

Chapter 16

Industry and Economic Analysis for the Executive Branch



Photo: The Winder Building, headquarters of the Office of the U.S. Trade Representative.

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“Scientific” Determination of Tariff Rates: The Need for Objective, Credible Information

For over 150 years, tariffs were the major source of revenue for the Federal government, and Congress was directly responsible for making tariff policy and establishing rates of duty for imported articles.

Between 1789 and 1910, Congress passed more than 225 laws and joint resolutions on tariff matters.¹¹⁶⁸ Information on tariffs and on individual industries was obtained through hearings, and setting tariff rates was a contentious and partisan issue.¹¹⁶⁹ After enactment of the Revenue Act of 1913,¹¹⁷⁰ support grew for the establishment of an independent, bipartisan agency that would, at a minimum, engage in fact-finding on issues related to tariffs and competitive conditions for U.S. industries.¹¹⁷¹

Non-partisanship, independence, and objectivity were seen as essential to injecting economic analysis and fact-finding into the debate on tariffs in general and in regard to individual industries and consumers.¹¹⁷² Information and advice received from “scientific investigations” conducted by a bipartisan body with quasi-judicial authority would be more credible than past practice.¹¹⁷³ Thus, in Title VII of the Revenue Act of 1916 (Revenue Act), Congress established

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¹¹⁶⁸ *Tariff Acts Passed by the Congress of the United States (1789–1909)* (Washington, DC: GPO, 1909).

¹¹⁶⁹ Karen E. Schnietz, “The 1916 Tariff Commission: Democrats’ Use of Expert Information to Constrain Republican Tariff Protection,” *Business and Economic History*, 23, no. 1 (1994), 177–80.

¹¹⁷⁰ C.16, 38 Stat. 114 (October 3, 1913).

¹¹⁷¹ In 1916, both the Democratic and Republican Party platforms supported the establishment of an independent agency. See, Gerhard Peters and John T. Woolley, *The American Presidency Project*; —Democratic Party Platform of 1916 (June 14, 1916); Republican Party Platform (June 7, 1916). online at <http://www.Presidency.ucsb.edu>, (accessed April 2016).

¹¹⁷² There were some short-lived experiments in obtaining advice from bodies appointed by the Executive Branch. These were the Tariff Commission, the Department of the Treasury (1882) (appointed pursuant to an Act of May 15, 1882 (22 Stat. 64); the Tariff Board (1909–12) (appointed pursuant to the Tariff Act of 1909 (36 Stat. 11)); Cost of Production Division, Bureau of Foreign and Domestic Commerce, Department of Commerce (1913–16) (established under the Appropriations Act of August 23, 1912. 37 Stat. 407).

¹¹⁷³ Schnietz, “The 1916 Tariff Commission,” 1994, *supra* note 1168.

an agency known as the Tariff Commission(Commission)¹¹⁷⁴ that would possess these characteristics. The Commission’s politically-balanced structure¹¹⁷⁵ and mandate to provide information, analysis and advice to both Congress and the Executive Branch would help ensure that neither Branch dominated the substance of the Commission’s reports or advice.

While the Commission experienced cuts in appropriations at times,¹¹⁷⁶ and struggled during those times to carry out its mission with scarce resources, Congress has consistently relied on the Commission’s expertise and objectivity over the last 100 years, and expanded the Commission’s role in providing information, reports, and advice on trade matters to the Executive Branch.¹¹⁷⁷ On only one occasion has Congress acted to limit the Commission’s interaction with the Executive Branch. In the Trade Agreements Extension Act of 1948, Congress expressly prohibited the Commission or any of its staff from participating “in the making of decisions with respect to the proposed terms of any foreign trade agreement or in the negotiation of any such agreement.”¹¹⁷⁸ That was a significant departure from previous practice, in particular during the negotiations leading to the General Agreement on Tariffs and Trade (GATT 1947). Within a year, Congress repealed this prohibition in the Reciprocal Trade Agreement Extension Act of 1949.¹¹⁷⁹

This Chapter reviews the various authorities that establish the Commission’s mandate to provide information, reports, and advice to the Executive Branch, and looks at how this mandate has evolved. Next, the Chapter discusses in broad terms how the Commission provides information, reports, and advice to the Executive Branch. The Chapter then offers a brief conclusion.

¹¹⁷⁴ Congress changed the name of the Tariff Commission to the U.S. International Trade Commission (USITC) in the Trade Act of 1974. Use of the term “Commission” in this Chapter refers to the Tariff Commission prior to 1975 and the U.S. International Trade Commission after that date.

¹¹⁷⁵ Section 700 of the Tariff Act of 1916, Ch.463, 39 Stat. 756 (September 8, 1916).

¹¹⁷⁶ E.g., U.S. Tariff Commission *Annual Report* submitted to Congress November 29, 1919, 5–6 (appropriations cut by one-third).

¹¹⁷⁷ See discussion in section II below.

¹¹⁷⁸ Section 3(c) of Pub. L. No. 80-792, 62 Stat. 1053. During that period, the Commission reported that it attended meetings of interagency committees involved in ongoing trade negotiations as observers. I *Commission’s Annual Report* submitted to Congress January 3, 1950, 13.

¹¹⁷⁹ Section 2 of the Reciprocal Trade Agreement Extension Act of 1949 (68 Stat. 698) repealed Pub. L. No. 80-792 and section 5 of that Act amended section 350 of the Tariff Act of 1930 (19 U.S.C. 1354) to restore the references to the President seeking advice from the Commission and certain other agencies.

Evolution of the Commission's Mandate

The Revenue Act of 1916

Congress, having established the Commission in the Revenue Act,¹¹⁸⁰ directed the Commission to undertake investigations and provide reports and economic analysis to Congress and the President. Section 702 of the Revenue Act vested the Commission with the responsibilities of investigating the administration and fiscal and industrial effects of the customs laws, specific tariff-related issues, and the operation of customs laws, including the effect of those laws on the industries and labor of the United States, and submitting reports of its investigations. Similarly, section 704 of the Act granted the Commission the authority to investigate tariff relations between the United States and foreign countries, commercial treaties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption and conditions, causes, and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production.¹¹⁸¹

Only section 703 of the Revenue Act specifically refers to the President and directs the Commission to

put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress, and shall report to Congress on the first Monday of December of each year hereafter a statement of the methods adopted and all expenses incurred, and a summary of all reports made during the year.¹¹⁸²

A review of the Commission's annual reports between 1917 and 1921 reveals that the Commission immediately began providing information and advice under sections 702 and 704 of the Act and initiated investigations under its own authority or at the request of Congress under these authorities. The Commission did not institute any investigations under section 703.¹¹⁸³ While the President did not make any requests for information under section 703, he did designate the Commission as the responsible agency for the collection of statistical

¹¹⁸⁰ Section 700 of the Tariff Act of 1916, ch.463, 39 Stat. 756 (September 8, 1916).

¹¹⁸¹ *Ibid* §§ 702 and 704. As discussed in previous chapters, these sections are the precursors of several types of trade-related investigations, including those concerning antidumping and countervailing duties.

¹¹⁸² *Ibid.* § 703.

¹¹⁸³ *Commission Annual Report* submitted to Congress November 15, 1917; November 26, 1918; November 29, 1919; December 6, 1920; and December 5, 1921.

information regarding certain chemical commodities and the preparation of a census of domestic production.¹¹⁸⁴

The Tariff Act of 1922

The Tariff Act of 1922¹¹⁸⁵ (the 1922 Act) significantly changed the interaction between the Commission and the Executive Branch. In section 315, Congress authorized the President to take several different actions including implementing a so-called “flexible tariff” based on the concept of using the tariff to equalize the cost of production of domestic articles and imports from the principal competing country.¹¹⁸⁶ A Commission investigation of the differing costs of products needed to be completed before the President could proclaim any change in the relevant tariff.¹¹⁸⁷

Section 317 of the 1922 Act authorized the President to proclaim new or increased duties if he determined that a foreign country was engaged in discrimination against U.S. commerce. Discrimination was described broadly to include both direct and indirect discrimination through “law, or administrative regulation, or practice.”¹¹⁸⁸ Under section 317(g), the Commission was required to “ascertain and at all times to be informed whether any of the “discriminations against the commerce of the United States . . . are practiced by any country; and if and when such discriminatory acts are disclosed, it shall be the duty of the Commission to bring the matter to the attention of the President, together with recommendations.”¹¹⁸⁹ To assist the President and Congress in administering the law, the Commission was directed “to ascertain information on cost of production for domestic and imported products” and “all other facts which will show the differences in or which affect competition between articles of the United States and imported articles in the principal markets of the United States.”¹¹⁹⁰

¹¹⁸⁴ The designation of the Commission was in preparation for the implementation of section 500 of the Revenue Act, which authorized the President to remove an increase in duties on certain chemicals under specified conditions. *Commission Annual Report* submitted to Congress on November 15, 1917 at 13–14.

¹¹⁸⁵ Pub. L. No. 67-318, 36 Stat. 11, ch. 356.

¹¹⁸⁶ *Ibid.* at section 315. This section also authorized the President to increase or decrease duties (within a 50 percent limit) or impose a duty based on the American selling price (also subject to a 50 percent limit). *Ibid.*

¹¹⁸⁷ *Ibid.* § 315(c) para.2.

¹¹⁸⁸ *Ibid.* § 317(a). This concept of discrimination appears to foreshadow the approach taken in Article III of GATT 1947 in relation to national treatment.

¹¹⁸⁹ 1922 Act at section 317(g).

¹¹⁹⁰ *Ibid.* § 318(a).

Between 1922 and 1929, the Commission conducted numerous investigations and submitted reports under various provisions of the 1922 Act, in particular, section 315.¹¹⁹¹ The requirements for these investigations and reports to provide advice or recommendations to the President expanded on the concept of having the Commission provide a “scientific and factual basis” for the President’s exercise of delegated authority. As discussed below Congress has included this type of requirement in several subsequent statutes, including the Bipartisan Congressional Priorities and Accountability Act of 2015 (TPA 2015).

Soon after the Commission began issuing reports under the provisions of the 1922 Act, questions were raised regarding the Commission’s powers and duties. On March 27, 1923, the Attorney General issued an opinion on the Commission’s actions in regard to an investigation of the duty on Logs of Fir, Spruce, Cedar, or Western Hemlock. In that opinion, the Attorney General stated that “the 1922 Act has not changed the status of the Tariff Commission and the powers and duties of that tribunal remain limited to the ascertainment and report of facts,”¹¹⁹² thus, confirming the legitimacy of the Commission’s action in that investigation and more generally under section 315.

In 1923, the Commission made a report to the President “On the Relation of the Tariff on Sugar to the Rise in Price of February-April 1923.” This report was in response to a request from President Harding sent in a telegram to the Commission on March 27, 1923. The request and the Commission’s summary do not state the basis for the President’s request (possibly section 703 of the Revenue Act) and the brevity and informality of the request stands in contrast to the formal and more detailed letters that convey requests for Commission reports under more recent statutes.¹¹⁹³

The Tariff Act of 1930

Congress undertook a major revision of U.S. tariff law in 1930, which resulted in the Tariff Act of 1930 (the so-called Smoot-Hawley tariff).¹¹⁹⁴ Congress replaced section 703 of the Revenue Act

¹¹⁹¹ *Commission Annual Report* submitted to Congress December 2, 1929. In that report, the Commission stated that since 1922, it had completed 183 reports and special surveys. Forty-eight reports covering 56 articles had been completed under section 315 of the 1922 Act; 5 reports under section 316 (unfair methods of competition); 18 under section 317 involving complaints of discrimination against U.S. commerce; and 97 under the general powers conferred under the Revenue Act and section 318 of 1922 Act (self-initiated). The Commission also states that it provided 15 formal reports to the President and the Department of State on tariff matters (authority for those reports is not mentioned). *Ibid.* at 9. In addition, the report mentions numerous minor and less formal investigations; responses to requests for information; and reports to various government officials. A table providing details is provided. *Ibid.* at 10. These matters appear akin to the “technical assistance” that the Commission provides to Congress and the Executive Branch.

¹¹⁹² *Commission Annual Report* submitted to Congress December 3, 1923, Appendix V, 83.

¹¹⁹³ *Ibid.*, Appendix IV at 55–71.

¹¹⁹⁴ 19 U.S.C. 1300 *et seq.*

with section 332(g) of the Tariff Act of 1930,¹¹⁹⁵ which carried forward the Commission's mandate to provide all information at its command to the President, the Committee on Ways and Means of the House of Representatives (House Ways and Means Committee), the Senate Committee on Finance (Senate Finance Committee) and either House of Congress on request.¹¹⁹⁶ In 1930, the Commission conducted its first investigations under section 332 based on two Senate resolutions.¹¹⁹⁷ This began a tradition that continues today of the Senate Finance Committee and the House Ways and Means Committee requesting investigations and reports pursuant to section 332.¹¹⁹⁸

In 1940, the Executive Branch made its first request for an investigation under section 332,¹¹⁹⁹ but it was not until 1965 that the President and the Special Representative for Trade Negotiations began to request Commission investigations under section 332 on a regular basis.¹²⁰⁰ Since then, the President and the U.S. Trade Representative (USTR) have requested the Commission to conduct numerous fact-finding investigations ranging from those involving

¹¹⁹⁵ 19 U.S.C. 1332(g). While section 332 included several provisions found in prior Acts relating to the Commission's responsibilities, section 332(g) is the provision that the Executive Branch relies on today in requesting reports and analyses from the Commission.

¹¹⁹⁶ The President delegated his function under section 332(g) to the U.S. Trade Representative in section 5.301 of Executive Order 12661 of December 27, 1988 (54 Fed. Reg. 799).

¹¹⁹⁷ *Commission Annual Report* submitted to Congress December 1, 1930, 2–3.

¹¹⁹⁸ *E.g.*, Investigation No. 332-540, *Digital Trade in the U.S. and Global Economics, Part 2*, USITC Publication 4485 (Washington, DC: USITC, August 2014) (requested by the Senate Finance Committee); Investigation No. 332-543, *Trade, Investment, and Industrial Policies in India: Effects on the U.S. Economy*, USITC Publication 4501 (Washington, DC: USITC, December 2014) (requested by the House Ways and Means Committee and Senate Finance Committee); Investigation No. 332-524, *Brazil: Competitive Factors in Brazil Affecting U.S. and Brazilian Sales in Selected Third Country Markets*, USITC Publication 4310 (Washington, DC: USITC, April 2012) (requested by the Senate Finance Committee); Investigation No. 332-526, *Business Jet Aircraft Industry: Structure and Factors Affecting Competitiveness*, USITC Publication 4314 (Washington, DC: USITC, May 2012) (requested by the House Ways and Means Committee); *Overview of Cuban Imports of Goods and Services and Effects of U.S. Restrictions*, USITC Publication 4597 (Washington, DC: USITC, March 2016) (requested by the Senate Finance Committee).

¹¹⁹⁹ *Products of Puerto Rican Needlework Industry*, Investigation No. 332-024, (no publication) (requested by the Wage and Hour Division).

¹²⁰⁰ *E.g.*, Investigation No. 332-046, *Textured Yarns*, USITC Publication 0166 (Washington, DC: USITC, December 1965) (request from the President); Investigation No. 332-047, *Products Subject to Duty. . . Based on Values Determined by Conventional Valuation Methods*, USITC Publication 0181 (Washington, DC: USITC, July 26, 1966) (request from the Special Trade Representative); Investigation No. 332-049, *Probable Economic Impact of Concessions on Certain . . .* (Completed on October 3, 1966—Confidential); Investigation No. 332-054, *Mink Fur Skins*, USITC Publication 0242 (Washington, DC: USITC, April 1968) (request from the President). In the Trade Act of 1974, the title of the Special Trade Representative for Trade Negotiations was changed to the United States Trade Representative (USTR) and the office was made part of the Executive Office of the President. See 19 U.S.C. 2171 (originally enacted as section 141 of the Trade Act of 1974).

specific industries, such as textiles, non-rubber footwear, and mushroom industries,¹²⁰¹ to those addressing the competitive conditions facing U.S. industries generally.¹²⁰² The President and the USTR also have requested reports regarding the operation of the Generalized System of Preferences (GSP) program and other preference programs. On some issues, such as those involving the General Agreement on Trade in Services, USTR has asked the Commission to provide a series of reports.¹²⁰³

From the Reciprocal Trade Agreements Act to Trade Promotion Authority: The Trade Agreements Program

The Reciprocal Trade Agreements Act (RTAA), enacted in 1934, amended the Tariff Act of 1930 to authorize the President to enter into foreign trade agreements and “to proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder.”¹²⁰⁴

While this authority was subject to a 50-percent limitation on the amount by which the President could increase or decrease a particular duty, Congress did not need to enact legislation to approve any agreement that complied with the conditions and procedures in the RTAA. Moreover, the proclaimed duties or other import restrictions were to apply on a most-favored nation basis.¹²⁰⁵

¹²⁰¹ Investigation No. 332-055, *Textile and Apparel Industries*, USTC Publication 0226 (January 1968) (request from the President); Investigation No. 332-056, *Nonrubber Footwear*, USTC Publication 0276 (Washington, DC: USTC, January 1969) (request from the President); USTC Investigation No. 332-072: *Mushrooms*, USITC Publication 0580 (Washington, DC: USTC, May 1973) (request from the President).

¹²⁰² Investigation No. 332-065, *Competitive Position of U.S. Industries*; Three reports were issued: USTC Publication 0473 (Washington, DC: USTC, April 1972); 0737 (Washington, DC: USITC, August 1975); 0738 (Washington, DC: USITC, August 1975) (request from the President).

¹²⁰³ *E.g.*, Investigation No. 332-78, *Certain Articles Being Considered For Removal From The List of Articles Eligible for Duty-Free Treatment under the U.S. Generalized System of Preferences (GSP)*, Investigation Nos. 332-78 and TA-503(a)-2 (September 1976) (request from the President); Investigation No. 332-81, *Probable Economic Effects of Designating Certain Articles as Eligible for the U.S. Generalized System of Preferences (GSP)*, Investigation. Nos. 332-81 and TA-503-(a)(3) (January 1977) (request from the Special Trade Representative); Investigation No. 332-267, *General Agreement on Trade in Services: Examination of South American Trading Partners’ Schedule of Commitments*, USITC Publication 3007 (Washington, DC: USITC, December 1996) (requested by USTR); Investigation No. 332-376, *General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by Asia/Pacific Trading Partners*, USITC Publication 3011 (Washington, DC: USITC, January 1997) (requested by USTR). A comprehensive list of Commission investigations conducted under section 332 is at https://www.usitc.gov/research_and_analysis/332_commission_publication.htm.

¹²⁰⁴ Pub. L. No. 93-316, 48 Stat. 943, § 350(a)(2).

¹²⁰⁵ *Ibid.*

Section 4 of the RTAA required the President to provide the public with reasonable notice of the intention to negotiate an agreement and an opportunity for interested persons to provide views to the President, or to such agency as the President may designate. Before concluding an agreement, the President was required to seek information and advice with respect to the proposed agreement from the Commission, the Departments of State, Agriculture and Commerce, and other sources as appropriate.¹²⁰⁶

The RTAA established the foundation for what has evolved into trade promotion authority (TPA) procedures, which are discussed in the following section. Requirements to have an agreement approved and implemented using TPA procedures have become much more complex than those in section 4 of the RTAA, as the agreements have become more complex. Hence, the Commission's role in providing advice to the Executive Branch in connection with these trade agreements is also more complex.

Beginning in 1934, the Commission became immersed in providing the advice called for in section 4 of the RTAA.¹²⁰⁷ The overall trade negotiating committee structure consisted of: the Executive Committee on Commercial Policy; the Committee on Trade Agreements; the Committee for Reciprocity Information; and country, commodity and special committees. Representatives of the Commission served on all of these committees and members of the Commission served as the Chairman and Vice Chairman of the Committee for Reciprocity Information.¹²⁰⁸

Trade negotiations between 1934 and the beginning of World War II (WWII) were normally bilateral. Between 1934 and 1947, the United States concluded and put trade agreements into effect with 29 countries.¹²⁰⁹

On November 9, 1946, the Department of State announced the intention of the United States to enter into trade-agreement negotiations with certain foreign countries; these negotiations commenced in the spring of 1947. The Commission contributed to this effort by producing

¹²⁰⁶ *Ibid.*, § 4.

¹²⁰⁷ *Commission Annual Report* submitted to Congress January 8, 1935, 10–13. ("Procedure and Work Under the Trade Agreements Act"). This report includes detailed information on the Commission's role during the early phase of implementation of the RTAA.

¹²⁰⁸ *Ibid.* The President established the Committee for Information Reciprocity in Executive Order 6750 (June 1934).

¹²⁰⁹ *USTC, Operation of the Trade Agreements Program*, 1st Report (June 1934–April 1948), Publication 160 (Washington, DC: February 1947), part II, table 1, 38, https://www.usitc.gov/research_and_analysis/332_commission_publication.htm. As indicated in this table, as of the end of 1947, commitments under GATT 1947 superseded the relevant bilateral agreement. During WWII the Commission worked with other agencies on the war effort providing information on commodities production and distribution. *Commission Annual Report* submitted to Congress December 1, 1941, 4–5 and subsequent annual reports through the year 1945 (submitted to Congress January 3, 1946). The annual report for 1945 includes a general discussion of its work for war agencies and preparation for the end of WW II, 1–8.

3,000 pages of information on possible U.S. concessions. Twenty-seven Commission staff served as members of or assistants to the U.S. delegation, and a Commission attorney served as a legal advisor to the U.S. delegation. In addition, five Commissioners served as members of the delegation for various periods.¹²¹⁰

Since the initial negotiations on a multilateral trade agreement in 1947, there have been seven additional “rounds” of negotiations under the auspices of the GATT.¹²¹¹ The Commission has provided advice to Executive Branch negotiators during each of these negotiations. Congress has approved the results of these negotiations through special statutory procedures. These procedures are known as “fast-track” or “trade promotion authority” (TPA).

Recent Trade Promotion Authority Legislation

As of June 29, 2015, the requirements to use TPA procedures for the approval and implementation of trade agreements are set forth in TPA 2015. Most recent experience, however, is under TPA 2015’s predecessor statute, the Bipartisan Trade Promotion Authority Act of 2002 (TPA 2002).

In tariff negotiations conducted pursuant to TPA procedures, section 131(a)(1) of the Trade Act of 1974 Act (1974 Act) requires the President to seek advice from the Commission¹²¹² on the probable economic effect of the reduction or elimination of the tariffs under consideration on industries producing like or competitive articles and on consumers.¹²¹³ The Commission is required to provide its advice within 6 months after receipt of a request,¹²¹⁴ and receipt of the Commission’s advice or expiration of the 6-month period is a prerequisite for making a formal

¹²¹⁰ See *Commission Annual Report* submitted to Congress January 2, 1948, 13–16 for information on the operation of the trade agreements program committees during this period. In the last stages of WWII, discussions on global economic institutions began. Although an International Trade Organization was not established, the framework set out in GATT 1947 provided a multilateral basis for tariff and non-tariff negotiations and rules between 1948 and 1995.

¹²¹¹ The GATT was never established formally as an international organization. “CONTRACTING PARTIES” undertook joint action under GATT 1947, including implementation of decisions to conduct tariff negotiations. Individual Contracting Parties (member governments) applied the GATT 1947 provisionally.

¹²¹² 19 U.S.C. 2151(a)(1). Section 131-134 of the 1974 Act apply to agreements covered under section 103 of TPA 2015. See section 110 of TPA 2015. In Executive Order 13701 of July 17, 2015 (80 Fed. Reg. 43901), the President delegated this function to the USTR. Under TPA 2002, the President had delegated the corresponding function to the USTR. Executive Order 13277 of November 19, 2002 (67 Fed. Reg. 7305).

¹²¹³ 19 U.S.C. 2151(a)(1) and (b). Section 131(a)(1) also applies to negotiations to provide tariff compensation under section 123 of the 1974 Act. The maximum time allotted to the Commission to provide its advice in such cases is 90 days after receipt of the request.

¹²¹⁴ 19 U.S.C. 2154.

offer in the negotiations to modify tariffs.¹²¹⁵ Similarly, section 105(a)(2)(B)(III) of TPA 2015 requires the President to request advice from the Commission on the probable economic effects of a tariff reduction on import sensitive agricultural products before initiating tariff negotiations on those products.¹²¹⁶ While the President is required to seek the Commission's advice regarding tariff modification, seeking advice on possible modifications of non-tariff matters is discretionary.¹²¹⁷ The USTR has sought such advice in connection with the multilateral negotiations on trade in services.¹²¹⁸

In addition to seeking advice from the Commission in connection with the initiation of negotiations, not later than 90 calendar days before the day on which the President enters into (signs) a trade agreement that is subject to TPA procedures, the President is required to provide the Commission with the details of the agreement as it exists at that time and request the Commission to prepare and submit an assessment of the agreement to the President and Congress.¹²¹⁹ The Commission must submit this report not later than 105 calendar days after the President enters into the trade agreement.¹²²⁰

Finally, if the President seeks extension of TPA procedures beyond July 1, 2018, the President is to inform the Commission, which is then required to submit a report to Congress no later than June 1, 2018. That report is to include the Commission's analysis of the economic impact on the United States of all trade agreements implemented between June 29, 2015 and the date on which the President seeks extension of trade promotion procedures.¹²²¹

¹²¹⁵ The USTR's letter to the Commission requesting advice in accordance with section 131 of the Trade Act of 1974 and section 2104 of TPA 2002 normally requests that the Commission provide its advice as soon as possible. The Commission's notice in the *Federal Register* setting out the schedule for the investigation includes the date that Commission intends to submit its report to the USTR. Since the advice is intended as guidance for ongoing negotiations, key elements of these reports are classified for national security reasons and in no event is any business confidential information submitted to the Commission made public.

¹²¹⁶ 19 U.S.C. 3804(b)(2)(iii) and 19 U.S.C. 4204(a)(2)(B)(III).

¹²¹⁷ 19 U.S.C. 2151(a)(2).

¹²¹⁸ See Request from Ambassador Kirk to the Commission of January 15, 2013 regarding the negotiations on the Trade in Services Agreement (TISA).

¹²¹⁹ 19 U.S.C. 4204(c)(1). In practice, negotiators provide the Commission with information as soon as possible and update it as negotiations conclude. Under recent free trade agreements, the Commission has faced challenges in producing a report within the strict statutory time frame.

¹²²⁰ *Ibid.*, (c)(2). Under TPA 2002, the Commission was provided a maximum of 90 calendar days to submit its report to Congress and the President. In connection with several reports submitted under this provision, the Commission submitted its report significantly in advance of that deadline. This permitted the submission to Congress of a bill implementing the relevant agreement more quickly.

¹²²¹ 19 U.S.C. 4202(c)(3)(B). A similar provision is in TPA 2002 (19 U.S.C. 3803(c)(3)(B)) and the Commission issued its report in May 2005. See Investigation No. TA-2103-1, *The Impact of Trade Agreements under Trade Promotion Authority*, USITC Publication 3780 (Washington, DC: USITC, May 2005).

Other Requirements for Commission Reports and Advice to the Executive Branch

In the 1974 Act, Congress authorized the President to designate certain articles as eligible for duty-free treatment under the GSP program, subject to certain conditions, including receipt of advice from the Commission.¹²²² Similarly, under the African Growth and Opportunity Act (AGOA), the President is authorized to provide duty-free treatment to certain import sensitive articles under the GSP program if, after receiving advice from the Commission, the President determines that the relevant article is not import-sensitive in the context of imports from sub-Saharan African countries.¹²²³ In addition, when determining whether to grant a waiver of a competitive need limitation¹²²⁴ under Title V of the 1974 Act, which covers both GSP and AGOA, the President must receive advice from the Commission regarding whether any industry in the United States is likely to be adversely affected by such waiver.¹²²⁵

In the Omnibus Trade and Competitiveness Act of 1988 (1988 Act), Congress approved and implemented the International Convention on the Harmonized Commodity Description and Coding System (Convention).¹²²⁶ In section 1205 of the 1988 Act, Congress tasked the Commission with keeping the Harmonized Tariff Schedule of the United States (HTS) under

¹²²² 19 U.S.C. 2463(a)(1) and (e). Under section 503(f) (19 U.S.C. 2463(f)), the requirements and procedures of sections 131 through 134 of the 1974 Act apply to advice on designation of articles as eligible for preferential treatment under Title V of the 1974 Act.

¹²²³ 19 U.S.C. 2406(A)(b)(1).

¹²²⁴ Competitive need limitations (CNLs) are quantitative ceilings on benefits under the GSP program for each product and beneficiary developing country (BDC). The GSP statute, 19 U.S.C. 2461 *et seq.*, provides that a BDC is to lose its GSP eligibility if a CNL is exceeded and no waiver is granted. The President is authorized to grant a waiver of a CNL under 3 circumstances: (1) in response to a petition and giving great weight to certain statutory criteria; (2) if the article at issue was not produced in the United States on January 1, 1995; or (3) total imports from all countries under the program are *de minimis* (an amount set annually according to statute).

¹²²⁵ 19 U.S.C. 2463(d). In a similar vein, under the Caribbean Trade Partnership Act (CBTPA), the Commission must provide its advice on whether fabrics and yarns should be made eligible for preferential treatment under that Act. See CBTPA, 19 U.S.C. 2713(v)(II)(bb) (a so-called “short-supply” provision). Under 19 U.S.C. 2704, the Commission is also required to submit to Congress and the President biennial reports regarding the economic impact of the Caribbean Basin Economic Recovery Act. The Commission issued its latest report on September 30, 2015. Investigation No. 332-227, *Caribbean Basin Economic Recovery Act: Impact on U.S. Industries and Consumers and on Beneficiary Countries* (Washington, DC: USITC, September 30, 2015).

¹²²⁶ 19 U.S.C. 3003.

review and with recommending certain types of modifications to the HTS.¹²²⁷ Under section 1206 of the 1988 Act, the President is authorized to proclaim modifications to the HTS based on the recommendations by the Commission, if the President determines that the modifications are in conformity with United States obligations under the Convention and do not run counter to the national economic interest of the United States. Prior to proclaiming any modifications, the President must submit a report to the House Ways and Means Committee and the Senate Finance Committee that sets forth the proposed modification and the reasons for the modification.¹²²⁸ The President may proclaim a modification to the HTS after the expiration of a layover period of at least 60 legislative days. Recommendations to amend the HTS to implement the most recent amendments to the Convention are, as of this writing, in the layover process before the House Ways and Means and Senate Finance committees.¹²²⁹

The Uruguay Round Agreements Act (URAA) authorized the President to proclaim certain modifications to tariffs and rules of origin, subject to compliance with the “consultation and layover” provisions set out in section 115 of the URAA. Section 111(b), for example, authorizes the President to proclaim the modification or staged reduction of any duty in any tariff category that was the subject of reciprocal duty elimination, i.e., a sector subject to “zero-for-zero” negotiations (such as toys) or harmonization (such as chemicals) during the Uruguay Round negotiations, provided that the United States agrees to the modifications in a multilateral negotiation under the auspices of the World Trade Organization (WTO).¹²³⁰ Section 115 of the

¹²²⁷ *Ibid.* at 3005. While most of the investigations and reports involve recommendations to implement amendments to the Convention adopted by the World Customs Organization, the Commission has initiated two investigations at the request of Customs and Border Protection and has addressed technical corrections to the HTS in its investigations and recommendations. See Investigation No. 1205-8, *Certain Footwear: Recommendations for Modifying the Harmonized Tariff Schedule of the United States*, USITC Publication 4178 (Washington, DC: USITC, 2010) and the Addendum to this Report, USITC Publication 4217 (Washington, DC: USITC, 2011); Investigation No. 1205-11, *Recommended Modifications in the Harmonized Tariff Schedule to Conform with Amendments to the Harmonized System Recommended by the World Customs Organization, and to Address Other Matters*, USITC Publication 4556 (Washington, DC: USITC, July 2015). Section 1205 of the 1988 Act sets out procedures for a transparent process and requirements for submission of Commission recommendations to the President.

¹²²⁸ 19 U.S.C. 3006. In addition to the long “layover” period under section 1206, any modifications proclaimed under section 1206 cannot take effect before the 30th day after the proclamation is published in the *Federal Register*. Other tariff modifications subject to layover periods are based on calendar days and can enter into effect within 15 days after a proclamation is signed.

¹²²⁹ The target date for making the majority of the proposed changes to the HTS is January 2017, *Ibid.* A second set of modifications, which are discussed in Investigation No. 1205-12, *Proposed Commission Recommendations to the President to Modify the Tariff Nomenclature in Chapters 3, 44, and 63 of the Harmonized Tariff Schedule*, USITC Publication 4593 (Washington, DC: USITC, February 2016), have a target date of January 1, 2018 for implementation.

¹²³⁰ 19 U.S.C. 3521 (b)(1).

URAA (Consultation and Layover Requirements) requires the President,¹²³¹ *inter alia*, to obtain advice from the Commission on the proposed actions.¹²³² Consistent with section 111(b), the Commission has provided advice under Section 115 regarding, *inter alia*, the effects of implementation of the Information Technology Agreement, additions to the pharmaceutical appendix to the HTS, and the elimination of duties on most distilled spirits.¹²³³ The TPA 2015 expressly provides that the authority set out in section 111 of the URAA is not affected, and thus is available to implement the results of tariff negotiations in the relevant sectors.

The longstanding approach of authorizing the President to proclaim changes in certain tariff-related matters, conditioned on compliance with “consultation and layover” provisions, is also embodied in legislation implementing agreements that have been approved pursuant to TPA procedures. Each of the implementing bills enacted under the procedures in TPA 2002, for example, includes a section setting forth consultation and layover requirements that apply under provisions authorizing the President to proclaim modifications to tariffs, including the acceleration of tariff cuts, and changes to certain rules of origin.¹²³⁴

As an example, section 201(b) of the United States-Chile Free Trade Agreement Implementation Act (Chile Implementation Act)—one of the many implementing bills enacted under TPA 2002—authorizes the President to modify the staging of any duty treatment set forth in Annex 3.3 of

¹²³¹ The President has assigned responsibility under section 115 to request advice from advisory committees and the Commission, submit reports to the House Ways and Means and Senate Finance Committees, and consult with these committees to the USTR. Presidential Memorandum to the United States Trade Representative of September 29, 1995 (60 Fed. Reg. 52061) (October 4, 1995).

¹²³² 19 U.S.C. 3524 (1)(B). The President must also obtain advice from the appropriate private sector advisory committees and submit a report to the Ways and Means Committee and Senate Finance Committee that sets out the proposed action, reasons for the action, and the advice received from the Commission and the advisory committee. The President must consult with these committees and wait at least 60 calendar days after submitting the required report before proclaiming an action. *Ibid.* at (2) through (4).

¹²³³ *E.g.*, Investigation No. 332-380, *Advice Concerning the Proposed Modification of Duties on Certain Information Technology Products and Distilled Spirits*, USITC Publication 3031 (Washington, DC: USITC, 1997); Investigation No. 332-376, *Advice Concerning the Addition of Certain Pharmaceutical Products and Chemical Intermediates to the Pharmaceutical Appendix to the Harmonized Tariff Schedule of the United States*, USITC Publication 3011 (Washington, DC: USITC, 1997). (Additional USITC reports on proposed updates to the pharmaceuticals appendix are found at USITC Publication 3167 (Washington, DC: USITC, 1999); USITC Publication 3883 (Washington, DC: USITC, 2006); and USITC Publication 4181 (Washington, DC: USITC, September 2010)). The Statement of Administrative Action provides some further examples of sectors that could be subject to section 111 of the URAA.

¹²³⁴ *E.g.*, section 103 of the United States-Singapore Free Trade Agreement Implementation Act (19 U.S.C. 3805 note) referenced in sections 201(b) and 202(o) of that Act; section 104 of the United States-Panama Trade Promotion Agreement Implementation Act referenced in sections 201(b) and 202(o) of that Act; and section 104 of the United States-Korea Free Trade Agreement Implementation Act referenced in sections 201(b) and 202(o) of that Act. Authority to proclaim tariff modifications and changes to rules of origin subject to compliance with consultation and lay-over requirements is also in the North America Free Trade Agreement (NAFTA) Implementation Act and requests for advice on modifications to NAFTA rules of origin have been frequent. *E.g.*, *Probable Economic Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin*, Investigation No. 103-27 (November 2013) for the most recent Commission report.

the United States-Chile Free Trade Agreement (USCFTA), subject to compliance with the consultation and layover provisions set forth in section 103 of the Chile Implementation Act.¹²³⁵ Similarly, section 202(o)(2)(A) of that Act authorizes the President to proclaim modifications to the rules of origin in Annex 4.1 to the USCFTA.¹²³⁶ Thus, in accordance with section 103 of the USCFTA, the Commission provided advice to the President on accelerating tariff elimination for certain vegetables and grape juice under the USCFTA,¹²³⁷ and on modifications of the rules of origin under that Agreement.¹²³⁸ On both issues, the President subsequently proclaimed the proposed modifications.¹²³⁹

Dispute Settlement

As described in previous chapters, the Commission has investigative responsibilities for administering various U.S. trade laws, including those relating to antidumping, subsidies, countervailing duties, and safeguards. Commission actions under U.S. law may be subject to dispute settlement in the WTO to the extent that those actions constitute a measure covered under a WTO agreement.

The Commission's role in the context of dispute settlement is an important one, albeit one that is not often in the spotlight. Although USTR is the lead agency representing the United States in the context of WTO dispute settlement,¹²⁴⁰ the Commission plays an active role in helping to defend the actions that it has taken and in determining "compensation" owed to or by the United States if a measure that has been found to be inconsistent with a WTO obligation is not brought into compliance. In addition, in certain disputes involving U.S. obligations under the WTO Antidumping Agreement, the Safeguards Agreement, or the Agreement on Subsidies and Countervailing Measures, the USTR may request that the Commission provide an advisory opinion on whether it can take action under the relevant U.S. law that would render the

¹²³⁵ 19 U.S.C. 3805 note, section 201(b).

¹²³⁶ *Ibid.*, section 202(o)(2)(A). This authority does not apply to chapters 50 through 64, except to the extent provided for in subparagraph 202(o)(2)(B).

¹²³⁷ Investigation No. 332-498 and Chile FTA-103-020, *Certain Vegetables and Grape Juice: Probable Economic Effect of Accelerated Tariff Elimination for Certain Goods of Chile*, USITC Publication 4017 (Washington, DC: USITC, June 2008).

¹²³⁸ Investigation No. Chile FTA-103-019, *Probable Economic Effect of Certain Modifications to the United States-Chile Free Trade Agreement Rules of Origin*, USITC Publication 4042 (Washington, DC: USITC, October 2008).

¹²³⁹ Proclamation 8214 of December 27, 2007 (73 Fed. Reg. 1439).

¹²⁴⁰ 19 U.S.C. 2171(c)(1)(C) and (D). The Commission's *Annual Report* typically includes a table describing trade litigation, including that before the WTO. *E.g.*, *The Commission's Annual Report for Fiscal Year 2000*, USITC Publication 3445, 105-07, which, in addition to table V listing litigation, includes a chart showing the number of pending cases and the proportion that involve GATT/WTO issues, AD/CVD, section 337, or Administrative issues for FYs 1995 through 2000.

Commission's action "not inconsistent" with the relevant findings of the WTO dispute settlement panel or Appellate Body.¹²⁴¹

The Process of Providing Reports and Advice to the Executive Branch

Formal Commission Investigations

The Commission implements its mandates to provide facts, information, and advice to the Executive Branch through formal investigations. The Commission also supports the trade policy making process through informal expert assistance provided by Commission staff to USTR and other agencies.¹²⁴² All Commission reports and assessments must be accurate, objective, and provided in a timely fashion.

The framework for formal investigations to provide reports to Congress and the Executive Branch is set out in statutes and Commission regulations. Section 131(b) of the 1974 Act, for example, sets a maximum time period of 6 months for an investigation under that section. In some cases, such as in section 105 of TPA 2015, the statute identifies elements that need to be part of the investigative process, such as a review of current literature.¹²⁴³ The Commission's regulations set out specific procedures that apply in its non-adjudicative investigations, which include an opportunity for submissions from the public, and, in most cases, a hearing.¹²⁴⁴

The request for a report or advice shapes the investigation and Commission staff often works with USTR staff to help ensure a clear understanding of the issues that the Commission is being asked to address; formulate specific questions that need to be answered; determine the number and timing of reports, and establish whether the report and the material associated with the preparation of the report will be released to the public.¹²⁴⁵ Ultimately, however, the USTR determines the content and details of the request.

The Commission uses investigative teams in fact finding and probable economic effect investigations that include trade analysts, economists, experts in tariff nomenclature or

¹²⁴¹ 19 U.S.C. 3538. The Commission also has a role in disputes under chapter 19 of NAFTA, assisting in the defense of its decisions covered under the antidumping, subsidy, and countervailing duty provisions of that Agreement.

¹²⁴² Commission reports are reviewed and approved by the Commission, constitute official Commission views, and require considerable time to produce and submit. Technical advice received from Commission staff can be obtained more quickly, but cannot be cited as Commission advice.

¹²⁴³ Section 105(c)(2) and (3).

¹²⁴⁴ See 19 CFR sections 201 and 205.

¹²⁴⁵ Often USTR requests advice from the Commission on proposed or ongoing negotiations or other matters that must be classified consistent with Executive Order 13026 of December 29, 2009. In those instances, classified material is confidential and not released to the public.

particular service sectors as appropriate, and attorneys. Commission staff employs various methods to gather information for a particular investigation, including public hearings, and surveys and questionnaires sent to U.S. producers, service suppliers, importers, and consumers, with follow-up by telephone interviews and other means. Commission staff may also conduct interviews with industry, academic, and other experts. In most investigations Commission staff engage in secondary research and domestic fieldwork, and in some investigations foreign fieldwork. Fact-finding investigations also typically involve data compilation and analysis and the use of statistical, econometric, and simulation analyses. As U.S. industries have become more globalized, and as the subject matter of fact-finding and probable economic effect investigations has evolved to include important non-tariff issues such as regulatory effects and the protection of intellectual property, the Commission has had to develop additional and new methodologies.¹²⁴⁶

In response to requests from the Executive Branch in recent years, the Commission has submitted reports on a wide range of issues, including trade barriers affecting small and medium-sized enterprises, environmental and related services, investment performance in sub-Saharan Africa, remanufactured goods, renewable energy and related services, and many other issues.¹²⁴⁷ Similarly, Commission reports on the probable impact of free trade agreements previously mandated under section 2104 of TPA 2002, and now under section 105 of TPA 2015), must address both tariff and non-tariff issues and more recent reports include quantitative and qualitative assessments of non-tariff as well as tariff issues.¹²⁴⁸ On May 18, 2016, the Commission submitted its report under section 105 of TPA 2015 with regard to the potential effects of the Trans-Pacific Partnership (TPP) Agreement on the U.S. economy.¹²⁴⁹ In light of the number of signatories, the nature and number of commitments, and the size and scope of the

¹²⁴⁶ E.g., Investigation No. 332-514, *China: Intellectual Property Infringement, Indigenous Innovation Policies, and Frameworks for Measuring the Effects on the U.S. Economy*, USITC Publication 4199 (amended) (Washington, DC: USITC, November 2010) at "Chapter 6: Frameworks for Assessing the Quantitative Effects of Intellectual Property Infringement and Indigenous Innovation Policies in China on the U.S. Economy."

¹²⁴⁷ Investigation No. 332-54, *Trade Barriers that U.S. Small and Medium-Sized Enterprises Perceive as Affecting Exports to the European Union*, USITC Publication 4455 (Washington, DC: USITC, March 2014); Investigation No. 332-533, *Environmental and Related Services*, USITC Publication 4389 (Washington, DC: USITC, March 2013); Investigation No. 332-542, *AGOA: Trade and Investment Performance Overview*, USITC Publication 4461 (Washington, DC: USITC, April 2014); Investigation No. 332-525, *Remanufactured Goods: An Overview of the U.S. and Global Industries, Market and Trade*, USITC Publication 4356 (Washington, DC: USITC, November 2012); Investigation No. 332-534, *Renewable Energy and Related Services: Recent Developments*, USITC Publication 4421 (Washington, DC: USITC, September 2013).

¹²⁴⁸ In the past, the evaluation of the effect of non-tariff measures was more qualitative than quantitative, but this is evolving as methodology improves. See e.g., Investigation No. TA-2104-24, *U.S.-Korea Free Trade Agreement: Potential Economy-wide and Selected Sectoral Effects*, USITC Publication 3949 (Washington, DC: USITC, September 2007) at "Introduction: Scope and Approach of the Report."

¹²⁴⁹ Investigation No. TPA-105-001, *Trans-Pacific Partnership Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors*, USITC Publication 4607 (Washington, DC: USITC, May 2016).

economic relationship between the United States and the TPP economies, this report is the most complex and significant report of its kind.

In obtaining information for its reports and advice, the Commission must maintain a working relationship with companies and workers that enables it to gather as much information as possible, respect confidentiality, and is transparent and accessible. As noted above, the Commission uses surveys, questionnaires, hearings, field-work, and outreach to individual sources to gather information for its investigations. Obtaining information from companies can present challenges, as a company may have concerns that providing information could adversely affect its relationship with its foreign or domestic customers and competitors. In addition, a company could have concerns about its ability to do business in another country, if the foreign government considers that the information that the company provides (or the Commission's decision) harms the country's interests.

Informal Technical Assistance to the Executive Branch

Many of the reports and advice that the Commission provides to the Executive Branch are required under various statutes and are conducted under formal procedures and time frames. In some cases, however, the question posed does not merit a formal investigation, and the Commission provides information on an informal basis. For example, Commission staff frequently provide factual information in response to questions from other government agencies. These Commission responses can be provided in person, via phone and email, or in the form of short papers or spreadsheets. The Commission is represented on the Trade Policy Staff Committee (TPSC), and through its participation in the TPSC, the Commission staff provides briefings on Commission reports and responds to agencies' questions regarding those reports. Although the Commission does not engage in policy-making, it benefits from being aware of trade issues of concern to other agencies. It can provide current information, anticipate future needs, and work to develop necessary expertise to address those concerns.

Conclusion

Although the Commission's responsibilities and procedures to provide information and analysis to the Executive Branch have evolved over the past 100 years, the core principles of transparency, objectivity, and responsiveness to the needs of those requesting and receiving its advice have remained constant. Starting with the Revenue Act and carrying through to the enactment of TPA 2015, Congress has authorized the Executive Branch to exercise specific authorities upon receipt of reports and recommendations from the Commission. That action has and continues to exhibit a confidence in the Commission's expertise in providing non-

partisan, objective information and analysis in a timely fashion. The Executive Branch has accepted and worked with the condition of receiving information and advice from the Commission, and considers the Commission and its staff to be an invaluable resource to the President, USTR, and other agencies that make and implement U.S. trade policy.

Conclusion

Paul R. Bardos

As was stated in Chapter 1, the Commission sought to focus on its mandate for independence, lack of partisanship, and objectivity as a theme of this book. The chapters that followed have illustrated in various ways how the need for an agency like the Commission led first to its creation with a narrow mission, then to the addition of many responsibilities, and finally to the methods the agency adopted to carry out its mandate.

During the United States' first century, Congress repeatedly sought, without success, to create a source of useful information on which to base the setting of tariffs. In 1916, despite misgivings on the part of the President and members of Congress, the U.S. Tariff Commission was established to provide such information. Over the ensuing hundred years, the agency was given more and more tasks as its usefulness became apparent.

At first the Commission's primary responsibility, tariff activities have continued up to the present day in spite of the reduction of U.S. tariffs to relatively low levels. Well after the agency's creation, it began conducting investigations concerning imports that were alleged to be dumped or subsidized; this practice has continued, involving industries producing a wide range of products. The agency also carried out safeguard investigations; although few such proceedings have occurred in recent years, they were a mainstay of Commission activities for many years, and may become so again (a number of cases have been filed recently). An early mandate to investigate unfair practices eventually made the Commission into an important forum for the litigation of intellectual property rights. Both Congress and the executive branch have sought and continue to seek the Commission's assistance in the study of a wide range of international trade issues, leading to the agency's development of the capability to perform increasingly sophisticated industry and economic analysis.

Now that the Commission has completed its first century, there is hope that the next hundred years will not soon see the agency's demise. The continued high rate of complaint filings under section 337 of the Tariff Act of 1930 and the recent increase in petition filings under title VII of that Act show that holders of U.S. intellectual property rights and members of domestic industries still find value in participating in Commission proceedings. Congress and the U.S. Trade Representative continue to request that the Commission conduct studies on issues of increasing complexity. The very recent addition of new responsibilities concerning miscellaneous tariff bills reflects Congress' belief that the Commission is not only useful because of its operations of long standing, but is also capable of making additional contributions to the effectiveness of United States international trade policy.

Appendix A

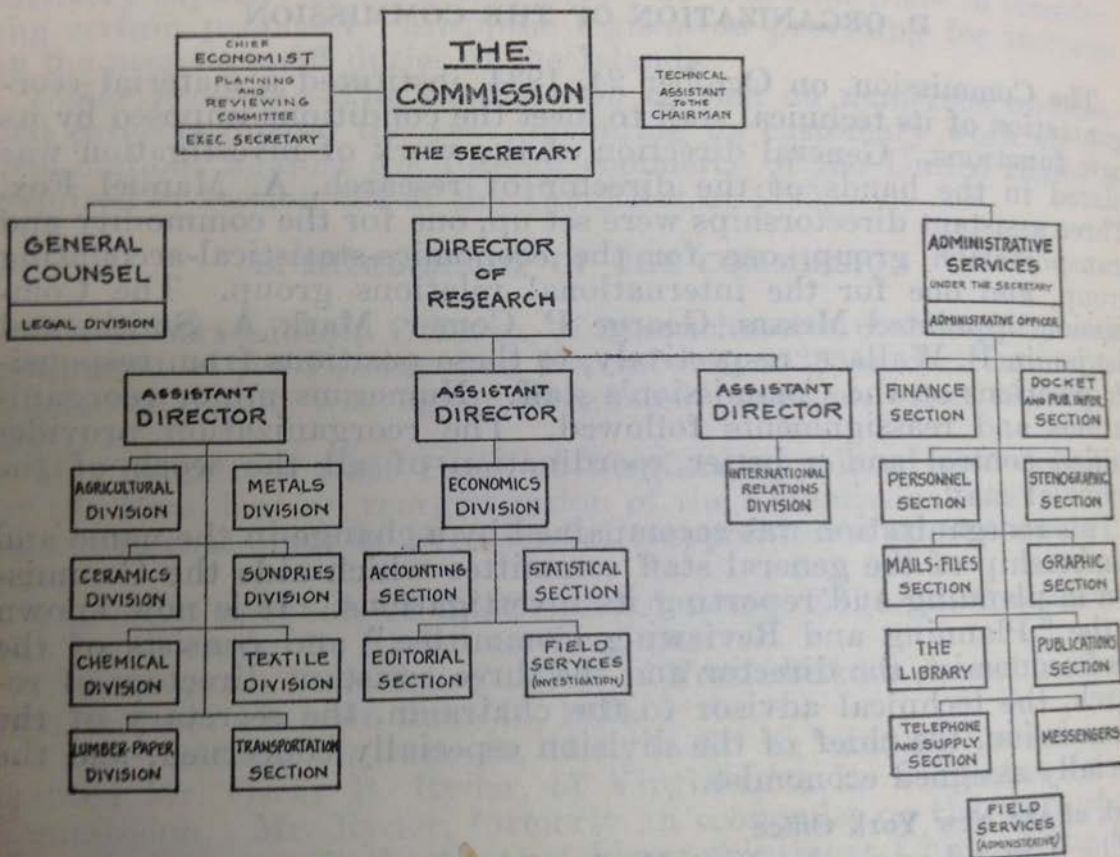
Organization Charts for the Commission from 1934, 1977, and 2016

The 1934 chart is from USTC, *Eighteenth Annual Report of the United States Tariff Commission June 30, 1934* (Washington, DC: GPO, January 2, 1935), 18.

Chart Showing Organization

A chart of the present organization follows:

UNITED STATES TARIFF COMMISSION ORGANIZATION CHART

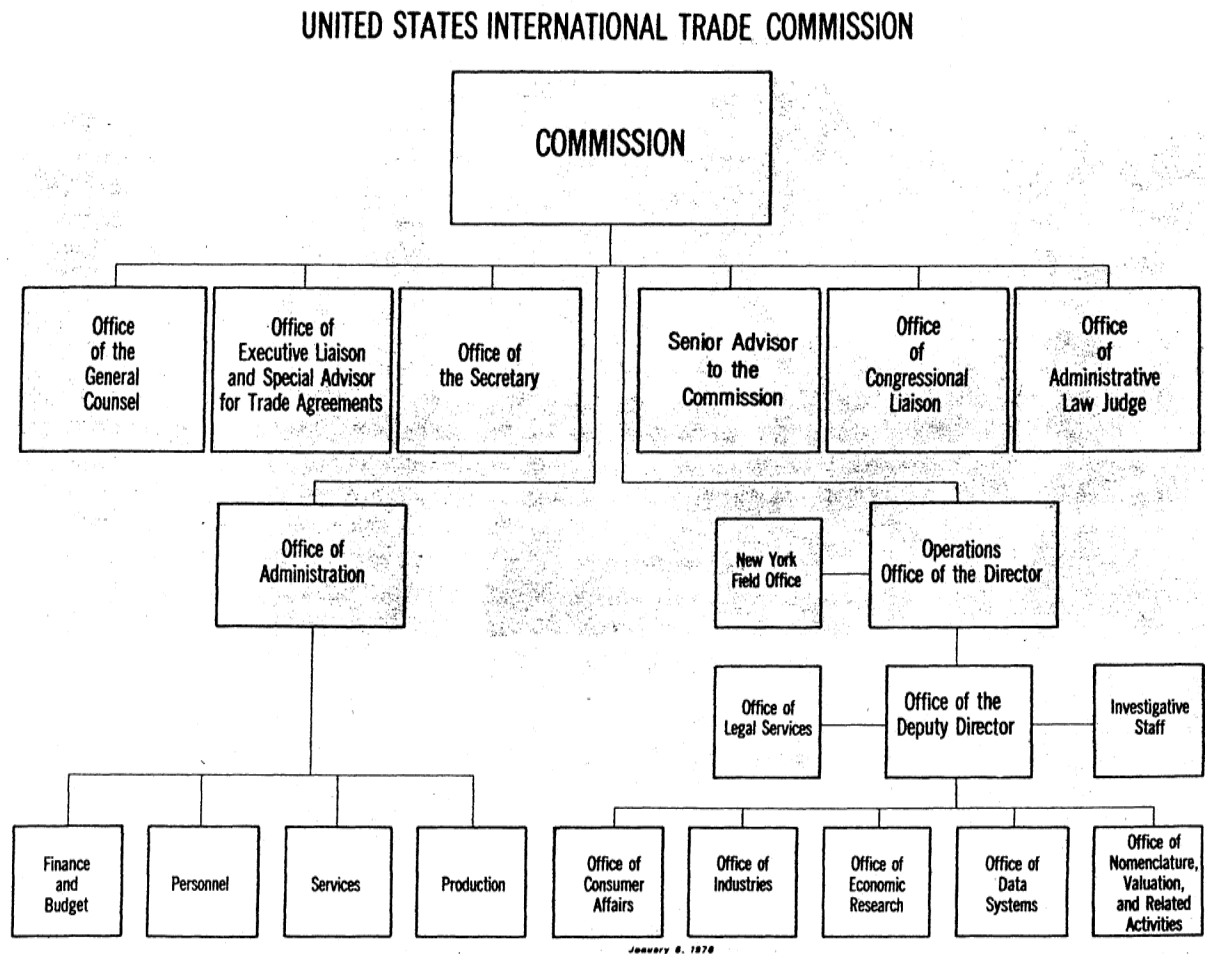


Approved Oct. 24, 1934.

E. THE STAFF

The Commission and its staff, as organized at the close of the fiscal year 1934, consisted of 277 persons, a net decrease of 24 from last year. This total comprised 4 commissioners and 273 employees, 174 of whom were men and 103 were women. Forty-five members of the staff rendered military or naval service. The total number of money de-

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The 2016 chart appears in U.S. International Trade Commission, *Annual Performance Plan, FY 2016-17*, and *Annual Performance Report, FY 2015* (February 9, 2016), 7.



Appendix B

The Commissioners who have served on the U.S. Tariff Commission or the U.S. International Trade Commission, from 1917 to 2017

The list is maintained by the Office of the Secretary to the Commission

Number	Commissioner	Party Affiliation	State	Entered on Duty	Ended Service
86	Schmidtlein, Rhonda K.	Democrat	MO	4/28/2014	N.A.
85	Kieff, F. Scott	Republican	IL	10/18/2013	6/30/2017
84	Broadbent, Meredith M.	Republican	VA	9/10/2012	N.A.
83	Johanson, David S.	Republican	TX	12/8/2011	N.A.
82	Pinkert, Dean Arthur	Democrat	VA	2/26/2007	2/28/2017
81	Williamson, Irving A.	Democrat	NY	2/7/2007	N.A.
80	Aranoff, Shara L.	Democrat	MD	9/6/2005	4/4/2014
79	Pearson, Daniel	Republican	MN	10/8/2003	10/18/2012
78	Lane, Charlotte R.	Republican	WV	8/27/2003	12/7/2011
77	Devaney, Dennis M.	Republican	MI	1/16/2001	12/20/2001
76	Okun, Deanna Tanner	Republican	ID	1/3/2000	8/8/2012
75	Askey, Thelma J.	Republican	TN	8/7/1998	1/16/2001
74	Koplan, Stephen	Democrat	VA	8/4/1998	2/6/2007
73	Hillman, Jennifer A.	Democrat	IN	8/4/1998	2/23/2007
72	Miller, Marcia E.	Democrat	IN	8/5/1996	9/6/2005
71	Bragg, Lynn M.	Republican	MD	3/31/1994	3/2/2003
70	Watson, Peter S.	Republican	CA	12/17/1991	10/31/1996
69	Nuzum, Janet A.	Democrat	VA	11/26/1991	2/2/1997
68	Crawford, Carol T.	Republican	VA	11/22/1991	1/3/2000
67	Newquist, Don E.	Democrat	TX	10/18/1988	1/31/1998
66	Cass, Ronald A.	Democrat	MA	1/20/1988	6/16/1990
65	Brunsdale, Anne E.	Republican	DC	1/3/1986	3/7/1994
64	Rohr, David B.	Democrat	MD	3/27/1984	8/5/1996
63	Liebeler, Susan W.	Independent	CA	4/20/1984	10/7/1988
62	Lodwick, Seeley G.	Republican	IA	8/12/1983	12/16/1991
61	Haggart, Veronica A.	Republican	DC	3/23/1982	6/16/1984
60	Frank, Eugene J.	Republican	PA	9/22/1981	10/23/1982
59	Eckes, Alfred E., Jr.	Republican	VA	9/21/1981	7/2/1990
58	Calhoun, Michael J.	Independent	DC	2/1/1980	9/10/1982
57	Stern, Paula	Democrat	DC	10/16/1978	1/27/1987
56	Alberger, Bill	Democrat	OR	10/20/1977	6/16/1982
55	Minchew, Daniel	Democrat	GA	10/8/1974	9/30/1978
54	Ablondi, Italo H.	Democrat	NY	7/25/1972	10/10/1978
53	Parker, Joseph O.	Republican	VA	8/9/1971	12/31/1979
52	Bedell, Catherine	Republican	WA	7/12/1971	11/30/1981
51	Mize, Chester L.	Republican	KS	1/25/1971	3/17/1971
50	Young, J. Banks	Democrat	VA	1/6/1971	7/1/1974
49	Moore, George M.	Republican	MD	8/26/1969	1/16/1981
48	Newsom, Herschel D.	Republican	IN	11/21/1968	7/2/1970
47	Leonard, Will E., Jr.	Democrat	LA	10/29/1968	6/10/1977
46	Metzger, Stanley D.	Democrat	DC	11/9/1967	7/11/1969
45	Clubb, Bruce E.	Republican	VA	7/3/1967	6/16/1971
44	Kaplowitz, Paul	Democrat	DC	1/26/1966	6/16/1967
43	Thunberg, Penelope H.	Independent	MD	8/3/1965	6/16/1970
42	Fenn, Dan H., Jr.	Democrat	MA	10/18/1963	6/21/1967
41	Culliton, James W.	Independent	IN	12/5/1962	6/16/1968
40	Dorfman, Ben	Democrat	DC	11/2/1961	7/6/1965
39	Overton, J. Allen, Jr.	Republican	WV	5/1/1959	5/31/1962

Appendix B: The Commissioners who have served on the U.S. Tariff Commission or the U.S. International Trade Commission, from 1917 to 2017

Number	Commissioner	Party Affiliation	State	Entered on Duty	Ended Service
38	Dowling, William E.	Democrat	MI	8/22/1955	6/15/1963
37	Jones, J. Weldon	Democrat	TX	6/20/1955	6/16/1961
36	Sutton, Glenn W.	Democrat	GA	9/1/1954	6/16/1972
35	Schreiber, Walter R.	Republican	MD	8/5/1953	6/16/1964
34	Talbot, Joseph E.	Republican	CT	7/15/1965	4/30/1966
34	Talbot, Joseph E.	Republican	CT	4/15/1953	6/16/1965
33	Gregg, John P.	Republican	OR	8/30/1946	10/29/1952
32	Barnes, George Z.	Republican	IL	9/1/1944	8/8/1945
31	McGill, George	Democrat	KS	2/4/1949	6/16/1954
31	McGill, George	Democrat	KS	8/22/1944	6/16/1948
30	Edminster, Lynn R.	Democrat	IL	7/1/1942	6/16/1955
29	Brown, Fred H.	Democrat	NH	8/7/1940	6/16/1941
28	Fox, Abraham M.	Republican	NY	7/27/1937	5/26/1941
27	Grady, Henry F.	Democrat	CA	4/30/1937	8/7/1939
26	Sears, William J.	Democrat	FL	4/30/1937	6/16/1937
25	Durand, E. Dana	Republican	MN	12/8/1935	6/16/1952
24	Stevens, Raymond B.	Democrat	NH	7/1/1937	5/18/1942
24	Stevens, Raymond B.	Democrat	NH	8/20/1935	3/31/1937
23	Ryder, Oscar B.	Democrat	VA	6/13/1934	2/28/1955
22	Collier, James W.	Democrat	MS	3/28/1933	9/28/1933
21	Crisp, Charles R.	Democrat	GA	10/7/1932	12/30/1932
20	Ornburn, Ira N.	Democrat	CT	2/15/1932	6/16/1933
19	O'Brien, Robert L.	Republican	MA	2/15/1932	6/30/1937
18	Coulter, John J.	Republican	ND	9/17/1930	6/16/1934
17	Fletcher, Henry P.	Republican	PA	9/17/1930	11/30/1931
16	Clark, Frank	Democrat	FL	4/12/1928	9/16/1930
15	Dixon, Lincoln	Democrat	IN	9/29/1930	9/16/1932
15	Dixon, Lincoln	Democrat	IN	3/10/1927	9/16/1930
14	Lowell, Sherman J.	Republican	NY	7/6/1926	9/16/1930
13	Brossard, Edgar B.	Republican	UT	9/20/1950	4/30/1959
13	Brossard, Edgar B.	Republican	UT	7/22/1925	6/16/1950
12	Baldwin, A. H.	Republican	NY	6/22/1925	7/3/1926
11	Dennis, Alfred P.	Democrat	MD	3/16/1925	8/29/1931
10	Glassie, Henry H.	Democrat	MD	3/8/1923	3/4/1927
9	Burgess, William	Republican	NJ	7/6/1921	6/1/1925
8	Marvin, Thomas O.	Republican	VA	3/11/1921	9/16/1930
7	Page, Thomas	Democrat	VA	9/17/1930	1/13/1937
7	Page, Thomas	Democrat	VA	2/21/1918	2/28/1923
6	Costigan, Edward P.	Republican	CO	3/26/1917	3/14/1928
5	Culbertson, William S.	Republican	KS	3/26/1917	5/17/1925
4	Kent, William	Independent	CA	3/26/1917	3/1/1920
3	Lewis, David J.	Democrat	MD	3/26/1917	3/4/1925
2	Roper, Daniel C.	Democrat	SC	3/26/1917	9/26/1917
1	Taussig, Frank W.	Independent	MA	3/26/1917	8/1/1919

Appendix C

Commissioners of the U.S. Tariff Commission or U.S. International Trade Commission who have served as Chairman or Vice Chairman, 1917– 2017

The list is maintained by the Office of the Secretary to the Commission.

Term start	Term end	Chairmanship succession		Party	#
		Commissioner	Chairman #		
3/30/1917	7/31/1919	Taussig, Frank W.	1	Independent	1
1/15/1920	1/15/1922	Page, Thomas	2	Democrat	7
1/15/1922	1/14/1930	Marvin, Thomas O.	3	Republican	8
1/15/1930	9/16/1930	Brossard, Edgar B.	4	Republican	13
9/16/1930	11/30/1931	Fletcher, Henry P.	5	Republican	17
12/1/1931	6/30/1937	O'Brien, Robert L.	6	Republican	19
7/1/1937	5/18/1942	Stevens, Raymond B.	7	Democrat	24
7/28/1942	3/5/1953	Ryder, Oscar B.	8	Democrat	23
3/5/1953	4/30/1959	Brossard, Edgar B.		Republican	13
5/5/1959	6/16/1961	Talbot, Joseph E.	9	Republican	34
11/2/1961	6/16/1965	Dorfman, Ben	10	Democrat	40
1/26/1966	6/16/1967	Kaplowitz, Paul	11	Democrat	44
11/9/1967	6/16/1969	Metzger, Stanley D.	12	Democrat	46
7/22/1969	6/17/1970	Sutton, Glenn W.	13	Democrat	36
1/25/1971	3/17/1971	Mize, Chester L.	14	Republican	51
7/12/1971	6/16/1975	Bedell, Catherine	15	Republican	52
6/16/1975	12/16/1976	Leonard, Will E., Jr.	16	Democrat	47
12/17/1976	6/16/1978	Minchew, Daniel	17	Democrat	55
6/17/1978	6/19/1978	Moore, George M. *	18	Republican	49
6/19/1978	12/31/1979	Parker, Joseph O.	19	Republican	53
1/1/1980	6/16/1980	Bedell, Catherine		Republican	52
6/17/1980	6/16/1982	Alberger, Bill	20	Democrat	56
6/17/1982	6/16/1984	Eckes, Alfred E., Jr.	21	Republican	59
6/17/1984	6/16/1986	Stern, Paula	22	Democrat	57
6/17/1986	6/16/1988	Liebel, Susan W.	23	Independent	63
6/17/1988	6/27/1988	Eckes, Alfred E., Jr. *		Republican	59
6/28/1988	3/27/1989	Brunsdale, Anne E. *	24	Republican	65
3/28/1989	6/16/1990	Brunsdale, Anne E.		Republican	65
6/17/1990	12/12/1991	Brunsdale, Anne E. *		Republican	65
12/13/1991	6/16/1994	Newquist, Don E.	25	Democrat	67
6/17/1994	6/16/1996	Watson, Peter S.	26	Republican	70
6/17/1996	8/5/1996	Rohr, David B. **	27	Democrat	64
8/5/1996	6/16/1998	Miller, Marcia E.	28	Democrat	72
6/17/1998	6/16/2000	Bragg, Lynn M.	29	Republican	71
6/17/2000	6/16/2002	Koplan, Stephen	30	Democrat	74
6/17/2002	6/16/2004	Okun, Deanna Tanner	31	Republican	76
6/17/2004	6/16/2006	Koplan, Stephen		Democrat	74
6/17/2006	6/16/2008	Pearson, Daniel R.	32	Republican	79
6/17/2008	6/16/2010	Aranoff, Shara L	33	Democrat	80
6/17/2010	6/16/2012	Okun, Deanna Tanner **		Republican	76
6/17/2012	6/16/2014	Williamson, Irving A.	34	Democrat	81
6/17/2014	6/16/2016	Broadbent, Meredith M	35	Republican	84
6/17/2016	6/16/2018	Williamson, Irving A. **	35	Democrat	81
1/14/2017	6/16/2018	Schmidtlein, Rhonda K.	36	Democrat	86
*Acting Chairman					
** Chairman by operation of law					

Appendix C: Commissioners of the U.S. Tariff Commission or U.S. International Trade Commission who have served as Chairman or Vice Chairman, 1917–2017

The list is maintained by the Office of the Secretary to the Commission.

Vice-Chairmanship succession				
Term start	Term end	Commissioner	Party	#
3/30/1917	9/26/1917	Roper, Daniel C.	Democrat	2
2/21/1918	1/4/1920	Page, Thomas	Democrat	7
5/1/1921	1/14/1922	Marvin, Thomas O.	Republican	8
1/15/1922	5/17/1925	Culbertson, William S.	Republican	5
7/22/1925	7/22/1930	Dennis, Alfred P.	Democrat	11
9/29/1930	1/13/1937	Page, Thomas	Democrat	7
1/16/1937	3/31/1937	Stevens, Raymond B.	Democrat	24
7/1/1937	8/7/1939	Grady, Henry F.	Democrat	27
8/8/1939	6/30/1942	Ryder, Oscar B.	Democrat	23
8/4/1942	8/3/1953	Edminster, Lynn R.	Democrat	30
8/8/1953	5/4/1959	Talbot, Joseph E.	Republican	34
5/12/1959	6/16/1961	Overton, J. Allen, Jr.	Republican	39
10/14/1964	6/16/1965	Fenn, Dan H., Jr.	Democrat	42
6/17/1966	6/16/1969	Sutton, Glenn W.	Democrat	36
8/9/1971	6/16/1974	Parker, Joseph O.	Republican	53
8/7/1974	6/16/1975	Parker, Joseph O.	Republican	53
6/16/1975	12/16/1976	Minchew, Daniel	Democrat	55
12/17/1976	6/16/1978	Parker, Joseph O.	Republican	53
6/19/1978	6/16/1980	Alberger, Bill	Democrat	56
6/17/1980	6/16/1982	Calhoun, Michael J.	Independent	58
6/29/1984	6/16/1986	Liebeler, Susan W.	Independent	63
6/17/1986	6/16/1988	Brunsdale, Anne E.	Republican	65
6/28/1988	3/27/1989	Brunsdale, Anne E.	Republican	65
3/28/1989	6/15/1990	Cass, Ronald A.	Democrat	66
6/17/1990	6/16/1992	Brunsdale, Anne E.	Republican	65
6/17/1992	6/16/1994	Watson, Peter S.	Republican	70
6/17/1994	6/16/1996	Nuzum, Janet A.	Democrat	69
8/5/1996	6/16/1998	Bragg, Lynn M.	Republican	71
6/17/1998	6/16/2000	Miller, Marcia E.	Democrat	72
6/17/2000	6/16/2002	Okun, Deanna Tanner	Republican	76
6/17/2002	6/16/2004	Hillman, Jennifer	Democrat	73
6/17/2004	6/16/2006	Okun, Deanna Tanner	Republican	76
6/17/2006	6/16/2008	Aranoff, Shara L.	Democrat	80
6/17/2008	6/16/2010	Pearson, Daniel R	Republican	79
6/17/2010	6/16/2012	Williamson, Irving A.	Democrat	81
6/17/2014	6/16/2016	Pinkert, Dean A.	Democrat	82
8/11/2016	6/16/2018	Johanson, David S.	Republican	83

Appendix D

Administrative Law Judges who have served at the U.S. International Trade Commission, 1976–2017

The list was compiled from information provided by the Commission's Office of the Administrative Law Judges.

Name	Years of Service
Myron R. Renick	1976-77
Donald K. Duvall	1979-84
Janet D. Saxon	1984-95
John J. Mathias	1984-90
Paul J. Luckern	1984-2011
Sidney Harris	1984-2007
Charles E. Bullock	2002-Present
Debra Morriss	1998-2001
Delbert Terrill	2001-05
Robert Barton	2005-07
Carl C. Charneski	2007-11
Theodore R. Essex	2007-17
Robert K. Rogers, Jr.	2008-13
James Gildea	2008-14
David P. Shaw	2011-Present
Thomas B. Pender	2011-Present
Sandra (Dee) Lord	2013-Present
MaryJoan McNamara	2015-Present

