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Miscellaneous Tariff Bills (MTBs)

Background

On September 13, 2018, the President signed the Miscellaneous Tariff Bill Act of 2018 (P.L. 115-239), an Act that provided temporary tariff suspensions and reductions on more than 1500 products. This legislation followed the American Manufacturing Competitiveness Act of 2016 (P.L. 114-159) that established a process for considering these bills.

What Are MTBs? Miscellaneous Tariff Bills (MTBs) aim to temporarily suspend or reduce tariffs on certain imported products (called duty suspensions). In order to be considered for inclusion in an MTB, proposed individual duty suspensions must be noncontroversial (e.g., no domestic producer or Member objects); revenue-neutral (forgone tariff revenues of no more than \$500,000 per product); and administrable by U.S. Customs and Border Protection (CBP).

Debate. Many in Congress support MTBs as a relatively low-cost method of providing a competitive edge to U.S. businesses by reducing tariffs on chemicals and other inputs used to manufacture downstream products, thus making end-use products more affordable to consumers. However, the former process by which MTBs were originally assembled was controversial because it involved constituents asking individual Members to introduce duty suspension bills to benefit a constituent's company. These individual bills were then vetted by the relevant congressional committees (House Ways and Means and Senate Finance) for inclusion in a larger package. Some Members criticized the transparency of this process, while others defended it because Members were required to file disclosure forms listing the beneficiaries of duty suspensions and affirm that neither they nor their spouses had any financial interest.

In addition, there were concerns under the former process that duty suspensions violated the House and Senate ban on congressionally-directed spending (earmark ban) because they were "limited tariff benefits," defined in House and Senate rules as tariff reductions benefiting 10 or fewer entities. Supporters countered that because all enacted duty suspensions appear in the Harmonized Tariff Schedule (HTS), any importer of the subject products could automatically take advantage of the cost savings.

New MTB Process

To address prior concerns with the process, Congress enacted legislation reforming the process for vetting MTBs. The American Manufacturing Competitiveness Act of 2016, P.L. 114-159, established a process for initiating two MTBs, one in 2016 and one in 2019. In order to be included in an MTB, the same conditions for duty suspensions applied (noncontroversial, revenue-neutral, and administrable).

Expanded ITC Role. In the previous MTB process, the U.S. International Trade Commission (ITC), an independent agency with a statutory responsibility to assist Congress (19 U.S.C. 1332(g)), reviewed bills proposed for MTBs, made recommendations regarding proper tariff classification, calculated tariff amounts, and surveyed industries to determine if proposed duty suspensions were controversial. In the new procedure, the ITC's role expanded to include receiving the petitions for duty suspensions or reductions (MTB petitions), collecting public feedback, gathering input from other related agencies, and reporting findings directly to the appropriate congressional committees (House Ways and Means and Senate Finance).

The new 2016 MTB process began on October 14, 2016, with an ITC notice published in the *Federal Register* asking members of the public who can demonstrate that they are potential MTB beneficiaries to submit petitions within 60 days (closed on December 12, 2016). Late petitions were not accepted. The ITC received petitions directly and published them on a publicly available website no later than 30 days after the end of the 60-day period. Over 3,000 petitions were submitted. After all petitions and relevant documentation were posted, the ITC issued a notice requesting public comments within 45 days (by mid-January 2017). All comments were available to the public (see **Table 1**, MTB Process Timeline in P.L. 114-159, below).

Commerce Report. In previous MTBs, the Department of Commerce (Commerce) coordinated the Administration's comments on duty suspensions. Commerce analysts, along with ITC, also researched proposed duty suspensions to determine the existence of any objecting domestic producers. In the new process, Commerce's role remains essentially the same, with the addition of a deadline.

On April 10, 2017, within 90 days after the ITC's publication of the MTB petitions, Commerce, in conjunction with CBP and other relevant federal agencies, submitted a report on each petition to the ITC and the congressional committees. The report included, for each proposed duty suspension: (1) a determination of whether domestic production exists, or if domestic production does exist, whether the producer objects to the MTB petition; and (2) identification of technical changes to the description, if any, necessary for purposes of CBP administration.

ITC Preliminary Report. The ITC was required to submit a preliminary report to the House Ways and Means and Senate Finance committees 120 to 150 days following the publication date of the MTB petitions (submitted June 9, 2017). For each petition, the report was required to contain: (1) the product's HTS heading or subheading; (2) a determination of whether or not domestic production or an

objection to the duty suspension existed; (3) any technical changes necessary to the product description; (4) an estimate of the amount of loss in U.S. revenue; (5) a determination of whether the duty suspension or reduction would be available to any importer of the targeted product; and (6) the likely beneficiaries of the duty suspension or reduction.

Table 1. MTB Process Timeline in P.L. 114-159

Date	Action
No Later than October 15, 2016 and October 15, 2019	ITC publishes notice requesting duty suspension petitions
60-day period beginning on ITC notice publication date	Public sends duty suspension petitions to ITC
No later than 30 days after 60-day period expires	ITC publishes duty suspension petitions on Internet
45-day period beginning on the publication date of petitions	Public comment period (also viewable by the public)
No later than 90 days following the publication date of petitions	Commerce, in consultation with CBP and other relevant federal agencies, submits report to ITC and appropriate congressional committees
120 to 150 days following the publication date of petitions	ITC Preliminary Report to committees
60 days after submission of preliminary report	ITC Final Report to committees
No later than 12 months after enactment of MTB	ITC reports on the effects of MTB legislation on the U.S. economy

Source: Sections 3 and 4 of P.L. 114-159.

The preliminary report also contained: (1) a list of MTB petitions that the ITC determined met the requirements of the Act without modification, as well as lists of petitions for which the ITC recommended; (2) technical corrections; (3) changes to the amount of duty suspension; or (4) changes to the scope of the targeted products. The report also included a list of all MTB petitions that did not include all the required information, as well as those for whom the petitioner was not a likely beneficiary. Finally, the report included a list of MTB petitions that the ITC did not recommend for inclusion.

Final ITC Report. After taking into account congressional committee feedback and other information, the ITC submitted its final report within 60 days determining, in part, whether each petition (1) is able to be administered by CBP; (2) does not exceed \$500,000 in revenue loss per year; and (3) is available to any person importing the product. The final report was submitted on August 8, 2017.

Congressional Consideration. Congress must act on MTB legislation in order for it to be enacted. Although P.L. 114-159 contains a sense of Congress that an MTB should be considered no later than 90 days after the final ITC report, there is no requirement in the law for an MTB to receive floor action. If an MTB is to be considered, the House

Ways and Means Committee and/or the Senate Finance Committee must publish a list of all “limited tariff benefits” (i.e., provisions modifying the HTS in a way that benefits 10 or fewer entities) under a process specified in the legislation.

Current MTB Legislation

On November 9, 2017, companion MTBs based on the new process, were introduced in the House (H.R. 4318) and Senate (S. 2108). The House unanimously passed H.R. 4318 under suspension of the rules on January 16, 2018.

On July 26, 2018, the Senate passed H.R. 4318 by unanimous consent, with an amendment that removed several products from the MTB measure and added several types of lower-priced shoe products. All of these products (those removed from the bill as well as those that were inserted) had been previously vetted through the ITC process, open for public comment, and included in the MTB report submitted by the ITC to Congress. The Senate amendment also extended customs user fees through October 13, 2027, instead of April 22, 2026, as in the House version. The House agreed to the Senate amendment to H.R. 4318 on September 4, 2018. President Trump signed the measure on September 13.

Issues for Congress

What are the costs and benefits of MTBs? According to P.L. 114-159, the ITC must submit a report to Congress on the economic effects of duty suspensions and reductions on the U.S. economy within 12 months of the enactment of an MTB. In the report, the ITC must also include recommendations regarding which domestic industries might benefit from permanent duty suspensions or reductions, either through U.S. unilateral action or through negotiating reciprocal tariff agreements.

Is the new process working as intended, ensuring more transparency and timely consideration of these measures? Each MTB must be submitted through a process that allows for public comment, and likely beneficiaries are also disclosed. In the 2016-2017 MTB process, the ITC and other agencies were able to meet the time lines prescribed in the legislation.

Is Congress’s constitutional power abrogated through the MTB process? Some in Congress expressed reservations that transferring authority over the MTB process to the ITC would interfere with Congress’s power to regulate foreign commerce, as well as its power to appropriate. The new process permits the ITC to receive, analyze (with other agencies), and make recommendations on individual MTB petitions. However, no agency may exclude a duty suspension from potential consideration by Congress, or add a duty suspension not submitted through the MTB petition process. Any drafting of MTB legislation remains the prerogative of the House Ways and Means and Senate Finance committees.

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