

**Sandler Trade LLC and the
WITA-GWU Intensive Trade Seminar
present**

**Trade Responsibilities in the
Executive Branch**

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September 27, 2017**



Sandler Trade LLC



Trump Administration

115th Congress

Senate

Majority Leader: Mitch McConnell (R);
Minority Leader: Chuck Schumer (D);
Chairman Senate Finance Committee: Orrin Hatch (R)

House of Representatives

Speaker: Paul Ryan (R)
Minority Leader: Nancy Pelosi (D)
Chairman of House Ways & Means: Kevin Brady (R)

President Trump

Vice President Mike Pence

- White House Office: Chief of Staff and Advisor
- White House National Trade Council
- Special Representative for International Negotiations
- Office of U.S. Trade Representative
- National Economic Council
- National Security Council
- Office of Management & Budget

Cabinet

Members: 15
Nominated by President

Supreme Court

Chief Justice: John Roberts Jr.
Members: 8

U.S. International Trade Commission

15 Departments, including

Dept. of Commerce

Dept. of State

Dept. of Labor

Dept. of Treasury

Implications on U.S. Trade Policy

The Trump Administration and its Key Trade Players

- **White House is very active in setting U.S. trade policy (Peter Navarro, Gary Cohn) along with the Department of Commerce (Secretary Wilbur Ross)**
- **USTR (Amb. Lighthizer) is enlarging USTR's role, but is not yet a key player as was the USTR in the recent Bush and Obama Administrations**
- **There are “more seats at the trade policy-setting table, all of whom do not agree with each other.”**

General context:

- **Pres. Trump utilizes unpredictability; has high tolerance for chaos; likes differing opinions around him**
- **Adversarial, fractured WH arrangement; conflicting factions operating: ideologues, military, and finance guys**

So, who are these players?



Trade Policy Makers



Mr. Gary Cohn

Director of National Economic Council
White House National Economic Council



Mr. Jared Kushner

Senior White House Advisor to the President
Executive Office of the President



Mr. Wilbur Ross

Secretary of Commerce
U.S. Department of Commerce



Mr. Robert Lighthizer

U.S. Trade Representative,
Executive Office of the President



Dr. Peter Navarro

Assistant to the President and
Director of Trade and Industrial Policy
The White House National Trade Council



Mr. Wilbur Ross

Nominee for Secretary of Commerce



- **Has known Trump for 20+ years; private-equity investor**
 - Founded WL Ross & Co. LLC (2000), a private equity firm
 - Worked at Rothschild Inc. (1997-2000), an investment bank
- **“King of Bankruptcy”**
 - Best known for buying failed companies in steel, textile and coal, rehabilitating them, and reselling for profit
- **Trade responsibilities more significant than previous Commerce Secretaries**
- **A chief architect of “America First” trade policy**
 - Trump campaign economic policy advisor
- **Not in favor of steel 203 action, however, but support other actions against China and others**



Amb. Lighthizer: Perspective on Trade

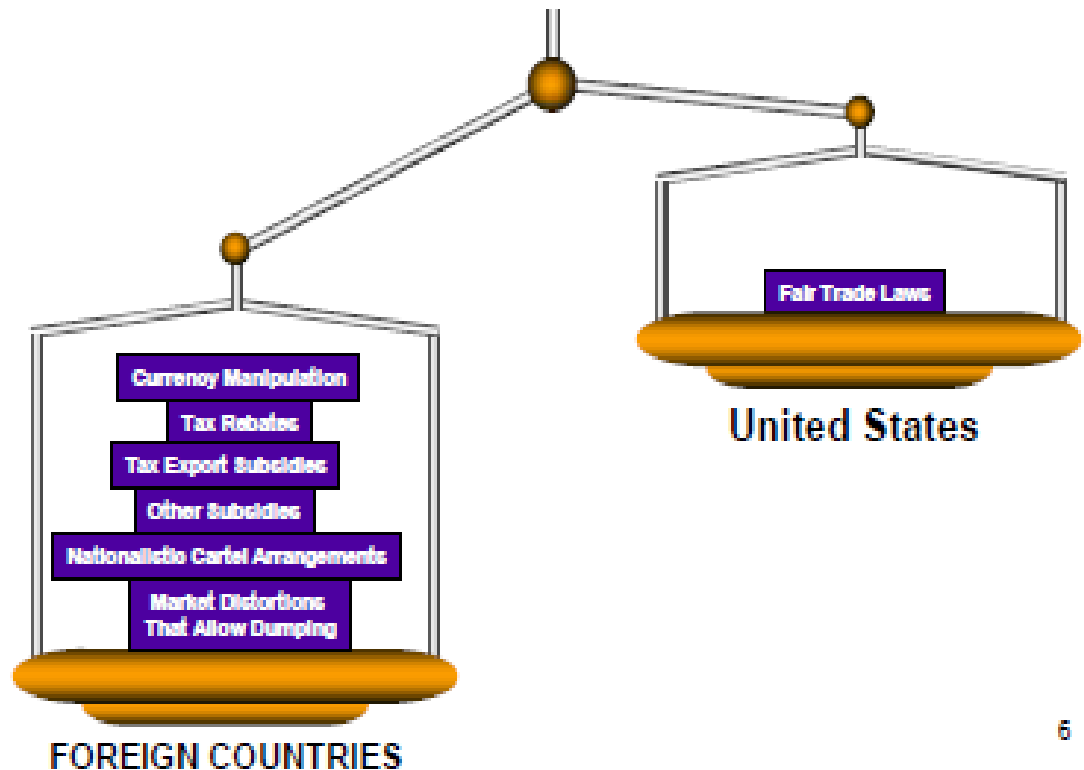


Unique advantage: He knows the required Congressional interactions and U.S. legal requirements to make trade policies, negotiate FTAs, and take enforcement actions.

His priorities

- Trade Imbalances
- Currency Manipulation
- WTO Reform
- VAT Tax Inequities
- **Enforcement**
- Follow Congressional Oversight Rules
- Apply U.S. AD & Subsidy Laws to Non-Market Economies (China)

Pro-Manufacturing Trade Policies



Dr. Peter Navarro, Assistant to the President and Director of Trade & Industrial Policy



- **Wrote Trump's economic plan with Wilbur Ross**
- **Wants to reshape U.S.-China trade relations**
 - Is vocal critic of China and U.S.- China trade relationship
 - Academic research focused on U.S.-China relations
 - *Crouching Tiger: What China's Militarism Means for the World* (2015);
Death by China (2011); *Coming China Wars* (2006)
- **Advocates for trade policies that shrink U.S. trade deficit; expand growth; and stop jobs from leaving U.S. shores.**
- **Renegotiating NAFTA is his priority**
- **Free-wheeling style – little regard for process/law (rather than using USG internal review process):** impose tariffs on steel imports; withdraw from the South Korea FTA (KORUS)
- **Reputation as a trade warrior ingratiates him with the President: President Trump: "Peter! Where's my Peter?"**
- **Navarro "reinforces Trump's worldview on trade, which many do not..."**



Navarro's Perspectives on Trade



- **First priority is to protect America's sovereignty**
- **U.S. trade policies needs to focus on America's own interests to restore lost American jobs and prosperity**
 - Vision: U.S. workers make components and assemble finished product in the U.S.
- **Trade is a zero-sum game and America is losing to China**
 - Perspective: U.S. needs to prevent other countries, particularly China, from stealing the jobs of Americans by leveraging trade rules.



Mr. Gary Cohn

Director of National Economic Council



- **Former Goldman Sachs #2 – President and CEO (2006-2017)**
 - Expert in global investment banking, investment management and securities
- **One of President Trump’s top economic advisors**
 - Reported to be close with Mr. Kushner
- **Influences financial regulatory policy**
 - Filled in for Secretary Mnuchin while he awaited Senate confirmation
- **Seen as liaison to business community**
 - Brings connections to foreign economic ministers, technology executives and banking regulators.
- **Pro-economic development and pro-business**
- **Advocates more traditional U.S. trade model**
- **Prior to this, no background in trade policy or negotiations; not vocally political**



Trade Circle Dynamics: Weekly Trade Policy Meetings

- **Varied perspectives and access**
 - Mr. Kushner: Likely holds most influence on and has most direct access to President Trump based on loyalty, proven actions, and persuasiveness
 - Mr. Cohn: pro-economic development, pro-business, more measured, use the process
 - Mr. Ross: businessman, turnaround guru, Asia savvy, don't hit steel imports
 - Mr. Lighthizer: only person in the circle who knows Congressional and U.S. legal requirements for trade policy-making; U.S. steel advocate, enforcer, China, trade imbalance concerns
 - Dr. Navarro: his ideology supports Pres. Trump's "protectionism"
- **Circumstantial lines of authority**
 - Influence with President Trump varies almost moment by moment
 - To whom is President Trump listening (and not) at that key moment?
 - Considerations: loyalty, long-term ties, in sync with President Trump's ideology, business savvy, access allowed by COS Kelly, agreement (or not) with President's highest-priority actions



Implications on U.S. Trade Policy

The Priorities

- **U.S. trade policies will be guided by: buy America, hire America, and ‘pro-fairness’**
- **Trade deficits matter:**
 - “A nation runs trade deficits when the value of its imports exceeds exports.” Trade policy is among the primary causes of the U.S. trade deficit.
 - The Administration is reviewing all existing US free trade agreements (FTAs) to determine whether they are working to the U.S.’ economic benefit – against the criteria of trade balances.”
- **China is the number one problem**, which the WTO cannot address. Sheer scale of its coordinated efforts to develop its economy; to subsidize, create national champions, require tech transfer. Poses an unprecedented threat to world trading system. The WTO is not equipped or designed to manage mercantilism on this scale.



Implications on U.S. Trade Policy

The Priorities (continued)

- **Trade policy is based on mercantilism, not comparative advantage**
 - Maximizing net exports is the best route to a nation's economic prosperity. “To export is good, and to import is bad.” (*As opposed to “comparative advantage” – each country does what it is best suited to do and free trade creates the necessary linkages*)
 - Americans can “compete successfully in most sectors with anyone in the world” *when competition is on a level and fair playing field.*
 - **Removing market distortions and encouraging fair competition leads to efficiency and more wealth. But most markets are not free and fair nor free from market distortions & closings, subsidies, & regulatory restrictions.**
 - Priority difference from previous Administrations: ***How do we (aggressively) achieve free and fair competition?***
 - **Must be proactive. Use all instruments available to make it expensive for [nations] to engage in non-economic behavior and not to treat our ranchers and workers fairly.**
- U.S. will demand "reciprocity" both in domestic and international markets.**



Implications on U.S. Trade Policy

The “Not Priorities”

- **Previously commonly used concepts like "supply-chain friendly trade policy," "global value chain," and "regional production network" have been omitted completely from policy documents**
- **Comparative advantage vis a vis other trade partners not mentioned**
- **WTO seen as ineffective at best; harmful at worst**
- **Multilateral and plurilateral agreements don't work – except if they could shrink trade imbalances (i.e., TTIP re Germany)**



Implications on U.S. Trade Policy

The Tools

- **Expect change, expect new approaches, and expect action**
- **China: aluminum, sec. 232 (national security) on steel, sec 301 on China's intellectual property practices, WTO agriculture cases (surprising?); Ross just told Chinese the need for concrete deliverables and meaningful action on key issues**
- **All countries: focus is on rules-of-origin, anti-dumping, review of import tariffs or restrictions, requiring a trade partner not to “cheat,” shrinking the trade deficits**
- **How? Aggressive enforcement:**
 - **Expect: Actions Sec 201 safeguard action (solar panels, for example)**
 - **Expect many AD/CVD actions**
 - **Expect: Voluntary export restriction/VRA agreements as well as bilateral market openings of single products**



Implications on U.S. Trade Policy

The Tools (continued)

- **Expect: ROOs: rules of origin in the NAFTA renegotiation. USTR has proposed adding more national content requirements to NAFTA and removing ways to make textile raw material sourcing more flexible and less costly.**
- **Expect: Termination and renegotiation of trade agreements and, possibly trade preferences, when the Administration finds that trade flows and other factors indicate a "disequilibrium."**
- **Expect: Use of bilateral trade agreements that provide the United States with more negotiation leverage and ensure better enforcement.**
- **To come: Unknown outcome but important: Trade Agreements Report: whether they (and preferences) are working in favor of the U.S. (Oct). "Reasonable to see if what we paid and what we received are equivalent. One measure of this is trade deficits."**



Implications on U.S. Trade Policy

The “Un-Tools”

- **Future of how we use and interact through the WTO is up in the air.**
- **Appears there is little support for the value and power of trade institutions.**
- **Great displeasure with dispute settlement agreements and WTO DSU process.**
 - **There are “numerous examples that dispute settlement has diminished what we had bargained for, or has imposed obligations that we did not agree to.”**
- **Generalized System of Preferences? Unknown.**



Implications on U.S. Trade Policy

Relationships with countries

- **People are still reading the tea leaves.**
 - Whose next in the FTA queue?
 - Trade agreements report: what about trade partners whose FTAs have not been mentioned?
 - WTO Ministerial is in December. Could be a lot of bombshells.
 - Trade deficit report. That's going to come out, too. Lining a lot of countries in the crosshairs – to make trade fair again.
- **Business community concerned** that administration's preference for a unilateral approach on trade could anger U.S. trading partners, resulting in retaliatory measures and an adverse business environment.
 - *'2017 US Fashion Industry Benchmarking Study'* released by the US Fashion Industry Association (USFIA), surveyed industry executives who reported "the protectionist trade policy agenda in the United States" is their top business challenge this year.



Implications on U.S. Trade Policy

The Advocacy Process

- "It's exhausting because there are so many places that you have to touch, so many different bases, because you never know who [President Trump is] listening to," said Brian Wild, a Republican adviser to businesses at the law firm Brownstein Hyatt Farber Schreck. "You never know who's going to get the final 'yes.'"
- "We're telling our clients that ... any argument that has a jobs impact has to be framed as a jobs argument," said Stewart Verdery, CEO of the Republican lobbying firm Monument Policy Group, who has represented tech companies including Amazon and Microsoft. "An intellectual argument, a fairness argument, even a federal spending argument is not nearly as powerful as a jobs argument."



The Congress, President and USTR

- In 1934, U.S. Congress delegated to President (**POTUS**) authority to lower or raise tariffs as part of agreements with nations (**FTAs**)
- President delegated to Office of the U.S. Trade Representative (**USTR**) the development, coordination and negotiation of U.S. international trade, commodity, and investment policies, negotiations, enforcement.
- USTR is in the Executive Office of the President (**EOP**)
- National Security Council (**NSC**) helps POTUS oversee trade policy



USTR =

- The **USTR** is an Ambassador and Cabinet member who serves as President's principal trade advisor, negotiator, spokesperson, and representative to **WTO**.
- Through an interagency structure (**TPRG & TPSC**), **USTR coordinates trade policy within the Administration***
- **USTR** frames issues for **POTUS** decisions through consultations with Congress and standing Congressional Committees (**SFC & HWM**)
- **USTR** consults with 28 appointed private-sector industry & special-interest advisory groups: **ACTPN, APAC, 16 ITACs, IGPAC, LAC, TEPAC, TACA: 700 people**
- **USTR's additional role: compliance and enforcement**



Department of Commerce*

- **Mission: make U.S. businesses more innovative at home and more competitive internationally**
- **Multiple bureaus & functions to, e.g., promote U.S. exports, monitor weather, manage fish, assist small businesses, collect data, take the census, etc.**
- **Key trade-related functions:**
 - **Antidumping and countervailing duty investigations**
 - **Sectoral and functional support for USTR trade negotiations**
 - **Trade compliance monitoring (along with USTR)**
 - **Management of industry trade advisory committees**

**Formerly*



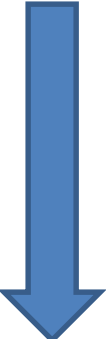
Other Agencies with Trade Responsibilities

- Department of State (DOS)
- Department of Labor (DOL)
- Department of Agriculture (USDA)
- Department of Treasury (Treas)
- Ex-Officio: U.S. International Trade Commission (USITC or ITC): an independent agency
 - Administers U.S. trade laws within its mandate
 - “Dataweb” with U.S. export and import data
 - U.S. Harmonized Tariff Schedule (HTSUS)
 - Completes independent trade studies on FTAs, GSP changes, U.S. competitiveness
 - Staff are industry experts



(Opaque) Interagency Review Process: Led by USTR

19 agencies provide advice to USTR in developing and coordinating implementation of U.S. trade policy; operates by reaching consensus on issues/decisions:

- 
- 90 Subcommittees (e.g., Special 301, GSP) recommend to:
 - Trade Policy Staff Committee (AUSTR/DAS): if consensus on the decision - is final determination; if not goes to...
 - Trade Policy Review Group (Deputy USTR/Deputy or Assistant Secretary): if consensus, is final decision; if not, goes to...
 - Principals (Cabinet): if consensus, is final decision; if not goes to the...
 - President for THE final decision



Enforcement Mechanisms

- **WTO cases** (China, Indonesia, European Union...)
- **FTA consultations and dispute settlement**
 - **CAFTA Enforcement Mechanisms:** IPR, Worker Rights, Env. Protection, Transparency, Investor Protections
 - **Columbian (FTA) Labor Action Plan**
- **Special 301** (Intellectual Property Rights (IPR) Review): Notorious Markets; Priority Watch List (PWL) 10; Watch List (WL) 27 (including Guatemala)
- **Other Trade Barrier Reports:** 1) all Foreign Trade Barriers (NTE); 2) Technical Barriers to Trade (TBT); 3) Sanitary and Phyto-Sanitary Measures (SPS).
- **Mandatory GSP Criteria:** Worker Rights, IPR, Investor Protections
- **USDOL:** Child and Forced Labor



U.S. Trade Policy and Doing Business Tips

- **“How are you?” really means “What do you know? What can you tell me? What’s the latest?”**
- **Ask questions, even if you know the answer; you’ll find out more than the answer you sought**
- **Keep your promises**
- **Meet the published deadlines**
- **U.S. trade folk often are not “relationship” people**
- **Keep current: e-newsletters (agencies and companies), Facebook, LinkedIn, Twitter, blogs**
- **Know which agency or person *really* is in charge or makes the decision (despite others’ claims)**
- **What you see is not always what it is, so....**
- **Keep asking questions and solicit opinions**



Web Resources

- Glossary of Acronyms: <http://www.ustr.gov/about-us/trade-toolbox/glossary-trade-terms>
- U.S. Trade Representative's e-newsletter
- *World Trade Online; Washington Trade Daily; Politico Pro* (trade)
- Who is importing from your country: Panjiva, etc.
- U.S. International Trade Commission: www.usitc.gov
- Congressional Research Service: <https://opencrs.com> (*also: J.F. Hornbeck paper on "Congress & Trade," April 2011*)
- Guide to U.S. Government: <http://bensguide.gpo.gov/>
- Other: sandlertrade.com, wita.org



Where to Look For...

- Trade policy – ustr.gov; trade.gov
- Import regulations – cbp.gov
- Import data:
http://dataweb.usitc.gov/scripts/tariff_current.asp
- Tariff schedules, trade studies - USITC.gov; census.gov; CROSS rulings
- Legislation -- congress.gov
- Submitting comments -- regulations.gov
- Federal notices -- federalregister.gov
- Can't attend a hearing but want to listen - hearings are webcast – go to Committee websites



Thank you!



Sandler Trade LLC