United States
Department of
Agriculture

Office of the General Counsel
1400 Independence Ave. SW
Washington, DC 20250-1400

January 15, 2021

**Delivered via Electronic Mail**
Melanie Sloan
Senior Advisor
American Oversight
1030 15th Street NW, Suite B255
Washington, District of Columbia 20005
Email: foia@americanoversight.org

**Re: Freedom of Information Act (FOIA) Request No. 2020-OSEC-06383-F
Final Response**

Dear Ms. Sloan:

This is the Office of Information Affairs (OIA), FOIA Division's final response to the above-referenced FOIA request, which sought:

> All email communications (including emails, email attachments, complete email chains, and calendar invitations) sent by (a) the officials specified below that contain at least one term from column A and at least one term from column B.
>
> Specified Department of Agriculture (USDA) Officials:
> I. Sonny Perdue, Secretary of Agriculture
> II. Joby Young, Chief of Staff
> III. Stephen Censky, Deputy Secretary of Agriculture
> IV. Ken [Isley], Administrator of the Foreign Agricultural Service
> V. Mark Dries, Deputy Administrator for Trade Policy and Geographic Affairs for the Foreign Agricultural Service
> VI. Katie Nishiura, Deputy Administrator for Foreign Affairs for the Foreign Agricultural Service

Specified Terms:

| Column A | Column B |
|---|---|
| i. Tariff<br>ii. Export<br>iii. Ethanol<br>iv. Soybean<br>v. Wheat<br>vi. Corn<br>vii. Iowa<br>viii. Farmer<br>ix. Farmers | i. Elect*<br>ii. Reelect*<br>iii. Re-elect*<br>iv. Vote*<br>v. Voting<br>vi. POTUS |

Your request has been processed under the FOIA, 5 U.S.C. § 552.

Electronic searches for responsive records were conducted by the Client Experience Center's (CEC) eComply team. The CEC provides comprehensive, fee-for-service information technology (IT) associated operations, security, and technical support services to USDA end users. The CEC also implements and manages enterprise IT solutions for users Department-wide. The email accounts associated with the Secretary of Agriculture, the Deputy Secretary of Agriculture, Joby Young, Ken Isley, Mark Dries, and Katie Nishiura were searched for emails responsive to your request. The CEC search located seven (7) pages of responsive records.

Following a review of the responsive records, the OIA has determined that certain information contained therein should be withheld pursuant to 5 U.S.C. § 552 (b)(6) (FOIA Exemption 6). Additionally, five (5) pages of records have been withheld in their entirety under 5 U.S.C. § 552(b)(5) (FOIA Exemption 5). Below is an explanation of the information that has been withheld.

## FOIA Exemption 5 - Deliberative

FOIA Exemption 5 protects from disclosure those "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." One of the frequently invoked FOIA Exemption 5 privileges is the deliberative process privilege. To fall within FOIA's deliberative process privilege, the records must be both pre-decisional and deliberative; the records must precede the adoption of an agency policy and include opinions, recommendations, or deliberations on a legal or policy matter. In this instance, the FOIA Division is fully withholding, under the deliberative process privilege, pre-decisional intra-agency briefings on issues relating to diplomatic relations with China and proposed talking points.

These items are pre-decisional in that they are antecedent to any final agency decision. These items are also deliberative in that they reflect the evolving, back-and-forth process between agency employees that is so integral to the Executive Branch decision-making process, which involves the development of potential recommendations by agency advisors to agency decision-makers for use in making policy decisions.

If these pre-decisional, deliberative communications were released to the public, USDA and other Executive Branch employees would be much more cautious in their discussions with each other, and in candidly discussing and providing all pertinent information and viewpoints in a timely manner to agency decision-makers. This lack of candor would also seriously impair the Department's ability to engage in forthright, internal discussions necessary for efficient and proper agency decision-making.

## FOIA Exemption 6

Exemption 6 generally is referred to as the "personal privacy" exemption. It provides that the disclosure requirements of FOIA do not apply to "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Application of the exemption involves balancing the public's interest in disclosure against individuals' privacy interests.

The information withheld under Exemption 6 consists of the alias email address for Secretary Sonny Perdue. The agency has a significant interest in ensuring that its officials have the capacity to safely perform a full range of official functions, including emergency operations, continuity of operations, and devolution planning and execution. These functions could not be accomplished if public email-writing campaigns impeded communications to the email accounts from which officials operate in emergency situations. In the event of emergency, not only are alias accounts necessary for safe and efficient emergency operations, but also so that family members can reach otherwise unavailable officials. While the existence of such alias email accounts and certain content of emails released therefrom may shed light on agency functions, the actual email addresses do not in and of themselves advance a public interest—particularly when balanced against the critical interest of agency officials in maintaining safe and responsible communication with critical business contacts, including those in the White House, during emergency situations and situations presenting potential national security threats. Nevertheless, in response to records requests, it is the agency's policy to process and release responsive documents derived from searches of all agency email accounts (including alias email accounts) to the extent not otherwise exempt or prohibited by law. Furthermore, we note that the disclosure of officials' primary official email accounts serves as the most appropriate point of contact for the public and poses the least amount of risk or threat in emergency operations.

You may appeal this response by email at USDAFOIA@usda.gov. Your appeal must be in writing, and it must be received electronically no later than 90 calendar days from the date of this letter. The OGC will not consider appeals received after the 90 calendar-day limit. Appeals received after 5:00 p.m. EST will be considered received the next business day. The appeal letter should include the FOIA tracking number, a copy of the original request, the OIA's response to your original request, and a statement explaining the basis of your appeal. For quickest possible handling, the subject line of your email and the appeal letter should be marked "Freedom of Information Act Appeal" and reference FOIA No. 2020-OSEC-06383-F.

You may seek dispute resolution services from the OIA's FOIA Public Liaison, Ms. Camille Aponte. Ms. Aponte may be contacted by telephone at (202) 505-0271, or electronically at Camille.Aponte@usda.gov or USDAFOIA@usda.gov.

You also have the option to seek assistance from the Office of Government Information Services (OGIS). Please visit https://www.archives.gov/ogis/mediation-program/request-assistance for information about how to request OGIS assistance in relation to a FOIA request.

Provisions of the FOIA allow us to recover part of the cost of processing your request. In this instance, no fees will be charged.

If you have any questions regarding the processing of this request, please contact Ms. Melanie Enciso at (202) 694-5982, or electronically at melanie.enciso@usda.gov or USDAFOIA@usda.gov.

For additional information regarding USDA FOIA regulations and processes, please refer to the information available online at www.dm.usda.gov/foia.

The OIA appreciates the opportunity to assist you with this matter.

Sincerely,

Alexis R. Graves
Departmental FOIA Officer
Office of Information Affairs

Enclosures: Responsive Records (7 pages)

**From:** Dries, Mark - FAS, Washington, DC
**To:** Hamilton, Clay - FAS; Thomas, Allison - FAS, Washington, DC; Bertsch, Charles - FAS, Washington, DC; Sparding, Kristin - FAS, Washington, DC
**Cc:** Whitley, Daniel - FAS, Washington, DC; Stephens, Andrew - FAS, Washington, DC; Ramos, Karina - FAS, Washington, DC
**Subject:** FW: POTUS tweets regarding tariffs
**Date:** Monday, December 2, 2019 9:14:00 AM

Fyi (yellow-highlighted).

Mark Dries
Deputy Administrator
Trade Policy & Geographic Affairs
Foreign Agricultural Service
U.S. Department of Agriculture
(202) 756-7195;  Email: mark.dries@usda.gov

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**From:** Hafemeister, Jason - OSEC, Washington, DC <Jason.Hafemeister1@usda.gov>
**Sent:** Monday, December 2, 2019 8:20 AM
**To:** Stephens, Andrew - FAS, Washington, DC <Andrew.Stephens@fas.usda.gov>
**Cc:** Isley, Ken - FAS, Washington, DC <ken.isley@usda.gov>; McKinney, Ted - OSEC, Washington, DC <Ted.McKinney@usda.gov>; Whitley, Daniel - FAS, Washington, DC <Daniel.Whitley@usda.gov>; Dries, Mark - FAS, Washington, DC <Mark.Dries@usda.gov>
**Subject:** FW: POTUS tweets regarding tariffs

FYI

jh

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**From:** Rich, Michawn - OC, Washington, DC <michawn.rich@usda.gov>
**Sent:** Monday, December 2, 2019 8:10 AM
**To:** (b)(6) [redacted] - OSEC, Washington, DC <(b)(6) [redacted]@usda.gov> Secretary Perdue's alias email address
**Cc:** Young, Joby - OSEC, Washington, DC <joby.young@usda.gov>; Hafemeister, Jason - OSEC, Washington, DC <Jason.Hafemeister1@usda.gov>; Rollins, Blake - OSEC, Washington, DC <blake.rollins@usda.gov>; Rodgers, Meghan - OC, Washington, DC <meghan.rodgers@usda.gov>; Varsamis, Alec - OC, Washington, DC <alec.varsamis@usda.gov>; Weeks, Audra - OSEC, Washington, DC <Audra.Weeks@usda.gov>; DuRant, Ryann - OC, Washington, DC <Ryann.DuRant@usda.gov>
**Subject:** POTUS tweets regarding tariffs

@realdonaldtrump: U.S. Markets are up as much as 21% since the announcement of Tariffs on 3/1/2018 - and the U.S. is taking in massive amounts of money (and giving some to our farmers, who have been targeted by China)!

Brazil and Argentina have been presiding over a massive devaluation of their currencies. which is not good for our farmers. Therefore, effective immediately, I will restore the Tariffs on all Steel & Aluminum that is shipped into the U.S. from those countries. The Federal....

.....Reserve should likewise act so that countries, of which there are many, no longer take advantage of our strong dollar by further devaluing their currencies. This makes it very hard for our manufactures & farmers to fairly export their goods. Lower Rates & Loosen - Fed!

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**From:** Dries, Mark - FAS, Washington, DC
**Sent:** Friday, December 27, 2019 9:32 AM
**To:** Hafemeister, Jason - OSEC, Washington, DC; Isley, Ken - FAS, Washington, DC; Whitley, Daniel - FAS, Washington, DC; Hamilton, Clay - FAS; Willbrand, Zhulieta - OSEC, Washington, DC; Chaves, Barbara - FAS, Washington, DC; Thomas, Allison - FAS, Washington, DC; Nenon, Sharynne - FAS, Washington, DC; Sheppard, Wade - FAS, Washington, DC; Devine, Andrew - FAS,; Stephens, Andrew - FAS, Washington, DC; Richey, Bobby - FAS, BEIJING, CHINA; Ward, Michael - FAS, BEIJING, CHINA
**Subject:** CRS Report on China Phase One Trade Deal
**Attachments:** CRS Phase One Trade Deal Report Dec 2019.pdf

**Follow Up Flag:** Follow up
**Flag Status:** Flagged

Fyi, in case you haven't already seen this report.

Mark Dries
Deputy Administrator
Trade Policy & Geographic Affairs
Foreign Agricultural Service
U.S. Department of Agriculture
(202) 756-7195;  Email: mark.dries@usda.gov

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INSIGHT

# U.S. Announces Preliminary Phase One Trade Deal with China

December 19, 2019

The Trump Administration announced on December 13, 2019, a draft agreement with the Chinese government on a subset of trade and investment issues the Administration raised in March 2018 under Section 301 of the U.S. Trade Act of 1974. The Chinese government has not formally agreed to the agreement and neither side has signed it. China is currently reviewing the text, leaving open the potential for disagreement or renegotiation of terms. If the process goes smoothly, U.S. Trade Representative (USTR) Robert Lighthizer and Chinese Vice Premier Liu He could sign the agreement in January 2020 in Washington, DC, before starting phase two negotiations.

The Administration identified four concerns about China's behavior in its March 2018 Section 301 Report—forced technology transfer, cyber-enabled theft of U.S. intellectual property (IP) and trade secrets, discriminatory and nonmarket licensing practices, and state-funded strategic acquisition of U.S. assets—and subsequently imposed four rounds of tariffs on Chinese goods. China responded with four rounds of counter tariffs. Negotiations also sought to address President Trump's concerns about the trade balance and incorporate Chinese offers in unrelated areas, such as financial services.

The USTR said the two sides have drafted an 86-page text covering some aspects of IP, technology transfer, agriculture, financial services, exchange rates, and dispute resolution that could be made public over the next few weeks. The two sides have been working with a draft text since at least May 2019, when China reportedly returned a heavily marked up draft and held up purchase agreements until the United States agreed to lift some tariffs. The Administration may have released details of the draft agreement to justify its decision to delay tariffs scheduled to take effect on December 15 and to lock in terms with China.

## Reactions

Some Members of Congress and most commentators assess the deal to be a first step in a longer effort to resolve U.S. trade concerns with China. Many observers call it a short-term truce, noting it falls significantly short of the Administration's goal of a comprehensive settlement, leaving tough systemic issues on IP and technology transfer to phase two talks. The USTR agrees that the deal is just a first step, but notes that most U.S. tariffs remain in place and that the deal will have a strong enforcement mechanism. Critics counter that the Administration was too quick to settle and that by lifting and delaying

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some tariffs, it may have lost leverage. They see the Administration as responding to pressure to keep China relations stable and the U.S. economy on solid footing ahead of the U.S. presidential election in November. U.S. firms, especially smaller companies, facing tariffs that remain in place are still concerned about the effects on their businesses. Others note that China's promise to buy an additional $16 billion in U.S. agriculture in the deal's first year is well below the U.S. target of $25 billion. Beijing also has preserved space for China to implement its industrial policies in strategic sectors of concern to the United States. Critics argue the timing gives China credit for purchases of U.S. products it would have likely made anyway in areas such as pork, to address shortages ahead of the Chinese lunar new-year in late January, and stem inflationary pressures.

## Key Details and Issues to Watch

**Tariffs.** The United States agreed to delay tariffs scheduled to take effect December 15, 2019, that would have affected approximately $160 billion worth of imports from China, particularly consumer electronics. For U.S. tariffs enacted on September 1, 2019, the deal cuts the tariff rate from 15% to 7.5%. The remaining U.S. tariffs enacted since March 2018 will remain in effect. According to a December 15 announcement by China's State Council Tariff Commission, China has agreed not to proceed with its own scheduled December tariff increases (Appendix II) and will extend exemptions for autos, auto parts and some pork and soybean imports it announced in September; earlier tariffs, including tariffs China implemented on September 1 (Appendix I), remain in effect. Some question whether the deal will be enough to reassure business and supply chains that have been diversifying in the wake of tariffs.

**Purchases.** China committed to purchase an additional $200 billion of U.S. agriculture, energy, and manufacturing goods over the next two years, with a detailed breakout by commodity; agriculture constitutes approximately $40 billion to $50 billion of the total. Beijing said it will buy $16 billion of U.S. agricultural goods in the first year of the deal and that purchases will be market-based, which may mean Chinese purchases could fall below U.S. stated goals. China's purchases may potentially shift U.S. export flows from other markets but not generate new demand. Neither side has released details about commitments beyond year two.

**Currency.** The Administration negotiated a currency commitment similar to Chapter 33 of the proposed U.S.-Mexico-Canada Agreement that includes a commitment to market-determined exchange rates, transparency and reporting requirements, and recourse to dispute settlement.

**Financial Services.** China promised to selectively reduce some foreign equity limits and restrictions, likely in an effort to generate pockets of U.S. business support, but may slow implementation through licensing, as it has done previously.

**IP.** China's commitments on counterfeiting, patent and trademark, and pharmaceutical protections may reflect recent domestic actions. China's new Foreign Investment Law imposes legal penalties for officials who disclose trade secrets, but Chinese industrial policies still incentivize government officials to obtain foreign knowhow. China's State Council promised new IPR protections by 2022, including financial damages in patent infringement cases, but has been silent on industrial policies and procurement rules that require foreign firms to share or transfer IP and knowhow to China.

**Technology Transfer.** USTR says that China will not force technology transfer and will not use state financing to make overseas acquisitions that advance China's industrial policies. This may be difficult to enforce. The new Foreign Investment Law forbids forced technology transfer, but Chinese officials frequently state that foreign firms willingly give their technology. Chinese industrial policies, such as Made in China 2025 and the national semiconductor policy, remain in force, and the Chinese government can leverage informal powers. The U.S. business community has voiced concerns that China is doubling down on industrial policies, including recapitalization of government funds and the launch of a new plan and $21-billion government fund to support advanced manufacturing. In 2020, Chinese officials will be adjudicating the country's next Five-Year Plan (2021-25) and supporting industrial plans that lay out plans for specific sectors.

**Enforcement.** USTR says remaining U.S. tariffs will incentivize implementation of Chinese commitments. An enforcement mechanism will allow 90 days to resolve issues, after which either side can take proportionate action. Snapback tariffs may be difficult to justify without specific benchmarks and timelines.

**Phase Two.** Core U.S. concerns on IP, technology transfer, and state subsidies appear to be left to phase two of the negotiations. These systemic issues have so far been intractable. They involve a web of reinforcing Chinese government plans and industrial policies that offer preferences and support for Chinese firms, both domestically and overseas, and often require foreign firms to partner and transfer technology, proprietary knowhow, and core IP with Chinese entities. China has used dialogue in the past to delay action on contentious issues. Phase two will test whether the U.S. approach can break new ground.

## Related CRS Products

- CRS Report R45949, *U.S.-China Tariff Actions by the Numbers*, by Brock R. Williams and Keigh E. Hammond.
- CRS In Focus IF11284, *U.S.-China Trade and Economic Relations: Overview*, by Karen M. Sutter.

# Author Information

Karen M. Sutter
Specialist in Asian Trade and Finance

# Disclaimer

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|---|---|
| **From:** | [redacted] (b)(6) - OSEC, Washington, DC Secretary Perdue's alias |
| **To:** | Rich, Michawn - OC, Washington, DC; Rodgers, Meghan - OC, Washington, DC; Boswell, Kristi - OSEC, Washington, DC; Willbrand, Zhulieta - OSEC, Washington, DC; Young, Joby - OSEC, Washington, DC; Rollins, Blake - OSEC, Washington, DC |
| **Subject:** | Media Interview with Ambassador Branstad |
| **Attachments:** | Bloomberg Interview Brief 1.16.20.docx<br>Trade TPs.docx Attachments 1 & 2 (5 pages total) fully withheld under FOIA Exemption 5: Deliberative / Pre-decisional |

Mike Dorning of Bloomberg