ADMINISTRATIVE PROCEDURE ACT — FOREIGN AFFAIRS EXEMPTION — COURT OF INTERNATIONAL TRADE HOLDS THAT THE APA'S FOREIGN AFFAIRS EXEMPTION DOES NOT EXTEND TO TARIFFS IMPOSED UNDER SECTION 301 OF THE TRADE ACT. — *In re Section 301 Cases*, 570 F. Supp. 3d 1306 (Ct. Int'l Trade 2022).

Can the Administrative Procedure Act[1] (APA) constrain the President's broad authority in the conduct of foreign affairs?[2] The Court of International Trade (CIT) recently wrestled with this question in *In re Section 301 Cases*,[3] where it addressed whether the Trump Administration's imposition of tariffs on Chinese goods was subject to the APA's notice-and-comment procedures or excused under the statute's foreign affairs exemption.[4] In holding that the foreign affairs exemption did not apply,[5] the court claimed to follow precedent — but in fact, the court wisely moved away from a previous rule that was both overly broad and doctrinally problematic. Future courts would do well to follow the CIT's lead in narrowing the scope of the foreign affairs exemption.

In the lead-up to the 2016 presidential election, then-candidate Donald Trump railed against China's allegedly unfair trade practices.[6] After assuming office, President Trump directed the Office of the United States Trade Representative (USTR) to decide whether to investigate these practices pursuant to its authority under the Trade Act of 1974.[7] Section 301 of the Trade Act requires USTR to first determine that "(1) an act, policy or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and (2) action by the United States is appropriate."[8] Upon making this determination, USTR is empowered to, inter alia, impose duties on the offending country's imported products.[9]

In March 2018, USTR released a report finding the preconditions for section 301 action against China satisfied.[10] On the same day, President

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[1] 5 U.S.C. §§ 551–559, 701–706.

[2] *See generally* Jack Goldsmith, *The Supreme Court, 2014 Term — Comment:* Zivotofsky II *as Precedent in the Executive Branch*, 129 HARV. L. REV. 112, 113–14 (2015).

[3] 570 F. Supp. 3d 1306 (Ct. Int'l Trade 2022).

[4] *See id.* at 1335; 5 U.S.C. § 553(a)(1).

[5] *Section 301*, 570 F. Supp. 3d at 1335.

[6] *See Trump Accuses China of "Raping" US with Unfair Trade Policy*, BBC (May 2, 2016), https://www.bbc.com/news/election-us-2016-36185012 [https://perma.cc/UU84-PNN7].

[7] 19 U.S.C. §§ 2101–2497b; Addressing China's Laws, Policies, Practices, and Actions Related to Intellectual Property, Innovation, and Technology, 82 Fed. Reg. 39,007, 39,007 (Aug. 17, 2017).

[8] 19 U.S.C. § 2411(b).

[9] *Id.* § 2411(c)(1)(B).

[10] OFF. OF THE U.S. TRADE REPRESENTATIVE, EXEC. OFF. OF THE PRESIDENT, 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, at 43–47, 60–61, 147–52, 171–76, 182 (2018).

Trump directed USTR to "take all appropriate action" against China in response to its discriminatory trade practices.[11] The memo instructed USTR to propose, finalize, and potentially implement tariffs on Chinese products.[12] USTR began this process in April when it provided notice of proposed duties for public comment as required by section 304(b) of the Trade Act.[13] In June and August 2018, USTR imposed 25% tariffs on a set of Chinese products with an annual trade value of $50 billion.[14] This was done in two installments known as the List 1 and List 2 duties.[15] China immediately retaliated with its own tariffs.[16] Leading up to the imposition of the List 1 and List 2 duties, President Trump had directed USTR to identify an additional $200 billion worth of Chinese goods that could be targeted if China didn't "change its practices."[17] In September 2018, after China had retaliated against the initial duties, USTR proceeded to modify the original action to include the additional $200 billion of goods in what were known as the List 3 duties.[18] In 2019, USTR again revised the original action to impose two further installments of tariffs, the List 4A and 4B duties, covering nearly $300 billion of additional products.[19] As required by section 307(a)(2) of the Trade Act, these modifications also went through notice and comment.[20]

Plaintiff HMTX Industries brought suit in the CIT, challenging the List 3 and 4 duties on two theories: first, that USTR had exceeded its

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[11] Actions by the United States Related to the Section 301 Investigation of China's Laws, Policies, Practices, or Actions Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 13,099, 13,100 (Mar. 27, 2018).

[12] *Id.* at 13,100.

[13] 19 U.S.C. § 2414(b); Notice of Determination 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. 14,906 (proposed Apr. 6, 2018); *see also* 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 (proposed June 20, 2018).

[14] *Section 301*, 570 F. Supp. 3d at 1318.

[15] *Id.*

[16] *See* Sidney Leng, *China Hits Retaliation Button, Launching Tariffs as Trade War with U.S. Starts*, POLITICO (July 6, 2018, 6:28 AM), https://www.politico.com/story/2018/07/06/china-retaliation-us-tariffs-672127 [https://perma.cc/NES2-9K78].

[17] Press Release, The White House, Statement from the President Regarding Trade with China (June 18, 2018), https://trumpwhitehouse.archives.gov/briefings-statements/statement-president-regarding-trade-china-2 [https://perma.cc/YF94-KD9Y].

[18] *See Section 301*, 570 F. Supp. 3d at 1319. Section 307 of the Trade Act allows for the modification of actions taken under section 301. *See* 19 U.S.C. § 2417.

[19] *Section 301*, 570 F. Supp. 3d at 1320; *see* Erica York, *Tracking the Economic Impact of U.S. Tariffs and Retaliatory Actions*, TAX FOUND. (Apr. 1, 2022), https://taxfoundation.org/tariffs-trump-trade-war [https://perma.cc/72ZS-QU4U]. USTR ultimately suspended the List 4B duties as part of its trade deal with China. *See id.*

[20] 19 U.S.C. § 2417(a)(2) ("[T]he Trade Representative . . . shall provide opportunity for the presentation of views by other interested persons affected by the proposed modification or termination . . . ."); *see, e.g.*, Request for Comments Concerning 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 (July 17, 2018).

authority under section 307 of the Trade Act in imposing the List 3 and 4 duties; second, that USTR violated the APA by exceeding its authority and promulgating the lists in an arbitrary and capricious manner.[21]

The court remanded to USTR, concluding that USTR violated the APA by failing to adequately respond to comments in promulgating the lists.[22] Writing for the panel, Chief Judge Barnett[23] first addressed reviewability. The court rejected the government's argument that the duties were nonreviewable because they were actions of the President, not the agency.[24] It explained that even though the President was directly involved, the presidential-action doctrine has barred review of actions only where the President had final statutory or constitutional responsibility — and he did not here.[25] It also rejected the argument that the political question doctrine barred review, concluding that the questions before the court were mere matters of statutory interpretation and did not require the court to review the agency's discretionary decisions.[26]

Turning to the merits, the court first held that USTR's actions were proper exercises of its authority under section 307 of the Trade Act.[27] Section 307(a)(1)(B) allows the modification of a section 301 action if "the burden or restriction on United States commerce . . . of the acts, policies, and practices, *that are the subject of such action* has increased or decreased."[28] The plaintiffs argued that China's retaliation could not have been the "subject" of the original action because it occurred after the initial investigation.[29] The panel disagreed, observing that China intended its retaliatory measures to buttress the policies that the United States's action sought to end.[30] Because of this nexus between the original tariffs and China's retaliation, the court held that USTR's modification action satisfied the statutory requirements.[31]

The panel next addressed whether USTR's actions were arbitrary and capricious under the APA. It first considered whether the foreign

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[21] *Section 301*, 570 F. Supp. 3d at 1321. HMTX Industries is an American-headquartered importer of luxury vinyl tile, which is produced mainly in China. *See US Trade Rep Announces 25% China Tariff Exclusions Granted to Luxury Vinyl Tile Companies*, HMTX INDUS. (Nov. 11, 2019), https://hmtx.global/2019/11/12/us-trade-rep-announces-25-china-tariff-exclusions-granted-to-luxury-vinyl-tile-companies [https://perma.cc/3ECZ-987G].

[22] *Section 301*, 570 F. Supp. 3d at 1338, 1349.

[23] Chief Judge Barnett was joined by Judges Kelly and Choe-Groves. While cases before the CIT are typically heard by a single judge, "[w]hen a case . . . has broad and significant implications, the chief judge may assign the case to a three-judge panel." *About the Court*, U.S. CT. INT'L TRADE, https://www.cit.uscourts.gov/about-court [https://perma.cc/MGQ2-JA2Q].

[24] *Section 301*, 570 F. Supp. 3d at 1324.

[25] *Id.* at 1323–24.

[26] *Id.* at 1326–28.

[27] *Id.* at 1334. After holding that section 307(a)(1)(B) authorized the actions, Chief Judge Barnett declined to determine whether section 307(a)(1)(C) also authorized them. *Id.* at 1334–35.

[28] 19 U.S.C. § 2417(a)(1)(B) (emphasis added).

[29] *See Section 301*, 570 F. Supp. 3d at 1331–32.

[30] *Id.* at 1332.

[31] *Id.* at 1334.

affairs exemption applied. The APA exempts rulemaking from its procedural requirements when the action involves "a military or foreign affairs function of the United States."[32] While the Trade Act unquestionably required USTR's tariffs to undergo notice and comment,[33] the government argued that the Trade Act has less onerous procedures than the APA does.[34] And because the Trade Act does not require a reasoned explanation addressing the received comments, "applying the foreign affairs exemption would relieve the court from analyzing the sufficiency of the USTR's response to public comments."[35] The court appeared skeptical of the government's invocation of the foreign affairs exemption, noting that it was raised "entirely *post hoc*" and did not accord with USTR's previous actions during the modification process.[36]

However, the court avoided answering whether the exemption could be invoked post hoc by determining that, regardless, USTR's actions did not fall within the foreign affairs exemption.[37] To make this determination, the court relied on two past cases, *Mast Industries, Inc. v. Regan*[38] and *American Ass'n of Exporters and Importers-Textile and Apparel Group v. United States*.[39] Under *Mast*, the foreign affairs exemption should be "construed narrowly"; it applies "'only "to the extent" that the excepted subject matter is clearly and directly involved' in a 'foreign affairs function.'"[40] While the *Mast* court did hold this standard to be per se met in the context of agreements with foreign governments,[41] the *Section 301* panel distinguished the present case by noting that the eventual trade agreement between the United States and China was completed only after the List 3 and 4 duties were promulgated.[42] The court next explained that, under controlling circuit precedent in *American Ass'n*, the foreign affairs exemption is triggered when the imposition of APA procedural requirements would have "definitely undesirable international consequences."[43] While the government suggested that such consequences would occur because the actions "relate[d] to the President's 'overall political agenda concerning relations with another

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[32] 5 U.S.C. § 553(a)(1).

[33] *See* 19 U.S.C. § 2417(a)(2).

[34] *See Section 301*, 570 F. Supp. 3d at 1336 n.22.

[35] *Id.*

[36] *Id.* at 1336 (noting at each step in the process, USTR "published notices of its intended actions, accepted comments from the public, and held hearings prior to publishing its determinations").

[37] *Id.*

[38] 596 F. Supp. 1567 (Ct. Int'l Trade 1984).

[39] 751 F.2d 1239 (Fed. Cir. 1985); *see Section 301*, 570 F. Supp. 3d at 1337.

[40] *Mast*, 596 F. Supp. at 1582 (quoting H.R. REP. NO. 79-1980, at 257 (1946)).

[41] *Id.*

[42] *Section 301*, 570 F. Supp. 3d at 1336.

[43] *Id.* at 1337 (quoting *Mast*, 596 F. Supp. at 1581 & n.20) (citing *Am. Ass'n*, 751 F.2d at 1249).

country,'" the court concluded this argument was insufficient and the exemption did not apply.[44]

Reaching the merits of the APA claim, the panel found that USTR had failed to respond adequately to comments.[45] USTR's statement of basis and purpose focused primarily on the fact that the agency was acting at the President's direction,[46] even though the submitted comments raised a host of concerns[47] and USTR made a variety of changes between the proposed and final lists. Although presidential direction is statutorily significant, it "does not obviate the USTR's obligation to respond to significant issues raised in the comments."[48] Because USTR failed to do so, the court remanded Lists 3 and 4 without vacatur.[49]

Even as the court purported to follow *American Ass'n* and *Mast*,[50] it in practice cabined those cases' holdings. Applying the rationales from either would have led the court to the opposite conclusion. This decision to move away from precedent was wise — the rule from these cases was overly broad and swept up a range of trade-related actions particularly suited for notice and comment. The logic of *American Ass'n* also creates superfluity within APA doctrine. Other courts would be wise to follow the CIT's lead in cabining this precedent and to look for opportunities to reconsider the scope of the foreign affairs exemption.

Under the logic of *Mast*, the court should have applied the foreign affairs exemption. While the *Mast* court said the exemption should be construed narrowly, it still found it to be triggered in a vast array of circumstances, from formal negotiation to whenever the President directs his subordinates to define the terms of, or even violate, an international agreement.[51] Indeed, *Mast* has historically been read expansively,[52] despite the *Section 301* panel's attempt to distinguish *Mast* by

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[44] *Id.* at 1335 (quoting Defendants' Motion to Dismiss, or Alternatively, Motion for Judgment on the Agency Record at 42, *Section 301* (No. 21-cv-00052)); *see id.* at 1337.

[45] *See id.* at 1338–43. The court suggested that failure to respond to comments might show that the agency did not consider all relevant factors, *id.* at 1338 (quoting Sherley v. Sebelius, 689 F.3d 776, 784 (D.C. Cir. 2012)), which is arbitrary and capricious under APA § 706(2)(A), *see id.* at 1338, 1343.

[46] *See id.* at 1341.

[47] *See id.* at 1339–40.

[48] *Id.* at 1341.

[49] *Id.* at 1349. The court opted not to vacate after balancing the flaws of the List 3 and 4 duties against the impact that vacatur might have on the government's ability to negotiate with China. *Id.* at 1343–44.

[50] *See id.* at 1335–37.

[51] Mast Indus., Inc. v. Regan, 596 F. Supp. 1567, 1582 (Ct. Int'l Trade 1984).

[52] *See, e.g.*, William D. Araiza, Note, *Notice-and-Comment Rights for Administrative Decisions Affecting International Trade: Heightened Need, No Response*, 99 YALE L.J. 669, 675–76 (1989); Int'l Bhd. of Teamsters v. Peña, 17 F.3d 1478, 1486 (D.C. Cir. 1994) (citing *Mast* to hold that a regulation that did no more than implement an agreement between the United States and Mexico was subject to the foreign affairs exemption); Am. Inst. for Imported Steel, Inc. v. United States, 600 F. Supp. 204, 211 (Ct. Int'l Trade 1984) (citing *Mast* to hold that an embargo of steel from

suggesting the regulation in question must implement an already-negotiated agreement or relate to ongoing negotiations conducted pursuant to explicit statutory authority.[53] The exemption should have been triggered under *Mast*: the tariffs on Chinese goods likely implicated not only the negotiation of a potential agreement with China,[54] but also the potential violation of the United States's World Trade Organization obligations.[55]

The exemption should likewise have been triggered under the broad rule of *American Ass'n*.[56] That court provided two reasons why requiring notice-and-comment procedures to impose an import quota would provoke "definitely undesirable international consequences"[57]: First, traditional notice and comment would incentivize importers to artificially increase trade volume prior to the quota's effective date to avoid paying higher duties; the resulting surge in imports would defeat the purpose of the regulation, which was to *reduce* trade.[58] Second, because the authority to impose quotas derived in part from the President's foreign affairs power, he may use such action "as a part of his overall foreign policy" — if notice and comment were required, "the President's power to conduct foreign policy would plainly be hampered."[59] The *Section 301* duties restricted the volume of trade with China just as the quotas in *American Ass'n* did,[60] so the same fear of an import surge would

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Europe made in accordance with agreement was a foreign affairs function). *But see* Invenergy Renewables LLC v. United States, 422 F. Supp. 3d 1255, 1288–90 (Ct. Int'l Trade 2019) (citing *Mast* exclusively for the contention that the exemption should be construed narrowly and finding that safeguard duties on imported solar panels did not implicate a foreign affairs function).

[53] *See Section 301*, 570 F. Supp. 3d at 1336 & n.24. *Mast* itself made no such distinction. *See Mast*, 596 F. Supp. at 1582 n.23 ("Violation of an international commitment . . . is no less a 'foreign affairs function' than the negotiation of such a commitment." (citing Goldwater v. Carter, 617 F.2d 697, 706 (D.C. Cir. 1979) (per curiam), *vacated and remanded*, 444 U.S. 996 (1979))).

[54] *See* Press Release, Off. of the U.S. Trade Rep., United States and China Reach Phase One Trade Agreement (Dec. 13, 2019), https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/december/united-states-and-china-reach [https://perma.cc/U8W9-9MDV]; *see also* Scott Horsley, *Trump Signs "Phase 1" China Trade Deal, But Most Tariffs Remain in Place*, NPR (Jan. 15, 2020, 2:07 PM), https://www.npr.org/2020/01/15/796305300/trump-to-sign-phase-one-china-trade-deal-but-most-tariffs-remain-in-place [https://perma.cc/J4ZG-P52N] (noting that, in exchange for specific Chinese reforms, the United States agreed to relax certain tariffs).

[55] *See, e.g.*, General Agreement on Tariffs and Trade art. 1, ¶ 1, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 187 (outlining the parties' Most Favored Nation obligation to afford equal advantages to all signatories); *see also* Araiza, *supra* note 52, at 675 n.42 (arguing that under *Mast* any customs classification procedure affecting the importation of goods whose tariffs or quotas were covered by the General Agreement on Tarrifs and Trade would implicate the foreign affairs exemption).

[56] *See* Am. Ass'n of Exps. & Imps.-Textile & Apparel Grp. v. United States, 751 F.2d 1239, 1249 (Fed. Cir. 1985). The Federal Circuit's decision built upon the logic of *Mast*. *See id.* (agreeing with *Mast* that the Committee for the Implementation of Textile Agreements's rulemaking was covered by the foreign affairs exemption); C. Jeffrey Tibbels, *Delineating the Foreign Affairs Function in the Age of Globalization*, 23 SUFFOLK TRANSNAT'L L. REV. 389, 401 (1999) ("[T]he Federal Circuit followed *Mast*'s logic in [*American Ass'n*] . . . .").

[57] *Am. Ass'n*, 751 F. 2d at 1249 (quoting H.R. REP. NO. 79-1980, at 257 (1946)).

[58] *Id.*

[59] *Id.*

[60] *See id.* at 1241–42.

apply. Increased transparency in USTR's procedures would create incentives for foreign exporters and American importers to maximize trade volume immediately prior to the effective date.[61] Similarly, imposing tariffs on Chinese goods was core to President Trump's foreign policy.[62] Procedural restrictions on such impositions would necessarily be restrictions on the President's power to conduct foreign policy.[63] By rejecting the government's contention that the interference with the President's foreign policy was a "definitely undesirable international consequence" and failing to acknowledge the threat of an import surge as similar, the *Section 301* court rejected the very rationales that underpinned the decision in *American Ass'n*.

Yet the *Section 301* court's decision to cabin the scope of the foreign affairs exemption was wise because of the implications of applying the exemption in trade-related cases. In general, overly broad exceptions to the APA minimize public participation in the administrative law process, a key purpose of the Act.[64] Policy decisions related to international trade in particular create clear winners and losers between domestic importers and manufacturers of competing products.[65] As a result of this dynamic and the significant commercial stakes, there is often heavy lobbying from both sides;[66] thus, enabling public participation in trade decisions has been a policy priority since at least the 1930s.[67] The *Section 301* tariffs were no exception, spurring a significant spike in

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[61] In fact, research on the topic suggests this was the case. *See* Mary Amiti et al., *The Impact of the 2018 Tariffs on Prices and Welfare*, J. ECON. PERSPS., Fall 2019, at 187, 195 (noting that for other products subject to the first tariffs imposed by the Trump Administration, the data "shows a big surge in imports . . . likely caused by importers moving forward import orders in order to obtain products before the imposition of the tariffs").

[62] *See, e.g.*, Edward Wong, *On U.S. Foreign Policy, The New Boss Acts a Lot Like the Old One*, N.Y. TIMES (July 25, 2022), https://www.nytimes.com/2022/07/24/us/politics/biden-trump-foreign-policy.html [https://perma.cc/4TX9-3F6W] (listing "[t]ariffs and export controls on China" as key components of the Trump Administration's foreign policy).

[63] The government made this point when it invoked *American Ass'n* in arguing that the "actions in this case relate[d] to the President's 'overall political agenda concerning relations with another country.'" Defendants' Motion to Dismiss or, Alternatively, Motion for Judgment on the Agency Record at 43, *Section 301* (No. 21-cv-00052) (quoting *Am. Ass'n*, 751 F. 2d at 1249).

[64] *See* Arthur Earl Bonfield, *Military and Foreign Affairs Function Rule-Making Under the APA*, 71 MICH. L. REV. 221, 226 (1972). Several scholars have specifically advocated against an overly broad application of the foreign affairs exemption. *See id.* (arguing that the foreign affairs exemption is justified only in narrow circumstances); Tibbels, *supra* note 56, at 409–12 ("Congress must re-assert the original scope of the exemption in the face of unprecedented executive dominance over foreign affairs." *Id.* at 410–11.). The Administrative Conference of the United States, an independent federal agency responsible for researching and making recommendations on agency conduct related to the APA, has even advocated for its elimination. *See* 1 C.F.R. § 310.2 (1974) (resolution no. 2); Tibbels, *supra* note 56, at 396 n.37, 397.

[65] Araiza, *supra* note 52, at 682.

[66] *Id.*

[67] *See* JOHN DAY LARKIN, TRADE AGREEMENTS: A STUDY IN DEMOCRATIC METHODS 66–67 (1940).

lobbying activity.[68] And while the Trade Act's notice-and-comment procedures are less than those required by the APA, they are still an important feature included to ensure that any "action taken under § 301 furthers United States interests and limits any adverse effects on sectors of the economy other than those of the petitioning industry."[69] By treating notice and comment as a formality and declining to respond to the myriad comments it received, USTR threatened to undermine the spirit of both the Trade Act and the APA. Allowing an agency to invoke the foreign affairs exemption whenever a trade-related regulation is implicated would exclude from APA notice and comment an entire category of policy decisions for which the procedural safeguards of the APA would be especially beneficial.

In declining to apply the foreign affairs exemption, the *Section 301* court also avoided the unnecessary overlap in APA doctrine that the *American Ass'n* court had created. There was nothing intrinsically tied to foreign affairs in that court's fear of an import surge — any agency regulation affecting market conditions could be expected to invite similar anticipatory actions. In other contexts, such fears are addressed through invocation of the APA's good cause exception, which is subject to judicial review.[70] Had the *Section 301* court allowed this doctrinal overlap to persist, agencies seeking a traditional good cause exemption could attempt to avoid judicial review by fitting their action into the foreign affairs exemption.

The court's tacit narrowing of *Mast* and *American Ass'n* suggests that it was concerned with the negative consequences of a broad interpretation of the foreign affairs exemption. Yet so long as that interpretation remains binding precedent, courts will likely continue to pay it lip service while applying a more limited standard. This creates a muddied and confusing jurisprudence for future litigants. Federal appellate courts would do well to note the problems inherent in *American Ass'n*, acknowledge that its framework no longer controls, and consider developing a tighter, more nuanced interpretation of the foreign affairs exemption.

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[68] Brody Mullins & Andrew Duehren, *U.S. Businesses Ramp Up Lobbying Against Trump's Tariffs*, WALL ST. J. (Sept. 12, 2018, 12:00 AM), https://www.wsj.com/articles/u-s-businesses-ramp-up-lobbying-against-trumps-tariffs-1536724811 [https://perma.cc/XYQ4-XYBE].

[69] Judith Hippler Bello & Alan F. Holmer, *Section 301 of the Trade Act of 1974: Requirements, Procedures, and Developments*, 7 NW. J. INT'L L. & BUS. 633, 649–51 (1986); *see Section 301*, 570 F. Supp. 3d at 1336 n.22.

[70] *See* Kyle Schneider, Note, *Judicial Review of Good Cause Determinations Under the Administrative Procedure Act*, 73 STAN. L. REV. 237, 250, 252 (2021) ("Courts . . . allow good cause when prior notice could subvert complex statutory schemes. These cases often involve regulations affecting markets or where concerns about strategic action by sophisticated actors are particularly pronounced." *Id.* at 250.). The good cause exception requires that an agency demonstrate that undergoing notice and comment would be "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(3)(B).