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Trump Relegates Free Trade to the Doghouse

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Robert Lighthizer, a former Reagan administration deputy U.S. trade representative and longtime trade-remedies attorney, is President-elect Donald Trump's choice for United States Trade Representative (USTR).

Considered in conjunction with naming Peter Navarro to head the newly created National Trade Council at the White House (my take) and nominating Wilbur Ross as commerce secretary (my take), Lighthizer's selection seems to confirm fears that U.S. trade policy is descending into darkness.

At the very least, it is reasonable to assume that for the foreseeable future trade policy will be overwhelmingly enforcement-oriented, while trade agreements and other forms of liberalization will be relegated to the doghouse.

For many years, Lighthizer has represented U.S. steel companies, America's most trade-litigious industry, filing dozens of antidumping and countervailing duty petitions to keep foreign steel out of the United States.

Some of the cases in which he was involved were brought before WTO dispute settlement, where the dispute panel and appellate body ruled that the United States was administering its antidumping law in ways that violated U.S. commitments under the WTO Antidumping Agreement.

Perhaps as a result of those experiences, Lighthizer has been a strident critic of the WTO's dispute settlement body, which he accuses of overreach and usurpation of U.S. sovereignty. (Here is a debate from 10 years ago between Lighthizer and me on the merits of the WTO.)

There may be something of a pro-complainant "bias" at the WTO because governments don't bring cases to dispute settlement unless they are reasonably certain of victory.

There is a selection bias. When the United States is the complainant, it wins most of the issues in most of the cases. When the United States is the defendant, it loses most of the issues in most of the cases.

It just so happens that the United States has had to defend its indefensible antidumping regimemany times at the WTO, and in most cases it has lost. Antidumping litigation is Lighthizer's bread and butter.

Lighthizer has advocated for the formal establishment of a committee composed of retired federal judges to review WTO dispute panel and appellate body findings that are adverse to the U.S. government's position.

While that is not, in and of itself, necessarily provocative, the ultimate purpose of such a committee would be to collect evidence that the WTO has an anti-American bias, which might be used to advocate WTO withdrawal.

The Uruguay Round Agreements Act, which was passed by the U.S. Congress in 1994, contains a provision that effectively requires Congress to vote every five years on whether the United States should remain a member of the WTO.

From Lighthizer's view, this process would send a signal to the WTO and its members that if the United States doesn't get its way, it might bolt the system. And that would give the United States some extra leverage, which might deter the filing of formal complaints and add a corrupting political dimension to dispute settlement determinations.

Or, perhaps worse, Lighthizer could use his perch at USTR to lobby Congress to vote for WTO withdrawal.

Lighthizer fancies himself a conservative, although he is more aptly characterized as an economic nationalist with deep disdain for free trade. He has argued that true conservatives throughout American history have been suspicious of free trade and favored protectionism.

He proudly notes that Ronald Reagan—often pegged as a free trader—imposed all sorts of protectionist measures against imported cars, motorcycles, steel, textiles and sugar. And all of these measures were "successful," he claims.

Despite conclusions reached after the naming of Ross and Navarro, USTR's role in formulating trade policy won't be diminished but dramatically altered. Enforcement will be the mantra and, I suspect, much of the enforcement effort will be directed at China, Mexico and developing countries alleged to be the destinations for massive amounts of U.S. outsourcing.

But the targets may change when the Trump administration comes to realize that most U.S. outward investment goes not to China or Mexico, but to Europe. Actually, the EU is likely to come under greater scrutiny because Trump and the GOP Congress want to overhaul the tax code, and some of the changes being considered may run afoul of U.S. WTO obligations, possibly prompting complaints from Brussels.

Having added leverage to suppress formal EU complaints about border tax adjustments seems like it would dovetail neatly with Trump's approach.

Whether and how long the imbalance between enforcement and liberalization persists will be determined, in part, by how provocative and unilateral U.S. enforcement efforts become. Raising import barriers will have an immediate and deleterious impact on the U.S. economy, especially on manufacturers who rely heavily on imported intermediate goods and capital equipment.

Raising those barriers unilaterally—or in circumvention of WTO rules—would likely spark retaliation, which would reduce export revenues and exacerbate the economic damage.

My best guess remains that Trump doesn't want to kill the economy, will eventually recognize the folly of this approach and will reverse course before too long.

But, buckle up. It's going to be a bumpy ride.

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