

Federal Circuit Affirms Lawfulness of Section 301 “Lists 3 and 4A” Tariffs on China

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On September 25, 2025, the U.S. Court of Appeals for the Federal Circuit (CAFC) [affirmed](#) a decision by a three-judge panel on the U.S. Court of International Trade (CIT) upholding Section 301 tariffs on imports from China imposed in May 2019 (so-called “List 3” tariffs) and February 2020 (“List 4 tariffs”), with tariff rates ranging from 7.5 percent to 25 percent.

The tariffs stemmed from the Office of the United States Trade Representative’s (USTR) investigation and [determination](#) in April 2018 under Section 301 of the Trade Act of 1974 that China had engaged in unreasonable and discriminatory conduct burdening or restricting U.S. intellectual property rights, innovation, or technology development. In response to China’s unlawful conduct, and after a public comment period and hearing, USTR determined in June 2018 to impose 25 percent tariffs on a list (“List 1”) of U.S. imports from China that enter under specific subheadings of the Harmonized Tariff Schedule of the United States (HTSUS). That prompted retaliatory tariffs imposed by China on U.S. goods, which in turn prompted USTR to issue various additional lists – including Lists 3 and 4 – of modified, higher tariff rates for specified HTSUS subheadings.

Companies that imported affected products from China challenged the legality of these Lists 3 4A tariffs imposed and modified between September 2018 and January 2020 (List 4B tariffs were indefinitely suspended in December 2019). The CIT consolidated the more than 3,500 lawsuits from parties who contended, among other things, that the tariffs were unsupported by statutory authority and imposed in violation of procedural requirements mandated by the Administrative Procedure Act (APA). The main issue was whether the statute could be correctly interpreted to permit USTR to impose the higher tariff rates via Lists 3 and 4A.

In a unanimous decision, the three-judge CAFC panel affirmed the [CIT’s decision](#) issued in March 2023 upholding the Lists 3 and 4A tariffs. The CAFC agreed with the CIT that the authorizing language of Section 307 of the Trade Act of 1974 permitting USTR to “modify” Section 301 action also allowed the agency to increase the tariffs, and that USTR had complied with the [CIT’s earlier decision](#) to demonstrate USTR’s compliance with the APA’s requirements.

While the CAFC agreed with the CIT that Section 307 allowed the modification of the tariffs, the appeals court found that an increase in the tariff rate was authorized by a provision within the law other than that relied on by the lower court and the Government. The CAFC reasoned that the statutory use of “modify” in this instance is open-ended and does not “exclude” any particular action, meaning the law is “indifferent” as to both the degree and direction of change. In other words, Section 307 authorizes USTR to alter initial action taken under Section 301 in either a trade-restricting or trade-liberalizing manner, and that USTR has wide leeway and “substantial discretion” to adjust in either direction its discretionary measures imposed. Nonetheless, the CAFC observed

that modifications of initial Section 301 measures must still “be tailored to achieve Section 301’s statutory goal of eliminating the investigated conduct” and that the law does not permit USTR “to raise tariffs for any reason or by an amount that exceeds what USTR believes to be appropriate” to achieve the ends of its discretionary action under Section 301. Ultimately, the CAFC concluded that the Lists 3 and 4A tariffs were, therefore, lawful because USTR adequately demonstrated that the tariffs were related to USTR’s initial action and were intended to influence China’s offending behavior.

In addition, the CAFC held that Congress did not unconstitutionally delegate to USTR the authority to decide whether and to what extent to modify certain Section 301 measures. The appeals court also concluded that unlike in its [recent decision addressing IEEPA tariffs](#), the major questions doctrine articulated by the Supreme Court did not apply in this instance. As explained, the “Lists 3 and 4A tariffs may, at best, be a new use of USTR’s regulatory authority, but they do not involve a transformation of USTR’s regulatory authority,” in contrast to the unprecedented IEEPA tariffs imposed by President Trump in 2025. Lastly, the CAFC also agreed with the CIT’s holding that USTR was not excused from complying with APA requirements under the “foreign affairs exception,” and that USTR’s elaboration, upon remand, of the procedures followed in making the modifications at issue satisfied the APA’s requirements.

The litigants in this case, HMTX Industries LLC v. United States, may still appeal the CAFC’s decision either to the full CAFC (by filing a petition for rehearing or rehearing *en banc*) within 45 days after the entry of judgment, or to the Supreme Court within 90 days after the entry of judgment. In the meantime, the Section 301 tariffs remain in effect, as they have throughout the pendency of this litigation. [Kelley Drye’s International Trade team](#) will continue to monitor this case and other litigation over tariffs.