2002

The Office of the United States Trade Representative

Phillip J. Winniger

The Office of the United States Trade Representative

Phillip J. Wininger

2002

Approved by

Patricia H Minter 5-6-02

Abstract

Since its creation through the Trade Expansion Act of 1962, the Office of the United States Trade Representative (USTR) has helped liberalize economies, negotiate trade agreements, and coordinate U.S. trade policy. Although situated within the Executive Office of the President, the USTR is best seen through the lens of legislative action. Congress has used successive trade acts to both expand and constrain the Office, while forcing it to reconcile multilateral goals with unilateral domestic objectives. An examination of the USTR's developmental stages identifies the congressional impact upon the Office and the resulting political balance.

Table of Contents

Introduction
Defining the Role of Congress

Revealing both the purpose and nature of an open global economic system, U.S. Trade Representative Robert Zoellick spoke before the Council of America's on May 7, 2001:

> Today, at the dawn of a new century, we have a fresh opportunity—for the United States, the Americas, and the world. It is up to us to champion the values of openness and freedom, to honor the vital linkages among economic liberty, free trade, open societies, successful democracies, individual opportunity, and peaceful security....We can set a course for the global system—not just for a year or two, but for decades to come.[1]

In today's interconnected world, countless forces both advance and resist Zoellick's goal of economic freedom. While numerous Americans may acknowledge the controversies surrounding NAFTA, steel imports, or labor standards, few citizens regularly scrutinize a premiere element behind the broader trade debate—the Office of the U.S. Trade Representative (USTR). With a mandate to negotiate, coordinate, and execute trade policy, this cabinet-level office has evolved into America's most experienced agent of global trade. Because the USTR now fulfills an essential role in issues ranging from the World Trade

[1] Robert Zoellick, prepared remarks before the Council of Americas, "Free Trade and Hemispheric Hope," 7 May 2001.

Organization to bilateral agreements to unfair trade investigations, no one can fully comprehend international economic relations without exploring the Office.

The elite policy-makers within the Office of the U.S. Trade Representative, however, do not promote trade expansion in a vacuum. Just as competing forces consume free trade itself, the Office must delicately balance economic goals against the background of domestic interests, international resistance, and political events. These political realities require the USTR not only to be an expert policy coordinator, but also an agency that contends with constraining political forces.

Even though the Office of the U.S. Trade Representative remains under the direct control of the President, the Office's development as seen through the lens of Congress offers the most vivid portrayal of the factors shaping its existence. After its creation through the Trade Expansion Act of 1962, the Office evolved from a humble agent of negotiation to the most important government force balancing free trade's political and economic elements. Congress institutionalized the Office through successive legislation and applied various political interests and perceptions to mold its evolution. While operating within the context of trade expansion, for example, Congress integrated diversified interests, including domestic economic concerns, industry pressure, and protectionist uprisings. Ultimately, the instrumental transitions that both expanded and defined the Office resulted from congressional action, not the mandates of Presidents.

Basic Overview

As currently instituted, the Office of the U.S. Trade Representative fulfills the following role:

> The Office of the U.S. Trade Representative (USTR) is responsible for developing and coordinating U.S. international

trade, commodity, and direct investment policy, and leading or directing negotiations with other countries on such matters. The U.S. Trade Representative is a Cabinet member who serves as the President's principal trade advisor, negotiator, and spokesperson on trade and related investment matters.[2]

Pursuing this basic agenda, the USTR's responsibilities comprise eight areas:

1. all matters within the World Trade Organization (WTO)
2. trade, commodity, and direct investment matters managed by international institutions such as the Organization for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD)
3. expansion of market access for American goods and services;
4. industrial and services trade policy
5. international commodity agreements and policy
6. bilateral and multilateral trade and investment issues
7. trade-related intellectual property protection issues
8. negotiations affecting U.S. import policies.[3]

To execute these responsibilities, the USTR maintains interagency coordination through the Trade Policy Review Group and Trade Policy Staff Committee. These bodies, which are chaired by the Trade Representative, consist of seventeen federal agencies and offices. Furthermore, while handling multilateral negotiations and bilateral negotiations, the Office also maintains a close relationship with both Congress and private sector committees. In respect to the private sector, for example, the USTR must solicit their advice when coordinating trade policy and undergoing 301 investigations, which act against unfair trade barriers abroad.[4]

---

[2] "USTR's Role," <http://www.ustr.gov/about-ustr/ustrrole.shtml>2001.
[3] Ibid.
[4] Ibid.

After its initial creation, the Office maintained a comparatively small staff that competed for influence against several federal agencies, including the departments of State, Commerce, and Treasury. Through successive congressional legislation and interaction, however, the USTR evolved into the premiere coordinator of trade policy by the 1980s and 1990s. This evolution ultimately elevated the Office's stature within the Executive Branch as the USTR was granted greater powers concerning international negotiation, policy development, and trade enforcement.

The Congressional Role

As the subsequent chapters reveal, the development of the USTR into its current form necessitated several stages. Through the congressional action, each period integrated the surrounding context of economic challenges, trade support or resistance, and economic policy transitions into the Office's evolution. Just as the Office's size, nature, and influence were transformed, congressional views concerning free trade oscillated between protectionism, trade support, and political resistance. These changing perceptions molded the USTR through accompanying legislation and interaction, which, in turn, guided the Office through new political and economic realities.

Although several transition points exist, the development of USTR from the congressional perspective is best explored through three basic stages: (1) the initial formation, (2) the 1970s trade acts, and (3) the unilateral versus multilateral divides of the 1980s and 1990s. While the first stage offered the foundation of a new trade consensus and executive authority, the second stage constructed the bureaucratic institutionalization. These earlier developments ultimately supported the Office's fruition during the 1980s and 1990s, as the USTR increasingly balanced multilateral and unilateral trade powers.

The USTR's increasing importance uncovers several themes. First, the Office is not only an economic institution, but also an adaptable force integrating political realities and perceptions into its development. While the USTR's everlasting goal remains trade expansion, it must balance these interests against the competing political desires. Second, although under the Executive branch's control, the USTR's development is most fundamentally guided by the Legislative Branch. Through successive interaction and legislation, Congress has molded the Office to respond to new circumstances, goals, and perceptions. Finally, the USTR's growth pattern reflects the increasing complexities of the global economy, domestic interests, and foreign policymaking. The surrounding economic context, for instance, has been radically transformed since the Office's initial creation. In 1962, global trade was not as immediate as it is today--thanks to the explosion of bilateral agreements, multilateral frameworks, and global investment opportunities.

As these themes collectively reveal, Congress has created both an international and domestic mediation force. By somewhat transferring the trade arena from the Legislature to the Executive, Congress has instituted an effective arbitrator among private interests, domestic economic concerns, international developments, and governmental divides. Thus, when one considers the complexities, the development of the Office of the United States Trade Representative through Congress has ultimately produced a tool that orchestrates divergent elements into a broader free-trade consensus.

Chapter One
Origin of the Trade Representative

Oklahoma Representative McClintic articulated the protectionist battle of the early twentieth century during congressional debate on March 24, 1934:

> As I view this whole thing, it is a contest between Americanism and internationalism. As for me, I will take my place on the side of Americanism. I am more concerned with the welfare of ten million idle in this country, than I am with the idle of other countries. [Applause] Charity begins at home and our duty is to provide for our own people first.[1]

Until the 1930s, both Republicans and Democrats supported some form of protectionist trade policy. While the Republicans openly opposed trade liberalization, the Democrats appeased business constituents through the so-called "pleasingly ambiguous language."[2] As a result, government created an economic regime that maintained high tariffs, restrained imports, and perpetuated the belief that foreign competition only endangered domestic industry. As economist I. M. Destler explains, "That tariff, more than any other single topic, engrossed congressional energies for more than a hundred years."[3] From "Tariff of Abominations" of

[1] *United States of America Congressional Record,* Vol. 18, 73rd Congress, 51552.
[2] Robert, A. Pastor, *Congress and the Politics of U.S. Foreign Economic Policy,* (Berkley: University of California Press, 1980), 77.
[3] I.M. Destler, *American Trade Politics,* (Institute for International Economics: The Twentieth Century Fund, 1990), 3-6.

1828 to the Fordney-McCumber Act of 1922, Congress responded to strong protectionist sentiments by raising tariffs and maintaining trade barriers.

This ingrained system of protectionism culminated with the Hawley-Smoot Tariff Act of 1930. Although President Hoover originally informed Congress that he desired only limited changes in tariff rates, considerable congressional debate and interest-group pressure created perhaps the most detrimental trade policy in history. The final bill raised the average ad valorem tax on imports to over 52 percent, the highest tariff rate of the twentieth century. While many proponents claimed that the United States would "be on the upgrade financially, economically, and commercially" following the bill's enactment, the economic effects of this tariff plunged the United States deeper into depression. From 1929 to 1933, U.S. exports fell from $488 million to $120 million. World trade decreased from $35 billion to $12 billion as countries such as Canada, France, Mexico, Italy, and Australia increased tariffs to retaliate.[4]

An examination of the transition from a protectionist regime controlled by Congress to a free-trade system promoted by the Executive Branch unveils the origin of the Office of United States Trade Representative. Only four years after Hawley-Smoot, lawmakers gathered in 1934 to enact the Reciprocal Trade Agreements Act. As the subsequent analysis reveals, this legislation provided the foundation for the later rise of the USTR and guided the creation of the Office through the Trade Expansion Act of 1962. Ultimately, these Acts not only counterbalanced the protectionist regime of previous decades, but also instilled within the Executive Branch an agency that would later rise to prominent trade status.

---

[4] Robert A. Pastor, 78-79.

The Reciprocal Trade Agreements Act of 1934

Guided by the concept of reciprocity, the Reciprocal Trade Agreements Act of 1934 granted the President the authority to raise or lower tariffs by as much as fifty percent without congressional approval. Lawmakers intended this added leverage as a tool for the Executive Branch to negotiate with other nations and mutually lower tariffs through bilateral trade agreements.[5] The evolution and enactment of this legislation furthered the later rise of the Office by (1) formulating the basis of a free-trade regime, (2) transferring extensive trade negotiation power to the Executive Branch, and (3) overriding constitutional objections.

Without the context of free trade, government could not have created a special coordinator and negotiator of trade expansion. The 1934 trade act provided this necessary environment by converting the rhetoric of protectionism into the reality of free trade. With the election of Franklin Roosevelt, Hoover became the last President to support high tariffs as a trade policy component. Recognizing the damage created by Hawley-Smoot, Roosevelt initiated new trade rhetoric. Instead of supporting home-market protectionism, he promoted an export-based trade policy, or the execution of trade agreements that would expand markets for U.S. products abroad.[6]

Secretary of State Cordell Hull, a longtime proponent of free trade, coordinated the President's relationship with Congress concerning new trade legislation. His attempts to persuade Congress were enveloped by the larger debate between protectionism and free trade[7]. Thus, the framework of trade expansion extended from divisive interaction between representatives from Roosevelt's administration and congressional figures.

---

[5] Ibid., 85-88.
[6] Delia B. Conti, *Reconciling Free Trade, Fair Trade, and Interdependence,* (Westport, Connecticut: Praeger Series on Political Communication), 19-20.
[7] Ibid., 20.

Advancing the protectionist cause, Republican Representative Evans described tariff reductions:

> In other words, a policy of survival of the fittest is to be applied to all industry throughout the world, which means that the small, struggling American industry, whether agricultural or otherwise, will have to give way to foreign producers, who by the advantage of low costs of production can prove themselves more efficient.[8]

This general economic argument followed the protectionist philosophy of previous years. congressmen aligned with Evans believed that barrier reductions would allow cheap, foreign-made products to infiltrate the market, undermine American producers, and injure the domestic economy. Supporting his state's pottery industry, for example, Representative Jenkins of Ohio concluded that the twenty thousand people employed within the industry could not compete with cheaper foreign labor from abroad. The reduction of tariffs would decimate an American product "equal to the product of any country in quality." As he further argued, "...if those industries that cannot compete with cheap labor are marked for annihilation, then the pottery industry might as well give up the ghost."[9]

These sentiments were further aided by the protectionist philosophy of Economist Samuel Crowther. In his book entitled *America--Self-contained*, Crowther asserted that the export trade was "going the way of the whaling trade, and there is just as much chance of restoring it as there is of restoring the whaling trade by cutting out electricity and decreeing the world-wide use of sperm oil." Identifying the foreign market as a force "of little significance," he concluded that the U.S. home market could supply all needs; therefore, the

[8] Congressional Record, 5353.
[9] Ibid., 5449.

government must protect domestic industry.[10] During congressional debate, Representative Jenkins described Crowther's words as "a story of the greatness and sufficiency of our great country."[11]

Administration officials and many Democrats, however, believed that Crowther's philosophy led to the exact opposite result--a story of isolation, economic depression, and insufficiency. During his appearance before the powerful House Ways and Means Committee, which deliberated the legislation, Secretary Hull informed the members that "commercial wars are unprofitable" and that the decrease in foreign trade during the past several years "had been among the major forces in paralyzing our economic system."[12]

Representative Hill of Massachusetts utilized this analysis to voice the free-trade counter argument:

> We have millions of unemployed and their earning power must be reestablished. In order to do so we must increase our exports. The only way in which we can do this is to increase our imports. If we are to sell our surplus products abroad we must be paid for them in American dollars... That is to buy their merchandise, every dollar spent in foreign lands eventually will return to the United States to purchase American products.[13]

These words presented the fundamental rationale underpinning trade expansion promoted in the 1934 legislation. Many sectors, including agriculture, faced a major production surplus. These industries needed new markets to sell products and reap profits. Export related trade, however, could not expand without reciprocal trade agreements that allowed new imports. In

---

[10] Samuel Crowther, *America--Self-Contained,*, quoted in Destler, I.M., *American Trade Politics,* (Institute for International Economics: The Twentieth Century Fund), 10.
[11] Congressional Record, 5453.
[12] Ibid., 5433.
[13] Ibid., 5563.

other words, trade and increased exports necessitated a two-way process, not a unilateral trade policy.

Because of the economic ills associated with Hawley-Smoot, the Republican's "home-market" sentiments represented the last breath of an overriding protectionist philosophy. Working closely with Congress, Hull drafted legislation that granted considerable negotiating power to the President, or the Executive Branch, to create bilateral agreements that would expand the export market. Although Hull believed that the unilateral reduction of tariffs provided the quickest avenue to free trade, he understood that Congress would have found such a system unacceptable. Therefore, he promoted the idea of reciprocity and bilateral agreements as the "next best method." While expanding trade, reciprocal agreements could appease congressional concerns that countries would not respond appropriately to U.S. tariff reductions.[14]

The combination of economic decline, Democrat support, and administration pressure all combined to defeat the Republicans' protectionist desires. Within just a few years, a set of powers permitting trade expansion replaced a system that mandated high tariffs and trade restrictions. The Hawley-Smoot tariff served the opposite goal of its original intentions. Instead of delivering the wonders of a protected home market, it spurred major economic detriments. This situation, in turn, prompted a divisive interaction between administration officials and Congress that ultimately created the new context of free trade. By first changing the entire focus of American trade policy, Congress' 1934 legislation provided the foundation for the USTR to later exist within this framework.

Along with a basic trade environment, however, the Reciprocal Trade Agreements Act of 1934 permitted the rise of the USTR by instilling greater trade negotiation power within the Executive Branch. Article I of the Constitution grants Congress sole power "to regulate commerce with foreign nations."[15] In fact, although given some treaty making power, the President is granted no specific trade authority. With a supreme role in trade policy, legislators constantly debated and enacted tariffs prior to 1934 as part of a second constitutional authority "to lay and collect duties." Realizing the effects of past actions congressional figures desired a method to remove themselves from the constant political wrangling and industry pressure that promoted higher tariffs. Political Economist Destler explains that Congress is a "decentralized, undisciplined institution, particularly susceptible to pressure from organized interests." Tariff reductions do not "come naturally" within the legislative sphere.[16]

Delegating greater trade power to the Executive Branch, Congress somewhat removed this problem. The Legislative Branch would no longer deal with the continuous aspects of trade policy, because the President would have power to unilaterally negotiate tariff reductions by as much as fifty percent. While not completely eradicating partisan divides, the delegation of greater executive power helped lawmakers restrict industry pressure and build a greater trade consensus. During the early Roosevelt administration, for example, Republicans and Democrats were bitterly divided over trade. By the end of World War Two, very few leaders identified trade policy as a primary difference between the two parties.[17]

The immediate congressional debate concerning new executive power yielded a divisive battle. This struggle involved three basic issues associated with the delegation of

---

[14] Robert A. Pastor, 89.
[15] U.S. Constitution, Art. I.
[16] I.M. Destler, 4.
[17] Ibid., 4-6.

power: (1) the necessity of centralized trade power, (2) the nature of Congress' constitutional role, and (3) the political effects of a decision making transition. The resolution of this debate in favor of greater executive power both complemented the free- trade regime and initiated the negotiating power later adapted to the USTR.

Under the strains of economic depression, supporters of the 1934 legislation argued that such powers were necessary to aid the recovery program and effectively control foreign economic relations. Representative Samuel B. Hill of Washington, for example, cited on March 27, 1934, that while other European nations effectively entered new trade agreements, the United State remained isolated. To further trade negotiation, Hill demanded executive authority:

> The United States is barred from participation in the negotiation of these reciprocal trade agreements because of the lack of Executive authority or of the authority in the administrative branches...to negotiate such agreements. Our tariff policy is so rigid, so cumbersome, and so unbendable that it is absolutely impossible to enter negotiations for reciprocal trade agreement.[18]

While the other leading commercial countries of the world gained new administrative authority to enter bilateral contracts, the United States remained under an antiquated, inefficient system that required full congressional approval. Under the President's treaty-making power, the Executive Branch could only enter agreements with other nations following ratification by the Senate. As Hill illustrated, only three bilateral trade agreements had been enacted during the previous one hundred years, because most agreements failed the Senate's ratification process.[19]

---

[18] Congressional Record, 5513.
[19] Ibid., 5514.

Opponents, however, insisted upon the uniqueness of American diplomacy, as expressed by Representative Cooper of Tennessee:

> Our diplomacy differs from that of every of other diplomacy in that ours has been open and aboveboard. The diplomacy of foreign countries has been secret, and in that system we have seen chicanery; in that we have seen deceit. If we ever come to the time and place when we must deal secretly, and without taking into our confidence the American people, it will be a colossal mistake. Talk about democracy! Rugged individualism is safer than rugged socialism.[20]

Promoting the connection between Congress and the American people, Cooper expressed the belief that centralized Executive authority would reap "dictatorial and secretive powers." American democracy, unlike other governments, rested upon decentralized authority that permitted more outside influence and deliberation.

In a related manner, many congressional figures believed that new Executive authority would upset the careful balance of government decision making. By granting the President greater trade authority, skeptics asserted that the future of American industry would rest upon the "little coterie of socialistic visionaries called the brain trust" who influenced the President. This so-called "brain trust" included executive-level administrators selected to advise and execute presidential actions.[21]

In testimony before the agriculture committee, for example, Secretary Tugwell reported that "no industry is entitled to support by tariffs."[22] In reply, Representative Marshall of Ohio demanded that he was "not willing to trust tariff-making power to an administration that has no sympathy whatever with the protective tariff."[23] These statements

[20] Ibid., 5444.
[21] Ibid., 5439.
[22] Ibid.
[23] Ibid.

reveal the underlying tension between Congress and administration officials. As Marshall believed, executive officials would administer trade with the cold-hearted nature of efficiency and low- cost production rather than American interests. Consequently, government officials would eliminate American industry and jobs by promoting cheaper imports.

The same individuals who despised increased executive power also raised constitutional objections. House arguments by Representative Snell of New York presented the basic constitutional objection:

> The first and most important power conferred upon Congress is the power to lay and collect taxes and duties. We all know that the American union was established as a result of conflicts over commerce and the impossibility of regulating foreign commerce by the separate states....I oppose this attempt with all force at my command, because it is a furtive effort to accomplish by indirect means the destruction of the power of Congress.[24]

As Snell concluded, centralization of power would not only be unwise, but also violate basic powers delegated by the Constitution. Because tariffs involved Congress' constitutional control over taxation and foreign commerce, the President could not unilaterally change such policies, despite the importance of free trade.

This constitutional objection presented the greatest obstacle between Congress and the Roosevelt administration. Even with continuous efforts by Secretary Hull to quell such opposition, the final congressional vote followed party lines, with most Democrats voting for the legislation and most Republicans voting against it.[25] Despite the close vote and wary support, the 1934 legislation initiated a great transition in trade policy interaction. Although

---

[24] Ibid., 5353.
[25] Robert A. Pastor, 92.

past decades maintained Congress' supreme control over the tariff, the enactment of the Reciprocal Trade Agreements Act constructed a new dynamic that advanced executive authority, lowered tariff rates, and formulated trade agreements. Congress did not debate the possible role of a trade representative, but the 1934 legislation transformed the government's power and focus in manner that built the necessary foundation for the USTR.

The later power of the Office resulted not only from the free-trade context but also from the greater power granted to a governing executive agency. Although debate focused upon congressional versus presidential power, the State Department perhaps gained the most authority from the origin of a free-trade regime. First, denying the abilities of Congress, Representative Faddis of Pennsylvania argued that "Congress as a body does not have time to take up the consideration of such an intricate question and to do it justice."[26] Second, in regard to the President, Representative Jenkins of Ohio responded, "Indeed it is not unreasonable to suppose that since it will be physically impossible for the President to make these secret agreements, these agreements will be made largely through the Secretary of State."[27] Such statements recognize the necessity of centralized trade power. Because trade negotiations involved complex issues, tremendous coordination, and specific knowledge, a central agency was necessary to execute policy.

By 1945, Secretary Hull had negotiated with twenty-seven nations to approve thirty-two bilateral agreements, which, in turn, reduced tariff rates by an average of forty-four percent. By 1942, international trade had surpassed the pre-depression level and, by 1950, had grown to 10.2 billion dollars. Meanwhile, the State Department provided direction over the establishment of the General Agreement on Tariffs and Trade, which provided a

[26] Congressional Record, 5356.
[27] Ibid., 5448.

global framework for multilateral trade negotiation. Following the Reciprocal Trade Agreements Act, the State Department reigned supreme as the most important force of trade policy. With its centralized negotiation and coordination powers, it offered the proper knowledge and authority to develop America's free-trade regime.[28]

This honeymoon period for the State Department did not last indefinitely. During the 1950's, the dynamics of trade politics changed and congressmen began to question the State Department's role.[29] While the immediate postwar period uplifted the United States as the supreme economic power in the world, international competition later resurged and threatened American industries. As a result, Congress' intention of trade policy no longer coincided with State Department's interests.

When the United States was economically dominant over a devastated Europe and Japan, State Department officials could easily goad trade to match their foreign policy objective of creating a "free world coalition founded on a liberal world economic order."[30] As Japan and Europe rebounded, congressmen believed that trade policy should follow a more self-interested direction, rather than the pursuit of a "peaceful world order." Considering this growing disconnection between world interests and domestic interests, congressmen complained that State Department officials, such as Secretary Ball, were undermining American industries to fulfill other nations' desires.[31] Both the growing disenchantment with the State Department and the changing focus of trade policy culminated with the Trade Expansion Act of 1962, which created the Special Trade Representative. While permitting the advancement of trade, these developments created an executive broker

[28] I.M. Destler, 10-11.
[29] Ibid., 16.
[30] Ibid., 17-18.
[31] Robert A. Pastor, 93.

better situated to balance domestic and international concerns, garner a relationship with Congress, and work within a divisive trade policy framework.

The Trade Expansion Act of 1962

The powers granted by the Reciprocal Trade Agreements Act were close to expiring in 1962; therefore, President Kennedy initiated a campaign to persuade Congress to renew executive authority. As a foremost objective, he desired a new round of multilateral trade negotiations under the auspices of GATT. Without Congress' grant of power, however, he could not have directed multiple nations toward the common goal of tariff reductions.[32] The dynamics between Kennedy's push for trade and Congress's economic concerns molded the creation of a Special Trade Representative by (1) offering new motivation for trade negotiation and (2) utilizing domestic interests to undermine the State Department's role.

In order to create the environment for a multilateral trade negotiator, President Kennedy had to balance his promotion of a trade round with Congress' fear of rising international competition. From the perspective of Congress, the postwar period of superior U.S. economic power had given way to two primary concerns--a U.S. recession and the declining balance of payments.[33] During the early 1960s, the comparative economic power of the United States and Europe reflected in their accumulation of foreign exchange. While the United States' reserves had declined, the European Economic Community's reserves had increased by over 6.5 billion dollars, which indicated the rise of foreign investment. Furthermore, Europe's combined GNP had exceeded that of the U.S. by more than two to

[32] John F. Kennedy, "Message to the Congress on Foreign Trade Policy," 25 January 1962. *Public Papers on the Presidents, 1962, 68-77,* as reprinted in Meir, Gerald A., *Problems of Trade Policy,* (Oxford University Press), 27-29.
[33] Gerald Meir, 28.

one.[34] Addressing these concerns, Representative of Mills of the House Ways and Means committee was quoted in the Congressional Record as saying:

> The tariff cuts under the Reciprocal Trade Acts had not had a serious effect up until 1958 except in certain hard-hit industries. The overall impact of imports is just beginning to be felt in our marketplace. If Congress pushes through any further tariff cuts without allowing the past four years of experience to be measured, it will commit this nation to a policy that may very well destroy for many years to come any betterment in our way of life.[35]

These words reiterate the concerns of many industries increasingly affected by imports. From Congress' perspective, past bilateral agreements were linked with current domestic economic concerns, and, if not corrected, could plunge the United States from its superior position.

In respect to the balance of payments, Senator Carl T. Curtis explained that unbalanced trade bargaining had allowed the rising European Economic Community to rapidly increase imports at a much faster rate than U.S. Exports. As he notes within the act's legislative history, the United States bargained away eighty percent of its tariffs and lowered the average rate to eleven percent. The European countries, however, maintained comparatively higher protective barriers. For example, while European candy entered the U.S. under a tariff of fourteen percent, U.S. candy faced tariffs greater than thirty percent. Consequently, Curtis argued that the results for the U.S. economy were not "praiseworthy" and that trade must "be a two-way street."[36]

---

34 Congressional and Administrative News, 87th Congress, Session 2, 4192.
35 United States of America Congressional Record, Volume .
36 Administrative News, 3443

When promoting the renewed executive authority, Kennedy addressed these concerns by stating that both an improved balance of payments and accelerated economic growth necessitated trade powers. He linked these two factors during an address to Congress:

> Our efforts to expand our economy will be importantly affected by our ability to expand our exports...There is arising across the Atlantic a single economic community which may have a population half again as big as our own. As its consumer incomes grow, it consumer demands are also growing, particularly for the types of goods we produce best.[37]

His words were an attempt to reconcile free trade with fair trade. After taking action to reduce the balance of payments deficit, Kennedy transformed the rhetoric of Congress into the rhetoric of free trade. Utilizing the contemporary Cold War mindset, he asserted that the United States must assume economic leadership with both developing and industrialized economies to battle against the Soviet Union's growing influence. From Kennedy's perspective, the United States' free trade leadership was the "only peaceful means of combating the Soviet Union." Furthermore, he weighed the threat of European economic power against the opportunities it offered for U.S. exports. Although Congress often decried rising European power, Kennedy argued that both confronting and taking advantage of such power could ultimately benefit U.S. industry.[38]

As Kennedy imbedded Congress with the necessity of trade liberalization, Congress offered Kennedy the framework of a new trade broker. With the rise of GATT and the Cold War, trade reached global dimensions. The bilateral trade agreements manufactured by the State Department, therefore, were buttressed by multilateral trade talks.[39] The greater

---

[37] Gerald A. Meir, 28.
[38] Delia B. Conti, 40.
[39] Bernard Hoekman and Michel Kostecki, *The Political Economy of the World Trading System: From GATT to WTO,* (Oxford University Press, 1996), 12-19.

complexity and coordination of such negotiations required full-time trade expertise. As a result, Congress developed the idea of a Special Trade Representative to handle the responsibilities promoted by the Kennedy Administration. Under the guidance of House Ways and Means Chairman Wilbur D. Mills, Congress believed that no agency was prepared to handle trade matters; therefore, power should be invested in a new office. From a bureaucratic perspective, Kennedy disliked the idea of a trade representative to administer his authority. Listening to Neustadt's political ideas, he believed that the administration should not create "special purpose" positions within the Executive Office that could undermine his personal authority. Through a series of negotiations between Congress and the White House, Kennedy reluctantly agreed that this reorganization of trade policy was an "acceptable price to pay" for the broad negotiating authority he would obtain.[40]

As an underlying motive, Congress intended for the Special Trade Representative not only to coordinate new trade complexities but also to replace the State Department's role. Understanding Congress' pessimism with the State Department, Kennedy asked Secretary of Commerce Luther Hodges to be the chief administration spokesman on the hill rather than Secretary of State George Ball. Meanwhile, Congress railed against the State Department as "unsympathetic and unresponsive to domestic interests." [41] Promoting domestic interests, for example, Representative Dent of Pennsylvania stated that the "trade agreements of the last decade had become the millstone around the neck of the American people."[42] Representative

[40] I. M. Destler, 17-18.
[41] Robert A. Pastor, 112.
[42] Congressional Record, 22279.

Mills articulated the role of the Special Trade Representative to reform the trade negotiation process:

> For the past decade the United States has carried on this program with the primary objective of building the economies of other nations...without regard to the damaging effects upon our own industries and our own labor...We provide for a special representative in order to make certain that negotiations be prepared for and carried out differently than in the past.[43]

Ultimately, the origin of the Special Trade Representative represented the compromise between the Kennedy Administration and Congress. As passed, the Trade Expansion Act of 1962 created an official selected by the President and approved by the Senate who would specifically coordinate and help execute trade negotiations. Providing full-time technical expertise, the representative was chosen to preside over a Cabinet-level interagency Trade Information Committee, developed to coordinate trade and advise the President. Institutionalized with this role, Congress developed a procedure for the Special Trade Representative to hear industry and agricultural groups and relate to Congress, which would vote to approve future representatives.[44] Not only to create a balance between executive and congressional control, the USTR was also formulated to integrate the overall desire for trade liberalization and concerns about increased imports. In other words, while sensitive to political concerns, the Office was intended to lean against the overall force of protectionism and move trade negotiation to new levels.

Summary

Although the nature of trade policy dramatically changed between the enactment of the Hawley-Smoot tariff and the Trade Expansion Act of 1962, the oscillation between

[43] Ibid., 22304.
[44] Administrative News, 5634.

"Americanism" and Internationalism," as expressed by Representative McClintic, remained a continuous force. Slowly, however, the powerful force of trade liberalization replaced an antiquated regime in which Congress embraced protective tariffs. While the Reciprocal Trade Agreements Act of 1934 created the basic framework of a free-trade system and executive power, the Trade Expansion Act of 1962 compromised between protectionist and free-trade beliefs in order to formulate a balance between trade expansion and domestic concerns.

The rise and fall of the State Department as the major trade negotiator highlighted the necessity of a specific agency devoted to trade. These events collectively permitted the rise of an Office intended both to coordinate multilateral trade policy and to relate to domestic concerns. Even though the United States would continue to waver between opposing trade beliefs, Congress had created an office that would later become the supreme mediator in the enduring "contest between Americanism and Internationalism."

Chapter Two
The 1970s Trade Acts: Institutionalization of the Trade Representative

At the commencement of the 1970s, rising inflation, the dollar's devaluation, and international competition undermined the United States' economic dominance. Congressman Bennett best characterized the surrounding economic uncertainty during Senate debate on December 12, 1974:

> There are violent forces at work in the world, forces which now threaten to tear apart the international bonds and relationships so carefully woven over the past three decades....The world now watches and waits for the participation of the United States.[1]

This statement reveals that concerns about the United States' economic relations provided both a disrupting force and the necessity of U.S. leadership. While the broader congressional sentiment maintained free-trade support, the surrounding economic perplexities generated a new focus. Leaders that previously promoted tariff barrier reductions now mandated a more inward examination and once again propelled a divide between domestic and international objectives.

[1] *United States of America Congressional Record*, Volume 120, 93rd Congress, 1974, 39519.

An examination of the circumstances precipitating both the Trade Act of 1974 and the Trade Agreements Act of 1979 identifies a new direction for foreign economic policy and, more specifically, the Office of the Trade Representative. The 1970s background of an uncertain economy and a faltering foreign policy apparatus shaped Congress' perceptions, which, in turn, redefined the USTR's power and nature. Despite the renewal of free trade's oppositional forces, Congress ultimately institutionalized the Office as a premiere element in international trade negotiations.

Background of Economic Uncertainty

Three forces underpinned the USTR's evolution: (1) Perceptions of an inequitable world economy, (2) the fragmentation of foreign economic policy, and (3) the transforming context of trade relations. While the 1970s trade acts officially instituted the Office's development, these circumstances motivated actions within the legislative sphere; thus, one cannot appreciate the USTR's development without recognizing the underlying forces.

Following the Trade Expansion Act of 1962, the world's economic policy leaders reduced tariffs by over fifty percent during the Kennedy Round of Negotiations. Since the mid-1960s, however, Congress had confronted new forms of protectionism, as summarized by Senator Long during congressional debate:

> The Kennedy Round of Trade Negotiations brought about the largest tariff reductions in the history of the United States. Unfortunately, the Kennedy Round did not remedy fundamental inequities in the world trading system...Our trading partners, most notably the European Community, devised new ways to pursue protectionism.[2]

[2] Ibid., 39504.

According to the *Legislative History of Trade Act of 1974*, the large trade surpluses of the post-World War Two economy were replaced by trade deficits as the United States evolved from a manufacturing economy to a service-oriented one. The economic transition not only created social disruptions through unemployment, but also accompanied high oil prices, inflation, the collapsing gold standard, and the largest budget deficits since World War Two.[3] As the following table from the Department of Commerce illustrates, the United States' manufacturing trade balance steadily decline between 1960 and 1973 relative to Europe and Japan.

U.S. TRADE AND BALANCE OF PAYMENTS, 1960-74

[In billions of dollars]

	U.S. trade position				Trade balance		Balance of payments		
	Exports (X)		Imports (M)						
	Total	Minus foreign aid	F.o.b.	C.i.f.[1]	F.o.b.	C.i.f. (M) excluding foreign aid (X)	Liquidity[2]	Official settlements[2]	Basic balance
1960	19.7	18.0	15.1	16.3	4.6	1.7	−3.7	−3.4	−1.2
1961	20.2	18.5	14.8	16.0	5.5	2.5	−2.3	−1.3	([3])
1962	21.0	18.9	16.5	17.8	4.5	1.1	−2.9	−2.6	−1.0
1963	22.5	20.0	17.2	18.6	5.3	1.4	−2.7	−1.9	−1.3
1964	25.8	23.1	18.7	20.3	7.1	2.8	−2.7	−1.5	−.1
1965	26.7	24.3	21.4	23.2	5.3	1.1	−2.5	−1.3	−1.8
1966	29.5	27.0	25.6	27.7	3.9	−.7	−2.2	.2	−2.1
1967	31.0	28.5	26.9	28.8	4.1	−.3	−4.7	−3.4	−3.7
1968	34.1	31.8	33.2	35.3	.8	−3.5	−1.6	−1.6	−1.9
1969	37.3	35.3	36.0	38.2	1.3	−2.9	−6.1	2.7	−3.6
1970	42.7	40.7	40.0	42.4	2.7	−1.7	−3.9	−9.8	−3.8
1971	43.5	41.7	45.6	48.3	−2.0	−6.6	−22.0	−29.8	−10.6
1972	49.2	47.5	55.6	58.9	−6.4	−11.4	−13.9	−10.4	−11.2
1973	70.8	69.4	69.5	73.2	1.7	−3.8	−7.8	−5.3	−.9
1974:									
I	22.4	45.6	21.7	23.2	−.7	−4.6	−1.0	1.1	1.7
II	24.2		25.2	27.0	−.9		−6.2	−4.5	−2.7
III	25.0	24.7[5]	27.1	29.0	−2.1	−4.3[5]	([3])	([4])	([4])

[1] C.i.f. imports for the years 1960-66 are assumed to be roughly equivalent to 108.3 percent of f.o.b. imports in accordance with a Bureau of Customs—Tariff Commission—Bureau of Census study based on 1966 arrivals. For the years 1967-73 estimates are based on Bureau of Customs-Bureau of Census studies showing estimated freight and insurance charges to be 6.9 percent (1967), 6.3 percent (1968), 6.1 percent (1969), 6.2 percent (1970), 6.1 percent (1971), and 5.9 percent for 1972 and 1973.

[2] The liquidity and official settlements deficits for 1966-73 excludes SDR allocations.

[3] Less than $50 million.

[4] Not available.

[5] Partly estimated.

Source: U.S. Department of Commerce.

Printed in *U.S. Congressional and Administrative News*, 93[rd] Congress, Second Session, 1974.

[3] *U.S. Congressional and Administrative News*, 93[rd] Congress, Second Session, 1974, 7193.

Other leading nations interjected unprecedented economic power. In respect to the trade balance, Japan's $2.6 billion trade surplus in 1960 transformed into $23.3 billion in 1973.[4] The trade balance alone cannot document the world economies' relative strength, but this data perpetuated the belief that the United States' economic power was quickly diminishing. Senator Long voiced the resulting concerns about the U.S. economy:

> One result of discriminatory trade practices has been a decline in the U.S. Share of world trade. While the value of free world exports more than quadrupled between 1960 and 1973, the U.S. share of the export market underwent a steady decline from 15.9 percent in 1960 to 14.6 percent in 1970.[5]

The *Legislative History of the Trade Act of 1974* identified the perceived link between economic decline and trade restrictions:

> Several major trading countries which have large trade and payments surpluses continue to maintain unjustifiable and unreasonable restrictions on imports and investment even though they enjoy relatively strong economies.[6]

As the statements indicate, congressional leaders such as Long uplifted discriminatory trade practices as the blameworthy force behind the world's economic inequities and the relative decline of the United States' economy.

Congress also renewed its focus on the foreign economic policy apparatus. Following the resolution of the Kennedy Round, two major issues became apparent--the USTR retained limited powers and economic policy-making exuded confusion. The USTR provided a relatively small, flexible negotiating role with a staff of only twenty-five

[4] Ibid., 7197.
[5] *Congressional Record,* Vol. 120, 39503.
[6] *U.S. Congressional and Administrative News,* 87th Congress, 7193.

professionals. The Office shared its trade powers with the State department and, to a lesser extent, Commerce and Agriculture.[7]

The dispersion of power reflected the Executive Branch's reluctance to delegate new trade authority and, more importantly, the long-established interests of other departments. President Johnson relied primarily on the Deputy Assistant for National Security Affairs, while limiting his access to the Trade Representative. Early within the Johnson Presidency, the NSA position held by Francis M. Bator had established close connections and trust. Furthermore, stronger executive agencies easily surpassed the Office, because it remained relatively small and not yet fully evolved through statute.[8] When Nixon entered office, he realized the necessity of centralized leadership, but both the Department of Commerce and the State Department lobbied Nixon to control foreign trade powers. As a result, Commerce was granted power to control the Trade Representative's nomination and to direct trade negotiations with Japan over the so-called "textile wrangle."[9]

Before the House Committee on Foreign Affairs on June 20, 1972, Secretary of State William Rogers interjected analysis by *Foreign Policy* magazine's Harold Malmgren:

> Why has there been so much confusion? The answer is that there are more than 60 agencies, departments, or other institutional mechanisms which have direct interests and decision-making powers in international economic issues....The need for coordination became increasingly apparent over the years as foreign aid problems grew and trade became an instrument of security policy.[10]

Agencies ranging from the State Department to Commerce to the National Security Council all played overlapping and conflicting roles in the international economic arena. The Nixon

[7] I.M. Destler, *American Trade Politics,* (Institute for International Economics: The Twentieth Century Fund, 1990),. 90.
[8] Ibid.

Administration, for example, preceded the committee's discussion with the following statement from the 1971 *Report of the President's Commission on International Trade and Investment Policy:*

> Virtually every government department and regulatory commission has participated in developing and administering some facets of our foreign economic policy...This diverse involvement is unavoidable because of the wide variety of interests...All of these strands converge at the White House, posing a formidable problem of coordination, arbitration, and leadership.[11]

Congressional leaders also desired a new direction for trade negotiation. Even though the Trade Representative's initial creation rested on the belief that previous trade negotiators neglected domestic interests, these perceptions became more apparent with the faltering economy. During the post-World War Two years, the discriminatory actions by other nations seemed a small concern compared to the larger goal of constructing economic recovery abroad. However, with faltering monetary policy, rising inflation, and the relative strength other leading economies, the United States embarked upon a new competitive mindset. Long expressed Congress' perception during Senate debate on December 12, 1974:

> Rather than conducting U.S. international economic relations on sound economic and commercial principles, the Executive has used trade and monetary policy in a foreign aid context...By pursuing a soft trade policy, by refusing to strike swiftly and surely at foreign unfair trade practices, the Executive has actually fostered the proliferation of barriers to international commerce.[12]

---

[9] Ibid.
[10] Committee on Foreign Affairs, *Reform of International Foreign Economic Policy*, 87th Congress, 1972.
[11] Richard M. Nixon, *Report of President's Commission on International Trade and Investment Policy,* 1971.
[12] *Congressional Record,* Vol. 120, 39514.

The so-called "foreign aid" context of international economic policy could not stand against the rise of protectionist barriers. Political economist Stephen D. Cohen argued, "The era of the foreign policy imperative had ended…For the United States, an entirely new approach to international economic policy was needed, one which meticulously balanced external policies with old-fashioned inward concern."[13] Although global economic interaction remained steadfast, pursuit of free trade could not be successful without a recognition of domestic interests.

The United States Congress renewed its focus upon the Trade Representative through the trade acts of 1974 and 1979. Combining perceptions of an inequitable world system and a faltering foreign economic leadership, legislation and congressional interaction redefined the Trade Representative as a force that could balance domestic concern and external relations, as described by Cohen. Congress created a more powerful, institutionalized force and transformed the USTR's fundamental nature.

The Trade Act of 1974

Early in his presidency, President Nixon promoted a new trade act to restore trade negotiation power and initiate the so-called Tokyo Round of Trade Negotiations. Because the trade policy powers granted by the Trade Expansion Act of 1962 had expired, Nixon commenced a campaign to renew the authority. He provided a message to Congress on November 18, 1969, that outlined the basic agenda:

> The need to restore our trade surplus heightens the need for further movement toward freer trade. It requires us to persuade other nations to lower barriers which deny us fair access to their markets. An environment of freer trade will permit the widest possible scope for the

[13] Stephen D. Cohen, *The Making of United State International Economic Policy: Principles, Problems, and Proposals for Reform,* (Praeger Publishers: New York, 1977), 10.

> genius of American industry and agriculture to respond
> to the competitive challenge of the 1970s.[14]

Furthering this political stance, the Nixon Administration argued that renewed trade authority would prevent the "exposure of exports to foreign retaliation."[15] Pledging to maintain close interaction with Congress, Nixon appointed William D. Eberle as Special Trade Representative in 1971 to execute two primary goals--meeting with world trade officials concerning multilateral arrangements and consulting with Congress on new trade legislation. Although Nixon initially recognized the Office's power through Eberle's appointment, congressional events imbedded within the Trade Act of 1974 most effectively redefined the Office's ròle through a four-fold process: (1) institutionalizing its power through effective interaction, (2) advancing the tools of "export politics," (3) mandating interaction with the private sector, and (4) overcoming opposition to trade negotiations. Ultimately, while recognizing Nixon's foreign economic guidance, Congress integrated the surrounding economic uncertainty into the USTR.

The Nixon Administration is more accurately depicted as a force undermining the Office, rather than a supportive agent. After appointing Eberle, Nixon created the Council on International Economic Policy (CIEP) and named Special Assistant Peter Flanigan to head the post. The USTR was directed to lead negotiations, while the CIEP was required to coordinate trade policy. Therefore, the Trade Representative chaired an interagency committee formulating negotiations, and the Deputy Director of CIEP chaired an interagency group drafting the trade bill.[16] Instead of providing complementary roles, the two agencies

---

[14] Delia B. Conti, *Reconciling Free Trade, Fair Trade, and Interdependence,* (Westport, Connecticut: Praeger Series on Political Communication), 59.
[15] Ibid., 60.
[16] Robert A. Pastor, *Congress and the Politics of U.S. Foreign Economic Policy,* (Berkley: University of California Press, 1980), 138.

became opposing forces when Flanagan attempted an integration of the Office of the Trade Representative into the larger CIEP.[17]

Protection offered by Congress, however, enabled the USTR to overcome the CIEP and emerge as a stronger bureaucratic element. Performing as an adept negotiator, Trade Representative Eberle realized that no trade legislation would pass without concessions to the protectionist forces. With his mandate to interact with Congress, Eberle proposed trade adjustment assistance along with "escape valves," which allowed some protection for industries disproportionately affected by trade. He simultaneously pursued the larger goal of renewed executive trade authority necessary for the Tokyo Round. Because of regular appearances before congressional committees and an evolving legislative relationship, Senators and Representatives began to recognize the Trade Representative as both a trade expert and an effective arbitrator between government branches.[18]

The effective interaction promoted the Office of the Trade Representative into a more trusted and familiar bridge between the Executive Branch and Congress than the CIEP, forcing it to fade into the background. Ironically, even though the CIEP originally attempted to overpower the USTR, Eberle's adept political skills proved the more viable force behind both trade negotiation and policy coordination. Fearing that Nixon or subsequent Presidents would consolidate the Office with another White House operation, Congress, through the 1974 act, established the Office of the Trade Representative within the Executive Office of the President and legislated cabinet rank to its chief.[19]

In regard to the background of economic uncertainty, the USTR's improved institutionalization helped resolve some confusion within the foreign economic policy

---

[17] I. M. Destler, 90.
[18] Robert A. Pastor, 140.

apparatus. The Office was not expanded to control the full range of international economic concerns, but it gained more control over trade negotiation and policy. Thus, while a clearer direction for overall economic policy would derive from the Trade Agreements of 1979, this initial act provided a major step toward ingraining trade powers within a central agency.

Complementing this basic support from Congress, the Trade Act of 1974 reengineered the focus of trade policy through the USTR's "tools of export politics." As outlined within the act, the agency was required to investigate alleged protective trade barriers abroad and, in turn, consult with both Congress and the President. Section 301 of the act outlined the following powers and responsibilities:

1. The Trade Representative must investigate and inform the President concerning unfair non-tariff trade barriers, including subsidies, restrictive licensing systems, discriminatory border taxes, quotas, and exchange controls, which are "unjustifiable" and "burden or restrict" U.S. commerce. Upon receipt of a finding of unfair trade restrictions, the President has the power to direct negotiations with the investigated country or recommend retaliatory action after allowing public hearings on the issue.
2. Individual parties can petition the Trade Representative concerning "foreign actions adversely affecting their interests." Upon receipt of a complaint, the Trade Representative must initiate a review of the alleged practice and hold public hearings.
3. With respect to these investigations, the Trade Representative must submit a semi-annual report to both houses of Congress "summarizing the reviews and hearings conducted by it during the preceding six-month period."
4. Congress will maintain a veto power over executive retaliatory actions resulting from Section 301 investigations. By simple majority of both Houses "within a 90-day period

[19] Destler., I.M., 90.

following the date on which notice of the broad retaliatory actions was submitted to Congress, it could vote to override the president."[20]

Through Section 301, Congress granted the USTR strong unilateralist power to incorporate domestic complaints into a procedure that regulated against protective foreign trade practices. Senator Long explained this role for the Office of the Trade Representative with a report from the Senate's Committee on Finance:

> The Committee believes that the United States can no longer stand by and expose its markets, while other nations shelter their economies—often in violation of international agreements—with variable levies, export subsidies...and import quotas. The Committee recognizes the responsibility of the United States to provide leadership in the international community. At the same time, however, the committee recognizes the duty of the Congress to adopt policies for the sound growth of the economy....U.S. negotiators will not grant concessions which are not fully reciprocated by foreign concession of equivalent value to the commerce of the United States.[21]

Coinciding with Cohen's analysis, Long supported Section 301 as a mechanism both to continue the process of trade and battle unfair restrictions that created systemic inequities. Although the United States was willing to lower its own barriers, it mandated reciprocal actions abroad.

This focus upon mandated reciprocity provides a tool to espouse the growing faith in "export politics." By definition, the export-oriented nature of trade appeased both domestic business constituencies and free trade goals, because it uplifted trade barrier reductions as a method to increase global interaction and provide profitable markets for domestic industries.

---

[20] *U.S. Congressional and Administrative News,* 87th Congress, 7195.

[21] *Congressional Record,* Vol. 120, 39507.

As a result, Section 301 not only provided the USTR with specific powers but also guided the agency along a rhetorical and political framework.

Robert Strauss, the Trade Representative who followed Eberle, best exemplifies this policy arrangement. After the enactment of the Trade Act of 1974, Strauss engaged in bilateral discussions with Japan to push "trade-expanding" issues by pressuring more agricultural imports and quota reductions. On the international front, this policy furthered the goal of freer trade. On the domestic front, "export expansion policies" generated the argument that freer trade promoted profitable markets and, in turn, aided domestic industries.[22]

By providing the option to investigate and act against barriers abroad, the USTR responded to the constraints of both domestic industries and foreign countries. On one hand, the USTR could garner support of American companies by investigating their alleged complaints. At the same time, the Office could promote freer trade through bilateral and multilateral negotiations with other nations. Instead of pursuing economic relations in the "foreign aid" context, the new trade policy framework integrated competing perspectives.

Congress also enacted the first major bureaucratic element—sectoral committees designed to "elicit advice from the private sector." Different groups within the Office's framework were designed to represent private industry, labor, and agricultural interests. With rising concerns about a faltering U.S. economy and barriers abroad, private interests demanded more interaction with trade policymaking.[23] Directing all these concerns to Capitol Hill, however, would have overwhelmed Congress with constituency pressure. As a

[22] I. M. Destler, 93
[23] Ibid., 94.

result, Long's committee report offered the following rationale for large-scale private consultation within the USTR:

> Private sector advisory committees, established by the Committee bill, would issue formal reports at the conclusion of agreements affecting their sectors, evaluating the equity and mutuality of the agreements within their sectors.[24]

While some congressional leaders believed that private consultation would hamper the Office, the private sector groups fulfilled a vital political role. Congress could appease domestic constituents by directing them to the Office while simultaneously gaining some separation from their pressures. According to the law, the Office was required to consult with each sectoral committee during trade policy development and even offer explanations when their council was not accepted. Furthermore, each committee reported independently to Congress concerning its view of multilateral and bilateral trade agreements. As its decision-making process included large private sector interests rather than just expert trade professionals, the fundamental nature of the Office of the Trade Representative changed.[25]

Collectively, these actions transforming the USTR and pursuing a more politically balanced trade policy permitted Congress to overcome opposition. Interests stretching from labor unions to protectionist members of Congress campaigned to prevent a new trade bill. Incorporating trade adjustment assistance and section 301 investigations, however, helped assure domestic constituencies that their interests would accompany any trade agreement. With the triumph over the persistent opposition forces, Congress molded the USTR in a manner reflecting trade policy's new reality. Although the Office remained a flexible, expert force, it now balanced that focus with the inclusion of domestic interests. Therefore, as

---

[24] *Congressional Record,* Vol. 120, 39508.
[25] I. M. Destler, 94.

designed by Congress, the USTR was granted a major role in uplifting international negotiations while eliminating the perceived systemic inequities.

The Trade Agreements Act of 1979

While the Trade Act of 1974 provided some resolution to the economic uncertainty, the Trade Agreements Act of 1979 primarily addressed dispersion within the foreign economic policy apparatus. Two major factors prompted congressional support for the USTR as a stronger bureaucratic element—Robert Strauss' adept negotiating skills and the necessity of institutionalized trade powers. This rising support within Congress forced the Carter Administration to initiate *Reorganization Plan No. 3 of 1979*, which instituted the Office's modern bureaucratic framework.

Robert Strauss' tenure during the Tokyo Round of Negotiations is often referred to as the Office's "Days of Glory." A basic insight into this description is visualized through bilateral agreements that accompanied the multilateral framework. During the later 1970s, Strauss pursued positive bilateral agreements with Korea and Taiwan concerning shoes and with Japan concerning television production. Strauss' independence allowed him to speak with candor and toughness in an unprecedented fashion. When negotiating with Japan, for example, he threatened to "fly home without signing" when confronted with resistance and even exaggerated the effects by saying that no agreement would bring U.S.-Japan relations to a "bursting point."[26] On the domestic front, he maintained a steady and productive relationship with Congress. When Senator William Roth, for instance, suggested hearings at six-month intervals to monitor negotiating progress, Strauss stated that he should "report on a more frequent basis" and, in turn, thanked Congress for the "strong bipartisan support" for U.S. negotiators.

This adept interaction with foreign nations and Congress not only propelled new agreements, but also advanced the USTR's image as a strong broker among competing interests. In respect to the Tokyo Round negotiations, political scientist Gilbert R. Winham asserted the USTR's advantages:

> The Tokyo Round experience demonstrated that channels of access could be two-way streets: access to the executive by the private sector could also mean access to the private sector by the executive. In comparison to Congress, which is the normal arena of interest-group activity, the executive was better able to confront constituency groups with a coordinated plan of its own for trade policy.[27]

Strauss adequately fulfilled the intent of the previous Trade Act of 1974--balancing domestic interests with the goals of free trade. Considering the trade discontent with Japan, industries ranging from steel producers to makers of color TVs all lobbied the USTR through the institutionalized private sector involvement. However, instead of restraining trade, Strauss effectively changed focus toward trade expansion and undermined protectionism through the pursuit of "export politics."

This productive interaction and coordination with private interests translated to Congress. In the 1974 act, Congress agreed to follow the "fast track approach" of a simple "yes or no vote" on the implementing legislation submitted by the Executive Branch. Trade Representative Strauss agreed to have the bill primarily formulated in Congress, because the Carter Administration wanted to ensure passage.[28] During regular consultation, Strauss adequately supported trade-remedy laws in exchange for the bill's passage. For example, while strongly promoting the multilateral agreements, Strauss answered Pennsylvania

---

[26] Ibid., 92.
[27] Ibid., 95.
[28] Ibid., 121.

Senator John Heinz call for a more lenient antidumping policy. This pragmatic approach not only guided the bill's enactment, but also established the Trade Representative as an effective mediator between free trade goals and congressional concerns.

As a result of this reinforcing relationship through the Trade Agreements Act, Congress mandated the Carter Administration to institutionalize the Office's bureaucratic framework. During the Tokyo Round negotiations, trade responsibilities remained widely dispersed among various agencies. While the USTR commanded the leading role during negotiations, Commerce primarily promoted exports, and the Treasury handled the greatest amount of unfair trade practice cases.[29] This inefficient dispersion of power motivated the Senate Finance Committee to criticize the policy apparatus in 1979:

> ....No single agency exists which clearly predominates in the formulation of trade policy to the extent that people with a trade issue know where in the Executive branch they can turn to find a person who will give their particular problem attention....Further, the lack of coordination and lack of attention to trade issues has often resulted in failure to aggressively enforce U.S. unfair trade practice statutes.[30]

Future trade policies and negotiations would necessitate clear coordination in order to respond to various economic circumstances. As Congress instituted the trade agreements through the 1979 act, it directly focused upon the policymaking framework. Both the powerful House Ways and Means Committee and Senate Finance Committee pressured Carter to submit a reorganization plan for the allocation of trade powers. In fact, the draft legislation mandated that the President offer a proposal to Congress by July 10, 1979. When the plan did not arrive within the specified time period, the Chairman of the Senate Finance Trade Subcommittee, Abraham A. Ribicoff, prohibited Senate action on the trade legislation.

---

[29] Ibid., 98.

President Carter, in response, expeditiously provided a reorganization plan that went into effect in January 1980.[31] Therefore, while the Executive Branch institutionalized the bureaucratic framework for the USTR, Congress provided the major impetus behind such action.

Along with transforming the name from the Special Trade Representative to the Office of the U.S. Trade Representative, Carter's reorganization plan strengthened the Office by highlighting its primacy in international trade relations. The Summary and Purpose statement of the so-called *Reorganization Plan No. 3 of 1979* offered the following description:

> The U.S. Trade Representative will be responsible for developing and coordinating U.S. Policy for international trade and direct investment, including import remedies and unfair trade practice remedies, East-West trade policy, international investment policy, international commodity policy, energy trade, and export expansion....The Trade Representative will be the chief advisor to the President on international trade policy and shall advise the President on the impact on international trade of other policies of the U.S. Government. In addition he will have the lead responsibility for the conduct of international trade negotiations, including commodity and direct investment negotiations in which the U.S. participates[32].

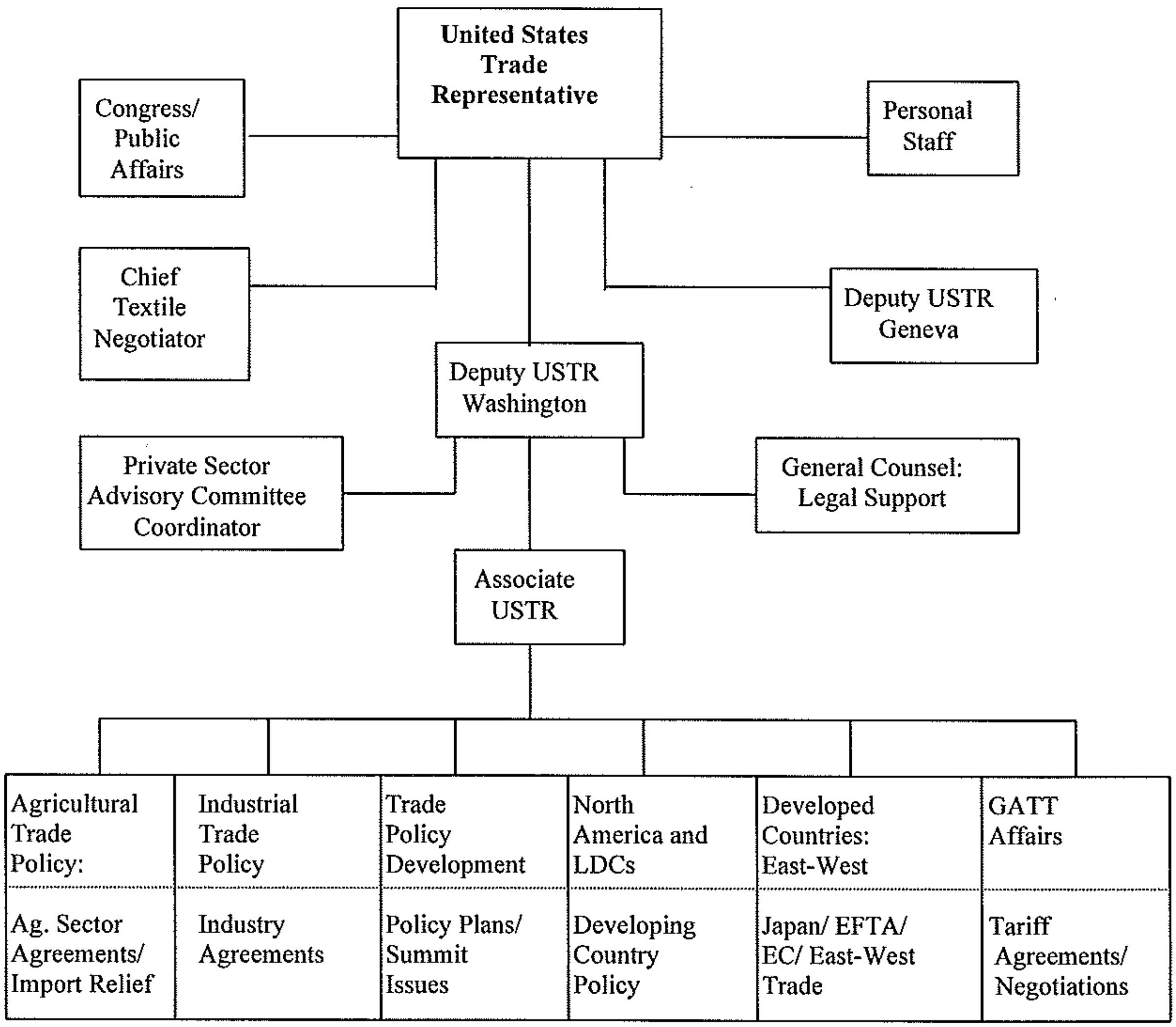
The accompanying report recognized the USTR as the answer to power diffusion:

> Trade issues now cut across the jurisdiction of at least twelve Government agencies. This diffusion has created confusion both for foreign and domestic enterprises...The President's plan addresses that problem by establishing the U.S. Trade Representative as the chief American voice on trade matters.[33]

---

[30] Committee on Finance, *Dispersion of Foreign Economic Policy,* 12 July 1979.
[31] I. M. Destler, 99.
[32] *Reorganization Plan No. 3 of 1979.,* Carter Administration, 1-2.
[33] Ibid., 4.

While granting the USTR a preeminent voice in most trade matters, the Plan still maintained a comparatively small, experienced staff not exceeding 116. The small size enabled flexibility and required the Office to connect with other government agencies to gather information. Outlining the general structure, the following graph reveals the basic apparatus derived from the Reorganization Plan:



Source: Reorganization Plan No. 3 of 1979, Carter Administration, 1980.

Some features, including the private sector consultation, already existed, but the plan offered the first delineation of committees to handle various trade responsibilities. The Industrial Trade Policy committee, for example, accommodated issues concerning trade adjustment assistance, energy trade, and import relief cases, while the Trade Policy Development committee offered strategic planning and trade analysis.

The Trade Agreements Act of 1979 provided a turning point for the newly titled Office of the U.S. Trade Representative. By forcing the Carter administration to construct a bureaucratic plan, the Act further institutionalized the USTR's underlying framework and, for the first time, promoted the Office as the premiere trade negotiation force. Although retaining its small, flexible role, the bureaucratic institutionalization provided a shield protecting the USTR's power against other agencies.

Summary

A broad overview of the 1970s reveals that the decade's economic uncertainty provided a positive force for the Office, rather than a stumbling block. Although fears of a diminishing economy fueled protectionist desires, Congress constructed the USTR to accommodate internal interests while pursuing external trade policy. Both the private sector committees and Section 301 investigations derived from the Trade Act of 1974 extended an effective strategy--export politics. Robert Strauss effectively manifested this process by promoting exports during bilateral and multilateral negotiations. By the end of the 1970s, only ten Section 301 investigations were formalized, but the 1974 trade act provided the foundation for more assertive action during subsequent decades.

While the earlier trade act created a more assertive office, the Trade Agreements Act of 1979 completed the institutionalization process. Early in the decade, Congress enhanced the Trade Representative's stature through effective interaction with William Eberle and Robert Strauss, who both undermined the competing CIEP. During the Tokyo Round, however, trade policy remained widely dispersed among competing interests, prompting international confusion. The 1979 act's requirement for Carter to reorganize trade policy limited this dispersion of power and institutionalized the Office of the U.S. Trade Representative.

In regard to the three major uncertainties of foreign economic policy, the USTR became a defining element in Congress' construction of a political balance. While engaging in trade negotiations, the USTR now implemented retaliatory actions, which helped appease U.S. industries concerned about barriers abroad. With this evolution, the Office entered the 1980s and 1990s not only as a more institutionalized force, but also a political agent that could expand trade and respond to resistant forces at home.

Chapter Three
Unilateral Trade Power in a Multilateral World

During his early years in power, President Ronald Reagan described the destiny of U.S. foreign economic diplomacy:

> Let no one misunderstand us. We're generous and farsighted in our goals, and we intend to use our full power to achieve these goals. We seek to plug the holes in the boat of free markets...And no one should mistake our determination to use our full power to prevent others from destroying the boat and sinking us all.[1]

Incorporating divergent political views, Reagan's words represent the continued balance between free-trade pursuit and domestic concerns. During the 1980s and 1990s, a complex network of negotiations propelled the creation of the World Trade Organization, the North American Free Trade Agreement, and countless multilateral trade barrier reductions. As journalist Thomas Friedman explains, "In the broadest sense we have gone from a system built around division and walls to a system increasingly built around integration and webs."[2] The events stretching the previous two decades have entailed the Cold War's defeat, increased economic cooperation, and the rise of a term both loved and hated--globalization.

---

[1] Ronald Reagan, "International Free Trade," *WCPD,* 20 November 1982.
[2] Thomas Friedman, *The Lexus and the Olive Tree,* (Anchor Books: New York, 2000), 8.

Reagan's words foreshadowed that the rise of a multilateral trade framework did not eliminate the unilateral powers emanating from U.S. policymakers. In regard to Congress, an integrated, global economy re-energized protectionist pressures concerning the environment, labor, and domestic economy. Attempting to "plug the holes in the boat of free markets," Congress molded the Office of the U.S. Trade Representative by granting it strong unilateral power within a multilateral context.

A general overview of the World Trade Organization's development illustrates that the USTR has garnered institutionalized multilateral obligations. The Omnibus Trade and Competitiveness Act of 1988, in contrast, has bestowed the Office with greater power to unilaterally investigate and retaliate against foreign nations. From a broader standpoint, the USTR's dual nature reflects the tension between globalization and domestic concerns inherent within Congress. During recent years, instead of reconciling these pressures, the legislative sphere has only complicated the Office's unilateral and multilateral roles through the rise of anti-globalization issues.

Context of a Multilateral Framework

The Uruguay Round, which stretched from 1986 to 1994, transformed GATT into a stronger, more institutionalized framework--the World Trade Organization (WTO). Because of the growing number of trade negotiations and disputes, the vaguely-worded GATT norms and provisions no longer effectively handled free trade's complexities. The WTO helped resolve these concerns by providing a "common institutional framework for the conduct of trade relations among its members in matters related to the agreements."[3] To achieve this goal, the organization integrated four basic functions: (1) implementing and

[3] Bernard Hoeckman and Michel Kostecki, *The Political Economy of the World Trading System: From GATT to WTO,* (Oxford University Press, 1996), 37.

operating trade agreements, (2) offering a negotiation forum, (3) providing a dispute settlement mechanism, (4) maintaining cooperation within foreign economy policy.[4]

Because of the USTR's earlier institutionalization, the Office's experts not only negotiated this framework but also assumed new duties. As the United States' premiere agent of trade coordination, the USTR gained responsibility for all WTO matters, including negotiating trade conferences, integrating new members, and handling dispute resolution.[5] During the 1990s, for example, Trade Representative Charlene Barshefsky negotiated the integration of China into the WTO by reconciling Chinese and American trade interests. In respect to trade conflicts, the WTO implemented a formal dispute mechanism to resolve disagreements among members concerning trade actions and provisions. The USTR naturally uses its expertise to represent American interests in disputes ranging from bananas to export subsidies.[6]

The framework's complexities have also necessitated an enlarged bureaucracy. Along with more officials in Washington, D.C., the USTR maintains an office in Geneva, where the WTO is located. Because the organization's full range of matters spans agriculture, services, telecommunications, and various trade conflicts, the USTR must offer expert officials to handle the expanding network of issues.[7] As a basic purpose, the WTO intends to direct the world trade officials into a more consensual environment, reconciling divergent trade interest. Thus, the USTR devotes considerable time and energy pursuing action within this system.

[4] Ibid., 38.
[5] Ibid.
[6] Ibid., 44-50.

Growth of Unilateral Trade Power

While the USTR assumed new multilateral responsibilities, congressional legislation provided a strong unilateral tool. The Omnibus Trade and Competitiveness Act of 1988 strengthened Section 301 investigations to grant the USTR greater power, a restricted timetable, and new requirements to act against other nations. A scrutiny of this legislation's nature and development reveals the rise of the Office's unilateral power within a multilateral context. During the past two decades, the unilateralism embedded within the USTR has agitated conflict on the international front and has mandated the Office to balance opposing roles.

As outlined within the legislative history, the 1988 trade act extended the USTR's Section 301 responsibilities in the following manner:

1. Congress added a clause *mandating* USTR trade retaliation against countries unable to eliminate unfair trade practices through negotiation.
2. A newly established Section 306 required the USTR to monitor compliance with trade agreements, including those resulting from Section 301 negotiations.
3. A mandate was issued to "identify priority practices, the elimination of which are likely to have the most significant potential to increase U.S. exports."[8]

Collectively these new mandates are now known as Super 301, because they grant the USTR considerable obligations outside of the President's discretion. In this respect, the most influential component involves the requirement of mandatory retaliation. In circumstances in which a foreign trade practice violates a multilateral or bilateral trade agreement, the USTR is required to initiate negotiation or retaliations. This transfer of

[7] *2000 Annual Report of the President of the United States on the Trade Agreements Program,* as Printed by the Office of the United States Trade Representative, <http://www.ustr.gov/reports/2001.html>, 7-56.

power to the USTR has greatly elevated its status. Although the Office traditionally initiated investigations as a result of public petition or the President's guidance, Super 301has now committed the USTR to act without external input.[9]

The USTR's unilateral mandate evolved from a distinction formulated through the 1984 Tariff and Trade Act. Because the original Section 301 did not distinguish between "unjustifiable" and "unreasonable" practices, the 1984 Trade Act clarified this language. Unjustifiable practices were determined to be those that violated GATT provisions or established trade agreements. Unreasonable practices, however, represented those "not necessarily in violation of or inconsistent with U.S. legal rights, but which are otherwise deemed to be unfair and inequitable."[10] The mandatory actions, of course, derived from the unjustifiable practices, while unreasonable practices permitted the USTR to pursue actions against countries not even violating established agreements.

The factors precipitating Congress' development of Super 301 were three-fold: (1) dissatisfaction with GATT procedures, (2) inability to tackle trade imbalances, and (3) growing pessimism toward Japan. At the same time that world leaders were initiating the Uruguay Round, these factors perpetuated distrust of the multilateral system and forged a reliance on "aggressive unilateralism."

The number of GATT trade disputes climbed from thirty-two in the 1970s to 115 in the 1980s. Because GATT was not intended to serve as a formal institution, the increasing legalistic nature of trade disputes did not complement the agreement.[11] From Congress' perspective, inefficiency of the GATT system required the United States to take more

---

[8] *U.S. Congressional and Administrative News,* 100th Congress, Second Session, 1988, 1550-1595.
[9] Thomas O. Bayard and Kimberly Ann Elliott, *Reciprocity and Retaliation in U.S. Trade Policy,* (Institute for International Economics: Washington D.C., 1997), 27-29.
[10] Ibid., 31

unilateral action to dissolve trade barriers. On June 12, 1988, Representative Dorgan of North Dakota argued this position:

> The U.S. Trade Representative has put out a blue book that is 300 pages long...300 pages of unfair practices and barriers that our producers meet when they try and compete overseas. We ought not take that. We ought to put pressure on our allies to stop it.[12]

Because GATT's vague wording and inefficiency could not handle all trade barriers and disputes, Representative Dorgan reflected the widespread sentiment that Congress should establish more unilateral action.

The background of trade imbalances extended this viewpoint. With the increasing value of the dollar during the 1980s, the U.S. trade deficit on goods and services doubled from $24 billion in 1979 to $50 billion in 1983.[13] While most economists linked the trade deficit with macroeconomic conditions, Congress offered a different perception. In a report to the House Energy and Commerce Committee, Representative Dingell of Michigan blamed the deficit on trade barriers:

> The Subcommittee believes a thorough reading of the record...leads inevitably to the conclusion that the United States is being victimized on the world market. Further, while our trading partners have relentlessly pursued their economic self-interest in determining import and export policies, this country has been hamstrung by a free trade ideology that ignores the realities of the world trading system.[14]

---

[11] Ibid., 11
[12] *United States of America Congressional Record,* Volume 134, No. 102, 100th Congress, 2nd Session, 5531.
[13] Thomas O. Bayard and Kimberly Elliot, 13-14.
[14] U.S. House of Representative, Committee on Energy and Commerce, "Examination of the U.S. Trade Deficit," 1986, 3-4.

Representative Dingell upheld the belief that the greater openness of the home market put the United States at a disadvantage and, thus, required unilateral trade action to remove the perceived inequities behind the growing trade deficit.

The belief that trade barriers exacerbated macroeconomic conditions was most directly aimed at Japan. Given its major trading-partner status with the United States, many congressmen were dissatisfied with Japan's resistance to lower trade barriers. The so-called "Japan Problem" of the 1980s prompted Congress' focus on more forceful measures to open the country's market. Because previous bilateral efforts to reduce barriers insignificantly increased U.S. exports, the pressure of the unilateral action would offer the right prescription--diplomatic force and the threat of retaliation.

The execution of Super 301 procedures has created both international tension and the necessity of balance for the USTR. As legal expert Jared R. Silverman explains, "Because the unilateral domestic actions of any nation impact the obligations of the multilateral international system, a fundamental tension exists between the theories of realism and of free trade."[15] While realism recognizes sovereign states preserving their self-interest, free-trade theory requires "cooperation, coordination, and mutual trust" to further trade liberalization.[16]

In accordance with Silverman's observations, the present system formulated by Congress integrates the opposing aspects of realism and cooperation to create a dual nature for the USTR. The trade disputes with Japan best reflect this conflicting, yet intricately balanced, policy structure. In 1995, disputes between Japan and the United States concerning automobiles culminated with consultation before the WTO Dispute Settlement Body. As a

[15] Jared R. Silverman, "Symposium on Current Issues in the World Trade Organization, Multilateral Resolution Over Unilateral Retaliation: Adjudicating the Use of Section 301 Before the WTO," *University of Pennsylvania Journal of International Economic Law,* Spring 1996, 237-238.
[16] Ibid.

foremost demand, the United States instructed Japan to allow its firms to expand the purchase of U.S. automobiles and permit more American-made auto parts. While pursuing WTO negotiations, the USTR held public hearings in accordance with Section 301 and, in turn, proposed sanctions. In response, Japan initiated a complaint with the WTO alleging that the proposed sanctions violated multilateral agreements. With the overwhelming prospect of retaliation, Japan pursued an eventual agreement with U.S., and the sanctions were never implemented.[17]

This case outlines the delicate balance offered through a mix of unilateral and multilateral strategies. Although at first deferring to WTO procedures, the United States pursued the parallel strategy of initiating Section 301 sanctions. The completion of bilateral negotiation, however, halted both the WTO and Section 301 actions through a mutually reinforcing arrangement. This mixture of complaint proceedings, retaliatory threats, and eventual resolutions now comprises the oscillating nature of U.S. foreign trade policy. In other words, the USTR combats trade conflicts with a hybrid combination of unilateral and multilateral tools in order to achieve open markets for exports. Even though confrontation often develops on the international front, negotiations can lead toward final resolution.

This strategy has been accompanied by concern that the USTR will neglect the subtleties and nuances of trade negotiation. Summarizing this worry, Representative Kemp of New York objected to Super 301 during congressional debate on July 13, 1988:

> It takes authority in very delicate trade negotiations with the rest of the world out of the hands of the President who is responsible not only for the public good. And it puts it in the hands of a czar, an unelected bureaucrat. It is going to

[17] Wha Seu Chang, "Taming Unilateralism Under the Multilateral Trading System: Unfinished Job in the WTO Panel Ruling on U.S. Sanctions 301-310 of the Trade Act of 1974," *Law and Policy in International Business,* Summer 2000, 1153-1154.

> turn the USTR into a funnel for problems that will exist in every single business or industry in the United States, whether it is due to trade violations or not.[18]

Like several congressmen opposing Section 301's expansion, Representative Kemp believed that unilateral powers invested within the USTR would overwhelm multilateral obligations with domestic industry pressure.

In practice, however, the mixture of unilateral and multilateral tools presents a much more astute approach than many leaders had expected. During the early 1990s, Trade Representative Carla Hills implemented the so-called "Velvet Crowbar," which necessitated the choice between "when to use the crowbar and when to use the handshake." During the Uruguay Round negotiations, for example, Hills appeased Congress by targeting three countries for 301 sanctions--Japan, Brazil, and India. At the same time, she continued the multilateral consultations, which eventually led to the WTO's creation.[19]

When naming priority countries for Super 301, Hills effectively balanced multilateral and congressional interests. Prior trade agreements with Korea and Taiwan, for example, prevented them from being named as priority countries. To prevent a conflict with Japan from dismantling the Uruguay Round, the USTR did not name the country as a priority, but engaged in forceful negotiations that liberalized the market for supercomputers and satellites.[20] As these actions illustrate, Hills integrated her international and domestic pressures into hybrid combination of legislative mandates, international negotiations, and divergent interests. Ultimately, instead of using extensive power only to relieve pressures from Congress or domestic industries, the USTR continued the delicate nature of international economic diplomacy.

---

[18] Congressional Record, Vol. 134, 5535.
[19] Thomas O. Bayard and Kimberly Elliot, 38-40.

The strategic interaction offered by Hills has been adopted by later trade representatives. As iterated by a USTR report released on May 1, 2000, the Office has used Section 301 to investigate twenty-nine countries ranging from those in South America to those in Europe. Simultaneously, the USTR has utilized the WTO dispute settlement process to resolve nearly fifty-three cases involving the same group of countries.[21] This dual nature approach may create tension between realism and cooperation, but it effectively provides the Office with the powers and opportunities to direct divergent constraints toward trade liberalization.

Rise of Anti-Globalization Constraints

While balancing unilateral and multilateral duties, the USTR confronts another constraining element compounded by Congress--the controversial issues of globalization. Thomas Friedman argues that global trade and interaction are counteracted by groups who "see this transformation as a big loss, not a gain." By challenging "traditional business practices, social structures, cultural mores, and environments," the free trade phenomenon has "fed many different specific emotions and anxieties."[22] In respect to both labor and the environment, anti-globalization ideas have limited the USTR through the congressional sphere by (1) restricting trade negotiation and (2) forcing the integration of social concerns.

Despite efforts during the Clinton Administration, Congress refused to grant "Fast Track," or Trade Promotion Authority, to the Executive Branch. Evolving from grants of power in the 1962, 1974, and 1988 trade acts, Trade Promotion Authority allows the Executive Branch, and specifically the USTR, to negotiate trade agreements with only an up

[20] Ibid., 40-42.
[21] Office of the United States Trade Representative, *Fact Sheet: Monitoring and Enforcing Trade Laws and Agreements,* 1 May 2000, 2-25.
[22] Thomas Friedman, 329-333.

or down vote from Congress. This procedure appeases negotiation partners, because it prevents the Legislative Branch from amending previously developed agreements.[23]

While numerous protectionist interest groups have attacked the authority of the USTR, labor and environmental concerns have become the preeminent stumbling block. Citing problems with NAFTA, for example, many Democrats objected to the Canadian methanol producer Methanex Corporation, which filed a complaint with a special tribunal over California's decision to phase out MTBE, a carcinogenic fuel additive that easily contaminates ground water.[24] According to many Trade Promotion Authority opponents, examples such as this one highlights the ability of international agreements to undermine the United States' environmental, health, labor, and safety standards.

According to Trade Representative Robert Zoellick, congressional concerns about the issues of globalization greatly restricted new agreements during the later 1990s. In testimony before the House Ways and Means Committee on March 7, 2001, Zoellick argued:

> We are in danger of being left behind. There was a time when U.S. involvement in international trade negotiations was a prerequisite for them to succeed. That is no longer true. Indeed, other countries are writing the rules of the international trading system as they negotiate without us.[25]

Zoellick also informed the committee that the European Union had signed twenty free-trade agreements since 1990, while negotiating arrangements with Mexico, Japan, South Korea, and Chile. The United States, meanwhile, had remained deadlocked over domestic disputes.[26]

---

[23] Senate Finance Committee, FDCH Congressional Testimony, "Trade Promotion Authority," 20 June 2001.
[24] Julie Hirschfeld Davis, "Debate over Fast Track Authority Refocused on Domestic Concerns," *CQ Weekly*, 13 October 2001, 2421.
[25] Committee on Ways and Means, "Statement of Robert B. Zoellick, U.S. Trade Representative," 7 March 2001, 2-3.
[26] Ibid.

The resistance created by environmental and labor issues has already impacted the limited trade agreements that do result. Under the guidance of Trade Representative Charlene Barshefsky, the United States negotiated a free trade agreement with Jordan. Unlike past efforts, however, the U.S.-Jordan negotiations contained labor and environmental provisions. While establishing the Joint Forum on Environmental Technical Cooperation, the agreement contained the mandate for each nation to respect the other's environmental and labor standards when pursuing foreign direct investment and economic involvement.[27] This pact did not establish new standards, but did recognize each country's labor and environmental laws in an unprecedented manner. Trade Representatives ranging from Mickey Kantor to Robert Zoellick have all preferred keeping social issues separate from trade agreements, such as through the International Labor Organization.[28] Increasing congressional demands to include environmental and labor standards, however, have forced pragmatism, as visualized through the U.S.-Jordan Free Trade Agreement.

Summary

An overview of the events occurring during the 1980s and 1990s reveals that the dual nature of the USTR's powers both advance and resist trade goals. While the unilateral tool of Super 301 appeases domestic concerns, it also furthers a fundamental tension between realism and international cooperation. Trade Representatives such as Carla Hills, however, have used the opposing duties to delicately balance divergent views and maintain a larger trade consensus.

---

[27] Office of the United States Trade Representative, "Draft Environmental Review of the Proposed *Agreement on the Establishment of a Free Trade Area Between the Government of the United States and the Government of the Hashemite Kingdom of Jordan,*" September 2000, 4-8.
[28] Stephen Norton, "Zoellick Urges Renewal of Trade Negotiating Authority," *CongressDaily*, 30 January 2001, 3.

The most recent issues of anti-globalization place an even greater strait-jacket on the USTR. Listening to constituent interests, congressional figures now demand the incorporation of social issues into international economic arrangements. As illustrated by the U.S.-Jordan trade pact, the USTR's initial reluctance to incorporate social standards has given way to pragmatism in order to advance larger trade goals and obtain Trade Promotion Authority. At the beginning of the twenty-first century, the congressional mandates and issues resulting from the previous two decades ultimately continue the Office's role as a balancing agent that guides opposing interests toward greater trade liberalization.

Conclusion
Clarifying Basic Themes

In his address before the Council of Americas on May 7, 2001, Trade Representative Robert Zoellick linked free trade with "values of openness, economic freedom, and peaceful security."[1] When one considers the complexities and nuances of trade expansion, Zoellick seems to have promoted an idealistic view of global economic freedom. Trade Representatives since the USTR's creation in 1962 have all pursued economic liberalization, but political constraints have both molded and restrained the Office's mission to promote the "values of openness." As the preceding chapters reveal, the USTR's evolution through Congress best illustrates the persistent balance between idealistic goals and political realities. The path of development is most vivid in respect to the three basic themes: (1) the USTR's political adaptation, (2) the Legislative Branch's fundamental guidance, and (3) the increasing complexities of a global economy.

The Office of the United States Trade Representative has adapted economic goals to conflicting political perceptions since its origin. Although the Reciprocal Trade Agreements Act of 1934 introduced a free-trade regime, the resulting path of foreign economic relations

[1] Robert Zoellick, prepared remarks before the Council of Americas, "Free Trade and Hemispheric Hope," 7 May 2001.

has not provided consensus. The Trade Expansion Act of 1962, for example, created the USTR not only to negotiate trade agreements, but also to overcome the State Department's lack of response to domestic pressures. By mandating Section 301 and private sector committees, the Trade Act of 1974 incorporated the divergent viewpoints that accompanied economic uncertainty. During the 1980s and 1990s, resistance to the multilateral framework and globalization necessitated the unilateral powers granted by the Omnibus Trade and Competitiveness Act. Through each of these periods, the USTR was given power to expand trade abroad, while the growing duties of investigatory action and domestic consultation offered a counterbalancing inward focus.

Although situated within the Executive Office of the President, the USTR became institutionalized through Congress. Each developmental transition led to tension between executive and legislative goals. President Kennedy, for instance, resisted a new executive power center that could undermine his own authority, but Congress pressured him to relent with the Trade Expansion Act of 1962. At the commencement of the 1970s, President Nixon created the CIEP, which challenged the USTR's policy-coordination powers. The USTR's adept interaction with the Legislative Branch, however, culminated with the Office's institutionalization through the Trade Agreements Act of 1979, as Congress pressured the Carter Administration to offer a reorganization plan. Congress had the incentive to relieve trade pressures by delegating powers to the Executive Branch. On the other hand, different presidential administrations resisted legislative efforts to dictate their organization of executive power.

When the USTR was originally created, few government leaders perceived the countless trade agreements that would later fuel global interaction. As economic interdependence has influenced more livelihoods, Congress has augmented the Office's power to balance complicated forces. The 1970s economic decline, for example, intertwined the global economy with the domestic arena. When U.S. industries attacked foreign nations as the cause of their economic troubles, the Trade Act of 1974 granted the USTR powers both to expand trade and appease domestic concerns.

Further complicating free trade, divergent political views have become a more pronounced constraint, as symbolized by the issues of globalization. During the 1990s, domestic groups waged unprecedented attacks on trade because of labor and environmental concerns. These issues have underpinned congressional resistance to Trade Promotion Authority. Without the full support of Congress, the USTR's participation in the multilateral framework has been restrained and replaced by unilateral demands.

As the Office carries its powers into the twenty-first century, it still faces the basic struggle between opposing beliefs that it confronted at its inception. The USTR's objective remains free trade, but pragmatism allows the Office to endure the contest between international and domestic objectives. Although the recent issues of globalization will not die soon, the USTR retains the powers offered by Congress to navigate opposing forces. Ultimately, these forces may shape the Office's future development, but they do not undermine its fundamental purpose—intertwining political realities and perceptions into the larger pursuit of economic freedom.

Bibliography

Bayard, Thomas O. and Kimberly Ann Elliott. *Reciprocity and Retaliation in U.S. Trade Policy*. Washington D.C.: Institute for International Economics, 1997.

Chang, Wha Seu. "Taming Unilaterlism Under the Multilateral Trading System: Unfinished Job in the WTO Panel Ruling on U.S. Sanctions 301-310 of the Trade Act of 1974." *Law and Policy in International Business*. Summer 2000, 1152-1160.

Cohen, Stephen D. *The Making of United State International Economic Policy: Principles, Problems, and Proposals for Reform*. New York: Praeger Publishers, 1977.

Committee on Finance. Dispersion of Foreign Economic Policy. 12 July 1979

Committee on Foreign Affairs. Reform of International Foreign Economic Policy. 87th Congress. 1972.

Conti, Delia B. *Reconciling Free Trade, Fair Trade, and Interdependence*. Westport, Connecticut: Praeger Series on Political Communication, 1998.

Crowther, Samuel. *America--Self-Contained*. Quoted in I.M. Destler. *American Trade Politics*. Institute for International Economics: The Twentieth Century Fund, 1990.

Davis, Julie Hirschfeld. "Debate over Fast Track Authority Refocused on Domestic Concerns." *CQ Weekly*. 13 October 2001, 2420-2423.

Destler, I.M. *American Trade Politics*. Institute for International Economics: The Twentieth Century Fund, 1990.

Friedman, Thomas. *The Lexus and the Olive Tree*. New York: Anchor Books, 2000.

Hoeckman, Bernard and Michel Kostecki. *The Political Economy of the World Trading System: From GATT to WTO.* Oxford University Press, 1996.

Kennedy, John F. "Message to the Congress on Foreign Trade Policy." 25 January 1962. *Public Papers on the Presidents.* 1962, 68-67. As reprinted in Meir, Gerald A. *Problems of Trade Policy.* Oxford University Press, 1973.

Meir, Gerald A. *Problems of Trade Policy.* Oxford University Press, 1973.

Nixon, Richard M. *Report of President's Commission on International Trade and Investment Policy*, 1971.

Norton, Stephen. "Zoellick Urges Renewal of Trade Negotiation Authority. Congress Daily. 30 January 2001, 3-10.

Office of the United States Trade Representative. "Draft Environmental Review of the Proposed Agreement on the Establishment of a Free Trade Area Between the Government of the United States and the Government of the Hashemite Kingdom of Jordan." September 2000.

Office of the United States Trade Representative. *Fact Sheet: Monitoring and Enforcing Trade Laws and Agreements.* 1 May 2000, 2-25.

Pastor, Robert A. *Congress and the Politics of U.S. Foreign Economic Policy.* Berkley: University of California Press, 1980.

Reagan, Ronald. "International Free Trade." *WCPD.* 20 November 1982.

Reorganization Plan No. 3 of 1979. Carter Administration, 1980.

Senate Finance Committee. *FDCH Congressional Testimony.* "Trade Promotion Authority." 20 June 2001.

Silverman, Jared R. "Symposium on Current Issues in the World Trade Organization, Multilateral Resolution Over Unilateral Retaliation: Adjudicating the Use of Section 301 before the WTO." *University of Pennsylvania Journal of International Economic Law.* Spring 1996, 237-238.

United States of America Congressional Record. Volume 18. 73rd Congress, 1962.

United States of America Congressional Record. Volume 120, 93rd Congress, 1974.

United States of America Congressional Record. Volume 134. No. 102. 100th Congress, 2nd Session, 1988.

U.S. Congressional and Administrative News. 87th Congress. Second Session. 1962, 7193-7196.

U.S. Congressional and Administrative News. 100th Congress. Second Session. 1962, 7193-7196.

U.S. House Committee on Ways and Means. "Statement of Robert B. Zoellick, U.S. Trade Representative." 7 March 2001.

U.S. House of Representatives. Committee on Energy and Commerce. "Examination of the U.S. Trade Deficit." 1986.

USTR's Role. <http://www.ustr.gov/about-ustr/ustrrole.shtml>, 2001.

Zoellick, Robert. Prepared remarks before the Council of Americas. "Free Trade and Hemispheric Hope." 7 May 2001.

2000 Annual Report of the President of the United States on the Trade Agreements Program. As printed by the Office of the United States Trade Representative. <http://www.ustr.gov/reports/2001.html>, 7-56.