

US Trade Policy, US-EU Relations, and WTO Reform

Testimony of

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It is a pleasure to be back with you. I appeared before the International Trade Committee of the European Parliament about four years ago when I was Deputy Director-General of the WTO. Cecilia Malmström testified at the same meeting, and she is now a colleague of mine at the Peterson Institute.

Overview

America's Trade Priorities

The principal overriding foreign economic policy issue for the Biden administration is competition with China. A second immediate priority is the necessity to maintain effective policy measures to deal with Russia's invasion of Ukraine.

Competition with China is seen to require:

- strengthening the domestic economy,
- direct measures with respect to trade with China, and
- working with those with aligned interests to deal with China.

The one clear area of White House and Congressional alignment after the mid-term election remains alignment on the need to counter China. Public support for this position is also strong.

A successful aspect of US foreign policy has been working with allies to support Ukraine and undermine the Russian war effort.

It is not clear how far the alignment of nations present with respect to economic relations with Russia will extend to a uniform approach to dealings with China. All the actors without exception -- those countries trading with China and those receiving investments from China or having received them from China -- have mixed interests. Most countries do not buy fully into a Manichean world, divided into two camps, one to conform policies with and the other to shun.

Multilateralism

The Biden Administration expresses its support for multilateralism. Both Secretary of State Antony Blinken and USTR Amb. Tai state their attachment to it. There is, however, acceptance within the Administration of the Progressive Democratic narrative that there was excessive trade liberalization stretching back decades that did not adequately take into account the harms to American workers of having a more open market. The implication of the Progressive narrative is that the sum of the economic effects of past trade agreements was negative for America. This is the frame of reference for setting Administration policy going forward.

Whereas at the end of WWII, a very substantial effort was put into postwar planning to construct a liberal international world order, there is no master plan that is apparent on the part of any of the WTO's members as to how to re-shape the world trading system.

Friend-Shoring

The Biden Administration considers that resilience of supply chains requires the sourcing of products in generally aligned countries. The clearest case is a first tier consisting of the Western democracies.

There is now sharp criticism from America's friends that US industrial policies, the foundation of its foreign economic policies, do not take into account the interests of its friends. This is manifested by Buy-American procurement requirements and discriminatory subsidies requiring a degree of local manufacture.

All countries have a degree of conflicting policy goals. In the United States friend-shoring clashes with –

- industrial policy – subsidies for domestic production of EVs, batteries,
- political considerations – restrictions on imports of steel and aluminum, and
- climate policy – increased costs due to trade measures for deploying windmills and solar panels and transport of LNG to New England and the Jones Act.

While the Inflation Reduction Act (IRA) discrimination in the granting of subsidies to produce green goods is a major irritant at present in EU – US relations, transatlantic trade flows are growing stronger. The headline yesterday in the Wall Street Journal reads “U.S.-Europe Trade Booms as Old Allies Draw Closer”, and states that “The U.S. has imported more goods from Europe than from China this year”.¹ Whether or not US trade has pivoted to this extent, there is a change taking place that bolsters the idea of friend-shoring, even if the IRA subsidies will not be assisting in this process.

The President’s Trade Agreements Program

The decision not to seek renewal of trade promotion authority (a Congressional mandate for negotiations combined with procedures facilitating implementation of trade agreements – an up or down vote and limits on debate) is an indication of the Administration’s lack of interest in engaging in reciprocal trade negotiations. The US constitutional structure, which divides the foreign affairs from commerce powers, requires a compact between the two branches of government if the United States is to change any US law to implement a trade agreement. Establishing a mandate for trade negotiations requires a clear idea on the part of the President of the direction that he wishes to take with respect to trade policy and a commitment to achieving stated objectives. It is more than just a procedural device as to how the two branches of government should work together.

The Administration’s international economic initiatives with respect to trade are limited:

- The Trade and Technology Council (TTC) is not TTIP (which was more ambitious but floundered)
- The Indo-Pacific Economic Forum (IPEF) is not TPP (from which Trump withdrew)

The common thread is that no new market access is on offer from the United States, which clearly curtails what can be sought from America’s trading partners. A potential area for cooperation with the EU would be to coordinate policies with respect to subsidization of chosen industries – e.g., semiconductors, EVs, batteries.

Outlook for the WTO

The current WTO agenda consists of:

- Consideration of extension of the TRIPS Waiver to diagnostics and therapeutics,
- Continuation of negotiation of open plurilateral agreements (the Joint Statement Initiatives (JSIs)) on e-commerce and investment facilitation for development,

¹ <https://www.wsj.com/articles/u-s-europe-trade-booms-as-old-allies-draw-closer-11668914679>.

- Structured discussions on the environment, and
- An amorphous call for WTO reform.

The nature of US engagement at the WTO is closely watched as the US was almost always in the lead of the multilateral trading system until recent years. It was the inventor and guarantor of multilateralism.

The role of the United States at MC 12 in June was in large part damage limitation. It worked to make sure that the Ministerial Conference did not deadlock over the language used to describe China's nonparticipation in the whatever benefits existed under the TRIPS waiver for vaccines. It proposed a mandate for sanitary and phytosanitary work, and it promised to work to resolve by 2024 the impasse created to have binding dispute settlement at the WTO. This is the one area within the WTO where the US has the clear lead, to arrive at a solution to the loss of binding dispute settlement.

There is no indication that the US (or any other WTO member) has a plan for the future of the WTO. Leadership for the JSIs came from "middle-grounders", with the US joining in rather than initiating negotiations. Other potential sources of leadership would be the EU were it to choose to be more assertive, and again, middle-grounders, including the participants in the Ottawa Group (14 likeminded WTO Members, known as the Ottawa Group (Australia, Brazil, Canada, Chile, European Union, Japan, Kenya, South Korea, Mexico, New Zealand, Norway, Singapore, Switzerland and the United Kingdom)).

What is needed at the WTO, and is not being attempted, includes --

- Serious engagement and deliberation on the subject of carbon border adjustment measures (CBAM),
- Putting into place a global health rapid response mechanism, and
- "Root and branch" reform of the WTO.

WTO Reform

Negotiations

The WTO should become a place where major negotiations take place. There must be an end to the idea that there needs to be a consensus of the whole membership for a negotiation to take place and be concluded. Blocking members from reaching agreements to be administered at the WTO, if the agreements are consonant with the purposes of the institution, should not be tolerated. In addition, the issue needs to be faced as to when nondiscrimination

(MFN) will be required, or in the alternative, the benefits of a plurilateral are confined to its signatories.

Dispute Settlement

The Appellate Body as it once existed will not be restored. It is still unclear whether there will be two-tier dispute settlement, a panel stage followed by an appeal.

The primary reason the WTO's dispute settlement system failed was constitutional. There were no checks and balances. This institutional defect resulted in a rule by judges, with no ability of Members to have a say in what the rules were and no role for the executive (the Secretariat) other than offering good offices to mediate disputes, an avenue that was not much used. Imagine that the European Union consisted of the European Court of Justice, with no functioning Parliament and no relevant role for the EU Commission. What would exist would be a "gouvernement des Juges". In France this brought a revolution. It did in the WTO as well.

The WTO Dispute Settlement Body had no clear role other than as an employment agency to choose Appellate Body Members. There was no effective member oversight. The system had a built-in bias for delay and overreach. Worse, the balance in the multilateral trading system was upset – the system reneged on the promise that while there would be more open trade, there would also be the means to offset unfair and injurious trade.

There are two primary choices as to how to reform the dispute settlement system: build in oversight with a counterweight to dispute settlement panels with appellate level panels deciding only as necessary what the WTO rules are to mean, subject to DSB review, or have panels operate as arbitral bodies, perhaps with only one stage, with no appellate level.

The path forward is complicated by "new" problems, going beyond the prior US concern that the system was making some trade remedies unusable (safeguards) and others less effective (anti-dumping and countervailing duties) --

- What is to be done about national security measures?
- What is to be done about dealing with China issues?
- What is to be done about green steel (green-lighting)?
- What is to be done about MFN in the e-commerce JSI? In other codes?

Intelligence Gathering for Transparency

The WTO should become a hub for all useful trade information. This does not mean being the depository of all information, but the institution should have the ability to tap into

data bases everywhere to provide members with clear intelligence on the measures and policies that affect trade.

The Secretariat should be independent of the Members in performing this function, not curbed by Members' political concerns.

Creation of Independent Executive Functions

The chief administrator of the World Bank, the International Monetary Fund and the OECD each chair the resident group of country representatives that are each expected to present proposals for Members to consider. The Director-General of the WTO does not have these roles. She should have the freedom to make proposals, to drive the process.²

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I will be pleased to answer any questions that you may have.

² NOTE: WTO reform is dealt with in greater detail in a series of working papers published by the Peterson Institute for International Economics:

<https://www.piie.com/publications/working-papers/wto-2025-constructing-executive-branch>;

<https://www.piie.com/publications/working-papers/wto-2025-getting-back-negotiating-table>;

<https://www.piie.com/publications/working-papers/wto-2025-enhancing-global-trade-intelligence>;

<https://www.piie.com/publications/working-papers/wto-2025-restoring-binding-dispute-settlement>;

<https://www.piie.com/publications/working-papers/wto-2025-restoring-binding-dispute-settlement>.

The subject will be covered in my forthcoming book, "Revitalizing the WTO", Cambridge University Press (2023).