

Client Alert

International Trade & Litigation Practice Group

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President Obama Signs American Manufacturing Competitiveness Act of 2016

Law Modifies Process For Duty Suspensions And Reductions

On May 20, 2016, President Obama signed the American Manufacturing Competitiveness Act of 2016 into law (the Act). The Act restores the ability of the U.S. Congress to consider so-called Miscellaneous Tariff Bill (MTB) legislation. Under this mechanism, duties may be eliminated or reduced for a period of up to three years on imported articles not otherwise available in the United States. The prior version of the MTB program expired on December 31, 2012. Renewal provides the U.S. manufacturing sector with the potential for relief from higher costs imposed by import duties on articles that cannot be sourced domestically.

The Act was drafted with the intent of providing greater transparency into the MTB process. Under the prior process, potential beneficiaries lobbied individual Members of Congress to introduce tariff suspension legislation. The new MTB framework will rely more heavily on the expertise of the non-partisan U.S. International Trade Commission (ITC or Commission). The ITC is an independent, quasi-judicial Federal agency with broad investigative responsibilities on matters of trade, including the collection and analysis of trade data in order to assist Congress in the development of sound and informed U.S. trade policy. The ITC is also charged with maintaining the Harmonized Tariff Schedule of the United States (HTSUS).

In addition, the Act requires the Congressional Budget Office to provide Congress with an assessment of whether the amount of a duty suspension or reduction in an MTB exceeds \$500,000 in a calendar year. In such cases, Congress is required to adjust the amount so that the estimated loss in revenue to the United States does not exceed the \$500,000 threshold. The Act also instructs the U.S. Department of Commerce (Commerce), U.S. Customs and Border Protection (CBP), “and other relevant Federal agencies” to provide details on domestic production of the article that is the subject of any petition and to provide information necessary for purposes of administration when the articles are presented for importation.

The ITC will initiate the new MTB procedure via notice published in the Federal Register no later than October 15, 2016. Petitions and related information requested by the ITC will need to be filed within 60 days of the date of the ITC’s Federal Register notice. Each petition must include

For more information, contact:

J. Michael Taylor
+1 202 626 2385
jmtaylor@kslaw.com

Charles Julien
+41 22 591 0804
cjulien@kslaw.com

Mark Wasden
+1 202 626 5529
mwasden@kslaw.com

Bonnie B. Byers
+1 202 626 5507
bbyers@kslaw.com

Patrick J. Togni
+1 202 626 2958
ptogni@kslaw.com

King & Spalding
Washington, D.C.
1700 Pennsylvania Avenue, NW
Washington, D.C. 20006-4707
Tel: +1 202 737 0500
Fax: +1 202 626 3737

Geneva
Rue du Rhône 14
CH-1204 Geneva, Switzerland
Tel: +41 22 591 0800
Fax: +41 22 591 0880

www.kslaw.com

details on 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 subsequently will solicit public comments on the petitions for duty suspensions and reductions. Additional information on MTB petition filing requirements and procedures (including treatment of any confidential business information received by the Commission) will be published by the ITC later this year.

Within 150 days of publication of the Federal Register notice, the ITC must deliver a preliminary report to the House Ways and Means and Senate Finance Committees (the Relevant Congressional Committees). The ITC's preliminary report must include information gathered and analyzed by the ITC for all of the petitions for a duty suspension or reduction received by the ITC, including background on the articles at issue, the revenue impact of any duty reduction or elimination, and whether the petitions meet the requirements of the Act. If the ITC concludes the requirements of the Act are not satisfied by a petition, the ITC must recommend technical corrections. The ITC also must recommend modifications in cases where the amount of duty suspension or reduction that is subject to a petition exceeds the \$500,000 annual threshold in revenue loss to the United States. Importantly, the ITC's preliminary report must identify those petitions that the Commission does not recommend for inclusion in an MTB. These examples underscore the importance of ensuring that any petition for MTB relief meets the requirements of the Act, and is properly drafted.

Sixty days after issuing its preliminary report, the ITC must issue a final report to the Relevant Congressional Committees. The ITC final report must provide updated information (if any) associated with each of the petitions. The ITC also must determine whether CBP likely would be able to administer the requested duty suspension or reduction, and assess whether each petition would result in less than \$500,000 in duty loss during a calendar year in which the duty suspension or reduction would be in effect. Any relief granted under the MTB remains in effect for no more than 3 years, unless renewed.

After the ITC phase concludes, the new MTB process shifts back to Congress. The Act empowers the Relevant Committees to exclude petitions from any MTB for a variety of reasons, including (1) an objection from a Member of Congress and (2) when there is domestic production of the article in question. Importantly, however, the Act prevents Congress from including petitions for which the ITC determined that required information was not provided, for which the ITC found that the petitioner is not a likely beneficiary, or for which the ITC did not recommend inclusion in the MTB. Congress is also precluded from including a petition that was not involved in the review process at the ITC. Thus, while Congress retains the power to exclude petitions recommended for duty relief by the ITC, the new process does not allow Senators or Representatives to seek relief for articles that did not undergo the ITC/public comment process.

The new MTB presents some similarities with the European Union autonomous tariff suspension and quota system. Under the EU system, industrial users operating in the EU can request a tariff suspension if an imported input is not produced in the EU. If an input is produced in the EU but not in sufficient quantity to fully satisfy EU demand, an autonomous tariff quota may be opened. For both tariff suspensions and quotas, tariffs may be waived wholly (resulting in zero duties) or partially (resulting in a reduced tariff rate) but always on a temporary basis. Tariff suspensions are valid for up to five years, while tariff quotas are opened and renewed on a yearly basis.

Requests for tariff suspensions or quotas must be filed by processing or manufacturing companies with the competent national authorities of the EU Member States. Requests then are reviewed at the EU level, because the 28 EU Member States—and Turkey, as it is party to a customs union with the EU—apply a common external tariff. During the course of the review, EU producers of a product covered by a tariff waiver request may file objections. If approved, tariff suspensions and quotas enter into force biannually on either January 1 or July. Once in force, these may be amended or extended according to a procedure similar to that governing the review of initial requests.

King & Spalding has recognized expertise in EU customs laws and assisted companies operating in the EU and Turkey in obtaining tariff suspensions and quotas of over \$100 million in the last two years.

In sum, the American Manufacturing Competitiveness Act of 2016 restores the MTB as a tool for U.S. industries that may be affected by import duties on products that are not available domestically and allows U.S. manufacturers to again seek similar duty relief that is available to manufacturers in Europe. The new MTB process builds upon the legacy of the prior MTB law, which expired almost three years ago. While many details are yet to come, potential petitioners should consult with experienced counsel now and begin to take steps to gather the required information.

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