

## Importers Seek Relief from Section 301 Tariffs on China-Based Manufacturing

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September 17, 2020

The United States has imposed tariffs on various Chinese products under Section 301 of the Trade Act of 1974, one of the principal statutes by which the United States enforces trade agreements and addresses unjustifiable burdens on U.S. commerce. The products are identified in lists known colloquially as Lists 1 to 4. Multinational companies with international supply chains have struggled to manage the financial impact of the Section 301 tariffs on China-based manufacturing, and a recent lawsuit in the Court of International Trade seeks relief.

Three U.S. importers of vinyl tile filed an action late last week in the Court of International Trade seeking to vacate the tariffs on certain Chinese products identified on “List 3” and “List 4,” as well as obtain a refund of Section 301 duties paid since 2018 (see *HMTX Industries LLC, et al. v. United States of America, et al.*, Court No. 20-00177). The plaintiffs claim the United States Trade Representative (“USTR”) exceeded its authority and violated required procedural processes by imposing duties on products from China for retaliatory reasons, rather than for the technology infringement and intellectual property harms identified in the Section 301 investigation leading to “List 1” and “List 2.” Plaintiffs also claim that the USTR violated the Administrative Procedure Act by failing to: (i) provide sufficient opportunity for comment; (ii) undertake an analysis of the claimed increased burden on U.S. commerce; and, (iii) identify the facts necessary to support the determination. Since USTR published the notice of “List 3” in the Federal Register on September 21, 2018, the plaintiffs assert that their claims are timely under the two-year statute of limitations provided by 28 U.S.C. § 2636(i).

**Importers desiring to file for similar relief should do so no later than Friday, September 18, 2020.**

Also of note, the World Trade Organization (“WTO”) on Tuesday issued a report finding that some tariffs issued by the U.S. on Chinese products are “inconsistent” with international trade rules. The WTO encouraged settlement negotiations to resolve the issues. This finding may be subject to appellate review.

If you have been impacted by Section 301 duties on imports from China under List 3 or List 4(a), please contact the authors or your Miller Canfield attorney.