

DOJ Announces 'China Initiative' to Investigate and Prosecute Chinese Companies

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On November 1, 2018, then-Attorney General Jeff Sessions announced the U.S. Department of Justice's (DOJ) "China Initiative"¹ with the objective of countering perceived national security threats to the United States from China. The initiative promises to investigate and prosecute Chinese companies aggressively for alleged trade secret theft, economic espionage, Foreign Corrupt Practices Act (FCPA) offenses and other violations of U.S. law.

In his speech announcing the initiative and an accompanying fact sheet, then-Attorney General Sessions cited a number of recent prosecutions for economic espionage and referenced several reports by the Trump administration on China's allegedly unfair trade practices and theft of U.S. intellectual property.² Alleged threats to the United States' "critical infrastructure" from foreign direct investment, supply chain threats and "foreign agents seeking to influence the American public and policymakers without proper registration" also will be vigorously investigated and prosecuted.

The China Initiative is being led by the DOJ's National Security Division and includes senior FBI and DOJ officials, and U.S. Attorneys from five different federal judicial districts.

Among other things, the initiative seeks to:

- identify priority trade secret theft cases and bring them to fruition in a timely manner;
- apply the Foreign Agents Registration Act to unregistered agents who seek to advance China's political agenda and bring enforcement actions where appropriate;
- implement the Foreign Investment Risk Review Modernization Act for the DOJ;
- identify FCPA cases involving Chinese companies that compete with American businesses; and
- increase efforts to improve Chinese responses to requests under the Mutual Legal Assistance Agreement with the U.S.

The China Initiative reflects growing tensions between China and the U.S. in areas of trade and intellectual property protections, as well as the Trump administration's enforcement focus on Chinese companies. The DOJ's China Initiative comes on the heels of recent efforts by Chinese authorities to assert sovereignty over cross-border data transfer under the Chinese Cybersecurity Law and to restrict companies' ability to provide information, even on a voluntary basis, to foreign authorities under the International Criminal Judicial Assistance Law.

These developments promise to make the international enforcement landscape even more challenging and complex for multinational companies, and they underscore the importance of continued vigilance, proactive assessment of relevant legal risks and contingency planning.

¹ "Attorney General Jeff Sessions Announces New Initiative to Combat Chinese Economic Espionage," DOJ (Nov. 1, 2018).

² "Attorney General Jeff Sessions' China Initiative Fact Sheet," DOJ (Nov. 1, 2018).