Observers rebuke U.S. proposal to levy countervailing duties against currency undervaluation

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WASHINGTON, Feb. 26 (Xinhua) -- The U.S. government's latest proposal to impose countervailing duties (CVDs) on products from countries accused of undervaluing their currencies is harmful and inconsistent with the World Trade Organization (WTO) rules, according to former U.S. officials, trade lawyers and experts.

The U.S. Department of Commerce (DOC) earlier this month published a final rule that would allow the department to treat "currency undervaluation" as countervailable subsidies under the U.S. countervailing duty law amid wide concerns.

The controversial rule, which will take effect in April, paves the way for the department to levy CVDs on imported goods from countries that allegedly undervalue their currencies relative to the U.S. dollar.

The U.S. Chamber of Commerce, the largest lobbying group in the country, has voiced opposition to the proposal, as there is no agreed way to measure undervaluation of currencies and it violates obligations the United States has undertaken in WTO agreements.

"When the first case citing currency undervaluation is decided by Commerce, it will eventually be appealed to the WTO. That will probably not happen for at least a year," Gary Hufbauer, a former U.S. Treasury official and senior fellow at the Peterson Institute for International Economics, told Xinhua on Wednesday.

"My guess is that the WTO panel will decide that alleged currency undervaluation does not provide grounds for a CVD," Hufbauer said, adding that "it was a mistake" to allow the Commerce Department to apply CVDs to offset currency undervaluation.

"Commerce argues its proposal meets the World Trade Organization's test for a subsidy's specificity. This is a novel interpretation, disputed by trade lawyers, experts, and the conclusion reached by the Bush and Obama administrations," said Mark Sobel, U.S. chairman of the Official Monetary and Financial Institutions Forum, an independent think tank.

Sobel, also a former U.S. Treasury official, called the proposal "poorly conceived" and "harmful" to longstanding U.S. international monetary and financial policies, as the Treasury Department has long been the lead agency with responsibility for currency issues while the Commerce Department has "zero expertise" on currency matters.

Jeffrey Frankel, a professor at Harvard University, has also "strongly" opposed the proposal to modify regulations on CVD proceedings to "include attempted judgments of trading partners' currency manipulation."

"It would be impractical to implement, because it is impossible to say when a currency is undervalued or overvalued, let alone by how much. If implemented nevertheless, the proposal would harm the U.S. economy," Frankel wrote in comments submitted to the Commerce Department.

Daniel Ikenson, director of trade policy studies at the Cato Institute, warned that CVDs could magnify its adverse impact on U.S. exporters by keeping foreign products that would have been bound for the United States in the foreign market, increasing the supply and suppressing prices.

"There might also be overt retaliation. U.S. exporters, in other words, would get no relief and, in fact, would be punished by CVD measures," he said.

It is "highly likely" that the Commerce Department's initial currency undervaluation determinations, as well as the final rule itself, will face legal challenges before the U.S. Court of International Trade or the WTO's Dispute Settlement Body, according to Scott Lincicome, an international trade attorney with the law firm White & Case in Washington.

"DOC's final rule expands upon or changes outright past agency practice on the treatment of currency policy under U.S. CVD law, and Congress repeatedly considered and rejected legislation to amend the law so that DOC could act," Lincicome wrote recently in a report, adding that plaintiffs might argue that the Commerce Department lacked the statutory authority to alter its approach without congressional action.

"Commerce's proposal is the wrong way forward. It is more in keeping with the protectionist 'currency war' mentality of the 1930s," Sobel said.

While U.S. trading partners will take the proposal seriously, currency wars are not likely to happen, according to Stephen Roach, senior fellow at Yale University's Jackson Institute of Global Affairs.

"I think there's an understanding that currency wars are lose-lose, and they can create multilateral trade wars, the likes of which we saw in the early 1930s ... so this is not the way to go," he said.