

Trade Compliance Flash: Q&A on Miscellaneous Tariff Bill Reform: A Duty Savings Opportunity

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Earlier this week, Congress passed the American Manufacturing Competitiveness Act of 2016, a bill that reforms the Miscellaneous Tariff Bill (MTB) process. The bill now goes to President Obama for signature. This Q&A explains the new process and sets forth the steps a company should consider to achieve duty savings on imported products under the MTB.

The bill, if passed, provides an opportunity for companies to achieve duty savings on imported products that are not produced in the United States. Our Customs and Trade Policy advisors can help with all facets of the MTB process, including identifying eligible products, preparing petitions for duty relief, drafting comments (either in support or opposition) of petitions submitted by other companies, and interacting with the relevant U.S. government agencies and Congress to advocate for a favorable outcome.

What is the MTB?

The MTB is legislation to temporarily reduce or suspend customs duties on products that are not produced in the United States (or, if such production exists, there must be no opposition from a U.S. producer). To qualify for the tariff benefit, the estimated loss in revenue to the U.S. government from the duty suspension or reduction on each product must be less than \$500,000 in a calendar year.

How will the reformed MTB process work?

In the past, the MTB process started and ended with Congress. The new process differs in that it begins with companies filing a formal petition to the non-partisan U.S. International Trade Commission (ITC), rather than individual members of Congress. The proposed process for the submission and consideration of petitions is as follows:

1. **ITC Requests Petitions:** On October 15, 2016, the ITC will publish a notice in the Federal Register requesting petitions from the public on duty suspensions or reductions under the MTB for a 60-day period.
2. **Public Comment Period:** 30 days after the petition request period expires, the ITC will publish the petitions submitted in the Federal Register and request comments from members of the public for a 45-day period.
3. **ITC Issues Report to Congress:** Approximately 180 to 210 days after releasing the list of petitions, the ITC will publish a report to Congress listing all products that satisfy the MTB criteria. The ITC's report will be based on a review of all petitions and public comments submitted as well as input from Congress, U.S. Customs and Border Protection (CBP), the U.S. Department of Commerce and other appropriate federal agencies.
4. **Congressional Approval of MTB:** After reviewing the ITC's report, the House and Senate will prepare MTB legislation to amend Chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) -- a chapter of the U.S. tariff reserved for that purpose. Congress can include only those products approved by the ITC, but may also exclude any qualifying product. The duty savings will become effective on a date specified in the MTB bill, which may occur as soon as the fourth quarter of 2017.

What information must be contained in the petition to the ITC?

A petition to the ITC must contain the following information: (1) the name and address of the petitioner; (2) a certification from the company that the product likely satisfies the criteria for duty suspension or reduction; (3) a description of the product to be included in Chapter 99 of the HTSUS (including, to the extent available, the tariff classification of that product and any relevant CBP rulings or entry summaries showing the article's current classification); (4) a brief and general description of the industry in the United States using the article; (5) a statement as to whether the petition provides for an extension of an existing duty suspension or reduction or provides for a new suspension or reduction; (6) an estimate of the article's total import value for the next five years (including the estimated value of imports by other importers, if available); and (7) a description regarding any domestic production, if available.

What can companies do to explore potential duty savings under the new MTB process?

Companies should consider taking the following steps to identify potential duty savings opportunities under the MTB:

- **Review the company's import data (e.g., ITRAC or ACE reports) and identify products on which the company pays customs duties, and the amount in duties paid in the prior calendar year.** Note that U.S. importers may request a record of all of their import transactions for a period of up to five years -- known as ITRAC data -- from CBP for a marginal fee.
- **Research whether any dutiable products for which the company is paying significant customs duties on an annual basis are manufactured in the United States.** This step may involve internet research and conversations with the company's sourcing and sales departments and its suppliers.
- **Think creatively when exploring potential candidates for duty relief** . It is incumbent upon a company to define a product that is potentially eligible for the tariff benefit as specifically as possible. By defining a product narrowly, an importer may gain a competitive advantage over other importers of a similar but not identical product that falls under the same HTSUS subheading. A narrowly defined product is also less likely to exceed the \$500,000 annual limit on duty reductions or suspensions.
- **Compile the information needed to prepare the ITC petition** . Preparing a petition will be time-consuming, as it will likely require input from employees in multiple divisions (e.g., product managers, procurement, trade compliance, legal, *etc.*), suppliers, and even U.S. Customs, if ITRAC data is requested. It would be wise to start the process early.

For more information, please contact one of the following authors:

Richard A. Mojica, rmojica@milchev.com, 202-626-1571

P. Welles Orr, worr@milchev.com, 202-626-1481

Austen Walsh*

**Former Miller & Chevalier attorney*

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