

Global Trade Law

Global trade has grown immensely since the end of the Second World War. Globalization accelerated exponentially after the fall of the Berlin Wall and after the dissolution of the Soviet Union.

The World Trade Organization was founded in the midst of these momentous changes. Its principal objective was to develop a rules-based international system of trade. Shortly after the formation of the WTO, new and powerful players emerged in the global trading system, which gave rise to economic and political anxiety within the United States and worldwide. After 9/11 this anxiety was heightened when countries such as Russia, China, India, Brazil, and the United Arab Emirates exploded onto the global stage with their great economic booms, supercharged with trade surpluses, petrodollars, and surging commodity prices. Managing this new order has become a central problem of global politics.

The International Practice Section presents feature articles in this issue of *Virginia Lawyer* to explore legal dimensions of this new global landscape.

Two articles examine the World Trade Organization by assessing U.S. trade litigation against China and reflecting upon the current stalemate of WTO trade negotiations. Other articles appraise the trade policies of Virginia and Gov. Timothy M. Kaine's vision of "embracing globalization." Another article assesses the challenge that bilateral agreements pose to the multilateral system. Finally, two shorter pieces provide research assistance to professionals examining international trade law and undertakings by major universities aimed at commercializing research and promoting technology transfer to the private sector.

Global trade cuts across sectors and disciplines. Contributors are from George Mason University's schools of public policy and information technology, the Virginia Association of Law Libraries, the Department of Trade and Economic Development in the Office of the Virginia Governor, and the U.S. International Trade Commission in Washington, D.C.



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United States-China Trade Litigation in the WTO

by Stuart S. Malawer

The Permanent Mission of the People's Republic of China
to the World Trade Organization

中华人民共和国常驻世界贸易组织代表团

Since the midterm elections, the United States has launched an assault on China using WTO litigation.

The two most intriguing aspects of today's global trading system are the convergence of the role of the World Trade Organization (WTO) litigation and United States-China bilateral trade relations.¹ The U.S. has made WTO litigation a major component of its trade policy of "active engagement" to meet the new challenges of East Asia.² A response to the historic change of control within the Congress at the 2006 mid-term elections, the policy has become a central aspect of U.S.-China trade policy.

The U.S. government has initiated a trade offensive against China in the WTO, mainly in response to the shift of congressional control from the Republican Party to the Democratic Party. This offensive has serious implications beyond the bilateral trade issues concerning the U.S. and China. It foreshadows the governance of global trade moving from negotiations toward more litigation.

This change and its effects raise two broader questions. First, what are the implications of this U.S. trade offensive against China for global trade relations? Second, is resorting to WTO litigation a default position because of the failure of international negotiations?

My approach is to focus primarily on recent WTO litigation involving the U.S. and China while noting recent international negotiations and pending Congressional legislation.

WTO Litigation

Since the midterm elections, the United States has launched an assault on China using WTO litigation. In 2007, the United States filed three cases in the WTO against China.

The first case, filed on February 2, 2007, targeted a range of export subsidies. (*Exemption from Taxes as to Domestically Produced Goods*)³ The U.S. contends that China is violating the Subsidies Agreement and National Treatment Principle. Specifically, the U.S. argues that China provides various tax rebates to a range of Chinese firms amounting to export subsidies.⁴ Mexico filed a similar case and a panel was established in September 2007.⁵ The U.S. case was suspended in November after the parties reached a settlement.

On April 10, 2007, the United States filed twin cases.⁶ The first of these cases involved an alleged failure to enforce intellectual property rights. (*Protection & Enforcement of Intellectual Property Rights*)⁷ The U.S. alleges that China is violating the Intellectual Property Agreement (Trade-Related Aspects of Intellectual Property Rights, or TRIPS) by not enforcing its intellectual property obligations. For example, the U.S. argued that the threshold to establish trademark counterfeiting and copyright piracy under China's criminal procedures is too high. Moreover, the U.S. argues there is a lack of procedures and penalties. A panel to determine

this matter was established in September 2007.

The second of these cases targeted market access and distribution restrictions on films and audiovisual products. (*Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*)⁸ The U.S. argues that China maintains restrictions on the import of films and restricts foreign companies from distributing films and DVDs. The U.S. contends these restrictions violate market access obligations under the 1994 General Agreement on Tariffs and Trade (GATT) as to imports, as well as the Services Agreement concerning domestic distribution. A panel was requested in October 2007.

Neither of these cases had third parties joining the U.S. Apparently, no foreign governments wanted to be associated with either the merits of the cases or their timing, given their foreign policy or other global trade considerations.

Prior to the 2007 WTO litigation, the U.S. filed two WTO cases against China. The earlier filings indicate that the U.S. began choosing WTO litigation against China as an important trade tool several years prior to its most recent actions.

The first case, filed on March 18, 2004, (*VAT & Integrated Circuits*),⁹ was settled in the consultation stage by a “mutually agreed-upon solution” prior to full litigation.¹⁰ The U.S. contended that China was violating the National Treatment Principle of the GATT, and argued that the refund of

the value added tax to Chinese manufacturers (or when Chinese designed chips were imported) violated the GATT. The second case, filed on March 30, 2006, (*Imports of Auto Parts*)¹¹ had the U.S. and the European Union arguing that the import of auto parts are subject to tariffs equal to those on completed cars.¹² They argued that they should be charged the lower rate for parts, rather than the higher rate, for completed automobiles and that failure to classify the parts properly violates the GATT and the Trade-Related Investment Measures Agreement. A panel has been requested.¹³

While not currently involving WTO litigation, a U.S. Court of International Trade decision of 2007 (*High-Gloss Paper/NewPage Corporation*) further complicates the trade disputes between China and the United States. China has recently threatened to bring full litigation against the U.S. in the WTO concerning subsidies levied pursuant to this case.¹⁴ This case marks the first by China as a sole complainant.¹⁵ Consultations were requested in September.¹⁶ On March 29, 2007, the U.S. Court of International Trade in New York upheld the George W. Bush administration’s (Department of Commerce) change of trade policy, bringing subsidy actions against Chinese imports.¹⁷ The administration decided as a matter of policy to allow subsidy actions concerning goods from non-market economies. This ruling reversed the 1980’s *Georgetown Steel* and U.S. trade policy of the last twenty years, both of which did not allow bringing subsidy cases involving nonmarket economies, principally China.

China has consistently argued that the cases filed by the U.S. on these issues were unjustified. “U.S. filing complaints in the WTO over alleged commercial piracy in China will badly damage cooperation.”¹⁸ In the U.S. Court of International Trade case, China has taken an even stronger position. “The Chinese government expresses strong dissatisfaction about the U.S. decision to impose penalty tariffs against the imports of Chinese coated free sheet paper.”¹⁹

Ambassador Susan C. Schwab, the U.S. trade representative, says bringing trade actions should not be viewed as a failure in trade relations. “We have brought four formal WTO cases in the past fourteen months and we are determined to press our cases vigorously in the months ahead. This should not be regarded as a failure in our trade relationship with China. Quite the contrary. Resorting to dispute settlement is itself a form of engagement. It is evidence of two countries working to resolve disputes about obligations through neutral, legal mechanisms. WTO dispute settlement is designed to prevent trade wars rather than fuel them.”²⁰

International Negotiations

The reliance of the U.S. on WTO litigation points to faulty international negotiations.²¹ In May 2007, the Second China Strategic Dialogue in Washington, D.C., the more recent negotiations in Beijing and the Group of Seven (G-7) meeting (even though it stepped up pressure on China in currency valuation) failed to produce any significant results.²² Neither has the older U.S.-China Joint Commission on

China Litigation in the WTO (2003–07)

Complainant	Party	Status	Number	Agreement
U.S. Steel Safeguards	T.P. Complainant	AB Report 2003	DS 252	Safeguards
U.S. A/D & CVD	Complainant	Request Consultation 2007	DS 368	Dumping & Subsidies
Respondent				
China’s VAT on Integrated Circuits	Respondent	Mutually Agreed Solution 2005	DS 309	GATT 1994
China Auto Parts	Respondent	Request Consultation 2006	DS 340	GATT 1994, Subsidies
China’s Subsidies & Refunds	Respondent	Request Consultation 2007	DS 358	Subsidies
China’s Intellectual Property Rights	Respondent	Request Consultation 2007	DS 362	Intellectual Property
China’s Distribution System	Respondent	Request Consultation 2007	DS 363	Services

Commerce and Trade produced any important outcomes.²³ This failure of negotiations is occurring while China remains the target of the largest number of antidumping actions brought by countries worldwide (thirty-six during July to December 2006).²⁴ The EU is considering filing newer cases and adopting a more aggressive approach.²⁵ European steel makers recently asked the European Commission to impose antidumping duties on steel, and this appears to be an opening shot in a looming trade war with China.

Congressional Legislation

While the Bush administration is moving forward with its trade litigation, there are various bills in Congress proposing a host of stronger actions against China. Each could have potentially serious consequences for trade with China. Describing them is like photographing the sand on a beach during a windstorm.²⁶ However, what is particularly unique is that congressional legislation for the first time would include WTO litigation as a sanction.

The Senate Finance Committee bill (sponsored by Max S. Baucus, Charles E. “Chuck” Grassley, Charles E. Schumer and Lindsey O. Graham) defines dumping by considering undervaluation of foreign currency.²⁷ This approach is tamer than earlier bills. However, this bill would require the United States Trade Representative (USTR) to file a WTO action within a year of the Department of the Treasury determining that a nation’s currency is “misaligned.” Leading Democratic presidential contenders (Hillary Clinton and Barack Obama) have signed on to this approach.²⁸ The Bush administration opposes this strategy.²⁹ “Public opinion polls show rising discontent with globalization among Republicans and Democrats alike.”³⁰

Given the time it will take for enactment of the legislation, required Treasury Department action, the USTR request to the WTO, and the WTO’s process of panels and appeals, late 2010 is the earliest any WTO action could occur. This lengthy timeline for possible action

under this bill indicates that passing legislation is not necessarily the most efficient or effective way to address these trade issues. Reinvigorated negotiations become more attractive, with a promise of a quicker resolution.

The earlier Senate bill (sponsored by Schumer and Graham) would authorize 27.5 percent duties on all imports to counter the undervaluation of the yuan. This bill also presents a novel possibility—action in the WTO. The bill declares that as a general principle the undervaluation of currencies amount to an export subsidy.

The Senate Banking Committee bill (sponsored by Christopher J. Dodd and Richard C. Shelby) requests the Treasury Department to take actions over global currency imbalances and currency manipulation. This measure is clearly aimed at China.

A bill in the House of Representatives (sponsored by Arthur G. Davis and Philip English) would allow subsidy actions as to nonmarket economies. It would codify both the Bush administration’s policy and the decision of the U.S. Court of International Trade in the *High-Gloss Paper* authorizing subsidy actions against imports coming from nonmarket economies.

The Bush administration has warned against all of the above legislation.³¹ It emphasizes China as a source of affordable consumer products and a marketplace for American exports. In particular, the administration has supported negotiations with litigation as a central component of its trade policy. Recently, the Bush administration denied a Section 301 petition seeking to launch a WTO case against China concerning the valuation of the yuan.³²

Assessment

In summary, the U.S. filed two cases against China in the WTO soon after China’s accession in 2001. Since the midterm elections in 2006, the Bush administration has launched a more aggressive trade policy against China in

the WTO, filing an additional three cases. Panels have been established and decisions are expected by late 2008.

The Bush administration’s newer trade policy is in response to the swing in power in the Congress.³³ The Democrat-controlled Congress has become more resistant to President Bush’s trade policies, which have involved opposition to fast-track extension and the approval of various bilateral trade agreements (with South Korea, Panama, Peru, and Colombia). The Bush administration’s approach is an obvious response to the Democratic Party’s focus on a “new populism,” emphasizing “trade and jobs.”³⁴ This shift joins a growing popular resistance to globalization and trade, growing concern over product and food safety, and increasing Republican Party resistance, as well. Congressional backlash is in large part based on continuous failure by the Treasury Department to determine that China has manipulated the yuan and declare such manipulation to be a prohibited trade restriction.

The Treasury Department failed to take this action again in its semi-annual report to Congress on foreign exchange, issued in June 2007. However, the Treasury Department’s cautionary position is understandable. The provisions of the WTO agreements do not consider currency valuation in the context of a trade restriction, let alone declare them as inconsistent with the WTO.³⁵

The Bush administration’s policy also is a reaction to international diplomacy failures. Bilateral negotiations with China and the Doha trade negotiations have been disappointments. Successful bilateral trade talks hold the promise of resolving difficult disputes. Success in multilateral negotiations offers the possibility of adoption of newer rules for the general trading system. Developing and clarifying rules through multilateral negotiation is the optimal solution. U.S. trade efforts should be focused on this approach.

Of course, this newer U.S. trade policy is in the context of myriad international economic and political factors. China’s eco-

China Investment Data

Foreign Direct Investment

Outflow — 2006	\$11.3 billion
Outflow — 1996	\$2.1 billion

Direct Investment Positions

Inward — 2005	\$610.2 billion
Outward — 2005	\$64.5 billion

International Direct Investment Database,
Organisation for Economic Co-operation and
Development, Paris, 2006

conomic development and growth is huge. China's gross domestic product in the first quarter was a twelve-year high at 11.9 percent. China could well grow this year at the fastest rate since 1993 and bring it closer to overtaking Germany as the world's third-largest economy.³⁶ China has an overvalued currency, and global economic balances persist. The U.S. economy is slowing. China's demand for imports is fueling a global economic expansion. China is on course to lead the world in initial public offerings.³⁷ The initial public offering of the Industrial and Commercial Bank of China in July 2007 made ICBC the world's largest bank by capitalization. Two months later, this IPO was surpassed by that of China Construction Bank Corp. China's stock market has reached an all-time high (six thousand in October 2007). In November, after its public offering, PetroChina became the world's first \$1,000bn company. A day later, the public offering of Alibaba.com made it the world's second largest Internet company. China now leads the world in publicly traded companies with more than \$200 billion in market capitalization.³⁸ China's sovereign wealth fund, the China Investment Corporation, is preparing to invest globally.³⁹

Within a geopolitical context, China is becoming of great importance and concern to the United States. For example, there has been increased cooperation between Russia and China in Central Asia within the new Shanghai Cooperation Organization. China has been a key participant in the nuclear negotiations with North Korea. "[C]hinese nationalism backed by economic

strength—poses obvious foreign policy dilemmas for the west."⁴⁰ The ideological battles over which model is best for economic development will continue. "Authoritarian nationalism" is challenging the Western political model that embraces liberal democracy.⁴¹ "State capitalism" seems more appropriate for defining the market in China.⁴²

The new U.S. trade actions against China in the WTO could easily spill into a larger trade war.⁴³ Initially, it could lead to new Chinese restrictions on U.S. multinationals investing in China and China's investment in the U.S.⁴⁴ The U.S. multinationals doing business in China and U.S. exporters to China would pay the price for U.S. import restrictions.⁴⁵ This possibility is particularly worrisome since China is generating significant earnings in a generally slowing U.S. economy. The U.S. economy is "decoupling" from the global economy as the economic locomotive of global growth. "[T]he global economy is moving into a newer era in which growth in developing parts of the world becomes the key component of economic expansion."⁴⁶

Ultimately, the trade conflict could affect the U.S. political and national security relations with China. Changing some specific practices of China or tweaking U.S. trade law are not going to change the fact that China is a rapidly developing, emerging-market powerhouse. China is poised to become the largest trading nation in the world. There is a need to develop other remedies for the U.S.-China trade conflict. Developing less unilateral and confrontational actions on both sides is preferable.

The bigger issue still warrants discussion. Has WTO litigation become the weapon of choice for the United States because there has been a failure of diplomacy

within the WTO system?⁴⁷ The answer is yes. The possible implications of this reality are huge. Litigated decisions are applicable only to the individual parties to a case. While litigation does hold the promise of coaxing states back to the negotiating table litigation simply does not hold the answer for developing general rules addressing ever more complex issues of trade relations—rules that are applicable to all WTO members. Is it better for global trade relations to be centered on the WTO Dispute Settlement Understanding system than on the seemingly never-ending Doha negotiations or bilateral negotiations over trade disputes? Here, the answer is no. Trade disputes are better settled within the dispute resolution system. While individual or a range of trade disputes may be settled by bilateral negotiations, it is crucial for trade relations to be grounded in multilateral negotiations through which policy choices are made by the parties for the benefit of themselves and the global trading system. Professor Robert Z. Lawrence of Harvard University states, "The shift from bilateral to multilateral enforcement helps secure the legitimacy of the trading system and reduces the political costs associated with bilateral dispute settlement."⁴⁸ He concludes, "There are other reasons to be wary of an aggressive move toward tougher enforcement . . . [The] dispute settlement system reflects a subtle amalgam of the legal and diplomatic approaches . . ."⁴⁹

This grounding means reinvigorating the current round of WTO negotiations to develop newer rules for both broader and more technical trade issues. As trade relations continue to evolve, these issues will undoubtedly encompass a greater range of economic relations than does the

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Official China Web Sites For Foreign Affairs & Foreign Commerce

Chinese Mission to the World Trade Organization
China Ministry of Foreign Commerce (MOFCOM)
China's Foreign Market Access Report (MOFCOM)
China Ministry of Foreign Affairs
China Embassy to the U.S. (Economic & Commercial)

<http://wto2.mofcom.gov.cn/aboutus/aboutus.html>
<http://english.mofcom.gov.cn/>
<http://gpj.mofcom.gov.cn/table/2005en.pdf>
<http://www.fmprc.gov.cn/eng/>
<http://us2.mofcom.gov.cn/index.shtml>

Virginia Embracing Globalization

by Patrick O. Gottschalk



From left to right: Brent D. Sheffler of the Virginia Economic Development Partnership, Virginia Secretary of Commerce and Trade Patrick O. Gottschalk, Gov. Timothy M. Kaine, and Virginia Deputy Secretary of Commerce and Trade Rick Siger on a 2006 trade mission to Canada.

Increased international trade by U.S. companies has helped maintain the strength of the U.S. economy.

In his Economic Development Strategic Plan, Gov. Timothy M. Kaine set forth nine broad goals that focus on strengthening and maintaining Virginia's award-winning business climate, while expanding opportunities for all of Virginia's regions and citizens. In keeping with Virginia's history of international commerce, the Governor's Economic Development Strategic Plan contains a goal directly related to international business. This goal is to "develop a coordinated international marketing strategy for Virginia including both foreign direct investment and export/import features."

The position of Governor Kaine's administration regarding globalization is clear—Virginia is better positioned than many other states to be a winner in a global economy. Targeted international investments, increased exports, dependable transportation, and strong governmental leadership have all contributed to placing Virginia in a position to prosper from globalization.

There are many questions regarding both the short- and long-term implications of globalization, but there is no question that globalization is upon us. The world's economy continues to expand. In a recent study, the International Monetary Fund projected that the global economy will grow by 4.8 percent in 2008, while the U.S. economy will grow by only 1.9 percent.

Increased international trade by U.S. companies has helped maintain the strength of the U.S. economy. The growth of the world's economy, combined with advances in technology and transportation, has produced a global business climate that was unimaginable fifty years ago. Over the past several decades, Virginia, like the United States as a whole, has benefited from the increase in global trade. Since 1950, the volume of world trade has increased twenty-fold from \$320 billion to \$6.8 trillion.

Virginia is already a winner in globalization. There are more than seven hundred

foreign-affiliated firms located in Virginia. Virginia's total exports of goods and services are estimated to be \$21 billion worldwide. The Port of Virginia is the third largest on the East Coast, and earlier this year Governor Kaine launched the Virginia International Trade Alliance, a public-private partnership aimed at leading Virginia's international business strategy.

There are challenges that come with the benefits of globalization. Virginia has lost jobs in certain manufacturing industries. While the loss of any job in Virginia is a concern, the reality is that the net impact of trade on the number of manufacturing jobs in the United States is positive. All fifty states, including Virginia, have realized a net gain in jobs directly attributable to trade.

Virginia Attracts International Investment

One benefit of globalization is the foreign dollars it brings to the commonwealth through investment. Foreign investment has long been a priority for Virginia. In 1968, Virginia became one of the first states to set up an overseas investment presence in Europe when it opened an office in Brussels, Belgium. Successful foreign companies in Virginia not only reinvest in their operations here, but also become examples to other companies in their home countries and in their industries. Their success makes it easier to attract similar companies to Virginia.

Foreign investment in Virginia totals \$19.6 billion—just 1.6 percent of all foreign investment in the U.S. Leading countries for Virginia foreign investment are Germany, Japan, the United Kingdom, Denmark, and Canada. Industry sectors in Virginia with high levels of foreign direct investment are information technology, transportation equipment, electronics, plastics, rubber, and machinery manufacturing. Not all foreign direct investment is for big projects. The average size project based on jobs created is seventy-one jobs, and based on capital investment is just more than \$10 million.

According to the U.S. Bureau of Economic Analysis, Virginia accounts for 2.5 percent

of foreign employment in the U.S., or approximately 144,800 jobs. The top countries for foreign employment are Germany, the United Kingdom, Japan, Canada, and Sweden. The average compensation per employee was nearly \$60,000 for U.S. subsidiaries of foreign companies, higher than the national average annual pay as calculated by the U.S. Bureau of Labor Statistics.

Foreign Companies in Virginia

Some of the successes of foreign businesses in Virginia speak volumes to the importance of foreign investment to the commonwealth.

Maersk—In September 2007, the Danish shipping line Maersk and its sister company APM Terminals opened a \$450 million new container terminal in Portsmouth that will employ 210 people. This facility is the first privately developed container terminal in the U.S. Maersk's current facility is adjacent to the Port of Virginia. The proximity provides the state an opportunity to improve capacity at its port operations.

"This facility will create opportunities in global commerce for our customers while maintaining the highest standards in safety and security. Our vision is to create a port that will act as a catalyst for international business in the local and regional economies by creating a new, broader long term platform for business growth," said Thomas Thune Andersen, president and chief executive officer of Maersk Inc.

IKEA—In October 2006, Swedwood North America, a furniture manufacturer and subsidiary of IKEA, announced that it would build its North American manufacturing operation in an industrial park jointly developed by Pittsylvania County and the City of Danville. With a projected completion date on the first of three phases slated for the end of 2007, the Swedwood facility will employ up to 740 people.

"Swedwood's new facility represents the second largest investment ever in Southside Virginia," said Governor Kaine in making the announcement. "The available, trained workforce pushed Virginia ahead."

Volkswagen of America Inc.—In September 2007, Virginia welcomed Volkswagen of America Inc. as it relocated its U.S. corporate headquarters to Fairfax County. Volkswagen will invest more than \$100 million in a 185,000-square-foot facility to serve as the headquarters for both Volkswagen and Audi. This project will create four hundred new jobs paying an average wage in excess of \$120,000.

"Virginia's work force and business culture are in line with our strategy of connecting even more closely with our customers, and its location is convenient to vitally important markets for all of our brands. We are excited to become part of the Virginia community," Stefan Jacoby, CEO of Volkswagen of America, said in the September announcement.

Virginia's foreign company activity has been on an upward trend since 1994, and I am confident this trend will continue. Based on the Virginia Economic Development Partnership's (VEDP) current pipeline of projects, foreign investment should continue to play an important role in Virginia's economic growth. The VEDP is currently pursuing projects with major multinational companies in the medical equipment, energy, metal building materials, food products, and automotive industries.

Virginia's Products and Services Are World-Class

Virginia products and services are found around the world, and the demand for Virginia products and services continues to grow. The commonwealth has incredible assets that support Virginia companies as they expand their international business. The twenty-fourth largest exporting state in the U.S., Virginia has seen exports steadily rise over the years. In fact, Virginia saw a more than 15 percent growth in exported goods from 2005 to 2006, an increase for the fourth consecutive year. From 2002 to 2006, the export of Virginia goods rose an astounding 31 percent.

Thanks in part to our strategic location and infrastructure, globalization via export trade thrives in Virginia. Virginia industries have proven flexible, open to meet the

changing needs of a global economy and recognizing the need to diversify their customer base via export trade. Although traditionally dominated by coal and tobacco exports, Virginia's strengths have shifted to the manufactured goods sector, and more recently toward technology and services. Top exports in recent years include industrial and electrical machinery, vehicles, plastics, and paper products.

Tobacco and, more recently, coal have dominated Virginia exports since the state's founding in 1607. Virginia has diversified to make up for market shifts pertaining to declining coal and tobacco sales, although these products remain in demand worldwide. Coal and tobacco remain in the top five exported Virginia goods. As Virginia develops its strengths in technology, services, and manufacturing, the rate of growth for other commodities, along with changing demand, will likely decrease the dominance of tobacco and coal exports. Virginia exported 54 percent less tobacco in 2005 than in 2001, and although coal exports increased by nearly one-third in the same period, other commodities play stronger roles in Virginia's economy each year.

One clear example of Virginia's shift away from coal and tobacco and toward technology is the recent rise of digital integrated circuit exports. Otherwise known as microchips, integrated circuit exports rose to the top of Virginia's export list in 2006 with more than \$1.5 billion in international sales, overtaking both coal and tobacco products. Export volume of microchips in 2006 nearly tripled that of 2004. This represents growth at an astounding pace.

Another sign of globalization is found in Virginia's increased export of services. For the past decade, service exports have been slowly growing to dominate Virginia's gross domestic product (GDP) and employment. Service exports contribute heavily to Virginia's technological innovation and growth in skilled jobs, although the subject does not typically draw much attention.



Map courtesy of Theodora Maps, www.theodora.com/maps; 2006 data from World Trade Atlas, www.worldtrade-statistics.com

The service sector is large and lucrative. According to the United States Coalition of Service Industries, more than 80 percent of Virginia's GDP is generated by the service sector, and employs more than 80 percent of Virginians. In 2005, Virginia exported close to \$12 billion in services.

Encompassing travel, financial, legal, security, and many other industries, the service economy in Virginia has a huge impact on the local economy. In fact, the price and quality of services influence other parts of the economy, including our competitiveness in the manufacturing arena, according to the Coalition of Service Industries. The coalition also estimates that the U.S. only exports about 5 percent of its services. Compared with 20 percent of American-made goods that are exported, it is evident that there is ample room to grow service exports.

Whether the export is a service or a tangible good, Virginia businesses export to every geographic region in the world. Top trading partners include Canada, European Union countries, China, and Japan.

Virginia sold more than \$2 billion in goods to Canada last year, marking the tenth year in a row that Canada has been Virginia's number one export destination. Western Europe ranked as Virginia's top export region for the ninth consecutive year. Virginia export volumes soared to China as well; they rose more than 30 percent last year, making China Virginia's third-highest export destination at more than \$900 million.

Emerging markets such as China and India have become key trading partners for Virginia. Emerging markets also present

interesting opportunities for growth in Virginia's future exports. These markets and others—such as Brazil and Russia—are currently industrializing. They have a growing middle class and governments instituting reforms that will likely lead to increased trade and investment.

Connecting Virginia to the World

Virginia's advantages for international trade are its location and transportation system. These valuable resources offer companies engaged in international business opportunities to get people and products to or from anywhere in the world. With its East Coast location, Virginia is a gateway to the U.S. for international business by virtue of the Port of Virginia and Washington Dulles International Airport, as well as the six major interstate highways and eleven railroads that crisscross the commonwealth. These world-class facilities enable products and people to enter the U.S. market and access international markets with ease and efficiency.

The Port of Virginia comprises three marine terminals operated by the Virginia Port Authority. The Port of Virginia is the seventh-largest container port in the U.S. and the third-largest on the East Coast. Over 55 percent of the cargo that is transported via the Port of Virginia originates or is destined for locations outside of Virginia.

Virginia's air transportation system also contributes to its strength as an internationally competitive state. Dulles Airport continues to see remarkable growth and expansion. International passenger traffic increased by 13.2 percent in 2006 and 2007. In 2007, 145 new weekly flights to

eight new international destinations were added, and flights to six new countries—China, Ireland, Kuwait, Panama, Qatar, and Spain—were added. In fact, I had the pleasure of being on the first flight from Dulles to Beijing, China, in March 2007.

While Virginia is proactively building upon its rail and port infrastructure, the commonwealth must continue to address issues related to congestion on its interstate highways to ensure that the flow of goods is uninterrupted. To address this issue, Governor Kaine has made transportation investments a key priority for his administration.

Virginia Supports International Business

In addition to the Kaine administration's dedication to improving infrastructure, the commonwealth also has a wide variety of state resources devoted to promoting international trade in general. The Virginia Economic Development Partnership focuses on two aspects of international business—investment promotion and export trade promotion.

VEDP maintains investment offices in Brussels, Belgium, Tokyo, Japan, Seoul, South Korea, and Hong Kong. The agency's trade offices in Mexico City, Mexico, and São Paulo, Brazil, also offer investment assistance. VEDP maintains an aggressive marketing program to attract foreign companies to Virginia, as staff in Virginia and the overseas offices make direct calls on foreign-owned companies.

VDEP's services geared toward export trade promotion include not only in-country market research and export programs such as Virginia Leaders in Export Trade and Accessing International Markets, but also business matchmaking visits to other countries as part of VDEP's regular cadre of trade missions. As Virginia's secretary of commerce and trade, I've been honored to participate in three trade missions with Governor Kaine, other members of his

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The author thanks Alleyn Harned, assistant secretary of commerce and trade, for his assistance on this article.

cabinet, and Virginia business leaders. It is a tremendous opportunity to personally emphasize to our world partners the importance the commonwealth places on our standing in the global marketplace.

One foreign trade mission, in May 2006, took us to Canada, Virginia's top trading partner. There, we visited Toronto and Montreal to strengthen our economic ties and promote Virginia's four hundredth anniversary at Jamestown. In November 2006, we traveled to Denmark, Sweden, the United Kingdom, and Germany to focus on trade development and business recruitment. While in London, Governor Kaine also kicked off the Jamestown four hundredth anniversary celebration at Tower Bridge.

More recently, I had the opportunity to lead with my colleague Aneesh P. Chopra, the Virginia secretary of technology, what is believed to be the largest and most strategically significant state delegation to India. At more than one hundred strong, we traveled to New Delhi, Chennai, and Mumbai in April 2007 to cultivate Virginia's relationship with India and open more doors to increased mutual trade and investment, particularly in the areas of global logistics, agriculture, infrastructure, technology, and research and development.

Poised for the Future of Globalization

Thanks in part to Virginia's strategic location, transportation system, and businesses dedicated to trade and investment, Virginia has responded well to the demands of a global economy. We are, however, far

from finished in our efforts to adapt to globalization.

There inevitably will be challenges related to globalization that Virginia businesses and state organizations must face. Business leaders, our government, and other stakeholders continue to be aggressive and deliberate regarding Virginia's role in the global economy. Issues surrounding the advantages and disadvantages of globalization will continue to challenge us.

Founded as a trading company four hundred years ago, Virginia has exceeded every expectation as a global player. I am confident that Virginians will continue to embrace globalization, ensuring success and profitability in the commonwealth for years to come. ♁

U.S. Trade Policy and Multilateralism— The Challenge of Bilateral Trade Agreements

by Kevin J. Fandl



The goal of the WTO has long been to seek elimination of all barriers to trade in each member country . . .

The present United States approach to global trade liberalization might be characterized as a haphazard scramble to piece together bilateral and regional agreements with any willing country. The George W. Bush administration has pushed hard for the conclusion of bilateral trade agreements with several developing countries by arguing that the agreements will open the door to expanded U.S. markets and will encourage stronger protection of U.S. investors in those markets. The recent conclusion of agreements in Latin America exemplifies this pattern. However, is this rushed approach to trade liberalization bringing benefits to the U.S. economy faster, or is it sacrificing true economic growth conducted on a more equitable multilateral basis that might provide for more sustainable long-term economic development?

The decision to push for bilateral agreements to the potential detriment of ongoing multilateral negotiations can have a significant impact on the U.S. business community.

In the short run, U.S. businesses stand to gain from bilateral trade agreements through easier access to new markets, potentially lower import costs for raw materials, and better protection of their investments in the countries privy to the agreement. Yet in the long run, the effects may not be as positive. First, as trade diversion expands, less-efficient producers will become production centers, stunting

further development of already efficient producers in other countries and preventing U.S. businesses from reaping the rewards of low-cost imports. Second, if multilateral talks continue to starve from lack of attention, global liberalization would fail to materialize, again harming businesses. Third, U.S. businesses that have no incentive to conduct business with countries involved in bilateral agreements with the U.S. will gain little from the agreements and may suffer compared to U.S. counterparts that do conduct business with the countries in the agreement. Finally, bilateral agreements tend to create tension between the U.S. and developing countries as many developing world citizens perceive the agreements as unbalanced. Accordingly, the resulting backlash can cut off business opportunities for U.S. investors, as has happened in Venezuela and other parts of the developing world.

Since the inception of multilateral trade and the World Trade Organization's (WTO) most-favored-nation principle, economists, policymakers, and business professionals have concluded that the most efficient means for acquiring sustainable gains from world trade is through global trade liberalization. This means that all countries—developed and developing—that subscribe to the WTO would act concurrently to lower tariff and nontariff barriers to trade, offering equal protections to all other members of the organization. The goal of the WTO has long been to seek elimination of all barri-

ers to trade in each member country, leaving nothing but markets to determine the flow of goods and services across borders. The wisdom of this principle is supported by neoclassical economic theory, which forms the basis of many national economic policies as well as the WTO and thus attracts a large support base.

Bilateral and regional trade agreements are concluded between two or more countries outside the purview of the WTO. These agreements are most often, but not always, between a developing and a developed country. Because they are not regulated by the WTO, the parties are free to negotiate their own terms of trade and may include issues outside the basic exchange of goods and services. These additional issues can include security agreements, commitments to reduce corruption, investor protections, intellectual property rights, labor standards, environmental protections, international enforcement of judgments, and restraints on currency controls. The WTO does not generally negotiate such matters, as they are not considered direct components of trade.

Countries that engage in bilateral trade agreements generally argue that they are concluded in good faith with the intention of enhancing global trade. Developed countries that pursue such agreements contend that the agreements can lead to a more rapid liberalization process, thereby avoiding the long delays and barriers to concluding a full multilateral liberalization process, such as that sought by the WTO's current Doha Round of trade talks. They also argue that such agreements can work to improve geopolitical and political concerns, such as improving the judiciary, reducing corruption, and supporting economic development in the partner developing country.

Negotiation Imbalance

The WTO permits member states to enter into bilateral and regional trade agreements under certain conditions. These conditions specify that the agreement must not make any member state that is outside the agreement worse off than before the agreement; they must substantially elimi-

nate all barriers to trade; and they must eliminate such barriers within a reasonable amount of time.¹ These agreements must be notified to the WTO in advance for review and subsequent approval. Of the more than two hundred such agreements in existence today, only one has been officially approved by the WTO.²

There are several concerns about countries entering bilateral rather than multilateral agreements to liberalize trade. On the economic front, the primary contention is that the long-standing WTO principle of most-favored-nation is compromised. This principle specifies that all member states of the WTO shall receive the same benefits as every other member—in other words, if one member state receives a benefit under the agreement, all member states must receive the same or an equivalent benefit. There can be, in effect, no favored nation. Bilateral and regional trade agreements do exactly the opposite—they provide special benefits to some member states that are not provided to other member states of the WTO. For example, if the U.S. offers Singapore duty-free entry of textiles under the U.S.-Singapore bilateral free trade agreement, yet it has negotiated a tariff of 5 percent for WTO member states under its WTO concessions, other WTO member states will suffer by having to pay more than Singapore for their textile exports to the U.S. A corollary of this concern is the likelihood of trade diversion.

In the example above, even if Singapore is not the most efficient producer of textiles, their exports to the U.S. will be favored by U.S. consumers because they will be sold roughly 5 percent less expensively on the U.S. market. If, in fact, India were the most efficient textile producer, Indian manufacturers would have to reduce their prices in order to remain competitive with Singapore, despite their quality and efficiency. The result is an imperfect market exchange, contrary to the free market aspirations espoused by the U.S.

On the noneconomic front, additional concerns about negotiating outside the multilateral context exist. Politically, there

is a concern about the equitability of negotiations between developed and developing countries. Numerous trade experts have drawn attention to the power imbalance that exists between trade negotiators from a developed country and those from a developing country.³ The U.S. has a specialized body that negotiates trade agreements on its behalf—the Office of the U.S. Trade Representative, which is home to a number of highly trained experts in all areas of trade deemed beneficial to U.S. industry. A developing country usually utilizes the services of its trade ministry or other body equivalent to the U.S. Department of Commerce to negotiate these agreements. Accordingly, it does not possess the cadre of experts that the U.S. enjoys, nor is it endowed with resources to dedicate to negotiating smaller agreements while also maintaining representation in WTO negotiations likely to be more friendly to developing countries.

Because these negotiations are not limited to trade issues alone, U.S. negotiators often push to receive noneconomic benefits. The two areas that have garnered the most attention in this area are labor and environmental protections. For example, the U.S. has made many of its agreements conditional upon developing countries adhering to strict labor practices and protections, such as paying reasonable wages to workers. Their primary concern here, altruistic as it may appear, is to protect U.S. industry that may wish to compete for market share in the developing country or to compete with lower developing-country export prices on the U.S. market. Lower wages, a common practice in many developing countries, allows those countries to remain competitive on global markets and to encourage the development of small businesses that could not afford to pay higher wages. Tougher laws mean less competitive edge against the incoming U.S. businesses and less competitive exports on world markets.

Environmental protections also greatly limit a developing country's economic prowess. In the early stages of industrialization, as is evident today in India and China and historically in the U.S. and

Western Europe, pollution is rampant. The infrastructure to limit this toxic proliferation is often not yet in place. Developing-country governments have neither the money nor expertise to invest in pollution reduction schemes. In many instances, their limited funds are devoted to debt repayment and poverty reduction programs. Yet developed countries—typically the largest global polluters—have used these provisions to further restrain developing country competitiveness by raising the cost of doing business through required environmental safeguards.

U.S. Trade Policy

The United States has used bilateral and regional trade agreements for a number of reasons, the least of which is economic gain. In fact, most of the recently ratified or negotiated trade agreements outside the multilateral context have generated only minor economic benefit for the U.S. For instance, the recent U.S.-Australia free-trade agreement has increased the trade surplus for the U.S. by 32 percent for a total of only \$2 billion. The increase was only \$4 billion for the agreements with Chile and Singapore. Even over the long term, economic gains have been small. The Congressional Budget Office reports that U.S. Gross Domestic Product increased only slightly because of the North American Free Trade Agreement (NAFTA), and not necessarily due to its direct effects.⁴ In developing countries, the news is even less positive. Consider NAFTA, which, more than ten years after signing, is hotly debated by economists as to the benefits for the Mexican economy. Also consider the Free Trade Area of the Americas, which not only was unsuccessful as an agreement, but also may have increased regional backlash against the U.S.

U.S. trade policy is highly protective of its own innovative economy. Accordingly, the protection of intellectual property is a top priority for its trade negotiators. On any street corner in a developing country, vendors pawn off copies of the latest U.S. films and music, Rolex watches, Coach sunglasses, and almost anything that can be copied. The price for these items is rarely more than 20 percent of what some-

one would pay in a developed country, unless of course the buyer were a bad negotiator. The U.S. wants developing countries to implement more rigid laws to prohibit the manufacture and sale of these infringing goods, and stronger enforcement of such laws. Language requiring stronger laws and better implementation of such laws has become standard in trade agreements, despite the WTO's multilaterally negotiated intellectual property agreement.

I can speak firsthand of the effect of these clauses from my time living in Colombia during the negotiation of that country's trade agreement with the U.S. I witnessed one of their popular black markets, San Andrecitos, shutting down in anticipation of a raid by police—something much more frequent since the conclusion of the agreement.

These constraints on trade also can serve to weaken economic growth in developing countries. Much of the contraband sold in developing countries is copied because original research, development, and production are not yet feasible. Lack of investment in innovative technologies limits the growth of an innovative sector in most countries (with the obvious exceptions of China and India), leaving developing countries with the options of copying existing technology or reverting to primary commodities such as agriculture to sustain their incomes, which is becoming increasingly difficult.

So why does the U.S. insist on pursuing such agreements rather than remaining focused on the floundering Doha Development Agenda and other multilateral negotiations? The rationale is largely noneconomic. A recent Heritage Foundation report suggests that the primary basis for evaluating a free trade agreement includes the partner country's support of U.S. economic and foreign policy interests. As an example, the report discusses the U.S.-Bahrain agreement, which may be used as a stepping stone toward the conclusion of a Middle East Free Trade Area that would greatly promote the U.S. security goals in the

region by expanding U.S. economic linkages there.⁵

The Bush administration has pursued a policy of trade negotiations with developing countries that uses the threat of removing existing trade preferences or aid if the country does not enter the agreement on U.S. terms—meaning that a developing country party to a negotiation has little negotiating room to debate the demands of the U.S. in exchange for small openings in the U.S. market. In the case of Colombia, the threat was the potential removal of the Andean Trade Preference Act (which has expired and was extended while Congress debates implementation of the FTA). Removal of these trade preferences, which gave Colombia duty-free access to much of the U.S. market, would be very detrimental to the Colombian economy. This coercive approach has caused many developing countries to balk at working on trade deals at all with the U.S. Consider Venezuela, for example, which has opted instead to negotiate with China and its regional partners, thereby diverting potentially beneficial U.S. market exchange. Singapore's own minister of foreign affairs, George Yeo, said that developing countries negotiate out of fear and insecurity, rather than economic considerations.⁶

Presidents William J. Clinton and George W. Bush have enjoyed Trade Promotion Authority (TPA), which allows them to negotiate a trade agreement and, once signed, present the agreement to Congress for an up or down vote. With TPA, Congress may not amend or modify anything in the agreement. This authority is a sharp sword for negotiations, as it provides confidence in the negotiating parties that the agreement will go forward without changes by the U.S. Congress. Without TPA, anything that the parties agree to is subject to modification before approval. However, President Bush lost this TPA in June 2007, taking away this powerful weapon and making the conclusion of trade agreements more challenging. Since the Republican Party lost control of the Congress, Democrats have asserted that they will not approve any pending agree-

ments without strong labor and environmental safeguards. Agreements with Peru, Colombia, and Panama hang in the balance as the administration tries to attract sufficient support to ratify these pending deals.⁷

One example of the controversy brewing in Congress today involves the pending U.S.-Colombia FTA, which, despite the support of Colombian President Alvaro Uribe and the Bush administration, is faltering under congressional pressure. Congress is pushing for more prosecution by the Colombian government of right-wing paramilitaries and better enforcement of the law against human-rights abusers. With a growing scandal of political ties to paramilitary groups in the Colombian Congress and the hesitation of the U.S. Congress to consider moving forward without certain assurances from Colombia, it seems less and less likely that the agreement will be approved before a change in U.S. administration. The situation is similar in Panama, where the leader of their Congress was accused, tried, and acquitted of killing an American soldier in 1992. Pedro Miguel Gonzalez is still wanted in the U.S. on these charges. With Gonzalez at the head of the Panamanian Congress, the U.S. Congress is unlikely to approve the FTA.⁸

Thus far, the U.S. has successfully concluded agreements with Israel, Canada, NAFTA, Jordan, Chile, Singapore, Australia, Morocco, El Salvador, Nicaragua, and Honduras. With the recent Costa Rican referendum, an agreement also will be concluded with the Central American region. Agreements with Bahrain, Guatemala, the Dominican Republic, and Costa Rica have been approved but not yet entered into force. Agreements with Oman, Peru, and Colombia are currently under Congressional review. Peru's agreement is likely to be approved later this year.

Public opinion in the U.S. lately has turned sour on trade agreements, attesting to a growing concern about the loss of U.S. jobs due to competitive foreign firms and outsourcing to lower-wage countries.

Congress noticed this sentiment and, with the approaching election, again has made trade a central issue. Secretary of State Condoleezza Rice recently argued that the current sentiment both in the Congress and among the public at large could lead to protectionist tendencies, "and we know from any number of historical experiences that that impulse to protect always leads to bad outcomes."⁹

Yet the U.S. is not the only country pursuing bilateral and regional trade agreements with developing countries. The European Community has engaged in at least twenty-three bilateral trade agreements with countries such as Turkey, Egypt, Israel, Iceland, and Mexico, and has four regional agreements in place with South Africa, Chile, Mexico, and the European Free Trade Area. The European Union (EU) pursues a policy of using bilateral and regional agreements as stepping stones to larger, multilateral integration. Peter B. Mandelson, EU trade commissioner, argued last year that the EU does not pursue bilaterals as quick-fix solutions to trade problems, but rather as a testing ground for liberalization issues that the WTO has not yet successfully tackled, such as trade in services.¹⁰ He argued that the EU is only interested in deep free-trade agreements that liberalize all trade.

Negative Consequences of Bilateral/Regional Trade Agreements

Liberal free traders—as described by the libertarian Cato Institute, for instance—suggest that all varieties of trade agreements are beneficial to global economic growth. They argue that individuals receive economic freedom when their governments lower barriers, so it makes no difference whether the other parties to the agreement reciprocate in order to see gains.¹¹ However, trade economists such as Jagdish N. Bhagwati and Arvind Panagariya at Columbia University argue the contrary. They say that agreements concluded outside the protections of the multilateral forum severely disadvantage developing countries by restricting their much-needed flexibility in adapting to the growing pains of development.

There is also concern about backlash from uneven trade liberalization. Inequality has been steadily growing throughout the developing world, and trade liberalization is considered by some as strengthening existing inequalities. It also is seen as a mechanism for exerting U.S. influence in the domestic political affairs of countries with which the U.S. has strategic interests. This is most evident in Latin America, where the Free Trade Area of the Americas—the keystone of the Bush administration's foreign policy in the region—met with significant resistance and eventually failed. Several countries in the region, including Venezuela, Brazil, Bolivia, and Ecuador, have recently elected left-leaning leaders that have chosen to slow the pace of liberalization and even in some cases to turn back previous liberalizations by nationalizing some industries. This backlash is not surprising given the failed U.S. economic interventions in the region over the past thirty years. However, the reversal of trade openness has been cause for concern because it is antithetical to the goals of the WTO, and makes multilateral liberalization goals harder to achieve.

The Bush administration and other proponents of unrestricted free trade are wise to seek reductions in trade barriers around the world and to pursue the goals of economic development; however, trade at all costs is not necessarily an intelligent approach to achieving this goal. Trade negotiations outside the multilateral context give rise to a significant number of concerns, as highlighted by this brief survey. While they bring the potential for economic growth and improved livelihoods for some, they also ignite concerns over inequities and imbalance in trade between developed and developing countries. The U.S. has long pushed for a reduction in barriers to trade, but by employing a haphazard bilateral and regional approach, they may be effectuating more negative consequences than positive.

Bilateral Trade Agreements
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Technology Transfer by Universities in the U.S. and Abroad

by Arun K. Sood



Public and private universities are recognizing the importance of technology transfer mechanisms as a powerful catalyst for economic development.

In 1980, the U.S. Congress passed the Bayh-Dole Act, formally referred to as Public Law 96-517. This legislation assigns the intellectual property rights derived from federal-government-funded research to a university. Most university research in the United States and abroad is directly or indirectly supported by governments. Thus, in the U.S., the Bayh-Dole Act has provided a strong incentive for the research-oriented universities to pursue technology licensing opportunities. Universities already participate in technology transfer—the students are the vehicle for this transfer, and the licensing opportunity provides an additional dimension for the technology transfer mission of the universities.

In this the Information Age, all governments see technology transfer as an important element of economic development and comparative trade advantage, and technology licensing and enterprise creation has implicitly become part of the mis-

sion of research universities all over the world. Technology licensing and related spin-off activities are handled at two U.S. universities and four foreign universities—each with research agendas and an organized effort to interact with industry.

Comparative Overview of Six Universities

Public and private universities are recognizing the importance of technology transfer mechanisms as a powerful catalyst for economic development. This is an international trend. Carnegie Mellon University in Pittsburgh, Pennsylvania; Feng Chia University in Taiwan; Indian Institute of Science in Bangalore; the Indian Institute of Technology in Delhi; Stanford University in Palo Alto, California; and the University of Oxford in England have made organized efforts at technology licensing. These organizations oversee and coordinate patent filings, patent, and “know-how” licensing, and they nurture university technology spin-offs. Additional

information about these institutions can be found at the Web addresses at right.

The universities structure the technology transfer organizations in different ways. Some of the institutions establish organizations independent of the university structure. For example, University of Oxford has set up a company—ISIS Innovations Ltd. Technology transfer operations at IIT Delhi are managed by an independent foundation. Oxford's ISIS has in turn formed Oxford University Consulting, which provides the expertise of Oxford faculty to solve specific problems. Oxford University Consulting has offices in Japan and the U.S. The ISIS Enterprise division offers support to the technology transfer offices at other institutions.

University Technology Transfer Organizations

University technology transfer operations benefit the community. Licensing arrangements provide financial returns for the university, inventors, and business owners. Revenue supports operational costs, including patent filings. Institutions report large variation in the annual income. The Stanford Office of Technology Licensing revenue was \$50 million in 2004, \$61 million in 2006, and \$384 million in 2005. The order of magnitude increase in 2005 was related to the Stanford investment in Google. The Feng Chia University average annual technology licensing revenue is \$4.5 million New Taiwan (NT)—about \$150,000 U.S.—with a peak of \$10 million NT in 2005. Feng Chia has found that technology transfer enhances the FCU image and is an effective faculty and student recruitment tool.

Spin-Offs Require Institutional Support

All the universities have active spin-off programs. The Stanford and Oxford efforts are more mature than those at other institutions. The Stanford Office of Technology Licensing has a staff of thirty and the Oxford ISIS a staff of forty. However, even the smaller units play a crucial role in encouraging entrepreneurship at the university. Establishing an administrative unit for patent filings and spin-off management

Six Leading Global Universities & Technology Transfer

Institution	Unit	Web Address
Carnegie Mellon University	Center for Technology Transfer	www.carnegiemellonctt.com
Feng Chia University (FCU)	Office of Technology Licensing	www.ord.fcu.edu.tw/Organize/enOrganize_otl.html
Indian Institute of Science, Bangalore (IISc)	Centre for Scientific and Industrial Consulting	www.csic.iisc.ernet.in/index.htm
Indian Institute of Technology, Delhi (IITD)	Foundation for Innovation and Technology Transfer	www.fitt-iitd.org
Stanford University	Office of Technology Licensing	http://otl.stanford.edu
University of Oxford	ISIS Innovation Ltd	www.isis-innovation.com

leads to more enterprise creation. At Oxford, ISIS started spin-off creation activity in 1997. Pre-1998 there were ten spin-offs over the previous forty years; in 1998 there were four spin-offs; and subsequently an average of more than five spin-off companies have been created per year. At Carnegie Mellon, seven spin-off companies were created in 2005. The IIT Delhi Business Incubator was started in 2000. In the first five years, twelve spin-offs were sponsored and six companies left the incubator. In March 2005, six companies resided in the incubator; all of them had active faculty involvement.

The importance of organizational support for technology transfer is highlighted by the Bangalore India Institute of Science experience. IISc is a premier graduate and research institute in India started in 1909. Although the master's and doctoral research efforts at IISc are well-known, the enterprise creation efforts have not had organizational support. Typically, IISc has provided consulting services to industry. Discussions with faculty indicate that IISc has recognized the need, and is now establishing an organization to support technology transfer. The Society for Innovation and Development has been set up in collaboration with IISc.

Angel Networks for New Venture Support

Oxford has established the ISIS Angels Network. Angel groups are useful as a

source of start-up funding, and also provide the researchers with key commercial contacts. The network increases community involvement in the university and provides a critical resource to the faculty entrepreneur. For example, early in the process of enterprise spin-off, the faculty entrepreneur negotiates a licensing agreement with the university. Since each new enterprise is different, each licensing arrangement is different. All these agreements involve different combinations of upfront payment, royalties, equity participation in the enterprise, and sub-licensing arrangements. The degree of exclusivity has an impact on these terms. Carnegie Mellon provides a template for a term sheet. The angel investor provides important input to the entrepreneur and ensures that the terms do not impede venture funding.

Conclusion

Organized technology transfer is taking on increasing importance in the context of increased international trade and the globalization of businesses. Legislation in the U.S. and foreign countries supports this undertaking. Traditional university research focus on scholarly work is now being influenced by the commercial pull. Since this research is often government funded, the Bayh-Dole Act has been instrumental in increasing the technology licensing focus at universities. Not all faculty members participate in the technology licensing efforts, but the presence of

organized technology licensing initiatives on the university campus is increasing faculty involvement. Universities are using incentives such as a share in the revenue derived from licensing fees to encourage faculty involvement. This article, by examining six universities in four countries, demonstrates that the trend for university technology licensing is widespread.

In conclusion:

- There is an increasing global awareness of the role universities play in economic development.
- One aspect of this critical role is the increasing importance of promoting technology transfer from universities to the private sector.
- This commercialization of university technology is crucial for developing and maintaining comparative trade advantage.
- Legislation is essential in promoting this process of commercial innovation.
- Barriers to technology transfer are often those internal to universities, but they can be alleviated by diligent management of faculty relations.



Arun K. Sood is professor of computer science at George Mason University. He received his undergraduate degree at the Indian Institute of Technology, Delhi, and his master's and doctorate at Carnegie Mellon University. Photo of Sood (left) with former Virginia governor Mark D. Warner in India.

The University of Virginia has a technology licensing program managed by the University of Virginia Patent Foundation (UVPF). The Technology Transfer Office at the College of William and Mary also works with UVPF. At Virginia Tech and George Mason University, technology licensing is managed by Virginia Tech Intellectual Properties Inc. and George Mason Intellectual Properties Inc. respectively.

The Commonwealth of Virginia recognizes the importance of commercializing university research in technology, as evidenced by the long-time establishment of the Center for Innovative Technology. The Virginia Economic Development Partnership and the executive branch's

secretaries of commerce and trade and technology actively promote technology as a component of the new commonwealth's policy of embracing globalization.

Virginia universities play an important role in the economic development of the commonwealth and promote economic ties in this time of globalization. Transfer of technology is critical to this undertaking. Virginia universities are competing well with both national and international universities, but the challenge is to move forward and participate even more forcefully. ❧

Trade Liberalization Despite Doha's Delay

by Robert A. Rogowsky

Despite bleak prospects, there is much to be optimistic about, unless you are a trade minister whose job success is tied to completing a round.

The Doha Round of multilateral trade negotiations appears to be, as some have labeled it, on life support. Desperate measures are taken weekly to sustain and possibly resuscitate it. While the round officially began November 2001, negotiations in services and agriculture, as dictated by the preceding Uruguay Round Agreement (URA), started in 2000 and have been grinding on for seven years. After more than half a decade, the talks have nearly collapsed. Despite bleak prospects, there is much to be optimistic about, unless you are a trade minister whose job success is tied to completing a round. Ultimately, the Doha Round is likely to succeed, but not for many years. In the meantime, significant trade liberalization will continue while the negotiators painstakingly labor toward more fundamental reforms on the agenda.

The Doha Round

First, the round will be lengthy. Each of the eight preceding rounds took longer than the one before. The Uruguay Round lasted eight years. If the length of the previous eight General Agreement on Trade and Tariffs negotiations is any measure, the Doha Round will last twelve years. By that calculation, we are only halfway through. Why does it take so long? The low-hanging fruit was picked decades ago. Negotiators are digging into highly sensitive areas that domestic political forces in every country are well-equipped to resist. Intensely sensitive agriculture negotiations have stymied progress of the round. Progress in both industrial tariffs in developing countries and services also has

been slow. Negotiators for the former are still trying to settle on the “modalities” or method of the negotiation.

Second, the success of the Uruguay Round Agreement is a problem for the Doha Round. The URA is a broad-reaching agreement that brought under World Trade Organization discipline, indeed created the WTO, matters that for decades had been too politically sensitive to be included.

Early rounds focused on tariffs. The Tokyo Round (1973–79) opened discussions of a few non-tariff measures—like subsidies and antidumping. But the URA opened whole new areas for liberalization. Textiles and agriculture were brought under WTO discipline. The agreement restructured the dispute settlement rules, creating a more forceful adjudicative body. Services were introduced and concluded with the General Agreement on Services, including separate agreements on financial services and telecommunications. New agreements were reached on Trade Related Intellectual Property, Trade Related Investment Measures, Sanitary and Phyto-Sanitary Measures (to prevent them from being used as trade barriers), and Technical Barriers to Trade. The Trade Review Mechanism was created to audit members' progress on a regular basis. Bi-annual ministerial meetings were set up to ensure regular attention at the highest levels.

Third, the URA instituted the principle of “single undertaking” wherein every member agrees to every element of the agree-

ment. A member cannot pick and chose, but must accept the whole agreement and all its parts. Once considered among the most valuable accomplishments of the URA, it now appears to be its Achilles heel.

Single undertaking becomes a problem in part because of the success of the WTO in attracting members. The Kennedy Round (1962–67) involved forty-eight parties and covered \$40 billion in trade. The URA involved 120 members and \$3.7 trillion in trade. The WTO currently has 151 members, and the current negotiations touch on more than \$5 trillion in trade. Fewer than three dozen members are considered developed nations. The developing and less developed countries range from China, India, and Brazil to Indonesia, Paraguay, and Burkina Faso. Common ground is scarce.¹

In the grim atmosphere of the Doha Round, much is encouraging. Trade negotiations are intensely political events. Powerful political forces are at work to prevent liberalization. If the necessary countervailing pro-trade forces are not active, that it is because the gains from freer trade are already occurring on their own.

National, Bilateral, and Regional Liberalization

Over the past decade, a substantial amount of liberalization occurred outside the multi-lateral negotiations, and this will continue. Bilateral and regional agreements, such as the North American Free Trade Agreement and Mercosur, have opened many markets. Nearly 400 regional agreements have been notified to the WTO. Some are modest initiatives, but many are robust free-trade arrangements. The United States alone has completed ten free-trade agreements covering fifteen countries and has many more in the pipeline, including a Framework for Transatlantic Economic Integration.

An even more powerful type of liberalization is unilateral reform. Many countries are already reducing tariffs well below their maximum level—the “bound” rate that the country negotiated in the URA.² For instance, Brazil’s average most-

favored-nation tariff bound under the URA exceeded 31 percent. But Brazil has lowered tariffs to a trade weighted average of 8.2 percent. India similarly has lowered its URA bound tariffs from nearly 50 to 14.6 percent, South Africa, from nearly 20 to 5.1 percent, and Turkey from nearly 30 to 4.8 percent. The World Bank’s *Global Economic Prospects 2005* indicates that two-thirds of tariff cutting was the result of unilateral trade reform, 25 percent is from multilateral negotiations, and the rest is from preferential trade agreements.

Ironically, the greater the difference between the bound rates and the applied rates, the larger the cuts in bound rates that are required to affect actual rates, the ones that matter to exporters. The larger the cuts needed, the harder it is to negotiate, and yet the less valuable it is for exporters to expend scarce political capital lobbying for it (and against protection-oriented groups). Similarly, aggressive competition for foreign direct investment has pushed countries to offer protections and other enticements to encourage investment. This has substantially reduced the incentive for trade-oriented industry to expend political effort to get a more comprehensive Trade Related Investment Measures package.

Many countries are reducing the non-tariff barriers (NTBs) blocking trade. The World Bank reports that developing countries have substantially reduced core NTBs (including quantitative restrictions, price administration, and monopolistic trading channels). In 1989, more than 30 percent of tariff lines in East Asia and Pacific countries had core NTBs, but only 5.5 percent had them in 2004. South Asia fell from 57 to 13 percent, and the Middle East and North Africa from 44 to 8.5 percent. These trends are hard on those that we need support for negotiations, but ironically because progress is being made through other routes.

The pressure to liberalize also is muted when economies are growing rapidly. It has been calculated that the even the highest estimates of economic welfare gain from a successful Doha Round would be

equivalent to eighty-two days of growth for Brazil at its average rate of growth from 2000–05.³ For India, it is twenty-four days of growth, and for China only three days. It becomes clearer why trading partners are reluctant to concede sensitive trade protections when broader economic growth overshadows the potential gains. Happily, it also becomes increasingly clear to growth-oriented nations, as economic theory shows, that there is good reason to liberalize unilaterally.

Dispute Resolution and Liberalization

Finally, regardless of progress made in the Doha negotiations, a remarkable amount of liberalization continues through the dispute settlement mechanism. Since 1994, roughly 360 complaints have been filed. While only about 30 percent of the members of the WTO have been involved, and disproportionately, the United States and the European Union, important barriers to trade, are under growing attack from the juridical process the dispute settlement mechanism offers. Fewer than a third of the complaints have required more than consultations to resolve. Of those that go to a dispute panel or through appellate body review, about 90 percent identify violations that must be corrected. Virtually without exception, members found in violation express intent to correct the problem, and in many cases have already done so. Retaliation, the remedy for non-compliance, has been requested in fewer than 20 percent of the adjudicated cases. Retaliation has been authorized in only eight cases and was not even used in some of them.⁴

Members have taken to dispute settlement highly sensitive matters that have plagued trade negotiations for decades, including Canadian softwood lumber stumpage fees, the U.S. foreign sales corporation tax, the European Union’s hormone-treated beef ban, the European banana distribution restrictions, safeguards, and numerous complaints on anti-dumping and countervailing duty enforcement (including the practice of “zeroing”). In the past two years, seven cases aimed at intellectual property protection, including barriers to

entertainment products and refunds, reductions, and exemptions from taxes, have been filed against China. China has filed one against the U.S. Agricultural subsidies—slow in negotiation—are increasingly challenged in the dispute process. Brazil successfully challenged EU sugar subsidies and U.S. cotton subsidies. Canada has challenged U.S. corn subsidies. Brazil recently filed a broad-spectrum “request for consultation” (first step to a formal complaint) with the U.S., identifying violations for multiple agricultural support programs aimed at a long list of plant and animal products.⁵

The Doha negotiation may be in terminal decline. More likely, it is simply bed-ridden until after the U.S. and Indian elections. The negotiation is in this condition at least in part because of the solid institutional foundation left by the URA; the rapid globalization regardless of negotiations; the perception by export-oriented interests that they need to invest less heav-



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ily in trade at the expense of other areas of concern; and the growing realization by growth-oriented emerging markets that unilateral reform works. ♪

Endnotes:

- 1 Coalitions, however, are plentiful, including, but not limited to, the G-4, G-8, G-20, G-90, the Group-of-110, the Cairns group, the NAMA-11, the Africa/Caribbean/Pacific Group, the “Cotton 4,” and the Like-Minded group, each with its own agenda.
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To be successful in raising global living standards, eliminating tariff and nontariff barriers, and allowing markets to operate freely, the U.S. should be concentrating its vast resources on concluding the Doha Round of negotiations at the WTO. The successful conclusion of this trade and development agenda will do far more for economic growth than any number of smaller agreements, and will do so without the potential for severe backlash among developing countries that threatens to derail all efforts to conclude a multilateral agreement. A wise trade policy is an essential component of an effective foreign policy, and the two are largely interlinked. Pursuing U.S. economic power by coercing developing countries with little to offer the U.S. into trade agreements may weaken the U.S. position in global trade negotiations as well as on the foreign policy stage. ♪



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Endnotes:

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- 2 Referring to the customs union between the Slovak and Czech Republics. See CONSULTATIVE BOARD, WORLD TRADE ORGANIZATION, THE FUTURE OF THE WTO: ADDRESSING INSTITUTIONAL CHALLENGES IN THE NEW MILLENNIUM 21-22 (2004), available at http://www.wto.org/english/thewto_e/10anniv_e/future_wto_e.pdf.
- 3 See, e.g., Kevin J. Fandl, Bilateral Agreements and Fair Trade Practices: A Policy Analysis of the Colombia-U.S. Free Trade Agreement (2006), 10 YALE HUMAN RTS. & DEV. L.J. 64 (2007).
- 4 Robert McMahon, *The Rise in Bilateral Free Trade Agreements*, Council on Foreign Relations (June 13, 2006).
- 5 Daniella Markheim, *America’s Free Trade Agenda: The State of Bilateral and Multilateral Trade Negotiations*, Heritage Foundation Backgrounder (Nov. 2, 2005).
- 6 Guy de Jonquieres, “The Challenge for the Multilateral Trade System,” Yale Global Online, Nov. 18, 2002.
- 7 Neil Irwin, “A Shift in Bush’s Trade Politics,” *Washington Post* (Oct. 10, 2007).
- 8 *Id.*
- 9 *Id.*
- 10 Peter Mandelson, “Bilateral Agreements in EU Trade Policy” (speech at London School of Economics, Oct. 9, 2006).
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Six Steps to a Smaller World: Finding International Law from Your Desktop

by Jennifer Sekula

Researching the law of another country is one of the most challenging, yet interesting, tasks an attorney can take on. Every country presents potential obstacles to the researcher, including unfamiliar legal systems and terminology, varying levels of access to laws and related materials, and possibly one or more different languages to contend with. Despite all the variables, the following steps can help you get started with your research into any country's laws.

Start at the beginning. Take a moment to acquaint yourself with the country's legal system so you can understand the relevance of the documents that you'll find later. Many research guides, in print or online, contain such introductions. Alternatively, try searching in Google or another Internet search engine using the name of the country and "legal system" or "research guide."

See if someone else has already blazed the trail. Imagine researching an issue within the U.S. law of sales without having ever heard of the Uniform Commercial Code. You would stumble across thousands of cases with no idea of what their significance is—or whether there's other law on point. To make sense of it all, you would look for a good secondary source that explains the law and leads you to the most relevant statutes and decisions. Foreign research is no different. Check treatises, academic and bar journal articles, and free Web sites for descriptions of and citations to the laws of the country in which you're interested. Try

searches that combine the topic and the name of the country. If you need to know whether a divorce is valid under Ugandan law, for example, the search *Uganda /p divorce* in LexisNexis.com or Westlaw's journal database returns an article that cites and discusses six diverse laws that govern marriage and divorce in that country.

Look it up in Martindale-Hubbell. MH includes a helpful volume called the *International Law Digest* (also available on LexisNexis.com). The digest, written by local attorneys, provides a reasonably detailed, concise overview of a given nation's laws, with citations to relevant statutes or regulations. It covers eighty-one countries and the European Union, including most of the larger jurisdictions.

Seek out official Web sites of different countries about their laws. Stuart S. Malawer provides some links on his Web site at www.InternationalTradeRelations.com, under "Foreign Source Material."

Find a "Research Guide" on your country and/or topic. If none of the above suggestions help, you can set out on your own with the aid of a good, up-to-date guide to direct you to the resources where a country's laws can be found. One of the best free sites out there is GlobalLex from New York University (www.nyulawglobal.org/globalex/), which publishes guides by lawyers and librarians on countries from Afghanistan to Zimbabwe.

The most comprehensive foreign research guide of all is the *Foreign Law Guide*, a subscription-only online product (also published in print as *Foreign Law: Current Sources of Codes and Basic Legislation in Jurisdictions of the World*). The guide includes the names and citations to translations (if available) of more than 170 countries' codes, official journals, and other general legal sources. It also lists specific laws of each country by subject, with citations to translations if they exist.

Nail down the text of the law. Once you have your citation, the quickest way to locate the law is to search for it using an Internet search engine. If this doesn't work, try one of the Legal Information Institutes, which are Web sites that collect primary documents (collectively listed as "databases") and links to laws (collectively labeled "catalogs") from various countries. The biggest one is WorldLII (www.worldlii.org), where you can find links to regional LIIs at the bottom of the main page. LexisNexis.com and Westlaw are additional sources for laws, but only for a handful of foreign jurisdictions. Finally, if your law is reprinted in a book but you don't have access to it, see if you can obtain the book from a library.

Exercise caution when using translations of laws. Even "official" translations are not always as reliable as one might hope. Furthermore, many codes and cases have not been translated into

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English. You may wish to retain the services of a translation firm or local counsel to be certain that you are reading an accurate version of the law.

Treaties. If you discover that you actually need a treaty and not a foreign law, here are three sources to consult: Many multilateral treaties are administered by secretariats, which typically maintain Web sites that are great sources of a reliable version of the text. Enter the name of the treaty plus the word “secretariat” into an Internet search engine. Additionally, LexisNexis.com and



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Westlaw both include every treaty to which the U.S. is a party, starting with 1776 and 1778 respectively. Finally, the American Society of International Law (www.asil.org) offers a free, comprehen-

sive research tool called EISIL (Electronic Information System for International Law; www.eisil.org), which can help you locate treaties by subject, among other useful features.

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existing rules-based system. It also means taking greater advantage of the consultation stage in the dispute resolution system, where it can be more effectively utilized to settle contentious cases involving specific and divisive trade issues. This stage requires traditional diplomatic negotiations to occur in a confidential context. This reliance on more vigorous negotiations would be better for U.S.-China bilateral relations and enhance global governance of trade. Furthermore, it would strengthen the rules-based multilateral system.⁵⁰ The WTO Director-General Pascal Lamy recently concluded, “[T]he WTO is an engine, a motor energizing the international legal order . . . a catalyst for international mutual respect towards international coherence and even for more global governance, which I believe is needed if we want the world we live in to become less violent . . .”⁵¹ ☞

Endnotes

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