



## Trade needs a referee

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The trade community has been wrapped up over the past few months in a debate over whether the Trump administration wants to truly subvert the World Trade Organization (WTO), or whether it is just using saber-rattling to bring about substantive change in the body.

Which has, of course, got me thinking about sports metaphors.

It seems to me that the WTO is like a professional basketball game. Two parties engage in trade under WTO rules under the proviso that there are certain rules to the engagement, and that the WTO will essentially act as the referee if one party breaks the rules.

The Trump administration, via the cipher of the U.S. Trade Representative Robert Lighthizer, clearly does not trust the referee or the rules the referee is supposed to be enforcing. The Trump administration, instead, has indicated it wants to play a pickup game with no referee, otherwise known as bilateral trade agreements.

So I ran this analogy by Dan Ikenson, who heads the Cato Institute's Herbert A. Stiefel Center for Trade Policy Studies and has been involved in trade policy since 1990, to get his thoughts.

"The U.S. has an interesting history with the WTO," he said in an interview last week. "In 1995, when the WTO was established, the U.S. was by far the primary complainant in the first seven or eight years. One of the reasons was that in negotiating the Uruguay Round, the U.S. knew where the bodies were buried. They knew where the Europeans and the Japanese would be out of compliance. So they brought a whole bunch of cases and they won most of the cases.

"Turns out that the complainants win about 90 percent of the time at the WTO. Well, starting in the early 2000s, other governments started bringing cases against the U.S and primarily against its anti-dumping regime. And the U.S. lost almost every one of those cases, which is consistent with the complainants winning. You don't bring cases unless you're sure you're going to win.

"And Lighthizer, now the current USTR, was a trade lawyer representing steel interests. A lot of the issues that were adjudicated came down against his clients. Particularly on matters

regarding zeroing, a very technical calculation methodology under the anti-dumping regime. And so he developed a distaste and there are scholars out that said, look, the WTO appellate body is overstepping because it is assuming or reading in obligations that the United States never really did agree to. There's supposed to be a special standard of deference under anti-dumping, which the U.S. had pushed for, and there's an argument that maybe that standard of deference has not been honored.

Ikenson said current antipathy toward the WTO is not emanating from the White House.

“The concerns about the WTO, I think, are generated by the USTR himself,” he said. “And I think that the WTO could be reformed, but you're going to kill it rather than reform it if you indict everything that it does. If you block appointees to the appellate body, which the United States is doing.”

More broadly, Ikenson noted that “a lot of countries looked up to the United States and expected to follow its lead,” but that won't be the case if it continues to undermine the WTO.

The discussion brought my mind back to a briefing given by Singapore's ambassador to the United States Ashok Kumar Mirpuri in mid-2016 about the state of the Trans-Pacific Partnership.

“The surprise is that so many of us built our economies on the economic model of the U.S. free market,” Mirpuri said. “The surprise is that now people (in the United States) have started to reflect that this model isn't effective. This is what you put out in the world – not just democracy, but free trade.”

Ikenson said he saw the TPP (the version that included the United States) as the “natural outgrowth of the gap in the sense that we've come to the end of these consensus driven multi-lateral (WTO) trade rounds.

“We have 164 countries, economics that are at different levels of development, disparate interests,” he said. “They're not going to agree on a lot of things, so the TPP was this model of achieving critical mass, agreeing on a core set of ideas, and saying this is it. Hey, if you want to join, this is what you have to do to join. And that, to me, was extending U.S. hegemony, the U.S. system, the rules-based system, deep into Asia into the 21st Century. Now we've bailed on it. So there's a lot of skepticism about these international organizations and international bodies.”

Ikenson said there is some legitimacy to that skepticism, but that undermining the institution as a whole wipes away the positives of an entity that has been effective overall.

“The WTO is, by and large, a very important, successful, worthy institution,” he said. “It

doesn't usurp U.S. sovereignty. In fact, the decisions at the end all say, you know we find the United States in violation of Article 2.42 of the anti-dumping agreement and we 'recommend' that you bring it into compliance or come into conformity with the agreement.

“If the U.S. chooses not to do it, then the complainants can seek retaliation and then they aim that retaliation at unrelated sectors. Say, citrus from Florida, textiles from North Carolina and motorcycles and cheese from Wisconsin. So, all of a sudden, all of these interests in America that didn't have any stake in the initial issue, say a steel tariff, all of a sudden, are saying whoa, whoa, whoa, what's this all about? And to me that's ingenious.”

It's often said that professional referees in any sport will never make everybody happy, but if both sides are equally unhappy, they've probably done a good job. And maybe that's the lens through which we should view the WTO. Because, as anyone who's ever played in a pickup basketball game will tell you (if they're being honest), there's no more unfair game than one in which the players get to enforce their own rules.