

## **Alert** | International Trade



October 2020

### **Importers Could Still Be Eligible to File Section 301 Refund Actions**

U.S. importers of products manufactured in China and subject to Section 301 Lists 3 and 4A may still file actions in the Court of International Trade (CIT) requesting tariff refunds. The numerous lawsuits already filed allege that the U.S. Trade Representative (USTR) overstepped its authority in promulgating Lists 3 and 4A.

USTR's Section 301 investigation found that U.S. exports were unfairly burdened by Chinese intellectual property policies and therefore recommended \$50 billion in retaliatory tariffs. Those tariffs were issued pursuant to List 1 (\$34 billion) and List 2 (\$16 billion). The lawsuits filed allege that the imposition of Section 301 duties on List 3 (\$200 billion) and 4A (\$116 billion) goods was outside USTR's original authority, as they were promulgated in response to other issues including currency manipulation and cyber theft.

In addition, Section 304 of the Trade Act of 1974 requires USTR to determine what action to take, if any, within 12 months after initiation of that investigation. USTR issued List 3 and List 4A beyond the 12-month period. If successful, the actions could result in refunds to plaintiffs for all duties paid under Lists 3 and 4A up until the case is resolved.

There is a two-year statute of limitations to file for refund cases under 28 USC §1581(i). USTR's List 3 was published in the Federal Register on Sept. 21, 2018. Therefore, many companies filed for refunds by Sept. 21, 2020. List 4A was not published until August 2019, so the deadline will be August 2021.

The cases filed after Sept. 21, 2020, allege that under the Administrative Procedure Act (APA) a plaintiff has standing once it suffers an “injury in fact.” Each entry and duty payment can be considered an injury in fact; therefore, importers may well have standing under the APA to sue beyond Sept. 21, 2020. Based on prior CIT actions, it is unclear whether the court will consider the date of publication of the Federal Register Notice or the date of payment of duties as the start of the two-year statute of limitations period.

Even though it is uncertain whether the CIT will approve of using the APA to establish standing, importers of merchandise on List 3, who have not yet filed, may want to consider submitting a complaint requesting Section 301 tariff refunds using the APA to establish standing.

## Authors

This GT Alert was prepared by:

- [Laura Siegel Rabinowitz](#) | +1 212.801.9201 | [rabinowitzl@gtlaw.com](mailto:rabinowitzl@gtlaw.com)
- [Donald S. Stein](#) | +1 202.530.8502 | [steind@gtlaw.com](mailto:steind@gtlaw.com)
- [Axel S. Urie](#) | +1 202.530.8539 | [uriea@gtlaw.com](mailto:uriea@gtlaw.com)

Albany. Amsterdam. Atlanta. Austin. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.~ Houston. Las Vegas. London.\* Los Angeles. Mexico City.+ Miami. Milan.» Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. Salt Lake City. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.\* Warsaw.~ Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. \*Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¶Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimbengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2020 Greenberg Traurig, LLP. All rights reserved.*