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## 1. China's New Tariff Law: what you need to know

### Overview

The *Tariff Law of the People's Republic of China* ("Tariff Law") is effective from December 1, 2024. This new legislation is set to replace the Import and Export Tariff Regulations of the People's Republic of China, which fall under the purview of the State Council. The Tariff Law, aims to formalize and systematize the existing tariff framework, with a focus on three key objectives: law-based taxation, response to domestic and international changes, and simplification of customs procedures.

### Key Provisions

The New Measures reduced the threshold for strategic investment and broadened investment channels to encourage foreign investors to make long-term and value investments in China. The following are highlights in the New Measures: The Tariff Law consolidates and elevates several existing provisions and practices to the legal hierarchy of law. Notably, it clarifies the obligations of cross-border e-commerce platforms regarding tariff withholding and consolidated taxation (Article 3). Additionally, it solidifies rules on the origin of goods, stipulating that tariff rates must adhere to corresponding rules of origin. This codification into law is a significant step towards standardization and enforcement, despite these rules having been previously observed in practice.

The legislation also introduces several notable amendments, including:

- Specifying the administration of tariff collection can be implemented in a mode of separating the release of goods from the determination of tax amount (Article 41).
- Modifying the applicable date of the chargeable exchange rate, which is calculated according to the chargeable exchange rate converted to RMB on the date when the taxpayer completes the declaration (Article 60).
- Extending the deadline for taxpayers to apply for the refund of overpaid taxes from one year to three years (Article 51).
- Adjusting the period of back duty to three years (Article 45).
- Adding force majeure as a circumstance exempting the re-export or re-import of goods from customs duties. This broadens the scope of exemptions beyond quality or specification reasons, allowing traders to re-import or re-export due to unforeseen changes in trade policies or market conditions (Article 39).
- Clarifying the priority of tariff collection in debt settlement. Taxes collected by customs have priority over unsecured claims, unless otherwise provided by law. If a taxpayer's unpaid tax occurs before the taxpayer creates a mortgage or pledge on its property, the tax shall be enforced before the mortgage or pledge (Article 58).
- Three new administrative penalty rules have been added, including a penalty of between 50 percent and three times the amount of tax due for withholding obligors who fail to withhold or collect taxes due (Article 62 to 64).

- **Counter-Tariffs and Anti-Dumping**

A pivotal element of the Tariff Law is its explicit delineation of the mechanisms through which the Chinese government may impose anti-dumping and countervailing duties on trade partners. This addresses a previous legislative gap, as Chinese law had not previously granted specific powers for the implementation of countervailing tariffs. The Tariff Law now codifies these powers, enabling the Tariff Commission under the State Council to decide on levying anti-dumping duties, countervailing duties, safeguard measures tariffs, and other tariff measures decided by the State Council (Item 6, Article 7).

Specifically, Article 17 empowers the Tariff Commission to recommend "corresponding measures based on the principle of reciprocity" in instances where a country or region does not meet the most-favored-nation treatment or preferential tariff treatment stipulated in international

tax treaties to which China is a signatory. This authority encompasses the capacity to enforce retaliatory tariffs on imports from countries or regions that contravene international treaties or agreements through trade prohibitions, restrictions, tariffs, or other measures that distort normal trade with China.

The new provisions on anti-circumvention measures in the Tariff Law provide a legal basis for China to impose anti-circumvention measures such as adjusting tariffs for the reduction of taxable amounts that do not have a reasonable commercial purpose. While this may be seen as a technical change, as China has previously imposed counter-tariffs, the Tariff Law sends a clear signal to trade partners that China is willing and able to respond to import duties on Chinese goods. This reflects the changing dynamics of global trade amid heightened geopolitical tensions and comes at a time when multiple regions are considering additional tariffs on Chinese goods.

## Conclusion

The Tariff Law marks a significant evolution in China's approach to tariffs. By codifying existing practices and introducing new legal tools, the law aims to stabilize the tariff system while providing a framework for responding to global trade challenges. Businesses operating in or with China should closely monitor these changes to ensure compliance and strategic alignment with the evolving legal landscape.

## 2. Navigating Standards for calculating damages for trademark infringement

### Background

On October 30, 2024, the China National Intellectual Property Administration ("CNIPA") and the State Administration for Market Regulation ("SAMR") jointly issued *the Measures for Calculation of Illegal Business Revenue in Trademark Infringement Cases* ("Measures"), which comes into effect from the date of issue. The release of the Measures marks prominent progress for establishing legal grounds for calculation of illegal business revenue in trademark infringement cases. The establishment of calculation method of illegal business revenue provides guidance for determining the illegal business revenue under different circumstances in a trademark infringement case.

### Key content

The Measures not only set calculating standards of illegal business revenue of trademark infringement for general circumstances but also for special circumstances. As per the provisions in the Measures, illegal business revenue refers to the total value of infringing goods involved in the trademark infringement, or the business income generated by the infringement.

Calculating standard of illegal business revenue under general circumstances:

| Circumstance  | Calculating standard  |
|---|---|
| Infringing goods that have been sold  | The price at which they were actually sold.   |
| Infringing goods that have not yet been sold  | The actual average sales price of the infringing goods that have been identified; or the labeled price of the infringing goods. |
| The actual sales price cannot be ascertained, or the infringing goods do not have a labeled price | Market median price of the infringed goods during the period of infringement.   |

It is worth noting that determination of market median price is specified as follows in the Measures:

The market median price of the infringed product shall be determined in accordance with the infringer's published guiding retail price of the same kind of product; if no guideline retail price is published, it shall be determined in accordance with the following methods:

- If there are several merchants selling the same kind of infringing product in the market, sampling the retail prices of several of them and taking the average to determine the market median price; if there is only one merchant selling the product, determining the market median price in accordance with the retail price of that merchant;

- The market does not have the same kind of infringing products for sale, according to the median price of the previous market of the same kind of infringing products for sale, or according to the median price of the market of the same kind of infringing products that have been sold with the infringing products in terms of function, use, main materials, design and configuration.

Calculating standards of illegal business revenue under special circumstances:

| Circumstance  | Calculating standard  |
|---|---|
| Processing and contracting activities of contract for labor and materials | Actual sales price of the infringing goods.<br><br>If the infringing goods are not independently valued, they shall be calculated according to the proportion of their value in the contracted processing and contracting business activities; if it is not possible to distinguish the proportion of their value, the amount of illegal business shall be calculated in accordance with the market median price of the infringed goods.  |
| Free gifted goods   | Actual purchase price or manufacturing cost of the gift; or labeled price or market median price of the infringed goods.  |
| Refurbished goods   | Overall value of the infringing goods.  |
| Assisting infringement  | Income derived from assisting infringement; If there is no income, it is deemed as if there were no illegal business revenue.   |
| Infringement of renting goods   | Rental income.  |
| Infringement in advertising   | If the infringing goods cannot be identified, they will be deemed as if there were no illegal business revenue.   |
| Trademark license infringement  | If the trademark licensor and the licensee jointly infringe the exclusive right to use a registered trademark of another person, the illegal business amount shall be calculated according to the calculation method under general circumstances.<br><br>Trademark licensor constitutes helping the licensee to infringe the exclusive right to use other registered trademarks, according to the licensing income calculation of illegal business revenue; trademark gratuitous licensing, it is treated as if there were no illegal business revenue. |
| False sales tactics such as click farming                                 | Not counted as illegal business revenue if providing sufficient evidence.   |

It is worth noting that if the actual illegal business revenue cannot be verified according to the above provisions, the case will be handled as if there is no illegal business revenue. If only part of the illegal business revenue can be verified, the illegal business revenue will be handled according to the verified illegal business revenue.

## Conclusion

The Measures not only provide specific and standardized operational guidelines for trademark enforcement authorities to calculate and determine the amount of illegal business revenue and solve the long-existing problem of lacking law enforcing standards in practice, but also help create a fair and transparent legal environment of intellectual property protection and enforcement, as well as better settle disputes in trademark infringement cases.

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