

# Refunds of Some Section 301 Chinese Duties May Be Available

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The litigation filed last fall challenging the legitimacy of the United States Trade Representative's (USTR) decision to issue the List 3 and List 4 China 301 tariffs is moving forward, but companies paying these duties may still be able to join the litigation and thereby preserve their right to any refunds should the plaintiffs prevail. On February 10 and 16, 2021, the Court of International Trade (CIT) issued two procedural orders, the first of which consolidated the nearly 4,000 related complaints into a single master case, *In Re Section 301 Cases*. In the February 16 order, the CIT directed the plaintiffs to coordinate with the government and submit a proposed representative sample of the case by March 19, 2021.

While new plaintiffs may still be added, companies that have paid Section 301 duties on Chinese imports should file now to maximize refunds. Once companies file, the case will be prosecuted by the lead plaintiff thus minimizing costs to the other affected parties.

### **Background: The Section 301 China Tariff Litigation**

On September 10, 2020, HMTX Industries LLC initiated a lawsuit alleging that the List 3 and List 4 tariffs are without statutory basis because they were prosecuted in an untimely fashion and without statutory authorization. The suit also challenges USTR's procedural failings in seeking comment on and otherwise promulgating the lists. It asks the CIT to declare List 3 and List 4 duties unlawful, refund any duties paid under List 3 and List 4, and enjoin the U.S. government from imposing List 3 and List 4 duties against them in the future.

The List 3 tariffs became effective on September 24, 2018. The List 4 tariffs became effective in August 2019. Companies that pay these tariffs are adversely affected under the law and, therefore, have standing to join the complaint. Thus far, around 4,000 companies have joined the case, and others continue to do so. Generally, a company must file a complaint within two years after the cause of action first accrues.

In this case, there are different opinions on the deadline for filing. For example, some argue that a cause of action arises every time a company imports an item and pays duties – so any products imported subject to the List 3 tariffs within the past two years could be potentially refunded. Additionally, any products subject to exclusions that have subsequently expired could be included. All products subject to the List 4 tariffs will be included if the complaint is filed before August 20, 2021. Thus, companies have an incentive to join the case if they have paid or continue to pay List 3 or List 4 duties. Should the plaintiffs prevail, the government will be required to refund duties to those companies that joined the complaint.

### **Next Steps**

Joining the complaint requires very little company-specific information at this point, and can be a low-cost way to protect your company's ability to recoup List 3 and List 4 duties paid. Contact your Lowenstein attorney if you are interested in learning more.

# Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

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