

**CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA**

JOHN MURPHY
SENIOR VICE PRESIDENT
INTERNATIONAL POLICY

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June 26, 2019

Jeffrey I. Kessler
Assistant Secretary for Enforcement and Compliance
Department of Commerce
Room 1870
1401 Constitution Ave NW
Washington, DC 20230

Docket No. ITA-2019-0002

Dear Assistant Secretary Kessler:

The U.S. Chamber of Commerce (“Chamber”) appreciates the opportunity to present the following comments to the U.S. Department of Commerce (“the Department”) on the proposed “Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings” pursuant to Federal Register Notice 2019-11197. The Chamber is the world’s largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

The Department has proposed “to modify two regulations pertaining to the determination of benefit and specificity in countervailing duty proceedings. These modifications, if adopted, would clarify how the Department determines the existence of a benefit resulting from a subsidy in the form of currency undervaluation, and clarify that companies in the traded goods sector of an economy can constitute a group of enterprises for purposes of determining whether a subsidy is specific.”

The Chamber believes the proposal is flawed and urges the Department to abandon it for three reasons. First, the proposed change requires legislation. The proposal to alter U.S. countervailing duty law to deem currency undervaluation a countervailable subsidy may not be effected by a mere regulatory change.

In past Administrations, officials have indicated they do not believe the Department has the authority to make this policy change absent legislation. Moreover, Congress considered and failed to approve such legislation. Congress enacted U.S. countervailing duty law using its exclusive constitutional authority to regulate foreign trade (Article 1, Section 8). It would be unlawful for the Administration to assert the right to add to this law in this manner.

Second, there is no agreed methodology for measuring the undervaluation or overvaluation of currencies. Even the International Monetary Fund employs no single model to estimate equilibrium exchange rates, which might serve as a basis against which currencies' valuation could be measured. Estimates of whether a given currency is "properly" valued in exchange rate markets are thus unavoidably subjective.

Third, the proposal would violate international trade obligations the United States as undertaken. According to the WTO Agreement on Subsidies and Countervailing Measures, countervailing duties may be applied to imports of goods that receive subsidies that are "specific" to individuals or groups of "enterprises or industries." Trade experts have long argued that currency undervaluation—even if it could be accurately estimated—does not qualify as a specific subsidy.

The proposal is unlikely to withstand a challenge before a WTO dispute settlement panel. As such, implementing this proposal would likely lead in due course to WTO-sanctioned retaliation against exports of U.S. goods and services.

Thank you for considering our views. Please do not hesitate to reach out with questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John Murphy". The signature is fluid and cursive, with a long, sweeping tail that loops back under the name.

John Murphy
Senior Vice President for International Policy
U.S. Chamber of Commerce