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US, Robert Lighthizer chalk up win in challenge to World Trade Organization rulings

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U.S. Trade Representative Robert Lighthizer touted a win Tuesday in a long-running disagreement with the World Trade Organization that should give the U.S. power in trade disputes.

The U.S. got a World Trade Organization panel, effectively a lower court, to declare that rulings by the organization's Appellate Body, the higher court, are not a precedent that it has to follow, a position that Lighthizer had long called for.

The case involved the U.S. claim that Canada's policies regarding its softwood lumber industry amounted to unfair subsidies and dumping. The World Trade Organization's Appellate Body panel rejected the U.S. claims, but a panel disagreed and found in favor of the U.S.

"The United States commends this panel for doing its own interpretive analysis, and for having the courage to stand up to the undue pressure that the Appellate Body has been putting on panels for many years," Lighthizer said. "Appellate Body reports are not binding precedent, and where the Appellate Body's reasoning is erroneous and unpersuasive, a WTO panel has an obligation not to follow such flawed reasoning."

The ruling is a significant win for the Trump administration on the trade front, said Simon Lester, trade policy analyst for the libertarian Cato Institute, because it sets a precedent that goes beyond the specific dispute over lumber. The U.S. has disagreed with many of the Appellate Body's rulings and the ruling potentially weakens them.

"They're happy with the fact that there is an panel saying that we are not going to follow the appellate body," Lester said. "The U.S. is saying the Appellate body is treating its rulings as binding precedent when it shouldn't. The U.S. says the WTO's own rules don't provide for that and the Appellate Body is taking too much power."

That doesn't mean the panel's ruling on the lumber dispute is the final word on the subject. That ruling could be appealed to the Appellate Body, which can overturn the panel. Even then, having such disputes between the panels and the Appellate Body bolsters the U.S. position, Lester says.

The case involved a particular methodology the U.S. used to analyze Canada's policies dubbed "zero pricing," which the organization's Appellate Body had rejected but the U.S. stood behind.

The U.S. softwood lumber industry employs 18,000 workers and shipped approximately \$7 billion in 2016, the Lighthizer's office said. Imports of the same product from Canada in the same year were nearly \$6 billion.