



WTO must step in before US-China trade feud spirals out of control

James Bacchus

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It is time for the World Trade Organization (WTO) to step in and mediate the trade conflict between the United States and China that threatens to spiral out of control.

With tariffs trumping tariffs, the on-again, off-again negotiations between the two countries seem nowhere near a solution to their trade tensions.

Even if the negotiations resume, it is uncertain how they can progress, much less succeed, with the two sides so far apart and with no neutral presence at the negotiating table devoted to trying to bring the two countries together in a practical and workable deal.

Before this commercial confrontation slows growth in both the U.S. and China, before it spills over to cause grave harm to the rest of the world economy and before it further unravels the rule-based world trading system, the two disputing countries should try an alternative means of finding common ground in a mutually acceptable trade settlement — WTO mediation.

Both countries continue to file complaints against each other in the WTO, but neither country seems to have noticed a little-used provision in Article 5 of the WTO Dispute Settlement Understanding that offers mediation as another option for resolving their trade disputes without having to survive a legal showdown over such sensitive issues as the meaning of the national security defense for trade restrictions and the extent of what Trump and his acolytes see as their sovereign right to impose trade restrictions unilaterally.

Under WTO rules, mediation “may be requested at any time by any party to a dispute.” It may be a prelude to filing a legal complaint in the WTO, or it may occur simultaneously with WTO litigation.

The U.S. and China can agree to have their trade dispute mediated by anyone they choose, and they can structure and conduct the mediation in any way they choose. Throughout mediation, they will retain all their sovereign rights to decide entirely for themselves whether they wish to agree to new, mediated terms for an overall trade settlement.

As it is, the two countries have no basis for a settlement and no mutual understanding of what might comprise a settlement. Most recently, the United States insisted on inclusion in the “new NAFTA” of a provision that requires Mexico and Canada to give the U.S. three months’ notice before it begins negotiations with a non-market economy, i.e., China.

National Economic Council Director Larry Kudlow was blunt: “The continent as a whole now stands united against what I’m going to call the unfair trade practices by you know who — it starts with a 'C' and ends with an 'A.'”

Given such talk by the Trump administration, how can China think this impasse is about legitimate U.S. trade concerns and not about a Trump desire to contain the rise of China?

The Chinese do not understand Trump is acting contrary to what they (and many in the U.S.) see as the true American economic interest, and Trump and his trade team do not understand why the Chinese are refusing to yield despite intensifying U.S. pressure.

Unclear is what Trump wants for the United States. Is he seeking a lower bilateral trade deficit, structural changes in China’s state-driven economic policies or a trade wall that will sever the close ties between the U.S. and Chinese economies? Does he want all of the above? Or does he even know what he wants?

Equally unclear is what China is willing to give: minimal modifications in the protectionist parts of Chinese industrial policies or more managed trade by a shift in Chinese purchases from other foreign suppliers to U.S. suppliers?

Or is China willing to manage less of its trade and do more to fulfill its claimed aim of freeing and enabling market forces, which would be by far the best way to lift the Chinese people up the ladder of global competitiveness?

Trump seems to think bullying China will work. It won’t. China seems to think the election of a Democratic Congress in November will change the view of the U.S. government toward trade with China. It won’t. Both must think again.

To some, it may seem naïve to suggest mediation amid such mounting acrimony. But in these fraught times, it falls upon those who still seek a rational world to suggest rational solutions.

The fact that the two countries seem unlikely to call on the WTO for help is not evidence that they should not do so. Nor is it evidence that they will not do so if all else fails.

As any trade negotiator knows, to reach an artful trade deal, both sides in a negotiation must know what they absolutely must have, know where they are willing to yield to get a deal and be willing to search together for common ground that each can later defend back home as in its own interests.

Mediation in the WTO can only help. A dispassionate voice can help both countries put aside their emotions and pin down for each other precisely what they each need to be able to take back home in a trade deal.

A neutral voice can help them discover common ground. A neutral voice with a global perspective can help them locate that common ground in a place that does not tread on the treaty rights of the world's many other trading countries.

The Chinese insist they are fulfilling their WTO obligations. They avow their support for free trade and for the WTO. Why not put their support to this test? For his part, Trump seems indifferent to WTO obligations.

He has expressed nothing but disdain for the WTO while seemingly doing his best to dismantle it with his illegal tariffs and other willful trade actions. But if, in U.S. trade with China, Trump really wants a trade solution, and not just a trade confrontation, what does he have to lose by agreeing to mediation?

If he is not happy with the results, he can always denounce the mediator.

James Bacchus is adjunct scholar at the Cato Institute, senior counsellor at the International Center for Trade and Sustainable Development, and distinguished university professor of global affairs at the University of Central Florida. His new book, from Cambridge University Press, is "The Willing World: Shaping and Sharing a Sustainable Global Prosperity."