

HR 782 IH

110th CONGRESS

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H. R. 782

To amend title VII of the Tariff Act of 1930 to provide that exchange-rate misalignment by any foreign nation is a countervailable export subsidy, to amend the Exchange Rates and International Economic Policy Coordination Act of 1988 to clarify the definition of manipulation with respect to currency, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES**January 31, 2007**

Mr. RYAN of Ohio (for himself, Mr. HUNTER, Ms. SLAUGHTER, Mr. ALTMIRE, Mr. DEFAZIO, Ms. DELAURO, Mr. DOYLE, Mr. EHLERS, Ms. FOXX, Mr. GERLACH, Mr. HAYES, Mr. HOLT, Mr. KILDEE, Mr. LIPINSKI, Mr. MANZULLO, Mr. MCGOVERN, Mr. MCHUGH, Mr. MEEK of Florida, Mr. MICHAUD, Mrs. MILLER of Michigan, Mr. MOLLOHAN, Mrs. MYRICK, Mr. NORWOOD, Mr. RENZI, Mr. ROHRABACHER, Mr. SAXTON, Ms. SCHAKOWSKY, Mr. SENSENBRENNER, Mr. SOUDER, Mr. SPACE, Ms. SUTTON, Mr. WALZ of Minnesota, and Mr. WILSON of South Carolina) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Financial Services, Foreign Affairs, and 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 amend title VII of the Tariff Act of 1930 to provide that exchange-rate misalignment by any foreign nation is a countervailable export subsidy, to amend the Exchange Rates and International Economic Policy Coordination Act of 1988 to clarify the definition of manipulation with respect to currency, 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 'Fair Currency Act of 2007'.

TITLE I--SUBSIDIES AND PRODUCT-SPECIFIC SAFEGUARD MECHANISM

SEC. 101. FINDINGS.

Congress makes the following findings:

- (1) The economy and national security of the United States are critically dependent upon a vibrant manufacturing and agricultural base.
- (2) The good health of United States manufacturing and agriculture requires, among other things, unfettered access to open markets abroad and fairly traded raw materials and products in accord with the international legal principles and agreements of the World Trade Organization and the International Monetary Fund.
- (3) The International Monetary Fund, the G-8, and other international organizations have repeatedly noted that exchange-rate misalignment can cause imbalances in the international trading system that could ultimately undercut the stability of the system, but have taken no action to redress such misalignments and imbalances.
- (4) Since 1994, the People's Republic of China and other countries have repeatedly intervened in currency markets and taken measures that have significantly misaligned the values of their currencies against the United States dollar and other currencies.
- (5) This policy by the People's Republic of China, for example, has resulted in substantial undervaluation of the renminbi, by up to 40 percent or more.
- (6) Evidence of this undervaluation can be found in the large and growing annual trade surpluses of the People's Republic of China; substantially expanding foreign direct investment in China; and the rapidly increasing aggregate amount of foreign currency reserves that are held by the People's Republic of China.
- (7) Undervaluation by the People's Republic of China and by other countries acts as both a subsidy for their exports and as a nontariff barrier against imports into their territories, to the serious detriment of United States manufacturing and agriculture.
- (8)(A) As members of both the World Trade Organization and the International Monetary Fund, the People's Republic of China and other countries have assumed a series of international legal obligations to eliminate all subsidies for exports and to facilitate international trade by fostering a monetary system that does not tend to produce erratic disruptions, that does not prevent effective balance-of-payments adjustment, and that does not gain unfair competitive advantage.
- (B) These obligations are most prominently set forth in--
 - (i) Articles VI, XV, and XVI of the GATT 1994 (as defined in section 2(1)(B) of the Uruguay Round Agreements Act (19 U.S.C. 3501(1)(B)));
 - (ii) the Agreement on Subsidies and Countervailing Measures (as described in

section 101(d)(12) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(12)); and

(iii) Articles IV and VIII of the International Monetary Fund's Articles of Agreement.

(9) Under the foregoing circumstances, it is consistent with the international legal obligations of the People's Republic of China and similarly situated countries and with the corresponding international legal rights of the United States to amend relevant United States trade laws to make explicit that exchange-rate misalignment by any country is actionable as a countervailable export subsidy.

SEC. 102. APPLICATION OF COUNTERVAILING DUTIES TO NONMARKET ECONOMY COUNTRIES.

(a) In General- Section 701(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1671(a)(1)) is amended by inserting '(including a nonmarket economy country)' after 'country' each place it appears.

(b) Use of Alternate Methodologies- Section 771(5)(E) of the Tariff Act of 1930 (19 U.S.C. 1677(5)(E)) is amended by adding at the end the following: 'With respect to a nonmarket economy country, for purposes of identifying and measuring a subsidy benefit described in clause (i), (ii), (iii), or (iv), or otherwise conferred upon a recipient, the administering authority shall use methodologies that take into account the possibility that prevailing terms and conditions in that country might not be available or might themselves be inappropriate benchmarks due to market distortions. In such circumstances, unless it is demonstrated that the nonmarket economy country's prevailing terms and conditions practicably can be adjusted to serve as appropriate benchmarks, the administering authority shall use as benchmarks appropriate terms and conditions prevailing outside the nonmarket economy country. When the party in possession of the information necessary to identify and measure the benefit of a subsidy does not timely and completely submit that information for the record, the administering authority shall use for that purpose the facts otherwise available and shall, as warranted, draw adverse inferences.'

(c) Adjustments For Export Price and Constructed Export Price- Section 772(c)(1)(C) of the Tariff Act of 1930 (19 U.S.C. 1677a(c)(1)(C)) is amended by inserting before the end comma the following: ', whether the subject merchandise is from a country with a market economy, a nonmarket economy, or a combination thereof'.

(d) Effective Date- The amendments made by subsections (a), (b), and (c) apply with respect to a countervailing duty proceeding initiated under subtitle A of title VII of the Tariff Act of 1930 before, on, or after the date of enactment of this Act.

(e) Antidumping Provisions Not Affected- The amendments made by subsections (a), (b), and (c) shall not affect the status of a country as a nonmarket economy country for the

purposes of any matter relating to antidumping duties under the Tariff Act of 1930.

SEC. 103. CLARIFICATION TO INCLUDE EXCHANGE-RATE MISALIGNMENT AS A COUNTERAVAILABLE SUBSIDY UNDER TITLE VII OF THE TARIFF ACT OF 1930.

(a) Amendments to Definition of Countervailable Subsidy-

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

(A) by redesignating clauses (i) through (iv) as subclauses (I) through (IV), respectively;

(B) by striking 'The term' and inserting '(i) The term'; and

(C) by adding at the end the following:

(ii) Exchange-rate misalignment (as defined in paragraph (5C)) constitutes a financial contribution within the meaning of subclauses (I) and (III) of clause (i).'

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

(A) in clause (iii), by striking ', and' and inserting a comma;

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

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

(v) in the case of exchange-rate misalignment (as defined in paragraph (5C)), if the price of exported goods in United States dollars is less than what the price of such goods would be without the exchange-rate misalignment.'

(3) SPECIFICITY- Section 771(5A)(B) of the Tariff Act of 1930 (19 U.S.C. 1677(5A)(B)) is amended by inserting before the period at the end the following: ', such as exchange-rate misalignment (as defined in paragraph (5C))'.

(b) Definition of Exchange-Rate Misalignment- Section 771 of the Tariff Act of 1930 (19 U.S.C. 1677) is amended by inserting after paragraph (5B) the following new paragraph:

(5C) EXCHANGE-RATE MISALIGNMENT-

(A) IN GENERAL- For purposes of paragraphs (5) and (5A), the term

` exchange-rate misalignment' means an undervaluation of a foreign currency as a result of protracted large-scale intervention by or at the direction of a governmental authority in the exchange market. Such undervaluation shall be found when the observed exchange rate for a foreign currency is below the exchange rate that could reasonably be expected for that foreign currency absent the intervention.

` (B) FACTORS- In determining whether exchange-rate misalignment is occurring and a benefit thereby is conferred, the administering authority in each case--

` (i) shall consider the exporting country's--

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

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

` (III) foreign direct investment in its territory;

` (IV) currency-specific and aggregate amounts of foreign currency reserves; and

` (V) mechanisms employed to maintain its currency at an undervalued exchange rate relative to another currency and, particularly, the nature, duration, and monetary expenditures of those mechanisms;

` (ii) may consider such other economic factors as are relevant; and

` (iii) shall measure the trade surpluses or deficits described in subclauses (I) and (II) of clause (i) with reference to the trade data reported by the United States and the other trading partners of the exporting country, unless such trade data are not available or are demonstrably inaccurate, in which case the exporting country's trade data may be relied upon if shown to be sufficiently accurate and trustworthy.

` (C) COMPUTATION- In quantifying exchange-rate misalignment, the administering authority shall develop and apply an objective methodology that is consistent with widely recognized macroeconomic theory and shall rely upon governmentally published and other publicly available and reliable data.

` (D) TYPE OF ECONOMY- An authority found to be engaged in exchange-rate misalignment may have either a market economy or a nonmarket economy or a combination thereof.'

(c) Effective Date- The amendments made by this section apply with respect to a countervailing duty proceeding initiated under subtitle A of title VII of the Tariff Act of 1930 before, on, or after the date of enactment of this Act.

SEC. 104. CLARIFICATION TO INCLUDE EXCHANGE-RATE MISALIGNMENT BY THE PEOPLE'S REPUBLIC OF CHINA AS A CONDITION TO BE CONSIDERED WITH RESPECT TO MARKET DISRUPTION UNDER CHAPTER 2 OF TITLE IV OF THE TRADE ACT OF 1974.

(a) Market Disruption-

(1) IN GENERAL- Section 421(c) of the Trade Act of 1974 (19 U.S.C. 2451(c)) is amended by adding at the end the following new paragraphs:

` (3) For purposes of this section, the term `under such conditions' includes exchange-rate misalignment (as defined in paragraph (4)).

` (4)(A) For purposes of this section, the term `exchange-rate misalignment' means an undervaluation of the renminbi as a result of protracted large-scale intervention by or at the direction of the Government of the People's Republic of China in the exchange market. Such undervaluation shall be found when the observed exchange rate for the renminbi is below the exchange rate that could reasonably be expected for the renminbi absent the intervention.

` (B) In determining whether exchange-rate misalignment is occurring, the Commission in each case--

` (i) shall consider the People's Republic of China's--

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

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

` (III) foreign-direct investment in its territory;

` (IV) currency-specific and aggregate amounts of foreign currency reserves; and

` (V) mechanisms employed to maintain its currency at an undervalued exchange rate relative to another currency and, particularly, the nature, duration, and monetary expenditures of those mechanisms;

` (ii) may consider such other economic factors as are relevant; and

` (iii) shall measure the trade surpluses or deficits described in subclauses (I)

and (II) of clause (i) with reference to the trade data reported by the United States and the other trading partners of the People's Republic of China, unless such trade data are not available or are demonstrably inaccurate, in which case the trade data of the People's Republic of China may be relied upon if shown to be sufficiently accurate and trustworthy.

`(C) COMPUTATION- In quantifying exchange-rate misalignment, the Commission shall develop and apply an objective methodology that is consistent with widely recognized macroeconomic theory and shall rely upon governmentally published and other publicly available and reliable data.'

(b) Critical Circumstances- Section 421(i)(1) of the Trade Act of 1974 (19 U.S.C. 2451(i)(1)) is amended by inserting after subparagraph (B) the following:

`If the petition alleges and reasonably documents that exchange-rate misalignment is occurring, such exchange-rate misalignment shall be considered as a factor weighing in favor of affirmative findings in subparagraphs (A) and (B).'

(c) Standard for Presidential Action- Section 421(k)(2) of the Trade Act of 1974 (19 U.S.C. 2451(k)(2)) is amended by adding at the end the following new sentence: `If the Commission makes an affirmative determination that exchange-rate misalignment is occurring, the President shall consider such exchange-rate misalignment as a factor weighing in favor of providing import relief in accordance with subsection (a).'

(d) Modifications of Relief- Section 421(n)(2) of the Trade Act of 1974 (19 U.S.C. 2451(n)(2)) is amended by adding at the end the following new sentence: `If the Commission affirmatively determines that exchange-rate misalignment is occurring, the Commission and the President shall consider such exchange-rate misalignment as a factor weighing in favor of finding that continuation of relief is necessary to prevent or remedy the market disruption at issue.'

(e) Extension of Action- Section 421(o) of the Trade Act of 1974 (19 U.S.C. 2451(o)) is amended--

(1) in paragraph (1), by adding at the end the following new sentence: `If the Commission makes an affirmative determination that exchange-rate misalignment is occurring, the Commission shall consider such exchange-rate misalignment as a factor weighing in favor of finding that an extension of the period of relief is necessary to prevent or remedy the market disruption at issue.'; and

(2) in paragraph (4), by adding at the end the following new sentence: `If the Commission makes an affirmative determination that exchange-rate misalignment is occurring, the President shall consider such exchange-rate misalignment as a factor weighing in favor of finding that an extension of the period of relief is necessary to prevent or remedy the market disruption at issue.'

(f) Effective Date- The amendments made by this section apply with respect to an

