



August 16, 2016

Ms. Lisa R. Barton
Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Re: Investigation No. MISC-034 on the Proposed Miscellaneous Tariff Bill Petition System

Dear Secretary Barton:

On behalf of the American Apparel & Footwear Association (AAFA), I am submitting these comments on the forms that the U.S. International Trade Commission has published to:

- (a) Receive petitions for MTB duty relief and
- (b) Submit public comment on those petitions.

We are also providing thoughts on the overall process.

AAFA is the national trade association representing apparel, footwear, and other sewn products companies, and their suppliers, which compete in the global market. Representing more than 1,000 world famous name brands, our membership includes 340 companies, drawn from throughout the supply chain. AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its four million U.S. workers, and its contribution of \$361 billion in annual U.S. retail sales.

We are long-time supporters of the miscellaneous tariff bill (MTB) as a way for our member companies to seek and obtain temporary tariff relief. We were one of the organizations working with Congress to enact the [American Manufacturing Competitiveness Act \(AMCA\) of 2016](#), which created a new three-step process involving the U.S. International Trade Commission (USITC).

When fully operational, this process will be critical for U.S. apparel, footwear, and textile manufacturers and importers alike to reduce costs on inputs or finished articles not available in the United States in commercial quantities. Eliminating these duties improves the competitiveness of U.S. brands and manufacturers, creates opportunities for U.S. employers and their workers, and reduces costs for U.S. consumers.

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A. Overall Comments:

1. Providing Maximum Duty Relief:

Congress passed the AMCA and tasked the Commission with the collection and review of these petitions so that future legislation can be enacted that will provide sweeping duty relief for U.S. companies. The AMCA is built on the premise that the competitiveness of U.S. manufacturers and other companies is eroded by the imposition of certain duties, and that it will be improved through the suspension or reduction of such duties.

Specifically, section 2(a)(1) of the AMCA states that duties are imposed on “imported goods for which there is no domestic availability or limited domestic availability.” Section 2(a)(2) adds that the imposition of such duties “creates artificial distortions in the economy of the United States that negatively affect manufacturing and consumers.” Section 2(a)(3) states further that “manufacturing competitiveness of the United States around the world will be enhanced if Congress regularly and predictably updates the Harmonized Tariff Schedule to suspend or reduce duties on such goods.”

Clear Congressional intent, therefore, reflects a desire to see the greatest amount of duty relief possible.

AAFA Recommendation: We encourage the Commission to conduct this exercise so that it can help achieve the Congressional goal to provide the greatest amount of duty relief possible. Such relief is especially important given the lapse in this program for the past three years, which has resulted in the perpetuation of these distortions for an extended period of time.

2. A Process That Works:

The AMCA builds on a process that has been run through Congress, with input by the Commission and Executive Branch agencies, for many years. While that process was stalled for the past several years, it had previously yielded significant tariff relief while affording stakeholders multiple opportunities to convey their interests and to perfect their tariff relief submissions as new information became known.

Section 2(a)(3) stresses the importance of a transparent and open procedure to build confidence in the overall duty suspension process. The AMCA then outlines this process, tasking the Commission to identify and report on MTB petitions that result in traditional duty loss targets (of \$500,000 or less per year), that are for products not produced in the United States in commercial quantities, and that are administrable. The AMCA narrowly follows the parameters of the previous Congressional process and does not envision other factors – such as preference erosion – entering into the evaluation of or reporting on petitions.

Clear Congressional intent stresses a successful process in addition to a successful outcome.

AAFA Recommendation: With this in mind, we encourage the Commission to make sure the forms and process are the least burdensome possible. We also encourage a process that is dynamic enough so that petitions stand the greatest chance possible for success. This means giving petitioners a chance to respond to (and hopefully fix) adverse comments that may be presented on their specific petitions. It also means analyzing petitions only according to the three narrow requirements relating to duty loss, domestic production, and administrability.

We also emphasize that the MTB project is not new. While the process is different than what had been used previously, it is based on those previous procedures. We expect many of the petitions submitted to reflect products that have previously been vetted, approved, and expired. Thus, while there may be a large quantity of petitions submitted – due to pent up demand – we expect many of those petitions to be similar or identical to previously approved MTBs. With this in mind, the USITC may want to add in a section to the form to enable petitioners to check if the petition represents an MTB that had previously been approved and had expired.

3. Commercial Availability of Domestic Production:

As noted above, section 2(a)(1) of the AMCA notes that there may be "no domestic availability or insufficient domestic availability." The term "insufficient domestic availability" implies that the quantity of production is a relevant factor.

Clear Congressional intent envisions production be available or imminent in commercial quantities to be considered a factor in comments on petitions.

AAFA Recommendation: Comments from domestic producers objecting to a particular petition should be required to demonstrate that their current or imminent production capacity is commensurate with demand by downstream manufacturers and consumers of the product under consideration.

B. Comments on the Form Used for Petitions:

1. Question #2 asks: Are you requesting a temporary duty suspension or a temporary duty reduction? If it is a reduction, the form then asks what is the lower duty rate that you are requesting?

AAFA Comment: We recommend these questions be deleted. Importers will naturally want the greatest amount of duty relief possible provided the amount of duty loss does not exceed \$500,000. We encourage the Commission to perform that calculation – as we understand was done in previous years – to assign the rate that generates the greatest amount of duty reduction possible for each petition.

2. Question 6(c) asks whether there is a published Customs ruling establishing the HTS classification of the product.

AAFA Comment: To provide the greatest amount of relevant information, the Commission should allow the petitioner to provide any relevant rulings related to the product or similar product.

3. Question 6(d) requests a copy of a liquidated CBP entry summary supporting the product's classification for each HTS subheading.

AAFA Comment: Certain importers will have entry summary documents that can be over 100 pages. Others may not have the entry summary documents or they may not be the importer of record (IOR). For IORs, we suggest that the ITC only request the first page of the entry summary, the relevant page with the specific HTS/product classification, and the last page to be provided as part of the sample copy for the petition. For petitioners who are not the IOR, but who will still want to answer "Yes" to that question because they are ultimately the entity that caused the import, the entry summary should not be required. We note that the ACMA helpfully includes the words "if available" for this item.

4. Question 7(c) asks: Is the product an intermediate product (i.e., is it used to make another product)?

AAFA Comment: We recommend this question be deleted. This information is not needed nor is it relevant to the analysis that the Commission will perform. We also do not find a basis for this question in the ACMA, which treats manufacturers and consumers as identical beneficiaries of duty suspension and makes no mention of intermediate products.

5. Question 8(a) asks for information about what country or countries from which the product is imported.

AAFA Comment: This data is readily available in USITC, and is unnecessary for the petition to also provide this information. Question 4(c) in the "Information for Comments form" already asks for the importer's sourcing country details, which may be more relevant.

6. Question 8(b) asks for U.S. import data for 2015 and 2016, and estimates of future imports for five years.

AAFA Comment: We recommend this question be amended so that it only ask (on a confidential business information basis) for the information on the petitioner's imports. An importer does not know this data for all U.S. imports but does for its own imports. Moreover, at the time the petitions are expected to be submitted, full year 2016 data will not be known. With regard to future year imports, such information will also be difficult, if not impossible, for a petitioner to supply. Among other things, such an estimate will likely change based on whether a duty relief petition is granted or not but it is unclear if the question is asking for this information with a particular premise in mind. Moreover, the petitions are for a three-year period yet the request is for five years of future data estimates. While we understand that the Congress has asked for this information in the ACMA, it also included the phrase "if available."

7. Question 8(c) asks for contact names, phone numbers, and emails of other beneficiaries.

AAFA Comment: We recommend this question be deleted or amended. U.S. importers do not have access to this information and should not be required to provide it. Customs and Border Protection (CBP) already has access to this information, and can share it with the Commission. We note further that while such information is requested in the ACMA, Congress helpfully included the phrase “if available.”

8. Question 8(d) asks whether the petitioner is aware of any beneficiaries other than the petitioner and U.S. importers listed above.

AAFA Comment: It seems unreasonable to request that the petitioner provide details of other possible beneficiaries. This should be deleted.

9. Question 9 asks whether the product or a like product is produced in the U.S., whether it is commercially available, and whether there is planned production.

AAFA Comment: Many importers will not have complete information on this question, and it should be amended to say “if available.” The Commission should include these questions on the form for comments by domestic producers who may object to a petition. Timeliness of production in commercial quantities should also be a relevant factor in the question.

C. Comments on the Form Used for Comments:

1. Question 4(a) creates four categories of individuals who may comment – (1) objectors (who may or may not produce the article), (2) supporters (who may or may not import the article), (3) representatives of government agencies, and (4) domestic producers who do not object.

AAFA Comment: This four-fold description is overly complicated, especially since it is followed by Question 5, which provides space for the comment itself. We recommend simplifying this to provide only two sections in Question 4 – one for domestic producers who oppose a petition and one for other commenters.

The point of this form is to identify domestic producers who engage in, or who expect to engage in, commercially meaningful production of the like or directly competitive article to that which is the subject of the petition. Other comments, while interesting and possibly providing context, fall outside the scope of what is actually required here. Moreover, we are puzzled why there is a space for individual federal government agencies to provide comments at this point. It is our understanding that the commerce department will shepherd all the federal administration and agency comments, and that such comments will be exclusive to the questions of whether there is domestic production in commercial quantities and whether the petitions are administrable.

2. Question 4(b) asks for details relating to domestic production and asks a “Yes/No” question if the production is done in commercial quantities.

AAFA Comment: The first question in this section should relate whether domestic production or imminent production is done in commercial quantities in a timely manner. If the answer is “Yes,” then the respondent should be directed to answer follow up questions – such as those contained in this section – to determine the nature of that commercially available production and whether the production is commensurate with demand for the product by manufacturers and consumers. If the answer is “No,” then the respondent should not be prompted to provide additional information as those additional answers will add nothing to the response.

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As a final note, we commend the Commission for providing the public a chance to comment on these forms, and for engaging with the trade community so readily on this process. A hallmark of the previous MTB process was its transparency in providing the public multiple ways to provide input. It is our hope (and expectation based on the actions the Commission has taken thus far) that this will be a hallmark of the new process as well. We look forward to continued engagement with the Commission on this initiative.

Thanks for your consideration of these comments. Please contact me at 202-853-9347 if you have any questions.

Sincerely,



Stephen Lamar
Executive Vice President