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Elements of Public Policy and USTR

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Abstract

For the liberalists, the WTO would be indispensable as an umpire or promoter for liberal economy. Even for the reformers of the regime, say, environmentalists, activists or progressives, it would be, in the least, a necessary evil in view of the trade governance. Behind this world forum, however, we are able to identify the national actors, perhaps the trade diplomats, which are fairly substantial or powerful in some aspect to wheel ahead the interdisciplinary complexities entangled with the trade issues. The trade laws and public policy, at either national or international scale, would perhaps be an epitome most practically as the analytical tool of understanding. In this context, the paper deals with the USTR, one of most influential national trade offices, in the traditional rubric of public policy discipline.

INTRODUCTION

1. The International Trade and Administrative Regime

The interdependency among various nations in this global economy is needless to specify. Almost every country could not manage their national economy without the trade and foreign investment. In terms of law and public policy, the trade regime can be classed into three folds, to say, national, global and regional. The modern commerce states generally administer their national policy of international trade. In order to perform this mission, the administrative system would be afforded within the constitutional government and according to the pertinent statutes. The United States Trade Representative (USTR), Department of Commerce (DOC) and International Trade Administration (ITA) are key players in this term, which create and execute their roles or responsibilities on the import relief, anti-dumping, subsidies, as well as requirements from the Super 301 and the like (Gibson, M.L., 2000). A regional level of trade regime may be found in EU, NAFTA, and MURCUSOR, which purports to boost the regional trade and economy. It would be founded on the regional treaties or compacts to govern the regime. For example, the provisions of NAFTA concerning the special tribunal conferred a jurisdiction of trade dispute among the member states would be largely accepted to effectively exclude the constitutional jurisdiction vested within the Article III courts. The global level of trade regime would be seen to crystallize as the 1994 WTO regime. The regime has transformed immanently from the weak form of 1947 GATT, which would not be wrong if we say, "a kind of constitutional regime in the management of international economy." The judicial nature of organization had increased as remarked, which instituted a reverse consensus system, cross-sector retaliation and orderly rule on the dispute settlement procedure. OECD, IMF and IBRD or World Bank would be a global scale organization which leads or influences the international economy. The scope of responsibilities or the ways to interact would differ from WTO, however. If the WTO is an organ for the real sector economy, IMF, IBRD or World Bank would administer the international obligations or execute the treaty provisions on other economic or financial commitment. For

example, OECD would discuss a large spectrum of global economic issues than WTO, but they often act to merely produce a soft nature of norms.

The trade policy of US is an area which is to address in this article. The policy area would deserve an extent of review since (i) the nation had long decades suffer from the trade deficit; (ii) it entails a distinct characteristic in terms of law and public policy (Hammond, T. H. & Knott, J. H., 1999). First, the public policy would be national, but the quality of issues or problems might traverse the nation onto a complicated or multiple profiles of foreign nation or enterprises. Second, the trade issues came to be recognized as a top priority, and considered to be any more proper imploring on a strategic response. This strategic attribute would be involved with the rest of policy areas. Nonetheless, this area generally profiles in more of that focus. For example, the fast track procedure established by the Congress was intended to respond speedily and faster with the challenge of national trade issues. Third, the USTR had recently increased its role and responsibilities to remedy the chronic ills of trade deficit, which inaugurated as directly responsible to the President of United States. This implies the importance of trade policy and urgency or immediacy to address the unfair or discriminatory practices of foreign nation against the US trade interest (Chung, J.W., 2006). Fourth, the policy area is not domestic in most aspect, but involves an aspect of negotiation and diplomacy. The international context of policy creation and implementation would explain much of policy elements, such as the structure or plane to be played by the agencies. A scope of dealings with the multinational corporations, negotiation and compromise with the foreign nations, as well as respect for the international laws would feature more powerfully than other policy areas.

One administrative agency intended to employ for this project would be USTR. The USTR is one of presidential bureau outside the cabinet level, which is responsible to execute the roles set forth within the statutes. In understanding the virtue of trade liberalization and market access, the US has entered into numerous trade agreements with other countries (2006). The office is part of executive office of president. The head, US trade representative, serves as a cabinet level, though not technically within the cabinet, who would advise the president. The responsibilities of USTR are to develop and coordinate the policy of US international trade, generally covering the trade of goods and services, direct investment policy and oversight of trade negotiation (Hammond, T. H. & Knott, J. H., 1999). It acts in interagency structure to coordinate the trade policy, resolve disagreements as well as to frame issues for presidential decision. It annually prepared the National Trade Estimate Report on Foreign Trade Barriers. The Report contains an investigation of significant trade barriers to US exports, estimates of the impact on the value of US exports, and the actions taken to eliminate barriers. An interesting point about this agency lies in the statute itself, which they are responsible to implement, to say, the Section 182 as amended of the Trade Act of 1974 (2006). The Act imposes "a mandate on annual basis to identify those foreign countries…The Act also defines priority foreign countries as those…" The USTR is also responsible to enforce the section of the Act, which obligates to do the same in concerns with the protection of intellectual property rights. It deals with the identification of and response with the foreign countries, which practice the inadequate and ineffective protection of IPR. The Uruguay Round Agreement Act (URAA) complements with the Act in defining the role of USTR. The national and international obligations are treated in a different measure that URAA states that compliance with the Agreement on Trade-Related Aspects of Intellectual Property Rights does not include a country from being identified as denying "adequate and effective protection of intellectual property rights". Under the backdrop and present status of US trade administration, this article intends to deliver a synopsis of USTR's public meaning, which will be illustrative of and accorded with the several major elements dealt in the law and public policy.

2. A Trade Statute and Role of USTR

A most important statute would be the section of the US Trade Act of 1974, in which the USTR is responsible to enforce under the authority and command of president (2006). The power and responsibilities of USTR would be seen as distinct from the normal line of trade and commercial policy institutions, such as DOC, ITC and the like. Three important elements could be posited to distinguish : (i) the trade policy and issues within the USTR would be aggressive than defensive and thus principally structured to make it auspicious for the trade interest of US (ii) the dynamism, interaction and official line to report would be simple, strategic and central (iii) their responsibilities would be creative, formulating and negotiation-intense than application of laws or rules already settled (iv) their responsibilities are shaped in a compelling commitment that the discretion, interpretive leniency, and final power to enforce would rather not depend on the statute itself, but on the delegating command from the Congress. Hence, they would act as the kind of police power to sanction and be retributive of the identified scope of wrong nations. Consider the anti-dumping and subsidies practices of commercial agency in the US. The US is one of most patronizing countries who employ those two measures to restore the trade justice. They may levy the anti-dumping

or countervailing tariffs to efface the effect of unfair competition from impermissible subsidies of the government as well as unfair manipulation between the foreign and domestic market (Harrington, C. B. & Carter, L. H., 2009). We use the words, "countervailing and anti-dumping," yet to be reluctant to characterize as sanction or retribution unlike the Super 301. The statutory terms and requirements in the former two traditional sectors of trade policy are pretty defined and could be agreed if otherwise would be contended in the courtroom. That could be seen not compatible with the manner and paradigm of deals from the Super 301, which actually is extraordinary from the normal ways of trade statute. The terms and requirements are not reduced to the narrow and most appreciable form of concepts and provisions. For example, they use the terms, i.e., unfair, illegal, unreasonable, discriminatory, or trade interest of US and the kind, which could be vague or ambiguous in variance with the actors and interpreters. We note, at this point, that the trade policy is not surely insulated from the international network and concern that may possess some extent of international character. The Super 301 is certainly a domestic nature of norm in the formal viewpoint, but its impact would be multi-national. Most importantly, we have thus transferred some of important state function on the trade and international commerce to the international organizations, notably WTO. It operates on the basis of multilateralism not only from ideology, but also with an impeccable attribute of dispute settlement mechanism. The kind of controversies as described in the terms above illustrated are the scope of jurisdiction envisaged to be adjudicated by the WTO dispute settlement body multi-nationally, not by the US authority unilaterally (Clark, B. R., 2003). This argument would be advocated by a number of international scholars while the countervailing argument could be framed on the legal ground by many national jurists. The matter brought the permissibility and due extent of extraterritorial application of domestic laws, and reveals an inherent disagreement involving the state sovereignty conception and international commitment. We often prefer to approach this issue via the international comity and diplomatic solution other than views of legal orthodoxy. Nonetheless, the Super 301 and USTR now serve interestingly the national needs to address a public goal despite the international criticism. On the other, the process to create a policy and implement would be facilitated with the simple and strategic line of authority where the president is to take all appropriate action, including a retaliation, to obtain the removal of any act, policy, or practice of a foreign government that violates an international trade agreement or is unjustified, unreasonable, or discriminatory, and that burdens or restricts U.S. commerce. There are two ways to take a process. It can be self-initiated by the USTR, while a petition filed by the business or industry group would offer a thread to invoke the process. A policy goal of this act would defend the trade interest of US against the unfair, unreasonable, illegal and discriminatory practices of foreign nation. The peculiar aspect to a public concern underlies a mandatory identification of such countries, annually as a priority of countries. The USTR, then, is obliged to undertake the process followed by negotiation, settlement in the form of compensation or elimination of trade barrier, as well as request of WTO dispute settlement proceedings for cases involving the trade agreements.

The similar institutions were added as we see in the Special 301 Amendments involving the intellectual property rights. This would come in response with the increasing profile of intellectual property in terms of national economy and welfare of US citizens. The practice of president and agencies gradually raised the extent of policy focus on this sector. However, we also need to be aware that the Trips Agreement of WTO entered into force which potentially diminishes its roles as an international umpire. The concept of international trade has shifted intensively from the 1947 GATT, and highly been reinforced in the moment of WTO inauguration, 1995 (Chung, J.W., 2006). It pursues a perfect and idealistic market where the businesses could be advanced without the barriers and fairly. Trade liberalization and fair competition would be central so that the national government has to be neutral and is not desired to be auspicious. It is a grey area hardly defined in any absolute legal command, but morally in conflict with the WTO ideals. Typically the words, the "interest of US trade," would increase a public skepticism if other than the legitimate state or public interest within the WTO or other frames of international law, such as public health, humanistic cause, public order and morality and so. As stated, the policy area would be required of multiple contemplations, both national and international as well as concerns of private sector. The jurisdiction of USTR would involve an aggressive or highly discretionary measure beyond the normal administration of trade justice where we can identify major roles of Super 301, Special 301, and Safeguard Act. The words, "aggressive or highly discretionary," often would not readily be adaptive with the law enforcing authority, which, however, could survive in the trade policy area (Gibson, M.L., 2000). A new protectionism in the 1970's or 1980's would surge to respond with the assails of new industrialized economies in the US market. The safeguard measure could be seen as one of most practical measure in this national end (2006). The import relief often would play a key role in favor to protect a complaining sector of industries. The elements or requirements would differ a little in quality so that an import relief requires of the final approval of President to issue or enforce. The findings, "significant injury to domestic industries" or so, would work less definitely on any quantifiable terms. Therefore, the enforcement of Safeguard Act is not the same with anti-dumping or subsidies measure or other measure of tariffs act. It would be partly because the nature of trade measure would have a cause only to save the industries and has a quality of emergency, albeit

without any fault from the trade partners. US also upgraded its trade policy from the demand and pressure of industries as well as from the chronic of the trade and financial deficit of federal government. A new initiative resulted in two institutions, Super and Special 301, which would be critiqued, "a unique public law to advocate a private or economic interest" as commented from some of British jurists, for example, P. Drahos, law professor of Queen Mary, University of London (Harrington, C. B. & Carter, L. H., 2009; Special 301 Report, 2014).

3. Three Illustrative Rules and Enforcement of USTR

The three rules, in this thesis purpose, had been selected in this background, which would include the Executive Order 13116, and two standards of the Super 301 and Special 301 legalized thereby. Hence, our focus would be given to those which perhaps are ingenious as distinct from the normal dealings of law. In terms of the authority and accountability of agencies, the rules expose a very good subject of public administration studies from several points: (i) two political branches tend to be highly collaborative and mutually reinforcing on the urgency of policy issues (ii) the congressional control is any more powerful to compel and coerce a specific action depriving of the interpretive leniency often ensconced within a scope of statutes (iii) as the independent agency is directly responsible to the president outside the cabinet system, the enforcing authority can exploit the fast and strategic measures to address a seasonal nature of trade issues (iv) the Act would not be a permanent subject, but at the renewal option of president in short term of years. The three rules would provide the statutory terms and principles that the USTR could enforce (Iancu, B., 2012; Kerwin, C. M. & Furlong, S.R., 2011). The requirement to identify and negotiate with the priority group of countries is compulsory and to produce an annual report containing the executive summaries, elements, list of countries and others. A notice and comment set forth in the APA apply in the purpose to comply with the due process of law and to increase a democratic quality of administration. Under the Executive Order 13116, USTR is required to submit to the Congress each year a report identifying foreign countries who fail to comply with their obligations of international law or maintain a discriminatory or unreasonable practice against the trade interest of US (Identification, 1999; Chung, J.W., 2006; Laureate Education, Inc., 2009). The identifiable harm or damage to the trade interest, of course, constitutes one important requirement since the non-intervention doctrine of domestic issues would be firm in the practice of international laws.

A statutory principle would begin as from most problematic through the less, i.e., legal violation first, discriminatory second and unreasonable third. The response with this differing extent of culpability would lead a different treatment in terms of the administrative decision making. The 2011 report could be surveyed briefly to show the ways that the USTR execute the policies and standards. The report grounded a legal mandate at first that: (i) have failed to comply with their obligations under the WTO Agreement on the Government Procurement, chapter 10 of the NAFTA, or other agreements relating to government procurement to which that country and the United States are parties; or (ii) maintain, in government procurement, a significant pattern or practice of discrimination against U.S. products or services which results in identifiable harm to U.S. businesses, when those countries' products or services are acquired in significant amounts by the U.S. government. The USTR, then, would be compelled to initiate an investigation under section 302 of the Act (Harrington, C. B. & Carter, L. H., 2009). If the matter is not resolved within 90 days of the submission of report, the international dispute proceeding, inter alia, would be initiated upon the Executive Order, exclusively on the finding that the rights of the United States under an international procurement agreement are being violated or that a significant pattern or practice of discrimination exists. A perception or understanding of the policy measure or effect would come antipathetic as expected from its intrinsic and policy goals. Most importantly, the trade issue could play at forefront with no dissidence or counter views, but with little exception, such as heard in the environmental or social justice advocacy. R.B. Zoellick, the trade expert and who formerly served as an USTR commented, "Together these reports underscore the Administration's strong commitment to ensuring that Americans reap the benefits of the trade agreements that we negotiate" (Chung, J.W., 2006). He added, "They also demonstrate the importance of vigilant monitoring of U.S. trade agreements and quick responses to non-compliance - including through the use of WTO and NAFTA dispute settlement procedures, WTO oversight committees, and U.S. trade law tools." (2006). Two important points were emphasized with respect to the domestic consequence of policy and its collaboration with international bodies or administrative regime. In his statement, we can see that the law and public policy in this area of important national priority are highly interwoven with the international structure and authority.

4. A Compliance and Oversight

If we consider the issue of compliance and oversight as well as the judicial control as a main body of subject concerned and discussed in this discipline, his latter part of comment obviously touches on the core of attributes of trade administration (Woolf, L. & Jowell, J., 1995). That could be contended or critiqued, however, as introduced and from the very reason of different footings or political stance. Mostly international in concern and approach, they pointed out two evils that can abridge a rationale and structure of governance. First, its lobbying power can impact and be realistic to force a domestic measure compelled overriding the primacy of self-determination. In the Jamaican case, the threat over negotiation and eventual remedy in the interest of US could be traced (Special 301 Report, 2014). The US trade expert took a lead of domestic legislative process on the intellectual property law in Jamaica. He actually sat down with the local lawyers and wrote their copy right law together. The protection of intellectual property law had been one of sensitive issues over the negotiation of new international trade regime. It well represented the typology of the South-North disparity in terms of international economy. This new area, in terms of law implementation or imperialistic upstaging, could not be entirely pure provided if the issue entails a genuine aspect of contention and they apply an implied thwart to comply with their theme or values. The kind of undue influence from the private sector, as represented publicly by the USTR or other trade agencies, could not come in comport with the traditional notion of state sovereignty, in this contemporary age, largely not from the military might but from the negotiation and implanting their legal system or value (Harrington, C. B. & Carter, L. H., 2009). The other critique stresses its possible contribution to fuel a trade warring (Hätähuuto: Suomi luisuu takapajulaksi, 2013). As we consider, the scope and ways to identify the Priority Watch List and Watch list, for example, between 1996 and 2000 could be biased or compulsory to remove the essential attribute of public administration, some leniency with an interpretive leeway or authority to determine the fact. Based on the facts determined by USTR, the normal ways of public administration should anticipate that the PWL may not be prepared. That is not the case in these rules, which subjects the independent constitutional authority unduly under the control of US Congress (Bowers, J. R., 1989). The essential function, namely "execute the laws," enshrined in the constitution was affected seriously by depriving the power to withhold an execution on the construing of statutory requirement and fact determination. Practically, the statutory standard or rules, such as discriminatory, unfair or unreasonable, would not govern, but merely be hyped or framed, if to produce as mandatory the countries of unlawful or unfair practice annually. Therefore, in this case, the separation of powers principle, "hermetically sealed, but identifiable in its very attributes," could ebb in the dubious interest of collaboration and cooperation as furnaces into one of priority national goals (INS v. Chada, 1983). The role of president, thus, would be fairly open and positive to structure this distinct policy area. From the kind of immediacy, readiness and emergency as a character for this area of laws and public policy, it would be plausible to make the laws to effect only in short time limitations, and delegates the power to renew within the hands of president (Gibson, M.L., 2000).

Hence the role of president would be excessive to make the whole of system fatal, which would not be a normal way in the plain administrative issues. This moderates the imagery of "executing legislature" and divulges a distinct paradigm of national trade administration, as corroborated in the fast track procedure to enact the trade law rules. The role of president would be heavier since the industry would be any most enabling constituent to mobilize his political support. Institutionally, the machination of bureaucracy is tightened and condensed, and could go on the same tone and spirit since the issues involve an applied concept or strategic decision than the normal consideration of laws and public policy. As reiterated, the quality would require an immediacy and strategic leniency beyond the normal extent of interpretive leniency (Bowers, J. R., 1989). For example, the President and USTR have to respond with an adequate retaliatory measure which is highly susceptible to a negotiation and as fairly undefined in extent unlike the administrative fines or cease and desist order. Of course, the leadership of president would become more salient under these policy environments. Then it would not surprise that the vision of president was shaped in terms and put to the public notice through the website of USTR. The annual report also begins with the vision of president and summarizes their achievements and tasks on progress in line with the vantage of his emphasis. The president's and congressional role could be ascertained in the TPA program, in terms of collaboration with the Congress and under the constitutional structure of trade policy making (Great Neck Publishing, 2009; MacDonald, J. A., & Franko, W. W., Jr., 2007). The Trade Promotion Authority (TPA) or TPA legislation would denote the acts or statutes framed since 1974, which defined the U.S. negotiating objective and priorities for the trade agreements and established a consultation and notification requirements for the President. It is subject to the approval of Congress and reaffirms the primary role of Congress in the development and oversight of U.S. trade policy. The key elements incorporated levels of congressional authority from its role of guidance, establishment of congressional requirements, through the terms, conditions and procedures of negotiated international trade agreements (Bowers, J. R., 1989). A notification and consultation with the stakeholders come as important, and the power of purse would be an effective tool to achieve a congressional intent. A procedural requirement for the consideration of bills in implementing the trade agreements is not unexpected as reflexive of the recent tendency of strong oversight

mechanism. The stakeholder's approach including the Congress, private sector, the public and other stakeholders would demonstrate a legitimacy and democratic concept of constitutional play or public administration (Great Neck Publishing, 2009; MacDonald, J. A., & Franko, W. W., Jr., 2007).

5. **A Transition of Presidency and Its Influence**

The transition from one presidency to another, particularly a shift of partisan administration would incur largely similar consequence, such as midnight regulation and often unfriendly reaction from the succeeding administration (Brito, J. & De Rugy, V., 2009; Sapien, J. & Nankin, J., 2008). Some characteristics in the trade policy and its administration would expose in aspects. First, since the trade policy is retrenched with key national agendas, such as economic growth or fiscal and trade deficit, the partisan politics would less be a decisive factor in the rulemaking and implementation of laws and trade policy. Second, the stakeholders would be major businesses and industries which entertain a strong voice in the national politics. They often interact effectively in the web of policy networks and key financial supporters for the federal election. They are highly powerful to inform or inculcate the bureaus in order to promote the national trade interest. This generally works to arouse the focus and attention of new administration. Nevertheless, the same general nature of trade issues would mitigate the chances of paradigm shift in the policy-making (Gibson, M.L., 2000). For example, the Bush administration and Obama's would share the value of liberal market and the safeguard from the unlawful or unfair practice of foreign nations would be an urgent national priority. According to ambassador Zoellik, a removal of trade barriers in foreign markets along with the domestic liberalization would be a central concern in the Bush administration. He further stressed to fulfill the president's vision for 2001 "to reestablish a bipartisan consensus on free trade and to move on multiple fronts to expand trade" (2000). Third, a sharing and common recognition between two administrations, however, could be vitiated from its effect on the domestic issues. For example, some sectors of workers may disfavor an FTA because of its adverse impact on their labor market. Auto industries might not be readily sanguine to conclude the FTA with South Korea since the tally and aftermath may show it would not entirely be beneficial. However, this never means that the trade policy should come as a midnight regulation or other distinct consequence in the transition period. Of course, that is because that the trade policy would not be unilaterally dealt, but requires a lengthy negotiation and international compromise. As noted, the Congress is a major player to ensure the interest of national industries. In the basic feature of TPA, we can confirm a multiple transformation from the external and internal factors, "TPA ensures transparency and public engagement in trade….makes trade agreements better…. helps to export more 'MADE IN AMERICA' products abroad….supports job growth" (Trade Promotion Authority, 2014). A transparency and public engagement in trade simply reflect the new ethos of international trade regime and congressional role. The job growth would be a sensitive policy promise to be argued seriously by the new President (Samuels, D. J. & Shugart, M. S., 2003). In short, the transition of presidency can be viewed in subtle differences, perhaps because of the attribute of trade policy. The oversight of trade policy needs to be made distinct, which would be from the same ground.

6. The Challenges and Judicial Control

The judicial oversight would intervene to respond with the challenges and agencies' action in multiple dimensions (Woolf, L. & Jowell, J., 1995). First, the USTR would interact and be infused by the WTO dispute settlement mechanism. It is interesting, however, that the status of US would be preeminent in the international community and the WTO would not be a definite authority unlike the national court. The national courts would control in our most sensibility, but the WTO would be external to communicate, negotiate, be informed and respond. That is not merely a sensible matter, but also connoted in both of system and institution (Bailey, M. A. & Maltzman, F., 2008). First, the decision of DSB takes a form of recommendation, neither order, declaratory, commanding nor injunctive to coerce its view. An intrinsic of binding effect as a norm would lack essentially notwithstanding its practical impact. However a disrepute and discredit from non-compliance might follow and, in some extreme possibilities, they may be dismembered from the WTO. Nonetheless, it would not be a presidential command to penetrate the line authority of agencies nor the court order enforceable upon the state power. For example, the court order to remove the life support system for the patients in a vegetative state in Florida could not be abrogated by the resolution or order of Governor. On the while, the WTO decision of panels or appellate body would basically depend on the national strategy and value whether to comply or not. The only recourse in this case would be a finely prepared retaliatory measure permitted to the winning party and compensation settlement in proportion with the alleged breach of WTO laws. Nonetheless, the US and EU would be a major power to engineer this international organization in terms of the economic scale and legal intelligence. Its paradigm would be based on two western legal traditions, and in some

cases inculcate its developmental path for a new treaty or multinational trade agreement (Clark, B. R., 2003). They would be the kind of "economic chess board," for two major powers in an extreme sense, and also for other reasons, such as its location, staffing, its function, etc. and as we see in the Greenroom practice of WTO. However, it is true that the normative system is conspicuous, typically since 1995 and as radically reformed with the new dispute settlement mechanism. This means that the US and EU may be prime progenitors of this institution, but should learn from their protégé toward the idealistic trade regime of world. In this aspect, the concept of learning organization and acculturation of organizational members often proposed by the theorists of governance could be attributed to the relation of multiple actors involved in the international and national trade policy-making. Second, the USTR would undertake a role to respond with the international scale of challenges, and the extra-territorial application of domestic laws would be contended as a matter of legal theory. The Courts often would be a faithful executor to apply the national laws as possible extent, but not in conflict with their legal frame and beliefs (Bailey, M. A. & Maltzman, F., 2008). In this light, the Court would be a collaborator with the USTR to forge their national interest, yet it being generally less pursued by the Court other than the USTR. This might be because the Court would be more strictly bound by the laws and legal theories. For example, the USTR would be more spiritual or enthusiastic to regulate an infringement with the trademark, but the Court would moderate on the effect theory. Third, the trade administration in the US would be perceived in two classes, which are more norm-based on one hand and are more strategy-oriented on the other. For example, the anti-dumping and subsidies measure or countervailing tariffs would be disposed on the fine system of statutes or case laws while the Super and Special 301 as well as safeguard measure would require a presidential mind and engagement in the organizational structure and would incur less a chance to be brought into the litigation (King, K. L. & Meernik, J., 1999). Interestingly, we can know a strategic primacy of trade issues with one illustration, so-called the Byrd Amendment. The anti-dumping and subsidies measure basically has been punitive and in order for the sanction of unfair competition, but could be schemed to benefit the domestic industries from the income of anti-dumping or countervailing tariffs. This perversion was disputed in the Court, and condemned partially by it, but on other ground. The international context of trade justice or ideals would not be a direct point on which the national courts could base his determination (Shapiro, S. A., & Levy, R. E., 1995). Rather, equal distribution, other than finding of subsidies, injuries to the domestic industry, or fair competition, must be attracted and focused from the constitutional viewpoint. The Byrd case certainly could undergird the characteristics of trade policy from other policy areas of more domestic aura. I may consider additionally two specific challenges involving the Super 301 and extraterritorial application of national laws.

In the Banana and Hormone cases, EU was illustrated as one of priority watch list by the USTR and the EU initiated an action to claim that Super 301 would violate the WTO laws (Ernst-Ulrich Petersmann & Mark A. Pollack, 2003). The claim raised several points of aggrievance. First, the time frame of US trade acts is not proper as short for a finding and retaliatory measure that the US could not respect the WTO opinions and decision perhaps lengthier in process. This would cripple the dispute settlement system of WTO since the US could not fully wait until the WTO decision comes out. Second, the trade acts confer an authority to determine a trade violation on the USTR, as spelled out "unlawful, unfair or discriminatory…. deny the trade interests and privileges of US duly entitled with the international laws…" (2003). In this assertion, EU emphasized that the USTR would not be an international arbiter of international laws (King, K. L. & Meernik, J., 1999). But it could be countered that every national agency could learn the international laws and impose their views and public policies within the territoriality principle. EU eventually argued that the frame is inconsistent with the provisions of the Understanding of Dispute Settlement (DSU). Third, the trade acts would contravene the basic spirit and structure of WTO and DSU, which are directed not for unilateralism, but for the multilateralism. The panel report was adopted with the approval of dispute settlement body, and EU discarded an option of appeal to cease the controversy (United States-Section 301-310 of the Trade Act, 1974). The panel report clarified that the trade acts are weakly framed in high possibilities of threat, which are to allow the USTR a unilateral and arbitrary coercion. It said that this would be a prima facie violation of DSU. However, in consideration of the trade acts and other factors, typically the measures undertaken by USTR over time and history as accorded with the congressional direction, the Super 301 is not deemed inconsistent with the US commitment of the WTO laws. The panel added a precaution that the future of USTR's policy may jeopardize a contrary result unless it must otherwise be in comport with this decision. A criticism to favor the US position could not be negated. First, the alleged conviction of USTR would well be based on its finding that the odd countries or practices violated the international laws. Second, the Super 301 could be supported as a domestic policy tool upon the petition of stakeholders and based on the intrinsic of state role to protect their citizens' interest. The previous cases would merely implement the WTO rules which would be a part of international laws in the province of case law tradition. This point, however, may be argued if the WTO would merely be a foreign judiciary. In counter, however, the cases of other common law countries still would be an influential authority, if not binding as in a strict terminology. In any case, the critiques view than there would be no basis of good argument to debase the

previous practices of USTR. Super 301 is not a monstrous institution, but merely delegated the trade authority to the President of US. The Super 301 is managed largely in the discretionary scheme of USTR, and the failure to exercise a due extent of discretion would not be an international matter, but merely national, which would still be dubious if the national courts could intervene. For them, a critical point lies in the question whether the president actually violates the international laws in the enforcement of Super 301, not whether the system could allow a possibility to violate the international laws (Kirwan, K. A., 1995; Rosenbloom, D. H., 1983). Third, the Super 301 would be positively evaluated in other points of view that it could contribute to the holistic picture of justice in the interest of international trade regime. Assume if the worse countries in the trade commitment may respect the finding of USTR and withdraw from their breach or discriminatory practice. Then, the market access and ideals of transparency may be elevated. Forth, a normative view can also make it distinguished between the violation of international laws and unfair or discriminatory practice against the trade interest of US (Bailey, M. A. & Maltzman, F., 2008). Still we could not find any legitimate ground to coerce abandoning the national policies to protect from the latter class of worse practice. According to the state theory and international laws, the view perceived that a governmental role to promote the general welfare and sovereignty of domestic policy making would be sacred and inviolable.

7. Trade Administrators and Leadership

As with the normal area of public policy, trade administrators are required to consider the laws and create the rules or public policy. Hence, while a political control, for example, by staffing with a political officer appointed and commanded by the White House, would figure to affect the administration, the normative aspect has to be powerful as a variable. A bureaucratic sociology is also another factor which intervenes to reach the final shape of trade policy (Gajduschek, G., 2003; Kauffman, H., 2008). One of traits in the USTR and trade policy would be obvious that the international laws, centrally on the WTO and FTAs, would be an important law with which they have to be consistent to interact. The bureaucrats in trade administration, therefore, would often possess a talent or career experience as a diplomat. A share of officers would study the foreign relations in the university and the current head of USTR would not be an exception. M. Fromm, a current leader of organization, officially shingles his biography as a diplomat in the webpage of USTR. He is also a close friend of Obama, a graduate of Harvard law school, while attending the JD program there. It signifies the spoils system of US administration, and the importance of political control to respond with the theme, "democratic rule and check mechanism." He is the kind of political appointee who is responsible to implement the popular will as represented by the winning candidate of presidential election. Still the continuum of national administration, however, may be resilient which often counteracts a complete or perfect alternation of paradigm or past policies (2003). So the sociological aspect would come third in factor which follows the economic and political paradigm. The rational choice theory might come idealistic as first, and enters into a phase, and perhaps influences an ambitious wish of succeeding president. He may feel underwritten by winning the election, whose policy would realistically, if not mere in theory in this stage, be proven most rational and desirable by majority of voters. The administrative world makes a third phase possibly to muddy the vision on one hand. On the other, the staffs and administrators could aid to make it tangible or firmer to be vital for implementation which we expect idealistically. In this perception, the bureaucrats might be a working arm of presidency through the machinations of administrative branch, but also comprises a distinct society on history and tradition, expertise, experience, as well as elements of humanity (Kauffman, H., 2008). One helpful illustration would be Hoover who was an FBI director to play on six presidents of the United States. A formality in the line command and supervision in combination with the political will of people would certainly be in any primacy, but the kind of rare stories would divulge the informal aspect of bureaucracy, perhaps human or organization-specific contingencies. The USTR would entail the kind of normal characteristic in the assessment of head roles. In addition, we can derive points in distinction from other agencies. The USTR historically is not traditional if it was created as late as in the 1960's Kennedy administration. Its scope and quality of authority should shift to strengthen itself and in an intimate interaction with the President and Congress. For example, the negotiation and sanction initially were elective within the discretion of agency. Afterwards, it turned to be mandatory in response with the aggravated trade or fiscal deficit. This implies that the trade policy would be strategic and demanding issues of nation where the head roles would be consistent and vigilant in a direct reporting to the President and Congress. Often diplomacy or negotiation would be more friendly with the politics sensibly, which gives a space from the normative orthodoxy. Hence, the political role of agency's head would be stark although its scope of command may not be extended. This can lead to the organization more qualified, alerted, readier and capable as a whole. The flavor of "economic FBI or CIA" would not be false to view the USTR. The trade issues had been intensified over the increasing rate of internationalization, typically beginning at the creation of new world economic order, 1947 GATT and Bretton Woods Conference. The 1947 GATT witnessed eight Rounds to discuss the major issues of world trade, and

President Kennedy had achieved an impressive success in lowering the tariff rate. Around the time, the US hegemony politically rose, and the international policy was expedited. The trade administration turned to be marshaled and in some comprehensive structure through the 1980's omnibus laws. In this nature of organic history, USTR would be one of star agencies to testify a US commitment to the international community. The head role would be significant not only nationally but also internationally. The normal aspect of internal oversight would not be waived, however, which evinces the importance of democratic control (Gajduschek, G., 2003). It would be responsible to the parent agency, Executive Office of President (EOP), currently led by D. McDough as a chief of staff. The EOP would consist of various public offices to aid the presidency, to illustrate, the council of economic advisers, chair of the council of economic advisers, chair of the council on environmental quality, office of management and administration, office of management and budget and etc.

8. The Role of Mass Media and Trade Policy-Making

The role of mass media is extensive to affect the law and public policy. The implications from this interaction would be conceived both positively and negatively in view of idealistic process in democracies. For example, the agenda setting theory holds a view, based on the empirical study covering 1968 presidential election, that a frequency and prominence in the news coverage determine the most important election issue. Cook et al suggested that the media influenced views about issue importance among the general public and government policy makers, who used an experimental design built around a single media event (1983). The limitations of media also are alleged to be present. The conflict-laden exposure of public issues in the news or television program can have a potential of misleading the public opinion (Forgette, R. & Morris, J. S., 2006). An odd simplification and strategic framing can make it a kind of contact sports lacking prudence and contemplation. The intrinsic of mass media as commercial establishments and professionalism would make a high social impact, but nevertheless comes short or contingent on a day to day basis. The news reports may be matched with a parliamentary debate for our comparative purpose in effecting to transform the society (Patterson, T. E., 1998). Basically, we may hardly construct the news source or information readily on its own, which is thought as "no politics possible at the speed of light" (1998). In this standpoint of view, the trade policy is generally fact-driven in the treatment of media, and the multifaceted or mosaic of policy factors requires any more strategic way of approach with the professional aids and expertise. That is true, indeed, as compared to other areas of public policy, including the public health, social welfare, or criminal policies. The issue tends to involve a kind of conundrum which encompasses widely, the field of law and treaty, diplomacy, global economy, and industrial condition. Nevertheless, the strategic framing of media may simplify them by expediting a profiling of issues, for example, the context involving an auto sales market between the US and Japanese producers. This could affect a public opinion as misleading, and that the trade administrations, say, the DOC or ITC and USTR, may motivate themselves to act and investigate the issue ultimately to the disadvantage of US national interests as we experienced in 1980's Reagan administration.

The mass media generally is attributed as a "fourth branch," which plays an important role to engineer the democratic society. They lead a public opinion and frontier the new development of issues, events and occurrences. They are a vanguard to situate the community through the past, present and future context of meaningful construction (1998). They are a center of public attention, and mobilize the basis of policy environment. Their impact would be serious to move the policy makers since they have to be accountable for the popular will. The impact of mass media on trade administration should not be overstated, and they actually tend to orienteer a public opinion in safeguarding the accountability of government. They generally function to aid in setting a most important trade agenda and can facilitate shaping issue importance in the trade policy area. They also undergird the direction of trade policies and help to create an alternative. However,, it is important that the ultimate responsibility remains with the law or policy makers because (i) they are politically elected and assigned a power and competence to create or enforce the public policy (ii) we have no other alternative, but only should find any feasible solution for a public issue or agenda, which would be on a continued study and churning, conceive it as enduring, and render it as informed, systemic, monitored, prudent with the kind of cost-benefit analysis, procedural, and with some form of participation.

9. A Concluding Comment

We often consider the economy is any fatal indicator for human, organizational and national behavior. It has long been a primary for the mind of western intelligence, which determines the framework of meditation, philosophy, political ideology, socio-economic status, social justice and so. This is obvious and needless to advert on the kind of

liberalist or communist. It is practically any more powerful if we chant on the 1990's reform of east Europe and the rise of China as world two major powers. Material accumulation and economic growth are never a horseshit, but hardly eradicated even if we are some of greater ethical priest. It was embedded in the western tradition and ways of thinking as we see any usual encounter of the terms in the social science, such as "econo-political" or "socio-economic." In this mainstream, it is not exaggerating that, WTO, the current body to govern the international trade regime would be any most firm institution among many other international organizations. For the liberalists, it would be indispensable as an umpire or promoters for liberal economy. Even for the reformers of the regime, say, environmentalists, activists or progressives, it would be, in the least, a necessary evil in view of the trade governance. Behind this world forum, however, we are able to identify the national actors, perhaps the trade diplomats, which are fairly substantial or powerful in some aspect to wheel ahead the interdisciplinary complexities entangled with the trade issues. The trade laws and public policy, at either national or international scale, would perhaps be an epitome most practically as the analytical tool of understanding. The economy or economics may fuel a primate cause for the organization, but could not be expressed any tangibly. Plainly, we could not say, "As I am poor, you should afford." The context has to be converted into any logic or metaphor or argument with the power of persuasion, and most importantly through the avenue of institution, say, laws and national government. The political scientist may be concerned, but their foundation tends hypostatically to center on the political power. Given they pursue a realistic nature of political power, the shortage would also be likely if their frame per se is political rather than trade or economy. WTO are some hybrid nature of organization, which is hardly submissive to any singular frame, and generally less political if the organization is viewed, mutatis mutandis, as the kind of constitutive body of global harmonization. The multilateralism is a prevailing theme in this organization other than the head of state, prime minister or Congress. The social activist may impugn this organization as one of worse culprit for the pleasant or human standard of living. They accuse the industrialists and hold a belief that the current trade regime endorses an injustice from the capitalists or developmentalists. Perhaps, their query would be why we suffer from the pollution, industrial disaster or notoriously the climate change without any due compensation. Their cause may transcend an interpersonal justice, such as damages award, but foresee in concern the impact through generations. They consider the environment as a common asset of global public, and the contention had been in wake over the Rio consensus and Tokyo protocol. This phase could witness a little progress in their cause, but the underrepresentation is notable with some of advisory status within the governmental organizations. Often they act on the basis of NGOs, which merely voice as the kind of pseudo-democratic citizenry. Under this present dynamism, I consider the law and public policy would serve any practical coverage to explore the international and national trade regime. The studies of this article would never be exhaustive, but could be hoped for any follow up details from subsequent research. Most wishfully, the discipline of public policy seems to less fare on this concern than the lawyers of international trade. It may be a pilot work to combine the elements of public policy with the international and national trade organizations. Nonetheless, they exercise their role routinely within the twilight of law and public policy and with less a systemic awareness of their interplay. In this context, the paper deals with the USTR, one of most influential national trade offices, in the traditional rubric of public policy discipline. I believe that the research work needs to follow in this context.

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