

Looking For Some Duty Relief? The Miscellaneous Tariff Bill May Be Your Answer

By Karen A. Lobdell

Spring appears to have finally arrived and, along with it, a renewed interest in development and approval of a Miscellaneous Tariff Bill (MTB) during the 111th Congress. Benefits under the previous MTB are due to expire at the end of 2009 and extending them could help ease some of the economic difficulties facing U.S. manufacturers and importers.

MTB Legislation

Companies often propose that members of Congress introduce bills seeking to suspend or reduce tariffs on certain imports. The primary purpose of these bills is to help U.S. manufacturers compete at home and abroad by temporarily suspending or reducing duties on intermediate products or materials that are not made domestically, or where there is no domestic opposition. These reductions or suspensions reduce the cost for U.S. businesses and ultimately increase the competitiveness of their products. The vast majority of the commodities where suspension or reduction of duties is requested are chemicals, raw materials or other components used in the manufacturing process that are otherwise unavailable domestically.

The last MTB legislation was passed during the 109th Congress and included suspension or reduction of duties until December 31, 2009, on an estimated 680 commodities.¹

During the 110th Congress, efforts were made to move forward on an MTB. The legislation did not pass before the 110th Congress adjourned and those bills, which were introduced in 2007 and 2008 to suspend or reduce duties on roughly 800 commodities, will need to be reintroduced during the current 111th Congress.

¹ Of the 680 products, 380 products were included in H.R. 6111 (a previously House-passed tax extension package), which was signed into law December 20, 2006, (P.L. 109-432) and an additional 300 products were included in H.R. 4, the "Pension Protection Act of 2006," (P.L. 109-280).

During the 110th Congress, the House and Senate also adopted earmark reform parliamentary procedures affecting “limited tariff benefits.”² The rule requires that bills must include a list identifying any limited tariff benefits. It also provides that any Member, Delegate or Resident Commissioner requesting a limited tariff benefit must provide a “limited tariff disclosure form” certifying the member and member’s spouse do not have a financial interest in the tariff suspension, among other things. This has added an additional step to the MTB process.

Current Status

Momentum for a new MTB in the 111th Congress is building. Recently, Reps. Ellen O. Tauscher (D-Calif.) and Howard Coble (R-N.C.) gathered signatures for a letter to the House Ways and Means Committee to make the MTB a priority this year. A number of factors must be considered before this process moves forward, however.

- > The House is examining how to deal with requests from House members no longer in office. New House members would need to support the bills introduced by their predecessors. If they do not, those proposals will likely be excluded from any renewed MTB.
- > The committee is also looking at how it will proceed with respect to tariff suspension bills introduced during the last session of Congress by members still in office. For example, all of the bills introduced during the 110th Congress will have to be reintroduced during the 111th Congress.³
- > The committee is also examining whether it will agree to include in the final MTB any tariff suspension/reduction bills on specific products introduced for the first time this year. The committee may not allow inclusion of products that were not introduced during the 110th Congress because it would slow the process of approving the MTB.
- > Another hurdle would be how to pay for the MTB. The bill is estimated to have a cost of \$400 million based on the inclusion of roughly 800 individual product requests. The value of individual bills in the MTB cannot exceed \$500,000.
- > A final challenge lies with the Senate Finance Committee, which has not yet finalized its own plans for how to move forward with the MTB bill.

Steps to Participate

Companies that are interested in obtaining duty suspensions or reductions should take the following steps in order to ensure the best potential outcome:

² A limited tariff benefit is defined as a provision modifying the *Harmonized Tariff Schedule of the United States* in a manner that benefits 10 or fewer entities.

³ The committee could decide that all of those bills will simply be reintroduced together in the MTB, however, those members sponsoring individual tariff suspension/reduction bills may need to redo their disclosure forms.

1. Identify which products the company wishes to include in the MTB. Ideally, these would be products that lack substantial U.S. producers.
2. Determine the correct technical format and physical description of the product(s) following the format of the *Harmonized Tariff Schedule of the United States* (HTSUS). A product should be narrowly described and include the eight-digit tariff line so U.S. Customs and Border Protection (CBP) can readily identify the product on importation.⁴
3. Determine whether the products meet the minimum requirements for consideration. At a minimum, duty reduction/suspension bills must meet the following criteria:
 - a. Be noncontroversial (not objected to by a domestic producer of the product for which the duty reduction is being sought).⁵
 - b. Amount to less than \$500,000 of lost duty revenue per year (for each bill).⁶
4. Approach the relevant congressional member(s) to introduce the legislation. A member of Congress must introduce the proposed bills. To participate in the MTB process, companies will need to identify, contact and gain the support of the relevant members of Congress.⁷

Expectations Upon Submission

Typically there is a 45-day window from the time the House Ways & Means Committee initiates the MTB process and the deadline for introducing duty suspension/reduction bills. With this in mind, companies must begin the due diligence process as early as possible to ensure that requests are ready for submission.

After introduction of the individual bills, there will be a period for public comment. Simultaneously, the bills will be reviewed by the U.S. Trade Representative (USTR), the International Trade Commission (ITC) and CBP. This process can take three to four months for reviews and analyses. The ITC will issue a report that will include its review of each respective bill and the anticipated impact, including domestic opposition and duty loss estimates. This information is used by the Congressional Budget Office to score each bill.

Upon completion of the comment period and submission of other agency reports, the Senate drafts a final bill. The final bill will go to the floor for a vote and must pass by unanimous consent. If it passes, the Senate bill will go to conference with the House version and the combined bill will go to a vote. If that bill passes, it goes to the President for his signature.

⁴ Chemical products should have a Chemical Abstracts Service (CAS) registry number in the description, if applicable.

⁵ Because the MTB is passed by unanimous consent, this requirement is a priority.

⁶ In the event a particular bill exceeds the \$500,000 threshold, the Committee may redraft the bill by limiting the scope of the temporary duty measure, by staging or reducing the approved duty rate decrease or by changing the bill into a duty reduction rather than complete suspension.

⁷ Ideally, this will be a representative of the company's home state. Ultimately, however, to succeed in gaining duty suspension/reduction, it is helpful to have support from a member of both the House and Senate. Please note that each product for which a company is requesting duty suspension/reduction will need its own bill introduced. Bills are commodity specific.

Savings to individual companies from suspension/reduction of import duties on manufactured inputs or retail items can be significant. Companies interested in lowering or eliminating the import duties they pay should begin to develop proposals and seek congressional support sooner rather than later.

Drinker Biddle's Customs and Trade Practice is prepared to assist importers with duty suspension/reduction bills. We can offer assistance in:

- > Conducting an economic analysis of the proposed duty suspension/reduction request;
- > Drafting proposed legislation to temporarily suspend or reduce duties;
- > Assisting with the introduction of duty suspension/reduction bills;
- > Working with congressional staff to help advance the bill and obtain necessary congressional support through the legislative process;
- > Assisting during the review period of the bills with CBP, ITC and the USTR to help ensure a successful outcome.

Should you require further assistance with regard to the information set forth in this memorandum, please contact **Karen A. Lobdell**, Director, Trade Security & Supply Chain Services, at (312) 569-1066 or Karen.Lobdell@dbr.com, or any member of Drinker Biddle's Customs and Trade Practice.

Customs and Trade Practice Group

Kathleen Murphy
Chair, Partner
(312) 569-1155
Kathleen.Murphy@dbr.com

Therese Ignich
Trade Specialist
Licensed Customs Broker
(312) 569-1582
Therese.Ignich@dbr.com

Joan Koenig
Counsel
(312) 569-1163
Joan.Koenig@dbr.com

Karen Lobdell
Director, Trade Security &
Supply Chain Services
Licensed Custom Broker
(312) 569-1066
Karen.Lobdell@dbr.com

Randy Rucker
Partner
(312) 569-1157
Randy.Rucker@dbr.com

James Sawyer
Partner
(312) 569-1156
James.Sawyer@dbr.com

Beata Spuhler
Associate
(312) 569-1158
Beata.Spuhler@dbr.com

Michelle Welsh
Associate
(312) 569-1172
Michelle.Welsh@dbr.com

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