Liza Mark, Edward Lebow, Jierong Yang in Law360: A Look at China's Version of 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 U.S. Defense Production Act of 1950, 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, President Donald Trump issued an 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 [Defense Production Act] to permit the use of the powers granted by the DPA. On March 23, 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.

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