

The Currency Reform for Fair Trade Act of 2009 (Summary)

Fundamental exchange-rate misalignment occurs when a foreign government engages in protracted, large-scale intervention in the exchange markets with the result that its currency is undervalued or overvalued on an inflation-adjusted, trade-weighted basis by at least 5 percent, on average, during a specified 18-month period. This misalignment is hybrid in nature, a monetary measure that distorts international trade by acting (a) as a subsidy that reduces prices on exports from the country undervaluing its currency and (b) as an added tariff on imports into that country. U.S. trade remedies have not yet been applied to offset the subsidy-effects of currency undervaluation.

The Currency Reform for Fair Trade Act of 2009 departs from previous bills by focusing only on the trade aspect of currency misalignment and will:

- Ensure that standard, World Trade Organization (WTO)-consistent trade remedies are available to complement the diplomatic process from a monetary standpoint under the Omnibus Trade and Competitiveness Act of 1988.
- Direct the U.S. Department of Commerce to measure whether a country's currency is fundamentally misaligned. These calculations will be public and will use reliable, public data available from the IMF as well as the two primary methodologies and guidelines that the IMF follows in its computations of exchange-rate misalignment.
- Clarify that any foreign government's undervaluation of its currency by means of such intervention can be offset by means of either countervailing duties or antidumping duties. Consistent with WTO rules these remedies are imposed only when the U.S. International Trade Commission determines that the unfair practice has caused or threatens to cause material injury to U.S. companies and workers. It is the effect or impact of the exchange-rate misalignment, not the foreign government's purpose or intent underlying this policy, that is controlling as far as the WTO's agreements are concerned.
- Consistent with WTO rules, direct the U.S. Department of Commerce to treat currency undervaluation as a prohibited export-contingent subsidy. The text of the WTO's Agreement on Subsidies and Countervailing Measures and related jurisprudence support the conclusion that undervaluation of a currency through a government's protracted, large-scale intervention in exchange markets constitutes a prohibited, countervailable export subsidy.
- Consistent with WTO rules, alternatively provide that when calculating dumping margins adjustments will be made to the foreign exporter's U.S. price to offset undervaluation. Also consistent with the WTO's standards, imposition of only one or the other remedy of countervailing and antidumping duties will be allowed. Existing U.S. law prohibits such "double-counting," that is, the simultaneous application of countervailing and antidumping duties to counter the same export subsidy.

In the final analysis, whether a measure is compliant with the WTO's rules cannot be definitively determined absent resolution in a formal dispute settlement at the WTO, but special care has been taken to make the provisions of this currency bill consistent with the rights and obligations of the United States in accordance with the WTO's relevant agreements and provisions.