



# 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 vast majority of these bills address chemicals, raw materials, or other components used as inputs in the manufacturing process. The rationale for these requests, in general, is that they help domestic producers of the 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). Before inclusion in an MTB, the individual legislative proposals introduced by Members are reviewed by the trade subcommittee staff in each committee, 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 item), and are able to be administered by U.S. Customs and Border Protection (CBP).

In the 111<sup>th</sup> Congress, the United States Manufacturing Enhancement Act of 2010 (P.L. 111-227) was signed by the President on August 11, 2010. As enacted, the law temporarily suspended or reduced for three years (through December 31, 2012) duties on over 600 products, many of which renewed duty suspensions or reductions that were already in place. On December 15, 2010, H.R. 6517, a bill that, in part, proposed duty suspensions on approximately 290 additional products, passed in the House. Due to changes in the Senate version of the bill, the duty suspension provisions were dropped. On December 22, 2010, the Senate passed H.R. 6517, as amended, and the House passed the Senate's amended version of the bill on the same date (became P.L. 111-344).

MTB legislation could be taken up in the second session of the 112<sup>th</sup> Congress. 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 Trade Subcommittee announced the beginning of the MTB process in the House, and invited Members to submit duty suspension bills by April 30, 2012. Senate Finance Committee Chairman Baucus also announced on March 30 that duty suspension bills would be due in the Senate on the same date. Since the duty suspensions enacted in P.L. 111-227 expire on December 30, 2012, MTB legislation in the 112<sup>th</sup> Congress could include renewal of some or all of the provisions in that law, those included in H.R. 6517 in the 111<sup>th</sup> Congress that were not enacted, as well as new duty suspensions.

On June 12, 2012, S. 3292, the Temporary Duty Suspension Process Act of 2012, a bill seeking to require the USITC to recommend temporary duty suspensions to Congress, was introduced. This bill is similar, but not identical, to S. 1162 (the Removing Hurdles for American Manufacturers Act of 2011), introduced on June 9, 2011.

This report discusses: first, the 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, MTB legislation debated in the past few Congresses; and third, some details of the debate for MTB passage. Finally, MTB legislation considered 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 MTB legislation in an omnibus format appears to have originated in the 97<sup>th</sup> Congress (1983), when 58 duty suspensions were enacted in P.L. 97-446. These larger trade packages 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. Before inclusion in an MTB, the individual legislative proposals introduced by Members are reviewed by the trade subcommittee staff in each committee, the U.S. International Trade Commission (USITC), and several executive branch agencies to ensure that they are noncontroversial (generally, that no domestic producer objects), relatively revenue-neutral (revenue loss of no more than \$500,000 in foregone tariffs per item), and that they are able to be administered by U.S. Customs and Border Protection (CBP).

This report discusses the current process by which duty suspension bills and other provisions are introduced, reviewed by several government agencies and committee staff, made available for public comment, and finally included in omnibus MTB legislation reported out by the committees of jurisdiction.

## Recent Developments

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.<sup>1</sup> Senate Finance Committee Chairman Baucus also announced on March 30 that duty suspension bills would be due in the Senate on the same date.<sup>2</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 are back from 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>3</sup>

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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> 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>3</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, 112th Cong., 2nd sess., April 25, 2012.

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 and all paperwork submitted by 5:00 p.m. on Wednesday, May 16, 2012.<sup>4</sup>

According to a search of the Legislative Information System, over 1,800 duty suspension bills have been introduced in Congress.

On June 12, 2012, S. 3292, the Temporary Duty Suspension Process Act of 2012, a bill seeking to require the USITC to recommend temporary duty suspensions to Congress, was introduced (see MTB Legislation, “112<sup>th</sup> Congress”). This bill is similar, but not identical, to S. 1162 (the Removing Hurdles for American Manufacturers Act of 2011, introduced June 9, 2011).

## **Committee, Agency, and Executive Review of MTBs**

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>5</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 stated 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>6</sup>

In recent Congresses, due to the 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.

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>7</sup> In accordance with the Statutory Pay-As-You-Go Act of 2010, this revenue loss was offset by an

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<sup>4</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, 112th Cong., 2nd sess., May 10, 2012.

<sup>5</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>6</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>7</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>.

extension of customs user fees, as well as a small penalty increase for untimely filing of corporate estimated tax payments.<sup>8</sup>

## **Agency and Executive Review**

After duty suspension bills are introduced and referred, they are reviewed by trade subcommittee staff, who, in turn, solicit comments from the Administration (including the United States Trade Representative, CBP, and the Department of Commerce) and the USITC. Committee staff often solicit comments from the public directly, but may also do so through Administration channels or the USITC. The process was created to ensure that duty suspensions that do not meet the criteria listed above would be filtered out.

## **The U.S. International Trade Commission's Role**

Generally, the USITC is the first agency that provides a response to the committees, and is the only agency directly required to do so by statute.<sup>9</sup> The USITC usually contacts U.S. manufacturers or industry groups through its Office of Industries. When it makes these contacts, USITC staff are especially looking to see if there are U.S. producers of similar goods as those targeted for duty suspensions, and if there are, to see if they approve or disapprove of the duty suspension. If there are U.S. manufacturers who object, the duty suspension is dropped.<sup>10</sup>

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 on the Internet.<sup>11</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>12</sup>

## **Administration's Response**

The overall Administration response to the 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 to a suspension of duties on a product unless a

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<sup>8</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 Bill Heniff Jr.

<sup>9</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>10</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).

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

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 impact 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>13</sup>

The Office of the United States Trade Representative (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 any 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>14</sup>

## **MTB Legislation**

In recent Congresses, the number of proposed duty suspensions has 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 individual pieces of legislation introduced in the House and Senate. During the MTB process in the 112<sup>th</sup> Congress, about 1,800 bills have been introduced in the House and Senate to date.<sup>15</sup>

### **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 (Boehner), 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 (Thomas, introduced December 7, 2006) 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, Tauscher). H.R. 6111, including the duty suspensions, 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.

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<sup>13</sup> Discussion with CBP officials, various dates in 2009.

<sup>14</sup> Discussions with USTR officials, various dates in 2009.

<sup>15</sup> Legislative Information System of the U.S. Congress.

## 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 legislative proposals for inclusion in a proposed MTB by December 14, 2007, no omnibus bill was introduced. However, individual provisions 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 were not set to expire until the end of 2009, many lawmakers reportedly regarded the end of 2009 as the “real deadline” for passage of MTB legislation—thus making consideration of MTB legislation in the 111<sup>th</sup> Congress more likely.<sup>16</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. These procedures also extended to “limited tariff benefits,” defined in both 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>17</sup> In the 110<sup>th</sup> Congress, the House and Senate leadership treated MTB legislation as falling under these rules as limited tariff benefits.

#### 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.<sup>18</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>19</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

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<sup>16</sup> “Senate GOP Trade Counsel Sees No Miscellaneous Tariff Bill This Year,” *Inside U.S. Trade*, August 8, 2008.

<sup>17</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 Sandy Streeter. 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.

<sup>18</sup> CRS Report RS22866, *Earmark Disclosure Rules in the House: Member and Committee Requirements*, by Megan Suzanne Lynch.

<sup>19</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.



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.” Thus, committees may also have their own administrative requirements beyond those required by House rules, such as requiring the posting of disclosure forms online.<sup>20</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>21</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>22</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 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>23</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

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<sup>20</sup> Ibid.

<sup>21</sup> See Senate Rule XLIV. CRS Report RS22867, *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, by Megan Suzanne Lynch.

<sup>22</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.

<sup>23</sup> Senate Rule XLIV, paragraph 6. CRS Report RS22867, *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, by Megan Suzanne Lynch.

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>24</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>25</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>26</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>27</sup>

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>28</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).

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<sup>24</sup> “Grassley Welcomes New Transparency in Miscellaneous Tariff Bill Process,” Press Release, October 1, 2009.

<sup>25</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>26</sup> Ibid.

<sup>27</sup> See House Ways and Means Committee website, <http://waysandmeans.house.gov/>, “Hot Topics.”

<sup>28</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>.

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**

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.<sup>29</sup> Senate Finance Committee Chairman Baucus also announced on March 30 that duty suspension bills were due in the Senate on the same date.<sup>30</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 are back from 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>31</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 and all paperwork submitted by 5:00 PM on Wednesday, May 16, 2012.<sup>32</sup> According to a search of Legislative Information System, over 1,800 bills have been introduced in Congress to date.

S. 3292 (the Temporary Duty Suspension Process Act of 2012), introduced June 13, 2012, would 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>33</sup> S. 3292 would require 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. S. 3292 would require the USITC to submit the first draft miscellaneous duty suspension legislation no later than 120 days after enactment of the bill, and subsequent drafts no later than January 1, 2015, and January 1, 2018. The bill would also require the USITC to submit an initial report on the duty suspension process within 300 days of

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<sup>29</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>30</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>31</sup> U.S. Congress, House Committee on Ways and Means, *Chairman Camp, Ranking Member Levin, Chairman 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.

<sup>32</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>33</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.”

enactment, as well as an annual report on the benefits of duty suspensions or reductions to sectors of the U.S. economy. The text of S. 3292 was also submitted as an amendment to S. 2237, the Small Business Jobs and Tax Relief Act, on July 12, 2012 (S.Amdt. 2490).

In the first session of the 112<sup>th</sup> Congress, S. 1162 (the Removing Hurdles for American Manufacturers Act of 2011), introduced June 9, 2011, proposed that the USITC be authorized to develop and recommend legislation for temporary duty suspensions. The USITC would be prohibited from recommending a suspension or reduction if (1) an interested federal agency determines it is not in the U.S. interest and includes that determination in an agency public hearing record; (2) a domestic producer objects to the suspension or reduction and demonstrates that there is U.S. domestic production of the article in commercially available quantities; (3) U.S. revenue loss exceeds \$500,000 annually (adjusted for inflation); or (4) the duty suspension or reduction is for more than three years.

## Issues for Congress

Tariffs on many products have been reduced over a period of almost seven decades as a result of bilateral and multilateral trade negotiations. Most economists believe that lower foreign tariffs benefit U.S. exporters because they make U.S. goods less expensive and more competitive in foreign markets, and that lower U.S. tariffs can benefit domestic manufacturers and consumers because the cost savings on imported products used in manufacturing may be passed on to consumers and other “downstream” producers.

Tariffs are also used protectively for some products in many countries, including the United States, in an effort to help import-sensitive domestic industries in the face of lower-priced foreign products. Duty suspensions on these import-competing products, including certain agriculture, textiles, and steel products, could be considered controversial by the U.S. domestic industries that produce similar products, and thus could be ineligible for inclusion in MTB legislation.

### Are Duty Suspensions “Earmarks”?

Current debate over MTBs in Congress centers around whether or not duty suspensions are “earmarks” and thus fall under the House and Senate Republican pledge to end all congressionally directed spending in the 112<sup>th</sup> Congress, including tariff- and tax-related benefits.<sup>34</sup>

First, supporters of duty suspensions, including the House Ways and Means Committee and Senate Finance Committee bipartisan leadership, say that since duty suspensions appear in the Harmonized Tariff Schedule, the tariff savings are freely available to any importer.<sup>35</sup> Moreover, they say that an MTB would offer “broad benefits across our economy” because they lower production costs for American manufacturers, and are job-creating.<sup>36</sup> These lower costs, in turn,

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<sup>34</sup> “New Senate Republican Earmark Ban Puts MTB Push in Serious Trouble,” *Inside U.S. Trade*, November 18, 2010.

<sup>35</sup> U.S. Congress, House, Text of Letter signed by 65 Republican freshmen to Speaker John Boehner and Majority Leader Cantor, April 20, 2012.

<sup>36</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, 112th Cong., 2nd sess., March 30, 2012.

may be passed on to American consumers.<sup>37</sup> Those opposed to duty suspensions maintain that only the few companies that request a duty suspension actually take advantage of it, and that they have the “taint” of doing a constituent a favor.<sup>38</sup>

Second, proponents of duty suspensions say that rather than being congressionally directed spending, MTBs result in temporary suspensions of tariffs that are potentially “distortive taxes on consumption and production.”<sup>39</sup> Moreover, MTBs do not reduce revenues by more than \$500,000 per item, and must be fully paid for according to PAYGO rules. As an 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>40</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>41</sup>

Third, supporters assert that, unlike most earmarks, MTB provisions go through an intensive and transparent vetting process that includes posting prospective duty suspensions on the Internet, 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. Opponents of MTBs hold that the process is nonetheless politicized, and that the current process creates obstacles for small businesses because they may be unable to hire lobbyists to promote these highly specialized bills for them.<sup>42</sup>

Some MTB opponents have advocated changing the process. One bill introduced in the 112<sup>th</sup> Congress, S. 1162, would authorize the USITC to open the MTB process, collect petitions from the private sector, vet the bills, and provide a completed MTB package to Congress.<sup>43</sup> Supporters of the current MTB process say that this approach would not eliminate lobbying for MTB legislation, but would shift it to the USITC. Those who support the existing MTB process point out that this proposal could diminish the constitutional power of Congress as enumerated in Article I, Section 8 to levy tariffs, and by extension, suspend them.<sup>44</sup> In addition, they say that shifting the process to the USITC could make it even less transparent than the current system because lobbyists are not subject to the same disclosure rules when interacting with the USITC as they are when dealing with Congress.<sup>45</sup>

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<sup>37</sup> Ibid.

<sup>38</sup> “Lobbyists say MTB passage is Unlikely Until Congress Reforms Process,” *Inside U.S. Trade*, January 5, 2011.

<sup>39</sup> Ikenson, Dan, “Misguided Misgivings about the Miscellaneous Tariff Bill,” *Forbes*, May 7, 2012.

<sup>40</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.cbp.gov>.

<sup>41</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 Bill Heniff Jr.

<sup>42</sup> Senator Jim DeMint, “Take Politics Out of Tariff Rules,” *CNN Wire*, April 25, 2012. See also Ikenson, Dan, “Misguided Misgivings about the Miscellaneous Tariff Bill,” *Forbes*, May 7, 2012.

<sup>43</sup> Ibid.

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

## 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 Senator Richard Shelby, who placed a hold on the bill 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>46</sup> Other provisions, including one proposing to grant normal trade relations status to Laos, and another providing a trust fund for U.S. wool producers, also met with objections.<sup>47</sup> Ultimately, the bill passed in late 2004 (P.L. 108-429).

Some private-sector supporters of MTB legislation have reportedly criticized the MTB process because they say that the large MTB packages have come to be seen by Members as a moving vehicle to which they could attach trade initiatives unrelated to duty suspensions.<sup>48</sup> Since Members see fewer opportunities to move their trade policy issues, the MTB becomes an attractive target on which to attach potentially controversial trade measures.<sup>49</sup>

## 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>50</sup> In this light, there are several reasons that duty suspensions have merited 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>46</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>47</sup> “Miscellaneous Tariff Bill Approved, Supporters Seek New Approach,” *Inside U.S. Trade*, November 26, 2004.

<sup>48</sup> “Miscellaneous Tariff Bill Approved, Supporters Seek New Approach,” *Inside U.S. Trade*, November 26, 2004.

<sup>49</sup> *Ibid.*

<sup>50</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. Report 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>51</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>51</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./Sponsor	Reports	Status
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).
111 <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 (Thomas)/H.R. 6111 (Tauscher).	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.



Congress	Bill No./Sponsor	Reports	Status
109 <sup>th</sup>	H.R. 4 (Boehner) contained about 300 duty suspension measures.	No published reports on MTB legislation.	8/17/2006: P.L. 109-280, in the Pension Protection Act of 2006.
109 <sup>th</sup>	H.R. 4944 (Shaw)	No published reports.	3/15/2006: passed House.
108 <sup>th</sup>	H.R. 1047 (Crane)	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 (Crane)	No published reports.	10/7/2002: passed House.
106 <sup>th</sup>	H.R. 4868 (Crane)	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 (Archer)	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 (Archer)	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 (Crane)	H.Rept. 105-671 S.Rept. 105-356	8/4/1998: passed House.
104 <sup>th</sup>	H.R. 3815 (Crane)	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 (Gephardt)	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.

Congress	Bill No./Sponsor	Reports	Status
102 <sup>nd</sup>	H.R. 4318 (Gibbons)	H. Rept. 102-634, WCMP 102-37	7/31/1992: passed House.
101 <sup>st</sup>	H.R. 1594 (Gibbons)	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 (Rostenkowski)	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 (Rostenkowski)	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 (Wright) H.R. 5686 (Rostenkowski)	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 (Gibbons), H.R. 6064 (Gibbons)	H. Rept. 98-267; S. Rept. 98-308	10/30/1984: P.L. 98-573, the Trade and Tariff Act of 1984, Title I.
97 <sup>th</sup>	H.R. 4566 (Gibbons), H.R. 6867 (Gibbons)	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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