

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

**Trade Responsibilities in the
Executive Branch**

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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



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The Congress, President and USTR

- In 1934, U.S. Congress delegated to President authority to lower or raise tariffs as part of agreements with nations (**FTAs**)
- President delegated to Office of the U.S. Trade Representative (**USTR**) 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



**THE TRADITIONAL TRADE POLICY-
MAKING PROCESS: NOT CURRENTLY
FULLY OPERATIONAL**



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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 Presidential 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**



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 specific issues within 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**



A world map with a light blue background and a grid of latitude and longitude lines. The map is color-coded by country, with various shades of green, yellow, orange, and pink. Major bodies of water are labeled in blue, and major countries are labeled in black. The map is centered on the Atlantic Ocean.

TRADE POLICY-MAKING PROCESS THAT IS CURRENTLY OPERATIONAL

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Trade Policy Makers (Tuesday mtgs.)



Mr. Gary Cohn, Director of National Economic Council, White House National Economic Council; directed the interagency process



Mr. Jared Kushner
Senior White House Advisor to President
Executive Office of the President



Mr. Wilbur Ross
Secretary of Commerce,
U.S. Department of Commerce



Ms. Ivanka Trump
Assistant to the
President



Mr. Stephen Mnuchin, Secretary of
Treasury, U.S. Department of
Treasury



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



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



- Wrote Trump's initial economic plan with Wilbur Ross: America First
- Goal has been to reshape U.S.-China trade relations
- U.S. trade policies should focus on America's own interests to restore lost American jobs and prosperity
 - Vision: U.S. workers make components and assemble finished product in U.S.
- Advocates for trade policies that shrink U.S. trade deficit; expand growth; and stop jobs from leaving U.S. shores.
- Renegotiating NAFTA high priority
- Free-wheeling style – little regard for process/law (rather than using USG interagency review process):
- Impose tariffs on steel imports; withdraw from the South Korea FTA
- Reputation as a trade warrior ingratiates him with the President
- Trade is a zero-sum game, and America is losing to China
- U.S. needs to prevent other countries, particularly China, from stealing American jobs. How? **Leverage U.S. trade rules.**



USTR Amb. Lighthizer: The Man to **Leverage**



U.S. Trade Rules

- “Lighthizer’s is the economic philosophy most responsible for guiding the Trump administration...and he has ensured its influence for years, perhaps decades, to come.” (*Foreign Policy*, 8/6/18)
- “Lighthizer scorns the multilateral approach in favor of bilateralism, or deals between two nations to lower barriers. Against the collective approach exemplified by the WTO agreement, which over 100 countries signed in Marrakech in 1994, he promotes a transactional one instead, proceeding deal by deal and case by case.” (*FP*)
- “We’re not talking about a level playing field,” he said to Congress (7/26/18), “What we’re saying to (our trading partner) is, ‘We’ll give you better access than the rest of the world, and you give us approximately an equal amount of better access.’”
- He knows required Congressional interactions, U.S. trade law, and WTO Agreements; knows how to use legal processes to make trade policies, negotiate FTAs, and take enforcement actions. Negotiated voluntary export restraints when Deputy USTR under President Reagan.



Key aspects of Amb. Lighthizer's philosophy

- Aggressive unilateralism: The use of unilateral action to achieve better access and lower barriers, such as Executive orders, diplomatic pressure, and legal enforcement barriers, such as **Sec. 232, Sec. 301, GSP (proactive country eligibility reviews), Article 28 of the GATT Agreement (Modification of Schedules)**
- Government executives have the sovereign right to decide when economic rules bind and when they do not (FP)
- Globally minded state capitalism where aspects of the democratic process are routinely short-circuited in pursuit of a competitive edge (FP)...“So that market forces can determine who survives and who doesn't survive.” (Amb. Lighthizer to Congress, July 26, 2018).



U.S. Enforcement Acts – Only Presidential Action Needed

- Section 301: Under Section 301 of the Trade Act of 1974, USTR initiated investigation to determine whether China's policies and practices related to technology transfer, intellectual property, and innovation are unreasonable, unjustifiable, or discriminatory; burden or restrict U.S. commerce.
- Section 232 of the Trade Expansion Act of 1962, as amended, gives the executive branch the ability to conduct investigations to “determine the effects on the national security of imports.” – WTO exemption; not disputable; no definition of “national security” (25% steel tariff; 10% aluminum tariff)
- Section 201 – safeguard based on injury to industry – WTO scrutiny (Safeguard Agreement, allows retaliation by affected countries)
 - Article 28 of the GATT (Modification of Schedules)



Mr. Wilbur Ross, Secretary of Commerce



- **Has known Trump for 20+ years; private-equity investor**
 - **Founded WL Ross & Co. LLC (2000), a private equity firm**
- **“King of Bankruptcy”**
 - **Best known for buying failed companies in steel, textile and coal, rehabilitating them, and reselling for profit**
- **His 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 supports other actions against China and additional nations**



Mr. Stephen Mnuchin, Secretary of Treasury



- **President Trump at Mnuchin's swearing-in ceremony: Mnuchin will "defend our manufacturing jobs from those who cheat and steal and rob us blind."**
- **Confirmation hearing:**
 - **"Trade should increase exports but not necessarily limit imports"**
 - **Committed to work closely with Secretary of Commerce to ensure that the laws regarding unfair trade are fully enforced**
 - **"Ending IP theft will be a central focus of the Administration's trade policy."**
- **Appointment signaled pro-Wall street policies**
 - **Goldman Sachs partner (with Gary Cohn)**
- **Has known Trump for 15 years**
 - **National Finance Chairman of Trump Campaign**



Impact of Departures from Administration of Key Trade Figures

- **Gary Cohn:**
 - Liaison to the business community; pro-economic development and pro-business
 - Advocated using the traditional U.S. trade process and model; oversaw the interagency trade consultative process
 - Result: Some in the private sector now see that fact-based advocacy is ineffective; Administration has a lack of understanding of modern (international) supply chains; business communities feel closed out; interagency decision-making process not used



Impact of Departures from Administration of Key Trade Figures

- **Everett Eissenstat (NSC/NEC International Trade Negotiator; former Trade Counsel to Senate Finance Committee Chair Orrin Hatch; USTR DAUSTR)**
 - “Important voice in the room when Trump’s economic officials were debating policy decisions... (A)lso served as Trump’s representative at international economic gatherings.” (WSJ, 6/26/18)
 - Highly respected trade expert by the Hill (also USTR alumnus)
 - Result: departure of experienced and in-depth trade expertise that was trusted by Hill trade leadership; had built relationships with foreign officials



Impact of Departures from Administration of Key Trade Figures

- **Commerce Department Chief of Staff Wendy Teramoto**
 - **Seen as the point-person in coordinating all the agencies and personalities involved (in trade-policy decision-making)**
 - **“She was at every Tuesday trade meeting held by the president’s trade team, including Ross, Lighthizer and Treasury Secretary Steven Mnuchin, and often coordinated with top aides to those on the team, including Kushner’s aide Avrahm Berkowitz and Ivanka’s chief Julie Radford”**
 - **“She kept Commerce in the game and understood the importance of staying close to the White House,” said an administration official. (Wash Examiner, 9/2/18)**
 - **Result: Even less interagency coordination? Less Department of Commerce influence?**



Implications of Current Trade Decision-Making Structure on U.S. Trade Policy

The Decision-Making Process

- Interagency process not used
- Decision-making concentrated in a limited number of loyal, but not all like-minded, individuals
- Appears to limit input into trade policy by Departments of Agriculture, State, and Labor
- Limited consultations with Congress and business communities
- Directives given to agencies at breakneck speed
- Consistent action with measured follow-through is at a premium



Implications of Current Trade Decision-Making Structure 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."



U.S. Trade Policy and Doing Business Tips

- This is a tough trade-policy making environment. Keep in mind what is driving current strategies and decisions; check your thoughts with others'
- Change is constant. Not so much unpredictable, but constant...and exhausting. How can you best keep up? Divide up the responsibility to do so. Use E-newsletters, Twitter, Podcasts, LinkedIn, Blogs, events
- **“How are you?” really means “What do you know? What can you tell me? What’s the latest?” – it is the Washington currency of trade relationships**
- Ask questions and solicit opinions. Even if you think you know the answer, you’ll find out more than the answer or opinion you sought. Keep doing so
- Keep your promises
- Meet published deadlines, as pertinent
- U.S. trade folk often are not “relationship” people, and they are now overloaded
- Know which agency or person *really* is in charge or makes the decision (despite others’ claims)
 - **What you see or think you see is not always what it is, so.... don’t take things at face value**



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!



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