Fast track authority gives presidents substantial agenda setting powers. First, it gives the president the power to decide whether a proposal will be debated and voted before other projects. Second, because it forces the legislature to make a decision on a bill or proposal within a certain number of days.

As mentioned above, the details regarding fast track authority vary across countries. In general, fast track authority can be classified depending on whether Congress has to vote on the bill for it to become law, or if the bill becomes law if Congress does not act within a certain number of days.

Among the countries where urgent bills need congressional approval is Colombia (art. 163, Colombia Constitution), the closest to Chile, as the legislature has to approve or reject the urgent bill within 30 days (for each chamber). The key element in Colombia is that there is no reversion point if the legislature does not act within that time (Nolte 2003).[[1]](#footnote-1) In Colombia, the president can attach the urgent label to any kind of bill, even the annual budget. In Brazil, if Congress does not make a decision over the urgent bill win 45 days, Congress comes to a halt until it votes on the bill (art. 64, Brazil Constitution).

In other three countries (Uruguay, Ecuador, and Paraguay), the specific details of fast track authority confer the President greater power because if Congress does not act within a certain number of days, the bill immediately becomes law. This type of urgency increases significantly the legislative powers of the president, as it allows her to change the status quo with a “law” without any congressional action. However, these countries do have some institutional mechanisms that attempt to control the presidential power. In Uruguay, the president cannot label urgent some bills like the budget, as well as bills that need the support of three fifths or two thirds of the chamber to become law. Furthermore, only one bill at a time can be declared urgent and, more significantly, each chamber can reject the “urgency” label by a vote of three fifths of the membership.

In Ecuador, the 1998 constitution constrains the president in that he can only label as urgent bills related the economy, and one bill at a time. Congress has 30 days to modify, approve or reject the urgent bill. Otherwise, it becomes law.

Paraguay has the most permissive prerogatives for the president. The 1992 Constitution gives the president latitude to declare urgent any type of bill, at any point during the legislative process. Each chamber has 30 days to make a decision. Otherwise, the bill becomes law.

The U.S. also grants its president with fast track authority on one issue, international trade agreements. Under this authority, international trade agreements are considered under “expedited legislative procedures” (CRS:2015). In this way, the chambers suspend their ordinary legislative procedures: once they reach the floor, agreements can be debated for a limited period of time, cannot be amended and have to be approved within a certain period of time. On its part, the president needs to commit to consult with the relevant committees during the negotiation process and to notify Congress 90 days before signing an agreement. The idea behind fast track authority in these agreements is to increase the leverage of the president when negotiating such agreements: other countries know that whatever agreement they reach, it will be approved fast and unamended. The expedited legislative procedures under fast track were first included in the Trade Act of 1974, and modified a few times after that.[[2]](#footnote-2)

An important element in this fast track authority is that it is subject to time limits. In 1974, Congress granted the president this authority for five years, ending in January 1980. Congress renewed this authority various times, interrupting it for 8 years from 1994 until the Trade Act of 2002, in which a Republican majority granted fast track authority to president George W. Bush. This authority expired in 2007, although it remained in effect until 2011 for those agreements that were already under negotiation. Obama requested the renewal of fast track authority immediately after that, but it was only granted it in 2015.

The literature analyzing president’s fast track authority in the US tries to understand the conditions under which Congress will delegate this authority to the President. Some scholars argue that legislators prefer to delegate trade authority on the president because the president is better able to resist the pressures from interest groups. Thus, legislators tie their hands and insulate themselves from these lobbying efforts (e.g.; Destler 1992). Others argue that even though legislators delegate this authority, they still have mechanisms to control the president through oversight and procedural constraints(e.g.; Kiewiet and McCubbins 1991). In a more nuanced view, Lohman and O’Halloran (1994) argue that Congress will constrain the president under divided government and when partisan conflict is high.

With a very detailed description of the constitutional powers of the Latin American presidents, Garcia Montero argues that the more power presidents have to force the debate and vote on her proposals, the greater the role and influence of president in the legislative process. Garcia Montero creates a typology that classifies presidents in Latin America depending on the president’s fast track powers. She emphasizes the differences in the institutional design among the different countries, situating Colombia and Brazil as the least powerful, and Paraguay as the most.

In an article explaining the different powers of Presidents, Colomer and Negretto (2003)

In an article analyzing Chile’s relationship between Congress and the president, Nolte (2003:51) argues that fast track authority in Chile does not give the president an important power to determine the fate of her initiatives. He claims that in Chile an urgent bill still needs congressional support to become law, so the size and discipline of the president’s congressional majority is more important than her institutional prerogative to declare bills urgent. He also emphasizes that the President has no mechanism to sanction Congress if the latter does not act within a certain number of days.

Attempting to understand presidential success in the legislative arena, Aleman and Navia (2009) argue that is one of the prerogatives used by the President. They argue that “It may be employed as both a signaling device and a scheduling tool, prioritizing specific proposals in a busy environment, or in some cases compelling Congress to address a legislative initiative” (2009:404). For the case of Chile, they argue that “presidential urgencies is as a bargaining tool useful for shortening leadership negotiations and compelling legislative decision-making… Within the narrower set of bills that receive suma or immediate urgency requests, we find the agenda prioritised by the government… utilised to speed along the final touches on proposals that have already been negotiated with leading opposition parties. In either case the executive decides which bills will be negotiated and prioritised for an eventual floor vote, and which ones will be postponed (perhaps indefinitely). “ (2009:404). Thye find that “bills that receive immediate and suma urgency motions appear significantly more likely to pass. These findings confirm the hypothesised effect of presidential prioritisation, indicating that different types of urgencies have substantively different effects on legislation.” WE SAY IT JUST HAPPEN TO BE THAT THOSE ARE THE MOST IMPORTANT IN THE PRESIDNETIAL AGENDA, BUT THE MAIN POINT IS THAT THOSE BILLS WERE NEGOTIATED WITH THE COMMITTEE CHAIR, AND THAT’S WHY THEY ARE PASSING.

Aninat (2006): Chile: “Esto lleva a que el principal efecto de las urgencias sea determinar el orden del día (tanto en comisiones como en sala) y enviar señales políticas de preferencias o prioridades del gobierno, en vez de forzar la votación de proyectos de ley (La Constitución no establece lo que sucede en caso de que el proyecto de ley bajo urgencia no se vote en el tiempo indicado. )”.

Aninat (2006): “La facultad presidencial de imponer urgencias a la tramitación legislativa de proyectos de ley da un importante poder de agenda al Presidente de la Repú- blica. Al contrario de lo que ocurre en Estados Unidos, donde las comisiones pueden demorar proyectos de ley como táctica legislativa para evitar que éstos sean votados en la sala, esta facultad le permite al Ejecutivo determinar la tabla de discusión de las comisiones y de la sala de ambas Cámaras, ya que los proyec- tos con urgencia desplazan a proyectos que no gozan de ésta en el orden del día. Esto otorga al Presidente la capacidad para determinar los ritmos de tramitación legislativa, al permitirle, por una parte, forzar la discusión de ciertos proyectos y, por otra, mantener proyectos fuera de discusión a través de la congestión de la agenda con otros proyectos de ley “ (2006:133). “El Presidente de Chile goza del control de la agenda legislativa a través de amplias facultades en la aplicación de urgencias, y de su iniciativa exclusiva sobre diversas materias de ley “ (145

1. Es interesante el quote que pone d euna entrevista con Axel Buchheister, Director del Programa Legislativo de Libertad y Desarrollo, cuando la opo-

sición quiere ver un proyecto suyo, el Ejecutivo le pone suma urgencia o discusión inmediata a ese proyecto, de modo que el debate sea corto y no se pueda escuchar a los ciudadanos interesados: “Ese sistema se usa sistemática y constantemente como una forma de impedir el debate”.

Berrios y Gamboa: “En relación a las urgencias, creemos que es incorrecto sobrevalorar su importancia como lo hacen algunos analistas. En primer lugar, porque si declarada una urgencia el Congreso no resuelve sobre aquel proyecto, ello no trae como consecuencia su aprobación. Por tanto, la única sanción que esto conlleva será asumir el costo político de no resolver, el cual no necesariamente es muy alto, en particular si se trata de un asunto de baja visibilidad pública. En segundo lugar, y en el marco de lo anterior, la declaración de urgencia simple a un proyecto es meramente simbólica, ya que en realidad no constituye una presión real sobre el Congreso24. Distinto es el caso de los proyectos con declaración de “discusión inmediata”, mediante la cual el Ejecutivo, especialmente si se trata de uno de gran interés para el público, efectivamente puede presionar a los parlamentarios. Esto, porque los congresistas pueden temer asumir costos importantes en caso de que rechacen o no resuelvan sobre ese proyecto y ello tenga amplia cobertura en la prensa. En tercer lugar, el Ejecutivo enfrenta la limitación de que no puede declarar la urgencia indiscriminadamente, ya que el uso excesivo puede entorpecer el buen funcionamiento del Congreso “ (pag 18).

Calvo and Chasquetti, in an article that analyzes how the partisan composition of Congress affect the scheduling and consideration of bill in Urguay,

Cox and Morgnsten: “ **Latin Americanpresidentscan reach inside the assembly to appoint its membersto his cabinet,directlyproposebills, andacceleratetheirconsideration. Thus, when a presidenthas good prospects of legislative support,cabinets are con- structedto maintainthat support;initiative powers and urgency provisions are used in concertwith coalitionpartners;andthe presidentrelatesto the congressmore as a primeministerrelatesto a parliamen … henthe presidenthas little legislative support,however, cabinetsarefilledwithcroniesandtechnocrats;initiativepowersandurgencyprovi- sions are used on an ad hoc basis; and the president relates to congress more as English monarchs used to relate to their parliaments**

**But Latin American executives have a unique combinationof institutionalpowers, with both unilateralabilities (such as some forms of decree) and integrativeabilities (such as urgency motions). Depending on the lay of the political land, they can choose either to make an end run aroundthe assembly or to join it “**

**Figueiredo and Limongi (2000, CP): “According to Article 64 of the constitution,the executive may demand urgency for the considerationof a bill at any moment.The urgencyrequestedby the president sets time limits for the bill's debate. Each house has at most forty-five days to vote on the bill. Thus, no minoritycan block the presidentialagenda.This prerogativeis not extensively used since the provisionaldecree is a much more efficient way of speedingup andapprovinglegislation**

Nolte (2003): “No hay que sobrevaluar el poder que dan las urgencias al Gobernante en comparación con otros mecanismos como la posibilidad de legislar por decreto (sin una autorización previa del Congre- so), ya que está claro que la intervención del legislativo es más activa en el primer caso que en el segundo, tornando a la urgencia en un instrumento de menos fuerza para el presidente. En el caso de los decretos-leyes, como en Argentina o Brasil, un presidente actúa y cambia el status quo legislativo y si el parlamento no da un voto negativo de rechazo su posición prevalece. En la situación de las urgencias, el presidente necesita un voto positivo del parlamento para convertir su propuesta en ley teniendo siempre la posibilidad de rechazar el proyecto. Por eso, el presidente solamente puede usar esta facultad cuando tiene cierta certeza de contar con una mayoría parla- mentaria suficiente.

Además, la importancia práctica de la urgencia es restringida porque el Presidente no cuenta con un instrumento de sanción si el parlamento no cumple con los limites de tiempo de las urgencias, porque sus iniciativas no se convierten en ley si el parlamento no las aprueba. La incapacidad del presidente de dominar por completo la agenda parlamentaria se refleja en las estadísticas legisla- tivas; así, durante la presidencia de Patricio Aylwin (1990-1993), un porcentaje importante de proyectos de ley no cumplió con los plazos previstos, en especial al tratarse de urgencias simples (alrededor del 80 %). En el caso de la urgencia de discusión inmediata –sumando las cifras del primer y segundo trámite–, en más de un 20 % no se cumplió con el plazo de tres días para la discusión y votación de los proyectos de ley (Siavelis, 2002: 96).

Hay que subrayar que el éxito de los proyectos de ley del presidente chileno depende en prime- ra instancia, y a fin de cuentas, de la mayoría parlamentaria con la que cuenta. Durante el gobierno del presidente Aylwin, el tiempo promedio del trámite legislativo de los proyectos de ley que tenían urgencia no distó mucho de los proyectos que no la tenían. Tampoco hubo casi diferencia entre la tasa de éxito de las iniciativas legislativas presidenciales con y sin urgencia (sumando los diferentes grados de urgencia). La urgencia es un instrumento para señalar priori- dades y organizar el trabajo parlamentario. En este sentido sí parece funcionar, ya que la tasa de éxito de las iniciativas presidenciales aumentó de acuerdo al grado de urgencia con que fueron calificados los mismos. “

Morgensten, Polga, and Shair (2013): “A second friend of Latin American presidents is the time limitation that some constitutions impose on legislative action with regards to the budget and bills the president deems urgent. To take just one example, under both the 1998 and 2008 Ecuadorian Constitutions, executive-initiated bills of “economic urgency” can be approved, modified, or rejected by a congres- sional majority. However, if a bill is not ruled on within 30 days, it officially becomes a decree-law (*decreto-ley*). “

US Tucker and wallach: “When the Nixon administration first lobbied Congress for  
Fast Track authority, it maintained that the executive branch would only negotiate non-tariff issues closely related to trade. Instead, over the last 35 years, the scope and content of “trade” agreements have been quietly but dramatically transformed  
into wide-ranging international commercial pacts that contain hundreds of pages of provisions that set non-trade policy in many areas traditionally reserved for Congress and state legislatures. Indeed, in practical terms, Fast Track has become a means for  
the president to “diplomatically legislate” on an array of non- trade matters. The mechanism has allowed successive presidents since Nixon to establish rules related to domestic environmental, health, safety and essential-service regulations; establishment of immigration policies; limits on local development and land-use policy; extension of domestic patent terms; establishment of new rights and greater protections for foreign investors operating within the United States that extend beyond U.S. law; and even limits on how domestic procurement dollars may be expended. Indeed, today’s “trade” agreements have systematically shifted decision-making on numerous non-trade policies away from the control of local, state and national legislatures to global venues impervious to meaningful participation by those who will live with the results…. he fifth regime, dating from the mid 1970s to 2008, is the  
Fast Track period. What on paper entailed greater congressional involvement relative to the 1934-67 system of unilateral executive- branch tariff-proclamation authority, *in practice* provided the executive greater control over U.S. trade and non-trade policies than the country had ever seen. Fast Track, originally justified  
as a way to enhance U.S. competitiveness in the face of a rising Europe, instead coincided with a period of record-breaking  
U.S. trade deficits and U.S. deindustrialization. As noted, the mechanism also facilitated passage of pacts that delved deeply into domestic non-trade congressional and subfederal jurisdiction.  
In the late 1980s, progressive reformers sought to substantially amend the Fast Track mechanism, but were subsequently disappointed when congressional negotiating objectives — which were non-binding, a key feature and problem with Fast Track  
— produced the controversial NAFTA and WTO. By the mid 1990s, wide bipartisan support for Fast Track had evaporated. The delegation authority was rejected on the House floor in 1998, only passed by a one-vote margin in the middle of the night in 2002 for the Bush II administration, and was finally allowed to die in 2007

Siavelis: Of the 637 total initiatives presented by the president, 375 were declared urgent and 262 were not. Nonetheless, the approval rating for both sets of legislation is virtually the same. Legislation declared urgent had a 64% approval rate while legislation without urgency had an approval rate of 62.6%... Do urgencies then have no effect? What is intriguing about the answer to this question is that when urgencies are considered separately it seems that urgency does something to expedite consideration of particular bills by the legislature. When broken down into distinct types (whether it is a simple urgencia, a suma urgencia, or a discusión inmediata) the level of urgency seems to have bearing on the likelihood that legislation is approved. Of the presidential initiatives with discusión inmediata, 92% were converted into law, while the rate of passage for suma urgencia and simple urgencia was 73% and 56% respectively. These bills were also considered more quickly, and the speed of consideration was directly related to the level of urgency. These data present a number of puzzles. When the data comparing legislative success and speed of consideration for executive and legislative initiatives is considered separately it appears that urgency helps the president secure the passage of his initiatives. However, when only executive initiatives are considered it appears that urgency powers have little global effect, until they are dis-aggregated by type.

It is difficult to determine what to conclude from what seems contradictory data. Clearly, a number of other variables can help explain the inconsistency between the global effect of urgencies and their effect when broken down into distinct types.

Navia & Aleman (in Aleman and tsebelis book): “The president can also affect the congressional schedule by using motions of urgency, which compel Congress to act within a short period of time. Presidents can attach three types of urgencies to bills: *immediate* imposes a three-day deadline; *suma* a ten-day deadline; and *simple* a thirty-day deadline. Urgencies are used to force a choice in the face of contentious disagreement, as well as to speed up the approval of more consensual or already-negotiated bills. Presidents can also withdraw and renew these urgencies, and they often

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do it when congressional leaders signal that more time is needed to reach an agreement.4 *Suma* or *immediate* urgency requests identify those proposals prioritized by the government (Alemán and Navia 2009). Executive urgencies influence passage rates. In a prior work, we have shown that executive bills prioritized by the government through urgency procedures are significantly more likely to become law (Alemán and Navia 2009). Executive bills with *simple* urgency requests are not necessarily more likely to pass than bills without an urgency motion but they are more likely to be reported by the committee with jurisdiction in the chamber of origin. Any type of executive motion of urgency increases the odds of approval of bills initiated by legislators. … As expected, presidents frequently used urgency motions to push major bills forward. When considering only those major executive initiatives that became law, we find that the executive attached some form of urgency motion to 72 percent of successful major bills, and the most severe forms of urgencies (*suma* or *immediate*) to around half of them. The incidence of urgency motions among major executive bills is greater than that reported for all bills (Alemán and Navia 2009). Urgencies were also used, although at a lower frequency, with several of the major bills introduced by members of Congress.17 When we look at major bills that were passed very promptly—in less than 100 days—we find only executive initiated bills. All of these bills received urgency motions, and the vast majority of the most severe form.18 The median time of passage for a major bill introduced by a Concertación president was just over seven months if the bill had a *suma* or *immediate* urgency motion attached to it and around sixteen months if it did not. Figure 4.3 shows the time (days) associated with the passage of bills according to the author: the current president, a former president, and a member of Congress… such executive bills are most often helped by agenda setting tools that force them onto the congressional calendar. Presidents regularly apply urgency motions to navigate major bills towards enactment, making full use of their right over plenary time. As expected, laws (major or otherwise) that originate in the executive branch travel towards enactment faster than laws introduced by legislators.

Pachon y Carroll (en tsbelis y aleman): Third, the president has urgency powers, such that Congress is required to begin committee deliberations and decide on priority bills within thirty days. The president can also freeze the agenda until a decision is taken, reducing the ability to delay consideration.3

1. Mexico: It was only until 2012 that urgency motions to the executive were granted. Beginning each legislative period the president may introduce two initiatives and tag them as urgent. Each chamber has thirty days to produce a committee report and vote it on the floor. The constitution says nothing about how to proceed in case Congress fails to do so.

Chasquetti: “Third, the Uruguayan president is also empowered to declare bills urgent, which imposes a deadline on Congress. If an urgent bill is not addressed by the plenary within the stipulated time (maximum 100 days), it becomes law automatically.5 Uruguayan presidents, unlike their Chilean counterparts, have seldom used this mechanism. Obstacles and blockages from their own supporters seem to have discouraged their use. Since this prerogative was instituted in the constitution in 1967, only fourteen urgent bills have been sent to Congress of which only eight became law. The remaining six were reclas- sified as non-urgent and were buried in the congressional committees. ..We should note that urgency procedures available to legislators in the regulation of the chambers were occasionally used to speed up the passage of bills.22 The main goal for using the urgent procedures appears to have been preventing the bill from being blocked by a standing committee. Out of the thirty-five major bills introduced by the executive, five had an exceptional treatment voted by a majority of the members. Thus, while for most legislation the normal legislative procedures are used to pass the executive’s legislative program, in a non-trivial number of cases (around 14 percent of major bills), congressional urgency procedures are used to push executive proposals to the plenary floor. “ in a footnote “More specifically, the urgency bills have different deadlines for each stage of the legislative process. The first chamber has forty-five days and the second has thirty days. If the latter makes changes, the bill returns to the first with a new period of fifteen days. If the first chamber accepts the amendments, the Asamblea General— the joint assembly of both chambers—has ten days to resolve the conflict. If any of these deadlines are not fulfilled, the bill automatically becomes law (Article 168, paragraph 7). Congress can remove the urgent consideration nature of these bills with a vote and a majority of three-fifths in one of the chambers. “

Vconclusion in tsebelis y aleman: “Presidents in Chile, Brazil, Colombia, Peru, and Uruguay use urgency motions to prioritize bills in the congressional calendar. In the case of Peru, the urgency procedure is used very frequently but it is rather toothless; in Uruguay, the urgency power included in the constitution is very robust but it is a norm to use it sparingly. In contrast, presidents in Brazil and Chile use their urgency prerogatives frequently to push bills to the floor of congress. As a result, the congressional agenda in these two countries is, to a significant extent, dictated by the priorities of the executive branch. Presidents in Colom- bia also use urgency procedures to accelerate the discussion of legislation, although apparently less often than in Chile and Brazil. The lack of this procedure in Argentina and Mexico limits the influence of the executive branch on the congressional schedule and prevents presidents from compel- ling legislators to take a stand on a particular bill. “

Siavelis (2000) found no clear association between urgency motions and overall bill passage rates (2000: 93)

For committees from aleman y Navia: “Chile’s congressional committees are considered rather muscular. For instance, in a recent study by the Inter-American Development Bank (2006) classifying the strength of congressional committees in 18 Latin American countries, Chile’s committees were ranked in the top category (‘high’) with five other nations. Although Chilean committees tend to be popu- lated by legislators with long congressional tenures, frequent changes in positions of authority (chairs and vice-chairs) and alterations in committee assignments contribute to undermine their autonomy. “ (2009: 409).

From Danesi: Committee chairs: Chairs last in their position the whole legislative period (four years). They have complete and exclusive control of the committee procedure and agenda. Their prerogatives include the decision to hold secret sessions and to assign meetings the specific purpose of discussing current events (a kind of “incident(s)” meeting), the rejection of amendments, and the preparation of the itemized list of rules Hacienda should study in the “financing analysis.” The participative reform of 1990 had transformed the exclusive decision of Chairs to hold secret sessions into a majority decision. As it happened with other measures, this amendment was suppressed in 1994.

The impressive power of Chairs, coupled with the jurisdiction of the Hacienda Committee, gives an idea of the influential position of the Chair of this committee.

find that presidential bills declared urgent are more likely to pass. Their explanations is that by declaring them urgent, the president is signaling Congress about her priorities.

1. We are reaseraching the case of Colombia, although it is not clear whether urgency means a close rule. [↑](#footnote-ref-1)
2. The first bill passed under these procedures was the Trade Agreement Act of 1979 (resulting from the Tokyo Round of the GATT) [↑](#footnote-ref-2)