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Congress Calls on USTR to Initiate China Import Exclusion Process for List 3

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In the joint explanatory statement (JES) to the mini-omnibus bill signed into law by the President on February 15, Congress called on the U.S. Trade Representative (USTR) to initiate, by March 17, an exclusion request process for the 6,000+ tariff items included on List 3 of the 301 tariffs on China. The process would allow companies to request that their products be excluded from the additional 301 duties currently imposed on List 3 items. The current 10 percent duty rate on List 3 items will be increased to 25 percent on March 2 unless U.S. and Chinese officials reach a deal to avoid the scheduled rate hike.

While exclusion request processes were established following the imposition of an additional 25 percent duty on List 1 and List 2 items from China, the administration did not plan to implement a similar process for List 3 items, citing the lower 10 percent additional duty rate that applies to List 3 items. Congress' instructions come amid a lack of any sign of progress in negotiations with China that would help avoid the March 2 rate hike, as well as growing concerns about the effects of ongoing 301 duties on U.S. businesses, their employees, and consumers. Importantly, however, the congressional request in the JES is not binding as it is not included in the bill signed by President Trump. Rather, the JES expresses the intent of Congress regarding implementation of the bill. So while it is likely that the USTR will follow congressional instructions, there is a chance the USTR and the administration will push back.

Despite this uncertainty, we do know that per Congress' instructions, the List 3 exclusion request process will likely follow the same

procedures as those in rounds 1 and 2. That means companies importing List 3 items can already begin gathering the information required to submit an exclusion request. This head start can prove useful as the USTR has been reviewing requests in the order they come in, so companies that submit requests as soon as the List 3 process is implemented (and ahead of the many thousands of other requests that are expected) should receive a faster response.

In addition to the unique physical and other specifications of the product, the HTS code used to enter it into the United States, and figures regarding the annual volume and value of imports of the product, companies should gather the information necessary to prepare responses to the following questions:

- Is the product available only from China (is a comparable product available from sources in the United States and/or in third countries)?
- Will the additional 301 duties cause severe economic harm to the company or other U.S. interests (including employees and employees' families, the community, and consumers)?
- Is the product strategically important or related to the "Made in China 2025" policy or other Chinese industrial programs?

As negotiations continue and the March 2 rate hike draws near, we will keep you updated regarding any significant developments. Meanwhile, we recommend that you begin preparing to take advantage of this forthcoming opportunity to limit the negative effects of the 301 duties on your company's bottom line.

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