

AMENDMENT TO RULES COMMITTEE PRINT 117-

31

OFFERED BY MRS. MURPHY OF FLORIDA

At the appropriate place in title VI of division K, insert the following:

1 **SEC. ____ . PROCESS FOR EXCLUSION OF ARTICLES FROM**
2 **DUTIES UNDER SECTION 301 OF THE TRADE**
3 **ACT OF 1974.**

4 (a) ESTABLISHMENT OF GENERAL EXCLUSION
5 PROCESS.—

6 (1) IN GENERAL.—Title III of the Trade Act of
7 1974 (19 U.S.C. 2411 et seq.) is amended by insert-
8 ing after section 305 the following:

9 **“SEC. 305A. PROCESS FOR EXCLUSION OF ARTICLES FROM**
10 **DUTIES.**

11 “(a) ANALYSIS OF ALTERNATIVE ACTION.—Subject
12 to subsection (d), before taking action under section
13 301(b), the Trade Representative shall analyze the impact
14 of the action on United States entities, particularly small
15 entities, and consumers in the United States with a goal
16 of mitigating the impact of duties on United States enti-
17 ties and consumers in the United States, including by eval-
18 uating alternatives or modifications to particular actions.

1 “(b) PROCESS FOR EXCLUSION FROM DUTIES.—

2 “(1) IN GENERAL.—Subject to subsection (d),
3 the Trade Representative shall establish and main-
4 tain a process for exclusion requests from duties
5 under section 301(b) unless the Trade Representa-
6 tive determines and certifies to the appropriate con-
7 gressional committees that maintaining an exclusion
8 process—

9 “(A) would impair the ability of the United
10 States to maintain effective pressure to remove
11 unreasonable or discriminatory practices bur-
12 dening commerce in the United States; or

13 “(B) is impractical due to the low value of
14 the duties imposed.

15 “(2) BRIEFING.—If the Trade Representative
16 makes a certification under paragraph (1), not later
17 than 3 days before making the certification, the
18 Trade Representative shall brief the appropriate
19 congressional committees regarding the reasons for
20 the certification.

21 “(3) CONTINUED CERTIFICATION.—If the
22 Trade Representative makes a certification under
23 paragraph (1) with respect to duties under section
24 301(b), not less frequently than once every 180 days
25 while those duties are in effect, the Trade Rep-

1 representative shall determine and certify to the appro-
2 priate congressional committees that the reasons for
3 forgoing an exclusion process with respect to those
4 duties continue to be present.

5 “(c) IMPLEMENTATION OF EXCLUSION PROCESS.—

6 “(1) IN GENERAL.—In implementing an exclu-
7 sion process required under subsection (b)(1), the
8 Trade Representative shall consider whether and
9 which criteria described in paragraph (2), and such
10 other criteria as the Trade Representative considers
11 appropriate under the circumstances, are appro-
12 priate to apply in the exclusion process.

13 “(2) CRITERIA DESCRIBED.—The criteria de-
14 scribed in this paragraph for exclusion of articles
15 from duties under section 301(b) include the fol-
16 lowing:

17 “(A) Whether the failure to grant the ex-
18 clusion would result in severe economic harm to
19 the requester.

20 “(B) Whether the article or a reasonable
21 substitute is not commercially available to the
22 requester.

23 “(C) Whether the imposition of the duty
24 with respect to the article would unreasonably
25 increase consumer prices for day-to-day items

1 consumed by low- or middle-income families in
2 the United States.

3 “(D) Whether the imposition of the duty
4 would have an unreasonable impact on manu-
5 facturing output of the United States.

6 “(E) Whether the imposition of the duty
7 would have an unreasonable impact on the abil-
8 ity of an entity to fulfill contracts or to build
9 critical infrastructure.

10 “(F) Whether the failure to grant the ex-
11 clusion is likely to result in a particular entity
12 or entities having the ability to abuse a domi-
13 nant market position.

14 “(d) EXCLUSION OF CERTAIN DUTIES.—This section
15 shall not apply to duties imposed under section 301(b)
16 pursuant to a dispute resolution process under the World
17 Trade Organization.

18 “(e) PUBLICATION OF NOTICE.—Subject to sub-
19 section (d), not later than 90 days after imposing any duty
20 under section 301(b), the Trade Representative, in con-
21 sultation with such other Federal agencies as the Trade
22 Representative considers appropriate, shall publish a no-
23 tice in the Federal Register regarding the criteria that the
24 Trade Representative will apply and the evidence it will
25 evaluate in determining whether a request for exclusion

1 from such duty satisfies the requirements of the exclusion
2 process under subsection (b)(1).

3 “(f) DEFINITIONS.—In this section:

4 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
5 TEES.—The term ‘appropriate congressional com-
6 mittees’ means—

7 “(A) the Committee on Finance of the
8 Senate; and

9 “(B) the Committee on Ways and Means
10 of the House of Representatives.

11 “(2) SEVERE ECONOMIC HARM.—The term ‘se-
12 vere economic harm’, with respect to an exclusion
13 from duties requested by a United States entity, in-
14 cludes circumstances under which failure to grant
15 the exclusion would—

16 “(A) render the business of the entity un-
17 profitable; or

18 “(B) result in a significant number or pro-
19 portion of the workers employed by the entity
20 becoming totally separated from employment.

21 “(3) SMALL ENTITIES.—The term ‘small enti-
22 ties’ has the meaning given the term ‘small entity’
23 in section 601 of title 5, United States Code.

24 “(4) UNITED STATES ENTITY.—The term
25 ‘United States entity’ means an entity organized

1 under the laws of the United States or of any juris-
2 diction within the United States, including a foreign
3 branch of such an entity.”.

4 (2) CLERICAL AMENDMENT.—The table of con-
5 tents for the Trade Act of 1974 is amended by in-
6 serting after the item relating to section 305 the fol-
7 lowing:

“Sec. 305A. Process for exclusion of articles from duties.”.

8 (b) ESTABLISHMENT OF EXCLUSION PROCESS FOR
9 CERTAIN DUTIES RELATING TO PEOPLE’S REPUBLIC OF
10 CHINA.—

11 (1) IN GENERAL.—Notwithstanding any other
12 provision of law, the United States Trade Represent-
13 ative shall establish a process pursuant to which
14 United States entities and associations of those enti-
15 ties may request the exclusion of articles from duties
16 described in paragraph (2).

17 (2) DUTIES DESCRIBED.—The duties described
18 in this paragraph are duties imposed pursuant to
19 the investigation initiated under section 301 of the
20 Trade Act of 1974 (19 U.S.C. 2411) on August 18,
21 2017, and with respect to which notice was pub-
22 lished in the Federal Register on August 24, 2017
23 (82 Fed. Reg. 40213).

24 (3) IMPLEMENTATION OF EXCLUSION PROC-
25 ESS.—In implementing the process established under

1 paragraph (1) for exclusion of articles from duties
2 described in paragraph (2), if the exclusion of the
3 article can likely be administered by U.S. Customs
4 and Border Protection—

5 (A) the Trade Representative shall exclude
6 that article from the imposition of such a duty
7 if the Trade Representative determines, fol-
8 lowing a request from a United States entity or
9 an association of those entities, that the failure
10 to grant the exclusion would result in severe
11 economic harm to the requester;

12 (B) unless the Trade Representative deter-
13 mines that granting the exclusion would impair
14 the ability of the United States to maintain ef-
15 fective pressure to remove an unreasonable or
16 discriminatory practice burdening United States
17 commerce, the Trade Representative shall ex-
18 clude that article from the imposition of such a
19 duty if the Trade Representative determines fol-
20 lowing a request from a United States entity or
21 an association of those entities that—

22 (i) the article or a reasonable sub-
23 stitute is not commercially available to the
24 requester;

1 (ii) the imposition of the duty with re-
2 spect to the article would unreasonably in-
3 crease consumer prices for day-to-day
4 items consumed by low- or middle-income
5 families in the United States;

6 (iii) the imposition of the duty would
7 have an unreasonable impact on manufac-
8 turing output of the United States;

9 (iv) the imposition of the duty would
10 have an unreasonable impact on the ability
11 of an entity to fulfill contracts or to build
12 critical infrastructure; or

13 (v) the failure to grant the exclusion
14 is likely to result in a particular entity or
15 entities having the ability to abuse a domi-
16 nant market position; and

17 (C) the Trade Representative may identify
18 other criteria relevant to determining whether
19 the article shall be excluded from the imposition
20 of such a duty.

21 (4) TIMEFRAME OF EXCLUSION AND RE-
22 NEWAL.—

23 (A) PERIOD OF EXCLUSION.—An exclusion
24 of an article requested under paragraph (1)
25 from duties described in paragraph (2)—

1 (i) shall be for a period of 18 months;

2 and

3 (ii) shall be decided—

4 (I) not later than 90 days before
5 the duty is due to be paid; or

6 (II) if the Trade Representative
7 determines that the request presents
8 exceptionally complex issues or re-
9 quires additional evidence, not later
10 than 120 days before the duty is due
11 to be paid.

12 (B) RENEWAL.—The Trade Representative
13 shall allow applications for renewal of an exclu-
14 sion under paragraph (1) to be submitted not
15 later than 90 days before the exclusion is set to
16 expire.

17 (C) FAILURE TO ACT.—If the Trade Rep-
18 resentative fails to decide an exclusion request
19 under subparagraph (A)(ii) during the appro-
20 priate period set forth under that subpara-
21 graph, the exclusion request will be deemed to
22 have been granted until the date that is 30 days
23 after the Trade Representative publishes in the
24 Federal Register a decision not to grant the re-
25 quest.

1 (5) WRITTEN REASONING.—

2 (A) IN GENERAL.—If the Trade Rep-
3 resentative denies a request for an exclusion
4 under paragraph (1), the Trade Representative
5 shall provide to the requester of the exclusion a
6 reasoned determination for denying the request.

7 (B) SUBSTANTIAL EVIDENCE.—A deter-
8 mination under subparagraph (A) shall be sup-
9 ported by substantial evidence from the admin-
10 istrative record.

11 (6) REVIEW.—

12 (A) IN GENERAL.—Not later than 180
13 days after the date of the enactment of this
14 Act, and annually thereafter, the Comptroller
15 General of the United States shall conduct an
16 audit of the exclusion process established under
17 paragraph (1).

18 (B) ELEMENTS OF AUDIT.—Each audit re-
19 quired by subparagraph (A) shall—

20 (i) include a review of the process
21 for—

22 (I) receiving and reviewing exclu-
23 sion requests under paragraph (1);

24 (II) determining eligibility for an
25 exclusion;

1 (III) applying relevant criteria
2 for an exclusion; and

3 (IV) making determinations re-
4 garding whether to grant an exclu-
5 sion;

6 (ii) examine the information provided
7 to applicants prior to seeking an exclusion,
8 as well as throughout the exclusion appli-
9 cation process; and

10 (iii) analyze the timeliness of deci-
11 sions, the consistency of decisions, and the
12 internal review process for making deci-
13 sions with respect to an exclusion.

14 (7) REGULATIONS.—

15 (A) IMPLEMENTATION OF PROCESS.—Not
16 later than 120 days after the date of the enact-
17 ment of this Act, The Trade Representative, in
18 consultation with such other Federal agencies
19 as the Trade Representative considers appro-
20 priate, shall prescribe regulations regarding the
21 criteria that the Trade Representative will
22 apply and the evidence the Trade Representa-
23 tive will evaluate in deciding whether any of the
24 conditions in paragraph (3) have been satisfied

1 with respect to an exclusion request under para-
2 graph (1).

3 (B) SEVERE ECONOMIC HARM.—The
4 Trade Representative shall prescribe regulations
5 regarding the definition of severe economic
6 harm under paragraph (8), including by setting
7 forth the evidence necessary to establish that a
8 business is unprofitable, that workers will be
9 separated, and other circumstances in which se-
10 vere economic harm may be demonstrated.

11 (8) DEFINITIONS.—In this subsection:

12 (A) SEVERE ECONOMIC HARM.—The term
13 “severe economic harm”, with respect to an ex-
14 clusion from duties requested by a United
15 States entity or an association of those entities,
16 includes circumstances under which failure to
17 grant the exclusion would—

18 (i) render the business of the entity or
19 entities unprofitable; or

20 (ii) result in a significant number or
21 proportion of the workers employed by the
22 entity or entities becoming totally sepa-
23 rated from employment.

24 (B) UNITED STATES ENTITY.—The term
25 “United States entity” means an entity orga-

1 nized under the laws of the United States or of
2 any jurisdiction within the United States, in-
3 cluding a foreign branch of such an entity.

4 (c) TREATMENT OF CERTAIN EXCLUSIONS RELAT-
5 ING TO PEOPLE'S REPUBLIC OF CHINA.—

6 (1) REAUTHORIZATION OF EXCLUSIONS.—All
7 covered duty exclusions shall be reinstated for en-
8 tries filed on or before December 31, 2022.

9 (2) RETROACTIVE APPLICATION FOR CERTAIN
10 LIQUIDATIONS AND RELIQUIDATIONS.—

11 (A) IN GENERAL.—Notwithstanding sec-
12 tion 514 of the Tariff Act of 1930 (19 U.S.C.
13 1514) or any other provision of law and subject
14 to subparagraph (B), any entry of a covered ar-
15 ticle on which duties were paid under section
16 301(b) of the Trade Act of 1974 (19 U.S.C.
17 2411(b)) and to which a covered duty exclusion
18 would have applied if the entry were made on
19 August 1, 2020, that was made—

20 (i) after August 1, 2020; and

21 (ii) before the date of the enactment
22 of this Act,

23 shall be liquidated or reliquidated as though
24 such entry occurred on such date of enactment.

1 (B) REQUESTS.—A liquidation or reliqui-
2 dation may be made under subparagraph (A)
3 with respect to an entry of an article only if a
4 request therefor is filed with U.S. Customs and
5 Border Protection not later than 180 days after
6 the date of the enactment of this Act that con-
7 tains sufficient information to enable U.S. Cus-
8 toms and Border Protection—

9 (i) to identify and reconstruct the
10 entry, if necessary; and

11 (ii) to verify that the article is a cov-
12 ered article.

13 (C) PAYMENT OF AMOUNTS OWED.—Any
14 amounts owed by the United States pursuant to
15 the liquidation or reliquidation of an entry of a
16 covered article under subparagraph (A) shall be
17 paid, without interest, not later than 90 days
18 after the date of the liquidation or reliquidation
19 (as the case may be).

20 (3) DEFINITIONS.—In this subsection:

21 (A) COVERED ARTICLE.—The term “cov-
22 ered article” means an article that qualifies for
23 a covered duty exclusion from duties paid under
24 section 301(b) of the Trade Act of 1974 (19
25 U.S.C. 2411(b)) that was not granted by the

1 United States Trade Representative within 180
2 days of the date of liquidation of an entry con-
3 taining such an article.

4 (B) COVERED DUTY EXCLUSION.—The
5 term “covered duty exclusion” means a specific
6 article exclusion that was—

7 (i) granted in the investigation initi-
8 ated under section 301 of the Trade Act of
9 1974 (19 U.S.C. 2411) on August 18,
10 2017, and with respect to which notice was
11 published in the Federal Register on Au-
12 gust 24, 2017 (82 Fed. Reg. 40213); and

13 (ii) published in the Federal Register.

14 (C) ENTRY.—The term “entry” includes a
15 withdrawal from warehouse for consumption.

