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The 1934 System: Protection for Congress

Seventy-five years ago, the United States Congress took final action on the most famous trade law in American history. The Tariff Act of 1930, better known as "Smoot-Hawley," amended "specific tariff schedules for over twenty thousand items, almost all of them increases."[1] It established "the highest general tariff rate structure that the United States [had] ever experienced," with duties actually collected reaching, by one estimate, 60 percent of the value of dutiable imports.[2]

What followed is well known. The law quickly "occasioned," as one contemporary critic put it, "more comment, more controversy, more vituperation in the national as well as in the international sphere than any other tariff measure in history."[3] Country after country raised tariff barriers in retaliation. World trade stagnated: for the United States, imports dropped from $4.40 billion in 1929 to $1.45 billion in 1933, and

1. Robert A. Pastor, *Congress and the Politics of US Foreign Economic Policy, 1929–1976* (Berkeley: University of California Press, 1980), 77–78.

2. John M. Dobson, *Two Centuries of Tariffs: The Background and Emergence of the United States International Trade Commission* (Washington, DC: US International Trade Commission, December 1976), 34.

3. Joseph M. Jones, Jr., *Tariff Retaliation: Repercussions of the Hawley-Smoot Bill* (Philadelphia: University of Pennsylvania Press, 1934), 1.

exports plunged even more: from $5.16 billion to $1.65 billion.[4] The Great Depression—already well under way in 1930—deepened and became truly global. World War II followed less than a decade later.

Not as well remembered today is the fact that Smoot-Hawley was the last general tariff law ever enacted by the United States Congress. From the "Tariff of Abominations" denounced by Andrew Jackson and John C. Calhoun in 1828 through the McKinley Tariff of 1890 and the Fordney-McCumber Act of 1922, such comprehensive tariff bills had been prime congressional business and the level of US import barriers one of the hottest issues between the Republican and Democratic parties. The tariff, "more than any other single topic, had engrossed [congressional] energies for more than a hundred years."[5] And high rates of duty had been the rule, not the exception.

But barely four years after Smoot-Hawley, our national legislature enacted an entirely different sort of trade law. The Reciprocal Trade Agreements Act of 1934 began a movement of tariffs in the opposite—downward—direction, by authorizing the president to negotiate and implement pacts with other nations in which each agreed to cut tariffs on items of interest to the other. With this authority, the president could reduce any US tariff by up to 50 percent without further recourse to Congress. And the authority was renewed in 1937, 1940, and 1943.

Secretary of State Cordell Hull lost no time in exploiting this authority. By 1945, the United States had entered 32 such bilateral trade agreements with 27 countries, granting tariff concessions on 64 percent of all dutiable imports and reducing rates by an average of 44 percent.[6]

In the immediate postwar period, trade negotiations went multilateral. The reciprocal negotiating authority was updated in 1945 to allow further reductions of up to 50 percent from that year's rates. Under American leadership, the General Agreement on Tariffs and Trade (GATT) was negotiated. Its articles provided guidelines for national trade policies and a framework within which the United States and its major (primarily Euro-

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4. US Department of Commerce, Bureau of the Census, *Historical Statistics of the United States: Colonial Times to 1970, Part 2* (Washington, DC: US Department of Commerce, 1975), 884. Much of this fall, of course, reflected the Depression's sharp price and output decreases. But even after adjustment for these changes, exports fell, as a share of total US goods production, by more than 20 percent between 1929 and 1933.

5. James L. Sundquist, *The Decline and Resurgence of Congress* (Washington, DC: Brookings Institution, 1981), 99.

6. John H. Jackson, Jean-Victor Louis, and Mitsuo Matsushita, *Implementing the Tokyo Round: National Constitutions and International Economic Relations* (Ann Arbor: University of Michigan Press, 1984), 141; and John W. Evans, *The Kennedy Round in American Trade Policy: The Twilight of the GATT?* (Cambridge, MA: Harvard University Press, 1971), 7.

pean) trading partners could enter a series of global negotiating "rounds" resulting in further tariff cuts.

This approach began to flag in the 1950s: Item-by-item tariff negotiations produced diminishing returns; protectionist pressures regained strength in the United States; and the European Common Market, created in 1957, posed a new challenge. Congress responded in 1962, on President John F. Kennedy's recommendation, by authorizing negotiations to cut tariffs across the board. The resulting "Kennedy Round," completed in 1967, produced further cuts in US protective duties averaging 35 percent.[7]

Smoot-Hawley remained on the books, in form still the basic US trade law. But because of negotiations authorized by subsequent Congresses, its average tariff level on dutiable imports had been reduced from 60 percent in 1931 to 10 percent in 1970 (and 5.7 percent in 1980).[8]

Total US exports did not return to their pre-Depression level until 1942. But thereafter they grew rapidly: to $10.2 billion in 1950, $20.4 billion in 1960, and $42.6 billion in 1970.[9] The parallel figures for imports were $8.9 billion in 1950, $14.7 billion in 1960, and $40 billion in 1970.

The increase in global commerce was even greater. This trade expansion was a prime contributor to a remarkable era of world prosperity. It also contributed to something the 20th century had not previously seen: decades of peace on the European continent.

How was it possible, politically, for the United States to reduce its own trade barriers and persuade the world to do likewise? As noted in the opening chapter, E. E. Schattschneider had demonstrated how politics must drive Congress to respond to producer pressures and raise levels of protection. By what political magic had "Schattschneider's law" been repealed?

The short answer is that Congress legislated itself out of the business of making product-specific trade law. There were exceptions, of course. But, as a general rule, Congress as a collective body was as assiduous in avoiding specific trade barriers after 1934 as it had been in imposing them the century before.

A new system for trade policymaking came into being. Like any ongoing set of policy processes, it was not created by any one actor at any sin-

7. Evans, *The Kennedy Round in American Trade Policy*, 283.

8. Dobson, *Two Centuries of Tariffs*, 34; US Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1982–83* (Washington, DC: US Department of Commerce, 1982), 844.

9. US Department of Commerce, *Historical Statistics of the United States*, 884, and US Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1984* (Washington, DC: US Department of Commerce, 1985), 831. These data differ slightly from the Commerce Department data employed later in this study in discussions of contemporary US trade flows.

gle time. It evolved, not only because of creative leadership from men like Cordell Hull, but also because it served the political interests of those senators and representatives most responsible for trade policy.[10]

Protecting Congress from Trade Pressures

Article I of the United States Constitution grants Congress sole power "to regulate commerce with foreign nations." It also provides Congress authority "to lay and collect . . . duties," and the tariff supplied about half of federal revenues as recently as 1910.[11] The Constitution grants the president no trade-specific authority whatsoever. Thus, in no sphere of government policy can the primacy of the legislative branch be clearer: Congress reigns supreme on trade, unless and until it decides otherwise.

Beginning in the mid-1930s, Congress did decide otherwise, changing the way it handled trade issues. No longer did it give priority to protecting American industry. Instead, its members would give priority to protecting themselves: from the direct, one-sided pressure from producer interests that had led them to make bad trade law. They would channel that pressure elsewhere, pushing product-specific trade decisions out of the committees of Congress and off the House and Senate floors to other governmental institutions.[12]

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10. In recent years, there has been a lively scholarly debate about the relative importance of these process changes in the redirection of US trade policy. Michael J. Hiscox argues that although "the RTAA [plausibly] helped to produce more liberal policy outcomes," its enduring success was due less to the institutional changes than to two "*exogenous* changes in [societal] trade policy coalitions that altered the preferences of Republicans and Democrats enough to cement the new system in place" (*italics* in original). "The Magic Bullet? The RTAA, Institutional Reform, and Trade Liberalization," *International Organization* 53: 4, Autumn 1999, 670, 690. Karen E. Schnietz, by contrast, sees the RTAA as "arguably the most important piece of trade legislation of this century" but challenges standard explanations of *why* it was enacted (e.g., since few of them changed their votes between 1930 and 1934, members of Congress did not "learn" from Smoot-Hawley that congressional logrolling had disastrous economic consequences). "The Institutional Foundation of U.S. Trade Policy: Revisiting Explanations for the 1934 Reciprocal Trade Agreements Act," *Journal of Policy History* 12, vol. 4 (2000): 417–20.

While differing with this author on a number of matters, Sharyn O'Halloran gives central place to the specifics of congressional delegation in her "new institutionalist" analysis. See her *Politics, Process, and American Trade Policy* (Ann Arbor: University of Michigan Press, 1994), especially chapter 5.

11. Dobson, *Two Centuries of Tariffs*, 31. In fiscal year 1984, by contrast, customs duties constituted just 1.7 percent of total federal budget receipts.

12. Implicit in the pages that follow is an assumption about congressional motivation at variance with much of the "new institutionalist" literature on Congress, which assumes that members' policy behavior aims overridingly at influencing policy outcomes. Elsewhere I seek to make this explicit, arguing that this is "not a necessary means to their broader goal:

The instruments for accomplishing this goal developed and changed with time, and political protection was never, of course, the sole congressional motive. What moved some legislators was a conviction that trade regulation had become too complicated and too detailed for Congress to be handling its specifics. For Secretary of State Cordell Hull and some of his fellow Democrats—historically the lower-tariff political party—the aim was to reduce trade barriers in any way that was practical. As a Tennessee congressman during World War I, the secretary himself had become convinced that "unhampered trade dovetailed with peace; high tariffs, trade barriers, and unfair economic competition, with war."[13] And without the combination of his determination and an economic crisis that produced lopsided Democratic majorities in Congress, the historic shift of 1934 would not have come about—at least not then. Twenty years later, a landmark trade policymaking study could report that protectionists "shared in the consensus that somebody outside Congress should set tariff rates or impose and remove quotas."[14] But no such bipartisan consensus existed in the 1930s.

The shift did not mean that legislators abdicated all responsibility for trade. They continued to set the guidelines, regulating how much tariff levels could be changed, by what procedures, and with what exceptions. Individual members also remained free to make ample protectionist noise, and to declaim loudly on behalf of producer interests that were strong in their states or districts. In fact, they could do so more freely than ever, secure in the knowledge that most actual decisions would be made elsewhere.

The year 1934 was not the first in which Congress delegated specific trade authority to the president. The US Tariff Commission had been created in 1916 as a nonpartisan, fact-finding agency. And the "flexible tariff" position of the Fordney-McCumber Act of 1922 empowered the president, at the commission's recommendation, to raise or lower any tariff by up to 50 percent in order to equalize the production costs of domestic firms and foreign competitors. (If fully applied, which it never was, this provision would have eliminated "comparative advantage," the primary

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to maintain and enhance political standing at home and in Washington." See 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.

13. *The Memoirs of Cordell Hull,* vol. 1 (New York: Macmillan, 1948), 81. Karen E. Schnietz argues that, more generally, "Democrats hoped the RTAA would institutionalize low tariffs" through two features highlighted here (delegation to the president, reciprocal tariff negotiations) and one not explicitly addressed in this book: removal of the prior requirement that the Senate ratify trade agreements by a two-thirds vote. "The Institutional Foundation of U.S. Trade Policy," 418, 429–38.

14. Raymond A. Bauer, Ithiel de Sola Pool, and Lewis Anthony Dexter, *American Business and Public Policy: The Politics of Foreign Trade* (Chicago: Aldine-Atherton, 1972), 39.

economic reason for trade since it is such differences in production costs that make trade profitable!)[15]

But as long as Congress was expected to pass comprehensive bills adjusting tariffs every few years, such measures could never keep protectionist wolves from the Capitol's doors. For those affected knew that Congress would shortly be acting on their specific products, in a process that gave priority to their interests. This could only encourage them to press all the harder, for greater and greater protection. As Hull put the matter,

> it would have been folly to go to Congress and ask that the Smoot-Hawley Act be repealed or its rates reduced by Congress. This [approach had], with the exception of the Underwood Act in 1913 . . . always resulted in higher tariffs because the special interests enriched by high tariffs went to their respective Congressmen and insisted on higher rates.[16]

What was required was a system that would make the buck stop somewhere else. In 1934, the legislative and executive branches began to construct such a system.

The central need was obvious: to delegate specific tariff setting. But meeting this need required answers to two basic questions. First, how could Congress rationalize giving up such a major power? And second, would not whoever was delegated this power be subject to the same unbalanced set of pressures, with similar policy results?

The "Bargaining Tariff"

The need for a rationale for the delegation of congressional power was answered by linking tariff setting to international negotiations, a clear presidential prerogative. To borrow the phrase of Joseph M. Jones, Jr., a strong advocate of this approach, the United States moved decisively from an inflexible, statutory tariff to a "bargaining tariff."[17] The president could reduce rates by up to 50 percent, but only after negotiating bilateral agreements in which the United States "got" as well as "gave."[18]

Another way that Congress rationalized the delegation of authority was by making it temporary. As Dean Acheson noted many years later,

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15. Dobson, *Two Centuries of Tariffs*, 87–95.

16. *Memoirs of Cordell Hull*, vol. 1, 358.

17. Joseph M. Jones, Jr., *Tariff Retaliation*, 303.

18. The delegation of tariff-setting authority to encourage "reciprocal" concessions was not unprecedented. The barrier-raising McKinley Tariff Act of 1890 gave the president authority to adjust tariffs on sugar and other specified commodities according to the "reciprocity" shown American exports by particular Latin American countries. See David A. Lake, *Power, Protection, and Free Trade: International Sources of U.S. Commercial Strategy, 1887–1939* (Ithaca, NY: Cornell University Press, 1989), especially 100–02.

> unlike almost all of the New Deal economic legislation once regarded as radical, the executive power to negotiate trade agreements has not been permanently incorporated in American legislation, but only extended from time to time for short periods with alternating contractions and expansions of scope.[19]

By its answer to the first question—the rationale for delegating power—the Reciprocal Trade Agreements Act of 1934 also addressed the second: how to avoid unbalanced trade pressures. In the process of trade negotiation, "getting" and "giving" were defined in terms of producers, not consumers. But the "bargaining tariff" shifted the balance of trade politics by engaging the interests of export producers, since tariff reductions could now be defended as a means of winning new markets for American products overseas. Export interests had long been an influence on US trade policy, but usually they were no match for producers threatened by imports. The bargaining tariff strengthened the exporters' stakes and their policy influence, creating something of a political counterweight on the liberal trade side.

Thus, partly as a genuine objective (we did want other countries to lower their trade barriers) and partly as a political device, the "bargaining tariff" was an essential ingredient in the emerging American trade policymaking system. And since, from the 1920s onward, the United States regularly extended bilaterally negotiated tariff cuts to its other trading partners (under the unconditional "most favored nation" [MFN] principle), country-by-country deals were an effective means of reducing trade barriers across the board.

In 1934, legislators could grant the new authority tentatively, experimentally. Hull had wanted it to be unbounded in time, but Congress limited it to an initial three years (however, the agreements negotiated during this period would remain in effect indefinitely). Hull also would have liked to bargain multilaterally, but he settled for "the next best method," bilateral negotiations, because "it was manifest that public opinion in no country, especially our own, would at that time support a worthwhile multilateral undertaking."[20] Yet in one crucial respect the executive authority to negotiate trade agreements was unconstrained by the traditional limits: Congress did not insist on approving the specific agreements that were negotiated.

In subsequent decades, presidents would employ tariff-negotiating authority more ambitiously—to negotiate multilaterally (after World War II) or to bargain on general tariff levels rather than item by item (the Kennedy Round). Always there were limits in time and in the range of negotiation. Nevertheless, Congress continued to respond to new trade policy demands by shifting the basic pressure and responsibility onto the president.

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19. Dean Acheson, *Present at the Creation: My Years at the State Department* (New York: W. W. Norton, 1969), 10.

20. *Memoirs of Cordell Hull*, vol. 1, 356.

The "Bicycle Theory" and "Export Politics"

One political effect of trade negotiations was to divert some trade policymaking attention from the problems of the American market to the benefits of opening up markets overseas. In fact, the very existence of ongoing negotiations proved a potent rationale for deferring protectionist claims. It gave negotiators (and their congressional allies) a strong situational argument: to impose or tighten an import barrier now, they could assert, would undercut talks aimed at broader American trade advantages. Conversely, the unavailability of this argument in periods between major trade negotiations strengthened the hands of those seeking protection. Trade specialists came to label this phenomenon the "bicycle theory": The trade system needed to move forward (liberalize further) or else it would "fall down" into new import restrictions. It could not stand still.

Even in the absence of major negotiations, trade officials sought ways to shift from "import politics" to "export politics." From the late 1960s to the mid-1990s, for example, every US administration has had to cope with severe pressures generated by rising sales from Japan. Although interest group pressures were typically tilted toward curbing imports, officials have regularly, with congressional cooperation, shifted the focus to exports, to opening up the Japanese market. Responding to arguments that other countries' trading practices were unfair, US trade negotiators did not have to defend those practices or point to the beams in our own eyes. Instead, they could demonstrate their toughness by demanding market-opening concessions from our trading partners.

But to delegate power over specific trade barriers with reasonable confidence, Congress needed more than an international negotiating process. It also needed two sorts of executive agents: a *broker* who would be responsive to legislators' concerns domestically even while pushing for bargains internationally, and *regulators* who would technocratically apply statutory import relief rules to a set of exceptional cases.

The Executive Broker

In preparing Smoot-Hawley, the House Ways and Means Committee "accumulated 11,000 pages of testimony and briefs in forty-three days and five nights," but no one came to speak for the executive branch.[21] At hearings for the 1934 act, by contrast, seven of 17 witnesses represented the Roosevelt administration.[22] Congress would not have adopted such a law without executive branch leadership. And if the new American trade policymaking system were to work, Congress needed a focal point for trade

21. E. E. Schattschneider, *Politics, Pressures and the Tariff* (New York: Prentice-Hall, 1935), 36.

22. Pastor, *Congress and the Politics of US Foreign Economic Policy*, 88.

policy management within the executive branch, an official who could balance foreign and domestic concerns.

For the first decade, the position of trusted executive agent was admirably occupied by a man from Capitol Hill, Secretary of State Cordell Hull. While he tilted trade policy in the market-expanding direction as much as was politically feasible, he retained his sensitivity to congressional concerns. He moved immediately and aggressively to exploit the new bargaining authority. At the same time, he never forgot that the hand that had granted this authority could also take it away.

Hull resigned in 1944, leaving a gap on the trade scene that would not be filled in any durable way for nearly 20 years. In the immediate postwar years it did not really matter. Europe and Japan were devastated. Triumphant and economically dominant, the United States was in a position to sell abroad far more than the world could sell us in return. Thus, it was logical—and politically feasible—for trade policy to be subordinate to the broader American foreign policy of constructing a free world coalition founded on a liberal world economic order. And it was logical for the State Department, staffed by such talents as Under Secretary Will L. Clayton, to continue to play the lead trade-negotiating role.

But in the 1950s, as resurgent international competition once again began to threaten American industries, attacks on State stewardship increased. The department was charged with favoring foreign interests over American interests, with bargaining away US commercial advantages in the interest of good political relations or other diplomatic goals. For a time, State managed to keep the primary negotiating responsibility, and it could play this role aggressively when its senior economic official was someone like Under Secretary C. Douglas Dillon. However, in 1953, President Dwight D. Eisenhower found it necessary to join Congress in setting up a commission, chaired by Clarence B. Randall, to develop recommendations for his overall trade policy. Randall was then brought into the White House as a special trade adviser to implement the commission's report. And the Kennedy administration developed its major trade expansion program in the White House, under a temporary staff headed by Howard C. Petersen.

So when, to meet the challenge of the new European Economic Community (EEC), that administration went to Congress seeking broad new authority to reduce tariff rates across the board (not item by item), it was not surprising that House Ways and Means Chairman Wilbur D. Mills (D-AR) raised the question of whether State could be trusted with this new authority. Should it not be given instead to a negotiator who would be responsive at least equally to domestic clients? No existing agency was a good candidate. The Commerce Department was, in Mills' view, incompetent. Moreover, Mills and another well-placed critic of State, Senate Finance Committee Chairman Harry F. Byrd, Sr. (D-VA), thought Commerce insufficiently responsive to agricultural interests. So perhaps there should be a new presidential negotiator who could balance domestic and foreign concerns.

Mills proposed, therefore, that the president designate a special representative for trade negotiations (STR). An important figure in developing and brokering this idea was Myer N. Rashish, a Mills aide in the late 1950s, who was serving as Petersen's White House deputy in preparing the Trade Expansion Act. Rashish suggested that the Petersen office itself was an appropriate model. He believed that conflicting bureaucratic interests made it impossible for the administration to initiate such a reorganization proposal; however, if Mills proposed it, the president would consider reorganization an acceptable price to pay for the broad new negotiating authority he was seeking. And Kennedy did accept it, but reluctantly; like most presidents, he resisted efforts to establish special-purpose offices in "his" Executive Office.[23]

Organizationally, the STR was an anomaly. Though it was housed in the Executive Office of the President, few of its heads had close personal contact with the chief executive (Robert S. Strauss was the prime exception). For presidents were politicians who, like members of Congress, wanted to limit their direct responsibility for decisions that went against important trade constituencies. Neither was trade negotiating the normal type of White House activity. In fact, it was the sort of day-to-day operating function usually housed in a cabinet department. But no appropriate department existed.

The White House location offered flexibility, balance, and (sometimes) power. During the Kennedy Round, STR Christian A. Herter and his deputies, W. Michael Blumenthal and William M. Roth, enhanced their leverage by initiating close working relationships with State—which then retained authority for most trade negotiations outside the Kennedy Round—and with the international economic component of the National Security Council staff. (In the early 1970s, when influence in such matters shifted to the economic side of the White House, STR William D. Eberle and his deputies William R. Pearce and Harald B. Malmgren made their

23. Congress not only created its own agent in 1962; it protected and strengthened the special representative a decade later. When the Nixon administration proposed to place the STR under its Council on International Economic Policy (CIEP), Ways and Means responded by voting to make the office of the STR (not just the representative) statutory, in an amendment to what became the Trade Act of 1974. By the time the Senate finished its work, the office had been placed formally in the Executive Office of the President, and, on the proposal of Finance Committee Chairman Russell B. Long (D-LA), its head was given cabinet rank. Long underscored legislators' sense that they owned a piece of this White House trade operation when he suggested, during the confirmation hearings of Jimmy Carter's STR, Robert S. Strauss, that "it might be a good idea for us to ask" the secretaries of state and treasury to meet with his committee "so that there can be no misunderstanding" about which official was to have trade primacy (US Congress, Senate Committee on Finance, *Hearing on Nominations,* 95th Congress, 1st session, 23 March 1977, 4).

presidential connection through George P. Shultz, secretary of the treasury and "economic czar" of the Nixon administration.) But whatever the specific relationships of the STR, the White House location—combined with special status and separation from the White House political staff—offered him flexibility in working with legislators across as well as along party lines, drawing in some interests to balance others, and keeping the trade policy game as open as possible.

The office of the STR allowed executive branch trade officials to do what Hull had done three decades before: employ their leeway to tilt trade policy in the liberal, market-expanding direction. Sensitive to the political winds, they could lean at least moderately against them, recognizing that congressmen who bucked interest group demands to them did not always require their full satisfaction. The STR-led executive branch certainly advocated US interests in international negotiations—it had to do so to retain credibility at home. But the role of such negotiations in US trade politics was to keep the game open, to limit protection, and to respond to the trade problems of specific industries with market-expanding solutions.

Domestically, American trade policymakers were noninterventionist. Unlike their counterparts in Japan's Ministry of International Trade and Industry (MITI), for example, they did not aspire to nurture those industries at home that promised future competitiveness abroad. But when it came to international trade barriers, they were definitely not policy neutral. They wanted to limit such barriers insofar as was possible. This made them trade policy activists, for when they feared being trapped by one-sided pressure for protection, they would look for countervailing interests and encourage them to weigh in on the other side. This approach created frequent tension with legislators championing particular industries. But most congressional trade leaders, most of the time, sympathized with the broad objective of liberal trade and, free of direct responsibility themselves, often connived with their executive counterparts to steer the political game in the direction of trade expansion.

"The Rules"

As legislators worked with executive branch leaders to construct a system to protect themselves from trade pressures, they also employed a different sort of administrative institution, one modeled on quasi-judicial regulatory procedures. For there remained broad agreement that, under certain exceptional circumstances, American industries ought to have recourse to trade protection. Unless "objective" procedures could be devised to provide such protection, these industries would demand specific statutory action. Thus, US law and practice maintained a set of "trade remedies" designed to offer recourse to interests seriously injured by imports and to those up against what were considered "unfair" foreign practices.

Some major legal trade remedies originated well before the Reciprocal Trade Agreements Act of 1934. A law dating from 1897 required the secretary of the treasury to impose a special, offsetting duty if he found that foreign governments were subsidizing exports with a "bounty or grant." The Anti-Dumping Act of 1921 called for similar measures if foreign sellers were found to be unloading goods in our market at prices below their home market price. (After World War II, GATT Article VI authorized and regulated national antidumping and countervailing duty [CVD] measures.)

There remained the problem of industries injured by import competition that they did not, or could not, claim to be "unfair." If, for example, a US tariff reduction led to an unexpectedly large surge in particular imports, should not competing domestic producers have the right to seek at least temporary trade relief? Congressional trade specialists generally thought they should; Congress was worried about the uncertainty inherent in the international negotiations it had authorized, and wanted some form of insurance for domestic interests. So in the 1943 agreement with Mexico, the United States, drawing on pre-1934 precedents, included an "escape clause" allowing an affected industry to appeal for temporary import relief if it could prove injury from the results of US trade concessions. This approach was incorporated in Article XIX of the GATT.[24]

Seeking to avoid statutory constraint, State officials proposed to include such a clause in all future US trade agreements, and President Harry S. Truman issued an executive order in 1947 setting forth procedures by which injured firms could seek relief. This deferred statutory action for a while, but by 1951 Congress had found this insufficient, so legislators incorporated a general "escape clause" provision in an act extending presidential trade-negotiating authority.

By making protection the "exceptional" recourse in the "normal" process of trade-barrier reduction, the escape clause kept the quasi-judicial form of the old flexible tariff but turned the substance on its head. Protection-minded legislators sought to counter this with so-called "peril point" requirements that were incorporated in the 1948 law and intermittently thereafter. These required the Tariff Commission to estimate the point beyond which tariffs could not be reduced without "peril" to specific industries; their aim was to pressure the executive not to negotiate rates below that level.

If regularly followed, the peril point principle would have made protection the norm and trade liberalization the exception. And in fact, with

24. For background on US and GATT law, together with case examples, see John H. Jackson, *Legal Problems of International Economic Relations: Cases, Materials and Text, American Casebook Series* (St. Paul: West Publishing Co., 1977), 617–64.

this and other devices, Congress in the 1950s slowed the momentum of trade liberalization to a crawl: by grudging, sometimes single-year extensions of presidential negotiating authority; by escape clause criteria that made it fairly easy for industries to qualify for relief; by a 1958 provision allowing Congress, with a two-thirds vote in both houses, to compel the president to implement a Tariff Commission escape clause recommendation; and by limiting the range of future tariff reduction. In the "Dillon Round" negotiation of 1960, for example, authority for tariff cuts was limited to 20 percent. In fact, only a 10 percent reduction was achieved.

The Trade Expansion Act of 1962 brought major revision and codification to the escape clause. An interest seeking relief had to demonstrate serious injury, the major cause of which was an increase in imports due to US tariff concessions. If the Tariff Commission found that a particular interest met this rather tough test, the president had a choice whether or not to accept the commission's recommendations for tariff or quota relief. If he did not, Congress could override his negative decision by a majority vote in both houses. But while the administration had to swallow this "legislative veto" provision, it was able to beat back a Senate floor amendment adding a "peril point" requirement. (And in fact the veto was never exercised.)

During congressional debate, President Kennedy illustrated the political utility of the escape clause by implementing a Tariff Commission recommendation to increase tariffs on Belgian carpets and sheet glass. When the European Community retaliated, Kennedy stuck to his decision, adding that if his bill were already law, he "could have then offered an alternate package [of compensating tariff reductions] which . . . would have prevented retaliation."[25] He was thus able simultaneously to demonstrate his readiness to help injured industries and to argue that trade-liberalizing legislation offered a better way to do so.

The 1962 act also added an innovative approach to injury from imports—that of "trade adjustment assistance" (TAA). The idea was originally suggested, it appears, in a Council on Foreign Relations planning paper prepared during World War II, and it was given broad public exposure when proposed to Eisenhower's Randall Commission by David J. McDonald of the United Steelworkers union in 1953. The TAA idea offered an alternative, or a supplement, to tariff relief. Workers or firms hurt by imports could apply for government financial, technical, and retraining assistance—including relocation allowances—that would help the firms to become more competitive and the workers to move to other lines of endeavor. The political aim was to weaken support for trade restrictions by offering a constructive alternative to those hurt by imports.

The Randall Commission had rejected the idea, by a 16 to 1 vote. But it was picked up by several senators in the 1950s, including one John F. Kennedy. When he became president, Kennedy favored its adoption on

25. Pastor, *Congress and the Politics of US Foreign Economic Policy,* 114.

both substantive and political grounds, since it was something to offer AFL-CIO leaders to help secure labor support of his Trade Expansion Act. TAA was, moreover, consistent with his administration's emphasis on worker retraining as a response to unemployment.

By the 1960s, therefore, a number of administrative remedies were available to companies and workers injured by increased import competition. Substantively, their goal was equity—an established set of procedures, available to all, offering insurance against damage from trade liberalization or offsets for trade-distorting foreign practices like subsidies. Politically, the administrative remedies were another means by which Congress could divert trade pressures elsewhere. Legislators could say to those seeking statutory remedies, "Have you looked into the escape clause?" or "It sounds like a dumping case to me—can I make an appointment for you at Treasury so you can learn the procedure for relief on that?" Rather than trying to arbitrate the many trade claims, legislators could point to "the rules" under which firms and workers were entitled to relief. And officials of the executive branch could do likewise.

But in practice, the administrative remedies could not satisfy the largest trade-impacted industries. These industries wanted greater assurance of relief, and their political power gave them reason to believe they could do better by applying direct pressure at both ends of Pennsylvania Avenue.

Deals for "Special Cases"

International negotiations brought executive branch officials and export interests more effectively into trade politics; remedy procedures offered the injured a recourse other than going to Congress for new legislation. There remained the "special cases": those large, import-impacted interests that saw in open trade more threat than promise, and that were powerful enough not to settle for such relief as the regular rules might afford. The trade policymaking system also needed means to cope with them, or they might join together in a protectionist coalition and overthrow the liberal order. And even if that were beyond their immediate reach, they could certainly do much to impede an administration's trade-expanding initiatives.

In the postwar period, the most important "special case" was textiles (including apparel), followed by certain agricultural products[26] and steel. Oil

26. Agricultural interests sometimes won specific statutory protection for products like meat and sugar through legislation that moved through the House and Senate agriculture committees (which never fully joined in the tradition of congressional self-denial on trade). At other times they won import relief through executive action under legal authorities like Section 22 of the Agricultural Adjustment Act of 1933, which authorized the president, on the recommendation of the Tariff Commission and the secretary of agriculture, to impose quotas or fees to the extent that imports were interfering with a domestic commodity program designed to buttress prices and limit production.

imports were a prime issue until a 1955 statutory compromise authorized the president to restrict imports in cases in which they threatened to impair national security, and President Eisenhower imposed oil import quotas four years later. The auto industry remained committed to open trade until the late 1970s. But the textile-apparel coalition, with its 2.5 million workers and firms located in every state of the union, had sufficient concern about trade and sufficient political power to threaten the general trade policymaking system unless its specific interests were accommodated.

For the first nine postwar years, the textile industry was relatively inactive. It shared the benefits of the artificial economic dominance the war had provided the United States. So confident were its leaders that in 1946, they endorsed and cooperated in a mission to Japan—a fierce prewar trade competitor—to aid in reconstructing that country's textile industry during the American occupation. But in 1955, suffering a depressed market at home and resurgent sales from across the Pacific, and seeing in the debate over reciprocal trade renewal an opportunity to make the industry's weight felt,

> [t]extiles entered the legislative battle in full force. Letters poured in on the congressmen from the textile districts. The Georgia and Alabama delegations, longtime mainstays of Southern free-trade sentiment, went over to the protectionist side.[27]

At that time, US cotton textile exports exceeded imports, and the latter were less than 2 percent of domestic production. But if the industry's substantive case for relief was a bit overstated, its power was taken very seriously. In the House of Representatives, it took an enormous personal effort by House Speaker Sam Rayburn (D-TX) to beat back efforts to open up the trade authority bill of 1955 to protectionist amendments. A year later, a proposal for rigid textile quotas failed by just two votes in the Senate. The Eisenhower administration got the message, and Japan was pressured to limit its cotton textile exports. When the US textile industry found this "voluntary" Japanese restraint insufficient, Congress added Section 204 to the Agricultural Act of 1956, authorizing the president to negotiate bilateral export limitation agreements with foreign governments on "textiles or textile products." The Eisenhower administration moved promptly to exercise this authority.[28]

For a comprehensive survey of "special protection," see Gary Clyde Hufbauer, Diane T. Berliner, and Kimberly Ann Elliott, *Trade Protection in the United States: 31 Case Studies* (Washington, DC: Institute for International Economics, 1986).

27. Bauer, Pool, and Dexter, *American Business and Public Policy*, 60.

28. For an extended treatment of textile policymaking, especially vis-à-vis Japan, see I. M. Destler, Haruhiro Fukui, and Hideo Sato, *The Textile Wrangle: Conflict in Japanese-American Relations, 1969–1971* (Ithaca, NY: Cornell University Press, 1979).

What was clear to President Eisenhower was clearer still to President Kennedy. As senator from a declining textile state, he knew both the industry's power and its interests. As presidential candidate, he had promised action to control textile imports from Hong Kong and elsewhere, which—now that Japanese sales were limited—were growing in volume. As president, he wanted to deliver on this promise. He recognized also that unless this key industry was appeased, Congress was unlikely to approve general trade-expanding legislation.

The result was a special multilateral deal for the industry, known officially as the Long-Term Arrangement Regarding International Trade in Cotton Textiles (LTA). This pact was completed in 1962 under GATT auspices, although it constituted a massive exception to normal GATT rules. The LTA set guidelines within which importing nations could negotiate detailed, product-by-product quota agreements with exporters. And once negotiations for the LTA were well under way, the American Cotton Manufacturers Institute returned Kennedy's favor by endorsing his trade legislation: "We believe that the authority to deal with foreign nations proposed by the President will be wisely exercised and should be granted."[29]

This pattern was repeated eight years later, albeit at considerably greater international cost. At industry insistence, the Nixon administration embarked on a fractious, three-year negotiation with Japan, eventually threatening use of the "Trading with the Enemy Act" to force that nation to broaden its export restraints to include textiles of wool and man-made fibers. (Then, in 1973, this too was multilateralized in the Multi-Fiber Arrangement [MFA], which succeeded the LTA. Not entirely by coincidence, Congress completed action on President Nixon's trade expansion proposal the following year.)

And in the late 1960s, with the steel industry feeling growing import pressure, the State Department shepherded an arrangement among Japanese, European, and American producers to limit the volume sales of the major foreign exporters to the US market. This arrangement was abandoned in the 1970s, in part because of uncertainty about its legality under American antitrust law, and in part because dollar devaluation (plus an economic boom) brought a temporary easing of US steel-trade problems.[30]

These special deals circumvented both national and international rules. Typically, they involved pressuring foreign governments—primarily Japan in the 1950s and 1960s—to enforce "voluntary" export restraints (VERs). This device got around the domestic rules for proving injury and

29. Bauer, Pool, and Dexter, *American Business and Public Policy*, 79.

30. But in 1977, the Carter administration would respond to renewed pressure from the steel industry with a new form of an ad hoc import limit, the "trigger price mechanism" (TPM). See Hideo Sato and Michael Hodin, "The U.S.-Japanese Steel Issue of 1977," in I. M. Destler and Hideo Sato, eds., *Coping with U.S.-Japanese Economic Conflicts* (Lexington, MA: D. C. Heath, 1982), 56–70.

limiting the duration of protection. For the United States, VERs had the international benefit that, unlike measures taken directly against imports, they were not subject to the GATT proviso allowing other nations to impose equivalent trade restrictions unless the United States offered "compensation" in the form of offsetting tariff reductions. In both of these ways, they undercut the 1934 policymaking system, for they showed how easily its rules could be avoided by those with power to do so.

Yet at the same time, special deals reinforced the protection for Congress that was the system's political foundation. They kept industry-specific protection out of US trade statutes. They gave executive officials significant leeway to cooperate with exporting countries in working out the form that protection would take, thus limiting the risk of retaliation. They let congressmen play the role they preferred: that of making noise, lobbying the executive branch for action, but refraining from final action themselves. (And for foreign firms they had one major benefit that tariffs or US import quotas did not have—they allowed them to raise their prices, thus pocketing the "scarcity rents" available because they were selling fewer goods than the market wished to buy. This was the real "compensation" provided, and it was one that directly benefited the industry hurt by the restraint.)[31]

Strong Congressional Committees

Last but not least, Congress needed internal safeguards. For the various means of diverting trade pressures shared one fundamental weakness: Congress could always override them by enacting a trade-restrictive statute, since it did not, and could not, yield that fundamental power to make any law "to regulate commerce with foreign nations." Thus, since the political interests of an individual senator or representative continued to be tilted in the direction of supporting the claimant for protection, there was always the danger that, if forced to an up-or-down vote, legislators would impose statutory trade restrictions.

There was therefore a need for internal procedures and institutions that would keep this from happening. Insofar as possible, product-specific bills and amendments had to be kept off the House and Senate floors.

This required strong committees. Fortunately, trade policy had long been the province of two of the most powerful congressional panels: Finance in the Senate and Ways and Means in the House. They were the tax

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31. C. Fred Bergsten and his colleagues have argued for replacing VERs with tariffs or auction quotas that would allow the United States to capture these rents. See C. Fred Bergsten, Kimberly Ann Elliott, Jeffrey J. Schott, and Wendy E. Takacs, *Auction Quotas and United States Trade Policy*, Policy Analyses in International Economics 19 (Washington, DC: Institute for International Economics, September 1987). VERs were outlawed in the Uruguay Round Agreement of 1994.

committees, and their jurisdiction over foreign commerce derived originally from the tariff's revenue function. From the 1930s onward, their power was enhanced by jurisdiction over Social Security. As tax committees, they had broad authority, close links to domestic interests, and the reputation for being hard-nosed, realistic, and slightly conservative. Unlike Foreign Relations in the Senate or Foreign Affairs in the House, they were unlikely to be disparaged by their colleagues as soft on foreign interests. Because they had other major legislative fish to fry, they were content with a system that delegated trade details, and satisfied with considering major trade authority bills just once every few years.

Particularly pivotal was the House Ways and Means Committee. In comparison with the House of Representatives, the Senate was smaller, more informal, and more personality dependent in its mode of operation. It had always allowed individual members more sway—more opportunity to delay action with unlimited debate, more leeway to propose amendments to legislation being considered on the floor. Once an influx of liberal activists broke down the informal dominance of southern seniors in the 1960s, the Senate became a very open place, where leaders reigned but did not rule. Senate rules did not require an amendment to be "germane" to the pending legislation. Therefore if a trade-restrictive amendment was suddenly sprung on the floor for attachment to a semirelated bill, the Finance Committee chairman often lacked the ability to block it.

But the Ways and Means chairman could. Because of its size, the House was inevitably more dependent than the Senate on formal institutions, rules, and procedures. And after the power of the House leadership had been limited by the revolt against Speaker Joseph G. Cannon (D-IL) in 1910, committee chairmen—chosen by seniority—rose to dominance. In fact, "the zenith of committee government occurred between the years 1937 and 1971,"[32] precisely the period when the 1934 system flourished. A strong and skillful Ways and Means leader could virtually ensure that the full House considered only those trade proposals that his committee wished to place before it. He could also place a strong personal imprint on whatever his committee recommended.

The most artful practitioner of this power was Wilbur D. Mills (D-AR), Ways and Means chairman from 1958 to 1974. He kept his committee relatively small by House standards—25 members—and resisted the formation of subcommittees. Working closely with these members, he dominated his panel not by arbitrary action—although he valued and used the chair's prerogative—but by his superior grasp of both substance and politics. He was always listening: to committee members, to lobbyists, to administration leaders, and to staff experts. In his committee, he knew how

32. Roger H. Davidson, "Subcommittee Government: New Channels for Policy Making," in Thomas E. Mann and Norman J. Ornstein, eds., *The New Congress* (Washington, DC: American Enterprise Institute, 1981), 103.

to put together bills that had consensus support. And he was determined not to take the slightest risk that a Ways and Means bill would lose on the House floor, or that it would be subject to an amendment the committee could not abide.

On trade, this meant playing the game of protecting his colleagues: blocking floor votes, diverting pressure elsewhere, pushing an administration to work out special deals when the heat got too strong. And while Mills was a free trader by personal conviction, he was clever enough not to seem insensitive to import-affected petitioners. He would listen to them sympathetically and make sure that they had access to the proper procedures. Simultaneously, he would maneuver to avert statutory protection of any sort for specific products.

A classic example of how Mills made the system work was his response to mounting textile-industry pressure in the years following the Kennedy Round. In 1968, a junior South Carolina senator, Ernest F. Hollings (D), proposed as an amendment to the Johnson administration's pending tax bill that statutory quotas be established for textile and apparel products. The full Senate approved the amendment, and the vote was not close. Mills, in alliance with the White House and the State Department, refused to accept it when the bill went to the Senate-House conference committee; he insisted, as a matter of constitutional propriety, that such provisions should originate in the House (trade was tariffs; tariffs were revenue measures). Senate conferees receded, as they did normally in such cases in those days, and so the quota proposal died without House members ever having to vote on it.

But Mills did not rest here. Realizing that the rise of then uncontrolled imports of man-made fiber textiles meant that the industry was very likely to win some form of protection eventually, Mills began to advocate it—in the nonstatutory form of restraints negotiated with Japan and the other major East Asian suppliers. And while his goal was to prevent direct congressional action, he buttressed the Nixon administration's bargaining position by introducing his own quota bill. If "voluntary" restraints were not achieved, Mills declared repeatedly, Congress would be forced to act.

Mills was playing a game familiar to trade practitioners: hyping the "protectionist threat" from Congress so as to create pressure on foreign governments to come to terms and to render legislative action unnecessary. The administration, in turn, was supposed to talk about the threat of legislation but stop short of supporting it. However, President Richard M. Nixon broke this unwritten rule in June 1970 when, frustrated by Japan's failure to carry through on high-level promises to come to terms, he "reluctantly" endorsed the statutory quota bill Mills had introduced.

The chairman was now in a bind. He had no choice but to move forward with a "Mills bill" that he did not really want enacted. But it somehow took until late November for the House to complete floor action, and although supporters rushed the bill to the Senate floor in December, they were unable to force a vote. Finance Chairman Russell Long played his part by attaching to the bill a controversial Social Security–welfare reform package, so that it was subject to twin filibusters: by liberal traders and by welfare reform critics. The bill died when the 91st Congress adjourned.

Then, in early 1971, in order to avoid having to travel the same road again, Mills encouraged the Japanese textile industry to develop its own unilateral plan to restrain exports. It did so, and though the limits were far less stringent than those the administration had been seeking, Mills endorsed the plan immediately upon its announcement.

In the end, this Japanese industry plan did not resolve the US-Japan textile dispute. But it did achieve both of Mills' objectives: removing the threat of legislation and providing some relief to the US industry.[33] Thus Mills protected the Congress. He also protected the nation's capacity to pursue generally liberal trade policies.

The fact that it regularly diverted proposals for statutory protection of specific industries did not mean that Congress never employed its independent legislative authority in matters of trade. When, every few years, presidents proposed major trade-negotiating legislation, Ways and Means and Finance were anything but administration rubber stamps. They held lengthy hearings; they reworked executive branch drafts from beginning to end. But the most thorough academic study of the House panel pointed out that in the typically closed Ways and Means markup sessions, "executive department representatives not only attend . . . but are an integral, active part of the discussion."[34] And markups focused on adjusting the details of the system of delegation—setting the range and limits of negotiating authority and refining the rules for trade remedies. With rare exceptions, general trade bills did not include product-specific protection.

Trade as a Nonparty Issue

As it operated in the decades following its inauguration, the 1934 system provided protection for Congress with a range of devices: the bargaining tariff, the executive broker, the quasi-judicial "trade remedies," the "special deals," and the strong congressional committees that worked with liberal-leaning executive branch leaders to make the system work. It also benefited enormously from the fact that trade was not a primary focus of partisan political competition.

This had not been true for most of American history. Schattschneider went so far as to argue that "the dominant position of the Republican

33. See Destler, Fukui, and Sato, *The Textile Wrangle*, especially chapter 11.

34. John F. Manley, *The Politics of Finance: The House Committee on Ways and Means* (Boston: Little, Brown, 1970), 348.

party before 1932 can be attributed largely to the successful exploitation of the tariff by this party as a means of attaching to itself a formidable array of interests dependent on the protective system and intent upon continuing it."[35] In the early Roosevelt administration, the great majority of Democrats had supported the reciprocal trade legislation, and virtually all Republicans had opposed it. (In 1934, 1937, and 1940, no more than five Republican votes were cast in favor of reciprocal trade in either house.)

But beginning with the wartime extension of 1943, and increasingly in the late 1940s and 1950s, Republicans began to support final passage of liberal trade legislation, although they often backed restrictive amendments.[36] And by the early 1970s, members of the GOP were increasingly aligned in favor of liberal trade, as was logically consistent with their general skepticism about intervention in the domestic economy.

By this time, the Democrats had begun to move in the opposite direction. Policy logic might have inclined them toward protectionism in the 1930s, since in the New Deal they were the party that became committed to aggressive intervention in the US economy. Instead, throughout the 1940s and 1950s they maintained their low-tariff tradition as exemplified by Cordell Hull (who had fought New Deal interventionists seeking to restrict trade), even though textile-industry pressure created a shift among representatives from the South, historically the strongest free trade region. And after President Kennedy had appeased that industry, members of his party voted overwhelmingly in support of his Trade Expansion Act of 1962. Only when organized labor left the liberal trade camp in the late 1960s did substantial numbers of northern Democrats begin to defect.

Thus, in the quarter century after World War II, neither party, while out of office, singled out trade policy as a primary point of difference with the administration in power. This contributed to cooperation on Capitol Hill: Ways and Means, whose deliberations over taxes were characterized by sharp party division, handled trade in a bipartisan, consensus manner as the issue "lost its partisan character nationally."[37] Presidential candidates would, of course, target appeals to particular interests—Kennedy sought votes from textile states with industry-specific promises in 1960, and Nixon, bested in that encounter, emulated him eight years later. But the basic open-market orientation of overall policy was not challenged. "Protectionism" remained a discredited concept, and while a politician who advocated it might win gratitude from specific interests, he would lose respect in the broader public eye.

35. Schattschneider, *Politics, Pressures and the Tariff*, 283.

36. For the main votes through 1958, see Pastor, *Congress and the Politics of US Foreign Economic Policy*, 97.

37. Richard F. Fenno, Jr., *Congressmen in Committees* (Boston: Little, Brown, 1973), 207.

This meant that presidents of both parties could tilt in favor of open trade, as they had to for the system to work. There were variations in their degrees of personal commitment: on balance, Gerald R. Ford's was greater than Richard M. Nixon's, and Lyndon B. Johnson and Jimmy Carter were more devoted free traders than John F. Kennedy. But all proved willing to play the role of tilting policy in the liberal direction—in the decisions they made themselves and in the appointments they made to key trade positions. And all proved able to play this role, for they knew that they were not thereby subjecting themselves to broad, partisan assault. They could take some of the interest group heat. This continuing presidential commitment made it possible for the Congress to buck responsibility, and for the "brokers" in the bureaucracy to do their trade-expanding work.

The System's Advantages and Limits

Operating within the broader context just described, the 1934 system had enormous advantages—not just for trade, but also for the major governmental participants. The president could generally treat trade policy as a component of US international leadership. Yet he could occasionally respond to specific industry constituencies, and he could avoid making very many decisions against particular producers, except those taken in broader negotiations that brought compensating benefits to other producers.

If presidents could pick and choose among trade issues while tilting generally in the liberal direction, members of Congress had even greater leeway. The majority were free to make noise, give "protectionist" speeches, or introduce bills favored by particular constituencies, secure in the knowledge that nothing statutory was likely to result. Or they could respond sympathetically to constituents and point to all the possibilities for help available elsewhere, sending them "downtown" to the Tariff Commission or the STR. Members of the trade committees could use their potential influence over trade legislation to press the executive branch to do something for particular constituencies on either the export or the import side. All could avoid final responsibility for product-by-product trade action, and thus avoid the choice between what they felt to be good politics and what they believed to be good policy.

For the senior trade officials of the executive branch agencies, the system was cumbersome, inefficient, and frustrating on a day-to-day basis. There were always interest groups to respond to, or interagency battles to fight, or technical problems to thrash out with foreign officials who had their own full agendas of political and operational problems. But over the longer term the system "worked"; maneuvering within it, trade officials could manage issues and negotiations so as to limit trade restrictions.

They could give priority to bargaining about foreign trade barriers. They could bring in countervailing interests if a US industry's campaign for protection threatened to overwhelm them. And with timely domestic brokering, they could prevent the formation of a protectionist coalition seeking broad, Smoot-Hawley–type restrictions. Thus they could avoid negative actions that might reverse the continuing growth of trade that was bringing profit to producers worldwide.

Finally, the 1934 system benefited from the checks and balances built into our governing charter. Since the prime need was to prevent restrictive action, it proved helpful that much in our Constitution is designed to inhibit rash governmental action of any kind. Division of power between branches and within the Congress means that bad proposals might be stopped at several points. A president could resist or veto legislation. A strong House committee chairman might kill it. The two houses might not agree on details. This constitutional bias was particularly important in those relatively rare instances—like that of textiles in 1969–71—when a president became so committed to achieving a particular trade restriction that his support for the overall liberal system was compromised. For it meant that an adroit legislator—like Wilbur Mills—could come to the rescue.

The system had, of course, important limits. It never provided "free trade," nor did its proponents seriously claim it did. What they sought and achieved was relative openness, but the exceptions could prove significant and expandable. On textiles, for example, what began as "voluntary" Japanese restraints on sales of cotton products grew, by stages, into an elaborate network of bilateral agreements that subjected sales of any textile or apparel item from any substantial developing country to tight quota limits.

The system was weak also in the area of agricultural trade. Here the controlling legislation went through the House and Senate agriculture committees, and the farm legislators did not always play by the same rules. Despite an increasingly favorable overall trade balance in agricultural products, the United States imposed quotas on imports of products such as sugar, cheese, and beef. In fact, to reconcile such restrictions (and broader US crop production programs) with GATT rules against quotas, the United States sought and obtained in 1955 a waiver exempting such measures from GATT coverage. Later, as heavy subsidies and quota restrictions came to deny American farmers substantial markets in Europe and Japan, they had cause to rue this precedent, regularly cited by European Union trade negotiators defending their agricultural trade barriers.

Another limitation was that, nationally and internationally, the system dealt primarily with direct trade measures such as tariffs and quotas, tending to neglect broader national policies that had an important trade impact. There had been one major effort to go further, by creating an International Trade Organization (ITO). The Havana Charter, signed in March 1948, provided for an organization that would not be limited to regulating trade barriers but would also address such matters as international commodity agreements and domestic full-employment policies. But when the charter came up for legislative ratification, its broad scope alienated not only congressional protectionists but also protrade "perfectionists" who feared it would encourage government actions that inhibited business enterprise. The ITO charter was never ratified.[38] So these issues had to be addressed ad hoc, under the auspices of a GATT originally conceived as a temporary arrangement.[39]

The system also depended, to a considerable degree, on favorable economic conditions for the nation as a whole and for specific industries. Textile protection began in a decade—the 1950s—when that industry faced stagnant domestic and international demand. Increased demand for trade restrictions tended to rise with the level of unemployment and the overvaluation of the dollar.

And the system could be shaken if a key player departed from the script. After Richard Nixon "reluctantly" supported statutory quotas for the textile industry in 1970, the House voted to enact them.

The System's Contradictions

More important than these particular kinds of limits, which no system could have avoided, were some deeper contradictions. In several respects, the 1934 system of trade policymaking would become the victim of its success, as its accomplishments weakened the instruments that had made success possible.

The "Bargaining Tariff" as Vanishing Asset

As long as the primary trade policy business involved the traditional barriers—tariffs and quotas—international negotiations could focus on limiting and reducing them. This made for efficient international negotiations, as national delegations had clear and measurable things to trade off against one another. They could point to concrete results and monitor implementation without great difficulty. And the prospect of barrier reduction abroad served as a brake on pressures at home—protection for an industry could be denied or limited on the grounds that it would undercut the chance to gain export benefits for other industries.

38. William Diebold, Jr., "The End of the ITO," *Essays in International Finance* 16 (Princeton, NJ: Princeton University Press, October 1952), especially 11–24.

39. In fact, trade bills in the 1950s regularly included a clause reading as follows: "The enactment of this Act shall not be construed to determine or indicate the approval or disapproval by the Congress of the Executive Agreement known as the General Agreement on Tariffs and Trade." See Jackson, *Legal Problems of International Economic Relations*, 408–10.

Tariff negotiations also facilitated the delegation of congressional power. Legislation could specify in advance the range of permitted reductions, and the executive branch could negotiate and the president proclaim them without Congress having to ratify their specifics. And to the degree that trade policy was tariffs, the jurisdiction of the "tax" committees, Finance and Ways and Means, was hard for Hill competitors to contest.

However, the more trade negotiators accomplished, the lower were the remaining tariffs. Attention shifted to nontariff trade distortions, which were harder to define and whose removal was more fractious to negotiate internationally; it was hard to point to clear, measurable results.

Domestically, there were two major complications. First, Congress could not simply authorize a negotiation and let an administration take it from there, since legislation could not fully anticipate the sorts of changes in US law that would be required to implement an agreement. So Congress would have to enact trade legislation at both ends of the process. Second, to the degree that trade negotiations explicitly involved many things other than tariffs, the control of the trade committees would be weakened. They would be under pressure to share jurisdiction; subjects like product standards and government procurement regulations were the province of other, competing committees.

International Openness Versus Domestic Intervention

The demise of tariffs as the key trade issue exacerbated another contradiction built into the postwar GATT regime—that between the drive to lower economic barriers among nations and the increasing governmental intervention within them.[40] For if one lesson of the Great Depression was the folly of protectionism, an even more powerful one was that national economies, left to themselves, would not necessarily provide full employment, much less ensure equitable income distribution and personal economic security. So almost all "capitalist" governments entered the postwar period determined to conduct activist, interventionist economic policies at home. Their electorates expected them to do so and held them accountable for the results.

As long as trade policy involved tariffs—a distinct, separable instrument—nations could reconcile barrier reductions with activist policies at home. They could be "liberal" on cross-border transactions and interventionist within the home market. But their "domestic" economic actions had a considerable impact on trade, and the lowering of tariffs made this impact more visible. Inevitably, American producers began to focus less on tariffs and more on other nations' domestic steps: the subsidies benefiting

40. See John Gerard Ruggie, "International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order," *International Organization* (Spring 1982): 379–415.

Europe's state-owned steel companies, or the buy-Japanese policies of the government telecommunications agency in Tokyo.

The many asymmetries in what various governments were doing made it hard to put together packages of "reciprocal" national concessions on nontariff trade issues. Pressures on nations to change their domestic subsidy, regulation, and procurement policies struck at the policy tolerance that had been a central, if largely implicit, element of the international consensus that created and maintained the GATT. For many nontariff barriers (NTBs), like product standards or systems of taxation, negotiations raised sensitive questions of national sovereignty.

Within the United States, attention to NTBs fueled charges of "unfairness," the political Achilles' heel of the liberal trade consensus at home. From the numerous specific cases in which foreign governments intervened in trade to the disadvantage of particular American producers, it was easy to construct a broad general argument that Uncle Sam had become "Uncle Sucker"—that our competitors were taking away with oft-invisible domestic policies the trade opportunities they apparently granted in tariff negotiations.

Success as Multiplier of Trade Pressures

To the degree that the postwar regime brought about expanded trade, it created another problem for the policymaking system. For it increased the number of "losers"—producer interests adversely affected by foreign competition and driven to seek help. It was one thing when the major trade-impacted industries were few and predictable: textiles, steel, shoes. But when imports rose from less than 5 percent of GNP to more than 10 percent, the ranks of the "injured" multiplied. Large industries previously ranked among America's finest—consumer electronics, automobiles, and machine tools—began coming to Washington with their problems. The system, accustomed to facing only a handful of specific pressures, now had to cope with a basketful.

There were also, of course, an increasing number of American producers who were profiting from the export side of international trade, not to mention importers and retailers with a stake in foreign products. But for all the traditional reasons, they did not so readily join the political arena. If trade "losers" go regularly into politics to seek relief, trade "winners" generally stick to business. Trade officials and politicians could work to involve them, and they regularly did so, but this only increased their leadership burden.

The Dilemma of the Rules

A final contradiction was one built into the trade remedy procedures. These procedures were, in principle, an important escape valve, diverting pressures at least temporarily away from Congress (and the executive branch). Yet to remain credible, they had to result—reasonably often—in actual trade relief.

Viewed from overseas, actions granting such relief were viewed as departures from liberal trade policy, signs that the United States was "going protectionist." The fact that our foreign competitors were imposing their own (often less visible) trade restrictions did not seem to lessen their propensity to express alarm about ours. Moreover, if the trade-remedy procedures regularly resulted in restraining trade, they would in fact have a protectionist result. Thus, relief procedures that were credible domestically weakened US trade leadership internationally.

In the 1960s this dilemma was resolved, under the Trade Expansion Act of 1962 (TEA), by rules that made escape clause relief hard to obtain, and by lax administration of the countervailing duty and antidumping laws. In the short run, this facilitated US international trade leadership, but it brought petitioners back to congressional doorsteps. And relief under the new TAA program, which might have absorbed some of the pressure, proved as hard to qualify for as relief under the escape clause. So the TEA approach proved unsustainable: in the 1970s legislators, seeking continued protection for themselves, would respond by rewriting the trade-remedy laws so that relief would be easier to obtain. This would help domestically, but it undercut US international trade leadership. Particularly sensitive abroad were those cases in which US petitioners alleged unfair foreign trade practices.

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From the 1930s through the 1960s, the main story of American trade policymaking was the story of the construction and elaboration of a pressure-diverting policy management system. No one planned the 1934 system in its entirety. It evolved from a mix of strong executive and congressional leadership and ad hoc responses to particular pressures. It gave the American body politic not only an unaccustomed capacity to resist new trade restrictions, but remarkable success in reducing old ones, as evidenced by a series of negotiations that culminated in the Kennedy Round agreements of 1967.

This chapter has sought to describe the "1934 system"—how we got it and how it worked. The next section of this book, however, sets forth how this system was shaken in the 1970s and 1980s, not only by pressures and contradictions such as those described above, but also by more turbulent economic times—for the United States, its major competitors, and the international trading system. The next chapter examines the global changes to which trade policy has been forced to respond. Thereafter, we look at the response of specific US institutions and processes—Congress, the executive branch, the quasi-judicial rules, and the broader domestic political system.