



**Pending U.S. Government Shutdown &
CAFC China Section 301 Lists 3 and 4A Decision
(September 28, 2025)**

Pending U.S. Government 9/30 Shutdown

As of yesterday, there is only one current contingency plan that was [posted](#) by the Department of Homeland Security. There are no other current contingency plans that have been issued by the White House, the Office of Management and Budget (OMB) and the individual federal agencies. In the past, detailed guidance was available by this time. The OMB recently stated that non-essential federal employees should be fired, not temporarily furloughed as in the past. OMB on Wednesday directed agencies to revise their shutdown contingency plans to specify which non-essential workers will be dismissed during the shutdown. The impact on both import and export trade may well be significant. While CBP Port offices will remain open, staffing may be reduced. Expect time delays on cargo release/review transactions. Ruling requests, compliance reviews, auditing, FTZ Activations, etc. are expected to be suspended. All other CBP functions at the Port, Trade Operations, and Headquarters may be impacted. Expect time delays in the processing of all federal agency import/export transactions. We will keep you apprised of developments.

CAFC China Section 301 Lists 3 and 4A Decision

On September 25, a three-judge panel of the U.S. Court of Appeals for the Federal Circuit (“CAFC”) issued its long-awaited decision in [HMTX Industries LLC v. U.S.](#) on President Trump’s 2018 imposition of the China Section 301 duties on List 3 and List 4A products. The three-judge panel issued a unanimous decision upholding the China Section 301 List 3 and 4A tariffs.

The CAFC reasoned that the U.S. Trade Representative’s (“USTR’s”) List 3 and List 4A tariff actions were authorized by Section 307(a)(1)(C) of the Trade Act of 1974, as amended (19 U.S.C. § 2417), and its notice-and-comment proceedings did not violate the Administrative Procedure Act (APA). The CAFC found that USTR had the statutory authority to modify or terminate Section 301 actions “...subject to the specific direction, if any, of the President” and that the statutory terms allowing it to “modify” any action, provided broad authority that did not limit USTR to downward adjustments or termination of the initial Section 301 tariffs.

We expect that the plaintiffs will file a motion requesting that the full CAFC re-hear the case *en banc*. If the CAFC declines to hear the case *en banc*, then we expect the plaintiffs to appeal the CAFC decision to the U.S. Supreme Court.

Many are likely interested in whether this decision impacts the recent CAFC decision in [V.O.S. Selections, Inc. v. Trump](#) (CAFC No. 2025-1812, Aug, 29, 2025) that the tariffs assessed by President Trump under the International Emergency Economic Powers Act (“IEEPA”) exceeded his statutory authority. First, the legal basis for the tariffs is different in each case (i.e., IEEPA vs. Section 301). Second, the CAFC explicitly distinguished its decision in [V.O.S. Selections](#) from its decision in [HMTX Industries](#):

Likewise, this case is distinguishable from our recent decision in V.O.S., where the major questions doctrine was implicated because the tariffs at issue were “unheralded” and “transformative,” the government had “never previously claimed powers of th[at] magnitude” under the relevant statute [IEEPA], the “basic and consequential tradeoffs” inherent in the President’s decision to impose those tariffs were “ones that Congress would likely have intended for itself,” and there was “no clear congressional authorization by IEEPA for tariffs of the magnitude of [those implemented].”

Further hinting at the distinction being drawn between the two cases, the CAFC concluded in HMTX Industries that “[t]he Lists 3 and 4A tariffs may, at best, be a new use of USTR’s regulatory authority, but they do not involve a transformation of USTR’s regulatory authority.”

Please contact [Marshall Miller](#), [Sean Murray](#), [Brian Murphy](#) or [David Ostheimer](#) if you have any questions about the CAFC decisions, case proceedings, or the U.S. government shutdown.

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