

A Welcome Trade Win for China

A ruling against Washington is good for the U.S. and good for world trade.

Amid all the bad news in the U.S.-China trading relationship, a recent World Trade Organization ruling comes as a breath of fresh air. An appellate panel in Geneva has sent Washington back to the drawing board with regard to a particularly unfair bit of trade "enforcement." In the process it has set down an important marker with implications for other areas of global trade law.

The case centered on the U.S. Commerce Department's method for calculating punitive duties against countries that are somewhere between planned and market economies. Antidumping duties were originally designed to handicap companies that sell goods abroad for less than they charge in their domestic market. But since all prices are distorted in a nonmarket economy, the WTO allows trade partners to determine what the fair price should be by referring to the costs in a market economy at a similar stage of development.

This is bad enough, since it often leads to absurdly high tariffs against countries like China and Vietnam. But at least they are exempt from the other category of WTO-allowed retaliation— countervailing duties. These are designed to punish government subsidies and can't be applied to a nonmarket economy because central planning makes internal costs almost meaningless.

But in 2007, the U.S. decided to have it both ways. *Bureaucrats deemed China and Vietnam "nonmarket economies" to enforce antidumping rules, allowing American protectionists to seek higher antidumping duties. But Commerce also called those countries "market economies" when domestic companies cried out for countervailing duties against subsidies.* This meant that China and Vietnam were damned whether they tried to put industries on a market footing or cut subsidies.



No wonder China took the U.S. to court in Geneva, and no wonder the U.S. lost. For now, the WTO ruling technically applies only to the case at hand, which involved duties on steel pipes, sacks and tires. But this is a warning to Commerce that the trade judges will scrutinize similar cases in future. This also isn't the only legal wrist-slap Commerce has received on this issue. In 2009, America's own Court of International Trade told Commerce this duty-calculation method violated U.S. trade law. Commerce is currently appealing that decision.

The WTO judges also ruled in this case on an issue with much broader global significance: what constitutes a "public body" for purposes of calculating subsidies. This matters because only a public body can confer an illegal subsidy. Commerce wanted to define a public body as broadly as possible, to make it easier to impose countervailing duties. The WTO ruled in favor of a much stricter definition. In practice, this decision will make it harder to impose countervailing duties in many cases.

Unfortunately, the WTO lacks the ability to enforce sensible rulings like this directly. Member countries have to change their own laws. The WTO's stiffest sanction is to allow victors to impose retaliatory tariffs if the losers don't comply. The U.S. has sometimes opted to live with the retaliatory tariffs, as happened for years after the WTO ruled the Byrd Amendment governing antidumping duties illegal.

It makes sense for Commerce to comply, despite all the political headwinds the department will face from protectionists in Congress. President Obama has recently rediscovered the virtues of trade, at least with his drive to double American exports in the next few years. To achieve that goal, America will want other countries to play by global trading rules to keep their borders open to U.S. goods. After several years of escalating protectionism masquerading as trade enforcement from Washington, the world needs some positive tit-for-tat.

That's especially true regarding China, for whom this WTO ruling is a victory in more ways than one. China has used its WTO membership to integrate itself more fully into the global economy. Last week's decision in Geneva validates China's decision to play by the global trading rules instead of sinking to retaliation. The best way for America to encourage this trend is to demonstrate its own willingness to play by the rules even when it loses. That could also make it easier to ask Beijing to comply when it loses WTO rulings.

The WTO has given Washington a mandate to rethink a petty bit of protectionism that has undermined U.S. global trade leadership. It's in America's economic and political interest to comply.