



Navigating a 21st century global trading system

Bill Reinsch is the President of the National Foreign Trade Council

For the first three years of the Obama Administration, the Administration had done so little on trade that there was little to write about. Last year, however, was different, and this year will be different as well, although it will be a year where the work will be great and the results few. We will need to wait for 2014 for the latter.

After closing off the 'old' agenda of the Colombia, Korea and Panama free trade agreements in 2011, we are now moving on a new agenda – multilaterally, trying to rescue something, anything, at the World Trade Organization (WTO), plurilaterally moving on the Trans-Pacific Partnership (TPP) and a long-awaited US-EU negotiation, and unilaterally enacting trade negotiating authority.

Before discussing those issues, however, let me make a larger philosophical point about changes in the trading system that drive US policy.

We are living through extraordinarily rapid changes from traditional trade (exports and imports) to a global supply chain model. Everything is made everywhere. That means that the problems are not the same. Tariffs are no longer the big issue, though some big ones remain. Now it is non-tariff barriers, local content, intellectual property and more.

That has also changed the global political dynamic. The gap between rich and poor countries is narrowing, although inequality within countries, including the United States, is a growing problem. 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 newly emerging economies have been reluctant to strengthen their commitment to a multilateral system they had little part in creating. Meanwhile, rich 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 and maybe Indonesia.

The consequence for the trading system is that inevitably we are moving away from most-favoured nation treatment and toward a two-track WTO, where one group moves faster on trade liberalization and the other group is 'just watching.'

This is why I am a short-term pessimist and a long-term

optimist. 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 are in for a rocky five to 10 years. Eventually, however, new roles get sorted out, countries recognize where their interests, rather than their rhetoric, lie, and begin to act accordingly.

The US Administration's response has been to begin to act as though trade policy is a legitimate part of economic policy rather than a political millstone around their neck, but they also see it as part of a larger geopolitical strategy.

By that I mean the President's determination to be a 'Pacific President' and the growing challenge of China and the other BRICS to the West on many fronts. Both have forced the Administration to think more creatively about how trade policy fits into our overall global strategy. At the same time, the demise of the Doha Round has opened the door to more creative discussion about how to move forward.

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. For business, 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.

One of those is a services plurilateral agreement. The United States is one of the 22 or so countries having discussions on that, and it has the strong backing of the business community for two reasons. First, it offers tangible benefits in trade liberalization, which we support. 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. That a two-track WTO can become a reality.

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, and there is currently a decent amount of optimism that an agreement will be reached.

The other is expansion of the Information Technology Agreement, which likewise continues to make steady progress, once again without the participation of all the BRICS.

Meanwhile, squabbling continues over the remnants of the Doha Round as governments try to salvage whatever they can from it. Here there is less optimism. 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.

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

Many of those focus on intellectual property (IP) enforcement and ensuring the free flow of information on the internet. That is not only in the interest of the United States. Strong IP rights are essential to the growth of an innovation class in any country. If you do not protect US companies' rights you are not going to be able to protect your own innovators' rights either, and if you cannot do that, they will leave and create somewhere else. Unfortunately, protectionist efforts in this area are becoming more numerous and more creative. We have moved way beyond simple theft into policies like forced localization and local content requirements.

Another topic left in the Doha debris is an agreement on green technology. This would be win-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 non-tariff barriers. This, too, is something we will be pursuing in multiple venues.

The main venue for these topics currently is the Trans-Pacific Partnership negotiations, soon to be joined by the US-EU negotiations. The parties have only now reached the point where significant concessions will need to be offered. Reports from the recently concluded negotiating round in Lima are that significant progress was made in a number of areas, but contentious issues remain on market access, IP and competition policy, including greater discipline on state-owned enterprises, among others.

The real danger point will occur when the issues are narrowed to a handful of politically difficult ones, at which time there is always a risk political will evaporate.

The latest development is the US-EU negotiation. There is no debate about the potential importance of this deal, and, while enthusiasm for it is great, there is also considerable scepticism about its chances. For one thing, we have been negotiating the regulatory issues for 20 years without success. I am optimistic we can get over 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*

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separately." Recognizing that, formal launch of the talks is set for this month with the first actual round to take place in July followed by two more this year.

Notwithstanding our mutual good intentions, however, we are divided by a number of fundamental differences. Three of the most obvious are privacy, competition and precaution. In particular, the latter, 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, and both have numerous active civil society organizations that will be monitoring the talks closely. The European Parliament has already complicated the situation by agreeing to French demands for an exception for cultural matters in the talks.

The timing for concluding both these negotiations is uncertain. TPP members would like to finish this year, which is possible but unlikely. The European Union would like to conclude by the end of 2014 when the current Commission's term expires, but it is hard to believe that the regulatory issues will be resolved that quickly.

That suggests 2013 is likely to be a year of frenetic activity with few results. And I would say the same thing about the US Congress. A lot of work, but not necessarily 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 Senator Max Baucus, Chairman of the Senate Finance Committee, and Representative Dave Camp, Chairman of the House Ways and Means Committee, have said they are going to do it. The Administration has said the same, but seems to prefer doing it later in the context of a TPP agreement rather than sooner. The reality is that if the committees begin, everyone else will follow, so watch for hearing announcements.

This will be a long, complicated debate, if only because we haven't had it for 12 years, and there is pent up demand. There are people in the business community now thinking up ways to avoid complications, but it cannot be done. The National Foreign Trade Council, incidentally, plans to be in the midst of this debate. It has already offered its own draft bill and is consulting with Congressional staff on how to proceed.

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

Of course, if you read between the lines on enforcement, you can see that a lot of it is really 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 policies designed to force technology transfer and discriminate against foreign companies. 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 the foreigners that are bearing the costs. That means further legislative and administrative initiatives with respect to China are a certainty, as are expanding US efforts to enlist other countries in a united front on this.

On other matters, both the Generalized System of Preferences (GSP) and the Andean Trade Preferences and Drug Eradication Act (ATPDEA) expire July 31. Ecuador is the only remaining ATPDEA beneficiary, and faces significant opposition to its inclusion. Given that, it is likely Congress

will simply let it expire. On GSP, Congress annually promises to overhaul it, and then ignores it until too late and ends up simply renewing it. This year we should hope for more but expect the same.

In addition, on the last day of the 112th Congress, members of the House Ways and Means Committee introduced a long-awaited miscellaneous tariff bill. While there was no time for action on it in the last Congress, its introduction set the stage for action on it this year. Ways and Means set a March 28 deadline for sponsors of the bill's provisions to provide updated disclosure information, and staff is now reviewing the updated information. Also, at the end of the last Congress, competing Customs reauthorization bills were proposed by Ways and Means Republicans and Democrats. Although there are many similarities between the two, the differences will need to be reconciled before the bill will move forward.

There are other issues looming – states' Buy America legislation, better protection of trade secrets, reorganization of our trade agencies, government procurement – but there is not space here to cover everything in a single article. I have provided some guesses – hopefully educated ones. The promising development is that the US Administration has discovered that trade policy is not a political albatross but something that can help grow the economy and thereby help them politically. How they translate that understanding into actual accomplishments remains to be seen. ■