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Former Trade Policy Officials Say Resolving EU Trade Problems Thorny

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While it seems clear that Joe Biden wants to “team up with our allies” to confront China, less clear is how that will work in reality, Mayer Brown international trade lawyer Tim Keeler said during a Nov. 17 Mayer Brown webinar about trade policy in the incoming administration. Keeler, who is a former chief of staff in the Office of the U.S. Trade Representative, said a majority of Congress believes the Section 301 tariffs have been a source of leverage, while the European Union thinks the tariffs violated World Trade Organization rules.

He said that during the Trump administration, the EU and the U.S. have been in disagreement on the WTO appellate body, Boeing and Airbus subsidies, who should be the next WTO director-general and digital services taxes (DST). He asked: “Even if the U.S. were to accede to the EU view on all those positions, what does the EU do in return? I don’t think they do tariffs on China.” And if all the EU is willing to do is bring WTO cases or try to get China to agree to new disciplines at the WTO, he doesn’t think that will satisfy U.S. politicians. “I think people have assumed not having mean tweets will make it easier” to present a unified front on China, he said. “I don’t think that’s the case.”

Former USTR and Commerce Secretary Mickey Kantor, who served during the Clinton administration, believes that Biden will roll back Section 232 tariffs on European steel and aluminum, reach a compromise on Airbus-Boeing and work to resolve DST policy to move the relationship with Europe forward. None of the other panelists were as optimistic.

Former USTR Susan Schwab, who served during the George W. Bush administration, agreed with Keeler. She said that while a Biden administration would not have imposed tariffs on European steel, the worldwide effects of Chinese overcapacity in steel remain even if those tariffs are lifted. “I believe that if [USTR Robert] Lighthizer could have struck an approach between Japan and the EU on overcapacity, they would have done so,” she said. She also said that the free trade talks between the U.S. and Europe failed because of the EU, not the U.S.

Mayer Brown senior adviser Warren Payne, a former policy director at the House Ways and Means Committee, said that although Biden would prefer to focus on the COVID-19 pandemic, the recession and an infrastructure bill in the first six months in office, the collision course between European countries and the U.S. on DST means that he can’t just stick with domestic concerns in the early days of his administration. Payne said there may be a tax approach to finding a settlement at the Organization for Economic Cooperation and Development, rather than tariffs on French or other DST-imposing countries’ imports.

But he said Ways and Means Chairman Richard Neal, D-Mass., Senate Minority Leader Chuck Schumer, D-N.Y., and the top Democrat on the Senate Finance Committee have all “been very clear that they will not sacrifice the U.S. tax base either to these DSTs or to these OECD negotiations.” He said Republicans in Congress also think countries trying to impose DSTs are trying to tax income that rightfully should be subject to the U.S. corporate income tax.

Payne, in response to a question from *International Trade Today*, said he believes the most likely tariff liberalization in 2021 is the restoration of India to the Generalized System of Preferences benefits program. “I think if the Trump administration does not reach any kind of mini deal” with India before Jan. 20, 2021, Biden will make improving relations with India a priority, he said. Biden wants to “rebuild relationships with allies that can help it triangulate against China,” he said. “Restoration of GSP benefits is going to be critical to that,” Kantor agreed.

None of the panelists believes Biden will roll back any Section 301 tariffs on China in the first year, though he may restore lapsed exclusions or approve more exclusions. “You may see more exclusions, you may see more negotiations,” Schwab said. “I see a quieter trade policy; perhaps a more boring trade policy. But I don’t see any tariffs being peeled back any time soon.”

Schwab said she’ll be looking for what last-minute actions Lighthizer takes over the next two months, including whether he pushes to renew GSP and the Miscellaneous Tariff Bill, whether he extends exclusions on Section 301 tariffs on COVID-related items, and whether he reaches a deal with the United Kingdom. Payne pointed to the Section 301 investigation on Vietnam as something the outgoing administration could try to finish before Jan. 20, and said the fact that Lighthizer is against a public hearing suggests “they are in a hurry to get to a conclusion.”

If the Trump administration doesn’t impose trade restrictions on Vietnam over alleged currency manipulation or illegal logging, the panelists said, they are unsure how Biden will deal with the investigation. Keeler said some Democratic constituencies like the investigations, and choosing not to punish Vietnam could have some political cost. Payne said he expects Biden would want to pursue action on Vietnamese logging practices, but he didn’t say whether tariffs were a likely outcome.

He thinks a deal with the U.K. before Jan. 20 is very unlikely, though possible, and Schwab said Biden might want to move a U.K. deal by March so that it can get in under trade promotion authority, or fast-track, which will expire July 1. “There is a very narrow window to do a deal,” she said.

Keeler agreed that if the U.K. deal will get a vote, it has to be no later than June 30. “I think it’s unlikely a Biden administration would want to spend the kind of political capital to avoid a lapse in TPA; even if they did, I very much doubt they would have the votes in Congress to get TPA approved,” he said.

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