FOIA Number: 2017-0401-F

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THE TETHERED PRESIDENCY

Congressional Restraints on Executive Power

EDITED BY
THOMAS M. FRANCK

1981

New York University Press

New York & London

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Negotiating About Negotiations: The Geneva Multilateral Trade Talks

*Robert C. Cassidy, Jr.**

I. INTRODUCTION

ARTICLE I, Section 8, clause 3 of the Constitution confers on the Congress the power to "regulate commerce with foreign Nations." At the same time, the president is the "sole organ of the federal government in the field of international relations."[1] Despite the problems presented by this awkward separation of powers, the United States has just concluded and implemented the most ambitious trade negotiation since the negotiation of the General Agreement on Tariffs and Trade in 1948.

Given the somewhat protectionist political climate in the United States arising from slow growth and persistent balance-of-trade deficits, the success of the Tokyo Round is somewhat surprising. Congressional approval of the legislation approving and implementing the Tokyo Round results—by massive majorities in both houses, after only thirty-four days of formal consideration—appears to many people to be astounding.[2]

To the extent the press noted this unusual event at all,[3] it tended to attribute the success of the enterprise to the skill of Ambassador Robert S. Strauss. While the results might well have been different without Strauss's considerable efforts, the success of the Tokyo Round is largely attributable to a "unique Constitutional experiment . . . [in] cooperation between the legislative and executive branches of the Government during a complex international negotiation."[4] This chapter will describe the evolution of this experiment.

*The opinions expressed in this chapter are those of the author and do not necessarily reflect the opinions of the Office of the United States Trade Representative.

To put the discussion in perspective, a brief summary of earlier experiments in coordination between the Congress and the president during international trade negotiations is in order. Beginning with the Trade Agreements Act of 1934,[5] the Congress has periodically delegated to the president authority to implement in domestic law the results of trade agreements insofar as they relate to tariffs. This system worked well until the Kennedy Round of Multilateral Trade Negotiations (1964–67) under the auspices of the General Agreement on Tariffs and Trade (GATT).

The problem that arose in the Kennedy Round did not relate to tariff changes but to antidumping procedures and customs valuation procedures. These issues were a novelty in GATT negotiations. The fact that they were considered at all reflects the success of previous negotiations in lowering effective tariff rates throughout the industrial world.

As tariff rates declined, the effects on international trade of national laws and policies other than tariffs, "nontariff barriers," became more apparent. The Kennedy Round agreements on antidumping and customs valuation represent the first serious attempt to expand the GATT system specifically to the significant problem of nontariff barriers. However, neither U.S. law[6] nor the U.S. Congress contemplated this kind of agreement resulting from the Kennedy Round. The result was that the undertakings relating to customs valuation were never implemented by Congress. Although the president entered into the Antidumping Code, the Congress adopted legislation, which became law, specifically requiring existing domestic legislation to prevail over the code.[7]

When preparations for a seventh round of GATT negotiations, the Tokyo Round, began in the late 1960s, the executive branch had to face in earnest the issue of nontariff barriers. They needed the president submits an "implementing bill" and Congress, by a voting majority of both Houses:

(1) approves the agreement,
(2) makes changes or additions to domestic law necessary to implement the agreement, and
(3) approves a statement describing changes in administrative practice proposed to implement the agreement,

and the bill is signed by the president.[25] Administration demands for rapid congressional action on trade agreements were addressed by the creation of special procedural rules to accelerate congressional consideration of an implementing bill. The procedures are designed to result in a final congressional decision within ninety working days after an implementing bill is introduced. Important features of these procedures are automatic discharge of the implementing bill from committee after a set period, usually forty-five working days, and a limitation of floor debate to twenty hours. Most important, an implementing bill cannot be amended in committee or on the floor by either house.[26]

Although the positive approval requirement was the most significant amendment affecting congressional-executive consultation during the trade negotiations, the Finance Committee made an important modification to the House bill provision creating congressional advisers. The amendment requires the special representative for trade negotiations (STR) to keep both congressional advisers and designated members of the Finance Committee's and the Ways and Means Committee's staffs "currently informed" on the status of negotiations.[27] Under this provision, STR supplied the two committees with most position papers and reporting cables relating to the trade negotiations. As a result, the congressional committee staffs were able to carry on current and detailed discussions about the negotiations with both the administration and members of the committees.

III. IMPLEMENTATION OF THE TRADE ACT

Although the Trade Act of 1974 contains provisions governing congressional-executive consultation that are more elaborate than

any previous legislation, it left a great deal to be implemented informally by both Congress and the executive branch. From early 1975 until late in 1977 there evolved a process of consultation that was generally satisfactory to both sides. It is probably fortunate that the trade negotiations moved very slowly during this period. As a result, both Congress and the executive agencies, particularly STR, were able to devote considerable time to developing the process as opposed to discussing substantive policy issues. In particular, personal relationships developed between individuals in STR and members and staff on the Hill. These relationships contributed importantly to the ultimate success of the process. Once the negotiations began to move quickly, in 1978, there was in place an operating system that could react quickly to unfolding events.

Before reviewing the different aspects of this system, it is important to understand how the Ways and Means Committee and the Finance Committee oversee a program when there is no legislation relating to that program before the committees. Both committees rely heavily on a few members who become "experts" on the subject. These members are usually on the subcommittee responsible for the program. Nonexpert members will typically pay attention to a program only when a specific problem of a constituent arises or when new legislation comes before the committee. Even the expert members rely heavily on the committee staff for guidance on all but the most general policy issues. The result is that the responsibility for oversight normally falls on the staff with an occasional intervention by a member.

A. INFORMATION

Section 161(b) of the Trade Act of 1974 (19 U.S.C. 2211) requires STR to keep congressional advisers currently informed. Early in 1975, the House and Senate committee staffs met with the special representative for trade negotiations, Ambassador Dent, to sign a memorandum of understanding implementing Section 161. Under this agreement, STR committed itself to supplying both committees in a timely manner with incoming and outgoing cables relating to the trade negotiations. The committees agreed to obtain appropriate security clearances for their staffs and to follow prescribed procedures for handling classified documents.

A formal agreement was considered necessary in light of State Department opposition to disclosure of internal executive branch communications. This opposition manifested itself in threats to invoke executive privilege and refusal to deliver certain "sensitive" cables to STR for fear they would be turned over to Congress. State eventually agreed to comply with Section 161 in light of the memorandum of understanding and a side agreement between the Department and STR. Under the side agreement, only cables between Washington and Geneva relating to the trade negotiations could be supplied to Congress. Cables from or to other posts were not supplied even though they related to the negotiations.

The information aspect of consultation worked fairly well. Somewhat to the surprise of executive branch officials, no cable supplied to the Congress between 1975 and 1979 was disclosed to any person without appropriate clearances.

The major congressional complaint was the week or so delay between the time a cable was sent from, or received in, Washington and its delivery to the committees. The committee staffs were occasionally disturbed by the fact that STR was obviously not sending all cable traffic relating to the trade negotiations. However, virtually all important cables were supplied to the Hill. Although committee members rarely asked to see cables, they were regularly used by staff as the basis for briefings.

A significant feature of the consultation process while the trade negotiations were in progress was that members of Congress and the committee staffs almost never made definitive statements for or against specific negotiating proposals put forward by STR. This conscious attempt by the Hill to avoid commitments did not prevent frequent discussion of details between STR and the committee staffs. It did require STR to rely heavily on the advice it received from its private advisory committees.

Those committees were established under the Trade Act of 1974.[29] They were composed of private citizens representing a broad array of industrial, labor, and agricultural interests. The committees were informed of current developments in the trade negotiations and provided guidance on specific STR proposals.

Despite congressional hesitance to give specific guidance, the

dialogue between Congress and the administration left the trade negotiators with a clear idea of the political parameters within which they were working. It also gave the members of Congress some assurance that the negotiators were seeking results that were politically acceptable.

B. TRAVEL

Politics and economics aside, one of the most interesting aspects of international trade policy is the possibilities it presents for foreign travel. This lure was used effectively by both the members of Congress responsible for trade and by the STR to keep nonexpert members interested in the subject. The Ways and Means Committee and the Finance Committee sponsored one or more foreign trips each year for members to discuss trade issues with foreign officials and American negotiators in Geneva.

Both the members of Congress and the American negotiators, many of whom had never spoken with a member of Congress, apparently thought the trips valuable. On the congressional side, the members say that personal contact with foreign and American negotiators gave them a better understanding of the international political dynamics of the talks. Conversely, the American negotiators got a very clear view of the problems they would face when they returned to Congress with trade agreements.

In addition to travel by members, which was relatively rare, the committee staffers responsible for trade traveled to Geneva on a regular basis. This allowed them to verify information received in cables. It also exposed them to the day-to-day problems of the negotiators and vice versa.

While it is not possible to prove that the congressional presence in Geneva, either of members or staffs, was essential to the consultation process, both the executive and congressional participants believe it was one of the catalysts that made the system work. It permitted serious and relatively uninterrupted discussions of the domestic and international political issues in the trade negotiations. Furthermore, many American negotiators believe that allowing congressional representatives to discuss their concerns

Westview Press

MAKING GOVERNMENT WORK

From White House to Congress

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and John F. Kennedy

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The System CAN Work: The Trade Act of 1979

Richard R. Rivers

Executive-Legislative Partnership In International Commercial Policy

Within most democratic governments, the conduct of international commercial policy is the joint responsibility of the executive and legislative branches. This division of powers exists in varying degrees in most Western political systems. Nowhere, however, is this joint responsibility more evident than in the unique governmental system of the United States. This case study discusses the partnership between the president and Congress for the conduct of U.S. trade policy, how this partnership became strained during the 1960s, and how it was renegotiated with apparent success during the 1970s.

Under the U.S. Constitution, Congress is vested with the power to regulate foreign commerce. The president is the country's chief negotiator and representative in the international arena. Throughout U.S. history, Congress and the president have carried out these mutual and interacting roles diligently, if not always harmoniously.

This system has gradually given rise to open rivalry as the two branches have undertaken to carry out their constitutional roles and respond to their different constituencies in the conduct of foreign economic

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policy. Presidents, for example, have occasionally tried to exercise international trade powers properly reserved to Congress. And, on occasion, Congress has attempted to exercise the powers of the presidency.

At the same time, the nature of problems in international economic relations has become increasingly complex. The objective of trade liberalization has evolved from the reduction and elimination of tariffs to the negotiation of international rules on nontariff barriers.

The growth of economic interdependence during the postwar period has tested the existing political and legal mechanisms for governments in negotiating reciprocal reductions in the import duties they levy on imported goods at their borders. Yet, it is much more difficult for governments to negotiate international rules for nontariff barriers that indirectly affect trade and that may originate within state houses or even city halls.

For the United States, this trend toward economic interdependence and the proliferation of nontariff barriers has imposed a growing strain on the political and legal mechanisms for the conduct of international trade negotiations. These forces culminated in 1967 with the 90th Congress's express repudiation of an international code of conduct on antidumping that had been negotiated by executive branch officials during the Kennedy Round of trade negotiations. The antidumping code set the international rules by which governments must abide as they regulate imports sold in their national markets at prices below home market prices—a politically sensitive subject for Congress. In effect, Congress told both U.S. and foreign negotiators that, although they could negotiate and reach any international agreement they might wish, Congress could not be taken for granted, and the necessity for implementation in domestic law through legislation could not be circumvented.

This regrettable episode in executive-legislative relations created an atmosphere of suspicion and mistrust between the two branches and between the United States and its trading partners. Under such circumstances, the conduct of U.S. commercial policy became exceedingly difficult, if not altogether impossible. Foreign government officials, particularly those of The European Communities and Canada, came to doubt the credibility of U.S. negotiators and used that doubt as justification for not engaging the United States in negotiations on nontariff trade barriers.

In 1971, against this background of growing concern about the effects of nontariff barriers on trade and of mistrust between the executive and legislative branches, the Nixon administration began exploring ways to renegotiate the trade-policy partnership between the executive branch and Congress and to seek a renewed delegation of trade-negotiating authority from Congress.These efforts resulted in a negotiation between

Congress and the executive and the enactment of the Trade Act of 1974, which created an unprecedented statutory framework within which the branches could perform their respective constitutional roles. This unique "experiment in constitutional government," as the Senate Finance Committee termed it, resulted seven years later in Congress's passing the most comprehensive trade legislation of the postwar era, if not indeed the country's history, by an overwhelming margin.

The chain of events, which began with congressional repudiation of an antidumping code in 1967, led to the renegotiation and innovative redesign of the executive-legislative partnership in 1974 and resulted in the passage of the Trade Agreements Act of 1979, is often suggested as a model of executive-congressional collaboration in the field of foreign affairs. Without prejudging the validity of such a model, this chapter describes the modern evolution of the trade-policy partnership between the executive and legislative branches and its operation, which, in effect, broke down and had to be renegotiated by the parties during the Tokyo Round of Multilateral Trade Negotiations (MTN) from 1973 to 1979.

The Constitutional Base

The U.S. Constitution established a federal government with three branches, a separation of powers, a system of checks and balances among those branches, and the president as the chief executive. Inherent in the presidency is the foreign affairs power by which the president has emerged as the chief negotiator and representative of the United States in the international arena. The primacy of the president in the field of foreign affairs, however, is not without qualification, as the Constitution itself imposes several limits on presidential powers, such as vesting the power to declare war in Congress and requiring that treaties be submitted to the Senate for its advice, consent, and concurrence. Yet over the years the executive branch has developed various forms of executive agreements, which—depending upon their nature and content—may or may not be submitted to Congress for approval and/or implementation.

In the field of international trade policy, the president's powers are strictly constrained by two powers the Constitution explicitly vests in Congress:

- the power to regulate commerce with foreign nations
- the power to lay and collect taxes, duties, imposts, and excises (Article I, Section 8)

As a practical matter, presidents may negotiate and enter into virtually any international agreement they desire. Such agreements may not be self-executing and may have domestic legal consequences, such as regulating foreign commerce by restricting imports at the border or raising revenues, which require congressional approval and implementation before having force and effect as domestic U.S. law.

The joint executive-legislative responsibility is a feature of most democratic systems, including parliamentary governments. The circumstance of a negotiator exceeding his or her legal authority and political capability is a potential problem for any government participating in international negotiation. These problems are manageable, however, for most parliamentary Western governments. In economic unions, such as The European Communities, they present difficult political, if not legal, problems. Because of the unique design of the U.S. constitutional system, these problems pose special challenges for the conduct of U.S. commercial relations—challenges that have not always been met or successfully overcome.

U.S. Commercial Policy

Prior to 1934, the tariff policy of the United States was set by Congress primarily to raise revenues and protect domestic production from import competition. Little, if any, attention was given to the consequences of U.S. tariff policy for the external relations of the United States or for the world economy.

In 1934, motivated by a desire to restore world trade and prompted by the exemplary leadership of then-Secretary of State Cordell Hull, President Franklin Delano Roosevelt requested and received from Congress advance authority to reduce tariffs in reciprocal negotiations with other countries from the levels designated in the Smoot-Hawley Tariff Act of 1930. This presidential action marked the beginning of the Reciprocal Trade Agreements Program and offers a modern example of executive-legislative cooperation in the field of U.S. commercial policy.

Following World War II, the United States took the lead in the design and construction of the postwar world economic order. At the 1944 international conference at Bretton Woods, and in later international conferences, the U.S. delegation proposed the creation of an international trade organization (ITO) and an international agreement for the regulation of trade among nations. Faced with growing opposition from a suspicious Congress, however, the executive branch abandoned its plans. The ITO never came into existence, and U.S. accession to the General Agreement on Tariffs and Trade (GATT) was accomplished by means of an executive agreement, which the Congress refused to recognize and never approved.

Despite this inauspicious beginning, the executive branch secured from Congress the authority to reduce U.S. tariffs in the context of reciprocal trade negotiations. Under the auspices of GATT, six rounds of tariff negotiations were held that steadily reduced tariffs, especially among the industrialized democracies.

As tariffs declined, the volume of world trade increased markedly in proportion to overall industrial production. As tariffs were lowered, however, more subtle and insidious barriers replaced them as the major obstacles to trade. Known as nontariff barriers, they came in such forms as subsidies, import licensing systems, customs valuation methods, discriminatory product standards, and government purchasing requirements. These governmental practices were deeply rooted in national laws and regulations and often served legitimate domestic interests, such as regulation of domestic industries, maintenance of domestic prices for international commodities, and the preservation of important industries for national security reasons.

Such governmental practices, however, seriously distorted world trade and created inefficiencies in the world economy. GATT, moreover, did not address many of these practices. Even those nontariff barrier practices that GATT restricted, such as export subsidies on nonprimary products, were addressed by rules that had proved vague, ineffective, and unenforceable over the years. In fact, many provisions of GATT had fallen into disuse and discredit, including procedures for settling disputes.

Although the reduction of tariffs was the principal object, during the Kennedy Round of trade negotiations, certain participating governments undertook to negotiate nontariff barrier agreements. In particular, the United States agreed to eliminate the highly protective American Selling Price system of customs valuation applied to imports of certain commodities and agreed to adhere to an international antidumping code regulating the responses of governments to imports sold below fair value. The decision by the executive branch to negotiate on nontariff barriers in the Kennedy Round was made in the face of express congressional opposition to negotiating such matters and was carried out under the general foreign affairs power of the presidency.

At the end of the Kennedy Round, Congress reneged on the executive branch commitments and declined to repeal the American Selling Price system. Despite the agreement of the U.S. negotiators to repeal the provision, the provision remained U.S. law.

Furthermore, Congress acted affirmatively to alter the terms of U.S. adherence to the antidumping code. In the first session of the 90th Congress in 1967, a resolution was offered in the Senate demanding that the international antidumping code be submitted to the Senate for its advice and consent. Later, in September 1968, the Senate passed an amendment that would have terminated U.S. adherence to the terms of the agreement. The House refused, however, to go along with the Senate

action but agreed to a compromise, which provided for implementation only insofar as the provisions of the code were consistent with those of existing U.S. law and practice. Any conflict between the two was to be resolved in favor of the law as it had been administered previously. In effect, Congress took steps to nullify the antidumping code insofar as it differed from U.S. law.

The entire episode poisoned executive-legislative relations in the field of international trade. Senator Russell B. Long (D-La.), the chairman of the Senate Committee on Finance, published a law review article entitled "United States Law and the International Antidumping Code" in which he concluded:

> The international antidumping code was negotiated without advance authority by Congress, in the face of a strict admonition by the Senate not to change the antidumping act in any way. Apart from the question as to whether the President has authority to enter into international agreements with foreign nations in an area which the Constitution reserves exclusively to the Congress, it is settled law that when an agreement has the effect of changing existing domestic law, either directly or by indirection through giving the law a meaning and a result which Congress never intended, the agreement cannot be given effect until it has been submitted to Congress for implementing legislation.[1]

The Nixon administration entered office in January 1969 without tariff-cutting authority (the five-year authority granted by Congress in the Trade Expansion Act of 1962 had expired at the end of 1967). Moreover, both inside and outside of government it was thought to be imperative that nontariff barriers had to be subjected to the discipline of international rules. But there seemed little prospect, however, for obtaining the special authority required from a distrustful Congress, and, indeed, an attempt at trade legislation failed in 1971.

In July 1971, the Williams Commission, a commission on international trade and investment policy, reported "a growing concern in this country that the United States has not received full value for the tariff concessions made over the years because foreign countries have found other ways, besides tariffs, of impeding our access to their markets."[2] Slowly, a consensus began to evolve within the U.S. government that a new round of trade negotiations should be held. President Richard Nixon bluntly brought the issue to the forefront internationally and to the attention of U.S. trading partners with his actions of August 15, 1971—most particularly the closing of the gold window and the imposition of a surcharge on imports. These developments led to the Tokyo Declaration of September 1973, which called for a new international round of trade negotiations, to be known as the Tokyo Round, under the auspices of GATT. These multilateral negotiations would be aimed not only at further tariff reductions but also at nontariff barriers.

Although it was widely agreed that a new and ambitious round of negotiations on nontariff barriers to trade should be held, the problem of U.S. negotiating authority remained, with the executive branch needing to secure explicit and credible authority from Congress to engage in international negotiations on such practices. Work began within the executive branch on the design of a trade bill. The legislation that finally emerged contained a number of major executive branch initiatives, including a proposal to grant most-favored-nation (MFN) status to the Soviet Union. In many ways, however, the most significant provision of the 1973 Nixon trade bill was in the important and difficult area of nontariff barriers. In addition to seeking advance tariff-cutting authority, the executive branch sought a negotiating mandate on nontariff barriers and advance presidential authority to implement them in U.S. law, unless either the House or the Senate voted to override the president's proposal within a period of 90 days after notification—a one-House veto.

This unprecedented delegation of congressional authority to the president was approved by the House of Representatives and sent to the Senate in essentially the form it had been submitted to Congress by the executive branch. In the Senate, however, the administration's proposal predictably ran into strong opposition. Still angry about the Kennedy Round experience and believing that U.S. negotiators had turned deaf ears to congressional admonitions and private sector advice regarding the negotiations, key members of the Senate Finance Committee balked when briefed by committee staff on the provisions of the House bill.

During the 20 months of congressional consideration following submission of the trade bill much had occurred. In October 1973 the Organization of Petroleum Exporting Countries (OPEC) oil embargo darkened the world and, shortly thereafter, had plunged the world economy into a deep recession. In addition, President Nixon had resigned from office. His successor, President Gerald R. Ford, had renewed the previous administration's request for enactment of trade legislation, partly in an effort to head off spreading global protectionism. The legislation was being considered in the Senate in an entirely different political climate. Not surprisingly, given the passage of time and changed circumstances, the bill underwent major revision in the Senate Finance Committee.

In the judgment of the Finance Committee staff, the House bill proposed "the largest delegation of trade negotiating authority to the executive in history." In the view of Senator Herman Talmadge (D-Ga.), the House bill, with its legislative veto procedure, would establish

procedures that were inconsistent with the traditional roles of the executive branch and Congress. "That's not the way our laws are made," Talmadge told Finance Committee staff persons. Instead he proposed that the president simply submit nontariff barrier trade agreements to Congress to be considered in the conventional manner. Executive branch officials took the position that such a procedure would leave them without credibility at the negotiating table.

Senator Talmadge asked the Senate Finance Committee staff to search for a compromise. The Finance Committee staff proposed that the House and Senate agree to amend their rules to provide for a mandatory up or down vote by Congress, without amendments, within a statutory deadline. The legislation would direct the president to negotiate on nontariff barriers to trade and to submit his agreements, and whatever implementing legislation was necessary or appropriate, to Congress for consideration under the new procedures. The procedures would pass muster under the Constitution because both House and Senate would act. The international agreements would not "enter into force for the United States" unless Congress approved.

The bill, as amended by the Senate, elaborated upon the provisions that the House had added to increase the participation of the public, Congress, and various governmental agencies in the negotiations. Extensive prenegotiation hearings and advice would be required. In addition, the legislation established an elaborate, private sector advisory system to include representatives of labor, industry, agriculture, and consumers to provide policy input and technical advice during the negotiations. These private sector advisory committees would be required to issue official reports during and at the conclusion of the negotiations. Private sector advisers were to be kept intimately informed during the course of the negotiations and, to the extent that the executive branch deviated from their advice, the president was required to inform Congress as to its reasons.

The Finance Committee also proposed that the capability of Congress to monitor U.S. trade policy during the negotiations be strengthened in the legislation. In addition to the procedures established for the approval of the nontariff barrier agreements, five members of the Senate and five members of the House were to be designated as official advisers to the U.S. trade delegation. Staff members of both the House Ways and Means Committee and the Senate Finance Committee would be given access to classified U.S. materials and kept abreast of the negotiations on a detailed and ongoing basis.

As amended by the Senate, close coordination and consultation on legislation formed an iron triangle between executive branch negotiators, Congress, and the private sector, with three types of advisory committees being established. The first would be an overall policy level advisory committee for trade negotiations to be composed of senior representatives of government, labor, industry, agriculture, service industries, consumer interests, and the general public. Second, by amending the House bill, the Senate gave the president authority to establish policy advisory committees for industry, labor, and agriculture to provide general policy advice to U.S. negotiators during the negotiations. Third, the Senate legislation provided that the president should establish such industry, labor, service, or agriculture sector advisory committees as he thought necessary for technical advice on tariff and nontariff barrier negotiations. Qualified experts from particular industries were to advise trade negotiators from the point of view of their personal expertise and not from the point of view of their particular employers. The advice they gave the trade negotiators would also be shared with Congress.

The Senate amendments were negotiated in conference with the House and sent to President Ford as the Trade Act of 1974. This legislation provided the basic charter for U.S. participation in the Tokyo Round and established the unique system under which the negotiated trade agreements would be approved and implemented into U.S. law.[3] Congress, acting in the light of its experience in prior negotiations, renegotiated with the executive branch the terms of their partnership for the conduct of U.S. trade policy. The result was a system of mandatory consultation and coordination so stringent that the executive could ignore it only at peril of losing all in a single vote.

The Negotiating Process

Although the Tokyo Round began formally with the Tokyo Declaration of September 1973, the negotiations did not commence in Geneva until Congress had passed the Trade Act of 1974 in January 1975. Two and one half years passed with few significant occurrences, however, largely because of global recession and the uncertain U.S. presidency. During this period the participating governments occupied themselves by preparing the technical basis for the negotiations. The Trade Negotiating Committee in charge of the Tokyo Round established the following seven negotiating groups to deal with specific subjects:

1. Tariffs Group
2. Sectors Group—intended to permit negotiations of all issues affecting specific industrial sectors (e.g., civil aircraft)
3. Agriculture Group
4. Nontariff Measures Group—including five sub-groups dealing with the following issues: (a) government procurement policies (b) quantitative restrictions and import licensing (c) customs valuation (d) subsidies and countervailing duties (e) product standards
5. Safeguards Group—in charge of international rules relating to countries imposing temporary import restraint to prevent injury to a domestic industry caused by increased imports
6. Tropical Products Group—intended to permit concessions to the developing countries from the developed countries
7. Framework Improvement Group—intended to permit discussion of proposed changes in GATT rules, in particular, GATT rules governing dispute settlement.

It was not, however, until early 1977 that the negotiations began to show signs of life. In March 1977, President Jimmy Carter appointed Robert S. Strauss, the former chairman of the Democratic Party, as his special trade representative (STR), an appointment that apparently was made after consultation with key members of Congress and that was well received by the private sector. A lawyer and businessman, Strauss knew little about international trade, but he had a fine sense for domestic politics and Congress.

President Carter, early in his presidency, signaled his commitment to pursuing the MTN to a successful conclusion. At the Downing Street Summit, President Carter and Japanese Prime Minister Takeo Fukuda strongly supported continuing the trade negotiations in the face of recalcitrant European heads of state, particularly French President Giscard d'Estaing. Gradually the international negotiating process began to gather momentum.

By July 1977, the United States and The European Communities (EC) were able to agree on a timetable to complete the preparatory phase of the MTN. The negotiations of the Tokyo Round—in reality a hundred or more ongoing negotiations among a hundred or more countries—had begun in earnest and were moving ahead under the relentless prodding of Ambassador Strauss.

The executive branch and Congress had acted early in 1975 to implement the private sector advice and consultative provisions contained in the Trade Act of 1974. Periodic briefings of members of Congress and committee staffs by the STR, his deputies, and staff and regular access by the congressional committees to MTN documents had commenced shortly thereafter.

Congressional staff began traveling to Geneva in 1975 and preparing regular reports of the negotiations for senators and representatives. Senators and their staffs attended multilateral and bilateral negotiating sessions, met with officials of foreign delegations and of the GATT

Secretariat, and held regular consultations with STR officials in both Washington and Geneva.

These briefings of private sector advisers, members of Congress, and committee staff were anything but perfunctory. Private sector and congressional advisers insisted on being kept fully informed on the negotiations. Moreover, the government actively sought the views of the private sector advisers, and more often than not, incorporated their advice into U.S. negotiating positions. Senior STR officials often went from negotiating sessions with foreign governments to negotiating sessions with private sector advisers.

A negotiator on the sensitive and difficult Code on Subsidies and Countervailing Duties, for example, would spend two weeks in Europe negotiating with officials of The European Community. He would then return to Washington and participate in a round of interagency meetings and in the private sector advisory system where he was likely to run a difficult question and answer gauntlet. He had to read the draft Industrial Sector Advisory Report (ISAR) of each Industrial Sector Advisory Committee (ISAC) with whom he would be meeting and understand their particular objectives and concerns in the field of subsidies and countervailing duties. This process created a high degree of communication and consultation between Congress, its key trade committees and their staffs, the many private sector advisory committees, and officials of the special trade representative's office.

The office of the STR, headed by Ambassador Strauss and his principal deputies—Alan Wolf in Washington and Alonzo McDonald in Geneva—became a domestic and international clearinghouse in which tens of thousands of pieces of data—economic and political—concerning foreign and domestic interests could be processed and arranged. Transcripts of presentations by STR officials were available in private reading rooms at the Department of Commerce and in the special trade representative's office for all persons having appropriate security clearances. Ambassador Strauss was in daily contact with members of Congress and key private sector advisers, as well as with his negotiating counterparts. On occasion, foreign trade officials had direct contact with members of Congress and private sector advisers. These meetings were carefully monitored and coordinated with the STR officials.

Both domestically and abroad, Ambassador Strauss was perceived as having the confidence of both the president and Congress. He frequently made it clear that his effective function in office required serving two masters. There was no doubt that the STR spoke with the full authority of both the president and Congress.

Within the executive branch, the special trade representative enjoyed primacy in all matters relating to the trade policy of the United States.

Ambassador Strauss approached the negotiations with the perspective of a domestic politician, recognizing that there must be something in the package for everyone but that no single interest could have its way entirely. This was applied both internationally and domestically.

Internationally, Ambassador Strauss sought to convince participating countries that the negotiations would contain positive benefits to their economies and would present a balanced package that each negotiator could bring home for domestic approval and implementation. At the same time, in terms of domestic politics, Ambassador Strauss selected a combination of concessions to be given and gained that were not only in the national economic interest, but also struck an appropriate political balance between competing domestic interests—whether they were regional, agricultural or industrial, multinational or domestic exporter or importer, consumer or producer. For example, it might become necessary to trade away long-standing and important import protection for the domestic bourbon industry in order to gain valuable agricultural trade concessions from The European Communities. The bourbon concession could have negative consequences in such bourbon producing states as Kentucky, but, if the trade concessions gained at the expense of the bourbon industry included tariff concessions on tobacco, then the political damage in Kentucky would be offset or even overcome.

By the fall of 1978, the full scope of the Tokyo Round was apparent. There were hundreds of bilateral "request and offer" agreements on nontariff barriers between participating governments as well as tariff reductions as significant as those of the Kennedy Round on thousands of industrial and agricultural products. In addition there were the multilateral codes of conduct on the major nontariff barriers, the principal ones of which were:

- The Subsidies-Countervailing Duty Code—regulating the use of subsidies and the responses governments may take either unilaterally or through multilateral dispute settlement
- The Antidumping Code—revising and updating the code that regulates the actions governments may take in response to dumped imports
- The Government Procurement Code—liberalizing government procurement and eliminating discrimination
- The Customs Valuation Code—harmonizing national customs valuation laws and practices
- The Licensing Code—regulating governmental import licensing practices

- Civil Aircraft Code—a sectoral agreement eliminating duties on civil aircraft and parts and applying to a range of nontariff barriers on aircraft
- Framework Arrangements—relating to dispute settlement and other general GATT matters
- Safeguards Code[4]—relating to the measures governments may take to provide temporary import relief to industries seriously injured by imports

Concluding and Implementing the Tokyo Round

Winding down the negotiations in January of 1979, President Carter followed the procedures set forth in the Trade Act of 1974 and notified Congress of his intention to enter into the Tokyo Round trade agreements. This notice set in motion the intricate, bank-vault-time-lock procedures established under the Trade Act of 1974. Shortly thereafter, the STR office began sending detailed proposals for approving and implementing the trade agreements and for making other "appropriate" changes in the U.S. law to the Senate Finance Committee, and the House Ways and Means Committee.

Under an agreement initiated by the Senate Finance Committee staff, the administration had agreed to consult and work closely with Congress in drafting the implementing bill before it was submitted to Congress by the president and therefore became unamendable. The proposals that the administration sent to the House and Senate committees were contained in detailed papers setting forth the method for setting international obligations of the United States into U.S. domestic law. The staffs of both committees briefed their members in detail on each of the administration's proposals, and both committees held public hearings in February and April 1979. The administration's plans for implementing the Tokyo Round were shared with private sector advisers.

The Senate Finance Committee and the Subcommittee on Trade of the House Ways and Means Committee began holding closed mark-up sessions on the implementing legislation in March 1979, at which time the Senate Committees on Agriculture and on Commerce also met to consider the aspects that fell within their respective jurisdictions. A careful process of presentation and discussion was designed to identify and defuse any last minute political problems that might arise.

Only one serious political problem arose. The code on government procurement as originally negotiated would have opened federal government procurement to competitive bidding and eliminated the preference toward minority-owned businesses. When members of the House

expressed opposition, Ambassador Strauss immediately ordered negotiators in Geneva to make readjustments.[5]

Committee sessions continued throughout the spring. On April 12, the United States concluded a *procés-verbal* with its trading partners in Geneva. In early May, the Committees on Finance and on Ways and Means met in a "nonconference" to reconcile their differences.

During this domestic implementation process, private sector groups engaged in heavy lobbying of congressional committees and the executive branch officials, as when STR officials met regularly with representatives of domestic industries. These meetings produced a number of proposed amendments to existing law, aimed at strengthening the unfair trade practice statutes, in particular, the antidumping and countervailing duty statutes. Although these amendments were not, strictly speaking, necessary for the implementation of the Tokyo Round agreements, they fell into the category of "appropriate" changes provided for under the Trade Act of 1974. The amendments did not contravene the international agreements but made mainly procedural changes to appease the domestic interests of those who had long been critical of import relief statutes. The definition of material injury, which would be incorporated for the first time into the U.S. countervailing duty statute, was a particularly difficult issue.

As a practical matter, the negotiating sessions with domestic industries added a new and strong source of political support for the passage of the Trade Agreements Act. Whereas importers and exporters—who were benefited by trade liberalization—had long supported the Tokyo Round process, such domestic industries as steel previously had hoped to gain little. As these industries saw an opportunity to improve the operation of the unfair trade practice statutes, the Trade Agreements Act came to have the support of both the weak and the strong in international competition.

The actual text of the Trade Agreements Act was drafted by the Senate and House legislative counsels in sessions attended by administration officials and committee staff persons.[6] The drafting group produced a comprehensive committee print of the bill entitled "Office of the Special Representative for Trade Negotiations Draft Proposal." This draft was circulated among executive branch agencies for intensive review, which resulted in very few changes in the actual legislation. Thirty-three members of Congress wrote President Carter warning him against making any changes in the implementing legislation. Another congressional letter, signed by fewer, urged that he make whatever changes were necessary to maintain a liberal trade policy.

The bill that ultimately was submitted to the Congress by President Carter on June 19 contained minor changes from the bill that Congress and the executive branch had agreed upon. It was immediately introduced in both the House and Senate and 34 days later was adopted by both bodies by overwhelming margins. The speed of the U.S. implementation process and the precision with which it faithfully implemented the international agreements astonished U.S. trading partners, particularly officials of The European Communities. Passage of the legislation was front-page news in all the capitals of the world but one: Washington, D.C. The passage of the Trade Agreements Act of 1979, probably the most significant trade legislation in U.S. history, received only slight mention in the back pages of the *Washington Post*.[7] The event had become an anticlimax to the process.

Notes

1. 3 *International Lawyer* 464 (1969).
2. Commission on International Trade and Investment Policy, *United States International Economic Policy in an Interdependent World*, A Report to the President (Washington, D.C.: USGPO July 1971), 22.
3. It is interesting to speculate on what would have been the fate of the Tokyo Round agreements had the Congress enacted the House version containing a one-House legislative veto, in light of the Supreme Court's decision in *Immigration and Naturalization Service v. Chadha* et al., 103 Sup. Ct. 2764 (1983); see also, *Consumers Energy Council of America v. Federal Energy Regulatory Commission (FERC)*, 673 F.2d 425 (D.C. Cir. 1982), and *Consumers Union of the United States, Inc. v. Federal Trade Commission (FTC)*, 691 F.2d 575 (D.C. Cir. 1982), aff'd per curiam sub nom. *Process Gas Consumers Group v. Consumers Energy Council of America*, 103 Sup. Ct. 3556 (1983).
4. Ultimately, the negotiation of the Safeguards Code could not be concluded during the Tokyo Round, and the code fell out of the final legislative package.
5. The readjustment was that the National Aeronautics and Space Administration procurement was made subject to the provisions of the code and therefore made available to foreign bidders.
6. The same procedure is traditionally followed in the drafting of amendments to the Internal Revenue Code.
7. In contrast, the conclusion in 1967 of the Kennedy Round of trade negotiations—basically a tariff-cutting exercise—had been the occasion for an eight-column banner headline in the *New York Times*. Annoyed by the lack of press coverage of the enactment of the Trade Agreements Act of 1979, President Carter wrote an unpublished letter of complaint to the editor of the *Washington Post*.

Commentary: On Trade

Robert S. Strauss

I offer a somewhat different perspective on the Trade Act of 1979 than does Richard Rivers. While his chapter is dispassionate and objective, rightly focusing on structure and organization, I will examine the process—how the negotiations were carried on during my term as special trade representative (STR) from 1977–1979. The manner in which the structure was used to achieve a successful outcome of the multilateral trade negotiations was as important as the nature of the structure, and the operation was as much political as technical.

Knowing very little about the intricate trade matters that would be subject to negotiation, I was uncertain whether or not to accept President Carter's offer of the STR position. Nevertheless, the special trade representative was one of the few positions in the new administration in which I had any interest, because it offered the opportunity to conduct negotiations, it was free of bureaucracy, and it was outside of the departmental chain of command.

I was convinced to accept the position when Senator Russell Long (D-La.), chairman of the Senate Finance Committee—whom President Carter had informed of my hesitancy—called me to say both he and Senator Robert Dole (R-Kans.), ranking Republican member of the Finance Committee, agreed that I was in their view the person most likely to engineer a successful trade agreement that Congress would accept. Senator Long said that he and Senator Dole strongly urged me to accept the position.

Assured of the bipartisan backing and support of the Senate Finance Committee, I told President Carter of my willingness to become the STR. The Senate Finance Committee had a vested interest in the negotiations process, and its seal of approval endowed the STR with a certain amount of leverage. I had enough experience to know how to use this leverage to good advantage and to know when to and when not to use it. The political muscle, visibility, and credibility that only Congress could provide was more important than that given by the White House.

Although congressional support was essential to the STR, the relative stature of the position within the administration was also critical. The

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HISTORICAL AND STATUTORY NOTES

1994 Amendments

Subsec. (a). Pub.L. 103-465, § 261(d)(1)(A)(iii), struck out "or section 1303(e) of this title," after "2473(a) or (b),".

1990 Amendment

Subsec. (b). Pub.L. 101-382, struck out provisions referring to section 2437(c)(3) of this title.

Effective Date of 1994 Amendments

Amendment by section 261(d)(1)(A)(iii) of Pub.L. 103-465 effective Jan. 1, 1995, see section 261(d)(2) of Pub.L. 103-465, set out as a note under section 1315 of this title.

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.

Transfer of Functions

Any reference in any provision of law enacted before Jan. 4, 1995, to a function, duty, or authority of the Clerk of the House of Representatives treated as referring, with respect to that function, duty, or authority, to the officer of the House of Representatives exercising that function, duty, or authority, as determined by the Committee on House Oversight of the House of Representatives, see section 2(1) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

Legislative History

For legislative history and purpose of Pub.L. 101-382, see 1990 U.S. Code Cong. and Adm. News, p. 928. See, also, Pub.L. 103-465, 1994 U.S. Code Cong. and Adm. News, p. 3773.

CROSS REFERENCES

Review of participation in the WTO and Congressional disapproval, see 19 USCA § 3535.

PART 6—CONGRESSIONAL LIAISON AND REPORTS

§ 2211. Congressional advisers for trade policy and negotiations

(a) Selection

(1) At the beginning of each regular session of Congress, the Speaker of the House of Representatives, upon the recommendation of the chairman of the Committee on Ways and Means, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, and the President pro tempore of the Senate, upon the recommendation of the chairman of the Committee on Finance, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, who shall be designated congressional advisers on trade policy and negotiations. They shall provide advice on the development of trade policy and priorities for the implementation thereof. They shall also be accredited by the United States Trade Representative on behalf of the President as official advisers to the United States delegations to international conferences, meetings, and negotiating sessions relating to trade agreements.

(2)(A) In addition to the advisers designated under paragraph (1) from the Committee on Ways and Means and the Committee on Finance—

(i) the Speaker of the House may select additional members of the House, for designation as congressional advisers regarding specific trade policy matters or negotiations, from any other committee of the House or joint committee of Congress that has jurisdiction over legislation likely to be affected by such matters or negotiations; and

(ii) the President pro tempore of the Senate may select additional members of the Senate, for designation as congressional advisers regarding specific trade policy matters or negotiations, from any other committee of the Senate or joint committee of Congress that has jurisdiction over legislation likely to be affected by such matters or negotiations.

Members of the House and Senate selected as congressional advisers under this subparagraph shall be accredited by the United States Trade Representative.

(B) Before designating any member under subparagraph (A), the Speaker or the President pro tempore shall consult with—

(i) the chairman and ranking member of the Committee on Ways and Means or the Committee on Finance, as appropriate; and

(ii) the chairman and ranking minority member of the committee from which the member will be selected.

(C) Not more than 3 members (not more than 2 of whom are members of the same political party) may be selected under this paragraph as advisers from any committee of Congress.

(b) Briefing

(1) The United States Trade Representative shall keep each official adviser designated under subsection (a)(1) of this section currently informed on matters affecting the trade policy of the United States and, with respect to possible agreements, negotiating objectives, the status of negotiations in progress, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out any trade agreement or any requirement of, amendment to, or recommendation under, such agreement.

(2) The United States Trade Representative shall keep each official adviser designated under subsection (a)(2) of this section currently informed regarding the trade policy matters and negotiations with respect to which the adviser is designated.

(3)(A) The chairmen of the Committee on Ways and Means and the Committee on Finance may designate members (in addition to the official advisers under subsection (a)(1) of this section) and staff members of their respective committees who shall have access to the information provided to official advisers under paragraph (1).

(B) The Chairman of any committee of the House or Senate or any joint committee of Congress from which official advisers are selected under subsection (a)(2) of this section may designate other members of such committee, and staff members of such committee, who shall have access to the information provided to official advisers under paragraph (2).

(c) Committee consultation

The United States Trade Representative shall consult on a continuing basis with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the other appropriate committees of the House and Senate on the development, implementation, and administration of overall trade policy of the United States. Such consultations shall include, but are not limited to, the following elements of such policy:

(1) The principal multilateral and bilateral negotiating objectives and the progress being made toward their achievement.

(2) The implementation, administration, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

(3) The actions taken, and proposed to be taken, under the trade laws of the United States and the effectiveness, or anticipated effectiveness, of such actions in achieving trade policy objectives.

(4) The important developments and issues in other areas of trade for which there must be developed proper policy response.

When necessary, meetings shall be held with each Committee in executive session to review matters under negotiation.

did this ever happen?

(As amended Pub.L. 100–418, Title I, § 1632, Aug. 23, 1988, 102 Stat. 1269.)

HISTORICAL AND STATUTORY NOTES

1988 Amendment

Pub.L. 100–418, § 1632, substituted provisions relating to Congressional advisers for trade policy and negotiations for similar provisions which related to Congressional delegates to negotiations, expanded provisions relating to briefing of official advisers and added provisions requiring consultation with Congressional committees.

Legislative History

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

§ 2212. Transmission of agreements to Congress

(a) Submission of copy and reasons

As soon as practicable after a trade agreement entered into under section 2133 or 2134 of this title or under section 2902 of this title has entered into force with respect to the United States, the President shall, if he has not previously done so, transmit a copy of such trade agreement to each House of the Congress together with a statement, in the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(b) For purposes of sections 2253(c), 2437(c)(2), and 2437(c)(3) of this title, the 90-day period referred to in such sections shall be computed by excluding—

(1) the days on which either House is not in session because of an adjournemnt 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 is not in session.

Pub.L. 93–618, Title I, § 154, Jan. 3, 1975, 88 Stat. 2008; Pub.L. 96–39, Title IX, § 902(a)(2), July 26, 1979, 93 Stat. 300.

Historical Note

1979 Amendment. Subsec. (a). Pub.L. 96–39 struck out reference to section 2412(a) of this title.

Subsec. (b). Pub.L. 96–39 struck out reference to section 2412(b) of this title.

Effective Date of 1979 Amendment. Amendment by Pub.L. 96–39 effective July 26, 1979, see section 903 of Pub.L. 96–39, set out as a note under section 2411 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–618, see 1974 U.S.Code Cong. and Adm.News, p. 7186. See, also, Pub.L. 96–39, 1979 U.S. Code Cong. and Adm.News, p. 381.

Library References

United States ⚖18.

C.J.S. United States §§ 21, 23.

PART 6—CONGRESSIONAL LIAISON AND REPORTS

§ 2211. Congressional delegates to negotiations

(a) At the beginning of each regular session of Congress, the Speaker of the House of Representatives, upon the recommendation of the chairman of the Committee on Ways and Means, shall select five members (not more than three of whom are members of the same political party) of such committee, and the President pro tempore of the Senate, upon the recommendation of the chairman of the Committee on Finance, shall select five members (not more than three of whom are members of the same political party) of such committee, who shall be accredited by the President as official advisers to the United States delegations to international conferences, meetings, and negotiations sessions relating to trade agreements.

(b)(1) The United States Trade Representative shall keep each official adviser currently informed on United States negotiating objectives, the status of negotiations in progress, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out any trade agreement or any requirement of, amendment to, or recommendation under, such agreement.

(2) The chairmen of the Committee on Ways and Means and the Committee on Finance may designate members (in addition to the official advisors under subsection (a) of this section) and staff members of their respective committees who shall have access to the information provided to official advisers under paragraph (1).

Pub.L. 93–618, Title I, § 161, Jan. 3, 1975, 88 Stat. 2008; Pub.L. 96–39, § 3(e), July 26, 1979, 93 Stat. 150; 1979 Reorg.Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.

Historical Note

1979 Amendment. Subsec. (b)(1). Pub. L. 96–39 substituted "trade agreement or any requirement of, amendment to, or recommendation under, such agreement" for "trade agreement".

Change of Name. "United States Trade Representative" was substituted for "Special Representative for Trade Negotiations" in subsec. (b)(1), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1–107(a) of Ex. Ord.No.12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–618, see 1974 U.S.Code Cong. and Adm.News, p. 7186. See, also, Pub.L. 96–39, 1979 U.S. Code Cong. and Adm.News, p. 381.

Library References

United States ⚖23(5). C.J.S. United States § 26.

§ 2212. Transmission of agreements to Congress

(a) As soon as practicable after a trade agreement entered into under part 1 of this subchapter or section 2133 or 2134 of this title has entered into force with respect to the United States, the President shall, if he has not previously done so, transmit a copy of such trade agreement to each House of the Congress together with a statement, in the light of the advice of the International Trade Commission under section 2151(b) of this title, if any, and of other relevant considerations, of his reasons for entering into the agreement.

(b) The President shall transmit to each Member of the Congress a summary of the information required to be transmitted to each House under subsection (a) of this section. For purposes of this subsection, the term "Member" includes any Delegate or Resident Commissioner.

Pub.L. 93–618, Title I, § 162, Jan. 3, 1975, 88 Stat. 2008.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 93–618, see 1974 U.S.Code Cong. and Adm.News, p. 7186.

Library References

United States ⚖26. C.J.S. United States §§ 27, 28.

what is strategy for add-ons?

n "bona fide motor-vehicle manufacturer"
ı who, upon application to the Secretary of
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motor vehicles per 40-hour week. The Sec-
ıerce shall maintain, and publish from time
'ederal Register, a list of the names and ad-
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of motor vehicles, such Canadian article or
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Daschle
- consultation mtgs
- still need wk
- respond to request
- 1988 Act proviso on labor
- unilateral - Adm trade agenda
- ILO → inspection wk of 13th Oct recess

TODO
- POTUS speech
- Press Release - nosell
- Labor letter - Dems
- Redraft Sec.: ~~[illegible]~~ late Thursday
- Ways + Means Whip Group
- Roth
- Pres. mtgs.

- Memorandum of Understanding
- How to formally incorporate Members

Chapter 14: ORGANIZATION OF TRADE POLICY FUNCTIONS

A. CONGRESS

1. Congressional Advisers

Section 161 of the Trade Act of 1974, as amended

[19 U.S.C. 2211; P.L. 93–618, as amended by P.L. 96–39 and P.L. 100–418]

SEC. 161. CONGRESSIONAL ADVISERS FOR TRADE POLICY AND NEGOTIATIONS.

(a) SELECTION.—

(1) At the beginning of each regular session of Congress, the Speaker of the House of Representatives, upon the recommendation of the chairman of the Committee on Ways and Means, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, and the President pro tempore of the Senate, upon the recommendation of the chairman of the Committee on Finance, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, who shall be designated congressional advisers on trade policy and negotiations. They shall provide advice on the development of trade policy and priorities for the implementation thereof. They shall also be accredited by the United States Trade Representative on behalf of the President as official advisers to the United States delegations to international conferences, meetings, and negotiating sessions relating to trade agreements.

(2)(A) In addition to the advisers designated under paragraph (1) from the Committee on Ways and Means and the Committee on Finance—

(i) the Speaker of the House may select additional members of the House, for designation as congressional advisers regarding specific trade policy matters or negotiations, from any other committee of the House or joint committee of Congress that has jurisdiction over legislation likely to be affected by such matters or negotiations; and

(ii) the President pro tempore of the Senate may select additional members of the Senate, for designation as congressional advisers regarding specific trade policy matters or negotiations, from any other committee of the Senate or joint committee of Congress that has jurisdiction over legislation likely to be affected by such matters or negotiations.

Members of the House and Senate selected as congressional advisers under this subparagraph shall be accredited by the United States Trade Representative.

Sec. 108 Report
Ways + Means Hearing
Senate Finance Reps

(B) Before designating any member under subparagraph (A), the Speaker or the President pro tempore shall consult with—

(i) the chairman and ranking member of the Committee on Ways and Means or the Committee on Finance, as appropriate; and

(ii) the chairman and ranking minority member of the committee from which the member will be selected.

(C) Not more than 3 members (not more than 2 of whom are members of the same political party) may be selected under this paragraph as advisers from any committee of Congress.

(b) BRIEFING.—

(1) The United States Trade Representative shall keep each official adviser designated under subsection (a)(1) currently informed on matters affecting the trade policy of the United States and, with respect to possible agreements, negotiating objectives, the status of negotiations in progress, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out any trade agreement or any requirement of, amendment to, or recommendation under, such agreement.

(2) The United States Trade Representative shall keep each official adviser designated under subsection (a)(2) currently informed regarding the trade policy matters and negotiations with respect to which the adviser is designated.

(3)(A) The chairmen of the Committee on Ways and Means and the Committee on Finance may designate members (in addition to the official advisers under subsection (a)(1)) and staff members of their respective committees who shall have access to the information provided to official advisers under paragraph (1).

(B) The Chairman of any committee of the House or Senate or any joint committee of Congress from which official advisers are selected under subsection (a)(2) may designate other members of such committee, and staff members of such committee, who shall have access to the information provided to official advisers under paragraph (2).

(c) COMMITTEE CONSULTATION.—The United States Trade Representative shall consult on a continuing basis with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the other appropriate committees of the House and Senate on the development, implementation, and administration of overall trade policy of the United States. Such consultations shall include, but are not limited to, the following elements of such policy:

(1) The principal multilateral and bilateral negotiating objectives and the progress being made toward their achievement.

(2) The implementation, administration, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

(3) The actions taken, and proposed to be taken, under the trade laws of the United States and the effectiveness, or anticipated effectiveness, of such actions in achieving trade policy objectives.

(4) The important developments and issues in other areas of trade for which there must be developed proper policy response.

When necessary, meetings shall be held with each Committee in executive session to review matters under negotiation.

2. Reports to Congress

Sections 162 and 163 of the Trade Act of 1974, as amended

[19 U.S.C. 2212 and 2213; P.L. 93–618, as amended by P.L. 100–418 and P.L. 100–647]

SEC. 162. TRANSMISSION OF AGREEMENTS TO CONGRESS.

(a) As soon as practicable, after a trade agreement entered into under section 123 or 124 or under section 1102 of the Omnibus Trade and Competitiveness Act of 1988 has entered into force with respect to the United States, the President shall, if he has not previously done so, transmit a copy of such trade agreement to each House of the Congress together with a statement, in the light of the advice of the International Trade Commission under section 131(b), if any, and of other relevent considerations, of his reasons for entering into the agreement.

(b) The President shall transmit to each Member of the Congress a summary of the information required to be transmitted to each House under subsection (a). For purposes of this subsection, the term "Member" includes any Delegate or Resident Commissioner.

SEC. 163. REPORTS.

(a) ANNUAL REPORT ON TRADE AGREEMENTS PROGRAM AND NATIONAL TRADE POLICY AGENDA.—

(1) The President shall submit to the Congress during each calendar year (but not later than March 1 of that year) a report on—

(A) the operation of the trade agreements program, and the provision of import relief and adjustment assistance to workers and firms, under this Act during the preceding calendar year; and

(B) the national trade policy agenda for the year in which the report is submitted.

(2) The report shall include, with respect to the matters referred to in paragraph (1)(A), information regarding—

(A) new trade negotiations;

(B) changes made in duties and nontariff barriers and other distortions of trade of the United States;

(C) reciprocal concessions obtained;

(D) changes in trade agreements (including the incorporation therein of actions taken for import relief and compensation provided therefor);

(E) the extension or withdrawal of nondiscriminatory treatment by the United States with respect to the products of foreign countries;

(F) the extension, modification, withdrawal, suspension, or limitation of preferential treatment to exports of developing countries;

Tony

FAST TRACK: HISTORICAL BACKGROUND

Constitutional Authority

- The Constitution gives Congress exclusive authority to set tariffs and enact other legislation governing international trade.

- The President negotiates international agreements under his own Constitutional authority.

- If the President negotiates a trade agreement that calls for a change in tariffs or in other domestic laws, the President must submit the trade agreement to the Congress -- or have Congress' advance approval of such changes.

Tariff Proclamation Authority

- Tariffs were the major source of revenue for the federal government for well over 100 years. Congress enacted a number of across-the-board tariff changes -- the last of which was the increases of the 1930 Smoot-Hawley Tariff Act.

- During the Roosevelt Administration, Congress began moving away from protectionism four years later.

- Congress gave the President the authority in 1934 to "proclaim" up to 50 percent reductions in U.S. tariffs in return for "reciprocal" commitments from other countries -- without further action by Congress. This was the original "fast track" -- although it was not called that then.

- Proclamation authority was to last for three years, but was renewed over the following six decades.

  -- By 1945, Cordell Hull had negotiated tariff reductions with 27 countries -- lowering U.S. tariffs by an average 44% on covered products.

  -- The President used his proclamation authority to carry out U.S. tariff commitments under the first world-wide trade agreement, GATT, in 1947.

  -- The President used his 50 percent tariff cutting powers again to implement U.S. tariff commitments under several subsequent GATT negotiating rounds -- including the "Kennedy Round" cuts, completed in 1967.

Non-tariff Barriers

- Once the early GATT rounds were completed, tariffs had dropped in the United States and other developed countries to the point where other -- non-tariff -- trade barriers became equally or more important. These included product design standards and customs rules designed to exclude foreign goods. and other barriers to market access

- Although the President had authority to lower tariffs further, he did not have the power to change federal law in order to put "non-tariff" agreements into effect.

Genesis of Fast Track

7 - Congress rejected two important agreements concluded by the Johnson Administration to close the Kennedy Round (a GATT "dumping" code and a change in U.S. tariff appraisal methods) in 1967. The rejection was a major embarrassment for the United States, which had sought the two agreements.

- The Nixon Administration recognized that the United States could not negotiate and carry out future market-opening deals unless the President and the Congress worked together. President Nixon asked the Congress for proclamation authority to make changes in U.S. law necessary to implement "non-tariff barrier" agreements -- subject to a possible Congressional veto.

- The House went along, but the Finance Committee objected -- Senator Talmadge, in particular, wanted to retain the power to approve trade agreements, not just veto their implementation.

- The compromise was a "fast track" procedure, inserted in the 1974 trade act, for obtaining Congressional approval on an "up or down" vote within a limited period. (The idea was drawn from a procedure common to budget resolutions.)

- The procedures required the Administration to consult closely with the Congress both before and during negotiations. They were crafted with the next GATT negotiating round -- the Tokyo Round -- in mind.

Agreement on Drafting Implementing Bills

- Towards the close of the Tokyo Round, the Ways and Means and Finance committees -- which had principal jurisdiction over trade bills -- insisted on further guarantees from the Carter Administration. They insisted that the implementing legislation for the Round would be drawn up collaboratively with the Congress, in advance of actually submitting a bill, through pre-hearings and pre-markups.

- That format was used repeatedly thereafter. The pre-hearing and -markup procedure (l~~argely recreate~~s) the legislative process in advance of the bill's submission.
mirrors regular

- o Congress overwhelmingly approved the Tokyo Round legislation, together with a partial extension of fast track through 1988.

Inclusion of FTA Negotiations

- o In 1984, Congress wrote a specific three-year fast-track bill for free-trade agreements with individual countries -- ~~which~~ the Reagan Administration used to negotiate and obtain Congressional approval for FTAs with Israel (1985) and Canada (1988).

The Uruguay Round and NAFTA

- o In 1988, Congress enacted the first "omnibus" trade act since Smoot-Hawley, which it used to extend fast-track for both FTA's and the GATT "Uruguay Round" until March 1991.

- o The Uruguay Round negotiations broke down in Brussels in December 1990, by which time the NAFTA negotiations had gotten under way.

- o The 1988 statute allowed the Administration to request a two-year extension of fast track -- unless either House disapproved. The Bush Administration waged a fierce and successful fight to overcome opposition to the extension.

- o During the debate, the Bush Administration attempted to address questions that had been raised by spelling out in advance its NAFTA negotiating objectives and implementing proposals. An Administration statement to the Congress also stressed Mexico's labor and environment efforts.

- o The House overwhelmingly approved a resolution endorsing the Bush Administration's NAFTA labor and environment objectives.

- o The NAFTA was signed by President Bush in December 1992 and approved by the Congress under fast track procedures in the 1993. At the same time, Congress provided for the implementation of supplemental agreements on labor and the environment.

- o Congress extended fast track procedures for a final time in 1993 for the Uruguay Round agreement. That agreement, which replaced the GATT with the World Trade Organization, was approved by large Congressional margins in late 1994.

Key Fast Track Components

- o Under fast track, Congress maintains substantial control and oversight over our most important trade negotiations. In return, Congress commits to refrain from re-negotiating agreements that the President brings back for consideration. vote yes / no

- o Under fast track rules, Congress has exerted authority in a variety of ways, including by:

negotiating objectives

-- requiring the President to meet extensive consultation, reporting and notification requirements in connection with fast track trade negotiations;

-- creating a special, rapid procedure for Congress to ~~retract~~ revoke fast track if the President fails to consult adequately;

-- empowering the Ways and Means and Finance committees to veto particular free-trade negotiations in advance;

-- providing that either House may disapprove the extension of fast-track procedures;

-- insisting on Congressional participation in drafting the implementing bill through the use of pre-hearings and -markups;

-- requiring the President to spell out precisely how he will use his existing regulatory authority to carry out fast track trade agreements; and

-- reserving the right to vote an agreement down if it is unacceptable.

o Other key components of fast track have been:

-- a commitment by the Congress to vote "yes or no" -- with no amendments -- on the implementing bill within several months after it is introduced. As a practical matter, Congress has typically taken only a few weeks because issues involving the agreement are worked out during the lengthy pre-hearing and -markup period that precedes submission of the bill.

-- a provision limiting the types of provisions that can be included in implementing legislation to those "necessary or appropriate" to carry out the agreement. This requirement has helped keep non-trade matters out of fast track legislation, but provides enough flexibility to help ensure passage.

-- a provision in the 1988 version of fast track allowing for an extension of fast track if the President meets certain reporting requirements and if the Congress does not disapprove.

Uses of Fast Track

o Since 1974, five significant trade agreements have been brought to the Congress under "fast track" procedures.

o These are the Tokyo and Uruguay Round agreements, our bilateral free-trade arrangements with Israel and Canada, and the NAFTA.

- o Future uses of fast track are likely to include multilateral agreements, in particular the WTO built-in agenda, which includes global negotiations on lowering barriers to trade in agricultural products or in other sectors where the United States is the world's leader; sectoral agreements, like the recently concluded ITA; and the long-delayed free-trade agreement with Chile.

expand

Continuous from Jan 1975 to April 1994 w/ TR & Chief

Extension of Fast Track Trade Negotiating Authority

What Is Fast Track?

The short answer is that it is an expedited procedure for Congressional consideration of trade agreements. The two essential features of any fast track authority are: (1) a vote on implementing legislation within a fixed period of time, and (2) an up or down vote, with no amendments.

Trade Negotiating Authority

The Constitution gives Congress exclusive authority to set tariffs and enact other legislation governing international trade. The President has the Constitutional authority to negotiate international agreements. If the President negotiates a trade agreement that requires changes in U.S. tariffs or in other domestic laws, that trade agreement's implementing legislation must be submitted to Congress--or the President must have Congress' advance approval of such changes. Tariff cutting authority is one instance where Congress has often granted the President prior approval and such authority has been included in all of the recent grants of fast track authority. For changes implementing other provisions of a trade agreement, fast track provides for a time certain vote and that vote is on the total package, with no amendments.

Historical Background to Fast Track

For over 60 years, ~~the~~ Congress and ~~the~~ Presidents have recognized that the negotiation and implementation of trade agreements require special cooperation. In the aftermath of the record-high rates of the Smoot-Hawley Tariff Act of 1930 and the Depression they helped create, both the Congress and the President recognized that only by working closely together could trade barriers be torn down and markets opened to U.S. goods and services. This new attitude was first reflected in the Reciprocal Trade Agreements Act of 1934, giving the President authority to both negotiate tariff cutting agreements and to implement them without further Congressional approval.

In recent years, as tariffs became less of an obstacle to trade and many of our trading partners sought to protect their domestic markets by erecting non-tariff barriers, the scope of trade negotiations broadened and by agreement between the Nixon Administration and the Congress, fast track was created to accomodate this broader trade agenda. Specifically, it was first embodied in the Trade Act of 1974 to deal with the Tokyo Round negotiations called for in the GATT. Fast track procedures for approving trade agreements have been renewed by Congress in 1979, 1984, 1988, 1991, and most recently in 1993. As a result, Presidents have had fast track negotiating authority continuously from January 1975 until April 1994, with a brief hiatus for eight months in 1988.

Fast Track Is Essential to Successful Trade Negotiations

In exchange for the expedited consideration of implementing legislation, Congress has established a number of procedural safeguards that guarantee it a meaningful role both before and during the negotiating process and, equally important, in determing how to implement trade agreements. Requests for fast track have always included exstensive notification and consultation requirements, both for Congress itself and for private sector advisory committees. In every trade agreement negotiated under fast track, Congress has been an active participant in identifying negotiating objectives, monitoring the actual negotiations, and drafting implementing legislation.

To apply fast track to a trade agreement, whether sectoral, bilateral or multilateral, the President must notify Congress in advance of his intention to sign such an agreement. For most previous grants, the advance notice requirement was 90 days; for the Uruguay Round, because it was such a massive agreement, the notice requirement was set at 120 days. Even before the President signals his intention to enter into an agreement, the private sector advisory committees are required to report to both Congress and the President on their views as to whether the agreement meets U.S. negotiating objectives. Further, for bilateral trade agreements, the Congress must be given advance notice of the President's intent to begin negotiations. During the next 60 legislative days, either the House Ways and Means Committe or the Senate Finance Committee can vote to deny fast track for the proposed bilateral.

Once the negotiations have been concluded and the President has signed it, the Congress and the Administration begin a period of extensive informal discussions on the drafting of the implementing legislation. This process, reflecting the growing complexity of trade agreements, has involved an ever increasing number of committees of jurisdiction and interested Members. In addition, the President is required to spell out precisely how he intends to use his existing regulatory authority in implementing the agreement. And, of course, Congress retains the right to vote down an agreement if, after all of the consultations, it still finds the package unacceptable.

Additional Congressional prerogatives include a special procedure for revoking fast track if the President fails to meet the consultation requirements. Finally, in recent instances where fast track authority has been granted and extensions included, either House has retained the right to disapprove of such extensions provided that either the House Ways and Means Committee or the Senate Finance Committee have reported out an "extension disapproval resolution."

Why Fast Track Is Essential To Trade Negotiations

Fast track procedures reflect an Executive-Congressional understanding that trade agreements to open markets and tear down tariff barriers are the product of difficult negotiations and that permitting an entire agreement to be subject to individual amendments means unravelling the agreement. In order to determine whether any trade agreement is in the national interest, it requires looking at the total package in its entirety. Without fast track, it is virtually impossible to see how any negotiation could produce a final offer from our trading partners if each provision in the package was subject to amendment.

By granting Presidents fast track, Congress has empowered American Presidents with the same bargaining power and negotiating authority possessed by our trading partners. That is, the ability to ensure that the agreement so painstakingly negotiated would be the agreement voted on. Without fast track, the President cannot make such an assurance and without it, few would be willing to enter into a negotiation and even fewer would be willing to negotiate the tough concessions necessary. No trading nation would ever reveal its final, best offer knowing that the United States could unilaterally reopen the agreement.

The United States Trade Agenda: What Is Fast Track For

After consultations with Congress, the President will set out the nation's trade agenda for the next few years. The absence of large-scale negotiations like the Tokyo and Uruguay Rounds has mistakenly led some to conclude that not having fast track is not a problem for the United States. That is just as wrong a view as the idea that this request for fast track is only about extending NAFTA to Chile.

The President has identified three main areas in which negotiations would greatly benefit the United States. First, there is the "built-in" agenda of the WTO, which calls for negotiations on government procurement in 1997; intellectual property in 1998; agriculture in 1999; and trade in services in 2000. In each of these areas, the United States is the most competitive nation in the world and, as a result, we stand to benefit the most from actively participating in writing the rules of trade.

The second part of the President's proposed agenda involves building on the success of the Information Technology Agreement(ITA). This $5 billion tariff cut on products for which the United States is the world's leading producer was achieved by the use of residual tariff cutting authority from a previous grant of fast track. We have identified eight additional sectors for future negotiations: ITA 2, chemicals, automotive, oilseeds, energy equipment and services, environmental technology and services, medical equipment and services, and wood and paper products. Other APEC members have submitted their "wish lists" and it appears there is sufficient overlapping support for many of the U.S. suggestions. Without fast track, it is very unlikely that this process will go forward.

The third area the President hopes to address is moving forward in both the Asia Pacific Economic Cooperation Forum(APEC) toward the goal of free trade by the year 2010 and with a Free Trade Agreement for the Americas(FTAA)by the year 2005. In both regions, economic growth rates are among the highest in the world and barriers to U.S. exports remain high. As a result, tariff reductions and greater market access will have a very positive effect on our exports. Without the active participation of the United States, both of these processes will slow considerably--and without fast track we

cannot participate actively.

The President and many Members of Congress have indicated that negotiating a trade agreement with Chile is a critical step in continuing the move to trade liberalization in the Hemisphere. The Canadians have already concluded a bilateral treaty with Chile and the result, for our exports, is that we face an across-the-board 11% tariff disadvantage.

It is important to remember that non-participation by the United States in global trade negotiations does not mean that our competitors are going to call a halt to their efforts to gain market access and preferential tariff treatment. On the contrary, they are very active in advancing their own agendas. Since 1992, in Latin America and Asia they have concluded over 20 free trade agreements--agreements that leave us at a disadvantage.

The United States is the most competitive nation in the world. That is why it is so advantageous for us to play a leading role in establishing both the focus of trade negotiations and the rules. We will not have the opportunity to do either in the absence of fast track.

Legislative History of Fast Track

-there are five major elements to fast track:

1. a specification of negotiating objectives and the types of agreements to which fast track authority applies;

2. procedural requirements involving consultation with Congressional committees and the private sector advisory committees during the course of the negotiations and advance notice of intent to conclude an agreement;

3. a deadline for the conclusion of agreements authorized in order for fast track to apply;

4.rules concerning Presidential submission of the agreement to Congress, except that there has never been a time limit requiring transmission of the implementing legislation, together with the draft of the proposed implementing bill and supporting documentation as required in authorizing fast track;

5.a procedural commitment by Congress to introduce the implementing bill on the day it is submitted and a timetable that produces a vote in both House and Senate within 60 legislative days(90 days for implementing revenue bills) with no amendments

-in the 1988 renewal, a "reverse fast track" provision was added permitting Congress to terminate fast track if USTR failed to meet the statutory consultation requirements

-the original grant was 1974; the first renewal was 1979; 1984; 1988(for Uruguay Round and FTAs; 1991(a two year extension); 1994--the advance notice requirement was 90 days in 1991 and increased to 120 days in 1994

-no fast track bill has made any provision for the Congressional role in drafting the implementing bill; as a result, the non-markup routine emeerged first with Bob Strauss

-the "necessary and appropriate" language was in the original 1974 Act

-the non markup worked exceptionally well in Tokyo Round and in Canadian FTA as the Reagan administration made a commitment to work with Congress in drafting the implementing bill and actively participated in the non-markups

-in NAFTA it did not work as well, probably because of time constraints as the House vote date had been set and the target date for completing the draft was not met

-it worked well in the Uruguay Round but by then, the private interest groups understood it and the budget rule of paygo was applicable--as a result, the time from the conclusion of the agreement to the conclusion of the non-markup was increased substantially

-in NAFTA the bill was finally submitted only thirteen days before the scheduled vote(because of bargaining for votes by means of "appropriate")

-by 1991 the degree of controversy surrounding fast track has escalated; the two year extension provided for in 1988 had envisioned the Uruguay Round but it now had to accomodate NAFTA

-the Kantor proposal in 1994 included Labor Standards and Trade and the Environment as the fifth and sixth of seven enumerated Trade Negotiating Objectives; on labor, the language paralleled the 1988 Worker Rights section in the negotiating authority for Uruguay Round with the change being a substitution of the phrase "internationally recognized labor standards" for "worker rights; the specific environmental language was new but very general: "to promote the compatibility of the rules of the international trading system with environmental protection."

-remember, this was a Democratic Congress and a Republican Administration; there is a big difference now with the reverse and Mickey's proposal was greeted icily; no consultation with business and so there was also unanimity in opposing its inclusion

-Mickey and Archer negotiated a tentative deal in August which deleted labor and the environment as specific negotiating objectives and agreed that the Administration would not negotiate agreements with trade sanctions for labor

and environmental issues in the absence of bipartisan congressional support

-there was some opposition in Senate Finance to considering fast track under a fast track procedure

-in early 1995 the Ways and Means committee wanted to start on a bill but it did so on a strictly partisan basis; it was here for the first time that the idea of going only with necessary surfaced and a provision was added requiring the President to send to Congress within 60 days of entering into an agreement a description of the changes in U.S. law required to implement; it also referred to labor and the environment in the context of "directly related" to trade

-Republicans interpreted "directly related" to mean measures that impeded trade as opposed to measures meant to prevent industries from the race to the bottom; there was also an explicit prohibition against the use of fast track to change U.S. labor and environmental laws or for agreements providing for trade sanctions to enforce labor or environmental standards

-Mickey saw this as worse than 1994 language as did Gore, so it simply became a dance between the Committee and the Administration

-in September, 1995, the Committee voted out its bill on a strictly party vote; the negotiations continued after this and there is some dispute as to who evidenced the greater degree of flexibilty; USTR never offered up a proposal

-in the early fall it appeared that a near consensus had been achieved on about 95 percent of the issues; but no work had been done in the Senate

-at this point, it all came apart; some blame Mickey's partisanship and his agreeing to things in private with the Committee and then publicly saying "no"

-fast forward to May 1997 when Archer tried again to get to mark up by proposing a draft outline to be used that appeared to go beyond the 1995 version; again Matsui said no, with USTR fearing it still looked like a Republican deal; thus the Archer letter to the President

-fast track and Congressional prerogatives: provide for Congressional role in authorizing each particular negotiation and establish statutory guidelines and limits as to what each is about; consultation on nature of agreement and

consultation on implementing legislation but with wider committee participation

-what agreements are authorized; the issues addressed in fast track trade negotiations; the implementing legislation both procedurally and substantively

-the NAFTA could have been blocked through the use of the never exercised power to stop a bilateral negotiation within the 60 day notification period; or again when Bush sought the extension in 1991

-the result in NAFTA is that Congress never got a chance to vote on NAFTA itself until after the agreement was negotiated and implementation was presented

-the 1988 language was based on an existing statutory commitment about international labor standards in the GATT; no problems in either body and none raised by Reagan administration--but no statutory requirement that all 16 principal trade negotiating objectives be achieved

-there is, as Lugar points out, a problem with paygo and fast track; it isn't a commitment in the context of a trade agreement that needs to be protected

-statutory negotiating deadlines should be specific to each particular agreement, with a requirement that Congress approve, in advance, the negotiation of specific agreements--committee approval or joint resolution

-would approval resolution be subject to fast track: provided Congress had endorsed the broader goal; if the agreement went beyond what Congress had agreed to then normal legislative procedure

-a possible construct: fast track for use in market-expanding trade negotiations requiring broad consultation requirements and a legislative timetable for implementing bills once submitted; the details for completion of agreements, negotiating objectives etc. in each legislative proposal for specific negotiation; reverse fast track could apply to individual negotiations

-the current Ways and Means draft: as in '95 and '97 versions fast track implementing legislation limited to measures "necessary" w/o "appropriate" and added a requirement that within 60 days of entering an agreement, the

President must submit to Congress a description of those changes to U.S. law that its implemention will required; too restrictive to include their current language requiring provisions directly related to principal negotiating objectives; other formulations: necessary to facilitate the implementation of the agreement; if necessary and appropriate then a requirement that President submit a list of all those provisions not strictly necessary together with a rationale as to why they are appropriate

-also a possible requirement that the Administration submit draft implementing language for comment by committees of jurisdiciton prior to formal submission of the bill

-and statutory role for non markup process in exchange for shorter timetable for Congressional consideration

-