

MISCELLANEOUS TARIFF BILL:

A TOOL FOR DEINDUSTRIALIZATION WHICH SHOULD BE MENDED OR ENDED

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The Miscellaneous Tariff Bill has been used by importers, retailers and foreign companies to harm existing and future domestic manufacturing. If the US is going to Build Back Better, we need to be producing goods that are not currently produced here. The memorandum identifies problems with the MTB Petition System, solutions to those problems and the explores whether the MTB is consistent with an industrial strategy to rebuild domestic supply chains and create good paying jobs.

Key Points

- Congress should consider refusing MTB renewal until a comprehensive industrial strategy is created that the tariff suspension process can support rather than harm.
- If MTB is renewed, the worst abuses of the system should be fixed.
- These fixes include companies seeking tariff suspension on finished – rather than intermediate - goods imports that do not bolster domestic manufacturing and rampant filing of false or frivolous petitions misrepresenting the existence of domestic production.

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I. BACKGROUND

The Miscellaneous Tariff Bill (MTB) is a law that temporarily reduces or suspends the import tariffs paid on particular products imported into the United States. The Coalition for a Prosperous America opposes the MTB in its current forum because it has been used and abused as a tool for deindustrializing the US. The MTB should not be renewed unless it fosters a US industrial policy to rebuild manufacturing supply chains.

Congress has passed, from time to time, a Miscellaneous Tariff Bill (MTB) which were temporary in nature. Importers would lobby their Representatives directly for tariff reduction on a wide variety of goods and the MTB would be drafted and passed based upon this lobbying.

No US industrial policy or strategy guided MTB development and passage. While the stated rationale would always be to assist American manufacturers by waiving tariffs on their needed inputs that were not available domestically, in practice it has been a free for all that displaced US manufacturing with competing products from overseas. Retailers and other businesses with no manufacturing presence seeking tariff waivers on finished goods they want to sell into the U.S. market.

The American Manufacturing Competitiveness Act of 2016 (AMCA) was an MTB renewal law that improved the process somewhat. The law created a centralized process, administered by the USITC, for importers to submit petitions requesting suspension of existing default tariffs. It authorized two cycles. The first was in 2016-2017 while the second was in 2019-2020.

The AMCA did enhance transparency compared to the earlier MTB processes, which were done entirely in the halls of Congress. The USITC works with the Department of Commerce to develop a recommended list of goods for tariff suspension, a helpful departure from the lobbyist directed process of the past.

The AMCA also prohibits goods which are currently manufactured in the US to be excluded from the tariff suspension program. The Department of Commerce assists the USITC by assessing whether domestic production exists for each tariff suspension petition received.

However, there is no overall industrial strategy that guides the MTB process.

After the USITC concludes its recommendation process, tariffs are not suspended on the goods unless and until Congress passes an MTB which incorporates the list. In other words, the USITC simply makes recommendations. Individual Congressmen have the authority to object and block particular tariff waivers even if they appeared on a “recommended” list by the USITC.

After the 2016-2017 MTB process, Congress passed the MTB of 2018. That bill closely followed the USITC’s recommendations. However, “several” products were removed and some were added by the relevant Congressional committees, according to the Congressional Research Service.

The 2019-2020 USITC list has been compiled, but Congress has not taken up the MTB bill. There are some tariff suspension “recommendations” by USITC that are very worrying, detailed below.

In the 2019-2020 MTB process, the USITC received 3,479¹ petitions for tariff waivers, and 745 objections. These objections were mostly because the Department of Commerce identified domestic producers of the goods subject to a petition, called them up, alerted them, and then helped them file an objection. An objection due to domestic production is enough for the USITC to *not* recommend a tariff suspension, thankfully.

Importers are allowed to define their specific need very specifically, much more specifically than an individual tariff line, which aids them in claiming that there is no available domestic production.

II. TIMELINE OF EXISTING MTB PETITION PROCESS

- USITC issues F.R. Notice inviting petitions within 60 days
- After 60-day period, list of petitions published to website, and public has six weeks to comment on submissions.
- Within 90 days from USITC publishing the list, the DOC (in conjunction with CBP and other agencies) must publish a report, determining for each petition:
 - Whether domestic production exists; and
 - How the petition would be implemented by CBP (recall that petitions can be written narrowly tailored, thus it has to be converted to a format that CBP can administer under the Harmonized Tariff Schedule).
- USITC then issues a preliminary report, available for comment, and then a final report, for Congress’ consideration.

III. THE MISCELLANEOUS TARIFF BILL SHOULD NOT BE RENEWED UNTIL IT IS GUIDED BY A U.S. INDUSTRIAL STRATEGY

America has realized that it must re-industrialize to achieve national economic strength, build the industries of the future, and provide good jobs for its workers. The MTB was developed when the U.S. was confident of its economic position in the world and believed that moving to a service based economy was the proper goal for a post-industrial society. It provided further tariff reduction without reciprocal treatment from the rest of the world.

The MTB fosters the importation of foreign goods that the U.S. could be producing, should be producing or, until recently, was producing. While its stated purpose is to help manufacturing, its true purpose has been to import cheap goods whenever possible regardless of the U.S. employment and industrial strength impact.

The tariff suspension program rewards foreign countries who subsidize their industries to achieve the cheapest goods and drive out US companies by granting them tariff waivers. It

¹ The actual number of original petitions received by the USITC was 4,086; 3,479 represents what the USITC adjudicated following consolidations and withdrawals.

rewards retailers and importers with low-cost imports of finished goods which have no relevance to assisting US manufacturing.

The MTB grants free market access to critical, essential or future goods that we do not make in the US but should be making. Congress and the Biden administration are working hard to restore industry supply chains in pandemic related goods, national security goods or other critical products which we may not produce. MTB harms rather than assists that effort.

IV. FOUR PROBLEMS THAT MTB RENEWAL MUST ADDRESS

Congress should recognize the following problems as it considers whether to renew the MTB.

1) Non-Manufacturing Petitioners Abuse MTB Claiming Tariff Waivers for Finished Goods that do not Help US Manufacturing

The most recent MTB bill was titled the “American Manufacturing Competitiveness Act”, not the Importer’s Tax Cut Act. And yet, importers without domestic manufacturing submit thousands of petitions for consumer end-products manufactured entirely overseas. And often, these businesses have no manufacturing concern whatsoever. Petitions for consumer-end goods come from many non-manufacturing entities, examples of which are detailed below.

- Dealers and Retailers. For example, MarineMax, Inc., a publicly traded company on the New York Stock Exchange, describes itself as the nation’s largest recreational boat and yacht retailer. They do not manufacture boats. And yet in 2019, MarineMax, Inc. submitted three petitions for tariff suspensions on recreational boats.

The law firm of Holland & Knight LLP, which enjoyed revenue of \$1.04 billion in 2020, filed three petitions on behalf of MarineMax, Inc. in the 2019-2020 MTBPS. In each petition’s Question 13a, a response of “no” was offered when asked whether the petitioner was aware of domestic production.

The “no” answer is completely incorrect, which is readily apparent to anyone with an internet search engine.

Either MarineMax, Inc. or its counsel submitted a deceitful petition, or they were recklessly negligent in preparing their answers. Fortunately, Dept. of Commerce staff identified domestic production and facilitated an objection.

- Private labels (Brands): An example here would be The Coleman Company, Inc., a brand-company focusing on the branding and sale of outdoor recreation products. Coleman submitted a petition for insulated coolers and beverage bags (Petition 1901608), claiming no domestic production existed. This was false, and fortunately Dept. of Commerce staff were able to identify a domestic producer and assist them with filing an objection.
- Foreign manufacturers without domestic production: A troubling example from the last MTB process was Mitsubishi Fuso Truck of America, Inc., which has no domestic

production of its trucks, and was able to get a USITC recommendation for a tariff suspension petition for medium-duty electric trucks (Petition 1901387).

The example is troubling, because it is a recommended waiver of a substantial tariff of 25%: the famous ‘chicken tax’ which has been responsible for keeping truck manufacturing within the United States. While it was likely true that there was no imminent availability of medium duty electric trucks when the Dept. of Commerce prepared its report in early 2020, there will be this year, with several new American electric vehicle manufacturers releasing their first domestically-produced electric truck offerings this year, including companies like Tesla, Ford, Workhorse, Lordstown and Bollinger. Removing the 25% tariff at this critical time would be folly because the US should be increasing its EV production.

Businesses without domestic production, like the three types above, should not benefit from tariff suspensions because there is no improvement to US manufacturing competitiveness.

But nor should U.S. manufacturers be given carte blanche to file petitions seeking tariff suspensions for finished goods they do not make. For example, Carrier Corporation, despite being a domestic producer of heating and cooling equipment, submitted a petition (Petition 1901727) for a tariff suspension on residential heat pumps which the company does not make. Carrier claimed there was no domestic production. Fortunately again, Goodman Manufacturing Company objected, indicating it operated the third largest manufacturing plant in the United States and was a manufacturer of HVAC products. (Comment 1901610).

If petitions were limited to intermediary-input goods, all of the above abuse would be curtailed.

2) Fails to consider goods domestic producers, such as custom fabricators, who can easily make a product if they receive a purchase order.

While the USITC’s petition form does ask petitioners if they are aware of any domestic production, and this is thankfully double checked by the Commerce Dept., capable domestic producers are still being overlooked in droves. A significant example is custom fabricators who produce a wide range of parts and machinery on contract for others and are the bedrock of resilient supply chains. Their business model is an ability to easily manipulate base metals and modify production to produce many other parts, per customer specifications. But they are severely harmed by process in the AMCA which considers only what domestic producers are currently producing, rather than what they are capable of producing if solicited.

When the Department of Commerce searches for U.S. domestic production, they do not poll custom fabricators to see if a certain input can be produced.

3) Fails to identify domestic production of like products due to tension with Federal Trade Commission’s Made-in-USA standard.

Many U.S. companies do manufacturing work domestically, but are unable or unwilling to advertise their goods as “Made in the USA” (MUSA) or a variation thereof because the Federal

Trade Commission maintains a strict “all or virtually all” standard for MUSA marketing. The FTC’s MUSA standard is in no manner contemplated in the AMCA’s definition of “domestic production”. The de facto reality is merely that the MUSA standard creates a “chill factor” dissuading domestic producers from advertising their goods as American-made, which in turn makes it more difficult for individuals at the Dept. of Commerce from determining whether there is in fact domestic production.

For this reason, much American manufacturing activity goes overlooked.

For example, Whirlpool Corporation does not make food processors domestically. Whirlpool Corporation submitted two petitions (1901335 and 1901349) for tariff suspensions on food processors. Whirlpool Corporation indicated that there was no domestic manufacturing of food processors, and the Department of Commerce did not find otherwise.

In fact, Vitamix does manufacture food processors domestically, although because certain key components are imported, Vitamix no longer markets them as “Made in the USA”. This should not detract from the fact that if these same food processors were exported, under WTO rules, they would legitimately be “Product of USA” because the components were “substantially transformed” in the USA. Domestically, Vitamix lists its food processors as “Engineered and Assembled in USA”, to be in compliance with the FTC standard.

Goods assembled in the United States do – and should – count as domestic production for purposes of the AMCA. Even if domestically-produced goods do not satisfy the FTC standard, that manufacturing activity and the jobs they support are still worthy of protection from wholly-imported end products. And a U.S. manufacturer assembling finished goods domestically is far more likely to source some U.S. components, compared to a foreign manufacturer.

4) Petitions can undermine U.S. trade enforcement orders and benefit China

When petitioners submit their petitions to the USITC, they are requested to indicate the country most likely to benefit from the proposed duty suspension. More often than not, that country is China, which is subject to a broad array of trade remedy orders. It makes no sense to allow the MTB process to undermine our trade enforcement orders.

The 2016 AMCA did not have a mechanism for excluding petitions for which existing trade remedy orders (e.g., anti-dumping, countervailing duties, or safeguard duties, or goods subject to 232 or 301 orders). At a minimum, if an imported good is subject to a trade remedy order, it should not be eligible for an MTB tariff suspension.

The MTB can also be used for more subtle trade remedy evasion. For example, in the most recent MTB, the Olive Growers Council of California filed a protest to a petition from the Association of Food Industries which was seeking tariff suspensions across three 10-digit bulk olive Harmonized Tariff System numbers. The Olive Growers were able to make a compelling case that this petition was precisely to side-step AD and CVD duties assessed against Spanish exporters. The petitioner in this instance (see petition 1903451) also brazenly declared that there was no domestic production available, fortunately the Department of Commerce did not agree and an objection was filed.

V. SEVEN LEGISLATIVE SOLUTIONS TO PROBLEMS

1) Finished goods should be ineligible for tariff suspension.

The tariff free importation of finished products does not benefit US manufacturing. Question 11.c on the USITC petition form asks “Is this product an intermediate good (i.e., is it used to make another product)?”

If the answer is “No” (as it most often was under the previous cycle), then the petition should be disallowed.

2) Companies who do not engage in domestic manufacturing should not be petitioners

The MTB cannot enhance the competitiveness of U.S. manufacturing if the petitioners do not engage in manufacturing. The purpose of the MTB should not be to facilitate cheap importation for retailers, dealers and distributors.

3) Petitioners should have to explain how the input is needed in their U.S. manufacturing and make an affirmative showing that there is no domestic production.

The MTB petition process should adopt lessons from the Section 232 duty exclusion process to further the goal of benefitting US manufacturing. The Section 232 duty exclusion process requires petitioners to (a) explain how the intermediate good is needed for their domestic manufacturing and (b) to document how they determined that there is no domestic production. The MTB petition process does not have these requirements and attracts thousands of petitions that claim, without justification or affirmative search, that there is no domestic source. Those requirements helped guard against baseless claims that no domestic supply was available in the 232 process and should be included in any MTB renewal.

4) Petition filing fees should be charged to discourage frivolous petitions and to pay for the government investigative process

The MTB Petition System is overloaded with too many petitions, many of which are frivolous. Because there is no filing fee, there is no cost to deter this abuse.

In the USITC’s Budget Justification for Fiscal Year 2020, the Commission stated that the MTBPS is a “complex and heavily used system [which] will need significant support resources for the next filing cycle”.²

Federal courts charge filing fees for civil complaints. U.S. Citizenship and Immigration Services (USCIS) charges fees for immigration services to its petitioners. USITC should charge filing fees to for MTBPS petitions that increase government staff workloads and increase importers’ profit margins.

² USITC, Budget Justification Fiscal Year 2020, pg. 9, *available at* https://usitc.gov/documents/fy_2020_cbj_final.pdf

This would have the added benefit of likely eliminating poorly drafted and spurious petitions. When a petition can be filed at zero cost, online and within minutes, government resources are overloaded as petitioners abuse the process. The Congressional Research Service reported that “many MTB petitions contained errors in accurately classifying the merchandise according to the Harmonized Tariff Schedule of the United States. Thus, almost 28% of the petitions were not recommended for inclusion in an MTB because the duty suspensions could not be administered by CBP.”³

5) Disallow invoking confidential business information (CBI) treatment.

Importers claim treatment of confidential business information (CBI) with wanton disregard, making it difficult for domestic manufacturers or the public to determine whether the petitions have merit. None of the questions on the MTBPS petitioners form requests any information meriting treatment as CBI. Instead, the invocations of CBI are used to make it more difficult for domestic manufacturers to scrutinize importers’ petitions. The CBI claims increase the number of unmerited petitions and unnecessarily reduce transparency.

6) Reject petitions if they would undercut an existing trade remedy order.

If a particular HTSUS line is subject to a trade remedy order, then it should be ineligible for duty suspensions under the MTB.

³ Congressional Research Service, Miscellaneous Tariff Bills, updated February 21, 2021, *available at* <https://crsreports.congress.gov/product/pdf/IF/IF10478>