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# Introduction

International trade negotiations once focused on reducing border barriers such as tariffs and quotas that protected markets for manufactured goods. Such discussions took place in a rules-based, multilateral global system centered on the General Agreement on Tariffs and Trade—the GATT. The GATT was spectacularly successful in reducing border barriers. On average, tariffs on industrial goods fell from around 40 percent in 1947 to below 5 percent in the late 1980s. But as tariffs fell and markets opened, the challenges presented by the different laws and practices of different trading nations became apparent. In response, the focus of trade policy-making shifted. Trade negotiations now often center on policies and rules once thought of as purely domestic in nature. Trading nations commonly seek not only to negotiate over tariffs but also to change practices by constraining, reconciling, or even harmonizing rules.

The cases presented in this volume describe negotiations to set trade rules in this new context. Our aim is to present the facts coherently and in a manner that will raise questions and inspire discussion. To that end, the cases both explore the substance of trade agreements and delve into the negotiation process. As well as the *what* of trade, they describe the *who*, *how*, and *why* of decision making. By examining some of the most important recent negotiations, the reader can come to understand not only the larger issues surrounding trade policy today but also how participants seek to exert influence and how the system evolves as a result of these pressures.

We have tried here, both in our introductions and in the cases themselves, to avoid policy advocacy. The idea is neither to undertake an analysis of trade policy from the perspective of a particular discipline (e.g., economics, politics, law, negotiation) nor to provide normative prescriptions. The cases in this volume cover five important trade negotia-

tions, all focused on “making the rules”—the process of establishing how the trade system will operate. A companion volume will offer cases on settling—or attempting to settle—trade disputes. In both volumes we pay particular attention to how decision making on trade occurs within the context of the American political system. Some of the cases in this volume take place in the United States without the direct participation of other nations; others involve bilateral, regional, or multilateral negotiations. But all the cases concentrate on exploring the policies, politics, and processes that are used to make rules about trade.

The five major rule-making events treated here are the introduction of rules for intellectual property into the World Trade Organization (WTO), the negotiations at the Organization for Economic Cooperation and Development (OECD) for a Multilateral Agreement on Investment (MAI), the negotiations over granting the US president trade promotion (fast-track) authority, the negotiations between the United States and China over China’s accession to the WTO, and the negotiations between the United States and the European Union to establish mutual recognition of conformity assessment procedures.<sup>1</sup> The cases are summarized below.

## **The Agreement on Trade-Related Aspects of Intellectual Property Rights**

To what extent should international trade agreements require participating nations to harmonize their policies? A two-part case on the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) explores this critically important question. The case also provides insight into the distribution of power within the WTO and the importance of effective negotiation in determining outcomes. Negotiated during the Uruguay Round of trade talks, the TRIPS agreement significantly broadened the reach of the trading regime by establishing the most comprehensive set of global trade rules for intellectual property. It obligated WTO members to adopt policies protecting patents, trademarks, and copyrights. While countries remained free to provide even more protection than TRIPS required, the agreement set minimum standards. But the TRIPS negotiation might not have happened without a concerted effort by the pharmaceutical, software, and entertainment industries to get intellectual property on the Uruguay Round agenda and to press for completion of an agreement. How was this landmark agreement negotiated? What were the challenges?

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1. We have chosen not to present a case on the North American Free Trade Agreement (NAFTA), arguably the most crucial US trade policy negotiation in the past decade, because a superb study of the agreement—Frederick Mayer’s *Interpreting NAFTA: The Science and Art of Political Analysis* (1998)—already exists.

In the aftermath of the Uruguay Round, some argued that the TRIPS agreement would largely benefit richer countries while hurting poorer nations. Some representatives of developing countries and nongovernmental organizations (NGOs) were especially concerned that TRIPS would decrease access to medicines in developing countries. These groups organized to fight for their cause, both at the WTO and around the world. The second part of the case describes their efforts to secure the Declaration on TRIPS and Public Health at the 2001 WTO ministerial meeting in Doha.

## **The Multilateral Agreement on Investment**

Negotiations for the Multilateral Agreement on Investment began in 1993 at the OECD with great expectations. However, the talks failed to produce an agreement. A well-organized campaign against the MAI negotiations played a role in the treaty's demise: 600 organizations in 70 countries fought strenuously against it. But some observers say that difficulties that emerged in the talks themselves were just as important—if not more so. Negotiators had substantive disagreements about what the treaty should achieve. In addition, governments were often unready or unable to make the commitments necessary to reach agreement. How and why did this negotiation come to be held at the OECD? Who gains and who loses from foreign direct investment? Should international trade agreements cover foreign direct investment? Are investment agreements even necessary?

## **Fast Track/Trade Promotion Authority**

How well-suited is the US system for negotiating modern trade agreements? The Constitution gives the president the authority to negotiate international trade agreements. However, Congress must approve any such agreement and the legislation to implement consequent changes in US statutory law. To many trade policymakers, this arrangement blunts the negotiating power of the United States in trade talks because other countries know that any commitments made at the table can be altered or rejected by Congress. Therefore, from 1974 to 1993, Congress granted the president fast-track authority: In return for regular consultations and timely notification by the executive, the legislature committed to an expeditious yes-or-no vote to implement trade agreements with no amendments or changes. But beginning in the early 1990s, fast track became the subject of fierce political debate, largely centered on concerns about global trade liberalization. Can the United States pursue trade agreements without fast track? Why did fast track become so contentious? Should provisions on core labor standards and environmental standards be included in

trade agreements? Why was President Clinton unsuccessful in obtaining fast-track authority in 1997 and President George W. Bush able to obtain it (renamed trade promotion authority) in July 2002?

## **China's WTO Accession: The 1999 US-China Bilateral Agreement and the Battle for Permanent Normal Trade Relations**

On December 11, 2001, China became a member of the World Trade Organization. Many say the 1999 US-China bilateral trade agreement and the vote in Congress to permanently establish normal trade relations with China paved the way for China's WTO accession. Even though China was not a WTO member, the United States had granted China most favored nation (MFN) trading status since 1979. Yet US law required annual renewal of China's trade status, a process that often became a focal point in Congress for protests over human rights issues, security concerns, and the growing US trade deficit with China. In order to support China's WTO accession, the United States had to commit itself to nondiscriminatory treatment by agreeing to make China's MFN status permanent—granting permanent normal trade relations, or PNTR—and thereby giving up the right to annual reviews. The vote in Congress generated a lobbying battle on Capitol Hill of historic proportions. Why did PNTR pass? What role should trade agreements play in promoting human rights, enhancing domestic reform, encouraging the rule of law, and promoting national security? How were the US-China bilateral agreement and the PNTR vote linked to other key negotiations? What is the role of trade in advancing America's economic interests?

## **The US-EU Mutual Recognition Agreements**

In 1998, the United States and the European Union recognized each other's inspection, testing, and certification requirements for a wide range of traded products in a set of agreements known as mutual recognition agreements. The MRAs applied to nearly \$50 billion in transatlantic trade in six sectors: medical devices, pharmaceuticals, recreational craft, telecommunications, electromagnetic compatibility (EMC) services, and electrical equipment. The MRAs were intended to enhance the US-EU trade relationship by eliminating duplicative testing, streamlining procedures, lowering costs, and decreasing the amount of time needed to bring new products to market. According to the US Commerce Department, the agreement would save US industries more than \$1 billion annually in testing and certification costs. According to Stuart Eizenstat, the MRAs would

“cut red tape and save money for industry, consumers, and regulators and make the USA more competitive.”<sup>2</sup>

An important player in the MRA negotiations was the Transatlantic Business Dialogue (TABD), a group of American and European business leaders that came together as part of a US government initiative. The MRA negotiations were also notable for involving regulatory agencies in trade talks. Indeed, that involvement created some tension domestically, for the US regulatory agencies, with a mission of safeguarding consumers, had run-ins with the agencies seeking to facilitate trade. Tension also arose between US and European agencies that had different standards and methods for certifying products. Though an agreement was concluded, there were problems with implementation. Should trade agencies take the lead in such areas? If not, how can nations deal with their differences in certification, inspection, and regulatory standards? What is the appropriate role for industry in these discussions? Is regulatory harmonization the goal?

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2. Eizenstat, quoted in “US Industry Urged to Back MRAs with EU,” *Marketletter*, October 13, 1997.