We have previously reported on the Economic and Trade Agreement between the United States and China (“Phase One Trade Deal”), which entered into force on February 14, 2020. This Legal Update reports on implementation of the Phase One Trade Deal and the impact, if any, of the COVID-19 outbreak on the US-China trade relationship.

The View from the United States

The response to COVID-19 in the United States has been on a different cycle and scale than the response to the outbreak in China. Whereas China is already beginning to relax widespread and dramatic restrictions on the movement of people within its borders, the United States is just beginning to close schools, cancel sporting events and in some cases (e.g., New York City) declare states of emergency. For now, though, the federal government’s approach to trade with China has been, for the most part, “business as usual.”

As it has been for many months, the Office of the United States Trade Representative (USTR) continues to grant limited, product-specific exclusions to the tariffs previously imposed by the United States on a majority of goods imported from China. The most recent set of exclusions, announced March 10, 2020, exempts certain products from an additional 7.5 percent duty imposed by the United States on September 1, 2019. The tariff exclusions granted this week will be effective from September 1, 2019, until September 1, 2020. US Customs and Border Protection will issue instructions on entry guidance and implementation.

Some of these exclusions cover medical devices and products, including sanitary wipes, medical gloves, face masks, surgical gowns and other items that are needed in the fight against COVID-19. However, these exclusions do not appear to signal a new or dramatically different approach to trade with China as a result of the COVID-19 outbreak in the United States. Numerous tariff exclusion requests covering medical devices have been denied, and presumably this trend will continue for those devices not directly related to COVID-19 prevention and treatment. Indeed, when asked recently
whether the United States might relax tariffs on China in order to stimulate the economy and address the COVID-19 outbreak, White House trade adviser Peter Navarro flatly said “no” and characterized any suggestions to the contrary as “absurd.”

The tariffs imposed by the Trump administration on China have forced many businesses to rethink their supply chains based in China. The COVID-19 outbreak and the national security concerns focused on Huawei and ZTE have only served to accelerate those recalculations and efforts. In short, the exigencies of the COVID-19 outbreak may force the United States to relax certain tariffs on certain products with an “eye” to fighting the virus, but we do not expect the White House to “chart a new course” with respect to China, especially in the long term.

**The View from China**

Since the beginning of 2020, China has adopted numerous measures to confront the outbreak of COVID-19 within its borders. As noted above, China has begun to relax some of these measures in recent weeks.

As part of its response to COVID-19, China, like the US, has relaxed tariffs and other restrictions on certain products needed to fight the outbreak. Specifically, on February 1, 2020, China announced that for certain US goods (e.g., reagents, fire trucks, and disinfectants) imported pursuant to China’s new temporary “Tax Exemption Policy” (which was issued on the same day) and for purposes of preventing and controlling the COVID-19 outbreak, tariffs imposed by China in response to US trade actions would not apply during the period of January 1 to March 31, 2020.

At the same time that it has been fighting the COVID-19 outbreak, China’s efforts to implement the Phase One Trade Deal have continued. For example, in February 2020, China lowered the ad valorem rates for additional tariffs imposed on US goods under its latest round of countermeasures to US tariffs pursuant to Section 301, and granted new product exclusions for US products captured by a previous round, which are effective from February 28, 2020, to February 27, 2021.

Furthermore, on March 2, 2020, China implemented a new tariff exclusion process for “market-based purchases.” Under this new tariff exclusion process, a China-based importer may file an exclusion request for any products included on the eligible product list published together with the official announcement of the new process. Eligible products span across all previous rounds of China’s Section 301 countermeasures. The term “market-based purchases” indicates that this new process bears a relationship to China’s purchase obligations under the Phase One Trade Deal.

In sum, China has not let the COVID-19 outbreak stop it from implementing the Phase One Trade Deal with the United States. If anything, China’s efforts to control the virus have caused it to further relax countermeasures previously adopted in order to respond to US tariffs and other trade measures, at least in the short term. However, the significant economic loss caused by the COVID-19 outbreak and its aftermath might create some difficulties for China to keep pace with its purchase obligations under the Phase One Trade Deal. The exact impact, if any, on China’s “market-based purchases” of US products under the agreement remains to be seen.

**Where Things Go from Here**
US tariffs and other restrictions on Chinese goods and services during 2018 and 2019 shook the markets. China’s countermeasures did the same. Businesses large and small in both countries had to adapt. COVID-19 is placing new pressures on business and the markets. No one, including the White House, saw this coming. Moreover, it comes less than nine months before the next presidential election in the United States. Regardless of who is ahead in the polls or who wins the election, trade officials in Beijing and Washington will presumably try to minimize any disruptions or shocks during the remainder of 2020. As part of this effort, trade officials will likely signal progress in the effort to conclude a Phase Two Trade Deal. However, once we get past the November election, hopefully COVID-19 will be in our rearview mirror and reality will set in. That reality should include a healthy scepticism that China and the United States can move past their differences and conclude a Phase Two Trade Deal anytime soon.

1 For more details on the Phase One Trade Deal, please see the Mayer Brown Legal Updates available at


https://ustr.gov/sites/default/files/enforcement/301Investigations/%24300_Billion_Exclusions_Granted_March.pdf


4 Announcement on the Tax Exemption Policy for Imported Supplies for the Prevention and Control of the Pneumonia Outbreak Caused by Novel Coronavirus http://www.gov.cn/zhengce/zhengceku/2020-02/01/content_5473748.htm

5 Circular of the Customs Tariff Commission of the State Council on the Non-implementation of Additional Tariffs on Imported Supplies from the US for the Prevention and Control of the Pneumonia Outbreak Caused by Novel Coronavirus http://www.gov.cn/zhengce/zhengceku/2020-02/06/content_5473754.htm

6 Announcement of the Customs Tariff Commission of the State Council on Adjusting the Additional Tariffs on Some Imported Goods Originating from the United States http://www.gov.cn/zhengce/zhengceku/2020-02/06/content_5475214.htm


8 Announcement of the Customs Tariff Commission of the State Council on Starting the Work on Tariff
Exclusion for Some US Imports under Market-based Purchase

http://www.gov.cn/zhengce/zhengceku/2020-02/18/content_5480381.htm

Authors

- Duane W. Layton
- Jing Zhang
- Heng Li