

# Client Alert

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## **President Trump Signs Memorandum To Combat Discriminatory Or Unreasonable Technology Transfer, Intellectual Property, And Innovation Practices By China**

On March 22, 2018, President Trump signed a memorandum instructing his administration to take action against the “unfair and harmful acquisition of U.S. technology” by China.

The President previously instructed United States Trade Representative (“USTR”) Lighthizer to investigate under Section 301 of the Trade Act of 1974 the “acts, policies, and practices” of the Chinese Government related to technology transfer, intellectual property, and innovation practices. In its 180-page report, USTR chronicled multiple Chinese acts, policies, and practices, and focused on Chinese ambitions with respect to certain high-tech industries. For example, USTR reports that the State Council of China released its 10-year plan for targeting ten strategic advanced technology manufacturing industries for promotion and development, specifically (1) advanced information technology; (2) robotics and automated machine tools; (3) aircraft and aircraft components; (4) maritime vessels and maritime engineering equipment; (5) advanced rail equipment; (6) new energy vehicles; (7) electrical generation and transmission equipment; (8) agriculture machinery and equipment; (9) new materials; and (10) pharmaceuticals and advanced medical devices. USTR also notes that the State Council called for China to achieve 40% self-sufficiency by 2020 and 70% self-sufficiency by 2025 in core components and critical materials.

USTR then determined that China’s acts, policies, and practices relating to technology transfer, intellectual property, and innovation practices are, in fact, “unreasonable, unjustifiable, or discriminatory and burden or restrict U.S. commerce.” Specifically, in its report, USTR found four areas where China’s acts were unreasonable or discriminatory:

- 1) the use of foreign ownership restrictions, joint venture requirements, and foreign investment restrictions to force technology transfers from U.S. companies to Chinese companies;
- 2) the imposition of technology licensing requirements that prevent the ability of U.S. companies to bargain for market-based terms on technology transfers, forcing transfers on terms that benefit Chinese companies;

- 3) the direction and facilitation of foreign investment and acquisitions by Chinese companies by the Government of China to generate large-scale technology transfers from the United States to Chinese industries; and
- 4) support and direct participation in cyber theft of U.S. intellectual property.

In response to these findings, President Trump instructed USTR to a) pursue dispute settlement at the World Trade Organization to “address China’s discriminatory licensing practices” and b) implement tariffs on a list of products that are benefitted by China’s unfair industrial policies.

To implement the tariffs, USTR has 15 days to publish a list of potential products that would face a proposed 25 percent additional tariff. After a period of public notice and comment, USTR will determine the final list of products and tariff levels. The potential products subject to the tariff reportedly account for \$60 billion in trade from China each year and include products from the aerospace, information communication, technology, and machinery sectors. The final list could be published as early as March 27, 2018.

President Trump also instructed the Secretary of the Treasury, in consultation with other administration officials, to propose measures to address concerns about Chinese investment in the United States “in industries or technologies deemed important to the United States.” The Secretary of the Treasury was instructed to report his progress on this task to the President in 60 days.

We will update this Client Alert when the list of products that will be subject to tariffs is issued by the Administration.

A USTR Fact Sheet on the Section 301 investigation and proposed action is available [here](#).

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