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THE REORGANIZATION OF TRADE POLICYMAKING: PROSPECTS AND PROBLEMS

Thomas R. Graham†

After decades of international economic preeminence, the competitive position of the United States in the world economy drastically deteriorated in the 1970's. The organization of the U.S. executive branch was inadequate to cope with this deterioration. Years of easy successes in international trade caused the United States to take this preeminence for granted, leaving the United States without a coherent national trade policy or an effective means of promoting U.S. exports. Instead, many federal agencies took uncoordinated and often contradictory actions affecting U.S. trade.¹ Frequently, these actions subordinated the interest in promoting U.S. trade competitiveness to other U.S. policy goals in areas such as antitrust, tax, and the environment.

In 1979, conclusion of the Tokyo Round of multilateral trade negotiations (MTN)² provided an occasion for a reassessment of the U.S. approach to trade. The MTN produced a series of new international agreements that, together with the already existing General Agreement on Tariffs and Trade,³ were intended to reduce barriers to trade. Congress


¹. See note 38 infra and accompanying text.

². The General Agreement on Tariffs and Trade (GATT), note 3 infra, sponsors periodic "rounds" of negotiations to further promote international trade. The Tokyo Round, involving some ninety-nine nations, was the seventh such round and was held in 1974-79 at Geneva, Switzerland. These negotiations will be referred to as the "Tokyo Round" and as the "MTN." For background on the Tokyo Round, see Graham, Reforming the International Trading System: The Tokyo Round Trade Negotiations in the Final Stage, 12 CORNELL INT'L L. J. 1 (1979); Wolff, The U.S. Mandate for Trade Negotiations, 16 VA. J. INT'L L. 505 (1976).

implemented these new agreements for the United States by enacting the Trade Agreements Act of 1979. U.S. negotiators and members of the Congress viewed the MTN agreements and the Trade Agreements Act as opportunities to redress the declining U.S. trade position by opening up new export markets for U.S. products.

The United States, however, could not fully exploit these opportunities under the existing institutional framework for trade policymaking. Accordingly, the Senate Finance Committee and the House Ways and Means Committee refused to approve the Trade Agreements Act until President Carter produced a satisfactory proposal for executive reorganization. In response, the President produced a draft reorganization plan which, after final negotiations between the executive and members of Congress, he formally submitted to the Congress on September 25, 1979. President Carter subsequently implemented this plan by issuing an

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5. Congress exercised influence over the content of the President’s proposal in an unusual manner. Prior to the President’s formal submission to Congress of the Trade Agreements Act of 1979, Congress, during informal consultations, insisted that the Act contain a requirement that the President submit a reorganization proposal by July 10, 1979. Accordingly, section 1109 of the Act contained such a requirement specifying that:

In developing his proposal, the President shall consider, among other possibilities, strengthening the coordination and functional responsibilities of the Office of the Special Representative for Trade Negotiations to include, among other things, representation of the United States in all matters before the General Agreement on Tariffs and Trade, the establishment of a board of trade with a coordinating mechanism in the Executive Office of the President, and the establishment of a Department of International Trade and Investment. The recommendations of the President, as embodied in such proposal, should include a monitoring and enforcement structure which would insure protection of United States rights under agreements negotiated pursuant to the Tokyo Round of the Multilateral Trade Negotiations and all other elements of multilateral and bilateral international trade agreements. The proposal should result in an upgrading of commercial programs and commercial attaches overseas to assure that United States trading partners are meeting their trade agreement obligations, particularly those entered into under such agreements, including the tendering procedures of the Agreement on Government Procurement.

Pub. L. No. 96-39, 93 Stat. 144, 314 (1979). Congress chose the deadline of July 10 because Congress anticipated that it would formally receive the proposed Trade Agreements Act during the summer. Congress, in essence, pressured the executive into setting a deadline, in draft legislation, for producing a reorganization proposal. Failure to meet this deadline would ensure delay or failure of the enactment of the legislation.
executive order on January 2, 1980. The reorganization was designed to facilitate implementation of the MTN and the Trade Agreements Act of 1979. The reorganization also attempts to achieve many broader goals, including more aggressive promotion of U.S. exports and stronger enforcement of U.S. laws against unfair import competition. Furthermore, the reorganization attempts to improve coordination between trade policy and other federal policies, to enhance the priority of trade programs relative to other federal programs, and to achieve more vigorous representation of U.S. trade interests in international forums.

This article describes the evolution of the administrative structure for the conduct of international trade and explores the problems inherent in this structure. The article then describes the new reorganization and raises questions whether the above goals can be achieved by merely shifting responsibilities among federal agencies. Finally, the article speculates about the future effects of the reorganization on U.S. international trade.

I

HISTORICAL PERSPECTIVE

The U.S. Constitution empowers Congress to regulate "commerce with foreign nations, and among the several states" and to enact all laws "necessary and proper" to exercise this power. Pursuant to this grant of power, Congress has delegated to the executive branch the authority to conduct most of the government's international trade activities, including the administration of the laws remedying unfair import competition.

8. See Office of the White House Press Secretary, Fact Sheet—International Trade Reorganization 1 (January 2, 1980).
10. U.S. Const. art. I, § 8, cl. 3.

For a discussion of the antidumping law, see Jacobs & Hove, Remedy for Unfair Import Competition in the United States, 13 Cornell Int'l. L.J. 1, 5-13 (1980) [hereinafter cited as Remedies].

imposition of temporary import restrictions to help U.S. producers adjust to fair but injurious import competition, and the reduction of tariffs pursuant to international agreements. Since Congress can withdraw or modify this authority, however, Congress exercises a powerful influence over the executive branch's administration of trade activities.

Dissatisfaction with the executive branch's conduct of trade activity prompted Congress, in the Trade Expansion Act of 1962, to reorganize executive trade policymaking. In section 241 of that Act, Congress created the position of the Special Representative for Trade Negotiations (STR), placed the STR within the Executive Office of the President, and authorized the STR to be the chief representative for U.S. trade negotiations. In addition, section 241 authorized the STR to be chairman of a cabinet level Trade Policy Committee (TPC). This committee, whose membership included the Secretaries of State, Commerce, Agriculture, Labor, and Treasury, was intended to provide overall trade policy guidance.

By creating the STR position, Congress served two purposes. First, Congress withdrew the trade negotiation function from the State Department. It was widely believed that during trade negotiations, State had

rizes the executive branch to impose a duty upon certain imports aided by the payment of a "bounty or grant" from a foreign government. If the product is imported from specified countries, the countervailing duty law also requires a finding to the effect that the imports benefiting from bounties or grants result in material injury to a U.S. industry. 19 U.S.C.A. § 1671 (West 1980). For a discussion of the countervailing duty law, see Remedies, supra, at 13-17.

13. The "escape clause" sections of the Trade Act of 1974, §§ 201-203, 19 U.S.C. §§ 2251-2253 (1976), grant the executive branch the authority to temporarily limit increasing imports that are a "substantial cause of serious injury" to U.S. producers. For a discussion of the escape clause remedies, see Remedies, supra note 12, at 21-23.

14. The Reciprocal Trade Agreements Act of 1934, Pub. L. No. 73-316, 48 Stat. 943 (current version at 19 U.S.C. § 1351 (1976)), originally granted the President the authority to negotiate and implement agreements with foreign countries to reduce tariffs if such reduction would expand foreign markets. Congress periodically renewed this authority and supplanted it with new grants of authority to negotiate and implement tariff agreements in section 201 of the Trade Expansion Act of 1962, see note 15 infra, and in section 101 of the Trade Act of 1974, see note 31 infra. For a discussion of the Reciprocal Trade Agreements Act, see generally H. TASCA, THE RECIPROCAL TRADE POLICY OF THE UNITED STATES (1938); G. BECKETT, THE RECIPROCAL TRADE AGREEMENTS PROGRAM (1940).


17. Id.

18. Section 242 of the Trade Expansion Act of 1962, 19 U.S.C. § 1872 (1976), requires the President to establish an interagency organization composed of the STR and "the heads of such departments and of such other officers as the President shall designate." Pursuant to this provision, President Kennedy, by Executive Order No. 11,075, 18 Fed. Reg. 473 (1963), created the Trade Policy Committee and appointed the Secretaries of State, Treasury, Commerce, Agriculture, Labor, Interior, and Defense to be members.
given other nations easy access to the U.S. market in order to attain unrelated foreign policy goals. By creating the STR position, Congress reaffirmed its intention that trade negotiations would result in reciprocal exchanges of trade benefits and that trade negotiators should consider not only foreign policy matters, but domestic economic and political concerns as well.\textsuperscript{20} Second, Congress gave responsibility for trade negotiations to a bureaucratically neutral party who could balance the competing interests of the State, Commerce, Agriculture, and Treasury Departments.\textsuperscript{21} Since trade policy cuts across many areas of domestic policymaking, the positions that each department strives to promote in trade negotiations frequently conflict. The STR, as a member of the Executive Office of the President and as chairman of the TPC, was in a position to coordinate the diverse policies of other departments, thereby developing more objective and unified U.S. negotiating positions.

This new executive structure functioned reasonably well throughout the Kennedy Round negotiations,\textsuperscript{22} which were held from 1962 to 1967. In the late 1960's, however, U.S. manufacturers and labor unions began to express extreme dissatisfaction with the terms and the administration of U.S. laws regulating import competition. One such law provoking great dissatisfaction was the U.S. "escape clause" law.\textsuperscript{23} The "escape clause" permits domestic industries that have been injured by increased import competition to petition the executive branch for temporary restrictions, such as increased tariffs or the imposition of quotas, on the injurious imports.\textsuperscript{24} The Trade Expansion Act of 1962 tightened the eligibility criteria for receiving escape clause protection,\textsuperscript{25} and during the economic boom of the 1960's, the Kennedy and Johnson Administrations were not inclined to grant escape clause relief.

\begin{footnotesize}
\begin{enumerate}
\item Id.
\item See note 13 supra.
\item Section 201 of the Trade Agreements Extension Act of 1951, Pub. L. No. 82-50, 65 Stat. 72 (repealed 1962), provided relief to producers who could show that an increase in imports "had contributed substantially towards causing or threatening serious injury."
\item Section 301 of the Trade Expansion Act of 1962, Pub. L. No. 87-794, 76 Stat. 872 (repealed 1975), significantly tightened the eligibility criteria by requiring the producer to prove that the increase in imports is "the major factor in causing, or threatening to cause, such injury." (emphasis added). This tightening of the eligibility criteria seriously reduced the availability of escape clause relief. See Metzger, Trade Expansion Act of 1962, 51 Geo. L.J. 425, 447-48 (1963); Note; Comparison of Standards for Injury Under Escape Clause Procedure and the Antidumping Act, 29 U. Pitt. L. Rev. 435, 436 (1968).
\end{enumerate}
\end{footnotesize}
United States manufacturers and labor unions also expressed dissatisfaction with Treasury's loose administration of the antidumping and countervailing duty laws. These statutes imposed no deadline for completing antidumping or countervailing duty investigations. Consequently, Treasury, perhaps inspired by the Kennedy and Johnson Administrations' general reluctance to impose increased import restrictions, tended to defer indefinitely many of these investigations.

The economic problems of the early 1970's prompted further dissatisfaction with the prevailing trade policies. More than previously, the United States faced stiff import competition from Japan, European nations, and advanced developing countries. In 1971, the United States experienced its first balance of trade deficit of this century. Many multinational companies moved their manufacturing operations abroad, thereby eliminating U.S. jobs, at least in the short run. The value of the dollar plummeted and the OPEC embargo and oil price increases contributed further to the already existing problems of high unemployment and inflation. These difficulties increased the domestic political pressures for tighter restrictions upon import competition.

Congress responded to this widespread dissatisfaction by very nearly enacting legislation requiring the imposition of import quotas to protect several powerful manufacturing sectors. After these proposals failed, the Nixon Administration seized the initiative by submitting legislation to authorize U.S. participation in a major new round of international trade negotiations. This proposal became the Trade Act of 1974, which not only authorized U.S. participation in the MTN, but also amended U.S. laws reg-

26. For a discussion of the antidumping and countervailing duty laws, see note 12 supra.
29. See Muller, A Qualifying and Dissenting View of the Multinational Corporation, in Global Companies 21-41 (1975).
30. H.R. 18970, 91st Cong., 1st Sess. (1970), proposed as the “Trade Act of 1970,” also known as the “Mills Bill,” was passed by the House of Representatives and was considered seriously by the Senate before failing with the adjournment of the 91st Congress. This bill would have imposed mandatory import quotas for textiles and shoes, and it would have authorized the imposition of quotas for other categories of products for which import competition was significant and growing. For an analysis of this bill, see Rehm, Proposed Trade Act of 1970: What Direction U.S. Foreign Trade Policy?, 2 J. Mar. L. & Com. 289 (1971). In 1971, Senator Vance Hartke and Congressman James Burke introduced, with the support of the AFL-CIO, a “Foreign Trade and Investment Act,” also known as the “Burke-Hartke Bill,” which not only provided for extensive quotas to protect existing domestic market shares of U.S. producers, but which also would have discouraged investment abroad by U.S. companies.
ulating import competition and provided for the second mini-reorganization of trade policymaking to be undertaken in twelve years.

More specifically, the Trade Act of 1974 considerably tightened Treasury's administration of the antidumping and countervailing duty laws by imposing time limits for the completion of investigations. Furthermore, the Act relaxed the eligibility criteria for a U.S. industry to receive escape clause protection, thereby making escape clause relief more available to U.S. industries. Finally, the Act elevated the STR position from subcabinet to cabinet level, and placed the STR's supporting bureaucracy on a statutory basis.

The Trade Act of 1974, however, failed to eliminate many of the problems inherent in the existing trade policymaking framework. Major problems still existed in the administration of trade laws, the formulation of trade policy, the promotion of exports, and the negotiation of trade agreements.

The Treasury Department continued to be the target of private sector criticism and frustration with the government's perceived inability to deal with "unfair" import competition. In particular, Treasury fell far behind in its collection of antidumping duties. In one highly publicized case, Television Receiving Sets from Japan, Treasury failed for several years to collect antidumping duties owed by more than one hundred Japanese importers of television receivers. By 1979, this backlog of unpaid duties became such a political embarrassment and a drain on administrative resources that the

32. In countervailing duty cases, the Act gave Treasury six months to make a preliminary determination, and twelve months to make a final determination of whether imports had benefited from a bounty or grant by a foreign government. Pub. L. No. 93-618, § 331(a), 88 Stat. 2083 (1975) (current version at 19 U.S.C.A. § 1303(b)(A) (West 1980)).

In dumping cases, the Act required that Treasury make a preliminary dumping determination within six months (nine months in complicated cases); that the International Trade Commission determine within three months thereafter whether the dumping injured a competing U.S. industry; and, that Treasury make its final dumping determination within three subsequent months. Pub. L. No. 93-618, § 321, 88 Stat. 2043 (1975) (current version at 19 U.S.C.A. § 160 (West 1980)).

33. Section 201(b)(1) of the Trade Act of 1974 eliminated the requirement that a complainant demonstrate that an increase in import competition resulting from concessions granted under trade agreements caused injury to a domestic industry. 19 U.S.C. § 2251(b)(1)(1976).

34. Pub. L. No. 93-618, § 141, 88 Stat. 1999 (1975)(current version at 19 U.S.C. § 2171 (1976)). Previously, only the position of the STR had been authorized by statute. President Kennedy, not Congress, created the supporting bureaucracy of the STR Office in Executive Order No. 11,075, 28 Fed. Reg. 473 (1963). Placing the STR supporting bureaucracy on a statutory basis was significant because it prohibited the President from abolishing the STR Office without Congressional approval.


36. See Administration of the Antidumping Act of 1921, Assessment and Collection of Duties Under the Antidumping Act of 1921, Hearings Before the Subcommittee on Trade of the House
government agreed to settle all outstanding claims for antidumping duties upon the payment by television importers of some $66 million of the $138 million of duties that were originally said to be owed.\textsuperscript{37}

Trade policy was not well coordinated and no single spokesman for the executive's trade policy existed. Officials responsible for trade policymaking rarely communicated with the officials responsible for tax, investment, antitrust, and environmental policies, all of which bear upon trade policy in some fashion. At least twelve agencies took relatively uncoordinated and often contradictory trade policy actions.\textsuperscript{38} Many of these agencies subordinated trade policy concerns to other policy concerns promoted by advocates in the Administration that were more effective than trade policy advocates.

United States export promotion efforts were clearly deficient. Businessmen complained about antitrust laws that discouraged joint ventures for research and development, tax reforms that reduced exemptions for Americans living abroad, the absence of direct export incentives such as those used by the Japanese and Western European governments, and the existence of several direct disincentives for exports.\textsuperscript{39} Organizational weak-

\textsuperscript{Committee on Ways and Means, 95th Cong., 2d Sess. 7, 8 (1978) (statement of Robert H. Mundheim, General Counsel of the Treasury Department).}


38. Cabinet Departments responsible for activities affecting some aspect of trade included: (1) State—responsible for East-West trade negotiations, the negotiation of commodity agreements and general foreign policy; (2) Treasury—responsible for antidumping and countervailing duty investigations, the administration of national security trade restrictions and general economic policy; (3) Commerce—serves as liaison to the business community, responsible for export promotion and the administration of adjustment assistance to domestic firms; (4) Agriculture—serves as liaison to domestic agricultural interests and the Foreign Agricultural Service, responsible for price supports and related import restrictions; (5) Labor—serves as liaison to domestic labor, responsible for the administration of adjustment assistance to workers; (6) Interior—responsible for the formulation of policies regarding minerals and raw materials; (7) Defense—responsible for all trade matters related to national security and for the trade of strategic materials; (8) Energy—responsible for oil import policy and for other energy-trade matters.

Other federal agencies conducting activities affecting trade included: (1) the U.S. International Trade Commission—statutory responsibility to conduct investigations to determine whether import competition has injured U.S. industries and to conduct investigations of alleged infringements of U.S. patents; (2) the U.S. Export-Import Bank—responsible for financing U.S. export sales; (3) the Overseas Private Investment Corporation—insurer against risks attributable to investment in developing countries; (4) the Council of Economic Advisors; (5) the National Security Council; (6) the Agency for International Development; and, (7) the Office of the Special Representative for Trade Negotiations.

nesses accounted for at least part of the poor U.S. export promotion efforts. For example, the Export-Import Bank had no organizational ties to the export promotion efforts of the Commerce Department. Furthermore, neither the Export-Import Bank nor Commerce coordinated their export promotion efforts with other elements of U.S. trade and economic policy.

Although the STR had been responsible for U.S. representation in the GATT rounds of trade negotiations since 1962, other negotiations that directly affected U.S. trade remained the responsibilities of other agencies. For example, the State Department retained control of the "East-West" negotiations between the United States and state-controlled economies. State also retained control of "commodity" negotiations aimed at stabilizing world prices for such primary commodities as coffee, cocoa, and tin. The STR Office and the State Department periodically battled for the chance to represent the United States in GATT matters other than the multilateral trade negotiations and on trade issues arising in the Organization for Economic Cooperation and Development. The fact that no single agency represented the United States in all international trade negotiations was further evidence of the absence of coordination in U.S. trade policymaking.

II
THE REORGANIZATION OF 1979

A. THE ALTERNATIVES

By early 1978, dissatisfaction prompted Congress as well as members of the private sector to discuss possibilities for reform of the executive trade machinery. Such reform could take one of two directions. On one hand, the reform could consolidate responsibility for all trade actions into one new trade department. This consolidation approach would provide a fresh start in trade policymaking and would clearly increase the priority given to trade matters. Skeptics of the consolidation approach, however, warned that consolidation would entail the creation of another large bureaucracy and that mere creation of an independent trade department would not eliminate the competing institutionalized trade policy interests of State, Labor, Agriculture, and Commerce.

On the other hand, the reform could leave the responsibility for trade activity scattered among many executive agencies, and could designate a "lead agency" to be responsible for coordination of all trade activities that these other agencies conduct. This coordination approach would avoid the creation of still another bureaucracy. A danger of this approach was that

40. The Export-Import Bank attempts to promote exports by extending credit to foreign purchasers of U.S. goods.
the most obvious candidates for "lead agency" appeared unfit for this role. For example, State and Treasury each had well-established roles outside the trade area that biased their trade policy concerns. Such bias could cause either of these departments to again subordinate trade policy interests to the department's own broader institutional concerns. Commerce, another possible candidate for "lead agency," was widely perceived to lack the vigor and influence that a leadership role in trade policy requires.41

By the time President Carter submitted the Tokyo Round agreements and their implementing legislation to the Congress in June, 1979, several members of Congress had submitted formal proposals for trade reorganization. These proposals represented three basic viewpoints. The "maximalist" approach favored the creation of a new cabinet position to manage all trade activity.42 By contrast, the "minimalist" approach merely favored a shift of responsibility for trade activity among existing agencies.43 Supporters of the "minimalist" approach proposed to shift the responsibility for the enforcement of unfair trade laws from Treasury to Commerce,44 to shift responsibility for East-West trade negotiations and commodity agreements from the State Department to the STR,45 and to merge the U.S. International Trade Commission with the Department of Commerce and International Trade.46

The third approach struck a compromise between the first two approaches.47 The compromise approach sought to centralize trade activity in a new Special Trade Agency,48 modeled after the STR office, without establishing a new department of trade within the Executive Office. This new agency would assume responsibility for enforcement of antidumping and countervailing duty laws49 and promotion of U.S. exports.50 In addition,

41. Some suggested that the President create a White House Council, similar to the Council on International Economic Policy that had functioned in the early 1970's, to assume the role of "lead agency." The inefficiency of the CIEP led to its demise in 1976 when Congress failed to extend its statutory authority. For a discussion of the CIEP's performance, see I.M. Destler, Making Foreign Economic Policy 213-14 (1980). Such inefficiency made a CIEP-type agency likewise seem unfit for the role of "lead agency."


43. The "minimalist" approach was sponsored in a bill by Representatives Jones and Frenzel, H.R. 4567, 96th Cong., 1st Sess. (1979).

44. Id. § 204(a)(1).

45. Id. § 205.

46. Id. § 204(a)(2).

47. The compromise approach was sponsored in a bill by Representative Long, H.R. 4995, 96th Cong., 1st Sess. (1979).

48. Id. § 102(1).

49. Id. § 203(2)(A).

50. Id. § 203(3).
the proposal provided for establishment of a Trade Coordinating Council within the White House to coordinate the trade policy activities conducted by other agencies. The STR would head both the agency and the council.51

B. THE REORGANIZATION

In September, 1979, President Carter, responding to congressional pressure,52 submitted to Congress the reorganization plan jointly formulated by his administration,53 the Senate Finance Committee,54 and the House Ways and Means Committee.55 Neither house of Congress voted to nullify the proposal within 60 days, and in failing to do so, authorized the President to implement the plan.56 President Carter did so by issuing an executive order57 on January 2, 1980.

The new reorganization closely resembled the “minimalist” approach. The authors of the plan rejected the “maximalist” approach for three reasons. First, they feared that a new department would merely enlarge the federal bureaucracy without eliminating attempts by other departments to influence trade policy. Second, creation of a new department requires massive restructuring that could have paralyzed trade policymaking and the enforcement of import laws at the same time that the Tokyo Round agreements and the Trade Agreements Act of 1979 were first taking effect. Third, the administrative chaos surrounding the birth of the Departments of Energy and Education in the fall of 1979 made that time a poor political season in which to attempt the creation of still another cabinet department. The authors rejected the compromise approach because it suffered from the same defects as did the “maximalist” proposal without offering any significant commensurate advantages.

The reorganization concentrated nearly all trade responsibilities within the Department of Commerce and the Office of the STR, thereby drastically reducing the roles played by State and Treasury. In general, the reor-

51. Id. § 301.
52. See note 5 supra.
53. For the Administration’s proposal, see Reorg. Plan and President’s Message, note 6 supra.
56. 5 U.S.C. § 906(a)(1976) provides:
(a) Except as otherwise provided under subsection (c) of this section, a reorganization plan is effective at the end of the first period of sixty calendar days of continuous session of Congress after the date on which the plan is transmitted to it unless, between the date of transmittal and the end of the sixty-day period, either House passes a resolution stating in substance that the House does not favor the reorganization plan.
ganization consolidated responsibility for the administration of all trade programs and day to day trade operations in Commerce. The plan vested the STR with responsibility for the formulation and coordination of trade policy and for the conduct of all international trade negotiations.

More specifically, the plan transferred to Commerce the responsibility for the administration of the antidumping and countervailing duty laws.58 Because "trade is the primary mission"59 of Commerce, the President thought that Commerce could perform these duties more efficiently and effectively than Treasury.60

In order to place all export promotion activities in a single organization,61 the plan transferred to Commerce responsibility for all foreign commercial representation.62 Commerce would also be responsible for the coordination of its own export promotion efforts with those of the U.S. Export-Import Bank.63 In order to achieve this coordination, the plan made the Secretary of Commerce a member of the Board of Directors of the Export-Import Bank.64

The plan also charged Commerce with responsibility for the implementation of the MTN agreements.65 President Carter explicitly recognized that the Tokyo Round agreements not only created new opportunities for the United States, but imposed new obligations on all contracting nations as well.66 Commerce will be responsible for seizing those opportunities and for monitoring compliance with those obligations. The President further ordered that Commerce operate a Trade Complaint Center where U.S. domestic interests could register complaints and obtain information regarding available remedies for violations of the MTN agreements.67 Commerce will retain control over export controls, trade adjustment assistance for firms and communities, and the research of trade problems.68

More significantly, the plan strengthened the trade bureaucracy of Commerce by restructuring the Department itself. The plan created several new positions. The Deputy Secretary of Commerce will serve as an assis-

58. Reorg. Plan, supra note 6, § 2a.
59. President's Message, supra note 6, at 1732.
60. Id.
61. Id.
63. Id.
64. Reorg. Plan, supra note 6, § 3.
65. Reorg. Plan, supra note 6, § 2a. For a discussion of the activities that the Plan requires Commerce to conduct to fulfill its responsibility for MTN implementation, see President's Message, supra note 6, at 1733.
66. Id.
67. Id.
68. Reorg. Plan, supra note 6, § 2a.
tant to the Secretary and will have responsibilities in all areas of Commerce. The Undersecretary of Commerce for International Trade will have overall responsibility for all trade programs. The Assistant Secretary for Trade Administration will administer the antidumping and countervailing duty laws, and the Assistant Secretary for Export Development will be responsible for promotion of U.S. exports and for all foreign commercial representation. Finally, the Assistant Secretary for Trade Policy and Programs, occupying an already existing position, will be responsible for MTN implementation. Creation of positions responsible only for trade activity guaranteed that Commerce will devote more attention to trade activities, especially export promotion.

The plan changed the name of the STR to the United States Trade Representative (USTR). While the plan assigned to Commerce the responsibility for the day to day administration of the unfair trade laws, export development programs, and MTN implementation, the plan vested the USTR with the responsibility for policy supervision and overall coordination of all three areas.

The plan charged the USTR with responsibility for representing the United States in all trade negotiations regarding GATT matters, East-West trade, commodity agreements, and matters considered by both the Organization for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD).

The plan made the USTR responsible for the daily conduct of negotiations of specific issues as well as for the development of long term policies and strategies for negotiation. The assignment to the USTR of responsibility for the daily conduct of negotiations was intended to insure "that all trade negotiations are handled consistently and that our negotiation leverage is employed to the maximum . . . ." The plan created the Trade Negotiations Committee, chaired by the USTR and composed of Commerce, State, Treasury, Agriculture, and Labor, to coordinate these daily

69. Id. § 2(b)(1).
70. Id. § 2(c). See also President's Message, supra note 6, at 1732.
71. Id.
72. Id. These two Assistant Secretary positions were created by Reorg. Plan, supra note 6, § 2d.
73. President's Message, supra note 6, at 1733.
74. Reorg. Plan, supra note 6, § 1(a).
75. Id. § 1(b)(3).
76. Id. § 1(b)(3)(A).
77. Id. § 1(b)(3)(E).
78. Id.
79. Id. § 1(b)(3)(A).
80. President's Message, supra note 6, at 1731.
81. Id.
operational aspects of trade negotiations. In addition, USTR would be responsible for formulation and implementation of U.S. international investment policy and for the coordination of all trade matters involving energy.

To facilitate performance of these duties, the plan made the USTR a member of the National Advisory Council on International Monetary and Financial Policies and of the Boards of Directors of the Export-Import Bank and the Overseas Private Investment Corporation.

The plan provides that the Trade Policy Committee (TPC), a cabinet-level interagency committee composed of the Secretaries of State, Treasury, Defense, Interior, Commerce, Labor, and Energy, the Attorney General, the Director of the Office of Management and Budget, and the Chairman of the Council of Economic Advisors, would serve as the USTR's principal advisor. The plan expanded the TPC to include the Secretary of Transportation, the Assistant to the President for National Security Affairs, and the Director of the U.S. International Development Cooperation Agency, and elevated the Secretary of Commerce to the position of the Vice Chairman of the TPC. The plan expands the responsibilities of the TPC to coincide with the new responsibilities of the USTR.

Finally, the plan made the USTR the principal advisor to the President on international trade policy and charged the USTR with responsibility for advising the President on the impact of other policies of the U.S. government on international trade.

III
PROBLEMS AND PROSPECTS

The new reorganization is a positive step toward solving many of the problems attributable to the previously disorganized administrative framework for trade activity. Nevertheless, the plan may face some serious problems. When proposing his reorganization plan to Congress, President Carter stated, "[T]hese improvements will be achieved with no increase in personnel or expenditures except for an annual expenditure of about

82. Id.
83. Reorg. Plan, supra note 6, § 1(b)(3)(C).
84. Id. § 1(b)(3)(F).
85. President's Message, supra note 6, at 1731.
86. Reorg. Plan, supra note 6, § 3.
87. Id. § 4(a).
88. Id. § 1(b)(1).
89. Id.
90. Id.
91. Id.
$300,000 for the salaries and clerical support of the three additional senior Commerce Department officials . . . .92 The subsequent fiscal restraints that President Carter announced on March 13, 1980,93 have presumably strengthened his resolve of the previous September to spend no additional funds on the trade reorganization. It would appear, however, that the goals of this massive restructuring effort cannot possibly be fully achieved without some increase in expenditures.

Failure to increase personnel, for example, could easily be a ground for skepticism. At the height of the Tokyo Round negotiations, the USTR Office employed about seventy professionals, most of whom were stretched to the limit with their respective duties. The plan has made the USTR Office responsible for large new policy areas without providing for any increase in personnel. The USTR can and has disguised the swelling of the Executive Office of the President by "detailing" employees of Commerce, Agriculture, and State to the USTR Office, thereby hiding personnel increases in the budgets of other departments. A high quality office, however, cannot easily be built through dependence upon temporary "detailees" from other departments.

A second potential problem stems from the apparent scope of the USTR's functions under the plan. If the words of the plan are taken literally, this new assignment of functions to the USTR would radically alter the way the United States conducts its broader foreign policy by allowing the USTR, as the spokesman for trade policy, to control other important segments of U.S. foreign relations. This result would have a certain nice irony because it would be a mirror image of the problems that gave rise to creation of the USTR position in the first place.94 Such result, however, is unlikely to be workable, or permitted, in practice.

For example, the assignment to the USTR of responsibility for "trade issues involving energy"95 surely does not mean that the USTR will now take over price negotiations with the OPEC nations — a subject fraught with policy implications far broader than those usually associated with trade in goods. Similarly, the assignment of responsibility for "East-West trade matters" probably does not mean that the USTR may revive the issue of Soviet emigration in order to explore possibilities for granting most-favored nation status to the Soviet Union, or that the USTR may initiate discussions leading toward lifting the U.S. embargo on trade with Cuba.

92. President's Message, supra note 6, at 1734.
94. See notes 16-21 supra and accompanying text.
Clearly, such issues require coordination of not only the trade policy actions of various agencies, but coordination of U.S. trade policy with larger foreign and economic policy goals as well. It is unlikely that the reorganization will greatly alter the means of making policy regarding such issues. When extremely volatile issues affect more than one agency, the working relationship that evolves between the affected agencies, the force of personality and viewpoint, access to the President, and enjoyment of the President’s confidence usually determine who will predominate. Therefore, although the plan appears to assign lead responsibility to the USTR on some of these issues, other agencies may ultimately assume this responsibility. The full scope of the USTR’s new responsibilities will not be known until the working relationship evolves between the USTR, the Departments of State and Energy, and the National Security Council.

The third problem involves the relationship between the USTR and Commerce in antidumping and countervailing duty matters. While the plan assigns Commerce responsibility for conducting antidumping and countervailing duty investigations, it assigns the USTR responsibility for “policy oversight” and “coordination” with respect to those investigations. The USTR is to exercise this vaguely defined oversight “to the extent legally permissible” and should direct this oversight “toward the establishment of new precedents, negotiation of assurances, and coordination with other trade matters . . . .” The line between the USTR’s responsibilities for overall policy guidance and Commerce’s responsibility for administering specific statutory procedures is undefined. The amended antidumping and countervailing duty laws contribute to the uncertainty by authorizing the USTR to negotiate agreements, with foreign producers in antidumping cases and with foreign governments in countervailing duty cases, in which the United States would terminate U.S. investigations in return for certain assurances regarding the foreign export practices. The ultimate delineation of responsibilities will evolve with practice, but until then, conflicts are sure to arise.

A fourth problem lies in the area of export promotion. The new export promotion responsibilities of Commerce could become merely the latest in a series of largely unsuccessful export initiatives of the last decade. These initiatives have shown that U.S. competitiveness will not improve through mere “jawboning” in the absence of basic policy changes. The international competitive difficulties of the United States stem from a long period of inadequate capital formation, poor productivity, lagging innovation,

96. President’s Message, supra note 6, at 1730.
97. Id.
aimless federal research and development programs that support dying industries at the expense of the most competitive ones, and disincentives written into the tax, antitrust, and other laws. The United States could effectively cure these competitive difficulties only through policy changes that would eliminate these underlying causes. Although the reorganization will result in the devotion of more attention to basic changes in these areas, it cannot itself effect the underlying policy changes that could remedy these difficulties. Therefore, the prospects for significant improvement of U.S. export figures as a result of the reorganization alone are gloomy.

CONCLUSION

The reorganization of 1979 promises some relief from one of the United States' biggest problems in international trade—the absence of a coherent national trade policy. Mere shifting of responsibilities among agencies, however, in the absence of specific policy changes cannot totally alleviate this problem. In addition, the shifting of many responsibilities at this time could detract from the most immediate business of the federal trade establishment—to hold the trading system together, to make the Tokyo Round agreements work, and to get the new U.S. trade law off to a successful start. Inevitably, there will be a period of transition as new persons and agencies adjust to new roles. How quickly and effectively these roles are assumed will in large part determine not only the success of the reorganization, but also, the success of the entire Tokyo Round endeavor.