

A LOOK AHEAD

Biden Expected to Mend Fences at WTO

by Annagabriella Colón

Observers say they hope the Biden administration will repair the United States' strained relationship with the WTO, but the elimination of section 301 tariffs is not in the cards, according to practitioners.

"I do think that on the dispute settlement side they will look at building it back up," said Doreen Edelman, a partner at Lowenstein Sandler LLP. "I think that you will hear the Biden administration talk about taking a look at it, and certainly consider getting more active and making changes. They'd rather be in the club than on the outside looking in."

Joe Biden wants to represent both sides of the aisle, and the far right and left share a desire for more U.S.-first policies, Edelman said. She predicted that Biden will consider that position when reengaging with the WTO, but will tread with caution.

U.S.-WTO Conflict

Accusing the WTO of discrimination and judicial overreach, the Trump administration since 2017 has blocked the appointments of new WTO appeals judges to replace those whose four-year terms had expired. This reduced the dispute resolution panel — which normally has seven judges — to a single person by December 2019. To hear an appeal, the appellate body must convene at least three judges.

To work around the situation, 16 WTO members — including the EU — on March 27, 2020, announced an interim arrangement to settle trade disputes through arbitration under article 25 of the WTO Dispute Settlement Understanding.

While it was not previously addressed in the same way as the Trump administration, the United States had the same complaints before President Trump took office, Warren H. Maruyama, a partner at Hogan Lovells and former

general counsel for the U.S. Trade Representative's Office (USTR), told *Tax Notes*. "The concerns about appellate body overreaching are bipartisan and date back to the [George W.] Bush and Obama administrations. I haven't seen anything that's coming out of Geneva yet that credibly addresses the U.S. concerns," Maruyama said.

'Restoring WTO dispute settlement is not going to solve any bigger problems that we have with anyone in the world right now. It's a good long-term thing to do,' Bown said.

"Where we can, I think we should not give up on the World Trade Organization," Claude Barfield, resident scholar in economic policy studies at the American Enterprise Institute and former consultant to the USTR, told attendees during a December 8, 2020, webinar in which he and other economists discussed trade policy challenges facing the Biden administration.

Anne O. Krueger, senior research professor of international economics at the Johns Hopkins University School for Advanced International Studies and former World Bank chief economist, said she hopes the new administration will recommit to multilateralism, restoring the WTO's function.

"Restoring WTO dispute settlement is not going to solve any bigger problems that we have with anyone in the world right now. It's a good long-term thing to do," said Chad P. Bown, Reginald Jones senior fellow at the Peterson Institute for International Economics and former White House senior economist for international trade and investment and lead economist at the World Bank. "But a Biden administration is going to recognize that even if they fixed WTO dispute settlement on day one, any disputes that they might initiate . . . wouldn't get resolved for three or four years."

Bown, who was speaking December 8, 2020, during an American Enterprise Institute webinar in which he and other specialists discussed trade

policy challenges facing the Biden administration, said the U.S.-WTO relationship is among several issues that must be resolved if the U.S. government wants help from its allies in surmounting common trade challenges posed by China. Although the Biden camp has said there are no plans to enter into any new trade deals until some domestic matters are resolved, there are several trade issues — including the trade war with China — that the United States will have to address early on, Bown said.

Tensions With China

Trade tensions between the United States and China eased January 15, 2020, when Trump and Chinese Vice Premier Liu He signed phase 1 of a multibillion-dollar trade deal. However, even with the agreement in place, the Trump administration has not removed 25 percent and 7.5 percent tariffs on approximately \$250 billion and \$120 billion worth of Chinese imports, respectively. The United States said in August that the tariffs will remain in place until the two sides successfully negotiate phase 2 of the agreement.

Those expecting to see the immediate removal of section 301 tariffs under the Biden administration may be disappointed, according to some practitioners. “I think he’s going to look at them. I don’t think he’s going to come in and immediately remove them in an executive order,” Edelman said.

Maruyama agreed. “I doubt the section 301 tariffs on China are going away anytime soon,” he said.

Responding to Biden’s appointment of Katherine Tai as head of the USTR, Kelly Ann Shaw, a partner with Hogan Lovells and former deputy assistant to the president for international economic affairs, told *Tax Notes* in a December 10, 2020, email that anyone expecting a return to Obama-era trade policies with China is in for a rude awakening.

“While I do think [Tai will] make efforts to work closely with allies where possible, she’s not cut from the go-along-to-get-along cloth,” Shaw said. “She’s worked on China issues most of her career and is a true expert. Katherine will be a strong defender of American workers and businesses first — and that’s why she’s respected on both sides of the aisle.”

EU-U.S. Trade Dispute

Another heated quarrel is the ongoing Boeing-Airbus state aid dispute with the EU, which has been brewing for nearly 15 years.

In a ruling published October 2, 2019, the WTO ruled that the United States could impose almost \$7.5 billion of tariffs on EU imports in response to subsidies for European aerospace company Airbus. A year later, on October 13, 2020, a WTO arbitrator found that the EU had grounds to impose countermeasures of \$3.99 billion to compensate for the impact of Boeing subsidies on Airbus.

In November 2020 the EU announced an additional 15 percent tariff on U.S. aircraft imports, as well as an additional tariff of 25 percent on a range of agricultural and industrial products imported from the United States.

During an interview on Bloomberg TV December 3, EU Trade Commissioner Valdis Dombrovskis said a deal with the Trump administration was viable.

‘While the EU and others clearly expect the Biden administration to remove Trump’s section 232 tariffs right away, my guess is there’s going to be a lot of opposition from the steel companies and unions, so I don’t think it can be taken for granted at all,’ Maruyama said.

Edelman agreed that a détente is possible, saying the new administration will likely push for negotiations to get “back on track with the EU” as part of a move toward multilateralism. “The incoming administration wants to work with the European Union on issues of significant importance to both the U.S. and the EU, like climate change and protecting technology,” she said.

The Airbus tariffs are not the only U.S. tariffs on EU imports. In May 2018 the United States imposed tariffs of 25 percent on steel and 10 percent on aluminum imported from the EU and several other countries. The move was driven by concern that excessive imports of those products were threatening the domestic steel and aluminum industries and the United States’

ability to meet defense and infrastructure demands in a national emergency. The tariffs — implemented under section 232 of the Trade Expansion Act of 1962 — are still in effect.

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Edelman agreed, but said some allies, like Japan and the EU, could eventually be taken off the list. “That way, [Biden] is still addressing the issues to protect the domestic manufacturers, but he also is showing he recognizes that we want an open playing field for trade with our partners,” she said. “The bottom line is that he will try to balance domestic needs with the goal of having better relations with our trading partners.”

Mexico and Canada found themselves on, and eventually off, the tariff list after reaching an agreement with the United States in May 2019 to mutually remove all retaliatory taxes and tariffs. However, on August 6, 2020, Trump reinstated the tariff on aluminum imported from Canada. ■

A LOOK AHEAD

COVID-19 Relief Likely to Be Yellen’s Legislative Focus

by Alexis Gravely

With Janet Yellen expected to lead Treasury for the Biden administration during an economic crisis, any legislative priorities she has for her first year will likely be centered on providing relief and stimulus.

Treasury Secretary Steven Mnuchin has been an active player in negotiating coronavirus relief packages with Congress throughout 2020. The same role for Treasury secretary is anticipated in 2021, pending Yellen’s official nomination by President-elect Joe Biden and confirmation by the Senate.

“I think her public statements have made it pretty clear that she believes there needs to be a very active role on the part of the federal government . . . so I would expect her to be a strong advocate for whatever plans ultimately are put into place by the administration to address the COVID crisis,” said Mel Schwarz of Eide Bailly LLP.

‘I think Yellen’s history as a scholar suggests that she will be paying attention to the unique features of this recession and the fact that it really has disproportionately hurt people at the bottom,’ Gordon said.

Even though Congress has passed and President Trump has signed another bill, analysts say more relief will be needed once Biden takes office in January. And Yellen’s background as an academic with an interest in income inequality could make her perfectly suited for the moment, according to Tracy Gordon of the Urban-Brookings Tax Policy Center.

“I think Janet Yellen’s history as a scholar . . . suggests that she will be paying attention to the unique features of this recession and the fact that it really has disproportionately hurt people at the bottom,” Gordon said, adding that Yellen is “a very creative thinker about how to approach all of these problems.”