



TRADE AND NEW ISSUES: ENVIRONMENT, ENERGY AND LABOR

-- SPEAKING NOTES --

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**John R. Magnus
TRADEWINS LLC
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Good morning ladies and gentlemen. I'm John Magnus of TradeWins LLC and Miller & Chevalier Chartered. It's a big honor to be among such luminaries on the panel and in front of such a knowledgeable group.

I. Introduction

I did a little essay recently -- it was posted at the *Inside US Trade* website -- that identified key questions related to the next chapter of U.S. trade policy. In preparing for today's discussion, that list of six questions seemed like a decent place to start. They included:

1. **Paradigm:** What broad strategic paradigm will the new U.S. administration follow as a replacement for the Bush administration's "competitive liberalization?"
2. **Emphasis:** How much relative emphasis will the new U.S. government place on "reforming" existing trade pacts, as opposed to pursuing or implementing new ones?
3. **Votes:** Will the new government allow any major trade-liberalizing items to come to a vote in the first two years?
4. **Labor-environment:** Will the United States now pursue a "blue and green" agenda as part of its multilateral trade diplomacy?
5. **Enforcement:** With power in the Executive and Legislative branches, how will Democrats follow up their rhetoric of the last several years on trade "enforcement?"
6. **Wild-cards:** What trade items will become unblocked, explode onto the agenda, and/or evolve with unexpected speed?

I was too cowardly in that piece to venture any answers, but have resolved to be somewhat bolder today and indulge in speculation in two areas: the trajectory of the blue-green agenda generally, and the particular problem of PPM-based measures that affect trade ("PPM" standing for "process/production method").

II. Blue-Green

The “May 10 principles,”¹ announced in May 2007 by the newly empowered Democratic congressional leadership and the Bush administration, gave labor (blue) and environmental (green) issues greater prominence in the U.S. trade policy template. Having long been a feature of U.S. unilateral trade preference programs, blue and green requirements would henceforth appear in bilateral and regional trade agreements. Some saw this as revolutionary, others as incremental. But one thing that was clear was that Congressional participants described the May 10 package as the best (“bluest” and “greenest”) result they could achieve when forced to compromise with a sitting Republican President.

I’m told they are now freed of that constraint. So it is reasonable to wonder about several of the limits (a more accurate term might be silences) in the May 10 package:

Substantive obligations: In the labor field, for example, which substantive obligations -- which ILO conventions -- will be elevated?

Bilateral/regional deals implicated: Will the May 10 agreement’s “going-forward” limitation survive, or will there be an effort to retrofit U.S. trade pacts already in force?

Multilateral implications: And most importantly, what about the WTO? There was no mention in the May 10 package, one way or the other, about taking blue and green issues into the multilateral sphere.

There are now indications that the Obama administration will seek to take the blue-green agenda both backward and forward -- backward, in the sense of reopening the NAFTA in hopes of bringing it up to (or maybe beyond) the May 10 standards, and forward by testing it out in Geneva.

Howard Dean speaking in Davos recently showed great confidence on the WTO point. As reported in a recent issue of *Washington Trade Daily*:

Former Democratic Party Chairman Howard Dean said on Saturday that the United States cannot visualize a Doha trade agreement without a strong component on labor and environmental standards.... During a session on protectionism at this year’s World Economic Forum, Mr. Dean made it clear that Washington will insist that global trade must ensure proper coverage of labor and environment standards.

¹ A summary is available at <http://waysandmeans.house.gov/media/pdf/NewTradePolicy.pdf>. The full text is available at <http://waysandmeans.house.gov/Media/pdf/110/05%2014%2007/05%2014%2007.pdf>.

Mr. Dean does not speak formally for the Obama administration, but I suspect that he does speak knowledgeably *about* that administration.

You might wonder, and I believe Jeff Schott will be talking about this, how the world will respond, especially in light of the fact that a Doha deal has so far been elusive even without substantial new blue-green demands from the United States. Mr. Dean's trial balloon got some support from the WTO's host country:

Mr. Dean backed a stance by Swiss trade minister Doris Leuthard that labor and social standards should have been in the Doha negotiating package. The Swiss trade minister suggested that labor and the environment should be part of the next multilateral trade round.

And, it got some opposition from elsewhere:

Mr. Dean's call, however, provoked sharp opposition from Indonesian trade minister Mari Pangestu who said developing countries will never agree to labor and the environment as Doha issues. She said the Seattle WTO ministerial meeting in 1999 collapsed because of labor and environment. The two issues must be dealt with by their respective international organizations. ...

Brazil's foreign minister Celso Amorim expressed concern, saying that Brazil has already taken sufficient measures on the environment – including promoting ethanol production. He noted that President Lula da Silva comes from the trade unions – arguing that Brazil needs no lessons on the importance of rights for its workers.

My bold prediction is that President Obama will before too long go past the previous high water mark established by President Clinton, when at the time of the Seattle Ministerial he mused aloud to a reporter about a “social chapter” in the WTO rulebook. Fasten your seatbelts.

III. PPMs

Now a point more specific to environment and energy. In a world where carbon control schemes and other “sustainability” measures are increasingly finding it necessary to focus on how products are made, how might the trading system's current hard-line against PPM-based distinctions be softened?

The old examples of PPM-based regulations are familiar. They tend to involve border measures and endangered animals like dolphins and sea turtles.

The new examples are more challenging. They involve things like transportation fuels, and regulatory measures that allocate market opportunities, or market

advantages, according to PPM criteria. It turns out, for example, that there is reason on environmental grounds to care about what feedstocks are used at different biofuel factories, even if the final products are indistinguishable by the time they reach someone's port. But trade rules, based on the cases litigated so far, are inhospitable to regulatory distinctions based on such concerns.

Measures like these raise numerous questions -- is the PPM standard itself, and a given product's conformity with it, determined privately or by government; what legal and other consequences attach to meeting (or failing to meet) the standard; *etc.* But the broader point is that the desire to reduce carbon emissions is destined to give rise to national measures that will be highly popular and will test the now-fairly-rigid rule against using PPMs to determine the treatment of products.

At present, to justify a PPM-based measure, whether a border measure or something less directly trade-related, you basically have to show that a PPM-based measure was the only real option *and* that the particular PPM-based measure you chose was the least trade-restrictive one available. This is a difficult task. But the rule against PPMs exists for a reason, and to move away from it is to open a Pandora's box. Some of today's panelists, especially our moderator Andy Shoyer, have done some deep thinking about what might be inside that box.

PPM-based measures can vary widely. Some may be implemented product by product, while others use short-cuts and basically appear to ask whether particular traded products originate in a "good" or a "bad" country. Some are border measures and directly control market access, while others affect trade more indirectly, controlling access to (for example) consumption subsidies.

My two cents is that WTO panels are more likely to begin to find some flexibility if they are presented with the right cases. For example, they might have an easier time warming up to a PPM if it merely controlled access to a consumption subsidy, rather than being determinative of importability.

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I'll stop there, and look forward to the Q&A. Again, many thanks for your attention, and thanks to the symposium organizers for inviting me to contribute today.