

Calendar No. 656109TH CONGRESS
2^D SESSION**S. 3992**

To amend the Exchange Rates and International Economic Policy Coordination Act of 1988 to clarify the definition of manipulation with respect to currency, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2006

Mr. BUNNING introduced the following bill; which was read the first time

SEPTEMBER 30 (legislative day, SEPTEMBER 29), 2006

Read the second time and placed on the calendar

A BILL

To amend the Exchange Rates and International Economic Policy Coordination Act of 1988 to clarify the definition of manipulation with respect to currency, 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. SHORT TITLE.**

4 This Act may be cited as the “United States Fair
5 Currency Practices Act of 2006”.

1 **SEC. 2. FINDINGS.**

2 (a) Congress makes the following findings:

3 (1) Since the Exchange Rates and International
4 Economic Policy Coordination Act of 1988 (22
5 U.S.C. 5302(3)) was enacted the global economy has
6 changed dramatically, with increased capital account
7 openness, a sharp increase in the flow of funds
8 internationally, and an ever growing number of
9 emerging market economies becoming systemically
10 important to the global flow of goods, services, and
11 capital. In addition, practices such as the mainte-
12 nance of multiple currency regimes have become
13 rare.

14 (2) Exchange rates among major trading na-
15 tions are occasionally manipulated or fundamentally
16 misaligned due to direct or indirect governmental
17 intervention in the exchange market.

18 (3) A major focus of national economic policy
19 should be a market-driven exchange rate for the
20 United States dollar at a level consistent with a sus-
21 tainable balance in the United States current ac-
22 count.

23 (4) While some degree of surpluses and deficits
24 in payments balances may be expected, particularly
25 in response to increasing economic globalization,
26 large and growing imbalances raise concerns of pos-

1 sible disruption to financial markets. In part, such
2 imbalances often reflect exchange rate policies that
3 foster fundamental misalignment of currencies.

4 (5) Currencies in fundamental misalignment
5 can seriously impair the ability of international mar-
6 kets to adjust appropriately to global capital and
7 trade flows, threatening trade flows and causing eco-
8 nomic harm to the United States.

9 (6) The effects of a fundamentally misaligned
10 currency may be so harmful that it is essential to
11 correct the fundamental misalignment without re-
12 gard to the purpose of any policy that contributed
13 to the misalignment.

14 (7) In the interests of facilitating the exchange
15 of goods, services, and capital among countries, sus-
16 taining sound economic growth, and fostering finan-
17 cial and economic stability, Article IV of the Inter-
18 national Monetary Fund's Articles of Agreement ob-
19 ligates each member of the International Monetary
20 Fund to avoid manipulating exchange rates in order
21 to prevent effective balance of payments adjustment
22 or to gain an unfair competitive advantage over
23 other members.

24 (8) The failure of a government to acknowledge
25 a fundamental misalignment of its currency or to

1 take steps to correct such a fundamental misalign-
2 ment, either through inaction or mere token action,
3 is a form of exchange rate manipulation and is in-
4 consistent with that government's obligations under
5 Article IV of the International Monetary Fund's Ar-
6 ticles of Agreement.

7 **TITLE I—INTERNATIONAL MON-**
8 **ETARY AND FINANCIAL POL-**
9 **ICY**

10 **SEC. 101. AMENDMENTS TO DEFINITIONS.**

11 Section 3006 of the Exchange Rates and Inter-
12 national Economic Policy Coordination Act of 1988 (22
13 U.S.C. 5306) is amended by adding at the end the fol-
14 lowing:

15 “(3) **FUNDAMENTAL MISALIGNMENT.**—The
16 term ‘fundamental misalignment’ means a material
17 sustained disparity between the observed levels of an
18 effective exchange rate for a currency and the cor-
19 responding levels of an effective exchange rate for
20 that currency that would be consistent with funda-
21 mental macroeconomic conditions based on a gen-
22 erally accepted economic rationale.

23 “(4) **EFFECTIVE EXCHANGE RATE.**—The term
24 ‘effective exchange rate’ means a weighted average

1 of bilateral exchange rates, expressed in either nomi-
2 nal or real terms.

3 “(5) **GENERALLY ACCEPTED ECONOMIC RA-**
4 **TIONALE.**—The term ‘generally accepted economic
5 rationale’ means an explanation drawn on widely
6 recognized macroeconomic theory for which there is
7 a significant degree of empirical support.”.

8 **SEC. 102. BILATERAL NEGOTIATIONS.**

9 (a) **IN GENERAL.**—Section 3004(b) of the Exchange
10 Rates and International Economic Policy Coordination
11 Act of 1988 (22 U.S.C. 5304(b)) is amended to read as
12 follows:

13 “(b) **BILATERAL NEGOTIATIONS.**—

14 “(1) **IN GENERAL.**—The Secretary of the
15 Treasury shall analyze on an annual basis the ex-
16 change rate policies of foreign countries, in consulta-
17 tion with the International Monetary Fund, and con-
18 sider whether countries—

19 “(A) manipulate the rate of exchange be-
20 tween their currency and the United States dol-
21 lar for purposes of preventing effective balance
22 of payments adjustments or gaining unfair com-
23 petitive advantage in international trade; or

24 “(B) have a currency that is in funda-
25 mental misalignment.

1 “(2) AFFIRMATIVE DETERMINATION.—If the
2 Secretary considers that such manipulation or fun-
3 damental misalignment is occurring with respect to
4 countries that—

5 “(A) have material global current account
6 surpluses; or

7 “(B) have significant bilateral trade sur-
8 pluses with the United States,

9 the Secretary of the Treasury shall take action to
10 initiate negotiations with such foreign countries on
11 an expedited basis, in the International Monetary
12 Fund or bilaterally, for the purpose of ensuring that
13 such countries regularly and promptly adjust the
14 rate of exchange between their currencies and the
15 United States dollar to permit effective balance of
16 payments adjustments and to eliminate the unfair
17 advantage.

18 “(3) EXCEPTION.—The Secretary shall not be
19 required to initiate negotiations if the Secretary de-
20 termines that such negotiations would have a serious
21 detrimental impact on vital national economic and
22 security interests. The Secretary shall inform the
23 chairman and the ranking minority member of the
24 Committee on Banking, Housing, and Urban Affairs
25 of the Senate and of the Committee on Financial

1 Services of the House of Representatives of the Sec-
2 retary's determination.”.

3 **SEC. 103. REPORTING REQUIREMENTS.**

4 Section 3005 of the Exchange Rates and Inter-
5 national Economic Policy Coordination Act of 1988 (22
6 U.S.C. 5305) is amended to read as follows:

7 **“SEC. 3005. REPORTING REQUIREMENTS.**

8 “(a) **REPORTS REQUIRED.**—

9 “(1) **IN GENERAL.**—The Secretary, after con-
10 sulting with the Chairman of the Board, shall sub-
11 mit to Congress, on or before October 15 of each
12 year, a written report on international economic pol-
13 icy and currency exchange rates.

14 “(2) **INTERIM REPORT.**—The Secretary, after
15 consulting with the Chairman of the Board, shall
16 submit to Congress, on or before April 15 of each
17 year, a written report on interim developments with
18 respect to international economic policy and cur-
19 rency exchange rates.

20 “(b) **CONTENTS OF REPORTS.**—Each report sub-
21 mitted under subsection (a) shall contain—

22 “(1) an analysis of currency market develop-
23 ments and the relationship between the United
24 States dollar and the currencies of major economies
25 and United States trading partners;

1 “(2) a review of the economic and financial
2 policies of major economies and United States trad-
3 ing partners and an evaluation of the impact that
4 such policies have on currency exchange rates;

5 “(3) a description of any currency intervention
6 by the United States or other major economies or
7 United States trading partners, or other actions un-
8 dertaken to adjust the actual exchange rate of the
9 dollar;

10 “(4) an evaluation of the factors that underlie
11 conditions in the currency markets, including—

12 “(A) monetary and financial conditions;

13 “(B) foreign exchange reserve accumula-
14 tion;

15 “(C) macroeconomic trends;

16 “(D) trends in current and financial ac-
17 count balances;

18 “(E) the size and composition of, and
19 changes in, international capital flows;

20 “(F) the impact of the external sector on
21 economic changes;

22 “(G) the size and growth of external in-
23 debtedness;

24 “(H) trends in the net level of inter-
25 national investment; and

1 “(I) capital controls, trade, and exchange
2 restrictions;

3 “(5) a list of currencies of the major economies
4 or economic areas that are manipulated or in funda-
5 mental misalignment and a description of any eco-
6 nomic models or methodologies used to establish the
7 list;

8 “(6) a description of any reason or cir-
9 cumstance that accounts for why each currency iden-
10 tified under paragraph (5) is manipulated or in fun-
11 damental misalignment based on a generally accept-
12 ed economic rationale;

13 “(7) a list of each currency identified under
14 paragraph (5) for which the manipulation or funda-
15 mental misalignment causes, or contributes to, a
16 material adverse impact on the economy of the
17 United States, including a description of any reason
18 or circumstance that explains why the manipulation
19 or fundamental misalignment is not accounted for
20 under paragraph (6);

21 “(8) the results of any prior consultations con-
22 ducted or other steps taken; and

23 “(9)(A) a list of each occasion during the re-
24 porting period when the issue of exchange-rate mis-
25 alignment was raised in a countervailing duty pro-

1 ceeding under subtitle A of title VII of the Tariff
2 Act of 1930 or in an investigation under section 421
3 of the Trade Act of 1974;

4 “(B) a summary in each such instance of
5 whether or not exchange-rate misalignment was
6 found and the reasoning and data underlying that
7 finding; and

8 “(C) a discussion regarding each affirmative
9 finding of exchange-rate misalignment to consider
10 the circumstances underlying that exchange-rate
11 misalignment and what action appropriately has
12 been or might be taken by the Secretary apart from
13 and in addition to import relief to correct the ex-
14 change-rate misalignment.

15 “(c) DEVELOPMENT OF REPORTS.—The Secretary
16 shall consult with the Chairman of the Board with respect
17 to the preparation of each report required under sub-
18 section (a). Any comments provided by the Chairman of
19 the Board shall be submitted to the Secretary not later
20 than the date that is 15 days before the date each report
21 is due under subsection (a). The Secretary shall submit
22 the report after taking into account all comments re-
23 ceived.”.

1 **SEC. 104. INTERNATIONAL FINANCIAL INSTITUTION GOV-**
2 **ERNANCE ARRANGEMENTS.**

3 (a) INITIAL REVIEW.—Notwithstanding any other
4 provision of law, before the United States approves a pro-
5 posed change in the governance arrangement of any inter-
6 national financial institution, as defined in section
7 1701(c)(2) of the International Financial Institutions Act
8 (22 U.S.C. 262r(c)(2)), the Secretary of the Treasury
9 shall determine whether any member of the international
10 financial institution that would benefit from the proposed
11 change, in the form of increased voting shares or represen-
12 tation, has a currency that is manipulated or in funda-
13 mental misalignment, and if so, whether the manipulation
14 or fundamental misalignment causes or contributes to a
15 material adverse impact on the economy of the United
16 States. The determination shall be reported to Congress.

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

22 (c) FURTHER ACTION.—The United States shall con-
23 tinue to oppose any proposed change in the governance
24 arrangement of an international financial institution, pur-
25 suant to subsection (b), until the Secretary determines
26 and reports to Congress that the currency of each member

1 of the international financial institution that would benefit
2 from the proposed change, in the form of increased voting
3 shares or representation, is neither manipulated nor in
4 fundamental misalignment.

5 **SEC. 105. NONMARKET ECONOMY STATUS.**

6 (a) IN GENERAL.—Paragraph (18)(B)(vi) of section
7 771 of the Tariff Act of 1930 (19 U.S.C. 1677(18)(B)(vi))
8 is amended by inserting before the end period the fol-
9 lowing: “, including whether the currency of the foreign
10 country has been identified pursuant to section 3005(b)(7)
11 of the Exchange Rates and International Economic Policy
12 Coordination Act of 1988 (22 U.S.C. 5305(b)(7)) in any
13 written report required by such section 3005(b)(7) during
14 the 24-month period immediately preceding the month
15 during which the administering authority seeks to revoke
16 a determination that such foreign country is a nonmarket
17 economy country”.

18 (b) TERMINATION.—The amendment made by this
19 section shall apply during the 10-year period beginning on
20 the date of the enactment of this Act.

21 **TITLE II—SUBSIDIES AND PROD-**
22 **UCT-SPECIFIC SAFEGUARD**
23 **MECHANISM**

24 **SEC. 201. FINDINGS.**

25 Congress makes the following findings:

1 (1) The economy and national security of the
2 United States are critically dependent upon a vi-
3 brant manufacturing and agricultural base.

4 (2) The good health of United States manufac-
5 turing and agriculture requires, among other things,
6 unfettered access to open markets abroad and fairly
7 traded raw materials and products in accord with
8 the international legal principles and agreements of
9 the World Trade Organization and the International
10 Monetary Fund.

11 (3) The International Monetary Fund, the G-
12 8, and other international organizations have repeat-
13 edly noted that exchange-rate misalignment can
14 cause imbalances in the international trading system
15 that could ultimately undercut the stability of the
16 system, but have taken no action to address such
17 misalignments and imbalances.

18 (4) Since 1994, the People's Republic of China
19 and other countries have aggressively intervened in
20 currency markets and taken measures that have sig-
21 nificantly misaligned the values of their currencies
22 against the United States dollar and other cur-
23 rencies.

24 (5) This policy by the People's Republic of
25 China, for example, has resulted in substantial

1 undervaluation of the renminbi, by up to 40 percent
2 or more.

3 (6) Evidence of this undervaluation can be
4 found in the large and growing annual trade sur-
5 pluses of the People's Republic of China; substan-
6 tially expanding foreign direct investment in China;
7 and the rapidly increasing aggregate amount of for-
8 eign currency reserves that are held by the People's
9 Republic of China.

10 (7) Undervaluation by the People's Republic of
11 China and by other countries acts as both a subsidy
12 for their exports and as a nontariff barrier against
13 imports into their territories, to the serious det-
14 riment of United States manufacturing and agri-
15 culture.

16 (8)(A) As members of both the World Trade
17 Organization and the International Monetary Fund,
18 the People's Republic of China and other countries
19 have assumed a series of international legal obliga-
20 tions to eliminate all subsidies for exports and to fa-
21 cilitate international trade by fostering a monetary
22 system that does not tend to produce erratic disrup-
23 tions, that does not prevent effective balance-of-pay-
24 ments adjustment, and that does not gain unfair
25 competitive advantage.

1 (B) These obligations are most prominently set
 2 forth in Articles VI, XV, and XVI of the GATT
 3 1994 (as defined in section 2(1)(B) of the Uruguay
 4 Round Agreements Act (19 U.S.C. 3501(1)(B)), in
 5 the Agreement on Subsidies and Countervailing
 6 Measures (as defined in section 101(d)(12) of the
 7 Uruguay Round Agreements Act (19 U.S.C.
 8 3511(d)(12)), and in Articles IV and VIII of the
 9 International Monetary Fund's Articles of Agree-
 10 ment.

11 (9) Under the foregoing circumstances, it is
 12 consistent with the international legal obligations of
 13 the People's Republic of China and similarly situ-
 14 ated countries and with the corresponding inter-
 15 national legal rights of the United States to amend
 16 relevant United States trade laws to make explicit
 17 that exchange-rate misalignment is actionable as a
 18 countervailable export subsidy.

19 **SEC. 202. CLARIFICATION TO INCLUDE EXCHANGE-RATE**
 20 **MISALIGNMENT AS A COUNTERAVAILABLE**
 21 **SUBSIDY UNDER TITLE VII OF THE TARIFF**
 22 **ACT OF 1930.**

23 (a) AMENDMENTS TO DEFINITION OF
 24 COUNTERAVAILABLE SUBSIDY.—

1 (1) FINANCIAL CONTRIBUTION.—Section
2 771(5)(D) of the Tariff Act of 1930 (19 U.S.C.
3 1677(5)(D)) is amended—

4 (A) by redesignating clauses (i) through
5 (iv) as subclauses (I) through (IV), respectively;

6 (B) by striking “The term” and inserting
7 “(i) The term”; and

8 (C) by adding at the end the following:

9 “(ii) Exchange-rate misalignment (as
10 defined in paragraph (5C)) constitutes a
11 financial contribution within the meaning
12 of subclauses I and III of clause (i).”.

13 (2) BENEFIT CONFERRED.—Section 771(5)(E)
14 of the Tariff Act of 1930 (19 U.S.C. 1677(5)(E)) is
15 amended—

16 (A) in clause (iii), by striking “, and” and
17 inserting a comma;

18 (B) in clause (iv), by striking the period at
19 the end and inserting “, and”; and

20 (C) by adding at the end the following new
21 clause:

22 “(v) in the case of exchange-rate mis-
23 alignment (as defined in paragraph (5C)),
24 if the price of exported goods in United
25 States dollars is less than what the price

1 of such goods would be without the ex-
2 change-rate misalignment.”.

3 (3) SPECIFICITY.—Section 771(5A)(B) of the
4 Tariff Act of 1930 (19 U.S.C. 1677(5A)(B)) is
5 amended by adding at the end before the period the
6 following: “, such as exchange-rate misalignment (as
7 defined in paragraph (5C))”.

8 (b) DEFINITION OF EXCHANGE-RATE MISALIGN-
9 MENT.—Section 771 of the Tariff Act of 1930 (19 U.S.C.
10 1677) is amended by inserting after paragraph (5B) the
11 following new paragraph:

12 “(5C) EXCHANGE-RATE MISALIGNMENT.—

13 “(A) IN GENERAL.—For purposes of para-
14 graphs (5) and (5A), the term ‘exchange-rate
15 misalignment’ means a significant undervalu-
16 ation of a foreign currency as a result of pro-
17 tracted large-scale intervention by or at the di-
18 rection of a governmental authority in exchange
19 markets. Such undervaluation shall be found
20 when the observed exchange rate for a foreign
21 currency is significantly below the exchange
22 rate that could reasonably be expected for that
23 foreign currency absent the intervention.

24 “(B) FACTORS.—In determining whether
25 exchange-rate misalignment is occurring and a

1 benefit thereby is conferred, the administering
2 authority in each case—

3 “(i) shall consider the exporting coun-
4 try’s—

5 “(I) bilateral balance-of-trade
6 surplus or deficit with the United
7 States;

8 “(II) balance-of-trade surplus or
9 deficit with its other trading partners
10 individually and in the aggregate;

11 “(III) foreign direct investment
12 in its territory;

13 “(IV) currency-specific and ag-
14 gregate amounts of foreign currency
15 reserves; and

16 “(V) mechanisms employed to
17 maintain its currency at an under-
18 valued exchange rate relative to an-
19 other currency and, particularly, the
20 nature, duration, and monetary ex-
21 penditures of those mechanisms;

22 “(ii) may consider such other eco-
23 nomic factors as are relevant; and

24 “(iii) shall measure the trade sur-
25 pluses or deficits described in subclauses

1 (I) and (II) of clause (i) with reference to
2 the trade data reported by the United
3 States and the other trading partners of
4 the exporting country, unless such trade
5 data are not available or are demonstrably
6 inaccurate, in which case the exporting
7 country's trade data may be relied upon if
8 shown to be sufficiently accurate and
9 trustworthy.

10 “(C) COMPUTATION.—In calculating the
11 extent of exchange-rate misalignment, the ad-
12 ministering authority shall, in consultation with
13 the Treasury Department and the Federal Re-
14 serve, develop and apply an objective method-
15 ology that is consistent with widely recognized
16 macroeconomic theory and shall rely upon gov-
17 ernmentally published and other publicly avail-
18 able data.

19 “(D) TYPE OF ECONOMY.—An authority
20 found to be engaged in exchange-rate misalign-
21 ment may have either a market economy or a
22 nonmarket economy or a combination thereof.”.

23 (e) EFFECTIVE DATE.—The amendments made by
24 this section apply with respect to a countervailing duty
25 proceeding initiated under subtitle A of title VII of the

1 Tariff Act of 1930 before, on, or after the date of enact-
2 ment of this Act.

3 **SEC. 203. CLARIFICATION TO INCLUDE EXCHANGE-RATE**
4 **MISALIGNMENT BY THE PEOPLE’S REPUBLIC**
5 **OF CHINA AS A CONDITION TO BE CONSID-**
6 **ERED WITH RESPECT TO MARKET DISRUP-**
7 **TION UNDER CHAPTER 2 OF TITLE IV OF THE**
8 **TRADE ACT OF 1974.**

9 (a) MARKET DISRUPTION.—

10 (1) IN GENERAL.—Section 421(c) of the Trade
11 Act of 1974 (19 U.S.C. 2451(c)) is amended by add-
12 ing at the end the following new paragraphs:

13 “(3) For purposes of this section, the term ‘under
14 such conditions’ includes exchange-rate misalignment (as
15 defined in paragraph (4)).”.

16 “(4)(A) For purposes of this section, the term ‘ex-
17 change-rate misalignment’ means a significant undervalu-
18 ation of the renminbi as a result of protracted large-scale
19 intervention by or at the direction of the Government of
20 the People’s Republic of China in exchange markets. Such
21 undervaluation shall be found when the observed exchange
22 rate for the renminbi is significantly below the exchange
23 rate that could reasonably be expected for the renminbi
24 absent the intervention.

1 “(B) In determining whether exchange-rate misalign-
2 ment is occurring, the Commission in each case—

3 “(i) shall consider the People’s Republic of Chi-
4 na’s—

5 “(I) bilateral balance-of-trade surplus or
6 deficit with the United States;

7 “(II) balance-of-trade surplus or deficit
8 with its other trading partners individually and
9 in the aggregate;

10 “(III) foreign-direct investment in its terri-
11 tory;

12 “(IV) currency-specific and aggregate
13 amounts of foreign currency reserves; and

14 “(V) mechanisms employed to maintain its
15 currency at an undervalued exchange rate rel-
16 ative to another currency and, particularly, the
17 nature, duration, and monetary expenditures of
18 those mechanisms;

19 “(ii) may consider such other economic factors
20 as are relevant; and

21 “(iii) shall measure the trade surpluses or defi-
22 cits described in subclauses (I) and (II) of clause (i)
23 with reference to the trade data reported by the
24 United States and the other trading partners of the
25 People’s Republic of China, unless such trade data

1 are not available or are demonstrably inaccurate, in
2 which case the trade data of the People’s Republic
3 of China may be relied upon if shown to be suffi-
4 ciently accurate and trustworthy.

5 “(C) In calculating the extent of exchange-rate mis-
6 alignment, the Commission shall, in consultation with the
7 Treasury Department and the Federal Reserve, develop
8 and apply an objective methodology that is consistent with
9 widely recognized macroeconomic theory and shall rely
10 upon governmentally published and other publicly avail-
11 able data.”.

12 (b) CRITICAL CIRCUMSTANCES.—Section 421(i)(1) of
13 the Trade Act of 1974 (19 U.S.C. 2451(i)(1)) is amend-
14 ed—

15 (1) in subparagraph (A), by striking “and” at
16 the end;

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

19 (3) by inserting after subparagraph (B) the fol-
20 lowing new subparagraph:

21 “(C) if the petition alleges and reasonably
22 documents that exchange-rate misalignment is
23 occurring, such exchange-rate misalignment
24 shall be considered as a factor weighing in favor

1 of affirmative findings in subparagraphs (A)
2 and (B).”.

3 (c) STANDARD FOR PRESIDENTIAL ACTION.—Section
4 421(k)(2) of the Trade Act of 1974 (19 U.S.C.
5 2451(k)(2)) is amended by adding at the end the following
6 new sentence: “If the Commission makes an affirmative
7 determination that exchange-rate misalignment is occur-
8 ring, the President shall consider such exchange-rate mis-
9 alignment as a factor weighing in favor of providing im-
10 port relief in accordance with subsection (a).”.

11 (d) MODIFICATIONS OF RELIEF.—Section 421(n)(2)
12 of the Trade Act of 1974 (19 U.S.C. 2451(n)(2)) is
13 amended by adding at the end the following new sentence:
14 “If the Commission affirmatively determines that ex-
15 change-rate misalignment is occurring, the Commission
16 and the President shall consider such exchange-rate mis-
17 alignment as a factor weighing in favor of finding that
18 continuation of relief is necessary to prevent or remedy
19 the market disruption at issue.”.

20 (e) EXTENSION OF ACTION.—Section 421(o) of the
21 Trade Act of 1974 (19 U.S.C. 2451(o)) is amended—

22 (1) in paragraph (1), by adding at the end the
23 following new sentence: “If the Commission makes
24 an affirmative determination that exchange-rate mis-
25 alignment is occurring, the Commission shall con-

1 sider such exchange-rate misalignment as a factor
 2 weighing in favor of finding that an extension of the
 3 period of relief is necessary to prevent or remedy the
 4 market disruption at issue.”; and

5 (2) in paragraph (4), by adding at the end the
 6 following new sentence: “If the Commission makes
 7 an affirmative determination that exchange-rate mis-
 8 alignment is occurring, the President shall consider
 9 such exchange-rate misalignment as a factor weigh-
 10 ing in favor of finding that an extension of the pe-
 11 riod of relief is necessary to prevent or remedy the
 12 market disruption at issue.”.

13 (f) EFFECTIVE DATE.—The amendments made by
 14 this section apply with respect to an investigation initiated
 15 under chapter 2 of title IV of the Trade Act of 1974 be-
 16 fore, on, or after the date of the enactment of this Act.

17 **SEC. 204. PROHIBITION ON PROCUREMENT BY THE DE-**
 18 **PARTMENT OF DEFENSE OF CERTAIN DE-**
 19 **FENSE ARTICLES IMPORTED FROM THE PEO-**
 20 **PLE’S REPUBLIC OF CHINA.**

21 (a) COPY OF PETITION, REQUEST, OR RESOLUTION
 22 TO BE TRANSMITTED TO THE SECRETARY OF DE-
 23 FENSE.—Section 421(b)(4) of the Trade Act of 1974 (19
 24 U.S.C. 2451(b)(4)) is amended by inserting “, the Sec-
 25 retary of Defense” after “, the Trade Representative”.

1 (b) DETERMINATION OF SECRETARY OF DEFENSE.—
2 Section 421(b) of the Trade Act of 1974 (19 U.S.C.
3 2451(b)) is amended by adding at the end the following
4 new paragraph:

5 “(6) Not later than 15 days after the date on which
6 an investigation is initiated under this subsection, the Sec-
7 retary of Defense shall submit to the Commission a report
8 in writing which contains the determination of the Sec-
9 retary as to whether or not the articles of the People’s
10 Republic of China that are the subject of the investigation
11 are like or directly competitive with articles produced by
12 a domestic industry that are critical to the defense indus-
13 trial base of the United States.”.

14 (c) PROHIBITION ON PROCUREMENT BY THE DE-
15 PARTMENT OF DEFENSE OF CERTAIN DEFENSE ARTI-
16 CLES.—

17 (1) PROHIBITION.—If the United States Inter-
18 national Trade Commission makes an affirmative
19 determination under section 421(b) of the Trade Act
20 of 1974 (19 U.S.C. 2451(b)), or a determination
21 which the President or the United States Trade
22 Representative may consider as affirmative under
23 section 421(e) of such Act (19 U.S.C. 2451(e)), with
24 respect to articles of the People’s Republic of China
25 that the Secretary of Defense has determined are

1 like or directly competitive with articles produced by
2 a domestic industry that are critical to the defense
3 industrial base of the United States, the Secretary
4 of Defense may not procure, directly or indirectly,
5 such articles of the People's Republic of China.

6 (2) WAIVER.—The President may waive the ap-
7 plication of the prohibition contained in paragraph
8 (1) on a case-by-case basis if the President deter-
9 mines and certifies to Congress that it is in the na-
10 tional security interests of the United States to do
11 so.

12 **SEC. 205. APPLICATION TO GOODS FROM CANADA AND**
13 **MEXICO.**

14 Pursuant to article 1902 of the North American Free
15 Trade Agreement and section 408 of the North American
16 Free Trade Agreement Implementation Act of 1993 (19
17 U.S.C. 3438), the amendments made by sections 105 and
18 202 of this Act shall apply to goods from Canada and
19 Mexico.

Calendar No. 656

109TH CONGRESS
2^D SESSION
S. 3992

A BILL

To amend the Exchange Rates and International Economic Policy Coordination Act of 1988 to clarify the definition of manipulation with respect to currency, and for other purposes.

SEPTEMBER 30 (legislative day, SEPTEMBER 29), 2006

Read the second time and placed on the calendar