



The Bottom Line

SEPTEMBER 2020 | VOL. 54

U.S. TRADE RELATIONS WITH CHINA TODAY

Summary

The United States is using a multi-tiered approach to address unfair Chinese economic practices, including punitive duties on import products and restrictions on U.S. exports.

Background

The Trade Act of 1974 (Section 301) authorizes the President to take all appropriate action, including retaliation, to obtain the removal of any act, policy or practice of a foreign government that violates an international trade agreement or is unjustified, unreasonable, or discriminatory, and that burdens or restricts U.S. commerce. In August of 2017, the President instructed the U.S. Trade Representative (USTR) to investigate China's unfair trade practices. The results, announced in March 2018, concluded that China engages in activities, including foreign ownership restrictions on business in China, technology transfer requirements to Chinese entities, investment in U.S. firms to obtain cutting-edge technology and intellectual property, unauthorized intrusions into computer networks of U.S. companies, and manipulation of Chinese currency to inflate the cost of U.S.-manufactured goods in China. A series of punitive tariffs were levied on Chinese goods shipped to the United States. The consequence of these tariffs was to make Chinese products more expensive for U.S. consumers, and, as a result, provide a more level market for U.S. manufacturers of the same products.

Current Status

On Tuesday, April 28, 2020, the Department of Commerce, Bureau of Industry, and Security (BIS) published a final rule that became effective on Monday, June 29, 2020. The rule revised § 758.1 of the Export Administration Regulations (EAR) to require filing for items on the Commerce Control List (CCL) destined to China (also Russia and Venezuela) regardless of the value of the shipment, unless the shipment is eligible for License Exception GOV. In addition, even if no license is required to ship a CCL item, the EEI

filing must include the correct ECCN regardless of reason for control. Under the auspices of the National Defense Authorization Act of 1999 and the White House's National Security Strategy, on June 24, 2020, the Department of Defense (DoD) published a letter to Senator Tom Cotton enclosing a list of twenty companies headquartered in the People's Republic of China (PRC) which the DoD determined are operating (directly or indirectly) in the United States and are "Communist Chinese military companies," including Huawei. This list was supplemented with another eleven companies on August 27. In a related move, the Bureau of Industry and Security amended rules in the EAR to require licensing for products destined not only for "military end use" but also for "military end users."

The President issued an Executive Order on July 14, 2020 suspending the application of section 201(a) of the United States-Hong Kong Policy Act of 1992. With this EO, the United States has ruled that Hong Kong is no longer sufficiently autonomous to justify differential treatment in relation to China.

Impact

Under the new export rules, effectively every shipment to China requires a declaration, and every shipment to a deemed "Military End User" will require a license. With this additional data, the U.S. will have a more accurate picture of what exports are moving. China has a history of coercing technology away from American firms and supporting industrial policies that economists say have helped China dominate global industries like steel and solar panels. While the most public U.S. strategy has been the punitive tariffs levied on Chinese products, the changes to export policy will have a more immediate impact on controlling the transfer of sensitive technology to China.

RESOURCES:

[Technology Transfer, Intellectual Property & Innovation](#) (USTR)
[Expansion of Export, Reexport, and Transfer Controls](#) (FR)
[Letter to Senator Tom Cotton](#) (DoD)
[Additional Qualifying Entities](#) (DoD)