

President Holds Off on China Tariff Increase as Congress Demands Exclusion Process

IN SHORT

The Situation: On February 24, President Trump indicated that he would hold off on increasing tariffs from 10 to 25 percent on products included on the third list ("List 3") of Chinese-origin products subject to additional duties pursuant to Section 301 of the Trade Act of 1974 ("Section 301"). The deadline for that increase was set to begin on March 2. This move comes less than 10 days after Congress demanded that the United States Trade Representative ("USTR") create an exclusion process for List 3 products.

The Result: Companies that import List 3 products into the United States can, at least for now, breathe a sigh of relief that the tariffs will not increase from 10 to 25 percent on March 2, as they wait to learn whether an exclusion process for List 3 products will be implemented similar to the exclusion processes for the first two lists of Chinese-origin products subject to Section 301 duties ("List 1" and "List 2").

Looking Ahead: Trade negotiations between the United States and China continue. The delayed increase in duties appears to be indefinite for now. Businesses affected by these tariffs should monitor the quickly changing landscape as the future of Section 301 List 3 tariffs is unclear.

On February 24, President Trump indicated that he would hold off on increasing tariffs from 10 to 25 percent on Section 301 List 3 products. The original deadline for this increase was set to begin on March 2. The President cited the "substantial progress" made in the ongoing trade talks between the United States and China. Although a formal agreement between the parties has not been reached, President Trump said that "[a]ssuming both sides make additional progress, we will be planning a Summit for President Xi and myself, at Mar-a-Lago, to conclude an agreement." At this point, the extension appears to be indefinite.

This development comes on the heels of the President signing into law the Consolidated Appropriations Act of 2019 earlier this month to fund the government and prevent a second government shut down this year. Accompanying this legislation was a [Congressional Joint Explanatory Statement](#) ("JES"), which voiced Congressional concern that the USTR has not implemented an exclusion process for goods included on List 3. In the JES, Congress explicitly states that the "USTR shall establish an exclusion process for tariffs imposed on goods subject to Section 301 tariffs in round 3." The JES also states that the process should be initiated no later than March 17, 2019, and should follow the same procedures as the product exclusion processes for List 1 and List 2.



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Although the JES indicates Congressional intent, it was not part of the bill signed into law. Therefore, the language directing the USTR to implement an exclusion process for List 3 is not binding. However, Congress has sent the USTR a powerful message regarding the importance of implementing a List 3 exclusion process. Additionally, Congress will likely continue this pressure when USTR Lighthizer testifies before the House Ways and Means Committee on

As trade negotiations between the United States and China continue, businesses should brace for the tariffs on List 3 products to **potentially** increase if negotiations fall apart or stall, and be prepared to submit exclusion requests if an exclusion process is established for List 3. Negotiations in the coming weeks could have a significant impact on the additional duties imposed on Chinese-origin goods pursuant to Section 301.

THREE KEY TAKEAWAYS

1. Additional duties on List 3 products will not increase from 10 to 25 percent on March 2.
2. Congress demands that the USTR create an exclusion process for List 3 products subject to additional duties pursuant to Section 301.
3. Continuing trade negotiations between the United States and China could have a significant impact on the additional duties imposed on Chinese-origin goods pursuant to Section 301 in the coming weeks.



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