

111TH CONGRESS
1ST SESSION

H. R. 2378

To amend title VII of the Tariff Act of 1930 to clarify that fundamental exchange-rate misalignment by any foreign nation is actionable under United States countervailing and antidumping duty laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2009

Mr. RYAN of Ohio (for himself, Mr. TIM MURPHY of Pennsylvania, Mr. ALTMIRE, Mr. JONES, Mr. DEFazio, Mr. WILSON of Ohio, Mr. BURTON of Indiana, Mr. MICHAUD, Mr. SOUDER, Mr. SHULER, Mr. MCHUGH, Mr. COBLE, Mr. BARRETT of South Carolina, Mr. BOUCHER, Ms. SUTTON, Mr. PLATTS, Mr. ARCURI, Mr. HIGGINS, Mr. BOSWELL, Mr. CONYERS, Mr. GENE GREEN of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. COSTELLO, Mr. LEE of New York, Mr. HOLT, Mr. WESTMORELAND, Mr. ROHRBACHER, Mr. SHUSTER, Mr. BRALEY of Iowa, Mr. WILSON of South Carolina, Mr. HOLDEN, Mr. OLVER, Mr. KAGEN, Mr. KILDEE, Mr. HARE, Mrs. MYRICK, Mr. VISCLOSKY, Mr. MANZULLO, Mr. ROGERS of Michigan, and Mr. BROWN of South Carolina) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend title VII of the Tariff Act of 1930 to clarify that fundamental exchange-rate misalignment by any foreign nation is actionable under United States countervailing and antidumping duty laws, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Currency Reform for
3 Fair Trade Act”.

4 **SEC. 2. FINDINGS.**

5 Congress makes the following findings:

6 (1) The strength, vitality, and stability of the
7 United States economy and, more broadly, the open-
8 ness and effectiveness of the global trading system
9 are critically dependent upon an international mone-
10 tary regime of orderly and flexible exchange rates.

11 (2) Increasingly in recent years, a number of
12 foreign governments have undervalued their cur-
13 rencies by means of protracted, large-scale interven-
14 tion directly or indirectly through surrogates in for-
15 eign exchange markets, and this fundamental mis-
16 alignment has substantially contributed to distor-
17 tions in trade flows, unsustainable current account
18 imbalances, and serious competitive problems for
19 countries like the United States that permit their
20 currencies to fluctuate in response to changes in
21 market forces.

22 (3) This exchange depreciation serves as a sub-
23 sidy for, and facilitates dumping of, exports from
24 countries that engage in this mercantilist practice.

25 (4) It is consistent with the agreements of the
26 World Trade Organization and the International

1 Monetary Fund that United States trade law be
 2 amended to clarify and make explicit that funda-
 3 mental undervaluation by an exporting country of its
 4 currency is actionable as a countervailable export
 5 subsidy and alternatively can be offset by anti-
 6 dumping duties when injury to producers and work-
 7 ers in the United States is caused by such subsidized
 8 and dumped imports.

9 **SEC. 3. FUNDAMENTAL AND ACTIONABLE MISALIGNMENT**
 10 **OF A CURRENCY.**

11 (a) IN GENERAL.—Subtitle D of title VII of the Tar-
 12 iff Act of 1930 (19 U.S.C. 1677 et seq.) is amended by
 13 inserting after section 771B the following new section:

14 **“SEC. 771C. FUNDAMENTAL AND ACTIONABLE MISALIGN-**
 15 **MENT OF A CURRENCY.**

16 “(a) FUNDAMENTAL AND ACTIONABLE UNDERVALU-
 17 ATION OF A CURRENCY.—For purposes of subsection (c),
 18 the currency of an exporting country is fundamentally and
 19 actionably undervalued if—

20 “(1) the real effective exchange rate of the ex-
 21 porting country’s currency is undervalued by at least
 22 5 percent, on average, during an 18-month period
 23 that represents the most recent 18 months for which
 24 the information required under subsection (c) is rea-
 25 sonably available, but that does not include any time

1 later than the final month in the period of investiga-
2 tion or the period of review, as applicable;

3 “(2) during part or all of the 18-month period,
4 the government of the exporting country has en-
5 gaged directly or indirectly through surrogates in
6 protracted, large-scale intervention in foreign ex-
7 change markets, and that intervention has involved
8 the direct transfer of funds or the potential direct
9 transfer of funds or liabilities;

10 “(3) during part or all of the 18-month period,
11 the exporting country has experienced a significant
12 and prolonged global current account surplus;

13 “(4) during part or all of the 18-month period,
14 the exporting country has experienced a significant
15 and prolonged bilateral current account surplus with
16 the United States; and

17 “(5) during part or all of the 18-month period,
18 the foreign exchange reserves held or controlled by
19 the government of the exporting country have ex-
20 ceeded the amount necessary to repay its external
21 debt obligations falling due within the coming 12
22 months, except that the requirement of this para-
23 graph shall not be satisfied and no fundamental and
24 actionable undervaluation shall be found as to the
25 currency of an exporting country if the exporting

1 country during any part of the 18-month period has
2 been allowed under article XII or article XVIII, sec-
3 tion B of the GATT 1994 (as defined in section
4 2(1)(B) of the Uruguay Round Agreements Act (19
5 U.S.C. 3501(1)(B)) to impose restrictions to safe-
6 guard its balance of payments.

7 “(b) FUNDAMENTAL AND ACTIONABLE OVER-
8 VALUATION OF A CURRENCY.—For purposes of subsection
9 (c), the currency of an exporting country is fundamentally
10 and actionably overvalued if—

11 “(1) the real effective exchange rate of the ex-
12 porting country’s currency is overvalued by at least
13 5 percent, on average, during an 18-month period
14 that represents the most recent 18 months for which
15 the information required under subsection (c) is rea-
16 sonably available, but that does not include any time
17 later than the final month in the period of investiga-
18 tion or the period of review, as applicable;

19 “(2) during part or all of the 18-month period,
20 the government of the exporting country has en-
21 gaged directly or indirectly through surrogates in
22 protracted, large-scale intervention in foreign ex-
23 change markets, and that intervention has involved
24 the direct transfer of funds or the potential direct
25 transfer of funds or liabilities;

1 “(3) during part or all of the 18-month period,
2 the exporting country has experienced a significant
3 and prolonged global current account deficit;

4 “(4) during part or all of the 18-month period,
5 the exporting country has experienced a significant
6 and prolonged bilateral current account deficit with
7 the United States; and

8 “(5) during part or all of the 18-month period,
9 the foreign exchange reserves held or controlled by
10 the government of the exporting country have been
11 less than the amount necessary to repay its external
12 debt obligations falling due within the coming 12
13 months, except that the requirement of this para-
14 graph shall not be satisfied and no fundamental and
15 actionable overvaluation shall be found as to the cur-
16 rency of an exporting country if the exporting coun-
17 try during any part of the 18-month period has been
18 allowed under article XII or article XVIII, section B
19 of the GATT 1994 (as defined in section 2(1)(B) of
20 the Uruguay Round Agreements Act (19 U.S.C.
21 3501(1)(B)) to impose restrictions to safeguard its
22 balance of payments.

23 “(c) IDENTIFICATION OF FUNDAMENTAL AND AC-
24 TIONABLE MISALIGNMENT OF A CURRENCY.—In calcu-
25 lating under subsection (a) or (b) whether the currency

1 of an exporting country was fundamentally and actionably
2 misaligned during the applicable 18-month period de-
3 scribed in such subsection, the administering authority
4 shall—

5 “(1) measure the level of any such misalign-
6 ment as the simple average of the results yielded
7 from application of the macroeconomic-balance ap-
8 proach and the equilibrium-real-exchange-rate ap-
9 proach;

10 “(2) rely upon data that are publicly available,
11 reliable, and compiled and maintained by the Inter-
12 national Monetary Fund or the World Bank or, if
13 the International Monetary Fund or the World Bank
14 cannot provide such data, by other international or-
15 ganizations or by national governments;

16 “(3) for the purposes of the initiation and the
17 preliminary and final determinations of an investiga-
18 tion and for purposes of the preliminary and final
19 results of a review, rely upon data for an 18-month
20 period that represents the most recent 18 months
21 for which the information needed under this sub-
22 section is reasonably available at the time, but that
23 does not include any time later than the final month
24 in the period of investigation or the period of review,
25 as applicable;

1 “(4) use inflation-adjusted, trade-weighted ex-
2 change rates;

3 “(5) implement the macroeconomic-balance ap-
4 proach and the equilibrium-real-exchange-rate ap-
5 proach using the methodologies described in the
6 guidelines of the International Monetary Fund’s
7 Consultative Group on Exchange Rate Issues, when-
8 ever possible; and

9 “(6) in the event that the guidelines of the
10 International Monetary Fund’s Consultative Group
11 on Exchange Rate Issues are not available, employ
12 generally accepted economic and econometric tech-
13 niques to implement the macroeconomic-balance ap-
14 proach and the equilibrium-real-exchange-rate ap-
15 proach.

16 “(d) IDENTIFICATION OF UNDERVALUATION OR
17 OVERVALUATION OF A CURRENCY DURING THE PERIOD
18 OF INVESTIGATION OR THE PERIOD OF REVIEW.—If fun-
19 damental and actionable misalignment within the meaning
20 of subsection (a) or (b) is identified under subsection (c)
21 as to an exporting country’s currency for the applicable
22 18-month period described in subsection (a) or (b), the
23 administering authority shall—

24 “(1) calculate for the period of investigation or
25 the period of review, as applicable, the level of

1 undervaluation or overvaluation, as the case may be,
2 of the real effective exchange rate of the exporting
3 country's currency in accordance with the proce-
4 dures, methodologies, and standards set forth in
5 subsection (c);

6 “(2) calculate for the period of investigation or
7 the period of review, as applicable, using the results
8 from each approach described in subsection (c)(1),
9 the level of undervaluation or overvaluation, as the
10 case may be, of the real exchange rate between the
11 exporting country and the United States, deriving
12 such level from each level of undervaluation or over-
13 valuation, as the case may be, of the real effective
14 exchange rate determined under paragraph (1) by
15 allocating appreciations or depreciations, as the case
16 may be, in the bilateral real exchange rates of the
17 exporting country to its trading partners on the
18 basis of the overall current account balances of such
19 trading partners; and

20 “(3) take the simple average of each level of
21 undervaluation or overvaluation, as the case may be,
22 calculated under paragraph (2) to measure the level
23 of undervaluation or overvaluation, as the case may
24 be, of the bilateral real exchange rate between the
25 exporting country and the United States.

1 “(e) CONSIDERATION OF UNDERVALUATION OF A
2 CURRENCY IN COUNTERVAILING AND ANTIDUMPING
3 DUTY PROCEEDINGS.—If the administering authority de-
4 termines under subsection (d) that the currency of an ex-
5 porting country was undervalued in relation to the United
6 States dollar during the period of investigation or the pe-
7 riod of review, as applicable—

8 “(1) in a countervailing duty proceeding, the
9 administering authority shall include in the net
10 countervailable subsidy the amount that reflects the
11 level of undervaluation determined under subsection
12 (d)(3) in the bilateral real exchange rate between the
13 currency of the exporting country and the United
14 States dollar; and

15 “(2) in an antidumping duty proceeding, the
16 administering authority shall adjust the export price
17 and constructed export price downward by the
18 amount that reflects the level of undervaluation de-
19 termined under subsection (d)(3) in the bilateral real
20 exchange rate between the currency of the exporting
21 country and the United States dollar.

22 “(f) CONSIDERATION OF OVERVALUATION OF A CUR-
23 RENCY IN ANTIDUMPING DUTY PROCEEDINGS.—If the
24 administering authority determines under subsection (d)
25 that the currency of an exporting country was overvalued

1 in relation to the United States dollar during the period
2 of investigation or the period of review, as applicable, the
3 administering authority shall adjust the export price and
4 constructed export price upward by the amount that re-
5 flects the level of overvaluation determined under sub-
6 section (d)(3) in the bilateral real exchange rate between
7 the currency of the exporting country and the United
8 States dollar.

9 “(g) TYPE OF ECONOMY.—Any determination with
10 respect to the currency of an exporting country by the ad-
11 ministering authority under this section shall be made re-
12 gardless of whether the exporting country has a market
13 economy, a nonmarket economy, or a combination thereof.

14 “(h) DEFINITIONS.—In this section:

15 “(1) PROTRACTED, LARGE-SCALE INTERVEN-
16 TION IN FOREIGN EXCHANGE MARKETS.—

17 “(A) IN GENERAL.—The term ‘protracted,
18 large-scale intervention in foreign exchange
19 markets’ means involvement in foreign ex-
20 change markets by the government of an ex-
21 porting country, either directly or indirectly
22 through surrogates, in such a way as to con-
23 tribute significantly to fundamental and action-
24 able misalignment of the currency of the export-
25 ing country within the meaning of subsection

1 (a) or (b). Such involvement may include one or
2 more of the following:

3 “(i) Governmental purchases, sales, or
4 other exchanges of currencies in foreign ex-
5 change markets.

6 “(ii) Requirement by law or policy of
7 the government of the exporting country
8 that some or all of the foreign currency
9 earnings by an exporter or producer in the
10 exporting country be converted into the
11 currency of the exporting country.

12 “(iii) Any other practice by the gov-
13 ernment of the exporting country that has
14 the effect of causing fundamental and ac-
15 tionable misalignment of the exchange rate
16 of the exporting country’s currency and
17 that involves the direct transfer of funds or
18 the potential direct transfer of funds or li-
19 abilities.

20 “(B) RULE OF CONSTRUCTION.—Funda-
21 mental and actionable misalignment of the cur-
22 rency of an exporting country within the mean-
23 ing of subsection (a) or (b) shall be attributed
24 to the protracted, large-scale intervention in
25 foreign exchange markets by the government of

1 the exporting country unless it is determined
2 that such intervention was not a significant
3 cause of the fundamental and actionable mis-
4 alignment.

5 “(2) MACROECONOMIC-BALANCE APPROACH.—

6 The term ‘macroeconomic-balance approach’ means
7 a methodology under which the level of undervalu-
8 ation or overvaluation of the real effective exchange
9 rate of the exporting country’s currency is defined as
10 the change in the real effective exchange rate needed
11 to achieve equilibrium in the exporting country’s bal-
12 ance of payments.

13 “(3) EQUILIBRIUM-REAL-EXCHANGE-RATE AP-

14 PROACH.—The term ‘equilibrium-real-exchange-rate
15 approach’ means a methodology under which the
16 level of undervaluation or overvaluation of the real
17 effective exchange rate of the exporting country’s
18 currency is defined as the difference between the ob-
19 served real effective exchange rate and the real ef-
20 fective exchange rate predicted by an econometric
21 model.”.

22 (b) CLERICAL AMENDMENT.—The table of contents
23 of title VII of the Tariff Act of 1930 is amended by insert-
24 ing after the item relating to section 771B the following
25 new item:

“Sec. 771C. Fundamental and actionable misalignment of a currency.”.

1 **SEC. 4. CLARIFICATIONS REGARDING DEFINITION OF**
2 **COUNTERAVAILABLE SUBSIDY.**

3 (a) FINANCIAL CONTRIBUTION.—Section 771(5)(D)
4 of the Tariff Act of 1930 (19 U.S.C. 1677(5)(D)) is
5 amended by adding at the end the following new sentence:

6 “A fundamentally and actionably undervalued cur-
7 rency (as determined under section 771C) constitutes a
8 financial contribution under clause (i).”

9 (b) BENEFIT CONFERRED.—Section 771(5)(E) of
10 the Tariff Act of 1930 (19 U.S.C. 1677(5)(E)) is amend-
11 ed—

12 (1) in clause (iii), by striking “and” at the end;

13 (2) in clause (iv), by striking the period at the
14 end and inserting “, and”; and

15 (3) by inserting after clause (iv) the following
16 new clause:

17 “(v) in the case of a fundamentally
18 and actionably undervalued currency (as
19 determined under section 771C), if the ex-
20 porter or producer receives or is entitled to
21 receive more of the exporting country’s
22 currency in exchange for the United States
23 dollars paid for the subject merchandise
24 than if the exporting country’s currency
25 were not fundamentally and actionably un-
26 dervalued.”.

1 (c) SPECIFICITY.—Section 771(5A)(B) of the Tariff
 2 Act of 1930 (19 U.S.C. 1677(5A)(B)) is amended by add-
 3 ing at the end the following new sentence: “For purposes
 4 of this subparagraph, a fundamentally and actionably un-
 5 dervalued currency (as determined under section 771C)
 6 constitutes an export subsidy.”.

7 **SEC. 5. CLARIFICATIONS REGARDING DUMPING.**

8 (a) ADJUSTMENTS FOR EXPORT PRICE AND CON-
 9 STRUCTED EXPORT PRICE.—Section 772(c) of the Tariff
 10 Act of 1930 (19 U.S.C. 1677a(c)) is amended—

11 (1) in paragraph (1)—

12 (A) in subparagraph (B) by striking “and”
 13 at the end; and

14 (B) by adding at the end the following new
 15 subparagraph:

16 “(D) the amount that reflects the level of
 17 overvaluation in the bilateral real exchange rate
 18 between the exporting country and the United
 19 States (as determined under section 771C),
 20 and”; and

21 (2) in paragraph (2)—

22 (A) in subparagraph (A) by striking “and”
 23 at the end;

24 (B) in subparagraph (B), by striking the
 25 period at the end and inserting “, and”; and

1 (C) by adding at the end the following new
 2 subparagraph:

3 “(C) the amount that reflects the level of
 4 undervaluation in the bilateral real exchange
 5 rate between the exporting country and the
 6 United States (as determined under section
 7 771C).”.

8 (b) AMENDMENTS TO DEFINITION OF NONMARKET
 9 ECONOMY COUNTRY.—Section 771(18)(B) of the Tariff
 10 Act of 1930 (19 U.S.C. 1677(18)(B)) is amended—

11 (1) in clause (v), by striking “and” at the end;

12 (2) by redesignating clause (vi) as clause (vii);

13 and

14 (3) by inserting after clause (v) the following
 15 new clause:

16 “(vi) whether in the view of the ad-
 17 ministering authority the currency of the
 18 foreign country is fundamentally and ac-
 19 tionably undervalued or fundamentally and
 20 actionably overvalued (as determined under
 21 section 771C), and”.

22 **SEC. 6. APPLICATION TO GOODS FROM CANADA AND MEX-**
 23 **ICO.**

24 Pursuant to article 1902 of the North American Free
 25 Trade Agreement and section 408 of the North American

1 Free Trade Agreement Implementation Act of 1993 (19
2 U.S.C. 3438), the amendments made by this Act shall
3 apply with respect to goods from Canada and Mexico.

4 **SEC. 7. EFFECTIVE DATE.**

5 The amendments made by this Act apply with respect
6 to countervailing and antidumping duty proceedings initi-
7 ated under title VII of the Tariff Act of 1930 before, on,
8 or after the date of enactment of this Act.

○