JANUARY 27, 2020

Making sense of the big, beautiful monster trade deal: Part #3

By David Cheng, Jeffrey Costellia and David Kaufman

As we discussed in Part #1, the long-awaited details of the Phase 1 trade deal between China and the United States were released on Wednesday, January 15, 2020. The Agreement, called a "big, beautiful monster," has extensive detail in some areas, and others are left rather vague. In this Alert (Part #3), we examine the efforts to "**expand trade**" outlined in the Agreement.

While the Agreement is called a "trade deal," really only one Chapter is entirely focused on "Expanding Trade." By eyeing trade expansion between China and the U.S., the Agreement is truly only focused on expanding the purchase of U.S. goods and services by China. The Agreement states: "The Parties acknowledge that trade and economic structural changes resulting from this Agreement and from other actions being taken by China to open up its economy and improve its trade regime should lead to improved trade flows, including significant increases in exports of goods and services to China by the United States and other countries."

Dollar targets

The Agreement presents a target of an increase in purchases made by China to be accomplished by the end of next year: "China shall ensure that purchases and imports into China from the United States of the manufactured goods, agricultural goods, energy products, and services identified in Annex 6.1 exceed the corresponding 2017 baseline amount by no less than $200 billion." In other words, China is committed to boosting its purchases of American products.

Agreed-to-Purchases by China Over 2017 Levels (in billions)

Categories	2020	2021
Manufactured Goods	$32.90	$44.80
Agricultural Products	$12.50	$19.50
Energy Products	$18.50	$33.90
Services	$12.80	$25.10

TOTAL		**$76.70**	**$123.30**

The Agreement includes a lengthy attachment that fleshes out the categories into specific products and services by HS Code, BMPC Category, and/or BEA Line Number.

No specific mechanism

There is no specific mechanism for ensuring these purchases actually occur. However, each side has expressed an obligation to facilitate the trade. Under the Agreement, the U.S. agrees "to take appropriate steps to facilitate the availability of U.S. goods and services to be purchased and imported into China" and allows China to "request consultations" if the U.S. or its companies are dragging their feet in some way.

Agricultural products

A day after President Trump signed the trade deal; he tweeted, "The farmers are really happy with the new China Trade Deal." This statement is partially based on the above commitments by China to increase their agriculture products purchase by over $30 billion and, also, perhaps on Chapter 3 of the Agreement's attempt to tackle some of the systemic challenges in U.S./China agricultural trade. America has long alleged that China applies unnecessary safety restrictions that negatively impact agricultural imports. The Agreement tries to change that in substantive ways by requiring China to reevaluate these restrictions. The U.S. agriculture secretary was quoted as saying, "There's going to be a sanitary/phytosanitary relaxation of prohibitions that have inhibited all of our exports there." The Agreement touches on a wide range of agriculture products from dairy to beef to rice. The U.S. also agrees to look for ways to boost imports of Chinese aquatic products to the U.S.

Opportunities for U.S. businesses

As discussed above, there is no actual mechanism or protocol (beyond the loosening of agriculture restrictions) for achieving these proposed trade levels. We presume that the drafters have left the end result in the hands of the Chinese government, having many more ways to influence purchasing—even among private sector entities—than the U.S. government does. American companies should examine their distribution channels and sales relationships in China and look for opportunities to sell products into the country, especially in the categories marked for increases in the Agreement.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- David Cheng at **dcheng@nixonpeabody.com** or +852-2171-6212
- Jeffrey Costellia at **jcostellia@nixonpeabody.com** or 202-585-8207
- David Kaufman, Director of Global Strategies, at **dkaufman@nixonpeabody.com** or 415-984-8241