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(Original Signature of Member)

111TH CONGRESS
1ST SESSION

H. R.

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.

IN THE HOUSE OF REPRESENTATIVES

Mr. RYAN of Ohio introduced the following bill; which was referred to the Committee on _____

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,*

3 **SECTION 1. FINDINGS.**

4 Congress makes the following findings:

5 (1) The strength, vitality, and stability of the
6 United States economy and, more broadly, the open-

1 ness and effectiveness of the global trading system
2 are critically dependent upon an international mone-
3 tary regime of orderly and flexible exchange rates.

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

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

18 (4) It is consistent with the agreements of the
19 World Trade Organization and the International
20 Monetary Fund that United States trade law be
21 amended to clarify and make explicit that funda-
22 mental undervaluation by an exporting country of its
23 currency is actionable as a countervailable export
24 subsidy and alternatively can be offset by anti-
25 dumping duties when injury to producers and work-

1 ers in the United States is caused by such subsidized
2 and dumped imports.

3 **SEC. 2. FUNDAMENTAL AND ACTIONABLE MISALIGNMENT**
4 **OF A CURRENCY.**

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

8 **“SEC. 771C. FUNDAMENTAL AND ACTIONABLE MISALIGN-**
9 **MENT OF A CURRENCY.**

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

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

22 “(2) during part or all of the 18-month period,
23 the government of the exporting country has en-
24 gaged directly or indirectly through surrogates in
25 protracted, large-scale intervention in foreign ex-

1 change markets, and that intervention has involved
2 direct transfers of funds or potential direct transfer
3 of funds or liabilities;

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

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

11 “(5) during part or all of the 18-month period,
12 the foreign exchange reserves held or controlled by
13 the government of the exporting country have ex-
14 ceeded the amount necessary to repay its external
15 debt obligations falling due within the coming twelve
16 months, except that the requirement of this para-
17 graph shall not be satisfied and no fundamental and
18 actionable undervaluation shall be found as to the
19 currency of an exporting country if the exporting
20 country during any part of the 18-month period has
21 been allowed under Article XII or Article XVIII, sec-
22 tion B of the GATT 1994 (as defined in section
23 2(1)(B) of the Uruguay Round Agreements Act (19
24 U.S.C. 3501(1)(B)) to impose restrictions to safe-
25 guard its balance of payments.

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

5 “(1) the real effective exchange rate of the ex-
6 porting country’s currency is overvalued by at least
7 5 percent, on average, during an 18-month period
8 that represents the most recent 18 months for which
9 the information required under subsection (c) is rea-
10 sonably available, but that does not include any time
11 later than the final month in the period of investiga-
12 tion or the period of review, as applicable;

13 “(2) during part or all of the 18-month period,
14 the government of the exporting country has en-
15 gaged directly or indirectly through surrogates in
16 protracted, large-scale intervention in foreign ex-
17 change markets, and that intervention has involved
18 direct transfers of funds or potential direct transfer
19 of funds or liabilities;

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

23 “(4) during part or all of the 18-month period,
24 the exporting country has experienced a significant

1 and prolonged bilateral current account deficit with
2 the United States; and

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

18 “(c) IDENTIFICATION OF FUNDAMENTAL AND AC-
19 TIONABLE MISALIGNMENT OF A CURRENCY.—In calcu-
20 lating under subsection (a) or (b) whether the currency
21 of an exporting country was fundamentally and actionably
22 misaligned during the applicable 18-month period de-
23 scribed in such subsection, the administering authority
24 shall—

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

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

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

22 “(4) use inflation-adjusted, trade-weighted ex-
23 change rates;

24 “(5) implement the macroeconomic-balance ap-
25 proach and the equilibrium-real-exchange-rate ap-

1 proach using the methodologies described in the
2 guidelines of the International Monetary Fund’s
3 Consultative Group on Exchange Rate Issues, when-
4 ever possible; and

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

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

20 “(1) calculate for the period of investigation or
21 the period of review, as applicable, the level of
22 undervaluation or overvaluation, as the case may be,
23 of the real effective exchange rate of the exporting
24 country’s currency in accordance with the proce-

1 dures, methodologies, and standards set forth in
2 subsection (c);

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

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

23 “(e) CONSIDERATION OF UNDERVALUATION OF A
24 CURRENCY IN COUNTERVAILING AND ANTIDUMPING
25 DUTY PROCEEDINGS.—If the administering authority de-

1 termines under subsection (d) that the currency of an ex-
2 porting country was undervalued in relation to the United
3 States dollar during the period of investigation or the pe-
4 riod of review, as applicable—

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

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

19 “(f) CONSIDERATION OF OVERVALUATION OF A CUR-
20 RENCY IN ANTIDUMPING DUTY PROCEEDINGS.—If the
21 administering authority determines under subsection (d)
22 that the currency of an exporting country was overvalued
23 in relation to the United States dollar during the period
24 of investigation or the period of review, as applicable, the
25 administering authority shall adjust the export price and

1 constructed export price upward by the amount that re-
2 flects the level of overvaluation determined under sub-
3 section (d)(3) in the bilateral real exchange rate between
4 the currency of the exporting country and the United
5 States dollar.

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

11 “(h) DEFINITIONS.—In this section:

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

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

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

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

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

18 “(B) RULE OF CONSTRUCTION.—Funda-
19 mental and actionable misalignment of the cur-
20 rency of an exporting country within the mean-
21 ing of subsection (a) or (b) shall be attributed
22 to the protracted, large-scale intervention in
23 foreign exchange markets by the government of
24 the exporting country unless it is determined
25 that such intervention was not a significant

1 cause of the fundamental and actionable mis-
2 alignment.

3 “(2) MACROECONOMIC-BALANCE APPROACH.—

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

11 “(3) EQUILIBRIUM-REAL-EXCHANGE-RATE AP-
12 PROACH.—The term ‘equilibrium-real-exchange-rate

13 approach’ means a methodology under which the
14 level of undervaluation or overvaluation of the real
15 effective exchange rate of the exporting country’s
16 currency is defined as the difference between the ob-
17 served real effective exchange rate and the real ef-
18 fective exchange rate predicted by an econometric
19 model.”.

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

 “Sec. 771C. Fundamental and actionable misalignment of a currency.”.

1 **SEC. 3. 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 “For purposes of clause (i), a fundamentally and ac-
7 tionably undervalued currency (as determined under sec-
8 tion 771C) shall be deemed to be a direct transfer of
9 funds.”

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

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

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

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

18 “(v) in the case of a fundamentally
19 and actionably undervalued currency (as
20 determined under section 771C), if the ex-
21 porter or producer receives or is entitled to
22 receive more of the exporting country’s
23 currency in exchange for the United States
24 dollars paid for the subject merchandise
25 than if the exporting country’s currency

1 were not fundamentally and actionably un-
2 dervalued.”.

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

9 **SEC. 4. CLARIFICATIONS REGARDING DUMPING.**

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

13 (1) in paragraph (1)—

14 (A) in subparagraph (B) by striking “and”
15 at the end; and

16 (B) by adding at the end the following new
17 subparagraph:

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

23 (2) in paragraph (2)—

24 (A) in subparagraph (A) by striking “and”
25 at the end;

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

3 (C) by adding at the end the following new
4 subparagraph:

5 “(C) the amount that reflects the level of
6 undervaluation in the bilateral real exchange
7 rate between the exporting country and the
8 United States (as determined under section
9 771C).”.

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

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

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

15 and

16 (3) by inserting after clause (v) the following
17 new clause:

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

1 **SEC. 5. APPLICATION TO GOODS FROM CANADA AND MEX-**
2 **ICO.**

3 Pursuant to article 1902 of the North American Free
4 Trade Agreement and section 408 of the North American
5 Free Trade Agreement Implementation Act of 1993 (19
6 U.S.C. 3438), the amendments made by this Act shall
7 apply with respect to goods from Canada and Mexico.

8 **SEC. 6. EFFECTIVE DATE.**

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