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The Making of a Trade Warrior

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At his confirmation hearings for the position of U.S. trade representative, Robert Lighthizer, the nation's chief trade negotiator, promised to fight for all of America's great industries. Yes, he acknowledged, he had built his three-decade career by lobbying for the steel industry. But he was ready, he said, to make the world safe again for good old-fashioned American capitalism, in all its forms. He recalled a caution he'd received from a senator: "As you go through doing your job, remember that you do not eat steel."

The senator wanted Lighthizer to concede that, despite its hold on the national imagination, steel's contribution to the American economy has waned. Even back in 2003, when Lighthizer made his first major bid to control the rules of global trade, neither of the two leading American steel companies was worth more in the stock market than the nascent Amazon, despite employing a dozen times as many employees. Today, the two shiny new headquarters Amazon plans to build could house the majority of the 81,000-odd workers who work in America's remaining iron and steel mills, according to the Bureau of Labor Statistics.

As America's steel workforce has shrunk, the industry has maintained and even tightened its hold on Washington. Lighthizer has played no small part in steel's political endurance; he has been working for years to yoke steel's interests with the nation's. Through a spokesperson, Lighthizer declined to comment for this story. But more than two decades of his writing, speeches, and interviews give a sense of how he has come to view the global economy, and the perils he believes America faces as China grows more dominant.

Lighthizer believes that the shrinking of the American steel industry isn't a mere by-product of technological shifts, but the result of a war China has been waging for decades. He and his allies think the growing superpower will now take the fight to other U.S. interests, threatening the nation's economic hegemony. Now he's preparing his own battle plan, refined over a career of lobbying. He plans to bend the rules of the global economy in America's favor—even if that means breaking the system America itself created.

It's easy to forget how new our global economic system is.

In the early 1980s, when Lighthizer first got the call to join the executive branch, there was no nafta, no European Union, no World Trade Organization. Within America's cozy trade community, Lighthizer was already established. When he was nominated to serve as President Ronald Reagan's deputy trade representative in 1983, the Senate Finance Committee that was to vet him greeted his introduction with knowing laughter, according to *The New York Times*. The inside joke was that he was an inside man—he was already a staffer on the committee.

Under Reagan, Lighthizer's key assignment was to use American leverage in one-on-one talks to persuade trading partners like Japan to accept terms that favored U.S. firms. He came away with a reputation as a blunt, effective negotiator, and a nickname to match: "missile man." Japanese negotiators slapped him with the moniker, according to *The Wall Street Journal*, after he folded one of their proposals into a paper airplane and threw it back at them.

In 1985, Lighthizer joined an elite law firm, Skadden, Arps, Slate, Meagher & Flom, where he would stay until his formal return to government under Donald Trump. He quickly settled down into the client work that would define his career: representing the American steel industry in its trade disputes. Technically, that made him a lobbyist, but any aspersion implied in that label misses the point. "He enjoys being part of the exercise of power," his brother James Lighthizer, a Maryland Democrat, told *The Washington Post* in 1987. "Like me, that's his passion. This lobbying stuff pays great, but it's secondary. He didn't get involved in government to do lobbying, he got involved in lobbying to get back in government."

Lighthizer's methods of waging war were vicious, but not strictly underhanded. "Honest isn't quite the right word," the trade lawyer Donald Cameron told me, searching for an adjective to describe the Skadden team he had worked against over the years. "I found that their representation was actually stronger and just more reasonable in the way that they approached it than some of the other firms that represent U.S. steel interests." Their gift was knowing where the money was and going after it with verve. In 1992, Lighthizer and Alan Wolff, a frequent collaborator from another law firm, planned a gluttonous feast for the creatures of Washington's swamp. Together, they sent the Commerce Department and the International Trade Commission "two million pages of documents in 650 boxes" according to *The New York Times*. The filings documented allegations of unfair trading practices, which, if upheld, would lead to tariffs against American firms' overseas competitors. To save their business, foreign steelmakers would have to join in the legal feeding frenzy, making Washington's trade lawyers the one guaranteed winner. "This is a fat pig, and they all want a slice of it," Lighthizer told the *Times*. "Every single person in town will be working on this, every single one."

When the world trade organization was established in 1995, its objective was partly to tame the wild capitalism that Lighthizer and his allies so expertly practiced. It built on an edifice of trade negotiations hammered out since World War II, and the result resembles a monument to a certain ideal of capitalism. The vision holds that trade is best when goods and services can move across borders unhindered by tariffs or other government meddling. Companies that do business internationally are expected to operate free from most government aid and to avoid anticompetitive tactics such as dumping, or selling below cost to capture market share. If they don't, other governments can retaliate within the law.

The WTO provides a venue for negotiations among its members but, crucially, it also established a judicial system that can issue binding rulings. The genius of that judiciary, with the seven-person Appellate Body as its final arbiter, is that it lets rival powers see their ambitions reflected back in it. The small countries of the world could envision themselves, like the Lilliputians, tying down America's outsize strength. And Gulliver, why would he sign up to be ensnared? To give America's expert trade negotiators the force of law. Pre-WTO, Lighthizer recalled in a speech at the New America Foundation, America's lawyers would fight out a trade agreement, only to find they had no way to hold the other side to it. But here was a fix, he said. “The best way to do it was just to say we will use sort of a U.S. system. We will have kind of a court. And in everybody’s mind was, well, we will create international panelists who will be basically like American judges.” The United States was a creating a weapon it could wield best. What was there to lose?

Left unanswered on the occasion of the WTO’s creation was the question of whether China would join it. Then-President Bill Clinton was a proponent of welcoming the fast-growing economy into the new global trading regime, if its leaders would agree to a handful of concessions. Lighthizer, a staunch opponent of China’s entry into the organization, campaigned for Senator Robert Dole against Clinton’s reelection. (In 1996, *The Baltimore Sun* found Lighthizer with a pair of binoculars, gazing out at Clinton’s golf game on the South Lawn of the White House.) After Clinton’s reelection victory, Lighthizer took to the *Times’* op-ed page to warn of disaster: “If China is allowed to join the W.T.O. on the lenient terms that it has long been demanding, virtually no manufacturing job in this country will be safe,” he said. China’s “leaders view economics the same way they view defense, foreign policy or human rights. It is a means of expanding the power of the state and maintaining control of its population,” he wrote in another *Times* op-ed.

But Lighthizer’s dire warnings about global government and threats to U.S. sovereignty were no match for Clinton’s sunny paeans to the American ideal of capitalism. “By joining the W.T.O.,” Clinton said in a speech, “China is not simply agreeing to import more of our products; it is agreeing to import one of democracy’s most cherished values: economic freedom. The more China liberalizes its economy, the more fully it will liberate the potential of its people.” Over Lighthizer’s objections, China sped toward full-fledged membership in the WTO. But as Clinton’s presidency neared its end, Lighthizer and his clients readied new ways to ensure their success in the new economic order.

While Lighthizer and his fellow lobbyists feasted in the late 1990s, the American steel industry was going lean. U.S. Steel had become the world’s first billion-dollar company within a year of its creation, in 1901. A century later, its steel shares were worth virtually the same in total, a significant decline in value after decades of inflation. Its pension obligations had combined with aging technology—like other old-line producers, it made steel from raw materials—to weaken its place in the market. New-line producers such as Nucor Corporation were making steel from scrap, at lower costs. And steelmakers of all kinds were producing more than ever.

By 1998, all that supply was chasing a smaller global market. The bottom fell out of Russia’s post-Soviet economy. Fast-growing Asian markets tumbled into financial crisis. American companies suddenly faced stiff competition. In response, the industry, led by its union workers, opted for the most patriotic of American business traditions: Create a slick marketing campaign and pressure Washington to step in.

The national campaign was called Stand Up for Steel. Lighthizer and other industry lawyers filed case after case in U.S. trade courts. Lobbyists pushed to get the president to launch a so-called Section 201 investigation, a defensive action known as “safeguards,” which would raise tariffs on competing imports. With a Democrat in the White House—and another aiming to keep it—the unions hoped for a favorable hearing, but the Clinton administration resisted. A union lobbyist recalled making a Hail Mary visit to the White House six hours before George W. Bush's inauguration. But in the Clinton administration, Susan Rosegrant recounts in a study of the protection campaign, economic policy trumped politics. "Our hearts bled for the steel industry, but we didn't think they were being damaged by imports," Robert Lawrence, an economic adviser to Clinton, said, according to the study. William Klinefelter, a union lobbyist, believed that decision might have doomed Al Gore's presidential run. "It would have gone a long way if he could have walked into West Virginia saying that this administration has initiated a 201 to save the basic steel industry," he said in the study. Instead, Bush took the state, and the White House.

For Bush's new administration, the steel industry's plight created a political opportunity that was too good to miss. Republicans had been the party of WTO-style free trade: law-bound and globally minded. But the political incentives to favor protectionism were enticing. Klinefelter explained in the study: "In 2004, Bush could go into Pennsylvania, Ohio, Indiana, Illinois, and West Virginia and say, 'I'm the president who saved your job.' Now it doesn't make any difference what the leadership of the steelworkers union says about the next Democratic presidential candidate. If Bush comes through on this 201, he's going to get our guys." And that's exactly what the president did, setting in motion a long-term realignment in the politics of trade.

Bush directed the International Trade Commission to start an investigation. The government's intervention, he said, was "designed to restore market forces to world steel markets." The safeguards required formal review, but Bush's declaration put the president's imprimatur on the industry's cause. Even opposing lobbyists had to hand it to American steel. Lewis Leibowitz, an adversary, told *The Washington Post* in 2001, "This is an industry that has something like 160,000 workers, and the market [value] of all the companies is smaller than that of Amazon.com, and they've turned this town upside down. So my hat is off to them." Leibowitz understated steel's position. Because of the dot-com collapse, a few firms, including Nucor, briefly outpaced Amazon. But protecting steel's market cap meant throwing some nasty elbows.

At the time, Christine McDaniel was putting her freshly minted economics doctorate to good use in the Office of Economics at the International Trade Commission. Despite its somewhat misleading name, the commission is a domestic American agency. Its commissioners are appointed by the president and confirmed by the Senate to nine-year, nonrenewable terms, removed from the heat of trade politics. For that reason, the commission is frequently described as a "quasi-independent" agency. It sorts through allegations of unfair trade practices and says which ones really did damage. The commission sided with Bush in his 201 investigation, and sometimes sided with Lighthizer and his colleagues on cases filed on behalf of U.S. Steel and others. Some cases, however, got a little more complicated. For McDaniel, what should have been an anodyne research assignment became a political shouting match that threatened her entire agency.

One of several claims of unfair foreign competition the steel industry filed with the ITC concerned cold-rolled steel, the kind of material used to make products such as lockers or car roofs. An ITC commissioner on the case asked McDaniel to look into an economic model supplied by one of the foreign companies involved—just the type of service to her country a young economist might relish. But before the case was even decided, McDaniel received an alarming phone call. A lawyer for the steel industry was on the line, yelling at her to back off the research. “ITC is an independent agency, and I knew that this lawyer should not have been calling me directly,” she told me. “For him to do that suggested that he felt that he could circumvent the process, which—it just didn’t seem right. And I never forgot that.” Then the American steel companies lost the case. And with the president in their corner, they didn’t take kindly to being stopped by a clutch of no-name trade technocrats. Members of Congress with close connections to the industry—including, according to *National Journal*, the chair of the Congressional Steel Caucus, Representative Ralph Regula of Ohio—issued a report that recommended identifying McDaniel publicly. Congress also considered cutting the entire budget of the department where she worked.

“They’re for their bottom line, just like everyone else,” McDaniel said. “But they just don’t seem to respect the checks and balances of the system. They’re not transparent in how they operate.” And attacking her agency’s budget wasn’t playing fair. “I think that was a new low. A very sneaky thing to do. And threatening, too.” It sent a warning to the commission to play by steel’s rules. “The steel folks, they’ve really succeeded in trying to limit any economic analysis in these cases,” she said. (The trade lawyer William Barringer documented the episode in his book, *Paying the Price for Big Steel*, but this is the first time McDaniel has spoken publicly about it.) It’s not clear whether any one individual was responsible for the decision to accost a civil servant. But it was Lighthizer’s case. And according to lobbying disclosures, people and PACs associated with his law firm, Skadden, and his client, U.S. Steel, gave tens of thousands of dollars in sum in political donations toward the reelection of Senator Jay Rockefeller, whose state of West Virginia was home to an ailing corner of the steel industry, and who paid an in-person visit to the commission, declaring, “I find this deeply disturbing.”

(Skadden did not respond to a request for comment. A spokesperson for U.S. Steel wrote in an email after this story was published, “U.S. Steel has long supported the comprehensive and effective enforcement of our country’s fair trade laws and supports the actions taken by the president and the U.S. Department of Commerce to use all of the tools in existing U.S. trade law authority to limit steel imports to ensure our national and economic security.” Skadden does not currently represent the firm on trade matters, she said.)

All these years later, what the participants in this episode took away is a sense that they were misused in service of narrow ends. “The bad guy in this story is the steel industry,” McDaniel said.

By 2003, the Bush administration’s Section 201 safeguards for the steel industry had survived domestic review, but in the American-made global order, they now had to pass muster with the WTO as well. The Europeans, Japanese, Chinese, and others had all complained that Bush’s protectionism was an illegal handout to American steel. And they won, in a headline case. America was Gulliver after all.

Robert Lighthizer had cemented his reputation as one of the most vocal critics of WTO law and the lawyers who practiced it. That an international body, unanswerable to the people of any nation, should have the ability to veto a democratic nation’s policies was a dangerous incursion on U.S. sovereignty, he argued. The WTO’s ruling against the Bush administration’s safeguards helped to reinforce the case.

The administration made an audacious move. In 2003, it nominated Lighthizer to the WTO's high court, the Appellate Body. Lighthizer spoke of the opportunity to join the institution he often delighted in tearing down as a turning point—the chance to pivot from years of outsider criticism into a public-spirited role. "Do you criticize the system and hope to kill it," he told the journalist Gregory Rushford, "or do you think it is worthwhile to go to Geneva and apply a strict constructionist's perspective, and add a certain credibility?"

There was no question of Lighthizer's legal talent—indeed, to this day, few are more skillful practitioners of the dark arts of trade law. But others who have served on the Appellate Body saw him as far outside the mainstream of globally oriented trade lawyers. James Bacchus, a former American congressman who was the outgoing occupant of the job Lighthizer was nominated for, recalled briefing him on what to expect from the nomination process. Lighthizer is sincere in his beliefs, Bacchus told me, but doesn't seem to believe in the very existence of international law: "I was in favor of establishing an understanding about what is right in international trade, and then upholding it. Mr. Lighthizer was in favor of reserving our right to use our might to make right in international trade." Jennifer Hillman, a former ITC commissioner and Appellate Body member, had trouble imagining a man so committed to the pursuit of a particular set of interests serving on the judicial body. "In Geneva, when you're on the Appellate Body, you've checked your nationality at the door. And your job is not in fact to protect the United States; your job is to render fair decisions," Hillman told me.

The WTO denied Lighthizer's nomination, choosing instead his fellow Skadden alum and trade lawyer Merit Janow, who embodied an opposite set of ideals. While Lighthizer was the consummate lobbyist, Janow took pains to shun even the faintest impression of a conflict of interest. "In my years on the Appellate Body," Janow wrote in a reflection on her time at the WTO, "I had no contact with the U.S. government and, in fact, U.S. officials would avoid even extended pleasantries at the occasional cocktail party lest even such idle conversation generate any misimpression." Lighthizer's quest to become the Antonin Scalia of international trade law had ended, for the moment, in rejection.

Yet now, 15 years later, Lighthizer has leapfrogged the position he was denied. He can nominate Bacchus, Janow, and Hillman's successor—or deny one entirely.

In office,Llighthizer's goal is simple to state, if somewhat more complicated to achieve. He wants to roll back China's advances on the global economy. His zeal for that mission comes directly from his years working on behalf of American steel interests. According to Dan DiMicco, the former CEO of Nucor Corporation and a trade adviser to President Trump, steel jobs were the first casualties of a quiet war China has been waging on the American worker. "We've been in a trade war for 25 years. We haven't engaged; it's been waged on us. They've done it by sleight of hand, by lying, by using short-term greed to undermine long-term success. And Trump knows all of that, and he's put Bob in charge," DiMicco told me.

America's economists will tell you that bilateral trade deficits are nothing to worry about. They're certainly not fixable by measures like tariffs. But for Lighthizer, America's trade deficits are the symptom of a growing problem. Trade deficits "raise serious concerns about America's global leadership role," he has argued. Imbalanced trade was behind the decline of American manufacturing, he told the Senate Finance Committee in 2007. "U.S. policies are effectively propping up manufacturers in the rest of the world, while placing our own manufacturers at a major disadvantage," he said. America's "massive trade deficit," he continued, results from "the fact that U.S. manufacturers find it more and more difficult to compete with their international rivals."

Lighthizer sees China, more than any other country, as the heart of America's misguided global strategy. "It seems clear that the U.S. manufacturing crisis is related to our trade with China," he testified to a congressional commission in 2010. "U.S. policymakers also underestimated China's ability to manipulate the WTO system to its advantage." American officials believed companies would sell to newly affluent Chinese consumers. "This assumption failed to account for the many incentives Western companies had to bet on the other side, and use China as a manufacturing platform to serve the U.S. market," he continued. Americans should be concerned, he wrote, that "our enormous trade imbalances — which require us to sell hundreds of billions of dollars in assets each year — will leave our children dependent on foreign decision makers."

In 2016, DiMicco urged Trump to take Lighthizer into the fold. "I will say this about Bob Lighthizer: He's no spring chicken," he said. Lighthizer has come out of a comfortable semiretirement to take the fight to China, DiMicco said. "It's no different than a Marine charging up Pork Chop Hill. He's committed, and he's putting his money where his mouth is." The metaphor is telling. Hundreds of U.S. Army infantrymen (not Marines, granted) died in a pair of battles on Pork Chop Hill in 1953 in Korea—in direct combat with Chinese troops. At his confirmation hearings in 2017, Lighthizer bantered with a senator about his ability to push the U.S.-China conflict to the top of the political agenda: "I will bet you, you and I will sit down in your office between now and the time I leave, and you will say, 'Bob, you were right; he really is going to change the paradigm on China. I believe he is going to change the paradigm on China.' If you look at our problems, China is right up there."

Lighthizer, like Trump, believes in the politics of grievance. The two men are close, according to *The New York Times*. When Wilbur Ross, the commerce secretary, tried to broker a deal with China early in the administration, Lighthizer talked the president out of it. "People who know me know I'm a bit of a contrarian myself," Lighthizer joked shortly after his confirmation. But he has allies, including Peter Navarro, a stridently anti-China economist who also has long-standing ties to the steel industry. "In my judgment, we have the finest U.S. trade representative we have had in our history," Navarro told an audience at a recent speech. Navarro also denounced "Wall Street bankers and globalist elites" who have been trying to head off conflict with China, aiming a shot at individuals like Gary Cohn, the former head of Trump's Council of Economic Advisers.

In a scene in Bob Woodward's *Fear*, Cohn tries to convince Trump that the WTO isn't biased against the United States, because, he argues, the U.S. wins most of its cases in the WTO's Appellate Body. "This is bullshit," says Trump. It's not, says Cohn: "This is data from the United States trade representative. Call Lighthizer and see if he agrees." Cohn was right on the data, but wrong on Lighthizer's interpretation of it. As far back as 2000, Lighthizer has insisted that America found itself on the wrong side of the institution it built in its own image. "I think now we are largely defendants," Lighthizer said at the time. "We find ourselves with our, in my judgment at least, democratic process under attack wherein we make certain decisions through a democratic process, and we find a non-democratic body now overturning those decisions. And to me that is very troubling." What matters isn't the cases America wins; it's the cases America loses.

In the trade community, few actions under the Trump administration have been more controversial than the decision to impose tariffs on steel and aluminum under Section 232 of the 1962 Trade Expansion Act. After the Commerce Department initiated the tariffs, Lighthizer put them to good use as a foil in his negotiations with Canada and Mexico. Section 232 is a special legal provision that allows the United States to take defensive trade actions on national-security grounds. Before Trump, presidents were careful to avoid letting courts test the precedent the exemption would set. Once the U.S. plays the national-security card, there's nothing stopping any other country from doing the same. And that's not to mention the absurdity of claiming that countries like Canada and Mexico—America's trading partners in nafta—are threats to national security. "There's a difference between safeguarding an industry, and saying America's national security is at risk," Carla Hills, who negotiated nafta as one of Lighthizer's U.S. trade representative predecessors, told me. "It puts us in the category of, 'We are going to be bombed if we don't fix this.' And who are we going to hit, our closest allies?"

Lighthizer has pushed the World Trade Organization to the limit in his attempt to regain American primacy. As of October, the WTO Appellate Body no longer has enough members to hear all possible cases. The United States has vetoed all appointments to the body, citing what Lighthizer and his office have described as judicial overreach, and is resisting efforts by American allies to resolve the impasse. "This poses a grave systemic risk which could affect all areas of our work," Roberto Azevêdo, the director-general of the WTO, said in September. American officials have long seen squeezing the Appellate Body as a way to gain power over the WTO. Barack Obama's administration blocked one appointment entirely and refused to renominate Hillman. But, according to Bacchus, who served on the Appellate Body for eight years, including as its chief, the current administration has crossed a line. "Trump has taken a long-standing issue and turned it into a crisis," he said.

The United States has raised a number of procedural concerns in its complaints about WTO Appellate Body members. But Hillman said she suspects that Lighthizer "wants to return to the old days in which the dispute-settlement system was fundamentally not binding." (Lighthizer has been circumspect about the issue in public lately, but said as much in his 2000 New America Foundation speech: "I guess my prescription, really, is to move back to more of a negotiating kind of a settlement. Return to WTO and what it really was meant to be. Something where you have somebody make a decision but have it not be binding.") For Lighthizer, a WTO judiciary that is more amenable to American pressure is likely a good thing. The U.S. is facing two major cases now that could have adverse effects. One deals with the Section 232 national-security tariffs. The other is about China, and whether the United States can force it to follow special rules. If the top court can't rule on those questions, then they'll be settled the traditional way, through raw power.

At the moment, Lighthizer is still riding a nafta high within the administration. The still-unratified U.S.-Mexico-Canada Agreement would produce largely cosmetic changes to the underlying economic relationship among the three countries. ("I would describe it as a face lift and a boob job," Susan Aaronson, a professor at George Washington University, told me) But the deal has two particular provisions that stand out. One threatens automotive manufacturers with higher costs if they don't return manufacturing jobs to the United States. The other makes it difficult for the negotiating partners to strike new trade deals with China. By implication, the overarching strategy of American trade policy is to start bringing back the manufacturing jobs that have migrated from the U.S. to China since the latter joined the WTO—whether businesses like it or not.

Lighthizer's campaign against China relies on an illicit trade weapon: Section 301 of the 1974 Trade Act. It allows unilateral action by the American president against trade policies he deems unfair or overly burdensome. For that reason, the WTO has limited its use, a stricture Lighthizer sees as yet another way China has undercut America's power to defend its interests, which he told the U.S.-China Economic and Security Review Commission in 2010.

Although the WTO's limits on Section 301 remain, Lighthizer quickly reclaimed its power upon taking office, ordering an investigation into China's trade practices. In March, his office issued a 200-page document known as the Section 301 report, something akin to a charge sheet of allegations of economic crimes by China. It documents systematic efforts by Chinese companies and officials, often acting on the mandates of the Communist Party, to force unfair terms onto American companies, to steal their technologies, and to spy on their corporate secrets. The incidents in the report are difficult to verify, but experts who have read it say the alleged actions appear consistent with recent Chinese behavior.

Among the claims Lighthizer's office has leveled against China are charges that it has engaged in outright attacks on American interests. A November update to the 301 report features two alleged Chinese intelligence officers who discuss targeting American aerospace technology by planting a Trojan horse in a French company's network. "I'll bring the horse … to you tonight," one officer reportedly says. "Can you take the Frenchmen out to dinner tonight? I'll pretend I bump [sic] into you at the restaurant to say hello. This way we don't need to meet in Shanghai." According to DiMicco, Xi Jinping, the Chinese president who recently had the constitution changed to remove his term limits, has been explicit about his overall goal: "He came out and said, as dictator-in-chief for life, that China was going to dominate all the industries of the future, not be a competitor, not be a partner, but to dominate the global industries—semiconductors, artificial intelligence, and aerospace, you name it. They were going to use all the tactics and economic aggression and trade mercantilism and predatory pricing that they had used against the steel industry for all these other industries."

Based on the 301 report, Trump has issued a series of escalating tariffs against Chinese imports. As of December, $200 billion worth of goods from China face 10 percent tariffs at the U.S. border; Trump has threatened more. The tariffs appear to have been designed to target not just the Chinese government, but also American and other firms that manufacture in China, according to the researchers Mary E. Lovely and Yang Liang. A list from Bloomberg features 62 companies that reported higher costs due to the tariffs, including General Electric, which has said they will cost it as much as $400 million.

China has challenged the use of Section 301 at the WTO, marking yet another case that would be impossible for a diminished Appellate Body to decide. Of the body's three members, one is from China, and another is from the U.S. If either recused themselves, the case could not proceed.

American tech firms with global supply chains are in a difficult position. In the sweeping view of history held by Lighthizer and his allies, it's no accident that manufacturing jobs can't return to

America. This view holds that the Communist Party has used China's membership in the WTO to draw companies in, making them unwitting accomplices to the pillaging of the American economy. Trump has singled out Apple, which makes iPhones that carry the label "designed in California" and are assembled in China. "Make your products in the United States instead of China," he tweeted in September. In a submission to Lighthizer's office, Apple made the case that it does assemble products in China, but "every Apple product contains parts or materials from the United States and is made with equipment from U.S.-based suppliers." Apple's CEO, Tim Cook, has said the firm wants to help support more jobs in the United States, but is limited by the nation's lack of high-skilled workers. Apple's late founder, Steve Jobs, was more blunt, according to *The New York Times*. Asked by President Barack Obama if Apple could ever bring its overseas facilities back to the U.S., Jobs replied, "Those jobs aren't coming back." (Laurene Powell Jobs, Jobs's widow, is the founder of the Emerson Collective, which is the majority owner of The Atlantic.) After the spat with Trump, Lighthizer's office announced that some Apple products like the Apple Watch would be exempt from tariffs, and Trump later praised Cook for hiring more Americans. Apple did not respond on the record to a request for comment.

The wto risks irreparable damage from Lighthizer's battles with China. In an influential article, Mark Wu, a Harvard Law professor who negotiated intellectual-property deals for the U.S. government, made the case that China's accession to the WTO was premised on a mistaken assumption that the organization could accommodate the country's authoritarian system. China's path, the WTO's creators assumed, would resemble other countries'. "Instead, Chinese leaders have developed a unique economic model ... which WTO rules are not adequately equipped to address," Wu told me. The WTO has rules for South Korea's family-run conglomerates, but not for Chinese banks that answer to unwritten orders from the Communist Party. Correcting such an omission wouldn't necessarily be fatal for the WTO, but would require both the U.S. and China—among others—to make concessions, and little in the United States' negotiating posture suggests a willingness to do so. "Another option is to resort to power politics to try to force these changes, and possibly risk breaking the system while trying to save it," Wu said. "If we do neither, then the reality is that the WTO's relevance will gradually diminish as China rises, because China's size and trade impact are just too large for others to wait patiently for market reforms to play out."

Lighthizer has said he doesn't want to kill the WTO. But it stands in the way of his objectives with China, and his history suggests he won't be gentle with anything that gets in his way.

"Law is good if legal rules are what you want," the UC Irvine law professor Gregory Shaffer said to me, discussing Lighthizer's approach to the WTO. "And that's basically the way the U.S. viewed it when it created the institution. But once other countries learn how to use the law against the powerful, then the powerful start thinking maybe the law isn't such a great thing." Of course, the less powerful haven't always been thrilled with the WTO even as it's currently constituted. Winning a case doesn't entitle a country that's been wronged to enact punishment; it only allows them to put up retaliatory tariffs worth as much as the original damage. That lawful pain is intended to persuade the other party to back off. The system advantages vast economies such as the United States, which can afford the costs of issuing retaliatory tariffs. But for small economies, retaliating can do as much harm as good. In 2004, Antigua and Barbuda won a case over online gambling against the U.S., but it's neverbeen willing to swallow the $21-million-a-year cost of retaliating against the the country. "The small nation of Antigua and Barbuda, has good reason to join Mr Lighthizer in questioning [the WTO]," Ronald Sanders, Antigua and Barbuda's ambassador to the U.S., wrote last year. "But for different reasons."

Lighthizer's criticisms have crystallized the divisions among supporters and critics of the WTO. Even if the bulk of the 301 report is accurate, what matters is how the United States responds to it. "We had better think about what it is we're really trying to accomplish. Are we trying to deal with some very real and very irritating trade concerns, or are we trying to contain the rise of China?" asked Bacchus, the former Appellate Body chief. "China's rise is not our decline." Hillman believes that the United States should employ a never-before-used legal strategy and argue that China's efforts violate the spirit of international trade law, if not always the letter. She wants the U.S. to take the issues outlined in the report to its allies, and go together to Geneva to force China to defend itself. "You should at least give the WTO a serious try before saying it can't handle this kind of a case," she said.

When Donald Trump met with Xi Jinping in Argentina in December, the two presidents tried to reduce the tensions. Lighthizer will lead the U.S. side in 90 days of talks that were widely described as a kind of truce. But he has cautioned that he will quickly return to arms when the clock runs out on March 1 if China doesn't restructure its economic relationship with the U.S. and stop stealing American technology. "We will protect that technology and get additional market access from China," he said on a recent *Face the Nation*. "If that can be done, the president wants us to do it. If not, we'll have tariffs." Lighthizer intends to take the fight to China. With James Mattis's resignation, he has become one of the most influential figures in American foreign policy. Unlike Mattis, there was never any doubt that Lighthizer sees his role as furthering the president's ambitions rather than checking them. But can a lobbyist whose career was devoted to fighting for protectionism be trusted to fight for national interests bigger than any one man?

The trade lawyer and Cato Institute scholar Scott Lincicome recently reviewed surveys of Americans' attitudes on free trade and protectionism, which he found to be wide but shallow. "Most Americans generally support freer trade, globalization, and even oft-maligned trade agreements," he wrote. But that support is vulnerable to being influenced by organized campaigns on specific issues, such as Trump's steel tariffs: "As a result, protectionist policies emanating from the United States government today are most likely a response not to a groundswell of popular support for protectionism but instead to discrete interest group lobbying (e.g., the U.S. steel industry) or influential segments of the U.S. voting population (e.g., steelworkers in Pennsylvania)." That lines up with a recent paper by the economist Dani Rodrik. Economists tend to reflexively support anything described as a "free trade agreement," Rodrik argued, but modern trade deals have little to do with reducing barriers to trade. After all, the negotiations that created the WTO resulted in the biggest trading countries ending the vast majority of their tariffs and quotas. What's left is a fight to change local rules and regulations. "Rather than reining in protectionists, trade agreements empower another set of special interests and politically well-connected firms, such as international banks, pharmaceutical companies, and multinational corporations," Rodrik wrote.

In a sense, that makes Robert Lighthizer the most honest man in Washington. He doesn't believe in unregulated free trade, but the very idea of free trade is a chimera. America's trade laws have always served America first—at least for those lawyers who know exactly whom to lobby and how. Generations of American trade negotiators have voiced lofty ideals at the same time as America's global power and prestige swelled, but they rarely had to prove that their principles wouldn't bend when pressed. The law serves the weak, they could say, while never having to contemplate the experience of real weakness. Now, as America is eclipsed by China, Lighthizer has arrived to say the law should favor those who make it. Who is to tell him he's wrong? China? If you'd rather China's laws, he might well say, go ahead and live under them. In the meantime, the rest of us will go on living in Lighthizer's world. And if you don't like its laws, at least you know who made them.