

114TH CONGRESS
2D SESSION

S. 2794

To establish a process for the submission and consideration of petitions for temporary duty suspensions and reductions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 13, 2016

Mr. HATCH (for himself, Mr. WYDEN, Mr. PORTMAN, Mrs. McCASKILL, Mr. BURR, Mr. CASEY, Mr. TOOMEY, Mr. BROWN, Mr. CORNYN, Mr. ISAKSON, Mr. FLAKE, and Mr. COATS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To establish a process for the submission and consideration of petitions for temporary duty suspensions and reductions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Manufac-
5 turing Competitiveness Act of 2016”.

6 **SEC. 2. SENSE OF CONGRESS ON THE NEED FOR A MIS-**
7 **CELLANEOUS TARIFF BILL.**

8 (a) FINDINGS.—Congress makes the following find-
9 ings:

1 (1) As of the date of the enactment of this Act,
2 the Harmonized Tariff Schedule of the United
3 States imposes duties on imported goods for which
4 there is no domestic availability or insufficient do-
5 mestic availability.

6 (2) The imposition of duties on such goods cre-
7 ates artificial distortions in the economy of the
8 United States that negatively affect United States
9 manufacturers and consumers.

10 (3) The manufacturing competitiveness of the
11 United States around the world will be enhanced if
12 Congress regularly and predictably updates the Har-
13 monized Tariff Schedule to suspend or reduce duties
14 on such goods.

15 (4) Creating and maintaining an open and
16 transparent process for consideration of petitions for
17 duty suspensions and reductions builds confidence
18 that the process is fair, open to all, and free of
19 abuse.

20 (5) Complying with the Rules of the House of
21 Representatives and the Senate, in particular with
22 clause 9 of rule XXI of the Rules of the House of
23 Representatives and rule XLIV of the Standing
24 Rules of the Senate, is essential to fostering and

1 maintaining confidence in the process for consid-
2 ering a miscellaneous tariff bill.

3 (6) A miscellaneous tariff bill developed under
4 this process will not contain any—

5 (A) congressional earmarks or limited tax
6 benefits within the meaning of clause 9 of rule
7 XXI of the Rules of the House of Representa-
8 tives; or

9 (B) congressionally directed spending items
10 or limited tax benefits within the meaning of
11 rule XLIV of the Standing Rules of the Senate.

12 (7) Because any limited tariff benefits con-
13 tained in any miscellaneous tariff bill following the
14 process set forth by this Act will not have been the
15 subject of legislation introduced by an individual
16 Member of Congress and will be fully vetted through
17 a transparent and fair process free of abuse, it is ap-
18 propriate for Congress to consider limited tariff ben-
19 efits as part of that miscellaneous tariff bill as long
20 as—

21 (A) in the case of a miscellaneous tariff bill
22 considered in the House of Representatives,
23 consistent with the Rules of the House of Rep-
24 resentatives, a list of such limited tariff benefits
25 is published in the reports of the Committee on

1 Ways and Means of the House of Representa-
 2 tives accompanying the miscellaneous tariff bill,
 3 or in the Congressional Record; and

4 (B) in the case of a miscellaneous tariff
 5 bill considered in the Senate, consistent with
 6 the Standing Rules of the Senate—

7 (i) such limited tariff benefits have
 8 been identified through lists, charts, or
 9 other similar means; and

10 (ii) the information identified in
 11 clause (i) has been available on a publicly
 12 accessible congressional website in a
 13 searchable format at least 48 hours before
 14 the vote on the motion to proceed to the
 15 miscellaneous tariff bill or the vote on the
 16 adoption of a report of a committee of con-
 17 ference in connection with the miscella-
 18 neous tariff bill, as the case may be.

19 (8) When the process set forth under paragraph
 20 (7) is followed, it is consistent with the letter and in-
 21 tent of the Rules of the House of Representatives
 22 and the Senate and other related guidance.

23 (b) SENSE OF CONGRESS.—It is the sense of Con-
 24 gress that, to remove the competitive disadvantage to
 25 United States manufacturers and consumers and to pro-

1 mote the competitiveness of United States manufacturers,
 2 Congress should, not later than 90 days after the United
 3 States International Trade Commission issues a final re-
 4 port on petitions for duty suspensions and reductions
 5 under section 3(b)(3)(E), consider a miscellaneous tariff
 6 bill.

7 **SEC. 3. PROCESS FOR CONSIDERATION OF PETITIONS FOR**
 8 **DUTY SUSPENSIONS AND REDUCTIONS.**

9 (a) PURPOSE.—It is the purpose of this section to
 10 establish a process for the submission and consideration
 11 of petitions for duty suspensions and reductions.

12 (b) REQUIREMENTS OF COMMISSION.—

13 (1) INITIATION.—Not later than October 15,
 14 2016, and October 15, 2019, the Commission shall
 15 publish in the Federal Register and on a publicly
 16 available Internet website of the Commission a no-
 17 tice requesting members of the public who can dem-
 18 onstrate that they are likely beneficiaries of duty
 19 suspensions or reductions to submit to the Commis-
 20 sion during the 60-day period beginning on the date
 21 of such publication—

22 (A) petitions for duty suspensions and re-
 23 ductions; and

24 (B) Commission disclosure forms with re-
 25 spect to such duty suspensions and reductions.

1 (2) CONTENT OF PETITIONS.—Each petition
2 for a duty suspension or reduction under paragraph
3 (1)(A) shall include the following information:

4 (A) The name and address of the peti-
5 tioner.

6 (B) A statement as to whether the petition
7 provides for an extension of an existing duty
8 suspension or reduction or provides for a new
9 duty suspension or reduction.

10 (C) A certification that the petitioner is a
11 likely beneficiary of the proposed duty suspen-
12 sion or reduction.

13 (D) An article description for the proposed
14 duty suspension or reduction to be included in
15 the amendment to subchapter II of chapter 99
16 of the Harmonized Tariff Schedule of the
17 United States.

18 (E) To the extent available—

19 (i) a classification of the article for
20 purposes of the amendment to subchapter
21 II of chapter 99 of the Harmonized Tariff
22 Schedule of the United States;

23 (ii) a classification ruling of U.S. Cus-
24 toms and Border Protection with respect
25 to the article; and

1 (iii) a copy of a U.S. Customs and
 2 Border Protection entry summary indi-
 3 cating where the article is classified in the
 4 Harmonized Tariff Schedule of the United
 5 States.

6 (F) A brief and general description of the
 7 article.

8 (G) A brief description of the industry in
 9 the United States that uses the article.

10 (H) An estimate of the total value, in
 11 United States dollars, of imports of the article
 12 for each of the 5 calendar years after the cal-
 13 endar year in which the petition is filed, includ-
 14 ing an estimate of the total value of such im-
 15 ports by the person who submits the petition
 16 and by any other importers, if available.

17 (I) The name of each person that imports
 18 the article, if available.

19 (J) A description of any domestic produc-
 20 tion of the article, if available.

21 (K) Such other information as the Com-
 22 mission may require.

23 (3) REVIEW.—

24 (A) COMMISSION PUBLICATION AND PUB-
 25 LIC AVAILABILITY.—As soon as practicable

1 after the expiration of the 60-day period speci-
2 fied in paragraph (1), but in any case not later
3 than 30 days after the expiration of such 60-
4 day period, the Commission shall publish on a
5 publicly available Internet website of the Com-
6 mission—

7 (i) a list of the petitions for duty sus-
8 pensions and reductions submitted under
9 paragraph (1)(A) that contain the informa-
10 tion required under paragraph (2); and

11 (ii) the Commission disclosure forms
12 with respect to such duty suspensions and
13 reductions submitted under paragraph
14 (1)(B).

15 (B) PUBLIC COMMENT.—

16 (i) IN GENERAL.—The Commission
17 shall publish in the Federal Register and
18 on a publicly available Internet website of
19 the Commission a notice requesting mem-
20 bers of the public to submit to the Com-
21 mission during the 45-day period begin-
22 ning on the date of publication described
23 in subparagraph (A) comments on—

24 (I) the list of the petitions for
25 duty suspensions and reductions pub-

lished by the Commission under subparagraph (A)(i); and

(II) the Commission disclosure forms with respect to such duty suspensions and reductions published by the Commission under subparagraph (A)(ii).

(ii) PUBLICATION OF COMMENTS.—

The Commission shall publish in the Federal Register and on a publicly available Internet website of the Commission the comments of the members of the public received under clause (i).

(C) PRELIMINARY REPORT.—

(i) IN GENERAL.—As soon as practicable after the expiration of the 120-day period beginning on the date of publication described in subparagraph (A), but in any case not later than 30 days after the expiration of such 120-day period, the Commission shall submit to the appropriate congressional committees a preliminary report on the petitions for duty suspensions and reductions submitted under paragraph (1)(A). The preliminary report shall con-

tain the following information with respect
to each petition for a duty suspension or
reduction:

(I) The heading or subheading of
the Harmonized Tariff Schedule of
the United States in which each arti-
cle that is the subject of the petition
for the duty suspension or reduction
is classified, as identified by docu-
mentation supplied to the Commis-
sion, and any supporting information
obtained by the Commission.

(II) A determination of whether
or not domestic production of the arti-
cle that is the subject of the petition
for the duty suspension or reduction
exists, taking into account the report
of the Secretary of Commerce under
subsection (c)(1), and, if such produc-
tion exists, whether or not a domestic
producer of the article objects to the
duty suspension or reduction.

(III) Any technical changes to
the article description of the article
that is the subject of the petition for

1 the duty suspension or reduction that
2 are necessary for purposes of adminis-
3 tration when the article is presented
4 for importation, taking into account
5 the report of the Secretary of Com-
6 merce under subsection (c)(2).

7 (IV) An estimate of the amount
8 of loss in revenue to the United States
9 that would no longer be collected if
10 the duty suspension or reduction
11 takes effect.

12 (V) A determination of whether
13 or not the duty suspension or reduc-
14 tion is available to any person that
15 imports the article that is the subject
16 of the duty suspension or reduction.

17 (VI) The likely beneficiaries of
18 each duty suspension or reduction, in-
19 cluding whether the petitioner is a
20 likely beneficiary.

21 (ii) CATEGORIES OF INFORMATION.—

22 The preliminary report submitted under
23 clause (i) shall also contain the following
24 information:

1 (I) A list of petitions for duty
2 suspensions and reductions that meet
3 the requirements of this Act without
4 modifications.

5 (II) A list of petitions for duty
6 suspensions and reductions for which
7 the Commission recommends technical
8 corrections in order to meet the re-
9 quirements of this Act, with the cor-
10 rection specified.

11 (III) A list of petitions for duty
12 suspensions and reductions for which
13 the Commission recommends modi-
14 fications to the amount of the duty
15 suspension or reduction that is the
16 subject of the petition to comply with
17 the requirements of this Act, with the
18 modification specified.

19 (IV) A list of petitions for duty
20 suspensions and reductions for which
21 the Commission recommends modi-
22 fications to the scope of the articles
23 that are the subject of such petitions
24 to address objections by domestic pro-

1 ducers to such petitions, with the
2 modifications specified.

3 (V) A list of the following:

4 (aa) Petitions for duty sus-
5 pensions and reductions that the
6 Commission has determined do
7 not contain the information re-
8 quired under paragraph (2).

9 (bb) Petitions for duty sus-
10 pensions and reductions with re-
11 spect to which the Commission
12 has determined the petitioner is
13 not a likely beneficiary.

14 (VI) A list of petitions for duty
15 suspensions and reductions that the
16 Commission does not recommend for
17 inclusion in a miscellaneous tariff bill,
18 other than petitions specified in sub-
19 clause (V).

20 (D) ADDITIONAL INFORMATION.—The
21 Commission shall consider any information sub-
22 mitted by the appropriate congressional com-
23 mittees to the Commission relating to moving a
24 petition that is contained in the list referred to
25 in subclause (VI) of subparagraph (C)(ii) of the

1 preliminary report submitted under subpara-
2 graph (C) to a list referred to in subclause (I),
3 (II), (III), or (IV) of subparagraph (C)(ii).

4 (E) FINAL REPORT.—Not later than 60
5 days after the date on which the preliminary re-
6 port is submitted under subparagraph (C), the
7 Commission shall submit to the appropriate
8 congressional committees a final report on each
9 petition for a duty suspension or reduction
10 specified in the preliminary report. The final re-
11 port shall contain with respect to each such pe-
12 tition—

13 (i) the information required under
14 clauses (i) and (ii) of subparagraph (C)
15 and updated as appropriate under sub-
16 paragraph (D); and

17 (ii) a determination of the Commis-
18 sion that—

19 (I) the duty suspension or reduc-
20 tion can be administered by U.S. Cus-
21 toms and Border Protection;

22 (II) the estimated loss in revenue
23 to the United States from the duty
24 suspension or reduction does not ex-
25 ceed \$500,000 in a calendar year dur-

1 ing which the duty suspension or re-
 2 duction would be in effect, as deter-
 3 mined by the Congressional Budget
 4 Office; and

5 (III) the duty suspension or re-
 6 duction is available to any person im-
 7 porting the article that is the subject
 8 of the duty suspension or reduction.

9 (F) EXCLUSIONS.—The appropriate con-
 10 gressional committees may exclude from a mis-
 11 cellaneous tariff bill any petition for a duty sus-
 12 pension or reduction that—

13 (i) is contained in any list referred to
 14 in subclause (I), (II), (III), or (IV) of sub-
 15 paragraph (C)(ii), as updated as appro-
 16 priate under subparagraph (E)(i);

17 (ii) is the subject of an objection from
 18 a Member of Congress; or

19 (iii) is for an article for which there is
 20 domestic production.

21 (G) PROHIBITIONS.—Any petitions for
 22 duty suspensions or reductions that are con-
 23 tained in any list referred to in subclause (V)
 24 or (VI) of subparagraph (C)(ii), as updated as
 25 appropriate under subparagraph (E)(i), or have

1 not otherwise undergone the processes required
2 by this Act shall not be included in a miscella-
3 neous tariff bill.

4 (4) CONFIDENTIAL BUSINESS INFORMATION.—

5 The procedures concerning the release of confiden-
6 tial business information set forth in section 332(g)
7 of the Tariff Act of 1930 (19 U.S.C. 1332(g)) shall
8 apply with respect to information received by the
9 Commission in preparing reports under this sub-
10 section.

11 (5) PROCEDURES.—The Commission shall pre-
12 scribe and publish in the Federal Register and on a
13 publicly available Internet website of the Commis-
14 sion procedures to be complied with by members of
15 the public submitting petitions for duty suspensions
16 and reductions under subsection (b)(1)(A).

17 (c) DEPARTMENT OF COMMERCE REPORT.—Not
18 later than the end of the 90-day period beginning on the
19 date of publication of the petitions for duty suspensions
20 and reductions under subsection (b)(3)(A), the Secretary
21 of Commerce, in consultation with U.S. Customs and Bor-
22 der Protection and other relevant Federal agencies, shall
23 submit to the Commission and the appropriate congres-
24 sional committees a report on each petition for a duty sus-

1 pension or reduction submitted under subsection (b)(1)(A)
2 that includes the following information:

3 (1) A determination of whether or not domestic
4 production of the article that is the subject of the
5 petition for the duty suspension or reduction exists
6 and, if such production exists, whether or not a do-
7 mestic producer of the article objects to the petition
8 for the duty suspension or reduction.

9 (2) Any technical changes to the article descrip-
10 tion that are necessary for purposes of administra-
11 tion when articles are presented for importation.

12 **SEC. 4. REPORT ON EFFECTS OF DUTY SUSPENSIONS AND**
13 **REDUCTIONS ON UNITED STATES ECONOMY.**

14 (a) IN GENERAL.—Not later than May 1, 2018, and
15 May 1, 2020, the Commission shall submit to the appro-
16 priate congressional committees a report on the effects on
17 the United States economy of duty suspensions and reduc-
18 tions enacted pursuant to this Act, including a broad as-
19 sessment of the economic effects of such duty suspensions
20 and reductions on producers, purchasers, and consumers
21 in the United States, using case studies describing such
22 effects on selected industries or by type of article as avail-
23 able data permit.

24 (b) RECOMMENDATIONS.—The Commission shall also
25 solicit and append to the report required under subsection

1 (a) recommendations with respect to those domestic indus-
 2 try sectors or specific domestic industries that might ben-
 3 efit from permanent duty suspensions and reductions, ei-
 4 ther through a unilateral action of the United States or
 5 through negotiations for reciprocal tariff agreements, with
 6 a particular focus on inequities created by tariff inver-
 7 sions.

8 (c) FORM OF REPORT.—Each report required by this
 9 section shall be submitted in unclassified form, but may
 10 include a classified annex.

11 **SEC. 5. PUBLICATION OF LIMITED TARIFF BENEFITS IN**
 12 **THE HOUSE OF REPRESENTATIVES AND THE**
 13 **SENATE.**

14 (a) HOUSE OF REPRESENTATIVES.—

15 (1) IN GENERAL.—The chair of the Committee
 16 on Ways and Means of the House of Representatives
 17 shall include a list of limited tariff benefits con-
 18 tained in a miscellaneous tariff bill in the report to
 19 accompany such a bill or, in a case where a miscella-
 20 neous tariff bill is not reported by the committee,
 21 shall cause such a list to be printed in the appro-
 22 priate section of the Congressional Record.

23 (2) LIMITED TARIFF BENEFIT DEFINED.—For
 24 purposes of this subsection and consistent with
 25 clause 9 of rule XXI of the Rules of the House of

1 Representatives, as in effect during the One Hun-
2 dred Fourteenth Congress, the term “limited tariff
3 benefit” means a provision modifying the Har-
4 monized Tariff Schedule of the United States in a
5 manner that benefits 10 or fewer entities.

6 (b) SENATE.—

7 (1) IN GENERAL.—The chairman of the Com-
8 mittee on Finance of the Senate, the Majority Lead-
9 er of the Senate, or the designee of the Majority
10 Leader of the Senate, shall provide for the publica-
11 tion in the Congressional Record of a certification
12 that—

13 (A) each limited tariff benefit contained in
14 a miscellaneous tariff bill considered in the Sen-
15 ate has been identified through lists, charts, or
16 other similar means; and

17 (B) the information identified in subpara-
18 graph (A) has been available on a publicly ac-
19 cessible congressional website in a searchable
20 format at least 48 hours before the vote on the
21 motion to proceed to the miscellaneous tariff
22 bill or the vote on the adoption of a report of
23 a committee of conference in connection with
24 the miscellaneous tariff bill, as the case may be.

1 (2) SATISFACTION OF SENATE RULES.—Publi-
 2 cation of a certification in the Congressional Record
 3 under paragraph (1) satisfies the certification re-
 4 quirements of paragraphs 1(a), 2(a), and 3(a) of
 5 rule XLIV of the Standing Rules of the Senate.

6 (3) LIMITED TARIFF BENEFIT DEFINED.—For
 7 purposes of this subsection and consistent with rule
 8 XLIV of the Standing Rules of the Senate, as in ef-
 9 fect during the One Hundred Fourteenth Congress,
 10 the term “limited tariff benefit” means a provision
 11 modifying the Harmonized Tariff Schedule of the
 12 United States in a manner that benefits 10 or fewer
 13 entities.

14 (c) ENACTMENT AS EXERCISE OF RULEMAKING
 15 POWER OF HOUSE OF REPRESENTATIVES AND SEN-
 16 ATE.—This section is enacted by Congress—

17 (1) as an exercise of the rulemaking power of
 18 the House of Representatives and the Senate, re-
 19 spectively, and as such are deemed a part of the
 20 rules of each House, respectively, and such proce-
 21 dures supersede other rules only to the extent that
 22 they are inconsistent with such other rules; and

23 (2) with full recognition of the constitutional
 24 right of either House to change the rules (so far as
 25 relating to the procedure of that House) at any time,

1 in the same manner, and to the same extent as in
2 the case of any other rule of that House.

3 **SEC. 6. JUDICIAL REVIEW PRECLUDED.**

4 The exercise of functions under this Act shall not be
5 subject to judicial review.

6 **SEC. 7. DEFINITIONS.**

7 In this Act:

8 (1) APPROPRIATE CONGRESSIONAL COMMIT-
9 TEES.—The term “appropriate congressional com-
10 mittees” means the Committee on Ways and Means
11 of the House of Representatives and the Committee
12 on Finance of the Senate.

13 (2) COMMISSION.—The term “Commission”
14 means the United States International Trade Com-
15 mission.

16 (3) COMMISSION DISCLOSURE FORM.—The
17 term “Commission disclosure form” means, with re-
18 spect to a petition for a duty suspension or reduc-
19 tion, a document submitted by a petitioner to the
20 Commission that contains the following:

21 (A) The contact information for any known
22 importers of the article to which the proposed
23 duty suspension or reduction would apply.

24 (B) A certification by the petitioner that
25 the proposed duty suspension or reduction is

1 available to any person importing the article to
2 which the proposed duty suspension or reduc-
3 tion would apply.

4 (C) A certification that the petitioner is a
5 likely beneficiary of the proposed duty suspen-
6 sion or reduction.

7 (4) DOMESTIC PRODUCER.—The term “domes-
8 tic producer” means a person that demonstrates
9 production, or imminent production, in the United
10 States of an article that is identical to, or like or di-
11 rectly competitive with, an article to which a petition
12 for a duty suspension or reduction would apply.

13 (5) DOMESTIC PRODUCTION.—The term “do-
14 mestic production” means the production of an arti-
15 cle that is identical to, or like or directly competitive
16 with, an article to which a petition for a duty sus-
17 pension or reduction would apply, for which a do-
18 mestic producer has demonstrated production, or im-
19 minent production, in the United States.

20 (6) DUTY SUSPENSION OR REDUCTION.—The
21 term “duty suspension or reduction” refers to an
22 amendment to subchapter II of chapter 99 of the
23 Harmonized Tariff Schedule of the United States
24 for a period not to exceed 3 years that—

1 (A) extends an existing temporary duty
 2 suspension or reduction on an article under
 3 that subchapter; or

4 (B) provides for a new temporary duty
 5 suspension or reduction on an article under
 6 that subchapter.

7 (7) LIKELY BENEFICIARY.—The term “likely
 8 beneficiary” means an individual or entity likely to
 9 utilize, or benefit directly from the utilization of, an
 10 article that is the subject of a petition for a duty
 11 suspension or reduction.

12 (8) MEMBER OF CONGRESS.—The term “Mem-
 13 ber of Congress” means a Senator or Representative
 14 in, or Delegate or Resident Commissioner to, Con-
 15 gress.

16 (9) MISCELLANEOUS TARIFF BILL.—The term
 17 “miscellaneous tariff bill” means a bill of either
 18 House of Congress that contains only duty suspen-
 19 sions and reductions and related technical correc-
 20 tions that—

21 (A) are included in the final report of the
 22 Commission submitted to the appropriate con-
 23 gressional committees under section 3(b)(3)(E),
 24 except for—

1 (i) petitions for duty suspensions or
2 reductions that the Commission has deter-
3 mined do not contain the information re-
4 quired under section 3(b)(2);

5 (ii) petitions for duty suspensions and
6 reductions with respect to which the Com-
7 mission has determined the petitioner is
8 not a likely beneficiary; and

9 (iii) petitions for duty suspensions and
10 reductions that the Commission does not
11 recommend for inclusion in the miscella-
12 neous tariff bill;

13 (B) are not excluded under section
14 3(b)(3)(F); and

15 (C) otherwise meet the applicable require-
16 ments of this Act.

○