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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, in general, is that they help domestic producers of downstream goods reduce costs, thus making their products more competitive. In turn, these cost reductions may be passed on to the consumer.

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 trade (or tariff) 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 (USITC), 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 two or 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 were not successful, 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 112<sup>th</sup> Congress (H.R. 6727) and 113<sup>th</sup> 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. However, many U.S. manufacturers and in Congress continue to strongly support MTB legislation; therefore, it could emerge as a legislative issue in the 114<sup>th</sup> Congress.

Some in Congress propose changing the current MTB process by requiring an agency outside Congress, such as the United States International Trade Commission (USITC), to recommend products for duty suspensions. Bills were introduced in the 112<sup>th</sup> Congress (S. 3292) and 113<sup>th</sup> Congress (S. 790) that supported this approach.

This report discusses the existing review process of duty suspension bills, and tracks MTB legislation introduced from the 109<sup>th</sup> to the 113<sup>th</sup> 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. Finally, MTB legislation in Congress from 1983 to the present is summarized in **Table A-1**.

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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 trade and technical corrections bills (MTBs). The introduction of omnibus-format MTB legislation appears to have originated in the 97<sup>th</sup> Congress (1983), when 58 duty suspensions were enacted in a stand-alone bill that became P.L. 97-446. 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 (generally, no domestic producer objects), revenue-neutral (defined as revenue loss of no more than \$500,000 in foregone tariffs per item), and able to be administered by U.S. Customs and Border Protection (CBP).

This report, first, discusses the existing review process of duty suspension bills by House Ways and Means and Senate Finance committee staff, the U.S. International Trade Commission (USITC), and other relevant agencies. Second, the report tracks MTB legislation introduced from the 109th to the 113th Congresses. Legislation and House and Senate rules covering “earmarks” and “limited tariff benefits” that have impact on the current MTB debate are also discussed. The third section presents issues for Congress. Finally, MTB legislation in Congress from 1983 to the present is summarized in Table A-1. This report will be updated as events warrant.

## Current MTB Review Process

In most cases, the MTB process is 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.<sup>1</sup> Members are also required to file disclosure forms affirming that neither the Member nor spouse has any financial interest in the entity supporting the duty suspension.<sup>2</sup>

The deadline for introduction is usually several months before an MTB is expected to be reported out of committee. The MTB, when introduced, includes all committee-approved measures, including duty suspensions. The legislative goal of the committees is for an MTB to be “non-controversial”—meaning that the measure is able to pass both houses by unanimous consent or under suspension of the rules.<sup>3</sup>

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

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<sup>1</sup> 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, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 30, 2012.

<sup>2</sup> House Committee on Ways and Means, *Miscellaneous Tariff Bill (MTB) Process*, [http://waysandmeans.house.gov/UploadedFiles/MTB\\_Procedures\\_FINAL.pdf](http://waysandmeans.house.gov/UploadedFiles/MTB_Procedures_FINAL.pdf).

<sup>3</sup> *Ibid.*

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.<sup>4</sup>

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 (111<sup>th</sup> Congress, became P.L. 111-227) would cost the government about \$298 million in foregone revenue over 10 years, out of about \$29 billion collected in tariffs per year.<sup>5</sup> In accordance with the Statutory Pay-As-You-Go Act of 2010, this 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.<sup>6</sup>

## Agency and Executive Review

After duty suspension bills are introduced and referred to the relevant committees, they are reviewed by trade subcommittee staff and several federal agencies, including the United States Trade Representative (USTR), CBP, and the Department of Commerce) and the USITC. Committee staff may solicit comments from the public directly, but may also do so through Administration channels or the USITC. All bills, disclosure forms, USITC reports, and relevant information released by other federal agencies are also posted on committee websites for public comment.<sup>7</sup>

## USITC Role

Generally, the USITC is the first agency that responds to the committees, and is the only agency directly required to do so by statute.<sup>8</sup> The USITC contacts 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 there are domestic manufacturers, USITC staff ask if they approve or disapprove of the duty suspension. If there a U.S. manufacturer objects, the duty suspension is dropped.<sup>9</sup>

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<sup>4</sup> Ibid.

<sup>5</sup> Congressional Budget Office, Cost Estimate, *CBO-Estimated Revenue Effect of Titles I, II and III of H.R. 4380, 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>.

<sup>6</sup> H.R. 4380, 111<sup>th</sup> Congress, §§4001-4003. See also CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*, by (name redacted)

<sup>7</sup> House Committee on Ways and Means, Miscellaneous Tariff Bill (MTB) Process, [http://waysandmeans.house.gov/UploadedFiles/MTB\\_Procedures\\_FINAL.pdf](http://waysandmeans.house.gov/UploadedFiles/MTB_Procedures_FINAL.pdf).

<sup>8</sup> 19 U.S.C. 1332(g) states that one of the roles of the USITC 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.”

<sup>9</sup> The USITC takes no official position on duty suspension measures, but relays any domestic company support or objections to committee staff. Examples of bill reports in previous Congresses can be found on the USITC website at [http://www.usitc.gov/tariff\\_affairs/congress\\_reports/index.htm](http://www.usitc.gov/tariff_affairs/congress_reports/index.htm).

The USITC issues “congressional bill reports” on the stand-alone bills, which are forwarded to the committees, shared with relevant agencies in the executive branch, and posted online.<sup>10</sup> These reports provide information on the dollar amount and volume of trade; estimated revenue loss if the tariff is suspended; and technical information, including proper nomenclature, Harmonized Tariff Schedule (HTS) heading, and Chemical Abstracts number, if applicable. The reports also list the proponent company’s name, other domestic firms contacted by the USITC, and each firm’s position on the proposal. If a company writes a letter either supporting or opposing the duty suspension, a copy of the letter is also attached.<sup>11</sup>

## Administration’s Response

The overall Administration response to a proposed MTB is coordinated by the Department of Commerce (Commerce). Analysts at Commerce also research the targeted products, either independently or in conjunction with the USITC, depending on the time frame. With regard to comments on duty suspensions, Commerce generally does not object unless a U.S. producer is 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) are also not opposed, even if a like product is manufactured in the United States.

CBP also comments on duty suspensions, largely by recommending reclassifications or changes in nomenclature for ease in administering the proposed tariff changes. CBP has a formal agreement to share this information with the USITC, and may also provide information to other agencies. However, if certain measures affect CBP more directly (e.g., changes in duty drawback statutes, legislative responses to CBP rulings, liquidations and reliquidations, or permanent duty suspensions), CBP may also communicate directly to the committees on a confidential basis.<sup>12</sup>

The USTR may also comment on individual duty suspension bills, but generally focuses on larger issues in the legislation that could more permanently affect U.S. trade policy. However, USTR officials indicate that the Administration usually prefers that the unilateral tariff modifications in MTBs are temporary, so that more permanent revisions of duties can continue to be used in trade negotiations to seek reciprocal tariff benefits for U.S. exports.<sup>13</sup>

## MTB Legislation

From the 109<sup>th</sup> to the 112<sup>th</sup> Congresses, the number of individual duty suspension bills introduced increased significantly. For example, in the 109<sup>th</sup> Congress, duty suspensions were granted for a total of 680 products, out of more than 1,000 proposed in bills introduced in the House and Senate. During the MTB process in the 112<sup>th</sup> Congress, about 1,800 bills were introduced.<sup>14</sup> MTB legislation introduced in Congress since the 97<sup>th</sup> Congress is listed in **Table A-1**.

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Discussion with CBP officials, various dates in 2009.

<sup>13</sup> Discussions with USTR officials, various dates in 2009.

<sup>14</sup> CRS survey of Legislative Information System of the U.S. Congress (LIS).

## 109<sup>th</sup> Congress

Congress did not pass stand-alone MTB legislation during the 109<sup>th</sup> 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.

## 110<sup>th</sup> Congress

In the 110<sup>th</sup> 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.

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 111<sup>th</sup> Congress more likely.<sup>15</sup>

## “Limited Tariff Benefit” Disclosure Rules in the 110<sup>th</sup> Congress

In the 110<sup>th</sup> 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.”<sup>16</sup>

## 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,

<sup>15</sup> “Senate GOP Trade Counsel Sees No Miscellaneous Tariff Bill This Year,” *Inside U.S. Trade*, August 8, 2008.

<sup>16</sup> H.Res. 5, “Adopting Rules for the 111<sup>th</sup> Congress.” CRS Report RL34462, *House and Senate Procedural Rules Concerning Earmark Disclosure*, by (name redacted). The House originally adopted a similar new spending earmark transparency requirement in H.Res. 491, 110<sup>th</sup> Congress, by unanimous consent on June 18, 2007.

along with the name of the Member, Delegate, or Resident Commissioner requesting them, or a statement certifying that the proposal does not contain them.<sup>17</sup> 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*.<sup>18</sup>

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.<sup>19</sup>

## Senate Rules

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 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<sup>20</sup> 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.<sup>21</sup>

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

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<sup>17</sup> CRS Report RS22866, *Earmark Disclosure Rules in the House: Member and Committee Requirements*, by (name redacted), *Earmark Disclosure Rules in the House: Member and Committee Requirements*, by (name redacted).

<sup>18</sup> *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.

<sup>19</sup> *Ibid.*

<sup>20</sup> See Senate Rule XLIV, CRS Report RS22867, *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, by (name redacted).

<sup>21</sup> 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.



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.<sup>22</sup>

## 111<sup>th</sup> Congress

Then-House Ways and Means Trade Subcommittee Chairman Sander M. Levin and then-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.

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. When engaging in lobbying activities associated with the MTB process, lobbyists must now register these efforts under a separate issue code (“TAR”, an abbreviation for tariff). Then-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.”<sup>23</sup>

On June 7, 2010, then-Chairman Levin and then-Chairman Tanner issued a “Dear Colleague” letter urging Members to support passage of the 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).<sup>24</sup> 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.<sup>25</sup>

On July 7, 2010, the committee released a draft manager’s amendment to H.R. 4380, the United States Manufacturing Enhancement Act of 2010. The manager’s amendment divided the duty suspensions into three categories: Title I included bills requesting new duty suspensions or reductions that had a House and Senate counterpart; Title II included House bills extending expired MTB provisions; and Title III included Senate bills extending expired provisions. Bills in Titles II and III (extensions of expired provisions only) were subject to retroactive treatment effective January 1, 2010. The Ways and Means Committee posted the manager’s amendment on its website and sought comments and feedback on the proposed legislation.<sup>26</sup>

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<sup>22</sup> Senate Rule XLIV, paragraph 6. CRS Report RS22867, *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, by (name redacted), *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, by (name redacted).

<sup>23</sup> “Grassley Welcomes New Transparency in Miscellaneous Tariff Bill Process,” Press Release, October 1, 2009.

<sup>24</sup> U.S. Congress, House Committee on Ways and Means, *Support Passage of the Miscellaneous Tariff Bill (MTB)*, Dear Colleague letter, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 7, 2010.

<sup>25</sup> *Ibid.*

<sup>26</sup> See House Ways and Means Committee website, <http://waysandmeans.house.gov/>, “Hot Topics.”

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).

On November 24, 2010, the 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 111<sup>th</sup> Congress.<sup>27</sup> 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).

Also in the 111<sup>th</sup> Congress, a bill seeking to change the approval process for MTBs was introduced. The Duty Suspension Facilitation Act of 2010 (S. 4003, December 2, 2010) would have authorized the USITC to develop and submit duty suspension legislation to the House Ways and Means and Senate Finance Committees every two years.

## 112<sup>th</sup> Congress

The MTB process in the 112<sup>th</sup> Congress began on March 30, 2012, then-Chairman Camp and then-Ranking Member Levin of the House Ways and Means Committee and then-Chairman Brady and then-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.<sup>28</sup> Then-Senate Finance Committee Chairman Baucus also announced on March 30 that duty suspension bills were due in the Senate on the same date.<sup>29</sup>

In a follow-up announcement on April 25, the Ways and Means Committee said that Members would meet the April 30 deadline if draft bills were submitted to the Legislative Counsel by 3:00 p.m. on April 30. After the bills were processed by the Legislative Counsel, Members were requested to introduce the bills at their earliest opportunity, and then to submit all bills, bill description forms, and bill disclosure forms to the committee within three days of introduction.<sup>30</sup>

In a subsequent May 10 announcement, the Ways and Means Committee announced that all bills that were submitted to the Legislative Counsel before the April 30 deadline must be introduced

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<sup>27</sup> U.S. House, Committee on Ways and Means, Discussion Draft of second 111<sup>th</sup> Congress MTB, [http://waysandmeans.house.gov/media/pdf/111/MTB\\_Second\\_DiscussionDraft.pdf](http://waysandmeans.house.gov/media/pdf/111/MTB_Second_DiscussionDraft.pdf); updated MTB matrix at <http://waysandmeans.house.gov/singlepages.aspx?NewsID=10501>.

<sup>28</sup> 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, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 30, 2012.

<sup>29</sup> U.S. Congress, Senate Committee on Finance, *Baucus Announces Process for Miscellaneous Tariff Bill*, Committee Announcement, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 30, 2012.

<sup>30</sup> U.S. Congress, House Committee on Ways and Means, *Chairman Camp, Ranking Member Levin, Chairmand Brady, and Ranking Member McDermott Extend Deadline for MTB*, Dear Colleague Letter, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 25, 2012.

and all paperwork submitted by 5:00 PM on Wednesday, May 16, 2012.<sup>31</sup> According to a search of Legislative Information System, over 1,800 bills were introduced.

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.

Also in the 112<sup>th</sup> Congress, some Members advocated procedural changes to the MTB process that would have authorized the USITC to develop draft MTB legislation to be submitted to Congress for additional action. S. 3292 (the Temporary Duty Suspension Process Act of 2012), introduced June 13, 2012, sought to authorize the USITC to develop a process by which it would review products for temporary duty suspensions and develop draft legislation based on: (1) the USITC's own initiative; (2) petitions submitted to the USITC by the public; or (3) duty suspensions referred to the USITC by a Member of Congress.<sup>32</sup> S. 3292 also would have required that duty suspensions (1) be administrable by CBP; (2) cost no more than \$500,000 in lost revenue (adjusted for inflation); (3) be on articles not made in the United States or expected to be made in the United States in the next 12 months; and (4) be at least three years in duration. The text of S. 3292 was additionally submitted as an amendment to S. 2237, the Small Business Jobs and Tax Relief Act, on July 12, 2012 (S.Amdt. 2490). Cloture on S. 2237 was not invoked in the Senate.

## 113<sup>th</sup> Congress

MTB legislation in the 113<sup>th</sup> Congress included H.R. 2708, the United States Job Creation and Manufacturing Competitiveness Act of 2013, and S. 790, the Temporary Duty Suspension Process Act of 2012. Neither bill received floor action.

## Issues for Congress

### Are Duty Suspensions “Limited Tariff Benefits”?

Current debate over MTBs 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.<sup>33</sup>

Supporters of duty suspensions assert that since duty suspensions appear in the Harmonized Tariff Schedule, the tariff savings are freely available to any importer.<sup>34</sup> They also argue that an MTB offers “broad benefits across our economy” because duty suspensions lower production costs for

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<sup>31</sup> U.S. Congress, House Committee on Ways and Means, *Camp, Levin, Brady, and McDermott Set May 16 Submissions Deadline for MTB Process*, Dear Colleague Letter, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 10, 2012.

<sup>32</sup> The bill specifically states that “a petition referred to the Commission by a Member of Congress ... shall receive treatment no more favorable than treatment received by a petition submitted to the Commission by a member of the public.”

<sup>33</sup> “New Senate Republican Earmark Ban Puts MTB Push in Serious Trouble,” *Inside U.S. Trade*, November 18, 2010.

<sup>34</sup> U.S. Congress, House, Text of Letter signed by 65 Republican freshmen to Speaker John Boehner and Majority Leader Cantor, April 20, 2012.

American manufacturers, and are job-creating.<sup>35</sup> These lower production costs, in turn, may be passed on to American consumers.<sup>36</sup> They also assert that rather than being congressionally directed spending, MTBs result in temporary suspensions of tariffs that are potentially “distortive taxes on consumption and production.”<sup>37</sup> Moreover, MTBs may not reduce revenues by more than \$500,000 per item, and must be fully paid for according to budget rules.

Opponents argue that duty suspensions are limited tariff benefits because they assert that only the companies that request a duty suspension actually take advantage of it.<sup>38</sup> 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.<sup>39</sup>

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.<sup>40</sup>

## 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 USITC 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.<sup>41</sup>

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 112<sup>th</sup> (S. 3292) and 113<sup>th</sup> (S. 790) Congresses would have authorized the U.S. International Trade Commission (USITC) to oversee the MTB process, collect petitions from the private sector, vet the bills, and provide a completed MTB package to Congress for consideration.<sup>42</sup>

Supporters of the current process say that this approach would not eliminate lobbying for MTB legislation, but rather shift it to the USITC. 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 USITC and other federal agencies as they are when

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<sup>35</sup> 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, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 30, 2012.

<sup>36</sup> *Ibid.*

<sup>37</sup> Ikenson, Dan, “Misguided Misgivings about the Miscellaneous Tariff Bill,” *Forbes*, May 7, 2012.

<sup>38</sup> 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>.

<sup>39</sup> Sunlight Foundation, *Tariff Bill Opens the Floodgates for Lobbyists*, April 30, 2012.

<sup>40</sup> 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>.

<sup>41</sup> Ikenson, Dan, “Misguided Misgivings about the Miscellaneous Tariff Bill,” *Forbes*, May 7, 2012.

<sup>42</sup> “Lobbyists say MTB passage is Unlikely Until Congress Reforms Process,” *Inside U.S. Trade*, January 5, 2011.

dealing with Congress.<sup>43</sup> 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.<sup>44</sup>

## 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, 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).<sup>45</sup> 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.<sup>46</sup> Ultimately, the bill passed in late 2004 (P.L. 108-429).

## Rationale for Passage of Duty Suspensions

According to House Ways and Means Committee documents, duty suspensions are considered “in light of compelling circumstances of inadequate domestic supply, unusually demanding conditions or long-run changes in marketing conditions warranting special legislation.”<sup>47</sup> In this light, there are several reasons that duty suspensions have been judged to merit consideration.

First, in some cases, a higher tariff rate may apply to a relatively uncompetitive product because it is aggregated in a larger HTS grouping that also contains similar products that are considered more import-sensitive. This is often the case where certain chemical compounds are concerned. In these cases, a new HTS subheading is created, thus disaggregating the product in question so that the duty can be suspended on it without affecting the tariff on the more import-competing products.

Second, there might be no current domestic production of a particular product, or it might not be produced in sufficient quantities to satisfy domestic demand. Therefore, U.S. producers who use the commodity as manufacturing input may have to depend on imports. In this case, a duty suspension could lower the overall price of the good without significant harm to domestic suppliers.

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<sup>43</sup> “Senate Dems, House Push Ahead with MTB in Face of DeMint Opposition,” *Inside U.S. Trade*, May 11, 2012.

<sup>44</sup> 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.”

<sup>45</sup> 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.

<sup>46</sup> “Miscellaneous Tariff Bill Approved, Supporters Seek New Approach,” *Inside U.S. Trade*, November 26, 2004.

<sup>47</sup> U.S. Congress, House Committee on Ways and Means, *Report on Legislative Activity During the 97<sup>th</sup> Congress of the Committee on Ways and Means*, 97<sup>th</sup> Cong., 2<sup>nd</sup> sess., January 3, 1983, H.Rept. 97-1005 (Washington: GPO, 1983), p. 69.

Third, the duty rate of a product essential in the manufacture of a domestic product may be higher than that on the comparable imported finished good. One example of this was a case in which casein button blanks used by U.S. button manufacturers were imported at 22.1% *ad valorem* (tariff is a percentage rate based on the value of the good), while finished buttons were imported at a rate of 6.9% *ad valorem*. Domestic producers complained that they were put at a competitive disadvantage *vis-à-vis* foreign manufacturers of the same product because of the higher duty rate for the raw material.<sup>48</sup>

Fourth, multinational corporations sometimes manufacture inputs at foreign subsidiaries and import them to be used as components in domestically produced merchandise. For example, a U.S. pharmaceutical manufacturer may fabricate some of the chemical ingredients in a plant overseas, and then import the inputs into the United States, where they are used in the finished product. Congress, on occasion, may consider these duty suspensions in order to facilitate the transaction because the importing company would not be likely to purchase it from a domestic producer.

Fifth, a nonprofit association may wish to import an item and ask their Member to introduce a one-time duty suspension for the product. For example, churches have sometimes requested duty-free status for pipe organs purchased from Europe, or an educational institution might ask for duty-free status for parts to be used in the construction of a telescope.

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<sup>48</sup> P.L. 97-446, 96 Stat. 2329.

## Appendix. MTB Legislation

**Table A-I. Miscellaneous Trade Legislation, 97<sup>th</sup> Congress to the Present**

Congress	Bill No.	Reports	Status
113 <sup>th</sup>	H.R. 2708	Re-introduction of 112 <sup>th</sup> Congress bill with some modifications and technical corrections. See <a href="http://waysandmeans.house.gov/mtb/">http://waysandmeans.house.gov/mtb/</a>	7/17/2013: Introduced.
112 <sup>th</sup>	H.R. 6727	Information is posted on the House Ways and Means Committee website: <a href="http://waysandmeans.house.gov/mtb/mtbbills.htm">http://waysandmeans.house.gov/mtb/mtbbills.htm</a> Information is posted on the Senate Finance Committee Website: <a href="http://www.finance.senate.gov/legislation/details/?id=beca4d9e-5056-a032-5262-f8409b84f63a">http://www.finance.senate.gov/legislation/details/?id=beca4d9e-5056-a032-5262-f8409b84f63a</a>	1/1/2013: Introduced.
111 <sup>th</sup>	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).
111 <sup>th</sup>	H.R. 4380	Information was posted on the House Ways and Means Committee website. See also Senate Finance Committee website: <a href="http://finance.senate.gov/legislation/comment/?id=54211d78-fc55-51c6-b8e6-0b9ef2f44044">http://finance.senate.gov/legislation/comment/?id=54211d78-fc55-51c6-b8e6-0b9ef2f44044</a>	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).
110 <sup>th</sup>	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.
109 <sup>th</sup>	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.
109 <sup>th</sup>	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
109 <sup>th</sup>	H.R. 4944	No published reports.	3/15/2006: passed House.
108 <sup>th</sup>	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.
107 <sup>th</sup>	H.R. 5385	No published reports.	10/7/2002: passed House.
106 <sup>th</sup>	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.
106 <sup>th</sup>	H.R. 435	See H.Rept. 105-367 (on related bill H.R. 2622 in 105 <sup>th</sup> ) 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.
105 <sup>th</sup>	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.
105 <sup>th</sup>	H.R. 4342	H.Rept. 105-671 S.Rept. 105-356	8/4/1998: passed House.
104 <sup>th</sup>	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.
103 <sup>rd</sup>	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.
102 <sup>nd</sup>	H.R. 4318	H. Rept. 102-634, WCMP 102-37	7/31/1992: passed House.
101 <sup>st</sup>	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.
100 <sup>th</sup>	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
100 <sup>th</sup>	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
99 <sup>th</sup>	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.
98 <sup>th</sup>	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.



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<b>Congress</b>	<b>Bill No.</b>	<b>Reports</b>	<b>Status</b>
97 <sup>th</sup>	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.

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

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