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China abuses trade, but tariffs are the wrong way to fight

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U.S. trade policy has been a dizzying mess these past several weeks, from levying ill-conceived steel and aluminum tariffs on Canada, Mexico, and the European Union, to the president's charade at the G-7 summit in Quebec to the Senate's feckless decision to block consideration of Sen. Bob Corker's, R-Tenn., efforts to reclaim congressional authority over trade.

After a brief simmering in tensions between Washington and Beijing, now comes news that the Trump administration will move forward with tariffs on $50 billion of Chinese products to combat allegedly abusive trade policy practices. China is the right target, but the president's unilateral tariffs represent a missed opportunity.

There is no question that certain Chinese trade policy practices, including their intellectual property practices, are a cause for concern that ought to be addressed. But tariffs are not the answer for myriad reasons.

Trump's plan to impose unilateral tariffs under Section 301 of the Trade Act of 1974 likely violates both domestic and international trade law. Before the advent of the World Trade Organization, the U.S. used Section 301 aggressively to combat what it saw as "unfair" trade policy practices abroad. As part of the Uruguay Round, which transformed the General Agreement on Tariffs and Trade into the WTO, the U.S. promised to stop imposing unilateral tariffs under Section 301 for practices covered under WTO agreements. Likewise, when Congress ratified the Uruguay Round, it mandated that all disputes falling within WTO agreements be settled at the WTO.

Rather than act unilaterally, the U.S. should demonstrate thoughtful global leadership by putting together a coalition of like-minded nations, including Japan and members of the European Union, to challenge China's unfair and abusive intellectual property practices.

Some argue the WTO rules are insufficient to discipline China's 21st century trade policy practices. This is a dubious claim. Jim Bacchus (a former chair of the WTO's Appellate Body, the highest trade court in the world, and a current adjunct scholar at the Cato Institute) has written persuasively about the WTO's Trade-related Aspects of Intellectual Property Rights Agreement, and how it provides the basis for a significant challenge to Beijing's intellectual property regime. The U.S. wins about 90 percent of the cases it brings to the WTO and China has a good, though not perfect, record of complying with adverse WTO rulings.

Instead, it is Beijing that will challenge the Section 301 tariffs at the WTO, and likely prevail. Instead of China being viewed as the transgressor in the eyes of the world, the administration's unilateral tariffs make the U.S. the lawless actor.

Not only is the decision to levy tariffs on Chinese products rooted in questionable legal grounds, it is dismal economics. Tariffs (taxes on imported products) are paid by domestic consumers, not foreign producers. In other words, the tariffs levied by the president will serve as a regressive tax on American families and businesses who buy covered products from China.

While virtually all tariffs are bad, some are worse than others. In particular, tariffs on intermediate products (components imported into the U.S. that are used in the domestic production process) are especially unwise. As Chad Bown of the Peterson Institute for International Economics recently noted, about 85 percent of the administration's initial target list of Chinese products were either intermediate products or capital goods. Such tariffs will disrupt complicated global supply chains significantly and damage long-term U.S. competitiveness.

Instead of changing China's trade policy practices, new tariffs will simply trigger a like-kind response from Beijing. American exporters in unrelated industries will soon find themselves ensnared in a back-and-forth game of retaliation. As is often the case in these situations, tensions can easily spiral out of control.

In April, during the first trade conflagration with China, Beijing released a list of 106 American products they would target for retaliation, including U.S. cars and agriculture products like soybeans. Thankfully, cooler heads prevailed; the U.S. agreed to pause the tariffs and China agreed to purchase more American exports.

Now that economic detente appears to be off the table, expect a similar response from China shortly.

The U.S.-China relationship is the single most important geopolitical relationship in the world today. Getting it right is of utmost importance for peace and prosperity in the 21st century.

We can start by following the trade rules we both designed and agreed to after the carnage of World War II. They, and basic economics, will continue to serve us well.