



[Billing Code 3290-F7]

## **OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**Docket No. USTR-2017-0016**

### **Initiation of Section 301 Investigation; Hearing; and Request for Public Comments: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of initiation of investigation; hearing; and request for comments.

**SUMMARY:** The United States Trade Representative has initiated an investigation pursuant to the Trade Act of 1974, as amended (the Trade Act), to determine whether acts, policies, and practices of the Government of China related to technology transfer, intellectual property, and innovation are actionable under the Trade Act. The inter-agency Section 301 Committee is holding a public hearing and seeking comments in connection with this investigation.

**DATES:** The United States Trade Representative initiated the investigation on August 18, 2017. The schedule and due dates are as follows:

To be assured of consideration, written comments and requests to appear at the hearing must be submitted by Thursday, September 28, 2017 at 11:59 pm. The request to appear must include a summary of testimony.

Tuesday, October 10, 2017: The Section 301 Committee will convene a public hearing in the main hearing room of the U.S. International Trade Commission, 500 E Street SW, Washington DC 20436, beginning at 9:30 am. If necessary, the hearing may continue on the next business day.

To be assured of consideration, post-hearing rebuttal comments must be submitted by Friday, October 20, 2017 at 11:59 pm.

**ADDRESSES:** You should submit written comments through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments in section II below. For alternatives to on-line submissions, please contact Gwendolyn Diggs at (202) 395-3150 before transmitting a comment and in advance of the relevant deadline.

**FOR FURTHER INFORMATION CONTACT:** For procedural questions concerning written comments or participating in the public hearing, contact Gwendolyn Diggs at (202) 395-3150. Direct all other questions regarding this notice to William Busis, Deputy Assistant U.S. Trade Representative for Monitoring and Enforcement and Chair of the Section 301 Committee, or Katherine Linton and Arthur Tsao, Assistant General Counsels at (202) 395-3150.

**I. SUPPLEMENTARY INFORMATION:**

**A. The President's Memorandum**

On August 14, 2017, the President issued a Memorandum (82 FR 39007) to the United States Trade Representative stating inter alia:

China has implemented laws, policies, and practices and has taken actions related to intellectual property, innovation, and technology that may encourage or require the transfer of American technology and intellectual property to enterprises in China or that may otherwise negatively affect American economic interests.

These laws, policies, practices, and actions may inhibit United States exports, deprive United States citizens of fair remuneration for their innovations, divert

American jobs to workers in China, contribute to our trade deficit with China, and otherwise undermine American manufacturing, services, and innovation.

The Memorandum included the following instruction:

The United States Trade Representative shall determine, consistent with section 302(b) of the Trade Act of 1974 (19 U.S.C. 2412(b)), whether to investigate any of China's laws, policies, practices, or actions that may be unreasonable or discriminatory and that may be harming American intellectual property rights, innovation, or technology development.

Pursuant to the President's Memorandum, on August 18, 2017, the United States Trade Representative initiated an investigation under section 302(b) of the Trade Act (19 U.S.C. 2412(b)) to determine whether acts, policies, and practices of the Government of China related to technology transfer, intellectual property, and innovation are unreasonable or discriminatory and burden or restrict U.S. commerce.

## **B. The Chinese Government's Acts, Policies and Practices**

The acts, policies and practices of the Government of China directed at the transfer of U.S. and other foreign technologies and intellectual property are an important element of China's strategy to become a leader in a number of industries, including advanced-technology industries, as reflected in China's "Made in China 2025" industrial plan, and other similar industrial policy initiatives. The Chinese government's acts, policies, and practices take many forms. The investigation initially will consider the following specific types of conduct:

First, the Chinese government reportedly uses a variety of tools, including opaque and discretionary administrative approval processes, joint venture requirements, foreign equity limitations, procurements, and other mechanisms to regulate or intervene in U.S. companies' operations in China, in order to require or pressure the transfer of technologies and intellectual property to Chinese companies. Moreover, many U.S. companies report facing vague and unwritten rules, as well as local rules that diverge from national ones, which are applied in a selective and non-transparent manner by Chinese government officials to pressure technology transfer.

Second, the Chinese government's acts, policies and practices reportedly deprive U.S. companies of the ability to set market-based terms in licensing and other technology-related negotiations with Chinese companies and undermine U.S. companies' control over their technology in China. For example, the Regulations on Technology Import and Export Administration mandate particular terms for indemnities and ownership of technology improvements for imported technology, and other measures also impose non-market terms in licensing and technology contracts.

Third, the Chinese government reportedly directs and/or unfairly facilitates the systematic investment in, and/or acquisition of, U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property and generate large-scale technology transfer in industries deemed important by Chinese government industrial plans.

Fourth, the investigation will consider whether the Chinese government is conducting or supporting unauthorized intrusions into U.S. commercial computer networks or cyber-enabled theft of intellectual property, trade secrets, or confidential

business information, and whether this conduct harms U.S. companies or provides competitive advantages to Chinese companies or commercial sectors.

In addition to these four types of conduct, interested parties may submit for consideration information on other acts, policies and practices of China relating to technology transfer, intellectual property, and innovation described in the President's Memorandum that might be included in this investigation, and/or might be addressed through other applicable mechanisms.

### **C. Relevant Provisions of the Trade Act**

Section 302(b)(1)(A) of the Trade Act authorizes the United States Trade Representative to initiate an investigation to determine whether conduct is actionable under section 301 of the Trade Act.

Actionable conduct under section 301(b)(1) includes, inter alia, acts, policies and practices of a foreign country that are unreasonable or discriminatory and burden or restrict U.S. commerce. Unreasonable actions are those that while not necessarily in violation of, or inconsistent with, the international legal rights of the United States are otherwise unfair and inequitable.

Pursuant to section 302(b)(1)(B), the United States Trade Representative has consulted with appropriate advisory committees. The United States Trade Representative also has consulted with members of the inter-agency Section 301 Committee. On the date of initiation, the United States Trade Representative requested consultations with the Government of China concerning the issues under investigation, pursuant to section 303(a)(1) of the Trade Act (19 U.S.C. 2413(a)(1)).

Pursuant to section 304(a)(2)(B) of the Trade Act, 19 U.S.C. 2414(a)(2)(B), the United States Trade Representative must determine within 12 months from the date of initiation of the investigation whether any act, policy, or practice described in section 301 of the Trade Acts exists and, if that determination is affirmative, what action, if any, to take.

## **II. Request for Comments and to Testify at the Hearing**

### **A. Topics and Schedule**

The Office of the U.S. Trade Representative (USTR) invites written comments on:

1. The acts, policies, and practices of the Chinese government described in Section I.B above.
2. Information on other acts, policies and practices of China relating to technology transfer, intellectual property, and innovation as described in the President's Memorandum, which might be included in this investigation, and/or might be addressed through other applicable mechanisms.
3. The nature and level of burden or restriction on U.S. commerce caused by the applicable acts, policies and practices of the Government of China, and/or any economic assessment of that burden or restriction.
4. The determinations required under section 304 of the Trade Act, that is, whether actionable conduct exists under section 301(b) and what action, if any, should be taken.

To be assured of consideration, USTR must receive initial written comments by 11:59 pm on September 28, 2017, in accordance with the instructions in section II.B below.

The Section 301 Committee will convene a public hearing in the main hearing room of the U.S. International Trade Commission, 500 E Street SW, Washington DC 20436, beginning at 9:30 am on October 10, 2017. Persons wishing to appear at the hearing must provide written notification of their intention and a summary of the proposed testimony by 11:59 pm on September 28, 2017, in accordance with the instructions in section II.B below. Remarks at the hearing may be no longer than five minutes to allow for possible questions from the Section 301 Committee. The deadline for submission of post-hearing rebuttal comments is 11:59 pm on October 20, 2017.

Indicate in the “Type Comment” field if you are submitting a request to appear at the hearing, and include the name, address and telephone number of the person presenting the testimony. A summary of the testimony should be attached by using the “Upload File” field. The file name should include the name of the person who will be presenting the testimony.

## **B. Requirements for Submissions**

Persons submitting a notification of intent to testify, a summary of testimony, or written comments must do so in English, and must identify this matter (on the reference line of the first page of the submission) as “Section 301 Investigation: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation.”

To be assured of consideration, you must submit written comments, requests to testify, and summaries of testimony by 11:59 pm on September 28, 2017. The deadline for submitting rebuttal comments is 11:59 pm on October 20, 2017.

All submissions must be in English and sent electronically via [www.regulations.gov](http://www.regulations.gov) using docket number USTR-2017-0016. You must make any alternative arrangements in advance of the relevant deadline and before transmitting a comment by contacting Gwendolyn Diggs at (202) 395-3150.

To make a submission via [www.regulations.gov](http://www.regulations.gov), enter Docket Number USTR-2017-0016 on the home page and click “Search.” The site will provide a search-results page listing all documents associated with this docket. Find the reference to this notice and click on the button labeled “Comment Now.” For further information on using the [www.regulations.gov](http://www.regulations.gov) website, please consult the resources provided on the website by clicking on “How to Use Regulations.gov” on the bottom of the home page.

The [www.regulations.gov](http://www.regulations.gov) website allows users to provide comments by filling in a “Type Comment” field, or by attaching a document using an “Upload File” field. USTR prefers that you provide submissions as an attached document. If a document is attached, it is sufficient to type “see attached” in the “Type Comment” field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) format. If the submission is in another file format, please indicate the name of the software application in the “Type Comment” field. File names should reflect the name of the person or entity submitting the comments.

Indicate in the “Type Comment” field if you are submitting a request to appear at the hearing, and include the name, address and telephone number of the person

presenting the testimony. The file name should include who will be presenting the testimony.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC”. Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. If you request business confidential treatment, you must certify that the information is business confidential and would not customarily be released to the public. Filers of submissions containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character “P”. The “BC” and “P” should be followed by the name of the person or entity submitting the comments or rebuttal comments. If these procedures are not sufficient to protect business confidential information or otherwise protect business interests, please contact Katherine Linton at 202-395-3150 to discuss whether alternative arrangements are possible.

We will post comments in the docket for public inspection, except business confidential information. You can view comments on the <https://www.regulations.gov>

website by entering docket number USTR-2017-0016 in the search field on the home page.

William L. Busis

Chair, Section 301 Committee

Office of the United States Trade Representative.

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