

## **Which should come first, the WTO or U.S. trade law?**

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No Trading on U.S. Security

With challenges from China mounting, William R. Hawkins asks: Which should come first, the WTO or U.S. trade law?

I was on the staff of the House Republican Research Committee when the issue of U.S. membership in the new World Trade Organization came before Congress in 1994. The WTO marked a major revolution in how the GATT (General Agreement on Tariffs and Trade) operated. The GATT, founded in 1947, had always operated as a mediation body, with the actual settlement of disputes being left to negotiations between the parties. The WTO assumed the role of arbitrator, issuing judgments and authorizing trade sanctions to enforce them. The WTO has the authority to declare national laws “illegal” and to give rival powers the right to impose penalties if the laws are not changed. I wrote several papers for the RRC warning of this threat to national sovereignty which were circulated to all GOP House members.

I was called down to the office of Rep. Newt Gingrich, the de facto party leader, where his staff tried to talk me out of my views. Their final argument was that since the United States was the world’s largest economy and only Superpower, it could defy any WTO ruling that threatened a vital industry. While this is certainly possible, then Deputy U.S. Trade Representative Charlene Barshefsky was telling the National Association of Manufacturers (March 4, 1994), “We will not block WTO rulings” because we are a nation that respects international law and commitments. That is why we need to be very careful about what we sign.

China, now well on its way to becoming the world’s second largest economy, did not join the WTO until 2001. There has been a steady stream of reports, both from business groups and government agencies, documenting Beijing’s failures to live up to its WTO obligations. In the wake of the tire dispute, China is contemplating going outside the WTO process to retaliate against U.S. safeguard actions allowed under the accession agreement Beijing

signed. As Mei Xinyu, of the Research Institute of Foreign Trade and Economic Cooperation in Beijing's Ministry of Commerce, said Sept. 13, "To keep peace, you need to have the capability to attack the other side. The same is true for trade."

Under Section 421 of the 1974 Trade Act, complaints can be filed against foreign countries if a "surge" of imports into the United States disrupts domestic production and costs American jobs. Between 2004 and 2008, China's tire production capacity expanded by 152 percent and is projected to jump another 16 percent by 2010. U.S. imports of tires jumped from 14.6 million in 2004 to 46 million in 2008, with China's share of the U.S. tire market surging from 4.7 percent to 16.7 percent. Four U.S. tire plants closed in 2006 and 2007, and three more were set to close this year. Over 5,000 jobs have been lost in the U.S. tire industry during the 2004-2008 period.

Surges can occur any time, especially when dealing with an aggressive trading state like China. But they are more likely (and harmful) during economic downturns. Foreign producers want to capture larger overseas markets to offset falling demand at home. It is an attempt to export unemployment by keeping their factories open and closing down those of rivals. Only those who survive recessions are able to benefit when recovery sets in. The aim is to force others to "adjust" downward or go out of business.

The three-year remedies approved by President Barack Obama were less than the U.S. International Trade Commission (ITC) recommended, but are still substantial. They consist of an additional tariff of 35 percent ad valorem in the first year, 30 percent in the second, and 25 percent in the third year.

Beijing has filed a protest with the WTO, but it does not have merit. "When China came in to the WTO, the U.S. negotiated the ability to impose remedies in situations just like this one," said U.S. Trade Representative Ron Kirk, "We consulted with China as allowed for under the WTO. This decision has been based carefully on America's rights under WTO rules, namely China's accession agreement, and on sound economic calculations." Unfortunately, the safeguard agreement with China, which Beijing is trying

to ignore, expires in 2013. But the United States should continue to protect its own interests even without WTO cover.

Beijing has threatened unilateral retaliation. One of the first industries mentioned was auto parts. Beijing lost a WTO case to the U.S. on auto parts last year and wants an excuse to offset the ruling with higher tariffs. China promised during the WTO accession negotiations to lower its tariffs on auto parts, but it had been imposing an extra 25 percent tax on auto parts if they were used in the production of vehicles that violate thresholds for Chinese-made content. The WTO ruled this was illegal, but China does not consider the matter ended.

Beijing industrial policy has long been based on the principle that if something is going to be sold in China; it should be built in China. A very logical approach to industrialization that has kept Chinese imports low and its trade surplus high, supporting rapid economic growth and the accumulation of the world's largest currency reserves. Beijing may well decide that maintaining this policy is more important to national development than adherence to the WTO. And any lackadaisical enforcement of trade remedies by American authorities would reduce the cost to China of making the decision to ignore international law.

Consider, for example, the U.S. WTO victory against Airbus, part of European Aeronautic Defense & Space. Airbus builds about half of the world's commercial airliners, while the other half of the market is held by Boeing. The U.S. brought the suit against Airbus in October 2004, alleging "illegal" government subsidies that gave it a competitive advantage over Boeing. The subsidies relate to the entire family of Airbus aircraft, including the A330 used in the Airbus bid against Boeing for 179 U.S. Air Force refueling tankers worth \$35 billion. The WTO ruling should mean that Airbus will be disqualified from the bidding, but the USAF has said it will not affect the competition. Failure to make full use of a WTO victory after such a long legal battle weakens the credibility of U.S. threats to go to the WTO to deter harmful foreign behavior.

For those who favor the use of international law and multilateral bodies over unilateral actions to protect national interests, the favorable WTO ruling in the Airbus case will be used to persuade the American public to choose this

legalistic route in economic disputes. Yet, it took nearly five years to get a preliminary ruling. The WTO is not expected to issue its formal ruling until the end of the year. Then both sides can appeal that ruling, meaning a final outcome is not likely before next spring.

The tire case moved much faster because the ruling only had to move through the USITC. The investigation was started on April 24 and the ITC issued its remedy on June 29. America is better off when pursuing its own interests in its own ways. Even if it wins a WTO case, enforcement of the decision still rests on the U.S. imposing sanctions to compel compliance. Rather than go through a lengthy and uncertain process to get to the same end, U.S. trade law should be invoked to protect American firms, jobs, production capacity and the national economy. Unilateral action can also stimulate negotiations, which can move faster outside the WTO than within.

There is a division of labor in the use of different venues for trade disputes. The WTO is used to break down foreign barriers to American exports, while U.S. safeguard, anti-dumping and countervailing duty laws are invoked to protect domestic firms from the predatory tactics of foreign rivals trying to capture larger shares of the American market. Whether dealing with imports or exports, the competition is cutthroat, and every tactic born from centuries of mercantilist rivalry is in play, plus a few new ones.

On September 24, USTR Ron Kirk announced a new enforcement effort to spot barriers to American exports, with a special emphasis on agriculture. The largest problem in the trade imbalance remains, however, the flood of imported manufactured goods that have driven domestic industry out of its own home market. American trade law will thus play the larger role in helping firms and labor redress the imbalance by taking back the nation's commercial territory.

As a sovereign people, decisions affecting the country's prosperity and security cannot be properly surrendered to foreign "authority." The United States has an inherent right to act in its self defense. The WTO is a tool, to be picked up or put aside as needed; just one widget in the policy toolbox. As President George W. Bush said in his 2004 State of the Union message in regard to the United Nations, "America will never seek a permission slip to defend the security of our country." The same should hold true for the WTO.