

U.S. Court of International Trade Upholds Section 301 Duties on China

March 21, 2023

In a highly significant decision on March 17, 2023, a three-judge panel of the U.S. Court of International Trade (CIT) issued an opinion upholding the U.S. Trade Representative's (USTR) imposition in 2018 and 2019 of a third and fourth round of tariffs under Section 301 of the Trade Act of 1974 (Section 301). Approximately 3,600 importers challenged at the CIT the legality of these 25% Section 301 tariffs on hundreds of billions of dollars' worth of Chinese-origin goods.

In April 2022, the CIT found that while the imposition of these duties did not violate the Trade Act, USTR failed to abide by Administrative Procedure Act (APA) requirements to consider public comments when it imposed the duties. The CIT accordingly remanded the agency's decision imposing the duties for further explanation and consideration, while simultaneously denying the plaintiffs' request that the duties be lifted in the meantime. We wrote about the CIT's April 2022 decision in a client alert linked [here](#).

On remand, USTR offered a more fulsome explanation of its decision to impose the duties and reasoning at the time of the underlying agency action. While the importers challenged this additional rationale as a "post hoc rationalization"—*i.e.*, new explanation that post-dates the agency action, which is generally impermissible in administrative law—the CIT rejected these arguments and found that USTR's explanation complied with Supreme Court precedent. In doing so, the CIT upheld USTR's response to public comments concerning presidential direction, harm to the U.S. economy, efficacy of the tariffs, and tariff alternatives. Notably, the CIT made clear that it may not reweigh evidence or opine on USTR or the President's policy choices, such as the appropriate way to address China's numerous unfair trade practices.

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With the appeal at the CIT final, the importers have already stated their intention to appeal to the U.S. Court of Appeals for the Federal Circuit.

Background: Section 301 authorizes USTR to take action to encourage foreign countries to abandon or mitigate unfair trade practices affecting U.S. commerce. In 2017, at the direction of then-President Trump, USTR began an investigation into China's trade practices, and ultimately concluded that a variety of Chinese practices unfairly burdened U.S. commerce. Subject to the President's direction, USTR imposed Section 301 tariffs ranging from 7.5% to 25% on four successive rounds of Chinese products between July 6, 2018 and September 1, 2019.

Section 301 duties are currently undergoing "reviews of necessity," in which domestic industries and companies that benefit from the tariffs may request their continuation beyond the initial four-year time period contemplated by the Trade Act. More information about the ongoing reviews can be found in a client alert linked [here](#).

Wiley has a robust International Trade practice and extensive experience helping clients navigate trade enforcement and Section 301 product exclusion matters. For more information about these issues, please contact one of the attorneys listed on this alert.