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# President Trump Announces Trade Actions Targeting Chinese Tech and Intellectual Property Policies

On August 18, 2017, US Trade Representative Robert Lighthizer initiated an investigation to determine whether the acts, policies, and practices of the Chinese Government related to technology transfer, intellectual property, and innovation are unreasonable or discriminatory and either burden or restrict US commerce under Section 301 of the *Trade Act of 1974*, as amended (19 U.S.C. § 2411). Ambassador Lighthizer launched the Section 301 investigation at the direction of US President Donald Trump, who signed a memorandum on August 14, 2017 instructing the Office of the US Trade Representative (USTR) to conduct such an investigation.

On March 22, 2018, USTR released its Section 301 report, finding that China's policies harm to the US economy by at least US $50 billion per year. Simultaneously, President Trump signed a Presidential Memorandum outlining a series of remedies that his Administration may take, including plans to (1) increase tariffs on certain Chinese imports, (2) take action against China at the World Trade Organization (WTO), and (3) increase restrictions on Chinese investment in sensitive US technology. US businesses must assess their supply chains and global operations to evaluate potential effects and potentially engage with US policymakers on the impacts of these proposals.

## What is a Section 301 Investigation?

Section 301 is the principal statutory authority under which the United States may impose trade sanctions on foreign countries that either violate trade agreements or engage in other unfair trade practices. If, after conducting a Section 301 investigation, the US Trade Representative makes an affirmative determination of actionable conduct, the President has broad authority to respond with any actions within his power with respect to trade in goods or services, or any other area of pertinent relations with the foreign country.

The United States has only initiated a Section 301 investigation once since 2001, but President Trump's decision to invoke this authority was prompted, at least in part, by a continued frustration over the US trade deficit with China. Since the creation of the WTO, the United States and countries with similar laws have largely relied instead upon that institution to settle these types of disputes.

In instructing USTR to conduct the Section 301 investigation, the President emphasized that "the United States is a world leader in research-and-development-intensive, high-technology goods," and that "violations of intellectual property rights and other unfair technology transfers potentially threaten United States firms by undermining their ability to compete fairly in the global market." It further noted that China's conduct "may inhibit United States exports, deprive United States citizens of fair remuneration for their innovations, divert American jobs to workers in China, contribute to our trade deficit with China, and otherwise undermine American manufacturing, services, and innovation."

## Section 301 Findings

In this most recent investigation, USTR found that:

- China uses foreign ownership restrictions, such as joint venture requirements and administrative review and licensing processes to force or pressure US companies to transfer technology to Chinese entities;
- China forces US companies seeking to license technologies to Chinese entities to do so on non-market based terms;
- China directs and unfairly facilitates investments and acquisitions to generate large-scale technology transfer from US companies to Chinese entities;
- China conducts and supports cyber intrusions into US companies to access their sensitive commercial information, such as trade secrets; and
- China's unfair acts, policies, and practices cause tens of billions in damages to the United States each year.

### Increased Tariffs on Certain Chinese Products

In developing a package of remedies, President Trump directed USTR to draft a list of proposed Chinese goods that could face increased tariffs of 25 percent. The products subject to increased tariffs will be from the aerospace, information communication technology, and machinery sectors. The tariffs will reportedly cover upwards of 1,300 Chinese products valued at US $50-60 billion (determined based on the value of the trade in those goods and not the value of the tariffs to be collected). Notably, the tariffs will not go into effect immediately; USTR has 15 days to compile the list of goods that could face increased duties, although it is expected to be released sooner. USTR will publish the list in the *Federal Register*, together with the date of a public hearing. The public will have 30 days to comment on the proposed product list.

### WTO Action

On March 23, at the direction of President Trump, USTR filed a request for consultations at the WTO to address China's technology licensing requirements. According to a USTR press release:

China appears to be breaking WTO rules by denying foreign patent holders, including US companies, basic patent rights to stop a Chinese entity from using the technology after a licensing contract ends. China also appears to be breaking WTO rules by imposing mandatory adverse contract terms that discriminate against and are less favorable for imported foreign technology.

A request for consultations is the first step in the WTO dispute settlement process. If the two countries are not able to reach a mutual solution, the United States can request the establishment of a dispute settlement panel to review the matter.

### Investment Restrictions

President Trump also directed Treasury Secretary Steve Mnuchin to consult with other agencies and propose potential executive actions "to address concerns about investment in the United States directed or facilitated by China in industries or technologies deemed important to the United States." Secretary Mnuchin must report his progress on this endeavor to the President within 60 days. It is unclear at this time the types of restrictions the White House is seeking.

## Chinese Reaction

Reaction from China was swift. Following the President's announcement, the Chinese Embassy released a statement that said, in part:

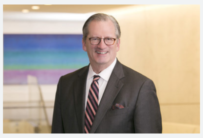
> China does not want a trade war with anyone. But China is not afraid of and will not recoil from a trade war. China is confident and capable of facing any challenge. If a trade war were initiated by the US, China would fight to the end to defend its own legitimate interests with all necessary measures. The actions undertaken by the US are self-defeating. They will directly harm the interests of US consumers, companies, and financial markets. They also jeopardize international trade order and world economic stability.

Additionally, China announced it is considering retaliatory tariffs on a number of products, split into two groups. The first group would face a 15 percent tariff and would include 120 tariff lines covering fresh fruit, dried fruits and nuts, wine, modified ethanol, American ginseng and seamless steel pipes. The second group, covering eight different product categories, would face a 25 percent tariff and would include pork, recycled aluminum and other items.

## What's Next?

US and international businesses must quickly engage with Administration officials to relay the impacts these proposals could have on trade with and investment in the United States. We are available to assist affected parties by assessing the impact of the proposed remedies, advocating to senior Administration officials as they prepare proposals for the President's consideration, and helping parties navigate any changes to US regulation of trade and investment with China.

## Contacts



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