CLIENT ALERTS

New China/United States Phase I Trade Accord Signed - Future Implications Uncertain

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In a much-heralded ceremony on January 15, top delegates from China and the US signed what was referred to as a Phase I trade deal between China and the US which hopefully will put a partial end to some of the contentious issues that have disrupted import supply chains and roiled the stock market.

As referred to in earlier Client Alerts from December 13, 2019, and August 26, 2019, the US has imposed tariffs on China based on an investigation under Section 301 of the Trade Act of 1974 based on findings that, among other things, China was not enforcing intellectual property protection or granting equal market access to U.S companies. According to the testimony of U.S Trade Representative Lighthizer before the Senate Finance Committee, this “deal” was not a trade agreement that required the President to submit it for Congressional approval.

The Phase I accord will please some and disappoint others. While it will result in the lowering the current 15 percent List 4A tariffs on $100 billion in exports from China to 7.5 percent and eliminating the scheduled imposition of List 4B tariffs on $162 billion of Chinese exports, it does not roll back existing tariffs on Lists 1, 2 and 3 which constitute the vast majority of tariffs by value. These tariffs on lists 1, 2 and 3 are also the ones with the greatest impact on the automotive parts industries. Nevertheless, the deal represents progress. China reportedly pushed unsuccessfully for a rollback in existing tariffs.

Concern remains that existing tariffs remain on $250 billion in imports from China on Lists 1-3. In particular, List 3 contains hundreds of categories of motor vehicle parts and components. The phase two deal is not expected until after the November election.

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Significantly, despite fears expressed by some that the Phase I deal would not address the core issues that were the basis for the Section 301 action – dealing with intellectual property, the agreement does address some intellectual property enforcement concerns. It is reported that important issues were addressed and represents incremental progress in addressing better intellectual protection. The agreement focuses heavily on U.S. concerns that the Chinese government and companies coerce American ones into handing over their technology to their rivals. In a two-page section of the agreement, both nations agreed to a number of provisions aimed at preventing that. They agreed that "neither party shall require or pressure persons" to transfer technology to do business or to get regulatory approvals. They also banned pressure "formally or informally" on companies to use certain technology to get a license.

The other important issue that was the basis for the original Section 301 action was the lack of Chinese market access, highlighted by the paltry amount of automobiles and automotive parts imported by China. The anticipated market opening of China for up to $200 billion of additional exports of U.S. goods and services over two years would undoubtedly help the motor vehicle parts sector and countless other manufacturers, as well as the much-publicized agricultural imports. In a signing ceremony today with Chinese Vice Minister Liu Hu at the White House, President Trump affirmed that China has agreed to import more than $50 billion of U.S. agricultural products, $75 billion in manufacturing products and $50 billion in the energy sector.

One analyst described the deal as a "standstill arrangement", with a finding that China was not a currency manipulator and increased Chinese purchases of U.S agricultural and energy products.

The provisions of the deal are subject to a new enforcement mechanism that provides for several rounds of consultations. If the two sides are unable to resolve the dispute, the complaining party could take "remedial measure in a proportionate way". Recently released text can be obtained here.

Butzel Long attorneys have counseled clients concerning Section 301 tariffs on Chinese imports and have successfully assisted them with exclusion requests and are available to assist them in understanding the latest changes.

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