Explainer on Common Terms in US Export Controls

National security as a focal point in US-China High Tech Trade

“Recent Developments on US and China Export Control Issues” – June 20, 2018

This explainer serves to introduce members to common terms that have become increasingly important against the backdrop of the US-China trade relations.

Sections of the Trade Act of 1974

### Section 201, 301, and 232

<table>
<thead>
<tr>
<th>Affected Countries</th>
<th>Mainly South Korea, China, and Vietnam</th>
<th>Mainly China</th>
<th>Global</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impacted Products</td>
<td>Solar cells, modules, and manufactured washing machines</td>
<td>Advanced technology</td>
<td>Steel and aluminum</td>
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<td>Goal</td>
<td>To determine whether imports are harmful to domestic industries</td>
<td>To determine whether China’s policies related to intellectual property (IP) and technology transfer/innovation are “unreasonable or discriminatory”</td>
<td>To determine the effects of imports on national security</td>
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<td>Responsible Agency</td>
<td>US International Trade Commission</td>
<td>Office of the US Trade Representative (USTR)</td>
<td>US Department of Commerce (in consultation with the Secretary of Defense)</td>
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<tr>
<td>Actions-in-effect</td>
<td>• 30% tariffs set on crystalline silicon photovoltaic cells and modules, and 20% on large residential washers (effective since February 7, 2018)</td>
<td>• WTO case filed on Chinese discriminatory tech licensing practices • 25% additional tariffs on certain products from China, worth US $34 billion (effective since July 6, 2018)</td>
<td>• 25% tariffs on steel imports and 10% tariffs on aluminum imports (effective since March 23, 2018) • First list of product exclusions on steel imports has been released by Bureau of Industry and Security (BIS). BIS has received more than 20,000 requests but only processed 98 of</td>
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Note: tariff percentage to decrease each year

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<tr>
<th>Actions-in-the-pipeline</th>
<th>Levies on another US $16 billion of Chinese goods on the way</th>
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<tr>
<td>No further actions announced by the White House. However, Protecting American Solar Jobs Act (H.R. 5571) has been proposed in the US House of Representatives to repeal the solar tariffs.</td>
<td>10% tariffs on additional US $200 billion of Chinese products seeking for comments</td>
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<td>▪ Investment restrictions by the Treasury Department (See “FIRRMA” section for more information)</td>
<td>▪ More product exclusions to be released</td>
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<td>▪ The US Congress plans to continuously demonstrate that it plays a central role in implementing tariffs</td>
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Agencies and Offices Relevant in US Export Control

**CFIUS**
The Committee on Foreign Investment in the United States, CFIUS, reviews national security risks on inbound investments taking place via mergers and acquisitions. Chaired by the Secretary of the Treasury, it is an interagency committee, which consists of members from eight different federal agencies.

- If a transaction poses a threat to US national security, the President has the authority to suspend that transaction or attach conditions to it.

CFIUS has the jurisdiction to review transactions involving US businesses, but the definition of its jurisdiction is often unclear. For example, investments made by foreign individuals with a voting interest of 10 percent or less are not within CFIUS’ jurisdiction. However, CFIUS can still call it into question in practice.

**BIS**
The Bureau of Industry and Security, BIS, regulates exports of sensitive goods and technologies, and cooperates with other countries on export control and strategic trade issues. BIS is an agency under the Department of Commerce.

- In the case of ZTE, BIS first fined ZTE and placed it on probation in a settlement in March 2017 for illegally exporting US materials to Iran and North Korea; in April 2018, BIS found ZTE in violation of the settlement and placed a denial order on ZTE; in June 2018, BIS and ZTE reached a new settlement that mandates ZTE to pay a US $1 billion fine, overhaul its leadership, and meet other conditions. Another denial order is in place for 10 years and will be activated if any additional violations occur.

**USTR**
The Office of the US Trade Representative, USTR, is responsible for developing and coordinating US international trade, commodity and direct investment policy, and overseeing

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negotiations with other countries. USTR is part of the Executive Office of the US President and the head of USTR is the US Trade Representative, a Cabinet member in the White House.

- Tariff exclusion: after the 25 percent tariff on US $34 billion worth of Chinese imports went into effect on July 6, 2018, USTR announced that companies can seek product exclusions from the tariff.
  - Companies have 90 days to file such requests (due October 9).
  - All submissions must be done in English and sent electronically via www.regulations.gov. Once requests are submitted, there will be a period of 21 days for public responses on the same website.
  - If one exclusion is to be made on a specific product, all the imports of such product will benefit from the exclusion.
  - Official instructions can be found here.

### US Legislation Relevant in US Export Control

#### FIRRMA

The Foreign Investment Risk Review Modernization Act, FIRRMA, intends to expand the jurisdiction and reform the process of CFIUS.

- There have been two versions of FIRRMA since November 8, 2017. The final version of the bill in both the Senate and the House removed the provision that would have given CFIUS more power in reviewing certain technology transfers such as joint-ventures with non-US partners.
- CFIUS will be able to expand its jurisdiction over foreign investments, specifically in real estate proximity and non-controlling minority investments operating in US critical technologies.
- On June 27, 2018, President Trump announced that he would not enforce new investment restrictions against China under Section 301, provided that Congress passes FIRRMA.

#### ERCA

The Export Control Reform Act of 2018, ECRA, is a bipartisan piece of legislation which seeks to establish a permanent statutory basis for the export control of commercial, dual-use, and less sensitive defense items.

- ECRA would expand US jurisdiction to regulate transfers abroad by US and foreign persons of commodities, software, or technology.
- It would be the first time to apply US-deemed export controls to transfers of controlled technology to US companies unless they are majority-owned by US natural persons.
- When introducing ECRA on February 15, 2018, US legislators emphasized that the rationale behind the bill stems from sensitive technology transfers to China.
- Currently the bill is waiting for consideration by the House and Senate.
If you have questions about the event and or would like to join AmCham China's Export Compliance Working Group, please contact Catherine Liu.
For inquiries on INSIGHTS, please contact Chloe Ma.

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