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US TRADE POLICYMAKING  
Organizational Options

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This essay explores options for the organization of U.S. trade policy in the early 21st century. It begins with the recognition that the macroeconomic forces affecting the US trade balance (the federal budget surplus or deficit, the level of consumer demand, the exchange rate) are addressed, primarily, by government institutions outside the trade sphere: Treasury, the Fed, the Office of Management and Budget, and the Council of Economic Advisers, for example, as well as the Congressional budget and banking committees.

This paper, by contrast, focuses on government institutions that deal directly with US imports and exports. These can have significant impact on the composition and volume of trade, and hence on the gains Americans derive from trade. The analysis centers on the Office of the United States Trade Representative, which has--by law and in practice--the lead role in trade negotiations and in trade policy management and coordination. It addresses the evolution of USTR's role and relationships with other operating agencies (primarily the Department of Commerce) and other policy coordinating agencies (primarily the National Economic Council). It concludes by setting forth options, including an argument that recent changes in the structure of US trade politics may strengthen the case for changes in US government organization.

This essay draws upon nearly thirty years of scholarship on US trade policymaking, beginning with a book on the US-Japan textile conflict of 1969-71. It does not reflect new research, or close current observation of US trade policy institutions (the author is spending 1999-2000 in Kazakhstan). It does, however, reflect changes in the author's thinking from the last time he addressed the subject in print.<sup>1</sup>

### The Creation and Expansion of [U]STR

Unlike other governments, the United States has no "Ministry of Trade." Instead, primary responsibility for policy and negotiations rests with an organization in the Executive Office of the President (EOP): the Office of the United States Trade Representative (USTR). This anomalous unit began as the President's Special Representative for Trade Negotiations (STR), established by John F. Kennedy's executive order in January 1963. Up to that time, the Department of State had the primary role--and Cordell Hull, Secretary of State under Franklin D. Roosevelt, had launched US trade policy on its current liberalization track in 1934. But after World War II Congress grew increasingly skeptical about that Department's capacity and willingness to go to bat for US commercial interests. When Kennedy sought authority for what became known as the Kennedy Round, House Ways and Means Chairman Wilbur Mills (D-Ark) included in the Trade Expansion Act of 1962 a requirement that they be led by a special negotiator and office that could balance

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. I. M. Destler, *American Trade Politics*, Third Edition (Institute for International Economics and Twentieth Century Fund, 1995), pp. 298-302.

US foreign policy and US economic interests.

Congress strengthened STR in the Trade Act of 1974, by making it a statutory office in the EOP and giving its head Cabinet-level rank. President Jimmy Carter, responding to Congressional insistence, further strengthened the office by Executive Order in 1980, renaming it USTR, increasing its authorized staff from 59 to 131, and transferring to it most of State's remaining trade policy responsibilities. Since then, the Office has grown further in size and negotiating responsibilities. Congress gave it enhanced authority in the Omnibus Trade and Competitiveness Act of 1988, particularly over Section 301 cases charging foreign governments with "unreasonable" or "unjustifiable" trade practices.

The Carter executive order also made the Department of Commerce (DoC) "the focus of nonagricultural operational trade responsibilities." Consistent with that cumbersome phrase, DoC has by far the largest number of US government employees involved in trade, and has direct responsibility for export promotion, administration of national security export controls, and enforcement of antidumping and countervailing duty laws.

#### Organizational Anomaly, Political Necessity

As an organization, USTR represents a marked deviation from normal government practice. The EOP is mainly home to staff (advisory and coordinating) units, but USTR is primarily operational: it conducts negotiations with other governments, and plays a lead role in administering US trade laws such as Section 301. Normally, such activities are housed in Cabinet departments. This

anomaly has generated widespread confusion--among foreign governments, and also for incoming administrations. As former House Trade Subcommittee Chair Sam Gibbons (D-Fla) once put it, with but modest exaggeration, “Every President that comes in wants to throw the USTR Office out of the White House.”<sup>2</sup> In fact Ronald Reagan, having promised Commerce Secretary Malcolm Baldrige the lead trade role, went so far as to propose legislation in 1983 supplanting USTR with a Department of Trade.

But Congress was skeptical. And underlying this was respect for USTR’s *political* logic. USTR was indeed, as its critics put it, “a broker, not an advocate,”<sup>3</sup> but that reflected the nature of trade’s political problem: many competing interests needed to be heard. Moreover, there was an age-old political imbalance. Firms helped by trade concentrated on business, but those hurt by trade went into politics, seeking import relief. An agency that responded only to the economic pressures that bore upon it would reflect this imbalance. By this logic the proposed Department of Trade would become, in practice, a “Department of Protection.”

As a White House agency with a coordinating mandate, however, USTR could evoke and engage other policy interests to right the balance. This need seemed all the more urgent in the

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. U.S. Congress, House Committee on Ways and Means, Subcommittee on Trade, *Hearings on Options to Improve the Trade Remedy Laws*, 98th Cong., 1st sess. (16 and 17 March, and 13 and 14 April 1983), Serial 98-14, part 1, p. 389.

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. US Congress, Senate Committee on Governmental Affairs, *Trade Reorganization Act of 1983*, 98th Cong., 2nd sess. (3 April 1984), S. Rept. 98-384, p. 8.

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1980s, as the strong dollar drove the US trade imbalance to hitherto-unimagined, twelve-digit proportions. Industries flooded Washington with demands for relief, threatening for a time to reverse the half-century-old US policy of trade expansion. Only after the second Reagan administration helped bring down the dollar (and then the trade imbalance) did these pressures recede. The Bush and Clinton administrations followed with completion and ratification of the pathbreaking NAFTA and Uruguay Round accords. And the US economy flourished.

### The Evolution of USTR

The USTR structure seemed vindicated. Yet [U]STR itself had been changing, in ways that made it less of a broker and more of a single-minded advocate of trade interests and implementer of trade initiatives. The first change began in the 1970s, when the office moved from the stance of relatively pure free-trade advocacy it had held to during and after the Kennedy Round to one significantly more responsive to industry concerns, even when these pointed to temporary import relief.<sup>4</sup> This shift was consolidated under the leadership of the quintessential trade broker, Robert Strauss (USTR in 1977-79). USTR's stance acquired a more militant, sometimes even mercantilist flavor in the 1980s, as it fought within the executive for a tougher US trade-negotiating stance, particularly vis-a-vis Japan.

But into the 1990s the office still combined the roles of lead trade negotiator and interagency policy leader. Formally, the coordinating role was written into legislation: USTR

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. I. M. Destler, *Making Foreign Economic Policy* (Brookings Institution, 1980), p. 203.

chaired an interagency committee structure with the Cabinet-level Trade Policy Committee at its apex. Few issues made it to this level, of course, but the system carried a substantial workload in the working-level Trade Policy Staff Committee and the deputy-level Trade Policy Review Group (TPRG) to which issues were appealed.

This pattern changed in the Clinton administration. The new National Economic Council, through *its* deputies committee, took over the coordinating work formerly performed by the TPRG. USTR career staff bemoaned this, but the deputy USTRs appear to have welcomed it. They were allowed to take the substantive lead in NEC deputies' discussions, and they were relieved of the burden of always consulting and accommodating other agencies: that was now the NEC's task.<sup>5</sup> And their boss, Mickey Kantor, also felt free to "end run" the process to win Clinton's personal endorsement of controversial positions.<sup>6</sup> His successor, Charlene Barshefsky, worked more within the interagency process, but USTR's deemphasis on coordination in favor of line operations and trade advocacy was not reversed. More generally, USTR was increasingly seen as mouthpiece for the views of specific American industries, more so than in the seventies and eighties..

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. I. M. Destler, *The National Economic Council: A Work in Progress* (Institute for International Economics, 1996), pp. 35-36.

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. *Ibid.*, pp. 46-47, 54. Kantor was also unique among USTRs in giving partisan political interests priority over trade policy goals (Strauss and William Brock, former national party chairmen, had not), but this reflected the predispositions of an individual, not a longer-term trend.

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Had the underlying structure of US trade politics remained the same, had the balance of industry pressures continued to tilt in the trade-restrictive direction as in those earlier decades, USTR might have moved with them and become the “Department of Protection” that critics feared would emerge from the trade department proposal. But notwithstanding the emergence of record trade deficits in the 1990s (proportionately comparable to those of the eighties), traditional industry protectionism was largely absent.<sup>7</sup> The reasons included the atypically strong state of the US economy, but they also include the ongoing internationalization of that economy. The situation has so evolved that it has become commonplace among liberalization’s critics to assert that trade expansion reflects the interests of business, arrayed against those of labor, the environment, human rights, etc. And on the key trade vote of 2000--the House endorsement of permanent normal trade relations with China--this caricature of the two sides was not far off the mark: business mobilized for openness, overcame the resistance of labor and advocates of other social concerns, and prevailed. (By contrast, business was never fully engaged in the fast-track extension fight of 1997, which was lost by the administration and the Congressional leadership.)

In fact, there appears to be a “new politics of trade policy,” one where business protectionism is greatly diminished (albeit not eliminated) but resistance to trade liberalization

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from other quarters has increased.<sup>8</sup> If one wishes to maintain a consensus in support of trade expansion, one should then worry less about, say, the textile industry and more about environmentalists. If the old adversary was South Carolina's Roger Milliken and (potentially) Lee Iacocca, the new one is Lori Wallich of Public Citizen. The new substantive and political priority is the "trade and. . ." issues. And the new need is to enlarge the trade policy tent by doing enough about trade's impact on environmental and labor standards to bring in members of Congress responsive to these constituencies who also believe that economic openness is the route to future prosperity.

At this point, the reader may be forgiven a simple question: wasn't this essay supposed to be about government organization? In fact, this extended historical-analytic prologue yields two non-trivial organizational conclusions:

- 1) There is less reason than heretofore to fear that consolidation of executive functions in a Department of Trade will reinforce protectionism.
- 2) Coordination of trade policy needs to reach beyond the economic sphere to engage the social issues--labor, environment, human rights--that are today the greatest impediment to further negotiating progress.

And these lead to discussion of the two basic organizational issues: consolidation and coordination.

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. For the full-blown argument, see I. M. Destler, *The New Politics of American Trade: Trade, Labor, and the Environment* (Institute for International Economics, October 1999). For a shorter version, see Destler, "U.S. Trade Governance in the New Global Economy," in Susan Collins, editor, *Brookings Trade Policy Forum 1999*, pp. 37-62.



## Consolidating Governmental Trade Functions

Proposals for trade policy reorganization are typically launched with a litany highlighting the number of government agencies with fingers in the trade pie. And they surely number well into the double digits. But this is neither the main problem, nor is it susceptible to sweeping solution. There is no overriding reason, for example, that export promotion needs to be closely associated, in day-to-day operations, with import regulation, or the collection of customs duties. There are also positive reasons for separation: Congress insists on an independent U.S. International Trade Commission to provide judgements not dominated by current administration policy or tactics. And since trade decisions affect other US government interests, other agencies are bound to get involved. No reorganization plan will prevent, for example, the involvement in trade debates of the National Security Council, or the Environmental Protection Agency, or the Departments of State, Treasury, Agriculture, Labor, Energy, etc., etc.

The core problem, rather, is that there are two agencies whose primary business is trade--USTR and the Department of Commerce. The stated division of labor is that the former does policy and negotiations and the latter handles operations. But dividing responsibility in this way between two coequal organizations is dubious organizational doctrine and not replicated in other policy spheres. In fact, the cause lies in the desire to retain USTR but not make it too big, since there are ongoing pressures to limit the size of the EOP ("White House") staff.

The biggest resulting problem is that the extensive trade responsibilities and staff of Commerce offer a more than ample base for a policy-minded Secretary bent on challenging the

USTR for trade leadership. Making this more likely is Commerce's lack of jurisdiction over any other substantive issue of near-comparable visibility and importance. Nor is this danger merely theoretical. Maurice Stans made just such a challenge in 1969, and Malcolm Baldrige did likewise in 1981--both with initial success for themselves, at the cost of coherence and effectiveness in overall trade policy. Robert Mosbacher in 1989 had the will but not the skills. Ron Brown had both in 1993, but cleverly carved out a prominent trade role for himself--leading high-profile business-government trade delegations overseas--that did not undercut USTR. (Unfortunately, the political controversy generated by Brown's choices of which businessmen to take along has forced his successor to curtail this practice.)

To avoid future conflict, the operational trade functions (housed mainly in Commerce) need to be made formally subordinate to the policy and negotiating functions (mainly in USTR). The simplest way to do this would be to subsume both in a Department of Trade, whose head might (for continuity's sake) hold simultaneously the title of US Trade Representative. The primary objection in the past (voiced by this author, among others) has been fear of protectionist capture, as it would move the trade policy leader farther from the President and closer to its (primarily business) constituency. But USTR has moved in that direction anyway, and that constituency has internationalized. So this objection loses much of its weight.

An alternative (proposed earlier by this author) is more complicated. It involves three related steps:<sup>9</sup>

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1. Converting USTR into a small, elite EOP unit charged with leading international negotiations and interagency coordination;

1. Creating, outside the EOP, a non-cabinet US Trade Administration headed by a deputy USTR for operations, and placing within it the remaining staff of USTR and Commerce's International Trade Administration;

1. Abolishing the Department of Commerce, with its other units made independent agencies.

Should other offices be brought into a newly consolidated trade agency? A study should certainly be undertaken. But assuming that, for different reasons, the USITC and the Export-Import Bank remained independent, the pickings might prove slim.

### Trade Policy Coordination

A more complicated question is how to handle the coordination problem. It is difficult because it involves at least three policy circles:

- 1. specific actions clearly within the trade policy sphere;
- 1. trade policy's connections to economic policy and foreign policy--long recognized;
- 1. trade policy's impact on the social sphere--the newly-important "trade and.. ." issues.

Even when it gave priority to coordination, [U]STR never held full sway in even the first of these.

It connected with, and sought support from, the White House policy staff office with the international economic portfolio: the NSC in the 1960s, variously-named economic policy staffs at most times since. One would hope, however, that a unified trade policy organization like that proposed above could carry most of the intra-trade policy coordination burden.

To address the long-recognized connections between trade policy, economic policy, and foreign policy, the basic choice is between the National Security Council and the National

Economic Council. The former is stronger, but less likely to give the role priority, and less likely to be credible with the economic interests and their allies on Capitol Hill. Hence the NEC seems the appropriate locus, assuming that this (non-statutory) staff is retained by the next administration. The NSC could seek part-ownership through a merger of its international economic staff with that of the NEC (as done under Clinton), or it could simply insist on a place at the table to be sure that foreign policy/security interests and relationships were given their due.

Hardest is the question of bringing in the “new” connections: trade and labor standards, trade and environmental standards, trade and human rights. Their very inclusion is controversial: among Republicans, within the business community, and in many Third World nations who see labor and environmental linkages as stalking horses for protectionism. On the other side, the NEC hardly appears as an “honest broker” to advocates of the social concerns. In reality, the process answer chosen here will likely be the product of the substantive course selected by the next administration. If it seeks engage these interests rather than exclude and override them, it will need to bring advocates of these concerns to the table to probe the possibilities for constructive compromise.

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### **Epilogue on Congressional Organization**

Contrary to the author’s initial intent, this essay has not addressed the organization of Congress. The main reason is that it has already exceeded ten pages--also contrary to original intent. But a few additional words may be useful.

Because tariffs are taxes, primary Congressional responsibility for trade policy has long rested with the revenue committees--House Ways and Means; Senate Finance--even though

customs receipts have long ceased to be an important source of funds for the US Treasury. Both committees pressed for creation of USTR, protected and strengthened it at several points, and would have effective veto power over executive branch organizational changes such as those suggested above. In the House, the power of Ways and Means waned after the reforms of the 1970s, waxed in the 1980s under Chairman Dan Rostenkowski (D-Ill), and has waned again in the 1990s--like that of committees generally--under Gingrich/Republican rule. Senate Finance has never had comparable authority in the free-wheeling upper chamber, but it has nonetheless remained one of the strongest Senate panels, and has exceeded expectations under the Roth chairmanship, particularly on international trade.

These committees' have worked effectively with USTR. Their current problem is not dissimilar to USTR's--the broadened impact of international trade, triggering involvement of interests and policy concerns that are in other committees' purviews. Labor and environmental matters, for example, are under other jurisdictions.

Effective executive-congressional trade policy collaboration will continue to rest importantly on these committees. That was evident as recently as May, when an overwhelming Ways and Means endorsement both facilitated and foreshadowed the strong House vote for permanent normal trade relations with China. (That reflected also at least a temporary restoration of the bipartisan committee support that trade policy long enjoyed.)

There is need, however, for non-economic (and other economic) perspectives to be better represented in Congressional trade policy deliberations. One means would be the creation of a Trade Steering Group in the House (and perhaps a parallel body in the less formal Senate). The TSG would be headed by the Ways and Means chair, but it would include senior representatives of a range of other committees whose interests trade policy affected: those overseeing labor, environment, energy, agriculture, etc. This group might take overall responsibility for management of comprehensive trade legislation, delegating particular pieces of the bills to panels with specific expertise, aiming to strike balances the full House would endorse. Ways and Means would continue to be first among equals. But legislation reported out to the full House would reflect, hopefully, a broader consensus.