

In Brief

Case Studies in US Trade Negotiation Volume 1: Making the Rules

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The cases in this volume cover five of the most important trade negotiations, all focused on “making the rules”—the process of establishing how the trade system operates. The cases both explore the substance of trade agreements and delve into the negotiation process. They describe the *who*, *how*, and *why* of decision making, as well as the *what* of trade—i.e., the cases examine not only the larger issues surrounding trade policy today but also how participants seek to exert influence and how the system evolves as a result of these pressures. A companion volume, *Resolving Disputes*, offers cases on trade disputes.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Negotiated during the World Trade Organization’s Uruguay Round of trade talks, the 1994 TRIPS agreement established the most comprehensive set of global trade rules for intellectual property. It obligated WTO members to adopt policies protecting patents, trademarks, and copyrights. While countries remained free to provide even more protection than TRIPS required, the agreement set minimum standards. But the TRIPS negotiation might not have happened without a concerted effort by the pharmaceutical, software, and entertainment industries to get intellectual property on the Uruguay Round agenda and to press for completion of an agreement.

After the Uruguay Round was concluded, some argued that the TRIPS agreement would largely benefit rich countries while hurting poor nations. Some representatives of developing countries and nongovernmental organizations (NGOs) were especially concerned that TRIPS would decrease access to medicines in developing countries. These groups fought for their cause, both at the WTO and around the world, and secured the Declaration on TRIPS and Public Health at the 2001 WTO ministerial meeting in Doha.

The Multilateral Agreement on Investment (MAI). Negotiations for the MAI began in 1993 at the Organization for Economic Cooperation and Development (OECD) with great expectations. The talks aimed to create global rules on foreign investment that would protect investors, remove governmental barriers and controls on foreign investment, and establish an effective system for settling disputes. However, the talks failed to produce an agreement. A well-organized campaign against the MAI negotiations played a role in the treaty’s demise: Six hundred organizations in 70 countries fought strenuously against it. But difficulties that emerged in the talks themselves were just as important. Negotiators had substantive disagreements about what the treaty should achieve. In addition, governments were often not ready or were unable to make the commitments necessary to reach agreement.

Trade Promotion Authority. Known until 2001 as fast track, trade promotion authority plays a major role in determining US trade policy. The US Constitution gives the president the authority to negotiate international trade agreements. However, Congress must approve any such agreement and the legislation to implement consequent changes in US statutory law. To many trade policymakers, this arrangement blunts the negotiating power of the United States in trade talks because other countries know that Congress can alter or reject any commitments made at the table. Therefore, from 1974 to 1993

Congress granted the president fast-track authority: In return for regular consultations and timely notification by the executive, the legislature committed to an expeditious yes-or-no vote to implement trade agreements with no amendments or changes.

But beginning in the early 1990s, fast track became the subject of fierce political debate, largely centered on concerns about global trade liberalization. President Bill Clinton was unsuccessful in obtaining fast-track authority in 1997, but President George W. Bush was able to obtain it in July 2002. By renaming fast track “trade promotion authority,” the Bush administration focused not on moving a bill quickly through Congress but on promoting trade. In addition, through bipartisan negotiations, Congress succeeded in reforming trade adjustment assistance, providing additional aid to US workers displaced by trade liberalization.

The 1999 US-China Bilateral Trade Agreement and Battle for Permanent Normal Trade Relations (PNTR) with China. On December 11, 2001, China became a member of the WTO. Many say the 1999 US-China bilateral trade agreement and the vote in Congress to permanently establish normal trade relations with China paved the way for China’s WTO accession. Even though China was not a WTO member, the United States had granted China most favored nation (MFN) trading status since 1979. Yet US law required annual renewal of China’s trade status, a process that often became a focal point in Congress for protests over human rights issues, security concerns, and the growing US trade deficit with China.

To support China’s WTO accession, the United States had to commit itself to nondiscriminatory treatment by agreeing to make China’s MFN status permanent—by granting PNTR—and thereby giving up the right to annual reviews. The fight to win passage of PNTR in the US Congress was a classic exercise in legislative coalition building. Well-timed endorsements—including by Alan Greenspan and former presidents Gerald R. Ford, Jimmy Carter, and George H. W. Bush—also played a role in tipping the balance. Moreover, incorporating the Levin-Bereuter provisions—to monitor China’s performance on human rights, address harmful import surges, and ensure that China complies with all its commitments in the US-China agreement—directly into the PNTR bill broke the tie between trade and human rights, while still providing critics with a mechanism for focusing attention on Chinese behavior.

US-EU Mutual Recognition Agreements. In 1998 the United States and the European Union negotiated mutual recognition agreements (MRAs) to eliminate duplicative testing, streamline procedures, lower costs, and decrease the time needed to bring new products to market. The MRAs applied to nearly \$50 billion in transatlantic trade in six sectors: medical devices, pharmaceuticals, recreational craft, telecommunications, electromagnetic compatibility services, and electrical equipment. An important player in the MRA negotiations was the Transatlantic Business Dialogue, a group of American and European business leaders that came together as part of a US government initiative.

The MRA negotiations were notable for involving regulatory agencies in trade talks. Indeed, that involvement created some tension domestically: US regulatory agencies, with a mission of safeguarding consumers, had run-ins with the agencies seeking to facilitate trade. Tension also arose between US and European agencies that had different standards and methods for certifying products. Though an agreement was concluded, implementation proved to be a problem.

The cases illustrate how a variety of participants are influencing and designing global trade rules. Decisions are made in a political context through negotiations between governments, corporations, NGOs, and interest groups. International agreements not only establish rules but also determine who makes those rules and who enforces them. In short, international trade agreements have become highly political endeavors because they affect the distribution of both income and power.

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