

# U.S. Trade Policy and The Doha Round Negotiations

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## Abstract

The U.S. Trade Policy 2010 (TP) has a target of doubling U.S. exports by 2014. On average, a twenty percent increase in exports per year is required to achieve the target of the TP. In 1960, the total value of U.S. exports was \$25.9 billion. Since then, U.S. exports have increased tremendously. Since 2000, it has surpassed the trillion dollar level. In 2008, it reached 1.8 trillion and came down slightly, to 1.6 trillion, in 2009. During the 2000-2008 period, U.S. exports nearly doubled. In its history, U.S. exports have never doubled in a five-year period. It does not mean that it is unachievable. Perhaps, had there been a robust economic recovery at the domestic level and a liberal trading environment across the globe, it would have been possible to meet the target. In addition to a sluggish economic recovery following the 2008-2010 domestic recession, the United States is also facing growing protectionist pressure across the globe. Thus, the United States faces immense pressures both domestically and internationally. At the international level, significant obstacles lie in the path of successful completion of the Doha Round Trade Negotiations under the World Trade Organization (WTO), which could provide an impressive enabling trading environment across the globe. But, the Doha Round Negotiations are moving in an intractably negative direction especially fraught with the inability to manage diametric interests among the major G7 players (Australia, Brazil, Canada, China, EU, India, Japan, and the United States). Against this background, this paper analyzes the focuses and approaches of U.S. trade policies in regard to the Doha Round Trade Negotiations under the WTO, launched in 2001. Since then, the Doha Round is ongoing with suspensions and resumptions. So far, tangible achievements are in the offing. In this light, this paper explicates how the domestic policies of the United States have impacted the international trade negotiations in the Doha Round. It also assesses the importance of the United States for the success of Doha Round Negotiations.

**Key Words:** WTO, Doha Round, Trade Policy, United States, Negotiations, International Law

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## 1. Background: The U.S. Trade Policy

### 1.1 Pre-Election Trade Policy Vision

An election campaign is not always the perfect yardstick to measure future policies, especially trade policies. Nevertheless, an overview of the trade policy debate during the last U.S. presidential election campaign in 2008, offers a heuristic perspective. Democratic candidates, Senators Barack Obama and Hillary Clinton, blamed the Bush administration's trade liberalization policy for being a major cause of the doom and gloom of the U.S. economy, while Republican candidate Senator John McCain argued for free-trade principles.<sup>1</sup> Both Obama and Clinton strongly expressed their position to opt out of NAFTA, if core labor and environmental provisions were not incorporated into the NAFTA regime.<sup>2</sup> Senator Obama also strongly argued for voting against the Central American Free Trade Agreement (CAFTA) and said he wanted to add enforceable labor standard provisions in the World Trade Organization (WTO).<sup>3</sup>

On the whole, assessing Senator Obama's position on trade policies, The Washington Post pointed out that Senator Obama linked trade agreements to millions of job losses and subprime mortgage problems in the United States sharing a new anti-trade skepticism.<sup>4</sup> Not surprisingly, Sallie James, of the libertarian oriented Cato Institute, is critical of this position, "Obama's campaign literature reveals a deep distrust of the market in general and unrestricted trade in particular. While his statement on trade opens with a promising line that 'trade with foreign nations should strengthen the American economy and create more American jobs,' he then goes on to tout his willingness to get tough with trade partners and to use trade policy as a tool for advancing labor and environmental standards, including through amending NAFTA so that it would work for American workers. He emphasized the importance of enforcing trade agreements, and appealed to the WTO to stop countries (presumably excluding the United

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1. See Sallie James, *Race to the Bottom? The Presidential Candidates' Positions on Trade*, CATO TRADE POLICY STUDIES, at 1 (April 15, 2008).

2. *Id.* at 3; see also Democratic Candidate debate in Cleveland, Ohio, February 26, 2008, available at <<http://www.nytimes.com/2008/02/26/us/politics/26text-debate.html>>.

3. *Id.* at 4.

4. *Id.* at 5; see also "Trading Down; On Economics, Mr. Obama Goes Populist," The Washington Post, February 17, 2008, available at <<http://www.washingtonpost.com/wp-dyn/content/article/2008/02/16/AR2008021602080.html>>.

States) from continuing unfair subsidies to foreign exports.”<sup>5</sup>

The Trade Policy 2010 (TP) is one of the most important formal trade policies of the Obama administration. How far it has departed from the Bush era trade policy, and what trade regime it has envisioned, both at the domestic and global levels, are some of the important issues for analysis. Before beginning such an analysis however, it would be worthwhile to look at President Obama’s trade policy position during his senatorial term. Out of sixteen occasions, he had cast thirteen major votes on trade policy issues in the Senate in support of trade barriers and against reducing trade subsidies.<sup>6</sup> In short, Obama’s role in the U.S. Senate and his ideas expressed during the U.S. Presidential election campaign, present President Barack Obama as one of the skeptical figures in liberalizing trade.

## **1.2 Obama Administration Trade Policies**

Barak Obama became the 44<sup>th</sup> President of the United States of America in a time of extreme economic difficulty that weighs heavily upon U.S. trade policy. Within a month of the start of his presidency, Barak Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA).<sup>7</sup> The ARRA, among other things introduced a \$787 billion economic stimulus, and a “buy American” products policy. Section 1605 of the ARRA provided that none of the funds appropriated or otherwise made available by the Act could be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project were produced in the United States. This “buy American products” or “buy America”<sup>8</sup> provision is contrary to the national treatment principle of the WTO.<sup>9</sup>

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5. *Id.*

6. *Id.* at 4.

7. *See* American Recovery and Reinvestment Act of 2009, *available at* <[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h1enr.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf)>.

8. *See* The U.S. Trade Policy 2011, *available at* <[http://www.ustr.gov/webfm\\_send/2587](http://www.ustr.gov/webfm_send/2587)>. It explains the outcomes of the “buy America” policy in the following words, “U.S. manufacturers sold more “Made in America” goods in markets from Indonesia to Israel; our farmers resumed sales of poultry in Russia and pork in China; and our companies and workers experienced significant growth in services trade.”

9. *See* Art. III.2 of the General Agreement on Tariffs and Trade, 1947/1994. Art. III.2 provides that, “The product of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, or use. . . .” *See also* John

However, following the U.S. policy, many stimulus packages around the world, including those in China,<sup>10</sup> adopted similar measures. These measures have a chilling effect on the international trading regime. Although, WTO Director-General Pascal Lamy claimed that these measures were compatible with the WTO rules.<sup>11</sup> Despite Lamy's attempts to justify "buy domestic products" measures, since the *Canadian Investment case*<sup>12</sup> it is clearly established that trade policies regarding "buy domestic products" are inconsistent with the national treatment rule.

In February 2009, the Office of the United States Trade Representative (USTR) brought out the U.S. Trade Policy. It was the first Trade Policy (TP) of U.S. President Barack Obama.<sup>13</sup> The TP 2009 is primarily centered on the idea of reorienting the

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Murphy, *Is Buy America Good for US Economy?* THE ATLANTA JOURNAL-CONSTITUTION (March 24, 2009). Murphy states that, "The debate showed how easy it is to demagogue the "buy American" issue. In the end, if we refuse to buy foreign-made goods, our trading partners will refuse to buy from us. Since the United States is the world's largest exporter, we have more to lose from a trade war than anyone." ; WTO Appellate Body, *Korea - Taxes on Alcoholic Beverages*, WT/DS75/AB/R (Jan. 1999); WTO Appellate Body, *Canada - Certain Measures Concerning Periodicals*, WT/DS31/AB/R (June 1997); WTO Appellate Body, *EC - Regime for the Importation, Sale, and Distribution of Bananas*, WT/DS27/AB/R (Sept. 1997); WTO Appellate Body, *Japan - Alcoholic Beverages*, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R (Oct. 1996); WTO Appellate Body, *US - Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/2 (April 1996); GATT Panel, *Canada - Certain Measures Concerning Periodicals*, L/5504-30S/140 (Feb. 1984).

10. See *Official Rules Out "Buy China" Policy*, SOUTH CHINA MORNING POST, Feb. 10, 2009; cited in C. L. Lim and Jiang Yu Wang, *China and the Doha Development Agenda*, 44 JOURNAL OF WORLD TRADE 1311, 1309-1331 (2010).

11. See Pascal Lamy, *Current Challenges for Global Trade*, Lecture Delivered at Erasmus University, the Netherlands, May 18, 2009, available at <[http://www.wto.org/english/news\\_e/sppl\\_e/sppl125\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl125_e.htm)>. Lamy says, we are witnessing increased instances of countries raising their tariffs on certain imports, instituting new non-tariff measures and initiating anti-dumping actions. We are also seeing bail-out packages and other rescue measures being adopted to help specific industries. The rationale behind these measures is to favor domestic goods and service suppliers at the expense of imports. Many of these measures fall within WTO rules and so far they have not triggered a tit-for-tat chain retaliation. But it is clear that these measures have a chilling effect on trade flows in general. See also American Recovery and Reinvestment Act 2009, Title XVI, Sec. 1605, available at <<http://www.bsa.ca.gov/pdfs/stimulus/arra.pdf>>.

12. See GATT Panel, *Canada - Certain Measures Concerning Periodicals*, L/5504-30S/140 (Feb. 1984). The United States had complained and challenged that the Canadian Foreign Investment Review Act had given preferences to those investors who would make a commitment to purchase Canadian goods over imported goods and the Act had also required meeting certain export performance requirements. The GATT Panel found that the "buy Canadian goods" policy was inconsistent with the GATT Article III, which ensures equal treatment of domestic and foreign nationals and products at the domestic market.

13. See USTR, 2009 Trade Policy Agenda and 2008 Annual Report of the President of the United States on the Trade Agreements Program, available at <<http://www.ustr.gov/about-us/press-office/reports-and-publications/2009/2009-trade-policy-agenda-and-2008-annual-report>>

American economy to meet the challenges of global competitiveness.<sup>14</sup> To this end, it is fundamentally concerned with the economic consequences for workers.<sup>15</sup> It has clearly expressed its reluctance to eliminate barriers to trade. It reasons that liberalizing trade would be a challenge in the face of serious turmoil in the U.S. economy and financial markets. For the TP 2009, instead of liberalizing trade, improvement in trade adjustment assistance (TAA) programs would help the economy to recover.<sup>16</sup> On top of that, the Obama administration expressed its willingness to use trade negotiating authority with proper constraints.<sup>17</sup>

On a positive note, the TP 2009 acknowledged that in order to promote economic stability in the United States, adherence to the rules based international trading system was indispensable. But, at the same time, the administration introduced new concepts that were more U.S. centric than facilitating the rules based international trading system.<sup>18</sup> For example, it introduced a policy to help small and medium-sized U.S. firms respond to competitive imports from across the globe and help them to become effective exporters.<sup>19</sup> TP 2009 observes that trade would be more beneficial for the world, and fairer for everyone, if it would respect the basic rights of workers. For that reason, the TP 2009 aims to incorporate labor provisions in trade agreements.<sup>20</sup> Along with labor issues, TP 2009 also prefers to use environmental concerns as measures to deter trade.<sup>21</sup> It has clearly concluded that simply lowering and eliminating tariffs would not produce a successful trade policy for the United States.<sup>22</sup> These policy priorities indicate that the Obama administration has

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14. *Id.* at 1.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 2.

19. *Id.*

20. *Id.*

21. *Id.* The TP 2009 mentions that, "Also, as we tackle the issues of equity, we need to ask how trade policy can respond to mounting global environmental challenges. These range from climate change to dangerously depleted resources such as fisheries. We should aim to make trade a part of the tool kit of solutions for addressing international environmental challenges."

22. *Id.* The TP 2009 states that, "The clear implication of these global challenges is that simply lowering tariffs and eliminating tariffs will not produce a successful trade policy. Managing our nation's trade policy and engagement in the world economy has become an ever more complex challenge. Therefore, we must bring the same vigor and innovation to making trade policies more transparent and accountable that we are now applying to the process of developing and implementing our domestic economic policies."

chosen a sort of modern day mercantilism with a recalcitrant role in the Doha Round Negotiations.

The TP 2009 explains fair trade in its own terms. For it, the idea of fair trade consists of three standards or trade measures: social, environmental, and political accountability.<sup>23</sup> The social measures are related to labor standards, specifically to the protection of American workers. Among others, the measures relating to political accountability are related to the idea of “behind the border” or in other words, to negotiate for market access for the U.S. firms on the agenda of transparency, trade facilitation, due process, government procurement, fair treatment for U.S. service sectors, and the protection of intellectual property rights in partners trade practice.<sup>24</sup>

## 2. Doha Round Negotiations

### 1.1 Origin of the Doha Round

The General Agreement on Tariffs and Trade (GATT)<sup>25</sup> was one of the key institutions established following the end of the Second World War. Though, for almost fifty years, it was a provisional body. The GATT was largely guided by the idea of removing barriers to trade, opening up markets, facilitating market access, and promoting international trade for growth and development. To realize these goals, the GATT concluded eight different rounds of trade negotiations that lasted for years. One of the longest trade negotiation rounds of the GATT was the

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23. *Id.* at 5.

24. *Id.* at 4.

25. See William A. Kerr, *GATT-1947: A Living Legacy Fostering the Liberalization of International Trade*, 11 THE ESTEY CENTER JOURNAL OF INTERNATIONAL LAW AND TRADE POLICY 1-11 (2010); see also DOUGLAS A. IRWIN & ET. AL., THE GENESIS OF THE GATT (Cambridge University Press 2007); SURENDRA BHANDARI, WORLD TRADE ORGANIZATION AND DEVELOPING COUNTRIES 1-14 (Deep & Deep Publication, New Delhi, 1998, 2002); GATT, The Birth of the GATT, GATT/40/3 (Geneva, 1987); ROBERT E. HUDEC, THE GATT LEGAL SYSTEM AND WORLD TRADE DIPLOMACY (New York, Praeger Publishers 1975); Gerard Curzon & Victoria Curzon, *GATT: Traders Club*, in Robert W. Cox & Harold K. Jacobson (eds.), THE ANATOMY OF INFLUENCE 298-333 (Yale University Press, 1973); George Bronz, *An International Trade Organization the Second Attempt*, 69 HARVARD LAW REVIEW 440-482 (1956); Leicester Webb, *The Future of International Trade*, 5 WORLD POLITICS 423-441 (1953); CLAIR WILCOX, A CHARTER FOR WORLD TRADE (NEW YORK, THE MACMILLAN COMPANY 1949); Jacob Viner, *Conflicts of Principle in Drafting a Trade Charter*, 25 FOREIGN AFFAIRS 612-628 (1947); Herbert Feis, *The Conflict Over Trade Ideologies*, 25 FOREIGN AFFAIRS 217-228 (1947).



Uruguay Round (UR) that lasted for eight years from 1986-1994.<sup>26</sup> The UR established the World Trade Organization (WTO), which came into existence succeeding the GATT on 1 January 1995.<sup>27</sup> The GATT used to cover only trade in goods, the WTO in addition to trade in goods covers trade in services, and trade in intellectual property rights, as well.

The birth of the Doha Round<sup>28</sup> is associated with the UR. Despite eight years of negotiations, the UR was concluded prematurely. On the one hand, it was fraught with conflict between developing and developed countries on a number of issues, and on the other hand it was specifically caught up in the conflict between the United States and the EU. Before the trade negotiation authority of the U.S. President would expire, the negotiators had agreed to conclude the WTO Agreements. As a result, the UR left out a number of issues in the form of built-in-agenda to be settled later.<sup>29</sup> Thus, a trade round was needed under the WTO. The

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26. See Bernard Hoekman, *Uruguay Round*, in THE PRINCETON ENCYCLOPEDIA OF THE WORLD ECONOMY, 1154-1160 (Princeton, Princeton University Press, 2009); see also JAGDISH BHAGWATI & MATHIAS HIRSH, THE URUGUAY ROUND AND BEYOND: ESSAYS IN HONOR OF ARTHUR DUNKEL (The University of Michigan Press, 1999); ERNEST H. PREEG, TRADERS IN A BRAVE NEW WORLD: THE URUGUAY ROUND AND THE FUTURE OF INTERNATIONAL TRADING SYSTEM (The University of Chicago Press, 1995); Trien Nguyen, Carlo Perroni, & Randall Wigle, *An Evolution of the Draft Final Act of the Uruguay Round*, 103 THE ECONOMIC JOURNAL 1540-1549 (1993); Bernard Hoekman, *New Issues in the Uruguay Round and Beyond*, 103 THE ECONOMIC JOURNAL 1528-1539 (1993); The Negotiations Committee, Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, MTN.TNC/W/35/Rev.1 (Dec. 1990); Arthur Dunkel, *Uruguay Round Challenges*, Address in Annual Conference of European and American Journalists, Annapolis USA, May 18, 1989, GATT/1455 (May 1989).

27. See PERTOS C. MAVRODIS & ET. AL., THE LAW OF THE WORLD TRADE ORGANIZATION (WTO), (West, 2010); see also JOHN H. BARTON & ET. AL., THE EVOLUTION OF THE TRADE REGIME: POLITICS, LAW, AND ECONOMICS OF THE GATT AND THE WTO (Princeton University Press, 2008); JOHN H. JACKSON, THE JURISPRUDENCE OF GATT AND THE WTO: INSIGHTS ON TREATY LAW AND ECONOMIC RELATIONS (Cambridge University Press, 2007); SURENDRA BHANDARI, THE WTO AND THE DEVELOPING COUNTRIES: FROM DIPLOMACY TO RULES BASED SYSTEM (New Delhi, Deep & Deep Publication, 1998/2004).

28. See WTO, Doha Declarations, available at <[http://www.wto.org/english/res\\_e/booksp\\_e/ddec\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/ddec_e.pdf)>; see also Antonio Bouef, *Eight Years of Doha Trade Talks: Where Do We Stand?* 11 THE ESTEY CENTER JOURNAL OF INTERNATIONAL LAW AND TRADE POLICY 349-370 (2010); Surendra Bhandari, *Making Rules in the WTO: Lessons from Article 6 of the TRIPS Agreement* 11 THE ESTEY CENTER JOURNAL OF INTERNATIONAL LAW AND TRADE POLICY 67-77 (2010); Dillip K. Das, *The Doha Round of Multilateral Trade Negotiations and the Developing Economies*, 6 THE ESTEY CENTER JOURNAL OF INTERNATIONAL LAW AND TRADE POLICY 115-147 (2005).

29. See MIKE MOORE, A WORLD WITHOUT WALLS: FREEDOM, DEVELOPMENT, FREE TRADE AND GLOBAL GOVERNANCE (CAMBRIDGE UNIVERSITY PRESS, 2007). Moore says the UR was artificially

third ministerial conference of the WTO in Seattle was supposed to launch a negotiation round. Due to a widespread feeling of resentment and backlash on a number of issues, both from developed and developing countries, further supported by vociferous civil society organizations across the globe, the Seattle Ministerial Conference was doomed to fail.

Finally, the fourth ministerial conference of the WTO held in Doha, Qatar, in November 2001, launched the new negotiations round. It originally covered twenty-one different issues, known as the Doha Development Agenda (DDA) for negotiations. With the Doha Round, the WTO has been given an opportunity to prove that it is the efficient negotiation forum or the negotiating machine<sup>30</sup> to bring international trade issues within the premise of the rule of law. However, the state of the Doha Round Negotiations is indicating a situation completely opposite.

The Doha Round Negotiations have been running for ten years and are not yet concluded. A number of times, it has missed deadlines. Originally, it was planned to conclude by 1 January 2005.<sup>31</sup> It could not meet the deadline. Then, another deadline was set for the end of 2006.<sup>32</sup> For a second time, it missed the target. The third deadline was set for July 2008. Again, it failed to meet the deadline. For a fourth time, the deadline was put in for the end of 2010. The

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concluded, leaving out a number of issues to be resolved later—the so-called implementation issues. That Round was finished because U.S. legislation to facilitate the negotiations was expiring, ministers were exhausted, other options were being pursued, and because then-DG Peter Sutherland's enormous political skills were able to bring the deal together. *See also* Philip H. Trezise, *The Uruguay Round: High Hopes, Hard Realities, and Unfinished Business*, CATO REVIEW OF BUSINESS & GOVERNMENT, available at <<http://www.cato.org/pubs/regulation/regv14n1/v14n1-3.pdf>>.

30. *See* WTO, UNDERSTANDING THE WTO 9 (WTO, Geneva, 2010) also available at <[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/understanding\\_e.pdf](http://www.wto.org/english/thewto_e/whatis_e/tif_e/understanding_e.pdf)>; *see also* WTO, The Future of the WTO: Report by the Consultative Board to the Director-General Supachai Panitchpakdi, para. 269, (WTO, Geneva, 2004) also available at <[http://www.wto.org/english/thewto\\_e/10anniv\\_e/future\\_wto\\_e.pdf](http://www.wto.org/english/thewto_e/10anniv_e/future_wto_e.pdf)>.

31. *See* WTO, Doha Ministerial Declaration, WT/MIN(01)/DEC/1 (20 Nov. 2001), available at <[http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm#organization](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#organization)>. Paragraph 45 of the Declaration provides that "The negotiations to be pursued under the terms of this declaration shall be concluded not later than 1 January 2005. . . ."

32. *See* WTO, Hong-Kong Ministerial Declaration, WT/MIN(05)/DEC, (22 Dec. 2005), available at <[http://www.wto.org/english/thewto\\_e/minist\\_e/min05\\_e/final\\_text\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm)>. Para 1 of the Declaration provides that, "We reaffirm the Declarations and Decisions we adopted at Doha, as well as the Decision adopted by the General Council on 1 August 2004, and our full commitment to give effect to them. We renew our resolve to complete the Doha Work Program fully and to conclude the negotiations launched at Doha successfully in 2006."



negotiators could not make a deal by this deadline either. In between, the Doha Round Negotiations were suspended,<sup>33</sup> and followed by resumptions.<sup>34</sup> A number of times, the WTO Director General Pascal Lamy stressed that the Doha Round was close to striking a deal. It never took place. Rather, the negotiations are ongoing with a hope of conclusion. Recently, Pascal Lamy has set another deadline for December 2011.<sup>35</sup> Yet, it is not known when the Doha Round will be concluded. Aborting the Doha Round is not in the interest of the WTO Members, nor is its completion to liberalize trade further undertaken seriously. In short, it is widely felt that the Doha Round has been a victim of the indecision, stubbornness, and clash of the interests of the G7 countries (Australia, Brazil, China, EU, India, Japan, and the USA).

## **1.2 Coverage of the Doha Round / Doha Round Issues**

The Doha Round covers twenty-one agenda items.<sup>36</sup> Immediately after the conclusion of the fourth ministerial conference of the WTO, some of the developing countries, especially Brazil and India, expressed their dissatisfaction with some of the agenda items. Generally, they expressed their discomfort with the Singapore

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33. See WTO, Talks Suspended: Today there are only Losers (24 July 2006), *available at* <[http://www.wto.org/english/news\\_e/news06\\_e/mod06\\_summary\\_24july\\_e.htm](http://www.wto.org/english/news_e/news06_e/mod06_summary_24july_e.htm)>. Pascal Lamy the Director General of the WTO suspended the Doha Round Negotiations giving a reason that the gaps between the key players remained too wide. It was especially followed by inconclusive meeting among Australia, Brazil, the EU, India, Japan, and the U.S.; *see also* WTO, Talks Collapse Despite Progress on a List of Issues (29 July 2008), *available at* <[http://www.wto.org/english/news\\_e/news08\\_e/meet08\\_summary\\_29july\\_e.htm](http://www.wto.org/english/news_e/news08_e/meet08_summary_29july_e.htm)>. Pascal Lamy mentioned that out of a to-do list of 20 topics, 18 had seen positions converge but the gaps could not narrow on the 19<sup>th</sup> - the specific safeguard mechanism for developing countries.

34. See WTO, We Have Fully Resumed the Negotiations Across the Board (7 Feb. 2007), *available at* <[http://www.wto.org/english/news\\_e/news07\\_e/gc\\_dg\\_stat\\_7feb07\\_e.htm](http://www.wto.org/english/news_e/news07_e/gc_dg_stat_7feb07_e.htm)>. While declaring the resumption of the Doha Round, the WTO Director General Pascal Lamy mentioned that the political conditions across the globe were favorable for the conclusion of the negotiations; *see also* WTO, Capture Progress and Continue Work Members Say (30 July 2008), *available at* <[http://www.wto.org/english/news\\_e/news08\\_e/meet08\\_summary\\_30july\\_e.htm](http://www.wto.org/english/news_e/news08_e/meet08_summary_30july_e.htm)>. WTO Members in the Meeting of Trade Negotiations Committee emphasized to preserve the issues settled and continue to work in the Doha Round. Finally, the seventh ministerial conference of the WTO signaled to conclude the Doha Round by the end of 2010.

35. See WTO, Lamy Urges Members to start negotiating to put together a December package (22 July 2011) *available at* <[http://www.wto.org/english/news\\_e/news11\\_e/tnc\\_infstat\\_22jun11\\_e.htm](http://www.wto.org/english/news_e/news11_e/tnc_infstat_22jun11_e.htm)>; *see also* WTO, Members support Lamy's proposed three-speed search for Doha outcome in December, (31 May 2011), *available at* <[http://www.wto.org/english/news\\_e/news11\\_e/tnc\\_infstat\\_31may11\\_e.htm](http://www.wto.org/english/news_e/news11_e/tnc_infstat_31may11_e.htm)>.

36. See the Annex I of this paper.

issues,<sup>37</sup> in particular on the issues of trade and investment, trade and competition policy, and transparency in government procurement that were part of the Doha Round Negotiations.

Amidst the growing dissatisfaction with the Singapore issues covered by the Doha Round, the Cancun Ministerial Conference of the WTO took place in 2003. It directly experienced the tug of war between Brazil, China, and India on the one side, and the United States, EU, and other developed countries on the other. Consequently, the Cancun Ministerial Conference could not issue a ministerial declaration either. Rather, it issued a one-page statement acknowledging that, “Notwithstanding this setback, we reaffirm all our Doha Declarations and Decisions and recommit ourselves to working to implement them fully and faithfully.”<sup>38</sup>

In July 2004, WTO Members removed issues like investment, competition, and transparency in government procurement from the Doha Round Negotiations agenda. In the Seventh Ministerial Meeting held from 30 November to 2 December 2009, WTO Members decided to put the issue of “non-violation complaint” under TRIPS, and tariffs on electronic commerce into a moratorium. Moratoriums under the July Package 2004 and the Seventh Ministerial Conference are different in nature. The July Package has put a moratorium on the three agenda items permanently, at least not to be a part of the Doha Round Negotiations. The Seventh Ministerial Conference has temporarily put a moratorium on the two issues until the next Ministerial Conference in December 2011.

### **3. Approaches of the U.S. Trade Policy towards Doha Round Negotiations**

Once, the Chinese Commerce Minister Chen Deming stated that the mini-ministerial Doha Round talks in July 2008 failed due to the inability of the

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37. See Ichiro Araki & Surendra Bhandari, *Hong Kong Ministerial Conference of the WTO: A Leap Forward to the Doha Development Agenda*, 10 YOKOHAMA NATIONAL UNIVERSITY SOCIAL SCIENCE JOURNAL 617-636 (2006). Four issues incorporated by the Singapore Ministerial Conference of the WTO as part of the WTO negotiation program are known as Singapore Issues. They are: Trade and Investment, Trade and Competition Policy, Trade Facilitation, and Transparency in Government Procurement. See also WTO, Singapore Ministerial Declaration paras. 20-21, WT/MIN(96)/DEC (18 Dec. 1996), available at <[http://www.wto.org/english/thewto\\_e/minist\\_e/min96\\_e/singapore\\_declaration96\\_e.pdf](http://www.wto.org/english/thewto_e/minist_e/min96_e/singapore_declaration96_e.pdf)>.

38. See WTO, Ministerial Statement, adopted 14 September 2003, WT/MIN(03)/20 (23 September 2003).

United States and India to bridge the gap between their positions on special safeguard triggering levels.<sup>39</sup> Susan Schwab, former U.S. Trade Representative and the chief U.S. negotiator in the Doha Round remarked that Brazil, China, India, and South Africa are not interested in opening their markets, instead demanding market opening in the developed countries. For example, India was demanding to shield 90% of its farm products from tariff cuts. Also, countries, both developed and developing, are fearful of the increased imports from China, which is one of the unacknowledged reasons behind Doha's frequent failures. For Susan Schwab, with the disinclination of many developing countries for opening their markets, the Doha Round is doomed.<sup>40</sup>

Statements by Mr. Deming and Ms. Schwab clearly indicate how important a role the G7 (Australia, Brazil, China, EU, India, Japan, and the USA) countries play in the Doha Round Negotiations. Despite the fact, this paper is not analyzing trade policies and approaches of all the G7 countries except by taking some references for a comparison. It is primarily limited to analyzing the trade policy and approaches of the United States towards the Doha Round Negotiations.

Since 1994, the President of the United States hasn't had trade negotiating authority. To start the new trade negotiations round under the WTO, the U.S. President needs authority from the Congress. As a reason to request the trade negotiating authority for the Doha Round, the Trade Policy 2001 of the United States justifies that, ". . . U.S. leadership is essential to reinvigorating the international trading system, including launching a new round of global negotiations, as well as regional and bilateral negotiations. History has shown that expanded trade – imports as well as exports – leads to more prosperous U.S. businesses, more choices of goods and lower prices for consumers, and more opportunities for American farmers and workers leading to higher wages, more jobs and economic growth. Expanding trade brings particular benefits to lower-income Americans who are squeezed both as consumers and taxpayers."<sup>41</sup>

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39. See D. Chen, Statement at the Mini-ministerial Meeting by H. E. Chen Deming, Minister of Commerce, PRC, July 29, 2008; cited in C. L. Lim and Jiang Yu Wang, *China and the Doha Development Agenda*, 44 JOURNAL OF WORLD TRADE 1318, 1309-1331 (2010).

40. See Susan C. Schwab, *After Doha: Why the Negotiations Are Doomed and What We Should Do About It*, 90 FOREIGN AFFAIRS 104-114 (May/June 2011).

41. See Letter from the President to the Congressional Leadership, May 10, 2001, available at <<http://georgewbush-whitehouse.archives.gov/news/releases/2001/05/20010510-5.html>>; see also The President's 2001 International Trade Agenda, May 10, 2001, available at <<http://georgewbush-whitehouse.archives.gov/news/releases/2001/05/20010511.html>>. The Letter provides that, "The trade agenda reflects my strong commitment to open markets around the world for the benefit of American workers, farmers, and businesses. I also am committed to open

Despite the positive approach and leadership role in the Doha Round, during the period of the Bush administration, the Doha Round did not progress much. Rather, it was suspended and resumed a number of times. The Doha Round Negotiations were mainly occupied with the idea of introducing a number of derogations and exemptions clauses. Nevertheless, the Bush administration's last trade policy – the Trade Policy 2008 – observes three important U.S. achievements during the period in conjunction with international trade regime. They are:<sup>42</sup>

- The United States provided strong global leadership in international trade and investment.
- It created new opportunities for U.S. farmers, ranchers, manufacturers, service providers, workers, and consumers.
- During the period, U.S. exports increased 50 percent, especially in 2007, exports attained their highest share of GDP in the U.S. history, at nearly 12 percent.

Along with these achievements, the TP 2008 expected market opening, pro-growth trade and investment policy opportunity in the coming years. Further, the TP 2008 informs that the Bush administration led efforts throughout the Doha Round Negotiations to achieve an ambitious, comprehensive, and balanced agreement.<sup>43</sup> However, at the same time, the Bush administration engaged in expanding bilateral trading regimes, securing 17 Free Trade Area Agreements (FTAs) in force, up from 3 FTAs when President Bush had come into power.<sup>44</sup> This indicates that the United States was shifting its trade policy focus from multilateral to a bilateral level. The policy switch was bolstered by some empirical facts. During the period, U.S. exports to its 11 FTA partners had grown over 70 percent faster on average than U.S. exports to the rest of the world. Remarkably, the FTA partner countries offered opportunities to the United States to be

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markets to provide lower prices and greater choices for U.S. consumers and industries. Open trade fuels the engine of economic growth that creates new jobs and new income in the United States and around the world. We have no time to waste in reasserting America's leadership on trade. The President has not had trade negotiating authority since it expired in 1994. We can no longer afford to sit still while our trading partners move ahead without us. For that reason, I have placed the enactment of U.S. Trade Promotion Authority at the top of my trade legislative agenda. . . I am committed to . . . rebuild the consensus needed to allow America to reassert its leadership in the trade arena. . . .”

42. See the Presidents 2008's Trade Policy Agenda, at 1, *available at* <[http://www.ustr.gov/sites/default/files/uploads/reports/2008/asset\\_upload\\_file490\\_14556.pdf](http://www.ustr.gov/sites/default/files/uploads/reports/2008/asset_upload_file490_14556.pdf)>.

43. *Id.*

44. *Id.* at 2.

destinations for 41 percent of total U.S. exports.<sup>45</sup>

In addition to these figures, in 2002 when the Bush administration got Congressional approval for its Trade Promotion Authority (TPA), Congress required it to effectively enforce labor laws in the FTAs, which offered the administration another reason to switch to a bilateral trade mechanism from the multilateral one.<sup>46</sup> The 2002 Trade Act further required that the enforcement of environmental laws had to be among the core objectives of FTA negotiations.

Also, the Bush administration was constantly aware of the fact that 95% of global consumers live outside the United States. To market U.S. goods and services to them, an open and liberal global market was required. The TP 2008 insisted on continuing the economic policies that produce the most diverse, innovative, productive, open, and prosperous economy.<sup>47</sup> But it understood that the increasing number of FTAs across the globe that provide a preferential trading environment for FTA members pose a threat, placing U.S. business firms in relatively disadvantageous positions in accessing the world's most dynamic markets.<sup>48</sup> The Bush administration did not develop a clear vision on addressing the problem posed by FTAs, rather, it adopted a double standard of expanding FTAs on the one hand, and engaging in multilateralism on the other. The main focus of the U.S. trade policy was reduced to capturing immediate gains from bilateral trading regimes rather than to enlarge global welfare.

The TP 2008 observes that since the beginning of the Doha Round the United States played the leadership role and engaged with Brazil, EU and India in a G4 process aimed at moving the Doha Negotiations to a logical conclusion, but it broke down due to reluctance of the emerging economies – primarily over industrial tariff cuts.<sup>49</sup> The 2007 TP rightly states that finding a consensus on the negotiating agenda in the Doha Round has proved elusive.<sup>50</sup> Despite this fact, the United States expressed its commitment to the idea that true development gains could best be achieved through further real market liberalization by both developed and developing members.<sup>51</sup>

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45. *Id.*

46. *Id.* at 22.

47. *Id.* at 4.

48. *Id.*

49. *Id.* at 6.

50. See the President's 2007's Trade Policy Agenda, at 8, available at <[http://www.ustr.gov/sites/default/files/uploads/reports/2007/asset\\_upload\\_file629\\_10624.pdf](http://www.ustr.gov/sites/default/files/uploads/reports/2007/asset_upload_file629_10624.pdf)>.

51. *Id.* at 9.

The TP 2007 further illuminates the fact that the efforts stymied by the Doha Round resulted from other leading countries' failures to reciprocate the U.S. proposals to liberalize markets, including cutting farm subsidies. The TP 2007 states that, "The United States pursued every opportunity available in 2006 to break the apparent deadlock in the Doha Round, but to no avail. Major WTO Members continued to resist matching U.S. ambitions and the formal talks were suspended in July 2006."<sup>52</sup>

The picture presented by the TP 2007 reflects only one side of the story. Developed countries too, refused to liberalize the farm sector. Consequently, during the Bush period, the Doha Round did not move forward, rather, it was impeded by the leading negotiating countries' reluctance on liberalizing their markets. Nevertheless, the TP 2007 rightly observes that finding a consensus on the negotiating agenda in the Doha Round has proved elusive.<sup>53</sup> Despite this fact, the United States expressed its commitment to the idea that both developed and developing members could best achieve true development gains through further real market liberalization.<sup>54</sup>

Since the Doha Round Negotiations had almost fallen into a catch-22 situation, the FTA were on the move, and policy for integration of labor and environmental issues into FTAs were already legitimized; a modest shift from the Bush era trade policy could cause a stern effect on the Doha Round Negotiations. The Obama administration's trade policies remind us that they are not a major departure from the Bush era trade policies but a modest shift, though enough to have a cascading effect on the Doha Round Negotiations.

A clear shift in the American trade policy is reflected in the TP 2010 focusing on export led growth and trade policy. The TP 2010 targets a doubling of U.S. exports by 2014. On average, a twenty percent increase in exports per year for the period will achieve the target of the TP 2010. The export - import data from 1960 — 2009 show that to achieve this goal, the United States needs to take bold steps; especially it needs to change its pattern of trade. For example, the U.S. exports of goods from 1960 — 1970 were positive; i.e. there were more exports than imports. During the same period, exports of services were negative; i.e. more imports than exports. Except in 1973 & 1975, from 1971 — 2009 U.S. exports of goods were negative. During the same period, exports of services were positive. In 1960, the

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52. *Id.* at 2.

53. *Id.* at 8.

54. *Id.* at 9.



total value of U.S. exports was 25.9 billion. Since then, U.S. exports have increased tremendously. In 2000, it crossed the trillion dollar mark. In 2008, it was 1.8 trillion and came down slightly to 1.6 trillion in 2009. In fact, during the period of 2000 — 2008, U.S. exports almost doubled.<sup>55</sup>

Looking at the U.S. trade data from 2009 to May 2011, the U.S. trade balance is negative i.e. more imports than exports. For example, in 2009 the total trade deficit was U.S. \$381.27 billion, and grew to 500.02 billion in 2010. The trade data of eight months from January 2011 to August 2011 show that the trade balance is continuously moving in a negative direction. The eight month deficit is \$376.19 billion.<sup>56</sup> These data show that the Obama administration has designed what is arguably an over-ambitious trade policy, unlikely to double U.S. exports by 2014.

As the global leader, the United States is expected to play a catalytic role in promoting global welfare. But, the Obama administration adopted a trade policy which results in a juxtaposition of domestic welfare with global welfare. The departure from the idea of compatibility of global welfare with domestic welfare is clearly reflected in the TP 2010. The TP 2010 reiterates that the United States should be able to exercise rights to bring the rules-based global trading system to bear for job creation and expansion of economic opportunities in the United States. It defined fighting for market access abroad, regulating foreign competition at home,<sup>57</sup> and making global trade policies more reflective of American values<sup>58</sup> as its priority targets in the Doha Round.

To achieve these targets, along with doubling U.S. exports by 2014, the TP 2010 has adopted four key measures in the name of the National Export Initiative. First, the Obama administration created an institution called the Export Promotion Cabinet to promote exports. Second, it has devised a funding mechanism for the promotion of exports. Third, it has prioritized activities for exports advocacy. Fourth, it aims to launch exports tools for small and medium sized businesses.<sup>59</sup> These measures introduce mercantilist principles as guiding ideas of the TP 2010. The mechanism of funding for exports promotion is an

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55. See Surendra Bhandari, *U.S. Trade Policy Agenda 2010: Could We Double Our Export in the Next Five Years?* at 1, available at <<http://ssrn.com/abstract=1670435>>.

56. See U.S. Census Bureau, *U.S. International Trade in Goods and Services*, (May 2011), available at <[http://www.census.gov/foreign-trade/Press-Release/current\\_press\\_release/ft900.pdf](http://www.census.gov/foreign-trade/Press-Release/current_press_release/ft900.pdf)>.

57. See the President's 2010's Trade Policy Agenda, at 1, available at <[http://www.ustr.gov/webfm\\_send/1673](http://www.ustr.gov/webfm_send/1673)>.

58. *Id.* at 2.

59. *Id.* at 1.

erroneous trade policy. It diverts public funds for the benefit of selected exporters from the need of equitable distribution for public or social causes. It discredits the idea of comparative advantage and expands the role for the government in making and breaking markets. Above all, it is inconsistent with Article 3 of the WTO Agreement on Subsidies and Countervailing Measures.<sup>60</sup>

Like the Bush era trade policy, the Obama administration also acknowledges Doha Round Negotiations as opportunities to open international markets aggressively. Opening international markets is critical for the U.S. economy. Since 10 million jobs in merchandise sectors are supported alone by exports activities. More than the merchandise sector, exports are the lifeblood of many American farms and ranchers. Agriculture exports support 800,000 jobs in the United States. The logical expectation of the TP 2010 is that by doubling exports, not only the American products would get better market share at the international level but also millions more jobs could be created at home.

Despite this expectation of the United States, the Doha Round is on the verge of failure. The reasons are clear. First, the leading countries (G7) are engaged in legitimizing their own domestic values and policy goals through the international rule making at the Doha Round. Second, countries are reluctant to open and liberalize trade at domestic levels, but vigorously trying to open markets at the international level. This self-contradictory and anarchic concept is unhelpful to the successful streamlining of the Doha Round. Third, each negotiating country is trying to legitimize exceptions, concessions, derogations, and fragmentations to the existing rules and standards of the WTO.<sup>61</sup>

#### **4. Implications of the Doha Round for the United States**

The success of the Doha Round will help the United States to create more jobs, expand its market share at the global level for both its merchandise and services, and help streamline the economic recovery at home. The failure of the

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60. See Article 3 of the Agreement on Subsidies and Countervailing Measures, 1994. It reads as follows:

“3.1 Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited:

(a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I;

(b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

3.2 A Member shall neither grant nor maintain subsidies referred to in paragraph 1.”

61. See Surendra Bhandari, *The Doha Round Negotiations of the World Trade Organization: Free or Managed Trade?* available at <<http://ssrn.com/abstract=1875192>>.

Doha Round in liberalizing markets by substantial reduction of tariffs and non-tariff barriers including subsidies would negatively affect the United States in terms of, among others, its target in job creation, exports promotion, and economic recovery.

The success of the Doha Round is more vital to the developed countries than the developing countries, unlike the commonplace explanations often given including by, among others, Pascal Lamy. Mostly, the developed countries have already opened their markets except in the area of farm products, tariff escalation, comparatively higher tariff rates to the goods importable from the developing countries, and use of special and differential treatment mechanism combined with non-trade measures among others. If the Doha Round fails, market access for the developed countries products and services into countries like Brazil, China, India, Indonesia, Russia, and many other developing economies would be uninviting, at least not better than what was marked by the Uruguay Round in 1994. Since, the United States is the leading global economy; it would suffer more from the failure of the Doha Round.

Consequently, the U.S. aspirations for market access for its products and services will not stop there. The United States has already entered into 17 FTAs and three more are in the pipeline. It will aggressively engage in expanding FTAs and bilateral trade regimes. It will continue granting farm subsidies, casually non-farm subsidies, buy American policy, trade adjustment assistance programs, and anti-dumping measures among others. Perhaps, these measures will help the United States to meet its short-term economic growth, but they pose severe challenge for multilateralism and the founding principles of the WTO.

However, it is not a given that the United States will stop expanding its efforts for FTAs, farm subsidies, non-farm subsidies, buy American policy, trade adjustment assistance programs, and anti-dumping measure on the success of the Doha Round Negotiations. Its trade with FTA partners has grown conspicuously, which is a very attractive reason for engaging in FTAs. Farm subsidies, both for production and non-production are bundled with excessive political interests and lobbying. Buy American policy has already been justified by Pascal Lamy. Trade adjustment assistance (TAA) has been applied for a long time, although not as a good trade policy but as a part of labor politics. Anti-dumping measures have been used to discourage imports from competitors. Anti-dumping measures are already institutionalized as the backbone of the American trade policy. Thus, on the success of the Doha Round too, it could hardly be expected that the U.S. trade policy would disconnect it from its past legacy.

There are two specific interests of the developing countries in the Doha Round. First, the liberalization of the agriculture sector in developed countries to allow market access for the farm products of developing countries. Second, to reduce the tariff and non-tariff barriers among the developing countries, this is estimated to be about 70 percent of total duties. The first interest will be realized if the developed countries cut their farm subsidies substantially, which seems unlikely as their readiness shown in the Doha Round is extremely sluggish. The second interest is also closely linked to agricultural liberalization in the developed countries. It is a bargaining point in the hand of developing countries. Thus, the developing countries are unwilling to liberalize their tariff and non-tariff barriers unless the developed countries come up with a convincing plan to open their farm sector. The EU is extremely conservative in opening the farm sector. Unless the EU is ready, the United States alone will not be ready to open the farm sector. Moreover, some of the developing countries like India are demanding to have a mechanism for special safeguard measures to protect their farm sector beyond the Uruguay Round mechanism. This regressive positioning of India has further fanned the flames of controversy.

Since liberalization of trade is believed to be superior in terms of efficiency, it is always puzzling why governments often engage in mercantilist trade policy, as has happened in the Doha Round Negotiations. One of the explanations of this puzzle is that firms are the driving force of the economy. Often firms find gain by avoiding competition in the domestic market and by limiting or discouraging imports and expanding market access to international markets for exports. This dichotomous approach of firms puts governments at odds. When every government tries to protect the interest of its firms with the policy of allowing limited access to the domestic market while demanding intense access to international markets (called the strategic trade policy),<sup>62</sup> this dichotomy leads countries to anarchy. As a result, international negotiations depart from the very idea of comparative advantage, trade liberalization, and non-discrimination to derogations, flexibilities, concessions, and fragmentations. Exactly, what has happened in the Doha Round.

The strategic trade policy has drawn not only American government into defining fairness, but other governments have also adopted similar policy choices in defining fairness. Consequently, fairness has been fragmented into several

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62. See Helen V. Milner & David B. Yoffie, *Between free trade and protectionism: strategic trade policy and a theory of corporate trade demands*, 40 INTERNATIONAL ORGANIZATIONS 240, 239-272 (1989).

disharmonious political conceptualizations. The strategic trade policy approach is plausible in the budget for financial year 2012 proposed by the Obama administration. It claims that, "We also must look ahead to what will create the economic growth and the jobs over the next several years so that we can keep the American Dream alive for our children and grandchildren. That starts with recognizing that in the high-tech, interdependent world of the 21st Century, our companies and our workers are not just competing with each other, but with their counterparts all over the world. Indeed, we, as a Nation, are competing with countries all over the globe that are eager to win the contest for growth, jobs, and prosperity for their people."<sup>63</sup> This strategic trade policy approach clearly, and arguably erroneously, believes in juxtaposition of domestic welfare and global welfare.

The overreliance on strategic trade policy has already been a boomerang for the U.S. economy. For example, many developing countries had no bargaining power or had weak bargaining power until the Uruguay Round. Now the situation has been vastly changed. China having entered into the WTO, is going to overtake the U.S. in terms of trade volume in the future. Brazil and India have already strengthened their negotiating positions in the WTO and are reluctant to come under any pressure.<sup>64</sup> The United States and EU, once near monopolists of the tool of anti-dumping measures, are now increasingly being joined by countries like India, China, and other emerging economies. This shows the United States has not only used strategic trade policy, but now other emerging economies have also learned how, and are willing to do so.

Still, the observation of the U.S. Trade Policy 2011 should not be ignored. It claims that the United States has become able to expand the level playing field

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63. See Budget of the United States Government: Competing and Winning in the World Economy, Fiscal Year 2012, available at <<http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/competing.pdf>>.

64. See Kamal Nath, *Statement on Doha Round*, BUSINESS LINE (Aug. 1, 2008). Kamal Nath claimed that, "India and other developing countries would not compromise on the development content of the Doha Round . . . the mini ministerial of 30 countries ended in a fiasco in arriving at a consensus on subsidy level and import tariffs on agriculture and industrial goods . . . the Minister said the trigger for an SSM was crucial because it determines when a safeguard duty could be slapped. The volume trigger for such special products, which would either take zero or low tariff cuts, was sought to be fixed at 40% higher than the average imports of the last three years by the United States, whereas India and other developing countries said only 10 per cent higher than the average imports of the last three years . . . Safeguard mechanism was not the only issue on which headway could not be made. Other important developing country issues such as cotton, preference erosion, duty free and quota free for LDCs tropical products and fishery subsidies on which discussions were not held.

for American producers to enhance their exports around the world. The United States has achieved more intellectual property protection.<sup>65</sup> This indicates that the United States is able to achieve its trade aspirations irrespective of the Doha Round success or failure. The data shows that U.S. exports have increased modestly in 2010 from 2009; however, the trade deficit widened more in 2010 than in 2009.<sup>66</sup> Nevertheless, one important fact the TP 2011 acknowledges, is that the United States is insisting that the foreign governments would not unfairly advantage their own manufacturing industries in key sectors from aerospace to clean energy.<sup>67</sup> This statement is enough to signify the importance of the Doha Round for the United States.

In short, two conspicuous developments are emerging in the arena of international trade regimes. First, the United States and EU are no more the only dominating forces in international trade negotiations. As a result, a new paradigm shift has occurred whereby leadership roles are now shared by new trading powers such as China, Brazil, and India along with the United States and EU. A vision for joint leadership is currently lacking, and one needs to be urgently built, if there is to be success of the Doha Round ushering in a new multilateral trading regime. Second, the traditional rulemaking process at the international trade regime is no longer acceptable. In part, it is because traditionally, the domestic trade policy concepts of the United States and EU would be legitimized through the international rulemaking process. This hegemonic rulemaking process is no more acceptable to other negotiating countries. This change has brought immense challenges, too. The first challenge is associated with the theoretical and methodological frameworks to harmonize the contesting concepts, and to transmute them into universally acceptable rules of international trade law. Second, the role played by the leading countries (G7) has already been proved erroneous and insufficient. Their roles need to be focused on developing or agreeing on theoretical and methodological frameworks, which would help explain and achieve harmony between global and domestic welfare. Perhaps, policy change and focus in the line of global welfare would better proffer opportunities to harmonize the contesting concepts for devising trade rules at the global level.

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65. See The U.S. Trade Policy 2011, at 1, available at <[http://www.ustr.gov/webfm\\_send/2587](http://www.ustr.gov/webfm_send/2587)>.

66. See Exhibit 1 of the U.S. International Trade in Goods and Services, May 2011 available at <[http://www.census.gov/foreign-trade/Press-Release/current\\_press\\_release/exh1.pdf](http://www.census.gov/foreign-trade/Press-Release/current_press_release/exh1.pdf)>. U.S. exports have increased from U.S. \$1,575,037,000,000 in 2009 to \$1,837,577,000,000 in 2010. But in the same period, the trade deficit has increased from \$381,272,000,000 to \$500,027,000,000.

67. See The U.S. Trade Policy 2011, *supra* note 65.



Among world leaders, the role of the United States is still significant. The United States can cut through the noise, and play a leading role in bringing all the WTO Members together, especially the G7 countries, to focus on expanding global welfare. At the same time, the United States can play a leadership role in moving nations away from policies projecting global welfare disharmoniously with the domestic welfare. Keeping global welfare at the center, the negotiators could harmonize contesting concepts and transmute them into a robust body of rules for international trade, marking the success of the Doha Round.

## 5. Conclusion

Throughout history, U.S. trade policy presents a vivid picture of continuity and discontinuity, switching from one regime to another. Laws and policies have unequivocally served the interests of domestic producers. The U.S. negotiators have skillfully influenced international trade negotiations and drive international law-making by introducing the U.S. legal policy concepts. In many occasions, the United States has provided a leadership role for trade liberalization at the international level and has fought against protectionism. On other occasions, the United States has compromised and adopted a protagonist role for protectionist trade policies. This ambience of policy duality inspired by pragmatism, game theory, self-help modality, and the new trade theory has restricted the U.S. ability to take leadership in the time of need for trade liberalization. The Doha Round is a palpable example. Especially, the trade policies of the Obama Administration elucidate the U.S. reluctance to support liberal trade policy for global welfare. Consequently, the Doha Round Negotiations have suffered. The United States is not the only country to cause disarray in the Doha Round; India and China have equally played a role in making the Doha Round captive of their vested interests.

An Indian Yogi, Swami Vivekananda, when he visited the United States in 1893 observed that, "The Americans are so rich that they spend money like water, and by forced legislation keep up the price of everything so high. . ." <sup>68</sup> On October 11, 2011 the U.S. Congress passed legislation to take measures including scaling up tariffs on products from countries that have devalued currencies (China). The higher the tariff, the costlier the goods will be and the heavier will be the burden to the consumer. The 1893 observation of Swami Vivekananda is still afresh that the United States turns to legal mechanisms to keep prices higher and protect the

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68. See Complete Works of Swami Vivekananda Part V, (location 226 of 7640, Kindle ed.), published by Swami Madhavananda & Advaita Ashram (Almora, India, 1919).

U.S. producers, and workers, at the cost of the consumers. The United States often applies this same policy at the international level as well.

The United States often successfully extends its domestic trade policy to the international trade policy regime. The Doha Round; has however, presented a different case. Some other countries, especially India and China have also embarked on the trade policy path that the United States has been pursuing for decades. As a result, these countries are mired with the obsession of extending their own domestic policies into the Doha Round that will produce more harm than good. Primarily, this tendency will reduce the chance for the successful conclusion of the Doha Round. In any case, if these countries happen to trade off their interests, the compromise will generate a situation of derogation, divergence, and asymmetry causing a dent in the fundamental principles, values, and foundation of the international trade regime, already shown in the Doha Round.

In short, the Doha Round has presented a case where the EU and the United States are no longer the only global leaders of international trade negotiations and rule making. This changing scenario has given enormous space to the emerging countries to play an important role with responsibility for international rule making. At the same time, it also poses immense challenges, as more countries are taking leadership positions but with less of an eye to global responsibility, the narrations are aggravating wider gaps allowing more divergences than harmonization. These dynamics compel the Doha Round Negotiations to experience the growing pressure of protectionism and diminishing the benefits of multilateralism.

The Doha Round Negotiations offer deep lessons. No international trade negotiations seem to produce beneficial results by holding them hostage for the extension of domestic trade policy. With a protectionist policy persuasion, no countries will be able to expand domestic welfare. Since the concept of domestic welfare is closely associated with global welfare, unless the domestic trade policies and trade negotiations concepts are formulated to expand both domestic and global welfare, the Doha Round will turn into a noble dream with desultory exercises.

U.S. Trade Policy and The Doha Round Negotiations

**Annex I: Doha Round Negotiations Agenda Items**

SN	Issue of Negotiation	Doha Declaration	July Package 2004 & Further
1	Implementation Related Issues and Concerns <ul style="list-style-type: none"> <li>• Geographical Indications: Multilateral Register for Wines and Spirits</li> <li>• Biological Diversity and Traditional Knowledge</li> <li>• Geographical Indications</li> <li>• Public Health</li> <li>• Non-violation and Situational Complaints</li> </ul>	Para. 12	
2	Agriculture <ul style="list-style-type: none"> <li>• Cotton</li> </ul>	Para. 13 & 14	July Package
3	Services	Para. 15	
4	Market Access for Non-Agricultural Products (NAMA) <ul style="list-style-type: none"> <li>• Balance Between NAMA &amp; Agriculture</li> <li>• Commodity Issues</li> </ul>	Para. 16	Hong Kong Ministerial July Package
5	Intellectual Property Rights <ul style="list-style-type: none"> <li>• Geographical Indications: Multilateral Register for Wines and Spirits</li> <li>• Biological Diversity and Traditional Knowledge</li> <li>• Geographical Indications</li> <li>• Public Health</li> <li>• Non-violation and Situational Complaints</li> </ul>	Paras. 17-19	
6	Relationship between Trade and Investment	Paras. 20-22	Dropped
7	Trade and Competition Policy	Paras 23-25	Dropped
8	Transparency in Government Procurement	Para. 26	Dropped
9	Trade Facilitation	Para. 27	
10	WTO Rules: Anti-dumping	Para. 28	
11	WTO Rules: Subsidies	Para. 28	
12	WTO Rules: Regional Trade Agreement	Para. 29	
13	Dispute Settlement Understanding	Para. 30	
14	Trade and Environment <ul style="list-style-type: none"> <li>• Fisheries</li> </ul>	Paras. 31-33	
15	Electronic Commerce	Para. 34	
16	Small Economies	Para. 35	
17	Trade, Debt, and Finance	Para. 36	
18	Trade and Technology Transfer	Para. 37	
19	Technical Cooperation and Capacity Building	Paras. 38-41	
20	Least-developed Countries	Paras. 42 & 43	
21	Special and Differential Treatment	Para. 44	

