

Section 301 Tariffs On China-Based Manufacturing: Here to Stay (For Now)

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A recent decision by the U.S. Court of International Trade ("USCIT") means that tariffs on imports from China under Section 301 of the Trade Act of 1974 will remain in place for now.

In 2018, the United States imposed tariffs on various products imported from China under Section 301—identifying impacted products on Lists 1 to 4 as published in the Federal Register. As a result, supply chains struggled to manage the financial impact of the ad valorem tariffs ranging from 7.5% to 25%.

In 2020, U.S. importers filed an action in the USCIT seeking to vacate tariffs for Lists 3 and 4A. The importers argued that the United States Trade Representative ("USTR") exceeded its authority and violated the Administrative Procedure Act ("APA") by, among other things, failing to allow sufficient time and process for notice and comment. Specifically, the plaintiffs contend that the USTR received thousands of comments opposing the imposition of the duties and failed to give any reasonable response to the comments other than those that relate to whether specific tariff items would be subject to the duties.

After allowing the USTR to address why its responses to the comments were appropriate, the USCIT affirmed the Section 301 tariffs on March 17, 2023—finding the USTR had given enough consideration to public input to satisfy its obligations under the APA.

USCIT held that an agency must only respond to comments that raised significant problems—those "which, if true, raise points relevant to the agency's decision *and which, if adopted, would require a change in an agency's proposed rule.*" The USCIT emphasized that the standard that the agency must meet in responding to comments "is not particularly demanding." Rather, the USCIT will "uphold a decision of less-than-ideal clarity if the agency's path may reasonably be discerned." As such, the USCIT opined that the USTR was only required to show awareness of the comments and engaged in reasoned decision-making.

USCIT's decision may be appealed to the Court of Appeals for the Federal Circuit. If an appeal is ultimately successful, refunds of Section 301 tariffs paid on List 3 and List 4A goods may become available to the litigants and the Section 301 tariff program may cease.?

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