

CLIENT ALERT

USTR: China Discriminates Against U.S. Firms Related to Tech Transfer, IP, and Trade Secrets

March 23, 2018

On August 18, 2017, the Office of the United States Trade Representative (USTR) launched a formal investigation pursuant to Section 301 of the Tariff Act of 1974 on the People's Republic of China (PRC). The probe sought to determine whether the acts, policies, and practices of the PRC related to technology transfer, intellectual property, trade secrets, and innovation were discriminatory towards U.S. firms and undermined the United States' ability to compete fairly in the global market. Section 301 allows the President to seek removal of any act, policy, or practice of a foreign government that violates an international agreement or that unfairly burdens or restricts U.S. commerce.

On March 22, President Trump issued a Memorandum stating the USTR found PRC actions do undermine U.S. firms' ability to compete fairly in the global market by (1) requiring or pressuring U.S. companies to transfer technology to Chinese companies; (2) imposing restrictions on, and intervening in, U.S. firms' investments and activities, including through restrictions on technology licensing terms; (3) obtaining cutting-edge technology by directing and facilitating the investment and acquisition of U.S. companies by Chinese companies; and (4) conducting and supporting intrusions and theft from the computer networks of U.S. companies.

In response, the President has directed the USTR to address these violations via a combination of retaliatory tariffs, World Trade Organization (WTO) dispute settlement, and the Department of the Treasury to address via investment restrictions.

Tariffs

The Memorandum directed the USTR to consider additional tariffs on certain Chinese importations. The proposed list of goods and corresponding tariff increases will be released within 15 days followed by a period of notice and comment and currently are scheduled for publication in the Federal Register on March 27, 2018. Publication of the list for public notice and comment will trigger a 60-day period during which items could be removed from the list (and others added). After the close of the 60-day public comment period, USTR will finalize the list and notify to begin collecting the 25% additional duties (in addition to any Most Favored Nation duties and/or antidumping/countervailing duty measures that may apply to the same imports from China).

Though this list is pending release, it has been anticipated that it may impact up to \$60 billion worth of Chinese goods across a number of industries. Sectors subject to proposed tariffs will include aerospace, information communication technology, and machinery. The scope of potential coverage to electronics, apparel, footwear, and home goods industries is not yet known.

Investment Restrictions

Increased restrictions on Chinese investments as they relate to "industries or technologies deemed important to the United States" is also to be addressed. In that regard, the Memorandum directed the Secretary of the Treasury to propose executive

branch action. U.S. officials have commented that the investment restrictions contemplated will be “complementary” to those overseen by the Committee on Foreign Investment in the United States (CFIUS), managed by Treasury.

WTO Dispute Settlement

The Memorandum directs the USTR to pursue dispute settlement at the WTO on matters relating to China’s “discriminatory technology licensing practices.”

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