beginning of not only greater cooperation between the legislative and executive branches, but also an

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1. U.S. CONST. art. I, § 8, cl. 3; U.S. CONST. art. II, § 2, cl. 2. *See also* Edmund W. Sim, *Derailing the Fast-Track for International Trade Agreements*, 5 FLA. J. INT'L L. 471, 476 (1990) (stating that the Constitution mandates that the executive and legislative branches engage in a balancing of power as far as the formulation of foreign trade policy is concerned); C. O'Neal Taylor, *Fast Track, Trade Policy, and Free Trade Agreements: Why the NAFTA Turned Into a Battle*, 28 GEO. WASH. J. INT'L L. & ECON. 1, 15 (1994); *infra* notes 21-145 and accompanying text.

2. Ilona B. Nickels, *NAFTA's Passage Through Fast-Track*, MEX. TRADE & L. REP., Mar. 1993, at 7. *See also* Natalie R. Minter, *Fast-Track Procedures: Do They Infringe Upon Congressional Constitutional Rights?*, 1 SYRACUSE J. LEGIS. & POL'Y 107, 107 (1995) (noting that the implementation of trade agreements into law often took months under traditional congressional approval measures); *infra* text accompanying notes 29-32.

3. Harold Hongju Koh, *The Legal Markets of International Trade: A Perspective on the Proposed United States-Canada Free Trade Agreement*, 12 YALE J. INT'L L. 193, 201-10 (1987) (discussing the relationship between Congress and the executive from the years 1930 to 1984); Sim, *supra* note 1, at 476 (explaining that a combative relationship between Congress and the executive branch resulted from their overlapping roles in foreign trade). *See also* Taylor, *supra* note 1, at 18. As a result of the friction between the executive and legislative branches in defining United States trade policy, two myths evolved. *Id.* First, the executive branch began to presume that Congress was too protectionist to be trusted with the formulation of trade agreements. *Id.* at 19. Second, Congress believed that the executive branch could not be trusted to cooperate with the legislative branch. *Id.* at 20. *See infra* notes 46-50 and accompanying text.

innovative procedure which expedited the entire treaty-making process.[4] This instrument, known as fast-track authority, is the means through which Congress authorizes the President unilaterally to negotiate international trade agreements for a limited period of time.[5] However, the President must keep Congress updated on the progress of the negotiations, seek congressional input, and submit the final agreement to Congress for approval.[6] At the same time, fast-track authority provides that Congress, when presented with the final draft of the agreement, can either approve or reject the proposal without attaching extensive modifications to the agreement.[7] Despite many constitutional objections to this trade tool, fast-track procedures result in the execution of international trade agreements in an efficient and expeditious manner while simultaneously meeting the demands of both Congress and the executive branch.[8]

Nevertheless, Congress, in recent years, has become increasingly reluctant to grant fast-track authority to the President for the negotiation of trade agreements.[9] This reluctance, often based on a variety of peripheral and irrelevant factors, threatens the effectiveness of fast-track authority and jeopardizes the competitiveness and credibility of the United States in the rapidly developing world order of international trade.[10] For example, Congress is considering granting fast-track authority for the negotiation of Chile's accession

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4. Harold Hongju Koh, *The Fast Track and United States Trade Policy*, 18 BROOK. J. INT'L L. 143, 144 (1992) (explaining that fast-track procedures serve a two-fold purpose: while enhancing the President's negotiating credibility, fast-track also promotes presidential accountability to Congress). *See also* Ellen G. Yost, *The United States Perspective on Negotiations for a North American Free Trade Agreement*, 5 INT'L L. PRACTICUM 67 (1992).

5. Trade Act of 1974, Pub. L. No. 93-618, §§ 151-53, 88 Stat. 1978 (1975) (codified at 19 U.S.C. §§ 2191-2193 (1988)). *See also* Hongju Koh, *supra* note 4, at 143-44; Vanessa Patton Sciarra, Note, *Congress and Arms Sales: Tapping the Potential of the Fast Track Guarantee Procedure*, 97 YALE L.J. 1439, 1453-57 (1988).

6. Omnibus Trade and Competitiveness Act of 1988, §§ 1102-1103, 19 U.S.C. §§ 2902-2903 (1988). *See also* Hongju Koh, *supra* note 4, at 146 (stating that the legislative veto effected a compromise in which the President gained more negotiating authority, while Congress was assured a comprehensive consultative process with the executive).

7. Omnibus Trade and Competitiveness Act of 1988 § 1103(a)(1)(B). *See also* Steve Charnovitz, *No Time for NEPA: Trade Agreements on a Fast Track*, 3 MINN. J. GLOBAL TRADE 195, 201 (1994) (stating that fast-track authority was created to insure that implementing legislation needed for a trade agreement would be voted on by Congress without amendments).

8. Charnovitz, *supra* note 7, at 197. *But see id.* at 197 n.73 (citing Brief for the Appellants at 12-13, Public Citizen v. United States Trade Representative, 5 F.3d 549 (D.C. Cir. 1993) (No. 93-5212) (stating that the fast-track rules are a direct reflection of the President's inherent power over international relations)).

9. Stephen Fidler, *Chile Gloomy on NAFTA Prospects*, FIN. TIMES, Dec. 11, 1995, at 6.

10. Mike Pariente, *New Kid on the Block: Chile's Struggle to Join the North American Free Trade Association*, HISPANIC, Apr. 1995, *available in* WESTLAW, ALLNEWS, at *5. *See also Chile is Left Waiting at the Altar*, CHI. TRIB., Nov. 10, 1995, at 28 [hereinafter *Chile Left Waiting*]; Peter Morton, *Isolationist Fever Creeps into U.S. Politics*, FIN. POST, Dec. 2, 1995, at 6.

to the North American Free Trade Agreement (NAFTA),[11] which is currently comprised of the United States, Canada, and Mexico.[12] The accession of Chile to the NAFTA would constitute a significant step towards the realization of a free trade zone in the Western Hemisphere.[13] Absent fast-track procedures, the President of Chile refuses to negotiate with the United States regarding Chile's accession to the NAFTA.[14] However, Congress is vacillating on its decision to grant fast-track authority based on economic, environmental, labor, and purely partisan factors.[15] This hesitation not only threatens to derail a potentially valuable addition to the NAFTA table, but also places United States trade policy at risk.[16] Therefore, the present status of fast-track authority must be revised in order to preserve the roles of the executive and legislative branches in foreign trade, while simultaneously promoting the trade interests of the United States in a more productive and expeditious manner.

This Note examines the use of fast-track authority in the implementation of international trade agreements. More specifically, this Note will illustrate the need to modify fast-track procedures by reflecting upon Congress' reluctance to grant fast-track authority for the negotiation of Chile's accession to the NAFTA. In addition, this Note will set forth a proposed revision of fast-track procedures with the objectives of furthering United States international trade objectives, and of insuring the United States' role as a leader in the new world order of free trade.

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11. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 605 (entered into force Jan. 1, 1994) [hereinafter NAFTA]. The NAFTA was formed to effectuate the eventual total reduction of tariffs among the signatories. *Id.*

12. Pariente, *supra* note 10 at *1 (noting that during the Summit of the Americas in Miami in 1994, President Clinton formally invited Chile to become the fourth member nation of the North American Free Trade Agreement).

13. Georges Fauriol & Sidney Weintraub, *U.S. Policy, Brazil, and the Southern Cone*, WASH. Q., Summer 1995, at 125. The Miami Summit called on all of the governments in the Western Hemisphere to establish a free trade area from Canada to Tierra del Fuego by the year 2005. *Id.*

14. *U.S. Lawmakers Want Chile NAFTA "Fast Track,"* METALS WK., Aug. 21, 1995, at 12 [hereinafter *U.S. Lawmakers*] (explaining that Chilean officials have indicated that they will not sign any NAFTA agreements until fast-track authority has been approved, arguing that full congressional review without fast-track procedures would amount to negotiating membership in the free trade agreement twice).

15. Fidler, *supra* note 9, at 6. *See also* Pariente, *supra* note 10, at *1. Pariente notes that opponents to fast-track authority argue that labor and environmental standards, human rights, anti-drug enforcement, and issues regarding the democratic development of nations should not be tied directly to free trade agreements. *Id.* In addition, as the presidential election draws near, politicians will be driven to do what is best for their partisan interests, instead of adhering to what is best for the nation. *Id.*

16. *See infra* notes 197-223 and accompanying text.

Section II of this Note will briefly explore the history and development of fast-track authority in the foreign trade policy of the United States.[17] Section III will focus on fast-track procedures in general and will examine the constitutionality of this trade tool.[18] Section IV will detail the present controversy regarding the accession of Chile to the NAFTA and the possible consequences resulting from Congress' failure to grant fast-track authority to the President.[19] Finally, Section V will set forth a proposed modification to fast-track authority and the goals that will be achieved by such modification.[20]

II. THE HISTORY AND DEVELOPMENT OF FAST-TRACK AUTHORITY

A. The United States Constitution and the Making of International Trade Agreements

The original framers of the United States Constitution created a unique democracy in which each of the three branches of government may fulfill its own responsibilities and duties, free from the influence and interference of the other branches.[21] At the same time, however, the Constitution permits one branch to seek assistance from another branch in meeting its duties.[22] This interdependence, therefore, results in an often combative atmosphere.[23] For example, both the legislative and executive branches are endowed with the authority to participate in the negotiation of international trade agreements.[24] Article I of the Constitution provides Congress with the power to "regulate commerce with foreign nations."[25] At the same time, Article II views the President as the United States' representative in all international matters and

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17. *See infra* notes 21-101 and accompanying text.

18. *See infra* notes 102-45 and accompanying text.

19. *See infra* notes 146-223 and accompanying text.

20. *See infra* notes 224-51 and accompanying text.

21. U.S. CONST. arts. I-III. *See also* Sim, *supra* note 1, at 472 (noting that the Founding Fathers wished both to restrict and to empower future leaders by creating a separation of powers); JOHN H. JACKSON, THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS 61 (1989) (illustrating that this division of authority among the three branches reflects the system of checks and balances created by the Constitution).

22. Nixon v. Administrator of Gen. Serv., 433 U.S. 425, 443 (1977). *See also* Sim, *supra* note 1, at 472 (stating that the Constitution established a tripartite system of government in which the authority was shared jointly by the President, the Congress, and the Judiciary).

23. *See* Taylor, *supra* note 1, at 15; Sim, *supra* note 1, at 476. The Constitution forces the legislature and the executive to engage in a precarious balance of power with regard to trade agreements. *Id.* at 472. However, despite their many successes, their failures to cooperate "dot the history of international commerce." *Id.* The International Trade Organization, which was proposed after World War II and which faded away as a result of the lack of cooperation between Congress and the executive, exemplifies such a failure. *Id.*

24. *See* Taylor, *supra* note 1, at 15 (noting that the negotiation of international trade agreements requires the participation of these two branches of government).

25. U.S. CONST. art. I, § 8, cl. 3.

bestows upon the executive the authority to enter treaties.[26] Therefore, the process of negotiating and concluding international trade agreements mandates cooperation between the two, often opposing, branches of government.[27]

The use of fast-track procedures is a product of modern times.[28] Before the advent of modern fast-track procedures, the President submitted international trade agreements to Congress for approval.[29] However, without the efficiency provided by the fast-track process, Congress often took considerable time to approve and to implement the necessary legislation since it was not bound by a restrictive timetable.[30] In addition, both the House of Representatives and the Senate were entitled to attach amendments or to redact portions of the agreement.[31] Thus, not only were the original intentions of the parties to the agreement severely compromised by such practices of Congress, but the credibility of the United States in the eyes of its trading partners was diminished as well.[32] Fast-track authority, on the other hand, expedites the congressional approval process by ensuring that Congress deals with a trade agreement as a complete package.[33]

Prior to 1934, Congress played a dominant role in the formulation of international trade agreements and the execution of foreign trade policy.[34] The President, on the other hand, was restricted to the fulfillment of inconsequential responsibilities.[35] Congressional dominance in the area of international trade, however, was short-lived. In 1930, despite the warnings of leading economists,

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26. U.S. CONST. art. II, § 2, cl. 2.

27. Sim, *supra* note 1, at 472 (explaining that while the President may negotiate international agreements, only Congress may implement legislation affecting international commerce into domestic law).

28. Pariente, *supra* note 10, at *1 (stating that fast-track authorization has been used in every piece of trade legislation considered by Congress since World War II). *See also* Hongju Koh, *supra* note 4, at 146 (noting that prior to 1974, trade agreements had been accepted into law either as congressional-executive agreements or as sole executive agreements).

29. Nickels, *supra* note 2, at 8.

30. *Id.* *See also* Minter, *supra* note 2, at 108 (stating that in the absence of fast-track, the implementation of a trade agreement often takes months under normal congressional procedures).

31. Nickels, *supra* note 2, at 8. By amending negotiated trade agreements, Congress had the power to alter the original expectations underlying the agreement. *Id.*

32. *See also* Charnovitz, *supra* note 7, at 199 (illustrating the President's inability to assure foreign negotiating parties that the agreement will reflect their expectations under normal procedures).

33. Minter, *supra* note 2, at 109 (stating that this process insures that the original version of the trade agreement, which is submitted by the President, will be the version Congress votes upon).

34. STEPHEN D. COHEN, THE MAKING OF UNITED STATES INTERNATIONAL ECONOMIC POLICY 7 (1977); ROBERT A. PASTOR, CONGRESS AND THE POLITICS OF UNITED STATES FOREIGN ECONOMIC POLICY, 1929-1976, at 79 (1980); Taylor, *supra* note 1, at 17.

35. Sim, *supra* note 1, at 475 (describing United States trade policy as being "based almost entirely on congressionally controlled tariffs . . . with the President limited to ministerial tasks").

Congress enacted the Smoot-Hawley Tariff Act[36] which was aimed at sustaining the economic prosperity enjoyed by the United States in the years following World War I.[37] This Act set tariffs at their highest level in the history of the United States[38] and has been attributed as the primary cause of the Stock Market Crash of 1929[39] and the Great Depression.[40] As a result, Congress, having been publicly condemned for its traditional adherence to protectionist trade policies, enthusiastically turned the reins of international trade policy-making over to the executive branch in the Reciprocal Trade Agreements Act of 1934.[41] This Act gave the President, for a certain period of time, wide latitude in unilaterally negotiating trade agreements, thereby insulating Congress from further political disasters.[42]

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36. Smoot-Hawley Tariff Act of 1930, ch. 497, 46 Stat. 590 (1930) (codified as amended at 19 U.S.C. §§ 1206-1677 (1988)).

37. *Id. See also The History of Protectionism Proves the Value of Free Trade*, INSIGHT, Summer 1992, at 24. The prevailing attitude of the years immediately preceding World War I was that the United States could sustain and even dramatically increase the effects of the economic boom of the "roaring 20's" by sharply raising tariffs. *Id.* Congress also believed that American businesses, which had expanded into new markets as a result of the war, needed protection as infant industries from foreign competition. *Id.* The Smoot-Hawley Tariff Act, enacted to meet these concerns during the Hoover administration, increased the tariffs on most imports, including minerals, chemicals, dyes and textiles. *Id.* Tariffs were raised on more than one-thousand articles in trade resulting both in the retaliation by at least twenty-six other nations against the United States and in the Depression of the 1930's. *Id.* In response to this overt protectionism, other nations increased their own tariff levels, to the detriment of the United States. *Id.* In the first year following the enactment of the Smoot-Hawley Tariff Act, customs revenues plummeted from $600 million to $250 million. *Id.* In addition, the United States' foreign trade decreased from $9.6 billion to $2.9 billion. *Id.* The crash in customs revenues and exports led to a sharp decrease in the United States Treasury, thereby triggering the Depression of the 1930's. *Id.* It should be noted that President Woodrow Wilson twice vetoed such measures stating that: "We must abolish everything that bears even the semblance of privilege or of any kind of artificial advantage, and put businessmen and producers under the stimulant of a constant necessity to be efficient, economical and enterprising." *Id.* The Smoot-Hawley Tariff Act is still in force today and applies to nations which do not enjoy Most Favored Nation status with the United States. *Id.*

38. *Id.*

39. *See generally* PASTOR, *supra* note 34. *But see* Barry Eichengreen & Douglas A. Irwin, *Trade Blocs, Currency Blocs and the Disintegration of World Trade in the 1930's*, NAT'L BUREAU ECON. RES. 1, 1-5 (1993) (disagreeing with the premise that the Smoot-Hawley Tariff Act was a major cause of the Depression in the 1930's).

40. *See* Taylor, *supra* note 1, at 17.

41. The Reciprocal Trade Agreements Act, 19 U.S.C. §§ 1351-1354 (1988). *See, e.g.*, Sim, *supra* note 1, at 475 (describing Congress' humiliation as a result of the Smoot-Hawley debacle); GILBERT R. WINHAM, THE EVOLUTION OF INTERNATIONAL TRADE AGREEMENTS 19 (1992) (noting that the United States, upon enacting the Reciprocal Trade Agreements Act, recognized for the first time that the setting of tariffs was an action that could be negotiated with other nations).

42. Reciprocal Trade Agreements Act § 1351(a). Under this Act, the President's unilateral negotiating power was extended for three years. *Id.*

In 1962, Congress attempted to take back some of the power previously granted to the executive branch in negotiating international trade agreements by enacting the Trade Expansion Act,[43] which required the President to seek congressional approval for all trade agreements.[44] This Act was intended to provide Congress with greater control over the content of international trade agreements.[45] However, as a glaring illustration of the distrust and lack of cooperation that exists between Congress and the executive branch, President Johnson refused to abide by the Trade Expansion Act during the negotiations of the Kennedy Round[46] of the General Agreement on Tariffs and Trade (GATT),[47] and entered the GATT with neither congressional authorization nor approval.[48] As a result, Congress enacted domestic legislation which, in effect, nullified President Johnson's agreement.[49] In addition, Congress refused to grant any further unilateral negotiating authority to the executive until 1974.[50]

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43. Trade Expansion Act of 1962, Pub. L. No. 87-794, 76 Stat. 872 (1962) (repealed 1975).

44. *Id.*

45. *Id.* The Trade Expansion Act of 1962 continued to allow the President to negotiate international trade agreements; however, it required the President to submit the agreement to Congress for final approval. *Id. See also* Sim, *supra* note 1, at 475. Sim noted that in the legislative history of the Trade Expansion Act, Congress directed that the United States' antidumping law not be affected by negotiations conducted by the President. *Id.* In fact, Congress enacted this Act primarily because of its fear that President Johnson, in the negotiation of the General Agreement on Tariffs and Trade (GATT), would agree to the inclusion of non-tariff barriers, such as antidumping measures. *Id.* at 476. The regulation of non-tariff barriers falls beyond the scope of Article I's designation of congressional powers; thus, by requiring the President to submit the final draft for approval, Congress could ostensibly control the content of the agreement and preclude the proposed antidumping provisions. *Id. See infra* note 49.

46. RALPH H. FOLSOM ET AL., INTERNATIONAL BUSINESS TRANSACTIONS: A PROBLEM—ORIENTED COURSEBOOK 21 (3d ed. 1995) (defining "rounds" as formal negotiations of the GATT which facilitates "the discussion of international trade barriers on a multi-nation level, rather than having world trade arrangements be the result of an aggregate of bilateral agreements").

47. BLACK'S LAW DICTIONARY 681 (6th ed. 1990) (defining GATT as "[a] multi-lateral international agreement that requires foreign products to be accorded no less favorable treatment under the laws than that accorded domestic products"). *See also The History of Protectionism Proves the Value of Free Trade*, *supra* note 37, at 24. The GATT, established during the global reconstruction following World War II, was created to address the issue of tariff and non-tariff barriers against trade. *Id.* This treaty was signed at the Geneva Trade Conference in 1947 and was formed to address mutlilateral trade issues and the resolution of trade disputes. *Id.* The basic principle underlying the GATT is the Most Favored Nation Status, which dictates that member states treat all other GATT members equally. *Id. See also* FOLSOM, ET AL., *supra* note 46, at 318 (describing Most Favored Nation Status as the policy that trade barrier restrictions, when enacted by members of the GATT, should apply equally to all trading members rather than only to a limited few).

48. Taylor, *supra* note 1, at 18. In response to the perceived constraint on his negotiating authority, President Johnson entered into the agreement and adopted the antidumping code, contrary to Congress' mandates. *Id. See also* Sim, *supra* note 1, at 475.

49. Sim, *supra* note 1, at 476 (stating that Congress negated the agreement by making it subsidiary to existing United States law).

50. *Id.*

B. The Birth of Fast-Track Authority

The Trade Act of 1974,[51] which addressed the United States' involvement in the Tokyo Round[52] of the GATT negotiations, marked the beginning of a new tool in formulating international trade agreements: fast-track authority. In addition to being granted advance authority to negotiate trade agreements, the President was given the responsibility of consulting with the Senate Finance Committee, the House Ways and Means Committee, and any other committees impacted by the proposed agreements.[53] The President was also required to notify both houses of Congress ninety days before actually concluding the agreement, and to seek input from relevant government departments and agencies, the private sector, and Congress as well.[54] In return, Congress modified the House and Senate Rules to provide for an up-or-down vote on the final draft of the agreement without amendments or redactions.[55] Fast-track authority facilitated a greater cooperation between the legislative and executive branches by allowing Congress to have more access and input into trade agreements, and by ensuring that the President would retain his credibility and status as the United States' primary representative in the eyes of other negotiating nations.[56]

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51. Trade and Tariff Act of 1974 § 102-151, 19 U.S.C. §§ 2191-2913 (1988).

52. The Tokyo Round, the seventh conference of the GATT, was completed in 1979. The primary focus of this round was the reduction of non-tariff barriers. FOLSOM ET AL., *supra* note 46, at 21.

53. Trade and Tariff Act of 1974 §§ 102-151. *See also* Sim, *supra* note 1, at 478 (noting that the Trade and Tariff Act of 1974 required the President to complete numerous procedural tasks before gaining access to the fast track procedures).

54. 19 U.S.C. §§ 2191-2913.

55. *Id.* *See also* Charnovitz, *supra* note 7, at 197.

56. Hongju Koh, *supra* note 4, at 148. The advantages of fast-track authority were fourfold:

> First, it allowed Congress to overcome both the political inertia and the procedural obstacles that frequently prevent a controversial measure from coming to a vote at all. Second, it controlled domestic special interest group pressures that might otherwise have provoked extensive, *ad hoc* amendment of a negotiated trade accord. Third, it bolstered the Executive Branch's negotiating credibility with United States allies, which had suffered serious damage during the Kennedy Round, by reassuring trading partners that negotiated trade agreements would undergo swift and nonintrusive legislative consideration. Fourth, and finally, it acted functionally like a one-house legislative veto to control executive discretion, for it authorized either House to block passage of a fully negotiated trade agreement simply by voting down the agreement or its implementing legislation.

Id.

Within the last fifteen years, fast-track authority has been a staple for the United States in the negotiation of international trade agreements.[57] The Uruguay Round[58] of the GATT and the North American Free Trade Agreement[59] are the two most recent and significant trade agreements formulated under fast-track procedures. The multilateral negotiations for the Uruguay Round of the GATT began in 1986.[60] The final GATT Ministerial Meetings, signifying the conclusion of the agreement, were scheduled for 1990; however, these meetings were stalled as a result of a dispute between the United States and the European Union regarding agricultural subsidies.[61] Had the Uruguay Round been completed as scheduled in 1990, President Bush could have submitted the agreement to Congress under fast-track procedures within the requisite timeframe.[62] The disagreement between the United States and the European Union prevented the agreement from falling within the fast-track parameters, thereby forcing President Bush to seek an extension of fast-track authority from Congress.[63]

When the conclusion of the GATT was immeasurably delayed, the United States turned its attention to bilateral trade agreements.[64] "During the summer of 1990, President Salinas of Mexico requested bilateral negotiations with the United States for a free trade agreement."[65] President Bush notified Congress of his intention to enter negotiations with Mexico, later amending this

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57. The Trade and Tariff Act of 1984 and the Omnibus Trade and Competitiveness Act of 1988 both set forth provisions for fast-track authority. The 1988 Act constitutes the most current pronouncement of fast-track authority. Trade and Tariff Act of 1984, Pub. L. No. 98-573, 98 Stat. 2948 (codified in scattered sections of 19 U.S.C.) (amending Trade Act of 1974); Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. §§ 2902-2903 (1988). In January of 1988, the United States concluded a free trade agreement with Canada with the aid of fast-track procedures. Taylor, *supra* note 1, at 32. Despite the fact that a dispute arose over whether the Reagan Administration adequately satisfied the consultation requirement of the 1988 Act, the executive obtained congressional approval for the agreement by agreeing to work closely with Congress in drafting the necessary implementing legislation. *Id.* The United States-Canada Free Trade Agreement, which was considered by Congress in the summer of 1988, entered into force later that year. *Id. See also* United States-Canada Free-Trade Agreement Implementation Act of 1988, 19 U.S.C. § 2112 (1993).

58. *See supra* notes 46-47 (describing the nature of the GATT and the definition of "rounds").

59. NAFTA, *supra* note 11, 32 I.L.M. at 289.

60. WINHAM, *supra* note 41, at 19.

61. *Id.* at 86-94.

62. *See infra* note 109 and accompanying text.

63. *See infra* note 117 and accompanying text.

64. Taylor, *supra* note 1, at 33.

65. *Id.* (citing Commitment to Reach a North American Free Trade Agreement: Chronology in Bureau of Public Affairs, 3 DEP'T ST. DISPATCH 565-67 (July 20, 1992) (detailing all communications between the United States and Mexico regarding the negotiation of a free trade agreement)).

notification by including Canada in the negotiations.[66] However, as in the case of the Uruguay Round of the GATT, the timeframe for fast-track authority, which was set forth in the 1988 Act,[67] was no longer applicable to the negotiation of the NAFTA. Therefore, President Bush was required to seek an extension of fast-track procedures from Congress.[68]

On March 1, 1991, President Bush included both the GATT and the NAFTA in his request for the extension of fast-track authority.[69] This request was supported by a comprehensive review of the Uruguay Round negotiations, a detailed report by the Advisory Committee for Trade Policy and Negotiations,[70] and other materials which further illustrated the need for fast-track authority.[71] Nevertheless, the extension request was not warmly received by Congress, and an explosive debate regarding the extension of fast-track authority ensued.[72]

Two primary arguments arose against the extension of fast-track authority in Congress. First, many members of Congress opposed the concept of fast-track authority in general. This opposition was based largely on the premise that an extension of fast-track authority would signify a surrender of congressional power.[73] Not only were these opponents distrusting of both the executive and the substantive content of the NAFTA, but they also asserted their belief that Congress ought to exercise more control over the process of

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66. Joint Statement Announcing Canada-Mexico-United States Trilateral Free Trade Negotiations, 1991 PUB. PAPERS 111 (Feb. 5, 1991).

67. The Omnibus Trade and Competitiveness Act of 1988 § 1103(b)(1)(A), 19 U.S.C. § 2902 (1988). *See infra* note 109 and accompanying text.

68. *See infra* notes 117-18.

69. Message to the Congress Transmitting a Report on Trade Negotiations and Agreements and Fast Track Authority Extension, 1991 PUB. PAPERS 206 (Mar. 1, 1991), *reprinted in* 137 CONG. REC. H1330 (daily ed. Mar. 4, 1991). *See also* Taylor, *supra* note 1, at 16. President Bush combined both the GATT and the NAFTA in one fast-track extension request. *Id.* at 33. Many members of Congress opposed the NAFTA; however, Congress had long accepted the use of fast-track procedures for the GATT. *Id.* at 35-38. Thus, by submitting one extension request, which covered both the GATT and the NAFTA, the Bush Administration hoped to block any opposition to fast-track authority, believing that Congress would not willfully jeopardize the GATT. *Id.*

70. This committee is a private sector advisory group created by the Trade and Tariff Act of 1974.

71. Taylor, *supra* note 1, at 41. The executive asserted that fast-track procedures guaranteed a timely and unamended agreement. *Id.* In addition, fast-track authority was shown to be a strong incentive for other nations to negotiate agreements with the United States. *Id.* Finally, the Bush Administration claimed that fast-track authority makes Congress and the President partners in the process of negotiating and concluding international trade agreements. *Id.*

72. *See infra* text accompanying notes 82-101.

73. "[F]ast track operates like a gun to our head—no amendments, no reservations, take 30 days and vote up or down." 137 CONG. REC. S6558 (daily ed. May 23, 1991) (quoting Senator Hollings).

negotiating and concluding international trade agreements.[74] Second, many members of Congress, having been pressured by lobbying constituent groups, opposed the extension of fast-track authority for the NAFTA based on labor and environmental concerns.[75] In terms of labor, Congress feared that companies in the United States would move to Mexico in order to take advantage of lower wage rates, thereby resulting in job losses and worker dislocation in the United States.[76] In addition, Congress worried that labor dislocation, in the absence of adequate worker adjustment and retraining programs, would have a detrimental effect on the United States economy.[77] With regard to the environment, Congress asserted that the health and safety standards of the United States might be attacked as non-tariff barriers to trade.[78] Congress also warned of the possibility that United States companies would relocate to Mexico in order to avoid mandatory compliance with the strict environmental standards of the United States.[79] In addition, Congress predicted that transboundary pollution along the border between the United States and Mexico would increase as a direct result of United States companies moving south.[80] Therefore, because of the opposition to the NAFTA by many politicians, Congress threatened to reject the request for the extension of fast-track authority by issuing a procedural disapproval resolution.[81]

In response to the threat of a procedural disapproval resolution by Congress, President Bush instituted an Action Plan, in which several promises were made in exchange for the extension of fast-track authority.[82] First,

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74. Taylor, *supra* note 1, at 41-42.

75. Sim, *supra* note 1, at 481. Labor, environmental and consumer groups opposed the extension of fast-track authority for both the GATT and the NAFTA. *Id.* "[B]y opposing extension, . . . [these] groups and others for the first time managed to inject themselves directly into international trade policymaking." *Id.*

76. *See* 137 CONG. REC. H3514 (daily ed. May 23, 1991) (detailing how 32 representatives and 13 senators asserted that the NAFTA would result in traumatic job losses in the United States).

77. *See infra* text accompanying notes 87-96.

78. *See* 137 CONG. REC. H3549 (daily ed. May 23, 1991).

79. *Id.*

80. *See* Tim Golden, *A History of Pollution in Mexico Casts Clouds Over Trade Accord*, N.Y. TIMES, Aug. 16, 1993, at A1; Robert Tomsho, *Dirty Work: Environmental Posse Fights a Lonely War Along the Rio Grande*, WALL ST. J., Nov. 10, 1992, at A1.

81. The Omnibus Trade and Competitiveness Act of 1988 § 1103(c)(1)(B), 19 U.S.C. § 2902 (1988). *See infra* notes 115-16.

82. HOUSE COMM. ON WAYS AND MEANS, 102D CONG., EXCHANGE OF LETTERS ON ISSUES CONCERNING THE NEGOTIATION OF A NORTH AMERICAN FREE TRADE AGREEMENT 1-72 (Comm. Print 1991) [hereinafter ACTION PLAN]. The Action Plan was intended to reduce any possible adverse effects of the NAFTA on U.S. jobs in six primary ways. First, the plan provided a transition period after the removal of tariffs which would permit vulnerable American industries to adapt. *Id.* at 42. Second, the plan mandated strict rules of origin to prevent countries, which were not parties to the NAFTA, from using Mexico as an "export platform." *Id.* at 44-45. Third, safeguard measures were to be implemented in order to shield American industries from import

President Bush committed his administration to maintaining a close relationship with Congress throughout the negotiation process.[83] Next, the President promised to work with Congress to ensure that an effective worker retraining and assistance program would be implemented for dislocated American workers.[84] Finally, the executive agreed to develop a joint program with Mexico to protect the environment.[85] Ultimately, Congress rejected its procedural disapproval resolution.[86]

Despite the fact that all of the obstacles of fast-track authority were removed, Congress, upon enacting the Gephardt-Rostenkowski Resolution,[87] regarded the extension as conditioned on the President's negotiating a strong deal which effectively addressed Congress' labor and environmental concerns.[88] The Gephardt-Rostenkowski Resolution required the President to satisfy a specific list of objectives during both the Uruguay Round talks and the NAFTA negotiations.[89] These objectives mandated that the President satisfy four basic requirements. First, the resolution mandated that the GATT and the NAFTA had to provide strict rules of origin[90] and enforcement measures.[91] Second, the United States was to be allowed to maintain its health and safety

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increases from Canada and Mexico. *Id.* at 43. Fourth, the Action Plan required the institution of a worker adjustment program for American workers who lost their jobs as a result of the NAFTA. *Id.* at 45-47. Fifth, the plan mandated that restrictions be erected to prevent an influx of Mexican workers into the United States. *Id.* Finally, the Action Plan provided a "Memorandum of Understanding" between the United States and Mexico on such subjects as health and safety, labor standards, and the resolution of labor conflicts." *Id.* at 67-81. *See also* Taylor, *supra* note 1, at 35-36.

83. ACTION PLAN, *supra* note 82, at 2.

84. *Id.*

85. *Id.* at 7-8. The Action Plan provided that the United States could exclude products which did not satisfy health and safety standards. *Id.* at 7. In addition, the plan promised joint cooperation with Mexico in improving Mexico's environmental standards and created a border program which would be dedicated to such issues as air and water pollution, pesticides, and hazardous materials. *Id.* at 8.

86. Taylor, *supra* note 1, at 48. *See infra* notes 87-96 and accompanying text (describing the Gephardt-Rostenkowski Resolution, which was enacted in lieu of the issuance of a procedural disapproval resolution).

87. Expressing the Sense of the House of Representatives with Respect to the U.S. Objectives that Should Be Achieved in the Negotiations of Future Trade Agreements, H.R. Res. 146, 102d Cong., (1991) [hereinafter Gephardt-Rostenkowski Resolution].

88. 137 CONG. REC. H3608 (daily ed. May 23, 1991) (statement of Rep. Gephardt). "[The resolution] presents another course—conditional fast track. Our resolution conditions the continuation of fast track authority on the President living up to [certain] commitments." *Id.*

89. *See supra* note 87 and accompanying text.

90. Rules of origin typically require that, in the case of a free trade agreement, an imported good originate in one of the member states in order to benefit from the lower tariff rates of the free trade arrangement. FOLSOM ET AL., *supra* note 46, at 325.

91. 137 CONG. REC. H3589-90 (daily ed. May 23, 1991).

standards.[92] Third, measures designed to minimize worker dislocation in the areas of industry and agriculture were to be permitted.[93] Finally, the resolution required that current United States laws regarding subsidies, dumping, and unfair trade practices were to remain in force.[94] In addition to these four commandments, the Gephardt-Rostenkowski Resolution required the implementation of legislation which was aimed at the NAFTA, such as the institution of worker adjustment programs and joint programs with Mexico which would address environmental concerns.[95] In the event that Congress was dissatisfied with the contents of the final agreements, the Gephardt-Rostenkowski Resolution permitted Congress to either rescind its grant of fast-track authority or reject the NAFTA in its entirety.[96]

In August of 1992, President Bush concluded the NAFTA negotiations and submitted the final agreement to Congress.[97] Despite congressional outcries that the NAFTA was unsatisfactory for the United States, President Bush asserted that the executive branch had met its obligations to Congress under both the Action Plan[98] and the Gephardt-Rostenkowski Resolution.[99] Thus, the NAFTA became a highly controversial political issue during the 1992 Presidential elections. Upon taking office, President Clinton tried both to appease Congress' aversion to the NAFTA and to avoid offending Canada and Mexico.[100] Clinton kept the final agreement as it was negotiated and addressed the labor and environmental issues of Congress through the negotiation of supplemental agreements, which were ultimately folded into the NAFTA.[101] Thus, the struggle between Congress and the executive over the application of fast-track procedures to the negotiations of the GATT and the NAFTA illustrates the steady weakening of the fast-track process.

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92. *Id.*

93. *Id.*

94. *Id.*

95. Gephardt-Rostenkowski Resolution, *supra* note 87. Section 7 of this resolution also required the United States Trade Representative to work with Congress during the negotiations of the NAFTA. *Id.*

96. *Id. See supra* note 88.

97. Letter to Congressional Leaders on the North American Free Trade Agreement, 1992-93 PUB. PAPERS 1595 (Sept. 18, 1992).

98. *See supra* note 84 and accompanying text.

99. *See supra* note 87 and accompanying text.

100. Taylor, *supra* note 1, at 52.

101. *Id.* These supplemental agreements were concluded in September of 1993. *Id. See also* North American Agreement on Environmental Cooperation, Sept. 14, 1993, 32 I.L.M. 1480 [hereinafter Environmental Cooperation]; North American Agreement on Labor Cooperation, Sept. 14, 1993, 32 I.L.M. 1499 [hereinafter Labor Cooperation].

III. FAST-TRACK AUTHORITY: ITS SIGNIFICANCE AS AN INSTRUMENT IN THE NEGOTIATION OF INTERNATIONAL TRADE AGREEMENTS AND ITS CONSTITUTIONALITY

A. The Application of Fast-Track Procedures

Congress further developed fast-track authority in its modifications of the 1974 Trade Act[102] through the enactment of both the Trade and Tariff Act of 1984[103] and the Omnibus Trade and Competitiveness Act of 1988.[104] It should be noted that despite the fact that the 1988 Act is the latest pronouncement of fast-track authority, the window of time in which the President was authorized to negotiate trade agreements on the fast-track has expired under the 1988 Act as of June 1, 1993.[105] Any future grant of fast-track authority to the executive is solely within the discretion of Congress.[106] The framework of fast-track authority under the 1988 Act can best be illustrated as a two-tiered system. The first tier pertained to agreements which properly fell within in a specified period of time.[107] The second tier, however, applied to situations in which the President had to request an extension of fast-track authority from Congress since the negotiation of the trade agreement took place after the requisite time period of the 1988 Act.[108]

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102. Alan F. Holmer & Judith H. Bello, *U.S. Trade and Policy Series No. 20 The Fast Track Debate: A Prescription for Pragmatism*, 26 INT'L LAW. 183, 184 (1992) (noting that the current provisions regarding fast-track authority can be found in Sections 1102 and 1103 of the 1988 Act, which refer to Section 151 of the Trade Act of 1974).

103. Trade and Tariff Act of 1984, Pub. L. No. 98-573, 98 Stat. 2948 (codified in scattered sections of 19 U.S.C.) (amending Trade Act of 1974). The 1984 Trade Act was implemented prior to the United States' Free Trade Agreements with Canada and Israel. *Id.* It required the President to notify and consult with both the House Ways and Means Committee and the Senate Finance Committee sixty legislative days before giving the requisite ninety-day notice of his intent to sign a free trade agreement with a country other than Israel or Canada. *Id.* at 149. The Act also provided that fast-track authority would automatically be granted where neither committee opposed the trade negotiations during this sixty-day period. *Id.* In the event that either committee rejected the negotiations or the final draft of the agreement during this sixty-day period, Congress would not grant fast-track authority to the Executive; however, the proposed agreement could still be introduced through the traditional treaty-making process. *Id.*

104. The Omnibus Trade and Competitiveness Act of 1988, Pub L. No. 100-418, 102 Stat. 1107 (codified at 19 U.S.C §§ 2902-2903 (1988)). *See also* Holmer & Bello, *supra* note 102, at 185 (explaining that fast-track authority officially expired in January of 1988, but was extended in the 1988 Act until 1993).

105. The Omnibus Trade and Competitiveness Act of 1988 § 1102(c)(1).

106. Taylor, *supra* note 1, at 15.

107. The Omnibus Trade and Competitiveness Act of 1988 § 1103(b)(1)(A).

108. *Id.* § 1103(b)(1)(B).

The first tier applied fast-track procedures to trade agreements entered into before June 1, 1991.[109] If the negotiation of the trade agreement occurred prior to this date, the President was required to provide the Senate Finance and House Ways and Means Committees with sixty days' written notice that he intended to enter into trade negotiations with a foreign nation.[110] It was at this point that the consultation period between the legislative and executive branches was to commence. Second, the President was obligated to notify the House of Representatives and the Senate of his intention to sign and enter into the proposed trade agreement no later than ninety calendar days prior to the conclusion of the negotiations.[111] Upon entering the agreement, the President was then required to submit the final draft, a draft of the implementing bill, a statement of the administration's proposed framework for implementing the agreement, and a report detailing all relevant and material information surrounding the agreement to the House and Senate.[112] Finally, Congress was required to issue a decision either approving or rejecting the agreement within sixty days of receiving all of the necessary materials from the executive.[113] If Congress rejected the final draft outright, the President could resubmit the trade agreement to Congress for consideration, absent fast-track procedures.[114] In addition to approving or rejecting the agreement, the House and the Senate were entitled to issue a procedural disapproval resolution within the same sixty-day period.[115] Such a resolution would disqualify the trade agreement from the fast-track process based on the executive's failure to satisfy procedural requirements.[116]

The second tier of the fast-track provisions, set forth in the 1988 Act, applied to the extension of fast-track authority for trade agreements entered after May 31, 1991, and prior to June 1, 1993.[117] The President, who was required to make a request for the extension of fast-track authority by March 1,

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109. *Id.* § 1103(b)(1)(A). *See also* Holmer & Bello, *supra* note 102, at 184.

110. The Omnibus Trade and Competitiveness Act of 1988, § 1102(c)(3)(B)-(C), 19 U.S.C. §§ 2902-2903 (1988).

111. *Id.* § 1103(a)(1)(A). *See also* Holmer & Bello, *supra* note 102, at 185.

112. The Omnibus Trade and Competitiveness Act of 1988 § 1103(a)(2).

113. *Id.* § 1103(c).

114. Nickels, *supra* note 2, at 8 (noting, however, that if fast-track authority were not applicable, Congress would not be bound to a timetable for consideration of the agreement; thus, filibusters would be possible, and either chamber would be free to amend the agreement under normal procedures).

115. The Omnibus Trade and Competitiveness Act of 1988 § 1103(c)(1)(A)-(E).

116. *Id. See also* Holmer & Bello, *supra* note 102, at 185 (giving the President's failure to consult adequately with Congress as an example of conduct which would merit the issuance of a congressional procedural disapproval resolution).

117. The Omnibus Trade and Competitiveness Act of 1988, § 1103(b)(1)(B), 19 U.S.C. §§ 2902-2903 (1988).

1991,[118] was also obligated to submit a detailed report to Congress which contained four primary elements. First, the report had to describe the trade agreements that had been negotiated under the 1988 Act and give the date on which they were to be submitted to Congress for approval.[119] Second, the report was to outline the progress made during the negotiations.[120] Third, the report was to set forth the justifications for continuing the negotiations toward the conclusion of the trade agreement.[121] Finally, the report had to state the reasons why an extension of fast-track authority was necessary for the continuing negotiations.[122] In addition, the private sector Advisory Committee for Trade Policy and Negotiations[123] was required to submit a report to Congress by March 1, 1991, regarding the progress of the negotiations and whether, in the Committee's opinion, an extension of fast-track authority should be granted.[124] The final step in the process, under the second tier of the 1988 Act, consisted of Congress' approval or rejection of the requested extension of fast-track authority.[125] This last hurdle in gaining congressional approval for the extension of fast-track procedures has proven to be extremely arduous for the executive, since Congress has grown increasingly hesitant to grant such authority.[126] This reluctance reflects the continuing controversy regarding the propriety of the fast-track process.

B. An On-Going Debate: The Constitutionality of Fast-Track Authority

1. A Constitutional Perspective on Foreign Commerce

The United States Constitution endows the legislative branch with the power to regulate commerce with foreign nations, among the several states, and with the Indian tribes.[127] In the case of *Gibbons v. Ogden*,[128] the Supreme Court

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118. *Id.* § 1103(b)(2).
119. *Id.* § 1103(b)(2)(A).
120. *Id.* § 1103(b)(2)(B).
121. *Id.*
122. *Id.* § 1103(b)(2)(C).
123. *See supra* note 70.
124. The Omnibus Trade and Competitiveness Act of 1988, § 1103(b)(3)(A)-(B), 19 U.S.C. §§ 2902-2903 (1988).
125. *Id.* § 1103(b)(1)(B)(i)-(ii).
126. *See supra* notes 72-101 and accompanying text.
127. U.S. CONST. art. II, § 2, cl. 2.
128. Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 189-90 (1824) (describing commerce as "commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."). In *Gibbons v. Ogden*, the New York legislature had granted a right of exclusive use to operate steamboats between New York and New Jersey to certain individuals. *Id.* at 1-2. When Thomas Gibbons initiated a steamboat operation of his own along the same route, a New York court enjoined him from further activity. *Id.* at 2. The Supreme Court invalidated the injunction since Ogden's monopoly over the operation of steamboats

espoused its interpretation of the Constitution regarding Congress' power over the regulation of commerce. The Court stated that the power to regulate commerce is vested in the Congress and is plenary;[129] therefore, the Constitution has designated Congress as one of the two principal players controlling the international trade of the United States. Despite the fact that fast-track authority precludes Congress from amending and redacting portions of proposed trade agreements, Congress still retains the power to regulate commerce with foreign nations.[130] Thus, fast-track authority does not distort the true intention of the Constitution since Congress is ultimately responsible for either approving or rejecting proposed international trade agreements.[131]

The second of the two principal entities involved in the creation of international trade policy is the executive branch.[132] The Constitution gives the President the authority to initiate, negotiate, and conclude international agreements.[133] The Supreme Court further illustrated the power of the President to participate in the arena of foreign affairs in *United States v. Curtiss-Wright Export Corp.*,[134] in which the Court affirmed the constitutional framers' intentions that the President serve as the constitutional representative of the United States with regard to foreign nations.[135] Thus, fast-track authority preserves the executive's role as the primary negotiator and representative of the United States, thereby enabling the President to conclude an agreement without the fear that he will be second-guessed by Congress.

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violated the Commerce Clause. *Id.* at 3.

129. *Id.* at 196 (stating that "[t]his power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution.").

130. Eleanor Roberts Lewis, *The North America Free Trade Agreement*, 789 PRAC. L. INST. 511, 517 (1992), *available in* WESTLAW, TP-ALL.

131. *Id.* at 518.

132. *See supra* notes 21-27 and accompanying text.

133. *Id. See also* Taylor, *supra* note 1, at 15.

134. 299 U.S. 304 (1936). In this case, the Curtiss-Wright Export Corporation, charged with conspiring to sell arms and ammunitions to a foreign country, challenged the constitutionality of a joint resolution of Congress which empowered the President unilaterally to impose an embargo upon the sale of such arms if he deemed such action to be necessary. *Id.* at 311-14. The appellees contended that the joint resolution was an invalid delegation of legislative power to the executive branch. *Id.* at 315. The Court based its holding that the joint resolution was valid on the executive's authority to serve as the constitutional representative of the United States in foreign affairs. *Id.* at 319. "[T]he President alone has the power to speak or listen as a representative of the nation . . . [making] treaties with the advice and consent of the Senate; but he alone negotiates." *Id.*

135. The President is empowered by the Constitution to initiate and negotiate international trade agreements and other such treaties, having consulted with and sought approval from a two-thirds majority of the Senate. U.S. CONST. art. II, § 2, cl. 2. *See also Curtiss-Wright*, 299 U.S. at 319 ("the President alone has the power to speak or listen as a representative of the nation").

2. The Propriety of Fast-Track Authority

Even though fast-track authority has been exalted as a revolutionary instrument in the negotiation and conclusion of international trade agreements, many objections have arisen regarding its constitutionality and effectiveness. The primary constitutional objection is that the congressional power to regulate commerce and foreign relations is steadily being usurped by the executive branch in the exercise of fast-track authority.[136] Therefore, opponents of fast-track authority claim that this process defeats the original framers' preservation of the separation of powers.[137] Some interpretations of the Constitution have gone so far as to declare that Article I's delineation of the legislative powers proscribes any delegation of Congress' authority.[138] Critics of fast-track authority also proclaim that reducing congressional participation in the formulation of international trade agreements merely to an all-or-nothing vote creates an atmosphere which is clearly contrary to the American notion of democracy.[139] However, a close examination of relevant Supreme Court pronouncements reveals the fallacy of these objections. The Constitution, although providing for a separation of powers, permits each of the three branches of government to seek assistance from the other branches in meeting its unique responsibilities.[140]

For example, in *Nixon v. Administrator of General Services*,[141] the

136. Patti Goldman, *The Democratization of the Development of United States Trade Policy*, 27 CORNELL INT'L L.J. 631, 654 (1994) (stating that the absolute bar on amendments is undemocratic).

137. Minter, *supra* note 2, at 110 (expressing the common belief that these procedures violate the Constitution's distribution of national power among the legislative and the executive branches of the national government). *See also* Goldman, *supra* note 136, at 654 (stating that fast-track authority diminishes both the Congress' and the public's ability to fashion the terms and conditions of an international agreement).

138. U.S. CONST. art. I, § 1 ("All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."). *See also* J.W. Hampton Jr. & Co. v. United States, 276 U.S. 394, 406 (1928) (delegating congressional legislative powers to another branch of the government violates the U.S. Constitution).

139. Minter, *supra* note 2, at 110.

140. *Id.* at 111. The Constitution creates a partial separation of power in which each branch may seek assistance, when necessary, from the other branches. *Id.*

141. Nixon v. Administrator of Gen. Serv., 433 U.S. 425 (1977). In *Nixon*, President Nixon brought suit alleging that the Presidential Recordings and Materials Preservation Act, which directs the Administrator of General Services to take custody of all Presidential papers and tape recordings to provide for their preservation in the federal archives, violated the Constitution. *Id.* at 430. President Nixon objected to the Administrator's request for 42 million pages of documents and 880 tape recordings of conversations, which may have had some relevance to the prosecution of the Watergate case. *Id.* at 430-31. President Nixon contended that the Act violated the separation of powers doctrine since Congress' delegation of authority to a lesser official of the executive branch impermissibly enabled the legislature to interfere in matters which are solely within the jurisdiction

Supreme Court, relying on the constitutional interpretations expressed in the Federalist Papers of Madison[142] and in the writings of Justice Story,[143] rejected the argument that the Constitution mandates strict independence among each of the branches of the government.[144] Instead, the original framers set about creating a system in which the branches could delegate authority to, and seek assistance from, the other branches.[145] Therefore, the delegation of congressional authority to the other branches of the government, such as in the granting of fast-track authority to the President, is permissible within the confines of the U.S. Constitution.

IV. SYMPTOMS OF THE EROSION OF FAST-TRACK AUTHORITY

A. The Erosion of Fast-Track Procedures

In spite of the many arguments asserted against the use of fast-track authority as a trade tool, fast-track procedures continue to play a significant role in the negotiation of international trade agreements; however, in recent years the potency of the fast-track process has been steadily weakened by both political and seemingly extraneous forces alike.[146] For example, lobbying groups have exerted political pressure on Congress demanding that labor and environmental

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of the executive. *Id.* at 440. The Court, deeming Nixon's argument an "archaic view of the separation of powers . . . requiring three airtight departments of government," held that the Act did not violate the Constitution since it did not prevent the executive branch from accomplishing its constitutionally assigned duties. *Id.* at 443 (quoting Nixon v. Administrator of Gen. Servs., 408 F. Supp. 321, 342 (D.D.C. 1976)).

142. THE FEDERALIST NO. 47, at 325-26 (James Madison) (J. Cooke ed. 1961).

> [This does] not mean that these departments ought to have no partial agency in, or no controul over the acts of each other . . . . [The true meaning] can amount to no more than this, that where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution, are subverted.

Id.

143. 1 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 525 (Melville M. Bigelow, 5th ed. 1891).

> [W]hen we speak of a separation of the three great departments of government, and maintain that that separation is indispensable to public liberty, we are to understand this maxim in a limited sense. It is not meant to affirm that they must be kept wholly and entirely separate and distinct, and have no common link of connection or dependence, the one upon the other, in the slightest degree.

Id.

144. *Nixon*, 408 F. Supp. at 443. Despite the fact that each branch of the government can interpret the Constitution for itself, and that the other branches must respect this interpretation, the argument that the Constitution contemplates a complete division of authority between the three branches is misconceived. *Id.*

145. *Id.* at 443 (citing Youngstown Steel & Tube Co. v. Sawyer, 343 U.S. 579 (1952)).

146. *See infra* notes 181-96 and accompanying text.

issues be excluded from any trade negotiations with foreign nations.[147] These constituent groups have already influenced the conduct of Congress. During the fast-track extension debate for the negotiations of the GATT and the NAFTA, Congress' initial reluctance to grant an extension of fast-track authority and its enactment of the Gephardt-Rostenkowski Resolution primarily resulted from intense political pressure by these groups.[148] By excluding such issues, however, Congress diminished the negotiating authority of the President during trade talks. This effect alone is contrary to the fast-track process, which permits the unilateral negotiation of trade agreements by the President and enhances the role of the executive as the primary representative of the United States.[149]

Another factor which has contributed to the erosion of the fast-track process is the resurgence of the misguided belief in isolationism.[150] This philosophy, which has resurfaced in light of the 1996 presidential election, urges the United States to forsake all efforts towards an increased participation in international trade.[151] The proponents of isolationism wish to protect American industries from international competition; thus, these isolationists condemn the use of any instrument, such as fast-track authority, which facilitates the expansion of foreign trade.[152]

The final factor which has resulted in the diminished effectiveness of fast-track authority involves the irrelevant demands of party politics.[153] With the Republicans and the Democrats both scrambling to fill the presidential slot in the

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147. *See supra* notes 75-81 and accompanying text.

148. *See supra* notes 75-96 and accompanying text (discussing the fast-track extension debate and concerns about the NAFTA and labor in the United States).

149. Hongju Koh, *supra* note 4, at 144. *See also* United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936).

150. For backgound on isolationism in general, see JAGDISH BHAGWATI, PROTECTIONISM 43-59 (1988); I.M. DESTLER & JOHN S. O'DELL, ANTI-PROTECTION: CHANGING FORCES IN UNITED STATES TRADE POLITICS 10 (1987).

151. *See, e.g.*, RALPH NADER ET AL., THE CASE AGAINST FREE TRADE: GATT, NAFTA AND THE GLOBALIZATION OF CORPORATE POWER (1993); RAVI BATRA, THE MYTH OF FREE TRADE: A PLAN FOR AMERICA'S ECONOMIC REVIVAL (1993); STEPHANIE ANN LENWAY, THE POLITICS OF UNITED STATES INTERNATIONAL TRADE: PROTECTION, EXPANSION AND ESCAPE (1985).

152. *See* TIM LANG & COLIN HINES, THE NEW PROTECTIONISM: PROTECTING THE FUTURE AGAINST FREE TRADE 6-7 (1993). *But see* Secretary of State Warren Christopher, Address at the Harvard University School of Government (Jan. 18, 1996). In his remarks, Secretary of State Christopher stated:

> As this presidential election year begins, . . . we're once again hearing from those who preach the dangerous gospel of protection and isolation. America and the world went down that road in the 1930's, and our mistake fueled the Great Depression and helped set the stage for World War II. Shutting America off from the world would be just as reckless today as it was in the 1930's . . . . [W]e must compete, not retreat.

Id.

153. *See infra* notes 193-96 and accompanying text.

1996 election, partisan campaign strategies have emerged as the cornerstone upon which foreign trade policy is made.[154] This extraneous factor played a major role during the 1992 presidential election and will undoubtedly assume a similar position in future elections.[155] Recently, the issue of granting fast-track authority to President Clinton to negotiate Chile's accession to the NAFTA arose before Congress; however, a stalemate ensued in Congress as a result of the present ineffectiveness of the fast-track process.[156] Fast-track procedures must be modified in order to preserve the competitiveness of the United States as an international trading partner.[157]

B. Chile's Accession to the NAFTA

1. Chile: An Experiment in Reform

In December of 1994, thirty-four heads of state met in Miami for the Summit of the Americas,[158] in which the United States, Canada, and the countries of Latin America and the Caribbean—with the exception of Cuba—agreed to work towards a free trade zone in the Western Hemisphere by the year 2005.[159] To show their commitment to the "Spirit of Miami,"[160] President

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154. Peter Morton, *Isolationist Fever Creeps Into U.S. Politics*, FIN. POST, Dec. 2, 1995, at 6.

155. G. Phillip Hughes, *The Americas: One Year After the Summit of the Americas*, WALL ST. J., Dec. 29, 1995, at A11. *See also* Taylor, *supra* note 1, at 14 n.53.

156. Anne Swardson, *Canada, Chile Eye NAFTA-Like Pact*, WASH. POST, Dec. 30, 1995, at A15; John Urquhart, *Canada, NAFTA Partners Work on Chile's Membership Bid*, DOW JONES INT'L NEWS SERV., Jan. 4, 1996, *available in* WESTLAW, ALLNEWSPLUS; *Chile, Canada Free Trade Compatible with NAFTA*, CAP. MKT. REP., Jan. 24, 1996, *available in* WESTLAW, ALLNEWSPLUS.

157. *See infra* Section V.

158. *U.S. Pushes Forward with Hemispheric Economic Integration Initiative, Despite Mexican Financial Crisis*, CHRON. OF LATIN AM. ECON. AFF., June 1995 [hereinafter *U.S. Pushes*].

159. Stephen Fidler, *Faded Spirit of Miami Enthusiasm for Free Trade Accord in the Americas Has Waned*, FIN. TIMES, Dec. 11, 1995, at 18. *See also* Fauriol & Weintraub, *supra* note 13, at 123. The so-called 'Spirit of Miami' came about through three significant developments in the Western Hemisphere:

> (1) the hemisphere is awash with subregional efforts to encourage freer flows of trade and investment: the two most influential forces are the North American Free Trade Agreement (NAFTA) in the North and the Mercado Común del Sur (MERCOSUR) in the South;
>
> (2) an internal process of political reforms (democratization) and economic liberalization has transformed Latin America into a dynamic center of market economic experiments; and
>
> (3) perhaps most significant, much of this forward movement has been possible due to a remarkably committed political and technocratic leadership.

Id.

Clinton and the leaders of Canada and Mexico formally invited Chile to join the NAFTA.[161] However, the fervor which inspired this commitment to free trade in the Americas has waned.[162] Before elaborating on the reasons behind the delay in Chile's accession to the NAFTA, the situation in Chile itself must be reviewed.

Of all of the countries in Latin America, Chile has proven to be the strongest candidate for the fourth chair at the NAFTA table.[163] Chile, located between the Pacific Ocean and the Andes Mountain range in South America, has been likened to the prosperous nations on the Pacific Rim.[164] The growing success in Chile's economy is unlike that of its Latin American neighbors. In just fifteen years, capitalist economic reforms have resulted in a dramatic increase in the standard of living for the citizens of Chile.[165] In fact, Chile initiated its market reforms almost a decade before its Latin American neighbors, and reduced its trade barriers without expecting reciprocity from other nations.[166] Ironically, most of these reforms were the product of the

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160. Fidler, *supra* note 159, at 18 (referring to the atmosphere of the Miami Summit which fostered a keen enthusiasm for spreading free trade throughout the Western Hemisphere). *See also* Charles Lunan, *Free Trade Legislation is Stalled: Chile Unlikely to Join in NAFTA*, SUN-SENTINEL, Dec. 5, 1995, at 1D; Christopher B. Johnstone, *Congress Trade Agenda Slim as Second Session Opens*, JEI REP., Jan. 19, 1996, *available in* WESTLAW, ALLNEWSPLUS.

161. Pariente, *supra* note 10, at *1; Fidler, *supra* note 159, at 18 (stating that the plan set the stage for an economic partnership to replace the historically strained relationship between the United States and Latin America, beginning with Chile).

162. Christopher Chazin, *Chile Is No Longer Counting on NAFTA*, ASIAN WALL ST. J., Nov. 27, 1995, at 12 (noting that Chile's chances of joining the NAFTA are steadily slipping away). *See also* Fidler, *supra* note 9, at 6.

163. *See* Swardson, *supra* note 156, at A15 (noting that Chile is particularly desirable because its economy is one of the most open and stable in South America). *See also* David Hendricks, *Chile Fighting to Join NAFTA*, SAN ANTONIO EXPRESS, Aug. 25, 1995, at 18; Yvette Collymore, *Chile-Trade: NAFTA Entry Could Mean Another Star on U.S. Flag*, INTER PRESS SERV., June 6, 1995, *available in* WESTLAW, ALLNEWS.

164. *Next Stop South, NAFTA's Progress*, ECONOMIST, Feb. 25, 1995, at A29 [hereinafter *Next Stop South*] (likening Chile to an Asian tiger mistakenly attached to a different continent).

165. Alexandre Barros, *The Capitalist Revolution in Latin America: When Will the People Be Happy?*, WASH. Q., Summer 1995, at 103, 104 (noting that 10 percent of the population in Chile—approximately 1.5 million people—have moved above the poverty line as a result of the capitalist revolution).

166. *Next Stop South*, *supra* note 164, at A29; Ian Brodie, *Aiming to Join the Trade Club; Chile*, TIMES OF LONDON, Aug. 14, 1995, *available in* WESTLAW, NPPLUS, at *1 (stating that in the past decade, Chile's economy has grown an average of 6% a year and is expected to continue doing so through the year 2000 as a result of its market reforms); Hughes, *supra* note 155, at A11 (noting that, because of the success of Chile's reforms, many thought that Chile had a better case for joining NAFTA than Mexico).

military dictatorship of General Augusto Pinochet Ugarte.[167] Today, many of the government leaders in Chile, former leftist intellectuals and politicians who opposed Pinochet, continue the capitalist policies and reforms initiated during the dictatorship.[168]

Following the decline of the Pinochet dictatorship, the administrations of both Presidents Aylwin Azocar and Eduardo Frei Ruz-Tagle have brought about a growing economic prosperity to Chile.[169] Not only has the Chilean government stabilized its currency and defeated inflation, but it has also privatized most of its state-owned business entities.[170] In addition, the City of Santiago, the capital of Chile, rivals the most industrious international cities of the world, such as New York City, Los Angeles, and London.[171] In terms of social and economic reforms, adherence to democratic policies, and market readiness, Chile is the most qualified Latin American candidate to join the NAFTA.[172]

Besides Chile's own interests in becoming the fourth member of the NAFTA, the original signatories also have strong incentives for allowing its accession. The greatest advantage resulting from Chile's accession to the NAFTA lies in its precedential value.[173] Permitting Chile's entry would mark

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167. Barros, *supra* note 165, at 104. The reforms were possible because there was a dictatorship that could force them through despite their unpopularity. *Id. See also Next Stop South, supra* note 164, at A29 (illustrating that the Pinochet dictatorship combined political repression with economic liberalization); Brodie, *supra* note 166, at *1 (stating that "[t]he Chilean Government's enactment of extensive free-market reforms and pursuit of foreign investment have created the region's most liberali[z]ed business climate").

168. Barros, *supra* note 165, at 104. The many leftist opponents of the Pinochet dictatorship went into exile, fleeing mostly to the Communist nations they had idealized. *Id.* However, they soon discovered that the life in socialist and authoritarian societies would not be ideal for Chile. *Id.* These exiles later relocated in capitalist states where they saw the same social and economic problems which plagued Chile much better resolved than they were in the socialist countries. *Id.* at 104-05. By the time they returned to Chile after the end of the military dictatorship, the exiles saw the positive results of the capitalist policies and reforms in Chile. *Id.* at 105.

169. Pariente, *supra* note 10, at *1. President Aylwin won Chile's first free presidential election since the Pinochet dictatorship in December of 1989. *Id.* President Eduardo Frei, Chile's present leader, was elected in 1994. *Id.* Both administrations "reformed the political process . . . crushed inflation and brought about record economic growth for Chile. *Id. See also Next Stop South, supra* note 164, at A29. For the past eight years, Chile's economy has grown at an annual rate of 7%. *Id.* While the unemployment rate in Chile has fallen to a mere 5%, the investment rate rests currently at 25%. *Id.*

170. *See* Hughes, *supra* note 155, at A11; Swardson, *supra* note 156, at A15.

171. *Next Stop South, supra* note 164, at A29. One commentator described the city of Santiago as having "mobile telephones galore, an emerging futuristic skyline and American-educated officials who wax eloquent on topics such as privati[z]ation and electronic road-pricing." *Id.*

172. *See* Tony Munroe, *Politics Stall Chile's Entry Into NAFTA*, WASH. TIMES, Sept. 10, 1995, at A1; Hughes, *supra* note 155, at A11.

173. *Next Stop South, supra* note 164, at A29; Fidler, *supra* note 9, at 16.

the first step towards the proposed Free Trade Area of the Americas[174] by establishing the framework through which future countries will follow. Chile's enrollment in the NAFTA would also encourage Latin American nations to hold steadfast to their commitment to social, economic and democratic reforms by rewarding them both with membership in a comprehensive free trade association and access to larger markets.[175] Finally, such a move would prove to Latin America that the member states of the NAFTA are sincere in their commitments to the "Spirit of Miami."[176]

NAFTA membership for Chile would impose few risks on the original signatories. Chile is located approximately eight hours by plane from the United States.[177] In addition, its population consists of just over fourteen million people.[178] Therefore, the fears that the current members of the NAFTA will be flooded with illegal Chilean immigrants and that jobs will be diverted to Chile on a grand scale as a result of granting membership to Chile are highly improbable.[179] In fact, the economies of Canada, Mexico, and especially the United States stand to benefit tremendously from the accession of Chile and subsequent Latin American nations to the NAFTA.[180] Any obstacles impeding the progress towards free trade in the Western Hemisphere, therefore, would be detrimental for the economies of all of the nations in the Americas.

2. Reasons for Delay

Despite the "Spirit of Miami" and the pledged commitment by the nations in the Americas to work toward free trade, many roadblocks have been thrown in front of the accession of Chile to the NAFTA. Unfortunately, it appears that all of these obstacles have been erected by the United States alone.[181]

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174. *U.S. Pushes, supra* note 158.

175. Brodie, *supra* note 166, at *1 (stating that Chile's accession to NAFTA would send an emphatic message to other Latin American economies that reforms and the removal of tariffs have as their reward membership in a free trade organization).

176. *U.S. Pushes, supra* note 158 (adding that most of the Latin American governments are waiting to see if the U.S. Congress will permit Chile's accession to the NAFTA before they further work towards the Free Trade Area of the Americas). *See also* Hughes, *supra* note 155, at A11.

177. *Next Stop South, supra* note 164, at A29.

178. CHILE: AMERICANS REVIEW 1997, AMERICA'S REVIEW WORLD OF INFORMATION, Aug. 11, 1996, at 24 (stating that as of 1995, the population of Chile topped 14.3 million people).

179. *Next Stop South, supra* note 164, at A29.

180. Hughes, *supra* note 155, at A11. Currently, Latin America comprises one-quarter of the world market for United States telecommunications equipment exports. *Id.* In fact, the export of U.S. telecommunications equipment to Latin America increased by nearly 50% in 1994, topping $2.7 billion. *Id.* The market for telecommunications equipment and services (including long distance, wireless and data transmission services), however, will continue to flourish only if the United States and other Latin American nations remain committed to a path toward free trade. *Id.*

181. Pariente, *supra* note 10, at *1.

Generally, the United States is responsible for three basic impediments to the expansion of the NAFTA at this time.

First, the United States' previously enthusiastic outlook on free trade in the Americas has dimmed in recent months as a result of the economic crisis in Mexico[182] and its $20 billion bailout of the Mexican government. Resulting from this diminished enthusiasm for free trade is the renewed belief in isolationism held by some members of Congress and various political candidates for the 1996 presidential election.[183] These isolationists range from the extremists, who are pushing for the United States to pull out of the World Trade Organization and the NAFTA,[184] to those in Congress who are seeking a moratorium on new trade agreements and who have refused to support the extension of fast-track authority for Chile's accession to the NAFTA.[185] The proponents of isolationism fail to realize that the world has undergone significant changes since the 1930's. In today's economy, trade is carried on between different regional blocs, and individual nations are finding that they "are less masters of their own houses."[186] That is, countries no longer engage in foreign trade based solely upon the formulation of a national trade policy; instead, multinational trading blocs are largely becoming the primary players in the international economy.[187]

The second obstacle impeding Chile's entry into the NAFTA consists of Congress' and the Clinton administration's failure to agree on the proper scope

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182. Hughes, *supra* note 155, at A11 (noting that the value of Mexican currency plummeted over 60% in a year). *See, e.g.*, Lunan, *supra* note 160, at 1D; *Mexican Economy in Turmoil*, DAYTON DAILY NEWS, Dec. 23, 1994, at 11B (explaining that the economic recession in Mexico was a result of the government's decision to devaluate the peso in attempting to calm Mexico's financial markets and economic crisis, which were incited by the unrest in Chiapas).

183. Morton, *supra* note 154, at 6. *See also* Fauriol & Weintraub, *supra* note 13, at 131 (stating that the United States cannot isolate itself economically as the rest of the hemisphere looks outward).

184. Morton, *supra* note 154, at 6. Pat Buchanan, a conservative Republican candidate for the presidency, campaigned on a platform of isolationism that looked back to the Smoot-Hawley Act. *Id.* In addition to the United States' withdrawal from the World Trade Organization and the NAFTA, Buchanan is also pushing for the creation of monumental tariffs against countries, including Canada, with which the United States has a trade deficit. *Id.*

185. *Dole 2: Chile's Fast-Track NAFTA Entry Not Going to Happen*, CAP. MARKETS REP., Dec. 21, 1995. Bob Dole, Republican Senate Majority Leader and presidential hopeful, opposes the extension of fast-track authority, stating that Chile's inclusion in the NAFTA "[is] not going to happen . . . . I don't think it's a good idea." *Id.*

186. *Now, the Wars Are Economic: Technology's Reach Is Eroding National Sovereignty*, CHI. TRIB., Oct. 1995, at A7 (explaining that there is no longer an American economy; there is a global economy).

187. *Id.* (emphasizing that there are signs that the world is splitting into three general trading blocs: Asia, Europe and North America).

of the extension of fast-track authority.[188] The Republican-controlled Congress refuses to extend fast-track authority to the Clinton administration as long as provisions regarding labor and the environment are part of the negotiating process.[189] They argue that such an extension of fast-track authority would allow the Clinton administration to place undue restraints on foreign imports in the interest of social policy.[190] On the other hand, just as matters regarding labor and the environment were part of the NAFTA negotiations with Mexico, the executive branch insists that they must be included in future negotiations with Chile.[191] The Clinton administration asserts that the inclusion of these issues in future fast-track negotiations regarding the NAFTA will enable the United States to enforce labor and environmental agreements with sanctions, as is the norm in other areas of trade.[192]

Finally, Chile's accession to the NAFTA has been obstructed by the purely irrelevant and ulterior motives of party politics. As the 1996 presidential election approaches, politicians on both sides of the free trade debate have placed greater value on partisan campaign strategies, rather than on the United States' trade policy.[193] For the Clinton administration, the grant of fast-track authority, including the ability to negotiate labor and environmental standards, would be well received by labor and environmental groups, which constitute significant portions of the voting public.[194] In the other partisan camp, Republican campaign strategies will hardly suffer if the trade agreement with Chile is never brought to fruition. Free trade is an extremely divisive issue for the Republican party;[195] therefore, refusing to grant fast-track authority to the Clinton administration would convey a two-fold benefit to the Republican party. While keeping the matter of Chile's entry into the NAFTA and the issue of free trade, in general, out of the election, the Republican party would also prevent

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188. Leon Hadar, *U.S. Lawmakers Fail to Agree on Critical Trade Legislations*, BUS. TIMES, Aug. 7, 1995, at 14 (detailing the fast-track extension debate's arguments against the inclusion of labor and environmental issues in the negotiation of international trade agreements).

189. *Id.*

190. *Id.*

191. *Chile Left Waiting*, *supra* note 10, at 28 (noting that Mexico had to sign side-agreements consenting to specific labor and environmental standards as part of the NAFTA negotiations).

192. *USTR to Reopen Fast Track Talks with U.S. Congress*, DOW JONES INT'L NEWS SERV., Dec. 1, 1995.

193. Hughes, *supra* note 155, at A11. *See also* Pariente, *supra* note 10, at *5 (emphasizing that as the United States presidential election draws near, politicians will likely be swayed by the polls since "politics have been known to prevail over wisdom").

194. Hughes, *supra* note 155, at A11. Even if Congress continues in its refusal to grant fast-track authority, the administration's staunch and unwavering insistence on the inclusion of these issues will certainly please the labor and environmental interest groups. *Id.*

195. *Id.* The issue of free trade has created a schism in the Republican party. *Id.* The party is now divided into protectionist conservatives and free-market conservatives. *Id.*

President Clinton from achieving a major trade victory during an election year.[196]

3. The Fatal Consequences of Denying NAFTA Membership to Chile

With the "Spirit of Miami" quickly fading in the minds of politicians because of the fast-track stalemate in Congress, the United States stands to lose the most from denying Chile's accession to the NAFTA. In fact, Congress' continuing refusal to grant fast-track authority would signify much more than the United States' losing an opportunity to expand the NAFTA for the first time since its inception. For example, the United States, as a result of the weakened status of its fast-track procedures, may one day find itself left behind and excluded from free trade arrangements with foreign nations, such as those in Latin America. That is, competing international organizations, such as the European Union[197] and other trade unions, will likely surpass the United States as a leader in free trade by concluding trade agreements with Latin America while the United States remains in a quagmire over its domestic implementation process.[198] In addition, the United States would be deprived of its ability both to encourage democratic social policies among Latin American nations through the enticement of future trade dealings, and to dispel the old suspicions about the United States' interests in Latin America.[199] Finally, the United States risks losing the economic benefits which would accompany the growth of free trade in the Western Hemisphere.[200]

In today's world, instead of conducting highly individualized foreign trade policies, nations have banded together to form customs unions,[201] free trade

196. *Id.*

197. The European Union (EU) is a supranational organization formed to increase economic integration and cooperation among the member states. The EU entered into force on November 1, 1993, and was ratified by the 12 members comprising the European Community. The number of members to the EU is expected to increase by the year 2000, and the EU may become a major competitor to North America and Asia. FOLSOM ET AL., *supra* note 46, at 1234-45.

198. Hughes, *supra* note 155, at A11.

199. *Id.*

200. *Id. See also* James R. Holbein, *The Case for Free Trade*, 15 LOY. L.A. INT'L & COMP. L.J. 19 (1992) (explaining that countries which do not seize free trade opportunities are in danger of being left behind).

201. FOLSOM ET AL., *supra* note 46, at 410-30. A "customs union" is an organization made up of individual nations which agree to implement a common external policy regarding foreign trade policy, such as a unified tariff system applicable to nations not party to the union. *Id.* In addition, within a customs union, there are no internal barriers on trade, and each of the members enjoy free trade with each other. *Id.* The establishment of a customs union involves great cooperation among the member states and may even call upon countries to give up some of their individual sovereignty. *Id.* The European Union is an example of a customs union. *Id. See also* Ruth E. Olson, Note, *GATT—Legal Application of Safeguards in the Context of Regional Trade Arrangements and Its*

areas,[202] and common markets[203] in order to amplify their returns from successful trade dealings. Currently, Chile is vying for membership in one of two trade organizations: NAFTA and MERCOSUR.[204] MERCOSUR, which is a common market comprised of the "Southern Cone"[205] nations of Argentina, Brazil, Paraguay, and Uruguay,[206] has also set its sights on one day merging with the NAFTA,[207] possibly following Chile's lead. However, since the United States has delayed its commitment to Chile's accession to the NAFTA indefinitely, and since Chilean President Eduardo Frei has refused to engage in any negotiations with the United States in the absence of fast-track authority, Chile has initiated steps toward membership in MERCOSUR.[208] To make matters worse for the United States, MERCOSUR has made expansion into Europe a top priority.[209] In fact, representatives of the Southern Cone

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Implications for the Canada-U.S. Free Trade Agreement, 73 MINN. L. REV. 1488, 1493-94 (1989) (comparing customs unions with free trade areas).

202. FOLSOM ET AL., *supra* note 46, at 410-30. A "free trade area" is an organization comprised of nations which reduce tariffs between themselves but retain their own trade barriers as to non-member states. *Id.* The Canada-U.S. Free Trade Agreement, the NAFTA, and the Latin American Free Trade Association (LAFTA) are examples of free trade areas. *Id.*

203. *Id.* at 412-14. "Common markets" are trade organizations in which the member nations impose no barriers on capital, labor or investments upon each other. *Id.* The Central American Common Market (CACM) and the Andean Common Market are examples of common markets. *Id.*

204. Félix Peña, *New Approaches to Economic Integration in the Southern Cone*, WASH. Q., Summer 1995, at 113. This common market was established for the purposes of expanding trade among its members, promoting democratic social and economic policies in the region, and stimulating the national development of its members. *Id.* at 115. MERCOSUR represents 210 million consumers, roughly 55% of the Latin American market, and boasts a gross domestic product of over $800 billion. *Id.* at 113. Together, the countries of the NAFTA and MERCOSUR constitute 95% of the market in the Western Hemisphere. *Id.* MERCOSUR, whose market surpasses that of Russia, is also the fourth largest economic integration organization, following NAFTA, the European Union, and Japan. *Id.*

205. *Id.*

206. *MERCOSUR Countries Reach a Preliminary Agreement for Bolivia to Join Trade Bloc*, CHRON. OF LATIN AM. ECON. AFF., Dec. 14, 1995 [hereinafter *Preliminary Agreement*]. MERCOSUR recently moved to expand its trade bloc by reaching an agreement to include Bolivia and by pursuing negotiations with Chile. *Id.*

207. Peña, *supra* note 204, at 118. Peña notes that MERCOSUR is committed to maintaining a strong relationship with NAFTA. *Id.*

> [If Chile ultimately does not accede to NAFTA individually, one] scenario would be an agreement between Mercosur—perhaps including Chile—and NAFTA, following the pattern of the so-called 4 + 1 agreement (the trade and investment framework accord signed by the four Mercosur countries with the United States in July 1991).

Id. "The Southern Cone countries, . . . together with NAFTA, will most probably be the two main pillars of a hemispheric system of free trade and investment." *Id.* at 121.

208. Hughes, *supra* note 155, at A11.

209. Peña, *supra* note 204, at 118. Europe is of vital importance to MERCOSUR because 70% of Europe's direct foreign investment in South America is focused primarily in the Southern Cone. *Id.* In fact, the EU and MERCOSUR have recently initiated negotiations toward a "transatlantic free trade area." *Id.*

nations met with delegates from the European Union[210] on December 15, 1995, to sign a cooperation agreement intended to facilitate negotiations for a future free trade zone.[211] This proposed trade zone would become the largest trading bloc in the world.[212] Thus, unless Congress and the Clinton administration come to an understanding soon, the European Union may gain access to the entire South American region through free trade accords with MERCOSUR and other Latin American nations, thereby closing the door on all future free trade dealings with the United States and the other members of the NAFTA.[213] Recently, Canada and Chile announced that as a result of the current stalemate regarding fast-track authority in Congress, they will begin bilateral negotiations towards a free trade agreement.[214] Canada and Mexico have contemplated a similar separate free trade accord with Chile, which would be folded into the NAFTA once the delay by the United States has been rectified.[215] Thus, unless the United States removes the obstacles blocking Chile's accession to the NAFTA, the trade agreement between Canada, Mexico, and Chile, which will contain terms and conditions that have not been assented to by the United States, will ultimately be incorporated into the NAFTA.[216]

In addition to the possibilities of being excluded from trade with Latin America by competing trade organizations and of the discouragement of reform in Latin America, the United States risks losing out on the tremendous economic return generated from free trade. In its first year, the NAFTA has generated significant economic returns for its member nations.[217] For example, between 1993 and 1994, United States exports to Mexico rose by 17% to roughly $24.5

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210. *See* FOLSOM ET AL., *supra* note 46, at 1234.

211. Debra Percival, *Latin America-Trade: MERCOSUR and EU Head for Free Trade*, INTER PRESS SERV. GLOBAL INFO. NETWORK, July 1, 1994, *available in* WESTLAW, ALLNEWSPLUS; *MERCOSUR Leaders Talk Consolidation Ahead of EU Accord Signing*, AGENCE FR.-PRESSE, Dec. 8, 1995, *available in* WESTLAW, ALLNEWSPLUS.

212. *Preliminary Agreement*, *supra* note 206.

213. Hughes, *supra* note 155, at A11.

214. Swardson, *supra* note 156, at A15. Expanding its trade with Chile is of vital importance to Canada. *Id.* Presently, more than 80% of Canada's export and import dealings are made with the United States, thereby solidifying Canada's dependence on the United States. *Id.* Canada has, thus, pursued the expansion of its trading networks with Chile in order to stem its growing dependency on the United States. *Id.* It should also be noted that Chile already has a free-trade agreement with Mexico. *Id.*

215. *Chile May Get Deal on NAFTA Says U.S.*, ARIZ. REPUBLIC, Dec. 1, 1995, at E1 [hereinafter *Chile May Get Deal*] (explaining that the separate trade accord with Chile would cover items of interest to the three countries until Washington rejoins negotiations).

216. Swardson, *supra* note 156, at A15. This agreement will serve as a bridge to full NAFTA membership for Chile and will be folded into NAFTA once accession negotiations are completed. *Id. See also Chile May Get Deal*, *supra* note 215, at E1.

217. *Free Trade Must Overcome Obstacle*, NEW ORLEANS TIMES-PICAYUNE, Jan. 5, 1995, at 6A1.

billion.[218] Conversely, Mexican exports to the United States rose to $23.4 billion, increasing by 21% from 1993.[219] Overall, the United States' trade with Canada grew to $109 billion while trade with Mexico generated almost $1.5 billion.[220] Inviting Chile, which has a stable and booming economy, to join the NAFTA can only increase the economic benefit for all nations concerned. In addition, Chile's entry into the NAFTA would convey the message to other growing Latin American countries, such as the Southern Cone nations, that NAFTA membership for them is no longer speculative and remote. The United States' history of promoting social, economic, and political policies in Latin America has been riddled with overtones of dominance, exploitation, and outright bullying; thus, many countries to the south have eyed their interactions with the United States suspiciously.[221] Nonetheless, the possibility of creating a free trade zone in the Western Hemisphere provides the means through which the United States and other NAFTA members may foster democratic reforms throughout South America in a more digestable manner.[222] The promotion of reforms regarding economic and political development through the enticement of future membership in economic integration associations insures a more stable and secure environment for all nations in the Western Hemisphere.[223] The United States' failure to bring about the realization of its commitment to a free trade zone in the Western Hemisphere may lead to the discouragement of all types of reform in Latin America. Thus, with the

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218. *Id.*

219. *Id.*

220. *Id.* (emphasizing that the combined Gross Domestic Product of the members of NAFTA was 25% larger than that of the EU in 1994).

221. Fauriol & Weintraub, *supra* note 13, at 129.

222. Warren Christopher, *America's Leadership, America's Opportunity*, FOREIGN POL'Y, Spring 1995, at 6 (noting that countries which adhere to democratic ideals are less likely to go to war with each other and to disregard fundamental principles of international law).

> Democratic nations are critical to building a world where long-term stability is strengthened by accountable governments, not weakened by dictatorships; a world where disputes are mediated by dialogue, not by repression and violence; where information flows freely; and where the rule of law protects property, contracts, patents, and the other essential elements of free-market economies.

Id. *See also* Holbein, *supra* note 200, at 24. Free trade agreements such as the NAFTA not only serve "as a model for market oriented policies and reforms elsewhere in the hemisphere," but they also spur nonmember countries on to raise their level of national and economic development in order to one day be rewarded with membership in such organizations. *Id.* *See also* Brodie, *supra* note 166, at *1 (noting that "[b]y admitting Chile to Nafta, Washington would send an emphatic signal to far larger Latin American economies, such as Brazil and Argentina, that reforms and removal of tariffs have as their reward membership in a free-trade club").

223. Christopher, *supra* note 222, at 6. In order for the United States to remain competitive, it must promote open markets and sustainable economic growth. *Id.* The consequences of the Smoot-Hawley Tariff Act taught the United States that isolationism will weaken economic security. *Id.* The United States can only thrive "in a world where trade is rising and barriers are falling." *Id.*

realization of a free trade zone in the Western Hemisphere within view, the socioeconomic future for all of the American nations appears promising.

V. OPTIONS FOR THE FUTURE: A RENEWED AND INVIGORATED FAST-TRACK

As the extension period for fast-track authority set forth in the Omnibus Trade and Competitiveness Act of 1988 has expired, and as Congress currently contemplates a subsequent granting of fast-track authority to President Clinton for the negotiation of Chile's accession to the NAFTA, the time to revise these fast-track procedures is at hand. One of the primary purposes of this Note is to set forth a proposed modification of fast-track procedures in a future trade act by amending the current provisions in the 1988 Act.[224] Fast-track authority should be modified so as to facilitate greater ease in both the conclusion of international trade agreements and the implementation of these agreements into United States law. Future revisions of the present version of fast-track authority should also strive to enhance the competitiveness of the United States in the growing global economy and to preserve the credibility of the executive as the primary representative of the United States in all foreign matters.

A. Proposal for the Revision of Fast-Track Procedures

Sec. 1102. Trade Agreement Negotiating Authority

(c) Bilateral and Multilateral Agreements Involving Tariff and Non-Tariff Barriers.

(1) The President may enter into bilateral and multilateral trade agreements with foreign countries that provide for the elimination or reduction of tariff and non-tariff barriers to international trade between the United States and the countries concerned.

(2) A trade agreement may be entered into under paragraph (1) with any foreign nation only if-

(A) the agreement satisfies or makes progress in achieving the objectives set forth in section 1101(a) of this subtitle;

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224. This note modifies the fast-track process by amending sections 1102 and 1103 of the 1988 Act, which are the most current pronouncements of fast-track, despite the fact that this authority has expired as of 1993. The Omnibus Trade and Competitiveness Act of 1988 §§ 1102, 1103, 19 U.S.C. §§ 2902-2903 (1988). *See infra* section V.A. Note that the proposal sets forth only those sections of the 1988 Act which will be amended. For a complete discussion and summary of the entire revised process, see *infra* section V.B.

(B) such foreign country requests the negotiation of such an agreement; and

(C) the President, no later than ninety (90) days prior to the date notice is given to the House of Representatives and the Senate of the intention to enter the agreement under section 1103 of this title-

(1) provides written notice of such negotiations to the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and any other congressional committee possessing relevant subject matter jurisdiction over legislation which would be affected by the trade agreement; and

(2) consults with such committees regarding the negotiation of said agreement.

(d) Consultation with Congress before agreement entered into.

(1) Before the President enters into any trade agreement under subsection (c), the President shall consult with-

(A) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate; and

(B) any other committee which has relevant subject matter jurisdiction over legislation which would be affected by the trade agreement.

(2) The consultation under paragraph (1) shall consist of-

(A) the nature of the agreement;

(B) the extent to which the agreement will satisfy or make progress in achieving the objectives set forth in section 1101(a) of this title; and

(C) all matters relevant to the implementation of the agreement under section 1103 of this title.

Sec. 1103. Implementation of Trade Agreements

(b) Application of Congressional "Fast-Track" Procedures to Implementing Bills.

(1) Except as provided in paragraph (2), the provisions of section 151 of the Trade Act of 1974 (hereinafter referred to as "fast-track procedures") shall apply to implementing bills submitted with respect to all trade agreements entered into under section 1102(c).

(2) The fast-track procedures shall not apply to any implementing bill submitted with respect to a trade agreement if both Houses of Congress separately agree to procedural disapproval resolutions within any sixty-day period.

(A) Procedural Disapproval Resolutions-

(i) in the House of Representatives-

(I) shall be introduced by the chairman or ranking minority member of the Committee on Ways and Means or the chairman or ranking minority member of the Committee on Rules,

(II) shall be jointly referred to the Committee on Ways and Means and the Committee on Rules, and

(III) may not be amended by either Committee, and

(ii) in the Senate shall be original resolutions of the Committee on Finance.

(B) For purposes of this subsection, the term "procedural disapproval resolution" means a resolution of either House of the Congress which declares that since the President has failed or refused to consult with Congress on trade negotiations and trade agreements, fast-track procedures will not apply to the implementation of any trade agreement.

B. Application and Comments Regarding the Amended Fast-Track Process

As amended, the fast-track process will consist of many of the original elements that comprised the 1988 Act, while incorporating new measures which will result in a more effective trade tool for both the executive and legislative

branches. The most significant change from the 1988 Act lies in the new scope of fast-track authority. Under the proposed revision, fast-track authority will no longer be constrained by a restrictive expiration period.[225] Instead, fast-track procedures will apply generally to all multilateral and bilateral trade agreements unless Congress, in determining that the executive has failed to satisfy the procedural requirements of the process, issues a procedural disapproval resolution.[226] Thus, the modification eliminates the second tier of the 1988 Act in which the executive was required to seek an extension of fast-track procedures.[227] The revision will prevent the recurrence of situations in which Congress conditioned its grant of fast-track authority upon peripheral issues by insuring that environmental and labor matters are within the executive's negotiating authority. In addition, the proposal also provides that the grant of fast-track authority will no longer hinge on considerations such as political campaign strategies.[228] The revised process will now consist of only two stages: the negotiation stage and the approval stage.[229] Nevertheless, the primary elements of the fast-track process will remain largely unchanged.

During the negotiation stage, the fast-track process will still be initiated by a foreign country's request to negotiate an international trade agreement with the United States.[230] Upon obtaining such a request, the executive branch must notify in writing the Senate Committee on Finance, the House Ways and Means Committee, and any other congressional committee which possesses relevant subject matter jurisdiction at least ninety legislative days[231] prior to the President's notifying both houses of Congress of his intent to enter into trade negotiations. Under the 1988 Act, the President was required to provide notice only to the Senate Finance Committee and the House Ways and Means Committee sixty legislative days prior to notifying the House and the Senate of

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225. The Omnibus Trade and Competitiveness Act of 1988 § 1103(b)(1)(A)-(B), 19 U.S.C. § 2903 (1988). *See supra* Section V. A.

226. The procedural disapproval resolution process of the 1988 Act remains unchanged in form. The Omnibus Trade and Competitiveness Act of 1988 § 1103(c)(1)(A)-(E). *See supra* notes 115-16 and accompanying text.

227. The Omnibus Trade and Competitiveness Act of 1988 § 1103(B). *See supra* notes 117-126 and accompanying text.

228. *See supra* text accompanying notes 193-96 (describing the partisan campaign strategies which currently are impeding Chile's accession to the NAFTA).

229. *See infra* notes 230-40 and accompanying text. Unlike the tiered system of the original 1988 Act, in which the second level applied only in the event that a trade agreement was to be negotiated subsequent to the date specified in the first level, both of the proposed revision's stages will apply in every situation since there will no longer be an expiration date for fast-track authority.

230. The Omnibus Trade and Competitiveness Act of 1988 § 1102(c)(3)(B), 19 U.S.C. §§ 2902-2903 (1988).

231. *See* Lewis, *supra* note 130, at 512 (stating that legislative days are those in which both the House and Senate are either in session or in adjournment for less than three days).

the proposed trade negotiations.[232] However, by expanding both the notification time period and the committees to whom the President must notify, the proposed revision will provide more time and more participants for the consultation process. In addition, as in the 1988 Act, the executive is required to interact with the International Trade Commission,[233] the aforementioned congressional committees, and private sector advisory groups[234] as part of the consultation process. Finally, at the conclusion of the negotiation stage, the President must submit the agreements, other required materials,[235] and written notice of his intention to enter the agreements to the House and Senate at least ninety days prior to the signing of the agreement.[236]

The approval stage of the modified fast-track process commences upon Congress' receipt of all the necessary documentation. Congress then has ninety legislative days[237] in which to approve or reject the agreements without amendments.[238] However, in the event that Congress finds a procedural defect which disqualifies the trade agreement from receiving fast-track treatment, Congress, as in the 1988 Act, is entitled to issue a procedural disapproval resolution.[239] That is, if the executive fails to provide the required notice of its intentions to negotiate or conclude a trade agreement, to consult adequately with Congress, or otherwise fails to fulfill an obligation in accordance with fast-track requirements, Congress may withhold the application of fast-track procedures to the trade agreement.[240] This procedural disqualification privilege guarantees not only the swift execution of a proposed international trade agreement, but also that the executive branch performs its mandated obligations in a manner which adequately satisfies Congress.

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232. The Omnibus Trade and Competitiveness Act of 1988 § 1102(c)(3)(C)(i). *See supra* note 110 and accompanying text.

233. Lewis, *supra* note 130, at 517.

234. *Id.*

235. These materials consist of a draft of an implementing bill, a statement of any administrative action that must be taken to implement the agreement, and other supporting information. The Omnibus Trade and Competitiveness Act of 1988 § 1103(a)(1)(B). *See supra* note 112 and accompanying text.

236. The Omnibus Trade and Competitiveness Act of 1988 § 1103(a)(1)(A), 19 U.S.C. §§ 2902-2903 (1988). *See supra* text accompanying note 111.

237. *See* Lewis, *supra* note 130, at 517 (noting that the approval period consists of ninety legislative days if tariffs are involved, or sixty legislative days if only non-tariff barriers are involved).

238. *Id.*

239. The Omnibus Trade and Competitiveness Act of 1988 § 1103(c)(1)(A)-(E). *See supra* notes 115-16 and accompanying text.

240. The Omnibus Trade and Competitiveness Act of 1988 § 1103(c)(1)(A)-E). *See supra* notes 125-26 and accompanying text.

Despite the predicted improvements afforded to the status of fast-track authority, several arguments will undoubtedly arise against the proposed revision. For example, critics may adhere to the traditional assertion that any form of fast-track authority reduces Congress' role in foreign commerce to that of a rubber stamp.[241] This argument is premised on the belief that because amendments to the proposed trade agreement are absolutely barred, congressional control over United States trade policy is drastically usurped by the use of fast-track procedures.[242] Thus, Congress and the public in general are prevented from influencing the content of trade agreements, contrary to the notion of democracy.[243] However, this argument overlooks the fact that Congress presides in judgment over every proposed international trade agreement by approving or rejecting the final draft.[244] Thus, under the fast-track process, Congress possesses a type of veto power over trade proposals which results in an equal partnership between the legislative and the executive branches.[245]

A second likely argument against the proposed revision of fast-track authority lies in the frequent criticism that the executive has continuously failed to consult adequately with Congress during the negotiation stage of the fast-track process.[246] Although this point bears valid merit, this argument overlooks Congress' power to issue procedural disapproval resolutions as a result of the executive's failure to comply with procedural requirements. In addition, Congress may also use its veto power to reject any agreement with which it disagrees. Thus, the congressional veto power and the procedural disapproval mechanism provided for in this process enables Congress to influence the executive's compliance with fast-track requirements.

Finally, opponents of the proposed amendments may assert the view that fast-track authority is no longer a necessary instrument in the negotiation and conclusion of trade agreements.[247] This argument, however, fails to recognize

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241. *See* Goldman, *supra* note 136, at 655-58.

242. *Id.* at 655. Goldman notes that "[t]hrough the no-amendment rule, Congress relinquishes much of its power to determine the terms of trade agreements. That power accretes to the President, who can alone determine what will be negotiated and what limits will be placed on domestic prerogatives." *Id.*

243. *Id.*

244. *See* Taylor *supra* note 1, at 15. *See supra* text accompanying notes 113-16.

245. Taylor, *supra* note 1, at 32-36 (detailing Congress' dissatisfaction with President Reagan's consultation with Congress for the U.S.-Canada Free Trade Agreement, and President Bush's consultation with Congress for the NAFTA).

246. *See supra* notes 46-50 and accompanying text.

247. Goldman, *supra* note 136, at 658. Goldman asserts that fast-track procedures have become obsolete. *Id.* She adds that the negotiation of the Supplemental Agreements on Labor and Environmental Cooperation demonstrates that the United States can reopen trade agreements, such as the NAFTA, and obtain additional concessions in order to satisfy Congress. *Id.* *See also*

the importance of a system in which trade agreements may be expeditiously negotiated, concluded and implemented. Only through such a process may the United States maintain its competitiveness in international trade.[248] Fast-track authority enables the negotiation process to progress more efficiently by guaranteeing that agreements are timely executed in a way which best reflects the expectations of the negotiating parties.[249] Thus, foreign nations will have a strong incentive to engage in negotiations with the United States if fast-track procedures are a part of the agreement process.[250] Finally, an efficient system of formulating trade accords will ultimately prevent the United States, which is currently handicapped by the present fast-track process, from being surpassed by its trade competitors.[251] Therefore, fast-track authority can no longer be considered an optional or obsolete instrument in world trade; instead, fast-track authority will undoubtedly prove to be indispensable to the United States in the years to come.

VI. CONCLUSION

The fast-track process is essential to the negotiation and conclusion of international agreements in the modern era of global trade. In fact, without fast-track authority, the United States will likely lose its status as a world leader in international trade since its traditional treaty-making process has proven to be unwieldy, unreliable, and cumbersome. Despite the obvious advantages provided by this trade tool, fast-track procedures have slowly begun to erode in recent years. The controversy surrounding Chile's accession to the NAFTA exemplifies the trend toward a weakening of fast-track authority. Therefore, the fast-track process must be amended and modified to ensure that future trade agreements may be implemented in the most efficient and expedient manner possible.

Fast-track procedures should become a permanent instrument in the negotiation of trade agreements, unfettered by any congressionally mandated expiration dates. In addition, by modifying the time and notice requirements of fast-track authority, as well as by adjusting the extent to which the principal players will participate in the negotiation of trade agreements, this proposed

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Environmental Cooperation, *supra* note 101, 32 I.L.M. at 1480; Labor Cooperation, *supra* note 101, 32 I.L.M. at 1499.

248. *See* Hughes, *supra* note 155, at A11. *See also* Taylor, *supra* note 1, at 131.

249. *See* Taylor, *supra* note 1, at 41 (setting forth President Bush's assertions regarding the benefits of fast-track authority for the negotiation of the GATT and the NAFTA).

250. *Id. See also supra* notes 173-76 and accompanying text (illustrating the incentives for countries to negotiate with the United States in the future as a result of fast-track procedures).

251. *See supra* text accompanying notes 197-223 (illustrating the competition afforded by the European Union and MERCOSUR to the United States in the expansion of free trade around the world).

revision of fast-track procedures will continue to adhere to the policy goals and objectives of the United States. In short, if the United States wishes to continue to benefit from its trade relationships with foreign nations, and to retain its position of leadership in the expanding world order, it must embrace a renewed and invigorated fast-track process as the means to these ends.

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