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*Commentary*

## Obama, trade enforcement, and China

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**Surprisingly, it is not China but the United States that holds  
the title for being sanctioned most by the WTO.**

**This year, President Obama  
claimed that since he entered office  
in 2009, his administration filed 20  
World Trade Organization cases**

**and won every one that was  
decided. At the time of this  
assertion, this involved 11 filings  
against China.**

**The cases filed against China that have been won by the United States have concerned, among others, Chinese duties or restrictions on U.S. high-tech steel exports, U.S. agricultural exports, dumping of Chinese tires into the U.S. marketplace, restrictions on imports of autos and auto parts into China, and restricted use of electronic payment systems (credit cards) in China. They also involved Chinese restrictions on exports of rare earth elements and other raw materials from China.**

**This certainly sounds like a great achievement for U.S. trade enforcement, which would reflect a sterling record in the WTO dispute resolution system.**

**But is it a great achievement? It might be, but it is not the whole story. The whole story is much more nuanced and important to understand.**

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**The Obama administration does not point out that China has prevailed in a number of cases that it brought against the United States.**

**Take, for example, the 2012 case decided against the United States involving “zeroing” as a methodology for calculating anti-dumping duties. Another case was decided in 2014 against the United States regarding its application of non-market status in calculating dumping and countervailing duties for certain Chinese imports.**

**Indeed, China has recently requested — just this May — a compliance procedure against the United States for its failure to implement a decision involving countervailing duties on Chinese exports by state-owned enterprises.**

**Newer cases that have been brought by the United States are pending**

**and involve Chinese taxation on aircraft and “demonstration bases” (special manufacturing zones), which seem to be in the process of settlement before litigation. Both involve issues of subsidies.**

**The 12th, and most recent, case brought by the Obama administration against China was filed this June and involves Chinese compliance with a prior decision involving its dumping and the countervailing duties imposed on the import of U.S. chicken broilers.**

**Perhaps the most important metric to look at in determining a member’s compliance with the WTO’s decisions is whether the WTO has authorized sanctions against a country for not implementing its panel or Appellate Body recommendations.**

**Surprisingly, it is not China but the United States that holds the title for being sanctioned the most. China has never been sanctioned — no**

**such sanctions have ever been authorized in U.S.-China disputes.**

**For example, the United States was recently sanctioned in 2015 for not complying with the “Country of Origin Labeling” (COOL) requirements in two cases brought by Canada and Mexico concerning the import of beef and pork. U.S. rules required identifying the foreign source of the imports, which violates WTO rules.**

**An examination of the most recent WTO report on sanctions, covering its first 20 years (1995–2014), indicates the following: Sanctions were authorized against the United States in three distinct cases involving the use of foreign sale corporations, cotton subsidies, and restrictions on online betting services. These cases involved multiple complaining parties. The United States has been sanctioned more than any other country.**

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**Before concluding, it's interesting to put all of this in a slightly broader context.**

**In the more than two-decade history of the WTO, over 500 trade disputes have been submitted. The dispute settlement system experienced its busiest year in 2015, with an average of 30 active panels per month. Most of the referred requests involved trade remedy issues regarding dumping, subsidies, and safeguards, among others.**

**The United States is the leading user of the dispute resolution system. But many countries use it. Developing countries now file about one half of the cases each year. Out of the 500 cases filed, only about one-third of them wind up in full litigation before a panel. Most are settled in the diplomatic**

**consultation stage that precedes the panel hearing.**

**The United States has won the vast number of cases it litigated in the WTO as both complainant and respondent. There have only been a handful of requests for sanctions, and even fewer have been authorized. But most of those few were never even implemented — perhaps only three or four, which is not very many.**

**The United States has filed more cases against China than any other country. Interestingly, China has tended to implement fairly promptly all adverse decisions against it by the U.S.**

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**What are my conclusions?**

- The Obama administration has been very active in WTO litigation generally and has been successful in WTO litigation against China specifically.**

- However, the United States has also lost a number of cases brought against it by China. Of course, the administration doesn't normally broadcast this.
- The United States is the country against which sanctions have been authorized the most, but only a few times.
- China has implemented adverse WTO decisions. This should be noted more by the administration, since it shows the positive aspect of China's engagement in the global trading system — and its acceptance of and its role in developing the rules of the road.

**My general conclusion: The Obama administration is correct in broadly stating its success in WTO litigation generally as well as against China. But in terms of full disclosure, there have been some unsettling actions by the United States — namely, not fully disclosing its losses to China, China's general compliance, and sanctions that have been authorized against the U.S. The recent U.S. opposition to reappointing a Korean judge to the Appellate Body, for his decisions concerning**

**U.S. trade remedy laws, is disappointing.**

**My take is that as the primary architect of the WTO, its dispute resolution system, and the judicial and rules-based approach to global trade relations, the United States should act a bit more carefully and supportive in order not to undermine this system. In particular, it should promptly implement decisions against it.**

**The system has served U.S. national interests well in resolving trade disputes generally and those between the U.S. and China.**

**It is not the absence of litigation that proves a successful system; rather, it is how the cases are resolved when commercial disputes arise, as they do when more international commercial transactions occur. So far they have been successfully resolved within the system.**

**Hopefully, this type of judicial and diplomatic approach developed in the WTO can be expanded to apply to non-commercial disputes between China and the United States. After all, the commercial and political relationships between China and the United States are critically interrelated and are most important as the 21st century rolls along.**

**The Obama administration should be proud of its strategy in the WTO generally and its enforcement actions against China. But there is no need to puff it up. A realistic assessment would analyze losses by both the U.S. and China as well as**

**sanctions by other countries against the U.S., in order to more accurately describe a complex system. This would make this unique international legal system look more balanced. It would provide U.S. policymakers the opportunity to further the global trading system in a more realistic manner.**

**Trade enforcement strategy is an important trade policy issue and foreign policy issue, and, above all else, it has huge geopolitical implications for U.S. national security. This is especially true in the context of U.S.-China relations.**

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