

Chaotic Trade System A Big Pain For Business, Ex-USTR Says

By Alex Lawson

Law360, New York (August 07, 2014, 7:22 PM ET) -- An increasingly unpredictable international trading system sparked by an uptick in disparate trade agreements and government intervention has created an untenable commercial environment for companies looking to conduct business globally, former U.S. Trade Representative Susan Schwab tells Law360.

The stalling of multilateral efforts to craft cohesive global trade and investment rules has pushed nations both large and small to pursue more limited agreements that can squarely address their most immediate concerns in a given region, Schwab explained, noting that the proliferation of these efforts has substantially complicated the operations of businesses across several sectors.

“Even the largest multinational firms, stepping back and looking at what is going on, their heads are spinning trying to figure out how this affects all of their business plans,” Schwab said in an interview with Law360. “You’ve got the progress in the trade system stalling and all of the regional [deals] in various states of suspended animation.”

Schwab, who served as USTR under President George W. Bush from 2006 to 2009, now works as a strategic adviser at Mayer Brown LLP, where she says she regularly hears complaints from companies of all sizes regarding a persistent web of complex, overlapping regulations and compliance obligations.

Firms in several sectors are facing challenges, but Schwab said that companies dealing in multipronged supply chains such as consumer goods, pharmaceuticals, chemicals, and textile and apparel are often being hit the hardest.

“It becomes very, very important to think about where you’re going to produce, where you’re going to source and where you’re going to sell and construct your supply chains,” Schwab said. “A major multinational can look at a global map and save a whole lot of money and avoid a lot of headaches by sourcing in certain places.”

While large corporations often have the money and resources to try to adapt to such an environment, the current dynamic of global commerce can often deal lethal blows to smaller firms that aren’t able to alter their sourcing or production processes to keep up.

“For major multinationals, it’s a nightmare, or an opportunity, and for a small or medium-sized companies, it’s a disaster,” the former USTR said.

The U.S. and other nations recently missed out on an opportunity to cut into at least some of that confusion after missing a deadline last week to implement an agreement at the World Trade Organization to streamline customs procedures worldwide and cut down on border-entry red tape.

Implementation of the agreement, which some observers speculated could yield nearly \$1 trillion in worldwide savings, faltered because of an effort by a small throng of developing countries, led by India, to link the deal with commitments to safeguard their food subsidy programs from legal challenges.

Schwab echoed the near-unanimous sentiment of several experts in saying that India's move poses a substantial threat to ever reviving a serious effort to rewrite international trade rules for the first time in two decades.

“What the Indians did is a travesty, and it's a disaster for India's economy, the rest of the world and the multilateral trading system,” Schwab said. “The implications for the trading system and the global economy and businesses are really bad news. Not only do you have a stalling of these mega-regional negotiations, but now you've got a stalling of what had been a glimmer of hope in the multilateral system.”

With the WTO consensus model of negotiations floundering, the U.S. has not been shy about pursuing its own regional trade initiatives, primarily in the form of the Trans-Pacific Partnership with 11 Asia-Pacific nations and the Transatlantic Trade and Investment Partnership talks with the 28-nation European Union.

The TPP talks have moved into an aggressive stage, with President Barack Obama aiming to present a finalized or nearly completed deal in time for a November summit of Asia-Pacific nations. Schwab said that TPP negotiating dynamics are such that a quick closure or utter failure may be equally likely outcomes at this juncture.

“They are at an odd point in the TPP negotiations where it could go either way,” Schwab said.

The lingering hurdles in the TPP negotiations appear to be the hard lines taken by Japan and Canada regarding the opening up of their respective agricultural markets, but Schwab said the biggest challenge for the Obama administration may reside on Capitol Hill.

Every Republican member of the powerful Ways and Means Committee in the U.S. House of Representatives last month told U.S. Trade Representative Michael Froman that they would not offer support for any TPP deal unless the administration first secured a deal to renew trade promotion authority, or TPA.

TPA, which has been expired since 2007, allows Congress to set certain standards for trade agreements in exchange for an up-or-down vote on the deals without amendments. Traditionally, the administration and Congress have worked together to pass TPA, which then allowed the White House to negotiate deals adhering to the standards laid out in the legislation.

But the Obama White House has thus far been content to continue negotiating trade deals like the TPP and figure out a way to pass TPA after the fact. Schwab pointed out that the strongly worded letter from the Ways and Means Republicans ought to put the administration on notice.

“That was really a game-changer,” she said. “They've been saying that privately for six months or more,

but when you've got one side of this equation publicly saying, 'Don't even think about closing this deal without TPA,' that is not an insignificant development.”

The TTIP has been somewhat sluggish to deliver returns since its launch just over a year ago. While there have been criticisms regarding a lack of transparency in the talks on both sides of the Atlantic, the discourse has been particularly acrimonious in the EU, where the 28-nation bloc's ombudsman has launched a probe aimed at pulling back the curtain.

Schwab said that the EU's efforts on outreach with lawmakers and interest groups will become clearer after the new European Commission takes over later this fall. In the meantime, she urged negotiators to remain ambitious in the talks and not settle for mere tariff elimination.

“If at the end of the day, they do the 'take the money and run' scenario, which would be just to drop tariffs and forget the regulatory side of the equation, and there will be a temptation to do that, it would be the worst possible outcome,” she said. “They will lose the opportunity to enhance competitiveness and get real market access.”

--Editing by Jeremy Barker and Philip Shea.

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