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When Protectionism Is Not Protectionism

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In the *Wall Street Journal* last week, Commerce Secretary Wilbur Ross shared some of his views about free trade and protectionism, which were widely and deservedly criticized for their misguided obsession with trade deficits and their mercantilist disregard for U.S. consumers. But Ross also offered a more nuanced take on what does and does not constitute protectionism, which is a matter of great relevance in this atmosphere of increasing trade frictions.

Attempting to offer an explanation for U.S. goods trade deficits with China and the EU, Ross presents a bar chart showing the average tariffs for 22 manufacturing industries in the United States, Europe, and China. U.S. tariffs are lower than China's in 20 of 22 industries and lower than the EU's in 17 of 22 industries. Does that mean that China and the EU are more protectionist than the United States? In the category of applied tariffs, yes, it does. Does that mean that China and/or the EU are engaging in "protectionism," which might warrant a ruling from the Dispute Settlement Body of the World Trade Organization, and possibly authorization for the United States to retaliate? No, it doesn't.

Tariff differentials among members of the World Trade Organization today are the product of multilateral trade negotiations, beginning in 1947 and spanning six decades, which lead to gradual reductions in global trade barriers. The formulae for tariff reductions permitted countries with smaller economies and at earlier stages of development to reduce tariffs more slowly and less steeply. Among the rationales for permitting asymmetric tariff liberalization was that it was the only way to bring more countries into the rules-based trading system. Countries at different levels of development with different-sized economies, different factor endowments, different political sensitivities to trade liberalization, and different tariff practices would never have been able to agree to identical tariff rates.

The "bound" tariff rates of the United States (meaning the highest rates the United States can assess on imports under its GATT/WTO obligations) are, in fact, lower than those of the EU and China. We can argue over whether that's fair or whether or how much the differentials contribute to U.S. trade deficits or how much better off U.S. consumers and consuming industries are when their government taxes their purchases at lower rates. But, while it is appropriate to consider tariffs "protectionism," the higher average tariffs in China and the EU are not protectionist in the sense that they violate either government's obligations under the WTO.

It is certainly desirable to reduce all tariffs to zero, but that's probably not feasible multilaterally—within the WTO—anytime soon. However, U.S. bilateral free trade agreements with China and the EU, in which the United States asks for zero tariffs, are possible. Whether this administration has the interest or wherewithal to pursue that course is unclear. After all, President Trump withdrew the United States from the Trans-Pacific Partnership during his first week in office. Under the TPP, 88 percent of tariffs in 12 countries would have gone to zero immediately, with nearly all going to zero over a period of 16 years.

Ross then goes on to defend certain U.S. trade remedy actions—duties imposed under the U.S. antidumping and countervailing duty laws to redress “unfair” trade—as “measures necessary to ensure a level playing field.” Ross laments the fact that U.S. trade remedy measures are often characterized as protectionism, when in fact—he argues—those laws are consistent with WTO rules.

Secretary Ross is right. Although antidumping and countervailing duty measures are forms of protectionism, their application by member governments is not considered protectionist under WTO rules. In fact, they are specifically authorized by the WTO, as a means to redress injurious dumping and injurious subsidization. However, those domestic laws and their administration must comport with provisions in various WTO agreements. When they don't comport – because, perhaps, the U.S. Commerce Department has been too aggressive in its assumptions, too partial in its calculation methods, or too capricious in its adjustments – governments representing the foreign exporters can challenge the United States at the WTO and, unless the issue is resolved in the consultations stage, the DSB will issue a ruling.

On 38 occasions since 1995, the WTO DSB has found aspects of U.S. trade remedy law administration to be “out of conformity” with U.S. WTO obligations. That's another way of saying that the protectionism accorded U.S. industries under the trade remedy laws is in fact protectionist by WTO standards at least some of the time.

Secretary Ross then turns his attention to China's and Europe's “formidable non-tariff trade barriers against imports.” He alludes to onerous certification standards, sanitary and phytosanitary measures (e.g., food safety regulations), non-science based prohibitions against genetically modified goods, local production requirements, and forced technology transfer. He also mentions low-cost loans, energy subsidies, and other forms of support bestowed upon China's and Europe's exporters by their respective governments.

Certainly, government subsidization and behind the border rules and regulations can have protectionist intentions or consequences, and where there are agreed upon rules to heed, the WTO provides a reliable forum for addressing these issues – and resolving most. But there are a couple of important points Secretary Ross should bear in mind about protectionism.

First, the U.S. government is not an angel; it's part of the problem. In the United States, there are “Buy American” rules that restrict most government procurement spending to U.S. suppliers, ensuring that taxpayers get the smallest bang for their buck; heavily protected services industries, such as transportation and shipping, that drive up the cost of everything; apparently interminable farm subsidies; quotas and high tariffs on imported sugar; high tariffs on basic consumer

products, such as clothing and footwear; energy export restrictions; the market-distorting cronyism of the Export-Import bank; trade remedies actions that violate WTO rules and strangle downstream U.S. industries and tax consumers; regulatory protectionism masquerading as public health and safety precautions; rules of origin and local content requirements that limit trade's benefits; restrictions on foreign investment, and more.

Second, if the Trump administration intends to ramp up enforcement to tackle what it sees as foreign protectionism, it had better do it by the book. Don't act unilaterally, as judge, jury, and executioner. Mind the rules of the WTO, which provides a legitimate path for challenging and resolving issues, such as those mentioned above. The minute the U.S. government goes rogue by implementing trade restrictions without following WTO protocols, the United States will be the violator, the protectionist. And acting unilaterally, such as by conducting a Section 301 investigation and then imposing measures in response to Chinese forced technology transfer policies, for example, will set a terrible example, invite immediate Chinese retaliation, and encourage all members to abandon their WTO commitments.

The global economy remains rife with protectionism. The worst way to address it is by being a protectionist.

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