



June 27, 2019

Via www.regulations.gov
Docket No. ITA-2019-0002

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

Re: Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings, 84 FR 24406 (May 28, 2019) – Comments of Committee To Support US Trade Laws (CSUSTL)

Dear Assistant Secretary Kessler,

On behalf of the Committee to Support United States Trade Laws (“CSUSIL”), we hereby submit comments in response to the U.S. Department of Commerce’s (“Commerce”) proposed rule and request for comments (“*Proposed Rule*”) regarding modifications to Commerce’s regulations pertaining to the determination of benefit and specificity in countervailing duty (“CVD”) proceedings regarding currency manipulation.¹ These comments are timely filed in accordance with the deadline outlined by Commerce in the *Proposed Rule*.

CSUSIL is a national organization of companies, trade associations, labor unions, workers, and individuals located in all 50 states of the nation and is committed to preserving and enhancing U.S. trade laws and supporting trade policies that benefit the United States manufacturing and agricultural sectors. CSUSIL consists of 423 companies and organizations

¹ *Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings: Proposed Rule and Request for Comment*, 84 Fed. Reg. 24,406 (May 28, 2019) (“*Proposed Rule*”).

representing 167 industries, including manufacturing, technology, agriculture, mining, energy and services. CSUSIL commends the Administration's efforts, and Commerce's initiative in this rulemaking, to use all powers under the United States' trade remedy laws to protect domestic industries from unfair trade practices. We strongly support Commerce's action to offset the trade-distorting effects caused by a foreign government's targeted intervention in the market that artificially devalues its currency. Given the myriad cases involving diverse industries, CSUSIL supports a final rule that provides Commerce maximum flexibility in administering the CVD law to offset government intervention that confers an unfair competitive advantage to foreign producers over U.S. manufacturers.

First, Commerce should clarify that its use of the word "entity" in the *Proposed Rule* is not intended to limit the application of the final rule to banks or institutions that are not authorities within the meaning of Section 771(5)(B) of the Tariff Act of 1930, as amended ("the Act"). Specifically, there may be proceedings involving countries that do not maintain significant state ownership or control over the financial sector. Yet, determining the value of the domestic currency to establish the exchange rate is a government action, which results in entrusting or directing private actors that use that exchange rate to provide a financial contribution in the amount of currency exchanged. Accordingly, Commerce should clarify that it intends to continue to apply the "entrusts or directs" language "broadly," as explained in the Statement of Administrative Action accompanying the Uruguay Round Agreements Act.²

Second, regarding specificity Commerce provided the following proposed language:

² *Statement of Administrative Action Accompanying the Uruguay Round Agreements Act*, H.R. Doc. No. 103-316, vol. 1 (1994) at 926 ("The Administration intends that the 'entrusts or directs' standard shall be interpreted broadly. The Administration plans to continue its policy of not permitting the indirect provision of a subsidy to become a loophole when unfairly traded imports enter the United States and injure a U.S. industry.").

Traded goods sector. In determining whether a subsidy is being provided to a “group” of enterprises or industries within the meaning of section 771(5A)(D) of the Act, the Secretary may consider enterprises that primarily buy or sell goods internationally to comprise such a group.

CSUSIL is concerned that the use of the word “primarily” in the *Proposed Rule* may result in an unreasonably high bar for establishing that currency undervaluation is specific. CSUSIL notes that Commerce has not provided a definition of the word “primarily,” which may result in fewer allegations under the *Proposed Rule* than underlying developments in individual countries would warrant. Moreover, CSUSIL does not believe that such a high bar is necessary given the existing definitions of *de facto* specificity in Section 771(5A)(D) of the Act, which uses terms like “predominant” and “disproportionate” with respect to use and amount received, respectively. The *de facto* specificity provision does not apply rigid tests for these words, but grants substantial discretion to Commerce to determine whether the facts of a particular proceeding support a specificity finding. Therefore, CSUSIL requests that Commerce replace the phrase “primarily buy or sell” with the phrase “are actively engaged in buying or selling,” which would establish a discretionary basis to assess the specificity of currency undervaluation.

Third, CSUSIL appreciates Commerce’s intent to collaborate with the Department of Treasury; however, CSUSIL notes that Commerce’s determinations under the CVD statute are substantively different and for a different purpose than Treasury’s determination of “manipulation” for the purposes of Treasury’s annual reports issued pursuant to 22 U.S.C. § 5305. The language in the *Proposed Rule* appears to inappropriately cede decisional authority under the countervailing duty laws to Treasury. Commerce should amend the language in the preamble regarding the interplay between Commerce and Treasury, specifically by clarifying that it will not “defer” to Treasury regarding the existence and extent of currency undervaluation but will “confer with, and seek advice from” Treasury. CSUSIL notes that

Commerce and Treasury may come to different conclusions given the different statutory schemes and so deference to Treasury is unwarranted.

Fourth, Commerce has provided sample methodologies (*i.e.*, the IMF REER calculation) for determining whether government intervention in the currency market results in a competitive benefit conferred to foreign producers. Commerce should clarify that it is not limiting itself to only that methodology and may consider other methodologies (*e.g.* purchasing power parity, macroeconomic balance approach, etc.) to measure undervaluation if appropriate given the facts of a proceeding.

Finally, CSUSIL encourages Commerce to use all of its tools to address currency imbalances, including by addressing such currency undervaluation in the context of antidumping proceedings under existing law.

CSUSIL appreciates the opportunity to provide these comments. CSUSIL commends the Administration on its commitment to ensuring our trading partners do not unfairly subsidize their domestic industry to confer a competitive advantage over U.S. manufacturers and workers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark B. Benedict', with a long horizontal flourish extending to the right.

Mark B. Benedict
President
Committee To Support US Trade Laws (CSUSTL)