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# Hughes Hubbard & Reed

## US-China Trade Tensions Escalate

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**April 4, 2018** – There have been a number of important developments in the U.S.-China trade relationship just in the last couple of weeks. Here are the highlights:

On March 22nd, President Donald Trump signed a memorandum into law, pursuant to his authority under Section 301 of the Trade Act of 1974 (19 U.S.C. § 2411), directing the United States Trade Representative (“USTR”) to publish a list of products in the Federal Register that could ultimately be subject to 25% U.S. tariff surcharges. USTR’s proposed list targets products that allegedly benefit from Chinese intellectual property-related policies, practices, and acts geared toward positioning China as a global leader in advanced technologies by the year 2025. Sectors to which the proposed tariffs are targeted include aerospace, agriculture, information and communication technology, machinery, robotics, semiconductors, and tires.

On March 23rd, the Ministry of Finance of the People’s Republic of China (“MOFCOM”) issued a press release in response to an action the Administration announced on March 8th (proclaiming of global steel and aluminum tariffs under Section 232 of the Trade Expansion Act of 1962). In China’s view, the Section 232 action was a disguised safeguard. China therefore decided that, pursuant to the WTO Agreement on Safeguards, it was entitled to place compensatory tariffs on seven categories of U.S. products spanning 128 tariff lines.

On April 1st, MOFCOM announced (translation required) the imposition of tariff surcharges of 15% and 25%, effective April 2, 2018, on 128 U.S. products.

On April 3rd, USTR published a proposed list of 1,300 Chinese products that could be subject to tariff surcharges worth approximately \$50 billion, following USTR’s determination that Chinese intellectual property-related policies, practices, and acts, including forced technology transfers, have resulted in harm to the U.S. economy of an equivalent amount.

Finally, China has just today reportedly decided to levy an additional 25% tariff surcharge on around \$50 billion of U.S. imports, covering 106 U.S. products (translation required), including soybeans, cars, aircraft, and chemicals, should the United States follow through with implementation of the proposed intellectual property-related tariff

surcharges. China argues that the United States may not unilaterally impose these surcharges consistent with WTO principles.

### **Details on China's Response to U.S. Steel and Aluminum Tariffs**

MOFCOM's March 23rd announcement indicated that 120 of the 128 U.S. products, classifiable under the following five product categories, would be subject to a 15% tariff surcharge: (i) fresh fruits, dry fruits and nut products; (ii) wine; (iii) modified ethanol, (iv) ginseng roots; and (v) seamless steel pipes. Tariff surcharges on these products would impact \$977 million worth of annual U.S. exports to China. The remaining eight products, classifiable as pork and pork products and aluminum scrap, would be subject to a 25% tariff surcharge which, by MOFCOM's estimation, would affect some \$1.992 billion worth annually of U.S. shipments to China. At that time, China indicated it would implement the 15% tariff surcharges shortly after expiration of a 30-day consultation period required under the WTO Agreement on Safeguards, and that it would implement the 25% tariff surcharges only "after further evaluating the impact of the U.S. measures on China."

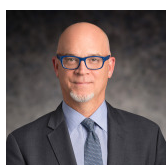
On April 1st, however, MOFCOM announced that on April 2nd it would impose surcharges for the entire list of 128 tariff lines. A MOFCOM spokesperson clarified, in a [statement](#) (translation required), that China decided to impose all of the tariff surcharges on an expedited basis after determining it was unlikely to reach consensus with the United States through WTO safeguards consultations.

### **Looking Ahead**

The instructions accompanying USTR's proposed Section 301 list indicate that USTR will hold a public hearing on May 15th. Parties wishing to testify at the hearing about the list must file a request to testify by April 23rd, and submit written comments, if any, by May 11th. Post-hearing rebuttals are due by May 22nd. Pursuant to Section 304(b) of the Trade Act of 1974 (19 U.S.C. § 2414(b)), USTR is also required to consult appropriate agencies and advisory committees, namely the Section 301 Committee, and may request the views of the U.S. International Trade Commission regarding the probable impact of the Section 301 tariff surcharges on the U.S. economy.

Stock markets plunged on April 2nd in response to the latest trade skirmishes. We note that 84 of the 128 products impacted by MOFCOM's April 1st announcement were U.S. food and agricultural products, accounting for \$2 billion of affected shipments.

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