

Trump Administration's First Major Statement On Foreign Trade Affects Agriculture

by Lawrence Ward and T. Augustine Lo

On March 1, 2017, President Donald Trump released his first major policy statement on U.S. foreign trade relations. Issued through the Office of the U.S. Trade Representative ("USTR"), a part of the Executive Office of the President at the White House, this new statement is comprised of two parts, the 2017 Trade Policy Agenda and the 2016 Annual Report. The first part contains bold promises by the new Administration to reshape the landscape of U.S. trade relations with other countries, particularly as to the agricultural sector. The second part contains a detailed report on progress in trade matters made during 2016 by the Obama Administration.

First announced on the USTR webpage under the banner of "America First Trade Policy," the new Trade Policy Agenda promises to conduct trade policy "to expand trade in a way that is freer and fairer for all Americans." This policy statement specifically names the U.S. agricultural sector as an intended beneficiary of this new policy. Among key objectives, the Trump Administration promises to work on reducing "unfair trade barriers in other markets that block U.S. exports, including exports of agricultural goods." The Trump Administration also promises to balance trade policy to protect the agricultural sector.

The Trade Policy Agenda blames America's international trading partners for imposing "significant barriers" against U.S. agricultural exporters. According to the document, "trading partners maintain high tariffs and other non-tariff barriers, which block market access to U.S. goods and agricultural exports." The document also cites foreign countries' subsidies to their agricultural producers, and other grievances as grounds that "the status quo is unsustainable." The Trump Administration says it will follow "a more aggressive approach" to hold trading partners "accountable" for not fulfilling their obligations under existing trade agreements.

The Trade Policy Agenda singles out four international trading partners in particular for their contributions to the U.S. trade deficit. The document cites the growing trade deficit with China, which increased from US\$81.9 billion in 2000 to early US\$334 billion in 2015.

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The document also notes that the United States has trade deficits with Canada and Mexico, who are members of the North American Free Trade Agreement (“NAFTA”). The document recalls that President Obama and Secretary of State Hillary Clinton’s earlier threats to withdraw from NAFTA if renegotiation of that agreement were to fail with Canada and Mexico. The Trade Policy Agenda also blames South Korea for adding to the U.S. trade deficit with that country since a bilateral U.S.-Korea free trade agreement came into effect in 2012 under President Obama.

The Trump Administration had already announced in its first week in office that it was withdrawing from the 12-nation Trans-Pacific Partnership (“TPP”) that had been negotiated over a seven-year period by the Obama Administration. The TPP had previously gained the broad support of most major U.S. farming and agricultural producer associations because the TPP would have reduced such trade barriers limiting American agricultural exports to 11 other Pacific Rim nations, such as Vietnam and Japan, as well as to Canada and Mexico. Approximately 40% of all world trade would have been encompassed in such trade promotion gains for U.S. agricultural producers under the TPP.

President Trump has said his Administration will avoid such multilateral agreements as the TPP and, instead, intends to embark on a series of bilateral negotiations with major trading partners. Such negotiations would likely affect the ability of U.S. agricultural producers to export to those countries. In recent years, for example, there has been a range of disputes affecting American producers, from beef exports to South Korea, to India’s price support for its domestic agricultural producers, to Canada’s subsidies for dairy producers.

Because the Trade Policy Agenda document does not offer any clear targets or other details, it is difficult to gauge at this stage how future trade negotiations will differ from efforts under previous Presidents, all of whom have supported greater international market access by U.S. producers and exporters. Presumably, the Trump Administration will approach such negotiations with a mixture of “carrots and sticks” to obtain what it wants, but the document does not state what those incentives or pressures will be. It is noteworthy, however, that the document explicitly references earlier threats by President Obama and Secretary Clinton to withdraw from NAFTA, which would certainly affect trade in goods between the United States, Canada, and Mexico, including agricultural goods, but the effects of withdrawal could be difficult to predict.

For instance, according to the U.S. Census Bureau, U.S. exports of agricultural products to Canada had grown from an annual average of US\$4.95 billion in the three years immediately before NAFTA coming into effect in January 1994 to an annual average of US\$21.4 billion during the years 2013 to 2015. Thus, U.S. agricultural exports to Canada grew by 332% after NAFTA came into force.¹ If the Trump Administration were to withdraw from NAFTA, it is unclear what would happen to U.S. agricultural exports to Canada that had grown so sharply under the auspices of NAFTA. (Moreover, Canada had already agreed to drop a considerable number of further tariff and non-tariff barriers against U.S. agricultural products under the TPP, to which it was a signatory, so U.S.

agricultural exports to Canada would have been expected to grow even more if the TPP had been allowed to go into effect.)

The Trade Policy Agenda also clearly underscores the Trump Administration's stated shift away from multilateral frameworks such as the World Trade Organization ("WTO") by emphasizing existing authority under U.S. law to defy adverse rulings by the WTO dispute settlement panels and the WTO Appellate Body under 19 U.S.C. §§ 3512(a)(1) and 3533(f)). Although these statutory provisions have been U.S. law since the United States joined the WTO in 1995, it appears that the Trump Administration has decided to emphasize the U.S. prerogative to ignore adverse rulings from such WTO bodies as a core part of its trade program. (However, the document does not explain what the Administration would do if the prevailing nations in such WTO disputes were then to impose trade countermeasures against U.S. exporters. Such retaliatory steps would presumably have to be expected, often with American producers caught in the middle when trade disputes are escalated to such levels and spill over beyond the boundaries established by normal WTO procedures.)

The second part of the USTR release, which is the agency's statutorily-required 2016 annual report to Congress, offers a sharply contrasting view of what the United States has been able to achieve through adherence to such WTO proceedings in favor of American exporters, including those in the agricultural sector.² The 2016 annual report recites, among other things, the American successes against Indonesia's barriers against imports of U.S. horticultural, beef, poultry, and other animal products; the European Union's barrier against U.S. bananas and beef products; India's barriers against U.S. poultry and other agricultural products; Japan's restrictions against U.S. fruits; Korea's restrictions against U.S. beef products; and Turkey's measures against U.S. rice imports. It is unclear now, if the United States elects in the future to defy adverse rulings from the WTO, whether it would nonetheless continue to seek such historically successful WTO protections for American producers or would only use bilateral methods.

President Trump's nominee to be the new U.S. Trade Representative, Robert Lighthizer, was a former Deputy U.S. Trade Representative in the Reagan Administration and has spent years as a high profile litigator of international trade cases in Washington DC on behalf of various U.S. industries affected by imports into the American market and by foreign barriers to U.S. exports. If and when confirmed by the U.S. Senate, Mr. Lighthizer can be expected to bring all of that significant prior government and private sector experience to his leadership of that agency in fulfilling the broad visions laid out in the new Trade Policy Agenda. Moreover, once he is in office and is able to articulate more details of the Trump Administration's specific trade proposals, American producers will then be able to gauge better whether such proposals will help their export efforts as promised.

¹ Economic Research Service, U.S. Department of Agriculture:
<https://www.ers.usda.gov/data-products/foreign-agricultural-trade-of-the-united-states-fatus/calendar-year/>.

² 2016 Annual Report, at 168-69, 170 (Office of the U.S. Trade Representative).