

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue and has a dark blue top cap and bottom base. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The text is centered within the hourglass.

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Tariff Modifications: Miscellaneous Duty Suspension Bills

Vivian C. Jones, Foreign Affairs, Defense, and Trade Division

January 8, 2008

Abstract. This report focuses 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.

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Tariff Modifications: Miscellaneous Tariff Bills

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Summary

Constituent importers often request that Members of Congress introduce bills seeking to suspend or reduce tariffs on certain imports on their behalf. The vast majority of these commodities are chemicals, raw materials, or other components used as inputs in the manufacturing process. The rationale for these requests, in general, is that they help domestic producers of the downstream goods 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 these duty suspension bills and other technical trade provisions into larger pieces of legislation known as miscellaneous tariff bills (MTBs). Before inclusion in an MTB, the individual legislative proposals introduced by Members 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).

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

In the first session of the 110th Congress, congressional ethics and earmark reform legislation also targeted “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.” This legislation amended House and Senate rules to make it out of order to consider bills containing earmarks, limited tax benefits, or *limited tariff benefits* unless certain disclosure and reporting requirements are met by the Member proposing the legislation and the committees of jurisdiction.

On November 1, 2007, the House Ways and Means Trade Subcommittee signaled that a miscellaneous trade bill will be considered in the second session of the 110th Congress by issuing an advisory calling for House Members to submit legislative proposals for inclusion in the next MTB by December 14, 2007. The House advisory gave no specific time line for the bill’s introduction. The Senate Finance Committee has not issued a call for MTB legislation as yet.

This report 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.

MTB 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 a time, Congress tended to act on them individually.

In the 110th Congress, the House Ways and Means Trade Subcommittee signaled that it plans to introduce a miscellaneous trade bill in the second session by issuing an advisory calling for House Members to submit legislative proposals for inclusion in the next MTB by December 14, 2007. The advisory gave no specific time line for the bill’s introduction or consideration. The Senate Finance Committee has not issued a call for MTB proposals as yet.

109th Congress Legislation

On July 28, 2006, legislation suspending or reducing duties until December 31, 2009 on 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, the law included duty suspensions for which corresponding stand-alone legislation had been introduced House and 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 additional 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).

“Limited Tariff Benefits” in 110th Congress Ethics Legislation

House Legislation

On January 5, 2007, the House adopted earmark reform parliamentary procedures, also affecting “limited tariff benefits,” in section 404 of 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.” 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.¹

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 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 certifying 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. 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.²

The resolution also provides that any Member, Delegate, or Resident Commissioner requesting a limited tariff benefit must provide a written disclosure 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 disclosures and make the statements regarding limited tariff benefits included in a committee-reported bill or conference report “open for public inspection.”

¹ H.Res. 6, sec. 404.

² 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.

Senate Legislation

On January 18, 2007, the Senate passed S. 1. Title I, the Legislative Transparency and Accountability Act of 2007, included disclosure requirements for congressionally directed spending similar to those passed in the House. An amended version of S. 1. was considered in the House and passed on July 31, 2007. The Senate then passed an identical version on August 2, 2007. The President signed the legislation on September 14, 2007 (became P.L. 110-81).

Sec. 521 of the law amended the standing rules of the Senate to provide that it will not be in order to consider a bill, joint resolution reported by any committee, a bill or joint resolution not reported by a committee, or the adoption of a conference committee report unless the chairman of the committee of jurisdiction, the Majority Leader, or his or her designee, certifies that any congressionally directed spending items (earmarks), limited tariff benefits, or limited tax benefits (1) have been identified (“through lists, charts, or other similar means including the name of each Senator who submitted the request ...”); and are (2) searchable “on a publicly accessible congressional website” at least 48 hours (or “as soon as practicable” in the case of spending items proposed in floor amendments) prior to the vote.³ If the disclosure is not completed, the measure is subject to a point of order.⁴ The law defines 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,” (identical to the definition in H.Res. 6).

Additionally, any Senator who requests a limited tariff benefit (or any other directed spending item mentioned in the law) must disclose in writing the name of the sponsor, the name and location of the intended recipient, any individual or entities reasonably anticipated to benefit, and the purpose of the benefit. Senators must also certify that the principal purpose of any directed spending is not to further only the pecuniary interest of the Member or only the interest of the Member’s immediate family, or only the pecuniary interest of a limited class of persons or enterprises when the Member, his or her family, or enterprises controlled by them are members of the affected class.⁵

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 (the committees of jurisdiction) chairs have sent out Dear Colleague letters to all Members inviting them to introduce stand-alone legislation 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

³ For a more comprehensive treatment of limited tariff benefits in the context of lobbying reform, see CRS Report RL34008, *Lobbying Reform Legislation: Side-by-Side Analysis of Lobbying Provisions in S. 1 and H.R. 2316, 110th Congress*, by Jack Maskell.

⁴ Any Senator may waive the application of the rule or all points of order under the rule pending an affirmative vote of three-fifths of the Senate.

⁵ P.L. 110-81, sec. 521, Amendment to Rule XLIV, paragraph 9, and CRS Report RL34008, *Lobbying Reform Legislation: Side-by-Side Analysis of Lobbying Provisions in S. 1 and H.R. 2316, 110th Congress*, by Jack Maskell.

for an MTB to be non-controversial so that the measure will pass both Houses by unanimous consent or under suspension of the rules.⁶

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).

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.⁷

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.⁸ 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.⁹ 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,

⁶ See U.S. House, Committee on Ways and Means Trade Subcommittee Advisory, “Levin and Herger Request Introduction of Miscellaneous Tariff and Duty Suspension Bills by December 14, 2007”, November 1, 2007.

⁷ 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.

⁸ 19 U.S.C. 1332 (d) and (g).

⁹ The ITC also publishes congressional bill reports on the Internet. See http://www.usitc.gov/tata/hts/other/rel_doc/bill_reports/index.htm.

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.¹⁰

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 many products 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.

¹⁰ 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/rel_doc/bill_reports/s-0698.pdf).

Thus, supporters of duty suspension measures point out that since they are largely requested on chemicals and other production inputs, they are a significant means of reducing manufacturing costs, thus 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 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 floor consideration of the legislation 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).¹¹ 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.¹² 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.¹³

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 other reasons that duty suspensions may merit 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 particular 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 could lower the overall price of the good without significant harm to domestic suppliers.

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

¹¹ 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.

¹² Inside U.S. Trade, “Miscellaneous Tariff Bill Approved, Supporters Seek New Approach,” November 26, 2004.

¹³ Inside U.S. Trade, “Grassley Likely to Work Miscellaneous Trade Bill if House Acts,” February 10, 2006.

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-à-vis* foreign manufacturers of the same product because of the higher duty rate for the raw material.¹⁴

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.¹⁵ The Board recommended that all barriers to importing these metals be dropped. The bill passed both chambers by unanimous consent.

Table I. Miscellaneous Trade Legislation, 97th Congress to the Present

Congress	Bill No./Sponsor	Reports	Status
110 th			11/1/2007: House Ways and Means Trade Subcte. Advisory requesting MTB legislation by Dec. 14, 2007.
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. 12/20/2006: P.L. 109-432, in Tax Relief and Health Care Act of 2006.
109 th	H.R. 4 (Boehner) contained about 300 duty suspension measures.	No published reports.	8/17/2006: P.L. 109-280, in 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.

¹⁴ P.L. 97-446, 96 Stat. 2329.

¹⁵ 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.

Congress	Bill No./Sponsor	Reports	Status
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 105 th). 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.
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 I.
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

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