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The White House Needs Better Guidance on Its New China Trade Policy

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Last week, President Donald Trump signed a memorandum directing executive agencies to target China through a series of punitive import and investment measures. The Administration will attempt to punish China for its "unfair trade practices" in the following three ways: (1) litigation of Chinese forced technology transfers through the World Trade Organization (WTO); (2) further restriction of Chinese investment in the U.S. through the Department of Treasury; and (3) tariffs of 25 percent on $50 billion to $60 billion of Chinese imports.

The Administration's approach represents a combination of good policies that will minimize harm to American businesses, farmers, workers, and families, as well as policies with good intentions that could have serious negative consequences. Following this announcement, the White House should continue to fine tune its policies toward China and work with Congress to ensure that all appropriate branches of government are included in the process.

WTO Consultation

America's track record at the WTO is nearly perfect. Since 2004, the U.S. has won 100 percent of the cases it has litigated at the WTO against China.[1] In these situations, China has complied with dispute outcomes in all cases but one, where China only partially complied.[2] In short, the WTO process works for America, and the Trump Administration should continue to pursue disputes as needed.

The President's memorandum directed the Office of the United States Trade Representative (USTR) to file a consultation request with the WTO regarding "China's discriminatory licensing practices."[3] Following this directive, the USTR filed a request alleging Chinese violation of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The USTR states that "China deprives foreign intellectual property rights holders of the ability to protect their intellectual property rights in China as well as freely negotiate market-based terms in licensing and other technology-related contracts."[4]

The United States and China will first undergo a consultation process on the issue put forward by the USTR. If an agreement cannot be reached, the dispute-resolution process could take up to a year.[5] This could be a long process for the White House, but history shows that when the proper WTO channels are utilized, China modifies its behavior.

Investment Screening

President Trump has asked the Department of the Treasury to propose ways in which it can further block Chinese investments in U.S. technologies. For the past year, Congress has been working to reform the way foreign investment in the U.S. is reviewed for national security concerns. Investments that threaten national security from countries that do not have a defense or investment security agree-

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ment with the U.S. would come under such review. These efforts, led by Senator John Cornyn (R–TX) and Representative Robert Pittenger (R–NC), would already increase scrutiny for investments coming from China and Russia.

While the U.S. has generally supported the rise of China's economy, and emphasized that Chinese economic policy must adhere to global standards for trade and investment, the Administration would be unlikely to welcome a Chinese economy that outperforms the American economy and technology leadership.

Recently, the President blocked any potential bid by Singapore-based tech company Broadcom for U.S. tech company Qualcomm.[6] While there were concerns for national security that could have blocked any potential acquisition, the U.S. interagency body in charge of reviewing the transaction and White House noted that it was China's rise in the area of 5G communications development that was a major concern for the block—even though no Chinese company was a part of the Broadcom-Qualcomm deal.[7]

Historically, the U.S. has maintained a focus on promoting foreign investment, while raising some concerns for national security. More recent efforts to screen investment on the basis of economic security have diverged from the free-market principles that should be driving policy.[8] The Treasury directives in the recent memorandum may side-step the important reforms Congress has been working on, and bleed into considering factors of economic security. The U.S. government should not be in the business of deciding which industries are in need of economic security.

Trade Restrictions

While the first two strategies against China are somewhat in the correct direction, tariffs on Chinese imports will only harm American businesses, farmers, workers, and families. The Administration has said that the price of inaction with China outweighs the price of action, but it should not be the policy of the government to impose tariffs knowing that they will inflict harm on the forgotten men and women of America.

History shows that tariffs simply increase the price of imported goods, forcing American businesses and consumers to pay more than they would otherwise pay.[9] Additionally, tariffs often result in retaliation by trading partners, with U.S. farmers as the usual victims. China has already started investigations to retaliate against U.S. sorghum and soybean exports, which were valued at $1.1 billion and $14 billion in 2017, respectively.[10]

1 Simon Lester and Huan Zhu, "China's Response to WTO Complaints Filed Against It," Cato Institute, March 2018, https://object.cato.org/sites/cato.org/files/wp-content/uploads/china_wto_cases_summary.pdf (accessed March 23, 2018).

2 Ibid.

3 The White House, "Presidential Memorandum on the Actions by the United States Related to the Section 301 Investigation," March 22, 2018, https://www.whitehouse.gov/presidential-actions/presidential-memorandum-actions-united-states-related-section-301-investigation/ (accessed March 23, 2018).

4 "USTR Requests WTO Consultations with China Over Alleged 'Unfair' Technology Practices," *World Trade Online*, March 23, 2018, https://insidetrade.com/sites/insidetrade.com/files/documents/2018/mar/wto-03232018-cons.pdf (accessed March 23, 2018).

5 World Trade Organization, "Understanding the WTO: Settling Disputes," https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm (accessed March 23, 2018).

6 The White House, Executive Order, "Presidential Order Regarding the Proposed Takeover of Qualcomm Incorporated by Broadcom Limited," March 12, 2018, https://www.whitehouse.gov/presidential-actions/presidential-order-regarding-proposed-takeover-qualcomm-incorporated-broadcom-limited/ (accessed March 23, 2018).

7 Kate O'Keeffe, "Trump Orders Broadcom to Cease Attempt to Buy Qualcomm," *The Wall Street Journal*, March 13, 2018, https://www.wsj.com/articles/in-letter-cfius-suggests-it-may-soon-recommend-against-broadcom-bid-for-qualcomm-1520869867 (accessed March 23, 2018).

8 Riley Walters, "Reform Proposals to the Committee on Foreign Investment in the United States," Heritage Foundation *Issue Brief* No. 4753, August 15, 2017, https://www.heritage.org/international-economies/report/reform-proposals-the-committee-foreign-investment-the-united-states.

9 Tori K. Whiting, "Four Guidelines for the President When Considering Tariffs," Heritage Foundation *Issue Brief* No. 4811, January 22, 2018, https://www.heritage.org/trade/report/four-guidelines-the-president-when-considering-tariffs.

10 Dominique Patton, "China Launches Dumping Probe into U.S. Sorghum Imports Amid Rising Trade Tensions," Reuters, February 4, 2018, https://www.reuters.com/article/us-china-us-sorghum/china-launches-dumping-probe-into-u-s-sorghum-imports-amid-rising-trade-tension-idUSKBN1FO06C (accessed March 23, 2018), and Irina Ivanova, "Trade War with China Could Hurt These U.S. Businesses Most," CBS News *Moneywatch*, March 23, 2018, https://www.cbsnews.com/news/trade-war-with-china-u-s-businesses-most-at-risk/ (accessed March 23, 2018).

Over the next two months or so, the USTR will be tasked with selecting the import categories that will be subject to new tariffs, conducting a period for comments by the public on the proposed tariffs, holding a public hearing on the proposed tariffs, and finally administering the tariff decisions.[11]

Throughout this process, the USTR should be required to conduct and publicize cost-benefit analyses of any proposed tariffs. Congress should hold the USTR accountable throughout this process by requiring results of any economic analysis to be reported to the House Committee on Ways and Means and the Senate Finance Committee.

Recommendations

The Administration is heading in the correct direction by seeking solutions within the international community and organizations set up to address trade disputes. However, pressuring trading partners to the negotiating table with broad-based tariffs on imports like steel and aluminum tariffs is a poor strategy to spur action. These sort of punitive measures force trading partners to be on defense, rather than focusing on organizing their offenses together with America against China.

The Administration should:

- **File disputes against Chinese trade policies through the WTO.** Seeking resolution, rather than pursuing unilateral tariffs, will minimize harm for Americans.
- **Focus on engaging with allies in a constructive way to combat Chinese trade policies.** Enforcement of the rule of law, not broad tariffs on trading partners, should be the goal of the Administration.
- **Support Congress's role to modernize the Committee on Foreign Investment in the United States review process.** The government should encourage investment and innovation in the U.S. while maintaining national security.

Conclusion

Congress should require government agencies to conduct full economic analyses on potential tariffs. The economic impact of tariffs against China, or any other country, should be fully examined, and findings should be reported to the committees of jurisdiction.

Moving forward, the U.S. should engage with its closest trading partners, such as the European Union, Canada, Mexico, and South Korea, in constructive ways to develop a coalition of countries combatting unfair actions by China. This sort of organized, combined action will put the necessary pressure on China to institute changes to its policies, while minimizing impact on the American economy.

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11 Office of the United States Trade Representative, "Section 301 Factsheet," March 2018, https://ustr.gov/sites/default/files/USTR%20301%20Fact%20Sheet.pdf (accessed March 23, 2018).