Coping with a Nettlesome Dilemma

The Long Road to the U.S. Trade Act of 2002

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I. Introduction

The President of the United States—then William Clinton—began seeking trade negotiating authority from the U.S. Congress in 1994. In 2002, President George W. Bush succeeded in getting it. Through calibrated decisions on numerous sensitive issues related to trade, slowly but steadily a Congressional majority was built in both Houses of Congress in favor of this authority. This article aims to analyze the way in which these majorities have been constructed. Although attention will be paid to the first attempts to get that authority after the expiry of the previous one in 1993, the emphasis will be on the final stages in 2001 and 2002. What happened in that period affected to a large extent the way in which the authority has been phrased and conditioned and, thus, the way one can expect the United States to behave in international trade negotiations in the years to come.

The process through which the trade negotiating authority was defined and granted took many years. It unfolded in the context of the increasing politicization of trade liberalization and trade regulation (see Baldwin, 2001; Sauvé and Subramanian, 2001). This made it increasingly difficult for U.S. legislators to escape from a nettlesome dilemma the trade policy debate has brought with it since the enactment of the Smoot-Hawley Act in 1930 and the Reciprocal Trade Agreements Act of 1934. It is a dilemma between maximizing Congressional control over international trade policy making and the concern of Congressional members to avoid the devastating effects of such control. The latter refers to the potentially disastrous effects of logrolling on trade (as the Smoot-Hawley Act has shown; see Gibson, 2000, p. 13), the Congressional concern to avoid this, and the concern that doing the latter should not expose Congress or its members to the political fallout of trade liberalization in sensitive sectors (Destler, 1995 and 2000). The way out of the nettlesome dilemma consists then of finding a balance between relinquishing to the President the capacity to determine international trade policy and keeping control over what the President does with this capacity.

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The long road to the Trade Act of 2002 showed, however, that finding that balance is a daunting task. It was a road that entailed substantive consequences for the terms and conditions of the trade negotiating authority granted to the President.

II. TRADE NEGOTIATING AUTHORITY AND THE NETTLESONE DILEMMA

The legislation on the presidential trade negotiating authority reflects a Congressional ambivalence on trade. On the one hand, it reflects the recognition by most members of Congress of the political and economic risks of letting Congress decide on its own about questions of trade liberalization or import protection. On the other hand, it reflects the concern of these members about losing control over the policy decisions on liberalization and protection. This ambivalence would not have existed—at least not in its current shape—if the U.S. Constitution had not granted the power to regulate commerce to Congress. Indeed, in Article I, Section 8 (first paragraph), the U.S. Constitution provides that:

"Congress shall have the power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States …"

In addition, in Article I, Section 8 (third paragraph), it provides that:

"Congress shall have the power to regulate Commerce with foreign nations, and among the several states, and with the Indian tribes."

This means that Congress has the power to regulate commerce through what nowadays are called tariff and non-tariff barriers. The former is a consequence of the fact that customs duties are not just instruments of trade policy but also of fiscal policy. They are a source of revenue for government. In the nineteenth century, they were even the most important source of income for the U.S. federal government.

From the early days of the U.S. republic, Congress started to look at ways to deal with this power. There were three reasons for this. First, it did so because customs duties became more and more important as trade policy instruments and relatively less important as sources of government income. Second, in the sphere of trade policy, trade negotiations and the concomitant conclusion of international trade agreements increasingly became important. Third, after the Civil War, tariff policies became politically controversial, especially in the era of Presidents Grover Cleveland, Benjamin Harrison, and William McKinley. Whereas the first reason raised the question of how high or low to set the tariffs, and the second reason raised the question of finding efficient ways to negotiate trade agreements with other countries, the third one raised the question of shielding the members of Congress from capture by particularistic interest groups, especially those that favored protectionism.

Nonetheless, despite all these concerns, Congress did not find a satisfactory way to delegate trade policy-making authority to other institutions until the Smoot-Hawley