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# World Trade Organization (WTO): Issues in the Debate on Continued U.S. Participation

Raymond J. Ahearn  
*Congressional Research Service*

Ian F. Fergusson  
*Congressional Research Service*

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# World Trade Organization (WTO): Issues in the Debate on Continued U.S. Participation

## **Abstract**

[Excerpt] Following World War II, the United States led efforts to establish an open and nondiscriminatory trading system with the expressed goal of raising the economic well-being of all countries and bolstering world peace. These efforts culminated in the creation of the General Agreement on Tariffs and Trade (GATT) in 1948, a provisional agreement on tariffs and trade rules that governed world trade for 47 years. The World Trade Organization (WTO) succeeded the GATT in 1995 and today serves as a permanent body that administers the rules and agreements negotiated and signed by 153 participating parties, as well as a forum for dispute settlement and negotiations.

Section 125 of the Uruguay Round Agreements (P.L. 103-465), which is the law that approved and implemented the agreements reached during the Uruguay Round of multilateral trade negotiations, provided that the U.S. Trade Representative (USTR) must submit to Congress every five years a report that analyzes the costs and benefits of continued U.S. participation in the WTO. The USTR submitted its report to Congress on March 1, 2010, triggering a 90 legislative day timetable in which any Member of Congress may introduce a privileged joint resolution withdrawing congressional approval of the WTO Agreement (to date no withdrawal resolution has been introduced in the 111th Congress).

Most observers maintain that U.S. withdrawal from the WTO is at best highly unlikely for both substantive and procedural reasons. Substantively, the withdrawal of U.S. participation could undermine a multilateral system of trade rules and practices, formulated and implemented under U.S. leadership, that on balance has contributed to increased economic prosperity and security at home and abroad. Procedurally, a withdrawal resolution would have to pass both the House and Senate and then surmount a likely Presidential veto via an override with a two-thirds majority vote. Nevertheless, such a resolution provides an opportunity for Members of Congress periodically to debate “whether the WTO is an effective organization” and ways it could better serve U.S. interests.

The purpose of this report is to analyze some of the main issues in any debate on U.S. participation in the WTO and to address some of the criticisms leveled at the organization. Academic studies indicate that the United States benefits from broad reductions in trade barriers worldwide, but some workers and industries might not share in those gains. Decisions in the WTO are made by member governments, which determine their negotiating positions, file dispute challenges, and implement their decisions. However, some argue that smaller countries are left out of decision-making and that governments tend to represent the interests of large corporations disproportionately.

The United States has been a frequent participant in WTO dispute proceedings, both as a complainant and as a respondent. There have been complaints that countries do not adhere to decisions and that U.S. trade remedy laws have not been judged properly. It is also argued that this multilateral dispute settlement process is unique and that the United States has successfully used the process to advance its economic interests.

Certain advocates for the environment, food safety, labor, development, and financial regulation have criticized the WTO. Much of the criticism is based on interpretations of various WTO agreements or rulings that have been controversial. An appendix sets out the legislative procedures for the WTO withdrawal resolution. This report will be updated as events warrant.

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**Keywords**

World Trade Organization, WTO, trade, United States

**Comments****Suggested Citation**

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# World Trade Organization (WTO): Issues in the Debate on Continued U.S. Participation

**Raymond J. Ahearn**

Specialist in International Trade and Finance

**Ian F. Fergusson**

Specialist in International Trade and Finance

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Congressional Research Service

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## Summary

Following World War II, the United States led efforts to establish an open and nondiscriminatory trading system with the expressed goal of raising the economic well-being of all countries and bolstering world peace. These efforts culminated in the creation of the General Agreement on Tariffs and Trade (GATT) in 1948, a provisional agreement on tariffs and trade rules that governed world trade for 47 years. The World Trade Organization (WTO) succeeded the GATT in 1995 and today serves as a permanent body that administers the rules and agreements negotiated and signed by 153 participating parties, as well as a forum for dispute settlement and negotiations.

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Most observers maintain that U.S. withdrawal from the WTO is at best highly unlikely for both substantive and procedural reasons. Substantively, the withdrawal of U.S. participation could undermine a multilateral system of trade rules and practices, formulated and implemented under U.S. leadership, that on balance has contributed to increased economic prosperity and security at home and abroad. Procedurally, a withdrawal resolution would have to pass both the House and Senate and then surmount a likely Presidential veto via an override with a two-thirds majority vote. Nevertheless, such a resolution provides an opportunity for Members of Congress periodically to debate “whether the WTO is an effective organization” and ways it could better serve U.S. interests.

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Certain advocates for the environment, food safety, labor, development, and financial regulation have criticized the WTO. Much of the criticism is based on interpretations of various WTO agreements or rulings that have been controversial. An appendix sets out the legislative procedures for the WTO withdrawal resolution. This report will be updated as events warrant.

## **Contents**

Introduction .....	1
Background on the GATT/WTO System .....	2
GATT .....	3
WTO .....	5
Stakeholders in the WTO Debate.....	8
Economic Costs and Benefits of the WTO.....	10
Decisionmaking in the WTO and National Sovereignty Issues.....	14
Governance.....	15
Decisionmaking .....	15
Transparency in the WTO .....	18
Sovereignty.....	19
The WTO Dispute Process .....	19
Criticisms of the WTO from Environmental, Food Safety, Labor, Development, and Financial Regulation Perspectives .....	22
Environmental Concerns .....	23
Health and Safety Concerns .....	24
Labor Concerns.....	25
Development Concerns .....	27
Financial Services Regulation Concerns .....	28
Possible Consequences of U.S. Withdrawal from the WTO .....	31

## **Tables**

Table 1. Summary of GATT Negotiating Rounds.....	4
Table 2. Uruguay Round Tariff Bindings .....	6
Table 3. Snapshot of Cases Involving the United States .....	21

## **Appendixes**

Appendix. Legislative Procedure for U.S. Withdrawal from the WTO .....	33
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## **Contacts**

Author Contact Information .....	38
Acknowledgments .....	38

## Introduction

The 111<sup>th</sup> Congress is considering various issues related to the World Trade Organization (WTO). The United States was a major force behind the creation of the WTO in 1993 and the establishment of new rules and trade liberalization that occurred as a result of the Uruguay Round of multilateral trade negotiations (1986-1994). Section 125 of the Uruguay Round Agreements Act (P.L. 103-465), which is the law that approved and implemented the agreements reached during the Uruguay Round, provided that the U.S. Trade Representative (USTR) must submit to the Congress every five years a report that analyzes the costs and benefits of continued U.S. participation in the WTO.<sup>1</sup> Once Congress receives this comprehensive report, any Member of Congress may introduce a privileged joint resolution withdrawing congressional approval of the WTO Agreement within 90 days.<sup>2</sup>

The legislative procedure for such withdrawal basically follows Section 152 of the Trade Act of 1974 (P.L. 93-618), which provides for the enactment of joint resolutions disapproving certain trade-related actions. The procedure provides for a (non-mandatory) introduction of the resolution, with mandatory, non-amendable language, and specific expedited (fast-track) legislative procedures.<sup>3</sup>

The USTR submitted the report to Congress on March 1, 2010. To date no withdrawal resolution has been introduced in the 111<sup>th</sup> Congress in either chamber.<sup>4</sup> The last time such a resolution was considered was in 2005. At that time the Administration submitted its report on U.S. participation in the WTO on March 2 and on the same day, Representative Bernard Sanders introduced withdrawal resolution H.J.Res. 27. H.J.Res. 27 was privileged and was considered under expedited legislative procedures. On May 26, 2005, the House Ways and Means Committee reported the resolution adversely (H.Rept. 109-100). On June 9, 2005, the House defeated H.J.Res. 27 by a vote of 338-86. A similar withdrawal resolution was introduced in 2000 (H.J.Res. 90; H.Rept. 106-672) and was voted down in the House by a 363-56 vote. The withdrawal resolution offered the opportunity for Members to examine the costs and benefits of WTO participation, express the degree of satisfaction with WTO dispute decisions, or debate other aspects of WTO membership.

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<sup>1</sup> The most recent report was submitted on March 1, 2010, and it can be found in Office of the U.S. Trade Representative. *2010 Trade Policy Agenda and 2009 Annual Report of the President of the United States on the Trade Agreements Program*. Chapter II and Annex II of this report serve to meet the requirements of the Uruguay Round Agreements Act.

<sup>2</sup> The 90-day period excludes any day on which either house is not in session because of an adjournment of more than three days to a day certain, or sine die, and any Saturday and Sunday on which either house is not in session.

<sup>3</sup> See CRS Report RL32700, *Seeking Withdrawal of Congressional Approval of the WTO Agreement: Background, Legislative Procedure, and Practical Consequences*, by Vladimir N. Pregelj. In brief, any withdrawal resolution is referred to the Ways and Means Committee in the House and the Finance Committee in the Senate. The committee of referral has 45 non-recess days (as defined in 19 U.S.C. 2192) to report the measure; otherwise, it is automatically discharged. Floor debate is limited. If Congress adopts a joint resolution of withdrawal, it must transmit the resolution to the President within 90 non-recess days from the receipt of the President's report on the WTO. Under Section 125, congressional approval of the WTO Agreement ceases to be effective "if and only if" the joint resolution is enacted into law in accordance with the Section 125 requirements.

<sup>4</sup> Based on the criterion of the statute and the announced congressional schedule, a resolution would have to be introduced sometime in September to qualify for privileged status.

In addition to possibly considering a withdrawal resolution, the 111<sup>th</sup> Congress has monitored WTO disputes involving U.S. interests and U.S. laws, China's implementation of its WTO commitments, and U.S. participation in the Doha Development Agenda, the latest round of multilateral trade negotiations. These talks, which began in November 2001 in Doha, Qatar, have been stalemated for a number of years.

Most observers maintain that U.S. withdrawal from the WTO is at best highly unlikely for both substantive and procedural reasons. Substantively, the withdrawal of U.S. participation could undermine a multilateral system of trade rules and practices, formulated and implemented under U.S. leadership, that on balance has contributed to increased economic prosperity and security at home and abroad. Procedurally, a withdrawal resolution would have to pass both the House and Senate and then surmount a likely Presidential veto via an override with a two-thirds majority vote. It has also been debated what legal effect the resolution would have if adopted. Yet, this resolution provides an opportunity for members of Congress periodically to debate the U.S. role in an important international institution and the direction of U.S. trade policy, generally. The reasons for the disapproval provision are explained by the House Ways and Means Committee as follows:

The purpose of this provision is to provide an opportunity for the Congress to evaluate the transition of the GATT to the WTO and to assess periodically whether continued membership in this organization is in the best interest of the United States. It is the desire of the Committee not to leave this decision totally in the hands of the Executive Branch but to be active in determining whether the WTO is an effective organization for achieving common trade goals and principles and for settling trade disputes among sovereign nations.<sup>5</sup>

The purpose of this report is to analyze some of the main issues in the debate on U.S. participation in the WTO and to address some of the criticisms leveled at the organization. To put the issue in perspective, the report begins with a brief history of the world trading system, including its purpose and functions, followed by an examination of the economic benefits and costs of the WTO. The main body of the report addresses selected issues for the United States: the economic costs and benefits to the United States; decisionmaking in the WTO and national sovereignty; the WTO dispute process; and criticisms of the WTO from environmental, health and safety, labor, development, and financial regulation perspectives.

## **Background on the GATT/WTO System**

Following World War II, nations throughout the world, led by the United States and several other developed countries, sought to establish an open and non-discriminatory trading system with the goal of raising the economic well-being of all countries. Aware of the role of trade barriers in contributing to the economic depression in the 1930s, including severe drops in world trade, global production, and employment, the countries that met to discuss the new trading system considered open trade as essential for economic stability and peace.

The intent of these negotiators was to establish an International Trade Organization, which would address not only trade barriers but other issues indirectly related to trade, including employment,

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<sup>5</sup> House Committee on Ways and Means, *Uruguay Round Agreements Act; Report to accompany H.R. 5110*, 103d Congress, 2d Session, H.Rept. 103-826, part 1, October 3, 1994, p. 34-35.

investment, restrictive business practices, and commodity agreements. Unable to secure approval for such a comprehensive agreement, however, they reached a provisional agreement on tariffs and trade rules, called the General Agreement on Tariffs and Trade (GATT). The GATT went into effect in 1948. This provisional agreement became the principal set of rules governing international trade for the next 47 years.

## GATT

The GATT was not a formal international organization. The countries signing the GATT were “contracting parties” and not members because the GATT was simply an agreement between governments and not a formal treaty. The GATT did house a small secretariat based in Geneva but it remained very small, especially compared to the staffs of the other international economic institutions such as the International Monetary Fund and World Bank, which were also established following World War II. Based on a mission to promote trade liberalization, the GATT also became the principal set of rules governing international trade.

The core principles and articles of the GATT (which are carried over to the WTO) committed the original 23 members to lower tariffs on a range of industrial goods and to apply tariffs in a non-discriminatory manner (the so-called most-favored-nation or MFN principle).<sup>6</sup> This meant that if a country granted a trade benefit or concession to one country (such as a lower tariff on a particular product), it would have to extend the same benefit or concession to all other members of the GATT. By having to do the same for all members, the welfare gains from trade liberalization were magnified. GATT members also agreed to provide “national treatment” for imports from other members, meaning that domestic regulations could not treat foreign products less favorably than like domestic products once they had entered the market. Countries party to the agreement, thus, could not establish one set of health and safety regulations on domestic products while imposing more stringent regulations on imports as way of protecting domestic producers.

Although the GATT lacked authority to enforce these rules or principles largely because it was not accompanied by an effective dispute settlement system, it nonetheless brought about a substantial reduction of tariffs and other trade barriers. **Table 1** lists the “negotiating rounds” of the GATT and their major accomplishments. The eight rounds listed succeeded in reducing average tariffs on industrial products from roughly 40% to just below 4%, facilitating a fourteen-fold increase in world trade over its 47 year history. When the first round of negotiations was completed in 1947, 23 nations participated and the amount of trade covered by the agreements was around \$53 billion. When the Uruguay Round establishing the WTO was concluded in 1994, 123 countries participated and the amount of trade affected was nearly \$3.7 trillion. Currently, there are 153 members of the WTO, governing trade flows of \$15.7 trillion in 2008.<sup>7</sup>

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<sup>6</sup> Also referred to as normal trade relations (NTR) status by the United States.

<sup>7</sup> WTO, *2009 International Trade Statistics*, Table 1.6, [http://www.wto.org/english/res\\_e/statis\\_e/its2009\\_e/its09\\_world\\_trade\\_dev\\_e.htm](http://www.wto.org/english/res_e/statis_e/its2009_e/its09_world_trade_dev_e.htm).

**Table I. Summary of GATT Negotiating Rounds**

Year	Where Negotiated (Name of Round)	Number of Countries Negotiating	Major Accomplishments
1947	Geneva	23	GATT established. Tariff reduction of about 20% negotiated.
1949	Annecy, France	13	Accession of 11 new contracting parties. Tariff reduction of about 2%.
1950-51	Torquay, U.K.	38	Accession of 7 new contracting parties. Tariff reduction of about 3%.
1955-56	Geneva	26	Tariff reduction of about 2.5%.
1960-61	Geneva (Dillon)	26	Tariff reduction of about 4% and negotiations involving external tariff of the European Community.
1964-67	Geneva (Kennedy)	62	Tariff reduction of about 35% and negotiation of antidumping measures
1973-79	Geneva (Tokyo)	102	Tariff reduction of about 33%, plus five non-tariff barrier codes negotiated.
1986-1994	Geneva (Uruguay)	123	WTO created along with a new dispute settlement system. Liberalization of agriculture and textiles and apparel. Rules adopted for new areas such as services, investment, and intellectual property.

**Source:** Douglas A. Irwin, *Free Trade Under Fire*, p. 225, and Stephen D. Cohen, et al., *Fundamentals of U.S. Foreign Trade Policy*, p. 185.

During the first trade round held in Geneva in 1947, a 20% tariff reduction was negotiated. In the 1950s, more countries acceded to the GATT, but the tariff reductions were negligible. The Kennedy Round in the mid-1960s resulted in an average tariff cut of 35%. These cuts were generally across the board, with each country receiving exemptions for sensitive sectors. The Tokyo Round of the 1970s reduced tariffs by another 33%, leading to an average import duty on industrial goods at just under 5% for developed countries. The Tokyo Round also represented the first attempt to reform the international trade rules that had existed since 1947 by including many more issues and policies that could distort international trade. As a result, Tokyo Round negotiators established several new plurilateral codes dealing with non-tariff issues such as antidumping, subsidies, technical barriers, import licensing, customs valuation, and government

procurement. Countries could choose which, if any, of these codes they wished to adopt. The majority of GATT signatories, including most developing countries, chose not to sign the codes.<sup>8</sup>

The Uruguay Round, which took eight years to negotiate (1986-1994), proved to be the most comprehensive GATT trade round. This round further lowered tariffs in industrial goods and liberalized trade in areas that had eluded previous negotiators, notably agriculture and textiles and apparel. It also extended rules to new areas such as services, investment, and intellectual property. It created a trade policy review mechanism, which periodically examines a member's trade policies and practices. Most significantly, the Uruguay Round created the WTO as a legal international organization charged with administering a revised and stronger dispute settlement mechanism, as well as many new trade agreements adopted during the long negotiation. For the most part, the Uruguay Round agreements were also accepted as a *single package* or *single undertaking* meaning that all participants and future members of the WTO are required to follow all of the agreements reached.<sup>9</sup>

## WTO

The World Trade Organization (WTO) succeeded the GATT in 1995. In contrast to the GATT, the WTO was created as a permanent structure. But like the GATT, the WTO secretariat and support staff is small by international standards and lacks independent power. The power to make trade policy and write rules resides specifically with the member countries, and not the WTO director-general or staff.<sup>10</sup>

Most decisions within the WTO are made by consensus, not by formal vote. The highest level body in the WTO is the Ministerial Conference, which is the body of political representatives (trade ministers) from each member country. The body that oversees the day-to-day operations of the WTO is the General Council, which consists of a representative from each member country. Many other councils and committees deal with particular issues, and members of these bodies are also national representatives.

The WTO has three broad functions: administering the rules of the trading system, establishing new rules through negotiations, and resolving disputes between member states. The first deals with administering the rules and principles negotiated and signed by its members. The main purpose of the rules is to ensure that trade flows as smoothly, predictably, and freely as possible. The rules or WTO agreements are essentially contracts binding governments to keep their trade policies within agreed limits.

The core principles of the GATT are carried over to the WTO. In general, these key principles are non-discrimination and the notion that freer trade through the gradual reduction of trade barriers strengthens the world economy. The barriers concerned include tariffs, quotas, and a growing range of non-tariff measures such as product standards, food safety measures, subsidies, and domestic regulations.

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<sup>8</sup> Douglas A. Irwin, *Free Trade Under Fire*, Princeton University Press, 2009, p. 226.

<sup>9</sup> *Ibid.*, p. 231. The Agreement on Government Procurement remained a plurilateral agreement, and the subsequent Agreement on Information Technology was also negotiated plurilaterally.

<sup>10</sup> *Ibid.*, p. 239.

While opening markets can encourage competition, innovation, and growth, it also entails adjustments for workers and firms. The WTO agreements allow countries to introduce changes gradually, through “progressive liberalization.” Developing countries and ‘sensitive sectors’ are usually given longer transition periods to fulfill their obligations.

In WTO parlance, when countries agree to open their markets further to foreign goods and services, they “bind” their commitments or agree not to raise them. For goods, these bindings amount to ceilings on tariff rates. A country can change its bindings, but only after negotiating with its trading partners, which could entail compensating them for loss of trade. As shown in **Table 2**, one of the achievements of the Uruguay Round was to increase the amount of trade under binding commitments.

Promising not to raise a trade barrier can be as important as lowering one because the promise provides traders and investors a substantially higher amount of market security and predictability. This proved particularly important during the 2009 global economic downturn. Unlike the 1930s when countries reacted to slumping world demand by raising tariffs and other trade barriers, the WTO reported that its 153 members, accounting for 90% of world trade, by and large did not resort to protectionist measures in response to the crisis.<sup>11</sup>

**Table 2. Uruguay Round Tariff Bindings**  
Percentage of tariffs bound before and after 1986-94 talks

	<b>Before</b>	<b>After</b>
Developed countries	78	99
Developing countries	21	73
Transition economies	73	98

**Source:** WTO, *Understanding the WTO: Basics*, found at WTO website, <http://www.wto.org>.

**Notes:** These are tariff lines, so percentages are not weighted according to trade volume or value.

The promotion of fair and undistorted competition is another important principle of the WTO. While WTO is often described as a free trade organization, numerous WTO rules are concerned with transparent and non-distorted competition. The most-favored-nation treatment and national treatment concepts are clearly aimed at promoting fair trade. So too are the rules on subsidies and dumping. For example, when a company receives a prohibited subsidy for exporting, the WTO fair trade rules allow governments to neutralize any unfair advantage by imposing a duty to offset for the unfair advantage.

The scope of the WTO is broader than the GATT because it administers multilateral agreements on agriculture, services, investment, and intellectual property, in addition to goods. The new rules in particular are forcing the WTO to deal with complex issues that go deep into the economic structures of member states.

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<sup>11</sup> WTO, *Overview of Developments in the International Trading Environment*, November 18, 2009. WT/TPR/OV/12, p. 4.

The second function of the WTO is to provide a mechanism to enforce the rules and settle disputes. While the GATT's process for settling disputes between member countries was informal, ad hoc, and voluntary, the WTO dispute settlement process is formalized, legalistic, and enforceable.<sup>12</sup> Under the GATT, panel proceedings could take years to complete, any defending party could block an unfavorable ruling, failure to implement a ruling carried no consequence, and the process did not cover all the agreements. Under the WTO, there are strict timetables for panel proceedings, the defending party cannot block rulings, there is one comprehensive dispute settlement process covering all the agreements, and the rulings are enforceable. Yet, under both systems, considerable emphasis is placed on having the member countries resolve disputes through consultations and negotiations, rather than relying on formal panel rulings.

#### **GATT/WTO Principles of Non-Discrimination**

The *most-favored nation (MFN)* (also called *normal trade relations (NTR)* by the United States) principle requires each member country to grant each other member country treatment at least as favorable as it grants to its most-favored trade partner. The *national treatment principle* obligates each country not to discriminate between domestic and foreign products; once an imported product has entered a country, the product must be treated no less favorably than a "like" product produced domestically.

Third, the WTO, as the GATT did for 47 years, provides a negotiating forum where member governments try to sort out the trade problems they face with each other. This can involve a few countries, many countries, or all members. As part of the post-Uruguay Round built-in agenda, negotiations covering basic telecommunications and financial services were completed under the auspices of the WTO in 1997. Selected WTO members also negotiated a deal for zero tariffs in information technology products and negotiations improving rules and procedures for government procurement have taken place.

Multilateral negotiations launched in 2001, the so-called Doha Development Agenda (DDA) round, however, have proved difficult and contentious. For nearly nine years, the negotiations have been stalemated over the treatment of issues such as reducing domestic subsidies and opening markets in agriculture, industrial tariffs, non-tariff barriers, services, intellectual property rights, and special and differential treatment for developing countries. The most significant differences have been between developed countries, led by the United States and European Union, on the one hand, and developing countries, led by India, Brazil, and China, on the other hand.

Although the DDA was supposed to have been completed by 2005, many subsequent deadlines have been missed. This failure has prompted many to question the utility of the WTO as a negotiating forum, as well as the practicality of conducting a large-scale negotiation involving 153 participants with consensus and a single undertaking as guiding principles. At the same time, many proposals have been advanced for bringing the round to an end and making the WTO a stronger forum for negotiations in the future.<sup>13</sup>

<sup>12</sup> This stronger dispute settlement system was created, in part, as a result of demands from Congress that the GATT approach was ineffective in eliminating barriers to U.S. exports. In fact, it was first principal trade negotiation objective set out in the Omnibus Trade and Competitiveness Act of 1988, P.L. 100-418, Sec. 1101(b)(1), 19 U.S.C. 2901(b)(1).

<sup>13</sup> See, for example, CRS Report RL32060, *World Trade Organization Negotiations: The Doha Development Agenda*, by Ian F. Fergusson; CRS Report RS22927, *WTO Doha Round: Implications for U.S. Agriculture*, by Randy Schnepf and Charles E. Hanrahan; and CRS Report RL33085, *Trade in Services: The Doha Development Agenda Negotiations and U.S. Goals*, by William H. Cooper.

In addition, some have questioned the continued relevancy of the Doha negotiations in light of other pressing issues implicating the trade regime, such as the global financial crisis, trade implications of greenhouse gas mitigation strategies, perceived exchange-rate manipulation, and widely volatile commodity prices, none of which are being addressed in the current negotiations. As two noted economists wrote, “the Doha process has been Nero-like in dwelling on issues of relatively minor consequence while the burning issues of the day are not even on the agenda.”<sup>14</sup> Another noted economist maintains that the round has “suffered incalculable collateral damage by seven years of fruitless, arcane negotiations and ... by the petty bickering and blame-games of national trade ministers,” and has advocated for the suspension of the round for a year to allow time “to plot a course for the long-term revival of the negotiations and of the WTO as an institution.”<sup>15</sup>

## Stakeholders in the WTO Debate

The debate about the WTO and trade is often intense and complicated. Showing few signs of abating, the debate has raised some basic questions. Why is freer trade and trade liberalization considered by most observers to be a desirable policy? Do the most frequently made criticisms of the WTO and trade agreements have merit? Do WTO rules erode a country’s sovereignty and undermine its leeway to set health, safety, environmental and other domestic regulations?<sup>16</sup>

Defenders of the WTO and its system of rules come mainly from exporters of goods, services, and agricultural products, foreign investors, consumer groups, retailers, mainstream economists and other academics, and government leaders. They argue that rising levels of trade and a rules-based trading system contribute, on balance, to improving the welfare and prosperity of billions of people around the world. Trade expansion is viewed as an engine of economic growth both here and abroad. WTO membership is seen helping countries to keep their own markets open for the benefit of exporters, consumers, and industries using imports. WTO agreements are deemed to make it less tempting for governments to impose economically costly trade barriers under short-term political pressure. Supporters also argue that a rules-based trading system helps create more dynamic and competitive economies, and helps provide the kind of stability, predictability, and growth in international trade that is good for both the world and the United States.<sup>17</sup>

Supporters, however, recognize that the WTO has shortcomings. They worry, for example, about the WTO’s relevance as a result of the proliferation of regional and bilateral trade agreements. They are concerned that the WTO has been unable to conclude the Doha Round trade liberalization talks since negotiations began nearly nine years ago. They are concerned about a perceived lack of transparency in the operations of the WTO, particularly over the decision-making process guided by a consensus principle that makes it increasingly more difficult to make decisions. They are also unsure whether the mandate given to the WTO is too large or too small. On the one hand, some supporters believe that the WTO should stick to a much narrower agenda that deals with market access for goods and services. On the other hand, some supporters want to expand the WTO’s mandate to include trade issues more broadly defined, including competition

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<sup>14</sup> Aaditya Mattoo and Arvind Subramanian, “Multilateralism Beyond Doha,” World Bank Policy Research Working Paper 4735, September 2008.

<sup>15</sup> Claude Barfield, “Suspend Negotiations at Doha,” *Forbes*, January 9, 2009.

<sup>16</sup> Douglas A. Irwin, *Free Trade Under Fire*, Princeton University Press, 2009, p.4.

<sup>17</sup> *Ibid.*, p. 277.

policy, energy policy, global health services, and a host of other contentious issues such as corruption, corporate social responsibility, exchange rates, and cyber security.<sup>18</sup>

Despite these concerns, supporters believe that the WTO can be improved and reformed. They point to studies initiated by the WTO itself to address these concerns and are confident that progress in addressing alleged shortcomings is being made.<sup>19</sup> Furthermore, they maintain that if the WTO did not exist, some other organization would have to be invented to set and monitor trade rules between countries at the global level.

On the other side of the debate are many groups who oppose the current system of world trade as embodied in the WTO. These critics include NGOs or public interest groups representing consumers, environmentalists, labor unions, food safety advocates, human rights groups, and other groups concerned about social justice and poverty in developing countries. Some economic populists, such as television commentators Patrick Buchanan and Lou Dobbs, fear the loss of economic sovereignty to the WTO.

With notable exceptions, these groups are often hostile to, or highly critical of capitalism, multinational corporations, and freedom of cross-border trade and capital flows. Some see the WTO and its agreements as “a powerful mechanism for spreading and locking-in corporate-led globalization.”<sup>20</sup> For example, Thea Lee of the AFL-CIO asserts that the major objective of U.S. trade policy has been to increase the profitability of U.S.-based multinational companies at the expense of U.S. workers who lose their jobs because their companies have shifted production overseas.<sup>21</sup> These groups tend to see freer trade and trade agreements as harming workers, weakening manufacturing industries and environmental standards, pressuring wages and labor standards, outsourcing jobs, and undermining U.S. sovereignty. Many of these trade skeptics see the evolving and growing WTO agenda causing real-life hardships in terms of plant closings, layoffs of workers, lost jobs, and unsafe work places taking place in both developed and developing countries.<sup>22</sup>

Many of their concerns are directed at what they call free trade policies and the WTO. The concerns are propelled by rapid increase in international trade and a much more competitive international environment. As global economic integration has accelerated in recent years, so has the pace of painful economic adjustments. Meanwhile, the reach of world trade rules has gone beyond trade barriers to encompass internal regulatory policies affecting health, safety, and the environment. As a result, groups disturbed by these changes, whether directly in terms of jobs or indirectly in terms of community values they believe are at stake, have questioned the effects of integration and the institutions associated with it. Many of these groups have raised questions about the impact of commerce on the U.S. economy and on the operations and transparency of the WTO. They argue that trade liberalization agreements have gone too far by imposing restrictions

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<sup>18</sup> Jennifer Hillman, *Saving Multilateralism*, German Marshall Fund Paper Series, 2010, p. 26.

<sup>19</sup> See, for example, World Trade Organization, *The Future of the WTO: Addressing Institutional Challenges in the New Millennium: Report of the Consultation Board to the Director-General Supachia Pantichpakdi* (the “Sutherland Report”), 2004.

<sup>20</sup> Lori Wallach and Patrick Woodall, *Whose Trade Organization*, (New Press, 2004), p.2.

<sup>21</sup> Testimony of Thea Lee, Policy Director, AFL-CIO, Senate Finance Committee, *U.S.-Panama Trade Promotion Agreement*, May 21, 2009.

<sup>22</sup> Sherrod Brown, *Myths of Free Trade*, WW Norton & Co, 2004, pp. 69-96.

of the ability of sovereign governments to regulate commercial activity within their borders by requiring them to adhere to WTO rules.

In the background of the debate over the WTO, the U.S. public has grown less supportive of international trade. Most polls show a majority of Americans expressing some degree of skepticism that free trade and the WTO benefit most Americans. A 2008 survey of public opinion in 24 countries by the Pew Research Center found that Americans are among the least supportive of international trade. Just 53% of Americans said that trade was good for the United States, down sharply from 78% in 2002. They are also skeptical of trade agreements, with 35% saying that they were a good thing and 48% saying they were bad. The American public also appears to care more about jobs destroyed by imports than about jobs destroyed due to technological change or shifts in demand.<sup>23</sup>

These public views no doubt are reflected in recent congressional deliberations on U.S. trade policy in general, and on free trade agreements (FTAs) in particular. Congressional ambivalence on trade liberalization, particularly in the House of Representatives, seems to have increased in recent years as indicated by the increasing closeness of votes on trade legislation such as trade promotion authority.<sup>24</sup> In addition, while three FTAs have been signed since 2007 (Colombia, Korea, and Panama), the Obama Administration to date has not arranged with Congress for consideration of the implementing legislation. Lack of movement from the administration and the congressional leadership reflects, in part, the growing debate over the impact that FTAs have on the U.S. economy. While the U.S. business community broadly supports FTAs as the promoters of U.S. exports, jobs, and stronger political ties, U.S. labor unions and some NGOs oppose them on grounds of unfair competition or their alleged adverse impact on workers and development in poor countries.

## **Economic Costs and Benefits of the WTO**

One question that Congress may consider as it debates continued participation in the WTO is its effect on the economy and prosperity of the United States. In one sense, this is a difficult question to answer as the general prosperity of the 15 years of WTO existence occurred along with the information technology boom in the United States in the 1990s, the rise of China as an economic power, and macroeconomic and other factors. U.S. involvement in the WTO did not happen in a vacuum. Much of the increased trade may have occurred anyhow, or in the case of our two largest partners, Canada and Mexico, may have occurred as a consequence, in part, of the implementation of the North American Free Trade Agreement (NAFTA), which was approved by Congress in 1993, more than because of the WTO.

Many economists believe that, over the past 60 years, the more predictable environment for trade as well as the reduction in trade barriers, which were a result of multilateral trade rules, have contributed to unprecedented economic prosperity for the majority of countries. For example, the WTO reports that the value of world exports in 2008 was 266 times that of 1948, while world gross domestic product (GDP) in 2003 was 8.3 times that of world GDP in 1950.<sup>25</sup> Part of this

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<sup>23</sup> Irwin, pp. 25-26.

<sup>24</sup> CRS Report R41145, *The Future of U.S. Trade Policy: An Analysis of Issues and Options for the 111<sup>th</sup> Congress*, by William H. Cooper.

<sup>25</sup> World Trade Organization, *International Trade Statistics 2009*. The growth of world trade more than doubled in the (continued...)

growth is the result of the development of global supply chains, and related trade in intermediate products. However, the rapid growth in world exports has also been attributed to the progressive reduction of trade barriers caused by successive rounds of GATT/WTO trade liberalization, and likely has contributed to the growth in world GDP.

In the report that the President submitted to Congress in March 2010 on the costs and benefits of U.S. participation in the WTO, the Administration has equated U.S. economic success with WTO membership through a variety of trade and non-trade statistics.<sup>26</sup> For example, the report notes that during the 1994-2010 period (the WTO was established in 1995): U.S. GDP rose 50%, industrial production also rose 50%, productivity rose at an annual rate of 4.4% or 70% for the period for manufacturing (2.5% per year or 40% for the economy as a whole in the period) compared with 1.8% annually in the 1984-1994 period. While the report states that “productivity growth is among the most important factors influencing how rapidly real incomes grow and living standards rise,” it appears that increases in productivity have not been matched by rising real wages during the period. The report mentions that real hourly compensation increased 21% during the period, or 1.3% per year, and 22.8 million new jobs were created. Yet, manufacturing employment declined 21% during this period to just about 10% of the labor force.

The President’s report also cites trade statistics. For example, bound tariff rates were lowered an average of 40% for developed countries and 25% for developing countries by the Uruguay Round. U.S. exports of goods and services increased 112% from 1994-2008, from \$703 billion to \$1.83 trillion. U.S. goods exports increased 197% to developing countries and 117% to developed countries. Just over 50% of U.S. exports now go to developing countries, compared to 43% in 1994. Imports of goods and services increased 143%, from \$801 billion to \$2.52 trillion during the WTO period. U.S. goods imports from developed countries increased 129% and by 334% from developing countries. Whereas 57% of U.S. imports came from industrialized countries in 1994, now nearly 60% of imports come from developing countries. Moreover, the composition of imports from developing countries has changed since 1994 from primarily raw materials increasingly to manufactured products.

These statistics are used to bolster the case for continued U.S. participation in the WTO. However, saying that this economic activity occurred during the existence of the WTO is different than saying it happened because of the WTO. Aside from the time period correlation, the report does not conduct rigorous analysis on the value of U.S. participation. Because the WTO’s rules and principles for trade, trade liberalization, and dispute settlement procedures are all designed to encourage trade, it is often taken as self-evident that it accomplishes these goals. However, other factors have been in play during the existence of the WTO, such as the information and communications technology revolution, productivity advances in the United States, decreasing shipping costs, and other developments. Perhaps most importantly, these figures highlight the increased role of developing countries both as trading partners of the United States and in the world trading system.

Nonetheless, most economists argue that increased trade will have a net positive effect on economies. From their perspective, specialization from trade strengthens the most competitive

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2003-2008 period alone.

<sup>26</sup> U.S. Trade Representative, *2010 Trade Policy Agenda and 2009 Annual Report*, Chapter II and Annex I.

and productive sectors of a nation's economy by reallocating resources from less efficient economic activities. They assert that increased trade benefits consumers by offering a greater selection of goods, often at lower prices, which in turn would increase the real income of consumers, and that trade liberalization increases the rate of economic growth through such dynamic effects as the introduction of new products, access to specialized goods, skills transfers, and human capital accumulation.<sup>27</sup>

A pair of econometric studies have attempted to measure the effect of the WTO on the world economy. In both studies, a gravity model (an econometric model in which different phenomena such as GDP, population, distance, common language, or membership in trade arrangements are isolated to attempt to determine the importance of each to trade flows) was used to attempt to isolate the effect of WTO membership on the trade flows of various countries, both members and non-members. The first study,<sup>28</sup> using some 50 years of trade statistics from 175 countries, found that the existence of the GATT/WTO, by itself, did not have a significant positive effect on trade flows. However, a second study<sup>29</sup> by two economists of the International Monetary Fund using much the same data suggests that if the aforementioned gravity model is designed to differentiate between developed and developing countries, then the effects of the GATT/WTO membership on world trade flows can be positively identified, at least for developed countries. The authors postulated that this result is due to developing countries largely being given a "free ride," due to special and differential treatment provisions that has exempted them from many GATT/WTO obligations. These studies show that the potential exists for WTO liberalization to have a beneficial effect on trade, but the differences in their findings show that this issue has not been settled.

Studies also abound on the value of prospective WTO liberalization to the United States and the world economy. In 2005, the now-Peterson Institute for International Economics (IIE) released a report<sup>30</sup> attempting to quantify the gains from global integration using trade liberalization as a proxy for globalization. The study compiled different studies measuring the increased income resulting from increased exposure to trade, the 'sifting and sorting' effects of competition resulting from open trade, potential lost trade from not implementing trade liberalization in the post-war period, and the use of intermediate imports. From this, IIE estimated that the present benefit of all past trade liberalization to the U.S. economy is on the order of \$1 trillion annually, and this translates to a U.S. per capita income gain of \$2,800 to \$5,000. However, this study refers to all trade liberalization, not just that resulting from the GATT/WTO.

Several studies have tried to model the effect of various WTO Doha Round negotiating proposals through general or partial equilibrium models on trade flows and effects on national welfare. One early study used the Michigan Model, a multi-country, multi-sector, general equilibrium model, to analyze various trade policy changes and scenarios.<sup>31</sup> In this case, the model was used to measure

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<sup>27</sup> For further discussion of these concepts, see CRS Report RL31932, *Trade Agreements: Impact on the U.S. Economy*, by James K. Jackson.

<sup>28</sup> Andrew K. Rose, "Do We Really Know That the WTO Increases Trade?," Center for Economic Policy Research, Discussion Paper 3538, September 2002.

<sup>29</sup> Arvind Subramanian and Shang-Jin Wei, "The WTO Promotes International Trade, Strongly but Unevenly," National Bureau of Economic Research Working Paper 10024, October 2003.

<sup>30</sup> Scott Bradford, Paul Grieco, and Gary Hufbauer, "The Payoff to America from Global Integration," in Fred Bergsten, ed., *The United States in the World Economy: Foreign Economic Policy for the Next Decade* (Washington: Institute for International Economics, January 2005), pp. 65-109.

<sup>31</sup> Drusilla Brown, Alan Deardorff, and Robert Stern, "Multilateral, Regional, and Bilateral Trade Options for the (continued...)"

the welfare effects of a 33% reduction in agricultural tariffs and export and production subsidies, in tariffs on manufactures, and on service barriers. The model estimates that U.S. net welfare would increase by \$164 billion (1.81% increase in GDP). It found that the United States would gain primarily from services liberalization (\$135 billion), would receive some net welfare benefit from manufacturing tariff liberalization (\$36.5 billion), but would actually suffer a net welfare loss of \$7.23 billion from the agricultural liberalization envisioned by the model.<sup>32</sup>

A 2009 study by the Peterson Institute for International Economics that seeks to quantify the proposals made by chairs of the various negotiating committees at the Doha Round as of August 2009.<sup>33</sup> The study covered 22 countries—7 advanced and 15 developing—that account for about 75% of world trade. The study found that agriculture and industrial market offers would increase trade among the sample countries by \$133.8 billion (\$67.1 billion in exports and \$66.8 billion in imports) resulting in an increase in GDP of \$63 billion. The study found that proposals on the table would result in increased U.S. exports of \$7.6 billion and imports of \$14.3 billion. It notes that the modest U.S. gain would be partially due to existing FTAs with many partner countries. The authors also modeled a 10% tariff equivalent liberalization in services, and sector liberalization in electronics/components, environmental goods, and chemicals, and drew on previous work on quantifying trade facilitation proposals. If these are included, the Doha Round could lead to a much more substantive increase of \$592 billion (\$280.4 billion in exports and \$311.6 billion in imports) resulting in GDP gains of \$248.8 billion among the sample countries. Under this scenario, U.S. GDP would increase by \$36.4 billion and would result in additional trade flows of \$85.3 billion (\$39.4 in additional exports and \$45.9 billion in additional imports).

A study conducted for the European Commission Trade Directorate used a dynamic computable general equilibrium model to simulate the impact of the July 2008 negotiating proposals.<sup>34</sup> It found an increase in world exports of goods of \$226 billion, resulting in a increase in world GDP of \$57 billion by the base year 2020. Adding what the authors term a “modest” 3% liberalization in services barriers results in an additional \$36 billion in trade. Increased trade resulting from trade facilitation reforms would bring gains of an additional \$99 billion, primarily to developing countries. Overall, world trade would increase by \$383 billion as all the provisions are phased in, resulting in a gain of \$167 billion in world GDP. The study estimates that \$10.3 billion of that GDP gain would accrue to the United States.

In discussing these recent studies, three World Bank economists<sup>35</sup> argue that while these gains may not seem particularly significant to the developed country corporate interests that have traditionally driven multilateral trade liberalization, concluding the round is important nonetheless. Because of years of steady trade and investment growth and unilateral trade liberalization in developing countries, they assert the relative quantifiable value of multilateral

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United States and Japan, University of Michigan Discussion Paper 490, December 12, 2002, at <http://www.spp.umich.edu/rsie/workingpapers/wp.html>.

<sup>32</sup> Ibid., p. 13.

<sup>33</sup> Adler, Brunel, Hufbauer, Schott, and Wong, “Figuring Out the Doha Round,” Peterson Institute for International Economics, 2010. [http://www.wto.org/english/res\\_e/reser\\_e/dialogue\\_paper\\_schott\\_e.pdf](http://www.wto.org/english/res_e/reser_e/dialogue_paper_schott_e.pdf) The United States has not agreed that these proposals form the basis for negotiations.

<sup>34</sup> Decreux and Fontagné, “Economic Impact of Potential Outcome of the DDA,” *Centre d’études prospectives et d’informations internationales*, May 1, 2009. [http://www.cepii.fr/anglaisgraph/reports/pdf/2009/2009\\_01.pdf](http://www.cepii.fr/anglaisgraph/reports/pdf/2009/2009_01.pdf)

<sup>35</sup> Bernard Hoekman, Will Martin, and Aaditya Mattoo, “Conclude Doha: It Matters!,” World Bank Policy Research Working Paper #5135, November 2009. [http://www.wto.org/english/res\\_e/reser\\_e/dialogue\\_paper\\_worldbank\\_e.pdf](http://www.wto.org/english/res_e/reser_e/dialogue_paper_worldbank_e.pdf)

negotiations have diminished. However, they maintain that the importance of the negotiations can be seen during times of economic distress. They note that there has been little recourse to protectionism where multilateral disciplines exist and that such protectionism as has occurred largely has been consistent with the letter of WTO commitments. In areas where there are no multilateral disciplines, however, the resort to protection has been more common. They cite the reintroduction of export subsidies for dairy products and restrictions on the movement of natural person—the so-called Mode IV services—as examples of backsliding that would be prevented or regulated under the current negotiations.

There is an overall consensus among economists that, in general, consumers gain from trade in the form of lower prices and increased choice. These so-called “welfare effects” allow consumers to buy more goods and services than before. This increased buying power boosts demand for other goods and services, including those produced in the United States. In 2005, the President’s report stated the number of wage/hours required to buy various consumer goods has decreased during the period of WTO, and postulates that is due to trade openness promoted by the WTO.<sup>36</sup> Workers in export sectors also gain to the extent that the WTO opens foreign markets to trade. Employees engaged in export sectors are generally more highly skilled than those of import-competing sectors and are generally more highly paid.<sup>37</sup>

However, some labor, particularly unskilled labor, likely has lost out from free trade. The income gap between high and low skilled labor, and between labor and other factors of production (land, capital) is consistent with international trade theory. This theory suggests that in terms of factors of production (land, labor, capital), trade between two countries will result in the relatively scarce factor in each country being made worse off by trade relative to other factors. In the United States, labor, and especially unskilled labor, arguably is the relatively scarce factor in a country otherwise rich in capital, land and educational opportunities.<sup>38</sup> However, reallocating factors of production to their most efficient use has real human costs. Closing a local plant due to import competition is devastating for workers and communities alike, especially if no comparable employer exists to absorb the labor force. Although trade theory holds that labor and capital will *eventually* be redeployed in a more productive manner, *eventually* can be a long time coming for workers and communities that have lost their livelihood.

## Decisionmaking in the WTO and National Sovereignty Issues

An important question related to the WTO is who are the decisionmakers in the organization. There are many different claims about who sets the rules. A second question is, once the decisionmakers within the WTO have agreed on rules, what do the rules mean with regard to national sovereignty of WTO members?

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<sup>36</sup> USTR, *2005 Trade Policy Agenda and 2004 Annual Report*, World Trade Organization, p. 13.

<sup>37</sup> Irwin, p. 120.

<sup>38</sup> The Stolper-Samuelson Theorem, “Protection and Real Wages,” by Wolfgang Stolper and Paul Samuelson, 9 *Review of Economic Studies* 58-73 (1941); Alan Deardorff and Robert Stern, “What the Public Needs to Know About Globalization and the World Trade Organization,” University of Michigan School of Public Policy Discussion Paper #460, July 2000.

## **Governance**

Questions of governance and power are often at the heart of the debate over the WTO. Some critics portray the WTO as an undemocratic, elitist organization operating in a non-transparent fashion, mostly for the benefit of multinational corporations from rich countries. By contrast, some supporters say that the WTO is a body of nations that set their own domestic trade policies and represent the interests of all their citizens in their decisions.

The WTO itself consists of highly trained support staff (economists, lawyers, and other public policy professionals) that assist the member states in their activities. This relatively small international organization had 627 employees in 2009, and a budget of approximately \$162.5 million, the U.S. contribution of which was \$21.8 million. Its Secretariat provides administrative and technical support to the WTO's councils, committees, working parties, and negotiating groups; provides technical support to developing countries; undertakes trade policy analysis of individual member countries; provides legal assistance in the resolution of trade disputes; and assists in accession negotiations for potential new members.

The WTO describes itself as a “member-driven” organization. Major decisions at the WTO are made by representatives of the 153 member governments.<sup>39</sup> Member states proffer negotiating positions, build alliances with other nations, file dispute settlement cases, and implement their decisions. Rule-making power is not delegated to a board of directors or an executive board in the WTO, but is exercised by the member countries as a whole. Although major economies have had greater power within the WTO than smaller economies for many years, blocs of developing countries have become much more influential at WTO meetings. Some experts argue that country representatives have not resolved all questions about rules through negotiation. They point to some questions being resolved through the dispute process, where WTO rules are being interpreted not by member countries but by appointed panelists.

Critics who may acknowledge the limited nature of the WTO's power, nonetheless contend the WTO is overly influenced by commercial concerns of member states and by the organization to the exclusion of other important issues. This argument reflects in part the power of national-level interests such as corporations to shape country negotiating positions. But this influence is effected primarily at the national level through domestic institutions. Multinational corporations have no direct participation in WTO decision-making and cannot file dispute settlement actions on their own.

## **Decisionmaking**

Decisions are usually reached through consensus among all of the WTO member countries.<sup>40</sup> Consensus has been the hallmark of WTO decisionmaking since the founding of the GATT in 1947. It was much easier to reach consensus when the GATT was an organization of developed countries, or when the developing-country members were quiescent. The increased membership

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<sup>39</sup> An internal study of WTO governance has recommended a more pro-active Secretariat through enhancement of the role of the Director-General. See *The Future of the WTO: Addressing Institutional Challenges in the New Millennium*. Report by Peter Sutherland, Chairman of the Consultative Board, et al. (hereinafter cited as the Sutherland Report.), pp. 73-78.

<sup>40</sup> WTO members may adopt an interpretation of any WTO agreement by three-quarters vote, but this option has never been used.

of developing countries in the organization and the larger role developing countries are playing in WTO affairs have provoked some to question the continued viability of the consensus approach to WTO decision making. These changes also have implications for the United States, which in earlier years did not have to compromise with large blocs of developing countries.

Consensus decision making has been attacked as undermining the progress of trade liberalization. Trade liberalization, it is claimed, is doomed to proceed at a snail's pace if each country, no matter how economically small, can veto any trade deal. Some critics characterize this as undemocratic and threatening to the will of the majority. Some argue this results in the lengthy duration of trade negotiations and in dilution of benefits derived therefrom.

However, alternatives to consensus are also problematic. Voting at the WTO, authorized for certain limited procedural circumstances, could be expanded. The choice of voting instruments—one-country-one-vote, voting power based on trade flows, or voting power based on population—would each have adherents or detractors, and would favor some countries or country blocs to the detriment of others. For this reason, any move to voting at the WTO would prompt serious resistance from countries that stand to lose from such a change. Currently, the United States has considerable influence on WTO decisions because of its economic size, but if a voting system were used in the WTO, depending on the type of voting system, it is unclear what level of influence the United States would maintain.

Aside from voting, another method of dealing with the short-comings of consensus is through the use of “a la carte” agreements (such as the plurilateral Agreement on Government Procurement), which would allow countries to opt in or out of certain agreements, or even to certain conditions within adopted agreements. This would allow willing member states to undertake commitments on a reciprocal basis within areas in which universal commitments are unlikely, at least in the near term. It would allow for more ambitious trade liberalization in certain areas among like-minded-countries. Member states could judge whether they were able or willing to take on commitments, and could join later if appropriate. This method has been used primarily in terms of sectoral liberalization. More extensive use of sectoral liberalization, including in the non-agricultural market access (NAMA) negotiations, is favored by the United States based on critical mass criteria, described below.

In negotiating, this method arguably would undercut the process of the “single undertaking,” which is the foundation of the current Doha Round. The single undertaking posits that negotiations for the Round are only finished when all the agreements are completed and agreed to by all. The rationale for the single undertaking serves to reinforce the consensus principle; all agreements must have universal support. The single undertaking acts to prevent the concerns of some members from being ignored in the rush to agreement on other issues. It also is a way to encourage countries to participate in the talks, since there should be something for everyone in the final deal. However, the single undertaking has also led to stalemate if there are intractable issues among the parties.

The primary justification for consensus approach is that it provides legitimacy to WTO decisions, and it reinforces national sovereignty. As difficult as achieving consensus is, such an agreement is more likely to be implemented, or at least less openly flouted, if it is agreed to by all members. The Sutherland report on the WTO observed, “it must remain for sovereign governments to decide, at every point, their national interests and to demand that those interests are reflected in

everything the WTO decides.”<sup>41</sup> As long as the WTO remains an organization of sovereign governments, the tension between unwieldy decision making and more legitimacy is likely to continue.

The 2007 Warwick Commission report on the future of the multilateral trading system, among others, advocated the use of the critical mass approach to decision making in certain situations, a variant of the a la carte approach.<sup>42</sup> They point out that critical mass decision making (CMD) has a precedent in the Tokyo Round Codes that were negotiated from 1974-1979. As noted above, these plurilateral agreements covered antidumping, subsidies and countervailing measures, customs valuations, import licensing procedures, technical barriers to trade, government procurement, and three sectoral agreements. The first five subsequently were negotiated in the Uruguay Round and incorporated as mandatory agreements in the WTO system, although the sixth—government procurement—remains a plurilateral agreement. In addition, the Information Technology Agreement is based on adherence by a critical mass of countries. Certain sectoral initiatives in the Non-Agricultural Market Access (NAMA) negotiations demanded by the United States would also rely on critical mass acceptance. Such initiatives undertaken thus far have been applied on a most-favored-nation basis (MFN), i.e. countries not participating nonetheless receive the benefit, thus the necessity of obtaining support from the critical mass of countries conducting the majority of trade in the product or affected most by its regulation.

The Warwick Commission envisioned that CMD could be used in situations where “new rules are required to protect or refine the existing balance of rights and obligations and/or the extension of cooperation into new regulatory areas will impart a discernable positive global welfare benefit.” In applying CMD, the Commission favored maintaining the MFN principle that distributional consequences of any new arrangement would be considered; that no other venue would be evidently better than the WTO to pursue the desired cooperation; that support would be available to assist members wishing to participate; and that members not participating initially would have the right to join in the future.<sup>43</sup>

Supporters assert that the introduction of CMD could serve to break the logjam of the current stalemate in the Doha negotiations and could possibly allow countries to use the WTO to ‘test the waters’ in formulating more ambitious cooperation. However it must be remembered that the Tokyo Codes proved largely unsatisfactory in their performance, which led to their renegotiation and inclusion as compulsory prerequisites to joining the WTO in the Uruguay Round. According to one trade specialist, “as time passed it became clear that governments were not willing to make as much use of the [non-tariff barrier] codes as would have been needed to produce anything like the degree of liberalization earlier GATT action had brought on tariffs and quantitative restriction.”<sup>44</sup>

Politically, though, critical mass may not be achievable in the current environment. Getting a critical mass in the world economy today practically means signing up large developing countries, which, depending on the issue, may be some of the very countries most resistant to working on a plurilateral basis. An example of this is the, thus far, unwillingness of large

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<sup>41</sup> The Sutherland Report, p. 63.

<sup>42</sup> University of Warwick, *The Multilateral Trade Regime: Which Way Forward?*, pp. 30-32.

<sup>43</sup> *Ibid.*, p. 31.

<sup>44</sup> William Diebold, Jr., “From the ITO to the GATT—And Back?,” in *The Bretton Woods—GATT System*, Orin Kirschner, ed. (Armonk NY: M.E. Sharpe, 1996), pp. 160-161.

developing countries to negotiate industrial sectoral agreements in the NAMA negotiations. On the other hand, the United States has identified these sectors as areas of greatest potential benefit in future trade liberalization. Yet, under certain circumstances, agreements resulting from CMD could act in the same manner as regional trade agreements in extending the realm of cooperation and agreement in certain areas to be followed by broader application in the future.

## **Transparency in the WTO**

Another critique of the WTO is that it is an opaque organization that operates substantially behind closed doors. Meetings of the General Council and of the negotiating groups are not open to the public. However, many of the most egregious examples of WTO secrecy have been addressed over the years. Since 2005, dispute settlement proceedings can be opened to the public if all the disputing parties agree to do so, and some have been televised via closed-circuit television. Supporting briefs are not automatically available to the public, but can be released at the discretion of the authoring government. Most submissions or interventions in negotiations have been available immediately at the organization's website since 2002, and summaries of meetings are available sometime after. An annual public forum has been held at the WTO Secretariat each year since 2001, to provide a venue for interaction between WTO officials, non-governmental organizations (NGOs), parliamentarians, and national representatives. While some groups have sought total transparency in all phases of WTO operations, other commentators consider a measure of secrecy necessary in sensitive negotiations.

Article V:2 of the Marrakesh Agreement, which established the WTO in 1994, authorizes cooperation and consultation between the General Council of the WTO and non-governmental organizations (NGOs). The nature and extent of that role have remained unclear during the life of the WTO. Some argue for a greater role for NGOs as a way of increasing the transparency of the organization, or providing a voice within the WTO for non-commercial concerns. Presenting amicus briefs at WTO dispute proceedings, and participating in WTO negotiations through written submissions or actual participation in negotiating sessions are examples of ways that NGOs could be included in WTO proceedings. The use of amicus briefs has been controversial in the dispute settlement context and their use has been opposed by the majority of the membership, with the United States being the most visible proponent of their use.<sup>45</sup> NGOs themselves represent a wide variety of interests (for example, the National Wildlife Federation and the Chambers of Commerce are NGOs) and themselves possess varying attributes of transparency and accountability. The interests of the NGOs are especially important to consider in light of their activities assisting developing countries to formulate negotiating positions. For example, Oxfam assisted the C-4 nations of African cotton producers in developing their negotiating positions for Doha, and NGOs were instrumental in the effort to adopt the TRIPS Declaration on Public Health and to negotiate the subsequent access to medicine waiver.<sup>46</sup>

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<sup>45</sup> Peter Van den Bossche, *The Law and Policy of the World Trade Organization*, Cambridge University Press, 2005. pp. 199-200.

<sup>46</sup> See CRS Report R40607, *Intellectual Property Rights and Access to Medicines: International Trade Issues*, by Shayerah Ilias.

## Sovereignty

Some critics charge that “international bureaucrats” at the WTO can override laws enacted in the United States. The broad scope of WTO obligations, coupled with strong dispute settlement procedures contained in the WTO dispute settlement understanding, have led some to argue that the WTO has undue influence on domestic laws and regulations, as well as on the process of law-making itself.<sup>47</sup> The United States has repealed laws and enacted new ones, as well as undertaken administrative action, to comply with WTO dispute settlement decisions.

As a member of the WTO, the United States does commit to act in accordance with the rules of the multilateral body. Article XVI(4) of the Agreement Establishing the World Trade Organization (the Marrakesh Agreement) states, “Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.” Governments accept these obligations in order to obtain assurance that other governments will not restrict trade in certain ways, and, in return, commit themselves to abide by the same rules. Countries participate in trade agreements because the gains from the predictability of other countries’ actions exceed the costs of refraining from such actions themselves. This is also true of any treaty or international agreement that the United States adheres to. But if governments determine that the costs of being a member of the WTO outweigh the benefits, they may withdraw from the WTO. Article XV(1) of the Marrakesh Agreement states that any country may withdraw, and the withdrawal takes effect six months after written notice is received by the Director-General of the WTO.

WTO disputes are member-directed, and the WTO itself has no independent enforcement authority. Thus, the organization cannot compel a member country to amend, alter, or repeal its laws or regulations, even in the event a dispute settlement panel has determined them to be inconsistent with WTO obligations. In other words, WTO agreements leave it to the individual member to decide how it will respond to an adverse WTO decision. However, if a country does not comply within a reasonable period of time, and if requested by a complaining party, the WTO may authorize retaliation, such as the withdrawal of tariff concessions by the complaining party, determined to be equivalent to the economic effects of the offending statute. In some instances, a member state will accept the withdrawal of tariff concessions instead of repealing a popular law or policy. For example, rather than allow imports of hormone-treated beef, the EU offered compensation, but the United States refused the compensation and eventually imposed retaliatory tariffs on EU products.<sup>48</sup>

## The WTO Dispute Process

Some Members of Congress have criticized the operation of the WTO dispute settlement process. The procedures for resolving disputes in the international trading system were greatly strengthened by the Uruguay Round, which created the WTO in 1995. Before 1995, the procedures under the GATT had been broadly criticized as being ineffective. Under those

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<sup>47</sup> For example, according to the Sierra Club, the “WTO shifted enormous power from local, state and national governments to unaccountable international bureaucrats. The WTO can review and penalize *any* act of *any* government that in *any* way compromises trade rules. Governments must comply.” See the Sierra Club website, <http://www.sierraclub.org/trade/summit/fact.asp>.

<sup>48</sup> See CRS Report R40449, *The U.S.-EU Beef Hormone Dispute*, by Renée Johnson and Charles E. Hanrahan.

procedures, a panel finding would not be accepted unless there was a consensus among member states to impose the finding. Given that the party losing the dispute was unlikely to accept the finding, dispute decisions often did not result in an end to the challenged practice. In the Uruguay Round, the United States was a principal proponent for a stronger dispute settlement process that provided a greater likelihood of ensuring compliance.

The WTO's dispute settlement procedure was strengthened by imposing stricter deadlines and by making it easier to establish panels, adopt panel reports, and authorize retaliation, if necessary. Decisions are made by member country representatives to the WTO General Council who gather also as the Dispute Settlement Body (DSB). The first stage of the dispute settlement process is consultation between the governments involved. If consultation is not successful, the complainant may ask the Dispute Settlement Body to establish a dispute panel. The dispute panel hears the case and issues its report to the disputing parties and then to the members in general. The report may be appealed, and once the panel and any appellate proceedings are completed, the reports are presented for adoption by the DSB under its reverse consensus rule. If the complaining party prevails, the respondent may choose to change its practice or try to negotiate an agreeable resolution; if the respondent chooses not to act, or its responsive action is not acceptable to the complaining country, the complainant may request that the DSB authorize suspension of obligations, thereby giving permission for the complainant to retaliate. Procedures are clearly set out with specific timetables at each stage.

So far under the WTO dispute settlement procedure, the United States has had more success as a complainant than as a respondent.<sup>49</sup> According to USTR lists of disputes involving the United States, last updated February 17, 2009, the United States had filed 88 complaints (including compliance proceedings), and 63 of those had been concluded. In addition, the WTO currently reports that the United States has joined an additional 78 cases as an interested party.<sup>50</sup> The USTR accounting indicates that the United States has won overwhelmingly in the cases that it has brought to the WTO.<sup>51</sup> On the other hand, a number of U.S. trade practices have been successfully challenged at the WTO. According to the USTR list, the United States did not prevail on slightly more than half of the cases where another country brought the case. (See **Table 3** for the disposition of those cases.) It must be noted the success rate of the complainant is usually higher than those of a respondent in many instances. Members are more likely to file a complaint, or request a panel, if they are sure they have a good case and have a greater chance of prevailing.

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<sup>49</sup> For further information on WTO cases involving the United States, see CRS Report RL32014, *WTO Dispute Settlement: Status of U.S. Compliance in Pending Cases*, by Jeanne J. Grimmett, and CRS Report RS20088, *Dispute Settlement in the World Trade Organization (WTO): An Overview*, by Jeanne J. Grimmett.

<sup>50</sup> WTO Dispute Settlement by Country. [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)

<sup>51</sup> Data in this paragraph and **Table 3** are from "Snapshot of WTO Cases Involving the United States" last updated on February 17, 2009.

[http://ustraderep.gov/assets/Trade\\_Agreements/Monitoring\\_Enforcement/Dispute\\_Settlement/WTO/asset\\_upload\\_file770\\_5696.pdf](http://ustraderep.gov/assets/Trade_Agreements/Monitoring_Enforcement/Dispute_Settlement/WTO/asset_upload_file770_5696.pdf)

**Table 3. Snapshot of Cases Involving the United States**

As of February 17, 2009

Disposition	U.S. as Complainant (90 <sup>a</sup> cases)	U.S. as Respondent (128 Cases)
Resolved to U.S. Satisfaction Without Completing Litigation	27	19
U.S. Prevailed on Core Issues	32	16
U.S. Did Not Prevail on Core Issues	4	37
In Progress, Merged, or Otherwise Inactive	27	56

**Source:** U.S. Trade Representative

- a. Includes two cases partially concluded.

The question of whether or not the United States should withdraw from the WTO raises another question of what the United States would do without the WTO dispute mechanism. The United States is a party to a number of free-trade agreements that include dispute procedures. Where a violation of those agreements is alleged, the United States or other party to the agreement could turn to those procedures. Such instances, however, might be limited. For practices not covered by those agreements, which would include actions by several of our large trading partners, including China, Japan, and the EU, there would be no comparable rules or forum. Absent the WTO, countries can always try to settle a trade dispute through bilateral negotiations, as can happen under Section 301 of the Trade Act of 1974, underpinned by the threat of unilateral trade sanctions.<sup>52</sup> However, the use of this mechanism prior to the formation of the WTO angered U.S. trade partners. Generally speaking, most governments view WTO dispute settlement generally as fair and impartial, which increases the chances that the parties adhere to its decisions. While some countries may not want to be seen responding to pressure from the United States, they may be more amenable to be seen as in compliance with international rules and norms.

There have been complaints that some countries, including the United States, have not fully adhered to the finding of the WTO Dispute Settlement Panels. An example is the U.S. complaint against European Union (EU) trade restrictions on imports of beef produced with hormones. The United States was granted permission by the DSB to impose retaliatory tariffs on imports from the EU. In spite of continued retaliatory tariffs on its products, the EU has not withdrawn the challenged practice, although, subsequently, the EU has expanded its hormone-free quota, and the United States has modified its retaliation schedule.<sup>53</sup> Although the EU believes it is now in compliance with its WTO obligations in this case, the United States has been able to continue to maintain its retaliatory tariffs under WTO rules.<sup>54</sup>

Other complaints center around trade remedy laws such as antidumping, countervailing duties, and safeguard provisions, including those involving the United States. In the past decade, the

<sup>52</sup> Sections 301 through 309 of the Trade Act of 1974 (as amended), commonly referred to as *Section 301*, is a method by which the United States seeks to address “unfair” foreign barriers to U.S. exports and enforce U.S. rights under trade agreements.

<sup>53</sup> CRS Report R40449, *The U.S.-EU Beef Hormone Dispute*, by Renée Johnson and Charles E. Hanrahan, p. 14.

<sup>54</sup> CRS Report RS20088, *Dispute Settlement in the World Trade Organization (WTO): An Overview*, by Jeanne J. Grimmett, p.8.

United States has lost a number of these cases, including cases involving steel safeguards, the U.S. Antidumping Act of 1916, the Continued Dumping and Subsidy Offset Act—the so-called Byrd Amendment, and the practice of “zeroing” in antidumping procedures.<sup>55</sup> In response, Members of Congress and others have questioned the expertise underlying certain WTO dispute decisions, whether the panels are making rules through their decisions and thus bypassing negotiations, and whether the panels are extending appropriate deference to domestic laws. Others have raised concerns about the growing use of trade remedy laws—and their WTO compliance—by developing countries, especially against the United States.

An example of this sentiment in the 111<sup>th</sup> Congress can be found in the proposed Trade Act of 2009 (H.R. 496, Rangel). The legislation expresses the sense of Congress that the WTO Appellate Body does not have the authority to establish new legal standards that a dispute settlement panel must apply in deciding cases, and that “a dispute settlement panel is obligated to follow the text of an agreement negotiated by the WTO members themselves, and not the ‘jurisprudence’ of the WTO Appellate Body” (Sec. 205). In previous Congresses, Senator Baucus introduced legislation (most recently, S. 1919 in the 110<sup>th</sup> Congress) that would create a WTO Dispute Settlement Review Commission to review cases decided against the United States. In such cases, the Commission would determine whether the WTO panel or Appellate Body deviated from the applicable standard of review, including in antidumping, countervailing duty, and other unfair trade remedy cases (Title II).

Although there are many complaints about the WTO dispute process, especially after a major WTO dispute decision against the United States, some Members of Congress look to the WTO dispute process as an important way to challenge the trade practices of other nations. In a number of instances, Members have protested the actions of a foreign country and proposed that if the situation cannot be resolved, then the United States should file a dispute in the WTO. In these instances, Members have viewed WTO dispute resolution as a legitimate and possibly effective way to cause the countries to change their actions. Some members have urged WTO action against China’s policy of pegging the yuan to the dollar, viewed as an unfair trade practice.<sup>56</sup> The Currency Exchange Rate Oversight Reform Act of 2010 (S. 3134, Schumer) would require the United States to bring a complaint to the WTO for certain countries, presumably China, alleged to have a misaligned currency. The Trade Priorities Enforcement Act (S. 1782, Brown) would require the United States to initiate dispute settlement consultations in the WTO against countries which the USTR has found to be engaged in a priority foreign country trade practice.

## **Criticisms of the WTO from Environmental, Food Safety, Labor, Development, and Financial Regulation Perspectives**

In the debate on U.S. participation in the WTO, some advocates for the environment, food safety, labor, development, and financial regulation have been extremely vocal in their criticisms of the WTO. While some of the critics oppose the very existence of the WTO, much of the criticism is

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<sup>55</sup> For information on U.S. trade remedy laws and these specific issues, see CRS Report RL32371, *Trade Remedies: A Primer*, by Vivian C. Jones.

<sup>56</sup> “House Letter Demands Coordinated Currency Push By Administration,” *Inside U.S. Trade*, March 5, 2010.

based on interpretations of various WTO agreements or rulings. An examination of these criticisms follows.

## **Environmental Concerns**

Environmentalists have long registered a number of concerns about the relationship between trade expansion and the environment. Some have argued that globalization, encouraged by trade liberalization, is a threat to the environment. Others have expressed fears that lower environmental standards in one country would force a country with higher standards to set lesser standards in order to remain competitive. And still others have argued that the WTO is against the environment. It is these latter arguments where environmentalists feel that the WTO trade rulings put environmental regulators at a disadvantage.

Critics, such as Public Citizen, have argued that the WTO has been a disaster for the environment. For example, the organization maintained that “years of experience under the WTO have confirmed environmentalist’s worst fears: the WTO is undermining existing local, national, and international environmental and conservation policies.”<sup>57</sup>

Yet, in the relatively few cases involving the environment, WTO rulings have not led to a weakening of U.S. environmental protections. Rather the cases have highlighted the right of countries to set their own environmental standards as long as they do so in a non-discriminatory fashion.<sup>58</sup> The Appellate Body has permitted environmental regulations as consistent with exceptions in GATT Article XX (g) for measures relating to the preservation of exhaustible natural resources.<sup>59</sup> Furthermore, of the nearly 400 cases brought before the WTO to date, only three involve an examination of environmental issues. During the nearly five-decade existence of the GATT, there were only six environmental-related disputes. These handful of cases, in turn, have pivoted mainly on whether the regulation challenged has been implemented in a non-discriminatory fashion, and not on whether environmental regulation itself is permissible under the WTO system.<sup>60</sup>

In recent years, the debate concerning the WTO and the environment has evolved into what role the institution can play in ameliorating several high profile transnational environmental issues. These issues intersect with economic issues and the trading system and lend themselves to possible WTO involvement, either through the development of proactive policies through negotiations, or through challenges to unilateral state actions at the WTO. In particular, climate change and fishing subsidies have received attention in this context.

The compatibility of any climate change mitigation strategy with WTO rules has received attention in debates on enacting such legislation in the United States and elsewhere. Many of

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<sup>57</sup> Wallach and Woodall, 2004, p. 20.

<sup>58</sup> The three cases most cited in this regard are the 1991 Tuna-Dolphin Case from the GATT era, the 1998 United States-Import Prohibition of Certain Shrimp [DS-58] (Shrimp-Turtle Case), and the 1995 United States-Standards for Reformulated and Conventional Gasoline [DS-2,4].

<sup>59</sup> GATT Article XX, entitled General Exceptions, allows countries to enact and enforce various measures that may restrict trade in order to achieve various objectives, such as protection of human and animal health and conservation of natural resources, provided that the measure is non-discriminatory and is not a disguised restriction on international trade.

<sup>60</sup> Irwin, p. 245.

these questions take the form of whether a country enacting a greenhouse gas (GHG) reduction strategy, whether a cap-and-trade plan, a carbon tax, or other variant, can take measures to prevent their industry from losing competitiveness in a world with differentiated carbon policies. It is quite possible that any GHG reduction strategy that involves so-called border adjustment measures on imported products could be challenged at the WTO.

Other issues related to climate change also have a WTO context. The industrial market access talks in the Doha Round have engaged in negotiations to remove tariffs on so-called “environmental goods and services” such as pollution abatement, renewable energy, and efficiency goods and services. These talks have bogged down on developing country concerns that their goods are not being taken into account—such as ethanol for Brazil—and that reduction or elimination of tariffs on these products would stifle their own ability to develop these technologies. Some have also claimed that current intellectual property rules in the TRIPS agreement hinder the adoption and diffusion of environmentally friendly technologies, although others point out that industries in developing countries have become leaders in such technologies in their own right.<sup>61</sup>

The Doha Development Round is also negotiating the reduction or elimination of fishing subsidies. These subsidies are thought to encourage overfishing and have contributed to the exhaustion of certain fish stocks. Yet, these talks also have not yielded agreement even on the types or methods that disciplines on fishing subsidies should take.<sup>62</sup>

## **Health and Safety Concerns**

The use of food safety regulations for protectionist purposes has a long history. Countries have often banned food products without much scientific evidence of health risks, often in an effort to help home producers. The Department of Agriculture estimated that such questionable foreign regulations cost the United States about \$5 billion in lost food exports in 1996.<sup>63</sup>

The WTO attempted to address concerns about food safety regulations serving as disguised protectionist restrictions in the Uruguay Round’s Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). The SPS Agreement, which elaborates on Article XX of the GATT, prescribes rules requiring a scientific basis for measures that restrict imports on the basis of health or safety concerns. The key objectives of the agreement are to recognize the sovereign right of WTO members to provide the level of health protection they consider appropriate and to ensure that SPS requirements do not represent disguised restrictions on international trade.<sup>64</sup>

In practice it has been very difficult for policymakers to distinguish health and safety protection from disguised protectionism enacted under the name of health and safety. This has been particularly true in regard to the longstanding dispute between the United States and European Union over hormone-treated beef.

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<sup>61</sup> Copenhagen Economics, *Are IPR a Barrier to the Transfer of Climate Change Technology?*, January 19, 2009.

<sup>62</sup> “Members Remain Divided on Fisheries Draft Text”, *Bridges Trade BioRes*, April 4, 2008.

<sup>63</sup> Donna Roberts and Kate DeRemer, *An Overview of Technical Barriers to U.S. Agricultural Exports*, Economic Research Service, U.S. Department of Agriculture, Staff Paper AGES-9705, March, 1997.

<sup>64</sup> CRS Report RL33472, *Sanitary and Phytosanitary (SPS) Concerns in Agricultural Trade*, by Geoffrey S. Becker.

This conflict began in the early 1980s when the European Commission enacted a ban on both the production and importation of meat derived from animals treated with growth-promoting hormones. Although the regulation appeared to be non-discriminatory because the same standard was applied to domestic and imported meat, the United States challenged the ban in 1995 after the SPS agreement came into effect on the grounds that the ban was not supported by scientific evidence, a risk assessment, or based on any international standard. U.S. cattle producers also argued that it constituted a disguised restriction on international trade.<sup>65</sup>

A WTO panel in 1997 ruled against the EU position, prompting widespread protests from environmental groups in Europe and the United States. The environmental groups, backed by a European population that was generally opposed to the use of hormones in livestock production and leery of the potentially harmful health effects, maintained that the scientific evidence requirement was too demanding. Along with the European Commission, they argued that the ban was based on the “precautionary principle,” which stated that if scientific evidence did not establish beyond a doubt the hormone-treated beef was safe for humans, then a country should have the right to ban a product. Despite a WTO ruling authorizing the United States to impose retaliatory tariffs on EU products, the dispute continues. Rather than change its policy, the EU has decided to acquiesce to the U.S. retaliation.

While the SPS Agreement has served as a basis for settling a number of other disputes involving health and safety protection, the beef hormone case and related dispute involving genetically modified organisms (GMO) are reminders that negotiated rules have limits in cases involving complex technical issues, particularly when the WTO parties to the dispute have different political and social values placed on maintaining a particular regulation. Accordingly, some analysts question whether these issues can be settled best through the formulation of “legal solutions” or through a diplomatic approach that stresses conciliation and problem solving over legal precision.<sup>66</sup>

## **Labor Concerns**

As the living standards and wages of middle-class Americans have stagnated over the past decade and income inequality has increased, some labor unions and other critics of globalization have argued that WTO rules and agreements that have facilitated the closer integration of developed and low-wage developing countries are to blame. In addition to depressing wages and increasing income inequality, the charge is made that trade with poor countries puts downward pressure on labor standards in the United States.

The rationale for the argument that trade puts downward pressure on U.S. wages is that firms strive to match lower wages in developing countries in order to stay competitive. While such claims overlook the fact that higher U.S. wages are based on higher productivity of U.S. workers, it is true that trade can affect the distribution of U.S. wages. Wages in some industries that

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<sup>65</sup>See CRS Report R40449, *The U.S.-EU Beef Hormone Dispute*, by Renée Johnson and Charles E. Hanrahan for the current status of this dispute.

<sup>66</sup> Claude E. Barfield, *Free Trade, Sovereignty, Democracy: The Future of the World Trade Organization*, American Institute Press, 2001.

compete against imports are well below the U.S. average, while wages in exporting industries tend to be well above the U.S. average.<sup>67</sup>

Economic theory would suggest that trade may have contributed to the increased income inequality the United States has experienced in recent years. This is because trade tends to create jobs in high-wage industries in which the United States exports and reduces jobs in low-wage industries where the United States imports. But most academic analyses suggest that this effect is modest, compared to other factors, particularly technological innovation that has raised the demand for more highly skilled and educated labor.<sup>68</sup> In particular, global supply chains make it difficult to fully measure trade effects, as many products can be developed in the United States, assembled in a second country, using components from several other countries, including the United States.

Critics of the current WTO trade regime also fear that labor standards in developed countries will be weakened or compromised by trade and investment flows with poor countries. The concern is that governments in developed countries will be persuaded by businesses to revise labor standards downward to enable home-based companies to compete against increased competition with companies based in countries with lower standards.

While this argument is also intuitively appealing, the few instances commonly cited of declining labor and safety standards in the United States may often be due to inadequate domestic enforcement of the legislated standards and presence of illegal immigrants who tend to not demand enforcement due to fear of deportation rather than globalization. Some also argue that the decline in unionization, now accounting for around 7% of the private sector work force, as well as 50-year-old legislation (Taft-Hartley) which weakened the right to strike and form unions, may be more powerful factors than globalization.<sup>69</sup>

Economists have also looked at the standards issue by asking if there is evidence that U.S. multinationals are more inclined to invest in countries that have weak protection of workers' rights to unionize and low safety workplace standards. One study that summarized the literature on this question concluded that weak labor standards are only one of many factors that determine the location decisions by multinationals.<sup>70</sup> A study by analysts at the International Labor Organization (ILO) also found that higher unionization rates are associated with higher investment inflows.<sup>71</sup>

At the same time that U.S. labor standards arguably remain largely unaffected by global economic integration, union critics have often argued that the WTO rules should include minimum levels (and enforcement) of labor standards, and possibly trade sanctions to enforce the rules. These rules include a range of issues from child labor and forced labor to the right to organize trade unions and strikes. These critics contend that low or weak foreign labor standards effectively

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<sup>67</sup> Irwin, p. 120.

<sup>68</sup> Robert Z. Lawrence, *Blue Collar Blues: Is Trade to Blame for Rising U.S. Income Inequality*, Peterson Institute for International Economics, 2008.

<sup>69</sup> Jagdish Bhagwati, *In Defense of Globalization*, Oxford University Press, 2007, p. 129.

<sup>70</sup> Drusilla Brown, Alan Deardorff, and Robert Stern, "The Effects of Multinational Enterprises on Wages and Working Conditions in Developing Countries," March 11, 2002. Available at <http://www.econ.luleuven.ac.be/ew/academic/intecon/home/Working Group Seminars /Files/Deardorff. puff>.

<sup>71</sup> David Kucera, "The Effects of Core Worker Rights on Labor Costs and Foreign Direct Investment: Evaluating the Conventional Wisdom," International Labor Organization, Geneva, 2001.

lower costs of doing business abroad, and that internationally enforced rules are needed to “level the playing field.” Others maintain that the issue is more complicated. For example, child labor is closely related to poverty, they argue, and economic policies to raise family incomes might be more effective than requiring higher labor standards. Furthermore, most developing countries and some developed countries are opposed to including worker’s rights in the WTO.

Rather than dealing with labor standards in the WTO, some observers argue that a better course of action might be to strengthen the ILO, especially in the area of enforcement of agreed-on rules. In 1996, WTO members recognized the ILO as the competent body to set and deal with those standards.<sup>72</sup> Others contend that the ILO is not taken seriously because it has no enforcement mechanism, and that the only way to ensure effective policy on labor rights is to place it in negotiations along with tariffs, services, and intellectual property rights.

## **Development Concerns**

The role of the WTO in fostering development among the lesser-developed nations of the world may play a part in this debate. This is because the Doha Round, known officially as the Doha Development Agenda, has put issues of development front and center on its agenda. The concerns of developing nations at WTO have affected U.S. policy in two ways. First, the aim of the United States and other developed countries has been to increase developing country participation in the GATT/WTO process in order to strengthen the process and to ensure that the economic benefits of open trade reach all countries. Second, and somewhat at odds with the first, the United States and other developed countries must also adjust to the growing influence of developing countries both within the WTO and in the international trading system. The developing countries have become increasingly vocal about the need for export markets for their agriculture, textile, and other products.

The United States and other developed countries have made trade a key component of development policy and a focus of WTO activity. Policymakers recognize that trade has a role to play in alleviating poverty and increasing growth in the developing world. Problems of causality have made it difficult to delineate the contribution of international trade, or the impact of WTO membership, on developing country poverty reduction or growth. However, most economists argue that developing countries can obtain significant economic benefits from adopting more open trade policies. One study found that the developing countries most open to international trade experienced a 5% annual increase in real per capita income compared to only a 1.4% increase in real per capita income for developing countries not very open to international trade.<sup>73</sup> In fact, the disciplines placed by WTO membership on corruption, excessive regulation, and other institutional failures have encouraged many countries to seek WTO membership.

Developed countries at the WTO have attempted to include developing countries in the WTO/GATT system by the use of special and differential treatment (SDT). SDT provisions include the principle of less than full reciprocity of tariff commitments, a commitment to the reduction of barriers on products of interest to developing countries, including a reduction of barriers which differentiate between the primary and processed form of a good (tariff escalation).

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<sup>72</sup> This position was in the Singapore Ministerial Declaration, Adopted on 13 December 1996. The Declaration is available on the WTO’s web page at <http://www.wto.org>.

<sup>73</sup> David Dollar and Aart Kraay, “Trade, Growth, and Poverty,” *Economic Journal*, 114 (February 2004): F22-F49.

SDT provisions have allowed developing countries to largely exempt themselves from reciprocal tariff cuts made by developed countries. Import tariffs in developing countries remain on average bound at levels between 10% and 30% compared to less than 5% in developed countries.<sup>74</sup> SDT does not permit wholesale exemption from other WTO agreements, such as Trade-Related Aspects of Intellectual Property Rights (TRIPS) or the General Agreement on Trade in Services (GATS), although such provisions may extend timelines for compliance or provide specific derogations from those agreements. These provisions are generally conceded to have been the political price extracted for developing countries' support of successive rounds of trade liberalization.

The Uruguay Round (1986-1994) was the first multilateral trade negotiation in which developing countries played an active role. From a developed country perspective, one of the hallmarks of the Uruguay Round was to limit the application of SDT exceptions and bring the developing countries under the rules. Developed countries agreed to liberalize trade in textiles and apparel and agriculture, sectors where developing countries are competitive, in return for acceptance by developing countries of new rules for services, investment, and intellectual property, sectors where developed countries are competitive. This exchange of concessions over time proved disappointing to many developing countries who felt that they had not gained much more access to the agricultural markets of developed countries. In addition, many developing countries complained bitterly that the TRIPS agreement transferred income from developing to developed countries by strengthening the ability of multinational corporations to charge higher prices in developing countries.<sup>75</sup>

Based on their Uruguay Round experience, the developing countries entered into the Doha Round more leery about the benefits of multilateral negotiations. Framing the round as a "development round" raised expectations among many developing countries that they were entitled to generous SDT.<sup>76</sup> Combined with the rising economic clout of India, China, and Brazil, the developing countries became more assertive in the Doha negotiations, often contributing to missed deadlines and stalemate.<sup>77</sup> At an important mini-ministerial meeting in July 2008, for example, differences between developed and developing countries were narrowed on many issues, but India and China insisted on special treatment that would allow them to raise tariffs on agricultural imports. In the final analysis, whether or how the Doha Round will be completed pivots critically on market access concessions made by both developing and developed countries.

## **Financial Services Regulation Concerns**

Some critics have charged that the WTO's rules and disciplines pertinent to trade in services promote financial services deregulation and, thus, could potentially conflict with the efforts of countries to establish new regulations in the aftermath of the 2008 financial crisis and global economic downturn. As viewed by Public Citizen, one such critic, "now, amidst breathless calls

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<sup>74</sup> World Bank, Trade Research, <http://www.worldbank.org/trade>.

<sup>75</sup> One study estimated that the full implementation of the TRIPs agreement would transfer \$5.8 billion from developing countries to the United States, and another \$2.5 billion to five other developed countries. See Keith Marcus, *Intellectual Property Rights in the Global Economy*, Institute for International Economics, Washington, DC, 2000.

<sup>76</sup> In the Doha negotiations, the United States has favored SDT provisions that emphasize longer implementation periods, rather than a general release from commitments.

<sup>77</sup> Developing countries now make up a majority of WTO members, and because of the consensus-based approach to decision-making, they can block policies and negotiations perceived to be against their interests.

from all quarters for expansive new global financial regulations to address the global economic crisis is a seeming lack of awareness that most of the world's countries are bound to expansive WTO financial services deregulation requirements."<sup>78</sup>

The multilateral rules and disciplines pertinent to trade in services are contained in three legal instruments: The General Agreement on Trade in Services (GATS); the GATS Annex on Financial Services, and the Understanding on Commitments in Financial Services. The GATS contains the rules and disciplines applicable to all service sectors, including financial services. The GATS, for example, contains provisions on most-favored-nation treatment (Article II), domestic regulation (Article VI), market access (Article XVI), and national treatment (Article XVII). Attached to the GATS are a number of annexes, including the Annexes on Financial Services and Schedules of Specific Commitment of all WTO members concerning their market access and national treatment commitments for specific service sectors. In addition, an Understanding on Commitments in Financial Services provides the basis for post-1995 negotiations on the liberalization of financial services.<sup>79</sup>

Partially in response to concerns raised by critics, the WTO Secretariat recently issued a report that discusses and explains the disciplines on trade in financial services contained in the three legal instruments.<sup>80</sup> The first point the Secretariat makes is that services trade liberalization, within the context of the GATS, entails "the elimination of six types of limitations on market access, as well as measures contrary to national treatment, only with respect to trade in sectors where Members have made specific commitments."<sup>81</sup> When including a service in their schedules, Members therefore may qualify the extent to which access is granted to their markets by imposing any of the six limitations identified in Article XVI of the GATS, as well as by qualifying the extent to which the national treatment obligation (Article XVII) in the GATS is provided.<sup>82</sup>

The above-referenced commitments arguably provide for, or encourage, a reduction of government limitations on market access by allowing, for example, foreign banks greater scope to compete in other countries on the same basis as domestic banks and under the same regulations. In the view of the WTO Secretariat, this, however, is not encouragement of financial deregulation because Members party to the agreements do not have to make any promises to change their "domestic regulations."

As the WTO report points out, "liberalization in the GATS sense is not synonymous with deregulation of service activities. As a matter of fact, even within the context of comparable commitments on market access and national treatment, Members may operate completely

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<sup>78</sup> Public Citizen, *The Connection between the World Trade Organization's Extreme Financial Service Deregulation Requirements and the Global Economic Crisis*, Policy Primer, November 2009, p. 1. available at <http://www.tradewatch.org>.

<sup>79</sup> Peter Van den Bossche, *The Law and Policy of the World Trade Organization*, Cambridge University Press, 2005, pp. 50-51.

<sup>80</sup> WTO, "Background Note by the Secretariat on Financial Services," S/C/W/312. February 3, 2010.

<sup>81</sup> The six limitations on market access as provided in Article XVI of the GATS are: (1) limitations on the number of services suppliers; (2) limitations on the total value of service transactions or assets; (3) limitations on the total number of service operations or on the total quantity of service output; (4) limitations on the total number of natural persons that may be employed in a particular service sector; (5) measures which require or restrict specific types of legal entity or joint venture; and (6) limitations on the participation of foreign capital in financial sector investments.

<sup>82</sup> WTO, Background Note, p.2.

different regulatory frameworks, ranging from leaving the services concerned unregulated to establishing stringent regulatory requirements in areas such as licensing, capital adequacy, or liquidity.”<sup>83</sup>

A second prominent concern raised by critics relates to a provision in the Annex on Financial Services which provides a special exception for measures taken for prudential reasons. Public Citizen has raised the question that the prudential exception is ambiguous and can be challenged in other WTO tribunals.<sup>84</sup>

The prudential exception or carve out (Article 2(a) of the GATS Annex on Financial Services) reads as follows:

Notwithstanding any other provision of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member’s commitments or obligations under the Agreement.

In evaluating the first sentence of the carve out, the WTO Secretariat states that “a measure falling within the ambit of the carve out, although inconsistent with other provisions of the GATS, would still be legally permitted.” By implication Members are afforded considerable autonomy to enact financial regulatory measures.<sup>85</sup>

The second sentence of the carve out, however, narrows the scope of the exception and has been a topic of legal controversy. Public Citizen interprets the second sentence to mean that “prudential measures can indeed run afoul of GATS obligations, and thus can be challenged in WTO tribunals.”<sup>86</sup> The WTO Secretariat admits that it is not “an unqualified exception,” but maintains that it is designed to prohibit measures that are purely or primarily protectionist in effect, but disguised as prudential measures.<sup>87</sup> Other legal scholars have opined that the language of the exception is vague and could have been stated more clearly.<sup>88</sup>

To date, there have been no WTO cases filed asserting that any of the regulatory measures taken by Member States in response to the financial crisis were contrary to WTO commitments. Similarly, there appears to be no evidence or examples that WTO financial services rules to date have undermined or prevented Member States from financial re-regulation.<sup>89</sup>

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<sup>83</sup> Ibid.

<sup>84</sup> Public Citizen, “Memo: That’s All They Got? What Latest WTO Secretariat Paper on Financial Crisis Does and Does Not Say About GATS Disciplines on Financial Regulation,” March 15, 2010, pp. 5-6.

<sup>85</sup> WTO, Background Note, p. 8.

<sup>86</sup> Public Citizen, March 15 memo, p. 5.

<sup>87</sup> WTO, Background Note, p.8.

<sup>88</sup> International Economic Law and Policy Blog, “Global Trade Watch and the Prudential Carve Out,” May 28, 2010-June 5, 2010.

<sup>89</sup> Ibid.

## **Possible Consequences of U.S. Withdrawal from the WTO**

Most observers would maintain that the possibility of U.S. withdrawal from the WTO is at best highly unlikely for procedural and substantive reasons. This is because a withdrawal resolution would have to pass both the House and Senate and then surmount a likely Presidential veto via an override with a two-thirds majority vote. It has also been debated what legal effect the resolution would have if adopted. But in the remote possibility that a resolution was actually implemented leading U.S. withdrawal from the WTO, such withdrawal would have a number of practical consequences.

Substantively, the WTO and its multilateral system of rules and practices, which were formulated and implemented under U.S. leadership, would be weakened. The influence and the cohesiveness of the WTO as an organization would also be adversely affected as both a forum for settling disputes and for negotiating multilateral trade rules. Non-discrimination, a key bedrock principle of the multilateral trading system, could be eroded, particularly given the added impetus U.S. withdrawal could give to the proliferation of regional and bilateral free trade agreements (FTAs). In the process, economic inefficiency and political tensions could increase.

The withdrawal of the United States from the WTO could also lead to a U.S. loss of influence over how important international trade matters are decided. The WTO could continue to exist without the United States and international trade rules could continue to be negotiated without U.S. participation, rules that practically could affect U.S. interests. The founding of the GATT and creation of the WTO was premised on the notion that a multilateral and rules-based trading system was necessary to avoid a return to the nationalistic interwar trade policies of the 1930s. A loss of economic influence, in turn, could also be followed by a loss of political influence.

On a more functional level, the withdrawal would relieve the United States from obligations stemming specifically from the WTO agreement, but also preclude it from benefiting from its rights under the agreement, particularly access to the WTO dispute settlement mechanism. As a practical matter, without recourse to the established dispute settlement process, the United States would be open to unrestrained retaliation and counter-retaliation. By the same token, possible U.S. retaliatory actions would not be restrained by WTO obligations.

Withdrawal from WTO obligations would also alter the basis for U.S. trade relationships in significant ways. As the United States has implemented many WTO obligations in the Uruguay Round Agreements Act (URAA; P.L. 103-465) as domestic law, these laws would not be repealed by the withdrawal resolution and would continue to apply to WTO members and to U.S. trading partners in general. At the same time, were the United States to withdraw from the WTO, it would no longer need to maintain these provisions as a matter of WTO obligation. U.S. withdrawal would also raise questions about the continued effect of trade concessions made by other countries encompassed by the WTO agreements. In the absence of WTO participation, U.S. trade relationships with a number of countries would continue to be regulated by earlier bilateral agreements and by FTAs negotiated with some 17 countries.<sup>90</sup> Most U.S. FTAs contain references

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<sup>90</sup> See CRS Report RL32700, *Seeking Withdrawal of Congressional Approval of the WTO Agreement: Background, Legislative Procedure, and Practical Consequences*, by Vladimir N. Pregelj.

to WTO agreements, however, and it is unclear how these provisions would be interpreted in the future.

## **Appendix. Legislative Procedure for U.S. Withdrawal from the WTO<sup>91</sup>**

The Uruguay Round Agreements Act (URAA; P.L. 103-465) in Section 101 (19 U.S.C. 3511) authorized the acceptance, by the President, of U.S. membership in the World Trade Organization (WTO) and, thereby, of the rights and obligations of the Agreement Establishing the World Trade Organization (WTO Agreement) with its annexed specialized multilateral and plurilateral trade agreements.<sup>92</sup> The URAA, on the other hand, also contains provisions spelling out the legislative procedure whereby the statutory approval of the United States's membership in the WTO can be withdrawn.

The statute functionally ties the withdrawal of the United States from WTO membership to the requirement of periodic reports by the Executive to the Congress on the operation of the WTO and its effects on the United States.

Section 124 of the URAA (19 U.S.C. 3534) requires the U.S. Trade Representative to submit to Congress, by March 1 of each year, beginning in 1996, a report on a wide range of WTO activities and administrative aspects of WTO operations during the preceding WTO fiscal year (which is the calendar year).

Moreover, as required by Section 125 of the Uruguay Round Agreements Act (19 U.S.C. 2535), beginning with March 1, 2000, and every five years thereafter, such report, transmitted by the President, must "include an analysis of the effects of the WTO Agreement on the interests of the United States, the costs and benefits to the United States of its participation in the WTO, and the value of the continued participation of the United States in the WTO."

Following the submission of such quinquennial report, Congress can withdraw its approval of the WTO Agreement and, with it, of the United States's participation in the WTO, through the enactment of a joint resolution disapproving the original approval of the WTO Agreement. The reasons for the disapproval provision are explained by the House Ways and Means Committee on p. 35 of its report on the Uruguay Round Agreements Act (H.R. 5110; H.Rept. 103-826, Part 1).<sup>93</sup>

The purpose of this provision is to provide an opportunity for the Congress to evaluate the transition of the GATT to the WTO and to assess periodically whether continued membership in this organization is in the best interest of the United States. It is the desire of the Committee not to leave this decision totally in the hands of the Executive Branch but to be active in determining whether the WTO is an effective organization for achieving common trade goals and principles and for settling trade disputes among sovereign nations.

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<sup>91</sup> This appendix originally appeared as CRS Report RS21918, *United States' Withdrawal from the World Trade Organization: Legislative Procedure*, November 10, 2004, by Vladimir N. Pregelj, a longtime Specialist in International Trade and Finance at CRS.

<sup>92</sup> Multilateral trade agreements (MTAs) are agreements to which a government automatically becomes a party by accepting membership in the WTO and, hence, apply to all WTO members. Plurilateral trade agreements (PTAs) apply only between WTO members that specifically accede to them. At present, there are only two PTAs: Agreement on Trade in Civil Aircraft, and Agreement on Government Procurement, both acceded to by the United States.

<sup>93</sup> There was no Senate report on the measure.

In the course of the five-year review, individual members of Congress can evaluate whether the WTO remains on course as a trade-oriented organization and has not expanded its activities to non-trade related areas. Congress wants to ensure that the United States can continue to exercise substantial influence within the WTO and successfully promote goals that benefit American producers, workers and consumers.

The provision was added to the original draft of the measure in the Trade Subcommittee of the House Ways and Means Committee prior to its introduction. Since the bill implementing the WTO Agreement was to be considered under the fast-track procedure and, hence, could not be amended once introduced, any changes to it had to be made before its formal introduction in mock mark-ups in the relevant committees with both congressional and executive participation.

The legislation lays out a specific procedure to be followed by the Congress in the consideration of the withdrawal measure. To the extent that it differs from the regular procedure,<sup>94</sup> this procedure follows, in the main, the special abbreviated fast-track procedure for the consideration of “resolutions disapproving certain actions” (Section 152 of the Trade Act of 1974, as amended; 19 U.S.C. 2192),<sup>95</sup> which has been modified with respect to the timetable for certain legislative steps by the provisions of Section 125 itself. The provisions of both Section 152 of the Trade Act of 1974 and Section 125 of the URAA are specifically defined as exercises of the rulemaking power of either house and deemed a part of the rules of either house. They can be changed by either house, with respect to its own procedure, at any time in the same manner and to the same extent as any other rule of that house (Section 151(a) of the Trade Act of 1974, as amended, applied to the procedure by Section 152 of the same Act; and Section 125(d) of the Uruguay Round Agreements Act; 19 U.S.C. 2191(a), 2192, and 3535(d)).

In the presentation that follows, consequently, statutory references to Section 125 refer to that section of the Uruguay Round Agreements Act (19 U.S.C. 3535), while those to Section 152 refer to that section of the Trade Act of 1974 (19 U.S.C. 2192).

Functionally, the timetable for legislative consideration of the joint resolution of disapproval encompasses the following steps:

*(1) Introduction of a joint resolution of withdrawal.*

A joint resolution of withdrawal may be introduced in either house by any member of that house (Sec. 125(c)(2)(A); 19 U.S.C. 3535(c)(2)(A)) within 90 days<sup>96</sup> of the date on which the Congress receives the quinquennial report submitted by the President on the operation of the WTO (Sec. 125(b)(2)(B); 19 U.S.C. 3535(b)(2)(B)).

*(2) Language of the withdrawal resolution.*

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<sup>94</sup> Steps that are part of the regular legislative procedure (omitted in this specific legislation, but applicable to it) are added in this report in parentheses at the appropriate places.

<sup>95</sup> This procedure is used basically for enacting joint resolutions to disapprove presidential determinations that a nonmarket-economy country is not in violation of the freedom of emigration requirements of the Jackson-Vanik amendment (Sec. 402(b), Trade Act of 1974; 19 U.S.C. 2192(b)), or to disapprove presidential remedial action in import relief cases (Sec. 203(c)(1) of the Trade Act of 1974; 19 U.S.C. 2253(c)(1)).

<sup>96</sup> The 90-day period excludes any day on which either House is not in session because of an adjournment of more than three days to a day certain, or sine die, and any Saturday and Sunday on which either House is not in session (Sec. 125(b)(2)(B); 19 U.S.C. 3535(b)(2)(B), by reference to Sec. 154(b) (19 U.S.C. 2194(b)).

The language of the joint resolution is prescribed by law (Sec. 125(c)(1); 19 U.S.C. 3535(c)(1)) to read, after the resolving clause, only as follows:

That the Congress withdraws its approval, provided under section 101(a) of the Uruguay Round Agreements Act, of the WTO Agreement as defined in section 2(9) of that Act.

(3) *Committee referral.*

The resolution is referred, in the House, to the Committee on Ways and Means and, in the Senate, to the Committee on Finance (Sec. 152(b); 19 U.S.C. 2192(b)).

(4) *Committee consideration.*

If the committee of either house to which the resolution has been referred has not reported it within 45 days<sup>97</sup> after its introduction, the committee is automatically discharged from further consideration of the resolution, and the resolution is placed on the appropriate calendar for floor consideration (Sec. 125(c)(2)(C); 19 U.S.C. 3535(c)(2)(C)).

(Also placed on the appropriate calendar under regular legislative procedure are measures that have been reported, whether favorably or adversely.)

(5) *Restriction on consideration in either house.*

It is not in order in either house to consider a joint resolution of withdrawal (other than a resolution received from the other house) if that house has previously adopted a joint resolution of withdrawal (Sec. 125(c)(3); 19 U.S.C. 3535(c)(3)).<sup>98</sup>

(6) *Floor consideration in the House.*

(a) It is not in order to consider the joint resolution unless it has been reported by the Ways and Means Committee or that committee has been discharged (Sec. 125(c)(2)(D)(ii); 19 U.S.C. 3535(c)(2)(D)(ii)).

(b) A motion to proceed to the consideration of the resolution may only be made on the second legislative day after the calendar day on which the sponsor of the motion announces to the House his intention to do so (Sec. 125(c)(2)(E); 19 U.S.C. 3535(c)(2)(E)). The motion is highly privileged and nondebatable; no amendment to the motion, nor a motion to reconsider the vote by which it has been agreed or disagreed to, is in order (Sec. 152(d)(1); 19 U.S.C. 2192(d)(1)).

(c) Debate is limited to 20 hours, divided equally between those favoring and those opposing the resolution; a motion further to limit debate is nondebatable; no amendment to the resolution, nor a motion to recommit it or to reconsider the vote by which it has been agreed or disagreed to, is in order (Sec. 152(d)(2); 19 U.S.C. 2192(d)(2)).

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<sup>97</sup> Computed as in footnote 96.

<sup>98</sup> The exception for a resolution adopted by the "other house," applicable in some other cases considered under Section 152, cannot apply to the consideration in the House of Representatives, since a resolution passed by the Senate is to be kept at the desk and is, hence, not transmitted to the House for the latter's consideration (see item 7(c)).

(d) Motions to postpone the consideration of the resolution and motions to proceed to the consideration of other business are decided without debate (Sec. 152(d)(3); 19 U.S.C. 2192(d)(3)).

(e) All appeals from the decisions of the Chair regarding the application of the Rules of the House of Representatives relating to the resolution are decided without debate (Sec. 152(d)(4); 19 U.S.C. 2192(d)(4)).

(f) Except as provided in the preceding provisions (a)-(e), consideration of the resolution is governed by the Rules of the House of Representatives applicable to other measures in similar circumstances (Sec. 152(d)(5); 19 U.S.C. 2192(d)(5)).

(Hence, like all expedited procedures, this procedure can be superseded by the House's adoption of a resolution reported by the Rules Committee providing for a different procedure.)

*(7) Procedure in the Senate.*

(a) A joint resolution of withdrawal that has passed the House is, upon receipt by the Senate, referred to the Committee on Finance (Sec. 152(f)(1)(A)(i); 19 U.S.C. 2192(f)(1)(A)(i)).

(b) If a joint resolution was introduced in the Senate before receipt of the resolution passed by the House, the House resolution is placed on the Senate calendar, but the Senate considers its own resolution, except that the Senate vote on the passage of the resolution is on the House resolution (Sec. 152(f)(1)(A)(ii); 19 U.S.C. 2192(f)(1)(A)(ii)).

(c) If the Senate passes a joint resolution of withdrawal before receiving the passed House resolution, its resolution is held at the desk pending the receipt of the House resolution. Upon receipt of the House resolution, the latter is deemed to have been read twice, considered, read the third time, and passed (Sec. 152(f)(1)(B); 19 U.S.C. 2192(f)(1)(B)).

(This procedure makes it clear that a resolution of withdrawal cannot be adopted unless it is a House joint resolution.)

*(8) Floor consideration in the Senate.*

(a) A motion to proceed to the consideration of the resolution is privileged; an amendment to the motion is not in order, nor is a motion to reconsider the vote on the motion to proceed, whether agreed or disagreed to (Sec. 152(e)(1); 19 U.S.C. 2192(e)(1)).

(b) Debate on the joint resolution and all debatable motions and appeals connected therewith is limited to 20 hours, equally divided between, and controlled by, the majority leader and the minority leader, or their designees (Sec. 152(e)(2); 19 U.S.C. 2192(e)(2)).

(c) Debate on any debatable motion or appeal is limited to one hour, equally divided between, and controlled by, its mover and the manager of the resolution, except that when the manager is in favor of such motion or appeal, the time in opposition is controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of the resolution, allot additional time to any Senator during

the consideration of any debatable motion or appeal (Sec. 152(e)(3); 19 U.S.C. 2192(e)(3)).

(d) A motion to further limit debate on the resolution, on a debatable motion, or on an appeal is nondebatable; and no amendment to, or motion to recommit, the resolution is in order (Sec. 152(e)(4); 19 U.S.C. 2192(e)(4)).

*(9) Deadline for transmission to the President.*

If the Congress adopts a joint resolution of withdrawal, it must transmit it to the President within 90 days<sup>99</sup> from the receipt of the President's quinquennial report (Sec. 125(b)(2)(i); 19 U.S.C. 3535(b)(2)(i)).

*(10) Override of the veto.*

If the President vetoes the joint resolution, each house may vote to override the veto [by a two-thirds majority] either by the last day of the 90-day period beginning on the date the Congress receives the President's report, or the last day of the 15-day period<sup>100</sup> beginning on the date the Congress receives the veto message, whichever is later (Sec. 125(b)(2)(A)(ii); 19 U.S.C. 3535(b)(2)(A)(ii)). In the Senate, consideration of a veto message, including consideration of any debatable motions and appeals related thereto, is limited to ten hours, equally divided between, and controlled by, the majority leader and the minority leader, or their designees (Sec. 152(f)(3); 19 U.S.C. (f)(3)).<sup>101</sup>

*(11) Implementing the withdrawal.*

The withdrawal of a member from the WTO is regulated by Article XV of the WTO Agreement. The provision requires the transmission of a written notice of withdrawal by the withdrawing member to the Director-General of the WTO, which takes effect six months after the date of its receipt and applies to the WTO Agreement and all related multilateral trade agreements; withdrawal from plurilateral agreements acceded to by the withdrawing member is controlled by the specific provisions of such agreements. Thus, the withdrawal from the plurilateral Agreement on Government Procurement under its Article 10 takes effect 60 days after the receipt of written notice of withdrawal by the Director-General of the WTO; and the withdrawal from the Agreement on Civilian Aircraft under its Article 9.6, 12 months from the receipt of the written notice.

As to the actual implementation of the withdrawal: Section 125 contains no specific provisions regarding the resolution's entry into effect, nor a directive (presumably to the President) to transmit the notice of withdrawal to the Director-General, nor the deadline for such transmittal. Nor does it address the time-lag between the entry into effect of the resolution (on the date of its enactment or veto override) and the effective date of withdrawal of the United States from the WTO (six months after the transmittal of the withdrawal notice).

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<sup>99</sup> Computed as in footnote 96.

<sup>100</sup> Both periods computed as in footnote 96.

<sup>101</sup> Under the Rules of the House of Representatives, the debate on overriding a Presidential veto is normally limited to one hour.

## **Author Contact Information**

Raymond J. Ahearn  
Specialist in International Trade and Finance  
rahearn@crs.loc.gov, 7-7629

Ian F. Fergusson  
Specialist in International Trade and Finance  
ifergusson@crs.loc.gov, 7-4997

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