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Thousands of Companies Big and Small Sue US Challenging Section 301 List 3 and List 4 Tariffs

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A lawsuit filed by three vinyl tile importers last month at the U.S. Court of International Trade (CIT) challenging the U.S. Trade Representative's (USTR) implementation of Section 301 "List 3" and "List 4" duties on products from China, *HMTX Industries LLC et al. v. United States* (Court No. 20-00177), has resulted in the filing of thousands of additional lawsuits brought by other affected importers.

The original plaintiffs challenged the USTR's implementation of List 3 and List 4 tariffs in late 2018 as exceeding its statutory authority under the 1974 Trade Act on September 10, 2020. The complaint acknowledged that "List 1" and "List 2" tariffs were justified as directly responsive to China's unfair trade practices. The complaint alleges that the USTR's subsequent rounds of tariff actions against Chinese origin imports overstepped the USTR's authority, however, and failed to comply with the requirements of the Administrative Procedures Act (APA). While proving the USTR exceeded its authority is difficult and the OESA in a notice indicated they felt the chance of success of this lawsuit was no more than 50%, over 3,000 companion lawsuits are pending, in case the initial HMTX case is successful.

By September 26, 2020, over 3,300 other companies, including Ford, Tesla, Volvo Group North America, Home Depot, and Walgreens, filed similar suits. The strategy behind the filing of companion lawsuits by other importers is plaintiffs expect to then move to consolidate with the *HMTX Industries* case or stay the lawsuits pending the CIT's disposition of the *HMTX* case. This will benefit the additional importers if the *HMTX Industries* lawsuit is successful without each incurring the large expenses of fully litigating their claims.

Concerns over a possible expiration of the two-year statute of limitations for bringing claims pertaining to List 3 fueled the rush of companion lawsuits. The applicable procedural and customs

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laws are complex, and one possible interpretation is that importers had to file a lawsuit within two years of the September 21, 2018 issuance of the List 3 rules. Other importers have since filed companion lawsuits alleging that the two-year statute of limitations does not begin until either the date the U.S. government started to collect tariffs or the date that an importer/plaintiff first paid such tariffs.

With regard to List 4, those rules were not issued until August of 2019, so there is still time to bring such an action for importers who are paying List 4A tariffs without the timing concern. (The List 4B tariffs are currently on hold.)

The CIT is currently considering motions from the government and various parties for case management procedures such as the appointment of a three-judge panel, and/or a plaintiff steering committee to handle this complex quasi-class action.

If you are affected by List 3 or List 4A tariffs, or are uncertain which list your products appear on and would like more information about filing a companion lawsuit, you should contact Butzel Long immediately.

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