

## Six Questions for US Trade Policy

By John R. Magnus \*

The quadrennial Washington ritual of preparing and broadcasting “advice to the new administration” is now in full bloom -- perhaps the fullest bloom ever.

Trade policy is no exception. Stakeholders, think-tankers, and “wise persons” of every affiliation are opining on what the new government should do, or refrain from doing, on trade.

But at this unusual moment -- maybe an inflection point -- in the history of American trade policy, questions may be more useful than answers. Here are six key questions. Nobody could answer them with much confidence today, but the answers as they emerge will largely define U.S. trade policy’s next chapter.

1. **Paradigm:** What broad strategic paradigm will the new administration follow as a replacement for the Bush Administration’s “competitive liberalization?” As a matter of explicit doctrine since 2003, and in practice since earlier, the United States has opportunistically pursued trade liberalization on a bilateral and regional basis -- both for its own economic and geopolitical benefits, and to increase incentives for large trading partners in Europe and Asia to be forthcoming in multilateral trade talks. Execution of that doctrine stalled in President Bush’s second term, with three bilateral agreements left un-implemented by Congress. Washington’s new political majority has criticized the doctrine itself, but has yet to coalesce on a new one. Competitive liberalization was accommodating; it provided cover for initiatives that were attractive to the government for various reasons, even where the economics were modest, and all without overtly calling into question the primacy of multilateralism. A successor doctrine will have big shoes to fill.

2. **Emphasis:** How much relative emphasis will the new government place on “reforming” existing trade pacts, as opposed to pursuing or implementing new ones? Existing pacts provide net economic benefits (although modest in some cases) to the United States. Tweaking them to provide even *more* net benefits is possible in theory, but would be difficult both technically and politically, and may not be the canniest use of resources in terms of using trade policy to help make America’s economy hum again.

3. **Votes:** Will the new government allow any major trade-liberalizing items to come to a vote in the first two years? Conventional wisdom holds that trade votes are bad for the Democratic party -- they split the caucus, demoralize stakeholders, and generally spell trouble for the party’s political majority. Many regard allowing trade initiatives to reach the front of the legislative queue as a blunder of the early Clinton administration. A precious period of unified government was squandered when it could, the argument goes, have been used to enact important Democratic priorities. And then it might have lasted longer -- the 1994 Republican takeover could have been averted! Although questionable in several particulars, this narrative is present in the minds of many Democrats in and out of government today, and they are determined to manage the new period of unified government differently. There will be a strong temptation to use President Obama’s political capital exclusively for initiatives favored by a strong majority of Democrats,

to keep trade-liberalizing measures (and related items like Trade Promotion Authority) off the voting agenda for months or even years, and to limit any congressional trade votes to matters like adjustment assistance and enforcement. But, of course, foreign policy concerns, and business community desires, will pull in the opposite direction.

4. **Blue-green:** Will the United States now pursue a “blue and green” agenda as part of its multilateral trade diplomacy? The “May 10 principles,” announced with great fanfare in May 2007 by the newly empowered Democratic congressional leadership and the Bush administration, gave labor (blue) and environmental (green) issues greater prominence in the U.S. trade policy template. Long a feature of U.S. unilateral trade preference programs, blue and green requirements would henceforth appear in bilateral and regional trade agreements. But, there was no mention of taking blue and green issues into the multilateral sphere. Participants on the Congressional side described this result as the best they could achieve when forced to compromise with a sitting Republican President. Freed of that constraint, will they now seek to take the blue-green agenda global? Will the Obama administration agree to attempt such an expansion, and, if so, how will the world respond? (A new multilateral deal has so far been elusive even without these substantial new U.S. demands.)

5. **Enforcement:** With power in the Executive and Legislative branches, how will Democrats follow up their rhetoric of the last several years on trade “enforcement?” The critique has focused significantly on the Bush Administration’s discretionary decisionmaking (too timid, *etc.*), but also has reached further to encompass the enforcement architecture. What structural reforms to the existing enforcement machinery will Congressional leaders seek to prioritize? Which ones (if any) will the Obama administration willingly accept?

6. **Wild-cards:** What trade items will become unblocked, explode onto the agenda, and/or evolve with unexpected speed? Such items emerge in most cycles of the U.S. government -- for example, China in the 106th congress and import safety in the 110<sup>th</sup>. In the next cycle, perhaps Russia, or Cuba, or carbon tariffs, or energy, or auto subsidies, will play such a role. In trade as elsewhere, much depends on how government leaders deal with issues that unexpectedly demand attention.

Sincere apologies to readers who picked up this page expecting answers. I doubt the wait will be very long.

*\* The author, a trade lawyer in Washington, DC, is President of TradeWins LLC and Of Counsel at Miller & Chevalier Chartered.*