

Congress of the United States
Washington, DC 20515

July 21, 2017

The Honorable Rhonda K. Schmidlein
Chairman
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Dear Chairman Schmidlein:

In accordance with the *American Manufacturing and Competitiveness Act of 2016*, the House Committee on Ways and Means and the Senate Committee on Finance have reviewed the thorough preliminary report prepared by the U.S. International Trade Commission (ITC) concerning the Miscellaneous Tariff Bill (MTB) process. As you know, the Act requires the ITC to consider in the preparation of its final report any additional information submitted by the Committees that may support moving petitions listed in Category VI in the preliminary report into Category I, II, III, or IV. This letter is intended to provide such information.

The Committees, having met with dozens of petitioners regarding their petitions and the new process, offer the following overarching comments for the ITC's consideration as it prepares its final report.

- **Analysis of Domestic Availability:** Congress passed the Act for the express purpose of “remov[ing] the competitive disadvantage to United States manufacturers and consumers and to promote the competitiveness of United States manufacturers.” To achieve this goal, the Act provides for a transparent, open, and fair process for the consideration of petitions for duty suspensions and reductions.
 - *Necessity of Evidence:* Any determination that domestic production exists must be based on a demonstration by the domestic producer of production or imminent production in the United States of an identical, like, or directly competitive article. Accordingly, the Committees emphasize that blanket assertions regarding domestic production without evidence demonstrating such production should be deemed insufficient. This is especially important in instances in which an objection was raised with the Department of Commerce (Commerce) and the information contained in the objection was not made available to the public. In such instances, petitioners are unaware of the objector's identity and the grounds for objection and thus may be unable to meaningfully respond to the objection.
 - *Imminent Production:* Consistent with section 220.2(i) of the ITC's regulations, objections based upon “imminent production” should include some evidence demonstrating that “production [is] planned to begin within 3 years of the date on which the petition is filed.” In other words, an objection based upon imminent production must demonstrate more than that production is theoretically possible.
 - *Analysis by the Department of Commerce:* Several petitioners raised concerns that the ITC and Commerce were inconsistent in their application of what constituted an “identical, like, or directly competitive” article. These agencies both have

considerable expertise in conducting such analyses. At the same time, the Committees note that in both the preliminary and final reports, the determination of whether there is domestic production of an identical, like, or directly competitive article is made by the ITC. While the ITC must take into account Commerce's findings, the report must reflect the conclusions of the ITC, and the ITC should not automatically substitute another agency's conclusions for its own.

- **Consideration of Additional Information:** The Committees appreciate that the ITC reopened its portal so that petitioners could address domestic objections and administrability concerns to the greatest extent possible. In keeping with the spirit of the Act, this opportunity provided a fair and transparent way for petitioners to provide additional information to the ITC prior to issuing the final report. While we understand the significant time constraint that the ITC is under to prepare its final report, the Committees understand and expect that the ITC is analyzing the additional information and working with Commerce and U.S. Customs and Border Protection to determine whether a petition should be moved to Category I, II, III, or IV in the final report. The Committees urge the ITC, with the assistance of the other agencies, to continue working to resolve any issues regarding the sufficiency of the additional information. Further, the Committees expect that the ITC is continuing to communicate with petitioners regarding questions it may have concerning any additional information provided during the reopening of the portal so that it can conduct a complete analysis. This will ensure that the ITC's reopening of the portal was not only fair and transparent, but also meaningful.

The Committees appreciate the tremendous amount of time and resources that the ITC has dedicated to the new Miscellaneous Tariff Bill process and are confident in the objectivity of its analysis. We look forward to receiving the ITC's final report, preparing legislation in consultation with Members of Congress, and providing relief to U.S. manufacturers and consumers later this year.

Sincerely,



KEVIN BRADY
Chairman
House Committee on Ways and Means



ORRIN HATCH
Chairman
Senate Committee on Finance



RICHARD E. NEAL
Ranking Member
House Committee on Ways and Means



RON WYDEN
Ranking Member
Senate Committee on Finance

Cc: David S. Johanson, Vice Chairman
Irving A. Williamson, Commissioner
Meredith M. Broadbent, Commissioner