The Currency Exchange Rate Oversight Reform Act of 2010

Introduced on March 16, 2010, by Senators Schumer, Stabenow, Graham, Brownback, Brown (OH), Snowe, Feingold, Specter, Casey, Bayh, Levin, Cardin, Gillibrand and Webb

The Schumer-Stabenow-Graham Currency Exchange Rate Oversight Act of 2010 will reform and enhance oversight of currency exchange rates. The bill provides consequences for countries that fail to adopt appropriate policies to eliminate currency misalignment and includes tools to address the impact of currency misalignment on U.S. industries.

Under current law, Treasury is required to identify countries that manipulate their currency for purposes of gaining an unfair competitive trade advantage. In recent years, Treasury has found that certain countries' currencies were undervalued. However, based on its interpretation of the law's legal standard for a finding of "manipulation," Treasury has refused to cite such countries as currency manipulators. The Schumer-Stabenow bill repeals the currency provisions in current law and replaces them with a new framework, based on objective criteria, which will require Treasury to identify misaligned currencies and require action by the administration if countries fail to correct the misalignment.

Establishes New Objective Criteria. The legislation requires Treasury to develop a biannual report to Congress that identifies two categories of currencies: (1) a general category of "fundamentally misaligned currencies" based on observed objective criteria and (2) a select category of "fundamentally misaligned currencies for priority action" that reflects misaligned currencies caused by clear policy actions by the relevant government.

Strengthens Existing Countervailing Duty Law to Address Currency Undervaluation. The legislation clarifies that the Commerce Department already has authority under U.S. law to investigate whether currency undervaluation by a government provides a "countervailable subsidy" and must do so if a U.S. industry requests investigation. In recent years, the Commerce Department has been reluctant to exercise its authority under the law. This legislation, therefore, seeks to strengthen and reaffirm existing law and the Commerce Department's obligations under the law.

The legislation also makes it clear that the Commerce Department is required to investigate currency undervaluation as a "countervailable subsidy" if Treasury designates a "priority" currency and a U.S. industry requests an investigation. Under existing trade laws, if Commerce and the International Trade Commission find that subsidized imports are causing economic harm to a U.S. industry, the administration must impose duties on those imports to counter the effect of the subsidy.

Requires New Consultations. The legislation requires Treasury to engage in immediate consultations with all countries cited in the report. For "priority" currencies, Treasury would seek advice from the International Monetary Fund (IMF) as well as key trading partners.

Triggers Tough Consequences. For "priority" currencies, important consequences are triggered unless a country adopts policies to eliminate the misalignment.

Immediately upon designation of a "priority" currency, the administration must:

- Oppose any IMF governance changes that benefit a country whose currency is designated for priority action.
- Determine whether to grant a country "market economy" status for purpose of U.S. antidumping law.

After 90 days of failure to adopt appropriate policies, the administration must:

- Reflect currency undervaluation in dumping calculations for products produced or manufactured in the designated country.
- Forbid federal procurement of goods and services from the designated country unless that country is a member of the WTO Government Procurement Agreement ("GPA").
- Request the IMF to engage the designated country in special consultations over its misaligned currency.
- Forbid Overseas Private Investment Corporation (OPIC) financing or insurance for projects in the designated country.
- Oppose new multilateral bank financing for projects in the designated country.

After 360 days of failure to adopt appropriate policies, the administration must:

- Require the U.S. Trade Representative to request dispute settlement consultations in the World Trade Organization with the government responsible for the currency.
- Require the Department of Treasury to consult with the Federal Reserve Board and other central banks to consider remedial intervention in currency markets.

Limits Presidential Waiver. The President could initially waive the consequences that take effect after the first 90 days if such action would harm national security or the vital economic interest of the United States. However, the President must explain to the Congress in writing how the adverse impact of taking an action would be *greater* than the potential benefits of such action. Any subsequent economic waiver would require the President to explain how the adverse impact of taking an action would be substantially *out of proportion* to the benefits of such action. Furthermore, any Member of Congress may thereafter introduce a joint resolution of disapproval concerning the President's waiver. Should the disapproval resolution be approved, the President may veto it, and the Congress would have the opportunity to override the veto.

Establishes New Consultative Body. The bill would create a new body with which Treasury must consult during the development of its report. Of the nine members, one would be selected by the President and the remainder by the Chairmen and Ranking Members of the Senate Finance and Banking Committees, as well and the House Ways and Means and Financial Services Committees. The members must have demonstrated expertise in finance, economics, or currency exchange.