

Shifting Trade Policies Impact Business Decisions

IN SHORT

The Situation: Ever since President Trump launched major trade initiatives last year, there has been considerable uncertainty about how the administration would proceed. Recent developments have clarified the intentions of the administration.

The Developments: Increased tariffs will be imposed on Chinese-origin goods containing "industrially significant technology" pursuant to Section 301 beginning on July 6, and investment restrictions and enhanced export controls will be imposed on Chinese persons and entities related to the acquisition of such technology from U.S. companies within the next month. In addition, certain countries are no longer excluded from Section 232 duties on steel and aluminum, and other products may become subject to these duties in the future.

The Impact: U.S. companies will be affected by the shifting policies as countries announce retaliatory tariffs.

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Major trade initiatives were announced by the Trump Administration last year, including (i) actions aimed at China pursuant to Section 301 of the Trade Act of 1974, based on the theft and transfer of U.S. technology and (ii) actions taken on steel and aluminum imports under Section 232 of the Trade Expansion Act of 1962.

Trump Administration Actions Under Section 301

On March 22, 2018, President Trump directed his administration to address the concerns detailed in a report published pursuant to Section 301. As we have [previously written](#), he directed:

- The United States Trade Representative ("USTR"), after a period of notice and comment, to publish a final list of Chinese-origin products subject to additional tariffs;
- The USTR to initiate a dispute settlement in the World Trade Organization ("WTO") to address China's discriminatory technology licensing practices; and
- The Secretary of the Treasury to propose investment restrictions addressing China's government-led efforts to acquire sensitive U.S. technologies.

On April 6, the USTR published the proposed list of products subject to a 25 percent tariff increase, which covered \$50 billion worth of wide-ranging categories of Chinese goods. Three days of hearings were held during May.

The Treasury Secretary subsequently provided President Trump with a progress update on the proposed investment restrictions by May 21, as was required, but did not publicly reveal the information. He did announce, however, that the trade war with China had been put "on hold." This announcement, and other actions by administration officials, generated uncertainty regarding whether the tariffs and investment restrictions would go into effect as planned.



On May 29, the White House confirmed that it would go forward with the Section 301 actions, and the USTR, in a statement released on June 15, implemented the first steps.



Recent Developments. Recent announcements have since clarified the status of these measures. On May 29, the White House [confirmed](#) that it would go forward with the Section 301 actions, and the USTR, in a [statement](#) released on June 15, implemented the first steps.

These announcements provided two significant updates.

Tariffs. The May 29 announcement indicated that a 25 percent tariff increase would soon be imposed on \$50 billion worth of Chinese-origin goods. Departing from this original plan, however, the June 15 USTR statement unexpectedly created two sets of tariff lines and, for now, only imposed the additional tariffs on products included on one of the lists.

The final list of products covered by the Section 301 duties was set forth in the [first set](#) of tariff lines,

which affects \$34 billion in goods and represents 818 of the 1,333 lines from the administration's original proposed list. Tariffs on these products will become effective on July 6.

Members of the public will soon be able to request that particular products from this list be excluded from the additional tariffs. More information about the product exclusion request process, including the procedures for submitting exclusion requests and oppositions to such requests, will be published in the Federal Register within the next few weeks.

The [second set](#) of tariff lines, which affects \$16 billion in goods, is undergoing further review in the notice-and-comment process. The relevant dates are as follows:

- June 29: Deadline for requests to appear.
- July 20: Deadline for submitting written comments.
- July 24: Public hearing.
- July 31: Deadline for submitting post-hearing rebuttal comments.

Investment Restrictions and Enhanced Export Controls. Chinese persons and entities will also be subject to specific investment restrictions and enhanced export controls related to the acquisition of "industrially significant technology." Proposed measures will be announced by June 30, and implemented shortly thereafter.

Various factors (like a newly reached U.S.-China trade deal) could impact the timeline for implementation or the decision whether to implement the above-described measures at all.

President Trump Considers Section 232 Tariffs

Separate from the Section 301 tariff actions is the Trump Administration's recent imposition of additional 25 percent tariffs on steel imports and additional 10 percent tariffs on aluminum imports. As [we have written](#), these duties were imposed on national security grounds pursuant to Section 232. Although the duties went into effect against most countries (including China) on March 23, 2018, they did not apply to Canada, Mexico, or the European Union countries until June 1.

Recent Developments. President Trump is reportedly considering another round of Section 232 duties of potentially up to 25 percent on automobile and auto parts imports. The Department of Commerce began investigating that issue on May 23, 2018. Although, given the lengthy investigation process, these tariffs (if imposed at all) would likely not be implemented for some time, these developments represent another factor that could complicate the U.S.-China trade relationship, as well as the NAFTA renegotiation process.

Additionally, the administration has suggested that it is considering whether to initiate Section 232 cases on other industries, including semiconductors and artificial intelligence.

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Against this backdrop of uncertainty and in response to the recent U.S. tariffs described above, many countries around the world have announced retaliatory tariffs. We will continue to monitor significant developments.

THREE KEY TAKEAWAYS

1. Acting under its Section 301 authority, the Trump Administration will impose additional 25 percent tariffs on \$34 billion worth of Chinese-origin goods containing "industrially significant technology" beginning on July 6. An additional \$16 billion worth of Chinese-origin goods also could become subject to additional duties in the future. Further, the administration plans to impose investment restrictions and enhanced export controls relating to Chinese acquisitions of "industrially significant technology" from U.S. companies within the next month.
2. Section 232 tariffs have now gone into effect for countries that were previously excluded, and additional products may become subject to Section 232 tariffs in the future.
3. Companies impacted by the tariffs should consider whether they should take steps to mitigate their risks, including engaging directly with the U.S. government through either the public notice-and-comment process associated with the second set of Section 301 tariff lines or the product exclusion process available for both types of duties.

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