

ALERT

USTR Tai Unveils Biden Administration U.S.-China Trade Strategy

October 4, 2021

U.S. Trade Representative (USTR) Katherine Tai outlined the Biden Administration's long-awaited U.S.-China trade policy at the Center for Strategic and International Studies (CSIS) on October 4, 2021.

Notably, Ambassador Tai stated that the Administration plans to "restart" the prior Administration's Section 301 tariff exclusion process. Additionally, she said that the USTR will engage China on its implementation of the "Phase 1" trade agreement, whose purchasing commitments are set to expire at the end of the year. Ambassador Tai emphasized that the next stage of engagement will focus on addressing Chinese State-Owned Enterprises (SOEs) and China's state driven economic model, which she noted has impacted key U.S. industries such as steel, solar, and semiconductors. She also indicated that the Administration is open to considering new trade disciplines, and referenced a potential Section 301 investigation, possibly into Chinese subsidies. Ambassador Tai emphasized that she plans to work closely with U.S. allies and will focus the Administration's whole-of-government worker-centric policy on confronting Chinese unfair trade.

Section 301 Exclusions: Recognizing that China's "forced IP and technology transfer policies" have been "longstanding and serious problems," Ambassador Tai said that the Administration will start a "targeted tariff exclusion process" to ensure "the existing enforcement structure optimally serves our economic interests." The "restart" seeks to mitigate the impact of tariffs that "have not generated any strategic benefits and raised costs on Americans," while ensuring the current 301 tariffs "align appropriately with our economic priorities."

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“Phase One” Agreement: While the Trump Administration’s “Phase One” agreement included a set of commitments from China, Ambassador Tai said the agreement “did not meaningfully address the fundamental concerns that we have with China’s trade practices,” as the Chinese government “pour[s] billions of dollars into targeted industries to shape its economy to the will of the state.” She detailed how such policies have injured the U.S. steel, solar, agriculture, and semiconductor industries. Despite its criticisms of the agreement, USTR committed to holding China accountable to its commitments under the deal, such as its promise to purchase certain agricultural products.

Using the “Full Range” of Trade Tools: With respect to the next steps, Ambassador Tai committed to engaging directly with China on its industrial policies, “specifically related to its state-centered and non-market trade practices including Beijing’s non-market policies and practices that distort competition by propping up state-owned enterprises, limiting market access, and other coercive and predatory practices in trade and technology.” She noted that the Administration must be willing to “deploy all tools and explore the development of new ones.” When asked specifically about when she would start a new Section 301 investigation, Tai replied that it would “depend” and that she is willing to look at all available tools to address China’s unfair trade practices, emphasizing that Section 301 is a “very, very important tool.” She noted that instead of focusing on market access, the Administration would instead focus on “smarter and more resilient” trade.

Multilateralism: In contrast to the previous Administration’s “unilateral U.S. pressure” paradigm, Ambassador Tai said that the United States will work closely with allies and like-minded partners toward “building truly fair international trade that enables healthy competition.” Tai noted that existing tariffs on steel and aluminum would not interfere with the United States’ relationship with the EU and that she aimed to take a litigious situation and convert it into an opportunity for partnership and collaboration, citing the recent resolution of the large civil aircraft dispute. She noted the importance of the World Trade Organization (WTO) and the U.S. commitment to it, including possible reforms.

Wiley has robust International Trade, Supply Chain, and National Security practices and extensive experience helping clients to navigate trade enforcement and Section 301 product exclusion matters. For more information about these issues, please contact one of the attorneys and advisors listed on the alert.

Nicole Hager, a law clerk with Wiley Rein LLP, contributed to this alert.