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Tariff Modifications: Miscellaneous Duty Suspension Bills

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Summary

Any modification of the tariff code must be approved by Congress, and constituents sometimes request that Members introduce bills seeking to suspend or eliminate tariffs on certain imports. In recent congressional practice, the House Ways and Means and Senate Finance committees have consolidated duty suspension bills into larger pieces of legislation known as miscellaneous tariff and technical corrections bills.

Although a miscellaneous trade bill has not yet been formally introduced in the 109th Congress, some observers anticipate that the House will consider a bill under suspension of rules during the week of March 13, 2006. This report will be updated as events warrant.

Background

The Constitution gives Congress the primary authority over trade policy; therefore, Congress must approve any modifications to the tariff code. Constituents, often representing industry associations, will sometimes ask Members of Congress to introduce legislation proposing to reduce, repeal, or temporarily suspend duties on certain imports. In recent years, 85% to 90% of these requests have been related to chemicals or other components used in the manufacturing process.

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 duty suspensions into larger pieces of legislation that also include instructions to U.S. Customs and Border Protection (CBP), and minor technical corrections or conforming amendments to trade laws.

This report focuses briefly on the reasons that duty suspensions have merited congressional attention and on the current procedure by which congressional committees evaluate and select commodities for inclusion in more comprehensive legislation.

Duty-Suspension Legislation

The introduction of miscellaneous duty suspension and technical corrections legislation in its current omnibus format appears to have originated in the 97th Congress with H.R. 4566 (Gibbons), which proposed to "reduce certain duties, to suspend temporarily certain duties, to extend certain existing suspensions of duties, and for other purposes."[1] Prior to that date, even though committee hearings were often held on several duty suspension bills as a group, Congress often acted on them individually. A list of miscellaneous duty suspension legislation from the 97th to the 108th Congresses is found in **Table 1**, below.

Legislation in the 108th Congress. On March 4, 2003, H.R. 1047 (Crane), the Miscellaneous Trade and Technical Corrections Act of 2003 was introduced. The bill sought to grant approximately 300 duty suspension and 100 extensions to duty suspensions already in force. The bill passed the House on March 5, 2003 by a vote of 415-11. On March 20, 2003, the Senate Finance Committee reported a similar bill, S. 671. According to Senate staff, several "holds" or objections to the Senate bill delayed its passage. On March 4, 2004, the Senate amended H.R. 1047 by striking all language after the enacting clause, and inserting the text of S. 671, as amended. The bill was passed by unanimous consent on the same date.

On October 8, 2004, the House passed the conference report to H.R. 1047 (H.Rept. 108-771) without objection, but the bill stalled in the Senate over opposition to a measure that would grant permanent normal trade relations status to Laos. In a November 5, 2004 letter to Senate leadership, Senate Finance Committee Chairman Charles Grassley, Ranking Member Max Baucus, and 39 other Senators expressed strong support for passage of the conference report prior to adjournment of the 108th Congress.[2] The Senate subsequently passed the conference report on November 19, 2004, and the President signed the bill on December 3, 2004 (P.L. 108-429, 118 Stat. 2434).

109th Congress. On March 10, 2005, Representative E. Clay Shaw, Chairman of the House Ways and Means Trade Subcommittee, announced the subcommittee's request that all Members submit tariff legislation or miscellaneous changes to trade laws by April 28, 2005.[3] On July 25, 2005, Chairman Shaw announced a request for written public comments on the provisions, which were subsequently published on the subcommittee website on September 2, 2005, the same date as the deadline for submissions for the record.

A miscellaneous trade package has not yet been formally introduced in the 109th Congress. According to congressional observers, however, the House may consider a bill

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[1] P.L. 97-446, enacted January 12, 1983.

[2] "Grassley, Baucus seek Lame Duck Approval for Tariff Bill," *Inside U.S. Trade*, November 5, 2004.

[3] "Shaw Requests Introduction of Miscellaneous Tariff and Duty Suspension Bills by April 28, 2005." Advisory from the Committee on Ways and Means, No. TR-1, March 10, 2005.

during the week of March 13, 2005.[4] The Senate Finance Committee has reportedly been reluctant to take up a miscellaneous trade bill since 2002, when a similar bill became unexpectedly controversial.[5]

Policy Considerations

Tariffs on most U.S. and foreign goods have been revised gradually downward over a period of almost seven decades as a result of bilateral and multilateral trade negotiations. Many economists believe that lower foreign tariffs benefit U.S. exporters because they make U.S. goods more competitive in foreign markets, and that lower U.S. tariffs can benefit domestic manufacturers and consumers because the cost savings on imported goods may be passed on to other "downstream" producers, ultimately resulting in lower costs of the finished products. However, tariffs may also be used protectively in an effort to help domestic industries remain competitive — especially those considered vulnerable to foreign imports, such as agriculture, textiles, and steel.

According to subcommittee staff, temporary duty suspensions are generally considered for inclusion in a larger trade bill if the corresponding goods or materials are deemed "noncontroversial" or "noncompetitive," meaning that (1) there is no domestic producer objecting to the duty suspension; (2) the suspension or reduction of the tariff is seen to be in the interest of U.S. "downstream" producers (and theoretically, consumers); and (3) the volume of imports and corresponding revenue loss are relatively small (generally not more than $500,000 per commodity).

Congress and the Administration usually favor the temporary nature of these measures because more permanent revisions of the tariff code can then be used in trade negotiations to seek reciprocal benefits for U.S. exports. In addition, if a domestic company later emerges that desires to manufacture the targeted commodity, the expiration of the duty suspension could make prices of the domestic product more competitive in the U.S. market.

Reasons for Passage. Since Congress has, in recent years, tended to confine its consideration of duty suspensions to noncontroversial requests, requests that seem to give one domestic corporation or industry a competitive advantage over another, or that meet with opposition from a domestic producer are generally not included. However, there are other reasons that duty suspensions have merited congressional attention.

First, in some cases, a higher tariff rate may apply to a relatively noncompetitive product that is aggregated in a Harmonized Tariff Schedule (HTS) heading or subheading with related commodities that are considered more competitive. This is often the case where certain chemical compounds are concerned.

Second, there may be no current domestic production of a commodity, or it may not be produced in sufficient quantities to satisfy domestic demand. As a result, U.S. manufacturers who use the commodity in their products may have to depend on imports.

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[4] Freedman, Jacob. " House Expected to Pass Long-Delayed Miscellaneous Trade Legislation," *CQ Today*, March 13, 2006, p. 4.

[5] Ibid.

In this case, a duty suspension would lower the overall price of the good, and the savings could be passed along to "downstream" producers and consumers.

Third, the duty rate of an important component of a domestic product may be higher than the duty 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*, 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-a-vis* foreign manufacturers of the same product because of the higher duty rate for the raw material.[6]

Fourth, multinational corporations sometimes manufacture products at a foreign subsidiary and import them for use in an additional manufacturing process. For example, a U.S. automobile manufacturer may fabricate some of its car parts in a plant in Guatemala, and then import the parts into the United States, where it assembles the finished product. Congress sometimes considers duty suspensions even if there is a similar product manufactured domestically because since the importing company also manufactures the product, it is not likely to purchase the item from the U.S. producer.

Fifth, nonprofit associations may wish to import an item and request a one-time suspension of duties. For example, churches have sometimes requested one-time duty-free status for pipe organs purchased from Europe, and an educational institution has been allowed duty-free status for parts used in the construction of a telescope.

A sixth, less frequent, reason for congressional approval of duty suspension legislation is compelling national interest. For example, in 1942, the 77th Congress considered the suspension of import duties on all scrap metal because the War Production Board predicted a shortage of as much as 6.5 million tons of metal necessary for the defense industry to operate its open hearth and electric furnaces at full capacity.[7] The Board recommended that all barriers to importing these metals be dropped so that all the necessary raw materials could be gathered to create the weapons and vehicles necessary to win the war. The bill passed both Houses by unanimous consent.

Current Committee and Legislative Procedure

Current congressional committee practice generally involves reporting out one omnibus piece of legislation per Congress that includes all committee-approved temporary duty suspensions and technical changes to trade laws. In recent Congresses, due to the number of provisions introduced (estimated at between 600 and 700 in the 109th Congress) committees of jurisdiction have tended to request comments from interested parties at the subcommittee level, rather than holding hearings on these bills. This was the Trade Subcommittee's practice in the 109th Congress.

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[6] P.L. 97-446, 96 Stat. 2329.

[7] United States Congress. Senate. Committee on Finance. *Hearing to Suspend Tariffs on Scrap Metals; to Amend the Internal Revenue Code Relating to Production of Alcohol; to Amend Internal Revenue Code Relating to the Leakage and Evaporation of Distilled Spirits*, 77th Congress, Second Session, March 5, 1942.

Agency and Executive Review. After duty suspension bills are introduced and referred, they are reviewed by subcommittee staff, who, in turn, solicit comments from the Administration (including the United States Trade Representative, CBP, and the Department of Commerce), and the International Trade Commission (ITC). Committee staff sometimes solicit public comments directly,[8] or may do so through Administration channels. Duty suspensions that might be considered controversial are generally filtered out in this process. Subcommittee staff also commented that committees prefer that the Congressional Budget Office (CBO) cost estimates on each duty suspension proposal are essentially revenue-neutral, or reduce federal government revenues by no more than $500,000.

Role of the International Trade Commission. Generally, the ITC is the first agency that provides a response to the committees, and appears to be the only one required to do so by statute.[9] The ITC usually contacts companies and industry groups through its Office of Industries (either directly or by sending out a questionnaire) to solicit responses from interested parties, especially looking for U.S. producers of the same or like commodities targeted for duty suspensions.

The ITC prepares a report on each commodity providing information on the amount and volume of trade, estimated revenue loss if the tariff is suspended, and technical information including proper nomenclature, HTS heading, and Chemical Abstract (CA) number, if applicable. The ITC forwards the reports to the congressional committees and shares them with relevant agencies in the Executive Branch.

Administration's Response. The overall Administration response is generally coordinated by the Department of Commerce (Commerce). Analysts at Commerce also research the targeted commodities, either independently or in conjunction with the ITC response, depending on time frame.

With regard to comments on duty suspensions, Commerce generally does not object unless a U.S. producer of a targeted commodity is found. In most cases, intra-company transfers are also not opposed, even if a like product is manufactured in the United States.

Customs and Border Protection 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 ITC, 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 will generally communicate directly to the committees on a confidential basis.

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[8] See Trade Subcommittee advisory of July 25, 2005. Comments were published online in a "virtual" committee print, WCMP 109-7, Written Comments on Technical Corrections to U.S. Trade Laws and Miscellaneous Duty Suspension Bills [http://waysandmeans.house.gov/].

[9] Section 332 of the Tariff Act of 1930 (19 U.S.C. 1332), as amended, charges the ITC with conducting studies and investigations at the request of the President, the House Committee on Ways and Means, or the Senate Committee on Finance.

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 would more permanently affect U.S. trade policy.

Table 1. Miscellaneous Duty Suspension Bills

Congress	Bill No./Sponsor	Reports	Status
108th	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.
107th	H.R. 5385 (Crane)	no published reports.	10/7/2002: Passed House. 10/8/2002: Preparation for Senate.
106th	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.
106th	H.R. 435 (Archer)	see H.Rept. 105-367 (on related bill H.R. 2622 in 105th). see S.Rept. 106-002 (on related bill S. 262)	6/25/1999: P.L. 106-36, the Miscellaneous Tariff and Technical Correction Act of 1999.
105th	H.R. 4856 (Archer)	see H.Rept. 105-367 (on rel. bill H.R. 2622). see S.Rept. 105-356 (on rel. bill H.R. 4342)	10/20/1998: passed House. 10/21/1998: received in Senate.
105th	H.R. 4342 (Crane)	H.Rept. 105-671; S.Rept. 105-356	8/4/1998: passed House. 9/29/1998: placed on Senate legislative calendar.
104th	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.
103rd	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, secs. 112-116.
102nd	H.R. 4318 (Gibbons)	H.Rept. 102-634	7/31/1992: Passed House. 8/3/1992: Received in Senate.
101st	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.
100th	H.R. 4848 (Rostenkowski)	see H.Rept. 100-40 (on rel. bill H.R. 3); H.Rept. 100-576 (conf. rpt.)	8/23/1988: P.L. 100-418, subtitle G, Tariff Provisions
98th	H.R. 3398 (Gibbons)	H.Rept. 98-267; S.Rept. 88-308	10/30/1984: P.L. 98-573, the Trade and Tariff Act of 1984, Title 1.
97th	H.R. 4566 (Gibbons)	H.Rept. 97-257 S.Rept. 97-564	10/12/1983: P.L. 97-446, the Educational, Scientific, and Cultural Materials Importation Act of 1982