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Transatlantic Take

Mr. Hogan Goes to Washington: Using Imagination to Break the Trade Impasse

By Peter Chase

EU Trade Commissioner Phil Hogan is in Washington this week for the first time in his new role—although he had visited a number of times in his previous incarnation as agriculture commissioner. With some imagination around agricultural trade, it could be a good visit. Alas, the chances of that are slim.

The timing of this maiden voyage is not propitious. Hogan's trip coincides with—and may well be eclipsed by—the expected signing of a major trade agreement between the United States and China. This "improvement" in that bilateral relationship (admittedly from a very low point) stands in some contrast to troubled transatlantic ties. These are marred by disputes over whether agriculture should be in a U.S.-EU trade agreement; U.S. tariffs and EU counter-tariffs on steel and aluminum; U.S. tariffs on European products stemming from the World Trade Organization (WTO) ruling against EU subsidies for Airbus; and a growing dispute over a digital services tax that France and other EU members now levy on U.S. information technology firms.

The European Commission accordingly hopes to "manage expectations" about the trip. The problems noted above will not be resolved, but Hogan and his counterpart, U.S. Trade Representative Robert Lighthizer, could focus on areas of shared interest, including joint efforts to tame China's massive financing for its export industries and WTO reforms.

That is unlikely to happen. President Donald Trump, Lighthizer, and the rest of the U.S. trade team know all too well that the European Union has the second largest trade surplus with the United States (the trade in goods surplus will exceed $170 billion in 2019, behind only China). They acknowledge that many factors drive the U.S. deficit, but believe the EU's persistent surplus shows the relationship is "fundamentally imbalanced." The EU benefits because previous presidents opened the U.S. market for "putative geopolitical advantage" (as the Trump administration's first trade policy statement put it); the EU has not opened as much. This is most obvious in agriculture, where the EU exports to the United States double what it imports (even though the latter is the world's largest exporter of commodities). But U.S. officials also point to standards and other obstacles to exports of U.S. manufactured products.

Hogan has to contend with this perception of a "fundamental imbalance" in the U.S.-EU trading relationship, whether or not he agrees with it. He can point to the huge amount of U.S. investment in Europe (over $3.2

trillion) that drives a lot of Europe's exports to the United States. Or note that the EU is the world's largest importer of goods and services, including of agricultural products. Or explain the U.S. deficit reflects the country's relatively quicker economic growth and substantial savings imbalance (driven in part by the Trump administration's enormous fiscal deficit).

None of this will matter. Washington thinks the EU needs to open up more to U.S. exports.

Hogan is unlikely to appreciate this one-way deal but is aware the Trump administration sees its strong-arm trade tactics succeeding with Canada and Mexico, Japan, South Korea, and even China. The EU will not be immune. The WTO ruling against the Airbus subsidies gave the administration a legitimate reason to turn up the heat with higher tariffs on over $7.4 billion of EU exports to the United States. Lighthizer's use of Section 301 to respond to the digital services tax has less cover under international law. But when the France's finance minister openly argues the tax disproportionately affects U.S. companies, a tough U.S. response is easier to understand. And Hogan knows that the administration's harshest tool—using "national security" to justify tariffs on imports of autos and auto-parts—still waits, although the president has not yet pulled that trigger.

So, it may be a rough visit. Hogan, who because of his size literally looms over most interlocutors, will try to keep the focus on a positive agenda, but will not shy away should push come to shove.

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The two sides, however, do not need a shoving match. And Hogan is uniquely positioned to use this trip to change the dynamics of the transatlantic trade relationship, if he chooses. He represents a new European Commission that could strive to turn the page and knows intimately the subject that could turn it: agriculture.

The last major EU-U.S. trade discussions occurred in July 2018, when European Commission President Jean-Claude Juncker appeared to have convinced President Trump to hold off on the feared auto tariffs while the two sides would begin negotiations toward a trade agreement. But disagreements arose immediately over whether agriculture would be covered by the talks, with Hogan, who attended the meeting as agriculture commissioner, arguing no. The United States and the EU in January 2019 completed the formalities that would let them begin negotiations, but whereas the Trump administration called for the comprehensive approach that characterized the Transatlantic Trade and Investment Partnership (TTIP) agreement launched in 2013 by President Barack Obama (without the controversial Investor-State Dispute Settlement), the EU formally disavowed TTIP and authorized negotiations only on industrial products.

The EU justifies its sectoral approach (which it knows would likely violate WTO rules) by saying it sees no need to discuss its sensitive subject—agriculture—if the United States will not put its sensitive issue—government procurement—on the table. This logic suffers from two major problems. Formally, the United States is willing to include government procurement (in part as it has demands of the EU). More importantly, even were President Trump to use his executive authority to allow EU products to compete on a completely level playing field for U.S. government procurement contracts, the EU could not guarantee full effective market access on agriculture … and it knows it.

For the problem in U.S.-EU agricultural trade, in the first instance, is not just tariffs, quotas, or other measures at the border that stop imports (although those barriers in the EU are high); the difficulty lies in differing European and U.S. approaches to food safety. And beyond that, the problem is politics, with France in particular concerned that U.S. exports could overwhelm its farmers.

If anyone has the power to untie this Gordian Knot, it's Hogan. He knows the issues, he knows Europe's agricultural sector, and he is well-known for protecting the continent's agricultural interests.

The solution is deceptively "simple." Hogan could suggest a willingness to include agriculture in the trade talks, meeting the Trump administration's demand. But he could insist that food-safety issues be excluded, arguing that the furor over the TTIP negotiations—when the idea that U.S. "chlorinated chicken" might be allowed into the EU set off a political firestorm in Europe—demonstrated this would be politically unsustainable.

This approach of differentiating by function (trade versus safety regulation) rather than sector (industry versus agriculture) might not work. Hogan would first have to change the narrative about EU agriculture—it is no longer an "infant industry" that needs to be protected, but rather a global export powerhouse, as reports he issued each year as agriculture commissioner demonstrate. (The EU has been the world's largest agro-foods exporter for a number of years and has run a trade surplus in the sector for a decade.)

He could also soften the blow by arguing that eliminating tariff protections would not allow U.S. products in to the market, for they would need to comply with EU food-safety regulation—which does not allow for the use of anti-microbial treatments on poultry (that chlorinate the chicken), bans the use of growth hormones in beef and ractopamine in pork, and prohibits the import and use of many varieties of genetically modified commodities grown in the United States (which effectively prevents those commodities from being imported into Europe, because unapproved varieties cannot be separated from those that are).

To counter U.S. complaints that such an approach would not provide effective market access for American farmers (and it would not), Hogan could offer a serious, but separate, effort for EU and U.S. food-safety regulators (not trade negotiators) to examine where regulatory differences that create unnecessary barriers to trade can be addressed … for European exporters as well as their U.S. counterparts. While not often discussed, Europe faces numerous "sanitary and phytosanitary" barriers in the United States as well—including for the sale of apples and pears, beef, cheeses, milk powder and other products. Addressing these would create significant positive benefits for the EU agricultural industry.

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These regulatory differences fall into four categories: politically sensitive products where either side refuses to move (sugar in the United States, hormone beef and chlorinated chicken in the EU); a very few areas where scientists differ about safety; areas where the U.S. and EU methods of assessing safety differ (though neither side says the others' food is demonstrably unsafe); and products where the other side simply does not want to move, mainly because it is irritated with the approach of the other (Grade A certification for French dairy products, for example).

The last two categories promise wins for both sides, with no danger to consumers. Each issue viewed individually is intractable, but when seen as a group, the benefits of cooperation and collaboration should be obvious for both. Resolving differences in the second group would benefit consumers of both sides: if something is unsafe for consumers on one side of the Atlantic, it is on the other as well. And, for the first group, where politics may be insurmountable, both sides need to respect the vulnerabilities of the other, for these problems are unlikely to be resolved no matter what.

Many observers might argue the long-running U.S.-EU dispute about agricultural biotechnology "genetically modified organisms" —would fit in that first category, not least as the United States has won WTO cases against the EU on this. But few acknowledge that the EU has since implemented a rigorous evaluation process for assessing the safety of biotech crops, and has approved about 80 different varieties for import and use. The difficulty here comes from the asymmetries between what is approved for Europe and what is used commercially in the United States, for those asymmetries effectively ban EU imports of the U.S. commodities as co-mingling of different farmers' harvests makes it impossible to ensure only approved varieties would be shipped. A serious phased program to address these asymmetries in individual crops could make a difference.

Hogan may not be in a position on this trip to Washington to propose such a bold approach to the agricultural issues that bedevil the U.S.-EU trade relationship, although officials on both sides are aware of the ideas; the political ground has not yet been adequately laid. But even a hint in this direction could forestall aggressive U.S. tactics. And the pressure on EU farming interests from the U.S. tariffs triggered by the Airbus and digital service tax disputes, coupled with an attempt to change the narrative about European agriculture, could begin to lay the stage for a more constructive approach. The trade negotiators on both sides of the Atlantic might not like the idea of being left out of the talks on food safety, but the significant political oversight of the regulators could help ease political concerns in Europe.

Phil Hogan has an opportunity to use this trip to make a difference. He should use it.

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