

ON A FAST TRACK TO WHERE?

The Dangers of a Trade Policy with a Flawed Foundation and the Need for a Broader, Bipartisan Approach

Representative Sander M. Levin

Ranking Democrat

Subcommittee on Trade

Committee on Ways and Means

The Center for Strategic and International Studies

[Remarks as prepared for delivery]

Tuesday, May 7, 2002

Introduction

I welcome the opportunity to come back to CSIS this morning. A year ago, I joined you to discuss, "Rebuilding U.S. Trade Policy - The Case for Relentless Innovation to Shape Economic Globalization." Unfortunately, it is a course the Bush Administration has to date chosen not to follow.

In fact, it seems that U.S. trade policy is following no coherent course at all. Whether the issue is fast track/Trade Promotion Authority, trade benefits to Pakistan, granting permanent normal trade relations to Russia, the steel 201 remedies, the steel 201 exclusions, or new subsidies in the farm bill, the Administration's trade policy does not seem to have a coherent foundation.

Unfortunately, the approach to trade policy that the Administration has been pursuing is well on its way to undermining fundamentally the bipartisan consensus in favor of expanded trade that has characterized progress over the last several years. We have heard much about how U.S. trade leadership has been losing ground. What has lost momentum, however, is not U.S. trade leadership, but the bipartisan approach necessary for U.S. trade policy to work.

The bipartisan trade consensus has been eroded in part because of a fundamental assumption underlying the trade policy of the Administration and many Republicans - that there is little or no need to shape the rules of trade and the forces of globalization; that market forces alone will resolve any problems that might arise.

At times, the Administration and key House Republicans have taken actions inconsistent with that view in an effort to move along their trade agenda. However, because any activism runs counter to their passive "let free trade roll" approach, these actions often amount to paying lip service to the issues, have been taken in ways that undercut their own credibility in the Congress and abroad, and have served, in my judgment, primarily to polarize the debate and move us further away from a sustainable broad coalition which is the cornerstone to U.S. trade policy.

This is clearly the case in Trade Promotion Authority. It is useful to ask - why is getting fast track through Congress so difficult in contrast to securing China PNTR and the Jordan FTA, with wide bipartisan majorities? On fast track, because of the sharply partisan approach to date, the Administration has apparently been looking to see who else it needs to accommodate. As one lobbyist put it: "They're desperate for TPA and are telling me ... we want TPA and will pay what it takes." [*Congress Daily*, April 25, 2002].

This "whatever it takes" mentality has overshadowed a key point. Whatever the outcome of congressional consideration of TPA, a victory under the Administration's current approach would

be ephemeral; each and every trade agreement brought back under fast track would see a repeat of the same debates and divisions. The Administration would have lost a major opportunity to return trade policy to a long-term stable foundation. Such a foundation would necessarily be truly bipartisan, on both sides of the Rotunda, not based on shifting alliances and very narrow margins in the House. Most importantly, such a foundation would equip us to deal with the new realities of the global economy.

A fundamental element of such a foundation is a fair and honest consideration of all the issues. We have an obligation, all of us in Congress, in the business community, among NGOs, the labor movement, academia, and others, to elevate the level of debate and discussion of the essential issues involved in trade policy and fast track. House Republicans repeatedly emphasized the great importance of the fast track debate to U.S. policy -- as we debated it for only one hour under a closed rule that did not allow for formal consideration of any amendments or substitutes. There remains the opportunity to have a full and meaningful consideration of all the issues in the Senate.

The Stakes in Trade Policy Today

The stakes cannot be overstated. The process of economic integration across borders - often referred to as economic globalization - is a defining event of our era. Economic globalization has had and will continue to have fundamental, transformative economic, political and social consequences.

International commerce is undergoing a revolution as profound as interstate commerce underwent a century ago. There has been a dramatic increase in the volume and value of trade. The number of countries participating in the system has mushroomed, from 23 in 1947, to 111 just a decade ago, to very likely 170 or more before the decade is out. Trade increasingly involves nations like China, Vietnam and Russia that have very different traditions and economic structures from our own. Major developing countries such as Brazil, Korea, India, Singapore, even South Africa, no longer compete and trade primarily in agricultural products or light manufactured goods, but also in steel, automobiles, electronics, and increasingly in services such as telecommunications and software. And, countries that have traditionally been marginalized by the world trading system, such as those in sub-Saharan Africa, are, fortunately, becoming fuller participants in it.

Trade is not only far different in its quantity but also its qualities. We have left behind the relatively uncomplicated world of tariffs, reflecting the success of the GATT in its first 50 years at addressing most traditional trade barriers.

We have now moved beyond even the challenges of many basic non-tariff barriers and have entered an era in which "trade policy" includes the full range of policy, laws and regulations that used to be considered exclusively or primarily "domestic policy" - including, domestic agriculture programs, antitrust law, food safety, telecommunications, natural resources conservation, labor standards, insurance regulation, and the intersection of effective protection of intellectual property rights with health policy. Trade policy has become domestic policy and vice versa in ways that have far-reaching implications for how we negotiate trade agreements and legislate domestic rules.

It is precisely at this time of great change and great challenge that it is most important for U.S. trade policy to reflect a real understanding of the substantive issues involved and be driven by sound guiding principles rather than short-sighted political expediency. Even some of the most thoughtful observers of globalization have missed key elements of the changed landscape. For example, in *The Lexus and the Olive Tree*, Thomas Friedman sets up a double axis with only two dimensions: "free trade or protectionist," and for or against a safety net. Friedman then divides

the world into these two dimensions: (1) "free traders" with no safety net; (2) "free traders" with a safety net; (3) "protectionists" with a safety net; and (4) "protectionists" without a safety net.

Respectfully, that misses a key development of the last 10-20 years: the fault line in domestic politics is no longer principally between "free traders" and "protectionists." For one thing, these terms have very little utility. For example, those labeled "free traders" routinely design and support massive sectoral interventions. But, even stipulating that the terms had utility, the key debate today is between those who seek to shape globalization (not resist it) and those who would allow markets to rule without substantial guidance or structure. I believe those who support the process of globalization but understand the imperative to structure and shape it actively offer the most innovative and promising blueprint for building a lasting common ground.

In view of the profoundly changed nature of the substance of U.S. trade policy, there are essentially three options for how we can respond. First, we can have a policy that seeks to return to the past; that attempts to buck globalization and create new walls and barriers to attempt to keep it out. Second, we can take the view that we need not do anything much, because globalization reflects the ascendancy of the free market, and the efficient free market will work the problems out on its own. Finally, we can accept, indeed embrace, globalization, but seek to structure the rules of trade to ensure that the benefits of globalization are maximized for all involved, while the downsides are minimized.

Consequences of A Misguided Approach To Trade Policy

Unfortunately, the approach adopted over the last year by the House Republican leadership and the Administration is more like the second approach outlined above - that the theoretical "free" international market is a categorical good and will resolve problems largely on its own and, therefore, there is little need to shape trade with principled or practical rules. This approach results in a minimization of the substantive issues of trade policy and does not offer sound guiding principles for the future. It has had a number of negative consequences already.

Shallow Arguments and Misleading Information

First, the Administration's and House Republicans' approach of doing "whatever it takes" in pursuit of what they perceive to be a pure good, has stimulated the use of shallow arguments and misleading information. For example, we are constantly told that we need fast track/TPA because the United States is "falling behind" in negotiating trade agreements. We are told that the E.U. has 29 free trade agreements and we have only three. What is not said is that the U.S. agreements actually cover a larger percentage of our external trade than do the many E.U. agreements, perhaps because many of the E.U. agreements are with countries like Lichtenstein, the Faroe Islands and Albania, with which the E.U. has very little trade.

Further, we are told that there are 130 free trade agreements in the world today and the United States has only three. Once again, what we are not told is that dozens of those agreements are ones between, for example, Estonia and Latvia or the Faroe Islands, between the Kyrgyz Republic and Belarus or Moldova, or between regional neighbors, which the U.S. would never have been invited to join, in any event. In addition, whether the provisions of these agreements are meaningful - for instance, the fact that many of the E.U.'s agreements effectively exclude important sectors, such as agriculture - is also not discussed. Moreover, those who make this argument seem conveniently to ignore the fact that the United States is already in the process of negotiating FTAs that would cover trade with 35 to 40 countries.

Of course, it is important that we be aware of and respond to trade diversion that arises from FTAs to which we are not a party. I also believe that the United States should take advantage of the opportunity to negotiate FTAs that make sense for the United States, based on a coherent

strategy. My point, however, is that the so-called "falling behind" argument has been used to create a false sense of crisis and is fundamentally shallow as presented. It is not a sound basis for making trade policy.

Diminished Credibility

Second, the current approach undermines the credibility of U.S. actions. Because the theory underlying the trade policy of the Administration and House Republicans is flawed, they periodically are faced with having to respond to events which their theory does not contemplate or concerns for which their theory does not propose any solution. When problems like these arise, the Administration is forced to turn to politics.

A good example is the recent steel decision. For three years, I have called for an effective safeguard action in this vital sector as a WTO-consistent way to address the substantial increases in import levels and the accompanying price depression caused by the Asian financial crisis and global overcapacity. In 1999, I joined 10 Democrats in voting against a WTO-inconsistent steel quota bill because I believed we could - and should - address this crisis in a WTO-compliant manner.

So, I was dismayed in the weeks surrounding the steel 201 decision early last month that the Administration defined it as a political decision. For example, just days after the decision, newspapers reported that Ambassador Zoellick "told Brazilian business leaders that domestic politics was behind" the steel 201 decision, quoting him as stating: "We are committed to moving forward with free trade, but, like Brazil, we have to manage political support for free trade at home. We have to create coalitions." [*The New York Times*, March 14, 2002, at W1.] Similarly, David Broder observed:

Their hope is that they can get a vote on the big trade bill in the Senate fairly soon and try to modify, adjust, deal with some of these complaints [about the steel 201 action]. And they aren't even certain that they've bought the extra votes they need to get this legislation through the Senate." [*Washington Week in Review*, March 29, 2002.]

Is it any surprise, then, that our trading partners and many in the press, perceiving politics behind the action, have derided it as one that must be without justification under WTO rules, provoking a firestorm of criticism and retaliatory threats.

All this is a result of basing a decision - or justifying it - on political grounds, rather than on substance. So we are not engaged in a reasoned if perhaps difficult debate over the causes and consequences of the over 200 million ton worldwide overcapacity in steel markets - abetted by subsidies, nonmarket practices in countries like China, anticompetitive practices in a number of countries, and government actions that enable or tolerate such practices - and how to reduce that overcapacity. Instead, we are debating whether the action was sufficient to pick up enough votes for TPA to get through the Senate and then again through the House.

In sum, I believe that on its substance, the steel decision was one of those moments that the Administration's trade policy lunged in the right direction. However, because of the overriding view that the decision was made "for the pleasure of political opportunism," as George Will put it [*Washington Post*, March 7, 2002], the decision was seriously undermined, and it underscores the lack of substantive coherence in the Administration's overall approach to trade.

Polarization and Erosion of Bipartisanship

Third, because their dominant theory holds that the market will resolve most all problems on its own, the Administration and House Republicans have been unwilling to address seriously policy approaches that attempt to shape the rules of trade. We have learned yet again that when policy issues and substantive differences are not addressed squarely, the debate becomes polarized. Rather than sitting down, identifying different approaches, and searching for common ground, the public debate becomes focused on caricatures and name-calling, like calling those who support inclusion of labor and environment provisions in trade agreements "xenophobes and isolationists."

The Administration and House Republican leaders made clear from the outset that they were not interested in seriously considering issues that are key to many pro-trade Democrats. In a recent article, a lobbyist close to the House leadership was quoted as to why they wanted to pass TPA without Democratic support: "They wanted to prove to the high-tech community that the Democratic Party is still controlled by unions." [*New Republic*, March 4-11, 2002]. They rejected the need for a broad, bipartisan effort. They took this approach even though earlier trade successes such as the African Growth and Opportunity Act, the Caribbean Basin Trade Initiative, China PNTR and the Jordan Free Trade Agreement were based on such bipartisanship and did consider these key issues.

The Ways and Means Committee and House votes on fast track/TPA were the most partisan in the modern history of trade policy - spanning more than three decades. Congressman Rangel and I, who had helped lead those earlier bipartisan efforts, found ourselves leading the opposition when the Republican leadership refused to address in a meaningful way the role of Congress as well as vital aspects of trade such as investment rules, trade remedies, labor and environmental standards.

Only 21 Democrats voted for the House bill; more Republicans voted against the bill than Democrats supported it. Longstanding Democratic stalwarts of expanded trade such as Representatives Bob Matsui and Jim McDermott strongly opposed it. Republicans who said they had never before supported a trade bill, and never would again (even, for some, if the bill returns after conference), voted for it not on its merits and not because they have any intention of supporting the agreements negotiated under it, but simply to get their President and their party out of a jam.

In the end, the Administration and House Republicans were forced to twist arms, make side deals on non-trade issues, create a carve-out for citrus and the specialty agriculture sector, and then finally agree to renege on past trade-expanding commitments to the Caribbean and Africa to woo enough Republicans to eke out a 215-214 plurality almost 20 minutes after the time for the vote had expired. At the same time, one hundred and sixty one Democrats voted for the Rangel fast track bill, numbers which reflected a missed opportunity for a bipartisan approach to trade policy.

Taking on the Key Issues

In order to restore the broad bipartisan consensus to U.S. trade policy, it is necessary to have a full debate, address squarely the different assumptions, and approaches, and resolve them. In contrast to the Administration's approach, I think it is absolutely necessary that the Senate seriously consider and adopt different approaches to many of the key issues.

There can simply be no escape from tackling the issues that are arising inevitably with the changing nature of trade and competition. Let me offer a few illustrations and guideposts.

Congressional Oversight

The growth and changing nature of international trade has profound implications for the role of Congress and the need for congressional oversight. This issue was touched on in the President's April 4 speech. The President laid out benefits of international trade, and did so well. However, totally missing was any discussion of the implications for the expansion of trade policy into new subject matters and their intertwining with domestic policies.

The President in his speech asserted that the enhanced consultative role set out for Congress in the House and Senate Finance bills keeps Congress "in the mix:"

"It's not by granting me TPA that all of a sudden they dealt themselves out of the mix; quite the contrary. They passed it, they dealt themselves into the mix. They have a chance to ratify, up or down, a treaty".

In fact, respectfully, it is article I, section 8 of the Constitution that not only puts Congress "in the mix," but gives it the sole authority to regulate U.S. trade with foreign countries. Expanding consultations does not, in fact, keep Congress "in the mix," let alone vindicate its Constitutional role.

Neither the President's speech nor the House or Senate Finance fast track bills consider whether, given that trade now encompasses most of what used to be considered "domestic" policy - in areas like antitrust, food safety, and various consumer regulatory standards - Congress should play an oversight role other than just being consulted more and more often. In contrast, the Durbin/Rangel bills contain carefully crafted provisions to assure that while only one can and should negotiate - namely, the President - Congress must be able to effectively participate.

Labor Market Standards

Eventually, all will have to address the question, as trade and competition expand, whether or not there is the need to begin to build floors on which this occurs, including core labor market and environmental standards. Experience shows that there is a need. The international trading sphere is becoming more and more integrated. History is replete with examples that demonstrate that closer economic integration also leads to and requires basic floors for competition and closer integration of other aspects of economies - including, e.g., product regulations, investment rules and labor markets.

International trade rules already have comfortably absorbed the first two of these areas - e.g., the WTO's Agreements on Technical Barriers to Trade, on Sanitary and Phytosanitary Measures, and Trade-Related Investment Measures. The closer the level of economic integration envisioned by an agreement, the more significant the rules in these areas tend to be: for example, the more far-reaching investor protections in NAFTA's chapter 11 as compared with the relatively weak WTO Agreement on Trade-Related Investment Measures (TRIMs), and the E.U.'s relatively more stringent system of harmonization and mutual recognition of product standards as compared with the more limited WTO Agreement on Technical Barriers to Trade.

The treatment of the labor standards issue to date has been a sharp contrast from the rules governing "national" product standards and investment regulations. But, it is simply not credible - whether from the standpoint of economic theory or common sense - to say that labor markets have no impact on trade or investment. It is also not credible to assert that abuse of core, internationally-recognized labor standards is a legitimate source of comparative advantage. Although the Administration has scoffed at attempts to include provisions in trade agreements that recognize the connection between trade and labor market standards, in fact it routinely acknowledges these issues when a particular state or powerful political ally is affected. For

example, when Senator Lott expressed concern earlier this year over unfair trade from foreign catfish due, among other things, to "cheap labor," the Administration responded. So, while the Administration and its allies say that the role that labor standards play in international competition has no place in fast track, the story is very different if they are considering catfish in Mississippi or textiles in North Carolina. That is not a coherent, effective trade policy.

In the medium- to long-run, the trade and labor standards nay sayers will lose. In fact, they have been losing for years -- the U.S. trade benefits programs like GSP, ATPA, CBI, and AGOA each address labor standards issues; and the areas of significant trade progress in the U.S. over the past few years have involved clear recognition of the trade/labor standards connection.

The progress made over the past few years has made it so important that the issue of core labor standards in trade agreements not be finessed in fast track, which is essentially what is attempted in the House and the Senate Finance Committee versions. Since the issue has received so much attention, it is worth taking a moment to explain very clearly what I and others in the House and Senate have been seeking. The Senate Finance bill calls for "promoting respect for core labor standards" - a hortatory provision - and would require only that countries effectively enforce their labor standards, no matter how weak those standards happen to be. Thus, the bill is arguably weaker than the provisions in our current trade benefits programs, which at least require countries to "take steps" to afford internationally recognized worker rights. Moreover, the Senate Finance bill does not draw any distinctions between the WTO and free trade agreements (which involve a much higher level of economic integration).

The Durbin/Rangel bills take a different approach. First, they call in the WTO for a Trade and Labor Working Group. This reflects the reality of WTO negotiations and the reality that the WTO involves a relatively lower level of economic integration than do free trade agreements. Second, they call in FTAs for there to be a floor established, of the five core, internationally-recognized labor standards - the rights to associate and to bargain collectively, and prohibitions on child labor, discrimination, and forced labor.

Let me repeat, we are not seeking and have never sought to have other countries adopt U.S.- labor standards. We are seeking a floor made up of five very basic standards recognized as core standards internationally. The Durbin/Rangel bills also call for free trade agreements to include phased-in compliance and work programs, including technical assistance and positive incentives, to help countries improve their labor standards.

This is not a gotcha game seeking to prevent trade, but a sincere effort to create a basic floor for free trade. Anyone who doubts the meaningfulness of addressing labor issues in trade agreements and the benefits that may flow should look at the mutual benefits from the labor provision which we negotiated into the textile agreement with Cambodia. That agreement is allowing Cambodian workers to gain greater benefits from the globalization of the textile market, while ensuring that American workers compete increasingly over time with workers who are not children, not enslaved and who can associate together and bargain for a decent livelihood. It is mistaken, as Sen. Baucus suggested last week, that setting as a principal negotiating objective for bilateral and regional agreements that countries implement and enforce the five core labor standards would only "set back both [the] agreements and the ILO." This was not the case with the Jordan FTA and it has not been the case in our trade preference programs. The Jordan FTA was premised on the fact that both countries' laws already incorporated the ILO core labor standards, thus the "effectively enforce" obligation had meaning. This basic premise was reflected in the text of the agreement and in floor statements by supporters in the House and Senate.

Far from setting back the Jordan agreement, the labor provisions helped it sail through both chambers on voice votes - an unprecedented feat for a major piece of trade legislation. Similarly, the focus on core labor standards has not set back our trade preference programs. We have used the labor provisions in these programs as leverage for countries to implement core labor standards in their own law - most recently Guatemala adopted changes to its labor laws in response to a GSP/CBI review. The current delay in reauthorizing these programs notwithstanding, these programs pass with wide margins, and enjoy strong support from the countries involved.

Investment Rules

Another key issue that needs to be addressed is investment rules, where the gradual leveling up of standards is essential to the successful continuing integration of the global economy. I support including an investor-state mechanism in free trade agreements, because I believe its basic purpose is valid. We must only ensure that the rules achieve this valid purpose without undermining legitimate local regulatory authority.

A good example of the perils of an inadequate approach in this area were illustrated again just two weeks ago. The Supreme Court decided what has already been described as a seminal case in U.S. constitutional "takings" law. We can leave for further discussion the details of the case; however, the key point is that only the Durbin/Rangel fast track bills would fully preserve the careful balance from U.S. Supreme Court jurisprudence in this vital area of constitutional law. They would do so by stating clearly and unequivocally the principle that international rules must provide "no greater rights" to foreign investors than are contained in U.S. law. By contrast, the Senate Finance Committee bill says potentially the opposite. It would ensure that U.S. citizens receive "no lesser rights" than foreign investors, thus opening the door wide for the international standards - which were the cause of concern in the first place - to be incorporated directly into U.S. law or, worse, for international tribunals to apply the overly broad international standards to U.S. cases, according investors far broader rights than under the U.S. Constitution as interpreted by the Supreme Court.

TAA Alone Is Inadequate

Separate from the core trade issues, but related is Trade Adjustment Assistance (TAA) for workers who have lost their jobs due to increased trade or the globalization of production. Once again, the basic assumption that the unregulated market will resolve all problems - that TAA is not "about trade" as suggested by Ambassador Zoellick last week [*Inside U.S. Trade*, May 3, 2002] - creates problems in finding bipartisan solutions to important trade policy issues.

We need - and I strongly support - comprehensive reform and improvement of TAA, including by adding a meaningful healthcare component. However, TAA and fast track/TPA address different, albeit complementary, challenges. The purpose of fast track/TPA is, or should be, to establish guideposts for negotiating a framework of trading rules that maximizes benefits and minimizes down sides. The purpose of TAA is to address more effectively for workers and firms the inevitable down sides and, through retraining, to enable more Americans to take full advantage of the benefits of trade expansion.

American workers, farmers, businesses, and consumers deserve to have the best policies in place. A good TAA bill can not make up for a weak fast track. Neither one can substitute for the other.

Restoring a Broad Bipartisan Coalition on Trade

President Bush says trade authority should send "an unmistakable signal to our trading partners that the Congress and the administration are united on trade" -- a goal worth pursuing and that we will inevitably need to pursue in the years ahead. Unfortunately, the way it has been handled by the Administration to date, the signal that is being sent is far from that goal.

I continue to believe that despite the missed opportunities, there is still real potential to rebuild a broad domestic coalition to support trade expansion. This coalition must be restored and enhanced most fundamentally because it has worked. It must be restored because it includes Democrats in the House who are internationalists, who support additional foreign assistance when needed, who have led the fight to replenish funding for the IMF and World Bank, and who support more international funding for AIDS prevention and research for a vaccination, who have been more willing than many to look at how domestic subsidies affect the international economy. These members are the vital potential allies for taking on difficult issues, now more likely to become even more thorny. Without these members, there will not be a consistent coalition capable of helping make the tough decisions that loom on the horizon.

Similarly, I believe that beyond our shores, there is a potential to change what appears to be an increasingly polarized dynamic, pitting the U.S. against E.U. in major disputes and developed against developing countries, etc. The changed dynamics raise new challenges to be sure; however, they also generate new opportunities. The challenge is to free ourselves from old ways of thinking and old patterns of mistrust and work together to both expand trade and shape the rules that govern it.

Time is our ally. History informs us that great changes inevitably lead to transformations in thinking and policy. The key issues - congressional oversight, regulatory standards in areas as diverse as health policy, food and safety, and telecommunications, as well as the more heavily-discussed issues of labor standards, environmental standards and conservation, and investment - are not optional considerations in the long run. They are inevitable realities that will need to be addressed sooner or later. The question is do we go kicking and screaming into the new era - resisting either globalization itself or the need to shape it - or do we embrace it and prepare to meet its challenges head-on.

At the beginning of the last century, led by Theodore Roosevelt and then Woodrow Wilson, the Progressives were successful at forming a bipartisan coalition to meet the new challenges of domestic industrialization head-on. The legacy of the reforms initiated by the Progressives - which were championed by Republicans and Democrats alike - is the most prosperous country on Earth, with the strongest middle-class, and the most formidable market of consumers. In our time, we should be just as bold and just as bipartisan in meeting the challenges of globalization.