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**Hand-Outs to Accompany the Presentation on
The US Congress and Future of the Farm Bill and
Trade Promotion Authority**



Notes:

For more details on how the fast track/trade promotion authority (TPA) actually works, and specific examples of how Congress has used this authority to influence the outcome and interpret the results of trade negotiations, see my article "Is the Fast Track Really Necessary?" *Journal of World Trade* Volume 31 Number 2 (April, 1997).

For more details on the limited authorities available if the TPA is not renewed, see my article "US Plans for a New WTO Round: Negotiating More Agreements with Less Authority," *The World Economy* Volume 23 Number 5 (May, 2000). While that analysis was written at a time when it appeared that the United States intended to launch a new WTO round without a renewal of the fast track, many of the points in the article would be equally applicable in the event that the current round were to continue without TPA.

How Ordinary Legislation is Approved in the U.S. Congress: The Example of a Bill to Renew Trade Promotion Authority

House of Representatives

233 Democrats, 201 Republicans, 1 vacancy

Senate

51 Democrats,¹ 49 Republicans

Stage 1: Committee consideration. The key issues that may be resolved at this stage, at least on an interim basis, are (1) how labor and environmental issues will be handled in TPA, (2) whether any changes will be made in the TPA procedures, and (3) whether the bill will deal only with TPA or become an omnibus trade bill that includes provisions dealing with other issues as well (e.g., permanent MFN for Russia, renewal of trade preferences, trade adjustment assistance, etc.).

Note: In the case of TPA-renewal, the most important action at the committee level is underway now, in the informal negotiations between the administration and key legislators. Whatever deals they strike will form the basis of the draft bill, but will also be subject to change at later stages of the legislative process.

House Ways and Means Committee

Chairman Charles Rangel (D-New York)
Ranking Member Jim McCrery (R-Louisiana)
24 Democrats, 17 Republicans

Trade Subcommittee

Chairman Sander Levin (D-Michigan)
Ranking Member Wally Herger (R-California)
9 Democrats, 6 Republicans

Senate Finance Committee

Chairman Max Baucus (D-Montana)
Ranking Member Charles Grassley (R-Iowa)
11 Democrats, 9 Republicans

Int'l Trade & Global Competitiveness Sub.

Chairman Blanche Lincoln (D-Arkansas)
Ranking Member Gordon Smith (R-Oregon)
6 Democrats, 5 Republicans

Stage 2: Floor debate. The two versions of the bill must be approved by both houses of Congress, and are also subject to amendment. The House bill is likely to be changed very little, if at all, but the Senate version could be very different from what was approved in the Finance Committee.

Approval: Bills require a simple majority. If there are no vacancies and all 435 members are present and voting, that means 218 votes.

Amendments: If the bill is considered under a closed rule, no amendments are allowed. The House Rules Committee may nevertheless allow some amendments to be considered. Amendments require a simple majority.

Filibuster: *There is no such maneuver in the House rules.*

Approval: Bills require a simple majority. If all 100 senators are present and voting, that means 51 votes. The vice president can cast the deciding vote when the Senate is evenly divided.

Amendments: Senate rules make it very easy to propose amendments. These are approved by a simple majority.

Filibuster: The opponents can block the bill through endless debate. This maneuver can be broken only if 60 senators vote to invoke cloture.

Stage 3: Reconciling differences between bills. There will almost always be differences between the versions of the bills that are approved by the two houses. These need to be resolved in one of two ways:

- A. The most common procedure is to appoint a conference committee composed of members of both chambers and both parties. They craft a unified bill that is sent back for final votes in both chambers.
- B. Alternatively, either chamber can approve the version of the bill that was approved in the other chamber (e.g., the Senate might simply adopt the version approved by the House). This is a less common approach, but is sometimes used at the end of a legislative session when time is tight.

Stage 4: Presidential action. The president has three choices:

- A. He can sign the bill into law.
- B. He can veto the bill. If he does so, the veto can be overridden by a two-thirds vote in both houses of Congress. (Note: President Bush has vetoed only one bill in more than six years.)
- C. If he takes no action within ten days and Congress is still in session, the bill becomes law without his signature. (If he takes no action and Congress has gone out of session, the bill is defeated on a "pocket veto" that cannot be overridden.)

¹ : Two of the senators who caucus with the Democrats are actually independents.

The Procedures of Trade Promotion Authority and the Opportunities for Congressional Influence

Stage 1: Notification prior to negotiations. In order for a trade agreement to be eligible for consideration under TPA procedures, the president must notify Congress of his intention to negotiate the agreement. That notice must be given at least 90 days before initiating negotiations. Congress does not need to take any action, but this provision implies the possibility that negotiations might be blocked if objections are raised.

Note: This step was taken long ago for any agreements that emerge from the Doha Round.

Stage 2: Negotiations. While the executive branch has principal authority for the conduct of the negotiations, members of Congress have several means by which they can influence the talks. These include formal consultations through the Congressional Oversight Group, holding hearings on the negotiations, sending letters to the president, communicating directly with the negotiating partner(s), etc.

Stage 3: Notification prior to signing an agreement. In order for a trade agreement to be eligible for consideration under TPA procedures, the president must notify Congress of his intention to enter into (i.e., sign) the agreement at least 90 calendar days before doing so. In order to make this notification, the negotiations must be largely completed. During this period, members of Congress will sometimes seek to have changes made in the final terms of the agreement.

Note: Because the current TPA grant is scheduled to expire at the end of June, 2007, this means that the deadline for concluding any pending negotiations is the end of March, 2007 (unless TPA is renewed).

Stage 4: Translating the agreement into implementing legislation (the “non-markup” process). A bill must be developed to make any changes in U.S. laws that are necessary to comply with the commitments made in the agreement. A “statement of administrative action” does the same thing for regulations.

The bill and the statement are originally developed by the trade committees in Congress, who recommend language to the president. The president is under no formal obligation to accept their recommendations, but failure to do so could provoke opposition.

During the period of 1979-1994, the implementing legislation for some trade agreements included items that had not been in the agreements as negotiated. In some instances, they included important matters of interpretation (e.g., in the Tokyo Round) or even substantive changes in the terms of the agreement (e.g., in the case of NAFTA). Under the Bush administration, there has been much more restraint shown (i.e., the terms of implementing legislation are generally restricted to matters in the original agreements).

Stage 5: Introduction and consideration of the implementing legislation. The president sends the implementing legislation, the statement of administrative action, and several other reports and documents to Congress. The draft implementing legislation is introduced for him by the congressional leadership.

Once the bill has been introduced, it cannot be amended. The law sets limits on the period of time that the bill can be under consideration in the trade committees and other committees with jurisdiction over specific aspects of the agreement (e.g., the agriculture committees can consider the agricultural commitments). If the maximum amount of time were to be spent on all of these steps, it would come to 90 legislative days. In actual practice, most implementing bills for trade agreements are voted upon within a few weeks of their introduction. The TPA rules guarantee that there will be votes in both chambers: The bill can neither be “bottled up” in any committee nor subject to a filibuster in the Senate.

While the bill cannot be amended, legislators are free to bargain with the executive over their votes. Presidents will sometimes make commitments with legislators in order to secure their support, and these commitments can indirectly affect the balance of concessions in the agreement. In the case of NAFTA, this was done quite explicitly through the negotiation of side agreements (especially on labor and environmental matters) and side letters (especially on sensitive products such as orange juice and sugar). The Bush administration has been more reluctant than its predecessors to engage in post-negotiation negotiations.

The implementing legislation requires a simple majority in both the House of Representatives (i.e., 218 votes) and the Senate (i.e., 51 votes, or 50 plus the vice president’s tie-breaking vote).

Stage 6: Presidential action. The implementing legislation must be signed by the president. The agreement does not go into effect until it is proclaimed by the president; this can be delayed if the other party has not yet come into compliance with its terms (e.g., met the intellectual property requirements, etc.).

Table 1
Free Trade Agreements of the United States

	Negotiations Initiated	Negotiations Concluded	Approved by U.S. Congress	Entry into Effect	Share of Total U.S. Imports	Share of U.S. Oil & Gas Imports	Share of Total U.S. Exports
Pre-Bush Administration FTAs					28.4	41.3	36.3
Israel	1984	1985	1985	1985	1.0	—	0.8
Canada	1986	1987	1988	1989	17.3	29.0	22.8
Mexico	1991	1992	1993	1994	10.1	12.3	12.7
Clinton-Bush FTAs					1.4	—	3.0
Jordan	2000	2001	2001	2001	0.1	—	0.1
Chile	2001	2003	2003	2004	0.4	—	0.6
Singapore	2001	2003	2003	2004	0.9	—	2.3
Bush Administration FTAs/Completed					1.5	0.2	3.8
Australia	2002	2004	2004	2005	0.4	0.1	1.8
Morocco	2003	2004	2004	2006	<0.1	—	0.1
Central America	2003	2004	2005	2006	0.8	0.1	1.4
Bahrain	2004	2004	2005	2006	<0.1	—	<0.1
Dominican Republic	2003	2004	2005	2007	0.3	—	0.5
Bush Administration FTAs/Pending					7.5	4.4	8.5
Oman	2004	2006	2006	Pending	<0.1	0.1	0.1
Peru	2003	2006	Pending	—	0.3	0.1	0.3
Colombia	2003	2006	Pending	—	0.5	1.7	0.6
Panama	2004	2006	Pending	—	<0.1	—	0.3
Korea	2006	Pending	—	—	2.6	—	3.3
Malaysia	2006	Pending	—	—	2.0	0.1	1.2
Southern African C.U.	2002	Pending*	—	—	0.4	—	0.5
Ecuador	2003	Pending*	—	—	0.4	2.4	0.2
Thailand	2003	Pending*	—	—	1.2	—	0.8
United Arab Emirates	2004	Pending*	—	—	0.1	<0.1	1.0

Source: Trade data are for 2005, calculated from U.S. International Trade Commission figures.

*: Note that there is virtually no chance that these FTA negotiations will be completed within the current grant of TPA.

Table 2
Selected Votes on Trade in the House of Representatives, 1979-2006

Percentages Taking the Pro-Trade Position (i.e., Voting for Market-Opening Initiatives or Against Market-Closing Initiatives); Categories Listed in Order of Partisanship

Year	Issue	Dems. (A)	Reps. (B)	(B) – (A)
<i>Average for Multilateral & Industrialized Country Agreements</i>		79.2	86.2	7.0
2005	Reject withdrawal of the United States from the WTO	76.9	82.6	5.7
2004	Approve U.S.-Australia FTA implementing bill	58.0	89.2	31.2
2000	Reject withdrawal of the United States from the WTO	89.2	84.7	-4.5
1994	Approve Uruguay Round agreements implementing bill	65.2	68.4	3.2
1988	Approve U.S.-Canada FTA implementing bill	87.8	93.8	6.0
1979	Approve Tokyo Round agreements implementing bill	98.0	98.7	0.7
<i>Average for Developing Country FTAs in the Middle East*</i>		57.5	93.5	36.0
2006	Approve U.S.-Oman FTA implementing bill	11.1	87.7	76.6
2005	Approve U.S.-Bahrain FTA implementing bill	58.7	94.2	35.5
2004	Approve U.S.-Morocco FTA implementing bill	60.0	91.9	31.9
1985	Approve U.S.-Israel FTA implementing bill	100.0	100.0	0.0
<i>Average for Developing Country Preferences and FTAs</i>		36.9	85.1	48.2
2005	Approve CAFTA-DR implementing bill	7.4	88.2	80.8
2003	Approve U.S.-Chile FTA implementing bill	36.9	87.8	50.9
2003	Approve U.S.-Singapore FTA implementing bill	37.1	87.9	50.8
2001	Recommit Andean Trade Preferences Act renewal	27.2	91.1	63.9
2000	Approve preferences for Africa and Caribbean Basin	61.8	85.9	24.1
1997	Expand preferences under the Caribbean Basin Initiative	23.5	62.1	38.6
1993	Approve NAFTA implementing bill	39.5	75.4	35.9
1984	Remove Asian NIEs from Gen'd System of Preferences	36.3	91.0	54.7
1983	Approve Caribbean Basin Economic Recovery Act	56.0	90.1	34.1
1982	Approve Caribbean Basin Economic Recovery Act	43.6	91.5	47.9
<i>Average for Grants of New Negotiating Authority</i>		19.8	81.5	61.7
2001	Approve bill to grant trade promotion authority	10.0	89.4	79.4
1998	Approve extension of fast-track authority	14.5	68.0	53.5
1991	Deny extension of fast-track authority	34.9	87.0	52.1

*: Note that the vote on the FTA with Jordan (2001) is not listed because it was approved on a voice vote.

Source: Calculated from votes reported in the Congressional Quarterly Almanac (various) and the House of Representatives website.

Table 3
Votes on Omnibus Trade Bills in the House of Representatives, 1973-2006

Percentages Voting to Enact the Bill

Year	Issue	Democrats	Republicans	Overall
2006	Approve mini-omnibus trade bill	48.9	58.0	53.5
2002	Approve the Trade Act of 2002	12.0	87.6	50.4
1988	Approve the Omnibus Trade & Competitiveness Act	99.2	39.3	74.5
1984	Approve the Trade and Tariff Act of 1984	100.0	99.3	99.7
1973	Approve the bill that became the Trade Act of 1974	87.6	93.0	89.0

Source: Calculated from votes reported in the Congressional Quarterly Almanac (various) and the House of Representatives website.

Table 4
Inter-Branch Bargains over Trade Initiatives, 1972-2002

Year	President's Request	Concessions Granted to Congress	
		Incorporated in the Trade Bill	Made Outside of the Bill
1972-1974	Grant fast-track for Tokyo Round. Approve U.S.-Soviet MFN agreement. Pass the Generalized System of Preferences.	Section 301 reciprocity provision written into the law. Jackson-Vanik conditions placed on Communist countries' MFN treatment. GSP proposal modified. Trade-remedy laws amended.	The Nixon administration took the United States off the Bretton Woods monetary system, and adopted a more interventionist exchange-rate policy.
1979	Approve on fast track the Tokyo Round agreements.	Several changes made in the operation of the trade-remedy laws, such as transfer of authority to the Department of Commerce.	Assistance package created for the textile and apparel industry.
1984	Grant fast track for U.S.-Israel FTA. Renew GSP.	Extensive amendments made to the reciprocity and trade-remedy laws. GSP converted into a neo-reciprocal bargaining instrument.	Protection extended to the U.S. steel industry through "voluntary" restraint agreements negotiated with foreign suppliers.
1985	Approve on fast track the U.S.-Israel FTA.	[none]	Adjustments made to the schedule of tariff concessions.
1986	Authorize use of fast track for the U.S.-Canada FTA.	[Additional legislation not required, but the 1984 trade law allowed the congressional trade committees to reject any proposed use of the fast track.]	Investigation of Canadian lumber subsidies initiated. Pledge to consult with Congress in negotiations.
1988	Approve on fast track the U.S.-Canada FTA. Grant fast track for Uruguay Round.	Extensive changes made in the reciprocity and trade-remedy laws. Implementing legislation for the U.S.-Canada FTA modified the agreement.	Support promised to the uranium industry (originally as part of the implementing legislation for the U.S.-Canada FTA).
1991	Renew fast track for the GATT Uruguay Round and NAFTA.	[Legislation not required; the 1988 trade law allowed Congress to reject a two-year extension of the fast-track authority by enacting a resolution of disapproval.]	Environmental and labor issues included in the NAFTA negotiations. Action taken under "Special 301" intellectual property law.
1993	Approve on fast track the North American FTA.	Numerous modifications made to NAFTA in the implementing legislation.	Side agreements reached on labor, the environment, and import surges. Many deals made on orange juice, sugar, and other products.
1994	Approve on fast track the Uruguay Round agreements.	Codification of Super 301 renewal. Amendments to trade-remedy laws. Several minor product concessions.	Deal for withdrawal from the WTO if dispute-settlement panels were found to be biased against United States (enactment blocked in 1995).
2002	Grant trade promotion authority for several negotiations. Renew GSP and Andean preferences. Graduate Russia from Jackson-Vanik and approve Pakistani trade preferences.	Restrictions in the authority to cut tariffs on import-sensitive agricultural products or negotiate on trade-remedy laws. Expanded trade adjustment assistance. [Russia not graduated from Jackson-Vanik; the Pakistani textile plan was dropped due to sharp opposition from textile-state lawmakers.]	Restrictions imposed on steel imports under the safeguards law. Farm bill enacts new and expanded subsidies for U.S. agriculture. Stricter rules of origin are required for Andean and Caribbean preferences.

Table 5
Characteristics of Selected U.S. Raw and Processed Agricultural Commodities

Imports for Consumption (Customs Value) and Domestic Exports (FAS Value), Thousands of Current Dollars

	Farms (2002)	Exports (2005)	Imports (2005)	Balance (2005)	Average MFN Tariff	Gov't Support	TRQs	Trade Cases	U.S. Position in WTO Cases
<i>Export-Oriented</i>	1,064,015	21,171,094	496,216	20,674,878					
Soybeans	317,611	6,314,528	62,947	6,251,581	0.00	Yes	—	—	Both
Corn	452,211	5,027,106	124,233	4,902,873	0.02	Yes	—	—	Both
Wheat	169,528	4,378,435	172,057	4,206,378	2.90	Yes	—	Yes	Both
Cotton	24,805	3,997,252	17,923	3,979,329	0.82	Yes	—	—	Respondent
Sorghum	40,214	510,446	97	510,349	0.66	Yes	—	—	—
Apples	26,853	492,708	103,732	388,976	0.00	—	—	—	Complainant
Rice	8,046	361,542	16	361,526	2.28	Yes	—	—	Complainant
Barley	24,747	89,077	15,211	73,866	0.44	Yes	—	—	—
<i>Low-Controversy</i>	c.215,794	5,625,157	11,270,673	-5,645,516					
Tree Nuts	40,377	2,510,285	1,824,242	686,043	0.07	—	—	—	—
Oranges	14,288	378,857	68,455	310,402	1.64	—	—	—	—
Dry Peas & Beans	10,841	356,874	186,560	170,314	0.37	—	—	—	—
Potatoes	9,408	109,662	91,271	18,391	0.41	—	—	—	Complainant
Oilseeds (Except Soybean)	15,225	195,572	320,432	-124,860	0.01	—	—	—	—
Oats	63,763	5,085	206,058	-200,973	0.00	Yes	—	—	—
Nursery Products & Trees	4,956	275,118	597,144	-322,026	1.54	—	—	—	—
Coffee & Tea	1,202	562,980	1,131,985	-569,005	0.35	—	—	—	—
Other Oilseed Products	NA	606,255	2,235,046	-1,628,791	0.98	—	—	—	—
Other Non-Citrus Fruits	55,734	624,460	4,609,480	-3,985,020	0.03	—	—	—	—
<i>Mixed-Interest</i>	c.1,003,818	12,774,697	13,136,723	-362,026					
Poultry, Prep'd/Preserved	32,006	2,757,665	164,983	2,592,682	1.58	—	Yes	—	Both
Wet Corn Milling Products	NA	1,379,134	394,407	984,727	3.07	—	—	—	Complainant
Meat Products (Not Poultry)	NA	6,077,051	5,944,872	132,179	3.27	—	Yes	Yes	Both
Berries	18,234	97,686	225,872	-128,186	0.00	—	—	Yes	—
Grapes	23,856	538,588	944,531	-405,943	0.06	—	—	Yes	—
Hogs and Pigs	78,895	27,889	598,176	-570,287	0.00	—	—	Yes	Both
Cattle	796,436	71,066	1,069,009	-997,943	0.02	—	—	—	Respondent
Other Vegetables & Melons	54,391	1,825,618	3,794,873	-1,969,255	1.01	—	Yes	Yes	Both

	Farms (2002)	Exports (2005)	Imports (2005)	Balance (2005)	Average MFN Tariff	Gov't Support	TRQs	Trade Cases	U.S. Position in WTO Cases
Import-Sensitive	c.185,314	5,391,033	8,979,818	-3,588,785		—			
Dry/Con./Evap. Dairy Prods.	NA	1,426,693	921,222	505,471	1.05	—	Yes	—	—
Tobacco	56,977	984,911	651,979	332,932	4.88	—	Yes	—	—
Peanuts	8,640	130,347	127	130,220	131.80	—	Yes	—	Respondent
Fluid Milk, Cream & Related	91,989	45,463	33,106	12,357	14.70	—	Yes	—	Complainant
Fresh Flowers, Seeds & Foliage	21,728	71,542	805,071	-733,529	2.83	—	—	Yes	—
Frozen Fruits, Juices & Veggies.	NA	860,867	1,606,266	-745,399	18.83	—	Yes	Yes	Respondent
Sugars	5,980	232,093	1,027,328	-795,235	6.54	—	Yes	Yes	Respondent
Cheese	NA	203,098	1,007,102	-804,004	10.09	—	Yes	—	Complainant
Fruits & Vegetables Preserved	NA	1,436,019	2,927,617	-1,491,598	4.60	—	Yes	Yes	—

TRQs: At least one product in this category is subject to tariff-rate quotas on an MFN basis and/or in free trade agreements.

Trade Cases: At least one product in this category has been subject to an investigation or order under the U.S. antidumping, countervailing duty, or safeguard laws during 1995-2006.

WTO Cases: For at least one product in this category, the United States has been the complainant, the respondent, or both, in a WTO dispute during 1995-2006.

Source: Trade data calculated from U.S. International Trade Commission data. Data on farms from the 2002 Census of Agriculture.