Melania OGRODNICZUK
Uniwersytet Jagielloński

THE INTERNATIONAL TRADE POLICY IN THE AMERICAN POLITICAL SYSTEM

Abstract
United States foreign policy, including trade policy, is a complicated process, complex mechanism, with many institutions participating. There are many participants in the process of US foreign trade policy-making. The article focuses on the description of the most important players in the foreign trade policy game and their influence on the subject.

Key words: foreign trade, trade policy, constitution, Congress, president.

1. International trade policy in the American Constitution

The American Constitution gives the right to manage the foreign policy to the President (government) and the Congress[1]. Among them we can enumerate those related to an international trade policy. According to the Constitution a division of tasks in American foreign trade policy presents as follows:
According to the Article 1 Section 8 „The Congress shall have Power:

- To lay and collect Taxes, Duties, Imposts and Excises (…), (that) shall be uniform throughout the United States;
- To regulate Commerce with foreign Nation;
- To (…) regulate the Value (…) of foreign Coin".

The third Clause of Section 8, that says: „The Congress shall have Power (…) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes" [2] is known as „the commerce clause". This provision defines a wide range of Congresses participation in trade policy[3]. And it stirred up controversies from the very beginning, because another institutions claimed for their rights in creating trade policy. Despite of, as Paweł Laidler states in his „Guide" of the American Constitution, „from the correct functioning of the system point of view, granting the competences to regulate an international trade to the federal power, was the only proper solution"[4]. Those controversies were many times resolved in a court decision.

[1] Henkin Louis, *Foreign Affairs and the United States Constitution*, Clarendon Press, Oxford 1996.
[2] *The Constitution of the United States, http://constitutionus.com/*, (access: 17.01.2015).
[3] Tokarczyk Roman Andrzej, *Prawo amerykańskie*, Wolters Kluwer Polska, Warsaw 2009, p. 142.
[4] Laidler Pawel, *Konstytucja Stanów Zjednoczonych Ameryki. Przewodnik*, Wydawnictwo

According to the Article 2 Section 1 of the Constitution „the executive Power shall be vested in a President of the United States of America". Therefore in the case of Congress the Constitution directly designates some elements of trade policy to it, but President's right to create this policy lies in his executive power.

Until 1922 the American President had only limited capacity to control foreign trade: the treaties. Until 1934 the Congress claimed, that for example the tariffs are an element of internal – not international – policy. But this interpretation of a division of tasks wasn't effective in practice. The legal acts, that were implemented in the following years, delegated another competences to the President. This contributed a total change in American strategy and a conception of global trade, in which the most important links are international trade agreements.[5] But still the President's power in foreign trade is scrupulously controlled by the Congress – to conclude an international agreement the President needs the approval of $2/3^{rd}$ of the Senate.

But apart from international agreements, the President can also:

- negotiate the agreements under his treaty power (the agreements, that are the results of treaties and related to them);
- conclude so-called *President-Congress agreements*, that need an approval of simple majority of votes from the House and the Senate;
- sign the agreements under his commander in chief of the army and navy power; those so-called *sole executive agreements* can be concluded without any cooperation with the Congress.[6]

Congressman Lee H. Hamilton in 2002 described the following foundations of the American foreign policy:

- The President as the major creator of foreign policy;
- The Congress as both a critic and a partner of the President in his foreign policy actions;
- Consultations between those two powers as a very important mechanism.[7]

This conclusion can definitely be applied to a foreign trade policy of the United States.

2. Selected institutions connected with the American trade policy and engaged to the process of international trade policy.[8]

The *Omnibus Trade Act*, passed in 1992, gave the foundations to create the Trade Promotion Coordinating Committee – TPCC. It was established by the president in 1993 under the Executive Order No. 12870. It involved 19 institutions, among them there were the federal Departments, and also federal agencies and government corporations. The list of institutions appeared as follows: the

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Uniwersytetu Jagiellońskiego, Kraków 2007, p. 47.

[5] Stein Herbert, *Presidential Economics. The Making of Economic Policy From Roosevelt to Clinton*, AEI Press, Washington (D.C.) 1994.

[6] Ludwikowski Rett L., *Handel międzynarodowy*, Wydawnictwo C.H. Beck, Warszawa 2012.

[7] Hamilton Lee H., *The Making of U.S. foreign policy: The roles of the President and Congress over four decades*, w: James A. Thurber (red.), *RIVALS FOR POWER. Presidential-Congressional Relations*, Rowman & Littlefield Publishers Inc, Lanham 2002, p. 207.

[8] Wilson James Q., *American government: institutions and policies*, D.C. Heath, Lexington 1989.

Department of Commerce, the Department of State, the Department of the Treasury, the Department of Agriculture, the Department of Energy, the Department of Transportation, the Department of Defense, the Department of Labor, the Department of the Interior, United States Agency for International Development - USAID, Trade and Development Agency – TDA, Environmental Protection Agency – EPA, U.S. Information Agency – USIA, Small Business Administration – SBA, Overseas Private Investment Corporation - OPIC, Export-Import Bank of the United States - Ex-Im Bank, United States Trade Representative - USTR, Council of Economic Advisors – CEA, Office of Management and Budget – OMB, National Economic Council – NEC, and National Security Council – NSC.[9]

For the purposes of this article in the first place is mentioned the Office of the United States Trade Representative as responsible for managing the U.S. trade policy, next the parts of particular government Departments involved in international trade, then another government agencies and other institutions. This catalogue doesn't list all the institutions involved in American foreign trade, but indicates the most active players.

1) Office of the United States Trade Representative[10]

The Office was established in 1962 as the Special Trade Representative - destined to manage the American trade negotiations. Its first important task was to participate in Kennedy Round trade negotiations under General Agreement on Tariffs and Trade[11]. Consecutive acts extended its scope of tasks. Since 1970s. the Office is a part of President's Executive Office. Current name was given to the Office by the Executive Order No. 12188 of 1980. Since then the USTR holds a function of creating policy, managing international trade negotiations on behalf of the American Government, and representing the American foreign trade interests among international institutions. The decisions in American international trade policy are made in a process, in which many institutions take part, although the USTR is responsible for the implementation of those decisions. The most important functions and tasks of the USTR are:

- responsibility for development and coordination of the American foreign trade policy and manage an international trade and investment negotiation;
- playing the role of President's main advisor in foreign trade policy and on another government policies impact on foreign trade;
- preparing the U.S. Policy in the main aspects of foreign trade, such as GATT and protection of American rights resulting from bi- and multilateral trade agreements;
- responsibility – in cooperation with the Department of Commerce – for monitoring another government's fulfilling their obligations, resulting from their trade agreements with USA;
- playing the role of the main U.S. negotiator in bilateral investment flow negotiations;

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[9] Official website: http://govinfo.library.unt.edu/npr/library/direct/orders/tradepromotion.html

[10] Official website: http://www.ustr.gov/about-us/history (access: 14.01.2015).

[11] Lovett William Anthony, Eckes Alfred E. Jr., Brinkman Richard E., *U.S. Trade Policy: History, Theory, and the WTO*, M.E. Sharpe, Inc., Armonk (NY), 2004, p. 147.

- coordination of common trade policy with another government agencies;
- being the main person who comments on foreign trade matters on behalf of the President;
- to report to and to be responsible to the President and Congress for administration of trade agreements program;
- performing a role of President's and Congress's advisor on the matter of non-tariff barriers, international trade agreements and others related to foreign trade issues;
- accepting the anti dumping petitions from the American exporters about another country's unfair practices[12] (inconsistent with the provisions of GATT);
- managing all the WTO negotiations.

2) U.S. Department of Commerce[13]

U.S. Department of Commerce (established in 1903 as Department of Commerce and Labor, as Department of Commerce since 1913[14]) in its foreign trade policy operates for the benefit of U.S. trade competitiveness on global market[15]. The goal is to strengthen an international economic position of the United States and to support its foreign trade by making the new markets accessible for the American goods and services.

Foreign trade policy is implemented by the special agency of the Department: the International Trade Administration (ITA). ITA, managed by the Undersecretary of Commerce for International Trade, was established in 1980 to strengthen the U.S. industry's competitiveness, promote trade and investments, and ensure fair trade by enforcing the implementation of the American trade law and the obligations upon trade agreements. It also helps the American organizations to compete with their both domestic and foreign competitors[16]. The International Trade Administration is divided into four sub-units[17], that have specific tasks:
- Foreign Commercial Service – promotion of the American export, particularly of small businesses, diplomatic support for the American enterprises all over the world[18];
- Manufacturing and Services – strengthening of the American competitiveness abroad by helping to create specialized trade policy for every branch of industry;
- Market Access and Compliance – support for the American businesses and helping to develop their trade potential by the reduction of barriers;
- Import Administration – enforcing the American trade law and the laws upon trade agreements, to prevent from an unfair import practices and to protect a competitiveness of the American businesses[19].

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[12] Ludwikowski Rett L., *Ameryka – świat biznesu. 250 pytań i odpowiedzi na temat handlu zagranicznego*, Instytut Przemysłowo-Handlowy im. Mirosława Dzielskiego, Kraków 1991, p. 68.
[13] Goldberg Jan, *The Department of Commerce*, The Rosen Publishing Group, Inc., New York (NY) 2006.
[14] Charnovitz Steve, *Reinventing the Commerce Dept.*, „Journal of Commerce", July 12, 1995.
[15] *The Department of Commerce*, University of Michigan Library, Ann Arbor (MI) 2007.
[16] Fennell Mark, *Introduction to the Department of Commerce (Citizen's Guide to Federal Agencies)*, Kindle Edition, Amazon Digital Service, Inc., 2011.
[17] Griffin Robert J., *The Department of Commerce*, Chelsea House Publishers, New York (NY) 1991.
[18] Shawn Dorman, *Inside a U.S. Embassy: Diplomacy at Work. The Essential Guide to the Foreign Service*, Potomac Books, Inc., Sterling (VA) 2011, p. 20.
[19] U.S. Department of Commerce, *The Department of Commerce: Condensed History, Duties, and*

3) U.S. Department of the Treasury

U.S Department of the Treasury

In the case of the U.S Department of the Treasury[20], established by the Congress act of 1789[21], the role in an international trade policy involves mainly a collection of tariffs and other trade duties. Apart from that it plays the main advisory role in foreign financial, monetary, economic, trade and tax policies. [22]

Within the Department function:

- the Office of Economic Policy, responsible for analyzing and reporting on current and anticipated economic developments in American and world economy, and supporting the process of economic decision making.
- the Office of International Affairs, and in its structure: Trade and Investment Policy deputat, who works to promote open trade and investments policy internationally and for the U.S. With the use of the Office of Trade Finance and Investment Negotiations and the Office of International Trade, the Department of the Treasury cooperates with another government agencies to create the policy of foreign trade and investments, participates in an international negotiations related to trade liberalization, in OECD committees on trade liberalization, etc.

4) U.S. Department of State[23]

U.S. Department of State

The United States Department of State (established in 1789 as a Department of Foreign Affairs)[24] is responsible for the American foreign policy[25]. Through its one unit - Bureau of Economic and Business – the Department implements its tasks of foreign trade policy: so-called Trade Policy and Programs[26]. Those programs support to attain the objectives of trade policy by creating the opportunities for developing export potential of American businesses, farmers and employees in global (like WTO), regional (like NAFTA) and bilateral (like US-Singapore FTA) trade initiatives. There are four offices:

- Office of Agriculture, Biotechnology, and Textile Trade Affairs, that has the following tasks: to harmonize the international standards, to negotiate the Food Assistance Convention (that coordinates the international actions in the face of crisis situations), to object the unjustified restrictions in agricultural trade, to promote open trade of basic foods.
- Office of Bilateral Trade Affairs (BTA), that participates in many key initiatives in trade and economic affairs, such as: striving the Congress's support for bilateral

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Practical Operation, Biblio Bazaar LLC., U.S. Department of Commerce, Washington (D.C.) 2008.

[20] Official website: www.treasury.gov (access: 31.01.2015).

[21] Kurian George Thomas (ed.), *A Historical Guide to the U.S. Government*, Oxford University-Press, Inc., New York (NY) 1998.

[22] Kaufman Judith C., *United States Department of the Treasury: current issues and background*, Nova Science Publishers, New York 2003.

[23] Mania Andrzej, *Department of State 1789-1939. Pierwsze 150 lat udziału w polityce zagranicznej USA*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2011.

[24] Plischke Elmer, *U.S. Department of State: A Reference History*, Greenwood Press, Westport (CT) 1999.

[25] Rothgeb John M. Jr., *U.S. Trade Policy: Balancing Economic Dreams and Political Realities*, CQ Press, Washington (D.C.) 2001.

[26] Official website: www.state.gov (access: 31.01.2015).

trade agreements, and economic dialogues, supporting the US-EU Transatlantic Economic Council and transatlantic economic dialogue, promoting a development of the African countries by the implementation of the *Africa Growth and Opportunity Act*, working on trade development with Middle East and Northern Africa.

- Office of Intellectual Property Enforcement (IPE), that promotes an American innovativeness by forcing the effective protection and enforcing intellectual property rights (IPR). The staff of the Office operate by the embassies and consulates to ensure, that the American intellectual property rights owners are protected abroad. They also take part in bi- and multilateral negotiations and talks concerning IPR, support the creating of international law in that matter.
- Office of Multilateral Trade Affairs, that runs a trade policy under multinational institutions, like WTO or OECD. Provides the expertise for the needs of regional and bilateral trade negotiations, and the negotiations in other areas: labor market, environment, services, government supplies, tariff protection means, trade potential building. Supports the bilateral WTO access negotiations and the American trade programs.[27]

5) U.S. Department of Defense[28]

The U.S. Department of Defense (established in 1789 as the Department of War) also takes its part in U.S. foreign trade policy. One of its agencies is the Defense Security Cooperation Agency, which - among others - offers a financial and technical assistance in the area of defense for foreign countries and organizations, through the following programs[29]:

- Foreign Military Sales (FMS), under which the arms, services and training support are provided. The countries that participate in that program can make their payments using their own or foreign funds (for example from support programs sponsored by USA or other grants). The President designates the countries or international organizations that can participate in this program. For that designation he needs the Department of State's recommendation. The Department also approves the individual programs.
- Direct Commercial Sales (DCS). Under this program the American businesses that offer products and services related to defense, receive special export licenses. With those licenses they can negotiate the terms of trade exchange directly with foreign recipients of their products.[30]

The programs mentioned above, along with the Foreign Military Financing (FMF) and the International Military Education and Training (IMET), form the Security Assistance System[31] under the Security Cooperation. This cooperation for

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[27] Moskin Robert J., *American Statecraft: The Story of the U.S. Foreign Service*, Thomas Dunne Books, St. Martin's Press, New York (NY) 2013.

[28] Borklund Carl W., *The Department of Defense*, Praeger, New York (NY) 1968.

[29] Official website: www.dsca.mil (http://www.dsca.mil/PressReleases/fmsadvantagev2.pdf) (access: 31.01.2015).

[30] Glennon John P., Trask Roger R. (ed.), *The Department of Defense: documents on organization and mission, 1978-2003*, Office of the Secretary of Defense, Historical Office, Washington (D.C.) 2008.

[31] Gholz Eugene, Sapolsky Harvey M., Talmadge Caitlin, *US Defense Politics: The origins of security policy*, Routledge 2013.

security's purpose is to build the relations with other countries, that would serve the American interests, to build in allied countries the effective defense system, to enable the U.S. forces taking part in missions during a time of peace[32]. Those are the elements of defense policy, although effect also the international trade in the armaments industry.

6) U.S. Department of Agriculture[33]

A significant role of the U.S. Department of Agriculture (established in 1889)[34] in trade policy follows from the fact, that United States are the world's largest food producer and exporter. At the same time the American producers manufacture more than the domestic consumers can purchase. Therefore it is very important to extend the access to foreign markets. Especially the markets of developing countries, where the demand for American products is large, and also where the American policy of foreign economic aid (which stimulates the trade) is realized.

The goal of the trade policy of the Department is then to liberalize a trade in the widest range. This could enable to expand the existing and conquer the new markets by various trade agreements. The Department:

- offers various trade programs, supporting the manufacturers and the state governments in their food and agricultural policy (financial, research or promotion support, that helps to increase the competitiveness on foreign markets)[35];
- takes part in the foreign aid programs by supplying the food surplus to the developing countries;
- conducts analyses of the economic effects of the trade policy on the American and global agriculture; the results of those analyses are published as numerous reports;
- provides the newest information and statistical data on agricultural trade[36].

7) U.S. Department of Labor[37]

Most of the international trade agreement include employee rights provisions. That is why the Department of Labor[38] also plays one of the roles in creating U.S. foreign trade policy. Those provisions' goals is to ensure that the benefits from trade liberalization would concern also the worker's rights and that their rights wouldn't be violated. Therefore the consultation with the Department of Labor is the permanent element of every free trade agreement negotiation process.

As a part of the Depratment operates the Bureau of International Labor Affairs (ILAB), with the special Office of Trade and Labor Affairs (OTLA). Its role is to

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[32] *Functions of the Department of Defense and Its Major Components*, By: Department of Defense, CreateSpace Independent Publishing Platform, 2013.

[33] Official website: http://www.usda.gov/wps/portal/usda/usdahome?navid=TRADE_POLICIES&navtype=RT&parentnav=MARKETING_TRADE (access: 02.02.2015).

[34] Chew Arthur P., *The United States Department of agriculture, its structure and functions*, U.S. Government Printing Office, Washington (D.C.) 1940

[35] Henneberry T.J., *Federal entomology: beginnings and organizational entities in the United States Department of Agriculture, 1854-2006, with selected research highlights*, Agricultural Research Service, U.S. Department of Agriculture, Washington (D.C.) 2008.

[36] Rosaler Maxine, *The Departament of Agriculture*, The Rosen Publishing Group, Inc., New York (NY) 2005

[37] Cochran Clarke E., Mayer Lawrence C., T. R. Carr, Joseph N. Cayer , Mark McKenzie, *American Public Policy: An Introduction*, Wadsworth Cengage Learning, Boston (MA) 2011.

[38] Official website: www.dol.gov (access: 03.02.2015).

verify if the foreign agreement party obeys its obligations towards workers. Upon the complains from institutions or trade unions, the Bureau also investigates the cases of employees rights violation, and prepares the report with recommendations. Those reports and recommendations help with resolving the disputes between USA and trade partner and making the decision about further cooperation upon the trade agreement.

8) U.S. Department of Homeland Security[39]

The United States Department of Homeland Security was established in 2001 after the events of September 11th. Its purpose is to coordinate the operations of U.S. intelligence and security agencies[40]. Since 2003 the federal agency – U.S. Custom Service – was included into the Department, and the U.S. Customs and Border Protection (CBP) was created[41]. This part's responsibility is (among others) to ensure the border protection and to enable the legal international trade. Thanks to its cooperation with many institutions engaged in international trade, other federal agencies and foreign governments, it can guarantee the American foreign trade safety by ensuring that the U.S. and international trade law is obeyed, protecting the market from dangerous products etc[42].

9) Export-Import Bank of the United States

The Ex-Im Bank[43], established in 1934, is the federal credit agency. Its purpose is to take part in financing the export of American goods and services to international markets. The Bank provides the capital guarantees, export credit insurance, etc[44]. It also offers the financial support for development of safe international transport system, that allows to buy the equipment, cars, technologies, safety systems[45]. All those activities are the elements of U.S. foreign trade policy in its more protectionist version.

10) U.S. Agency for International Development

After 1945 the Economic Cooperation Agency (ECA) was created, and it was responsible for the implementation of Marshall Plan in Europe. In 1961 President Kennedy established USAID[46]. Its activity consists in supporting the economic development of the countries by: assistance in implementing improvements in trade system, so that it could integrate with the world trade system; assistance in improving legal systems and domestic trade regulations; programs that support the

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[39] Milakovich Michael E., Gordon George J., *Public Administration in America*, Cengage Learning, Andover 2012.

[40] Wilson James Q., *American Government: Brief Version*, Wadsworth Cengage Learning, Boston (MA) 2011.

[41] Official website: www.cbp.gov (dostęp: 03.02.2015).

[42] Bullock Jane, Haddow George, *Introduction to Homeland Security. Second Edition*, Elsevier Inc., Burlington (MA) 2006.

[43] Becker William H., McClenaham William M., *The market, the state, and the Export-Import Bank of the United States, 1934-2000,* Cambridge University Press, Cambridge (UK); New York (NY) 2003.

[44] Feinberg Richard E., *Subsidizing success: the Import-Export Bank in the U.S. economy*, Cambridge University Press, Cambridge 1992.

[45] Hillman Jordan Jay, *The Import-Export Bank at work: promotional financing in the public sector,* Quorum Books, Westport (CT) 1982.

[46] Essex Jamey, *Development, security, and aid: geopolitics and geoeconomics at the U.S. Agency for International Development*, University of Georgia Press, Athens 2013.

countries in lowering the costs and risks of business activities. Thanks to that those countries should become the strong trade partners and create fast growing markets for American products[47].

11) Overseas Private Investment Corporation[48]

OPIC[49] is a financial institution of the U.S. government, that was established in 1971. It supports the American foreign trade policy by engaging the private capital to international initiatives. It also helps the American businesses in achieving a strong position on foreign, developing markets, generating the profits, creating jobs on domestic and foreign markets. To complete those goals it provides financing, guarantees, insurance for political risks to the investors[50].

12) U.S. Trade and Development Agency[51]

USTDA[52] is an independent government agency for foreign aid, established by the Congress in 1961. Its mission is to help businesses to create new job positions, by increasing the export of U.S. goods and services upon the developing programs for the countries that are the American trade partners. It grants the projects in developing countries, which goals are to develop modern infrastructure and open trade system. One of the criteria in selecting the project for the grant is if it offers benefits both for the country that gets the support, and the USA (for example the opportunity for the American businesses to export goods and services under the project).

The USTDA offers various programs such as:

- International Business Partnership Program, that proposes to the countries-trade partners the opportunity to learn about current and innovative U.S. technological achievements (by attending in presentations, trainings and workshops), which helps to develop the cooperation and increase the American export;
- a support for small businesses by consulting and giving the opportunity to take part in project financed by the USTDA[53].

13) U.S. International Trade Commission

The USITC's[54] mission is to administrate the American trade law, to provide the independent, high quality analyses and information to the President, Congress and USTR, and to support them in tariff, international trade and competitiveness

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[47] United States General Accounting Office, *U.S. Agency for International Development: Status of Achieving Key Outcomes and Addressing Major Management Challenges: Report to the Ranking Minority Member, Committee on Governmental Affairs, U.S. Senate, U.S.*, Government Printing Office, Washington (D.C.) 2001.

[48] Brennglass Allan C., *The Overseas Private Investment Corporation: a study in political risk*, Praeger, New York (NY) 1983.

[49] Official website: www.opic.gov (access: 03.02.2015).

[50] Moran Theodore H., *Reforming OPIC for the 21st century*, Institute for International Economics, Washington (D.C.) 2003.

[51] U.S. Trade Development Agency, *U.S. Business Guide to USDA*, U.S. Trade and Development Agency, Arlington (VA) 2009.

[52] Official website: www.ustda.gov (access: 04.02.2015).

[53] Hinkelman Edward G., Putzi Sibylla, *Dictionary of International Trade: Handbook of the Global Trade Community Includes 21 Key Appendices*, World Trade Press, Petaluma (CA) 2005, p. 180.

[54] Official website: www.usitc.gov (access: 13.02.2015).

matters. It also maintains the Harmonized Tariff Schedule of the United States. The Commission was established in 1916 as the U.S. Tariff Commission. The Commission runs:
- unfair import practices investigations;
- intellectual property rights violation investigations;
- research and development programs;
- news bulletin about tariffs, trade regulations, international agreements, statistic trade data, etc.;
- support for trade policy. [55]

3. The cooperation between the executive and legislative branches in the foreign trade policy-making

In one of the reports[56] prepared by the Congressional Research Service we can find a short story of the cooperation between the American legislative and executive power in the matter of international trade policy:
For the first 150 years of the United States the Congress executed its competencies in international trade by imposing the tariffs on all imported goods. The tariff was the main foreign trade policy tool and main federal budget income source. The early congressional trade debates were ran mainly in the conditions of conflict between the congressmen from northern, industrial regions (that had profits from high tariffs) and the representatives from southern states – large exporters, that wanted to lower the tariffs. At this time the main President's role (from his executive power given by the Constitution) was to negotiate and implement the bilateral agreements of friendship, trade and navigation.[57]

There were two acts from the 1930s. that fundamentally changed the nature of American trade policy. The first was „Smoot-Hawley" Tariff Act of 1930, that established prohibitive tariffs, which were the answer for the producers' needs during the Great Depression. But that policy made the American trade partners run the retaliatory trade restrictions. It deepened and lengthened the effects of depression.

The negative results of the „Smoot-Hawley" Tariff Act forced the Congress to create the new regulations. With the support of the ex-senator and Secretary of State Cordell Hull, the Congress ratified the Reciprocal Trade Agreements Act of 1934 (RTAA). That Act gave the President right to interfere in bilateral trade agreements to reduce the level of tariffs. The tariff was established upon the most favoured nation clause. Under the RTAA the Congress gave the President the right to implement new tariffs by a proclamation and without added legislative procedures.

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[55] United States International Trade Commission, *United States International Trade Commission*, Washington (D.C.) 1994.
[56] Cooper William H., Hornbeck J. F., *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, Congressional Research Service, August 9, 2012.
[57] Shapiro Hal, Brainard Lael, *Trade Promotion Authority Formerly Known as Fast Track: Building Common Ground on Trade Demands More Than a Name Change*, „The George Washington International Law Review", vol. 35, no. 1, 2003, p. 6.

The RTAA had the key significance for establishing the formal relations between the Congress and the President in the area of international trade policy. First: the right for determining the tariffs was delegated to the President. Second: the „Smoot-Hawley" Act was the last case of Congress' influence on tariff regulation. And third: the delegation of mentioned rights to the President didn't take away the Congress' influence on trade policy – the President's right is always temporary, could be revised, and can be prolonged.

Until 1962 the Congress many times renewed the President's right to reduce the tariffs. Upon the Trade Act of 1974 the President was authorized to react on some unfair, irrational or discriminating trade laws and practices of foreign governments, that could negatively influence the American trade liberty. The President's role was sanctioned as the guardian of American trade interests. [58]

Especially the Chapter 301 of the Trade Act of 1974 gave the President right to be the executor of American trade agreements. That way the Government is able to eliminate trade laws, policies or practices of foreign governments that can discriminate or limit the American trade or can violate the international trade agreements. This is the foundation of American trade law that gives the Government a right to protect the American exporters from unfair practices of foreign governments.[59]

One of many examples of use of the President's right to make independent decisions about foreign trade was Jimmy Carter's winning in battle against heavy duties on imported nuts, screws and bolts in April 1978. The International Trade Commission on congress wanted to put a 30 per cent duty on that products in order to protect the American producers from high imports, especially from Japan. But the President vetoed this decision claiming, that the high duties would cause inflation, invite retaliation and hurt international negotiations aimed at lowering trade barriers. At the end the President's decision was sustained.[60]

Also the USTR Office is able to take an action against unfair trade practice. It can do it with its own initiative or with a motion of person, firm or union. If the negotiations with foreign government aren't effective, the Chapter 301 of the **Trade** Act of 1974 gives the President right to take an action. In particular he can implement duties, taxes or restrictions on every product and service imported from given country. And there are no limitations about the President's choice of products that he puts restrictions on. He can also decide if some other country's practice is or isn't unfair, irrational or discriminatory.[61]

By the end of twentieth century the structure of the executive powers responsible for trade policy changed. *The Omnibus Trade and Competitivness Act of 1988* strengthened the importance of the USTR. The Congress' approval of 1993 ad 1994

[58] *The Trade Act of 1974* (full text), http://uscode.house.gov/download/pls/19C12.txt (access: 01.02.2015).

[59] United States General Accounting Office, *International Trade. Combating Unfair Foreign Trade Practices,* Report to the Chairman, Committee on Finance, U.S. Senate, March 1987.

[60] *Carter Wins Victory on Tariffs,* „The Washington Post", Apr 28, 1978, p. A3

[61] United States General Accounting Office, *International Trade. Combating Unfair Foreign Trade Practices,* Report to the Chairman, Committee on Finance, U.S. Senate, March 1987.

agreements and the Trade Promotion Authority Act of 2002 confirmed that the system evolves and proves correct.

4. Other US foreign trade policy-making participants.

The scientists from University of Minnesota and Northwestern University made an interesting analysis – they examined the influence of various groups on US Government decisions in foreign policy. The results of those analysis suggest that the American foreign trade policy is influenced mostly by a business leaders and experts. The experts also are under the influence of business leaders. The groups of employees have weaker, but also significant impact. The public opinion is the last factor that has least important impact on international trade policy decisions. [62]

A very interesting analysis of US political parties' attitude towards foreign trade regulations was made by the scientists from Bowling Green State University[63]. They studied all the voting on trade issues between 1993 (NAFTA ratification voting) and 2001 (Trade Promotion Authority voting) in the House. Among all of the interesting conclusions, one was as following: changing voting preferences of House representatives gives a crucial explanation for changes in foreign trade policy of the Congress. This inconstancy is influenced by many factors at the level of the Representatives' electoral districts. For example: for the Democrats the demands from various kinds of trade unions have more significance. That's why in the selected period this party lowered its support for free trade. Also more financial support from trade unions makes both Republicans and Democrats less supportive for liberalization of the trade. This issue is - as Authors says - more complicated, but we can generalize that the Republican House representatives promote free trade, but Democrats are less supportive of that.

The part in US foreign policy (including trade policy) also take governors and state governments[64]. Their role in cooperation with foreign governments and international institutions is more and more important. They take part in negotiations and participate in limited forms of international agreements on behalf of their states. They execute the sanctions and other limitations policies toward other countries. The governors more frequently use their right to make independent decisions in matters that influence the federal foreign policy[65].

As we can see from the analysis above many people or groups of people take part in creating the US foreign trade policy. So the area of international trade is no one power dominion. Trade policy requires a cooperation between both the executive and legislative branches. It also is hedged in many regulations and court decisions, that hamper both powers. The Constitution's articles are interpreted by

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[62] Jacobs Lawrence R., Page Benjamin I., *Who Influences U.S. Foreign Policy?*, „The American Political Science Review", Vol. 99, No. 1, Feb., 2005, pp. 107-123, American Political Science Association, http://www.jstor.org/stable/30038922 (access: 30.08.2012).

[63] Peake Jeffrey S., Jackson David J., Biglaiser Glen, *Don't Go Changing to Try and Please Me: A Preference-Consistency Analysis on Trade Policy in the U.S. House*, „Congress & The Presidency", Volume 34, Number 1, Spring 2007.

[64] McMillan Samuel Lucas, *The Involvement of State Governments in US Foreign Relations*, Palgrave Macmillan, February 2012.

[65] Ku Julian G., *Gubernatorial Foreign Policy*, „The Yale Law Journal", 2006, s. 2414.

many administrative powers and institutions, and those interpretations are often divergent. The United States don't have one legal document that would include all the trade regulations[66]. That is the main reason of many conflicts between all trade policy-making process participants.

5. Controversies

As it was said before, the President has a right to make independent decisions in foreign trade policy, but the Congress can prolong or not this right. That makes another area of conflict between both the executive and legislative branches[67]. For example: in 2007 when George Bush's second term was about to end, he tried to press a couple of trade agreements in short time. But after the Democrats took majority in both House and Senate, it was nearly impossible to do. This party, as it was said before, mostly opts for more strict protectionist foreign trade policy. A mandate that upon Trade Promotion Authority was essential for the White House to conclude the agreements, expired at the end of June 2007. According to *fast track*[68] procedure the President has to present the agreement project to the Congress no later than 90 days before the mandate expiration date. So in fact President Bush had to prepare his projects before April 2007. Gaining extension of the mandate would have been very difficult even in Republican Congress, because *fast track* procedure gives wide competencies to the executive branch. With a new Democtratic Congress it was almost impossible. At the last moment presidential negotiators managed to conclude the US-South Korea[69] trade agreement, which was the most significant since NAFTA of 1994.[70]

The other example of the President-Congress controversies is the situation from the 1950s. In those times when one party controlled both the executive and legislative branches, making a decision about trade policy was easy and peaceful. In the other cases the American trade negotiators started to feel some lack of freedom in their activities and decision making process. The Congress wasn't willing to give the executive branch a wide authorization in trade policy. The cooperation was also difficult because of the Congress' structure based on commissions. The congressional commissions were picking up some trade policy issues once in a while, when the agreements were considered. Meanwhile didn't engage themselves in the negotiation process, which was the most important from producers and importers points of view. But at those moments the Government had to be engaged the most. As a result some misunderstandings between branches happened frequently.[71]

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[66] Ludwikowski Rett L., *Ameryka – świat biznesu. 250 pytań i odpowiedzi na temat handlu zagranicznego*, Instytut Przemyslowo-Handlowy im. Mirosława Dzielskiego, Kraków 1991, pp. 37-38.
[67] Mania Andrzej, Laidler Pawel, Wordliczek Łukasz (ed.), *U.S. Foreign Policy. Theory, Mechanisms, Practice*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2012.
[68] *Fast-track* for trade agreements is the authority of the President of the United States to negotiate international agreements that Congress can approve or disapprove but cannot amend or filibuster.
[69] Known as KORUS FTA, concluded on June 30th 2007 r. Its purpose was to reduce the tariffs of 95% in 5 years.
[70] *Trouble with trade policy*, Economist.com / Global Agenda (Apr 3, 2007): 1. (access: 27.08.2012).
[71] Barrie Robert Wesley, *Congress And The Executive: The Making Of United States Foreign Trade*

It is the fact that after World War II the United States were the ones that led the international organizations responsible for a capitalist world economy. This arrangement let the American Government priority over Congress in management of foreign economic policy[72].

Despite those controversies between the President and the Congress, when it comes to use trade policy tools to gain some politic or diplomatic goals, the two parties reached an understanding.

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There are so many participants in the process of US foreign trade policy-making. Some of them have their authorizations given by the Constitution of the United States. Some others have a power to influence this policy given by the common law. In this complicated system it takes a lot of strength to achieve some compromise and to gain a common ground. Despite of many controversies, in overall the US foreign trade policy system, set on a very complicated structure, works.

Policy, „ProQuest Dissertations and Theses", 1968.

[72] Katznelson Ira, Shefter Martin (ed.), *Shaped by war and trade. International Influences on American Political Development*, Princeton University Press, Princeton 2002, p. 122.