



Trade Talks, with Soumaya Keynes & Chad P. Bown
A podcast about the economics of trade & policy

Episode 93. US Trade Policy Before Trump, with Ambassador Michael Froman

[Episode webpage](#)

July 19, 2019

Transcript

(lightly edited)



Soumaya Keynes 0:00

Hello, you're listening to an episode of Trade Talks, a podcast about the economics of trade policy. I'm Soumaya Keynes, the US economics and trade editor for *The Economist*.

Chad P. Bown 0:09

And I'm Chad P. Bown, a senior fellow at the Peterson Institute for International Economics.

Soumaya Keynes 0:13

This week, we are going to talk to Ambassador Mike Froman.

Chad P. Bown 0:16

Mike Froman was one of the architects of the Obama administration's trade and international economic strategy. Mike was President Obama's Deputy National Security Advisor for International Economic Affairs from 2009 to 2013. And he's best known as President Obama's US Trade Representative, where he held that job from 2013 to 2017.



Soumaya Keynes 0:36

I have a confession. I was supposed to join in the conversation with Chad and Mike, but unfortunately, Donald Trump threatened tariffs on Mexico, and so I had to go back to my day job rather than be there for this one. So Chad was in charge, don't worry, I will dip in to explain stuff where hopefully useful, or just where I want to feel like I was part of the trade party.

Mainly this episode is about China and the World Trade Organization. We will hear about the many shared frustrations between the Trump administration and the Obama administration.

Chad P. Bown 1:10

I asked Mike how he saw China from within the Obama administration.

Mike Froman 1:14

With China's WTO accession in 2001, there was a sense, as I understand it, that there shouldn't be enforcement actions brought for the first few years. And so China was given sort of a bye, and I don't know whether that was actually agreed to as part of their accession or was just seen that they needed some time to adjust to being part of the WTO system.

But there weren't a lot of enforcement actions brought against China until the second Bush administration.

Chad P. Bown 1:56

So by enforcement here, you mean formal WTO disputes challenging them?

Mike Froman 2:00

That's right. So by the time we came in, I think there was a lot of pent up frustration about how China's WTO accession had proceeded, the impact that it had on manufacturing in the US, and I think one can debate how much of that was globalization generally that would have happened with or without China's WTO accession. But certainly, with China's WTO accession, there was a lot of companies, there was a greater degree of comfort that they could move their production to China and have the assurance that products produced in China would have access to the US market.

And so I think, at least at the margin, it facilitated that kind of investment.



Soumaya Keynes 2:43

I looked at the list of disputes on the WTO's website. So this is where countries file formal complaints that China has broken one of the rules. To date, there have been 43 complaints against China. Now, Mike was right, they got a few years grace period. After China joined formally in 2001, there were no disputes against it until there was one in 2004, then there was none in 2005.

And then in 2006, the complaints really got going. You've got complaints about China's VAT system, its intellectual property rights, charges it applies on imported car parts. There are a few complaints from other countries. You've got cases of the EU and the US both filing disputes at the same time. But the US is by far the most frequent complainant, and it's really leading the charge against China. In 23 of the 43 disputes against China ever, the US was the complainant.

Chad P. Bown 3:30

I want to go into a little bit more depth into one of the issues you've touched on. The Obama administration really increased the number of enforcement actions against China, it filed a number of WTO disputes against China.

So how did you prioritize that? Which cases did you decide to pursue? Which ones did you want to pursue, but you couldn't? How does an administration make these kinds of decisions?

Mike Froman 4:00

So we tried to focus on ones that rather quantitatively very significant. For example, one of the cases we brought had to do with agricultural subsidies where China was providing subsidies way in excess of what they had committed to the WTO, and the WTO completely agreed, and China was found to be at fault.

But also ones that were systemically important. One I remember we brought had to do with a series of – this was one of the most difficult cases to put together – it had to do with a series of regulations at the local level and the provincial level, that created something called export bases. And they were programs that basically provided subsidies to Chinese exporters. And we found something like 300 regulations that forensically we had to put together to really understand the program. Of course, these were all in Mandarin, so we use all heads of our Mandarin speakers, translating these to find the 300 offending regulations.

But the result was that it was a subsidy program. And we brought that to the Chinese. We filed at the WTO. We brought it to the Chinese. And the Chinese basically agreed, and they got rid of it.

The last case we brought, which I think was one of the most interesting and complex cases, and it was literally in the last couple weeks of the Obama administration, had to do with aluminum and the overcapacity that had been created in China that was having a depressing effect on global aluminum prices and therefore damaging US aluminum smelters and companies.



And it really focused on the role of state owned banks and providing subsidized credit, as well as other subsidies, subsidies for alumina, other inputs into the aluminum process. But what was interesting about it was looking at the structure of the banking system, and how the structure of the banking system created these implicit subsidies for the aluminum sector which then encouraged them to overproduce. And that had, in this case, because there's a one single price for aluminum, as opposed to – it didn't matter whether they exported the aluminum or not, or where they exported the aluminum – simply producing it produced this negative injurious effect on global prices.

I'd say one more thing about China enforcement, which is goes beyond the WTO cases that we brought. One of the biggest challenges you have on the enforcement side is that you need information. The government doesn't have all the information at its disposal, particularly to understand what the injury has been to a US company or US industry. And so you need the cooperation and the active participation of US industry to put together these enforcement cases.

And in a lot of cases, the US industry was unwilling to put its head up or raise his hand or provide the necessary data to be able to do these cases. They would come in and raise concerns about what China was doing. But when it came time to actually put together the cases, for quite understandable reasons – they were worried about retaliation, worried about sharing business proprietary information – but it just made the job all that more difficult when you didn't have the data yourself to put these cases together, and the industry wasn't necessarily willing to provide it to you.

Chad P. Bown 7:21

But these systemic issues don't just affect the United States. What's that like as an official? How easy is it to get other countries to sign on? Is there this frustration that we're carrying – we, the Americans – are carrying the entire load ourselves and others should be challenging China? Why aren't they challenging China? What's your sense of all this?

Mike Froman 7:41

I think it's a good question. I think that part of it is that the US has been the leader of the global economic system for the last 75 years. And, as a result, other countries look to us to carry that burden and are very happy to hold our coat while we do so or ride our coattails, however you want to put it, but not invest themselves in that effort. Sometimes they are willing to join cases; and on occasion they're willing to initiate cases, and we join them and have them in the past.

But more often than not, they come to us, they're very happy to have us go and pursue these issues with China, but they don't necessarily invest a huge amount of effort themselves.

And, hopefully, particularly as the US has stepped back from this leadership role to a certain degree, hopefully other countries will step up because it is very much in their interest.



Soumaya Keynes 8:34

Over the course of the Obama administration, they initiated 14 separate WTO disputes; other countries launched nine over that period.

Now WTO disputes are very fun, as Chad will tell you, but during the Obama administration, there were lots of other types of engagement with China. Indirectly, there was the Transpacific Partnership or the TPP which didn't include China, but it was meant to be a counterweight to its influence within Asia. The administration was also trying to negotiate a bilateral investment treaty with the Chinese. So talks for that were launched towards the end of the Bush administration and the Obama administration really pushed it between 2014 and 2016. Mike wrote an article in *The Washington Post* back in February about this bilateral investment treaty.

Their understanding at the time was that the Chinese leadership had decided that it wanted to wrap up this deal with the US as a way of pushing internal reform. Mike said that as part of those discussions, the Chinese had already agreed to liberalize investments in most sectors, and lift its equity limits, and joint venture requirements. It's those requirements, the ones that force American companies to partner with Chinese companies when they enter the Chinese market; it's those that are the mechanism for this forced technology transfer that the Trump administration is complaining about today.

Chad P. Bown 9:54

What are some of the other items and approaches the administration took toward China over those eight years?

Mike Froman 10:02

Well, there was just a lot of engagement. And there were formal procedures for that engagement. We had the Strategic and Economic Dialogue; we had the Joint Commission on Commerce and Trade; there were scientific dialogues, scientists to scientists; there were military to military conversations around cyber, for example, there were some dialogues; we used enforcement mechanisms, both bilateral and through the multilateral system; and we used negotiations.

We make most progress with China when we align ourselves with some constituency internal in China who also cares about that issue. So we made progress on intellectual property rights when they began to have their own software developers and intellectual property producers, who also cared about having their rights protected. We make progress on some of these issues around state owned enterprise reform or subsidies when their private sector is also chafing at the unfair competition in the market that is brought to bear because of the role of certain state owned enterprises. And so, if we can have those kinds of dialogues, and we did a lot of it in the context of the bilateral investment treaty, then it has longer term effect as well.



Chad P. Bown 11:23

If you had to do it all again, are there things that the Obama administration should have done differently on China?

Mike Froman 11:30

I think we all learn from our successors what further steps can be taken and can be useful. I think the Trump administration has clearly developed a broad consensus across all the parties in the United States, but also in other countries, about their view of the nature of the challenge that China poses. And I think they've been able to go farther than we were because there is still division at the time between, for example, ourselves and Europe, and folks in Europe who were not as concerned about China and not willing to step out and put pressure on certain issues.

Chad P. Bown 11:55

So the Trump administration is obviously taking a very different approach toward China. And in one respect, they're doing this by tying a number of their actions in with concerns over national security. Were there similar pressures to do this within the Obama administration?

Mike Froman 12:26

I think there's been an evolution in the relationship between economics and national security that goes back now, a few decades.

It used to be conventional wisdom in Washington that the economic interests of the country were subjugated to the national security interests. That anytime there was a trade dispute with the country, but we needed that country for some national security reason, during the Cold War or otherwise, we would sublimate our economic concerns and just sort of suck it up.

I think starting with Clinton administration who, for example, created the National Economic Council to be a force and a process within the White House, equal to the National Security Council, to make sure the economic issues were brought to the table, and certainly, through the Obama administration, there was a bifurcation of the two issues. We could say to a country, we've got important national security issues to work with you on, but that doesn't mean we're going to subjugate our economic and our trade issues, and we're going to fight hard on the economic and trade side, even as we need to cooperate with you on counterterrorism, for example, or in the case of European Union on NATO issues or national security issues in that context.

This has evolved again, I think, in the current administration, where now China, as a national security threat, seems to be the dominant perspective of this current administration. And so they've re-linked



the trade issues, but in somewhat the opposite direction, saying, if you work with us on a national security issue, you may get a better deal on the trade side, witness North Korea.

And so it's been again, another step in that evolution.

Chad P. Bown 13:53

Okay. Now I want to turn to what the Obama administration was doing in the World Trade Organization, the WTO. It's not as if they weren't doing anything in Geneva, as you mentioned, there were all these disputes that were being filed.

But there were also some negotiations that were taking place. Can you tell us a little bit about those and some of the deals that got done?

Mike Froman 14:05

I think when we came in and made it clear after studying it that our view was the Doha Round itself was unlikely to reach a successful conclusion on the path it was on, that created an opening to start working on taking the pieces of the Doha Round that could get done, like trade facilitation, like issues around agricultural subsidies, and to make progress on those. And we were able to achieve multilateral agreements on those.

Similarly, we were able to achieve plurilateral agreements, so partial WTO agreements on various sectors like information technology products. There had been an information technology agreement back in the I guess, the 90s. This was an opportunity, a lot of new IT products that were still subject to tariffs, and we were able to come up with a list with a critical mass of countries, including China, that eliminated tariffs on about 200 categories of products worth about a trillion dollars of trade. We tried to do the same on environmental goods. We were not as successful because at the end of the day, China just felt like it couldn't move forward and tabled a proposal that was clearly intended to deadlock the negotiations.

And then on the dispute settlement piece, I think there been long standing concerns that, at times, some Appellate Body members would go beyond their mandate and try and fill in law where it didn't exist, where there was no agreement among the members. And that was against our understanding of what the Uruguay Round really meant, that the dispute settlement body was supposed to reflect the agreement among the members.

There wasn't supposed to be what we would call *dicta*, *dicta* was not supposed to have any effect. And they were supposed to stick to the confines of what had been agreed to.

So we, at one point, rejected the reappointments of an Appellate Body member and encouraged the country of that member to suggest somebody else, who we quickly approved. So we didn't stymie the workings of the Dispute Settlement Body. We were willing to approve Appellate Body members who we



felt had a history and a perspective of keeping to the Uruguay Round. And, by the way, this had nothing to do with whether we won or lost those cases, it was really about an approach to WTO jurisprudence, and whether the Appellate Body members were sticking to the Uruguay Round agreement or were creating new law. And we were not in favor of Appellate Body members who create a new law.

Soumaya Keynes 16:49

As all Trade Talks listeners should know by now, this Appellate Body business, it's a really big deal. And I would heartily encourage everyone to go back and listen to Episode 60 about all the ins and outs of it.

The contrast Mike is trying to draw is between the actions of the Trump administration, which is refusing to appoint any judges at all, and the actions that the Obama administration were essentially they were trying to influence the appointment of judges away from ones that as he puts it, would in their rulings, create new law.

Chad P. Bown 17:02

Let me try to push back against that a little bit. And this is a bit of an unfair fight because you're a trained lawyer, and I'm not.

It's hard to look at this though, and not see it or not interpret it as a little bit of sour grapes. That the examples where the United States is arguing that there has been *dicta* or judicial overreach are all in these cases that we've lost. And, in all of the great cases that we've won on the offensive side, that we've brought forward and the WTO is ruled in our favor, those are all fine.

So how do we draw the line between what's right and what's not right in this space?

Mike Froman 17:47

I think some of the cases that we cited we weren't even parties to. So it wasn't just cases that we lost. I think there were cases where we felt like there had been judicial overreach.

But I think what is very important is that we still valued, very much valued, the Dispute Settlement Body and the Appellate Body and the procedure and the certainty that created, and so we were willing to appoint other members to the Appellate Body, who we felt would adhere to the constraints of the Uruguay Round agreement.

Chad P. Bown 18:33

So last question on the WTO: What do you think is the future of the WTO?



Mike Froman 18:36

I think it has those three functions, negotiating, monitoring and dispute settlement. I think on negotiating, it is going to have to be a practical approach to doing agreements among the coalitions of the willing that are then open to others who want to join, and to build out support from there. Holding out for one big, all-inclusive round is not likely to produce success.

Chad P. Bown 18:48

So these plurilateral agreements.

Mike Froman 18:50

Plurilateral agreements are probably the way to go. As long as it is open plurilateralism, so that other countries can join, if they are ready and willing to live up to the standards.

I think on the monitoring, I think we need to hold countries' feet to the fire that they live up to their obligations to really submit their policies and practices to the scrutiny of the international body.

And on dispute settlement, I'm hopeful that other countries will work with the United States on a reform package that can allow new members of the Appellate Body to be appointed and to keep that process alive. I think it's a mistake to have nostalgia for the period before the WTO, when there wasn't any binding and enforceable dispute settlement. I think that's been an important advance over the last 20 plus years, to have a place that countries can go to and get a definitive ruling, that's not just their own personal view, but the view of the global trading community, that a country is in violation or not in violation of agreement, because then that allows for further pressure on those countries that are in violation to bring their policies and practices into conformity.

Soumaya Keynes 19:53

That is all from Mike. My big takeaways are that the Trump administration's frustrations were clearly shared by those in the Obama administration, but the Trump administration is pushing much harder and much faster than they did. And Mike said that one reason the Trump administration is able to go further is that there's now a broad consensus between the EU and the US about the challenges posed by China, whereas when he was in post, there was much more division.

Chad P. Bown 20:22



I guess what I would point out here is well, President Trump may have woken up the Europeans and other countries to the challenges that China is posing to the trading system, he really hasn't taken advantage of working with them to help resolve the problem.

Soumaya Keynes 20:37

Yeah, there is this trilateral process, this process between the EU, the US and Japan about how to write new rules that would deal with some of the shared concerns they have about China. There is that process, but it doesn't seem to be going anywhere very quickly. It seems also rather secondary to, you know, the bilateral that the Trump administration is pushing. They don't really seem to be trying to use that common concern as leverage to get the Chinese to sign up to anything right now.

I guess the other thing I should say is that yes, there is this big contrast between the, you know, more multilateral-institutions friendly approach of the Obama administration and then the much more aggressive approach of the Trump administration. But we shouldn't be overly optimistic about the potential of the sort of friendlier approach to work. Yes, there had been progress on China and those bilateral investment treaty negotiations, but it's always that last 10% that is that is the toughest to agree. So it's possible that they were so quite far away from a final deal.

Chad P. Bown 21:48

And even in that context in the Obama administration, I'm not sure what it would have even meant if China had agreed to this deal. Congress, as it turns out, wasn't even willing to pass the TPP agreement. I don't see how the Senate was going to ratify a bilateral investment treaty with China. That just seemed to be a political nonstarter.

The one important thing that I did pull out from what he said about the World Trade Organization was the Obama administration's approach to saving the system, and their approach was to explicitly to kill off the Doha Round and then to salvage the parts of it that were left to try to keep the system going.

And so they along with other countries did get this deal on information technology, they got one on trade facilitation, killing off export subsidies for agriculture. And today, there are these ongoing negotiations for e-commerce and fisheries subsidies. So those are all part of that strategy.

The big risk there, though, is that you can lose legitimacy of a big consensus-driven process. And another is, you may never get a big enough package that you can trade off one thing against another. I win a lot here; I lose a little bit there. If there aren't these tradeoffs that are enough to create wins for everybody, then you may not be able to actually tackle the really big and important stuff that has to get done.

And also, even as we're seeing today, this process of negotiations is still quite slow, and it's not very exciting. Though maybe that's good. Maybe you don't want this to become too politicized. I think a lot of the excitement that the negotiations that we've seen in the Trump administration hasn't necessarily been for good.



Soumaya Keynes 23:55

Chad's slogan for 2020- Make Trade Policy Boring Again. That is all for Trade Talks. A huge thank you to Ambassador Mike Froman, currently a Mastercard, and formerly the US Trade Representative, and Deputy National Security Adviser.

Chad P. Bown 24:05

And thanks also to Collin Warren who handles our audio. And also make sure to send us ideas and feedback. We are at email@tradetalkspodcast.com.

Soumaya Keynes 24:14

Do follow us on Twitter. I'm @SoumayaKeynes.

Chad P. Bown 24:16

And I'm @ChadBown.

Soumaya Keynes 24:18

And we're on @Trade__Talks.

Chad P. Bown 24:20

That's not one but two underscores, @Trade__Talks. Because when it comes to ways of tackling trade problems posed by China, maybe two is better than one.

Soumaya Keynes 24:29

So I'm recording this under a blanket in my bathroom. That was terrible joke. It wasn't a joke. I don't even get it, but I'm so hot, I need this to end.