

New Legal Action Provides Opportunity for Refunds on Products Impacted by China 301 Tariffs

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Importers of vinyl flooring filed a case at the U.S. Court of International Trade (CIT) on September 10, challenging the Administration's application of tariffs on products from China on Lists 3 and 4 pursuant to USTR's intellectual property Section 301 investigation.

The complaint alleges that the President's imposition of tariffs to products on these lists, which covers approximately \$320 billion in trade, exceeded authority granted by the Trade Act of 1974 and that the agency's implementation of the tariffs violated provisions of the Administrative Procedures Act. In addition to striking down the tariffs, the legal action seeks the refund of duties paid by the plaintiffs, with interest, for imported products on List 3.

We are alerting clients with interest in List 3-covered products of the potential litigation opportunity for filing a similar claim at the CIT to preserve the ability to obtain duty refunds. A two-year statute of limitations applies to the Administration's action, which runs from the date of publication of the notice (September 21, 2018). As such, the time to act is short. Interested parties who wish to file their own claims must do so **no later than September 21, 2020**.

Precedent suggests, if List 3 is found to be unlawfully promulgated, there may be an opportunity for all importers – including non-litigants – to obtain duty refunds through refund requests filed with Customs and Border Protection (CBP) or through an administrative refund process established by CBP. There is no guarantee, however, that such precedent would be followed. Filing a court claim would be a conservative approach and would likely result in an earlier refund.

We are available to prepare complaints for interested clients to preserve the ability for duty refunds at the earliest opportunity. While the litigation route might not make sense for every importer, there are instances where such an approach may be advisable. Factors that may weigh in favor of filing suit may include the amount of total duties paid under Lists 3 and/or 4A, the public nature of the lawsuit, and the cost of participating in such an action.

If you have List 3 Section 301 China tariffs and interested in pursuing such an action, please contact us immediately for an assessment of your company's specific situation and no later than **Thursday, September 17, 2020**. Given the short filing deadline, please have prepared:

- The Harmonized Tariff Schedule number(s) under which you imported merchandise on Lists 3 and/or 4;
- An estimated date range of the import shipments;

- An estimate of the total value of Section 301 duties paid; and
- The identity of the importer of record/party responsible for duty payment.

For more information please contact [Jennifer McCadney](#) or [Brooke Ringel](#).