

**SEPTEMBER 14, 2018**

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Bipartisan Miscellaneous Tariff Bill Legislation Becomes Law

Temporarily Suspends Or Reduces Import Duties On Certain Products Through December 2020

On September 13, 2018, President Trump signed the *Miscellaneous Tariff Bill ("MTB") Act of 2018* (H.R. 4318) into law. Congress presented the final MTB legislation to President Trump after the House of Representatives unanimously passed a slightly revised MTB bill in order to reconcile differences between the House and Senate versions.

As reported previously, Congress reinstated the MTB process in 2016 as part of the *American Manufacturing and Competitiveness Act of 2016* (the "Act"). MTB is designed to allow Congress to eliminate or reduce general import duties up to \$500,000 per year for a period of up to three years on imported articles not otherwise available in the United States. Under the revised statute, MTB relief is available to any importer of the particular product at issue and takes effect 30 days after the bill is signed into law. Thus, MTB relief will take effect on October 13 and runs through December 31, 2020. The temporary duty suspensions or reductions are associated with particular products and tariff classifications that are listed in the MTB legislation and which will be identified in Chapter 99 of the Harmonized Tariff Schedule of the United States ("HTSUS").

The Act's bipartisan drafters sought to provide enhanced transparency by shifting the MTB process to the non-partisan U.S. International Trade Commission ("ITC") and away from the traditional Congressional MTB framework. The ITC is an independent Federal agency with broad investigative and advisory responsibilities on matters of trade. Under the new MTB process, interested parties were required to file petitions with the ITC in order to obtain general duty relief for imports of specifically defined products. The new MTB statute also required the ITC to consult with U.S. Customs and Border Protection and the U.S. Department of Commerce on whether petitions should be included in any MTB legislation. The new process also enabled interested parties to file public comments to support, object to, or otherwise comment on a petition. As one example, many



public comments were filed by domestic producers who asserted that they maintained U.S. production capacity to make the product in commercial quantities.

The ITC's role culminated in the preparation of preliminary and final reports to the House Ways and Means and Senate Finance Committees to analyze the petitions and the articles for which duty relief was sought, the industry in the United States that uses the article, historical import data, and whether domestic production of the article occurred in the United States. After the ITC phase, the process shifted back to Congress in August 2017. The House passed an initial MTB bill unanimously (402-0) on January 16, 2018. In July 2018, the Senate approved by voice vote a revised version that removed certain petitions that were determined to be controversial in nature.

During House consideration of the final MTB package, House Ways and Means Chairman Kevin Brady (R-TX) remarked on the "bipartisan" measure that "will deliver much-needed temporary tariff relief to American manufacturers of all sizes, helping them reduce costs, create jobs, and compete globally." Ranking Member Bill Pascrell (D-NJ) noted how MTB legislation has enjoyed "longstanding and broad bipartisan support in both Chambers of Congress" over the years and how MTB is a tool "to bolster United States manufacturing and competitiveness by temporarily reducing or suspending tariffs on certain imported goods and components."

A note on the intersection between MTB and certain Chinese imports is warranted. Any Chinese-origin imports that may be eligible for temporary reduction or elimination of the general rate of duty under MTB still may be subject to an increased 25 percent duty as a result of the investigation by the United States Trade Representative into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974. See, e.g., *Notice of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 40823, 40825 (Aug. 16, 2018) ("Products of China...that are eligible for temporary duty exemptions or reductions under subchapter II to chapter 99, shall be subject to the additional 25 percent *ad valorem* rate of duty imposed by heading 9903.88.02."). See also HTSUS (2018) Revision 11, Chapter 99, Subchapter III, Temporary Modifications Established Pursuant To Trade Legislation at U.S. Note 20(a). This interplay between MTB and Section 301 highlights that cross-border trade and compliance requires heightened attention at this particular time.

In addition, an initial review of the final MTB legislation indicates minimal overlap between specific products that will be eligible for temporary duty reduction under MTB and products that also are subject to increased tariffs on steel (25 percent) and aluminum (10 percent) that were imposed by President Trump under Section 232 of the *Trade Expansion Act of 1962*. Furthermore, the HTSUS disallows application of MTB duty reductions on steel and aluminum products that are covered by Section 232 tariffs. See HTSUS (2018) Revision 11, Chapter 99, Subchapter III at Notes 16(a)(i) and 19(a)(i).



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