

Chapter 5

Evolution of the Chairmanship of the U.S. International Trade Commission



Photo: The office of the Chairman.

Shara L. Aranoff, Deanna Tanner Okun, and Daniel R. Pearson²⁹¹

In its 100-year history, 35 individuals have served one or more terms as Chairman of the U.S. International Trade Commission (USITC or Commission). The position has been held by 17 Democrats, 16 Republicans, and two Independents.²⁹² Currently, Chairmen serve 2-year terms,²⁹³ but the length of the Chairman's term has varied and changed with the evolution of the agency.²⁹⁴ Commissioners serving as Chairmen by operation of law²⁹⁵ have served much shorter terms—sometimes as short as a few days or weeks, reflecting the statutory provisions designed to ensure that the Commission continues to function, even when political processes delay the designation of a Chairman.

Although there has been a Chairman since the United States Tariff Commission first opened its doors in 1917, the powers and responsibilities of the office have evolved through changes in law and agency practice. This chapter chronicles the legal requirements and major legislative and practical changes that have shaped the Chairmanship during the Commission's first

²⁹¹ Former Commission Chairman Aranoff is of counsel at Covington & Burling LLP. Former Chairman Okun is a partner at Adduci Mastriani & Schaumberg LLP. Former Chairman Pearson is a principal of Pearson International Trade Services. The authors gratefully acknowledge the support and input of former colleagues and aides, including Catherine DeFilippo, Director, Office of Operations; Stephen Koplan, Senior Vice President, Wessel Group, and former Chairman of the Commission; and Elizabeth Ravesteijn, Economic Advisor to Chairman Schmidlein and current and former Chief of Staff.

²⁹² For a complete list of Commission Chairmen, please see the list at the end of this volume. Regarding Chairman Taussig's political party affiliation, see Select Senate Committee on Investigation of the Tariff Commission, *Hearings Pursuant to S. Res. 162, Part 1, 69th Cong. 1st Sess.*, HRG-1926-TAR-001 (March 23–24, 1926), 15–16.

²⁹³ 19 U.S.C. § 1330(c)(2)(B).

²⁹⁴ The longest-serving Chairman was Oscar B. Ryder, who held the office for almost 11 years, from July 28, 1942 to March 5, 1953.

²⁹⁵ Prior to the passage of the 1991 Act to amend the Tariff Act of 1930 to provide appropriate procedures for the appointment of the Chairman of the United States International Trade Commission, Pub. L. No. 102-185, § 1(a), 105 Stat. 1280 (December 4, 1991), the term "Acting Chairman" was used by Chairmen serving by operation of law. See, e.g., USITC, *1990 Annual Report*, USITC Publication 2354 (Washington, DC: USITC, May 1991), 5. Following the enactment of the 1991 Act, "Acting" was dropped from the Chairman's title. Press releases and annual reports denoted that the Chairman was serving by operation of law. See, e.g., USITC, "Deanna Tanner Okun Becomes Chairman of U.S. International Trade Commission," News Release 10-067, https://www.usitc.gov/press_room/news_release/2010/er0617hh1.htm; USITC, *2010 Year in Review*, USITC Publication 4212 (Washington, DC: USITC, December 2010), 5; and USITC, "Irving A. Williamson Becomes Chairman of U.S. International Trade Commission," News Release 16-072, June 20, 2016, https://www.usitc.gov/press_room/news_release/2016/er0620ll615.htm.

century.²⁹⁶ In addition, we share our personal recollections on the Chairmanship as three former Chairmen who served in that role collectively from 2006 to 2012, and as Commissioners for terms covering 2000–2014.

Creation of the Chairman and Vice Chairman in 1916

When Congress created the Tariff Commission in the Revenue Act of 1916 (the “1916 Act”), it provided that the Commission would consist of six members, who would be appointed by the President with the advice and consent of the Senate, no more than three of whom could be members of the same political party, and who would serve for 12-year terms. Commissioners were expressly precluded from engaging in “any other business, function, or employment,” and could be removed from office by the President for “inefficiency, neglect of duty, or malfeasance in office.” The 1916 Act further provided that a vacancy would not impair the right of the remaining Commissioners to exercise the powers of the Commission, but added that “no vacancy shall extend beyond any session of Congress.”²⁹⁷

The 1916 Act also created the offices of Chairman and Vice Chairman, stating that the President “shall designate annually the chairman and vice chairman of the commission.”²⁹⁸ While Congress instructed the President to “alternate as nearly as may be practicable” between the political parties when appointing new Commissioners, it placed no such limitation on the selection of the Chairman.²⁹⁹ The first Chairman, Harvard economics professor Frank Taussig, was nominated as an Independent, and was a long-time advocate of the Tariff Commission’s creation. The first Vice Chairman, South Carolina Democrat Daniel Calhoun Roper, was the first in a long line of Commissioners to have served on the staff of the House Committee on Ways and Means.³⁰⁰

Although it tasked the Commission with certain responsibilities and provided the powers necessary to pursue its institutional mission,³⁰¹ the statute was silent as to the responsibilities of the Chairman and Vice Chairman. In fact, rather than assigning specific powers to the Chairman, the Act appeared to authorize each individual Commissioner to exercise certain

²⁹⁶ Congress passed a number of tariff acts and statutes implementing trade agreements throughout the Commission’s first century. Although those statutes made broad changes in the Commission’s responsibilities and operations, most did not change the Chairmanship.

²⁹⁷ Revenue Act of September 8, 1916, Pub. L. No. 64-271, § 700, 39 Stat. 756, 795 (1916).

²⁹⁸ *Ibid.*

²⁹⁹ *Ibid.*

³⁰⁰ John M. Dobson, *Two Centuries of Tariffs: The Background and Emergence of the U.S. International Trade Commission* (Washington, DC: USITC, 1976), 89–90.

³⁰¹ Pub. L. No. 64–271, §§ 702–06.

powers of the Commission. For example, the Act stated that “the commission may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States or in any foreign country.”³⁰² Similarly, it provided that “any member of the commission may sign subpoenas, and members and agents of the commission, when authorized by the commission, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.”³⁰³

The United States’ entry into World War I, only six days after the Tariff Commission opened its doors in March 1917, led President Woodrow Wilson to assign certain war-related duties to Chairman Taussig. For example, the President directed the Chairman to serve on the Price-Fixing Committee of the War Industries Board, on various Food Administration committees, and as a director of the Sugar Equalization Board. In 1919, the Chairman of the Tariff Commission served as an economic advisor to the American delegation at the peace conference and helped draft the customs provisions of the peace treaty.³⁰⁴ In peacetime, however, the early Chairmen shared their powers with the other five Commissioners.

The Tariff Act of 1930

Throughout the 1920s, political dissention severely hampered the Commission’s effectiveness and provided ample opportunities to test the independence of its Chairman.³⁰⁵ Accusations of politicization were not new to the Tariff Commission. Each of the first several Presidents to appoint nominees to the Commission was accused of favoring individuals who shared his own trade philosophy. When President Woodrow Wilson appointed the first Commissioners in 1917, Republicans complained that five of the President’s six nominees were free trade proponents.³⁰⁶ Similarly reflecting their own policy preferences, Presidents Warren Harding and Calvin Coolidge both appointed Commissioners who favored protectionist policies, regardless of their political party.

In 1924, the Commission experienced the first of several crises, when Commissioner Henry Glassie, whose family held considerable financial interests in the sugar industry, refused to recuse himself from a sugar investigation. His fellow Commissioners had demanded he step down from the investigation, citing the need for impartiality. Chairman Thomas Marvin settled

³⁰² *Ibid.*, § 701.

³⁰³ *Ibid.*, § 706.

³⁰⁴ Bernhardt, *The Tariff Commission: Its Histories, Activities and Organization* (New York: D. Appleton and Company, 1922), 32.

³⁰⁵ Dobson, *Two Centuries of Tariffs*, 1976, 98–101.

³⁰⁶ *The New York Times*, “President Names Tariff Commission,” March 15, 1917; *The Washington Post*, “Attack Tariff Board; Wilson Sends Six Nominations to Senate; Amazes Old Guard,” March 15, 1917; Thomas Logan, “That Non-Partisan Board: Only One Protectionist Among the Six Members of the New Tariff Commission,” *American Economist* 59, no. 12 (1917).

the dispute by reading a message from President Coolidge, in which the President expressed his expectation that the Commissioners conduct their investigation in accordance with the law. However, the President also counseled Glassie to do as he saw fit, and “offered Executive support for any decision the Commissioner made.” Later that day, President Coolidge appointed Marvin as Chairman for another year.³⁰⁷

Members of Congress learned of these events, and acted to restore the Commission’s integrity by attaching a proviso to the Commission’s appropriation stating that

no part of this appropriation shall be used to pay the salary of any member of the United States Tariff Commission who shall hereafter participate in any proceedings under said sections 315, 316, 317, and 318 of said act, approved September 21, 1922, wherein he or any member of his family has any special, direct, and pecuniary interest, or in respect to the subject matter of which he has acted as attorney, legislative agent, or special representative.³⁰⁸

Executive actions throughout the 1920s further exacerbated tensions on the Commission, as President Coolidge continued to politicize the Commission.³⁰⁹ In response, the Senate created a special committee to investigate the Commission’s operations.³¹⁰ The committee launched its investigation in 1926 with the following mandate:

The inquiry shall have particular reference to the regulations and procedure of the Tariff Commission, the powers exercised and the functions performed by said commission, and to the institution, investigation, hearing, and decision of cases arising under said section. . . . The committee shall also investigate the appointment of members of said commission and report to the Senate whether any attempt has been made to influence

³⁰⁷ Although the Tariff Commission did not have a formal policy against commissioners participating in investigations in which they had direct interests, Commissioner Edward Costigan cited the Interstate Commerce Commission’s policy and asked that the Tariff Commission adopt similar standards. His proposal was rejected by a 3–3 vote. Commissioners Costigan, Culbertson, and Lewis, the remaining Wilson appointees to the Commission, voted in favor of adopting the policy. Chairman Marvin and Commissioners Burgess and Glassie, appointed by Presidents Harding and Coolidge, opposed. U.S. Tariff Commission (USTC), *Proceedings*, December 19, 1923.

³⁰⁸ Executive and Independent Offices Appropriation Act, Proviso Affecting Commission’s Appropriation, Pub. L. No. 68-214, 43 Stat. 529 (June 7, 1924), cited in U.S. Tariff Commission (USTC), *Eighth Annual Report of the USTC, 1924* (Washington, DC: USTC, December 1, 1924), 41–42.

³⁰⁹ In 1925, Former Chairman Taussig publicly decried the President’s appointments to the Commission, stating that “the endeavor seems to have been to make it not an organization for unbiased inquiry on the facts, but one for preparing such recommendations as are known in advance to be acceptable to the party and the Administration in power.” *The New York Times*, “Demands an Inquiry on Tariff Board to Purge it of Politics,” December 30, 1925.

³¹⁰ Senate, *Select Committee Investigation of the United States Tariff Commission*, 69th Cong., 1st sess. (1928).

the official action of members of said commission by any official of the Government or other person or persons; and if so, what were the means or methods so used.³¹¹

The investigation culminated in a complete restructuring of the Commission as part of the Tariff Act of 1930.³¹² Although some members of Congress wanted to eliminate the Tariff Commission entirely, most sought to preserve the Commission. As a result, the Tariff Act of 1930 preserved the Commission, but made significant changes in its structure that were designed to restore the agency's independence. Among other things, the 1930 Act provided that each existing member of the Commission could only "continue to serve until his successor (as designated by the President at the time of nomination) takes office, but in no event for longer than ninety days after the effective date of this Act."³¹³ By requiring that President Hoover replace all of the existing Commissioners ninety days after the statute's effective date, Congress sought to ensure the President would "create a whole new Commission—one that would be more acceptable to its many critics."³¹⁴

The 1930 Act also stipulated the qualifications to be a Commissioner: it required Commissioners to be citizens of the United States and to possess the qualifications needed to develop an expert knowledge of tariff problems and efficiency in the administration of the Commission's functions.³¹⁵ After much internal debate in Congress on the matter,³¹⁶ the Act further specified that no more than three Commissioners could be members of the same political party. The Act also repeated the 1916 Act's requirement that Commissioner appointments alternate political parties as nearly as may be practicable³¹⁷ and drastically shortened Commissioners' terms in office. Specifically:

³¹¹ S. Res. 162, 69th Cong., 1st sess. (March 11, 1926). From March 1926 to February 1927, the committee held 41 sessions. The hearings comprised 1,461 pages. According to the Commission's *1927 Annual Report*, "The commissioners and the chief of the economics division were present at practically all of the hearings." U.S. Tariff Commission (USTC), *Eleventh Annual Report of the USTC, 1927* (Washington, DC: USTC, December 5, 1927), 112. On February 17, 1927, the Senate passed a resolution to continue the investigation until the end of the first regular session of the Seventieth Congress. *Ibid.*, 113.

³¹² See generally Tariff Act of 1930, Pub. L. No. 71-361, 46 Stat. 590 (1930).

³¹³ Pub. L. No. 71-361, § 330.

³¹⁴ Dobson, *Two Centuries of Tariffs*, 1976, 102.

³¹⁵ Pub. L. No. No. 71-361, § 330(a).

³¹⁶ Dobson, *Two Centuries of Tariffs*, 1976, 102. Minutes of the Senate Finance Committee's Executive Session on August 20, 1929, reveal that Sen. Smoot put forth a motion to disagree with House amendment 1129, which proposed a seven-member Commission, in favor of a six-member Commission, with no more than three Commissioners from the same political party. The vote carried 7 to 4. Senate Finance Committee, Executive Session Minutes on H.R. 2667, SF-T.27, HRG-1929-FNS-0077. The House receded from the amendment (H.R. 2667, 71st Cong., 2d sess. (January 6 (calendar day March 24), 1930), and the final bill as passed reflected Sen. Smoot's motion.

³¹⁷ Pub. L. No. 71-361, § 330(a).

Terms of office of the commissioners first taking office after the date of the enactment of this [1930] Act, shall expire, as designated by the President at the time of nomination, one at the end of each of the first six years after the date of the enactment of this Act. The term of office of a successor to any such commissioner shall expire six years from the date of the expiration of the term for which his predecessor was appointed, except that any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term.³¹⁸

With regard to the Chairman and Vice Chairman, the 1930 Act reiterated the 1916 Act's requirement that the President "annually designate one of the commissioners as chairman and one as vice chairman," but further elaborated that the Vice Chairman would act as Chairman "in case of the absence or disability of the chairman." The 1930 Act also clarified that a "majority of commissioners in office shall constitute a quorum," but the Commission "may function notwithstanding vacancies."³¹⁹ Through these changes, Congress structured the Commission and its leadership in such a way that business could continue unabated, even in the absence of one or more Commissioners.

Administrative Gridlock in the 1970s Leads Congress to Reshape the Chairmanship

By the early 1970s, Congress had again become concerned about the independence of the Tariff Commission, worrying that it was becoming too closely aligned with the executive branch to provide politically independent advice to Congress.³²⁰ As noted by the Senate Finance Committee in its report on the Trade Act of 1974, "The Committee strongly believes in the need to prevent the Commission from being transformed into a partisan body or an agency dominated by the Executive Branch."³²¹ The Committee also expressed its concern that "sickness, vacancies, and other problems have sometimes resulted in two or more Commissioners not participating in the business of the Commission," causing frequent tie votes at the Commission.³²²

To rectify these perceived problems, the Trade Act of 1974 expanded the term of Commissioners to nine years and provided that a Commissioner who had served for more than

³¹⁸ *Ibid.*, § 330(b).

³¹⁹ *Ibid.*, § 330(c).

³²⁰ The Commission's Chairman and Vice Chairman at the time were both designated by the President (and the President at the time was a Republican while both Houses of Congress were controlled by the Democrats).

³²¹ Senate Finance Committee, *Report of the Committee on Finance*, S. Rep. No. 93-1298 (November 26, 1974), 115.

³²² *Ibid.*

five years could not be reappointed.³²³ The 1974 Act also rescinded the President's power to appoint the Chairman and Vice Chairman. Instead, the most senior Commissioner with at least 18 months left in his/her term would serve automatically as Chairman for 18 months, while the most senior Commissioner of the other political party with at least 36 months remaining in his/her term would serve as Vice Chairman. Thus, under the Act, the Chairmanship would rotate automatically between the parties every 18 months.³²⁴ According to the Senate report on the Act:

This amendment is intended to strengthen the independence of the Commission by removing the power to appoint the chairman and vice chairman of the Commission from the President. Also, it would provide, in the normal course of events, that the chairman and vice chairman of the Commission are the two most senior in service among Commission members. It is hoped that this may provide an incentive to commissioners to serve their entire terms and avoid vacancies, as well as provide that the most experienced members of the Commission serve as chairman and vice chairman, which is generally desirable.³²⁵

The 1974 Act also aimed to incentivize Commissioner participation in votes by making their voting records public. Finally, to further support the agency's independence, the 1974 Act authorized the Commission to be represented in all judicial proceedings by its own attorneys and for the Commission's budgets to be submitted to Congress without revision by OMB.³²⁶

Although Congress adopted these reforms in an attempt to provide the Commission with a structure that would motivate the Commissioners to address matters before the agency in a timely and independent manner, it treated administrative matters differently from the substantive work of the Commission. Commissioner votes on substantive matters would be made public, but the same was not true for votes on administrative matters. According to the Senate Report: "It is not the intent of this Committee that votes on internal Commission matters (work schedules, personnel matters, etc.) would be covered."³²⁷

Not long after passage of the 1974 Act, the trade committees began hearing reports of gridlock within the Commission, with the Commissioners spending inordinate amounts of time

³²³ This rule remains in effect today. 19 U.S.C. § 1330(a).

³²⁴ Trade Act of 1974, Pub. L. No. 93-618, § 172, 88 Stat. 2009–2010 (January 3, 1975).

³²⁵ S. Rep. No. 93-1298 (1974), 117.

³²⁶ Pub. L. No. 93-618, §§ 173–75; S. Rep. No. 93-1298 (1974), 117–18. Prior to the passage of the 1974 Act, the Commission's budget was subject to change by the Office of Management and Budget (OMB), and the Commission was dependent on the U.S. Department of Justice for representation in court, including on matters relating to the laws the Commission administered.

³²⁷ S. Rep. No. 93-1298 (1974), 117.

disagreeing over seemingly minor administrative matters.³²⁸ The passage of the 1974 Act had prompted a major reorganization within the Commission, as the agency determined the best structure and staffing to meet its broadened responsibilities.³²⁹ Differences of opinion over the reorganization and other administrative matters began to diminish the Commission's efficacy and endanger its reputation.³³⁰ According to the Ways and Means Committee, there had been "a completely unwarranted amount of time spent by Commissioners bitterly debating minor administrative or personnel matters, often in public sessions" or in the press. The Ways and Means Committee declared that "the amount of hours the Commission has spent failing to decide on minor administrative matters is poor management. The dissension created ultimately impacts on the substantive work of Commissioners and their ability to function as a Commission."³³¹

In addition to Commissioners publicly airing their disagreements about administrative matters, the Committee was concerned that "too often individual Commissioners stress[ed] to an inordinate degree their own independence in both administrative and substantive matters."³³² For example, disagreements among the Commissioners on personnel matters were leading individual Commissioners to add to their personal staffs rather than rely on agency staff. For that reason, the Committee determined to permanently limit the Commissioners to four personal staff members each, noting that:

to permit the Commissioners to add to their personal staff because *individual* Commissioners are unable to obtain what they deem to be appropriate staff response to request or directions would not contribute in the long run to an efficient and effective Commission. Proliferation of personal staff could well contribute to further dissension among the staff and among the Commissioners. The limitation should serve to remind the Commissioners that their role is one of leading the entire staff to perform the work necessary to carry out responsibilities imposed on the Commission as a whole. It is a task for which the Commissioners are individually and collectively responsible.³³³

³²⁸ House Committee on Ways and Means, *Administration of, and Authorization of Appropriations to, the International Trade Commission*, H. Rep. No. 95-217 (April 21, 1977), 4–6, 9. The Committee noted the minutiae prompting the disagreements, such as whether Commission publications should be single-spaced rather than double-spaced to save printing costs, "the appointment of one temporary law student intern over the Christmas holiday"; "sentence by sentence a job description of an employee (an investigative attorney)"; and the "color, size, stitching, distribution, and other printing details of an historical report." *Ibid.*, 9.

³²⁹ USITC, "Message from the Chairman," *1976 Annual Report*, (Washington, DC: GPO, 1977).

³³⁰ H. Rep. No. 95-217 (1977), 3–4.

³³¹ *Ibid.*, 6, 9.

³³² *Ibid.*, 6.

³³³ *Ibid.*, 5, emphasis in original.

Moreover, the Ways and Means Committee suggested, the Commissioners should delegate more administrative tasks to agency staff rather than performing the day-to-day management of the agency themselves, explaining that doing so would give the Commissioners more time to work on substantive matters and reduce acrimony amongst them.³³⁴

The Senate Finance Committee agreed, noting that the Commission was “suffering from internal administrative problems, particularly personnel problems which . . . inhibited efficient administration and hurt employee morale.” The Committee believed that “these problems result from the inability of the Commissioners to agree among themselves and the cumbersome requirement that the full Commission act on all administrative matters.” As a result, the Committee concluded, it had become “convinced that the best way to end these problems [was] to give the Chairman . . . administrative authority subject to disapproval of the full Commission.”³³⁵

In an attempt to improve the administration of the Commission, in 1977, Congress amended 19 U.S.C. § 1330. The 1977 Act gave the power to designate the Chairman and Vice Chairman back to the President, subject to the requirement that the Chairmanship rotate between the parties every two years and that the Vice Chairman and Chairman not come from the same party. The second and more critical change was to provide, for the first time, that the Chairman would “exercise and be responsible for” all administrative functions of the Commission (including the hiring of its employees and procurement of the services of experts and consultants), with two exceptions: the termination of certain senior personnel and the formulation of the Commission’s annual budget.³³⁶

In the case of these latter administrative matters (that is, the hiring of certain senior personnel and formulation of the annual budget), however, Congress provided that any decision of the Chairman was subject to disapproval “by a majority vote of all the Commissioners in office.”³³⁷ As the House Ways and Means Committee explained, the need for Commission approval of

³³⁴ *Ibid.*, 9.

³³⁵ Senate Finance Committee, *U.S. International Trade Commission Budget Authorization*, S. Rep. No. 95-122 (May 5, 1977), 2.

³³⁶ Authorization and Appropriations for the U.S. International Trade Commission, Pub. L. No. 95-106, §§ 2–3, 91 Stat. 867 (August 17, 1977). Specifically, the two exceptions are the Chairman’s decisions to: “(A) terminate the employment of any supervisory employee of the Commission whose duties involve substantial personal responsibility for Commission matters and who is compensated at a rate equal to, or in excess of, the rate for grade GS-15 . . . , and (B) formulate the annual budget of the Commission.” Pub. L. No. 95-106, § 3(a), 91 Stat. 868.

³³⁷ *Ibid.*, § 3(a).

terminations of key senior personnel was necessary “to maintain the type of organization the Commission should be—an objective, independent, nonpartisan, fact-finding body.”³³⁸ Similarly, the Committee explained, “the budget of the Commission should continue to be the responsibility of the entire Commission since at least a majority of the Commission should agree in broad terms on the magnitude of the resources to be sought and the general priorities to be assigned in the utilization of these resources.”³³⁹

In adopting these changes, both the House Ways and Means and Senate Finance Committees were aware that Congress had historically rejected the idea of a “strong” Chairman, but emphasized that “the failure of the Commissioners to agree on minimal delegation of authority of responsibility to the Chairman or to the staff should not be allowed to continue.” The 1977 Act was considered “a sound middle ground, between the present chaotic situation and the strong chairman concept” originally proposed in the Senate version of the 1977 Act. According to its House sponsor, the 1977 legislation was intended to “enable the Commission to devote all its energies to substantive matters within the jurisdiction of the Commission, leaving responsibility for administration of the Commission to the Chairman and his delegates. The conferees believe that ending full Commission debate of administrative matters should result in more definitive majority decisions on matters of substance.”³⁴⁰

Congressional Action in 1991 to Address Anomalies in Designation of the Chairman

In 1991, Congress revisited the designation of the Chairman and Vice Chairman after an unusual succession in leadership. In 1986, President Ronald Reagan named an Independent, Susan W. Liebeler, as Chairman of the USITC for the two-year term that expired on June 16, 1988; he named a Republican, Anne E. Brunsdale, as Vice Chairman.³⁴¹ Then, in 1988, President Reagan did not designate a new Chairman, but reappointed Vice Chairman Brunsdale to a two-year term as Vice Chairman, which meant that, under the statute, she became Acting Chairman.³⁴² Brunsdale served as Acting Chairman from June 27, 1988, until March 28, 1989, when newly-elected President George H. W. Bush designated her to be the Chairman for the term expiring

³³⁸ H. Rep. No. 95-217 (1977), 10. *See also Shewmaker v. Parker*, 479 F. Supp. 616, 619 (D.D.C. 1979): “While the overall purpose [of the 1977 Act] was to correct poor ITC management by delegating most administrative authority to the Chairman, Congress refused to sacrifice traditional nonpartisanship to administrative efficiency. Indeed, Congress sought to avoid the possibility of a ‘strong chairman’ making the key staff responsible only to him or her rather than to the whole Commission.”

³³⁹ *Ibid.*

³⁴⁰ *Ibid.*, 8–9; 123 Cong. Rec. H8673 (August 4, 1977).

³⁴¹ USITC, *1986 Annual Report*, USITC Publication 1935 (Washington, DC: USITC, January 1987), iii.

³⁴² USITC, *1988 Annual Report*, USITC Publication 2140 (Washington, DC: USITC, January 1988), 4. Under the 1977 Act, the Vice Chairman served as Chairman “in case of the absence or disability of the Chairman.” Pub. L. No. 95-106, §3(a).

on June 16, 1990.³⁴³ At the conclusion of that term, President Bush designated Commissioner Brunsdale to be Vice Chairman for the term expiring on June 16, 1992. Since President Bush did not designate a new Chairman at that time, Vice Chairman Brunsdale again became Chairman, by operation of law.³⁴⁴

Congress viewed the actions of Presidents Reagan and Bush as an effort by the executive branch to politicize the Commission:

Congress [has] struggled for years to find a workable administrative structure for the ITC which would not compromise the agency's mission as both an independent source of knowledgeable trade advice to the Congress and the executive branch and as an independent arbiter of trade cases. The solution found in 1977 ensured that no single political party or individual could exercise undue influence over the commission on substantive issues.³⁴⁵

The delicate balance that we struck in that legislation has been deliberately undercut by the administration in recent years. Instead of complying with the law, the administration has chosen to ignore it.³⁴⁶

Thus, in 1991, Congress took action to eliminate this practice. The 1991 Act sought to prevent this abnormal sequence of Commission leadership by reformulating the procedures for the appointment of the Chairman. It specified that, when the President has not designated a new Chairman by the date that a new term begins, the Commissioner that "is a member of a different political party than the chairman of the Commission for the immediately preceding term, and has the longest period of continuous service as a commissioner" would serve as Chairman until an individual designated by the President takes office.³⁴⁷

Additionally, the 1991 Act modified the seniority rule for commissioners eligible to be designated Chairman.³⁴⁸ Prior to the 1991 Act, the two most recently appointed members of the Commission were not eligible to be designated Chairman.³⁴⁹ The 1991 amendments were designed to give the President flexibility, while ensuring that any new Chairmen had spent a certain measure of time in office and had gained experience dealing with complex USITC

³⁴³ USITC, *1989 Annual Report*, USITC Publication 2264 (Washington, DC: USITC, March 1990), 4; USITC, *1990 Annual Report*, 1990, 6.

³⁴⁴ House Committee on Ways and Means, *Appointment of Chairman of the U.S. International Trade Commission*, H. Rep. No. 102-279 (October 30, 1991), 2. Brunsdale served as Vice Chairman and as Acting Chairman of the Commission throughout FY 1991.

³⁴⁵ 137 Cong. Rec. S17239-40 (November 20, 1991).

³⁴⁶ *Ibid.*

³⁴⁷ Pub. L. No. 102-185, § 1(a).

³⁴⁸ *Ibid.*, § 1.

³⁴⁹ Pub. L. No. 95-106, § 2(a).

issues.³⁵⁰ Specifically, Congress amended the statute to provide that that any Chairman who was appointed on or after June 17, 1996, must have served at least one year of continuous service as a USITC Commissioner prior to his/her appointment as Chairman.³⁵¹ However, the service requirement was waived in times of transition;³⁵² if a Commissioner did not complete a term as Chairman or Vice Chairman “by reason of death, resignation, removal from office as a commissioner, or expiration of his term of office as a commissioner,”³⁵³ the 1991 Act specified that the President could designate as Chairman or Vice Chairman for the remainder of the term a Commissioner of the same political party designation “without regard to the 1-year continuous service requirement.”³⁵⁴

Furthermore, the 1991 Act required the President to designate a Democratic Chairman for the term beginning on June 17, 1992, in order to resume the alternation of political parties for the Chairmanship.³⁵⁵ The 1991 Act also provided an exception for the appointment of the Chairman in 1992, specifying that the requirement for one year of continuous service as a Commissioner did not apply to the term of the Chairman beginning on June 17, 1992.³⁵⁶ Shortly after the enactment of the 1991 Act on December 4, 1991, President Bush designated Commissioner Don E. Newquist, a Democrat, as Chairman for the term ending on July 16, 1992. Then, consistent with the 1991 Act, President Bush re-designated Commissioner Newquist as Chairman on June 16, 1992, for the term ending June 16, 1994.³⁵⁷

The succession of Chairmen at the USITC alternated by presidential designation until almost two decades later. In 2010, Deanna Tanner Okun, a Republican, who had already served one term as Chairman, became the second Chairman of the USITC to accede to that position by operation of law. When outgoing Democratic Chairman Shara L. Aranoff’s term expired on June 16, 2010, President Barack Obama chose not to designate a Republican Chairman. Thus, according to the statute, Commissioner Okun, as senior Republican on the Commission, became Chairman again.³⁵⁸ Commissioner Okun served as Chairman until June 2012,³⁵⁹ when President Obama designated a Democrat, Irving Williamson, as Chairman for the term ending on June 16,

³⁵⁰ 137 Cong. Rec. H9160–61 (November 5, 1991).

³⁵¹ Pub. L. No. 102-185, §1(a); 19 U.S.C. §1330(c)(3)(A).

³⁵² 137 Cong. Rec. S15256 (October 25, 1991).

³⁵³ 19 U.S.C. 1330(c)(3)(C).

³⁵⁴ Pub. L. No. 102-185, § 1(a); 19 U.S.C. §1330(c)(3). In 1996, newly-designated Commissioner Marcia E. Miller became Chairman of the Commission under this provision, completing outgoing Chairman David B. Rohr’s term.

³⁵⁵ Pub. L. No. 102-185, § 1(b)(2).

³⁵⁶ Pub. L. No. 102-185, § 1(b)(1).

³⁵⁷ U.S. International Trade Commission (USITC), *1992 Annual Report*, USITC Publication 2624 (Washington, DC: USITC, June 1993), 6.

³⁵⁸ USITC, *2010 Year in Review*, 5; 19 U.S.C. § 1330(c)(1).

³⁵⁹ Commissioner Okun previously served as Chairman from June 17, 2002, to June 16, 2004.

2014. Thus, the 1991 Act has ensured that, whether by designation or by operation of law, the Chairmanship continues to alternate between parties.

The Modern Chairmanship

The statutory structure put in place in 1977, whereby the Chairman has the authority to make most administrative decisions for the Commission (subject to disapproval by a majority of the Commissioners), has been in force now for almost 40 years.³⁶⁰ The Chairman's authority in administrative matters is limited to the authority set out in section 331 of the Tariff Act of 1930 and does not extend to matters of substance, such as whether to institute an investigation or the determination in that investigation. In the case of investigations, while the Chairman may preside at the hearing or at the meeting at which the Commissioners vote, the Chairman is only one among six equals.

To assess how these dual roles of the Chairman work in practice, the authors consulted a number of former Chairmen, Chiefs of Staff, and long-time Senior Executive Service (SES) managers, as well as contributing their own recollections. The responses of these individuals generally reflected three themes:

- a) The USITC is unique among federal independent agencies in that the Chairman's views on substantive matters seldom, if ever, carry special weight with the other Commissioners;
- b) To be effective, an USITC Chairman needs to balance his or her statutory authority to make administrative decisions with a commitment to assure collegial decision-making whenever possible; and
- c) As government-wide administrative requirements multiply in areas like fiscal accountability and cybersecurity, Chairmen struggle to find a balance in managing administrative matters efficiently, so as to provide sufficient supervision and guidance to career staff charged with implementing decisions without micromanaging those staff.

Every Commissioner maintains a staff of professionals, which usually includes attorneys and economists, to provide assistance on substantive investigations. When a Commissioner becomes Chairman, however, he or she is also authorized to hire a Chief of Staff, which is typically a non-career SES position. Some Commissioners have selected a member of their existing staff as the Chief of Staff, while other Commissioners have selected an individual from outside of their office to fill the position. The Chief of Staff may assist the Chairman with ongoing investigations, but is primarily focused on administration of the agency and tends to

³⁶⁰ 19 U.S.C. §1330(c).

build up considerable expertise on agency operations during the Chairman's term. For that reason, the same individual has, on occasion, served as the Chief of Staff for more than one Chairman.³⁶¹

The Chief of Staff typically works closely with the Chairman to ensure that the Chairman achieves his/her strategic goals and that the agency functions efficiently and effectively. Because he/she is the Chairman's primary adviser and staff member, the Chief of Staff is essentially responsible for overseeing most of the Commission's activities on behalf of the Chairman. In performing this role, the Chief of Staff is required to carry a heavy workload. As a result, in 2011, the Commission created the position of Deputy Chief of Staff to help the Chief of Staff perform his duties, including following up on audits by the Commission's Office of Inspector General. Unlike the Chief of Staff, who is a Schedule C political appointee, the Deputy Chief of Staff holds a career position that is intended to ensure continuity across Chairmen in addressing issues critical to the management of the agency.

Conclusion

The evolution of the USITC Chairmanship provides an interesting example of the challenge of finding appropriate balance among competing factors: dealing with substantive vs. administrative matters; preserving the agency's independence from the executive and legislative branches, while being responsive to both; and maintaining a relatively strong hand as the Chairman while working collaboratively with the other Commissioners.

Policy-makers have intentionally structured the USITC and its Chairmanship to make it one of the most—if not the most—"independent" of all U.S. independent agencies. Among other things, Congress provided that Commissioners serve for nine-year terms without the opportunity to be reappointed. As a result of this relatively lengthy tenure, a Commissioner need not consider whether his voting record pleases the President who appointed him. Further, since the Chairmanship is only a two-year term, the ability of any Chairman to consolidate administrative power is reduced—albeit at the cost of losing continuity and efficiency each time a new Chairman must come up to speed on the agency's ongoing and complex administrative challenges. By rotating the Chairmanship between the two parties, regardless of the party of the President, a designation as Chairman is less susceptible to being used as a political prize to reward politically loyal Commissioners. With an even six, rather than an odd number of Commissioners, there is no edge given to the Commissioners who are of the same party as the President. Finally, and perhaps most importantly, Congress did not delegate substantive policy-making authority to the Commission. Unlike other agency heads, the Chairman of the USITC is

³⁶¹ For example, one individual served as Chief of Staff or its equivalent for Chairmen Don Newquist and Lynn Bragg, after having served as an aide to Chairmen Catherine Bedell and Alfred Eckes.

not expected to make policy changes—nor is capable of doing so. The statute allows Commissioners to vote individually on substantive issues based on their own interpretations and application of the law to the facts on record, yet also provides incentives for the Chairman and Commissioners to work together in administering the affairs of the Commission.

Throughout the past 100 years, the members of Congress who drafted the laws governing the agency's structure and operations have worked continually to create and improve a framework for the Chairmanship and for the agency that encourages independent decision-making on substantive matters and efficiency through collaboration on agency administration. From a position of one among many to that of first among equals, serving as Chairman of the USITC in the 21st century involves managing an agency employing approximately 400 people, with a budget of over \$90 million. The Chairman juggles the substantive work of a Commissioner with advisory responsibilities to both the executive and legislative branches and management issues as varied as information technology security concerns, physical space requirements, and budgetary constraints. While the role of the Chairman continues to evolve along with the substantive and administrative challenges facing the agency, the current structure of the Commission, designed to strike a balance, with neither a "strong" nor a "weak" Chairman, has on the whole, proven effective.

Bibliography

- Bernhardt, Joshua. *The Tariff Commission: Its Histories, Activities and Organization*. New York: D. Appleton and Company, 1922.
- Dobson, John M. *Two Centuries of Tariffs: The Background and Emergence of the U.S. International Trade Commission*. Washington, DC: USITC, 1976.
- Logan, Thomas. "That Non-Partisan Board: Only One Protectionist Among the Six Members of the New Tariff Commission." *American Economist*, vol. 59, no. 12 (March 23, 1917).
- Shewmaker v. Parker, 479 F. Supp. 616, 619 (D.D.C. 1979).
- The New York Times*. "Demands an Inquiry on Tariff Board to Purge It of Politics." December 30, 1925.
- The New York Times*. "President Names Tariff Commission," March 15, 1917.
- The Washington Post*. "Attack Tariff Board: Wilson Sends Six Nominations to Senate; Amazes Old Guard." March 15, 1917.
- U.S. Tariff Commission (USTC). *Eighth Annual Report of the USTC, 1924*. Washington, DC: GPO, December 1, 1924.
- . *Eleventh Annual Report of the USTC, 1927*. Washington, DC: GPO, December 5, 1927.
- U.S. International Trade Commission (USITC). *1976 Annual Report*. USITC Publication 970. Washington, DC: USITC, 1977.
- . *Annual Report, 1986*. USITC Publication 1935. Washington, DC: USITC, January 1987.
- . *Annual Report, 1988*. USITC Publication 2140. Washington, DC: USITC, January 1988.
- . *Annual Report, 1989*. USITC Publication 2264. Washington, DC: USITC, March 1990.
- . *Annual Report, 1990*. USITC Publication 2354. Washington, DC: USITC, May 1991.
- . *Annual Report, FY 1992*. USITC Publication 2624. Washington, DC: USITC, June 1993.
- . *Year in Review, FY 2010*. USITC Publication 4212. Washington, DC: USITC, December 2010.
- . "Deanna Tanner Okun Becomes Chairman of U.S. International Trade Commission." News Release 10-067.
https://www.usitc.gov/press_room/news_release/2010/er0617hh1.htm.
- . "Irving A. Williamson Becomes Chairman of U.S. International Trade Commission." News Release 16-072, June 20, 2016.
https://www.usitc.gov/press_room/news_release/2016/er0620ll615.htm.

