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Fast-Track and WTO Information Binder

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Challenges Facing the World Trade Organization

Jeffrey J. Schott

The agreement establishing the World Trade Organization (WTO) entered into force on 1 January 1995. In many respects, the "new" trading institution is very much like the "old" General Agreement on Tariffs and Trade (GATT) regime, which had governed world trade since the late 1940s. The WTO embodies 50 years of multilateral trade negotiations in the GATT, which liberalized trade and established a substantial body of trading rules.

As a result of the agreements negotiated in the Uruguay Round, which addressed issues previously not covered by world trading rules (e.g., trade in services, trade-related investment measures, and intellectual property rights), WTO obligations apply to a larger share of global commerce than the GATT did. For this and several other key reasons, the WTO is different from its predecessor.

The most significant difference is the "single undertaking" of the WTO agreement. WTO members must accept all of the obligations of the GATT and its corollary agreements (with a few exceptions) negotiated in the Tokyo and the Uruguay Rounds.¹ Countries that formerly received the benefits of some GATT codes without having to join and undertake new obligations must now end their "free ride." For many developing countries, the single undertaking commits them to substantially more trade obligations than previously required under the GATT regime. For the

1. Four plurilateral accords apply only to their signatories and thus are not subject to the single undertaking. The most important of these pacts is the Agreement on Government Procurement; the others cover civil aviation, beef, and dairy products.

United States and other developed countries that already adhere to almost all the existing pacts, this requirement entails few additional WTO commitments. Coupled with a scaling back of special provisions for developing countries, the single undertaking helps meet a key objective of the Uruguay Round and the WTO regime: integrating developing countries more fully into the trading system.

Interestingly, the Uruguay Round negotiations, like the NAFTA, resulted in agreements in which the developing countries committed to substantially more trade liberalization than their developed-country partners. Essentially, the overall deal balanced liberalization of trade barriers by developing countries with new WTO rules that commit developed countries to maintain their open markets (along with partial reforms of some of their long-standing tariff and nontariff barriers). Given the much higher level of trade barriers in most developing countries, the asymmetry of these trade deals is likely to reemerge in the future, as long as developed countries demonstrate that they will follow the rules.

To be sure, the agreements that constitute the WTO trading rules allow asymmetric implementation of WTO obligations for developing countries and countries in transition to market economies (i.e., longer periods for them to fully assume those obligations). In addition, the poorest countries are exempted from some requirements. However, in most instances the transition period afforded developing countries before they assume full WTO obligations is relatively short.² Within a decade, the WTO will essentially eliminate the free-rider problem.

The second major difference between the GATT and WTO regimes is the dispute settlement mechanism (DSM). The WTO consolidates the various dispute provisions of the constituent GATT accords into a unified dispute mechanism and thus precludes the "forum shopping" and overlapping cases that sometimes occurred in the GATT.

As a result of the reforms agreed in the Uruguay Round, the new WTO dispute settlement mechanism also remedies other basic flaws of the previous GATT rules: the overly long delays from the establishment to conclusion of panel proceedings, the ability of disputants to block the consensus needed to approve panel findings and authorize retaliation, and the difficulty in securing compliance with panel rulings. WTO procedures now operate under strict time limits; countries cannot veto judgments against them; panel findings are subject to review by a new Appellate Body; and procedures are in place to promote timely compliance, to monitor compliance actions, and to allow retaliation in the event of noncompliance (Schott 1994, 125-29).

2. The 11-year period for patent obligations involving agricultural chemicals and pharmaceuticals in the Agreement on Trade-Related Aspects of Intellectual Property Rights is the lengthiest and most contentious transition provision.

Because it is now difficult to block the adoption of panel rulings, the new Appellate Body is particularly important. It basically checks that panels do not overstep their authority or make mistakes with regard to issues of fact and law. It thus provides a safeguard against panel errors (both factual and jurisdictional) that would otherwise be automatically adopted under the new WTO procedures.³

The third distinction between the GATT and the WTO lies in the membership of the organizations. In the WTO, many more countries have either joined or are seeking membership in the organization than signed onto the GATT in the past, and more countries actively participate than did so under the GATT regime. As of 31 July 1996, the WTO had 123 members, and 31 other countries were in the process of acceding to it.⁴

The fourth difference involves the institutional structure of the two trade regimes. The GATT was a trade accord serviced by a professional secretariat; the WTO is a membership organization. This change is particularly important because the new institutional structure of the WTO provides greater legal coherence among its wide-ranging rights and obligations, including a unified disputes procedure (as noted above), and it establishes a permanent forum for consultations and negotiations on an ever-broadening agenda affecting global trade and investment in goods and services.⁵

In addition, the biennial ministerials mandated by the WTO agreement give political leaders an opportunity to provide useful direction to the work of the WTO. Unlike the past, when meetings of the world's trade ministers were few and far between and arranged on an ad hoc basis, regular sessions should help avoid delays in launching initiatives and implementing agreements. These systemic delays provoked concerns about the efficacy of the whole GATT process and contributed to the regeneration of protectionist pressures in major trading countries after each GATT round.

In sum, the WTO improves upon the GATT in terms of the content of the rights and obligations conferred on member countries, the number of countries participating, and its ability to promote trade negotiations

3. In this regard, the Appellate Body essentially performs the same task as that envisaged by the proposed Dole Commission in the United States, whose "made in the USA" reviews to a large extent would cover the same ground as the WTO panel.

4. In comparison, the Protocol of Provisional Application (PPA) of the GATT had 8 "original signatories" in October 1947 (United States, United Kingdom, Australia, Belgium, Canada, France, Luxembourg, and the Netherlands), 23 countries signed the PPA in January 1948, 74 were members by the end of the Kennedy Round in 1967, 84 by the end of the Tokyo Round in 1979, and 91 at the start of the Uruguay Round in 1986 (GATT Analytical Index 1994, 1054-55).

5. In addition, the WTO makes permanent the Trade Policy Review Mechanism (TPRM), which provides regular monitoring of the trade policies of member countries.

and to process trade disputes among its members. As a result, the world trading system will be able to provide greater discipline over the \$5 trillion in annual trade in goods and services.

The WTO and National Sovereignty

Some critics of the WTO equate the expansion of global trading rules with the loss of national sovereignty over trade policies. Does the acceptance of WTO obligations infringe the sovereignty of its member states?

International trade agreements confer rights to their signatories regarding the actions of other governments, but they also impose obligations and thus constrain a country's own actions. Countries accept these constraints because international trade accords provide beneficial bargains that strengthen their interests in world markets. Indeed, the very negotiation of trade accords is an exercise in the application of *national* sovereignty.

WTO signatories have delegated specific functions to the WTO and its secretariat involving the administration of the trading system. The WTO can rule on the conformity of national practices with the rights and obligations undertaken in the WTO, but member countries are then responsible for ensuring compliance (Croley and Jackson 1996). To be sure, WTO members have an obligation under *international* law to comply with the WTO rules, but the WTO itself has no means to force countries to honor those obligations.⁶ Unlike other international bodies, WTO members explicitly did not establish supranational bodies with power to change laws or extract fines or other penalties from member countries.

Nonetheless, concerns about whether the WTO agreement infringes upon US sovereignty still resurface and merit a straightforward response. These concerns are based on two misperceptions: that the United States will be compelled to change its laws at the behest of WTO decisions and that majority voting by WTO members will rewrite the trade rules to the disadvantage of major trading powers.

If a US practice is found to violate US international obligations, the WTO *cannot* force changes in US law or regulations. To put it another way, WTO decisions are not self-executing in US law. In such a case, the United States can decide to bring its practices in compliance with its international obligations or affected WTO members have the right to demand compensation or to retaliate.⁷ As argued by Jackson (chapter 9), WTO rules clearly favor the former approach for resolving trade disputes

6. For example, countries do not have recourse to the International Court of Justice for GATT disputes, nor is there provision to expel members for bad behavior.

7. In practice, however, few countries ever retaliate against the United States because such actions impose costs on their own producers and consumers and sour relations with the world's largest trading nation.

but also sanction other remedial measures for redressing violations of WTO obligations.

Regarding the second point, as under the GATT, WTO decisions will normally be made by consensus (i.e., decisions become effective if no member officially objects). If a consensus cannot be reached, matters will be decided by majority vote. Votes were rarely taken in the GATT; if they do arise in the WTO, the WTO agreement includes important checks and balances to the voting rules that effectively institute a "big power" block on all but the most mundane WTO decisions and preclude majority votes from undercutting the rights of other participants.

WTO Report Card: The First 18 Months

How well is the World Trade Organization working? The success of the WTO can be judged in part on how the organization is meeting its three basic responsibilities:

- to administer the new Uruguay Round accords and monitor compliance by WTO signatories;
- to demonstrate that world trade obligations are being enforced rigorously, objectively, and expeditiously;
- to reinforce support for global trade liberalization.

To date, the WTO generally has been performing these tasks quite well, despite its tight budget and small staff. The following subsections summarize the key results in each area.

Implementing the Uruguay Round Accords

All the Uruguay Round accords are now up and running. In most instances, liberalization commitments are being fulfilled, the requisite domestic programs and practices have been notified to the WTO, and the new trading rules have been or are being implemented through changes in national law or regulation. In addition, negotiations on financial services, basic telecommunications, maritime services, and the movement of natural persons have been restarted. However, like most self-contained sectoral talks, they have produced or will likely yield a meager harvest (see discussion below).

To be sure, some countries have tried to "fudge" the calculation of their required reduction of import barriers, particularly in agriculture, and some notification deadlines have slipped. Indeed, the vast number of notification requirements (more than 200 in all) have created administrative burdens for many governments, and even the United States has

not fully complied with some provisions. In several cases, serious abuses have prompted conflicts that the new WTO dispute settlement mechanism is handling.

Dispute Settlement Mechanism

Trading rules have little value unless they can be enforced. The dispute settlement mechanism provides a warranty that the bill of goods sold to participating countries during a trade negotiation will be dutifully delivered. For that reason, the effectiveness of the DSM is critical to the WTO's success.

Contrary to the concerns of some GATT critics, the WTO dispute settlement mechanism has gotten off to a good start (chapter 9). Four specific developments bear mention.

First, the WTO dispute settlement mechanism is being used. In its first 19 months (January 1995-July 1996), the WTO dispute settlement body has handled 51 requests for consultations. Many of these cases already have been resolved; the rest are subject to continuing consultations or panel review (table 1).

Second, a significant number of developed *and* developing countries are using the DSM. The United States has been the most active plaintiff, challenging foreign practices in 18 cases. Practices of the European Union (11), the United States (9), and Japan (8) have been the most frequent subject of consultations. Practices of developing countries have been brought to the DSM in 13 cases, including 4 challenges by other developing countries. Sixteen developing countries have initiated or joined in 20 cases challenging practices of other WTO members—some of which are major trading powers. Such actions indicate that developing countries believe that a rules-based system will protect them from unwarranted retaliation.

Third, the fact that the dispute settlement reforms ensure that decisions will be taken promptly and will not be blocked by disputants has encouraged countries to settle their differences bilaterally rather than await panel rulings. "Out-of-court" settlements have occurred in about one-third of the cases in which consultations have been initiated (including the US-Japan dispute over autos in the summer of 1995).

Fourth, the appeals process has worked. By coincidence, the first panel decision prompted the first appeal, which upheld the panel ruling on the WTO violation but rejected argumentation in the panel report that "would have narrowed the scope of an exception to international trading rules for measures relating to the conservation of exhaustible natural resources."⁸ The balanced approach taken by the Appellate Body in its

8. The case involved a complaint by Venezuela and Brazil that US regulations on reformulated gasoline were being applied in a discriminatory manner (Office of the US Trade Representative, press release 96-38, 29 April 1996).

inaugural case should reassure WTO members that panels will be neutral arbiters of whether national practices are consistent with WTO obligations.

Overall, the United States has used the DSM to successfully challenge numerous foreign trade practices, including various Korean measures affecting US farm exports and Japanese liquor taxes. Because the DSM has helped the United States achieve its goals in those cases, US officials have taken care to comply with DSM rulings affecting US practices, lest they weaken a system that amply benefits the United States. For example, the United States has agreed to comply with the few decisions that have gone against it, including a complaint by Venezuela and Brazil on reformulated gasoline. Further, consistent with WTO rules, the United States has withdrawn long-standing retaliatory duties against the European Union pending a DSM panel review of the EU import ban on hormone-treated meat.

One additional aspect of WTO dispute procedures should be noted. Disputes often arise over issues that fall in the gray areas of multilateral trade obligations. If prior negotiations failed to clearly define rights and obligations regarding an issue under dispute, then WTO dispute panels will have a difficult time ruling on the conformity of that issue with WTO obligations.

While expert panels could develop compromise solutions to pending disputes in such instances, there is understandable reluctance to adopt an approach in which panels could change or expand the interpretation of WTO provisions and thus alter the negotiated balance of concessions. In other words, panels cannot and should not "negotiate" new WTO rules through their deliberations. Indeed, Article 3.2 of the Dispute Settlement Understanding clearly states that "[r]ecommendations and rulings of the DSB [Dispute Settlement Body] cannot add to or diminish the rights and obligations provided in the covered agreements."

Nonetheless, the DSM allows challenges to practices that "nullify or impair" benefits that a member would expect to receive from trade agreements, even if they do not violate WTO obligations. These nonviolation nullification and impairment (NNI) cases have been rare. In such cases, an NNI finding does not require that a country modify its practices, since it did not violate WTO obligations, but the country should offer compensation (chapter 9). Although they cannot call for changes in a country's practices, panel reports in NNI cases can highlight problems that need to be resolved through new WTO obligations and thus help prepare WTO negotiations in new areas.

Ongoing Services Negotiations

The Uruguay Round negotiations on services produced a solid framework of trading rules and obligations but yielded disappointing results with

Table 1 WTO dispute settlement cases, January 1995-July 1996

	Disputed action	Complainant	Consultation requested	Panel established	Outcome
DS-01	Malaysian prohibition of imports of polyethylene and polypropylene	Singapore	10 Jan 95		Settled: Malaysia withdrew measure.
DS-02	US standards for reformulated and conventional gasoline	Venezuela	24 Jan 95	10 Apr 95	Appellate Body report of 20 May 96 upheld 21 Feb 96 panel finding that US measures violated WTO rules. US has announced intention to bring these measures into conformity with the GATT.
DS-03	Korean measures for testing and inspecting farm products	US	4 Apr 95		Partially settled; new consultation request May 96 (to include new measures).
DS-04	US standards for reformulated and conventional gasoline	Brazil	10 Apr 95	31 May 95 (examined by same panel as DS-02)	Same as DS-02.
DS-05	Korean measures concerning the shelf life of products	US	3 May 95		Partially settled.
DS-06	Proposed US import duties on autos from Japan	Japan	17 May 95		Settled; Japan withdrew complaint.
DS-07	EU trade description of scallops	Canada	19 May 95	19 Jul 95	Settled after interim panel report; settlement circulated.
DS-08	Japanese taxes on alcoholic beverages	EU	21 Jun 95	27 Sep 95	Appellate Body report of 4 Oct 96 upheld panel finding of 11 July 96 that Japanese taxes were inconsistent with GATT Article III.
DS-09	EU import duties on cereals	Canada	30 Jun 95	11 Oct 95	Settled.
DS-10	Japanese taxes on alcoholic beverages	Canada	7 Jul 95	27 Sep 95	Same as DS-08.
DS-11	Japanese taxes on alcoholic beverages	US	7 Jul 95	27 Sep 95	Same as DS-08.
DS-12	EU trade description of scallops	Peru	18 Jul 95	11 Oct 95	Settled after interim panel report; settlement circulated.
DS-13	EU import duties on grains	US	19 Jul 95	11 Oct 95	Settled.
DS-14	EU trade description of scallops	Chile	24 Jul 95	11 Oct 95 (with DS-12)	Settled after interim panel report; settlement circulated.
DS-15	Japanese measures on purchase of telecom equipment	EU	18 Aug 95		Not pursued.
DS-16	EU importation, sale, and distribution of bananas	Guatemala, Honduras, Mexico, and US	18 Sep 95		Superseded by new consultation request in 1996.
DS-17	EU import duties on rice	Thailand	3 Oct 95		Settled.
DS-18	Australian import ban on salmon from Canada	Canada	5 Oct 95		After consultation, Australia is reevaluating import ban.
DS-19	Polish import regime for autos	India	28 Sep 95		Settled.
DS-20	Korean measures on bottled water	Canada	23 Nov 95		Settled.
DS-21	Australian import ban on salmonids	US	17 Nov 95		Consultations held mid-December 1995; Australia is reevaluating import ban.
DS-22	Brazilian measures on desiccated coconut	Philippines	27 Nov 95	4 Mar 96	Panel report circulated 17 Oct 96.
DS-23	Venezuelan antidumping case on certain oil country tubular goods	Mexico	5 Dec 95		Antidumping investigation had already been terminated.

Table 1 WTO dispute settlement cases, January 1995-July 1996 *(continued)*

DS-24	US quotas on Costa Rican underwear	Costa Rica	22 Dec 95	5 Mar 96	Panel report expected mid-November 1996.
DS-25	EU implementation of Uruguay Round commitments on rice	Uruguay	12 Dec 95		Consultations held; case not pursued.
DS-26	EU import ban on hormone-treated meat	US	26 Jan 96	20 May 96	Panel report expected February 1997.
DS-27	EU regime for the import, sale, and distribution of bananas	US, Ecuador, Guatemala, Honduras, and Mexico	5 Feb 96	8 May 96	Panel report expected February 1997.
DS-28	Japanese measures on protection of sound recordings	US	9 Feb 96		Consultations held 4 Mar 96; further discussions in progress.
DS-29	Turkish import restrictions on textiles and clothing	Hong Kong	12 Feb 96		Consultations were scheduled, but Turkey failed to appear.
DS-30	Brazilian measures on desiccated coconut and coconut milk powder	Sri Lanka	23 Feb 96		See DS-22.
DS-31	Canadian import restrictions on certain periodicals	US	11 Mar 96	19 June 96	Panel report expected in early 1997.
DS-32	US measures on imports of women's and girls' wool coats (category 345)	India	15 Mar 96	17 April 96	Panel established on 17 Apr 96. Settled: US dropped the restraint.
DS-33	US measures on imports of woven wool shirts and blouses (category 440)	India	15 Mar 96	17 April 96	Panel report due early 1997.
DS-34	Turkish import restrictions on textiles and clothing	India	19 Mar 96		Consultations were scheduled, but Turkey failed to appear.
DS-35	Hungarian agricultural export subsidies	Argentina, Australia, Canada, New Zealand, Thailand, and US	27 Mar 96		Three rounds of consultations held.
DS-36	Pakistani patent protection for pharmaceutical and agricultural chemical products	US	30 Apr 96		Panel requested 4 Jul 96.
DS-37	Portuguese patent protection	US	30 Apr 96		Consultations held; Portugal will change its law; parties now drafting settlement.
DS-38	US measures pursuant to Cuban Liberty Act	EU	3 May 96		After three rounds of consultations, panel requested 3 Oct 96.
DS-39	US retaliation measures in EU hormone dispute	EU	17 Apr 96		EU requested panel. US withdrew measures on 15 Jul 96. EU not pursuing request.
DS-40	Korean laws, regulations, and practices in telecom procurement	EU	9 May 96		Settled.
DS-41	Korean inspection of agricultural products	US	24 May 96		Consultations held 20 Jun 96.
DS-42	Japanese sound recordings	EU	24 May 96		Consultations held 24 Jul 96 with US participation.
DS-43	Turkish taxation of foreign film revenues	US	12 Jun 96		Consultations held 25 Jul 96.

Table 1 WTO dispute settlement cases, January 1995-July 1996 (continued)

DS-44	Japanese consumer photographic film and paper	US	13 Jun 96	16 Oct 96	Panel report pending.
DS-45	Japanese distribution services	US	13 Jun 96		(GATS case) Consultations held 10 Jul 96.
DS-46	Brazilian export financing for aircraft	Canada	19 Jun 96		Consultations held July 96; revised panel request 3 Oct 96.
DS-47	Turkish import restrictions on textiles and clothing	Thailand	20 Jun 96		
DS-48	EU livestock and meat (hormones)	Canada	28 Jun 96	16 Oct 96	Panel report pending.
DS-49	US antidumping investigation on fresh and chilled tomatoes	Mexico	1 Jul 96		Consultations held 21 Aug 96.
DS-50	Indian pharmaceutical and agricultural chemical product patents	US	2 Jul 96		Consultations held 27 Jul 96.
DS-51	Brazilian auto import restrictions	Japan	30 Jul 96		Consultations held 13 Aug 96; attended by Japan, US, EU, Korea, and Canada.

Sources: World Trade Organization, USTR data.

respect to the liberalization of barriers to trade in several important sectors. Nonetheless, the General Agreement on Trade in Services (GATS) was accepted as part of the single undertaking, and WTO members committed to launch new negotiations by 1 January 2000 "with the view to achieving a progressively higher level of liberalization" (GATS Article XIX:1).

However, because of concerns raised by some countries (especially the United States) about the paucity of liberalization commitments in national schedules, Uruguay Round participants agreed to reopen negotiations for a limited period in several areas (including financial services, basic telecommunications, maritime services, and movement of natural persons). These talks were designed to allow countries to modify (and hopefully expand) their liberalization commitments—or to invoke exceptions to most-favored nation (MFN) status as permitted under the Annex on Article II Exemptions of the GATS.

To date, the three sectoral negotiations have produced modest results. The financial services talks stalled in late June 1995, when the United States stated that liberalization offers by other participants were insufficient to warrant committing to MFN treatment for all foreign firms in the US market.⁹ Efforts by the European Union prompted a month-long extension in the talks, additional concessions from a few countries, and agreement by all parties to maintain their schedule of commitments until November 1997, when countries would have 60 days to improve or amend their offers, or invoke the MFN exemption of the GATS.¹⁰

The negotiations on basic telecommunications followed a similar path. By the late April 1996 deadline, talks yielded both liberalization commitments from a number of developed and developing countries and new draft regulatory principles regarding access to and use of the public telecommunications transport network. The principles, which are included in whole or part in many of the participants' schedule of commitments, are particularly noteworthy since they commit governments to take measures (e.g., ensuring interconnection rights, setting up independent regulators) to prevent anticompetitive practices by major suppliers in their telecommunications market.¹¹ Here again, however, US negotiators found the national offers wanting, and talks were deferred until later in the year, with a new target completion date of 15 February 1997.¹²

9. The US commitments in financial services filed on 30 June included MFN treatment for existing foreign participants in the US market but did not guarantee MFN treatment for new entrants. (For an explanation of the US position, see the article by Deputy USTR Jeffrey Lang and Treasury Under Secretary Jeffrey Shafer, *Financial Times*, 4 June 1995.)

10. See the text of the WTO decision on financial services issued on 24 July 1995 (published in *Inside U.S. Trade*, 28 July 1995, 19-20).

11. For the text of the draft regulatory principles, see *Inside U.S. Trade*, 26 April 1996, 10-11.

12. Petrazzini (1996) underscores the substantial welfare gains that would result from the successful resolution of the telecom talks.

The maritime talks held the least promise of success and met most expectations by making almost no progress by their target completion date of 30 June 1996. Unlike the other sectoral talks, there was little to salvage from the work of the negotiating group; WTO talks were suspended until the end of the decade and participants given until 28 July 1996 to amend their GATS commitments in this sector.¹³

To be sure, the issues covered by these sectoral negotiations are complicated, and the task of sorting through both the economic and political implications of new trade obligations is vexing, so expectations of quick results in these talks were unjustifiably optimistic. But the sectoral approach itself has a number of drawbacks. The architects of these talks seem to have based their design on two fragile assumptions.

First, they assumed that WTO members, especially high-growth developing countries in East Asia and Latin America, would open their markets to foreign competition to promote their development objectives.¹⁴ While not unreasonable, it does not necessarily follow that those countries would "lock in" their domestic liberalization in WTO commitments in return for effectively no change in access to industrial-country markets. Thus, even if countries undertake domestic reform in their financial and telecom sectors, they have little incentive to use these "negotiating chips" in the current sectoral negotiations in the WTO.¹⁵

Second, the talks' planners assumed that US negotiators did not mean what they said during the Uruguay Round regarding their unwillingness to undertake MFN obligations in these sectors if other countries did not offer US service providers improved access to their markets. Contrary to the rhetoric of some Geneva negotiators, the US position was generally consistent on this point throughout the Uruguay Round.

To date, many countries have not bound new liberalization in their WTO schedules in the GATS and have threatened to invoke Article II exemptions at the conclusion of the extended negotiation period. This situation does not reflect a lack of support for new liberalization efforts in the WTO, but rather demonstrates the tactical flaw of pursuing sectoral negotiations. For the most part, sectoral talks have succeeded, on either a bilateral or multilateral level, only in textiles and steel—and in these cases, the result was to raise barriers to trade, not lower them!

Far more promising are efforts under way in the GATS working group on professional services to develop sector-specific guidelines for certifica-

tion and licensing requirements. In this case, industry associations in participating countries are working together, along with their respective governments, to elaborate how GATS obligations should be applied and interpreted for their sectors. While these efforts have not received the publicity (or notoriety) of the other sectoral talks, the work on professional services demonstrates that the GATS can provide a useful framework for the development of multilateral disciplines that support the expansion of global commerce.

Future Challenges

To maintain the credibility of the world trading system, WTO rights and obligations must continue to adapt to the new challenges arising from the increasing globalization of economic activity. To do so, WTO members need to both sustain the progress to date in implementing the results of the Uruguay Round and begin to address issues likely to dominate world trade in the 21st century. Four challenges deserve priority attention on the WTO agenda:

- promoting new trade liberalization initiatives, including the "built-in" negotiating agenda mandated by the Uruguay Round accords;
- expanding the WTO agenda to new issues (e.g., investment, competition policy, and trade-related environment and labor issues);
- ensuring the complementarity of regional and multilateral trade reforms;
- augmenting WTO institutional reforms.

WTO members must act quickly to launch initiatives in each of these areas. From past experience, we know that delays in starting new talks have often spawned a political backlash against multilateral reforms. Similar reactions already have surfaced, even though the Uruguay Round concluded just three years ago. The new threats to the trading system arise from:

- traditional efforts to maintain existing trade barriers and undo liberalization commitments or offset them with other protectionist measures;
- new strains of protectionism embedded in domestic regulatory practices;
- proliferating regionalism, which threatens to sap support for WTO initiatives and create new obstacles to multilateral liberalization.

13. For the text of the WTO decision on maritime transport services, see *Inside U.S. Trade*, 5 July 1996, 13.

14. Implicit in this assumption is the expectation that developing-country officials—unlike their industrial-country counterparts—would weigh "user" interests above the protectionist pressures of import-competing domestic industries.

15. In essence, the US threat to deny MFN treatment in its market had little sway on developing countries, which felt they had little to lose.

The WTO should meet these challenges head on and dispel the doubts generated by recent services negotiations that it cannot solve these pressing problems.

Promoting New Trade Liberalization

While the Uruguay Round achieved historic results, much work remains to liberalize the residual trade barriers that have survived eight rounds of GATT negotiations. Fortunately, WTO members already have a mandate, incorporated in the Uruguay Round accords, to undertake a broad range of new initiatives. Indeed, this so-called "built-in" agenda comprises more than 200 items. Many of these tasks involve reviews and refinements of the new WTO accords after several years of operations, but some require fundamental recommitments by WTO signatories to pursue new negotiations toward the progressive liberalization of trade barriers in politically sensitive areas such as agriculture and services.

Therefore, the first challenge facing the WTO is to refocus efforts on liberalizing barriers to trade in areas that have been resistant to past reforms and that generate constant friction among trading partners. In particular, WTO members need to address both tariff peaks in their national schedules (in specific industrial sectors and in agriculture) and restrictions on public procurement.

Tariffs

While average nonagricultural tariffs in industrial countries generally will be reduced to low levels once the Uruguay Round cuts are fully implemented, many of these countries will still maintain exceedingly high tariffs in selected industrial and agricultural products. For example, tariff peaks in textiles and apparel and in electronics mirror the tariff profile of the United States and the European Union, respectively. Furthermore, as a result of the tariffication of farm trade barriers in the Uruguay Round, the level of tariff bindings in agriculture is orders of magnitude higher. By 2000, EU bindings on dairy (178 percent) and sugar (152 percent), US bindings on dairy (93 percent) and sugar (91 percent), and Japanese bindings on dairy (326 percent) and wheat (152 percent) will still be in the stratosphere!¹⁶

Developing countries also have much to contribute to this liberalization process. To a large extent, trade concessions by developing countries in the Uruguay Round involved the acceptance of new trade rules and the binding of tariffs well above applied rates. These ceiling bindings allow these countries to increase their tariffs substantially, effectively offsetting

16. See Hathaway and Ingco (1995) for details on other products.

(or worse) tariff reforms implemented in recent years.¹⁷ Just as developed countries need to further reduce their peak tariffs, so too do developing countries need to reduce the gap between their bound rates and their currently applied rates.

Government Procurement

Government contracts often represent a sizable share of domestic economic activity, yet public officials seem to disdain competition for this procurement so that the sales can benefit domestic firms and political allies. Despite rules to guide public tenders developed after two decades of negotiations in the Organization for Economic Cooperation and Development (OECD) and the GATT, few countries adhere to WTO disciplines in this area, and the obligations themselves are rife with exceptions.

For economic efficiency reasons alone, WTO members should devote more attention to liberalizing government procurement. Furthermore, because tenders for government contracts often are not subject to competitive bidding, they can provide fertile ground for corrupt practices.¹⁸ It is inconceivable that such a large volume of economic activity in so many countries falls outside the trading rules.

Expanding the Trade Agenda

The WTO will be pressed to deal with an increasingly broad array of issues that have not been traditionally associated with trade negotiations. Two sets of problems command immediate attention.

First, the reduction of border restrictions has refocused attention on domestic regulatory policies that can effectively block market access by impeding foreign investment or otherwise limiting competition. New WTO initiatives in the area of investment and competition policy will have to be considered that go beyond the charge in the Uruguay Round agreement on trade-related investment measures (TRIMs) to "consider" complementing that accord with new rules in these areas.

Second, the WTO needs to seriously address the nexus of trade and environment and trade and labor issues—both to highlight areas of immediate relevance to the trading system (e.g., transboundary pollution) and to reinforce support for WTO initiatives among important US and European political constituencies. Environmental issues have been the subject

17. Indeed, Brazil sharply increased tariffs (especially in the auto sector) in 1995 to stem its burgeoning trade deficit, and Malaysia threatened to impose higher duties and/or quotas on nonessential goods in August 1996 because of its large current account deficit (*Financial Times*, 6 August 1996, 12).

18. For anecdotal evidence of such practices in Latin America, see *Latin Trade*, September 1996, 34-41.

of WTO discussions from the outset, and the new Committee on Trade and the Environment is charged with preparing recommendations for the Singapore ministerial meeting regarding the future WTO work program in this area. In addition, concerns about "social" issues such as labor rights, democratic reforms, and human rights have fueled demand for WTO consultations to determine whether—and, if so, to what extent—problems in these areas could be usefully addressed in WTO negotiations.

Investment

The WTO needs to develop comprehensive investment rules to discipline countries' deployment of carrots and sticks to induce industries to invest in their markets. The TRIMs agreement in the Uruguay Round provided a tentative first step in this regard, but much more needs to be done. In particular, WTO efforts in this area should focus on three sets of problems:

- the application of national treatment and MFN treatment to foreign investors and investments, and the reduction of national exceptions to these obligations;
- the strengthening of disciplines on investment incentives and establishment restrictions, which are not adequately addressed in the TRIMs accord;
- the integration of new WTO investment obligations with those in the GATS and the TRIMs accord.

Some countries may also want to raise the sensitive issue of national-security exceptions, which have become particularly contentious due to the controversy over the extraterritorial application of US sanctions. However, if this issue were to be raised, it would provoke legitimate concerns about WTO efforts to limit national sovereignty. Efforts to renegotiate WTO national-security exceptions would substantially erode US political support for the WTO and thus do more harm than good to the trading system.

WTO members should draw on efforts in other forums—including current talks in the OECD and investment accords under development in regional arrangements—to inform their work. In that regard, the NAFTA provisions on investment provide particularly good precedents for prospective WTO negotiations.

Competition Policy

Most major industrialized countries have domestic competition policies. Common elements include prohibition of domestic cartels, price fixing, market share allocation, and surveillance of mergers and acquisitions. However, they differ significantly in such areas as transparency, remedies against infringement, and the extent of coverage.

As a result, the subject does not easily lend itself to common international rules since the conditions of competition may differ markedly both between countries and between sectors within an economy. Graham and Richardson (1996) highlight four problems that could complicate efforts to develop WTO rules:

- differences in national competition laws regarding which practices are deemed to enhance competition and promote economic efficiency;
- sectoral exemptions from national antimonopoly rules;
- absence or inadequate enforcement of national competition policies in many WTO signatories;
- implementation of other trade policies (e.g., antidumping) or regulatory measures that can act to constrain competition.

WTO members will have to sort through these issues to determine whether a WTO accord on competition policy is feasible and, if so, how broad or limited its coverage should be and how the WTO dispute settlement mechanism would apply. Clearly, much more work needs to be done in this area before WTO negotiations could be contemplated.

Environment and Labor Issues

While environment and labor are not entirely new issues in the trade debate, there has been heightened concern that countries can gain unfair trade advantages through disregard for the environment or through unfair labor practices (particularly child labor). In some instances, trade restrictions have been imposed as a stick to prompt acceptance of environmental and social standards. Indeed, some multilateral environmental agreements (e.g., the Montreal Protocol on chlorofluorocarbons) condone the use of trade sanctions to enforce treaty obligations (Esty 1994).

On the other hand, trade measures designed to be environmentally friendly or to promote worker rights have occasionally masked protectionist motives. For example, developing-country concerns over such measures have been fed by their experience with the Generalized System of Preferences (GSP) programs, for which eligibility is conditioned in part on labor standards and human rights. WTO members need to examine the extent to which new international trade rules could resolve or mitigate problems in both these areas in order to lay the foundation for the negotiation of new WTO rights and obligations.

Linking Regionalism and Multilateralism

Over the last decade, regional trade arrangements have proliferated, new pacts covering large geographic areas have been created, and established

regional groups have been revitalized. More than 60 percent of world trade is now covered by regional pacts (chapter 14), and almost all major trading nations are members of at least one large regional trade arrangement.¹⁹

In the past, regional pacts generally reinforced multilateral trade initiatives, and the trade diverted by regional preferences was more than offset by the trade created by the increased growth resulting from these regional groups. Indeed, in some cases liberalization initiatives in one region were immediately emulated in another to ensure that those countries kept pace in the global competition for foreign investment. The most important example of such "competitive liberalization" among regions occurred in 1994, when the commitment by the Asia Pacific Economic Cooperation (APEC) forum to free trade and investment in the region by 2010/2020 at its Bogor, Indonesia, meetings in November was followed three weeks later by the declaration of the Summit of the Americas to negotiate a Free Trade Area of the Americas by 2005 (chapter 14).²⁰

Nonetheless, the size and complexity of the new arrangements reopen questions of whether regionalism will now hamper multilateral trade liberalization. Not only do the new pacts discriminate against nonmember countries, but the evolving crazy quilt of trading rules and customs regulations required to implement the preferential trading arrangements increase transactions costs for both members and nonmembers—and may constitute important new barriers to market access (e.g., industry-specific rules of origin).²¹

WTO obligations seek to promote the complementarity of regional and multilateral trade objectives. However, the rules are vague or incomplete and thus subject to abuse. In particular, GATT/WTO reviews of regional pacts allow significant sectoral exceptions (e.g., agriculture), skirt problems caused by contingent protection measures (especially antidumping duties) and rules of origin that often significantly distort trade and investment flows between the region and third countries, and fail to track regional pacts after they are signed, when transition provisions or rule changes can significantly affect market access for third-country suppliers.²² Thus, even if regional pacts follow the letter of WTO law, they can still pose obstacles to the trade of third countries. Countries need to revisit WTO rules and procedures regarding regional pacts to ensure that they

19. For a review of the growth of regional trading arrangements, see WTO (1995).

20. Competitive liberalization was also pursued by individual countries in the 1980s. Leading examples include Australia, Chile, and Mexico.

21. However, the largest regional group, APEC, has explicitly avoided such discrimination in its actions to date.

22. This latter problem may be mitigated by the work of the new WTO committee on regionalism, which was established in late 1995 to improve surveillance of regional pacts.

continue to remove rather than erect roadblocks to further multilateral trade reforms.

Augmenting WTO Institutional Reforms

The Uruguay Round accords strengthened the structure of the multilateral trading system. However, the growing demands that those accords place on the trading system, as well as the rapidly expanding membership in the WTO, will likely require additional institutional reforms if the WTO is to manage and administer the new trading rules and procedures effectively. Three problems merit immediate attention.

First, the WTO faces significant resource constraints. The WTO staff and budget both pale in comparison with those of other international organizations.²³ Governments clearly have not distributed resources commensurate with the responsibilities accorded these respective organizations. The small size of the WTO Secretariat already strains its ability to conduct legal and economic analysis. Staffing constraints also will inevitably limit the scope of joint activities that might be undertaken with other international economic institutions, particularly cooperative efforts with the International Monetary Fund (IMF) and the World Bank to help promote "greater coherence in global economic policymaking."²⁴ Such efforts are particularly needed to assist countries in transition in order to fully integrate them into the world economy.

Second, expanding membership will place additional pressures on the WTO's management structure, which, unlike other international membership organizations, is directed by a council comprising all current members. Both the IMF and the World Bank have an executive board to direct the senior officers of the organization, with permanent participation by the major industrial countries and weighted voting. Attempts to form a small executive body in the WTO, including proposals put forward in the Uruguay Round, were unsuccessful, and smaller WTO members remain strongly opposed to the concept. Consequently, the United States and other major trading countries continue to resort to ad hoc, extralegal processes such as the Quad (the United States, European Union, Canada, and Japan) to fill the void. This situation is already controversial and will become increasingly untenable as WTO membership expands to politically powerful entrants such as China and Russia.

Third, the process of admitting new members to the WTO needs to be standardized. Current procedures are cumbersome and often duplicative.

23. For example, the WTO budget is less than half that of the OECD or the International Labor Organization.

24. This initiative was mandated by signatories of the Uruguay Round accords in a declaration signed at Marrakesh, Morocco, in April 1994.

In many cases, WTO working parties could benefit from work done on the economy of candidate countries by staff at the World Bank and the IMF. Finally, as is evident from the long history of negotiations with China, some accession talks become overly politicized and thus further complicate the negotiation of protocols of accession by raising foreign policy as well as economic issues.

The Next Step

The Singapore ministerial in December 1996 provides the first opportunity for WTO member countries both to take stock of the progress achieved to date in getting the WTO up and running and to elaborate a WTO work program to guide members of the trading system as they approach the 21st century. Both tasks are crucial to maintain the credibility of, and political support for, the WTO.

To that end, the Singapore ministerial should begin to develop a strategy for addressing the multiple and diverse challenges facing the trading system. Not all of these problems need be resolved at that meeting, but ministers should at least begin preparations for WTO consultations and prospective negotiations in these areas. The success of the new trading regime will rest in large measure on how well WTO members address those challenges.

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RECENT DEVELOPMENTS



ALAN F. HOLMER*
JUDITH H. BELLO**

U.S. Trade and Policy Series No. 20 **The Fast Track Debate: A Prescription for Pragmatism**

In June 1990, Presidents George Bush and Carlos Salinas de Gortari endorsed the negotiation of a U.S.-Mexico free-trade agreement. In December 1990, trade ministers from over 100 nations failed to reach agreement in the long-running Uruguay Round multilateral trade negotiations. In February 1991, Presidents Bush and Salinas and Canadian Prime Minister Brian Mulroney announced their intention to negotiate a trilateral North American Free Trade Agreement (NAFTA).

To continue the multilateral talks and to begin the NAFTA negotiations, President Bush on March 1, 1991, formally requested a two-year extension of "fast track" procedures. This request unleashed a torrent of intense lobbying and triggered a spirited debate in the Congress. Although much opposition to the extension focused on certain industries that would likely be "losers" in free trade with Mexico, the fast track procedure itself provoked concern and extensive comment.

This article describes the fast track procedures and their previous applications. It then summarizes the developments in the Uruguay Round multilateral trade negotiations and with respect to Mexico (and Canada) that required extension of

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the fast track. Next, it outlines the concerns expressed by many in the Congress and relates the President's response to those concerns. Finally, this article analyzes the debate in the Congress over the fast track extension and, in light of this debate, offers a prescription for an effective executive-congressional partnership in trade negotiations.

I. The Fast Track Procedures

Under the U.S. Constitution the President is empowered to conduct the foreign affairs of the United States.¹ Therefore, the President does not need statutory authority to negotiate with foreign countries, including trade negotiations. However, the Congress is empowered to make the laws in general² and to regulate trade with foreign nations in particular.³ A trade agreement whose implementation requires changes in U.S. domestic law therefore falls squarely within the jurisdiction of the Congress.

The fast track is a procedure devised in the Trade Act of 1974⁴ to establish a congressional-executive partnership for trade negotiations. It enhances the President's credibility in trade negotiations, in particular by increasing the likelihood that Congress will implement the trade agreements that he negotiates with advice from and in consultation with the Congress. Fast track authority expired in January 1988, but was revived in the Omnibus Trade and Competitiveness Act of 1988 (1988 Act).⁵ Sections 1102 and 1103 of the 1988 Act⁶ provide the authority and set forth the conditions for the application of the fast track procedures provided in section 151 of the Trade Act of 1974.⁷

Basically, those procedures have been applied to any legislation implementing a trade agreement entered into under section 1102(b) or (c) of the 1988 Act⁸ before June 1, 1991, provided:

- in the case of bilateral agreements, the foreign country requested the negotiation and the President provided at least sixty days' notice to the Senate

Finance and House Ways and Means Committees of his intention to enter into negotiations;⁹

- the President notified the House of Representatives and Senate of his intention to enter into the agreement at least ninety calendar days before the day on which he entered into the agreement;¹⁰
- after entering into the agreement, the President submitted to the House and Senate the agreement, a draft implementing bill, a statement of administrative action proposed to implement the agreement, and detailed supporting information,¹¹ including notably a statement explaining how the agreement makes progress in achieving the negotiating objectives established in section 1101;¹² and
- both the House and the Senate did not separately agree to procedural disapproval resolutions within any sixty-day period, making legislation to implement a trade agreement ineligible for fast track procedures on the basis of the President's failure or refusal to consult with Congress on trade negotiations.¹³

The 1988 Act further provided an opportunity to extend the above-described deadlines to cover any trade agreement entered into after May 31, 1991, and before June 1, 1993, if and only if:

- the President requested such extension by March 1, 1991;
- the President submitted to Congress a report: (1) describing all the trade agreements that have been negotiated under section 1102(b) or (c) and when they will be submitted to Congress for approval,¹⁴ (2) describing the progress made to date in the remaining negotiations, (3) stating that such progress justifies continuation of the negotiations, and (4) stating the reasons why the extension is needed to complete the negotiations;
- by March 1, 1991, the private sector Advisory Committee for Trade Policy and Negotiations submitted a report to Congress on its views regarding the

1. *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936).

2. U.S. CONST. art. I, § 8, cl. 18.

3. *Id.* cl. 3.

4. Trade Act of 1974, §§ 101-102, 151, Pub. L. No. 93-618, 88 Stat. 1978, 1982, 2001 (1975) (codified at 19 U.S.C. §§ 2101, 2111-2112, 2191) (1988) [hereinafter 1974 Act]. For an excellent overview of the fast track, see Harold H. Koh, *Congressional Controls on Presidential Trade Policymaking After I.N.S. v. Chadha*, 18 N.Y.U. J. INT'L L. & POL. 1191 (1986); Koh, *History of the Fast-Track Approval Mechanism*, in JUDITH H. BELLO & ALAN F. HOLMER, GUIDE TO THE U.S.-CANADA FREE-TRADE AGREEMENT 1 (1990).

5. Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (codified as amended in scattered sections of 19 U.S.C. (1990)) [hereinafter 1988 Act].

6. *Id.* §§ 1102-1103, 19 U.S.C. §§ 2902-2903.

7. 1974 Act § 151, 19 U.S.C. § 2191.

8. Section 1102(b) concerns agreements (other than bilateral agreements) regarding nontariff barriers. Section 1102(c) deals with bilateral agreements regarding tariff and nontariff barriers. *Id.* § 1102(b)-(c), 19 U.S.C. § 2902(b)-(c). Section 1102(a) gives the President authority to proclaim reductions in U.S. tariffs, subject to specified limits. *Id.* § 1102(a), 19 U.S.C. § 2902(a).

9. *Id.* § 1102(c)(3)(B)-(C), 19 U.S.C. § 2902(c)(3)(B)-(C).

10. *Id.* § 1103(a)(1)(A), 19 U.S.C. § 2903(a)(1)(A).

11. *Id.* § 1103(a)(2), 19 U.S.C. § 2903(a)(2). The required information includes: (1) an explanation how the implementing bill and proposed administrative action will affect existing law; (2) a statement that the agreement makes progress in achieving the applicable purposes, policies, and objectives set forth in § 1101 of the 1988 Act, 19 U.S.C. § 2901; (3) a statement of the President's reasons regarding how the agreement makes such progress (as well as the extent to which the agreement does not do so), how it serves the interests of U.S. commerce, and why the implementing bill and proposed administrative action are required or appropriate to carry out the agreement; (4) a statement describing the efforts of the President to obtain international exchange rate equilibrium and any effect of the agreement on increased international monetary stability; and (5) a statement relating to noncommercial state trading enterprises.

12. *Id.* § 1101, 19 U.S.C. § 2901.

13. *Id.* § 1103(c), 19 U.S.C. § 2903(c).

14. Presumably, the President would indicate that he planned to submit all Uruguay Round agreements as a package, even if some were already concluded. In fact, it seems unlikely that any agreements will be firmly concluded until they all are.

progress made in the negotiations and the reasons for its views regarding whether the requested extension should be approved or disapproved; and

- neither the House nor the Senate adopted an extension disapproval resolution before June 1, 1991.¹⁵

An extension disapproval resolution could be introduced by any member of Congress.¹⁶ Any such resolution would be referred to the Committee on Finance in the Senate or, in the House, to the Committees on Ways and Means and Rules. Importantly, there is no automatic discharge provision¹⁷—meaning that a resolution referred to such committees could simply languish there without further action.

II. The Previous Applications of Fast Track Procedures

As noted above, the United States Congress established the fast track in the Trade Act of 1974,¹⁸ the central purpose of which was to facilitate the seventh or Tokyo Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT).¹⁹ With advice from the Congress and the private sector, those negotiations were finally concluded in April 1979 when the United States and other GATT trading partners signed various codes and framework agreements amending the GATT for their signatories.²⁰ In accordance with the fast track procedures, implementing legislation was cooperatively drafted by the executive branch (led by the Office of the then Special Trade Representative) and the Congress (led by the Senate Finance and House Ways and Means Committees). The President then submitted the bill already agreed upon, which was passed by the House (395-7)²¹ and Senate (90-4)²² and enacted into law as the Trade Agreements Act of 1979.²³

15. 1988 Act § 1103(b)(1)(B), 19 U.S.C. § 2903(b)(1)(B). Moreover, any extension disapproval resolution introduced in either house must be reported out of the committee to which it is referred (in the House, the Rules and the Ways and Means Committees; in the Senate, the Committee on Finance) by no later than May 15, 1991.

16. *Id.* § 1103(b)(5)(B)(i), 19 U.S.C. § 2903(b)(5)(B)(i).

17. Section 1103(5)(C) of the 1988 Act (19 U.S.C. § 2903(5)(C)) makes only § 152(d)-(e) (19 U.S.C. § 2192(d)-(e)) relating to floor consideration, applicable to extension disapproval resolutions, and does *not* make applicable § 152(c) (19 U.S.C. § 2192(c)) on discharge of a resolution from a committee.

18. See *supra* note 4 and accompanying text.

19. General Agreement on Tariffs and Trade (GATT), opened for signature Oct. 30, 1947, 61 Stat. (pts. 5 & 6) A3, 55 U.N.T.S. 187.

20. *E.g.*, Agreement on Interpretation of Article VI of the General Agreement on Tariffs and Trade, Apr. 12, 1979, 31 U.S.T. 4919, T.I.A.S. No. 9650; International Dairy Agreement, Apr. 12, 1979, 31 U.S.T. 679, T.I.A.S. No. 9623; Agreement on Trade in Civil Aircraft, Apr. 12, 1979, 31 U.S.T. 619, T.I.A.S. No. 9620; Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, Apr. 12, 1979, 31 U.S.T. 513, T.I.A.S. No. 9619; Agreement on Technical Barriers to Trade, Apr. 12, 1979, 31 U.S.T. 405, T.I.A.S. No. 9616.

21. 125 CONG. REC. 18017 (1979).

22. *Id.* at 20194.

23. Trade Agreements Act of 1979, Pub. L. No. 96-39, 93 Stat. 144 (codified as amended in scattered sections of 5, 19, 26 and 31 U.S.C. (1988)).

The next two uses of the fast track were to implement bilateral rather than multilateral agreements. First, the Trade and Tariff Act of 1984²⁴ outlined objectives for, and authorized the negotiation of, a free trade agreement with Israel.²⁵ With advice from the Congress and the private sector, the administration concluded those negotiations the following year and then cooperatively drafted an implementing bill with the Congress. The House passed the bill submitted by the President following this joint collaboration by a vote of 422-0,²⁶ and the Senate passed the bill by a voice vote.²⁷ The bill was then enacted as the United States-Israel Free Trade Area Implementation Act of 1985.²⁸

Second, in response to Prime Minister Brian Mulroney's request in 1985,²⁹ and with the advice of the Congress and the private sector, the United States and Canada negotiated a free trade agreement signed by the President and the Prime Minister on January 2, 1988.³⁰ While the administration felt it had consulted the Congress regularly and in detail,³¹ some in the Congress strongly disagreed.³² Nonetheless, the congressional leadership entered into an agreement with Secretary of the Treasury James A. Baker III and U.S. Trade Representative Clayton Yeutter concerning the legislation to implement the Canada agreement.

The administration officials agreed to draft the bill cooperatively with the Congress. Moreover, they agreed to accept the provisions worked out in this consultative process, provided: (1) they were consistent with the agreement and its implementation, and (2) were appropriate to carrying out its fundamental purposes. For their part, the congressional officials agreed to vote on the legislation submitted by the President in 1988, and to use their best efforts to expedite the process and vote before the August recess, if possible.³³ Under these pro-

24. Trade and Tariff Act of 1984, Pub. L. No. 98-573, 98 Stat. 2948 (codified as amended in scattered sections of 7, 18, 19, 22, 26, 28, 29, 31, 49 and 50 U.S.C. (1988)).

25. *Id.*, tit. IV (codified as amended in scattered sections of 19 U.S.C. (1988)).

26. 131 CONG. REC. 10631 (1985).

27. *Id.* at 13574.

28. United States-Israel Free Trade Area Implementation Act of 1985, Pub. L. No. 99-47, 99 Stat. 82 (codified at 19 U.S.C. § 2112 note (1988)).

29. Letter from Prime Minister Mulroney to President Reagan (Oct. 1, 1985), reprinted in BELLO & HOLMER, *supra* note 4, app. at A-1.

30. See generally *id.*

31. See, e.g., the list of consultations between congressional committees and the executive branch prepared by the Office of the U.S. Trade Representative in 1987, reprinted in *id.* app. at A-6.

32. For example, Senator Max S. Baucus (D-Mont.) wrote that "[t]he Reagan Administration's consultations with Congress concerning the FTA were reminiscent of the academic strategy of the average college student. During the term, important assignments were ignored or halfheartedly carried out. But, with failure close at hand, they were able to study all night to pass the final." *Id.* at 88. Several years later, some members would still recall what, in their view, had been inadequate consultations regarding the FTA. See, e.g., 137 CONG. REC. H3500 (daily ed. May 23, 1991) (statements by Rep. Donald J. Pease (D-Ohio) during the fast track extension debate); *id.* at H3608 (debate statements by Rep. Richard A. Gephardt (D-Mo.)); *id.* at S6552 (debate statements by Sen. Lloyd Bentsen (D-Tex.)).

33. Exchange of letters between Secretary of the Treasury James A. Baker III and Ambassador Clayton Yeutter and the Hons. Jim Wright, Robert Byrd, Dan Rostenkowski, and Lloyd Bentsen (Feb. 17, 1988), reprinted in BELLO & HOLMER, *supra* note 4, app. at A-10, 11.

cedures, the administration and Congress again cooperatively drafted legislation that the President then submitted to the Congress. As passed by the House (366-40)³⁴ and Senate (83-9),³⁵ that bill was enacted as the United States-Canada Free-Trade Agreement Implementation Act of 1988.³⁶

III. Developments in the Uruguay Round and with Mexico Requiring Extension of the Fast Track

In 1982 the United States sought to capitalize on the Tokyo Round momentum and generate support for a new round of multilateral trade negotiations. At the GATT ministerial meeting the United States tried, but failed in this effort. The resulting disappointment helped fuel U.S. resort to bilateral and plurilateral initiatives, notably the free trade negotiations with Israel (1984-85) and Canada (1985-87). Nonetheless, the U.S. remained committed to the GATT and its further liberalization. Finally in 1986, at another more successful ministerial meeting in Punta del Este, Uruguay, an eighth round of multilateral trade negotiations was finally launched, scheduled to be concluded within four years.³⁷

A midterm review in Montreal in December 1988 involved trade ministers in their staffs' negotiations, crystallized issues, and mapped out a timetable and direction for final negotiations.³⁸ In the spring of 1990, U.S. trade negotiators planned their final assault aimed at a successful conclusion in December 1990. They planned to use interim events—a trade summit at Puerto Vallarta, Mexico, in April, the G-7 Economic Summit in Houston in early July, and a meeting of the GATT Trade Negotiations Committee in late July—to create enough crises to compel reluctant trading partners to make the painful concessions needed to conclude the Round successfully.

However, the Mexican meeting did not jump-start serious negotiations; in Houston the European Communities appeared to agree, but later did not agree, to meaningful agricultural reform; and the Trade Negotiations Committee meeting did not resolve impasses or generate momentum. At the Brussels meeting in December 1990, the talks broke down, principally over the continued impasse regarding, in particular, the use of subsidies. The meeting was adjourned *sine die*, without a certainty of resumption.

Meanwhile, the United States did not put all its trade-liberalizing eggs in one basket. While the GATT remains the cornerstone of U.S. trade policy, Presidents Bush and Salinas announced their intention to pursue a free trade agreement on

June 10, 1991.³⁹ At their direction, trade ministers Carla A. Hills and Jaime Serra Puche consulted, and in August 1990 recommended the launch of negotiations.⁴⁰ On September 25, 1990, President Bush formally notified the Congress of his intention to negotiate a free trade agreement with Mexico. In February 1991 the U.S. and Mexican presidents and Canadian Prime Minister Brian Mulroney announced that Canada would participate too, making it a trilateral North American Free Trade Agreement negotiation.⁴¹ On February 5, 1991, President Bush formally notified the Congress of his intention of negotiating a free trade agreement with Canada as well as Mexico.⁴²

Also in February 1991 all Uruguay Round participants (including the European Communities) agreed to negotiate agricultural subsidy reductions in each of the three major areas.⁴³ Negotiations in Geneva could then resume. However, under the U.S. fast track, time had run out.

IV. The President's Extension Request and Response to Congressional Concerns

The fast track was due to expire on March 1, 1991, the deadline for the President to notify the Congress of his intention to enter into any trade agreement. The President had high hopes for both a NAFTA and a successful conclusion to the Round, but nothing in hand. To preserve the fast track option for these negotiations (as well as any possible agreement resulting from the Enterprise for the Americas Initiative), the President requested an extension of the fast track on March 1, 1991.⁴⁴ He submitted to the Congress all necessary supporting documents, including a voluminous report on progress in the Uruguay Round multilateral trade negotiations⁴⁵ and a report of the Advisory Committee on

39. The White House, Office of the Press Secretary, Joint Statement by the Presidents of Mexico and the United States on Negotiation of a Free Trade Agreement (June 11, 1990).

40. OFFICE OF THE U.S. TRADE REPRESENTATIVE, JOINT REPORT BY THE U.S. TRADE REPRESENTATIVE AND THE SECRETARY OF COMMERCE AND INDUSTRIAL DEVELOPMENT OF MEXICO TO THE PRESIDENT OF THE UNITED STATES OF AMERICA AND THE PRESIDENT OF THE UNITED MEXICAN STATES ON BILATERAL U.S.-MEXICAN TRADE (Aug. 8, 1990).

41. The White House, Office of the Press Secretary, Text of a Letter from the President to the Chairman of the Senate Committee on Finance and the Chairman of the House Committee on Ways and Means (Sept. 25, 1990).

42. Letter from President Bush to Dan Rostenkowski, Chairman, Committee on Ways and Means (Feb. 5, 1991).

43. Specifically, participants agreed "to conduct [agricultural] negotiations to achieve specific binding commitments on each of the following areas: domestic support, market access, and export competition . . ." Proposal by the Chairman at Official Level, Trade Negotiations Committee, Programme of Work (Feb. 26, 1991).

44. Letter from President Bush to the Congress (March 1, 1991) (available from the White House, Office of the Press Secretary).

45. REPORT TO THE CONGRESS ON THE EXTENSION OF FAST TRACK PROCEDURES PURSUANT TO SECTION 1103(B) OF THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988, H.R. DOC. NO. 51, 102d Cong., 1st Sess. (1991).

34. 134 CONG. REC. 21295 (1988).

35. *Id.* at 24444.

36. United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. No. 100-449, 102 Stat. 1851 (codified at 19 U.S.C. § 2112 note (1990)).

37. GATT, *Ministerial Declaration on the Uruguay Round* (Sept. 20, 1986).

38. GATT Secretariat, *Multilateral Trade Negotiations, Trade Negotiations Committee, Trade Negotiations Committee Meeting at Ministerial Level* (Dec. 9, 1988) (restricted document).

Trade Policy and Negotiations endorsing the extension of fast track, continuation of the Round, and the NAFTA initiative.⁴⁶

If the President's request had concerned use of the fast track solely to implement any Uruguay Round agreements, the reaction in the Congress might have been muted. His proposal of a free trade agreement with Mexico, however, provoked strong concerns in the Congress and among some interest groups in the private sector. In particular, organized labor strongly opposed the fast track extension for fear of losing American jobs to Mexico because of lower labor rates and less stringent (and less stringently enforced) Mexican standards. Many environmental groups echoed strong concerns as well, fearing protection of the environment would be eroded.

Crystallizing such concerns, Senate Finance and House Ways and Means Committee Chairmen Lloyd Bentsen and Dan Rostenkowski wrote President Bush on March 7.⁴⁷ The chairmen's letter asked the President to indicate, by no later than May 1, his plans with respect to labor and environmental issues in connection with the Mexican negotiations. On March 27, House Majority Leader Richard A. Gephardt also wrote the President, asking for the administration's plans regarding wage disparity, rules of origin, environmental protection, health and safety standards, labor mobility, worker and human rights, an escape clause, and worker adjustment programs.⁴⁸

The administration responded to the committee chairmen and majority leader on May 1. In his letter the President first made a personal commitment to "close bipartisan cooperation in the negotiations and beyond."⁴⁹ Second, he agreed to work with the Congress to provide adequate worker adjustment assistance. Third, he agreed to develop and implement an expanded program of U.S.-Mexico environmental cooperation parallel to the NAFTA talks. Fourth, he also agreed to work through new initiatives with Mexico to expand bilateral labor cooperation.⁵⁰

Submitted in support of the President's letter, numerous memoranda:

- described Mexico's record on labor and environmental issues, to correct any misunderstandings about Mexico's commitments to worker rights and adequate protection of the environment;

46. ADVISORY COMM. FOR TRADE POLICY AND NEGOTIATIONS, REPORT TO THE U.S. CONGRESS CONCERNING THE PRESIDENT'S REQUEST FOR THE EXTENSION OF FAST TRACK PROCEDURES IMPLEMENTING LEGISLATION FOR TRADE AGREEMENTS (March 1991).

47. Letter to the President from Senator Lloyd Bentsen, Chairman, Committee on Finance, and Representative Dan Rostenkowski, Chairman, Committee on Ways and Means (March 7, 1991), reprinted in COMMITTEE ON WAYS AND MEANS, EXCHANGE OF LETTERS ON ISSUES CONCERNING THE NEGOTIATION OF A NORTH AMERICAN FREE TRADE AGREEMENT, 102d Cong., 1st Sess. app. at 87 (Comm. Print 1991) [hereinafter EXCHANGE OF LETTERS].

48. *Id.* at 89-98.

49. *Id.* at 2.

50. *Id.*

- described various economic studies demonstrating that a free-trade agreement with Mexico would provide economic benefits to the United States;
- outlined the administration's plan to conduct separate, but parallel negotiations with Mexico on environmental issues; and
- indicated how the United States and Mexico proposed to consult on labor-related issues.⁵¹

In addition to this eighty-six-page response, administration witnesses testified before numerous committees in support of the President's request for extension of the fast track. They argued that:

- An extension was essential to continued U.S. economic leadership.
- Without fast track authority, the Office of the U.S. Trade Representative (USTR) would be out of business; USTR could not engage in trade liberalizing negotiations without the fast track. Congress had to decide whether or not it wanted USTR to negotiate trade liberalizing agreements. If it did, it was essential it give USTR the fast track.
- The vote on the fast track extension was not a vote on any result and did not lock any member in; it was only a procedural vote.
- The fast track was neither a fast, nor a narrow, track; the administration was not trying to rush anything through. Congress had ample time for input in the negotiations and review of the final agreement.
- The administration would honor its end of the bargain: Congress would receive detailed consultations, and the administration would write the implementing legislation with Congress. Members could vote against the implementing legislation the President submitted if they believed the agreement he negotiated was unacceptable.⁵²

Meanwhile, fast track extension disapproval resolutions were introduced and reported out of committees in both the House of Representatives and the Senate. The House resolution, H. Res. 101, was sponsored by Representative Byron L. Dorgan (D-S.D.); the identical Senate measure, S. Res. 78, was sponsored by Senator Ernest L. Hollings (D-S.C.). The Dorgan resolution was reported out of the Ways and Means Committee unfavorably on a vote of 27-9 on May 14.⁵³ The Hollings resolution likewise was reported unfavorably out of the Finance Committee on a vote of 15-3 on May 14.⁵⁴ With the receipt of the administra-

51. *Id.* at 4-86.

52. See, e.g., statements of Ambassador Carla A. Hills before the Senate Comm. on Finance (Feb. 6, 1991); Subcomm. on Trade, House Comm. on Ways and Means (Feb. 20, 1991); House Comm. on Ways and Means (March 12, 1991); House Comm. on Agriculture (April 24, 1991).

53. H.R. REP. NO. 63, pt. 2, 102d Cong., 1st Sess., at 9 (1991).

54. S. REP. NO. 56, 102d Cong., 1st Sess. 6 (1991). Both Chairmen Rostenkowski and Bentsen elected to report the resolutions out for floor action, rather than keep them bottled up in committee, even though the fast track procedures do not provide for the automatic discharge of a resolution from committee. See *supra* notes 4, 18 and accompanying text; see also 137 CONG. REC. S6550-54 (daily ed. May 23, 1991) (comments of Chairman Bentsen).

tion's response, a torrent of lobbying by various interest groups,⁵⁵ and the reports of the Finance and Ways and Means Committees, the congressional debate began.

V. The Congressional Debate over Extension of the Fast Track

Much of the debate in the Congress over the President's fast track extension request centered on the substance of the negotiations concerned, in particular the NAFTA talks with Mexico.⁵⁶ However, a considerable portion of the debate addressed the fast track procedure itself. A few members suggested that the fast track procedure was unconstitutional.⁵⁷ Most opponents of its extension, however, accepted its lawful basis, but decried the "abrogation,"⁵⁸ "abdication,"⁵⁹ "surrender,"⁶⁰ or "relinquish[ment]"⁶¹ of congressional power, prerogatives, and responsibilities. They opposed giving the executive a "carte blanche," "blank check,"⁶² or "keys to the store,"⁶³ thus reducing the role of Congress to that of a mere "rubber stamp."⁶⁴

Some opponents argued that fast track required that Congress trust the administration—a trust that some felt unwarranted by the administration's track record.⁶⁵ Indeed, such distrust was not limited to the Bush administration, or even to Republican administrations, by a Democratic Congress. The distrust

55. See, e.g., Jill Abramson, *U.S.-Mexico Trade Pact Is Pitting Vast Armies of Capitol Lobbyists against Each Other*, WALL ST. J., Apr. 25, 1991, at A16; see also 137 CONG. REC. S6634-36 (daily ed. May 23, 1991), S6797-98, S6810-11, S6816-17 (daily ed. May 24, 1991) (letters and press releases incorporated in the fast track extension congressional debate).

56. See, e.g., *id.* at S6614-15 (daily ed. May 23, 1991) (comments of Sen. Slade Gorton (R-Wash.)).

57. See, e.g., *id.* at H3505 (comments of Rep. John J. LaFalce (D-N.Y.)) ("The whole concept of fast-track authority is ultra vires and unenforceable."); *id.* at H3565 (comments of Rep. Gerald D. Kleczka (D-Wis.)) ("Our founding fathers would shudder at the thought of an agreement with so great an impact on American lives not subject to the consideration of elected representatives.").

58. *Id.* at H3503 (comments of Rep. LaFalce).

59. *Id.* at H3514 (comments of Rep. Cardiss Collins (D-Ill.)), H3529 (comments of Rep. David R. Obey (D-Wis.)), H3544 (comments of Rep. Richard J. Durbin (D-Ill.)), S6574 (comments of Sen. Jesse A. Helms (R-N.C.)).

60. *Id.* at H3524 (comments of Rep. Tim Johnson (D-S.D.)), H3574 (comments of Rep. Louis Stokes (D-Ohio)).

61. *Id.* at H3531 (comments of Rep. Ed Jenkins (D-Ga.)).

62. *Id.* at H3578 (comments of Rep. Craig Thomas (R-Wyo.)), H3590 (comments of Rep. Thomas McMillen (D-Md.)). Both of those representatives supported fast track extension and argued that such extension was not a blank check. *Contra id.* at H3582 (comments of Delegate Eleanor Holmes Norton (D-D.C.)), H3587 (comments of Rep. Nick J. Rahall, II (D-W.Va.)).

63. *Id.* at H3584 (comments of fast track supporter Rep. Robert F. Smith (R-Or.)).

64. *Id.* at H3579 (comments of Rep. Ted Weiss (D-N.Y.)); see also *id.* at S6595 (comments of Sen. Tom Harkin (D-Iowa)).

65. See *id.* at H3519 (comments of Rep. Dorgan) ("Do I trust this administration? Of course not."); see also *id.* at H3547 (comments of Rep. Andrews), H3549 (comments of Rep. Kildee), H3551 (comments of Rep. Conyers), H3562 (comments of Rep. Wolpe). Representative Douglas Applegate (D-Ohio) also claimed that "[t]he Administration's track record on trade stinks." *Id.* at H3605.

expressed was institutional—of the executive branch by the Congress. For example, one congressman said: "Trade negotiators ask you to just trust them. The Tokyo Round experience [led by the Democratic Carter administration] shows they were willing to lie massively to get a deal. And they want us to respect them in the morning and trust them again."⁶⁶ In addition to the Tokyo Round, the use of fast track with respect to the more recent free-trade agreement with Canada was criticized. Congressman John Dingell (D-Mich.) spoke of what he characterized as the administration's broken promises regarding the FTA.⁶⁷ Majority Leader Richard Gephardt said that the public debate of that agreement prior to its conclusion was "almost nonexistent."⁶⁸

In particular, some members—including some fast track supporters—complained of the inadequacy of past administrations' consultations with the Congress. Finance Committee Chairman Lloyd Bentsen, for example, said that the Reagan administration's initial consultations with the Congress regarding the U.S.-Canada Free-Trade Agreement were inadequate.⁶⁹ While he maintained that the Bush administration had "learned that lesson" and "[has] been consulting with us every step of the way,"⁷⁰ other members disagreed. Senator Thomas A. Daschle (D-S.D.), for example, maintained: "In my experience, the consultations have not been meaningful. . . . Muggers meet directly with their victims, too, but we don't call it consultations."⁷¹ Senator Ernest B. Hollings (D-S.C.) echoed this concern: "[T]hey claim that the distinguished Ambassador for Trade, Carla Hills, she consults. She consults. That is what I am complaining about. These consultations are killing us."⁷²

Some members disagreed that the fast track was necessary to conduct any trade negotiations. Congressmen Jenkins and Helms, for example, both said they just did not accept the argument that fast track authority "is essential to a successful negotiation of new trade agreements."⁷³ As Representative William L. Clay (D-Mo.) argued: "Fast track may be convenient to the President of the United States, but it is by no means essential to his ability to negotiate international agreements."⁷⁴

On the other hand, many who supported the extension of fast track for the multilateral Uruguay Round negotiations opposed, or expressed serious reserva-

66. *Id.* at H3516 (comments of Rep. Stark).

67. *Id.* at H3547-48 *passim*.

68. *Id.* at H3608.

69. *Id.* at S6552 (daily ed. May 24, 1991). He then added that the administration later "got the message and then they came and consulted." *Id.*; see also *supra* note 32 for similar comments of Sen. Baucus concerning consultations concerning the U.S.-Canada FTA.

70. 137 CONG. REC. S6552 (daily ed. May 24, 1991).

71. *Id.* at S6640.

72. *Id.* at S6778.

73. *Id.* at S6575 (daily ed. May 23, 1991) (comments of Sen. Helms); see also *id.* at H3530-31 (comments of Rep. Jenkins).

74. *Id.* at H3585.

tions about, its use for the NAFTA talks. Representative Pease, for example, maintained that the use of the fast track "is warranted when negotiating trade agreements with as many as 107 partners."⁷⁵ The administration, however, did not persuade Representative Pease and others that fast track was necessary in negotiations with far fewer trading partners. As Senator Paul S. Sarbanes (D-Md.) argued:

I have voted for this [fast track] procedure on GATT in the past. I was moved by the argument that if you go to a negotiation with 107 negotiators, it is very difficult to go back and renegotiate it. . . . But now, the administration is extending this to negotiations with individual countries.

. . . . I do not support the administration's path of moving to make fast track standard operating procedure in each trade negotiation that comes along.⁷⁶

In addition to this concern about the use of fast track for bilateral or trilateral negotiations generally, opposition was expressed to its use for talks with Mexico in particular. Senator Metzenbaum (D-Ohio) argued: "The Mexicans initiated these trade talks. The Mexicans want this agreement. And the Mexicans will continue to negotiate with or without the fast track. That is the reality."⁷⁷ Further, some members noted reports of a statement by the Mexican chief negotiator that Mexico would negotiate with the United States, with or without the fast track.⁷⁸

In response to these concerns, fast track supporters made the following arguments. First, they maintained that trade negotiations are an essential component of any strategy to enhance American competitiveness. House Majority Leader Gephardt began the argument: "[I]f we [can] open closed markets today we can open closed factories tomorrow."⁷⁹ Senator Lloyd Bentsen and Chairman of the Finance Subcommittee on International Trade, Max Baucus, continued it:

If you are serious about cracking down on foreign barriers, trade negotiations must be a part of your strategy. In the absence of negotiations, a multitude of unfair foreign barriers will remain. And the United States cannot settle for that—not if we want to be effective competitors for world markets.⁸⁰

75. *Id.* at H3500.

76. *Id.* at S6598-99; see also *id.* at S6787 (daily ed. May 24, 1991) (comments of Sen. Edward M. Kennedy (D-Mass.)) ("[I]t is difficult to envision a multilateral trade negotiation that would allow each nation to amend the treaty. And that is why the fast track procedure should be approved. But I want to express my deep concern over the Administration's use of fast track authority to enter into trade negotiations with Mexico."); *id.* at S6825 (comments of Sen. Joseph R. Biden (D-Del.)) ("[F]ast track was designed with multilateral negotiations in mind.").

77. *Id.* at S6603 (daily ed. May 23, 1991).

78. See, e.g., *id.* at S6598 (comments of Sen. Sarbanes), S6602 (comments of Sen. Metzenbaum). Metzenbaum referenced excerpts from *El Financiero*, "a respected Mexican newspaper," which reported the following observation made by Mexican Chief Negotiator Herminio Blanco in March 1991: "With the fast track or without it, in any case the negotiations will be carried out." *Id.* at S6602-03.

79. *Id.* at H3607.

80. *Id.* at S6552 (comments of Sen. Bentsen).

Instead of bemoaning the problems, we should be looking for solutions. And one of the best available solutions is to open foreign markets with trade agreements.⁸¹

Second, fast track supporters argued that other nations simply would not participate in trade negotiations with the United States except under fast track procedures. As Senator John C. Danforth (R-Mo.) summarized:

[I]t is the overwhelming opinion of people who know anything about international trade that without fast track there is no possibility of a trade agreement. It is just not going to happen. . . . Carla Hills says she has been told by her negotiating partners, forget it, we are not even going to talk to you.⁸²

Sam M. Gibbons (D-Fla.), chairman of the Subcommittee on International Trade, House Committee on Ways and Means, explained that during the sixth round of multilateral trade negotiations, the Kennedy Round, the administration had negotiated two agreements that the Congress subsequently had refused to implement legislatively. This experience, he noted, was the reason Congress created the fast track. Failure to implement the Kennedy Round agreements convinced the trading partners of the United States that negotiations with the U.S. executive branch lacked an adequate foundation in the absence of some substantial indication that the Congress supported the executive in the negotiations.⁸³ As Chairman Gibbons summarized, the reaction of trading partners was: "Listen, unless you reform your congressional procedures, we aren't dealing with you anymore. You are not a reliable bargainer."⁸⁴

Thus, argued fast track supporters, trade negotiations were essential to stimulate American competitiveness, and the fast track was essential to trade negotiations. Moreover, they added, the fast track did not reduce, but rather enhanced, the role of the Congress in trade negotiations. The fast track ensured that the Congress was a partner in the executive's deliberations with foreign nations on trade matters. "Fast track enables us to be a trade negotiating partner with the ultimate power to say yes or no," said House Minority Leader Robert H. Michel (R-Ill.).⁸⁵ Indeed, Chairman Dan Rostenkowski of the Ways and Means Committee argued that as a result of the fast track extension debate, Congress "has already strongly influenced the scope, agenda and course of the North American free trade negotiations before they even begin."⁸⁶

81. *Id.* at S6798 (daily ed. May 24, 1991) (comments of Sen. Baucus).

82. *Id.* at S6623 (daily ed. May 23, 1991); see also *id.* at H3498-99 (comments of Rep. David Dreier (R-Cal.)), H3503 (comments of Sam M. Gibbons (D-Fla.)).

83. *Id.* at H3503, H3517.

84. *Id.* at H3503.

85. *Id.* at H3559; see also, e.g., *id.* at H3518 (comments of Rep. Bill Archer (R-Tex.)), H3546 (comments of Rep. David E. Price (D-N.C.)), H3607 (comments of Rep. Rostenkowski (D-Ill.)).

86. *Id.* at H3521; see also *id.* at S6596 (comments of Sen. John D. Rockefeller IV (D-W.Va.)) ("Congress's role is not cosmetic"); *id.* at S6806 (daily ed. May 24, 1991) (comments of Sen. Connie Mack (R-Fla.)) (asserting that the fast track does not eliminate the Congress's influence on the outcome of trade negotiations).

Moreover, supporters generally credited at least the current administration with doing a good job in consulting with the Congress on trade negotiations. As ranking member of the Senate Finance Committee Bob Packwood (R-Or.) concluded: "If there is anything that can be said now about our U.S. Trade Representative, Ambassador Carla Hills, it is that she has given us opportunity after opportunity . . . for input."⁸⁷ Further, many supporters stressed that Bush administration trade negotiators had earned the Congress's trust by allowing the Brussels Ministerial to fail rather than to accept bad agreements. Speaker after speaker in the fast track extension debate gave the administration substantial credit for the courage of its conviction that no agreement was better than a bad agreement. For example, Representative Philip M. Crane (R-Ill.) "remind[ed] . . . those of little faith, that it was our distinguished U.S. Trade Representative who refused to conclude what in her eyes was an unsatisfactory agreement in the Uruguay round."⁸⁸ Senator Phil Gramm (R-Tex.) added:

The fact that Carla Hills was willing to walk away from the last best offer of the Europeans at the end of the GATT round in late 1990s tells me that this is a lady of real toughness. And it convinces me that she will be prepared to walk away from another GATT round if the final offer is not acceptable and will be willing to walk away from a United States-Mexico agreement if not successful.⁸⁹

Next, fast track supporters maintained that extension of fast track procedures did not require a wholesale delegation of trust to the administration. As several members indicated, "Trust but verify" may be applied to trade as well as strategic arms negotiations.⁹⁰ Indeed, many fast track supporters who voted against the extension disapproval resolutions joined fast track opponents in stressing their intention to seek to maximize congressional influence in the negotiations and scrutinize the outcome closely:

- **Congressman David E. Skaggs (D-Colo.):** "Negotiate, Mr. President, but negotiate well. . . . I'll be reading the fine print of any agreement."⁹¹
- **Senator Sam Nunn (D-Ga.):** "I will be looking carefully at the final agreement reached in the Uruguay round and the trade agreement with Mexico, and my vote for the fast track in no way commits me to vote for final approval."⁹²

87. *Id.* at S6555 (daily ed. May 23, 1991).

88. *Id.* at H3527.

89. *Id.* at S6607; *see also, e.g., id.* at H3595 (comments of Rep. Bill Emerson (R-Mo.)), S6600 (comments of Sen. Dave Durenburger (R-Minn.)), S6617 (comments of Sen. Dennis DeConcini (D-Ariz.)), S6798 (comments of Sen. Max Baucus). *But cf., e.g., id.* at S6595 (comments of Sen. Tom Harkin (D-Iowa)), S6640 (comments of Sen. Thomas Daschle (D-S.D.)).

90. *Id.* at H3572 (comments of Rep. William Hughes (D-N.J.)).

91. *Id.* at H3592-93. He also added: "We promise you careful scrutiny of the results." *Id.* at H3594.

92. *Id.* at S6814 (daily ed. May 24, 1991).

- **Congressman Doug Bereuter (R-Neb.):** "This Member would . . . serve notice to the administration that he will go over the eventual NAFTA with a fine-toothed comb."⁹³

Perhaps the House Majority Leader characterized this attitude most colorfully:

I am serving notice today that Congress will [keep the pressure on] Chairman Rostenkowski, Senator Bentsen, and I will sound like the song by the [P]olice that goes, "Every breath you take, every step you take, every move you make, we'll be watching you." Trust but verify: that will be our policy.⁹⁴

Finally, various members—fast track supporters and opponents—indicated that if the Congress was dissatisfied with the agreements the administration negotiated, then it had, and might exercise, the right to change the fast track rules.⁹⁵

Ultimately the fast track supporters prevailed. On May 23, 1991, the House of Representatives rejected the fast track disapproval resolution sponsored by Representative Byron L. Dorgan (D-N.D.), voting 192-231.⁹⁶ Immediately after defeating the disapproval resolution, the House passed overwhelmingly a "sense of the House"⁹⁷ resolution affirming the Congress's commitment to hold the administration to promises it had made concerning the treatment of environmental safeguards, worker safety, and worker adjustment assistance.⁹⁸ On May 24, 1991, the Senate disapproval resolution sponsored by Senator Ernest F. Hollings also failed, by a vote of 36-59.⁹⁹ Consequently, the President has authority until June 1, 1993, to enter into trade agreements pursuant to fast track procedures.¹⁰⁰

VI. A Prescription for a Pragmatic Partnership

As Senator Gramm characterized it, the rejection of the House and Senate resolutions that would have disapproved the extension of fast track was a "triumph of reason over passion" and "a victory of public interest over the special interests."¹⁰¹ Clearly, it was a strong, bipartisan endorsement for using trade

93. *Id.* at H3544 (daily ed. May 23, 1991).

94. *Id.* at H3608 (comments of Rep. Richard Gephardt (D-Mo.)).

95. *See, e.g., id.* at H3498 (comments of Rep. Anthony C. Beilenson (D-Cal.)), H3572 (comments of Rep. William Hughes (D-N.J.)), H3590 (comments of Rep. Thomas McMillen (D-Mo.)), H3609 (comments of Rep. Bill Barrett (R-Neb.)), S6639 (comments of Sen. Thomas Daschle (D-S.D.)).

96. *Id.* at H3588.

97. *Id.* at H3589, H3610.

98. EXCHANGE OF LETTERS, *supra* note 47.

99. 137 CONG. REC. S6829 (daily ed. May 24, 1991).

100. Even though the administration prevailed in the vote on an extension disapproval resolution, the fast track remains decidedly fragile. Despite its inclusion in a statute, it remains expressly subject to the constitutional rulemaking authority of each house. At any time, either the House of Representatives or the Senate can change its fast track rule, or eliminate the fast track altogether. Therefore, the administration and supporters of the Round and North American free trade talks must remain vigilant to preserve the fast track.

101. 137 CONG. REC. S6586 (daily ed. May 23, 1991).

negotiations to open foreign markets and thus enhance American competitiveness. A comfortable majority in both houses basically decided to "give trade a chance."¹⁰²

The debate, however, exposed the fragility of the fast track and the peril for any trade agreement negotiated by an administration without sufficient involvement of the Congress. For the President to enjoy both credibility with America's trading partners and substantial prospects for congressional passage of implementing legislation, these two branches must truly work together as partners: in the establishment of negotiating objectives, throughout the actual negotiations, and in the implementation of agreements in U.S. domestic law.

Pragmatically, this means that the administration must consult the Congress not only regularly, but meaningfully. While naturally loathe to disclose publicly its strategy, tactics, and goals, administration officials must be able and willing to consult with and confide in members and their staffs on these decisions. Some disagreements about substance are unavoidable, but Congress should have no just ground for complaint against the administration regarding procedures.

While regular and meaningful consultation with the Congress may sound easy to those not directly involved with the federal government, it requires an enormous expenditure of energy and time by many administration officials. The U.S. Trade Representative is not able to address the combined houses, as the President does when he delivers his State of the Union message. Even if she had this opportunity, it is far too public a forum in which to consult meaningfully without betraying negotiating positions to other nations. Instead, teams of administration officials, at varying levels and from varying agencies, haunt House and Senate hearing rooms, chambers, and corridors in an effort faithfully and diligently to meet their responsibility to consult with the Congress. However inefficient and diverting this requirement, it must be fulfilled.

For its part, on the other hand, Congress must be prepared to shoulder the burden of making trade-offs if it wishes to be a responsible partner in trade negotiations. The classic public injunction of the Congress to any administration in trade negotiations is to achieve 100 percent of all U.S. objectives and to make no concessions. While this is an understandable starting point, it is impossible to realize. Negotiations are based upon compromise. Trade agreements are likely to endure only if they embody compromise, since sovereign governments adhere over time only to arrangements that, on balance, serve their interests.

Of course, members of Congress who wish to be reelected cannot reasonably take positions in public that would provoke opposition by constituents. In public many in the Congress feel compelled to enjoin the administration to make no sacrifice and to attain all goals. In private, however, members must be prepared

to prioritize their objectives and to share with the administration their advice about negotiating positions. Unless they are prepared to do so, they are ethically estopped from complaining about the trade-offs that the administration ultimately must make.

Of course, even if both branches are responsible and faithful partners, disagreements on the substance will occur. Even when the administration consults diligently and the Congress, in private, offers frank advice about negotiating positions and trade-offs, the administration must sift conflicting advice—from different members and committees, the private sector, and executive agencies—and make hard choices that will not be universally popular.

Ultimately, the fast track requires the executive to exercise leadership, but reserves power for the Congress to accept or reject the agreements concluded with its advice. This formula does not guarantee that trade negotiations will succeed, but it provides the best opportunity for such success. If the Congress is realistic in its private advice to the administration, and the administration in turn is forthcoming in regular consultations with the Congress, there is no reason why this fast track partnership, while always fragile, cannot prosper through not only the Uruguay Round and NAFTA negotiations, but for the trade negotiations of the twenty-first century as well.

102. *Id.* at H3607 (comments of Rep. Richard Gephardt (D-Mo.)).

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THE EXTENSION OF FAST TRACK PROCEDURES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A REPORT THAT INCLUDES HIS REQUEST FOR THE EXTENSION OF FAST TRACK PROCEDURES FOR THE CONSIDERATION OF IMPLEMENTING LEGISLATION WITH RESPECT TO TRADE AGREEMENTS ENTERED INTO AFTER MAY 31, 1991, AND BEFORE JUNE 1, 1993, TOGETHER WITH A DESCRIPTION OF THE PROGRESS MADE TO DATE IN BILATERAL AND MULTILATERAL TRADE NEGOTIATIONS, THE ANTICIPATED SCHEDULE FOR TRANSMITTING SUCH AGREEMENTS TO THE CONGRESS, AND A STATEMENT OF THE REASONS SUPPORTING HIS REQUEST FOR AN EXTENSION OF FAST TRACK PROCEDURES



MARCH 4, 1991.—Message and accompanying papers referred to the Committees on Ways and Means and Rules, and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

40-445

WASHINGTON : 1991

MAR 4 1991

The message and accompanying report
referred to the Committee on
May 3, 1991. Also
Committee on Rules PR

TO THE CONGRESS OF THE UNITED STATES:

Pursuant to section 1103(b)(2) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418; 102 Stat. 1129), I transmit herewith a report that includes my request for the extension of fast track procedures for the consideration of implementing legislation with respect to trade agreements entered into after May 31, 1991, and before June 1, 1993, together with a description of the progress made to date in bilateral and multilateral trade negotiations, the anticipated schedule for transmitting such agreements to the Congress, and a statement of the reasons supporting my request for an extension of fast track procedures.

The fast track mechanism has played a vital role in U.S. trade policy for many years. It strengthens the hand of our trade negotiators and preserves the important role of the Congress in the shaping of U.S. trade policy. The continued availability of the fast track procedures over the next 2 years will ensure that our negotiators can bring to the Congress for its consideration trade agreements that will truly enhance the ability of the United States to compete internationally.

At a time when world events have reconfirmed the importance of U.S. leadership in multilateral efforts, maintaining fast track is essential to our leadership in the global trading system.

My request reflects my strong desire to continue the partnership between the Congress and the executive branch that the fast track represents. This partnership is essential if we are successfully to meet the world's growing economic challenges into the next century.

George Bush

THE WHITE HOUSE,
March 1, 1991.

REPORT TO THE CONGRESS
ON THE EXTENSION OF FAST TRACK PROCEDURES

Pursuant to Section 1103(b)
of the
Omnibus Trade and Competitiveness Act of 1988

Submitted by the President

March 1, 1991

FOREWORD

The Fast Track and Why It Is Essential

For the better part of this century, Congress and the Executive have recognized that the negotiation and implementation of trade agreements require special cooperation between the two Branches. In the aftermath of the record-high rates of the Smoot-Hawley Tariff Act of 1930 and the Depression that they helped fuel, both Congress and the Executive came to realize that only by working closely together in the exercise of their constitutional responsibilities could the two Branches effectively bring down foreign barriers to our trade and open opportunities for U.S. products and services in the international marketplace.

This new partnership was reflected in the Reciprocal Trade Agreements Act of 1934, which gave the President authority not only to conclude tariff-cutting agreements but also to implement them by proclamation without the need for subsequent legislation. During the following years, when the principal barriers to trade were tariffs, this arrangement proved highly successful and was responsible for the tariff reductions that promoted post-World War II economic growth, particularly in successive rounds of multilateral tariff-cutting negotiations.

As countries began to rely less on tariff protection and more on non-tariff trade barriers, the scope of trade negotiations broadened, and the "fast track" procedures were created by Congress as the necessary complement to this broader trade agenda.

Fast track procedures for approval of trade agreements were included by Congress in trade legislation in 1974, 1979 and again in the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act"). While giving Congress the assurance of meaningful participation throughout the negotiating process, fast track also provides two guarantees essential to the successful negotiation of trade agreements: (1) a vote on implementing legislation within a fixed period of time, and (2) no amendments to that legislation.

These procedures reflect an understanding that trade agreements, in which results in one area are often linked to results in others, are particularly vulnerable to multiple amendments that, while possibly small in themselves, could unravel entire agreements. Whether the balance of benefits contained in any trade agreement is in the overall interest of the United States can only be determined by looking at the whole package.

Through the fast track, Congress has given the President the same bargaining power possessed by his counterparts: the ability to assure his negotiating partners that the agreement reached internationally would be the agreement voted on at home. Without fast track, the President cannot give his negotiating partners that assurance. Without that assurance, foreign governments are reluctant to negotiate with the United States and will not make the tough concessions necessary to reach agreements the United States would be willing to sign. No negotiating partner will give its bottom line knowing that the bargain could be re-opened.

On the basis of fast track procedures, the United States has negotiated and implemented three remarkable trade agreements, each of which was approved by an overwhelming majority in both houses of Congress. These agreements -- the results of the Tokyo Round of GATT negotiations in 1979, the free-trade agreement ("FTA") with Israel in 1985, and the FTA with Canada in 1988 -- have reduced barriers to trade and provided a powerful engine for economic growth in the United States and worldwide.

The United States has much to gain through trade agreements that open markets and provide rules for free and fair trade. Maintaining the fast track will preserve our ability to continue efforts to liberalize trade and open markets through the GATT, through other multilateral agreements, and through bilateral agreements.

Extension of Fast Track Continues a Cooperative Relationship

Fast track procedures preserve Congress's role during the negotiation, approval and implementation of trade agreements. To ensure congressional and private sector input, the fast track statute contains extensive notification and consultation requirements. At each step along the way, from initiation through implementation, Congress is an active partner.

To use the fast track for any agreement, bilateral or multilateral, the President must notify Congress 90 calendar days before signature. By the time the President gives his 90-day notification, our many private sector advisory committees must report their views on the agreement both to Congress and the President. For bilateral agreements, Congress must be given advance notice of the negotiations; during the following 60 legislative working days, either the Senate Finance or House Ways & Means Committee can vote to deny fast track treatment.

Once an agreement is reached, Congress and the Administration work in close consultation to formulate implementing legislation. The process has involved the full participation of all committees of jurisdiction, and not only those committees traditionally consulted in setting trade negotiating objectives. If the agreement and its implementing

legislation are still not acceptable, they can be rejected by majority vote of either house. In fact, as a result of the extensive consultations with Congress and the private sector, the agreements that have been implemented under fast track procedures enjoyed widespread support when they were presented to Congress.

We find ourselves today engaged in bilateral and multilateral trade initiatives that hold unprecedented promise for the advancement of U.S. economic objectives. With such initiatives in the balance, now is not the time to dissolve a partnership that has endured for almost sixty years.

Continuing Fast Track is Essential to Securing Economic Gains

In incorporating the fast track in the 1988 Act, Congress expressly contemplated that an extension of the provision beyond June 1991 might be necessary and appropriate in order for the President to pursue effectively the trade policy objectives set out in the law.

The continued availability of fast track procedures over the next two years -- during which we expect to complete the Uruguay Round of multilateral negotiations, negotiate a North American Free Trade Agreement with Mexico and Canada, and pursue the trade objectives of the Enterprise for the Americas Initiative -- will enable our negotiators to bring to Congress for its consideration trade agreements that will enhance the ability of the United States to compete internationally. Supporting fast track now will allow these important negotiations to go forward without in any way detracting from Congress' ability to assess each agreement on its merits when presented for approval.

The Uruguay Round. These complex negotiations with 107 other nations (many of which are not fully integrated into the multilateral trading system) offer rich opportunities to break down trade barriers and expand the scope of international trade rules.

- o Since their inception in 1986, the Uruguay Round negotiations have been conducted in fifteen areas. Our objectives include more open markets, internationally agreed rules in areas not previously covered by multilateral agreements (services, investment, intellectual property rights), and institutional improvements in the GATT. The negotiations have been difficult, and important issues remain, but there has been significant progress overall toward our objectives. That progress should not be abandoned.
- o The United States had hoped to conclude the Uruguay Round last December at a ministerial level meeting in Brussels. However, the status of the negotiations on

several subjects at that time did not warrant conclusion -- particularly on agriculture. The unwillingness of the European Community ("EC"), as well as Japan and Korea, to accept a framework for agricultural reform impeded progress in the negotiations in all areas.

- o We are encouraged by a recent statement of GATT Director-General Arthur Dunkel that all participants have now agreed to negotiate specific binding commitments in each of the key areas of agricultural reform, thus clearing the way for the resumption of negotiations. However, important differences in agriculture and other areas remain. Much hard bargaining lies ahead.
- o The United States refused to accept a deficient Uruguay Round package in Brussels. Our high standards have not changed. Although ultimate success in the Uruguay Round cannot be guaranteed, we believe the United States should continue negotiations because a successful Round is overwhelmingly in our long-term economic interests.

North American FTA. We have a historic opportunity to achieve a North American Free Trade Agreement ("NAFTA") with Canada and Mexico. The Mexican Government has been pursuing a dramatic opening of its trading regime and has introduced market-oriented domestic reforms that benefit both Mexico and the United States. Building on those reforms and on the existing FTA we have with Canada, we can create a NAFTA that encompasses some 360 million people with almost \$6 trillion in output. A comprehensive NAFTA will create growth and better jobs in all three countries, and will make us more competitive in the global marketplace.

Extension of fast track will be essential for these negotiations, which are expected to begin in late Spring.

Enterprise for the Americas Initiative. An extension of fast track will also enable the United States to take steps in the next two years toward fulfillment of the trade objectives of the Enterprise for the Americas Initiative (EAI), announced in June 1990. Although it is likely that few Latin American nations will be in a position to enter into FTA negotiations with the United States before June 1993, the United States must continue to be able to respond to the increasing pace of economic liberalization in the region.

* * * * *

The United States has an enormous stake in the future of the global trading system. Exports have become a vital source of strength to the U.S. economy. In 1990, the nearly 8.5 percent growth in U.S. exports accounted for 88 percent of U.S. GNP growth. Since 1986, expanded exports have accounted for over 40 percent of the growth in U.S. GNP. In order to sustain the expansion of exports and consequent growth, we must continue our efforts to open world markets. We must maintain our active leadership role. Without an extension of fast track, those efforts and that role are placed in jeopardy.

Preserving fast track procedures -- and the partnership between Congress and the Executive Branch which fast track represents -- will keep on course our joint efforts to liberalize trade and open markets through the initiatives described above and through other multilateral and bilateral agreements. No country stands to gain more from those efforts than the United States.

As we approach the beginning of a new century, we should not hesitate to pursue the opportunities for economic growth and prosperity presented by successful trade negotiations. In order to turn those opportunities into realities, Congress and the Executive must continue to work together in the manner envisioned by the fast track.

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103D CONGRESS }
1st Session }

SENATE

{ REPORT
103-66 }

PROVIDING AUTHORITY FOR THE PRESIDENT TO ENTER INTO TRADE AGREEMENTS TO CONCLUDE THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS UNDER THE AUSPICES OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE, TO EXTEND TARIFF PROCLAMATION AUTHORITY TO CARRY OUT SUCH AGREEMENTS, AND TO APPLY CONGRESSIONAL "FAST TRACK" PROCEDURES TO A BILL IMPLEMENTING SUCH AGREEMENTS

JUNE 23 (legislative day, JUNE 22), 1993.—Ordered to be printed

Mr. MOYNIHAN, from the Committee on Finance,
submitted the following

REPORT

[To accompany S. 1003]

The Committee on Finance, to which was referred the bill (S. 1003) providing authority for the President to enter into trade agreements to conclude the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade, to extend tariff proclamation authority to carry out such agreements, and to apply Congressional "fast track" procedures to a bill implementing such agreements, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. SUMMARY

The Committee bill renews negotiating and proclamation authority and provides for the application of fast track approval procedures for agreements concluding the Uruguay Round of multilateral trade negotiations. The authority provided under the Committee bill would require that the President enter into any Uruguay Round agreements before April 16, 1994. The bill would also require that, before entering into any agreements, the President must give the Congress 120 days' advance notice of his intent to enter into the agreements. Under the Committee bill, the last day for such advance notification would be December 15, 1993. The Committee bill would also permit the private sector advisory committees established by section 135 of the Trade Act of 1974 to sub-

mit their reports to the Congress 30 days after the President notifies the Congress of his intent to enter into Uruguay Round agreements.

II. GENERAL EXPLANATION

The Congress first adopted expedited legislative procedures for trade agreements (known as the "fast track") in the Trade Act of 1974 ("1974 Trade Act"). The fast track has been renewed twice. It was extended for eight years in the Trade Agreements Act of 1979 and, after a lapse of eight months, was reauthorized in the Omnibus Trade and Competitiveness Act of 1988 ("1988 Trade Act"). The 1988 Trade Act provided fast track procedures for trade agreements signed by June 1, 1993, subject to a Presidential request in 1991.

Under the 1988 Trade Act, the President was authorized to enter into trade agreements to reduce or eliminate tariff and non-tariff barriers and other trade-distorting measures. The 1988 Trade Act also granted the President the authority to proclaim, within prescribed limits, modifications to U.S. tariffs that are negotiated as part of a multilateral trade agreement. The President was required to notify the Congress at least 90 days in advance of his intent to enter into a trade agreement in order for the agreement to be considered using the fast track procedures provided by the 1988 Trade Act. The last date for such advance notification under the 1988 Trade Act was March 2, 1993, and the authority itself expired May 31, 1993. In addition, the private sector advisory committees established under section 135 of the 1974 Trade Act were required to submit reports to the Congress on any trade agreement at the same time as the President notified Congress of his intent to enter into such agreement.

On April 27, 1993, United States Trade Representative Michael Kantor transmitted to the Congress, on behalf of the President, a legislative proposal to extend the fast track approval procedures to trade agreements that conclude the Uruguay Round of multilateral trade negotiations, provided that the President notified the Congress by December 15, 1993 of his intent to enter into any such agreements before April 16, 1994.

Consistent with the President's request, the Committee bill renews negotiating and proclamation authority and provides for the application of fast track approval procedures for Uruguay Round agreements. The authority would apply to agreements entered into before April 16, 1994, and would require that the President give the Congress a minimum of 120 days' advance notification (or by December 15, 1993) of his intent to do so. Tariff reductions proclaimed under the authority may not take effect before the effective date of a bill implementing the non-tariff elements of any agreements. The bill would also require that the private sector advisory committees submit their reports to the Congress on the Uruguay Round agreements within 30 days of the President's notification to the Congress.

The Committee believes that this extension of the fast track, requiring notice of an agreement by December 15, 1993, should be sufficient to permit the participants to conclude a comprehensive agreement in light of progress made in the past seven years of ne-

gotiations. The notification period required to qualify for fast track procedures is extended from 90 days to 120 days to provide the Congress with a meaningful opportunity to review the agreement since the period of review is likely to include weeks when the Congress is not in session. Finally, the bill delays the requirement for the submission of the private sector advisory committee reports until 30 days after the notification date to allow more informed analyses of the outcome of the negotiations.

The Committee believes that the Senate should promptly approve S. 1003 to enable the President to make a final attempt to bring the Uruguay Round to a successful conclusion. The Committee continues to believe that a properly negotiated Uruguay Round agreement can improve access to foreign markets for exports of U.S. manufactured goods, agricultural products and services. Further, the Committee believes that the Round provides the United States with the best opportunity to seek improvements and clarifications to the rules governing world trade and to bring under General Agreement on Tariffs and Trade (GATT) discipline, for the first time, trade in services and agriculture, intellectual property rights and trade-related investment measures.

As the negotiations move into their final phase, the Committee also believes that it is appropriate to review U.S. goals and objectives for the Uruguay Round. The Committee stands firmly by the negotiating objectives set forth in the 1988 Trade Act, and intends to measure the overall results of the Round against these objectives. At the same time, the Committee recognizes that the negotiations have evolved since they were first launched in 1986. Accordingly, the Committee has sent to the President the following letter stating its views on what U.S. objectives should be as the negotiations enter their final stage.

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC, June 23, 1993.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: The Committee on Finance has closely monitored the progress of the Uruguay Round negotiations since they were launched at Punta del Este in September 1986. As you know, the Congress set forth the principal negotiating objectives for the Round in the Omnibus Trade and Competitiveness Act of 1988. These have been, and will continue to be, the overall benchmarks against which we will measure the outcome of these negotiations.

Since then, however, the negotiations have evolved and the issues have become more clearly defined. In particular, in December 1991, GATT Director General Arthur Dunkel tabled his "Draft Final Act," the document which has since become the basis for much of the negotiations.

It is therefore appropriate, as the Congress considers the President's request to renew negotiating authority and "fast track" procedures for the Uruguay Round, to consider once again our goals and objectives in light of the specific issues raised, or left unaddressed, in the Draft Final Act. We set forth below the views

of the Committee on Finance on the goals it believes the United States should pursue with respect to eight key areas of the negotiations. It is the Committee's intention to review any final Uruguay Round agreement against these objectives, as well as the objectives set forth in the 1988 Trade Act.

First, as negotiations on market access move forward in anticipation of the July meeting of the leaders of the Group of Seven countries, the Committee reaffirms its longstanding belief that the Uruguay Round must result in more open, equitable, and reciprocal access for U.S. exporters of goods and services. With respect to manufactured products, the United States should seek an agreement that will substantially reduce tariff and non-tariff barriers to U.S. exports and eliminate tariffs where our private sector favors such an action and significant trading partners concur.

In the negotiations on services trade, the United States should seek substantial market access commitments that provide for national treatment, right of establishment, and equivalent competitive opportunities for our firms; countries that fail to make such commitments should be denied the benefits of the services agreement. In addition to a substantial reduction in existing trade barriers, the Round should also establish rules to prevent countries from erecting new ones.

Market access is also an important objective in the negotiations on agricultural trade, where we should seek to obtain meaningful commitments that will expand export opportunities for U.S. producers. In addition, we should aim for significant reductions in export subsidies and in farm support programs that distort world market prices by promoting overproduction and dumping of excess production on the world market. We should also ensure that unjustified sanitary and phytosanitary measures are disciplined, while preserving our right to maintain legitimate measures to protect health, safety, and the environment.

The government procurement negotiations also provide an opportunity for greater market access for U.S. firms. In addition to seeking to reduce barriers in foreign markets, the United States should work to expand the coverage of the Government Procurement Code and improve the fairness and transparency of administrative procedures.

The Committee continues to believe that the United States should seek a stronger GATT dispute settlement mechanism that will ensure, within set timeframes, the prompt and effective enforcement of our rights. At the same time, we must retain the ability to use our trade laws to remedy trade agreement violations and address the unfair trading practices of our competitors. In that connection, the Committee believes that dispute settlement panels hearing challenges to our antidumping or countervailing duty actions should be precluded from substituting their own judgment for the judgment of the U.S. International Trade Commission, the Department of Commerce, or U.S. courts.

The Committee strongly believes that our antidumping and countervailing duty laws must be preserved as effective tools for fighting unfair dumping and government subsidies. We are concerned, in particular, with the provisions of the Draft Final Act on standing, cumulation, cost and profit methodologies, de minimis excep-

tions, non-actionable subsidies, and the termination of antidumping and countervailing duty orders. We should seek stronger disciplines against export and domestic subsidies (including equity infusions, and natural resource and regional subsidies), as well as effective measures to prevent circumvention of antidumping and countervailing duty orders and diversionary dumping. At the same time, we should work toward greater transparency in the antidumping and countervailing duty actions taken by our trading partners, as well as a clarification of substantive rules and stronger procedural standards to prevent the misuse of these rules against U.S. exporters.

In the intellectual property negotiations, the Committee believes that our overarching goal should be an agreement that provides adequate protection and effective enforcement of all forms of intellectual property rights. We believe, however, that the Draft Final Act is deficient in several respects. The transition periods, particularly as they apply to developing countries, should be shortened. The agreement should provide for pipeline patent protection for products subject to pre-market regulatory review. The rules regarding the use of compulsory licenses should be strengthened. And the agreement should fully recognize contractual arrangements and transfers, and provide for comprehensive national treatment for U.S. owners of intellectual property rights.

Finally, in the textile and apparel negotiations, we believe that the United States should ensure that all countries provide equitable access to their domestic markets and that measures are put in place to prevent such trade-distorting practices as transshipment, false declarations, smuggling, and other forms of trade rule circumvention. In addition, we believe strongly that any country that does not adhere to the overall Uruguay Round agreement should not benefit from the phase-out of the Multifiber Arrangement (MFA). We also urge you to take into consideration, in any negotiations on textile and apparel tariff reductions, the significant trade-liberalizing effect of the phase-out of the MFA, as well as the impact on employment.

We urge you to keep these objectives, along with those in the 1988 Trade Act, in mind as you work to conclude the Uruguay Round by the end of this year. We look forward to working with you as these negotiations move forward, and stand ready to provide whatever assistance or advice you may find useful.

Sincerely,

DANIEL PATRICK MOYNIHAN,
Chairman.

BOB PACKWOOD,
Ranking Member.

III. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that S. 1003 was ordered favorably reported, without amendment, by a vote of 18 to 2.

IV. BUDGETARY IMPACT OF THE BILL

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office regarding the budgetary impact of the bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 23, 1993.

Hon. DANIEL PATRICK MOYNIHAN,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1003, as ordered reported by the Senate Committee on Finance on June 23, 1993. CBO estimates that this bill would cause no change in federal government receipts.

Before their expiration on June 1, 1993, sections 1102 and 1103 of the Omnibus Trade and Competitiveness Act of 1988 granted the President the authority to enter into multilateral and bilateral trade agreements. The President could reduce certain tariffs by proclamation within specified bounds prescribed by the law, and for provisions subject to Congressional approval, Congress could not amend implementing legislation once it had been formally introduced. Furthermore, as long as the President met statutory requirements concerning Congressional consultation during the negotiation process, Congress was required to act on the legislation following a strict timetable. This consideration process was known as the "fast track" procedures. S. 1003 would extend these provisions for any trade agreement resulting from the Uruguay Round negotiations taking place under the General Agreement on Tariffs and Trade.

Because the fast track procedures have expired, Congress can amend any legislation implementing trade agreements entered into since the expiration and faces no time constraints on the consideration. Secondly, the President no longer has the authority to implement certain tariff reductions of trade agreements without Congressional approval. S. 1003 would make a special exception for the Uruguay Round negotiations taking place under the auspices of the General Agreement on Tariffs and Trade. The President could enter into an agreement before April 16, 1994 (as long as he notified Congress of his intention 120 days beforehand), utilize his proclamation authority for certain tariff reductions, and have the legislation considered by Congress under the fast track procedures.

Because any agreement resulting from the Uruguay Round negotiations would need legislation in addition to S. 1003 for implementation, the budgetary impact of the agreement would be scored with that other implementing legislation. Therefore, CBO scores no change in revenues resulting from enactment of S. 1003. If, however, CBO believed that the President would use the proclamation authority before the consideration of the legislation implementing other parts of the agreement, CBO would score the effect of the proclaimed tariff reductions with this bill.

Because S. 1003 would extend the President's authority to implement certain tariff changes, the bill would be subject to pay-as-you-go procedures under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. However, CBO would score the effect of any such changes with the legislation implementing other sections of the agreement. The pay-as-you-go effects of S. 1003 are shown in the table below.

PAY-AS-YOU-GO CONSIDERATIONS

[By fiscal year, in millions of dollars]

	1993	1994	995
Changes in outlays	(1)	(1)	(1)
Changes in receipts	0	0	0

¹ Not applicable.

If you wish further details, please feel free to contact me or your staff may wish to contact John Stell at 226-2720.

Sincerely,

ROBERT D. REISCHAUER,
Director.

V. REGULATORY IMPACT OF THE BILL

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill will not significantly regulate any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no significant additional paperwork.

VI. CHANGES IN EXISTING LAW

Pursuant to the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 1003, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

* * * * *

SEC. 1102. TRADE AGREEMENT NEGOTIATING AUTHORITY.

(a) AGREEMENTS REGARDING TARIFF BARRIERS.—

* * * * *

(d) CONSULTATION WITH CONGRESS BEFORE AGREEMENTS ENTERED INTO.—

(1) Before the President enters into any trade agreement under subsection (b) or (c), the President shall consult with—

(A) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate; and

(B) each other committee of the House and the Senate, and each joint committee of the Congress, which has jurisdiction over legislation involving subject matters which would be affected by the trade agreement.

- (2) The consultation under paragraph (1) shall include—
 (A) the nature of the agreement;
 (B) how to what extent the agreement will achieve the applicable purposes, policies, and objectives of this title; and
 (C) all matters relating to the implementation of the agreement under section 1103.

(3) If it is proposed to implement two or more trade agreements in a single implementing bill under section 1103, the consultation under paragraph (1) shall include the desirability and feasibility of such proposed implementation.

(e) *SPECIAL PROVISIONS REGARDING URUGUAY ROUND TRADE NEGOTIATIONS.*—

(1) *IN GENERAL.*—Notwithstanding the time limitations in subsections (a) and (b), if the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade has not resulted in trade agreements by May 31, 1993, the President may, during the period after May 31, 1993, and before April 16, 1994, enter into, under subsections (a) and (b), trade agreements resulting from such negotiations.

(2) *APPLICATION OF TARIFF PROCLAMATION AUTHORITY.*—No proclamation under subsection (a) to carry out the provisions regarding tariff barriers of a trade agreement that is entered into pursuant to paragraph (1) may take effect before the effective date of a bill that implements the provisions regarding non-tariff barriers of a trade agreement that is entered into under such paragraph.

(3) *APPLICATION OF IMPLEMENTING AND "FAST TRACK" PROCEDURES.*—Section 1103 applies to any trade agreement negotiated under subsection (b) pursuant to paragraph (1), except that—

(A) in applying subsection (a)(1)(A) of section 1103 to any such agreement, the phrase "at least 120 calendar days before the day on which he enters into the trade agreement (but not later than December 15, 1993)," shall be substituted for the phrase "at least 90 calendar days before the day on which he enters into the trade agreement"; and

(B) no provision of subsection (b) of section 1103 other than paragraph (1)(A) applies to any such agreement and in applying such paragraph, "April 16, 1994;" shall be substituted for "June 1, 1991;".

(4) *ADVISORY COMMITTEE REPORTS.*—The report required under section 135(e)(1) of the Trade Act of 1974 regarding any trade agreement provided for under paragraph (1) shall be provided to the President, the Congress, and the United States Trade Representative not later than 30 days after the date on which the President notifies the Congress under section 1103(a)(1)(A) of his intention to enter into the agreement (but before January 15, 1994).

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Public Law 103-49
103d Congress

An Act

To provide authority for the President to enter into trade agreements to conclude the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade, to extend tariff proclamation authority to carry out such agreements, and to apply congressional "fast track" procedures to a bill implementing such agreements.

July 2, 1993
[H.R. 1876]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION. 1. EXTENSION OF URUGUAY ROUND TRADE AGREEMENT
NEGOTIATING AND PROCLAMATION AUTHORITY AND
OF "FAST TRACK" PROCEDURES TO IMPLEMENTING
LEGISLATION.**

Section 1102 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902) is amended by inserting at the end the following new subsection:

"(e) SPECIAL PROVISIONS REGARDING URUGUAY ROUND TRADE NEGOTIATIONS.—

"(1) IN GENERAL.—Notwithstanding the time limitations in subsections (a) and (b), if the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade has not resulted in trade agreements by May 31, 1993, the President may, during the period after May 31, 1993, and before April 16, 1994, enter into, under subsections (a) and (b), trade agreements resulting from such negotiations.

"(2) APPLICATION OF TARIFF PROCLAMATION AUTHORITY.—No proclamation under subsection (a) to carry out the provisions regarding tariff barriers of a trade agreement that is entered into pursuant to paragraph (1) may take effect before the effective date of a bill that implements the provisions regarding nontariff barriers of a trade agreement that is entered into under such paragraph.

"(3) APPLICATION OF IMPLEMENTING AND 'FAST TRACK' PROCEDURES.—Section 1103 applies to any trade agreement negotiated under subsection (b) pursuant to paragraph (1), except that—

"(A) in applying subsection (a)(1)(A) of section 1103 to any such agreement, the phrase 'at least 120 calendar days before the day on which he enters into the trade agreement (but not later than December 15, 1993),' shall be substituted for the phrase 'at least 90 calendar days before the day on which he enters into the trade agreement,'; and

“(B) no provision of subsection (b) of section 1103 other than paragraph (1)(A) applies to any such agreement and in applying such paragraph, ‘April 16, 1994,’ shall be substituted for ‘June 1, 1991;’.

“(4) ADVISORY COMMITTEE REPORTS.—The report required under section 135(e)(1) of the Trade Act of 1974 regarding any trade agreement provided for under paragraph (1) shall be provided to the President, the Congress, and the United States Trade Representative not later than 30 days after the date on which the President notifies the Congress under section 1103(a)(1)(A) of his intention to enter into the agreement (but before January 15, 1994).”.

Approved July 2, 1993.

LEGISLATIVE HISTORY—H.R. 1876 (S. 1003):

HOUSE REPORTS: No. 103-128, Pt. 1 (Comm. on Ways and Means) and Pt. 2 (Comm. on Rules).

SENATE REPORTS: No. 103-66 accompanying S. 1003 (Comm. on Finance).

CONGRESSIONAL RECORD, Vol. 139 (1993):
June 22, considered and passed House.

June 30, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 29 (1993):
July 2, Presidential statement.

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the President, shall take all appropriate and feasible action under the Trade Act of 1974 to enforce the rights of the United States under any such trade agreement or to obtain the elimination of such act, policy, or practice.

(Pub.L. 98-573, Title IX, § 905, Oct. 30, 1984, 98 Stat. 3049.)

HISTORICAL AND STATUTORY NOTES

References in Text

Section 854(a) of the Trade Agreements Act of 1979, referred to in subsec. (b)(1), (b)(1)(A), is set out as a Review of International Trade in Alcoholic Beverages note under section 2135 of this title.

The Trade Act of 1974, referred to in subsecs. (b)(1)(C)(i) and (c), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to chapter 12 (section 2101 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

Delegation of Functions

Functions vested in the President by section 1125 of Pub.L. 100-418 [set out as a note under this section], regarding the updated report on barriers to wine trade, delegated to the United States Trade Representative pursuant to Ex. Ord. No. 12661, Dec. 27, 1988, 54 F.R. 779, set out as a note under section 2901 of this title.

Reports on Negotiations to Eliminate Wine Trade Barriers

Pub.L. 100-418, Title I, § 1125, Aug. 23, 1988, 102 Stat. 1147, provided that:

"Before the close of the 13-month period beginning on the date of the enactment of this Act [Aug. 23, 1988], the President shall update each report that the President submitted to the Com-

mittee on Ways and Means and the Committee on Finance under section 905(b) of the Wine Equity and Export Expansion Act of 1984 (19 U.S.C. 2804) [subsec. (b) of this section] and submit the updated report to both of such committees. Each updated report shall contain, with respect to the major wine trading country concerned—

"(1) a description of each tariff or nontariff barrier to (or other distortion of) trade in United States wine of that country with respect to which the United States Trade Representative has carried out consultations since the report required under such section 905(b) [subsec. (b) of this section] was submitted;

"(2) the status of the consultations described under paragraph (1); and

"(3) information, explanations, and recommendations of the kind referred to in paragraph (1)(C), (D), and (E) of such section 905(b) [subsec. (b) of this section] that are based on developments (including the taking of relevant actions, if any, of a kind not contemplated at the time of the enactment of such 1984 Act [Aug. 5, 1983]) since the submission of the report required under such section."

Legislative History

For legislative history and purpose of Pub. L. 98-573, see 1984 U.S. Code Cong. and Adm. News, p. 4910.

§ 2805. Required consultations

The Trade Representative shall consult with the Committees and with representatives of the wine and grape products industries in the United States—

(1) before identifying tariff barriers and nontariff barriers to (or other distortions of) trade in United States wine and designating major wine trading countries under section 2803 of this title;

(2) in developing the reports required under section 2804(b) of this title; and

(3) for purposes of determining whether action by the President is appropriate under any provision of the Trade Act of 1974 with respect to any act, policy, or practice referred to in section 2804(b)(1) of this title.

(Pub.L. 98-573, Title IX, § 906, Oct. 30, 1984, 98 Stat. 3050.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Trade Act of 1974, referred to in cl. (3), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to chapter 12 (section 2101 et seq.) of this title. For complete classification of this Act to the Code,

see References in Text note set out under section 2101 of this title and Tables.

Legislative History

For legislative history and purpose of Pub. L. 98-573, see 1984 U.S. Code Cong. and Adm. News, p. 4910.

§ 2806. United States wine export promotion

In order to develop, maintain, and expand foreign markets for United States wine, the President is encouraged to—

(1) utilize, for the fiscal year ending September 30, 1985, the authority provided under section 135 of the Omnibus Budget Reconciliation Act of 1984 to make

available sufficient funds to initiate, in cooperation with nongovernmental trade associations representative of United States wineries, an export promotion program for United States; and

(2) request, for each subsequent fiscal year, an appropriation for such a wine export promotion program that will not be at the expense of any appropriations requested for export promotion programs involving other agriculture commodities.

(Pub.L. 98-573, Title IX, § 907, Oct. 30, 1984, 98 Stat. 3050.)

HISTORICAL AND STATUTORY NOTES

References in Text

Section 135 of the Omnibus Budget Reconciliation Act of 1982, referred to in cl. (1), is set out as an Agricultural Export Promotion note under section 612c of Title 7, Agriculture.

Legislative History

For legislative history and purpose of Pub. L. 98-573, see 1984 U.S. Code Cong. and Adm. News, p. 4910.

CHAPTER 17—NEGOTIATION AND IMPLEMENTATION OF TRADE AGREEMENTS

Sec.		Sec.	
2901.	Overall and principal trade negotiating objectives of the United States. (a) Overall trade negotiating objectives. (b) Principal trade negotiating objectives.	2903.	Implementation of trade agreements. (c) Limitations on use of "fast track" procedures. (d) Rules of House of Representative and Senate. (e) Computation of certain periods of time.
2902.	Trade agreement negotiating authority. (a) Agreements regarding tariff barriers. (b) Agreements regarding nontariff barriers. (c) Bilateral agreements regarding tariff and nontariff barriers. (d) Consultation with Congress before agreements entered into. (e) Special provisions regarding Uruguay Round trade negotiations.	2904.	Termination and reservation authority reciprocal nondiscriminatory treatment. (a) In general. (b) Reciprocal nondiscriminatory treatment.
2903.	Implementation of trade agreements. (a) In general. (b) Application of Congressional "fast track" procedures to implementing bills.	2905.	Accession of state trading regimes to the General Agreement on Tariffs and Trade. (a) In general. (b) Effects of affirmative determination. (c) Expedited consideration of bill to approve extension. (d) Publication.
		2906.	Definitions.

§ 2901. Overall and principal trade negotiating objectives of the United States

(a) Overall trade negotiating objectives

The overall trade negotiating objectives of the United States are to obtain—

- (1) more open, equitable, and reciprocal market access;
- (2) the reduction or elimination of barriers and other trade-distorting policies and practices; and
- (3) a more effective system of international trading disciplines and procedures.

(b) Principal trade negotiating objectives

(1) Dispute settlement

The principal negotiating objectives of the United States with respect to dispute settlement are—

- (A) to provide for more effective and expeditious dispute settlement mechanisms and procedures; and
- (B) to ensure that such mechanisms within the GATT and GATT agreements provide for more effective and expeditious resolution of disputes and enable better enforcement of United States rights.

(2) Improvement of the GATT and multilateral trade negotiation agreements

The principal negotiating objectives of the United States regarding the improvement of GATT and multilateral trade negotiation agreements are—

(A) to enhance the status of the GATT;

(B) to improve the operation and extend the coverage of the GATT and such agreements and arrangements to products, sectors, and conditions of trade not adequately covered; and

(C) to expand country participation in particular agreements or arrangements, where appropriate.

(3) Transparency

The principal negotiating objective of the United States regarding transparency is to obtain broader application of the principle of transparency and clarification of the costs and benefits of trade policy actions through the observance of open and equitable procedures in trade matters by Contracting Parties to the GATT.

(4) Developing countries

The principal negotiating objectives of the United States regarding developing countries are—

(A) to ensure that developing countries promote economic development by assuming the fullest possible measure of responsibility for achieving and maintaining an open international trading system by providing reciprocal benefits and assuming equivalent obligations with respect to their import and export practices; and

(B) to establish procedures for reducing nonreciprocal trade benefits for the more advanced developing countries.

(5) Current account surpluses

The principal negotiating objective of the United States regarding current account surpluses is to develop rules to address large and persistent global current account imbalances of countries, including imbalances which threaten the stability of the international trading system, by imposing greater responsibility on such countries to undertake policy changes aimed at restoring current account equilibrium, including expedited implementation of trade agreements where feasible and appropriate.

(6) Trade and monetary coordination

The principal negotiating objective of the United States regarding trade and monetary coordination is to develop mechanisms to assure greater coordination, consistency, and cooperation between international trade and monetary systems and institutions.

(7) Agriculture

The principal negotiating objectives of the United States with respect to agriculture are to achieve, on an expedited basis to the maximum extent feasible, more open and fair conditions of trade in agricultural commodities by—

(A) developing, strengthening, and clarifying rules for agricultural trade, including disciplines on restrictive or trade-distorting import and export practices;

(B) increasing United States agricultural exports by eliminating barriers to trade (including transparent and nontransparent barriers) and reducing or eliminating the subsidization of agricultural production consistent with the United States policy of agricultural stabilization in cyclical and unpredictable markets;

(C) creating a free and more open world agricultural trading system by resolving questions pertaining to export and other trade-distorting subsidies, market pricing and market access and eliminating and reducing substantially other specific constraints to fair trade and more open market access, such as tariffs, quotas, and other nontariff practices, including unjustified sanitary and sanitary restrictions;

(D) seeking agreements by which the major agricultural exporting nations agree to pursue policies to reduce excessive production of agricultural commodities during periods of oversupply, with due regard for the fact that the United States already undertakes such policies, and without recourse to arbitrary schemes to divide market shares among major exporting countries.

(8) Unfair trade practices

The principal negotiating objectives of the United States with respect to unfair trade practices are—

(A) to improve the provisions of the GATT and nontariff measure agreements in order to define, deter, discourage the persistent use of, and otherwise discipline unfair trade practices having adverse trade effects, including forms of subsidy and dumping and other practices not adequately covered such as resource input subsidies, diversionary dumping, dumped or subsidized inputs, and export targeting practices;

(B) to obtain the application of similar rules to the treatment of primary and nonprimary products in the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the GATT (relating to subsidies and countervailing measures); and

(C) to obtain the enforcement of GATT rules against—

(i) state trading enterprises, and

(ii) the acts, practices, or policies of any foreign government which as a practical matter, unreasonably require that—

(I) substantial direct investment in the foreign country be made,

(II) intellectual property be licensed to the foreign country or to any firm of the foreign country, or

(III) other collateral concessions be made,

as a condition for the importation of any product or service of the United States into the foreign country or as a condition for carrying on business in the foreign country.

(9) Trade in services

(A) The principal negotiating objectives of the United States regarding trade in services are—

(i) to reduce or to eliminate barriers to, or other distortions of, international trade in services, including barriers that deny national treatment and restrictions on establishment and operation in such markets; and

(ii) to develop internationally agreed rules, including dispute settlement procedures, which—

(I) are consistent with the commercial policies of the United States, and

(II) will reduce or eliminate such barriers or distortions, and help ensure fair, equitable opportunities for foreign markets.

(B) In pursuing the negotiating objectives described in subparagraph (A), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the law and regulations related thereto.

(10) Intellectual property

The principal negotiating objectives of the United States regarding intellectual property are—

(A) to seek the enactment and effective enforcement by foreign countries of laws which—

(i) recognized and adequately protect intellectual property, including copyrights, patents, trademarks, semi-conductor chip layout designs, and trade secrets, and

(ii) provide protection against unfair competition,

(B) to establish in the GATT obligations—

(i) to implement adequate substantive standards for

(I) the standards in existing international agreements that provide adequate protection, and

(II) the standards in national laws if international agreement standards are inadequate or do not exist,

(ii) to establish effective procedures to enforce, both internally and at the border, the standards implemented under clause (i), and

(iii) to implement effective dispute settlement procedures that improve on existing GATT procedures;

(C) to recognize that the inclusion in the GATT of—

(i) adequate and effective substantive norms and standards for the protection and enforcement of intellectual property rights, and

(ii) dispute settlement provisions and enforcement procedures, is without prejudice to other complementary initiatives undertaken in other international organizations; and

(D) to supplement and strengthen standards for protection and enforcement in existing international intellectual property conventions administered by other international organizations, including their expansion to cover new and emerging technologies and elimination of discrimination or unreasonable exceptions or preconditions to protection.

(11) Foreign direct investment

(A) The principal negotiating objectives of the United States regarding foreign direct investment are—

(i) to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment; and

(ii) to develop internationally agreed rules, including dispute settlement procedures, which—

(I) will help ensure a free flow of foreign direct investment, and

(II) will reduce or eliminate the trade distortive effects of certain trade-related investment measures.

(B) In pursuing the negotiating objectives described in subparagraph (A), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the law and regulations related thereto.

(12) Safeguards

The principal negotiating objectives of the United States regarding safeguards are—

(A) to improve and expand rules and procedures covering safeguard measures;

(B) to ensure that safeguard measures are—

(i) transparent,

(ii) temporary,

(iii) degressive, and

(iv) subject to review and termination when no longer necessary to remedy injury and to facilitate adjustment; and

(C) to require notification of, and to monitor the use by, GATT Contracting Parties of import relief actions for their domestic industries.

(13) Specific barriers

The principal negotiating objective of the United States regarding specific barriers is to obtain competitive opportunities for United States exports in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports to United States markets, including the reduction or elimination of specific tariff and nontariff trade barriers, particularly—

(A) measures identified in the annual report prepared under section 2241 of this title, and

(B) foreign tariffs and nontariff barriers on competitive United States exports when like or similar products enter the United States at low rates of duty or are duty-free, and other tariff disparities that impede access to particular export markets.

(14) Worker rights

The principal negotiating objectives of the United States regarding worker rights are—

(A) to promote respect for worker rights;

(B) to secure a review of the relationship of worker rights to GATT articles, objectives, and related instruments with a view to ensuring that the benefits of the trading system are available to all workers; and

(C) to adopt, as a principle of the GATT, that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade.

(15) Access to high technology

(A) The principal negotiating objective of the United States regarding access to high technology is to obtain the elimination or reduction of foreign barriers to, and acts, policies, or practices by foreign governments which limit, equitable access by United States persons to foreign-developed technology, including barriers, acts, policies, or practices which have the effect of—

(i) restricting the participation of United States persons in government-supported research and development projects;

(ii) denying equitable access by United States persons to government-held patents;

(iii) requiring the approval or agreement of government entities, or imposing other forms of government interventions, as a condition for the granting of licenses to United States persons by foreign persons (except for approval or agreement which may be necessary for national security purposes to control the export of critical military technology); and

(iv) otherwise denying equitable access by United States persons to foreign-developed technology or contributing to the inequitable flow of technology between the United States and its trading partners.

(B) In pursuing the negotiating objective described in subparagraph (A), the United States negotiators shall take into account United States Government policies in licensing or otherwise making available to foreign persons technology and other information developed by United States laboratories.

(16) Border taxes

The principal negotiating objective of the United States regarding border taxes is to obtain a revision of the GATT with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily for revenue on direct taxes rather than indirect taxes.

(Pub.L. 100-418, Title I, § 1101, Aug. 23, 1988, 102 Stat. 1121.)

HISTORICAL AND STATUTORY NOTES

Short Title

Section 1(a) of Pub.L. 100-418 provided that: "This Act [see Tables for classification] may be cited as the 'Omnibus Trade and Competitiveness Act of 1988'."

Findings and Purposes of Trade, Customs, and Tariff Laws

Section 1001 of Pub.L. 100-418 provided that:

"(a) Findings.—The Congress finds that—

"(1) in the last 10 years there has arisen a new global economy in which trade, technological development, investment, and services form an integrated system; and in this system

these activities affect each other and the health of the United States economy;

"(2) the United States is confronted with a fundamental disequilibrium in its trade and current account balances and a rapid increase in its net external debt;

"(3) such disequilibrium and increase are a result of numerous factors, including—

"(A) disparities between the macroeconomic policies of the major trading nations.

"(B) the large United States budget deficit,

"(C) instabilities and structural defects in the world monetary system."

"(D) the growth of debt throughout the developing world.

"(E) structural defects in the world trading system and inadequate enforcement of trade agreement obligations.

"(F) governmental distortions and barriers.

"(G) serious shortcomings in United States trade policy, and

"(H) inadequate growth in the productivity and competitiveness of United States firms and industries relative to their overseas competition;

"(4) it is essential, and should be the highest priority of the United States Government, to pursue a broad array of domestic and international policies—

"(A) to prevent future declines in the United States economy and standards of living,

"(B) to ensure future stability in external trade of the United States, and

"(C) to guarantee the continued vitality of the technological, industrial, and agricultural base of the United States;

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 12661

Dec. 27, 1988, 54 F.R. 779, as amended Ex.Ord. No. 12697, Dec. 22, 1989, 54 F.R. 53037; Ex.Ord. No. 12716, May 24, 1990, 55 F.R. 21831; Ex. Ord. No. 12774, Sept. 27, 1991, 56 F.R. 49835

IMPLEMENTATION OF OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988 AND RELATED INTERNATIONAL TRADE MATTERS

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418, 102 Stat. 1107) ("Omnibus Trade Act"), the Tariff Act of 1930 (Chapter 497, 46 Stat. 590, June 17, 1930), as amended ("Tariff Act"), the National Defense Authorization Act, Fiscal Year 1989 (P.L. 100-456, 102 Stat. 1918) ("Defense Authorization Act"), section 301 of Title 3 of the United States Code [section 301 of Title 3, The President], and, in general, to ensure that the international trade policy of the United States shall be conducted and administered in a way that achieves the economic, foreign policy, and national security objectives of the United States and in a coordinated manner under the direction of the President, it is hereby ordered as follows:

PART I—TRADE, CUSTOMS, AND TARIFF LAWS

Section 1-101. Accession of State Trading Regimes to the General Agreement on Tariffs and Trade. The functions vested in the President by sections 1106(a), (b) and (d) of the Omnibus Trade Act [section 2905(a), (b) and (d) of this title] regarding the accession of state trading regimes to the General Agreement on Tariffs and Trade, are delegated to the United States Trade Representative.

Sec. 1-201. Wine Barriers. The functions vested in the President by section 1125 of the Omnibus Trade Act [set out as a note under

"(5) the President should be authorized and encouraged to negotiate trade agreements and related investment, financial, intellectual property, and services agreements that meet the standards set forth in this title [Title I of Pub.L. 100-418. See Tables volume for classifications]; and

"(6) while the United States is not in a position to dictate economic policy to the rest of the world, the United States is in a position to lead the world and it is in the national interest for the United States to do so.

"(b) Purposes.—The purposes of this title [Title I of Pub.L. 100-418. See Tables volume for classifications.] are to—

"(1) authorize the negotiation of reciprocal trade agreements;

"(2) strengthen United States trade laws;

"(3) improve the development and management of United States trade strategy; and

"(4) through these actions, improve standards of living in the world."

Legislative History

For legislative history and purpose of Pub.L. 100-418, see 1988 U.S. Code Cong. and Adm. News, p. 1547.

section 2804 of this title) regarding the updated report on barriers to wine trade, are delegated to the United States Trade Representative.

Sec. 1-301. Steel Imports. The functions vested in the President by section 805(d)(1) and (2) of the Trade and Tariff Act of 1984 (19 U.S.C. 2253, note), as amended by section 1322 of the Omnibus Trade Act [amending provisions set out as a note under section 2253 of this title] are delegated to the United States Trade Representative.

Sec. 1-401. Telecommunications Trade. The functions vested in the President by sections 1375 and 1376(e) of the Omnibus Trade Act [sections 3104 and 3105(e) of this title], regarding certain telecommunications negotiations as may be ordered by the President and reports thereon to Congressional Committees, are delegated to the United States Trade Representative.

Sec. 1-501. Uniform Fee on Imports. The functions vested in the President by section 1428 of the Omnibus Trade Act [enacting section 2397 of this title and provisions set out as a note thereunder], regarding negotiations to obtain authority under the General Agreement on Tariffs and Trade to impose a small uniform fee on imports, are delegated to the United States Trade Representative.

PART II—EXPORT ENHANCEMENT

Sec. 2-101. Countertrade and

(1) Establishment. There is established an Interagency Group on Countertrade, which shall be composed of the Secretaries of Commerce, State, Defense, Treasury, Labor, Agriculture, and Energy, the Attorney General, the Administrator of the Agency for International Development, the Director of the Federal Emergency Management Agency, the United States Trade Representative and the Director of the Office of Management and Budget, or their respective representatives. The Secretary of Commerce or his representative shall be the Chairman of the interagency group.

(2) Functions. The interagency group shall carry out the functions and duties set out in section 2205(a) of the Omnibus Trade Act.

Sec. 2-201. Sanctions Against Toshiba and Kongsberg.

(1) Procurement Sanctions. Pursuant to section 2443 of the Omnibus Trade Act [set out as a note under section 2410a of the Appendix to Title 50, War and National Defense] and subject to the exceptions referred to in paragraph (3), departments, agencies and instrumentalities of the United States Government shall not for the three-year period beginning on the date this Order takes effect, contract with or procure products and services from Toshiba Machine Company, Kongsberg Trading Company, Toshiba Corporation or Kongsberg Vaapenfabrikk. The head of each department, agency or instrumentality is hereby directed and authorized to implement this procurement sanction in accordance with paragraph (3).

(2) Import Sanctions. Pursuant to section 2443 of the Omnibus Trade Act and subject to the exceptions referred to in paragraph (3), importation into the United States, its territories and possessions, of products produced by Toshiba Machine Company or Kongsberg Trading Company is prohibited for three years from the effective date of this Order. The Secretary of the Treasury is hereby directed and authorized to implement this import sanction in accordance with paragraph (3).

(3) Exceptions. Authority to make determinations as to exceptions to sanctions and to implement exceptions by regulation or otherwise is delegated (i) to the Secretary of Defense with respect to determinations under section 2443(c)(1) regarding the procurement of defense articles or defense services, (ii) to the Secretary of the Treasury with respect to exceptions under section 2443(c)(2) regarding importation prohibited by section 2443(a)(2), and (iii) to the head of each Federal department, agency or instrumentality with respect to exceptions under section 2443(c)(2) affecting their respective contracting and procurement. All regulations implementing these exceptions provisions shall be consistent with any guidelines provided by the Office of Federal Procurement Policy, Office of Management and Budget.

(4) Annual Report. The annual report required by section 2445 [enacting section 2413(f) of the Appendix to Title 50] concerning estimated increases in defense expenditures arising from illegal technology transfers, shall be prepared by the Secretary of Defense, in consultation with the Secretaries of State and Com-

merce, for submission to the Congress by the President.

PART III—FOREIGN CORRUPT PRACTICES AMENDMENTS: INVESTMENT; AND TECHNOLOGY

Sec. 3-101. Foreign Corrupt Practices Act Amendments.

The functions conferred upon the President by section 5003(d)(1) ("International Agreement") of the Omnibus Trade Act [set out as a note under section 78dd-1 of Title 15, Commerce and Trade] are delegated to the Secretary of State, who in performing such functions shall act in consultation with the Attorney General, the United States Trade Representative, the Chairman of the Securities and Exchange Commission, the Secretary of Commerce, the Secretary of the Treasury and the Director of the Office of Management and Budget.

Sec. 3-201. Authority to Review Certain Mergers, Acquisitions, and Takeovers.

(1) Executive Order No. 11558, as amended [set out as a note under section 78b of Title 15, Commerce and Trade], regarding the Committee on Foreign Investment in the United States (the "Committee") is further amended as follows:

(A) By adding new Sections 7 and 8 as follows:

"Sec. 7. (1) Investigations. (a) The Committee is designated to receive notices and other information, to determine whether investigations should be undertaken, and to make investigations, pursuant to Section 721(a) of the Defense Production Act [section 2170(a) of the Appendix to Title 50]. (b) If the Committee determines that an investigation should be undertaken, such investigation shall commence no later than 30 days after receipt by the Committee of written notification of the proposed or pending merger, acquisition, or takeover. Such investigation shall be completed no later than 45 days after such determination. (c) If one or more Committee members differ with a Committee decision not to undertake an investigation, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for his decision within 25 days after receipt by the Committee of written notification of the proposed or pending merger, acquisition, or takeover. (d) A unanimous decision by the Committee not to undertake an investigation with regard to a notice shall constitute action under this section on such notice. The Chairman shall advise the President of said decision.

"(2) Report to the President. Upon completion or termination of any investigation, the Committee shall report to the President and present a recommendation. Any such report shall include information relevant to subparagraphs (1) and (2) of Section 721(d) of the Defense Production Act [Section 2170(d)(1) and (2) of the Appendix to Title 50]. If the Committee is unable to reach a unanimous recommendation, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for his decision.

"Sec. 8. The Chairman of the Committee, in consultation with other members of the Committee, is hereby delegated the authority to issue regulations to implement Section 721 of the Defense Production Act [Section 2170 of the Appendix to Title 50]."

(B) By deleting, from the second sentence in Section 1(a), the text beginning with "a representative" and ending with "by each of".

(C) By deleting, from the third sentence in Section 1(a), the phrase "representative of the".

(D) By deleting "and" at the end of subparagraph (3) of Section 1(b), by substituting "; and" for the period at the end of subparagraph (4) of that Section, and by adding a new subparagraph (5) as follows: "(5) coordinate the views of the Executive Branch and discharge the responsibilities with respect to Section 721(a) and (e) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) (Defense Production Act) [section 2170(a) and (e) of the Appendix to Title 50, War and National Defense]."

(E) By adding the following sentence at the end of Section 5: "Information or documentary material filed pursuant to Section 1(b)(5) or Section 7 of this Order shall be treated in accordance with paragraph (b) of Section 721 of the Defense Production Act [section 2170(b) of the Appendix to Title 50]."

(F) By inserting in Section 1(a) the following additional Committee members: "(7) The Attorney General." and "(8) The Director of the Office of Management and Budget."

(G) The Interim Presidential Directive to the Secretary of the Treasury of October 26, 1988, is hereby revoked, and any notices received or investigations pending as of the date this Order takes effect shall be referred to the Chairman of the Committee for action consistent with this Order.

Sec. 3-301. Reporting Requirement on Semiconductors, Fiber Optics and Superconducting Materials.

(1) The Secretary of Commerce, in consultation with the Director of the Office of Science and Technology Policy, the Secretary of Defense, and the Director of the Office of Management and Budget, shall prepare for the President to submit to the Congress with the Fiscal Year 1990 budget a report describing policies and budget proposals regarding:

(A) Federal research in semiconductors and semiconductor manufacturing technology, including a discussion of the respective roles of the various Federal departments and agencies in such research;

(B) Federal research and acquisition policies for fiber optics and optical-electronic technologies generally;

(C) Superconducting materials, including descriptions of research priorities, the scientific and technical barriers to commercialization which such research is designed to overcome, steps taken to ensure coordination among Federal agencies conducting research on superconducting materials, and steps taken to consult with private United States industry to ensure that no unnecessary duplication of research exists and that all important scientific and technical

barriers to the commercialization of superconducting materials will be addressed; and

(D) Federal research to assist United States industry to develop and apply advanced manufacturing technologies for the production of durable and nondurable goods.

(2) The Department of Defense, the Department of Energy, the National Science Foundation, the National Aeronautics and Space Administration, the Department of State, the United States Trade Representative, and other Federal agencies deemed appropriate by the Secretary of Commerce shall provide the information described in section 5141 of the Omnibus Trade Act (not classified to the Code) concerning their Fiscal Year 1989 program and proposed Fiscal Year 1990 program to the Secretary of Commerce in sufficient time to permit preparation of the report.

(3) The Office of Management and Budget shall provide to the Secretary of Commerce, in sufficient time to permit preparation of the report, a summary of the Federal base program and Fiscal Year 1990 budget initiatives in each of the technical areas of the report.

(4) The Office of Science and Technology Policy ("OSTP") shall provide the Secretary of Commerce with appropriate policy guidance in the technical areas of the report, including a summary of the criteria used to select research projects within an agency and among agencies, and the results of any studies conducted by OSTP, or by others if OSTP deems them to be relevant, which analyze the influence of the Federal research programs in the technical areas of the report.

Sec. 3-401. [Revoked by Ex. Ord. No. 12774, Sept. 27, 1991, 56 F.R. 49835.] [set out as a note under section 14 of Appendix 2 to Title 5, Government Organization and Employees]

PART IV—EDUCATION AND TRAINING FOR AMERICAN COMPETITIVENESS

Sec. 4-101. Buy American Act of 1988.

(1) The functions vested in the President by section 7002 of the Omnibus Trade Act, regarding section 4(d) [section 10b-1(d) of Title 41, Public Contracts of Title III of the Buy American Act of 1933, as amended (41 U.S.C. 10a-10d), are delegated to the Secretary of Defense.

(2) The functions vested in the President by section 7003 of the Omnibus Trade Act, regarding the annual report required by subsection (d) of section 305 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515) [section 2515(d) of this title], are delegated to the United States Trade Representative.

PART V—MISCELLANEOUS

Sec. 5-101. Executive Oversight.

Any actions or determinations taken or made by an officer or agency under the Omnibus Trade Act or this Order shall be subject to the Executive oversight and direction of the President, and such actions or determinations shall be undertaken after appropriate inter-agency consultation as established by the President.

Sec. 5-102. Regulatory Review. Notwithstanding the provisions of section 1(a)(2) of Executive Order No. 12291 of February 17, 1981

[set out as a note under section 601 of Title 5], the Director of the Office of Management and Budget shall, with regard to regulations, rules, or agency statements of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency relative to the administration of the Export Administration Act, determine whether such regulations, rules, or agency statements are exempted from review under that Order, pursuant to the provisions of section 8(b) thereof.

Sec. 5-201. Offsets. The negotiating functions under section 825(c) of the Defense Authorization Act [set out as a note under section 2505 of Title 10, Armed Forces], as may be ordered by the President, are hereby jointly delegated to the Secretary of Defense and the United States Trade Representative. These functions shall be coordinated with the Secretary of State and conducted in consultation with the Secretaries of Commerce, Labor and the Treasury.

Sec. 5-202. Reporting Functions. The reporting functions of the President under section 825(d) of the Defense Authorization Act [not classified to the Code] are delegated to the Director of the Office of Management and Bud-

get. The Director may further delegate to the heads of Executive departments and agencies responsibility for preparing particular sections of such reports. The heads of Executive departments and agencies shall, to the extent permitted by law, provide the Director with such information as may be necessary for the effective performance of these functions.

Sec. 5-301. International Trade Commission Report. The functions vested in the President by section 332(g) of the Tariff Act [section 1332(g) of this title], regarding reports by the United States International Trade Commission to the President, are delegated to the United States Trade Representative.

Sec. 5-401. Strengthening International Institutions. To the extent possible, actions undertaken under this Order shall be conducted in a manner that strengthens international institutions that further United States objectives, such as opening foreign markets and preventing the export of strategic goods and technologies to proscribed destinations.

Sec. 5-501. Effective Date. This Order shall take effect at 12:01 a.m. on Wednesday, December 28, 1988.

§ 2902. Trade agreement negotiating authority

(a) Agreements regarding tariff barriers

(1) Whenever the President determines that one or more existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes, policies, and objectives of this title will be promoted thereby, the President—

(A) before June 1, 1993, may enter into trade agreements with foreign countries; and

(B) may, subject to paragraphs (2) through (5), proclaim—

(i) such modification or continuance of any existing duty,

(ii) such continuance of existing duty-free or excise treatment, or

(iii) such additional duties;

as he determines to be required or appropriate to carry out any such trade agreement.

(2) No proclamation may be made under subsection (a) of this section that—

(A) reduces any rate of duty (other than a rate of duty that does not exceed 5 percent ad valorem on August 23, 1988,) to a rate which is less than 50 percent of the rate of such duty that applies on such date; or

(B) increases any rate of duty above the rate that applies on such date of enactment.

(3)(A) Except as provided in subparagraph (B), the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement entered into under paragraph (1) shall not exceed the aggregate reduction which would have been in effect on such day if a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed in paragraph (1) to carry out such agreement with respect to such article.

(B) No staging under subparagraph (A) is required with respect to a rate reduction that is proclaimed under paragraph (1) for an article of a kind that is not produced in the United States. The United States International Trade Commission shall advise the President of the identity of articles that may be exempted from staging under this subparagraph.

(4) If the President determines that such action will simplify the computation of reductions under paragraph (3), the President may round an annual reduction by the lesser of—

(A) the difference between the reduction without regard to this paragraph and the next lower whole number; or

(B) one-half of 1 percent ad valorem.

(5) No reduction in a rate of duty under a trade agreement entered into under subsection (a) of this section on any article may take effect more than 10 years after the effective date of the first reduction under paragraph (1) that is proclaimed to carry out the trade agreement with respect to such article.

(6) A rate of duty reduction or increase that may not be proclaimed by reason of paragraph (2) may take effect only if a provision authorizing such reduction or increase is included within an implementing bill provided for under section 2903 of this title and that bill is enacted into law.

(b) Agreements regarding nontariff barriers

(1) Whenever the President determines that any barrier to, or other distortion of, international trade—

(A) unduly burdens or restricts the foreign trade of the United States or adversely affects the United States economy; or

(B) the imposition of any such barrier or distortion is likely to result in a burden, restriction, or effect;

and that the purposes, policies, and objectives of this title will be promoted thereby, the President may, before June 1, 1993, enter into a trade agreement with foreign countries providing for—

(i) the reduction or elimination of such barrier or other distortion; or

(ii) the prohibition of, or limitations on the imposition of, such barrier or other distortion.

(2) A trade agreement may be entered into under this subsection only if such agreement makes progress in meeting the applicable objectives described in section 2901 of this title.

(c) Bilateral agreements regarding tariff and nontariff barriers

(1) Before June 1, 1993, the President may enter into bilateral trade agreements with foreign countries that provide for the elimination or reduction of any duty imposed by the United States. A trade agreement entered into under this paragraph may also provide for the reduction or elimination of barriers to, or other distortions of, the international trade of the foreign country or the United States.

(2) Notwithstanding any other provision of law, no trade benefit shall be extended to any country by reason of the extension of any trade benefit to another country under a trade agreement entered into under paragraph (1) with such other country.

(3) A trade agreement may be entered into under paragraph (1) with any foreign country only if—

(A) the agreement makes progress in meeting the applicable objectives described in section 2901 of this title;

(B) such foreign country requests the negotiation of such an agreement; and

(C) the President, at least 60 days before the date notice is provided under section 2903 (a)(1)(A) of this title—

(i) provides written notice of such negotiations to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and

(ii) consults with such committees regarding the negotiation of such agreement.

(4) The 60-day period of time described in paragraph (3)(C) shall be computed in accordance with section 2903(e) of this title.

(5) In any case in which there is an inconsistency between any provision of this Act and any bilateral free trade area agreement that entered into force and effect with

respect to the United States before January 1, 1987, the provision shall not apply with respect to the foreign country that is party to that agreement.

(d) Consultation with Congress before agreements entered into

(1) Before the President enters into any trade agreement under subsection (b) or (c) of this section, the President shall consult with—

(A) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate; and

(B) each other committee of the House and the Senate, and each joint committee of the Congress, which has jurisdiction over legislation involving subject matters which would be affected by the trade agreement.

(2) The consultation under paragraph (1) shall include—

(A) the nature of the agreement;

(B) how and to what extent the agreement will achieve the applicable purposes, policies, and objectives of this title; and

(C) all matters relating to the implementation of the agreement under section 2903 of this title.

(3) If it is proposed to implement two or more trade agreements in a single implementing bill under section 2903 of this title, the consultation under paragraph (1) shall include the desirability and feasibility of such proposed implementation.

(e) Special provisions regarding Uruguay Round trade negotiations

(1) In general

Notwithstanding the time limitations in subsections (a) and (b) of this section, if the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade has not resulted in trade agreements by May 31, 1993, the President may, during the period after May 31, 1993, and before April 16, 1994, enter into, under subsections (a) and (b) of this section, trade agreements resulting from such negotiations.

(2) Application of tariff proclamation authority

No proclamation under subsection (a) of this section to carry out the provisions regarding tariff barriers of a trade agreement that is entered into pursuant to paragraph (1) may take effect before the effective date of a bill that implements the provisions regarding nontariff barriers of a trade agreement that is entered into under such paragraph.

(3) Application of implementing and "fast track" procedures

Section 2903 of this title applies to any trade agreement negotiated under subsection (b) of this section pursuant to paragraph (1), except that—

(A) in applying subsection (a)(1)(A) of section 2903 of this title to any such agreement, the phrase "at least 120 calendar days before the day on which he enters into the trade agreement (but not later than December 15, 1993)," shall be substituted for the phrase "at least 90 calendar days before the day on which he enters into the trade agreement,"; and

(B) no provision of subsection (b) of section 2903 of this title other than paragraph (1)(A) applies to any such agreement and in applying such paragraph, "April 16, 1994," shall be substituted for "June 1, 1991,".

(4) Advisory committee reports

The report required under section 2155(e)(1) of this title regarding any trade agreement provided for under paragraph (1) shall be provided to the President, the Congress, and the United States Trade Representative not later than 30 days after the date on which the President notifies the Congress under section 2903(a)(1)(A) of this title of his intention to enter into the agreement (but before January 15, 1994).

HISTORICAL AND STATUTORY NOTES

References in Text

This title, referred to in subsecs. (a)(1), (b)(1)(B), and (d)(2)(B), is Title I of Pub.L. 100-418, Aug. 23, 1988, 102 Stat. 1119. For complete distribution of Title I in the Code, see Tables.

This Act, referred to in subsec. (c)(5), is the Omnibus Trade and Competitiveness Act of 1988, Pub.L. 100-418. For classification of this Act in the Code, see Tables.

1993 Amendments

Subsec. (e). Pub.L. 103-49, § 1, added subsec. (e).

1990 Amendment

Subsec. (c)(4). Pub.L. 101-382, substituted "paragraph (3)(C)" for "paragraph (3)(B)" and "section 2903(e)" for "section 2903(f)".

Legislative History

For legislative history and purpose of Pub.L. 100-418, see 1988 U.S. Code Cong. and Adm. News, p. 1547. See, also, Pub.L. 101-382, 1990 U.S. Code Cong. and Adm. News, p. 928; Pub.L. 103-49, 1993 U.S. Code Cong. and Adm. News, p. 301.

LIBRARY REFERENCES

Customs Duties ⇨ 10, 11.

C.J.S. Customs Duties §§ 17, 18.

§ 2903. Implementation of trade agreements

(a) In general

(1) Any agreement entered into under section 2902(b) or (c) of this title shall enter into force with respect to the United States if (and only if)—

(A) the President, at least 90 calendar days before the day on which he enters into the trade agreement, notifies the House of Representatives and the Senate of his intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(B) after entering into the agreement, the President submits a document to the House of Representatives and to the Senate containing a copy of the final legal text of the agreement, together with—

- (i) a draft of an implementing bill,
- (ii) a statement of any administrative action proposed to implement the trade agreement, and
- (iii) the supporting information described in paragraph (2); and

(C) the implementing bill is enacted into law.

(2) The supporting information required under paragraph (1)(B)(iii) consists of—

(A) an explanation as to how the implementing bill and proposed administrative action will change or affect existing law; and

(B) a statement—

(i) asserting that the agreement makes progress in achieving the applicable purposes, policies, and objectives of this title,

(ii) setting forth the reasons of the President regarding—

(I) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in clause (i), and why and to what extent the agreement does not achieve other applicable purposes, policies, and objectives,

(II) how the agreement serves the interests of United States commerce, and

(III) why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement;

(iii) describing the efforts made by the President to obtain international exchange rate equilibrium and any effect the agreement may have regarding increased international monetary stability; and

(iv) describing the extent, if any, to which—

(I) each foreign country that is a party to the agreement maintains non-commercial state trading enterprises that may adversely affect, nullify, or impair the benefits to the United States under the agreement, and

(II) the agreement applies to or affects purchases and sales by such enterprises.

(3) To ensure that a foreign country which receives benefits under a trade agreement entered into under section 2902(b) or (c) of this title is subject to the obligations imposed by such agreement, the President shall recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement if such application is consistent with the terms of such agreement.

(b) Application of Congressional "fast track" procedures to implementing bills

(1) Except as provided in subsection (c) of this section—

(A) the provisions of section 2191 of this title (hereinafter in this section referred to as "fast track procedures") apply to implementing bills submitted with respect to trade agreements entered into under section 2902(b) or (c) of this title before June 1, 1991; and

(B) such fast track procedures shall be extended to implementing bills submitted with respect to trade agreements entered into under section 2902 of this title after May 31, 1991, and before June 1, 1993, if (and only if)—

(i) the President requests such extension under paragraph (2); and

(ii) neither House of the Congress adopts an extension disapproval resolution under paragraph (5) before June 1, 1991.

(2) If the President is of the opinion that the fast track procedures should be extended to implementing bills described in paragraph (1)(B), the President must submit to the Congress, no later than March 1, 1991, a written report that contains a request for such extension, together with—

(A) a description of all trade agreements that have been negotiated under section 2902(b) or (c) of this title and the anticipated schedule for submitting such agreements to the Congress for approval;

(B) a description of the progress that has been made in multilateral and bilateral negotiations to achieve the purposes, policies, and objectives of this title, and a statement that such progress justifies the continuation of negotiations; and

(C) a statement of the reasons why the extension is needed to complete the negotiations.

(3) The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 2155 of this title of his decision to submit a report to Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but not later than March 1, 1991, a written report that contains—

(A) its views regarding the progress that has been made in multilateral and bilateral negotiations to achieve the purposes, policies, and objectives of this title; and

(B) a statement of its views, and the reasons therefor, regarding whether the extension requested under paragraph (2) should be approved or disapproved.

(4) The reports submitted to the Congress under paragraphs (2) and (3), or any portion of the reports, may be classified to the extent the President determines appropriate.

(5)(A) For purposes of this subsection, the term "extension disapproval resolution" means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the _____ disapproves the request of the President for the extension, under section 1103(b)(1)(B)(i) of the Omnibus Trade and Competitiveness Act of 1988 [19 U.S.C.A. § 2903(b)(1)(B)(i)], of the provisions of section 151 of the Trade Act of 1974 [19 U.S.C.A. § 2191] to any implementing bill submitted with respect to any trade agreement entered into under section 1102(b) or (c) of such Act [19 U.S.C.A. § 2902(b) or (c)] after May 31, 1991, because sufficient tangible progress has not been made in trade negotiations.", with the blank space being filled with the name of the resolving House of the Congress.

(B) Extension disapproval resolutions—

(i) may be introduced in either House of the Congress by any member of such House; and

(ii) shall be jointly referred, in the House of Representatives, to the Committee on Ways and Means and the Committee on Rules.

(C) The provisions of section 2192(d) and (e) of this title (relating to the floor consideration of certain resolutions in the House and Senate) apply to extension disapproval resolutions.

(D) It is not in order for—

(i) the Senate to consider any extension disapproval resolution not reported by the Committee on Finance;

(ii) the House of Representatives to consider any extension disapproval resolution not reported by the Committee on Ways and Means and the Committee on Rules; or

(iii) either House of the Congress to consider an extension disapproval resolution that is reported to such House after May 15, 1991.

(c) Limitations on use of "fast track" procedures

(1)(A) The fast track procedures shall not apply to any implementing bill submitted with respect to a trade agreement entered into under section 2902(b) or (c) of this title if both Houses of the Congress separately agree to procedural disapproval resolutions within any 60-day period.

(B) Procedural disapproval resolutions—

(i) in the House of Representatives—

(I) shall be introduced by the chairman or ranking minority member of the Committee on Ways and Means or the chairman or ranking minority member of the Committee on Rules,

(II) shall be jointly referred to the Committee on Ways and Means and the Committee on Rules, and

(III) may not be amended by either Committee; and

(ii) in the Senate shall be original resolutions of the Committee on Finance.

(C) The provisions of section 2192(d) and (e) of this title (relating to the floor consideration of certain resolutions in the House and Senate) apply to procedural disapproval resolutions.

(D) It is not in order for the House of Representatives to consider any procedural disapproval resolution not reported by the Committee on Ways and Means and the Committee on Rules.

(E) For purposes of this subsection, the term "procedural disapproval resolution" means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the President has failed or refused to consult with Congress on trade negotiations and trade agreements in accordance with the provisions of the Omnibus Trade and Competitiveness Act of 1988 [Pub.L. 100-418], and, therefore, the provisions of section 151 of the Trade Act of 1974 [19 U.S.C.A. § 2191] shall not apply to any implementing bill submitted with respect to any trade agreement entered into under section 1102(b) or (c) of such Act of 1988 [19 U.S.C.A. § 2902(b) or (c)], if, during the 60-day period beginning on the date on which this resolution is agreed to by the , the agrees to a procedural disapproval resolution (within the meaning of section 1103(c)(1)(E) of such Act of 1988).", with the first blank space being filled with the name of the resolving House of the Congress and the second blank space being filled with the name of the other House of the Congress.

(2) The fast track procedures shall not apply to any implementing bill that contains a provision approving of any trade agreement which is entered into under section 2902(c) of this title with any foreign country if either—

(A) the requirements of section 2902(c)(3) of this title are not met with respect to the negotiation of such agreement; or

(B) the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives disapproves of the negotiation of such agreement before the close of the 60-day period which begins on the date notice is provided under section 2902(c)(3)(C)(i) of this title with respect to the negotiation of such agreement.

(d) Rules of House of Representatives and Senate

Subsections (b) and (c) of this section are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

(e) Computation of certain periods of time

Each period of time described in subsection (c)(1)(A) and (E) and (2) of this section shall be computed without regard to—

(1) the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(2) any Saturday and Sunday, not excluded under paragraph (1), when either House of the Congress is not in session.

(Pub.L. 100-418, Title I, § 1103, Aug. 23, 1988, 102 Stat. 1128.)

HISTORICAL AND STATUTORY NOTES

References in Text

This title, referred to in subsecs. (a)(2)(B)(i) and (b)(2)(B), (3)(A), is Title I of Pub.L. 100-418, Aug. 23, 1988, 102 Stat. 1119. For complete distribution of Title I in the Code, see Tables.

The Omnibus Trade and Competitiveness Act of 1988, referred to in subsec. (c)(1)(E), is

Pub.L. 100-418, Aug. 23, 1988, 102 Stat. 1117. For classification of this Act in the Code, see Tables volume.

Legislative History

For legislative history and purpose of Pub.L. 100-418, see 1988 U.S. Code Cong. and Adm. News, p. 1547.

LIBRARY REFERENCES

Customs Duties ¶¶ 10, 11.

C.J.S. Customs Duties §§ 17, 18.

NOTES OF DECISIONS

Construction with other laws 1

1. Construction with other laws

President's action in submitting international trade agreement to Congress would not consti-

tute "final agency action" reviewable under Administrative Procedure Act (APA). *Public Citizen v. U.S. Trade Representative*, C.A.D.C. 1993, 5 F.3d 549.

§ 2904. Termination and reservation authority; reciprocal nondiscriminatory treatment

(a) In general

For purposes of applying sections 2135, 2136(a), and 2137 of this title—

(1) any trade agreement entered into under section 2902 of this title shall be treated as an agreement entered into under section 2111 or 2112 of this title, as appropriate; and

(2) any proclamation or Executive order issued pursuant to a trade agreement entered into under section 2902 of this title shall be treated as a proclamation or Executive order issued pursuant to a trade agreement entered into under section 2112 of this title.

(b) Reciprocal nondiscriminatory treatment

(1) The President shall determine, before June 1, 1993, whether any major industrial country has failed to make concessions under trade agreements entered into under section 2902(a) and (b) of this title which provide competitive opportunities for the commerce of the United States in such country substantially equivalent to the competitive opportunities, provided by concessions made by the United States under trade agreements entered into under section 2902(a) and (b) of this title, for the commerce of such country in the United States.

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Divider Title: _____

Section 1-106. Incidental Transfers and Reassignments

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with functions transferred or reassigned by the provisions of this order as the Director of the Office of Management and Budget shall determine shall be transferred or reassigned for use in connection with such functions.

Section 1-107. Effective Dates.

(a) Sections 1, 2(a), 2(b)(2), 2(c), 2(d), 3, 4, 5(a), 5(b)(2), 5(c) through (e), and 6 through 8 of Reorganization Plan No. 3 of 1970 [set out as a note under this section], and the provisions of this order, shall take effect as of January 2, 1980.

(b) Section 5(b)(1) of such plan [set out as a note under this section] shall take effect as of April 1, 1980.

JIMMY CARTER

Library References

United States § 31.

C.J.S. United States § 31.

Code of Federal Regulations

Organization, etc., see 15 CFR Chap. XX.

PART 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS**§ 2191. Bills implementing trade agreements on nontariff barriers and resolutions approving commercial agreements with Communist countries**

(a) **Rules of House of Representatives and Senate.**—This section and sections 2192 and 2193 of this title are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of implementing bills described in subsection (b)(1) of this section, implementing revenue bills described in subsection (b)(2) of this section, approval resolutions described in subsection (b)(3) of this section, and resolutions described in sections 2192(a) and 2193(a) of this title; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) **Definitions.**—For purposes of this section—

(1) The term “implementing bill” means only a bill of either House of Congress which is introduced as provided in subsection (c) of this section with respect to one or more trade agreements submitted to the House of Representatives and the Senate under section 2112 of this title and which contains—

(A) a provision approving such trade agreement or agreements,

(B) a provision approving the statement of administrative action (if any) proposed to implement such trade agreement or agreements, and

(C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements, provisions, necessary or appropriate to implement such trade agreement or agreements, either repealing or amending existing laws or providing new statutory authority.

(2) The term “implementing revenue bill” means an implementing bill which contains one or more revenue measures by reason of which it must originate in the House of Representatives.

(3) The term “approval resolution” means only a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: “That the Congress approves the extension of nondiscriminatory treatment with respect to the products of _____ transmitted by the President to the Congress on _____”, the first blank space being filled with the name of the country involved and the second blank space being filled with the appropriate date.

(c) **Introduction and referral.**—

(1) On the day on which a trade agreement is submitted to the House of Representatives and the Senate under section 2112 of this title, the implementing bill submitted by the President with respect to such trade agreement shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a trade agreement is submitted, the implementing bill shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. Such bills shall be referred by the Presiding Officers of the respective Houses to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

(2) On the day on which a bilateral commercial agreement entered into under subchapter IV of this chapter after January

3, 1975, is transmitted to the House of Representatives and the Senate, an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement is transmitted, the approval resolution with respect to such agreement shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. The approval resolution introduced in the House shall be referred to the Committee on Ways and Means and the approval resolution introduced in the Senate shall be referred to the Committee on Finance.

(d) **Amendments prohibited.**—No amendment to an implementing bill or approval resolution shall be in order in either the House of Representatives or the Senate; and no motion to suspend the application of this subsection shall be in order in either House, nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this subsection by unanimous consent.

(e) **Period for committee and floor consideration.**—

(1) Except as provided in paragraph (2), if the committee or committees of either House to which an implementing bill or approval resolution has been referred have not reported it at the close of the 45th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the bill or resolution and it shall be placed on the appropriate calendar. A vote on final passage of the bill or resolution shall be taken in each House on or before the close of the 15th day after the bill or resolution is reported by the committee or committees of that House to which it was referred, or after such committee or committees have been discharged from further consideration of the bill or resolution. If prior to the passage by one House of an implementing bill or approval resolution of that House, that House receives the same implementing bill or approval resolution from the other House, then—

(A) the procedure in that House shall be the same as if no implementing bill or approval resolution had been received from the other House; but

(B) the vote on final passage shall be on the implementing bill or approval resolution of the other House.

(2) The provisions of paragraph (1) shall not apply in the Senate to an implementing revenue bill. An implementing revenue bill received from the House shall be referred to the appropriate committee or committees of the Senate. If such committee or committees have not reported such bill at the close of the 15th day after its receipt by the Senate (or, if later, before the close of the 45th day after the corresponding implementing revenue bill was introduced in the Senate), such committee or committees shall be automatically discharged from further consideration of such bill and it shall be placed on the calendar. A vote on final passage of such bill shall be taken in the Senate on or before the close of the 15th day after such bill is reported by the committee or committees of the Senate to which it was referred, or after such committee or committees have been discharged from further consideration of such bill.

(3) For purposes of paragraphs (1) and (2), in computing a number of days in either House, there shall be excluded any day on which that House is not in session.

(f) **Floor consideration in House.**—

(1) A motion in the House of Representatives to proceed to the consideration of an implementing bill or approval resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the House of Representatives on an implementing bill or approval resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit an implementing bill or approval resolution or to move to reconsider the vote by which an implementing bill or approval resolution is agreed to or disagreed to.

(3) Motions to postpone, made in the House of Representatives with respect to the consideration of an implementing bill or approval resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to an implementing bill or approval resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of an implementing bill or approval resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(g) Floor consideration in Senate.—

(1) A motion in the Senate to proceed to the consideration of an implementing bill or approval resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on an implementing bill or approval resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with an implementing bill or approval resolution shall be limited to not more than 1 hour to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of an implementing bill or approval resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) A motion in the Senate to further limit debate is not debatable. A motion to recommit an implementing bill or approval resolution is not in order.

Pub.L. 93-618, Title I, § 151, Jan. 3, 1975, 88 Stat. 2001.

Historical Note

Legislative History. For legislative 1974 U.S.Code Cong. and Adm.News, p. history and purpose of Pub.L. 93-618, see 7188.

Library References

United States ☞ 22.

C.J.S. United States §§ 22, 25.

§ 2192. Resolutions disapproving certain actions**(a) Contents of resolutions.—**

(1) For purposes of this section, the term "resolution" means only—

(A) a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the action taken by, or the determination of, the President under section 203 of the Trade Act of 1974 transmitted to the Congress on _____", the blank space being filled with the appropriate date; and

(B) a resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That the _____ does not approve _____ transmitted to the Congress on _____", with the first blank space being filled with the name of the resolving House, the second blank space being filled in accordance with paragraph 2, and the third blank space being filled with the appropriate date.

(2) The second blank space referred to in paragraph (1) B shall be filled as follows:

(A) in the case of a resolution referred to in section 1303(e) of this title, with the phrase "the termination of the Secretary of the Treasury under section 303(d) of the Tariff Act of 1930";

(B) in the case of a resolution referred to in section 2437(c)(2) of this title with the phrase "the extension of nondiscriminatory treatment with respect to the products of _____" (with this blank space being filled with the name of the country involved); and

(C) in the case of a resolution referred to in section 2437(c)(3) of this title, with the phrase "the report of the President submitted under section _____ of the Trade Act of 1974 with respect to _____" (with the first blank space being filled with "402(b)" or "409(b)", as appropriate, and the second blank space being filled with the name of the country involved).

(b) Reference to committees.—All resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all resolutions introduced in the Senate shall be referred to the Committee on Finance.

(c) Discharge of committees.—

(1) If the committee of either House to which a resolution has been referred has not reported it at the end of 30 days after its introduction, not counting any day which is excluded under section 2194(b) of this title, it is an order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same matter, except no motion to discharge shall be in order after the committee has reported a resolution with respect to the same matter.

(2) A motion to discharge under paragraph (1) may be made only by an individual favoring the resolution, and is highly privileged in the House and privileged in the Senate; and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and

Title note set out under section 1801 of this title], section 350 of the Tariff Act of 1930 [section 1351 of this title], Reorganization Plan No. 3 of 1979 [set out as a note under this section], and section 301 of title 3 of the United States Code [section 301 of Title 3, The President], and as President of the United States, it is hereby ordered as follows:

[See main volume for text of sections 1-101 to 1-103]

CODE OF FEDERAL REGULATIONS

Office of U.S. Trade Representative, freedom of information policies and procedures, see 15 CFR 2004.1 et seq.

PART 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

§ 2191. Bills implementing trade agreements on nontariff barriers and resolutions approving commercial agreements with Communist countries

[See main volume for text of (a)]

(b) Definitions

For purposes of this section—

(1) The term “implementing bill” means only a bill of either House of Congress which is introduced as provided in subsection (c) of this section with respect to one or more trade agreements submitted to the House of Representatives and the Senate under section 2112 or section 2903(a)(1) of this title and which contains—

[See main volume for text of (A) to (C)]

(2) The term “implementing revenue bill or resolution” means an implementing bill, or approval resolution, which contains one or more revenue measures by reason of which it must originate in the House of Representatives.

(3) The term “approval resolution” means only a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: “That the Congress approves the extension of nondiscriminatory treatment with respect to the products of _____ transmitted by the President to the Congress on _____”, the first blank space being filled with the name of the country involved and the second blank space being filled with the appropriate date.

[See main volume for text of (c) and (d)]

(e) Period for committee and floor consideration

[See main volume for text of (1)]

(2) The provisions of paragraph (1) shall not apply in the Senate to an implementing revenue bill or resolution. An implementing revenue bill or resolution received from the House shall be referred to the appropriate committee or committees of the Senate. If such committee or committees have not reported such bill or resolution at the close of the 15th day after its receipt by the Senate (or, if later, before the close of the 45th day after the corresponding implementing revenue bill or resolution was introduced in the Senate), such committee or committees shall be automatically discharged from further consideration of such bill or resolution and it shall be placed on the calendar. A vote on final passage of such bill or resolution shall be taken in the Senate on or before the close of the 15th day after such bill or resolution is reported by the committee or committees of the Senate to which it was referred, or after such committee or committees have been discharged from further consideration of such bill or resolution.

[See main volume for text of (3); (f) and (g)]

(As amended Pub.L. 100-418, Title I, § 1107(b)(1), Aug. 23, 1988, 102 Stat. 1135; Pub.L. 101-382, Title I, § 132(b)(2), Aug. 20, 1990, 104 Stat. 645.)

Section 1-104. Authority Under the Foreign Service Act and Related Laws.

[See main volume for text of (a)]

(b) [Revoked by Ex.Ord. No. 12292, Feb. 23, 1981, 46 F.R. 13968.]

[See main volume for text of (c); sections 1-105 to 1-107]

1990 Amendment

Pub.L. 101-382, in subsec. (b), in par. (2), inserted provisions relating to resolution, wherever appearing, and in par. (3), substituted provisions relating to joint resolution for provisions relating to concurrent resolution, and in subsec. (e)(2), inserted provisions relating to resolution, wherever appearing.

1988 Amendment

Subsec. (b)(1). Pub.L. 100-418 inserted reference to section 2903(a)(1) of this title.

HISTORICAL AND STATUTORY NOTES

Effective Date of 1990 Amendment

Amendment by Pub.L. 101-382 effective Aug. 20, 1990, except as otherwise provided for. See section 132(d) of Pub.L. 101-382, set out as a note under section 2432 of this title.

Legislative History

For legislative history and purpose of Pub.L. 100-418, see 1988 U.S. Code Cong. and Adm. News, p. 1547. See, also, Pub.L. 101-382, 1990 U.S. Code Cong. and Adm. News, p. 323.

LAW REVIEW COMMENTARIES

Constitutionality of binational panel review in Canada-U.S. free trade agreement. Gordon A. Christenson and Kimberly Gambrell. 23 Int'l Law. 401 (1989).

§ 2192. Resolutions disapproving certain actions

(a) Contents of resolutions—

(1) For purposes of this section, the term “resolution” means only—

(A) a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: “That the Congress does not approve the action taken by, or the determination of, the President under section 203 of the Trade Act of 1974 transmitted to the Congress on _____”, the blank space being filled with the appropriate date; and

(B) a joint resolution of the two Houses of Congress, the matter after the resolving clause of which is as follows: “That the Congress does not approve _____ transmitted to the Congress on _____”, with the first blank space being filled in accordance with paragraph (2), and the second blank space being filled with the appropriate date.

(2) The first blank space referred to in paragraph (1)(B) shall be filled as follows:

(A) in the case of a resolution referred to in section 1303(e) of this title, with the phrase “the termination of the Secretary of the Treasury under section 303(d) of the Tariff Act of 1930”; and

(B) in the case of a resolution referred to in section 2437(c)(2) of this title, with the phrase “the report of the President submitted under section _____ of the Trade Act of 1974 with respect to _____” (with the first blank space being filled with “402(b)” or “409(b)”, as appropriate, and the second blank space being filled with the name of the country involved).

[See main volume for text of (b)]

(c) Discharge of committees

(1) If the committee of either House to which a resolution has been referred has not reported it at the end of 30 days after its introduction, not counting any day which is excluded under section 2194(b) of this title, it is an order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same matter, except that a motion to discharge—

(A) may only be made on the second legislative day after the calendar day on which the Member making the motion announces to the House his intention to do so; and

(B) is not in order after the Committee has reported a resolution with respect to the same matter.

[See main volume for text of (2); (d) and (e)]

(f) Procedures in the Senate

(1) Except as otherwise provided in this section, the following procedures shall apply in the Senate to a resolution to which this section applies:

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(2) If the President determines under paragraph (1) that a major industrial country has not made concessions under trade agreements entered into under section 2902(a) and (b) of this title which provide substantially equivalent competitive opportunities for the commerce of the United States, the President shall, either generally with respect to such country or by article produced by such country, in order to restore equivalence of competitive opportunities, recommended to the Congress—

(A) legislation providing for the termination or denial of the benefits of concessions of trade agreements entered into under section 2902(a) and (b) of this title that have been made with respect to rates of duty or other import restrictions imposed by the United States, and

(B) legislation providing that any law necessary to carry out any trade agreement under section 2902(a) or (b) of this title not apply to such country.

(3) For purposes of this subsection, the term "major industrial country" means Canada, the European Communities, the individual member countries of the European Communities, Japan, and any other foreign country designated by the President for purposes of this subsection.

(Pub.L. 100-418, Title I, § 1105, Aug. 23, 1988, 102 Stat. 1132.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 100-418, see 1988 U.S. Code Cong. and Adm. News, p. 1547.

LIBRARY REFERENCES

Customs Duties § 11.
C.J.S. Customs Duties § 18.

§ 2905. Accession of state trading regimes to the General Agreement on Tariffs and Trade

(a) In general

Before any major foreign country accedes, after August 23, 1988, to the GATT the President shall determine—

- (1) whether state trading enterprises account for a significant share of—
 - (A) the exports of such major foreign country, or
 - (B) the goods of such major foreign country that are subject to competition from goods imported into such foreign country; and
- (2) whether such state trading enterprises—
 - (A) unduly burden and restrict, or adversely affect, the foreign trade of the United States or the United States economy, or
 - (B) are likely to result in such a burden, restriction, or effect.

(b) Effects of affirmative determination

If both of the determinations made under paragraphs (1) and (2) of subsection (a) of this section with respect to a major foreign country are affirmative—

- (1) the President shall reserve the right of the United States to withhold extension of the application of the GATT, between the United States and such major foreign country, and
- (2) the GATT shall not apply between the United States and such major foreign country until—
 - (A) such foreign country enters into an agreement with the United States providing that the state trading enterprises of such foreign country—

(i) will—

- (I) make purchases which are not for the use of such foreign country, and
- (II) make sales in international trade, in accordance with commercial considerations (including quality, availability, marketability, and transportation), and

(ii) will afford United States business firms adequate opportunity in accordance with customary practice, to compete for participation in such purchases or sales; or

(B) a bill submitted under subsection (c) of this section which approves of the extension of the application of the GATT between the United States and such major foreign country is enacted into law.

(c) Expedited consideration of bill to approve extension

(1) The President may submit to the Congress any draft of a bill which approves of the extension of the application of the GATT between the United States and a major foreign country.

(2) Any draft of a bill described in paragraph (1) that is submitted by the President to the Congress shall—

(A) be introduced by the majority leader of each House of the Congress (by request) on the first day on which such House is in session after the date such draft is submitted to the Congress; and

(B) shall be treated as an implementing bill of purposes of subsections (d), (e), (f), and (g) of section 2191 of this title.

(d) Publication

The President shall publish in the Federal Register each determination made under subsection (a) of this section.

(Pub.L. 100-418, Title I, § 1106, Aug. 23, 1988, 102 Stat. 1133.)

HISTORICAL AND STATUTORY NOTES

Delegation of Functions

Functions vested in the President by Subsecs. (a), (b) and (d) of this section regarding the accession of state trading regimes to the General Agreement on Tariffs and Trade, delegated to the United States Trade Representative, pursuant to Ex.Ord. No. 12661, Dec. 27, 1988, 54 F.R.

779, set out as a note under section 2901 of this title.

Legislative History

For legislative history and purpose of Pub.L. 100-418, see 1988 U.S. Code Cong. and Adm. News, p. 1547.

LIBRARY REFERENCES

Customs Duties § 10, 11.
C.J.S. Customs Duties §§ 17, 18.

§ 2906. Definitions

For purposes of this chapter:

- (1) The term "distortion" includes, but is not limited to, a subsidy.
- (2) The term "foreign country" includes any foreign instrumentality. Any territory or possession of a foreign country that is administered separately for customs purposes, shall be treated as a separate foreign country.
- (3) The term "GATT" means the General Agreement on Tariffs and Trade.
- (4) The term "implementing bill" has the meaning given such term in section 2191(b)(1) of this title.
- (5) The term "international trade" includes, but is not limited to—
 - (A) trade in both goods and services, and
 - (B) foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services.
- (6) The term "state trading enterprise" means—
 - (A) any agency, instrumentality, or administrative unit of a foreign country which—
 - (i) purchases goods or services in international trade for any purpose other than the use of such goods or services by such agency, instrumentality, administrative unit, or foreign country, or
 - (ii) sells goods or services in international trade;
 - (B) any business firm which—

- (i) is substantially owned or controlled by a foreign country or any agency, instrumentality, or administrative unit thereof,
- (ii) is granted (formally or informally) any special or exclusive privilege by such foreign country, agency, instrumentality, or administrative unit, and
- (iii) purchases goods or services in international trade for any purpose other than the use of such goods or services by such foreign country, agency, instrumentality, or administrative unit, or which sells goods or services in international trade.

(Pub.L. 100-418, Title I, § 1107(a), Aug. 23, 1988, 102 Stat. 1134.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in text preceding par. (1), read in the original "this part", meaning Part 1 of Subtitle A of Title I of Pub.L. 100-418. Part 1 provisions are classified to this chapter and repealed section 2131(a) to (c), amended

sections 2133(a), (b)(2), (d) and 2191(b)(1), and enacted section 2133(e) of this title.

Legislative History

For legislative history and purpose of Pub.L. 100-418, see 1988 U.S. Code Cong. and Adm. News, p. 1547.

LIBRARY REFERENCES

Customs Duties §§ 10 to 12.

C.J.S. Customs Duties §§ 17, 18, 19 et seq.

CHAPTER 18—IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE

Sec.		Sec.	
3001.	Purposes.	3006.	Presidential action on Commission recommendations.
3002.	Definitions.		(a) In general.
3003.	Congressional approval of United States accession to the Convention.		(b) Lay-over period.
	(a) Congressional approval.	3007.	Publication of the Harmonized Tariff Schedule.
	(b) Acceptance of the final legal text of the Convention by the President.		(a) In general.
	(c) Unspecified private remedies not created.		(b) Content.
	(d) Termination.	3008.	Import and export statistics.
3004.	Enactment of the Harmonized Tariff Schedule.	3009.	Coordination of trade policy and the Convention.
	(a) Omitted.	3010.	United States participation on the Customs Cooperation Council regarding the Convention.
	(b) Modifications to the Harmonized Tariff Schedule.		(a) Principal United States agencies.
	(c) Status of the Harmonized Tariff Schedule.		(b) Development of technical proposals.
	(d) Interim informational use of Harmonized Tariff Schedule classifications.		(c) Availability of Customs Cooperation Council publications.
3005.	Commission review of, and recommendations regarding, the Harmonized Tariff Schedule.	3011.	Transition to the Harmonized Tariff Schedule.
	(a) In general.		(a) Existing executive actions.
	(b) Agency and public views regarding recommendations.		(b) Generalized system of preferences conversion.
	(c) Submission of recommendations.		(c) Import restrictions under the Agricultural Adjustment Act.
	(d) Requirements regarding recommendations.		(d) Certain protests and petitions under the customs law.
		3012.	Reference to the Harmonized Tariff Schedule.

§ 3001. Purposes

The purposes of this chapter are—

- (1) to approve the International Convention on the Harmonized Commodity Description and Coding System;
- (2) to implement in United States law the nomenclature established internationally by the Convention; and

- (3) to provide that the Convention shall be treated as a trade agreement obligation of the United States.

(Pub.L. 100-418, Title I, § 1201, Aug. 23, 1988, 102 Stat. 1147.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in text, read in the original "this subtitle", meaning subtitle B of Pub.L. 100-418, Title I. Subtitle B is classified to this chapter and: amended sections 58c(a)(9)(A), (C), (3), 1312(f)(1), (2)(A), (3), 1315(d), 1321(a)(2)(B), 1337(j), 1466(f), 1498(a)(1)(A) to (C), (1), 2011, 2138(b), 2253(f)(1), (3), 2434(c), 2437(c)(3), 2481(7), 2483, 2581(b)(3), 2702(a)(1)(C), 2703(b)(4), (5), (c)(1)(A)(i), (ii), (d), (f)(5)(A) to (F) of this title; enacted section 3001 note and section 3005 note; amended pre-section 1202 notes and section 2112 note; and amended section 511(a)(2), 1444(f)(3), 1783, 1784 of Title 7, Agriculture, section 374(a)(3) of Title 10, Armed Forces, section 301(b), (e), (f) of Title 13, Census, sections 1274(b), (c), 2064(d), 2066(a), 2602(7), 2612(a)(1) of Title 15, Commerce and Trade, sections 1606a(b)(1), 3912 of Title 16, Conservation, sections 41, 951(a)(2) of Title 21, Food and Drugs, section 5059(a) of Title 22, Foreign Relations and Intercourse, sections 7652(e)(3), 9504(b)(1)(B) of Title 26, Internal Revenue Code, section 1295(a)(7) of Title 28, Judiciary and Judicial Procedure, and section 98h-4 of Title 50, War and National Defense.

Effective Date

Section 1217 of Pub.L. 100-418 provided that:

"(a) **Accession to Convention and Provisions Other Than the Implementation of the Harmonized Tariff Schedule.**—Except as provided in subsection (b), the provisions of this subtitle [subtitle B, §§ 1201-1207, of Pub.L. 100-418, Title I. For distribution of subtitle B in the Code, see References in Text note set out under this section] take effect on the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988 [Aug. 23, 1988].

"(b) **Implementation of the Harmonized Tariff Schedule.**—The effective date of the

Harmonized Tariff Schedule is January 1, 1989. On such date—

"(1) the amendments made by sections 1204(a) [amending pre-section 1202 note], 1213 [amending sections 1315(d) and 2438 of this title and pre-section 1202 note], 1214 [amending sections 58c(a)(9)(A), (C), (3), 1312(f), (1), (2)(A), (3), 1321(a)(2)(B), 1337(j), 1466(f), 1498(a)(1)(A), (1), 2011, 2138(b), 2253(f)(1), (3), 2434(c), 2437(c)(3), 2481(7), 2483, 2581(b)(3), 2702(a)(1)(C), 2703(c)(1)(A)(i), (ii), (d), (f)(5)(A)-(F) of this title; and amending note provision under section 2112 of this title; and amending sections 511(a)(2), 1444(f)(3), 1783, and 1784 of Title 7, Agriculture; section 374(a)(3) of Title 10, Armed Forces; section 301(b), (e), (f) of Title 13, Census; sections 1274(b), (c), 2064(d), 2066(a), 2602(7), and 2612(a)(1) of Title 15, Commerce and Trade; sections 1606a(b)(1) and 3912 of Title 16, Conservation; sections 41 and 951(a)(2) of Title 21, Food and Drugs; section 5059(b) of Title 22, Foreign Relations and Intercourse; sections 7652(e)(3) and 9504(b)(1)(B) of Title 26, Internal Revenue Code; section 1295(a)(7) of Title 28, Judiciary and Judicial Procedure; and section 98h-4 of Title 50, War and National Defense; and 1215 [amending section 2138(b)(6), (7) and enacting section 2138(b)(8) of this title] take effect and apply with respect to articles entered on or after such date; and

"(2) sections 1204(c) [sections 3004(c), 1211 [3011], and 1212 [3012 of this title] take effect."

Legislative History

For legislative history and purpose of Pub.L. 100-418, see 1988 U.S. Code Cong. and Adm. News, p. 1547.

§ 3002. Definitions

As used in this chapter:

- (1) The term "Commission" means the United States International Trade Commission.
- (2) The term "Convention" means the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on June 14, 1983, and the Protocol thereto, done at Brussels on June 24, 1986, submitted to the Congress on June 15, 1987.
- (3) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.
- (4) The term "Federal agency" means any establishment in the executive branch of the United States Government.
- (5) The term "old Schedules" means title I of the Tariff Act of 1930 (19 U.S.C. 1202) as in effect on the day before January 1, 1989.
- (6) The term "technical rectifications" means rectifications of an editorial character or minor technical or clerical changes which do not affect the substance or meaning of the text, such as—
 - (A) errors in spelling, numbering, or punctuation;
 - (B) errors in indentation;

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needed, one that renewed the lending authority of the Export-Import Bank. But now a weaker Ways and Means Committee, in a decentralized House, could not prevent a floor vote. So a much more elaborate procedural shuffle had to be devised to sidetrack the proposal.⁶

In 1985, with imports surging, the textile industry was able to move a highly restrictive quota bill to the House floor through the Ways and Means Committee, notwithstanding the opposition of the chairmen of both the full committee and the trade subcommittee. Sponsored by Representative Ed Jenkins (D-GA), the bill would have imposed quotas on a global and on a country-specific basis. With nearly 300 members signing on as cosponsors, the Ways and Means leadership elected to send it to the floor without recommendation, in the expectation that President Ronald Reagan would veto the measure. Reagan did, and a motion to override failed by eight votes.⁷ Similar bills were passed—and vetoed—in 1988 and 1990.

The textile industry campaign of 1978 contributed to the failure of the Carter administration to win enactment that same fall of legislation needed to complete the Tokyo Round of multilateral trade negotiations (MTN): extension of authority to waive enforcement of countervailing duties.⁸ The chairman and the ranking Republican of the Ways and Means Trade Subcommittee then conceded defeat, declaring in a public letter to Special Trade Representative Robert S. Strauss that the countervailing duty waiver could not be passed in the next Congress unless the textile exclusion was attached. To prevent this, the administration was forced to buy off that industry with policy concessions in early 1979.

If congressional reform thus weakened the key committees, so also

6. The Export-Import Bank measure was formally abandoned, its provisions attached to another bill at 4 a.m. on the last day of the 95th Congress. The textile-tariff proposal was brought to the House floor and adopted overwhelmingly, but as an amendment to a bill President Jimmy Carter could afford to veto—one authorizing the sale of Carson City silver dollars. By design or coincidence, this bill was one of the last two of the session to be formally “enrolled” and sent to the White House, and the presidential veto thus could be delayed until after the mid-term election (the other straggler, also vetoed, provided for meat import quotas).

7. The veto took place in December 1985, but in an unusual action, industry supporters won postponement of an override vote until the following summer so that the threat would toughen the administration’s stance in the talks for extension of the Multi-Fiber Arrangement. On this they were, in the main, successful.

8. Europeans had insisted from the start that they would not negotiate under threat of such duties being imposed under the old, pre-GATT US law which did not require that petitioning industries prove injury from imports, at the same time as they were working out a new subsidy-countervail-code agreement under which the United States would impose such a test. Although the Trade Act of 1974 had granted a five-year authorization for the Tokyo Round, it only provided a four-year authority for waiving countervailing duties. This expired on 3 January 1979, just as the negotiations were reaching their climax.

did changes in the content of trade policy. Senate Finance and House Ways and Means were, first and foremost, revenue committees. By historical precedent and recurrent argument, their trade authority was derived from tariffs—the main means of raising revenue during most of the republic’s existence. Tariffs’ declining importance in trade policy undercut this jurisdictional rationale. The rise of nontariff trade issues in the 1970s—such as government procurement, product standards, and subsidies—inevitably brought other committees into the substance of trade policy.

How then could Congress play its role in the trade system? On one major type of business—authorization and implementation of major trade agreements—it showed considerable creativity by developing new rules for expedited action that led to the overwhelming 1979 vote in favor of the MTN. On product-specific issues, however, Congress had become more vulnerable to special-interest pressures.

Renewing the Delegation of Power: The “Fast-Track” Procedures

From the Reciprocal Trade Agreements Act of 1934 through the Trade Expansion Act of 1962, the means by which Congress delegated authority for trade negotiations remained basically the same. Successive statutes authorized executive officials to negotiate (within specified numerical limits) reductions in US tariffs, in exchange for reductions by its trading partners. When a deal was finally struck, it could be implemented by presidential proclamation, without further recourse to Capitol Hill.

For American trade negotiators, this arrangement had enormous advantages. It gave them maximum credibility abroad, since their power to deliver on their commitments was not in doubt. It also increased their leverage with affected industries at home. Those fearing the effects of particular tariff cuts could and did appeal for congressional backing, but since no formal ratification of the final trade agreement was required, the ultimate decision rested at the northwest end of Pennsylvania Avenue. In theory, of course, lobbyists could prevail on Congress to vote an exception for their product—as the textile industry sought to do in 1978. But this was very much an uphill fight, for it went against the whole system of delegating power and protecting legislators.

When a nontariff trade barrier (NTB) was at issue, however, there was no comparable system of advance authorization, and therefore no assurance that what US representatives negotiated abroad would become law at home. This weakness of the trade system was revealed rather dramatically in the final stages of the Kennedy Round. In exchange for related foreign concessions, the Johnson administration made

two important nontariff commitments in 1967: to participate in a new GATT antidumping code and to eliminate the system of customs appraisals called the American Selling Price (ASP), which inflated the duties of certain categories of US imports. Congress had authorized neither of these agreements; in fact, the Senate passed a sense-of-Congress resolution in 1966 opposing their negotiation. And Congress implemented neither of them. In fact, it rendered US adherence to the antidumping code meaningless by insisting that whenever it conflicted with domestic law, the latter would prevail.⁹

These precedents were hardly encouraging. With tariffs now at a fraction of Smoot-Hawley levels, future trade rounds would focus increasingly on NTBs. How could US negotiators be credible internationally? And how could Congress be insulated from pressure to reject or rework what the executive branch had wrought?

The Nixon administration confronted this problem in early 1973 when it sought legislation to authorize a trade round giving priority to nontariff distortions. Not surprisingly, it proposed a procedure nearly identical to that for tariffs. Congress would authorize talks to bargain down NTBs; the president would implement the agreements reached by proclaiming the necessary changes in US domestic statutes, which would go into effect unless either house of Congress vetoed the measure within 90 days. The process was similar to that inaugurated in the New Deal for executive branch reorganization: the president could put forward "reorganization plans," which became law unless the House or the Senate objected.

The House accepted this legislative veto proposal; the Senate did not. It was, argued senior Finance Democrat Herman E. Talmadge of Georgia, "not the way we make laws." This procedure might be all right for government organization, but for substantive policy he was convinced that such an open-ended delegation of power to amend statutes was unconstitutional. Talmadge saw no alternative to affirmative congressional action, after the fact, on all specific, nontariff changes in American law resulting from trade negotiations. And his Finance Committee colleagues agreed.

This seemed to render negotiations impossible: how could foreign governments deal seriously with the United States if Congress might reject or amend the outcome or never take definitive action at all? Fortunately, negotiations among STR leaders, Talmadge, and Finance Committee staff yielded an alternative the senator found acceptable. This was a statutory commitment to an up-or-down vote, within a specified period of time, on

any legislation implementing an NTB agreement submitted by the president.

As finally enacted, the Trade Act included an elaborate procedural timetable aimed at assuring expeditious legislative action. After consulting with the relevant congressional committees, the president would give notice of intent at least 90 days before entering into any NTB agreement. Once he did so, Congress would act within 60 days of his submitting the implementing bill, under rules barring committee or floor amendments.¹⁰

This was not a perfect solution for executive negotiators, for they could not assure their foreign counterparts that Congress would deliver. But they could promise a prompt and clear answer.

These new procedures were adopted to facilitate negotiations abroad. Yet, although no one fully realized it at the time, they would also reshape the policy process at home. Specifically, on trade agreements, the procedures allowed the new, "open" Congress to replicate its closed predecessor. With the legislative process limited in scope and time, the stance of the trade committees, Finance and Ways and Means, was once again likely to prove decisive. To be confident of favorable floor actions, the STR's office needed the committees' overwhelming support of the agreements negotiated. This meant paying attention to committee members and aides, whom the legislation made official observers and advisers at the negotiations.

In practice, the Hill's substantive contribution was limited for most of the MTN. But as the end of the talks approached in the spring of 1978, the senior trade expert on the Finance Committee staff, Robert C. Cassidy Jr., posed a procedural challenge. He began pressing for a major congressional role in the drafting of the nonamendable MTN implementing legislation that the president was to propose. Politically, he argued, enactment of such legislation would require a joint commitment by the STR and the trade committees. Operationally, this could best be accomplished if they developed that legislation together.

Insofar as possible, Cassidy proposed, they would replicate the normal legislative process. In sessions with STR Robert Strauss and other executive branch representatives that came to be labeled "nonmarkups," Finance and Ways and Means would advise separately on the implementing bill's substance. They would then reconcile their differences in a "nonconference." Finally, the drafting of the actual statutory language would be an interbranch process, with congressional legal aides working

9. For detail and documentation on this episode, see Michael J. Glennon, Thomas M. Franck, and Robert C. Cassidy Jr., *United States Foreign Relations Law: Documents and Sources*, vol. 4, International Economic Regulation (London: Oceana Publications, 1984), 1-38.

10. For details, see I. M. Destler, *Making Foreign Economic Policy* (Washington: Brookings Institution, 1980), 177-78; Matthew J. Marks and Harald B. Malmgren, "Negotiating Nontariff Distortions to Trade," *Law and Policy in International Business* 7, no. 2 (1975): 338-41; and Glennon, Franck, and Cassidy, *Foreign Relations Law*, esp. 41-65. The maximum time period for action on an "implementing revenue bill" was slightly longer: 90 days.

with counterparts in executive agencies much as they did on normal trade legislation. Only then would the president send the formal, nonamendable implementing bill to Capitol Hill.

There was some initial skepticism at the staff level in STR: Did they really want to give Capitol Hill that strong a role in drafting the president's bill? But ties between the trade office and the Finance staff were strong—STR General Counsel Richard R. Rivers had worked for that committee prior to 1977—and so STR acquiesced. But “unofficially,” by one authoritative report, “STR said they still hoped to carry on the bill drafting process without too much congressional interference.”¹¹ So Finance senators summoned STR Strauss and won his personal assent to this procedure, which was quickly confirmed in an exchange of letters. Ways and Means, never a formal party to the arrangement, followed it in practice.¹²

In return for this considerable concession on procedure, the executive branch won near-total congressional approval of the substance of the MTN agreements it negotiated, which were implemented through a single legislative package, the Trade Agreements Act of 1979.¹³ On the most sensitive issue—how tough an injury test would be applied in US countervailing duty cases—the code commitment to a “material injury” test survived a strong industry challenge. So strong was Strauss’s credibility by this time that he reportedly clinched his argument by declaring that “the French want it” this way. “I don’t know why and [Deputy STR Alan Wm.] Wolff doesn’t know why and Rivers doesn’t know why, but I need you to go along!”¹⁴

Congressional action was expeditious as well. On 4 January 1979, Presi-

dent Jimmy Carter gave the required 90-day notice of intent to conclude the MTN. By 6 March, the Senate Finance Committee had begun its series of nine “nonmarkups,” and by 16 May, the House Ways and Means Subcommittee on Trade concluded its 15th such session. Representatives of the two then joined in a “nonconference” on 21–23 May. All these meetings were closed to the public, although hearings were held in both committees and press releases reported major committee decisions as they were made.

Most interesting perhaps was the fact that this quasi-legislative process cut the full Senate and House out of the main action. When a 373-page “committee print” containing proposed statutory language was finally circulated on 1 June, all the major decisions had been made. With a few changes, these same words were what the president proposed to Congress in his nonamendable bill 18 days later. Both chambers passed the bill in July, by votes of 395 to 7 and 90 to 4. One who voted no, reformist Representative A. Toby Moffett (D-CT), gave testimony to how effectively the broad membership had been excluded when he protested that “the speed with which we were expected to get on with this bill did not provide ample opportunity for full analysis.”¹⁵

The Carter administration, with STR Robert Strauss in the lead, had constructed a carefully balanced MTN package that responded to all major US trade interests. Some observers actually felt that Strauss had been too responsive, and cited the overwhelming approval margins as evidence. Ranking Ways and Means Republican Barber B. Conable (R-NY) recalled warning him, “You’re buying a landslide,” giving away too much. In terms of congressional process, however, the key was that the “fast-track” provisions protected the bulk of legislators from product-specific pressure in 1979 just as effectively as the bargaining tariff, and the closed rule barring House floor amendments, had done in the 45 years previous. The administration, in alliance with the primary trade committees, shouldered the main political burden for the members at large. And the main congressional trade players clearly were pleased with the process, for they included in the implementing act a provision that extended this procedure for negotiating and implementing NTB agreements through 3 January 1988.

Still, there were important differences between the new NTB process and the old one on tariffs, and these differences had policy consequences. One was the fact that Congress now had to pass legislation at both ends of a negotiation. For the Kennedy Round tariff agreements, the Trade Expansion Act of 1962 had sufficed. The Tokyo Round required the Trade Act of 1974 to get it going and the Trade Agreements Act of 1979 to conclude it successfully.

This meant that during the talks, US negotiators had to worry about

11. Glennon, Franck, and Cassidy, *Foreign Relations Law*, 161.

12. See Robert C. Cassidy Jr., “Negotiating About Negotiations,” in Thomas M. Franck, ed., *The Tethered Presidency* (New York: New York University Press, 1981), 264–82; I. M. Destler and Thomas R. Graham, “United States Congress and the Tokyo Round: Lessons of a Success Story,” *World Economy* (June 1980): 53–70; Destler, “Trade Consensus; SALT Stalemate: Congress and Foreign Policy in the Seventies,” in Thomas E. Mann and Norman J. Ornstein, eds., *The New Congress*, (Washington: American Enterprise Institute, 1981), 333–40; and documents in Glennon, Franck, and Cassidy, *Foreign Relations Law*, 153–99.

13. In only one case did its congressional consultations force the administration to alter a previously negotiated accord: the House Small Business Committee protested the proposal to open up to international bidding US government contracts reserved for minority-owned enterprises. Strauss responded by substituting other opportunities for foreign firms to sell to US agencies.

14. One interesting example of a substantial change in US policies resulting from the MTN was the wine-gallon concession, in which American negotiators agreed to thoroughgoing revision of a method of computing excise taxes on distilled spirits that dated from the mid-19th century, and that had the effect, not originally intended, of penalizing imports. For a full description, see Gilbert R. Winham, *International Trade and the Tokyo Round Negotiation* (Princeton, NJ: Princeton University Press, 1986), chap. 7.

15. *Congressional Record*, Daily Edition, 13 July 1979, E3582.

the danger that unhappy industries might join together and mobilize a congressional majority to block the implementing bill. In fact, negotiators felt they had to prevent even the formation of such a coalition, since once one came together there was no telling how widely it might spread. Thus in addition to mobilizing maximum support from export interests that stood to gain from a successful MTN, the STR had to show particular sensitivity to the demands of the more powerful among the potential losers, the import-affected industries.

So pressure for special deals increased. Textiles, which had already gotten its Multi-Fiber Arrangement during the runup to the 1974 act, won a tightening of its implementation vis-à-vis the major East Asian exporters and mainland China. The steel industry won adoption of the trigger price mechanism (TPM), through which the US government pledged to initiate antidumping action if foreign products were sold at prices below certain specified minimum levels.

Further policy concessions were included in the 1979 law itself. Though generally consistent with the MTN codes, its drafting was much more than a pro forma implementation exercise. In fact, it grew to exceed the 1974 law in its length, and the key committees used their leeway to press purposes well beyond those the MTN required. As will be recounted in chapter 5, Senate Finance held up final action until President Carter submitted a proposal to reorganize the trade bureaucracy. Even more important for trade policy, steel industry ally John Heinz (R-PA) joined with trade law reformer John C. Danforth (R-MO) to bring about a comprehensive rewriting of the countervailing duty and the antidumping laws, with effects to be set forth in chapter 6.

Finally, the content of the codes meant that Finance and Ways and Means had to acknowledge more explicitly than ever that trade regulation reached into the jurisdictions of numerous competing committees. The 1974 act foreshadowed this recognition, for the fast-track procedures provided only that an implementing bill be referred to "the appropriate committee" in each chamber. The decision to use a single implementation bill for the entire MTN meant that Ways and Means kept its primacy on MTN legislation, and in practice it even proved possible to get the other committees to waive their claim to joint referral. But in return, Trade Subcommittee Chairman Charles A. Vanik (D-OH) invited members of the relevant committees to participate in nonmarkups affecting their jurisdictions. Senate Finance went even farther, passing entire titles on to sister committees and adopting their recommendations as its own.

Most important was the fact that the fast-track procedures solved only half of the "Congress problem" insofar as trade was concerned. They established a new mechanism for authorizing and implementing major international, trade-expanding agreements. Thus, they extended the possibility of US leadership in negotiating such agreements into the post-

tariff trade world. In 1984, Congress would authorize negotiation of bilateral agreements under this procedure, enabling the Reagan administration to negotiate free-trade arrangements with Israel and Canada and win expeditious, overwhelming fast-track approval. And in 1988 and 1991, as discussed later, Congress again extended the fast-track time period, both for the Uruguay Round multilateral talks and for bilateral talks with Mexico.

But this procedure did nothing to divert the many other product-specific restrictive proposals that individual members had always put forward and always would. As Congressman Conable phrased it a few months before his retirement at the end of 1984, "Congress has become a participatory democracy. So you can't stop bad proposals as easily as you used to."¹⁶

Industry-Specific Proposals: The Automobile Case

The textile episodes offer one illustration of Conable's point. Few congressional trade leaders believed that the textile industry needed further protection, but they lacked both the authority and the mechanisms to prevent it.

This did not mean that Congress had become eager to pass statutory restrictions. In most instances, the aim of particular quota bills was still not to get them enacted into law but to demonstrate the sponsor's allegiance to a particular industry, or to pressure the executive branch, the appropriate foreign government, or both. Congress was still acting as a lobby to influence decisions made outside its halls.

In the early 1980s, the most dramatic and visible example was the struggle over trade in automobiles. The second oil shock of 1979 brought gasoline lines and a doubling of the price of motor fuel. As a result, demand shifted sharply toward small, high-mileage models. American car makers were unprepared for this shift: their sales fell off sharply, and imports, three-fourths of which came from Japan, expanded to meet the new demand.¹⁷ Ford and General Motors suffered record losses, and Chrysler needed a governmental rescue to avert bankruptcy. US auto

16. Personal interview, 31 July 1984.

17. In absolute numbers, the growth of imports was moderate, from 2 million in 1978 to 2.4 million in 1980. But their market share shot up from 17.7 percent to 26.7 percent, as sales of American-made vehicles plummeted during the same two years from 9.3 million to 6.6 million, the lowest figure since 1961. See Gilbert R. Winham and Ikuo Kabashima, "The Politics of U.S.-Japanese Auto Trade," in I. M. Destler and Hideo Sato, eds., *Coping With U.S.-Japanese Economic Conflicts* (Lexington, MA.: Lexington Books, 1982), 76.

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With approval of the Canada-US FTA in September, the 100th Congress completed its ample trade work. Its successor would not do likewise: legislators in 1989-90 moved on to other issues, limiting their trade activity to monitoring implementation of their 1988 handiwork. In 1991, however, they were suddenly confronted with a new challenge: a vote on extending the fast-track deadline not just for the Uruguay Round, but for a projected FTA with Mexico as well. This brought before Congress the first explicit floor consideration of the legislative procedure that constrained the authority of the rank and file over trade.

Mexico and Fast-Track Renewal

In 1989 and 1990, trade receded on the legislative agenda. Exports continued to surge; import growth moderated; the trade deficit shrank somewhat. Speaker Jim Wright was caught up, in 1989, with a scandal that would force his resignation. Tom Foley of Washington, a liberal trader, was the consensus choice to succeed him, and Foley was succeeded as majority leader by Richard Gephardt (D-MO). In the Senate, Robert Byrd left the majority leader position to become president pro tempore and chairman of the Appropriations Committee, with George Mitchell of Maine his successor.

Trade-minded senators and representatives watched with approval in 1989 as USTR Carla Hills named Japan a "priority foreign country" under Super 301,⁴⁷ and as Korea and Taiwan scurried to make enough trade concessions to avoid similar designation. And in 1990, many in both chambers were preoccupied with the extended budget negotiations that began in the spring and continued into late October. Aside from its now-routine passage of textile quota legislation, and the equally routine failure to override President Bush's veto, Congress took little specific trade action. There were no burning statutory issues. Moreover, the enactment of the 1988 act had been a politically demanding enterprise, with Bentsen, Rostenkowski, and their colleagues compelled to respond to and balance an enormous range of pressures and interests. The years that followed offered welcome respite. And even though Super 301 expired in 1990, there was no serious congressional move to extend it.

Such legislative restraint was also consistent with the projected timetable of the Uruguay Round. The multilateral talks were intended to last four years, culminating in an agreement by the end of 1990. The 1988 act reflected and reinforced this timetable, with a bit of leeway, by providing that fast-track approval procedures would be followed if the president signed an agreement by 1 June 1991—provided he gave notice 90 days before.

But the Uruguay Round moved slowly. Agreement was particularly elusive on agriculture, where the United States had initially sought a commitment to remove all trade-distorting government policies and was still insisting on major liberalization as a prerequisite for deals on textiles, services, and the many other specific issues on the agenda. A December 1990 GATT Ministerial Conference at Brussels, designed to break the impasse, confirmed it instead.

With the multilateral talks at a stalemate, attention turned to a fallback provision of the 1988 act inserted with just such a contingency in mind. The president could, on or before 1 March 1991, seek a two-year extension of fast-track authority by declaring that progress had been made and additional time might allow the negotiations to succeed. And as the law was written, he could gain the extension unless either house voted against it by 1 June.⁴⁸ He would then have until June 1993 to sign a multilateral agreement.

There was one complicating factor. In the spring of 1990, Mexico's reformist president, Carlos Salinas de Gortari, broke with his country's protectionist and anti-*yanqui* tradition by asking President Bush to negotiate a bilateral free trade agreement. Bush agreed, overruling trade advisers who preferred to wait until a Uruguay Round accord was in hand. He sent Congress the required notification of intent in September. When Ottawa expressed concern that a bilateral US-Mexico pact might undermine Canada's arrangement with the United States, it was agreed to include Canada in the talks, with the aim of creating a North American Free Trade Agreement (NAFTA). Bush notified Congress of this decision in February 1991.

A fast-track extension would therefore apply to the NAFTA talks as well to the Uruguay Round. Free trade with Mexico had been in no member's mind when the law was enacted in 1988. The act did include a brief section endorsing the procedural, US-Mexico "framework" agreement signed in 1987, but a free trade arrangement was considered a decade off at the very least. Still, the fast-track procedures had been broadened in 1984 to cover bilateral accords, with similar consultation caveats and the same expiration date. And the new timetable in the 1988 act applied to both as well. Hence an extension for the GATT talks would cover Mexico as well.⁴⁹

48. In general, legislative vetoes of presidential or agency actions had been rendered unconstitutional by the Supreme Court's *Chadha* decision of June 1983. But the issue here was not statutory substance but legislative procedures, over which the Constitution gave Congress full authority.

49. House Ways and Means or Senate Finance could have blocked fast-track for Mexico by exercising their right to disapprove the negotiations within 60 days of the presidential notification. But neither did so, forcing members to vote up or down on both together.

47. Also designated were Brazil and India.

This prospect alarmed US organized labor and some environmental groups. The former felt particularly threatened by open trade with a "low-wage" neighbor: US workers had already lost many low-skill, mass-production jobs to foreign competition, and a Mexico deal would only exacerbate this trend. Environmentalists worried that competition with Mexico would undercut US environmental regulations by creating a "pollution haven" for US firms south of the border, and leading to a relaxation of US antipollution laws for competitive purposes. Well before 1 March, both were mobilizing against fast-track extension. Their initial success drove Rostenkowski to suggest at one point that it might be necessary to somehow exclude Mexico from coverage in order to salvage authority for the GATT talks. However, the president followed the law (and his interests) in requesting general fast-track extension.

The fast-track procedures had been law for over 16 years, but this was the first time they had held center stage on the House or Senate floor. Previously, their specifics had been worked out in Finance and in Ways and Means, with Congress as a whole ratifying the committees' handiwork when it voted general trade legislation. And this time the issue *could* have been buried in committee—the law provided that a fast-track disapproval resolution could reach the House or Senate floor only if the requisite committee(s) approved. But committee and chamber leaders quickly decided that burial in committee, while perfectly legal, would be viewed as politically egregious and thus discredit both the procedures and any agreements reached thereunder. Disapproval agreements therefore would have to go to both floors, and be voted up or down there.

With critics quick off the blocks, congressional leaders would have normally sought statutory compromise. But on its face the law made this difficult or impossible: the "sole matter" of an "extension disapproval resolution" was to be "That the [House/Senate] disapproves the request of the President for the extension . . . because sufficient tangible progress has not been made in trade negotiations."⁵⁰ Moreover, Speaker Foley resisted creative proposals to separate the Mexico negotiations from the Uruguay Round, or otherwise compromise the procedures. He saw them as a pact between Congress and the executive; if Congress changed the rules when acting on the extension, how could it demand that the administration play straight?

Bentsen and Rostenkowski, both strong backers of fast-track renewal, therefore resorted to nonstatutory bargaining. They wrote to President Bush seeking assurances on three key matters: the overall economic impact of a NAFTA; its effects on jobs and worker rights; and its impact on the environment.⁵¹ They needed a reply by 1 May, they declared, so that

50. Public Law 100-418; Sec. 1103(b)(5)(A).

51. Bargaining with colleagues was impeded by the fact that some key labor Democrats on Ways and Means (like Donald J. Pease of Ohio) were committed to vote against

Congress could consider it and vote before the 1 June deadline. Gephardt resisting strong labor pressure and maintaining an undecided posture wrote a separate letter raising similar concerns.

With everyone's attention on Mexico, the Uruguay Round got something of a free ride. When the Brussels ministerial conference failed, it was thought that a fast-track extension debate would turn the spotlight on those negotiations, with senators and representatives pressing the administration on why progress had been limited and why they expected the next two years to be any better. Congress might even have threatened specific conditions or minimum requirements for a Uruguay Round package. The USTR would presumably have responded by pressing its counterparts in Europe and East Asia, seeking concrete evidence of prospective gains in order to persuade Congress to continue the enterprise. But this did not happen—in fact, the tendency was for members critical of the Mexico accord to say nice things about the multilateral round, to balance their positions and avoid being labeled protectionists.

Responding to the strong, early labor and environmentalist opposition, Bentsen and Rostenkowski pressed business leaders to get moving: if they favored fast-track extension, they had better lobby hard, or else the measure would fail. And business responded. The old pro-trade coalition, demoralized by the Reagan trade deficit and mobilized only for the endgame in 1985-88, was now back in full force—encouraged by the export boom, but concerned that a collapse of the Uruguay Round would unleash protectionism here and abroad. So they went "balls out" for extension, as one Washington insider put it. Mexican representatives were active and effective also, belying their long-standing reputation for inattention to the Washington power game.

Last but not least, the charge was led by a highly competent USTR, Carla A. Hills, backed by a president who wasn't about to see his Mexico initiative go under. Together, the USTR and the White House pressed business to be active; they encouraged (and received) restraint and flexibility from Mexico and Salinas; they brought in a range of arguments, from the future of the world trading system to the interests of the growing population of Hispanic-Americans. And on 1 May the president responded adroitly to the questions posed by Bentsen and Rostenkowski. Pointing to the doubling of US exports to Mexico between 1986 and 1990, the administration declared that "a NAFTA will result in greater prosperity for U.S. workers, farmers, businesses and consumers." Moreover, since "Mexico's economy is 1/25 the size of the U.S. economy . . .

extension for Mexico. And labor followed its characteristic strategy of taking a strong stand and refusing to compromise. On trade, this had usually served to minimize labor's influence—with the plant-closing provision of 1988 the major exception; it would do so in 1991 as well.

scenarios of mass dislocations resulting from reduced U.S. trade barriers are not realistic." Nonetheless, the statement promised "adjustment provisions to avert injurious effects," including transition and safeguard mechanisms and an "adequately funded" worker adjustment program providing "prompt, comprehensive, and effective services" for those who lost their jobs as a result of an FTA with Mexico.⁵² Bush's statement also praised and supported Mexican efforts to enforce labor standards and worker rights. On the environment, "Mexico and the United States agree that efforts to increase growth through an FTA should be complemented by cooperative efforts to enhance environmental protection." And in addition to pursuing "joint environmental initiatives," the United States would "ensure that our right to safeguard the environment is preserved in the NAFTA."⁵³

The statement accelerated a shift by some environmental groups: from opposition to an accord to using the negotiations as an opportunity to advance their concerns. Labor remained in opposition, but once the outcome was clear the AFL-CIO deemphasized the final vote and scurried unsuccessfully for ways to make the outcome less clear-cut. Bentsen and Rostenkowski declared their satisfaction with the White House response. On 9 May Gephardt declared his support, with a "caveat: If the administration sends to this Congress a trade treaty that trades away American jobs, or tolerates pollution of the environment or abuse of workers, we can, and we will, amend it or reject it."⁵⁴

When the votes came, they were anticlimactic. Ways and Means voted 27 to 9 against the disapproval resolution; Finance did likewise by 15 to 3. On 23 May the House rejected the resolution by 231 to 192, a margin that apparently overstated the bedrock opposition to fast-track.⁵⁵ The Senate followed the next day by 59 to 36. The split was both partisan and regional. Democrats in the House voted 170 to 91 to veto fast-track, but the leadership backed it, and representatives from California, Florida, and Texas—states with large Hispanic-American populations—voted 64 to 25 in favor.

Critics got one consolation prize. Speaker Foley resisted the idea of

staging separate votes on the Uruguay Round and Mexico, though some members complained they were being forced to oppose the former because of the latter. And efforts by critical legislators to modify the fast-track procedures never came to a vote.⁵⁶ But the House did adopt by 329 to 85, after rejecting the disapproval measure, a Gephardt-Rostenkowski resolution endorsing the labor and environmental objectives included in the 1 May statement, and calling for close consultation with the administration during the Mexico negotiations.

By fall 1991, it was back to business as usual. Hills was pushing ahead on the Geneva and Mexico fronts; legislators, faced with many competing demands, were only sometimes responsive to opportunities to give advice. The House majority leader had come forth with "a new 'Gephardt amendment' that will put teeth in Super 301," again targeting Japan in particular, to "reduce the discretion the President has not to take action against priority countries and priority practices."⁵⁷ But its effect—and perhaps its intent—was more to position Gephardt and like-minded Democrats on the "tough" side of the trade debate (and to balance Gephardt's support of fast-track) than to influence the legislative agenda on trade, at least in the near term. For that awaited the results of the global and hemispheric trade talks (see chapter 9).

1984 and After: The Leadership Difference

Since the early 1980s, Congress has seemed ready on several occasions to reverse postwar liberal trade policies. On each occasion, it refrained from doing so. Product-specific protectionism, so much in prospect in 1982 and 1983, was removed from the law passed in 1984. The explosion of concern about the US trade balance in 1985–86 was brought under control by an administration that first shifted course on the exchange rate—encouraging the dollar to fall—and thereafter bargained hard on the specifics of what became the 1988 Trade Act. And despite strong early opposition, fast-track renewal passed comfortably in 1991. Frustration with the no-amendment procedure was substantial, raising doubts as to whether Congress would agree to it for a post-1993 trade negotiation. But for the present, it once again went along and delegated major authority to the administration.

On each of these occasions, members of Congress showed strong in-

52. This represented, at least potentially, a reversal of the deemphasis on trade adjustment in the 1980s. See chapter 6.

53. Quotations are from "Response of the Administration to Issues Raised in Connection With the Negotiation of a North American Free Trade Agreement," Transmitted to the Congress by the president on 1 May 1991, processed, "Overview" section, 1, 3, 6, 9, and 11.

54. Quoted in *Congressional Quarterly*, 11 May 1991, 1181.

55. *Congressional Quarterly* reported that "the opposition total" seemed padded, "since many votes to reject the fast track were made after it was apparent that proponents had the numbers to win." The AFL-CIO vote count had shown "only 140 lawmakers solidly . . . against the fast-track extension." 25 May 1991, 1358–59.

56. Representative Sander M. Levin and Senator Donald W. Riegle Jr., both Democrats from Michigan, proposed that the procedures be revised so that Congress could offer a limited number of amendments to a US-Mexico accord. But with the no-amendment rule for the disapproval resolution, they were unable to get a vote.

57. Richard A. Gephardt, remarks at the Institute for International Economics, Washington, 10 September 1991, 4–5.

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the United States is simultaneously moving toward free trade with nations outside the hemisphere.

Flexibility on Fast-Track

Success on NAFTA and the Uruguay Round depended on the fast-track procedures, by which Congress committed itself to an expeditious up-or-down vote on the implementing legislation as submitted by the president. But both exposed fast-track to broad congressional and public scrutiny for the first time since its invention in 1974. On previous occasions, the key action on the procedures was taken in committee. The trade debates of the 1990s brought chamberwide attention to fast-track, with critics highlighting the limitations it places on congressional power. This was one important reason Clinton failed to win extension of fast-track during the debate over the implementing legislation for the Uruguay Round in 1994 (see chapter 9).

The resulting lack of such authority poses a serious threat to trade negotiations, since it remains unrealistic to expect others to reach complex trade agreements with the United States if the Congress has the power to amend them, or to pick and choose among their provisions. So supporters of multilateral trade negotiations need to explore compromises that respond to critics' concerns while preserving the core principle. Some of these compromises need to be procedural: trimming back the permissible substance of a fast-track bill and giving explicit statutory recognition to the congressional role in its drafting. Others involve the substance of future negotiations, with liberals seeking explicit authorization of trade-related labor and environmental agreements and conservatives seeking to exclude these subject matters entirely. Specific suggestions are included earlier in this chapter.

The point of these suggestions is to preserve the essence of the fast-track process. What is crucial is that the Democratic administration and the Republican Congress reach agreement on a practical extension formula, just as a Republican administration and a Democratic Congress initiated the process 21 years ago. And the administration should avoid the temptation to do without it—to complete a free trade negotiation with Chile, for example, and bring it up for approval under normal legislative procedures. It is doubtful this would work. And even if it did, it would set a terrible precedent for future multilateral agreements.

Revising the Trade-Remedy Laws

NAFTA and the Uruguay Round were dramatic breakthroughs, but they left many issues unresolved. It will take time, however, to get major

new talks under way. The 1994 impasse over fast-track is only one of the reasons.

In years to come, therefore, major international negotiations may play a diminished role in countering US protectionism. Advocates of open markets will need to rely less on such international negotiations and more on specific, antiprotectionist interests that gain from exports and imports. Such trade-dependent interests—including retailers and industrial users of imported inputs—have been growing more active in US trade politics. Enmeshed as they are in an interdependent global economy, they can and should bear more of the political burden for supporting liberal trade policies than they did during the relatively “closed” US economic past.

US trade law is sometimes written as if the only particularized interests of concern are US-owned, US-based producers of the specific products whose trade is at issue. But the real world has long since departed from this model. A firm's capacity to export may rest upon its capacity to import—as Caterpillar has argued in resisting steel import restraint. And in certain product areas like TV production, foreign-owned companies may be more likely than their domestic counterparts to have their products “made in USA.”⁵⁰

One area of policy particularly embedded in obsolete assumptions is US trade-remedy laws. As illustrated by the case of flat-panel display panels for computers, discussed in chapter 6, US dumping laws ask only whether products priced below an arbitrarily set “fair value” hurt competing US producers (who do not have to follow the same pricing rules). They do not ask whether imposition of a duty will damage US firms that use the imported products as inputs—perhaps forcing them, as in this case, to move entire operations overseas.

For most of the postwar period, it was very difficult for firms to get relief under US trade-remedy laws. Now, in dumping cases, it is too easy. Of the 539 antidumping cases carried to completion since 1980, only 27—or 5 percent—failed because dumping was found not to have occurred.⁵¹ One apparent cause is “practices and procedures which tend systematically to favor higher rather than lower dumping . . . ‘margins,’ ”⁵²

50. In 1988, foreign-owned firms employed over 15,000 Americans engaged in TV manufacturing in the United States, compared with 2,500 for Zenith, the sole US producer. See Robert B. Reich, “Who Is Us?” *Harvard Business Review* (January-February 1990): 61. Reich's broader analysis on this issue is *The Work of Nations: Preparing Ourselves for 21st Century Capitalism* (New York: Alfred A. Knopf, 1991).

51. Forty-three percent were concluded with a finding of no injury, and an additional 134 cases were withdrawn before final action was taken—in most cases because of voluntary export restraint arrangements.

52. Richard Boltuck and Robert E. Litan, eds., *Down in the Dumps: Administration of the Unfair Trade Laws* (Washington: Brookings Institution, 1991), 13.

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Overall congressional support. Gephardt and Levin, two respected "tough on trade" Democrats, were solid supporters of the GATT bill.

The Loss of Future Fast-Track

The second issue where the administration approach cost precious time concerned future trade negotiations: whether fast-track authority for them would be included in the Uruguay Round bill. In this case, it cost USTR the substance as well. Mickey Kantor and his colleagues needed congressional authority to pursue their regional and global negotiating agenda. They did not get it in 1994.

Authority to employ fast-track procedures for the results of future trade negotiations had been included, almost unnoticed, in the 1979 legislation implementing the Tokyo Round. But the 1991 renewal debate had made fast-track a visible and controversial issue, particularly for members of Congress not on the principal trade committees. Kantor made the matter more controversial by delaying his specific proposal to mid-June, springing it on the trade community without full consultation, and including in it two provisions bound to provoke opposition. One was the duration of the proposal: it would cover essentially all trade negotiations completed by December 2001, seven years into the future. This seemed to many legislators an excessively long and broad request, particularly since the post-Uruguay Round trade agenda was only beginning to be developed. The second was a proposal to include trade-related labor and environmental issues among the specific negotiating priorities set forth in the fast-track extension. This got the business community up in arms.

In its post-Uruguay Round planning, USTR had placed very high priority on initiatives to reconcile trade liberalization and environmental protection and to bring internationally recognized labor standards into the trade dialogue. Politically, the latter was a peace offering to labor and its congressional allies, who had opposed NAFTA. Early in 1994, therefore, USTR launched an aggressive international campaign to include labor standards on the agenda of the new World Trade Organization. Specifically, Kantor pressed for agreement to be announced on this matter at the Marrakesh meeting on 15 April where final Uruguay Round agreements would be signed. He faced "overwhelming international opposition,"⁴⁸ particularly from developing countries, and in the end had to settle for agreement that the issue would be discussed by the Preparatory Committee, which was being established to help manage the transition from GATT to WTO. But Vice President Gore highlighted the issue in the address he delivered at Marrakesh.

48. *Inside US Trade*, 1 April 1994, 1.

Business interests had acquiesced only reluctantly in NAFTA labor and environmental side agreements, fearing they would increase regulation. They reacted very negatively to the administration's spring labor-standards campaign. Then USTR, with only limited consultation, unveiled its fast-track proposal in June, which made "labor standards" and "trade and the environment" the fifth and sixth of seven "principal trade negotiating objectives" for which the new authority was to be employed.⁴⁹ The business community reacted strongly. Before long, many Republicans were saying that they would only approve new fast-track if labor and environmental issues were explicitly *excluded*, a stance heartily endorsed by small and medium-sized businesses. Multinational firms in the Business Roundtable accepted the idea that some treatment of labor and environment issues might be appropriate in trade talks. But they felt frustrated. The administration, they believed, was undercutting its own cause by not working closely with the business allies upon whose support extension of fast-track would depend. With Moynihan and Packwood already skeptical about fast-track's inclusion in the implementing bill, the best hope was for the administration to win agreement in the House and then work hand-in-glove with business in persuading the Senate. But from the business standpoint, there was a lack of the close consultation and confidence that would make this possible.

The labor/environment issue, and the way Kantor was handling it, divided Congress along partisan lines—just the thing that he needed to avoid. The financing issue had a similar effect. Moreover, while Republicans remained generally supportive of free trade in general and the agreement in particular, their sights were increasingly set on the upcoming November elections, where they saw a chance for major gains. They feared that a Clinton "victory" on a major piece of legislation—or, worse yet, several major victories—would give him and the Democrats a political countermomentum like that which he had gained from the NAFTA vote. Their immediate target was health care, the predominant business of the second session of the 103rd Congress. But as Clinton's prospects on this issue receded, Republicans began thinking of denying him a trade victory also, or at least of making sure that the victory came on their terms. Thus, although the core Uruguay Round debate was never substantively partisan (like the budget in 1993 or health care in 1994), the issue became tactically partisan, and remained so through the November elections.

The WTO and US "Sovereignty"

The most prominent public issue was the creation of the new World Trade Organization. As noted earlier, US officials had initially been resis-

49. For the full text, see *Inside US Trade* Special Report, 21 June 1994, S-26.

tant to it, partly out of concern over its domestic reception. And once the WTO was agreed to, it became the target and mobilizing issue for an odd anti-GATT alliance, bringing together Ralph Nader, Pat Buchanan, and Ross Perot. The buzz word was "sovereignty," and whether the WTO would take it away from the United States. Newt Gingrich pressed the issue in the spring, partly because a Georgia primary opponent was raising it. He won a special hearing in House Ways and Means and won also a provision, in the implementing legislation, whereby the Congress could vote on withdrawal from the WTO every five years.

For the Buchanan-led hard right, the WTO was a new manifestation of the threat of a "world government." For the left, the WTO raised concerns that the new trade institutions and procedures would override US laws on such matters as environmental protection and product safety. For Senate Minority Leader Robert Dole, it was a rationale for withholding support until the politically opportune moment. Claiming he had had more phone calls to his Wichita office on WTO than on NAFTA, he asked why Congress couldn't wait until the issue was clarified and why there was the need to rush to a vote in 1994.⁵⁰ Supporters brought in conservative jurist Robert Bork to quash the sovereignty question, and Bork declared that the WTO took away no authority from US institutions, and could not force any changes in US law. The Heritage Foundation weighed in with a similar analysis. Together with the strengthened dispute-settlement procedures, however, the WTO could produce legitimate decisions that US laws violated US trade commitments. And while it could not force changes in these laws, it could sanction retaliation by other nations if the laws were not changed. A specific aspect of this issue receiving prominence was the impact on laws below the federal level. State attorneys general mobilized and won a provision to protect their participation in any changes of state laws required to conform to Uruguay Round agreements, or as a result of adverse WTO decisions.

Other issues also brought complications. The textile industry, whose quotas the agreement would phase out in 10 years, sought (and would win) short-term gains through promised changes in the "rules of origin" used to enforce those quotas. Senator John Danforth (R-MO) led an early Republican protest against rules governing subsidies, which gave a "green light" to those aimed at enhancing research and development. Curiously absent from the debate, however, was the issue of trade adjustment measures. One reason was that, with the AFL-CIO on the sidelines, the issue of "jobs" was as marginal to the Uruguay Round debate in 1994 as it had been central to the NAFTA debate in 1993.

50. See Keith Bradsher, "Dole Urges Postponement For Approval Of Trade Pact," *New York Times*, 31 August 1994. Kansas was a particular target of GATT opponents, who apparently orchestrated the phone calls. Dole presumably knew this at the time, and he admitted it later.

Delaying the Process: Dole, Hollings, and Gingrich

Thus, despite its determination to move fast on Uruguay Round implementation, USTR found itself bogged down on a variety of issues as spring became summer and summer approached fall. And the process seemed to maximize the leverage of those who stood in the way. If opponents' head start on NAFTA was the result of Clinton political strategy, on GATT a somewhat similar political pattern was rooted in the fast-track procedures themselves. The way in which policy bargaining was centered on the drafting of legislation gave business interests an incentive to delay or condition their support in order to extract the last bit of gain—in the wording of the antidumping laws, for example, or in rules of origin for textiles. Once the package was finally put together, time was short, the opposition was mobilized, and business could not simply turn on a dime to all-out support. Thus the internationalist interests that had come together so strongly on NAFTA and on China MFN were not a powerful counterweight when Republicans subordinated GATT approval to their determination to deny all victories to Clinton.

The original administration goal was to get approval—or at least a House vote—before the August congressional recess. But while health care dominated members' attention, negotiations on the implementing bill ran on endlessly—in particular on the budget, on future fast-track, and on antidumping. The first "nonconference" between Senate Finance and House Ways and Means was not held until 19 August, and the final one was on 20 September. Kantor struggled repeatedly to formulate a follow-on fast-track proposal acceptable to both Gephardt Democrats and Archer Republicans. He thought he had one in August, but by then Senate Finance was adamantly against including any such language. Under strong White House pressure, he continued to press the matter after its prospects had evaporated, delaying the process further. The administration finally gave up on future fast-track in September, without even gaining authority for the broadly supported free trade negotiations with Chile.

More important, the bill now faced a time bind that threatened its very enactment. The law allowed up to 90 legislative days for Congress to consider trade implementing legislation after its submission, and there were nowhere near 90 days between late September and the anticipated October adjournment. Of course, no previous fast-track bill had taken all of the 90 days, as steps had been skipped or statutory times truncated through leadership power (in the House) or unanimous consent agreements (in the Senate). The NAFTA bill was not even introduced until 4 November 1993, just 16 days before the final Senate vote, and the Senate skipped over the statutory requirement that the bill, after House passage, "shall be referred to the appropriate committee or committees" in that body. But that required acquiescence of key committee chairs,

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What to Do? A Framework for Future US Trade Policy

Trade policy carries burdens that go beyond its capacities. The instruments at its disposal—measures impeding imports or encouraging exports—are weak and inappropriate when set against 12-digit trade deficits or crises in major American industries. Yet they are what US political leaders are typically asked to employ when such troubles come knocking at their doors. Nor do the tools get any sharper when alliances lose their enemies, and frustrations with Japanese and Europeans multiply.

This book has told the story of an American trade policymaking system confronting sharply altered circumstances at home and abroad, a system that has held up considerably better than most would have predicted. This chapter builds on that story but goes beyond it. It asks the prescriptive question: what should we do now? Granted the problems and changes recounted in previous pages, how should American officials and institutions respond? What set of policies, procedures, and institutions will best serve American interests in the new global environment?

The first section of this chapter answers these questions for the near term, in light of the challenges facing a Democratic president and a Republican Congress in 1995 and 1996. The remainder provides broader, longer-term prescription. It does so in two forms: a summary section offering concise analysis and recommendations, and a more extended section that treats matters more thoroughly. It includes remedies outside the trade policy sphere—steps to reduce the budget deficit and enhance productivity. And the entire chapter is built on the premise that, even in a world where many foreigners are “unfair” and some are gaining on us, a basically liberal trade approach remains the best policy option for today’s United States.

Policy for the Near Term

To move trade policy forward in 1995 and 1996, the White House and Congress will need to come together on three central things:

- **a substantive agenda** that simultaneously pursues multilateral, hemispheric, and APEC liberalization options and also nurtures the gradual development of the World Trade Organization and its dispute-settlement processes;
- **A public argument** that highlights how internationalization is a fact of life, that trade brings gains that exceed its pains, and that broad protectionism is no longer a feasible policy option;
- **A reformed trade policy process** that preserves the essence of fast-track but curbs abuses and promotes timely debate over major new initiatives.

A New Agenda?

The Clinton administration was understandably guarded about its post-Uruguay Round agenda in 1994, wishing not to lose votes on either side of the aisle. And the response to its trade-environment proposal hardly encouraged it to be more forthcoming. But in early 1995, it needed to be more forthcoming: ready to advance specific initiatives, yet aware that consensus had not yet formed on many matters.

On geographic priorities, there has been near-universal support for free trade with Chile—the Latin American country next in line—and broad backing for further moves toward Western Hemisphere free trade. There is more generalized support, tinged with wariness, for trade liberalization in APEC. Business is driven heavily in this direction, but Asian economies pose a far greater challenge to American workers than the Mexican economy ever can.

Moving to functional issues, the Clinton USTR has focused on three post-Uruguay Round matters—labor, the environment, and competition policy. It will need to adjust its priorities, for the election has further weakened support for the first two. They may not have to be abandoned entirely, but USTR will need to proceed cautiously, eschewing grand environmental and labor initiatives. US politics in the mid-1990s will not support them.

Fortunately for US officials who need to keep the initiative, there will remain other issues as well: left-over business from the round, such as trade in cultural properties and financial services, and questions of implementing the agreements and getting the WTO off to a solid start. The Dole deal is an expression of the limits of American tolerance for binding international dispute settlement. It will constrain both WTO panels

and USTR trade officials seeking to influence them. There is also the distinct possibility that the implementing legislation has produced anti-dumping provisions that WTO panels will find inconsistent with the agreement signed in April 1994. One hopes such decisions will not be found arbitrary or capricious by Dole's WTO Dispute Settlement Review Commission. And if they are, Congress ought not seek to overturn the whole system in the interest of protecting a few steel producers. But in this, as in all trade policymaking, balance will be required: the United States should push for greater liberalization and internationalization, but not so fast as to put past achievements at risk.

More Effective Trade Advocacy

With 60 years of progress in trade liberalization, with negotiation after negotiation and vote after vote confirming this basic direction, US trade policy should be politically secure. The fact that it does not seem so is due, in important part, to the rising popular debate and the defensiveness of trade advocates within it. They have done very well within the analytic community—establishing standards for analysis and demolishing the sweeping claims of Ross Perot and Pat Choate. They have done less well debating Ralph Nader on the national media. And they have failed to convey a realistic sense of today's world: that internationalization is a fact, no longer a choice; that imports as well as exports benefit a nation; that with the increased trade in components as well as final products, producers are importers too; that to gain maximum advantage from trade liberalization, we must be prepared to attack—as protectionist—all laws and practices, however they are labeled, that treat foreign and domestic producers differently.

As Bill Clinton and Mickey Kantor have noted, much of the American public is predisposed against trade because it is afraid of change—with reason. Trade has hurt many workers and will likely continue to disadvantage those with the least skills by putting them in competition with lower-wage foreign counterparts. But the answer is not to protect but to upgrade, for there is no durable way for worker welfare to advance unless productivity advances first. And a better educated, better trained work force is a key to improving productivity.

These and other arguments need to be made, with empathy for those who fear becoming losers in the global economy, but with determination to maintain and broaden policies of trade openness. And trade experts as well as trade-supporting politicians need to be bolder about making them.

A Trimmed-Down Fast-Track Process

Finally, there is a need for significant reform of the fast-track process. Here, too, the insider community has coasted for 20 years with the basic

law of 1974, as agreements became more complex, as the drafting process became more cumbersome, as trade politics became more public. Extension of the law in 1988, intended for the Uruguay Round, was applied also to NAFTA, denying Congress as a whole any single occasion to stop it before the NAFTA train had left the station.¹ The joining of fast-track rules with budgetary requirements has led to embarrassments such as the APC-*Washington Post* provision, inserted at the eleventh hour because it brought needed revenue, yet immovable when it provoked understandable attack after the bill was formally submitted. And efforts have been made to broaden the substance of policy covered by fast-track beyond what today's trade policy consensus permits.

Because the administration failed to win extension of the process in 1994, Congress will be considering fast-track on a non-fast-track basis—in a bill open to amendment. With both houses now under Republican control, the administration will need to proceed very carefully. As they both play their roles, the executive and Congress should consider statutory changes that would narrow fast-track's potential for use and abuse, in order to make it a still more effective vehicle for trade agreements that Congress has explicitly authorized.

Like its predecessors, any bill extending the procedures will delimit the substantive purposes served by negotiations whose outcomes receive fast-track treatment. The administration should not repeat its effort to extend the procedure to cover, explicitly, negotiations on labor and environmental matters. These issues, however important, are currently subjects of sharp partisan division, not bipartisan consensus. And fast-track can work only on issues for which this consensus exists.

Departing from its predecessors, forthcoming fast-track legislation should incorporate **three major changes** in the process:

- First, the bill should **narrow the range of matters a fast-track bill can cover**, perhaps limiting it to measures "necessary" for implementation, rather than the more permissive "necessary or appropriate" in previous laws. The latter has given administration officials the leeway to broaden support by adding ancillary measures, but at the cost of lengthening the drafting process, inviting new special-interest demands, and encouraging international business to hold off lobbying for an agreement until all details on which it has an interest have been resolved. As part of this limitation, it could allow amendment of budgetary provisions included not to implement the agreement but to square with congressional rules.²

1. The legislation did give the Senate Finance and House Ways and Means Committees a veto over the launching of bilateral free trade negotiations, one which Senate Finance came within one vote of exercising on the US-Canada negotiation in 1986.

2. Senator Lugar suggested this in his Uruguay Round statement, on which this concluding proposal draws in other respects also.

- Second, the bill should **give committees their right to review before the text of the bill is set in concrete** and establish a more expedited timetable thereafter. The 45-day review period, which was Senator Hollings's statutory right in 1994, came after the final bill was drafted and submitted and unamendable. More appropriate would be to put into law some features of the nonmarkup process as now practiced: allowing committees of jurisdiction, for example, a specified length of time to hold hearings and make detailed statutory recommendations between the signing of an agreement and the presidential submission of implementing legislation.

- Third, the bill should **provide for explicit congressional authorization of the specific negotiations where the procedure applies**. It should not be written so broadly that an administration can launch a major negotiation such as NAFTA without explicit congressional action. Rather, fast-track should be amended so as to facilitate debate over such a negotiation, and provide for an explicit up-or-down vote, before it gets started.

One way to legislate this last limitation would be for the Congress to enact, without a termination date, a slimmed-down fast-track process of the sort proposed here—or in Senator Lugar's floor statement. Specific negotiations would qualify for the process, however, only if explicitly authorized by the Congress.³ Matters that are ripe—Chilean adherence to NAFTA, for example—could be included in the bill that establishes the broader process. But any matter not explicitly authorized therein would need to be voted later. The bill might also specify procedures under which the administration could request and win a timely vote. More important is the need to require one.

Finally, to ensure that the fast-track process will be employed for major negotiations—where it is vital—USTR and Congress should eschew the temptation to negotiate and implement less complicated, specific country negotiations under the normal legislative process. This would be a terrible precedent, for it would create the erroneous impression that fast-track is not generally necessary and undercut the case for its renewal. In early 1995, for example, there has been talk of handling Chilean accession to NAFTA in this manner. This temptation should be resisted. The Chileans have been waiting several years to negotiate with the United States, and it is not unreasonable to *begin* talks with them in anticipation of fast-track legislation. Both the Tokyo and Uruguay Round negotiations were launched before Congress had enacted laws authorizing them. But a Chile negotiation should not be *completed* unless and until Con-

3. This should normally include dates for their completion, so as to create the action-forcing target that has often proved essential.

gress extends fast-track and implementation can proceed under that authority.

Reforming the fast-track law, and applying it to all significant trade negotiations, would retain what has proved so important: the need to avoid congressional renegotiation of an accord, and hence to assure other nations that our negotiators possess sufficient authority to deal authoritatively with issues at hand. But it would also enhance democratic debate. Both are important. The latter is becoming more so as trade becomes central to American economic life.

These specific measures should be considered as part of a broader approach to US trade policy, one built on good economics and good politics. The remainder of this book sets forth such an approach.

Managing Trade Policy: A Basic Prescription

The fundamental prerequisite for sensible trade policy is *macroeconomic balance*. If a nation is consuming more than it is producing, if investment within its borders exceeds saving, it runs—by definition—a trade deficit. If that deficit is large, it will affect the balance of trade politics by increasing the number of producers hurt by imports relative to the number of those helped by exports. It will multiply the number of demands for trade restrictions, making it far harder for officials and legislators to resist.

Although a trade deficit thus exerts a major impact on trade policy, the converse is not the case. Action specifically directed toward imports and exports has little effect on the balance between them. **Trade measures can affect the volume of trade. They can influence the composition of trade. But unless coupled with other measures, they will have little impact on the overall surplus or deficit of a nation.**

Rather, the appropriate remedies for a trade deficit are *macroeconomic* actions that increase saving relative to investment and production relative to consumption. For the United States, the most promising course by far is action to reduce the federal budget deficit, because that represents massive dissaving for the American economy. Under conditions of slack domestic demand, there can also be a role for *exchange rate policy*, meaning direct efforts to influence the value of the dollar.⁴

4. In these circumstances, decline in the value of the dollar will increase demand for exports and replace imports with domestic products, thus increasing production relative to consumption (and bringing the economy closer to full capacity). At full capacity, however, the main product of dollar devaluation will be inflation. For elaboration, see I. M. Destler and C. Randall Henning, *Dollar Politics: Exchange Rate Policymaking in the United States* (Washington: Institute for International Economics, 1989), esp. 10–11 and 148–49.

Within a condition of overall balance, the United States should expect to run surpluses with some trading partners—such as the European Union—and deficits with others—such as Japan.⁵ **These bilateral imbalances are normal, even beneficial: they are one way that nations maximize the gains from trade. Measures that seek to regulate or eliminate them make no economic sense whatsoever.**

Macroeconomic policy can help the United States balance its global trade account and thereby bring pressures down to a more manageable level. It cannot, however, determine the exchange rate at which balance will take place. And unless productivity within the United States grows at a rate comparable to that in the rest of the world, it can only achieve external balance at a progressively lower (real) exchange rate. This means a declining living standard for Americans relative to the citizens of other nations, because it will take more US currency to buy foreign products and less of foreigners' currency for them to buy US products.

Hence there is a need for *productivity and competitiveness policies* that improve the quality and profitability of economic activity in the United States. These include measures to improve the quality of the work force (education and training), actions to strengthen the US economic infrastructure, steps to increase private saving and investment, and *technology policy* aimed at encouraging innovation and the efficient application of new ideas to the production process. The aim of such *microeconomic* measures is to make the economy both more productive and more flexible. The result, if successful, is greater gains from trade and a higher living standard for Americans.

Trade policy is not an effective instrument for addressing these broad, economywide problems of international balance and domestic productivity growth. It can have two very important goals, however. Its positive goal is to increase the volume of trade—and hence the gains from trade—through opening markets abroad and at home. Its negative goal is damage limitation: minimizing the harm to the overall US economy, and to the international trading system, from successful attempts by special interests to win import protection. In practice, the two are related. Damage limitation requires mobilization of counterpressure to offset the normal political imbalance favoring the concentrated interests hurt by trade. And one of the best means of creating such counterpressure is through negotiations aimed at increasing export opportunities, because these bring the export interests that gain from trade expansion more actively into the political fray.

This underscores the importance of the success in the complex, multi-

5. C. Fred Bergsten and William R. Cline, *The United States-Japan Trade Problem*, POLICY ANALYSES IN INTERNATIONAL ECONOMICS 13 (Washington: Institute for International Economics, 1985), 32–41.

nation, multi-issue Uruguay Round. The agreement will bring new export opportunities for American farmers and producers of other goods and services, as well as multilateral constraint on protectionist measures. And the new World Trade Organization offers opportunities to press for further market opening that US officials should exploit. Regional free trade is not a good substitute. For a nation two-thirds of whose exports go across the two great oceans, a hemispheric trade bloc offers a much narrower range of economic opportunities, and hence less counterpressure against trade restrictions.⁶ And it brings risks of precipitating conflict among regional blocs unless accompanied by progress in the global GATT system.

There are specific economic and political gains to the United States from special arrangements with Canada and Mexico. But US priority should continue to go to *global* trade liberalization. In pursuit of regional liberalization opportunities, moreover, the United States should balance initiatives within the Americas with those elsewhere, particularly East Asia. As a general principle, **Western Hemisphere nations beyond the current NAFTA partners should not be offered free trade arrangements unless the United States is simultaneously moving toward free trade with nations outside the hemisphere.**

To conclude major trade-liberalizing agreements, fast-track procedures remain essential—as they were for the Tokyo Round of the 1970s and the Uruguay Round. The Bush administration and its congressional allies won a major victory in May 1991 when both houses acquiesced in their extension through June 1993. But in the course of that debate, fast-track became a broad congressional and public issue for the first time since its creation in 1974, with critics protesting loudly that it tied legislators' hands. Due in part to this concern, the Clinton administration failed to win such authority for new negotiations in the Uruguay Round legislation of 1994. As discussed earlier in this chapter, **it will be difficult to get fast-track procedures extended without some limitation on their scope and/or some buttressing of the congressional role within them.**

Ever since the Reciprocal Trade Agreements Act of 1934, international barrier-reducing negotiations have been a major counterweight to protectionism here at home. Multilateral talks may not play this role as effectively in the future. The pain attendant to the completion of the Uruguay Round of negotiations does not encourage leaders in the United States, Europe, or Japan to plunge quickly into another. And if a forthcoming round addresses trade and the environment, as widely predicted, its primary goal will not be further trade-barrier reduction but rather the reconciling of two strong, and sometimes compet-

ing, policy frameworks. Thus it may not play the same protection-constraining role in the US political process. **Advocates of liberal trade policy must be prepared to rely less on major international negotiations and more on specific antiprotectionist interests based within the United States.**

Such trade-dependent interests—including retailers and industrial users of imported inputs—have grown stronger and more active in US trade politics.⁷ Enmeshed as they are in an interdependent global economy, they can and should bear more of the political burden for supporting liberal trade policies. **US trade-remedy laws should be amended to reflect their growing trade interest and economic importance.**

This should be part of a broader reshaping of the statutes governing administrative trade relief. Before the 1970s, it was too hard for firms to get action under these statutes; now, it is too easy (at least under current US antidumping law as implemented). The result is too much protection and too many cases diverted from consideration under the escape clause to the laws that highlight alleged foreign "unfairness." And as spelled out in chapter 9, the Clinton administration acted to weaken Uruguay Round reforms in these procedures.

The best solution would be an international agreement on competition policy, with rules on predatory pricing that apply to both foreign and domestically produced goods. But absent such an agreement, the United States should adopt the following reforms as a package:

- The threshold for proving injury under the escape clause (Section 201) should be eased, but relief should be tied to an explicit adjustment commitment by the petitioner.
- The threshold for proving dumping should be toughened, returning to the original standard of comparing selling prices here to selling prices in the producer's home market.
- In dumping or countervailing duty cases in which dumping or subsidy and injury are found, a follow-on procedure should be created whereby users and other affected interests could seek a reduction in the level of penalty duty assessed by demonstrating that its full imposition would cause them serious injury.

Congress will continue to insist on export assertiveness, and the US Trade Representative (USTR) will continue to find tough, market-opening negotiations important in establishing its credibility and deflecting

6. See Jeffrey J. Schott, *More Free Trade Areas? Policy Analyses in International Economics* 27 (Washington: Institute for International Economics, 1989).

7. J. M. Destler and John S. Odell, *Anti-Protection: Changing Forces in United States Trade Politics*, *POLICY ANALYSES IN INTERNATIONAL ECONOMICS* 21 (Washington: Institute for International Economics, 1987).

US protectionism. Thus there is an ongoing need for unilateral initiative, such as Section 301 provides for under current law.

Such procedures ought to be legitimated and regulated internationally, and the Uruguay Round agreements advanced this objective by broadening the range of trade issues subject to multilateral discipline and by strengthening dispute-settlement procedures under the new World Trade Organization. (US law provides that Section 301 cases must be pursued under GATT/WTO rules if they apply to the case at hand.) Moreover, the original Super 301 was counterproductive in its targeting of entire countries rather than specific trade practices. **But continuation of a case-initiating authority like that provided by Section 301 offers an important instrument for the USTR to retain trade policy initiative—with foreign countries, within the executive branch, and vis-à-vis the Congress.** And since the net effect of Section 301 to date has been trade liberalization, not trade restriction, its continuation is not an excessive burden for the international trading system to bear.⁸

Section 301 should be employed not to balance trade with particular countries or within particular sectors, but for products for which US producers are world-class competitors but find their comparative advantage thwarted by foreign restrictions. Section 301 should not be deployed to support an American "strategic trade policy," but it is an appropriate weapon for thwarting other nations' efforts to pursue such policies. To this end, it will occasionally be useful to employ two devices in negotiations with Japan: "sectoral reciprocity," that is, conditioning access to the US market on comparable access to the Japanese market in the same product area; and quantitative targets for import expansion. But their use should be the exception, not the rule. **Most important, the United States should resist the notion of developing a split-level trade policy: managed trade with Japan and liberalism with all other countries.** The need is to bring the world's number-two capitalist economy more fully into the global trade order, not to draw lines against it.

All these recommendations assume continuation of a trade policymaking system where Congress makes great noise and exerts considerable influence but delegates final decision power elsewhere. Congress reinforced this system in 1988 by eschewing product-specific measures and by transferring important authorities to the USTR, particularly the authority to impose sanctions in Section 301 cases. The grand successes of 1992–94, in completing and ratifying NAFTA and the Uruguay Round, suggest that the basic institutional mechanism remains sound.

Nonetheless, the following reforms would be useful at both ends of Pennsylvania Avenue to consolidate authority and deal with changes in personalities that come with changes in administrations:

8. Thomas O. Bayard and Kimberly Ann Elliott, *Reciprocity and Retaliation in U.S. Trade Policy* (Washington: Institute for International Economics, 1994).

■ In the executive branch there have twice been occasions of sharp conflict between the USTR and the secretary of Commerce. Such conflict is built into the current structure, because trade is the most important of the Commerce secretary's policy responsibilities. The appropriate response is to **transfer, from Commerce to an operating agency reporting to the USTR, the functions of the current International Trade Administration.**

■ On Capitol Hill, decentralization of power and internationalization of the US economy have weakened the impact of the key trade committee, House Ways and Means. Former chairman Dan Rostenkowski (D-IL) limited that erosion through a combination of committee role and personal power. But his successor, Bill Archer (R-TX), may find the going harder. It would be useful, therefore, to **create a House Trade Steering Group, headed by the Ways and Means chair and including representatives of other committees with trade jurisdiction, including Energy and Commerce, Banking, Foreign Affairs, and Agriculture.** The role of the Steering Group would be to coordinate omnibus trade legislation, including bills to implement major trade agreements.

Other reforms would also buttress the United States' capacity to pursue rational trade policies, including a restored trade adjustment assistance program and new means to analyze and publicize the gains from trade and the costs of trade protection. All will only work over the long term, however, if the United States can compete effectively in the world economy. And all will work *well* only if Americans understand the limits of trade policy: what it can and cannot do. That is a major purpose of this summary, and of the broader analysis that follows.

How Not to Cure Trade Imbalances

On 4 November 1991, the House majority leader introduced a new "Gephardt amendment." If it had been enacted, the measure would have "put on a Super 301 list for priority trade negotiations" any country that had bilateral trade accounting for "not less than 15 percent" of the US merchandise trade deficit, that ran a global current account surplus at least as large as its bilateral deficit with the United States, and that engaged in "protectionist practices which limit market opportunities."⁹

9. Quotations in this and the following paragraph are from the proposed "Market Opportunity and Reciprocal Enforcement Act of 1991" and the Statement of Majority Leader Richard A. Gephardt (D-MO) on its introduction, News Release of 4 November 1991.

No specific nation appeared by name in Gephardt's statutory language, but Japan was the obvious and admitted target. "For years," Gephardt declared in his statement introducing the measure, "we have been trying to get Japan and other countries to be more like us, to play by our rules. This legislation will continue this fight. But, at the same time, if a country wants to exclude our products, they will face similar restrictions on access to the U.S. market."¹⁰

Like the original Gephardt amendment of 1986–88, this proposal exploited two widely shared beliefs: that nations *ought* normally to balance their trade bilaterally, and that deficits were caused, in important part, by the surplus country's barriers to imports. The majority leader was too sophisticated to make such arguments directly; indeed, he had stated on other occasions that foreign trade barriers were *not* the prime source of the US deficit. But in late 1991 he was clearly implying that they were—at least where Japan was concerned. Responding to questions after an earlier address announcing his intent to submit the bill, Gephardt declared that "with Japan we continue to have a \$40 billion trade deficit out of a [global] total of a \$60 billion trade deficit"; had his amendment been adopted in 1988, we "would have probably brought down the Japanese trade deficit more quickly and we'd be in a different position with regard to Japan than we are today."¹¹ And in December, Gephardt joined with Michigan colleagues in putting forward a bill calling on Japan to eliminate the bilateral deficit entirely over a five-year period, against the threat of a curtailment of the total number of Japanese-label cars and light trucks sold in the American market.¹²

Trade With Japan: Right Problem, Wrong Solution

Bilateral trade deficits are bad; they are caused by foreign barriers against US products; target these barriers and the deficits will come down—Gephardt was far from alone in advancing or exploiting such logic in the 1990s. As 1991 drew to a close, business executives preparing to visit East Asia with President Bush were stressing that "Japan and the other

nations of the region—which account for 80 percent of the US trade deficit—must open their markets wider to American companies."¹³ And in pursuing its "framework negotiations" with Tokyo, the Clinton administration was driven, in part, by the rise of the bilateral imbalance to a new record level. It seems like elementary common sense to blame a trade imbalance on foreign import restrictions or on weak-kneed American trade bargaining. If the United States is selling less than it is buying, it must be because the US market is open, drawing others' goods in while they are blocking US goods. If the situation is to be corrected, it seems to follow that the United States will have to "get tough"—really tough—with its trading partners.

Of course, prominent Americans had spoken in this manner before the 1990s. In the spring of 1985, the US Senate literally unloaded on Japan. In the previous year, the US trade deficit had topped \$100 billion for the first time, and the value of imports had ballooned to 50 percent above that of exports. Little wonder that producers of internationally traded goods flocked to Washington—not just those feeling pressure from imports, but those like Caterpillar, who were losing market share in formerly lucrative export markets. Such companies saw the trade imbalance growing even worse. They saw the dollar continuing to rise. Perhaps worst of all, they saw a Reagan administration with no credible program for dealing with the trade crisis, and a president who, to judge by his words, looked upon the American economic landscape and saw nothing but good. Finding the White House deaf to their appeals, they redoubled their efforts at the other end of Pennsylvania Avenue.

Senators responded by going after Japan. By a 92-to-0 vote on 28 March 1985, they passed a resolution attacking the "bilateral trade imbalance" that was "costing the United States hundreds of thousands of jobs every year."¹⁴ Japan had "extensive access to the United States market," the resolution declared. US exporters "lack access to the Japanese market for manufactured goods, forest products, key agricultural commodities, and certain services in which the United States has a comparative advantage." Years of market-access negotiations with Japan had been "largely unsuccessful." Therefore, the resolution called upon the president to retaliate against unfair Japanese trading practices.

In the one-sided debate on the measure, Finance Committee Chairman Bob Packwood (R-OR) announced he had reached "the limits of my patience with the Japanese." Trade Subcommittee Chairman John C. Danforth (R-MO) declared that, regarding Japan, "the time has come to

10. Moreover, the bill had a specific sectoral target: trade in automotive vehicles and parts. For any country put on the new Super 301 priority list, the USTR would be required to address, under Section 301, any and all restrictive practices affecting any sector that accounted for at least 10 percent of the bilateral deficit. This criterion was intended to respond to the recession-worsened crisis in the US auto industry—and to the fierce competition US auto parts manufacturers were facing from imports and from production by Japanese transplants.

11. Address to the Institute for International Economics on US Trade Policy, 10 September 1991, Reuters transcript, 10.

12. *Washington Post*, 21 December 1991, C1.

13. *Washington Post*, 20 December 1991, B10.

14. The text of Senate Concurrent Resolution 15 appears in *Congressional Record*, Daily Edition, 28 March 1985, S3573. The quotes in the following paragraph come from the debate that preceded its adoption, S3556-73. See the first edition of *American Trade Politics* for a fuller account of this episode.

act—not talk, not complain, not insult, but act.” His Democratic counterpart, Senator Lloyd Bentsen (D-TX) declared himself “a reluctant supporter of this resolution . . . because I do not think it goes far enough.” “We are in a trade war, and we are losing it,” he declared.

Congressional frustration with Japan had a nple factual basis—in 1995 as well as 1985. Tokyo ran persistent global trade and current account surpluses, and while Gephardt did not acknowledge, in his 1991 proposal, the major improvement that took place between 1987 and 1990, Japan’s surplus would reach new record levels in the years thereafter.¹⁵ And its market did not thwart only Americans. To quote one oft-cited statistic, in 1984 Japan took just 8 percent of the manufactured exports of the developing countries, compared to 58 percent taken by the United States—although this percentage rose with the yen appreciation of the late 1980s. While Japan had dismantled most of its formal trade barriers rapidly in the 1970s, strong import resistance clearly remained, and it was entirely proper for the United States to press a country that had so benefited from liberal trade to practice at home what it took such adept advantage of abroad.¹⁶

But there was one small difficulty. Japanese trade policies had very little relation to the American trade imbalance that generated such enormous pressure on Capitol Hill in 1985, and that remained Gephardt’s target in the 1990s. Japan had not created it, and improvements in Japan’s trade behavior would not solve it, however desirable such improvements might be on other grounds. Even the bilateral imbalance was not, to any significant degree, the product of Japanese import barriers. To demonstrate why, let us analyze the situation that existed in the spring of 1985.

- The trade deficit with Japan was America’s largest, but it had not worsened any faster between 1981 and 1984 than US trade balances with Europe or the developing countries.¹⁷

15. Between 1986 and 1990, US exports to Japan nearly doubled, rising from \$26.9 billion to \$48.6 billion. Over this same period, US imports from Japan rose just 9.5 percent, from \$81.9 billion to \$89.7 billion. Japan’s current account surplus peaked at \$87.0 billion in 1987 and fell to \$35.8 billion in 1990.

In 1991, however, this improvement ceased. By 1993, Japan’s current account surplus had reached a new record of \$131.4 billion, and in 1994 the bilateral trade imbalance hit \$65.7 billion, with US exports at \$53.5 billion and imports at \$119.1 billion.

16. For a comprehensive analysis, see Edward J. Lincoln, *Japan’s Unequal Trade* (Washington: Brookings Institution, 1990).

17. Comparing US bilateral trade balances with 24 major trading nations, Bergsten and Cline found that for 17 of them, the proportionate change from 1980–81 to 1984 was greater than that with Japan. Bergsten and Cline, *United States–Japan Economic Problem*, 23. For the decade as a whole, changes in the US–Japan trade deficit were proportionate to those in the global US trade deficit.

- This suggested that the trade imbalance was, in essence, “made in America.” And it was. But it was not a product of US trade policies: these had in fact grown more restrictive since 1981, when the overall US current account was in balance.

- Instead, experts generally agreed, the \$80 billion increase in the US trade deficit between 1981 and 1984 was the product of three macro-economic developments: the developing-country debt crisis, which caused Latin American capital and merchandise imports to plummet; the “growth gap” of 1983 and 1984, with the United States leading the advanced industrial world in emerging from recession (and therefore in growth of its import demand); and most important, the remarkable rise in the value of the dollar.¹⁸

- Why had the dollar risen, despite growing US trade deficits? The operative force had been international capital flows—the readiness of both domestic and foreign investors to shift their funds out of foreign assets and into US assets. The United States needed them to do so in order to finance its suddenly enormous budget deficits without “crowding out” private business investment. High real US interest rates were a powerful inducement. These were being encouraged by the tight monetary policy of a Federal Reserve Board determined to quench inflation.

- Finally, during the same period when the United States had been developing a capital shortage, Japan and the European Community had been developing capital surpluses. They had been cutting their government budget deficits. In Japan, this had created a substantial excess of savings. Its outflow, much of it directly to this country, helped finance the US deficit and the Reagan-era boom, but it weakened the yen and thereby fueled the very Japanese trade surplus that was bringing denunciation down upon Tokyo.

Given this situation, suppose that in 1985 Japan had made the sort of broad, immediate trade concessions that Americans sought. Suppose that, as the Commerce Department estimated at the time, such opening of Japanese markets resulted in \$10 billion in additional US sales. Suppose also that these openings benefited other exporting nations also, to the tune of an additional \$10 billion. But suppose that the Japanese savings-

18. For the most comprehensive analysis, see Stephen Marris, *Deficits and the Dollar: The World Economy at Risk*, POLICY ANALYSES IN INTERNATIONAL ECONOMICS 14 (Washington: Institute for International Economics, revised edition, 1987), chap. 1. Bergsten and Cline (*United States–Japan Economic Problem*, 50) found that “the main driving force behind the growing imbalance in the bilateral US–Japanese trade relationship has been the overvaluation of the dollar,” followed by the slowdown in Japan’s growth relative to the United States. See chapter 3 for more on exchange rate misalignment and its impact on trade flows.

capital surplus remained substantially unchanged. The increased import demand, combined with the continuing capital outflow, could be expected to weaken the yen further, reducing other imports and increasing exports until most or all of the trade balance improvement was offset.¹⁹ The volume of Japanese trade would almost certainly be larger, the world economy would be more efficient, and US exporters would benefit. But the *balance* of trade would be little changed.²⁰

One could, by this logic, still criticize the Japanese government for policies that resulted in large trade and current account surpluses, just as one could criticize the Reagan administration for the opposite. But the policies needing alteration would be macroeconomic. As Secretary of State George P. Shultz put it in the trade-contentious spring of 1985, "Japan must deal with its saving-investment imbalance if its chronic imbalance in trade is to be corrected."²¹

Similarly, if the United States had then imposed trade barriers without reducing the saving-investment imbalance that was causing it to import capital, it might succeed in reallocating the trade pain among import-impacted industries, and between them and the export sector. But it would not, in a floating exchange rate regime, reduce the US trade deficit to any significant degree.

In the years thereafter, of course, the US trade imbalance did come down significantly—from the 1987 peak of \$159.6 billion to \$74.1 billion in 1991 (table 3.1). Improvement was even greater in the deficit as a proportion of total US trade: from 24.5 percent in 1986 to 8.2 percent in 1991, a level last seen in 1982. The bilateral deficit with Japan declined also: from \$56.3 billion in 1987 to \$41.1 billion in 1990, and from 50 percent to 30 percent of total bilateral trade. By 1994, however, the global US deficit had risen again, to a new record total of \$166.3 billion, though total US trade had so expanded since the mid-1980s that the deficit's proportion of total trade was now just 14.2 percent, far from the peak. For Japan, the deficit also reached a peak total—\$65.7 billion—and also not a peak share of bilateral trade—38.1 percent.

The causes of the improvement between 1987 and 1991 were macroeconomic: a sharp decline in the dollar; a reversal of the growth

gap, with Japan in particular growing faster in the late 1980s; modest improvement on the US fiscal front;²² and the US recession, which depressed import demand in 1990–91. Paul R. Krugman, frequently a challenger of the conventional wisdom on trade economics, concluded that, in this instance, mainstream theory had been vindicated:

During the 1980s, and in particular as the US trade deficit continued to widen after 1985, it was widely argued that . . . strategic behavior by foreign firms in general and Japanese firms in particular meant that exchange rates no longer worked to reduce imbalances. Yet two years after the dollar began its decline, the United States experienced an export boom; this happened just about when and in the magnitude that the traditional models would have predicted. . . . the evidence seems overwhelming that exchange rate changes do indeed work.²³

Robert Z. Lawrence reached similar conclusions, adding that "both export and import performance indicate that Japan has adjusted more than Europe and other trading partners of the United States."²⁴

But after 1992 the same macroeconomic forces were working in the opposite direction—in particular a new growth gap between a recovering America and its sluggish industrial partners. The trade results gave new legitimacy to proposals that targeted that imbalance, even Gephardt's proposal to reduce it to zero.

The means for achieving this remain unclear. Moreover, unlike the goal of eliminating the overall US trade deficit, making exports equal imports in bilateral US-Japan trade makes absolutely no economic sense. The advantage of a multilateral system is that nations do not have to balance two-by-two: they can run surpluses with certain countries and deficits with others, taking full advantage of the gains from trade. Any effort to limit or eliminate the overall US-Japan deficit would be incredibly disruptive to consumers and marketers and industrial users of Japanese-made products in the United States. And assuming no change in the two nations' saving-investment balances, the bilateral deficit reduction would be offset by changes in the two nations' trade accounts with other nations, leaving the global US deficit (and the global Japanese surplus) unchanged.

19. By definition, a nation's net capital outflow has to be equalled by its current account surplus. Or, in the case of the United States, the present current account deficit has to be equal to, and financed by, an inflow of capital.

20. As the president's Council of Economic Advisers put the matter in 1990, "removal of import barriers is likely to increase both Japanese imports and Japanese exports. The net effect on overall trade imbalances is unclear." *Economic Report of the President*, February 1990, 249.

21. George P. Shultz, "National Policies and Global Prosperity," address at the Woodrow Wilson School of Public and International Affairs, Princeton University (11 April 1985).

22. Among the inadequate, partial steps which produced *some* fiscal constraint were the Gramm-Rudman-Hollings legislation of 1985, the tax reform law of 1986, which brought a one-time revenue rise in 1987, the executive-legislative agreement in the wake of the October 1987 stock market crash, and most important, the comprehensive budget agreement of October 1990.

23. *Has the Adjustment Process Worked?* POLICY ANALYSES IN INTERNATIONAL ECONOMICS 34 (Washington: Institute for International Economics, 1991), 46.

24. "U.S. Current Account Adjustment: An Appraisal," *Brookings Papers on Economic Activity*, 1990: 2, 372.

Getting Serious About Trade Imbalances

What then should be done about trade imbalances? The first need is for education, to spread understanding of their causes and why trade actions cannot cure them. The second, at the boundaries of this book's reach, concerns macroeconomic policy, or specifically what might be done to set such imbalances aright.

Education

Experience may be a hard school, but the 1980s brought many learners. By early 1983, for the first time in memory, a major US industry group, the Business Roundtable, was pointing to the dollar-yen rate as a primary source of trade ills. By 1985, precious few trading interests were still insensitive to the impact of exchange rates on their international competitiveness. And since this new awareness extended to most congressional trade activists, it bought time for US trade policymakers when, in the fall of 1985, the yen began a sharp rise. In fact, the trade legislation of 1988 contained a subtitle on "Exchange Rates and International Economic Policy Coordination."

But this connection, however crucial, is not all that needs learning and remembering. The larger lesson is that, in a world of floating exchange rates and large-scale capital flows, **trade imbalances are largely immune to treatment by trade policy measures.** They can be reached only by other means, mainly macroeconomic measures that influence total demand and affect the saving-investment balance within trading nations. Also, when circumstances are favorable, trade imbalances can be influenced by official intervention in foreign exchange markets.

Trade measures can affect the volume of trade. They can influence the composition of that trade, and the fortunes of individual companies and workers. But unless coupled with other measures, they will have little impact on the overall surplus or deficit run by a nation.

This negative lesson has its limits. It is, as earlier noted, counterintuitive. If Japan restricts market access *and* runs trade surpluses, it is an uphill argument to assert that the two are essentially unrelated. If the United States is running record trade deficits and its firms are facing trade barriers abroad and subsidized foreign competition at home, it is hard to resist arguments that the former are *caused* by the latter. And even those who are persuaded that trade deficits are macroeconomically driven may become unpersuaded if a significant trade imbalance remains after a major macroeconomic change like the 1985–87 decline of the dollar.

More important, it is not enough, in responding to industries under stress and to politicians feeling their heat, to argue that a particular remedy will *not* minister to their ills. For in policy, as in sports, it is hard to

beat something with nothing. Politicians facing daily pressure need at some point to respond, to "do something." If constructive action is not available, they may be driven to destructive actions. This was true during the record trade imbalances of the mid-1980s; it was also true of the (proportionately) lesser imbalances during the recession environment of the 1992–94.

So one must ask further: if trade measures will not cure trade imbalances, what will? The short answer is the obvious one: changes in macroeconomic policy.

Macroeconomic Policy

Federal Reserve Chairman Alan Greenspan brought the bad news to the House Ways and Means Committee in December 1991. To members under pressure to do something about a recession that would not end, he argued against a "quick fix" tax cut that would further increase the federal budget deficit. The need was the opposite: to increase national saving. And the surest way to achieve that would be to reduce the size of the federal budget deficit. Only in this fashion could the United States begin to put the US economy on a sound, long-term basis.²⁵

As with the budget deficit, so also with the trade deficit. A nation importing more than it exports is consuming more than it produces. This can only be financed by borrowing, or by drawing down assets. Either way, we purchase enjoyment in the present at cost to the future.²⁶

Attacking the trade deficit ultimately requires attacking the saving-investment imbalance that lies at its roots. There are times when other measures will help temporarily—Treasury Secretary James A. Baker, for example, exploited a period of economic leeway to "manage" a substantial decline in the dollar after the Plaza Agreement of September 1985, without major fiscal adjustment and without the inflation many feared would result.²⁷ But ultimately it is necessary to eliminate overconsumption. Americans can do this either by increasing private saving or by

25. Greenspan testimony as reported in *Washington Post*, 19 December 1991, A1. The Fed chairman made this pill a bit easier to swallow by orchestrating, two days later, a major easing of monetary policy: a full-point drop in the discount rate.

26. A *Washington Post* editorial of 2 January 1992 reiterated the "basic but inconvenient reality" that "the American trade deficit is made in the U.S.A. It reflects policy decisions here to keep consumption and the standard of living higher than the country's productivity can support. That requires a flow of imports larger than the country's exports." Of course, trade deficits may serve long-term objectives if the borrowing finances investment leading to greater future productivity. But in the 1980s, the United States borrowed mainly to finance consumption.

27. See I. M. Destler and C. Randall Henning, *Dollar Politics*, esp. chaps. 3 and 4.

reducing government dissaving. We know little about how to do the first, at least at the household level. Thus, as Greenspan told the Ways and Means Committee, the United States needs to do the second, by cutting the federal budget deficit. The Fed could offset the depressive fiscal effects by easing up on interest rates. Together these moves could bring down the value of the dollar, promoting exports and replacing imports, so that improvement in the international balance compensates for total reduction in domestic demand.

The good time to do this, of course, is when the domestic economy is strong and unemployment is low. That way the pain of adjustment is reduced. President George Bush entered office at just such a time. He inherited six straight years of economic growth, and the unemployment rate in 1989 was the lowest since 1973. Bush was also greeted with advice to act at once, "to move preemptively early in his new term . . . rather than being forced to react to a crisis later,"²⁸ to "take bold action" in an expanding economy "to reduce the deficit."²⁹ And Congress had even provided political protection in the form of a bipartisan National Economic Commission to share the political pain.

Unfortunately, the president had already mortgaged his future with his endlessly repeated presidential campaign pledge: "Read my lips. No new taxes!" So he temporized for 15 months and did not declare himself ready to compromise on revenues until June 1990. Fractious budget negotiations took four additional months to reach a conclusion, and the significant (albeit insufficient) new taxes and spending constraints agreed to in October hit an economy sliding into recession.³⁰ When recovery proved elusive, Bush faced the worst of all political-economic worlds as he approached election day 1992: a weak economy and a budget deficit that had soared to a record \$340 billion, and a challenge from the right drawing blood for his broken tax promise!³¹ There was enormous pressure from politicians in both parties to take short-term, stimulative actions that would shift money from saving to consumption and hence make the long-term problem worse—the very sort of actions Greenspan had warned against.

At last, the nation was paying the price for the consumption binge of the 1980s. Bush paid it personally, in his resounding electoral defeat. And Clinton paid a price also, when his moderate program to reduce

the deficit was denounced by Republicans as the greatest tax increase in history and played some part in the GOP's mid-term election triumph of 1994. The president then backed away from further serious budget action in 1995, while Republicans proposed both tax and spending cuts, with uncertain net result. Still the sad fact remained: durable resolution of the trade imbalance would require serious, painful budget action during the Clinton administration and beyond.

If the United States were to finally get out of the budget imbalance/trade imbalance mess, would there be any way to reduce the chances of recidivism in the future? Is there any way, within the governmental process, to institutionalize consideration of policy linkages, to increase the chances that US leaders will address the connection between trade and macroeconomic policies in a timely manner?

There is certainly a clear need for the president's senior advisers to focus on the global impact of such far-reaching measures as the Reagan tax-and-budget package of 1981. And a president needs mechanisms of political burden sharing when he contemplates remedial action. The problem is that one cannot legislate presidential advisory processes. In 1981 the Reagan administration did establish a senior committee that ought to have addressed these policy connections: the Cabinet Council on Economic Affairs. The fact that it did not do so reflected not lack of jurisdiction but lack of understanding and will; administration minds and priorities were elsewhere. Similarly, President Bush did not take advantage of the bipartisan National Economic Commission because of his ill-advised campaign commitment on taxes. One is left with a modest but useful recommendation: that any administration ought to place within its policy coordination staff a senior aide with presidential access and a broad international economic policy mandate.³² The Clinton administration in fact did so through the creation of the National Economic Council, staffed by an assistant to the president for economic affairs.

Finally, could changes in congressional procedures encourage legislators to target the real causes of unbalanced trade? One reason legislators have stressed trade policy responses is that they have clear power to impose them, whereas the exchange rate, for example, is beyond legislative reach. The 1988 act provides a potentially useful vehicle for refocusing congressional attention: a requirement that the secretary of the Treasury deliver every six months, to the Senate and House banking committees, "a written report on international economic policy, including exchange rate policy," one which is to include "recommendations for

28. C. Fred Bergsten, *America in the World Economy: A Strategy for the 1990s* (Washington: Institute for International Economics, 1988), 6.

29. C. Michael Aho and Marc Levinson, *After Reagan: Confronting the Changed World Economy* (New York: Council on Foreign Relations Press, 1988), 25.

30. The October 1990 budget agreement increased taxes and constrained spending to some degree, lowering the projected annual deficit by roughly \$100 billion a year.

31. This fiscal 1992 figure was ballooned by both the recession and the enormous budgetary cost of the collapse of many federally insured savings and loan institutions.

32. For considerations governing where this aide can best be placed, see I. M. Destler, *Making Foreign Economic Policy* (Washington: Brookings Institution, 1980), 217–28. For a comprehensive analysis based on the Ford administration experience, see Roger Porter, *Presidential Decisionmaking: The Economic Policy Board* (Cambridge: Cambridge University Press, 1980).

any changes necessary in United States economic policy to attain a more appropriate and sustainable balance in the current account."³³ But the report is also required to address "bilateral negotiations," particularly regarding countries that may "manipulate the rate of exchange." With congressional acquiescence, the Treasury has used this mandate to deal lightly with the problem of the US imbalance, spotlighting instead the exchange rate policies of Korea, Taiwan, and the People's Republic of China. This underscores how any such mechanism is dependent on the enforcement attention given it by members of Congress. A stronger vehicle might be what this author has suggested elsewhere: creation, in each house of Congress, of a Select Oversight Committee on the Dollar and the National Economy.³⁴ The aim is to put constructive pressure on an administration and to channel congressional energy away from the wrong answers and toward the right ones.

Using corrective macroeconomic policy measures, as well as reforms in structure and process like those suggested here, government can attack those large imbalances that so burden trade policymakers. For these economywide "trade" problems have, by their nature, no trade policy solutions. If macroeconomic policy changes help bring an end to the saving-investment imbalance, and if national policies and international cooperation can reduce future exchange rate fluctuations, American firms and workers can function in a far more stable, predictable economic environment. If adjustment within the US economy were then smooth, so that workers and capital could flow efficiently into enterprises with international comparative advantage, and if US productivity growth were robust—bringing rising average income to American workers—then trade policymakers could rest truly easy.

Unfortunately, major adjustment is seldom smooth. And productivity growth has not been strong: the average real wages of the American worker have not risen over the past two decades. Hence macroeconomic policy correction needs to be accompanied by *microeconomic* measures that buttress the long-term competitiveness of firms and workers operating within US borders.

Microeconomic Policy: Promoting Adjustment and Productivity Growth

Over the past quarter-century, US producers have lost global supremacy in a succession of sectors: steel, consumer electronics, automobiles, and

33. Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, Title III, Sec. 3005.

34. Destler and Henning, *Dollar Politics*, 155–58.

high-technology products such as semiconductors. These successive declines evoked a broader pessimism: could the US economy have much of a future if industry after industry was being bested in its home market by foreign competitors, particularly Japanese? Some argued that the United States was deindustrializing, that international trade was relentlessly transforming the nation into a postindustrial, service economy. This was demonstrably not true in the late 1970s, when the issue was first raised—manufacturing employment reached an all-time high of 21.1 million in the summer of 1979. But in the decade that followed, the trade deficit and broader structural transformation took a significant toll. At the end of 1994, after three years of steady economic recovery, US factory jobs were 2.9 million fewer.

As discussed in chapter 7, these developments raised the question of industrial policy: whether the United States should invest public resources to influence the sectoral composition of the US economy, to buttress certain industries viewed as important for the national future. Other nations had clearly done so, albeit with mixed effectiveness. So, willy-nilly, had the United States. Agriculture had long benefited from research and educational support and from programs to aid producers of specific commodities. Aircraft, computer, and semiconductor firms had gained enormously from Pentagon research and development funding. The US textile and apparel industries were larger because of quota protection. But all this was ad hoc. Unlike countries such as Japan and France, the United States had never targeted particular industries or sectors for purposes of economic development. But there were many who saw such action by foreign governments as a threat to the United States. They felt that the United States should counter other nations' industrial policies or respond in kind to their governmental efforts to create future comparative advantage, or both.

Much of the campaign focused on trade action: making industrial targeting an unfair trade practice under US countervailing duty law, as proposed by Representative Sam M. Gibbons (D-FL), or threatening import restrictions for products such as telecommunications from nations whose markets denied US firms reciprocal access. Or, for basic industries, the policy advocated was frequently one of protection, because imports were subsidized and this was unfair, or because the industry needed time to restructure itself so that it could face foreign competition more effectively in the future, or both.

From the vantage point of a particular industry, such an approach has substantial attractions. An industry loses when foreign competitors are subsidized, as in certain cases they have been; it gains, at least in the short run, from any form of benefit bestowed by its government, whether it be a direct subsidy, import protection, or favorable treatment in the tax code. There will also be, from time to time, strong welfare arguments for providing import relief and related assistance to individuals and com-

munities absorbing acute trade pain. If, for certain large industries, the burden of trade impact is regionally concentrated in the Northeast-Midwest rust belt; if plant closings have a multiplier effect by drying up businesses that depend on their spending and that of their employees; and if the geographic mobility of many residents of these communities is limited, this may argue for redevelopment programs with a geographic focus.

But such programs need to be limited to cases of very severe need. For their net impact will almost always be to weaken, not strengthen, the American economy taken as a whole.

From an economywide perspective, any help to a particular industry represents resources diverted from other uses, however the subsidy may be provided. If the aim is to arrest or slow an industry's decline, it is, by definition, a grant to the competitively inefficient, to a current economic loser. Even at the high-tech, high-growth end of the industrial spectrum, public support makes economic policy sense only if it promises to spur future productivity or market gains commensurate with public investment. And if it does, one must then ask why government is better able than private capitalists to anticipate these gains and finance them.

There will be instances, of course, in which a particular industry produces spillover benefits, "external economies" in economists' lingo, meaning that its success produces gains for the broader economy and society beyond those captured by the firms' owners. Such public gains can justify public investments. But these gains must be weighed against negative spillovers. If government policies result in US steel (or semiconductor) prices being substantially above international norms, for example, these will create international competitive disadvantages for firms that use these products as inputs, such as makers of autos (or computers). Moreover, while public help can increase the capacity of an industry to compete internationally, it can reduce the incentive to make the hard, cost-cutting decisions that will ultimately prove necessary.

To the limits of industry-specific interventions in terms of overall economic efficiency must be added problems of political efficacy. Will the US system of government allow officials to allocate resources to those select cases in which the spillover gains for the overall economy are strongest? It may when these gains are coincident with other policy purposes, as in the case of certain defense research, for example. But the normal political process tends to produce the opposite result. It is the losers (Chrysler Corporation, the steel industry) that come to Washington for help, and government frequently responds to them—because of their evident hardship, as well as their political power. In Japan, too, it is agriculture that wins the most blatant government favor, to the detriment of the economy as a whole. In the United States, which lacks a policy tradition of trying to generate visions of future industrial struc-

ture and bring these visions into being, the losers are likely to do even better.

For all these reasons, even strong proponents of an industrial-policy focus tend to see sector-specific policy actions as the last resort. As Laura Tyson and John Zysman put it, "When we confront either a sector problem or a shift in international trade that is of broad national concern, there should be a clear order of policy preferences: aggregate policies first; policies to improve the workings of markets second; and finally—and only as a last resort—industry-specific policies."³⁵ And in undertaking such interventions, to repeat the words of Robert B. Reich, the motivation should be pro-adjustment, supportive of the "transformation of all nations' industrial bases toward higher-value production."³⁶

But there remains a broader concern about American industrial competitiveness. In the world of international trade, a nation cannot, by definition, be competitive in all industries. The whole purpose of trade is to benefit from the international division of labor, to buy from abroad what is less expensive there, and to produce what we produce most efficiently here. But the position of the US economy overall, and the living standards of American citizens, are ultimately functions of the productivity of US economic enterprises. Unless their output per worker continues to increase, there is no way, in the long run, for the real incomes of Americans to grow. And there is no way to avoid falling behind, in relative terms, if productivity in other nations, broadly defined, is increasing faster.

Here there is reason for long-term worry. Paralleling the relative decline of specific US industries has been a sharp longer-term drop in the rate of growth of output per hour per worker: from 1958 through 1973 it rose by 51 percent; in the ensuing 15-year period, 1973 through 1988, it grew by only 16 percent. Since 1988, US productivity performance has been slightly better.³⁷ Still, average weekly earnings in private industry actually declined in the 1970s and 1980s, remaining flat since then.³⁸ The postwar American escalator that brought steady rises in average living standards has ceased to function.³⁹ Other nations have experienced similar declines—the "productivity slowdown" has been present in all ad-

35. "Conclusions: What to Do Now?" in John Zysman and Laura Tyson, eds., *American Industry in International Competition: Government Policies and Corporate Strategies* (Ithaca, NY: Cornell University Press, 1983), 423.

36. Robert B. Reich, "Beyond Free Trade," *Foreign Affairs* 61, no. 4 (Spring 1983): 790.

37. Changes in "output per hour for all persons," in 1982 dollars, computed from *Economic Report of the President*, February 1995, table B-47.

38. *Economic Report of the President*, February 1995, table B-45.

39. Frank Levy, *Dollars and Dreams: The Changing American Income Distribution* (New York: Russell Sage Foundation and W. W. Norton, 1988).

vanced industrial nations. Nonetheless, "by the 1980s foreign productivity levels had converged close to those in the United States."⁴⁰ In Japan, productivity growth continues to be significantly greater. And according to a committee of the National Academy of Sciences, experts in both countries "share the conclusion that Japan's high technology capabilities are now on par with or ahead of the United States in many areas."⁴¹ In future years, unless US relative productivity performance improves, the United States could return to, and maintain, a reasonable export-import balance, but only at the cost of a gradual, continuing devaluation of the dollar, which would mean lower (relative) living standards for the American people.

The United States therefore needs policies to speed adjustment by industry and labor and to encourage movement of resources from less-productive to more-productive enterprises and regions. This should be joined with efforts to enhance the productive base for the economy as a whole: education and training for the 21st century work force and public investment in the United States' eroding economic infrastructure. There is also a strong need for policies, in Charles Schultze's words, "designed to make the economy in general more flexible, more dynamic, more productive, and more capable of adjustment to technological change."⁴² These policies can include tax code changes that favor productivity-enhancing forms of investment and that favor the domestic saving that must ultimately finance such investment. And since private firms typically underinvest in research and development, because it is difficult for them to capture the full social return on such investment, the United States needs government policies that support the development and application of new technology.⁴³

Among liberal trade advocates, it is common to view industrial policy as a stalking horse for protection. And among proponents of laissez-faire in general, it is seen as counterproductive meddling in domestic markets. It can be either, or both. A label like "industrial policy" can lend respectability to trade-restrictive proposals for politicians who view "protectionism" as something bad. Even if no trade protection is initially involved or intended, it can create a governmental stake in a particular

industry's prosperity that may lead to such protection in the future. And industrial policy involves, by definition, government microeconomic intervention that may well prove unwise from an economywide perspective.

But these problems notwithstanding, a focus on competitiveness and industrial productivity can be enormously constructive. It can offer an alternative to protection, or Japan bashing. It can turn American attention away from nefarious-seeming foreigners, toward self-help at home. It can focus US energies on creating an appropriate, stimulative policy environment for productive enterprises. It can encourage a creeping recognition that many of the problems of American producers are, in important part, "made in USA."⁴⁴

The Role of Trade Policy

Changes in macroeconomic policy can help redress trade imbalances and ease the pressure they generate for import restrictions. Steps to improve overall industrial competitiveness can help make adjustment to economic dislocations more humane and efficient and hopefully renew the growth in American wage levels, reducing the temptation to blame foreign devils for domestic ills.

By contrast, *trade policy*—actions directly affecting imports and exports—is not an efficient instrument for addressing these broad, economywide problems. Import barriers can, of course, affect the composition of trade, and thus, over time, the sectoral composition of the domestic economy. But the gains such barriers provide to some industries will be at the expense of other industries, and the economy as a whole will suffer from favoring enterprises that are less competitive internationally.

We are left, then, with two primary trade policy goals: one positive and one negative. The positive aim is to increase the *volume* of trade,⁴⁵ through opening markets abroad and at home, and thus to increase the gains from trade to the American economy as a whole.⁴⁶ The negative aim is damage limitation—minimizing the harm to the overall US econ-

40. Robert Z. Lawrence, "Innovation and Trade: Meeting the Foreign Challenge," in Henry J. Aaron, ed., *Setting National Priorities: Policy for the Nineties* (Washington: Brookings Institution, 1990), 147.

41. Committee on Japan, National Research Council, *Science, Technology, and the Future of the U.S.-Japan Relationship* (Washington: National Academy Press, March 1990), 7.

42. Charles L. Schultze, "Industrial Policy: A Solution in Search of a Problem," *California Management Review* 24, no. 4 (Summer 1983): 6.

43. See Martin Neil Baily and Alok K. Chakrabarti, *Innovation and the Productivity Crisis* (Washington: Brookings Institution, 1988), chap. 6; and Lawrence, "Innovation and Trade."

44. For a comprehensive analysis, see *Building A Competitive America, First Annual Report of the Competitiveness Policy Council* (Washington: Government Printing Office, March 4, 1992).

45. Of course, an expansion of exports through subsidization is just as trade-distorting as a restriction of imports. Thus, countervailing duties to offset foreign subsidies have an economic, as well as a political, rationale.

46. US gains will be particularly strong if the newly liberalized foreign markets are for products where American producers have a strong comparative advantage. Hence there is strong economic and political interest in responding to market-opening pressures from export interests.

omy, and the international trading system, from successful attempts by special interests to win import protection.

The latter remains the core problem of American trade politics. Even after current trade storms pass, even after the value of American exports comes to equal the value of its imports, substantial demands for trade restrictions will remain. Between 1970 and 1990, trade doubled as a share of US gross national product. Hence more industries are exposed internationally, and more are hurt by import competition. Of course, there are also more that gain from trade—and their interests offer a check against across-the-board protectionism. Still, relief from imports retains a political legitimacy that government protection from domestic rivals does not have. For products like steel, the case for protection is strengthened by the actions of some foreign governments to subsidize and protect their own domestic producers.

In form, this is basically the Schattschneider problem that opened this book: the problem of political imbalance. The US Congress, recognizing its vulnerability to one-sided pressure for import restrictions, cooperated with successive administrations in developing means of coping: a range of devices that facilitate voluntary legislative restraint on product-specific trade policy. America's political leaders developed a system to divert and channel pressures and to deal separately with the most trade-afflicted among the major US industries. Throughout the postwar period, this system has generally avoided major public confrontations on trade that pit industry against industry or political party against political party. It has tilted policy outcomes toward open trade by tilting process toward closed politics.

Can the System Be Salvaged?

Can such an approach still work for the United States in the 1990s? At least four trends, spelled out in the body of this book, make the going harder:

- trade has become more important economically;
- Congress is now more open procedurally;
- the trade-remedy procedures have proved more exploitable politically;
- politicians have brought the issue back into partisan national electoral politics.

Taken together, these four trends have made trade policy a much more public matter. Rhetoric has escalated. Legislative activity has increased, whether it is measured in the number of bills introduced or in

the number given committee or floor consideration. There are more efforts to draw trade policy lines for partisan advantage.

Such developments might lead to a judgment that the old system has run its course, that it is futile to keep trying to patch it up, that the United States should instead look to create an entirely different set of trade policy institutions. One sophisticated recent analysis asked whether the American trade policymaking system had not become "an obsolete bargain."⁴⁷ Representative Richard A. Gephardt, in introducing the bill discussed earlier, declared an interest in "reclaiming some of the power which has been delegated to the president and his administration."⁴⁸

Yet even the Congresses of the 1980s, faced with a trade imbalance beyond previous imagination, proved reluctant to seize product-specific trade responsibility. In fact, most congressional trade leaders have sought not weaker but stronger executive branch leadership. Senator John C. Danforth (R-MO) suggested openly in his spring 1985 Japan offensive that his prime target was the White House: he wanted the administration to take the trade problem seriously. When Senate Finance Committee Chairman Lloyd Bentsen took the Senate floor seven years later to declare that a draft Uruguay Round text "just won't pass muster" in the Congress, his aim was not to bury the agreement but to salvage it.⁴⁹ Between those two occasions Congress passed three textile quota bills, but each with the comfort of knowing that the president was committed to vetoing them, and with House override votes that somehow fell eight—and eleven, and ten—votes short of the two-thirds required.

This suggests a strong continuing market on Capitol Hill for political insulation, a will to continue a trade policymaking relationship in which legislators can make noise, pressure the administration, claim credit for specific actions it takes, but avoid final responsibility themselves. It suggests that "protection for Congress" lives on.

If a system that insulates members continues to reflect political reality on Capitol Hill, it also represents political necessity for those who favor open trade policies. As illustrated by House votes for domestic-content legislation in 1982 and 1983 and the substantial margins in both chambers for the textile bills of 1985 through 1990, legislators remain vulnerable to unbalanced pressure for import restrictions. In neither autos nor textiles was the number of representatives who wanted the legislation to become law anywhere near equal to the number who voted "aye" at roll call time.

47. David B. Yoffee, "American Trade Policy: An Obsolete Bargain?" in John E. Chubb and Paul E. Peterson, eds., *Can the Government Govern?* (Washington: Brookings Institution, 1989), esp. 118ff.

48. Statement of 4 November 1991.

49. Statement of 2 February 1992.

Many of them, in fact, would rather not have voted at all. But the erosion of internal congressional constraints makes it harder today for leaders to protect members by stopping such proposals before they reach the floor.

All of this places even more burdens on the "executive broker," in both meanings of that phrase: the central function that needs buttressing and the downtown institution that must perform it. Both damage limitation at home and trade expansion abroad require the balancing of economic interests and policy concerns. When an industry seeks protection from imports, government needs to seek out other interests that would be affected by such protection—industrial users of products affected, retailers, exporters—and encourage them to enter the political arena. And ever since the "bargaining tariff" of the 1930s, one of the best ways to resist closing markets at home has been to press for opening markets overseas.

Not by coincidence, successive congressional trade leaders have created, strengthened, and protected the executive branch brokering institution—the Office of the US Trade Representative. They placed it where they hoped its chief would have the ear of the president and the leeway to balance domestic and foreign concerns, micro and macro issues, legislative and executive branches. And if presidents have seldom given trade policy the priority that legislators sought, they have regularly chosen strong USTRs: adroit senior politicians with strong ties on Capitol Hill like Robert S. Strauss and William E. Brock and seasoned professionals like Carla A. Hills and Mickey Kantor. And their successes have come from immersion in the politics of trade.

All learned quickly the bedrock need to establish credibility as defender of US interests; only then will broad business and congressional support for a liberal trade regime and market-expanding policies be maintained. This requires the aggressive and visible practice of "export politics," pressing particular foreign-market issues in which there are good prospects for success and issues in which the United States can maintain a tough stance—a stance that threatens trade sanctions if meaningful foreign concessions are not forthcoming.

Finally, trade policy needs to be managed, insofar as is possible, in a bipartisan manner—as STRs and USTRs generally have done. A bipartisan approach is necessary because the immediate electoral payoffs will often seem to be on the trade-restrictive side, and the alternative is a bidding war in which Democrats and Republicans compete for special-interest support at the expense of overall national welfare. A bipartisan approach remains possible because protectionism is still a risky party platform, costly in respect and in reputation—as John Connally learned in the late 1970s in his quest for the Republican presidential nomination, and as Democrats have discovered more than once during the 1980s. And a bipartisan approach can bring great trade victories, as shown in congressional action on the NAFTA and GATT accords.

Policy Tools: International Negotiations

The old trade policymaking system leaned heavily on international negotiations to achieve global reductions in trade barriers. Such negotiations remain the most obvious political means of expanding the volume of trade. They also perform three valuable functions in US trade politics. They offer a basis for bringing export interests actively into the political process, offsetting the ever-present pressure from producers who would restrict imports. They provide a rationale for resisting that protectionist pressure. And they reinforce the position of the central trade broker who has the lead in conducting them.

Thus, USTR William Brock was advancing both national and institutional interests when, during President Reagan's first term, he sought to initiate a new global trade negotiation. His successor, Clayton Yeutter, brought this goal to fruition in September 1986 by winning agreement at Punta del Este to launch the "Uruguay Round" of multilateral trade talks. His successor, Carla Hills, brought these complex, multinational, multi-issue talks near completion. Her successor, Mickey Kantor, closed the deal. The agreement is expected to produce new export opportunities for American agriculture, and for manufacturing and service industries. It signals that the end of the Cold War does not mean the end of trade cooperation.

Over this same period, the United States also negotiated trade liberalization regionally: a free trade agreement with Canada and Mexico, and target dates for barrier elimination for both the hemisphere and the Asia-Pacific community. These talks also energized US producers seeking trade expansion and helped deflect protectionist pressures. And the Clinton administration avoided the dangers of a world of regional trade blocs through parallel agreements in APEC and the Americas. Trade diplomacy in both arenas brings economic and political gains, helping build collaborative structures for the post-Cold War world. But the fundamental US interest is in the global system. The United States is a global trader, two-thirds of whose exports go *outside* the Western Hemisphere. US trade with Korea, for example, is more than double that with any American nation outside NAFTA. The European Union and Japan, moreover, are the economic power centers with which the United States will define the future world economic order.

US trade policy priority should therefore continue to go to *global* trade liberalization. To this end, high priority should be given to *using* the WTO and its dispute-settlement procedures to open foreign markets. The United States should pursue unresolved trade issues on a multilateral, MFN basis to the extent feasible. And where the United States chooses to pursue regional negotiations, it should balance initiatives within the Americas with those elsewhere, particularly East Asia. As a general principle, the United States should not offer free trade arrangements to other Western Hemisphere nations beyond the present NAFTA unless

the United States is simultaneously moving toward free trade with nations outside the hemisphere.

Flexibility on Fast-Track

Success on NAFTA and the Uruguay Round depended on the fast-track procedures, by which Congress committed itself to an expeditious up-or-down vote on the implementing legislation as submitted by the president. But both exposed fast-track to broad congressional and public scrutiny for the first time since its invention in 1974. On previous occasions, the key action on the procedures was taken in committee. The trade debates of the 1990s brought chamberwide attention to fast-track, with critics highlighting the limitations it places on congressional power. This was one important reason Clinton failed to win extension of fast-track during the debate over the implementing legislation for the Uruguay Round in 1994 (see chapter 9).

The resulting lack of such authority poses a serious threat to trade negotiations, since it remains unrealistic to expect others to reach complex trade agreements with the United States if the Congress has the power to amend them, or to pick and choose among their provisions. So supporters of multilateral trade negotiations need to explore compromises that respond to critics' concerns while preserving the core principle. Some of these compromises need to be procedural: trimming back the permissible substance of a fast-track bill and giving explicit statutory recognition to the congressional role in its drafting. Others involve the substance of future negotiations, with liberals seeking explicit authorization of trade-related labor and environmental agreements and conservatives seeking to exclude these subject matters entirely. Specific suggestions are included earlier in this chapter.

The point of these suggestions is to preserve the essence of the fast-track process. What is crucial is that the Democratic administration and the Republican Congress reach agreement on a practical extension formula, just as a Republican administration and a Democratic Congress initiated the process 21 years ago. And the administration should avoid the temptation to do without it—to complete a free trade negotiation with Chile, for example, and bring it up for approval under normal legislative procedures. It is doubtful this would work. And even if it did, it would set a terrible precedent for future multilateral agreements.

Revising the Trade-Remedy Laws

NAFTA and the Uruguay Round were dramatic breakthroughs, but they left many issues unresolved. It will take time, however, to get major

new talks under way. The 1994 impasse over fast-track is only one of the reasons.

In years to come, therefore, major international negotiations may play a diminished role in countering US protectionism. Advocates of open markets will need to rely less on such international negotiations and more on specific, antiprotectionist interests that gain from exports and imports. Such trade-dependent interests—including retailers and industrial users of imported inputs—have been growing more active in US trade politics. Enmeshed as they are in an interdependent global economy, they can and should bear more of the political burden for supporting liberal trade policies than they did during the relatively "closed" US economic past.

US trade law is sometimes written as if the only particularized interests of concern are US-owned, US-based producers of the specific products whose trade is at issue. But the real world has long since departed from this model. A firm's capacity to export may rest upon its capacity to import—as Caterpillar has argued in resisting steel import restraint. And in certain product areas like TV production, foreign-owned companies may be more likely than their domestic counterparts to have their products "made in USA."⁵⁰

One area of policy particularly embedded in obsolete assumptions is US trade-remedy laws. As illustrated by the case of flat-panel display panels for computers, discussed in chapter 6, US dumping laws ask only whether products priced below an arbitrarily set "fair value" hurt competing US producers (who do not have to follow the same pricing rules). They do not ask whether imposition of a duty will damage US firms that use the imported products as inputs—perhaps forcing them, as in this case, to move entire operations overseas.

For most of the postwar period, it was very difficult for firms to get relief under US trade-remedy laws. Now, in dumping cases, it is too easy. Of the 539 antidumping cases carried to completion since 1980, only 27—or 5 percent—failed because dumping was found not to have occurred.⁵¹ One apparent cause is "practices and procedures which tend systematically to favor higher rather than lower dumping . . . 'margins,'"⁵²

50. In 1988, foreign-owned firms employed over 15,000 Americans engaged in TV manufacturing in the United States, compared with 2,500 for Zenith, the sole US producer. See Robert B. Reich, "Who Is Us?" *Harvard Business Review* (January-February 1990): 61. Reich's broader analysis on this issue is *The Work of Nations: Preparing Ourselves for 21st Century Capitalism* (New York: Alfred A. Knopf, 1991).

51. Forty-three percent were concluded with a finding of no injury, and an additional 134 cases were withdrawn before final action was taken—in most cases because of voluntary export restraint arrangements.

52. Richard Boltuck and Robert E. Litan, eds., *Down in the Dumps: Administration of the Unfair Trade Laws* (Washington: Brookings Institution, 1991), 13.

procedures that are encouraged—though not always required—by US antidumping law. The result is unjustified or inflated penalty duties, which turn the spotlight on alleged foreign unfairness, poisoning the international dialogue by turning international commercial contests into battles of good versus evil. The United States also provokes foreign emulation, as the European Union and other trading partners impose mirror-image penalties on it. Finally, easy access to antidumping relief undercuts what is supposed to be the primary channel for import relief and adjustment, the “escape clause” (Section 201). For if dumping findings are quasi-automatic, why should a company seek action under a statute with a more demanding injury standard, a time limit for any protection, and a presidential right to deny relief even if statutory criteria are met?

It is difficult to muster domestic support to restore balance to the trade-remedy laws, since politicians are understandably wary of being labeled as advocates of “unfair trade.”⁵³ The best approach is through international negotiations over competition policy, which would ideally bring the law on pricing practices by foreign producers closer to that governing practice by domestic producers—barring predatory pricing, but allowing greater flexibility in pricing to specific markets. Moreover, trade officials could use international negotiations as a counterweight to the narrow, intense interests that have skewed antidumping laws in the protectionist direction. Unfortunately, Mickey Kantor did the opposite in the Uruguay Round. He leaned against the forces of reform in order to build industry confidence in administration “toughness” and to broaden support for the implementing legislation (see chapter 9). So while the round did bring some useful changes, the net impact on US practice is likely to prove small.

There remains, therefore, a need for comprehensive reform of the trade remedy laws. The governing statutes should be amended: to lower the injury threshold for the escape clause, while tying relief to a specific, enforceable adjustment commitment from the petitioner; to raise the threshold for proving dumping, returning at minimum to the original standard of comparing prices here to those in the exporter’s home market; and to create, in dumping or countervailing duty cases where dumping or subsidy and injury are found, a follow-on procedure whereby users and other affected interests could seek a reduction in the level of penalty duty assessed by demonstrating that its full imposition would cause *them* serious injury. In the increasingly trade-dependent US economy, it is high time to recognize that there are American economic interests on both sides of these cases. Resolving them requires balancing such interests, not specifying—in ever-tighter form—the “rights” of one side.

53. In our study of antiprotection lobbying, John S. Odell and I found that activity in opposition to trade restrictions was “significantly lighter or absent” in cases “where charges of unfairness were . . . prominent.” See Destler and Odell, *Anti-Protection*, 73.

Keeping Section 301

On “unfair trade,” US law and administrative processes have become skewed in favor of petitioners, moved by the ideological triumph of those who champion these remedies. For use of Section 301 to attack foreign market barriers, however, there is greater justification for the course that Congress and successive administrations have taken. Substantively, there remain many arbitrary foreign practices that close potentially lucrative export markets; institutionally, the GATT process has not proved a strong means of addressing them, though the strengthened WTO dispute-settlement procedures offer hope for the future. Moreover, for the typical member of Congress the political alternative to toughness on exports is not likely to be unabashed laissez-faire liberalism, but greater protectionism on imports.

There is thus a continuing need for export assertiveness, even (to use the critics’ label) “aggressive unilateralism.”⁵⁴ Producers sometimes need such assertiveness to crack foreign markets; Congress needs it to press for executive activism; the USTR needs it to retain the initiative.

The statutory vehicle for unilateral initiative is Section 301 of the Trade Act of 1974, as amended. Critics have protested that this provision has no specific GATT sanction and that retaliation under its authority therefore violates US GATT obligations (unless it is pursuant to a specific GATT finding that foreign trade restrictions constitute “nullification and impairment” of the offending nation’s previous trade concessions). The authority granted to the president under Section 301 is quite sweeping: an administration predisposed toward trade restrictions or trade sanctions could do much damage with it. So the best route to reform here, as with excesses in antidumping law, would be international agreement on criteria for Section 301-type cases, and resolution of such cases—as far as possible—within a strengthened WTO dispute-settlement mechanism. This would have the added advantage of subjecting “unreasonable and unjustifiable” US practices to reciprocal attack from abroad.

Constraining American unilateralism was an important Uruguay Round goal for US trading partners, and the agreement did achieve this to some degree: by strengthening the WTO’s capacity for dispute settlement and broadening the range of agreements to which it can apply. Since US law already provided that 301 cases should be pursued through such channels where applicable, this has the effect of bringing more

54. Jagdish Bhagwati and Hugh Patrick, eds., *Aggressive Unilateralism: America’s 301 Trade Policy and the World Trading System* (Ann Arbor: University of Michigan Press, 1990). See especially the extended reflection by Robert Hudec, subtitled “Beyond Good and Evil,” concerning whether Section 301 represents justifiable “civil disobedience” for achieving change in a sluggish, often unresponsive international system.

such cases within the multilateral system. It also provides international legal sanction for US retaliation, in cases where the system finds that 301 claims are justified. The result has been to improve a mechanism that has been, on balance, a force for trade liberalization.⁵⁵ So Section 301 should be retained: despite the heat that it generates, it is not an excessive burden for the international trading system to bear. "Special 301" on intellectual property protection should be retained as well.

Super 301 is another matter. There seems little doubt that the direct impact of the original, 1989–90 version was constructive: Korea and Taiwan made substantial concessions to avoid the "priority foreign country" designation, and agreements were reached with Japan in 1990 covering the supercomputer, satellite, and wood-product markets targeted under Super 301 in 1989. And Super 301 was indirectly responsible for the useful Structural Impediments Initiative, or SII talks, between the United States and Japan. Still, as in child rearing and social relations, it is better in trade policy and interstate relations to attack the practice rather than denounce the culprit ("you did a bad thing," not "you are a bad boy"). In this sense, President Clinton's "Super 301" executive order of March 1994 targeting foreign country *practices* was an improvement. But this welcome change made it indistinguishable from regular 301, except that the administration was giving itself a new set of deadlines! The Clinton administration's not-so-Super 301 was included in the Uruguay Round implementing legislation, continuing through 1995. No substantive purpose is served by extending it further, but if further extension proves politically useful, it will do little harm.

Using Section 301: Strategic Trade Policy or Sectoral Reciprocity?

The authority to initiate cases raises the question of how they should be selected. The United States should certainly *not* follow Representative Gephardt's proposal to base the decision on a mechanical formula highlighting bilateral trade deficits or imbalances within specific sectors. It makes no economic sense to balance trade bilaterally; moreover, such a formula would typically focus US energies on product areas in which it had comparative *disadvantage*! The USTR should instead give priority to product areas where US producers are clearly world-class competitors and where foreign impediments are preventing this advantage from being realized. The rapidly emerging biotechnology industry is one very strong candidate. In such cases, successful negotiations are most likely to result in significantly increased markets for efficient American firms, and

hence gains for the US (and global) economies. It is also likely to build support for liberal trade policies.⁵⁶

Should US policy go further? Should the United States embark on a "strategic trade policy" that systematically selects key industries and seeks to buttress their position in international markets? In general, policies that subsidize or protect particular firms or sectors impose a net cost to the nation—the industrial problem treated earlier. But as discussed in chapter 7, recent economic research has suggested there may be exceptional cases—involving oligopolistic markets, short product cycles, and increasing economies of scale—where "strategic" government intervention can bring durable trade advantages that exceed and outlast the governmental help provided. Further research has suggested, however, just how difficult it would be for officials to identify such industries in a timely manner and choose the appropriate means of government action. There is, however, a stronger case for defensive policies aimed at thwarting other nations' efforts to confer international market advantage on their favored industries, at heading off foreign industrial targeting before it has an impact on US industries.⁵⁷

Once the United States has decided which export cases to press, two further questions repeatedly arise. The first concerns what is labeled "specific" or "sectoral" reciprocity: whether the openness of the US market for a product should be conditioned on foreign market access for the same product. The second is whether negotiators should go beyond seeking removal of import barriers and insist on fulfillment of quantitative targets for import expansion—as in the US-Japan semiconductor agreement.

Carried to its logical extreme, "sectoral reciprocity" makes little trade sense. If negotiators must limit themselves to a series of narrow bargains within sectors—balancing US import restrictions on wine against those of the European Union, for example—the chance for broad, mutually beneficial, cross-industry trade-offs disappears, and with it the prospect for major trade liberalization.

There is, however, a strong circumstantial case for selective application of the "sectoral reciprocity" principle in negotiations with Japan. If one believes, for example, that industries such as semiconductors and telecommunications are important to future US industrial strength, and that the ability to sell in one of the two biggest markets in the world is an important contributor to the strength of these industries, then it follows

56. Seeking to balance auto sector trade with Japan, as the Gephardt proposal would have us do, would predictably—and perhaps intentionally—undermine support for liberal trade. Balance will not be achieved, and this "failure" will legitimize protection of the domestic market.

57. Laura D'Andrea Tyson elaborates on these issues from the perspective of a "cautious activist" in *Who's Bashing Whom? Trade Conflict in High-Technology Industries* (Washington: Institute for International Economics, 1992).

55. Bayard and Elliott, *Reciprocity and Retaliation*.

that these products should have priority in bilateral trade talks. In the quest for leverage over the Japanese government on these issues, the question arises of how to affect the interests of Fujitsu or Nippon Electric or Hitachi, integrated electronics firms that will have an important influence on Japanese policy. Generally speaking, they will have no interest in opening home markets to competitive imports unless failure to do so is likely to cost them sales in the lucrative American market. Thus, a capacity to threaten market closure here can be important in achieving market openness across the Pacific. In 1980 the United States won its initial concessions from Japan on telecommunications by threatening to deny Japanese firms the right to bid on US government contracts under the just-completed Tokyo Round government procurement code.⁵⁸

This principle of sectoral reciprocity was at the core of the US-Japan semiconductor agreement reached in 1986 and renewed in 1991. Senator Danforth also succeeded in attaching to the 1988 act a set of provisions applying the principle to telecommunications trade. Such "reciprocity" has won the support of both practitioners and scholars who see it as a practical, politically manageable means of handling thorny trade issues with Japan.⁵⁹

The risk of sectoral reciprocity, as William R. Cline has pointed out, is that if the United States actually comes to deliver on such threats, the likely outcome is greater protection and lower welfare in both countries.⁶⁰ Or it may lead to a market-sharing, cartel-type arrangement, as the US-Japan semiconductor arrangement has become in some respects, strengthening the very government-business collusion the United States normally seeks to eliminate. This risk is increased if an agreement includes explicit import-expansion commitments or targets, as recommended by advocates of "results-oriented trade policy," since these force collaboration among firms—and with government—to allocate the import "burden."⁶¹ They can thus be attacked as a new form of "managed trade."

58. Timothy J. Curran, "Politics and High Technology: The NIT Case," in I. M. Destler and Hideo Sato, eds., *Coping with U.S.-Japanese Economic Conflicts* (Lexington, MA: Lexington Books, 1982), 231-39.

59. Clyde V. Prestowitz Jr., *Trading Places: How We Allowed Japan to Take the Lead* (New York: Basic Books, 1988), esp. chap. 11; Stephen D. Krasner, *Asymmetries in US-Japanese Trade Relations: The Case for Specific Reciprocity*, Policy Papers in International Studies 32 (Berkeley: University of California, Institute of International Studies, 1987).

60. William R. Cline, *Reciprocity: A New Approach to World Trade Policy*, POLICY ANALYSES IN INTERNATIONAL ECONOMICS 2 (Washington: Institute for International Economics, 1982).

61. Advisory Committee on Trade Policy and Negotiations, *Analysis of the U.S.-Japan Trade Problem*, transmitted to USTR Carla A. Hills, February 1989. Jagdish Bhagwati has labeled such agreements "voluntary import expansions," or VIEs. See Bhagwati, *Protectionism* (Cambridge, MA: MIT Press, 1988), 82-84. Bergsten and Noland, in *Reconcilable Differences?*, advocate use of VIEs in exceptional cases.

and the Japanese did precisely this in response to Clinton administration proposals in 1993. Thus the presumption should normally be against the use of such targets. There are times, however, when they become the only practical way of addressing a situation where private-sector import resistance is the core problem in the target country, and they are generally preferable to the alternative of limiting sales to the US market. The semiconductor agreement of 1986 is a case where such targets seem to have brought about increased foreign sales in the Japanese market.

A Separate Trade Policy Toward Japan?

As such examples show, many of these thorny policy problems arise most frequently in US trade dealings with Japan. In industry after industry, Japanese firms are American firms' toughest rivals. The enormous impact of Japan on the world trading order, the combination of formidable competitiveness on exports and embedded resistance to imports, has drained the patience of team after team of US trade negotiators. It has also led some veteran trade practitioners to conclude—usually not for attribution—that the United States should respond to this challenge by pursuing a split-level or two-track trade policy: managed trade or tit-for-tat reciprocity with the Japanese, and multilateral liberalism with everyone else. This sentiment—that Japan is different and should be treated differently—finds support in the writings of so-called Japan revisionists (and in Japanese self-perceptions of uniqueness). Clyde Prestowitz argues, for example, that the concept of trade openness is alien to Japanese culture and practice, so efforts to apply this principle to trans-Pacific dealings must inevitably fail.⁶²

Conflicts with Japan regularly threaten the political base for liberal policies. Why not therefore jettison the most vulnerable part of the US "free trade" policy in order to preserve the rest? If the United States did so, Europeans would certainly follow: the Japanophobia of leading continental politicians far exceeds that of the United States. But it is hard to see how one can exclude the world's number-two market economy from the global system without crippling that system. It would be reckless to abandon the substantial trade gains stemming from Japan's GATT commitments in the hope that the United States could somehow work a better deal outside them. It would be foolish to discard the potential leverage that US-Japan cooperation gives against EU protectionism.

Moreover, while "the Japan problem" is real, it is typically misspecified and exaggerated. Many point to the bilateral trade deficit, but this is not per se a detriment to the American economy, and it is, as earlier stated,

62. See Prestowitz, *Trading Places*.

an inappropriate target for US trade policy. Many decry the loss of "good jobs" to Japanese competition—and many US workers have indeed suffered from the internationalization of the US economy—but as Japan's former Minister of Labor Tetsuo Kondo recently noted, the average productivity of American workers still exceeds, substantially, that of their counterparts across the Pacific.⁶³ Many bemoan the *keiretsu* ties among Japanese firms—which make getting a foothold in that market particularly difficult. Yet Japanese management and production methods are being widely emulated by American firms, and one key driving force for this emulation is the success of companies like Honda and Sony in manufacturing within the United States. Moreover, the notion that Japanese gains equal American losses is wrong and obsolete. In the global, interdependent world market that has emerged from the ashes of World War II, gains by one nation bring gains to others, provided they remain open and exploit competitive pressure to improve efficiency within their own borders.

The rise of Japanese economic power has not been easy for Japan's partners and rivals to accommodate. And the problem will certainly continue, the recession of 1992–94 notwithstanding, since Japan's growth performance may well continue to exceed that of America and Europe into the 21st century. But the problem will hardly be ameliorated if the United States tries to manage global economic relations with the Japanese off to one side. Instead, the need is to bring Japan more fully into the world system. The United States needs to use aggressive policy tools where necessary in particular product cases, but only in order to facilitate trade, not to impede it. Most important, the need is to build a positive-sum relationship and avert the sort of geostrategic conflict in which we—and the Japanese—would be losers.⁶⁴

A USTR-Based Trade Reorganization

The analysis and recommendations in this chapter assume that the post-war interbranch division of labor will be maintained: senators and repre-

sentatives will be visible and influential participants in the process, but the primary decision locus for specific product and negotiating cases will remain the executive branch. The Omnibus Trade and Competitiveness Act of 1988 moved to strengthen this system, not to transform it, by avoiding product-specific measures and buttressing the authority of the USTR, even transferring to the USTR from the president the power to decide upon sanctions in Section 301 cases.⁶⁵ Congressional approval of landmark agreements in 1993 and 1994 gives testimony to the fact that the system continues to work. Still, it could be further strengthened by moderate reforms at both ends of Pennsylvania Avenue.

The reason for moderate trade reorganization is *not* the fact that many federal agencies have *some* role in trade policymaking. This simply reflects the range of governmental concerns that trade policy affects. In any conceivable organizational arrangement, the United States would continue to have the State Department and the National Security Council stressing trade's importance to alliance relations, the Defense Department worrying about the defense industrial base, the Treasury Department and the Council of Economic Advisers responsible for linking trade policy to the overall domestic economy and developing-world debt, and the Department of Agriculture stressing the connection of grain exports to commodity programs and overall farm welfare.

All government activities that have a "trade" label do not require a common home. As a day-to-day matter, for example, export promotion through technical aid to firms need not be housed in the same agency that handles import regulation or trade negotiations. Nor, contrary to myth, are other governments united on trade policy. Americans negotiating trade issues with Japan during the past 15 years have dealt not only, and not always mainly, with the Ministry of International Trade and Industry. They have found themselves confronting the Agriculture Ministry on beef and citrus, the Ministry of Posts and Telecommunications on the deregulation of Nippon Telephone and Telegraph, and the Finance Ministry on a range of matters, not to mention the Office of the Prime Minister, the Foreign Ministry, and, intermittently, a special Minister for International Economic Relations.

Reorganization proposals also suffer from exaggeration of what trade policy can accomplish. Proponents of a US "department of trade" have had ambitious goals: to redress the trade imbalance, to bolster industrial competitiveness generally.⁶⁶ Their reach exceeds trade policy's grasp.

63. "On the key measure of purchasing power per hour of manufacturing work, the [Japan Productivity Center/OECD] figures showed that Americans outproduced the Japanese by 62 percent and led the European countries by smaller margins." *Washington Post*, 8 February 1992, C1.

64. For a more comprehensive look at US-Japan relations in the altered global environment, see I. M. Destler and Michael Nacht, "Beyond Mutual Recrimination: Building A Solid U.S.-Japan Relationship in the 1990s," *International Security*, 15, no. 3 (Winter 1990/91): 92–119. See also *Beyond the Framework Talks: Building a Mature U.S.-Japan Relationship*, Final Report of the Maryland/Tsukuba Project (I.M. Destler and Hideo Sato, co-directors), Center for International and Security Studies at Maryland, School of Public Affairs, University of Maryland at College Park, November 1994.

65. The first edition of this book argued against such transfers of authority, warning that they might *weaken* the USTR by distancing her/him from the president (page 205). To date, this does not seem to have occurred.

66. See, for example, the opening statements of Senator William V. Roth Jr. (R-DE), and his colleagues in US Congress, Senate Committee on Governmental Affairs, Trade Reorganization Act of 1983, 98th Cong., 2nd sess., 17 March 1983, S. Hearing 98-474, 1-10.

But if substantial dispersion of US governmental trade responsibility is inevitable, the current bifurcation of central trade responsibility is not. In fact, the current organization has at least four serious flaws:

- The current USTR-Commerce division of labor asks for trouble. Assigning "policy," "coordination," and "negotiations" to one official and "nonagricultural operational trade responsibilities" to a cabinet colleague invites competition and conflict.
- This is exacerbated by the fact that international trade is the only subject in the Commerce secretary's portfolio that offers an opportunity for important policy leadership. Thus, any ambitious incumbent with decent White House connections becomes a rival of the USTR.
- The numerical expansion of the Office of the USTR in 1980 created an organizational hybrid, too large for a flexible coordinating-negotiating staff but too small to be the central executive branch repository of line expertise and responsibility. And the USTR's size makes it a target of White House reorganizers seeking to trim overall staff.
- Presidential support for the USTR, particularly important at times of trade policy crisis, has often in the past been tenuous.

This situation has led some legislators, notably Senator William V. Roth Jr. (R-DE), to propose replacing this "two-headed monster"⁶⁷ with a Department of Trade. They argue that this would create strength. Indeed, the Reagan administration endorsed this view in 1983-84, though largely because of a prior commitment by senior aide Edwin Meese III to Secretary of Commerce Malcolm Baldrige. In fact, however, a secretary of trade would more likely become what most heads of executive departments currently are: an official with a prestigious title but modest power, all too close to the interests his department affects, and distant from the president. On trade, this would mean a department overly responsive to the protection-seeking complainers and unable or disinclined to balance their concerns against those of others.

The better answer is to build on what has been, across a number of administrations, an organizational success story—the Office of the US Trade Representative—and to do so in a way that might improve the incumbent's presidential connection. Three simple steps are needed:

- Convert the USTR into a small, elite Executive Office of the President (EOP) unit, with a professional staff totaling about 25, with responsi-

bility for leading international negotiations, brokering on Capitol Hill, and coordinating interagency trade.

- Create outside the EOP, as a noncabinet executive branch agency, a United States Trade Administration (USTA) headed by a deputy USTR for operations, and merge within this new unit the remaining staff of the current USTR and that of Commerce's International Trade Administration.
- Abolish the Department of Commerce.⁶⁸

Creating a two-tiered USTR-USTA structure would have several obvious advantages. It would build on an organization with a generally successful track record, one that retains substantial support on Capitol Hill and in the broader trade community. It would establish the US trade representative as the only cabinet-level official for whom international trade was the primary policy responsibility. It would reduce conflict below cabinet level by consolidating, under one of the USTR's deputies, the staffs responsible for providing detailed backup to negotiations and enforcing the trade laws. Within the executive branch, trade policy would continue to be an interagency process at both the USTR and the USTA level, but management of this process would be easier with a clear locus of leadership.⁶⁹

Trade policymaking could also benefit from modest reform at the other end of Pennsylvania Avenue. The USTR has been, in important respects, a creature and ally of the Senate Finance and House Ways and Means committees. A strong role for these committees remains critical, particularly for Ways and Means, which has faced increasing jurisdictional challenge. But it cannot regain the dominance of Chairman Wilbur D. Mills's day. With increased congressional interest in trade, and with major trade-affecting action now involving spheres like exchange rate, regulatory, or industrial policy, other committees will inevitably play important roles. For instance, other committees partici-

68. This final step would not be required for trade reorganization, since removal of the Commerce Department's trade functions would presumably end the secretary's threat to USTR primacy. But it would be a logical step, for what remained would be a set of autonomous technical agencies—National Oceanic and Atmospheric Administration, Bureau of the Census, National Institute of Standards and Technology, and Patent and Trademark Office are the largest. These could exist as free-standing federal agencies, but cabinet status would be inappropriate. Of course, if the United States were to embark on an active, industry-specific microeconomic policy, a revamped Commerce Department might be an appropriate base. On this point, see the Competitiveness Policy Council report, *Building a Competitive America*.

69. For a more extended argument supporting this recommendation, see pages 201–206 of the first edition of this book.

67. The phrase is Senator Roth's. See, for example, US Congress, *Trade Reorganization Act of 1983*, 2.

pated in review of the Tokyo and Uruguay Round agreements of 1979 and 1994, and the Omnibus Trade and Competitiveness Act of 1988 engaged 11 different House committees, while the conference committee contained no less than 155 representatives and 44 senators; action was coordinated by the office of House Speaker Jim Wright (D-TX). Former Ways and Means Chairman Dan Rostenkowski (D-IL) was able to play a very strong leadership role—because of his personal power, and because many of the most contentious issues were under his committee's jurisdiction. But his successors may not be so fortunate.

There is a need to protect that central role while accommodating pressures for broader participation. For future general trade legislation, it would be desirable for the speaker of the House to formalize the first-among-equals role of the Ways and Means chair by designating him as head of a House Trade Steering Group that included representatives from other appropriate committees, including Banking, Finance and Urban Affairs (to cover international monetary issues), Energy and Commerce, and Foreign Affairs. Such a group could manage future omnibus legislation and implementation of major trade agreements, farming out sections of a bill to the appropriate panels, with the Ways and Means chair retaining overall policy responsibility for coordinating their work and managing the bill that emerged.

Another possible congressional reform would be a trade reconciliation procedure parallel to that employed on budget matters since 1974. Bills and amendments diverging from existing trade policy (as interpreted by Senate Finance, House Ways and Means, the proposed Steering Group, or any other committee with established authority over its subject matter) would be subject to a point of order on the Senate or House floor. Through such a procedure, congressional leaders could block floor votes on product-specific, trade-restrictive proposals that had not been recommended by the committee with jurisdiction.

Policy Tools: New Approaches to Trade Adjustment

Just as trade policymakers need opportunities to expand US markets abroad, they need alternatives at home for firms and workers fighting losing battles against import competition.

In principle, of course, the plight of a worker displaced by foreign competition is no different from that of one whose job disappears because his firm moves to Texas or South Carolina. In practice, however, "foreign" competition creates pressure for government intervention, while domestic competition does not. When there are no alternatives, that intervention is likely to be focused on restricting imports. Thus, the argument for treating trade-generated displacement differently is that the US political system treats trade differently.

In the 1960s and 1970s, the United States recognized this difference by establishing and expanding the program known as Trade Adjustment Assistance (TAA). This broadened support for major trade legislation and provided Presidents Gerald R. Ford and Jimmy Carter something to give industries like shoes and automobiles while denying or deferring import relief. TAA did not, however, prove very effective in retraining workers and helping them move out of the trade-injured industry. Many auto workers, for example, seem to have used the program to maintain an income near that to which they had become accustomed, while waiting for their old companies to hire them back! No wonder many of TAA's former congressional champions turned skeptical, or that it proved an easy target for the budget-cutting initiative of the incoming Reagan administration. Since 1981, the authorizing legislation has twice been extended, but funding and eligibility have been curtailed.

TAA's demise was unfortunate for two important reasons. First of all, government should be seeking ways to facilitate workers' adjustment to economic change. These workers are losers in a broader international competitive process that brings large overall benefits to their nation. In return, that nation ought to give some attention to helping these workers train for and find other jobs. Public officials have not found this easy to do, but the federal government should continue to experiment in this area, together with private firms and state agencies. A moderately financed TAA program can carry out such experimentation, and approaches that prove successful can then be extended also to workers displaced by home-grown economic change.

The second reason to regret TAA's decline is political: TAA dilutes pressure for trade restrictions, and thus it strengthens the national capacity to pursue open trade policies, which produce gains for the nation far greater than TAA's costs.

But how could one hope to fund trade adjustment at more than a token level, at a time of record budget deficits and tight spending limits? One promising approach, developed in detail by Gary Clyde Hufbauer and Howard F. Rosen,⁷⁰ applies particularly to those industries to which trade protection is also being provided. They would channel revenues from tariffs to the financing of adjustment programs. If the protection were in the form of quotas, these would be auctioned off and the proceeds devoted to the same purpose.⁷¹ The aim would be not to invest

70. Hufbauer and Rosen, *Trade Policy for Troubled Industries*, POLICY ANALYSES IN INTERNATIONAL ECONOMICS 15 (Washington: Institute for International Economics, 1986), chap. 5. See also Robert Z. Lawrence and Robert E. Litan, *Saving Free Trade: A Pragmatic Approach* (Washington: Brookings Institution, 1986).

71. C. Fred Bergsten et al., *Auction Quotas and United States Trade Policy*, POLICY ANALYSES IN INTERNATIONAL ECONOMICS 19 (Washington: Institute for International Economics, 1987).

public funds in new production facilities but to facilitate downsizing, a movement of resources out of the industry. This approach is easiest to apply in cases of new protection. By opting to participate in such a program, firms and workers would get temporary import relief, but it would be degressive, diminishing over time. And they would have to choose between this sort of comprehensive but temporary protection and other remedies such as the unfair trade statutes.⁷²

The political risk of such a program, addressed to (and shaped by) a particular industry or sector, is that it may be captured by antiadjustment industry and labor interests, who may convert it into an instrument of indefinite protection and support. It would then no longer facilitate an orderly outflow of resources from the industry; it would instead become a means for an industry to remain uncompetitively large with perpetual government help. European adjustment programs have frequently experienced such capture. One means of resisting this tendency would be to ensure that antiprotection interests, including users of an industry's products, were represented in the development and oversight of any adjustment program. Also important is active monitoring by executive branch trade leaders determined to limit trade restrictions. This is another argument for housing executive branch leadership in the White House-based USTR, rather than in a department that would be vulnerable to special-interest pressure and disadvantaged in mobilizing counterweights.

In balancing pressures for import relief in specific industry cases, one final device would be most helpful: an analytic agency, free of short-run dependence on either the White House or the Congress, whose job would be to measure, as objectively as possible, the real impact of present and prospective cases of trade protection on all major affected US interests and on the economy as a whole.

As an operating agency, the USTR could not give priority to such analysis, nor would the proposed USTA under it. The US International Trade Commission must, under present law, limit its injury investigations to the petitioning industry, although it can and does consider broader effects when it decides what form of trade relief to recommend. One approach would be to widen the USITC's mandate so that it would be required to publish a more comprehensive assessment of the impact of import restrictions, as well as the industry-specific findings on which its injury determination is based. This would include, but go beyond, the

proposal of Senator John H. Chafee (R-RI) that the USITC evaluate the impact of trade relief on consumers.

If it were judged difficult for the USITC to pursue such contrasting analytic tasks simultaneously, an alternative would be to create a new Trade Barrier Assessment Agency. Its task would be to issue annual, public reports on the extent and impact of existing US import barriers and other trade-distorting practices, and ad hoc reports when specific new cases arose.⁷³ A model would be the Australian Industry Commission (formerly the Industries Assistance Commission), which has performed this function with high credibility.⁷⁴

In Defense of Trade Brokering

In the end, much will depend on the quality and assertiveness of the trade leadership of the executive branch. Greater decentralization and activism on Capitol Hill have increased the USTR's burden and her/his need to keep the initiative. To cope with trade policy pressures effectively requires building confidence in the system, so that it is responsive to trade-created problems even when resisting the relief sought. It requires knowing the petitioners and their political patrons.

Brokering in the trade sphere is not an end in itself, but a means to maintain relatively open US policies. It is an appropriate means for trade because achieving this goal is importantly a matter of avoiding or limiting government interventions in the US economy. Such a trade-expanding purpose is what gives officials a basis for taking the initiative and a capacity for dealing with specific interests without being engulfed by them. If they act as if government policy is simply a function of the balance of outside pressures, they will invite still more pressure, together with contempt for their weakness. But if they demonstrate commitment to this purpose, and skill in its pursuit, they will command respect—as have, in fact, many US trade officials in the half-century since Secretary of State Cordell Hull.

Trade officials' posture should be that they know where the trade policy train should go, and that they have the political capacity to steer it in that direction, together with the readiness to plan and execute the journey in ways that maximize the gain and minimize the pain for spe-

72. The Reagan and Bush administrations were resistant to such trade adjustment; TAA was kept alive in the 1980s, and operated with modest funding, only through the persistent efforts of senators like the late John Heinz (R-PA). President Bush promised, in the 1991 campaign for continuation of fast-track authority, an "adequately funded" worker adjustment program as a complement to a North American Free Trade Agreement. Such a program was part of the final NAFTA package. But the Clinton administration has favored general-purpose worker adjustment programs over those specifically targeted at the effects of trade.

73. Jeffrey J. Schott would have such a "domestic surveillance body" work in tandem with a strengthened GATT "trade policy review mechanism." *The Global Trade Negotiations: What Can Be Achieved?* POLICY ANALYSES IN INTERNATIONAL ECONOMICS 29 (Washington: Institute for International Economics, 1990), 38.

74. Lawrence B. Krause, "Australia's Comparative Advantage in International Trade," in Richard E. Caves and Lawrence B. Krause, eds., *The Australian Economy: A View from the North* (Washington: Brookings Institution, 1984), 290.

cial interests. Only then will private actors find it to their advantage to climb on board. Only with a balance of strength and responsiveness can trade leaders cope effectively with the inevitable pressures of an internationalized American economy.

In cases of major industry campaigns for import relief, like steel in 1984 or textiles in 1985–90, the USTR needs to tilt against them, to encourage all major interests affected by proposed trade restrictions to make their voices heard. When the political game is broadened to include players on the other side—industrial users of imports, retailers, exporters, foreign governments—an administration gains leeway to resist extreme demands and to opt for moderate trade restrictions when some action is required.

By contrast, in cases in which industries seek legal trade remedies, the USTR needs to show sympathy and empathy, with overt presidential backing—to press Section 301 cases where egregious foreign practices are involved, and to lean toward granting temporary relief under the escape clause (Section 201) where it would seem to make a nontemporary difference for a trade-injured industry.

In the end, there is no attractive alternative to the classic, liberal-leaning trade policy that was pursued by those who shaped the old American trade policymaking system. Now, as in earlier decades, the United States needs institutions designed to limit and balance restrictive pressures while leading the United States and the world toward a more open and mutually rewarding international economy. Yet these institutions must be adapted to changes in US economics and politics. If the United States is to maintain the benefits of trade and the stimulus of a relatively open international system, it must continue to find ways of coping with trade pressures, ways of converting import-reducing issues to export-expanding issues when it can, and putting together limited protection packages when it must.

Finally, if Americans are to support continuation of such policies, they must believe that they can compete and prosper in today's difficult trade world.

Most critical to restoring such a belief are the macroeconomic and microeconomic measures stressed at the outset of this chapter, for only when US imports stop regularly exceeding its exports, and only with greater improvement in productivity, will it be possible to sell the notion that the United States is "holding its own." Also important, however, is a sustained effort by government and business leaders to put forward a broad, pro-trade rationale that can play in the domestic arena.

That rationale would go something like this: The world is a tough place, with a great deal of unfairness (here as well as overseas), but:

1. America is competing and can compete with any nation in the world, as long as its macroeconomic policies keep saving and investment—

and currency relationships—in reasonable balance and US workers and firms grow in productivity.

- The way to keep competing is by maintaining a dynamic, flexible economy that rewards US industrial winners, not its losers.
- To do this, the United States needs to keep its economic borders as open as possible and press other nations to do likewise.

To those hurt by the economic change that trade will bring, the United States should offer aid to facilitate adjustment, but not lock itself into outmoded production facilities or overpriced products.

With persistence and luck, Americans can hold their own in a relatively open trade world. Americans ought to be able to handle internal politics so as to make that happy outcome possible. And day by day, as they grapple with the specifics of trade politics, executive branch and congressional trade leaders could do worse than bear in mind the admonition with which E. E. Schattschneider closed his book about Smoot-Hawley 60 years ago: "To manage pressures is to govern; to let pressures run wild is to abdicate."⁷⁵

75. Schattschneider, *Politics, Pressure and The Tariff* (New York: Prentice-Hall, 1935), 293.

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Congressional restraint depended, in important part, on the capacity of legislative leaders to control the action by preventing floor votes on product-specific restrictions. In the words of one prescient analyst in 1974, the House Ways and Means Committee and its chairman were "in effect . . . hired to put a damper on particularism in tax and tariff matters."¹

However, during the postwar period, Congress was changing. Power was spreading out among the 535 individual members; thus the legislative calendar and output were less subject to leaders' control. This change accelerated in the 1970s, particularly in the House of Representatives. At the same time, trade was becoming more important to the American economy.

Then, in the 1980s, this less protected Congress was hit with unprecedented trade-political pressure, generated mainly by unprecedented trade deficits. And the Reagan administration was slow to respond. So legislators of both political parties seized the initiative, demanding tougher executive action to enter resistant foreign markets, and passing the first congressionally initiated omnibus trade bill since before Smoot-Hawley.

Counter to many predictions, Congress still did not "go protectionist." Nor did legislators reclaim their constitutional power to impose product-specific trade barriers. They continued to delegate broad powers to the executive—in the 1988 act and in the 1991 vote renewing "fast-track" negotiating authority for the multilateral Uruguay Round and for free trade negotiations with Mexico. But they did so more grudgingly, with more detailed demands and timetables, which constrained administration flexibility. They thus put more pressure than ever on the executive branch, making open US trade policies more dependent than ever on the latter's policy commitment and leadership skill.

□ □ □

The tragedy of one man came to symbolize the demise of the old order. In October 1974, even as the Senate Finance Committee was quietly marking up the authorizing legislation for the Tokyo Round, the chairman of its House counterpart became involved in a scandal that would force his resignation. For years, Wilbur D. Mills (D-AR) had been the consummate insider. The central congressional figure on trade and tax policy, he was perhaps the most powerful member of his chamber, yet he was little known to the general public. In a parliamentary regime, he might well have become prime minister. But in the United States, his one quest for national recognition was in a belated campaign for the 1972 Democratic presidential nomination. This campaign had peaked with

1. David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974), 154.

a 4 percent vote in the New Hampshire primary, and Mills won a total of 33.8 delegate votes at the convention the following August.

Now Mills's name would become a household word because of a bizarre incident that exposed his heavy drinking and involvement with a woman not his wife.² It came at a time when Mills's influence was already in decline. Suffering from a back ailment, he had missed most of the House Ways and Means markups of the Tokyo Round authorization bill the year before. Now his career and reputation publicly disintegrated. He won reelection in November, but the sudden scandal reduced his usually overwhelming majority to 59 percent. By December, he had declared himself an alcoholic and announced that he would not continue as Ways and Means chairman in the next Congress. Two years later, he retired from public office.

Mills was succeeded as chairman by Al Ullman (D-OR). He was replaced by no one. His talented Senate counterpart of the 1970s, Finance Chairman Russell B. Long (D-LA), would develop a formidable personal reputation, as would Long's successors, Robert J. Dole (R-KS) and Lloyd Bentsen (D-TX). In the 1980s, Dan Rostenkowski (D-IL) would restore some of the old luster to Ways and Means. But, from the 1960s onward, the Senate was too freewheeling and democratic to permit the sort of personal policy dominance that Mills had exercised. In the 1970s the House became so as well.

Congressional Reform and the Weakening of Ways and Means

Even before the Arkansan's public fall from grace, the "excessive power" of Ways and Means had been "a major target of reorganization."³ This was part of a broader challenge to the power of committee chairmen by congressional reformers.

American politics was opening up, and more and more legislators owed their election not to party machines but to personal entrepreneurship. They did not want to run the turtle's race between seniority and senility, by serving quietly as apprentices for the 20 to 30 years it might take to move up the ranks to chair a major committee.

By the end of 1974, it was clear that new House members no longer had to wait. They could aspire to policy influence almost immediately.

2. A car in which Mills was riding was stopped (for speeding, without lights) by a National Park Service police cruiser, at which point the woman ran from the car and leaped into the nearby Washington Tidal Basin. The episode received extensive press coverage, particularly in the *Washington Post*, as the "full story" was gradually revealed.

3. Roger H. Davidson and Walter J. Oleszek, *Congress Against Itself* (Bloomington: Indiana University Press, 1977), 179.

and increased car production by Japanese firms on American soil made it increasingly difficult for Toyota and its rivals to fill the quotas in the years thereafter: imports dropped below 2 million vehicles a year, whereas the VER allowed 2.3 million. Japan's Ministry for International Trade and Industry (MITI) kept extending the auto VER, to avoid the political storm that might follow its removal, but it had become all symbol, no substance.¹⁹

Restraints on textiles retained their bite, of course, notwithstanding the failure of the industry to win statutory protection, and notwithstanding the Uruguay Round prospects for liberalizing or terminating the Multi-Fiber Arrangement (MFA).²⁰ And the number of products subject to countervailing or antidumping duties rose 42 percent between mid-1983 and the end of 1990. There was also, as discussed in chapters 5 and 7, a new precedent for managed trade in semiconductors—under the US-Japan agreement reached in 1986 and renewed in 1991. In summary, however, the most reasonable conclusion is that American trade protection increased sharply in the early 1980s but receded somewhat thereafter. The net increase over the decade was less than one might have expected given the pressures at play.

Recent years have also brought a modest shift in the focus of trade-liberalizing energies: from multilateral to bilateral and regional negotiations. The former continued to have top priority for the USTR—and, when pressed, for Presidents Ronald Reagan and George Bush as well. Yet the US negotiations with Canada and Mexico signaled an American willingness to pursue preferential arrangements close to home, and Bush's Enterprise for the Americas Initiative invited other Latin American nations to come forward with their own liberalization proposals.²¹

A further cause for concern in the early 1990s was the new vulnerability of the fast-track process. This expedited-vote, no-amendment procedure for implementing trade agreements was born in the Trade Act of 1974, extended for eight years in the Trade Agreements Act of 1979, broadened to encompass bilateral deals in the Trade and Tariff Act of 1984, extended with modest amendments in the Omnibus Trade and

Competitiveness Act of 1988, and extended once again by Congress in the spring of 1991. Thus it had received five votes of confidence from the Congress in a span of 15 years.

But en route to the last of these, something new happened: fast-track became a public issue. On all previous occasions, it was worked out quietly between the USTR and the committees of primary jurisdiction. And this was understandable, since in addition to promoting efficiency in trade policy the arrangement suited these actors' institutional interests. But in 1991 the process "came out in the open" for the first time, with fast-track itself becoming the specific, central subject of debate and votes on the House and Senate floors. Members of Congress not on House Ways and Means or Senate Finance were sensitized to the cost of these procedures in terms of their political and policy interests. There was little they could do about this in 1991, since the rules governing that extension favored the proponents: amendments were not in order, and a negative House or Senate vote would have brought major US trade negotiations, multilateral and bilateral, to a crashing halt. But next time it would take affirmative legislation to extend fast-track. This would at a minimum involve a major debate, and the legislation would presumably be open to the normal legislative weapons of amendment and delay.²²

Last, but assuredly not least, was trade's reemergence as a front-burner political issue in the fall and winter 1991–92. The immediate causes were the unexpected persistence of recession and President Bush's remarkable vulnerability on economic issues. Through most of 1991, economists predicted that recovery would come soon. It did not. Through most of 1991, in the afterglow of the Persian Gulf War, Bush's public approval rating remained above 70 percent—higher than Ronald Reagan's had ever been—and the president was expected to enter the 1992 elections in a commanding political position. He did not. As the economy stagnated and unemployment grew, he increasingly came under attack for his international preoccupations: by September, no less than 66 percent of Americans felt their president was spending "too much time on foreign problems" and not enough on domestic.²³ Two months later, in economically depressed (and traditionally protectionist) Pennsylvania, Democrat Harris Wofford won an upset Senate victory over former Bush administration Attorney General Richard Thornburgh on the slogan that Americans should "take care of our own."

The president responded with what can only be described as panic,

19. Thus a subsequent study by Hufbauer and Elliott finds that the "share of total US exports assisted by trade barriers dropped from 21.5 percent of all imports in 1984 to only 10.4 percent in 1990." See their *Measuring the Costs of Trade Protection in the United States* (Washington: Institute for International Economics, 1994), 14.

20. Imports of textiles and apparel rose sharply in the 1980s, the MFA notwithstanding. For detail on that trade, the costs of textile and apparel protection, and Uruguay Round alternatives, see William R. Cline, *The Future of World Trade in Textiles and Apparel* (Washington: Institute for International Economics, second edition, 1990).

21. J. David Richardson labels this approach "minilateralism," a readiness to pursue liberalization in smaller groupings when multilateral opportunities appear limited or blocked. See "U.S. Trade Policy in the 1980s: Turns—and Roads Not Taken," Working Paper 3725 (Cambridge, MA: National Bureau of Economic Research, 1991).

22. Technically, fast-track extension could be included in implementing legislation for the Uruguay Round, as done in 1979 for the Tokyo Round, with action thereon again constrained by fast-track rules. But given the procedures' new visibility, such a step would risk undermining prospects for congressional approval of the results of the Uruguay Round.

23. ABC News poll, reported in *National Journal*, 12 October 1991, 2510.

parties supported the bill by margins of two-to-one, and the bill received at least 64 percent support from every region of the country.⁵⁹ GATT did even better in the Senate: the waiver passed with eight votes beyond the sixty required, and the count on final passage was 76–24, a happy surprise to the Clinton White House. In the Senate, the bipartisanship was mathematically perfect: as noted by Dole, each party voted 76 percent in favor: Democrats 41–13; Republicans 35–11.⁶⁰ There were some unexpected defections, most notably that of outgoing Trade Subcommittee Chair Max Baucus. Getting far more national notice, however, was the decision of labor Democrat Barbara Mikulski of Maryland to “vote for GATT.”

I am a blue-collar Senator. My heart and soul lies with blue-collar America. . . . And in the last decade, working people have faced the loss of jobs, lower wages and a reduced standard of living, and a shrinking manufacturing base, everything that the critics say. But voting against GATT will not save those jobs or bring those jobs back. . . . The Uruguay Round [will] cut tariffs and reduce trade barriers for many of Maryland's top export industries. . . . So I am voting for GATT to generate more exports, to create more jobs in my own State of Maryland and in the United States of America.⁶¹

In November before his GATT victory, Clinton had flown to Indonesia to sign an APEC summit declaration committing member states to achieving free trade by 2020 (by 2010 for the most advanced among them). In December the trade venue was Miami and the Summit for the Americas. The result there was a commitment to conclude a free trade arrangement for the hemisphere by the year 2005.⁶²

As 1994 came to a close, President Clinton was still absorbing his crushing mid-term election setback. But he was also, in the words of one commentator, “compiling a more ambitious record of trade liberalization than any President since at least Harry S. Truman.”⁶³ The road had been anything but smooth, and some of its obstacles had been of the administration's own making. One important battle was lost—that for fast-track ratification. But in the end, with bipartisan support, the administration

The House split 288–146, with Democrats 167–89 and Republicans 121–56. Regional percentages in favor were: Northeast, 70%; South, 64%; Midwest, 66%; and West, 67%. Calculations are from *The New York Times*, 30 November 1994.)

On the waiver, 69 percent of Democrats voted in favor, and 67 percent of Republicans.

Congressional Record, 30 November 1994, S15102.

This was the target date for agreement, not for the actual removal of barriers. This ambiguous the question of which goal—APEC or Western Hemisphere—was more ambitious.

Ronald Brownstein, “Clinton Drawing Visionary Blueprint of Global Economy,” *Los Angeles Times*, 5 December 1994.

came through. Mickey Kantor in particular had proved an adept “closer” of deals: with Mexicans on NAFTA issues, with the European Union on GATT, and with senators and representatives on both. Carla Hills and others had moved both enterprises very far along: completing the NAFTA pact and winning the key US-EC breakthrough at Blair House. Kantor had pushed them over the top. He was the first US trade representative called upon to deliver major results in his first two years. And he did.

Looking to the Future

Once again, the US trade policymaking system had worked. Congress played actively but allowed the administration to lead. On NAFTA, members came around because they were substantively persuaded, but also because they were unwilling to take the responsibility for its rejection. On GATT, direct rejection always seemed unlikely, but the limited enthusiasm of its backers made the agreement constantly vulnerable to other agendas. In the end, it received resounding bipartisan support. The trade policy process had once more overcome both partisan conflict and the separation of powers.

Kantor's USTR was less dependably antiprotection than the USTR of Carla Hills, reflecting the broader forces at play within Clinton's Democratic administration. It was responsive to a range of restriction-seeking industries: to steel on antidumping, to textiles on Uruguay Round and implementing bill details, to autos in seeking quantitative export targets vis-à-vis Japan. Its unrequited courtship of labor also fueled doubts over where Kantor and USTR stood. But these departures from free trade purity were well within the postwar trade-brokering tradition. The more important truth was that yet another administration had mastered the formula: firm commitment to negotiate and implement trade-liberalizing agreements and flexibility in accommodating key producer constituencies on the details. And trade continued to expand.

With NAFTA and GATT ratified, the biggest items had been removed from the US trade agenda. There remained unfinished Uruguay Round business and the need to launch the World Trade Organization. There loomed, on the horizon, hemispheric negotiations toward free trade and the APEC liberalization process as well. All this suggested a bright future for liberal trade.

Yet although the strong pro-GATT votes in Congress sent a powerful affirmative message around the world, the future remained murky. One reason was the big tasks had been completed, the missions accomplished. If past periods following major GATT agreements are an indicator, the coming years will likely feature some backsliding, as protectionist forces are no longer held in check by the momentum of on-going talks. This need for momentum in trade policy—the so-called bicycle theory—made

it all the more important for the Clinton administration and Congress to move forward in 1995 with a follow-on trade agenda. The failure to renew fast-track in 1994 has made this a necessity, but also an opportunity.

But the going would not be easy. For one thing, while trade votes may still be won by elites, the trade dialogue is no longer dominated by them. The threat of competition with Mexico triggered a gut-wrenching national debate over NAFTA in 1993, though the specifics of that agreement overwhelmingly favored the United States. The Uruguay Round never reached that degree of prominence, but the WTO engendered strong, vocal opposition in 1994, with opponents employing modern media methods—speaking to the grass roots, their voices amplified by talk radio. Supporters of liberal trade are not comfortable in such forums and have not done particularly well in them. They have coasted along, capitalizing on broad consensus among elites, comfortable that they would prevail in the inside politics of Washington—as they have generally prevailed throughout the postwar period. Unlike Cordell Hull, who initiated trade liberalization in the United States more than 60 years ago, free traders are not very good on the stump. They have not had to be. So they have gotten out of practice.

They will need to shape up, for their central procedural vehicle is threatened as well. The apparent reason Mickey Kantor failed to get future fast-track in the implementing bill was his effort to stretch the substance to cover trade-related labor and environmental issues. A deeper reason is that the process has been piling up opposition for years, especially since the vote of 1991 forced it into the light of day. Senate Finance Chairman Daniel Patrick Moynihan, whose jurisdiction stood to gain, opposed inclusion of follow-on authority in the implementing bill because he feared controversy over fast-track would jeopardize its passage. Senator Richard Lugar, a consistent supporter of liberal trade, declared during the final debate that “much of the opposition to the Uruguay Round has focused not [on] the specifics of the agreement, where the United States clearly stands to gain, but on the allegedly closed and corrupt nature of the congressional fast-track process.” And some of this criticism was legitimate, he declared, for “the fast-track privilege has come to be seen as a vehicle for side deals, special-interest accommodations and provisions of questionable merit—none of which can be changed once included in implementing legislation, unless a Senator is prepared to defeat the entire agreement. . . .”⁶⁴

There were other problems as well. With the strong US recovery, the trade deficit had ballooned again, to a record \$166.3 billion in 1994 (table 3.1). Continued trans-Pacific conflict generated support for the notion that the United States should somehow pursue a two-track trade policy:

one for the bulk of nations and a second for Japan—as if a global trading system could somehow exclude the world’s number-two economy and number-one creditor nation. There was continuing resistance abroad to “aggressive unilateralism” in US trade policy: in Europe, and across East and Southeast Asia. At home, the Republican sweep brought scores of militant newcomers to Capitol Hill—newcomers with unclear trade views, newcomers untutored in the Washington rituals that have deflected bad trade legislation.

In this new context, can the United States pursue forward-looking trade policies that accept the reality of an interdependent world and bring Americans the gains from competing effectively in that world? Chapter 10 explores how we might do so.

64. *Congressional Record*, 1 December 1994, S15321.