

## **At WTO, U.S. racks up wins against China, but the benefit is less than certain**

By Howard Schneider

The United States has won an impressive string of victories against China at the World Trade Organization in the past few years but U.S. companies have seen only limited benefits, according to a review of the cases and interviews with analysts and officials familiar with them.

U.S. challenges, for example, have led to the repeal of Chinese import tariffs on American-made auto parts. But by the time the United States prevailed, China was well on its way — with the help of the protective tariffs — to developing its own industry for manufacturing engines, transmissions and other components, say U.S. auto industry officials. The repeal did little to stem the long-term movement of auto-parts work from the United States to China.

Another WTO case challenging Chinese restrictions on U.S. film exports led to a partial opening of China's market. But China was able to maintain strict limits on how many major movie releases can be shown there each year, and studio box-office receipts are capped far below levels that prevail in the United States and other major markets.

The Obama administration has put enforcement of trade agreements at the heart of its approach toward China, the world's second-largest economy and an aggressive economic competitor. The Geneva-based WTO, which oversees the world's major trade treaties, is central to that effort.

The WTO offers a neutral forum where a country can call out another for cheating. This was supposed to help keep nations honest when they trade with one another, fostering freer and fairer commerce and fueling economic growth all around. For the United States, the WTO was meant, in part, to help it navigate a thicket of economic challenges from China and other rapidly developing countries.

While President Obama and GOP presidential candidate Mitt Romney have been swapping accusations over who is tougher in tackling Chinese economic policies, there is more to the debate than scoring political points. The shared concerns over Chinese competition point out the limits of the WTO. Over the decade since China joined the organization, it has become increasingly clear that it is a flawed tool for prying open China's massive market to American exports.

Major sections of the Chinese market, for example, remain out of the WTO's reach. China was allowed to join the organization in late 2001 without opening its government procurement to foreign companies, and it promised to negotiate a deal on this issue in the future. But China has yet to make an offer that the United States and other WTO members will accept.

In other areas of the economy, the Obama administration, like the George W. Bush administration, has proven adept at mounting successful challenges. Of 14 complaints brought by the United States against China, 11 have essentially prevailed. Three cases are pending. China has won three cases it brought against the United States and lost a fourth.

But winning in the courtroom is often only the start of the battle. What typically follows are negotiations between the two sides that determine what changes the losing side will make in its trade practices. Early cases won discrete benefits for the United States — such as the lifting of tax preferences that China offered its local companies — but later cases have bogged down in settlement talks.

The United States recently won a case involving restrictions on the activities of U.S. credit-card companies in China. Now, the matter is probably headed to appeal and protracted negotiations, during which time China's homegrown electronic-payments giant, China UnionPay, can continue solidifying the dominant market position it has built under state protection.

A WTO case brought in 2007 against China's lax intellectual-property laws was won by the United States two years later. But Lael Brainard, U.S. Treasury undersecretary for international affairs, said recently that theft of U.S. intellectual property in China remains "rampant."

The WTO battle over American film exports also began in 2007 and was won by the United States in 2009. But it was only during this year's visit by incoming Chinese leader Xi Jinping that a settlement was concluded.

Greg Frazier, executive vice president of the Motion Picture Association of America, acknowledged the limits of that deal. Bumping the number of imported first-run films from 20 to 34 per year was hardly a revolution. The increase in studio box-office receipts from 13 percent to 25 percent still falls short of the typical 50-50 split. To get the agreement, the United States also had to agree to leave the government's China Film Group as the country's sole film importer.

But U.S. business officials say they accept that progress with China will always be grudgingly step by step.

"The view was, use the WTO to crack restrictions, which had been in place for 20 years, and try to set up a dynamic that will feed into commercial changes that are taking place," Frazier said. "People look at this market, and they want to transform it. It's not in the cards. You do what is politically feasible."

Some U.S. executives say American companies should stay engaged in China and cut deals as they can.

“China is going to be the world’s biggest economy, and U.S. companies have to figure out how to do business there,” said John G. Rice, General Electric’s vice chairman.

Experts say it is unlikely that WTO enforcement will broadly change China’s policies. The Chinese “think they have a pretty good model, and they don’t see the WTO as an institution that can make major changes,” said Gary Hufbauer, a trade expert at the Peterson Institute for International Economics who follows U.S.-China economic relations. “Modest changes. Minor changes. But not major systemic change.”

Obama administration officials say they hope recent WTO cases will hit at the core of China’s industrial policy. That means, for example, challenging China’s export restrictions on rare-earth minerals critical to high-tech manufacturing, as well as other industrial raw materials. U.S. officials say they hope persistence — increasing the number and complexity of cases filed in Geneva — will pay off and prompt China’s policymakers to avoid adopting trade measures that they know will be successfully challenged.

“There has been a seminal shift under this administration in how the United States enforces trade agreements with respect to China and other countries,” said Timothy Reif, general counsel at the U.S. Trade Representative’s Office. “Our role is to make clear that if they are going to engage in inconsistencies, we will fight it and, when necessary, litigate it.”

Reif has hired three Mandarin-proficient lawyers over the past year to work with Katherine Tai, the office’s chief counsel for China trade enforcement, and the pace of case filings has increased. The new Interagency Trade Enforcement Center is focusing on China and has drawn in personnel from other agencies. The rare-earths challenge was considered so complex and sensitive, its preparation involved help from the Environmental Protection Agency, the State Department and intelligence agencies, and extensive deliberations with the White House.

WTO challenges are not the only tool the United States has to try to open China’s market. The Commerce Department has imposed dozens of tariffs on Chinese products considered unfairly priced or subsidized. The United States also holds regular high-level talks with China to push trade and economic issues.

But in the 10 years since China joined the WTO, the group has become the venue for a steady series of trade battles.

China was quick to settle the first cases brought against it, said Henry Gao of the Shanghai Institute of Foreign Trade, but is now fighting back more aggressively and negotiating tougher when it loses.

The country has sent promising young lawyers to programs such as Georgetown University’s Institute of International Economic Law, begun sending more participants to

**world trade forums and panels, and expanded Chinese organizations such as the Shanghai Institute to press its viewpoint.**

**The Chinese “don’t like litigation, and there was a lack of experience with the WTO system” in the early years, Gao said. But the country recognizes that the WTO is one field in “the competition for economic supremacy.”**