

DISAPPROVING THE RULE SUBMITTED BY THE DEPARTMENT OF COMMERCE RELATING TO “PROCEDURES COVERING SUSPENSION OF LIQUIDATION, DUTIES AND ESTIMATED DUTIES IN ACCORD WITH PRESIDENTIAL PROCLAMATION 10414”

APRIL 21, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Missouri, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.J. Res 39]

The Committee on Ways and Means, to whom was referred the joint resolution (H.J. Res 39) disapproving the rule submitted by the Department of Commerce relating to “Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414”, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

CONTENTS

	Page
I. SUMMARY AND BACKGROUND	2
A. Purpose and Summary	2
B. Background and Need for Legislation	2
C. Legislative History	3
D. Designated Hearing	3
II. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION	4
III. VOTES OF THE COMMITTEE	4
IV. BUDGET EFFECTS OF THE BILL	4
A. Congressional Budget Office Cost Estimate	4
B. Committee Estimate of Budgetary Effects	5
C. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority	5
V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE	5
A. Committee Oversight Findings and Recommendations	5
B. Statement of General Performance Goals and Objectives	5
C. Information Relating to Unfunded Mandates	5

D. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits	6
E. Duplication of Federal Programs	6
VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED	6
VII. DISSENTING VIEWS	7

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The purpose of H.J. Res. 39 is to provide for Congressional disapproval of the rule submitted by the Department of Commerce relating to “Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414”.

B. BACKGROUND AND NEED FOR LEGISLATION

In 2012, the Department of Commerce issued final determinations that imports of solar cells and modules from the People’s Republic of China (PRC) were unfairly priced and subsidized, and the International Trade Commission issued final determinations that these imports materially injured the U.S. domestic industry. Pursuant to these determinations, the United States imposed anti-dumping (AD) duties ranging from 18 to 25 percent on solar cells and modules imported from certain individually-investigated Chinese firms and 250 percent on all other solar cells and modules imported from the PRC.¹ Additionally, the United States imposed countervailing (CVD) duties of 14 to 15 percent on all solar cells and modules imported from China.²

On April 1, 2022, in response to a petition from Auxin Solar Inc., the Department of Commerce initiated a circumvention inquiry into whether imports of solar cells and modules, completed in Cambodia, Malaysia, Thailand, or Vietnam using parts and components from the PRC, are circumventing existing AD and CVD orders on solar cells and modules from the PRC.³

On June 6, 2022, President Biden issued Proclamation 10414, which “declare[d] an emergency to exist with respect to the threats to the availability of sufficient electricity generation capacity to meet expected consumer demand,” citing 19 U.S.C. § 1318(a) as authority for this emergency declaration. That statute empowers the President to proclaim an emergency “by reason of a state of war, or otherwise,” and on the basis of that emergency to allow “the importation free of duty of food, clothing, and medical, surgical, and other supplies for use in emergency relief work.” On the basis of this authority, Proclamation 10414 directed the Secretary of Commerce to “consider taking appropriate action” to permit importation free of any new tariffs imposed under U.S. AD or CVD law of solar cells and modules from Cambodia, Malaysia, Thailand, and Vietnam for a period of 24 months. On September 16, 2022, the Department of Commerce issued a Final Rule to implement Proclamation 10414.⁴

¹ 77 Fed. Reg. 73018 (December 7, 2012).

² 77 Fed. Reg. 73017 (December 7, 2012).

³ 87 Fed. Reg. 19071 (April 1, 2022).

⁴ 87 Fed. Reg. 56868 (September 16, 2022).

On December 2, 2022, the Department of Commerce issued Preliminary Affirmative Determinations of Circumvention with respect to Cambodia, Malaysia, Thailand, and Vietnam.⁵

Under the normal operation of U.S. AD and CVD law, upon issuing a Preliminary Affirmative Determination of Circumvention, the Department of Commerce would instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of products covered by such a determination and require collection of cash deposits sufficient to cover estimated duties that reflect the preliminary finding of circumvention. However, due to Proclamation 10414, as implemented by the Department of Commerce’s Final Rule, the Department of Commerce did not instruct CBP to do so and has made clear that it does not intend to take any action to collect duties or estimated duties that reflect the finding of circumvention for solar cells and modules from these four countries that enter the United States prior to June 6, 2024.

H.J. Res. 39 would disapprove of the Department of Commerce’s Final Rule implementing President Biden’s Proclamation 10414 and allow U.S. AD and CVD law to function as designed, including to address circumvention of AD and CVD orders by exporters from the PRC. Pursuant to the Congressional Review Act, enacting H.J. Res. 39 into law would prevent this Final Rule from having effect and would prevent the Department of Commerce from issuing a rule that is substantially the same as this Final Rule.

C. LEGISLATIVE HISTORY

Background

H.J. Res. 39 was introduced on March 7, 2023, and was referred to the Committee on Ways and Means.

Committee hearings

On March 24, 2023, the Committee on Ways and Means held a hearing with United States Trade Representative, Ambassador Katherine Tai. The purpose of the hearing was to discuss the Biden Administration’s 2023 trade policy agenda.

On April 18, 2023, the Trade Subcommittee of the Committee on Ways and Means held a hearing on Countering China’s Trade and Investment Agenda: Opportunities for American Leadership.

Committee action

The Committee on Ways and Means marked up H.J. Res. 39, Disapproving the rule submitted by the Department of Commerce relating to “Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414”, on April 19, 2023, and ordered the resolution favorably reported (with quorum being present) by a vote of 26–13.

D. DESIGNATED HEARING

Pursuant to clause 3(c)(6) of rule XIII, the following hearings were used to consider H.J. Res. 39: Committee on Ways and Means hearing which took place on March 24, 2023, entitled “The Biden Administration’s 2023 Trade Policy Agenda with United States

⁵ 87 Fed. Reg. 75221 (December 8, 2022).

Trade Representative, Ambassador Tai”; and Committee on Ways and Means Trade Subcommittee hearing which took place on April 18, 2023, entitled “Countering China’s Trade and Investment Agenda: Opportunities for American Leadership.”

II. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1

This section provides that Congress disapproves of the “Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414” rule published by the Department of Commerce, and that the rule shall have no force or effect.

III. VOTES OF THE COMMITTEE

In compliance with the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.J. Res. 39, Disapproving the Rule Submitted by the Department of Commerce Relating to “Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414”.

H.J. Res. 39 was ordered favorably reported to the House of Representatives by a roll call vote of 26 yeas to 13 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Smith (MO)	X	.....	.....	Mr. Neal .....	.....	.....	.....
Mr. Buchanan	X	.....	.....	Mr. Doggett .....	.....	.....	.....
Mr. Smith (NE)	X	.....	.....	Mr. Thompson .....	.....	X	.....
Mr. Kelly	X	.....	.....	Mr. Larson .....	.....	X	.....
Mr. Schweikert	X	.....	.....	Mr. Blumenauer .....	.....	X	.....
Mr. LaHood	X	.....	.....	Mr. Pascrell .....	.....	.....	.....
Dr. Wenstrup	X	.....	.....	Mr. Davis .....	.....	X	.....
Mr. Arrington	X	.....	.....	Ms. Sánchez .....	.....	X	.....
Dr. Ferguson	X	.....	.....	Mr. Higgins .....	.....	X	.....
Mr. Estes	X	.....	.....	Ms. Sewell	X	.....	.....
Mr. Smucker	X	.....	.....	Ms. DelBene .....	.....	X	.....
Mr. Hern	X	.....	.....	Ms. Chu .....	.....	X	.....
Ms. Miller	X	.....	.....	Ms. Moore .....	.....	X	.....
Dr. Murphy	X	.....	.....	Mr. Kildee .....	.....	.....	.....
Mr. Kustoff	X	.....	.....	Mr. Beyer .....	.....	X	.....
Mr. Fitzpatrick	X	.....	.....	Mr. Evans .....	.....	X	.....
Mr. Steube	X	.....	.....	Mr. Schneider .....	.....	X	.....
Ms. Tenney	X	.....	.....	Mr. Panetta .....	.....	X	.....
Mrs. Fischbach	X	.....	.....		
Mr. Moore	X	.....	.....		
Mr. Steel	X	.....	.....		
Ms. Van Dyne	X	.....	.....		
Mr. Feenstra	X	.....	.....		
Ms. Malliotakis	X	.....	.....		
Mr. Carey	X	.....	.....		

IV. BUDGET EFFECTS OF THE BILL

A. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(d) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by

the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974* was not made available to the Committee in time for the filing of this report.

B. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

With respect to the requirements of clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974*.

C. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974* and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to provide for Congressional disapproval of the Final Rule published by the Department of Commerce titled "Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414."

C. INFORMATION RELATING TO UNFUNDED MANDATES

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

D. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND
LIMITED TARIFF BENEFITS

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, this resolution, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

E. DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95-220, as amended by Pub. L. No. 98-169).

**VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS
REPORTED**

As reported by the Committee, H.J. Res 39 makes no changes in existing law.

VII. DISSENTING VIEWS

COMMITTEE ON WAYS AND MEANS,
HOUSE OF REPRESENTATIVES,
Washington, DC, April 21, 2023.

House Democrats are committed to fighting against climate change while supercharging our domestic manufacturing. We made sure that the clean energy transition will mean more jobs, more manufacturing, and higher wages here in the United States. The *Inflation Reduction Act* is the single largest clean energy investment in U.S. history. The IRA is putting the country on a path to responsible, sustainable energy independence. In addition, the green tax credits in the IRA have spurred over 100,000 jobs for U.S. electricians, mechanics, construction workers, technicians, support staff, and others. In the law's first six months, 90 new clean energy projects have been announced in 31 states. These projects include battery manufacturing, electric vehicle manufacturing, and wind and solar manufacturing sites.

Last August, President Biden signed into law the bipartisan *CHIPS and Science Act of 2022*, which will make historic investments in U.S. workers, communities, and businesses. Among other things, the *CHIPS Act* will boost American semiconductor research, development, and production. The *CHIPS Act* prohibits funding recipients from expanding semiconductor manufacturing in China and countries defined by law as posing a national security threat to the United States. Along with the Bipartisan Infrastructure Law and the *CHIPS Act*, these landmark laws have led to companies committing more than \$200 billion to U.S. manufacturing. Environmental priorities must not be separated from our commitment to stand up for human rights.

House Democrats led the bipartisan, bicameral effort to pass into law the *Uyghur Forced Labor Prevention Act*, which is in now in full force, showing the People's Republic of China (PRC) that products made through forced labor have no place in the United States. Concerns with forced labor in the solar industry have been well-documented, and these products should not enter the U.S. market. In June 2021, U.S. Customs and Border Protection banned imports of silica-based products made by Hoshine Silicon Industry Company as well as goods made using those products, including solar cells. The U.S. Department of Labor added Chinese polysilicon to a list of goods believed to be produced by child labor or forced labor. Ways and Means Democrats will continue to oversee implementation of our laws prohibiting this deplorable and unconscionable practice.

In addition to enforcing laws regarding the prohibition of forced labor, House Democrats are committed to ensuring that the U.S. has the trade tools to combat unfair trade practices. House Democrats fought hard to establish new enforcement structures in the

United States-Mexico-Canada Agreement that have raised our standards as a nation and serve as a powerful beacon of what's possible. We must continue to give weight to our word by fighting for aggressive enforcement of our trade rules. In this regard, in December 2022 the U.S. Commerce Department found that certain companies are attempting to bypass U.S. antidumping and countervailing duty orders on solar cells and panels from China by doing minor processing in Cambodia, Malaysia, Thailand, or Vietnam before shipping to the United States.¹

For over a hundred years now, Congress has maintained trade remedies laws to address unfair trade practices.² Trade remedies underpin our open economy and are a critical tool to address unfair trade practices by the People's Republic of China. The findings by the U.S. Commerce Department cannot be ignored.

Sincerely,

RICHARD E. NEAL,
Ranking Member.

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¹Federal Register Notice, Vol. 87, No. 235, December 8, 2022.

²See Trade Remedies: Antidumping (noting that since 1921 Congress has maintained U.S. antidumping laws and the basic antidumping administrative framework; further, the Antidumping Act of 1921 became the textual basis for the antidumping provision of the multilateral trading system), Christopher A. Casey, Liana Wong, Congressional Research Service, August 23, 2022; *see also* Trade Remedies: Countervailing Duties (noting that beginning in the 1890s U.S. trade laws began to include countervailing duty provisions), Christopher A. Casey, Liana Wong, Congressional Research Service, August 23, 2022.