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Introduction to SENATE

The U.S. Senate is the American government's premier legislative body. Its 100 members have the power to draft and pass legislation, approve major presidential appointments, and ratify treaties with foreign countries. Senators play a critical role in the government and have a heavy influence on the decisions of the executive branch. Delegates to our 65th Session will have the opportunity to participate in lively debates about some of the most pressing issues facing the chamber today and will work together in the spirit of bipartisanship to achieve lasting solutions.



Topic 1 | Immigration Reform and a Pathway to Citizenship

Introduction

The United States is a nation of immigrants. From the initial settlers of the New World, to the most recent arrivals, immigrants have always played a significant role in American history. In 2013, more than 40 million people residing in the U.S. were born in another country, representing around 13.1% of the total population (Pew). Though most cannot vote, these immigrants nonetheless have a profound effect on shaping American life and political discourse.

As the 2016 primary elections have shown, the debate over migration to the U.S. is largely unsettled. America's patchwork system of visas and applications for legal immigration remains a debacle unto itself. However, the most vitriolic and heated debate surrounds the estimated 10.9 million undocumented immigrants that reside throughout this country with no legal status (Markon). With a new president moving into the Oval Office, these complex and intertwined issues will undoubtedly take on a significant role in the new administration's first year in power. This brief will provide a detailed history of America's immigration policy in addition to past U.S. Senate action on the topic before delving into specific case studies of recent issues with the country's immigration policy.



Topic Background

A History of Immigration Law

For a country so thoroughly defined by immigration, the U.S. actually received very few new settlers during the first few decades of independence. Throughout the 1780s, the Articles of Confederation generated political and economic volatility that made the former British colonies a rather unappealing destination for immigrants. As few as 6,000 immigrants per year settled in the U.S. during this time. However, even after the adoption of the Constitution in 1789, immigration continued to remain rather low. In fact, between 1789 and 1820 only about 500,000 new settlers stepped foot on American shores. The decade-long Napoleonic War on the European continent combined with America's War of 1812 both greatly discouraged European migration during this period. Unfortunately, many newcomers during these years were slaves forcibly transported across the Atlantic Ocean in horrific conditions to be sold throughout the Americas. Around 650,000 slaves were brought directly to the United States, sparking tensions that would fester until the Civil War and beyond (Liberty-Ellis).

However, beginning with Napoleon's defeat, European migration to the U.S. resumed at far higher rates, overwhelming major port cities with many sick and destitute newcomers. In response, Congress passed the Steerage Act of 1819, requiring naval vessels to keep detailed passenger records and improving ship conditions (Liberty-Ellis). However, this initial immigration legislation did not stem the tide of newcomers. A wave of immigration traveled to the United States between 1815 and 1865. Many stemmed from Germany, but about a third of all newcomers were Irish escaping from a massive famine that ravaged the country throughout the mid-1800s. This time also saw



the rise of the first major nativist movement with the formation of the American, or Know-Nothing, Party. Fuelled by anti-Catholic and economic resentment, the American Party gained a significant following in the late antebellum period. Internal strife and the rise of the Republican Party quickly doomed the Know-Nothings, but nativism continued to be a major force in U.S. politics until the Civil War significantly reduced migration (History).

During the first century of independence, immigration policy was largely delegated to state governments, leading to significantly different treatments for immigrants depending on where they first arrived. However, with more and more immigrants landing on American shores, the federal government took decisive action to centralize policy. In 1890, President Benjamin Harrison designated Ellis Island as a federal immigration station (NPS). With the advent of steam power, immigration became far more accessible, and new arrivals began to pour in from all of Europe. Many immigrants in this new wave came from southern and eastern Europe, with Italy, the Austro-Hungarian Empire, and Russia serving as the largest countries of origin. In contrast, the Chinese Exclusion Act of 1882 and the 1907 Gentlemen's Agreement with Japan severely limited immigration from Asia. This unequal treatment largely followed public opinion, with racial prejudices playing a key factor in determining who was allowed to enter the country. Discrimination in favor of western Europeans was codified with the Immigration Act of 1924, which set quotas based on an immigrant's nationality. It was not until Lyndon Johnson signed the Nationality Act of 1965 that the old rules were fully abandoned and the modern immigration system began to take shape (Liberty-Ellis).



The Modern Immigration System

The Johnson administration scrapped the quota system and focused instead on granting visas for family and employment reasons. About three quarters of all visas were set aside for immediate family members of U.S. citizens and residents, while the rest were mostly allocated for employment objectives. This system benefitted higher-skilled workers whose qualifications matched the requirements for a visa. Finally, the law set aside 6% of all visas for refugees and asylum seekers (Pew 20). However, even in the most liberal immigration legislation in American history, fears about immigrants were written into the text of the bill. In order to issue an employment visa, the Department of Labor was required to certify that no American workers could fill the job in question and that U.S. workers would not be harmed in the process. These certifications were politically necessary to appease voters' concerns of losing their jobs. Additionally, the law created the first restrictions on immigration from Western Hemisphere countries like Mexico, creating the conditions for a rapid increase in the population of undocumented immigrants (Martin, 2011).

Over the last three decades, a succession of administrations attempted to confront these new issues. In 1986, President Ronald Reagan signed the Immigration Reform and Control Act into law, giving legal status to the 2.7 million undocumented immigrants in the U.S. since the early 1980s and creating a special program for farmworkers. The Reagan administration argued that it would be impossible to deport the entirety of this sizeable population and that legal status was the only realistic option for many. However, it argued that, by cracking down on the hiring of undocumented workers and strengthening border security, the issue could be resolved and



undocumented immigration halted. Unfortunately for President Reagan, the legislation broadly failed to stem the flow of migrants across America's borders. In 1990, the first Bush administration expanded legal immigration by increasing the number of visas available per year and creating several new visa categories (Pew 21). With several exceptions, this is the current federal status of legal immigration in the U.S.

Immigrant Demographics

Since the Johnson Administration, the majority of immigrants have stemmed from Latin America and Asia. Mexico in particular accounted for 34% of all immigrants in 2000. Even with several reforms to the immigration system, demand for visas continued to far outpace supply. Consequently, the number of unauthorized immigrants also soared, reaching a peak of 12.2 million people in 2007. However, after a decline during the Great Recession, the undocumented population has remained mostly stable at about 11 million. For Mexicans in particular, unauthorized immigration has stalled (Passel, Cohn, and Gonzalez-Barrera). There are several potential explanations for these changes. America's economic crisis may have made immigration less attractive. Additionally, a rapid expansion of the U.S. Border Patrol in the previous years could be partially responsible for the change. Finally, the expanded use of the e-Verify background check system—mandated for firms with federal contracts after 2009—likely made it more challenging for undocumented immigrants to find work. Nonetheless, the true cause of the slowdown remains vigorously contested.

The recent shift in undocumented immigration has also spilled over into the realm of legal migration. At the same time as immigration from Mexico has declined, new arrivals from Asia have spiked dramatically. These immigrants accounted for 41% of the



total in 2013. In contrast, Europe now accounts for only 10% of total immigration.

Immigration is also remarkably concentrated in just a handful of states, with about half settling in New York, California, Texas, and Florida (Pew 36).

Views on Immigration

Though Americans are slightly more likely to view immigrants positively in the long run, there are substantial differences in between different groups. Younger Americans and college graduates tend to view immigration in a significantly more positive light than Republicans and those with a high school diploma or less (Pew 53). Public attitudes toward immigration have also become more positive since the 1990s as the population as a whole has become more racially diverse and integrated. However, majorities of Americans believe that immigrants are making both the economy and crime worse (Pew 57). Because of the heavy concentration of immigrants in a few states and regions, many Americans do not have frequent interactions with new arrivals—a factor correlated with acceptance of immigration. Additionally, some conservatives view the distinct cultures of many immigrants as incompatible with American values. Opposition to immigration must thus be examined through both an economic and social lens, with some Americans feeling that their way of life is put at risk by the new arrivals. These strong emotions have made it impossible to enact major changes to immigration law in the last decade.



Recent Legislative Action

Comprehensive Immigration Reform Act of 2006

Over the last decade, several major attempts were made at the federal level to address immigration. Undocumented immigration surged in the new millennium and, by 2005, the time seemed ripe to enact comprehensive reform. The Bush administration agreed, believing that the legislation was a rare bill that would appeal to both business-minded conservatives and liberal-leaning minority voters. In response, Arlen Specter introduced the S.2611, the Comprehensive Immigration Reform Act (CIRA), with support from many prominent senators like John McCain, Lindsey Graham, and Ted Kennedy (Weiner). The bill significantly increased funding for border security increased penalties for companies that employed undocumented workers. In exchange, the legislation created a significantly more generous temporary worker program and provided a path to legal status and citizenship for many immigrants (“Summary: Comprehensive Immigration Reform Act of 2006 S.2611”).

However, the Bush administration encountered significant pushback from right-wing members of the Republican Party who decried any path to citizenship as amnesty. Though the Senate managed to pass its legislation with significant bipartisan support, resistance was fierce in the more conservative House of Representatives. On December 15th, 2005, the House pre-empted Senate efforts at compromise and passed H.R. 4437, which took a far harsher tone toward undocumented immigrants (“Immigrant Policy Project”). Spearheaded by Representatives Peter King and James Sensenbrenner, the bill focused exclusively on beefing up border security and law enforcement while rejecting the paths to status and citizenship that became the basis



for compromise in the Senate (Wasem 2). Illegal entry to the United States was designated a felony and unauthorized presence in the country would have been criminalized on its own. These changes indirectly shifted responsibility for the enforcement of immigration laws to state and local agencies (Wasem 10). Additionally, the bill would have provided funding for vastly expanded fencing along the border with Mexico and created an electronic employment verification process with required participation from all employers (“Immigrant Policy Project”).

H.R. 4377 provoked significant backlash among Hispanic voters, with massive demonstrations breaking out across the country (Weisman). Conservative talk radio hosts condemned the Senate compromise as an amnesty program and any hope of reconciling with the House bill was quickly dashed. The most hardline activists viewed nothing short of mass deportations as acceptable. When a significantly more conservative compromise was re-introduced in 2007, Democrats had taken control of both houses of Congress and reform was once again stalled (Weiner). Though these overhauls ultimately failed, the ideas formed the basis of the ongoing immigration debate under the Obama administration. Moreover, many strategists argue that right-wing efforts to defeat the overhaul were the final straw in pushing Hispanic voters firmly to the Democratic camp (Weisman).

The Obama Years: State and Federal Reform Efforts

When the Obama administration came to power in 2009, immigration reform was put on hold in order to focus on the global financial crisis and fast track other legislative goals like the Affordable Care Act. In response, state governments took up the mantle. In April 2010, Arizona’s Gov. Jan Brewer signed SB 1070, the “Support Our Law



Enforcement and Safe Neighborhoods Act” into law. This legislation created state penalties for undocumented immigrants and anyone who harbored or transported them. In short, the bill criminalized unlawful presence at a state level as opposed to the federal level proposed in H.R. 4437 (“Arizona’s Immigration Enforcement Laws”). Most controversially, the law required immigrants to have their alien registration documents on them at all times and compelled police to investigate if they suspected that someone was in the U.S. illegally (“What does Arizona’s Immigration Law Do?”). Though the Supreme Court eventually tossed out some provisions, the legislation has become a model for conservative statehouses across the country. Several months later, Alabama passed an even stricter law that required schools to check students’ legal status and criminalized everything from renting to undocumented immigrants to giving them a ride. Though these laws have had questionable effects on immigration, they nonetheless have become a part of the legal code in several states (Sarlin).

While these states and others (Notably Utah, Georgia, Indiana, and South Carolina) took a conservative approach to immigration reform, California did the exact opposite. In 2011, Governor Jerry Brown signed the California Dream Act, granting undocumented immigrants access to financial aid for public universities and community colleges throughout the state. As long as students had attended three years of high school in California and certified that they were in the process of legalizing their immigration status, they were eligible for aid (McGreevy). Over the last several years undocumented immigrants in California were authorized to practice more than 40 professions including law, architecture, and dentistry. Finally, starting in 2015 undocumented immigrants became eligible to receive California driver’s licenses. In



contrast to the rest of the country, these measures attracted little controversy and often received bipartisan support. Public opinion largely drove these legislative accomplishments: more than 63% of Californians believe that immigrants benefit the state overall (Baldassare 5). These views are significantly more positive than those of many other Americans, explaining the generous measures taken by the state government.

In contrast, legislation at the federal level remains fraught with political infighting. In legislative session following the 2010 midterm elections, the outgoing Democratic majority in the House of Representatives passed the DREAM Act, granting thousands of young undocumented immigrants brought to the United States as children a pathway to citizenship. In order to be eligible, applicants would have to complete two years of college or military service (Brandt). However, the legislation stalled in the Senate, with only 55 Senators voting in favor of Cloture (U.S. Senate). When the bill was reintroduced in 2011, a number of Republican Senators like John McCain, Lindsey Graham, and John Cornyn who had supported the legislation in the past declined to support under heavy political pressure from the Republican base (Demirjian).

However, the issue again resurfaced in 2013 when a bipartisan group of senators including Chuck Schumer, John McCain, and Marco Rubio crafted a sweeping compromise that vastly increased border security resources in exchange for a pathway to citizenship for undocumented workers (Kim). Additionally, the legislation called for the creation of a new W-visa program, which would have granted lower-skill workers with the opportunity to apply for jobs in the U.S (Chew). With the Mitt Romney's defeat in 2012 driven in part by a 44-point loss among Latinos, the Senate voted 68-32 in favor of



the bill (Kim). However, a backlash from grass-roots conservatives like Rush Limbaugh quickly followed. With many Republicans fearful of Tea Party backed primary challengers, the bill was ignored by the House and even abandoned by some of its sponsors like Marco Rubio (Horowitz).

The Obama administration responded to the legislative gridlock with sweeping executive orders granting millions a pathway to legal status. In 2012, Obama announced the Deferred Action for Childhood Arrivals (DACA) program in order to benefit more than 800,000 young undocumented immigrants. Under this order, the Department of Homeland security would no longer initiate the deportation of undocumented migrants who came to the U.S. before age 16, have lived here for at least five years, and are in school or have graduated (Preston). Then, in 2014, the administration took an additional step by halting the deportation of about five million immigrants, while allowing many to apply for legal work permits (Shear). However, these executive orders were immediately challenged by several state governments and are now under review before the Supreme Court (Nelson). Thus, the issue of immigration will once again be at the forefront of political debate in aftermath of the 2016 election.



Case Studies

Arizona S.B. 1070

On 23 April 2010, Arizona Governor Jan Brewer signed into law SB 1070. Among other provisions, SB 1070 forbade citizens of Arizona from transporting undocumented/illegal immigrants; decreed that “trespassing” in Arizona without documentation – already a federal misdemeanor – was criminal and ineligible for parole; criminalized working without documentation; and authorized police, during lawful traffic stops, to demand documentation and issue warrantless arrests of any person believed to be guilty of a crime (such as immigrating illegally) whose punishment makes that person eligible for ‘removal’ from the U.S. (Morse; Cave). In her signing statement, Brewer framed the law as a necessary response to the border-related violence and crime caused by illegal immigration, citing “decades of federal inaction and misguided policy” (“Arizona Gov. Jan Brewer”).

Controversy erupted immediately: activists launched a boycott campaign against the state of Arizona; Cardinal Roger Mahony of LA – a religious figure of national reputation – likened the bill’s documentation requirements to “Nazism”; and the U.S. Department of Justice joined a coalition of civil rights groups challenging the law in court (Lemons; Archibold; “Arizona’s SB 1070”; Morse). Among other grievances, the ACLU and others criticized SB 1070 for its perceived reliance on racial profiling to catch undocumented/illegal immigrants, even after it was amended to restrict consideration of race or color (through HB 2162). Nonetheless, SB 1070 succeeded in bringing immigration legislation to the forefront of state agendas, resulting in two dozen “copycat



bills” being introduced in other states, five of which passed in Alabama, Georgia, Indiana, South Carolina, and Utah (“Arizona’s SB 1070”).

The efficacy of SB 1070 remains unclear, and depends perhaps on interpretation of the bill’s purpose. The Arizona Department of Public Safety and FBI statistics indicate that crime fell 9-13% in the first four years after SB 1070’s passage. However, crime in Arizona began declining continuously in 2002, and analysis of several years’ data does not indicate a correlation between crime in Arizona and the number of people apprehended near the border (Grega). Arizona State University Professor Marie Province, however, asserts the goal of SB 1070 was never to reduce violent crime, but rather to assist the federal government in deporting undocumented/illegal immigrants. In this regard, SB 1070’s effect is also uncertain, since Arizona’s undocumented/illegal immigrant population began its decline two years prior to SB 1070 as a result of the Great Recession and new legislation requiring employers to verify social security numbers, making it nearly impossible for undocumented/illegal immigrants to hold jobs (Davis). As for the economic side, any taxpayer savings from reduced welfare and education costs appear to have been outweighed by the steep drop in tourism and business motivated by SB 1070. The Center for American Progress estimates that Phoenix lost \$141 million in tourism and convention industry business in the four months after SB 1070’s passing, leading to the loss of 2,761 jobs and reducing economic output by \$253 million, on top of the \$1.9 million spent by the state defending against lawsuits (Serrano).

Courts have struck down every provision of SB 1070 except the most controversial one: authorization for police officers to demand proof of immigration status



during lawful stops (Santos). The same provision (sometimes called the “show-me-your-papers” provision) is essentially all that remains of Alabama, Georgia, Indiana, and South Carolina’s bills as well; Utah’s has been blocked completely (“SB 1070 Four Years”; Sarlin).

SB 1070 succeeded in bringing immigration to the forefront of the nation’s conscience and in giving law enforcement a tool to pursue undocumented/illegal immigrants. At the same time, however, it inspired a backlash that many proponents of stricter immigration enforcement did not anticipate. In 2012, having witnessed Arizona’s experience over the past two years, not a single state passed legislation targeting undocumented/illegal immigrants (“What’s At Stake”). And in 2013, a federal judge found the Arizona police guilty of racial profiling (Khan). If SB 1070 has demonstrated anything, it is that states which that enact stricter measures to counter illegal immigration must be prepared for serious social, legal, and economic difficulties as a result.

2014-2015: Undocumented Children

Between 2014 and 2015, tens of thousands of Central American children – mostly from El Salvador, Guatemala, and Honduras – illegally crossed the southern U.S. border in two surges of unprecedented magnitude. In June of 2014, at the peak of the influx, over 10,600 unaccompanied children crossed into the U.S. (Markon and Partlow). According to the Women’s Refugee Commission, the majority of Central Americans seeking to enter the U.S. first attempt to “flee internally” (i.e. within their country/region) before coming to the States (Siegel). Many of them ultimately came to the U.S. to escape escalating violence in the region: El Salvador, for instance,



experienced the most homicides in 2015 since the end of its civil war in 1992 (Markon and Partlow). Political “turbulence” in Guatemala, food insecurity, and the drought plaguing the region for the past two years were other motivating factors (Siegel).

After initial processing by the Department of Homeland Security, all unaccompanied youth are placed in the care of the Department of Health and Human Services (HHS), which shelters and cares for the children until a ‘sponsor’ can be found for each child to stay with as his/her immigration court case is pending (Markon and Partlow; Siegel). For the decade prior to the surges, HHS cared for an average of less than 10,000 children a year; in 2014 it became responsible for 57,000, and by the end of 2015 tens of thousands more, at an estimated cost of \$1.35 billion (Siegel; Markon and Partlow). The drastic increase in children under HHS’s responsibility has forced the agency to rely more on independently run, non-profit shelters while simultaneously decreasing the manpower available to inspect these shelters, some of which were found upon investigation to be mistreating the children (Siegel). A federal law requiring that unaccompanied children be released from detention within 72 hours has forced the overwhelmed HHS to release children to sponsors that it has not had time to thoroughly vet, some of whom have sexually assaulted (or forced into labor) the children entrusted to them (Siegel).

The immigration court system has also been overwhelmed, leading to a situation in which “very few are deported back, and few cases are resolved quickly” (Siegel). In November of 2015, there was a backlog of 463,627 cases; and by the end of the year, half the cases from 2014 remained open (Siegel). Border officials claim the rarity of



deportations, along with 2015 federal court orders that mandated reductions in detention time, have encouraged more migrants to attempt the journey (Siegel).

It is, in the words of President Obama, nothing short of an “urgent humanitarian situation” (Chuck). In response, the U.S. government has opened three new shelters with 1,400 beds and has launched a “Dangers Awareness Campaign” in Central America to educate potential migrants about the perils of crossing the border illegally (U.S. Customs and Border Protection; Markon and Partlow). The Obama administration has also introduced the “Central American Minors/Refugee Parole program,” which will allow Central American children to apply for refugee status within their home countries rather than attempt to enter the U.S. illegally (Chuck). In 2015 Congress appropriated \$750 million to help Central American nations “combat poverty, gang violence, trafficking, and government corruption, and to improve border security and social programs”; \$150 million to upgrade Mexican border security; and additional funds to hire another 55 immigration judges (Siegel; Markon and Partlow).

Not everyone is satisfied with the government’s handling of the situation. Border officials believe the rerouting of manpower from border patrolling to immigration processing has reduced border security – a problem Texas governor Greg Abbot has sought to compensate for by deploying the National Guard along his state’s stretch of the border (Siegel; Markon and Partlow). Senator Ron Johnson has criticized the government’s provision of accommodations and court hearings to all unaccompanied children and Obama’s “Deferred Action for Childhood Arrivals” program on the grounds that they incentivize illegal immigration (Siegel). Meanwhile Senator Ben Sasse has



chastised Immigrations and Customs Enforcement (ICE) for its reluctance to deport a known criminal who entered the U.S. as an unaccompanied minor (May).

Overall, the government's response has led to a significant decrease in illegal immigration. In the first five months of 2015, for example, U.S. aid helped Mexico apprehend and deport 56% more migrants en route to the U.S. than in the previous year (Wiltz). Yet smugglers (many of whom are involved in narcotics trafficking) have already adjusted their routes to get around the new American and Mexican border checkpoints (Chuck). The crisis is far from over and some fear that such surges may be the "new normal," at least until Central America itself is 'fixed' (Siegel).



Conclusion

Immigration plays a critical role in America's history. And yet, vigorous debate continues through today about how many and what type of immigrants this country should welcome. Undocumented immigration is clearly an issue that must be addressed—both for the sake of the undocumented and for the potential threat that porous borders can pose to national security. With passions running high on both sides of the issue, it is up to the Senate to lead the way and find a comprehensive solution. The questions facing the chamber are economic, political, and moral in nature. It is simply infeasible to deport nearly 12 million people living in this country with no legal status. However, which immigrants (if any) should get status, and what would this system look like? Should additional actions be taken to secure our borders? How can we update our legal immigration system for modern realities? The proposals presented in this topic synopsis are meant as a starting point, showcasing ideas that others have tried to make reality. Undocumented immigration, the visa system, and border security are inextricably linked. Only truly comprehensive reform can lead to a sustainable solution. We look forward to seeing your ideas.



Questions to Consider

1. Should undocumented immigrants receive some sort of legal status from the federal government? What would such a system look like?
2. How concerned should we be about border security? What are potential options to strengthen our current law enforcement?
3. How far should the federal government go to protect undocumented children?
4. What are the flaws with our current system of legal immigration? What can be done to reform work and student visas?
5. What positive and negative impacts do immigrants have on their communities?
6. What kind of immigration plan could gain bipartisan support?
7. Should states and local law enforcement play a role in managing immigration?
8. What kind of reforms, if any, should be made to the current system of accepting refugees?
9. How can the U.S. work with undocumented immigrants' countries of origin to address the root causes of the situation?



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Topic 2 | Trade Agreements and the American Economy

Introduction

From iPhones in India to McDonalds in Morocco, globalization and trade have transformed the world economy. In 2013, the American economy traded goods and services equal to more than 30% of GDP with countries around the world. Companies shipped more than \$2.3 trillion in merchandise and services to other nations, making the U.S. the world's second largest exporter behind China. The Department of Commerce estimates that more than 11 million American jobs are supported by trade, while small and medium sized businesses generate about a third of all exports (“U.S. Trade Overview, 2013”).

At first glance, trade would seem to be uncontroversial. In classical theory, open economies allow countries to specialize in the goods and services they can produce most efficiently, maximizing output and overall welfare. And yet, free trade is now unpopular with both major political parties. On the right, Donald Trump has torn up the traditional pro-trade consensus within the Republican Party and threatened to tear up trade deals and impose huge punitive tariffs on imports from China and Mexico (Bremmer). Meanwhile, though Democratic-leaning labor unions have long been opposed to trade agreements, both Bernie Sanders and Hillary Clinton pledged on the campaign trail to be far stricter on trade than the Obama administration (Needham). With the Trans-Pacific Partnership (TPP) already before Congress and the Trans-Atlantic Trade and Investment Partnership (TTIP) reaching a critical negotiation phase, trade is certain to be on the U.S. Senate's agenda in 2017. This topic synopsis will give an overview of free trade in America and its relations with Europe and Asia before



discussing more recent legislative actions and finally providing detailed case studies on the effects of trade.



Topic Background

Since the American Revolutionary War, free trade has been intertwined with U.S. economic policy. In 1775, Great Britain's Parliament passed the Prohibitory Act as a punitive response to the rebellions and civil unrest sweeping across the American colonies. The legislation decreed that a naval blockade was to be enforced against all American ports (Ferling). In response, the Continental Congress opened all ports to foreign trade on April 6, 1776, ending an era of economic dependence on Great Britain. As the historian John W. Tyler notes, "Free trade had been forced on the Americans, like it or not (Tyler)."

However, the system of global trade and reduced tariffs we are familiar with only truly began to emerge after the end of World War II. In the 1930s the infamous Smoot-Hawley tariff sparked a rash of protectionist measures around the world that set back the cause of free trade for decades and significantly worsened the Great Depression around the globe (Chang 2). Though the U.S. is frequently portrayed as the historical leader in free trade, it in fact lagged behind Britain by more than a century in reducing its tariffs. Even then, the reduction was not nearly as significant or rapid as in mid-19th century Britain (Chang 6).

The Infant Industry Argument

In order to understand why free trade is such a recent occurrence, it is important to understand the rationale behind the protectionist practiced by even developed countries throughout much of modern history. In its early history, free trade was actually seen as a weapon by Great Britain to forestall economic development in Continental Europe and the United States. Many leaders in the campaign to repeal Britain's Corn



Law in 1846 explicitly argued that it would “halt the move to industrialization on the Continent” by flooding the international market with cheap goods (Kindleberger 196). The nascent, less efficient factories in affected countries would simply be unable to compete with superior British products at lower prices.

These arguments, later codified as the infant industry theory, were first articulated by Alexander Hamilton in his *Reports of the Secretary of the Treasury on the Subject of Manufactures* in 1791. Hamilton argued that protectionist policies were critical in order to allow industries to develop before they could compete with more efficient global counterparts. In fact, Great Britain employed these very policies to great effect in the decades before 1846 (Chang 5). In this line of economic theory, the subsequent trade liberalization in the late 19th and early 20th centuries was then a natural consequence of earlier protectionism. As Friedrich List argued, “when anyone has attained the summit of greatness, he kicks away the ladder by which he has climbed up, in order to deprive others of the means of climbing up after him (List 295).” As proponents of the infant industry theory saw it, these ladders were protectionist tariffs and other trade barriers.

The Changing Post War Order

Nonetheless, in the aftermath of World War II, these arguments quickly lost favor in the developed world. Between 1948 and 1968, merchandise export volumes exploded by 290% in non-communist countries. More significantly, growth in trade vastly exceeded growth in output during this period in world history (Terborgh 1). Even before the end of World War II, leaders in the Democratic Party began to argue that the tariffs and economic protectionism of the 1930s had significantly contributed to the



outbreak of hostilities in the next decade (Baldwin 7). However, the single largest factor contributing to U.S. trade liberalization was its unprecedented dominance of trade and international payments in the immediate postwar period. As late as 1952, U.S. exports accounted for 35% of the total volume generated by the world's ten largest economies. With the development of the Cold War, trade was viewed as a natural means to maintain geopolitical influence (Baldwin 8-9).

The 1944 Bretton Woods Conference created the core of the postwar economic order, forming the World Bank and IMF in addition to creating a system of fixed exchange rates between industrialized nations. However, many trade barriers went unaddressed in this initial round of negotiations. In order to address these issues, more than 50 countries participated in negotiations meant to form an International Trade Organization as a third pillar of international finance and an offshoot of the United Nations. Around the same time, 23 countries negotiated a package of trade rules and 45,000 tariff concessions that affected about 20% of global trade at the time. This General Agreement on Tariffs and Trade was signed on October 30, 1947 and was intended to operate in concert with but independently of the ITO. However, though ITO negotiations were successfully completed in Havana, Cuba in 1948, it proved impossible to ratify in several national legislatures amid political pressure from domestic industries that benefitted from trade restrictions. Ironically, even though the Truman administration led the negotiations, it was the U.S. Congress that proved most intractable. Thus, the GATT was the only multilateral instrument governing world trade for nearly five decades (“Understanding the WTO”).



Over the next several decades the GATT proved to be a surprisingly effective system to govern world trade. Additional rounds of negotiation resulted in continuous tariff reductions, sparking a boom in global trade throughout the 1950s and 1960s. However, as time went on, governments devised other forms of protectionism like quotas and sanctions—commonly known as non-tariff barriers to trade—that diluted the effectiveness of the GATT. Additionally, as the trade in global services expanded, the agreement itself became less comprehensive (“Understanding the WTO”).

Driven by the need to address these significant deficiencies, the international community began negotiations for a new round of trade agreements in 1986 with a summit in Punta del Este, Uruguay. In the final agreement, advanced economies agreed to reduce tariffs on industrial goods amounting for nearly 2/3 of all imports while developing countries committed to do the same for about 1/3 of total imports (Fieleke 4). Most importantly, the agreement significantly curtailed non-tariff barriers to trade like quotas, which had not been regulated under the GATT (Fieleke 6). In order to prevent trade dumping (exporting products at significantly below-market prices), the negotiations also created restrictions on the level to which products in certain sectors like agriculture could be subsidized without facing trade restrictions (Fieleke 7). Finally, the agreement was the first of its kind to address restrictions on the global trade in services (Fieleke 8). In order to enforce these agreements and provide a framework for settling disputes, the negotiations formed the World Trade Organization. Within this organization, each country has one vote regardless of size. When it was first launched in 1995, the WTO had 81 member countries with more than 50 others in the process of joining. These



initial members accounted for more than 90% of the global trade in goods and services, making the WTO a critical international institution (Fieleke 10).

However, much remains unfinished in the realm of global trade. In the two decades since the Uruguay round, only one global free trade agreement was crafted—the WTO’s very underwhelming Bali package of 2013 (“Game of Zones”). In 2001, negotiators met in Doha, Qatar to forge a pact meant to significantly contribute to economic development and address issues like agricultural subsidies that had not been fully resolved by the Uruguay round. However, after more than 14 years, the talks ended in failure at the end of 2015 “Global Trade After the Failure of the Doha Round”). Instead, countries have ratified more than 10 regional trade agreements a year for the last two decades. Though these agreements are regarded as less efficient in theory than global agreements, in practice the differences are far less obvious. (“Game of Zones”) Thus, over the last two decades, global trade has entered a new chapter in history.



Recent Legislative History

Though global free trade agreements have had a far larger impact on U.S. trade historically, public opinion on the issue has been disproportionately shaped by regional agreements. Of these, by far the most well known is the North American Free Trade Agreement, or NAFTA, which came into effect in January 1994. The ultimate goal of this accord was to phase out most tariffs on trade between the United States, Mexico, and Canada. Over the course of 14 years, tariffs on a wide variety of industries like agriculture, textiles, and automobiles were cut significantly or eliminated entirely. Additionally, the agreement imposed additional intellectual property and environmental protections (McBride). Though the agreement was supported by the Clinton administration, it relied primarily on Republicans for support in the Senate and was approved by a vote of 61 to 38 (Gerstenzang).

The effects of this agreement, however, remain far from settled. A 2003 Congressional Budget report concluded that, though NAFTA probably increased U.S. GDP, it likely was not more than a few billion dollars, or just several hundredths of a percent GDP growth. However, the report does concede that some manufacturing industries may have needed significantly longer to adjust to the accord than others (Villareal 14). Many labor unions in particular view NAFTA as responsible for the loss of thousands of jobs in the decades since the agreement's ratification. In addition to more recent evidence, these arguments will be examined in depth in the case study.

Despite the controversy, these agreements have become significantly more common as a tool of economic policy over the last two decades. In 2005, the U.S. and several Latin American countries completed negotiations on the Dominican Republic-



Central America Free Trade Agreement, or CAFTA. More recently, the Obama administration reached bilateral free trade agreements with Colombia, Panama, and South Korea. These agreements were approved with bipartisan support in both houses of Congress and seemed to signal the continued warming of attitudes in both parties toward free trade.

The Trans-Pacific Partnership

The Trans-Pacific Partnership is a regional trade agreement signed on February 4, 2016 that has yet to come into effect or be approved by the U.S. Congress. The accord has been signed by representatives from Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam. These countries combined account for about 40% of global output and 20% of trade. The agreement as written would reduce or eliminate both tariff and non-tariff barriers across virtually all industries between signatory countries (USTR). This would affect more than 18,000 different tariffs. Moreover, tariffs on all American manufactured goods and almost all American agricultural products would be eliminated (Gerwin). Finally, the agreement would strengthen intellectual property protections and would create a mechanism for resolving disputes between investors and foreign governments (USTR).

Since it was announced, the agreement has sharply divided economists. The mix of developed and emerging markets on its own has created significant controversy. In an independent analysis, the World Bank concluded that the agreement would raise regional GDP by about 1.1% by 2030 (World Bank). However, another, somewhat more controversial study from Tufts University found that the agreement would eliminate more



than 450,000 jobs by 2025 (Capaldo). On the whole, the nonpartisan Congressional Research Service notes that evidence appears to be in favor of the agreement providing minor but tangible economic benefits to the U.S. However, it is also likely that the agreement will have significant negative effects on some industries previously protected by trade barriers (“The Trans-Pacific Partnership in Brief”). Though the Obama administration has been pushing for a vote in the near future, it is unlikely to happen before the 2016 election. With trade taking on such a major role in the presidential election, it remains to be seen whether the Trans-Pacific partnership has a political future in its current form. However, even if it is approved, much remains to be done in order to help the hardest-hit communities adapt to globalization.

Trans-Atlantic Trade and Investment Partnership

Viewed as a compliment to the TPP by the Obama administration, U.S. officials are also hard at work negotiating a free trade agreement with the European Union. Such an agreement has been proposed since the 1990s, and negotiations formally began in 2013 as the Trans-Atlantic Trade and Investment Partnership. Agriculture remains a major sticking point in the negotiation. Many EU products like Parmesan cheese and champagne are protected by Geographical Indications that restrict the usage of these product names to only those goods produced in designated regions under specific criteria (“For the Love of Pizza”). However, the U.S. has long ignored these restrictions and produced goods under the same names. At the same time, both regions must come to terms on agricultural subsidies and agree to a host of other standards. Complicating these matters further, populism is on the rise in both Europe and the U.S. Two years ago a majority of Americans supported the TTIP. However, in



the most recent poll, support for the agreement has dropped below 20%. Many have come to view trade agreements as job-killers that send traditionally good-paying industries overseas. If these trends continue, it could signal the beginning of a new era of global protectionism.

The Role of the Senate

Unlike for traditional legislation, the role of the U.S. Senate is somewhat different when it comes to signed trade agreements. Under trade promotion authority previously granted by Congress, the president has the power to negotiate trade agreements conditional on approval by both houses of Congress. Thus, the Senate's traditional role is to review an existing accord rather than creating one. However, trade agreements are rarely passed in isolation. In order to insure a smooth implementation and help those negatively affected by trade, Congress has traditionally created auxiliary legislation. Most recently, this "trade adjustment assistance" was passed in a combined bill with a renewal of trade promotion authority. In short, the role of the U.S. Senate will be twofold in the coming months: it will debate any trade agreements sent to it by the President and then craft companion legislation to maximize trade's benefits for the American people.



Case Study

NAFTA

It began as a Republican initiative but was passed by a Democratic president (“NAFTA Signed”). It has simultaneously been promoted as savior, and decried as executioner, of the American manufacturing industry. It is the North American Free Trade Agreement (NAFTA), and it created the world’s largest free trade zone when it came into effect on January 1st, 1994 (“NAFTA Signed”). NAFTA removed “virtually all” tariffs and trade restrictions between the U.S., Mexico, and Canada (“NAFTA Signed”). Negotiated on the heels of the 1991 recession, it quickly passed through Congress largely because of two accompanying “side agreements”: the North American Agreement on Labor Cooperation (NAALC), which created a transnational enforcement mechanism for labor regulations; and the North American Agreement on Environment Cooperation (NAAEC), which promotes sustainable development and strengthened environmental protection (O’Leary et al). NAFTA’s incorporation of environmental and labor issues into a free trade agreement (FTA) set a precedent that all subsequent FTAs with the U.S. have followed (O’Leary et al).

Proponents of NAFTA claimed free trade would create a more favorable environment for U.S. companies to sell in and would increase imports, thereby forcing competition and providing American consumers with quality goods at lower prices (Glassman). Furthermore, they argued, freer trade would facilitate economic development in Mexico, leading to job growth that would discourage illegal immigration to the United States (McBride and Sergie). Meanwhile the opposition derided NAFTA as a means to “free American corporations from U.S. laws protecting workers and the



environment” by removing the obstacles to relocating to comparatively under-regulated Mexico (Faux).

Despite 20 years of hindsight, NAFTA’s impact remains unclear and both sides of the debate claim the evidence supports their side. Take employment as an example. In a debate against Democratic presidential nominee Hillary Clinton, Senator Bernie Sanders cited a study by the left-leaning Economic Policy Institute accusing NAFTA of eliminating 800,000 American jobs (the Economic Policy Institute is not alone in holding NAFTA responsible for the relocation of jobs from the U.S. to Mexico) (Greenberg; McBride and Sergie). At the same time, Martin Baily of the Brookings Institute has said NAFTA may not have cost the U.S. any jobs, and the U.S. Chamber of Commerce has claimed NAFTA created millions of jobs (Greenberg; NAFTA, 20 Years). Politifact has dismissed the Economic Policy Institute’s estimate as an outlier, and the Economic Policy Institute argues the U.S. Chamber of Commerce’s claim “disingenuous[ly]” ignores key data (Greenberg; NAFTA, 20 Years).

Complicating analysis of NAFTA’s effect on employment, and NAFTA as a whole, are other factors such as globalization, rapid technological innovation, changes in domestic policy, normalization of trade relations with China, and the Great Recession. Research demonstrates that China and technology have had a much greater negative impact on U.S. jobs than NAFTA, and many economists believe these factors ensured job losses would have occurred even without NAFTA (McBride and Sergie; NAFTA, 20 Years). As Bloomberg points out, “a significant portion” of factories, American and otherwise, have since moved to China and India (Glassman).



To some economists, employment is not an accurate measure of NAFTA's success. Economist Walter Kemmsies explains that 40% of US imports from Mexico in 2014 were "derived from U.S. sources," versus 5% in 1994; "This," he says, "is the symbol of the success of NAFTA" (NAFTA, 20 Years). And according to some research, job loss is not necessarily bad for the U.S. as a whole; one study showed a \$450,000 gain in higher productivity and lower prices for every job lost per year to NAFTA (McBride and Sergie).

To say the least, consensus on NAFTA remains elusive. Regional trade has increased dramatically, as has cross-border investment; employment is also greater now than when NAFTA was implemented – 22% higher, to be specific – but the aforementioned factors (globalization, technology, China, etc.) make it difficult to determine if NAFTA can take credit (McBride and Sergie; Glassman). It appears that NAFTA has benefited the U.S. economy, but the benefits – diffuse as they are – are not as perceptible as the costs, which are "highly concentrated in specific industries like auto manufacturing" (McBride and Sergie). The average consumer now enjoys improved goods at lower prices, but this does little to help those who lost their jobs, whatever the reason (McBride and Sergie). In the 15 years after NAFTA, American employment in traded goods industries fell 18.5% (O'Leary et al.). Many displaced workers have been unable to find new jobs – even after completing a government re-training program (the NAFTA-TAA) – and those that found new jobs experienced an average earnings loss of 13% (O'Leary et al.).

The Congressional Research Service, a nonpartisan policy division of Congress, reports NAFTA "did not cause the huge job losses feared by the critics or the large



economic gains predicted by supporters [...] The net overall effect of NAFTA on the U.S. economy appears to have been relatively modest” (Greenberg). The Organization for Economic Cooperation and Development (OECD) independently came to the same conclusion (Greenberg). While NAFTA on its own may not have radically effected the U.S. economy, its legacy sure has. Since the passage of NAFTA, a “new era” of FTAs has begun, and along with them, fresh debates about the value of free trade (McBride and Sergio).



Conclusion

Trade agreements have become an integral part of the U.S. and global economic order. Economic consensus indicates that trade can have significant positive impacts on the lives of ordinary citizens in the medium and long run. However, this reality provides no comfort to the former employees of factories around the country that have been shut down and moved overseas. It is the job of the Senate to evaluate trade agreements on a fair and objective basis, and come up with a compromise that maximizes the welfare of all stakeholders. Please come to committee having studied the concerns of your constituents and ready to work on behalf of them. Together we can forge a path forward toward greater prosperity for all.



Questions to Consider

1. What effects will the TPP and TTIP have on American businesses? On ordinary Americans?
2. What kind of trade adjustment assistance should the federal government provide to citizens who lose their jobs from trade agreements?
3. How can the U.S. government balance the needs of Americans affected by trade with those of even poorer citizens in developing countries who stand to benefit from free trade?
4. What kind of effects do free trade agreements have in projecting American power overseas, forging alliances, and promoting democracy?
5. Should industries important to national security (eg. shipbuilding, aircraft manufacturers) be protected from foreign competition with tariffs and other trade barriers?
6. How important is the TPP to counteracting China's growing influence throughout Asia?
7. How should the U.S. respond to increasing populist backlash against free trade agreements?



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