

Client Alert

International Trade & Litigation Practice Group

April 20, 2017

Public Comments And Hearing Regarding Administration Report On Significant Trade Deficits

On April 17, 2017, the Office of the United States Trade Representative (“USTR”) and the U.S. Department of Commerce’s International Trade Administration (“Commerce”) published a Federal Register notice regarding a public hearing and a request for comments “to assist in the analysis for the assessment” of Significant Trade Deficits which is required by the Presidential Executive Order Regarding the Omnibus Report on Significant Trade Deficits (“Omnibus Report On Significant Trade Deficits Executive Order”).

Readers of our April 3 Client Alert will recall that the Omnibus Report On Significant Trade Deficits Executive Order did not define “significant trade deficit.” The Federal Register notice now clarifies that “[t]he trading partners with which the United States had a significant trade deficit in goods in 2016 (in alphabetical order) were Canada, China, the European Union, India, Indonesia, Japan, Korea, Malaysia, Mexico, Switzerland, Taiwan, Thailand, and Vietnam.”

PUBLIC COMMENTS

Public comments and any requests to appear at the hearing must be filed by Wednesday, May 10, 2017 at 11:59 p.m. Eastern Daylight Time (“EDT”). Additional details on filing requirements and procedures are available in the Federal Register notice. Submissions containing business confidential information (“BCI”) may be filed and will be exempt from public inspection.

The Federal Register notice identifies several topics on which USTR and Commerce seek information regarding “each identified trading partner with which the United States had a significant trade deficit in goods in 2016”, including to:

- assess the major causes of the trade deficit, including, as applicable, differential tariffs, non-tariff barriers, injurious dumping, injurious government subsidization, intellectual property theft, forced technology transfer, denial of worker rights and labor standards, and any other form of discrimination against the commerce of the United States or other factors contributing to the deficit;
- assess whether the trading partner is, directly or indirectly, imposing unequal burdens on, or unfairly discriminating in fact against, the commerce of the United States by law, regulation, or practice and thereby placing the commerce of the United States at an unfair advantage;

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- assess the effects of the trade relationship on the production capacity and strength of the manufacturing base and defense industrial bases of the United States;
- assess the effects of the trade relationship on employment and wage growth in the United States; and
- identify imports and trade practices that may be impairing the national security of the United States.

The Federal Register notice also invites responses to the following additional questions, “which are relevant for the assessment”:

- Which bilateral trade deficits are structural or cyclical rather than mercantilist-driven?
- To what extent are non-market economies operating within a market-based system creat[ing] trade imbalances?
- To what extent does chronic industrial overcapacity resulting from government subsidies affect the U.S. trade deficit?
- Have free trade agreements contributed to bilateral trade deficits and how?
- To what extent have weak enforcement and dispute resolution mechanisms inadequately addressed trade issues that result in trade deficits?
- Are there any other factors related to trade deficits that the report should consider?

Finally, the Federal Register notice singles out the U.S. “manufacturing and the defense industrial base (with specific focus on electronics, aerospace, avionics, materials, machinery, and equipment)” for targeted comments on how requirements on (i) mandated coproduction and licensed production, (ii) mandated subcontracting/counter trade, (iii) required technology transfer, (iv) required collaborative research and development, (v) mandated joint ventures and intellectual property transfer, and (vi) required capital investment “have affected opportunities for increased U.S. exports, profitability, and employment.”

PUBLIC HEARING

A public hearing will be held at Commerce on Thursday, May 18, 2017, beginning at 9:30 a.m. EDT. Written requests to appear at the hearing, along with “a summary of the proposed testimony”, must be filed by the May 10 deadline for public comments. Hearing participants will be limited to no more than five minutes of presentation “to allow for possible questions from the panel.”

In sum, the Federal Register notice provides U.S. manufacturers, farmers, and other segments of the U.S. economy with the opportunity to comment on how their industries and markets are affected by the U.S. trade deficit in goods with Canada, China, the European Union, India, Indonesia, Japan, Korea, Malaysia, Mexico, Switzerland, Taiwan, Thailand, and Vietnam.

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