

August 2, 2021

Background:

In early fall of 2020, Dentons Cohen & Grigsby filed a number of separate legal actions in the US Court of International Trade (CIT) on behalf of our clients challenging the validity of the Section 301 “List 3” tariffs imposed on Chinese goods under the Trade Act of 1974 by the US Trade Representative (the USTR) and US Customs and Border Protection. The crux of the plaintiffs’ argument is that these tariffs were imposed in a manner that failed to comply with the procedures required under the Trade Act of 1974 and that the Office of the USTR exceeded its authority to “modify” an action under Section 307 of the Trade Act by promulgating List 3 in retaliation to the retaliatory tariffs imposed by China. This case is active, with the Government having filed a Motion to Dismiss or, alternatively, Motion for Judgment on the Agency Record on June 1, 2021, in the lead case being administered by the plaintiffs’ steering committee. The lead plaintiffs’ Response in Opposition to the Government’s Motion to Dismiss is due to be filed on August 2, 2021.

List 4A Approaching Deadline:

The same challenges that we had advanced in connection with the imposition of tariffs on the Section 301 List 3 tariffs equally apply to the imposition of Section 301 “List 4A” tariffs imposed on Chinese goods under the Trade Act of 1974. **One arguably approaching deadline for the filing at the CIT of challenges to the imposition of Section 301 tariffs on goods covered by List 4A is August 20, 2021**, which is two years after the publication of List 4A on August 20, 2019, in the Federal Register and which is generally viewed as the most conservative deadline for List 4A challenges at the CIT. The List 3 tariffs cover a wide range of products estimated to total \$200 billion in imports from China. In contrast, List 4A covers a smaller number of total annual imports from China, identified by their respective Harmonized Tariff Schedule designation, but contains several broad groupings of products, including certain foods, apparel, chemical products, steel and aluminum and machinery.

Continuing Claim Theory:

It is worth noting that some plaintiffs have taken the position that each time an importer enters goods under List 3 (and going forward under List 4A) a new claim and injury accrues that supports a substantive (as opposed to a procedural) challenge to the imposition of these tariffs. This theory has not been adjudicated by the CIT, but it appears to have legal merit. Under this theory, a legal action filed today may be considered to be timely filed for all entries of merchandise subject to List 3 entered within the last two years.

Please feel free to reach out to any of the key contacts should you have questions or need further assistance.

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