



THE US CONGRESS AND THE DOHA NEGOTIATIONS: MARRIAGE, SEPARATION OR DIVORCE?

I. Introduction¹

1. Because of its central role in making trade law and setting the negotiating objectives for the Administration in trade negotiations, the Congress of the United States has always been a vital and unavoidable ingredient in the work of the GATT and the WTO. While most governments must report to their legislatures and may occasionally lose votes on trade policy measures, the US Congress remains the pre-eminent influence on Washington's ability to negotiate in Geneva.

2. The close proximity of negotiators and legislators – for instance, during WTO ministerial meetings – can be disconcerting. The closeness of the private sector and other lobbies to Congressional business can be no less perplexing. 2007 will be a crucial year for the Doha Work Programme (DWP). What is achievable, if anything, will depend significantly on Congress. This Information Brief attempts to sketch the main features of the US legislative system regarding trade and how they might impact the negotiating climate in Geneva next year.

II. The Politics of US Trade Policy-Making

3. Regardless of the outcome of the mid-term elections, the Doha Work Programme (DWP) will be greatly influenced in 2007 by two strands of US Congressional activity. First, the passage of a new Farm Bill – on which the future of US domestic farm support programs from

September 2007 would depend – or the rolling over of the 2002 Farm Bill for an additional period. Either way, there will be an impact on the ability of US trade negotiators to offer substantially improved conditions for cutting back domestic support under a DWP agriculture agreement.

4. The second will be a decision by the Administration on whether or not to seek new "Trade Promotion Authority"² (TPA) – once known as "fast track" – and a decision by Congress on whether, and under what conditions, to grant it.

5. While current TPA expires at the end of June 2007, a request to extend needs to be presented several months in advance to allow for the necessary Congressional consideration and procedures. However, the absence of TPA need not prevent negotiations in Geneva with full US participation; what is vital is the security of TPA for the *conclusion* of any DWP deal.

6. Thus, it is perfectly possible for the Administration to make its request to Congress several months – or even years – after the expiry of the present authority. Indeed, the US Administration had no "fast track" authority between 1994 and 2002. While no broad, multilateral package of trade measures was presented to Congress during that time, the absence of

¹ Please note that this Information Brief is being written before the final results of the US election are known. AITIC will update this brief following tabulation of the results.

² Trade Promotion Authority or "Fast Track" allows the President to present trade agreements to Congress such that the terms must be voted up or down, in their entirety. In other words Congress cannot pick and choose what it likes and what it rejects – it is all or nothing. However, the translation of the terms of a trade agreement into legal language is very much a matter for consideration in Congress and the packaging of such agreements with other measures and provisions is normal. Thus there is plenty of room for bargaining on the basis of which support for votes on the final bill can be won or lost.

negotiating authority did not prevent the pursuit and conclusion of trade agreements – including the bilateral WTO-accession deal with China and the financial services and telecommunications agreements under GATS.

7. The political balance within Congress will certainly influence what is possible and what is not next year. But there should be no assumption that a change from Republican Party to Democrat control would have an automatically negative impact on the prospects for the two main potential planks of legislation or for the DWP.

8. Historically, the Democratic Party was the party of “free trade” and is arguably less captured by the large agricultural lobbies than the Republicans. On the other hand, Democrats have traditionally driven the labour rights and environment agendas and have made TPA at least partly conditional on the achievement of labour and environment commitments in bilateral trade agreements. Indeed, the original NAFTA agreement had to be renegotiated in 1993, at the behest of the new Democrat President, Bill Clinton, to include such commitments.

9. While recent speeches by key Democrats in Congress – those who may be expected to be influential – suggest that the labour and environment agendas would be pursued more actively in a Democrat-controlled Congress, it is far from clear that they would be pursued into the WTO realm. After all, any significant extension of TPA in 2007 or 2008 would likely affect, after the election of 2008, a future Democrat President as much as a Republican President now. Binding the hands of a potential president of their own persuasion may not be attractive. But that is speculation: it should be remembered that forecasting the chemistry and the performance of the US Congress is not a science, no more than for other democratic legislatures.

10. One thing is certain, however; just as the passage of trade legislation by the

Republican Congress over the past decade has always required Democrat votes in support, so a Democrat-controlled Congress would need Republican votes to secure passage of measures in the future. The record shows that there are members in both chambers that habitually abstain, or that vote against trade bills. In a period where bipartisanship is an almost forgotten concept in the US Congress, there is no natural majority for trade opening measures on either side.

11. In practice, personalities, ambition and personal leanings among a rather few figures count for much. It is the business managers that call most of the shots in Congress. Thus, the new chairs of the various congressional committees (see below) will be instrumental in determining what kind of legislation is pursued, when, and with what degree of political urgency. And, in the House of Representatives, it is the Speaker who is all-powerful in terms of the consideration of any bill in committee and, naturally, on the floor of the full House.

12. With a change of control in the House and/or the Senate, then it will normally be the current “Ranking (Minority) Member” of the committees who will take the chair from January 2007. Among the potential Democratic Party chairs of the five or six committees and sub-committees that will be crucial to any passage of farm and trade bills in the new Congress is very much the same mix of pro/anti-trade, pro/anti farm subsidies, pro/anti-WTO sentiments as among the current Republican chairmen.

13. Yet, while personal inclination is important, what also counts is to whom the new chairs listen. The consideration and content of trade and farm measures in Congress is highly influenced by lobbies. Often, pressure groups or individual business firms draft self-interested clauses of new legislation and inject them into the committee process through sympathetic members. A Republican controlled Congress is most persuaded by business and large-scale farming interests. A Democratically-controlled Congress will be

influenced too by business and farmers, but also by the labour unions and environmental groups.

14. A final consideration, in the event of a change of control, will be the degree to which a Democratic Congress is *interested* in trade issues. For at least two years there will be a natural tension between the Republican President and the Democrat Congress. Trade has not figured as a big-ticket item on the Democratic Party's programme and in the mid-term election campaign. Could Democrat business managers be persuaded that trade in general, and the Doha Round in particular, are too important to ignore or put on the back burner? If so, can they be persuaded to expend the political effort and capital to press significant measures through the Congress – and do so in cooperation with the Administration? We shall not know the answer to that question until next year.

III. How the System Works

15. Bills introduced into the US Congress may be drafted by the Administration or by members of Congress. Whatever the source of the original proposals, all texts go through a lengthy process of negotiation and revision. Bills commonly take several months to pass all their stages. While a number of Congressional committees may have an interest in any one piece of legislation, and hold hearings on them, the principal routes for the two DWP-related Bills that may come forward in 2007 are as follows:

A. ***“Farm Bill” (2002 Farm Security and Rural Investment Act)***

16. The Administration has indicated it may make a proposal to Congress in the first quarter of the year. Passage through Congress would look something like the following:

1. House Agriculture Committee. (Currently, its members are 25 Republicans (Rep) and 21 Democrats (Dem))
 - Hearings with testimony from interested parties

- Consideration of amendments and votes (“markup”³ sessions)
- 2. Full House floor debate and vote
- 3. Senate Agriculture Committee (11 Rep, 10 Dem) – hearings, markup and votes
- 4. Senate floor vote
- 5. Reconsideration in the House (full House or committee) if Senate passes a different or amended version of original House bill.
- 6. Possible House/Senate “Conference” to reconcile two versions
- 7. Final House vote
- 8. Final Senate vote
- 9. Bill passed for Presidential signature⁴

17. An alternative process might be followed if there is a decision to merely roll forward the programs contained in the 2002 “Farm Bill” (see Section III.B below) . Such a decision could be taken by resolution of the two chambers or by attaching it to an unrelated bill in its final stages of passage through the Congress. However, the measure will still be subject to much the same scrutiny as a full bill.

B. ***Trade Promotion Authority (“Fast Track”) Extension Bill***

18. The following assumes a bill originating in the House of Representatives or sent by the Administration to the House:

1. House Ways and Means Committee, Trade Sub-Committee (8 Rep 5 Dem) - public hearings, markup and votes.
2. House Ways and Means Committee (23 Rep, 16 Dem) - full committee hearings, markup and votes
3. House floor vote
4. Senate Finance Committee, Sub-committee on International Trade (8 Rep, 6 Dem) – hearings, markup and votes
5. Senate Finance Committee (11 Rep, 9 Dem) – hearings, markup and votes
6. Senate floor vote
7. Reconsideration in the House (full House or committees) if Senate passes a different or amended version of original House bill.

³ “Markup” refers to the consideration of draft amendments to legislation and the voting thereon. The draft amendments must be tabled by members of the relevant committee but may originate from a variety of external interests, including business firms, trade associations, NGOs and legal representatives of overseas companies and governments.

⁴ If the president does not wish to sign legislation – to exercise a veto – he may return it (within 10 days) to the chamber from which it originated, stating his objections. A presidential “veto” can be over-ridden if the legislation is carried by a two-thirds majority in both chambers.

8. Possible House/Senate Conference to reconcile two versions
9. Final House vote
10. Final Senate vote
11. Presidential signature

19. The role played by the two sub-committees is a matter for the chairmen of the principal committees - i.e. the House Ways and Means Committee and the Senate Finance Committee.

20. The course ultimately followed for both pieces of potential legislation will certainly be affected by the outcome of the mid-term elections insofar as the control of committees and business management in the Congress may change.

IV. Where Are We Coming From?

21. The following paragraphs outline the most recent legislation concerning farm support programs and TPA.

A. 1996 Federal Agriculture Improvement and Reform Act ("FAIR")

- Moved main US farm support programs (affecting feed grains, wheat, upland cotton and rice) away from price-linked "deficiency" payments towards "de-coupled" support.
- "Production flexibility contract payments" were largely independent of commodity prices and were set to reduce over a period of seven years – from about \$5.6 billion to \$4.0 billion in total.
- Contracts were partially dependent on conservation commitments but land had to be kept in agricultural use. Farmers could decide freely on the crops to grow.
- Programs revised for other protected products – dairy, peanuts, sugar
- Commodity loan rate system (lower-than-market interest rate loans) retained, but modified.
- Export support moved into line with Uruguay Round commitments – notably by capping the Export Enhancement Program

22. In the event, the planned reductions in overall farm support spending did not occur. Congress voted exceptional spending supplements annually from 1998 to 2001 – largely to boost projected falls in farm incomes due to global commodity price weaknesses and the Asian financial crisis.

B. 2002 Farm Security and Rural Investment Act

23. In effect the US government gave up on de-coupled support for farmers precisely at the point at which the European Union was moving in that direction. The chief features of the new, five-year Farm Bill were:

- "Counter Cyclical Payments" (CCPs) were introduced. These provide payments to farmers of covered commodities whenever their "effective" price falls below a target price. Thus, the link between support and price was re-established.
- Fixed direct payments replaced production flexibility contract payments.
- Soybeans, other oilseeds and peanuts become covered crops for direct payments.
- Commodity loan rate system made available for peanuts, wool, mohair and honey in addition to traditional program crops.
- Overall spending for environmental and conservation programs rose by 80%.
- Secretary for Agriculture was required to make adjustments if the allowable Uruguay Round AMS ceiling could be exceeded by the relevant domestic support programs.
- Export Enhancement Program (EEP) payments were maintained (at around \$480 million a year) with a broadening of the definition of "unfair trading practices" – in response to which EEP payments are, in theory, provided.

C. Trade Act of 2002 and "Fast Track" Conditions

24. "Fast Track" or "Trade Promotion Authority" (TPA), as it is now known, is normally contained in legislation providing for other measures or objectives. Current US negotiating authority was granted in the Trade Act of 2002 which contained a number of other "divisions" in addition to "Bipartisan Trade Promotion Authority". In effect, the price of securing positive Congressional votes for TPA was – and will be – additional programmes and measures elsewhere. Apart from its general and miscellaneous chapters the 2002 Act allowed for:

- Trade adjustment assistance. A major boost to retraining spending, relocation allowances, health insurance and other employment support required as a result of

trade-related industrial and agricultural adjustment. At the same time, this division also covered various customs service activities including those relating to drug control enforcement, antiterrorism and textiles transshipment.

- The Andean Trade Preference Act and its many exceptions protecting specific US farm sectors and the textiles industry.
- The extension of GSP, adding new conditions relating to the fight against terrorism and the abolition of the worst forms of child labour.

25. It is expected that renewal of the Andean Trade Preference Act and GSP will take place shortly – perhaps in the “lame duck” session of the current Congress in the weeks following the mid-term elections. In any event, any short-term extension of TPA next year would probably be contained in legislation relating to other measures.

26. Division B of the Act provides for Trade Promotion Authority, in this case allowing the President to enter into trade agreements with foreign nations until 1 July 2005 or, in the absence of any resolution in either house of Congress disapproving the extension (as was the case), until 1 July 2007. However, like any other “fast track” authority it contained conditions. In this case, the objectives of US trade negotiations with other countries were contained in over one hundred clauses in 17 broad chapters with overall, principal and priority categories. Among others, detailed objectives were set out for: foreign investment conditions, intellectual property protection, anti-corruption, electronic commerce, agriculture, labour and environment, dispute settlement and the protection of US trade remedy laws. Some of these conditions were applicable largely to preferential trade agreements while others were relevant to the DWP.

27. In pursuing trade agreements the US Trade Representative is required to consult with Congress, notably with the appropriate Congressional committees and the International Trade Commission. In entering into trade agreements on tariffs or non-tariff barriers, the President must

show that he has “made progress” in meeting the relevant objectives in the Act.

28. The initial version of the 2002 bill passed the House of Representatives, in December 2001, by just a single vote. Subsequent votes after the House/Senate Conference were almost as tight with just one or two votes to spare. That result was secured only after a massive lobbying campaign.

29. Votes on “Fast Track” itself and on trade agreements reached under “Fast Track” authority have been increasingly difficult to win over the past two decades. In 1979, “Fast Track” was extended with a vote in favour of 395 to 7. The implementing legislation for the Uruguay Round, for instance, was passed in the House by 288 votes to 146. A 1998 attempt to provide “Fast Track” authority to the Clinton Administration was voted down in the House of Representatives by 180 to 243.

V. Pending Trade Policy Issues in the US Congress

30. While TPA and the farm bill will be the most important trade issues in the 110th Congress (2007-2008), they are not the only ones. Listed below are other pending matters, roughly in the order that they are likely to be taken up in Congress. A few of these issues may come up in a special post-election (“lame duck”) session in mid-November. This session, which will convene just after the election, will be the last time that the current (109th) Congress meets. While the main purpose of this session will be to consider appropriations bills that were not enacted before Congress adjourned for the election, the session may also take up some other business.

- The bill to grant permanent normal trade relations (i.e., most favored nation treatment) to Vietnam is expected to be taken up in the lame duck session. Approval of this bill will mean that the United States no longer places conditions on Vietnam’s MFN status, and thus will not be legally obliged to invoke non-application (WTO Article XIII) upon Vietnam’s accession.

- Another issue that might conceivably be taken up in the lame duck session of Congress, but is more likely to be postponed until next year, is renewal of the Generalized System of Preferences (GSP). That programme is due to expire at the end of this year, and while the Bush administration favours renewal it has not yet made specific recommendations for changes in the programme (e.g., the reduction or elimination of benefits for some countries such as Brazil and India).
- Trade preferences for Andean countries are also expiring at the end of this year. It is not clear whether the United States will opt to renew those preferences on a short-term basis, pending approval of the free trade agreements (FTAs) with Peru and Colombia. Failure to renew these preferences would have a greater impact on Ecuador (FTA negotiations with this country stalled) and Bolivia (which never joined the U.S.-Andean talks).
- Special preferences for the Caribbean Basin and sub-Saharan Africa will expire on September 30, 2008, and their renewal may therefore be at issue in 2008 (the second year of the 110th Congress).
- The FTAs with Peru and Colombia have yet to be approved by Congress. It is possible, but not certain, that the Peruvian FTA will be taken up in the lame duck session. It is not clear whether the implementing legislation for this FTA will be submitted in time, however, and the issue may therefore be carried over into the 110th Congress. The Colombian agreement will be taken up next year.
- FTAs with several other countries (Korea, Thailand, the United Arab Emirates, etc.) are still under negotiation. If these talks can be concluded within the next few months, the results may be considered by Congress within the current grant of TPA.

31. How these issues will be handled depends not only on whether the Democrats take control of either or both chambers of Congress, but also on the extent of their electoral victory and how they propose to deal with it. Some of these are matters for which the voting patterns of Democrats and Republicans have not been very far apart — at least so far. If the Democrats do well on Election Day, however, they will need to decide whether they will opt to deal with the Bush administration on these matters in a cooperative or a confrontational manner.

VI. Bilateral versus Multilateral Objectives

32. The issue of TPA renewal and the political price the Administration is prepared to pay to secure it is not merely a question of the credibility of the DWP in Congress. There remains a strong dynamic for the pursuit of bilateral and regional preferential trade agreements. These can be of more interest than the WTO to individual members of Congress who often develop close ties to particular countries and causes. Indeed, bilateral FTAs can represent a significant political achievement even if their commercial value to the US is negligible. They may demand a disproportionate amount of negotiating effort on the part of the USTR and other agencies in Washington, but they are usually economically painless, provide foreign policy and other non-trade benefits, and are comparatively easy to get through Congress compared to a major WTO deal. In recent years, the biggest fights have taken place over the textiles and clothing elements in such deals; but they have usually squeezed through Congress nonetheless.

33. Thus, even if the DWP is getting nowhere by next spring, it should not be assumed that the Administration would be unable to secure TPA renewal if there was sufficient interest in prospective bilateral and regional trade deals.

34. There could be other significant trade issues that may occupy the time of Congress at the expense of TPA. For instance, the granting of permanent normal trade relations (PNTR) — unconditional MFN treatment in WTO terms — for Russia may require a major lobbying effort by supporters and the Administration once a bilateral deal with Moscow on WTO accession terms is secured.

35. Several measures may, of course, be packaged together in a single bill. However, it is the political judgement of the Congressional business managers, pushed or pulled by the Administration, that will determine what will be attempted

within the limited time available and given the political balance and sentiment in the two Houses.

VII. Conclusion

36. The future of the DWP is bound up with political fortunes, ambitions and judgements in the US Congress. To some extent, the WTO is always dependent on the goodwill of the US political system; in 2007 it is likely to be more so than any time recently. With a change of party control, the prospects are even less certain than ever. Yet, history shows that Congress often does the right thing in the end, even if only by a single vote. Nothing can be excluded right now. Equally, nothing on trade is easy in the US Congress; nothing can be taken for granted.

List of Acronyms

CCP	Counter Cyclical Payment
DWP	Doha Work Programme
EEP	Export Enhancement Program
FAIR	Federal Agricultural Improvement Act
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
MFN	Most Favoured Nation
NAFTA	North American Free Trade Agreement
PNTR	Permanent Normal Trade Relations
TPA	Trade Promotion Authority
WTO	World Trade Organization