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August 12, 2016

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

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

Dear Secretary Barton:

The National Association of Manufacturers (NAM) appreciates the opportunity to provide comments on the proposed Miscellaneous Tariff Bill (MTB) information collection documents put forward by the U.S. International Trade Commission (ITC) in June.

Manufacturing in the United States supports more than 17 million jobs, and U.S. manufacturing is producing more today than ever before, reaching a record \$2.17 trillion in value-added output in 2015. It is the engine that drives the U.S. economy by providing good-paying and high-skilled jobs, opportunity and prosperity. Manufacturing has the biggest multiplier effect of any industry and manufacturers in the United States perform more than three-quarters of all private-sector R&D in the country – driving more innovation than any other sector.

The NAM leads industry efforts to advance the competitiveness of manufacturers in the United States through many trade initiatives, including by seeking the elimination of border taxes on inputs and other products not produced or available in the United States in commercial quantities through the MTB process.

A strong and robust MTB process can play a critical role in the operations of domestic manufacturers by correcting, on a temporary basis, distortions in the U.S. tariff code by eliminating or reducing duties on imported products for which there is no or insufficient domestic production and availability. Such distortions undermine the competitiveness of manufacturers in the United States, particularly small- and medium-sized manufacturers, by imposing unnecessary costs and, in some cases, imposing a higher cost on manufacturers' inputs than the competing foreign imported product.

The NAM has long championed the MTB and supported passage of the American Manufacturing Competitiveness Act of 2016 (Pub. Law No. 114-159) (AMCA) to correct distortions through the creation of a transparent, objective, predictable and regularized process for Congress to consider and enact MTBs.

As a preliminary matter, it is critical that the MTB process work effectively, particularly for small- and medium-sized manufacturers, which constitute more than 90 percent of the NAM's

overall membership. Of particular importance is ensuring that information requested is only what is required to conduct the analyses required by Congress and that the correct parties are requested to supply information. As explained in the detailed comments below, for example, there are instances where the ITC proposal seeks more information than required or seeks information from petitioners that they would not be able to provide. To ensure that this process works effectively, particularly for small businesses, the NAM urges the ITC to remove unnecessary and burdensome requirements. Not only will this reduce burdens for industry, but it will also remove a barrier that might otherwise dissuade some manufacturers from seeking the elimination or reduction of tariffs under the MTB.

In addition, please find below the NAM's comments on specific provisions in the ITC's draft "MTB Process: Information for Petitions" document.

Request for Temporary Duty Suspension or Duty Reduction (Section 2): Section 3(b)(2)(B) of the AMCA says that each petition should contain "[a] statement as to whether the petition provides for an extension of an existing duty suspension or reduction or provides for a new duty suspension or reduction." However, Section 2 of the draft "Information for Petitions" document asks whether a company is requesting a temporary duty suspension or a temporary duty reduction, and if a reduction, the requested lower duty rate. In our view, the burden to determine whether a duty rate should be reduced (and not suspended altogether) should fall on the ITC, and not on petitioning companies. For cases where the annual revenue loss resulting from a duty suspension would exceed \$500,000, the ITC should determine the appropriate duty reduction for a given product. Based on the NAM's interpretation of the AMCA, this would be consistent with the intention of the statute, and consistent with past practice.

Chemical Names (Section 6(a)(ii)): The current list of chemical synonyms does not capture all synonyms, which can create confusion and potentially misapplication of the ultimate MTB. The NAM requests the inclusion of an additional field to allow for the submission of other chemical synonyms to increase transparency.

Customs Ruling Establishing the Harmonized Tariff System (HTS) Classification of Product (Section 6(b)): The ITC proposal would request information on older HTS classification rulings. This requirement would create substantial difficulty for companies that will not always be able to determine whether a relevant older ruling exists. To correct this problem, the NAM requests a revision to this section that would allow companies to indicate that they are not aware of the existence of an older ruling.

Liquidated CBP Entry Summary Requirement (Section 6(d)): The ITC's proposed requirement that petitioners "provide a copy of a liquidated CBP entry summary supporting the product's classification for each HTS subheading you indicate above" may be impractical if not impossible for many companies to provide. In many cases, the end user is not the importer of record, as companies frequently purchase products from a distributor of the imported product. Distributors are likely to resist providing a liquidation form to customers as it would disclose proprietary and/or competitive information. Furthermore, such information is not necessary to identify the product. The NAM requests, therefore, that the entry summary should be required only "if available."

For petitioners able to submit entry summaries, companies require assurance that the customs entry would be treated as Confidential Business Information (CBI) by the ITC, as well as any other federal agencies involved in the review process. Language detailing treatment of this information as CBI should be included in the final request for information.

A “Certificate of Imported Goods” could be an alternative to submitting a liquidated CBP entry, such as that which is submitted to CBP for duty drawback purposes. However, it should be noted that this certificate contains quantity, duty paid on quantity, and duty rate information and therefore enables calculation of the declared value (*i.e.*, price), which is CBI. As a result, if such a certificate were to be used for MTB purposes, it should either exclude quantity and duty paid information or be marked and treated as CBI not subject to FOIA.

Five-Year Import Data Projection (Section 8(b)): The ITC’s proposed requirement that petitioners provide estimates of U.S. import data for the proposed product for the next five years is excessive, as five-year projections cannot accurately predict what trade flows will look like so far into the future. The NAM requests that the ITC limit eliminate this data projection requirement, as it places an unnecessary and burdensome requirement for petitioning companies, particularly for small businesses.

Given that the data projections required by Section 8(b) may require the submission of CBI, the ITC should clarify that any such CBI data will be handled accordingly with no public disclosure or sharing with competitors.

If a data submission projection requirement is included in the final petition system, Section 8(b) should clarify whether the data is to be provided by quantity or value. If by quantity, then the unit of measurement should be clarified (*e.g.*, kilograms or pounds).

The NAM also requests clarification as to whether any data submitted would apply only to the petitioner’s imports, as opposed to all U.S. imports, given that an individual company is unlikely to be able to make valid projections beyond its own company. Requiring data on all U.S. imports, for example, would impose a heavy and unnecessary burden on small manufacturers.

Certification that Proposed Duty Change Is Available to Any Person Importing Article (Section 10): As drafted, this section could be understood to exclude patented compounds from consideration under the new MTB process. The ITC should reformulate Section 10 as a question or series of questions to identify those products for which there will be limited tariff benefits (*e.g.*, because they are still under patent).

Thank you for the opportunity to provide the NAM’s views on the new MTB process. We welcome the opportunity to discuss further.

Sincerely,

Linda Dempsey