1. H.R. 4923 – American Manufacturing Competitiveness Act of 2016
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3. H.R. 699 – Email Privacy Act
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H.R. 4923 — American Manufacturing Competitiveness Act of 2016 (Rep. Brady, R-TX)

CONTACT: Nicholas Rodman, 202-226-8576

FLOOR SCHEDULE:

Scheduled for consideration on April 27, 2016 suspension of the rules, which requires 2/3 vote for passage.

TOPLINE SUMMARY:

H.R. 4923 would establish process for U.S. businesses to submit petitions for consideration to suspend or reduce duties directly to the U.S. International Trade Commission, subject to Congressional review .

COST:

A Congressional Budget Office (CBO) estimate is not available.

Rule 28(a)(1) of the Rules of the Republican Conference prohibit measures from being scheduled for consideration under suspension of the rules without an accompanying cost estimate. Rule 28(b) provides that the cost estimate requirement may be waived by a majority of the Elected Leadership.

The committee report accompanying H.R. 4923 indicates that "[With] respect to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, an estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 was not submitted to the Committee before the filing of the report. With respect to clause 3(d) of rule XIII of the Rules of the House of Representatives, the committee estimates that H.R. 4923 will result in no direct spending and will have no revenue impact."

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Prior to 2011, Congress frequently considered a Miscellaneous Tariff Bill, which reduced or eliminated duties on imported goods for which no domestic manufacturer existed and under which revenue collected was less than $500,000 annually. These tariff reductions often benefit a small number of individuals and firms that import the covered product, in many cases falling below the general benefit threshold required to avoid classification as a limited tariff benefit. Because these benefits were also requested directly by individual Members of Congress, they were prohibited from being scheduled for consideration under the earmark moratorium adopted by the Republican Majority taking office in 2011. Rather than allowing Members to request these benefits, H.R. 4923 would direct the International Trade Commission to develop a list of proposed reductions that meet the other MTB requirements – less than $500,000 in revenue and limited domestic production – based on submissions from firms. This list would then be transmitted to Congress, where it could not be augmented, and where it would then be considered as legislation.

Specifically, H.R. 4923 would direct U.S. International Trade Commission publish in the Federal Register and on a publicly available Internet website a notice requesting members of the public who can demonstrate that they are likely beneficiaries of duty suspensions or reductions to submit to the commission during the 60-day period beginning on the date of the publication: (1) petitions for duty

suspensions and reductions; and (2) commission disclosure forms with specified content. The commission would further be required to publish the petitions as well as comments received.

The bill would additionally direct the commission to submit a report to Congress on the petitions for duty suspensions and reductions to include: (1) the heading or subheading of the Harmonized Tariff Schedule; (2) a determination of whether or not domestic production of the article that is the subject of the petition for the duty suspension or reduction exists; (3) any technical changes to the article description of the article that is the subject of the petition for the duty suspension or reduction; (4) an estimate of the amount of loss in revenue to the United States that would no longer be collected if the duty suspension or reduction takes effect; (5) a determination of whether or not the duty suspension or reduction is available to any person that imports the article that is the subject of the duty suspension or reduction; and (6) the likely beneficiaries of each duty suspension or reduction, including whether the petitioner is a likely beneficiary. The bill would require the commission to submit a final report to Congress on each petition for a duty suspension or reduction specified in the preliminary report to include: (1) a determination of the Commission whether the duty suspension or reduction can likely be administered by U.S. Customs and Border Protection; (2) the estimated loss in revenue to the United States from the duty suspension or reduction does not exceed $500,000 in a calendar year during which the duty suspension or reduction would be in effect; and (3) the duty suspension or reduction is available to any person importing the article that is the subject of the duty suspension or reduction.

H.R. 4923 would direct appropriate congressional committees to adjust the amount of a duty suspension or reduction in a miscellaneous tariff bill only to assure that the estimated loss in revenue to the United States from that duty suspension or reduction, as estimated by the Congressional Budget Office, does not exceed $500,000 in a calendar year during which the duty suspension or reduction would be in effect.

The bill would further state a sense of Congress that to remove the competitive disadvantage to United States manufacturers and consumers and to promote the competitiveness of United States manufacturers, Congress should, not later than 90 days after the United States International Trade Commission issues a final report on petitions for duty suspensions and reductions, consider a miscellaneous tariff bill.

H.R. 4923 would state that: (1) the Harmonized Tariff Schedule of the United States imposes duties on imported goods for which there is no domestic availability or insufficient domestic availability; (2) the imposition of duties on such goods creates artificial distortions in the economy of the United States that negatively affect American manufacturers and consumers; (3) the manufacturing competitiveness of the United States around the world will be enhanced if Congress regularly and predictably updates the Harmonized Tariff Schedule to suspend or reduce duties on such goods; (4) creating and maintaining an open and transparent process for the consideration of petitions for duty suspensions and reductions builds confidence that the process is fair, open to all, and free of abuse; and (5) complying with the Rules of the House of Representatives and the Senate, in particular with clause 9 of rule XXI of the Rules of the House of Representatives and rule XLIV of the Standing Rules of the Senate, is essential to fostering and maintaining confidence in the process for considering a miscellaneous tariff bill.

The bill stipulates the procedures concerning the release of confidential business information set forth in section 332(g) of the Smoot-Hawley Tariff Act of 1930 (19 U.S.C. 1332(g)) would apply to information received by the commission in posting petitions on a publicly available website and in preparing reports. The Department of Commerce would be directed to submit a report to Congress which would include: (1) a determination of whether or not domestic production of the article included in the petition for the duty suspension or reduction exists and, if such production exists, whether or not a domestic producer of the article objects to the petition for the duty suspension or reduction; and (2) any technical changes to the article description that are necessary for purposes of administration when articles are presented for importation. The commission would additionally be directed to submit a report to Congress on the effects on the United States economy of duty suspensions and reductions, including a broad assessment of the economic effects of such duty suspensions and reductions on producers, purchasers, and consumers in the

United States. H.R. 4923 would direct Congress to include a list of limited tariff benefits contained in a miscellaneous tariff bill in the report accompanying the bill.

The corresponding Senate version of the bill (S. 2794) can be found here. The House report (H. Rept. 114-519) accompanying H.R. 4923 can be found here. Chairman Brady's opening remarks for the markup of H.R. 4923 can be found here. Press releases provided by the House Ways and Means Committee can be found here and here. A two-page fact sheet from the House Ways and Means Committee can be found here.

A National Review op-ed by Heritage Action and the Club for Growth on several policy recommendations to H.R. 4923 can be found here. The National Taxpayers Union's rebuttal can be found here.

ADDITIONAL COMMENTARY:

- Representatives Mark Walker, Tom McClintock, Mick Mulvaney, and Jeff Duncan
- Heritage Action and Club for Growth

ORGANIZATIONS IN SUPPORT:

- National Association of Manufacturers
- Americans for Tax Reform
- National Taxpayers Union
- Campaign for Liberty
- R Street Institute
- Council for Citizens Against Government Waste
- Taxpayers for Common Sense
- Niskanen Center
- Taxpayers Protection Alliance
- Center for Individual Freedom
- Jeffersonian Project
- Small Business and Entrepreneurship Council
- American Chemistry Council
- American Automotive Policy Council Inc.
- U.S. Chamber of Commerce
- Consumer Technology Association
- Association of Equipment Manufacturers
- A more complete list of companies and associations in support can be found here

COMMITTEE ACTION:

H.R. 4923 was introduced on April 13, 2016 and was referred to the House Committee on Ways and Means. On April 25, 2016 the bill was reported (amended) by the committee.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available.

CONSTITUTIONAL AUTHORITY:

According to the sponsor: "Congress has the power to enact this legislation pursuant to the following: Section 8 of Article I of the U.S. Constitution." No specific enumerating clause was listed.

H.R. 4240 — No Fly for Foreign Fighters Act (Rep. Jackson Lee, D-TX)

CONTACT: Jennifer Weinhart, 202-226-0706

FLOOR SCHEDULE:

Expected to be considered on April 27, 2016 under a suspension of the rules which requires a 2/3 majority vote for passage.

TOPLINE SUMMARY:

H.R. 4240 would require the Government Accountability Office (GAO) to submit a report on the status on whether past weaknesses in the operation and administration of the Terrorist Screening Database (TSDB) and its subsets have been addressed, and how lingering vulnerabilities may be addressed or mitigated with additional changes to the TSDB.

COST:

The Congressional Budget Office (CBO) estimates that "enacting H.R. 4240 would not increase direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026."

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Under Homeland Security Presidential Directive 6, the U.S. government created the Terrorist Screening Center to establish and maintain the Terrorist Screening Database, America's terror watchlist. According to the Committee Report, a previous Government Accountability Office (GAO) study unearthed certain weaknesses in the nomination of individuals to the list and in how the list was used. In 2010, the government issued guidance in how to address these weaknesses and in its 2012 report, the GAO encouraged government-wide assessments of the outcomes of watchlist screening programs.

This bill would require the GAO to conduct a study and issue a report on whether past areas of weakness in the TSDB have been addressed and how further vulnerabilities may be addressed.

COMMITTEE ACTION:

H.R. 4240 was introduced on December 11, 2015 and was referred to the House Committee on the Judiciary, where it was ordered reported by voice vote on January 12, 2016.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available.

CONSTITUTIONAL AUTHORITY:

Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clauses 1, 3, and 18.

H.R. 699 — Email Privacy Act (Rep. Yoder, R-KS)

CONTACT: Jennifer Weinhart, 202-226-0706

FLOOR SCHEDULE:

Expected to be considered on April 27, 2016 under a suspension of the rules which requires a 2/3 majority vote for passage.

TOPLINE SUMMARY:

H.R. 699 would amend the Electronic Communications Privacy Act of 1986 to require federal authorities to obtain a warrant prior to accessing all email or digital communications.

COST:

The Congressional Budget Office (CBO) cost estimates that "enacting H.R. 699 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027."

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

The Electronic Communications Privacy Act (ECPA) of 1986 prevents providers of remote electronic communications services from knowingly divulging electronic communications kept in electronic storage or maintained by a provider, except for certain exceptions. Presently, law enforcement or civil agencies may request this information by subpoena only, if it is more than 180 days old and considered abandoned property. Subpoenas, unlike warrants, do not require probable cause for issuance. Although the subpoena powers have not been used recently, since a 2010 case questioning their constitutionality, H.R. 699 would require government authorities to obtain a warrant prior to obtaining electronic communications, regardless of how long the communications have been held in storage.

Presently, the Email Communications Privacy Act does not differentiate between publicly disclosed content, like advertisements, and that which is disclosed privately, like email or texts. H.R. 699 would establish that public content need not be obtained through the same rigorous process, like a warrant, that is necessary for private content.

Though the original draft of the legislation required the government to notify suspects of an ECPA warrant after emails were released, the amended version allows technology companies that are served a warrant to notify suspects that a warrant has been issued. H.R. 699 would also, however, allow government officials to apply for a court order that would direct providers to not provide such notice for a certain period of time.

This legislation would prohibit disclosure requirements from being construed to limit the government's use of administrative or civil discovery subpoena to require (1) an originator or recipient of a communication from disclosing its contents; or (2) an entity with electronic services for its employees from disclosing electronic communications held on systems owned or operated by the entities.

Nothing in this legislation would limit the power of Congress to conduct its own investigations when necessary, and would not diminish Congress's authority to compel the production of electronic or wire communications. H.R. 699 would also maintain a legal distinction between remote computing services and

electronic communications services. A remote computing service, like something stored on the cloud, would remain separate from something like a shared Google document, which would be a form of an electronic communication.

H.R. 699 would require the Comptroller General to submit a report to Congress regarding the disclosure of customer communications and an analysis of the number of instances communications were provided and the length of time taken to provide disclosure.

OUTSIDE GROUPS IN SUPPORT:

Heritage Action (Key Vote)
FreedomWorks (Key Vote)
Adobe
ACT | The App Association
Amazon
American Civil Liberties Union
American Library Association
American Association of Law Libraries
Americans for Tax Reform
Application Developers Alliance
Association of Research Libraries
Automattic Inc.
Brennan Center for Justice
BSA | The Software Alliance
Center for Democracy & Technology
Center for Financial Privacy and Human Rights
Cisco Systems
Competitive Enterprise Institute
CompTIA
Computer & Communications Industry Association
The Constitution Project
Consumer Action
Consumer Technology Association
Council for Citizens Against Government Waste
Data Foundry, Inc.
Deluxe Corp
Digital Liberty
Direct Marketing Association
Distributed Computing Industry Association (DCIA)
Dropbox
Electronic Frontier Foundation
Engine
Evernote
Facebook
Foursquare
FreedomWorks
Federation of Genealogical Societies
Future of Privacy Forum
Golden Frog, GmbH
Google
Hackers/Founders
Hewlett Packard Enterprise
HP Inc.
Information Technology and Innovation Foundation

Information Technology Industry Council
Instacart
Institute for Policy Innovation
Internet Association
Internet Infrastructure Coalition – I2Coalition
The Jeffersonian Project
Less Government
LinkedIn
Microsoft
National Association of Criminal Defense Lawyers
NetChoice
New America's Open Technology Institute
Newspaper Association of America
Niskanen Center
Personal.com
R Street Institute
Reform Government Surveillance
Snapchat
Software & Information Industry Association
Sonic
Taxpayers Protection Alliance
TechFreedom
TechNet
Twitter
U.S. Chamber of Commerce
Venture Politics
Yahoo
National Taxpayers Union

COMMITTEE ACTION:

H.R. 699 was introduced on February 4, 2015 and was referred to the House Committee on the Judiciary where it was ordered reported, amended, 28-0, on April 13, 2016.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available.

CONSTITUTIONAL AUTHORITY:

Congress has the power to enact this legislation pursuant to the following: Amendment IV The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

S. 1890 — Defend Trade Secrets Act of 2016 (S. Hatch, (R-UT)

CONTACT: Jennifer Weinhart, 202-226-0706

FLOOR SCHEDULE:

Expected to be considered on April 27 under a suspension of the rules which requires a 2/3 majority vote for passage.

TOPLINE SUMMARY:

S. 1890 would give owners of misappropriated trade secrets the ability to sue in Federal Court if the secrets are connected to products or services used in foreign or interstate commerce.

COST:

The Congressional Budget Office (CBO) estimates that implementing S. 1890 would have no significant effect on the federal budget.

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

"Trade Secrets" are commercially valuable forms of intellectual property that a business chooses to maintain in confidence. These secrets could include things like business methods, chemical profiles, consumer profiles, or advertising strategies. According to the Committee Report, losses to the U.S. economy due to the theft of trade secrets amount to over $300 billion per year. While the Economic Espionage Act of 1996 provides some recourse for the misappropriation of trade secrets on a federal level, those injured are not able to bring a Federal civil action and the protection of trade secrets is largely covered on the state-level.

Presently, the States share some uniformity in their treatment of trade secrets. The non-profit organization, the Uniform Law Commission, has drafted the Uniform Trade Secrets Act (UTSA), to which 47 states and the District of Columbia are parties. There exists, however, some modifications to the act amongst the states, including the breadth of information protected, application of the act over parties who innocently acquired trade secrets, and which party holds the burden of proof, which make application of the UTSA difficult.

S. 1890 amend the Economic Espionage Act to allow the owner of a misappropriated trade secret to bring a civil action in Federal Court, if the trade secret in question is used in, or intended to be used it, foreign or interstate commerce activities.

Relevant courts would be permitted to issue an order upon application from the party that stands to be harmed to seize information under extraordinary circumstances with or without notification to the party subject to seizure. Such seizure would mitigate the continuing dissemination of a trade secret while a civil action has been brought. In order to issue the order, a court must satisfy several requirements, including: (1) determination that a temporary restraining order is inadequate; (2) immediate and irreparable injury is imminent; (3) the harm in denying the seizure outweighs the interests against whom the seizure is ordered; (4) the applicant is likely to succeed in their accusation of misappropriation; (5) the applicant

specifies what is to be seized and where to find the matter; (6) the person holding the material to be seized would move or destroy the matter if they were given notice; and (7) the applicant has not publicized the seizure.

A seizure order would be required to do several things, including: (1) consider findings of fact and conclusions of law; (2) implement the narrowest seizure of property possible; (3) adopt an order to protect the disclosure of seized property; (4) maintain limited access to the information contained in the seized property; (5) establish a hearing date, typically within seven days of the order's implementation; and (6) require the party obtaining the order to supply security for any payment of damages that may be ordered.

Either party involved may petition the court to terminate or modify the order, following notice that the party obtained the order. If a party involved suffers any damages through wrongful seizure, they would then have a valid cause of action against the applicant to the order. A court would be permitted to grant an injunction to stop or prevent a misappropriation of a trade secret, though this injunction would not be able to conflict with state law prohibiting restraints on trade, nor would it prohibit a person from entering an employment relationship. An injunction would be permitted even if it required affirmative action to prevent a trade secret's disclosure. If an injunction is not appropriate, the court would be permitted to allow future use of a trade secret, so long as said party pays royalties.

The court would be permitted to assess and enforce damages for actual losses or unjust enrichment, or if damages are not appropriate, require the payment of royalties, for the misappropriation of the trade secret. If the trade secret was willfully and maliciously misappropriated, damages may be doubled, and if made in bad faith, may result in the guilty party paying attorney's fees.

This legislation also provides for civil or criminal immunity for those that disclose trade secrets who: (1) provide disclosures privately to federal, state or local officials, for the purposes of investigating violations of the law; or (2) provide disclosure in a sealed document in a judicial proceeding.

This legislation would impose a three-year statute of limitations to bring civil action. It also establishes that any economic espionage and theft of trade secrets would amount to RICO Act predicate offenses. This bill would require the Attorney General to report biannually on trade secret theft that occurs outside of the United States. It would also require the Federal Judicial Center to develop best practices for seizure and storage of misappropriated trade secrets.

The Senate Judiciary Committee Report can be found here.

OUTSIDE GROUPS IN SUPPORT:

U.S. Chamber of Commerce

COMMITTEE ACTION:

S. 1890 was introduced on July 29, 2015 and was referred the Senate Committee on the Judiciary. The Senate passed the legislation, amended, by a recorded vote of 87-0.

ADMINISTRATION POSITION:

A Statement of Administration Policy is available here.

CONSTITUTIONAL AUTHORITY:

Measures originating in the Senate do not require a constitutional authority statement.