

FLOOR DAILY (Feb. 28, 2021)

## CHINESE TARIFF SECTION 301 LAWSUITS SENT TO THREE-JUDGE PANEL.

Washington, DC, February 8, 2021—More than 3,500 lawsuits challenging the Trump administration's sweeping tariffs on Chinese products were placed under the review of a special three-judge panel at the U.S. Court of International Trade on February 5, underscoring the high stakes of the sprawling litigation, reports Law360.

“Vinyl flooring supplier HMTX Industries LLC and lighting fixture supplier Jasco Product Co. LLC filed suit last year against former President Donald Trump over his tariff campaign against Beijing, alleging that the bulk of the tariffs were issued outside the bounds of U.S. trade law.

“A tidal wave of challenges from other importers soon followed, taking square aim at the president's tariff power. Much of the early phase of the litigation has focused on logistical issues posed by thousands of similar cases in the CIT, a relatively low-volume court that has averaged just shy of 350 new complaints per year over the last decade.

“CIT cases are traditionally heard by a single judge, but the court's rules do allow for a three-judge panel to hear cases centering on issues with ‘broad or significant implications’ for the trade bar. HMTX and Jasco moved for a special panel in September, and the request was granted.

“Matthew Nicely, an Akin Gump Strauss Hauer & Feld LLP representing HMTX and Jasco, said that the companies were ‘very pleased’ to have the cases marshaled to a special panel, adding that he was eager to advance the vast raft of litigation.

“While the government did not oppose HMTX and Jasco's panel request, it did argue that the matter would be better handled by a single judge and that, at a minimum, the management of the enormous caseload should be sorted out before moving to the panel phase.

“The cases challenge most of the tariffs imposed by the Trump *administration under Section 301 of the Trade Act of 1974*, which gives the president wide latitude to set import restrictions on countries that are engaging in unfair trade practices.

“Most of the challenges use a two-pronged approach to knock down the tariffs, arguing that the bulk of Trump's China tariffs were issued after a 12-month statutory deadline had lapsed and that the White House had violated the Administrative Procedure Act by rushing through its later-stage tariff increases.

“Trump's China duties grew out of a Section 301 investigation that was launched in August 2017, ultimately rebuking Beijing for its *intellectual property and technology transfer policies*. Two rounds of duties covering a total of \$50 billion worth of Chinese goods were set before the 12-month deadline, but subsequent rounds covering roughly \$500 billion were issued afterward.”