

USTR Releases President Trump's National Trade Policy Agenda for 2017

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On March 1, 2017, the Office of the US Trade Representative (USTR) released the President's National Trade Policy Agenda for 2017, providing the Trump administration's first formal, written statement of its trade policy priorities and objectives. The agenda describes, in relatively general terms, three main objectives that the Trump administration intends to pursue: (i) combating unfair trade practices through the use of trade remedies (anti-dumping, countervailing duty and safeguards measures) and "Section 301"; (ii) negotiating "new and better" trade agreements; and (iii) using "all possible leverage" to eliminate foreign trade barriers. It also discusses the administration's views on the WTO dispute settlement system, emphasizing two general legal principles: that WTO rulings are not directly binding on the United States, and that they should not modify a Member's rights or obligations under the WTO Agreements.

Although some of the views expressed in the agenda represent a departure from the trade policies and rhetoric of previous administrations, they generally are in line with our prior predictions regarding the Trump administration's approach and do not embrace the most radical aspects of President Trump's past promises on trade. Instead, they represent the fairly mainstream (though certainly more protectionist) policy view of various US industries, unions and their legal counsel – an unsurprising outcome given these groups' influence in the new administration. Moreover, in contrast with previous trade policy agendas, the 2017 agenda generally avoids providing specific details about the Trump administration's plans and policy positions and notes at the outset that the administration will submit a more detailed version of the trade policy agenda after the Senate has confirmed a USTR.

Overview of the agenda

The agenda lists four items that the Trump administration has identified as "major priorities" for its trade policy:

- **Defending US sovereignty over trade policy.** In discussing its view of the WTO dispute settlement system, the administration highlights two legal principles that it considers to be of particular importance: (i) the WTO Dispute Settlement Understanding (DSU) repeatedly states that the rulings of the Dispute Settlement Body (DSB) "cannot add to or diminish the rights or obligations" provided in the WTO Agreements; and (ii) the Uruguay Round Agreements Act confirms that DSB rulings are not self-executing

or directly binding on the United States, instead requiring the government's voluntary compliance. Neither of these principles is, in and of itself, controversial.

However, the agenda then notes that, consistent with these protections, the administration "will aggressively defend American sovereignty over trade policy", and that it will resist efforts to "advance interpretations that would weaken the rights and benefits of, or increase the obligations under, the various trade agreements to which the United States is a party". However, it does not propose any particular course of action or change in policy, and thus does not necessarily indicate that the Trump administration will depart from past US practice by, for example, expressly refusing to comply with adverse WTO rulings.

Indeed, recent US administrations have to some extent followed the same two legal principles highlighted by the Trump administration. For example, the Obama administration in 2016 blocked the reappointment of an Appellate Body member on the grounds that rulings in which he had been involved had allegedly exceeded the Appellate Body's mandate as stated in the DSU. The United States government also has not fully complied (and has delayed compliance) with several adverse WTO rulings, particularly in the area of subsidies and trade remedies,¹ and has for years showed signs of disenchantment with WTO negotiations, turning increasingly to regional and plurilateral agreements to pursue its trade agenda. The ambiguous language used in the Trump agenda thus leaves open the possibility that the new administration might simply continue these practices, albeit in a more colorful and direct manner. Nevertheless, the tenor of the agenda does warrant caution, as the administration's express refusal to comply with dispute settlement rulings or abandonment of the WTO would likely cripple the institution.

- **Strictly enforcing US trade laws.** The agenda highlights several legal mechanisms that the Trump administration intends to use to combat unfair trading practices. In particular, it notes that the administration intends to enforce the anti-dumping (AD) and countervailing duty (CVD) laws, and that the Department of Commerce may self-initiate AD/CVD investigations if circumstances warrant. Similarly, the agenda states that the imposition of safeguard measures under Section 201 of the Trade Act of 1974 "may be appropriate" in some situations and that Section 301 of the Trade Act, if "properly used", can be a powerful lever to encourage foreign countries to adopt more market-friendly policies. Doing so could be consistent with US law, which arguably permits unilateral Section 301 challenges to certain foreign government actions that fall outside of WTO rules, but would undoubtedly lead to a response (unilateral or at the WTO) from the targeted country.

On the other hand, the agenda does not mention other, more controversial unilateral mechanisms (e.g., Section 338 of the Tariff Act of 1930, Section 232(b) of the Trade Expansion Act of 1962, and the Trading With the Enemy Act), nor does it indicate that the Trump administration intends to use such mechanisms. This represents a departure from past statements by President Trump and his political staff that such measures were under consideration, though these measures could be implied in the agenda's promise to "use all possible leverage" to open foreign markets to US goods and services (see below).

- **Negotiating "new and better trade deals".** The agenda highlights the administration's view that, while existing US trade agreements have "generated substantial benefits" for some segments of the US economy, they nonetheless have not "lived up to expectations". Consequently, the agenda states that "the time has come for a major review of how we approach trade agreements". However, it does not identify specific features of US trade agreements that the administration views as problematic, nor does it describe the administration's criteria for future agreements or renegotiations of current deals. The agenda also does not rule out the possibility of the Trump administration engaging in plurilateral or even multilateral (WTO) negotiations; rather, it merely states that the administration "will tend to focus on bilateral negotiations" going forward. Moreover, the agenda does not reiterate the Trump campaign's threats to withdraw from US trade agreements, such as NAFTA, or from the WTO.
- **Using leverage to open foreign markets.** The agenda highlights several types of foreign trade barriers that block or impede the competitiveness of US exports, including tariffs, subsidies, restrictions on data flows and services, trade secret theft, currency practices, and technical barriers to trade. The agenda calls for "a more aggressive approach" to eliminating these barriers, and states that the Trump administration

¹ Examples of such cases include *United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (DS379), *United States — Subsidies on Upland Cotton* (DS267), *United States — Measures Relating to Zeroing and Sunset Reviews* (DS322), and *United States — Laws, Regulations and Methodology for Calculating Dumping Margins* (DS294).

“will use all possible leverage to encourage other countries to give U.S. producers fair, reciprocal access to their markets”. However, the agenda does not describe the forms of leverage that the administration will use to achieve this objective.

Outlook

Consistent with our expectations, the agenda lays out a more defensive, enforcement-oriented approach to trade policy than that taken by previous administrations but does not represent a radical shift towards US protectionism. Trump administration officials such as Treasury Secretary Stephen Mnuchin also have continued to downplay the likelihood that the Trump administration will impose extreme protectionist measures. Moreover, while avoiding outright criticism of the agenda, Republican Members of Congress such as House Ways and Means Committee Chairman Kevin Brady (R-TX) have responded to it by expressing support for free trade agreements and the WTO’s dispute settlement system, suggesting that Congress may push back against radical changes in policy in these areas. Thus, at this stage, we continue to expect that the Trump administration will avoid the more extreme policy proposals discussed during the campaign.

A copy of the 2017 agenda is referenced [here](#). For a copy of USTR’s Annual Report on the Trade Agreements Program for 2016, which was released alongside the 2017 agenda, click [here](#).

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