4

A Less Protected Congress

In the early postwar decades, the United States Congress was remarkably restrained in the exercise of its constitutional authority to "regulate commerce with foreign nations." Individual senators and representatives engaged in a great deal of trade rhetoric; they lent their names to hundreds of bills proposing trade restrictions for industries that were strong within their constituencies. Congress periodically passed general trade laws to extend, expand, and limit presidential negotiating authority, including the reciprocal trade act renewals in the 1950s, as well as larger authorization acts like those of 1962 and 1974. There were also times when Congress failed to deliver on important executive commitments: to the International Trade Organization charter of 1948, for example, or to the Kennedy Round antidumping agreement signed almost 20 years later.

But product-specific legislative output was sparse. Senators and representatives consistently referred particular cases elsewhere: to the Tariff Commission for assessing injury to petitioning industries, for example, or to the executive for negotiating tariff cuts or arranging limits on the inflow of particularly sensitive commodities. Bills proposing statutory protection for textiles or shoes or steel typically died in committee, often without so much as a hearing. With the exception of a few agricultural quotas, Congress almost never legislated specific import protection.

As outlined in chapter 2, such "voluntary restraint" by Congress was the central domestic political prerequisite for US international trade leadership. By delegating responsibility to the executive and by helping fashion a system that protected legislators from one-sided restrictive pressures, Congress made it possible for successive presidents to maintain and expand the liberal trade order.

Congressional restraint depended, in important part, on the capacity of legislative leaders to control the action by preventing floor votes on product-specific restrictions. In the words of one prescient analyst in 1974, the House Ways and Means Committee and its chairman were "in effect . . . hired to put a damper on particularism in tax and tariff matters."[1]

However, during the postwar period, Congress was changing. Power was spreading out among the 535 individual members; thus the legislative calendar and output were less subject to leaders' control. This change accelerated in the 1970s, particularly in the House of Representatives. At the same time, trade was becoming more important to the American economy.

Then, in the 1980s, this less-protected Congress was hit with unprecedented trade-political pressure, generated mainly by unprecedented trade deficits. And the Reagan administration was slow to respond. So legislators of both political parties seized the initiative, demanding tougher executive action to enter resistant foreign markets, and passing the first congressionally initiated omnibus trade bill since before Smoot-Hawley.

Counter to many predictions, Congress still did not "go protectionist." Nor did legislators reclaim their constitutional power to impose product-specific trade barriers. They continued to delegate broad powers to the executive—in the 1988 act and in the 1991 vote renewing "fast-track" negotiating authority for the multilateral Uruguay Round and for free trade negotiations with Mexico. But they did so more grudgingly, with more detailed demands and timetables, which constrained administration flexibility. They thus put more pressure than ever on the executive branch, making open US trade policies more dependent than ever on the latter's policy commitment and leadership skill.

The tragedy of one man came to symbolize the demise of the old order. In October 1974, even as the Senate Finance Committee was quietly marking up the authorizing legislation for the Tokyo Round, the chairman of its House counterpart became involved in a scandal that would force his resignation. For years, Wilbur D. Mills (D-AK) had been the consummate insider. The central congressional figure on trade and tax policy, he was perhaps the most powerful member of his chamber, yet he was little known to the general public. In a parliamentary regime, he might well have become prime minister. But in the United States, his one quest for national recognition was in a belated campaign for the 1972 Democratic presidential nomination. This campaign had peaked with a 4 percent vote in the New Hampshire primary, and Mills won a total of 33.8 delegate votes at the convention the following August.

1. David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974), 154.

Now Mills' name would become a household word because of a bizarre incident that exposed his heavy drinking and involvement with a woman not his wife.[2] It came at a time when Mills' influence was already in decline. Suffering from a back ailment, he had missed most of the House Ways and Means markups of the Tokyo Round authorization bill the year before. Now his career and reputation publicly disintegrated. He won reelection in November, but the sudden scandal reduced his usually overwhelming majority to 59 percent. By December, he had declared himself an alcoholic and announced that he would not continue as Ways and Means chairman in the next Congress. Two years later, he retired from public office.

Mills was succeeded as chairman by Al Ullman (D-OR). He was replaced by no one. His talented Senate counterpart of the 1970s, Finance Chairman Russell B. Long (D-LA), would develop a formidable personal reputation, as would Long's successors, Robert J. Dole (R-KS) and Lloyd Bentsen (D-TX). In the 1980s, virtuoso politician Dan Rostenkowski (D-IL) would restore some of the old luster to Ways and Means. But, from the 1960s onward, the Senate was too freewheeling and democratic to permit the sort of personal policy dominance that Mills had exercised. In the 1970s the House became so as well.

Congressional Reform and the Weakening of Ways and Means

Even before the Arkansan's public fall from grace, the "excessive power" of Ways and Means had been "a major target of reorganization."[3] This was part of a broader challenge to the power of committee chairmen by congressional reformers.

American politics was opening up, and more and more legislators owed their election not to party machines but to personal entrepreneurship. They did not want to run the turtle's race between seniority and senility by serving quietly as apprentices for the 20 to 30 years it might take to move up the ranks to chair a major committee.

By the end of 1974, it was clear that new House members no longer had to wait. They could aspire to policy influence almost immediately. The post-Watergate election had brought no fewer than 75 new Democrats into the House. Adding to them the newly elected Republicans and the turnover in the 1972 election, more than one-third of the House members in January 1975 had not been there three years before.

---

2. A car in which Mills was riding was stopped (for speeding, without lights) by a National Park Service police cruiser, at which point the woman ran from the car and leaped into the nearby Washington Tidal Basin. The episode received extensive press coverage, particularly in the *Washington Post*, as the "full story" was gradually revealed.

3. Roger H. Davidson and Walter J. Oleszek, *Congress Against Itself* (Bloomington: Indiana University Press, 1977), 179.

The freshmen joined the veteran reformers to activate the long-moribund Democratic caucus. Exploiting a recently adopted requirement for caucus votes on all House committee chairs, they ousted three and threatened others. The caucus took particular steps to cut the powers of Ways and Means. Its Democratic members were stripped of one special source of power over their colleagues: the role of "committee on committees," deciding who would fill vacancies on all House panels. Ways and Means was also expanded from 25 to 37 members, making close management in the Mills mode harder for a successor to accomplish.

Not all reform ideas were adopted. One major internal review group, the "Bolling Committee," proposed in 1974 to take away substantial chunks of jurisdiction, moving authority over trade and tariffs, for example, to House Foreign Affairs. This proposal was set aside, and Ways and Means' substantive sphere remained largely intact.

Nevertheless, like other committees, Ways and Means was forced to form legislative subcommittees with separate staffs. This meant that, in the future, its chairman would share primary trade responsibility with the chairman of the Trade Subcommittee. The committee was also subject to new House rules making markups of bills generally open to the public. Bills were subject to procedural changes that made "open rules"—allowing floor amendments—the norm, so that on-the-record, roll-call votes on such amendments were now far easier for proponents to obtain.

In both its sources and its goals, the congressional reform movement was unrelated to trade. But the reformers' twin objectives—decentralization of power and openness of procedures—nonetheless struck at the heart of the old American trade policymaking system. Open US trade policy had been founded, in part, on closed politics, on a variety of devices that shielded legislators from one-sided restrictive pressures. It had prospered under congressional barons—Mills above all—who had enough leverage to manipulate issues and to protect their colleagues from those up-or-down votes that forced a choice between conviction and constituency. As noted in chapter 2, the system did not protect Congress all of the time; for example, agriculture was partly outside its domain. In addition, as illustrated by the "Mills bill" episode of 1970 (see chapter 2), an unfavorable sequence of events could overcome barriers to congressional action. Still, the 1934 system had succeeded in keeping the great bulk of product-specific protectionist proposals from coming to roll-call votes on the House floor.

This was the very sort of thing that reformers wanted to change. Although they were not thinking specifically of trade, their overall goal was to force policy choices out in the open by publicizing House actions and members' stands. Believing that "special interests" benefited from the closed system, they reasoned that if Congress were democratized and its

operations exposed to the sunshine, then the larger public interest would prevail.

There was both truth and oversimplification in this critique of the cozy old system. Closed procedures could indeed benefit special interests. But they also could offer insulation to members who wanted to resist such interests but were reluctant to do so under the watchful eyes of their lobbyists. For while anyone could attend open meetings, it was typically the lobbyists who did. They came, they saw, and they reported back on what members were doing for (or against) their particular causes. More open floor procedures also offered new opportunities for special interests to press their proposals.[4]

Three textile episodes, spread over three decades, illustrate how more open House processes offered advantages to those seeking protection. In the spring of 1968, to buttress his candidacy for his first full Senate term, Senator Ernest F. Hollings (D-SC) won adoption of a stringent proposal for statutory textile quotas cosponsored by no fewer than 67 colleagues, attaching it to major Johnson administration tax legislation. However, as noted in chapter 2, this proposal stopped at the House door, for Mills, supported by the administration, refused to accept it in conference. The Senate Finance Committee cooperated; indeed, it generally counted on its House counterpart to kill such initiatives. (And Johnson, according to someone who served in his White House, added a personal flourish, making Hollings "an offer he couldn't refuse." He told the junior senator that if he pushed for another Senate floor vote the administration would defeat him and then spread the word around South Carolina that Hollings had bungled the textile industry's case.)

In 1978, Hollings won Senate adoption of another extreme industry proposal, one that would require an 11th-hour withdrawal of all the textile tariff reductions offered by the United States in the nearly completed Tokyo Round.[5] Senate Trade Subcommittee Chairman Abraham A. Ribicoff (D-CT) declared that this could "ensure the failure of the negotiation." Again the vehicle was a bill that the administration needed, one that renewed the lending authority of the Export-Import Bank. But now a weaker Ways and Means Committee, in a decentralized House, could not

4. John F. Witte draws a similar connection between congressional reform and special-interest tax provisions. See his "The Income Tax Mess: Deviant Process or Institutional Failure?" paper prepared for delivery at the 1985 Annual Meeting of the American Political Science Association, New Orleans (1 September 1985).

5. The industry was hardly in dire straits. The system of negotiated quota agreements had been broadened in the early 1970s from cotton products to those of all major fibers, and this had helped keep the total volume of textile imports in 1976–78 at about 6 percent below its peak in 1971–73.

prevent a floor vote on the proposal. So a much more elaborate procedural shuffle had to be devised to sidetrack the proposal.[6]

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

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

If congressional reform thus weakened the key committees, so also did changes in the content of trade policy. Senate Finance and House Ways and Means were, first and foremost, revenue committees. By historical precedent and recurrent argument, their trade authority was derived from tariffs—the main means of raising revenue during most of the republic's

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

7. The veto took place in December 1985, but in an unusual action, industry supporters won postponement of an override vote until the following summer, in a successful effort to toughen the administration's stance in the talks for extension of the Multi-Fiber Arrangement.

8. Europeans had insisted from the start that they would not negotiate under threat of such duties being imposed under the old, pre-GATT US law, which did not require that petitioning industries prove injury from imports, at the same time as they were working out a new subsidy-countervail-code agreement under which the United States would impose such a test. Although the Trade Act of 1974 had granted a five-year authorization for the Tokyo Round, it only provided a four-year authority for waiving countervailing duties. This expired on 3 January 1979, just as the negotiations were reaching their climax.

existence. Tariffs' declining importance in trade policy undercut this jurisdictional rationale. The rise of nontariff trade issues in the 1970s—such as government procurement, product standards, and subsidies—inevitably brought other committees into the substance of trade policy.

How then could Congress play its role in the trade system? On one major type of business—authorization and implementation of major trade agreements—it showed considerable creativity by developing new rules for expedited action that led to the overwhelming 1979 vote in favor of the MTN. On product-specific issues, however, Congress had become more vulnerable to special-interest pressures.

Renewing the Delegation of Power: The "Fast-Track" Procedures

From the Reciprocal Trade Agreements Act of 1934 through the Trade Expansion Act of 1962, the means by which Congress delegated authority for trade negotiations remained basically the same. Successive statutes authorized executive officials to negotiate (within specified numerical limits) reductions in US tariffs, in exchange for reductions by US trading partners. When a deal was finally struck, it could be implemented by presidential proclamation, without further recourse to Capitol Hill.

For American trade negotiators, this arrangement had enormous advantages. It gave them maximum credibility abroad, since their power to deliver on their commitments was not in doubt. It also increased their leverage with affected industries at home. Those fearing the effects of particular tariff cuts could and did appeal for congressional backing, but since no formal ratification of the final trade agreement was required, the ultimate decision rested at the northwest end of Pennsylvania Avenue. In theory, of course, lobbyists could prevail on Congress to vote an exception for their product—as the textile industry sought to do in 1978. But this was very much an uphill fight, for it went against the whole system of delegating power and protecting legislators.

When a nontariff trade barrier (NTB) was at issue, however, there was no comparable system of advance authorization, and therefore no assurance that what US representatives negotiated abroad would become law at home. This weakness of the 1934 system was revealed rather dramatically in the final stages of the Kennedy Round. In exchange for related foreign concessions, the Johnson administration made two important nontariff commitments in 1967: to participate in a new GATT antidumping code and to eliminate the system of customs appraisals called the American Selling Price (ASP), which inflated the duties of certain categories of US imports. Congress had authorized neither of these agreements; in fact, the Senate passed a sense-of-Congress resolution in 1966 opposing their negotiation. And Congress implemented neither of them.

In fact, it rendered US adherence to the antidumping code meaningless by insisting that whenever it conflicted with domestic law, the latter would prevail.[9]

These precedents were hardly encouraging. With tariffs now at a fraction of Smoot-Hawley levels, future trade rounds would focus increasingly on NTBs. How could US negotiators be credible internationally? And how could Congress be insulated from pressure to reject or rework what the executive branch had wrought?

The Nixon administration confronted this problem in early 1973 when it sought legislation to authorize a trade round giving priority to nontariff distortions. Not surprisingly, it proposed a procedure nearly identical to that for tariffs. Congress would authorize talks to bargain down NTBs; the president would implement the agreements reached by proclaiming the necessary changes in US domestic statutes, which would go into effect unless either house of Congress vetoed the measure within 90 days. The process was similar to that inaugurated in the New Deal for executive branch reorganization: The president could put forward "reorganization plans," which became law unless the House or the Senate objected.

The House accepted this legislative veto proposal; the Senate did not. It was, argued senior Finance Democrat Herman E. Talmadge of Georgia, "not the way we make laws." This procedure might be all right for government organization, but for substantive policy he was convinced that such an open-ended delegation of power to amend statutes was unconstitutional. Talmadge saw no alternative to affirmative congressional action, after the fact, on all specific, nontariff changes in American law resulting from trade negotiations. And his Finance Committee colleagues agreed.

This seemed to render negotiations impossible: How could foreign governments deal seriously with the United States if Congress might reject or amend the outcome or never take definitive action at all? However, negotiations between leaders from the office of the special representative for trade negotiations (STR), Talmadge, and Finance Committee staff yielded an alternative that the senator found acceptable. This was a statutory commitment to an up-or-down vote, within a specified period of time, on any legislation implementing an NTB agreement submitted by the president.

As finally enacted, the Trade Act included an elaborate procedural timetable aimed at ensuring expeditious legislative action. After consulting with the relevant congressional committees, the president would give notice of intent at least 90 days before entering into any NTB agreement.

9. For detail and documentation on this episode, see Michael J. Glennon, Thomas M. Franck, and Robert C. Cassidy, Jr., *United States Foreign Relations Law: Documents and Sources*, vol. 4, International Economic Regulation (London: Oceana Publications, 1984), 1–38.

Once he did so, Congress would act within 60 days of his submitting the implementing bill, under rules barring committee or floor amendments.[10]

This was not a perfect solution for executive negotiators, for they could not assure their foreign counterparts that Congress would deliver. But they could promise a prompt and clear answer.

These new procedures were adopted to facilitate negotiations abroad. Yet, although no one fully realized it at the time, they would also reshape the policy process at home. Specifically, on trade agreements, the procedures allowed the new, "open" Congress to replicate its closed predecessor. With the legislative process limited in scope and time, the stance of the trade committees, Finance and Ways and Means, was once again likely to prove decisive. To be confident of favorable floor actions, the STR's office needed the committees' overwhelming support of the agreements negotiated. This meant paying attention to committee members and aides, whom the legislation made official observers and advisers at the negotiations.

In practice, the Hill's substantive contribution was limited for most of the MTN. But as the end of the talks approached in the spring of 1978, the senior trade expert on the Finance Committee staff, Robert C. Cassidy, Jr., posed a procedural challenge. He began pressing for a major congressional role in the drafting of the nonamendable MTN implementing legislation that the president was to propose. Politically, he argued, enactment of such legislation would require a joint commitment by the STR and the trade committees. Operationally, this could best be accomplished if they developed that legislation together.

Insofar as possible, Cassidy proposed, they would replicate the normal legislative process. In sessions with STR Robert Strauss and other executive branch representatives that came to be labeled "nonmarkups," Finance and Ways and Means would advise separately on the implementing bill's substance. They would then reconcile their differences in a "nonconference." Finally, the drafting of the actual statutory language would be an interbranch process, with congressional legal aides working with counterparts in executive agencies much as they did on normal trade legislation. Only then would the president send the formal, nonamendable implementing bill to Capitol Hill.

There was some initial skepticism at the staff level in STR: Did they really want to give Capitol Hill that strong a role in drafting the president's bill? But ties between trade office and Finance staff were strong—STR

10. For details, see I. M. Destler, *Renewing Fast-Track Legislation* (Washington, DC: Institute for International Economics, Policy Analyses in International Economics 50, September 1997), 1–2, 6–8; Matthew J. Marks and Harald B. Malmgren, "Negotiating Nontariff Distortions to Trade," *Law and Policy in International Business* 7, no. 2 (1975): 338–41; and Glennon, Franck, and Cassidy, *Foreign Relations Law*, especially 41–65. The maximum time period for action on an "implementing revenue bill" was slightly longer: 90 days.

General Counsel Richard R. Rivers had worked for that committee prior to 1977—and so STR acquiesced. But "unofficially," by one authoritative report, "STR said they still hoped to carry on the bill drafting process without too much congressional interference."[11] So Finance senators summoned STR Strauss and won his personal assent to this procedure, which was quickly confirmed in an exchange of letters. Ways and Means, never a formal party to the arrangement, followed it in practice.[12]

In return for this considerable concession on procedure, the executive branch won near-total congressional approval of the substance of the MTN agreements it negotiated, which were implemented through a single legislative package, the Trade Agreements Act of 1979.[13] On the most sensitive issue—how tough an injury test would be applied in US countervailing duty cases—the code commitment to a "material injury" test survived a strong industry challenge. So strong was Strauss's credibility by this time that he reportedly clinched his argument by declaring that "the French want it" this way. "I don't know why and [Deputy STR Alan Wm.] Wolff doesn't know why and Rivers doesn't know why, but I need you to go along!"[14]

Congressional action was expeditious as well. On 4 January 1979, President Jimmy Carter gave the required 90-day notice of intent to conclude the MTN. By 6 March, the Senate Finance Committee had begun its series of nine "nonmarkups," and by 16 May, the House Ways and Means Subcommittee on Trade concluded its 15th such session. Representatives of the two then joined in a "nonconference" on 21–23 May. All these meetings were closed to the public, although hearings were held in both com-

---

11. Glennon, Franck, and Cassidy, *Foreign Relations Law*, 161.

12. See Robert C. Cassidy, Jr., "Negotiating About Negotiations," in Thomas M. Franck, ed., *The Tethered Presidency* (New York: New York University Press, 1981), 264–82; I. M. Destler and Thomas R. Graham, "United States Congress and the Tokyo Round: Lessons of a Success Story," *World Economy* (June 1980): 53–70; Destler, "Trade Consensus; SALT Stalemate: Congress and Foreign Policy in the Seventies," in Thomas E. Mann and Norman J. Ornstein, eds., *The New Congress* (Washington, DC: American Enterprise Institute, 1981), 333–40; and documents in Glennon, Franck, and Cassidy, *Foreign Relations Law*, 153–99.

13. In only one case did its congressional consultations force the administration to alter a previously negotiated accord: the House Small Business Committee protested the proposal to open up to international bidding US government contracts reserved for minority-owned enterprises. Strauss responded by substituting other opportunities for foreign firms to sell to US agencies.

14. One interesting example of a substantial change in US policies resulting from the MTN was the wine gallon concession, in which American negotiators agreed to thoroughgoing revision of a method of computing excise taxes on distilled spirits that dated from the mid-19th century and that had the effect of penalizing imports. For a full description, see Gilbert R. Winham, *International Trade and the Tokyo Round Negotiation* (Princeton, NJ: Princeton University Press, 1986), chapter 7.

mittees and press releases reported major committee decisions as they were made.

Most interesting perhaps was the fact that this quasi-legislative process cut the full Senate and House out of the main action. When a 373-page "committee print" containing proposed statutory language was finally circulated on 1 June, all the major decisions had been made. With a few changes, these same words were what the president proposed to Congress in his nonamendable bill 18 days later. Both chambers passed the bill in July, by votes of 395 to 7 and 90 to 4. One who voted no, reformist Representative A. Toby Moffett (D-CT), gave testimony to how effectively the broad membership had been excluded when he protested that "the speed with which we were expected to get on with this bill did not provide ample opportunity for full analysis."[15]

The Carter administration, with STR Robert Strauss in the lead, had constructed a carefully balanced MTN package that responded to all major US trade interests. Some observers actually felt that Strauss had been too responsive, and cited the overwhelming approval margins as evidence. Ranking Ways and Means Republican Barber B. Conable (R-NY) recalled warning him, "You're buying a landslide," giving away too much. In terms of congressional process, however, the key was that the "fast-track" provisions protected the bulk of legislators from product-specific pressure in 1979 just as effectively as the bargaining tariff, and the closed rule barring House floor amendments, had done in the 45 years previous. The administration, in alliance with the primary trade committees, shouldered the main political burden for the members at large. And the main congressional trade players clearly were pleased with the process, for they included in the implementing act a provision that extended this procedure for negotiating and implementing NTB agreements through 3 January 1988.

Still, there were important differences between the new NTB process and the old one on tariffs, and these differences had policy consequences. One was the fact that Congress now had to pass legislation at both ends of a negotiation. For the Kennedy Round tariff agreements, the Trade Expansion Act of 1962 had sufficed. The Tokyo Round required the Trade Act of 1974 to get it going and the Trade Agreements Act of 1979 to conclude it successfully.

This meant that during the talks, US negotiators had to worry about the danger that unhappy industries might join together and mobilize a congressional majority to block the implementing bill. In fact, negotiators felt they had to prevent even the formation of such a coalition, since once one came together there was no telling how widely it might spread. Thus, in addition to mobilizing maximum support from export interests that stood

15. *Congressional Record*, Daily Edition, 13 July 1979, E3582.

to gain from a successful MTN, the STR had to show particular sensitivity to the demands of the more powerful among the potential losers, the import-affected industries.

So pressure for special deals increased. Textiles, which had already gotten its Multi-Fiber Arrangement during the run-up to the 1974 act, won a tightening of its implementation vis-à-vis the major East Asian exporters and mainland China. The steel industry won adoption of the trigger price mechanism (TPM), through which the US government pledged to initiate antidumping action if foreign products were sold at prices below certain specified minimum levels.

Further policy concessions were included in the 1979 law itself. Though generally consistent with the MTN codes, its drafting was much more than a pro forma implementation exercise. In fact, it grew to exceed the 1974 law in its length, and the key committees used their leeway to press purposes well beyond those the MTN required. As will be recounted in chapter 5, Senate Finance held up final action until President Carter submitted a proposal to reorganize the trade bureaucracy. Even more important for trade policy, steel industry ally John Heinz (R-PA) joined with trade law reformer John C. Danforth (R-MO) to bring about a comprehensive rewriting of the countervailing duty and the antidumping laws, with effects to be set forth in chapter 6.

Finally, the content of the codes meant that Finance and Ways and Means had to acknowledge more explicitly than ever that trade regulation reached into the jurisdictions of numerous competing committees. The 1974 act foreshadowed this recognition, for the fast-track procedures provided only that an implementing bill be referred to "the appropriate committee" in each chamber. The decision to use a single implementation bill for the entire MTN meant that Ways and Means kept its primacy on MTN legislation, and in practice it even proved possible to get the other committees to waive their claim to joint referral. But in return, Trade Subcommittee Chairman Charles A. Vanik (D-OH) invited members of the relevant committees to participate in nonmarkups affecting their jurisdictions. Senate Finance went even farther, passing entire titles on to sister committees and adopting their recommendations as its own.

Most important was the fact that the fast-track procedures solved only half of the "Congress problem" insofar as trade was concerned. They established a new mechanism for authorizing and implementing major international, trade-expanding agreements. Thus, they extended the possibility of US leadership in negotiating such agreements into the posttariff trade world. In 1984, Congress would authorize negotiation of bilateral agreements under this procedure, enabling the Reagan administration to negotiate free trade arrangements with Israel and Canada and win expeditious, overwhelming fast-track approval. And in 1988 and 1991, as discussed later, Congress again extended the fast-track time period, both for the Uruguay Round multilateral talks and for negotiations with Mexico.

But this procedure did nothing to divert the many other product-specific restrictive proposals that individual members had always put forward and always would. As Congressman Conable phrased it a few months before his retirement at the end of 1984, "Congress has become a participatory democracy. So you can't stop bad proposals as easily as you used to."[16]

Industry-Specific Proposals: The Automobile Case

The textile episodes offer one illustration of Conable's point. Few congressional trade leaders believed that the textile industry needed further protection, but they lacked both the authority and the mechanisms to prevent it.

This did not mean that Congress had become eager to pass statutory restrictions. In most instances, the aim of particular quota bills was still not to get them enacted into law but to demonstrate the sponsor's allegiance to a particular industry, or to pressure the executive branch, the appropriate foreign government, or both. Congress was still acting as a lobby to influence decisions made outside its halls.

In the early 1980s, the most dramatic and visible example was the struggle over trade in automobiles. The second oil shock of 1979 brought gasoline lines and a doubling of the price of motor fuel. As a result, demand shifted sharply toward small, high-mileage models. American carmakers were unprepared for this shift: Their sales fell off sharply, and imports, three-fourths of which came from Japan, expanded to meet the new demand.[17] Ford and General Motors suffered record losses, and Chrysler needed a governmental rescue to avert bankruptcy. US auto unemployment exceeded 300,000, out of a total of almost 1 million directly employed in the industry.[18]

Long the symbol of US economic supremacy, the auto industry was suddenly in very dire straits. The congressional response went through three distinct stages. The first, extending through most of 1980, was one of spotlighting the problem and hoping that established remedies would produce a solution. Vanik's Trade Subcommittee held hearings, sending a clear signal that some form of protective action might have to be taken. At

---

16. Personal interview, 31 July 1984.

17. In absolute numbers, the growth of imports was moderate, from 2 million in 1978 to 2.4 million in 1980. But their market share shot up from 17.7 percent to 26.7 percent, as sales of American-made vehicles plummeted during the same two years from 9.3 million to 6.6 million, the lowest figure since 1961. See Gilbert R. Winham and Ikuo Kabashima, "The Politics of U.S.-Japanese Auto Trade," in I. M. Destler and Hideo Sato, eds., *Coping with U.S.-Japanese Economic Conflicts* (Lexington, MA: Lexington Books, 1982), 76.

18. "The U.S. Automobile Industry, 1980," Report to the President from the Secretary of Transportation, January 1981, 83–85.

the same time, legislators supported the United Auto Workers (UAW) in its campaign to get Japanese automakers to build plants in the United States. The June submission of an escape clause petition by the UAW and Ford offered the hope that "the rules" could provide the needed relief. While the US International Trade Commission (USITC) deliberated, President Carter encouraged provision of generous adjustment assistance for laid-off workers, and his electoral rival, Ronald Reagan, promised in September to "try to convince the Japanese that . . . the deluge of their cars into the United States must be slowed."[19]

But the USITC decided in November, by a three-to-two vote, that it could not recommend relief because the major causes of the industry's woes were other than imports. Congress then moved quickly into the second stage, that of pressing for the issue to be treated as a "special case." Vanik rushed to schedule hearings and won House passage, before December adjournment, of a special resolution authorizing the president to negotiate an orderly marketing agreement with Japan.

In the new 97th Congress, the initiative shifted to the Senate. Vanik, a pragmatist frequently sympathetic to trade-impacted industries, had retired and was succeeded as subcommittee chair by liberal trade champion Sam M. Gibbons (D-FL). On the other side of the Hill, the surprise Republican capture of the Senate made John Danforth chairman of the Finance Subcommittee on International Trade. Automobiles were an important industry in his home state of Missouri, and he lost no time: He held hearings before Reagan's inauguration in January and introduced a bill in February that would impose statutory quotas on Japanese automobile imports for three years.

The aim was not to pass the bill but to pressure the Japanese, and to ensure that Reagan's general campaign promise won out over the liberal trade views of his senior economic advisers. Tokyo was, in fact, willing, but the Japanese Ministry of International Trade and Industry needed strong American pressure as leverage against its auto industry. The Reagan administration, however, wanted to minimize its own formal responsibility for any restrictive outcome. The result was a "look no hands" approach that confused Tokyo and increased the need for congressional threats. Finance Chairman Robert J. Dole (R-KS) claimed that he could count two-thirds of the Senate in support of the quota bill, enough to override a presidential veto, and Danforth scheduled a markup for 12 May.

All of this positioning had the intended result. On 1 May, with US Trade Representative William E. Brock in Tokyo, the Japanese government announced a "unilateral" commitment to limit exports for two to three years. This met the Finance Committee's demand for a "multi-year effort,"[20] and

19. Winham and Kabashima, "The Politics of U.S.-Japanese Auto Trade," 115.

20. Finance Committee Press Release 81–89, 29 April 1981.

in fact the restraints were extended every year through March 1993. It also enabled USTR Brock to satisfy the Japanese political need, by assuring them that, in the light of the plan, there was now no prospect of the quota legislation passing Congress. Danforth could declare the plan "an important step in the right direction," and set aside his bill.

The second phase thus produced modest protection for autos, and this solution lasted, politically, for about a year. But the US recession deepened, helping move the auto issue into the third phase, in which politics now spilled over outside the trade committees' control.

The impetus came from the United Auto Workers, a union long committed to open trade. Beset with growing unemployment and frustrated by the slow response by Toyota and Nissan to his campaign for Japanese investment in the United States, UAW President Douglas A. Fraser began in 1980 to suggest "local content legislation" as a long-term solution. But the real push came two years later. The continuing recession had caused US auto sales to plunge further, and despite the slightly lower sales forced by export restraints, the Japanese share of the US market edged further upward. The UAW responded with a bill that mandated a rigid domestic-content formula: The larger the number of cars a company sold here, the greater the portion of their total value would have to come from the United States, up to a maximum of 90 percent. Had it become law, this bill would have slashed future imports of autos and auto parts to a fraction of current levels.

Brock called it "the worst piece of economic legislation since the 1930s," and Danforth exaggerated very little in declaring that "the overwhelming majority" of members saw it as "perfectly ridiculous."[21] By making the bill a litmus test of the allegiance of labor Democrats, however, the UAW was able to win House adoption of a modified domestic-content bill by a 215 to 188 vote in December 1982. In November 1983, a House with 26 more Democrats passed a somewhat stronger bill by a slightly smaller margin, 219 to 199 votes. On both occasions, northeastern and midwestern Democrats voted almost unanimously in favor. The bill never reached the Senate floor, however, and the issue gradually faded from the trade scene as the US auto industry regained sales and strength, albeit at lower levels of employment.

Committee Competition and Policy Entrepreneurship

As important as the progress of domestic-content legislation was the process by which it was achieved. By drafting the legislation as a measure to regulate domestic production, its proponents managed to get it referred to the sympathetic Committee on Energy and Commerce. Ways and Means, the panel with established trade jurisdiction, was limited to sponsoring parallel hearings and urging rejection of the bill—suggesting a further erosion of the procedural checks on industry-specific trade legislation.

---

21. *Congressional Quarterly Almanac*, 1982, 56.

Energy and Commerce was chaired by an aggressive old-timer, John D. Dingell (D-MI), who had come to the House in 1955. But by 1982, its next eight ranking members, in terms of seniority, were members of the reformist class of 1975. They were, for the most part, policy activists in the Democratic party mainstream. With energy fading as a national concern, trade policy was a natural focus for their talents.

Ways and Means had also expanded in 1975, as noted at the outset of this chapter. But competition for seats on that committee was much keener, so in 1982 the most senior of its 1975 arrivals remained number seven on the committee (Gibbons, who chaired the Trade Subcommittee, had come to the House in 1963). And the energies of several of the more aggressive mid-level members—James R. Jones (D-OK, sixth in seniority), Richard A. Gephardt (D-MO, 12th) and Thomas J. Downey (D-NY, 13th)—were divided between Ways and Means and the Budget Committee.

The net result in the early 1980s was a certain imbalance of initiative and energy. Dingell and his committee were aggressive and policy active. Ways and Means continued in the more passive gatekeeper role, but without the power and procedural tools it had possessed a decade before.

Dingell's committee was far from seizing control of trade policy. In fact, when Dan Rostenkowski (D-IL) became Ways and Means chairman in 1981, Dingell faced an adversary whose political skills and concern for "turf" were at least equal to his own. In 1985, Rostenkowski himself would seize the initiative by cosponsoring a trade-restrictive bill targeted at Japan and other nations running large surpluses with the United States. And from then into the 1990s he was clearly the most important House figure on trade policy. But Energy and Commerce was an active contestant, and it pushed Ways and Means toward activism as well. It gave the Gibbons Trade Subcommittee strong reason to take initiatives about which some senior members were ambivalent, like toughening the trade-remedy laws to demonstrate seriousness about the trade problems of important constituencies.[22]

Activism in competing committees was also consistent with another congressional trend. Trade issues were becoming, to a greater extent, entrepreneurial issues, as members increasingly saw the subject as worthy of investment of their discretionary time.

Since the 1950s, there had been a sharp rise in policy entrepreneurship on Capitol Hill, particularly among liberals. Senators and representatives would adopt particular issues as their own, seeking both to improve government policy and to enhance their personal reputations. But through the mid-1970s, it is striking how seldom they made trade policy a vehicle for their ambitions. It was seen as a dull, "no-win" issue. Free trade was unappealing to the mass public; protectionism was anathema to the policy community. So neither broad stand was attractive for presentation to

22. As an aide to a relatively protectionist senator put it in an interview, "We always figured that the way to get Gibbons to do something was to get Dingell to do something."

a general national or party audience. Legislators (and presidential candidates) generally limited themselves to trade "noise" targeted at specific constituencies. Broader trade advocacy was left to idiosyncratic legislators like Senator Vance Hartke (D-IN), cosponsor of the Burke-Hartke quota bill of 1971. Its fate did not inspire emulation. Nor did the fate of Hartke himself, who was beaten decisively in his 1976 reelection contest.

Even on a central question like trade with Japan, activism was late in coming. It was not until 1977, for example, that a congressman, Democrat Jim Jones of Oklahoma, moved to concentrate his energies on this broad subject, forming a Ways and Means Task Force on US-Japan Trade. And one apparent reason why Senator Lloyd Bentsen (D-TX) suggested a surcharge against Japanese imports in 1979 was that despite the enormous rise in that country's sales to the US market, the senator's staff judged that none of Bentsen's 99 colleagues had yet made Japan "his" issue.

This could not, of course, continue. As detailed in chapter 3, trade was simply becoming too important to the American economy. So congressional debates reflected increasing trade advocacy: between 1975 and 1980, by one measure, the frequency of House and Senate floor references to trade went up by 70 percent.[23] And a comprehensive count, based on computerized bill summaries supplied by the Congressional Research Service (CRS), indicates a gradual increase in the number of trade-restrictive bills introduced in the House of Representatives: from 127 in the 96th Congress (1979–80) to 137 in the 97th and 144 in the 98th.[24] These included proposals to impose steel quotas or link wine import restrictions

23. This figure was arrived at by comparing the number of columns under "Foreign Trade" in the *Congressional Record Index*, adjusted for the index's overall length.

24. This computation draws on the computerized CRS bill digest file. If one counts only those bills whose primary purpose was to restrict trade, and whose primary apparent motivation was to benefit US producers (for example, excluding bills to bar purchases of Iranian crude oil, Ugandan coffee, etc.), this modest trend disappears: the numbers drop to 62, 56, and 57, respectively. There was a clear upsurge in 1985, however. In the first nine months of that year, 49 such bills were introduced, compared with just 30 in the same period two years earlier.

After this analysis was completed, Raymond J. Ahearn of CRS published a count that was more comprehensive in its coverage, and more detailed for 1985. Using a broader definition of trade, this computer search found 1,089 trade bills introduced in the 96th Congress, 1,150 in the 97th, 1,401 in the 98th, and 879 in 1985, the first year of the 99th. Bill-by-bill inspection of the 1985 group to eliminate nongermane legislation reduced the total to 634, of which 99 were significantly and directly protectionist in purpose and effect. There were also 51 routine bills adjusting tariffs upward, 77 "potentially protectionist" bills that would make it easier to obtain quasi-judicial trade relief, and 109 bills to "restrict trade to achieve nonprotectionist objectives." See Raymond J. Ahearn, "Protectionist Legislation in 1985" (Washington, DC: Congressional Research Service, 31 March 1986, processed).

At this author's request, Ahearn updated his general bill count in 1991: totals were 1,248 for the 99th Congress (1985–86), 1,455 for the 100th (1987–88), and 1,429 for the 101st (1989–90). Over this period—and for the first seven months of the 102nd Congress—trade bills were between 11.5 percent and 12.9 percent of total bills submitted (Ahearn to Destler, memorandum, 12 August 1991).

to wine export opportunities, and even, in one case, a proposal to establish a dollar ceiling for the bilateral US-Japan trade imbalance.

Many proposals have been in the "export politics" tradition of seeking to solve problems through trade expansion, opening foreign markets. But even here, several of the most prominent, in the words of two expert analysts, "break sharply with traditional US trade policy."[25] In their original form, the "reciprocity" bills sponsored by Danforth and Heinz sought to require restrictions on access to US markets in sectors where major trading partners denied US products comparable market opportunities. More generally, as Raymond J. Ahearn and Alfred Reifman noted at middecade, "the most common congressional approaches were based on unilateral standards of reciprocity, discrimination, and the threat of retaliation. Successive administrations have opposed similar approaches on the grounds that they violate US international obligations, undermine US global leadership, and are economically counterproductive."[26]

Reinforcing such congressional approaches was a spreading belief that the United States needed to recognize that the liberal trade ideal was impractical and outmoded and to adopt a more sophisticated, interventionist approach to international trade, comparable to that of its trading partners. Intellectual staff aides put forward appealing alternate conceptions: we should no longer pretend that we or anybody else could make market openness the touchstone of commercial relations; rather we should determine the shape of the future economy we want and use trade policy as one tool to bring it about.[27]

More than once in the 1980s and early 1990s, an explosion of specific initiatives signaled to many who followed trade that Congress was at last going to reclaim direct, detailed control over "commerce with foreign nations." In late 1982, the plight of import-impacted industries was exacerbated by an overvalued dollar, with record unemployment fueling worker discontent. Frustration with US trading partners was compounded by

---

25. Raymond J. Ahearn and Alfred Reifman, "U.S. Trade Policy: Congress Sends a Message," in Robert E. Baldwin and J. David Richardson, eds., *NBER Conference Report: Current U.S. Trade Policy: Analysis, Agenda, and Administration* (Cambridge, MA: National Bureau of Economic Research, 1986), 104.

26. Ibid. See also William R. Cline, *"Reciprocity": A New Approach to World Trade Policy?* Policy Analyses in International Economics 2 (Washington, DC: Institute for International Economics, September 1982). There was some resistance among the leaders of multinational firms. The Business Roundtable warned, for example, that "an improper use of reciprocity could worsen, instead of improve, our economic vitality. If misapplied, the concept has the potential for further undermining an already vulnerable multilateral trading system by triggering retaliation." "Statement of the Business Roundtable Task Force for International Trade and Investment on Reciprocity in Trade" (19 March 1982, processed), 2.

27. See, for example, US Congress, House Energy and Commerce Committee, *The United States in a Changing World Economy: The Case for an Integrated Domestic and International Commercial Policy*, Staff Report, September 1983.

seemingly endless market-access negotiations with the Japanese, and by bitterness about European agricultural protectionism, which boiled over at a fractious GATT Ministerial Conference in November. Looking at these trends, and at the number of trade-related bills on the near-term legislative schedule, Senate Finance Chairman Robert Dole predicted that 1983 would be "the year of trade" on Capitol Hill. The *National Journal* rang in that year with a headline, "The Protectionist Congress—Is This the Year That the Trade Barriers Go Up?" "The 98th Congress," it reported, "may be dominated by legislators angered by what they view as unfair European and Japanese trade practices and eager to retaliate in kind."[28]

Two years later, the driving force was the hitherto unimaginable US trade deficit, which shot above $100 billion in 1984 and continued in 12 digits through 1990. Feeling enormous pressure from affected producers, and frustrated by the administration's neglect of both specific trade issues and the overvalued dollar, senators and representatives began in the spring of 1985 by unloading on Japan, passing strongly worded (albeit nonbinding) resolutions by votes of 92 to 0 and 397 to 19. Through this and subsequent moves toward omnibus legislation, they seized the trade policy initiative—and retained it through the end of the Reagan administration.

On each occasion, however, Congress made only marginal policy changes. While it forced greater aggressiveness in US trade policy, it refrained from taking clear control, and from imposing protectionism. It stepped back from the abyss. The ferment of 1982–83 culminated in the modest, marginally liberalizing Trade and Tariff Act of 1984. The raging trade fires of 1985–86 were dampened, by and large, in the comprehensive—but only marginally restrictive—Omnibus Trade and Competitiveness Act of 1988. And a vigorous debate in 1991, triggered by the launch of NAFTA talks with Mexico and Canada, culminated in solid—though not overwhelming—congressional endorsement of the Bush administration's multilateral and bilateral trade initiatives.

The first anticlimax came in 1983. Contrary to Dole's forecast, Congress did little on trade that year, as the long-delayed US economic recovery began, taking some of the bite out of the drive for statutory restrictions. Once again, legislators were willing to channel pressure elsewhere. Even when, in 1984, 201 representatives signed onto a steel quota bill, the predominant view was that it would serve the traditional function of pressuring the executive branch rather than find its way into the statute books. And the pressure proved successful, as President Reagan ordered USTR Brock to negotiate export restraint agreements with major foreign suppliers. The summer and fall of 1984, however, brought a surge of congressional activity, capped by enactment of the first general trade bill in five years.

28. *National Journal*, 1 January 1983, 18.

The Trade and Tariff Act of 1984: Pressure Contained

The closing months of the 98th Congress saw the policy context worsen.[29] By summer, most experts had come around to C. Fred Bergsten's projection that the US trade deficit would top $100 billion in 1984. This put advocates of open trade very much on the defensive and made the prospects bleak for the several relatively specialized trade bills on the legislative agenda.

These included one "must" item for the liberal trade community, trade preferences for developing countries (GSP, or Generalized System of Preferences). In the Trade Act of 1974, the United States had, pursuant to an international agreement, granted these countries duty-free access to the US market for a range of their products for a 10-year period ending on 3 January 1985. GSP had precious little support among American economic interests, even though only 3 percent of total US imports were affected—because of the exclusion of sensitive articles (for example, textiles and shoes) and ceilings on benefits available to any one country for a specific product. Organized labor opposed the program, particularly for the "big three" newly industrialized countries (NICs)—Hong Kong, Korea, and Taiwan—whose products were generally competitive in the United States without special treatment. But Third World nations attached great symbolic importance to GSP. Its abandonment would make it very hard for the United States to negotiate with these countries on matters that were important to interests here—intellectual property protection, for example, and access to their markets.

The prospects for passing GSP extension on its own were dim: The administration had been unable in 1983 to find a single House member to sponsor it. There was on the table, however, a trade proposal that was enormously popular in both Congress (it had 163 House sponsors) and the Reagan White House: a bill authorizing negotiation of a bilateral free trade agreement with Israel. On 31 July 1984, the Senate Finance Committee voted to combine the two, add a number of other proposals (including Danforth's modified reciprocity bill), and attach the whole package to a minor tariff-adjustment bill (HR 3398) that had already been passed by the other chamber.[30]

USTR Brock welcomed this development. With the House stymied on GSP, this offered the best opportunity for forward movement. Trade Sub-

29. The following pages draw substantially on confidential interviews with persons involved in the enactment of the Trade and Tariff Act of 1984. See appendix A of the first edition of this book (1986) for a more detailed account of its enactment.

30. This legerdemain was necessary because of the constitutional requirement that "all bills for raising revenue," and hence bills affecting tariffs, "originate in the House of Representatives" (Article I, Section 6).

committee Chairman Danforth favored it for this reason, and another: it was the best vehicle for enactment of his reciprocity proposal. But Majority Leader Howard H. Baker, Jr. (R-TN) was reluctant to allot Senate floor time to the bill. Danforth had not been able to negotiate a "unanimous consent" agreement limiting time for debate or amendments that might be proposed. The leader feared, therefore, that the bill would be tied up procedurally on the floor and loaded with protectionist baubles for a wide range of industries.

But because of a House-Senate-administration impasse on budget legislation, there was floor time available in mid-September. So Baker gave Danforth his chance. The tacit understanding was that if he lost control, the bill would be pulled off the floor, never to return.

In one sense, Baker's fears were borne out. Danforth never lost control, but to keep it—as debate extended from the anticipated two days to three, then four—he had to accept six floor amendments on Monday, 14 on Tuesday, 12 on Wednesday, and 11 on Thursday. The pattern, faintly reminiscent of Smoot-Hawley, was to bargain down but then accept industry-specific protection proposals, and among the successful floor amendments were those favoring producers of copper, bromine, wine, footwear, ferroalloys, and dairy products. When, on the second day of debate, the president made his decision to negotiate voluntary restraint agreements with steel-exporting countries, an amendment was added giving the administration legal authority to enforce such restraints.

But for three factors, the damage would have been even greater. First, on the second day, the Senate did signal that there were limits by rejecting a particularly egregious proposal to reverse a USITC decision and raise the tariff on water-packed tuna. Second, during the final two days, Danforth was supported by the personal presence of Brock, who employed his floor privileges as a former senator to involve himself aggressively in the brokering process. Third, organized labor did essentially nothing, reacting very slowly when the legislation was suddenly taken up. Labor senators proposed neither domestic-content requirements nor anything else for autos. Nor did any senator advance a labor amendment curbing GSP, which might either have passed or forced the extended debate that would have been fatal to the legislation.

So the bill survived, passing the Senate late Thursday by a vote of 96 to 0. The margin reflected the number of interests that had been temporarily "bought off" in the bill itself or through agreements negotiated on the side. An alarmed *Washington Post* lambasted the result in an editorial entitled "The Anti-Trade Bill": "The losers in every major trade case of the past year have managed to insert language to try to win in Congress what they lost in litigation."[31]

31. *Washington Post*, 28 September 1984.

Senate passage broke the Ways and Means logjam, and a week later that committee reported out four separate trade bills: GSP renewal, US-Israel free trade, "steel import stabilization," and "wine equity." Chairman Rostenkowski secured floor time for each under "modified closed rules" that limited amendments. Six days later, on Wednesday, 3 October, the House passed each of the four separately, defeating in the process, by a surprisingly wide 233 to 174 margin, a labor-backed Gephardt amendment that would have eliminated preferences for the big three NICs. It then attached the four bills as amendments to the Senate-passed HR 3398, along with several previously enacted bills, the most important being the "Trade Remedies Reform Act" developed by Trade Subcommittee Chairman Sam Gibbons. Interestingly, the domestic-content bill was not among them.

By this point, time for compromising House-Senate differences had grown very short: the target for *sine die* adjournment of the 98th Congress was the coming weekend. One question was whether the product-specific amendments in the Senate bill (and to some degree the House bill as well) could be deleted, rendering the bill acceptable to President Reagan. Another was whether the House conferees could be persuaded to yield on most other issues where the two bills differed—preferences, procedures for approving the US-Israel agreement, trade remedies. If they did not, Brock and the administration could not accept the bill. But what could House representatives get in return?

The answer, it soon became clear, was in the provisions with which Rostenkowski was personally most identified, those on steel. He had pushed through a bill that, in the name of implementing Reagan's just announced "national policy for the steel industry," incorporated two proposals advocated by presidential challenger Walter F. Mondale and other Democratic critics of the president's action: a market-share target of 17 percent for steel imports, and an "adjustment" condition for steel firms, which were, as a price for continued protection, required to reinvest all net cash flow in steel operations and allocate 1 percent of earnings to worker retraining. Rostenkowski insisted on retaining these, and was granted most of his demands. One by one the other issues were worked out, in a frenetic 26-hour conference punctuated by both policy and personal tensions. By the conclusion of the Senate-House deliberations Friday afternoon, 5 October, Congress had abandoned its weekend adjournment target, and the compromise bill, labeled the Trade and Tariff Act of 1984, was adopted by both houses the following Tuesday. Somehow, observed the *Washington Post* in a follow-up editorial, "most of the bad stuff got thrown out [in conference] and all of the good stuff stayed."[32]

32. "On Trade, a Happy Ending," *Washington Post*, 12 October 1984. Singled out for special praise was "William E. Brock, who worked mightily and, as it turned out, highly effectively to change the thrust of this bill."

It had proved possible for Congress to pass a general trade bill that extended an unpopular program (GSP), while omitting or gutting most protectionist provisions. Language designed to benefit copper, ferroalloys, shoes, and dairy products was deleted or neutralized. On preferences, in fact, the bill represented a move in the liberal-internationalist direction, in comparison with the 1974 law that it replaced, by encouraging the administration to negotiate with the NICs for market access and intellectual property rights, and offered the NICs inducements as well as penalties.[33]

But the bill had restrictive provisions as well.[34] Most serious was one that originated in the administration—the new steel policy. The White House had suggested, in a way that the industry read as a promise, that it would seek to limit total steel imports to a certain level. This cleared the way for the bill to incorporate a global import ceiling, something even the textile industry had been unable to achieve. It was written as a bipartisan compromise—between the 17 percent ceiling favored by Mondale and the 20.2 percent Reagan target—reflecting only the "sense of Congress." But the bill included a future threat, of "such legislative actions concerning steel and iron ore products as may be necessary," if the Reagan program did not "produce satisfactory results within a reasonable period of time."[35] And the entire steel title was enacted hastily, without hearings or serious review of the language in either body.

Still, in 1984, Congress was able to enact a modest, balanced trade law. Legislative success that year was the product of a confluence of particular personalities: Brock, Danforth, and Rostenkowski. Each, in a different way, wanted the omnibus bill to pass, and each was skilled in moving it forward. Each was willing to limit rewards for special interests, and each proved indispensable to its success.

But the way the bill moved through the Congress underscored the weakness of the old institutional checks, particularly in the House. With Ways and Means deadlocked, the Senate had to move on the legislation first, something Wilbur Mills would never have allowed. This exposed the

---

33. The Reagan administration used this leverage to win policy concessions—getting Singapore, for example, to revamp its intellectual property laws. Then, in the spring of 1988, it revoked trade preferences for Singapore anyway, together with those for Hong Kong, Korea, and Taiwan.

34. For example, it included technical changes in the trade-remedy laws, using such obscure labels as "cumulation," which tilted them in favor of domestic claimants. It also included a watered-down but still objectionable precedent on wine, allowing producers of grapes to challenge wine imports and thus provoking a confrontation with the European Community. The Community won a GATT panel ruling against this law in 1986, and the United States complied, but only because "the law expired." See Robert E. Hudec, "Thinking about the New Section 301: Beyond Good and Evil," in Jagdish Bhagwati and Hugh T. Patrick, eds., *Aggressive Unilateralism: America's 301 Trade Policy and the World Trading System* (Ann Arbor: University of Michigan Press, 1990), 157.

35. Trade and Tariff Act of 1984, Section 803.

bill to the vagaries of that freewheeling chamber and guaranteed that there would be an enormous amount of cleanup work to do in the House-Senate conference—and little time to do it.

The legislation cleared most current issues on the trade-legislative agenda. So as the 98th Congress completed its work, there was a widespread expectation that its successor would focus on other issues. But 1985 through 1988 would be the *years* of trade, the period of greatest congressional trade intensity since the 1930s. From the late-January 1985 release of figures showing a $123 billion trade deficit for calendar year 1984,[36] to the presidential signing of comprehensive trade legislation almost four years later, trade leaped to a place near the top of congressional preoccupations. Both House and Senate seized the trade policy initiative, and the second Reagan administration struggled to stay in the game.

1985–88: The Years of Trade

The initial target of congressional activism in 1985 was Japan, the nation with the largest trade surplus with the United States. Danforth and his Senate Finance colleagues felt frustrated on a number of fronts. The bilateral imbalance, conservatively measured, had shot up from $19.3 billion to $33.6 billion, making it far higher than any the United States had ever run with any country. At the same time, American negotiators seeking to open Japanese markets felt continuing frustration, even in areas like telecommunications, in which there was a long negotiating history and a strong commitment to progress from Prime Minister Yasuhiro Nakasone. And the Reagan administration was declaring itself ready to end voluntary auto restraints. Before the end of March, the Senate had passed, without opposition, a strongly worded Danforth resolution denouncing "unfair Japanese trade practices" and calling for retaliation unless Japan opened its markets sufficiently to American products to offset its anticipated increases in auto sales. The House followed with a parallel resolution, which, although it was directed more at the overall US trade imbalance and its macroeconomic causes, also singled out Japan for priority attention.

The concerns of Danforth and his Republican colleagues involved politics as well as policy. If Republicans did not find a way to get out front on trade, the issue might threaten them in the mid-term elections in November 1986. This fear gained substance in August 1985, when a Democrat

36. The Commerce Department reported trade figures first on a c.i.f. basis, with imports including the cost of freight, as required by the Trade Agreements Act of 1979. The "customs value" deficit figure, preferred by economists, was $107 billion, later adjusted to $112.5 billion. This study generally uses customs value trade statistics, the norm before 1980 (and after 1988), to facilitate historical comparison.

who blamed imports for lost jobs won a close race for an open congressional seat, taking particular advantage of his opponent's unthinking rejoinder questioning "what trade had to do with East Texas."

By that summer, three prominent, centrist Democrats on the trade committees—Bentsen of Senate Finance, and Rostenkowski and Gephardt of House Ways and Means—had cosponsored a bill imposing a surcharge on countries running heavy trade surpluses with the United States. Brazil, Japan, Korea, and Taiwan were the countries potentially affected. In September, House Speaker Thomas P. "Tip" O'Neill (D-MA) could declare with only modest exaggeration: "Based on what I hear from members in the cloak room, trade is the number one issue."[37]

More traditional protectionism flourished as well. A highly restrictive textile quota bill, sponsored by Representative Ed Jenkins, was originally introduced to stiffen the administration's position in the negotiations on renewal of the Multi-Fiber Arrangement (MFA), which regulated imports from developing nations and from Japan. But the bill took off, with a majority of senators and nearly 300 representatives signing on as cosponsors. Proponents got the bill through Ways and Means essentially as proposed, despite the opposition of the full committee and trade subcommittee chairs, with the latter, Sam Gibbons, reduced to declaring victory when the House passed it by "only" 262 to 159, less than the number required to override a veto.

Unable to get Finance to take up the measure, Senate sponsors Hollings and Strom Thurmond (R-SC) went around the committee, attaching the legislation to bill after bill on the floor until Majority Leader Robert Dole was forced to cooperate. And in the version passed by the Senate, quotas for shoes were added, as well as a provision calling for voluntary trade restraint on copper. President Reagan vetoed the measure in December, but in the override vote the textile industry managed to increase its House margin to 276 to 149, just eight votes short of the two-thirds required.

Legislative initiative continued also on other trade fronts. Danforth's proposal to enforce "reciprocity" on telecommunications products was reported out by Finance. A similar bill was approved by the House Energy and Commerce Committee, which challenged the supremacy of Ways and Means on trade by also drafting its own trade-remedy legislation. The House Democratic Caucus formed working groups that made their own proposals, and Senate Democrats did likewise.

But the most important drive was for new omnibus trade legislation. In November 1985, Danforth introduced S 1860, a relatively moderate, 10-title bipartisan proposal with 33 cosponsors, 13 of them from Finance. Early in 1986, the House Democratic leadership launched a more partisan campaign to make trade one of its top priorities. Ways and Means now

---

37. Quoted in the *Washington Post*, 19 September 1985.

had to move lest it lose its authority, and by early May it had reported out legislation that curbed presidential discretion in trade-remedy cases, mandated retaliation when other nations did not open their markets (with a separate, specific chapter for telecommunications products), and provided (in the famous "Gephardt amendment") for quotas in cases of countries—Japan, Taiwan, and Germany—running large bilateral surpluses with the United States. After being combined with bills reported out of other committees, the omnibus measure passed the House by 295 to 115.

The White House denounced the bill as "pure protectionism," a "rankly political" action that would be "trade-destroying, not trade-creating."[38] This was technically misleading on substance, but all too accurate about the likely results. Unlike the Jenkins bill or Smoot-Hawley, the omnibus measure did not restrict imports directly. But it revised section after section of general US trade laws to make it easier for firms to qualify for import relief and harder for presidents to deny it to them. It also represented a giant step toward unilateralism, establishing new, "made in USA" standards for defining fair and unfair trade that were not sanctioned by GATT rules or by established international practice. The bill therefore merited the label of "process protectionism." The likely outcome, had it become law, would have been a significant rise in de facto US import restrictions, though this was not necessarily the intent of all members who supported it.

Senate Republicans did not share President Reagan's unhappiness with the House bill. Indeed, many of its provisions had counterparts in Danforth's S 1860. Members of the Finance Committee would have liked to move their own trade measure, but they were preoccupied through spring and summer 1986 with major tax reform legislation. With the administration opposing any trade action that year, it proved impossible to achieve consensus among committee members on the omnibus legislation's substance and priority, and so the measure died with the 99th Congress in October 1986.

Within a month, however, executive-congressional relations were transformed. The Democrats recaptured control of the Senate, with a surprise gain of eight seats in the mid-term elections. That same month, the Reagan administration was gravely weakened by the exposure of what became known as the Iran-contra scandal. The partisan change had the more direct impact on trade politics. The reason was not that Senate Democrats were more aggressive on trade, or more protectionist, than their Republican counterparts—the difference here was marginal. What mattered was that control of that body had shifted from a leadership whose job (in important part) was to make life easier for a Republican administration, to one whose job (in major part) was to score points against it. Trade was *the* legislative issue most ready for such use, and Senator Robert Byrd

38. Statement by White House Deputy Press Secretary Larry M. Speakes, 22 May 1986.

(D-WV), soon to be restored to the majority leadership, lost no time in declaring that trade would be the Democrats' top priority in 1987–88.

The Omnibus Trade and Competitiveness Act of 1988

Senate Democrats were eager to move on trade, but the House had to go first. Trade bills remained revenue measures, which the Constitution ordained must originate in the House. The rule had been circumvented in 1984, but now there was no need: Jim Wright (D-TX), O'Neill's successor, was eager to move in 1987. Seeking greater substantive engagement than the typical speaker, Wright set an ambitious deadline for action by all interested committees. The omnibus bill passed in 1986 was reintroduced as HR 3 and parcelled out for reworking to 11 House committees, with Ways and Means first among equals.

Seeing the handwriting on the wall, Treasury Secretary James Baker now indicated that omnibus legislation could be useful. The Plaza Agreement of September 1985 had been followed by a steady decline in the dollar, generating expectations that the trade deficit would soon begin to shrink. Moreover, USTR Clayton Yeutter had won agreement the previous September to inaugurate the multilateral Uruguay Round, so the administration needed extension of the fast-track negotiating authority due to expire in January 1988. The administration now sent down its own draft legislation, as had its predecessors for the Kennedy and Tokyo Rounds. But in sharp contrast to 1962 and 1974, the House ignored the administration's bill,[39] and proceeded on the basis of HR 3.

By April the leadership was merging the 11 separate committee proposals. Wright insisted on excluding product-specific measures: textiles would get a separate vote later, and an Energy and Commerce–reported measure to limit imports of high-quality digital tape recorders was excised from the omnibus legislation. The revised HR 3 passed the House, 290 to 137, on 30 April, with 43 Republicans joining virtually all Democrats in support. Included with the standard trade policy measures—such as authorization for the Uruguay Round, numerous toughenings of trade-remedy laws, strengthening of the authority of the USTR—were several new measures, including the "Bryant amendment," which required reporting of foreign investment, and provisions on exchange rates and Third World debt; worker retraining; relaxation of national security export controls; agricultural and broader export promotion; and math, science, and foreign language education. (The "omnibus" in the title was not without meaning.)

---

39. In the words of one congressional source, "They never opened the envelope." See J. David Richardson, "U.S. Trade Policy in the 1980s: Turns—and Roads—Not Taken," Working Paper 3725 (Cambridge, MA: National Bureau of Economic Research, June 1991), 46. For a detailed account by a central participant, see Susan C. Schwab, *Trade-Offs: Negotiating the Omnibus Trade and Competitiveness Act* (Boston, MA: Harvard Business School Press, 1994), chapters 4–7.

Included also was the Gephardt amendment, which required imposition of import barriers against countries that failed to reduce their large bilateral trade surpluses with the United States. Unlike in 1986, Ways and Means had not incorporated it in the provisions it reported. But Gephardt won inclusion of his amendment by a floor vote of 218 to 214. The victory helped Gephardt's newly launched presidential campaign, which many members supported. But the narrow margin signaled that the amendment was unlikely to be included in the final legislation.

Meanwhile, the Senate began its work, with new Finance Committee Chairman Lloyd Bentsen in the lead. By early May, his committee reported a bill with broad (19 to 1) bipartisan support, which excluded the Gephardt amendment but which, among its many provisions, imposed new procedural conditions on fast-track authorization for the Uruguay Round, mandated retaliation against unfair foreign trade practices, and curbed presidential discretion in escape-clause cases. Majority Leader Byrd combined this with bills reported by eight other committees, and brought it to the Senate floor in June. (One of these, from Edward Kennedy's [D-MA] Labor and Public Welfare Committee, included a provision requiring firms with over 100 employees to give 60 days' notice before plant closings.) After a month of debate, the omnibus measure passed by a vote of 71 to 27.

The Senate bill included, in a floor amendment, the Senate's alternative to the Gephardt amendment: a measure that would, after conference reworking, become known as "Super 301," and which required the USTR to name and target countries maintaining patterns of import barriers and unfair, market-distorting practices. The bill also contained a ban on all imports from Japan's Toshiba Corporation and a Norwegian defense company, a provision also added on the floor after revelation that the two companies had sold important defense-related equipment to the Soviet Union (in violation of both Japanese law and international export control arrangements). In general, this bill—like its House counterpart—was considerably less restrictive in its likely effects than the omnibus bill of 1986. Moreover, the House bill was more restrictive on some matters, the Senate on others, suggesting that the final result could prove more liberal than either.

Administration trade officials were considerably more engaged in the legislative process in 1987 than they had been in 1986. And White House comments as the bill made its way forward were certainly more moderate than the denunciations of 1986. But officials' access was asymmetric: good in the House, limited in the Senate. Deputy USTR Alan Holmer and USTR General Counsel Judith Bello had prepared the ground carefully with Rufus Yerxa and his associates on the Ways and Means trade staff, spending weekends in 1986 going over issues and possible solutions. Moreover, Chairman Rostenkowski was predisposed to cooperate with the administration. And so even though the House leadership had pushed trade for partisan advantage, Holmer and Bello had good working access to Ways and Means staff and to members' caucuses.

It was chillier for them on the north side of the Hill. Holmer had once served as Senator Packwood's administrative assistant, facilitating good relations with staff aides Leonard Santos and Josh Bolton during his chairmanship. But Packwood's successor, Lloyd Bentsen, was a much sterner critic of administration trade policy, and Jeffrey Lang, who acceded to the key Finance staff position, replicated his boss's reluctance to work closely with USTR officials. Holmer and Bello thus lacked both regular access to Finance senators and the sort of ties to Finance staff that their predecessors had developed in 1974 and 1979. So they worked with whom they could. Particularly important was longtime Danforth aide Susan Schwab, architect of his "reciprocity" legislation and an influential inside player on issues such as Section 301, telecommunications, and Japan.

In general, the administration was less happy with the Senate bill than its House counterpart: USTR Yeutter and Treasury Secretary James Baker urged Senate Republicans to vote against final passage in order to strengthen the prospects for change in conference. In any case, each house had passed a multititle, multicommittee bill roughly 1,000 draft pages in length. To reconcile the two, a 199-member conference committee was appointed—44 senators and 155 representatives. They were split into 17 subconferences responsible for separate sections.

Organizing all this brought the members into October, when a dramatic event intervened: the Dow Jones Industrial Average plunged by over 500 points in a single day. The crash of 19 October, "Black Monday," was blamed in part on the federal budget deficit, and it precipitated a White House-congressional summit on that subject. As this summit dragged on into December, it became the main policy preoccupation of Bentsen, Rostenkowski, and many of their colleagues. Black Monday also made members wary of taking *any* forceful trade action; the markets were jumpy, and anything labeled "protectionist" might drive them further down, with Congress taking the blame!

At the start of 1988, Rostenkowski and Bentsen began to refocus on trade, and they signaled that they were seeking a bill the president would sign. Their readiness to compromise with the administration was underscored when the House conferees proposed dropping all provisions in either version that were directly trade restrictive, a proposal the Senate eventually accepted. Such action was made easier by the fact that the trade deficit was at last declining, lessening the heat from import-impacted interests and giving exporters the incentive to lobby for moderation to avoid cutting short the now burgeoning boom in their foreign sales. By the end of March, Subconference I had resolved virtually all trade policy issues; a rewritten version of Super 301 supplanted the Gephardt amendment, and numerous specific authorities were transferred from the president to the USTR, although executive flexibility was maintained on the escape clause and the imposition of trade sanctions. The Bryant amendment that threatened foreign investment in the United

States was replaced by the Exon-Florio provision, which provided for executive branch review of foreign takeovers that carried national security implications: the president was authorized to block those he found inimical. The ban on Toshiba imports was narrowed to apply only to the offending subsidiary, Toshiba Machine Company, and to its Norwegian counterpart.[40] A broad range of special-interest amendments to the antidumping laws were deleted or neutralized. And fast-track authority was extended in a form the administration found acceptable.

On 20 April 1988, the full conference committee reported out a compromise HR 3, still over 1,000 parchment pages. The House passed it by 312 to 107, and the Senate followed by 63 to 36. The legislation still contained, however, the Senate-initiated provision mandating notification of plant closings by companies employing 100 or more workers. There had been frenetic negotiations on this issue, with Kennedy and organized labor pushing for retention of the provision, and many other Democrats attracted by its political message. But Reagan, backed by organized business, was threatening a veto. To prevent this, Rostenkowski and Bentsen wanted the provision removed, but they did not prevail. Speaker Wright sent the bill to the White House in a Capitol "signing ceremony" featuring television cameras and laid-off workers speaking in support of the measure.

Reagan did veto HR 3 in May, citing in particular both the plant-closing provision and a formerly obscure prohibition of certain oil exports from Alaska. The Senate override attempt fell five votes short. To trade legislators and officials, it looked briefly as if their intensive labors would come to naught. But Democrats soon found an ingenious way to have their cake and eat it too. A new trade bill was prepared, HR 4848, identical except for the excision of the plant closings and Alaskan oil provisions. The plant-closing provision was introduced as a separate measure, and brought quickly to the House and Senate floors. To Democrats' and organized labor's delight, the issue and the bill caught fire, and both chambers passed it with lopsided, bipartisan majorities. Thus put on the (antiworker) defensive, Reagan let it become law without his signature. In the meantime, the House and then the Senate were passing the slightly slimmer trade bill by overwhelming margins. On 23 August, with Reagan's signature, HR 4848 became Public Law 100-418, the Omnibus Trade and Competitiveness Act of 1988.

The 1988 law was the culmination of four years of congressional activity. It was the first major trade bill initiated by Congress since the days before Smoot-Hawley. And it was by far the longest trade bill passed by the postwar Congress: the 1,000-plus pages of parchment amounted to 467 statutory pages, compared with 173 pages for the 1979 law, 98 pages

40. This result was widely attributed to Toshiba's multimillion-dollar lobbying effort. But US firms using Toshiba inputs were also very unhappy with the original ban, and they made their feelings known on Capitol Hill.

in 1974, and just 31 pages for the Trade Expansion Act of 1962. The length reflected the multicommittee process and the many detailed methods by which legislators sought to constrain the executive in the management of trade policy.

There were two important things the bill did not do: It did not impose statutory protectionism, and it did not impose direct congressional control over trade. Rather, it passed the policy ball back to the statutorily enhanced USTR with multiple provisions aimed at setting the USTR's agenda and stiffening its spine. Most important were extension of fast-track authority to cover the Uruguay Round and bilateral negotiations,[41] and language centered on Section 301, which targeted "unjustifiable and unreasonable" foreign trade practices—particularly those impeding US exports. Congress wanted to make retaliation against such practices "mandatory but not compulsory," to quote the delightful phrase that originated at a Finance Committee hearing and was widely repeated thereafter.[42] But as this ambivalent language suggested, members remained more than willing to have the USTR make the tough calls.[43]

The House also accepted, in the end, continuing Ways and Means trade primacy. Speaker Wright was a force at key junctures, and his office was active in intercommittee coordination. But on the details of substance and trade policy bargaining, it was Rostenkowski who emerged supreme in the House—confident in the eighth year of his chairmanship and comfortable in bargaining with colleagues in the House, his counterpart in the Senate, leaders in the administration, and the many private interests engaged.

Ways and Means also played a central role in another important trade measure of 1988: the implementing bill for the Canada–United States Free Trade Agreement. Responding to an initiative from north of the border, and using the bilateral, fast-track authorization contained in the 1984 act, President Reagan notified Congress in December 1985 of his intention to proceed. Frustrated over the administration's lack of responsiveness to its concerns, Senate Finance took up a proposal to block fast-track treatment for the negotiations, rejecting it in April 1986 (by 10 to 10) only after

41. Congress imposed new conditions on fast-track authority, one of which would deny use of the procedures if both houses passed, within any 60-day period, procedural disapproval resolutions declaring that "the President has failed or refused to consult with Congress on trade negotiations and trade agreements in accordance with the provisions of the Omnibus Trade and Competitiveness Act of 1988." Section 1103(c)(1)(E).

42. Judith Hippler Bello and Alan F. Holmer, "The Heart of the 1988 Trade Act: A Legislative History of the Amendments to Section 301," in Jagdish Bhagwati and Hugh T. Patrick, eds., *Aggressive Unilateralism*, 59. They report that the phrase originated in an exchange between Chairman Packwood and former STR Robert Strauss.

43. For a broader argument on why senators and representatives may find such behavior in their political interest, see I. M. Destler, "Constituencies, Congress, and US Trade Policy," in Alan V. Deardorff and Robert M. Stern, *Constituent Interests and U.S. Trade Policies* (Ann Arbor: University of Michigan Press, 1998), 93–108.

assurances were provided on softwood lumber and other issues.[44] And the negotiations were rushed to completion in the waning months of 1987 so that Congress could be prenotified in early October, as the law required, and the agreement could be signed on 2 January 1988, the very last day that the fast-track authority allowed.[45]

Thereafter, however, the implementing process proceeded smoothly, replicating that for the Tokyo Round nine years earlier. The administration promised not to submit implementing legislation before June, provided congressional leaders agreed to act between then and adjournment in October. "Nonmarkups" were then held in February through May, followed by a "nonconference" to resolve House-Senate differences. Only after agreement was reached was the legislation formally introduced and approved, by 366 to 40 in the House and 83 to 9 in the Senate. Ways and Means' central role in tracking the details was reflected in the fact that, as one administration official later put it, the implementing bill "was written on Mary Jane Wignot's computer." (Wignot was the Ways and Means aide with specific responsibility for US-Canada trade.)[46]

With approval of the Canada-US Free Trade Agreement in September, the 100th Congress completed its ample trade work. Its successor would not do likewise: legislators in 1989–90 moved on to other issues, limiting their trade activity to monitoring implementation of their 1988 handiwork. In 1991, however, they were suddenly confronted with a new challenge: a vote on extending the fast-track deadline not just for the Uruguay Round but for free trade talks involving Mexico as well. This brought before Congress the first explicit floor consideration of the legislative procedure that constrained the authority of the rank and file over trade.

NAFTA and Fast-Track Renewal

In 1989 and 1990, trade receded on the legislative agenda. Exports continued to surge; import growth moderated; and the trade deficit shrank somewhat. Speaker Jim Wright was caught up, in 1989, with a scandal that would force his resignation. Tom Foley of Washington, a liberal trader, was

44. Jeffrey J. Schott, *United States–Canada Free Trade: An Evaluation of the Agreement*, Policy Analyses in International Economics 24 (Washington, DC: Institute for International Economics, 1988), 13.

45. To legislators' annoyance, and contrary to the law's intent, major substantive provisions of the agreement were defined in the period *between* the October notification and the January signing. In 1991, they extracted commitments from the Bush administration not to repeat this practice in negotiations for the North American Free Trade Agreement.

46. For more detail, see David Layton-Brown, "Implementing the Agreement," in Peter Morici, ed., *Making Free Trade Work: The Canada-U.S. Agreement* (New York: Council on Foreign Relations Press, 1990), 28–30.

the consensus choice to succeed him, and Foley was succeeded as majority leader by Richard Gephardt (D-MO). In the Senate, Robert Byrd left the majority leader position to become president pro tempore and chairman of the Appropriations Committee, with George Mitchell of Maine his successor.

Trade-minded senators and representatives watched with approval in 1989 as USTR Carla Hills named Japan a "priority foreign country" under Super 301,[47] and as Korea and Taiwan scurried to make enough trade concessions to avoid similar designation. And in 1990, many in both chambers were preoccupied with the extended budget negotiations that began in the spring and continued into late October. Aside from its now routine passage of textile quota legislation, and the equally routine failure to override President Bush's veto, Congress took little specific trade action. There were no burning statutory issues. Moreover, the enactment of the 1988 act had been a politically demanding enterprise, with Bentsen, Rostenkowski, and their colleagues compelled to respond to and balance an enormous range of pressures and interests. The years that followed offered welcome respite. And even though Super 301 expired in 1990, there was no serious congressional move to extend it.

Such legislative restraint was also consistent with the projected timetable of the Uruguay Round. The multilateral talks were intended to last four years, culminating in an agreement by the end of 1990. The 1988 act reflected and reinforced this timetable, with a bit of leeway, by providing that fast-track approval procedures would be followed if the president signed an agreement by 1 June 1991—provided he gave notice 90 days before.

But the Uruguay Round moved slowly. Agreement was particularly elusive on agriculture, where the United States had initially sought a commitment to remove all trade-distorting government policies and was still insisting on major liberalization as a prerequisite for deals on textiles, services, and the many other specific issues on the agenda. A December 1990 GATT Ministerial Conference at Brussels, designed to break the impasse, confirmed it instead.

With the multilateral talks at a stalemate, attention turned to a fallback provision of the 1988 act inserted with just such a contingency in mind. The president could, on or before 1 March 1991, seek a two-year extension of fast-track authority by declaring that progress had been made and additional time might allow the negotiations to succeed. And as the law was written, he could gain the extension unless either house voted against it by 1 June.[48] He would then have until June 1993 to sign a multilateral agreement.

47. Also designated were Brazil and India.

48. In general, legislative vetoes of presidential or agency actions had been rendered unconstitutional by the Supreme Court's *Chadha* decision of June 1983. But the issue here was not statutory substance but legislative procedures, over which the Constitution gave Congress full authority.

There was one complicating factor. In the spring of 1990, Mexico's reformist president, Carlos Salinas de Gortari, broke with his country's protectionist and anti-*yanqui* tradition by asking President Bush to negotiate a bilateral free trade agreement. Bush agreed, notwithstanding the reluctance of trade advisers who would have preferred to wait until a Uruguay Round accord was in hand. He sent Congress the required notification of intent in September. When Ottawa expressed concern that a bilateral US-Mexico pact might undermine Canada's arrangement with the United States, it was agreed to include Canada in the talks, with the aim of creating a North American Free Trade Agreement (NAFTA). Bush notified Congress of this decision in February 1991.

A fast-track extension would therefore apply to the NAFTA talks as well as to the Uruguay Round. Free trade with Mexico had been in no member's mind when the law was enacted in 1988. The act did include a brief section endorsing the procedural US-Mexico "framework" agreement signed in 1987, but a free trade arrangement was considered a decade off at the very least. Still, the fast-track procedures had been broadened in 1984 to cover bilateral accords, with similar consultation caveats and the same expiration date. And the new timetable in the 1988 act applied to both as well. Hence an extension for the GATT talks would cover NAFTA as well.

This prospect alarmed organized labor and some environmental groups. The former felt particularly threatened by open trade with a "low-wage" neighbor: US workers had already lost many low-skill, mass-production jobs to foreign competition, and a Mexico deal would only exacerbate this trend. Environmentalists worried that competition with Mexico would undercut US environmental regulations by creating a "pollution haven" for US firms south of the border, leading to a relaxation of US antipollution laws for competitive purposes. Well before 1 March, both were mobilizing against fast-track extension. Their initial success drove Rostenkowski to suggest at one point that it might be necessary to somehow exclude Mexico from coverage in order to salvage authority for the GATT talks. However, the president followed the law (and his interests) in requesting general fast-track extension.

The fast-track procedures had been law for over 16 years, but this was the first time they had held center stage on the House or Senate floor. Previously, their specifics had been worked out in Finance and in Ways and Means, with Congress as a whole ratifying the committees' handiwork when it voted general trade legislation. And this time the issue *could* have been killed in committee—the law provided that a fast-track disapproval resolution could reach the House or Senate floor only if the requisite committee(s) approved. But committee and chamber leaders quickly decided that burial in committee, while perfectly legal, would be viewed as politically egregious and thus discredit both the procedures and any agreements reached thereunder. Disapproval resolutions therefore would have to go to both floors, and be voted up or down there.

With critics quick off the blocks, congressional leaders would have normally sought statutory compromise. But on its face the law made this difficult or impossible: the "sole matter" of an "extension disapproval resolution" was to be "That the [House/Senate] disapproves the request of the President for the extension . . . because sufficient tangible progress has not been made in trade negotiations."[49] Moreover, Speaker Foley resisted creative proposals to separate the Mexico negotiations from the Uruguay Round, or otherwise compromise the procedures. He saw them as a pact between Congress and the executive; if Congress changed the rules when acting on the extension, how could it demand that the administration play straight?

Bentsen and Rostenkowski, both strong backers of fast-track renewal, therefore resorted to nonstatutory bargaining. They wrote to President Bush seeking assurances on three key matters: the overall economic impact of a NAFTA; its effects on jobs and worker rights; and its impact on the environment.[50] They needed a reply by 1 May, they declared, so that Congress could consider it and vote before the 1 June deadline. Gephardt, resisting strong labor pressure and maintaining an undecided posture, wrote a separate letter raising similar concerns.

With everyone's attention on Mexico, the Uruguay Round got something of a free ride. When the Brussels ministerial conference failed, it was thought that a fast-track extension debate would turn the spotlight on those negotiations, with senators and representatives pressing the administration on why progress had been limited and why they expected the next two years to be any better. Congress might even have threatened specific conditions or minimum requirements for a Uruguay Round package. The USTR would presumably have responded by pressing its counterparts in Europe and East Asia, seeking concrete evidence of prospective gains in order to persuade Congress to continue the enterprise. But this did not happen—in fact, the tendency was for members critical of a Mexico accord to say nice things about the multilateral round, to balance their positions and avoid being labeled protectionists.

Reacting to the strong, early labor and environmentalist opposition, Bentsen and Rostenkowski pressed business leaders to get moving: if they favored fast-track extension, they had better lobby hard, or else the measure would fail. And business responded. The old protrade coalition, demoralized by the Reagan trade deficit and mobilized only for the endgame in 1985–88, was now back in full force—encouraged by the export boom,

49. Public Law 100-418; Section 1103(b)(5)(A).

50. Bargaining with colleagues was impeded by the fact that some key labor Democrats on Ways and Means (like Donald J. Pease of Ohio) were committed to vote against extension for Mexico. And labor followed its characteristic strategy of taking a strong stand and refusing to compromise. On trade, this had usually served to minimize labor's influence with the plant-closing provision of 1988 the major exception; it would do so in 1991 as well.

but concerned that a collapse of the Uruguay Round would unleash protectionism here and abroad. So they went "balls out" for extension, as one Washington insider put it. Mexican representatives were active and effective also, belying their long-standing reputation for inattention to the Washington power game.

Last but not least, the charge was led by a highly competent USTR, Carla A. Hills, backed by a president who wasn't about to see his Mexico initiative go under. Together, the USTR and the White House pressed business to be active; they encouraged (and received) restraint and flexibility from Mexico and Salinas; they brought in a range of arguments, from the future of the world trading system to the interests of the growing population of Hispanic-Americans.

And on 1 May, in language crafted by the USTR, the president responded adroitly to the questions posed by Bentsen and Rostenkowski. Pointing to the doubling of US exports to Mexico between 1986 and 1990, the administration declared "a NAFTA will result in greater prosperity for US workers, farmers, businesses and consumers." Moreover, since "Mexico's economy is 1⁄25 the size of the US economy . . . scenarios of mass dislocations resulting from reduced US trade barriers are not realistic." Nonetheless, the statement promised "adjustment provisions to avert injurious effects," including transition and safeguard mechanisms and an "adequately funded" worker adjustment program providing "prompt, comprehensive, and effective services" for those who lost their jobs as a result of free trade with Mexico.[51] Bush's statement also praised and supported Mexican efforts to enforce labor standards and worker rights. On the environment, "Mexico and the United States agree that efforts to increase growth through an FTA should be complemented by cooperative efforts to enhance environmental protection." And in addition to pursuing "joint environmental initiatives," the United States would "ensure that our right to safeguard the environment is preserved in the NAFTA."[52]

The statement accelerated a shift by some environmental groups: from opposition to an accord to using the negotiations as an opportunity to advance their concerns. Labor remained in opposition, but once the outcome was clear the AFL-CIO deemphasized the final vote and scurried unsuccessfully for ways to make the outcome less clear-cut. Bentsen and Rostenkowski declared their satisfaction with the White House response. On 9 May Gephardt declared his support, with a "caveat: If the administration sends to this Congress a trade treaty that trades away American jobs,

51. This represented, at least potentially, a reversal of the deemphasis on trade adjustment in the 1980s. See chapter 6.

52. Quotations are from "Response of the Administration to Issues Raised in Connection with the Negotiation of a North American Free Trade Agreement," transmitted to the Congress by the president on 1 May 1991, processed, "Overview" section, 1, 3, 6, 9, and 11.

or tolerates pollution of the environment or abuse of workers, we can, and we will, amend it or reject it."[53]

When the votes came, they were anticlimactic. Ways and Means voted 27 to 9 against the disapproval resolution; Finance did likewise by 15 to 3. On 23 May the House rejected the resolution by 231 to 192, a margin that apparently overstated the bedrock opposition to fast-track extension.[54] The Senate followed the next day by 59 to 36. The split was both partisan and regional. Democrats in the House voted 170 to 91 to veto fast track, but the leadership backed it, and representatives from California, Florida, and Texas—states with large Hispanic-American populations—voted 64 to 25 in favor.

Critics got one consolation prize. Speaker Foley had resisted the idea of staging separate votes on the Uruguay Round and NAFTA, though some members complained they were being forced to oppose the former because of the latter. But the House did adopt by 329 to 85, *after* rejecting the disapproval measure, a Gephardt-Rostenkowski resolution endorsing the labor and environmental objectives included in the 1 May statement, and calling for close consultation with the administration during the Mexico negotiations.

By fall 1991, it was back to business as usual. Hills was pushing ahead on the Geneva and Mexico fronts; legislators, faced with many competing demands, were only sometimes responsive to opportunities to give advice. The House majority leader had come forth with "a new 'Gephardt amendment' that will put teeth in Super 301," again targeting Japan in particular, to "reduce the discretion the President has not to take action against priority countries and priority practices."[55] But its effect—and perhaps its intent—was more to position Gephardt and like-minded Democrats on the "tough" side of the trade debate (and to balance Gephardt's support of fast track) than to influence the legislative agenda on trade, at least in the near term. For that awaited the results of the global and hemispheric trade talks (see chapter 8).

1984 and After: The Leadership Difference

In the 1980s and early 1990s, Congress seemed ready on several occasions to reverse postwar liberal trade policies. On each occasion, it refrained

53. Quoted in *Congressional Quarterly*, 11 May 1991, 1181.

54. *Congressional Quarterly* reported that "the opposition total" seemed padded, "since many votes to reject the fast track were made after it was apparent that proponents had the numbers to win." The AFL-CIO vote count had shown "only 140 lawmakers solidly . . . against the fast-track extension." 25 May 1991, 1358–59.

55. Richard A. Gephardt, remarks at the Institute for International Economics, Washington, DC, 10 September 1991, 4–5.

from doing so. Product-specific protectionism, so much in prospect in 1982 and 1983, was removed from the law passed in 1984. The explosion of concern about the US trade balance in 1985–86 was brought under control by an administration that first shifted course on the exchange rate—encouraging the dollar to fall—and thereafter bargained hard on the specifics of what became the 1988 Trade Act. And despite strong early opposition, fast-track renewal passed comfortably in 1991. Frustration with the no-amendment procedure was substantial, raising doubts as to whether Congress would agree to it for a post-1993 trade negotiation. But for the present, it once again went along and delegated major authority to the administration.

On each of these occasions, members of Congress showed strong interest in trade policy, and insisted on making it tougher and more responsive to US-based economic interests—particularly on the export side. But on each occasion, Congress failed to seize authority for itself and instead passed the policy ball back to the other end of Pennsylvania Avenue. Members of Congress were less satisfied with liberal trade policies than they had once been. And with the reform in congressional procedures, they were less capable of resisting product-specific initiatives. But they wished neither to succumb to such initiatives nor to take responsibility for their consequences. Delegation to the executive was the natural way out of this dilemma.

But greater congressional skepticism and activism increased the burden on executive branch trade leaders. The changed role of Congress made the trade policymaking system even more dependent on the liberal trade commitment and the political skill of the senior officials at the other end of Pennsylvania Avenue, who now had to delve deeply into the legislative game, arguing and resisting and bargaining with trade activists on Capitol Hill.

USTR Brock and his staff performed this service in 1984, helping to protect Congress from itself. In 1985, when White House attention was elsewhere for most of the year, the administration lost the initiative, and USTR Yeutter was forced to spend the years through 1988 struggling to regain it. Hills did regain momentum for the Bush administration in 1989, but the USTR's longer-term success would depend on what it achieved in the Uruguay Round talks, which would play back into domestic trade politics. For a deeper look at this interplay, we turn now to the subject of the next chapter, the executive branch.