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Miscellaneous Tariff Bills: Overview and Issues for Congress

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Summary

U.S. importers often request that Members of Congress introduce bills seeking to temporarily suspend or reduce tariffs on certain imports. The rationale for these requests is that they cut costs for U.S manufacturers, thus enabling them to hire more workers, invest in research and development, and reduce costs for consumers.

In recent congressional practice, the House Ways and Means and Senate Finance Committees, the committees of jurisdiction over tariffs, have combined individual duty suspension bills and other technical trade provisions into larger pieces of legislation known as miscellaneous tariff (or trade) bills (MTBs). When Members introduce bills, they must also file disclosure forms indicating that they have no economic interest in the entity requesting the suspension. Before inclusion in an MTB, the individual bills are reviewed by the trade subcommittee staff in each of the relevant committees, the U.S. International Trade Commission (ITC), and executive branch agencies to ensure that they are noncontroversial (generally, that no domestic producer, Member, or government agency objects), relatively revenue-neutral (revenue loss due to the duty suspension of no more than $500,000 per product), and are able to be administered by U.S. Customs and Border Protection (CBP). All bills, bill reports, and disclosure forms are also placed on committee websites for public comment.

Duty suspensions in MTBs are only available for a limited time (generally, three years from the date of enactment), and if no subsequent MTB legislation is passed, the duty-free or reduced duty status of the products expires. Expired duty suspensions must be re-introduced to be included in new MTB legislation, and in most cases, the favorable duty status is not retroactively renewed. The last enacted MTB expired on December 31, 2012. This MTB, the United States Manufacturing Enhancement Act of 2010 (P.L. 111-227), suspended entirely or reduced duties on over 600 products. Since legislative attempts to pass an additional MTB extending the duty suspension on these products were not successful, currently, duties must be paid on these products, most of which are inputs in various U.S. manufactured products. Additional MTB legislation was introduced in the 112th Congress (H.R. 6727) and 113th Congress (H.R. 2708), but neither bill was taken up in either the House or the Senate, possibly due to controversy over whether MTB legislation violated House and Senate rules on congressionally directed spending.

The Trade Facilitation and Enforcement Act of 2015, P.L. 114-125, enacted on February 24, 2016, included a sense of Congress that urged the House Ways and Means and Senate Finance Committees to "advance, as soon as possible, after consultation with the public and Members of the Senate and House of Representatives, a regular and predictable legislative process for the temporary suspension and reduction of duties that is consistent with the rules of the Senate and of the House." Some in Congress propose changing the MTB process by requiring an agency outside Congress, such as the ITC, to receive petitions and vet products for duty suspensions. Bills supporting this approach have been introduced in 114th Congress (S. 2794, H.R. 4923). Thus, Congress may discuss a procedure to change the MTB process in the second session of the 114th Congress.

This report provides recent developments regarding the proposed MTB process, and compares this proposal for vetting MTBs with the existing review process. It also tracks the current proposal and provides information on MTB legislation introduced from the 109th to the 113th Congresses. Legislation and House and Senate rules covering "earmarks" and "limited tariff benefits" that may affect the current MTB debate are also discussed. The report also presents issues for Congress.

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Introduction

U.S. importers, usually manufacturers or representatives of industry associations, will sometimes ask Members to introduce legislation seeking to reduce, repeal, or temporarily suspend duties on certain imports. Since the early 1980s, the House Ways and Means and Senate Finance Committees, the primary committees of jurisdiction on trade matters, have tended to incorporate these duty suspension requests into omnibus legislation known as miscellaneous tariff and technical corrections bills (MTBs). MTBs may also include minor technical corrections to U.S. trade laws and specific instructions to U.S. Customs and Border Protection (CBP) regarding shipments of certain imported products. In order to be included in an MTB, duty suspensions must be noncontroversial (no domestic producer, federal agency, or Member objects), revenue-neutral (defined as revenue loss of no more than $500,000 in foregone tariffs per item), and able to be administered by CBP and other agencies. The previous process for assembling MTBs, which involved Members introducing individual duty suspension bills at the request of constituents, has been controversial in recent Congresses due to the assertions of some Members that the process violated House and Senate rules banning earmarks, or congressionally directed spending. Thus, the last MTB to be enacted was the United States Manufacturing Enhancement Act of 2010 (P.L. 111-227), and efforts since then to pass subsequent MTB legislation have stalled.

This report, first, discusses recent developments on new legislation proposing a revised process for vetting duty suspension bills. Second, the previous MTB process that involved Member introduction and vetting by House Ways and Means and Senate Finance Committee staff, the U.S. International Trade Commission (ITC), and other relevant agencies is described. Third, the report tracks MTB legislation introduced from the 109th to the 114th Congresses. Legislation and House and Senate rules covering "earmarks" and "limited tariff benefits" that may have impact on the current MTB debate are also highlighted. Finally, MTB legislation in Congress from 1983 to the present is summarized. This report will be updated as events warrant.

Recent Developments

Congress may presently consider a bill to legislatively establish a process to facilitate consideration of MTBs. On April 13, House Ways and Means Chairman Kevin Brady introduced H.R. 4923, the American Manufacturing Competitiveness Act of 2016.[1] The Ways and Means Trade Subcommittee held hearings on H.R. 4923 on April 14, and a full committee markup of the bill was held on April 20. The committee passed the bill, as amended, on the same date. During the markup, Chairman Brady asserted that "our bipartisan bill creates an open and transparent process that allows the American people to see every part of this process. Our bill upholds our earmark rules because Members of Congress will no longer introduce bills to begin the MTB process." The legislation could reportedly come to the House floor as early as the last week in April.[2]

The Trade Facilitation and Enforcement Act of 2015, P.L. 114-125, enacted on February 24, 2016, included a sense of Congress that urged the House Ways and Means and Senate Finance Committees to "advance, as soon as possible, after consultation with the public and Members of

[1] An identical companion bill, S. 2794 , was introduced by Senate Finance Committee Chairman Orrin Hatch on the same date.

[2] "Brady Expects Quick Floor Vote After W&M Passes MTB Reform Bill," *Inside U.S. Trade*, April 21, 2016; "Ryan Says MTB House Vote Next Week, Defers on Day, Suspension of Rules," *Inside U.S. Trade*, April 21, 2016.

the Senate and House of Representatives, a regular and predictable legislative process for the temporary suspension and reduction of duties that is consistent with the rules of the Senate and of the House."

Previous MTB Process

The MTB consideration process proposed by H.R. 4923 and S. 2794 is different than the previous process for vetting MTBs primarily because (1) an independent agency, the U.S. International Trade Commission (ITC), will directly receive duty suspension petitions from the public; and (2) the process would be subject to certain time and reporting requirements. As in the previous MTB process (1) the ITC—in consultation with the Department of Commerce, U.S. Customs and Border Protection, the U.S. Trade Representative, and other relevant agencies—would consider the duty suspension requests; (2) the conditions that applied to prior duty suspensions (i.e., they must be noncontroversial, revenue-neutral, administrable) would apply; and (3) the final MTB would be drafted through the committee, which would retain authority to exclude duty suspensions to which a Member objected or if there were domestic production.

When considering previous MTB legislation, the process was begun by the House Ways and Means and Senate Finance Committee chairs (the committees of jurisdiction) sending out Dear Colleague letters inviting Members to introduce stand-alone legislation on proposed duty suspensions.[3] Members were required to file disclosure forms affirming that neither the Member nor spouse had any financial interest in the entity supporting the duty suspension.[4]

The deadline for introduction was usually several months before an MTB was expected to be reported out of committee. The MTB, when introduced, included all committee-approved measures, including duty suspensions. The legislative goal of the committees was for an MTB to be "non-controversial"—meaning that the measure was able to pass both houses by unanimous consent or under suspension of the rules.[5]

In recent Congresses, due to the large number of bills submitted, the committees of jurisdiction have tended to request comments from interested parties at the subcommittee level, rather than holding hearings on these bills. The subcommittee considers duty suspensions for inclusion in the MTB only if the corresponding goods or materials are deemed "noncontroversial" or "noncompetitive," meaning that (1) there is no domestic producer objecting to the duty suspension, and (2) the suspension or reduction of the tariff is seen to be in the interest of U.S. "downstream" manufacturers and consumers.[6]

Furthermore, the volume of imports and corresponding revenue loss must be "revenue neutral" or generally not more than $500,000 per product per year. For example, the Congressional Budget Office estimated that all duty suspensions and extensions to suspensions in House-passed H.R. 4380 (P.L. 111-227) would cost the government about $286 million in foregone revenue on about 650 products over 10 years, out of about approximately $29 billion collected in tariffs per year.[7]

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[3] U.S. Congress, House Committee on Ways and Means, Subcommittee on Trade, *Chairman Camp, Ranking Member Levin, Chairman Brady, and Ranking Member McDermott Kick Off Pro-Growth, Pro-Job Miscellaneous Tariff Bill Process*, Dear Colleague Letter, 112th Cong., 2nd sess., March 30, 2012.

[4] House Committee on Ways and Means, Miscellaneous Tariff Bill (MTB) Process, http://waysandmeans.house.gov/UploadedFiles/MTB_Procedures_FINAL.pdf.

[5] Ibid.

[6] Ibid.

[7] Congressional Budget Office, Cost Estimate, *CBO-Estimated Revenue Effect of Titles I, II and III of* H.R. 4380,

In accordance with the Statutory Pay-As-You-Go Act of 2010, potential revenue loss was offset by an extension of customs user fees, as well as a small penalty increase for untimely filing of corporate estimated tax payments.[8]

Agency and Executive Review

After duty suspension bills were introduced and referred to the relevant committees, the bills were reviewed by trade subcommittee staff and several federal agencies, including the United States Trade Representative (USTR), CBP, the Department of Commerce, and the ITC. Committee staff may solicit comments from the public directly, but may also do so through Administration channels or the ITC. All bills, disclosure forms, ITC reports, and relevant information released by other federal agencies are also posted on committee websites for public comment.[9]

ITC Role

The ITC was the first agency that examined the duty suspensions and responded to the committees, and is the only agency expressly required to do so by statute.[10] The ITC also contacted U.S. manufacturers or industry groups through its Office of Industries, especially looking for U.S. producers of similar goods as those targeted for duty suspensions. If domestic manufacturers existed, ITC staffers sought to determine their approval or disapproval of the duty suspension. If a U.S. manufacturer objected, the duty suspension proposal was dropped.

Administration's Response

The overall Administration response to an MTB was coordinated by the Department of Commerce (Commerce). Analysts at Commerce also researched the targeted products, either independently or in conjunction with the ITC, depending on the timeframe. With regard to comments on duty suspensions, Commerce generally did not object unless a U.S. producer was found. In most cases, intra-company transfers (instances in which a multinational with a subsidiary in the United States imports a product manufactured in a plant owned by the same company overseas) were also not opposed by Commerce, even if a like product was manufactured in the United States.

CBP also commented on duty suspensions, largely by recommending reclassifications or changes in nomenclature for ease in administering the proposed tariff changes. CBP had a formal agreement to share this information with the ITC, and also provided information to other agencies. However, if certain measures affected CBP more directly (e.g., issues regarding duty

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Amending the Harmonized Tariff Schedule to Modify Temporarily Certain Rates of Duty, July 20, 2010. U.S. Customs and Border Protection, *Performance and Accountability Report: Fiscal Year 2011*, http://www.cbo.gov.

[8] H.R. 4380, 111th Congress, §§4001-4003. *See also* CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*, by Bill Heniff Jr.

[9] House Committee on Ways and Means, Miscellaneous Tariff Bill (MTB) Process, http://waysandmeans.house.gov/UploadedFiles/MTB_Procedures_FINAL.pdf.

[10] 19 U.S.C. 1332(g) states that one of the roles of the ITC is to "put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress."

drawback, legislative responses to CBP rulings, liquidations and reliquidations, or permanent duty suspensions), CBP also communicated directly to the committees on a confidential basis.[11]

USTR Role

The USTR also commented occasionally on individual duty suspension bills, but generally focused on larger issues in the legislation that could more permanently affect U.S. trade policy. USTR officials also indicated that the Administration usually prefers that the unilateral tariff modifications in MTBs are temporary, so that more permanent revisions/reductions of duties can continue to be used in trade negotiations to seek reciprocal tariff benefits for U.S. exports.[12]

MTB Legislation

From the 109th to the 112th Congresses, the number of individual duty suspension bills introduced increased significantly. For example, in the 109th Congress, duty suspensions were granted for about 680 products, out of more than 1,000 proposed in bills introduced in the House and Senate. During the MTB process in the 112th Congress, about 1,800 individual duty suspension bills were introduced.[13]

MTB legislation introduced in Congress since the 97th Congress is listed in **Table A-1**.

109th Congress

Congress did not pass stand-alone MTB legislation during the 109th Congress. Instead, almost 700 MTB provisions were attached to other legislation before the House Ways and Means and Senate Finance Committees. First, about 300 duty suspensions were attached to H.R. 4, the "Pension Protection Act of 2006" (P.L. 109-280), signed by the President on August 6, 2006. Second, On December 7, 2006, the House and Senate reached an agreement on trade legislation to be included in a larger legislative package of tax break extensions. As part of the House-Senate compromise, H.R. 6406 proposed to suspend or reduce tariffs on about 380 additional products. H.R. 6406 passed the House on December 8, 2006, by a vote of 212-184. H.R. 6406 was ultimately appended to a previously House-passed tax extension package (H.R. 6111) that subsequently passed the Senate on December 9. The President signed H.R. 6111 on December 20, 2006 (P.L. 109-432). Both P.L. 109-280 and P.L. 109-432 suspended tariffs until December 31, 2009.

110th Congress

In the 110th Congress, no MTB legislation was introduced in either house. Although a November 2007 Ways and Means advisory press release called for House Members to submit duty suspension bills for a proposed MTB by December 14, 2007, no omnibus bill was introduced. However, the bills introduced continued to be vetted by the trade subcommittee, agency input was submitted, and proposed duty suspensions were posted on the Ways and Means Committee website for public comment.

[11] Discussion with CBP officials, various dates in 2009.

[12] Discussions with USTR officials, various dates in 2009.

[13] CRS survey of Legislative Information System of the U.S. Congress (LIS).

Since most of the duty suspensions passed in 2006 would not expire until the end of 2009, many lawmakers reportedly regarded the end of 2009 as the "real deadline" for passage of MTB legislation—which they indicated would make consideration of MTB legislation in the 111th Congress more likely.[14]

"Limited Tariff Benefit" Disclosure Rules in the 110th Congress

In the 110th Congress, the House and Senate adopted procedures that were primarily aimed at increasing transparency in congressionally directed spending, also known as "earmarks." These procedures also extended to "limited tariff benefits," defined in House and Senate rules as "a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities."[15]

House Rules

House rules (see House Rule XXI, clause 9) provide that in order to be considered on the House floor, a bill or joint resolution reported by a committee must include in the report a list of congressional earmarks, limited tax benefits, and *limited tariff benefits* in the bill or the report, along with the name of the Member, Delegate, or Resident Commissioner requesting them, or a statement certifying that the proposal does not contain them.[16] Depending on the type of measure, the list or statement should be included in the measure's accompanying report, or published in the *Congressional Record*.[17]

House Rule XXIII, clause 17(a), requires any Member, Delegate, or Resident Commissioner requesting a limited tariff benefit to provide a written disclosure to the chairman and ranking minority Member of the committee of jurisdiction including (1) the name of the sponsor; (2) identification of the individual or entities "reasonably anticipated to benefit" from the measure; (3) the purpose of the limited tariff benefit; and (4) a certification that the sponsoring Member or spouse has no financial interest in the benefit. The committees of jurisdiction are directed to maintain the disclosures and make the statements regarding limited tariff benefits included in a committee-reported bill or conference report to regular appropriations bills "open for public inspection." Committees may also have their own administrative requirements beyond those required by House rules, such as requiring the posting of disclosure forms online.[18]

Senate Rules

In the 110th Congress, the Senate addressed rule changes through legislation. In Title I of S. 1, the Legislative Transparency and Accountability Act of 2007, the Senate also included disclosure requirements for congressionally directed spending similar to those passed in the House. An

[14] "Senate GOP Trade Counsel Sees No Miscellaneous Tariff Bill This Year," *Inside U.S. Trade*, August 8, 2008.

[15] H.Res. 5, "Adopting Rules for the 111th Congress." CRS Report RL34462, *House and Senate Procedural Rules Concerning Earmark Disclosure*, by Sandy Streeter. The House originally adopted a similar new spending earmark transparency requirement in H.Res. 491, 110th Congress, by unanimous consent on June 18, 2007.

[16] CRS Report RS22866, *Earmark Disclosure Rules in the House: Member and Committee Requirements*, by Megan S. Lynch.

[17] Ibid. The House may waive this rule by unanimous consent (that is, if no Member objects) or by a motion to suspend the rules and pass the measure, which requires a two-thirds vote to adopt. The rule also provides a mechanism for the House to decide on a case-by-case basis whether to adopt a special rule waiving this new rule, which requires a majority vote.

[18] Ibid.

amended version of S. 1 was considered in the House and passed on July 31, 2007. The Senate then passed an identical version on August 2, 2007. The President signed the legislation on September 14, 2007 (P.L. 110-81).

Section 521 (Senate Rule XLIV) amended the standing rules of the Senate[19] to provide that it will not be in order to consider a bill or joint resolution reported by any committee, a bill or joint resolution not reported by a committee, or the adoption of a conference committee report, unless the chairman of the committee of jurisdiction, the majority leader, or his or her designee, certifies that any congressionally directed spending items, limited tariff benefits, or limited tax benefits (1) have been identified ("through lists, charts, or other similar means including the name of each Senator who submitted the request"); and (2) are searchable "on a publicly accessible congressional website" at least 48 hours (or "as soon as practicable" in the case of spending items proposed in floor amendments) prior to the vote. If the disclosure is not completed, the measure is subject to a point of order.[20]

Any Senator who requests a limited tariff benefit (or any directed spending item mentioned in the law) must now submit disclosure forms including (1) the name of the sponsor; (2) the name and location of the intended recipient; (3) any individual or entities reasonably anticipated to benefit; (4) the purpose of the benefit; and (5) a certification that neither the Senator nor their immediate families have a financial interest.[21]

111th Congress

House Ways and Means Trade Subcommittee Chairman Sander M. Levin and Ranking Member Kevin Brady introduced H.R. 4380, the Miscellaneous Tariff and Technical Corrections Act of 2009, on December 15, 2009. The bill sought to renew many of the duty suspensions that were in place prior to January 1, 2009. The bill covered more than 600 products, most of which were manufacturing inputs for finished goods made in the United States.

New Duty Suspensions Considered

On October 1, 2009, the Senate Finance Committee announced that it would also move forward on an MTB, and laid out the process for Senators to introduce individual bills for consideration in a final omnibus package by October 30, 2009. This announcement came after a bipartisan agreement between the House and Senate was reached involving additional disclosure requirements for lobbyists. The agreement required lobbyists to register under a separate issue code ("TAR", an abbreviation for tariff) when engaging in lobbying activities associated with the MTB process. Senate Finance Committee Ranking Member Chuck Grassley sought this requirement so that the process "would benefit from improved transparency in the disclosure of lobbying activities associated with individual miscellaneous tariff bills."[22]

On June 7, 2010, House Ways and Means Committee Chairman Levin and Trade Subcommittee Chairman Tanner issued a "Dear Colleague" letter urging Members to support passage of the

[19] See Senate Rule XLIV, CRS Report RS22867, *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, by Megan S. Lynch.

[20] Any Senator may move to waive the application of the rule or all points of order under the rule pending an affirmative vote of three-fifths of the Senate.

[21] Senate Rule XLIV, paragraph 6. CRS Report RS22867, *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, by Megan S. Lynch.

[22] "Grassley Welcomes New Transparency in Miscellaneous Tariff Bill Process," Press Release, October 1, 2009.

MTB legislation (H.R. 4380) and attempting to differentiate MTB legislation from earmarks. The letter mentioned that "some have attempted to characterize MTB provisions as 'congressional earmarks,'" and enclosed a copy of the House Rules pointing out the definitions of "earmark" and "limited tariff benefit" as discussed in the previous section (see "Limited Tariff Benefit" Disclosure Rules," above).[23] The letter also mentioned the vetting process (discussed in more detail above) and suggested that the MTB legislation could generate an increase in U.S. production and support U.S. jobs.[24] The House passed H.R. 4380 on July 21, 2010, under suspension of the rules by a vote of 378-43. The Senate subsequently passed the bill by unanimous consent on July 27, 2010, and it was signed by the President on August 11, 2010 (P.L. 111-227).

Additional 111th Congress MTB Process

On November 24, 2010, the House Ways and Means Committee posted a discussion draft of a second MTB package, along with an updated matrix (listing bill sponsors, bill beneficiaries, and government agency comments, among other things) combining all bills introduced in the MTB process during the 111th Congress.[25] H.R. 6517, the Omnibus Trade Act of 2010, was subsequently introduced on December 15. The bill sought, in part, duty suspensions for about 290 additional products. The House approved H.R. 6517 on the same date.

On December 22, 2010, the Senate by unanimous consent passed an amendment in the nature of a substitute to H.R. 6517 that did not contain the duty suspension measures. The House also passed the amended version of H.R. 6517 without objection on December 22 (P.L. 111-344).

112th Congress

The MTB process in the 112th Congress began on March 30, 2012. Chairman Camp and Ranking Member Levin of the House Ways and Means Committee and Chairman Brady and Ranking Member McDermott of the Ways and Means Trade Subcommittee announced the beginning of the MTB process in the House, and invited Members to submit duty suspension bills by April 30, 2012.[26] Senate Finance Committee Chairman Baucus also announced on March 30 that duty suspension bills were due in the Senate on the same date.[27]

On January 1, 2012, H.R. 6727, the U.S. Job Creation and Manufacturing Competitiveness Act of 2013, was introduced, but ultimately did not receive House or Senate floor consideration.

113th Congress

In the 113th Congress, the House Ways and Means Committee announced plans to move forward with the MTB legislation introduced in the previous Congress, pending re-submission of

[23] U.S. Congress, House Committee on Ways and Means, *Support Passage of the Miscellaneous Tariff Bill (MTB)*, Dear Colleague letter, 111th Cong., 2nd sess., June 7, 2010.

[24] Ibid.

[25] U.S. House, Committee on Ways and Means, Discussion Draft of second 111th Congress MTB, http://waysandmeans.house.gov/media/pdf/111/MTB_Second_DiscussionDraft.pdf; updated MTB matrix at http://waysandmeans.house.gov/singlepages.aspx?NewsID=10501.

[26] U.S. Congress, House Committee on Ways and Means, Subcommittee on Trade, *Chairman Camp, Ranking Member Levin, Chairman Brady, and Ranking Member McDermott Kick Off Pro-Growth, Pro-Job Miscellaneous Tariff Bill Process*, Dear Colleague Letter, 112th Cong., 2nd sess., March 30, 2012.

[27] U.S. Congress, Senate Committee on Finance, *Baucus Announces Process for Miscellaneous Tariff Bill*, Committee Announcement, 112th Cong., 2nd sess., March 30, 2012.

Members' disclosure forms. H.R. 2708, the United States Job Creation and Manufacturing Competiveness Act of 2013, introduced on July 17, 2013, saw no floor action.

Issues for Congress

MTB Process Reform

Since the 111th Congress, several Members have introduced legislation seeking to change the MTB process, primarily by authorizing the ITC to receive duty suspensions and develop draft MTB legislation to be submitted to Congress for additional action. Some Members assert that modifying the process by having an agency, rather than Members of Congress, receive duty suspension requests would ensure that the MTB package does not violate the earmark ban.[28] Other Members contend that by changing the MTB process Congress is "giving away" or "surrendering" constitutional prerogatives and responsibilities over foreign trade and appropriations.[29]

MTB reform legislation has pointed to the ITC as a possible agency with a lead role, presumably because of its independent status, and because it already performs the initial task of researching and reporting on duty suspensions.

In addition, one of the statutory roles of the ITC is to "put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and ... make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress."[30] Thus, if Congress were to reform the means by which duty suspensions are received, the ITC might be a good alternative.

Are Duty Suspensions "Limited Tariff Benefits"?

A primary issue of the MTB debate in Congress centers on whether or not duty suspensions are "limited tariff benefits" and thus fall under a moratorium on congressionally directed spending, including tariff- and tax-related benefits.[31]

Supporters of duty suspensions assert that since duty suspensions appear in the Harmonized Tariff Schedule, the tariff savings are freely available to any importer.[32] They also argue that an MTB offers "broad benefits across our economy" because duty suspensions lower production costs for American manufacturers, and are job-creating.[33] These lower production costs, in turn, may be passed on to American consumers.[34] They also assert that rather than being congressionally

[28] "Hatch Backs House MTB Reform Proposal, July Target for Passage," *Inside U.S. Trade*, April 8, 2016.

[29] Comments from Ranking Member Sander M. Levin, and Representatives Jim McDermott and Richard Neal during Ways and Means Trade Subcommittee hearing and full Committee markup on H.R. 4923, April 14 and April 20, 2016.

[30] 19 U.S.C. §1332(g).

[31] "New Senate Republican Earmark Ban Puts MTB Push in Serious Trouble," *Inside U.S. Trade*, November 18, 2010.

[32] U.S. Congress, House, Text of Letter signed by 65 Republican freshmen to Speaker John Boehner and Majority Leader Cantor, April 20, 2012.

[33] U.S. Congress, House Committee on Ways and Means, Subcommittee on Trade, *Chairman Camp, Ranking Member Levin, Chairman Brady, and Ranking Member McDermott Kick Off Pro-Growth, Pro-Job Miscellaneous Tariff Bill Process*, Dear Colleague Letter, 112th Cong., 2nd sess., March 30, 2012.

[34] Ibid.

directed spending, MTBs result in temporary suspensions of tariffs that are potentially "distortive taxes on consumption and production."[35]

Opponents argue that duty suspensions are limited tariff benefits because only the companies that request duty suspensions actually take advantage of them.[36] In addition, some maintain that since businesses often hire lobbyists to petition their Members to introduce duty suspension legislation, the process provides some opportunity for undue influence.[37]

Opponents also assert that MTBs do not provide sufficient economic benefits because they are temporary, the qualifications for relief are too narrow, and they distract Congress from broader trade legislation that could permanently lower tariffs through multilateral negotiations.[38]

Transparency

MTB supporters assert that, unlike most earmarks, MTB provisions go through an intensive and transparent vetting process that includes posting prospective duty suspensions on committee websites for public comment, review by the ITC and executive branch agencies, and scoring by the Congressional Budget Office. Disclosure forms are also required of Members that identify the origin of the request and certify that the Member does not financially benefit from the provision.[39]

Many MTB opponents assert that the current process is not transparent enough. Some in Congress, although critical of the current system, have suggested changing the process by having an outside agency review duty suspensions and present an MTB package to Congress prior to any congressional action. Legislation introduced in the 112th (S. 3292) and 113th (S. 790) Congresses would have authorized the ITC to oversee the MTB process, collect petitions from the private sector, vet the bills, and provide a completed MTB package to Congress for consideration.[40]

Supporters of the current process say that this approach would not eliminate lobbying for MTB legislation, but rather shift it to the ITC. They assert that this could make the MTB process less transparent than the current system because lobbyists would not be subject to the same disclosure rules when interacting with the ITC and other federal agencies as they are when dealing with Congress.[41] Another argument made by supporters of the existing process is that shifting the duty suspension process diminishes the constitutional power of Congress as enumerated in Article I, Section 8 to levy tariffs, and by extension, suspend them.[42]

Insertion of Non-MTB Measures

Despite the efforts of House and Senate committees to ensure the neutrality of MTB legislation, insertion of non-MTB measures has held up floor consideration of the legislation in the past,

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[35] Ikenson, Dan, "Misguided Misgivings about the Miscellaneous Tariff Bill," *Forbes*, May 7, 2012.

[36] The Heritage Foundation, *Tariff Reform: Flawed MTB Process Limits Tariff Relief, Violates Earmark Moratorium*, Fact Sheet #117, May 29, 2013, http://www.heritage.org/research/factsheets/2013/05/tariff-reform.

[37] Sunlight Foundation, *Tariff Bill Opens the Floodgates for Lobbyists*, April 30, 2012.

[38] The Heritage Foundation, *Tariff Reform: Flawed MTB Process Limits Tariff Relief, Violates Earmark Moratorium*, Fact Sheet #117, May 29, 2013, http://www.heritage.org/research/factsheets/2013/05/tariff-reform.

[39] Ikenson, Dan, "Misguided Misgivings about the Miscellaneous Tariff Bill," *Forbes*, May 7, 2012.

[40] "Lobbyists say MTB passage is Unlikely Until Congress Reforms Process," *Inside U.S. Trade*, January 5, 2011.

[41] "Senate Dems, House Push Ahead with MTB in Face of DeMint Opposition," *Inside U.S. Trade*, May 11, 2012.

[42] Article I, Section 8 of the Constitution gives Congress the power to "lay and collect" duties, as well as to "regulate commerce with foreign nations."

especially in the Senate. These measures largely dealt with broader trade policy issues rather than with duty suspensions. For example, the last omnibus MTB reported out of the Senate—first introduced in 2002—reportedly faced opposition from one Senator because it did not include a provision to roll back preferential access previously given to beneficiaries of the Caribbean Basin Trade Partnership Act in the Trade Act of 2002 (P.L. 107-210).[43] Other provisions, including one that would to grant normal trade relations status to Laos, and another providing a trust fund for U.S. wool producers, also met with objections.[44] Ultimately, the bill passed in late 2004 (P.L. 108-429).

[43] The Senator insisted that the preferential access of socks from Caribbean nations needed to be rolled back because it was harmful to Alabama sock producers. Letter to Senator Charles Grassley, Chairman of the Senate Finance Committee, from Senators Richard Shelby and Jeff Sessions, October 4, 2002.

[44] "Miscellaneous Tariff Bill Approved, Supporters Seek New Approach," *Inside U.S. Trade*, November 26, 2004.

Appendix. MTB Legislation

Table A-1. Miscellaneous Tariff Legislation, 97th Congress to the Present

Congress	Bill No.	Reports	Status
113th	H.R. 2708	Re-introduction of 112th Congress bill with some modifications and technical corrections.	7/17/2013: Introduced.
112th	H.R. 6727	Information was posted on the House Ways and Means Committee and Senate Finance Committee websites.	1/1/2013: Introduced.
111th	H.R. 6517	Information was posted on the House Ways and Means Committee website.	12/15/2010: passed House. 12/22/2010: Amended version of bill that passed House and Senate did not contain duty suspensions (P.L. 111-344).
111th	H.R. 4380	Information was posted on the House Ways and Means Committee and Senate Finance Committee websites.	7/21/2010: Passed House under suspension of rules (378-43) 7/27/2010: Passed Senate by Unanimous Consent 8/11/2010: Signed by President (P.L. 111-227).
110th	No MTB Introduced	Information was posted on the House Ways and Means website.	11/1/2007: House Ways and Means Trade Subcte. Advisory requesting MTB legislation by Dec. 14, 2007.
109th	H.R. 6406/ H.R. 6111	No published reports on MTB legislation. Information and highlights were posted on the House Ways and Means Committee website.	12/8/2006: H.R. 6406 passed House. 12/9/2006: H.R. 6111 (including provisions of 6406) passed Senate. 12/20/2006: P.L. 109-432, in Tax Relief and Health Care Act of 2006.
109th	H.R. 4	No published reports on MTB legislation.	8/17/2006: P.L. 109-280, in the Pension Protection Act of 2006. contained about 300 duty suspension measures

Congress	Bill No.	Reports	Status
109th	H.R. 4944	No published reports.	3/15/2006: passed House.
108th	H.R. 1047	H.Rept. 108-771 (conference report)	12/3/2004: P.L. 108-429, the Miscellaneous Trade and Technical Corrections Act of 2004.
107th	H.R. 5385	No published reports.	10/7/2002: passed House.
106th	H.R. 4868	H.Rept. 106-789 S.Rept. 106-503	11/9/2000: P.L. 106-476, the Tariff Suspension and Trade Act of 2000.
106th	H.R. 435	See H.Rept. 105-367 (on related bill H.R. 2622 in 105th) See S.Rept. 106-2 (on related bill S. 262)	6/25/1999: P.L. 106-36, the Miscellaneous Tariff and Technical Correction Act of 1999.
105th	H.R. 4856	See H.Rept. 105-367 (on related bill H.R. 2622) S.Rept. 105-356 (on related bill H.R. 4342)	10/20/1998: passed House.
105th	H.R. 4342	H.Rept. 105-671 S.Rept. 105-356	8/4/1998: passed House.
104th	H.R. 3815	H.Rept. 104-718 S.Rept. 104-393	10/11/1996: P.L. 104-295, the Miscellaneous Trade and Technical Corrections Act of 1996.
103rd	H.R. 5110	H. Rept. 103-826, parts 1 and 2. See S. Rept. 103-421 (on related bill S. 2467)	12/8/1998: became P.L. 103-465. Uruguay Round Implementation bill; see Subtitle B, Tariff Modifications, §§112-116.
102nd	H.R. 4318	H. Rept. 102-634, WCMP 102-37	7/31/1992: passed House.
101st	H.R. 1594	See H. Rept. 101-427 (on related bill H.R. 4328) S. Rept. 101-252; H. Rept. 101-650 (conf. rpt.)	8/20/1990: P.L. 101-382, the Customs and Trade Act of 1990.
100th	H.R. 4333	H. Rept. 100-795; H. Rept. 100-1104 (conf. rpt.), vols. 1 and 2	11/10/1988: P.L. 100-647, Technical and Miscellaneous Revenue Act of 1988
100th	H.R. 4848	no published reports on subtitle G	8/23/1988: P.L. 100-418, Omnibus Trade & Comp. Act of 1988, subtitle G, Tariff Provisions
99th	H.R. 4800/ H.R. 5686	no published reports	5/22/1986: H.R. 4800 passed House. 10/14/1986: H.R. 5686 passed House.

98th	H.R. 3398/ H.R. 6064	H. Rept. 98-267; S. Rept. 98-308	10/30/1984: P.L. 98-573, the Trade and Tariff Act of 1984, Title I.
97th	H.R. 4566/ H.R. 6867	H. Rept. 97-257 H. Rept. 97-837 H. Rept. 97-989 S. Rept. 97-564	10/12/1983: P.L. 97-446, the Educational, Scientific, and Cultural Materials Importation Act of 1982.

Source: Legislative Information System of the U.S. Congress.

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