

# TRADE

## BIG QUESTIONS FOR THE CIT



Historically, the Court of International Trade has focused on relatively narrow, highly technical matters relating to customs duties and trade litigation matters. But now it finds itself on the front lines of high-profile battles over the regulation of global business.

“The Trump administration’s aggressive trade policy has dramatically increased the scope and scale of litigation at the Court of International Trade,” says [Daniel Cannistra](#), a partner in Crowell & Moring’s [International Trade Group](#). “Suddenly, the court, which is not well known to a lot of people, is dealing with the same issues that are showing up on the front page of *The New York Times* every week or so.”

The trade-policy cases coming before the court involve fundamental questions about international business and presidential actions. “These very large-scale economic and constitutional issues are going to sit with the Court of International Trade to get resolved in the first instance,” says Cannistra. He notes that

a three-judge CIT panel, rather than a single judge, because of its potentially broad impact. The group’s motion said that “it is hard to imagine a more significant case” and that the issue “affects countless businesses and individuals in the United States and abroad, both directly and indirectly.” The CIT apparently agreed, granting the request for the panel in September. The case is likely to be resolved in 2019—and because about 20 percent of the U.S. economy is based on these metals in one form or another, the decision will affect a broad range of businesses.

### COMING SOON?

Following that, the CIT is likely to address the issue of import tariffs on Chinese goods—and here again, Cannistra says, “Trump’s entire China trade policy will ultimately be reviewed by this court. This goes to the president’s authority to negotiate with trading partners—and the Court of International Trade is going to have the first voice on whether or not he can unilaterally rewrite the tariff schedule for the purpose of negotiating



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in nearly four decades, the court has handled just two constitutional issues. Now, he points out, “it may well be faced with three constitutional issues in the next 12 months, all of which will impact the economy as a whole.”

The first of these three issues is already before the CIT—the administration’s placing of limits on steel and aluminum imports based on national security concerns, an approach not used in U.S. trade policy since the oil crisis of the 1970s. “The question is, was it in fact a constitutional use of presidential powers to suddenly impose 25 percent import duties on all steel and aluminum products coming into the U.S.?” says Cannistra. The plaintiff in this suit, the American Institute for International Steel (AIIS), an industry trade group, is challenging the constitutionality of the president’s actions and of the law that was used to justify those actions, Section 232 of the Trade Expansion Act of 1962.

In June 2018, the AIIS requested that the case be heard by

trade agreements. Congress, not the president, has the power to tax imports, so this case will rest at the intersection of executive authority to negotiate with foreign countries and the power to impose taxes and regulate commerce.” The other constitutional issues that appear to be on the CIT’s horizon include the new United States-Mexico-Canada Agreement, which is sure to contain questions concerning executive authority over trade.

The consequences of these decisions will be profound. For example, if the CIT upholds one of these administration trade policies, what will it mean to a company’s global supply chain? Will production need to be relocated from one country to another? These shifts are not made overnight; the court’s decisions will affect companies for years. General counsel should keep a close eye on these cases and be ready to help their companies understand their ramifications—and navigate the web of complex and critical questions raised by evolving trade policy.