

# Regulating for Globalization

Trade, Labor and EU Law Perspectives

## The US and China trade agreement – Phase One

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This article was first published by [Daily Cargo News](#).

### *Only the beginning of the end of tension?*

In much the same way that Australia welcomed rain this week, the release of ‘Phase One’ of the US and China Agreement had led to some degree of relief and confidence in the commercial and financial world.

However, like our rain, the Phase One Agreement does not solve all the problems of the US and China trade deal and only represents the initiation of a pathway to a more comprehensive deal. It is quite light on details, but there is no doubt that some of the commitments if followed through, would assist the creation of a new trade relationship between the world’s major trading partners, even though it is likely to affect Australian exporters.

A first point to remember is that this is not a conventional trade ‘deal’ like our Free Trade Agreement regime. At its heart, this is all an important part of the ‘America First’ theme of President Trump’s election campaign which promised a more balanced relationship with China to assist Americans in the agricultural and manufacturing heartland. That led to a number of immediate measures such as the US exit from The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**TPP11**) and the initiation of various inquiries into the potential effect of Chinese exports and practices resulting in the imposition of significant tariffs on Chinese goods and bans on trade with certain Chinese entities. The reality of the outcomes for many in the US has been negative, but that hardly seems to matter. The measures have seemingly been embraced by the US electorate, even as impeachment proceedings commence in the US. The political consequences of the deal cannot be over-estimated when the next ‘Phases’ of the Agreement are only likely to be negotiated if President Trump wins re-election and it is certain that the promise of those future agreements will form part of the next US election campaign.

It really reflects the new political reality that perceived national interests trump more altruistic mutually beneficial outcomes. The US interests wanted to deal with the trade imbalance with China and other Chinese practices such as forced transfer of intellectual property to Chinese companies as parts of commercial deals. The Phase One Agreement lays the groundwork for these outcomes. However, be under no misapprehension that all is happy in the bilateral relationship evidenced by the impending publication of a rule that would enhance the ability of the US to block shipments of foreign-made goods to Huawei as the US seeks to enhance the pressure on that company.

The terms of the Phase One Agreement had been the subject of some preliminary, carefully controlled ‘leaks’ including the release on 13 December 2019 of a ‘Fact Sheet’, most of which have been delivered, albeit with some lack of detail and with some deliberate secrecy. Some of the elements of the Phase One Agreement can be summarised as:

- An IP chapter addressing concerns on the protection of US IP in strategic markets and requiring China to take more action against ‘pirate’ or counterfeit goods.
- A chapter requiring China to outlaw mandatory technology transfers and to adopt procedures for fair payment for the technology.
- Provisions for possible reductions in tariffs imposed on Chinese exports by the US.
- An Agriculture chapter to deal with ‘structural barriers to trade’ and support expansion of US food, agriculture and seafood product exports.
- A Financial Services chapter intending to remove ‘long-standing trade and investment barriers’ applying to US providers of a range of financial services.
- A chapter on ‘Macroeconomic Policies and Exchange Rate Matters’ is intended to improve policy and transparency commitments relating to currency issues. This comes at the same time that the US appears to have withdrawn from its claims that China is a currency manipulator.
- The ‘Expanding Trade’ chapter obliges China to import various US goods and services over the next 2 years in a total amount that exceeds China’s level of imports of those goods in 2017 by no less than US\$200 billion. It even covers ‘rare earths’ which are not produced by the US. This could hurt a number of Australian exporters of the same goods to China and to the US whose trade could be disrupted. It could also affect Chinese obligations to afford ‘Most Favoured Nation’ treatment to other trading partners; and
- An important chapter to provide a means to resolve disputes in a ‘fair and expeditious’ manner.

There are a lot of important aspects not addressed in the Phase One Agreement, which have drawn

criticism. For example, there are no provisions reducing the level of Chinese subsidies and other support to its industries which was one of the reasons for the imposition of the US tariffs in the first place.

Some Australian companies have been the beneficiaries of the US/China dispute, including those selling goods made cheaper by the trade dispute. Other companies have achieved successes through retaliatory tariffs on US goods into China by providing duty-free substitutes through our China-Australia Free Trade Agreement (**ChAFTA**). The official response by the Australian government has been subdued, anticipating no major impacts at this stage and reminding us that the lower tariffs under ChAFTA still give Australian companies an advantage in the China market. Even so, Australian exporters of energy and agriculture do face some damage from the Phase One Agreement and those that could follow. Those associated with those industries have already called on the Federal government to ensure that their interests are not adversely effected. The share prices of energy stocks fell on the announcement of the Phase One Agreement with LNG exporters particularly affected.

As always, the real effect is yet to come, and while the move of the US and China is a positive step to settle international markets, there may well be some direct consequences for Australian exporters. More details to follow including a report from my trip to the US in April 2020.

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