

KIRKLAND ALERT

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Trump Administration Announces New Tariffs on Chinese Goods

On June 15, 2018, the U.S. Trade Representative (“USTR”) [released](#) a list of \$50 billion worth of products imported from China that will be subject to new 25% tariffs. U.S. Customs and Border Protection (“Customs”) will begin to collect duties on most of these products in just under three weeks, making it imperative for companies that have not previously assessed the potential impacts of the new tariffs on their value chains to do so as promptly as practicable.

The View from Washington

The announcement of new tariffs reflects another front in the administration’s whole-of-government approach to advancing U.S. interests vis-à-vis an assertive China. Since taking office, President Trump has repeatedly stressed that his administration will not hesitate to take action against perceived unfair trade practices and has consistently linked trade policy with the protection of U.S. national security and technological leadership. The Trump Administration has [initiated a number of trade enforcement actions](#) aimed at China, including tariffs on imports of large residential washing machines and solar cells, new [antidumping/countervailing duty](#) orders and investigations, and [steel and aluminum tariffs](#).

In announcing the new tariffs, the U.S. Trade Representative reinforced the importance of trade enforcement to U.S. national security, [stating](#) that the U.S. must “*take strong defensive actions to protect America’s leadership in technology and innovation against the unprecedented threat posed by*” certain Chinese government actions. Given the Trump Administration’s stated trade and security policy objectives, companies that rely on Chinese manufacturers and suppliers likely will continue to face new regulatory and commercial uncertainties in the near term.

Here are five key things to know about the new tariffs:

- 1. The new tariffs reflect one prong in the Trump Administration’s response to the findings of the USTR’s Section 301 investigation of China’s acts, policies and practices on technology transfer, intellectual property, and innovation.**

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The new tariffs form part of the Trump Administration's response to an investigation by USTR under Section 301 of the Trade Act. USTR released its findings in March 2018, concluding that China's acts, policies and practices on technology transfer, intellectual property, and innovation were "*unreasonable or discriminatory and burden or restrict U.S. commerce.*" USTR published an initial list of products that could be subject to increased tariffs in April 2018. Following a series of hearings and public comment, USTR refined the initial list to produce the list released on June 15, 2018.

In addition to releasing the new tariffs, the U.S. is continuing to pursue its dispute settlement rights at the World Trade Organization ("WTO") in response to China's alleged improper technology licensing requirements. President Trump also has indicated that the U.S. will impose investment restrictions and new export control requirements on acquisitions by Chinese companies and individuals of "*industrially significant*" technology. These new restrictions are scheduled to be announced by **June 30, 2018**, and will complement the effort currently underway to [reform the Committee on Foreign Investment in the United States](#).

The new tariffs are aimed at products in industry sectors that benefit from or are considered strategic priorities under China's Made in China 2025 program (e.g., aerospace, robotics).

2. The new tariffs are designed to be rolled out in two stages.

Tariffs on products from 818 tariff lines, reflecting \$34 billion worth of imports from China, are scheduled to become effective on July 6, 2018.

USTR also proposed tariffs on products from an additional 284 tariff lines, reflecting \$16 billion worth of imports. This latter set of tariffs will be subject to public hearing and comment prior to implementation.

3. Most products targeted for new tariffs come from industry sectors that the Chinese government considers to be strategic priorities (e.g., semiconductors, artificial intelligence, biotech).

The new tariffs are aimed at products in industry sectors that benefit from or are considered strategic priorities under China's *Made in China 2025* program (e.g., aerospace, robotics). Since its publication of the proposed list in April 2018, USTR has removed certain consumer goods (e.g., printer accessories) from the list in order to focus it more narrowly on "strategic" products. USTR also considered the negative impact on strategic U.S. industries and consumers.

USTR [has indicated](#) that it will permit U.S. companies to apply for exemptions from the new tariffs if they are unable to procure the products in question from an alternate source.

4. China has already taken action against the new tariffs — and additional measures are likely forthcoming.

China's response to the new tariffs was swift: the Ministry of Commerce ("MOFCOM") announced that China would impose penalties "*of equal strength*" on U.S. products, including \$34 billion worth of tariffs on U.S. goods that will take effect on the same day as the first round of U.S. tariffs. Goods targeted by China include soybeans, whiskey, agricultural products and seafood. MOFCOM further indicated that the new tariffs effectively nullified previously negotiated deals aimed at narrowing the U.S.-China trade imbalance.

5. There is bipartisan support for increasing trade enforcement on China, making additional trade enforcement measures a distinct possibility.

The new tariffs drew applause from a number of U.S. politicians from across the political spectrum, reflecting growing bipartisan support for vigorous trade policy with respect to China. Sen. Chuck Schumer (D-NY) called the new tariffs "right on target," linking them to protection of U.S. jobs. Similarly, Sen. Sherrod Brown (D-OH) characterized the action as an "*important step*" in resetting the U.S.-China trade relationship.

Importantly, reactions were not universally positive. Sen. Dick Durbin (D-IL) cautioned that "[f]armers in Illinois and across America stand to lose much from President Trump's reckless trade wars." That being said, there is a shared consensus among most U.S. government stakeholders that U.S. trade policy is an appropriate vehicle to respond to Chinese government policies that are perceived to adversely affect the U.S. — making it more likely that the U.S. will continue to use trade enforcement actions as a means to counteract these policies.

Key Takeaways

- Absent major policy and political shifts, turbulence in the U.S.-China relationship will continue to impact both inbound Chinese investment as well as U.S. companies' opportunities to enter or expand in the Chinese market.
- Buyers considering acquisitions of companies that import goods from China should ensure that transactional due diligence includes a comprehensive assessment of supply chain vulnerabilities arising from regulatory and political uncertainty.
- Vigilance and diligence will be critical in order to evaluate real time developments in the U.S.-China trade relationship in order to enhance enterprise decision-making.

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