

109TH CONGRESS
1ST SESSION

S. 377

To require negotiation and appropriate action with respect to certain countries that engage in currency manipulation.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2005

Mr. LIEBERMAN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To require negotiation and appropriate action with respect to certain countries that engage in currency manipulation.

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 “Fair Currency En-
5 forcement Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The manufacturing sector is an important
9 driver of the United States economy, contributing al-
10 most 30 percent of our economic growth during the

1 1990's, and twice the productivity growth of the
2 service sector during that period.

3 (2) The manufacturing sector contributes sig-
4 nificantly to our Nation's development of new prod-
5 ucts and technologies for world markets, performing
6 almost 60 percent of all research and development in
7 the United States over the past two decades.

8 (3) The manufacturing sector provides high
9 quality jobs, with average weekly wages between 20
10 and 30 percent higher than jobs in the service sec-
11 tor.

12 (4) The manufacturing growth creates a signifi-
13 cant number of jobs and investments in other sec-
14 tors of the economy, and this "multiplier effect" is
15 reckoned by economists to be larger (2.43 to 1) than
16 for any other significant sector of the economy.

17 (5) The "jobless recovery" from the recent re-
18 cession has witnessed the worst job slump since the
19 Great Depression and the weakest employment re-
20 covery on record.

21 (6) The manufacturing sector has been hit the
22 hardest by the jobless recovery.

23 (7) A significant factor in the loss of valuable
24 United States manufacturing jobs is the difficulty

1 faced by United States manufacturers in competing
2 effectively against lower priced foreign products.

3 (8) A significant obstacle to United States man-
4 ufacturers in competing against foreign manufactur-
5 ers is the practice of some governments of inter-
6 vening aggressively in currency markets, or pegging
7 their currencies at fixed rates, to maintain their own
8 currencies at artificially low valuations, thus sub-
9 sidizing their export sales and raising price barriers
10 to imports from the United States.

11 (9) Certain Asian countries exemplify this prac-
12 tice. China, Japan, South Korea, and Taiwan to-
13 gether have accumulated approximately $\frac{1}{2}$ of the
14 world's total currency reserves. The vast majority of
15 these reserves, perhaps as high as 90 percent, are in
16 dollars. These same 4 countries account for 60 per-
17 cent of the United States world trade deficit in man-
18 ufactured goods. These reserves are symptomatic of
19 a strategy of intervention to manipulate currency
20 values.

21 (10) The People's Republic of China is particu-
22 larly aggressive in intervening to maintain the value
23 of its currency, the renminbi, at an artificially low
24 rate. China maintains this rate by mandating for-
25 eign exchange sales at its central bank at a fixed ex-

1 change rate against the dollar, in effect, pegging the
2 renminbi at this rate. This low rate represents a sig-
3 nificant reason why China has contributed the most
4 to our trade deficit in manufactured goods.

5 (11) Economists estimate that as a result of
6 this manipulation of the Chinese currency, the
7 renminbi is undervalued by between 15 and 40 per-
8 cent, effectively creating a 15- to 40-percent subsidy
9 for Chinese exports and giving Chinese manufactur-
10 ers a significant price advantage over United States
11 and other competitors.

12 (12) The national currency of Japan is the yen.
13 Experts estimate that the yen is undervalued by ap-
14 proximately 20 percent or more, giving Japanese
15 manufacturers a significant price advantage over
16 United States competitors.

17 (13) In addition to being placed at a competi-
18 tive disadvantage by foreign competitors' exports
19 that are unfairly subsidized by strategically under-
20 valued currencies, United States manufacturers also
21 may face significant nontariff barriers to their own
22 exports to these same countries. For example, in the
23 past in China, until remediated, a complex system
24 involving that nation's value added tax and special
25 tax rebates ensured that semiconductor devices im-

1 ported into China were taxed at 17 percent while do-
2 mestic devices are effectively taxed at 6 percent.

3 (14) The United States has the right and power
4 to redress unfair competitive practices in inter-
5 national trade involving currency manipulation.

6 (15) Under section 3004 of the Omnibus Trade
7 and Competitiveness Act of 1988, the Secretary of
8 the Treasury is required to determine whether any
9 country is manipulating the rate of exchange be-
10 tween its currency and the dollar for the purpose of
11 preventing effective balance of payments adjust-
12 ments or gaining unfair advantage in international
13 trade. If such violations are found, the Secretary of
14 the Treasury is required to undertake negotiations
15 with any country that has a significant trade sur-
16 plus.

17 (16) Article IV of the Articles of Agreement of
18 the International Monetary Fund prohibits currency
19 manipulation by a member for the purposes of gain-
20 ing an unfair competitive advantage over other mem-
21 bers, and the related surveillance provision defines
22 “manipulation” to include “protracted large-scale
23 intervention in one direction in the exchange mar-
24 ket”.

1 (17) Under Article XV of the Exchange Agree-
2 ments of the General Agreement on Tariffs and
3 Trade, all contracting parties “shall not, by ex-
4 change action, frustrate the intent of the provisions
5 of this Agreement, nor by trade action, the intent of
6 the Articles of Agreement of the International Mone-
7 tary Fund”. Such actions are actionable violations.
8 The intent of the General Agreement on Tariffs and
9 Trade Exchange Agreement, as stated in the pre-
10 amble of that Agreement, includes the objective of
11 “entering into reciprocal and mutually advantageous
12 arrangements directed to substantial reduction of
13 tariffs and other barriers to trade,” and currency
14 manipulation may constitute a trade barrier disrup-
15 tive to reciprocal and mutually advantageous trade
16 arrangements.

17 (18) Deliberate currency manipulation by na-
18 tions to significantly undervalue their currencies also
19 may be interpreted as a violation of the Agreement
20 on Subsidies and Countervailing Measures of the
21 World Trade Organization (as described in section
22 101(d)(12)) of the Uruguay Round Agreements Act,
23 which could lead to action and remedy under the
24 World Trade Organization dispute settlement proce-
25 dures.

1 (19) Deliberate, large-scale intervention by gov-
2 ernments in currency markets to significantly under-
3 value their currencies may be a nullification and im-
4 pairment of trade benefits precluded under Article
5 XXIII of the General Agreement on Tariffs and
6 Trade, and subject to remedy.

7 (20) The United States Trade Representative
8 also has authority to pursue remedial actions under
9 section 301 of the Trade Act of 1974.

10 (21) The United States has special rights to
11 take action to redress market disruption under sec-
12 tion 406 of the Trade Act of 1974 adopted pursuant
13 to the provisions of the United States-China Bilat-
14 eral Agreement on World Trade Organization Acces-
15 sion.

16 (22) While large-scale manipulation of cur-
17 rencies by certain major trading partners to achieve
18 an unfair competitive advantage is one of the most
19 pervasive barriers faced by the manufacturing sector
20 in the United States, other factors are contributing
21 to the decline of manufacturing and small and mid-
22 sized manufacturing firms in the United States, in-
23 cluding but not limited to non-tariff trade barriers,
24 lax enforcement of existing trade agreements, and

1 weak or underutilized government support for trade
2 promotion.

3 **SEC. 3. NEGOTIATION PERIOD REGARDING CURRENCY NE-**
4 **GOTIATIONS.**

5 Beginning on the date of enactment of this Act, the
6 President shall begin bilateral and multilateral negotia-
7 tions for a 90-day period with those governments of na-
8 tions determined to be engaged most egregiously in cur-
9 rency manipulation, as defined in section 7, to seek a
10 prompt and orderly end to such currency manipulation
11 and to ensure that the currencies of these countries are
12 freely traded on international currency markets, or are es-
13 tablished at a level that reflects a more appropriate and
14 accurate market value. The President shall seek support
15 in this process from international agencies and other na-
16 tions and regions adversely affected by these currency
17 practices.

18 **SEC. 4. FINDINGS OF FACT AND REPORT REGARDING CUR-**
19 **RENCY MANIPULATION.**

20 (a) IN GENERAL.—During the 90-day negotiation pe-
21 riod described in section 3, the International Trade Com-
22 mission shall—

23 (1) ascertain and develop the full facts and de-
24 tails concerning how countries have acted to manipu-
25 late their currencies to increase their exports to the

1 United States and limit their imports of United
2 States products;

3 (2) quantify the extent of this currency manipu-
4 lation;

5 (3) examine in detail how these currency prac-
6 tices have affected and will continue to affect United
7 States manufacturers and United States trade levels,
8 both for imports and exports;

9 (4) review whether and to what extent reduc-
10 tion of currency manipulation and the accumulation
11 of dollar-denominated currency reserves and public
12 debt instruments might adversely affect United
13 States interest rates and public debt financing;

14 (5) make a determination of any and all avail-
15 able mechanisms for redress under applicable inter-
16 national trade treaties and agreements, including the
17 Articles of Agreement of the International Monetary
18 Fund, the General Agreement on Tariffs and Trade,
19 the World Trade Organization Agreements, and
20 United States trade laws; and

21 (6) undertake other appropriate evaluations of
22 the issues described in paragraphs (1) through (5).

23 (b) REPORT.—Not later than 90 days after the date
24 of enactment of this Act, the International Trade Commis-
25 sion shall provide a detailed report to the President, the

1 United States Trade Representative, the Secretary of the
2 Treasury, and the appropriate congressional committees
3 on the findings made as a result of the reviews undertaken
4 under paragraphs (1) through (6) of subsection (a).

5 **SEC. 5. INSTITUTE PROCEEDINGS REGARDING CURRENCY**
6 **MANIPULATION.**

7 At the end of the 90-day negotiation period provided
8 for in section 3, if agreements are not reached by the
9 President to promptly end currency manipulation, the
10 President shall institute proceedings under the relevant
11 provisions of international law and United States trade
12 laws including sections 301 and 406 of the Trade Act of
13 1974 with respect to those countries that, based on the
14 findings of the International Trade Commission under sec-
15 tion 4, continue to engage in the most egregious currency
16 manipulation. In addition to seeking a prompt end to cur-
17 rency manipulation, the President shall seek appropriate
18 damages and remedies for the Nation's manufacturers and
19 other affected parties. If the President does not institute
20 action, the President shall, not later than 120 days after
21 the date of enactment of this Act, provide to the appro-
22 priate congressional committees a detailed explanation and
23 accounting of precisely why the President has determined
24 not to institute action.

1 **SEC. 6. ADDITIONAL REPORTS AND RECOMMENDATIONS.**

2 (a) NATIONAL SECURITY.—Within 90 days of the
3 date of enactment of this Act, the Secretary of Defense
4 shall provide a detailed report to the appropriate congres-
5 sional committees evaluating the effects on our national
6 security of countries engaging in significant currency ma-
7 nipulations, and the effect of such manipulation on critical
8 manufacturing sectors.

9 (b) OTHER UNFAIR TRADE PRACTICES.—Within 90
10 days of the date of enactment of this Act, the United
11 States Trade Representative and the International Trade
12 Commission shall evaluate and report in detail to the ap-
13 propriate congressional committees on other trade prac-
14 tices and trade barriers by major East Asian trading na-
15 tions potentially in violation of international trade agree-
16 ments, including the practice of maintaining a value-added
17 or other tax regime that effectively discriminates against
18 imports by underpricing domestically produced goods, or
19 setting technology standards that effectively limit imports.

20 (c) TRADE ENFORCEMENT.—Within 90 days of the
21 date of enactment of this Act, the United States Trade
22 Representative and the International Trade Commission
23 shall report in detail to the appropriate congressional com-
24 mittees on steps that could be taken to significantly im-
25 prove trade enforcement efforts against unfair trade prac-
26 tices by competitor trading nations, including making rec-

1 ommendations for additional support for trade enforce-
2 ment efforts.

3 (d) TRADE PROMOTION.—Within 90 days of the date
4 of enactment of this Act, the Secretaries of State and
5 Commerce, and the United States Trade Representative,
6 shall prepare a detailed report with recommendations on
7 steps that could be undertaken to significantly improve
8 trade promotion for United States goods and services, in-
9 cluding recommendations on additional support to improve
10 trade promotion.

11 **SEC. 7. CURRENCY MANIPULATION DEFINED.**

12 In this Act, the term “currency manipulation”
13 means—

14 (1) large-scale manipulation of exchange rates
15 by a nation in order to gain an unfair competitive
16 advantage as stated in Article IV of the Articles of
17 Agreement of the International Monetary Fund and
18 related surveillance provisions;

19 (2) sustained, large-scale currency intervention
20 in one direction, through mandatory foreign ex-
21 change sales at a nation’s central bank at a fixed ex-
22 change rate; or

- 1 (3) other mechanisms, used to maintain a cur-
- 2 rency at a fixed exchange rate relative to another
- 3 currency.

