

CRS Report for Congress

Tariff Modifications: Miscellaneous Duty Suspension Bills

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Summary

Companies often propose that Members of Congress introduce bills seeking to suspend or reduce tariffs on certain imports. The vast majority of these commodities are chemicals, raw materials, or other components used in the manufacturing process. The rationale for these requests, in general, is that they help producers reduce costs, thus making their products more competitive. In turn, these cost reductions can be passed on to the consumer.

In recent congressional practice, House Ways and Means and Senate Finance Committees, the committees of jurisdiction over tariffs, have combined duty suspension bills and other technical trade provisions into larger pieces of legislation known as miscellaneous trade and technical corrections bills (MTBs). Before inclusion in an MTB, individual legislative proposals are reviewed by trade subcommittee staff and several executive branch agencies to ensure that they are noncontroversial (generally, that no domestic producer objects) and relatively revenue-neutral (revenue loss of no more than \$500,000 per item).

In the 109th Congress, on December 8, 2006, the House passed H.R. 6406, a trade package that included suspension of duties on about 380 products until December 31, 2009, and pursuant to the rule (H.Res. 1100), inserted it into H.R. 6111, a previously House-passed tax extension package. The Senate approved H.R. 6111 on December 9, and it was signed by the President on December 20, 2006 (P.L. 109-432). Tariff suspensions on about 300 other products were previously approved as inserted into H.R. 4, The Pension Protection Act of 2006 (P.L. 109-280).

In the 110th Congress, congressional earmark reform legislation in both Houses also seeks to target “limited tariff benefit[s],” defined as “a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.” On January 5, 2007, the House adopted earmark reform parliamentary procedures upon its agreement to Title IV of H.Res. 6. The measure would make it out of order to consider bills containing earmarks, limited tax benefits, or limited tariff benefits unless certain reporting requirements are met by the committee of jurisdiction and the Member proposing the legislation. The House earmark reform procedures are now in effect because a simple resolution, such as H.Res. 6, is only effective in the chamber that adopts it, and thus requires no further action.

On January 18, 2007, the Senate passed S. 1, the Legislative Transparency and Accountability Act of 2007. This bill includes similar language describing limited tariff benefits and reporting requirements, but it also proposes that the list of earmarks and other benefits should be posted “on the Internet in a searchable format to the general public for at least 48 hours before consideration of the bill or joint resolution.” Since the Senate version is in a bill, these measures cannot go into effect until the House passes its version, both the House and Senate reach agreement on all the provisions, and the bill becomes law. This report, which supercedes CRS Report RS21406, will be updated as events warrant.

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Background

The Constitution gives Congress the primary authority over trade policy; therefore, Congress must approve any modifications to the Harmonized Tariff Schedule (HTS). Constituents, often representing domestic industry associations or manufacturers, will sometimes ask Members to introduce legislation proposing to reduce, repeal, or temporarily suspend duties on certain imports. Since the early 1980s, the House Ways and Means and Senate Finance committees, the primary committees of jurisdiction on trade matters, have tended to incorporate duty suspensions into larger pieces of legislation known as miscellaneous trade and technical corrections bills (MTBs). These larger trade packages include modifications to the HTS (such as suspensions of duties on various products), specific instructions to U.S. Customs and Border Protection (CBP) regarding certain entries of commodities (largely where the CBP may have made an error in classification or dealing with other technical issues in entries of goods), and minor technical corrections to trade laws.

This report focuses briefly on recent legislative actions on duty suspensions, the current procedure by which congressional committees evaluate and select commodities for inclusion MTB legislation, and some of the reasons that Congress has approved them.

Duty Suspension Legislation

The introduction of MTB legislation in its current omnibus format appears to have originated in the 97th Congress with H.R. 4566 (Gibbons, P.L. 97-446, enacted January 12, 1983), which proposed to “reduce certain duties, to suspend temporarily certain duties, to extend certain existing suspensions of duties, and for other purposes.” Prior to that date, even though committee hearings were often held on several duty suspension bills at one time, Congress many times acted on them individually.

109th Congress Legislation

On March 10, 2005, then-House Ways and Means Trade Subcommittee Chairman E. Clay Shaw announced the subcommittee’s request that all Members submit tariff legislation or miscellaneous changes to trade laws by April 28, 2005.¹

¹ “Shaw Requests Introduction of Miscellaneous Tariff and Duty Suspension Bills by April (continued...)”

Then-Senate Finance Committee Chairman Chuck Grassley and then-Ranking Member Max Baucus “invited Senators to submit items for possible inclusion in a miscellaneous tariff bill” by May 26, 2006.² In both Houses, Members were asked to introduce these measures as stand-alone bills, as is the current standard practice.

On March 14, 2006, H.R. 4944, the “Miscellaneous Trade and Technical Corrections Act of 2006,” was introduced and considered under suspension of House rules.³ On March 15, the measure passed the House by a vote of 412-2. The Senate Finance Committee did not report out an MTB, but published the text of each stand-alone bill and requested public comments via the committee’s website.⁴

On July 28, 2006, legislation suspending or reducing duties until December 31, 2009, for about 300 products, along with a number of other trade provisions, was inserted into pension legislation before the House. H.R. 4 (Boehner), the “Pension Protection Act of 2006,” passed the House on the same date by a vote of 279-131. The bill was subsequently received in the Senate, and passed on August 3 by a vote of 93-5. On August 17, the President signed the bill (which became P.L. 109-280). According to Ways and Means committee staff, H.R. 4, as enacted, included those duty suspensions listed in H.R. 4944 for which corresponding stand-alone legislation had been introduced in the Senate.

On December 7, 2006, the House and Senate reached an agreement on trade legislation to be included in a larger legislative package of tax break extensions. As part of the House-Senate compromise, H.R. 6406 (Thomas, introduced December 7, 2006) proposed to suspend or reduce tariffs (also until December 31, 2009) on about 380 products. H.R. 6406 passed the House on December 8, 2006, by a vote of 212-184. Pursuant to the rule providing for House consideration of H.R. 6406 (H.Res. 1100), following passage, the bill was appended to a previously House-passed tax extension package (H.R. 6111, Tauscher). The Senate subsequently passed H.R. 6111, including the duty suspension legislation as well as other trade and tax provisions, on December 9, 2006, by a vote of 79-9. The President signed H.R. 6111 on December 20, 2006 (P.L. 109-432).

110th Congress Legislation⁵

House Legislation. On January 5, 2007, the House adopted earmark reform parliamentary procedures, also affecting “limited tariff benefits,” in section 404 of

¹ (...continued)

28, 2005.” Advisory from the Committee on Ways and Means, No. TR-1, March 10, 2005.

² U.S. Senate, Committee on Finance, Dear Colleague Letter. “Miscellaneous Tariff Bill, Deadline to Introduce Bills — May 26, 2006.”

³ Miscellaneous Trade and Technical Corrections Act of 2005, Congressional Record [daily edition], v. 152, March 14, 2006, pp. H893-940.

⁴ U.S. Senate, Committee on Finance. “Finance Committee Requests Written Comments on Miscellaneous Tariff Measures.” July 11, 2006. [<http://www.finance.senate.gov/sitepages/2006MTB.htm>].

⁵ Sandy Streeer, Analyst in American National Government, contributed to this section.

H.Res 6 (Adopting the Rules of the House of Representatives). The resolution defined a limited tariff benefit as “a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.”

The rule provides that, in order to be considered on the House floor, a bill or joint resolution reported by a committee must include in the report a list (not necessarily comprehensive) of congressional earmarks, limited tax benefits, and *limited tariff benefits* in the bill or the report, along with the name of the Member, Delegate, or Resident Commissioner requesting them, or a statement that the proposal does not contain them. Similarly, if a bill or joint resolution is not reported by the committee, prior to floor consideration, the chairman of each committee of initial referral must cause a similar list of benefits and requesting Members to be printed in the Congressional Record.⁶ In the case of conference reports, a list of benefits included in the conference report or accompanying joint explanatory statement and the requesting Members must be included in the joint explanatory statement in order to consider the conference report.⁷

The resolution also provides that any Member, Delegate, or Resident Commissioner requesting a limited tariff benefit must provide a written statement to the chairman and ranking minority member of the committee of jurisdiction including (1) the name of the sponsor, (2) identification of the individual or entities “reasonably anticipated to benefit” from the measure, (3) the purpose of the limited tariff benefit, and (4) a certification that the sponsoring Member or spouse has no financial interest in the benefit. The committees of jurisdiction are directed to maintain the written disclosures and make the statements regarding limited tariff benefits included in a committee-reported bill or conference report “open for public inspection.”

A simple resolution such as H.Res. 6 is only effective in the chamber that adopts it, and, once adopted, requires no further action. The House earmark procedures — including procedures for limited tariff benefits — are, therefore, now in effect.

Senate Bill. On January 18, 2007, the Senate passed S. 1. Title I, the Legislative Transparency and Accountability Act of 2007, includes two provisions regarding tariffs: (1) section 103, Congressional Earmark Reform; and (2) section 404, Prohibition on Financial Gain from Earmarks by Members, Immediate Family of Members, Staff of Members, or Immediate Family of Staff of Members.

The Senate language is similar to the House resolution in that it requires the committees of jurisdiction to provide a list of the sponsors and beneficiaries prior to consideration of the applicable legislation. The Senate bill, however, further seeks to require that the lists of benefits and congressional sponsors be made available to

⁶ This rule also applies to certain committee amendments to be considered on the floor. The Senate bill does not cover amendments.

⁷ The House may waive this rule by unanimous consent (that is, if no Member objects) or by a motion to suspend the rules and pass the measure, which requires a two-thirds vote to adopt. The rule also provides a mechanism for the House to decide on a case-by-case basis whether to adopt a special rule waiving this new rule, which requires a majority vote.

the general public on the Internet “in a searchable format” at least 48 hours prior to consideration on the floor (sec. 103).⁸ Similarly, the written statements by sponsors would also be required to be posted on the Internet “not later than 48 hours after receipt [of] such information.”

S. 1. also (sec. 404) seeks to prohibit Members, their spouses, and immediate family members from financially benefitting from congressional earmarks (including limited tariff benefits). Any employees on the staff, their spouses, and immediate family members of the sponsor would also be prohibited from receiving financial benefits.

Since the Senate’s provisions are in a bill, they can not go into effect until the House passes its version, both the House and Senate reach agreement on all the provisions, and the bill becomes law. However, since the Senate rules propose to guide only the Senate’s business, they do not need to be reconciled with the House rules.

Committee, Agency, and Executive Review

Current practice generally involves reporting out one MTB per Congress. In most congresses, the House Ways and Means and Senate Finance committee chairs have sent out Dear Colleague letters to all Members inviting them to introduce stand-alone bills on proposed duty suspensions several months before an MTB is expected to be reported out of committee. The MTB, when introduced, includes all committee-approved measures, including temporary duty suspensions. The stated legislative goal of the committees is for an MTB to be non-controversial so that the measure will pass both Houses by unanimous consent or under suspension of the rules.⁹

In recent Congresses, due to the number of provisions introduced (for example, about 470 new duty suspensions were introduced in the House in the 109th Congress), the committees of jurisdiction have tended to request comments from interested parties at the subcommittee level, rather than holding hearings on these bills. In practice, the subcommittee considers duty suspensions for inclusion in the MTB only if the corresponding goods or materials are deemed “noncontroversial” or “noncompetitive,” meaning that (1) there is no domestic producer objecting to the duty suspension, and (2) the suspension or reduction of the tariff is seen to be in the interest of U.S. “downstream” manufacturers (and theoretically, consumers).

⁸ In the Senate, there would be no motion to waive the application of the point of order as is the case with points of order under the Congressional Budget Act. However, the Senate could, on appeal, overrule the chair’s ruling on this new point of order (requires a majority vote) or adopt a motion to suspend the rules (requires a two-thirds vote). In order to propose such a motion, the sponsor must notify the Senate in writing at least one day prior to its consideration.

⁹ See U.S. Senate, Committee on Finance, Dear Colleague Letter. “Miscellaneous Tariff Bill, Deadline to Introduce Bills — May 26, 2006.”

Furthermore, the volume of imports and corresponding revenue loss must be “revenue neutral” or generally not more than \$500,000 per commodity. For example, the Congressional Budget Office estimated that all duty suspensions and extensions to suspensions in House-passed H.R. 4944 (109th Congress) would cost the government only about \$275 million in lost revenue over five years.¹⁰

Agency and Executive Review

After duty suspension bills are introduced and referred, they are reviewed by trade subcommittee staff, who, in turn, solicit comments from the Administration (including the United States Trade Representative, CBP, and the Department of Commerce), and the International Trade Commission (ITC). Committee staff often solicit public comments directly, but may do so through administration channels or the ITC. Duty suspensions that do not meet the above criteria are generally filtered out in this process.

International Trade Commission’s Role. Generally, the ITC is the first agency that provides a response to the committees, and is the only agency directly required to do so by statute.¹¹ The ITC usually contacts companies and industry groups through its Office of Industries (either through direct contact or by sending out a questionnaire) to solicit responses from interested parties, especially looking for U.S. producers of similar goods as those targeted for duty suspensions.

The ITC issues “congressional bill reports” on the stand-alone bills which they forward to the committees and share with relevant agencies in the Executive Branch.¹² These reports provide information on the dollar amount and volume of trade; estimated revenue loss if the tariff is suspended; and technical information, including proper nomenclature, HTS heading, and Chemical Abstracts number, if applicable. The reports also list the proponent company’s name, other domestic firms contacted by the ITC, and each firm’s position on the proposal. If a company writes a letter either supporting or opposing the duty suspension, a copy of the letter is also attached.¹³

¹⁰ Congressional Budget Office. Cost Estimate. H.R. 4944, Miscellaneous Trade and Technical Corrections Act of 2006, May 11, 2006. Many, if not all, of the duty suspensions included in H.R. 4944 were the measures ultimately passed in P.L. 109-280 and P.L. 109-432 as discussed above.

¹¹ 19 U.S.C. 1332 (d) and (g).

¹² The ITC also publishes congressional bill reports on the Internet. See [http://www.usitc.gov/tata/hts/other/rel_doc/bill_reports/index.htm].

¹³ The ITC takes no official position on duty suspension measures, but relays any domestic company support or objections to committee staff. An example of an instance in which an objection has been raised can be found in U.S. International Trade Commission, Memorandum on Proposed Tariff Legislation of the 109th Congress on S. 791 (Santorum) on a proposed duty suspension on plasma flat panel screen assemblies for use in televisions ([http://hotdocs.usitc.gov/tata/hts/other/rel_doc/bill_reports/s-0791.pdf]). The ITC report on S. 701 (Lautenberg) proposing a duty suspension on sorbic acid is an example of an instance in which no domestic opposition was noted ([<http://hotdocs.usitc.gov/tata/hts/other/>]
(continued...))

Administration’s Response. The overall administration response is coordinated by the Department of Commerce (Commerce). Analysts at Commerce also research the targeted commodities, either independently or in conjunction with the ITC, depending on the time frame. With regard to comments on duty suspensions, Commerce generally does not object unless a U.S. producer of a targeted commodity is found. In most cases, intra-company transfers (instances in which a multinational with a subsidiary in the United States imports a product manufactured in a plant owned by the same company overseas) are also not opposed, even if a like product is manufactured in the United States.

Customs and Border Protection also comments on duty suspensions, largely by recommending reclassifications or changes in nomenclature for ease in administering the proposed tariff changes. CBP has a formal agreement to share this information with the ITC, and may also provide information to other agencies. However, if certain measures impact CBP more directly (e.g., changes in duty drawback statutes, legislative responses to CBP rulings, liquidations and reliquidations, or permanent duty suspensions), CBP will generally communicate directly to the committees on a confidential basis.

The Office of the United States Trade Representative (USTR) may also comment on individual duty suspension bills, but generally focuses on larger issues in the legislation that would more permanently affect U.S. trade policy. However, USTR officials indicate that the administration usually prefers that any tariff modifications in MTBs are temporary, so that more permanent revisions of duties can continue to be used in trade negotiations to seek reciprocal tariff benefits for U.S. exports.

Policy Considerations

Tariffs on most U.S. and foreign goods have been revised gradually downward over a period of almost seven decades as a result of bilateral and multilateral trade negotiations. Many economists believe that lower foreign tariffs benefit U.S. exporters because they make U.S. goods more competitive in foreign markets, and that lower U.S. tariffs can benefit domestic manufacturers and consumers because the cost savings on imported goods may be passed on consumers or to other “downstream” producers, ultimately resulting in lower costs of the finished products. However, tariffs may also be used protectively in an effort to help domestic industries remain competitive — especially those considered vulnerable to foreign imports, such as agriculture, textiles, and steel.

Thus, supporters of duty suspensions point out that since they are largely requested on chemicals and other production inputs, they are a significant means of reducing manufacturing costs, they make domestic “downstream” goods more competitive. In turn, the cost savings can ultimately be passed on to consumers in the form of lower costs for finished products. Opponents, however, view them as an

¹³ (...continued)
rel_doc/bill_reports/s-0698.pdf]).

increasingly popular means by which Congress confers a benefit on business constituents, and point to instances in which competing domestic manufacturers have been harmed, despite the efforts of the subcommittee and administrative agencies to control their impact.

Despite the efforts of House and Senate committees to ensure the neutrality of MTBs, insertion of controversial measures has held up consideration in the past, especially in the Senate. However, these measures have largely dealt with trade policy concerns rather than duty suspensions. For example, the last MTB reported out of the Senate, first introduced in 2002, faced opposition from Senator Richard Shelby, who placed a hold on the bill because it did not include a provision to roll back preferential access previously given to beneficiaries of the Caribbean Basin Trade Partnership Act in the Trade Act of 2002 (P.L. 107-210).¹⁴ Other provisions, including one proposing to grant normal trade relations status to Laos, one to repeal the Antidumping Act of 1916 (pursuant to a WTO ruling) and another providing a trust for U.S. wool producers also met with objections.¹⁵ Ultimately, the bill passed in late 2004 (P.L. 108-429). The two-year legislative fight reportedly led to the reluctance of then-Chairman Grassley to report out a miscellaneous trade bill in the 109th Congress.¹⁶

Reasons for Passage. Due to the requirement that suspensions are “non-controversial,” requests that seem to give one domestic company or industry a competitive advantage over another, or that meet with opposition from a domestic producer, are generally not considered for inclusion in an MTB. However, an historical review of MTB legislation shows there are several reasons that duty suspensions have merited congressional attention.

First, in some cases, a higher tariff rate may apply to a relatively noncompetitive product because it is aggregated in a Harmonized Tariff Schedule (HTS) heading or subheading with similar commodities that are considered more competitive. This is often the case where certain chemical compounds are concerned.

Second, there might be no current domestic production of a commodity, or it might not be produced in sufficient quantities to satisfy domestic demand. As a result, U.S. producers who use the commodity as manufacturing input may have to depend on imports. In this case, a duty suspension would lower the overall price of the good, and the savings could be passed along to downstream producers and consumers.

¹⁴ The Senator insisted that the preferential access of socks from Caribbean nations needed to be rolled back because it was harmful to Alabama sock producers. Letter to Senator Charles Grassley, Chairman of the Senate Finance Committee, from Senators Richard Shelby and Jeff Sessions, October 4, 2002.

¹⁵ Inside U.S. Trade, “Miscellaneous Tariff Bill Approved, Supporters Seek New Approach,” November 26, 2004.

¹⁶ Inside U.S. Trade, “Grassley Likely to Work Miscellaneous Trade Bill if House Acts,” February 10, 2006.

Third, the duty rate of a component essential in the manufacture of a domestic product may be higher than that on the comparable imported finished good. One example of this was a case in which casein button blanks used by U.S. button manufacturers were imported at 22.1% *ad valorem*, while finished buttons were imported at a rate of 6.9% *ad valorem*. Domestic producers complained that they were put at a competitive disadvantage *vis-a-vis* foreign manufacturers of the same product because of the higher duty rate for the raw material.¹⁷

Fourth, multinational corporations sometimes manufacture commodities at foreign subsidiaries and import them to be used as components in domestically produced merchandise. For example, a U.S. automobile manufacturer may fabricate some of its car parts in a plant in Guatemala, and then import the parts into the United States, where it assembles the finished product. Congress sometimes considers duty suspensions in these cases, because the importing company would probably not purchase it from a domestic producer.

Fifth, nonprofit associations may wish to import an item and request a one-time duty suspension for the product. For example, churches have sometimes requested duty-free status for pipe organs purchased from Europe, and an educational institution has been allowed duty-free status for parts used in the construction of a telescope.

A sixth, less frequent, reason for congressional approval of duty suspension legislation is compelling national interest. For example, in 1942, the 77th Congress considered the suspension of import duties on all scrap metal because the War Production Board predicted a shortage of as much as 6.5 million tons of metal necessary for the defense industry to operate its open hearth and electric furnaces at full capacity.¹⁸ The Board recommended that all barriers to importing these metals be dropped. The bill passed both chambers by unanimous consent.

¹⁷ P.L. 97-446, 96 Stat. 2329.

¹⁸ U.S. Congress. Senate. Committee on Finance. *Hearing to Suspend Tariffs on Scrap Metals; to Amend the Internal Revenue Code Relating to Production of Alcohol; to Amend Internal Revenue Code Relating to the Leakage and Evaporation of Distilled Spirits*, 77th Congress, Second Session, March 5, 1942.

Miscellaneous Trade Legislation, 97th Congress to the Present

Congress	Bill No./Sponsor	Reports	Status
109 th	H.R. 6406 (Thomas)/H.R. 6111 (Tauscher).	No published reports.	12/8/2006: H.R. 6406 passed House. 12/9/2006: H.R. 6111 (including provisions of 6406) passed Senate.
109 th	H.R. 4 (Boehner) contained about 300 duty suspension measures.	No published reports.	8/17/2006: P.L. 109-280, the Pension Protection Act of 2006.
109 th	H.R. 4944 (Shaw)	No published reports.	3/15/2006: passed House.
108 th	H.R. 1047 (Crane)	H.Rept. 108-771 (conference report)	12/3/2004: P.L. 108-429, the Miscellaneous Trade and Technical Corrections Act of 2004.
107 th	H.R. 5385 (Crane)	No published reports.	10/7/2002: passed House.
106 th	H.R. 4868 (Crane)	H.Rept. 106-789 S.Rept. 106-503	11/9/2000: P.L. 106-476, the Tariff Suspension and Trade Act of 2000.
106 th	H.R. 435 (Archer)	see H.Rept. 105-367 (on related bill H.R. 2622 in 105th). see S.Rept. 106-2 (on related bill S. 262)	6/25/1999: P.L. 106-36, the Miscellaneous Tariff and Technical Correction Act of 1999.
105 th	H.R. 4856 (Archer)	see H.Rept. 105-367 (on rel. bill H.R. 2622). see S.Rept. 105-356 (on rel. bill H.R. 4342)	10/20/1998: passed House.
105 th	H.R. 4342 (Crane)	H.Rept. 105-671; S.Rept. 105-356	8/4/1998: passed House.
104 th	H.R. 3815 (Crane)	H.Rept. 104-718 S.Rept. 104-393	10/11/1996: P.L. 104-295, the Miscellaneous Trade and Technical Corrections Act of 1996.
103 rd	H.R. 5110 (Gephardt)	H.Rept. 103-826, parts 1 and 2. (See S.Rept. 103-421 on related bill S. 2467)	12/8/1998: became P.L. 103-465. Uruguay Round Implementation bill; see Subtitle B, Tariff Modifications, secs. 112-116.
102 nd	H.R. 4318 (Gibbons)	H.Rept. 102-634	7/31/1992: passed House.

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Congress	Bill No./Sponsor	Reports	Status
101 st	H.R. 1594 (Gibbons)	see H.Rept.101-427 (on related bill H.R. 4328) S.Rept. 101-252; H.Rept. 101-650 (conf. rpt.)	8/20/1990: P.L. 101-382, the Customs and Trade Act of 1990.
100 th	H.R. 4848 (Rostenkowski)	see H.Rept. 100-40 (on rel. bill H.R. 3); H.Rept. 100-576 (conf. rpt.)	8/23/1988: P.L. 100-418, subtitle G, Tariff Provisions
98 th	H.R. 3398 (Gibbons)	H.Rept. 98-267; S.Rept. 98-308	10/30/1984: P.L. 98-573, the Trade and Tariff Act of 1984, Title 1.
97 th	H.R. 4566 (Gibbons)	H.Rept. 97-257 S.Rept. 97-564	10/12/1983: P.L. 97-446, the Educational, Scientific, and Cultural Materials Importation Act of 1982