



**Agency for International Trade
Information and Cooperation**

February 2009

Report on AITIC *Flash Meeting*:

The Trade Policy of the Obama Administration

2 February 2009, 10.00 – 12.30
Conference Centre Varembeé, 9 rue de Varembeé, Room A

I. Introduction

1. In response to several queries from its Participating Members regarding the future trends in the trade policy of the United States under the Obama Administration, AITIC organised in early February 2009 a Flash Meeting to assess the implications of the recent change in the US Government and invited Professor Craig VanGrasstek¹ to share his views. As a trade expert based in Washington with over 40 years of experience on which to draw from, Dr VanGrasstek is well-positioned to comment on what the new Obama administration is likely to bring to US trade policy and how this might impact the global trade debate. The Flash Meeting, attended by well over one hundred participants, was opened by Dr Esperanza Durán, Executive Director of AITIC. After welcoming participants and introducing the speaker, she began the morning's meeting by commenting on the current economic crises and the recent signs of emerging protectionism, not least the much-debated "buy national" or in the specific case of the United States the "Buy America" policy in the economic stimulus package. Key questions were being raised by all trading partners on what course the future of US trade policy would take and how this would play out in Geneva, in particular for the future of the stalled Doha negotiations.

II. Objectives and summary of the meeting

2. Dr VanGrasstek had circulated prior to the Flash Meeting five questions his presentation would seek to answer: (i) Did President Obama receive a mandate on trade policy?; (ii) What are the implications of the restoration of unified government?; (iii) What is the significance and current status of trade promotion authority (TPA)?; (iv) What are the other pending issues and priorities in U.S. trade

¹ Dr VanGrasstek currently teaches courses in trade policy at Harvard University's John F. Kennedy School of Government and at Georgetown University.

policy?; and (v) Who are the key players who will set policy in the coming two years?

3. Using a case study of the “Buy American” provisions in the US economic stimulus package and five questions aimed at revealing some indication of what may come from the Obama administration, Dr VanGrasstek provided a very detailed analysis of the current political environment and the new administration’s agenda. In speaker’s opinion, US trade policy will be marginalised and handled episodically without much movement for at least the next two years. Unless Geneva acts to force the issue with an imminent result in the Doha negotiations the priority of the Obama administration will be trade policy related to government procurement and economic stimulus and not trade policy per se. Nonetheless, multilateral agreements have been, and are likely to continue being generally well received by Democrats, while in other types of agreements they have the reputation of being less pro-trade. Given the current economic and political environment, it is not a good time for a developing country to negotiate a free trade agreement (FTA) with Washington. Despite recent concerns over the “Buy American” provisions in the stimulus package, it is unlikely that there will be a surge of protectionism in the US. There are loopholes in the law that the Obama administration might use to grant exceptions. However, the ability of Congress to continue to interfere with and change the President’s trade or trade-related proposals will likely lead to trade disputes in the future.

III. A case study of the “Buy American” provision

4. Dr VanGrasstek’s presentation² began by focusing on the very recent “Buy American” provision in the current US economic stimulus bill, which had been heavily criticised by Canada and Europe, among others, as being “protectionist”.

5. The “Buy American” language in the US Economic Stimulus Package on the surface seems to indicate a rising protectionist trend, but Dr VanGrasstek pointed out subtleties in the text of the bill that would temper its strict application.

6. In particular, Section 1110 of the *American Recovery and Reinvestment Act of 2009* includes three exceptions: the first, containing a condition that provides for a loophole to the otherwise highly protectionist language, is allowed in cases where applying the buy American provision “*would be inconsistent with the public interest.*” Given the specificities of the US acquisitions law, this vaguely worded sentence basically means that if a government agreement with a blanket exception to the *Buy America Act* exists between the US and another country, those countries are exempted. Thus, countries that are signatories to the WTO’s *US Government Procurement Agreement* (GPA), or those that have government procurement provisions in their free trade agreements with the US, as well as two country groupings that have special treatment - the Caribbean Basin Initiative beneficiaries and the least-developed countries (LDCs) - are all free from the “Buy American” provision. The public interest exception would be sufficient to allow the Obama administration to seek and provide exceptions to these countries.

² Presentation available online: www.acici.org/ppt/02_02_09/2009Presentation_files/frame.htm.

7. In essence, the *American Recovery and Reinvestment Act of 2009* allows for discrimination against the “BRICs” (Brazil, Russia, India and China) and has come about due to the rapid increase of steel imports from these countries in the last ten years. In large part, this bill seems specifically designed to restrict imports from China. Key points that should be taken from studying this case:

- Trade-related issues will dominate the administration’s focus and not trade policy per se;
- The Obama administration did not insert the “Buy American” provision into the stimulus package;
- Republicans, although considered to be more free trade-oriented than Democrats, can be just as supportive of economic nationalism as Democrats;
- Republicans voted unanimously in favour of the “Buy American” provision alongside their Democrat counterparts on the House Appropriations Committee;
- Trade Promotion Authority (TPA), previously known as “fast track”, provides two guarantees:
 - The bill is voted 90 days after its introduction
 - It cannot be amended after it is formally introduced.

IV. Question 1: Did President Obama receive a trade policy mandate?

8. No. The driving force behind Barack Obama’s election was the recession. During his campaign, he showed very little interest in trade and gave no real position on trade policy. In fact, trade policy took a very low profile in the minds of US voters last year: only one per cent (Pew Center Poll) of those surveyed thought it was important, and this has been true for most US elections. Senator Obama made no protectionist promises during his campaign, nor did he indicate that trade would be a priority. The old story of Washington waiting for a result from Geneva and Geneva waiting for a grant of negotiating authority from Washington is likely to continue, simply because trade is not a priority for the Obama administration.

V. Question 2: What are the implications of the restoration of unified government?

9. A unified government (the Presidency, House of Representatives and the Senate dominated by one party) is neither a necessary nor a sufficient condition for successful trade policy-making, but it does make it much easier to manage the relationship between the three branches of government.

10. It is fair to assume that President Obama will have an easier time making trade policy should he need or want to, given the Democratic dominance of all three branches of government. However, trade policy is the prerogative of the US legislative branch and US Presidents can only set trade policy if such power is delegated by Congress in the form of TPA. President Clinton had his only real success on trade policy when the Democrats controlled Congress. President Bush

was fortunate to have six of his eight years in power with a Republican controlled Congress, and his success in trade policy came during this time. His failures came with the changing of control of Congress to the Democrats.

VI. Question 3: What is the significance and current status of trade promotion authority (TPA)?

11. TPA was in essence created to avoid the problems of trade negotiations results being vulnerable to amendments or attempts to block them by the US Congress. However, it is Congress that writes the TPA negotiating objectives. Thus, despite the obvious preference of other countries that the US negotiates with TPA, it should be noted that congressional control cannot be completely eliminated. The last grant of TPA expired in the middle of 2007, without much enthusiasm in the United States to renew it.

12. Key members of Congress have indicated that if negotiations in Geneva get to a point where a deal is reached, they will grapple with the process of granting TPA. But this is part of the problem: there is not a lot of momentum - neither in Geneva for finishing the negotiations nor in Washington to seek a new grant of TPA at present.

13. It is not known whether President Obama will try to break up deadlocks such as the Doha negotiations or by seeking a new TPA. A clue may be given during the confirmation hearings of Ron Kirk (who tends to be pro-trade in general) for the position of US Trade Representative.

VII. Question 4: What are the other pending issues and priorities in US trade policy?

14. It is difficult to know whether the expiration of certain preferential trade programs such as the Generalised System of Preferences (GSP) for LDCs will bring about some momentum in the trade policy area. Dr VanGrasstek provided handouts which included a comprehensive table³ indicating the current US Preferential Trade Programs listed in order of expiration of programme authorisation.

15. The future of FTAs that the new administration has inherited such as that with Panama and Korea will likely get approved, pending passage on the Korean side. One of the more interesting developments is that the Trans-Pacific Partnership negotiations have been expanded to include new partners: Brunei, New Zealand and Vietnam. These are all potential trade agreements. However, new FTA activity in the Obama administration can be expected to be insignificant. Dr VanGrasstek again stressed that trade-related areas - not trade policy - will dominate the new administration's agenda for the near future.

³ Table on page 7 of handouts: www.acici.org/ppt/02_02_09/Handouts2009_en.pdf.

VIII. Question 5: Who are the key players who will set policy in the coming two years?

16. Dr VanGrasstek ended the last part of his presentation with a closer, more nuanced look at the long-standing assumption that Democrats are protectionist and Republicans are free traders. Voting statistics⁴ of the House of Representatives from 1979 to 2008 as given in the handouts make clear that there are some areas where Democrats are basically pro-trade.

17. For multilateral and industrialised-country agreements, Democrats are in fact only slightly less pro-trade than Republicans, with 79 per cent of Democrats voting for such measures as compared to 86 per cent of Republicans. In contrast, it is in the granting of negotiating authority, TPA, where Democrats are much less pro-trade, with an average of only 16 per cent of Democrats voting for it compared to 85 per cent of Republicans.

18. When it comes to the vote on developing-country preferences, it is also important to point out that almost half of Democrats (47 per cent) voted in favour of them. However, this rate is still markedly below the 86 per cent of Republicans who voted for the measures.

19. The Democratic voting record in the House of Representatives for Developing Country FTAs outside the Middle East is not so strong at only 34 per cent of the Democratic vote as compared to 86 per cent of the Republicans.

20. Dr VanGrasstek's conclusion was that when Republicans look at trade policy, they tend to ask the question, "is this free-trade or not?" and if so, they vote for it 85-95 per cent of the time, no questions asked. Democrats, on the other hand, tend to ask "what *type* of free-trade is this?" If it is multilateral, Democrats are also pro-trade and vote for it.

21. One of the issues of interest to the audience and which will be coming up in the next year is how the US will deal with preferential trade programs with developing countries. To try to shed some light on the current political environment and who the key players are, a very detailed breakdown was given by the speaker using a two-by-two matrix⁵ that groups members of the US Congress according to their position on trade liberalisation in general, measured against their position on trade preferences for developing countries.

22. Most of the free traders are Republican, such as House Minority Leader John Boehner (Ohio) and Representative David Dreier (California), but not all. Gregory Meeks (New York) is one such example of a Democrat free trader. The pro-labour trade sceptics include powerful members of Congress such as the Speaker of the House of Representatives, Nancy Pelosi, Senator Sherrod Brown (Democrat-Ohio) and Representative Sandy Levin (Democrat-Michigan). Similarly, the Chairman of the House, Ways and Means Committee, Representative Charles Rangel (Democrat-New York) is the leading "preferential exceptionalist". Free trade "purists" include Chairman Max Baucus (Democrat-Montana), Senate

⁴ Percentages on page 9 of handouts: www.acici.org/ppt/02_02_09/Handouts2009_en.pdf.

⁵ Matrix on page 10 of handouts: www.acici.org/ppt/02_02_09/Handouts2009_en.pdf.

Finance Committee and Ranking Minority Member and former Chairman in the Senate Finance Committee Charles Grassley (Republican-Iowa). Key trade-policy makers in the Obama administration also include the USTR nominee, Ron Kirk (still to be confirmed) and Secretary of State Hillary Clinton. A big question mark was who would occupy the post of Secretary of Commerce, as no nomination had been made⁶.

23. Dr VanGrasstek pointed out that it will be important for the Obama administration to deal carefully with both Chairman Sandy Levin and Speaker of the House Nancy Pelosi who are particularly powerful. Although they are trade sceptics, both are persuadable and, the extent to which deals will be made on new grants of TPA or a Doha agreement will depend greatly on working effectively with them.

24. As far as influence, it does appear that the Obama government has positioned itself well to work effectively with Congress having three times the number of officials with congressional experience as did President Bush. Relations with Congress will therefore be closer and the Obama administration will be more able to get the results it wants.

IX. Implications for the Doha Round

25. In the past, there have been several rounds of multilateral trade negotiations in which what was happening in the US Congress was critical to the end-game: the Geneva, the Kennedy, the Tokyo and the Uruguay Rounds. Washington, however, cannot always take the blame since trade negotiations have failed more often for reasons other than US congressional opposition, be it as a result of a regime change in the partner country and/or a lack of international consensus. It should not be assumed that a Doha deal reached in Geneva will not pass the US Congress; previous multilateral deals have worked their way through the US Congress rather easily. It is important to remember that multilateral deals have more bipartisan support from the US perspective than other types of negotiations.

26. Dr VanGrasstek drew his presentation to a close by reviewing the main points of his presentation. The "Buy American" provisions in the stimulus package illustrate the importance of understanding the branches of US Government, their influential leaders and the rising importance of trade-related policy in place of trade policy. One should not conclude there is a great wave of protectionism rising in the United States. It is not a good time for developing countries (DCs) to negotiate a free trade agreement (FTA) with the US, but multilateral deals will continue to be generally well received. It was the speaker's opinion that the Geneva problems outweigh the Washington problems when considering the Doha negotiations, but he acknowledged that the Washington problem of getting a grant of TPA is an important part of why there is a Geneva problem in the first place.

⁶ At the time of this AITIC Flash Meeting, the nominee for Secretary of Commerce was not known. On 25 February, 2009, Gary Locke, former Governor of the state of Washington was nominated.

X. Questions and discussion

27. A comment was made that during the presentation Dr VanGrasstek had stated that there was little US public interest in trade, but a lot of interest in the current state of the economy, and the question was asked why this is the case given that trade helps to drive the economy? Dr VanGrasstek answered that trade accounts for a much smaller share of GDP (25 per cent) in the US than it does in most other countries (50-60 per cent) and is just not part of the public mindset.

28. Several members of the audience were interested in whether the change in Washington would translate into a new impetus to the negotiations and a window of opportunity to complete the Doha Round. Dr VanGrasstek answered that while the administration has changed, the US Congress has remained almost the same, and it is the Congress that places constraints on trade negotiations. In this regard, not much has changed. It was the speaker's opinion that the how the administration deals with the "Buy America" provision in the stimulus package - in particular whether it uses the public interest exception loophole - that might give an indication of what approach to expect in future. Dr VanGrasstek repeated that he felt the issue of whether the Doha Round is completed is more Geneva-driven than Washington-driven.

29. Another participant mentioned the upcoming G-20 meeting in London on 2 April and asked whether President Obama might give an indication as to what to expect in future at this meeting. In general, Dr VanGrasstek thought that there were very few signals so far, other than that President Obama may be a multilateralist, in the same vein as Wilson, Roosevelt and Clinton.

30. One question focused on whether the Obama administration might take action against China on its exchange rate policy, a view supported by Dr VanGrasstek, who cited the comments made by Timothy Geithner, Secretary of the Treasury, to that effect. This would likely lead to additional dispute settlement cases in future.

31. The theory was put forward that Democratic congressmen are less beholden to farm votes than Republicans and therefore it would follow that perhaps if the Obama administration asked its party members to follow a more liberal agriculture policy, they would. Dr VanGrasstek refuted this idea though, saying that President Obama was in part elected by the farm state of Iowa during the caucuses and pointed out that Democrats on agriculture committees in Congress are as protectionist as their Republican counterparts.

32. There were two questions that revolved around environmental issues given that this administration will undoubtedly be more pro-environment. Dr VanGrasstek did not believe new environmental issues would be brought into the Doha Round negotiations, but changes in policy that reflect the new stance on climate change would likely bring about funding of some green initiatives that may in turn lead to more dispute settlement cases.

33. A final question was asked regarding what the "cracks" in the "Buy American" provision were, which Dr VanGrasstek pointed out are due to the plurilateral nature of the agreement and had to do with rights of signatories and

those who do not have rights. He fully expects the US to take advantage of the loopholes to make exceptions for the signatories as well as to discriminate against China and other BRIC countries.

Acronyms

AoA	Agreement on Agriculture
BRIC	Brazil, Russia, India, China
DC	Developing country
FTA	Free Trade Agreement
GDP	Gross Domestic Product
GPA	Government Procurement Agreement
G-20	Group of 20
LDC	Least-developed country
NAMA	Non-agricultural Market Access
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
TPA	Trade Promotion Authority
USTR	United States Trade Representative
WTO	World Trade Organization