

Fact Sheet for Section 301 Lawsuit

(Ct. Int'l Trade No. 20-177)

I. Background

- In August 2017, the U.S. Trade Representative (USTR) initiated an investigation under Section 301 of the Trade Act of 1974 into China's acts, policies, and practices with respect to technology transfer and intellectual property.
- In March 2018, USTR concluded that China's acts, policies, and practices were unfair and imposed a burden on U.S. commerce, resulting in a harm of \$50 billion.
- In June and August 2018, USTR issued two lists – List 1 and List 2 – that cover imports whose trade value equals approximately \$50 billion, which USTR found was commensurate with the harm identified at the conclusion of USTR's Section 301 investigation. USTR imposed an additional duty of 25% *ad valorem* on products covered by List 1 and List 2.
- In the months that followed, USTR wildly expanded the scope of its response and issued two more lists – List 3 in September 2018 and List 4 in August 2019 – that together cover imports whose trade value equals approximately \$500 billion, an amount ten times the harm that USTR identified at the conclusion of its Section 301 investigation.
- For the \$200 billion in products covered by List 3, USTR initially imposed an additional duty of 10% *ad valorem*, a rate that it ultimately increased to 25% *ad valorem* in May 2019.
- When USTR issued List 4 in August 2019 to cover \$300 billion in imports, it divided that List into two parts – List 4A, which became effective in September 2019, and List 4B, which has not yet taken effect. For products covered by List 4A, USTR initially imposed an additional duty of 10% *ad valorem*, which USTR first increased to 15% but later decreased to 7.5%.
- On September 10, 2020, Plaintiffs initiated an action, docketed as No. 20-177, at the U.S. Court of International Trade (CIT). Plaintiffs' action challenges USTR's decision to issue List 3, which covers imports valued at approximately \$200 billion.

II. Questions & Answers

A. Nature of the Challenge:

- **What are the grounds for Plaintiffs' challenge to List 3 and List 4?**

The suit challenges the List 3 and List 4 tariffs as without statutory basis, because they were prosecuted in an untimely fashion and without statutory authorization. The suit also challenges USTR's various procedural failings in seeking comment on and otherwise promulgating the Lists.

- **What relief is sought by Plaintiffs?**

Plaintiffs have asked the CIT to declare List 3 duties unlawful, refund any duties paid under List 3, and enjoin the U.S. Government from imposing List 3 duties against them in the future.

B. Questions for Potential Challengers:

- **Who else may challenge the duties?**

Any company that imported products covered by Lists 3 or 4A and has paid the additional duties may challenge them at the CIT.

- **Is there a deadline by which a company must challenge the duties?**

Potentially. Out of caution, those seeking to challenge List 3 duties may wish to file by Monday, September 21, 2020 (i.e., two years after USTR published List 3), while those seeking to challenge List 4A duties may wish to file by Friday, August 20, 2021 (i.e., two years after USTR published List 4).

- **How may a company challenge its payment of these additional duties?**

A company may file its challenge in one of two ways.

First, a company may decide to file its own lawsuit. Out of caution, the company may wish to file by the deadlines (stated above) for challenging duties paid under List 3 and/or List 4A.

Second, a company may elect to “intervene” in action No. 20-177, the lawsuit that challenges the additional duties imposed under List 3. To do so, the company must file with the CIT a motion to intervene and a complaint outlining the company’s claims for relief. The CIT’s rules do not require the company to file its request for intervention by a particular date, but given the arguable deadline for challenging duties imposed under List 3, the company may wish to file its papers no later than Monday, September 21, 2020 if it intends to challenge additional duties imposed under List 3. If the company intends to challenge any duties paid pursuant to List 4A, it should file its papers as early as possible and well before the deadline for summary judgment motions.

- **Have you heard whether other companies will challenge duties paid under List 3 and List 4A?**

We understand that several other companies intend to file lawsuits in the days ahead that challenge the duties paid under List 3 and List 4A. We also understand that these companies may include additional counts directed to the exclusion process that USTR promulgated after it issued List 3 and List 4A.

C. Forum & Process Questions:

- **What is the CIT?**

The CIT is a U.S. federal court based in New York City that hears disputes over international trade matters.

- **How many judges serve on the CIT?**

12. In addition to 7 active judges, the CIT has 5 senior judges that hear a reduced number of cases.

- **Which judge will hear the case?**

The Chief Judge of the CIT will assign the case to one of the CIT's judges. In exceptional cases, the Chief Judge may assign the case to a three-judge panel.

- **Who will defend the imposition of additional duties?**

The U.S. Department of Justice, with lawyers from USTR playing a supporting role.

- **How long will the CIT take to rule?**

Plaintiffs will ask the CIT to resolve the dispute on an expedited basis, with the goal of obtaining a decision by mid-2021.