WHITE & CASE

US & Multilateral Trade Policy Developments

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Contents

US General Trade Policy Highlights

United States to Postpone Increased Tariffs on $200 Billion in Chinese Imports, Begin Negotiations with China

Following a December 1, 2018 bilateral meeting between President Trump and Chinese President Xi Jinping on the sidelines of the G20 summit in Argentina, the White House announced that the United States will postpone a scheduled increase in tariffs on $200 billion worth of Chinese imports while the two countries negotiate “structural changes” to China’s trade and intellectual property rights practices over a 90-day period.1 White House officials later clarified that the 90-day timeline began on December 1, meaning that the United States has postponed the planned tariff increase until March 1, 2019. In exchange, China has agreed to increase purchases of US energy, agricultural, and industrial products by an unspecified amount.

It had been widely expected that the bilateral meeting would result in a temporary “ceasefire” agreement of the kind announced by the White House on December 1. However, many details of the agreement – including the precise scope and objectives of the planned negotiations – remain unclear, owing to the lack of detail in the White House statement and the absence of any US-China joint statement listing mutually-agreed outcomes. Thus, while the recent announcement provides some assurance that the dispute will not escalate in the near term, it has done little to resolve the broader uncertainty in the US-China trade relationship.

We provide an overview of the G20 outcomes and the outlook for the US-China trade dispute below.

Background

Trade relations between the United States and China have deteriorated since June 2018, when the United States first confirmed that it would unilaterally impose tariffs of 25 percent on $34 billion worth of annual imports from China pursuant to Section 301 of the Trade Act of 1974. China responded to that action by immediately imposing equivalent tariffs on $34 billion worth of annual imports from the United States. This began a cycle of tit-for-tat retaliation: the United States subsequently imposed tariffs on two additional lists of Chinese goods valued at $16 billion (25 percent) and $200 billion (10 percent), to which China responded immediately by imposing tariffs on two additional lists of US goods valued at $16 billion and $60 billion (as shown below).

Tariff Action (Date)	USA Tariff Coverage	China Tariff Coverage
List 1 (July 6, 2018)	$34 billion	$34 billion
List 2 (August 23, 2018)	$16 billion	$16 billion
List 3 (September 24, 2018)	$200 billion	$60 billion
Total (minus exclusions)	$250 billion	$110 billion

As a result of these actions, the US Section 301 tariffs now apply to approximately USD 250 billion worth of annual imports from China (i.e., about half the value of total US imports from China in 2017). Meanwhile, China’s retaliatory tariffs cover approximately USD 110 billion worth of annual US exports (i.e., about 85 percent of total US exports to China in 2017), and China has reportedly pursued other non-tariff actions against US goods, services and investment. Moreover, the US tariffs on “List 3” goods were scheduled to increase automatically to 25 percent (from the current 10 percent) beginning on January 1, 2019. China has stated that it will “respond accordingly” if the United States goes through with the scheduled tariff increase.

G20 Outcomes

Following the bilateral meeting between Presidents Trump and Xi at the G20, the White House announced that (1) the United States will temporarily postpone the scheduled US tariff increase on “List 3” goods; (2) the two countries will begin negotiations regarding China’s trade and intellectual property rights practices; and (3) China will increase purchases of certain US goods. However, a statement issued the following day by Chinese Foreign Minister Wang Yi confirms only some of the outcomes announced by the United States.

[1] Click **here** to view the White House Statement. Click **here** to view the statement by Chinese Foreign Minister Wang Yi.

- **Section 301 tariffs and negotiations**. According to the US statement, President Trump has agreed that on January 1, 2019, “he will leave the tariffs on $200 billion worth of product at the 10 percent rate, and not raise it to 25 percent at this time.” In addition, President Trump and President Xi have agreed “to immediately begin negotiations on structural changes with respect to forced technology transfer, intellectual property protection, non-tariff barriers, cyber intrusions and cyber theft, services and agriculture.” The statement does not clarify the precise scope or US objectives for these negotiations.

  According to the statement, both parties agree “that they will endeavor to have this transaction completed within the next 90 days. If at the end of this period of time, the parties are unable to reach an agreement, the 10 percent tariffs will be raised to 25 percent.” Though the statement does not clarify the start date for the 90-day period, the White House has stated that it began on December 1, meaning that the United States has postponed the planned tariff increase until March 1, 2019. National Economic Council (NEC) Director Larry Kudlow has stated that US Trade Representative Robert Lighthizer will lead the negotiations for the United States.

  The statement issued by Chinese Foreign Minister Wang Yi also says that the United States has agreed not to increase tariffs on Chinese goods on January 1, and that the two sides will engage in negotiations “toward the removal of all additional tariffs”. However, it does not confirm that the negotiations will cover the specific subjects listed above (or “structural changes” to any Chinese policies), nor does it acknowledge the 90-day deadline and the United States’ claim that it will implement the planned tariff increase if the negotiations fail.

- **Concessions by China**. According to the US statement, “China will agree to purchase a not yet agreed upon, but very substantial, amount of agricultural, energy, industrial, and other product from the United States to reduce the trade imbalance between our two countries. China has agreed to start purchasing agricultural product from [US] farmers immediately.” The statement does not clarify what products China will purchase or when, the amount by which purchases will increase, or the mechanism through which the purchases will be made. China’s statement notes that it will increase imports of US goods, but provides no further details.

  According to the US statement, President Xi also indicated that “he is open to approving” the potential acquisition of NXP Semiconductors N.V. by the American firm Qualcomm (which China had previously rejected). However, China’s statement does not address this point, and Qualcomm later indicated that it does not plan to pursue the acquisition again.

Subsequent statements by US officials have caused confusion about the G20 outcomes and suggest that they were agreed with little advance preparation. For example, NEC Director Kudlow stated on December 3 that the 90-day negotiating period would not begin until January 1 (meaning that the US tariff increase would be postponed until April 1, 2019), but the White House later stated that the 90-day period began on December 1. In addition, President Trump claimed on December 2 that China “has agreed to reduce and remove tariffs on cars coming into China from the U.S.” However, neither the US nor Chinese statements reference such a commitment. NEC Director Kudlow stated on December 3 that “[w]e don't yet have specific agreement on that”, but that “we expect those tariffs to go to zero" as part of the forthcoming negotiation. White House trade advisor Peter Navarro acknowledged that the two sides have discussed the issue, but would not confirm that China had committed to any reduction in automobile tariffs. Treasury Secretary Steven Mnuchin, by contrast, claimed that China had agreed to reduce automobile tariffs but declined to discuss the specifics.

Outlook

US business groups have welcomed the United States’ announcement that it will postpone the scheduled increase of the Section 301 tariffs on “List 3” goods and resume negotiations with China. These commitments represent an improvement over the status quo in US-China trade relations by delaying a significant increase in US trade restrictions and likely Chinese retaliation. However, it appears that most, if not all, of the US and Chinese tariffs now in force will remain in place for the foreseeable future.

It also is unclear whether the announced negotiations will succeed in averting an escalation in the conflict altogether, especially given the ambiguities regarding the United States' objectives and the short timeframe for the negotiations. Most notably, there are major questions surrounding the Chinese concessions on "forced technology transfer, intellectual property protection, non-tariff barriers, cyber intrusions and cyber theft, services and agriculture." The United States has indicated that it will seek "structural changes" in these areas, but it is unlikely that major structural changes to China's policies can be negotiated in the 90-day window envisioned by the statement. More modest changes (e.g., increases in market access and incremental policy reforms) could potentially be negotiated in the 90-day timeframe, but the Trump administration has not indicated whether such concessions would be sufficient to prevent a further increase in US tariffs. It also is unclear whether the Trump administration will be willing to postpone the tariff increase beyond March 1 based on progress made in the negotiations and/or Chinese commitments to pursue structural reforms. President Trump recently stated that the negotiations will end on March 1 "unless extended", suggesting that futher postponements cannot be ruled out.

Furthermore, the US statement does not indicate whether negotiations with China could potentially result in the two countries scaling back the tariffs they have already put in place on one another's exports. The existing Section 301 tariffs and Chinese retaliation now apply to a significant portion of bilateral trade, but the US statement only contemplates a freeze on future tariff increases. The United States has not indicated if it is willing to negotiate reductions in the existing Section 301 tariffs as part of the planned negotiations with China (either during or after the 90-day period). Thus, while the recent announcement provides some assurance that the US-China dispute will not escalate before March 1, it provides no guidance as to the longer-term future of bilateral trade restrictions.

In addition, it is unclear when USTR will publish a Federal Register notice officially postponing the tariff increase on "List 3" goods until March 1, 2019. The tariff rate on List 3 goods is scheduled to increase automatically to 25 percent as of January 1, unless USTR takes action to implement the announced postponement. Given the wording of the US statement on the G20 outcomes, it appears possible that USTR will delay issuing the Federal Register notice until the details of China's commitments to purchase US agricultural, energy, and industrial products are agreed.

Additional information about the outcomes agreed at the G20 might become available in the coming day ns. As noted above, China thus far has provided little information about the G20 agreement. However, Chinese officials reportedly have indicated that China will publish additional information in the coming days after senior Chinese officials have returned to Beijing. An official statement from the Chinese government could provide further details and clarity about the outcomes agreed at the G20.

US Trade Representative Postpones Tariff Increase on Certain Products of China Covered by Section 301 Action

On December 14, 2018, the Office of the US Trade Representative (USTR) published a Federal Register notice officially postponing from January 1 to March 2, 2019 a scheduled tariff increase on approximately $200 billion worth of annual Chinese imports under Section 301 of the Trade Act of 1974.[2] The products at issue are those covered by USTR's third tariff action in the Section 301 investigation of China's intellectual property rights practices, which USTR announced in September 2018. As a result of USTR's latest action, the additional tariff on "List 3" goods will remain at the current rate of 10 percent until March 2, 2019, at which point it is scheduled to increase to 25 percent (unless the increase is further postponed or cancelled as a result of ongoing negotiations). USTR took this action at the direction of the President following the December 1, 2018 bilateral meeting between President Trump and Chinese

[2] Click **here** to view USTR's Federal Register notice.

President Xi Jinping, at which the United States agreed to postpone the tariff increase while the two countries negotiate "structural changes" to China's trade and intellectual property rights practices over a 90-day period. Since the meeting, the Chinese government has made some initial "good faith" gestures to bolster the bilateral negotiations. We summarize below the US Federal Register notice and recent developments.

Postponement of Tariff Increase

USTR's Federal Register notice confirms the previously-announced postponement of the tariff increase but provides no new information about the bilateral negotiations or the United States' objectives for them. Referencing the December 1 meeting, it states that "[t]he United States is engaging with China with the goal of obtaining the elimination of the acts, policies, and practices covered in the investigation", and that USTR has determined, "at the direction of the President", that "it no longer is appropriate for the rate of duty under the September 2018 action to increase to 25 percent on January 1, 2019, and that the rate of duty under the September 2018 action instead should increase to 25 percent on March 2, 2019 (which is the day following the end of the 90-day period mentioned in the December 1 Statement)." The notice provides that the 25 percent rate of duty will be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 am Eastern Standard Time on March 2, 2019.

Status of Bilateral Negotiations

US position

Following the December 1 bilateral meeting, US officials have done little to clarify the scope or US objectives for the negotiations with China. USTR Lighthizer in a December 7 interview indicated that the United States would need to achieve two general outcomes in the negotiation in order to refrain from further increasing tariffs on Chinese goods: (1) "structural changes in China, or an agreement to have structural changes"; and (2) additional market access for US exports to China. Regarding structural changes, he indicated that the United States is seeking reforms to the alleged Chinese government practices covered by the Section 301 investigation (*i.e.*, forced technology transfer, cyber-theft, state-directed investment, and IP licensing issues), but he did not clarify what specific changes the United States is seeking. Regarding market access, he indicated that the United States is seeking additional access for agricultural goods and commitments by China to purchase US agricultural products, but he provided no further details. Several Members of the Senate Finance Committee have commented in recent days that they have not been consulted on the Trump administration's plans or objectives for the negotiation.

Initial Chinese concessions

China in recent days has announced minor "good faith" concessions to the United States on market access for automotive goods, imports of US soybeans and corn, intellectual property rights enforcement, and the "Made in China 2025" industrial policy. However, the details of these actions, described below, remain ambiguous:

- **Automotive tariffs**. On December 14, China's State Council Tariff Commission announced that it will suspend the retaliatory tariffs that it has imposed on US automobiles and automotive parts from January 1 to March 31, 2019. During that period, the rate of duty applicable to the covered automotive goods from the United States will revert to the most-favored nation (MFN) rate applied by China to all WTO Member countries. Specifically, China will suspend:
  - The additional tariff of 25 percent imposed by China's first retaliation list[1] on the 28 tariff headings listed in Attachment 1;

[1] See *Announcement of the Tariff Commission of the State Council Regarding the Imposition of Additional Tariffs on $50 Billion-Worth of Imported Goods Originating in the United States* (Shui Wei Hui Announcement (2018) No. 5).

- The additional tariff of 25 percent imposed by China's second retaliation list[2] on 116 tariff headings listed in Attachment 2; and

- The additional tariff of 5 percent imposed by China's third retaliation list[3] on the 67 tariff headings listed in Attachment 3.

The Tariff Commission's statement says that China is taking this action "in order to implement the consensus" reached by Presidents Trump and Xi at their December 1 meeting. Trump administration officials have portrayed the action as a confirmation of President Trump's claim on December 2, 2018 that China had agreed to "reduce and remove" tariffs on US automotive goods. However, the value of this concession is limited significantly by its temporary nature, and by the removal of only the retaliatory tariffs China has imposed in response to the Section 301 action. The announcement does not provide the United States with any new market access or long-term certainty regarding tariff rates for US automotive exports to China.

- Agricultural purchases. During the week of December 9, 2018, US private exporters reported to the US Department of Agriculture new export sales of 1.34 million metric tons (mmt) of soybeans to China for the 2018/2019 marketing year. These purchases reverse a small portion of the decline in US soybean exports to China this year (on a year-to-date basis through October, US exports to China were down from 21.4 mmt in 2017 to 8.2 mmt in 2018). Press reports indicate that the purchases were carried out by Chinese state enterprises. However, China has not provided any official statement on the purchases, including whether they will continue or whether it plans to suspend or eliminate its retaliatory tariffs on US soybeans. The American Soybean Association stated that the resumed sales represent "a positive step", but emphasized that "it is vital that this 90-day process result in lifting the current 25 percent tariff that China continues to impose on U.S. soybean imports", and that "without removal of this tariff, it is improbable that sales of U.S. soybeans to China can be sustained." It further stated that the recent sale announcement "will not fix the prolonged period of low prices soybean farmers have faced since the trade war began."

  In addition, China reportedly is planning to resume imports of corn from the United States in the coming weeks. Published reports indicate that China may initially purchase at least 3 million metric tons of US corn as soon as January 2019, and that China is considering modifications to its 25 percent retaliatory tariff on US corn (including allowing some US corn to be imported at a lower duty rate under a tariff-rate quota and reimbursing importers for the 25 percent tariff for purchases outside the quota). However, China has not yet confirmed these plans.

- **Made in China 2025**. Recent reports indicate that China is preparing changes to the "Made in China 2025" industrial policy program as another potential concession to the United States. Among the changes reportedly being considered are (1) the elimination of specific numerical targets for Chinese market share in various industries; (2) unspecified reforms to promote "competitve neutrality" among state-owned, private and foreign firms; and (3) ten-year delays to certain industrial targets. However, the details and extent of these and other potential changes are unclear. Many observers doubt that China will be willing to undertake substantive reforms of its industrial policies in response to pressure from the United States, speculating instead that it will merely seek to "re-brand" those policies in ways that appear responsive to US concerns.

- **Intellectual Property**. In early December, China's National Development and Reform Commission issued a memorandum announcing new penalties for intellectual property rights violations (*e.g.*, patent infringement). The memorandum contemplates 38 new penalties for entities found to engage in intellectual property rights

[2] See *Announcement of the Tariff Commission of the State Council Regarding the Imposition of Additional Tariffs on $16 Billion-Worth of Imported Goods Originating in the United States* (Shui Wei Hui Announcement (2018) No. 7).

[3] See *Announcement of the Tariff Commission of the State Council Regarding the Imposition of Additional Tariffs on $60 Billion-Worth of Imported Goods Originating in the United States* (Shui Wei Hui Announcement (2018) No. 8).

violations, including potential restrictions on advertising, access to certain financial instruments and state funding, participation in government procurement and foreign trade, and real estate transactions. China stated that the new policy "signals a further step by China to strengthen IPR protection and shows China's sincerity in addressing American concern over the issue." However, the extent to which China will enforce the new measures and their effectiveness are currently unclear.

Outlook

USTR's formal announcement postponing the tariff increase provides some near-term relief for businesses affected by the US-China trade dispute, and China's recent concessions to the United States (though minor) represent both incremental near-term progress and a signal of good faith for the longer-term talks. However, these developments have done little to clarify each country's position and objectives on the key issues to be addressed in the 90-day negotiation, such as the extent of reforms to the alleged Chinese industrial policies identified in USTR's Section 301 report. It remains uncertain, therefore, whether the negotiations will succeed in averting further escalation of the trade dispute.

Impact of US Government Shutdown on Department of Commerce and International Trade Commission Activities

On December 21, 2018, the US federal government failed to enact appropriations to fund certain federal operations, resulting in a partial government shutdown. Both the US International Trade Commission (USITC) and the US Department of Commerce (USDOC) have issued plans detailing how a shutdown will affect their activities under the US trade remedy laws and other trade-related functions.[3] We summarize the plans below.

US International Trade Commission Activities

The USITC's "Plan for an Orderly Shutdown in the Absence of an Appropriation" indicates that most of the USITC's investigative activities, including import injury investigations under the anti-dumping and countervailing duty laws, will cease during the government shutdown. The plan identifies the following as "significant activities that will be disrupted" during the shutdown:

- Investigative activities, including:
  - Import injury investigations under the anti-dumping and countervailing duty laws (*i.e.*, Title VII of the Tariff Act of 1930);
  - Global safeguard investigations under Section 201 of the Tariff Act of 1930;
  - Investigations of unfair practices in import trade under Section 337 of the Tariff Act of 1930; and
  - General fact-finding investigations under Section 332 of the Tariff Act of 1930;
- Maintenance of the Harmonized Tariff Schedule of the United States;
- Technical assistance to the US Trade Representative and Congress; and
- All other government functions "other than those directly supporting active litigation to which the USITC or the United States is a party."

[3] Click **here** to view the USITC's plan and **here** to view the USDOC's plan.

The plan states that the USITC will continue certain limited activites during the shutdown, including litigation activities for which time extensions have not been granted, as well as incoming mail processing to facilitate the receipt of possible court orders requiring action by USITC attorneys.

US Department of Commerce Activities

The USDOC's "Plan for Orderly Shutdown Due to Lapse of Congressional Appropriations" indicates that most activities conducted by the International Trade Administration (ITA), such as anti-dumping and countervailing duty investigations, will cease during the government shutdown, whereas certain activities conducted by the Bureau of Industry and Security (BIS) (*e.g.*, export enforcement) will continue despite the lapse in appropriations. It also indicates that processing of Section 232 product exclusion requests (an activity conducted jointly by BIS and ITA) will cease during the shutdown.

International Trade Administration

The plan states that "most services and activities provided by the International Trade Administration" will not be available during the shutdown, except for certain services and activities funded by resources other than current year annual appropriations. The plan indicates that ITA officials will need to take the following actions, among others, in order to effectuate an orderly shutdown:

- The Deputy Assistant Secretary for Enforcement and Compliance will shut down the ITA's Enforcement and Compliance ("E&C") unit (which is responsible for, among other things, conducting AD/CVD investigations and administrative reviews and administering suspension agreements);
- The Deputy Assistant Secretary for AD/CVD Operations within E&C will shut down the agency's AD/CVD operations;
- The AD/CVD Enforcement Directors for Offices I - VIII will shut down AD/CVD cases & coordinate the return of staff on travel; and
- The Director of the Office of Accounting will shut down AD/CVD accounting & coordinate return of staff on travel.

The plan notes that certain "excepted" officials within the ITA will continue to carry out their functions during the shutdown. These include:

- Certain AD/CVD Case Verification Teams (International Trade Compliance Analysts, Accountants, and Import Policy Analysts);
- Various Export Control Officers, who will continue to conduct on-going overseas pre-licensing and post-shipment checks "to ensure compliance with US national security"; and
- The Director of the Customs Liaison Unit and the Director for Bilateral Agreements, who will continue to clear incoming Russian uranium shipments under the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation.

Bureau of Industry and Security

The plan states that export enforcement – described as "the ongoing conduct of criminal investigations, and prosecutions, and coordination with other law enforcement and intelligence agencies in furtherance of our national security" – will continue during the shutdown. In particular, it states that the following excepted officials will continue to carry out their functions during the shutdown:

- The Deputy Assistant Secretary for Export Enforcement will continue to supervise and coordinate enforcement activities;
- Various criminal investigators and export enforcement and compliance specialists will continue to conduct and provide support to ongoing criminal investigations;
- The Deputy Assistant Secretary for Export Administration will continue to supervise execution of export control and defense-related programs; and
- Various officials within the Offices of National Security and Technology Transfer Controls, Nonproliferation and Treaty Compliance, and Strategic Industries and Economic Security will continue to license emergency export applications.

Section 232 Product Exclusion Process

The plan indicates that BIS and ITA during the shutdown will cease processing of requests for exclusions from the tariffs and quotas imposed on steel and aluminum imports under Section 232 of the Trade Expansion Act of 1962. The Section 232 product exclusion process is led by BIS, but industry specialists within the ITA's Enforcement and Compliance unit assist in the process by providing technical analyses and making recommendations on exclusion requests. The USDOC plan states that, in order to ensure an orderly shutdown, the "Section 232 Exclusions Team" within ITA will shut down ITA's processing of Section 232 product exclusions "in conjunction with BIS Section 232 shutdown activities", indicating that the exclusion process will be paused for the duration of the shutdown.

Petitions and Investigations Highlights

US International Trade Commission Issues Affirmative Final Determinations in Anti-Dumping and Countervailing Duty Investigations of Common Alloy Aluminum Sheet from China

On December 7, 2018, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of common alloy aluminum sheet from China that the US Department of Commerce (DOC) has determined are subsidized and sold in the United States at less than fair value. DOC determined in November 2018 that imports of the subject merchandise from China were sold in the United States at dumping margins ranging from 49.85 to 59.72 percent and received countervailable subsidies valued at 46.48 to 116.49 percent. DOC made these determinations in rare "self-initiated" anti-dumping and countervailing duty investigations under Sections 702(a) and 732(a)(1) of the Tariff Act of 1930.

As a result of the ITC's affirmative final determinations, DOC will issue anti-dumping and countervailing duty orders on imports of common alloy aluminum sheet from China. The ITC made negative findings concerning "critical circumstances", and imports of this product from China therefore will not be subject to retroactive anti-dumping or countervailing duties.

The subject merchandise is common alloy aluminum sheet, which is a flatrolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080, and may also enter under 7606.11.3030, 7606.12.3030, 7606.91.3060, 7606.91.6040, 7606.92.3060, 7606.92.6040, and 7607.11.9090.

The ITC will publish its report on the investigation by January 11, 2019. According to the ITC, imports of the subject merchandise in 2017 were valued at approximately $972.8 million.