China Could Move Production Offshore to Avoid U.S. Tariffs (Corrected)

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News Story

- Chinese companies could move production offshore—such as Southeast Asia—to avoid U.S. duties
- Directly investing in U.S. is another option for Chinese companies

By Dave Sebastian

(Bloomberg Law) --
Mainland Chinese companies could shift parts of their production from China to other countries to avoid U.S. tariffs should a trade war persist, according to trade analysts.

Some Chinese companies have considered establishing new operations in the U.S., while others may opt for producing or reassembling a portion of their products in Southeast Asian countries to circumvent the tariffs, the analysts told Bloomberg Law.

Chinese manufacturers of machinery and tools and are among those considering the shift in production, though that may take six to 24 months, Nicole Collinson, president of international trade and government affairs at Sandler, Travis & Rosenberg P.A., told Bloomberg Law July 9. The list of Chinese goods subject to tariffs that the U.S. released on July 6 largely covers machinery, equipment, and vehicles.

Designating production processes outside China would reduce the U.S. tariffs, as the products would be subject to different U.S. regulations based on country of origin, said Collinson, whose firm also has offices in Hong Kong, Guangzhou, and Shanghai.

At issue are the 25 percent tariffs levied by the U.S. on $34 billion worth of Chinese goods in response to Beijing's forced technology transfer policies and theft of U.S. intellectual property. The tariffs were imposed under Section 301 of the Trade Act of 1974, which empowers the president to levy tariffs and other import restrictions whenever a foreign country imposes unfair trade practices that affect U.S. commerce.

Those are separate from new U.S. tariffs on $200 billion worth of Chinese goods, ranging from fish and meat to wool and leather, which were announced July 10 by the Office of the U.S. Trade Representative (USTR).

Casting a Wider Net

Vietnam and Cambodia are among the locations that have garnered "a lot of interest" from Chinese companies in their quest for new production sites, Lenny Feldman, an international trade attorney at Sandler, Travis &

Rosenberg P.A., told Bloomberg Law July 9.

“The labor is relatively cost-effective” in those countries, according to Feldman, who said he is familiar with discussions among Chinese manufacturing companies.

Chinese companies also could turn to Hong Kong and Macau, both special administrative regions of China, since their goods are not subject to the 25 percent Section 301 tariffs. But the regions have garnered less interest because of the higher cost of labor, said Feldman, who serves on U.S. Customs and Border Protection’s Commercial Customs Operations Advisory Committee.

Other alternatives for new production sites include Malaysia and India, as the countries are “pretty close” to China and have “very little friction” with the U.S. in finished goods trade, John Scannapieco, a trade attorney at Baker Donelson, told Bloomberg Law July 6.

A Chinese product reassembled in a third country must be substantially transformed for it to be exported to the U.S. under a different country of origin label, according to U.S. customs law. Assembling circuit boards and components into a computer, for instance, would qualify the product as substantially transformed, Nelson Dong, co-chair of the Asia-Pacific practice at Dorsey & Whitney LLP, told Bloomberg Law July 9. Dong’s firm has offices in Beijing, Shanghai, and Hong Kong.

Maintaining U.S. Market

Several Chinese companies are also working with their U.S. counterparts to split the cost of tariffs to import from China, while others are relying on existing deals where U.S. importers have already agreed to purchase Chinese goods regardless of the new tariffs, according to Collinson, who represents U.S. companies working with their Chinese counterparts in importing goods to the U.S.

The U.S., for some companies, is a market not worth losing, Scannapieco said.

“Some [companies] really need to do their best to export to the United States because that is their market,” according to Scannapieco, who said he helps China-based manufacturing companies trading with the U.S. Several companies have “contemplated” moving their production overseas before the U.S. tariffs on Chinese goods went into effect July 6, Scannapieco said.

Chinese automobile and auto parts manufacturers that own U.S. plants are among those that “might be happy about the decisions they’ve made” in investing directly in the U.S., Catherine Pan-Giordano, a corporate lawyer at Dorsey & Whitney, said July 9. Auto parts are a part of the Section 301 list of U.S. tariffs on Chinese goods.

Chinese companies are crossing their fingers since companies have until Oct. 9 to file requests for goods to be excluded from the Section 301 tariffs to USTR, Feldman said.

Moving Isn’t Easy

But moving operations to another country could be a hassle in the short run, and companies may see the strategy as more of a long-term plan, William Reinsch, and international business analyst at the Center for Strategic and International Studies, said.

“This doesn’t happen overnight,” Reinsch said. “It’ll take a while to set that up. You’re not going to see an instantaneous switch. If you see something that’s instantaneous, it’s probably illegal.”

Both U.S. and Chinese companies will still find it hard to make any coherent strategy amid the unpredictable developments surrounding the tariffs, Mickey Kantor, who was U.S. trade representative during the Clinton administration, said.

"I don't think either country has a long-term strategy," said Kantor, now a trade attorney at Mayer Brown. "I'm not sure we have a policy."

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