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PERSPECTIVE

Negotiating and the Congressional Conference Process: A Case Study of the Export Administration Act & the Omnibus Trade Bill

*Jennifer J. White**

The midnight shift at the Government Printing Office sealed up an ordinary cardboard box addressed to the Bill Clerk. Its contents were forty final copies of the Export Administration Amendment Act of 1985, one of which would be placed on the President's desk in the Oval Office for signature.

Printing the bill took less than twenty-four hours. It took over twenty-four months, however, to agree to its contents. Reaching a consensus between the House of Representatives and the Senate on how U.S. exports should be controlled spent the energies of all concerned. Endless hearings, committee mark-ups, floor actions, and congressional conferences were necessary to meld the two widely differing bills reauthorizing the control of U.S. exports for national security, foreign policy, and short supply reasons. The outcome, however, was determined less by the substantive differences between the House and Senate and more by the manner in which each side demonstrated skill in negotiation technique.

Any understanding of the legislative process requires a fundamental understanding of bargaining and negotiation theory. It is particularly applicable in assessing the proceedings of conferences between the House and the Senate where the two bodies have mutual power to both agree and to veto. The focus of this analysis centers on the actions and successful resolution of the House and Senate conference on the Export Administration Amendments Act (EAA) of 1985. Additional comment is provided on the negotiations between the House and Senate on export control reforms contained in the Omnibus Trade Bill, H.R. 3, presently before Congress.

One negotiation theory, processual analysis, offers an explana-

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tory model quite relevant to the legislative process. According to this analysis, outcomes are explained by the manner in which parties progress toward an end goal. That is, given a target point, negotiating parties move at concession rates based on the actions of the opposing party, opening positions, and security points.¹ The key factor in processual analysis is that each side tends to concede only at the rate of the opposition. In other words, concessions by one side will elicit reciprocal concessions by the other.

Processual analysis, or for that matter negotiation theory, is less compelling in explaining legislative outcomes within a single body of Congress. Motivations of legislators are based on various factors, such as the merits of the arguments, party loyalties, constituent interests, personal vendettas or favors, procedural maneuvers, personal publicity, or hidden agendas.

These elements are considerably subsumed, however, in a congressional conference. Once a conference is set between the House and Senate, legislators appointed as conferees negotiate for their respective legislative bodies. Reaching a compromise package of legislation acceptable to both bodies of Congress is clearly the preeminent goal of all parties. As a negotiator, the legislator no longer represents personal interests, but is accountable to the institution for a successful outcome.

This Perspective will examine the case of the renewal of the EAA in three distinct phases—the 98th, 99th, and the 100th Congress. It will also examine the reenactment of the EAA within the conference negotiations of the export provisions of the Omnibus Trade Bill.

I. The Export Administration Act

A. *The Players*

In the case of the Export Administration Act (EAA), five senators and fifteen congressmen² spent over six months in conference ironing out the differences between the two houses of Congress. During the 98th Congress, conferees met on fourteen separate occasions to negotiate before the session ended.³

¹ W. ZARTMAN & M. BERMAN, *THE PRACTICAL NEGOTIATOR* 166 (1982).

² Senate conferees were Sen. John Heinz (R-Pa.), Sen. Jake Garn (R-Utah), Sen. John Tower (R-Tex.), Sen. William Proxmire (D-Wis.), and Sen. Alan Cranston (D-Cal.). House conferees were Rep. Dante Fascell (D-Fla.), Rep. Lee Hamilton (D-Ind.), Rep. Don Bonker (D-Wash.), Rep. Steve Solarz (D-N.Y.), Rep. Dan Mica (D-Fla.), Rep. Michael Barnes (D-Md.), Rep. Howard Wolpe (D-Mich.), Rep. Sam Gejdenson (D-Conn.), Rep. Howard Berman (D-Cal.), Rep. Tom Lantos (D-Cal.), Rep. Toby Roth (R-Wis.), Rep. Olympia Snowe (R-Me.), Rep. Douglas Bereuter (R-Nev.), Rep. Gerald Solomon (R-N.Y.), and Rep. Ed Zschau (R-Cal.). There were seven other conferees who contributed and voted only on specific sections of the bill. They included Representatives Gibbons, Jones, Frenzel, Hutto, Byron, Courter, and Gray.

³ The conferees were appointed in March 1984 and the session ended on October 11, 1984.

Most of the members involved in the 1979 reauthorization of the EAA had changed by 1984.⁴ In 1979 eight congressmen were on the House Foreign Affairs Subcommittee on International Economic Policy and Trade—five Democrats and three Republicans. In 1984 there were ten members on the subcommittee—seven Democrats and three Republicans, only three of whom had also served in 1979.⁵ On the Senate side, a number of changes had also occurred. Unlike in 1979, the 1984 Republican-controlled Senate produced new members and a new chairman for the Senate Banking International Finance Subcommittee.⁶ Five Republicans and four Democrats sat on the subcommittee, only three of whom had also served in 1979.⁷

B. The 98th Congress

Three Republicans and two Democrats sat on the Senate conference bench, and before the conference began, Senators Heinz and Garn agreed to support each other's key interests.⁸ Senators Proxmire and Cranston looked to the Democratic majority on the House side to carry their views. The House conference bench consisted of ten Democrats and five Republicans. Coalitions on various issues frequently crossed party lines. For example, the Republicans needed three Democratic votes to carry their viewpoint, and the conference chairman relied on Republican votes to carry some of the more pro-business positions.

The Senate conferees had an advantage going into the negotiations, as they had a better understanding of the bill and its legislative history. This led to the Senate's tough opening position and its dominant role in influencing the pace of concession. Further handicapping the House was a heated dispute within the Administration on key provisions of the bill. Many of these provisions involved

⁴ In 1979, the Democrats on the Foreign Affairs International Economic Policy and Trade Subcommittee were Rep. Jonathan Bingham, Rep. Don Bonker, Rep. Donald Pease, Rep. Michael Barnes, and Rep. Howard Wolpe. In 1984, the membership included Rep. Don Bonker, Rep. Dan Mica, Rep. Howard Berman, Rep. Edward Feighan, Rep. Michael Barnes, Rep. Howard Wolpe, and Rep. Sam Gejdenson. The Republicans in 1979 were Rep. Robert Lagomarsino, Rep. Paul Findley, and Rep. Benjamin Gilman. In 1984, they were Rep. Toby Roth, Rep. Olympia Snowe, and Rep. Douglas Bereuter.

⁵ Neither the Chairman, Rep. Don Bonker, nor the Ranking Member, Rep. Toby Roth, had served on the subcommittee when the EAA had last been reauthorized. Thus, only three of the subcommittee members were familiar with the previous congressional debate.

⁶ Sen. John Heinz served as chair-person and Sen. William Proxmire as ranking member. Other members included Sen. Jake Garn, Sen. William Armstrong, Sen. Mack Mattingly, Sen. Chic Hecht, Sen. Alan Cranston, Sen. Alan Dixon, and Sen. Don Riegle.

⁷ In 1979, the Democrats on the Senate Banking International Finance Subcommittee were Sen. Adlai Stevenson, Sen. Harrison Williams, Sen. Alan Cranston, and Sen. Paul Tsongas. The Republicans were Sen. John Heinz, Sen. William Armstrong, and Sen. Nancy Kassebaum.

⁸ As long as Heinz and Garn agreed on a position it carried, because Heinz also held Senator Tower's blanket proxy.

transferring jurisdictions between the Departments of Commerce and Defense, and Commerce and Customs.⁹ The Commerce Department had been designated by the White House as the lead agency responsible for EAA reauthorization. Throughout the conference, however, members often questioned whether Under Secretary Lionel Olmer was speaking for the Administration on a particular legislative provision or whether his views reflected the Commerce agenda. The Departments of Defense (DOD), State, and Customs met with members and independently expressed their views of what they considered constituted the Administration's position. As the EAA conference moved into October, the Administration's position diffused, even as rumors surfaced that Olmer was leaving the government. As a result, less weight was given by conferees to an official Administration position. At the outset, when the Administration's credibility was high, its officials played a significant role in the negotiations. As it became apparent to the negotiators that departmental self-interests were overriding appropriate solutions and Administration brokers were engaged in destructive tactics, however, the Administration's influence was greatly diminished.

C. Elements of the Senate Negotiating Position

The House and Senate had passed vastly different reauthorization bills reflecting divergent philosophical approaches on export controls. The Senate was committed to several objectives in renewing the EAA, such as stopping or significantly reducing the transfer rate of militarily critical technologies to the Soviet bloc. To achieve this objective, the Senate sought to increase sizably the role of the Defense Department in the export licensing process. Another goal was to enhance the deterrence factor for illegal technology trafficking by improving enforcement and stiffening penalties. Finally, the Senate was also interested in eliminating the use of trade sanctions as a foreign policy tool except under extraordinary circumstances, and granting absolute sanctity of business contracts in the event trade sanctions were imposed. This position was a direct result of the Soviet gas pipeline sanctions.

D. The House Negotiating Position

The House was committed to a different agenda. Its principal objectives included assisting the U.S. exporting community by streamlining the export licensing process and eliminating where possible the need for licenses. This position stood against giving any additional oversight or licensing responsibilities to DOD. The House also wanted to mandate that the executive branch take ac-

⁹ The Senate generally championed the case of the Defense Department and Customs, while the House most often advocated for the Commerce Department.

count of the availability, from non-U.S. sources, of comparable goods and technologies when imposing national security and foreign policy controls. It hoped to exempt virtually all agricultural exports from export controls, to have considerable flexibility in the use of foreign policy controls, particularly for purposes of condemning human rights practices by other nations, and to impose sanctions against South Africa.

E. The EAA Conference

From April until October 1984, Congress and its staff fashioned compromises in many areas of the bill, and less controversial matters were easily resolved.¹⁰ Many of the issues were settled at the staff level, with members ratifying the recommendations of the staff in conference. Their commitments on revisions of the bill always reflected the dispositions of the two key Senators, Garn and Heinz. The House majority counsel could not as easily represent the views of its members, partly due to a change in staffing on the minority side two months into the conference process. Thus, coordinating concessions between House Democrats and Republicans to present a united case was difficult. Furthermore, several Republican House members wanted the Senate positions to prevail.

A typical conference meeting showcased Senator Heinz carrying the Senate view. Senator Garn trusted Senator Heinz to stick with their pact, so he was rarely in attendance. Although Senator Proxmire came to most of the conference sessions, he was virtually powerless to oppose the positions of Heinz and Garn. It was an intimidating tactic which worked against the House. For a position to carry on the House side, eight firm votes were necessary, and as a result, the House frequently conceded to the Senate position. It was therefore predominantly the Senate which controlled the rate of concessions. Nevertheless, the House held the powers of veto and of inaction.

Although many of the issues were resolved by mid-summer 1984, progress on the major provisions of the bill was hampered by linkages and pacts made between members, and concessions dropped to a minimum. An additional constraint was the consideration of the role of the Defense Department in reviewing West-West licenses—the so-called 10-G provision. Senator Garn was adamant about this provision because he believed that too much U.S. technology was flowing to the Soviet bloc through third-channel Western

¹⁰ Provisions concerning enforcement, violations, embedded microprocessors, the militarily critical technologies list, mandates for COCOM negotiations, import sanctions, agricultural exemptions, foreign availability, general licensing provisions and types of licenses, nuclear exports, exports to COCOM countries, and short supply controls were resolved.

countries, and that the Commerce Department, because of its predisposition for trade, was partially responsible for these widescale Soviet acquisitions. The House took the position that it was unnecessary to grant additional review authority to the Defense Department. Instead, they argued that by eliminating the requirement for Commerce to license West-West low-technology sales, the department could better concentrate its resources on reviewing high-technology exports. Conference members were unwilling to budge on the issue of 10-G. Votes were taken several times in the House with the result consistently 14-1 against granting any additional statutory authority to the Defense Department to review West-West licenses.

From mid-summer to October, House and Senate negotiators ratified minor items negotiated at the staff level. The liberal members of the House, led by Representative Steve Solarz, knew that they could carry the votes on the House side for the Senate contract sanctity provision. In exchange, however, Solarz wanted a commitment from the Senate on South African sanctions. Heinz delayed any consideration of South African sanctions, hoping in the interim to win enough House members over to his side on the contract sanctity issue. The final conference meeting ended in a stalemate. Contract sanctity, 10-G, and South African sanctions were still unresolved. Garn denounced House members' defense of the Commerce Department's handling of export licenses. House conferees were unmoved, however, concluding that time and again the Senate had scored at the expense of House positions. The conference adjourned in a stand-off.

F. The Last 48 Hours

The threat of seeing two years of work wasted changed the mood of the conference. Before October, both sides believed the other would give in, but with Congress set to adjourn at any moment, it appeared almost certain that each side's gains would be lost. With less than four weeks to go before elections, everyone was anxious to return to their districts.

Amid this anxious atmosphere, a simple solution was proposed. Early in the 98th Congress, the House had sent to the Senate a one-page extension of the 1979 EAA, H.R. 4230. The Senate could amend H.R. 4230 on the floor by adding all of the sections accepted by conferees and by developing a compromise package on the three outstanding contentious items—contract sanctity, South African sanctions, and 10-G. To pass the bill in the Senate, there had to be unanimous consent.

The Senate and House staff realized that success in the Senate depended on a compact of absolute silence on the game plan. If

anyone wanted to kill the bill—a lobbyist, an official in the executive branch, or a disgruntled member—he would only need the objection of one senator, so Senators Heinz and Garn would stake out an appropriate moment on the Senate floor when the fewest number of members would be present. It was well-known that the Commerce Department, ostensibly representing the Administration, no longer supported the bill.¹¹

G. *The Compromise*

The Senate-fashioned compromise contained all of the sections agreed to by conferees and a compromise on the three remaining contentious items. First, Senator Garn surprisingly agreed to drop his insistence on 10-G in exchange for the removal of all but one of the four proposed sanctions against South Africa.¹² Senator Heinz offered a fallback position on contract sanctity allowing contracts to be broken under extraordinary conditions of “breach of the peace.”

Through this compromise, everyone gave up a key position. The Senate’s proposal illustrated Hicksen’s tenet that a party will concede if the cost of holding out—no bill—is greater than the concession. Senators Garn and Heinz concluded that they had more to gain by conceding on their positions than by coming up empty handed. Once Congress adjourned, the entire reauthorization process would have to begin again, and the 1984 elections would change the composition of the negotiating teams.¹³

As it turned out, no senators chose to confront Senators Garn

¹¹ Three distinct voices emanated from the Administration. The Commerce Department had been designated as the lead agency on EAA. Lionel Olmer, the Under Secretary for International Affairs, was the principal spokesperson for the Administration in the open conference meetings. On a number of occasions, however, Senate conferees challenged the positions he espoused and postulated that they did not reflect the Administration’s view. The second Administration voice came from Lyn Withey, a congressional liaison at the White House. She was assigned the EAA bill very late in the course of events and it was her job to field departmental concerns with the various sections of the bill. The third voice was reflected in Senator Garn’s actions. He held certain positions in order to obtain a bill acceptable to the Reagan Administration. Senator Garn held the line on 10-G to eliminate or tone down Title 3 on South Africa. He did not want to send a bill to the White House that would force a veto immediately prior to the elections. The sanctions against South Africa were the key. It was believed that Senator Garn would only endorse a bill if assured that the President would sign it.

¹² Title 3 of the EAA bill contained four sanctions against South Africa: (1) A requirement that U.S. companies invested in South Africa comply with the Sullivan fair employment principles, (2) a ban on U.S. bank loans to the South African government or parastatals, (3) a ban on the U.S. importation of Krugerrands, and (4) a ban on further investment by U.S. companies in South Africa. The Senate compromise included the first requirement—U.S. companies comply with the Sullivan principles. For those companies not showing good faith efforts to comply, the President would be authorized to prohibit further investments by the companies in noncompliance. See 134 CONG. REC. H12,159 (daily ed. Oct. 11, 1984) (statement of Rep. Bonker).

¹³ Senator Garn was also scheduled in the spring for a NASA Space Shuttle trip. If a decision were put off until then, the Senate could not act until he returned.

and Heinz; the bill passed without objection and was sent to the House for consideration. House staffers had only a few hours to review the package before assembling the conference members for an 11:00 P.M. meeting of the Rules Committee, where the staff would obtain permission to bring the bill up on the floor the following morning. Unfortunately, the order of the provisions in the Senate bill had been rearranged, subtle word changes had been made, and some sections were curiously outdated. House staffers later learned that the Senate staff had inadvertently fashioned the compromise from a two-week old working document, which failed to reflect important changes that had been made in conference.

House members became suspicious of the Senate concessions and the rearranged bill, and in an effort to gain a little more, they made a mistake that eventually killed the compromise. The conference chairman added to the compromise package a ban on U.S. bank loans to South Africa. If passed as an amended bill by the House, it would again have to be unanimously approved by the full Senate. This miscalculated move by the House members killed the bill, and Congress adjourned without a reauthorization for the EAA.

In retrospect, an EAA bill would have been passed given more time and trust during the conference proceedings. If House members had been less suspicious of the Senate's motives, they would not have tampered with the compromise in the closing hours.

H. Phase Two: The 99th Congress

The experience of the EAA conferencing and the frenetic experience of the last-minute salvaging attempts sobered both sides. The effort had exhausted everyone, and other subcommittee work had already been delayed to accommodate the renewal of EAA. By now, everyone agreed, including the Administration, that the Senate compromise had been fair.¹⁴

On the first day of the new congressional session, Representative Toby Roth introduced H.R. 28, a comprehensive set of amendments to the EAA which contained all of the Senate compromises. Since Representative William Gray had determined that he would go forward with an independent bill on South African sanctions, the EAA bill considered in the 99th Congress did not contain any such sanctions. House members, however, decided to make it clear that

¹⁴ In both the House and the Senate, members were unimpressed with the manner in which the EAA reauthorization was handled by the Administration. Sen. Heinz said it was "depressing . . . to see the Administration handle their negotiations with us with what somebody might describe as a lack of integrity." . . . [E]verytime a deal was made, 'they tried to back out of it and ask for more.' . . . Olmer was speaking for a vested interest, the Commerce Department . . . Olmer 'overrepresented his case' when he said he was speaking for the Administration." *Heinz Says Next Move to Reauthorize Export Administration Act Should Come From House*, [Jan.-June] Int'l Trade Rep. (BNA) No. 3, at 86 (Jan. 16, 1985).

H.R. 28 would not be an opening negotiating position with the Senate, but a final one. This was the important turning point leading to a successful outcome in the 99th Congress.

In an unusual step, Chairman Don Bonker agreed to take up consideration of Roth's bill rather than introduce one of his own. Subcommittee and committee mark-up proceeded with no debate, and only minor technical changes were made in the bill.¹⁵ To reciprocate the chairman's gesture, Roth asked that the bill be reported out as a committee bill, H.R. 1786, cosponsored by all members. House floor action soon followed with no opposition or protracted debate. The consideration of the bill from subcommittee mark-up to House action took less than a month, as the contents of the bill were virtually identical to the Senate compromise.

The Senate staff recommended that the safest way to act quickly was to pass a simple ninety-day extension of the EAA of 1979. This was the best approach since the Senate rules made it easier for non-germane amendments to be attached to bills. The two bodies would simply meet in a pro forma conference in which the Senate would accede to the entire House bill. This action was taken following the Memorial Day recess, and it demonstrated that a consensus had been forged on the renewal of the EAA. Phase two was a time for reflection and reassessment of the costs of either starting over or reaching an agreement on the current deal. Momentum and exhaustion dictated the second choice. Both parties came away from the table declaring victory and a satisfactory outcome. In this case, concession behavior accounted for the initial breakdown in negotiations and for an eventual satisfactory settlement.

During the two-year negotiation process, each side continually gauged the behavior of the other, as concessions depended on the actions of the other side. When negotiations failed in phase one, both sides reassessed their previous concession behavior and took steps to enhance trust-building. For example, members on the House side made it publicly known that the Senate compromise had been fair. The Senate, by passing a simple extension, demonstrated it had no desire to reopen the export control debate. Processual analysis was useful in pinpointing what went wrong in phase one of the negotiations, and it served to prescribe a formula necessary for a successful outcome in phase two. It also served to explain why Congress took over twenty-four months to reauthorize the EAA.

II. The Omnibus Trade Bill: The 100th Congress

Although the 1985 EAA reauthorized the President's authority

¹⁵ In addition to technical amendments, Rep. Wolpe withdrew his provisions regarding nuclear exports and changes were made on Senator Proxmire's provision concerning nuclear cooperation agreements.

to control exports until September 1989, further modifications to the EAA were approved by the House in 1986. Those amendments were reintroduced in the House on January 7, 1987, as part of the Omnibus Trade Bill, H.R. 3. That same month, the National Academy of Sciences (NAS) released a major study assessing the effects of national security export controls on U.S. economic competitiveness. Many of the NAS findings generated further export control amendments so that by the time both the House and Senate passed separate Omnibus Trade Bills, it was clear that another major revision of the EAA was underway.

Once again U.S. export controls would be subject to a congressional conference. The outcome for industry and U.S. national security would again be tied to the concessional behavior of the House and Senate negotiators sent to the conference table. On the House side, the ten conferees chosen to negotiate the export control provisions were largely the same as those who had negotiated the 1985 amendments.¹⁶ Only two members, Representatives Bilbray and Miller, were new to the subcommittee. To help negotiate two of the export control provisions, House conferees were chosen from outside the Foreign Affairs Committee. Three conferees were included from the Armed Services Committee to help with the 10-G issue,¹⁷ and three additional conferees were appointed to help with the Toshiba sanctions issue, making for a group of twenty House negotiators.¹⁸

In organizing the seventeen subconferences for H.R. 3, House Speaker Jim Wright resolved jurisdictional disputes by allowing any Committee with an interest in a particular issue to be considered conferees. As a result, some 150 congressmen were chosen to conference the various provisions of the trade bill. Fifty-one separate groupings of negotiators were assigned to resolve the differences between the House and Senate bills. In effect, virtually every Committee was involved in conferencing the Omnibus Trade Bill. In dispensing with the traditional Committee jurisdictional lines, how-

¹⁶ House conferees included six Democrats and four Republicans: Rep. Dante Fascell (D-Fla.), Rep. Don Bonker (D-Wash.), Rep. Dan Mica (D-Fla.), Rep. Howard Berman (D-Cal.), Rep. Mel Levine (D-Cal.), Rep. James Bilbray (D-Nev.), Rep. William Broomfield (R-Mich.), Rep. Toby Roth (R-Wis.), Rep. Doug Bereuter (R-Neb.), and Rep. John Miller (R-Wash.). Senate conferees included three Democrats and two Republicans: Sen. William Proxmire (D-Wis.), Sen. Paul Sarbanes (D-Md.), Sen. Alan Dixon (D-Ill.), Sen. Jake Garn (R-Utah), and Sen. John Heinz (R-Pa.).

¹⁷ Conferees from the Armed Services Committee included Rep. Les Aspin (D-Wis.), Rep. Nicholas Mavroules (D-Mass.), and Rep. Duncan Hunter (R-Cal.).

¹⁸ Conferees from the Foreign Affairs Committee included Reps. Fascell, Bonker, Mica, Broomfield, and Roth. Conferees from the Ways and Means Committee included Reps. Rostenkowski, Gibbons, Downey (D-N.Y.), Archer, and Schulze. Conferees from Government Operations included Reps. Brooks, Conyers, Neal, Horton, and Walker. Conferees from the Armed Services Committee included Reps. Aspin, Stratton, Mavroules, Badham, and Hunter.

ever, a dangerous precedent was set for future considerations of any trade matters. Committees that are conferencing export control matters for the first time will undoubtedly attempt to claim jurisdiction again in the future.

Conference staff members began meeting in September 1987 to resolve differences between the House and Senate positions. The concession behavior of the previous conferences began to reappear, and compromises were reached quickly on the less controversial matters. Fifty-four separate issues were put forth and eventually organized into three categories: (1) issues considered resolved provided that members agreed with the staff recommendations; (2) issues likely to be resolved at the staff level; and (3) issues that would require members to meet directly to negotiate. Staff negotiations proceeded at a steady pace through October and as many issues as possible were placed in the first category. House leadership urged the trade conferees to complete all negotiations by the mid-December close of the session. Staff negotiations began to bog down as more difficult issues were considered, and both sides were reluctant to give up potential bargaining chips that might be needed later in the negotiations. As the deadline approached, the Senate sent a comprehensive proposal to the House suggesting trade-offs on all of the export reform matters, except for four issues to be resolved by a meeting of the conferees. The outstanding controversial issues were: (1) Alaskan oil export controls; (2) export licensing requirements for items exported to COCOM and non-COCOM destinations; (3) DOD's role in reviewing West-West licensing; and (4) sanctions against Toshiba Machine Corporation and Kongsberg Vaapenfabrikk (also known as the Garn amendment).

On the first issue, the House bill expanded current restrictions on the export of crude oil from Alaska to include all domestically produced crude oil. Refined petroleum products produced by export refineries were also subject to the restrictions. The Senate had no comparable provisions on crude oil and essentially prohibited export restrictions on refineries already in operation. Although both the House and Senate bills removed certain export licensing requirements for both COCOM and non-COCOM destinations, the bills differed in the degree of liberalization and the exceptions provided. The House completely eliminated any export licensing requirements for U.S. shipments to COCOM countries except for "extraordinarily sophisticated" goods or technology. The Senate threshold level captures more items that would still require export licenses.

With respect to the third issue, the role of DOD in reviewing export licenses, the House bill prohibited the department from reviewing any export shipments to free world destinations and limited its review to East-bloc-destined shipments only. The Senate bill had

no comparable provision. Finally, the Senate bill required a mandatory two to five year ban on imports from Toshiba Machine Corporation and Kongsberg Vaapenfabbrikk as retaliation for the illegal diversion of Toshiba Machine Company milling machines to the Soviet Union. Because the Toshiba scandal broke after the House acted on the trade bill, there was no comparable provision on the House side.

Although these four issues remained, the Senate proposal broke the deadlock in staff negotiations. The package delineated most of the areas where members were willing to make trade-offs, and the House returned a comprehensive counterproposal to the Senate two weeks later. Despite these efforts, negotiations were interrupted by a change in the imposed deadline, and further conference meetings were postponed when it became clear that the House leadership was not going to take up the trade bill before the end of the session. It was not until February that conferees resumed consideration of the bill. Although staff recommendations had been made on all export control reform issues, the House had yet to develop a counterproposal on the Toshiba sanctions. Neither side wanted to consider the Toshiba issue on its own, but preferred to link concessions on Toshiba to concessions on export control reform.

Anticipating that the Senate would be reluctant to accept significant liberalization of export licensing requirements or removal of DOD in the West-West licensing review process, the House proposed a minimalist response on Toshiba sanctions. The proposal offered a list of sanctions from which the President could choose, including a one percent tariff on products imported from Toshiba Machine Company. The sanctions were discretionary, and any company with contracts or purchase agreements with Toshiba Machine Company signed by the time Congress enacted the legislation was exempted from the import ban. Among House conferees, the proposal was controversial. Nine out of the eleven conferees voted against it. When the Toshiba proposal was sent to the Senate, it was poorly received, and less than two weeks later the Senate returned a counterproposal that omitted previous compromises and reinstated original positions. Communications between the House and Senate were breaking down, and both sides were retreating from good-faith efforts made in previous months.

Facing conferees was the March 23rd deadline imposed by the House leadership, and all matters on the trade bill were to be resolved by that date. Outstanding controversial issues would be dropped altogether from H.R. 3. Just as in previous consideration of export controls, it would not be surprising to see another game of brinkmanship. Although neither side wanted to see its work wasted, the threat of deleting both Toshiba sanctions and export control re-

forms had advantages and disadvantages for both sides. From the viewpoint of the Senate, the Administration had sufficient authority to implement export control reforms if it wanted to do so, without additional legislation. From the House perspective, the Garn amendment on Toshiba would be excessively damaging to U.S. economic interests.

With the reauthorization of the EAA scheduled for 1989 with a vastly different set of players, industry is understandably interested in seeing export control reforms enacted in the trade bill. The major proponent of export control reform on the House side, Rep. Don Bonker, is running for the Senate.¹⁹ Another consideration will be the extent to which it appears that other controversial matters in the trade bill are ultimately dispensed with by other trade conference groups. If it appears that the bill will be one that the President will be inclined to sign, members will likely be more apt to fashion a compromise on export controls at the last minute. If H.R. 3 emerges as a partisan piece, designed to evoke a presidential veto, members may be more inclined to balk at further concessions.

All of these factors will be on the minds of the House and Senate negotiators as the clock winds down and the trade conference draws to an end. For some, the outcome may be mounds of papers and files thrown by the wayside; to others, it may be a welcomed sigh of relief. For the veteran, negotiating the EAA is now a familiar cycle that seems fated for endless repetition. With the new year and the 101st Congress, members will start the process once again, with hearings, mark-up, floor debates, and passage of widely differing export control reform bills forcing the appointment of House and Senate conferees. While the merits of the arguments may in many instances determine the results of future congressional conferences, the interested observer may be better served in predicting and understanding outcomes by more closely examining negotiation and concession behavior.

¹⁹ Rep. Dan Mica, another reform proponent, is also running for a Senate seat.

