



## Can the US-China trade deal be enforced?

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President Trump and Chinese Vice Premier Liu He signed the U.S.-China "phase one" trade deal this month. President Trump touted the significance of this deal, stating: "Nobody has ever seen anything like it. This is the biggest deal there is anywhere in the world, by far."

But trade observers understand that much of the U.S.-China trade deal is a restatement of current trade obligations. Many of the deal's substantive obligations already exist at the WTO, where China previously agreed, among other things, to protect intellectual property and refrain from forced technology transfer. There are some expanded obligations in the new deal as well, but the agreement mirrors current coverage to a great extent.

What is most different about the U.S.-China deal is a brand new "dispute resolution" chapter. Unfortunately, this enforcement mechanism is a step backwards, and is less likely to induce reform in China on intellectual property, technology transfer, and other issues than the dispute provisions found in most other trade agreements. That's a shame, because if these new rules are good ones, we need them to be enforceable.

Trade enforcement typically works as follows. If one government thinks another is not complying with the obligations in a trade agreement, the complaining government can raise its concerns through a request for consultations. If the consultations do not resolve the issue, the complaining government can ask for a neutral panel of experts to consider whether the other government's actions violate the terms of the agreement. That panel will issue a ruling on the legal question of whether the respondent government is in compliance. If there is violation, there will also be a neutral entity to determine the harm from the violation and the appropriate trade retaliation that can be imposed in response.

The WTO has the most advanced version of this process, with 593 complaints since it was established in 1995, and hundreds of panel reports and appellate reports reviewing those complaints (the Trump administration may have just killed off the appellate review mechanism, at least in its current form, but the panels remain). Bilateral and regional trade agreements have their own version of panels, without appellate review.

The neutral adjudication provided through these panels makes it possible to enforce the agreements. One government's view that another is in violation is not seen as objective: It is simply the position of the government, rather than an impartial conclusion. An unbiased

adjudicator, by contrast, has the credibility to determine whether a violation exists. This process brings the “rule of law” to international trade disputes. Rather than “frontier justice,” under which a complainant would decide on its own whether a violation exists and what retaliation is justified, there is a quasi-judicial approach to resolving disputes.

Of course, compliance with trade obligations cannot be achieved in every case. Some government policies are too politically sensitive to change, regardless of an international ruling. But without this neutral ruling, it can be very difficult to convince a government that it is in the wrong.

With the U.S.-China trade deal, the Trump administration appears to be trying to move away from this conventional wisdom and away from the rule of law. The U.S.-China trade deal does not have the typical adjudication mechanism, but rather has a mechanism under which either side can determine on its own if the other is not in compliance, and can then -- after a consultations process -- take what it considers to be appropriate action in response (most likely, this will take the form of tariffs).

The Trump administration may see this as a tough enforcement mechanism, and it is certainly going to be a quick one if there is no need to adjudicate the dispute. But think about this: If China believes it is in compliance, but the United States does not, these unilateral tariffs probably will not induce China to take any action. Why would China change based on what it considers to be an incorrect view of the meaning of the agreement?

If, on the other hand, there were a ruling by a neutral adjudicator that China is not in compliance, China might take some action. It has done so in response to WTO rulings, and it would likely to do so in this context as well.

What we have with the U.S.-China trade deal, then, is not really an enforcement mechanism at all. Rather, it is merely a process to restart the tariff war if one side is not happy about something. Presumably this could be done without any special process, though, as there was no such provision that served as the basis for starting the tariff war initially. The Trump administration has proved that governments who want to start tariff wars can do so whenever they want. Thus, it is not clear what these new dispute provisions in the U.S.-China trade deal will accomplish. If the Trump administration is not happy with China's behavior, it can find reasons to impose tariffs without these provisions, as it has done before.

The Trump administration touted its deal as “a momentous step — one that has never been taken before with China.” In its current form, however, it is not. If the Trump administration wants the obligations in the deal to have an impact, it needs to include a neutral adjudication mechanism to hear claims of violation, which will offer the credibility and legitimacy that could actually induce China to comply.

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