

U.S./China Trade “Deal” Short on IP/Trade Secret Specifics

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With the announcement last week of a tentative partial trade agreement with China, the U.S. appears to be headed to a somewhat easing of tensions between the two superpowers. Terms of the agreement are vague, with references to a reduction in tariffs, increase in agricultural purchases by China, and agreements to return to the bargaining table.

What is missing, though, are references to increases in protection of U.S. intellectual property: trade secrets, patents, copyrights, and trademarks, long espoused by the U.S. This silence is in stark contrast to the stated goal of the U.S. that protection of U.S. intellectual property in China is among the key components to a successful and permanent trade deal.

The importance of such protection has been made manifest in several recent events. The National Association of Manufacturers was hacked over the summer and blame was placed by investigators on Chinese nationals. Earlier in the year, a former employee of a U.S. cast iron plant was sentenced to one year in prison after being arrested at the airport, en route to China with files of confidential information of his former employer. Furthermore, China’s trademark register is full of foreign trademarks registered in China by its citizens.

China apparently has verbally committed as a part of an overall trade package to tighten up enforcement efforts in the IP arena. But how does China quantify that commitment? Such requires a change in the Chinese government’s mindset, its enforcement policies, and its recognition of the protectability of foreign trade secrets and other IP rights. None of these can be reduced to tariff percentages, bushels or other common trade terms. What can China offer in the way of a concrete plan to bolster protection of foreign confidential information? Indeed, the silence of the parties as to this important issue is probably an indication of the difficulty the parties are having in reaching a verifiable agreement on IP. With trust levels between the nations at their nadir, one can easily see how resolution of the IP protection issue may be a major stumbling block to a lasting trade agreement. Will it become prohibitive? Time will tell.

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