

USTR Finds China's IP Practices Cause at Least \$50 Billion in Harm: Proposed Tariffs and Investment Restrictions Ratchet Up U.S.-China Trade Tensions

March 22, 2018

International Trade; Public Policy and Government Affairs

Earlier today, the administration announced its findings that China's theft of U.S. technologies and intellectual property ("IP") have caused at least \$50 billion in harm to the U.S. economy per year. In response, President Trump issued an order announcing its intent to impose additional tariffs on Chinese imports, curtail Chinese investment in the United States, and challenge Chinese technology licensing rules in the World Trade Organization ("WTO"). This announcement caps the administration's seven-month investigation of China's IP practices.

The administration plans to solicit public comments on proposed additional 25 percent tariffs covering certain products from sectors such as aerospace, information communication technology, and machinery, which have benefited from China's IP policies. The Office of the U.S. Trade Representative ("USTR") [has indicated](#) that it will publish a proposed product list within "the next several days," which will start a 30-day public comment period, after which USTR will publish the final product list in the Federal Register.

These tariffs would be the latest in a series of new U.S. duties. Earlier this year, President Trump imposed tariffs on imported solar cells and panels and washing machines following a pair of safeguard trade cases under Section 201 of the Trade Act of 1974. And on March 8, the administration announced steel and aluminum tariffs pursuant to Section 232 national security investigations, due to take effect on March 23, 2018.

In addition to the tariff measures, the presidential memorandum directs the Secretary of the Treasury to propose within 60 days, in consultation with other agencies, executive action "to address concerns about investment in the United States directed or facilitated by China in industries or technologies deemed important to the United States." The scope of these restrictions is unclear for now, but could implicate ongoing [debates](#) about expanding the jurisdiction of the Committee on Foreign Investment in the United States ("CFIUS"), which has reviewed and blocked numerous Chinese transactions involving U.S. entities on national security grounds.

The WTO challenge will target China's discriminatory IP licensing practices, based on a [statement](#) from the president. [According to USTR](#), U.S. and other foreign companies are required to license their technologies to Chinese firms on non-market-based terms favoring the Chinese party. By contrast, these restrictions do not govern licensing agreements between two Chinese entities under similar circumstances.

The actions announced today mark the culmination of the [investigation](#) launched by the USTR in August 2017 under Section 301 of the Trade Act of 1974 (“Section 301”) of China’s technology transfer and other IP practices. In particular, USTR investigated “whether acts, policies, and practices of the Government of China related to technology transfer, intellectual property, and innovation are unreasonable or discriminatory and burden or restrict U.S. commerce.” The statute authorizes a broad range of possible retaliatory tools—including any “appropriate and feasible action within the power of the president”—that the president may direct, not limited to industries directly linked to identified harms. Today, the USTR released [a report](#) outlining its findings that China’s IP policies are unreasonable or discriminatory and burden or restrict U.S. commerce.

Beijing has signaled that it is prepared to deploy “all necessary measures” in response to any U.S. trade actions that it views as running afoul of international trade rules. In a brief statement, China’s Ministry of Commerce (MOFCOM) condemned the U.S. announcement as representing “unilateralism and protectionism” and as contrary to U.S. and global interests. MOFCOM emphasized that China “does not wish to fight a trade war, but is certainly not afraid of a trade war.” China could retaliate in a number of ways, including by imposing tariffs that hurt U.S. sectors with domestic political leverage, such as agriculture. For example, following the imposition of tariffs on solar cells and panels, China appeared to respond by self-initiating an antidumping investigation into sorghum imported from the United States. In response to the Section 232 tariffs, China has proposed an additional 15 percent tariff on 120 products worth a total of \$977 million, including fresh fruits, nuts, wine, and seamless steel pipes, and a 25 percent tariff on eight other products worth \$1.992 billion, including pork, pork products, and recycled aluminum. This reaction suggests a response similar in size and type—commensurate with the impact of the U.S. tariffs and citing WTO justification. Beyond tit-for-tat retaliation, China may challenge U.S. trade actions through the WTO. U.S. companies with business interests in China should also be prepared for more informal and opaque actions that impede their business goals in China.

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- [Chris Adams](#), who recently joined Covington from the U.S. Department of Treasury, where he served as Senior Coordinator for China Affairs, managing the highest level U.S.-China economic policy dialogues for the Obama and Trump administrations;
- [Marney Cheek](#), former Associate General Counsel at USTR;
- [Alan Larson](#), former Under Secretary of State for Economic, Business and Agricultural Affairs;
- [Timothy Stratford](#), former Assistant USTR for China Affairs;
- [John Veroneau](#), former Deputy USTR and former USTR General Counsel;
- [Gina Vetere](#), former Senior Policy Advisor to the Deputy USTR and former Director of IP and Innovation at USTR; and

- [Robert Wang](#), former career Foreign Service Officer for 30 years, including serving as the Deputy Chief of Mission at the U.S. Embassy in Beijing.

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