

# > Trump’s Attempted Takedown of the Global Trade Regime?

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*The Trump administration has taken policy positions that signal a U.S. retrenchment from the rules-based international trading system. Overt and aggressive policy actions in some areas combined with strategic disengagement and resource starvation in others put the World Trade Organization (WTO) at increased risk. While cloaking actions as protecting the system from China, the administration has introduced other tensions by simultaneously threatening America’s pre-existing network of alliances. Such an ‘America First’ strategy could lead to dissolution of the 70-year old multilateral order.*

## **THREATEN THE RULES-BASED SYSTEM WITH OFFENSIVE U.S. BEHAVIOR**

One way to withdraw leadership from a rules-based system is to simply start breaking those rules. The Trump administration has already pushed up against the boundaries of WTO obligations and acceptable trade policy norms.

In April, the administration self-initiated two separate investigations into whether imports of steel and aluminum were a threat to U.S. national security. Under Section 232 of the Trade Expansion Act of 1962, the President could implement a broad set of import restrictions with very little procedural oversight.<sup>1</sup>

While there are national security exceptions embodied in the WTO agreement—in particular, GATT Article XXI—countries have rarely invoked them, mostly out of systemic concerns. Suppose a trading partner with exporters adversely affected by such restrictions were to file a formal WTO challenge. Losing such a dispute would be bad systemically; it provides an aggrieved trading partner license to invoke the exception itself whenever it had a protectionist inclination. America’s invocation of the national security exception on steel

invites China to invoke it on soybeans or the European Union to invoke it on digital or Internet services. But winning such a dispute could be worse; such a ruling against the United States could provide the Trump administration with just the political justification it seeks to abandon the agreement altogether.

In August, the administration self-initiated a separate unfair trade investigation under Section 301 of the U.S. Trade Act of 1974. This one examines whether China has engaged in forced technology transfer and other state-sponsored theft of intellectual property.<sup>2</sup> While results from this investigation could be taken to the WTO for dispute settlement, what does the administration do if its unfair trade findings are not covered by WTO rules? At that point acting outside of the system would overstep boundaries; the United States’ own actions would be tacit acknowledgment that Beijing had not broken WTO rules.

Finally, the administration has repeatedly used heated rhetoric to disparage other core tenets of the international system. Commerce Secretary Wilbur Ross has challenged the concepts of nondiscrimination, or most-favored nation (MFN) treatment, as hurting U.S. interests. He has also argued for “reciprocal” tariffs—that whatever the United States imposes on imports of a product from a trading partner, that partner should be expected to impose the same tariff level on the same imported product from America.<sup>3</sup> Forced implementation of such an approach would upset decades of successfully negotiated and sustained tariff cooperation that had coalesced into an open and rules-based global trade regime.

## **STARVE THE WTO OF LEGITIMACY THROUGH LACK OF USE, RESOURCES, & ENGAGEMENT**

There are also signs that the Trump administration is simultaneously adopting a complementary, anti-WTO

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approach through both strategic disregard and resource starvation.

First, the administration has created a crisis-like environment for the Dispute Settlement Body in Geneva, withholding support for basic appointment of WTO Appellate Body members. This threatens to slow down an already over-burdened and under-funded Secretariat at precisely the moment when expeditious and unbiased adjudication of disputes is critical to justify the existence of the Organization.

Second, despite a large volume of very vocal complaints about China, Mexico, South Korea and others, the Trump administration has yet to file a single offensive WTO dispute backing up its rhetoric with formal charges. After months of delays, it has finally signaled engagement on two agriculture disputes that the Obama administration had initiated against China and one dispute concerning wine against Canada. But two other systemically important cases—one on Chinese aluminum subsidies and one on raw material export restraints—still languish. The failure to actively pursue WTO disputes in the U.S. offensive interest today would make it easier down-the-line for the administration to complain about defensive rulings against the United States on Trump's watch—some of which, odds are, will be lost.

Indeed, more than most administrations, the Trump administration has already begun a campaign against prior WTO Appellate Body and Panel decisions and U.S. losses in defensive disputes over issues such as the use of “zeroing” in antidumping investigations.<sup>4</sup> USTR Robert Lighthizer recently confirmed his earlier<sup>5</sup> position of criticism for the WTO with<sup>6</sup>

*“the United States sees numerous examples where the dispute-settlement process over the years has really diminished what we bargained for or imposed obligations that we do not believe we agreed to. There have been a lot of cases in the dumping and countervailing-duty, the trade-remedies laws, where, in my opinion, the decisions are really indefensible.”*

Lighthizer also publicly reiterated his fondness for the prior, non-legalistic, dispute settlement model under the General Agreement on Tariffs and Trade in which U.S. intimidation was used to resolve disputes in lieu of the rule of law.<sup>7</sup> This, indeed, is consistent with his 1995 position against the WTO in which he called for Congress to enact “Three-strikes and you're out” legislation that would have removed the United States from the agreement after the Appellate Body issued

three reports that were unfavorable to the American interest.<sup>8</sup> Finally, he has indicated little optimism about the upcoming WTO ministerial meeting in Buenos Aires, and the Trump administration has provided little public support for the ongoing plurilateral negotiations for a new Trade in Services Agreement (TiSA) or an Environmental Goods Agreement (EGA).

### **MASK THE APPROACH AS PROTECTING THE SYSTEM FROM CHINA**

In his recent speech, Lighthizer also stated emphatically, “Unfortunately, the World Trade Organization is not equipped to deal with this [China] problem...We must find new ways to ensure that a market-based economy prevails.”

The concerns with China's behavior in the international trading system have become broadly apparent and increasingly accepted across the policy spectrum. The China problem is not a Trump phenomenon. China has failed to transform into a market economy recognizable to the United States, European Union, Japan, and other traditional stalwarts of the system, and this creates problems for the WTO.<sup>9</sup> Even different American leadership—including one with multilateral inclinations—would find challenges and uncertainty in concocting a long-term solution to the China conundrum.

One argument is that the international community has not yet sufficiently stood up to China. The United States has given it more effort of late: the Obama administration filed 14 different WTO disputes against China; this was twice as many as the George W. Bush administration, which was slow to challenge China with only one case before 2006. But this has clearly not been enough. And non-American WTO members has been extremely reticent to challenge any Chinese policy behavior at all. Given its tremendous volume of imports and exports globally, the paucity of WTO disputes lodged against China by countries willing to go it alone and without the United States as a co-complainant is an empirical puzzle.

Nevertheless, it would be wrong to argue that the United States or other WTO members have fully exhausted the tools available under dispute settlement to address concerns with China. First, there is not yet a WTO ruling that China should be treated as a “market economy” under national antidumping laws. Second, even if current WTO rules do not fully cover the policy behavior that China is exhibiting, until a member brings

forward and loses a non-violation nullification or impairment case to challenge China, arguably the WTO toolbox has not been emptied. It is premature to conclude that the WTO cannot be harnessed to address the problem.<sup>10</sup>

### **TRUMP'S ANTI-CHINA APPROACH: A FALSE AUTHENTICITY?**

Is the Trump administration really protecting the global system from China, or is it simply using China as an excuse to implement a broader program of economic nationalism and isolationism? There is increasing evidence to suggest the latter is a real possibility.

The administration has gone out of its way to traumatize trade relations with the same key allies with which it needs strategic cooperation to protect the international system from China's state-driven economic system.

Rather than reaching out to partners and the multilateral forum, the administration has adopted a stubborn mandate that it will only negotiate bilateral deals. This makes clear their intent to try to use America's economic heft to somehow browbeat partners into deal making. Through its actions on the Trans-Pacific Partnership (withdrawal), NAFTA (renegotiation), and KORUS (threats), the administration has put at risk its most economically and strategically important free trade agreements.

Its aggressive use of U.S. trade laws could end up imposing trade restrictions—not on China, which has largely been already covered by prior administrations' use of antidumping or countervailing duties—but on the same potential allies in Europe, Canada, Mexico, Japan, and South Korea.<sup>11</sup> It has gotten to the point where even allies must make trade retaliation threats known to the public—and key Congressional leaders—to warn the administration of the costs of its actions.<sup>12</sup>

### **POLICY RECOMMENDATIONS**

President Trump's inaugural address included the unforgettable line, "Protection will lead to great prosperity and strength."

One important way to combat that is by explaining its consequences—and costs—before implementation of such a policy choice. This includes publicly explaining the rights that the global trading system provides its members—including the right to trade retaliation in the event of WTO violations and noncompliance—and identifying the explicit economic costs to American industries, workers, and Congressional districts if President Trump unilaterally goes back on commitments that the United States has made.

Unfortunately, this approach fails to confront the real challenges facing the WTO. By focusing the world's attention on Trump's potential for protectionism, the administration has pulled the world's energy away from the major underlying threat to the market-economy and rules-based system, which is China. And unfortunately, the international community is unlikely to confront the challenges that China poses to the WTO without the United States.

## ENDNOTES

- <sup>1</sup> See Chad P. Bown “Trump’s threat of steel tariffs heralds big changes in trade policy,” *Washington Post (Monkey Cage)*, 21 April 2017; and Chad P. Bown “Trump is a new kind of protectionist—He operates in stealth mode,” *Washington Post (Monkey Cage)*, 12 June 2017.
- <sup>2</sup> See Chad P. Bown “Rogue 301: Trump to Dust Off another Outdated U.S. Trade Law?” *PIIE Trade & Investment Policy Watch*, 3 August 2017.
- <sup>3</sup> See Chad P. Bown and Alan O. Sykes, “The Trump Trade Team’s Vocabulary Problem,” *Wall Street Journal*, 14 May 2017; Wilbur Ross “Most Favored Nation Rule Hurts Importers, Limits U.S. Trade,” *Wall Street Journal*, 25 May 2017, and Chad P. Bown and Alan O. Sykes, “Trump’s Reciprocal Tariffs Don’t Add Up,” *Bloomberg View*, 14 June 2017; and Chad P. Bown, Robert W. Staiger and Alan O. Sykes, “Multilateral or Bilateral Trade Deals? Lessons from History,” in Chad P. Bown (ed.), *Economics and Policy in the Age of Trump*, London, UK: CEPR Press, 2017, 153-163.
- <sup>4</sup> See Chad P. Bown and Thomas J. Prusa (2011) “U.S. Antidumping: Much Ado About Zeroing,” in William J. Martin and Aaditya Mattoo (eds.), *Unfinished Business? The WTO’s Doha Agenda*, London, UK: CEPR and World Bank, pp. 355-392.
- <sup>5</sup> Robert E. Lighthizer (2010) “Testimony Before the U.S. China Economic and Security Review Commission: Evaluating China’s Role in the World Trade Organization Over the Past Decade,” June 9.
- <sup>6</sup> These and other references are to Robert Lighthizer’s speech at Center for Strategic and International Studies, Washington, DC on September 18, 2017.
- <sup>7</sup> See Jagdish Bhagwati and Hugh Patrick, eds. (1990), *Aggressive Unilateralism*. Ann Arbor, MI: University of Michigan Press.
- <sup>8</sup> Bob Davis “Campaign ‘96: Lighthizer, Dole’s Idea Man, Attempts to Derail Buchanan With Trade Issue,” *Wall Street Journal*, 28 February 1996, p. A16.
- <sup>9</sup> Mark Wu (2016) “The ‘China, Inc.’ Challenge to Global Trade Governance,” *Harvard International Law Journal* 57, no. 2: 261–24.
- <sup>10</sup> Robert W. Staiger and Alan O. Sykes (2013) “Non-Violations,” *Journal of International Economic Law* 16, 741–775.
- <sup>11</sup> Chad P. Bown (2017) “Steel, Aluminum, Lumber, Solar: Trump’s Stealth Trade Protection,” *Peterson Institute for International Economics Policy Brief* 17–21, June.
- <sup>12</sup> Shawn Donnan “EU targets Kentucky bourbon in steel retaliation,” *Financial Times*, 7 July 2017.