



Does the New U.S.-Taiwan Bilateral Trade Mandate Signal the End of U.S. Adherence to the One-China Policy? Multinational Companies Should Expect a Catch-22 Soon.

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On August 17, 2022, the U.S. Trade Representative (“USTR”) released an 11-point negotiation mandate to facilitate formalized trade negotiations between the U.S. and Taiwan (the “Mandate”). In time, the PRC will respond to the increased cooperation between the U.S. and Taiwan with more than mere rhetoric, flyovers, and a weeklong naval blockade. Multinational companies doing business in China should examine how this may affect their regional business and arrange to have appropriate contingency plans in place to manage the PRC’s potential response, supply chain disruption, government pressure, or investigations within mainland China, as well as public relations issues.

There is perhaps no U.S.-China political issue more incendiary than Taiwan. As background: (i) until recently, Hong Kong was used as a predictable legal market for conducting business and trade with China, while Taiwan has long been the preferred location for certain technology industries, such as semiconductors; (ii) in response to China’s enforcement of its National Security Law in Hong Kong, on July 14, 2020, then-President Trump issued Executive Order 13936, which revoked the special trading status of Hong Kong; (iii) the U.S.’s trade policy in Asia, particularly with respect to China, has been in flux through the last three administrations—the Obama administration attempted to create the Trans-Pacific Partnership, the Trump administration tried to directly negotiate with China, and now the Biden administration looks to Taiwan to fill the gap. Challenging issues for multinational companies are soon to follow.

The Mandate lays out 11 areas for formal negotiation, including measures to facilitate trade generally, cooperative regulatory development, promotion of agricultural trade and environmental standards, cooperation on data-sharing, enhanced anticorruption enforcement, and taking steps to combat allegedly non-market policies and coercive practices attributed to mainland China. The Mandate should not be viewed in a silo, the CHIPS and Science Act (discussed here) should also increase the economic connection between the economies of the U.S. and Taiwan for years to follow. Likewise, the economies and markets of the U.S. and China are increasingly decoupling, with many more mainland Chinese companies expected to delist from U.S. markets and additional U.S. regulatory enforcement against Chinese technology companies being contemplated. Further, the Uyghur Forced Labor Detention Act (discussed here) is causing companies to rethink their supply chains and to pivot away from China.

Politically, with China’s increased influence over the affairs of Hong Kong, along with the Trump administration’s failure to conclude U.S.-China trade agreements, the U.S.’s last potential Mandarin-speaking partner (and sphere of

influence) in the region is Taiwan. The Biden administration has decided to play that card at this time. The pivot is strategic and, in the current context, signals a probability that the U.S. would not accept (or idly suffer) an endgame scenario for Taiwan similar to what happened to Hong Kong.

The PRC will respond, not only with the latest round of sanctions against the two delegations of U.S. officials who visited Taiwan this month, but also through actions and pressure on multinational companies with business interests in mainland China and Taiwan. Multinational companies in various industries have faced pressure and enforcement actions from China regarding Taiwan in the past. If the prior playbook is any indication, China is going to press companies to make explicit choices to retain access to its market or their production lines.

China has developed a counter-sanction regime that it could use for this purpose, including the Anti-Foreign Sanctions Law, the Measures on Obstructing the Unjustified Application of Foreign Laws and Measures, Provisions on the Unreliable Entity List (discussed [here](#) and [here](#)). The counter-sanction regime has yet to be wielded against companies, but no one wants to be the first. In this circumstance, all options will be on the table for China (legal action, boycott, or otherwise).

There is one key takeaway—the temperature in the region is rising quickly. The U.S.-Taiwan trade relationship will be another significant point of tension, superimposed on multiple ongoing cross-strait and Sino-U.S. issues that risk quickly escalating and destabilizing East Asia. To account for this flashpoint, companies with significant commercial interests in the region should implement and periodically review comprehensive contingency plans for that zone and establish internal and external response teams according to the characteristics of their business operations. The triage team models utilized in the Russia-sanctions context are also applicable to the potential risks in East Asia.

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