

Is There a Law in China Similar to the US Defense Production Act'

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Although there is no law or regulation in the People's Republic of China that explicitly parallels the US Defense Production Act of 1950 ("**DPA**"), as an economy with many remaining elements of state control, there are ample administrative measures, regulations and judicial precedents in China allowing the government to overrule outstanding production plans and contracts by mandating, controlling, allocating and prioritizing production of critical supplies. Thus, during the global COVID-19 pandemic, if a company is thinking of entering into contracts with Chinese manufacturers, government action is an additional risk that it needs to consider.

On March 18, 2020, US President Donald Trump issued an executive order ("**COVID-19 Executive Order**") declaring that "health and medical resources needed to respond to the spread of COVID-19, including personal protective equipment and ventilators" met the criteria set forth in the DPA to permit the use of the powers granted by the DPA. On March 23, 2020, President Trump took an initial step under the DPA by issuing an Executive Order authorizing the Attorney General to investigate and prosecute hoarding of personal protection equipment and related price gouging. On March 24, 2020, the administration went further, with FEMA administrator Peter Gaynor announcing that the agency would start using its DPA powers to procure about 60,000 test kits and began inserting DPA-specific language into its contracts for 500 million masks.

Essentially, under the DPA, the US federal government is authorized to force a US manufacturer to prioritize government contracts ahead of existing contracts for supporting the government's COVID-19 response and to allocate materials, services and facilities in such a manner as to prioritize these contracts or orders over other contracts and orders. Companies that are required under the DPA to produce government orders in priority are protected from liability for failing to meet prior deadlines. The government's authority under the DPA is typically implemented through the Defense Priorities and Allocations System ("DPAS").

China doesn't have any law like the DPA that overtly requires companies to prioritize the government's contracts ahead of existing commercial contracts. However, the Chinese government often uses administrative means to control epidemic prevention product manufacturing, which can have effects similar to the DPA. For example, during the COVID-19 crisis in early 2020, the Chinese central government issued multiple notices (i) requiring local governments to take charge of manufacturing epidemic prevention materials; and (ii) requiring manufacturers to obey the centralized arrangement:

Read the full alert [here](#).