

111TH CONGRESS
1ST SESSION

S. 1027

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 SENATE OF THE UNITED STATES

MAY 13, 2009

Ms. STABENOW (for herself, Mr. BUNNING, Mr. BROWN, Ms. SNOWE, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Finance

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Currency Reform for
5 Fair Trade Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) The strength, vitality, and stability of the
2 United States economy and, more broadly, the open-
3 ness and effectiveness of the global trading system
4 are critically dependent upon an international mone-
5 etary regime of orderly and flexible exchange rates.

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

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

20 (4) It is consistent with the agreements of the
21 World Trade Organization and the International
22 Monetary Fund that United States trade law be
23 amended to clarify and make explicit that funda-
24 mental undervaluation by an exporting country of its
25 currency is actionable as a countervailable export

1 subsidy and alternatively can be offset by anti-
 2 dumping duties when injury to producers and work-
 3 ers in the United States is caused by such subsidized
 4 and dumped imports.

5 **SEC. 3. FUNDAMENTAL AND ACTIONABLE MISALIGNMENT**
 6 **OF A CURRENCY.**

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

10 **“SEC. 771C. FUNDAMENTAL AND ACTIONABLE MISALIGN-**
 11 **MENT OF A CURRENCY.**

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

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

24 “(2) during part or all of the 18-month period,
 25 the government of the exporting country has en-

1 gaged directly or indirectly through surrogates in
2 protracted, large-scale intervention in foreign ex-
3 change markets, and that intervention has involved
4 the direct transfer of funds or the potential direct
5 transfer of funds or liabilities;

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

9 “(4) during part or all of the 18-month period,
10 the exporting country has experienced a significant
11 and prolonged bilateral current account surplus with
12 the United States; and

13 “(5) during part or all of the 18-month period,
14 the foreign exchange reserves held or controlled by
15 the government of the exporting country have ex-
16 ceeded the amount necessary to repay its external
17 debt obligations falling due within the coming 12
18 months, except that the requirement of this para-
19 graph shall not be satisfied and no fundamental and
20 actionable undervaluation shall be found as to the
21 currency of an exporting country if the exporting
22 country during any part of the 18-month period has
23 been allowed under article XII or article XVIII, sec-
24 tion B of the GATT 1994 (as defined in section
25 2(1)(B) of the Uruguay Round Agreements Act (19

1 U.S.C. 3501(1)(B)) to impose restrictions to safe-
2 guard its balance of payments.

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

7 “(1) the real effective exchange rate of the ex-
8 porting country’s currency is overvalued by at least
9 5 percent, on average, during an 18-month period
10 that represents the most recent 18 months for which
11 the information required under subsection (c) is rea-
12 sonably available, but that does not include any time
13 later than the final month in the period of investiga-
14 tion or the period of review, as applicable;

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

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

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

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

20 “(c) IDENTIFICATION OF FUNDAMENTAL AND AC-
21 TIONABLE MISALIGNMENT OF A CURRENCY.—In calcu-
22 lating under subsection (a) or (b) whether the currency
23 of an exporting country was fundamentally and actionably
24 misaligned during the applicable 18-month period de-

1 scribed in such subsection, the administering authority
2 shall—

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

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

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

24 “(4) use inflation-adjusted, trade-weighted ex-
25 change rates;

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

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

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

22 “(1) calculate for the period of investigation or
 23 the period of review, as applicable, the level of
 24 undervaluation or overvaluation, as the case may be,
 25 of the real effective exchange rate of the exporting

1 country's currency in accordance with the proce-
2 dures, methodologies, and standards set forth in
3 subsection (c);

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

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

24 “(e) CONSIDERATION OF UNDERVALUATION OF A
25 CURRENCY IN COUNTERVAILING AND ANTIDUMPING

1 DUTY PROCEEDINGS.—If the administering authority de-
 2 termines under subsection (d) that the currency of an ex-
 3 porting country was undervalued in relation to the United
 4 States dollar during the period of investigation or the pe-
 5 riod of review, as applicable—

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

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

20 “(f) CONSIDERATION OF OVERVALUATION OF A CUR-
 21 RENCY IN ANTIDUMPING DUTY PROCEEDINGS.—If the
 22 administering authority determines under subsection (d)
 23 that the currency of an exporting country was overvalued
 24 in relation to the United States dollar during the period
 25 of investigation or the period of review, as applicable, the

1 administering authority shall adjust the export price and
 2 constructed export price upward by the amount that re-
 3 flects the level of overvaluation determined under sub-
 4 section (d)(3) in the bilateral real exchange rate between
 5 the currency of the exporting country and the United
 6 States dollar.

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

12 “(h) DEFINITIONS.—In this section:

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

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

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

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

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

18 “(B) RULE OF CONSTRUCTION.—Funda-
19 mental and actionable misalignment of the cur-
20 rency of an exporting country within the mean-
21 ing of subsection (a) or (b) shall be attributed
22 to the protracted, large-scale intervention in
23 foreign exchange markets by the government of
24 the exporting country unless it is determined
25 that such intervention was not a significant

1 cause of the fundamental and actionable mis-
2 alignment.

3 “(2) MACROECONOMIC-BALANCE APPROACH.—

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

11 “(3) EQUILIBRIUM-REAL-EXCHANGE-RATE AP-
12 PROACH.—The term ‘equilibrium-real-exchange-rate

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

20 (b) CLERICAL AMENDMENT.—The table of contents
21 of title VII of the Tariff Act of 1930 is amended by insert-
22 ing after the item relating to section 771B the following
23 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 flush sen-
 6 tence:

7 “A fundamentally and actionably undervalued
 8 currency (as determined under section 771C)
 9 constitutes a financial contribution under clause
 10 (i).”.

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

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

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

17 (3) by inserting after clause (iv) the following
 18 new clause:

19 “(v) in the case of a fundamentally
 20 and actionably undervalued currency (as
 21 determined under section 771C), if the ex-
 22 porter or producer receives or is entitled to
 23 receive more of the exporting country’s
 24 currency in exchange for the United States
 25 dollars paid for the subject merchandise
 26 than if the exporting country’s currency

1 were not fundamentally and actionably un-
2 dervalued.”.

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

9 **SEC. 5. CLARIFICATIONS REGARDING DUMPING.**

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

13 (1) in paragraph (1)—

14 (A) in subparagraph (B) by striking “and”
15 at the end; and

16 (B) by adding at the end the following new
17 subparagraph:

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

23 (2) in paragraph (2)—

24 (A) in subparagraph (A) by striking “and”
25 at the end;

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

3 (C) by adding at the end the following new
 4 subparagraph:

5 “(C) the amount that reflects the level of
 6 undervaluation in the bilateral real exchange
 7 rate between the exporting country and the
 8 United States (as determined under section
 9 771C).”.

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

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

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

15 and

16 (3) by inserting after clause (v) the following
 17 new clause:

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

1 **SEC. 6. APPLICATION TO GOODS FROM CANADA AND MEX-**
2 **ICO.**

3 Pursuant to article 1902 of the North American Free
4 Trade Agreement and section 408 of the North American
5 Free Trade Agreement Implementation Act of 1993 (19
6 U.S.C. 3438), the amendments made by this Act shall
7 apply with respect to goods from Canada and Mexico.

8 **SEC. 7. EFFECTIVE DATE.**

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

○