The Future of U.S. Trade Policy: An Analysis of Issues and Options for the 112th Congress

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Summary

U.S. trade policy is at a cross-roads as the Obama Administration and the 112th Congress face a range of policy issues and challenges. The future direction of trade policy and how the issues will be addressed are unclear at this time and the subject of sharp debate within Congress, the Administration, and the trade policy community at large. While a number of issues are related to trade policy, the fundamental question that is the subject of this debate is which trade policy, if any, will maximize the benefits of trade and boost U.S. living standards.

Among the trade issues facing Congress and the Administration are pending free trade agreements (FTAs) and negotiations on new FTAs; the stalled Doha Development Agenda (DDA) multilateral trade negotiations; the possible renewal of trade promotion authority (TPA); the review and reauthorization of trade preference programs for developing countries; the enforcement of U.S. trade laws and rights under existing trade agreements; the role of export promotion in the U.S. economic recovery; and the growing link between foreign direct investment and trade and, with it, the increasing use of bilateral investment treaties (BITs) and investment provisions in trade agreements.

The current trade policy environment is affected by a number of political and economic forces. The political forces involve the opinions of the American public, including major stakeholders—business, labor, agriculture, and non-government organizations—on trade; congressional perspectives; presidential perspectives; and tension in the congressional/executive relationship as the two branches play their respective trade policy roles. The economic forces include the global economic downturn; the rise of developing countries, including the emerging markets of Brazil, China, and India as major trading powers; the growth of global production networks; the proliferation of free trade agreements and other preferential trade arrangements; the inherent limitations of trade policy as a tool in economic policy; the growth of "behind the border" trade barriers; and the long-standing U.S. trade deficits.

The debate on trade is framed by three groups of views. One group, who might be called "trade liberalizers," assert that on a net basis the benefits to the United States of trade liberalization are greater than the costs and, therefore, should be encouraged through trade barrier reductions. A second group—"fair traders"—acknowledge the benefits of trade liberalization but assert that U.S. firms and workers are often forced to compete under unfair conditions. They support trade agreements, but only if the agreements provide for a "level playing field." A third group—"trade skeptics"—tends to argue that the costs of trade liberalization outweigh the benefits for the United States, and therefore, reject unrestricted trade liberalization. Where policymakers fit on this continuum of views could help to determine how they decide to address the outstanding and emerging trade issues before Congress

In many cases, the trade policy positions of policymakers and other experts cannot be readily categorized as belonging to one group or another, but the categories provide a mechanism to analyze the major concepts in trade policy and their potential implications.

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The 112th Congress and the Obama Administration face a range of trade issues. Many of these issues, such as pending free trade agreements and trade negotiations, trade preferences for developing countries, trade enforcement and compliance, and renewal of trade promotion authority, are legacies of previous administrations and congresses. New issues may be on the horizon.

Trade policy is an important element of economic policy, and as such, its objective is to enhance national economic welfare. However, what constitutes economic welfare can vary among the interest groups that comprise the stakeholders in U.S. trade policy, such as farmers, manufacturers, service providers, workers, importers, consumers, and environmentalists, and among members of Congress who represent them. The shape and conduct of trade policy are the subject of much debate among policymakers.

U.S. policymakers appear to be at a crossroads on these questions at this time. The future shape, direction, and content of U.S. trade policy are uncertain. Some observers have suggested that the role of trade policy should be given lower priority relative to foreign policy and domestic economic issues; others call for an activist policy that faces the challenges head on. Besides these questions, there is the overarching question of what role, if any, should or can trade policy have in promoting U.S. economic and foreign policy interests. On the one hand, it can be argued that the emergence of global production networks, within which manufacturers have internationalized production processes across borders, is making government-to-government trade agreements and trade policy in general less effective, if not obsolete. In addition, the rapid increase in capital flows across borders dwarf the impact of flows of goods and services, reducing the effectiveness of trade policy initiatives. On the other hand, it can be argued that trade policy remains a significant aspect of economic and foreign policy that can hinder or promote national interests and has a high-level of relevance as reflected in the rapid growth of trade (U.S. trade in goods and services totaled $3.5 trillion in 2009), and the increase in bilateral and regional trade agreements throughout the world.

This report is designed to assist the 112th Congress as it grapples with these complex issues of trade policy in a rapidly changing economic landscape. How Congress and the Obama Administration respond could have long-term implications for U.S. trade, economic, and foreign policy interests. The report discusses the issues that the 112th Congress could face and the political and economic context in which these issues are being debated. It then analyzes the debate that is taking place among policy experts and stakeholders over the future form and role of trade policy and concludes with an examination of some of the options available to Congress and the pros and cons of each. This report will be updated as events warrant.

The Current Economic and Political Climate for Trade Policy

A number of political factors and economic conditions will influence the shape, direction, and content of U.S. trade policy in the next few years. The relative significance of each of these factors could change over time.

Political Factors

Public Opinion

One factor that will likely affect the direction of U.S. trade policy is American public opinion, including the views of major stakeholders, such as businesses, labor, farmers, and non-government organizations(NGOs), on trade liberalization and trade agreements. Some recent opinion surveys suggest an overall ambivalence, if not growing opposition, among the American public regarding trade liberalization. On the one hand, a plurality of Americans believe that free trade agreements hurt the United States. A Pew Research Center survey released on November 9, 2010, showed that 44% of the American public thought that free trade agreements were a "bad thing," while 35% viewed them as a "good thing.". These percentages were reverse from those that resulted from a December 2009 survey where 43% thought free trade agreements were a "good thing" and 32% thought they were a "bad thing" for the United States. On the other hand, a majority of those surveyed in the same study thought increasing trade with Canada, Japan, the European Union (EU), and other major trading partners was good for the United States.[1] Views vary among the major stakeholders. In general, the U.S. business community has supported trade agreements. The agriculture community largely supports them, although some groups, such as sugar producers, have opposed agreements that would increase access of foreign producers to their markets. U.S. labor in general has been skeptical on trade and has opposed most free trade agreements. Some NGOs, particularly those that serve poor countries, have opposed trade liberalization, while others view trade liberalization as an avenue to economic growth and development.

Congressional Perspective

Congress appears to reflect the public's ambivalence on trade policy much of the time. The congressional perspective is particularly critical because the Constitution assigns primary responsibility on trade policy to the legislative branch. Ambivalence on trade appears to be especially evident in the House of Representatives. Over the years, support in Congress for trade liberalization, by some measures, seems to have declined. For example, the House approved the Trade Act of 1974, which established "fast-track trade authority," by a vote of 272-140. On December 6, 2001, however, the House passed the most recent version of "fast-track" (now also called trade promotion authority [TPA]) by the thinner margin of 215-214. Votes on specific trade agreements perhaps indicate a greater congressional ambivalence on trade liberalization. On November 8, 2007, the House passed implementing legislation (H.R. 3688, P.L. 110-138) for the U.S.-Peru Free Trade Agreement—the most recent FTA to be approved—by a vote of 285-132, but passed the U.S.-Dominican Republic-Central American (DR-CAFTA) (H.R. 3045, P.L. 109-53) by a much narrower margin of 217-215. Senate votes on fast-track and trade agreements tended to be not as close.[2]

[1] The data are included in a more general survey released November 9, 2010, and available on the Pew Research Center website: http://www.pewreach.org.

[2] The references to fast-track authority and trade agreement votes were taken from CRS Report RS21004, *Trade Promotion Authority and Fast-Track Negotiating Authority for Trade Agreements: Major Votes*, by (name redacted).

Presidential Perspective

The President's role and his stance on trade is a third political factor shaping trade policy. While influenced by the other two factors, presidents have favored trade liberalization for economic and foreign policy reasons, while acknowledging, through rhetoric and actions, the adverse affects trade liberalization may have on some segments of the economy. This has been the case with both Republican and Democratic Administrations. The United States completed and enacted the Tokyo Round Agreements under President Carter, the negotiations for which were launched under President Nixon. NAFTA and the Uruguay Round Agreements were enacted under President Clinton, but the negotiations for both were launched under President Reagan and continued under President George H.W. Bush. This pattern may be continuing. President Obama has expressed qualified support for the pending free trade agreements (FTAs) with Colombia, Panama, and South Korea and for the completion of the Doha Development Agenda (DDA) round of WTO negotiations, all of which were launched under President George W. Bush. [3]

Executive-Legislative Partnership/Tension

The U.S. Constitution assigns express authority over foreign trade to Congress. Article I, section 8, gives Congress the power to "regulate commerce with foreign nations ..." and to "... lay and collect taxes, duties, imposts, and excises...." For more than a century and half, Congress exercised its foreign trade policy responsibility primarily through setting tariff rates. Tariffs were also a major source of federal government revenue at that time. Early congressional trade debates pitted members from northern manufacturing regions, who benefitted from protectionist tariffs, against those from largely southern raw material exporting regions, who lobbied for low tariffs.

However, for political and pragmatic reasons, Congress has increasingly delegated certain trade authority to the President—without relinquishing overall congressional authority over trade policy. One important example is in the area of trade agreement negotiations. In 1934, Congress enacted the Reciprocal Trade Agreements Act (RTAA; P.L. 73-316). The RTAA authorized the President to negotiate reciprocal agreements that reduced tariffs within pre-approved levels. The tariffs were applied on an MFN basis. Under the RTAA, Congress authorized the president to implement the new tariffs by proclamation without additional legislation. The RTAA was the first time Congress expressly *delegated* to the President major trade authority. In so doing, it is argued, Congress aimed to lessen pressure to protect specific firms and industries from import competition and also to assure trading partner-countries that agreements would not be changed by Congress before enactment.

In addition, the RTAA was also a practical way for Congress to exercise its constitutional responsibility for trade while recognizing the President's constitutional role (Article II) as the sole authority to negotiate foreign agreements for the United States. Over the years, Congress expanded presidential trade authority as trade negotiations and agreements became more complex. Beginning with the Trade Act of 1974, as amended, Congress authorized fast-track authority, which allowed for implementing legislation for certain trade agreements that the President negotiated be subject to expedited legislative procedures (e.g., limited debate, no

[3] The Obama Administration's positions on trade issues are outlined in *The President's 2010 Trade Agenda*. Available at http://www.ustr.gov.

amendments, and guaranteed congressional consideration), if the Administration adhered to statutorily mandated procedures, including consultation with Congress.[4]

Congress has delegated additional trade policy authority to the executive branch by granting it the authority to implement a number of trade remedies and other trade programs. For example, the U.S. Department of Commerce (along with the independent U.S. International Trade Commission) is responsible for implementing the anti-dumping (AD) and countervailing duty (CVD) trade remedy programs. AD and CVD remedies are designed to offset the price advantages accrued to imports as a result of dumping (selling at below fair market value) and foreign government subsidies, respectively. Congress has also given the authority to the President and the U.S. International Trade Commission (USITC) to implement the escape clause (section 201) trade remedy, to dampen the injurious effects on domestic industries of surges in fairly traded imports.[5]

While selectively delegating trade policy authority to the President, Congress has maintained tight reins on its implementation. In the case of trade agreement authority, Congress has made trade promotion authority subject to sunset provisions requiring it to be renewed and requires the President to adhere to deadlines, negotiating objectives, and consultation with Congress in order for the implementing legislation to be eligible for the expedited legislative procedures. In the case of trade remedies, Congress sets out, in the implementing statutes, procedures and other criteria that the relevant agencies are to follow in implementing these programs (while allowing for some degree of presidential and executive branch discretion in so doing). During the past two decades or more, Congress has tightened the reins and has, thus, arguably been shifting the balance of power on trade away from the executive and back to itself. In the case of trade agreement authority, Congress has expanded the list of negotiating objectives and consultation requirements and has played an increasing activist role in the implementation process. In the case of trade remedy programs, Congress has been reducing executive discretion to increase the frequency of decisions producing the measures that benefit domestic industries.

Within the executive-legislative relationship on trade policy exists inherent institutional tension even if the two branches are controlled by the same party. Congress, particularly the House, often reflects the interests of individual constituent groups. The President is generally seen as representing the interests of the country as a whole, including how trade policy relates to U.S. international economic and political concerns. At times, individual and national interests may conflict, such as when trade liberalization measures affect import-sensitive firms and industries, producing the need for bipartisan and inter-branch cooperation in order to conduct trade policy effectively.

Economic Factors

U.S. trade occurs in a rapidly changing economic environment. The role of trade in the U.S. economy has increased substantially over the years. For example, the total value of U.S. exports and imports of goods and services equaled 11% of U.S. gross domestic product (GDP) in 1970 and 25%% in 2009.[6] World trade has grown rapidly as well. For example, in 1989, world trade in

[4] For a more comprehensive treatment of fast track authority, see CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by (name redacted) and (name redacted).

[5] For more information on trade remedies, see CRS Report RL32371, *Trade Remedies: A Primer*, by (name redacted).

[6] Economist Intelligence Unit database.

goods and services was valued at $3.7 trillion and $15.2 trillion in 2009.[7] At the same time, the role of trade in the world economy increased, from 18% of world GDP in 1989 to 27% in 2009.[8] The United States economy accounts for 25% of the world's GDP, yet for only 5% of the world's population, which indicates a large number of potential consumers outside U.S. borders.[9]

Global Economic Downturn

One of the most significant factors affecting trade policy over the next few years will be the after-effects of the global financial crisis and the resulting economic downturn. Slumping world demand caused overall U.S. trade and trade with major partners to decline sharply. U.S. exports increased 11.8% and U.S. imports increased 7.3% in 2008 over 2007 levels; however, in 2009, U.S. exports declined 17.9%, and imports declined 25.9% from 2008 levels. The decline in U.S. trade mirrored world trade trends. The WTO reported that world trade declined 12% in 2009—the largest drop since World War II.[10] The impact of the downturn on U.S. employment will likely affect U.S. trade policy, at least indirectly. Even though U.S. economic growth has resumed, the unemployment rate has remained comparatively high at 9.8%.

During some economic crises, nations have withdrawn from global commerce and raised tariffs and nontariff barriers to protect domestic producers and workers from foreign competition. Such measures in turn caused trade to contract, exacerbating the recession. The primary historical example of such policy steps in the United States was the extremely high Smoot-Hawley tariffs contained in the Trade Act of 1930, which led U.S. trading partners to retaliate with high tariffs that slowed world trade and helped deepen and prolong the Great Depression. When Congress included a "Buy American" provision in the economic stimulus bill (H.R. 1, the American Recovery and Reinvestment Act of 2009, signed into law by the President on February 17, 2009), major trading partners, including China and the European Union, claimed that these were protectionist measures. The bill did include provisions stipulating that no measures could violate U.S. international obligations. The WTO reported that in 2009 its 153 members, representing more than 90% of world trade, did not resort to wholesale protectionist measures in response to the crisis, although it reported increases in some trade limiting, WTO-legal measures, such as trade remedy actions.[11] The U.S. stimulus programs and similar program by other countries have also raised the issue of to what degree are such state-funded programs targeted to certain industries, such as autos, that could become subsidies that are not acceptable under WTO rules.

Emergence of Developing Countries

The emergence of developing countries, particularly emerging economies such as Brazil, China, and India as major trading powers, is affecting U.S. trade policy. In 1985, developing countries accounted for 32.8% of total U.S. exports and for 34.5% of total imports. By 2009, developing

[7] International Monetary Fund. *Direction of Trade Statistics.*

[8] International Monetary Fund.

[9] CIA. *World Factbook.* Accessed at http://www.cia.gov on March 22, 2010.

[10] Lamy, Pascal. *Lamy says trade can have a positive impact on job creation during economic downturn.* http://www.wto.org.

[11] WTO., *Overview of Developments in the International Trading Environment,* November 18, 2009. WT/TPR/OV/12, p. 4.

countries accounted for 51.6% of U.S. exports and 59.8% of U.S. imports.[12] The growth of developing countries' economies and foreign trade presents the United States with opportunities and challenges. The imports from many developing economies provide U.S. consumers with an ever widening range of choices of products at lower prices, raising real incomes and contributing to a higher U.S. standard of living. They are also intermediate goods used in the production of U.S.-produced goods, lowering costs and, thereby, helping to maintain the competitiveness of U.S. firms in the global economy. A number of the developing countries have also become robust markets for U.S. exports.

At the same time, many U.S. workers are competing with an expanding pool of lower-wage labor from India, China, and other developing countries. Such competition induces U.S.-based firms to reduce costs by using labor-saving technology to remain productive while reducing labor costs, moving production offshore, or shutting down operations entirely, forcing workers to adjust. Even workers in the high-end services sector are feeling the pressures of competition from some developing countries.

Trade with developing countries also raises a set of issues regarding labor rights, environment protection, intellectual property rights and others that have become fixtures on the U.S. trade agenda. At the same time, developing countries are challenging U.S. policies on trade remedies, high tariffs on wearing apparel and other import-sensitive products, pricing of medicines, and the temporary entry of foreign workers. These countries have made their concerns heard in the WTO, especially during the Doha Development Agenda (DDA) round, where they make up a significant majority of the 153 WTO members, and most U.S. free trade agreements are with developing countries. U.S. trade policy must necessarily take into account the issues that result from the growing importance of the developing countries. Within the group, China has emerged as a powerful trading power and one of the top U.S. trading partners. It has become a focal point for U.S. trade policymakers and will likely continue to be so.[13]

Economic Integration and Global Production Networks

In the past several decades, the U.S. economy has become more integrated with the rest of the world economy, a trend commonly known as "globalization." Globalization has become more prevalent in part because of technology advancements, such as the Internet, that have dramatically reduced the costs of communication, and because of more efficient modes of transportation that allow goods to be shipped more cheaply. This process has led to the formation of global production networks, or global supply chains. A global production network is an arrangement under which a firm, with its headquarters in one country (for example, the United States), has divided its production process into discrete segments that can be handled across national borders. For example, a U.S.-based computer manufacturer could locate the design and marketing functions of the computer at home in the United States, have components produced in East Asia, and locate final assembly at home or abroad for export back home to the United States or to third country markets.[14] Furthermore, multinational corporations use them to avoid foreign trade barriers.

[12] CRS calculations based on data from the U.S. Department of Commerce. Bureau of Census. See also, CRS Report RL33945, *U.S. Trade with Developing Countries: Trends, Prospects, and Policy Implications*, by (name redacted).

[13] For more information on U.S.-China trade relations, see CRS Report RL33536, *China-U.S. Trade Issues*, by (name redacted).

[14] For a detailed analysis of global production networks and their policy implications, see CRS Report R40167, (continued...)

Although anecdotal evidence suggests a rapid increase in the formation of transnational production networks, such a trend is hard to quantify. One possible indicator is the amount of trade in intermediate goods conducted within multi-national corporations (MNCs). In 2007 (latest data available), 31% of such trade was in intermediate goods, an increase from 28% in 2002.[15]

The internationalization of production has implications for trade policy. Foreign trade is traditionally viewed as one nation exporting products entirely made by producers within its borders to another nation that then applies tariffs and other border measures before importing the good within its borders. The formation of global production networks means that many of the goods that are traded might not be final products but are components shipped within the production process. If the importer is a U.S. company purchasing parts or final products from a foreign company within its production network, tariffs and non-tariff measures applied at the border add to the cost of production for the U.S. company. If, for example, the U.S. government determines that flat computer screens are being dumped in the U.S. market and those screens are used in the assembly of computers in the United States, any antidumping duties applied will affect the cost (and probably the price competitiveness of the U.S. produced computer) and will lower the profits of the U.S. company that makes the final product.

Preferential Trade Arrangements

Along with the development of global supply chains, the surge in free trade agreements (FTAs), customs unions, and other preferential trade arrangements has significantly altered the shape of the international trading system.[16] According to the WTO, about 285such arrangements were in force in 2010, of which 90% are FTAs and around 10% are customs unions. The United States participates in 11 FTAs with 17 countries. Furthermore, many major U.S. trading partners are participating in this trend. For some observers, these arrangements promote global trade liberalization by creating groups of countries willing to reduce, if not eliminate, tariffs and other trade barriers in their mutual trade; in so doing, they improve economic efficiency and general economic welfare benefitting the world as a whole. The WTO permits free trade areas and customs unions under certain conditions, (for example, that the FTAs shall cover "substantially all trade" and not raise new barriers to trade with outsiders) even though they discriminate against trade with nonparticipants, violating the WTO principal of most-favored-nation (MFN), or nondiscriminatory, treatment. The WTO assumes that such agreements on a net basis will create more trade than divert trade from efficient producers.

However, critics assert that these arrangements undermine trade liberalization because the estimated 285 agreements are not structured alike. Some arrangements, for example the FTAs in which the United States participates, are very comprehensive and cover not only trade in goods but also trade in services, foreign investment, intellectual property rights protection, labor rights

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Globalized Supply Chains and U.S. Policy, by (name redacted).

[15] U.S. Department of Commerce. Bureau of the Census.

[16] FTAs are arrangements under which countries agree to eliminate tariffs and nontariff barriers on trade in goods and services within the FTA, but each country maintains its own trade policies, including tariffs on trade outside the region. Customs unions are arrangements under which members conduct free trade among themselves and maintain common tariffs and other trade policies outside the arrangement. Data on the number of FTAs and customs unions in force were obtained from the WTO website at http://www.wto.org.

and environment protection. Others, such as Japan's economic partnership agreements (EPAs), are more limited in scope and may exclude some sensitive sectors, such as agriculture trade. Furthermore, the arrangements will have differing sets of rules of origin—the criteria used to define eligibility for preferential treatment under the agreement. In addition, the FTAs and customs unions have overlapping memberships further fragmenting the international trading landscape. Critics charge that all of these asymmetries lead to a confusing web of trading arrangements which impede, rather than promote, the free flow of trade and undermine, the development of a strong and effective multilateral trading system. Another issue is whether these FTAs are actually used, or do the implementation costs outweigh the benefits.

Limitations on Trade Policymaking

U.S. policymakers, in both the executive branch and in Congress, are confronted with some limitations on the scope of their ability to develop and implement trade policy. Such limitations, some of which are reflected in U.S. commitments under the WTO, regional and bilateral trade agreements, treaties, and other international agreements to conduct trade within the bounds of mutually accepted rules. For example, under the WTO and other trade agreements, the United States has agreed not to raise its tariffs above agreed-upon rates, except under special circumstances. The United States always has the option of opting out of the agreement or treaty as prescribed in the agreement, with the understanding that in doing so, the United States may be sacrificing benefits as well as obligations.

In addition, successful policymakers must reflect the demands of the various economic stakeholders and their interests. They include manufacturers, services providers, labor, agriculture producers, environmental interest groups, among others. Many times the trade interests of these groups conflict, such as those of manufacturers and those of organized labor. In some cases, interests within one group of stakeholders will conflict. For example, manufacturers of exported goods largely favor trade policies that promote trade liberalization, whereas manufacturers of import-sensitive products will favor trade-restricting policies.

Trade policymakers are also restricted by the limited effectiveness of trade policies. For example, most mainstream economists argue that trade policies do not affect trade balances and, therefore, would have little if any influence on U.S. trade deficits. From their perspective, trade balances are largely a product of macroeconomic factors, including domestic savings and investment balances and exchange rates. While they acknowledge that trade policy generally influences the composition of trade they believe that trade policy has little if any affect on aggregate unemployment levels, although trade can affect the composition of employment.

"Behind the Border" Trade Barriers

At least one more factor will likely influence the content and implementation of U.S. trade policy—the increasing significance in trade negotiations of "behind the border" measures, such as safety regulations, internal taxes, environmental regulations, enforcement of intellectual property rights, investment regimes, and labor rights protection—and their impact on foreign commerce. In the negotiations on the U.S.-South Korea free trade agreement (KORUS FTA), for example, the United States had concerns regarding South Korean excise taxes on cars that U.S. auto manufacturers claim are applied in a discriminatory manner against foreign produced cars, particularly U.S.-made cars. These taxes are used to encourage fuel efficiency and pollution abatement but could purposely or inadvertently discriminate against imports. Also, foreign

governments' restrictions on imports of U.S.-produced beef, after the December 2003 discovery of a cow infected with bovine spongiform encephalopathy (BSE) ("mad cow disease") in Washington state, have been a major trade issue. A number of U.S. trading partners, for example, Japan, Taiwan, and South Korea, imposed a ban on imported U.S. beef and then have been phasing in certain imports only after arduous negotiations and assurances on the part of U.S. agricultural officials that the beef is safe. Another example is China's fledgling indigenous innovation policy that the Chinese government is employing to move China from being a largely manufacturing economy to an innovative one. Some argue that such policies could give Chinese firms an unfair advantage over U.S. counterparts.

Trade Deficits

The steady increase in U.S. trade deficits has cast a shadow on views of overall U.S. trade performance and trade policy. The United States has incurred annual merchandise trade deficits continually since 1976, when the deficit was $6.5 billion. In 2006, the deficit peaked at $828.0 billion. It decreased slightly in 2007 ($808.8 billion) and increased in 2008 to $816.2 billion. In 2009, the U.S. merchandise trade deficit decreased to $500.9 billion as a result of a drop in U.S. demand for imports due to the recession. The United States has also incurred annual deficits in its current account (which includes not only merchandise trade, but also services trade, investment income, and unilateral transfers) since 1992, when the deficit was $50.1 billion. In 2009, the current account deficit was $378.4 billion.[17] Mainstream economic theory and economists attribute the large trade deficits mainly to the imbalances in U.S. savings and investment—thus, the United States consumes more than it produces. The corollary to this perspective is that policymakers would have to use fiscal and monetary policies to address trade deficits rather than trade policies which would affect only the composition of trade. However, some have pointed to trade deficits, including bilateral trade deficits, as a barometer of the effectiveness or ineffectiveness of U.S. trade policy and an indicator of the fairness (or unfairness) of U.S. bilateral trade relationships. The U.S. merchandise trade deficit with China, which hit $226.8 billion, was the largest U.S. bilateral trade deficit in 2009. The deficit with Mexico was the second largest—$47.5 billion.[18]

Trade Issues

The 112th Congress faces a number of trade issues. Some of these issues were pending from the 111th Congress, while others are longer-term.

Pending FTAs and FTA Negotiations

The Bush Administration negotiated and implemented eight free trade agreements with 13 countries. These agreements entered into force after Congress passed implementing legislation. The Bush Administration also negotiated three other FTAs—with Colombia, Panama, and South Korea—which Congress has yet to approve. Differences between the Bush Administration and the Democratic leadership in the 110th Congress over the FTAs led to a stalemate. The Bush

[17] Department of Commerce. Bureau of Economic Analysis.

[18] Department of Commerce. Bureau of the Census.

Administration pressed Congress to act on the FTAs, even sending the draft implementing legislation for the proposed U.S.-Colombia FTA to Congress over the objections of the House Democratic leadership. However, the latter cited what it considered to be the failure of the Colombian government to ensure the safety of local trade union leaders and refused to move on the legislation. The House passed a rule on a party-line vote that disallowed the time limitations for consideration of the U.S.-Colombia FTA stipulated under TPA, effectively halting congressional action on the legislation. Concerns over alleged lax tax laws in Panama, that some members argue have allowed Panama to become a tax haven, have inhibited consideration of the U.S.-Panama FTA. Some members of Congress have also raised objections to the U.S.-South Korean FTA (KORUS FTA), claiming that it does not adequately address South Korean barriers to U.S. exports of manufactured goods, including autos, and would weaken U.S. trade remedies against dumped or subsidized imports from South Korea. In December 2010, the United States and South Korea agreed to some modifications of the KORUS FTA specifically regarding autos, that have lead to full support of the agreement by the U.S. auto industry.[19]

To date, the Administration has not indicated when it would expect to introduce draft implementing legislation for any of these agreements, although as a result of the December 2010 modifications, the Administration indicated it would be prepared to move on the KORUS FTA in 2011. In the meantime, the Administration has also entered into negotiations with participants in the Trans-Pacific Partnership (TPP) Agreement—Australia, Brunei, Chile, New Zealand, Peru, Singapore, and Vietnam. The objective is to build on U.S. trade ties in the region already established in FTAs with Australia, Chile, and Singapore and to provide a high-standard framework for expanded free trade in the region.[20]

The WTO and the DDA

In 2001, the members of the World Trade Organization (WTO) launched the latest round of trade negotiations called the Doha Development Agenda (DDA) round. During the more than eight years the negotiations have been underway, the negotiators have made some progress on establishing criteria for reducing barriers to trade in agricultural products, manufactured goods, and services and on reforming fundamental trade rules. However, they have at times confronted serious roadblocks that have caused negotiators to reach an impasse. The DDA negotiations are now at such a point because of disagreements between developing countries and developed countries over agricultural subsidies, modalities for the reduction of tariffs on manufactured goods, and other issues.[21]

[19] For more information on these three FTAs, see CRS Report RL32540, *The Proposed U.S.-Panama Free Trade Agreement*, by (name redacted); CRS Report RL34470, *The Proposed U.S.-Colombia Free Trade Agreement*, by (name redacted); and CRS Report RL34330, *The Proposed U.S.-South Korea Free Trade Agreement (KORUS FTA): Provisions and Implications*, coordinated by (name redacted).

[20] For more information on the TPP, see CRS Report R40502, *The Trans-Pacific Partnership Agreement*, by (name redacted) and (name redacted).

[21] For more information on the Doha Development Agenda negotiations, see CRS Report RL32060, *World Trade Organization Negotiations: The Doha Development Agenda*, by (name redacted).

Renewal of Trade Promotion Authority

TPA—formerly called fast-track authority—stipulates special House and Senate legislative procedures that allow implementing legislation for trade agreements to receive expedited consideration (that is, mandatory congressional consideration, limited debate and no amendments), subject to presidential adherence to consultation requirements, deadlines, and negotiating objectives set down in the TPA authorizing statute. The authority is granted for limited time periods. Congress first extended fast-track authority effective January 1, 1975, and renewed that authority in most cases, except for a nine-year period (1994-2002). The latest version was authorized under the Bipartisan Trade Promotion Authority Act (BTPAA) of 2002, which was enacted as Title XXI of The Trade Act of 2002 (P.L. 107-210) and went into effect on August 6, 2002. It expired on July 1, 2007.

Early incarnations of TPA, although controversial, were adopted with substantial bipartisan majorities. Over time, however, trade negotiations have become more complex, Congress has insisted on tighter oversight and consultation requirements, and the trade debate has become more partisan in nature, making congressional renewal of TPA, if anything, even more controversial.

The three pending FTAs—with Colombia, Panama, and South Korea—were completed within the statutory deadlines under the previous TPA and, therefore, are not affected by its expiration. However, the lack of TPA could affect progress in pending negotiations and future negotiations. For example, some WTO members have stated that unless the President has TPA, the United States would not be able to negotiate credibly because any agreements reached could be subject to congressional amendments. The same argument could apply to initiating new bilateral FTA negotiations, including the TPP. However, others might argue that the Doha Round had not made much progress even when President Bush had TPA , and U.S. trade partners, for example, New Zealand, have expressed eagerness to begin FTA negotiations despite the absence of TPA. Any debate in Congress on renewal of TPA will likely focus on the central question of whether, when, and in what form TPA should be renewed. Some have argued that TPA should be renewed to cover, at a minimum, the Doha Round multilateral agreement, if it can be concluded, and perhaps also potential future FTAs, such as the TPP.[22]

Reauthorization and Review of Trade Preference Programs

The United States extends preferential treatment, usually duty-free treatment, to a range of imports from many developing countries to promote economic growth and encourage development. In order to be eligible for the preferential treatment, the developing country must adhere to certain political and economic criteria, including rules of origin, protection of workers' rights and protection of intellectual property rights (IPR). Certain import-sensitive products are statutorily prohibited from receiving preferential treatment. In addition, under the Generalized System of Preferences (GSP), countries having an average per capita GDP above a specified threshold are ineligible for preferential treatment as are imports of their products that exceed a specified share of total U.S. imports of that product. Most of the preference programs are subject to congressional reauthorization.

[22] For more information on TPA, see CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by (name redacted) and (name redacted).

The GSP is the most comprehensive U.S. program covering the largest number of developing countries. That program was renewed until December 31, 2010 (P.L. 111-124) not beyond that by the 111th Congress. Some members of Congress have questioned the effectiveness of the program, because most of its benefits go to the more advanced developing countries, while the poorest countries benefit the least. Some have suggested, for example, lowering the per capita income threshold determining eligibility.[23]

Other trade preference programs are targeted to regions and provide coverage for a wider range of products than does GSP. The Andean Trade Preferences Act (ATPA), for example, provides special treatment to imports from Colombia, Bolivia, and Ecuador. The program was renewed until February 12, 2011, by the 111th Congress. [24] Another regional program, the Caribbean Basin Trade Partnership Act (CBTPA), extends preferential treatment to imports from eight Caribbean countries, including some textiles and apparel, is due to expire on September 30, 2010.[25] In addition, the African Growth and Opportunity Act (AGOA; Title I, P.L. 106-2006) provides tariff preferences and other economic benefits to countries in sub-Saharan Africa that meet certain criteria, including progress toward a market economy, respect for the rule of law, and human and worker rights. The Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (HOPE I) authorizes preferential access to U.S. imports of Haitian apparel. The Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II) extends the preferences for 10 years; expands coverage of duty-free treatment to more apparel products, particularly knit articles; and simplifies the rules, making them easier to use.[26]

Trade Enforcement

U.S. trade laws include provisions authorizing the government to impose remedies for domestic industries and firms against the price advantage of unfairly imported goods that have caused injury, such as imports that are dumped, that is, sold in the United States at a price determined to be less than fair value, or imports that have received a countervailable foreign government subsidy. They also include provisions dealing with surges in imports that may be fairly traded but injure or threaten to injure U.S. firms and workers. Other provisions deal with countries who do not adequately protect the intellectual property of U.S. owners. A number of members of Congress, members of the U.S. business community, and some labor groups have charged that previous administrations have not enforced these laws effectively. Some have charged, for example, that China's currency is undervalued, harming U.S. exporters, and have called for the United States to apply trade remedy laws to Chinese products that benefit from the undervalued currency. Proponents of stronger trade enforcement also argue that the United States should force trading partners who are members of the World Trade Organization (WTO), such as China, to fulfill their WTO obligations in trade with United States by exercising more aggressively their right to take those countries to the WTO under the Dispute Settlement Mechanism (DSM).

[23] For more information on GSP, see CRS Report RL33663, *Generalized System of Preferences: Background and Renewal Debate*, by (name redacted).

[24] See CRS Report RS22548, *ATPA Renewal: Background and Issues*, by (name redacted).

[25] See CRS Report RL33951, *U.S. Trade Policy and the Caribbean: From Trade Preferences to Free Trade Agreements*, by (name redacted).

[26] See CRS Report RL34687, *The Haitian Economy and the HOPE Act*, by (name redacted).

However, some U.S. trading partners have charged that the United States has not been fulfilling its WTO obligations because it has not complied with some adverse decisions. These include WTO determinations that the U.S. practice of "zeroing" in calculating antidumping duties and U.S. subsidies on cotton violate WTO rules and agreements. The WTO has approved the right of trading partners to impose countermeasures in retaliation for U.S. noncompliance in those cases.[27] In addition, Mexico has imposed tariffs under NAFTA on certain U.S. products in retaliation for U.S. noncompliance with the provision of NAFTA to allow Mexican trucks to carry cargo on U.S. highways.

Foreign Direct Investment: Bilateral Investment Treaties and FTA Investment Chapters

Foreign direct investment (FDI) refers to investments in "hard assets"—real estate, plants, factories, and companies—where the foreign investor has a controlling interest. FDI has become part of the debate and implementation of trade policy, because U.S. FDI abroad and FDI in the United States generate trade. U.S. affiliates of foreign companies import parts and services into the United States. They sell the final product in the United States and may also export it back to their home country or to a third country. Foreign affiliates of U.S. companies operate similarly.

U.S.-headquartered multinational companies (MNCs) seek investment opportunities abroad to locate closer to markets, develop products according to local preferences and tastes, take advantage of lower costs, and avoid border trade restrictions. However, they often confront inhospitable investment conditions, particularly in developing countries where protection of physical property rights and IPR is not as strong as in more developed countries, or where judicial systems are not as fully formed or advanced as the U.S. system. The United States launched its bilateral investment treaty (BIT) program in 1981 to provide assurances to U.S. investors that their investments in BIT-partner countries are accorded non-discriminatory treatment by the host-country, and that they would have access to fair legal procedures in disputes with host governments. Partner countries view BITs as an indication that they are safe environments in which U.S. investors can do business. As treaties, BITs are subject to approval by a two-thirds (67) vote of the Senate.

The United States has BITs in force with 40 countries, mostly developing countries, and BIT-like provisions in its FTAs. In addition, many U.S. FTAs have investment chapters that contain provisions similar to BITs. The Obama Administration is reviewing the U.S. BIT "model." This review will likely generate debate. Supporters of the current model, including the U.S. business community, want to maintain the elements of the BIT that provide for nondiscriminatory treatment of their investments. Some critics, however, charge that BITs encourage U.S. companies to re-locate production and jobs abroad rather than retain them in the United States. They also charge that BITs provide foreign investors in the United States access to more legal remedies in the United States than are available to domestic investors.[28] Proponents argue that these provisions are largely modeled on core principles in U.S. law.

[27] See CRS Report RL32014, *WTO Dispute Settlement: Status of U.S. Compliance in Pending Cases*, by (name reda cted).

[28] For more information on the U.S. BIT program, see CRS Report RL33978, *The U.S. Bilateral Investment Treaty Program: An Overview*, by (name redacted).

The Debate Over U.S. Trade Policy: Where Do We Go from Here?

The United States is at a crossroads in terms of trade policy. The Obama Administration has weighed in somewhat on trade with its National Export Initiative (NEI) to reenergize U.S. export promotion programs to increase the role small- and medium-sized companies in exporting and to contribute to the U.S. economic recovery. It also imposed high duties on imports of tires from China after the U.S. International Trade Commission (USITC) determined that the tires threatened to harm U.S. producers.

However, the Administration and the 112th Congress face a range of other trade policy issues and challenges that have not yet been addressed. The future direction of trade policy and how the issues are addressed is unclear at this time and the subject of sharp debate within Congress, the Administration, and the trade policy community at large. While a number of issues are related to trade policy, a fundamental question that is the subject of this debate is which trade policy, if any, will promote the highest possible standard of living for U.S. residents.

The debate on trade is influenced by the views of three groups. One group, who might be called "trade liberalizers," asserts that on a net basis the benefits to the United States of trade liberalization are greater than the costs and, therefore, should be encouraged through the reduction of trade barriers. A second group, often labeled "fair traders," acknowledges the benefits of trade liberalization but assert that U.S. firms and workers may be forced to compete under conditions they deem unfair. They support trade agreements but only those with provisions that "level the playing field." The third group, which might be called "trade skeptics," argues that U.S. policy as structured and practiced has undermined U.S. economic interests and that trade agreements and WTO obligations have gone too far in impinging on U.S. sovereignty. Where policymakers fit on this continuum of views could help to determine how they decide to address the outstanding and emerging trade issues before Congress.

In many cases, the trade policy positions of policymakers and other experts cannot be readily categorized as belonging to one group or another, but the categories provide a mechanism to analyze the major concepts in trade policy and their potential implications. Below is an examination of these views and examples of them as presented by prominent experts.

"Trade Liberalizers"

This group includes many mainstream economists and representatives of world-competitive industry, services, and agriculture. They adhere to a strict interpretation of the concept of comparative advantage and free markets in economic theory. According this concept, nations should export those goods and services that they can produce relatively more efficiently and import other goods they would produce less efficiently. To this end, nations should remove tariffs and non-tariff barriers to allow each nation to trade based on its comparative advantage, which is determined by its endowments of labor, land, capital, and technology. In so doing, each nation is able to use its resources to their most efficient purposes, which increases the nation's economic welfare and that of the world as a whole. Trade has a multiplier effect on the rest of the economy.

While a nation's general welfare may increase, freer trade does not necessarily distribute those benefits equally. In fact, as trade barriers are lifted, some segments of the economy, such as firms

that are unable to survive enhanced competition and the workers that they employ could lose and incur adjustment costs, including worker layoffs, contraction of operations, and plant closures. However, firms and industries and their workers who are competitive would gain by increasing exports. In terms of trade policy, "trade liberalizers" support measures to eliminate trade barriers to allow countries to develop and employ their respective comparative advantages. For example, they support a strong multilateral trading system including the completion of the Doha Round. They also want Congress to renew trade promotion authority (TPA) to allow the Administration to continue to negotiate trade agreements to encourage trade liberalization. In addition, members of this group encourage the renewal and expansion of tariff preferences for developing-country imports to encourage economic development on the basis of comparative advantage. "Trade liberalizers" also promote the liberalization of foreign investment to improve the efficiency of world commerce.

Trade policy views within this school are by no means homogeneous. Those in this category differ on how to accomplish trade liberalization and may occupy different positions on some of the outstanding trade issues. For example, some trade policy experts in the group continue to debate whether bilateral and regional free trade agreements are a stumbling block or building block to trade liberalization. Jagdish Bhagwati of Columbia University and some other economists oppose the use of bilateral and regional free trade agreements because, they argue, these agreements are inherently discriminatory, distort trade patterns, and divert trade from more efficient producers to less efficient ones.[29]

Bhagwati also argues that rules of origin and the phase-out schedules for tariffs and other conditions do not coincide among FTAs, especially with the proliferation of FTAs worldwide. The incongruity of these regulations across FTAs has created what he sees as a customs administration nightmare and calls it the "spaghetti-bowl" phenomenon. He has concluded that FTAs are a stumbling block to multilateralism and free trade.[30]

A more widely held view among "trade liberalizers" is that, while multilateral agreements are preferable, bilateral and regional FTAs are a "second best" solution, especially when multilateral negotiations in the WTO are proceeding slowly or are stalled. Economist Robert Z. Lawrence argues, for example, that recent FTAs involve much more economic integration than the elimination of tariffs. NAFTA, he points out, has led to the reduction in barriers on services trade, foreign investment, and other economic activities not covered by the WTO. In addition, under NAFTA, Mexico has affirmed its commitment to economic reform, making its economy more efficient. Lawrence asserts that the theory traditionally applied to FTAs (by Bhagwati and others) does not take into account these dynamic welfare-enhancing characteristics of FTAs which, he believes, are likely to outweigh any trade diversion that results from the elimination of tariffs.[31]

A CATO Institute study by economist Edward L. Hudgins argues that while it may be preferable to liberalize trade multilaterally, countries should take any available avenue, including bilateral or regional FTAs, even if they lead to some trade diversion. Furthermore, Hudgins asserts that FTAs can be more efficient vehicles for addressing difficult trade barriers than the WTO, where the

[29] Bhagwati, Jagdish. *Termites in the Trading System: How Preferential Agreements Undermine Free Trade,* p. 49-60.

[30] Ibid. p. 61-88.

[31] Lawrence, Robert Z. *Regionalism, Multilateralism, and Deeper Integration: Changing Paradigms for Developing Countries.* in Mendoza, Miguel Rodriquez, Patrick Low, and Barbara Kotschwar (eds.), *Trade Rules in the Making,* Organization of American States/Brookings Institution Press, Washington, DC. 1999, pp. 41-45.

large membership requires compromise to the least common denominator to achieve consensus. FTAs have also provided momentum for WTO members to move ahead with new trade rounds.[32] Proponents of FTAs have also argued that from a commercial, strategic standpoint the United States must approve the pending FTAs and negotiate new ones because trading partners are doing so, placing U.S. exporters at a disadvantage in important markets.

Some "trade liberalizers" even assert that the United States would be better off to remove its trade barriers unilaterally without waiting for reciprocal liberalization from trading partners. This position is based on the notion that the removal of tariffs and non-tariff barriers would reduce the cost of imports, increasing income and improving the standard of living.

Within this group are some economic experts who have concluded that trade policy alone cannot meet the challenges that U.S. companies and workers face in U.S. economy that has increasingly become integrated with the rest of the world (i.e., "globalization"). One study suggests that globalization, among other factors, has increased U.S. productivity, but the returns on the higher productivity have not been realized by U.S. workers in the form of higher wages and salaries.[33] This trend creates anxiety among lower wage earners about maintaining their standard of living.[34]

Advancements in communication technology, especially the Internet, have made more services, such as medical services, tradable across borders. As a result, domestic providers of those services have become increasingly vulnerable to foreign competition. These experts generally support policies that promote trade liberalization. However, they argue that U.S. policy must address those displaced by trade and prepare workers to compete in an increasingly integrated world economy. Such policies, they argue, are necessary to improve the U.S. standard of living, but also to limit if not reverse the decline in popular support for foreign trade. Such policies would include changing the personal tax structure to make it more progressive and to provide for deductions for tuition in new professions and for other expenses incurred in adjusting to career changes; unifying trade adjustment assistance programs with other worker assistance programs to make them more efficient; and revising business tax structures to allow for deductions incurred in adjusting to shifting business conditions.[35] Trade expert Grant Aldonas expands the policy recommendations even farther. He suggests that in order to prepare the U.S. worker better for the globalized economy, U.S. policy must provide the means to improve education at the primary and secondary levels and even at the pre-K level. These experts reject using trade policy to stop the effects of globalization, by putting restrictions on imports and investment, claiming that such measures are counter-productive and because globalization cannot be halted.

Some trade experts argue that globalization has made trade policy, at least it as has been structured and practiced, obsolete. This view asserts that trade policy continues to be based on the assumption that trade is conducted in goods and services that are produced entirely within a country and that producers in one country are competing with producers in another country. However, according to this view, as vertical integration of production processes across borders is

[32] Hudgins, Edward. L. Regional and Multilateral Trade Agreements: Complementary Means to Open Markets, *Cato Journal*, Vol. 15. No. 23, Fall/Winter 1995/96.

[33] Aldonas, Grant, Robert Z. Lawrence, and Matthew J. Slaughter. *Succeeding in the Global Economy: A New Policy Agenda for the American Worker*, The Financial Services Forum—Policy Research, June 26, 2007, pp. 46-57.

[34] For more information on globalization and worker anxiety, see CRS Report RL34091, *Globalization, Worker Insecurity, and Policy Approaches*, by (name redacted).

[35] Aldonas, Grant, Robert Z. Lawrence, and Matthew J. Slaughter. *Succeeding in the Global Economy: A New Policy Agenda for the American Worker*,. The Financial Services Forum—Policy Research, June 26, 2007, pp. 46-57.

becoming more predominate, measures to limit imports, such as trade remedy laws, can hurt U.S.-based firms because affected imports could be part of the transnational production process. Experts with this view assert that trade policy should be structured to remove barriers, even unilaterally, so that production within a vertical process can operate as smoothly as possible.[36]

"Fair Traders"

Most "fair traders" acknowledge the benefits of trade liberalization but contend that some U.S. workers and firms are at a disadvantage when faced with foreign competition. For example, wages in developing countries are often much lower than in the United States and other developed countries, and, these observers argue, these countries do not adhere to the same labor standards, such as the right to bargain collectively, as does the United States. In addition, producers in developing countries do not adhere to the same level of environment protection as do U.S. producers. While high labor and environment standards benefit the United States, they heighten production costs, placing U.S. firms and workers at a competitive disadvantage and making them more vulnerable to competition from imports from developing countries. As these imports account for larger shares of total U.S. imports, some members of Congress, labor unions, and others have demanded that U.S. trade agreements and tariff preference programs include provisions requiring U.S. trading partners to enforce prescribed labor and environmental standards.

Such requirements have been part of the eligibility criteria in the U.S. GSP program. Beginning with NAFTA, these requirements to varying degrees have been included in U.S. FTAs as a result of congressional demands. They have also been included as negotiating objectives in recent TPA. The debate over the inclusion of these provisions heightened with the change to Democratic leadership in the 110th Congress beginning in 2007. As a result, more members demanded enforceable labor and environmental provisions before any FTA would be considered. Negotiations between a bipartisan group of congressional leaders and the Bush Administration resulted in the so-called "New Trade Policy for America," reached on May 10, 2007. This agreement incorporates important changes, some with broad social implications for the pending FTAs. The principles contained in the agreement were used to alter the language of the FTAs with Peru, Colombia, Panama, and South Korea after they had been negotiated. (Of these agreements, only the one with Peru has been approved to date by Congress and is now in force.) The understanding required that the four pending FTAs adopt as fully enforceable commitments the five basic labor rights defined in the United Nations International Labor Organization's (ILO's) *Fundamental Principles and Rights at Work and its Follow-up (1998) Declaration*; adhere to numerous multilateral environmental agreements (MEAs); and accept pharmaceutical intellectual property rights (IPR) provisions that could expedite that country's access to generic drugs.[37]

An increasing number of policymakers are also insisting that in order to "level the playing field" the United States must ensure that trading partners fulfill their obligations under the WTO and other trade agreements in which they are parties with the United States. To do so, they demand that the Administration improve "trade enforcement" by using the trade policy tools in place,

[36] See for example, Ikenson, Daniel. *Made on Earth: How Global Economic Integration Renders Trade Policy Obsolete*, CATO Institute, Trade Policy Analysis, December 2, 2009.

[37] The May 10, 2007 compromise is available on the USTR website.

and/or have proposed legislation to strengthen those tools. Some would go so far as to impose restrictions on imports into United States as a way to level the playing field.

"Trade Skeptics"

"Trade skeptics" argue that U.S. trade policy as presently structured and implemented adversely affects overall U.S. economic and other national interests. Specifically, they argue trade policy is structured to favor multinational corporations and conglomerates over small businesses, workers, and small farmers. They also assert that multilateral and bilateral agreements erode the ability of national, state, and local governments to protect citizens against harmful products, promote a clean environment, and guarantee workers safe working conditions and a "living wage." Trade skeptics generally oppose launching negotiations on new bilateral and regional FTAs as well as the approval of FTAs with Colombia, Panama, and South Korea, because these agreements adhere to the traditional pattern of trade policy. Some argue that the Doha round negotiations within the WTO should cease and that the United States should reevaluate all trade agreements in which it is currently a party.

Among those who share some elements of these views are representatives of the major labor unions, such as the AFL-CIO. For example, Thea Lee, the organization's policy director, asserts that the major objective of U.S. trade policy has been to increase the profitability of U.S.-based multinational corporations at the expense of U.S. workers who lose their jobs because their companies have shifted production overseas, and U.S. trade agreements have encouraged such trends as they include provisions to make it easier to invest abroad. The AFL-CIO argues that trade agreements also do not adequately protect the rights of foreign workers. Lee claims that CAFTA and NAFTA have served as models for such policies and that all of the FTAs (except for the U.S.-Jordan FTA), including those that are pending, are based on the NAFTA/CAFTA model. Instead, she argues trade agreements must be restructured to benefit all.[38]

Similar views are held by the group Public Citizen. Lori Wallach, the group's spokesperson on trade, argues that trade liberalization agreements have gone too far because, she argues, they impose restrictions on the ability of sovereign governments to regulate commercial activity within their borders by requiring them to adhere to international rules established in the WTO and other organizations as well as in bilateral and regional free trade agreements. These rules pertain to services (including health services, education, and other "public services"); foreign investment; IPR; and food products. For example, according to Wallach, the WTO's IPR rules help to protect the profits of the owners of those rights, such as pharmaceutical companies at the expense of those in poor countries who cannot afford to pay the higher prices of the products.[39]

Some nongovernment organizations (NGOs), also oppose trade liberalization as it is conducted under current rules because, they claim, it favors the rich countries, including the United States, at the expense of poorer countries. For example, the international organization, Oxfam, argues that international trade rules, and rules established in FTAs between rich countries and poorer countries, always favor the rich countries. Under these arrangements, Oxfam asserts, the richer countries use their clout to force the poorer countries to eliminate tariffs on food products driving

[38] Testimony of Thea Lee, Policy Director, American Federation of Labor and Congress of Industrial Organizations (AFL-CIO Before the Senate Finance Committee, *U.S.-Panama Trade Promotion Agreement*, May 21, 2009.

[39] Wallach, Lori and Patrick Woodall. *Whose Trade Organization?: A Comprehensive Guide to the WTO.* The New Press. 2004. p. 282-292.

down prices that force the farmers in the poorer countries out of business. Richer countries also maintain high tariffs on some basic manufactured goods—footwear and wearing apparel—that the developing countries are trying to produce and export. Oxfam also argues that antidumping rules permit rich countries to impose prohibitive duties on developing country imports while the EU and the United States subsidize agricultural production, undermining the competitive position of their farmers. The organization asserts that the balance needs to be shifted by changing the rules and making the WTO and other trade arrangements more favorable to developing countries. The organization calls for developing countries to combine their forces to press demands for more favorable treatment in the Doha Development Agenda (DDA).[40]

A number of members of Congress have expressed skepticism regarding the current structure of trade agreements and trade liberalization and have done so in legislation in both the House and the Senate.

On June 24, 2009, H.R. 3012, the Trade Reform, Accountability, Development, and Employment Act of 2009 (TRADE Act of 2009)(Michaud), was introduced in the House in the 111th Congress. The bill has three main objectives:

(1) **Evaluate U.S. free trade agreements**. The bill would have required the Government Accountability Office (GAO) to report every two years on the "the economic, environmental, national security, health, safety, and other effects" of each free trade agreement in effect. The report would include the impact of the agreement on employment, wage levels, level of exports, the competitiveness of U.S. industries; the prices and volumes of domestic food production and exports and imports of food; and exchange rates. The report would indicate progress made by trading partners' in implementing commitments under the agreements and status of outstanding disputes under the agreement and whether the trading partner has a democratic government, respects fundamental human rights and core labor standards, takes measures against corruption, and complies with multilateral environmental agreements.

(2) **Mandate provisions in FTAs.** The bill would have required any future agreement that is to be given expedited legislative consideration to include provisions requiring trading partners to protect core labor standards under threat of sanctions for non-compliance; guarantee human rights to its citizens; protect the environment; and ensure adherence to food health and safety standards. The bill would also have restricted the applicability of trade agreements in regards to trade in services, foreign investment, government procurement, IPR protection, trade remedies, among other areas.

(3) **Renegotiation of trade agreements.** The bill would have required the President to submit to Congress a plan to renegotiate any trade agreement already in effect that does not meet the requirements in (2).

A newly established Congressional Review Committee would have been responsible for reviewing the GAO report and the presidential plan for renegotiating trade agreements and would be empowered to amend the plan. S. 2821 (Brown), a similar bill to H.R. 3012 (minus the Congressional Review Committee), was introduced on December 1, 2009.

[40] These views are described on Oxfam's website http://www.oxfam.org.

The Direction of Foreign Trade Policy and Its Implications

At this time, the 112th Congress and the Obama Administration are at a crossroads on trade policy. Over the years, the general consensus on trade liberalization has frayed as evidenced by closer congressional votes on major trade legislation and ambiguous views on the value of foreign trade from the American public at large. That splintering seems to have increased recently. This trend is likely influenced by the recession and high unemployment levels following the economic downturn. It likely is associated with a longer-term trend that is linked to the various effects of international economic integration ("globalization") that have made farmers, firms, and workers perceive themselves to be more vulnerable.

The direction that U.S. policymakers take trade policy will have broad implications—whether that direction is toward greater trade liberalization, as envisioned by "trade liberalizers"; conditional trade liberalization, as viewed by "fair traders"; or a restrained, if not retrenched, trade policy, as expressed by the "trade skeptics." Greater trade liberalization, whether unilateral or via trade negotiations and agreements, would promote further U.S. integration with the world economy and with it, according to many mainstream economists, a more efficient allocation of resources and economic growth. It would also encourage the development and adherence to internationally negotiated rules on trade to promote stability and to prevent the use of protectionist measures. At the same time, it would expose the already vulnerable firms and workers to increased competition, forcing them to make costly adjustments.

A "fair trade" focused policy direction would address what some view as inequities in trade policy by proceeding with trade agreements that require U.S. trade partners to adhere to core labor standards, environmental protection measures, and other provisions to "level the playing field." In so doing, such trade agreements could be acceptable to larger segments of the American public and rebuild a consensus on trade. However, some trading partners have resisted what they consider to be U.S. efforts to impose its own values on them through trade policy. Many economists argue that the "playing field" will always be uneven as labor will be cheaper in some countries than others, reflecting differing stages of development.

A "skeptical" policy direction would require U.S. policymakers to retrench and reevaluate trade policy as a whole to ascertain whether it has benefitted or harmed U.S. interests, for example, in employment, and would reserve the opportunity to renegotiate those trade agreements if they fail to meet the criteria. This approach would aim to protect U.S. national sovereignty over matters pertaining to the health and safety of its citizens, among other issues. Opponents of this path have argued that it is very difficult, if not impossible, to determine the impact of individual trade agreements on the level of employment and other economic trends, because so many other factors play a role. They also argue that revisiting and renegotiating trade agreements could undermine the credibility of the United States as a trading partner.

In addressing trade issues, U.S. policymakers may follow different approaches depending on the issue and on other political and economic factors. While a range of trade issues lie on the collective Congress-executive plate, trade enforcement issues—particularly with China, the FTAs, and trade preference review and reform—could very well serve as near-term bellwethers for the future of trade policy. In the longer term, policymakers will face the outlook of the Doha Round negotiations and possible renewal of trade promotion authority, among other issues. They

will likely also face fundamental questions, such as the future of the multilateral trade system; the role of trade policy, if any, in addressing non-trade issues, such as climate change; and the impact of globalization on the effectiveness of trade policy.

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