

**Paper prepared at the request of the
The Inter-American Development Bank
On the Trade Policymaking Process in the United States**

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Introduction

The constitution of the United States (U.S.) in effect proscribes both the authority and the responsibility to develop and carry out trade and investment (referred to as “commerce” in the constitution) policy and negotiate international agreements to two entities - the congress and the President. These federal decision-makers are supported by a formal and informal array of subsidiary decision-makers, advisors (both formal and informal), interests (organized) and the broad “court of public opinion.” Furthermore, the federal system is also interrelated (formally and informally) with the state and local system. Increasingly state and local elected representatives and officials and their constituencies are involved because trade and investment policy and agreements have either direct or indirect implications for them.

The broad scope of those involved in the development of trade and investment policy and the negotiation of agreements is a reflection of the diffusion of power that is inherent to the institutions, both within government and outside government, that bring great depth to the U.S. democracy. While some criticize the trade policymaking process as being the domain of a narrow set of interests, the process provides for virtually an unlimited range of interests – both foreign and domestic - to participate. The issue in the end, however, is which interests are the most influential at any given time and on any given matter.

What follows is a description of important elements of the trade and investment policymaking process in the U.S. It is structured to respond to questions that were posed by the Inter-American Development Bank staff.

The Procedures for Consultation on U.S. Trade Policy; Groups included in the Process; Consultation Scheduling; and the Structure of the Consultation

The executive branch and the congress both solicit and receive advice on trade and investment policy and the negotiation of agreements. What follows is a description of the executive branch and congressional systems of solicitation.

The executive branch solicits information through a number of means. The centerpiece of its official system of solicitation is the *official advisory committee system*. The congress in 1974 established the legislative framework for this system primarily to ensure that U.S. trade and investment policy and negotiation objectives adequately reflect U.S. commercial and economic interests. (For years congress has been concerned that U.S. trade and investment policy is too influenced by U.S. foreign policy interests within the executive branch policymaking process – the Department of State, for example, at one time played the central role in the development of trade and investment policy and in negotiations. It was for this reason among others, the congress created the Office of the Special Trade Representative (STR) in the Trade Expansion Act of 1962 and placed it

within the Executive Office of the President. The STR was subsequently elevated to the U.S. Trade Representative (USTR) and given Cabinet rank in the Trade Act of 1974.) Congress expanded and enhanced the role of this system in three subsequent trade acts.

The advisory committee system consists of 33 advisory committees, with a total membership of up to 1,000 advisors. Recommendations for candidates for committee membership are collected from a number of sources, including Members of Congress, associations and organizations, publications, and other individuals who have an interest or expertise in U.S. trade policy. Membership selection is based on qualifications, geography, and the needs of the specific committee. Members pay their own travel and other related expenses.

The system is arranged in three tiers: the President's Advisory Committee for Trade Policy and Negotiations (ACTPN); six policy advisory committees; and 26 technical, sectoral and functional advisory committees. The President appoints 45 ACTPN members for two-year terms. The 1974 Act requires that membership broadly represent key economic sectors affected by trade. The committee, because it is charged with providing advice to the President and his most senior advisors, also considers policy issues in the context of the overall national interest.

The six policy advisory committees are appointed by the USTR alone or in conjunction with other Cabinet officers. Those managed solely by USTR are the Intergovernmental Policy Advisory Committee (IGPAC) and the Trade Advisory Committee on Africa (TACA). Those policy advisory committees managed jointly with the Departments of Agriculture, Labor, Defense and the Environmental Protection Agency are, respectively, the Agricultural Policy Advisory Committee (APAC), the Labor Advisory Committee (LAC), the Defense Policy Advisory Committee (DPACT) and the Trade and Environment Policy Advisory Committee (TEPAC). Each committee provides advice specific to its area of focus.

The 26 sectoral, functional and technical advisory committees are organized in two areas: industry and agriculture. Representatives are appointed jointly by the USTR and the Secretaries of Commerce and Agriculture, respectively. Each sectoral or technical committee represents a specific sector or commodity group and provides technical advice concerning the effect that policy decisions and negotiations may have on its sector. The four functional advisory committees provide cross-sectoral advice on customs, standards, intellectual property rights issues and electronic commerce.

The official advisors are also solicited as part of the process in preparing information for congressional consideration. This has traditionally occurred in advance of the legislative process pertaining to the implementation of comprehensive free trade or multilateral agreements within the gambit of the WTO. Specifically, the views, including dissenting views, of all the advisory committees are included in a package of information for congressional review and consideration.

In addition, with the passage of the NAFTA implementing legislation and the Uruguay Round Agreements Act of 1994, the U.S. created expanded consultative procedures with state and local governments. The purpose is to ensure that the states and localities are informed and consulted on an ongoing basis regarding trade-related matters that directly relate to or that may have a direct effect on them. This is accomplished through a number of mechanisms, including a state “point of contact” system, the IGPAC, meetings with state and local associations and other mechanisms.

The congressional solicitation process does not incorporate the detailed elaboration and scope that is reflected in the executive branch *official advisory committee system*. The congressional system includes essentially two central elements: committee hearings on trade and investment related legislation and issues and the related oral and written information that is solicited surrounding these events; and the information that is constantly received in the offices of the “representatives of the people” and by the committees on a vast range of public policy topics, including trade and investment policy and negotiations. Furthermore, the congress can call upon the General Accounting Office (GAO) and the Congressional Research Service (CRS) to undertake research on particular areas of interest. Furthermore, the Committee on Ways and Means in the U.S. House of Representatives and the Finance Committee in the U.S. Senate solicit economic analysis from the U.S. International Trade Commission (USITC). (The President and the USTR also have the authority to request studies by the USITC.).

The congressional solicitation process is structured for a different purpose than is the executive branch system. The congressional system is structured to assist in the development of trade and investment related legislation and to solicit information on issues that are germane to policymaking to assist the congress in its oversight of and deliberations with the executive branch. The executive branch system is geared more toward the discussion of topics that are specific to upcoming or ongoing negotiations, the implementation of agreements, investigations under the U.S. trade laws and broader policy topics of national interest.

The *groups involved in the policymaking process* within the official advisory committee system are numerous. They include businesses from every sector where trade is a significant factor, organized labor, environmental organizations, consumer organizations, state and local government and all other aspects of the U.S. society that are interested in providing advice (i.e., academics, research institutions, trade associations, civic groups, individual citizens, etc.).

At the same time, official advisory committee deliberations – particularly the sectoral and functional committees - are not divulged to the public when they involve matters considered sensitive to the national interest as proscribed in U.S. law and/or when they include business confidential information. But, the policy committees usually have a component of the meeting agenda that is open to the public. For example, the ACTPN has in the past often opened a component of its meetings to the public/press. Furthermore, sectoral, functional and policy advisory committees do solicit information from the public when it is deemed appropriate, usually in writing (i.e., Federal Register solicitations).

The formal congressional solicitation system provides an opportunity for any citizen, organization, company or industry to provide advice to the relevant committees and/or their respective congressional member. Typically the solicitation is made formally by committees with respect to legislation and/or when hearings are being held. In addition, committee chairman will invite specific witnesses (in addition to executive branch officials) to present views before a committee and to answer questions. At the same time, committees and individual congressional offices on an ongoing basis are receiving information from constituencies, foreign governments and foreign individuals.

The *nature, scheduling and structure* of the formal system for soliciting advice in both the executive branch and the congress is well developed. For example, the executive branch typically formally solicits the views of the public and its official advisors in advance of every major comprehensive trade agreement, whether they are bilateral, regional, sectoral or multilateral. For example, the executive branch will hold hearings and/or solicit written information from any interested party through Federal Register notices. The format for the executive branch hearings and its written solicitations for information spell out, usually in significant detail, what information is germane and desired. In almost all cases these solicitations of information are also almost immediately posted on the relevant agency websites allowing virtually any interested party to both review and respond to the notice.

Furthermore, the executive branch formally solicits the views of its advisors and the public quite commonly during the negotiation of such an agreement, particularly when the negotiators are in need of additional information or advice on particular topics. In addition (as noted above), should the agreement require implementing legislation, the executive branch will solicit the views of all of its official advisors (including dissenting views) on the agreement itself and then forward that information to the congress for its consideration and review as it addresses the implementing legislation.

Similarly, congressional committees hold hearings, invites witnesses and solicit written comments on major issues and agreements before, during and after the conclusion of the negotiation, in addition to when implementing legislation is being developed. As is the case in the executive branch, congressional committees have websites that provide an opportunity for any interested party to submit comments on committee work or any other issue. Furthermore, the committee explains in sufficient detail what it is looking for in the way of advice and information for its deliberations and decision making.

In addition to the formal process for gathering the views of those interested, both the executive branch and the congress are constantly provided and solicit information through informal meetings and telephone conversations with interested companies, trade associations, researchers, unions, environmental organizations, individual citizens, etc. This “just in time” information gathering is instrumental to the policymaking process and forms a critical stream of input into decision-makers.

The Relationship between the Executive Branch, Congress and the States in Policymaking

The dialogue between the congress and the executive branch is where virtually all significant policy is made. Increasingly, however, the states and even municipalities are also important. Not only are the states and municipalities part of the official advisory committee system within the executive branch (the IGPAC and the state “point of contact” system), but increasingly they make their views known through direct and informal routes. The National Governors Association (NGA) and the National Conference of Mayors, for example, often pass resolutions and discuss trade and investment issues and relay this information to the executive branch and the congress. Furthermore, they – usually individually - engage counterparts in foreign countries and advocate on behalf of constituents in domestic and foreign policymaking institutions. Sometimes this is done in coordination with federal policymakers and sometimes not, which can cause some confusion if not understood in its appropriate context.

States and municipalities also have jurisdiction over a variety of laws and policy that are increasingly implicated by trade and investment negotiations (i.e., procurement, services, etc.). As a result, federal policy makers are, in effect, obligated to work with state and local elected representatives and officials to achieve their support if they are to be both successful at the negotiating table and in implementing what is negotiated. The implementation of the NAFTA, for example, has facilitated a plethora of activities between federal, state and local officials on a range of issues, many of which are border related. For example, the NAFTA land transportation services provisions to be effective require state and municipal support activities. In addition, the NAFTA encourages the negotiation and implementation of mutual recognition agreements (MRAs) across a range of services sectors. However, many of these sectors are regulated by state institutions and/or independently by private sector bodies. Therefore, in the absence of their active support MRAs are not feasible.

However, as noted above, the core of the policymaking process still primarily resides in the congressional/executive branch deliberation. Because the constitution proscribes that the congress has the sole authority to “regulate commerce” and the president has the sole authority to “negotiate” with foreign powers, a collaborative exercise in decision making is necessary when both making policy and negotiating and implementing agreements, particularly when agreements implicate U.S. law. The recent long and divisive debate over trade promotion authority (TPA)(previously known as fast-track) is a vivid example of the struggle between these two branches of government and the political parties within. In fact, some speculate that one of the reasons the congressional TPA debate was so long and divisive was – oddly enough – that there was no trade agreement to implement. In other words, the debate was over the intersection of politics and policy in the absence of a concrete piece of implementing legislation where a foreign sovereign(s) was hanging in the balance – some would cynically say an ideal situation for some politicians to make “principled” statements and not decisions.

In any case, policy making and the negotiation of agreements is a matter of intense interest in both the executive branch and the congress, and the level of interest appears to be increasing. One indication of that is the increasingly diverse set of congressional committees that are playing a more active oversight and legislative role in this policy arena. This is a reflection of both the scope of what is being addressed at the negotiating table and the increasing importance of trade and investment to the U.S. economy and its governing institutions at all levels. Trade and investment agreements are also viewed by a range of “non-traditional” players in the policy debate as vehicles to advance, or vehicles that threaten, a range of public policy objectives. These non-traditional players utilize both official and informal avenues at the federal, state and municipal levels of government to pursue their objectives. In fact, this is one of the main reasons – if not the main reason – why state and municipal officials have increasingly been engaged in the process.

At the same time, one should not jump to the assumption that state and municipal officials are antagonists when it comes to the negotiation of agreements that expand opportunities for trade and investment. The NGA and the Mayors Conference, for example, typically support trade and investment expansion and major agreements. However, not surprisingly, they do guard their jurisdictional authorities under the U.S. system zealously. So as the scope of agreements expands (i.e., to implicate legislation and policy that is the domain of sub-federal entities in the U.S.) and as the importance of trade and investment to the U.S. economy grows, these officials will play a larger role. In addition, they are often the “closest to” the constituents who are either positively or negatively impacted by trade and investment expansion (or contraction).

The Government and Special Interests – Their Role in the Process

The government at all levels in the U.S. is – relatively speaking – structured to both solicit input from and respond to its constituents. The degree to which those constituents are organized, determined, persistent, have an effective strategy and understand how the decision making process works can often determine the degree to which they can influence public policy. In fact, precisely because the government at all levels is dealing with such a broad and diverse set of competing interests attempting to influence its direction through a multitude of formal and informal channels, it can appear to some “special interests” as being unresponsive. This is obviously contrary to the stereotypical image of government beholden to special interests. Furthermore, this is not meant to imply that special interests – both domestic and foreign - do not play a significant role in policy making. In addition, this is not to say that special interests should not play a role in policy making, because they should.

The trade and investment policy making process at the federal level, as noted earlier, is characterized by numerous methods of soliciting and receiving the views of a vast array of interests. Virtually anyone with an interest and sufficient knowledge of the information gathering process can participate, including individual citizens. At the same time, interests – be they business, labor, environmentalists, consumers, foreign governments and others – recognize the necessity of being organized and being at the right places at the right times with a plan to improve the chances of influencing policy.

But, it is the effort of the government to both solicit a broad range of interests and to reflect those interests in its official advisory committee system that is in part how it attempts to guard against being captured by any one interest in policy making. Furthermore, within the executive branch policymaking process, the overriding focus – consistent with the constitutional mandate of the President – is to consider and pursue the national interest. The fact that more than a dozen federal agencies are involved on a regular basis in the making of policy (not to mention the congress, states and other entities) is to ensure that virtually all germane interests are weighed. For example, each agency brings an “interest” to bear in the debate. But, it is the role of the USTR overseen by the White House within the executive branch to synthesize all the perspectives and interests that are deemed relevant and design a policy that advances the national interest. By design this can pit interests against one another – an industry interest against another industry interest, for example, and/or a foreign policy concern against a domestic regulatory preoccupation, etc.

Sometimes the policy making process works like a symphony, and all the interests can be accommodated into a coherent policy that advances the national interest in a global context. But, by definition choices in the policy making process often have to be made by elected and appointed officials that advance some interests over others. It is these officials who are ultimately accountable, and to the degree a majority of the public that votes believes they are too beholden to any one special interest it can be reflected in the ballot box.

In addition, an array of ethics laws and regulations provide a legal framework that is designed to limit improper influence by special interests. The degree to which these rules are effective is constantly the subject of debate, but the fact of the matter is that they are among the most comprehensive and stringent in the world.

The Inter-Ministerial Policymaking Process: Weaknesses and Strengths

The *executive branch process* is reflected in U.S. law. But without citing the numerous statutes that play a part in determining the structure, the practical implementation of the policymaking process involves a large number of federal entities. Under the leadership of the White House, the USTR within the Executive Office of the President is the statutorily proscribed coordinator of U.S. trade and foreign direct investment policymaking, the President’s principal trade advisor as well as the chief U.S. negotiator. However, the development of trade and investment policy is carried out through an interagency deliberative process which formally includes the following entities: the Departments of State, Treasury, Agriculture, Commerce, Labor, Interior, Defense, Energy, Health and Human Services, Justice, Transportation, the Environmental Protection Agency, the Small Business Administration, the National Security Council/National Economic Council staffs, the Vice President’s office, the Office of Management and Budget and the Council of Economic Advisors.

In addition, departments/agencies have specific areas in which they have leadership roles in areas that complement trade and investment policy making and negotiations. For example, trade promotion is led primarily by the Department of Commerce working with a range of executive branch and independent agencies, including the Export/Import Bank, the Trade and Development Agency, the Overseas Private Investment Corporation, the Agriculture, State and Treasury Departments and USTR.

Independent agencies, such as the Federal Communications Commission, are utilized by both congress and the executive branch for their technical expertise where that is germane to a policy and/or a negotiating matter. For example, the USITC, has a statutorily proscribed role in providing economic advice to the President and the USTR

and in making “injury” determinations in the context of the implementation of certain U.S. trade laws (i.e., anti-dumping, countervailing duty and safeguard investigations, etc.). In addition, in advance of concluding free trade or major multilateral trade agreements, the USTR usually requests the advice of the USITC. The USITC provides advice specific to the economic implications of such agreements for U.S. industry and the economy. The USITC, in its research and analysis, holds public hearings and solicits written comments from interested parties (which often includes foreign governments and companies) in the context of preparing its report to the USTR. The USITC report, because it often includes confidential business information, is usually prepared in a public, and non-public, version. The USITC report is then circulated by the USTR to other agencies involved in the policymaking process.

The role and importance of each one of the institutions involved in the policy making process varies on a day to day basis depending upon the specifics of the issues at hand. It is fair to say, however, that currently the most heavily involved, in addition to USTR, on a day to day basis and in charting executive branch positions are: State, Treasury, Commerce, Agriculture and the National Security Council/National Economic Council. This list has been larger at times over the last ten years, and at times smaller.

The formal deliberative process in the U.S. goes on at four levels within the entities involved. At the top of the process (other than the President and Vice President) are the relevant Cabinet officials. The structure that is proscribed by U.S. statute has the USTR leading what is called the Trade Policy Committee (TPC) of the Cabinet. However, every President has developed his own Cabinet committee structure in practice (including President Bush), and the TPC has not been a formally functioning deliberative body. Rather, trade policy matters have been discussed within broader committee mandates focused on economic and national security matters. Usually, the President’s Assistant for Economic Affairs or National Security Affairs have been given the responsibility by the President to convene relevant meetings, with the President presiding as deemed necessary.

The next level down, where the preponderance of politically sensitive and important decisions are made, is through either the so-called deputies committee or the Trade Policy Review Group (TPRG). The Deputies Committee is typically convened by the Deputy Assistant to the President for International Economic Affairs/National Security and the statutory TPRG is chaired by a Deputy USTR. Typically, the officials who participate in these discussions are at or near the deputy level. Under President Bush, the TPRG has played an active role in addressing issues.

The senior working-level decision making process has traditionally been the domain of the Trade Policy Staff Committee (TPSC). The working level decision making process is handled by the TPSC Subcommittees, and includes dozens of committees focused by region, country, sectors and functions. These are typically led by a Director at USTR. This is often where the bulk of the day to day analysis and policy groundwork gets done.

As is typical of the vast majority of internal meetings in the executive branch, the deliberative process as it relates to trade and investment policy and negotiations is typically not open to the public. Furthermore, the agendas for these internal meetings are typically not made public in advance, or afterwards. On the other hand, the process leading up to these internal meetings is often one that results in either solicited, or unsolicited, information from interested stakeholders outside of government.

Specifically, the executive branch, usually through the TPSC or a specific agency, actively solicits the views of the interested public through Federal Register notices and/or public hearings (in Washington, and sometimes around the U.S.). These requests for information, or opinion, are common and usually occur numerous times a month on a variety of topics. The information that is received is usually an important consideration in the internal deliberative process. It is quite common, in fact, for the information that is received through these efforts to be the main topic of discussion in decision-making meetings.

Because of the increasingly important nature of the decisions being made in trade and investment policy, the demands upon the inter-agency process have increased. Accordingly, the number of decisions that require senior level review has grown significantly in the last 15 years. This has taxed all the agencies involved in this process. Furthermore, and not surprisingly, it has meant the White House has gotten increasingly involved on a day to day basis in the decisions that are made as well as a broader scope of committees and members in the congress. In short, because the stakes have gotten higher politically the demands on the agencies to turn around careful analysis and research for decision makers has grown. USTR's staff, in particular, is often under inordinate stresses. This stress is exacerbated when the interagency coordination process is not working smoothly and efficiently to generate high quality information and debate. Furthermore, some believe that there has been a confusing blurring of the policy coordination responsibilities between USTR and the National Economic Council/National Security Council, all of which reside within the Executive Office of the President. This blurring, however, is to some degree inevitable due to the increased importance of trade and investment policy in the domestic political context and in U.S. relations around the world.

At the same time, the interagency process regularly generates high quality information and fully informed debate. The resources that exist within the agencies involved in the policy making process are among the best in the world. In depth industry analysis, economic forecasting and research, intelligence from around the world on political, security and economic developments, legal expertise across the full spectrum of domestic and international law are among the tools that are available to U.S. trade and investment policy makers and negotiators. The depth of the advisory committee structures, the formal and informal solicitation of information from the interested public and the congressional process for gathering information further enables policy makers in both branches of government to make informed decisions. In fact, sorting through the huge and growing amounts of information available to those within the interagency process to ascertain the most critical information in a timely manner is one of the challenges.

Communication with Civil Society

Over the last ten years there has been a significant effort to expand upon the solicitation of information from non-governmental organization beyond the business community and organized labor. Trade and investment policy making has been inextricably linked in the U.S. to a range of additional issues of concern to environmentalists, consumer groups, human rights activists, health and safety interests among others. Furthermore, and as noted above, state and local governments are also deeply involved when sub-federal governance is implicated and given that the economic implications of trade and investment are increasingly noticed at the state and local level.

For example, within the official advisory committee system of the executive branch, the TEPAC has been created to ensure the input of experts and officials within the environmental community. In addition, consumer groups are part of the official advisory committee system. But on top of this, there has been a more consistent effort to solicit a broader spectrum of opinion in the development of policy outside the executive branch and congressional process. It is now not unusual, for example, for USTR officials to meet with health and safety organizations, AIDS activists, consumer groups and human rights activists in addition to labor and business groups. In fact, over the last ten years USTR has been structurally reformed to reflect the importance of many of these issues within the policy making process: an Assistant USTR for the Environment and Natural Resources was created along with an Assistant USTR for Labor.

While non-business interests are now more formally a part of the process, business interests remain the largest influence on the process overall. This is to be expected, given that the President, congress and state and local officials generally consider commerce to be the primary reason to negotiate trade and investment agreements.

While the perspectives of interests other than business have over the last ten years more consistently been weighed in the policymaking process, many of those from within the non-business community remain dissatisfied with their ability to influence policy. Ultimately, this is not an issue of process. Rather, this is a question of whether the elected representatives of the people in government chose to change policy. At the same time, it is likely that efforts will continue to make the policy making process, including the advisory committee system, more transparent. This will likely include the expansion of website utilization for the purposes of providing advice as well as additional procedural steps to help facilitate interaction with interested parties of all kinds.

Government and the Education of the Public About Trade

The federal government has undertaken efforts to inform the public about trade and trade agreements for many years. These efforts have typically peaked when congress is considering legislation to implement major trade agreements (i.e., the NAFTA, the Uruguay Round, etc.). However, it is difficult to argue that the federal government has been successful or consistent in setting forth a systematic and broad based effort to

educate the public on this topic. An inconsistent effort at best, for example, was expended following the NAFTA to explain it to the public, although this is not to say that no efforts have been undertaken. USTR, the Departments of Commerce, Agriculture and State and other agencies do provide information through their websites and senior officials discuss trade publicly. But, a concerted and fully integrated communications campaign year in and year out spearheaded by the federal government at all levels and aimed at the public has not occurred inspite the fact that trade is an increasingly important component of the U.S. economy.

On the other hand, opponents of trade expansion and trade agreements have organized far more than ever, particularly since the NAFTA, to get their message out. Furthermore, the press is typically inclined to report on negative developments related to trade (i.e., import competition being blamed for job losses, etc.) rather than success stories, as is often the case with other issues too. To be fair, however, the editorial community is usually supportive of trade.

The business community has undertaken efforts also, but their efforts typically are spasmodic and insufficient to reach a broad audience consistently and over time. For example, their efforts tend to increase dramatically surrounding congressional debates over trade legislation, but generally do not involve a nationwide communications program that reaches local communities and congress alike year in and year out.

The implications of the lack of an effective communications campaign in support of trade are not to be underestimated. As the scope of trade agreements expands to involve governance issues at the state and local level in addition to federal matters, and given the increasing economic importance of trade, the lack of a consistent and powerful set of messages designed to focus on the positives regarding trade means those who oppose trade and trade agreements are more often the ones heard on the “airwaves” and in localities. Accordingly, political support for market opening trade agreements in congress and in general is not assured.

The Media, Labor Unions and Foreign Interests

The media plays an important role in trade and investment policymaking just as it does in other areas of public policy. It both functions as an influence on policymakers – through editorials and new stories – and a “tool” of the policymaking community through opinion editorials and information that is provided to “make” stories that are written. A highly specialized press has been created that follows trade developments with great scrutiny in the U.S., making the policymaking process more transparent than it would otherwise be to the outside observer. Because of this, officials within the policy making process are both more careful and more calculating about how they talk to and/or “use” the press. Furthermore, because the political stakes around trade are generally higher than they were in the past, officials within the policy making process operate under much tighter guidance in their dealings with the press.

Senior officials typically start their day early with a review of the day's press clips from around the nation and the world. Stories can trigger rapidly moving internal policy deliberations and actions. In fact, as much as almost anything else, the press is a significant influence because it is often the vehicle for policymakers and those impacted by the decisions they make to inform each other.

Labor unions have traditionally played a powerful role in U.S. trade policymaking. Their influence is derived both from within the official advisory committee system and - even more importantly - their work with congress and state and local officials. Furthermore, their messages have evolved in some respects over the last fifteen years towards a message focused on how trade should be conducted (as opposed to whether) and what disciplines should be in place within the trading system.

In addition to focusing on worker rights issues over the last 15 years, the unions have typically focused on the importance of maintaining and strengthening trade remedy and safeguard laws, investment, investor-state issues and performance requirements, market access, rules of origin, procurement, temporary entry of professionals and trade adjustment assistance. They have also combined forces with a number of other non-governmental interests (i.e., environmentalists, some consumer groups, human rights activists and community organizers, etc.) in a loosely knit coalition in general opposition to trade agreements. The impetus for this effort followed the enactment of the NAFTA implementing legislation. They continue to view the NAFTA and trade and investment expansion with Mexico (less so Canada) and often developing countries more generally as a threat to their interests. Furthermore, organized labor often joins forces with industries seeking import relief, such as the steel, textile and apparel industries. The degree to which they are successful is a function of a number of factors: the role they play in political campaigns, the economic situation generally and in certain sectors, and the degree to which other interest groups are willing to join forces with them in seeking to influence policy. But most importantly, their influence is often determined by how important a role they want to play on specific trade legislation and trade agreements. In other words, if they want to play a significant role they often can, particularly in influencing allies in congress.

As trade and foreign direct investment in the U.S. grows, so will the influence of foreign interests. Foreign interests already play a significant role in influencing opinions within the policymaking process, both in congress, the executive branch and at the state and local level. Foreign interests are often major considerations in the policymaking process, both because of U.S. relations with a foreign power(s), but also because U.S. economic interests are interdependent with the world.

At the same time, there is no doubt that domestic politics are on balance the single most important factor in determining the direction of U.S. policy. In fact, as the economic stakes with trade and trade agreements have gotten higher the influence of domestic politics has gotten more powerful and complicated. This is not to say that the U.S. is becoming more inward looking and inherently more protectionist. It does mean that the trade-offs at the negotiating table for the U.S. are starting to become potentially more

divisive as trade oriented industries find themselves – in effect – pitted against import sensitive industry interests. Furthermore, foreign investors and U.S. investors overseas are an expanding web of interests that make drawing distinctions between U.S. and foreign companies more complicated. Foreign companies, for example, are U.S. employers in virtually every state in the U.S. Governors and Mayors actively solicit and compete for foreign investment. Therefore, sorting through what “interests” are U.S. interests in the policymaking process is not always easy.

Civil Society: Where Do We Go

As with many organized interest groups that have a concerted and legitimate public policy agenda, the various elements of civil society that are seeking to influence U.S. trade and investment policy are having some success. The environmental community has certainly had some success both in changing the institutions involved in the policymaking process and in impacting the U.S. position at the negotiating table. Similarly, the labor movement can claim successes.

The process of making trade policy has been incrementally changing to accommodate a growing spectrum of interests, including those that fall within the category of civil society. As the U.S. finds additional ways of responding to civil society that generates more domestic support for market opening trade agreements, it will take these up with its trading partners. U.S. trading partners, in turn, will have to make judgments about their own abilities to accommodate U.S. proposals. Sovereignty is a cherished element of governance around the world, but increasingly trade and investment negotiating tables around the world are the place where aspects of a parochial view on sovereignty are being challenged. This will continue to increase as nations become more interdependent, although one must be careful to avoid exaggerating the implications. Furthermore, it will be those that believe that moving forward is more important than standing still that will carry the burden of convincing their own respective societies of the benefits of an expanding scope of international disciplines.

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