

International Trade Alert

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What You Need to Know About the Temporary Duty Suspension Process Act of 2012

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On March 30, 2012, Congress once again began the process of working on passing a miscellaneous tariff bill (MTB). The process commenced with the announcement by the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee for Members of Congress to introduce tariff modification legislation to be considered by April 30, 2012. However, due to the overwhelming requests by Members, the deadline was pushed to May 16, 2012. The public comment period began on May 24th and was open until June 22, 2012.

The last few MTB cycles have been complicated by the politics surrounding the definition of an earmark. In the spring of 2010, Congress declared a ban on all earmarks, and included within the definition of an earmark the term "limited tariff benefit." Due to this language within the Earmark Disclosure Rules, many members of Congress have declined to introduce tariff modification legislation because of the concern that it may be perceived as an earmark. This has complicated the process for many companies seeking to receive a temporary suspension or duty reduction, which is critical for many manufacturers to remain globally competitive.

On June 13, 2012, there was a bipartisan effort to reform the MTB process with the introduction of the S. 3292, *Temporary Duty Suspension Process Act of 2012* by Senators Rob Portman (R-Ohio) and Claire McCaskill (D-Mo.). The legislation would allow companies to request duty suspensions or reductions directly through the International Trade Commission (ITC), rather than requiring a Member of Congress to first introduce legislation requesting the reduction or suspension.

Currently, the MTB process requires that a Member of Congress introduce legislation for each article for which a proponent is requesting a tariff modification, that is then vetted by the Congressional Budget Office (CBO), ITC, and a number of Executive Branch agencies, such as the Department of Commerce and U.S. Customs and Border Protection (CBP).

For a tariff modification bill to be eligible for inclusion in the MTB, its proponents must be able to prove that the bill (1) is non-controversial, and (2) is revenue-neutral, defined as costing under \$500,000 per year.

Potential Reform to the MTB Process. *The Temporary Duty Suspension Process Act of 2012* (S. 3292) (the Act) would move the first steps of the MTB process out of Congress and instead place the responsibilities for submission and review of petitions for tariff suspensions or reductions with the ITC. These petitions could be submitted by any member of the public, or by a member of Congress, directly to the ITC. Under the Act, petitions would be treated with equal weight, regardless of their origination.

After a review process that includes a period of public comment and consultation with relevant agencies, the ITC would propose a draft bill containing the recommended duty suspensions or reductions for the consideration of the Senate Finance Committee and the House Ways and Means Committee.

Accompanying the draft bill would be a report to the Committee outlining compliance with the statutory restraints on granting these suspensions and reductions, as well as any objections from the public or other agencies with which the ITC consulted.

New Process, Old Limits. As proposed, the ITC review process would be constrained by limits such as the MTB process has had in the past. Namely, any suspension or reduction in tariffs must not decrease U.S. revenue by more than \$500,000 in 2013, or the equivalent of \$500,000 multiplied by the change in the Consumer Price Index (CPI) for the previous year as compared to the CPI in 2012.

The suspension or reduction also must not pertain to any article that is produced in the United States or any article that is expected to be produced in the United States within a 12-month period of the introduction of the draft bill.

Finally, any proposed suspension or reduction must be able to be administered by CBP, and to this

end, the ITC must consult the head of that agency before proposing a draft bill.

Is Your Business Impacted? Much of the substantive underpinnings of what articles are eligible for a tariff suspension or reduction remain the same. The process by which such duties are passed into law will change slightly if this bill is passed. Under this new process, an interested firm can petition the ITC directly for a tariff suspension or reduction, removing the need to ask a member of Congress to introduce a bill. In the end, Congress will still make the final decision on whether the suspensions or reductions pass into law, but if passed, this legislation will speed up the first steps of the process by creating a less politically charged process for the initial review and recommendation of petitions, perhaps streamlining the process.

Our **Venable team** will be monitoring the progress of this bill as it makes its way through Congress, and can keep you up to date on any changes that will affect you in the future.

For more information on this topic, please [click here](#) to read our previous alert from April 2012.