**Slip Op. 22- UNITED STATES COURT OF INTERNATIONAL TRADE IN RE SECTION 301 CASES (Excerpts)**

**Before: Mark A. Barnett, Claire R. Kelly, and Jennifer Choe-Groves, Judges Court No. 21-00052-3JP**

**OPINION AND ORDER [Remanding the Office of the United States Trade Representative’s determinations with respect to List 3 and List 4A; granting in part and denying in part Defendants’ Motion to Correct the Administrative Record.]**

**The Foreign Affairs Exemption Does Not Apply -- The APA exempts a rulemaking from notice and comment procedures when the agency action involves a “foreign affairs function of the United States.” 5 U.S.C. § 553(a)(1) (stating that section 553 applies, “except to the extent that” a foreign affairs function “is involved”).20 In other words, the foreign affairs exemption is intended to allow an agency to “dispense with [the] notice-and-comment procedures” set forth in section 553. E.B. v. U.S. Dep’t of State, 2022 WL 343505, at \*4 (D.D.C. 2022) (emphasis added); see also H.R. REP. NO. 79-1980 at 257 (1946) (foreign affairs functions are “exempt[] from all of the requirements” set forth in section 553) (emphasis added.**

**Thus, Final List 3 and Final List 4 require reconsideration or further explanation regarding the USTR’s rationale for imposing the tariffs and, as necessary, the USTR’s reasons for placing products on the lists or removing products therefrom.**

**ORDERED that Final List 3 and Final List 4 are remanded to the USTR for reconsideration or further explanation consistent with this opinion.**