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Miscellaneous Tariff Bill Finally Passes

By James Sawyer and Mollie Sitkowski

In a rare demonstration of bipartisan politics, on May 20, 2016, President Obama signed into law the *American Manufacturing Competitiveness Act of 2016* (the “Act”) which includes long-awaited amendments to the process for requesting duty reductions under a *Miscellaneous Tariff Bill* (MTB). The Act formally transfers the technical review and management of the MTB process to the United States International Trade Commission (ITC) and provides mandated timelines, beginning no later than October 15, 2016, and October 15, 2019. The Act thus seeks to ensure that the MTB process will be completed at least twice in the next six years.

An MTB is designed to provide temporary duty reduction for specific products at the request of U.S. importers in order to increase their competitiveness in the global marketplace. Typically, companies request duty relief for manufacturing raw material inputs such as chemicals, electronic components, or parts that are not produced in the U.S. The more narrowly defined the product, the higher the likelihood it will be included in an MTB. The two largest impediments to success are the potential for domestic industry opposition and outstripping the \$500,000 savings threshold, above which a budget offset would be required.

The Mechanics

Prior to the Act’s new MTB framework, companies would submit requests for duty relief directly to their Congressional delegate, who would then support the duty relief in the larger MTB. This process was viewed negatively and appeared more as improper earmarking than support for U.S. manufacturing.

Under the revised process, the first step will be to submit requests to the ITC beginning October 15, 2016, for a filing period of 60 days. One month after the filing period ends, the ITC will publish the list of MTB requests separated into categories.

The first category will be reserved for products that were previously awarded an MTB tariff reduction reflected in Chapter 99 of the *Harmonized Tariff Schedule of the United States*. The second category will be for requests that require technical correction or evaluation in order to move ahead.

The ITC will then manage a notice and comment period on whether the individual MTB requests threaten U.S. domestic businesses. Following this

review, the ITC will send Congress a public report with recommendations for products entitled to duty relief.

Finally, the House Ways and Means Committee will examine the suggestions and draft an MTB proposal. The Committee would be allowed to exclude products from the MTB proposal, but would not be allowed to add any products not proposed by the ITC. Also, the Committee will certify that no spending earmarks accompany the proposal and publish a list of limited tariff benefits. Congress as a whole will then vote on the MTB to eventually be signed by the president.

Take Aways

The revised MTB process is anticipated to provide U.S. companies with a more transparent and structured process to approach proposed tariff exemptions via the MTB process, but the due diligence investigation and preparation into possible savings opportunities remain the key to success.

To prepare for your company’s submission to the ITC for possible inclusion in any MTB, we recommend that you take the following steps:

- Identify which dutiable products you import that lack domestic producers such as inputs to manufacturing or processing that occurs in the United States or finished products unavailable in the domestic market, coordinating internally with sourcing teams to identify potential domestic industry opposition;
- Tailor product descriptions and technical specifications as narrowly as possible to target specific items and increase the likelihood of success, as well as to distinguish products from competitors; and also work to ensure the products are tied to supplier invoices for validation and implementation by U.S. Customs and Border Protection at the time of importation;
- Analyze import figures and duty liability to ensure that estimated revenue loss for each product will not exceed \$500,000 in a calendar year, or structure a duty reduction consistent with that threshold; and
- Identify which members of Congress may be likely to back your proposal and be prepared to request that they provide support through the public comment process.

This is a new path for the MTB process and it is likely that there will be further instructions from the ITC, as well as growing pains as the process crystallizes. The key is to be prepared and not wait until the *Federal Register* announcement in October to start considering opportunities for possible duty savings.

For assistance in identifying which products are likely to receive duty relief through the MTB process, as well as determining the correct technical description, please contact James Sawyer, Mollie Sitkowski, or any other member of Drinker Biddle's Customs and International Trade Team.

Customs and International Trade Team

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