

US trade move against China snared in legal concerns

Actions by Trump administration could lead to challenges by affected companies

Shawn Donnan

The Trump administration's largest anticipated trade move against China has become bogged down in an internal debate focused in large part on legal concerns, even as Beijing is stepping up a frantic lobbying campaign to avert confrontation.

President Donald Trump launched the investigation into China's intellectual property regime and the forced transfer of technology by US companies last summer, declaring at the time that "this is just the beginning" of a promised fight against unfair trade practices around the world.

The so-called Section 301 investigation has since then become the centrepiece of a trade crackdown on China that the US is eager to launch this year. Expectations in Washington are that it would lead to a combination of investment measures and tariffs aimed at Beijing, with which it last year amassed a \$375bn trade deficit in goods.

But according to people familiar with the administration's discussions the push has become stuck in recent weeks with a debate over what measures to take.

The administration has been weighing up invoking the International Emergency Economic Powers Act, which is normally used to administer sanctions.

Such a move would be unusual and would require the president to declare a national emergency over trade with China, giving him wide powers to respond without congressional approval.

It also, however, could lead to legal challenges by affected US companies, prompting the concerns of administration lawyers.

Mr Trump has made it increasingly clear he is eager for action against Beijing, which his administration has labelled a strategic rival even as it has sought its help in dealing with North Korea. At a meeting with members of Congress on Tuesday the president said he was considering a mix of tariffs and quotas to protect aluminium and steel producers being “decimated” by cheap imports for which he has blamed China. Those moves would come via separate Section 232 investigations launched by his administration last year that face April deadlines.

“I want to keep prices down but I also want to make sure that we have a steel industry and an aluminium industry and we do need that for national defence. If we ever have a conflict we don’t want to be buying steel [from] a country we are fighting,” Mr Trump said.

The president also complained that the US had “rebuilt China”. “We’re like the piggy bank that had people running it who didn’t know what they are doing,” he told the meeting.

In January, the US imposed tariffs of up to 30 per cent on imported solar cells, in an action directed largely against Beijing. China’s commerce ministry responded by announcing an anti-dumping investigation into US exports of sorghum, an animal feed.

Officials in Beijing have been frantically lobbying US diplomats to avert a trade war. Over recent weeks Terry Branstad, the US ambassador to Beijing, has met privately with Chinese President Xi Jinping and Wang Qishan, the Communist party’s most trusted troubleshooter, according to four people familiar with the Sino-US discussions. Mr Xi’s top economic adviser, Liu He, has requested a meeting with Mr Branstad that has been scheduled for Wednesday, the people added. Late last week

Yang Jiechi, China’s top diplomat, travelled to Washington for meetings with Mr Trump and his top advisers, leading Chinese state media to hail the discussions as a way to “iron out trade issues”.

Such assertions are consistent with Mr Xi's argument, made in his first meeting last year with his US counterpart, that "we have a thousand reasons to get China-US relations right and not one reason to spoil the relationship".

At the end of last year, Chinese officials were confident that they had mollified Mr Trump after treating him to a "state visit plus" in Beijing. The China charge in Washington is being led by Mr Trump's trade representative, long-time China hawk Robert Lighthizer, who has said in private meetings that he wants to take action before entering into any substantive discussions, according to people who have met with him.

A spokeswoman for Mr Lighthizer on Tuesday insisted that "the United States is always prepared to meet any country to discuss trade issues of mutual concern". But the Trump administration last year suspended a Comprehensive Economic Dialogue with Beijing after disappointing early results. In recent reports Mr Lighthizer's office has also been scathing about past administrations' efforts to negotiate with China. Beijing's move to deploy top officials to engage Washington is a sign of how concerned the Chinese leadership has become.

For the past five years Mr Liu has headed a "party leading group" that wields enormous influence over financial and economic policy. In March he will become a vice-premier and head of a commission that oversees the country's leading financial regulators, according to people familiar with the appointment, making him China's de facto economic tsar. Mr Wang headed the party's anti-corruption campaign until last November and was widely regarded as China's second most powerful official. He is expected to be appointed to a senior position in March, most likely as vice-president with special responsibility for US affairs.