

BACKGROUND:

The Essential Guide To U.S. Trade



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for the U.S. Grains Council and National Corn Growers Association

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CHAPTER 1: THE BASIC VIRTUES OF TRADE

HOW TRADE BENEFITS THE U.S. ECONOMY

Look for the trade value in everything.

Most products we use have stories. They are the culmination of ideas, engineering, materials testing, accounting services, design, coding, sales, farming, manufacturing and countless other activities by workers who add their value along the way.

Examples can be found all around your home. Open your dresser drawer. Chances are, you'll pull a cotton shirt out of your drawer that doesn't have a "Made in USA" label. Even so, American researchers, engineers and designers in the textile industry are busy figuring out how our jeans can hold up through a lot of washings, how to keep wrinkles out of our suit jackets, and how our yoga pants will stretch in downward dog. Even if American workers aren't stitching up the final product when the "Made in" label is sewn in, they are nonetheless responsible for creating around 70% of that garment's value.

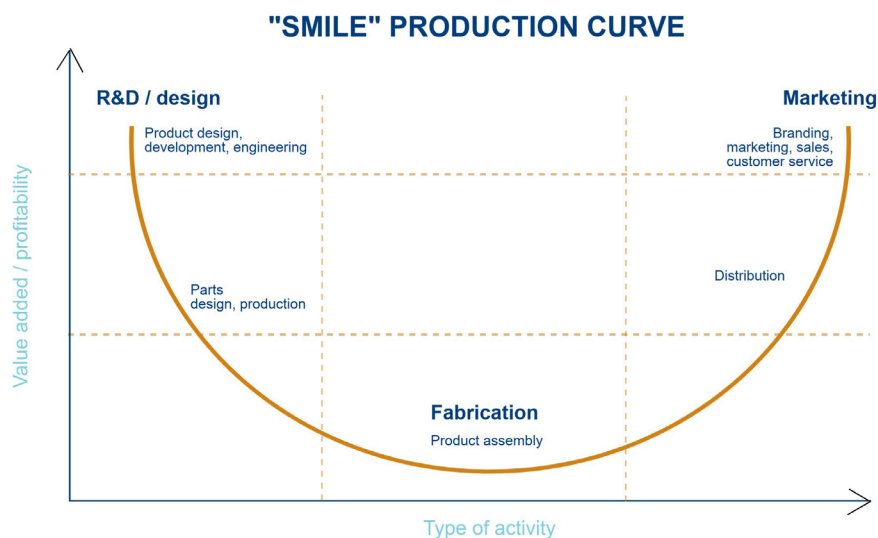
Every industry is different, but the basic story is similar: the expansion of global production networks offers opportunities for a wide range of American workers to participate. The question is, where do American workers want to be on the production curve? Most jobs are

being created at the beginning of the product journey and at the end, closer to customers. Fortunately, this is where American companies and workers excel and where jobs are being created.

Americans stake out high ground in value chains.

The global production of goods can be charted based on stages of activity and where value is added. Such a graph is called the "smile curve," with high-value activities at the beginning of a product's life, to low-value activities when products are fabricated, returning to more high-value activities as the product moves closer to the consumer through marketing and distribution.

The great news is Americans compete most effectively performing the activities on the production curve that require the most creativity and know-how, which are also the activities that generate the most profit. We are good at conceiving and developing new products, providing the services that bring them to life and developing sophisticated approaches to promoting their brands. Our workers and businesses have established a global advantage by organizing multinational production networks, known as global value chains, around their products and then dominating the activities at the top ends of the curve.



This is why our national conversations about trade require nuance. We can't simply focus on final or finished products. To understand how they were made and by whom, we have to think about the entire product journey.

For an example of where value is added, look to the range.

Roughly 900,000 Americans make their living on a ranch. U.S. ranchers own just 10% of the world's total cattle, but they are the most productive in the world. U.S. beef is [estimated by the U.S. Department of Agriculture \(USDA\)](#) to be a \$60 billion industry; it generated \$105 billion in U.S. sales in 2015 (the latest year data were available) and another \$7.9 billion in export sales, exporting around 10% of production. Most ranches are small, family-owned and operated, and widely dispersed across the United States.

The success of a rancher's business supports many other American jobs tied to the ranching industry, including farm equipment technicians, agriculture scientists, and grain growers. Why? Because ranchers buy livestock equipment, work with researchers at land grant universities, purchase nutrition and animal health products and consume veterinary services. They work with grain merchants, auctioneers and commodity merchandisers. Their beef is packaged, processed and shipped to supermarkets, food service suppliers and restaurants.

It's a story repeated throughout the U.S. agriculture sector as farmers and ranchers generate value across the U.S. economy and globally.

Let's talk about the trade balance for a minute.

It may sound counterintuitive, but the more production processes are spread across national boundaries through global value chains, the more integrated the U.S.

economy becomes with other economies in the world. Having so many firms lead and participate in global value chains is an American strength.

Like any successful businesses, U.S. firms are focused on maximizing the value they create while minimizing the costs to do it. What they aren't doing is keeping track of the trade balance. Why? Because it's a national accounting mechanism that does not provide information on where value is created. If that's so, why do we hear so many complaints from politicians about our trade deficit?

In 2018, the United States trade deficit grew to [\\$622 billion](#), the largest since 2008. Notably, the goods deficit with China hit a record \$378.7 billion, which is clearly a big component of the overall deficit. Should we be concerned?

It's mostly not the case that the deficit results from unfair trade practices. Nor is there agreement we need to do something about the trade deficit, since around half of what we import is comprised of the capital goods and material inputs we need to make our products (more on that in a moment).

Clouding things further, the methodology governments use to report trade flows is seriously outdated. The most common way to keep a national accounting of trade is to report the gross commercial value of goods and services as they exit and enter the country as if everything being traded is a finished product.

But, as described before, products are made through global value chains. Only one quarter of the goods and services traded globally are finished products. Therefore, the way we count the trade balance ignores that three quarters of global trade is in inputs or intermediary goods and services that make up parts of the overall production process.



How U.S. Grain Was Exported in 2017/2018

3.2% of U.S. feed grains was exported as beef or beef products.

3,835,647 metric tons of corn equivalents

In our previous clothing example, 70% of the value of a shirt might be added here in the United States, but if it was stitched up in China and sent to us as a final good, China gets 100% of the value of that shirt credited to its export balance. This is why trade policy shouldn't overly focus on the trade balance, even though we hear a lot about it in the media. It's not a very good representation of the strength of our economy, the "fairness" of our trading relationships, or whether jobs are growing or not. In fact, when our economy is booming, unemployment is down, and incomes are growing, we tend to buy more from all the businesses that use global supply chains – widening the trade deficit.

With that in perspective, we can still familiarize ourselves with official trade statistics. Let's take a quick look at two components of trade – what we export and import.

We are the world's second largest exporter of goods.

Our own economy is primarily services-based, with more than [80%](#) of American jobs found in services industries from business services like accounting or marketing, to banking and healthcare services, hospitality, retailing and more. The U.S. dominates in providing world-class services and is the largest exporter of commercial services in the world. Many services jobs also support the export of manufactured and agricultural goods including trade financing, distribution and marketing.

The U.S. is the world's second largest exporter of manufactured goods (China is first), exporting more than [\\$2.7 trillion](#) in 2018, which accounted for 10% of all global goods exports. According to USDA, U.S. agricultural exports in both bulk and high-value commodities have grown steadily over the last two decades from \$56.2 billion in 1995 to [\\$140.5 billion](#) in 2017.

Half of our imports go into making other products.

Imports get a bad rap. Politicians, policymakers and the media often refer to exports as the "positive" side of the trade equation. However, like exports, imports benefit our economy; characterizing imports as a negative for our economy is too broad a generalization.

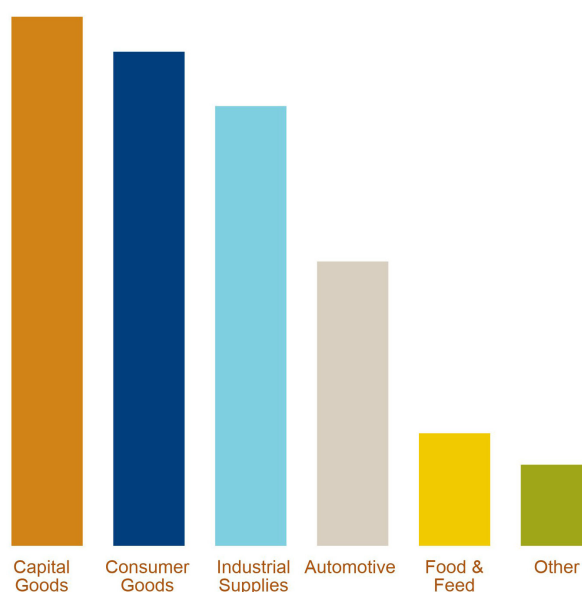
To understand why, we need to know what we import and who imports it.

Half of the [goods we import](#) are orders from U.S. companies, primarily manufacturers, that import the inputs needed to operate their own production processes. Those imports consist of capital goods such as machinery and machine tools, semiconductors, parts and equipment, and industrial supplies including chemicals, fuels, lumber, plastics and metals.

American companies make myriad decisions about where to source appropriate inputs, ingredients and other supplies to make products, taking into account quality, price, cost and other criteria suppliers must meet. Having access to global suppliers means that American-made finished products can leverage traded inputs when needed to be more competitive, which can help secure jobs for U.S. firms' employees.

As consumers, we generally like the variety and buying power importing can deliver, from electronics to clothing to food. The [cost savings](#) for American families can be significant. Over the last 20 years, though wages increased, the cost of many non-traded items like healthcare services, higher education and housing increased significantly - out pacing wage growth. In contrast, prices in many traded items subject to import

U.S. Imports by Principal End Use (2018)



Source: Bureau of Economic Analysis

competition either stayed relatively flat or dropped. For example, the average price of a TV dropped 97%, software was 67% cheaper, and cell phone service became 52% less expensive. Trade creates competition, but offers choice and saves the average American money by keeping consumer prices down.

Intellectual property (our protected ideas and innovations) are traded too.

Services are the invisible infrastructure of the global economy, but the story of services trade isn't told as much as it should be. More than 80% of American jobs are in services industries, including services easily traded across borders. They include logistics and transportation services, tourism and educational exchange programs and financial and information technology services.

Many services are now delivered over the internet (think online banking, social media marketing or shopping on Amazon). Given the exponential growth of platforms that enable services offered online, this area of global trade policy will only become more prominent.

Traded services even include the use of proprietary rights like to broadcast major sporting events, use of trademarks or copyrights, and rights arising

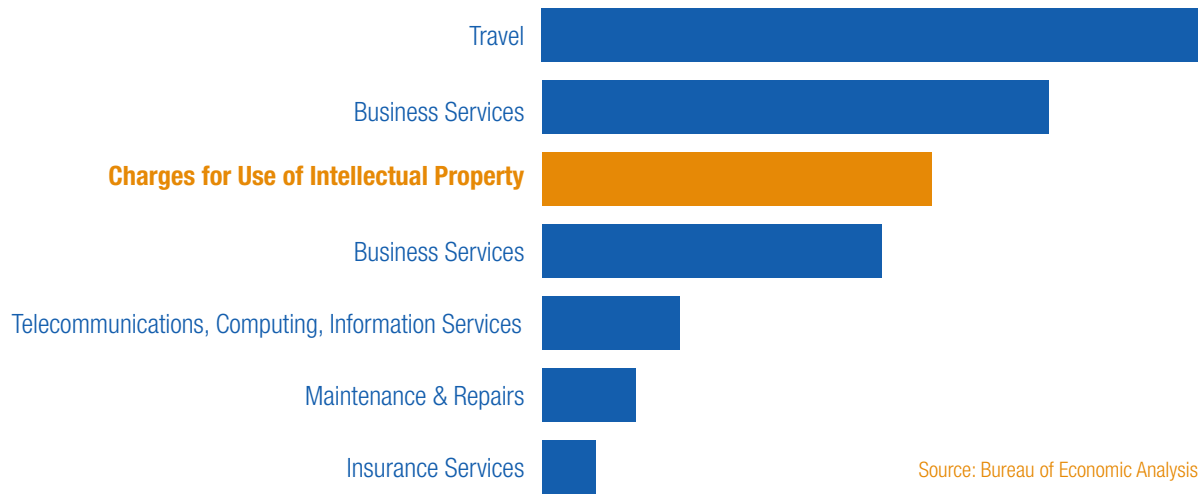
from American research and development such as pharmaceutical innovation and new techniques in plant breeding. This segment of globally traded services is growing fast.

Foreign direct investment (FDI) is also a very important part of the trade story.

We are the world's most attractive investment: the United States receives more FDI than any other country in the world. More than \$4 trillion in accumulated inward FDI stock in the United States contributed over \$277 billion in value to U.S. economy [in 2017](#).

Many of these investors are U.S. affiliates of foreign multinational corporations, like BMW, whose North American headquarters are in Woodcliff Lake, New Jersey, and Shell, which is owned by Royal Dutch Shell and develops oil and gas reserves in the United States. These are just two examples of the variety of industries in which foreign companies invest and do business in the United States, throughout the manufacturing sector – particularly chemicals like pharmaceuticals, transportation equipment and machinery – to wholesale trade and the financial, insurance and information industries.

U.S. Exports of Services By Major Category (2018)



Source: Bureau of Economic Analysis

In 2014, the latest year data were available, affiliates of foreign-owned companies employed 6.4 million American workers and performed \$59.6 billion in research and development. On average, jobs connected to foreign direct investments pay 30% better than the economy-wide average. And, they are heavy traders, accounting for more than [one-quarter](#) of total U.S. exports of goods and more than a third of imports of goods.

HOW TRADE BENEFITS U.S. AGRICULTURE

Food trade has grown more than thirteen times its value since 1980.

Even though the majority of food produced in the world is still grown and [consumed locally](#), global trade in agriculture and food products has swelled over the last three decades. In 1980, the value of agriculture and food trade is estimated to have been \$230 billion. By 2015, global trade had grown to \$1.77 trillion in agriculture and \$1.49 trillion in food products. Today, more than [one-fifth](#) of the calories grown in farm fields is ultimately traded in global markets.

As exporters, U.S. growers are second only to the European Union countries counted together.

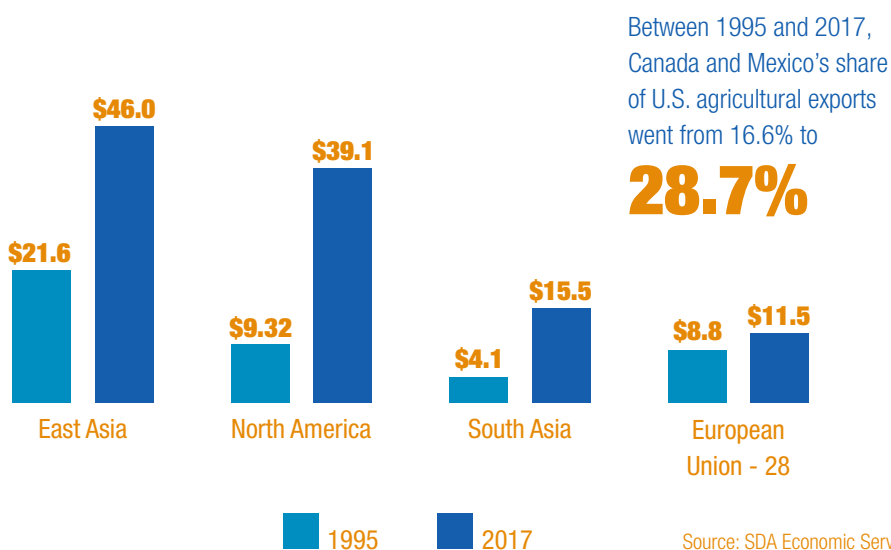
U.S. productivity is growing faster than demand in the United States, which means American farmers, ranchers and firms in U.S. agricultural supply chains rely on export markets as an important way to increase sales and revenues.

There's reason to worry that other countries' tariffs will dampen overseas sales, but in the aggregate, the U.S. Department of Agriculture (USDA) still sees a bright future for U.S. agricultural exports. As of May 2019, USDA's Economic Research Service projects fiscal 2019 agricultural exports at \$137.0 billion. According to U.S. trade statistics, the United States has maintained a surplus in agricultural trade since 1960, driven primarily by exports of bulk commodities. In 2017, the U.S. agricultural surplus totaled \$17.4 billion.

What are our largest agricultural export markets today?

Our neighbors, Canada and Mexico, are consistently among our top trading partners in agriculture. Together,

Three Regions Of U.S. Agricultural Export Growth, 1995 - 2017



our North American neighbors consumed more than \$39 billion, or 28.7% of total U.S. agricultural exports, making them vital markets. East Asia, including its lucrative markets of Japan and China, purchased nearly \$46 billion in U.S. agricultural exports, overtaking North America in accounting for 33.2% of the total. South Asia is also becoming a significant growth market for U.S. agriculture.

Population growth, urbanization and income growth – put these together, and we’ve got a lot of mouths to feed.

Demand is rising for U.S.-grown commodities and food in large emerging markets experiencing significant population growth. Cities in emerging markets are bulging at the seams, which is a result of global patterns of urbanization; more than two-thirds of the world’s population will live in cities by 2050. Significant reductions in poverty and the emergence of a robust middle class in developing economies have driven dietary “upgrading” as more people can afford meat, poultry and fish. Livestock demand is up as well, spurring demand for the grains and oilseeds that comprise animal diets.

Asia, Latin America and Sub-Saharan Africa are having the most impact on food consumption and changing patterns of agricultural and food trade. The lack of secure access for U.S. agricultural exports to China’s market further underscores the need to sow the seeds now for diversification into smaller, but growing, markets.

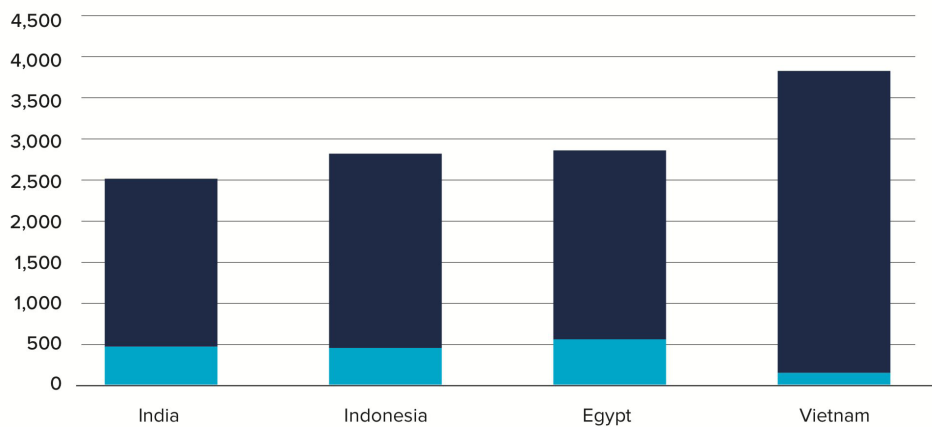
Capacity building and technical assistance are great ways to build customers in emerging markets.

Taken together, the emerging markets of Brazil, Russia, India, Indonesia and China are [projected](#) to comprise 19% of U.S. agricultural exports this year. Developing country markets as a whole represent around 56% of U.S. agricultural exports - an impressive 41% without counting China.

An important step to growing U.S. exports to these markets is U.S. expertise and assistance both to develop appropriate regulatory frameworks for marketing approvals and to facilitate the clearance and movement of food and feed products once approved for sale. Trade agreements and trade capacity building can be enormously helpful in promoting good regulatory practices across the board, opening the door to more purchases of U.S. agricultural and food exports.

The U.S. Grains Council and similar organizations working with other commodities support trade negotiations and help customers understand the value of purchasing U.S. origin. For example, the Council works closely with local feed manufacturers and animal agriculture producers in emerging markets to build their capacity for more and higher-quality feed demand.

The Value of Import Demand For Food And Agriculture



Source: Meit Maertens and Johan Swinnen, [Agricultural Trade and Development: A Value Chain Perspective](#), WTO Staff Working Paper ERSD-2015-04, World Trade Organization, April 2015

The benefits of U.S. agricultural exports extend well beyond the farming community.

The U.S. Department of Agriculture's (USDA's) Economic Research Service (ERS) [calculated](#) that the \$138 billion in U.S. agricultural exports in 2017 produced an additional \$179 billion in economic activity throughout the U.S. economy – even more than the value of the agricultural exports themselves. Agricultural trade supports more than a million full-time jobs, most in the non-farm sector.

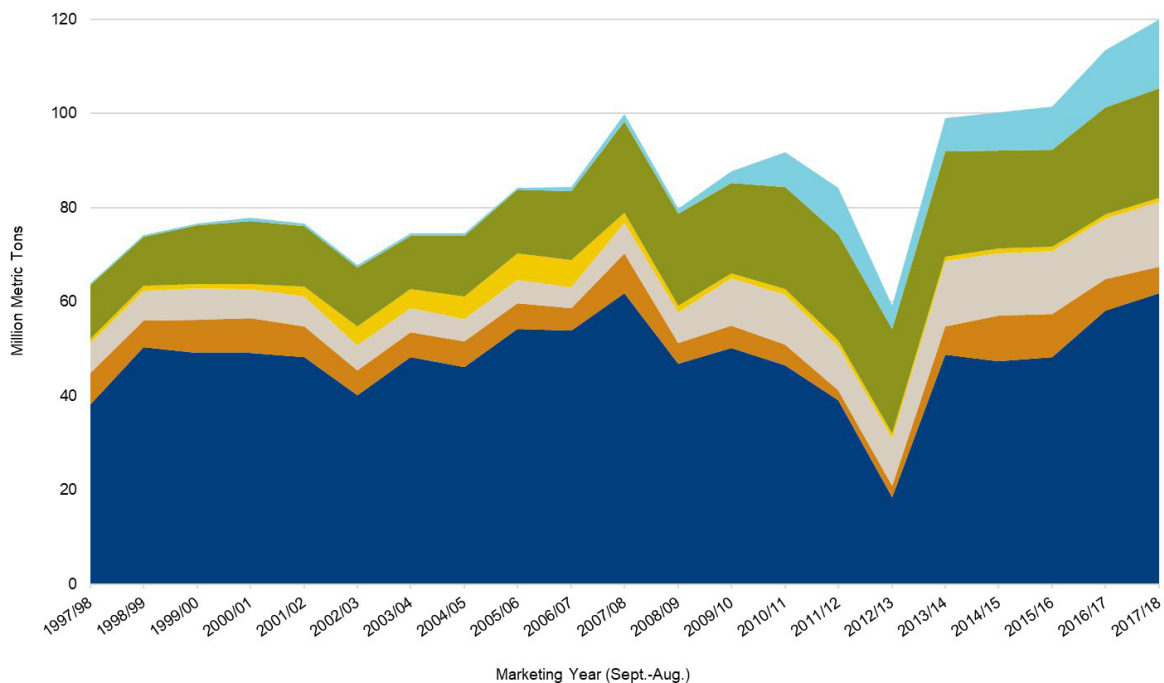
Farm activities require purchases of inputs and fuel as well as services including transportation, warehousing, packing and processing of non-bulk exports. Facilitating agricultural exports involves workers in support industries such as data processing, financial, legal and marketing. On average, it takes more than [8,000](#) American workers to produce \$1 billion worth of agricultural exports.

The U.S. Grains Council utilizes a “feed grains in all forms,” or GIAF, calculation to help capture how

important overseas markets are for U.S. feed grain producers. GIAF includes exports of corn, barley and sorghum along with the products made with them as inputs, including co-products like ethanol, DDGS and corn gluten feed/meal, as well as beef, pork and poultry meat exports. By this calculation, the United States exported nearly 120 million metric tons of feed grains in all forms in the 2017/2018 marketing year, translating into roughly 4.75 billion bushels of corn equivalent or a third of U.S. production, 6% above the prior year's record-setting levels.

Agricultural trade is a microcosm of the larger economy – exporting industries create concentric circles around them of so-called “domestic” goods and services provided by American workers who support those industries' ability to export. Farmers work with grains traders, transportation and storage service providers, food processors, banking and insurance companies. If we think about it this way, we can broaden our thinking about how important trade is to the success of the U.S. agricultural sector and overall U.S. economy.

U.S. Exports Of Feed Grains In All Forms Set New Record



Source: USDA FAS
GATS/USGC Analysis

■ Corn
■ Barley & Sorghum
■ DDGS & CGF&M
■ Processed Coarse Grain Products
■ Beef, pork & poultry (in corn equiv)
■ Ethanol (in corn equiv)



CHAPTER 2: A BRIEF HISTORY OF U.S. TRADE POLICY

OUR TRADE FOUNDATION

The United States was founded as a trading nation.

Trade has been essential to the United States' economy since before we became the United States. The Declaration of Independence lists grievances against King George III. We usually remember taxation without consent, but often forget that listed right before taxation was our grievance that England was "cutting off our trade from the rest of the world." In the prelude to the Revolution, Bostonians had thrown shipments of British tea into the harbor to protest the King's Tea Act of 1773, which required the purchase of British tea and imposed yet another (export) tax on goods shipped to the colonies.

For a time after the American Revolution, before the United States Constitution went into effect, the American states tried imposing their own duties on foreign goods and on goods moving among the states. States with ports along the East Coast, from Massachusetts to Georgia, levied different tariffs on British goods and fees on British vessels. But without a single American tariff code, British traders simply avoided the highest duties by engaging in arbitrage, entering their goods through the cheapest ports.

Congress derives its tariff powers from the Constitution.

The experience of an uncoordinated tariff regime helped convince states to grant Congress the power to impose and collect import duties and to regulate commerce with foreign nations on their behalf. The first seven sections of the Constitution lay out how Congress will operate. Congress' first real order of business in [Section 8](#) of the Constitution is laying and collecting import duties:

SECTION. 8.

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises...but all Duties, Imposts and Excises shall be uniform throughout the United States

Congress moved swiftly to exercise this power. The Tariff Act of 1789 was the first major law passed in the United States. It had two purposes: first, to generate revenue to support the new federal government, enabling the Congress to also pay down debts incurred during the Revolution, and, second, to "encourage and protect" the manufacturing of goods in the United States.

Some debates never change.

The debate over the impacts high tariffs were having on the fledgling American economy mirrors some of the debate we're having today.

Tariffs and excise taxes were practically the only sources of federal revenue until the passage of the 16th Amendment in 1913, which enabled Congress to impose income taxes. Congress also quickly realized tariffs could be used to shelter domestic producers from competition from imported products - at a cost to other American importers and exporters.

Agricultural-producing states viewed high duties as primarily benefiting manufacturing states, to which James Madison responded that the rest of the nation would inevitably "shoulder a disproportionate share of the financial burden." Alexander Hamilton warned that setting tariffs too high would be tantamount to economic warfare with Great Britain, which would cause trade to decline and reduce revenues needed to run the government and finance the national debt.

How much tariff is enough?

Tradesmen in Baltimore petitioned the First Congress to impose "such duties as will give a just and decided preference to their [domestic] labors" on "all foreign

articles, which can be made in America.” Attached to the petition was a list of items that were, or could be, manufactured in America “on moderate terms.”

But - in a scenario repeated over the course of the history of trade politics - protected domestic interests were not satisfied with the extent of protection Congress granted. Some sought more protection, including on goods considered essential, particularly military supplies (think about the justification for steel tariffs today!). In 1791, Treasury Secretary Alexander Hamilton issued a seminal report arguing the necessity of protecting domestic manufacturing for economic and national security reasons, while conceding in the same report that free international trade would be preferable.

The next 140 years of American trade history saw U.S. tariffs rise and fall in response to the domestic preoccupation with the politics of protection, regardless of the consequences to our relations with other economies or the impact to those economies. And so it went - until raising tariffs went too far. The Smoot-Hawley Tariff Act of 1930 raised average duties to their highest levels in American history to that date, a move that is largely thought to have hastened the spread and deepened the impact of the global depression that followed.

TARIFF LESSONS OVER TIME

We have experienced that three things always happen when we raise tariffs.

Raising tariffs - regardless of the circumstance or intent - produces similar outcomes. Tariffs generally raise prices throughout the economy. Granting protection for one industry leads more industries to seek protection and foreign

THE FIRST 150 YEARS OF AMERICAN TARIFFS

For much of early American history, party politics dictated tariff levels.

1781-1789

Under the original **Articles of Confederation**, states could tax both foreign goods and those entering from other states (e.g., the **1785 Pennsylvania Tariff**)

When **Democrats** were in power, **tariffs went down**. When **Republicans** were in power **tariffs went up**. Here are selected milestones.

1789-1791

The **Constitution** is ratified. Section 8 Article 1 grants power to Congress to lay and collect tariffs. Congress' first legislation is **The Tariff Act of 1789**.

1913

President Wilson cut tariffs from an average **40% to 12%**. To make up for lost federal revenue, he instituted the income and estate taxes. .

1922

Congress passes the **Fordney-McCumber Act**, which restored or **raised tariffs above 1913 levels**.

1930

President Hoover signs **The Smoot-Hawley Tariff Act** which raised nearly 900 tariffs. It is widely thought to have sparked retaliatory global tariffs that **depressed global trade by 66%** by 1934. .

1934

The Reciprocal Trade Agreements Act sets U.S. trade policy on the footing of liberalization. The President is authorized to negotiate trade deals with nations that agree to reciprocal tariff reductions.

producers hurt by U.S. tariffs turn around and ask their governments to raise tariffs on U.S. goods.

First, tariffs frequently increase the cost of doing business for American producers.

Why? Because domestic producers have every incentive to raise their prices to just below the price of the import that's been made more expensive due to the tariff.

Historian James Bovard wrote in a 2014 article, [*American Tariffs and Wars From the Revolution to the Depression:*](#)

"Prior to the Revolution, American iron manufacturers had been competitive with foreign products. But after Congress imposed a high tariff on iron imports, U.S. producers sharply raised their prices. Former Treasury Secretary Albert Gallatin, in an 1832 report, condemned 'the injustice and mischievous effects of an exaggerated duty on an article of such general use as iron. It falls upon the farmer, the mechanic, the shipping interest, and on every branch of the iron manufacture, those few excepted which have been embraced by the partial protecting system.'"

We can see this today playing out in the case of steel. The price of steel products protected by the tariffs imposed in 2017 is much higher than the price of like products available in global markets. That means buyers in other countries are paying less for their steel inputs while American users of steel must choose between paying for higher-priced, American-made steel or imported steel with a high tariff applied.

Second, the politics of tariffs are like eating potato chips: it's hard to stop with just one.

It's a slippery slope to protect one or two industries. What one industry asks for, others will want too, and politicians feel pressure to protect the specific producers they represent.

President Hoover's intention in the early 1930s was to protect American farmers with tariffs in the face of

falling global prices, but once Congress began the business of handing out tariff increases, a line of special interests formed out the door.

During consideration of the 1930 Tariff Act (which came to be known as the Smoot-Hawley Tariff Act), more than 1,000 businesses, trade associations, lobbyists, farmers and unionists testified before Congress over 45 days of hearings. Members of Congress traded votes to protect industries concentrated in each others districts, knowing the costs would be spread among all Americans. In all, nearly 900 tariffs were increased. In many cases, the tariffs were applied as specific amounts per volume imported (for example, \$.05/kg of cheese), not as a percentage of the import value. The resulting impact was that, while prices for basic imported goods were dropping due to deflation, tariffs kept the cost of imports prohibitively high, hurting the average American consumer and many producers.

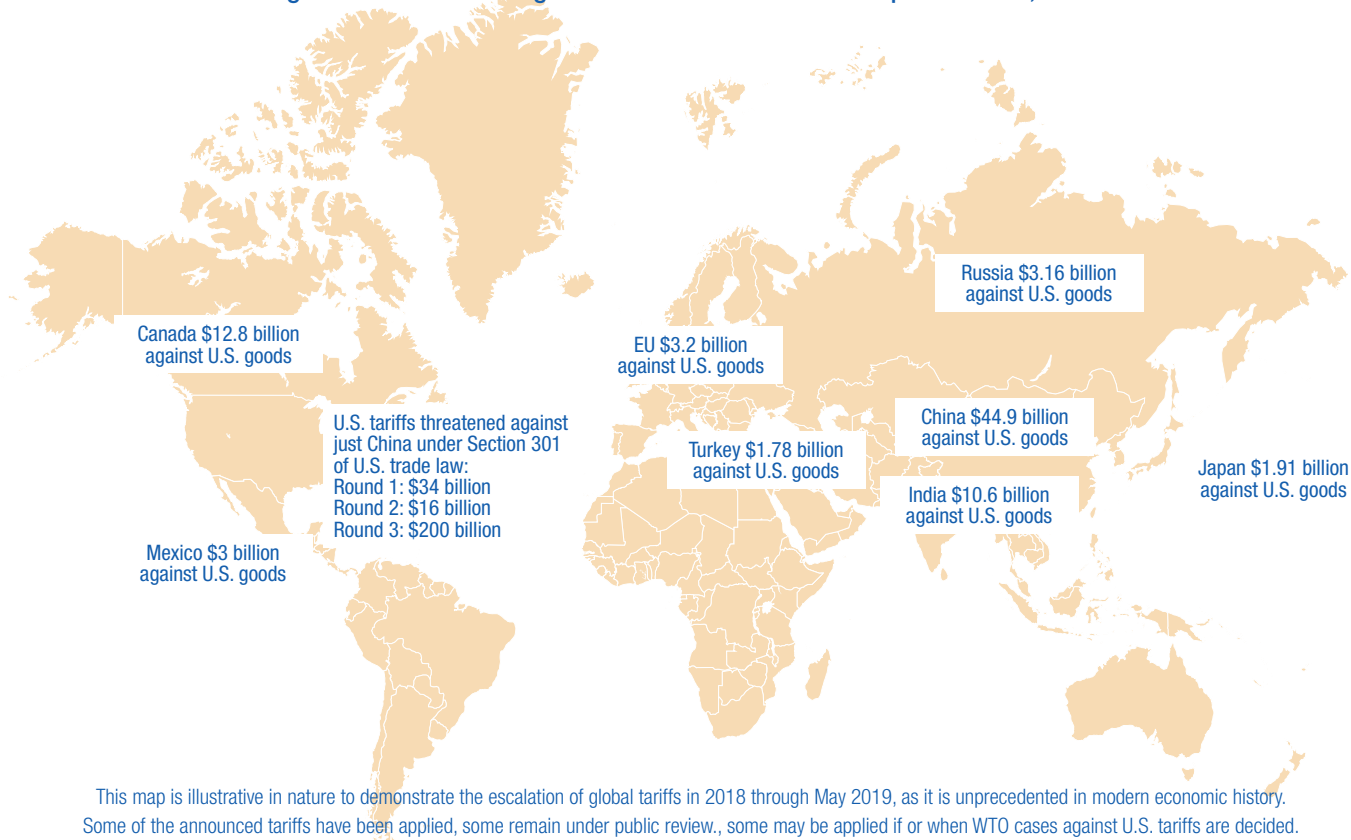
Third, protectionism follows Newton's Third Law of Motion - every action has an equal and opposite reaction.

What American industries seek, foreign producers will also seek from their governments; in other words, raise tariffs on imports of my goods, I'll raise tariffs on exports of your goods. In reaction to the 1930 Tariff Act, more than a dozen key trading partners including Canada, Britain, Germany and France retaliated with tariffs on U.S. products, causing trade to recede, a dynamic we have also seen in recent responses to the imposition of U.S. tariffs by the Trump Administration.

The volume of American imports had already dropped by 15% the year before the 1930 Tariff Act due to the onset of global depression. Within two more years, imports fell another 40%. In 1929, the United States exported \$5.24 billion worth of goods. By 1933, exports dropped to \$1.68 billion. The goal may have been to protect against imports, but in effect, overall world trade plummeted by 66% between 1929 and 1934 as countries retaliated against one another. The result was that American exports suffered as well, removing an important source of recovery and growth.

Global Retaliation In The Current “Tariff War”

More than \$330 billion worth of new tariffs has been threatened by eight of the world’s largest economies and the European Union, so far.



U.S. figures count only the tariffs threatened against China under the U.S. Section 301 investigation, but the retaliatory tariffs from other nations against the United States are a response to U.S. tariffs cited under “national security” and “safeguards” sections of the U.S. trade law.

THE TURN TOWARD TRADE LIBERALIZATION

The silver lining: our negative tariff experience made us leaders in trade liberalization.

The 1930 Tariff Act and its results created a watershed moment and fundamentally reshaped the orientation of American trade policy.

Many lessons were learned: tariffs have unintended consequences. Special interest requests cannot be accommodated without impact to rest of the economy. One request leads to others. Congress realized it might need to restrain its own powers by sharing trade-making

authority with the executive branch, which is thought to be more immune to lobbying by special interests.

Four years after the 1930 Tariff Act, Congress enacted a very different sort of trade law - the Reciprocal Trade Agreements Act of 1934 - which authorized the president to negotiate and implement trade deals with other nations that agreed to reciprocal tariff cuts.

The institutional structures in the U.S. government to pursue market opening were created, and the United States began to take the lead in pursuing tariff reductions globally. In the next chapter, we look at how administrations have used this “delegated authority” and how the trade deals negotiated by the executive branch are considered for approval by the U.S. Congress under modern trade promotion authority (TPA) legislation.

CHAPTER 3: CONGRESS DELEGATES TRADE POLICYMAKING TO THE EXECUTIVE BRANCH

DELEGATED AUTHORITY

Congress gives itself a pressure valve from trade politics.

Recall from the previous chapter that the Constitution confers the power to set tariffs and to regulate commerce with foreign nations to the U.S. Congress. Congress, however, wielded the power sloppily, catering overly to certain constituents and horse-trading tariffs for votes in the process that gave us the 1930 Tariff Act, which precipitated a downward spiral in U.S. exports and global trade.

With the 1934 Reciprocal Trade Agreements Act, Congress offered itself what *American Trade Politics* author Mac Destler has called a “pressure valve” from trade politics: it delegated responsibility to the executive branch to negotiate trade liberalizing deals.

This act was the foundation for modern legislation called trade promotion authority (TPA), which to this day governs the relationship between Congress and the administration for negotiating and approving U.S. free trade deals. In this arrangement, Congress isn’t relinquishing its responsibility or oversight of trade; instead, Congress sets guidelines, parameters, procedures and exceptions. The authority it gives the executive to represent its interests in trade negotiations has always been conditional and has always been temporary. In fact, TPA must be reauthorized every few years.

TPA has been used to pass almost every one of the United States’ free trade agreements and is the same authority that will be used for the Congress to approve the new U.S.-Mexico-Canada Agreement (USMCA) slated to replace the 1994 North American Free Trade Agreement (NAFTA).

The Cordell Hull model: negotiate one by one.

When Congress first granted trade promotion authority, negotiating trade deals was put in the hands of a one-

man negotiating band named Cordell Hull. Before there was an Office of the U.S. Trade Representative within the executive branch, trade deals were negotiated by the Secretary of State. Cordell Hull, a Southern Democrat from Byrdstown, Tennessee, was appointed Secretary of State in 1933 and set American trade policy on a new course. Hull saw trade agreements and tariffs being used as an economic weapon by some European nations, and believed negotiations to increase market access could instead be used as a strong and positive diplomatic tool.

Congress granted Hull authority on behalf of the executive to negotiate cuts to U.S. tariffs by up to 50% as long as the tariff reductions were reciprocated by the trading partner. In the decade of trade diplomacy that followed, Congress renewed Hull’s authority three times, and the executive branch closed bilateral trade deals with 25 individual countries, mostly in Europe and the Western Hemisphere. The concept of reciprocity was deeply linked with market opening deals, but agreements had to be negotiated one by one.

Once we had a global trade agreement, we could negotiate with many countries at a time.

In the next chapter, we’ll dive into the core features of the global trading system created through U.S.-led negotiations leading to the General Agreement on Tariffs and Trade (GATT) in 1947. Once the GATT was in place, the United States shifted its focus to multilateral trade negotiations among all the members of GATT. This was a more efficient way to liberalize trade than negotiating one deal at a time with one country at a time.

Congress renewed executive authority to negotiate multilateral trade deals 12 times over the next 20 years, through 1967. The authority to negotiate market-opening deals was primarily used to reduce tariffs on industrial goods. Over time, GATT (later World Trade Organization) negotiations would expand beyond tariffs

into other areas of global trade including agriculture subsidies, anti-dumping, intellectual property and non-tariff barriers to trade such as standards. But Congress was not always comfortable yielding authority in areas beyond tariffs.

When the Kennedy Round of GATT negotiations concluded in 1967, the deal included commitments in the non-tariff areas of anti-dumping and customs valuation (how to determine the value of goods for the purposes of applying customs duties). Some lawmakers complained the president had overstepped his authority since the new commitments required changes to U.S. laws, which the Congress should deliberate. The debate over how to allow room to expand negotiations while maintaining Congressional oversight continued for seven years until Congress granted negotiating authority in 1974 for the Tokyo Round of GATT talks. In this version of trade promotion authority, Congress changed the rules - it would withhold final approval over non-tariff agreements until it could see the deal, laying the foundation for TPA's construct today.

Congress initiates “fast track” approvals of trade deals.

In the 1974 Trade Act, Congress mandated that non-tariff agreements (ones that include commitments beyond tariff reductions) be implemented only through legislation. Congress would take a more active role in providing advice throughout the negotiations, but in return, would offer new procedures to ensure the final agreement could receive expedited and amendment-free votes. This is the creation of the so-called “fast track” procedures, the same procedures in place today that will be used to approve NAFTA's replacement, the U.S.-Mexico-Canada Agreement (USMCA).

The ability of Congress and the administration to use these procedures must be renewed. Fast track authority was renewed or extended several times prior to its use in 1994 to approve the Uruguay Round agreement that established the WTO, and to also approve the original NAFTA in 1994. But this was the end of the road for another eight years as the Clinton Administration tried, but failed, to secure fast track authority, in part due to party-line disagreements over the inclusion of labor and environmental commitments

in trade agreements. When a new round of WTO talks failed to launch as expected in 1999, the sense of urgency to renew fast track fell away.

In 2002, after 9/11, the Bush Administration made a successful case to Congress for pursuing trade deals to shore up security and economic alliances and found a compromise to include “new issues” such as labor and environmental issues. The Bush Administration made extensive use of TPA to negotiate 11 of the 14 trade agreements the U.S. has in place today. Panama, Colombia and South Korea were subsequently approved using TPA under the Obama Administration.

Power that Congress gives to the executive, it can take away.

Through TPA, the Congress provides the executive an assurance it will use expedited procedures to consider negotiated trade agreements and will not amend a deal after it's done. But, as the content of trade agreements expands, the opportunities for disagreement over substance also increases.

U.S. Free Trade Agreements in Force

Trade Partner(s)	Year Entered Into Force
Israel	1985
NAFTA (Canada/Mexico)	1989/1994
Jordan	2001
Chile	2004
Singapore	2005
Australia	2005
Morocco	2005
Central America-Dominican Republic (CAFTA-DR)	2006-2009
Bahrain	2006
Oman	2009
Peru	2009
Panama	2012
Colombia	2012
South Korea	2012

Debates over TPA renewal have become a proxy for these substantive differences, and sometimes the party with power in Congress threatens to withdraw TPA because the other party is in the White House. Increasingly difficult and partisan debates have created some serious potholes in the fast track process for approving trade deals, straining the credibility of U.S. negotiators to commit to trade deals that Congress won't change later.

In 2007, partisan disagreement manifested itself in a dramatic break in a pattern of Congressional-executive partnership on trade policymaking. As TPA was set to expire, the Bush Administration went into overdrive to satisfy Congressional demands on labor commitments associated with the U.S.-Colombia Free Trade Agreement. Frustrated that Members appeared to be moving the goalposts to avoid a vote, they did something unprecedented. Whereas the timing would normally be mutually agreed between the branches, the Administration took the step of sending draft legislation to Congress to start the fast track clock, attempting to force Congress to take a vote.

Nancy Pelosi, who was House Speaker at the time (as well as today), noted this was “a question of who has the leverage,” and House Democratic leadership called a vote to enact a rules change to withdraw use of fast track procedures for the Colombia deal. It would take another five years and changes to the agreement on environment, labor, pharmaceuticals, and enforcement to get the deal through Congress. It's no coincidence these are the same issues under debate now with respect to the USMCA.

Meanwhile, our trading partners took note that TPA might not be a sure thing and changes to a signed deal with the U.S. executive might not be the end of the negotiating road.

HOW TRADE PROMOTION AUTHORITY WORKS

The bargain between the executive branch and Congress under TPA is that if the executive follows procedures, Congress will not amend the trade deal and will use an expedited voting process for approval. Congress does not delegate lightly, and getting TPA legislation renewed has been a fight in and of itself. The agricultural business community has been historically supportive and an important voice in securing TPA.

TPA includes Congress' views on negotiating objectives.

Because Congress agrees not to amend the deal, its views about what U.S. trade agreements should achieve are expressed in advance in the form of “negotiating objectives” described in the TPA legislation. Some objectives are broad and directional, but most are specific and written to encourage negotiators to include the bill's language in the trade agreement itself. TPA has been an opportunity for Congress to signal its desire to tackle new issues in trade agreements, such as currency manipulation, competition from state owned enterprises and expansion of digital trade in goods and services.

Trade Negotiating Objectives For Agriculture: Excerpt From 2015 Trade Promotion Authority

...achieve fairer and more open conditions of trade in bulk, specialty crop, and value-added commodities by:

- *securing more open and equitable market access through robust rules on sanitary and phytosanitary measures;*
- *reducing or eliminating tariffs or other charges that decrease market opportunities for United States exports;*
- *eliminating government policies that create price depressing surpluses;*
- *eliminating state trading enterprises whenever possible;*
- *eliminating practices that adversely affect trade in perishable or cyclical products.*

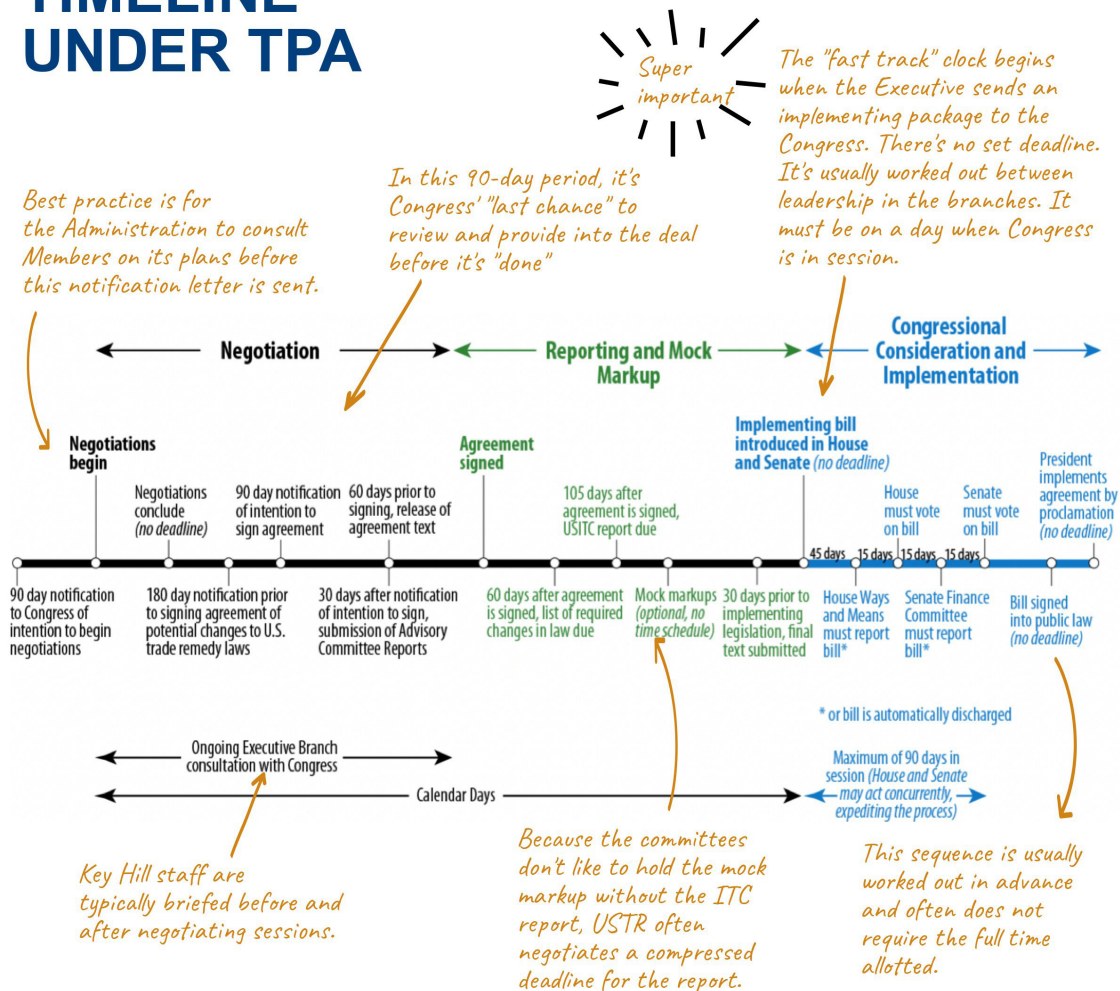
TPA requires consultation with Congress.

TPA stipulates a series of ongoing consultations with the administration throughout a trade negotiation. For example, TPA requires the administration to notify milestones in the negotiations; consult with congressional committees on special issues such as sensitive agricultural products, fishing, textiles and apparel; and to report on a variety of issues important to Members of Congress. Some requirements are very specific: the president must report any proposals that could change U.S. trade remedy law, conduct an environmental review, prepare an employment impact report, examine the labor rights in the trading partner,

and submit a plan for how the agreement will be implemented and enforced.

If Congress perceives the executive failed to follow TPA's prescribed procedures during the negotiating process, Congress can decide not to apply TPA to a vote on the trade deal before it. Still, it wouldn't be realistic to hold the executive to meeting every negotiating objective in the way Congress expresses in TPA. It's a negotiation, and every trading partner has a different economy, different trading and investment relationships with American businesses, differing levels of development, and different political and security considerations. Trade agreements may not address every negotiating objective in TPA in the same way.

CONGRESSIONAL TIMELINE UNDER TPA



This timeline [without commentary](#) is from the Congressional Research Service

Who else is involved in trade negotiations?

Within the administration, the Office of the U.S. Trade Representative is the locus of trade policy making. It's a small agency housed with the Executive Office of the President that has broad responsibility for developing and coordinating U.S. trade policy and leading negotiations.

Many agencies have an interest and role in trade policy. The ones that play the largest role are the economic agencies such as Commerce, Agriculture and Treasury. The State Department, Labor Department, Environmental Protection Agency, the Justice Department and others also have analysts, specialists and senior officials who bring important perspectives to the trade policymaking process.

It is USTR's responsibility to ensure the consideration of all these perspectives and to reconcile differences into a unified U.S. strategy and specific negotiating positions.

Outside the U.S. government, USTR seeks views from a broad range of stakeholders, including from Congressionally-mandated advisory committees, Congress, and the public at large.

The TPA process has many steps.

Before negotiations begin:

- The administration must consult trade committees and Members of Congress who are part of a dedicated trade negotiation oversight group. For example, the U.S. Trade Representative (USTR) might discuss with which countries the administration seeks to negotiate agreements.
- At least 90 days before initiating negotiations, the USTR, on behalf of the president, will transmit written notification to Congress laying out specific negotiating objectives. These typically mirror the objectives in the TPA legislation.
- USTR will hold public hearings to receive feedback from interested stakeholders.

During the negotiations:

- Before exchanging tariff offers, USTR must consult Congress on sensitive agriculture products, fish and shellfish, and textiles.
- After negotiations begin, USTR must wait six months before making a tariff offer, during which time USTR will request and take into account an economic analysis by the International Trade Commission (ITC) on the "probable economic effects" of trade liberalization under the proposed trade agreement.
- The administration will submit to Congress a report on labor rights in the country with which USTR is negotiating before concluding negotiations.
- 180 days before entering into an agreement, USTR will submit to Congress a report on any foreseen changes to U.S. trade remedy laws.

Once negotiations conclude:

- 90 days prior to signing an agreement, USTR, on behalf of the president, will notify Congress of its intent to enter into an agreement, publish a notice in the Federal Register and request another ITC study on the likely economic impact of the finished trade agreement.
- 60 days after signing the agreement, USTR will submit to Congress a list of changes to existing laws necessary to implement the agreement.
- 30 days after notification of intent to sign, USTR will receive reports from its advisory committees with feedback on what they like, or don't, about the agreement.

Congressional consideration and feedback:

- Normally, the House Ways and Means and Senate Finance Committees each hold a hearing, but not until they receive the ITC's economic analysis.
- After the administration sends draft implementing language to the Ways and Means and Finance Committees, the Committees will hold "non-markups," called this because Congress won't mark

up or amend the implementing bill but will use this opportunity to provide feedback so the administration can make changes.

- Once the administration has received this feedback, it will send final and formal implementing language to Congress. There is no set time frame within which the administration must do this; the timing is normally agreed on an informal basis between the chairmen of the Ways and Means and Finance Committees and the administration. However, once that is done, the bill will be considered under TPA procedures. In other words, the “fast track” clock begins.

Fast-track procedures are used:

- Once the president transmits a fast track trade agreement to Congress, the majority leaders of the House and Senate or their designees must introduce the implementing bill submitted by the president on the first day on which their chamber is in session.
- The committees to which the bill has been referred have 45 days after introduction to report the bill or it will be automatically discharged. Each chamber must vote within 15 days after the bill is reported or discharged.
- In the likely case the bill is a revenue bill (remember: tariffs are revenues), the bill must originate in the House. After the Senate receives the House-passed bill, the Finance Committee has another 15 days to report the bill or be discharged, and then the Senate has another 15 days to pass the bill.
- Each chamber can debate the bill for no more than 20 hours, meaning Senators cannot filibuster the bill. The bill can also pass with a simple majority vote.

In theory, the entire Congressional consideration should take no longer than 90 days.

While this is a lot of inside baseball procedure, the most important aspects to remember are: Congress agrees not to amend the bill, and Congress agrees to a streamlined voting procedure so the agreement can be considered for an up-or-down vote relatively

quickly. This expedited procedure only kicks in once the administration gives Congress implementing language – and there’s usually an unscripted political dance that determines the timing for that.

Does President Trump enjoy TPA expedited procedures for the trade agreements he negotiates?

The current TPA authority enshrined in the [Bipartisan Congressional Trade Priorities and Accountability Act of 2015](#) is authorized through July 1, 2021. The Trump Administration is seeking to negotiate several trade agreements under TPA and has already concluded one, the U.S.-Mexico-Canada Agreement (USMCA), which must be considered by Congress. Canada and Mexico have already initiated their legislative approval procedures, but the agreement cannot come into force until the United States Congress approves the deal.

GETTING THE VOTES: WHAT ARE THE PARTY LINES ON TRADE?

Both parties have flip-flopped on trade over the years.

From early U.S. history to the 1930s, tariffs went up and down often.

Many of the founders favored protectionism. Alexander Hamilton was a proud mercantilist who [wrote](#), “To preserve the balance of trade in favor of a nation ought to be a leading aim of its policy.” In the 1860 election, Abraham Lincoln’s Republican party [promised](#) it would increase tariffs “to encourage the development of the industrial interests of the whole country.” Northern and Midwestern manufacturers, usually represented by the Republican Party, promoted tariffs on imports. Southern Democrats typically argued for low trade barriers in support of the export interests of their agricultural constituencies who understood they might bear the brunt of tariffs on their products in overseas markets.

And so it went for many years.

From the 1880s through the 1930s, the politics of the tariff issue appeared quite simple. As economic historian Doug Irwin summarizes it, “when the Republicans

were in power they would raise the tariff, and when the Democrats were in power they would lower the tariff.” A long era of Republican-led trade protectionism waned when Senator Smoot and Representative Hawley, of the eponymous Smoot-Hawley Tariff Act of 1930, were each voted out of office in 1932, and the Reciprocal Trade Agreements Act of 1934 reoriented trade policy toward a long-term approach of steadily reducing tariffs.

From FDR to JFK was an important era of trade diplomacy.

Coming off of the economically-bruising experience of the 1930 Tariff Act, the administration of Franklin Delano Roosevelt pushed for free trade from the start, relying on Secretary of State Cordell Hull as lead trade negotiator. By the end of Roosevelt’s first term in 1936, Hull had reached trade agreements with 14 countries, and U.S. exports were rising again. Hull was so successful that by the end of his 11 years, the U.S. had reduced average tariff rates back from 60% to 28% through reciprocal trade agreements.

Secretary Hull’s trade diplomacy helped convince much of the world that free trade was beneficial, for which he won the 1945 Nobel Peace Prize. Following the experience of World War II, the Republicans gave up protectionism as well, with the Republican [platform](#) calling for removing all “unnecessary and destructive barriers to international trade.”

This emerging two-party consensus galvanized support for the multilateral trading system that exists today.

In post-World War II negotiations led by the United States, the General Agreement on Tariffs and Trade (the precursor to the WTO) was created in late 1947. Much of the rationale was to help European nations, who had been our main trading partners, rebuild their economies after the devastation of war. This multilateral agreement became the basis for several “rounds” of global tariff reductions under bipartisan U.S. leadership between 1948 and 1993. More on this in next chapter.

Bipartisanship on trade has been on the rocks since the 1970s.

In the 1970s, the bipartisan glue in favor of trade liberalization began to dissolve. Interest groups – primarily labor unions for manufacturing industries – began pressuring Democrats to oppose tariff reductions.

The pressure reached a climax in 1972 with the introduction by Democrats of the Burke-Hartke bill, which proposed to impose import quotas and prevent American firms from investing abroad. Republicans opposed the bill and prevented it from passing.

But the two parties settled into their new roles: Democrats would largely oppose trade liberalization and Republicans would generally promote free trade. It turns out, the Republican party has deviated from its free trade principles under pressure from industries suffering from import competition. Presidents Reagan, George H. W. Bush and George W. Bush offered temporary protections to semiconductors, autos and steel when those industries faced extraordinary threats.

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CHAPTER 4: THE GLOBAL TRADING SYSTEM

ORIGINS: FROM THE GATT TO THE WTO

Our framework for global trade was conceived as a way to recover from World War II and to promote peace through commerce.

For a system that has worked well to keep the economic peace for more than 70 years, we can thank a group of negotiators who conceived of the General Agreement on Tariffs and Trade (GATT) in 1947 after World War II ended. At that time, the world's greatest economies were destroyed, and the diplomats leading the talks believed the GATT's disciplines would provide a framework for nations to rebuild their economies. They also believed strong economic ties among nations would not just support growth and prosperity – they would help undergird peace among nations.

A series of negotiating rounds advanced “free-er” trade.

Through five “rounds” of negotiations over the following 15 years, members agreed to progressively reduce tariffs on the goods they traded with one another. It wasn't until the mid-1960s that the scope of negotiations broadened to address forms of non-tariff barriers and more elaborate procedures were created to settle disputes. The dilemma for GATT negotiators was – and still is at the WTO – that the pace, scope and complexity of goods and services traded globally expands much faster than can be covered in negotiating rounds that often take years to conclude.

The GATT disciplines get an institutional home.

Perhaps the most important achievement of the Uruguay Round of negotiations that began in 1986 and concluded

U.S. Promotes Global Trade Negotiations After WWII Until Today

Round Name/Location	Dates	Value Of Trade (Roughly)	Number Of Countries Participating
Geneva	1947	\$10 billion	23
Annecy (France)	1949	n/a	13
Torquay (England)	1950-51	n/a	38
Geneva	1956	\$2.5 billion	26
Dillon Round	1960-61	\$4.9 billion	26
Kennedy Round	1962-67	\$40 billion	62
Tokyo Round	1973-79	\$155 billion	102
Uruguay Round	1986-93	\$3.7 trillion	123
Doha Round	2001-	n/a	148+

in 1993 was the creation of the World Trade Organization (WTO) with standing committees so members can routinely oversee implementation of the agreements as well as negotiate new ones. The WTO encompassed the original GATT and provides an umbrella for additional and newer agreements such as the Agreement on Agriculture and the Agreement on Sanitary and Phytosanitary (SPS) Measures.

Importantly, members also agreed to a stronger, binding mechanism for settling disputes. While global trade rules have provided a more secure and predictable trading environment, WTO members saw a need to ensure consultations to resolve disputes could be referred to arbitration panels if members could not settle them amongst themselves. If a member loses its case and is found to violate WTO rules, it has a period of time to come into compliance. The WTO cannot force a member to do so, but if the member does not comply, then the WTO dispute settlement body may authorize the winning member to withdraw benefits to the losing member (usually in the form of withdrawing market access by raising tariffs). The system has worked reasonably well. Over the past 20 years, countries have resolved nearly 500 disputes through the WTO, with about half settled in the early stages of consultation.

Has multilateral liberalization run out of steam?

Unfortunately, the Uruguay Round implemented in 1994 was the last round of negotiations to result in an agreement. The Doha Development Round was launched under the WTO in November 2001, championed by the United States immediately after 9/11 as a way to unite countries around a common approach to bringing developing and less politically stable countries into the global economy.

The Doha Round carved out an ambitious agenda spanning agriculture and industrial goods, trade in services, and intellectual property protections. Negotiations have remained at an impasse since at least 2008, yet there is still disagreement on whether its original mandate and scope should be retained or declared “dead.” (The United States has been clear it believes the Round is no longer viable.)

In one shining achievement from the Doha Round, WTO members did agree to commitments to facilitate trade at the border through improvements to customs processes as part of the Trade Facilitation Agreement (TFA). The TFA is in force and its full implementation over the next few years should greatly benefit the pace and reduce the cost of global trade. For agricultural products, the TFA will help expedite customs processing of perishable food, in particular.

CORE PRINCIPLES OF THE WTO

Despite the lack of new agreements in the WTO, the core principles of the WTO (based on the original GATT) provide a great and lasting benefit to trading nations.

Life’s golden rule can be applied to trade.

In life we are taught, “Do unto others as you would have them do unto you.” In trade, we are taught the golden rule of non-discrimination.

Non-discrimination isn’t just a founding principle of the WTO, it’s an obligation. There are two basic rules of non-discrimination in WTO law: “national treatment” and “most-favored nation treatment.” Understanding both is critical to understanding why the WTO works as a framework for global trade.

The first core tenet at the WTO is national treatment.

National treatment applies to measures inside a country’s borders, like taxation and regulation. National treatment requires governments not afford an advantage to domestic producers relative to foreign producers. While we may want to do this in some cases, recall this is a reciprocal agreement - and we don’t like it when other governments discriminate against our producers.

The obligation applies to all traded goods as well as traded services and service suppliers, whether the discrimination occurs as a matter of law or has a discriminatory effect once the product, service or service supplier has entered the market.

Given the vast amount of national regulation in each country, it's not always easy to prevent discrimination when developing laws and regulations, and it's not always easy to prove an imported product is "like" the domestic product and should be treated no less favorably. (For example, are Japanese *shochu* and Russian vodka "like" products?) The overarching goal is to avoid protectionism and offer everyone an expectation of equally competitive conditions.

The second core tenet at the WTO is "most-favored nation" treatment, known as MFN.

MFN treatment basically requires that governments not discriminate between importing countries by treating the products of Country A better or worse than those from Country B. The obligation is embedded in a variety of multilateral trade agreements and applies to border measures as well as internal measures.

In a simple example, assume South Korea applies a customs duty of 5% to cell phones. If so, then South Korea must apply a 5% duty to all cell phones imported by any other WTO member, regardless of if those cell phones come from China or Finland.

Are there exceptions?

There are exceptions to the WTO's basic principles of non-discrimination.

For example, WTO members can be excused from the principle of MFN when they enter into free trade agreements with one ("bilateral") or more countries ("regional"). By definition, these agreements violate the MFN principle because countries offer free trade agreement partners preferential tariffs (usually zero). That's okay under the WTO exception as long as the parties to the free trade agreement eliminate barriers to substantially all trade between them and don't erect new barriers to trade with countries not party to the agreement.

So, bilateral trade deals (like a potential U.S. agreement with Japan or the United Kingdom) and regional deals (like NAFTA and the new USMCA) are exceptions to global trade rules. They establish more favorable trade

terms among the parties to the agreement than they extend to other WTO members.

Other types of exceptions are provided when members must take measures that violate their obligations to protect human, plant or animal health or for national security reasons, among a limited number of other circumstances.

WHO'S IN THE WTO CLUB, AND WHY IS MEMBERSHIP IMPORTANT?

At its founding in 1947, the General Agreement on Tariffs and Trade (GATT) was a tariff agreement among 23 nations that were the original "contracting parties." They were: Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, United Kingdom and the United States.

Today, the WTO's membership totals 164 members, who collectively account for more than 98% of world trade. Twenty-one governments are now in the process or have stated their intention to accede to the WTO.

The WTO is a pathway to recovery and growth.

Arguably, the WTO has struggled to assert relevance in modern trade negotiations; the Doha Round is an example of this. But the WTO plays another role that few question is vital – providing a pathway for economic reforms, development and growth through trade.

Think of this: Afghanistan is the most recent member of the World Trade Organization (WTO). Its entry represented a bold initiative by a government beset with an array of political, economic and security challenges. Liberia is another recent entrant, viewing membership as a path to economic recovery from civil war and the tragic consequences of the Ebola disease that tore at its fragile social and economic fabric. Bosnia and Herzegovina is working to complete its accession. Belarus, Iraq, Somalia and Timor-Leste are also in the queue.

What do these countries have in common? They are resolved to rebuild their post-conflict economies. They see benefits in making commitments within the WTO that will undergird necessary, but difficult, economic reforms at home. And they share the view that the WTO community will support them in peaceable negotiations, in spite of the political complexities of international relations away from the trade table.

They might not be your first choice of market, but these countries are important to peace and national security.

WTO membership is not just about economics.

The process of acceding to the WTO itself is important. Aspiring WTO members submit descriptions of their existing trade regimes for review by other members.

It's a time-consuming and detailed technical effort that can take years to complete, but it sets the baseline for negotiating their terms of membership. The resulting package of commitments will inform the government's roadmap for economic reforms and recovery.

That's why WTO members work hard to support acceding governments. With smaller, developing countries and those recovering from conflict, it's not about the economic gains from driving a hard bargain and winning concessions. It's about ensuring these countries are well-positioned and supported in their efforts to implement their commitments, which members believe will bring economic gains to those countries – and with economic gains, more lasting security and stability. Among other benefits, security and stability in these countries help combat the scourge of global terrorism.

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CHAPTER 5: AGRICULTURE IN THE WTO

THE AGRICULTURE DIFFERENCE

The fact that WTO negotiations and agreements are divided into agriculture and “all the rest” of traded goods – referred to collectively as non-agricultural goods – is a hint as to the special treatment trade in agricultural goods receives at the WTO.

When the original GATT principles and disciplines were developed, members did not envision excluding agricultural products from their commitments to reduce tariffs or otherwise open agricultural markets, but that’s exactly what happened for most of the GATT’s negotiating history. It wasn’t until the Uruguay Round of multilateral negotiations concluded in 1993 that members agreed to begin reducing barriers to trade in agricultural products, recognizing a wide variety of domestic agricultural programs in place, such as import quotas and production-based subsidies, had been long dampening the ability of countries to freely trade in the ag sector.

The WTO agreement on agriculture includes three core disciplines.

The Uruguay Round of WTO negotiations produced the Agreement on Agriculture. The Agreement’s framework encompasses three main types of issues affecting trade in agricultural products: market access, domestic supports and export subsidies.

Market access starts with a single tariff.

Much of the early progress on agriculture came from the tedious process in the 1990s of documenting members’ subsidies, supports and tariffs on trade in agricultural products, converting these approaches into a common form - the tariff - and then agreeing to “bind” those tariffs.

Until this time, quantitative restrictions on agricultural imports - such as quotas and marketing arrangements - had been allowed, and export subsidies had been

permitted. The process of converting various forms of non-tariff border restrictions into a tariff was known as “tariffication.” From then on, no border measures other than “normal customs duties” would be permitted.

Tariffs can still be somewhat complex. WTO members’ individual “tariff bindings” constitute their commitment not to increase a rate of duty beyond an agreed level. The bound rate serves as a ceiling. But every country also has “applied rates,” which refer to the customs duties *actually charged* on imports. Countries can increase or decrease the tariffs they apply as long as they do not exceed their bound rates. They may decide to do this, for example, when the imported product is not made domestically, so the product may be imported at a lower cost.

What is a tariff-rate quota (TRQ), and why do we still have them?

If WTO members are supposed to avoid quantitative restrictions such as quotas and only use tariffs, why do we still have “tariff-rate quotas” in agricultural trade?

In many cases, the new tariffs agreed in the “tariffication” process were still prohibitively high, resulting in less market access than before the tariffication process. Tariff-rate quotas (TRQs) were created as a way to ensure a certain amount of domestic consumption would continue to be supplied by imports.

TRQs are structured to allow a specified volume of imported product to enter the country at a lower tariff rate. Any amount of product imported in quantities beyond the quota allotment is taxed at higher - usually prohibitively high - tariff rates. For example, Canada allows roughly 20 million kilograms of cheese to be imported each year at a rate of duty that ranges from 0% up to 3.32 cents per kilogram. Any cheese imported above that quantity will be charged a duty rate of 245.5% and not less than \$3.53 to \$5.78 per kilogram.

The first steps to reduce domestic supports involved the creation of boxes.

Because of the diversity of the way governments offer domestic supports to their farmers, WTO members started discussions with an effort to characterize types of domestic supports, classifying each in a “box.”

Permissible - or “green box” - supports have minimal or no distortive effect on trade. Supports that may not be legal under WTO rules because they distort trade are categorized as “amber box” supports. Also created at the time was a “blue box” category to accommodate supports mainly by the EU and the United States that may be trade-distorting but are permitted because the measures are designed to limit or reduce production.

If a member’s domestic support measures do not correspond to the criteria of the green or blue boxes, they are considered amber box measures subject to reduction commitments. A member’s total amber box spending is capped, and members agree to overall percentage reductions, but not commodity-specific reductions.

A member’s green box supports are covered under a so-called “peace clause” that obligates members to avoid challenging them through formal dispute settlement. Generally, green box supports are those provided through publicly-funded government programs and should not have the effect of providing price supports to producers. They might include programs to control pests and disease, to electrify rural areas, or pay for domestic food aid programs. For developing countries, certain measures for development are also immune from challenge such as input subsidies for low-income farmers or support to diversify away from illicit narcotic crops.

Members have agreed to no new export subsidies.

Members committed in the Uruguay Round that no new export subsidies would be permitted. These include cash payments to producers contingent upon export; the disposal of government stocks at below-market prices; and transportation and freight subsidies.

Under the GATT, members could subsidize the export of primary agricultural products if they did not result in the exporting country having more than an “equitable” share of world trade. The Agreement on Subsidies and Countervailing Measures, which came into force in 1994, prohibited all subsidies on exports of agricultural products, with exceptions provided for in the Agreement on Agriculture. Within the Agreement on Agriculture, export subsidies are prohibited unless they conform with a WTO member’s individual country commitments. Those specific country commitments contain maximum budget outlays, maximum annual quantities, and other criteria to limit the use of export subsidies.

This was the way export subsidies were handled in the WTO until members finally agreed to eliminate export subsidies altogether at a meeting of trade ministers in December 2015.

THE DOHA DEVELOPMENT ROUND WAS SUPPOSED TO BE THE “REAL DEAL” ON AGRICULTURE.

A new, comprehensive round of WTO negotiations was launched in Doha, Qatar, in 2001. Reductions in agricultural supports and new market access commitments were part of the talks, though substantial disagreements remained between developed and developing country members. The talks were dealt a serious blow around mid-2008 when commodity prices spiked, causing the value of subsidies to fall. The urgency of reducing domestic supports was gone. Farmers enjoyed higher prices, but many developing countries were concerned about the impact to consumers, particularly in countries suffering high rates of undernutrition and hunger. Around 25 countries imposed restrictions on food exports, driving food prices up further – distorting both global and domestic prices.

When market prices came down years later, the landscape of agriculture subsidies had begun to shift in important ways. Europe had worked to reform and substantially reduce its subsidy program, and the United

States was ready to bargain with some of its domestic supports in exchange for increased access to growing markets. But countries where U.S. growers want to sell, such as China, India and Brazil, had markedly increased subsidy programs and were unwilling to provide meaningful increases in access.

As negotiations continue in an effort to reduce domestic supports, members complain about the systemic failure over recent years of their counterparts to notify their domestic support measures in a timely way, undermining transparency and allowing negotiators to posture based on perceptions of who subsidizes without rooting negotiations in hard, verifiable data. Countries are at loggerheads on this and other issues with no real progress in almost a decade.

The future of agriculture negotiations in the WTO is unclear.

Failure to achieve a comprehensive agreement encompassing agriculture and non-agricultural market access, services and other aspects of the original Doha Development Round mandate has prompted members to create “plurilateral” initiatives. If a critical mass of members who account for the majority of global trade in a particular sector agree to commitments among themselves, they are free to do so and to migrate a final deal into the WTO for consideration and accession by other members.

This is an approach members previously wanted to avoid out of concern for the “free rider” problem wherein countries that do not join the agreement nonetheless share in certain benefit. But this has proven a viable route for achieving liberalization, for example, in government procurement and trade in information technologies.

Similarly, some argue that rather than go for a comprehensive agriculture deal, members should simply seek agreement where possible. The agreement in December 2015 among trade ministers in the WTO to eliminate export subsidies, absent agreement on domestic subsidies or market access, is a successful example of this approach.

TRADE PROVISIONS ON AGRICULTURAL STANDARDS

Other WTO agreements apply to trade in agricultural products. They include agreements on safeguards, import licensing procedures, technical barriers to trade (similar to the SPS Agreement), and even the agreement on trade-related aspects of intellectual property (agricultural biotechnology, for example). Agricultural trade is also affected by agreements covering how countries deal with “dumped” products sold at below fair market value or unfairly subsidized products. The SPS Agreement is one of the most important for agricultural trade.

The SPS agreement is designed to address risks while facilitating trade.

Governments have the responsibility to ensure the safety of their food supplies and to protect the health of the plants and animals that supply the food system. They take steps to combat pests and diseases that threaten human, plant and animal health, seeking to eradicate them from domestic farms and ranches while also working to prevent their introduction through imported products. For example, with respect to imports, governments often inspect imported products and reject those carrying pests and diseases. Or they require products to be treated or processed in a particular way to eliminate pests or pathogens or to come from regions free of particular diseases. Such measures are known in international trade policy as sanitary and phytosanitary (SPS) measures.

The United States is a major food exporter and importer, so we apply SPS measures to imports while also complying with SPS requirements set by foreign governments when exporting to their markets. But while all governments recognize the need for – and the right of – other governments to impose SPS measures, they also want those governments to avoid overly restrictive SPS measures. SPS measures are supposed to be designed to address an actual health threat; they are not there to protect domestic producers from foreign competition. The WTO SPS Agreement is particularly important to agriculture because if you can’t get approvals to sell in the market, and you can’t clear customs, the tariffs in place don’t really matter.

Governments commit to balance regulation.

Some of the fundamental requirements under the WTO SPS Agreement are that governments develop and implement SPS measures using scientific principles and evidence; governments are encouraged to base their SPS measures on international standards; governments must base their SPS measures on an appropriate risk assessment; and government measures may be applied only to the extent necessary to protect human, animal or plant life or health. They should also not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.

The SPS Agreement recognizes that countries sometimes must take SPS measures temporarily while they gather the information necessary for a more objective assessment of the risks. For example, a country may ban imports of a product when it learns an animal disease normally posing a high risk has been found in the exporting country, but it is expected to narrow or eliminate the ban if, for example, it obtains additional information that the products come from a disease-free region of the exporting country.

SPS provisions in bilateral trade agreements are now “WTO-plus.”

Many U.S. free trade agreements include SPS chapters. Most since 1995 have merely reaffirmed the requirements of the WTO SPS Agreement. The U.S.-Mexico-Canada Agreement (USMCA) set to replace NAFTA would offer some additional benefits to agricultural traders by providing more detailed guidance on certain SPS measures applied to trade among our three countries and greater certainty through due process for U.S. agricultural exporters.

For example, the agreement would facilitate the governments sharing information required to conduct risk assessments; would provide rapid notification to importers or exporters if their shipments are being detained for SPS concerns; and specifies detailed rules for SPS-related audits, import inspections and certification requirements.

Regulatory harmonization is key to facilitating trade.

The WTO isn't a forum for developing standards for governments to adopt. For food and agriculture, other specialized United Nations forums have existed and performed that function well for many decades. For example, the Codex Alimentarius (Codex) has been developing international food standards and guidelines for national practices regarding the safety and quality of food since 1963. Codex involves independent experts and specialists to ensure its recommendations are based on scientific evidence. The standards it produces have become important reference points in settling disputes in the WTO involving food safety standards. Along with Codex, the WTO relies heavily on scientific discussions in two other international bodies - The International Plant Protection Convention and the World Organization for Animal Health - that specialize in standards to protect animal and plant health.

The role of the WTO SPS Agreement is to promote widespread use of the standards developed in these bodies to reduce the need for agricultural producers to meet differing standards in global trade. Discussions among WTO members in the SPS Committee focus on ensuring members take these standards into account when developing, applying and enforcing regulations governing food and agriculture. Members are required to notify other members of all changes to their SPS import requirements, regardless of whether they comply or deviate from an international standard. That information is disseminated to all members so private stakeholders (farmers, for example) have an opportunity to review and comment on proposed regulations affecting their exports before they go into effect.

Sometimes it's a matter of capacity building.

SPS measures would be subject to formal dispute settlement proceedings in the WTO member or under a bilateral free trade agreement. However, SPS disagreements often involve complex scientific

arguments and evidence, and governments retain wide latitude to decide how to achieve a desired level of protection for plant, animal or human health. If countries have a conflict over SPS standards, they could use the dispute settlement procedures in the WTO or another free trade agreement to resolve their differences.

Oftentimes, disputes or blocked shipments can result from a lack of technical capacity by the importing government which might conduct inspections, take samples, perform tests or send samples to laboratories for extensive testing. Shipments can be subject to quarantine and treatment. Unfortunately for our

exporters, such delays and extra processing can cause significant losses.

Developing country governments in particular benefit from capacity building and technical assistance to implement international food and agricultural standards in ways that do not create barriers to imports.

For instance, organizations like the U.S. Grains Council work with regulators and scientists in importing countries to ensure these functions are available and meeting international standards. This can include consultation, training and education throughout the grains value chains in importing countries.

NOTES:

CHAPTER 6: BEYOND THE WTO - REGIONAL AND BILATERAL TRADE DEALS

WHAT TO KNOW ABOUT FTAS AND THE WTO

Around the world, hundreds of free trade agreements are in force or under negotiation. WTO commitments do not prevent countries from negotiating these separate agreements, but they are considered exceptions and must meet certain criteria. Here's what you need to know about agreements designed to create free-trade areas.

What's in a name?

In common parlance, we use the term free trade agreement, abbreviated as FTA, for most agreements between two countries. WTO language refers to these agreements as "regional trade agreements," or RTAs.

Why are they called regional trade agreements? Because early efforts to integrate economically were among countries in the same region, like the North American Free Trade Agreement (NAFTA) among the United States, Canada and Mexico; the ASEAN Free Trade Agreement among countries in Southeast Asia; and MERCOSUR, the Southern Common Market Agreement involving the countries of South America.

Today, RTAs are the vehicle to negotiate free-trade areas that are not strictly regional, like the European Union's agreement with Japan. Trade agreements are driven less by geographic proximity than by a host of other considerations including the trade and investment patterns that developed through global supply chains. The European Union calls their agreements Economic Partnership Agreements; India and MERCOSUR call their agreement a Preferential Trade Agreement. In the WTO, these are all RTAs.

Are RTAs the exception or the rule?

In practice, RTAs are becoming commonplace and have been proliferating over the last decade. Under WTO rules, they are the exception.

A core tenet of the global trade system is non-discrimination among members. Although there are benefits to economic integration and trade liberalization outside the WTO, it's important to acknowledge that, by definition, RTAs discriminate by offering more favorable treatment to their parties than what's offered to all other WTO members.

In effect, trade agreements create new patterns of trade, but they do this by diverting trade that might otherwise develop or grow absent the agreement. That makes them inconsistent with WTO obligations. The WTO therefore treats them as exceptions and provides conditions for those exceptions.

The WTO has three essential conditions for RTAs.

WTO agreements reflect members' desires to strike a balance between enabling them to pursue economic integration while avoiding "to the greatest extent possible...creating adverse effects on the trade of other Members."

The specific conditions for regional trade exceptions can be found in [Article 24](#) and the Enabling Clause of the General Agreement on Tariffs and Trade (GATT 1994) and [Article 5](#) of the General Agreement on Trade in Services (GATS). Broadly, to constitute a legitimate exception to WTO obligations, RTAs must meet three conditions:

1. The agreement should cover "substantially all trade" among the parties to the agreement. (Meaning: you should not select just a few products or services on which you'll eliminate duties just for each other.)
2. The agreement should not raise barriers to trade with countries not party to the agreement. (Meaning: the agreement might have the effect of diverting trade, but you should not specifically create new barriers in the agreement.)

3. The agreement should result in a free trade area within a “reasonable length of time.” (Meaning: though not defined, 10 years is considered reasonable for achieving the elimination of duties on all non-agricultural goods. Often longer periods of time are granted for agricultural commodities and a handful of very sensitive traded goods.)

RTAs are supposed to be the exception, but...everyone's doing it.

In June 2016, Mongolia notified the WTO of its RTA with Japan, making it official that all WTO members now have at least one RTA in force.

WTO members are supposed to notify their agreements to the WTO secretariat, which maintains a public database. According to the WTO, 124 agreements were notified between 1948 and 1994. Since 1995, members have notified more than 400 additional agreements. WTO members can report their agreements under the goods agreement and the services agreement, so there's some double counting in that number — there are actually around 270 “physical” agreements in total.

The United States is a party to just 14 of those with 20 of our trading partners. According to their government websites, the European Union has some 70 trade deals in place, Mexico has 10 agreements with 45 countries, Japan has 18 agreements with 54 countries, and China has 16 agreements in place with 25 trading partners.

THE UNITED STATES ALWAYS FAVORED GLOBAL TRADE RULES.

Over the course of many administrations, the United States favored advancing trade liberalization globally through negotiating rounds in the WTO. From the inception of the global trade rules under the GATT in 1947 until the end of the Clinton Administration, the United States negotiated just three bilateral or regional free trade agreements: one with Israel, one with Canada, and then an expanded North American Free Trade Agreement (NAFTA) that included Mexico.

The Israel FTA, in force since 1985, was less about economics than a political and security alliance. NAFTA, in place since 1994, makes the most economic sense for the United States than any other FTA, given the proximity, size and complementarity of the Canadian and Mexican economies.

But our trading partners were actively concluding bilateral deals.

The starting point for the George W. Bush Administration's trade strategy was a review in 2001 of what our main trading partners were doing. What that review revealed was that the European Union had a long history of boosting their economic influence by engaging in Economic Partnership Agreements (often a kind of “junior” FTA) and had some 60 agreements outside of the WTO, not including ongoing negotiations with another 80 or so countries.

Smaller, market-oriented developing countries such as Chile, Peru and Costa Rica were leveraging a FTA approach to become exports hubs. In just the last couple of decades, countries in Asia have intensified efforts to achieve regional market integration. China, in particular, went from three agreements with small neighbors in 2004 to initiating 17 negotiations by the following year.

In response, the Bush Administration undertook a strategy of “competitive liberalization,” launching an unprecedented series of bilateral negotiations while at the same time promoting a Free Trade Area of the Americas (FTAA) and the launch of the Doha Round of WTO negotiations. During the Uruguay Round of WTO negotiations, the conclusion of NAFTA helped spur agreement as other WTO members did not want the United States to divert its attention to bilateral agreements. The Bush Administration hoped the same dynamic would lead to successful conclusion of the FTAA and Doha Rounds because, on balance, the Administration favored larger trade deals. Smaller agreements were seen as a way to build coalitions to achieve regional and multilateral agreements. Twelve of the United States' 14 free trade agreements in effect today were launched during the Bush Administration.

When the WTO's Doha Round got hopelessly stuck, many countries turned to large regional negotiations.

Decades of impasse at the WTO prompted some of the world's largest economies to turn their focus to negotiating "mega FTAs." The Trans-Pacific Partnership agreement (TPP) – with the United States in it – would have encompassed 40% of the world's GDP and one-quarter of world trade. An agreement between the United States and the European Union would cover nearly half of global GDP; \$2.7 trillion worth of goods and services are traded between our regions every day. China and the countries of South Asia, Southeast Asia and Oceania are attempting to negotiate a large regional trade agreement called the Regional Comprehensive Economic Partnership, or RCEP. Subsets of members of the WTO have also peeled off to try negotiating "plurilateral" trade deals in areas such as trade in services.

BILATERAL DEALS: WHETHER AND WITH WHOM?

Every U.S. administration has choices to make about its trade negotiation agenda: should it favor multilateral negotiations in the WTO or focus on pursuing bilateral free trade agreements with a handful of trading partners? The decision often comes down to a combination of philosophy, pragmatism and a reading of the political winds.

The administration has political and practical considerations when choosing FTA partners.

Any administration will certainly consider overarching economic and security rationales and outcomes when choosing countries with which to negotiate bilaterally or regionally. But there are also some pragmatic considerations that enter into the decision: do the business and agriculture communities consider a potential FTA a benefit to their industries? Is this market a priority for their expansion? Do their competitors enjoy better access to this market?

Additionally, an administration must consider if there is a compatibility of objectives among the governments

involved such that the administration can advance or achieve the objectives agreed with Congress under trade promotion authority? Does the counterpart government demonstrate the political willingness to make the legal and regulatory reforms as well as institutional commitments required from an FTA with the United States? Is the final agreement likely to enjoy sufficient support in the Congress?

And, by the way, are there better and more expedient ways to achieve a particular market access outcome? FTAs are not always the "first-best" option to tackle specific challenges of doing business in foreign markets. That's why trade policymakers reach to a variety of approaches – marketing through the Foreign Agricultural Service (FAS) in cooperation with organizations like the U.S. Grains Council, engaging in trade capacity building, government-to-government dialogue on specific issues, or even threatening a dispute settlement case in the WTO.

There are arguments for and against the U.S. focusing on bilateral and regional trade deals instead of putting its negotiating eggs in the WTO basket.

AGAINST: Pursuing bilateral deals is a piecemeal approach that makes it harder for U.S. companies take advantage of market opening since each agreement varies in its commitments and requirements. Bilateral FTAs consume time and resources that divert from multilateral negotiations. A bilateral negotiating strategy might lack coherence and macroeconomic impact versus global deals that include all WTO members. In some important areas such as agricultural subsidies, regulation of state-owned agricultural trading enterprises, and guarding against export restrictions by developing countries that are major agriculture producers, the WTO is the only place to achieve commitments that include important players in agriculture trade.

FOR: Bilateral trade deals might create stepping stones to achieve broader, global liberalization. Concluding global deals takes a long time, and negotiating bilateral deals affords new market access in the meanwhile, focusing on growth markets. FTAs can spur regional integration and enable negotiators to innovate provisions more readily among a smaller group of trading partners.

For example, TPP and the new USMCA will pioneer provisions on digital trade and procedures for quick decisions on SPS issues. Both will also afford the opportunity to achieve deeper market access in sensitive agricultural products than has been possible in the WTO thus far.

In the big picture, regionalism can lead to a patchwork of agreements with different rules and preferential

arrangements. Navigating those differences can raise the transaction costs for business. But when liberalization slows or fails to advance through the WTO, regional agreements can become stepping stones toward global agreement and incubators for new and more advanced provisions covering aspects of the modern economy not yet contemplated in WTO agreements.

WE NEED YOUR FEEDBACK

This backgrounder is updated regularly! Please send questions, comments, suggestions or other topics you'd like covered to
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Thank you in advance for helping improve future editions.