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Possible Rolling Deadlines for Import Tariff Challenges

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There may still be time for importers to seek refunds of certain Section 301 duties paid on Chinese imports. On September 10, HMTX Industries LLC filed suit against the U.S. Government, challenging the legality of the List 3 tariffs imposed on Chinese-origin imports into the United States under Section 301. HMTX is arguing that the Trade Act of 1974 required all tariff measures to be imposed within a year of the initial determination by the U.S. Government that such measures were required against China. HMTX is also arguing that the U.S. Government did not fairly consider public comments while finalizing List 3 and List 4A of the tariffs. These arguments are quite novel, and it is difficult to know how successful these arguments will be. However, only importers who file suit will be assured of refunds of their List 3 (and List 4A) duties, if these lawsuits are successful. Importers who do not file suit, are not guaranteed a refund of Section 301 duties they have paid. So far, thousands of imports have filed suit over the Section 301 tariffs.

Many lawsuits were filed by September 18 or September 21 of this year, in order to meet the two-year deadline for challenges to the tariffs. Most importers and their lawyers have been conservative in calculating the two-year deadline based on the timing of the U.S. Trade Representative's decision and the date when the new tariffs were published in the Federal Register. However, there is another theory that may allow importers to file suit based on the date they first paid the List 3 and List 4A duties. On this basis, many importers continue to file suit against the List 3 tariffs.

Please note that the two-year deadline for List 4A tariff items will not expire until September 1, 2021 at the earliest, so importers clearly still have time to file court challenges to these tariffs. Also, success in these court challenges will not affect List 1 and List 2 tariffs, which were imposed during the one-year period after the U.S. Government determined that tariffs on Chinese goods were necessary.

For importers who are concerned about litigation against the U.S. Government, it also may be possible to file protests with U.S. Customs on imports that are assessed with List 3 and List 4A tariffs. Importers have 180 days to file protests after the liquidation of their imports, and if court challenges are successful, U.S. Customs will need to apply those court rulings when deciding protests by importers. However, importers will need to develop strategies with their legal counsel for utilizing the protest procedure to possibly obtain List 3 and List 4A refunds.