

12. Trade Policy: The Exception to American Exceptionalism?

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It is an understatement to say that President Bush has been reluctant to join and adhere to international agreements.¹ The United States invaded Iraq under his leadership even though it failed to obtain a United Nations Security Council resolution authorizing the use of military force pursuant to Chapter VII of the United Nations Charter. Its treatment of prisoners in Guantanamo Bay, Cuba, has been viewed by many as violating the Geneva Conventions. Moreover, these are simply the most dramatic examples of more prevalent behavior: in contrast to the Clinton administration, President Bush rejected the Kyoto Protocol on Climate Change, repudiated his predecessor's signature of the statute of the International Criminal Court (ICC), withdrew from the Anti-Ballistic Missile Treaty (ABM), and opposed the negotiated protocol to strengthen the Biological and Toxic Weapons Convention.

The administration defends these actions as a refusal to go along with defective and symbolic international efforts that could limit America's ability to promote its interests.² For its critics, however, these actions reflect America's dangerous disregard for the international rule of law and international public opinion, both of which can be extremely useful to realizing the goals of U.S. foreign policy. With its apparent disregard for multilateral constraints on its behavior, the world's only superpower is now widely seen internationally as a major threat to world peace.³

Yet the Bush administration's trade policy presents an interesting contrast. It has been seeking new trade agreements at the World Trade Organization (WTO) and generally willing to adhere to existing WTO commitments, even where these have been politically and

financially costly. The administration succeeded in obtaining Trade Promotion Authority (TPA) and played a major role in launching a new multilateral trade round at Doha. The United States has also devoted attention to the Doha Round, producing proposals that demonstrate willingness to engage in very significant liberalization in both manufacturing and agriculture.

The United States has also been an active participant in the WTO dispute settlement system. Although during the Bush administration, the United States has been more busy defending cases than in bringing them. There have been numerous recent instances in which the United States has been found in violation of WTO rules. In response the United States has generally taken the necessary steps to conform, although sometimes slowly and reluctantly. This includes passing a costly tax bill to eliminate export subsidies (FSC-ETI), removing protective steel tariffs and several other safeguard measures that were declared illegal by the WTO, and eliminating the Step-2 program in cotton and the Byrd amendment, which redistributed antidumping duties to private parties, both in response to WTO defeats. To be sure, the United States has not taken these compliance measures with alacrity. Particularly in cases requiring changes in legislation, it has taken its time, and even when coming into compliance, the offending behavior has not been ended immediately. But overall the record is reasonably good.⁴

The administration has also continued the pattern established by the Clinton administration of avoiding unilateral retaliatory actions that have not been authorized by the WTO. It has also not sought voluntary export restraints and other quotas on disruptive imports. All in all, unlike its actions in other international spheres, it seems fair to say that the Bush administration has been prepared to submit to the rules of the multilateral system.

To be sure, the administration's trade policy not been confined to the multilateral system. In addition to these multilateral efforts, the administration has energetically sought free-trade agreements.⁵ These agreements are justified by the administration as complementary initiatives that through a process of "competitive liberalization" will help facilitate deeper international economic integration.⁶ Indeed, the prototypical agreements signed by the United States reflect a willingness to commit itself to "WTO-plus" rules that are deeper and more extensive than those covered under the WTO. They include additional provisions on investment and intellectual property and services, and unlike WTO agreements, also have rules for labor and the environment. But there is a danger that unless they are linked together the agreements could lead to a permanently fragmented trading system. Given the failed talks for achieving such linkage in the Western Hemisphere and the lack of progress in such arrangements in the Asia Pacific, this is a serious concern.

The administration's record also includes departures from the letter and spirit of the WTO rules. The original use of steel tariffs and its support for the subsidies-laden 2002 farm bill can be cited—though the administration defended both as necessary to secure congressional support for TPA.⁷ It also managed inadvertently to torpedo the Cancun Ministerial in Mexico in 2003 by prematurely coming to an agreement on agriculture with the European Union that served to polarize the meeting along North-South lines. This galvanized opposition in the form of the G20—an alliance of major developing countries. More recently the president's promotion of his U.S. Trade Representative Robert Portman to become the director of the Office of Management and Budget (OMB) at a critical point in the Doha negotiations certainly suggested that ending the Round successfully was not among his highest priorities. And in addition, while there is enough blame to go around for the

suspension of the Doha Round negotiations, the administration certainly deserves some for its unwillingness to make larger cuts in farm subsidies. Nonetheless, the overall record of the administration is in supporting multilateralism and it raises the central question of this chapter: is trade policy really different?

To explore this issue, the first section evaluates several pure trade-policy strategies. These include protectionism, unilateral liberalization, and cooperative liberalization achieved through bilateral or multilateral agreements. It argues that for the United States, cooperative strategies are superior on both economic and political grounds, and both bilateral and multilateral approaches have merit. The second section considers the U.S. interest specifically in the General Agreement on Tariffs and Trade (GATT)-WTO multilateral trade system. It describes the benefits that accrue to the United States from a system that opens markets, enforces the rule of law, and encourages economic development. The third section describes how in the 1980s there were pressures that led the United States to protect its own market and open markets abroad in ways that violated and ignored the multilateral trade rules. The fourth section notes that since the founding of the WTO in 1995, although the United States has continued to negotiate bilateral free-trade agreements, it has come back into the multilateral fold. The fifth section offers some suggestions for improving U.S. trade policy, and the final section returns to the overall theme of the chapter, arguing in fact that trade policy is actually not that different as might be supposed by considering this administration's behavior. The United States would do better in other foreign-policy dimensions if it were to emulate its approach to trade.

Basic Strategic Choices

The United States has the world's richest national economy and provides its citizens with living standards that are on average higher than in any other major industrial economy.⁸ For the most part, these living standards reflect the extraordinary productivity of Americans in producing goods and services but they also result from America's engagement in the international economy.

The benefits from trade in particular stem from both exporting and importing. Exporting raises the prices producers can charge for their products and allows them to enjoy economies of scale. Importing reduces product prices and increases the product choices available to consumers. Trade also intensifies competition, thereby encouraging firms to be more productive and innovative. According to one recent estimate, U.S. incomes are some 10 percent higher than they would be if the economy was self-sufficient.⁹

Protectionism

Seeking freer trade is not the only approach available to the nation.¹⁰ Trade economists have developed the theory of the optimal tariffs, which implies that, given the right conditions a large country (like the United States) could potentially do better with protection than with free trade.¹¹ The theory suggests that even though high tariffs may lead to inefficiencies, there could be offsetting benefits to such a country from driving down the world prices of the goods and services it imports. Instead of agreeing to liberalization and being bound by rules, it is certainly plausible that the United States could have benefited more from making use of its monopoly power.

The United States was most dominant in the world economy in the immediate aftermath of the Second World War and thus most able at that time to exploit its monopoly power. Yet instead its policies aimed at promoting multilateral trade liberalization under the GATT. The primacy of Cold War considerations is sometimes invoked to explain why it followed this strategy. To make the capitalist world safe, it was certainly in the U.S. interest to promote not only its own trade but trade and growth among its allies. With the collapse of the Soviet Union in the late 1980s, however, containment was no longer necessary, and one might have expected that U.S. policies would have been less constrained by noneconomic systemic considerations and more willing to use its domestic market for leverage. Yet the United States has not done this, which suggests that it was not simply the Cold War that led to U.S. support of multilateral liberalization. Indeed, this behavior reflects basic U.S. economic interests in a cooperative multilateral system.

The Smoot-Hawley experience exposed the weakness of the optimal tariff argument. The theory suggests that a country can benefit from its monopoly power, provided that it can get away with it. But if there is retaliation, both the country and its trading partners could be worse off.¹² As in other areas of foreign policy, U.S. behavior has systemic consequences, and protectionism at home can spur protection abroad, which happened in the 1930s. To be sure, economic historians debate the role these tariffs played in the depression of the 1930s, but there is no debate that their impact on world trade was disastrous as other nations responded with “beggar-thy-neighbor” policies of their own.

Unilateral Liberalization

If trade protection is harmful, why not liberalize unilaterally? Because the United States has the ability to influence the behavior of its trading partners. While the United States benefits from removing its tariffs, its benefits are even greater if other countries reciprocate.

A second explanation for the rarity of unilateral liberalization by the United States relates to domestic politics. Trade liberalization creates winners and losers, and in particular the losers are producers who compete with imports. To be sure, U.S. consumers would gain from cheaper prices if the United States liberalized unilaterally, but consumers are poorly organized, and thus the politics of unilateral liberalization are difficult in a system that is particularly responsive to producer interests. But reciprocal liberalization brings export interests to the table, which makes obtaining such agreements much easier.

Cooperative Liberalization

Cooperative liberalization can take place in both multilateral or bilateral (and plurilateral) settings. Multilateral trade liberalization depoliticizes trade relations. It places the focus on economic gains and losses rather than the virtues or vices of a particular trading partner. Reducing tariffs equally for all trading partners ensures that sales go to the trading partner whose products are cheapest or most attractive rather than the one who happens to have cut the best trade deal. Just as monetary exchange is superior to barter because it does not require a double coincidence of wants, so multilateral bargaining can facilitate cross trading. Bargaining multilaterally also gives opportunities for forming coalitions, something which is particularly beneficial to small countries but at times is very useful for all participants. The inclusive nature of multilateral agreements can achieve bargains that are particularly difficult to strike when countries can free ride on bilateral deals, because such

deals may confer benefits without making other countries pay. For example, the United States refuses to cut its agricultural subsidies in bilateral deals, because it wants to use these cuts to obtain benefits from all WTO members.

Bilateral trade agreements do have virtues. They can be more precisely tailored to meet the particular needs of each side. For the United States they have the virtue that generally the negotiations heighten power asymmetries. But they also have disadvantages because they could divert trade from more efficient producers to those receiving preferences, and because they result in complicated overlapping regimes of trade rules.

The ability to use both approaches simultaneously to achieve freer trade may also yield strategic benefits. In particular, footdraggers have the ability to stall large negotiations whereas it may be possible to put them under greater pressure by cutting bilateral deals with their competitors.

In short, the United States has a basic interest in cooperative, reciprocal trade liberalization because it not only yields economic gains but also helps to mobilize domestic political support for free trade. By contrast, unilaterally using market power to extract gains through protection can give rise to counterproductive foreign responses, while unilateral liberalization neglects the potential additional gains that can be obtained by using the reduction in domestic trade barriers as a bargaining chip to reduce foreign barriers. The United States is a large economy, and its relationship with many trading partners is asymmetrical. Foreigners are generally more dependent on their trade with the United States than it is on trade with them. Accordingly the United States can use market access as a powerful bargaining chip in either multilateral or bilateral settings, and the ability to combine these approaches could enhance its bargaining advantage.

The U.S. Interest in the WTO

According to its chapeau, the GATT seeks to raise living standards, achieve full employment, and boost growth by “entering into reciprocal and mutually advantageous arrangements to the substantial reductions of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce.”¹³ These sentiments conform to the interests the United States has in a trading system that a) reduces trade barriers; b) establishes and enforces rules; and c) promotes economic growth and development.

The GATT reduces trade barriers by conducting negotiations in which members agree to bind their tariffs at reduced rates. The system has been remarkably successful in reducing trade barriers, particularly for industrial products in developed countries. By bargaining with each other, countries have been able to persuade their trading partners to reduce barriers abroad in return for opening markets at home. The core principle of the WTO is Most Favored Nation (MFN) or nondiscrimination among members, and it operates to leverage the bargaining power of the strong to provide benefits for all. The net result for the United States is improved market access abroad and the ability to reduce trade barriers at home. The economy benefits both from being able to sell more exports and from being able to buy cheaper imported products.

Rule of Law

The WTO also serves as a forum for negotiating and enforcing trade rules. Rules are important because they provide greater security for those who seek to exploit the potential benefits of global engagement both as exporters and importers. They are also crucial in helping to discipline other government policies such as standards, taxes, and regulations that could be used to discriminate against U.S. goods and services. They are especially attractive when they conform to U.S. institutional practices and preferences.

Having trade rules and an enforcement process also serves to depoliticize trade disputes by subjecting them to adjudication based on objective criteria rather than diplomatic or other power-based relations. While the United States, as a powerful country, could certainly try to exert pressures through other channels, these can be politically costly, viewed as less legitimate by others, time consuming, and ultimately less effective than bringing a case when it has the rules on its side.

Importing benefits the nation and rules may also be crucial in disciplining protectionist policies at home. When powerful domestic interests support policies that are not in the national interest, even losing cases can be beneficial. There is an important difference between taking protectionist measures in response to political pressures and acting in accordance with the U.S. and WTO trade rules. It is for this reason, for example, that Congress has established the quasi-judicial International Trade Commission domestically to adjudicate claims of injury due to imports. There is also a strong rationale for having effective trade remedy laws that provide for safeguards in the event of disruptions as an alternative to permanently maintaining higher tariffs, and for an objective basis to determine if trade is fair.

The WTO has been remarkably successful in obtaining compliance with its rules by its members. One reason is that it does not simply rely on the force of international law but also allows for the withdrawal of concessions in the event of noncompliance.¹⁴ This regularizes a system of tit-for-tat, a behavioral response found to induce cooperation in repeated games.¹⁵ But while retaliation, particularly when targeted in politically sensitive areas, does play some role in inducing compliance, it is more likely that members comply with the rules because on balance they benefit from them and they care about their reputations in a system characterized by ongoing negotiations.

Foreign Growth and Economic Development

Finally, the United States also has an interest in a system that promotes growth and development in its trading partners. During the Cold War, the major concern related to capitalist countries; today it relates to developing countries. As large and rapidly growing markets, sources of cheaper products and raw materials, the United States benefits when the rest of the developing world prospers through trade. The WTO has become increasingly involved with the concerns of developing countries, and the strong interest the United States has in their growth is indicated by the fact that these countries already account for about half of U.S. trade and their share is likely to grow in the future.

System Features

There are other, specific features of the trading system that explain U.S. participation and commitment. First, the WTO functions by consensus. This means that the United States (and every other member) has ultimately consented to each and every agreement. This makes

the United States and other members far more likely to adhere to them. There is clearly greater legitimacy to rules that have been supported unanimously by all WTO members. Second, reciprocity is a major operating principle in negotiations and retaliation in response to violations. Thus, as the country with the largest market, the United States has considerable bargaining power. This shows up with respect to the attention it commands during negotiations, and by the fact that it has been one of the few members that have ever made use of the WTO provisions that allow retaliation.

Third, notwithstanding some of the claims of its critics to the contrary, the WTO system is extremely respectful of national sovereignty. In particular, the WTO itself does not bring its members to task when they violate the rules. It relies on other members to bring disputes before it. In addition, WTO rulings do not have direct effect. The United States cannot therefore be ordered or compelled to comply with WTO findings. Instead they have to be implemented either by U.S. regulators or U.S. law. To be sure, being found in violation could lead a foreign country to be authorized to retaliate against U.S. exports, but this is rare. At worst, therefore, the United States could choose to live with the retaliation without further consequence (as the European Union has in the case of U.S. retaliation against its ban of hormone-fed beef), even though it is in principle required to come into compliance. Thus “ultimate legal authority” rests with the U.S. Congress rather than the WTO.

The U.S. national interest is promoted by these objectives, agreements, and rules, and it is no surprise that for the most part the United States has supported them. But viewed from a U.S. perspective, the multilateral system is not without its flaws. The virtue of the system is its inclusiveness. But the diversity of the membership is also a weakness that makes agreement difficult to obtain because of a requirement of unanimity, particularly with respect

to issues in which the United States has a particular interest, such as foreign investment, environmental rules, and labor standards.

From Multilateral to Multitrack.

Thus far, the discussion has been couched in terms of U.S. national interests. Yet in reality, U.S. trade policy is highly political. Article 1 of the U.S. Constitution gives Congress, rather than the president, the ultimate power over trade agreements, and Congress, particularly the House of Representatives, is designed to reflect concerns that are local and immediate. It is not surprising, therefore, that U.S. trade-policy history has many examples of congressional willingness to act unilaterally and from a purely domestic perspective in response to constituent pressures. The logrolling that led to the Smoot-Hawley tariffs in 1930 is a good example. The fate of the 1948 Havana Charter, which would have founded an International Trade Organization, showed that Congress was not prepared to simply rubber stamp an international trade agreement even when it was negotiated under U.S. leadership.¹⁶ Congress has also been willing on numerous occasions to vote for quotas to protect major U.S. industries such as textiles, autos, and steel, even where these have violated GATT rules.

When the dollar strengthened in response to the high interest rates induced by large tax cuts and tight monetary policies, and the U.S. trade deficit began to increase, pressures built up in the United States for urgent action. There was a deep recession in the United States with adverse consequences for U.S. manufacturing. In addition there were widespread concerns that the United States was in decline and uncompetitive internationally. There was a common view among U.S. firms and workers that the country had foolishly followed laissez-faire policies while other countries had been more successful at promoting their firms with

industrial policies and subsidies. Japan, with its closed market and growing manufacturing prowess, was seen as a particular threat. In response, the United States took unilateral measures to protect its market at home and open markets abroad.

GATT rules prohibit discriminatory treatment of members, the use of quotas, and forbid members to raise tariffs above their bound rates without authorization. Yet, on numerous occasions, the Reagan (and Bush) administrations resorted to measures that violated these proscriptions.¹⁷ Whatever their professed beliefs in the virtues of free markets and the multilateral system may have been, when their domestic corporate constituents came asking for help, Republicans were very forthcoming with protection.

The growing challenge from Japan had long been marked by tensions and bilateral restraints on Japanese exports, but in the 1980s the United States also emphasized efforts to open the Japanese market. There were numerous initiatives that resulted in sector-specific agreements; the more broadly focused structural impediments initiative; and a managed trade initiative that required increased purchases of foreign semiconductors. In the mid 1980s the Reagan administration also used Section 301 of the Trade Act of 1974 to attack Brazilian informatics policy (telecommunications and computers) and Korean insurance barriers, even though services sectors like telecommunications and insurance were not covered under GATT rules. Congress also passed Super 301 legislation in 1988 and the Bush administration responded with additional challenges to Japan, India, and Brazil. GATT rules make it illegal to raise tariffs without GATT authorization, yet this did not stop the United States from taking retaliatory measures without GATT permission. The United States also unilaterally imposed trade measures in response to the European ban on hormone-fed beef in the late 1980s and European policies on oilseeds.¹⁸

In the late 1980s there were many who called for U.S. trade policy to be more assertive and use managed trade agreements, particularly with Japan. MIT economist Lester Thurow famously proclaimed, “the GATT is dead.” There were those who argued that instead of depending on rules, the United States should use the power of its domestic market to guarantee optimal results. Actions under Section 301, Super 301, the Voluntary Restraint Agreements (VRAs), and the Semiconductor Agreement all seemed to point the way forward. But the GATT’s obituary was premature.¹⁹ The Uruguay Round was successfully concluded in 1993 and, with the support of President Clinton, passed with very strong votes in both houses of the U.S. Congress.

Indeed it was partly concerns about U.S. unilateralism that had convinced the rest of the world to agree to a more effective multilateral system. Arthur Dunkel, the former head of the GATT, is said to have remarked that the best thing the United States did for the GATT was to start down the 301 and Super 301 road, thus unifying an outraged and alarmed world behind the trading regime.²⁰

Back to the Fold

Why has the United States been more rule abiding over the past decade? One reason is that the WTO, created by the Uruguay Round, is a more effective institution than the GATT. Its rules cover more issues that are of interest to U.S. exporting firms, and its ability to enforce them has also been enhanced. In the 1980s, for example, the United States could not use the GATT to challenge barriers to services exports in sectors such as insurance or telecommunications, failures to protect intellectual property, and discrimination on foreign

investors. In addition many developing countries did not subscribe to the codes dealing with subsidies and standards, such as those in the Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) agreements.

The United States was also frequently thwarted in its attempts to obtain authorization for retaliation under WTO rules when defendants simply vetoed the proceedings. The Uruguay Round Agreement succeeded in bringing almost all the obligations with respect to issues such as standards and technical barriers to trade, trade-related intellectual property (TRIPs), subsidies and countervailing measures and trade-related investment measures (TRIMs) into a single undertaking that all members (both developed and developing) had to accept. It also included agriculture and services. The agreement also explicitly outlawed extralegal measures such as voluntary export restraints after a set date. Additional WTO agreements have also been signed on telecommunications, information technology, and financial services.

The Uruguay Round Agreement also made dispute settlement much more effective, thereby reducing the need for the United States to resort to unilateral retaliatory measures. The GATT in principle had allowed for the suspension of concessions in response to violations, but it had a weak dispute-settlement system in which the defendant could block hearings and retaliation. Partly in response, the United States had claimed the right to impose sanctions unilaterally; the new WTO system was different. Members could not prevent cases from going forward or decisions being implemented. The result was an effective system that could guarantee a finding based on an impartial adjudicatory process.

A second important development is that the world economy has become more open and liberal, not only because of the WTO but because many countries have unilaterally

reduced their market barriers. In particular many developing countries and Japan have become far more welcoming of foreign investment. So there is less reason today for U.S. assertiveness.

A third relates to shifts in domestic political alignments. At one level these present a puzzle because as issues like labor and environmental standards have become part of the trade debate, trade policy has become more partisan. Many Democrats are opposed to these agreements, not because they are against free trade but because they believe the agreements fail to enforce such provisions adequately. But Republican control of the House of Representatives and of the Senate for almost all of George Bush's administration has created a more favorable environment for a Republican president's trade policy. By contrast, after the 1986 elections, the Democratic majority was much more willing to express their frustrations at U.S. policy to put pressure on Ronald Reagan in the 1980s, and he in turn felt pressure to respond with aggressive unilateral moves of his own.²¹

A fourth reason lies in differences between China and Japan. Japan was the major driver of unilateral U.S. actions in the late 1980s. Japanese firms were rivals for leading U.S. firms in key industries such as electronics and automobiles, and the closed Japanese market was seen as giving them an unfair advantage. Moreover, the barriers to the Japanese market were often opaque and not covered by GATT rules. In addition, the fact that Japan developed with a market that was closed to foreign investment meant that few U.S. firms had a strong interest in maintaining the U.S.-Japan trading relationship and opposing protection against Japan. By contrast, today China accounts for a large share of the U.S. trade deficit. While labor-intensive sectors in the United States have experienced job losses, in many cases the goods the United States buys from China are no longer produced locally. Thus relatively

fewer U.S. firms feel threatened. In addition, China has developed by attracting large numbers of foreign firms. Thus there are many major U.S. multinationals with an interest in maintaining the U.S.-China relationship. Similarly, during the period of the jobless recovery, there were concerns expressed relating to services outsourcing to India. But the administration actually spoke out in support of this development and, as with Chinese trade, many U.S. firms benefit from these operations. In the final analysis, therefore, the administration's adherence to multilateralism accords with the interests of its corporate constituents. Multinational firms that are increasingly organized to take advantage of global supply chains have an interest in an open, rules-based system.

Improving Trade Policy

The Bush administration can take some credit for its adherence to multilateral approaches in trade, but this does not mean that, overall, its policies leave no room for improvement. Indeed, in several respects these policies have been seriously deficient, particularly with respect to the treatment of workers and communities.

First, given the extremely weak performance of U.S. exports and manufacturing employment, the administration should have been far more energetic using the WTO strategically to help open markets for U.S. producers. Between 1994 and 2000, for example, the Clinton administration initiated sixty-eight cases at the WTO; between 2000 and 2006 the Bush administration brought just sixteen cases. Since foreigners have brought cases at about the same rate in both periods—fifty between 1994 and 2000 and forty-four between 2001 and 2006, this means the United States has been playing defense at the WTO.

Second, the United States has lost most of the cases brought against it, and its losses in trade-remedy cases, particularly safeguards, are of particular concern. Safeguards have a crucial role to play in helping U.S. industries temporarily mitigate some of the disruptive effects of international competition. Trade benefits the nation over the long run, but there are times when there is a case for moderating some of its effects to provide firms and workers with time to adjust. Yet five of the six cases in which the United States has implemented safeguard actions have been declared illegal by international panels.²² This experience has exposed problems with the rules that the administration has ignored. In particular, because of language used in the original 1947 GATT agreements, the rules have been interpreted to only permit safeguards in the event of “unforeseen developments and the effect of obligations incurred under this Agreement” (GATT Art XIX: 1[a]), yet there is a strong case for safeguards in response to disruptive imports even when these are not related to a particular trade-agreement obligation.²³ The administration has also failed to improve policies to ensure our safeguard measures can withstand international scrutiny or initiate proposals for changing the WTO rules to make them more user-friendly.

Third, the United States has been thwarted in introducing new issues in the WTO, in part because under the rules of a single undertaking, all countries are expected to sign on to all obligations. Because WTO members are extremely diverse, this either keeps agreements at the lowest common denominator or has led to certain provisions being extremely unpopular.²⁴ For example, issues such as foreign investment, transparency in government procurement, and competition policy were dropped from the Doha Round and labor standards were kept off the agenda, and the agreement on intellectual property has been very controversial. A better approach to these issues would be to introduce into the WTO a more

variable geometry, in which all members would subscribe to a core set of agreements, while another set would include only those willing to join. These clubs would permit binding multilateral agreements among willing countries in areas of deeper integration (that might include labor and environmental provisions that accorded with WTO objectives). It would be far better to have these issues dealt with under WTO oversight than having them neglected or dealt with only under regional arrangements. In addition, this approach would be in keeping with the basic idea that one size does not fit all.²⁵

Fourth, U.S. policies at home toward workers who are dislocated by trade should be improved. Programs for both real-wage insurance and tax-base insurance merit serious consideration.²⁶ The Trade Adjustment Assistance policies that extend unemployment insurance and offer training should be supplemented with new benefits for workers once they accept a new job. Wage insurance would compensate workers displaced as a result of trade for a proportion of the erosion in their earnings when they take a new job. A second program would be designed to help communities. Tax-base insurance would assist communities that are hit by plant closures and other disasters to maintain their services and resist a downward spiral in their revenues.

Finally, the strategy of using bilateral free-trade agreements as a mechanism for competitive liberalization will only work if they can eventually be merged into larger coherent arrangements. Yet the administration has not paid much attention to how this might be done. Indeed, by signing agreements with different rules for qualifying goods for eligibility—so called rules of origin—it is actually creating a hub-and-spoke arrangement that will be very difficult to merge.

Concluding Comments

The United States has played a leadership role over many decades to help construct an international trading system that enhances its interests. By and large it has succeeded in gaining international support for these efforts. The basic interests of the United States in a trade regime that opens markets, enforces the rule of law, and promotes economic development are met by the WTO. When there are WTO rulings against the United States, therefore, it generally complies not because it fears foreign retaliation—which has been relatively rare—or because the WTO has the power to compel it to do so, but because the United States would like other countries to comply with a system that works to its advantage.

It is striking that when the WTO dispute-settlement system became more effective and more powerful, the United States was more willing to be constrained by the WTO rules. U.S. concerns with the earlier regime were not related to the basic objectives, but the inability to accomplish them effectively.

Viewed from the perspective of the rest of the world, the WTO has been a success. U.S. trade power has been constrained. Since the WTO's formation, the United States has ceased to retaliate unilaterally or to seek so-called voluntary export restraints from its trading partners. This compliant behavior on the part of the United States is, however, by no means automatic or assured. In the past the United States has been willing to adopt such measures and to act outside the rules of the trading system. It is certainly possible that it could do so again.

In most respects, therefore, trade is not really all that exceptional. Acting together with other nations also confers legitimacy that unilateral measures lack. Exercising power is costly, and when this is done to provide international public goods from which other

countries will benefit, it surely makes sense for the United States to induce and persuade them to share the burdens. To be sure, in order to do this inevitably requires accepting compromises and constraints. But international cooperation is at least as vital in fighting terror, building democracy, promoting human rights, and preventing nuclear proliferation as it is in trade. In the case of trade, the interests of major U.S. corporations—a vital constituent—have led the U.S. administration to adhere to multilateral rules. It is unfortunate that in other areas, it has not been persuaded to apply a similar approach.

¹ For helpful comments, I thank Mort Halperin, Jeffrey Laurenti and Dan Tarullo as well as participants at a seminars held at the Belfer Center for Science and International Affairs at the Kennedy School of Government and the Center for American Progress.

² The administration National Security Strategy asserts that “in all cases, international obligations are to be taken seriously. They are not to be undertaken symbolically to rally support for an ideal without furthering its attainment.”

³ For a discussion of foreign views of the United States, see “The Roots of Resentment,” chapter 2 in Stephen M. Walt, *Taming American Power: The Global Response to U.S. Primacy* (New York: Norton, 2005).

⁴ Another example: the United States repealed the Continued Dumping and Subsidy Offset Act (CDSOA) (Byrd amendment) in 2006 but allowed it to remain in effect until October 1, 2007. The European Union and Canada have therefore retained retaliation under WTO authorization

⁵ These include free-trade agreements with Jordan, Singapore, Australia, Morocco, Bahrain, Oman, Central America (CAFTA), Dominican Republic, Panama, Peru, Colombia, and ongoing talks with Thailand, the South African Customs Union, South Korea, the United Arab Emirates, and Malaysia.

⁶ For a recent discussion of U.S. efforts, see Jeffrey J Schott, ed., *Free Trade Agreements: US Strategies and Priorities* (Washington DC: Institute for International Economics, 2004).

⁷ The WTO has also found in numerous cases that practices by the U.S. Commerce Department in administering trade-remedy laws violate WTO rules.

⁸ Living standards are actually higher in some smaller countries such as Luxemburg, but the United States ranks first in the G8.

⁹ Bradford et. al.<

¹⁰ By imposing tariffs and reducing our purchases from abroad we might be able to drive down the world prices of the goods we buy, thus improving our terms of trade.

¹¹ For an exposition, see Paul R. Krugman and Maurice Obstfeld, *International Economics: Theory and Policy* (Boston: Addison Wesley, 2003), 223–224.

¹² This reasoning implies that for two large countries trade policies fit neatly into the game theoretic framework of the prisoner’s dilemma. Both have an interest in cooperation, but acting alone will resort to protection. See Krugman and Obsfeld, *International Economics*,. 236.

¹³ The more recently drafted WTO chapeau adds the objectives of sustainable development and positive efforts to ensure that developing countries and especially the least-developed countries “secure a share in international trade commensurate with the needs of their economic development.”

¹⁴ For a discussion of retaliation, see Robert Z Lawrence, *Crimes and Punishments? An Analysis of Retaliation under the WTO* (Washington DC: Institute for International Economics, 2003).

¹⁵ See Robert Axelrod, *The Evolution of Cooperation* (New York: Basic Books, 1984).

¹⁶ Although the charter was negotiated under U.S. leadership with a view to establishing an International Trade Organization (ITO) to complement the other Bretton Woods institutions, it was never presented to Congress because it failed to command sufficient domestic support.

¹⁷ Instead of using the GATT safeguards provisions that required the United States to compensate foreigners for their loss of exports, in 1981, for example, the auto industry was protected with so-called voluntary export restraints by Japan. The following year it was the U.S. steel industry’s turn (with Voluntary Export Restraints [VERs] by the European Union). Protection on textiles was also increased. In addition, later a global price cartel was established for semiconductors and there were additional restraints on machine tools and Canadian softwood lumber.

¹⁸ For further discussion, see Jagdish Bhagwati and Hugh T. Patrick, eds, *Aggressive Unilateralism: America’s 301 Trade Policy and the World Trading System* (Ann Arbor: University of Michigan Press, 1990).

¹⁹ For an extensive analysis of Clinton trade policy, see Robert Z Lawrence, “International Trade Policy in

the 1990s” in Jeffrey A Frankel and Peter Orszag, eds., *U.S Economic Policy in the 1990s* (Cambridge: MIT Press, 2002).

²⁰ Quoted in Bayard and Elliot *Reciprocity and Retaliation in U.S. Trade Policy* (Washington DC: Institute for International Economics, 1994), 74.

²¹ The Democrats recaptured control of Senate in the midterm elections in 1986 after a six-year hiatus. According to I. M. Destler, “the partisan change had the more direct impact on trade politics. The reason was not that Senate Democrats were more aggressive on trade, or more protectionist, than their Republican counterparts—the difference here was marginal. What mattered was that control of that body had shifted from a leadership whose job (in important part) was to make life easier for a Republican Administration, to one whose job (in major part) was to score points against it.” *American Trade Politics*, 90

²² Robert Z Lawrence and Nathaniel Stankard, “America’s Sorry Trade Performance: Whatever Happened to All the Talk about the Rule of Law?” *The International Economy* (Winter 2004)

²³ See Alan Sykes, “The Safeguards Mess: A Critique of WTO Jurisprudence,” *World Trade Review* 261, no. 2 (2003).

²⁴ For a description of how this could be done see Robert Z Lawrence, “Rulemaking Amidst Growing Diversity: A Club of Club Approach to WTO Reform and New Issue Selection,” *Journal of International Economic Law* (forthcoming).

²⁶ These ideas were originally proposed in Robert Lawrence and Robert Litan, *Saving Free Trade : A Pragmatic Approach* (Washington DC: Brookings Institution, 1986). See also Lori G Kletzer and Robert E. Litan, “A Prescription to Relieve Worker Anxiety,” *International Economics Policy Brief, Institute for International Economics* (February 2001).<