

FAST TRACK

Concept Outline

Negotiating Objectives

Objectives should be tailored to particular negotiations, recognizing that different goals may be appropriate in the WTO, bilateral negotiations, and regional negotiations.

1. Tariffs.

- Seek to reduce all tariffs to current U.S. level and then to zero.
- Make a priority of eliminating tariff peaks.
- Seek to eliminate all industrial tariffs within 10 years.
- Make applied rates the starting point for negotiations.

2. Agriculture.

-Continue efforts to limit trade distorting practices, including subsidies to encourage production, import barriers, and the operation of state trading monopolies. Seek the elimination of agricultural export subsidies.

-Encourage continuing multilateral efforts to convert agricultural support to payments contingent on sustainable environmentally friendly agricultural practices.

3. E-Commerce. Preserve a free market for E-Commerce:

-Promote the liberalization of services essential to e-commerce, including telecommunications, computer related services, advertising and business services, distribution services (including the distribution of digitized content), information technology services, and financial services, including internet payments

-Seek the protection of intellectual property both online and offline, including stronger enforcement.

-Seek to eliminate all trade barriers to digitized trade, especially the online delivery of digitized content (including movies, music, software and publications)

4. Large Commercial Aircraft. Continue efforts to curb and, ultimately,

eliminate trade-distorting subsidies, including the terms of credit, and other similar practices.

-Ensure full application of WTO subsidies disciplines to trade in large commercial aircraft.

5. Forest Products.

-Seek the elimination of tariffs and other trade distorting practices on forest products.

-Recognize and support efforts to establish multilaterally accepted principles for sustainable forestry practices.

6. Steel. Aim to negotiate agreements to reduce subsidies, dumping, and other trade distorting practices in the steel industry with the aim of restoring the operation of the market and reducing global overcapacity in production.

7. Services. Strive to achieve a greater degree of market access for U.S. service providers and, ultimately, a more open market for trade in services.

- Pursue a “negative list” approach to opening services markets in bilateral and regional negotiations.

8. Intellectual Property Rights. Continue to pursue efforts to protect intellectual property rights, taking into account the need for special rules that may need to apply to health emergencies.

- Seek commitments to combat piracy.

9. Investment. Consistent with other objectives, continue to pursue efforts to expand opportunities for investment across borders.

10. Currency Manipulation. Consistent with the objectives contained in the 1988 Trade and Competitiveness Act, strive to identify those countries that maintain their currencies at an artificially low level with the aim of increasing exports and improving balance of trade. The Treasury Department will be required to issue an annual report on progress on this front.

11. Fisheries. The United States should seek to lower trade barriers impacting trade in fishery products and should seek to strengthen international disciplines, including under the auspices of the World Trade Organization, to encourage the removal of subsidies and other market-distorting financial incentives that encourage overfishing and other unsustainable fishing practices.

12. Private anticompetitive conduct. The United States should seek to eliminate government toleration of private anticompetitive conduct.

13. Government Procurement. The United States should seek to increase WTO member participation in the Agreement on Government Procurement. In the WTO and in bilateral and plurilateral negotiations, the United States should seek an increase in transparency and due process in government procurement, regardless of whether a given country is a party to the Agreement on Government Procurement.

Primary Directions to Negotiators

Primary Directions should be tailored to particular negotiations, recognizing that different goals may be appropriate in the WTO, bilateral negotiations, and regional negotiations.

1. Labor Rights.

-In all new agreements, the United States shall seek a requirement that countries not derogate from current domestic labor rights laws for purposes of stimulating exports or investment. The United States shall seek to make subject to dispute settlement sustained or recurring failures to enforce labor laws in a manner giving a country a trade or investment advantage.

-In all new trade agreements, the United States shall seek affirmation of countries' commitments to adhere to the five core principles of the International Labor Organization (ILO), as they are required to do by virtue of their membership in the ILO.

-For all new negotiations, the United States shall conduct a labor rights review focused on observance of core ILO principles and modeled upon the environmental reviews currently conducted under Executive Order.

-In all negotiations, the United States shall seek provisions allowing countries to restrict imports of products made with forced labor, including exploitative child labor, at their discretion.

-In the WTO, the United States shall seek a general exception to the ordinary rules governing trade in goods, permitting a country to take measures pursuant to a recommendation of the ILO under Article 33 of the ILO Constitution (such as the recent recommendation on Burma).

-The United States should seek to increase cooperation between the ILO and the WTO, as well as other international trade and economic institutions.

-In connection with all new trade agreements, the President must select and transmit to Congress a strategy for implementing/enforcing core labor standards in the countries that are parties to those agreements. Such strategy must apply to obligations contained in the agreements, as well as to labor objectives (such as improved compliance with ILO standards) that may exist outside the agreements. Such strategy must be likely to achieve a high degree of compliance with core labor standards. The Congress believes the following strategies could achieve such a degree of compliance: 1) trade sanctions for non-compliance, 2) fines for non-compliance, and 3) incentives for enhanced compliance.

2. Environmental Protection.

-The provisions of all new trade agreements should be consistent with environmental protection goals, including but not limited to sustainable development, protection of endangered species, and reduction of air and water pollution, and preserve the integrity of legitimate national laws aimed at achieving those goals.

- In all new agreements, the United States shall seek a requirement that countries not derogate from current domestic environmental protection laws for purposes of stimulating exports or investment. The United States shall seek to make subject to dispute settlement sustained or recurring failures to enforce environmental protection laws in a manner giving a country a trade or investment advantage.

-The environmental reviews currently conducted for new trade agreements under Executive Order shall be included as a statutory requirement in new fast track legislation.

-Actions taken in conformity with core multilateral environmental agreements (MEAs) should be “safe harbored” from challenge in the WTO or in dispute settlement fora created in other trade agreements, provided that there is an impartial mechanism for determining whether such actions are consistent with the MEAs. The determination whether particular MEAs have “core” status should be made in consultation with UNEP.

-Investor-to-State Disputes.

- (1) Countries should be required to compensate investors for direct expropriations but not for indirect expropriations or measures tantamount to expropriation. U.S. negotiators shall seek to establish a definition of “expropriation” that is consistent with U.S. law “takings” principles.
- (2) U.S. negotiators shall seek to ensure that legitimate environmental, health and safety regulations are not considered “unfair” or “inequitable” treatment as those terms are used in investment agreements.
- (3) Trade measures (such as import restrictions) that may appropriately be addressed in state-to-state dispute settlement should not be handled as investor-to-state disputes. To ensure that conventional trade disputes are not converted into investor-state disputes, an investor should be required to seek home-government espousal of its claim before proceeding to dispute settlement with the host government. If the home government declines to espouse the claim within a short period of time, the investor should be entitled to proceed to dispute settlement with the host government. The home government should provide opportunity for public comment before deciding whether to espouse a claim.

- (4) Given the public policy importance of investor-to-state disputes, the procedures governing such disputes should provide for prompt public access to briefs and other filings (excluding proprietary information). To the extent practicable, hearings should be open to the public.
- (5) The United States should give the public a meaningful opportunity to comment before taking a position in matters where it is either a disputing party or a third-party intervenor.

-Precautionary Principle. All trade agreements should recognize the obligation and right of national governments to provide a high standard of protection to their citizens through appropriate health and safety standards. In trade agreements, negotiators should endeavor to distinguish legitimate health and safety provisions from protectionist measures disguised as health and safety provisions. Factors to be considered in making that distinction should include (but not be limited to) available scientific and technical information, related processing technology, and intended end-uses of products.

-In connection with all new trade agreements, the President must select and transmit to Congress a strategy for implementing/enforcing environmental standards in the countries that are parties to those agreements. Such strategy must apply to obligations contained in the agreements, as well as to environmental objectives (such as improved compliance with core MEAs) that may exist outside the agreements. Such strategy must be likely to achieve a high degree of compliance with core environmental standards. The Congress believes the following strategies could achieve such a degree of compliance: 1) trade sanctions for non-compliance, 2) fines for non-compliance, and 3) incentives for enhanced compliance.

3. Transparency. In all trade agreements, the United States should seek dispute settlement provisions with a high degree of transparency in all stages of the process. This should include public access to dispute settlement proceedings before arbitral panels, an opportunity for input from outside groups, and full access (excluding proprietary information) to documents filed in arbitration and similar proceedings. The U.S. Trade Representative should strive to release negotiating documents on a timely basis.

4. Trade Laws. The United States should not enter into any trade agreement that undermines or weakens U.S. trade laws, particularly Section 201, antidumping law, countervailing duty law, or Section 301. Undermining or weakening includes entering into dispute settlement arrangements similar to those contained in Chapter 19 of the NAFTA.

Fast Track Procedures

1. Fast Track Grant. Fast track will be granted for two years with the possibility of extension for an additional three years.

-Extension Request. To gain an extension, the President must submit a report to Congress detailing his efforts and progress made toward each of the primary directions to negotiators and each of the negotiating objectives. Upon receiving such a request, the Majority and Minority leaders of both chambers shall introduce (by request) an extension resolution that will be referred to the Senate Finance Committee and the House Ways and Means Committee. The two Houses together will have a total of 90 session days to consider and cast a final vote on this resolution. Fast track is extended if both houses pass the extension resolution.

-In all negotiations conducted under fast track procedures the President is mandated to keep Congress informed of progress toward negotiating objectives and developments related to negotiating directives.

2. Reverse Fast Track. Any member can introduce a resolution to withdraw fast track either in total or with regard to a particular negotiation. The appropriate grounds for such a resolution is that the President is not fulfilling the directions to negotiators or the negotiating objectives. This resolution must be referred to the Finance Committee in the Senate and the Ways and Means Committee and Rules Committee in the House. If the Finance Committee reports such a resolution favorably, it must be considered by the Senate within 45 days. If both the Ways and Means and Rules Committees report such a resolution favorably, it must be considered by the House within 45 days. If both Houses of Congress separately agree to a reverse fast track resolution, then fast track procedures are terminated, either in total or with respect to specific negotiations, depending upon the subject of the resolution.

3. Committee Approval of Negotiations. Authority to negotiate a new round of WTO agreements, as well as a Free Trade Agreement of the Americas, under fast track procedures should be approved in the fast track bill. Authority to negotiate all other bilateral and plurilateral arrangements under fast track procedures must be separately requested from the Senate Finance Committee and House Ways and Means Committee by the President. For fast track procedures to apply to such agreements, both the Senate Finance Committee and the House Ways and Means Committee must approve such a request within 45 days.

4. Congressional Trade Advisors. In consultation with the Chairman and Ranking Member of the Senate Finance and House Ways and Means Committees, the Majority and Minority Leaders of each Chamber shall appoint Congressional Trade Advisors.

-The Chairman and Ranking Member of the Senate Finance and House Ways and Means shall be permanent Congressional Trade Advisors.

-In addition, the Majority Leader may appoint up to 7 additional Congressional Trade Advisors, and the Minority Leader may appoint up to 6 additional members. At least half of the appointments from the Senate must be drawn from the Finance Committee, and at least half of the appointments from the House must be drawn from the Ways and Means Committee.

-The Chairmanship of the Congressional Trade Advisors shall rotate on an annual basis between the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee.

-Resources. The Congressional Trade Advisors will be provided sufficient resources to fulfill their function.

-Congressional Trade Office. This office will be created to provide nonpartisan trade expertise to the Congressional Trade Advisors, Senate Finance Committee, and House Ways and Means Committee, as well as to other committees dealing with trade-related issues. The Director will be selected by the Chair and ranking members of Finance and Ways and Means, and the Director will name the professional staff. CTO staff will be allowed to attend and observe trade negotiating sessions and strategy sessions of the US negotiating team, as well as dispute resolution negotiations at the WTO, NAFTA, and other fora.

-Powers of the Congressional Trade Advisors.

-At their discretion, Congressional Trade Advisors or their designee will be allowed to attend and observe all negotiating sessions and planning sessions of the U.S. negotiating team.

-Advisory Reports. All international trade advisory reports – including from the ACTPN, the ISACs, and the “second tier” advisory committees – shall be submitted to the Congressional Trade Advisors as well as to the President and his designees.

5. Qualifications for Fast Track. In order for implementing legislation to qualify for fast track consideration:

(a) the President must certify that

(i) each of the directions to negotiators has been substantially satisfied, and

(ii) the negotiating objectives have been substantially satisfied,

and

(b) two-thirds of the Congressional Trade Advisors from each chamber must concur with each aspect of the President's certification.

-Implementing legislation and statement of administrative action will be drafted by the Committees of jurisdiction, in collaboration with the Administration, as has been the practice with the NAFTA implementing legislation and the URAA.

6. Debate Limits. In the Senate, a bill submitted under fast track shall not be subject to amendment. Normal time limits and cloture rules shall be applied to the bill.

Supplementary Provisions

1. ILAB Funding. The International Labor Affairs Bureau in the Department of Labor, which coordinates U.S. efforts in conjunction with the ILO, should be funded at a level of not less than \$140 million per year.

2. Enhanced weight to ILO findings. Findings and conclusions of the International Labor Organization should be given special weight in decisions including (a) a country's continued receipt of GSP and related benefits; (b) whether to accelerate the phase-in of free trade agreement benefits; (c) whether to accelerate quota increases in textile agreements; and (d) a country's participation in financial credit and guarantee programs. Where the ILO makes adverse findings or conclusions and the Administration decides, nevertheless, to continue or extend benefits, the Administration should be required to explain its determination in light of the ILO's findings or conclusions.

3. Burma sanctions. Pursuant to the November 2000 resolution of the ILO, the United States should ban the importation of products from Burma.

4. Environmental Initiatives. Efforts should be made to enhance the priority given environmental objectives in all international bodies. This should include expanded efforts in conjunction with the U.N. Environmental Program, the Convention on International Trade in Endangered Species, and other international environmental efforts.