

117TH CONGRESS
1ST SESSION

H. R. 6330

To amend the Tariff Act of 1930 to provide for consideration of the effect of excess production capacity in nonmarket economy countries to determine threat of material injury to United States industry in countervailing duty and antidumping duty investigations under title VII of that Act.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 20, 2021

Mr. HIGGINS of New York introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Tariff Act of 1930 to provide for consideration of the effect of excess production capacity in nonmarket economy countries to determine threat of material injury to United States industry in countervailing duty and antidumping duty investigations under title VII of that Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nonmarket Economy
5 Overcapacity Reform Act”.

1 **SEC. 2. EFFECT OF EXCESS PRODUCTION CAPACITY IN**
2 **NONMARKET ECONOMY COUNTRIES TO DE-**
3 **TERMINE THREAT OF MATERIAL INJURY TO**
4 **UNITED STATES INDUSTRY.**

5 (a) IN GENERAL.—Section 771(7)(F) of the Tariff
6 Act of 1930 (19 U.S.C. 1677(7)(F)) is amended by adding
7 at the end the following:

8 “(iv) EFFECT OF EXCESS PRODUC-
9 TION CAPACITY IN NONMARKET ECONOMY
10 COUNTRIES.—

11 “(I) IN GENERAL.—In addition
12 to consideration of the relevant eco-
13 nomic factors set forth in clauses (i),
14 (ii), and (iii), in making a determina-
15 tion of whether an industry in the
16 United States is threatened with ma-
17 terial injury by reason of imports (or
18 sales for importation) of subject mer-
19 chandise from a nonmarket economy
20 country due to excess production ca-
21 pacity, the Commission shall con-
22 sider—

23 “(aa) the actual or potential
24 market effects of the excess pro-
25 duction capacity and the excess

1 production capacity in the coun-
2 try; and

3 “(bb) whether the excess
4 production capacity—

5 “(AA) is currently
6 causing or is likely in the
7 foreseeable future to con-
8 tribute to adverse price ef-
9 fects in the United States
10 market;

11 “(BB) is likely in the
12 foreseeable future to con-
13 tribute to rapid and signifi-
14 cant increases in the volume
15 of imports of the subject
16 merchandise in the United
17 States market at prices at
18 which the normal value of
19 the subject merchandise ex-
20 ceeds the export price or
21 that are subsidized; or

22 “(CC) otherwise threat-
23 ens to cause material injury
24 to the United States domes-
25 tic industry.

1 “(II) ADDITIONAL FACTORS.—As
2 part of its consideration of the factors
3 set forth in items (aa) and (bb) of
4 subclause (I), the Commission shall
5 consider the following:

6 “(aa) Whether the excess
7 production capacity is related to
8 a lack of effective market dis-
9 ciplines that have contributed to
10 increases in such capacity.

11 “(bb) Whether the excess
12 production capacity exceeds or,
13 upon completion of projects
14 under construction to expand
15 such capacity, is projected to im-
16 minently exceed 25 percent of the
17 excess production capacity of the
18 subject merchandise.

19 “(cc) Whether producers in
20 the country have demonstrated
21 an ability to increase exports of
22 the subject merchandise, as evi-
23 denced by—

24 “(AA) an increase in
25 exports of the subject mer-

1 chandise or related products
2 to third country markets;

3 “(BB) an annual in-
4 crease in the volume of ex-
5 ports of the subject mer-
6 chandise or related products
7 that is greater than 10 per-
8 cent of the volume of ex-
9 ports of the subject mer-
10 chandise or related products
11 in the preceding calendar
12 year; or

13 “(CC) other factors
14 demonstrating an ability of
15 the country to increase ex-
16 ports of the subject mer-
17 chandise or related products
18 globally, including to the
19 United States.

20 “(dd) Whether the excess
21 production capacity currently or
22 in the future would likely con-
23 tribute to—

24 “(AA) a significant in-
25 crease in exports of the sub-

1 ject merchandise or related
2 products globally, including
3 to the United States;

4 “(BB) depression or
5 suppression of prices of the
6 subject merchandise sold
7 globally, including in the
8 United States;

9 “(CC) reductions in
10 United States investment or
11 research and development in
12 products of the same class
13 or kind as the subject mer-
14 chandise; or

15 “(DD) a significant in-
16 crease in the United States
17 market share of the subject
18 merchandise as compared to
19 the average share held by
20 producers of the subject
21 merchandise in the country
22 during the 3-year period
23 preceding the date of the de-
24 termination under clause (i).

1 “(ee) Whether any or all of
2 the factors described in items
3 (aa), (bb), (cc), or (dd) are likely
4 in the imminent future, given the
5 size and extent of the current or
6 projected excess production ca-
7 pacity and taking into account
8 current and future levels of de-
9 mand globally, including in the
10 United States.

11 “(ff) The standards of
12 threat of material injury applied
13 by the administering authorities
14 of the country to imports of
15 United States products.

16 “(III) ADDITIONAL FACTORS
17 WITH RESPECT TO EXCESS PRODUC-
18 TION CAPACITY.—As part of its con-
19 sideration of the factors set forth in
20 items (aa) and (bb) of subclause (I)
21 with respect to whether the excess
22 production capacity is real and immi-
23 nent, the Commission shall consider
24 the following:

1 “(aa) Whether current or
2 projected excess production ca-
3 pacity of the subject merchandise
4 significantly exceeds global de-
5 mand, particularly if the excess
6 production capacity results in
7 whole or in part from increases
8 in the excess production capacity
9 in the country and thus creates
10 an increased risk the subject
11 merchandise will be imported into
12 the United States market.

13 “(bb) The likelihood that the
14 excess production capacity, in-
15 cluding excess production capac-
16 ity under construction in the
17 country, would be halted, tempo-
18 rarily shut down, or permanently
19 closed in accordance with market
20 conditions in order to prevent the
21 negative effects described in sub-
22 clauses (I) and (II), or whether
23 such actions would be impractical
24 given the levels of investment, fi-
25 nancial commitments, employ-

1 ment costs, or government poli-
2 cies involved.

3 “(cc) Whether the excess
4 production capacity in the coun-
5 try is planned as part of a gov-
6 ernment industrial plan, policy,
7 or directive, or benefits from sig-
8 nificant government subsidies,
9 and therefore is not subject to
10 market disciplines that would re-
11 strain production or exports.

12 “(dd) Whether—

13 “(AA) related products
14 are subject to a counter-
15 vailing duty investigation or
16 order under subtitle A or an
17 antidumping duty investiga-
18 tion or order under subtitle
19 B; or

20 “(BB) related products
21 are subject to a counter-
22 vailing duty investigation or
23 order or an antidumping
24 duty investigation or order
25 in third countries that could

1 lead to the imposition of du-
2 ties on such products and
3 result in diversion of in-
4 creased exports of such
5 products to the United
6 States or other countries.

7 “(ee) Whether, taking into
8 account the type of product, tech-
9 nology, United States production
10 facilities, levels of United States
11 investment, research and develop-
12 ment costs, product life cycle,
13 and price sensitivities, the United
14 States domestic industry is espe-
15 cially vulnerable to increased im-
16 ports of the subject merchandise
17 so that injury caused by prices of
18 the dumped or subsidized imports
19 of the subject merchandise likely
20 would occur imminently upon
21 entry into the United States.

22 “(IV) DEFINITIONS.—In this
23 clause:

24 “(aa) EXCESS PRODUCTION
25 CAPACITY.—The term ‘excess

1 production capacity', with respect
2 to subject merchandise, means
3 production capacity of the subject
4 merchandise on a global basis
5 that exceeds estimated domestic
6 demand of the subject merchan-
7 dise by 25 percent or more or is
8 imminently likely to do so, in-
9 cluding through planned in-
10 creases in capacity under any
11 government industrial policies,
12 subsidy programs, production
13 targets, indigenous innovation
14 policies, or plans or directives re-
15 garding the development or con-
16 struction of such capacity.

17 “(bb) RELATED PRODUCT.—
18 The term ‘related product’, with
19 respect to subject merchandise,
20 means—

21 “(AA) any like or di-
22 rectly related product within
23 the scope of an investigation
24 relating to the subject mer-
25 chandise under this title;

1 “(BB) any upstream
2 product used in the produc-
3 tion of the subject merchan-
4 dise and that could be used
5 for purposes of exports of
6 any like or directly related
7 product; or

8 “(CC) any downstream
9 product manufactured used
10 in the production of the sub-
11 ject merchandise that could
12 lead to excess production ca-
13 pacity and used for purposes
14 of exports of any like or di-
15 rectly related product.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 subsection (a) take effect on the date of the enactment
18 of this Act and apply with respect to investigations initi-
19 ated under title VII of the Tariff Act of 1930 on or after
20 such date of enactment.

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