Urge to Merge: Why Combining the U.S. Trade Representative with Other Trade Agencies is a Bad Idea

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On Friday, January 13, President Obama announced his intention to merge the Commerce Department, Office of the U.S. Trade Representative, Small Business Administration, Export-Import Bank, Overseas Private Investment Corporation and U.S. Trade and Development Agency. That proposal quickly drew criticism from lawmakers and the U.S. business and agriculture communities. My aim today is to summarize those concerns.

In late January, the Chamber was one of 86 business associations signing a letter to the president expressing concern about the proposal. The signatories included organizations representing small, medium-sized, and large companies and associations representing farmers and ranchers, manufacturers, and service providers. (I'd like to recognize Linda Menghetti at ECAT, who led the drafting and rallied the signatories.)

At the heart of these concerns lies the high regard that lawmakers and business share for the Office of the U.S. Trade Representative. As House Ways and Means Trade Subcommittee Chairman Kevin Brady said: "USTR is nimble, aggressive and operates on a tiny budget — yet participates in round-the-clock negotiations with trading partners throughout the world while producing job creating trade agreements to spur the American economy." The business letter I mentioned called USTR "extremely efficient, focused and effective."

Against this backdrop of somewhat unusual high praise for a government agency, there are at least two major concerns about moving USTR — concern about moving it *out of* the Executive Office of the President, and concern about moving it *into* a larger, yet-to-be-named agency.

Out of the White House

First, the business community is concerned that USTR will lose stature and effectiveness by being removed from where it now sits. As our letter said: "USTR's unique and important role stems in substantial part from its position within the Executive Office of the President, lending it credibility with foreign trading partners, Congress, other U.S. government entities and private stakeholders… we believe that such a move will weaken the ability of USTR and the United States to pursue effectively a strong trade policy…"

House Ways and Means Committee Ranking Member Sander Levin invoked some of the history we've heard here today to make this point: "It is important to recall that Congress established the Office of the U.S. Trade Representative, within the Executive Office of the President, because our trade objectives were not adequately negotiated, implemented or emphasized when trade negotiators and enforcers were part of a broader agency."

While the administration has said that the USTR would retain cabinet status, he or she would report to another cabinet officer and not to the president. It is easy to imagine that the USTR would be received less seriously by minister-rank officials in countries such as Brazil, where the foreign affairs and trade functions are housed in a single ministry, or Mexico, where the economy secretary also has responsibility for trade. Those foreign officials may reason that the USTR should instead meet with lower level officials with a pure trade portfolio.

As Dean Kleckner, who served seven two-year terms as president of the American Farm Bureau Federation, wrote: "The United States needs to have a trade diplomat who possesses genuine stature, rather than a spot on an organization chart that puts the office below the head of a third-tier cabinet secretary. Not only should the trade chief speak directly for the president, but foreign leaders must understand that the Oval Office is just a phone call away. Otherwise, they won't engage in serious trade negotiations with us."

One veteran USTR staffer now in the private sector offers this further comment: "Decisions on trade are very political and very difficult. They sometimes involve having to take on powerful domestic constituencies with protectionist views — e.g., sugar growers, unions. Absent a direct relationship with the White House, it becomes much harder internally to overcome the forces of the status quo."

"Only strong USTRs with the confidence of the president have shown an ability to deliver on agreements that faced the opposition of powerful domestic groups. The further the distance between the President and the top trade negotiator, or the more bureaucracy and staff that surround the top trade negotiator, the harder it is to lead on trade."

It's worth taking a moment to consider how the system works today. As part of the Executive Office of the President, USTR coordinates trade policy, resolves inter-agency disagreements, and frames issues for presidential decision. It does so through the Trade Policy Staff Committee, which brings together senior civil service professionals from 19 Federal agencies and offices. When necessary, those decisions are raised to "deputy" or "under secretary" level through the USTR-chaired Trade Policy Review Group.

This system is probably under-resourced, and the Chamber and others in the business community have been vocal about saying so. But it's not a bad system. If anything, the business community would like to see the status of USTR enhanced within the inter-agency process, in which some agencies are at times reluctant to see international trade agreements touch even lightly on their policymaking competence. Moving USTR out of the Executive Office of the President would thus be a step in the wrong direction.

Into a New Bureaucracy

As I mentioned, the business community is also concerned about the implications of moving USTR into a larger, yet-to-be-named agency.

First, the *trade liberalization* mandate of USTR, which is tasked with negotiating market-opening trade agreements, is quite different from the *trade promotion* functions of the other five agencies proposed for inclusion in a new, merged trade agency. The Obama administration has shown enthusiasm for trade promotion, as seen in its National Export Initiative and its commitment of new resources for the Commerce Department's International Trade Administration and the Export-Import Bank.

However, the administration has proven hesitant on the trade liberalization front. The administration deserves credit for moving ahead with the trade accords with South Korea, Colombia, and Panama, and for pressing forward aggressively on the Trans-Pacific Partnership, but these initiatives began during the Bush Administration. The administration has not proposed any new trade agreements, and it has not requested that Congress approve Trade Promotion Authority.

As a result, the business community — which has significant offensive interests relating to trade liberalization — has viewed with skepticism the administration's proposal of subsuming USTR in a larger agency mostly dedicated to trade promotion. The business community was already concerned about how the administration has de-emphasized trade liberalization, and this proposal is simply another case in point.

As we wrote in our letter: "Subsuming USTR into a broader trade and business government department will severely harm [its] credibility and USTR's ability to play its unique coordinating role within the U.S. government."

House Ways and Means Chairman Dave Camp and Senate Finance Chairman Max Baucus issued a joint statement making this point: "Making [USTR] just another corner of a new bureaucratic behemoth would hurt American exports and hinder American job creation. We certainly need to look for ways to reduce

government and cut taxes, but not at the expense of programs that are helping businesses, ranchers, and farmers create jobs and expand our economy."

Contemplating such a merger of trade agencies, those who know the constituent parts well have argued that the president's proposal envisions "false economies" to be reaped by combining staff resources.

Take trade enforcement. USTR has the lead on the enforcement of U.S. trade agreements, but enforcement of U.S. trade remedy law — anti-dumping and countervailing duties — is the job of the Commerce Department, with a role as well for the quasi-judicial U.S. International Trade Commission.

While staff in these agencies all have "trade enforcement" responsibilities, these are very different matters. Even in a merged super-department, these would continue to be separate competencies.

Process and Politics

Finally, there are process concerns. In the laconic words of Inside U.S. Trade: "Several congressional sources said last month that Obama's failure to have substantive consultations with committees of jurisdiction prior to his Jan. 13 announcement seemed to signal that the White House may be more interested in the political value of the proposal than in actually getting it approved by Congress this year."

This is more than the oft-heard lament about poor executive-legislative consultation, for congressional authority over trade is not in question. Article 1 of the Constitution says: "The Congress shall have Power ... To regulate Commerce with foreign Nations."

As Senate Finance Committee Ranking Member Orrin Hatch stated: "What's disconcerting is that the President has again chosen not to work with Congress – even after I specifically asked the Obama Administration [in August 2011] to fully brief Congress if it chose to reorganize our trade agencies. The White House needs to remember that Congress has responsibilities to the American people that it represents."

The business community also has many questions. About a year ago, the administration did hold a number of sessions with key association and corporate leaders to hear their views on a possible merger of trade agencies. Many of these experienced professionals voiced concerns about merging USTR with Commerce and other agencies, and they are frustrated and disappointed that their advice was not heeded.

Even today, there is a dearth of information about the proposal. The administration last week sent a bill to Congress seeking "fast-track" authority to reorganize federal agencies. The White House has indicated that if Congress approves the bill, it will then take several months to develop a detailed legislative proposal fleshing out its plan.

In other words, a detailed proposal does not appear to be in hand even as of today.

Don't misunderstand me. There may well be some duplication of effort among the trade agencies, particularly on the trade promotion side of the equation. This is a question worth close examination, and if the finding is positive, a plan to rationalize programs should be executed. But to date, the administration's proposal is a disappointment.

Recommendations

We can do better. The business community very much wants USTR to "own" U.S. trade policy. In fact, trade Expansion Act of 1962 as amended requires this.

The business community would support measures to strengthen USTR's role. Additional resources would be a good beginning. In addition to a larger budget — which is only about $50 million today — the longstanding practice of "seconding" staff from other agencies to USTR should be used aggressively as needed.

In fact, it's not reorganization per se that is needed but a rethink of the inter-agency process. We need to examine how best to coordinate international economic policy across agencies.

A case in point: The February 17 Presidential Memorandum on "Maximizing the Effectiveness of Federal Programs and Functions Supporting Trade and Investment" places responsibility for the coordination of trade promotion functions not in the Commerce Department — where it has traditionally resided — but with the Deputy National Security Advisor for International Economics.

Michael Froman is a brilliant and accomplished official, but the National Security Council/National Economic Council staff are already spread thin. Moreover, they are called upon, almost daily, to put out one fire or another, and this is not conducive to long-term strategic thinking. We should think about how to ensure the NSC/NEC international economic policy team has the resources it needs. And rather than shifting agencies, more attention should be dedicated to improving the inter-agency coordination that must take place regardless of where those agencies are housed.

With regard to USTR, though, we should remember the Hippocratic Oath and at the very least do no harm in any reorganization. With excellent new trade agreements coming into force and international trade driving growth and job creation, USTR staff should be proud of their accomplishments.

Proposals to reorganize U.S. trade agencies should build upon, not detract from, that success.

I look forward to continuing this conversation. Thank you.