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Section 301 and China: The U.S.-China *Phase One* Trade Deal

On January 15, 2020, then-President Donald J. Trump signed a trade agreement with then-Vice Premier Liu He of the People's Republic of China (PRC, or China). The agreement sought to resolve some long-standing complaints by U.S. government and businesses asserting that China was engaging in unfair trade, investment, and technology practices, which the U.S. Trade Representative (USTR) had investigated and identified under Section 301 of the Trade Act of 1974 (19 U.S.C. §2411). The deal is called the *Phase One* agreement because it was to be the first of subsequent agreements to address U.S. concerns. It appeared to have been difficult for USTR to secure commitments from the PRC in some areas, and some experts assessed that PRC negotiators pushed most issues identified by the USTR related to PRC industrial policies (e.g., state subsidies, technology transfer requirements, and IP theft) for future talks. At his Senate confirmation hearing in January 2025, Treasury Secretary Scott Bessent stated that he would push the PRC government to abide by terms in the *Phase One* deal and related PRC commitments to purchase U.S. agriculture, energy, manufactured goods, and services. On January 20, 2025, President Trump directed the USTR to review the *Phase One* agreement, determine whether China was in compliance, and recommend U.S. actions.

China and Section 301 Context

In August 2017, the USTR invoked Section 301 in an effort to address PRC industrial policies. These PRC policies' stated objective is to seek PRC global commercial and technology leadership through trade, investment, and technology practices, which the USTR assessed to be discriminatory. The decision to invoke Section 301 followed 15 years of efforts by the U.S. government and U.S. industry to resolve concerns about PRC industrial practices, which PRC officials were mostly unwilling to acknowledge and address. These views were also informed by PRC intensification of such practices. Particular areas of concern included new *Made in China 2025* industrial policies, increased reports of PRC corporate espionage, tightened control by the PRC government of information and data controls, and increased economic coercion and forced technology transfer requirements by PRC authorities. U.S. stakeholders assessed that China was deploying a web of mutually reinforcing government policies that favored PRC firms and pressured or incentivized some foreign firms to transfer trade secrets, intellectual property (IP), and technology to PRC entities in order to operate and expand in China. Also of concern to U.S. stakeholders was a sharp increase in PRC firms' acquisition of foreign firms in strategic sectors (e.g., aerospace and semiconductors), often using state funds.

While the USTR had prevailed at the World Trade Organization (WTO) in several dispute cases or elements of cases against China, some experts assessed that most PRC practices at issue were systemic and pervasive such that they could not be resolved through the WTO's case-by-case dispute settlement approach. Some U.S. concerns (particularly regarding PRC investment restrictions and subsidies) fell in gray areas of WTO rules or outside the WTO's purview. Prior experience in seeking to address PRC industrial policies in key sectors (e.g., steel, solar panels, and telecom equipment) led U.S. officials to seek trade countermeasures to address PRC industrial policies in their early stages. They sought to target sectors supported by *Made in China 2025*, such as electric vehicles (EVs), before PRC firms entered a significant production or export phase. USTR reasoned that trade remedies, such as antidumping measures, were reactive and applied so late in a product cycle that they would do little to prevent China from securing a dominant global market position, particularly given the broad scope and potential global effects of China's policies.

Section 301 Findings and Actions

In 2018, as part of its investigation under Section 301 of the Trade Act of 1974 (19 U.S.C. §2411), the USTR concluded that China engaged in forced technology transfer, cyber-enabled theft of U.S. IP and trade secrets, discriminatory and nonmarket licensing practices, and state-funded strategic acquisitions of U.S. assets. Section 301 allows for a range of countermeasures and requires the USTR to negotiate with a country of concern in an effort to resolve issues. For countermeasures, the USTR imposed four rounds of tariffs at a rate that ranged from 7.5% to 25% on about $370 billion worth of U.S. imports from China. The PRC countered with tariffs on $110 billion worth of U.S. trade. Both sides have granted some exceptions, but most tariffs remain in effect. The Departments of Commerce and the Treasury did not use other authorities under their purview, such as restricting services trade and investment. The USTR also reached agreement with the PRC on some issues under *Phase One* (**text box).**

Phase One Agreement: Select Provisions

The Agreement includes PRC commitments in these areas:

IP. Defines "confidential business information" as trade secrets subject to protection, and defines "misappropriation" to include electronic intrusions and unauthorized disclosure, including by government officials and third-parties. The burden of proof shifts to the accused party if a rights holder shows that the accused party had access or an opportunity to obtain a trade secret; the information used by the accused party is materially the same as that of the rights holder; evidence that a trade secret has been or risks being disclosed; or other misappropriation evidence. Requires pharmaceutical patent extensions in the event of unreasonable delays in the PRC granting patents.

Technology Transfer. Prohibits forced technology transfer, an activity the PRC government had denied undertaking. Requires that firms operate freely without pressure to transfer technology. Transfer or licensing of technology should be on market terms that are voluntary and reflect mutual agreement. Prohibits the PRC government from requiring technology transfer in relation to acquisitions, joint ventures, or other transactions. Prohibits the PRC from requiring or pressuring (formally or informally) technology transfer, or the use or favoring of a particular technology. This prohibition includes conditions the PRC might impose through regulatory requirements and administrative approvals or licenses to operate in China or receive any advantages.

Foreign investment and acquisitions: Prohibits PRC government support of outbound investment targeting foreign technology/capabilities prioritized in PRC industrial plans.

Currency: Requires market-determined exchange rates, and transparency and reporting on currency practices.

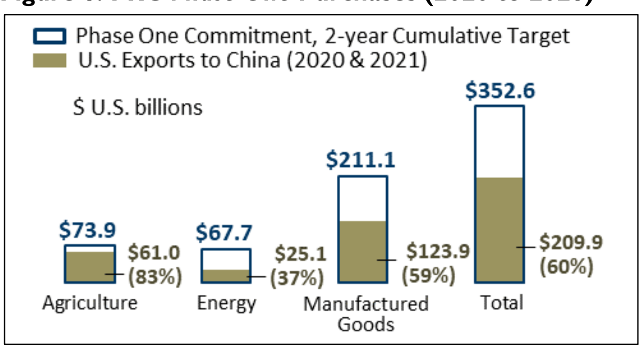
Negotiations: Creates a Trade Framework Group, led by the USTR and a PRC Vice Premier, to meet every six months on unresolved IP and agricultural issues.

Dispute Resolution. Allows 90 days to resolve issues, after which if a resolution is not reached either side may take proportionate unspecified action.

Other *Phase One* Commitments

Phase One also sought to address the U.S. trade deficit with China with a two-year purchasing deal. China agreed to purchase during 2020 and 2021 at least $200 billion of goods above a 2017 baseline amount of U.S. agriculture (+$32 billion), energy (+$52.4 billion), manufactured goods (+$77.7 billion), and services (+$37.9 billion). China fell short of its commitment by 60% for goods (and about 57% for goods and services), due in part to PRC efforts to diversify agriculture and energy suppliers and the COVID-19 pandemic. PRC efforts to hasten its exports by reclaiming shipping containers in U.S. ports before they could be reloaded by U.S. exporters may have impeded some U.S. exports to China during this period. (**Figure 1**).

Figure 1. PRC *Phase One* Purchases (2020 to 2021)



Source: CRS with data from the U.S. Census Bureau.

Notes: Excludes services commitments. Goods includes aircraft.

China also made some market access commitments in agriculture and financial services that were unrelated to USTR's Section 301 concerns. Some saw that this focus, together with the purchasing deal, allowed the PRC to avoid addressing core U.S. Section 301 concerns about PRC industrial and technology practices. In agriculture, the PRC committed to expand U.S. access to China's market in rice, beef, pork, and poultry, while leaving some technical issues to future talks. In financial services, China agreed to reduce some foreign equity limits, and licensed a few U.S. firms to operate in China. The PRC committed to review applications to operate in China from Mastercard, Visa, and American Express, but did not commit to licensing them to operate. China also still required foreign firms to joint venture with PRC firms in China's credit card market, which is controlled by a state monopoly, China UnionPay.

Subsequent Section 301 Actions

In May 2024, the USTR issued the results of its review of tariffs imposed on China under its 2018 determination. (Section 301 requires a review of U.S. tariffs at the four-year mark.) It extended most tariffs and proposed new tariffs of between 25% to 100% on some PRC goods (e.g., EVs and EV batteries, medical products, semiconductors, ship-to-shore cranes, solar cells, and steel and aluminum items). The USTR also initiated a Section 301 investigation in late 2024 on PRC semiconductor policies and practices and determined in January 2025 that PRC shipping and shipbuilding practices are "actionable" under Section 301.

Other Tariff Actions

In February 2025, President Trump announced a 10% tariff on all U.S. imports from China and withdrew *de minimis* treatment (an exemption of tariffs, fees, and taxes for goods valued at $800 or less), after declaring the PRC had not taken decisive actions to address China's role in fentanyl and synthetic opioids trade. The PRC retaliated with 10%-15% tariffs on U.S. agricultural machinery, autos, coal, and liquefied natural gas; an investigation into U.S. Google; and export controls on some chemical elements.

Issues for Congress

As it debates options to counter persistent PRC statist economic practices the USTR raised in 2018, Congress might assess the use of Section 301 to date and negotiation and implementation of the *Phase One* deal. Some Members have pressed for eliminating or reducing tariffs to provide relief for U.S. consumers and firms and stem inflation. Other Members argue that tariffs should be sustained or raised as a point of U.S. leverage to address PRC practices of concern and to protect the U.S. market from subsidized PRC exports. Issues Congress might consider include

- Given the limited commitments U.S. officials secured through *Phase One*, what might Congress expect or require in any subsequent talks with China? Does a focus on PRC talks take U.S. attention and resources away from efforts to use U.S. trade tools and take joint actions with other countries to counter PRC practices?
- Should the USTR enforce *Phase One* provisions, including its dispute process, to challenge PRC policies that violate the agreement? Should the USTR use Section 301 to address other PRC practices such as industrial subsidies? In addition to tariffs, what other tools might be deployed to counter PRC practices?
- What role have tariffs played in U.S. efforts to diversify supply chains away from China and counter PRC industrial policies? How might Trump Administration proposals to impose tariffs on other trading partners (e.g., Canada and Mexico) affect such efforts?
- The USTR proposed but never enacted tariffs on consumer electronics from China under Section 301. How might the February 2025 10% U.S. tariff on all PRC goods, including consumer electronics, affect China-based technology supply chains?

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