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:

SEC. _____. PROCESS FOR EXCLUSION OF ARTICLES FROM DUTIES UNDER SECTION 301 OF THE TRADE ACT OF 1974.

(a) ESTABLISHMENT OF GENERAL EXCLUSION PROCESS.—

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

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

“(a) ANALYSIS OF ALTERNATIVE ACTION.—Subject to subsection (d), before taking action under section 301(b), the Trade Representative shall analyze the impact of the action on United States entities, particularly small entities, and consumers in the United States with a goal of mitigating the impact of duties on United States entities and consumers in the United States, including by evaluating alternatives or modifications to particular actions.
“(b) PROCESS FOR EXCLUSION FROM DUTIES.—

“(1) IN GENERAL.—Subject to subsection (d), the Trade Representative shall establish and maintain a process for exclusion requests from duties under section 301(b) unless the Trade Representative determines and certifies to the appropriate congressional committees that maintaining an exclusion process—

“(A) would impair the ability of the United States to maintain effective pressure to remove unreasonable or discriminatory practices burdening commerce in the United States; or

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

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

“(3) CONTINUED CERTIFICATION.—If the Trade Representative makes a certification under paragraph (1) with respect to duties under section 301(b), not less frequently than once every 180 days while those duties are in effect, the Trade Rep-
resentative shall determine and certify to the appropriate congressional committees that the reasons for forgoing an exclusion process with respect to those duties continue to be present.

“(c) IMPLEMENTATION OF EXCLUSION PROCESS.—

“(1) IN GENERAL.—In implementing an exclusion process required under subsection (b)(1), the Trade Representative shall consider whether and which criteria described in paragraph (2), and such other criteria as the Trade Representative considers appropriate under the circumstances, are appropriate to apply in the exclusion process.

“(2) CRITERIA DESCRIBED.—The criteria described in this paragraph for exclusion of articles from duties under section 301(b) include the following:

“(A) Whether the failure to grant the exclusion would result in severe economic harm to the requester.

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

“(C) Whether the imposition of the duty with respect to the article would unreasonably increase consumer prices for day-to-day items
consumed by low- or middle-income families in the United States.

“(D) Whether the imposition of the duty would have an unreasonable impact on manufacturing output of the United States.

“(E) Whether the imposition of the duty would have an unreasonable impact on the ability of an entity to fulfill contracts or to build critical infrastructure.

“(F) Whether the failure to grant the exclusion is likely to result in a particular entity or entities having the ability to abuse a dominant market position.

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

“(e) PUBLICATION OF NOTICE.—Subject to subsection (d), not later than 90 days after imposing any duty under section 301(b), the Trade Representative, in consultation with such other Federal agencies as the Trade Representative considers appropriate, shall publish a notice in the Federal Register regarding the criteria that the Trade Representative will apply and the evidence it will evaluate in determining whether a request for exclusion
from such duty satisfies the requirements of the exclusion process under subsection (b)(1).

“(f) DEFINITIONS.—In this section:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

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

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

“(2) SEVERE ECONOMIC HARM.—The term ‘severe economic harm’, with respect to an exclusion from duties requested by a United States entity, includes circumstances under which failure to grant the exclusion would—

“(A) render the business of the entity unprofitable; or

“(B) result in a significant number or proportion of the workers employed by the entity becoming totally separated from employment.

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

“(4) UNITED STATES ENTITY.—The term ‘United States entity’ means an entity organized
under the laws of the United States or of any juris-
diction within the United States, including a foreign 
branch of such an entity.”.

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

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

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

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

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

(3) IMPLEMENTATION OF EXCLUSION PROC-
ESS.—In implementing the process established under
paragraph (1) for exclusion of articles from duties described in paragraph (2), if the exclusion of the article can likely be administered by U.S. Customs and Border Protection—

(A) the Trade Representative shall exclude that article from the imposition of such a duty if the Trade Representative determines, following a request from a United States entity or an association of those entities, that the failure to grant the exclusion would result in severe economic harm to the requester;

(B) unless the Trade Representative determines that granting the exclusion would impair the ability of the United States to maintain effective pressure to remove an unreasonable or discriminatory practice burdening United States commerce, the Trade Representative shall exclude that article from the imposition of such a duty if the Trade Representative determines following a request from a United States entity or an association of those entities that—

(i) the article or a reasonable substitute is not commercially available to the requester;
(ii) the imposition of the duty with respect to the article would unreasonably increase consumer prices for day-to-day items consumed by low- or middle-income families in the United States;

(iii) the imposition of the duty would have an unreasonable impact on manufacturing output of the United States;

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

(v) the failure to grant the exclusion is likely to result in a particular entity or entities having the ability to abuse a dominant market position; and

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

(4) **Timeframe of exclusion and renewal.**—

(A) Period of exclusion.—An exclusion of an article requested under paragraph (1) from duties described in paragraph (2)—
(i) shall be for a period of 18 months;

and

(ii) shall be decided—

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

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

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

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

(A) **IN GENERAL.**—If the Trade Representative denies a request for an exclusion under paragraph (1), the Trade Representative shall provide to the requester of the exclusion a reasoned determination for denying the request.

(B) **SUBSTANTIAL EVIDENCE.**—A determination under subparagraph (A) shall be supported by substantial evidence from the administrative record.

(6) **REVIEW.**—

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

(B) **ELEMENTS OF AUDIT.**—Each audit required by subparagraph (A) shall—

(i) include a review of the process for—

(1) receiving and reviewing exclusion requests under paragraph (1);

(II) determining eligibility for an exclusion;
(III) applying relevant criteria for an exclusion; and

(IV) making determinations regarding whether to grant an exclusion;

(ii) examine the information provided to applicants prior to seeking an exclusion, as well as throughout the exclusion application process; and

(iii) analyze the timeliness of decisions, the consistency of decisions, and the internal review process for making decisions with respect to an exclusion.

(7) REGULATIONS.—

(A) IMPLEMENTATION OF PROCESS.—Not later than 120 days after the date of the enactment of this Act, The Trade Representative, in consultation with such other Federal agencies as the Trade Representative considers appropriate, shall prescribe regulations regarding the criteria that the Trade Representative will apply and the evidence the Trade Representative will evaluate in deciding whether any of the conditions in paragraph (3) have been satisfied
with respect to an exclusion request under paragraph (1).

(B) **Severe Economic Harm.**—The Trade Representative shall prescribe regulations regarding the definition of severe economic harm under paragraph (8), including by setting forth the evidence necessary to establish that a business is unprofitable, that workers will be separated, and other circumstances in which severe economic harm may be demonstrated.

(8) **Definitions.**—In this subsection:

(A) **Severe Economic Harm.**—The term “severe economic harm”, with respect to an exclusion from duties requested by a United States entity or an association of those entities, includes circumstances under which failure to grant the exclusion would—

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

(ii) result in a significant number or proportion of the workers employed by the entity or entities becoming totally separated from employment.

(B) **United States Entity.**—The term “United States entity” means an entity orga-
nized under the laws of the United States or of any jurisdiction within the United States, including a foreign branch of such an entity.

(c) Treatment of Certain Exclusions Relating to People’s Republic of China.—

(1) Reauthorization of Exclusions.—All covered duty exclusions shall be reinstituted for entries filed on or before December 31, 2022.

(2) Retroactive Application for Certain Liquidations and Reliquidations.—

(A) In General.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to subparagraph (B), any entry of a covered article on which duties were paid under section 301(b) of the Trade Act of 1974 (19 U.S.C. 2411(b)) and to which a covered duty exclusion would have applied if the entry were made on August 1, 2020, that was made—

(i) after August 1, 2020; and

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

shall be liquidated or reliquidated as though such entry occurred on such date of enactment.
(B) REQUESTS.—A liquidation or reliquidation may be made under subparagraph (A) with respect to an entry of an article only if a request therefor is filed with U.S. Customs and Border Protection not later than 180 days after the date of the enactment of this Act that contains sufficient information to enable U.S. Customs and Border Protection—

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

(ii) to verify that the article is a covered article.

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

(3) DEFINITIONS.—In this subsection:

(A) COVERED ARTICLE.—The term “covered article” means an article that qualifies for a covered duty exclusion from duties paid under section 301(b) of the Trade Act of 1974 (19 U.S.C. 2411(b)) that was not granted by the
United States Trade Representative within 180 days of the date of liquidation of an entry containing such an article.

(B) Covered duty exclusion.—The term “covered duty exclusion” means a specific article exclusion that was—

(i) granted in the investigation initiated under section 301 of the Trade Act of 1974 (19 U.S.C. 2411) on August 18, 2017, and with respect to which notice was published in the Federal Register on August 24, 2017 (82 Fed. Reg. 40213); and

(ii) published in the Federal Register.

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