

Client Alert

International Trade & Litigation Practice Group

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Miscellaneous Tariff Bill Petition Process Goes Live *Potential for up to \$500,000 in duty relief per product*

The U.S. International Trade Commission (“ITC”) has begun accepting petitions seeking temporary duty suspensions and reductions pursuant to the American Manufacturing Competitiveness Act of 2016 (“the Act”). The Act reinstates the Miscellaneous Tariff Bill (“MTB”) program. As reported in a prior [client alert](#), the MTB program allows Congress to eliminate or reduce duties up to \$500,000 per year for a period of up to three years on imported articles not otherwise available in the United States. The last MTB program expired on December 31, 2012.

Likely beneficiaries of the MTB program include manufacturers that use imported raw materials or other articles that must be imported because they are not available domestically. Although some materials already can be entered duty free, in most cases, import duties have to be paid at the time of importation. Congress recognizes that these additional duties ultimately add to the costs of the imported materials and, when such materials are not already available, the increased costs affect the ability of companies around the United States to maximize their investments and hire additional employees.

Enhanced Role For The ITC

The Act’s bipartisan drafters sought to provide enhanced transparency. Historically, potential MTB beneficiaries lobbied individual Members of Congress to introduce tariff suspension legislation. The new approach relies more heavily on the expertise of the non-partisan ITC. The ITC is an independent Federal agency with broad investigative and advisory responsibilities on matters of trade.

MTB Petitions Must Be Filed Via The ITC’s Web Portal By December 12, 2016

To benefit from reduced or eliminated import duties under the new MTB program, interested parties must electronically file petitions to obtain duty relief for imports of specifically defined products with the ITC.

The ITC created an Internet-based MTB portal for submission of all petitions and related public comments. The ITC anticipates that up to 5,000 petitions and 14,000 comments will be filed. The ITC has released interim regulations

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and has disseminated detailed public guidance on preparing and filing MTB submissions. This highlights the importance of ensuring that any filings comply with all legal and technical requirements.

Petitioners and commenters are permitted to request non-disclosure of confidential business information (“CBI”) included in MTB submissions. Importantly, failure to claim CBI treatment for appropriate information will be treated as a waiver of the right to claim CBI protection, meaning the submitted information may be made available to the public. This reinforces the need to consult with experienced legal advisors in preparing and filing MTB petitions and comments.

Public Comments

Petitions properly filed via the ITC’s MTB portal will be available for inspection on the ITC website. The ITC will publish a notice in the *Federal Register* requesting members of the public to submit comments on the petitions. The deadline for filing public comments will be 45 days from the date of the *Federal Register* notice. Public comments will also be made available on the ITC website. Public comments allow interested parties to support, object to, or otherwise comment on a petition. As one example, public comments are likely to be filed by domestic producers who assert that they maintain U.S. production capacity to make the product in commercial quantities.

ITC Reports To Congress

The Act requires the ITC to issue preliminary and final reports to the House Ways and Means and Senate Finance Committees (“the Relevant Committees”). The reports must analyze the petitions and the article for which duty relief is being sought, the industry in the United States that uses the article, historical import data, and whether domestic production of the article occurs in the United States.

The ITC’s preliminary report must identify those petitions that the agency does not recommend for inclusion in an MTB. The ITC’s final report must provide updated information (if any) associated with each of the petitions. The ITC also must assess whether each petition would result in less than \$500,000 in duty loss during a calendar year (a threshold requirement of the Act). Thus, companies also should consider consulting with an experienced legal advisor to maximize any duty relief (*e.g.*, by properly defining and researching the product) and to ensure that the company’s petition(s) satisfy the petitioning requirements. Any relief granted under the MTB ultimately will remain in effect for three years, unless renewed.

The Congressional Role

After the ITC phase concludes, the new MTB process shifts to Congress. The Relevant Committees may exclude petitions from any MTB for a variety of reasons, including (1) an objection from a Member of Congress, or (2) when there is domestic production of the article in question. Importantly, however, the Act prevents Congress from including a petition that the ITC has determined to lack required information, that the ITC found to have been filed by a petitioner not likely to be a beneficiary, or that the ITC did not recommend for inclusion in the MTB. Congress also is precluded from adding articles that were not vetted during the review process at the ITC. In addition, Congress must ensure that duty suspension or reduction for a particular article does not exceed \$500,000 in a calendar year. For a company that obtains relief on many imported materials, the duty savings could be substantial.

Potential Timeline

The ITC has made clear that there will be no exceptions to the December 12 filing deadline. This is the required first step in a process that requires the ITC to complete its work by mid-2017. Thus, Congress could take up MTB

legislation as early as the second half of 2017. The actual sequence of events will depend on the political environment and the post-election makeup of Congress.

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