

U.S.- China Automotive Countervailing Duty Dispute DS440

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Chinese AD/CVD Investigation into U.S. Sedans and SUVs

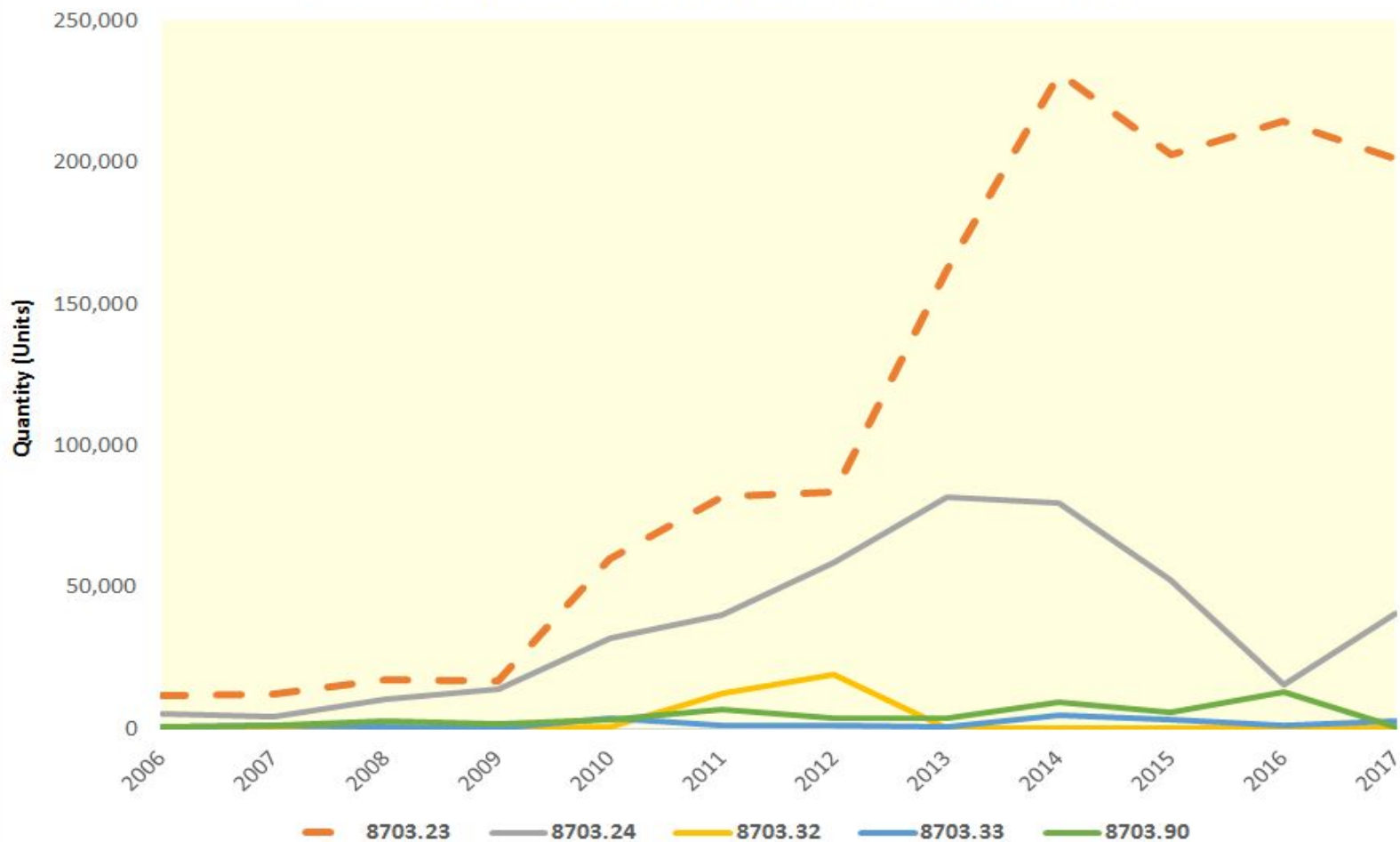
- The investigation started November 6, 2009, and was supposed to conclude the following year; however, the Ministry of Commerce (“MOFCOM”) extended the determination date until May 2011.
- The CVD investigation period (“POR”) was from September 1, 2008 to September 30, 2009. The injury investigation period was from January 1, 2006 to September 30, 2009.
- “Scope of investigation: Imported sedans and sport utility vehicles of cylinder capacity $\geq 2000\text{cc}$ originating from the United States. MOFCOM altered the scope of the investigation to only include vehicles with a cylinder capacity of $\geq 2500\text{cc}$.
- Subject merchandise: Sedans and sport utility vehicles of cylinder capacity $\geq 2000\text{cc}$, the main components of which are the engine, chassis, the main body, electrical equipment and Others.”
- MOFCOM investigated 24 U.S. subsidy programs.

Harmonized Tariff System (HTS) Codes included in China's Investigation

8703.23.51, 8703.23.52, 8703.23.59,
8703.23.61, 8703.23.62, 8703.23.69,
8703.24.11, 8703.24.12,
8703.24.19, 8703.24.21, 8703.24.22,
8703.24.29, 8703.32.21, 8703.32.22,
8703.32.29, 8703.33.11, 8703.33.12,
8703.33.19, 8703.33.21, 8703.33.22,
8703.33.29, 8703.33.61, 8703.33.62,
8703.33.69 and 8703.90.00.



US Vehicle Exports to China by Harmonized Tariff Code



Source: "USITC Interactive Tariff and Trade DataWeb." U.S. International Trade Commission, 2018.

Top markets for U.S Automobile Exports 2009-2014

Country	2009	2010	2011	2012	2013	2014
World	1,009,042	1,389,622	1,589,619	1,807,041	1,951,735	2,107,280
Canada	571,065	712,756	729,049	743,478	791,532	870,025
China	25,065	89,066	125,356	153,570	233,693	307,425
Mexico	101,080	129,128	141,569	159,415	153,738	151,902
Germany	112,017	97,228	146,251	168,522	135,048	147,680
Saudi Arabia	42,865	90,672	105,461	145,328	139,038	104,074
United Arab Emirates	19,800	35,851	39,937	61,443	69,381	63,901



Top Markets for U.S. Exports of New Passenger Vehicles & Light Trucks (By Units)

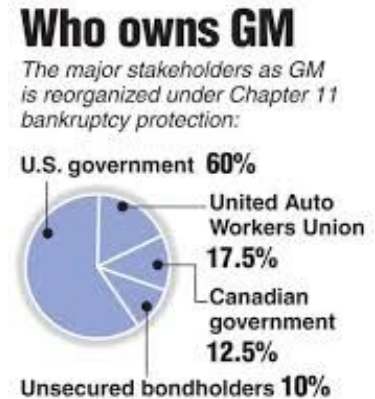
Country	2009	2010	2011	2012	2013	2014
World	24,222	34,605	41,226	47,990	52,566	57,540
Canada	12,532	16,813	17,691	18,666	20,208	21,649
China	636	2,574	3,993	4,616	7,235	9,753
Germany	4,319	3,581	5,041	5,755	4,639	5,153
Saudi Arabia	1,141	2,437	2,948	4,267	4,072	3,197
Mexico	1,786	2,605	2,906	3,301	3,296	3,169
United Arab Emirates	505	940	1,022	1,546	1,851	1,828



Top Markets for U.S. Exports of New Passenger Vehicles & Light Trucks (By Value in Millions of Dollars)

Economic Context and the Contested U.S. Subsidies

- Average U.S. Tariff on Imported vehicles: 2.5%
- General Motors (GM) and Chrysler were rescued by the U.S. Government bailouts in 2008 and 2009.
 - The U.S. Government spent approximately \$80 billion to restructure GM and facilitated a sale of Chrysler to Italian automaker Fiat.
- “Cash for Clunkers” program paid buyers who traded old vehicles for a new car.
- Fuel Efficient Vehicle Subsidies –
 - \$7,500 tax credit to buyers who purchase a fuel efficient vehicle.
 - \$2.4 billion in subsidies for fuel-efficient vehicle manufacturers.



U.S.-China Trade Disputes

- 2008: U.S. financial crisis. U.S. government provides liquidity to Chrysler and General Motors (GM).
- The Chinese Countervailing Duty (CVD) investigation into the U.S. automotive industry occurred in the context of several U.S. restrictive trade measures.
 - September 2009: U.S. imposes Section 421 “Safeguard” tariffs of 35% on Chinese tires;
 - November 2009: Chinese CVD investigation into U.S. automobiles;
 - September 2011: US begins an anti-dumping investigation into Chinese solar cells;
 - December 2011: China imposes anti-dumping/countervailing duties on tariffs

Chinese Automotive Import Restrictions

- Average bound tariff of 25% on vehicle imports.
- Luxury tax on SUVs.
- Foreign automakers are required to form joint ventures with domestic companies
- Many of these domestic Chinese vehicle makers are state-owned enterprises such as Changan Automobiles, Guangzhou Automobile Industry Group , and SAIC



广汽菲亚特
GAC FIAT



进无止境



上汽通用汽车
SAIC-GM

Result of MOFCOM Investigation:

- The Chinese government imposed duties ranged from 2% to 21.5% on imports of certain American-made cars.
- The tariffs affected about two-thirds of U.S. auto exports to China.



Final Duty Rates

Respondent	AD Rate (%)	CVD Rate (%)
GM USA	8.9	12.9
Chrysler USA	8.8	6.2
Mercedes-Benz USA	2.7	0
BMW USA	2.0	0
Honda USA	4.1	0
Ford USA	-	0
"All others"	21.5	12.9

“MOFCOM issued its final determinations on 5 May 2011. It found that the subject product was dumped and subsidized, and that the dumped and subsidized imports caused injury to the domestic industry.”

U.S China Trade Dispute over Automobiles

<https://america.cgtn.com/2014/05/24/u-s-china-trade-dispute-over-american-automobiles>



Complaint by the United States

- **On July 5 2012**, the US requested consultation with China.
 - The United States alleges that China measures appear to be inconsistent with:
 - Article VI of the GATT 1994 of the Anti-Dumping Agreement: Articles 1, 3.1, 3.2, 3.4, 3.5, 4.1, 5.3, 5.4, 6.2, 6.5.1, 6.8 (including Annex II, paragraph 1), 6.9, 12.2, and 12.2.2;
 - The SCM (Subsidies and Countervailing Measures) Agreement: Articles 10, 11.3, 11.4, 12.4.1, 12.7, 12.8, 15.1, 15.2, 15.4, 15.5, 16.1 22.3, and 22.5
- **Consultations** were held on **23 August 2012**. No mutually accepted resolution was reached.
- **On 23 October 2012**, the establishment of a panel pursuant to Article 6 of the DSU.
- The Panel held a **first substantive meeting** with the parties on **25 June 2013**.
 - Colombia, the European Union ("EU"), India, Japan, Korea, Oman, the Kingdom of Saudi Arabia ("Saudi Arabia"), and Turkey notified their interest in participating in the Panel proceedings as **third parties**.
- On **18 June 2014**, the DSB adopted the panel report.

Why the U.S. Contested China's anti-subsidy duties

- Chinese producers' market share increased during the POR.
- Subject vehicle imports from the United States remained consistent with the domestic industry's prices throughout the POR.
- The United States only exported “luxury” vehicles during the investigation. However, the vast majority, around 95 - 98% of Chinese domestically produced vehicles, were considered “entry-level.”
- MOFCOM failed to inform the United States of all the facts in their investigation.

Table 4: AUVs (in CNY/Unit)⁴³⁰

Year	2006	2007	2008	1Q-3Q 2009
Subject imports	315,467	288,749	403,089	411,382
Domestic like product	280,596	311,698	364,122	315,535

Third Parties

- **Colombia, European Union, India, Japan, Republic of Korea, Oman, Turkey, and Saudi Arabia.**
 - These examples of third party views are based solely on Article 6.9 of the Antidumping Agreement regarding dumping margin calculations and “consideration of facts.”:
- **South Korea** disputed against the methodology of China’s dumping margin.
- **The EU** wanted China to disclose the calculations regarding the anti-dumping margins.
- **Saudi Arabia** wanted to broaden the reported “essential facts” to include the MOFCOM’s investigation process.
- **Turkey** is concerned that the data disclosed to the companies under Article 6.9 of the Anti-dumping agreement should not include confidential information on other companies.
- **Japan** argued for additional details about the calculation of the dumping margin.

Dispute Panel Findings: USA

1. The Panel declined the U.S.'s claim that MOFCOM's investigations at issue were inconsistent with Article 4.1 Anti-Dumping Agreement and Article 16.1 of the SCM Agreement.
2. The Panel decided that the United States failed to confirm that China performed inconsistently with Articles 6.9, 12.2, 12.2.2 of the Anti-Dumping Agreement, and Articles 12.8, 22.3 and 22.5 of the SCM Agreement.
3. The Panel found that China acted inconsistently with the general obligation outlined in Article 1 of the Anti-Dumping Agreement and Article 10 of the SCM Agreement.

Dispute Panel Findings: China

1. Beijing failed to undertake an objective examination based on positive proof in its price effects analysis, and its following finding of price depression in its final determination of injury.
2. China failed to analyze market share data, industry productivity, and labor costs.
3. China failed to analyze the evidence presented regarding the competitive overlap among the imports affected and their national counterparts.
4. Beijing failed to accurately investigate whether the drop in consumption was causing damage to the home manufacturing.
5. The panel, therefore, concluded that China's AD and CVD investigations were inconsistent with its WTO commitments.

China acted inconsistently with:

- “**Articles 6.5.1** of the Anti-Dumping Agreement and **12.4.1** of the SCM Agreement in failing to require the submission of adequate non-confidential summaries of confidential information contained in the petition;”
- “**Article 6.9** of the Anti-Dumping Agreement because MOFCOM failed to disclose the essential facts under consideration which formed the basis of its decision to impose the AD duties;”
- “**Article 6.8** and paragraph 1 of Annex II of the AntiDumping Agreement with respect to the determination of the residual AD duty rate for unknown US exporters;”
- “**Article 12.7** of the SCM Agreement with respect to the determination of the residual CVD rate for unknown US exporters;”
- “**Articles 3.1 and 3.2** of the Anti-Dumping Agreement and **Articles 15.1 and 15.2** of the SCM Agreement in connection with MOFCOM's analysis of price effects;”
- “**Articles 3.1 and 3.5** of the Anti-Dumping Agreement and **Articles 15.1 and 15.5** of the SCM Agreement in connection with MOFCOM's causation determination;”
- “**Article 1** of the Anti-Dumping Agreement and **Article 10** of the SCM Agreement as a consequence of the foregoing violations of these Agreements.”

Panel Decision :

- The panel found in favor of the United States on nearly all U.S. claims.
- In pursuant to Article 19.1 of the DSU, China was recommended to bring its measures into conformity with its obligations under the Anti-Dumping and SCM Agreements.



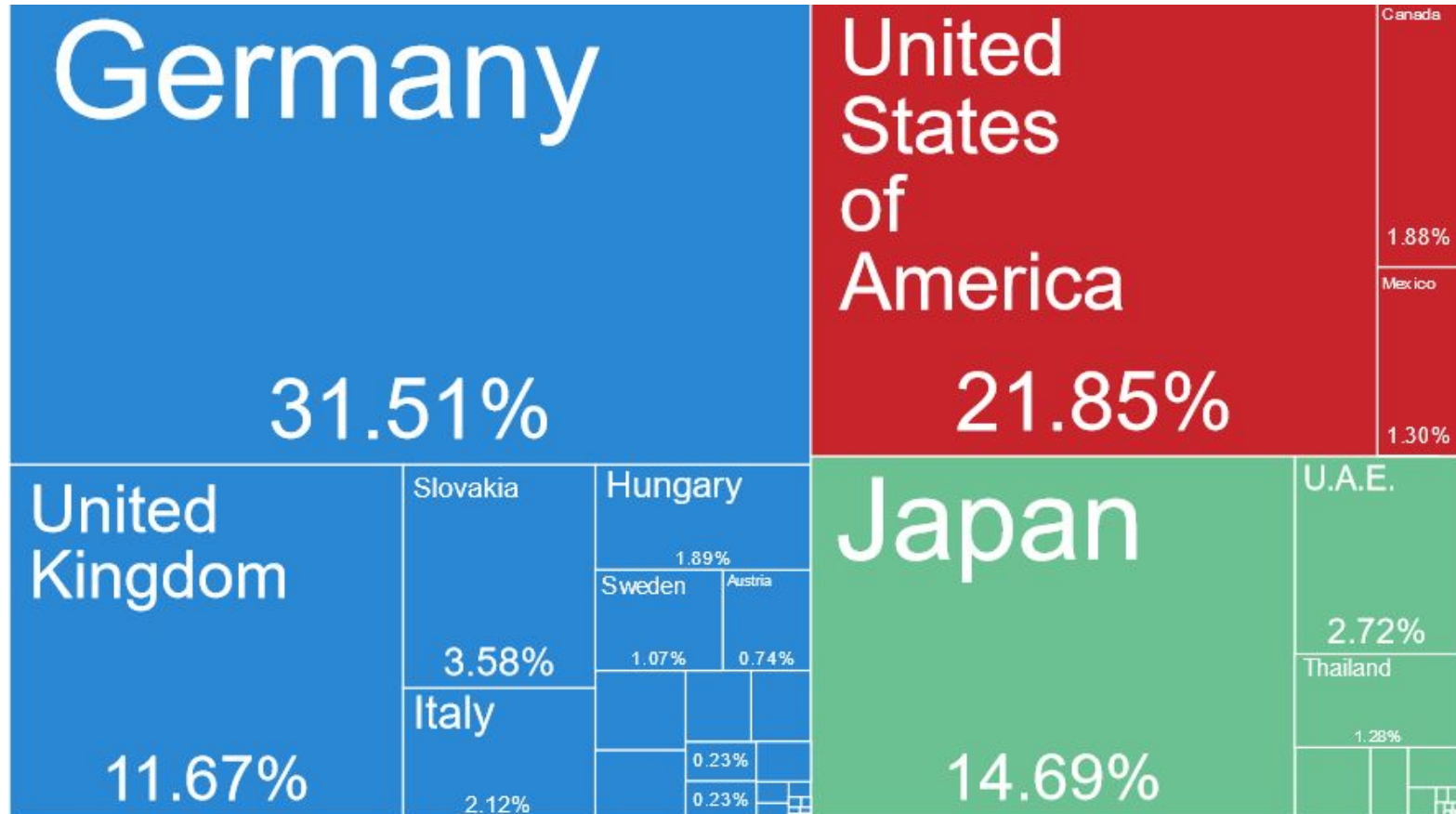
Post Dispute Trading Patterns

- US vehicle exports to China increased from approximately \$1 billion in 2009 to approximately \$7 Billion in 2016.
- China maintains high tariff barriers and joint venture requirements
- However, China is a significant exporter of vehicle parts and tires to the United States.
- China's largest vehicle export market is the United States, followed by Iran.
- China is the largest producer of vehicles in the world. GAC will be the Trumpchi brand to the United States in 2019.
 - Probably with a different name



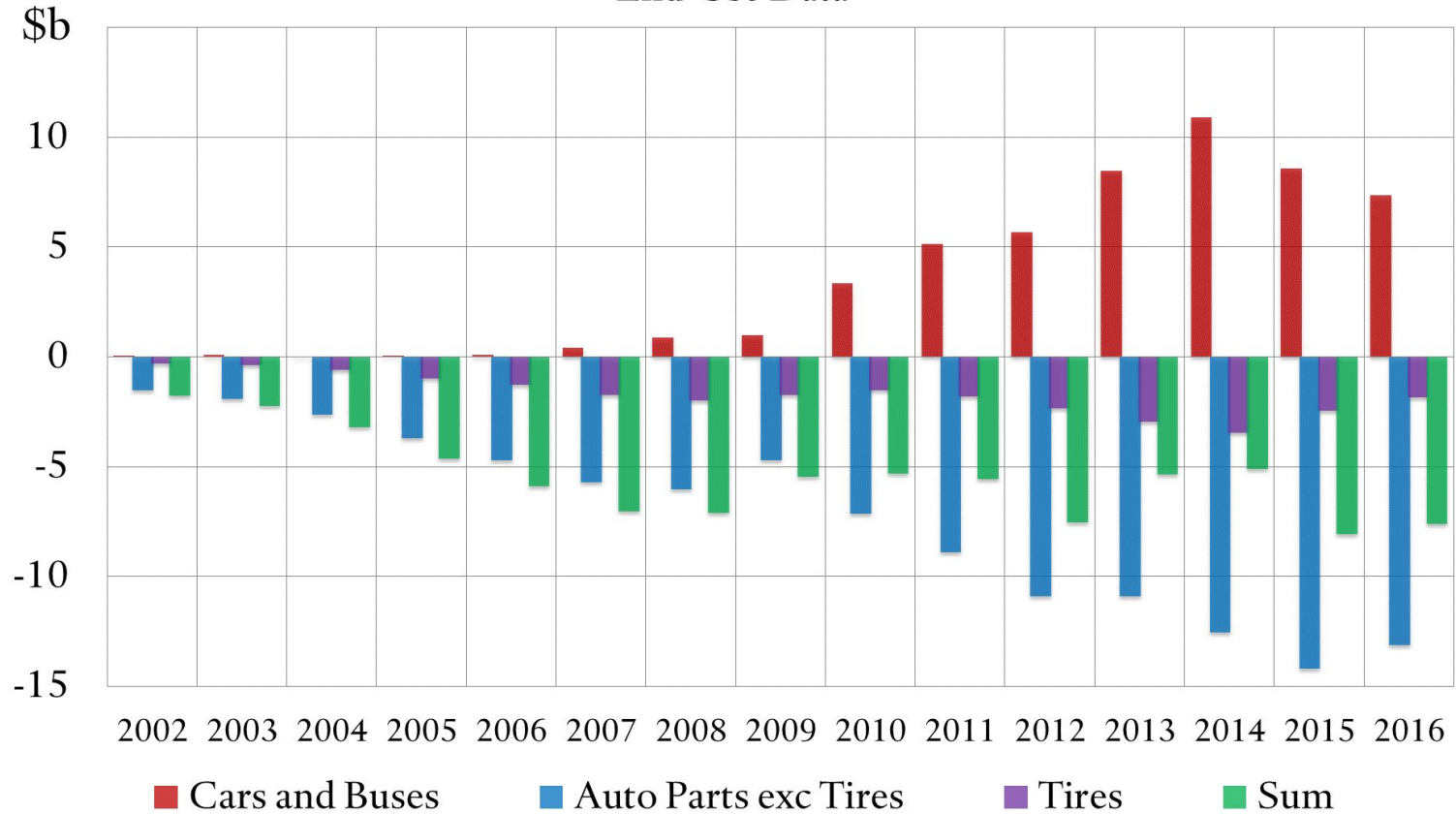
Chinese Vehicle Imports by Value - 2016

Source: "The Atlas of Economic Complexity by @HarvardCID."



Annual Balance on U.S. Auto Trade With China

End-Use Data



Sources: U.S. Census Bureau

Brad Setser
blogs.cfr.org/Setser

Future Trends in U.S. China Automotive Trade

- “Retaliation clause” of Section 301 of the Trade Act of 1974 due to Chinese cybersecurity/ IP laws.
- Tariffs on steel and aluminum products pursuant to Section 232(b) of the Trade Expansion Act of 1962.
 - Possible Chinese retaliation?
 - Tariffs could hurt U.S. automotive manufacturers because they rely on steel and aluminum imports
- Section 201 of the Trade Act of 1974 -- the safeguard measures of solar cells and washers. Similar the AD investigation on solar panels that Obama imposed in 2011, which led the Chinese to retaliate on sedans and SUVs.
- The Chinese Trade “Weapon”-. Senkaku/Diaoyu Island Dispute and Japanese vehicles

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