Ambassador Kirk’s vaguely mysterious phrase – “21st-century trade agreement” – implies two things: That there is something different about trade in the 21st century, and that policy needs to evolve in response. The concept’s meaning, however, has never been entirely clear. Trade itself tends to grow over time, agreements become incrementally more complex – but this has been going on for many years. But Kirk was correct to suggest that there has also been a more abrupt change in trade: the sudden emergence of the Internet as a pathway for trade in services, for small-scale business, logistics and supply-chain management, arts and media, and more.

This change does require policy to adapt and to take on some new missions. The TPP agreement is moving toward a likely conclusion this spring, and Congress has begun a discussion of Trade Promotion Authority. As both proceed, the question the uniquely ‘21st-century’ aspects of policy can help answer is about the nature of the global economy of 2030: perhaps one in which the Internet helps create a more affluent, more pluralistic, and more humane global economy; or, alternatively, one in which the digital world fragments, thickens, and ultimately comes to mirror the divisions of the physical world.

INTRODUCTION

Twenty years after the launch of the World Wide Web, nearly three billion individuals and millions of businesses use the Internet daily. As they search, shop, debate, and browse, they are in a practical sense moving data around the world in the form of ordered photons and electrons. The consequences materialize in the complex worlds of global banking, logistics and manufacturing; in daily life, entertainment choices, shopping, and teen texting; and in the nascent worlds of telemedicine, mobile wallets, and tailored cloud services.
If the Internet develops in the next two decades as it did in the last, these everyday surprises will simply be the early signs of a more fundamental evolution: the creation of a future global economy with ethical roots in the free flow of ideas, more able than today’s to raise living standards, empower individuals and small businesses, and assist the poor.

There is also an alternative future, rooted in nationalistic policy trends and data restrictions, and divergences of policies over privacy, cyber-security and other essential regulatory systems. Should this be the actual future, the Internet will evolve away from today’s still mostly open and egalitarian global space, to emerge instead as something fragmented and diminished, at least in comparison to what might be.

And here is the challenge for the agreements the Obama administration has hoped to conclude – the TPP, the Trans-Atlantic Trade and Investment Partnership, and the Trade in Services Agreement, which together cover 80 percent of world Internet traffic, and perhaps new options at the World Trade Organization – and for Congress as it debates a Trade Promotion Authority law which can define their content. If the genuinely new feature of 21st-century trade is the digital world, the mission of 21st-century “trade policy” is to preserve the integrity of the Internet as a global space for commerce, and to encourage policies that help it develop as it should:

- Free flow of data across borders, without arbitrary blockages or “forced localization”;
- Rights to transparent common-good regulation (to ensure privacy, protect national security, defend public morals based on national choices, enforce copyright and libel laws), rather than arbitrary, politicized, or protectionist limits on trade;
- Services guaranteed access to world markets;
- Trade facilitation encouraging small shipments of goods through *de minimis* exemptions from tariff schedules to support individuals and small businesses as they take up larger roles in trade.
- Privacy measures to ensure that diverging national laws do not rupture Internet links;
- Standards-setting procedures which encourage accelerated technological advance in devices and manufacturing;
- Intellectual property rules that encourage innovation and deter piracy, through strong copyright protections for innovation and content, and (as introduced by U.S. negotiators in the TPP talks) exceptions and limitations based in U.S. law which encourage cloud computing, user-created content, and new Internet services yet to be invented.

20TH-CENTURY TRADE POLICY AND ITS SUCCESS

It oversimplifies, but doesn’t mislead, to describe 20th-century trade policy as a long restorative effort. Launched with the New Deal Congress’s passage of the Reciprocal Trade Agreements
Act in 1934 and pursued ever since, it has been an effort to repair a global economy broken by misguided policy, and to prevent similar future mistakes.

Franklin Roosevelt and his allies designed 20th-century trade policy on the basis of an observation from experience, and a belief about the future. Their premise was that by raising tariffs between 1929 and 1931, the U.S. and its partners had harmed the global economy and deepened the Depression; and that this in turn had encouraged political radicalism and helped create the conditions for the Second World War. Their belief (or hope) was that if raising barriers had made the world poorer and more dangerous, reducing barriers might help rebuild prosperity, prevent a repetition of the Depression, and, over time, strengthen peace. Roosevelt’s 1945 message to Congress explains:

“If it is clear that barriers to foreign trade are coming down all around the world, businessmen can and will direct production to the things that look most promising under those conditions. In that case a real and large and permanent expansion of international trade becomes possible and likely. … The purpose of the whole effort is to eliminate economic warfare, to make practical international cooperation effective on as many fronts as possible, and so to lay the economic basis for the secure and peaceful world we all desire.”

Since then, 20th-century policy has continued across 17 more grants of Congressional negotiating authority to 12 presidents. Their negotiators have in turn completed 13 multilateral and “plurilateral” trade agreements, 15 Free Trade Agreements and 137 “accessions” to the GATT and the WTO. It is by no means complete: big economies such as India, Brazil, Egypt, South Africa often remain relatively closed, agriculture and textile trade are sharply limited almost everywhere, American home-goods tariffs remain at 1950s levels, and developing-country automotive trade barriers remain high. And while all major economies but Iran are now WTO members and 20 are FTA partners, formal acceptance of rules is obviously not the same thing as full compliance.

This admitted, a lot of the work begun in 1934 is done. The high barriers of the 1920s and 1930s are mostly gone, and where they still exist, WTO rules make them at least transparent and predictable. Trade flows tariff-free (or nearly so) in huge swathes of the goods economy – natural resources like gems, oil, and ore; tropical farm products like coffee, cocoa, and tea; high-tech goods like medicine, medical devices, smart phones, airplanes, military gear and satellites; and consumer products from furniture and toys to beer and laptops. WTO agreements and FTAs keep customs rules transparent, make standards-setting and intellectual property rules consistent across countries, and (in a few cases) open services markets.

The modern global economy combines these liberalizing policies with logistical innovation – air cargo, container shipping, express delivery – and better communications technology. It has many critics who make many valid points: competitive stress, the need for worker adjustment, challenges for border regulation, and ethical questions of equity, labor standards, and environmental policy arising in areas where rich and poor economies meet. All these require
careful thought and good policy response, sometimes through the evolution of agreements and sometimes through aid, capacity-building, domestic policy, and other means.

But the same critics often miss important facts. The world is considerably richer. The opening of the global economy has given the broad publics of the United States and wealthy countries an unprecedented degree of ‘mass affluence’ – fresh raspberries in winter, low-cost designer clothing, astonishingly cheap smart-phones and large-screen TVs – while encouraging a steady expansion of the middle classes of lower-income countries and a rapid recession of poverty.

The world economy is more stable. No postwar financial or resource crisis has caused anything comparable to the misery of the Depression; to the contrary, in a relatively more open world economy Americans were able to raise exports by 50 percent after the 2008 crisis, helping thousands of factories stay open and keeping millions of American men and women at work.

Most of all, we have come a long way toward Roosevelt’s ideal of a ‘secure and peaceful world.’ The more open world has in fact been safer: we are now in the midst of a sixth unbroken decade era of peace among the world’s great powers, a span without precedent in historical records.

THE FUTURE ECONOMY: MORE AFFLUENT, MORE PLURALISTIC, MORE HUMANE

Looking back, 20th-century trade policy has been a job done, obviously not perfectly but remarkably well. And now we have something new – a technology that very suddenly enables the mass transfer not of goods but of ordered information, worldwide and at very low cost.

Since the World Wide Web went live in 1993, the Internet has joined the China boom as the dynamic and disruptive fact of economic life. Limited to technology enthusiasts and lab professionals in the early 1990s, largely the domain of wealthy countries in 2000, it is now a global space in which nearly 3 billion people talk, argue, share entertainment, shop, sell, and learn. By 2017, according to Cisco’s projections, its ‘population’ will be approaching 4 billion; by 2020 it should reach essentially all of the world’s businesses, schools, research labs, banks, retail outlets, artists, scientists, and middle-class shoppers.

The Internet’s logical development over the next two decades is toward a world of more users, more capable data centers to store information, more powerful search engines to order it, better satellites and fiber-optics to transmit it around the world, and therefore of new possibilities. Considering these possibilities, Members of Congress debating the TPA bill have the chance – as Roosevelt did in thinking about the first multilateral trade negotiations 70 years ago – to look ahead and envision something better than we now have. Fundamentally, if today’s global economy is more open, stable, and peaceful than that of the 1930s, the right policies can make the global economy of the 2030s radically more affluent, pluralistic, and humane than today’s.
1. **More affluent:** First, the Internet’s creation of a global services economy can make the world much wealthier. 20th-century trade policy helped bring luxury goods once available to the wealthy (or nobody at all) to a mass public. By analogy, the Internet of 2030 can bring services now reserved for an elite to the global public.

What, after all, does the Internet do now? Fundamentally, it offers mass access to a torrent of products, in the form of electrons and photons arrayed as meaningful bits of data. These are Netflix videos for home theaters; CNN, the BBC, and al-Jazeera offering their various global audiences locally tailored news; iTunes and Spotify allow very small music purchases; teledicine providing 24-hour radiological services to small-town hospitals and clinics; search engines enabling individuals to shop online, make reservations for hotels and air-flights; cloud services that allow individuals to buy sophisticated software for single or tailored use at very low cost; online banking and bill-paying; and so on.

Until recently services like these crossed borders only in small volume via telephone, radio, and similar older media. And today’s flows are small and crude in comparison to what might lie ahead. The logical future is one in which more capable fiber-optics, satellites, and routers convey data held in more powerful servers, consumers use more efficient search engines and steadily more powerful software to find the information they need. As this proceeds, all sorts of services - arts and entertainment, financial services, online retailing, news and media, teledicine, distance education and hundreds of new industries that don’t now exist will become available not just to a relatively limited rich-world public, but to a world population of five billion Internet users.

Trade on this scale will support not only consumer opportunity but macroeconomic growth through new investment and employment. To adapt some figures, note that the commercial services best suited to Internet trade – arts and media, financial services, medicine, research, telecommunications, and so on – now account for about 10 percent of trade. (In practical terms this is about $2.3 trillion in exports as of 2012, as against $18.3 trillion in goods exports.) But they make up a much larger 30 percent of American and other developed-world GDP. As the Internet allows larger quantities of data to move at lower cost, services will catch up with manufacturing – just as 20th-century policy helped manufacturing overtake agriculture and resource trade in the last century.

Even if we ignore the potential of new demand to support new investment and industries, and assume that cross-border trade in services grows to equal its share of the U.S.’ domestic GDP, the figures are startling: Americans would export $400 billion a year more than we now do, the U.S. trade imbalance would close, and world exports would grow by nearly $3 trillion – all through the supply of services that make people’s lives richer, safer, healthier, and more fun.
2. **More Pluralistic:** Second, the Internet will make the world economy more ‘democratic,’ by giving small businesses and individuals greater power to shape the global economy.

To oversimplify, today’s world of trade in goods – the flows of clothes, tablets, beer, jewelry, and so on – is managed by large organizations. These are retailers, manufacturing complexes, logistics firms, and others using ‘big data’ to predict and satisfy consumer preference, and elaborate global value chains which create and move products efficiently from source to assembler to buyer.

Small businesses participate in these value chains, but more often as vendors for distributors and suppliers of specialized parts rather than as initiators. Barriers to their direct participation in international trade are high: small businesses lack dedicated legal staff to manage customs firms, and can rarely afford to send executives abroad to find and court potential new customers. Therefore relatively few small businesses export – in the U.S., the fraction is about 4 percent.

The Internet removes many of these barriers, enabling small businesses and individuals to use search engines, online auction sites, and express delivery services to find buyers, ship goods in small quantities to faraway customers, and so to become exporters. A bit of real-life illustration comes from eBay’s 2012 report *Commerce 3.0: Enabling Traders to Enter and Grow on the Global Stage*, which looks at eBay’s own users as exporters. Again, only 4 percent of American businesses as a whole export; by contrast, 97 percent of eBay’s business users are exporters, and small businesses export nearly as much of their total sales as large businesses:

“A remarkably high share of U.S. sellers on eBay engage in cross-border sales: out of those sellers considered as commercial sellers [i.e. among eBay’s business users, as opposed to individual] a staggering 97% export. … [S]mall and large sellers on eBay are almost equally likely to export: even the smallest 10% of commercial eBay sellers overwhelmingly engage in exports (94%). Small sellers on eBay export a share of 14% [of online sales] – not very different from the behavior of the largest 10% that export 18%.”

eBay is of course only one auction site, even if it’s quite a big one. But the Commerce Department’s annual systematic count of exporters shows the same thing. Released each April, these reports find small-business participation in trade rising fast. In the three years after the crisis, the U.S. was adding nearly 15,000 new exporting businesses a year, most of them small manufacturers employing fewer than 20 workers. One can assume, though not with certainty, that these are firms using auction sites, search engines, and e-mail services to find buyers abroad.

As capacity to do this grows, the future will be one in which smaller entities – businesses, artists, and families, as exporters and as choosers of the world’s goods – are much more powerful shapers of the global economy than they are today; and in which the global economy itself is if not more ‘democratic,’ then at least more pluralistic.
<table>
<thead>
<tr>
<th>Year</th>
<th>Total exporters</th>
<th>Small businesses*</th>
<th>Large businesses</th>
</tr>
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<tr>
<td>2001</td>
<td>242,000</td>
<td>165,000</td>
<td>26,000</td>
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<tr>
<td>2006</td>
<td>245,000</td>
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<tr>
<td>2011</td>
<td>302,000</td>
<td>233,000</td>
<td>23,000</td>
</tr>
</tbody>
</table>

* Adapted from Census Bureau “Profiles of U.S. Exporting Companies.” This table defines ‘small business’ as businesses employing 19 or fewer workers and ‘large business’ as employing 100 or more, and assumes that businesses for which the Department does not have employment totals are overwhelmingly small. If this latter group is excluded, the total of small business exporters rises from 94,000 in 2001 to 107,000 in 2009, and since then to 114,500.

3. **More humane:** Finally, both trends – a more affluent world public, and a more pluralistic economy – suggest a future significantly friendlier to the poor.

To be simplistic but not misleading, poor people usually have two problems to solve – they have little money, and they live far away from the main markets. The lack of money is obvious, the rural question sometimes less so. But to put figures on it, 900 million of the world’s 1.2 billion people in absolute poverty are rural people, as are a smaller but still disproportionate share of Americans below the national poverty line.

Internet access is no cure for either. But it does help reduce the barriers both pose to efficient use of income and to higher living standards by easing access to suppliers of essential goods and services. Examples appear in many fields – education, purchase of necessities and small amenities, communication with friends and relatives – but two areas may be especially significant.

One is access to a suite of basic health services – in particular monitoring of prescription medicines, chronic conditions, maternity, and radiology – in which long-distance monitoring and information flows can compensate for distance from centers of care. Rural people have higher rates of maternal mortality, infant mortality, and deaths to accident or treatable illness than anybody else. This is in part because they have little money to pay for services, but mostly because they usually live far from clinics which offer emergency services and routine care for illness and pregnancy, and very far from specialists needed to address more complex problems. Internet access via mobile phone allows regular, low-cost monitoring of patients and prescriptions at a distance, and easy, emergency consultation for patients far from urban hospitals. One recent real-world case in point comes from the Australian Broadcast Company, noting that “m-Health,” the delivery of medical advice and monitoring via cell-phone, is helping to cut maternal mortality in East Timor.

Another is the acceleration of ‘financial inclusion’, meaning the ability of low-income people to build savings and credit, and access loans to support small businesses, via ‘mobile wallets’ and virtual accounts. Low-income regions in poor countries have few bank branches, meaning that
most people in very low-income rural areas live by no-profit bartering of goods, and save money by high-risk and interest-free hoarding of cash and jewelry. Internet access is a unique way for these people to enter modern health and financial systems. One example is a hint of what may be possible: Kenya’s online banking service m-Pesa has helped to bring 17 million people from the traditional cash economy to the world of savings, interest, and credit, by enabling them to open very small-value accounts, take out small loans, and carry money through slums without physical risk. The service, launched in 2007, now operates in two other African countries.

… OR PERHAPS NOT

Quite a prospect. But perhaps only some of it – maybe little – will actually materialize. Here we can return to 20th-century trade policy for a lesson – not to recapitulate its achievements or criticize its shortcomings, but to remember why the politicians of the 1930s invented it.

Trade was of course not invented in the 1930s. The later 19th-century world economy was not primitive, quaint, closed, or fragmented. From the 1850s to the 1920s, it was open, technologically progressive, and linked more powerfully by information and logistical services than ever before. In this “steampunk” global economy, low trade barriers encouraged by a British-led treaty system joined the replacement of sail by steam. The Suez and Panama Canals cut months off maritime cargo deliveries, and the first wiring of the world through submarine telegraph cables opened instant communication to every continent by the 1870s. Finally, a series of multilateral agreements standardizing weights and measures, defining time zones, promoting international recognition of copyright and patents, and ensuring cable compatibility helped create a single world space for goods flows and information.

This global economy declined and then collapsed not because it was inherently unstable or ‘overreaching.’ Rather the causes were political rivalries among great powers, and the failure of 19th-century trade policy to provide legal support to flows of goods like that created by today’s WTO agreements and Free Trade Agreements. The 19th-century treaties were relatively weak, lacking policy “bindings” comparable to those of modern agreements; and no organization like the WTO existed to keep markets open and arbitrate disputes. This was convenient for high-tariff politicians in 19th-century America, Germany, and France, when all relied on Britain to keep an open market. In 1884 a ‘liberalizing’ Congress could lower tariffs, and in 1890 a more conservative Congress could raise them back, without much worry in either case about foreign reaction. But in the early 1930s, when all countries raised barriers simultaneously (and then began to compete by devaluing currencies), financial crisis became Depression and collapse.

The modern Internet economy has a similar weakness. A dazzling technological and engineering achievement, it has little more underpinning of policy than did the steamship-and-telegraph economy of 1913. No international agreement protects the free flow of data across borders in the
way that the GATT system has provided security for flows of goods. Governments feel free to coerce investment and data storage, bias standards-setting toward local champions, and even demand local production of IT software and hardware. And WTO agreements offer few guarantees of ‘market access’ to the service industries now just beginning to send their arrays of photons across the Internet. And beyond this, Internet trade poses questions of privacy, cyber-security and other challenges which, combining technical complexity with emotion as they do, require careful thought and international cooperation to avert the ruptures they can cause.

Thus two challenges to the Internet’s future have emerged and appear likely to worsen rapidly, as governments react to lobbying campaigns by businesses and NGOs, spy scandals, and other inevitabilities of political life:

**Advanced-economy divergence:** The United States and the European Union are not imposing severe new limits on internet use or data flows. But they are diverging rapidly in approaches to the online user privacy guarantees essential to people on the Internet using credit cards to buy and sell things, exchanging health information with hospitals, and validating identification with Social Security numbers. No longer fluid and malleable as they were in the 1990s, these divergences are setting ever more firmly in public opinion and law. They need international agreements to ensure that they do not rupture the Internet, thicken the ‘virtual borders,’ and severely degrade economic ties across the Atlantic in particular but worldwide as different countries adopt diverging models.

**Middle-income country ‘data nationalism’:** Still more ominous, many large and fast-growing middle- and lower-income countries are experimenting with attempts to bring economic nationalism to cyberspace. These include arbitrary and politicized limits on flows of data across borders, laws requiring local storage of data (and hence expensive multiplication of servers, pressure on world energy supplies, and so on), manufacturing of high-tech IT goods, and politicized standards-setting. Examples come from four of the world’s five largest countries – China, India, Indonesia, and Brazil, together home to 2.8 billion people and nearly half of the 2 billion new Internet users. All are conducting ambitious and ill-advised experiments in data limitation, buy-local rules, and forced localization:

- **Brazil** has reacted to the fall’s National Security Agency eavesdropping controversy by proposing to require companies operating in Brazil and using Internet data to store that data within the country. This is justified as a security measure to protect Brazilian personal data from electronic espionage, but is obviously unlikely to deter a modern intelligence service. If the bill in question passes, on the other hand – as of this writing it is under Congressional consideration – it is likely to raise access and data storage costs, slow the growth of Latin America’s Internet use and Internet industry development,
frustrate ordinary people hoping to buy and sell things, and create a fracture zone through which information moves only with difficulty and unnecessary expense.

- *China* has created a counter-Internet surrounded by a famous “Great Firewall,” and regularly blocks international data traffic for unexplained reasons or political purposes entirely unrelated to users.

- *India* has, in certain circumstances, required telecommunications operators and service providers to keep certain data in-country and allow access to law enforcement and security agencies. Press reports also indicated that Indian government officials placed significant pressure on certain telecommunications companies to locate servers in-country and hand over data to security services, or risk losing their ability to operate.

- *Indonesia* has published regulations requiring all businesses providing public services (leaving the definition of this term so far undefined) to keep data centers, and backup data centers, within national borders.

All this suggests a different future for the Internet in 2020: no longer today’s single borderless space, it might instead be a virtual world of “walled cities,” “gated communities,” “national clouds” or other unpleasant metaphors depicting suspicion, fragmentation, and lost sense of global common good.

Should this be the real future, the losses would be large. Money which might finance new and more efficient servers, lay advanced fiber-optics to homes, launch satellites, and research new services will instead be dissipated in building millions of redundant servers and paying off the high cost they impose on developing-country power grids. (To put this in perspective, the United States today is home to about a third of the world’s servers, and already uses about 2 percent of its power generation to store data.15) As the open protocols, borderlessness, and transnational communities of the contemporary Internet fragment, some of the wealth gained through integration and larger markets will never materialize; hopes for mHealth, financial inclusion, and other opportunities for working-class and poor communities would be reduced in scale and delayed in time. Ultimately, the online world would be permanently diminished – likely not by the kind of crisis and collapse which broke the global economy in the 1920s and the 1930s, but still emerging as something smaller, poorer, and more divided than it might have been.

21st-CENTURY TRADE POLICY: THE AGENDA

Here is the challenge for the American negotiators in the TPP, TTIP and TISA; and for Congress as it considers Trade Promotion Authority.
If the goal of 20th century policy was to reduce barriers and reopen a closed economy, that of 21st-century policy would be to make such a chore unnecessary. This requires agreements that keep the Internet open while ensuring rights to public-interest regulation; ensure that divergences in national policy do not rupture internet links; encourage the intellectual property and liability policies that support online innovation, artistic creation, and the lively exchange of information; and continue bolstering policies that encourage development of new and better information technology hardware.

For the next three years, the goal would be to create a policy consensus through the TPP, the T-TIP, and the Trade in Services Agreement. The participants in these agreements – the U.S., Japan, the 28-member European Union, Australia, New Zealand, Canada, Mexico, Peru, Chile, Singapore, Malaysia, Vietnam, and others - account for most world services trade and are home to most of the world’s major Internet, software, and IT companies. Their ability to agree on the basis of 21st-century trade policy would have a powerful (though of course not an inherently decisive) influence over future Internet policy, and would make it far more likely that online trade will develop as it should.

If the agreements are the goal, the Trade Promotion Authority bill is a chance for Congress to set the parameters of these agreements. As it works through the bill, it should keep in mind the following goals:

1. **Free Data Flow:** All three agreements should ensure that data flows freely across borders, unless there is a clear and published reason based in negotiated market-access limits for services or public-interest regulation in areas specified as exceptions (i.e. for national security, crime control, public morals, and so on). The Joint Statement by the U.S. and European Union two years ago is a point of departure:

   *Cross-Border Information Flows:* Governments should not prevent service suppliers of other countries, or customers of those suppliers, from electronically transferring information internally or across borders, accessing publicly available information, or accessing their own information stored in other countries.

Agreements need also to specify, using standard General Agreement on Trade in Services “exceptions” terminology and ‘least trade-restrictive’ regulatory principles, that governments have rights to limit and sometimes prevent flows of data, so long as they do so in a non-discriminatory way with a clear public-good purpose, e.g. to fight spam; enforce laws against pornography, hate speech, libel, and other abuses; or endanger the public by (for example) publishing guides to production of sophisticated weapons or names of intelligence agents, and do so in a way that meets the objectives with the least restriction to data.
2. **Discourage or Ban Forced Data Localization:** Companies using the Internet should be free to store data in the most efficient ways, avoiding the expense and wasteful use of electric power needed to manage redundant data centers spread around dozens of countries. The agreement would create this principle, with specified exceptions for clearly valid public-policy reasons or particularly sensitive data. Again the U.S.-EU statement of 2011 provides a foundation which can be made binding through the T-TIP and TPP:

   *Local Infrastructure:* Governments should not require ICT service suppliers to use local infrastructure, or establish a local presence, as a condition of supplying services.

3. **Open Markets for Services:** Agreements should include a comprehensive set of market-access rights for services, based on a “negative-list” approach that requires countries to specify the areas in which rights to sell (either from investment or across borders) will be subject to limits, and what these limits will be.

4. **Mechanisms for Privacy-Policy Compatibility:** Rather than setting a single global standard – likely impossible given differences of law created since the 1990s, and different privacy priorities in different countries – trade agreements should include “Safe Harbor” clauses which enable businesses to be certified as meeting national standards and therefore enable them to shift data across borders. One model is the Safe Harbor system negotiated between the US and the EU in 1999, in which American companies have been ‘certified’ by the European Commission as compliant with EU law; other options include mutual recognition agreements or alternative legal mechanisms.

5. **Trade Facilitation and De Minimis Rules:** The TPP and TTIP should encourage development of express delivery services, modern customs systems which use IT (and ideally “Single Windows), and high “de minimis’ waivers for tariffs to encourage trade in very small shipments of goods. This includes rights to make deliveries via plane and ground transport, and zero-tariff policy for shipments of goods valued at less than, say, $2,000, and capacity-building programs for developing-country partners involved in the TPP, notably Vietnam, Peru, and Brunei, to ensure that they can fully participate in small-scale trade.

6. **Standards-setting and approvals:** Ensure transparent procedures for approving new products, where possible through voluntary multi-stakeholder standards-setting procedures rather than processes entirely led by governments. Where government-based approvals are essential, encourage use of approaches developed by FDA, CPSC, and other regulatory agencies.

7. **Online Intellectual Property:** The administration in the Trans-Pacific Partnership has proposed a new formula for online copyright, joining traditional advocacy for high standards of copyright protection for authors and software with explicit proposals reflecting U.S. doctrine on limitations and exceptions of rights, and ‘safe harbor’ provisions based on Digital Millennium
Copyright Act provisions limiting remedies against intermediaries. This is a useful evolution of policy, continuing to support artists, authors and technological innovators, while as the U.S. Trade Representative observes also encouraging the technologies that develop search, data analytics, cloud computing, user-generated content, crowd sourcing and other innovations.

CONCLUSION

Ultimately, then, “21st-century trade policy” differs from 20th-century trade policy because of its mission: rather than an attempt to repair mistakes made in the past, it is an effort to preserve the possibilities of the future.

Roosevelt and the New Deal Congress in the 1930s were able to foresee, not in detail but in general, that a reintegrated world would be wealthier and more peaceful than the one in which they lived. The 20th-century agreements which followed on their work have created a global and sophisticated economy for goods trade, which raises many important questions and causes many stresses, but has made the world fundamentally wealthier and safer.

In the 2010s as well, participants in the debate will not be able to see the details of the world economy of the 2030s. But there is good reason to believe that they can imagine one better than ours, and devise a policy to help create it. This is the meaning of Kirk’s elusive phrase, and the hope of the 21st-century agreements policy is genuinely breaking new ground. As Congress argues out the terms of Trade Promotion Authority and debates the TPP, it is not the only important question – but the answers they find may be the ones we remember as the 21st century wears on.
3 Cisco, op. cit.
4 WTO International Trade Statistics 2013, Table III.1., at https://www.wto.org/english/res_e/statis_e/its2013_e/its13_toc_e.htm
5 Ibid.
7 Profile of U.S. Exporting Companies, Census Bureau, 2001-2002 to 2010-2012 (most recent available data), at http://www.census.gov/foreign-trade/aip/index.html#profile
8 Ibid.
11 mPesa can be reached via its parent firm, safari.com, at http://www.safaricom.co.ke/?id=257
13 Data from WorldInternetStats 2013, at http://www.internetworldstats.com/stats.htm
14 Drawing on research by the U.S. Council for International Business, cataloguing “localization” requirements of various sorts worldwide as of late 2013.