

US Congress Approves Legislation to Reform Duty Suspension Process

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Authors: [Scott Lincicome](#) and [Brian Picone](#)

On May 10, 2016, the US Congress approved the *American Manufacturing Competitiveness Act of 2016* (AMCA), which will modify congressional procedures for developing miscellaneous tariff bills (MTBs) in an effort to revive the long-stalled MTB process. President Obama is expected to sign the measure into law in the coming days. The enactment of the AMCA will set the stage for US importers to begin submitting duty suspension petitions to the US International Trade Commission (ITC) by October of 2016, and could result in congressional consideration of an MTB in 2017.

Background

Since the 1980s, the US Congress periodically has approved MTBs, which temporarily suspend import duties on certain goods such as chemicals, raw materials, and other manufacturing inputs in response to requests from the private sector. Goods are eligible for duty suspensions under the MTB if, *inter alia*: (i) they are not produced in the United States; or (ii) the producer(s) of the domestic like product do not object to the duty suspension. Congress has also required that each duty suspension included in the MTB must not cause an estimated loss in US tariff revenues of more than USD 500,000 per calendar year.

The objective of the MTB is to reduce input costs for domestic manufacturers of downstream products, thereby improving their competitiveness. However, due to the aforementioned limitations on product coverage and the revenue requirements, the overall tariff relief provided by the MTB is typically small relative to total US tariff revenues. The most recent MTB, which expired at the end of 2012, provided an estimated total USD 748 million in annual tariff relief.

Although MTBs historically have enjoyed strong bipartisan support, Congress has not approved an MTB since it enacted the *Manufacturing Enhancement Act of 2010*, which put in place duty suspensions that expired on December 31, 2012. The subsequent delay in approving a new MTB is primarily the result of disagreement among congressional Republicans as to whether the duty suspensions constitute “earmarks” (*i.e.*, congressionally-directed spending that benefits a very limited number of entities), potentially violating an earmark ban put in place by congressional Republicans in 2010.

New MTB Process

The AMCA modifies the MTB process in a manner designed to ensure that the duty suspensions do not violate congressional earmark rules. The most significant change to the process is a requirement that companies submit their duty suspension requests directly to the ITC for review. By contrast, under prior congressional practice, companies petitioned members of Congress to introduce stand-alone duty suspension bills which were then combined into a package and reviewed by the ITC. The AMCA otherwise retains most features of the prior MTB process, such as the limitations on product coverage, the USD 500,000 limit on annual tariff relief for each duty suspension, and the three-year time limit on duty suspensions.

The new MTB process as set forth in the AMCA may be summarized as follows:

- **Submission of petitions.** Before October 15, 2016 (and again before October 15, 2019) the ITC must publish a *Federal Register* notice initiating a 60-day period during which it will accept petitions for duty suspensions. The ITC must publish these petitions on its website within 30 days after the expiration of the 60-day petition window. The ITC will then accept public comments on the petitions for 45 days after the date on which the petitions are made public.
- **ITC analysis.** Within 150 days after publishing the petitions on its website, the ITC must submit a preliminary report on the petitions to the House Ways and Means and Senate Finance Committees. The report will assess whether each proposed duty suspension meets certain statutory requirements, including whether they involve products that are produced in the United States and whether producers of the domestic like products object to the duty suspensions. Based on these assessments the ITC report will recommend whether Congress should include each proposed duty suspension in the MTB. The ITC will then have an additional 60 days to provide a final report that takes into account congressional feedback and determines, *inter alia*, whether each proposed duty suspension would reduce US tariff revenues by more than USD 500,000 per year.
- **Congressional review.** The appropriate congressional committees will examine the ITC's recommendations and draft an MTB proposal. In so doing, the committees may exclude certain duty suspensions from the MTB for various reasons (*e.g.*, if a Member of Congress objects or if the relevant article is produced domestically). Congress also must adjust the amount of any proposed duty suspension so that the estimated loss in tariff revenues from any single duty suspension does not exceed USD 500,000 per calendar year. The resulting MTB will then be considered under normal legislative procedures.

Given that the Senate and the House of Representatives approved the AMCA by unanimous and near-unanimous votes, respectively, the bill appears to have resolved the earmark-related concerns that have delayed the MTB process for several years. Pursuant to the AMCA timelines, the ITC is scheduled to provide Congress with its final recommendations for the MTB no later than mid-August of 2017, providing an opportunity for a congressional vote on an MTB in late 2017. This process and the resulting vote on an MTB could occur sooner, however, if the ITC completes one or all of the above procedures before the statutory deadlines.

Click [here](#) for a copy of the AMCA.

White & Case LLP
701 Thirteenth Street NW
Washington DC 20005
United States

T +202 626 3600

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