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H. R. 1498

To clarify that exchange-rate manipulation by the People's Republic of China is actionable under the countervailing duty provisions and the product-specific safeguard mechanisms of the trade laws of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 2005

Mr. RYAN of Ohio (for himself and Mr. HUNTER) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To clarify that exchange-rate manipulation by the People's Republic of China is actionable under the countervailing duty provisions and the product-specific safeguard mechanisms of the trade laws of the United States, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Chinese Currency Act
5 of 2005”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) The economy and national security of the
4 United States are critically dependent upon a vi-
5 brant manufacturing base.

6 (2) The good health of the United States manu-
7 facturing industry requires, among other things, un-
8 fettered access to open markets abroad and fairly
9 traded raw materials and products in accord with
10 the international legal principles and agreements of
11 the World Trade Organization and the International
12 Monetary Fund.

13 (3) Since 1994, the People's Republic of China
14 has aggressively intervened in currency markets to
15 peg the Chinese currency, known as the renminbi or
16 yuan, at a fixed rate of approximately 8.28 yuan to
17 the United States dollar.

18 (4) Economists generally agree that this policy
19 by the People's Republic of China has resulted in
20 substantial undervaluation of the renminbi, perhaps
21 by 40 percent or more.

22 (5) Evidence of this undervaluation can be
23 found in the large and growing annual trade sur-
24 pluses of the People's Republic of China, foreign-di-
25 rect investment in China, and rapidly increasing ag-
26 gregate amount of foreign-currency reserves.

1 (6) The renminbi's undervaluation acts as both
2 a subsidy for exports from the People's Republic of
3 China and a non-tariff barrier against imports into
4 China, to the serious detriment of the United States
5 manufacturing industry.

6 (7)(A) As a member of both the World Trade
7 Organization and the International Monetary Fund,
8 the People's Republic of China has assumed a series
9 of international legal obligations that proscribe sub-
10 sidization of exports and exchange-rate manipula-
11 tion.

12 (B) These prohibitions are most prominently
13 set forth in Articles VI, XV, and XVI of the GATT
14 1994 (as defined in section 2(1)(B) of the Uruguay
15 Round Agreements Act (19 U.S.C. 3501(1)(B)), in
16 the Agreement on Subsidies and Countervailing
17 Measures (as defined in section 101(d)(12) of the
18 Uruguay Round Agreements Act (19 U.S.C.
19 3511(d)(12))), and in Articles IV and VIII of the
20 International Monetary Fund's Articles of Agree-
21 ment.

22 (8) In addition, as a further condition of its ac-
23 cession agreement to become a member of the World
24 Trade Organization on December 11, 2001, the Peo-
25 ple's Republic of China agreed to a transitional

1 product-specific safeguard mechanism to address
2 market disruption to an importing member's domes-
3 tic industry due to increased imports of products of
4 Chinese origin.

5 (9) Despite its international legal obligations,
6 and notwithstanding extended and ongoing negotia-
7 tions with the United States, the People's Republic
8 of China has given no indication of any intent to
9 correct the renminbi's undervaluation in the foresee-
10 able future.

11 (10) Under the foregoing circumstances, it is
12 consistent with the international legal obligations of
13 the People's Republic of China and with the cor-
14 responding international legal rights of the United
15 States to amend relevant United States trade laws
16 to make explicit that exchange-rate manipulation is
17 actionable as either or both a countervailable export
18 subsidy and as a cause of present or threatened
19 market disruption to United States domestic pro-
20 ducers.

1 **SEC. 3. CLARIFICATION TO INCLUDE EXCHANGE-RATE MA-**
 2 **NIPULATION AS COUNTERAVAILABLE SUBSIDY**
 3 **UNDER TITLE VII OF THE TARIFF ACT OF**
 4 **1930.**

5 (a) AMENDMENTS TO DEFINITION OF
 6 COUNTERAVAILABLE SUBSIDY.—

7 (1) FINANCIAL CONTRIBUTION.—Section
 8 771(5)(D) of the Tariff Act of 1930 (19 U.S.C.
 9 1677(5)(D)) is amended—

10 (A) by striking “The term” and inserting
 11 “(i) The term”;

12 (B) by redesignating clauses (i) through
 13 (iv) as subclauses (I) through (IV), respectively;
 14 and

15 (C) by adding at the end the following:

16 “(ii) In addition to clause (i), the term
 17 ‘provides a financial contribution’ means to en-
 18 gage in exchange-rate manipulation (as defined
 19 in paragraph (5C)).”.

20 (2) BENEFIT CONFERRED.—Section 771(5)(E)
 21 of the Tariff Act of 1930 (19 U.S.C. 1677(5)(E)) is
 22 amended—

23 (A) in clause (iii), by striking “, and” and
 24 inserting a comma;

25 (B) in clause (iv), by striking the period at
 26 the end and inserting “, and”; and

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

3 “(v) in the case of exchange-rate ma-
 4 nipulation (as defined in paragraph (5C)),
 5 if the price of exported goods is less than
 6 what the price of such goods would be ab-
 7 sent the exchange-rate manipulation.”.

8 (3) SPECIFICITY.—Section 771(5A)(B) of the
 9 Tariff Act of 1930 (19 U.S.C. 1677(5A)(B)) is
 10 amended by adding at the end before the period the
 11 following: “, such as exchange-rate manipulation (as
 12 defined in paragraph (5C))”.

13 (b) DEFINITION OF EXCHANGE-RATE MANIPULA-
 14 TION.—Section 771 of the Tariff Act of 1930 (19 U.S.C.
 15 1677) is amended by inserting after paragraph (5B) the
 16 following new paragraph:

17 “(5C) DEFINITION OF EXCHANGE-RATE MANIP-
 18 ULATION.—

19 “(A) IN GENERAL.—For purposes of para-
 20 graphs (5) and (5A), the term ‘exchange-rate
 21 manipulation’ means protracted large-scale
 22 intervention by an authority to undervalue its
 23 currency in the exchange market that prevents
 24 effective balance-of-payments adjustment or

1 that gains an unfair competitive advantage over
2 any other country.

3 “(B) FACTORS.—In determining whether
4 exchange-rate manipulation is occurring and a
5 benefit thereby conferred, the administering au-
6 thority in each case—

7 “(i) shall consider the exporting coun-
8 try’s—

9 “(I) bilateral balance-of-trade
10 surplus or deficit with the United
11 States;

12 “(II) balance-of-trade surplus or
13 deficit with its other trading partners
14 individually and in the aggregate;

15 “(III) foreign direct investment
16 in its territory;

17 “(IV) currency-specific and ag-
18 gregate amounts of foreign currency
19 reserves; and

20 “(V) mechanisms employed to
21 maintain its currency at a fixed ex-
22 change rate relative to another cur-
23 rency and, particularly, the nature,
24 duration, and monetary expenditures
25 of those mechanisms;

1 “(ii) may consider such other eco-
2 nomic factors as are relevant; and

3 “(iii) shall measure the trade sur-
4 pluses or deficits described in subclauses
5 (I) and (II) of clause (i) with reference to
6 the trade data reported by the United
7 States and the other trading partners of
8 the exporting country, unless such trade
9 data are not available or are demonstrably
10 inaccurate, in which case the exporting
11 country’s trade data may be relied upon if
12 shown to be sufficiently accurate and
13 trustworthy.

14 “(C) TYPE OF ECONOMY.—An authority
15 found to be engaged in exchange-rate manipula-
16 tion may have either a market economy or a
17 nonmarket economy or a combination thereof.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section apply with respect to a countervailing duty
20 investigation initiated under subtitle A of title VII of the
21 Tariff Act of 1930 before, on, or after the date of the
22 enactment of this Act.

1 **SEC. 4. CLARIFICATION TO INCLUDE EXCHANGE-RATE MA-**
2 **NIPULATION BY THE PEOPLE’S REPUBLIC OF**
3 **CHINA AS MARKET DISRUPTION UNDER**
4 **CHAPTER 2 OF TITLE IV OF THE TRADE ACT**
5 **OF 1974.**

6 (a) MARKET DISRUPTION.—

7 (1) IN GENERAL.—Section 421(c) of the Trade
8 Act of 1974 (19 U.S.C. 2451(c)) is amended by add-
9 ing at the end the following new paragraph:

10 “(3) For purposes of this section, the term ‘under
11 such conditions’ includes, but is not limited to, by reason
12 of exchange-rate manipulation (as defined in paragraph
13 (4)).”.

14 (2) DEFINITION OF EXCHANGE-RATE MANIPU-
15 LATION.—Section 421(c) of the Trade Act of 1974
16 (19 U.S.C. 2451(c)), as amended by paragraph (1),
17 is further amended by adding at the end the fol-
18 lowing new paragraph:

19 “(4)(A) For purposes of this section, the term ‘ex-
20 change-rate manipulation’ means protracted large-scale
21 intervention by the Government of the People’s Republic
22 of China or any other public entity within the territory
23 of the People’s Republic of China to undervalue its cur-
24 rency in the exchange market that prevents effective bal-
25 ance-of-payments adjustment or that gains an unfair com-
26 petitive advantage over the United States.

1 “(B) In determining whether exchange-rate manipu-
2 lation is occurring, the Commission in each case—

3 “(i) shall consider China’s—

4 “(I) bilateral balance-of-trade surplus or
5 deficit with the United States;

6 “(II) balance-of-trade surplus or deficit
7 with its other trading partners individually and
8 in the aggregate;

9 “(III) foreign direct investment in its terri-
10 tory;

11 “(IV) currency-specific and aggregate
12 amounts of foreign currency reserves; and

13 “(V) mechanisms employed to maintain its
14 currency at a fixed exchange rate relative to an-
15 other currency and, particularly, the nature, du-
16 ration, and monetary expenditures of those
17 mechanisms;

18 “(ii) may consider such other economic factors
19 as are relevant; and

20 “(iii) shall measure the trade surpluses or defi-
21 cits described in subclauses (I) and (II) of clause (i)
22 with reference to the trade data reported by the
23 United States and the other trading partners of
24 China, unless such trade data are not available or
25 are demonstrably inaccurate, in which case China’s

1 trade data may be relied upon if shown to be suffi-
2 ciently accurate and trustworthy.”.

3 (b) CRITICAL CIRCUMSTANCES.—Section 421(i)(1) of
4 the Trade Act of 1974 (19 U.S.C. 2451(i)(1)) is amend-
5 ed—

6 (1) in subparagraph (A), by striking “and” at
7 the end;

8 (2) in subparagraph (B), by striking the period
9 at the end and inserting “; and”; and

10 (3) by inserting after subparagraph (B) the fol-
11 lowing new subparagraph:

12 “(C) in those instances in which the petition al-
13 leges and reasonably documents that exchange-rate
14 manipulation is occurring, shall consider that factor
15 as weighing in favor of affirmative findings under
16 subparagraphs (A) and (B).”.

17 (c) STANDARD FOR PRESIDENTIAL ACTION.—Section
18 421(k)(2) of the Trade Act of 1974 (19 U.S.C.
19 2451(k)(2)) is amended by adding at the end the following
20 new sentence: “In those instances in which the Commis-
21 sion has made an affirmative determination that ex-
22 change-rate manipulation is occurring, the President shall
23 consider that factor as weighing in favor of providing im-
24 port relief in accordance with subsection (a).”.

1 (d) MODIFICATIONS OF RELIEF.—Section 421(n)(2)
2 of the Trade Act of 1974 (19 U.S.C. 2451(n)(2)) is
3 amended by adding at the end the following new sentence:
4 “In those instances in which the Commission has made
5 an affirmative determination that exchange-rate manipu-
6 lation is occurring, the Commission and the President
7 shall consider that factor as weighing in favor of finding
8 that continuation of relief is necessary to prevent or rem-
9 edy the market disruption at issue.”.

10 (e) EXTENSION OF ACTION.—Section 421(o) of the
11 Trade Act of 1974 (19 U.S.C. 2451(o)) is amended—

12 (1) in paragraph (1), by adding at the end the
13 following new sentence: “In those instances in which
14 the Commission has made an affirmative determina-
15 tion that exchange-rate manipulation is occurring,
16 the Commission shall consider that factor as weigh-
17 ing in favor of finding that an extension of the pe-
18 riod of relief is necessary to prevent or remedy the
19 market disruption at issue.”; and

20 (2) in paragraph (4), by adding at the end the
21 following new sentence: “In those instances in which
22 the Commission has made an affirmative determina-
23 tion that exchange-rate manipulation is occurring,
24 the President shall consider that factor as weighing
25 in favor of finding that an extension of the period

1 of relief is necessary to prevent or remedy the mar-
 2 ket disruption at issue.”.

3 (f) EFFECTIVE DATE.—The amendments made by
 4 this section apply with respect to an investigation initiated
 5 under chapter 2 of title IV of the Trade Act of 1974 be-
 6 fore, on, or after the date of the enactment of this Act.

7 **SEC. 5. PROHIBITION ON PROCUREMENT BY THE DEPART-**
 8 **MENT OF DEFENSE OF CERTAIN DEFENSE**
 9 **ARTICLES IMPORTED FROM THE PEOPLE’S**
 10 **REPUBLIC OF CHINA.**

11 (a) COPY OF PETITION, REQUEST, OR RESOLUTION
 12 TO BE TRANSMITTED TO THE SECRETARY OF DE-
 13 FENSE.—Section 421(b)(4) of the Trade Act of 1974 (19
 14 U.S.C. 2451(b)(4)) is amended by inserting “, the Sec-
 15 retary of Defense” after “, the Trade Representative”.

16 (b) DETERMINATION OF SECRETARY OF DEFENSE.—
 17 Section 421(b) of the Trade Act of 1974 (19 U.S.C.
 18 2451(b)) is amended by adding at the end the following
 19 new paragraph:

20 “(6) Not later than 15 days after the date on which
 21 an investigation is initiated under this subsection, the Sec-
 22 retary of Defense shall submit to the Commission a report
 23 in writing which contains the determination of the Sec-
 24 retary as to whether or not the articles of the People’s
 25 Republic of China that are the subject of the investigation

1 are like or directly competitive with articles produced by
2 a domestic industry that are critical to the defense indus-
3 trial base of the United States.”.

4 (c) PROHIBITION ON PROCUREMENT BY THE DE-
5 PARTMENT OF DEFENSE OF CERTAIN DEFENSE ARTI-
6 CLES.—

7 (1) PROHIBITION.—If the United States Inter-
8 national Trade Commission makes an affirmative
9 determination under section 421(b) of the Trade Act
10 of 1974 (19 U.S.C. 2451(b)), or a determination
11 which the President or the United States Trade
12 Representative may consider as affirmative under
13 section 421(e) of such Act (19 U.S.C. 2451(e)), with
14 respect to articles of the People’s Republic of China
15 that the Secretary of Defense has determined are
16 like or directly competitive with articles produced by
17 a domestic industry that are critical to the defense
18 industrial base of the United States, the Secretary
19 of Defense may not procure, directly or indirectly,
20 such products of the People’s Republic of China.

21 (2) WAIVER.—The President may waive the ap-
22 plication of the prohibition contained in paragraph
23 (1) on a case-by-case basis if the President deter-
24 mines and certifies to Congress that it is in the na-

- 1 tional security interests of the United States to do
- 2 so.

