WTO-consistency of the BTA and potential retaliation

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Three questions

- On what legal grounds might the Ryan-Brady border tax adjustment be challenged at the WTO?
- If the BTA were challenged and found WTO-illegal, what are the implications?
- How should that affect the tax reform process?

WTO dispute settlement facts

More than 500 disputes initiated since 1995

- US brought 114 against other countries
- Trading partners brought 129 against the US

Only 13 reached the stage in which the WTO authorized retaliation

- US brought 2 of those (*EC – Bananas, EC – Hormones*)
- Trading partners brought 7 against the US

Size of retaliation awards

- Maximum: **$4 billion** in *US – Foreign Sales Corporation (EC)*
- Minimum: **C$11.3 million** in *EC – Hormones (Canada)*
- Most recent: **$1 billion** in *US – Country of Origin Labeling (Canada, Mexico)*

BTA as Import Restriction - Trade Effects Formula

2016 data: $2.2 trillion in US goods imports

Assumptions:

- **Ryan-Brady: border tax adjustment on imports of 20%**
- **Ryan-Brady: wage deduction for US labor share; labor share is (say) 50%**
- **WTO interpretation: US BTA with the wage deduction is effectively 10% import tax**

What is the US import response to a newly imposed 10% import tax?

- **Assumption: trade elasticity with respect to tariffs is 1, so real imports fall by 10%**
- **Implication: US goods imports are $220 billion lower in 2017 than they would have otherwise been in the absence of this policy**

Result: US trading partners authorized to raise their tariffs to eliminate $220 billion of US exports (in 2016, US exports were $1.5 trillion)

BTA as Export Subsidy- Subsidy Formula

2016 data: $1.5 trillion in US goods exports

Assumptions:

- **Ryan-Brady: border tax adjustment on exports of 20%**
- **Ryan-Brady: wage deduction for US labor share; labor share is (say) 50%**
- **WTO interpretation: US BTA with the wage deduction is effectively a 10% export subsidy**

What is the US export response to a newly imposed 10% export subsidy?

- **Assumption: trade elasticity with respect to subsidy is 1; real exports increase by 10%**
- **Implication: US goods exports are $150 billion higher in 2017 than they would have otherwise been in the absence of this policy, so $1.65 trillion total**

Result: US trading partners authorized to raise their tariffs to eliminate $165 billion of US exports (Note: different formula for subsidy disputes: 10% of $1.65 trillion)

Who would bring such a dispute against the United States?

Historical examples of major multi-complainant country disputes

- ***US – Byrd Amendment*** (Brazil, Canada, Chile, EC, India, Japan, Korea, Mexico)
- ***US – Steel Safeguards*** (EC, Japan, Korea, China, Switzerland, Norway, Brazil, New Zealand, Taiwan)
- ***US – Shrimp-Sea Turtle*** (India, Malaysia, Pakistan, Thailand, Philippines)
- ***EC – Bananas*** (US, Ecuador, Guatemala, Honduras, Mexico, Panama)
- ***China – Rare Earths*** (US, EU, Japan)
- ***China – Raw Materials*** (US, EU, Mexico)

Who would bring such a dispute against the United States in 2017?

Import restriction (trade effects) formula - $220 billion – in retaliation

- **China:** $46 billion
- European Union: $42 billion
- **Mexico:** $30 billion
- Canada: $28 billion
- Japan: $13 billion
- And 6 other countries are all at $4 billion or more

“Countries would never bring a dispute because they are afraid President Trump would pull the US out of the WTO.”

This statement is wrong.

The implications.