

Chapter 15

Industry and Economic Analysis for Congress



Photo: The U.S. Capitol Building.

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The relationship between Congress and the U.S. International Trade Commission (USITC) is one of the most critical, not only for ensuring that the role of Congress in international trade matters is maintained but also that Congress makes informed and intelligent decisions as it implements trade policy and codifies it in statute. USITC industry and economic analysis activities include advice on the effects of trade negotiations, analysis on other trade issues, and technical assistance.

The USITC's role in providing assistance to Congress continues to evolve. Recently, the Commission was tasked with new responsibilities with respect to miscellaneous tariff bills, and has been developing a process for carrying out these responsibilities.¹¹⁶³

Background: Role of Congress in Trade Negotiations

The role of Congress with respect to the negotiation and implementation of international trade agreements derives from its enumerated powers under the Constitution to regulate foreign commerce and to impose and collect duties. Consequently, any change in tariffs or other import restrictions is governed under authorities delegated by Congress through statute, including appropriations. To insure that laws and authorities enacted by Congress are faithfully executed in accordance with legislative intent, Congress has included provisions in trade laws specifically limiting and circumscribing their application. Also, Congress has preserved its oversight role in trade negotiations by including in the legislation procedures for consultation with and notification to Congress before submission of a draft bill by the President.

The roles of Congress and the President in developing trade policy became more formalized under the Trade Act of 1974 (Public Law 93-618, January 3, 1975, 19 U.S.C. § 2101), which specifically granted authority to the President to enter into reciprocal trade agreements affecting both the traditional changes in tariffs and other U.S. laws necessary to ensure the effective implementation of trade agreements. Inevitably, implementation legislation also incorporated changes in statute deemed necessary to mitigate the effects of entering into such

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¹¹⁶³ A number of sources were used in the preparation of this chapter, including USITC publications and discussions with Congressional staff.

trade agreements. Prior to this formalization, changes to U.S. tariffs were concluded by the President through tariff proclamation authorities first granted to the President by Congress through the Reciprocal Trade Agreements Act of 1934. The formalization of Congress' role in 1974 was undertaken very deliberately to address two concerns that had emerged as trade between the United States and its trading partners expanded. First, Congress established its preeminence over trade matters under Article I, Section 8 of the U.S. Constitution rather than of the President under the treaty authorities of Article II, Section 2. Second, key members of the House of Representatives (House) wanted to clarify and assert the role of the House under Article I, Section 7, in originating all legislation that raised revenue.

To understand the concerns of Congress about its participation and role, one need only look at the evolution of multilateral trade agreements since the General Agreement on Tariffs and Trade (GATT) that was signed by 23 nations in Geneva on October 30, 1947; an agreement which affected \$10 billion in trade. The rising importance of international trade for the United States became increasingly apparent when President John F. Kennedy requested authority from Congress to cut all U.S. tariffs by 50 percent in an attempt to form the basis for a new round of multilateral negotiations that would seek to reduce the high level of tariffs that existed in the U.S. and among major trading partners. Congress approved the Trade Expansion Act of 1962 (Public Law 87-794, October 11, 1962) giving the President the authority to seek and, through proclamation authority, implement certain reciprocal tariff cuts as well as for the first time introducing trade adjustment assistance (TAA) as a necessary complement to trade concessions that may for a time adversely affect American workers and U.S. economic interests. On June 30, 1967, 66 nations representing 80 percent of world trade signed the trade agreement, commonly known as the Kennedy Round agreement, which achieved about \$40 billion worth of tariff cuts. Although primarily a tariff-cutting exercise, these negotiations also attempted to delve into trade remedies (antidumping) and preferential treatment for developing countries.

The expansion of the scope and competence of multilateral negotiations continued apace. Negotiations under the Tokyo Round (1973–79) between 102 countries achieved tariff concessions worth \$300 billion of world trade but also expanded to include non-tariff measures such as subsidies and countervailing measures, and “framework” agreements. The Uruguay Round Agreements (1986–94) were signed by 111 countries in Marrakesh on April 14, 1994,¹¹⁶⁴ and for the first time achieved a significant protocol with respect to trade in services. The agreement also covered agricultural subsidies, non-tariff measures, dispute settlement, and intellectual property rights. This Round established the World Trade Organization (WTO), which superseded the organization commonly referred to as the GATT. It incorporated further tariff reductions of about 40 percent and continued preferential treatment for developing countries.

¹¹⁶⁴ Based on WMCP-111-6 at 305, there were 125 participants in negotiations but originally 111 countries that signed.

The Doha Development Round, inaugurated in November of 2001 by 159 countries, began with an ambitious agenda to address tariffs, non-tariff measures including trade facilitation, agriculture, labor standards, environmental protection measures, competition, investment, transparency and patents. However, the Doha Round has been stalled for a number of years leading to much uncertainty about the future of multilateral trade talks. A number of negotiations for plurilateral agreements, including the expanded Information Technology Agreement and Environmental Goods Agreement, have continued among those countries, including the United States which are willing to discuss trade liberalization, in the absence of progress on the multilateral front.

The litany of ever expanding multilateral trade agreements informs the increasing interest by Congress in asserting its authority, participating in the process on a hands-on, continuing basis, and controlling the implementation and post-implementation requirements. However, it was the experience in the Kennedy Round where Congress believed it had had insufficient control and oversight over the negotiations that triggered the Trade Act of 1974 with its detailed authorities and multifaceted requirements. With this Round, it became clear that trade agreements would expand beyond simple tariff-cutting exercises. Also, importantly, Congress refused to implement the Kennedy Round agreement fully, particularly with respect to some tariffs and antidumping measures. Therefore, clear conflict emerged between the President and the willingness of Congress to approve unpopular measures through the legislative process, as well as incorporating provisions not part of the agreement (such as trade adjustment assistance), and the ability of the United States to honor the commitments it made in order to conclude the negotiations.

Thus, an important debate emerged as to whether these broader agreements should be considered as treaties, requiring advice and consent of the Senate by a two-thirds vote, and have the effect of supplanting current law without enactment of legislation. This would acknowledge the expanding nature of trade agreements beyond mere tariff changes and would avoid the increasing complexities of the legislative process. Congress also had growing concerns that it was not always kept fully informed of the scope of trade negotiations and the priorities and objectives of the U.S. negotiating position, the details of emerging deals, or the impact of any changes on constituencies or the economy in general. Also, Congress felt pressure to address their restive constituencies about the benefits and adverse effects domestically of increasingly global trade agreements.

Not surprisingly, the House Ways and Means Committee took the lead in constructing and drafting the Trade Act of 1974. The House had the most to lose because, as revenue measures, trade agreements must start the implementation process in the House, as opposed to treaties which constitutionally require only Senate approval. Furthermore, additional measures (such as TAA designed to mitigate adverse effects and essential to gaining support from Members)

would not be included under treaties approving trade agreements but would need to be pursued simultaneously and separately through regular legislative procedures.

Informational Relationship between Congress and the USITC

Certainly from the 1974 Trade Act onward, particularly as major multilateral and bilateral trade agreements were negotiated by Presidents and considered by Congress, Congress increasingly relied on the USITC as the key source for independent data collection and economic analysis; the USITC's reports and as a procedural and substantive centerpiece of Congress' consideration of these agreements. The reliance did not focus on Congress' understanding of just trade agreements, but increasingly provided a strong reference point for understanding the effects on the U.S. economy and workers of a range of Congressional and executive actions, from legislation such as miscellaneous tariff bills to the various trade laws that determine injury from fairly and unfairly traded goods and the protection of patents and trademarks to general fact-finding investigations, under statutes such as section 332 of the Tariff Act of 1930, on any matter involving tariffs or international trade.

The content and types of free trade agreements that are analyzed by the USITC have undergone significant evolution over time. Although the Kennedy Round of multilateral trade negotiations had aspirations of covering a range of trade activities beyond tariffs (such as agriculture, services, and the impact of subsidies and injurious imports), Congress had no appetite for the expansion of jurisdiction of international trade governing bodies (originally the General Agreement on Tariffs and Trade (GATT), and later the World Trade Organization (WTO)) such issues were not taken up until first the Tokyo Round and then the Uruguay Round. No longer the purview of tariffs alone, trade agreements first began to expand into agriculture, subsidies and dumping; now such agreements also tackle a wide range of issues including services, trade facilitation, regulatory environment, labor rights, and environmental protection, making the USITC's analysis all that more complex.

USITC Mandate/Jurisdictions

The broad mandate of the USITC, as outlined in the statute, is to administer U.S. trade remedy laws and to provide the President, the U.S. Trade Representative (USTR), and Congress with independent analysis, supported by substantive data and information, on the effects of various trade agreements (e.g., changes in trade barriers including tariffs and non-tariff barriers, effects on U.S. industries and consumers, U.S. employment, U.S. exports and imports, and U.S. competitiveness in general). With respect to the Congressional mandate, the primary analytical function of the USITC is to provide support after the conclusion of trade negotiations and

during the Congressional consideration and passage of legislation to implement such agreements. However, the attention by the Congressional oversight committees begins long before trade agreements are concluded and signed. Congress begins looking at data collected and analyzed by the USITC at the earliest stages, including reviewing information provided by the USITC to USTR in formulating U.S. objectives and approaches to any potential negotiation.

Another mandate of the USITC which is closely followed by Congress is the administration of U.S. trade remedy laws, particularly the countervailing duty and antidumping duty laws (title VII of the Tariff Act of 1930, as amended), the safeguard laws (sections 201–04 of the Trade Act of 1974, as amended) and unfair trade practice laws primarily related to patent and trademark violations (section 337 of the Tariff Act of 1930, as amended). The research and analytical capabilities of the USITC strongly inform the confidence Congress has in the successful implementation of these trade remedy laws. The USITC's internal investigations and analysis are critical in the Commission's determinations of any injury to U.S. industry and consumers under these laws. It is imperative that Congress have confidence that the USITC has performed independent and impartial analysis. The Congressional oversight committees follow closely both the information and analysis performed by the USITC professionals, but also the application of this information by the Commissioners as they make determinations regarding injury in individual cases brought under these statutes.

Congressional views are not uniform with respect to how U.S. trade remedy laws are to be applied by the Commission in its determination of injury. The implementation of trade remedy laws by the USITC in individual cases can generate a discussion among lawmakers, petitioners, Commissioners, and even foreign trade partners about the "intention" of Congress regarding such laws at the time of enactment. This discussion can put some pressure on the information gathering and analytical processes conducted by the USITC professionals. For example, some view the nature of injury as more narrowly focused on the direct impact on U.S. industry by imports in a quantitative and static manner. Others want a more qualitative and dynamic analysis in order to take into account the impact of import competition over time and in a broader economic context. Again, confidence in the precision and objectiveness of USITC data collection and analyses becomes crucial to Congressional confidence in the effectiveness of the application of the trade remedy statutes.

USITC investigative activities can be grouped into several general areas: advice on the effects of trade negotiations, investigations of injury caused by subsidized or dumped goods, investigations of unfair practices in import trade, development of uniform statistical data, and analysis of matters related to the U.S. tariff schedules. Congress has played a key role in structuring these studies, and has closely monitored and relied on the information provided to it by the USITC that they provide. Such information, analysis, data collection, and advice on trade policy, the effects of bilateral and multilateral trade negotiations on the U.S. economy

and its industries and workers, and the effective application of U.S. trade laws is crucial to Congressional support and implementation of these policies and objectives.

Statutory authority for the USITC's investigative responsibilities is primarily provided by the Tariff Act of 1930, the Trade Expansion Act of 1962, the Trade Act of 1974, the Trade Agreements Act of 1979, the Trade and Tariff Act of 1984, the Omnibus Trade and Competitiveness Act of 1988, the Uruguay Round Agreements Act (1994), and the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. Although these statutes provide very specific direction to the USITC with respect to supporting trade negotiations and U.S. trade laws, in practice Congress has a continuous line of communication to the USITC for information on trade policy development, the initiation and conduct of trade negotiations, the implementation of trade agreements and other initiatives in the statute, and actions taken under various trade laws and programs.

One of the most critical responsibilities of the USITC is to provide to Congress assessments of trade agreements negotiated under fast-track/trade promotion authority procedures, first included in the Trade Act of 1974. The Trade Expansion Act of 1962 had earlier required that the USITC (then known as the Tariff Commission) submit an annual report to Congress "on the operation of the trade agreements program."¹¹⁶⁵ However, the USITC's role as provider of factual information to Congress has significantly expanded in the decades that followed. Under the Trade Act of 1974, the USITC produced a number of reports relating to bilateral agreements. These included a 2006 report on a U.S.-Colombia Trade Promotion Agreement, and 2007 reports on the U.S.-Korea Free Trade Agreement and the U.S.-Panama Trade Promotion Agreement. The results of a study on the Trans-Pacific Partnership (TPP) negotiations, issued in May 2016, were highly anticipated by lawmakers particularly because the analysis would include the impact of the new and expanded rules on SPS, intellectual property, state-owned enterprises, etc.

Congressional access to USITC advice and information comes additionally in several forms. First, the USITC submits formal reports to Congress at the request of the two oversight committees: the House Committee on Ways and Means and the Senate Finance Committee. Additionally, Members and staff occasionally meet with USITC staff with regard to particular trade matters.

Congress may request formal reports from the Commission on trade policy, trade impacts, and a wide variety of trade-related issues under section 332 of the Tariff Act of 1930. Such Congressional requests come in the form of written requests from either the Ways and Means Committee or the Finance Committee.¹¹⁶⁶ Members outside the oversight committees who are

¹¹⁶⁵ Section 402(b).

¹¹⁶⁶ Either branch of Congress may also request investigations and reports. 19 U.S.C. § 1332(g).

interested in a particular USITC study must petition the chairs of either of these two oversight committees. Public reports of the studies and investigations requested by Congress are typically available to the public. The USITC also provides technical assistance to Congressional requesters, often on short notice.

When reviewing the history of section 332 reports requested by and that have been issued to Congress since the enactment of the Tariff Act of 1930, one sees an increasing complexity, intensity, and number of issues that are reflected in the rising importance of international trade to the U.S. economy and the nature of trade negotiations themselves. From 1930 to the launch of the Kennedy Round in 1962, Congress requested less than 20 section 332 studies of the USITC. By the time the Uruguay Round talks began, that number had more than doubled. During the Uruguay Round negotiations, requests for section 332 studies more than tripled. The trend continues. The sophistication of these studies has also increased, with the USITC having to increasingly look to quantify tariff and non-tariff barriers on areas like intellectual property and services trade barriers. Although there was a study requested in 1931 on *Labor Used in Producing Coal in Russia*, most of the studies were narrowly confined to one product (e.g., whiskey, wool, fluorspar, and hardboard) or on the tariff rates themselves (e.g., *Tariff Rates of 50 Percent or Higher*, 1973). However, following the Kennedy Round, Congressionally requested 332 studies more often focused broadly on the overall effects of certain trade actions, and typically had a significantly wider scope. These studies included *Implications of Multinational Firms for World Trade and Investment and for U.S. Trade and Labor* (1973), *Nature and Extent of Tariff Concessions Granted in U.S. Agreements* (1974), *Study of the Economic Effects of Terminating the Manufacturing Clause of the Copyright Law* (1983), *Review of the Effectiveness of Trade Dispute Settlement under the GATT and the Tokyo Round Agreements* (1985), and *The Impact of Increased U.S.-Mexico Trade on Southwest Border Development* (1986), among many others.

The 332 studies also reflected concerns regarding serious stresses faced by particular sectors of the U.S. economy because of rising U.S. imports and globalization. For example, *Monthly Reports Providing Information on the U.S. Auto Industry* (1981), *Monthly Report on Selected Steel Industry Data* (1986), and *Effects of the Steel Voluntary Restraint Agreements on U.S. Steel Consuming Industries* (1989) reflected Congressional concerns regarding import sensitive sectors. These studies often have reflected the importance of certain bilateral trade relationships. These studies include *Pros and Cons of Initiating Negotiations With Japan to Explore the Possibility of a U.S. Japan Free Trade Area Agreement* (1988), *Prospects for Future U.S. Mexican Trade Relations* (1990), *Survey of Views on the Impact of Granting Most Favored Nation Status to the Soviet Union* (1990), *Rules of Origin Issues Related to NAFTA and the North American Automotive Industry* (1991), *The Effects of Greater Economic Integration Within the*

European Community in the United States (1994), and Likely Impact of Providing Quota-free Entry to Textiles and Apparel from Sub-Saharan Africa (1997).

In recent years, the USITC completed its largest studies to date with respect to trade relations with India: *Trade, Investment, and Industrial Policies in India: Effects on the U.S. Economy (2014)* and *Trade and Investment Policies in India, 2014–15 (2015)*. An even more recent study was *Overview of Cuban Imports of Goods and Services and Effects of U.S. Restrictions*, Investigation No. 332-552, USITC Publication 4597 (March 2016). Without a doubt, section 332 studies have become much more than a tool for understanding sectoral or product specific trade effects, having expanded into an essential element in Congress' understanding of broad economic, trade, and foreign policy strategies.

Throughout the century since its founding, the USITC has provided assistance to Congress on a wide variety of trade issues. As a nonpartisan agency, the USITC provides objective and expert analysis. The Ways and Means Committee and the Finance Committee rely heavily on the USITC's work, and the agency is widely admired as a nonpartisan and objective source. Importantly, the confidence in the USITC has not changed as Administrations change, but has increased steadily over time.

