



Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

International Trade Cases To Watch In 2024

By Jennifer Doherty

Law360 (January 1, 2024, 8:02 AM EST) -- The coming year will see advancements in a new lawsuit from importers alleging they were placed on a forced labor blacklist without adequate warning or explanation and in cases lingering from the Trump administration, including an appeal in the test case headlining thousands of suits over tariffs on Chinese goods.

Here are the trade law cases and probes Law360 is keeping an eye on at the start of 2024.

Importers Cry Overreach in Section 301 Appeal

The appeal brought by a steering committee representing thousands of companies affected by sweeping tariffs imposed on Chinese goods between 2018 and 2019 will continue to dominate the caseload of hundreds of trade attorneys heading into 2024.

A key issue in the Federal Circuit case relates to the president's power to change a duty program once it's up and running.

Section 301 duties are meant to address unfair trade practices, which, in the case of the China tariffs, were alleged to be forced tech transfer and intellectual property theft from U.S. corporations. However, then-President Donald Trump followed up the first round of duties with three additional rounds of levies that did not repeat the process laid out in Trade Act of 1974.

While importers have asked the Federal Circuit to find those escalations unlawful, the appeals court has consistently backed similar tariff program expansions, including modifications to the Section 232 national security duties on steel and aluminum and the Section 201 safeguard duties on solar equipment.

"Under Article I, Section VIII [of the U.S. Constitution,] only Congress is supposed to be able to impose tariffs, but that's been rolled back based on all these recent court decisions in 232, 201 and this CIT decision," said John Brew, co-chair of Crowell & Moring LLP's international trade practice group, who represents several importers in the litigation.

Allowing the executive branch to impose tariffs "when and how it wants" has the potential to create a constitutional crisis, he continued.

On top of the Federal Circuit's recent record of consistent deference to the president on tariff

expansions, the growing role of trade policy in geopolitics may also complicate the importers' efforts to roll back the duties, according to Lowenstein Sandler LLP attorney Andrew Bisbas.

"If you undermine the ability of the executive [branch] to use what have become kind of accepted foreign policy tools, diplomatic tools, national security tools ... I think the appeals court will be hesitant to do that," said Bisbas.

Nevertheless, "anything's possible," he said.

As litigation proceeds, the Office of the U.S. Trade Representative is also completing its protracted four-year review of the Section 301 tariffs, which importers are still hopeful could lead to some relief if the agency expands existing product-specific exclusions to cover whole tariff categories.

The case is HMTX Industries LLC v. U.S., case number 23-1891, in the U.S. Court of Appeals for the Federal Circuit.

Ninestar Takes on CBP Evidence Withholding

A cohort of Chinese producers that found themselves in U.S. Customs and Border Protection's crosshairs are challenging the agency's refusal to show evidence, a complaint importers have lobbed at CBP across different types of investigations.

Ninestar — a maker of laser printers and printer materials — and affiliated companies drew from a pencil importer's win in the Federal Circuit earlier this year in a complaint assailing its addition to a roster of companies banned from importing to the U.S. for ties to Uyghur forced labor.

Like the pencil company accused of circumventing tariffs on Chinese goods, Ninestar said it could only gain access to the evidence that prompted the Forced Labor Enforcement Task Force led by CBP to scrutinize it by filing a suit and gaining access to the investigation records under a judicial protective order.

"As [the] plaintiffs' counsel has learned from reviewing the Confidential Administrative Record, the evidence underlying FLET's Listing Decision is virtually non-existent," Ninestar said in an amended complaint last month. "To overcome its lack of evidence that Ninestar is working with the Xinjiang government, FLET relied on untenable inferences drawn from long-stale materials that pre-date enactment of the UFLPA."

The case is Ninestar Corporation et al. v. United States et al., case number 1:23-cv-00182, at the U.S. Court of International Trade.

Commerce's Vietnam Market Review

Following Russia's return to the U.S. Department of Commerce's nonmarket economy list last year, the agency is now sizing up Vietnam's economy to see if Washington's newest semiconductor supply chain partner might be supply and demand-driven enough to get off the list.

The exercise has elicited criticism from Congress, however, with three Republican senators writing a letter to Secretary of Commerce Gina Raimondo last month, in which they called the review "rushed and its outcome predetermined," and pointed to Vietnam's "806-mile border with China."

Wiley Rein LLP international trade practice co-chair Tim Brightbill, whose team represents domestic petitioners in several of the 30 industries the lawmakers referenced where U.S. companies have accused Vietnamese competitors of dumping or circumvention, said his clients are "very concerned."

"While Vietnam has made progress on some of the factors that determine whether a country is a market economy, I just don't think there's been enough progress to justify this step," he told Law360, citing "how much circumvention and evasion in the trade world runs from China through Vietnam."

Aluminum Extrusion Probe

Vietnam is also one of 15 countries currently caught up in antidumping and countervailing duty probes of their aluminum extrusion industries.

While the list of respondents is lengthy, the petitions are more remarkable for their broad scope, said Grunfeld Desiderio Lebowitz Silverman & Klestadt LLP partner Andrew Schutz, who represents some of the foreign producers.

The current investigations are similar to extrusion probes focused on China from the early 2010s, which wound up "sucking in all of these products that ... were not necessarily originally intended to be part of that case," according to Schutz.

The end result was years of litigation as importers argued with Commerce and the petitioners over what the duty orders rightfully covered.

"It's by far the most scope rulings of any order, that China case," said Schutz, calling it "a nightmare all around for a lot of people."

One major concern for imports that contain extrusions is whether the aluminum part is imported as a sub-assembly of a larger product, which can be levied separately.

"There's a bazillion different pieces in an engine, and if there's just this little extruded aluminum part in it, technically, based on the way the scope is right now, you would have to identify that as subject to dumping [duties]," Schutz said.

The current investigation is Aluminum Extrusions From People's Republic of China, investigation number A-570-158 and others, at the U.S. International Trade Administration.

--Editing by Emily Kokoll.