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## The Obama Administration Trade Policy

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After closing off the “old” agenda of Colombia, Korea and Panama in 2011, we are now well into a new agenda – multilaterally, trying to rescue something, anything, at the WTO, plurilaterally moving on TPP and TTIP, and unilaterally enacting trade negotiating authority.

These are big deals in every sense of the word, and they reflect the rapid changes occurring in the trading system that, in turn, will influence U.S. trade policy.

We are in the midst of a transition from traditional trade (exports, imports) to a global supply chain model. Everything is made everywhere. Among other things, that means the problems are not the same. Tariffs are no longer the big issue, though some big ones remain. Now it’s NTBs such as localization barriers to trade, domestic content, SOEs, IP protection, etc.

That has also changed the global *political* dynamic. The gap between rich and poor countries is narrowing, although inequality *within* countries, including ours, is growing. That creates new economic pressures on the developed countries at the very time their economies are most fragile, and it creates new institutional problems because the emerging economies have been reluctant to strengthen their commitment to a multilateral system they had little part in creating. Meanwhile, developed countries are no longer willing or able to pay high costs to maintain the system as is.

We also face the challenge of a non-Western economic model, what Chalmers Johnson called “state developmental capitalism.” Originally it was Japan. Now it is China, India, Brazil, maybe Indonesia.

The consequence for the trading system is that we are moving away from MFN and towards a two-track system where one group moves faster on trade liberalization in a variety of different forums and the other group is “just watching.”

Going through this transition will be painful. The developed countries have to adjust to diminished status. The emerging economies have to accept new obligations. Currently, neither is handling that very well, and I think we’re in for a rocky 5-10 years. Eventually, however,

new roles get sorted out, countries recognize where their interests, rather than their rhetoric, lie, and begin to act accordingly. This is why I am a short term pessimist and a long term optimist about the multilateral system.

It does mean, however, a search for alternatives that involves understanding that trade is always part of a larger geopolitical strategy.

For example: the President's determination to be a "Pacific President" is a response to the growing challenge of China and the other BRICS to Western political and economic models. That challenge has forced the Administration to think more creatively about how trade policy fits into our overall global strategy, and the simultaneous demise of the Doha Round has opened the door to more creative discussion about what to do next.

The Round was one area of trade policy where the business community was solidly behind the Administration. No one thought there was enough on the table to get an agreement through Congress, or to persuade business to fight for it. That does not mean there was no interest in it. On the contrary, we were disappointed when it became obvious it could not be concluded, and we continue to hope for its resuscitation. Multilateralism is always the first best solution. At the same time, just as nature abhors a vacuum, we have also supported the Administration's efforts to move in new directions. Tryin' different things, as Kid Rock said.

One of those is a services plurilateral agreement -- TISA. The United States is one of the 23 countries (counting the EU as one) participating in that, and it has the strong backing of the business community for two reasons. First, it offers tangible benefits in trade liberalization where we have a comparative advantage. Second, if it is successful it will send an important signal to those countries that were the obstacles in the Doha Round that much of the world is prepared to liberalize trade with them or without them.

It is already clear, to no one's surprise, that this negotiation will not be an easy one. None of them are these days. But a good deal of progress was made last year on a framework for the talks; discussions this year have continued to move forward, concrete offers are being exchanged, and the latest round concluded last week optimistic about reaching an agreement. It remains unclear whether it will be a closed agreement providing its benefits only to its signatories, or open on an MFN basis.

The other is expansion of the multilateral Information Technology Agreement, which likewise continues to make steady progress, once again without the participation of the BRICS except for China. This is an interesting case because the initial Agreement's benefits were provided on an MFN basis, meaning that those who do not participate can also receive the benefits of tariff reduction. That makes it a bit of a hybrid -- a plurilateral agreement whose benefits are not restricted to its signatories. There is a reason for that -- the countries participating in the negotiations account for more than 90% of the production of the items under discussion. That means relatively few free riders.

Meanwhile, squabbling continues over the remnants of the Doha Round as governments try to salvage whatever they can from it. Here the optimism is more cautious, although we should know by the end of this week how ambitious the participants will be. Reports from this past weekend on agriculture were promising. It turns out that there is no low hanging fruit. Things

that once looked easy, like trade facilitation, have become difficult, both in their own right and because of the efforts of some to pile additional even more controversial issues on top of them. Thus there is once again concern that we will have a failed ministerial meeting in Bali, which would only further validate skepticism about multilateralism.

Such concerns push us to look for other ways to address the growing economic challenges we face, many of them in the new areas I mentioned.

Many of them focus on **intellectual property** enforcement and ensuring the free flow of information on the Internet.

That is not only in the interest of the United States. It will be a key issue in both the TPP and TTIP talks. Strong IP rights are essential to the growth of an innovation class in any country. If you do not defend U.S. companies' rights you will not be able to defend your own innovators' rights either, and if you can't do that, they will leave and innovate somewhere else. Unfortunately, negative efforts in this area are becoming more numerous and more creative. We've moved way beyond simple theft into policies like forced localization, local content requirements, and discriminatory standards and licensing requirements.

Another topic left in the Doha debris is an agreement on green technology. This would be win-win. More jobs and growth, a cleaner environment, and a template of rules that can be used in other contexts as well. An important step was taken at APEC when members agreed to a cap on tariffs and on removing nontariff barriers. This, too, is something we will be pursuing in multiple venues. It is an example of other organizations stepping up at times when the WTO has not acted.

At the same time, the US also has new-found enthusiasm for large FTAs -- the Trans Pacific Partnership and the Transatlantic Trade and Investment Partnership, or TTIP. The first is in the end game; the second is only just beginning.

TTP is at the danger point of all negotiations -- once the issues are narrowed to a handful of politically difficult ones, will political will evaporate? My prediction is that it will not, that the ministers will announce agreement in principle when they meet in Singapore next month, and that we will spend the next six months ironing out the details. "Agreement" is an elastic term in trade negotiations.

TTIP is not at that point. There is no debate about its importance, but, while enthusiasm for it is great, there is also considerable skepticism about its chances. For one thing, we've been negotiating the same regulatory issues with the EU for twenty years without success. I'm optimistic we can get beyond that because of our mutual concern about emerging market competitive challenges, largely China, and the realization, to quote Ben Franklin, "if we don't hang together, we will all hang separately."

Notwithstanding our mutual good intentions, however, we are divided by fundamentals. Three of the most obvious are privacy, competition, and precaution. The first is made more complicated by the NSA controversy, and the last, which underlies EU policy making in a number of areas, goes far beyond the American preference for science-based regulation. There are potentially middle grounds in these areas, but finding them and agreeing on them will not

be easy. It will also be complicated because both sides have active oversight bodies in the Congress and the European Parliament, as well as numerous active civil society organizations that will be monitoring the talks closely.

Even so, the pace of talks has picked up after the government shutdown forced postponement of the second round in October. That round just concluded in Brussels last week, and the third round is set for December 16-20. So, by the end of the year, we will be back on schedule. The EU would like to conclude by the end of 2014 when the current Commission's term expires, but it's hard to believe that the regulatory issues will be resolved that quickly.

Both these negotiations illustrate the point I made earlier about competing models. Both of them are about the elephant that is in the room but not at the table – China. Both of them are engaged in writing rules for the trading system that China and the other BRICS will come under pressure to adhere to, either because they want to join TPP or because they want to access the transatlantic market.

That is one of the reasons why a plurilateral approach is attractive. It's a way to create better rules without having to negotiate directly with the countries most likely to oppose better rules. If it works, we have better rules and more rapidly growing markets, with those left behind clamoring to get in. And they can get in, if they accept the rules, which takes us down a road that leads back to multilateralism.

If it doesn't work, we are still left with better rules that will work to our advantage in two very large markets. Of course, we always have the possibility of total failure -- an inability to reach agreement even within the narrower confines of a plurilateral negotiation, but right now I choose to be optimistic about our ability to complete both sets of talks.

So far, both these negotiations have made 2013 a year of frenetic activity with few actual results. And I would say the same thing about the Congress. A lot of work but not a lot of results.

The biggest domestic topic will be new trade negotiating authority. The Administration does not need it to start a negotiation, but it needs it to finish. Both chairmen, Baucus and Camp, have said they're going to do it, as recently as last week. The Administration has said the same but is not submitting its own bill, which has slowed down the process. I believe the imminent conclusion of a TPP agreement will drive this train. If victory is declared next month, that will move Congress to accelerate the process of considering new authority. That will be a complicated debate, partly because we haven't had it for twelve years, and there is pent up demand, and partly because the anti-trade folks have been busy, both in Washington and in state legislatures, sowing doubts about trade in general, about TPP in particular, and about trade negotiating authority. And the business community, I'm sorry to say, has failed to respond to the challenge, particularly at the state and local government level.

These groups have made inroads, despite recent polls showing growing support for trade, because they exploit the classic dilemma of trade negotiations: the losses are short term and specific, while the gains are long term and diffuse. The losers – and there always are some – know they have lost because they can measure it. The winners often do not know they have won because their victory cannot be measured in the short term or simply because they are not

paying attention. One of the things you will see from the other Washington next year is more grass roots activity in support of trade, and we will be coming to organizations like yours for advice and support.

On other matters, the Administration continues its policy of tougher trade law enforcement. There's nothing wrong with that, particularly since the Administration has been clear in its determination to act in a manner consistent with our WTO obligations, but enforcement is a tactic, not a policy. It will only take you so far.

Of course, if you read between the lines on enforcement, you can see that a lot of it is about China, which is rapidly becoming a special case in the trading system, and not just to us.

For companies, the biggest problem is China's discrimination against foreign companies and attempts to force technology transfer. Each meeting we have with China produces new commitments in these areas, but the record suggests that while the central government does what it says it will do, local authorities often pay no attention. That is not new – there is a 5,000 year history of that in China, but now it is the foreigners that are paying the price, although they are hardly the only ones. That means further legislative and administrative initiatives with respect to China are likely, as are expanding U.S. efforts to enlist other countries in a united front.

On other matters, the Generalized System of Preferences (GSP) expired on July 31, and efforts to renew it are stalled in the usual dispute over how to pay for it. Congress compounds the problem by annually promising to overhaul it, and then ignoring it until too late, leaving no option but simple renewal. In 2014 you should hope for more but expect the same. Similarly, both the long-awaited miscellaneous tariff bill and the Customs reauthorization bill await action. There is support for both but problems with each, which I can discuss if you are interested.

There are other issues looming – states' Buy America legislation, trade secrets, government procurement – but I cannot cover everything and instead leave time for questions. I've given you some guesses – hopefully educated ones about the short term future. The promising development is that the Administration has learned that trade policy is not a political albatross but something that can help grow the economy and thereby help them politically, and they have a plan to do that. How much of it they can accomplish remains to be seen.