RSC Republican Study Committee

REP. TOM PRICE, M.D. (R-GA), CHAIRMAN
PAUL TELLER, EXECUTIVE DIRECTOR
424 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

rsc.price.house.gov ph (202) 226-9717 / fax (202) 226-1633

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<u>Order of Business</u>: The bill is scheduled to be considered on Wednesday, September 29, 2010 under a yet-to-be-determined rule. The Rules Committee meets at 8:30 a.m. on Wednesday, September 29, 2010. If there are amendments to the bill, they will be included in a separate document.

<u>Summary</u>: On Friday, September 24, 2010, the House Ways and Means Committee adopted an amendment in the nature of a substitute authored by Congressman Levin (D-MI). The amendment changed the text of H.R. 2378, as originally introduced by Congressman Ryan (D-OH), in a significant way. The original bill would have *required* the Department of Commerce to treat undervaluation as a prohibited subsidy and allow for imposing countervailing and antidumping duties on imports from China, and any other country that undervalues its currency. The bill we are considering today *does not require* the Department of Commerce to do this any longer. The substitute amendment addresses concerns from Committee members and others that the mandate on the Department of Commerce would run counter to World Trade Organization (WTO) obligations and would run the risk of litigation from the WTO. The new version of the bill removes antidumping provisions and leaves imposing countervailing duties up to the discretion of the Department of Commerce.

Under current law, Commerce has resisted investigating foreign government currency as a countervailable subsidy (*defined below), subject to countervailing duties, because Commerce could dismiss claims based on the fact that a subsidy (such as undervalued currency) was available in circumstances in addition to export (i.e., when non-exporters may benefit). The Department of Commerce may now consider *all facts* available in determining whether China's exchange rate meets the definition of an export subsidy. They essentially must now evaluate the rate against the three part test (below). While the test exists in current law, the bill amends the definitions of two out of three parts of the tests: "benefit conferred" and "export subsidy." The bill does not amend the third test definition of "financial contribution."

*The Department of Commerce defines a “countervailable subsidy” as the following: “Foreign governments subsidize industries when they provide financial assistance to benefit the production, manufacture or exportation of goods. Subsidies can take many forms, such as direct cash payments, credits against taxes, and loans at terms that do not reflect market conditions. The statute and regulations establish standards for determining when a subsidy has been conferred. The amount of subsidies the foreign producer receives from the government is the basis for the subsidy rate by which the subsidy is offset, or "countervailed," through higher import duties."

Under the bill, countervailing duties may only be imposed when the Department of Commerce finds that the WTO criteria for an export subsidy, such as undervalued currency, have been satisfied. According to the one-page summary posted on the Ways and Means Committee website, this requires that:

- The foreign government's interventions in the currency markets result in a "financial contribution;"
- A "benefit" is conferred; and
- The resulting subsidy is "contingent on export."

Fundamentally Undervalued Currency. Currency is fundamentally undervalued if:

- The government of the country engages in large-scale intervention in one or more foreign exchange markets during part or all of the 18-month period that represents he most recent 18 months for which the information required under paragraph 38 of the Tariff Act of 1930 is reasonably available;
- The real effective exchange rate of the currency is undervalued by at least 5 percent, on average during part or all the specified 18-month period of time;
- During the 18-month period, the country has experienced significant and persistent global current account surpluses; and
- During the 18-month period, the foreign asset reserves held by the government of the country exceed the amount necessary to repay debt obligations that are due within the coming 12 months; 20 percent of the country’s money supply; and the value of the country’s imports during the previous 4 months.

Real Effective Exchange Rate Undervaluation. The calculation of real effective exchange rate undervaluation shall:

- Rely upon the results of the application of approaches described in the guidelines of the International Monetary Fund’s Consultative Group on Exchange Rate Issues, or if these are not available, the generally accepted economic and econometric techniques and methodologies;
- Rely upon data publicly available maintained by the IMF, or by other international organizations or national governments; and
- Use inflation-adjusted, trade-weighted exchange rates.

Report on Implementation. No later than 9 months after enactment, the Comptroller General of the U.S. shall submit a report on the implementation of the amendments made by this Act. The report must include a description of the extent to which U.S. industries have been injured due to undervalued currencies.

Potential Conservative Concerns: While Republicans can agree on many things regarding Chinese currency manipulation, there is disagreement among Republicans on the Ways and Means Committee with regard to how Congress should address the problem. In fact, the Republican Additional Views of the Committee Report (not available online yet) are signed by both supporters and opponents of the bill. The views discuss aspects of the problem that need to be addresses in one way or another. The below concerns are those expressed by *opponents* of the bill.

Market-Value is Necessary. Many conservatives believe that China must allow the market to determine the value of the Yuan – and the U.S. should not impose a duty in order to compensate for the inadequacy.

Trade Deficit Reduction Doesn't Equal Jobs. Many conservatives also believe that undervaluation is not the primary factor causing the trade deficit, and that there is little evidence that it is actually directly related to the loss of U.S. jobs. Heritage Foundation expert Derek Scissors argues that no one can determine the exact amount of undervaluation and therefore a response cannot be properly administered. He also asserts that the imposition of countervailing duties "…will do little to reduce the bilateral trade deficit" and that the way to reduce this deficit is to stop spending money we don't have. And perhaps most directly in reply to assertions that countervailing duties are a response to loss of jobs due to the Chinese exchange rate, he states that there is little connection between the U.S. trade deficit and jobs: "The idea that a small trade deficit means more American jobs is simplistic to the point of being useless. The U.S. trade deficit peaked in 2006, when unemployment was 4.6 percent. By 2009, the deficit in goods and services had fallen by half from 2006, yet the unemployment rate had doubled."

Negative Response from China. Many conservatives might also be concerned that this bill may trigger a response from China that further hurts our economy. This bill could chill trade in products that U.S. manufacturers need. Furthermore, eight former US Secretaries of Commerce and US Trade Representatives argue that this will not cause China to move any faster in correcting its currency appreciation. This letter in opposition was written before the markup.

Increase in Taxes on Americans. Club for Growth, which urges a no vote, states in a press release that, "This bill would make it easier for the government to slap punitive tariffs on 'nonmarket' economies - in particular China - if an exporting country's currency is considered misaligned against the U.S. dollar. This is a disastrous proposal that would increase taxes on American consumers, stall the economic recovery, and spark an ugly trade war that would benefit no one."

House Ways and Means Trade Subcommittee Ranking Member Kevin Brady (R-TX) outlines his concerns with the bill in a press release from September 24, 2010: "My view is that, on balance, the promises this bill makes to reduce the trade deficit with China and create U.S. jobs are largely unrealized. I'm convinced that where the priority is creating American jobs, a focus on tearing down more substantive barriers to U.S. access to China's consumers – like protecting U.S. intellectual property rights, directed lending and artificial barriers to farm products - would benefit thousands of more American workers than a focus on China currency alone."

Groups Opposed: The Club for Growth urges all members of Congress to vote "NO" on the bill. A vote on this bill will be included in the Club's 2010 Congressional Scorecard.

For a letter from the Business Roundtable, the Financial Services Roundtable, and over a dozen others opposing this bill, click here.

Supporting Arguments: Supporters of the bill argue that undervaluation of the Yuan costs jobs in the United States. Because the Yuan is undervalued (by as much as 40% by some accounts), this makes China's exports to the U.S. cheaper than if the rate was at the true level. This also makes U.S. exports to China more expensive resulting in U.S. products being undercut by Chinese goods. The Economic Policy Institute asserts that 2.4 million jobs were lost in the last decade to China – and many supporters of the bill assert that this is due, at least in part, to the undervaluation of Chinese currency.

Supporters of this bill also argue that the undervaluation of the Yuan is contributing to the bilateral trade deficit. Testimony from Dan DiMicco, Chairman, President and CEO of Nucor Corporation, in front of the House Ways and Means Committee on September 15, 2010 states that "China's practice of manipulating its currency, along with other protectionist measures, has driven up our trade deficit and is having a devastating impact on our manufacturing sector. Our trade deficit with China grew from $30 billion in 1994 to $256 billion in 2007."

Ways and Means Ranking Member Dave Camp (R-MI) argues in his opening statement, at the September 24, 2010 markup, the following:

> These are critical changes from the original bill, which, on its face, violated our WTO obligations. While I remain deeply concerned about using the countervailing duty law to address China's currency policy, I believe enacting this substitute does not result in such an automatic violation of our WTO obligations.
>
> It does send a clear signal to China that Congress's patience is running out, without giving China an excuse to take it out on U.S. companies and their workers.
>
> It also sends an important signal to this Administration – Congress has heard enough; it is time to produce results. The Administration must step up its efforts to work with Europe, Japan, Brazil, India, and other Asian countries and set a clear timeline for action. The first step is to put the issue of global imbalances – which naturally includes China's currency policy – on the agenda at the November G-20 meetings in Seoul as a prominent item. I am disturbed to see that the Korean Finance Minister was quoted yesterday as saying that a country's individual currency policy is not an appropriate topic for the G-20. The Administration needs to change this dynamic.

Committee Action: The bill was introduced on May 13, 2009 and referred to the House Committee on Ways and Means. No further public action was taken.

Administration Position: No Statement of Administration Policy is provided.

Cost to Taxpayers: No CBO score is available.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The bill makes it easier for the Department of Commerce to impose countervailing duties on goods from countries that manipulate their exchange rates.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: A committee reporting citing compliance with the rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

RSC Staff Contact: Natalie Farr, natalie.farr@mail.house.gov, (202) 226-0718