Executive summary

On 3 April 2018, the United States Trade Representative (USTR) published a proposed list of Chinese goods targeted for assessment of an additional 25% duty upon importation into the United States (US).¹ The detailed list of targeted products contained in the “USTR Notice” follows President Trump’s announcement on 22 March 2018 that China’s alleged theft of US intellectual property, estimated to cost US$50 billion² per year, will be offset through the suspension of commensurate trade concessions to China. As reported on 22 March, the President ordered the USTR to propose a list of products from China,³ pursuant to an investigation under Section 301 of the Trade Act of 1974 (Section 301).

The approximately 1300 products identified on the list span several sectors of materials, intermediate goods and finished goods, specifically targeting products believed to benefit from Chinese industrial policies such as the Government’s “Made in China 2025” initiative, e.g., certain aerospace and marine vessels and equipment, healthcare products and equipment, automotive vehicles (including passenger, commercial and industrial), and various types of industrial equipment (heavy machinery, clean room, nuclear reactors and tower cranes). While the list spans several chapters of the HTSUS,⁴ Chapter 84 contains the largest quantity of covered products.
The USTR Notice explains that the proposed list was designed to minimize impact on US consumers and largely excludes several types of consumer goods such as apparel, footwear and cell phones. Further, the USTR notes that many of the items identified for the tariff are also exported to the US from other countries, providing alternative sourcing options to importers. The full list of products can be found at [https://ustr.gov/sites/default/files/files/Press/Releases/301FRN.pdf](https://ustr.gov/sites/default/files/files/Press/Releases/301FRN.pdf).

Once an effective date is determined as further explained below, each product identified will be subject to the current Most Favored Nation rate plus an additional duty rate of 25% ad valorem when entered into the US. For example, if a covered Chinese product carries an existing duty rate of 5% ad valorem, the new duty rate for that item will be 30% upon implementation of the new tariffs.

### Detailed discussion

#### What to Expect Next

In accordance with Section 304(b) of the *Trade Act of 1974* (19 USC 2414(b)), interested parties will have until 11 May 2018 to submit initial comments to the USTR on the proposed list of products. Comments may address any of the USTR’s proposed actions including but not limited to whether products should be retained, removed or added to the list, as well as the appropriate level of aggregate trade covered by the duties, e.g., whether duties should impact more or less than the targeted $50 billion per year. When submitting comments, the USTR Notice encourages commenters to consider both the practicality and effectiveness in deterring China’s acts, policies, and practices, as well as any disproportionate economic harm to US businesses and consumers.

The Section 301 Committee has scheduled a public hearing on 15 May 2018 at the US International Trade Commission. Following the public hearing, interested parties will have until 22 May 2018 to submit post-hearing rebuttal comments.

Although an implementation date has not been specified, the USTR is expected to publish a final list of products in the Federal Register along with the effective implementation date of the new tariffs after the USTR and the interagency Section 301 committee analyze comments, testimony and post-hearing comments. At this point, the Administration has not indicated how long the duties will remain in effect, nor a timeframe for reviewing and potentially adjusting or eliminating targeted products.

#### China’s retaliation actions

China’s Foreign Ministry announced on 23 March that it was preparing to impose tariffs on up to 128 American-produced goods, including wine, fruit, pork, modified ethanol and seamless steel pipes. The action targets $3 billion worth of US exports in response to the US’ imposition of tariffs on imports of Chinese steel and aluminum products effective on 23 March. On 2 April, China made the retaliatory duties effective. China has also formally filed a World Trade Organization dispute resolution action against the US for the Section 301 steel and aluminum tariff actions and has indicated it will take further actions if necessary.

Additionally, on 4 April, China formally announced that it will levy an additional 25% tariff on 106 items with a trade value of $50 billion of US imports including soybeans, automobiles, chemicals and aircrafts as a response to the USTR’s publication of the proposed items subject to the Section 301 tariffs. The effective date for these tariffs has not been formally determined, but likely will be based on when the US’ final action takes effect.

#### Actions for businesses

Businesses involved in US-China trade will want to carefully review the USTR list of targeted items, as well as the items included on the lists published by China. Companies that import Chinese origin goods into the US should review their import data against the USTR list. Those who may be negatively impacted by the additional duties, including manufacturers, distributors, importers and consumers, should map their complete, end-to-end supply chain to fully understand the extent of products impacted, potential costs, alternative sourcing options, and to assess any opportunities to mitigate impact. Impacted businesses should also consider providing comments as to specific concerns or requested modifications prior to 11 May, and should monitor comments and testimony provided so that any appropriate rebuttal comments may be provided by 22 May.

Companies with impacted US imports will want to identify strategies to defer, eliminate, or recover the excess duties. For instance, importers should evaluate options to accelerate imports of targeted products in the US prior to implementation and/or consider benefits available through the use of a bonded warehouse, US Foreign Trade Zones, or substitution drawback. Likewise, manufacturers of targeted
products may want to evaluate whether it is feasible to re-engineer their supply chains in order to relocate origin-conferring operations to non-China countries. Importers should also explore strategies to minimize the customs value of imported Chinese products subject to the additional duties, re-evaluating current transfer pricing approaches, and considering US customs strategies such as First Sale for Export.

US exporters to China will want to undertake a similar exercise both with respect to goods on the list announced by China, and with respect to any other current or planned exports to China. US exporters should recognize that the China list is unlikely to remain static, and contingency planning may well prove beneficial for items that have not been listed by China to date, but could become subject to excess Chinese duties in the future.

Endnotes

2. Currency references in this Alert are to US$.
5. Further details on the steel and aluminum measures can be found in our March 2018 issue of TradeWatch (Volume 17, Issue 1) and the EY Global Tax Alert, US President Trump imposes tariffs on steel and aluminum products – Mexico and Canada excluded, dated 9 March 2018.
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