

World Trade after September 11, 2001: The U.S. Response

Leslie Alan Glick

Follow this and additional works at: <http://scholarship.law.cornell.edu/cilj>

 Part of the [Law Commons](#)

Recommended Citation

Glick, Leslie Alan (2002) "World Trade after September 11, 2001: The U.S. Response," *Cornell International Law Journal*: Vol. 35: Iss. 3, Article 12.

Available at: <http://scholarship.law.cornell.edu/cilj/vol35/iss3/12>

This Article is brought to you for free and open access by Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell International Law Journal by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

BERGER INTERNATIONAL STUDIES LECTURE

World Trade after September 11, 2001: The U.S. Response†

Leslie Alan Glick‡

| | |
|--|-----|
| Introduction | 627 |
| I. U.S. Customs | 629 |
| A. Short-term Impact of Destruction of U.S. Customs at 6 World Trade Center | 629 |
| B. The Effect of September Eleventh on Other Custom Functions—The Bigger Picture | 630 |
| C. Compliance Programs | 631 |
| II. U.S. Coast Guard and the Movement of Goods by Water .. | 635 |
| III. Regulation of Trucking | 636 |
| IV. The United States Trade Representative’s Office— Countering Terror with Trade | 637 |
| Conclusion | 638 |

Introduction

We were all affected by September Eleventh in different ways; some of us more than others. Beyond the terror and destruction that ensued, the attack on the World Trade Center evoked a symbolism of its own. It was not simply an attack on the United States government and the American people; it was an attack on the Port of New York and the World Trade Center that symbolize New York City as a hub of world trade. In fact, the terrorists have attacked the World Trade Center twice. September Eleventh was their second attempt. Their first attempt to destroy the structure with car bombs on February 26, 1993¹ was partially successful. These attacks

† Adapted from the text of a lecture delivered at Cornell Law School on April 12, 2002 as part of the Berger International Studies Lecture Series.

‡ Cornell University, B.S. (1967), J.D. (1970). Mr. Glick is former Chair of the International Law Section of the Federal Bar Association and is author of several books, including *GUIDE TO UNITED STATES CUSTOMS AND TRADE LAWS AFTER THE CUSTOMS MODERNIZATION ACT* (Kluwer Law International 2d ed. 1997) and *GUIDE TO THE NORTH AMERICAN FREE TRADE AGREEMENT* (Kluwer Law International 2d ed. 1994).

1. See, e.g., Douglas Jehl, *Explosion at the Twin Towers: Car Bombs; A Tool of Foreign Terror, Little Known in U.S.*, N.Y. TIMES, Feb. 27, 1993, at 24.

indicate that stopping the ability of New York City and consequently the U.S. to function as a trade and commercial center was clearly part of the terrorist mission.

Thus, as a trade lawyer, the events of 9/11 have had a double impact on me; both the shock and despair shared by millions of other Americans, but also an attack on my profession and the government agencies that I deal with on a daily basis. My focus today will be on how the events of 9/11 have affected commercial trade from an importer's viewpoint. I will focus on the U.S. Customs Service because it is the primary government agency regulating imports. I will also focus on two branches of the Department of Transportation: the United States Coast Guard that regulates shipping into the ports and harbors of the United States and the Federal Motor Carrier Safety Administration that has jurisdiction over trucking.

After looking at the measures the U.S. has adopted in response to terrorism, I will discuss the "diplomatic initiative" by U.S. Trade Representative Robert Zoellick to use U.S. trade policy as a way of combating conditions that might foster terrorism. While other branches of government were reciting the rhetoric of war and revenge against the "Axis of Evil," the U.S. Trade Representative—part of the Executive Office of the President—was planning to reach out to Arab countries through free trade agreements.

Initially, it is essential to understand that as part of different governmental departments, the activities of the Customs Service, the Coast Guard, the Federal Highway Motor Vehicle Carrier Safety Administration, and the U.S. Trade Representative, are not necessarily coordinated.² In addition to these departments, many government agencies are involved in aspects of international trade regulation; including the Department of Commerce International Trade Administration, the Department of Agriculture, the Department of State, and the independent bipartisan U.S. International Trade Commission. Each department has a role in either enforcing or administering trade policy, and they frequently disagree. Often, they do not even coordinate their activities, so within the course of this discussion if it seems that the different agencies were pursuing different and inconsistent goals, it is because they were.³ Consequently, the United States has often been accused of having no coherent trade policy.

The events of September 11, 2001 unveiled a new form of weapon; passenger aircrafts used as bombs. This use of an ordinary vehicle of transportation as a weapon of destruction prompted a new frame of thought, one in which we must consider that terrorists can transform

2. At the time of the lecture, the Customs Service was part of the Treasury Department, the Coast Guard and Federal Highway Motor Vehicle Carrier Safety Administration, were parts of the Department of Transportation, and the U.S. Trade Representative, was part of the executive office of the President. The first two agencies are now part of the new Department of Homeland Security.

3. This lecture was given prior to the establishment of the Department of Homeland Security. This agency was created by the Homeland Security Act of 2002, Pub. L. 107-296. (Nov. 25, 2002)

loaded vessels—such as Ultra Large Crude Carriers (ULCC) or trucks—into deadly weapons. Therefore, the government agencies mentioned above have a new agenda—to stop articles of commerce from becoming weapons of mass destruction.

I. U.S. Customs

U.S. Customs Service is the principal agency responsible for policing international trade activities, and was at the center of the September Eleventh attack. It was also one of the agencies that has reacted the fastest with new procedures for handling international trade transactions. Seven-hundred ninety employees from the New York Region worked in the U.S. Customs Office that was located in 6 World Trade Center, a building that was not directly hit by the planes, but was destroyed by falling debris when the twin towers disintegrated. Miraculously, all of the employees escaped. However, the New York Seaport—one of the busiest seaports in the world—was for all practical purposes out of business for two weeks because the office's telecommunication capabilities were destroyed. This two-week hiatus affected the entire trade community, even importers and exporters that do not use the port of New York.

A. Short-term Impact of Destruction of U.S. Customs at 6 World Trade Center

The events of September Eleventh had both short-term and long-term effects on Customs. The short-term effects were the practical disruptions to normal activities that occurred because, in part, Customs itself was both a target and a victim of the attack. The long-term effects were the security changes relating to the movement of goods into the United States. I will first briefly discuss some of the short-term effects because these have had, and will continue to have, an impact on the trade community for some time.

Although Customs headquarters is in Washington D.C., the New York Seaport office traditionally handled many important Customs functions. One such function is the issuing of rulings on the classification of imports, under one of thousands of tariff numbers under the Harmonized Tariff System—a difficult task handled by National Commodity Specialists (NCS). Customs has import specialists at almost every port of entry to do this job informally; however, in New York, the NCSs are experts and provide guidance to the import specialists in all the other ports, who may not see enough examples of a product to develop their own expertise.

The NCSs also have other specialized duties. First, “requests for internal advice” are frequently used when an importer challenges a ruling as to classification or valuation of a past or on-going transaction. These are filed at the port of entry but then generally sent to the NCS in New York for review. Second, the NCSs are the important figures in issuing binding Customs Rulings on prospective transactions. Although these ruling requests are some times addressed to Customs Headquarters, they often

are referred initially to the NCS in New York. They aim to issue a ruling within thirty days, which they meet often more in theory than in practice.

The events of September Eleventh had several effects on the functioning of Customs Rulings and the role of the NCSs because all of them are in New York. An immediate impact of September Eleventh was to disrupt the binding Customs Rulings program. First, all documents at 6 World Trade Center were destroyed. Therefore, ruling requests and samples that had previously been submitted were also destroyed. This meant importers and their attorneys had to re-file or resubmit documentation and samples, and that the ruling requests and the period for a ruling were delayed.

Due to the disruption caused by the tragedy, their lack of records, offices, and phones, Customs initially suspended the entire binding ruling program. Consequently, it was impossible for an importer or its attorney to obtain a binding ruling on the classification or valuation of an imported product during this time. This alone had a serious impact on the trade community creating uncertainty and as a result affecting exports to the U.S. Fortunately, the binding rulings program was reinstated on November 30, 2001. There was a substantial backlog from the period of suspension. Customs had set a goal of eliminating its backlog by September 30, 2002.⁴

Since September Eleventh, Customs has developed new rules on the submission samples. For example, samples of chemical or powdered substances can no longer be submitted with a ruling request. If a ruling involves a product of this nature, special arrangements must be made with the NCSs.

The events of September Eleventh also affected the filing of entry documents in New York. Many functions regarding the filing of entry documents and protests of Customs at the port of New York were initially transferred to U.S. Customs in the ports of Newark and JFK. This transfer included reports of dutiable vessel repairs that were made abroad. Entering textile products requiring visas created delays in presenting the original documents issued by foreign governments. Therefore, Customs adopted special procedures to allow copies of the visas to be produced if the originals could not be delivered at the time of entry.

B. The Effect of September Eleventh on Other Customs Functions—The Bigger Picture

The above discussion focused on the impact on Customs functions based in New York, but, of course, the impact of 9/11 is much greater. Immediately after 9/11, Customs was on a Level 1 Alert. Level 1 Alert is the highest level of vigilance short of closing the borders. There are four levels of alert; each has a different effect on Customs operations. During Level 4 Alert, or Code Green, U.S. Customs operates normally without specific threat advisories. During Level 3, or Code Blue, U.S. Customs operates at

4. This goal has been met. See *Customs News* October 17, 2002. <http://www.customs.ustras.gov/news/news/htm>.

normal operations with heightened awareness. At Level 2, or Code Yellow, Customs functions at an increased level of security. Finally, at Level 1, or Code Red, Customs undertakes intensive anti-terrorism operations.⁵

Prior to September Eleventh, U.S. Customs was on Level 4 Alert. This was immediately changed to Level 1 Alert, which meant: intensive primary inspections, more importers designated for secondary inspections, more delays at border crossings, more inspections of merchandise—generally, only two percent of all merchandise is ever inspected, and more use of electronic equipment for x-ray and bomb detection to check cargoes considered suspicious or high risk. Delay times at the Mexican and Canadian borders are posted twice daily on a web site.⁶

Like airline delays due to more security, importers now must learn to live with more delays in the entry of goods. In Customs, much of the additional security measures will be achieved through selective inspections, adding more personnel in the inspection and control division, and using dogs to screen shipments for explosives, drugs, and currency. Customs will also conduct a greater number of random searches of both persons and articles.

Customs is the only agency authorized to search—without a search warrant—people, cargo, and conveyances that cross the border. This plenary power is based on an old Supreme Court case holding that Constitutional rights begin after a person enters the country, rather than at the border.⁷ Customs is trying to make its inspections non-intrusive by detecting abnormalities in the movement of cargo and by using high-tech equipment, such as machines capable of scanning entire containers. Over 50,000 containers arrive in the United States each day. Customs must rely more on technology and intelligence, because it simply does not have the manpower to inspect more than a small percentage of the cargo without bringing commerce to a standstill.

C. Compliance Programs

Customs traditionally, like its sister agency the Internal Revenue Service, relies on voluntary compliance because it only has the capacity to check a small percentage of transactions. This voluntary compliance was institutionalized in the Customs Modernization Act of 1995;⁸ commonly known as the “Mod Act.” The Act created certain obligations on the part of the importer to use “informed compliance” and “reasonable care.” Before the act, the importer’s sole obligation was to describe his or her merchandise

5. See Raymond W. Kelly, Commissioner’s Message, *Threat Response Plan* (Feb. 15, 2000), at <http://www.customs.ustreas.gov/xp/cgov/newsroom/commissioner/messages/archives/feb152000.xml>.

6. See generally Border Wait Times, at <http://nemo.customs.gov/process/bordertimes/bordertimes.asp>.

7. See *Boyd v. U.S.*, 116 U.S. 616 (1886).

8. Title VI, North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182, 107 Stat. 2057 (codified as scattered sections of 19 U.S.C.). For a complete discussion of the “Mod Act,” see LESLIE ALAN GLICK, *GUIDE TO UNITED STATES CUSTOMS AND TRADE LAWS AFTER THE CUSTOMS MODERNIZATION ACT* (1997).

honestly. The importer was not required to have any knowledge of customs laws or procedures and could solely rely on his customs broker.

The Mod Act changed this by imposing obligations on the importer either to know the law and procedures, or to find them out with the help of experts. In response to these new obligations, importers began to develop compliance programs and handbooks. I work regularly with importers to develop such programs. Customs rewards importers that use compliance programs because these programs enable Customs to perform its duties more efficiently.

Traditionally, compliance programs have emphasized commercial issues, such as correct tariff classifications, valuations, marking of goods, record keeping, etc. However, now compliance programs have taken on a new meaning in terms of a partnership with Customs in insuring the security of merchandise in the warehouse, in transportation, and in fighting terrorism. I have helped many companies write compliance handbooks. Recently, I began sending them an insert emphasizing the issues that are now on the forefront of Customs lists. Customs checks compliance through various types of audits. Previously these were known as "CAT," which is an acronym for "compliance assessment teams." A CAT would visit selected importers and conduct compliance assessment reviews, resulting in penalties for those found in non-compliance.

More recently, Customs developed a program known as "focused assessment," which is a type of compliance audit based on risk management principals. "Focused assessment" was developed before September Eleventh, but is now being modified to include audits of security compliance procedures as well as commercial issues such as classification, valuation, marking, and record keeping. The first part of focused assessment is to evaluate a company's internal controls over customs operations. As long as Customs is convinced that internal controls are adequate, companies that have compliance programs with a "chain of command" responsible for customs issues as well as checks and balances in place to insure customs compliance will not receive full scale audits. Companies that do not have compliance programs will be subject to assessment compliance testing, which is a form of audit that could involve repeated Customs visits over the course of a year or longer.

One of the cornerstones of this new emphasis on cooperation and compliance of the trade community in the area of security is the Customs-Trade Partnership Against Terrorism or C-TPAT program.⁹ The purpose of the program is to develop industry-wide security for countering terrorism. Standards are much like ISO 9000 programs for quality production. This program is still new and evolving, but some of its basic concepts are described below.

First, the C-TPAT program involves increased security at the plant and loading dock. Customs inspects goods only when they enter. However,

9. See generally *Customs-Trade Partnership against Terrorism (C-TPAT)*, at http://www.customs.ustreas.gov/xp/cgov/import/commercial_enforcement/ctpat/.

goods often are vulnerable to tampering when they are in the loading dock or at the plant. Among other steps, C-TPAT recommends increased use of cameras, better background checks of employees, more security guards, and use of fences and security procedures for identifying visitors.

Goods are also vulnerable during transportation, because explosives or parts of weapons can be added to shipments. In the past, this has been quite common with drugs. For example, trucks carrying large amount of goods from Mexico that enter through the ports of Laredo and El Paso became prime targets for drug smugglers to introduce contraband into the trucks in the tires, frames, inside packing, etc. I recently had a case involving a U.S. client with a plant in Juarez, Mexico, whose truck was stopped and seized at the Customs inspection station because dogs detected drugs. Customs found nine million dollars worth of marijuana hidden between boxes of legitimate goods. My client was shocked, its truck and goods were confiscated by Customs. We undertook a thorough review and discovered that the truck had taken four hours to go from the plant to the border, which is typically a forty-five minute trip. The driver, who worked for an outside contractor, had stopped to allow the contraband to be added to the truck. My client, although not implicated in any crime, had not even sealed the truck. As part of its effort to avoid a penalty from Customs, my client agreed to implement a rigid compliance program. Part of its compliance program involves keeping a careful log of the times trucks arrive and leave the plant, and remaining in constant radio contact with the dispatcher so the location of trucks can be determined at any time so that suspicious delays can be spotted immediately and customs notified.

Although the following example involved drug smuggling, terrorists might use the same methods to introduce explosives or weapons of mass destruction into trucks. Customs cannot inspect every truck, so it is looking to work with the trade community to increase enforcement. Among the measures discussed in the C-TPAT program are methods of sealing trailers and crates, including high-tech methods with electronic seals that emit a radio signal when opened. Trucks and containers can also be tracked through global positioning satellites (GPS). However, these high-tech measures are expensive, so Customs is recommending measures that are less difficult to implement such as employee background checks and photo identification cards. In the example above, my client could not have discovered whether its employees had a criminal record, because it could not have obtained this information from the Mexican government. Access to information is changing and there are higher expectations for U.S. companies with plants overseas and more cooperation is expected from the foreign governments involved.

The C-TPAT group is the next generation of existing groups such as the Business Anti-Smuggling Coalition, known as BASC.¹⁰ BASC has

10. See generally *Business Anti-Smuggling Coalition (BASC)*, at http://www.customs.gov/xp/cgov/import/commercial_enforcement/international_programs/partnerships/basc.xml.

existed for a number of years, and its purpose is to help businesses work with Customs to develop better ways of detecting and preventing smuggling of drugs and contraband. BASC still exists but the C-TPAT group has taken a much higher priority.

Customs uses a carrot-and-stick approach to get companies to participate in the C-TPAT program. Companies participating in the program are assured expedited processing, priority service, advance notice of Customs compliance and enforcement exams, dedicated commercial “fast-lanes” for approved and active participants, less intrusive inspections to avoid delays in opening and repacking crates and containers, a designated Customs liaison, and assistance in securing cargo and conveyances against the threat of terrorism. In contrast, companies that do not want to participate will be subject to designation as “unknown category,” a higher scrutiny of cargo and conveyance, increased reviews and audits, added examinations, increased “requests for information,” and longer processing times. Thus, although C-TPAT is a voluntary program—as are all Customs compliance programs—it is clear that the rewards of participation are significant and the consequences of non-participation are costly.

Customs is also looking forward to additional help from customs brokers and freight forwarders, including verifying physical quantities of goods and more accurate invoice descriptions that make verification of a shipment’s contents easier. Customs is hoping to use brokers and freight forwarders as an early warning system. If the country of the goods’ origin does not square with the type of goods involved (e.g., bananas from Iceland), the freight forwarder or broker is expected to alert Customs. Forwarders and brokers are also expected to alert Customs when customers display undue concern about Customs inspections or change delivery addresses. For example, if for the past three years a company has shipped two containers a week from Sri Lanka to San Francisco, and this week an additional container was booked and two days prior to sailing the destination of one container is changed, then Customs might consider this a “red alert” situation because of the increase in the container count and the change of destination. In this situation, the broker or freight forwarder would have a duty to report the information to Customs.

Although everyone would agree that segments of the trade community should cooperate by reporting suspicious information to Customs, this may create an adversarial relationship between the importer and exporter and customs broker and freight forwarder. The reality of a post-September Eleventh trade environment is that there may be less trust and a more distant relationship between the shipper, the forwarder, the customs broker, accountants and consulting firms, and the importer than there has been in the past. Fortunately, attorney-client privilege still protects importers’ communications and documents with their customs attorney.

Customs is also placing more emphasis on importers’ knowledge of their customers and vendors. One large importer, Target Stores, uses an

“Approved for Purchase”¹¹ (AFP) program where it collects information from potential suppliers such as factory size, capacities, number of employees and the names and addresses of the facilities they might subcontract with, including the names of other principals and owners of each factory. Target validates this information during compliance inspections. Although this process may not be feasible for smaller companies, it is an indication of the lengths that some companies are willing to go in order to ensure the integrity of their suppliers, and thus the shipments and goods. Customs might come to expect similar standards in the years to come.

As part of its security efforts, Customs has established a program known as “Operation Shield America.”¹² Under this program, Customs urges private firms to inform Customs if they are approached for suspicious purchases that might assist in the creation of weapons of mass destruction.

Customs also wishes to minimize the security risks flowing from the availability of information about the destination and means of transit for shipments. Currently, the amount of paper created in connection with international shipments is immense. Bills of lading, commercial invoices, and other documents, which provide information about the shipment and means of carriage, are available to third parties. There are multiple copies of many of these forms and the sheer volume of critical shipment information that is distributed to third parties often compromises their security. Customs and other agencies are studying the security implications of the availability of these documents to third parties, in attempts to reduce the distribution of shipping documents. Customs is considering replacing the paper forms with secure electronic data transmission or encoded chips that are installed in the cargo and container.

II. U.S. Coast Guard and the Movement of Goods by Water

The Coast Guard has traditionally been a stepchild of the law enforcement agencies. Ninety-five percent of all foreign trade moves by vessels and ships, which are growing larger. Between 1960–70, the average container ship was about 1,700 twenty foot container equivalent units (TEU). By 2000, the average container ship had grown to 4,848 TEUs. Thus, the average ship coming into port has almost four times as much cargo as it did thirty or forty years ago. In 2000, sixty-two percent of new ship orders for container ships were so-called mega-ships with capacity of 5,000 TEUs or above.

At the same time, Coast Guard manpower is about 35,000, which is approximately the same size as the size of the New York City police force. Its fleet is the third oldest among the forty-one nations that maintain a

11. See generally Target Corporation, *General Information*, http://www.targetcorp.com/targetcorp_group/about/vendor.jhtml.

12. See generally Press Release, U.S. Customs Service, U.S. Customs Launches “Operation Shield America”: New Initiative Seeks to Prevent Terrorist Organizations From Acquiring Sensitive U.S. Technology, Weapons, and Equipment, at <http://www.customs.gov/hot-new/pressrel/2001/1210-01.htm>.

coast guard. The Coast Guard is now faced with new challenges. Its priorities have shifted from search, rescue, and drug interdiction to anti-terrorism activities. To meet this challenge, it has called-up 8,000 reservists, borrowed patrol boats from the Navy, and increased the deployment time of its vessels at sea.

These changes have practical effects for commercial shippers. The time for advance notice to the Coast Guard for arrival of vessels has been increased from twenty-four hours to ninety-six hours. Further, a ship may not enter the harbor until it is inspected and its crew questioned. The Coast Guard is boarding more vessels and is escorting ships with potentially dangerous cargo.

Like Customs, the Coast Guard is working with the trade community. It has formed "Harbor Safety Committees" to work out plans for harbor safety. The main security concern is large vessels—such as cruise liners, large petroleum crude carriers, and product carriers—that can be potential targets or weapons. Small boats can also be used to carry explosives, as was the case of the attack on the U.S.S. Cole in Yemen.¹³ The Coast Guard has a huge task to carry out with limited resources. There is no doubt that the trade community will bear some of the cost of the Coast Guard's expanded duties in the form of higher port fees and longer transit times. The costs to shipping companies will invariably be passed on to the importers.

Seaport Security has become an important part of homeland defense. Recently, the Senate passed S.1214, the Port and Maritime Security Act of 2001¹⁴ that covers such areas as local port security committees, maritime facility security plans, employment investigations, mandatory advanced electronic information for cargo and passengers arriving by vessel to name a few. Its counterpart in the House of Representatives is H.R.3437,¹⁵ which was introduced by Congressman Clay Shaw.

III. Regulation of Trucking

Like ships, trucks are both potential targets and weapons. As weapons, trucks can be used to attack buildings, as in the Oklahoma City bombing.¹⁶ Trucks containing weapons or nuclear materials become potential targets of hijacking. In conjunction with Section 1012 of the Patriot Act,¹⁷ the Department of Transportation (DOT) is in the process of developing a rulemaking procedure to prohibit states from issuing or renewing commercial drivers' licenses with an endorsement to operate a motor vehicle trans-

13. See, e.g., *Days of Rage in the Mideast*, N.Y. TIMES, Oct. 13, 2000 at A2.

14. Port and Maritime Security Act of 2001, S. 1214, 107th Cong. (2001).

15. Port and Maritime Security Act of 2001, H.R. 3437, 107th Cong. (2001).

16. See, e.g., Joe Haberstroh, et al., *Killer Blast in Midwest; Many Children Among the Dead in Explosion at Federal Building*, NEWSDAY, April 20, 1995 at 3; CNN report at www.cnn.com/US/OKC/index.html.

17. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

porting hazardous materials until the Department of Justice has conducted a background check on the applicant. Currently, there is no DOT requirement for employment or background checks, most states require only a written exam to obtain a commercial drivers license. Other efforts are being taken to prevent the hijacking or use of runaway trucks as weapons. These efforts involve the employment of various technologies such as brakes that can be remotely activated and GPS.

IV. The United States Trade Representative's Office—Countering Terror with Trade

The U.S. Trade Representative is part of the Executive Office of the President and is the chief official that conducts trade negotiations and represents the United States in the World Trade Organization in Geneva. Shortly after September Eleventh, the current U.S. Trade Representative, Robert Zoellick, indicated that economic growth through trade is the best weapon against terrorism. Zoellick focused on Congress as needing to complete action on the U.S. free trade agreement with Jordan—the first such commitment with a country in the Middle East, excluding Israel.¹⁸ He also noted that Congress needs to complete authorization for a trade accord with Vietnam, a former foe that in Zoellick's words is "recognizing that its future depends on markets, not Marxism." Zoellick also called on Congress to reauthorize critical expired trade preference legislation for Andean countries.

Most importantly, Representative Zoellick called on Congress to enact the so-called Trade Promotion Authority that he feels that America needs to negotiate new trade agreements such as the Free Trade Agreement for the Americas. The Trade Promotion Authority is a new euphemism for what, under the Clinton Administration was called "fast-track" and voted down by Congress. Recently, administration trade officials again zealously sought fast-track or Trade Promotion Authority to authorize them to negotiate trade agreements and restrict the power of Congress to change them afterwards, limiting Congress to a yes or no vote. The administration officials believe that fast-track authority is needed because other countries will not negotiate seriously if the United States cannot promise that a proposed agreement will not be changed.

However, some members of Congress see giving the administration these broad negotiating powers as a serious derogation of their Constitutional powers to approve treaties and of their oversight powers over Executive branch trade policies. Congress is in effect writing a blank check to the Administration by giving them the power to negotiate agreements that Congress will not change. These concerns are sometimes addressed through side agreements as was recently accomplished when the House approved Trade Promotion Authority after the President made certain com-

18. Since the date of this lecture, a Free Trade Agreement Act between the U.S. and Morocco has also been proposed. The U.S.-Jordan Free Trade Area Implementation Act, 107 Pub. L. 43, 115 Stat. 243 (2001).

mitments to congressmen from textile producing states that certain textile products would not be subject to tariff preferences.¹⁹

U.S. Trade Representative Zoellick believes building a coalition that will help overcome poverty and other conditions that lead to alienation and despair are as important to fighting terrorism as is placing more inspectors with guns at border crossings. According to Zoellick, the United States is in danger of losing its moral leadership in world trade and economic development. Zoellick points out that the United States is a party to only two of one-hundred thirty multilateral free-trade agreements and only a party to one of thirty free trade agreements that exist in the Western Hemisphere.

Conclusion

The events of September Eleventh have permanently changed the international trade environment. In the future there will be more of a burden on importers and shippers to develop security plans to ensure the integrity of their goods and shipments. Compliance programs will be emphasized and those participating will be rewarded. Those not participating will find it more difficult and time-consuming to import merchandise. Customs will conduct more risk-based focused assessments to determine the extent of compliance by importers, and those that are not in compliance will be penalized. Companies should be preparing compliance programs including both commercial compliance issues and security related issues. They also should develop compliance handbooks that include security procedures and conduct self-audits to determine their compliance levels and take corrective action before Customs comes calling.

From a policy viewpoint, it is unclear whether internationalist views of people like U.S. Trade Representative Zoellick will prevail over narrower, more xenophobic and insular views promoted by other government agencies. Although it is unclear which viewpoint is correct, what is clear is that world trade after September Eleventh will be much different than it has been in the past.

19. The Trade Promotion Legislation was passed by Congress on August 1, 2002. The Trade Act of 2002, 107 Pub. L. 210, 116 Stat. 933 (2002).