



Modest Setback on US-China Trade

Gary Clyde Hufbauer explains the ins and outs of the World Trade Organization's ruling against the United States over alleged dumping of steel pipes and other goods.

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Steve Weisman: One of the recent trade disputes with China and the United States involves the manufacturer of steel pipes in china. Gary Hufbauer of the Peterson Institute for International Economics is here with me, Steve Weisman, to discuss a ruling at the World Trade Organization that went against American interests and that has stirred some publicity. Thank you for joining me.

Gary Hufbauer: Thank you very much.

Steve Weisman: Okay, steel pipes. What at the heart of this issue? China has been making these steel pipes, which are the kind you sometimes see on scaffolding or lawn irrigation equipment. And suddenly there has been a surge of exports of these steel pipes into the United States and the U.S. has cried foul. Why?

Gary Hufbauer: Yes. There are a couple of things going on. And actually the case that the WTO took up involved several goods – off-road tires, steel pipes, not only the scaffolding kind but I believe oil country tubular individually were there.

So there was a group of goods, which had similar legal issues at stake, and there were really two very, very big legal issues. One, The United States regards China as a non-market economy. And we are entitled to do that to the end of December 2015, under China's protocol of *accession*.

Steve Weisman: To the World Trade Organization.

Gary Hufbauer: Correct. And as a non-market economy, when a dumping case comes up, that's when a Chinese company is said to be selling in the United States below its cost of production or below the price of which it sells in China.

United States does not have to look at Chinese costs, prices, or anything. It can instead use a so called, surrogate country, which could be the Philippines, could be India, could be Korea.

Steve Weisman: The standards of that country.

Gary Hufbauer: Yes. Well, how that product would be made and what the cost would be in that country.

Steve Weisman: Got it.

Gary Hufbauer: So that's been the norm for many, many years. Recently, that is in 2007, The United States said, that it could also, in the same case, apply a countervailing duty on U.S. imports from China of the same product. Now a countervailing duty is meant to offset a government subsidy to the producer of the product in question.

This has kind of a peculiar flavor to it because, the non-market economy approach in anti-

dumping case, already tosses out all of Chinese prices and costs and everything and looks at, let's say for example, Korea.

So once you've done that, you ask, "Well if you can't use any Chinese prices or cost, why are you then suddenly saying that something supplied by one Chinese company, to let's say the steel company, is subsidized?"

The U.S. said, "We can do it." And we did it in several cases. We were upheld actually at the panel level. There are two levels in the WTO; first of all a panel and then the appellate body of the WTO system.

And the justices said, "No. if you're going to do that, if you're going to apply both the countervailing duty and an anti-dumping duty in a non-market economy case, you, the United States, have to show that you didn't double count." In other words, that you didn't count the subsidy twice.

Steve Weisman: And that's what they ruled. Does the United States now have to recount in an appeal on the basis of that showing?

Gary Hufbauer: There's no appeal. This was the appeal. This is the Supreme Court. We're all over appeals but what this establishes for our future case, if the United States really wants to bring both the countervailing duty and an anti-dumping duty case against China, it could try to show that it didn't double count.

Steve Weisman: Will the United States be able to bring one or the other of these duties as long as they didn't double count?

Gary Hufbauer: Oh sure. Oh sure. That's clear. No question there. So it's only the double counting issue. Now that has attracted a lot of attention because the history on this is somewhat murky. But at one time the Commerce Department actually agreed with what the WTO is now saying. And the Commerce Department fought this in court and won that it couldn't double count. That was the Georgetown Steel case back in, I think about 2004.

When the Commerce Department changed its view, and started doing both, that was considered by U. S. court. And the U.S. court said, "You can't do it." But in any event, the WTO has now said you can't do it.

Steve Weisman: So this particular case had to do with steel pipes but it sets a precedent for a whole bunch of other goods.

Gary Hufbauer: Right. Right, and it did cover. The case actually did cover other goods besides steel pipes.

Steve Weisman: I see.

Gary Hufbauer: That was the big one, yes.

Steve Weisman: So this may not have been a setback but a clarification that could pave the way for future actions?

Gary Hufbauer: Yes. And I don't think it is such a setback. I think from a U. S. standpoint, the bigger issue is the second less noticed issue.

Steve Weisman: What's that?

Gary Hufbauer: The United States in this case said, "If a company is majority-owned by the Chinese government, we can assume it is a public body." And a public body can give subsidies when it sells products to other companies. And so there are a lot of companies in China, which are majority-owned, all the banks, many steel firms...

Steve Weisman: Majority-owned by the government.

Gary Hufbauer: By the government, yes: steel firms, fertilizers, cement, you name it, majority-owned by the government. Now here, the WTO decision was a setback. It could be an important setback. It said to the United States, "No. You cannot assume that because it's majority-owned it is government-controlled. You have to bring in more evidence that it's government-controlled. You have to bring some indication or directive and so forth."

I was involved in a case some years back, which involved a similar entity in Korea. And there was evidence in that case that the Korean government tried to influence the entity in question.

But the U.S. didn't bring in such evidence in most of the cases that issue here with China. That sets the bar ...

Steve Weisman: Higher.

Gary Hufbauer: Higher because—I kind of, on this point, sympathize with the U.S. Suppose the instruction to the majority-owned company is just verbal and there is no...?

Steve Weisman: You mean, not written down?

Gary Hufbauer: Yes, no written record, no emails that you could get a hold of, and so forth and so on. So that's the problem. Now the U.S. isn't saying that all publicly-owned companies are necessarily subsidizing when they sell in China to other Chinese firms but it's saying they might be.

The difference here is if you have a privately-owned company and it sells at a loss, that's business. That often happens and that's no subsidy. But when a government-owned company at government directions sells at a loss, well that's a subsidy. And so that's the issue going forward when China has such a huge involvement in the economy.

Steve Weisman: There are so many levels on which the United States engages or confronts china in the trade area. How significant was this?

Gary Hufbauer: I would put this at medium significance because of the public body issue not because of the double counting. Because I do think the public body issue -- that is, all these state-controlled companies -- I do think that's a problem potentially going forward because China has a different brand of capitalism than we're used to. Their brand of capitalism has a lot of state ownership and that arguably is a problem.

Steve Weisman: Gary Hufbauer, thank you very much.

Gary Hufbauer: Thank you.

