

112TH CONGRESS
1ST SESSION

S. 328

To amend title VII of the Tariff Act of 1930 to clarify that countervailing duties may be imposed to address subsidies relating to a fundamentally undervalued currency of any foreign country.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2011

Mr. BROWN of Ohio (for himself and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title VII of the Tariff Act of 1930 to clarify that countervailing duties may be imposed to address subsidies relating to a fundamentally undervalued currency of any foreign country.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Currency Reform for
5 Fair Trade Act”.

1 **SEC. 2. CLARIFICATION REGARDING DEFINITION OF**
2 **COUNTERAVAILABLE SUBSIDY.**

3 (a) **BENEFIT CONFERRED.**—Section 771(5)(E) of
4 the Tariff Act of 1930 (19 U.S.C. 1677(5)(E)) is amend-
5 ed—

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

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

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

11 “(v) in the case in which the currency
12 of a country in which the subject merchan-
13 dise is produced is exchanged for foreign
14 currency obtained from export trans-
15 actions, and the currency of such country
16 is a fundamentally undervalued currency,
17 as defined in paragraph (37), the dif-
18 ference between the amount of the cur-
19 rency of such country provided and the
20 amount of the currency of such country
21 that would have been provided if the real
22 effective exchange rate of the currency of
23 such country were not undervalued, as de-
24 termined pursuant to paragraph (38).”.

25 (b) **EXPORT SUBSIDY.**—Section 771(5A)(B) of the
26 Tariff Act of 1930 (19 U.S.C. 1677(5A)(B)) is amended

1 by adding at the end the following new sentence: “In the
2 case of a subsidy relating to a fundamentally undervalued
3 currency, the fact that the subsidy may also be provided
4 in circumstances not involving export shall not, for that
5 reason alone, mean that the subsidy cannot be considered
6 contingent upon export performance.”.

7 (c) DEFINITION OF FUNDAMENTALLY UNDER-
8 VALUED CURRENCY.—Section 771 of the Tariff Act of
9 1930 (19 U.S.C. 1677) is amended by adding at the end
10 the following new paragraph:

11 “(37) FUNDAMENTALLY UNDERVALUED CUR-
12 RENCY.—The administering authority shall deter-
13 mine that the currency of a country in which the
14 subject merchandise is produced is a ‘fundamentally
15 undervalued currency’ if—

16 “(A) the government of the country (in-
17 cluding any public entity within the territory of
18 the country) engages in protracted, large-scale
19 intervention in one or more foreign exchange
20 markets during part or all of the 18-month pe-
21 riod that represents the most recent 18 months
22 for which the information required under para-
23 graph (38) is reasonably available, but that
24 does not include any period of time later than

1 the final month in the period of investigation or
2 the period of review, as applicable;

3 “(B) the real effective exchange rate of the
4 currency is undervalued by at least 5 percent,
5 on average and as calculated under paragraph
6 (38), relative to the equilibrium real effective
7 exchange rate for the country’s currency during
8 the 18-month period;

9 “(C) during the 18-month period, the
10 country has experienced significant and per-
11 sistent global current account surpluses; and

12 “(D) during the 18-month period, the for-
13 eign asset reserves held by the government of
14 the country exceed—

15 “(i) the amount necessary to repay all
16 debt obligations of the government falling
17 due within the coming 12 months;

18 “(ii) 20 percent of the country’s
19 money supply, using standard measures of
20 M2; and

21 “(iii) the value of the country’s im-
22 ports during the previous 4 months.”.

23 (d) DEFINITION OF REAL EFFECTIVE EXCHANGE
24 RATE UNDERVALUATION.—Section 771 of the Tariff Act
25 of 1930 (19 U.S.C. 1677), as amended by subsection (c)

1 of this section, is further amended by adding at the end
2 the following new paragraph:

3 “(38) REAL EFFECTIVE EXCHANGE RATE
4 UNDERVALUATION.—The calculation of real effective
5 exchange rate undervaluation, for purposes of para-
6 graph (5)(E)(v) and paragraph (37), shall—

7 “(A)(i) rely upon, and where appropriate
8 be the simple average of, the results yielded
9 from application of the approaches described in
10 the guidelines of the International Monetary
11 Fund’s Consultative Group on Exchange Rate
12 Issues; or

13 “(ii) if the guidelines of the International
14 Monetary Fund’s Consultative Group on Ex-
15 change Rate Issues are not available, be based
16 on generally accepted economic and econometric
17 techniques and methodologies to measure the
18 level of undervaluation;

19 “(B) rely upon data that are publicly avail-
20 able, reliable, and compiled and maintained by
21 the International Monetary Fund or, if the
22 International Monetary Fund cannot provide
23 the data, by other international organizations or
24 by national governments; and

1 “(C) use inflation-adjusted, trade-weighted
2 exchange rates.”.

3 **SEC. 3. REPORT ON IMPLEMENTATION OF ACT.**

4 (a) IN GENERAL.—Not later than 9 months after the
5 date of the enactment of this Act, the Comptroller General
6 of the United States shall submit to Congress a report
7 on the implementation of the amendments made by this
8 Act.

9 (b) MATTERS TO BE INCLUDED.—The report re-
10 quired by subsection (a) shall include a description of the
11 extent to which United States industries that have been
12 materially injured by reason of imports of subject mer-
13 chandise produced in foreign countries with fundamentally
14 undervalued currencies have received relief under title VII
15 of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.), as
16 amended by this Act.

17 **SEC. 4. APPLICATION TO GOODS FROM CANADA AND MEX-**
18 **ICO.**

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 of 1993 (19
22 U.S.C. 3438), the amendments made by section 2 of this
23 Act shall apply to goods from Canada and Mexico.

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