

New Trump Tariffs Put US-China Trade Effort On The Rocks

By Alex Lawson

Law360 (May 6, 2019, 7:37 PM EDT) -- After weeks of vaguely optimistic assessments of his trade talks with China, President Donald Trump unloaded a bombshell tariff threat against Beijing that has thrown the negotiations into upheaval as a Chinese delegation prepares to visit for another round of meetings this week.

Trump took to his Twitter account on Sunday to say that he will raise the existing 10% tariff on \$200 billion worth of Chinese goods to 25% on Friday. U.S. Trade Representative Robert Lighthizer fleshed out that threat Monday, saying that China was beginning to renege on promises it had made at the negotiating table.

“We felt we were on track to get somewhere. Over the course of last week we have seen an erosion of commitments by China,” the top U.S. trade official said, adding that he was preparing a Federal Register notice that would put the duties into effect by the end of the week.

Along with the spike in the \$200 billion duty tranche, Trump also said he would “shortly” impose a new 25% duty on the roughly \$325 billion worth of goods that have not yet been caught up in the conflict.

Timing is Everything

The bombshell tariff threats landed mere days ahead of a Chinese delegation’s slated arrival in Washington, D.C., for another negotiating session that Trump now apparently hopes will be the last between the two quarreling powerhouses.

“He’s signaling to China that they don’t have weeks and weeks to do this, they need to come forward with something that’s going to be pretty close to a final deal,” Crowell & Moring LLP attorney and former Deputy U.S. Trade Representative Robert Holleyman told Law360.

The Chinese government was mostly mum in the immediate wake of Trump’s threat. On Monday, Foreign Ministry spokesman Geng Shuang said he hoped the two sides would “meet each other halfway” and that the Beijing delegation was still preparing for its visit to Washington.

If the meeting is still on, the biggest open question may be whether Vice Premier Liu He attends, as the White House said he would last week.

“Watch for whether or not Liu He comes. If for some reason he doesn’t come, then I think it’s in a much dicier environment,” Holleyman said.

A Long-Simmering Threat

What began as a U.S. rebuke of China’s intellectual property and technology transfer rules soon ballooned into a tit-for-tat tariff brawl that swallowed up more than \$350 billion worth of U.S.-China trade.

The Trump administration’s first round of duties against China covered \$50 billion worth of goods and focused primarily on industrial components. The stakes were raised considerably when the \$200 billion tranche took effect, reaching into consumer products like furniture and home electronics.

But the White House kept that tariff level at 10%, as opposed to the 25% levy applied to the initial round of products. It has held the potential for a 15-percentage-point increase over China’s head as the two sides have attempted to negotiate a resolution. Two different increase deadlines were put off until this week’s surprise announcement, which now puts a fleet of U.S. importers on high alert.

“It does put on the radar of anyone with products that are going to be captured within that list that it’s time to pay attention to what they have that could be at risk and the assumption is there’s going to be an exclusion process if those tariffs take hold,” Baker Donelson attorney Alan F. Enslin said.

Suddenly Fraught Negotiations

The Trump administration has been focusing much of its effort on changing China’s IP regime and its rules requiring companies to hand over sensitive technology to do business, but the talks have also focused on thorny issues such as cybertheft, agriculture, services, nontariff barriers and currency manipulation.

For weeks, Trump and the USTR have spoken only generally about the various meetings between the two sides, often indicating that the effort was trending in the right direction.

From the start, Lighthizer and Trump have said the main priority is not just getting new trade concessions from China, but ensuring that those obligations are actually met. Recent moves from Beijing in the opposite direction were apparently enough for the administration to flex its muscle.

The issue now is whether making such an aggressive move midstream will sink the talks. Sandler Travis & Rosenberg PA’s Nicole Bivens Collinson said China may not take kindly to the strong-arming.

“There’s the issue of saving face,” she explained. “Imagine if the Chinese come over now and they reach some kind of deal, and the president starts crowing about it and then it appears that President Xi Jinping caved into bullying, you can’t do that.”

--Editing by Kelly Duncan.