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

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World Trade Organization: The Continued Participation Debate

Summary

The World Trade Organization (WTO) is of interest to the 109th Congress for several reasons. First, Members are expected to consider a resolution (H.Res. 27) to withdraw congressional approval of the agreement establishing the WTO. Debate on the resolution would offer the opportunity for Members to examine the costs and benefits of WTO participation and examine other aspects of WTO membership. Second, the 109th Congress will monitor WTO disputes involving U.S. interests and possibly consider whether or not to amend U.S. laws to address WTO dispute panel findings. Members have criticized the WTO dispute process for several reasons, but the process does offer a stable multilateral forum for trade disputes. Third, at the same time that Congress might consider H.Res. 27, the United States and other WTO members are actively engaged in a multilateral round of trade negotiations in the WTO. The 109th Congress is monitoring those negotiations. A final set of agreements is not expected until 2006 or later.

In a report submitted to Congress on March 2, 2005 on the costs and benefits of continued participation in the WTO, the Administration cited a number of statistics that show growth in the U.S. and world economies since establishment of the WTO. Whether the growth cited was the result exclusively or mainly of activity in the WTO is arguable. Academic studies indicate that the United States would gain substantially from broad reductions in trade barriers worldwide. At the same time, some workers and industries might not share in those gains.

Questions of governance and power are among the issues at the heart of the debate on the WTO. Major decisions in the WTO are made by representatives of the 148 member governments. Members determine their negotiating positions, build alliances with other members, file dispute challenges, and implement their decisions. Some critics challenge the claim that the WTO is democratic in nature, however, by arguing that some smaller countries are left out of the decision-making and that governments tend to represent large commercial interests only.

The United States has been a frequent participant in WTO dispute proceedings, both as a complainant and as a respondent. There have been many complaints of the WTO dispute process, including the arguments that countries do not adhere to decisions and that U.S. trade remedy laws have not been judged properly. On the other hand, this multilateral trade dispute forum is unique, and the United States has been successful in many of its challenges.

Other issues include (1) the relationship between WTO rules and a country's right to establish domestic standards for labor, the environment, food safety, and other areas; and (2) U.S. policy toward developing countries, including a balance between providing assistance to those countries in the WTO and addressing their demands in trade negotiations.

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World Trade Organization: Issues in the Debate on U.S. Participation

In the next few months, the 109th Congress may consider issues related to the World Trade Organization (WTO). Under the Uruguay Round Agreements Act (P.L. 103-465), which is the law that implemented the agreements reached during the Uruguay Round of multilateral trade negotiations (1986-1994), 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.¹ Once Congress receives this comprehensive report, any Member of Congress may introduce a joint resolution withdrawing congressional approval of the Agreement establishing the WTO. On March 2, 2005, the Administration submitted the report on U.S. participation in the WTO,² and on the same day, Representative Bernard Sanders introduced withdrawal resolution H.J.Res. 27. H.J.Res. 27 is privileged and will be considered under expedited legislative procedures.³ A similar withdrawal resolution was introduced five years ago (H.J.Res. 90; H.Rept. 106-672) and was voted down in the House by a 363-56 vote and not introduced in the Senate. This year, a resolution might offer the opportunity for Members to examine the costs and benefits of WTO participation, express dissatisfaction with WTO dispute decisions, and debate other aspects of WTO membership.

In addition to considering H.Res 27, the 109th Congress will monitor WTO disputes involving U.S. interests and U.S. laws. Congress might also consider whether or not to change U.S. laws where WTO panels have decided against the United States. Members of Congress may debate whether the WTO dispute process and individual decisions support U.S. interests. At the same time, the United States and the other members of the WTO are participating in a multilateral round of trade negotiations. The talks began in November 2001 in Doha, Qatar, and are called the Doha Development Agenda, or Doha Round.

¹ See CRS Report RL32700, *Seeking Withdrawal of Congressional Approval of the WTO Agreement: Background, Legislative Procedure, and Practical Consequences*, by Vladimir N. Pregelj.

² The report can be found in Office of the U.S. Trade Representative. *2005 Trade Policy Agenda and 2004 Annual Report of the President of the United States on the Trade Agreements Program*, Part II.

³ For more information on the legislative process for consideration of a WTO withdrawal resolution, see 19 U.S.C. 2192 or CRS Report RL32700. In brief, the 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 the Congress adopts a joint resolution of withdrawal, it must transmit the resolution to the President within 90 non-recess days from receipt of the President's report on the WTO.

The purpose of this report is to analyze the main issues in the debate on U.S. participation in the WTO. To put the issue in perspective, the report begins with a brief history of the WTO, 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; arguments on whether or not to include labor, environmental, and food safety standards in the WTO; and the WTO and developing countries. It ends with a brief discussion of alternatives to participation in the WTO.

Brief Background on the WTO

Following World War II, nations throughout the world, led by the United States and several other developed countries, sought to establish an open and nondiscriminatory 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, 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, investment, restrictive business practices, and commodity agreements. Unable to secure approval of 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 GATT became the principal set of rules governing international trade for the next 47 years.

The World Trade Organization (WTO) succeeded the GATT in 1995.⁴ It was established as a result of the Uruguay Round of multilateral trade negotiations that were held under GATT auspices. The WTO encompassed the former GATT agreements with newly negotiated reforms, new trade issues such as services and trade-related intellectual property, a stronger dispute resolution procedure, a mechanism to review members' trade policies regularly, and other duties. In contrast to the GATT, the WTO was created as a permanent structure.

The WTO has three broad functions. First, the governments of the member countries agree on a set of multilateral rules and principles for trade, which provide a stable and predictable basis for trade. The economic effects of agreed-on rules and principles are difficult to quantify precisely, but are likely substantial and attractive to countries, since membership in the GATT/WTO has grown from 23 countries in 1948 to 148 countries at present (with about 30 more countries waiting to join). Also, world trade over the past half century, by growing more rapidly than world production, has served as an engine of economic growth for many countries.

⁴ For information on the WTO, see CRS Report 98-928, *The World Trade Organization: Background and Issues*, by Lenore Sek.

The second function of the WTO is to provide a mechanism to enforce the rules. The dispute settlement procedure provides a way in which disagreements among countries over the interpretation of the rules can be resolved. Broadly, a country with a complaint requests a consultation and, if the dispute is not resolved during the consultation, the complaining country may request establishment of a panel. After the panel issues its decision, both disputing parties have the right to appeal. After the conclusion of all such proceedings, the Dispute Settlement Body (representatives of all the WTO members) adopts the report or reports, unless it decides by consensus to reject them.⁵

WTO Principles of Non-Discrimination

The *most-favored nation (MFN)* (also called *normal trade relations (NTR)*) 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 provides a forum for negotiations to reduce trade barriers. Countries meet periodically in “rounds” to consider changes in rules on trade barriers. In the first five rounds (late 1940s to early 1960s), negotiations focused on reducing tariffs, which are now low. As tariffs were reduced, countries sometimes turned to non-tariff barriers (for example, subsidies, government procurement regulations, antidumping procedures) to restrict imports. Negotiations since the mid-1960s have covered non-tariff barriers as well. Today, negotiations might extend to measures that involve what once were exclusively domestic policy issues, such as health, safety, or environmental standards. Some WTO rules have been agreed on to prevent countries from using such standards as disguised protectionism, although each country retains the right to set its own standards.

Decisions within the WTO are made by member countries, not by WTO staff, and they 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.

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 prosperity of the 10 years of WTO existence occurred along with the information technology boom in the United States

⁵ See also CRS Report RS20088, *Dispute Settlement in the World Trade Organization: An Overview*, by Jeanne J. Grimmett.

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 50 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 world exports in 2003 were 126 times those in 1948, while world gross domestic product (GDP) in 2003 was 7 times that of world GDP in 1950.⁶ Looked at another way, the average annual rate of growth in the volume of world exports was higher than growth in GDP during the period. Such rapid growth in world exports has been attributed to the progressive reduction of trade barriers caused by successive rounds of GATT/WTO trade liberalization, and may have contributed to the growth in world GDP.

In the report that the President submitted to Congress on March 2, 2005 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. For example, the report notes that during the 1994-2004 period (the WTO was established in 1995): U.S. GDP rose 38%, industrial production rose 35%, productivity rose at an annual rate of 2.9%, (compared with 1.8% in the 1984-94 period), business investment rose 78% (compared with a 38% increase in the 10 years before the WTO was established), real compensation doubled to 1.8% per year, and 17.2 million new jobs were created. 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 63% from 1994-2004, from \$703 billion to \$1.1 trillion. U.S. exports increased 76% to developing countries and 48% to developed countries. Imports of goods and services increased 120%, from \$801 billion to \$1.764 trillion during the WTO period.

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 in the past decade such the information and communications technology revolution, productivity advances in the United States, decreasing shipping costs, and other developments.

⁶ World Trade Organization. *International Trade Statistics 2001-2004*.

Nonetheless, economists argue that increased trade will have a net positive effect on economies: specialization from trade strengthens the most competitive and productive sectors of a nation's economy by reallocating resources from less efficient economic activities. 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. 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.⁷

Recently, 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 study⁸, 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 study⁹ 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 postulate 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 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. Recently, the Institute for International Economics (IIE) released a report¹⁰ 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 estimates that the present benefit of all past trade liberalization to the U.S. economy is on the order of \$1 trillion

⁷ For further discussion of these concepts, see CRS Report RL31932, *Trade Agreements: Impact on the U.S. Economy*, by James K. Jackson.

⁸ Andrew K. Rose, "Do We Really Know That the WTO Increases Trade?," Center for Economic Policy Research, Discussion Paper 3538, September 2002.

⁹ Arvind Subramanian and Shang-Jin Wei, "The WTO Promotes International Trade, Strongly but Unevenly," National Bureau of Economic Research Working Paper 10024, October 2003.

¹⁰ Scott Bradford, Paul Grieco, and Gary Hufbauer, "The Payoff to America from Global Integration," in C. Fred Bergsten, ed., *The United States in the World Economy: Foreign Economic Policy for the Next Decade*, (Washington: International for International Economics, January 2005), pp. 65-109.

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.

Another study uses the Michigan Model, a multi-country, multi-sector, general equilibrium model to analyze various trade policy changes and scenarios.¹¹ In this case, the model was used to measure 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 be increased 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.¹²

There is a consensus that in general consumers gain from trade in the form of lower prices and increased choice. The President's report states 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.¹³ 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.¹⁴

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 may be the relatively scarce factor in a country otherwise rich in capital, land and educational opportunities.¹⁵ 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

¹¹ Drusilla Brown, Alan Deardorff, and Robert Stern, "Multilateral, Regional, and Bilateral Trade Options for the United States and Japan, University of Michigan Discussion Paper 490, December 12, 2002, (www.spp.umich.edu/rsie/workingpapers/wp.html).

¹² Ibid., p. 13.

¹³ USTR Annual Report 2004, World Trade Organization p. 13.

¹⁴ Douglas A. Irwin, *Free Trade Under Fire*, (Princeton University Press, 2002), p. 92.

¹⁵ 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.

manner, eventually can be a long time coming for workers who have lost their livelihood.

Decisionmaking in the WTO and National Sovereignty

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.

Decisionmaking

Questions of governance and power are often at the heart of the debate over the WTO. Some critics of the WTO portray the WTO as an undemocratic, elitist organization operating in 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 601 employees in 2004, and a budget of \$161.8 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 148 member governments.¹⁶ Member states proffer negotiating positions, build alliances with other nations, file dispute settlement cases, and implement their verdicts. 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. While 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.

¹⁶ A recent 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. (Hereafter referred to as The Sutherland Report.) p. 73-78.

Critics who may acknowledge the limited nature of the WTO's power, 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.

Consensus. Decisions are usually reached through consensus among all of the WTO member countries.¹⁷ 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 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 decisionmaking. 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

¹⁷ WTO members may adopt an interpretation of any WTO agreement by three-quarters vote, but this option has never been used.

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.

This method arguably would undercut the process of the “single undertaking,” which is now part of the current Doha Round. The single undertaking posits that negotiations for the Round are only finished when all the agreements are completed. 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.

The primary justification for consensus approach is that it provides legitimacy to WTO decisions, and it reinforces national sovereignty. Tedious though achieving consensus is, such an agreement is more likely to be implemented, or at least less openly flaunted, if it is agreed by all members. A recent 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.”¹⁸ As long as the WTO remains an organization of sovereign governments, the tension between unwieldy decisionmaking and more legitimacy is likely to continue.

Transparency in the WTO. Part of the 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. Dispute settlement proceedings are likewise closed, and supporting briefs are not automatically available to the public, but can be released at the discretion of the authoring government. Members who are not party to a dispute may not attend dispute panel or Appellate Body proceedings. According to the Sutherland Report, this confidentiality is seen as damaging to the WTO as an institution, and it recommends that dispute settlement proceedings be opened to the public “as a matter of course.”¹⁹ However, many of the most egregious examples of WTO secrecy have been addressed over the years. Most submissions or interventions in negotiations have been available immediately online since 2002, and summaries of meeting are available sometime after. 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 unsettled 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

¹⁸ The Sutherland Report, p. 63.

¹⁹ Ibid., p. 58.

submissions or actual participation in negotiating sessions are examples of ways that NGOs could be included in WTO proceedings. 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.

Sovereignty

Increasingly 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.²⁰

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 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, 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 Agreement establishing the WTO 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-driven, and the WTO itself has no independent enforcement authority. Thus, the organization cannot make a member country 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, 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.

²⁰ 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>].

Another issue is the relationship between WTO agreements and state laws and regulations. The National Conference on State Legislatures sent a letter to the USTR asking for meaningful consultations on future negotiations of international trade agreements.²¹ This follows the Maryland legislature's repeal of the state's adherence to the WTO government procurement agreement on April 11, 2005. Utah also has expressed its concerns over how the WTO's recent internet gambling decision might affect its state laws.²²

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 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 with 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.²³ According to USTR lists of

²¹ "USTR Faces Implementation Challenges on WTO Gambling Decision." *Inside U.S. Trade*. April 29, 2005.

²² *Ibid.*

²³ For further information on WTO cases involving the United States, see CRS Report RS21763, *WTO Dispute Settlement: Stages and Pending U.S. Activity Before the Dispute* (continued...)

disputes involving the United States, as of March 21, 2005, the United States had filed 74 complaints (including compliance proceedings), and 48 of those had been concluded. Those 48 were resolved thus: 22 — resolved to U.S. satisfaction without completing litigation; 22 — U.S. won on core issues; and 4 — U.S. did not prevail on core issues. The USTR lists indicate that the United States has won overwhelmingly in the cases that it has brought to the WTO.²⁴

The United States has not fared as well, however, when other countries challenged U.S. practices. The USTR reports that as of March 21, 2005, the United States was a responding party in 103 complaints and compliance proceedings. Of those, 49 have been concluded (almost the same number of cases as those with the United States as complainant). Those 49 cases were resolved thus: 14 — resolved without completing litigation (uncertain whether or not to U.S. satisfaction); 10 — U.S. won on core issues; and 25 — U.S. did not prevail on core issues. According to the USTR lists, the United States did not prevail on at least half of the cases where another country brought the case.

The question of whether or not the United States should withdraw from the WTO raises another question of how 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 most countries of the world, there would be no comparable rules or forum. Absent the WTO, countries can always try to settle a trade dispute through negotiations, as can happen under Section 301 of the Trade Act of 1974, even though there is no underlying trade agreement involved. Trade disputes would have to be settled by other means.

There have been complaints that countries have not adhered to dispute panels' findings. 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 higher tariffs on its products, the EU has not withdrawn the challenged practice. Likewise, a WTO panel found against the U.S. Continued Dumping and Subsidy Offset Act, commonly known as "the Byrd Amendment," which returns antidumping duties to a domestic industry. A WTO panel gave permission to the EU and seven other WTO members to retaliate, and the United States has not changed its law. The WTO does not have the power to force a country to change its law. These results show that countries may choose not to abide by decisions in the WTO.

²³ (...continued)

Settlement Body, by Todd B. Tatelman, and CRS Report RL32014, *WTO Dispute Settlement: Status of U.S. Compliance in Pending Cases*, by Jeanne J. Grimmett.

²⁴ Data in this paragraph and the next are from "Snapshot of WTO Cases Involving the United States" on the USTR web page at [\[http://www.ustr.gov/Trade_Agreements/Monitoring_Enforcement/Dispute_Settlement/WTO/Section_Index.html\]](http://www.ustr.gov/Trade_Agreements/Monitoring_Enforcement/Dispute_Settlement/WTO/Section_Index.html).

The WTO as an institution, however, is only as strong as its members' adherence to its rules.

Other complaints center around challenges to U.S. trade remedy laws.²⁵ In the last few years, the United States has lost a number of these cases, including cases involving steel safeguards, the U.S. Antidumping Act of 1916, and the Byrd Amendment. 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.²⁶

In the 108th Congress, Senator Baucus introduced a bill (S. 676) to establish a WTO Dispute Settlement Review Commission to review all reports of dispute settlement panels or the Appellate Body of the World Trade Organization (WTO) in proceedings initiated by other parties to the WTO that are adverse to the United States and that are adopted by the Dispute Settlement Body. 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. It can be noted that in general, the United States tends not to challenge trade-remedy laws of other countries in the WTO, but rather challenges product-specific foreign barriers, such as barriers to dairy products, or other nontariff barriers.

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. A case in point is the petition filed by a coalition of 35 Members of Congress under Section 301 asking that the USTR initiate a WTO dispute against China's policy of pegging the yuan to the dollar.²⁷ Similar legislation has been introduced in the 109th Congress to urge the USTR to initiate WTO dispute action against OPEC members who are also WTO members for

²⁵ For information on U.S. trade remedy laws, see CRS Report RL32371, *Trade Remedies: A Primer*, by Vivian C. Jones.

²⁶ Several bills in the 108th Congress dealt with perceived shortcomings of the WTO dispute process. For example: H.Con.Res. 243 (Levin) expressed the sense of Congress that, among other provisions, the President ensure members of dispute panels have expertise administering the unfair trade and trade remedy law at issue in the proceeding; H.Res. 328 (English) commends a U.S. request to the WTO for an investigation of alleged leaking of a dispute panel report; H.Res. 445 (Cardin) includes a provision calling on the USTR to pursue reform of the WTO dispute settlement process to increase its transparency and to ensure that it does not act outside its authority under the WTO agreements to limit trade remedy laws.

²⁷ For more information on U.S.-China trade relations, see CRS Issue Brief IB91121, *China-U.S. Trade Issues*, by Wayne M. Morrison.

their oil export quotas (S. 752) and against the EU for its support of Airbus (S.Con.Res. 25).

Standards: Labor, the Environment, and Food Safety

In the debate on U.S. participation in the WTO, an issue that often arises is whether U.S. laws and regulations establish certain standards that increase costs for U.S.-based businesses, and whether foreign-based companies then have an advantage because they do not have to meet the same standards. Related to this is the question of whether or not such standards should be part of the WTO rules. Another question is whether or not the WTO should influence how countries set their domestic standards. These questions have been raised specifically in discussions on standards for labor, the environment, and health and food safety.

Critics of current WTO trade rules argue that the rules should also include minimum levels (and enforcement) of labor standards, and possibly trade sanctions to enforce the rules. They contend that low or weak foreign labor standards effectively lower costs abroad, and that internationally-enforced rules are needed to “level the playing field.” They also state that low standards abroad might lead to declining standards in the United States if producers (and governments), in order to maintain competitiveness, become less committed to established labor standards. 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. Further, others contend that there is no evidence that labor standards in the United States have been lowered by foreign standards.

Some argue that, rather than dealing with labor standards in the WTO, a better course of action might be to strengthen the International Labor Organization, 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.²⁸ 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. For their part, most developing countries are dead-set against including labor rights in the WTO, considering them an invitation to developed-country protectionism.

Some of the same issues are raised with environmental standards (or lax enforcement). In April 1994, WTO members established a Committee on Trade and the Environment (CTE). The purposes of the CTE are to study the relationship between trade and environmental measures and to make recommendations as to whether modifications of the WTO are required. Environmentalists, however, have been disappointed that the CTE has not made more progress. They are concerned

²⁸ 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>].

that the goals of multilateral environmental treaties or domestic regulations might be undone by the dispute process of the WTO. They also are concerned that lower environmental standards abroad might contribute to lower standards in the United States. Supporters of the WTO argue that no multilateral environmental agreement has ever been challenged in the WTO. They contend that in the relatively few cases where environmental measures have been at issue, WTO dispute panels have ruled on narrow aspects of these laws or regulations. They also argue that environmental protection in the United States has not been compromised.

In the case of food safety, some WTO critics have argued that the standards set by U.S. food safety laws are being jeopardized by WTO panel rulings.²⁹ Some claim that WTO panelists are able to, or have, overturned U.S. and other countries' food safety laws. Or, other critics argue, WTO panels are superceding judgments by the public in regard to their desired level of food safety. WTO supporters maintain food safety laws are not being overturned, but that countries have agreed in the WTO to administer such laws in a nondiscriminatory way. At issue is usually the WTO Agreement on Sanitary and Phytosanitary Standards (SPS), which established criteria that countries must meet in order to show that a law is not a disguised trade restriction. Broadly, the criteria are that sanitary and phytosanitary standards should be based on science, a risk assessment, or relevant international standards. The precautionary principle is a notable point of disagreement. The principle says that where long-term health effects are uncertain or unknown, a country should have the right to ban a product. Several environmental groups have argued that the SPS Agreement should be amended to specifically incorporate the precautionary principle, while others argue that such a principle would be used as a trade barrier, and that only science should dictate.³⁰

WTO and Developing Countries

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 and textile products.

²⁹ For related information, see CRS Report RL32809, *Agricultural Biotechnology: Background and Recent Issues*, by Geoffrey S. Becker.

³⁰ For example, the United States and the EU have different positions on the precautionary principle. See CRS IssueBrief 10087, *U.S.-European Union Trade Relations: Issues and Policy Challenges*, by Raymond J. Ahearn.

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.³¹ However, one estimate has been that global free trade (more than that contemplated by the WTO Doha Round) would increase the income of developing countries by \$90 billion annually in static terms and by up to \$200 billion after dynamic gains were considered over time.³² These figures, if realized, would dwarf the amount of annual foreign aid (approximately \$69 billion in 2003³³) given by the developed world.

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, the protection of infant industries, and a commitment to the reduction of barriers on products of interest to developing countries and for the reduction of barriers which differentiate between the primary and processed form of a good (tariff escalation). SDT provisions have allowed developing countries to largely exempt themselves from reciprocal tariff cuts made by developed countries. (SDT does not permit wholesale exemption from other WTO agreements, such as TRIPS or GATS.) These provisions are generally conceded to have been the political price extracted for developing countries' support of successive rounds of trade liberalization. WTO members reaffirmed their commitment to SDT in the on-going Doha Round.

Some proponents of free trade argue that the SDT treatment has impeded the progress of developing countries. They say that the refusal of some developing countries to lower import tariffs has left many countries with an inefficient, protected, economic base that is unable to compete with the outside and is using resources potentially better deployed elsewhere in the domestic economy. By exempting them from WTO obligations, they have also exempted them from the benefits of the multilateral trading system. According to this view, developing countries should be encouraged to put their tariffs on the table as a way of extracting greater concessions on developed country tariffs of importance to them: agriculture, textiles/apparel, and other labor intensive products.

In addition to SDT, developed countries have tried to include developing countries in the multilateral trade community through trade capacity building (TCB). TCB refers to activities such as assisting developing countries to comply with their WTO obligations, building the capacity for countries to negotiate in the Doha Round, aiding in the development of WTO compliant customs administrations, regulatory procedures, sanitary and phytosanitary standards, and infrastructure related activity.

³¹ Jones, p. 152.

³² William R. Cline, *Trade Policy and Global Poverty*, Center for Global Development, June 2004.

³³ See CRS Report RS22032. *Foreign Aid: Understanding Data Used to Compare Donors*, by Larry Nowels.

The Doha Round has made the provision of TCB a part of the negotiations through the establishment of a negotiating group on SDT and implementation issues. A Global Trust Fund was established in July 1999 to receive extra-budgetary donations from WTO members to finance technical cooperation activities carried out by the WTO. This Fund had \$19.7 million at year-end 2003 available for technical assistance and capacity building purposes.³⁴ On its own the United States reported spending \$34.7 million in WTO-related trade capacity building in 2004.³⁵

While the United States has an interest in the economic benefits of WTO participation by developing countries, it also must respond to the increased clout of these countries within the WTO. Developing countries now make up a majority of members, and because of the consensus-based approach to WTO decision-making, they can block policies and negotiations perceived to be against their interests. Developing countries blocked negotiations on certain new issues at the 1999 Seattle ministerial meeting, leading to the ministerial's collapse, and a group of developing countries known as G-20³⁶ rejected the joint U.S.-EU agricultural proposals at the Cancun ministerial in 2003. Since the Cancun ministerial, the United States has engaged in consultations with the Five Interested Parties (FIPS), which include Brazil and India, and has sided, on occasion, with developing countries seeking agricultural liberalization. However, the United States has also indicated that it is seeking concessions from developing countries in tariff negotiations and substantive service-sector offers. In Doha negotiations, the United States has favored SDT provisions that emphasize longer implementing periods, rather than a general release from commitments.

³⁴ WTO Annual Report 2004, p. 131.

³⁵ USAID Trade Capacity Building Database, [<http://quesdb.cdie.org/tcb/overview.html>].

³⁶ G-20 members included at various times: Argentina, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand, and Venezuela.