

THE NATIONAL LAW REVIEW

No Further Shutdown; List 3 Exclusion Process Coming

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The Consolidated Appropriations Act of 2019 was signed into law on Friday, February 15, 2019, so the potential for another shutdown was averted, but there was a hidden gem buried in a related document. This new law contains a specific appropriation for the U.S. Trade Representative's office which reads: "For necessary expenses of the Office of the United States Trade Representative, ... \$53,000,000, ..."

Of particular interest to international traders is an interpretive statement which explains the content of the funding bill in more detail (all 218 pages, as opposed to the 465-page length of the actual bill). It is entitled: "EXPLANATORY STATEMENT SUBMITTED BY MRS. LOWEY, CHAIRWOMAN OF THE HOUSE COMMITTEE ON APPROPRIATIONS REGARDING H.J. RES. 3."

It refers to the "\$53,000,000 for ... USTR," but - here comes the hidden gem -

Section 301 Exclusion Process.-USTR has finalized tariffs on goods from China under Section 301 of the Trade Act of 1974 in three separate rounds, and provided an exclusion process that allows U.S. businesses to obtain relief from the Section 301 tariffs for goods subject to tariffs in rounds 1 and 2. It is concerning that there is no exclusion process for goods subject to tariffs in round 3 of the Section 301 proceedings, as was done in the first two rounds. USTR shall establish an exclusion process for tariffs imposed on goods subject to Section 301 tariffs in round 3. This process should be initiated no later than 30 days after the enactment of this Act, following the same procedures as those in rounds 1 and 2, allowing stakeholders to request that particular products classified within a tariff subheading subject to new round 3 tariffs be excluded from the Section 301 tariffs. USTR shall consult with the Committees on Appropriations, the House Committee on Ways and Means, and the Senate Committee on Finance regarding the nature and timing of the exclusion process. USTR shall also report to such committees no later than 30 days after enactment of this Act on the status of the exclusion process. [emphasis added]

As of the date of this alert, March 17, 2019 (a Sunday) is four weeks away, so now we wait to see how USTR responds. When will we know anything more? What can we expect to see published in the Federal Register or elsewhere that explains the status of any List 3 exclusion process? When might the List 3 exclusion process open? How it will work? Will it be different from the process to seek an exclusion for the products on Lists 1 and 2? These are all critical questions needing answers, and there are many others, including whether enough additional funding has been provided so as to allow USTR to more quickly move exclusion requests through the process to decision and publication.

Given the extent of the rumors circulating around the still pending List 1 and List 2 exclusion requests, including those lamenting the possibility no action will be taken on any pending requests beyond those approved in December 2018, the exclusion process remains a troubling situation which builds off of growing displeasure with the intent to use tariffs as a tool of trade policy. However, at this moment, the most worrying topic is will the rate on the List 3 goods increase to 25% on March 1st?

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