

[UTR Speech before the CSIS]

U.S. Trade Policy Priorities:

Robert Lighthizer, United States Trade Representative

[Edited]

September 18, 2017



AMB. LIGHTHIZER: People who know me know I'm a bit of a contrarian myself.

So let me just make a few points, and then sit down and take some questions. **Of course, these are very interesting times for trade. For decades, support for what we call free trade has been eroding among the electorate. There has been a growing feeling that the system that has developed in recent years is not quite fair to American workers and manufacturing, and that we need to change. In 2016, both major political parties ran candidates who to one degree or another were trade skeptics.**

On the Democratic side, of course we had Senator Sanders, who campaigned hard on this issue and from that perspective. Their ultimate candidate, Secretary Clinton, did not espouse the trade views of her husband, or for that matter her boss when she was secretary of state. She professed some degree of trade skepticism.

On our side, the views of President Trump are well known. While some politicians can be accused of changing to populist positions to get votes, this cannot be said of the president. If you go back 10, 20, 30 years, or even longer, you see a remarkable consistency. **He has been a critic – he has been critical of the prevailing U.S. trade policy of so-called free trade deals and of their effects on workers. So we will have change in trade policy.**

Let's talk briefly about our philosophy. I know that many sincerely believe that the prevailing world trade policy has been great for America and that those who complain are often people who are victims of economic progress. These analysts think that the whole problem is one of getting the correct message through – really not a policy direction issue but a failure to communicate. They believe that the voters are ill-informed, or in some cases perhaps ignorant. If they only really understood, they would support these trade agreements, the WTO, and all the rest.

Most of you know that I am not in that group. I agree with the president. I believe that Americans can compete successfully with anyone in the world, if the conditions are fair – not of course in all sectors, but in most. I believe, like many of you, that removing market distortions, encouraging fair competition, and letting markets determine economic outcomes leads to greater efficiency and a larger production of wealth both here and abroad. I'm sure that most here also agree that many markets are not free or fair. Governments try to determine outcomes through subsidies, closing markets, regulatory restrictions, and multiple similar strategies. The real policy difference, I submit, is not over whether we want efficient markets, but how do we get them.

What is the best thing to do in the face of market distortions to arrive at free and fair competition? I believe – and I think the president believes – that we must be proactive, the years of talking about these problems has not worked, and that we must use all instruments we have to make it expensive to engage in non-economic behavior, and to convince our trading partners to treat our workers, farmers, and ranchers fairly. We must demand reciprocity in home and in international markets. So expect change, expect new approaches, and expect action.

Second, the president believes – and I agree – that trade deficits matter. One can argue that too much emphasis can be put on specific bilateral deficits, but I think it is reasonable to ask, when faced with decades of large deficits globally and with most countries in the world, whether the rules of trade are causing part of the problem.

Now, I agree that tax rates, regulations, and other macroeconomic factors have a large part in forming these numbers, and the president is tackling these issues. But I submit the rules of trade also matter, and that they can determine outcomes.

In a simple example, how can one argue that it makes little difference when we have a 2 ½ percent tariff on automobiles and other developed countries have a 10 percent tariff, that it is inconsequential when these same countries border-adjust their taxes and we do not, or that it is unimportant when some countries continuously undervalue their currencies? Is it fair for us to pay higher tariff to export the same product than they pay to sell it here?

Third, I believe that there is one challenge on the current scene that is substantially more difficult than those faced in the past, and that is China. The sheer scale of their coordinated efforts to develop their economy, to subsidize, to create national champions, to force technology transfer, and to distort markets in China and throughout the world is a threat to the world trading system that is unprecedented.

Unfortunately, the World Trade Organization is not equipped to deal with this problem. The WTO and its predecessor, the General Agreement on Tariffs and Trade, were not designed to successfully manage mercantilism on this scale. We must find other ways to defend our companies, workers, farmers, and indeed our economic system. We must find new ways to ensure that a market-based economy prevails.

Fourth, we are looking at all of our trade agreements to determine if they are working to our benefit. The basic notion in a free-trade agreement is that one grants preferential treatment to a trading partner in return for an approximately equal amount of preferential treatment in their market. The object is to increase efficiency and to create wealth. It is reasonable to ask after a period of time whether what we received and what we paid were roughly equivalent. One measure of that is change in trade deficits. Where there the numbers and other factors indicate a disequilibrium, one should renegotiate.

So we had an election. **No one really ran on maintaining the status quo in trade.** President Trump won. We have a different philosophy, and **there will be change.** I look forward to working with many of you in this room on these issues as things develop, and to returning from time to time to talk about progress as we move forward. I look forward to answering your questions. (Applause.)

AMB. LIGHTHIZER: Well, let me say, first of all, that I'm not going to talk about any provisions that are out there that may be in this – in this agreement. It's just – in the NAFTA agreement. That's the context of whether I'm – I'll have to have answer that privately with Senator Brock.

AMB. LIGHTHIZER: Well, in the first place, I guess the whole economy is totally different than it was when I was I was in the – when I was working for Senator Brock. There was no internet. I don't think we had cellphones. So when we – when we got off the plane in New York, you had to find a place to put a quarter and make a phone call, is probably what happened. There was no digital economy. I mean, the economy was very different.

The other – the other thing that I would say is **that we were focused on a mercantilist policy from Japan** that we had to challenge, had to worry about. **And I think now it is on a scale multiples of that with China.** And interestingly, I have the Japanese come in and meet with me. And they say, you know, we have to do something about this mercantilism from China, that they're very worried about it. So, you know, that's – the principal challenge we face, to me at least, is how do we deal with China in a – in a global trading system? How do we deal with China in a situation where we want market efficiency to dictate?

Now, in addition to that, there are a lot of other things, other challenges we have. **We have trade agreements that we don't think have worked out in our interest.** And we have – we have to create rules really that work well for services and for – and for **the digital economy and all these kinds of things.** But to me, the biggest challenge that we face right now, the biggest difference between now and those days is really the appearance of China on the scene.

AMB. LIGHTHIZER: Well, I mean, in the first place, we prefer bilateral trade agreements to the plurilateral and multilateral trade agreements. The working assumption is that if you have an \$18 trillion economy, you can do better negotiating individually. You can argue both sides of that. I happen to agree with the president. Not only can you negotiate better agreements, but you can enforce them more easily, because usually in multilateral or plurilateral agreement it's difficult to enforce the agreements because you're disrupting too many things. In a bilateral agreement, I think you can.

So the policy will be, as stated by the president and others in the administration, will be to engage the countries in that region in bilateral agreements. We have to determine when we're going to do it and what the order will be and the like. There's interest in various countries in that. So clearly, this administration wants to stay very much engaged in Asia, and we expect to do that.

AMB. LIGHTHIZER: Well, I have met with Dr. Fox and talked about these issues. At the appropriate time, I think the United States will enter into that process with the U.K. I'm confident that we'll come to an agreement that's, you know, that's beneficial to both parties. That's probably a year or two off, I mean, it's not even the deadline. Even when it's going to happen is not quite clear yet until we know how their exit is going to go.

But we have had meetings, we've talked about how we will proceed. It's too early to have a negotiation. They really don't have competence in that area, but it's something that's on the horizon that the governments have spoken about. And at the appropriate time, I think we'll have a negotiation there and I'm sure it'll be a successful one.

MR. MILLER: Excellent. Thank you.

Let's turn to the multilateral system for a moment. There is a ministerial conference coming up in Buenos Aires this fall. And can you tell us, what's on the U.S. agenda for the ministerial conference? And more specifically, what does the Trump administration plan to do with the ongoing negotiations, such as the one for the trade in services agreement?

AMB. LIGHTHIZER: Well, I would say, first of all, we are in the process of looking at all of these agreements and trying to make some decision as to which ones we think are in our interests, which ones we want to pursue. USTR is doing a study on that and it'll come out hopefully in another month or so.

Our view is that it's unlikely that the ministerial in Buenos Aires is going to lead to negotiated outcomes. There are a number of areas where we would be willing to engage, but there seems to be something blocking it in every case. Hopefully, we'll end up with a good conference, one that we decide what the upcoming agenda will be and there will be agreement on that.

Clearly, services are, you know, are an important priority for the United States. We have a \$250 billion trade surplus in services, so that's a very important part of what we want to encourage. And American companies, even with that big services surplus, could be much,

much bigger if we had better rules and if we didn't have countries blocking U.S. exports of services. So that's a major thing for us.

And I've had a lot of services executives in talking to us. And they have a whole myriad of problems trying to move around, you know, trying to sell their services around the world.

MR. MILLER: Indeed.

To continue with the WTO, the United States has raised some objections to a dispute settlement understanding and the way the bodies are formed in that process. Could you tell us a little bit more about what the U.S. is trying to accomplish in terms of changing or reforming the dispute settlement body?

AMB. LIGHTHIZER: Well, I guess I would answer that in two parts. One, there are a number of issues which – on which there's pretty broad agreement that the WTO, in dispute-settlement understanding, is deficient. I mean, there are transparency issues. There are issues with the staff. There are a whole variety of issues that we have a problem with. And I think there's general agreement that there are problems.

But I think, even beyond that, the United States sees numerous examples where the dispute-settlement process over the years has really diminished what we bargained for or imposed obligations that we do not believe we agreed to. There have been a lot of cases in the dumping and countervailing-duty, the trade-remedies laws, where, in my opinion, the decisions are really indefensible, and even a lot of people who have much more free-trade orientation who read these question(s). And we've had tax laws that have been struck down. We've had other provisions where the WTO has taken – really, I think, took the position that they were going to strike down something they thought shouldn't happen rather than looking at these – the GATT agreement as a contract.

So what we've tended to see is that Americans look at the WTO or any of these trade agreements and we say, OK, this is a contract and these are my rights. Others – Europeans, but others also – tend to think they're sort of evolving kinds of governance. And there's a very different idea between these two things. And I think sorting that out is what have to do.

If your appellate body or your dispute-settlement process really thinks that we're trying to evolve into what's good for trade, that's one thing. If what you're going to do is look at the exact words and say here's what was bargained when Ambassador Hills sat down and negotiated, she had a very precise idea of what it was that the United States was giving and what it was we were getting. And anything that doesn't enforce that in that way is troubling.

And I think that the DSU has evolved in a way that it creates new obligations and it has reduced a lot of our benefits. So coming to grips with that, both in the procedural realm but also just practically, is really what we have to worry about in the DSU. And it's a fundamental part of the WTO. I mean, it's a very – it raises a lot of, you know, very major issues for the WTO.

AMB. LIGHTHIZER: Well, I mean, to the extent that we're – that we're objecting to the process, it's because we don't agree with the way the – in many cases the appellate body has approached this. **We think the appellate body has not limited itself to precise – to precisely what's in the agreement. So, I mean, that is the nature of our complaint.**

And that's not to say that we don't win cases. Of course we win cases. Back when Senator Brock and I were there and there was a system, it was before 1995, before the WTO, under the GATT, and there was a system where you would bring panels and then you would have a negotiation. And, you know, trade grew and we resolved issues eventually. And, you know, it's a system that, you know, was successful for a long period of time.

Now, under this binding dispute-settlement process, we have to figure out a way to have – from our point of view, to have it work.

MR. MILLER: I see. Helpful.

Let's talk a minute about the recent case – excuse me, the investigation – 301 investigation on intellectual property in China; large problem for a lot of American firms. IP complaints in China are by no means new. The mechanism of using Section 301 for an investigation is somewhat new. At least we haven't done that recently. Can you talk about how this is going to play out and what your expectations are and what we should expect to see?

AMB. LIGHTHIZER: Well, first of all, it is an investigation. So I can't prejudge it. We have a hearing coming up on the 10th of October and then we'll gather facts. And we'll decide what the situation is. And if needed, we'll recommend a remedy to the president. So we haven't prejudged anything. But as you say, there are an awful lot of complaints about forced technology transfer. CEOs come in to see me continuously. And almost every CEO of a major company at some point in the discussion will say they're having a problem with China forcing them to join into joint ventures, turning over the intellectual property to the joint venture, having to license their intellectual property at less than market value. And then, in addition to that, there's another issue, which is whether or not there is just piracy of intellectual property.

So we're looking at both of those things. We're not going to prejudge it. But there's an awful lot to indicate that there's a problem here. And intellectual property is one of the – one of the real competitive advantages that the United States has – not that the rest of the world isn't clever also. But the United States has developed an enormous amount of intellectual property. And getting the benefit of that for our companies and their workers is very, very important. So, to me, it's a fundamental case. **Why are we using 301? Because that's the investigative tool we have. If there are – if we turn up WTO violations, we'll bring them to the WTO. We're not precluded from doing that, by any means, by using 301.** And if there are things that are not covered by trade agreements that we think are unreasonable and restrain U.S. trade, then we'll try to devise other remedies that we think will get us to the point where we end up with market forces and market efficiency.

It really was what I was trying to talk about in my – just briefly in my opening statement. We all want to get to the same thing. And we have confidence that if we get to the point where we're approaching something really like free trade that the United States will do great. The question is, what do you do to get there? And do you have a more muscular kind of an approach, or do you hope that if you talk about it people will see the light? I guess part of what I wanted to say about my old boss is he kind of walked down both sides. He tried do one and he also did the other. So you know, hopefully we'll do that too as we – as we move forward.

AMB. LIGHTHIZER: Yeah, well, we're moving at warp speed, but we don't know whether we're going to get to a conclusion, that's the problem. We're running very quickly somewhere. We have a series of five-day sessions, as you say. Seven of them between the beginning and the end of the year. Five more to go. Another one starting in Ottawa in another week or so. The objective is to get it finished for a variety of reasons. There are elections coming up in Mexico. Plus, in the United States, there are a lot of people that this – the whole process is having real life effects on real farmers and ranchers and businesses people who are trying to do business. And particularly in the United States and Mexico, but also in Canada. So there are reasons to move quickly on a renegotiation, if that's what you're going to do, as quickly as you can do it.

The consultation process is complicated, as most people know. The first time that this process was used was in 1979, when we did – when the Carter administration and Ambassador Strauss came up and did that agreement. Since then, every time they've renewed it – I think is fair to say, but it's notionally true if not precisely – they've added some new fillip or twist or something that somebody said, well, why don't you do this? Why don't you do that also? And the reason for that is is that, of course, the Constitution gives power over trade to the Congress, and they're delegating it to us. So they have a right to say what the terms are.

We have to consult with the Congress. We have to consult with our current advisors. We come up with text. We draft it. We have to clear it first through the interagency process, or at least give the interagency process an opportunity to be heard. Then we have to go to the Congress. And then, when we get many proposals from the other countries, we have to do the same process. So it's – you know, it's difficult, it's hard on us, but it's also hard on the people on the Hill and it's hard on the people in the – in the – in the advisory groups. But, you know, the alternative is that you would stretch this out for a period of years and you would have a real negative effect, you know – unintended, you know, collateral damage, negative effect – on the – on real people, you know, selling – you know, selling products. So it's difficult, it takes a lot of time, it's fairly intense, and it's hard on everyone, but it's something that has to be done. And I think we're doing a pretty good job of it.

MR. MILLER: Excellent. Thank you.

One bilateral negotiation that is theoretically underway and we haven't talked about at all is the TTIP, the Transatlantic Trade and Investment Partnership. Now, this is something that exists, obviously. I mean, it's a bilateral between the U.S. and Europe. It never really got much past the stock-taking and polite information-sharing phases in the previous

administration. What are your thoughts on trade with Europe? It's still a big relationship. There is a bilateral framework. Where does this go?

AMB. LIDTHIZER: Well, I mean, it's a – it's a huge relationship and a very important relationship. You know, that agreement is one that we're looking at. There has been, you know, a reason why they haven't moved forward, and that is there's been a series of elections in Europe which would make it hard to do much with it. But on the broader question, the relationship is extremely important. There is just an enormous amount of trade between the United States and Europe.

So improving the rules there is something we should do. And working with Europe on a whole variety of other things, including the challenge with China but also negotiations within the WTO, is also important. And I think we have good relationships there. We certainly have tried to develop them. I certainly have done with my counterparts, and I know other people have done the same thing.

So it's an important relationship. We hope it develops. Whether we start that agreement up, we'll – you know, when and if is something that we're looking at right now, I know they're looking at also. But in the meantime, we're coordinating quite closely with them.

MR. MILLER: Excellent.

One final question, on services. We talked about the Trade in Services Agreement and what you're hearing from companies. Clearly, it's a major share of the U.S. economy and a major source of comparative advantage for the United States in the world. What's your vision for where services negotiation can go in this administration? And how shall we see that play out?

AMB. LIDTHIZER: Well, the objective, of course, is to open markets and to allow our people to compete. And we see a lot of barriers to trade and a lot of countries that want to create their own national champions in this space. So when we think of services, firstly – the biggest single part of it, by the way, is tourism and the like. It really isn't what a lot of people here might think of as services. But we think of as – financial services as being – and that's an extremely important aspect of U.S. trade, not just because it generates income and wealth and jobs, but also because many of these companies – insurance companies, for example – really are the source of investment in the economy throughout the world. So if all those companies are Chinese, then you're going to get one pattern of investment. If all those – or the biggest of those companies are American and European and others, then you're going to see a different – a different way that capital is spread around the world. And our hope is that if our model is followed it's going to be more efficiently distributed and it's going to go based on economics.

So we certainly understand the importance of services. We understand – whenever we have a bilateral meeting, services always comes up. We always have a list of – a list of complaints, of very specific barriers that we have to work our way through, and we have a certain amount of leverage in some and not in others. But, you know, we're doing what we can to open the

markets for services, and right now we're doing it on a bilateral basis almost across the board.

MR. MILLER: Very good.

Let me be the first to thank you for coming here today, for having a candid, forthright, clear vision of what you're doing. I found your remarks very helpful, and I hope we've been efficient with your time. But we do appreciate your being here and your candor in the Q&A. Thank you, and we wish you the best of luck. Please try and get back here.

AMB. LIGHTHIZER: Thank you very much. It was a pleasure to be here. (Applause.)