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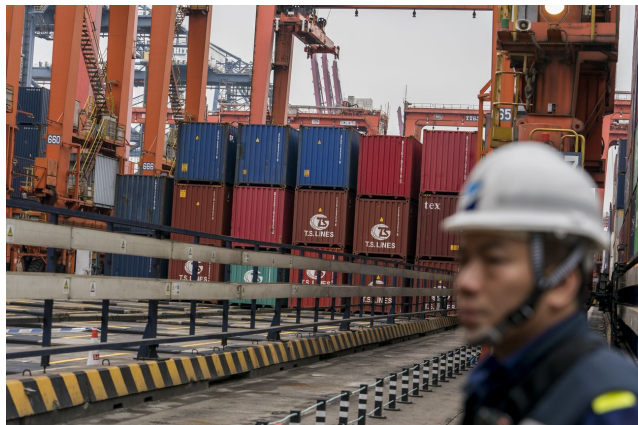
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OPINION | LETTERS

Legal Case Against China's Trade Is Complex

We shouldn't allow the trade policies of the Trump administration to undermine the basic principle of the WTO's judicial system.

March 28, 2018 4:43 pm ET



Shipping containers sit stacked in Container Terminal 9 at Kwai Tsing Container Terminals in Hong Kong, Jan. 30.

PHOTO: ANTHONY KWAN/BLOOMBERG NEWS

Your editorial “[Tackling China's Protectionism](#)” (March 21) discusses several of China's “predatory” policies, and then concludes that “all of these policies violate World Trade Organization agreements.” Unfortunately, that's not true as the most relevant WTO rules—written in 1994 and for China in 2001—don't prohibit the behavior being complained about. Identifying “strategic emerging industries” and giving them loans on easy terms isn't necessarily a violation of the WTO subsidies agreement. Similarly, for China to give its companies government help in making foreign acquisitions isn't itself prohibited.

A requirement on foreign companies to license intellectual property in return for greater access to the Chinese market isn't an obvious violation of any WTO rule. Abusing domestic antitrust law is also not a WTO violation as the WTO contains little international antitrust law.

The WTO judicial system began issuing rulings against China in 2009, and but for the counterproductive actions taken by the Obama and Trump administrations to block appointments to the WTO appellate tribunal, the WTO's judicial system could be functioning well today in making China more accountable.

You endorse the "tougher line" by the Trump administration, but instead of the unilateral tariffs (e.g., steel) the administration has authorized, you propose more targeted tariffs. International trade law prohibits this sort of self-help by the U.S. alone or in cooperation with its trade allies.

We shouldn't allow the trade policies of the Trump administration to undermine the basic principle of the WTO's judicial system, which is the independent adjudication of disputes. There are many normative mechanisms inside the WTO and alongside it that can be used to put pressure on China, and these should be tested and exhausted before the blunt instrument of non-WTO-approved trade sanctions is called on.

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