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Miscellaneous Tariff Bills (MTBs)

Background

On August 10, 2020, after receiving input from Congress and the public, the U.S. International Trade Commission (ITC) submitted its final Miscellaneous Tariff Bill (MTB) report to the House Ways and Means and Senate Finance Committees. The ITC action follows a specific procedure and timeline enacted in the American Manufacturing Competitiveness Act of 2016 (AMCA, P.L. 114-159), which authorized two MTB cycles using the AMCA procedure. In October 2019, the ITC announced that it was accepting petitions from the public for tariff suspension or reduction for possible inclusion in a MTB, then solicited public comment on these petitions, and submitted a preliminary report to Congress in June 2020. The AMCA contains no requirement that either committee introduce an MTB; rather, the law expresses a “sense of Congress” that Congress “should” consider a bill within 90 days after the ITC submits its final report. Thus, Congress might consider an MTB before the 116th Congress concludes.

This is the second MTB authorized by the AMCA. The first, the Miscellaneous Tariff Bill Act of 2018 (P.L. 115-239), enacted in September 2018, currently provides temporary tariff relief until December 31, 2020.

What is the purpose of MTBs? 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, each proposed duty suspension 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 assembled was controversial because it involved constituents asking individual Members to introduce duty suspension bills to benefit the constituent’s company.

MTB Process in AMCA

To address these prior concerns, Congress enacted AMCA to reform the process for vetting MTBs. The law also established a process for initiating two MTBs, one in 2016, and the second in 2019. To be included in an MTB, the same conditions for duty suspensions are applied as in the previous process (i.e., noncontroversial, revenue-neutral, and administrable).

Expanded ITC Role. Prior to passage of the AMCA, the ITC, an independent agency with statutory responsibility to assist Congress (19 U.S.C. 1332(g)), reviewed duty

suspension bills submitted by Members, made recommendations regarding proper tariff classification, calculated tariff amounts, and surveyed industries to determine if proposed duty suspensions were controversial. The AMCA expanded the ITC’s role to include directly receiving MTB petitions from industry representatives, collecting public feedback, gathering input from other related agencies, and reporting findings directly to the House Ways and Means and Senate Finance Committees.

The ITC began the MTB process on October 10, 2019, and followed a timeline specifically established in the AMCA (see Table 1, MTB Process Timeline in P.L. 114-159, below). The process began with an ITC *Federal Register* notice asking members of the public who can demonstrate that they are potential MTB beneficiaries to submit petitions within 60 days (October 11–December 10, 2019). Petitioners who wished to continue existing duty suspensions were required to reapply. On January 10, 2020, the ITC published all of the duty suspension requests it received on a publicly available website. From January 10 to February 24, the ITC requested public comments on the proposed duty suspensions. On March 30, 2020, the ITC announced that all comments on the duty suspensions were available to the public.

Commerce Report. In the next step in the process, the Department of Commerce, in conjunction with CBP and other relevant agencies, was required to a report to the ITC and Congress on each petition within 90 days of the publication of the MTB petitions. For each proposed duty suspension the report was to include (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’s preliminary report, due 120 to 150 days after the publication date of the petitions, must contain, for each petition, (1) the product’s Harmonized Tariff Schedule (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. The ITC submitted its preliminary report to Congress on June 9, 2020.

Final ITC Report. After taking into account congressional committee feedback, the additional public comments received, and other information, the ITC must submit a 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 ITC submitted its final report on August 10, 2020, on a total of 3,442 MTB petitions.

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 (comments 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 Congress
60 days after submission of preliminary report	ITC Final Report to Congress
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.

Issues for Congress

What are the costs and benefits of MTBs? The AMCA required the ITC to 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. The ITC report, released in October 2019, indicated that the 2018 MTB, which included 1,655 duty suspensions applied for by 335 separate firms, showed a small increase in terms of U.S. output, welfare, and GDP.

Does Congress have to act for an MTB to become law?

Although the AMCA 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 Senate Finance Committee must draft legislation and 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 AMCA.

In the 115th Congress, companion MTBs based on the new process were introduced in the House (H.R. 4318) and Senate (S. 2108) on November 9, 2017. 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, 2018.

What are the effects of the tariffs issued by the Trump Administration on the duty reductions in the MTB (P.L. 115-239)? The Miscellaneous Tariff Bill Act of 2018 suspended or reduced tariffs on 1,655 products, about 64% of which were also subject to additional duties under Section 301 if sourced from China. Thus, even though the MTB provided suspensions and reductions of the general (or “normal trade relations” U.S. tariff rate), certain Chinese imports were subject to additional tariffs of as much as 25%. According to an ITC report on the economic effects of the 2018 MTB, 15% of U.S. imports by value (or \$839 million) that entered under the MTB were subject to Section 301 tariffs. This lower percentage may indicate that some importers found sources other than China for MTB-covered products.

Is the new process working as intended, ensuring more transparency and timely consideration of these measures? Each MTB must be submitted through a petition 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.

Were there any complications in the 2016 MTB petition cycle? According to the ITC, many MTB petitions contained errors in accurately classifying the merchandise according to the Harmonized Tariff Schedule of the United States (HTSUS). Thus, almost 28% of the petitions were not recommended for inclusion in an MTB because the duty suspensions could not be administered by CBP. In the 2019-2020 cycle, the ITC recommended that petitioners research the HTSUS product classification using the Customs Ruling Online Search System (CROSS, <https://rulings.cbp.gov>), or submit a request to CBP for a binding customs classification ruling (<https://apps.cbp.gov/erulings/home>), prior to filing an MTB petition. The ITC also announced a series of workshops and webinars, the first of which were held in July and August 2019, to (1) help potential filers understand the MTB petition process, and (2) write acceptable product descriptions in various HTSUS categories.

Will MTBs continue under the current process after this MTB cycle? The AMCA provided for two MTBs, one initiated in 2016 and one in 2019. In order for the MTB process to be continued beyond the current (2019-2020) process, Congress must extend the AMCA, further amend the MTB process, or decide not to continue MTBs.

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