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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.

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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. ROHRABACHER, 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

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# 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.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Currency Reform for Fair Trade Act''.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) The strength, vitality, and stability of the United States economy and, more broadly, the openness and effectiveness of the global trading system are critically dependent upon an international monetary regime of orderly and flexible exchange rates.

(2) Increasingly in recent years, a number of foreign governments have undervalued their currencies by means of protracted, large-scale intervention directly or indirectly through surrogates in foreign exchange markets, and this fundamental misalignment has substantially contributed to distortions in trade flows, unsustainable current account imbalances, and serious competitive problems for countries like the United States that permit their currencies to fluctuate in response to changes in market forces.

(3) This exchange depreciation serves as a subsidy for, and facilitates dumping of, exports from countries that engage in this mercantilist practice.

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

Monetary Fund that United States trade law be amended to clarify and make explicit that fundamental undervaluation by an exporting country of its currency is actionable as a countervailable export subsidy and alternatively can be offset by antidumping duties when injury to producers and workers in the United States is caused by such subsidized and dumped imports.

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

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

**"SEC. 771C. FUNDAMENTAL AND ACTIONABLE MISALIGNMENT OF A CURRENCY.**

''(a) FUNDAMENTAL AND ACTIONABLE UNDERVALUATION OF A CURRENCY.—For purposes of subsection (c), the currency of an exporting country is fundamentally and actionably undervalued if—

''(1) the real effective exchange rate of the exporting country's currency is undervalued by at least 5 percent, on average, during an 18-month period that represents the most recent 18 months for which the information required under subsection (c) is reasonably available, but that does not include any time later than the final month in the period of investigation or the period of review, as applicable;

"(2) during part or all of the 18-month period, the government of the exporting country has engaged directly or indirectly through surrogates in protracted, large-scale intervention in foreign exchange markets, and that intervention has involved the direct transfer of funds or the potential direct transfer of funds or liabilities;

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

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

"(5) during part or all of the 18-month period, the foreign exchange reserves held or controlled by the government of the exporting country have exceeded the amount necessary to repay its external debt obligations falling due within the coming 12 months, except that the requirement of this paragraph shall not be satisfied and no fundamental and actionable undervaluation shall be found as to the currency of an exporting country if the exporting country during any part of the 18-month period has been allowed under article XII or article XVIII, section B of the GATT 1994 (as defined in section 2(1)(B) of the Uruguay Round Agreements Act (19 U.S.C. 3501(1)(B)) to impose restrictions to safeguard its balance of payments.

''(b) FUNDAMENTAL AND ACTIONABLE OVERVALUATION OF A CURRENCY.—For purposes of subsection (c), the currency of an exporting country is fundamentally and actionably overvalued if—

''(1) the real effective exchange rate of the exporting country's currency is overvalued by at least 5 percent, on average, during an 18-month period that represents the most recent 18 months for which the information required under subsection (c) is reasonably available, but that does not include any time later than the final month in the period of investigation or the period of review, as applicable;

''(2) during part or all of the 18-month period, the government of the exporting country has engaged directly or indirectly through surrogates in protracted, large-scale intervention in foreign exchange markets, and that intervention has involved the direct transfer of funds or the potential direct transfer of funds or liabilities;

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

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

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

"(c) IDENTIFICATION OF FUNDAMENTAL AND ACTIONABLE MISALIGNMENT OF A CURRENCY.—In calculating under subsection (a) or (b) whether the currency of an exporting country was fundamentally and actionably misaligned during the applicable 18-month period described in such subsection, the administering authority shall—

“(1) measure the level of any such misalignment as the simple average of the results yielded from application of the macroeconomic-balance approach and the equilibrium-real-exchange-rate approach;

“(2) rely upon data that are publicly available, reliable, and compiled and maintained by the International Monetary Fund or the World Bank or, if the International Monetary Fund or the World Bank cannot provide such data, by other international organizations or by national governments;

“(3) for the purposes of the initiation and the preliminary and final determinations of an investigation and for purposes of the preliminary and final results of a review, rely upon data for an 18-month period that represents the most recent 18 months for which the information needed under this subsection is reasonably available at the time, but that does not include any time later than the final month in the period of investigation or the period of review, as applicable;

“(4) use inflation-adjusted, trade-weighted exchange rates;

“(5) implement the macroeconomic-balance approach and the equilibrium-real-exchange-rate approach using the methodologies described in the guidelines of the International Monetary Fund’s Consultative Group on Exchange Rate Issues, whenever possible; and

“(6) in the event that the guidelines of the International Monetary Fund’s Consultative Group on Exchange Rate Issues are not available, employ generally accepted economic and econometric techniques to implement the macroeconomic-balance approach and the equilibrium-real-exchange-rate approach.

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

“(1) calculate for the period of investigation or the period of review, as applicable, the level of undervaluation or overvaluation, as the case may be, of the real effective exchange rate of the exporting country's currency in accordance with the procedures, methodologies, and standards set forth in subsection (c);

"(2) calculate for the period of investigation or the period of review, as applicable, using the results from each approach described in subsection (c)(1), the level of undervaluation or overvaluation, as the case may be, of the real exchange rate between the exporting country and the United States, deriving such level from each level of undervaluation or overvaluation, as the case may be, of the real effective exchange rate determined under paragraph (1) by allocating appreciations or depreciations, as the case may be, in the bilateral real exchange rates of the exporting country to its trading partners on the basis of the overall current account balances of such trading partners; and

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

"(e) CONSIDERATION OF UNDERVALUATION OF A CURRENCY IN COUNTERVAILING AND ANTIDUMPING DUTY PROCEEDINGS.—If the administering authority determines under subsection (d) that the currency of an exporting country was undervalued in relation to the United States dollar during the period of investigation or the period of review, as applicable—

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

"(2) in an antidumping duty proceeding, the administering authority shall adjust the export price and constructed export price downward by the amount that reflects the level of undervaluation determined under subsection (d)(3) in the bilateral real exchange rate between the currency of the exporting country and the United States dollar.

"(f) CONSIDERATION OF OVERVALUATION OF A CURRENCY IN ANTIDUMPING DUTY PROCEEDINGS.—If the administering authority determines under subsection (d) that the currency of an exporting country was overvalued in relation to the United States dollar during the period of investigation or the period of review, as applicable, the administering authority shall adjust the export price and constructed export price upward by the amount that reflects the level of overvaluation determined under subsection (d)(3) in the bilateral real exchange rate between the currency of the exporting country and the United States dollar.

"(g) TYPE OF ECONOMY.—Any determination with respect to the currency of an exporting country by the administering authority under this section shall be made regardless of whether the exporting country has a market economy, a nonmarket economy, or a combination thereof.

"(h) DEFINITIONS.—In this section:

"(1) PROTRACTED, LARGE-SCALE INTERVENTION IN FOREIGN EXCHANGE MARKETS.—

"(A) IN GENERAL.—The term 'protracted, large-scale intervention in foreign exchange markets' means involvement in foreign exchange markets by the government of an exporting country, either directly or indirectly through surrogates, in such a way as to contribute significantly to fundamental and actionable misalignment of the currency of the exporting country within the meaning of subsection

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

"(i) Governmental purchases, sales, or other exchanges of currencies in foreign exchange markets.

"(ii) Requirement by law or policy of the government of the exporting country that some or all of the foreign currency earnings by an exporter or producer in the exporting country be converted into the currency of the exporting country.

"(iii) Any other practice by the government of the exporting country that has the effect of causing fundamental and actionable misalignment of the exchange rate of the exporting country's currency and that involves the direct transfer of funds or the potential direct transfer of funds or liabilities.

"(B) RULE OF CONSTRUCTION.—Fundamental and actionable misalignment of the currency of an exporting country within the meaning of subsection (a) or (b) shall be attributed to the protracted, large-scale intervention in foreign exchange markets by the government of the exporting country unless it is determined that such intervention was not a significant cause of the fundamental and actionable misalignment.

"(2) MACROECONOMIC-BALANCE APPROACH.—The term 'macroeconomic-balance approach' means a methodology under which the level of undervaluation or overvaluation of the real effective exchange rate of the exporting country's currency is defined as the change in the real effective exchange rate needed to achieve equilibrium in the exporting country's balance of payments.

"(3) EQUILIBRIUM-REAL-EXCHANGE-RATE APPROACH.—The term 'equilibrium-real-exchange-rate approach' means a methodology under which the level of undervaluation or overvaluation of the real effective exchange rate of the exporting country's currency is defined as the difference between the observed real effective exchange rate and the real effective exchange rate predicted by an econometric model.".

(b) CLERICAL AMENDMENT.—The table of contents of title VII of the Tariff Act of 1930 is amended by inserting after the item relating to section 771B the following new item:

"Sec. 771C. Fundamental and actionable misalignment of a currency.".

**SEC. 4. CLARIFICATIONS REGARDING DEFINITION OF COUNTERVAILABLE SUBSIDY.**

(a) FINANCIAL CONTRIBUTION.—Section 771(5)(D) of the Tariff Act of 1930 (19 U.S.C. 1677(5)(D)) is amended by adding at the end the following new sentence: "A fundamentally and actionably undervalued currency (as determined under section 771C) constitutes a financial contribution under clause (i)."

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

(1) in clause (iii), by striking "and" at the end;

(2) in clause (iv), by striking the period at the end and inserting ", and"; and

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

"(v) in the case of a fundamentally and actionably undervalued currency (as determined under section 771C), if the exporter or producer receives or is entitled to receive more of the exporting country's currency in exchange for the United States dollars paid for the subject merchandise than if the exporting country's currency were not fundamentally and actionably undervalued.".

(c) SPECIFICITY.—Section 771(5A)(B) of the Tariff Act of 1930 (19 U.S.C. 1677(5A)(B)) is amended by adding at the end the following new sentence: ''For purposes of this subparagraph, a fundamentally and actionably undervalued currency (as determined under section 771C) constitutes an export subsidy.''.

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

(a) ADJUSTMENTS FOR EXPORT PRICE AND CONSTRUCTED EXPORT PRICE.—Section 772(c) of the Tariff Act of 1930 (19 U.S.C. 1677a(c)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B) by striking ''and'' at the end; and

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

''(D) the amount that reflects the level of overvaluation in the bilateral real exchange rate between the exporting country and the United States (as determined under section 771C), and''; and

(2) in paragraph (2)—

(A) in subparagraph (A) by striking ''and'' at the end;

(B) in subparagraph (B), by striking the period at the end and inserting '', and''; and

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

"(C) the amount that reflects the level of undervaluation in the bilateral real exchange rate between the exporting country and the United States (as determined under section 771C).".

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

(1) in clause (v), by striking "and" at the end;

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

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

"(vi) whether in the view of the administering authority the currency of the foreign country is fundamentally and actionably undervalued or fundamentally and actionably overvalued (as determined under section 771C), and".

**SEC. 6. APPLICATION TO GOODS FROM CANADA AND MEXICO.**

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

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

**SEC. 7. EFFECTIVE DATE.**

The amendments made by this Act apply with respect to countervailing and antidumping duty proceedings initiated under title VII of the Tariff Act of 1930 before, on, or after the date of enactment of this Act.

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