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Coming Soon: Long-Awaited Section 301 List 3 Tariff Exclusion Process

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Last month, United States Trade Representative Robert Lighthizer informed Senator Tim Kaine (D-Va) that his agency would not establish an exclusion process for products subject to Section 301 "List 3" tariffs unless and until these tariffs increased from 10% to 25%. (SEE: Butzel Client Alert 1/16/2019) Congress begged to differ.

In an explanatory statement issued by Congresswoman (D-NY) Nita Lowey, the Chair of the House Appropriations Committee to accompany appropriations legislation signed into law by President Trump on Feb. 15, Congress directed the Office of the U.S. Trade Representative (USTR) to establish an exclusion process for the List 3 goods "following the same procedures as those in rounds 1 and 2." USTR must report to Congress on "the nature and timing of this exclusion process" within 30 days (i.e., no later than March 17).

Interestingly, while Congress allocated an additional \$4 Million to the Department of Commerce BIS unit that is responsible for the Section 232 (steel and aluminum) tariff exclusion process, it directed no additional resources to the USTR to the additional Section 301 List 3 exclusion process. The Lists 1 and 2 exclusion process that is currently ongoing at USTR has been criticized for the lengthiness of the review process. Also, there have been concerns that the USTR did not have enough trained staff with technical backgrounds to evaluate the diverse and complex products seeking exclusions.

Companies with products on List 3 can expect the exclusion process to provide 1-year exclusions retroactive to the effective date of the List 3 tariffs. Similar to the List 1 and 2 exclusion processes, the List 3 process should also provide for comments and "sur-rebuttals", and exclusions granted should apply to all importers of excluded product categories and tariff codes, irrespective of whether the company filed a request. While the majority of Lists 1 and 2 applications are still being reviewed, the

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rationale for most of the exclusions that have been granted appears to be a lack of availability of the product outside China. (SEE: Butzel Client Alert 1-2-2019) Denials in some cases have been based on the conclusion that the product involved is part of the China 2025 program.

If you have a List 3 product and want to take advantage of the pending exclusion process, it is advisable to move quickly. We recommend being ready to file as soon as the List 3 site is announced, since, Lists 1 and 2 requests appear to be processed in the order in which they were received.

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