International Trade Daily™

June 28, 2018

Bloomberg BNA

Trade Balance

China Could Turn to Non-Tariff Barriers in Trade Spat with U.S.

BNA Snapshot

- Relaxed enforcement of IP protections, fewer Chinese tourists, boycotts among potential responses
- Trump's less aggressive stance on Chinese investment unlikely to affect Beijing's vow to retaliate against U.S. tariffs

By Dave Sebastian

U.S. companies operating in China and importers of U.S. products could face non-tariff measures from Beijing in response to tariffs on Chinese goods, analysts told Bloomberg Law.

China's retaliatory measures could range from staging boycotts of American products to applying more regulatory scrutiny to U.S. operations, Jake Parker, vice president of China operations at the U.S.-China Business Council, told Bloomberg Law June 27.

The council's members, made up of U.S. companies with operations in China, have reported increased customs inspections, such as more frequent spot checks at automobile companies based in China and U.S. fruit exports that were quarantined for a week—an unprecedented measure, Parker said.

The U.S. is due to impose tariffs on $34 billion of Chinese imports staring July 6, and President Donald Trump has threatened to impose levies on another $200 billion of Chinese goods.

China shot back that it would impose $34 billion worth of tariffs on U.S. goods on July 6.

But Beijing may have to turn to non-tariff barriers as it runs out of U.S. goods to impose additional tariffs on, analysts said.

Reviews More Politicized

China's intensified reviews, which also looked into violations in labor, antitrust, and environmental laws, are “becoming more politicized,” Parker said.

Companies “have indicated that there's concern that the reviews are not being done in a science-based manner,” Parker said.

Still, Trump on June 27 took a less aggressive approach than expected in vetting Chinese investment in the U.S. The administration decided to not to act on a law that would grant the president broad authority to curb Chinese investment. Trump instead called for Congress to strengthen the Committee on Foreign Investment in the U.S., which screens inward foreign investment, in preventing companies from violating U.S. intellectual property laws.

Two Different Issues

The White House announcement is unlikely to change the possibility of China retaliating against U.S. tariffs, as the Chinese M inistry of Commerce has pledged it would retaliate against the tariffs with the “same size and force,” William Reinsch, a trade analyst at the Center for Strategic and International Studies, told Bloomberg Law June 27.

“The tariffs is separate from the investment issues,” Reinsch said.

The Chinese Ministry of Commerce on June 19 said it might respond to the U.S. imposing tariffs on Chinese goods by “adopting comprehensive measures combining quantity and quality,” according to China's official Xinhua News Agency.

Chinese President Xi Jinping on June 22 met with executives of multinational companies, including such American heavyweights as United Parcel Service, Pfizer Inc., and Goldman Sachs Group Inc., according to Xinhua, China's state news agency.

Xi decried “trade protectionism, isolationism, and populism,” and told business leaders that China is open to “reform and opening up,” Xinhua reported.

It is unclear whether China's central government, on top of imposing $34 billion worth of counter-tariffs on U.S. goods, will target China-based U.S. businesses specifically, Parker said. But that doesn't cancel out chances of local governments pursuing their own retaliatory actions, which Parker said “would be well-received at other levels of China's government.”

Erecting Barriers

Additional barriers to investment in China could disrupt U.S. services such as banking and finance, which want to enter the Chinese market, Mary Lovely, a researcher who studies Chinese economic development at the Peterson Institute for International Economics, told Bloomberg Law.

China “can direct investment away from advantageous locations,” Lovely said. “They can delay approval for bank branching. They'll promise American credit card companies to operate in China—they could slow that down.”

A World Trade Organization panel ruled in 2012 that, per General Agreement on Trade in Services terms, China doesn't have to accommodate electronic payment services from abroad.

The U.S. also could see a drop in Chinese tourists if anti-American sentiment flares. That would be similar to what South Korea experienced following its deployment of a U.S. missile defense system, which China saw as a threat, Phil Levy, a senior fellow on the global economy at the Chicago Council on Global Affairs, told Bloomberg Law. Chinese tourists cashed in almost $35 billion to fly to and spend money in the U.S. in 2017, contributing 14 percent of American tourism receipts, according to Bureau of Economic Analysis data.

IP Bugaboo

There is also room for China to relax intellectual property laws—to the chagrin of U.S. technology companies, Rod Hunter, an international trade lawyer at Baker McKenzie, told Bloomberg Law.

China has made “considerable progress” over the last two decades in enforcing intellectual property laws, but “there are opportunities, if the government were so minded,” to delay or grant patents, said Hunter, who handled national security reviews for the Committee on Foreign Investment in the U.S. under the administration of President George W. Bush.

The Trump administration has been citing U.S. trade deficit in goods in imposing additional tariffs against China. The U.S. logged a near-$376 billion merchandise deficit with China in 2017, while America boasted a $40 billion surplus in services trade, according to Bureau of Economic Analysis data.

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