

UNITED STATES COURT OF INTERNATIONAL TRADE

GREEN FOOD INGREDIENTS LLC,

Plaintiff,

v.

UNITED STATES; OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE; ROBERT E. LIGHTHIZER, UNITED STATES TRADE REPRESENTATIVE; UNITED STATES CUSTOMS AND BORDER PROTECTION; MARK A. MORGAN, ACTING COMMISSIONER OF UNITED STATES CUSTOMS AND BORDER PROTECTION,

Defendants.

Court No. 20-03223

COMPLAINT

Plaintiff Green Food Ingredients LLC (Plaintiff), by and through its attorneys, allege:

1. Plaintiff imports roasted garlic powder from China that is assessed duty under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2005.99.97.
2. In addition to Plaintiff's regular duties under subheading 2005.99.97, its imported Garlic has been subject to the assessment of additional "Section 301" ad valorem duties under HTSUS subheading 9903.88.03 as products of China (List 3).
3. This case challenges the legality of these additional List 3 "Section 301" duties and the authority of Defendants to assess them under the Trade Act of 1974 (Trade Act) as enacted at 19 U.S.C. 2411(b).

JURISDICTION

4. The Court of International Trade has jurisdiction over this case under 28 U.S.C. § 1581(i)(1)(B), which confers to it "exclusive jurisdiction" over any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue. 28 U.S.C. § 1581(i)(1)(B).

5. Plaintiff has standing to bring this lawsuit under the authority of 28 U.S.C. §2631(i) since by reason of the Section 301 additional tariffs it is adversely affected or aggrieved by agency action within the meaning of section 702 of Title 5 (5 U.S.C. § 702).

6. This action is timely since it has been commenced within two years after the cause of action first accrued. 28 U.S.C. § 2636(i). Plaintiff presently contends that the earliest possible accrual of the cause of action was the Notice of Modification for List 3 published in the Federal Register on September 21, 2018. *Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to 4 Case 1:20-cv-00177-N/A Document 2 Filed 09/10/20 Page 5 of 25 Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 47,974 (Sept. 21, 2018)*. Thus, this action is timely filed.

SUMMARY OF PERTINENT ADMINISTRATIVE EVENTS

7. Section 301 of the Trade Act authorizes the United States Trade Representative (USTR) to investigate the trade practices of a foreign country and to impose tariffs on its imports if an unreasonable or discriminatory practice is found. 19 U.S.C. § 2411(b), (c)(1)(B).

8. In August, 2017, Defendant United States Trade Representative (USTR) initiated an investigation of China's trade practices under Section 301. *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).

9. On June 20, 2018, Defendant USTR published a list of China-origin products subject to an additional duty of 25% ad valorem applicable with respect to products that were entered for consumption, or withdrawn from warehouse for consumption, on or after July 6, 2018. This list is generally referred to as “List 1.” *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).*

10. On August 16, 2018, Defendant USTR published another list of China-origin products subject to an additional duty of 25% ad valorem. This list is generally referred to as “List 2”. The additional duties were effective with respect to products entered for consumption, or withdrawn from warehouse for consumption, on or after August 23, 2018. *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).*

11. On September 21, 2018, “List 3” was published by Defendant USTR imposing 10% *ad valorem* duties on additional products of China classified in the subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) set out in an Annex A to the notice. On January 1, 2019, the rate of additional duty was set to increase to 25% ad valorem. *Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 47974 (September 21, 2018).*

12. China and the United States continued to negotiate in an attempt to resolve their differences. In December, 2018, and February, 2019, Defendants delayed the scheduled increase in

the List 3 duty rate from 10% to 25%. *Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 *Fed. Reg.* 65,198 (Dec. 19, 2018); *Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 84 *Fed. Reg.* 7,966 (Mar. 5, 2019).

13. Since no acceptable resolution was reached, in May, 2019, Defendant USTR announced its intent to raise the tariff rate on List 3 goods to 25%, effective either May 10, 2019 or June 1, 2019, depending on the day of export. *Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 84 *Fed. Reg.* 20,459 (May 9, 2019) ("*List 3 Rate Increase Notice*"); *Implementing Modification to Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 84 *Fed. Reg.* 21,892 (May 15, 2019).

14. In June, 2019, Defendant USTR invited the public to seek exclusions from List 3 duties on a product-specific basis. *Procedures for Requests to Exclude Particular Products From the September 2018 Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 84 *Fed. Reg.* 29,576 (June 24, 2019). A number of exclusions were subsequently granted but the bulk of the List 3 Section 301 ad valorem duties remained in place including those paid by Plaintiff under its primary classification in HTSUS subheading 2005.99.97.

15. Though not directly applicable to Plaintiff's current imports and duty assessments, on May 17, 2019, Defendant USTR announced its intent to promulgate List 4 to cover additional products subject to Section 301 ad valorem duties. Under USTR's proposal, List 4 would impose an additional duty of 25% ad valorem on products worth \$300 billion. *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, 84 Fed. Reg. 22,564, 22,564 (May 17, 2019).

16. On August 20, 2019, USTR issued a final notice adopting List 4 in two tranches. *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).* List 4A would impose a 10% ad valorem duty on goods worth roughly \$120 billion, effective September 1, 2019, whereas List 4B would impose, with limited exclusions, a 10% ad valorem duty on the remaining goods, effective December 15, 2019. *Id.* at 43,304, 43,305.

17. On December 18, 2019, based on a trade deal with China, Defendant USTR indefinitely suspended the imposition of additional duties of 15 percent on products of China covered by List 4B. *Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 84 Fed. Reg. 69,447, 69,447 (Dec. 18, 2019).* USTR also stated its intent to reduce by half the tariff rate applicable to products covered by List 4A and this became effective on February 14, 2020. *Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 85 Fed. Reg. 3,741 (Jan. 22, 2020).*

18. The tariffs provided in List 4B have yet to be imposed.

FIRST CLAIM FOR RELIEF

DECLARATORY JUDGMENT FOR VIOLATION OF THE

TRADE ACT OF 1974

19. Paragraphs 1 through 18 are incorporated herein by reference.

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