

POLICY KEYNOTE: FIRESIDE CHAT WITH U.S. TRADE REPRESENTATIVE KATHERINE TAI

The Policy Keynote Fireside Chat was given at 2:00 p.m., Wednesday, April 3, 2024 by the U.S. Trade Representative Katherine Tai, who leads the Office of the U.S. Trade Representative, a cabinet-level agency in the Executive Office of the President, in conversation with Julian Arato, of the University of Michigan Law School.

INTRODUCTORY REMARKS BY LUCY REED

Good afternoon. I am Lucy Reed, a former president of the American Society, filling in for Greg Shaffer because there is another ongoing meeting. I am happy to welcome you all to the policy keynote, which is not a keynote. It will be a dialogue between Ambassador Katherine Tai and Professor Julian Arato. This is the very first event and moved up from Friday to today. So we welcome you all and are grateful for your flexibility.

I am proud to introduce Ambassador Tai as the first Asian American and woman of color to serve as the U.S. Trade Representative (USTR). Prior to her Senate confirmation, which was unusually unanimous, Ambassador Tai served as Chief Trade Counsel and Trade Subcommittee Staff Director for the House Ways and Means Committee in the Congress. There, she played a pivotal role in shaping U.S. trade law, negotiation strategy, and bilateral and multilateral agreements, including the renegotiated United States-Mexico-Canada agreement. Before that, Ambassador Tai served as a litigator at Office of the USTR, including as Chief Counsel for China Trade Enforcement. And before her federal service, Ambassador Tai also practiced law in the private sector and clerked for district judges. She was educated at Yale and Harvard Law School.

Julian Arato, I am happy to introduce to you as now a Professor of Law at the University of Michigan, where he focuses on public international law, international economic law, and private law. He is a member of the Board of Editors of the *American Journal of International Law*, and for today's purposes, most importantly, he has been a co-chair of the Program Committee for this year's annual meeting. And this is the very first event of this annual meeting. So with that, I turn you over to Julian and Ambassador Tai.

REMARKS BY JULIAN ARATO

Thank you so much for that introduction, and thank for joining us, Ambassador. I thought we would jump right in. I wanted to start by asking you about the Biden administration's marquee international trade policy. Things are changing dramatically in the U.S. approach to trade. Through your leadership at USTR, the administration has been pursuing what you have been

calling a worker-centric trade policy. Could you start by telling us about the new direction? What is the worker-centric trade policy, and what is the USTR doing concretely to manifest it?

REMARKS BY AMB. KATHERINE TAI

Thank you so much, Julian, and thank you for that first question right off the bat, because it makes us feel very seen. Indeed, when I came into this job, President Biden asked me to take U.S. trade policy in a new direction, to bring a new approach, and what he asked for specifically was for us to place workers at the center of our trade policy; therefore, the worker-centered trade policy. I have spent much of the past three years explaining what this means, because I think it is fair to say that “worker,” “center,” “trade,” and “policy” are all common words in the English language, but it really probably was only in this administration that we have put those words in this particular combination.

So what does it mean? First of all, it is important for everyone to grasp that a worker-centered trade policy is a new kind of trade policy; the implication being that we have pursued trade policies for a very long time, but we have never put our workers at the center. It is really about centering our work in policy on the experience of the human being in our economy. Trade policy is definitely part of the economic policy tool set. As such, it is important for us to appreciate that when we talk about economics and the economy, it often becomes about numbers and datasets, the trade balance, GDP, growth rates, sectoral growth, and sectoral trade-offs. But the truth of the matter is that our economy is actually made up of people, and traditionally when we have thought about people in the way we have conducted our trade policy, we have tended to think about them very narrowly and unidimensionally as consumers, which we are. You are a consumer; I am a consumer. We all consume in our daily lives.

But our participation in the economy as human beings goes beyond just being a consumer. Every consumer who goes out there and has to buy goods at the grocery store, at the convenience store, is generally also a worker, someone who has to earn a wage. Fundamentally, what we are trying to do is actively reimagine a version of globalization that is not justified simply on creating benefits for people as consumers. Low prices, for example, cost-cutting, the maximization of efficiency, that is the version of globalization that we currently have, and it is hitting some significant limits.

For us, this reimagination begins with focusing on a more holistic understanding of the human being’s participation in the economy. For every consumer that is out there who can benefit from lower prices, there is also someone who is competing in the global marketplace as a worker, who has to have the ability to advocate for himself or herself for better wages, better working conditions; to have more leverage to advance their position in the economy as a productive member of the economy. A worker-centered trade policy is one where we develop our trade policies by thinking about not just the benefits that we are producing for consumers and companies, big companies especially—which has been our model for traditional trade policies—but to think about how we can benefit our people as workers, how we can benefit the smalls and the mediums and the startups, just to think much more holistically about the impacts of our trade policies and how we can bring a different approach to create more inclusive benefits.

JULIAN ARATO

Would it be fair to say that it may be all well and good if we can marginally drive down the price of an iPhone, but, if we are not protecting people’s ability to secure a livelihood, that cheaper smart phone is not going to do them much good?

AMB. KATHERINE TAI

That is right. Low, low prices, great, if you also have the wage and the dollars in your pocket to spend. But if through the process of globalization, your ability to make a living is being pitted against workers in a faraway place who do not have rights and who are not able to get more rights, then your ability to improve your wage-earning potential is impacted. You have to look at the whole person, just as you have to look at the whole economy.

JULIAN ARATO

Right. From a sustainability perspective at least, this worker-centric model seems revolutionary. It is an attempt to shift not just the global but also our domestic economy. But, it has to be said, from another perspective—and there are certainly traditional voices saying this—some of this new direction feels like a return to old-style protectionism. I wonder if you could talk a little bit about how you walk the line. Is it a mistake to see these things in totally zero-sum terms? Is there an ability to thread the needle of promoting workers' interests in trade policy that is not just a return to rank protectionism?

AMB. KATHERINE TAI

This is a great question because as lawyers, especially for litigators, you are always trying to advance the most effective argument. We have probably all encountered the straw man strategy in argumentation, which is you construct a straw man that you can easily take down to try to overcome an argument that is inconvenient for you. Oftentimes as we are trying to advance a different kind of trade policy, we find ourselves being painted as barbaric protectionists, “Oh. Well, you are not about liberalization. You are not about pure, aggressive, comprehensive liberalization. You must be about this thing on the other end of the spectrum, which is protectionism or isolationism.” Nothing could be further from the truth.

The question that we are presenting to our friends and colleagues at home domestically, with our own stakeholders and partners, but also internationally is this fundamental question, which is how can you use trade policy to build out your middle class? This is why you also see us embracing a new kind of industrial strategy and policy. Instead of pitting ourselves against each other, instead of pitting our middle classes against each other's middle classes and our workers against each other, the question is, how can we use trade policy to build out our middle class? How can we trade? How can we develop a new trading system, a new set of trading principles to allow us to be building our middle classes together?

When I am asked, “Well, isn't this just a lot of talk?” I think the most important proof of concept that we have, that we have been continuing to build out, is something that I am really surprised is not better known, because we live and breathe the “new NAFTA,” the U.S.-Mexico-Canada Agreement (USMCA). One of the key improvements, the key modifications and corrections that is incorporated in the USMCA that was actually a real reason for the robust amounts of bipartisan support for this agreement, is a labor-specific, facility-specific enforcement mechanism that requires the U.S. and Mexican governments to work collaboratively together.

Because of this mechanism—and it is labor- and worker-specific—we have, uniquely through a trade agreement, offered a way for Mexican workers to increase their ability to advocate for themselves, to improve their standing at home, at these specific facilities. And by helping these Mexican workers, what we are doing is helping American workers who necessarily have to work alongside of and compete against their Mexican counterparts.

At this point we may have initiated approximately twenty of these cases. We have concluded about fifteen of them. As a result of the fifteen cases that we have brought and concluded, we have positively impacted 27,000 Mexican workers' lives. What does that mean? First, of those 27,000, they have received the ability and the right to take a free and fair vote for an independent union to represent them at their workplace. As a result of having that free and independent vote and independent union, they have been able to negotiate collective bargaining agreements that actually reflect their interests.

This has not been the case in Mexico for a very, very long time. Protection unions have negotiated protection contracts, all without the participation of the workers that they ostensibly represent. Then as a result of those contracts and agreements, they have been able to secure for the first time in years, a wage increase, safer working conditions, better benefits, back pay, sometimes the reinstatement of wrongfully terminated employees.

I want to emphasize that for the decades of criticism that NAFTA had in terms of undermining the rights of American workers, pitting American workers against Mexican workers who were fundamentally disadvantaged in their negotiating positions within the Mexican economy, we are offering a mechanism to advance worker rights, to create a more vibrant middle class through a trade agreement. With this exercise, what we see is we are able to flip the script on trade and globalization, that it is through trade that we are empowering people as workers.

This is an example of a worker-centered trade model that we are working very actively to bring into places like Geneva, the G20, in the G7, at APEC, to advance a different way that we can be doing trade that will be more sustainable, that can be more inclusive, that will drive better, more equitable economic outcomes, and create a pathway for a version of globalization that can be better than the one we are evolving out of, and that will be better than the versions of globalization that have come before that.

JULIAN ARATO

Let me push you a bit on this question of trade and development, because another straw man would be that this sounds like a worker-centric project that is focused on American workers. Obviously, from what you just said, the administration does not view this project as an American-workers-first project. Far from it, it is a project based on harmonizing labor standards to some degree, right?

Beyond the particularities of NAFTA, though, what do you see as a viable path for aligning our trade policy with the interest of workers in less developed and especially the least developed countries, where it might not work to have the same kinds of mechanisms? Do you see other paths toward that kind of alignment?

AMB. KATHERINE TAI

This is such a profoundly important question, because I think that when an advanced economy like the United States starts talking about worker standards, environmental standards, we are also bearing the burden of decades of trade and globalization dynamics where our developing, emerging economy counterparts will say, "Well, isn't this just a version of advanced economies keeping developing economies developing and keeping them down?" That is something really important for us to keep in mind as we are trying to develop a different kind of trade policy—to keep in mind that that is a sensitivity that we are likely to trigger, and how do we overcome it? Really important.

So yes, how do we build our middle classes together? Especially important when we are talking about advanced economy/emerging economy dynamics. I will give you a couple examples here, and you are right, because I think that one of the other things that we are very attuned to is

advancing trade policy, engaging with our trading partners in ways that are appropriately tailored for that particular partner and that particular partnership. An advanced/advanced economy dynamic will be different from advanced/developing or developing/developing.

We are really pushing ourselves to think more creatively, more broadly about what trade and development models could be more effective. We have our traditional trade and development programs. They are unilateral preference programs where the advanced economy will identify sectors where we will unilaterally take down our tariffs for these developing country and least developed country (LDC) partners as a way of stimulating trade and hopefully investment in those sectors in the partner country. What we have seen is that over time these programs have positive effects, but they tend not to be transformational.

What can we do to make these programs better? We are trying a number of different things. I would raise that we are negotiating a next-generation negotiation agreement with Kenya, a developing country that is coming up on middle-income status that is very motivated to figure out how to break out of the middle-income trap and to be able to thrive on the African continent, which itself is trying to integrate and trying to create a trading bloc that is more than a sum of its parts.

What is really important for us as a starting point is to have those conversations at the beginning of the negotiations where we are actively listening to what our developing economy partner is telling us. When I first came into this job, I had a set of very honest and actually difficult conversations with my counterpart at the time in Kenya, and it was because the Trump administration had started a free trade agreement that seemed like a fairly traditional exercise with a very important developing country partner, Kenya. We came in and said, “We are advancing a new kind of approach, specifically worker-centered. How can we adapt this to our partnership? Tell us what is it that you are looking for in a negotiating exercise with the United States?” The first answer was that being seen to be in an active negotiation with the United States is itself valuable for sending a strong signal to world markets that this is a partner that the United States has singled out for a special kind of relationship and exercise. I said, “We can definitely be negotiating something with you. We want to do that. We will send that signal.” But we have to go beyond that, because the traditional trade program is not worker-centered or tailored to this particular relationship.

The second thing that my counterpart told me was the importance of taking steps through the negotiations in the act of negotiating and then in terms of what we are negotiating to make our developing country partner, Kenya, a more desired destination for foreign investment. That is why when you see what we are negotiating with Kenya in this first phase of what we are calling the Strategic Trade and Investment Partnership, we are prioritizing issues around rule of law, political pluralism, human rights, anti-corruption, and fundamental basics for establishing a positive investment environment.

The third item that was conveyed to me, as we are negotiating, as we are developing this enhanced economic partnership arrangement, we also need to be developing our capacity to take advantage of the opportunities that will come from this arrangement. That was a really important note as well. Instead of spending seven to ten years negotiating a Cadillac agreement and then just unveiling it at the end and saying, “Here are the keys. Good luck,” along the way, we should be thinking about what are the opportunities we are going to open up and then how can we actually enable the economy and the people participating in the economy to take actual advantage of the opportunities we are going to be creating.

The other thing about our engagement with Africa, Kenya in particular, and then more broadly, is recognizing the African Continental Free Trade Area (AfCFTA), their continental integrative exercise, and the emphasis that they are placing on women and youth. Women and youth are an important part of the memorandum of understanding (MOU) that we have with the African Continental Free Trade Area. Women and youth in this kind of inclusive approach to breaking open the barriers

to economic participation and opportunity is also a big part of where we are putting our resources in this first set of negotiations.

One other example, as we are talking about the African Growth and Opportunity Act (AGOA), the AGOA Forum is hosted every year. Every other year, we host it here in the United States, and then the intervening years, one of our African partners that participates in AGOA will host. Last year was South Africa's host year, and a very magical thing happened at the AGOA Forum. For the first time, we had a very robustly realized, worker-centered AGOA Forum. You would not have necessarily thought that the AGOA Forum, this U.S.-Sub-Saharan African trade preference program forum, would have really fully embraced worker-centrism in trade. But I think it is because of South Africa as the host country, the incredibly important role that South Africa's trade unions played in overthrowing apartheid and establishing modern democracy in South Africa, and the degree to which the South African economy has bound up in it constitutionally, a focus on human rights, on promoting competition, and that that partnership with their worker organizations, that we had an AGOA Forum that was a forum for government-to-government collaboration and engagement, business-to-business, small business as well, a huge focus on empowering small businesses. You see that from us. You see that also from South Africa and other African nation, and then also the worker forum, not just South African trade unionists. We brought our labor organizations but also across Africa so that our workers could engage and that we could engage each other.

It was an incredibly inventive, innovative engagement that we had last November that I am delighted to share with you because we do a lot of things, and a lot of them tend to fly under the radar.

JULIAN ARATO

May I ask you a bit more about the Kenya example? There is something really exciting about that example. For how many decades have we heard a critique of trade integration that we have done economic integration and we skipped political integration and social integration? I am interested if you might want to say more about how far this one goes, because we have seen some trade treaties that say you need to have some human rights or you need to have some worker rights, but the political pluralism aspect of this agreement that you are describing sounds new. Could you please talk more about what those disciplines envision?

AMB. KATHERINE TAI

This is a really important question. If you start with our Trade Preference Programs, the most traditional, oldest, and biggest one is the Generalized System of Preferences (GSP). That is for all developing countries and is a baseline program.

Then we have a set of more specialized programs built on top of it, and AGOA was brought into the world in the early 2000s, and it has the most market opportunities, but it also comes with the most eligibility criteria that the participating countries have to meet in order to continue to benefit. Within those criteria, you see a real point of view about not just our market dynamics, not just economic integration, but about American economic and political values. I think that was really important.

If you think about the last twenty-five years of economic integration, the places where we see the greatest fraying in global economic integration are those places where we have the least amount of political values alignment. There is so much talk these days about democracy. Democracies fighting internationally and domestically against autocracy. Where you see the democracy/autocracy tectonic plates really rubbing against each other are also the places where the global economic program is showing the greatest amounts of stress. That is something that we are very conscious of—

how do you deploy your economic policies again in a way that is focused on economic freedoms? Economic freedoms are connected to political freedoms.

Our open market-based economy is also a very open, democratic, political entity, and at this moment of tremendous complexity in the world economic order, you are absolutely right. These are not things that we can separate from each other.

JULIAN ARATO

Let me switch gears, because I know many here are going to be interested in the World Trade Organization (WTO). We are fresh off of the 13th WTO Ministerial Conference (MC13). I am sure folks here would love to hear your readout of what happened in Abu Dhabi. Obviously, we cannot cover everything, but what are you most excited about? What do you take to be the most disappointing?

AMB. KATHERINE TAI

Fair question, important question. The 13th Ministerial Conference builds on the gains of the 12th, and I think that the really important thing to know about the 12th Ministerial Conference is about four years passed between the 12th and the 11th [ministerial conferences]. A huge part of it was COVID. The other thing you need to know is that MC11 was an emotionally devastating ministerial conference in that there were no significant outcomes from it. There was not even a joint communiqué that members could agree on, and that really sent the WTO itself as an institution and the membership into a bit of a tailspin. Certainly, questions around the relevance of the WTO or people committed to the WTO, with the MC12 coming in 2022, as we were still navigating our way out of the depths of the pandemic, really surprised people. There were a robust set of negotiated outcomes. It did require a significant amount of pragmatism with the fisheries' subsidies negotiations, which had been going on for 20 years, because we were not able to get the whole thing across the finish line. But we collectively said, "We actually have convergence on a good chunk of this. Let's just go ahead and push that across the finish line. We will keep working on the other pieces."

For MC13, there was a real push to get the other leftover pieces of fish subsidies over the finish line. We came really close. We did not get across the finish line, but we actually came really close. That was a disappointment, but also the glass is half full too. There is a very concerted effort, because people know how important this issue is with respect to sustainability.

Regarding other positives, the WTO has expanded now. We have 166 members. That is also double-edged. As it keeps getting bigger and more diverse, accomplishing consensus is going to keep getting harder, but we have just brought in Comoros and Timor-Leste, two developing countries, expanding out the family of WTO members.

A consensus-based organization with 166 very diverse members, who are going through different types of pressures is complex. Fish subsidies, for instance, you have small island nations who are literally fighting for their survival, negotiating with countries that are entirely landlocked, for whom a fish subsidies' negotiation is more of an academic exercise in international governance, having to work alongside each other and having to find common ground.

There was a tremendous sense of frustration, which is hard. The world is going [through] an evolution, a transformation, digitally, in terms of climate, in terms of the reordering of the relationships between the countries and economies of the world. All of this means that it is difficult to make long-term significant gains at any single ministerial conference, because there is too much changing for people to be able to make those kinds of commitments.

There was also a sense that we came so close on some things. In other areas, dynamics are just different. There are definitely some members of the WTO who sense a real opportunity in the

current reordering, and maybe want to hold off on setting more permanent rules until the reordering is more settled and they see how far they have come and whether or not they can better their position within this economic world order.

The most positive aspect of MC13 was the degree to which the conversation is changing. Yes, the WTO is showing its age. Yes, the WTO needs reform. But at MC13 we were finally starting to talk about our respective visions for what the WTO can mean, what each of us wants to see in the WTO. That is setting the WTO apart from its Bretton Woods siblings in this family of multilateral institutions. All of them are showing their age. The world is changing for all of us.

I am actually tremendously proud of the WTO because the work is hard but we are starting to do it.

JULIAN ARATO

Let me ask you one follow-up on what you say about the successes. We are in a room full of lawyers here, and probably a lot of them are disputes-oriented lawyers. A question on everybody's mind is, what is going on with dispute settlement at the WTO? It really seems like there has been some progress on dispute resolution reform. To many here, that's the burning question. Can you give us an update about what is happening, and what is the end game?

AMB. KATHERINE TAI

Yes. I am delighted to be at ASIL amongst a bunch of international lawyers, because these are the people who will have actually gone through the documents that have been made public and know that progress is being made in Geneva, because I think that that is not something that breaks through a lot into the layman's international policy conversation. You are absolutely right. We are making progress.

What does that mean? What does that progress look like? In a room full of international law practitioners, it is important to center the WTO dispute settlement conversation around a couple of basic facts. One is that the WTO as an institution is there because of its members. It does not sit on top of its members. It is not a supra-sovereign entity. It is a club that is defined by its members, each of which retains its sovereignty and its ability to decide its own policies.

When you get into dispute settlement, that is actually one of the most important elements to remember, which is we did not sign up for a supra-sovereign court system. This is still a forum for resolving disputes between most WTO members or countries, not all, but between individual members who actually have to rely on themselves and their own political systems to work out the frictions between them.

First of all, the dispute settlement system there is there to serve the members. What is it supposed to do? It is supposed to help the members settle and resolve the disputes that inevitably come up amongst them.

Another important aspect of WTO dispute settlement to really appreciate is to understand what we are doing now and how far we have come and how much further we need to go, which is that if you look at the dispute settlement understanding, it is the set of rules that define how the WTO can help its members resolve disputes. There is arbitration. There is a litigation process. That is not the only process that is provided for under the rules, and yet that is the only process that is ever used.

Over the 30 years of the WTO's existence, dispute settlement, which includes conciliation, mediation, consultations, and a whole suite of different ways of trying to work out your disputes with other WTO members, has become synonymous with a litigation forum that, by the way, has become very expensive, very lengthy, and out of reach for most WTO members, especially the developing ones and the LDCs.

When you look on the WTO's website, more than 600 disputes have been filed. It is not all of the WTO membership that engage, and that does not mean that some WTO members do not have frictions and disputes and tensions with others. It is that generally you have a subset of WTO members who have either developed in-house the ability to litigate out these cases or have to marshal the resources to hire outside counsel to litigate on their behalf.

We have become very thoughtful about this, especially at the beginning of this term. We buried the hatchet with the EU on an almost twenty-year-old set of cases about state support subsidies that each of us has provided to Boeing and Airbus. Those cases are so enormous that they have at times overwhelmed the system. If you trace back the history of the WTO dispute settlement system and the appellate body, in particular, some of the first dispensations that the appellate body gave to itself around the rules that had been written for the appellate body were done because those cases were so large. There is no way the appellate body could have worked through a record that big and sensitive in the 90 days that were supposed to be allotted to the appellate body.

We have been very thoughtful about the fact that right now we have an opportunity to remake the dispute settlement system, not in our own image, not just for the United States, but in a collaborative way where every WTO member can participate and at the end of the process, hopefully when we stand something up, see their own interests and their own participation reflected in it.

To your question about how we have been doing this, there was coincidentally while we were at MC13, a piece that came out in the *New York Times* about the process. It is an interest-based negotiation process around dispute settlement, and it is something that we wholeheartedly endorsed at the beginning, because I knew that the dispute settlement system is an important part of the WTO. It is currently not fully functioning. Not all parts, as written, are functioning, and it is important for us to make progress here toward a fully functioning dispute settlement system.

But I also knew that if we brought the traditional negotiating approach to WTO issues on dispute settlement, there was no way we were going to get there. The United States has been very clear about our concerns with the functioning of the dispute settlement system, the appellate body in particular. If you were to force me to come to the negotiations with a position paper, with a written text-based proposal, I am going to have to first think about what I think is desirable, what I can live with, and then dial every single aspect of that proposal up to 150 in order to put it into a 166-member negotiation to try to get close to something that I can live with.

You see this across the board in all the negotiations at the WTO. People show up. They have papers. They put them in. They read their talking points. We are not talking to each other; we are talking at each other. It is actually a tremendously non-productive way of engaging in negotiations, much less reform. The interest-based approach that we endorsed, that took root at the WTO, required a facilitator. It was the deputy permanent representative from Guatemala, who was tremendously skilled to bring members to the table, developed/developing, frequent users of the system, infrequent users, people who have never used it, and to have members identify what is it that you want, what interests do you want served from a dispute settlement system?

We have made a lot of progress around a certain set of issues. There is more progress to be made, including around what could replace the appellate body, what was the purpose of the appellate body, what interest did the appellate body serve, what interest do we want for a reconstituted dispute settlement system to serve, whether it is an appeals mechanism, a review mechanism, a mechanism to ensure better consistency of interpretations, however we are going to approach that.

I take a lot of encouragement from the fact that we have made more progress in a year on this than we have in 15 years of [Dispute Settlement Understanding] DSU reform that preceded it.

JULIAN ARATO

Let me just ask you about the time frame. I hear your point that it is not great that this institution that looks at resolving trade disputes in a forward-looking way, not a retroactive way, has suddenly turned into a litigation forum to such a degree. I take that point completely. There are all sorts of ways that we could be resolving and working out differences other than just going to litigation, and maybe there is something about the prior system that encouraged all of that litigation.

But the current status quo, where there is no functioning appellate body at all, has its own really serious problems for the rule of law. How long can that go on where we have a system where when things do get to litigation, a dispute can just be ignored by the losing party because there is no appeal? It is not just that there is a possible promised land. It is that the longer it takes us to get there, the rule-of-law problems fester.

AMB. KATHERINE TAI

Let us talk about what is actually going on at the WTO, which is people are still filing disputes against each other. We have just been hit with two cases that the [People's Republic of China] filed against us, one on the Inflation Reduction Act and then several months before, one on our semiconductor export controls. People are still very freely suing each other. Those disputes are still going to panel. You are still getting panel reports out of that system. But you are right. The appellate body is no longer constituted. It is no longer doing what it used to do.

That said, a subset of members has contracted amongst themselves, as they are empowered to do, around this Multi-Party Interim Agreement arrangement (MPIA). It looks very much like the appellate body. They have all agreed amongst themselves that they will recreate the appellate body for themselves.

For a subset of WTO members, they have found an alternative approach that is working for them, that is able to give them finality.

JULIAN ARATO

Fair enough.

AMB. KATHERINE TAI

For us, we have not signed up to the MPIA, in large part, because we had problems with the way the appellate body was running before. We are not going to sign up for a system that essentially recreates it.

But what it does mean is that when you get past the panel stage, then there is a conversation that we have with our complaining party or the responding party when we have brought the suit, and it is a much more political and policy conversation. It is one where the capitals have to connect. We cannot go on autopilot for another five, seven years to let the 21.5 process run out, to appeal, to go to arbitration. In a way, we are calling the question earlier around, what are you going to do about this? What can you do for me?

In fact, for some of our bigger challenges, what we are finding is, especially with our closest allies, whether that is strategic allies or economic partners, when challenges are coming up today in a very complex world and world economy, we are much more motivated to have that political capital-to-capital conversation at the front end to say, how can we accommodate each other's interests? Because, for example, we are agreed that there are significant changes to the way markets need to work, incentives need to work, for us to be able to respond to the crisis of climate change.

That is really opening our eyes to how having a system at the WTO could help to reinforce those capital-to-capital political conversations sooner.

JULIAN ARATO

Thank you for saying those words, because that is exactly the last question I wanted to ask you. But for the moment, climate change. Obviously, trade policy is intimately connected with climate governance, and no one here needs me to say that climate change is the problem of our time. And slow moving, though it might be, it is an all-hands-on-deck situation already. We are there.

Granted, trade policy is only part of the puzzle, but it is an important one, and so what do you think we can be doing better than we are already doing to align our trade policy with our climate goals?

AMB. KATHERINE TAI

Let me take this up. You are absolutely right. Climate is a collective challenge that is going to require a collective solution, and the climate has no borders. What happens at the border between economies is going to matter in terms of making effective economic and climate policies.

What does that mean? The WTO knows that it has an important role to play here, and WTO members know that. The issue is we do not really know what a solution would look like. But it is a solution that will have to work for everyone where trade can play a positive reinforcing role for how we address climate.

Right now, what I see is a lot of energy. There are at least one or two dozen different types of climate-related groups, dialogues, working groups, work streams, all happening at the WTO. Great. But how is that going to get focused?

There are also pressures being created outside of the WTO system that are going to stimulate engagement and help to shape what actually comes, and they are provocations. As an example, the Carbon Border Adjustment Mechanism (CBAM), the European Union's deforestation law, which penalizes exports into the European Union that are produced on deforested lands, is creating a lot of controversy and a lot of pushback, especially from developing country members at the WTO.

In order for change to happen, you need to have stimulation to provoke a response, hopefully a constructive response. I see the deforestation law, the European Union, the CBAM, other types of attempts from different WTO members that look very unilateral right now, as they engage with the WTO system, I think that that kind of uncomfortable push-pull is going to take us to where we need to go. But it is a great question. I do not know what the future looks like, but I do sense that the process is beginning.

JULIAN ARATO

Thank you so much, Ambassador Tai.