

119TH CONGRESS
2D SESSION

S. 4038

To exempt small business concerns from duties imposed by the President under section 122 of the Trade Act of 1974 and to prevent price gouging with respect to goods subject to such duties.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 2026

Mr. MARKEY (for himself, Ms. HIRONO, Mr. SCHUMER, Mrs. GILLIBRAND, Mr. HICKENLOOPER, Ms. KLOBUCHAR, Mr. VAN HOLLEN, and Ms. ROSEN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To exempt small business concerns from duties imposed by the President under section 122 of the Trade Act of 1974 and to prevent price gouging with respect to goods subject to such duties.

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 The Act may be cited as the “Small Business Libera-
5 tion 2.0 Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) COMMISSION.—The term “Commission”
2 means the Federal Trade Commission.

3 (2) COMPONENT.—The term “component”
4 means a good that is offered for sale to consumers
5 through incorporation into a final good.

6 (3) COVERED DUTY.—The term “covered duty”
7 means a duty imposed under the authority provided
8 by section 122 of the Trade Act of 1974 (19 U.S.C.
9 2132).

10 (4) COVERED GOOD.—The term “covered good”
11 means the following:

12 (A) A final good or a component that is
13 subject to a covered duty imposed on or after
14 January 20, 2026.

15 (B) A good that is assembled, in whole or
16 in part, in the United States and that includes
17 a component described in subparagraph (A).

18 (C) A final good or a component with re-
19 spect to which there is a planned duty.

20 (D) A good that is assembled, in whole or
21 in part, in the United States and that includes
22 a component described in subparagraph (C).

23 (5) DUTY-RELATED SHOCK DATE.—

1 (A) IN GENERAL.—The term “duty-related
2 shock date” means any date if, during the 30-
3 day period preceding that date—

4 (i) covered duties with respect to
5 goods classifiable under 5 or more sub-
6 headings of the Harmonized Tariff Sched-
7 ule of the United States took effect; or

8 (ii) planned duties with respect to
9 goods classifiable under 5 or more such
10 subheadings were demonstrated by a writ-
11 ten or spoken statement.

12 (B) CONSIDERATION OF NUMBER OF
13 TRADING PARTNERS.—Subparagraph (A) ap-
14 plies without regard to the number of trading
15 partners to which a covered duty or planned
16 duty is applicable.

17 (6) FINAL GOOD.—The term “final good”
18 means a good that does not require any further as-
19 sembly to be ready for sale to consumers.

20 (7) GOOD.—The term “good” means any good
21 offered for sale in commerce.

22 (8) PLANNED DUTY.—The term “planned
23 duty” means a covered duty that is intended to be
24 imposed or increased, as demonstrated by a written
25 or spoken statement by the President, the United

1 States Trade Representative, the Secretary of Com-
 2 merce, or another senior Federal official determined
 3 appropriate by the Commission, including by means
 4 of a press release, a comment at a press conference,
 5 meeting, or public event, or any other public commu-
 6 nication.

7 (9) SMALL BUSINESS CONCERN.—The term
 8 “small business concern” has the meaning given
 9 that term in section 3 of the Small Business Act (15
 10 U.S.C. 632).

11 (10) STATE.—The term “State” means each of
 12 the several States, the District of Columbia, each
 13 commonwealth, territory, or possession of the United
 14 States, and each federally recognized Indian Tribe.

15 (11) ULTIMATE PARENT ENTITY.—The term
 16 “ultimate parent entity” has the meaning given such
 17 term in section 801.1 of title 16, Code of Federal
 18 Regulations (or any successor regulation).

19 **SEC. 3. EXEMPTION AND REFUNDS FOR SMALL BUSINESS**
 20 **CONCERNS FROM DUTIES UNDER BALANCE-**
 21 **OF-PAYMENTS AUTHORITY.**

22 (a) EXEMPTION.—A covered duty shall not apply
 23 with respect to goods imported by or for the use of a small
 24 business concern.

1 (b) REFUNDS.—Not later than 90 days after the date
2 of the enactment of this Act, the President shall refund
3 the amount of any covered duties paid on goods imported
4 by or for the use of a small business concern.

5 **SEC. 4. PREVENTION OF PRICE GOUGING WITH RESPECT**
6 **TO GOODS SUBJECT TO DUTIES UNDER BAL-**
7 **ANCE-OF-PAYMENTS AUTHORITY.**

8 (a) PROHIBITION ON PRICE GOUGING.—

9 (1) IN GENERAL.—No person may sell or offer
10 for sale in the United States a covered good at an
11 unreasonably high price during the 5-year period
12 that follows the date on which—

13 (A) a covered duty with respect to the
14 good took effect or was increased; or

15 (B) a planned duty with respect to the
16 good was demonstrated by a written or spoken
17 statement.

18 (2) ROLE IN SUPPLY CHAIN IMMATERIAL.—The
19 prohibition under paragraph (1) applies without re-
20 gard to the position of a person in a supply chain
21 or distribution network.

22 (3) UNREASONABLY HIGH PRICE.—

23 (A) IN GENERAL.—For purposes of this
24 subsection, a person sells or offers for sale a

1 covered good at an unreasonably high price if
2 the person—

3 (i) has raised the price of a covered
4 good that is a final good by more than the
5 amount of—

6 (I) the costs directly generated
7 by the imposition of or an increase in
8 a covered duty with respect to the
9 good; and

10 (II) additional costs incurred by
11 the person in providing the good that
12 demonstrate that the covered duty
13 was not used by the person as a pre-
14 text for a price increase; or

15 (ii) has raised the price of a covered
16 good that is or includes a component by
17 more than the amount of—

18 (I) the costs directly generated
19 by the imposition of or an increase in
20 a covered duty with respect to the
21 component; and

22 (II) additional costs incurred by
23 the person in providing the good that
24 demonstrate that the covered duty

1 was not used by the person as a pre-
2 text for a price increase.

3 (B) PLANNED DUTIES.—With respect to a
4 covered good, no costs may be determined to be
5 directly generated by the imposition of a cov-
6 ered duty with respect to the good before the
7 date on which the covered duty takes effect
8 with respect to the good.

9 (C) BASELINE PRICE DETERMINATIONS.—
10 For purposes of this paragraph, the price of a
11 covered good before the date on which any cov-
12 ered duty or planned duty applicable to the
13 good took effect or was demonstrated by a writ-
14 ten or spoken statement, as the case may be,
15 shall be determined by reference to the average
16 price of the good during the 180-day period
17 preceding that date.

18 (b) EXEMPTION FOR SMALL BUSINESSES.—Sub-
19 section (a) does not apply to the sale, or offering for sale,
20 of a covered good by a small business concern.

21 (c) PRESUMPTION OF VIOLATION.—

22 (1) IN GENERAL.—With respect to any duty-re-
23 lated shock date, a person shall be presumed to be
24 in violation of subsection (a) if a preponderance of
25 the evidence demonstrates that the person—

1 (A) has unfair leverage (as described in
2 paragraph (3)); and

3 (B) sold or offered for sale on that date a
4 covered good at a price that was greater than
5 the average price of the good during the 180-
6 day period preceding the date on which the
7 most recent covered duty or planned duty appli-
8 cable to the good took effect or was dem-
9 onstrated by a written or spoken statement, as
10 the case may be.

11 (2) REBUTTAL.—A person may rebut a pre-
12 sumption under paragraph (1) if the person dem-
13 onstrates by clear and convincing evidence that the
14 relevant increase in the price of a covered good is at-
15 tributable, in full, to—

16 (A) costs directly generated by the imposi-
17 tion of or an increase in a covered duty with re-
18 spect to the good; and

19 (B) additional costs incurred by the person
20 in providing the good that demonstrate that the
21 covered duty was not used by the person as a
22 pretext for such increase.

23 (3) UNFAIR LEVERAGE.—

24 (A) CHARACTERISTICS.—For purposes of
25 this subsection, a person has unfair leverage if

1 the person or the ultimate parent entity of the
2 person—

3 (i) is not a small business concern; or

4 (ii) satisfies another characteristic set
5 forth in a regulation promulgated by the
6 Commission with respect to determining
7 unfair leverage.

8 (B) INFLATION ADJUSTMENT.—In Janu-
9 ary of the first year beginning after the date of
10 the enactment of this Act, and annually there-
11 after, the Commission shall adjust the amount
12 specified in subparagraph (A)(i) by the percent-
13 age change in the Consumer Price Index for All
14 Urban Consumers published by the Bureau of
15 Labor Statistics with respect to the 12-month
16 period preceding the date of such adjustment.

17 (C) CONSIDERATIONS.—In promulgating
18 regulations under subparagraph (A)(ii), the
19 Commission shall consider the capacity of a
20 person to do the following:

21 (i) Absorb, in whole or in part, costs
22 directly generated by a covered duty.

23 (ii) Increase production, in the United
24 States, of a good that is identical or sub-
25 stantially similar to a covered good.

1 (d) REGULATIONS.—

2 (1) IN GENERAL.—The Commission may pro-
3 mulgate, in accordance with section 553 of title 5,
4 United States Code, such regulations as may be nec-
5 essary to carry out this section.

6 (2) INTERAGENCY CONSULTATION.—The Com-
7 mission, in promulgating regulations under this sub-
8 section, shall consult with the United States Trade
9 Representative, the United States International
10 Trade Commission, the Commissioner of U.S. Cus-
11 toms and Border Protection, and the Commissioner
12 of the Bureau of Labor Statistics.

13 (e) ENFORCEMENT BY COMMISSION.—

14 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
15 TICES.—A violation of this section or a regulation
16 promulgated under this section shall be treated as a
17 violation of a regulation under section 18(a)(1)(B)
18 of the Federal Trade Commission Act (15 U.S.C.
19 57a(a)(1)(B)) regarding unfair or deceptive acts or
20 practices.

21 (2) POWERS OF COMMISSION.—The Commis-
22 sion shall enforce this section and the regulations
23 promulgated under this section in the same manner,
24 by the same means, and with the same jurisdiction,
25 powers, and duties as though all applicable terms

1 and provisions of the Federal Trade Commission Act
2 (15 U.S.C. 41 et seq.) were incorporated into and
3 made a part of this section. Any person who violates
4 this section or a regulation promulgated under this
5 section shall be subject to the penalties and entitled
6 to the privileges and immunities provided in the
7 Federal Trade Commission Act.

8 (3) AUTHORITY PRESERVED.—Nothing in this
9 section may be construed to limit the authority of
10 the Commission under any other provision of law.

11 (f) ACTIONS BY STATES.—

12 (1) IN GENERAL.—In any case in which the at-
13 torney general of a State, or an official or agency of
14 a State, has reason to believe that an interest of the
15 residents of such State has been or is threatened or
16 adversely affected by an act or practice in violation
17 of this section or a regulation promulgated under
18 this section, the State, as *parens patriae*, may bring
19 a civil action on behalf of the residents of the State
20 in an appropriate State court or an appropriate dis-
21 trict court of the United States to—

22 (A) enjoin such act or practice;

23 (B) enforce compliance with this section or
24 such regulation;

1 (C) obtain damages, restitution, or other
2 compensation on behalf of residents of the
3 State; or

4 (D) obtain such other legal and equitable
5 relief as the court may consider to be appro-
6 priate.

7 (2) NOTICE.—Before filing an action under this
8 subsection, the attorney general, official, or agency
9 of the State involved shall provide to the Commis-
10 sion a written notice of such action and a copy of
11 the complaint for such action. If the attorney gen-
12 eral, official, or agency determines that it is not fea-
13 sible to provide the notice described in this para-
14 graph before the filing of the action, the attorney
15 general, official, or agency shall provide written no-
16 tice of the action and a copy of the complaint to the
17 Commission immediately upon the filing of the ac-
18 tion.

19 (3) AUTHORITY OF COMMISSION.—On receiving
20 notice under paragraph (2) of an action under this
21 subsection, the Commission shall have the right—

22 (A) to intervene in the action;

23 (B) upon so intervening, to be heard on all
24 matters arising therein; and

25 (C) to file petitions for appeal.

1 (4) RULES OF CONSTRUCTION.—

2 (A) EXERCISING OF CERTAIN POWERS.—

3 For purposes of bringing a civil action under
4 this subsection, nothing in this Act may be con-
5 strued to prevent an attorney general, official,
6 or agency of a State from exercising the powers
7 conferred on the attorney general, official, or
8 agency by the laws of such State to conduct in-
9 vestigations, administer oaths and affirmations,
10 or compel the attendance of witnesses or the
11 production of documentary and other evidence.

12 (B) STATE PROCEEDINGS.—Nothing in
13 this subsection may be construed to prohibit an
14 authorized official of a State from initiating or
15 continuing any proceeding in a court of the
16 State for a violation of any civil or criminal law
17 of the State.

18 (g) EFFECT ON OTHER LAWS.—Nothing in this sec-
19 tion may be construed to preempt or otherwise affect any
20 State or local law.

21 (h) REPORTING BY CONSUMERS AND RELATED IN-
22 VESTIGATIONS.—

23 (1) IN GENERAL.—Not later than 180 days
24 after the date of the enactment of this Act, the
25 Commission shall establish a mechanism for con-

1 consumers to report to the Commission potential viola-
2 tions of this section.

3 (2) REQUIREMENTS.—The mechanism estab-
4 lished under paragraph (1) shall allow a consumer to
5 report a potential violation by a variety of means, in-
6 cluding the following:

7 (A) A telephone number.

8 (B) A mailing address.

9 (C) A website.

10 (3) CONSIDERATION.—Not later than 180 days
11 after the date of the enactment of this Act, the
12 Commission shall promulgate regulations estab-
13 lishing, and providing a detailed description of, the
14 process by which the Commission shall consider re-
15 ports provided through the mechanism established
16 under paragraph (1) and, if applicable, open inves-
17 tigation into potential violations of this section.

18 (4) RULE OF CONSTRUCTION.—Nothing in this
19 subsection may be construed to preclude the Com-
20 mission from unilaterally initiating an investigation
21 of a potential violation of this section.

22 **SEC. 5. REPORTS.**

23 (a) INTERNATIONAL TRADE COMMISSION AND BU-
24 REAU OF LABOR STATISTICS REPORT.—

1 (1) IN GENERAL.—Not later than 1 year after
2 the date of the enactment of this Act, and annually
3 thereafter, the United States International Trade
4 Commission and the Commissioner of the Bureau of
5 Labor Statistics shall jointly submit to Congress,
6 and make available to the public, a report on the
7 prices of goods sold by any entity that is not a small
8 business concern, with a focus on identifying
9 changes in the prices of covered goods.

10 (2) SUFFICIENCY OF SURVEYS.—

11 (A) IN GENERAL.—Before submitting the
12 first report required by paragraph (1), the
13 Commissioner of the Bureau of Labor Statistics
14 shall identify whether the existing surveys of
15 the Bureau collect sufficiently granular data
16 with respect to pricing decisions and consumer
17 prices to effectively identify price increases for
18 covered goods.

19 (B) DEVELOPMENT OF NEW SURVEYS.—If
20 the Commissioner determines under subpara-
21 graph (A) that the surveys of the Bureau are
22 insufficient, the Bureau shall develop and in-
23 clude in such surveys new questions to collect
24 the data necessary for the report required
25 under paragraph (1).

1 (b) FEDERAL TRADE COMMISSION REPORT.—Not
2 later than 1 year after the date of the enactment of this
3 Act, and annually thereafter, the Commission shall submit
4 to Congress, and make available to the public, a report
5 on the enforcement activities of the Commission under this
6 Act, which shall include an assessment of the impact of
7 the enforcement of this Act on consumer prices, both for
8 covered goods and all goods.

○