

Importers Should File Section 301 List 4A Actions for Duty Refunds

follow numerous lawsuits already filed on List 3 alleging the U.S. Trade Representative (USTR) overstepped its authority in promulgating the additional tariffs. We refer you to our previously issued GT Alert on the Section 301 litigation.

List 4A, valued at \$116 billion, includes the following product groupings:

- Foodstuffs
- Footwear, apparel, and accessories
- Steel, aluminum and other metals
- Machinery and parts thereof
- Consumer products

USTR's investigation pursuant to Section 301 of the Trade Act of 1974 found that U.S. exports were unfairly burdened by Chinese intellectual property policies and therefore recommended \$50 billion in retaliatory tariffs. However, the List 4A tariffs were promulgated in response to Chinese currency manipulation and cyber theft. The Act also requires USTR to determine what action to take, if any, within 12 months after initiation of that investigation. USTR issued List 4A beyond the 12-month period and accordingly, the promulgation of the additional tariffs was not within the confines of the statute. These are the two arguments that will underlie the challenge to these duties. While there is no guarantee of success, if successful, the actions could result in refunds to plaintiffs for all duties paid under List 4A up until the cases are resolved.

There have been more than 3,600 complaints filed in the CIT asserting that USTR went beyond its authority in assessing additional duties on goods on List 3 and List 4A. To date, the litigation has been procedural and focused on case management issues. On Feb. 5, 2021 the CIT Chief Judge Timothy Stanceu signed an order approving a three-judge panel to hear the slew of cases and assigning Judges Mark Barnett, Claire Kelly, and Jennifer Choe-Groves to the panel. They are the three most senior and active judges on the court. Now that the panel has been assigned, substantive proceedings may follow.

The filing deadline for cases to be brought on List 4A is Aug. 20, 2021. Importers may still file actions on List 3, although it is an open question whether the statute of limitations has already expired. While importers should keep in mind that this action likely will be appealed to the Court of Appeals for the Federal Circuit and potentially the U.S. Supreme Court, the cases have begun to move forward, and importers should file as soon as possible

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