Updates
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Imports and Investment From China to Face New Barriers

President Donald Trump's recent decision to impose a wide range of restrictive new measures against China, in response to China's practices involving U.S. intellectual property and technology, creates new risks, barriers—and in certain cases, opportunities—for U.S. industries that depend on China as an important market, production center and trading partner. The new measures include tariffs, a World Trade Organization challenge and potential restrictions on Chinese investment in U.S. industries, all of which are to be implemented over the coming weeks and months. Of concern to some is the potential for retaliatory measures by China, some of which have already been announced, that could cause collateral damage to U.S. industries unconnected to high technology sectors.

The administration's announcement lays out a range of actions against China based on the findings of a Section 301 investigation, initiated last August, into alleged unfair trade practices by China in the treatment of U.S. intellectual property and high technology investments. The investigation, conducted by the Office of the United States Trade Representative (USTR), concluded that:

1. China uses foreign ownership restrictions, including joint venture requirements, equity limitations and other investment restrictions, to acquire technology or pressure tech transfers from U.S. companies to Chinese entities;
2. China imposes substantial restrictions on and intervenes in U.S. companies' investments and activities through restrictions on technology licensing terms;
3. China directs and facilitates the systemic acquisition of U.S. companies and assets for the purpose of acquiring the technology to grow national champions within China and take market share from U.S. companies and other businesses around the world; and
4. China conducts, supports and authorizes intrusions into U.S. companies' computer networks.

Presidential Memorandum

In response to the USTR's findings, President Trump signed on March 22, 2018, a presidential memorandum with the following directives:

- **Tariffs.** The USTR will publish, within 15 days of the announcement (i.e., by April 4, 2018), a proposed list of products from China that will be subject to planned tariff increases of 25 percent. The products to be identified are those that the administration has concluded are supported by China's unfair industrial policy. Sectors subject to the proposed tariffs will include aerospace, information communication technology, and machinery.
- **WTO Challenge.** The USTR will address China's discriminatory technology licensing practices through a World Trade Organization (WTO) dispute proceeding. The USTR filed its WTO case the day after the president's announcement, formally requesting consultations with China regarding measures that, according to the USTR, prevent U.S. intellectual property holders in China from protecting their IP and negotiating market-based licensing and contract terms. The USTR states that these practices violate China's commitments under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).
- **Investment Restrictions.** The U.S. Department of Treasury, in consultation with other agencies, will propose restrictions on investment into the United States directed or facilitated by China in industries or technologies deemed important to the United States. These restrictions would come in addition to other changes being proposed in Congress to tighten U.S. restrictions on foreign investment, and to give more oversight to the Committee on Foreign Investment in the United States (CFIUS).

The USTR estimates that China's policies result in harm to the U.S. economy of at least $50 billion per year. The tariffs in response are expected to target products in the aerospace, information and communication technology, and machinery sectors. USTR officials stressed that the administration's actions were being drafted to have as little impact on consumers as possible and maximum impact on China's high technology industries that rely on U.S. market access.

After publication of the USTR's specific list of target products, interested members of the public will be permitted an opportunity to file written comments supporting, opposing or requesting the USTR to modify its proposal. It is unclear what changes the USTR might be willing to make to its proposed product list.

Intent and Impact of New Tariffs and Restrictions

The scope of the tariffs is intended to impede the Chinese government's technology transfer and intellectual property policies. The USTR said these policies are part of China's stated intention of seizing economic leadership in advanced technology as set forth in its industrial plans, such as "Made in China 2025."

The announcement comes on the heels of the Trump administration's earlier announcement that global imports of aluminum and steel will face national security-related duties. Since originally announcing that the tariffs would apply to all sources, the White House has subsequently determined that imports from Argentina, Australia, Brazil, Canada, the EU, South Korea and Mexico would be excluded from the tariffs. The tariffs on imports of aluminum and steel became effective on March 23, 2018.

Chinese Retaliatory Response

China swiftly announced its intention to impose retaliatory tariffs in response to the administration's Section 232 tariffs, and there is concern that China will ramp up further retaliatory measures after the USTR implements the Section 301 product tariffs in the coming weeks. Hours after the administration's Section 232 tariff announcement, China's news agencies reported that exports of U.S. fruits, nuts, wine and ethanol to China could face an additional 15 percent tariff, while exports of pork could face an additional 25 percent tariff. The 15 percent tariff would kick in "if the two countries can't reach an agreement on trade issues within a scheduled time," and the 25 percent tariff would be imposed "after evaluating the impact caused by U.S. policies," according to China's official press.

In the meantime, the U.S. Department of Commerce has announced a process for requesting exclusions from the Section 232 steel and aluminum tariffs. Only individuals or organizations using steel or aluminum in business activities (e.g., construction, manufacturing or supplying steel products to users) in the United States may submit exclusion requests. An exclusion will only be granted if an article is not produced in the United States in a sufficient and reasonably available amount; is not produced in the United States in a satisfactory quality; or for a specific national security consideration. Approved exclusions will be made on a product-specific basis, and will be limited to the individual or organization that submitted the specific exclusion request, unless Commerce approves a broader application of the product based on an exclusion request to apply to additional importers.

Companies with significant imports from, or investment in, China should monitor developments to determine whether their supply chains may be affected by the proposed U.S. tariffs or China's response to the trade barriers.

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