

112TH CONGRESS
1ST SESSION

S. 1619

AN ACT

To provide for identification of misaligned currency, require action to correct the misalignment, 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 Exchange
3 Rate Oversight Reform Act of 2011”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **ADMINISTERING AUTHORITY.**—The term
7 “administering authority” means the authority re-
8 ferred to in section 771(1) of the Tariff Act of 1930
9 (19 U.S.C. 1677(1)).

10 (2) **AGREEMENT ON GOVERNMENT PROCURE-**
11 **MENT.**—The term “Agreement on Government Pro-
12 curement” means the agreement referred to in sec-
13 tion 101(d)(17) of the Uruguay Round Agreements
14 Act (19 U.S.C. 3511(d)(17)).

15 (3) **COUNTRY.**—The term “country” means a
16 foreign country, dependent territory, or possession of
17 a foreign country, and may include an association of
18 2 or more foreign countries, dependent territories, or
19 possessions of countries into a customs union out-
20 side the United States.

21 (4) **EXPORTING COUNTRY.**—The term “export-
22 ing country” means the country in which the subject
23 merchandise is produced or manufactured.

24 (5) **FUNDAMENTAL MISALIGNMENT.**—The term
25 “fundamental misalignment” means a significant
26 and sustained undervaluation of the prevailing real

1 effective exchange rate, adjusted for cyclical and
2 transitory factors, from its medium-term equilibrium
3 level.

4 (6) FUNDAMENTALLY MISALIGNED CUR-
5 RENCY.—The term “fundamentally misaligned cur-
6 rency” means a foreign currency that is in funda-
7 mental misalignment.

8 (7) REAL EFFECTIVE EXCHANGE RATE.—The
9 term “real effective exchange rate” means a weight-
10 ed average of bilateral exchange rates, expressed in
11 price-adjusted terms.

12 (8) SECRETARY.—The term “Secretary” means
13 the Secretary of the Treasury.

14 (9) STERILIZATION.—The term “sterilization”
15 means domestic monetary operations taken to neu-
16 tralize the monetary impact of increases in reserves
17 associated with intervention in the currency ex-
18 change market.

19 (10) SUBJECT MERCHANDISE.—The term “sub-
20 ject merchandise” means the merchandise subject to
21 an antidumping investigation, review, suspension
22 agreement, or order referred to in section 771(25) of
23 the Tariff Act of 1930 (19 U.S.C. 1677(25)).

24 (11) WTO AGREEMENT.—The term “WTO
25 Agreement” means the agreement referred to in sec-

1 tion 2(9) of the Uruguay Round Agreements Act (19
2 U.S.C. 3501(9)).

3 **SEC. 3. REPORT ON INTERNATIONAL MONETARY POLICY**
4 **AND CURRENCY EXCHANGE RATES.**

5 (a) **REPORTS REQUIRED.**—

6 (1) **IN GENERAL.**—Not later than March 15
7 and September 15 of each calendar year, the Sec-
8 retary, after consulting with the Chairman of the
9 Board of Governors of the Federal Reserve System
10 and the Advisory Committee on International Ex-
11 change Rate Policy, shall submit to Congress and
12 make public, a written report on international mone-
13 tary policy and currency exchange rates.

14 (2) **CONSULTATIONS.**—On or before March 30
15 and September 30 of each calendar year, the Sec-
16 retary shall appear, if requested, before the Com-
17 mittee on Banking, Housing, and Urban Affairs and
18 the Committee on Finance of the Senate and the
19 Committee on Financial Services and the Committee
20 on Ways and Means of the House of Representatives
21 to provide testimony on the reports submitted pursu-
22 ant to paragraph (1).

23 (b) **CONTENT OF REPORTS.**—Each report submitted
24 under subsection (a) shall contain the following:

1 (1) An analysis of currency market develop-
2 ments and the relationship between the United
3 States dollar and the currencies of major economies
4 and trading partners of the United States.

5 (2) A review of the economic and monetary
6 policies of major economies and trading partners of
7 the United States, and an evaluation of how such
8 policies impact currency exchange rates.

9 (3) A description of any currency intervention
10 by the United States or other major economies or
11 trading partners of the United States, or other ac-
12 tions undertaken to adjust the actual exchange rate
13 relative to the United States dollar.

14 (4) An evaluation of the domestic and global
15 factors that underlie the conditions in the currency
16 markets, including—

17 (A) monetary and financial conditions;

18 (B) accumulation of foreign assets;

19 (C) macroeconomic trends;

20 (D) trends in current and financial ac-
21 count balances;

22 (E) the size, composition, and growth of
23 international capital flows;

24 (F) the impact of the external sector on
25 economic growth;

1 (G) the size and growth of external indebt-
2 edness;

3 (H) trends in the net level of international
4 investment; and

5 (I) capital controls, trade, and exchange
6 restrictions.

7 (5) A list of currencies designated as fun-
8 damentally misaligned currencies pursuant to section
9 4(a)(2), and a description of any economic models or
10 methodologies used to establish the list.

11 (6) A list of currencies designated for priority
12 action pursuant to section 4(a)(3).

13 (7) An identification of the nominal value asso-
14 ciated with the medium-term equilibrium exchange
15 rate, relative to the United States dollar, for each
16 currency listed under paragraph (6).

17 (8) A description of any consultations con-
18 ducted or other steps taken pursuant to section 5,
19 6, or 7, including any actions taken to eliminate the
20 fundamental misalignment.

21 (9) A description of any determination made
22 pursuant to section 9(a).

23 (c) CONSULTATIONS.—The Secretary shall consult
24 with the Chairman of the Board of Governors of the Fed-
25 eral Reserve System and the Advisory Committee on

1 International Exchange Rate Policy with respect to the
2 preparation of each report required under subsection (a).
3 Any comments provided by the Chairman of the Board
4 of Governors of the Federal Reserve System or the Advi-
5 sory Committee on International Exchange Rate Policy
6 shall be submitted to the Secretary not later than the date
7 that is 15 days before the date each report is due under
8 subsection (a). The Secretary shall submit the report to
9 Congress after taking into account all comments received
10 from the Chairman and the Advisory Committee.

11 **SEC. 4. IDENTIFICATION OF FUNDAMENTALLY MISALIGNED**
12 **CURRENCIES.**

13 (a) IDENTIFICATION.—

14 (1) IN GENERAL.—The Secretary shall analyze
15 on a semiannual basis the prevailing real effective
16 exchange rates of foreign currencies.

17 (2) DESIGNATION OF FUNDAMENTALLY MIS-
18 ALIGNED CURRENCIES.—With respect to the cur-
19 rencies of countries that have significant bilateral
20 trade flows with the United States, and currencies
21 that are otherwise significant to the operation, sta-
22 bility, or orderly development of regional or global
23 capital markets, the Secretary shall determine
24 whether any such currency is in fundamental mis-

1 alignment and shall designate such currency as a
2 fundamentally misaligned currency.

3 (3) DESIGNATION OF CURRENCIES FOR PRI-
4 ORITY ACTION.—The Secretary shall designate a
5 currency identified under paragraph (2) for priority
6 action if the country that issues such currency is—

7 (A) engaging in protracted large-scale
8 intervention in the currency exchange market,
9 particularly if accompanied by partial or full
10 sterilization;

11 (B) engaging in excessive and prolonged
12 official or quasi-official accumulation of foreign
13 exchange reserves and other foreign assets, for
14 balance of payments purposes;

15 (C) introducing or substantially modifying
16 for balance of payments purposes a restriction
17 on, or incentive for, the inflow or outflow of
18 capital, that is inconsistent with the goal of
19 achieving full currency convertibility; or

20 (D) pursuing any other policy or action
21 that, in the view of the Secretary, warrants des-
22 ignation for priority action.

23 (b) REPORTS.—The Secretary shall include a list of
24 any foreign currency designated under paragraph (2) or
25 (3) of subsection (a) and the data and reasoning under-

1 lying such designations in each report required by section
2 3.

3 **SEC. 5. NEGOTIATIONS AND CONSULTATIONS.**

4 (a) IN GENERAL.—Upon designation of a currency
5 pursuant to section 4(a)(2), the Secretary shall seek to
6 consult bilaterally with the country that issues such cur-
7 rency in order to facilitate the adoption of appropriate
8 policies to address the fundamental misalignment.

9 (b) CONSULTATIONS INVOLVING CURRENCIES DES-
10 IGNATED FOR PRIORITY ACTION.—With respect to each
11 currency designated for priority action pursuant to section
12 4(a)(3), the Secretary shall, in addition to seeking to con-
13 sult with a country pursuant to subsection (a)—

14 (1) seek the advice of the International Mone-
15 tary Fund with respect to the Secretary’s findings in
16 the report submitted to Congress pursuant to section
17 3(a); and

18 (2) encourage other governments, whether bilat-
19 erally or in appropriate multinational fora, to join
20 the United States in seeking the adoption of appro-
21 priate policies by the country described in subsection
22 (a) to eliminate the fundamental misalignment.

23 **SEC. 6. FAILURE TO ADOPT APPROPRIATE POLICIES.**

24 (a) IN GENERAL.—Not later than 90 days after the
25 date on which a currency is designated for priority action

1 pursuant to section 4(a)(3), the Secretary shall determine
2 whether the country that issues such currency has adopted
3 appropriate policies, and taken identifiable action, to
4 eliminate the fundamental misalignment. The Secretary
5 shall promptly notify Congress of such determination and
6 publish notice of the determination in the Federal Reg-
7 ister. If the Secretary determines that the country that
8 issues such currency has failed to adopt appropriate poli-
9 cies, or take identifiable action, to eliminate the funda-
10 mental misalignment, the following shall apply with re-
11 spect to the country until a notification described in sec-
12 tion 7(b) is published in the Federal Register:

13 (1) ADJUSTMENT UNDER ANTIDUMPING LAW.—

14 For purposes of an antidumping investigation under
15 subtitle B of title VII of the Tariff Act of 1930 (19
16 U.S.C. 1673 et seq.), or a review under subtitle C
17 of such Act (19 U.S.C. 1675 et seq.), the following
18 shall apply:

19 (A) IN GENERAL.—The administering au-
20 thority shall ensure a fair comparison between
21 the export price and the normal value by ad-
22 justing the price used to establish export price
23 or constructed export price to reflect the funda-
24 mental misalignment of the currency of the ex-
25 porting country.

1 (B) SALES SUBJECT TO ADJUSTMENT.—

2 The adjustment described in subparagraph (A)
3 shall apply with respect to subject merchandise
4 sold on or after the date that is 30 days after
5 the date the currency of the exporting country
6 is designated for priority action pursuant to
7 section 4(a)(3).

8 (2) FEDERAL PROCUREMENT.—

9 (A) IN GENERAL.—The President shall
10 prohibit the procurement by the Federal Gov-
11 ernment of products or services from the coun-
12 try.

13 (B) EXCEPTION.—The prohibition pro-
14 vided for in subparagraph (A) shall not apply
15 with respect to a country that is a party to the
16 Agreement on Government Procurement.

17 (3) REQUEST FOR IMF ACTION.—The United
18 States shall inform the Managing Director of the
19 International Monetary Fund of the failure of the
20 country to adopt appropriate policies, or to take
21 identifiable action, to eliminate the fundamental mis-
22 alignment, and the actions the country is engaging
23 in that are identified in section 4(a)(3), and shall re-
24 quest that the Managing Director of the Inter-
25 national Monetary Fund—

1 (A) consult with such country regarding
2 the observance of the country's obligations
3 under article IV of the International Monetary
4 Fund Articles of Agreement, including through
5 special consultations, if necessary; and

6 (B) formally report the results of such con-
7 sultations to the Executive Board of the Inter-
8 national Monetary Fund within 180 days of the
9 date of such request.

10 (4) OPIC FINANCING.—The Overseas Private
11 Investment Corporation shall not approve any new
12 financing (including insurance, reinsurance, or guar-
13 antee) with respect to a project located within the
14 country.

15 (5) MULTILATERAL BANK FINANCING.—

16 (A) IN GENERAL.—The Secretary shall in-
17 struct the United States Executive Director at
18 each multilateral bank to oppose the approval
19 of any new financing (including loans, other
20 credits, insurance, reinsurance, or guarantee) to
21 the government of the country or for a project
22 located within the country.

23 (B) MULTILATERAL BANK.—The term
24 “multilateral bank” includes each of the inter-
25 national financial institutions described in sec-

1 tion 1701(c)(2) of the International Financial
2 Institutions Act (22 U.S.C. 262r).

3 (b) WAIVER.—

4 (1) IN GENERAL.—The President may waive
5 any action provided for under subsection (a) if the
6 President determines that—

7 (A) taking such action would cause serious
8 harm to the national security of the United
9 States; or

10 (B) it is in the vital economic interest of
11 the United States to do so and taking such ac-
12 tion would have an adverse impact on the
13 United States economy greater than the bene-
14 fits of such action.

15 (2) NOTIFICATION.—The President shall
16 promptly notify Congress of a determination under
17 paragraph (1) (and the reasons for the determina-
18 tion, if made under paragraph (1)(B)) and shall
19 publish notice of the determination (and the reasons
20 for the determination, if made under paragraph
21 (1)(B)) in the Federal Register.

22 (c) REPORTS.—The Secretary shall describe any ac-
23 tion or determination pursuant to subsection (a) or (b)
24 in the first semiannual report required by section 3 after
25 the date of such action or determination.

1 **SEC. 7. PERSISTENT FAILURE TO ADOPT APPROPRIATE**
2 **POLICIES.**

3 (a) PERSISTENT FAILURE TO ADOPT APPROPRIATE
4 POLICIES.—Not later than 360 days after the date on
5 which a currency is designated for priority action pursuant
6 to section 4(a)(3), the Secretary shall determine whether
7 the country that issues such currency has adopted appro-
8 priate policies, and taken identifiable action, to eliminate
9 the fundamental misalignment. The Secretary shall
10 promptly notify Congress of such determination and shall
11 publish notice of the determination in the Federal Reg-
12 ister. If the Secretary determines that the country that
13 issues such currency has failed to adopt appropriate poli-
14 cies, or take identifiable action, to eliminate the funda-
15 mental misalignment, in addition to the actions described
16 in section 6(a), the following shall apply with respect to
17 the country until a notification described in subsection (b)
18 is published in the Federal Register:

19 (1) ACTION AT THE WTO.—The United States
20 Trade Representative shall request consultations in
21 the World Trade Organization with the country re-
22 garding the consistency of the country's actions with
23 its obligations under the WTO Agreement.

24 (2) REMEDIAL INTERVENTION.—

25 (A) IN GENERAL.—The Secretary shall
26 consult with the Board of Governors of the

1 Federal Reserve System to consider under-
2 taking remedial intervention in international
3 currency markets in response to the funda-
4 mental misalignment of the currency designated
5 for priority action, and coordinating such inter-
6 vention with other monetary authorities and the
7 International Monetary Fund. In doing so, the
8 Secretary shall consider the impact of such
9 intervention on domestic economic growth and
10 stability, including the impact on interest rates.

11 (B) NOTICE TO COUNTRY.—At the same
12 time the Secretary takes action under subpara-
13 graph (A), the Secretary shall notify the coun-
14 try that issues such currency of the consulta-
15 tions under subparagraph (A).

16 (b) NOTIFICATION.—The Secretary shall promptly
17 notify Congress when a country that issues a currency des-
18 ignated for priority action pursuant to section 4(a)(3)
19 adopts appropriate policies, or takes identifiable action, to
20 eliminate the fundamental misalignment, and publish no-
21 tice of the action of that country in the Federal Register.

22 (c) WAIVER.—

23 (1) IN GENERAL.—The President may waive
24 any action provided for under this section, or extend

1 any waiver provided for under section 6(b), if the
2 President determines that—

3 (A) taking such action would cause serious
4 harm to the national security of the United
5 States; or

6 (B) it is in the vital economic interest of
7 the United States to do so, and that taking
8 such action would have an adverse impact on
9 the United States economy substantially out of
10 proportion to the benefits of such action.

11 (2) NOTIFICATION.—The President shall
12 promptly notify Congress of a determination under
13 paragraph (1) (and the reasons for the determina-
14 tion, if made under paragraph (1)(B)) and shall
15 publish notice of the determination (and the reasons
16 for the determination, if made under paragraph
17 (1)(B)) in the Federal Register.

18 (d) DISAPPROVAL OF WAIVER.—If the President
19 waives an action pursuant to subsection (c)(1)(B), or ex-
20 tends a waiver provided for under section 6(b)(1)(B), the
21 waiver shall cease to have effect upon the enactment of
22 a resolution of disapproval described in section 8(a)(2).

23 (e) REPORTS.—The Secretary shall describe any ac-
24 tion or determination pursuant to subsection (a), (b), or

1 (c) in the first semiannual report required by section 3
 2 after the date of such action or determination.

3 **SEC. 8. CONGRESSIONAL DISAPPROVAL OF WAIVER.**

4 (a) RESOLUTION OF DISAPPROVAL.—

5 (1) INTRODUCTION.—If a resolution of dis-
 6 approval is introduced in the House of Representa-
 7 tives or the Senate during the 90-day period (not
 8 counting any day which is excluded under section
 9 154(b)(1) of the Trade Act of 1974 (19 U.S.C.
 10 2194(b(1))), beginning on the date on which the
 11 President first notifies Congress of a determination
 12 to waive action with respect to a country pursuant
 13 to section 7(c)(1)(B), that resolution of disapproval
 14 shall be considered in accordance with this sub-
 15 section.

16 (2) RESOLUTION OF DISAPPROVAL.—In this
 17 subsection, the term “resolution of disapproval”
 18 means only a joint resolution of the two Houses of
 19 the Congress, the sole matter after the resolving
 20 clause of which is as follows: “That Congress does
 21 not approve the determination of the President
 22 under _____ of the Currency
 23 Exchange Rate Oversight Reform Act of 2011 with
 24 respect to _____, of which Congress was no-
 25 tified on _____.”, with the first blank space

1 being filled section 7(c)(1)(B) or section 6(b)(1)(B),
2 whichever is applicable, the second blank space being
3 filled with the name of the appropriate country, and
4 the third blank space being filled with the appro-
5 priate date.

6 (3) PROCEDURES FOR CONSIDERING RESOLU-
7 TIONS.—

8 (A) INTRODUCTION AND REFERRAL.—Res-
9 olutions of disapproval—

10 (i) in the House of Representatives—

11 (I) may be introduced by any
12 Member of the House;

13 (II) shall be referred to the Com-
14 mittee on Financial Services and, in
15 addition, to the Committee on Rules;
16 and

17 (III) may not be amended by ei-
18 ther Committee; and

19 (ii) in the Senate—

20 (I) may be introduced by any
21 Member of the Senate;

22 (II) shall be referred to the Com-
23 mittee on Banking, Housing, and
24 Urban Affairs; and

25 (III) may not be amended.

1 (B) COMMITTEE DISCHARGE AND FLOOR
2 CONSIDERATION.—The provisions of sub-
3 sections (c) through (f) of section 152 of the
4 Trade Act of 1974 (other than paragraph (3)
5 of such subsection (f)) (19 U.S.C. 2192 (c)
6 through (f)) (relating to committee discharge
7 and floor consideration of certain resolutions in
8 the House and Senate) apply to a resolution of
9 disapproval under this section to the same ex-
10 tent as such subsections apply to joint resolu-
11 tions under such section 152.

12 (b) RULES OF HOUSE OF REPRESENTATIVES AND
13 SENATE.—This section is enacted by Congress—

14 (1) as an exercise of the rulemaking power of
15 the House of Representatives and the Senate, re-
16 spectively, and as such is deemed a part of the rules
17 of each House, respectively, and the rules provided
18 for in this section supersede other rules only to the
19 extent that they are inconsistent with such other
20 rules; and

21 (2) with the full recognition of the constitu-
22 tional right of either House to change the rules pro-
23 vided for in this section (so far as relating to the
24 procedures of that House) at any time, in the same

1 manner, and to the same extent as any other rule
2 of that House.

3 **SEC. 9. INTERNATIONAL FINANCIAL INSTITUTION GOVERN-**
4 **ANCE ARRANGEMENTS.**

5 (a) INITIAL REVIEW.—Notwithstanding any other
6 provision of law, before the United States approves a pro-
7 posed change in the governance arrangement of any inter-
8 national financial institution, as defined in section
9 1701(c)(2) of the International Financial Institutions Act
10 (22 U.S.C. 262r(c)(2)), the Secretary shall determine
11 whether any member of the international financial institu-
12 tion that would benefit from the proposed change, in the
13 form of increased voting shares or representation, has a
14 currency that was designated a currency for priority action
15 pursuant to section 4(a)(3) in the most recent report re-
16 quired by section 3. The determination shall be reported
17 to Congress.

18 (b) SUBSEQUENT ACTION.—The United States shall
19 oppose any proposed change in the governance arrange-
20 ment of the international financial institution (described
21 in subsection (a)), if the Secretary renders an affirmative
22 determination pursuant to subsection (a).

23 (c) FURTHER ACTION.—The United States shall con-
24 tinue to oppose any proposed change in the governance
25 arrangement of the international financial institution, pur-

1 suant to subsection (b), until the Secretary determines
2 and reports to Congress that the proposed change would
3 not benefit any member of the international financial insti-
4 tution, in the form of increased voting shares or represen-
5 tation, that has a currency that is designated a currency
6 for priority action pursuant to section 4(a)(3).

7 **SEC. 10. ADJUSTMENT FOR FUNDAMENTALLY MISALIGNED**
8 **CURRENCY DESIGNATED FOR PRIORITY AC-**
9 **TION.**

10 (a) IN GENERAL.—Subsection (c)(2) of section 772
11 of the Tariff Act of 1930 (19 U.S.C. 1677a(c)(2)) is
12 amended—

13 (1) by striking “and” at the end of subpara-
14 graph (A);

15 (2) by striking the period at the end of sub-
16 paragraph (B) and inserting “, and”; and

17 (3) by adding at the end the following:

18 “(C) if required by section 6(a)(1) of the
19 Currency Exchange Rate Oversight Reform Act
20 of 2011, the percentage by which the domestic
21 currency of the producer or exporter is under-
22 valued in relation to the United States dollar as
23 determined under section 771(37).”.

1 (b) CALCULATION METHODOLOGY.—Section 771 of
2 the Tariff Act of 1930 (19 U.S.C. 1677) is amended by
3 adding at the end the following:

4 “(37) PERCENTAGE UNDERVALUATION.—The
5 administering authority shall determine the percent-
6 age by which the domestic currency of the producer
7 or exporter is undervalued in relation to the United
8 States dollar by comparing the nominal value associ-
9 ated with the medium-term equilibrium exchange
10 rate of the domestic currency of the producer or ex-
11 porter, identified by the Secretary pursuant to sec-
12 tion 3(b)(7) of the Currency Exchange Rate Over-
13 sight Reform Act of 2011, to the official daily ex-
14 change rate identified by the administering author-
15 ity.”.

16 **SEC. 11. CURRENCY UNDERVALUATION UNDER COUNTER-**
17 **VAILING DUTY LAW.**

18 (a) INVESTIGATION OR REVIEW.—Subsection (c) of
19 section 702 of the Tariff Act of 1930 (19 U.S.C.
20 1671a(c)) is amended by adding at the end the following:

21 “(6) CURRENCY UNDERVALUATION.—For pur-
22 poses of a countervailing duty investigation under
23 this subtitle where the determinations under clauses
24 (i) and (ii) of paragraph (1)(A) are affirmative, or

1 a review under subtitle C of this title, the following
2 shall apply:

3 “(A) IN GENERAL.—The administering au-
4 thority shall initiate an investigation to deter-
5 mine whether currency undervaluation by the
6 government of a country or any public entity
7 within the territory of a country is providing,
8 directly or indirectly, a countervailable subsidy
9 as described in section 771(5), if—

10 “(i) a petition filed by an interested
11 party (described in subparagraph (C), (D),
12 (E), (F), or (G) of section 771(9)) alleges
13 the elements necessary for the imposition
14 of the duty imposed by section 701(a); and

15 “(ii) the petition is accompanied by
16 information reasonably available to the pe-
17 titioner supporting those allegations.

18 “(B) DESIGNATION OF FUNDAMENTALLY
19 MISALIGNED CURRENCY FOR PRIORITY AC-
20 TION.—Upon designation of a currency as a
21 fundamentally misaligned currency for priority
22 action pursuant to section 4(a)(3) of the Cur-
23 rency Exchange Rate Oversight Reform Act of
24 2011, the administering authority shall initiate
25 an investigation to determine whether the coun-

1 try that issues such currency is providing, di-
2 rectly or indirectly, a countervailable subsidy as
3 defined in section 771(5), if—

4 “(i) a petition filed by an interested
5 party (described in subparagraph (C), (D),
6 (E), (F), or (G) of section 771(9)) alleges
7 the elements necessary for the imposition
8 of the duty imposed by section 701(a); and

9 “(ii) the petition is accompanied by
10 information reasonably available to the pe-
11 titioner supporting those allegations.”.

12 (b) BENEFIT CALCULATION METHODOLOGY.—Sec-
13 tion 771 of the Tariff Act of 1930 (19 U.S.C. 1677), as
14 amended by section 10(b), is further amended by adding
15 at the end the following:

16 “(38) CURRENCY UNDERVALUATION BEN-
17 EFIT.—For purposes of a countervailing duty inves-
18 tigation under subtitle A of this title, or a review
19 under subtitle C of this title, the following shall
20 apply:

21 “(A) IN GENERAL.—If the administering
22 authority determines to investigate whether cur-
23 rency undervaluation is a countervailable sub-
24 sidy as defined in section 771(5), the admin-
25 istering authority shall determine whether there

1 is a benefit to the recipient and measure such
2 benefit by comparing the simple average of the
3 real exchange rates derived from application of
4 the macroeconomic-balance approach and the
5 equilibrium-real-exchange-rate approach to the
6 official daily exchange rate identified by the ad-
7 ministering authority. The administering au-
8 thority shall rely upon data that are publicly
9 available, reliable, and compiled and maintained
10 by the International Monetary Fund or the
11 World Bank, or other international organiza-
12 tions or national governments if International
13 Monetary Fund or World Bank data is not
14 available.

15 “(B) DESIGNATION OF FUNDAMENTALLY
16 MISALIGNED CURRENCY FOR PRIORITY AC-
17 TION.—In the case of designation of a currency
18 as a fundamentally misaligned currency for pri-
19 ority action pursuant to section 4(a)(3) of the
20 Currency Exchange Rate Oversight Reform Act
21 of 2011, the administering authority shall de-
22 termine whether there is a benefit to the recipi-
23 ent and measure such benefit by comparing the
24 nominal value associated with the medium-term
25 equilibrium exchange rate of the currency of the

1 exporting country, identified by the Secretary
2 pursuant to section 3(b)(7) of such Act, to the
3 official daily exchange rate identified by the ad-
4 ministering authority.

5 “(C) DEFINITIONS.—

6 “(i) MACROECONOMIC-BALANCE AP-
7 PROACH.—The term ‘macroeconomic-bal-
8 ance approach’ means a methodology
9 under which the level of undervaluation of
10 the real effective exchange rate of the ex-
11 porting country’s currency is defined as
12 the change in the real effective exchange
13 rate needed to achieve equilibrium in the
14 exporting country’s balance of payments,
15 as such methodology is described in the
16 guidelines of the International Monetary
17 Fund’s Consultative Group on Exchange
18 Rate Issues, if available.

19 “(ii) EQUILIBRIUM-REAL-EXCHANGE-
20 RATE APPROACH.—The term ‘equilibrium-
21 real-exchange-rate approach’ means a
22 methodology under which the level of
23 undervaluation of the real effective ex-
24 change rate of the exporting country’s cur-
25 rency is defined as the difference between

1 the observed real effective exchange rate
2 and the real effective exchange rate, as
3 such methodology is described in the guide-
4 lines of the International Monetary Fund’s
5 Consultative Group on Exchange Rate
6 Issues, if available.

7 “(iii) REAL EXCHANGE RATES.—The
8 term ‘real exchange rates’ means the bilat-
9 eral exchange rates derived from con-
10 verting the trade-weighted multilateral ex-
11 change rates yielded by the macro-
12 economic-balance approach and the equi-
13 librium-real-exchange-rate approach into
14 real bilateral terms.”.

15 (c) EXPORT SUBSIDY.—Section 771(5A)(B) of the
16 Tariff Act of 1930 (19 U.S.C. 1677(5A)(B)) is amended
17 by adding at the end the following new sentence: “The
18 fact that a subsidy may also be provided in circumstances
19 that do not involve export shall not, for that reason alone,
20 mean that the subsidy cannot be considered contingent
21 upon export performance.”.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section apply to countervailing duty investigations ini-
24 tiated under subtitle A of title VII of the Tariff Act of
25 1930 (19 U.S.C. 1671 et seq.) and reviews initiated under

1 subtitle C of title VII of such Act (19 U.S.C. 1675 et seq.)
2 before, on, or after the date of the enactment of this Act.

3 **SEC. 12. NONMARKET ECONOMY STATUS.**

4 Paragraph (18)(B) of section 771 of the Tariff Act
5 of 1930 (19 U.S.C. 1677(18)(B)) is amended—

6 (1) by striking “and” at the end of clause (v);

7 and

8 (2) by redesignating clause (vi) as clause (vii)

9 and inserting after clause (v) the following:

10 “(vi) whether the currency of the for-
11 eign country is designated, or has been
12 designated at any time over the 5 years
13 prior to review of nonmarket economy sta-
14 tus, a currency for priority action pursuant
15 to section 4(a)(3) of the Currency Ex-
16 change Rate Oversight Reform Act of
17 2011, and”.

18 **SEC. 13. APPLICATION TO CANADA AND MEXICO.**

19 Pursuant to article 1902 of the North American Free
20 Trade Agreement and section 408 of the North American
21 Free Trade Agreement Implementation Act (19 U.S.C.
22 3438), section 6(a)(1) and the amendments made by sec-
23 tions 10, 11, and 12 shall apply with respect to goods from
24 Canada and Mexico.

1 **SEC. 14. ADVISORY COMMITTEE ON INTERNATIONAL EX-**
2 **CHANGE RATE POLICY.**

3 (a) ESTABLISHMENT.—

4 (1) IN GENERAL.—There is established an Ad-
5 visory Committee on International Exchange Rate
6 Policy (in this section referred to as the “Com-
7 mittee”). The Committee shall be responsible for—

8 (A) advising the Secretary in the prepara-
9 tion of each report to Congress on international
10 monetary policy and currency exchange rates,
11 provided for in section 3; and

12 (B) advising Congress and the President
13 with respect to—

14 (i) international exchange rates and
15 financial policies; and

16 (ii) the impact of such policies on the
17 economy of the United States.

18 (2) MEMBERSHIP.—

19 (A) IN GENERAL.—The Committee shall be
20 composed of 9 members as follows, none of
21 whom shall be employees of the Federal Gov-
22 ernment:

23 (i) CONGRESSIONAL APPOINTEES.—

24 (I) SENATE APPOINTEES.—Four
25 persons shall be appointed by the
26 President pro tempore of the Senate,

1 upon the recommendation of the
2 chairmen and ranking members of the
3 Committee on Banking, Housing, and
4 Urban Affairs and the Committee on
5 Finance of the Senate.

6 (II) HOUSE APPOINTEES.—Four
7 persons shall be appointed by the
8 Speaker of the House of Representa-
9 tives upon the recommendation of the
10 chairmen and ranking members of the
11 Committee on Financial Services and
12 the Committee on Ways and Means of
13 the House of Representatives.

14 (ii) PRESIDENTIAL APPOINTEE.—One
15 person shall be appointed by the President.

16 (B) QUALIFICATIONS.—Persons shall be
17 selected under subparagraph (A) on the basis of
18 their objectivity and demonstrated expertise in
19 finance, economics, or currency exchange.

20 (3) TERMS.—Members shall be appointed for a
21 term of 4 years or until the Committee terminates.
22 An individual may be reappointed to the Committee
23 for additional terms.

1 (4) VACANCIES.—Any vacancy in the Com-
2 mittee shall not affect its powers, but shall be filled
3 in the same manner as the original appointment.

4 (b) DURATION OF COMMITTEE.—Notwithstanding
5 section 14(c) of the Federal Advisory Committee Act (5
6 U.S.C. App.), the Committee shall terminate on the date
7 that is 4 years after the date of the enactment of this
8 Act unless renewed by the President pursuant to section
9 14 of the Federal Advisory Committee Act (5 U.S.C.
10 App.) for a subsequent 4-year period. The President may
11 continue to renew the Committee for successive 4-year pe-
12 riods by taking appropriate action prior to the date on
13 which the Committee would otherwise terminate.

14 (c) PUBLIC MEETINGS.—The Committee shall hold
15 at least 2 public meetings each year for the purpose of
16 accepting public comments, including comments from
17 small business owners. The Committee shall also meet as
18 needed at the call of the Secretary or at the call of two-
19 thirds of the members of the Committee.

20 (d) CHAIRPERSON.—The Committee shall elect from
21 among its members a chairperson for a term of 4 years
22 or until the Committee terminates. A chairperson of the
23 Committee may be reelected chairperson but is ineligible
24 to serve consecutive terms as chairperson.

1 (e) STAFF.—The Secretary shall make available to
2 the Committee such staff, information, personnel, admin-
3 istrative services, and assistance as the Committee may
4 reasonably require to carry out its activities.

5 (f) APPLICATION OF FEDERAL ADVISORY COM-
6 MITTEE ACT.—

7 (1) IN GENERAL.—The provisions of the Fed-
8 eral Advisory Committee Act (5 U.S.C. App.) shall
9 apply to the Committee.

10 (2) EXCEPTION.—Except for the 2 annual pub-
11 lic meetings required under subsection (c), meetings
12 of the Committee shall be exempt from the require-
13 ments of subsections (a) and (b) of sections 10 and
14 11 of the Federal Advisory Committee Act (relating
15 to open meetings, public notice, public participation,
16 and public availability of documents), whenever and
17 to the extent it is determined by the President or the
18 Secretary that such meetings will be concerned with
19 matters the disclosure of which would seriously com-
20 promise the development by the United States Gov-
21 ernment of monetary and financial policy.

1 **SEC. 15. REPEAL OF THE EXCHANGE RATES AND ECO-**
2 **NOMIC POLICY COORDINATION ACT OF 1988.**

3 The Exchange Rates and International Economic
4 Policy Coordination Act of 1988 (22 U.S.C. 5301 et seq.)
5 is repealed.

Passed the Senate October 11, 2011.

Attest:

Secretary.

112TH CONGRESS
1ST SESSION

S. 1619

AN ACT

To provide for identification of misaligned currency,
require action to correct the misalignment, and
for other purposes.