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Fast Track 97 [2]

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Section-by-Section Analysis

Section 1. Short title.

Section 2. Negotiating objectives

This section of the proposed bill lays out the "overall" and "principal" objectives the Congress establishes to guide U.S. negotiators in hammering out fast track trade agreements. This general structure parallels that included in the 1988 fast track authority, which in turn was based on a similar format in the original 1974 fast track legislation.

Much of the text is drawn from language negotiated between USTR and House Republicans during 1995. The key provision is the first "principal" objective, relating to "specific barriers." This language was understood in 1995 to encompass trade-related environment and labor measures, even though the text does not say so. Labor and environment are mentioned explicitly only in the final "overall" objective but the language of the two provisions are otherwise very close -- making clear that the principal objectives encompass labor and environment as well.

While the language essentially reflects our negotiations with Chairman Archer in 1995, we have made changes that make our draft a bit less restrictive on the environment and labor issues. In particular, our proposal changes the principal objective on "specific barriers" -- as well as the final "overall" objective -- to say that environmental and labor measures subject to fast track negotiations must simply be "trade-related" rather than "directly" or "specifically" related to trade as the 1995 text put it. This change may be somewhat helpful on the Democratic side, but could be viewed as backtracking by Republicans.

The bifurcation between "overall" and "principal" objectives is consistent with past fast track legislation. The House Republicans used this bifurcation in 1995 to limit the President's discretion in the area of labor and the environment by requiring that all provisions of a fast-track implementing bill be "directly related to" the principal negotiating objectives. Under that approach, the principal objectives serve to limit the implementing legislation, while the text of the overall objectives is more advisory in nature.

It is worth noting that we have made a number of other, less controversial changes from the Republican 1995 bill in both the overall and principal objectives. For example, we have added a principal objective relating to agriculture. (Such an objective was contained in the 1988 Act as well.) Consistent with the approach in the 1995 bill negotiated with Chairman Archer, the principal negotiating objectives are general in nature. We expect we will hear from various business and other interest groups that would like their objectives explicitly mentioned in the bill.

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Section 3. Proclamation Authority and Fast Track Implementing Bills.

The first portion of this section provides the President with specific authority to lower U.S. tariffs -- without seeking further approval from the Congress -- in return for reciprocal concessions from our trade partners. Much of the language on this subject is derived from earlier iterations of tariff authority dating back to the mid-1930s. We have added a provision that will allow the President to conclude new sectoral tariff deals (like the deal we concluded on ITA in December).

A second portion of the section (sec. 3(b)(3)) deals with the kinds of provisions that may be included in fast track implementing bills. This is a critical provision as it gives flexibility to attract support necessary for passage of legislation pursuant to fast track authority. The traditional formulation -- in the fast track authority from 1974 to 1994 -- was that implementing bills could include any provision the Congress believed was "necessary or appropriate" to implement the trade agreement.

That formulation worked well in helping to secure the votes necessary to enact each of the five fast track agreements presented to the Congress since 1979. But it was subject to criticism from House Republicans and Senators of both parties on the ground that the language permitted fast track implementing bills to become Christmas trees for trade and non-trade matters unrelated to the actual implementation of the agreement.

We worked with House Republicans in 1995 to draft language that would limit the Christmas tree problem without unduly jeopardizing approval of future trade agreements or crimping the President's ability to treat trade-related environmental and labor issues. We were unable to come to closure. The Republican proposal proved to be too limiting. First, it placed in doubt our ability to get future trade deals through the Congress (for example, it would not have allowed for the inclusion of worker trade adjustment assistance which was critical to attract Democratic support for the NAFTA). Second, it was seen on the Democratic side as a blatant effort to keep the Administration from addressing trade-related labor and environment matters.

Our proposed draft goes back to the original "necessary or appropriate" formulation (by referencing section 151 of the 1974 trade act -- which also contains all of the voting and timing procedures relevant to fast track). The 1995 Republican bill amended section 151 to require implementing provisions to be both: 1) "directly related" to a principal negotiating objective; and 2) "necessary" to implement the trade agreement. The Republican bill also allowed for the insertion of certain kinds of housekeeping provisions, like those defining state and federal responsibilities under the agreement and providing for oversight. In addition, the Republican bill provided for the insertion of necessary PAYGO provisions.

Our proposal de-links the implementing bill from the principal negotiating objectives. Moreover, our proposal also allows for the inclusion of non-"necessary" provisions in fast-track implementing bills. For both reasons, our proposed bill will be controversial from the Republican perspective.

Finally, section 3(b)(1) also sets the duration for fast track. Our going-in position is that fast track should be in place through the end of the next President's term of office. Previous versions of fast track tended to be shorter in duration, and often provided that the President could extend the duration subject to Congressional disapproval. For example, the 1988 version lasted through mid-1991, with an extension through mid-1993, and then again through 1994. One reason the periods were short was to put pressure on our trading partners to reach quick deals in GATT negotiating rounds then underway. There is no round in progress at this time. Nonetheless, we would not be opposed to re-inclusion of an extension provision, particularly on a three plus four year basis.

Sections 4 and 5. Notice, Consultations, and Disapproval.

These sections of the bill set out the *quid pro quo* that the Congress exacts from the President in agreeing to an expedited "up or down" vote on fast track trade agreements. Sections 4 and 5 contain a number of provisions requiring the President to notify and consult with the Congress before and during the negotiation phase. The idea is to ensure that the Congress is fully integrated into the formulation of U.S. goals, strategies, and decision-making for each particular negotiation. In fact, Section 5 establishes an expedited procedure for Congress to withdraw fast track if it finds that the Administration is not adequately informing the Congress about the negotiations.

The language included in sections 4 and 5 roughly tracks that included in the 1988 legislation. (The 1988 act had somewhat different notice and consultation requirements for bilateral and multilateral negotiations, a distinction we and the Republicans agreed to drop.) In 1995, USTR agreed informally with House Republicans to add some consultation provisions beyond those required in the 1988 act. These were largely designed to elicit the Administration's intentions regarding its labor and environment objectives in specific negotiations. Our proposed bill does not include those provisions and we would expect the Republicans would add those back once the bill is introduced.

Further consultation procedures and safeguards could be added if there is pressure to do so. It is worth noting that beginning in 1984, bilateral fast track trade negotiations were subject to an up-front veto by either the Ways and Means or Finance committee. (Neither our draft nor the 1995 Republican bill contains such a provision.)

Section 6. Exemption for Chile and WTO Negotiations.

This section provides that the pre-negotiation notice and consultation provisions required under section 4 do not apply to our negotiations with Chile (which got underway in 1995) and certain WTO negotiations.

Section 7. Conforming Amendments.

These are technical and non-controversial changes to other statutes required as a result of the new fast track provisions.

Traditional Trading Authority
Discussion Points for Calls to Republicans

Shared Objective. We both want to ensure that fast track authority is renewed. We believe in free trade, and we know that our future prosperity depends on it. We can get this done. Our team is fully committed to doing whatever it takes to get it done, and we hope we can work in the same spirit of trust and cooperation that allowed us to get the budget done.

Delayed Bill to Gain Bipartisan Support. We delayed introducing the bill for a couple of days to address the concerns of moderate Democrats whose votes are absolutely essential for passage. We listened to them and made some changes, but we fully expect criticism from the rest of the Democratic caucus and from labor. We believe we now have strong legislation that deserves support from both sides of the aisle.

Accepted Your Proposal on "Directly Related to Trade." Most importantly, we have accepted the Archer language on "directly related to trade." The President is firmly committed to ensuring that, in our push for free trade, we do not undermine labor and environmental standards. And we are prepared to pursue side agreements with Chile and other nations to promote stronger labor and environmental standards. Even so, we have adopted the Archer-Dreier language on "directly related," and we recognize its importance to the Republican caucus.

More Detailed Review of Provisions. Key provisions of the bill include:

- **Provision on Worker Rights and the Environment**. The principal negotiating objective on worker rights included in this legislation is symmetrical to that granted to President Bush, but does specifically mention the environment and child labor standards as well. It is limited to making progress in the World Trade Organization ("WTO") and the International Labor Organization ("ILO").

- **Necessary or Appropriate**. The bill would permit the Administration to include in future implementing bills those provisions that are "necessary or appropriate" to implement the relevant trade agreement, but only if those provisions are also "trade-related." As we have discussed, we need to strike a balance. We need flexibility to include provisions that, while not absolutely required to implement a particular trade agreement, nevertheless address trade policy issues raised by that agreement. But we also don't want to allow extraneous provisions in the fast track bill. We think this strikes the right balance.

- **Duration**. The duration of the trading authority extends to 2001, with extension until 2005 subject to a congressional vote.

- **Consultations with Congress.** We have added strong language to ensure Congress is a full partner in setting objectives and establishing trade priorities for American negotiators. Provisions never before included in fast track bills include: (1) a requirement that the Administration inform Congress of its negotiating objectives for a specific agreement before negotiations begin; (2) a requirement that the Administration consult before signing an agreement about parallel agreements, such as labor and environmental side agreements.

- **Negotiating Instructions.** We added a section on negotiating instructions that will ensure negotiators do nothing that would lower U.S. public health and safety standards, and insist upon strict enforcement of our trade laws.

- **Specific Agriculture Objective.** The legislation responds to congressional concerns by providing a series of measures designed to achieve fairer and more open conditions of agricultural trade, including: reducing or eliminating tariffs and subsidies that hurt U.S. agricultural exports and market opportunities; addressing other unjustified barriers to such exports; and strengthening the international rules covering unfair foreign practices that distort world agricultural markets. We think this principal negotiating objective will appeal to Members of both parties.

- **Chile.** We have specifically designated Chile as the next country with which we would negotiate a bilateral free trade agreement.

Would Like to Proceed in a Bipartisan Spirit. We have made a genuine attempt to write a bill Republicans can support, while attracting moderate Democrats as well. We think it is a good bipartisan bill, and we would like your support. At the very least, we would like generally positive statements (e.g. "Good start," "We can work with this"). We pledge to work closely with you as the bill is considered.

Traditional Trading Authority
Discussion Points for Calls to Democrats

Held Bill Back to Listen to and Address Democratic Concerns. We held the bill back several days to hear the concerns of Democrats. We listened, and we believe we now have a bill that reflects the proper balance to address worker rights (including child labor standards) and environmental protection. Key provisions include:

- Worker Rights. Bill includes a negotiating objective on worker rights symmetrical to that granted President Bush by a Democratic Congress, with a specific reference to child labor. Also includes direction to seek stronger worker rights through the ILO, an idea proposed by Senator Moynihan and other Democrats.

- Environment. The negotiating objective also adds a specific provision on the environment, the first time ever this has been referenced in a fast track bill.

- Agriculture. Bill contains specific negotiating objective on agriculture, requested by Democrats.

- Better Consultations. Entirely new provisions requiring greater consultations, as to both the trade agreement and any labor/environmental side agreements.

- Duration. Authority granted until 2001, with extension until 2005 only after a congressional vote.

Bill Reflects Ongoing Commitment to Democratic Values. Overall, the President is committed to pursuing three objectives: (1) to break down unfair foreign trade barriers and create good American jobs; (2) to promote and advance worker rights; and (3) to promote responsible environmental protections. Throughout this process on fast track, our goal has been to ensure the President has the capacity to pursue all three objectives effectively.

- Trade Agreements. This bill permits labor/environmental provisions "directly related to trade" to be brought back to Congress under fast track authority. This is but one of many tools the President can use to advance his goals.

- Side Agreements. The President has extensive executive authority to reach labor/environmental agreements with countries. These agreements do not require congressional approval. We have already committed to conclude companion labor/environment agreements in future trade agreements where appropriate, and Chile has already agreed to enter such agreements.

- Other Agreements. The Clinton Administration has done more than any other to press countries to improve labor and environmental protection -- and we will continue to do so, whether through the ILO, the WTO, the UN, or international financial institutions. We should be concerned about improving conditions in all countries, not just in free trade partners.

More Detailed Review of Provisions. Key provisions include:

- **Necessary and Appropriate.** We have added language that will allow us to include in future implementing bills those provisions that are "necessary or appropriate" to implement the relevant trade agreement. The Administration and the Congress need flexibility to include in such bills provisions that, while not absolutely required to implement a particular trade agreement, nevertheless address trade policy issues raised by that agreement. These might include, for example, the agreement's relationship to existing U.S. trade laws, authority to monitor the results of the agreement, or extending Trade Adjustment Assistance to help those American workers who do not share the benefits from expanded trade. Restricting future bills only to those provisions deemed "necessary" would prevent inclusion of these and other critically important provisions.

- **Duration.** The duration of the trading authority extends to 2001, with extension until 2005 only after a congressional vote.

- **Consultations with Congress.** We have added strong language to ensure Congress is a full partner in setting objectives and establishing trade priorities for American negotiators. Provisions never before included in fast track bills include: (1) a requirement that the Administration inform Congress of its negotiating objectives for a specific agreement before negotiations begin; (2) a requirement that the Administration consult before signing a trade agreement about any parallel agreements, such as labor and environmental side agreements.

- **Negotiating Instructions.** We added a section on negotiating instructions that will ensure negotiators do nothing that would lower U.S. public health and safety standards, and insist upon strict enforcement of our trade laws.

- **Specific Agriculture Objective.** The legislation responds to congressional concerns by providing a series of measures designed to achieve fairer and more open conditions of agricultural trade, including: reducing or eliminating tariffs and subsidies that hurt U.S. agricultural exports and market opportunities; addressing other unjustified barriers to such exports; and strengthening the international rules covering unfair foreign practices that distort world agricultural markets.

- **Chile.** We have specifically designated Chile as the next country with which we would negotiate a bilateral free trade agreement. Chile made a firm commitment to enter into side agreements on labor and the environment.

FAST TRACK Q&A'S

"DIRECTLY RELATED TO TRADE"

Q: What does it mean to say that any labor/environment provisions brought back on fast track must be "directly related to trade"?

- It means that labor and environmental provisions having a direct relationship to trade can be included in fast track legislation.

- It is one part of our overall commitment to labor and the environment. As the President has stated, he is committed to pursuing three objectives as we move forward: 1) to open foreign markets and create good U.S. jobs; 2) to promote labor rights; and 3) to promote responsible environmental development. Throughout this debate, our goal has been to ensure the President has the capacity to pursue all three objectives effectively.

- The Administration's bill gives the President ample latitude to accomplish his labor/environment objectives. He has many tools at his disposal:

  - Trade Agreements. As we said, the bill permits labor/environmental provisions "directly related to trade" to be brought back to Congress under fast track authority. This is only one tool he can use.

  - Global Negotiations: This Administration has done more than any other to press countries to improve labor rights and environmental protection – and we will continue to do so. The bill itself contains a negotiating objective encouraging us to make progress in these areas in the WTO and the ILO. In addition, we will continue to press in other for a, like the World Bank, IMF, other international financial institutions and the UN. We should be concerned about improving the conditions in all countries, not just in free trade partners.

  - Side Agreements: The President has extensive executive authority to reach labor/environment agreements with countries. These agreements do not require Congressional approval. In the context of future free trade agreements, we have committed to conclude companion labor/environment agreements, when appropriate. Chile has already agreed to enter such agreements.

- The important point is to secure fast track authority. If we pursue trade negotiations, we have a much better chance of engaging these countries on labor and environmental issues. Rejecting fast track will not advance our interests on labor/environment.

Q: But what does the term "directly related to trade" mean?

- It means that a discrete set of provisions directly related to trade could be included in the fast track legislation. We are still discussing the precise definition with Congress, but examples include establishing the principle that countries should not lower their environmental or health and safety standards to attract foreign investment or provisions relating to the ability of a country to use sanitary/phytosanitary measures as a disguised form of trade protection.

- Remember that this is only one tool we have to pursue our labor and environmental objectives. We believe the combination of side agreements and other measures already give us much latitude to pursue our objectives.

Q: Suppose a country lowers its child labor standards to attract foreign investment or to export cheaper products to the U.S. Could this be included in the trade agreement?

- Obviously, we are not going to negotiate a free trade agreement with a country that has a heinous labor rights or environmental record, so the issue of what can be contained in an agreement would not arise.

- As to the precise definition of "directly related to trade", we are still working that out with Congress. We would favor a broader definition, but we also need to achieve a bipartisan consensus.

CONTENT OF SIDE AGREEMENTS

Q: What provisions will be contained in any side agreements you reach?

A: That could vary among countries. Different countries would have different conditions and different needs. As a general matter, agreements could include provisions to:

- Promote better enforcement of a country's labor and environmental laws and regulations.
- Encourage greater transparency and public disclosure about a country's labor and environmental standards and performance.
- Provide greater technical assistance to countries to improve their labor rights and environmental protection.

We would consult extensively with Congress about our approach in any individual case.

LINKAGE BETWEEN TRADE AGREEMENT/SIDE AGREEMENTS

Q: Do you commit to reach side agreements with all future free trade agreement partners?

- We reached side agreements with Mexico and Canada during those free trade negotiations. We have already said we will negotiate side agreements in the context of free trade talks with Chile – and Chile has agreed to do it.

- There may be instances when side agreements wouldn't be necessary (England, Sweden) but we would negotiate them when they are appropriate. In any case, we will move forward in full consultation with Congress.

SANCTIONS AND SIDE AGREEMENTS

Q: Would you make any future labor/environmental side agreements enforceable through trade sanctions?

- We will ensure that any side agreements we reach are enforceable through sanctions (whether monetary fines or other methods).

Q: Yes, but would you entertain the use of <u>trade</u> sanctions to enforce the agreements, as you did in NAFTA?

- At this time, the only bilateral free trade agreement we envision negotiating is with Chile. Chile has agreed to enter labor/environment side agreements enforceable by monetary fines. We think that will provide sufficient enforcement. Therefore, the question of other bilateral free trade agreements – let alone how they would be enforced – at this point is pretty theoretical.

- We would need to consult with Congress extensively before we pursue another bilateral free trade negotiations. If that situation arises, we will consult on this question as well.

Q: But at the end of the day, would you consider using trade sanctions?

- In most cases, we believe enforcement through monetary fines or similar methods could be effective. If they cannot, we would consider using trade sanctions to collect monetary fines, as we have done in past agreements. We would pursue this approach only after extensive consultation with Congress.

INTELLECTUAL PROPERTY
VERSUS
LABOR/ENVIRONMENT

Q: Critics charge that you incorporate intellectual property provisions in free trade agreements, but fail to give the same treatment to labor/environmental provisions? Aren't they correct that you care more about American corporations than about American workers?

- First, no Administration in history has been more aggressive in pressing to improve international labor rights or environmental protection. We have:
  - Continued to press this agenda in international institutions, like the ILO and WTO. In fact, our fast track bill contains a negotiating objective directing us to continue this effort.
  - Made a commitment to negotiate labor/environment side agreements in the context of future free trade agreements, when appropriate. We will negotiate such agreements in the context of the Chilean free trade talks. Those agreements can make a difference: there have 7 cases brought involving labor violations under the NAFTA side agreement, none brought for IPR violations under the NAFTA itself.
  - Other initiatives, like the President's 1996 Apparel Industry Partnership ("No Sweat Initiative"), a collaboration between labor, business and NGO's to encourage adoption of a code of conduct prohibiting exploitative child labor and encouraging humane working conditions.
- As to the critics' charge, there is a fundamental difference between intellectual property rights and labor/environment. Violations of intellectual property rights relate to the product itself, which is being exported to the United States. The issue of labor/environment involves more broadly the entire social and legal structure of the foreign country, which goes beyond trade concerns. That's an important difference.

19 USCA (1980)

Section 1-106. Incidental Transfers and Reassignments

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

Section 1-107. Effective Dates.

(a) Sections 1, 2(a), 2(b)(2), 2(c), 2(d), 3, 4, 5(a), 5(b)(2), 5(c) through (e), and 6 through 8 of Reorganization Plan No. 3 of 1979 [set out as a note under this section], and the provisions of this order, shall take effect as of January 2, 1980.

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

JIMMY CARTER

Library References

United States ⟹31. C.J.S. United States § 31.

Code of Federal Regulations

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

PART 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

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

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

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

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

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

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

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

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

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

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

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

(c) Introduction and referral.—

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

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

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

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

(e) Period for committee and floor consideration.—

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

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

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

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

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

(f) Floor consideration in House.—

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

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

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

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

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

(g) Floor consideration in Senate.—

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

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

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

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

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

Historical Note

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

Library References

United States ⇔22. C.J.S. United States §§ 22, 25.

§ 2192. Resolutions disapproving certain actions

(a) Contents of resolutions.—

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

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

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

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

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

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

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

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

(c) Discharge of committees.—

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

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

19 USCA (Supp. 1994)

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

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

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

[See main volume for text of (a)]

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

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

CODE OF FEDERAL REGULATIONS

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

Part 5—Congressional Procedures with Respect to Presidential Actions

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

[See main volume for text of (a)]

(b) Definitions

For purposes of this section—

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

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

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

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

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

(e) Period for committee and floor consideration

[See main volume for text of (1)]

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

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

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

HISTORICAL AND STATUTORY NOTES

1990 Amendment

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

1988 Amendment

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

Effective Date of 1990 Amendment

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

Legislative History

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

LAW REVIEW COMMENTARIES

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

§ 2192. Resolutions disapproving certain actions

(a) Contents of resolutions—

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

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

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

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

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

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

[See main volume for text of (b)]

(c) Discharge of committees

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

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

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

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

(f) Procedures in the Senate

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

Public Law 103-49
103d Congress

An Act

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

July 2, 1993
[H.R. 1876]

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

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

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

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

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

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

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

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

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

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

Approved July 2, 1993.

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

HOUSE REPORTS: No. 103-128, Pt. 1 (Comm. on Ways and Means) and Pt. 2 (Comm. on Rules).
SENATE REPORTS: No. 103-66 accompanying S. 1003 (Comm. on Finance).
CONGRESSIONAL RECORD, Vol. 139 (1993):
June 22, considered and passed House.
June 30, considered and passed Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 29 (1993):
July 2, Presidential statement.

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Calendar No. 104

103D CONGRESS 1st Session | SENATE | REPORT 103–66

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

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

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

REPORT

[To accompany S. 1003]

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

I. SUMMARY

The Committee bill renews negotiating and proclamation authority and provides for the application of fast track approval procedures for agreements concluding the Uruguay Round of multilateral trade negotiations. The authority provided under the Committee bill would require that the President enter into any Uruguay Round agreements before April 16, 1994. The bill would also require that, before entering into any agreements, the President must give the Congress 120 days' advance notice of his intent to enter into the agreements. Under the Committee bill, the last day for such advance notification would be December 15, 1993. The Committee bill would also permit the private sector advisory committees established by section 135 of the Trade Act of 1974 to submit their reports to the Congress 30 days after the President notifies the Congress of his intent to enter into Uruguay Round agreements.

II. General Explanation

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

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

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

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

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

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

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

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

U.S. Senate,
Committee on Finance,
Washington, DC, June 23, 1993.

The President,
The White House,
Washington, DC.

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

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

It is therefore appropriate, as the Congress considers the President's request to renew negotiating authority and "fast track" procedures for the Uruguay Round, to consider once again our goals and objectives in light of the specific issues raised, or left unaddressed, in the Draft Final Act. We set forth below the views of the Committee on Finance on the goals it believes the United States should pursue with respect to eight key areas of the negotiations. It is the Committee's intention to review any final Uruguay Round agreement against these objectives, as well as the objectives set forth in the 1988 Trade Act.

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

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

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

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

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

The Committee strongly believes that our antidumping and countervailing duty laws must be preserved as effective tools for fighting unfair dumping and government subsidies. We are concerned, in particular, with the provisions of the Draft Final Act on standing, cumulation, cost and profit methodologies, de minimis exceptions, non-actionable subsidies, and the termination of antidumping and countervailing duty orders. We should seek stronger disciplines against export and domestic subsidies (including equity infusions, and natural resource and regional subsidies), as well as effective measures to prevent circumvention of antidumping and countervailing duty orders and diversionary dumping. At the same time, we should work toward greater transparency in the antidumping and countervailing duty actions taken by our trading partners, as well as a clarification of substantive rules and stronger procedural standards to prevent the misuse of these rules against U.S. exporters.

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

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

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

Sincerely,

DANIEL PATRICK MOYNIHAN,
Chairman.
BOB PACKWOOD,
Ranking Member.

III. VOTE OF THE COMMITTEE IN REPORTING THE BILL

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

IV. Budgetary Impact of the Bill

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

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 23, 1993.

Hon. Daniel Patrick Moynihan,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

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

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

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

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

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

PAY-AS-YOU-GO CONSIDERATIONS

[By fiscal year, in millions of dollars]

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

[1] Not applicable.

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

Sincerely,

Robert D. Reischauer,
Director.

V. Regulatory Impact of the Bill

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

VI. Changes in Existing Law

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

Omnibus Trade and Competitiveness Act of 1988

* * * * * * *

SEC. 1102. TRADE AGREEMENT NEGOTIATING AUTHORITY.

(a) Agreements Regarding Tariff Barriers.—

* * * * * * *

(d) Consultation With Congress Before Agreements Entered Into.—

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

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

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

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

(A) the nature of the agreement;

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

(C) all matters relating to the implementation of the agreement under section 1103.

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

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

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

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

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

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

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

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

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102d Congress, 1st Session - - - - - - - - - - - - House Document [illegible]

THE EXTENSION OF FAST TRACK PROCEDURES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

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

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

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U.S. GOVERNMENT PRINTING OFFICE

40-445 WASHINGTON : 1991

MAR 4 1991

The [illegible] and accompanying report [illegible] the Committee on Ways and Means and Committee on Rules

TO THE CONGRESS OF THE UNITED STATES:

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

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

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

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

George Bush

THE WHITE HOUSE,
March 1, 1991.

REPORT TO THE CONGRESS
ON THE EXTENSION OF FAST TRACK PROCEDURES

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

Submitted by the President

March 1, 1991

FOREWORD

The Fast Track and Why It Is Essential

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

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

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

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

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

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

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

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

<u>Extension of Fast Track Continues a Cooperative Relationship</u>

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

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

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

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

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

<u>Continuing Fast Track is Essential to Securing Economic Gains</u>

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

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

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

- Since their inception in 1986, the Uruguay Round negotiations have been conducted in fifteen areas. Our objectives include more open markets, internationally agreed rules in areas not previously covered by multilateral agreements (services, investment, intellectual property rights), and institutional improvements in the GATT. The negotiations have been difficult, and important issues remain, but there has been significant progress overall toward our objectives. That progress should not be abandoned.

- The United States had hoped to conclude the Uruguay Round last December at a ministerial level meeting in Brussels. However, the status of the negotiations on several subjects at that time did not warrant conclusion -- particularly on agriculture. The unwillingness of the European Community ("EC"), as well as Japan and Korea, to accept a framework for agricultural reform impeded progress in the negotiations in all areas.

- We are encouraged by a recent statement of GATT Director-General Arthur Dunkel that all participants have now agreed to negotiate specific binding commitments in each of the key areas of agricultural reform, thus clearing the way for the resumption of negotiations. However, important differences in agriculture and other areas remain. Much hard bargaining lies ahead.

- The United States refused to accept a deficient Uruguay Round package in Brussels. Our high standards have not changed. Although ultimate success in the Uruguay Round cannot be guaranteed, we believe the United States should continue negotiations because a successful Round is overwhelmingly in our long-term economic interests.

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

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

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

* * * * *

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

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

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

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RECENT DEVELOPMENTS

ALAN F. HOLMER*
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The Fast Track Debate: A Prescription for Pragmatism

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

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

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

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

I. The Fast Track Procedures

Under the U.S. Constitution the President is empowered to conduct the foreign affairs of the United States.[1] Therefore, the President does not need statutory authority to negotiate with foreign countries, including trade negotiations. However, the Congress is empowered to make the laws in general[2] and to regulate trade with foreign nations in particular.[3] A trade agreement whose implementation requires changes in U.S. domestic law therefore falls squarely within the jurisdiction of the Congress.

The fast track is a procedure devised in the Trade Act of 1974[4] to establish a congressional-executive partnership for trade negotiations. It enhances the President's credibility in trade negotiations, in particular by increasing the likelihood that Congress will implement the trade agreements that he negotiates with advice from and in consultation with the Congress. Fast track authority expired in January 1988, but was revived in the Omnibus Trade and Competitiveness Act of 1988 (1988 Act).[5] Sections 1102 and 1103 of the 1988 Act[6] provide the authority and set forth the conditions for the application of the fast track procedures provided in section 151 of the Trade Act of 1974.[7]

Basically, those procedures have been applied to any legislation implementing a trade agreement entered into under section 1102(b) or (c) of the 1988 Act[8] before June 1, 1991, provided:

- in the case of bilateral agreements, the foreign country requested the negotiation and the President provided at least sixty days' notice to the Senate Finance and House Ways and Means Committees of his intention to enter into negotiations;[9]
- the President notified the House of Representatives and Senate of his intention to enter into the agreement at least ninety calendar days before the day on which he entered into the agreement;[10]
- after entering into the agreement, the President submitted to the House and Senate the agreement, a draft implementing bill, a statement of administrative action proposed to implement the agreement, and detailed supporting information,[11] including notably a statement explaining how the agreement makes progress in achieving the negotiating objectives established in section 1101;[12] and
- both the House and the Senate did not separately agree to procedural disapproval resolutions within any sixty-day period, making legislation to implement a trade agreement ineligible for fast track procedures on the basis of the President's failure or refusal to consult with Congress on trade negotiations.[13]

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

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

1. United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319 (1936).
2. U.S. CONST. art. I, § 8, cl. 18.
3. *Id.* cl. 3.
4. Trade Act of 1974, §§ 101–102, 151, Pub. L. No. 93-618, 88 Stat. 1978, 1982, 2001 (1975) (codified at 19 U.S.C. §§ 2101, 2111-2112, 2191) (1988) [hereinafter 1974 Act]. For an excellent overview of the fast track, see Harold H. Koh, *Congressional Controls on Presidential Trade Policymaking After I.N.S. v. Chadha*, 18 N.Y.U. J. INT'L L. & POL. 1191 (1986); Koh, *History of the Fast-Track Approval Mechanism*, in JUDITH H. BELLO & ALAN F. HOLMER, GUIDE TO THE U.S.-CANADA FREE-TRADE AGREEMENT 1 (1990).
5. Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (codified as amended in scattered sections of 19 U.S.C. (1990)) [hereinafter 1988 Act].
6. *Id.* §§ 1102-1103, 19 U.S.C. §§ 2902-2903.
7. 1974 Act § 151, 19 U.S.C. § 2191.
8. Section 1102(b) concerns agreements (other than bilateral agreements) regarding nontariff barriers. Section 1102(c) deals with bilateral agreements regarding tariff and nontariff barriers. *Id.* § 1102(b)-(c), 19 U.S.C. § 2902(b)-(c). Section 1102(a) gives the President authority to proclaim reductions in U.S. tariffs, subject to specified limits. *Id.* § 1102(a), 19 U.S.C. § 2902(a).
9. *Id.* § 1102(c)(3)(B)-(C), 19 U.S.C. § 2902(c)(3)(B)-(C).
10. *Id.* § 1103(a)(1)(A), 19 U.S.C. § 2903(a)(1)(A).
11. *Id.* § 1103(a)(2), 19 U.S.C. § 2903(a)(2). The required information includes: (1) an explanation how the implementing bill and proposed administrative action will affect existing law; (2) a statement that the agreement makes progress in achieving the applicable purposes, policies, and objectives set forth in § 1101 of the 1988 Act, 19 U.S.C. § 2901; (3) a statement of the President's reasons regarding how the agreement makes such progress (as well as the extent to which the agreement does not do so), how it serves the interests of U.S. commerce, and why the implementing bill and proposed administrative action are required or appropriate to carry out the agreement; (4) a statement describing the efforts of the President to obtain international exchange rate equilibrium and any effect of the agreement on increased international monetary stability; and (5) a statement relating to noncommercial state trading enterprises.
12. *Id.* § 1101, 19 U.S.C. § 2901.
13. *Id.* § 1103(c), 19 U.S.C. § 2903(c).
14. Presumably, the President would indicate that he planned to submit all Uruguay Round agreements as a package, even if some were already concluded. In fact, it seems unlikely that any agreements will be firmly concluded until they all are.

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

- neither the House nor the Senate adopted an extension disapproval resolution before June 1, 1991.[15]

An extension disapproval resolution could be introduced by any member of Congress.[16] Any such resolution would be referred to the Committee on Finance in the Senate or, in the House, to the Committees on Ways and Means and Rules. Importantly, there is no automatic discharge provision[17]—meaning that a resolution referred to such committees could simply languish there without further action.

II. The Previous Applications of Fast Track Procedures

As noted above, the United States Congress established the fast track in the Trade Act of 1974,[18] the central purpose of which was to facilitate the seventh or Tokyo Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT).[19] With advice from the Congress and the private sector, those negotiations were finally concluded in April 1979 when the United States and other GATT trading partners signed various codes and framework agreements amending the GATT for their signatories.[20] In accordance with the fast track procedures, implementing legislation was cooperatively drafted by the executive branch (led by the Office of the then Special Trade Representative) and the Congress (led by the Senate Finance and House Ways and Means Committees). The President then submitted the bill already agreed upon, which was passed by the House (395-7)[21] and Senate (90-4)[22] and enacted into law as the Trade Agreements Act of 1979.[23]

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

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

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

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

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

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

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

22. *Id.* at 20194.

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

The next two uses of the fast track were to implement bilateral rather than multilateral agreements. First, the Trade and Tariff Act of 1984[24] outlined objectives for, and authorized the negotiation of, a free trade agreement with Israel.[25] With advice from the Congress and the private sector, the administration concluded those negotiations the following year and then cooperatively drafted an implementing bill with the Congress. The House passed the bill submitted by the President following this joint collaboration by a vote of 422-0,[26] and the Senate passed the bill by a voice vote.[27] The bill was then enacted as the United States-Israel Free Trade Area Implementation Act of 1985.[28]

Second, in response to Prime Minister Brian Mulroney's request in 1985,[29] and with the advice of the Congress and the private sector, the United States and Canada negotiated a free trade agreement signed by the President and the Prime Minister on January 2, 1988.[30] While the administration felt it had consulted the Congress regularly and in detail,[31] some in the Congress strongly disagreed.[32] Nonetheless, the congressional leadership entered into an agreement with Secretary of the Treasury James A. Baker III and U.S. Trade Representative Clayton Yeutter concerning the legislation to implement the Canada agreement.

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

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

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

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

27. *Id.* at 13574.

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

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

30. *See generally id.*

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

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

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

cedures, the administration and Congress again cooperatively drafted legislation that the President then submitted to the Congress. As passed by the House (366-40)[34] and Senate (83-9),[35] that bill was enacted as the United States-Canada Free-Trade Agreement Implementation Act of 1988.[36]

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

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

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

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

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

34. 134 CONG. REC. 21295 (1988).
35. *Id.* at 24444.
36. United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. No. 100-449, 102 Stat. 1851 (codified at 19 U.S.C. § 2112 note (1990)).
37. GATT, *Ministerial Declaration on the Uruguay Round* (Sept. 20, 1986).
38. GATT Secretariat, Multilateral Trade Negotiations, Trade Negotiations Committee, *Trade Negotiations Committee Meeting at Ministerial Level* (Dec. 9, 1988) (restricted document).

June 10, 1991.[39] At their direction, trade ministers Carla A. Hills and Jaime Serra Puche consulted, and in August 1990 recommended the launch of negotiations.[40] On September 25, 1990, President Bush formally notified the Congress of his intention to negotiate a free trade agreement with Mexico. In February 1991 the U.S. and Mexican presidents and Canadian Prime Minister Brian Mulroney announced that Canada would participate too, making it a trilateral North American Free Trade Agreement negotiation.[41] On February 5, 1991, President Bush formally notified the Congress of his intention of negotiating a free trade agreement with Canada as well as Mexico.[42]

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

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

The fast track was due to expire on March 1, 1991, the deadline for the President to notify the Congress of his intention to enter into any trade agreement. The President had high hopes for both a NAFTA and a successful conclusion to the Round, but nothing in hand. To preserve the fast track option for these negotiations (as well as any possible agreement resulting from the Enterprise for the Americas Initiative), the President requested an extension of the fast track on March 1, 1991.[44] He submitted to the Congress all necessary supporting documents, including a voluminous report on progress in the Uruguay Round multilateral trade negotiations[45] and a report of the Advisory Committee on

39. The White House, Office of the Press Secretary, Joint Statement by the Presidents of Mexico and the United States on Negotiation of a Free Trade Agreement (June 11, 1990).
40. OFFICE OF THE U.S. TRADE REPRESENTATIVE, JOINT REPORT BY THE U.S. TRADE REPRESENTATIVE AND THE SECRETARY OF COMMERCE AND INDUSTRIAL DEVELOPMENT OF MEXICO TO THE PRESIDENT OF THE UNITED STATES OF AMERICA AND THE PRESIDENT OF THE UNITED MEXICAN STATES ON BILATERAL U.S.-MEXICAN TRADE (Aug. 8, 1990).
41. The White House, Office of the Press Secretary, Text of a Letter from the President to the Chairman of the Senate Committee on Finance and the Chairman of the House Committee on Ways and Means (Sept. 25, 1990).
42. Letter from President Bush to Dan Rostenkowski, Chairman, Committee on Ways and Means (Feb. 5, 1991).
43. Specifically, participants agreed "to conduct [agricultural] negotiations to achieve specific binding commitments on each of the following areas: domestic support, market access, and export competition . . . ." Proposal by the Chairman at Official Level, Trade Negotiations Committee, Programme of Work (Feb. 26, 1991).
44. Letter from President Bush to the Congress (March 1, 1991) (available from the White House, Office of the Press Secretary).
45. REPORT TO THE CONGRESS ON THE EXTENSION OF FAST TRACK PROCEDURES PURSUANT TO SECTION 1103(B) OF THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988, H.R. DOC. NO. 51, 102d Cong., 1st Sess. (1991).

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

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

Crystallizing such concerns, Senate Finance and House Ways and Means Committee Chairmen Lloyd Bentsen and Dan Rostenkowski wrote President Bush on March 7.[47] The chairmen's letter asked the President to indicate, by no later than May 1, his plans with respect to labor and environmental issues in connection with the Mexican negotiations. On March 27, House Majority Leader Richard A. Gephardt also wrote the President, asking for the administration's plans regarding wage disparity, rules of origin, environmental protection, health and safety standards, labor mobility, worker and human rights, an escape clause, and worker adjustment programs.[48]

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

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

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

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

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

48. *Id.* at 89-98.

49. *Id.* at 2.

50. *Id.*

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

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

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

Meanwhile, fast track extension disapproval resolutions were introduced and reported out of committees in both the House of Representatives and the Senate. The House resolution, H. Res. 101, was sponsored by Representative Byron L. Dorgan (D-S.D.); the identical Senate measure, S. Res. 78, was sponsored by Senator Ernest L. Hollings (D-S.C.). The Dorgan resolution was reported out of the Ways and Means Committee unfavorably on a vote of 27–9 on May 14.[53] The Hollings resolution likewise was reported unfavorably out of the Finance Committee on a vote of 15–3 on May 14.[54] With the receipt of the administra-

51. *Id.* at 4-86.

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

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

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

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

V. The Congressional Debate over Extension of the Fast Track

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

68. *Id.* at H3608.

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

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

71. *Id.* at S6640.

72. *Id.* at S6778.

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

74. *Id.* at H3585.

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

> I have voted for this [fast track] procedure on GATT in the past. I was moved by the argument that if you go to a negotiation with 107 negotiators, it is very difficult to go back and renegotiate it. . . . But now, the administration is extending this to negotiations with individual countries.
>
> . . . .
>
> . . . I do not support the administration's path of moving to make fast track standard operating procedure in each trade negotiation that comes along.[76]

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

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

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

75. *Id.* at H3500.

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

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

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

79. *Id.* at H3607.

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

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

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

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

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

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

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

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

83. *Id.* at H3503, H3517.

84. *Id.* at H3503.

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

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

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

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

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

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

87. *Id.* at S6555 (daily ed. May 23, 1991).
88. *Id.* at H3527.
89. *Id.* at S6607; *see also, e.g., id.* at H3595 (comments of Rep. Bill Emerson (R-Mo.)), S6600 (comments of Sen. Dave Durenburger (R-Minn.)), S6617 (comments of Sen. Dennis DeConcini (D-Ariz.)), S6798 (comments of Sen. Max Baucus). *But cf., e.g., id.* at S6595 (comments of Sen. Tom Harkin (D-Iowa)), S6640 (comments of Sen. Thomas Daschle (D-S.D.)).
90. *Id.* at H3572 (comments of Rep. William Hughes (D-N.J.)).
91. *Id.* at H3592-93. He also added: "We promise you careful scrutiny of the results." *Id.* at H3594.
92. *Id.* at S6814 (daily ed. May 24, 1991).

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

Perhaps the House Majority Leader characterized this attitude most colorfully:

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

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

Ultimately the fast track supporters prevailed. On May 23, 1991, the House of Representatives rejected the fast track disapproval resolution sponsored by Representative Byron L. Dorgan (D-N.D.), voting 192-231.[96] Immediately after defeating the disapproval resolution, the House passed overwhelmingly a "sense of the House"[97] resolution affirming the Congress's commitment to hold the administration to promises it had made concerning the treatment of environmental safeguards, worker safety, and worker adjustment assistance.[98] On May 24, 1991, the Senate disapproval resolution sponsored by Senator Ernest F. Hollings also failed, by a vote of 36-59.[99] Consequently, the President has authority until June 1, 1993, to enter into trade agreements pursuant to fast track procedures.[100]

VI. A Prescription for a Pragmatic Partnership

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

93. *Id.* at H3544 (daily ed. May 23, 1991).
94. *Id.* at H3608 (comments of Rep. Richard Gephardt (D-Mo.)).
95. *See, e.g., id.* at H3498 (comments of Rep. Anthony C. Beilenson (D-Cal.)), H3572 (comments of Rep. William Hughes (D-N.J.)), H3590 (comments of Rep. Thomas McMillen (D-Md.)), H3609 (comments of Rep. Bill Barrett (R-Neb.)), S6639 (comments of Sen. Thomas Daschle (D-S.D.)).
96. *Id.* at H3588.
97. *Id.* at H3589, H3610.
98. EXCHANGE OF LETTERS, *supra* note 47.
99. 137 CONG. REC. S6829 (daily ed. May 24, 1991).
100. Even though the administration prevailed in the vote on an extension disapproval resolution, the fast track remains decidedly fragile. Despite its inclusion in a statute, it remains expressly subject to the constitutional rulemaking authority of each house. At any time, either the House of Representatives or the Senate can change its fast track rule, or eliminate the fast track altogether. Therefore, the administration and supporters of the Round and North American free trade talks must remain vigilant to preserve the fast track.
101. 137 CONG. REC. S6586 (daily ed. May 23, 1991).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORICAL AND STATUTORY NOTES

Legislative History

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

LIBRARY REFERENCES

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

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

(a) In general

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

(1) whether state trading enterprises account for a significant share of—

(A) the exports of such major foreign country, or

(B) the goods of such major foreign country that are subject to competition from goods imported into such foreign country; and

(2) whether such state trading enterprises—

(A) unduly burden and restrict, or adversely affect, the foreign trade of the United States or the United States economy, or

(B) are likely to result in such a burden, restriction, or effect.

(b) Effects of affirmative determination

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

(1) the President shall reserve the right of the United States to withhold extension of the application of the GATT, between the United States and such major foreign country, and

(2) the GATT shall not apply between the United States and such major foreign country until—

(A) such foreign country enters into an agreement with the United States providing that the state trading enterprises of such foreign country—

(i) will—

(I) make purchases which are not for the use of such foreign country, and

(II) make sales in international trade,

in accordance with commercial considerations (including price, quality, availability, marketability, and transportation), and

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

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

(c) Expedited consideration of bill to approve extension

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

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

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

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

(d) Publication

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

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

HISTORICAL AND STATUTORY NOTES

Delegation of Functions

Functions vested in the President by Subsecs. (a), (b) and (d) of this section regarding the accession of state trading regimes to the General Agreement on Tariffs and Trade, delegated to the United States Trade Representative, pursuant to Ex.Ord. No. 12661, Dec. 27, 1988, 54 F.R. 779, set out as a note under section 2901 of this title.

Legislative History

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

LIBRARY REFERENCES

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

§ 2906. Definitions

For purposes of this chapter:

(1) The term "distortion" includes, but is not limited to, a subsidy.

(2) The term "foreign country" includes any foreign instrumentality. Any territory or possession of a foreign country that is administered separately for customs purposes, shall be treated as a separate foreign country.

(3) The term "GATT" means the General Agreement on Tariffs and Trade.

(4) The term "implementing bill" has the meaning given such term in section 2191(b)(1) of this title.

(5) The term "international trade" includes, but is not limited to—

(A) trade in both goods and services, and

(B) foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services.

(6) The term "state trading enterprise" means—

(A) any agency, instrumentality, or administrative unit of a foreign country which—

(i) purchases goods or services in international trade for any purpose other than the use of such goods or services by such agency, instrumentality, administrative unit, or foreign country, or

(ii) sells goods or services in international trade; or

(B) any business firm which—

(i) is substantially owned or controlled by a foreign country or any agency, instrumentality, or administrative unit thereof,

(ii) is granted (formally or informally) any special or exclusive privilege by such foreign country, agency, instrumentality, or administrative unit, and

(iii) purchases goods or services in international trade for any purpose other than the use of such goods or services by such foreign country, agency, instrumentality, or administrative unit, or which sells goods or services in international trade.

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

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in text preceding par. (1), read in the original "this part", meaning Part 1 of Subtitle A of Title I of Pub.L. 100–418. Part 1 provisions are classified to this chapter and repealed section 2131(a) to (c), amended sections 2133(a), (b)(2), (d) and 2191(b)(1), and enacted section 2133(e) of this title.

Legislative History

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

LIBRARY REFERENCES

Customs Duties ⚷10 to 12.
C.J.S. Customs Duties §§ 17, 18, 19 et seq.

CHAPTER 18—IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE

§ 3001. Purposes

The purposes of this chapter are—

(1) to approve the International Convention on the Harmonized Commodity Description and Coding System;

(2) to implement in United States law the nomenclature established internationally by the Convention; and

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

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

HISTORICAL AND STATUTORY NOTES

References in Text

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

Effective Date

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

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

"(b) **Implementation of the Harmonized Tariff Schedule.**—The effective date of the Harmonized Tariff Schedule is January 1, 1989. On such date—

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

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

Legislative History

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

§ 3002. Definitions

As used in this chapter:

(1) The term "Commission" means the United States International Trade Commission.

(2) The term "Convention" means the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on June 14, 1983, and the Protocol thereto, done at Brussels on June 24, 1986, submitted to the Congress on June 15, 1987.

(3) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(4) The term "Federal agency" means any establishment in the executive branch of the United States Government.

(5) The term "old Schedules" means title I of the Tariff Act of 1930 (19 U.S.C. 1202) as in effect on the day before January 1, 1989.

(6) The term "technical rectifications" means rectifications of an editorial character or minor technical or clerical changes which do not affect the substance or meaning of the text, such as—

(A) errors in spelling, numbering, or punctuation;

(B) errors in indentation;

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

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

HISTORICAL AND STATUTORY NOTES

References in Text

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

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

Delegation of Functions

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

Reports on Negotiations to Eliminate Wine Trade Barriers

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

"Before the close of the 13-month period beginning on the date of the enactment of this Act [Aug. 23, 1988], the President shall update each report that the President submitted to the Committee on Ways and Means and the Committee on Finance under section 905(b) of the Wine Equity and Export Expansion Act of 1984 (19 U.S.C. 2804) [subsec. (b) of this section] and submit the updated report to both of such committees. Each updated report shall contain, with respect to the major wine trading country concerned—

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

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

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

Legislative History

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

§ 2805. Required consultations

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

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

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

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

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

HISTORICAL AND STATUTORY NOTES

References in Text

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

Legislative History

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

§ 2806. United States wine export promotion

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

(1) utilize, for the fiscal year ending September 30, 1985, the authority provided under section 135 of the Omnibus Budget Reconciliation Act of 1982 to make

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

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

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

HISTORICAL AND STATUTORY NOTES

References in Text

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

Legislative History

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

CHAPTER 17—NEGOTIATION AND IMPLEMENTATION OF TRADE AGREEMENTS

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

(a) Overall trade negotiating objectives

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

(1) more open, equitable, and reciprocal market access;

(2) the reduction or elimination of barriers and other trade-distorting policies and practices; and

(3) a more effective system of international trading disciplines and procedures.

(b) Principal trade negotiating objectives

(1) Dispute settlement

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

(A) to provide for more effective and expeditious dispute settlement mechanisms and procedures; and

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

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

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

(A) to enhance the status of the GATT;

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

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

(3) Transparency

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

(4) Developing countries

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

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

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

(5) Current account surpluses

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

(6) Trade and monetary coordination

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

(7) Agriculture

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

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

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

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

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

(8) Unfair trade practices

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

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

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

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

(i) state trading enterprises, and

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

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

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

(III) other collateral concessions be made,

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

(9) Trade in services

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

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

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

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

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

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

(10) Intellectual property

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

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

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

(ii) provide protection against unfair competition,

(B) to establish in the GATT obligations—

(i) to implement adequate substantive standards based on—

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

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

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

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

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

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

(ii) dispute settlement provisions and enforcement procedures,

is without prejudice to other complementary initiatives undertaken in other international organizations; and

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

(11) Foreign direct investment

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

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

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

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

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

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

(12) Safeguards

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

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

(B) to ensure that safeguard measures are—

(i) transparent,

(ii) temporary,

(iii) degressive, and

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

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

(13) Specific barriers

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

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

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

(14) Worker rights

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

(A) to promote respect for worker rights;

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

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

(15) Access to high technology

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

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

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

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

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

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

(16) Border taxes

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

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

HISTORICAL AND STATUTORY NOTES

Short Title

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

Findings and Purposes of Trade, Customs, and Tariff Laws

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

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

"(1) in the last 10 years there has arisen a new global economy in which trade, technological development, investment, and services form an integrated system; and in this system these activities affect each other and the health of the United States economy;

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

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

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

"(B) the large United States budget deficit,

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

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

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

"(F) governmental distortions and barriers,

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

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

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

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

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

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

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

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

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

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

"(2) strengthen United States trade laws;

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

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

Legislative History

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

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 12661

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

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

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

PART I—TRADE, CUSTOMS, AND TARIFF LAWS

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

Sec. 1–201. Wine Barriers. The functions vested in the President by section 1125 of the Omnibus Trade Act [set out as a note under section 2804 of this title] regarding the updated report on barriers to wine trade, are delegated to the United States Trade Representative.

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

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

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

PART II—EXPORT ENHANCEMENT

Sec. 2–101. Countertrade and Barter.

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

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

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

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

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

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

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

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

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

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

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

(1) Executive Order No. 11858, as amended [set out as a note under section 78b of Title 15, Commerce and Trade], regarding the Committee on Foreign Investment in the United States (the "Committee") is further amended as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART IV—EDUCATION AND TRAINING FOR AMERICAN COMPETITIVENESS

Sec. 4–101. Buy American Act of 1988.

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

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

PART V—MISCELLANEOUS

Sec. 5–101. Executive Oversight.

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

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

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

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

Sec. 5–202. Reporting Functions. The reporting functions of the President under section 825(d) of the Defense Authorization Act [not classified to the Code] are delegated to the Director of the Office of Management and Budget. The Director may further delegate to the heads of Executive departments and agencies responsibility for preparing particular sections of such reports. The heads of Executive departments and agencies shall, to the extent permitted by law, provide the Director with such information as may be necessary for the effective performance of these functions.

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

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

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

§ 2902. Trade agreement negotiating authority

(a) Agreements regarding tariff barriers

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

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

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

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

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

(iii) such additional duties;

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

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

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

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

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

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

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

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

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

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

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

(b) Agreements regarding nontariff barriers

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

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

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

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

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

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

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

(c) Bilateral agreements regarding tariff and nontariff barriers

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

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

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

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

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

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

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

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

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

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

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

(d) Consultation with Congress before agreements entered into

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

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

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

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

(A) the nature of the agreement;

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

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

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

(e) Special provisions regarding Uruguay Round trade negotiations

(1) In general

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

(2) Application of tariff proclamation authority

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

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

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

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

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

(4) Advisory committee reports

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

(Pub.L. 100-418, Title I, § 1102, Aug. 23, 1988, 102 Stat. 1126; Pub.L. 101-382, Title I, § 13[illegible](b), Aug. [illegible], 1990, 104 Stat. 653; Pub.L. 103-49, § 1, July 2, 1993, 107 Stat. 239.)

HISTORICAL AND STATUTORY NOTES

References in Text

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

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

1993 Amendments

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

1990 Amendment

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

Legislative History

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

LIBRARY REFERENCES

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

§ 2903. Implementation of trade agreements

(a) In general

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

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

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

(i) a draft of an implementing bill,

(ii) a statement of any administrative action proposed to implement the trade agreement, and

(iii) the supporting information described in paragraph (2); and

(C) the implementing bill is enacted into law.

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

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

(B) a statement—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Extension disapproval resolutions—

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

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

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

(D) It is not in order for—

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

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

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

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

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

(B) Procedural disapproval resolutions—

(i) in the House of Representatives—

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

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

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

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

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

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

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

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

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

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

(d) Rules of House of Representatives and Senate

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

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

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

(e) Computation of certain periods of time

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

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

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

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

HISTORICAL AND STATUTORY NOTES

References in Text

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

The Omnibus Trade and Competitiveness Act of 1988, referred to in subsec. (c)(1)(E), is Pub.L. 100–418, Aug. 23, 1988, 102 Stat. 1107. For classification of this Act in the Code, see Tables volume.

Legislative History

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

LIBRARY REFERENCES

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

NOTES OF DECISIONS

Construction with other laws 1

1. Construction with other laws

President's action in submitting international trade agreement to Congress would not constitute "final agency action" reviewable under Administrative Procedure Act (APA). Public Citizen v. U.S. Trade Representative, C.A.D.C.1993, 5 F.3d 549.

§ 2904. Termination and reservation authority; reciprocal nondiscriminatory treatment

(a) In general

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

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

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

(b) Reciprocal nondiscriminatory treatment

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

Erskine –

Proposed changes add more balance to memo, while leaving the recommendation intact. He needs to know downsides of delay, even if it is the best course

Sandy

RICHARD A. GEPHARDT
MISSOURI
DEMOCRATIC LEADER

H-204 U.S. CAPITOL
202-225-0100

Congress of the United States
House of Representatives
Office of the Democratic Leader
Washington, DC 20515–6537

February 26, 1996

Dear Democratic Colleague:

Shortly, President Clinton is expected to request that Congress grant new fast track trade negotiating authority. I am writing to seek your support for a forward looking agenda that will ensure that future trade agreements promote progress in living standards, environment and human rights here in the U.S. and around the globe.

This is an important topic. Article One, Section Eight of our Constitution vests exclusive authority over international commerce in the legislative branch. In recent years, Congress has delegated more authority to the Executive Branch as our trade negotiating agenda has expanded beyond tariff and quotas issues.

However, delegating trade negotiating authority should not be an abdication of the important role that Congress has in this matter. The Constitution demands, and the American people — our constituents — expect that we will fight for their rights and interests in all venues. Any delegation of legislative authority over international trade that occurs should be based on a complete and thorough debate of the issues and a positive grant of authority.

In my view, the broad delegation of legislative authority involved in fast track isn't a privilege to be granted lightly: it has to be earned.

In 1991, I supported President Bush's request for fast track authority because I believed, as I do now, that we should seek to expand trade. We can't shy away from the world trading system. Exports support millions of jobs here in the U.S. We've got to continue our efforts to pry open foreign markets to ensure that American farmers, workers and businesses will have the opportunity to sell their competitive products abroad.

However, focusing on exports alone fails to recognize that our nation's trade deficit has reached historic levels fueled by an increasing flood of imports. Too many ideologues of the old status quo are not willing to address the impact of imports. The fact is that imports are having a tremendous impact on U.S. jobs and living standards. Last year, our nation's trade deficit reached a new record with a $166.6 billion deficit in goods. Many Americans see themselves as victims, rather than beneficiaries, of recent trade agreements.

As well, many of our nation's corporations are using the pressure of international competition and the threat of moving jobs out of our country to limit wage and salary increases and as a tool in fighting union organization efforts. During the debate over NAFTA, a Wall Street Journal poll of executives found that a majority of executives from large companies intended to shift some production to Mexico and that a large number intended to use NAFTA "as a bargaining chip to keep down wages in the U.S." This trend continues: A recent survey provided to the U.S. Department of Labor found that in more than half of union organizing drives

We must not negotiate away our jobs and our living standard based on outdated theories and assumptions about trade and international economics. Defenders of the status quo seek to define the debate on trade as being about either protectionism or free trade. Labels denigrate the debate and short-sell the interests of our people. What's needed is an honest debate about the real issue. We need a debate about the facts and our future, not motives and past theories.

The debate should be about how we continue the process of economic integration in a way that is truly a force for progress for all involved. We must continue to provide U.S. leadership without selling out average Americans who work hard, play by the rules and simply want a fair chance to succeed.

We must be unwilling to compromise or negotiate away the economic interests of our people. According to a recent survey, the public is growing increasingly frustrated with trade treaties and agreements which a majority believes are sacrificing our jobs, opportunity and economic future based on elite establishment projections that, in the long term, we'll all be better off. Used in this way, the long-term is simply a debating point: a point in time that may never come.

The primary focus of the current debate over fast track negotiating authority is the goal of expanding the North American Free Trade Agreement (NAFTA) first to Chile and, ultimately, throughout all of South and Central America.

During the debate over NAFTA, I traveled around my District and across the U.S. talking to farmers, workers and businesspeople to understand what competitive pressures faced our country. I visited Mexico several times to see for myself what was happening on the ground. I flew to the U.S. side of the border and drove across unannounced so that I could get an unvarnished view. I talked to hundreds of average people. I walked through scenes of environmental and health devastation. I knocked on the doors of many companies asking to see and understand their operations. I didn't want to rely simply on statistics or theories. I wanted to *really* understand what was necessary for everyone to benefit.

I supported fast track in 1991 because I believe that we needed a NAFTA. We can't ignore Mexico. Closing off our borders isn't an option. The question then, and now, is how do we make NAFTA a real force for progress. How do we ensure that an agreement promotes, not undermines living standards, health and safety for all our people. I believed that it was in the deep self-interest of the U.S. to reach an agreement that addressed the issues in a way that would promote fundamental, long-term change.

Recently David Bonior and I had the opportunity to visit Mexico to review first hand the results of NAFTA. Rather than improving conditions, the NAFTA has validated Mexico's system of labor relations, wage setting mechanisms and environmental enforcement that has damaged the standard of living, health and safety of the Mexican people. We saw 21st century technology combined with 19th century living and working conditions. The wages and living conditions of average hard-working Mexicans haven't improved. They've declined. Real manufacturing wages are now 25% lower than they were when NAFTA began.

Since 1980, real manufacturing wages have dropped by about 50%. Everyone clearly agrees that real wage declines have accelerated due to the peso crisis. However, it's important to recognize that real wages were stagnating prior to the peso crisis while at the same time worker productivity continued to grow. Workers simply aren't being compensated in relation to their efforts. The peso crisis exacerbated the real wage declines but the problem of inadequate compensation has much deeper roots in the Mexican economic and legal system.

There has been a tremendous increase in the number of maquiladora plants and an almost 50% increase in the maquiladora work force along the border since NAFTA began — plants that are almost exclusively created to send their exports into the U.S. During the 1993 debate on NAFTA's passage, proponents in Mexico and the United States said that NAFTA would eliminate the incentive to create maquiladoras. Investment in maquiladoras in the state of Baja California has surged by more than 35% over the past year alone. Since the start of NAFTA, hundreds of thousands of jobs have been shifted to maquiladora plants. These jobs pay wages on which it's almost impossible to raise a family. We met family after family who said that they simply couldn't make ends meet — a gallon of milk costs almost three hours of wages. One mother told me her children were lucky if they got to drink milk once a week. Almost everyone in the family is forced to work simply to get by.

Mexican workers are viewed simply as producers, not consumers. Many of the maquiladoras experience turnover rates of 100% or more. As wage increases are virtually nonexistent, workers have little recourse — many act like economic nomads going from plant to plant hoping for the slightest advantage to survive. Some return home. Many decide that the only ticket to a better life is to cross the border into the U.S. No one can live on much more than a survival basis working in these plants.

We drove by industrial parks where the companies continue to dump their toxic wastes at night into the rivers where people bathe. We saw furniture plants using highly toxic solvents and finishes that once operated in California and throughout the U.S. which had moved to Mexico because, as the General Accounting Office pointed out, of lax environmental enforcement. We revisited an abandoned lead recycling facility that I had visited on an earlier trip to the area. Tarps now covered the huge mounds of waste, yet nothing has been done to really clean up the site. Just feet away a dairy farm continues to operate. The milk from these cows is drunk by the kids in the area — those that can afford it. High blood levels of lead continue to plague the surrounding communities.

Not only have things not improved in the border area, but since NAFTA they've gotten worse. The only positive sign for me was that the Mexican people continue to have hope. They are proud people who simply want a chance to provide for themselves and their families. While the border is only miles away, and it beckons far too many people, most want to stay in Mexico because they love their country. Yet, many find that the pressures of daily life along the border and throughout the country are too great. Countless people continue to cross the border into the U.S. every day with the hope of a better life.

Some are pointing to the fact that we need to recognize the impact that the peso crisis has had in Mexico. I agree that the impact has been devastating. But, the negative trends under NAFTA in our trade balance and in real wages for Mexican workers were in place before the peso crisis hit. Months before the December 1994 peso crash, the U.S. trade surplus with Mexico had already turned into a monthly deficit. And, as I wrote to the President before the peso crisis occurred, the crisis was foreseeable. I warned, as many others did, about the overvalued peso and the threat to our economy that would result if the issue was not dealt with during the negotiations.

Some are also highlighting the repayment of the billions of dollars in loans that we made to Mexico as part of the peso bailout as a real sign of success. Clearly, we're all pleased that Mexico has refinanced these loans. But let's recognize that Mexico has repaid this loan in two ways. First, they've shifted some of their borrowing to other countries. Second, we ran a more than $16 billion trade deficit with Mexico last year alone and have amassed more than $33.6 billion in trade deficits with Mexico since the peso crisis began. In other words, many American workers have repaid Mexico's loans with their jobs and living standard.

As I said, I supported President Bush's request because I believed that we should seek to negotiate new trade agreements that expand opportunity. I spent several months negotiating with President Bush and his Administration about what our objectives should be. I believed then, as I believe now, that President Kennedy was right when he said in his first inaugural address: "Let us never negotiate out of fear, but let us never fear to negotiate." I'm confident that if we understand and fight for our objectives, we can reach good new agreements.

But there is a key difference between the debate in 1991 and today. In 1991 we were dealing with abstract ideas. Now we have had three years of real life experience under a specific set of rules embodied in the NAFTA. I believe that it would be a fundamental mistake to simply extend the current NAFTA. It simply isn't working.

Why isn't NAFTA working?

The single biggest flaw in the NAFTA was its failure to adequately address industrial relations — the right to strike, the right to organize and the right to freely associate. We've seen clearly that the failure to adequately enforce such core labor laws in Mexico means that Mexican wages have failed to rise. Nationally, wages are basically capped under the agreement known as "El Pacto." Additionally, as numerous workers in Tijuana told David Bonior and me recently, the maquiladora owners also privately set minimum and maximum wages so that they don't compete for workers on this basis.

While U.S. businesses were able to demand a provision in the NAFTA that requires that Mexico enforce it's intellectual property laws, and is able to use trade sanctions, criminal penalties and impoundment of goods to enforce these measures, there is no similar provision for enforcement of Mexico's labor laws or, for that matter, Mexico's environmental laws. Thus, if Mexico's failure to enforce it's labor laws results in Mexican worker wages being held down and their rights abrogated, there is little that we can do other than complain. So far, the few complaints that have been brought under the labor side agreement have made little or no impact.

Five cases concerning Mexico have been brought under the labor side agreement for labor violations in Mexico. As a result of these cases, no union has been recognized in Mexico. There has been no noticeable change on the ground. Take for example the cases at General Electric in Ciudad Juarez or Honeywell in Chihuahua where workers were fired trying to organize independent unions. Those unions remain unrecognized. Those workers have not been reinstated.

The workers that David and I talked to told stories very similar to the ones we heard during the NAFTA negotiations. Worker after worker told us how there was no ability to try and fight for better working conditions. If you complained, you were fired. Many told how the maquiladora owners kept lists of "problem" employees who were blacklisted because of their complaints. Many are arrested for their activities on trumped up charges.

Several workers told us they didn't even know if there was a union contract or, if there was, they had no idea who their union representative was. The union was a sham, but there wasn't anything they could do about it.

If we don't have an effective way of addressing this problem, Mexican workers aren't going to get a fair deal. They won't be fairly compensated for their hard work. We won't create and expand the middle class that can buy our products and alleviate the downward pressure on our people's wages. Labor rights is a trade issue. It has an impact on Mexican workers and our workers. The only truly effective way of dealing with this issue is being able to resort to trade sanctions if all else fails.

The promise of NAFTA was to be greater opportunity and increased standards of living in all three countries. That has not been the case. If Mexican workers can't bargain for higher wages, they won't expand the middle class that can purchase U.S. products. Indeed, since NAFTA, the percentage of Mexicans considered "extremely poor" rose from 31% in 1993 to 50% in 1996. Two out of three Mexicans now report that their personal economic situation is worse than before NAFTA. And, the downward pressure on our wages will continue.

As we seek to ensure adequate enforcement of labor laws, we need to seriously examine the need to provide for cross-border organizational rights for our labor organizations. Because of government dominated labor movements, coercion, and inadequate enforcement structures, it may be that the situation could be materially improved through the assistance of U.S. or other international labor organizations. As our businesses are able to form new alliances and have access to the enforcement process, our labor unions should have the same rights as well.

In the area of the environment, the increase in post-NAFTA border production has increased the border population and industrial and toxic emissions and waste. Yet, the promised improvements to the existing serious border health and environmental damage have not occurred. The NAFTA environmental side agreement is simply inadequate to the task.

To date, less than a handful of projects have been approved for funding by the NADBank and through the BECC. While projects have languished before these organizations, the health and safety of people on both sides of the border deteriorates. These organizations must begin to really fulfill their intended purpose and focus on the needs of the people live on and near the border — not just companies that are seeking to have their costs underwritten and defrayed by public funds.

We also need to be able to fully understand the potential impact of future trade agreements on the world's environment. We must carefully balance economic development and environmental protection. To do this, we must have complete environmental impact statements conducted as negotiations proceed.

I am unwilling to support new trade negotiations that do not address these fundamental flaws by including labor rights and the environment as chapters in the core of the agreement equal in stature and force and linked to provisions on investment and trade. And, such labor and environmental provisions must be fully enforceable with access to trade sanctions where necessary. Access to the enforcement process for average citizens and non-governmental organizations must be provided. Transparency throughout the process must also be assured.

These issues must not be covered in separate side agreements that can later be rejected by the Republicans, but as integral parts of the agreement itself. For me, this is not negotiable. Trade, labor and the environment are inextricably intertwined. Trade agreements should not become vehicles to undermine progress in these important areas.

Scope of authority

Over the past four years we have signed more than 200 new trade agreements — NAFTA and the GATT among them. While I support expanding our export opportunities and enhancing the rules of trade, I do not believe that a case has yet been made for broad fast track authority.

Last year I joined with then Secretary of Commerce Kantor and Senator Hollings in calling for dramatically expanded trade monitoring and enforcement capabilities. It was my belief — and continues to be my belief — that we should seek to capitalize on and learn from existing trade agreements before we haphazardly seek to engage in new negotiations simply for the sake of negotiating.

In the first six months of its operation the trade monitoring and enforcement unit at the Department of Commerce has already begun to root out substantial problems in the carrying out of our trade policy. I commend the Department for its attention to this area. It would be unwise to proceed in new areas before we understand what has and hasn't worked.

Accordingly, I believe that we should limit any grant of fast track authority — if the issues that I have raised are addressed — to bilateral negotiations with Chile or to remedy the flaws in the NAFTA before we proceed on any accession agreements. Indeed, our former colleague Bill Richardson, now serving as U.S. Ambassador to the United Nations, and I introduced Chile-only fast track legislation in 1994. While the legislative language is out-of-date, the approach of moving forward only with Chile, with significant changes from the 1994 NAFTA, should be the basis for any new trade negotiating authority. This proposal, and one I made later that year, provided trade negotiating authority while including significant procedural safeguards to protect Congress' interests.

I have been frustrated by the Administration's reluctance to provide factual analysis on our trade agreements and ongoing negotiations. Let me give you a few examples. Authority is being requested to expand NAFTA even before the congressionally-mandated July 1997 review is complete. I requested that the International Trade Commission do an analysis of the potential impact of allowing China to join the World Trade Organization. The ITC refused this request. As well, I requested that the USTR endorse my request, as provided for under current law, to force the ITC into acting. My understanding is that the USTR wants to limit the scope of the ITC's examination of these issues. Our Department of Labor has not released the survey it commissioned, which I mentioned earlier, that shows how companies are using the threat of moving jobs out of the country to limit union organizing success. There are many other areas where the debate is not being joined or is being stifled.

A case has not been made for providing trade negotiating authority in an open-ended way. That would be an overly broad delegation of Congressional power. Let's review where we are, what's been accomplished, and what needs to be accomplished before we provide broad trade negotiating authority. I believe that there will be broad bipartisan support on this point.

Upward Harmonization:

Our first step in reaching new trade agreements must be to require that all signatories enforce their basic laws. We should expect that as we engage in negotiations, the rule of law that a country has on its books — in its Constitution, statutory and regulatory manifestations — be fully enforced.

But this is the starting point, not the end, of our efforts. I commended the Mexicans during the negotiations for many of the laws that they have had on their books — especially those represented in Article 123 of their Constitution pertaining to basic labor rights. The first and most fundamental problem we faced, and continue to face, with Mexico is inadequate enforcement.

Chile, on the other hand, has not made similar progress in terms of its basic body of labor laws. While Chile's efforts at democratic and political reform deserve our recognition and support, Chile's progress in advancing labor rights has fallen short of the mark. The labor law put in place during the Pinochet dictatorship remains in effect, thwarting organizing efforts. Large groups of Chilean workers are effectively barred from being able to engage in collective bargaining: rural, forestry, construction, and fisheries workers. Where the Chilean labor law even allows contracts to be collectively negotiated, they are limited in scope to plant or enterprise bargaining with a ban on industry-wide organizing.

It's important to recognize that President Frei's government has offered a number of important labor law reforms that would improve Chile's legal foundation. But these reforms have been blocked by business interests and the Pinochet faction in the Chilean Senate. A precondition for reaching an agreement with Chile should be the passage of these and other reforms. As we have demanded that other countries improve their intellectual property protection laws prior to entering into agreements with them, we should require the same approach with regard to labor laws.

There also are improvements necessary in Chile's environmental laws. The most glaring problem is that regulations have yet to be issued to implement Chile's 1994 environmental law. In a resource rich economy where four categories of natural resources — agriculture, forestry, fisheries, and mining — comprise 80% of all exports, this is a fundamental problem.

Clearly Chile has made great strides in advancing democracy — strides that I and many others applaud. We need to work towards further enhancing and deepening the progress that has been made. We have the opportunity to reach a good agreement with Chile. But, before we sit down at the bargaining table, we have an obligation to consider what a "good agreement" really means. And we have a <u>right</u> to say to the people of Chile: we'll start a new trade partnership — but not if it means trading away our <u>values</u>. Not if it means lowering our labor and environmental standards or standard of living, instead of raising yours.

Let's recognize that what we're talking about is comprehensive economic integration between our countries: This is more comprehensive than the average trade agreement which simply don't address these important issues. We're talking about a form of economic marriage. As such, we can, and must, expect to have a comprehensive discussion of these issues. If the agreement is to be a force for progress, it must address more than minimal standards. It has to ensure that the opportunity growth and economic advancement are possible. If we limit the debate by failing to address all the important issues we put our people's standard of living at risk.

During the NAFTA negotiations I and many others were told that we would be able to change the agreement once it had been signed into law. We were told that a process existed that would allow for negotiation and renegotiation of various changes.

This was essentially a false promise. The ability to achieve results exists during the negotiating phase — not afterwards when our negotiating leverage has been lost. Rather than set an arbitrary deadline for completing negotiations, or being willing to accept a less than desirable result, we should remain at the negotiating table, or be willing to leave that table, if our national interests aren't furthered by the text of the agreement.

But in addition to the changes that should be made as part of any agreement, we need to recognize that further upward harmonization is necessary in labor and the environment and other important areas. We need to find a process that will ensure further progress, over time. A process that ties further trade liberalization — possibly within the context of the agreement — to other important improvements would further our interests in these vital areas.

Monetary Flows:

I pointed out earlier that I and others had raised during the NAFTA debate the threat that a devaluation of Mexico's peso could have on the U.S. and on the potential benefits that could result from any trade agreement with Mexico. Terms to counter major current fluctuations is an appropriate area for negotiation as part of any trade agreement.

During the peso crisis Administration officials pointed out the contagious effect that Mexico's problems could have on world financial markets. They pointed out that currencies and markets around the globe — from the Thai baht to the Italian lire — were effected. The bipartisan leadership on both sides of the Capitol supported the President's call for action.

But that call for action might have been avoided had we been aggressive with Mexico in addressing their economic policies during the course of the NAFTA debate. We must not allow this mistake to be made again. Congress' reluctance to support the peso bailout was a harbinger of future reluctance. The international financial system is not yet fully equipped to deal with a similar threat in the future. New trade agreements must address the issue of capital flight and currency stability.

Why must certain issues be covered in the core of the agreement

Coverage of labor and environmental issues must be included as a chapter in the core agreement, rather than included as side agreements as was done in NAFTA. Given the expansion of the impact of trade disciplines into the realm of domestic standards, coverage of labor and environmental issues is now as important to the success of a trade agreement as "traditional" trade issues.

A number of Republican members have indicated that they are willing to allow the commercial components of a trade agreement to be considered under fast track, but that other issues — labor and the environment and possibly others — might be subject to amendment. We cannot allow for some issues to be considered under procedural rules favoring passage and others under more cumbersome procedures. These Republicans want to try to delink labor and environmental issues from the trade agreement. This is simply unacceptable.

It's important to understand that any changes to the core agreement would require symmetrical changes in other countries. If we were to accept coverage of labor and environment and other issues under side agreements and these provisions were not agreed to by either the U.S. or other countries, the core of the agreement could still stand. Only by including these issues in the core of the agreement can we ensure that they will either be part of the law, or the entire agreement will fail. The rules of the game must be as fair and effective for our workers as for our patents.

Human Rights — Rule of Law

The adequate protection of human rights should be a basic standard we apply to our trade relations with any country. Our basic values and interests should not be auctioned off to the highest bidder. The moral leadership of the United States has acted to promote change around the globe. We must not debase this basic interest.

It's also important to understand that advocacy of human rights promotes, not undermines, our economic interests. A country that does not protect human rights does not afford its people the ability to demand fair compensation for their efforts. The result is that we fail to lift up the standard of living of people in other countries. This means that we are not expanding the class of consumers who can purchase our exports and we are putting downward pressure on our living standard simply to compete.

Our business community also needs to understand that promotion of human rights is a question of the rule of law. A country that fails to enforce its laws in this important area may refuse to adequately enforce its laws that protect our business interests as well. We have clearly seen this in China where the disdain for the basic rule of law as it relates to human rights has a parallel in China's failure to adequately protect intellectual property, failure to adequately abide by its market access commitments and its failure to follow the rule of law in many other areas.

Trade in narcotics

I believe that we must address narcotics flows as part of any future trade negotiations. As we seek to enhance the flow of goods and services through easier access between and among our trading partners, we must recognize the risk of increased drug trafficking. As we ease the way for products to come to our shores, we increase the ability of drug traffickers to take advantage of relaxed customs procedures.

It's appropriate and, indeed, vital that we address this issue as part of our trade negotiations. Failure to aggressively address this issue will undermine our ability to stem the flow of drugs. We've already seen the impact of the failure to address this issue as part of the NAFTA. Estimates indicate a dramatic rise in the drug trade with Mexico.

Clearly enhancing economic opportunity in other countries through greater trade will help to ease the pressure on the population to engage in drug production and trafficking as growth and opportunity rise. But it would be naive to believe that this will occur quickly and that there will be a wholesale replacement of the financial benefits in the drug trade.

Drug use by our nation's children is on the rise. While we must do all that we can to reduce the demand for drugs here in this country, we must also take advantage of every opportunity to reduce the supply of drugs. This is not a problem to be swept under the rug.

Transition

The American people know that our future lies in expanding economic engagement, not shying away from it. Given fair trade rules, American farmers, workers and businesses can out compete anyone.

But even with further economic integration under fair rules, we've got to recognize that there will be a price to pay for some Americans. While observers focus on the big winners, as elected public officials, we've got to focus on making ordinary people winners as well.

During the NAFTA debate I argued strenuously on this point. On two occasions I invited officials from the European Union to meet with me and other members of the Democratic Caucus to learn how they had addressed the integration of Spain, Portugal and Greece into the EU. To this day, the EU continues to focus on structural adjustment issues as a vital public policy issue. Since the integration of these countries into the EU, well over $100 billion has been spent on integration efforts. The leaders understood the need to seriously address the impact of integration and address any dislocation or disruption in the economy. Clearly, any program we look at would, at best, only spend a fraction of this amount, but it's clear that we just haven't been serious about this issue. We need to have a comprehensive debate about this issue.

To date, over 109,000 people have been certified for NAFTA Trade Adjustment Assistance benefits. Many, many more were disqualified because of the difficulty in qualifying for assistance. And, many others never applied because of inadequate information or understanding about the current program. And, the program needs to be expanded to increase individual eligibility and to cover firms that need assistance as well. Employees should not have to relocate themselves and their families because their firm and community has been adversely affected — we should also find ways of helping firms shift their focus to new product lines and endeavors so that we prepare for change, rather than protect against it.

In the past, transition assistance here in the U.S. has been an afterthought rather than an integral part of our trade policy formulation. This is a fundamental mistake. If we are to build public support for further trade expansion efforts we've got to seriously address this issue.

I believe that now is the time for a comprehensive trade adjustment assistance program to be put in place that will provide the foundation for any future trade expansion efforts. We must not allow future trade agreements to proceed without an adequate transition program being adopted that is directly linked to the consideration of the trade agreement in Congress.

Foreign Corrupt Practices

At the Miami Summit of the Americas in December, 1994 the issue of foreign corruption was highlighted. Former Commerce Secretary Mickey Kantor spent a great deal of effort highlighting this issue and seeking to promote positive solutions.

Across the globe U.S. business interests are prohibited from offering bribes or engaging in other corrupt practices, rightfully so, to expand their business interests. Rather than handcuffing our businesspeople as they seek to do business, we need to aggressively seek ways to rein in foreign corrupt practices that seek to pit one business against another to win a contract. Future trade agreements must seek to address this issue.

Length of authority

If trade negotiating authority is to be granted, it will essentially be a contract with President Clinton as to what powers and authority are delegated to him and his administration by Congress. While I believe that this grant should be as specific as possible, we must recognize that the authority will also depend on the intent and beliefs of the President.

Accordingly, I believe that Congress should be extremely reluctant to grant fast track authority beyond the current term of the President. Each President should have to make his or her case to the Congress and the American people as to how the authority is to be used.

Conclusion

I know that this letter is long, but the issues are important and complex. And, believe it or not, there are many other trade-related issues that demand attention — the treatment of indigenous peoples, and money laundering to name just two.

We need to have an engaged national debate on these issues in the country, not limit them to the back rooms in Congress. I hope that you will join with me in this debate so that we can ensure that future trade agreements enhance opportunity for all our people.

We must not be bound by arbitrary deadlines or the threat of lost opportunities. The United States is still the most open market in the world. And, it is the most desirable consumer market. We should be willing to use the leverage of access to our market to ensure that the rights and interests of our farmers, workers, businesses, public health and the environment are advanced, not undermined, by economic integration. I'm confident that an open, honest debate can yield positive results here at home and around the world.

Sincerely,

Dick Gephardt

Richard A. Gephardt
House Democratic Leader

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

April 30, 1997

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

Section 108 of the NAFTA implementing legislation directs the U.S. Trade Representative to submit, by May 1, 1997, to you and to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, a "report on significant market opening." The enclosed report is submitted in fulfillment of this requirement.

As mandated by the legislation, this report is to list those foreign countries that currently provide fair and equitable market access beyond what is required by existing multilateral trade agreements, or that have made significant progress in opening their markets to U.S. exports, and the further opening of whose markets has the greatest potential for U.S. exports.

This report covers all regions of the world. However, additional detail is provided on countries in two regions--Latin America and Asia/Pacific--that have been experiencing the strongest economic growth, and have been the major focus of recent U.S. regional trade policy efforts.

The legislation also requires, on the basis of this report, that you "determine with which foreign country or countries, if any, the United States should seek to negotiate a free trade area agreement or agreements." We hope that the enclosed report will be useful to you in making that determination.

I believe that the information in this report provides a basis for continuing to work with the Congress to identify opportunities for negotiating greater market access for U.S. exports.

Sincerely,

Charlene Barshefsky

Enclosure

FUTURE FREE TRADE AREA NEGOTIATIONS

REPORT ON SIGNIFICANT MARKET OPENING

This report was prepared by the Office of the United States Trade Representative, in accordance with the North American Free Trade Agreement Implementation Act, Sec. 108 (b)(2).

May 1, 1997

INTRODUCTION

As required by Section 108 (b)(2) of the North American Free Trade Agreement implementing legislation (PL 103-182, 107 STAT 2057), the United States Trade Representative must submit to the President and to the Senate Committee on Finance and the House Committee on Ways and Means, no later that May 1, 1997, a "report on significant market opening." Specifically, this report is to identify those foreign countries (a) that currently provide fair and equitable market access for U.S. exports of goods and services and opportunities for export-related investment by U.S. persons, beyond what is required by existing multilateral trade agreements or obligations; or have made significant progress in opening their markets to U.S. exports of goods and services and export-related investment by U.S. persons; and (b) the further opening of whose markets has the greatest potential to increase U.S. exports of goods and services and export-related investment by U.S. persons, either directly or through the establishment of a beneficial precedent. This report, entitled **FUTURE FREE TRADE AREA NEGOTIATIONS: Report on Significant Market Opening**, fulfills this requirement.

While this report covers all regions of the world as well as selected countries, additional detail is provided on two regions, Latin America and Asia-Pacific, that are experiencing the strongest economic growth and have been the major focus of recent U.S. trade policy efforts on a regional basis.

Part I of this report provides a review of major developments that affect U.S. trade with countries and regions that meet the criteria set out in Section 108. Part II of the report provides economic data on top U.S. trading partners, ranked by U.S. exports for 1996, by GDP/GNP[1] for 1994, and by the U.S. share of total imports for 1995.

A second report, due July 1, calls for recommendations by the President for free trade area (FTA) negotiations with each foreign country selected on the basis of the information provided in the first report. This step requires a separate Presidential determination. Thus this first report is <u>not</u> intended to identify specific countries that might ultimately be selected for an FTA.

[1] Gross Domestic Product or Gross National Product where available.

PART I: MAJOR REGIONS AND COUNTRIES WITH EXPORT MARKET OPPORTUNITIES

Latin America and the Caribbean

Overview

Economic Reforms and Growth

The Western Hemisphere is the largest regional destination for U.S. goods exports, accounting for almost 40 percent of U.S. goods exports in 1996. Goods exports to the Hemisphere in 1996 totaled $242 billion, while exports to Asia (excluding Japan and China) totaled $200 billion and exports to the 15 member states of the European Union amounted to approximately $128 billion. U.S. goods exports to the Hemisphere expanded by almost 76 percent between 1990 and 1996, while U.S. exports to the world grew by only 57 percent. However, U.S. exports to the rapidly developing markets of the Latin American and Caribbean countries (excluding Mexico) grew even more rapidly between 1990 and 1996, expanding by over 100 percent. Since 1991, the United States has consistently run a trade surplus with Latin America and the Caribbean, excluding Mexico.

The acceleration of regional economic growth in recent years is due to fundamental changes in economic, fiscal, and trade policy in Latin America. Many of the countries in the region have removed trade barriers, liberalized investment and services policy, privatized state enterprises, and put in place important economic reforms. All Latin American and Caribbean countries, except the Bahamas are now members of or in the process of acceding to the World Trade Organization (WTO).

This fundamental shift was recognized at the 1994 Summit of the Americas in Miami, where the 34 democratically elected leaders of the Western Hemisphere agreed to create a Free Trade Area of the Americas (FTAA) by 2005. Since then, the countries of the Hemisphere have been engaged in the process of constructing the FTAA. The United States has played a key role in this process, including acting as host for the 1995 Meeting of Trade Ministers in Denver.

Concurrent with the FTAA process has been ongoing work on the part of many of the countries of Latin America and the Caribbean to deepen and expand regional trading arrangements. MERCOSUR (Southern Common Market) and CARICOM (Caribbean Common Market) have both expanded the scope of their agreements, CARICOM by adding several countries, and MERCOSUR by signing free trade agreements with Chile and Bolivia. Bilateral and intra-bloc arrangements are also proliferating. Chile and Canada signed a free trade agreement (FTA) in 1996. Mexico and MERCOSUR are exploring the possibility of an FTA, and MERCOSUR and the Andean Pact countries are negotiating an FTA.

The United States is well-positioned to take advantage of the opportunities presented by the region's dynamic growth. U.S. companies are very competitive in the region. At the same time, however, Asia and Europe have become active in expanding their trade ties to the region. Latin America was China's second fastest-growing export market in 1995. Chile's largest export market is Japan, while the European Union (EU) constitutes the largest export market for MERCOSUR. The EU has stated that it expects to sign reciprocal trade agreements with MERCOSUR and Chile. The Latin American and Caribbean countries are responding positively to these overtures and are actively seeking to diversify their export bases. However, they also seek greater economic integration with the United States, which for most countries remains their largest single country trading partner.

U.S. Trade

The pattern of U.S. trade in goods with Latin America and the Caribbean (excluding Mexico) demonstrates the vitality of the trading relationship. Between 1990 and 1996, U.S. merchandise exports to the region have more than doubled, from $25.7 billion in 1990 to $52.5 billion in 1996.

U.S. exports have been concentrated predominantly in high-value-added products, such as consumer goods, capital equipment, and industrial supplies and materials. U.S. imports from Latin America are concentrated in agricultural products, industrial supplies and materials, and consumer goods.

Chile

Chile is the fifth largest economy among the United States' major export markets in the Latin America and the Caribbean region, with a GDP/GNP of $49.3 billion in 1994. Shipments of U.S. merchandise to Chile were valued at a record level of $4.1 billion in 1996 and accounted for 24.7 percent of Chile's total imports in 1995. Chile continues to demonstrate its outstanding economic success, posting yet another year of over 6 percent growth in 1996, with inflation down further and investment and savings as a share of GDP at record levels.

The Administration remains committed to fulfilling its commitment to a comprehensive trade agreement with Chile. An agreement with Chile is viewed as the right first step in the multifaceted Administration effort to build the FTAA.

Chile continues to pursue trade agreements with a variety of countries and regional entities. Market opening both in Chile and by its trading partners has been a key ingredient in Chile's economic success in recent years. Chile not only concluded an association agreement with MERCOSUR (the first of this type with MERCOSUR) but also concluded a comprehensive agreement with Canada that addresses tariffs, non-tariff measures, investment, services (except financial services), rules of origin, customs procedures, emergency action (i.e., safeguards), dispute settlement, telecommunications, temporary entry for business persons, competition policy and monopolies and state enterprises, antidumping and countervailing duties, labor, and the environment.

The Canada agreement is viewed by Chile and Canada as both an interim step to negotiating Chile's accession to the NAFTA and a strong bilateral market opening agreement in its own right. Chile also initiated negotiations in January 1997 with Mexico to expand the rules of its existing bilateral agreement on tariffs. In addition, Chile is pursuing market opening agreements with Central America, is part of APEC, has concluded a framework agreement with the EU to begin reciprocal trade negotiations, and continues its active pursuit of market opening with others in South America.

Sub Regions

To fully understand the trade flows in the region, as well as the opportunities and challenges facing the United States, one must look at the various trade arrangements that are in place or being negotiated in the region. The 1990s has seen the revival of a number of older trading blocs, including the Andean Pact, the Caribbean Community (CARICOM), and the Central American Common Market (CACM), as well as the creation of the Southern Common Market (MERCOSUR).

Throughout the 1990s, U.S. exports have increased to each of these major trading blocs. In the 1990-1996 period, exports to the Andean pact increased by 89 percent, to MERCOSUR by 177 percent, to the Central American Common Market by 116 percent, and to CARICOM by 30 percent.

These trading blocs are an added dimension of the U.S. export picture in the region. The constituent countries of these blocs represent important markets for the United States in and of themselves. At the same time, the economies of scale offered by these blocs offer the potential for even greater export opportunities.

Southern Region (Southern Common Market)

Summary: The Southern Common Market (abbreviated as MERCOSUR in Spanish and MERCOSUL in Portuguese) is the largest preferential trade agreement in Latin America. Consisting of Argentina, Brazil, Paraguay, and Uruguay, it contains two of the largest economies in Latin America, a combined GDP of just over $1 trillion (over half the GDP of Latin America), and a population of over 200 million. Two-way trade between the United States and the MERCOSUR was approximately $30 billion in 1996. The U.S. ran a merchandise trade surplus with MERCOSUR of $7.3 billion in 1996.

The 1991 Treaty of Asuncion and its amendments, contained in the 1994 Protocol of Ouro Preto, are the basis upon which MERCOSUR members are pursuing an eventual common market, with the free movement of goods, services, and the factors of production among the member states.

The implementation of the MERCOSUR customs union commenced January 1, 1995, with the establishment of a common external tariff (CET) covering 85 percent of MERCOSUR trade. The CET for the remainder of MERCOSUR's trade will be phased in through the year 2005.

Members of MERCOSUR signed a framework agreement with the EU in 1995. MERCOSUR and Chile concluded an association agreement that eliminates tariffs between MERCOSUR and Chile, with implementation beginning on October 1, 1996. Chile has not joined the MERCOSUR customs union, although additional discussions have been initiated to broaden the rules of the association agreement to cover services market access. Bolivia concluded a similar association agreement with MERCOSUR in December 1996. MERCOSUR has also been an important participant in the FTAA process. Brazil will host the Third Trade Ministerial in Belo Horizonte in May 1997, and Argentina chairs the FTAA Working Group on Subsidies, CVDs and Antidumping.

Brazil: Brazil is the single largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $472.5 billion in 1994. Shipments of U.S. merchandise to Brazil were valued at $12.7 billion in 1996 and accounted for 21.1 percent of Brazil's total imports in 1995.

Since 1990, Brazil has undertaken significant reform to open its previously tightly closed economy. The weighted average ad valorem tariff fell to 13.6 percent in 1996, down from 45 percent in 1986. Furthermore, a majority of quantitative restrictions have been eliminated. Brazil is also a privatizing a number of industries.

Since the initiation of the Real Plan in 1994 and the liberalization of Brazil's trade regime, U.S. exports to Brazil have increased dramatically in response to a pent-up demand from years of import restrictions in Brazil. Much of the expanded U.S. exports have been capital goods that will improve the efficiency of firms in Brazil.

Brazil is traditionally the largest trading partner of the United States in South America and the largest recipient of U.S. foreign direct investment in Latin America. Trade reform since 1990 has provided additional opportunities for U.S. firms. However, aspects of Brazil's trade and investment-related regime continue to present significant obstacles for U.S. exports. Brazil's regime for automobiles, which offers auto manufacturers reduced duties on imports of assembled cars and other benefits if they export sufficient quantities of parts and vehicles and promise to meet local content targets, is of particular concern.

Brazil passed a strong patent law in April 1996. The law contains pipeline protection and a one-year transition for providing pharmaceutical product patent protection. Thus, Brazil has accelerated its implementation of certain key provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). This strengthened intellectual property rights regime already has stimulated new investment commitments by international pharmaceutical firms.

Argentina: Argentina is the second largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $277.4 billion in 1994.

Shipments of U.S. merchandise to Argentina were valued at $4.5 billion in 1996 and accounted for 22.9 percent of Argentina's total imports in 1995.

Since 1989, Argentina has curtailed industrial production subsidies, abolished most price controls, outlawed restrictive practices and regulations impeding access to the Argentine market, and launched a fast-moving and largely successful privatization program. Argentine tariffs were reduced from an average of 22 percent to around 12 percent in 1996. The government abolished import-licensing requirements and most quantitative restrictions on imports. Argentina signed a bilateral investment treaty with the United States and joined the GATT Subsidies Code in 1991. However, Argentina's intellectual property rights regime, especially with respect to patents, is inadequate.

Paraguay: Paraguay is the thirteenth largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $7.6 billion in 1994. Shipments of U.S. merchandise to Paraguay were valued at $897 million in 1996 and accounted for 19.3 percent of Paraguay's total imports in 1995.

In 1989, Paraguay embarked on an economic liberalization program to decontrol interest rates and to implement a market-determined exchange rate. An investment law enacted in January 1992 granted nondiscriminatory treatment to foreign investors. In June 1992, Paraguay reduced duties and eliminated a number of administrative nontariff barriers. Paraguay's average tariff of seven percent is the lowest among the MERCOSUR countries and one of the lowest in Latin America and the Caribbean, although the Government of Paraguay has raised tariffs on certain agricultural imports that compete with domestic production. Paraguay became a GATT member in 1993. Inadequate protection of intellectual property rights continues to be a source of concern. Legislation to improve protection of such rights has been introduced and is being considered in 1997. However, the lack of enforcement of existing laws remains a problem.

Uruguay: Uruguay is the seventh largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $14.9 billion in 1994. Shipments of U.S. merchandise to Uruguay were valued at $484 million in 1996 and accounted for 9.9 percent of Uruguay's total imports in 1995.

Uruguay's small, open, and trade-based economy generally maintains few restrictions on trade and investment, although the state retains a significant presence. Uruguay has no foreign exchange controls and limits price controls to a small number of products and public services. Nondiscriminatory treatment is provided for foreign investors, although investment in certain sectors (including hydrocarbons, banking, railroads, strategic minerals, and telecommunications) is restricted. Uruguay's tariffs range from zero to 20 percent. Legislation to improve protection of intellectual property rights is under consideration in the Uruguayan Congress.

Andean Region

Summary: The five member countries of the Andean Pact -- Bolivia, Colombia, Ecuador, Peru, and Venezuela -- have a combined internal market of 100 million people, a combined GDP of more than $260 billion, and an average per capita GDP of over $2,600. (Note: At the time of this report, Peru has indicated that it will not participate in the free trade area within the Andean Pact, and the other members are considering whether Andean Pact decrees apply to Peru.)

The Andean Pact countries have undertaken liberalization of their trade and investment regimes as a coordinated effort under the auspices of the Andean Pact. Free trade in a limited number of products has been in effect among the Andean Pact countries since the early 1980s. In 1996, the countries focussed on reforming the institutions which support their internal integration process -- agreeing to transform the Andean Pact institutions created in 1969 by creating the "Andean Community," with a single Secretary General to replace the current five-member Junta.

In addition, the Andean Pact countries are moving toward greater integration with MERCOSUR. Bolivia concluded a free trade agreement with MERCOSUR, which took effect in April 1997, while the other members of the Andean Pact have begun negotiating a free trade agreement with MERCOSUR.

Each of the five Andean Pact countries also is taking part in the FTAA process, including participating in the eleven FTAA Working Groups. Colombia chaired the FTAA Trade Ministerial in March 1996, Peru chairs the Working Group on Competition Policy, and Bolivia chairs the Working Group on Customs Procedures and Rules of Origin.

Venezuela and Colombia have a free-trade agreement with Mexico (the G-3 FTA) which has been in effect since January 1, 1995. The G-3 Agreement is not as comprehensive as the NAFTA, but includes all of the same chapters as the NAFTA except the energy chapter. While some key areas are left for future negotiations, the "G-3" covers substantially all trade.

Colombia, Ecuador, and Venezuela continue to apply the Andean Pact common external tariff (CET), which took effect in early 1995. The CET has a structure of 5, 10, 15, and 20 percent, with exceptions for certain products. Bolivia maintains its lower, two-tier tariff structure of 5 and 10 percent. Peru, although currently a member of the Pact, will not apply the Pact's CET and will renegotiate existing tariff agreements with the other Pact Members.

The United States is the main export market for all Andean Pact countries except Bolivia. The United States exported an estimated $12.7 billion in 1996, while imports from the region totaled more than $20.0 billion. U.S. exports to the Andean countries grew by approximately 16 percent between 1992 and 1996. Trade has been encouraged generally by the United States through preferential tariff treatment, primarily under the Generalized System of Preferences (GSP) as well as the Andean Trade Preference Act (ATPA) (see below).

Bolivia: Bolivia is the fifteenth largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $5.5 billion in 1994. Shipments of U.S. merchandise to Bolivia were valued at $269 million in 1996 and accounted for 20.9 percent of Bolivia's total imports in 1995.

Bolivia has made strong economic advances since 1985, resulting from improved fiscal and macroeconomic policies. In addition, Bolivia has instituted trade reforms, lowering its maximum tariff to 10 percent and removing almost all non-tariff barriers. The assessment of additional fees on some products, however, continues to raise the cost of importing these goods.

Bolivia has removed restrictions on foreign investment and has launched a privatization program. Bolivia's existing IPR laws and their enforcement needs to be strengthened.

Colombia: Colombia is the third largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $60.6 billion in 1994. Shipments of U.S. merchandise to Colombia were valued at $4.7 billion in 1996 and accounted for 39.1 percent of Colombia's total imports in 1995.

Under an economic liberalization plan known as "apertura" (opening), in the early 1990s, Colombia substantially reduced tariffs, eliminated almost all import licensing requirements, simplified import and export procedures, established a free market exchange rate regime (with very few conditions), created transparent and more liberal foreign investment rules, and opened up nearly all sectors of the economy for foreign investment. The agricultural sector has been a general exception to this opening. Colombia's WTO bound tariff rates are between 35 to 40 percent ad valorem. Currently, Colombia's average applied tariff rate is about 12 percent ad valorem.

Colombia has largely eliminated investment screening, and the mechanisms that still exist are generally routine and non-discriminatory. Legislation grants national treatment to foreign direct investors and permits complete foreign ownership in virtually all sectors of the Colombian economy. Colombia has made improvements in the area of intellectual property rights (IPR). However, more needs to be done, and enforcement of IPR is a particular problem.

Ecuador: Ecuador is the eighth largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $14.3 billion in 1994. Shipments of U.S. merchandise to Ecuador were valued at $1.3 billion in 1996 and accounted for 30.8 percent of Ecuador's total imports in 1995.

Ecuador has substantially liberalized its trade regime since 1990, resulting in a reduction of tariffs and tariff dispersion, elimination of most non-tariff surcharges, and enactment of an in-bond processing industry law. When it joined the World Trade Organization (WTO) in January 1996, Ecuador bound most of its tariff rates at 30 percent or less. Ecuador's average applied tariff rate is about 17 percent ad valorem.

Foreign investors are accorded the same rights of entry as Ecuadorian private investors, may own up to 100 percent of enterprises in most sectors without prior government approval, and face the same tax regime. There are no controls or limits on transfers of profits or capital, and foreign exchange is readily available. There are no performance requirements. A bilateral investment treaty with the United States that guarantees access to binding international arbitration was implemented in April 1997. Ecuadorian law provides inadequate protection for intellectual property rights (IPR), and it can be difficult to gain effective protection through the legal system.

Peru: Peru is the sixth largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $49.0 billion in 1994. Shipments of U.S. merchandise to Peru were valued at $1.8 billion in 1996 and accounted for 26.7 percent of Peru's total imports in 1995.

As of April 1997, Peru has a two-tier tariff structure with a duty of 12 percent on the vast majority of imports and 20 percent on the remainder. The weighted-average applied tariff is less than 13 percent, down from 80 percent when President Fujimori took office in 1990. Almost all non-tariff barriers, including subsidies, import licensing requirements, import prohibitions, and quantitative restrictions, have been eliminated. Peru applies a value-added tax (VAT) of 18 percent to most products, and special consumption taxes, ranging from 10 to 50 percent, on certain items.

Peru has greatly liberalized its investment regime since 1990. National treatment for foreign investors is guaranteed in the 1993 constitution. Foreign investment does not require prior approval, except in banking and defense-related industries. There are no restrictions on remittances of profits, dividends, royalties, or capital. Peru has made recent changes in its intellectual property rights (IPR) regime, and further work needs to be done. IPR enforcement has been stepped up recently, but piracy remains widespread.

Venezuela: Venezuela is the fourth largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $58.5 billion in 1994. Shipments of U.S. merchandise to Venezuela were valued at $4.7 billion in 1996 and accounted for 42.1 percent of Venezuela's total imports in 1995.

Venezuela's economic climate improved dramatically in 1996 as the government abandoned the foreign exchange and price controls it had enacted in 1994 to cope with a financial crisis in the banking sector. Under the banner "Agenda Venezuela," the Government of Venezuela introduced in April 1996 a series of reforms designed to put the Venezuelan economy back on a free-market footing. The government significantly reduced the long-standing subsidy on gasoline -- resulting in an immediate five-fold increase in pump prices -- and re-started its stalled privatization program.

As a result of the Uruguay Round, Venezuela bound most of its rates at 35 to 40 percent. Venezuela's average applied tariff rate is approximately 10 percent.

Venezuela's investment policy continues to be characterized by state involvement. The state controls key sectors of the economy, including oil, gas, iron ore, and much of the coal and petrochemical industries; parastatals dominate others, like steel and aluminum. The government, however, plans to privatize several major state enterprises during 1997, including a four-company aluminum complex, an iron and steel company, and a ferrosilicon plant. Foreign investment continues to be restricted in the petroleum sector. Venezuela has made improvements in the area of intellectual property rights (IPR), but more remains to be done. Enforcement of copyrights and trademarks continues to be weak.

Caribbean Region

Summary: Countries in the Caribbean region include members of the Caribbean Community and Common Market (CARICOM), the Dominican Republic, and Haiti. Current members of CARICOM are: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

CARICOM, formed in 1973 to supersede the Caribbean Free Trade Area, has an internal market of about 6.3 million people and an average GDP of approximately $2,500 per capita. The economies of member states are vulnerable to changes in commodity prices, erosion of preferential markets, and the impact of frequent hurricanes. International aid flows to the Caribbean have declined considerably in the past ten years. This economic environment has prompted CARICOM countries to begin to open and reform their economies, to become more competitive by improving their human resource base and quality of education, to improve public services, and to promote private sector investment and export services.

Despite its name, CARICOM currently operates as a customs union and not a common market. The CARICOM common external tariff (CET), first proposed in 1973, has not yet been implemented by all member countries. In 1992, member states agreed to reform and implement the CET, including a reduction over a six-year period of maximum rates on nonagricultural tariffs to 20 percent, with the maximum rate on agricultural products set at 40 percent. Member states are allowed to maintain their own import surcharges, licenses, quotas, and prohibitions, which substantially increase the level of protection for many goods.

A fully implemented common market would significantly enhance the market potential of countries in CARICOM. However, progress toward establishment of the CET has been limited. The 17th CARICOM Summit, held in July 1996, noted progress toward the establishment of a Common Caribbean Market and Economy, including the implementation of a CET and gradual elimination of such non-tariff barriers between CARICOM member states as licensing systems, quantitative restrictions, and discriminatory internal taxes. It was also noted that Barbados, Dominica, Grenada, Guyana, Jamaica, and St. Lucia had passed legislation to extend the right to work and reside to university graduates from other CARICOM countries. The Summit also approved a plan, proposed by CARICOM Central Bank governors, to improve currency convertibility and the convergence of the economies of CARICOM member states. While the 17th CARICOM Summit produced an ambitious agenda, implementation remains a challenge.

The Dominican Republic, the largest beneficiary of the Caribbean Basin Initiative program, does not belong to any regional trade association, but has increased cooperation with both Central America and CARICOM. There has been some discussion of a CARICOM-Dominican Republic trade agreement. Haiti, which is recovering from several years of political and economic difficulties, is focussing primarily on reviving its economy.

Dominican Republic: The Dominican Republic is the tenth largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $10.1 billion in 1994. Shipments of U.S. merchandise to the Dominican Republic were valued at $3.2 billion in 1996 and accounted for 44.1 percent of the Dominican Republic's total imports in 1995.

The Dominican Republic has a market-determined exchange rate for most transactions. However, the Government of the Dominican Republic has taken no concrete steps to streamline the approval process for foreign investment or to lift restrictions on profit repatriation. Quantitative import restrictions have been replaced with tariffs, while the tariff schedule has been simplified to six categories with seven tariff rates ranging between five percent and 35 percent. The lack of adequate protection of intellectual property rights remains an ongoing problem.

Jamaica: Jamaica is the eighteenth largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $3.9 billion in 1994. Shipments of U.S. merchandise to Jamaica were valued at $1.5 billion in 1996 and accounted for 75.9 percent of Jamaica's total imports in 1995.

Jamaica has been working toward trade liberalization, but progress has been impeded by poor macro economic policy and large debt obligations. The Jamaica - U.S. Bilateral Investment Treaty came into force in June of 1996. Jamaica also has an Intellectual Property Rights Agreement with the United States. Jamaica participated actively in the WTO negotiations on basic telecommunications, making an offer that included market access and national treatment for enhanced services, digital mobile services, international voice, data, and video transmission services to firms involved in information processing located within free zones, telecommunications equipment sales, rental, maintenance, connection, repair and consulting, and domestic data services. Jamaica serves as chair of the FTAA Working Group on Smaller Economies.

Trinidad and Tobago: Trinidad and Tobago is the sixteenth largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $4.9 billion in 1994. Shipments of U.S. merchandise to Trinidad and Tobago were valued at $665 million in 1996 and accounted for 50.6 percent of Trinidad and Tobago's total imports in 1995.

Trinidad and Tobago has embarked on a program of gradual but consistent reductions in tariff and non-tariff barriers. The Bilateral Investment Treaty between Trinidad and Tobago and the United States has been in force since June of 1996. The two countries have also agreed to an Intellectual Property Rights Agreement.

Central American Region

The Central American Common Market (CACM) was created in 1960 and became effective in 1963. Its members are Guatemala, El Salvador, Honduras, Costa Rica, and Nicaragua. Panama, which has observer status, and Belize participate in CACM summits but not in regional trade integration efforts. The CACM and Panama, taken together, have created an internal market of over 30 million people, with a combined GDP of over $40 billion, and average GDP of about $1,300 per capita.

While participating in the FTAA process, CACM members continue to move toward regional integration. There are no duties for most products traded among CACM members, with certain exceptions, notably agricultural products. The CACM has a common external tariff (CET) which ranges between 5 and 20 percent on most products of non-CACM origin. Several of the Central American nations have jointly implemented measures to liberalize and harmonize their trade regime under the CACM. Guatemala, El Salvador, and Honduras, the so-called "northern triangle," have adopted agreements to facilitate the movement of capital and labor.

In 1995, the members of the CACM agreed on reducing the CET to between 0 and 15 percent, but allowed each member country to determine the timing of the changes. In addition to the establishment of a CET, the specific objectives of the CACM integration process include elimination of tariffs and quantitative restrictions on intra-regional trade (including the removal of foreign exchange constraints), unrestricted movement of labor and capital, and the eventual harmonization of monetary and fiscal policies.

Although intra-regional trade is generally not subject to tariffs, several member states maintain non-tariff barriers, such as burdensome and selectively enforced sanitary, safety, and quality standards and import licenses for sensitive items. Ongoing discussions to remove these barriers have not been widely successful, as CACM members have only limited leverage for reform in the absence of dispute settlement and enforcement provisions. In addition, recent discussions have not produced a consensus with respect to the protection of intellectual property rights, foreign direct investment, and services (especially banking and telecommunications) in the context of regional integration. Progress in privatization has not been uniform. El Salvador has made dramatic strides in privatizing such industries as telecommunications, while others are moving at a slower pace. Panama, a CACM observer, has completed its accession to the WTO and is expected to take appropriate legislative measures to ratify its accession before the June 30, 1997, deadline.

Central American countries have been extremely active in the FTAA process. Costa Rica chairs the Working Group on Investment and will host the Fourth Trade Ministerial on February 1998. Honduras is the chair of the Working Group on IPR, and El Salvador chairs the Working Group on Market Access.

Costa Rica: Costa Rica is the eleventh largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $7.9 billion in 1994.

Shipments of U.S. merchandise to Costa Rica were valued at $1.8 billion in 1996 and accounted for 52.3 percent of Costa Rica's total imports in 1995.

Since late 1994, Costa Rica has eliminated quantitative restrictions and requirements for import licenses and permits for a variety of commodities. The import permits in many cases have been replaced by tariffs. Most applied tariffs range from 1 to 28 percent as valorem. Government monopolies in important sectors, including telecommunications, electric power production and distribution, and insurance, represent a significant non-tariff barrier to U.S. private investment. By law expropriations are to occur only after payment has been made in full; however, expropriations made prior to 1995, as well as land invasions by squatters, remain unaddressed.

El Salvador: El Salvador is the twelveth largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $7.6 billion in 1994. Shipments of U.S. merchandise to El Salvador were valued at $1.1 billion in 1996 and accounted for 40.2 percent of El Salvador's total imports in 1995.

There are no legal barriers to U.S. exports of manufactured goods or bulk, non-agricultural commodities to El Salvador. Most U.S. goods face tariffs ranging from 0 to 20 percent, with rates scheduled to fall further by 1999. While higher duties are applied to automobiles, alcoholic beverages, textiles, and some luxury items, the Government of El Salvador may incorporate these excepted products into its general tariff schedule as it implements the 1996-99 reductions. Building on its 1994 intellectual property law, El Salvador has taken steps to protect intellectual property and enforce the rights of intellectual property holders. El Salvador has an open investment regime.

Guatemala: Guatemala is the ninth largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $12.4 billion in 1994. Shipments of U.S. merchandise to Guatemala were valued at $1.6 billion in 1996 and accounted for 46.8 percent of Guatemala's total imports in 1995.

Guatemala formally implemented the CACM common external tariff effective November 1, 1992. Price bands for corn and rice were eliminated in late 1995, but Guatemala has yet to formally eliminate price bands for sorghum. Additionally, Guatemala continues to employ a reference price methodology to value poultry imports. While Guatemala is making efforts to modernize its intellectual property regime, its protection of such property remains inadequate. Investment legislation designed to assure national treatment, clarify rules, and speed registration was adopted in 1995, but has yet to be implemented. Restrictions on foreign investment remain in several sectors of the economy, including public utilities, auditing, insurance, mineral exploitation, forestry, and the media.

Honduras: Honduras is the nineteenth largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $3.5 billion in 1994. Shipments of U.S. merchandise to Honduras were valued at $1.6 billion in 1996 and accounted for 55.5 percent of Honduras's total imports in 1995.

Honduras is working toward the full implementation of the CACM's common external tariff. The Government of Honduras has drafted and submitted to the legislature amendments intended to address shortcomings found in Honduras's 1993 copyright law, but that legislation has been pending for more than two years. Honduras's 1992 investment law provides transparent regulations, a reduction in discretionary government intervention, and nondiscriminatory treatment for foreign investors, but also requires majority Honduran ownership in certain areas, such as investments in commercial fishing, direct exploitation of forest resources, local transportation, and those areas benefiting directly from the national agrarian reform law. Honduras has signed a Bilateral Investment Treaty with the United States that has not, to date, been ratified. It is also in the process of negotiating an Intellectual Property Rights Agreement with the United States.

Nicaragua: Nicaragua is the twenty-fourth largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $30.2 billion in 1994. Shipments of U.S. merchandise to Nicaragua were valued at $262 million in 1996 and accounted for 26.3 percent of Nicaragua's total imports in 1995.

Nicaragua is working toward the full implementation of the CACM's common external tariff. Nicaragua also imposes a variety of import fees and employs a price band mechanism for certain agricultural products. Inadequate protection of intellectual property and investment restrictions (including expropriation disputes) remain significant current issues. Nicaragua has signed a Bilateral Investment Treaty with the United States, which to date has not been ratified, and is negotiating an Intellectual Property Rights Agreement with the United States.

Panama: Panama is the fourteenth largest economy among the United States' major export markets in the Latin American and Caribbean region, with a GDP/GNP of $6.7 billion in 1994. Shipments of U.S. merchandise to Panama were valued at $1.4 billion in 1996 and accounted for 12.5 percent of Panama's total imports in 1995.

Panama's October 1996 accession to the World Trade Organization (WTO), when completed, will result in tariff protection of 30 percent on non-agricultural products. In December 1996, the government issued a decree reducing tariffs on some items, converting other tariffs to ad valorem, and eliminating non-tariff barriers on non-agricultural items, although Panama's agricultural sector is still heavily protected by such barriers. Law 15 of 1994 (the Copyright Law) and Law 35 of 1996 (the Industrial Property Law) provide the framework for protection of intellectual property in Panama. Panama's accession to the WTO in 1996 required it to implement the WTO Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs) upon the date of accession, with no transition. Panama has been deficient in meeting this obligation. A limitation in Panamanian law on foreign government ownership of land affects a few U.S. Government insurance programs, but places no legal limitations on foreign private investment or ownership. The United States/Panama Bilateral Investment Treaty has been in force since 1991.

U.S. Trade Preference Programs

Andean Trade Preference Act

On December 4, 1991, President George Bush signed the Andean Trade Preference Act (ATPA), a preference program designed specifically to encourage the development of licit trade by Bolivia, Colombia, Ecuador, and Peru. Bolivia and Colombia were designated as beneficiaries in 1992, while Ecuador and Peru were designated as beneficiaries in 1993. Modeled after Caribbean Basin Economic Recovery Act (details of which are provided below), the ATPA is set to expire in 2001.

Caribbean Basin Initiative/Caribbean Basin Economic Recovery Act

The Caribbean Basin Initiative (CBI) was created by the Congress in 1984 to promote the economic revitalization of the Caribbean Basin through tariff preferences. Twenty-eight countries and territories are potentially eligible for benefits under the terms of the Caribbean Basin Economic Recovery Act (CBERA): Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Cayman Islands, Montserrat, Netherlands Antilles, Saint Kitts-Nevis, Turks and Caicos Islands, and British Virgin Islands.

Currently 24 countries, territories, and successor political entities receive CBI benefits. The following 20 countries were designated on January 1, 1984: Antigua and Barbuda, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Panama, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago. The Bahamas was designated on March 14, 1985. On April 11, 1986, Aruba was designated retroactive to January 1, 1986, upon becoming independent of the Netherlands Antilles. Guyana was designated effective November 24, 1988. Nicaragua was designated effective November 13, 1990. Panama's beneficiary status under CBERA was suspended on April 9, 1988, making it the first country to lose its designated status, and was restored effective March 17, 1990.[2]

Under the CBERA, U.S. duties are eliminated on all products from the CBI beneficiaries, except for textile and apparel products subject to textile agreements; petroleum; canned tuna; footwear; certain leather goods (which are eligible for reduced duties); and certain watches and watch parts. Sugar imports are duty free up to the level of individual country quotas. Two-way trade between the United States and CBI countries has expanded considerably since the program began in 1984. In 1996, U.S. exports to CBI countries totaled $16.4 billion, while imports from these countries were $14.6 billion, leaving the United States with a positive trade balance of $1.8 billion.

[2] The following eligible countries and territories have not officially requested beneficiary status: Anguilla, Cayman Islands, Suriname, and Turks and Caicos Islands.

Exports of textiles and apparel to CBI countries have grown significantly since 1983, largely as a result of the "9802" tariff program, under which import duties are levied only on the value added by assembly abroad of U.S.-made components. The introduction in 1986 of the Guaranteed Access Level Program also contributed to the increase in both CBI and U.S. exports. This special access program provides liberalized quotas and market access guarantees for CBI apparel exports made of components cut in the United States from 100 percent U.S.-manufactured fabric.

The CBI Program, originally designed to expire in 1995, was made permanent in 1990. In addition, reduced tariffs were provided for several leather goods and for non-apparel products assembled in CBI countries from 100 percent U.S. components. The program was enhanced in September 1991, with new or expanded duty-free coverage provided to 94 products.

Asia-Pacific Region

Overview

Economic Reforms and Growth

The Asia-Pacific region encompasses the most dynamic economies in the world. It also is characterized by significant diversity in levels of development, size, language, and cultures. Nevertheless, this region collectively, and countries in the region individually, have already had a significant impact on global growth. Pacific Rim countries will continue to serve as a key element in fueling growth for the foreseeable future. These trends have been fostered by important unilateral, bilateral, and multilateral efforts by the Asia Pacific Economic Cooperation (APEC) members to deregulate their economies and integrate them more fully into the global trading system. The 18 members of APEC are Australia, Brunei Darussalam, Canada, Chile, People's Republic of China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Philippines, Singapore, Taiwan (Chinese Taipei), Thailand, and the United States.

The dynamic, developing Asian economies continue to grow at approximately three times the rate of the established, industrialized countries. This growth is also reflected in income levels and output. Just three decades ago, Asia contributed only 8 percent of the world's GDP. Today, Asia commands almost 30 percent of global GDP.

Within the Asia Pacific region, several major regional trading arrangements -- the NAFTA, the Australia-New Zealand Closer Economic Relations Agreement (CER), and the recent ASEAN initiative to form an ASEAN Free Trade Agreement (AFTA) -- coexist. Some possibilities exist in the future for exploring the relationship among these arrangements. Other regional economic and trade arrangements include the South Asian Association for Regional Cooperation (SAARC) and the Indian Ocean Rim Association for Regional Cooperation (IORARC).

U.S. Trade

Since 1990, U.S. merchandise exports to all of Asia have increased at a rapid pace, growing from nearly $120 billion to approximately $200 billion in 1996. Much of what Asia needs to continue its growth patterns are goods and services in which the United States is a dominant global producer: aircraft, financial services, telecommunications, and infrastructure. Therefore, we anticipate continued growth in U.S. exports, particularly as income levels and markets develop further. Trade and investment among APEC members within Asia and with other trading partners across the Pacific is also increasing. Nevertheless, the U.S. continues to serve as an important market, if not the dominant market, for many APEC products.

Sub Regions

Asia Pacific Economic Cooperation (APEC)

Summary: All APEC members are either members of, or are currently acceding to, the WTO disciplines. The People's Republic of China (PRC) and Taiwan (Chinese Taipei) currently are engaged in negotiations toward their membership. All APEC/WTO members played an active role in Uruguay Round negotiations.

In 1994, APEC Leaders set a goal of free and open trade and investment by 2010 for APEC's industrialized economies and 2020 for its developing economies. In 1995, APEC developed the Osaka Action Agenda which laid out the action plan to achieve that goal. In 1996, APEC made some valuable contributions to trade liberalization, both within the forum and in the WTO. First, the APEC Leaders endorsed the Information Technology Agreement, subsequently agreed upon in the WTO, whereby countries accounting for over 90 percent of global trade agreed to zero tariffs on semiconductors, computers, telecommunications, and other information technology products. In addition, the APEC Telecommunications Group endorsed non-binding, pro-competitive principles for open basic telecommunications systems, principles which subsequently were incorporated into the WTO Agreement on Basic Telecommunications Services. Finally, APEC economies developed individual and collective action plans that detailed the short-term liberalization and facilitation steps that economies would take to meet the Bogor and Osaka targets of free and open trade.

ASEAN: The Association of Southeast Asian Nations (ASEAN) was founded in 1967 by Indonesia, Malaysia, the Philippines, Singapore, and Thailand to promote regional cooperation. Brunei Darussalam joined in 1984, soon after attaining full independence, and Vietnam joined in 1996. Laos, Cambodia, and Myanmar are slated to join ASEAN in July 1997. Approximately 400 million people live in the seven ASEAN countries, which had a combined GDP/GNP of $523.8 billion in 1994.

In January 1992, ASEAN took its most important step to date toward increasing economic integration when its members agreed to establish the ASEAN Free Trade Area (AFTA). Under AFTA, tariff rates on imports of some manufactured goods and agricultural products from other ASEAN countries will be reduced to five percent or less by 2003 (2006 for Vietnam). Some products covered by AFTA are scheduled for accelerated tariff reduction, including textiles, electronics, and pharmaceuticals. In addition, ASEAN has expanded the scope of the AFTA to include agreements on IPR, investment cooperation, and services. In implementing the AFTA, ASEAN has also included unprocessed agricultural commodities in the tariff phase-out scheme and placed more focus on the elimination of non-tariff measures such as customs surcharges and technical barriers to trade.

The ASEAN countries have grown dramatically in the past decade, due in part to a drive to increase exports. Between 1991 and 1994, the economies of the ASEAN countries (excluding Vietnam) expanded by nearly 50 percent, growing from $345 billion to $509 billion. Assisted by the high level of growth, U.S. exports to ASEAN have also risen rapidly; from $28 billion in 1993 to $43 billion in 1996. U.S. trade with the seven ASEAN countries (Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand, and Vietnam) continued to grow rapidly in 1996, with two-way trade reaching approximately $110 billion.

Brunei: Brunei is the eighteenth largest economy among the United States' major export markets in the Asia-Pacific region, with a GDP/GNP of $4.4 billion in 1993. Shipments of U.S. merchandise to Brunei were valued at $375 million in 1996 and accounted for 5.9 percent of Brunei's total imports in 1995.

In 1993, Brunei joined the General Agreement on Tariffs and Trade. Oil and gas production account for over 75 percent of Brunei's GDP and 99 percent of its export revenues.

Indonesia: Indonesia is the seventh largest economy among the United States' major export markets in the Asia-Pacific region, with a GDP/GNP of $167.6 billion in 1994. Shipments of U.S. merchandise to Indonesia were valued at $4.0 billion in 1996 and accounted for 9.5 percent of Indonesia's total imports in 1995.

In May 1995, the Indonesian Government unveiled a comprehensive tariff-reduction package which covers roughly two-thirds of all traded goods and which is designed to reduce most tariffs to under 5 percent by 2003. However, some products in the automotive, chemical, metal, and agriculture sectors are excluded. The deregulation packages announced in January and June 1996 advanced some of this tariff reform. Also, Indonesia participated in both the Information Technology Agreement (ITA) and the WTO negotiations on basic telecommunications services.

Indonesia retains significant barriers to trade in services and investment. Also, the 1996 pioneer auto program modified the existing, WTO-inconsistent auto policy to grant tax and tariff exemptions to wholly owned Indonesian companies that use a unique Indonesian-owned trademark. Finally, generally on intellectual property rights (IPR), Indonesia does not provide adequate protection of well-known marks or effective enforcement efforts aimed at software piracy at the retail and end-user levels. However, the Indonesian Government has demonstrated willingness to address the problem of use of pirated software by ministries. In 1997, the parliament passed revised copyright, patent, and trademark laws.

Malaysia: Malaysia is the tenth largest economy among the United States' major export markets in the Asia-Pacific region, with a GDP/GNP of $68.6 billion in 1994. Shipments of U.S. merchandise to Malaysia were valued at $8.5 billion in 1996 and accounted for 21.3 percent of Malaysia's total imports in 1995.

On a unilateral basis, Malaysia has gradually reduced import barriers, including tariffs, on a wide range of products. Duties on a trade-weighted basis average less than 10 percent. However, duties on some products remain relatively high, and in some cases have been increased to regulate imports. Malaysia maintains high tariffs and local content requirements in order to promote the domestic automobile industry. Malaysia has made progress in strengthening the protection and enforcement of intellectual property rights (IPR), and plans to adopt additional legislation in order to attract high-technology investment to the proposed "Multimedia Super Corridor" (MSC). In the areas of government procurement, services and investment policy, the Malaysian Government maintains a number of preferences to promote local businesses with ethnic Malay ownership.

The Philippines: The Philippines is the twelfth largest economy among the United States' major export markets in the Asia-Pacific region, with a GDP/GNP of $63.7 billion in 1994. Shipments of U.S. merchandise to the Philippines were valued at $6.1 billion in 1996 and accounted for 18.4 percent of the Philippines's total imports in 1995.

The Philippine Government continues to liberalize the economy and attract capital for infrastructure and other developmental programs. The Philippines in 1996 implemented broad tariff reductions which are generally in line with its Uruguay Round commitments and stated goal of adopting a uniform 5 percent tariff rate by the year 2004. However, in some sectors high tariffs and non-tariff barriers, as well as restrictive licensing practices for agricultural imports, continue to be areas of concern. The benefits of many of these tariff reductions and market-opening reforms are eroded by non-transparent and irregular customs practices. Enforcement of intellectual property rights continues to improve since the 1993 conclusion of a bilateral IPR agreement with the United States. However, the Philippines has not yet passed comprehensive IPR legislation to bring its regime up to minimum world standards.

Singapore: Singapore is the eleventh largest economy among the United States' major export markets in the Asia-Pacific region, with a GDP/GNP of $65.3 billion in 1994. Shipments of U.S. merchandise to Singapore were valued at $16.7 billion in 1996 and accounted for 15.1 percent of Singapore's total imports in 1995.

Singapore has one of the most open economies and maintains the lowest tariff rates in the region; 96 percent of imports enter duty-free. In the Uruguay Round, Singapore agreed to bind 70 percent of its tariff lines. Singapore does, however, retain barriers to trade in some sectors, for example, financial services. According to industry estimates, Singapore has the lowest rate of intellectual property piracy in Asia, although software piracy remains a concern. While its IPR regime is generally strong, Singapore has decided against accelerated implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs); opting instead to exploit the developing country phase-in period. In 1996, Singapore became a signatory to the WTO Government Procurement Agreement.

Thailand: Thailand is the eighth largest economy among the United States' major export markets in the Asia-Pacific region, with a GDP/GNP of $139.8 billion in 1994. Shipments of U.S. merchandise to Thailand were valued at $7.2 billion in 1996 and accounted for 11.5 percent of Thailand's total imports in 1995.

In recent years Thailand has gradually reduced tariffs on a range of goods. In 1996, the average trade-weighted tariff was 17 percent; down from 21 percent in 1995. However, non-transparent and irregular customs procedures are a significant concern to U.S. companies, and have reduced the impact of Thailand's market opening reforms . Tariffs on a range of agricultural products remain relatively high. Thailand also continues to deregulate the financial sector, in an effort to attract overseas capital; but retains certain restrictions on foreign financial services providers. U.S. investment in Thailand is covered by the 1966 Treaty of Amity and Economic Relations, which provides for the better of national or MFN treatment in most sectors. Thailand has substantially improved its intellectual property rights regime since 1992, and continues to work toward the adoption of improved patent legislation. Thai authorities have improved IPR enforcment activities, which continues to be a priority for the United States.

Closer Economic Relations Trade Agreement: In an effort to expand trade between the two countries, Australia and New Zealand established the Closer Economic Relations Trade Agreement (CER) in 1983. The CER, which was built upon a series of preferential bilateral agreements from the 1960s and expanded progressively over time, is comprehensive in both its rules and in the scope of trade covered. After a 1988 review, trade in services was brought into the agreement for the first time. By 1990, the CER abolished all border restrictions to trade in goods, including tariffs, quantitative restrictions, import and export prohibitions, and export incentives and export restrictions. Trans-Tasman antidumping provisions were removed, and the harmonization of business law and the application of trade practices legislation came into effect.

In November 1996, a Single Aviation Market (SAM) was created within and between Australia and New Zealand. Also in 1996, the two nations signed a Mutual Recognition Arrangement, signed and implemented the Agreement Establishing a System for the Development of Joint Food Standards, and exchanged letters on arrangements for inspecting imported food.

Since the CER Agreement was signed in 1983, total trans-Tasman trade has grown at an annual average rate of about 12 percent. The economies of both countries have grown at slower rates than those of other developed APEC countries -- 3.1 percent for Australia and 2.3 percent for New Zealand.

U.S. exports to Australia and New Zealand have grown less dramatically than to the rest of the Asia-Pacific region. From 1995 to 1996, U.S. merchandise exports to Australia grew 11.2 percent and to New Zealand by 2.0 percent. In 1996, the United States had a trade surplus of $8.1 billion with Australia and $263 million with New Zealand.

Australia: Australia is the fourth largest economy among the United States' major export markets in the Asia-Pacific region, with a GDP/GNP of $320.4 billion in 1994. Shipments of U.S. merchandise to Australia were valued at $12.0 billion in 1996 and accounted for 21.9 percent of Australia's total imports in 1995.

The Government of Australia is continuing a policy of economic reform begun in the 1980s to make Australia a more competitive global economy. Australia was an active participant in the Uruguay Round negotiations and is an original member of the WTO. In addition, like New Zealand, Australia is an important advocate of international trade liberalization in the Asia-Pacific region, particularly through its participation in APEC.

As calculated for Australia's WTO trade policy review, the trade weighted average tariff was 4.1 percent in 1993/94; a projected 2.8 percent in 1996/97; and a projected 2.2 percent in 2000/01. This represents a 72 percent tariff reduction compared to 1987. With the conclusion of the Uruguay Round, Australia bound over 94 percent of its industrial tariff lines. As part of its APEC Individual Action Plan (IAP), Australia has committed to further tariff liberalization.

New Zealand: New Zealand is the fourteenth largest economy among the United States' major export markets in the Asia-Pacific region, with a GDP/GNP of $46.7 billion in 1994. Shipments of U.S. merchandise to New Zealand were valued at $1.7 billion in 1996 and accounted for 18.7 percent of New Zealand's total imports in 1995.

New Zealand unilaterally instituted a program of significant tariff liberalization in December 1985, announcing that tariffs on goods not produced in New Zealand would be cut to zero unless trade policy considerations dictated otherwise. In 1988, the government reported that 93 percent of imports entered duty-free and instituted a multi-year program to reduce remaining tariffs. By July 1, 1996, the tariffs on most goods manufactured in New Zealand fell within the range of 5 to 15 percent. On December 16, 1994, New Zealand a announced further unilateral tariff reduction plan for July 1, 1997 through July 1, 2000, that will reduce all remaining tariffs to no more than 15 percent.

It is the stated policy of the government that opening the New Zealand economy to competition, particularly international competition, is a key element of a successful growth and employment strategy. Thus, tariff reductions after 2000 are scheduled for review in 1998. Under the terms of the new Coalition Agreement establishing the present government, the 1998 review is to proceed "taking into account the policies and progress of other trading partners."

Other APEC: The market opening measures in the Asia-Pacific region have had a significant effect on U.S. exports. Since 1990, U.S. exports to Asia have grown by over 70 percent. In 1996, U.S. trade across the Pacific is estimated to have exceeded our trans-Atlantic trade by more than 75 percent. This section provides information on some of the economies in the Asia-Pacific region.

Japan: Japan, with a GDP of $4.3 trillion in 1994, is the world's second largest economy and largest trading partner for the United States' in the Asia-Pacific region. Shipments of U.S. merchandise to Japan were valued at $67.5 billion in 1996 and accounted for 22.6 percent of Japan's total imports in 1995.

The Joint Statement on the United States - Japan Framework for a New Economic Partnership (the Framework), signed on July 12, 1993, continues to serve as the fundamental basis for U.S. trade policy towards Japan. The Framework addresses both sectoral and structural issues with the objective of substantially increasing access and sales of competitive foreign goods and services through market-opening and macroeconomic measures.

The United States and Japan have concluded 25 agreements since President Clinton took office, including the following agreements under the Framework: auto and auto parts, insurance and financial services, and government procurement of telecommunications and medical technologies. The United States places a high priority on implementation of our trade agreements and U.S. exports in those sectors covered by these agreements have increased at a rate significantly faster than in other sectors.

Nevertheless, there remain substantial barriers to market access in Japan. Over a period of decades, Japan erected a complex system of government support policies and regulations, combined with lax competition policy enforcement, which effectively hinders foreign goods and services from fairly competing in Japan. The United States is utilizing both bilateral and multilateral means to address these issues. The United States filed a case with the WTO dispute settlement body regarding Japan's consumer photographic film and paper market which details many of these practices on the part of the Japanese Government. In addition, the United States also continues to pursue greater market access through bilateral talks in a several sectors, including civil aviation, telecommunications, and paper.

China: China is the second largest economy among the United States' major export markets in the Asia-Pacific region, with a GDP/GNP of $631.2 billion in 1994. Shipments of U.S. merchandise to China were valued at $12.0 billion in 1996 and accounted for 12.2 percent of China's total imports in 1995.

Since 1992, the United States has made progress toward opening China's market to U.S. goods and services. Over the past five years, the United States has successfully negotiated landmark trade agreements with China that have resulted in increased market access for a range of goods and services through reduced tariff and non-tariff barriers.

On October 10, 1992, the United States and China signed a Memorandum of Understanding (MOU) on market access that commits China to significant liberalization of key aspects of its import administration, including reduction of trade barriers and gradual opening of its market to U.S. exports. This MOU resolved a 301 investigation initiated by the U.S. Government that started on October 10, 1991. The investigation examined four broad areas: the absence of transparency; import licensing requirements; import quotas, restrictions, and controls; and standards and certification requirements.

In 1992, the United States and China signed an MOU that committed China to strengthen its intellectual property rights (IPR) legal regime. On February 26, 1995, the United States and China signed an IPR Agreement designed to ensure both a crackdown on piracy and real market access for the intellectual property industry. In May 1996, when it became clear that China was not fully implementing this MOU, the Clinton Administration threatened to impose approximately $2 billion worth of sanctions on Chinese goods if China did not take action to stop piracy and improve market access. Subsequently, China closed 15 illegal CD factories and, in June 1996, the United States and China exchanged information in an IPR Accord that detailed the steps that China had taken and would take in the future to ensure effective implementation of the 1995 Agreement. Over the past 10 months, China has taken significant steps to crack down on piracy including closing 9 more factories between May and June 1996, and 28 production facilities between September 1996 and March 1997.

In February 1997, the United States and China renewed their bilateral textile agreement. The new agreement enhances market access opportunities for U.S. exports of textiles and apparel, includes additional protection against circumvention, and effectively controls China's exports to the United States.

These bilateral agreements demonstrate the significant progress that has been made in China. However, there remains a great deal of work to be done before China's market is sufficiently open to U.S. exports. China's growing economic strength, coupled with its focus on boosting competitiveness in certain export-oriented industries, requires continued vigilance by the Administration to ensure China's policies and practices are consistent with existing bilateral agreements and are in line with international rules.

In this light, the Administration is committed to supporting China's accession to the World Trade Organization (WTO) -- but only on the basis of a commercially meaningful protocol package. Recognizing that China is undergoing complex economic reform, USTR has approached WTO accession negotiations flexibly and pragmatically, with the understanding that the outcome must secure solid commitments from China to provide market access and follow WTO rules.

<u>Taiwan</u>: Taiwan is the sixth largest economy among the United States' major export markets in the Asia-Pacific region, with a GDP/GNP of $257.0 billion in 1994. Shipments of U.S. merchandise to Taiwan were valued at $18.4 billion in 1996 and accounted for 18.6 percent of Taiwan's total imports in 1995.

In March 1994 and July 1995, the Taiwan authorities cut tariffs on many industrial products at the behest of the United States. Taiwan's average nominal tariff rate is 8.6 percent, and the trade-weighted rate is 4.7 percent. Taiwan's participation in the Information Technology Agreement will result in further tariff reductions in information technology products.

Taiwan wishes to accede to the World Trade Organization (WTO). The United States has conducted extensive bilateral negotiations with Taiwan, especially during 1996 and early 1997. In these negotiations, Taiwan has agreed to further lower tariffs on some U.S. agricultural products, to open its services market significantly, to liberalize restrictions on U.S. beer and distilled spirits products, and to remove restrictions in its government procurement market.

In recent bilateral discussions, Taiwan has agreed to tighten further enforcement of intellectual property rights. Other bilateral talks resulted in substantial market opening in terms of telecommunications services and medical equipment.

Taiwan also aims to develop into an Asia-Pacific regional operations center, creating a further drive toward trade, investment, and financial liberalization. Continuing growth in the Taiwan economy of about 6 percent per year together with on-going trade liberalization provide opportunities for increasing U.S. exports, especially in the agricultural area.

Korea: Korea is the third largest economy among the United States' major export markets in the Asia-Pacific region, with a GDP/GNP of $367.6 billion in 1994. Shipments of U.S. merchandise to Korea were valued at $26.6 billion in 1996 and accounted for 22.5 percent of Korea's total imports in 1995.

Korea is the United States' fifth largest export market, and our third largest agricultural market. Although the United States enjoyed a $3.9 billion trade surplus with Korea in 1996, U.S. industry describes Korea as one of the toughest markets in the world for doing business. In the past decade, Korea removed a wide range of quantitative restrictions and average tariffs have been lowered to 7.9 percent. The Korean economy has grown significantly as a result of this relatively more open domestic market, and U.S. exports have expanded rapidly. However, access to the Korean market continues to be hindered by trade barriers rooted in ambiguous and non-transparent regulations which affect food safety and labeling, licensing, inspections, type approval, and other standards. Many of these technical barriers to trade are inconsistent with international norms.

In 1996, Korea became the twenty-ninth member of the OECD. In the context of its accession negotiations, Korea committed to certain financial and investment-related reforms. Korea participated in both the Information Technology Agreement and the WTO agreement on basic telecommunications services in early 1997, with modest trade and investment liberalizing results. The United States is consulting bilaterally with Korea on government interference in Korea's telecom sector and under WTO auspices on customs clearance problems. Korea has made progress on improving IPR protection, but deficiencies remain and Korea has claimed developing country status to delay implementation of its WTO TRIPS commitments.

South Asia

Summary: The countries of South Asia (India, Pakistan, Bangladesh, Sri Lanka, Nepal, the Maldives, and Bhutan) have a combined GDP of over $390 billion with 1996 imports from the

United States of over $5 billion. The seven countries discuss economic and trade issues periodically in an arrangement known as the South Asian Association for Regional Cooperation (SAARC). In addition, in March 1997, the first meeting of the Indian Ocean Rim Association for Regional Cooperation (IORARC) was held. Its fourteen members are committed to promoting liberalization of goods, services, investment and technology within the region. India and Australia played a major role in creating the organization. India and Pakistan are the dominant U.S. trading partners in the region.

India: India is the fifth largest economy among the United States' major export markets in the Asia-Pacific region, with a GDP/GNP of $292.4 billion in 1994. Shipments of U.S. merchandise to India in 1996 were valued at $3.3 billion and accounted for 9.7 percent of India's total imports in 1995.

Following a severe balance of payments crisis in 1991, the Indian Government introduced a number of significant economic reforms and also sought closer commercial and diplomatic ties with the United States. Subsequent governments have publicly articulated their economic policies as reform orientated at a more deliberate pace. Economic and commercial relations have improved considerably as a result of Indian efforts at economic reform and the attraction of India for the U.S. export of goods, services, and investment. India's enormous market coupled with the promise of further economic liberalization have resulted in increasing interest in India. However, the considerable economic and commercial potential of India still remains to be realized.

Until recently, India's complex web of market access barriers was a serious and longstanding impediment to most U.S. exports and investment. Although considerable progress has been realized since 1991, significant access barriers remain, especially for goods that can be produced domestically such as agricultural and consumer items. India's average tariff rate is still high by East Asian standards at 20 percent. Approximately 40 percent of India's import line items are subject to licensing restrictions, the vast majority of which India attempts to justify under the WTO balance of payments (BOP) provisions. This matter is the subject of consultations with the WTO BOP Committee.

India has been on the Special 301 "priority watch list" since 1994 and the United States and India are litigating in a WTO dispute settlement panel India's failure to implement the "mailbox" provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). India joined the ITA in March of 1997 and made a modest offer in the WTO telecommunications services negotiations that concluded in February 1997.

Pakistan: Pakistan is the thirteenth largest economy among the United States' major export markets in the Asia-Pacific region, with a GDP/GNP of $54.3 billion in 1994. Shipments of U.S. merchandise to Pakistan in 1996 were valued at $1.3 billion and accounted for 9.3 percent of Pakistan's total imports in 1995.

Pakistan has made progress in recent years in liberalizing import restrictions, but tariffs remain high -- up to 65 percent -- on many products, and some items still are subject to bans or quantitative restrictions. On March 31, 1997, the Pakistani Government announced a tariff simplification reform, including lowering maximum tariffs to 45 percent, as part of a broader structural adjustment plan.

Pakistan provides statutory national treatment to foreign investment in most industrial sectors, but not in non-industrial sectors. Local content requirements have been reported in the automobile, electronics, electrical products, and engineering industries under Pakistan's "deletion program," although participation in that program ostensibly is not compulsory. Pakistan's investment barriers are especially severe in services sectors such as banking, insurance, transportation, and telecommunications. In the WTO Agreement on Basic Telecommunications Services, Pakistan made commitments on basic telecommunications services, with phase-in of some obligations. In that agreement, Pakistan agreed to permit foreign ownership or control of all telecommunications services and facilities by 2004.

Copyright piracy remains a particularly serious problem in Pakistan. Strengthened law enforcement has had some impact against video piracy, but IPR piracy of computer software, textile designs, and reprinted books continues virtually unabated. In February, 1997, Pakistan implemented its obligation under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) to establish a "mailbox" system for agricultural chemical and pharmaceutical product patent applications. Pakistan remains on the Special 301 "watch list."

Sub-Saharan Africa

Overview

Economic Reforms and Growth

While political turmoil and violence continue to hold back development in various African countries, there has been a clear shift among some thirty Sub-Saharan countries from political instability and economic exploitation to political and market reform in this decade. Over the years, Sub-Saharan countries have tried many approaches to economic coordination of their economies. Some, such as the Organization for African Unity, are continental in breadth with 53 countries as members and long range in objectives, that is a free trade area by the year 2020. Others are more narrowly defined, such as the South African Customs Union (SACU)[3] which was founded in 1910 to deal with tariff and trade flows through South Africa to its small neighbors, some of which are landlocked (Botswana, Lesotho and Swaziland). Some efforts, like the Cross Border Initiative (CBI) have mixed membership--regional integration organizations and individual country members.

[3] SACU comprises Botswana, South Africa, Lesotho, Namibia, and Swaziland.

U.S. Trade

Sub-Saharan Africa[4] comprises 48 countries with a total population of 574 million. Its total GDP of $259 billion in 1994, as estimated by the World Bank, resulted in a per-capita GDP of $451. Its large population and low income make the African sub-continent a market of enormous needs, but limited effective demand. Its rich endowment of natural resources--petroleum and other minerals, including diamonds and gold--have made Africa a source of over $15 billion dollars of U.S. imports in 1996, up 37 percent since 1994. The Sub-Saharan market for U.S. goods is much less, $6 billion in 1996, up 20 percent since 1994. A significant portion of these exports are destined for investment in oil production facilities. Growth in U.S. trade with Sub-Saharan Africa will depend on the ability of its countries to broaden the scope of political and economic reforms. The progress some countries have made in furthering regional market integration serves as an indicator or their readiness to trade more openly not only with their neighbors but, in time, with global trading partners.

Sub Regions

Southern Africa (SADC)

Summary: The Southern African Development Community (SADC) was founded initially to counter South Africa's apartheid policies. South Africa (now a dynamic participant in SADC) and its eleven southern African neighbors signed a free trade protocol last August, which aims to eliminate tariffs within eight years and adopt other trade liberalizing measures. As they proceed to reduce trade barriers between their borders, SADC members, which now comprise a market of 130 million people, are expected to become more open to global competition so that U.S. producers can anticipate wider market opportunities in southern Africa.

South Africa: South Africa took on a new leadership role following the release of Nelson Mandela from prison and the subsequent establishment of a racially free democracy. The United States lifted its trade embargo with South Africa and trade has resumed between the United States and South Africa. South Africa is the single largest economy among the United States' major export markets in the Sub-Saharan Africa region, with a GDP/GNP of $123.1 billion in 1994. Shipments of U.S. merchandise to South Africa were valued at $3.1 billion in 1996 and accounted for 10.9 percent of South Africa's total imports in 1995.

Southern African Development Community

South Africa is now a dynamic participant in the Southern African Development Community (SADC) which was founded initially to give its members a collective voice in addressing donors

[4] Sub-Saharan Africa comprises Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Djibouti, Equatorial Guinea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome, and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, Zaire, and Zimbabwe.

to help develop a regional infrastructure independent of that in South Africa. SADC struck a unique chord in economic harmony in that it rose above country competition in the siting of facilities and developed a regional strategy on key topics such as communications, transportation, and industrial development. After South Africa joined its eleven southern African neighbors in SADC, they signed a free trade protocol in August 1996, which aims to eliminate tariffs within eight years and adopt other trade liberalizing measures. As they proceed to reduce trade barriers between their borders, SADC members, which now comprise a market of 130 million people, are expected to become more open to global competition so that U.S. producers can anticipate wider market opportunities in southern Africa.

West African Economic and Monetary Union

The West African Economic and Monetary Union (WAEMU) emerged in 1994 from earlier integration efforts and a pre-existing monetary union. Its members--Benin, Burkina, Cote d'Ivoire, Mali, Niger, Senegal, and Togo-- are pursuing full economic integration with a common external tariff, community value-added tax, and harmonized legal, regulatory and economic policies. Its total population of 60 million in an integrated market with minimal trade barriers could become a significant market for U.S. producers if it can loosen its ties to its European patrons. Currently Cote d'Ivoire, with a population of 13 million, is the largest of the group and U.S. exports doubled to $172 million between 1993 and 1995, although they declined to $142 in 1996.

If Nigeria, which was a member of WAEMU's predecessor, were to join the new effort, its 100 million people would more than double this West African market. U.S. imports from Nigeria average $5 billion a year, mainly oil imports. By comparison, Nigeria's imports from the United States are relatively small, but growing, rising from $602 million in 1995 to $816 million in 1996. This hefty 36 percent increase in exports to Nigeria, together with a 13 percent increase in U.S. exports to South Africa, accounted for 78 percent of the total increase of U.S. exports to Sub-Saharan Africa.

Common Market for Eastern and Southern Africa

The Common Market for Eastern and Southern Africa (COMESA)[5] was established in 1994 to revive the work of its predecessor, the Preferential Trading Area. However, because COMESA's membership includes ten members of SADC, there has been some concern about duplication of efforts. A more recent and more limited effort at integration in East Africa was effected by Kenya, Tanzania and Uganda, which set up once again the Permanent Tripartite Commission of the East African Community which had previously been a close union from 1967 to 1977. The currencies of these countries have been made convertible and priority is being given to develop transportation and communications, as well as harmonization of fiscal and monetary policies.

[5] COMESA members include SADC members (except South Africa and Botswana) and Burkina Faso, Comoros, Eritrea, Kenya, and Madagascar.

Cross Border Initiative

A different approach to trade liberalization has been sponsored as an umbrella effort by the multilateral banks which will provide some funding to facilitate its success. Called the Cross Border Initiative (CBI)[6], it seeks to coordinate the efforts of existing regional integration organizations such as SADC, COMESA and the Indian Ocean Commission, and involves fourteen individual countries. CBI is guided by four principles: deep integration by removing barriers to factor flows; establishment of comparative advantage; achievement of integration; through external trade liberalization; and self-selected pace of liberalization. If CBI can deal with the concerns caused by disparities in the pace of and approaches to liberalization, CBI may accelerate liberalization and widen the scope of participation, even though it lacks political autonomy. This in turn is likely to open African markets to U.S. producers, but it is unlikely to develop into an integrated market area with which a free trade agreement could be negotiated. It would appear that the regional units will remain the candidates for any such agreements.

Middle East

While significant obstacles to increased trade and investment exist throughout the Middle East, many countries in the region are taking steps to integrate their economies into the world trading system. Most countries of the region are members of the World Trade Organization. Saudi Arabia, Oman, and Jordan are currently in the WTO accession process.

Inadequate protection of intellectual property rights remains a serious problem throughout the region, causing hundreds of millions of dollars in lost sales of U.S. videocassettes, software, and pharmaceuticals. Some countries in the region continue to maintain high tariffs and a range of non-tariff barriers in order to protect their domestic markets.

The United States favors strengthening common action among Gulf Cooperation Council members (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates), as well as enhancing U.S.-GCC economic and commercial ties. The U.S. Government engages in high-level economic policy talks with GCC members through the U.S.-GCC Economic Dialogue.

Israel remains a key U.S. trading partner in the region. The United States negotiated a free trade agreement with Israel in 1985. The tariff reductions in the agreement were fully phased in by January 1, 1995. Under the Free Trade Area Agreement, the United States and Israel had differing interpretations as to the meaning of certain rights and obligations related to agricultural products, and Israel maintained significant restrictions on imports of many of these U.S. products.

In the interest of achieving practical improvements in agricultural trade between the two countries, the United States and Israel entered into an agreement on a five-year program of

[6] CBI member countries are Burundi, Comoros, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe.

gradual and steady improvement in agricultural market access, signed on November 4, 1996. Israel is now undertaking to make concessions on a wide range of priority U.S. commodities.

In 1996, the President also signed legislation and a subsequent proclamation which initiated duty-free treatment of products from the West Bank and Gaza Strip. The intent of the legislation is to spur export-related economic development in the region. This trade initiative is one element of tangible U.S. support for the Middle-East peace process, facilitating enhanced economic cooperation among Israel, Jordan, Egypt and the Palestinian Authority. Products of the West Bank and Gaza Strip and of industrial zones established on the borders of Israel and Jordan and Israel and Egypt will enjoy duty-free entry into the United States, treatment identical to that currently provided products of Israel under the Israel-U.S. Free Trade Agreement.

Egypt is also an important market in the region for U.S. products, especially agriculture. In 1991, Egypt began a program of trade liberalization, eliminating many non-tariff barriers and significantly reducing tariffs. Continuing liberalization promises now opportunities for U.S. exporters. The U.S. considers Egypt's economic reform and trade liberalization to be a key element of the Gore/Mubarak Economic Partnership.

Western Europe

European Union

The European Union (EU), composed of 15 industrialized western European countries -- Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom -- is the world's largest trading entity. The EU is also our second largest trading partner, with two-way merchandise trade totaling about $270 billion after. In 1996, U.S. merchandise exports to, and imports from, the EU increased, and for the fourth consecutive year, the United States ran a merchandise trade deficit with the EU, though services trade has in recent years tended to more than compensate for the goods trade deficit.

The United States and the EU are the world's largest zones of prosperity and both have mature, highly-diversified economies. There is a rough equivalence in merchandise trade in almost every large sector and the EU is an important consumer of high-value added U.S. products. The EU is a large purchaser of goods and services from U.S. growth industries, including telecommunications, financial services, aerospace, pharmaceuticals, audiovisual, and computers.

The U.S. and EU economies have also become increasingly interdependent through direct investment and joint ventures. Direct investment in the EU amounted to $320 billion in 1995, representing about 45 percent of total U.S. direct foreign investment. The growing interdependence of the two economies has created pressure for closer harmonization of the two trading regimes and regulatory structures, resulting in far greater attention to such items as mutual recognition of standards, protection of intellectual property rights, and coordination of approaches to labor standards and environmental concerns.

In most sectors, U.S. producers have good access to EU markets and can compete on a fair basis, The EU's implementation of the Single Market program (EC-92) has been generally beneficial to U.S. investors and exporters by breaking down internal EU barriers to trade, thereby creating a more cohesive market. This transformation of the EU's internal market is in turn fostering a more efficient allocation of U.S. firms' resources among the EU member states, thereby improving these firms' competitiveness.

Because of the similarity in the economies of the U.S. and EU, our ability to compete is often strongly affected by EU sectoral policies. Fortunately, many of the EU's most restrictive trade practices were eliminated through the Uruguay Round's tariff cuts and extension of GATT disciplines to services, intellectual property and investment. However, though the EU has a largely open trading regime, there are still a number of sectors which are not sufficiently open to U.S. producers. These sectors tend to be politically or symbolically powerful and heavily reliant on government subsidies. The EU Utilities Procurement Directive limits access to the enormous public telecommunications network and market for telecommunications equipment (e.g. central switches) and services. The EU Broadcast Directive limits access to the lucrative audio-visual market by reserving 50 percent of broadcast programming for European works. The EU also heavily subsidizes certain industries, to the competitive detriment of U.S. producers; these sectors include civil aircraft, steel, shipbuilding, and coal.

European Free Trade Area

The European Free Trade Area (EFTA) was established in 1960 as an alternative to the European Economic Community (EU) and now includes only Norway, Switzerland, Iceland, and Liechtenstein. Austria, Finland, and Sweden are the most recent former EFTA members to have negotiated respective terms of accession and now are EU members. In 1994 the separate European Economic Area (EEA) was established to encourage European economic integration and includes Norway, Iceland, Liechtenstein and all EU member states. The EEA brings over 70 percent of EFTA's trade regulations into conformity with those of the EU. This is providing, on balance, opportunities to U.S. businesses. Many regulations now conform to EU norms, making investment easier. Barriers to U.S. trade have fallen in many areas as the former EFTA states adopt EU regulations and as the Uruguay Round continues to be implemented.

Switzerland's application of GATT norms provides excellent opportunities and guarantees for trade and investment. However, Switzerland does continue to maintain significant barriers to agricultural trade, and Switzerland's banking sector continues to lack adequate transparency. Switzerland also provides certain trade advantages to EU and EFTA firms through a series of bilateral treaties.

Central and Eastern Europe

Overview

Economic Reforms and Growth

During 1996, most Central European countries continued to make progress in their efforts to transform centrally planned economies into market-oriented systems. Since the formal dissolution of the Soviet Union at the end of 1991, each of the independent republics has also been working towards this goal; however, progress in some of these countries is limited. The nature of the reforms adopted and the speed with which they are being implemented varies considerably from country to country.

The United States has actively supported political and economic reforms in Central and Eastern Europe. The United States continues to provide financial, technical, and administrative assistance designed to support movement toward democracy and market economies.

A primary focus of U.S. efforts has been to construct a framework for the rapid expansion of trade and investment between the United States and Central and Eastern Europe. This framework includes negotiating trade agreements to extend most-favored-nation (MFN) tariff treatment and intellectual property rights (IPR) protection, extending Generalized System of Preferences (GSP) benefits to eligible countries, encouraging adoption of WTO provisions in these countries' trade regimes, and negotiating bilateral investment treaties which guarantee compensation for expropriation, transfers in convertible currency, and the use of appropriate dispute settlement procedures.

U.S. Trade

Two-way trade between the United States and Central and Eastern Europe has expanded at a rapid pace in recent years. U.S. exports to Central and Eastern Europe have fluctuated in a generally upward trend since 1990, while U.S. imports from this region have surged. Accordingly, the U.S. trade balance has shifted from a surplus to, beginning in 1994, a deficit.

U.S. exports to Central and Eastern Europe are primarily food items (principally meat and wheat) and machinery and transport equipment (principally aircraft and telecommunications equipment). U.S. imports from this region include manufactured goods (principally articles of aluminum, iron, and nonalloy steel) and chemicals (principally radioactive materials and inorganic chemicals).

Sub Regions

Central Europe

Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia, and Slovenia are members of the WTO. WTO accession working parties have been established for Albania, Croatia, Macedonia, and the Baltic Republics (Estonia, Latvia, and Lithuania).

All Central European countries have MFN status. The United States has trade agreements with all Central European countries except the Republics of the former Yugoslavia and Poland. Where these countries are covered by the Jackson-Vanik Amendment to the Trade Act of 1974, the President has either certified that these countries are in compliance with the freedom of emigration provision or has waived the requirement. In December 1991, Congress affirmed that Title IV of the Trade Act of 1974 does not apply to the Baltic Republics. Pursuant to special legislation, the President removed the following countries from Title IV and accorded them unconditional MFN status: the Czech and Slovak Federal Republic (April 1992), Hungary (April 1992), Bulgaria (September 1996), and Romania (November 1996). The Jackson-Vanik Amendment never applied to Poland or the former Yugoslavia. As part of U.S. sanctions policy, the President revoked MFN from Serbia; on January 16, 1996, certain sanctions were dropped pursuant to the peace accords negotiated in Dayton, Ohio, although MFN was not restored.

In Central Europe, the United States has BITs in force with Bulgaria, the Czech Republic, Estonia, Latvia, Poland, Romania, and Slovakia. The BIT with Albania awaits an exchange of instruments ratification, while the BIT with Croatia has not yet been ratified by either party.

The United States is a major investor in many countries in the region, and is the principal foreign investor in Hungary and Poland. In trade of goods, however, the size of U.S. exports to and imports from the Central European countries is dwarfed by trade between those countries and the countries of the EU. By the end of 1994, most of the Central European countries had concluded Association Agreements with the EU. These include tariff preferences both for Central European countries' imports from the EU and EU imports from the Central European countries.

Russia

Russia is in the process of acceding to the World Trade Organization (WTO). Russia is the single largest economy among the United States' major export markets in the Central and Eastern Europe region, with a GDP/GNP of $393.0 billion in 1994. Shipments of U.S. merchandise to Russia were valued at $3.3 billion in 1996 and accounted for 5.7 percent of Russia's total imports in 1995.

Trade relations between the United States and Russia are governed by the U.S.-Russia trade agreement, signed in June 1990 with the USSR and approved by the U.S. Congress in November 1991. The USSR ceased to exist before ratification of the agreement, but the United States offered the agreement (with minor technical changes) to each of the emerging states of the former Soviet Union. The Russian Parliament approved the agreement, making it possible for the United

States to extend most-favored-nation status to Russia on June 17, 1992. A BIT with Russia has been approved by the U.S. Senate but is awaiting Russian ratification.

Ukraine

A WTO accession working parties have been established for Ukraine. Ukraine is the second largest economy among the United States' major export markets in the Central and Eastern Europe region, with a GDP/GNP of $99.1 billion in 1994. Shipments of U.S. merchandise to Ukraine were valued at $394 million in 1996 and accounted for 1.7 percent of Ukraine's total imports in 1995.

Most MFN tariffs in Ukraine range from zero to 30 percent, although tariffs on some items are 40-50 percent. In November 1996, Ukraine raised its tariffs on a number of agricultural products. Imports are also assessed a 20 percent VAT and, in some instances, an excise tax. Ukraine has implemented over the last two years a set of intellectual property laws, including laws covering patents, industrial designs, trademarks, plant varieties, and copyrights. Enforcement remains sporadic and inadequate, however. Ukraine passed a law on foreign investment in 1996 which provides certain protections, including general guarantees against expropriations, unhindered transfer of profits and post-tax revenues, and a ten-year guarantee against changes in legislation that affect companies operating in Ukraine.

Other Newly Independent States (NIS)

The countries reviewed in this section are: Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan. WTO accession working parties have been established for Armenia, Belarus, Georgia, Kazakstan, Kyrgyzstan, and Uzbekistan.

All NIS republics have MFN status. In addition, the United States has trade agreements with all of the NIS republics.

The United States has BITs in force with five NIS countries -- Armenia, Moldova, Kazakstan, Kyrgyzstan, and Ukraine. Belarus, Georgia, and Uzbekistan have also signed BITs with the United States. The BITs with Belarus and Georgia are awaiting exchange of the instruments of ratification, while the BIT with Uzbekistan has not yet been ratified by either party. Discussions for BITs are underway with the majority of other NIS countries.

Trade with the NIS has been growing from a small base, but is restricted due to the limited infrastructure, income and foreign exchange resources in these countries. In addition to changing legal structures and banking systems, the NIS are struggling with currency convertibility problems, inflation, and unemployment. Many of these countries also lack adequate road systems, power supplies, and communication structures. However, despite difficult commercial environments, U.S. companies are pursuing business opportunities.

PART II: ECONOMIC DATA ON U.S. TRADING PARTNERS

Table 1: Data on the 100 largest national markets for U.S. exports (ranked by U.S. export value)

Partner	U.S. Exports in 1996 ($ Million)	GDP/GNP in 1994 ($ Billion)	U.S. Imports in 1996 ($ Million)	U.S. Share of Imports in 1995 (%)
1. Canada	132,584	569.7	156,506	80.4
2. Japan	67,536	4,328.8	115,218	22.6
3. Mexico	56,761	369.9	72,963	74.5
4. United Kingdom	30,916	1,071.1	28,892	12.2
5. Korea (Republic of)	26,583	367.6	22,667	22.5
6. Germany	23,474	2,084.8	38,943	7.5
7. Taiwan	18,413	257.0	29,911	18.6
8. Singapore	16,685	65.3	20,340	15.1
9. Netherlands	16,615	339.0	6,617	3.8
10. France	14,428	1,356.0	18,630	5.8
11. Hong Kong	13,956	132.1	9,867	21.8
12. Brazil	12,699	472.5	8,762	21.1
13. Belgium	12,520	231.0	6,799	8.5
14. Australia	11,992	320.4	3,323	21.9
15. China (PRC)	11,978	631.2	51,495	12.2
16. Italy	8,785	1,102.0	18,222	4.8
17. Malaysia	8,521	68.6	17,825	21.3

Table 1: Data on the 100 largest national markets for U.S. exports (ranked by U.S. export value)				
Partner	U.S. Exports in 1996 ($ Million)	GDP/GNP in 1994 ($ Billion)	U.S. Imports in 1996 ($ Million)	U.S. Share of Imports in 1995 (%)
18. Switzerland	8,370	265.5	7,793	6.4
19. Saudi Arabia	7,295	125.5	8,781	21.4
20. Thailand	7,211	139.8	11,336	11.5
21. Philippines	6,125	63.7	8,162	18.4
22. Israel	6,009	78.5	6,426	17.8
23. Spain	5,486	525.5	4,281	6.4
24. Venezuela	4,741	58.5	12,903	42.1
25. Colombia	4,709	60.6	4,273	39.1
26. Argentina	4,516	277.4	2,278	22.9
27. Chile	4,132	49.3	2,256	24.7
28. Indonesia	3,965	167.6	8,213	9.5
29. Ireland	3,660	48.7	4,798	17.7
30. Sweden	3,429	207.1	7,158	5.3
31. Russia	3,340	393.0	3,561	5.7
32. India	3,318	292.4	6,169	9.7
33. Dominican Republic	3,183	10.1	3,575	44.1
34. Egypt	3,146	40.9	665	18.9
35. South Africa	3,106	123.1	2,323	10.9
36. Turkey	2,886	152.0	1,777	10.4
37. United Arab Emirates	2,527	36.2	496	8.1
38. Finland	2,438	96.1	2,345	7.1
39. Austria	2,009	197.0	2,199	3.3
40. Kuwait	1,979	31.1	1,640	23.5
41. Costa Rica	1,814	7.9	1,974	52.3

Table 1: Data on the 100 largest national markets for U.S. exports (ranked by U.S. export value)				
Partner	U.S. Exports in 1996 ($ Million)	GDP/GNP in 1994 ($ Billion)	U.S. Imports in 1996 ($ Million)	U.S. Share of Imports in 1995 (%)
42. Peru	1,767	49.0	1,261	26.7
43. Denmark	1,730	145.4	2,137	3.8
44. New Zealand	1,727	46.7	1,464	18.7
45. Honduras	1,641	3.5	1,796	55.5
46. Guatemala	1,564	12.4	1,673	46.8
47. Norway	1,558	113.5	3,869	6.7
48. Jamaica	1,491	3.9	839	75.9
49. Panama	1,378	6.7	346	12.5
50. Pakistan	1,277	54.3	1,266	9.3
51. Ecuador	1,257	14.3	1,916	30.8
52. El Salvador	1,072	7.6	1,074	40.2
53. Poland	968	92.8	627	3.9
54. Portugal	960	92.3	1,016	3.3
55. Paraguay	897	7.6	42	19.3
56. Greece	820	80.1	496	6.2
57. Nigeria	816	30.2	5,849	11.1
58. Bahamas	725	4.4	165	29.4
59. Trinidad and Tobago	665	4.9	1,017	50.6
60. Algeria	632	45.2	2,103	8.0
61. Lebanon	627	15.8	41	10.1
62. Vietnam	616	14.4	319	10.6
63. Netherlands Antilles	528	1.9	663	28.4
64. Uruguay	484	14.9	260	9.9

Table 1: Data on the 100 largest national markets for U.S. exports (ranked by U.S. export value)				
Partner	U.S. Exports in 1996 ($ Million)	GDP/GNP in 1994 ($ Billion)	U.S. Imports in 1996 ($ Million)	U.S. Share of Imports in 1995 (%)
65. Morocco	476	30.1	252	6.6
66. Haiti	474	1.6	143	65.0
67. Czech Republic	410	33.0	482	2.2
68. Ukraine	394	99.1	507	1.7
69. Brunei	375	4.4	49	5.9
70. Uzbekistan	352	21.5	157	2.8
71. Jordan	345	5.8	25	9.3
72. Hungary	331	39.6	677	3.1
73. French Guiana	301	0.8	5	3.3
74. Ghana	295	6.8	171	6.9
75. Bermuda	282	1.7	11	41.5
76. Bolivia	269	5.5	275	20.9
77. Angola	268	6.1	2,687	15.9
78. Romania	266	28.8	249	4.2
79. Nicaragua	262	1.4	350	26.3
80. Iceland	257	6.2	236	8.4
81. Cyprus	257	7.3	17	13.0
82. Yemen	256	4.1	27	7.7
83. Bahrain	244	4.9	115	6.8
84. Luxembourg	242	16.4	203	N/A
85. Syria	226	4.4	15	4.1
86. Aruba	225	1.1	558	N/A
87. Suriname	222	1.2	97	42.4
88. Barbados	222	1.7	41	35.5

Table 1: Data on the 100 largest national markets for U.S. exports (ranked by U.S. export value)				
Partner	U.S. Exports in 1996 ($ Million)	GDP/GNP in 1994 ($ Billion)	U.S. Imports in 1996 ($ Million)	U.S. Share of Imports in 1995 (%)
89. Oman	215	10.8	411	5.0
90. Sri Lanka	211	11.5	1,393	15.0
91. Bangladesh	210	25.9	1,343	6.1
92. Cayman Islands	208	0.7	17	N/A
93. Qatar	207	10.7	157	8.4
94. Turkmenistan	201	N/A	0	2.7
95. Tunisia	189	15.8	76	5.9
96. Latvia	165	5.8	99	1.9
97. Ethiopia	148	5.1	35	12.0
98. Cote d'Ivoire	141	7.5	397	5.9
99. Kazakstan	138	55.2	114	1.6
100. Bulgaria	137	10.5	126	2.6
Total Presented	614,796		784,118	
World	622,827		791,315	

Note. -- GDP/GNP data have been converted to U.S. dollars at market exchange rates except for the following countries (for which GDP/GNP data were converted to U.S. dollars at purchasing power parity exchange rates): Angola, Aruba, Bahamas, Bermuda, Brunei, Cayman Islands, French Guiana, Lebanon, Netherlands Antilles, Qatar, and Suriname. For the following countries, the most recent reliable GDP/GNP data available were from 1993: Aruba, Brunei, Cayman Islands, and French Guiana.

Source: Compiled from the World Bank Development Report 1996, the IMF Direction of Trade Yearbook 1996, the U.S. Bureau of the Census, and other sources.

Table 2: Data on the 100 largest national markets for U.S. exports (ranked by size of domestic economy)				
Partner	U.S. Exports in 1996 ($ Million)	GDP/GNP in 1994 ($ Billion)	U.S. Imports in 1996 ($ Million)	U.S. Share of Imports in 1995 (%)
1. Japan	67,536	4,328.8	115,218	22.6
2. Germany	23,474	2,084.8	38,943	7.5
3. France	14,428	1,356.0	18,630	5.8
4. Italy	8,785	1,102.0	18,222	4.8
5. United Kingdom	30,916	1,071.1	28,892	12.2
6. China (PRC)	11,978	631.2	51,495	12.2
7. Canada	132,584	569.7	156,506	80.4
8. Spain	5,486	525.5	4,281	6.4
9. Brazil	12,699	472.5	8,762	21.1
10. Russia	3,340	393.0	3,561	5.7
11. Mexico	56,761	369.9	72,963	74.5
12. Korea (Republic of)	26,583	367.6	22,667	22.5
13. Netherlands	16,615	339.0	6,617	3.8
14. Australia	11,992	320.4	3,323	21.9
15. India	3,318	292.4	6,169	9.7
16. Argentina	4,516	277.4	2,278	22.9
17. Switzerland	8,370	265.5	7,793	6.4
18. Taiwan	18,413	257.0	29,911	18.6
19. Belgium	12,520	231.0	6,799	8.5
20. Sweden	3,429	207.1	7,158	5.3
21. Austria	2,009	197.0	2,199	3.3
22. Indonesia	3,965	167.6	8,213	9.5
23. Turkey	2,886	152.0	1,777	10.4
24. Denmark	1,730	145.4	2,137	3.8

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Partner	U.S. Exports in 1996 ($ Million)	GDP/GNP in 1994 ($ Billion)	U.S. Imports in 1996 ($ Million)	U.S. Share of Imports in 1995 (%)
25. Thailand	7,211	139.8	11,336	11.5
26. Hong Kong	13,956	132.1	9,867	21.8
27. Saudi Arabia	7,295	125.5	8,781	21.4
28. South Africa	3,106	123.1	2,323	10.9
29. Norway	1,558	113.5	3,869	6.7
30. Ukraine	394	99.1	507	1.7
31. Finland	2,438	96.1	2,345	7.1
32. Poland	968	92.8	627	3.9
33. Portugal	960	92.3	1,016	3.3
34. Greece	820	80.1	496	6.2
35. Israel	6,009	78.5	6,426	17.8
36. Malaysia	8,521	68.6	17,825	21.3
37. Singapore	16,685	65.3	20,340	15.1
38. Philippines	6,125	63.7	8,162	18.4
39. Colombia	4,709	60.6	4,273	39.1
40. Venezuela	4,741	58.5	12,903	42.1
41. Kazakstan	138	55.2	114	1.6
42. Pakistan	1,277	54.3	1,266	9.3
43. Chile	4,132	49.3	2,256	24.7
44. Peru	1,767	49.0	1,261	26.7
45. Ireland	3,660	48.7	4,798	17.7
46. New Zealand	1,727	46.7	1,464	18.7
47. Algeria	632	45.2	2,103	8.0

Table 2: Data on the 100 largest national markets for U.S. exports (ranked by size of domestic economy)				
Partner	U.S. Exports in 1996 ($ Million)	GDP/GNP in 1994 ($ Billion)	U.S. Imports in 1996 ($ Million)	U.S. Share of Imports in 1995 (%)
48. Egypt	3146	40.9	665	18.9
49. Hungary	331	39.6	677	3.1
50. United Arab Emirates	2,527	36.2	496	8.1
51. Czech Republic	410	33.0	482	2.2
52. Kuwait	1,979	31.1	1,640	23.5
53. Nigeria	816	30.2	5,849	11.1
54. Morocco	476	30.1	252	6.6
55. Romania	266	28.8	249	4.2
56. Bangladesh	210	25.9	1,343	6.1
57. Uzbekistan	352	21.5	157	2.8
58. Luxembourg	242	16.4	203	N/A
59. Lebanon	627	15.8	41	10.1
60. Tunisia	189	15.8	76	5.9
61. Uruguay	484	14.9	260	9.9
62. Vietnam	616	14.4	319	10.6
63. Ecuador	1,257	14.3	1,916	30.8
64. Guatemala	1,564	12.4	1,673	46.8
65. Sri Lanka	211	11.5	1,393	15.0
66. Oman	215	10.8	411	5.0
67. Qatar	207	10.7	157	8.4
68. Bulgaria	137	10.5	126	2.6
69. Dominican Republic	3,183	10.1	3,575	44.1

Table 2: Data on the 100 largest national markets for U.S. exports (ranked by size of domestic economy)				
Partner	U.S. Exports in 1996 ($ Million)	GDP/GNP in 1994 ($ Billion)	U.S. Imports in 1996 ($ Million)	U.S. Share of Imports in 1995 (%)
70. Costa Rica	1,814	7.9	1,974	52.3
71. El Salvador	1,072	7.6	1,074	40.2
72. Paraguay	897	7.6	42	19.3
73. Cote d'Ivoire	141	7.5	397	5.9
74. Cyprus	257	7.3	17	13.0
75. Ghana	295	6.8	171	6.9
76. Panama	1,378	6.7	346	12.5
77. Iceland	257	6.2	236	8.4
78. Angola	268	6.1	2,687	15.9
79. Latvia	165	5.8	99	1.9
80. Jordan	345	5.8	25	9.3
81. Bolivia	269	5.5	275	20.9
82. Ethiopia	148	5.1	35	12.0
83. Bahrain	244	4.9	115	6.8
84. Trinidad and Tobago	665	4.9	1,017	50.6
85. Bahamas	725	4.4	165	29.4
86. Syria	226	4.4	15	4.1
87. Brunei	375	4.4	49	5.9
88. Yemen	256	4.1	27	7.7
89 Jamaica	1,491	3.9	839	75.9
90. Honduras	1,641	3.5	1,796	55.5
91. Netherlands Antilles	528	1.9	663	28.4

Table 2: Data on the 100 largest national markets for U.S. exports (ranked by size of domestic economy)				
Partner	U.S. Exports in 1996 ($ Million)	GDP/GNP in 1994 ($ Billion)	U.S. Imports in 1996 ($ Million)	U.S. Share of Imports in 1995 (%)
92. Barbados	222	1.7	41	35.5
93. Bermuda	282	1.7	11	41.5
94. Haiti	474	1.6	143	65.0
95. Nicaragua	262	1.4	350	26.3
96. Suriname	222	1.2	97	42.4
97. Aruba	225	1.1	558	N/A
98. French Guiana	301	0.8	5	3.3
99. Cayman Islands	208	0.7	17	N/A
100. Turkmenistan	201	N/A	0	2.7
Total Presented	614,796		784,118	
World	622,827		791,315	

Note . -- GDP/GNP data have been converted to U.S. dollars at market exchange rates except for the following countries (for which GDP/GNP data were converted to U.S. dollars at purchasing power parity exchange rates): Angola, Aruba, Bahamas, Bermuda, Brunei, Cayman Islands, French Guiana, Lebanon, Netherlands Antilles, Qatar, and Suriname. For the following countries, the most recent reliable GDP/GNP data available were from 1993: Aruba, Brunei, Cayman Islands, and French Guiana.

Source: Compiled from the World Bank Development Report 1996, the IMF Direction of Trade Yearbook 1996, the U.S. Bureau of the Census, and other sources.

Table 3: Data on the 100 largest national markets for U.S. exports (ranked by U.S. share of imports)				
Partner	U.S. Exports in 1996 ($ Million)	GDP/GNP in 1994 ($ Billion)	U.S. Imports in 1996 ($ Million)	U.S. Share of Imports in 1995 (%)
1. Canada	132,584	569.7	156,506	80.4
2. Jamaica	1,491	3.9	839	75.9
3. Mexico	56,761	369.9	72,963	74.5
4. Haiti	474	1.6	143	65.0
5. Honduras	1,641	3.5	1,796	55.5
6. Costa Rica	1,814	7.9	1,974	52.3
7. Trinidad and Tobago	665	4.9	1,017	50.6
8. Guatemala	1,564	12.4	1,673	46.8
9. Dominican Republic	3,183	10.1	3,575	44.1
10. Suriname	222	1.2	97	42.4
11. Venezuela	4,741	58.5	12,903	42.1
12. Bermuda	282	1.7	11	41.5
13. El Salvador	1,072	7.6	1,074	40.2
14. Colombia	4,709	60.6	4,273	39.1
15. Barbados	222	1.7	41	35.5
16. Ecuador	1,257	14.3	1,916	30.8
17. Bahamas	725	4.4	165	29.4
18. Netherlands Antilles	528	1.9	663	28.4
19. Peru	1,767	49.0	1,261	26.7
20. Nicaragua	262	1.4	350	26.3
21. Chile	4,132	49.3	2,256	24.7
22. Kuwait	1,979	31.1	1,640	23.5
23. Argentina	4,516	277.4	2,278	22.9

Table 3: Data on the 100 largest national markets for U.S. exports (ranked by U.S. share of imports)				
Partner	U.S. Exports in 1996 ($ Million)	GDP/GNP in 1994 ($ Billion)	U.S. Imports in 1996 ($ Million)	U.S. Share of Imports in 1995 (%)
24. Japan	67,536	4,328.8	115,218	22.6
25. Korea (Republic of)	26,583	367.6	22,667	22.5
26. Australia	11,992	320.4	3,323	21.9
27. Hong Kong	13,956	132.1	9,867	21.8
28. Saudi Arabia	7,295	125.5	8,781	21.4
29. Malaysia	8,521	68.6	17,825	21.3
30. Brazil	12,699	472.5	8,762	21.1
31. Bolivia	269	5.5	275	20.9
32. Paraguay	897	7.6	42	19.3
33. Egypt	3,146	40.9	665	18.9
34. New Zealand	1,727	46.7	1,464	18.7
35. Taiwan	18,413	257.0	29,911	18.6
36. Philippines	6,125	63.7	8,162	18.4
37. Israel	6,009	78.5	6,426	17.8
38. Ireland	3,660	48.7	4,798	17.7
39. Angola	268	6.1	2,687	15.9
40. Singapore	16,685	65.3	20,340	15.1
41. Sri Lanka	211	11.5	1,393	15.0
42. Cyprus	257	7.3	17	13.0
43. Panama	1,378	6.7	346	12.5
44. China (PRC)	11,978	631.2	51,495	12.2
45. United Kingdom	30,916	1,071.1	28,892	12.2
46. Ethiopia	148	5.1	35	12.0
47. Thailand	7,211	139.8	11,336	11.5

Table 3: Data on the 100 largest national markets for U.S. exports (ranked by U.S. share of imports)				
Partner	U.S. Exports in 1996 ($ Million)	GDP/GNP in 1994 ($ Billion)	U.S. Imports in 1996 ($ Million)	U.S. Share of Imports in 1995 (%)
48. Nigeria	816	30.2	5,849	11.1
49. South Africa	3,106	123.1	2,323	10.9
50. Vietnam	616	14.4	319	10.6
51. Turkey	2,886	152.0	1,777	10.4
52. Lebanon	627	15.8	41	10.1
53. Uruguay	484	14.9	260	9.9
54. India	3,318	292.4	6,169	9.7
55. Indonesia	3,965	167.6	8,213	9.5
56. Jordan	345	5.8	25	9.3
57. Pakistan	1,277	54.3	1,266	9.3
58. Belgium	12,520	231.0	6,799	8.5
59. Qatar	207	10.7	157	8.4
60. Iceland	257	6.2	236	8.4
61. United Arab Emirates	2,527	36.2	496	8.1
62. Algeria	632	45.2	2,103	8.0
63. Yemen	256	4.1	27	7.7
64. Germany	23,474	2,084.8	38,943	7.5
65. Finland	2,438	96.1	2,345	7.1
66. Ghana	295	6.8	171	6.9
67. Bahrain	244	4.9	115	6.8
68. Norway	1,558	113.5	3,869	6.7
69. Morocco	476	30.1	252	6.6
70. Spain	5,486	525.5	4,281	6.4

Table 3: Data on the 100 largest national markets for U.S. exports (ranked by U.S. share of imports)				
Partner	U.S. Exports in 1996 ($ Million)	GDP/GNP in 1994 ($ Billion)	U.S. Imports in 1996 ($ Million)	U.S. Share of Imports in 1995 (%)
71. Switzerland	8,370	265.5	7,793	6.4
72. Greece	820	80.1	496	6.2
73. Bangladesh	210	25.9	1,343	6.1
74. Cote d'Ivoire	141	7.5	397	5.9
75. Brunei	375	4.4	49	5.9
76. Tunisia	189	15.8	76	5.9
77. France	14,428	1,356.0	18,630	5.8
78. Russia	3,340	393.0	3,561	5.7
79. Sweden	3,429	207.1	7,158	5.3
80. Oman	215	10.8	411	5.0
81. Italy	8,785	1,102.0	18,222	4.8
82. Romania	266	28.8	249	4.2
83. Syria	226	4.4	15	4.1
84. Poland	968	92.8	627	3.9
85. Netherlands	16,615	339.0	6,617	3.8
86. Denmark	1,730	145.4	2,137	3.8
87. Portugal	960	92.3	1,016	3.3
88. French Guiana	301	0.8	5	3.3
89. Austria	2,009	197.0	2,199	3.3
90. Hungary	331	39.6	677	3.1
91. Uzbekistan	352	21.5	157	2.8
92. Turkmenistan	201	N/A	0	2.7
93. Bulgaria	137	10.5	126	2.6
94. Czech Republic	410	33.0	482	2.2

Table 3: Data on the 100 largest national markets for U.S. exports (ranked by U.S. share of imports)				
95. Latvia	165	5.8	99	1.9
96. Ukraine	394	99.1	507	1.7
97. Kazakstan	138	55.2	114	1.6
98. Aruba	225	1.1	558	N/A
99. Cayman Islands	208	0.7	17	N/A
100. Luxembourg	242	16.4	203	N/A
Total Presented	614,796		784,118	
World	622,827		791,315	

Note . -- GDP/GNP data have been converted to U.S. dollars at market exchange rates except for the following countries (for which GDP/GNP data were converted to U.S. dollars at purchasing power parity exchange rates): Angola, Aruba, Bahamas, Bermuda, Brunei, Cayman Islands, French Guiana, Lebanon, Netherlands Antilles, Qatar, and Suriname. For the following countries, the most recent reliable GDP/GNP data available were from 1993: Aruba, Brunei, Cayman Islands, and French Guiana.

Source: Compiled from the World Bank Development Report 1996, the IMF Direction of Trade Yearbook 1996, the U.S. Bureau of the Census, and other sources.

TALKING POINTS ON FAST TRACK TIMING

- The President has been involved in discussions and meetings on the priorities for this year and what the best way to sequence those priorities in order to address them in a prudent and pragmatic way so as to maximize our chances of success.

SUMMER

- **Balanced Budget.** The Administration's efforts have been focused on achieving a balanced budget agreement -- and that has been our number one priority.

- **China's Normal Trading Status.** We are also working hard to ensure that China's normal trading status is renewed.

- **During the course of the summer, we will focus on working towards completion of the budget agreement and securing normal trading status for China.**
  - We expect action on the budget to be active through most of the summer.
  - As you know, Congress must act 90 days from June 3 on our decision to continue normal trading status for China.
  - These will require a significant time commitment of the President's time and Administration resources.

FALL

- **Fast Track.** Beginning in the fall, we will take up Fast Track in full force to ensure that Fast Track legislation is passed <u>this</u> year. We will use the summer to begin building the groundwork for Fast Track legislation.

DETAILS OF FAST TRACK TIMING

- Erskine Bowles, Charlene Barshefsky and others called key Democratic and Republican leaders to get their views on whether they agreed that taking up Fast Track in September made sense.

- **Key members of Congress, both Democrats and Republicans were pleased to hear of the President's commitment to move forward** and conveyed that pushing hard beginning in September for a vote on Fast Track this year seemed a prudent and sensible plan.

OTHER IMPORTANT ISSUES

- Once the balance budget agreement is complete, the President will also continue his policy of investing in our people while pursuing policies of fiscal responsibility.

    - **Entitlement Reform.** This year, we will work on creating a bipartisan process on long-term entitlement issues.
    - **Children's Issues.** We will also begin focusing on additional children's issues including additional health care initiatives, 0-3 childhood development, pre-school initiatives and other education issues.
    - **Comp. Time, Juvenile Crime.** Clearly, issues such as comp. time and juvenile crime legislation are two of more the Administration and Congress will be dealing with.

Inside U.S. Trade

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JAF Jm LB DS CF Stats

ADMINISTRATION DECIDES TO DELAY FAST TRACK UNTIL SEPTEMBER

President Clinton this week formally decided to delay action on fast-track negotiating legislation until September, and to use the summer to consult with members of Congress on the substance of the bill, according to Administration officials. The Administration plans to devote a lot of resources to the initiative in September, according to these officials.

The decision was made at a high-level meeting on May 21 involving the President, Vice President Al Gore, Treasury Secretary Bob Rubin and his deputy Larry Summers, as well as U.S. Trade Representative Charlene Barshefsky and Gene Sperling, the director of the National Economic Council.

The decision to delay fast-track consideration until later in the year came after weeks of indications that the Administration believed it could not expend the political capital for fast track when Congress faced votes on the

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EU SUBMITS STATEMENT OF OBJECTIONS ON PROPOSED BOEING-MD MERGER

European Union competition authorities this week presented to the Boeing Co. a 60-page statement of objections to the proposed merger between Boeing and McDonnell Douglas Corp. (MDC), according to informed sources. The statement charged that the merger would further strengthen Boeing's already dominant position in the large commercial aircraft market with unfair advantages over its only remaining competitor, Airbus Industrie, sources said.

Commission officials handed the statement to Boeing's lawyers in Brussels on May 21, these sources said.

As is consistent with EU regulations, the EU statement does not propose steps Boeing could take to satisfy the EU's objections, informed sources said. The EU and Boeing will likely discuss ways to resolve the EU's objections next month.

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CHINA MFN OPPONENTS LAUNCH CAMPAIGN TO OVERRIDE CLINTON DECISION

Opponents of renewing most-favored nation status for China this week kicked off a campaign to override the decision by President Clinton announced earlier to extend MFN for another year. The launch of the two campaigns for extension and revocation came amid indications that a vote in the House is not likely until at least mid-July.

Supporters of MFN extension would prefer to have the vote as early as possible, but recognize the political difficulties of holding it before the reversion of Hong Kong to Chinese sovereignty on July 1, these sources said. A vote before then is "not out of the realm of the possible but a risky political move" because if "Hong Kong goes to hell" the leadership would suffer politically, one source said.

MFN opponents have emphasized the need for an extensive debate on China policy before a House vote. At a May 21 press conference announcing the opposition of a diverse coalition of groups to MFN renewal, Family

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CHINA WTO TALKS BRING NO BREAKTHROUGHS, BUT MORE PROGRESS POSSIBLE

Negotiations this week in Geneva on China's accession to the World Trade Organization are unlikely to produce a major breakthrough that would help conclude talks by the end of this year or early next year, according to a preliminary assessment by negotiators. But these officials held out the hope that China's chief negotiator Long Yongtu might announce some new concessions at the formal session of the working party today (May 23).

"We have not seen anything substantially new or meaningful," a Japanese official said. "We are waiting for additional good news."

But even if there were an announcement of additional concessions, it would be unlikely to mark a significant breakthrough in the talks, according to negotiators. Much of the informal sessions this week were taken up by technical talks on statutory inspections, agricultural trade and subsidies, official said. There was also little progress

continued on next page

Inside U.S. Trade published a Special Report on the outcome of the FTAA ministerial on May 20

May 15, 1997

The Honorable William J. Clinton
President
The White House
Washington, D.C.

Dear Mr. President:

As you know, I am a strong supporter of extending your Administration fast-track authority to negotiate and implement trade agreements. Since early this year, I have waited patiently for the Administration to present to Congress a proposal demonstrating that the White House was serious about negotiating trade agreements designed to remove barriers to U.S. exports, to the benefit of American companies, workers, and consumers.

I have been urging an early focus on fast-track in order to avoid direct conflict with congressional action on the budget and extension of MFN status for China that will occur in June or July as well as to provide sufficient time for Senate action so that we may have fast-track in place by the end of the year. I have repeatedly said that receiving a proposal from the Administration even during the summer would make it extraordinarily difficult to enact fast-track. However, although voicing strong support for fast-track authority, no concrete steps have been taken by your Administration to reach our objective of enacting trade negotiating authority. Accordingly, your actions dictate that discussion on renewal of fast-track negotiating authority be set aside.

Despite our efforts, your Administration has not accepted the proposed timetable that I am confident would have allowed fast-track renewal to be enacted into law this year. I, together with Congressman Crane, Chairman of the Subcommittee on Trade, recently offered an opportunity to the Administration to mark-up a bipartisan consensus on a fast-track proposal before the Memorial Day recess. Because there is still no movement from the White House on this important issue, and because Democrats have voiced strong opposition to moving fast-track legislation now, it proved impossible to mark-up consensus fast-track legislation during this critical window of opportunity.

Ambassador Barshefsky has done admirable work on Capitol Hill in meeting with Members, especially Democrats, to lay the groundwork for House consideration of fast-track authority. But there comes a time when the preparatory work must end and we move ahead, especially when the congressional schedule requires such timely action.

Fast-track authority is vital if the United States is to exercise a leadership role in international negotiations in order to protect and promote the interests of U.S. producers, workers and consumers. Indeed, our trading partners have already moved forward without the United States by signing more than a hundred trade agreements since fast-track authority expired. The United States was not at the table for those discussions and played no role in shaping their provisions.

I am deeply disappointed that your Administration's delay in seeking fast-track authority will translate directly into missed opportunities for our companies and our workers. Every month that goes by means more lost contracts and more job opportunities foregone for Americans. It is unfortunate that the Administration is unable to give what should be a major trade priority — early renewal of fast-track negotiating authority — the attention it deserves.

Sincerely,
Bill Archer (R-TX)
Chairman

In This Issue

fast track soon Dead?

FAST TRACK CALLS TO DEMS (either voted for GATT, NAFTA, or both or need to be called because of seniority)

BARSHEFSKY

LEADERSHIP
Gephardt, Bonior, Fazio, Lewis, Kennelly, Skaggs, Davis (Freshman Pres.), DeLauro

WAYS AND MEANS COMM.
Rangel, Matsui, Stark, Coyne, Levin, Cardin, McDermott, Kleczka, Neal, McNulty, Jefferson, Tanner, Becerra, Thurman

RULES COMM.
Frost, Slaughter, Hall

NEW DEMOCRATIC COALITION
Doooley, Moran, Roemer, Stenholm

CONGRESSIONAL BLACK CAUCUS
Waters, Lee, Johnson, McDonald

HISPANIC CAUCUS
Paster, Ortiz, Serrano, Torres, Martinez

OTHERS
Dingell, Baldacci, Blumenauer, Fazio, Sawyer, Spratt, Ackerman, Minge, Pelosi

TARULLO
INTERNATIONAL RELATIONS COMM.
Hamilton, Gejdenson, Berman, Hastings, Martinez, Payne, Andrews, McKinney, Menendez, Kim, Wynn

OTHERS
Dixon, Farr, Hefner, Hoyer, Lowey, Pickett, Scott, Skelton, Visclosky, Yates

RUBIN
BANKING COMM.
LaFalce, Maloney, Roybal-Allard, Bentsen, Jackson, Barrett, Flake, J.Kennedy, Schumer, Vento

OTHERS
Clement, Dicks, Doggett, Edwards, Filner, Harman, Kildee, Mascara, Borski, G. Brown, P. Kennedy, Parker

DALEY
COMMERCE COMM.
Markey, Gordon, Furse, Deutsch, Eshoo, Klink, Green, Boucher, Manton

OTHERS
Mascara, Meek, Murtha, Pomeroy, Rivers, Sabo, Baesler, Bishop, Olver, Abercrombie, C. Brown, Clayton, Clyburn, Poshard, Evans

Key Fast Track Components

Proclamation authority:	authority for President to lower U.S. tariffs without seeking implementing legislation (1988 Act: up to 50% reduction in tariffs over 5% *ad val.*, and elimination of tariffs below 5%).
Negotiating objectives:	general and/or specific or sectoral goals or recommendations for future negotiations (spelled out in detail in both 1974 and 1988 trade acts).
Scope of implementing bills:	types of provisions that may be included in bills implementing fast-track trade agreements (since 1974, Congress has permitted all legislative changes "necessary or appropriate" to implement the trade agreement).
Amendments:	fast-track rules have traditionally barred amendments once a fast-track implementing bill was introduced.
Notification and consultations:	previous fast-track rules imposed various requirements on the President to notify and consult with Congress concerning trade negotiations.
Duration, extension:	Congress has limited the period during which fast track agreements may be negotiated. The 1988 act provided for a two-year extension subject to disapproval by either House.

Congressional disapproval:	under 1984 and 1988 Acts Congress could disapprove fast track for particular agreements.

Possible Approaches

Proclamation authority:	Up to 50% reduction in tariffs over 5% *ad val.*, and elimination of tariffs below 5% (1988 act). Authority to do sectoral "zero-for-zero deals", tariff harmonization.
Negotiating objectives:	None. General negotiating objectives specified in Presidential statement. None. Bill contains very general Congressional "findings and recommendations" along lines of 1974 Act. General objectives specified in Presidential statement. trade barriers + other distorting practices None. General objectives specified in Presidential statement. Administration is required to spell out specific objectives each time it notifies Congress of intent to begin negotiations (as provided in 1995 W&M draft). Bill includes "overall" negotiating objectives, including very general labor and environment language. Bill includes "overall" and "principal" (i.e., sectoral) negotiating objectives, including overall or principal labor and environment objectives.

= pensions, NADBANK

Scope of implementing bills:

all changes "necessary or appropriate" to implement the trade agreement.

all changes "necessary for or directly related to" implementation, plus PAYGO. Key categories of "directly related" provisions set out in legislative history (e.g., private rights of action, federal-state issues, reporting requirements).

Amendments:

No amendments permitted.

No amendments, except that PAYGO provisions may be (Lugar) stricken (by majority or two-thirds vote) if equal or greater funding is provided through amendment.

No amendments, except that either House may remove any specific provision that a majority (or two-thirds) of members consider not to be "appropriate" (or "directly related") to implementation.

Notification and consultations:

President must consult with committees of jurisdiction in advance of signing agreement and must give 90 days notice to Congress before signing (1974 act). won't fly

Foreign country must request negotiations; President must notify and consult with Ways & Means and Finance committees concerning negotiations 180 days in advance of signing agreement; President must

	consult during negotiations with committees of jurisdiction; must notify Congress at least 90 days in advance of signing (1988 act requirements for bilateral agreements).
	President must provide 90-day advance notice of negotiations to Congress, with written statement of principal negotiating objectives; consultation before and during negotiations with key committees; President must notify Congress and consult with committees of jurisdiction at least 90 days before signing (1995 W&M draft).
Duration, extension:	four years (1974 act: 5 years)
	four years, with four-year extension subject to disapproval by either House (1988 act provided three years, plus two-year extension subject to disapproval by either House)
	eight years
Congressional disapproval:	None (1974 act).
	Fast track procedures do not apply to an agreement if: 1) either the W&M or Finance committees adopts a disapproval resolution within 60 days after the President notifies committees of the negotiations; or 2) both Houses adopt disapproval

resolutions stating that the
President has failed to
consult adequately (1988 act).

Statement of intent (mgmt lunch: informal) (SAP)

discuss w/ Archer first

esp. L+e use of exec. authority

Environs: readiness criteria

Ira + Bob] this week
Bruce + Thelma]

UNCLASSIFIED

Lael - FYI
Fr - Bob
Lael

FAST TRACK
LEGISLATIVE STRATEGY

I. GOAL

The goal of our legislative strategy is to secure passage of fast track legislation this session of Congress.

II. PRESIDENTIAL INVOLVEMENT

The President is likely to need to devote significant time to persuading members of Congress of the need to reinstate fast track authority. Specifically, we would suggest the following steps:

A. Mention at bipartisan foreign policy meeting.

B. Mention in State of the Union

C. Statement on introduction of legislation.

C. Calls and possible meetings with key members, particularly Senate Finance Committee and House Ways and Means Committee.

III. OTHER AGENCY ACTIVITY

A. Vice President calls to key members and small group meetings as needed with members.

B. USTR lead on interagency process in securing passage of fast track.

C. Introduction of legislation by bipartisan/bicameral group.

D. Focus on Committee Action:

1. USTR lead effort to work with Ways and Means and Finance on hearings.

2. Work to secure passage of fast track legislation out of committees.

E. Key agencies to work their committees-- i.e. State: foreign relations committees and 150 appropriation subcommittees; Treasury: Banking and their appropriators, etc.

F. Brief various caucuses and informal House groups.

UNCLASSIFIED

G. Divide up House members among agencies to work with throughout the process of securing passage of legislation.

H. Divide up Senate among agencies to work with throughout the process of securing passage of legislation.

I. Work with bipartisan House whip group on a regular basis.

J. Work with Senate leadership.

K. Set up "war room" as House and Senate votes near.

L. Work conference committee on bill.

IV. KEY DATES

A. February/March: Introduction of legislation.

B. March/April/May: Committee hearings on legislation.

C. May/June/July: Possible House and Senate consideration of bill.

D. August/September: Possible conference committee consideration of legislation.

E. September/October: Possible vote on conference committee report.

February 8, 1997

INFORMATION

MEMORANDUM FOR GENE SPERLING
DAN TARULLO
JIM STEINBERG

FROM: BOB KYLE

SUBJECT: Fast Track Meeting

This small Principals meeting on fast track is should begin addressing some of the big issues involved in the effort and to bring additional agencies into the process. I recommend we cover five topics:

Status

You might begin by letting Charlene update on talks with Congress, labor, business and others. Ira Shapiro and I have met with staffs from Gingrich and both sides of Ways & Means and Finance. The mood has been highly cooperative, with little posturing. Charlene's talk with Sweeney went well, although AFL staff (Mark Anderson) called Ira on Friday to say that Sweeney's affability toward Charlene's initial thoughts on labor/environment should not be taken as acceptance. At the staff level, it seems AFL is talking to Gephardt and moving more toward a harder line. Business reaction to the State of the Union was favorable, with a wait-and-see attitude toward labor/environment.

Labor/Environment

Regarding our substantive approach, Charlene is considering a Presidential Statement of Intentions regarding labor/environment that would spell out our objectives. Some Administration statement (after finding a bipartisan consensus) is probably wise. Earlier efforts to resolve this issue devolved too quickly into a search for statutory language that could mean all things to all people. As a result, no compromise ever stuck because parties interpreted the language differently. This time, all parties agree we need a more solid understanding of our approach, with specific language to follow.

Regardless what vehicle enunciates our policy, there are several issues we should address: 1) our position toward future labor/environment side agreements; 2) our position toward multilateral efforts in the WTO, OECD, etc.; 3) other international efforts that might advance our agenda. Charlene seems to want to channel our policy into some type of global effort (category 3). You might explore what she has in mind. My sense is that much of this debate will return to our position toward side agreements and specifically whether we will accept or forswear the use of trade sanctions to enforce the agreements.

More fundamentally, we need to develop and articulate a more coherent statement of our policy in this area. This could include: 1) reiteration that labor/environment has long been a bipartisan part of our trade policy (e.g., GSP/labor rights); 2) that pressing this agenda can be pro-trade (e.g., more equal distribution of worker income creates a more lucrative market); and 3) a statement of our agenda and what we will not do. You might ask USTR to take a first cut at such a document. I can work with them.

Tactically, I support Charlene's strategy of working quietly at first with all parties (labor, business, environmental groups, both parties on the Hill) to develop a consensus. Rather than have the Administration then float a proposal (which might simply become a target) we might seek an Archer-Rangel compromise. (Charlene hopes this might include Roth-Moynihan too; great if you can get it, but difficult). During this process, all parties should keep their rhetoric muted. You might reiterate that Charlene should be our chief spokesperson on this issue, with others simply saying we will work in a bipartisan manner with all parties to find a solution. We also need to underscore to business, labor and the Hill to avoid taking hardline public positions.

Other Substantive Issues

You might discuss Hill concerns that future implementing legislation contain only provisions "necessary" (not "necessary and appropriate") to implement the trade agreement. Our Hill discussions reflected general agreement that the legislative process needs some flexibility to secure votes, but some limit on dealmaking too. I suggest we agree to this principle, consider any ideas Charlene may present, then leave it to be negotiated.

You might also consider Congress' likely request that any future free trade negotiation be subject to a vote by the full House and Senate before negotiations start. Currently, the Ways & Means and Finance committees have authority to deny an individual negotiation. Full body envy of this privilege is likely to lead to a full body veto. However, this is a substantial concession and we should move there only over time. If we do, we can use it to justify less Administration precision on what future agreements we will negotiate.

Message/Communications Strategy

USTR has prepared a draft message document (attached), which needs work. You might ask Ira and I to work on a redraft. My general sense is we should take a fairly low-key approach to this initiative, now that the President has spoken. But we should: 1) have Charlene give a speech sounding our themes (which would provide a good document for use by allies); 2) quietly contact economic and foreign policy elites to build a base of support; 3) develop good documents (e.g., general message, fact sheets).

Uses of Fast Track

The attached document also purports to set forth the agreements we seek, but it is short on specifics. It references upcoming GATT negotiations: agriculture (1999), services (2000) and intellectual property (2000), and more near-term reviews in many areas. Chile is the only Latin country referenced, APEC lists no specific agreements and Russia and Africa are referenced more generally as long-term free trade candidates.

You might address several issues. How specific should we be? What other candidates could we reference? What regions should we emphasize or not emphasize (some Hill soundings suggest that Latin America yields a negative reaction in the wake of NAFTA)? Given that Congress may insert greater pre-negotiation vetoes, we can afford less specificity but this risks losing business support as the bill picks up barnacles. At the least, we need to look carefully at potential candidates (Singapore, Australia), then have a better answer about what agreements we favor and what criteria we would use to pursue further agreements.

Attachment