



Danny,

You suggested that comments on USTR organization and issues be made in writing, so I am sending you these thoughts, which I hope are of some use to you. Some points may be obvious, but ignoring them can impair the functioning of the office.

### Nature of USTR

Because of the Constitutional split of powers between the Executive and Congress (foreign affairs and commerce power), USTR is a hybrid – it has two parents, the President and the Congress, and it forgets this at its peril (e.g. the Colombia FTA getting side-tracked by Congress). This is a delicate balancing act. The President, the Senate Finance Committee and the House Ways and Means (and on some issues, other committees of jurisdiction) each should feel a degree of ownership of USTR. This relationship functions on trust. Fast track (Trade Promotion Authority) is like the full faith and credit of the U.S. backing the U.S. dollar, it is only good if there is confidence.

The second source of strength of the agency is its “honest broker” role among interested agencies. This is not really the right term, as it is trying to find a balance of agency interests, Congressional interests, and private sector interests, together with its concept of the national interest, weighed against what is negotiable with foreign country trading partners. This involves some fine judgments and risk-taking. It is not just summing up the various contending forces; it has to judge what best serves the national interest within the realm of the possible.

–

The third source of strength of the agency is its relationship to the private sector. The government is largely clueless as to what U.S. commercial interests are, because the government is not itself in business. It has to sift through what each source is telling it, and determine what is in the national interest

Another point is that USTR, like the Pope, has no army. It needs to be staffed by the rest of the government – other Executive Branch agencies (State, Commerce, Treasury, Agriculture, and Labor), the US International Traded Commission, and the private sector. None of this is entirely easy to obtain.

USTR does not represent the consumer, unless it is with respect to access to raw materials and other supplies of goods and services that the U.S. economy needs. In negotiations, USTR trades access to the U.S. market, ordinarily for access to foreign markets. That brings both exporter and U.S. consumer benefits, but the latter are a result of, not an objective of, most negotiations. That said, USTR is a major benefactor of the consumer as well as the producer. The above refers to negotiations for foreign market access, not recommendations to the President in import relief cases where there is a balancing to achieve the national interest.

Academics worry about “capture” of USTR by special interests. Trade policymaking as well as trade itself consists of primarily “special interests” – every tariff



line item here and abroad represents some set of special interests. USTR sorts through these and represents the national commercial interest. Incidents of capture in any bad sense are relatively rare – one can question whether the bananas case represented a sufficient U.S. priority to invest as much in it as was done. U.S. banana production was nonexistent. Probably someone can explain a good reason for the choice of that issue as a priority.

### Issues

There is an **insufficient analytical capability** in government to understand what foreign measures are and the extent to which they threaten U.S. national commercial interest. This fact gathering and analysis cannot be done within USTR, as the Executive Office of the President cannot accommodate the numbers of personnel needed. No agency is very good at this, and there are few resources dedicated to trade analysis as a priority. Barriers and distortions of trade are getting far more complex and harder to deal with. There is a very good book by John Keegan on “Intelligence in War”. He concludes that intelligence does not win wars but is vital to doing so. It is the same with identifying and dealing with trade issues.

Having **USTR in the Cabinet** was Congress’ idea not the President’s (Trade Act of 1974). The ability of the USTR to lead on trade can be seized by State, Treasury, Commerce, or others. This does not improve the results. NEC and the NSC also have usurped the interagency coordination role of USTR at the Deputies level. The President has to give USTR its mandate and status within the Executive Branch.

**USTR’s limited policy planning capabilities** are swamped by the need to deal with crises, either in negotiations or dispute settlement. The result is less strategic direction by far than is desirable. When USTR is after objectives that have little private sector support, the Trade Agreements Program is discredited, and the success rate plummets.

**The Private Sector Advisory Committees are not utilized as well as they could be.** They are not to be just a cheering squad for USTR. They should be consulted more actively – that is, really consulted. Those who are currently Committee members should be, and presumably are, being interviewed. Those should be private conversations to get unvarnished input. Sunshine is not always a virtue in information gathering.

There are a host of other specifics – one is to the setting of priorities more carefully so that trade agreements do not become a product of serendipity. **Scattershot FTAs** would be one example.

I have already suggested what should be on the 2009 and Forward Trade Agenda, and that paper is attached.



I will be pleased to answer any questions you may have. I was not present at the creation of USTR, but close enough to know some of the people who were. When I was general counsel of the agency I studied its history. I spent two years drafting the basic authority for the agency in a collaborative effort with the two committees of primary jurisdiction of the Congress. After I left the Deputy Trade Representative position in the Carter Administration, I served on the President's Advisory Committee on Trade Policy and Negotiations, and after that on the Services Policy Advisory Committee. I worked to get section 301 authority (which I had drafted originally) delegated to the USTR, and succeeded. And I have worked closely with the Office of the USTR on a variety of subjects since leaving government.

Good luck in this endeavor.

Sincerely,

Alan Wolff

(This note may be published on the web if that is your process.)