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Recommended Citation

Economic Perspectives, "An Overview Of US Trade Law United States Information Agency June 1997", Aprenet, June 01, 1997, https://nautilus.org/aprenet/an-overview-of-us-trade-law--nited-states-information-agency-june-1997/

Trade and the Environment

An Overview Of US Trade Law
United States Information Agency

June, 1997

TEXT:

(Compilation of laws that affect imports and exports) (11,350)

(PLEASE NOTE that the following document is not an official summary of U.S. trade law. It is an outline intended to provide the reader with information on a very complex topic.)

(Begin text)

The laws governing U.S. trade are numerous and complex. The following overview, drawn from several sources, provides an outline of the most important laws that affect U.S. imports and exports and of the authorities the Congress grants to the president to react to unfair trade practices, regulate trade for other reasons, and to negotiate trade agreements. This outline is intended to inform. It is not an official statement on U.S. trade laws.

The legislation that implemented the agreements reached under the Uruguay Round of multilateral trade negotiations -- which established the World Trade Organization (WTO) -- required substantial changes in many U.S. trade laws. These changes will go into effect over a number of years. The implementation of the North American Free Trade Agreement (NAFTA) establishes special procedures for eliminating trade barriers between the United States, Canada, and Mexico and for settling disputes.

The principal sources for this overview include: "Overview and Compilation of U.S. Trade Statutes, 1995 Edition," published by the House of Representatives Ways and Means Subcommittee on Trade; "The Year in Trade: 1996, Operation of the Trade Agreements Program," published by the U.S. International Trade Commission; "Summary of Statutory Provisions Related to Import Relief," published by the U.S. International Trade Commission; and "1997 Trade Policy Agenda and 1996 Annual Report of the President of the United States on the Trade Agreements Program," published by the Office of the U.S. Trade Representative.

The overview is divided into seven sections, following the organization of the Trade Subcommittee's "Overview." It includes a brief description of laws regulating trade for foreign policy and national security purposes. This kind of trade law will be the subject of the next issue of "Economic Perspectives."

This overview was written by USIA Economic Writers Bruce Odessey, Warner Rose and Jon Schaffer.

1) TARIFF AND CUSTOMS LAWS

Tariff System: The U.S. tariff system is the Harmonized Tariff Schedule of the United States. Officially adopted January 1, 1989, this system is based on the Harmonized Commodity Description and Coding System of the Customs Cooperation Council, an intergovernmental organization based in Brussels. Known as the Harmonized System (HS), this tariff system is used by all major trading countries.

Most U.S. tariffs are ad valorem -- the tariff is designated as a percent of the value of the imported good. U.S. ad valorem rates range from less than 1 percent to nearly 40 percent, with textiles and footwear imports most often subject to the higher duties. Most ad valorem tariffs are in the 2 to 7 percent range, with the average tariff being around 4 percent.

Some imports, generally agricultural products and other less processed goods, are subject to a "specific tariff," which is a certain charge for a certain quantity. Some products are subject to compound tariffs, a combination of ad valorem and specific levies. Still other products, such as sugar, are subject to tariff-rate quotas -- a higher tariff rate is applied to the imported good after a specified quantity of the item has entered the United States during the year at a lower prevailing rate. A small number of mostly special cases are subject to other kinds of levies.

Most Favored Nation Status: Nearly all U.S. trading partners have "Most Favored Nation" (MFN) trading status. The goods from all MFN-designated countries are subject to the same tariffs when they enter the United States. When the United States reduces, eliminates or otherwise changes a tariff, that change is applied equally to all MFN status countries. Imports from the few countries that do not have MFN status face significantly higher tariffs.

When the United States joined the General Agreement on Tariffs and Trade (GATT) at its founding in 1948, it agreed to extend MFN status to all other signatories. The status was also extended to certain countries that did not join the GATT. In 1951, the Congress directed President Harry Truman to revoke MFN status from the Soviet Union and all other Communist countries. As implemented at the time, this exclusion was applied to all then-Communist countries except Yugoslavia. For the Cold War period, most Communist countries were either denied MFN or had to meet certain conditions to be granted the status.

At present, the United States extends MFN status to all members of the WTO and most other countries. Nations excluded from MFN, as of May 1997, include Afghanistan, Cuba, Laos, North Korea, Vietnam, and Serbia/Montenegro. Countries seeking MFN status must fulfill two basic conditions: 1) compliance with the Jackson-Vanik provisions of the Trade Act of 1974 requiring a presidential determination that the country neither denies or impedes the right or opportunity of its citizens to emigrate; 2) reaching a bilateral commercial agreement with the United States. The conditions for Serbia/Montenegro to qualify for MFN may differ. Congressional action denied MFN status to Serbia/Montenegro in reaction to the armed conflict and human rights abuses after the breakup of the former Yugoslavia.

A few countries must get an annual presidential waiver or extension of a waiver to continue their MFN status. By far the most important country requiring this annual waiver extension is China, which has become one of the biggest exporters to the United States.

By July 3 of each year, the president must extend an annual waiver for China from the Jackson-Vanik freedom-of-emigration provisions. The waiver for China has been in effect since 1980. Every year since 1989, legislation has been introduced in Congress to disapprove the president's waiver. The legislation has sought to tie China's MFN renewal to meeting certain human rights conditions that go beyond freedom of emigration. Through 1996, all attempts to deny China MFN status have failed.

While Libya, Iran, and Iraq have MFN status, trade with these three countries has been embargoed by other U.S. laws.

Special Unilateral Programs: There are several laws that extend preferential tariff treatment on some products on a unilateral, non-reciprocal basis to qualifying developing countries. These programs include:

- Generalized System of Preferences (GSP), a program that grants tariff exemptions for more than 4,450 products from around 150 developing countries and territories. The GSP law provides for annual reviews of eligible articles and countries. Limits are placed on tariff exemptions for certain products if shipments rise above a certain dollar level. GSP benefits may also be restricted if the country maintains barriers to U.S. exports, denies intellectual property protection, or fails to abide by internationally-recognized workers rights. The current GSP law expired on May 31, 1997. When GSP was last extended in August 1996, after having been expired for more than a year, tariff exemptions were restored retroactively.

- Caribbean Basin Initiative (CBI), which provides for tariff exemptions or reductions for most products from 24 participating countries in Central America and the Caribbean region. The CBI trade preferences are not subject to annual reviews. Countries can lose their CBI benefits under certain circumstances.

- Andean Trade Preference Act (ATPA), which grants tariff preferences to certain products from Bolivia, Colombia, Ecuador, and Peru. This program expires in December 2001.

Countries with which the United States has trade agreements that reduce tariffs and other trade barriers, such as NAFTA and the U.S.-Israel Free Trade Area Agreement, are covered in another part of trade law that concerns reciprocal trading agreements.

Special Tariff Preferences: The United States grants an important tariff preference to goods entering the country that are made from parts fabricated in the United States. The provision of the law is HTS heading 9802 under the new Harmonized System -- previously known as Section 807 under the old Tariff System of the United States. Under this arrangement, the tariff is levied only on the foreign value added of the product. No duty is applied to the U.S.-made parts. This arrangement, known as "production sharing," is widely used for products ranging from motor vehicles to semiconductors to apparel sewn abroad with cloth made in the United States. In 1996, about 8.5 percent of total U.S. imports entered under the provisions of HTS heading 9802.

Customs Valuation, Other Regulations: The United States accepts the WTO Agreement on Customs Valuation as the basis for the U.S. law on customs valuation, the process for determining the value of an import in order to apply the ad valorem duty.

By adhering to the agreement, the United States uses the rules under the WTO Dispute Settlement Understanding to handle disputes.

Current U.S. law establishes the "transaction value" as the main basis for determining the value of imported merchandise. Generally, transaction value is the price actually paid or payable for the goods, with additions for certain items not included in that price. If this first valuation method cannot be used, the law stipulates that secondary valuation bases be used. In order, these are: 1) the transaction value of identical or similar merchandise; 2) deductive value; 3) computed value.

U.S. Customs laws also requires that the origin of products be clearly and truthfully explained. This is particularly important for products that seek entry under the unilateral tariff exemptions programs of GSP, CBI, and ATPA. For products to be eligible for the tariff concessions of these three programs, at least 35 percent of the direct cost of producing the good must have taken place in the beneficiary country.

There are special "country of origin" provisions for NAFTA.

2) TRADE REMEDY LAWS U.S. trade law contains a number of statutes that provide for specific remedies when foreign goods are being given an unfair advantage in the U.S. market or U.S. exports are being discriminated against in foreign markets.

Laws Aimed at Imports

The two most widely known statutes for protecting U.S. industries from unfairly traded imports are the countervailing duty law (CVD) and the antidumping law (AD). Both laws require that extra duties be levied on imports if they are found to be unfairly traded. Both laws contain similar procedures for conducting investigations, imposing duties, and then reviewing and possibly removing the duties.

Countervailing Duty Law: The CVD law provides a remedy in the form of an increased import duty to offset, or "countervail," a subsidy granted to a foreign product, the sale of which in the United States is injuring a U.S. producer of an identical or similar good. In most cases the countervailable subsidies are directly provided by the foreign government, but the law also applies to indirect subsidies that are identified by the CVD investigation.

A CVD investigation is usually initiated as a result of a petition filed by a domestic industry with the U.S. Department of Commerce and the U.S. International Trade Commission (ITC), but Commerce can initiate a case on its own.

The Commerce Department and the ITC both conduct investigations. Commerce investigates to determine if a "countervailable" subsidy is being provided, directly or indirectly in the country or territory or origin, to the manufacture, production, or export of the product that is the subject of the investigation.

The ITC investigation determines whether the petitioning U.S. industry is materially injured or threatened with material injury, or whether the establishment of an industry is materially injured by reason of imports that are receiving the subsidies. "Material injury" is defined in the law as harm that is not inconsequential, immaterial, or unimportant.

For countervailing duties to be imposed, Commerce must find the countervailable subsidy and the ITC must find injury.

The CVD law also covers "upstream subsidies" -- subsidies given to the production of the inputs that are incorporated into a final product that is exported to the United States.

Antidumping Law: Antidumping law is much more widely used than CVD law. Antidumping duties are imposed on imports when it is determined that the foreign good is being "dumped" -- sold, or is likely to be sold, in the United States for "less than fair value." In general, less than fair value means that the price of the import in the United States -- the purchase price or the exporter's sales price -- is less than the price of the good in the country of origin.

As is the case for CVD, antidumping proceedings are initiated either by a petition filed by an industry or by the Commerce Department.

Commerce must investigate to determine if dumping has occurred. The ITC then determines if the U.S. industry is suffering material injury or is threatened with material injury, or if the establishment of an industry is materially retarded by reason of the import.

The antidumping duties that are imposed when dumping and injury are found equal the amount by which the "normal value" of the good exceeds the export price, i.e., the U.S. price, for the product.

The Commerce Department determines the import's "normal value" by one of three methods. In order of preference, they are: the sale price in the country of origin; the price of the good in third markets; and the "constructed value," the sum of the cost of production plus additions for profits, selling commissions, and other administrative expenses such as packing. If actual data are not available, then a "surrogate" for profit and other expenses may be used to calculate the constructed value.

If two or more countries are named in an antidumping or a countervailing duty petition, the law requires the ITC to cumulatively assess the volume and effect of the like imports from the countries named if they compete with each other and with like products in the U.S. market. If imports from a country under investigation are found to be negligible, which is generally defined as less than 3 percent of total imports of the product being investigated, the investigation is terminated for that country. Certain exemptions from cumulation rules also are provided, such as those that apply to countries that participate in the Caribbean Basin Initiative and to Israel.

U.S. antidumping law also allows a U.S. industry to file a complaint about dumping in third countries. The U.S. industry would file a petition, which must explain why the dumping is detrimental to U.S. firms, with the Office of the U.S. Trade Representative (USTR), asking the agency to pursue U.S. rights under the WTO.

If the USTR determines that there is reasonable basis for the allegation, it submits a request to the appropriate authorities in the third country asking that antidumping action be taken on behalf of the United States.

Likewise, under the Uruguay Round Antidumping Agreement, the government of a WTO member can file a petition with USTR requesting an antidumping investigation of a product imported into the U.S. market from a third country.

AD and CVD Investigations, Levying of Duties: AD and CVD petitions have to be filed simultaneously at the Commerce Department and the ITC. If the case is accepted, then 45 days after the filing date, or after Commerce has begun an investigation on its own initiative, the ITC must make its preliminary determination on injury or threat of injury to a U.S. industry.

If the ITC determination is negative, then the proceedings end. If the ITC issues an affirmative determination, then Commerce makes its preliminary determination as to whether there is a reasonable basis to believe that a countervailable subsidy exists or that dumping has occurred.

If Commerce decides that there is a reasonable basis, then in the CVD cases it estimates a subsidy margin for each firm or country investigated. These estimates must be made within 65 days of the initiation of the investigation. This deadline can be extended to 130 days.

In AD cases, after the preliminary affirmative determination, Commerce estimates the weighted-average dumping margin -- the amount by which the normal value of the foreign product exceeds the export price. This determination is made 140 days after the initiation of the investigation, although this can be extended to 190 days.

In both cases, after preliminary affirmative determinations are made, the importer of the product must post a bond or cash deposit equal to the estimated net subsidy or dumping margin with the U.S. Customs Service.

If Commerce's preliminary determination is negative, cash deposits are not taken, but both the Commerce and ITC investigations continue to the final determination step.

There are provisions for entering into an agreement to suspend both the AD and CVD investigations if certain conditions are met.

Within 75 days of the preliminary determination, under normal circumstances, Commerce makes its final determination in both AD and CVD cases, although this can be extended to 135 days. If the final Commerce determination is negative, the proceedings end and the bond or cash deposit is refunded. If the final Commerce determination is affirmative, then the ITC has to make a final injury determination.

The ITC's final determination must be made by the 120th day after Commerce makes its affirmative preliminary determination, or by the 45th day after Commerce makes its affirmative final determination.

If the final ITC determination is affirmative, then Commerce issues a CVD or AD duty order within seven days of the notification of the ITC's determination. It should be noted that the final duties that must be paid for imports subject to the order can be considerably higher than the cash deposit amount.

Upon request, Commerce must review, as often as every 12 months, the amount of the net countervailable subsidy or dumping margin for merchandise under an outstanding countervailing or antidumping order. Commerce, upon request, must also review suspended investigations to determine the status of and compliance with the agreement, as well as the underlying net countervailable subsidy or dumping margin.

The Uruguay Round Agreements Act requires that the Commerce Department and the ITC initiate "sunset reviews" within five years after the issuance of an order to determine whether the revocation of the relevant order would likely lead to continuation or recurrence of dumping or countervailable subsidies and material injury.

Revocation of the dumping order or termination of the investigation can occur if the ITC determines that revocation or suspension is not likely to lead to a continuance or recurrence of material injury, and Commerce determines that there will be no continuation or recurrence of the dumping or the countervailable subsidy.

Parties dissatisfied with the final Commerce or ITC determinations in AD or CVD cases may file to seek a judicial review in the U.S. Court of International Trade in New York. If the determinations involve merchandise from Canada or Mexico, the parties can seek a review from the binational panel formed as part of NAFTA or can appeal to the Court of International Trade.

There are certain provisions of the law for so-called "critical circumstances" that allow petitioners to seek rapid action against a flood of imports that threaten a domestic industry.

Section 201-204, Adjusting to Imports: Sections 201-204 of the Trade Act of 1974 authorize the president to take action when a certain product is being imported into the country in such increased quantities as to cause serious injury, or threaten serious injury, to a domestic industry. This authority can be used even if the import is not priced unfairly.

The ITC conducts investigations in response to petitions filed by bona fide industry representatives, upon request by the president or by the USTR, upon receiving a resolution from the House of Representatives Ways and Means Committee or the Senate Finance Committee, or by its own decision.

The ITC has 180 days from the day on which the petition, request, or resolution is received to conduct its investigation and report its determination and any recommendations to the president. The investigation has two phases, a phase to determine if there is injury, which generally must be completed in 120 days, and a remedy phase, if that is necessary. If the ITC makes an affirmative injury determination, then it recommends to the president the action that will facilitate the industry's adjustment to import competition. This could involve an increase in duties, the imposition of a tariff-rate quota, quantitative restrictions, adjustment measures, or a combination of measures. In the case of NAFTA partners, the ITC must also find whether the imports from Mexico or Canada account for a substantial share of total imports and are contributing importantly to serious injury to the U.S. industry.

The ITC must also hold public hearings in conjunction with the injury and remedy phases of its investigation.

Upon receipt of an ITC report containing an affirmative injury determination and remedy recommendation, the president has 60 days to decide what to do. The president is not bound by the ITC's recommendations. He may implement the ITC's recommendations, implement relief of some other form within his authority, or take no action. The president must report to Congress on the action he is taking. If such action is different from that recommended by the ITC, he must explain the reasons why. Congress may, through a joint resolution within 90 days, direct the president to proclaim the action recommended by the ITC.

There are special provisions that allow "provisional" relief to be provided on an expedited basis pending completion of the investigation process.

Relief may be provided for an initial period of up to four years and may be extended, but the total period of relief may not exceed eight years. When relief is granted, the ITC monitors developments in the industries that are the beneficiaries of the action. When the relief action exceeds three years, the ITC must submit a report to the president and Congress on the situation of the industry not later than the midpoint of the relief period.

An industry receiving relief may request an extension of relief by submitting a petition six to nine months before the end of the relief period if it plans to seek an extension.

Section 337, Protection of Intellectual Property: Section 337 is primarily used to combat intellectual property infringement in imports. It declares as unlawful infringement of intellectual property such as a valid and enforceable U.S. patent, registered trademark, copyright, or registered mask work of a semiconductor chip product. Section 337 prohibits unfair methods of competition and unfair acts in the import and sale of products in the United States, the threat or effect of which is to destroy or substantially injure a domestic industry or to restrain and monopolize trade and commerce in the United States.

A Section 337 investigation is begun on the basis of a complaint or by the ITC on its own initiative. In general, if the ITC finds against the import, it may issue an order to exclude the product from entry and can order the domestic parties involved in the case to stop engaging in certain unlawful practices. If the product is an intellectual property product, no injury test is required.

The president may disapprove an ITC order within 60 days of its issuance for "policy reasons."

Laws to Assist Exports and to Enforce Trade Agreements

Section 301 of the Trade Act of 1974 is the principal U.S. law to enforce rights for U.S. firms under existing trade agreements, to obtain increased foreign market access for U.S. goods and services, and to respond to certain foreign practices such as infringement of intellectual property rights.

The law sets up a procedure for the Office of the U.S. Trade Representative to investigate foreign practices and hold consultations with a foreign government to seek a resolution of disputes, which may be an agreement by the government to eliminate the offending practice or to provide compensatory benefits to the United States.

If there is no satisfactory agreement, the law requires that USTR use the dispute settlement procedure available under the applicable trade agreement. In 1996, for example, the nine Section 301 cases initiated were referred to the WTO's dispute settlement procedures. If this step still does not bring a satisfactory resolution of the dispute, USTR may take other actions, which can include suspending the trade agreement's concessions, imposing duties or other import restrictions, and imposing fees or restrictions on services.

The impetus for Section 301 cases can be from a domestic petition or by the USTR on its own initiative.

The Congress requires that USTR conduct an annual review of overseas barriers, which is published on March 31 each year as the "National Trade Estimate Report on Foreign Trade Barriers," also known as the NTE Report. Super 301: The NTE Report is used to establish the so-called "Super 301" list of priority country practices, which is essentially a list of countries likely to be the subject of 301 actions.

Created in the 1988 Omnibus Trade and Competitiveness Act, Super 301 expired in 1990, but President Bill Clinton has revived it by successive executive orders, the latest of which expires at the end of 1997. The executive order requires that within six months of the submission of the NTE Report, the USTR shall identify those priority foreign country practices that, if eliminated, would likely have the most potential for increasing U.S. exports. USTR is also required to report to the Senate Finance Committee and the House Ways and Means Committee on any such practices.

Within 21 days after the report is submitted, the USTR must initiate Section 301 investigations of any priority foreign country practices identified in the report. No priority foreign country practices have been designated under Super 301 since 1989.

Special 301: A second expansion of Section 301 is "Special 301," which requires USTR to identify countries that deny adequate and effective protection for intellectual property rights (IPR), or that deny fair and equitable market access for persons who rely on IPR. Countries that have the most onerous or egregious acts, policies, or practices, or whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products, and are not engaged in good faith negotiations to address these problems, must be designated as "priority foreign countries."

USTR must decide which countries to identify each year within 30 days after issuance of the National Trade Estimate Report. If a trading partner is identified as a "priority foreign country," USTR must decide within the next 30 days whether to initiate an investigation of those acts, policies, and practices that were the basis for the identification as a priority country. Countries so designated are potentially subject to Section 301 actions.

Though not part of Special 301 legislation, USTR maintains separate categories of countries in which concerns about intellectual property protection remain. Countries with practices that have less of an impact, but that are still very serious, are placed on either a "priority watch list" or "watch list." Countries placed on the priority watch list are the focus of increased bilateral attention concerning the problem areas. Countries are usually designated, moved to a different list, or completely removed from the lists as a result of USTR's annual Special 301 review.

On April 30, 1997, USTR announced that 10 countries would be placed on the priority watch list and that 36 others had been designated for the watch list. USTR also announced that as a result of the annual Special 301 review, the United States would initiate WTO dispute settlement actions against four countries, bringing to 10 the number of IPR-related WTO cases initiated by the United States. No countries were designated priority foreign countries.

"Out of cycle" reviews can be, and often are, conducted at any time during the year, as a result of which countries can be added or removed from the watch lists.

3) OTHER LAWS REGULATING IMPORTS

Authorities to Restrict Imports of Agricultural and Textile Products

The Uruguay Round agreements and the legislation implementing them commit the United States to phasing out restrictions on agricultural products and textiles. Previously, Section 204 of the U.S. Agricultural Act of 1956 authorized the president to negotiate agreements with foreign governments to limit their agricultural or textile exports to the United States. This authority was used extensively prior to the conclusion of the Uruguay Round in 1994.

Multifiber Arrangement/Agreement on Textiles and Clothing: The Multifiber Arrangement (MFA), an international agreement that came into force in January 1974, allowed contracting members of the GATT to negotiate bilateral agreements imposing quantitative restrictions on textile and apparel imports. The MFA, negotiated under the authority of Section 204 of the 1956 act, was intended to help textile importing countries deal with market disruptions such as import surges while giving developing country exporters a greater share of the growing world textile market. Extended six times, the MFA expired on December 31, 1994, and was immediately replaced by the Uruguay Round Agreement on Textiles and Clothing (ATC).

Under the ATC, quotas and restrictions on textiles and apparel trade are set to be phased out in three stages ending on January 1, 2005. All WTO members are subject to the ATC, whether or not they were signatories to the MFA, and only WTO countries are eligible for the agreement's liberalizing benefits.

The bilateral textile agreements negotiated between individual importing and supplier countries under the MFA remain in force during the transition to 2005. The United States currently has textile and apparel quotas with 47 countries. Of these, 38 countries are subject to the ATC. Eight others are not WTO members and therefore will not benefit from the phase-out of quotas and restrictions specified under the ATC. Non-members such as China, Russia, and others will continue to be subject to bilateral textile agreements. Textile imports from Mexico and Canada are governed NAFTA.

Agriculture and the Uruguay Round Agreements Act: Section 401 of the Uruguay Round Agreements Act changed U.S. law to prohibit quantitative limitations or fees on agricultural product imports that are produced within a WTO member-state. When the agreement establishing the WTO entered into force on January 1, 1995, only wheat was excepted from this prohibition.

The Uruguay Round agreements on agriculture require WTO members to commit to reducing export subsidies and domestic subsidies and to improve market access. The agreement establishes rules and reduction commitments to be implemented over six years for developed countries and over 10 years for developing countries. The United States has agreed under the WTO to convert quotas and fees on agricultural products to tariff-rate quotas, and to reduce the tariffs over time.

Sugar Tariff-Rates Quotas: While the United States has always been a net importer of sugar, since 1934 there have been restrictions on sugar imports to foster the domestic sugar cane and sugar beet industries. This system of import protection has maintained a U.S. price for sugar well above the world price.

To bring the U.S. sugar program into conformity with the GATT, and later with the Uruguay Round accord, the absolute quotas imposed on imported sugar were converted into a tariff-rate quota arrangement in 1990. As a result of the Uruguay Round of multilateral trade negotiations, two tariff-rate quotas were adopted, one for raw cane sugar and one for imports of other sugars and syrups.

Under the tariff-rate quota system, the U.S. Secretary of Agriculture determines the amount of sugar that can be imported at the lower import duty rates, and the USTR allocates this quantity among the 40 eligible sugar exporting countries. The quantities allocated to the beneficiary countries under GSP, CBI and the ATPA receive duty-free treatment. Certificates of Quota Eligibility (CQE) are issued to the exporting countries and must be executed and returned with each shipment of sugar in order to receive quota treatment.

Imports of sugar that exceed the quota amount are subjected to much higher duties. The United States agreed in the Uruguay Round not to reduce the amount of sugar it would import and to lower its higher sugar tariffs by 15 percent over six years. Sugar imports from Mexico are governed by NAFTA provisions.

Tariff rate quotas are also applied to meat imports, which were previously subject to restrictions by the Meat Import Act. The tariff rate quotas replace import quotas that were required by the act once meat shipments surpassed a certain level. The Meat Import Act was repealed so U.S. law would conform to the Uruguay Round Agreement on Agriculture.

Authorities to Restrict Imports Under Certain Environmental Laws

Following is the status of the most prominent U.S. laws that use import restrictions to encourage foreign governments to adopt practices that protect dolphins, fisheries, wild birds, and other endangered species:

Marine Mammal Protection Act of 1972 (MMPA): Since 1990 the United States has banned imports of yellowfin tuna products derived from yellowfin tuna harvested in the eastern tropical Pacific Ocean, except from countries that prohibit their fishing boats from using purse seine nets in the harvest, a practice once responsible for the slaughter of hundreds of thousands of dolphins a year. U.S. boats have been subject to the same prohibition since 1972. Twice GATT panels ruled that the law violated GATT obligations, but neither ruling was ever formally adopted.

The Clinton administration supports implementation of the 1995 Panama Declaration, which would make binding on the 12 signatory countries voluntary conservation measures now practiced in the eastern tropical Pacific, where dolphin kills fell below 3,000 in 1996. But it would require changes in the MMPA, including lifting the embargoes and, most controversially, redefining the "dolphin-safe" label on tuna cans. Legislation implementing the Panama Declaration has passed in the House of Representatives, but faces obstacles in the Senate.

Section 609 of U.S. Public Law 101-162: As the State Department currently interprets this law, the United States prohibits imports of wild shrimp from areas of the world where the harvest might harm endangered or threatened sea turtles, except from countries certified by the department as requiring their shrimp boats to employ turtle excluder devices. U.S. shrimp boats have the same requirement. The State Department announces its list of certified countries on May 1 each year. A number of countries have challenged the embargo in the WTO, where a dispute-settlement panel is scheduled to rule on the case by December 1997.

Endangered Species Act of 1973: This law authorizes the secretary of the interior to prohibit imports of species or subspecies that are considered endangered or threatened.

Section 8 of the Fishermen's Protection Act of 1967, as amended, the "Pelly Amendment": The president has authority under this provision to ban imports of any products from any country that conducts fishery practices or engages in trade that diminishes the effectiveness of international programs for fishery conservation or international programs for endangered or threatened species. Under the Pelly Amendment, President Clinton briefly banned certain imports from Taiwan after his administration determined that the island economy was trading in rhinoceros horn and tiger bones in violation of the Convention on International Trade in Endangered Species (CITES). Pelly Amendment sanctions have also been threatened against countries that engage in whaling.

High Seas Driftnet Fisheries Enforcement Act: The president has authority under this provision to ban shellfish, fish and fish products, and sport fishing equipment from any country that his administration determines has violated the United Nations ban on driftnet fishing.

Wild Bird Conservation Act of 1992: The secretary of the interior is authorized to ban imports of exotic birds listed in any of the appendices to CITES.

National Security Import Restrictions

Section 232 of the Trade Expansion Act of 1962 allows the president to impose restrictions on imports that threaten national security. This has been used from time to time, most notably to impose quotas and fees on petroleum imports and to embargo import of refined petroleum products from Libya.

Balance of Payments Authority

Section 122 of the Trade Act of 1974 gives the president the power to increase or reduce imports to deal with balance of payments problems. The president can tighten import restrictions through quotas or import surcharges of up to 15 percent ad valorem, or a combination of the two. This law has never been invoked.

Product Standards

Differences in product standards, listing and approval procedures, and product certification systems often can impede trade and can be manipulated to discriminate against imports. The Agreement on Technical Barriers to Trade, known as the Standards Code, which was negotiated in the Tokyo Round of GATT negotiations that concluded in 1979, established for the first time international rules for how governments prepare, adopt, and apply standards and certification systems.

The Uruguay Round negotiations built on the Standards Code, establishing the Uruguay Round Agreement on Technical Barriers to Trade. This new agreement seeks to eliminate barriers in the form of national product standardization and testing practices and conformity assessment procedures.

U.S. law on the application of product standards in trade is based on these GATT and WTO agreements. NAFTA has its own provisions that deal with product standards.

Government Procurement

Governments are among the world's largest purchasers of goods -- even when military purchases are excluded. Most of this vast market has traditionally been closed to foreign suppliers by various measures that discriminate in favor of domestic producers.

The 1979 GATT Agreement on Government Procurement was a major effort to open up government procurement. It sought to discourage discrimination against foreign suppliers at all stages of the procurement process. The Government Procurement Code established by the agreement bound the signatories to take numerous steps to open up their government procurement processes.

The 1994 WTO Agreement on Government Procurement (GPA), which built on the 1979 code, entered into force on January 1, 1996. It requires central government agencies in member countries to observe non-discriminatory, fair, and transparent procedures in the procurement of goods and services, including construction services. The agreement also applies to subcentral governments and to government-owned enterprises.

The GPA requires the establishment of a domestic bid challenge system and introduces added flexibility to accommodate advances in procurement techniques. It also allows each signatory to negotiate coverage on a reciprocal, bilateral basis with other signatories. The United States has concluded comprehensive coverage packages with several countries.

The GPA is a "plurilateral agreement," which means that its members are those who specifically signed it. The GPA currently has 26 members, including the United States and most other industrial countries.

NAFTA has its own provisions to eliminate discriminatory government procurement practices.

The U.S. Congress passed a law in 1988 that required the president to submit an annual report to Congress identifying signatories to the GATT/WTO government procurement agreements that were in violation of their obligations, and non-signatories that are discriminating against U.S. products and services. The president was authorized to seek WTO dispute settlement procedures with WTO signatories and to impose sanctions against offending non-signatory countries. This law expired in 1996. The Clinton administration is reviewing whether to continued its authority through executive order.

®MDNM¯4) LAWS REGULATING EXPORT ACTIVITIES

Export Controls

The U.S. government controls certain exports to protect national security, to further U.S. foreign policy interests, to limit the proliferation of chemical and biological weapons and missile technology, and to ensure adequate domestic supply of certain goods that are in short supply.

Export Administration Act of 1979 (EAA): This law lapsed in September 1990, but the Bush and Clinton administrations have kept its export-control system operating under an emergency law called the International Emergency Economic Powers Act (IEEPA). Caught between business and defense interests, Congress has failed in several attempts to pass legislation to reform the Cold War-era EAA. Under EAA's provisions, the U.S. Department of Commerce controls exports of dual-use commodities -- goods of a civilian nature that also have potential military applications.

The Department of Commerce's Bureau of Export Administration (BXA) is the primary licensing agency for dual-use exports. The State Department licenses the export of defense articles and services under the authority of the Arms Export Control Act, while certain nuclear materials and equipment are licensed by the Nuclear Regulatory Commission under the authority of the Atomic Energy Act.

A very small percentage of exports and reexports require the submission of a license application to BXA. License requirements depend on an item's technical characteristics, its destination, its end-use and end-user, and other activities of the end-user. The first step for an exporter to take to find out whether a license is required is to determine, or request the BXA to determine, whether the product is on the Commerce Control List (CCL). This is the list of products subject to the export controls administered by the Commerce Department.

The BXA screens all export license applications to ensure that items are not illegally exported. In addition, it reviews specific individual license applications to access diversion risks, identify potential violations, and determine the reliability of those receiving controlled U.S.-origin commodities or technical data. BXA also carries out post-shipment verifications to ensure that a controlled U.S.-origin item has actually been delivered to the authorized end-user or consignee, and that it is being used as claimed on the export license application.

Persons knowingly violating export control regulations face fines of $50,000 or five times the value of the exports involved, whichever is greater, in addition to imprisonment of up to five years. If an individual has knowledge that an item will be used for the benefit of -- or that the destination or intended destination of the item is -- a country to which exports are restricted for national security or foreign policy purposes, the penalties for that individual increase to $250,000, imprisonment for up to 10 years, or both. Penalties for firms can be $1 million or up to five times the value of the exports involved, whichever is greater.

The effectiveness of many of the controls are enhanced by their being maintained as part of multilateral control arrangements. Currently, the United States is a member of the Nuclear Suppliers Group, the Australia Group, the Missile Technology Control Regime, and the Wassenaar

Arrangement.

Export Promotion

The U.S. government seeks to promote the export of specific types of products through the following programs.

Fair Trade in Auto Parts Act of 1988: This law requires the U.S. Department of Commerce to establish an initiative to increase the sale of U.S.-made auto parts to Japanese markets. The law expires in December 1998.

Federal Agriculture Improvement and Reform Act of 1996: This law, contained in the 1996 U.S. farm bill, continues a number of export-promotion programs in the U.S. Department of Agriculture. The Commodity Credit Corporation (CCC) provides credit guarantees of up to 98 percent of the principal and a portion of the interest on loans made by private banks for the purchase of U.S. agricultural exports. The Market Access Program uses CCC money to help the U.S. private sector promote agricultural exports through advertising, trade shows, and in-store demonstrations. The Export Enhancement Program subsidizes U.S. exports of wheat, rice, barley, and other commodities to counter sales in markets subsidized by the European Union. The Dairy Export Incentive Program similarly subsidizes dairy exports to counter subsidized sales by foreign governments. The Emerging Markets Program provides money for technical assistance to promote U.S. agricultural exports to emerging markets.

P.L. 480: The Food for Peace Program, originally passed by Congress in 1954, provides agricultural assistance to countries at different levels of economic development. Title I, administered by the U.S. Department of Agriculture, provides for government-to-government sales of agricultural commodities to developing countries under long-term credit arrangements. Titles II and III are administered by the U.S. Agency for International Development (USAID). Title II provides for the donation of U.S. agricultural commodities by the U.S. government to meet humanitarian food needs in foreign countries. Title III provides for government-to-government grants to support long-term economic development in the least-developed countries. Section 416(b) provides for overseas donations of surplus commodities to carry out assistance programs in developing countries.

The Food for Progress Program, a distinct program created in 1985 that is much smaller than P.L. 480, authorizes exports of agricultural commodities on credit terms or on a grant basis to support developing countries and countries that are emerging democracies committed to free-market practices in their agricultural economies.

5) AUTHORITIES RELATING TO POLITICAL AND ECONOMIC SECURITY

International Emergency Economic Powers Act

The International Emergency Economic Powers Act (IEEPA), passed in 1977, gives the president of the United States the power to freeze foreign assets in the United States, to impose trade embargoes, and to take other measures judged necessary to deal with an unusual and extraordinary threat to U.S. national security, foreign policy, or economic interests.

Under the act the president, after consulting with Congress, can declare that a national emergency exists because of a threat from a source outside the United States. After the declaration of emergency, the president has the power to "investigate, regulate, compel, or prohibit" virtually any economic transaction by a foreign entity in the United States.

Once the national emergency has gone into effect, the president must submit to Congress a detailed report explaining and justifying his actions.

IEEPA can be used with other laws in the imposition of the emergency economic sanctions.

Some of the uses of the IEEPA include the following: o President Jimmy Carter, in November 1979, froze Iranian assets in the United States in response to the seizure of hostages at the U.S. embassy in Teheran. o President Ronald Reagan, in May 1985, imposed a trade embargo on Nicaragua, embargoed certain trade and financial transactions with the government of South Africa in October 1985, and embargoed trade, transportation links, extension of credit, and travel to Libya in January 1986. o President George Bush, in August 1990, blocked Iraqi and Kuwaiti assets and property and imposed a trade embargo on Iraq and, in September 1990, extended the export control system of the expired Export Administration Act of 1979. o President Bill Clinton, in August 1994, continued the extension of the export control system of the expired Export Administration Act of 1979 and, in March 1996, blocked dealings with the management or development of the Iranian petroleum industry.

Trading With the Enemy Act

The Trading With the Enemy Act (TWTEA), originally passed in 1917, prohibits trade by the United States with any enemy or ally of an enemy during time of war. In 1977, the presidential authority provided in TWTEA to control economic transactions during peacetime were transferred to the International Emergency Economic Powers Act (IEEPA). Since then, IEEPA has been the principal vehicle for imposing economic measures on foreign adversaries when there has not been an official declaration of war.

Narcotics Control Trade Act

This law, which is part of the Drug Enforcement, Education, and Control Act of 1986, establishes a process whereby the president can impose a level of trade sanctions deemed appropriate against "uncooperative" major drug-producing or drug-transit countries.

Under the law, if a country is found not to be cooperating fully with U.S. anti-drug efforts, the president can revoke all preferential duty treatments, such as GSP, CBI, and ATPA, impose duties of up to 50 percent of the value of products, suspend commercial air services, and take other measures.

International Security and Development Cooperation Act of 1985

Section 505 of this law gives the president discretionary authority to restrict or ban imports from any country that the United States has determined supports terrorism or terrorist organizations or harbors terrorists or terrorist organizations. The president must consult with Congress in advance of invoking this authority and must make semi-annual reports to Congress.

Embargo on Transactions with Cuba

A trade embargo was imposed against Cuba in 1960 under the general authority of the Export Control Act of 1949. The embargo's continuation was contained in the Foreign Assistance Act of 1961 and in subsequent legislation.

As the law regarding trade with Cuba now stands, no U.S. product or service may be exported to that country directly or through third countries except for publications and informational material and certain humanitarian goods licensed for export by the U.S. Department of Commerce, such as medicine and medical supplies. U.S. persons may not deal in or assist with the sale of goods or commodities to or from Cuba from offshore locations. Goods and services of Cuban origin may not be imported into the United States through third countries. No vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has any interest may enter a U.S. port. Vessels engaged in trade with Cuba are prohibited from loading or unloading freight at any place in the United States for 180 days after departing a Cuban port.

U.S. economic sanctions against Cuba were increased through passage of the 1996 Libertad Act, known as the "Helms-Burton Act" after its sponsors, Senator Jesse Helms and Congressman Dan Burton. This act does not contain new restrictions on trade; its principle thrust is against foreign firms that are investing in Cuba.

Iraq Sanctions Act of 1990

The Iraq Sanctions Act enacted into law the trade embargo and other economic sanctions imposed on Iraq by presidential order shortly after Iraq's invasion of Kuwait.

The act imposes sanctions that go beyond the presidential order. It contains provisions aimed at increasing compliance by third countries with United Nations Security Council sanctions against Iraq.

Iran and Libya Sanctions Act of 1996

President Clinton signed the Iran and Libya Sanctions Act on August 5, 1996. The act tightens existing sanctions against the two countries. It provides for penalties against any U.S. individual or company, including a U.S. or foreign parent or subsidiary, that directly and significantly contributes to the development of the petroleum resources of either country. The law applies to any investment of $40 million or more, or any combination of investments of at least $10 million that add up to $40 million, made during any 12-month period. U.S. persons or companies also face sanctions for providing certain goods and services to Libya that significantly contribute to Libya's ability to acquire chemical, biological, and nuclear weapons or significant amounts and types of conventional weapons, or that contribute to Libya's ability maintain its aviation capabilities. The law also provides for other sanctions.

Antiterrorism and Effective Death Penalty Act of 1996

This law makes it a criminal offense for a U.S. citizen or resident to engage in certain financial transactions with the governments of Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria, except as provided for in regulations issued by the Secretary of the Treasury in consultation with the Secretary of State. These countries are on the U.S. government list of governments found to be supporting international terrorism.

Other Unilateral Economic Sanctions

Laws that call on the president to impose unilateral economic sanctions against a certain country for non-economic reasons are frequently provisions of much larger pieces of legislation, such as the foreign aid bill.

Disapproving Foreign Investment in Defense-related Industries

Following the proposed purchase in 1988 of an 80 percent share of a major U.S. semiconductor manufacturer by Fujitsu Ltd. of Japan, Congress passed an amendment to the Defense Production Act allowing the president to block foreign takeovers of firms found to be important to U.S. national security.

This provision is known as Exon-Florio, after its two sponsors, Senator James Exon and Representative Jim Florio. Under the law, the president can act to suspend or prohibit any acquisition, merger, or takeover of a U.S. firm by foreign persons if the president determines that the foreign purchaser might take actions that would threaten national security.

In making the decision to exercise this authority, the president may consider factors such as the domestic production needed for projected national defense requirements, the capacity of domestic industries to meet national defense requirements, and how the control of domestic industries and commercial activities by foreign citizens would affect the capacity of the United States to meet national defense requirements.

6) PRESIDENT'S NEGOTIATING AUTHORITY/RECIPROCAL TRADE AGREEMENTS

The U.S. Congress has the ultimate authority to decide whether the United States will raise or cut tariffs, erect or remove other trade barriers, or enter into bilateral or multilateral trade agreements.

In the post-World War II period, the Congress and the president have generally supported a more liberal and open world trading regime. This has been reflected by U.S. support and advocacy for the successive rounds of multilateral trade negotiations that took place from the establishment of the GATT in 1948 through creation of the WTO in 1995.

Congress grants the authority to the president and the executive branch to negotiate trade agreements. Congress must then approve the legislation to implement the agreements the president has negotiated.

Fast Track Trade Agreement Negotiating Authority: To make trade agreement negotiation more effective, Congress has on several occasions passed legislation giving the president "fast-track" authority for this process.

Under this authority, the Congress agrees in advance to approve or reject the legislation that implements a trade agreement negotiated by the executive branch, without possibility of amendment. This rule thus avoids amendments that can change the terms of the agreement, requiring that it be renegotiated. Amendments can kill an agreement.

In return for fast-track authority, the president agrees to extensive consultations with Congress while the agreement is being negotiated. This is important because large agreements, such as those that established the WTO or implemented NAFTA, can require many changes to U.S. laws.

Past laws granting fast-track authority have required executive branch consultations, such as:

o Meetings with the House of Representatives Ways and Means Committee, the Senate Finance Committee, and every other congressional committee with jurisdiction over matters affected by the agreement, as well as consultations with industry groups;

o Advance notice to Congress of at least 90 calendar days -- 120 days in the case of the Uruguay Round Agreements -- of the administration's intention to enter into a trade agreement;

o Submission of a final copy of agreement's legal text to the Congress, together with draft implementing legislation, a statement of any administrative action proposed to implement the agreement, and information supporting the proposed action.

The most recent fast-track authority law expired in December 1993. The implementing legislation for both the Uruguay Round agreements and NAFTA were approved under fast track.

U.S. Trade Representative Charlene Barshefsky has announced that the Clinton administration will send a proposal for renewal of fast-track authority to the Congress in September.

Uruguay Round Agreements/Uruguay Round Agreements Act: The Uruguay Round Agreements represented the culmination of negotiations among 125 countries over eight years. These negotiations began in Punta del Este, Uruguay, in September 1986, under the auspices of the GATT, and concluded in Geneva, Switzerland, in December 1993. The agreements were signed in Marrakesh, Morocco, on April 15, 1994, by 111 countries, including the United States, that committed themselves to gaining approval of the accords by their respective legislatures.

The Uruguay Round Agreements are the broadest, most comprehensive trade agreements in history. They contain commitments to reduce tariffs worldwide and to eliminate numerous other nontariff measures such as quotas, restrictive licensing systems, and discriminatory product standards.

The agreements also contain multilateral rules covering such matters as technical barriers to trade, trade-related investment measures (TRIMs), rules of origin, import licensing procedures, safeguards against import surges, trade-related aspects of intellectual property rights (TRIPs), antidumping and countervailing duties, agricultural trade and government procurement.

A framework of rules for trade and investment in services was set up by the General Agreement on Trade in Services (GATS).

The agreement that established the structure of the World Trade Organization incorporated the previous GATT institutions while expanding the organization to include new offices for services, intellectual property protection, and investment.

The Understanding on Rules and Procedures Governing the Settlement of Disputes established a new dispute-settlement procedure. This procedure is considerably different from its GATT predecessor in that its decisions are enforceable by the WTO.

The Uruguay Round Agreements Act, the U.S. law that incorporates all the trade agreements resulting from Uruguay Round, requires the USTR to report to Congress on the actions and operations of the WTO. The act also changed U.S. laws where necessary to conform to the Uruguay Round agreements.

North American Free Trade Agreement/NAFTA Implementation Act: The North American Free Trade Agreement, which links the United States, Canada, and Mexico, created the world's largest market for goods and services.

Following approval by the legislatures of each country, NAFTA went into effect on January 1, 1994.

NAFTA incorporates or otherwise carries forward most provisions of the U.S.-Canada Free Trade Agreement (FTA), which went into effect on January 1, 1989. The United States and Canada suspended the operation of the bilateral agreement upon entry into force of NAFTA. NAFTA supersedes certain provisions of the U.S.-Canada FTA, such as for rules of origin.

Upon implementation, NAFTA required the immediate elimination of tariffs on more than one-half of U.S. imports from Mexico and more than one-third of U.S. exports to Mexico.

NAFTA committed all parties to ending restrictions on NAFTA-member foreign investors, providing a high-level of intellectual property rights protection, and liberalizing trade in services. It also established its own dispute settlement mechanisms. NAFTA was accompanied by side agreements on environmental and labor standards and cooperation, making it the first U.S. trade accord to be formally linked to such commitments.

NAFTA's central oversight body is the North American Free Trade Commission, made up of the U.S. Trade Representative, the Canadian minister for international trade, and the Mexican secretary of commerce and industrial development. This commission has established working groups and advisory bodies to handle the day-to-day operation of the agreement.

NAFTA has its own rules governing trade and investment liberalization that are used in addition to or in place of the WTO rules. NAFTA rules apply in areas that include openness to government procurement, product standards, protection of intellectual property rights, telecommunications standards, investment, rules of origin, safeguards against import surges, and services.

United States-Israel Free Trade Area Agreement: This trade agreement was signed into law in June 1985. It was the first such agreement negotiated by the United States with a foreign country. The main elements of the agreement are the reciprocal elimination of tariffs on all products traded between the two countries over a 10-year period and the elimination of other regulations that restrict bilateral trade. A joint committee reviews and administers the agreement and provides for dispute settlement.

Telecommunications Trade: Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 requires the USTR to review by March 31 of each year the operation and effectiveness of U.S. telecommunications trade agreements.

The Section 1377 review seeks to determine whether any act, policy, or practice of a foreign country that has a telecommunications-related agreement with the United States is not in compliance with the agreement, or otherwise denies -- within the context of the agreement -- market opportunities to U.S. firms. An affirmative determination is to be treated as a trade agreement violation under Section 301.

7) TRADE POLICY: WHO DECIDES WHAT GETS DONE AND HOW

The Constitution of the United States gives the U.S. Congress the power to regulate foreign commerce and to collect duties. However, decisions to raise or lower tariffs, impose import quotas, or take other trade policy actions that affect both domestic and foreign interests are so complex that Congress, through a series of acts, has relegated much of the responsibility to the executive branch, which works on a daily basis with both private sector advisory groups and key congressional committees.

Congress

Congress's role in trade policy is essentially two-fold: the creation and the oversight of trade laws.

To ensure proper implementation of the trade laws by the executive branch, Congress requires that the executive branch regularly consult with it and submit to extensive notification procedures prior to submission of a draft trade agreement or implementing legislation.

In addition, trade law specifies that five members from the House of Representatives Ways and Means Committee and five members from the Senate Finance Committee be appointed as congressional advisers to U.S. delegations negotiating international trade agreements. The Office of the U.S. Trade Representative (USTR) must keep these advisers informed of U.S. objectives and the status of negotiations, and whether a potential agreement would require changes in U.S. laws.

Congress also requires numerous annual reports from the Office of the U.S. Trade Representative and from the U.S. International Trade Commission (ITC) to keep the Congress informed regarding actions taken under various trade laws and programs. The most prominent of these reports are the USTR's "National Trade Estimate Report on Foreign Trade Barriers" and the ITC's "The Year in Trade: Operation of the Trade Agreements Program."

Finally, Congress can make its trade policy concerns known through its power to authorize and appropriate funds for the functions of the major trade agencies.

Executive Branch

The principal mechanism for developing and coordinating U.S. government positions on international trade and trade-related investment issues lies within a three-tiered interagency trade policy process.

The interagency process is coordinated by a Trade Policy Committee (TPC), whose primary function is to assist and make recommendations to the president on broad issues of policy implementation and development.

The U.S. Trade Representative chairs and administers the TPC, which has two subordinate coordinating groups: the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC). The TPSC, consisting of senior-level officials from TPC member agencies, has more than 60 subcommittees and task forces. If the TPSC cannot reach consensus on an issue, or if the issue is one involving a significant policy matter, it is referred to the TPRG, whose members are officials at the under secretary and deputy USTR level in the member agencies.

The TPC member agencies include the departments of Commerce, Agriculture, State, the Treasury, Labor, Justice, Defense, the Interior, Transportation, Energy, and Health and Human Services; the Environmental Protection Agency; the Office of Management and Budget; the Council of Economic Advisers; the International Development Cooperation Agency; the National Economic Council; and the National Security Council. The U.S. International Trade Commission is a non-voting member of the TSPC and an observer at TPRG meetings. Representatives of other agencies also may be invited to attend meetings depending on the specific issues discussed.

Disagreements at the TPRG level are referred to a final cabinet-level tier of the interagency trade policy mechanism -- the National Economic Council (NEC). The NEC has overall responsibility for advising the president on a broad range of domestic and international economic issues. In this final interagency trade process, the NEC meetings are chaired by the president and include the vice president; the secretaries of State, the Treasury, Agriculture, Commerce, Labor, Housing and Urban Development, Transportation, and Energy; the administrator of the Environmental Protection Agency; the director of the Office of Management and Budget; the U.S. Trade Representative; the chair of the Council of Economic Advisers; the National Security Adviser; and the assistants to the president for economic policy, domestic policy, and science and technology policy.

As policy decisions are made within the interagency process, the USTR assumes responsibility for directing the implementation of that decision.

U.S. Trade Representative

The U.S. Trade Representative, a cabinet-level position with the rank of ambassador, has the overall responsibility for developing and coordinating the implementation of U.S. trade policy and is the president's principal adviser and chief spokesperson on trade. Under U.S. law, the USTR must be included in all economic summits and other international meetings at which international trade is a major topic, and the USTR has the lead responsibility for all negotiations on any matter considered under the auspices of the World Trade Organization.

The Office of the U.S. Trade Representative includes two deputy USTRs, one based in Washington, D.C., and the other in Geneva, Switzerland.

Department of Commerce

The major trade responsibilities of the Department of Commerce are centered in the International Trade Administration (ITA) and the Bureau of Export Administration (BXA).

ITA has general operational responsibility for export development, commercial representation abroad, the administration of antidumping and countervailing duty laws, export controls, and trade adjustment assistance to firms. BXA controls exports of commodities and technology for reasons of national security, foreign policy, and short supply. BXA issues export licenses in accordance with export control regulations.

U.S. Customs Service

The U.S. Customs Service, headed by the commissioner of customs, collects duties on imports and enforces more than 400 laws and regulations relating to international trade. Some of its responsibilities include interdicting and seizing illegally entered merchandise; processing persons, carriers, cargo, and mail into and out of the United States; administering quotas and other import restrictions; and helping enforce U.S. laws on copyright, patent, and trademark rights.

U.S. International Trade Commission

The U.S. International Trade Commission is an independent quasi-judicial agency that conducts studies, reports, and investigations, and makes recommendations to the president and the Congress, on a wide range of international trade issues.

One of its primary functions is to determine whether U.S. industries are materially injured by imports that benefit from subsidies or are priced or otherwise traded unfairly. Under Section 337 of the Tariff Act of 1930, the ITC also is authorized to order actions, subject to presidential disapproval, to remedy situations in which unfair methods of competition or unfair acts are being committed in the importation of goods into the United States.

The ITC's six commissioners, not more than three from the same political party, are appointed for nine-year terms.

Private Sector Advisory Committees

In 1974, the U.S. Congress established the private sector advisory committee system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Over the last 23 years, Congress has expanded and enhanced the role of this system, which now includes some 33 advisory committees, with a total membership of approximately 1,000 advisers.

The USTR manages a three-tiered advisory committee structure. The committees meet on a regular basis, receive sensitive information about ongoing trade negotiations and other trade policy issues, and report to the president on any trade agreement entered into under U.S. trade law. The most senior level, the Advisory Committee for Trade Policy and Negotiations (ACTPN), is a 45-member body composed of presidentially appointed representatives of government, labor, industry, agriculture, small business, service industries, retailers, consumer interests, and the general public. The group, which convenes at the call of the USTR, considers trade policy issues in the context of the overall national interest. The second tier is made up of seven policy advisory committees representing overall sectors of the economy, such as industry, agriculture, labor, and services, whose role is to advise the government of the impact of various trade measures on their respective sectors.

The third tier is composed of 25 sectoral, functional, and technical advisory committees consisting of experts from various fields, who provide specific technical information and advice on trade issues involving their particular sector. Members of the second and third tiers are appointed by the USTR and the secretary of the relevant department or agency.

(End text)

(The Overview is from the June 1997 issues of ECONOMIC PERSPECTIVES, a USIA Electronic Journal. Persons redistributing this Overview should credit ECONOMIC PERSPECTIVES as the source.)

Nautilus Institute
2342 Shattuck Ave. #300, Berkeley, CA 94704 | Phone: (510) 423-0372 | Email: nautilus@nautilus.org