

Senate Finance Committee Asks USTR Lighthizer: What is the Future of the WTO?

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On Tuesday, U.S. Trade Representative Robert Lighthizer testified before the Senate Finance Committee to discuss a question that is central to the Trump Administration's trade policy agenda: What is the future of the World Trade Organization (WTO)? As the 25th anniversary of the 1994 creation of the WTO (in its current form) approaches, the Trump Administration has been vocal in its criticism of the WTO's shortcomings and failure to abide by the text of the agreements as written in 1994. The Administration has pledged, as part of its overall trade policy, to seek critical reforms that will improve and reform the WTO's functions going forward. And, as Senator Wyden put it, trade issues including WTO challenges are one of the least known and biggest problems facing the United States' ability to create good paying jobs and to expand our markets.

Ambassador Lighthizer answered questions on a number of topics relating to the WTO and, more generally, current U.S. trade policies:

WTO Reform Is the WTO still relevant? In short, yes. Lighthizer explained that much work is done at the WTO committee level, including interpreting agreements, solving and diffusing disagreements, and helping parties move toward consensus. The problem, according to Lighthizer, is that the dispute settlement system established under the 1994 agreements has morphed the WTO from a negotiating forum to a litigation forum. This results in WTO members disfavoring agreements for concessions and instead litigating at the Appellate Body level to achieve gains they otherwise would not be entitled to. The solution? Lighthizer favors engaging in negotiations with small groups of countries with commonalities who are willing to take on extra obligations – for example, in the digital trade space – and excluding other members from that process. He suggests that such a plurilateral approach will be more fruitful. Lighthizer confirmed he knows of no other way to push for WTO reform than to use the only leverage available to the United States by blocking the appointment of Appellate Body members. Absent new appointments, the Appellate Body will no longer function by the end of 2019 as it will not have enough members to render decisions.

Another widespread complaint about the current functioning of the WTO is the ability of members to self-declare themselves “developing” countries. Developing countries are exempt from certain WTO obligations and receive benefits that are not available to non-developing countries. Lighthizer explained that this is particularly problematic in the case of countries like China, Korea, and Saudi Arabia, that have become increasingly wealthy over the years yet continue to reap the benefits of their self-declared developing country status. USTR has proposed and garnered some support for proposals to address this problem, for example, disallowing a country to be designated as “developing” if it is in the OECD.

In response to a number of questions about the status of Section 232 tariffs on imports of steel and aluminum, Lighthizer stated that the tariffs are working and are necessary. There are no immediate plans to lift those tariffs, but Lighthizer confirmed they are a constant topic of discussion in the ongoing US-China negotiations and US-Canada-Mexico conversations as the push to complete USMCA continues.

China Issues regarding China were a significant focus of the senators' questions. In response to concerns that China's growth since 2001 (when it joined the WTO) has come at the expense of the United States and in violation of WTO agreements and rules, Lighthizer explained that the current US-China negotiations address China's failure to abide by WTO obligations as well as overcapacity, currency manipulation, subsidies (both generally and to state-owned enterprises (SOEs), and more. Lighthizer explained further that the current structure of the agreement, which is 110 to 120 pages long, addresses technology transfer, IP protection, currency, market access, agriculture, non-tariff barriers, and enforcement of the agreement. Without question, he stated the agreement will include a commitment not to competitively devalue currency and will require increased transparency on the part of China. Lighthizer assured the Committee that enforceability is a critical aspect of the negotiations and the President will not OK an agreement absent strict enforcement provisions. Ambassador Lighthizer did not, however, provide an estimated date for when he anticipates negotiations to be completed. He further reported that China is pushing for removal of Section 301 tariffs and wants increased market access in certain sectors.

For more information on what to expect in 2019 on trade issues, check out our [post reviewing the Administration's 2019 trade policy agenda](#).