Tariffs won't change China, but the WTO might

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All eyes at the G-20 summit in Buenos Aires this weekend will be on President Trump and Chinese President Xi Jinping. As trade tensions rise, global markets stall, and more tariffs loom on the horizon, it is time for a new strategy to address Beijing's trade policy practices. Instead of self-defeating and quixotic tariffs, the United States should use the World Trade Organization to discipline China.

U.S. tariffs on imports from China have come in multiple stages over the course of 2018. Together, they form a response to a report from the Office of the U.S. Trade Representative finding that Beijing engages in a host of trade policy abuses, from forced technology transfers and intellectual property abuses to domestic subsidies and discriminatory licensing restrictions. For its part, Beijing has responded with tariffs on U.S. exports, which has led to a drastic reduction in agricultural exports to China.

To date, more than $250 billion of imports from China are subject to new tariffs, while $110 billion U.S. exports to China are subject to tariffs levied by Beijing. Declaring himself "a tariff person" in a recent interview with the Wall Street Journal, Trump also said it's "highly unlikely" he would suspend additional tariff hikes scheduled to take effect Jan. 1, 2019.

In an updated report issued late last week, USTR conceded that the tariffs have not changed Beijing's trade practices. Indeed, the report notes, "China fundamentally has not altered its acts, policies and practices related to technology transfer, intellectual property and innovation, and … appears to have taken further unreasonable actions in recent months." Perhaps the administration will use this as pretext to move forward with its planned tariff hikes, but that will lead inexorably to more pain for U.S. consumers, both families and businesses, who rely on products from China, while still failing to change Beijing's abusive trade policy practices.

Other recent reports point out that a better way to address Chinese trade practices would be to use the WTO's dispute settlement mechanism. The Trump administration is skeptical of the WTO generally. It also doubts the USTR has legal grounds to target China in a holistic case under WTO agreements.

But these are both flawed assumptions. The multilateral route in Geneva presents the best opportunity to discipline China.

First, the United States-China Economic and Security Review Commission's annual report to Congress suggested the USTR investigate whether to bring a "non-violation nullification or impairment" case against China at the WTO. Such non-violation claims allow WTO members to challenge measures that do not explicitly violate WTO agreements but "nullify or impair" expected benefits. The United States and willing allies could claim that they expected China to more fully liberalize its economy upon joining the WTO in 2001, for instance.

Likewise, a recent policy analysis from the Cato Institute's James Bacchus, Simon Lester, and Huan Zhu demonstrates that the Trump administration's skepticism of the WTO is unwarranted. China actually has a good record of complying with WTO rulings; in all but one of the 22 completed WTO cases against China, Beijing took actions to remove the offending measure or moved toward greater market access. "[T]here are no cases where China has simply ignored rulings against it," the authors write.

The Trump administration's insistence to the contrary, it's also the case that the United States and its allies have ample WTO provisions upon which to bring a holistic challenge to China's trade policy practices. Provisions, including those found in the Trade-related Aspects of Intellectual Property Rights Agreement and China's Accession Protocol, provide fertile, if previously unexplored, avenues for litigation at the WTO.

In addition to a holistic WTO dispute, the United States should rejoin the Trans-Pacific Partnership, which Trump unwisely abandoned shortly after his inauguration. China was the biggest beneficiary of the decision to exit the TPP. U.S. trade officials also should jump-start negotiations on the Transatlantic Trade and Investment Partnership with the European Union. Strengthening commercial relations with much of Asia and Europe can further pressure Beijing to abandon its ill-conceived trade practices and raise the standards of its commercial behavior.

The WTO is no panacea for all that ails the U.S.-China trade and investment relationship. Nonetheless, a large-scale WTO dispute would almost certainly do more to enhance market access and rein in China's abusive practices than a costly unilateral tariff strategy will.