



# FUNDAMENTALS OF TRADE: GOALS, APPROACHES, AND TOOLS

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## *Fundamentals of Trade: Goals, Approaches, and Tools*

### **International Trade Results in:**

- Making the World Smaller and More Interconnected
- Globalization of companies and Complex Supply Chains
- Expectations of Consumers – Desires, Impatience, Authenticity (IPR), and Prices
- Trade Treatises and Agreements; Trade Disputes and Trade Wars; Creation of International Organizations (World Trade Organization (GATT 1948), World Customs Organization, World Intellectual Property Organization, International Labor Organization, CODEX, UN/WHO-Food and Agriculture Organization, among others)
- Culture Clashes – CBP and Forced Labor Withhold Release Order WRO or Geographical Indications for wine and spirits, for example

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## **Trade Framework in United States:**

“Separation of Powers” Between the Executive Branch and Congress

Constitution vest significant powers over foreign affairs in the President.

Congressional “clawback” – Trade Promotion Authority (TPA) or “fast track.” Elements of TPA are:

(1) agreed upon negotiation goals

(2) continuing consultation with Congress, and

(3) a short period of time for an up or down vote by Congress with no amendments.

## Federal Actors:

White House

United States Trade Representative

Department of Commerce

Department of State

Department of the Treasury

Department of Agriculture

Senate Finance Committee – Trade Staff

House of Representatives Committee on Ways

and Means – Trade Staff

International Trade Commission

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In developing the trade policy of a nation or a regional/integrated economic or customs union, ask three questions:

## **Goals**

- Economic: Wider range of goods and services; more jobs in your country; better incomes and quality of life; David Ricardo's Law of Comparative Advantage (Source of the advantage such as climate or government subsidy- Matters?)
- Geopolitical: Favorable trade treatment to India during Cold War or Generalized System of Preferences (GSP) in U.S. giving lower tariff treatment to certain countries

## **Approaches**

- Brute force (as in Genghis Khan); "Conciliation and negotiation (Big country extracting concessions from small country); rule of law (levels the playing field and provides certainty)

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## **Tools**

Treaties – Uruguay Round Agreements or Marrakesh Agreement Establishing the World Trade Organization

Free Trade Agreements (FTA)

USMCA / CUSMA (English) or ACEUM (French) / T-MEC

U.S. has FTAs with 20 countries. <https://ustr.gov/trade-agreements/free-trade-agreements>

- “WTO Plus” FTAs – FTA contains provisions that are stronger than WTO obligations
- Avoid conflicting provisions in various trade agreements with several countries

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- *Trade and Investment Framework Agreements*

Framework for dialogue and consultation between countries on trade and investment.

<https://ustr.gov/trade-agreements/trade-investment-framework-agreements>

- *Executive Agreements*

USTR headed negotiations resulting in agreement with the executive Branch and no ratification or review by Congress. Existing laws and regulations allows compliance with trade obligations. Side letters may be private commitments.

- United States and European Community on Distilled Spirits (1994)

<https://www.ttb.gov/images/pdfs/us-ec-spirits-agreement.pdf>

- United States and European Union Wine Agreement (Wine Accord) (2006)

<https://www.ttb.gov/agreements/us-ec-wine-trade-agreement>

- Mutual Acceptance Agreements on Enological Practices (26 USC 5382)

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### Trade Sanctions

- Retaliatory Tariffs (“additional duties”) – Use Harmonized Tariff Schedule Subheading. Beverages Including Alcohol are in Chapter 22.
- Quotas
- Antidumping and countervailing duties

WTO approved trade sanction of “withdrawing concessions” based on a certain **volume of trade**. Airbus - \$7.5 billion and Boeing \$3.99 billion.

Unilateral trade sanctions under U.S. trade laws:

Section 301 (Trade Act of 1974) - Denies U.S. entitled rights under a trade agreement or measure is unjustifiable and burdens or restricts U.S. commerce. USTR enforces.

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French Digital Services Tax and general investigation of DSTs of Brazil, Czech Republic, EU, India, Italy, Indonesia, Spain, United Kingdom are Section 301 investigations.

Section 232 (Trade Expansion Act of 1962) – National security tariffs. The Steel and Aluminum Tariffs are an example of a section 232 tariff. Department of Commerce enforces <https://fas.org/sgp/crs/misc/IF10667.pdf>

Section 201 (Tariff Act of 1974) Temporary tariff or quote to protect U.S. industry to allow it time to adjust so as to compete with imported products.  
<https://fas.org/sgp/crs/misc/IF10786.pdf>

International Economic Emergency Powers Act (1967) Authorizes the president to regulate international commerce after declaring a national emergency in response to any unusual and extraordinary threat to the United States which has its source in whole or substantial part outside the United States. President Trump used it to threaten tariffs against Mexico on immigration on the Southern Border.



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## Resources:

- John H. Jackson, *The World Trade Organization, Constitution and Jurisprudence* (Royal Institute of International Affairs – Chatham House (1998))
- Jeffrey E. Garten, *From Silk to Silicon: The Story of Globalization Through Ten Extraordinary Lives* (Harper 2016)
- James Crawford, *Brownlie's Principles of Public International Law 9<sup>th</sup> Edition* (Oxford Press 2019)
- Mary Jane McCaffree and Pauline Innis, *Protocol: The Complete Handbook of Diplomatic, Official and Social Usage* (Devon Publishing 2002)
- *The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations* (Cambridge Press)

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