

**UNITED STATES COURT OF INTERNATIONAL TRADE**

---

BASF Corporation, :  
 :  
 Plaintiff, :  
 v. :  
 :  
 UNITED STATES OF AMERICA; ROBERT E. :  
 LIGHTHIZER, IN HIS OFFICIAL CAPACITY AS :  
 UNITED STATES TRADE REPRESENTATIVE; :  
 OFFICE OF THE UNITED STATES TRADE :  
 REPRESENTATIVE; MARK A. MORGAN, IN HIS :  
 OFFICIAL CAPACITY AS ACTING :  
 COMMISSIONER OF U.S. CUSTOMS & BORDER :  
 PROTECTION; U.S. CUSTOMS & BORDER :  
 PROTECTION, :  
 :  
 Defendants. :  

---

Court No. 20-603

**COMPLAINT**

BASF Corporation, (hereafter “Plaintiff”) by and through its attorneys Barnes, Richardson & Colburn, LLP, hereby allege the following:

**STATEMENT OF THE CASE**

1. This action challenges the imposition of duties on Chinese origin merchandise allegedly pursuant to Section 301 of the Trade Act of 1974, 19 U.S.C. § 2411 (hereafter “Section 301”). Specifically, Plaintiff alleges that Defendants’ imposition and collection of duties on products covered by so-called “List 3” and “List 4” are not authorized under Section 301, violate the Administrative Procedure Act, and are otherwise contrary to law.



## THE PARTIES

2. Plaintiff is an importer of various products subject to duty under List 3 or List 4, including but not limited to merchandise imported under List 3 subheadings 3824.99.39, 2839.19.00, 8708.80.65, 8708.80.65, and 3204.19.11 and List 4 subheadings 1302.32.00, 2921.42.65, 6305.32.00, and 2933.69.60.

3. Defendant United States of America is the federal government to which the disputed duties were paid and is the statutory defendant under 28 U.S.C. § 1581 (i) and 5 U.S.C. § 702.

4. Defendant Office of the United States Trade Representative (hereafter “USTR”) is the executive agency of the United States charged with conducting investigations pursuant to Section 301 and implementing appropriate responses thereto, subject to the direction of the President. USTR conducted the Section 301 investigation at issue and made numerous decisions regarding List 3 and List 4.

5. Defendant Robert E. Lighthizer currently hold the position of USTR and serves as the director of the Office of the USTR. In this capacity, he made numerous decisions regarding List 3 and List 4.

6. Defendant United States Customs and Border Protection (hereafter “CBP”) is the agency that administers, enforces, and collects the tariffs imposed pursuant to List 3 and List 4, including such payments made by plaintiff.

7. Defendant Mark A. Morgan is the Acting Commissioner of CBP. In that capacity he oversees CBP’s administration, enforcement and collection of tariffs imposed pursuant to List 3 and List 4, including such payments made by plaintiff.

### **STANDING**

8. Plaintiff has standing to bring this action pursuant to 28 U.S.C. § 2631(i), which provides that “[a]ny civil action of which the Court of International Trade has jurisdiction, other than an action specified in subsections (a)-(h), may be commenced in the court by any person adversely affected or aggrieved by agency action within the meaning of section 702 of title 5.” Plaintiff paid duties, and continues to pay duties, as a result of tariffs illegally imposed pursuant to List 3 and List 4. Plaintiff, therefore, is a person that has been adversely affected or aggrieved by an agency actions within the meaning of the Administrative Procedures Act. 5 U.S.C. § 702 and 28 U.S.C. § 2631(i).

### **JURISDICTION**

9. This action is commenced against the United States, its agencies, or its officers and arises out of a law providing for tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue, and the administration and enforcement of that law. As such, the Court has exclusive jurisdiction over this action pursuant to 28 U.S.C. § 1581(i)(1)(B) and §1581(i)(1)(D).

### **TIMELINESS**

10. An action brought under 28 U.S.C. § 1581(i)(1) is timely if commenced “within two years after the cause of action first accrues.” 28 U.S.C. § 2636(i).

11. List 3 was published on September 21, 2018 as *Notice of Modification of Section 301 Action: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 47,974 (Sept. 21, 2018). Plaintiff’s claims as to List 3 accrued at the earliest on September 21, 2018, when the USTR published in the Federal Register its determination to levy tariffs on goods on List 3 starting September 24, 2018. List 4 was

published on August 20, 2019 as *Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 84 Fed. Reg. 43,304 (Aug. 20, 2019). Plaintiff's claims as to List 4 accrued at the earliest on August 20, 2019, when the USTR published in the Federal Register its determination to levy tariffs on goods on List 4 starting September 1, 2019. The action is, therefore, timely.

#### **RELEVANT LAW**

12. 19 U.S.C. § 2411(b) and 19 U.S.C. § 2412 authorize the United States Trade Representative ("USTR") to investigate whether a foreign country has engaged in an "unreasonable or discriminatory" practice that burdens or restricts U.S commerce.

13. Pursuant to 19 U.S.C. § 2411(c)(1)(B), if the investigation reaches an affirmative determination, the USTR may impose duties on imports from the offending country.

14. Pursuant to 19 U.S.C. § 2414(a)(2)(B), USTR must determine what, if any, action to take within 12 months after the initiation of the investigation.

15. The USTR may modify or terminate an action taken in furtherance of Section 301 when, among other reasons, the burden or restriction on United States commerce as a result of the acts, policies, or practices have increased or decreased or when the action is no longer appropriate. 19 U.S.C. § 2417(a)(1)(B)-(C).

#### **RELEVANT FACTS**

16. USTR initiated the investigation into Chinese technology transfer and intellectual property practices on August 18, 2017. *Initiation of Section 301 Investigation; Hearing; and Request for Public Comments: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 82 Fed. Reg. 40,213 (Aug. 24, 2017).

17. On March 28, 2018, USTR published its report announcing the results of its investigation in OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, *Findings of the Investigation Into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of The Trade Act of 1974* (Mar. 22, 2018), available at <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF>. The report concludes that the investigated practices of the Chinese government are unreasonable and discriminatory and burden or restrict U.S. commerce. *Id.* at 47.

18. On June 20, 2018, USTR published *Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 28,710 (June 20, 2018), imposing an addition 25% *ad valorem* duty on selected products of China. This is the so-called "List 1."

19. On August 16, 2018, USTR published *Notice of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 40,823, 40,823-24 (Aug. 16, 2018), imposing an additional 25% *ad valorem* duty on selected products of China. This is the so-called "List 2."

20. China retaliated against the U.S. action by imposing duties on U.S.-origin goods.

21. In explicit response to China's retaliation and without reference to China's technology transfer, intellectual property, or innovation policies, the USTR proposed to impose duties on additional Chinese-origin products. *Request for Comments Concerning Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 33,608, 33,609 (July 17, 2018). See also *Statement by U.S. Trade Representative Robert Lighthizer on Section 301*

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.