ICAS Issue Primer
Topics in U.S.-China Relations

Previewing the Comprehensive Economic Dialogue

**Key Takeaways**

- The main purpose of the upcoming Comprehensive Economic Dialogue (CED) meeting is to: (a) take stock of the progress achieved on the **100-Day Action Plan** and (b) craft a **longer-term action plan** with a consistent cycle of negotiations and stocktaking.

  *As Commerce Secretary Wilbur Ross had noted at a conference in June, “we generally have two conference calls a day, one early in the morning our time and one late at night with the Chinese ... that’s five, six, seven days a week.” The two sides are deeply engaged in charting out a list of give-and-take deliverables by the time of upcoming Comprehensive Economic Dialogue.*

- Continuing focus of Comprehensive Economic Dialogue remains on **crafting a specific set of market access outcomes** that reduces the imbalance in U.S.-China trade relations. Widening the range and deepening the volume of U.S. agricultural exports to China remains the foremost priority area of interest. Other topics, including non-market access related trade irritants, are gradually being mainstreamed into the dialogue.

- **To the extent that China’s regulations serve as market access barriers**, be it sanitary and phytosanitary (SPS) standards in agriculture, intellectual property rights rules for pharmaceutical products, or barriers in services trade, the revision of these regulations are also an area of priority. Regulatory coherence and harmonization are otherwise beyond the purview of the CED (and will likely be taken up within the Joint Commission on Commerce and Trade discussions).

- At this time, a substantive exchange on **U.S. domestic trade remedies, in conjunction with the findings of the Section 232 investigation of steel imports as a national security threat**, is not foreseen. Down the line though, in future editions of the Comprehensive Economic Dialogue, the potential imposition of these remedies may emerge, both, as an agenda item and as a serious irritant within the dialogue.

- At this time, the **valuation of the RMB** (as an alleged export subsidy) is not a priority discussion topic – although it is not off-the-table either.

- At this time, the **Bilateral Investment Treaty (BIT) negotiations** are not on the agenda. But if concrete progress in implementing actions on a longer-term action plan is realized, aspects of the BIT discussions could be mainstreamed within the CED format.
100-Day Action Plan

At Mar-a-Lago, President Xi and President Trump established a Comprehensive Economic Dialogue and set in motion a 100-Day Action Plan of initial actions. The outcomes of this initial plan were due by July 16, 2017. Following is Status of Key Initial Actions in this regard:

- **Beef:** No later than July 16, China was to allow imports of U.S. beef on conditions consistent with international food safety and animal health standards and consistent with the 1999 U.S.-China Agricultural Cooperation Agreement. Following consultations with Beijing, on June 12, the Trump administration announced the finalization of a food safety protocol laying out standards that U.S. producers will have to meet in order to export beef products to China. China had lifted its ban on U.S. beef in the fall of 2016 but technical terms between the two countries had not been worked out until now. On June 21, on the first day of the U.S.-China Diplomatic and Security Dialogue, the first shipment of U.S. beef in 14 years arrived in Shanghai. China, however, is not eligible to ship cooked poultry products to the United States from birds slaughtered in the PRC. On June 16, the U.S. Department of Agriculture’s Food and Safety Inspection Service (FSIS) published a proposed rule which will amend America’s poultry products inspection regulations to list China as eligible to export cooked chicken products made from birds slaughtered in the PRC. The public comment period is open until August 15, 2017 and, at this time, there is no deadline as yet for a final decision. Separately, on June 16, FSIS published another proposed rule which determined that China’s poultry slaughter inspection system is equivalent to that of the United States -- paving the potential way for future China-origin cooked poultry exports.

- **Dairy:** On June 15, the U.S. Food and Drug Administration (FDA) and China’s Certification and Accreditation Administration signed a Memorandum of Understanding (MoU) that is expected to increase exports of milk, cheese, infant formula and other dairy products to China. The MOU formally outlines a process by which third-party certification bodies, on the FDA’s behalf, will audit U.S. dairy facilities to make sure they resolved at the earliest and the U.S. was to publish a proposed rule by July 16 in this regard. Currently, China is eligible to export processed poultry products to the United States if the products come from birds slaughtered in the United States or in other countries eligible to slaughter and export poultry to the United States. China, however, is not eligible to ship cooked poultry products to the United States from birds slaughtered in the PRC.

- **Poultry:** As per the 100-Day Plan, outstanding issues related to import of China-origin cooked poultry were to be
comply with Chinese food safety requirements. The FDA will issue certificates to U.S. dairy facilities after reviewing these third-party audits, making them eligible to export to China. It is worth noting that dairy was not listed as a deliverable in the initial 100-Day Action Plan.

- **U.S. Biotechnology Product Applications:** As per the 100-Day Plan, China’s National Biosafety Committee (NBC) was to provide an assessment of eight pending U.S. biotechnology product applications by end-May regarding their safety of intended use. If deemed safe, China was to grant certificates within 20 days. Pending applications in the pipeline to commercialize these genetically modified seeds involve agricultural giants Dow AgroSciences Syngenta, DuPont Pioneer and Monsanto. On June 14, China’s National Biosafety Committee (NBC) approved two of eight pending applications of genetically modified crops (Dow’s Enlist corn and Monsanto Vistive Gold Soybeans) for import. Decisions on the other safety assessments, or reasons for denial, are awaited.

- **Cross-Border Clearing:** As per point 6 of the 100 Day Plan, the United States was to extend the current “no-action relief” to Shanghai Clearing House (SHCH) for an additional 6 months, with extensions amounting to three years if appropriate. The “no-action relief” was first instituted by the Obama administration so that no action would be taken against SHCH for failing to register as a derivatives clearing organization, as required by the U.S. Commodity Exchange Act. On May 16, the U.S. Commodity Futures Trading Commission (CFTC) extended the “no-action relief” for an additional 6-month period. The negotiation of a Memorandum of Understanding (MoU) between CFTC and the People's Bank of China (PBoC) to cooperate and exchange information related to the oversight of cross-border clearing organizations is not expected to be completed by the July 16 deadline.
Below is the full text of the United States’ and China’s 100-Day Plan obligations according to a May 11, 2017 statement by the Commerce Department:

**Initial Actions of the U.S.-China Economic Cooperation 100-Day Plan**

1. Following one more round of technical consultations between the United States and China, China is to allow imports of U.S. beef on conditions consistent with international food safety and animal health standards and consistent with the 1999 Agricultural Cooperation Agreement, beginning as soon as possible but no later than July 16, 2017.

2. The United States and China are to resolve outstanding issues for the import of China origin cooked poultry to the United States as soon as possible, and after reaching consensus, the United States is to publish a proposed rule by July 16, 2017, at the latest, with the United States realizing China poultry exports as soon as possible.

3. China’s National Biosafety Committee (NBC) is to hold a meeting by the end of May 2017, to conduct science-based evaluations of all eight pending U.S. biotechnology product applications to assess the safety of the products for their intended use. No additional information unrelated to safety assessment for intended use is to be requested of the applicants. For any product that does not pass the safety evaluation at the NBC meeting held in May 2017, the NBC is to operate with transparency by providing in writing to the applicants a complete list of requested information necessary to finalize the safety assessment for the products’ intended use. The NBC is to hold meetings as frequently and as soon as possible after an application is resubmitted in order to finalize reviews of remaining applications without undue delay. For the products that pass the safety evaluations of the NBC, China is to grant certificates within 20 working days in accordance with Administrative License Law of the People’s Republic of China.

4. The United States welcomes China, as well as any of our trading partners, to receive imports of LNG from the United States. The United States treats China no less favorably than other non-FTA trade partners with regard to LNG export authorizations. Companies from China may proceed at any time to negotiate all types of contractual arrangement with U.S. LNG exporters, including long-term contracts, subject to the commercial considerations of the parties. As of April 25, 2017, the U.S. Department of Energy had authorized 19.2 billion cubic feet per day of natural gas exports to non-FTA countries.

5. By July 16, 2017, China is to allow wholly foreign-owned financial services firms in China to provide credit rating services, and to begin the licensing process for credit investigation.

6. The U.S. Commodity Futures Trading Commission (CFTC) intends to extend by July 16, 2017 the current no-action relief to Shanghai Clearing House for six months, with further extensions amounting to up to three years, if appropriate and consistent with the conditions set forth in the no-action relief. The People’s Bank of China and the CFTC are to work towards a Memorandum of Understanding (MOU) concerning the cooperation and the exchange of information related to the oversight of cross-border clearing organizations.

7. By July 16, 2017, China is to issue any further necessary guidelines and allow wholly U.S.-owned suppliers of electronic payment services (EPS) to begin the licensing process. This should lead to full and prompt market access. China is to continue to allow Chinese banks to issue dual brand-dual currency bankcards that allow U.S. EPS suppliers to process foreign currency payment card transactions.

8. The applicable U.S. federal regulatory authorities remain committed to apply in the United States the same bank prudential supervisory and regulatory standards to Chinese banking institutions as to other foreign banking institutions, in like circumstances and in accordance with U.S. law.

9. China is to issue both bond underwriting and settlement licenses to two qualified U.S. financial institutions by July 16, 2017.

10. The United States recognizes the importance of China’s One Belt and One Road initiative and is to send delegates to attend the Belt and Road Forum in Beijing May 14-15.
China Electronic Payments: By July 16, China was to issue further necessary guidelines on how wholly U.S.-owned suppliers of electronic payments services (EPS) could begin the licensing process. The People’s Bank of China (PBoC) recently issued these guidelines, which lays out a two-step application process with a national security review process thrown-in. It is anticipated that full access for fully U.S.-owned suppliers of electronic payments services (primarily Visa and Mastercard) is still 12-18 months away. The U.S. market access demand on electronic payment services stems from a WTO Dispute Settlement Body case that it won against China in 2012, and which China is being asked to implement.

Aside from these, China’s other 100-Day Action Plan obligations (due by July 16) include:

- Allowing fully foreign-owned U.S. financial services firms in China to provide credit rating services
- Issuing bond underwriting and settlement licenses to two qualified U.S. financial institutions.

Follow-on Action Plan

Both the key American interlocutors within the Comprehensive Economic Dialogue format, Treasury Secretary Steven Mnuchin and Commerce Secretary Wilbur Ross, have conveyed that the next phase of the U.S.-China meetings will center on a broader set of market access prioritizations, most likely over a longer term, with the specific intent of reducing the U.S. bilateral trade deficit with China. Widening the range and deepening the volume of U.S. agricultural exports to China, such as expanded pork and soybean exports, remains the foremost priority area of interest. To the extent that China’s regulations serve as market access barriers, be it technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) standards in agriculture, intellectual property rights rules for pharmaceutical products, or barriers in services trade, the revision of these regulations, too, are to be prioritized.

Both sides are in continuous and confidential discussions on this subsequent set of market access prioritizations. As Secretary Ross recently noted “We generally have two conference calls a day, one early in the morning our time and one late at night with the Chinese. That’s five, six, seven days a week.” An illustrative list of the key ‘asks’ from the American perspective across various issue areas could include:

- Eliminate questionable technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures, including overly restrictive pathogen and residue requirements for raw meat and poultry, that limit U.S. poultry and pork products exports to China. Specifically, with regard to poultry, China should accept exports from regions in the U.S. unaffected by the avian flu outbreak. Regarding beef imports, China should widen the range of U.S. beef or beef products that remain ineligible for export to China despite the recent opening of its
- Remove export restraints on various forms of 11 raw materials, including antimony, chromium, cobalt, copper, graphite, indium, lead, magnesium, talc, tantalum and tin.

- Liberalize banking regulations to enable U.S. banks to participate in the domestic currency business in China, particularly insofar as servicing Chinese retail customers.

- Liberalize the restrictions on internet-enabled payment services by granting additional licenses to U.S. non-bank suppliers of online payment services.

- Liberalize U.S. companies’ access to the document segment of China’s domestic express delivery market and provide non-discriminatory treatment in awarding U.S. companies business permits for access to the package segment of China’s domestic express delivery market.

- Improve the administration of China’s Value Added Taxes (VAT) rebate regime by eliminating unpredictable variability in rates, particularly for downstream products where China is a leading world producer or exporter - such as products made by the steel, aluminum and soda ash industries.

- Review the existing prohibition on the importation of remanufactured products as well as imports of remanufacturing process inputs, which currently are prevented from being imported into China’s customs territory, except from the special economic zones.

- Fulfill the commitments of its February 2012 Memorandum of Understanding (MoU) to open-up film distribution opportunities for imported films, particularly those films that are distributed in China on a flat-fee basis rather than a revenue-sharing basis;

- Revise China’s Patent Examination Guidelines to permit post-filing of supplemental data supporting pharmaceutical patent applications.

- Improve the regulation of the manufacture of active pharmaceutical ingredients to prevent their use in counterfeit and sub-standard medications. To this end, amend the Drug Administration Law to require regulatory control of the manufacturers of bulk chemicals that can be used as active pharmaceutical ingredients.

Aside from the American ‘asks’, it is likely that China’s domestic agricultural subsidies, as a trade distortion, will also be up for discussion. The U.S. has accused Beijing of exceeding its allowable subsidy limits for rice, wheat and corn and has filed a case in this regard at the World Trade Organization. China’s subsidies to electric battery production is also expected to figure as a discussion topic.
On-Going and Completed Trump Administration-initiated Domestic Trade Policy Investigations

There are a number of trade-related reviews and investigations that the Trump administration has initiated. The ones that involve China in some form or shape are:

- **Investigation into Whether Steel and Aluminum Imports Impair National Security**

On April 20, 2017, the Trump administration kicked off a sweeping investigation to determine whether steel imports and aluminum imports threaten American security. The investigations were to be conducted under Section 232 of the Trade Expansion Act, which means that the investigations were to be completed within a 270-day timeline. However, at this time (i.e. by mid-July 2017 rather than the January 2018 timeline), the Section 232 steel investigation has already been completed. Hectic negotiations are currently underway within a still somewhat-divided administration to arrive at a unified view on a proposed menu of remedies that President Trump could sign-off on, as per the timeline described below.

Under the Section 232 statute, if Commerce Secretary Wilbur Ross determines that steel imports “threaten to impair the national security,” the president then has 90 days to determine if he concurs -- and to take action to “adjust the imports of an article and its derivatives” or make non-trade-related moves. Such actions must be taken no later than 15 days after the president determines a response is warranted. Within 30 days of the president’s determination of whether to act, the president must submit a written statement to Congress outlining the reasons behind the decision.

At this time, the Section 232 steel investigation has been completed and a set of options, i.e. proposed trade remedies, is expected to be formally placed on the president’s desk during the week starting July 17. The options under discussion, which range from punitive broad-brush measures to narrowly tailored options, are:

- A stiff across-the-board tariff that would apply to any steel imports that fall in the scope of the investigation. The tariff would also apply to all existing anti-dumping and countervailing duty orders.

- A tariff-rate quota that would hit imports with a tariff once they exceed a certain volume. There is also discussion of an alternative that would apply tariffs if imports dip below a certain price.

- A straight quota that would apply strict limits on (a) imports of certain types of steel products, and (b) from certain countries - while by-and-large exempting other countries. This would be done by way of exclusions for specific steel products from specific steel-exporting countries.

At this time, the understanding is that Commerce Secretary Ross, who is the lead authority in making this determination, is leaning towards recommending an approach that leans towards the more-tailored end of the spectrum. The issue of the imposition of Section
232 steel remedies will likely be broached with Premier Wang Yang at the Comprehensive Economic Dialogue but it is far from certain how substantive that discussion will be. The Trump administration is reaching a unified view on this topic but is not there as yet fully.

When Trump concurs that steel imports “threaten to impair the national security” and imposes the remedies measures, it will be challenged - and most likely defeated - at the WTO’s Dispute Settlement Body. When the George W. Bush administration had imposed a (more conventional) Section 201 safeguard measure on a wide range of steel products in 2002, it was challenged and defeated in the WTO.

Also, the last time that an investigation was conducted under Section 232 of the Trade Expansion Act of 1962 (also in 2001, related to iron-ore and semi-finished steel product imports), the Bush administration had held two public hearings and took eight months to complete that inquiry. It also sent surveys to about 175 U.S. iron ore and semi-finished steel producers and potential consumers, and conducted site visits at places associated with the production, shipment, and consumption of iron ore and semi-finished steel in California, Michigan and Wisconsin. The Trump administration, by contrast, has held one hearing in the current investigation and has completed the probe in less than three months.

On the aluminum 232, views within the administration and among aluminum industry executives, unlike their steel counterparts, is more mixed. A majority do not believe that U.S. imports of aluminum are a threat to national security. At this time, the Commerce Department’s determination is far from done. The likelihood, on balance, is that aluminum imports will not be deemed to be a threat to national security.

The great irony in the cases of both steel and aluminum is that China is only a marginal exporter of these products to the U.S. market. China provides only 3 percent of all U.S. steel imports, and of the top 10 steel exporters to the U.S., half are countries with which the United States has mutual defense agreements. Regarding aluminum, China accounts for only 8.5 percent of the America’s foreign supply and its market share in 2016 was slightly down from 2015. Meantime imports from Canada account for more than half of U.S. foreign supply. If the intent of the 232 investigations is to punish China for its steel and aluminum domestic overcapacity, the Trump administration, if it goes down the tariff barrier route, could potentially end up punishing several friendly countries before it starts impacting China’s share of the U.S. market.

- Executive Order Initiating Review of Trade Agreement Violations and Abuses

On April 29, 2017, the Trump administration initiated a 180-day performance review of all existing international trade and investment agreements, with the intention to take lawful action to address violations or abuses of trade law. There are 164 members of the WTO, 20 U.S. free trade agreement partners and 42 bilateral U.S. investment treaties. The
A performance review will carefully examine each of the governing agreements. On the surface, China does not seem to be an intended target of the review. China, however, could end up as a casualty. The review will examine the U.S. relationship with the WTO and the WTO Dispute Settlement System. Both the concept of most favored nation, (which is the basis of trade relations in the multilateral system) as well as the consistency of awards by the WTO's dispute settlement system are to be examined. China is a beneficiary of the system (and MFN concept) and consistently wins anti-dumping and countervailing duty cases against the United States at the WTO's dispute settlement system. The review could offer a protectionist reason for United States not to comply with dispute settlement cases that it loses, including those against China.

This Executive Order comes against a toughening background of trade remedies and enforcement-related action by the Trump administration over the past three months. These include:

- Stated willingness of Commerce Secretary Wilbur Ross to ‘self-initiate’ anti-dumping cases much more frequently against foreign producers. Since 1980, the Commerce Department has self-initiated just three trade remedy cases.

- The administration’s budget proposal recommending addition of 29 full-time staff to the Commerce Department’s enforcement and compliance division to administer trade enforcement actions – even as 157 other trade-related positions are eliminated within the department. The enforcement and compliance division would be the only division safe from job cut in Trump’s budget request.

- A growing list of USTR officials who have had a long history of representing the interests of the U.S. steel industry. These include USTR Robert Lighthizer, USTR General Counsel Stephen Vaughn and USTR chief of staff Jamieson Greer. Wilbur Ross too has long-standing links to the industry. Indeed in 2002, Ross correctly betted on and exploited President Bush’s Section 201 safeguard measure on steel to purchase uncompetitive mills, which he then turned around for a profit with the cooperation of the industry’s powerful unions.

- A push within the administration to remove Chapter 19 of the original NAFTA agreement in the impending renegotiation of the agreement with Canada and Mexico. Chapter 19 had created a mechanism to adjudicate and resolve
disputes over anti-dumping and countervailing duty measures.

It is worth noting that this investigation is currently not a topic of discussions between the United States and China within the framework of the Comprehensive Economic Dialogue. But the repercussions stemming from these measures, which will take some time to percolate through the U.S. system and which might even be subject to WTO dispute settlement, has the potential to disrupt the bilateral trade relationship. These effects could start to be felt by late-2017 and both sides should brace for their effects.

- Executive Order Initiating Review of the Causes/Contributors to Trade Deficits in Major Bilateral Relationships

The Executive Order was issued on March 31 and the review was completed in late-June. The key purpose of the investigation was to understand the causes of the individual bilateral deficits and the linkages and implications of those deficits for unemployment outcomes in industrial sectors in the United States. The investigation assessed whether a bilateral trade deficit was caused by one of seven reasons: cheating or other inappropriate behavior; free trade agreements that have not produced their forecasted benefits; a lack of enforcement by the United States; policy decisions made by previous U.S. administrations; currency misalignment in relation to the U.S. dollar; constraints put in place by the WTO on U.S. behavior, particularly in the area of tax policy; systemic overcapacity in one or more industries; and asymmetrical trade barriers.

The report is currently under study and review at the White House. China is a key focus of the study, but given that these issues are being tackled bilaterally within the framework of the Comprehensive Economic Dialogue, the review’s findings vis-à-vis China is unclear. But the policy recommendations that are outlined in the review could become agenda items for future Comprehensive Economic Dialogue rounds.

U.S.-China and WTO Dispute Resolution Cases

Four new WTO cases were brought against China during President Obama's last year in office. They centered on Beijing's subsidy to producers of primary aluminum; tariff-rate quotas for rice, wheat and corn; the country’s domestic support for agricultural producers; and the export duties and other restrictions on the export of certain raw materials.

- In the raw materials case, USTR argues that China’s export duties and restraints on various forms of antimony, cobalt, copper, graphite, lead, magnesia, talc, tantalum and tin are inconsistent with its obligations under various provisions of the GATT 1994 and China’s WTO Accession Agreement.

- In the domestic support challenge, USTR argues that China’s market price support programs for agricultural commodities – notably, wheat, India rice, Japonica rice and corn – exceeded China’s internationally authorized and agreed levels. This excessive support creates price distortions and a tilted playing field for U.S. farmers’ access to the Chinese market.

- In the tariff-rate quotas (TRQ) case, USTR argues that China’s poorly defined criteria and unclear procedures for distributing TRQ allocations as well as
failure to announce quota allocation and reallocation, serve as a disguised trade barrier which leaves U.S. producers unsure and unable to benefit from available import opportunities.

- In the subsidy to producers of primary aluminum case, USTR argues that China provides subsidies to producers of primary aluminum that are inconsistent with its obligations under the WTO’s Subsidies and Countervailing Measures (SCM) Agreement.

The Trump administration, for its part, has not initiated any WTO Dispute Settlement Case against China, so far. And, in fact, the administration has questioned certain aspects of the Dispute Settlement Body’s authority and its judicial interpretations. In its March 2017 Trade Policy Agenda Report, USTR specifically notes:

... In other words, even if a WTO dispute settlement panel – or the WTO Appellate Body – rules against the United States, such a ruling does not automatically lead to a change in U.S. law or practice. Consistent with these important protections and applicable U.S. law, the Trump administration will aggressively defend American sovereignty over matters of trade policy.

... And, when the WTO adopts interpretations of WTO agreements that undermine the ability of the United States and other WTO Members to respond effectively to these real-world unfair trade practices with remedies expressly allowed under WTO rules, those interpretations undermine confidence in the trading system. None of these outcomes is in the interest of the United States or a healthy global economy. Accordingly, the Trump administration will act aggressively as needed to discourage this type of behavior – and encourage true market competition.

In addition to the new cases, the United States also continues to prosecute five outstanding cases against China at the WTO. Those active disputes include a challenge of China’s tax advantages for certain domestically produced aircraft; its subsidies for demonstration bases and common services platform programs; its anti-dumping/countervailing (AD/CVD) duties on U.S. broiler chicken products; non-fulfillment of obligations in the area of electronic payment services; and with regard to market access for books, movies and music.

These observations do not bode well for the multilateral rules-based trading and dispute settlement system – particularly, in the context of China’s own initiation of dispute settlement proceedings at the WTO against the United States and European Union in December 2016 over their failure to abide by China’s WTO Accession Protocol and revise their treatment of China as a
“non-market economy” in trade remedy cases. USTR Lighthizer has threateningly observed at a recent Congressional hearing that “a bad decision with respect to non-market economy status with China ... would be cataclysmic for the WTO.”

Given the Trump administration’s harsh views on trade remedies and enforcement-related measures, this case, without question, is one of the most serious litigation matters under way at the WTO.

On the other hand, the Comprehensive Economic Dialogue could provide a valuable forum to resolve some of the U.S.-China trade cases in ways that go some way towards satisfying America’s market access demands, while at the same time removing them from the WTO’s case docket. Just like issuing of guidelines by Beijing to allow U.S.-owned suppliers of electronic payment services to begin the licensing process was one of the 10 deliverables in the 100-Day Action Plan, so also the tariff-rate quota (TRQ) administration case and the export duties on raw materials case could be resolved on terms that are satisfactory to the United States, and which would qualitatively enhance the U.S.-China bilateral trade equation.

Currency Valuation

On the campaign trail, candidate Trump had promised that he would label China as a “currency manipulator” on his very first day in office. In the event, on April 14, 2017, the Trump administration released its first semi-annual report of the Foreign Exchange Policies of Major Trading Partners of the United States and China was not listed as a currency manipulator. No other major trading partner was listed either. China, along with 5 other countries, was however placed on a “Monitoring List” of major trading partners that merit close attention in terms of their currency practices. To be placed on the Monitoring List, a country must meet two of three criteria – a significant bilateral trade surplus with the United States; an overall material current account surplus; and evidence of persistent, one-sided intervention in foreign currency markets. In spite of meeting just one criterion, China was placed on the Monitoring List because its large bilateral trade surplus with the United States was deemed to “account for a disproportionate share of the overall U.S. trade deficit.” The next semi-annual report is due out in October. The currency issue is not expected to be a significant topic of conversation at the forthcoming meeting of the Comprehensive Economic Dialogue – although the issue has not been taken off-the-table either.

Investment-related Issues

The United States was China’s top destination for foreign direct investment in 2016 with $45.6 billion in completed acquisitions and greenfield investments. During the January to May 2017 period, the pace of inward investment registered a 100 percent increase. Further, from 2010 to 2016, Chinese investors were involved in providing financing roughly to the tune of $700 million for 51 artificial intelligence (AI) projects; $253 million for robotics start-ups; and $1.3 million in the area of augmented reality and virtual reality ventures. Rapid growth in Chinese foreign investment in these sensitive sectors, including semiconductors, and in the area of sensitive technologies, including artificial intelligence and machine learning, have raised anxieties within the U.S. political and defense establishment.
At this time, the Committee on Foreign Investment in the United States (CFIUS), which vets all significant inward investment proposals, does not plan to expand the criteria that it uses to test the suitability, threat or utility of a particular merger, acquisition or greenfield investment. It will continue to review mergers and acquisitions of companies in the U.S. only for potential national security implications and will not expand the purview to include a broader economic security test – the so-called “net economic benefit test.” Certain legislative fixes that tighten CFIUS appraisals, though, are nevertheless in the works on Capitol Hill, and which have the support of the administration in principle. These include:

- Lowering the bar for when companies and transactions, such as joint ventures, from certain countries that present more of a national security threat should undergo a CFIUS review. Coverage of joint ventures is to be expanded to include ventures based overseas as well as minority investment stakes in U.S.-based ventures.

- Authorizing a similar system for certain national security-sensitive products and technologies, with the U.S. Defense Department provided a lead role in identifying the specific products or technologies. Specific products/technologies will not be singled out.

- Identifying countries by category in terms of the national security threat posed by them, akin to the U.S. export control system for sensitive dual-use technologies that have possible military applications;

- Introduce measures to enhance the transparency of the administration’s CFIUS decisions for Members of Congress.

**Bilateral investment related topics are not likely to feature in this upcoming round of the Comprehensive Economic Dialogue (CED).** Discussions on the long-running Bilateral Investment Treaty (BIT) negotiations, too, are also expected to take a back-seat. The CED will continue to remain for the time being focused on its market access agenda with the explicit intention of reducing America’s large trade imbalance with China.

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