



## New year presents new opportunities in federal budget cycle

Congressional appropriations serve as a potent tool to guide administrative actions in commerce and trade

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Before departing in the final days of 2019, Congress passed a bipartisan spending package amounting to US\$1.4 trillion. Despite the frequent partisan fighting in Washington, D.C., the appropriations process remains a powerful bipartisan tool lawmakers use each year to check the executive and assert key policy directives.

When it comes to commerce and trade, appropriations have emerged as a consistent and effective way for congressional members to weigh in on behalf of their constituents. The following provisions are some examples of where Congress directed executive actions and serve as a guide to where industry can help shape policy.

### **Section 232 investigations**

- Congress directed the administration to publish the autos 232 report in the Federal Register. Members were dissatisfied with the administration's response to congressional inquiries and concerns – including a [bipartisan letter](#) signed by 12 senators – regarding the national security implications of automobile imports from Europe. The administration must publish the report within 30 days of enactment and submit any classified portions to Congress for review.
- The spending package fully funded the president's proposed increase for the Department of Commerce to address staffing and capacity shortfalls in reviewing exclusion requests. Congress was frustrated with the backlog of Section 232 tariff exclusion requests and acted on the need to speed up the approval process.
- After multiple stakeholder groups raised concerns to Congress, the administration must report to the appropriations committees on the status of imports under quota exclusions.
- Concerned with a perceived lack of transparency in the review of Section 232 exclusion applications, appropriators mandated quarterly reports on the number of exclusion requests the administration received, the number approved and denied, and the associated costs undertaken to process exclusion requests.

### **Trade enforcement and export promotion**

- The funding package established a dedicated anti-circumvention unit within the Department of Commerce to investigate allegations of duty evasion by foreign exporters and their U.S. importers. This was in response to increased alarm that foreign actors may be circumventing U.S. antidumping and countervailing duty laws.
- Due to continued concern over foreign seafood products unlawfully entering the U.S. market, Congress increased funding to detect and deter illegally harvested and improperly documented seafood imports. It also directed the administration to consider using remote sensing and imaging to advance seafood traceability efforts and support the goals of the Seafood Import Monitoring Program.
- With a desire to counterbalance the administration's expanded use of punitive trade measures, Congress rejected the president's proposed cut to programs promoting exports and increasing market access abroad and instead increased funding to assist American companies seeking to do business overseas.

### **The Committee on Foreign Investment in the United States (CFIUS) and export controls**

- Lawmakers signaled strong support for increased foreign investment reviews under the expanded CFIUS process by fully funding the president's requested increase to staff up key agencies and provide needed resources to investigate transactions in which a foreign person or entity may obtain control, or a stake in, certain U.S. businesses.
- The funding law directed the Department of Commerce to continue its exporter outreach program, with an emphasis on small- to medium-sized businesses, to educate companies on their obligations related to export controls.
- Congress increased funding to support actions to identify and control exports of emerging and foundational technologies, as directed by the Export Control Reform Act of 2018.

### **Section 301 and trade agreements**

- Displeased with the U.S. Trade Representative's initial Section 301 process, Congress mandated that any additional tariffs imposed on goods from China under Section 301 of the Trade Act of 1974 must be accompanied by an exclusion process that allows U.S. businesses to obtain relief from the tariffs.
- The spending package recognized the impact of de minimis or "duty-free" thresholds on small businesses that take advantage of e-commerce to send low-value shipments to customers in foreign countries and strongly supported the levels set in the United States-Mexico-Canada Agreement.
- Lawmakers continued to prohibit the administration from engaging in any activities promoting the export of tobacco products or seeking to reduce or remove marketing restrictions on tobacco products overseas, so long as the restrictions apply equally to U.S. and foreign tobacco products.
- Directly affecting future trade negotiations, the spending package prohibited the administration from including certain intellectual property-related text from three former free trade agreements into any new bilateral or multilateral trade agreement.

Other notable items in the spending package related to commerce included specific funding for communities suffering from nuclear power plant closures as well as coal-mining communities

that have been negatively impacted by stricter environmental regulations and job losses. The funding law also directed the Commerce Secretary to forgive an estimated US\$10 million in loan interest for the Pacific groundfish trawl fishery, and acknowledging that the accrued interest amount was due to delayed action by the Department of Commerce when the federal loan program was first created.

### **Looking ahead**

As the second session of the 116th Congress commences this week, many eyes will be on the impeachment trial in the Senate and upcoming fall elections. However, with a two-year budget deal in place, appropriators will begin work on the next funding cycle keeping the government running in fiscal year 2021. And, with the elimination of earmarks, Congress has focused its power of the purse on reining in executive actions and redirecting administrative policies.

The start of the budget cycle is the best time to engage lawmakers in the process and make sure they understand industry concerns in the areas of commerce and trade. Hogan Lovells is uniquely positioned to assist clients in navigating the appropriations process. Our firm has deep knowledge and extensive contacts with Capitol Hill that is paired with unmatched regulatory prowess in the fields of commerce and trade.

As you think about your regulatory concerns and priorities for the year, we encourage you to consider adding an appropriations strategy to address your business goals.

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