

Sec. 2—Powers, Duties of the President Cl. 2—Treaties and Appointment of Officers

or not to carry into effect treaty provisions.³¹⁹ At the conclusion of the debate, the House voted not only the money but a resolution offered by Madison stating that it did not claim any agency in the treaty-making process, “but that when a treaty stipulates regulations on any of the subjects submitted by the Constitution to the power of Congress, it must depend for its execution as to such stipulations on a law or laws to be passed by Congress, and it is the constitutional right and duty of the House of Representatives in all such cases to deliberate on the expediency or in expediency of carrying such treaty into effect, and to determine and act thereon as in their judgment may be most conducive to the public good.”³²⁰ This early precedent with regard to appropriations has apparently been uniformly adhered to.³²¹

Similarly, with regard to treaties that modify commercial tariff arrangements, the practice has been that the House always insisted on and the Senate acquiesced in legislation to carry into effect the provisions of such treaties.³²² The earliest congressional dispute came over an 1815 Convention with Great Britain,³²³ which provided for reciprocal reduction of duties. President Madison thereupon recommended to Congress such legislation as the convention might require for effectuation. The Senate and some members of the House believed that no implementing legislation was necessary because of a statute that already permitted the President to reduce duties on goods of nations that did not discriminate against United States goods; the House majority felt otherwise and compromise legislation was finally enacted acceptable to both points of view.³²⁴ But subsequent cases have seen legislation enacted;³²⁵ the Senate once refused to ratify a treaty

³¹⁹ Debate in the House ran for more than a month. It was excerpted from the *ANNALS* separately published as *DEBATES IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, DURING THE FIRST SESSION OF THE FOURTH CONGRESS UPON THE CONSTITUTIONAL POWERS OF THE HOUSE WITH RESPECT TO TREATIES* (1796). A source of much valuable information on the views of the Framers and those who came after them on the treaty power, the debates are analyzed in detail in E. BYRD, *TREATIES AND EXECUTIVE AGREEMENTS IN THE UNITED STATES* 35–59 (1960). Gallatin served in the United States Senate for two months in 1793–1794, the House of Representatives from 1795–1801, and as Secretary of the Treasury from 1801–1814.

³²⁰ 5 *ANNALS OF CONGRESS* 771, 782 (1796). The House adopted a similar resolution in 1871. *CONG. GLOBE*, 42d Congress, 1st sess. (1871), 835.

³²¹ S. Crandall, *supra*, at 171–182; 1 W. WILLOUGHBY, *THE CONSTITUTIONAL LAW OF THE UNITED STATES* 549–552 (2d ed. 1929); *but see* *RESTATEMENT, FOREIGN RELATIONS*, *supra*, § 111, Reporters’ Note 7, p. 57. *See also* H. REP. 4177, 49th Congress, 2d Sess. (1887). *Cf.* *De Lima v. Bidwell*, 182 U.S. 1, 198 (1901).

³²² S. Crandall, *supra*, at 183–199.

³²³ 8 Stat. 228.

³²⁴ 3 Stat. 255 (1816). *See* S. Crandall, *supra*, at 184–188.

³²⁵ S. Crandall, *supra*, at 188–195; 1 W. Willoughby, *supra*, at 555–560.