

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.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Currency Reform for  
3 Fair Trade Act”.

4 **SEC. 2. FINDINGS.**

5 Congress makes the following findings:

6 (1) The strength, vitality, and stability of the  
7 United States economy and, more broadly, the open-  
8 ness and effectiveness of the global trading system  
9 are critically dependent upon an international mone-  
10 tary regime of orderly and flexible exchange rates.

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

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

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

1 Monetary Fund that United States trade law be  
2 amended to clarify and make explicit that funda-  
3 mental undervaluation by an exporting country of its  
4 currency is actionable as a countervailable export  
5 subsidy and alternatively can be offset by anti-  
6 dumping duties when injury to producers and work-  
7 ers in the United States is caused by such subsidized  
8 and dumped imports.

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

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

14 **“SEC. 771C. FUNDAMENTAL AND ACTIONABLE MISALIGN-**  
15 **MENT OF A CURRENCY.**

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

20 “(1) the real effective exchange rate of the ex-  
21 porting country’s currency is undervalued by at least  
22 5 percent, on average, during an 18-month period  
23 that represents the most recent 18 months for which  
24 the information required under subsection (c) is rea-  
25 sonably available, but that does not include any time

1 later than the final month in the period of investiga-  
2 tion or the period of review, as applicable;

3 “(2) during part or all of the 18-month period,  
4 the government of the exporting country has en-  
5 gaged directly or indirectly through surrogates in  
6 protracted, large-scale intervention in foreign ex-  
7 change markets, and that intervention has involved  
8 the direct transfer of funds or the potential direct  
9 transfer of funds or liabilities;

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

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

17 “(5) during part or all of the 18-month period,  
18 the foreign exchange reserves held or controlled by  
19 the government of the exporting country have ex-  
20 ceeded the amount necessary to repay its external  
21 debt obligations falling due within the coming 12  
22 months, except that the requirement of this para-  
23 graph shall not be satisfied and no fundamental and  
24 actionable undervaluation shall be found as to the  
25 currency of an exporting country if the exporting

1 country during any part of the 18-month period has  
2 been allowed under article XII or article XVIII, sec-  
3 tion B of the GATT 1994 (as defined in section  
4 2(1)(B) of the Uruguay Round Agreements Act (19  
5 U.S.C. 3501(1)(B)) to impose restrictions to safe-  
6 guard its balance of payments.

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

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

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

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

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

8           “(5) during part or all of the 18-month period,  
9           the foreign exchange reserves held or controlled by  
10          the government of the exporting country have been  
11          less than the amount necessary to repay its external  
12          debt obligations falling due within the coming 12  
13          months, except that the requirement of this para-  
14          graph shall not be satisfied and no fundamental and  
15          actionable overvaluation shall be found as to the cur-  
16          rency of an exporting country if the exporting coun-  
17          try during any part of the 18-month period has been  
18          allowed under article XII or article XVIII, section B  
19          of the GATT 1994 (as defined in section 2(1)(B) of  
20          the Uruguay Round Agreements Act (19 U.S.C.  
21          3501(1)(B)) to impose restrictions to safeguard its  
22          balance of payments.

23          “(c) IDENTIFICATION OF FUNDAMENTAL AND AC-  
24          TIONABLE MISALIGNMENT OF A CURRENCY.—In calcu-  
25          lating under subsection (a) or (b) whether the currency

1 of an exporting country was fundamentally and actionably  
2 misaligned during the applicable 18-month period de-  
3 scribed in such subsection, the administering authority  
4 shall—

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

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

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

1           “(4) use inflation-adjusted, trade-weighted ex-  
2           change rates;

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

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

16          “(d) IDENTIFICATION OF UNDERVALUATION OR  
17          OVERVALUATION OF A CURRENCY DURING THE PERIOD  
18          OF INVESTIGATION OR THE PERIOD OF REVIEW.—If fun-  
19          damental and actionable misalignment within the meaning  
20          of subsection (a) or (b) is identified under subsection (c)  
21          as to an exporting country’s currency for the applicable  
22          18-month period described in subsection (a) or (b), the  
23          administering authority shall—

24                 “(1) calculate for the period of investigation or  
25                 the period of review, as applicable, the level of



1 undervaluation or overvaluation, as the case may be,  
2 of the real effective exchange rate of the exporting  
3 country's currency in accordance with the proce-  
4 dures, methodologies, and standards set forth in  
5 subsection (c);

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

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

1       “(e) CONSIDERATION OF UNDERVALUATION OF A  
2 CURRENCY IN COUNTERVAILING AND ANTIDUMPING  
3 DUTY PROCEEDINGS.—If the administering authority de-  
4 termines under subsection (d) that the currency of an ex-  
5 porting country was undervalued in relation to the United  
6 States dollar during the period of investigation or the pe-  
7 riod of review, as applicable—

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

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

22       “(f) CONSIDERATION OF OVERVALUATION OF A CUR-  
23 RENCY IN ANTIDUMPING DUTY PROCEEDINGS.—If the  
24 administering authority determines under subsection (d)  
25 that the currency of an exporting country was overvalued

1 in relation to the United States dollar during the period  
2 of investigation or the period of review, as applicable, the  
3 administering authority shall adjust the export price and  
4 constructed export price upward by the amount that re-  
5 flects the level of overvaluation determined under sub-  
6 section (d)(3) in the bilateral real exchange rate between  
7 the currency of the exporting country and the United  
8 States dollar.

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

14 “(h) DEFINITIONS.—In this section:

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

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

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

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

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

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

20 “(B) RULE OF CONSTRUCTION.—Funda-  
21 mental and actionable misalignment of the cur-  
22 rency of an exporting country within the mean-  
23 ing of subsection (a) or (b) shall be attributed  
24 to the protracted, large-scale intervention in  
25 foreign exchange markets by the government of

1 the exporting country unless it is determined  
2 that such intervention was not a significant  
3 cause of the fundamental and actionable mis-  
4 alignment.

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

13 “(3) EQUILIBRIUM-REAL-EXCHANGE-RATE AP-  
14 PROACH.—The term ‘equilibrium-real-exchange-rate  
15 approach’ means a methodology under which the  
16 level of undervaluation or overvaluation of the real  
17 effective exchange rate of the exporting country’s  
18 currency is defined as the difference between the ob-  
19 served real effective exchange rate and the real ef-  
20 fective exchange rate predicted by an econometric  
21 model.”.

22 (b) CLERICAL AMENDMENT.—The table of contents  
23 of title VII of the Tariff Act of 1930 is amended by insert-  
24 ing after the item relating to section 771B the following  
25 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 sentence:

6 “A fundamentally and actionably undervalued cur-  
7 rency (as determined under section 771C) constitutes a  
8 financial contribution under clause (i).”

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

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

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

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

17 “(v) in the case of a fundamentally  
18 and actionably undervalued currency (as  
19 determined under section 771C), if the ex-  
20 porter or producer receives or is entitled to  
21 receive more of the exporting country’s  
22 currency in exchange for the United States  
23 dollars paid for the subject merchandise  
24 than if the exporting country’s currency  
25 were not fundamentally and actionably un-  
26 dervalued.”.

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

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

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

11 (1) in paragraph (1)—

12 (A) in subparagraph (B) by striking “and”  
13 at the end; and

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

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

21 (2) in paragraph (2)—

22 (A) in subparagraph (A) by striking “and”  
23 at the end;

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

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

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

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

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

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

13 and

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

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

22 **SEC. 6. APPLICATION TO GOODS FROM CANADA AND MEX-**  
23 **ICO.**

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



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

4 **SEC. 7. EFFECTIVE DATE.**

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

