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China Cannot Have Its Cake and Eat It Too: Coercing the PRC to Reform Its Currency Exchange Policy to Conform to Its WTO Obligations

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Charles V. Archie†

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I. Introduction

In the decades leading to the First Opium War during the mid-19th Century, imperial China, a prosperous, globally engaged nation, found itself at or near the center of the economic universe. During that period, China amassed large trade surpluses and high silver reserves through its active export economy, placing its economy in a competitive and enviable market position. The British Empire, at the time a preeminent global power, disfavored China’s economic policies and warned the Chinese government of possible redress if it did not allow fairer trade practices. Britain’s threats went unheeded, and, as warned, the British flooded Chinese markets with opium from colonial India despite heavy restrictions placed on the drug by the Chinese government. The Chinese economy faltered as the population, glutted on opium, spiraled into a “century of humiliation,” as semi-colonial struggles with foreign imperial nations dominated the once dynastic state.

Fast-forward to the current global climate. China, now a communist state attempting to modernize its economy, has

3 Despite ceding imperial holdings in North America and Australia over the preceding century, the British Empire during the 19th Century still maintained impressive territorial possessions and influence throughout the world. See generally JOHN HOLLAND ROSE, THE CAMBRIDGE HISTORY OF THE BRITISH EMPIRE VOL. II, III (Cambridge Univ. Press 1959).
4 See Subramanian, supra note 2.
5 See id.
6 See id. The persistent presence of colonial influences in many parts of China can be cited as a historic occurrence that has impacted the nation’s subsequent insistence on self-reliance. See, e.g., infra note 64 and accompanying text.
7 The People’s Republic of China [hereinafter PRC or China].
developed an eerily similar export-driven economy supported by policies designed to take advantage of the modern global system: protectionist subsidies for domestic producers, discrimination against foreign manufacturers, trading for Western technology, and strictly measured currency devaluation, among others. China’s rise to economic prominence coincides with an increasingly global economic environment, which has embraced the Chinese entrepreneurial spirit for joint ventures and foreign direct investment in Chinese projects. These policies have exacerbated China’s relationship with another global power, the United States. China’s alleged currency manipulation has recently served as a “flash point” between the two countries. Presumably, the international community would prevent retaliatory tactics by the United States anywhere near those imposed by the British Empire in the 19th Century. However, the United States maintains several avenues of recourse against what many world leaders and economists believe is intentional, unfair market behavior harming both U.S. and international economic interests.

Essentially, currency manipulation functions when “an undervalued currency lowers a [manufacturing] firm’s cost of production relative to world prices and therefore helps to encourage exports.” As applied in conjunction with other government-run subsidy programs, currency devaluation has

8 See Steve Lohr, Maybe Japan Was Just a Warm-up for China, N.Y. TIMES, Jan. 21, 2011, at B1.
9 This attractiveness to business investors is part of the dilemma for the United States government. Many U.S.-based global companies have profited from Chinese policies (and have, thus, been reticent to blow the whistle on the Chinese government) while other, chiefly domestic U.S. companies have faltered as a result of Chinese competition. See id.
11 See Subramanian, supra note 2.
12 See Hufbauer & Woollacott, supra note 10, at 35, 36.
13 JONATHAN SANFORD, CONG. RESEARCH SERV., RS 22658, CURRENCY MANIPULATION 2, 3 (2010).
propelled China’s wild economic growth over the past decade. China has paced the world economy as one of its leading exporters on the strength of cheap goods relative to other global producers.\textsuperscript{15} China’s accession to the World Trade Organization (hereinafter “WTO”) in 2001\textsuperscript{16} and its involvement in the Group of Twenty (hereinafter “G-20”)\textsuperscript{17} is evidence of China’s renewed relevance and impact on the global economic and political stage. Indeed, China has developed a “unique role” in the global economy due to its posturing as the “factory of the world”: providing cheap export goods to other nations worldwide.\textsuperscript{18}

China’s centrally controlled economic plan, however, comes with both domestic and international consequences.\textsuperscript{19} Many economists doubt the sustainability of an economic system perpetuated through a consistently devalued currency; a “weak-currency policy” has encouraged increased investment opportunities, which “overheat” the Chinese economy with foreign dollars.\textsuperscript{20} Such growth has led to widespread inflation (and civil unrest) across China.\textsuperscript{21} Indeed, the inflation China has encountered recently has been cited as a natural, free market reaction to government measures artificially devaluing the currency.\textsuperscript{22} As one commentator put it, “China has stumbled into a monetary muddle that’s getting worse with each passing month.”\textsuperscript{23} Unfortunately, the Chinese government has responded with increasingly protectionist policies as opposed to those allowing the currency to reset naturally.\textsuperscript{24} These reactions are preferred, in part,
to avoid widespread economic malaise similar to that felt by Japan during the 1990s. Some see these measures as short-sighted, perpetuating a system that is ultimately unworkable and which may lead to more painful consequences than the government hopes to avoid by applying these measures. The Arab Spring has caused some to draw parallels to the economic and social conditions currently present in China.

These seemingly unfair economic strategies have also squeezed foreign economies as they attempt to climb out of the depths of the recent global recession. These countries, in turn, have sought recourse against China. Some, like Brazil, have adopted similar currency control measures in an attempt to protect their fragile economies. Others, like the United States, have responded with somewhat alarming inconsistency: hawkish threats of unilateral sanctions followed by hopeful, yet firm, diplomatic efforts aimed at cajoling the Chinese government into modifying its policies. In total, calls for international sanctions have increased in number and frequency; some see China’s "competitive devaluation" as a per se violation of China’s foreign exchange rates. See C. Fred Bergsten, Obama Has to Tell Beijing Some Hard Truths, FINANCIAL TIMES (Nov. 29, 2010), available at http://www.iie.com/publications/opeds/ (follow “2010” hyperlink; then select “Obama Has to Tell Beijing Some Hard Truths” hyperlink).


See id.

See id.


It is clear, though, that Chinese currency policy has a net destabilizing effect on the world economy. Estimating the impact of a revaluation of the renminbi, William Cline, a senior fellow at the Peterson Institute for International Economics, found that, “[A fifteen] percent revaluation of the [renminbi] . . . might reduce the US trade deficit by $60 billion and take 500,000 American workers off the unemployment payrolls.” These staggering numbers show the adverse effects Chinese currency manipulation can have in depressing other world economies as well as the potential benefits felt by those foreign economies with even modest Chinese reform.

Assessing these varied approaches to addressing China’s currency exchange policies uncovers the deficiencies in the current international oversight systems. Unilateral sanctioning or remedial actions proposed by individual nations cannot have a meaningful impact on Chinese policies. If anything, unilateral measures risk sparking “currency wars” that would have deleterious effects on the global economy. Deference to international governance organizations like the WTO and the IMF for oversight runs into one crucial issue: as the international governance system is currently structured, currency manipulation as an intentional act does not fit neatly into a category of prohibited acts subject to WTO jurisdiction. This highlights the current disjunction between international governance bodies in this area. Though the IMF recognizes currency manipulation as an unfair advantage, the IMF cannot currently undertake enforcement actions against manipulating countries. Conversely, the WTO is an active sanctioning body, but currently does not recognize


34 Hufbauer, supra note 25.


37 See SANFORD, supra note 13, at 2–3.

38 Id. at 4.
currency manipulation as grounds for recourse.\textsuperscript{39}

This leaves countries with steady, consistent diplomacy as the only current, and as this paper advocates, the most appropriate means to coerce policy change in China. The use of international fora, like the G-20, to stabilize the world economy is most effective "by specifying rules of behavior that countries are expected to follow that . . . reconcile the policies of different nations . . . [and] persuading [nations] to alter their policies in order to respect the interests of other countries."\textsuperscript{40} In sum, "[m]ultilateralism could work because China would incur the opprobrium of working against not just rich but poor countries, and hence against the entire financial and trading system."\textsuperscript{41} With many nations supporting policy change in China, it becomes easier for the Chinese government to realize that policy change does not have to be altruistic to China's exclusive detriment. Instead, it is more likely that China would understand the global benefit from its policy change as well as long-term Chinese growth.\textsuperscript{42}

In the end, however, any remedial system designed to bring China's currency into harmony with the global exchange market will depend on China's acquiescence to such a process. The Chinese government must concede that foreign nations and international organizations have standing to impact Chinese economic policies.\textsuperscript{43} One scholar recognizes that, "sensitivity [to China's economic past] should lead to the use of carrots rather than sticks to induce China's cooperation, and to an approach that is energetically multilateral, aimed at designing better rules, rather than aggressively unilateral, aimed at achieving particular

\textsuperscript{39} See id.

\textsuperscript{40} John Williamson, The Role of International Organizations in Creating a More Stable Economy, Lecture delivered at the Emirates Center for Strategic Studies and Research (Nov. 30, 2010), http://www.iie.com/publications/papers/williamson20101130.pdf. Assuming changes can be made in the WTO or IMF rules, these organizations could potentially supplement hearty diplomacy on these issues.

\textsuperscript{41} Subramanian, supra note 35.

\textsuperscript{42} See Williamson Lecture, supra note 40, at 1.

\textsuperscript{43} See id. at 4-5. Such concessions may prove difficult to achieve if China's adherence to nationalist policies continues into the administration of current vice-president and named-successor to President Hu Jintao, Xi Jinping. See also Edward Wong & Jonathan Ansfield, China Grooms a New Leader, Politically Defl. if Little Known, N.Y. TIMES, Jan. 24, 2011, at A1.
Part II of this article progresses through the history of the debate over China’s currency policy including a brief sketch of China’s emergence as a developing nation into a global economic power. Part II will also address several other grounds for dispute emanating from China’s economic policies. The development and impact of international governance bodies, predominately the IMF and WTO for the purposes of this paper, and their relative abilities to address the currency manipulation issue are discussed in Part III. Part IV sketches the disputes and sanctions between China and the United States since China’s accession to the WTO as well as possible avenues of recourse the United States may take. This comment concludes with a policy recommendation: the United States should eschew unilateral sanctions in favor of steady, firm diplomatic negotiations involving other global leaders in order to coerce China in a timely yet peaceful manner to allow its currency to appreciate to an equitable level.

II. Historical Analysis

This section develops the historical pretext to the current issues revolving around China’s currency policy. To understand how this issue has evolved, it is necessary to discuss how the Chinese government has evolved over time in both the economic and political spheres. This section will first review the post-World War II development of international organizations, specifically the WTO and IMF, and their changing roles in the international economic community. Next, this section will address China’s accession to the WTO and the obligations and expectations it undertook in doing so. Finally, this section traces in some detail the history of the currency policy issue itself as contextualized in the current political administrations of both the United States and China.

After analyzing these general developments, it becomes clear that China, as a developing nation with issues and culture unique to itself, has displayed a pattern of behavior inconsistent with its promises and obligations to other nations. In seeking a place at the table of world economic elites, China pledged to reform past practices and usher in policies promoting fairness in the market

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44 Subramanian, supra note 2.
place. Unfortunately, as will be seen, those obligations have gone generally unheeded in favor of policies designed to take advantage of China's place in the global market. In other words, China wants to have its cake and eat it too.

A. The Post-WWII Landscape and the Proliferation of the IMF and WTO

Towards the end of World War II, and the years following, the international economic system was in disastrous shape. In order to fill the void created by a devastated Europe and to plan funding for rebuilding efforts after the war (while avoiding the pitfalls of the Great Depression), leaders of various nations converged in Bretton Woods, New Hampshire, for negotiations. At what would become known as the Bretton Woods Conference, those leaders carved out an international monetary system that pegged all currency exchange rates unless circumstances were affecting individual countries' currency equilibrium. This par value system was to be monitored vigilantly by the IMF, with all countries subsequently joining the IMF agreeing to operate on this pegging system.

As originally constituted, the IMF's role was to foster an international system of fair and efficient world trade without significant obstacles to trade being imposed by the various member nations. Several of the purpose statements given in the IMF's Articles of Agreement bear out this intention:

46 See id.
47 See id. The other product of the Bretton Woods Conference, the World Bank, had an equally vital role in providing funds for the rebuilding of the postwar and continues to provide vital financing for emerging economies across the globe today. See World Bank Group Historical Chronology: Introduction, THE WORLD BANK, http://web.worldbank.org/ (follow “About” hyperlink; then follow “history” hyperlink; then follow “archives” hyperlink; then follow “chronology” hyperlink) (last visited Oct. 23, 2011). Perhaps this system of foreign aid, as observed by recent emerging economies like China, was a driving factor in China adopting the export-driven economic policies it currently has; from this perspective, driving up healthy reserves from a vigorous export economy allows nations to invest directly into domestic projects and endeavors without the need for foreign aid. See Williamson, supra note 40.
48 See SANFORD, supra note 13, at 1.
To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.

To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.

To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.  

These statements emphasize the belief that free exchange of goods and the success of a global economy depend on accurately and fairly valued currencies. Initially, the IMF possessed the authority to manage nations' exchange rates, but with the evolving economy of the late 1960s and early 1970s, the par value system was abandoned in favor of a floating system. Without the need to monitor tightly pegged exchange rates, member nations reduced the role of the IMF from an enforcer to more of a watchdog without any authoritative power to influence the actions of member nations. Though amendments to the IMF agreements contained provisions requiring countries to contemplate the effects of their currency rates on other nations, those provisions have proven toothless against nations which perceive currency exchange rate as a sovereign decision.  

The Bretton Woods Conference also recognized the need to

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49 Int'l Monetary Fund [IMF], Articles of Agreement, art. 1, ¶¶ (i)-(iii) (emphasis added).

50 See Williamson, supra note 40, at 3. Under the original IMF guidelines, a country could not adjust its currency exchange rate without approval from the IMF. See Cline, supra note 36, at 1. The only major restriction on this new system was the prohibition against pegging currency to the value of gold. See Williamson, supra note 40, at 3. Under this new system, nations could freely "float" the values of their currencies against those of other nations without IMF oversite. See Cline, supra note 36, at 2.

51 See Williamson, supra note 40, at 3.

52 See Cline, supra note 36, at 2.
establish an international organization to monitor trade amongst nations, leading to the drafting of the General Agreement on Tariffs and Trade (hereinafter “GATT”) and the pending creation of the International Trade Organization (hereinafter “ITO”) in Havana, Cuba in 1947 and 1948.\textsuperscript{53} Though the ITO charter was not approved by the U.S. Congress, overtime the GATT overcame its lack of institutional framework to become a “\textit{de facto} international organization” successfully monitoring tariffs between nations.\textsuperscript{54} The WTO as it is organized today was established in 1995 as a successor treaty organization evolving from the 1947 GATT treaty; the scope of the newly formed WTO incorporated those provisions covered by the original 1947 GATT treaty, but also included provisions and goals not contemplated by its predecessor document.\textsuperscript{55} It was generally “intended to prevent protection [from] being used to augment national demand.”\textsuperscript{56} Each nation that accedes to the WTO agrees to each provision of the original GATT treaty and all subsequent WTO rules, and acknowledges the need to conduct trade in a responsible manner.\textsuperscript{57} As originally contemplated, the WTO demanded obligations of each member nation designed to create a more harmonious trading environment for all other member nations: limits on anti-dumping duties by defining “dumping,” and limits on countervailing duties designed to offset subsidies on imported goods, among others.\textsuperscript{58}

Regarding “exchange arrangements,” however, the WTO explicitly ceded its authority to the IMF to resolve disputes and to

\textsuperscript{53} See Peter Van den Bossche, \textit{The Law and Policy of the World Trade Organization} 79-80 (Cambridge Univ. Press 2005). Interestingly, China, then the Republic of China, was an original signatory of the 1947 GATT but subsequently withdrew from the treaty. See Hufbauer, \textit{supra} note 10, at 4-5.

\textsuperscript{54} See Van den Bossche, \textit{supra} note 53, at 80-82.

\textsuperscript{55} See generally Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S 154 (providing on overview of the agreements under which the WTO member nations would operate).

\textsuperscript{56} Williamson, \textit{supra} note 40, at 2.

\textsuperscript{57} See Sanford, \textit{supra} note 13, at 2.

make determinations regarding the status of a member nation’s “exchange arrangements.”\(^\text{59}\) This shift is important. The WTO obligations, as drafted, did not contemplate currency manipulation as a sanctionable act.\(^\text{60}\) Therefore, the WTO as originally conceived and operated depended on the IMF’s oversight to determine inappropriate action and to dole out punishment. After the IMF was reduced to an advisory institution, GATT rules (as adopted by the WTO) recognizing the IMF’s oversight authority in international economic issues were not amended to contemplate this void.\(^\text{61}\) Without an enforcement mechanism, current WTO and IMF member nations have no legal means of recourse within the international community against a party they believe is manipulating its currency.

**B. China’s Economic Goals Shift Post-WWII**

Amidst this ever-changing international landscape, the Chinese government, in its various permutations since the end of World War II, has focused on interjecting itself into the international economy. Conflicts have been many, as political differences with other countries and concerns over a Communist China’s vast resources have provoked a range of trade limitations and diplomatic barriers to China’s establishment as a relevant world power. China’s acceptance within the global community after World War II has depended largely on outlasting Cold War fears of communist uprisings that persisted in different forms into the 1980s.

The immediate post-World War II era saw the rise of the People’s Republic of China\(^\text{62}\) (hereinafter “PRC”) and the rise of

\(^{59}\) General Agreement on Tariffs and Trade, art. XV ¶ 2, Oct. 30, 1947, 61 Stat. pt. 5, 55 U.N.T.S. 194. A debate regarding the interpretation of this article exists which becomes crucial to any attempt at soliciting the WTO for sanctions against China for currency manipulation. See Sanford, supra note 13, at 5. Essentially, the argument is reduced down to whether the GATT Article XV term “exchange agreements” should be interpreted in light of the meaning of the phrase when signed into being or interpreted within the broader sense of the phrase as it has been understood more recently to include foreign exchange rates (discussing the interpretation controversy). Id. For an action to proceed against China as an Article XV violation, the latter, broader interpretation must be adopted. See id.

\(^{60}\) See Bachus, supra note 31.

\(^{61}\) See Sanford, supra note 13, at 3.

\(^{62}\) The Chinese Civil War was a drawn out affair, interrupted by several other wars,
reactionary trade embargos against Chinese exporters by NATO member nations, Australia, and Japan which were designed to limit the international reach of China. Chinese economic policy under Chairman Mao played into these Western concerns, as it was a direct rejection of capitalist programs (at least as it was envisioned): Mao and his advisors strove for self-sufficiency through economic isolation. Not until Mao’s most extreme advisors passed on, and more noticeably, not until Mao’s death in 1976 was there a mutually renewed interest in trade and economic development between capitalist societies and China. U.S. President Richard Nixon’s visit to China remains the iconic moment precipitating this détente, but other indications of China’s reemergence on the global stage were apparent in the later years of Mao’s reign.

Gary Hufbauer, a respected international trade scholar, has summarized several highpoints of China’s attempts to reinvigorate its economy during the 1970s and 1980s:

In 1978, Deng Xiaoping [successor to Mao Zedong] assumed leadership of a massive and remarkably successful economic transformation, leading to a market-oriented and capitalist-flavored PRC economy. China and the United States signed a trade relations agreement the following year, according each other most favored nation status. The Deng leadership ushered in a period of PRC rapprochement with the international economic community. In 1980, China occupied the erstwhile Taiwanese seat within the IMF and the World Bank, and requested observer status within the GATT (granted in 1982). In 1983, China signed the Multi-Fiber Agreement [establishing quotas of textile exports in developing countries] and in 1986 it asked to rejoin the GATT, starting a 15 year long process toward but ultimately resulted in the division between the PRC and the Republic of China (Taiwan). See GRAHAM HUTCHINS, INTRODUCTION to MODERN CHINA: A GUIDE TO A CENTURY OF CHANGE 7-8 (2001).

63 See Hufbauer & Woollacott, supra note 10, at 5.
64 See HUTCHINS, supra note 62, at 11-12.
65 See id. at 12.
66 See id. at 12 (noting that impact of Mao’s policies were not felt until he died in September of 1976).
WTO accession.\textsuperscript{67}

The 1980s was, indeed, a decade during which the Chinese government recognized the importance of foreign capital and intellectual investment for the PRC to become an economically and politically relevant country.\textsuperscript{68} Despite the gradual embrace of a "free" market economy, the Chinese government has maintained that such progress would be on its terms and its time table,\textsuperscript{69} creating the appearance to some that the Chinese government is concerned with its own industrial and economic growth.\textsuperscript{70} China would have to lobby hard to dispel persistent worries about its controlled-market economy and government initiatives to gain greater access to the global economic system.

\textbf{C. China's WTO Accession and Obligations}

The fact that China's accession to the WTO took fifteen years is indication enough that other WTO member nations wanted to ensure that China's commitment to economic fairness and the rule-based trade system was, in fact, a sincere one.\textsuperscript{71} Political unrest in China following the Tiananmen Square protests of 1989 and the Chinese government's reaction to the East Asian financial crisis of 1997 and 1998 provided ample fodder for political opponents to China's accession.\textsuperscript{72}

The prolonged accession period was also indicative of the concerns the member nations had with the status of China's pre-accession economic system.\textsuperscript{73} To promote domestic economic

\begin{footnotesize}
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\item[\textsuperscript{67}] Hufbauer & Woollacott, supra note 10, at 5.
\item[\textsuperscript{68}] See id. (noting that Deng Xiaoping's policy and the signing of a trade agreement with the United States indicates a recognition of the importance of trade and investment by China).
\item[\textsuperscript{69}] Cf. Lohr, supra note 8, at BU6 (noting the government controlled "special economic zones" and technology-for-trade incentives for foreign firms in China).
\item[\textsuperscript{70}] See, e.g., Krugman, supra note 19, at A27 (discussing China's measures responding to rapid commodities inflation).
\item[\textsuperscript{72}] See Hufbauer & Woollacott, supra note 10, at 6; see also Min-you, supra note 71, at 118 (describing the politicization of China's WTO accession process as a result of human rights and international security considerations).
\item[\textsuperscript{73}] See generally Yu Min-you, supra note 71, at 107, 108 (discussing steps China
\end{itemize}
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growth during this period, the Chinese government instituted measures seen by the western world as overly protective: “strict quotas, high tariffs, poor intellectual property rights, restrictions on foreign investment, and other forms of market intervention.” Nevertheless, bilateral negotiations between China and many key members of the WTO provided the needed support for Chinese accession, and China formally acceded to the WTO on December 11, 2001. China’s accession to the WTO was billed as a “balanced and ambitious package of market opening commitments, which [were meant to] bring substantial benefits to China as well as to their WTO trading partners.” China’s Accession Agreement manifested the cautions held by WTO member nations by establishing benchmarks and obligations designed to transition China from its controlled-economy to a more free market economy. The agreement provided general commitments from China on a variety of trade platforms:

a. China will provide non-discriminatory treatment to all WTO Members. All foreign individuals and enterprises, including those not invested into or registered in China, will be accorded treatment no less favorable than that accorded to enterprises in China with respect to the right to trade.

b. China will eliminate dual pricing practices as well as differences in treatment accorded to goods produced for sale in China in comparison to those produced for export.

c. Price controls will not be used for purposes of affording must take in order to become a WTO member and assessments that must be made by the WTO to ensure that China is making reforms consistent with WTO mandates).

74 Hufbauer & Woollacott, supra note 10, at 5, 6. One staggering fact relevant to China’s historic tendency to manipulate its currency is that on January 1, 1994, the Chinese government unilaterally devalued its currency by fifty percent: distinct evidence of China’s reticence to embrace the free market economy. See Letter from Paul T. Jones II, Founder, Tudor Inv. Grp., to Investors 2 (Oct. 21, 2010) (on file with author).

75 See Hufbauer & Woollacott, supra note 10, at 6.

protection to domestic industries or service providers.

d. China will implement the WTO Agreement in an effective and uniform manner by revising its current domestic laws and enacting new legislation in full compliance with the WTO agreement.

e. Within three years of China's accession, all enterprises will have the right to import and export all goods and trade them throughout the customs territory with limited exceptions.

f. China will not maintain or introduce any export subsidies on agricultural products.77

This summary of directives provides evidence of the areas of concern the member nations had in agreeing to China's accession. Of note, interested member nations identified China's price control measures as a protectionist tactic that would generally not be tolerated upon China's accession.78 The specific terms of the agreement spelled out the prohibition against market manipulation: "China shall . . . allow prices for traded goods and services in every sector to be determined by market forces."79 Though this is not a per se restriction on currency manipulation, this prohibition, when read with additional language in the Working Party Report on China's Accession regarding non-discriminatory treatment of foreign producers, provides ample evidence that any market tactic designed to favor Chinese domestic producers over foreign firms would not be acceptable.80 The Working Party Report, which is incorporated by reference into China's Accession Agreement, provides further evidence that price manipulation was explicitly discussed in the context of China's accession: Chinese representatives committed to "implement [China's] obligations with respect to [foreign exchange] matters in accordance with the provisions of the WTO Agreement and related declarations and decisions of the WTO that

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77 Id. at 103-04 (emphasis added).

78 See Accession of the People's Republic of China, pt.1 § 9, 15, WT/L/432 (Nov. 23, 2001) [hereinafter Chinese Accession Agreement].

79 Id. at pt. 1 § 9.

concerned the IMF. Such manipulation would destroy the free and presumably equal trade status between member nations by giving domestic production firms an undue advantage over foreign producers in the same markets. As can be seen in the status of the conflict between the United States and China today, that provision has gone mostly unenforced and, until recently, has provoked few complaints from member nations.

China's Accession Agreement also provided deadlines for achieving certain trade-oriented benchmarks designed to reduce tariff amounts and increase accessibility to Chinese domestic markets for foreign producers. It also contained provisions allowing other member nations to take discriminatory actions against Chinese exporters to protect their economies from alleged Chinese product dumping and subsidizing.

Though China appeared to meet many market targets easily within the mandated deadlines, there were evident difficulties in implementing macro-level legal reforms throughout various Chinese provinces. As a result, it was clear there were tensions with trade partners regarding pledged reforms within the first several years after China's accession. China failed to meet many of its self-imposed deadlines for reducing tariffs in certain industries and continued to struggle in implementing reforms in information technology, export subsidies, and other economic sectors. Five years after accession, the United States Trade Representative (hereinafter "USTR"), the administrative office tasked with assessing China's compliance with its WTO obligations as they relate to U.S. interests, found China to be

81 Id. ¶ 35.
82 The ambivalence to China's protectionist policies by some is the product of a business culture that recognizes the potential returns on investments in China and that culture's reticence to upset these returns. See Lohr, supra note 8, at B1.
83 See Min-you, supra note 71, at 110.
84 See id. at 111. These somewhat one-sided accession terms were a bitter pill to swallow for some analysts from the Chinese perspective. See id. at 108-11.
85 Cf. id. at 85 (citing "areas of omission, conflict, and vagueness" of Chinese reforms which could not be reconciled with China's pledges under its Accession Agreement).
86 See id. at 133.
87 See id. at 133-34.
deficient in several key areas of compliance. In an annual report, the USTR isolated systemic problems that persisted in the Chinese economic system:

China’s implementation work is still incomplete. . . . Many of the shortfalls in China’s WTO compliance efforts seem to stem from China’s incomplete transition from being a state-planned economy. . . . China has not yet fully embraced the key WTO principles of market access, non-discrimination and national treatment, nor has China fully institutionalized market mechanisms and made its trade regime predictable and transparent.

These persistent shortcomings combined with the increased market activity between the United States and China have become grounds for dispute between the two nations. Chinese Accession Agreement provisions outlined the relatively stringent obligations conditioning China’s accession. They also gave rise to criticisms and forecasts as to whether China had the capacity or desire to adhere to its obligations under the WTO. Leaders recognized the immense challenge facing the Chinese government to transform a centrally-controlled economy into an essentially free-market economy in complete compliance with WTO provisions. Scholars also recognized the importance of China’s acceptance within the global trading system as a progressive nation. However, those same scholars were keenly aware that many Chinese officials and businessmen did not truly grasp the impact and implications of WTO accession on everyday business practices and the increased foreign competition

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88 See Yu Min-you, supra note 71, at 134.
89 Id. (quoting USTR, 2005 Report to Congress on China’s WTO Compliance (Dec. 11, 2005)).
90 See id.
91 See id. at 103-04.
92 See, e.g., Stewart, supra note 16, at 84-85. Compliance can be distilled down to recognition by both a country’s government and citizens that compliance is beneficial and their actions manifesting that recognition. See Yu Min-you, supra note 71, at 111-29.
93 See Yu Min-you, supra note 71, at 112.
94 See id. at 112-13.
nationwide that would result. For one, the Chinese government could not sacrifice dips in production and economic growth for the sake of fostering foreign competition because its economy was, and is, oriented to maximize trade surpluses. But it appears that China knew its massive growth potential coupled with its WTO accession created an economic atmosphere irresistible to foreign investors and global manufacturers looking to capitalize on the opportunity. However, China’s historically pragmatic approach to rules and regulations is inconsistent with the expectations of trade partners. This somewhat consistent policy of “subordination of law to political considerations” creates many of the ongoing tensions between China and its trading partners. As Long Yongtu, China’s Foreign Minister of Trade, indicated leading to China’s accession:

We [, China,] are used to dodging rules, or adopting an attitude of pragmatism toward rules, thus causing chaos in the market economic order. . . . In many cases, it is hard to get rid of old habits, often it is impossible to solve the problem by relying on one’s own strength alone, a sound, effective external force can impel us to accomplish something which we want to do but have delayed to accomplish.

95 See id. at 113-14.
96 Cf. David Barboza, Currency Fight With China Pits U.S. Businesses Against Each Other, N.Y. TIMES, Nov. 17, 2010, at B1 (explaining current reticence to reform currency policy). Some of the impetus for maximizing trade surpluses is to limit dependence on foreign or international sources for investment capital. See supra Part II.B (discussing the development of China’s export economy in Post WWII era). Similarly, this drive for self-sufficiency has evidenced itself in China’s current famine threat due to severe drought conditions in Chinese agricultural regions. See Keith Bradsher, U.N. Food Agency Issues Warning on China, N.Y. TIMES, Feb. 9, 2011, at A8. Because China has amassed such a large trade surplus, it can enter the world grain market without relying on heavy borrowing to purchase grain needed to cover losses from its own fields. See id. What is good for China may not be good for the rest of the grain importing world: unexpected Chinese competition for grain will drive prices higher than usual, as China can effectively outbid most other nations depending on grain imports. See id.
97 Yu Min-you, supra note 71, at 125-27.
98 See id. at 125.
99 Id. at 125-26 n.59 (quoting Interview with Long Yongtu, Chief Negotiator from the Chinese Ministry of Foreign Trade and Econ. Cooperation (Nov. 8, 2001)).
As will be seen, this persistent pragmatic attitude provides a constant source for conflict between China and its trade partners. Inevitably, as trade volumes and political consequences increase, so do the number and severity of claims against China.  

**D. China’s Currency Manipulation as a Political Hot Topic**

Long before President Barak Obama took office in January 2009, China artificially devalued its currency, the renminbi. However, U.S. leaders were reluctant to publically raise it as an issue prior to the current administration. Early on, the Obama administration emphasized its willingness to press the Chinese government on currency manipulation as an important issue that needed resolution. The administration’s position amounted to little more than posturing, as Obama and staff members were confronted with more pressing issues during their first one hundred days. Criticisms by Obama and other G-20 leaders in the months prior to the G-20 summit in late June 2010 netted an announcement from the government-controlled central bank of China that the renminbi would be allowed to appreciate relative to other world currencies. Despite this announced currency reform, studies examining economic statistics taken nearly half a

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100 See Hufbauer & Woollacott, *supra* note 10, at 3 (recognizing the frequency of conflict between the United States and China increased as the amount of trade between the two increased following China’s WTO accession).

101 See Jones II, *supra* note 74 (stating how China, on January 1, 1994, unilaterally devalued its currency by fifty percent).

102 Cf. Sanford, *supra* note 13, at 4 (describing the conciliatory stance the George W. Bush Administration took on the currency manipulation issue as compared to the Obama Administration’s attempted aggressive stance).

103 See Bacchus, *supra* note 31 (noting statements made by President Obama while campaigning). It should be noted that though Mr. Gaethner has pressed a hard-line stance on this currency issue, he also has stated that he recognizes the difficult predicament the Chinese government is in to meet the interests of its people. See Sanger & Wines, *supra* note 28, at A4.

104 See generally Joe Klein, *Joe Klein on the President’s Impressive Performance Thus Far*, TIME MAG. (Apr. 23, 2011), available at http://www.time.com/ (search “Joe Klein on The President’s Impressive Performance Thus Far”) (addressing many of the vital issues President Obama faced during his first 100 days in office).

year later showed the renminbi had actually continued to devalue.\textsuperscript{106} Perhaps as a response to this startling pattern, the Obama administration and Congress resolved to take a harder stance on Chinese currency policy (and other trade issues) by threatening WTO involvement if China refused to allow its currency to appreciate.\textsuperscript{107}

Around this period, legislators in each house of Congress separately proposed legislation that would give the administration the necessary means to label China as a currency manipulator and to pursue remedial efforts in the instance China would not voluntarily allow the renminbi to appreciate.\textsuperscript{108} The proposed Senate bill would provide the Commerce Department with an affirmative duty to seek active countermeasures against foreign nations found by the Treasury Department to be unfairly manipulating their currencies.\textsuperscript{109} The House of Representatives version did not mandate action but instead opted to give the Commerce Department the discretion to pursue countervailing

\textsuperscript{106} See Keenan, supra note 33, at 1-2.

\textsuperscript{107} See Sewell Chan, U.S. Signals Impatience with China, N.Y. TIMES, Sep. 16, 2010, at B1. Around this time, the United Steelworkers union filed a petition with the United States Trade Representative to examine possible improper subsidies provided to Chinese clean energy product manufacturing firms. See United Steelworkers Union, EXECUTIVE SUMMARY: UNITED STATES TRADE REPRESENTATIVE § 301 PETITION (2010). This petition alleging violations of specific WTO obligations by the Chinese government is indicative of the politically-charged nature of this economic debate, especially during the election-cycle. Chinese government officials saw it as such. See Michael Wines & Xiyun Yang, China Escalates Fight With U.S. on Energy Aid, N.Y. TIMES, Oct. 18, 2010, at B1.

\textsuperscript{108} See, e.g., H.R. 2378, 111th Cong. [hereinafter Fair Trade Act] (as passed by H.R., Sept. 29, 2010). The House of Representatives bill passed easily; however, the bill proposed in the Senate during the 111th Congress never made it to the floor for debate. See S. 3134, 111th Cong. (2010). A consistent version of the bill has been reintroduced in the 112th Congress. See Daniel Malloy, Sanctions Pushed for Managed Chinese Currency, PITTSBURG POST-GAZETTE (Jan. 18, 2011), available at http://www.post-gazette.com/pg/11018/1118780-84.stm. The bill passed by a sixty-three to thirty-five majority in early October. See Jennifer Steinhauer, Senate Jabs China Over Its Currency, N.Y. TIMES (Oct. 11, 2011), at B1. Somewhat confusingly, the Republican-controlled House of Representatives is not expected to bring the bill to a vote. See id. This conflict seems to add credence to the White House concerns of too severe sanctions against China and the consequences for a recovery economy. See id.

\textsuperscript{109} See Hufbauer & Woollacott, supra note 10, at 30-31 (discussing the Senate bill as composed during the 111th Congress).
duties against a foreign nation found to be unfairly manipulating its currency. Some have hoped that “perhaps the bill passed by the House . . . will serve as the warning shot that prompts Beijing to allow the renminbi to appreciate.” Those hopes have yet to be realized.

The U.S. government has also taken domestic economic measures calculated to stimulate its economy. These steps include massive financial stimulus packages replete with “Buy American” protectionist provisions as well as rounds of “quantitative easing” designed to induce greater liquidity in the U.S. lending market. These steps have not endeared the United States to the remainder of the global economic community.

These actions (or inactions) taken by the United States and China did not occur in a bubble. The remainder of the world has not remained idle as this trade dispute has smoldered; rather, quite the opposite has occurred. Other nations reacted, in part, to the increasingly protectionist policies of the two trade giants and, in part, to the dire economic outlook facing the global economy. These nations reacted by enacting protectionist policies of their own and attempted to engage the United States and China in trade issues that could affect the global market. Many of these negotiations have emanated from G-20 summits, most recently in Toronto and Seoul.

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110 See discussion infra Part III.A.
111 See Fair Trade Act, supra note 108, § 2(c).
112 Hufbauer & Woollacott, supra note 10, at 36.
114 Quantitative easing is an economic measure designed to stimulate a nation’s economy wherein that nation’s central bank buys back government bonds from banks and other commercial entities to increase cash flow and increase lending. See Larry Elliot, Quantitative Easing, Term in Business Glossary, GUARDIAN (Jan. 8, 2009), available at http://www.guardian.co.uk/business/ 2008/oct/14/businessglossary.
116 See id.
118 See id.
119 See id.
In the months leading to the G-20 summit in Seoul, South Korea in November 2010, the international community appeared more concerned with protecting each respective nation’s economy than with global economic harmonization. Countries with fragile export economies like Japan and Brazil took measures similar to China’s to control their own currencies. These countries hoped to devalue their currencies specifically against the renminbi, an indication that they had little faith in Chinese promises to allow the renminbi to appreciate in value. Not to be seen as choosing sides, many countries expressed their displeasure at the U.S. Federal Reserve System’s decision to undergo several rounds of quantitative easing due to the depreciating effects it would have on the U.S. dollar. Though the long-term effects of these measures were designed to stimulate the global economy, the short-term devaluation of the U.S. dollar would harm many countries’ export-based economies. Quantitative easing was such a hot-button topic that it shifted what the Obama administration had hoped to be a unified front opposing Chinese currency manipulation to a more fractured discussion on trade rights in general. When world leaders met in Seoul, the large majority of the summit was spent arguing over philosophical differences in trade stimulus. The discussion centered primarily on U.S. quantitative easing, not

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120 See id.

121 See id. These concerns remained despite diplomatic visits by Chinese officials to many European countries in the hopes of persuading European leaders to further open their nations to Chinese investment. See Liz Alderman, China Looks to Europe for Deals and Friends, N.Y. TIMES, Nov. 2, 2010, at A4. On these visits, Chinese leaders reminded the Europeans that China was willing to purchase European debt during the international economic crisis. See id. These overtures were not only meant to solicit further economic ties, but also to carry favor regarding currency policy. See id.

122 See Interview by Jeremy Hobson with Julia Coronado, Economist at BNP Paribas (Nov. 8, 2010).

123 See id.

124 See Sewell Chan et al., Obama’s Economic View is Rejected on World Stage, N.Y. TIMES, Nov. 12, 2010, at A1. As one commentator notes, these worries were short-sighted compared to the concerns over China’s currency manipulation. See The Fed v. the G-20, N.Y. TIMES, Nov. 10, 2010, at A34. China’s currency manipulation is designed as a long-term economic policy to meet foreign demand for Chinese exports; however, U.S. quantitative easing is meant to thaw credit lending domestically to stimulate the economy in the short-term. See id.

125 See Chan, supra note 124, at A1.
Chinese currency devaluation.\textsuperscript{126}

Given the posture of the parties going into it, the results of the Seoul G-20 summit were to be expected: preliminary agreements were made to monitor and avoid large trade deficits and surpluses which could harm the global economy, but no nation was committed to implementing these concessions by assigning an oversight capacity to any global organization.\textsuperscript{127} The nations deferred to future negotiations whenever any “big, enduring imbalances” were identified.\textsuperscript{128} The Seoul Communiqué lacked any particular language to implement any of its vague promises to “strengthen multilateral cooperation” and avoid “protectionist trade actions in all forms.”\textsuperscript{129} This lack of firm commitment on currency manipulation left President Obama to stew, venting to the press about China’s extensive market control tactics and export-based economy.\textsuperscript{130} Although, by most accounts, there were minor agreements made in Seoul regarding the international economic system, the “G-20 stalemate . . . intensified the feud over currencies and trade rather than help . . . to resolve it.”\textsuperscript{131}

Obama’s concerns were not allayed when the Chinese government announced stricter monetary policies to combat rising commodities inflation during the winter of 2010-11.\textsuperscript{132} These attempts to avoid an overheated economy restricted foreign investment and instituted price controls to monitor the money supply more closely.\textsuperscript{133} These tightened monetary measures were also attempts to reign in bank loans, which partially drove the overheating of China’s economy.\textsuperscript{134} To some economists, the

\textsuperscript{126} See id.

\textsuperscript{127} See Chan, supra note 17, at A4. There was recognition of the need to provide the IMF with greater control over international monetary issues but no concrete indication of what that increased power that would be. See The G-20 Seoul Summit Leaders’ Declaration, ¶ 9 (Nov. 11-12, 2010).

\textsuperscript{128} See The G-20 Seoul Summit Leaders’ Declaration, ¶ 9 (Nov. 11-12, 2010).

\textsuperscript{129} Id. ¶¶ 7, 9.

\textsuperscript{130} See, e.g., Chan, supra note 17, at A4 (summarizing President Obama’s takeaway thoughts on the summit).

\textsuperscript{131} Bergsten, supra note 24.

\textsuperscript{132} See Keith Bradsher, China’s Focus on Food Cost May Ignore Inflation Risk, NY TIMES, Nov. 18, 2010, at B1.

\textsuperscript{133} See id. at B1, B4.

\textsuperscript{134} See Keith Bradsher, China is Poised to Raise Rates Again, Bankers Say, N.Y.
inflation was an inevitable consequence of the surging money supply built on state-owned lending and an export-driven economy. This was precisely how the Obama administration did not want the Chinese government to respond to inflation: treating the symptom, which is inflation, rather than the illness of an artificially devalued currency. China's reactions to inflation and an overheated economy were aimed at incubating and sustaining domestic economic growth at the expense of foreign economies: little change could be seen in the Chinese policy of maintaining astronomical trade surpluses and an artificially devalued currency. Without foreign pressure, the Chinese government would continue to act without regard for foreign economies.

Notwithstanding Obama's harsh words, the tension in the international community, and China's tightened monetary policy, market conditions in China may have finally convinced the Chinese government to engage in meaningful discussions with the U.S. Some commentators saw the self-correcting market forces as a vehicle for détente between the United States and China. Indeed, as inflation continued to worsen through January 2011, Chinese president Hu Jintao's diplomatic visit to Washington, D.C. seemed an attempt at conciliation with the United States. Amidst the ceremonial pomp of state dinners and lavish

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See Bradsher, supra note 132; see also Krugman, supra note 20 and accompanying text.

See id.

See Bergsten, supra note 24. Though the renminbi has been recently appreciating against the dollar, the Chinese government still maintains measures to control the appreciation rate. See Bradsher, supra note 132.

See Bergsten, supra note 24.

Inflation in commodities prices was attributed to the marked slow-down in exports from China to other global trade partners. See Keith Bradsher, Inflation in China May Limit U.S. Trade Deficit, N.Y. Times, Jan. 31, 2011, at B1. These trade partners, including the U.S., refused (at least for the time being) to contract at a higher price with Chinese exporters for the inflation-effected goods. See id. For the U.S., such refusals meant a lowering of the trade deficit with China, another contentious aspect of trade relations between China and the U.S. See id.

President Obama and President Hu were able to discuss a wide variety of topics that have generally caused conflict between the two countries: human rights issues, intellectual property rights, North Korea, and China’s currency policy. Though no agreements were reached, the dialogue was important: Hu’s promises to reign in intellectual property theft and China’s “indigenous innovation” directives, along with his acknowledgment of the currency discrepancy, displayed a previously unlikely willingness to discuss these issues with foreign leaders.

The inflationary issues China has faced recently in its domestic market may have sparked this progress; it also could have been motivated in part by the Chinese government’s desire to see the renminbi elevated to the status of a world reserve currency along with the U.S. dollar and Japanese Yuan. To do so, the Chinese government will have to show the world that its continued growth is sustainable and demonstrate a willingness to institute gradual reform to its economic and political system to support a more stable economic system. These assurances could only be made if China can slowly shift away from its export-driven economy bolstered by U.S. debt holdings.

Further détente could be found following the G-20 meeting held in Paris in the Spring of 2011 to discuss, among other things, developing internationally recognized measures for economic distress. China, after providing initial resistance, cooperated...
with other G-20 members in drafting an agreement that could be used to determine when or if a country’s actions have caused global economic imbalances.\textsuperscript{149} China was persuaded by other G-20 delegations to include exchange rate and currency policies as factors to be included in any such future analysis.\textsuperscript{150} Global leaders saw this tentative agreement as a solid step towards developing international accountability within the currency exchange system.\textsuperscript{151} These agreements also provide further proof of China’s gradual acceptance of foreign influence in its policies.\textsuperscript{152}

These concessions may be considered cautiously optimistic that the Chinese government has realized that a long-term diplomatic and business relationship with another world power requires open dialogue on various issues that may not necessarily provide short-term benefits. China may have also realized that it may not be able to play by its own rules in a growing global economy. This optimism should be tempered until the Chinese government actually implements its promised reforms,\textsuperscript{153} something the U.S. Congress is loathing to wait.\textsuperscript{154}

\textbf{III. Avenues for Recourse in the Existing Conflict}

As the conflict between the United States and China smolders between the leaders and dignitaries of the two nations, the recently proposed legislation by both houses of Congress indicate the degree of seriousness with which U.S. politicians are addressing the issue.\textsuperscript{155} These actions show the general consensus shared by

\begin{itemize}
  \item \textsuperscript{149} See id.
  \item \textsuperscript{150} See id.
  \item \textsuperscript{151} See id.
  \item \textsuperscript{152} See id.
  \item \textsuperscript{153} Some, including U.S. Secretary of Commerce Gary Locke have little faith in China’s promised governmental reforms, citing its historic track record of hollow promises. See Dustin Ensinger, \textit{Locke Chides China on Indigenous Innovation}, \textit{ECONOMY IN CRISIS: AMERICA’S ECONOMIC REPORT}, (Feb. 3, 2011), available at http://economyincrisis.org/content/locke-chides-china-indigenous-innovation.
  \item \textsuperscript{154} Cf. Hutbauer & Woollacott, \textit{supra} note 10, at 30–32 (predicting the eagerness of the U.S. Congress to unilaterally sanction China over Chinese currency policy without waiting for a declaration by the IMF on the issue and despite the near certainty that China would seek redress from the WTO).
  \item \textsuperscript{155} See \textit{supra} text accompanying notes 108–112 (discussing the House and Senate
U.S. politicians and many economists: China actively manipulates its currency to such a degree that it adversely affects global competition in a variety of markets in statistically significant ways. The logical question, and the issue that this paper confronts, is what can and should the United States do about it.

There are a number of tactics the United States could implement in dealing with China's purportedly unfair currency manipulation. The United States could act unilaterally, relying on self-determined sanctions and remedial measures against China. It could seek dispute resolution and sanctions through international organizations like the WTO and IMF, or it could utilize multilateral diplomacy channeled through the G-20 or another diplomatic forum. Each of these approaches has its strengths and weaknesses, as well as historic antecedents that may forecast the likelihood of a Chinese response. Whatever policy the United States adopts, U.S. trade representatives and policymakers must contemplate the impact. These actions have an effect not only on the Chinese and U.S. economies and its political relationships, but also on global economic and political systems.

This section addresses each of these approaches to solving the policy dispute with China over its currency devaluation. While historical accounts of each method are not necessarily indicative of how China will respond to these pressures, they do give evidence of past precedent that is of some value. With these considerations, the most effective method of coercing Chinese reform without significant detriment to the economic system would most likely be through multilateral diplomatic channels. By involving other world leaders and policy-makers, the United States can impress upon China the global effect of its market tactics and do so in a relatively benign setting. This method would also limit versions of free trade bills designed to monitor China's (or any other nation's) currency policy for signs of manipulation. This legislation should be seen as a legitimate effort to address the perceived imbalances in international trade and not simply an attempt to collect scalps for the next election cycle. Of course, it doesn't hurt that efforts to promote fair trade go hand in hand with the perception of job-creation and general economic improvement.

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156 See Keenan, supra note 33.
157 See id. There is little debate over whether China artificially depreciates its currency and whether that depreciation harms foreign companies trading on the global market. See id.
any retaliatory or defensive measures contemplated by the Chinese and leave open the possibility of subsequent, more direct methods of coercion in the future.

A. Unilateral Measures Employed by the U.S. Risk

Diplomatic Fireworks and Chinese Countermeasures

The United States has relied heavily on self-determined remedial actions against China in the past, focusing predominately on antidumping, countervailing duty, and intellectual property-related investigations, among others. Many of these actions are predicated on U.S. rights as a WTO member nation. The United States has also taken some actions designed to improve the economic condition within the United States, which do not flow from U.S. rights as a member nation in the WTO. Such measures, though targeted at domestic problems, are not limited in their effect to only domestic markets, as other nations feel the consequences of U.S. policy decisions and rightfully express displeasure when those decisions have deleterious effects.

1. Unilateral Actions Under the Authority of the WTO

The United States can implement administrative remedies in the realm of international trade through its rights as a WTO member nation. As a condition of China’s accession to the WTO, the United States also claimed rights to discriminate against Chinese export goods allegedly subsidized by the Chinese

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158 See Hufbauer & Woollacott, supra note 10, at 21-22. “Dumping” which is the target of antidumping investigations and remedies, is “a situation of international price discrimination, where the price of a product when sold in the importing country is less than the price of that product in the market of the exporting country.” Technical Information on Anti-Dumping, WORLD TRADE ORGANIZATION, http://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm (last visited Feb. 8, 2011). “Countervailing duties” are additional duties imposed on goods entering a country, levied due to a determination that the exporting country has unfairly subsidized the price of those goods. See Subsidies and Countervailing Measures, WORLD TRADE ORGANIZATION, http://www.wto.org/english/tratop_e/scm_e/scm_e.htm (last visited Feb. 8, 2011).

159 See, e.g., Hufbauer, supra note 25.

160 See supra notes 103-09 and accompanying text (discussing the frustrations of emerging economies with the U.S. decision to undergo additional rounds of quantitative easing to stimulate the domestic economy).

161 See Hufbauer & Woollacott, supra note 10, at 18–19.
government until 2016. These remedies are designed mostly to counter and eliminate undue advantages in an affected market and not to punish the allegedly offending party. For this reason, countervailing duties, antidumping duties and other safeguards allowed under the WTO are strictly proscribed as to their length and degree of implementation. Further, nations against whom these measures have been levied have a right of recourse before the WTO in order to have said sanctions lifted.

The United States has been extremely active invoking its perceived WTO rights in sanctioning Chinese trade actions, especially product exports, to curtail some of the advantage China has gained in that area. Imposition of remedial actions are determined by the Department of Commerce, which follows procedures set out in the Tariff Act of 1930 (hereinafter “Smoot-Harley Tariff Act”). The Act explicitly provides remedial actions against WTO member countries deemed “Subsidy Agreement countr[ies]” that “[are] providing . . . a countervailing subsidy with respect to the manufacture, production, or export of a class or kind of merchandise.” It also provides for implementation of antidumping duties designed solely to mitigate the effects of any foreign good being sold at a price below the fair market value that has or may materially harm a U.S. industry. The act formally created the International Trade Commission (hereinafter “ITC”), which was tasked with working with the Commerce Department to make findings of whether U.S. industries were “materially harmed” by the actions of an importing party. When both the Commerce Department and ITC determine that imports have been sold at less than the fair market value and those sales have materially harmed a U.S. industry, the

162 See Chinese Accession Agreement, supra note 78, at 8–10.
163 See Hufbauer & Woollacott, supra note 10, at 19.
164 See id.
165 See id.
166 See id.
167 See id. at 20. To note, the Smoot-Harley Tariff Act is the subject of the litigation reform designed to tighten oversight of foreign trade practices affecting U.S. industries and discussed supra notes 96-100 and accompanying text.
administration may levy remedial duties on those offending imports.\textsuperscript{171} A vast majority of these cases reported to and investigated by the U.S. trade organizations have resulted in the enforcement of remedial measures against Chinese businesses in a wide variety of industries.\textsuperscript{172}

The United States has also pursued unilateral sanctions against China, albeit rarely, implementing safeguard measures and trade remedies regarding unforeseen, rapid rises in imports of certain goods from China.\textsuperscript{173} These measures are instituted at the discretion of the President as informed by a report of the USTR, which has considerable leeway in determining how and why an upswing in specific foreign imports have harmed the U.S. economy.\textsuperscript{174} Considering the seemingly nebulous basis for safeguard measures, it makes sense that there has only been one safeguard issued by the United States since China's accession to the WTO.\textsuperscript{175}

Most unilateral actions implementing countervailing duties or other remedies against Chinese importers have, for the most part, gone unchallenged by the Chinese government. Perhaps secure in its ability to continue to dominate the export markets despite such sanctions, the Chinese government may see these measures as a cost of doing business. Several unilateral actions by the United States have, however, drawn the ire of the Chinese government and, in some cases, the international community, resulting in bitter disputes and retaliatory actions.\textsuperscript{176}

Chinese actions against the Untied States before the WTO have been few and far between, but those actions can be

\textsuperscript{171} See Hufbauer & Woollacott, supra note 10, at 10.
\textsuperscript{172} See id. at 21-22.
\textsuperscript{173} See id.
\textsuperscript{175} See Hufbauer & Woollacott, supra note 10, at 22. That safeguard measure was levied against multiple actors, including China, relating to the U.S. steel industry. Another area of international trade rights that the United States zealously patrols unilaterally is the area of intellectual property rights. \textit{Id}. The authority to investigate and sanction foreign nations for intellectual property violations emanates from the Smoot-Harley Act. \textit{Id}. The ITC is charged with investigating these claims and recommending sanctions. See 19 U.S.C.A. § 1337 (B)-(E) (2006) (enumerating the various intellectual property violations that are sanctionable through the ITC).
\textsuperscript{176} See Hufbauer & Woollacott, supra note 10, at 20-22.
characterized as reactionary measures to U.S. unilateral sanctions against China.\textsuperscript{177} These U.S. measures, for the most part, were designed to protect U.S. economic interests from allegedly harmful global market conditions.\textsuperscript{178} Nevertheless, China challenged these unilateral actions to protect its own rights under the WTO agreements and has had a mixed success in doing so.

China first challenged a series of safeguard measures imposed by the United States in 2002, which increased the import duty on various types of steel imported from China.\textsuperscript{179} China alleged the United States did not meet certain requirements of the Agreement on Safeguards (hereinafter “SGA”) agreed to by all WTO members, as well as alleging that the United States breached certain articles of GATT 1994.\textsuperscript{180} Essentially, the United States allegedly failed to meet the procedural requirements the WTO established for implementing safeguard measures, and did not base its safeguard determinations on “uniform, impartial, and reasonable administration of the relevant U.S. laws and regulations,” failing to make adequate and reasonable findings to meet the threshold for imposing safeguard measures.\textsuperscript{181} After being joined by several other nations aggrieved by the global U.S. safeguard measures, China was vindicated by a WTO Panel.\textsuperscript{182} The Panel found that the United States did not meet the requirements under the SGA to impose safeguard measures and, therefore, was in violation of its obligations under SGA and GATT 1994.\textsuperscript{183} Primarily, the Panel found the United States did not sufficiently establish the “unforeseen developments” in the market that caused injury to U.S. domestic producers, the causal relation between any importation and injury, or the “parallelism” between the imported products that allegedly necessitated the

\textsuperscript{177} See id. at 21-22.

\textsuperscript{178} To contrast, the U.S. actions brought against China, discussed infra Part III.B.2, were brought to challenge perceived attempts by the Chinese government and industries to take advantage of the global economy.

\textsuperscript{179} See Request for Consultations by China, United States – Definitive Safeguard Measures on Imports of Certain Steel Products, WT/DS252/1 (Apr. 2, 2002).

\textsuperscript{180} See id. at 1-2.

\textsuperscript{181} Id.

\textsuperscript{182} See Final Reports of the Panel, United States – Definitive Safeguard Measures on Imports of Certain Steel Products, XI. ¶ 11.1, WT/DS252/R (July 11, 2003).

\textsuperscript{183} See id.
safeguard measures and those products which were in fact subject to the safeguard measures. An appellate body subsequently affirmed the majority of the Panel’s findings and requested the United States to bring its safeguard measures into compliance with its WTO obligations. Though this request did not eliminate the safeguard measures per se, a subsequent order issued by President George W. Bush effectively repealed the measures.

China next challenged determinations by the USTR that preliminary countervailing and anti-dumping duties were required to protect U.S. markets from Chinese produced coated free-sheet paper. China claimed that the Untied States made improper findings based on unsubstantiated evidence insufficient to support those findings that preliminary countervailing and anti-dumping duties were needed. There has been no action on this claim since China’s request for consultation.

In the summer of 2008, China filed another request for consultations against the United States in response to anti-dumping and countervailing duties placed on a range of Chinese imported products, including certain types of piping, tires, and woven sacks. WTO Panel findings concluded that the United States had minimally violated its duties under GATT 1994 and the

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184 See id. ¶ 11.2.


186 See Proclamation No. 7741, 68 Fed. Reg. 68, 483, ¶ 6 (Dec. 4, 2003). Interestingly, and perhaps indicative of the hardball approach to such actions, the Chinese government issued its own safeguard measures against American steel exports during the duration of this dispute and subsequently repealed those measures once the United States did so. See Hufbauer & Woollacott, supra note 10, at 15.

187 See Request for Consultations by China, United States – Preliminary Anti-Dumping and Countervailing Duty Determinations on Coated Free Sheet Paper from China, 1, WT/DS368/1 (Sep. 18, 2007).

188 See id. at 1-2.


SCM Agreement, errors presumably corrected by more thorough future procedural practices.\textsuperscript{191} China has notified the Dispute Settlement Body of its appeal, claiming that the WTO Panel made “errors of law and legal interpretation.”\textsuperscript{192}

In 2009, China filed another request for consultations against the United States before the WTO, alleging that U.S. regulations effectively eliminated the ability of the United States Food and Drug Administration to enable importation of several types of Chinese poultry products that have been deemed fit for import.\textsuperscript{193} These measures by the United States were alleged to have violated Articles I and XI of GATT 1994 and the Agriculture Agreement signed by all WTO members or, in the alternative, the Agreement on the Application of Sanitary and Phytosanitary Measures.\textsuperscript{194} The escalating trade disputes between the two nations over this issue may have been a result of the spread of the H1N1 influenza virus, as China joined many other WTO member nations in banning the importation of swine and pork products from several U.S. states.\textsuperscript{195} The Panel confirmed China’s allegations, finding the discrimination against Chinese poultry products was “maintained without sufficient scientific evidence” and “arbitrary or unjustifiable;” therefore, the U.S. regulation did not meet the terms of the Agreement on the Application of Sanitary and Phytosanitary Measures and, as such, violated provisions of GATT 1994 as an impermissible prohibition on imported products.\textsuperscript{196} Though the Panel found these violations, it did not recommend any action, as

\textsuperscript{191} See, e.g., id. ¶¶ 16.16-16.18, 17.1(c) (describing the investigative errors by the USTR).

\textsuperscript{192} See Notification of an Appeal by China under article 16.4 and Article 17 of the Understandings on Rules and Procedures Governing the Settlement of Disputes (DSU), and under Rule 20(1) of the Working Procedures for Appellate Review, United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, ¶¶ 5-10, WT/DS379/6 (Dec. 6, 2010).

\textsuperscript{193} See Request for Consultations by China, United States – Certain Measures Affecting Imports of Poultry from China, ¶ 5, WT/DS392/1 (Apr. 21, 2009).

\textsuperscript{194} See id. ¶ 4, 6. The alternative argument was included in anticipation of the arguments made by the United States that such measures were made for sanitary reasons. See id. ¶ 6.


\textsuperscript{196} See Report of the Panel, United States – Certain Measures Affecting Imports of Poultry from China, ¶¶ 8.1(b)-(c), 8.3(b), WT/DS392/R (Sept. 29, 2010).
the United States had allowed the relevant regulation to expire.197

Later in 2009, the United States announced several tariff rates increases on specific types of tires imported from China, raising the tariff rate on these products beyond what China believed was the rate allowed by international agreement.198 China alleged these actions violated Article I of GATT 1994 as similar imported tires from other nations had not been taxed at similar rates.199 China also alleged the United States had not made any showing that those increased taxes fell under any acceptable exception to the normal obligations of the United States under the WTO and other side agreements.200 Following extensive briefing and arguments, the Panel found that a market disruption by the import of Chinese tires did exist and that the temporary tax rate increases instituted by the United States was appropriate to mitigate the market disruption caused by the increase in imports.201 Therefore, the Panel tentatively found the United States had not violated its obligations under GATT 1994 or the Protocol on the Accession of the People’s Republic of China.202 China notified the Dispute Settlement Body of its decision to appeal this finding on May 24, 2011.175

China’s willingness to bring these remedial measures against the United States shows the consequences of unilateral actions, even when such actions are seemingly justified by the WTO. Despite the relatively small sample of complaints filed against the United States, the fact that China has been willing to challenge those regulations it believed violated WTO agreements provides support for the proposition that unilateral actions by the United States alone will not be enough to influence Chinese currency policy. Furthermore, the scale of these actions, relating to incredibly specific, individual product markets, pales in

197 See id. ¶ 8.7-8.10.
198 See Request for Consultations by China, United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China, WT/DS399/1 (Sept. 16, 2009).
199 See id.
200 See id.
202 See id. ¶ 8.1.
comparison to a challenge to China's currency exchange policy. Any U.S. unilateral action in this area will almost certainly provoke a response by China, both in diplomatic channels and through the WTO.

2. Unilateral U.S. Domestic Policies Affecting the International Community

As discussed above, the United States has taken drastic measures to support and reinvigorate its stagnated domestic economy in order to generate jobs, market liquidity, and generate economic growth within the United States. These measures have been received with mixed results, but have been generally regarded with disdain around the globe. As much as the Obama administration, the Federal Reserve Bank, and Congressmen on Capitol Hill would claim the sole goal of these measures was to provide short-term stimulus to the domestic economy, the fact remains that any domestic measures radically expanding purchasing and lending power while limiting the market access of international goods will have a significant effect on global markets and, specifically, the price of goods elsewhere. Such trade barriers create global trading inefficiencies, skew resource allocation, and drive prices up; they further protectionist policies that can deteriorate the desire for common goals amongst trading partners; and they make negotiation and agreement on future global issues far less likely.

The international ire for these provisions focused primarily on unfair subsidies by the U.S. government. As noted above, during the height of the recent financial crisis, the U.S. Congress passed a fiscal stimulus bill, the ARRA, which provided specific “Buy American” requirements for many government procurement and other projects funded by the stimulus. These provisions limit

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203 See supra notes 101-02 and accompanying text.
205 See, e.g., supra notes 116-26 and accompanying text (describing the uproar from developing nations over the U.S. decision to undergo a second round of quantitative easing).
206 See Pauwelyn, supra note 58, at 6-7.
207 See id. at 5-7.
208 See supra note 113 (discussing the ARRA bill).
the pool of employment, materials, and other resources project companies could utilize, providing domestic services and product providers an advantage in these markets.209 Especially pertinent to this conversation, the ARRA required “all of the iron, steel, and manufactured goods used in [an ARRA] project [must be] produced in the United States.”210 These provisions, as drafted, are worrisome with regard to U.S. international obligations and came under heavy criticism. Even with a clause subsequently amended to require all provisions of the bill “[to] be applied in a manner consistent with the United States obligations under international agreements,” there was little or no substantive direction regarding actual compliance with U.S. international obligations.211

These legislative requirements provoked the Chinese government to impose countervailing and antidumping duties on certain types of steel manufactured in the United States.212 Specifically, the Chinese government felt that steel purchased under governmental procurement programs benefitted materially from “Buy American” provisions.213 A volley of criticisms by U.S. steel interest groups has sparked investigations into these duties214 as well as a formal WTO action by the U.S. government for perceived procedural violations by the Chinese government in implementing these duties.215

209 See Hufbauer & Woollacott, supra note 10, at 27.
210 Id. (quoting ARRA § 1605 (2009)).
213 See Request for Consultations by the United States, China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States, WT/DS414/1 (Sept. 20, 2010) [hereinafter Electrical Steel].
214 See Len Boselovic, U.S. Steel Producers Rap China on Fairness, PITTSBURG POST-GAZETTE (Oct. 15, 2010), http://www.post-gazette.com/pg/10288/1095306-28.stm. The conflict over Chinese countervailing and anti-dumping duties on certain steel products should not be confused with the somewhat concurrent issue of China’s allegedly massive subsidies of its domestic steel industry’s growth in the clean energy market. See Sanger & Wines, supra note 107. This dispute has metastasized in the current economic conflict as the United States and China attempt to gain market superiority in a fledgling industry. Id.
215 See generally Electrical Steel, supra note 213 (outlining the faults the United
Other actions designed to stimulate short-term domestic growth in the United States have suffered similar opprobrium from the global community.\textsuperscript{216} After the Federal Reserve announced a second round of quantitative easing, committing to purchasing $600 billion in U.S. Treasury securities, emerging and developed economies alike were incensed by the U.S.'s failure to consult its trading partners in considering methods of stimulating its economy.\textsuperscript{217} Concerns for emerging markets stemmed from a depreciated dollar which would allow U.S. investors to flood those economies with money, causing inflation and other overheating issues.\textsuperscript{218} Though economic analysts are free to debate the limited, short-term effects of quantitative easing, it does not appear that other countries' fears have been abated. Many of those countries have turned to currency control measures of their own as protection against the devaluation of both the dollar and the renminbi.\textsuperscript{219}

The risks of government involvement in stimulus appear to extend into the global political forum. From the perspective of other foreign nations, U.S. domestic policies have been reduced to currency devaluation commensurate with Chinese currency policy. Despite the disparate motivations and timelines of the two policies in the diplomatic world, at least in this instance, perception is reality.\textsuperscript{220} Instead of galvanizing behind U.S. efforts to pressure China on its \textit{consistent} and \textit{long-term} currency policy at the latest G-20 summit, other nations lumped U.S. quantitative easing in as another reason the entire global currency system should be overhauled.\textsuperscript{221} By expanding the scope of the issues to include multiple economic systems, G-20 leaders decreased the likelihood

\textsuperscript{217} See id.
\textsuperscript{218} See id.
\textsuperscript{219} See Sanger & Wines \textit{supra} note 30 and accompanying text (identifying Japan and Brazil as countries that have taken steps to stabilize their currencies by artificially devaluing them on the exchange market).
\textsuperscript{220} See \textit{supra} notes 120-23 and accompanying text (discussing foreign nations' reactions to U.S. domestic policies at the G-20 negotiations in Seoul, South Korea).
\textsuperscript{221} See id.
of reaching any rules-based, formal commitment to eliminating or mitigating currency manipulation and other unfair price controls. World leaders have recognized the need to find some meaningful resolution to what is seen as a global problem but also acknowledged that commitments to fairer currency policies was far down the road. President Obama’s obvious frustration after the last G-20 summit tends to concede as much. The summit was an opportunity missed; missed, in part, due to a conflicting, perhaps ill-timed domestic policy initiative.

U.S. governmental interference in the currency market, either direct or indirect, intentional or not, also provides a convenient excuse for the Chinese government not to cooperate fully in any global or bilateral currency exchange discussions, let alone any binding commitments to reform. Leading up to and during the G-20 Summit in South Korea, the Chinese delegation was quick to remind other world leaders, publicly and privately, that the United States failed to consider the global impact of its domestic policies. Such public statements sculpt this dispute as a tête-à-tête between the two governments, with China unwilling to concede on its currency policy unless the United States acts in a similar fashion. This gamesmanship is particularly troubling because it leaves the remainder of the world caught between two apparently immovable objects. In such a predicament, concessions by either side are the only unilateral actions that would ameliorate the conflict, and neither side seems keen on giving too much away.

3. Unilateral Policies Do Not Provide Sufficient International Support to Affect Chinese Currency

See Nathalie Boschat et al., G-20 to Address Hot Money, WALL ST. J., Feb. 12-13, 2011, at A12. This series of reform contemplates a greater role for the IMF and a greater role of emerging economies within that resurgent IMF to deter exchange policies that have a negative effect on the world market. See Sewell Chan, Pact to Give Markets More Sway on Rates, N.Y. TIMES, Oct. 24, 2010, at 8. World leaders hope the newly renovated IMF will serve as an arbiter of disputes between member nations regarding trade and currency disputes. Id.

Boschat, supra note 223.

See Chan supra note 17 and accompanying text (reporting President Obama’s comments at a news conference following the conclusion of the G-20 Summit in Seoul regarding the continued need to press China on its currency policy).

See id.
Policy

The United States should not be faulted for taking actions either justified by its rights under the WTO to protect its domestic market from unfair competition or seemingly required by the dire economic climate. If the actions are as short-term as it is believed and the economic climate improves in the coming months or years, then the U.S. government should be applauded and forgiven by foreign nations who were quick to accuse the United States of protectionist policies. Those domestic policies could then be viewed as a forgivable way of handling economic malaise but not necessarily an appropriate or ideal way of addressing future global crises.

However, these rationales and methods should not be applied to the current policy dispute with China over currency manipulation. They appear to attract too much political dissent within the global community, which will likely perpetuate an isolationist approach to global issues. When U.S. unilateral actions are invariably challenged by China, little global support exists for U.S. initiatives that were not approved or even discussed by the international community.

Additionally, unilateral actions by the United States, even when couched within U.S. rights under the WTO, draw some level of dissent from China itself. These disputes often extend into multi-year settlement and appeal processes that do little to ameliorate the relations between the two parties. Disputes between China and the United States over certain inconsequential market sectors (relative to the dispute here) likely pale in comparison to an expectedly contentious dispute between the two over China's core monetary policy. If the United States were to impose across-the-board, unilateral sanctions on Chinese imports, full confrontation could be expected. There is good reason why—when diplomatic relations seemed strained leading up to and certainly following the G-20 summit in November 2010—many observers saw the pretext to a currency war between the United States and China. The Chinese government is adjusting to the

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226 See id.
227 See id.
free market economy at a stubbornly stilted rate while the United States, in actively seeking solutions to its unemployment and trade deficit problems, sees China’s currency and market control as prime factors in stifling U.S. economic growth.  

B. Existing International Framework Lacks Enforcement Mechanisms in this Context

As discussed above, the WTO and IMF were formed to provide international oversight over global trade and monetary practices while facilitating settlement of disputes between nations. These organizations, especially the WTO, have been instrumental in providing a dispute resolution process that is meaningful and respected. The administrative measures member nations may take in reaction to perceived threats by other member nations can effectively protect economic interests but may only be implemented after certain procedural elements have been satisfied. The United States has been especially prolific in soliciting the WTO for dispute resolution against China. The majority of these disputes filed by the United States against China can be characterized as attempts by the United States to protect “high value-added industries” where China experiences a significant lag in technical expertise and technological skill as compared to the United States and other developed nations.

The WTO and IMF are ill-suited to address the current issue because the structure of each organization and the length of proceedings do not provide adequate remedies for such a time-sensitive issue. Also, the WTO and IMF are unwieldy in

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229 Economists worry that China’s reticence to truly enter the free market system will create a “two-speed global economy” that threatens the success of the recovery with nations recovering on two separate tracks. See Alderman, supra note 115.

230 See supra Part II.A (discussing the development of the WTO and IMF).


232 See Hufbauer & Woollacott, supra note 10, at 19.

233 See id. at 7.

234 Id. at 35. Such “value-added industries” may include the integrated circuit market, where a significant amount of the manufacturing process involves implementing technological advancements to manipulate raw materials into a final product. Id. at 8.
addressing issues that do not fit neatly into their prescribed jurisdictions. If harmonization of these two bodies were more realistic, submission of this issue to an international forum would make the most sense. These bodies would be able to "identify and mitigate situations where their rules and procedures were not consistent or not mutually supportive and areas where changes in policy or institutional arrangements might be recommended to their member countries."^{235}

1. U.S. Actions Against China Through the WTO Dispute Settlement Process

A brief summary of each action the United States has taken against China will provide a better understanding of the WTO obligations that China has allegedly violated. These cases, juxtaposed against the factual basis of the current conflict, evidence the appropriate and realistic use of WTO settlement processes. Similarly, the procedures described below will show the time, effort, and sometimes the contrary results that arise from WTO disputes. Though U.S. lawmakers appear ready to confront China through the WTO regarding currency manipulation, it is unlikely that they will either want to wait out an extended dispute settlement proceeding or risk their political capital on a losing case.^{236}

There was somewhat of a grace period between China's accession to the WTO and the first complaint filed against it by the United States before the WTO Dispute Settlement Body.^{237} However, that grace period indicated the United States planned to take China's promises and obligations under the WTO seriously. In China—Value-Added Tax on Integrated Circuits, the United States instituted an action against China over its value-added tax (hereinafter "VAT") policies purportedly implemented to favor Chinese-designed and Chinese-produced superconductors.^{238}

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^{235} SANFORD, supra note 13, at 9.

^{236} There is a distinct possibility that a WTO dispute settlement board could find in favor of China in such a dispute given the foundational law as it stands today. See infra notes 273-78 and accompanying text.


^{238} See Request for Consultations by the United States, China — Value-Added Tax on Integrated Circuits, WT/DS309/1 (Mar. 24, 2004) [hereinafter Chinese
These specific allegations fell under non-compliance with GATT 1994 Article I on General Most-Favoured-Nation Treatment, GATT 1994 Article III on National Treatment on Internal Taxation and Regulation, Protocol on the Accession of the People’s Republic of China and General Agreement on Trade in Services (hereinafter “GATS”) and Article XVII on specific commitments to National Treatment in service provisions. Though the United States and China would settle this dispute through constructive meetings and bilateral talks, this dispute evidenced the growing discontent the United States had with Chinese trade policies.

The United States next brought claims against China before the WTO in March of 2006 alleging unfair treatment on imported “motor vehicle parts, components, and accessories.” Acting as co-complainants with Canada and the European Union, the United States separately claimed China had acted in contravention of its obligations under GATT 1994 Articles III and XI, Protocol on the Accession of the People’s Republic of China, Article 2.1 of the Agreement on Trade-Related Investment Measures (hereinafter “TRIMs Agreement”), and Articles 3.1(b) and 3.2 of the Agreement on Subsidies and Countervailing Measures (hereinafter “SCM Agreement”). After extensive fact finding and briefing by all parties, the WTO panel held that Chinese policies were inconsistent with its obligations under GATT 1994 Article III by affording less favorable treatment to foreign automobile parts than similar domestic products and subjecting Superconductors].

See id.

See Notification of Mutually Agreed Solution, China – Value-Added Tax on Integrated Circuits, WT/DS309/8 (Oct. 6, 1994) [hereinafter Value-Added Tax].


This provision of the TRIMs Agreement prohibits member nations from imposing TRIMs that discriminate between foreign and domestic producers. See Agreement on Trade-Related Investment Measures, WTO Analytical Index: Investment, http://www.wto.org/english/res_e/booksp_e/analytic_index_e/trims_01_e.htm (last visited Oct. 12, 2011).

See Pauwelyn, supra note 158 and accompanying text describing countervailing measures against unlawful subsidies.

those imported parts to taxes and fees not imposed on domestic parts. 245 Furthermore, the Panel did not find these measures fell under GATT 1994 Article XX(d) justification that these measures were necessary for China to comply with its WTO obligations. 246 Nearly two years after the original requests for consultation, upon an appeal by China, the WTO Appellate Body general upheld the Panel’s decisions and ordered China to bring its policies within compliance with GATT 1994 Article III. 247

In February 2007, the United States served another Request for Consultation on China arising from alleged tax benefits to certain Chinese domestic businesses that purchased domestic goods over foreign imports. 248 These actions were claimed to violate China’s obligations under GATT 1994 Article III, the SCM Agreement, and explicit sections of Protocol on the Accession of the People’s Republic of China and Report of the Working Party on the Accession of China. 249 Later that year, however, the United States and China were able to come to a mutual agreement on these issues and settled the dispute. 250

The United States filed another request for consultation in the spring of 2007, claiming China had violated provisions of the Trade-Related Aspects of Intellectual Property Rights Agreement (hereinafter “TRIPS Agreement”), an annex to GATT 1994, by not effectively protecting the intellectual property rights of U.S. importers against copyright infringement and not properly disposing of pirated goods seized by officials. 251 A panel of the

245 See id. ¶ 8.4.
246 See id.
248 See Request for Consultations by the United States, China – Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments, WT/DS358/1 (Feb. 7, 2007).
249 See id.
dispute settlement body heard voluminous arguments and found that China’s Copyright Law and administrative procedures at Customs did not conform with the TRIPS Agreement and ordered China to make the necessary changes to comply with its obligations.\textsuperscript{252}

During the same month, the United States filed another Request for Consultation with the WTO claiming China had violated Article III of GATT 1994 and Articles XVI and XVII of the General Agreement on Trade in Services (hereinafter “GATS”) by restricting market access and impinging on other rights of importers of “films for theatrical release, audiovisual home entertainment products, sound recordings, and publications.”\textsuperscript{253} This dispute was closely linked to the historical trend of stiff regulation on many types of media, especially foreign media, entering China.\textsuperscript{254} It also appeared to be an indicator as to whether China’s reforms have met the more liberal requirements for media disbursement under the WTO.\textsuperscript{255} The Panel ultimately found that China’s regulatory scheme in limiting distribution of foreign media and books in a stricter manner than domestic media and books was inconsistent with its WTO obligations, a decision that was generally upheld by an Appellate Body.\textsuperscript{256}

The United States next filed a request for consultation with the WTO against China in March 2008, complaining of “various measures of China [that] appear to impose market access restrictions and discriminatory requirements on foreign service suppliers seeking to supply financial information to customers in China.”\textsuperscript{257} The United States alleged these actions violated

\textsuperscript{252} See id. ¶¶ 8.1, 8.4.


\textsuperscript{254} See id. ¶¶ 4.5-4.31, 4.49.

\textsuperscript{255} See id.


\textsuperscript{257} Request for Consultations by the United States, China – Measures Affecting Financial Information Services and Foreign Financial Information Suppliers, WT/D8373/1, 1 (Mar. 5, 2008).
Articles XVI, XVII, and XVIII of GATS, thus affecting national treatment and market access for foreign service providers.\textsuperscript{258} During bilateral consultations, China and the United States were able to come to a mutual understanding of renewed Chinese commitments to providing greater market access and protection to foreign service providers in China.\textsuperscript{259} The countries agreed to have China make necessary clarifications to existing Chinese laws and regulations.\textsuperscript{260} Over the past two years, the United States has instituted five additional actions against China that have yet to limp through the WTO settlement process, all either remaining in consultations or awaiting a panel decision.\textsuperscript{261} These disputes include claims against China over several Chinese policies designed to grow domestic service and production industries: incentive packages to Chinese businesses to increase exports of agricultural products,\textsuperscript{262} restrictions on certain raw material exports,\textsuperscript{263} market access and other service restrictions on

\textsuperscript{258} See id. at 3.

\textsuperscript{259} See Joint Communication from China and the United States, China – Measures Affecting Financial Information Services and Foreign Financial Information Suppliers, ¶¶ 1-2, WT/DS373/4 (Dec. 9, 2008).

\textsuperscript{260} See Joint Communication from China and the United States, China – Measures Affecting Financial Information Services and Foreign Financial Information Suppliers, ¶¶ 3-4, WT/DS373/4 (Dec. 9, 2008).

\textsuperscript{261} See infra notes 263-68 and accompanying text.

\textsuperscript{262} See Request for Consultations by the United States, China – Grants, Loans and other Incentives, WT/DS387/1R, 1, 11 (Jan. 7, 2009).

\textsuperscript{263} See Request for Consultations by the United States, China – Measures Relating to the Exportation of Various Raw Materials, WT/DS394/1, 1-2 (June 25, 2009). These raw materials include, among others, bauxite, coke, fluorspar, silicon carbide, and zinc, which have been subject to trade restrictions in the form of export duties and minimum export prices. Such raw materials have been the subject of heated debates amongst Chinese trade partners recently due to China’s near complete control of the market for several of these raw materials. See also Keith Bradsher, China Seizes Rare Earth Mine Areas, NY TIMES, Jan. 21, 2011, at B1. The export quotas China has set for these elements have become, at times, a pawn in diplomatic disputes with trade neighbors to gain negotiation leverage; Keith Bradsher, Amid Tension, China Blocks Vital Exports to Japan, NY TIMES, Sep. 23, 2010, at B1 (discussing a territorial dispute between China and Japan and China’s embargo on exports of rare earth minerals to Japan in an attempt to gain leverage in negotiations); Reinhard Butikofer, When Rare Earths Get Rarer, NY TIMES, (Sep. 2, 2010), http://www.nytimes.com/2010/09/03/opinion/03ibt-edbutikofer.html. These materials have become vital over the past several years in the production of smart phones, light bulbs, electric cars, and other clean energy products and have been under increasingly strict regulations by the Chinese government.
CHINA CANNOT HAVE ITS CAKE AND EAT IT TOO

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electronic payment services, and policies that place contingent funding and other subsidies of wind power equipment manufacturing on the use of Chinese goods over imported goods, among others.

Another pending action regarding countervailing and anti-dumping duties placed on certain U.S. steel, mentioned above, is of particular note and will be interesting to track through the dispute settlement process as it appears to be a response to the “Buy American” provisions that proliferated in stimulus legislation and government procurement procedures in the United States. Unlike the other actions listed above, this claim was ultimately motivated by reactionary efforts made by China to U.S. trade industry practices. The U.S. steel industry has also successfully lobbied the USTR to investigate claims of “discriminatory laws and regulations, technology transfer requirements, restrictions on access to critical materials, and massive subsidies” that ultimately “have given Chinese producers an upper hand in accessing investment, technology, raw materials, and markets [for clean energy], while foreclosing these same opportunities to U.S. producers.” In essence, the U.S. steel lobby has alleged massive subsidy practices exist within the Chinese economy. No request for consultation has been filed yet with the WTO regarding these allegations.

2. WTO Involvement Has Temporal and Legal Barriers

Though WTO actions bring binding results, they involve a prolonged procedure that does not necessarily acknowledge time sensitive issues. Even after being found in violation of its WTO

264 See Request for Consultations by the United States, China – Certain Measures Affecting Electronic Payment Services, WT/DS413/1, 2 (Sep. 20, 2010).

265 See Request for Consultations by the United States, China – Measures Concerning Wind Power Equipment, WT/DS419/1, 1 (Jan. 6, 2011).

266 Requests for Consultations by the United States, China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States, WT/DS414 (Sep. 20, 2010) (outlining the various obligations to the WTO that China allegedly violated by imposing such duties on U.S. products).


268 United Steelworkers Union, supra note 107.
obligations, China, or any offending party, is provided with a reasonable period of time within which it must conform its conduct. In most cases, the hearing procedures from filing of a request for consultations to actual implementation of Panel or Appellate Body findings take in excess of two and a half years, if not more. Though these procedures are usually effective in determining a final compliance plan, there appears to be little the complaining party can do during the intervening period within the WTO structure to influence the offending party to act.

In a world of changing political fortunes, politicians will often seek quick fixes that they can champion on the campaign trail as evidence of progress. The WTO dispute resolution system is a time investment that does nothing for politicians in the here and now. Especially in the current economic climate when any drop in the unemployment rate is a welcome sight, forecasts of what a particular WTO sanction will do for the economy years down the road is not going to be sufficiently appealing to U.S. politicians or their constituents. Undaunted, politicians still try, as evidenced by the amended Fair Trade Act, which would provide legal standing by which the United States could unilaterally sanction China for its currency manipulation policy.

Even if politicians actively sought WTO resolution of this issue, the international legal foundation as currently laid cannot provide a remedy against currency manipulation. There is no current body imbued with authority to enjoin currency manipulation or to authorize sanctions against a manipulating nation. As discussed above, the majority of WTO actions are based on violations of individual articles of the various agreements which closely regulate specific trade actions in specific markets. Currency manipulation is an action that is not defined by the WTO and has yet to be interpreted by a WTO judicial body to be a sanctionable act. As much as policymakers and economists declare currency manipulation to be an illegal subsidy, no one with authority has acknowledged these well-healed opinions.

The IMF's problem, though not interpretative, it is authoritative. The IMF recognizes currency manipulation as a patently unfair monetary position, but does not have an

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269 See, e.g., Lohr, supra note 8 (quoting C. Fred Bergstein as saying, "[China's devaluation of the renminbi] is an across-the-board subsidy.").
enforcement mechanism to remedy such actions by member nations.\textsuperscript{270} Therefore, though an IMF declaration that China has manipulated its currency may have weight in diplomatic discussions, it is unlikely that the United States or any other aggrieved country would seek IMF involvement in this dispute.

This gap in international law can be resolved in one of two ways: amend the IMF and/or WTO agreements or solicit the WTO Dispute Settlement Body in the hope that a panel, as formulated, would be convinced to interpret currency manipulation as a subsidy subject to WTO law. Neither action is a sure thing; both present diplomatic risks that should be weighed when choosing a path, if either. Both the WTO and IMF require more than a supermajority to amend any agreement: The IMF Articles of Agreement require an eighty-five percent majority while changes to WTO agreements require near unanimity amongst members.\textsuperscript{271} Thus, countries currently manipulating their currencies could easily block any proposed changes. Additionally, any proposed changes to these agreements should be taken with their long-term consequences in mind. Providing any international organization with a greater degree of control necessarily limits member nations’ autonomy to act in the future. These amendments would necessarily foreclose future measures to stabilize or bolster a country’s economic situation using the exchange system.\textsuperscript{272}

As for relying on WTO rules as they exist today in its dispute resolution setting, such action should be taken in consideration with knowledge of certain deficiencies (from the perspective of a potentially aggrieved party) that exist within the WTO dispute system. For the Chinese government’s currency manipulation to be deemed a subsidy, an aggrieved party must show that the Chinese government has provided direct “financial contribution” or other indirect supporting mechanisms to a particular domestic industry.\textsuperscript{273} That contribution is deemed a subsidy to the exclusive benefit of the recipient if it cannot be achieved or determined by the existing domestic market.\textsuperscript{274} The system is not based on any

\textsuperscript{270} See supra notes 37-39 and accompanying text.

\textsuperscript{271} See SANFORD, supra note 13, at 5.

\textsuperscript{272} See id.

\textsuperscript{273} SCM Agreement, art. 1, ¶ 1.1(a)(1).

\textsuperscript{274} See id. at art. 14. See also Pauwelyn, supra note 58, at 15.
internationally agreed-upon standard, but on terms relative to the domestic economy.\textsuperscript{275} It will be exceedingly difficult to prove that currency manipulation meets these requirements. Though the SCM Agreement does not require export subsidies (which is how currency manipulation acts with reference to the United States) to be determined to be industry specific,\textsuperscript{276} it must show that the prices achieved by China's currency policy in the export industry cannot be achieved in the domestic market monitored by that same currency policy.

Thus, depending on the current legal definitions and framework of the international judicial system, the United States would be confronted with a host of difficult legal and temporal hurdles to overcome in seeking sanctions against Chinese currency manipulation. Despite political pressures to act and the variety of economic calculations that show the detrimental effect of China's currency policy on the world economy, the fact that no actions have been brought against China shows the delicate nature of this issue. Seeking sanctions and remedial action against a significant trade partner based on its entire exchange system has unparalleled economic consequences. The threat of WTO proceedings could spark antagonistic relations between the United States and China which could further hinder a global economy that depends on the production and consumption by these two powers. Such an adverse relationship could spill over into other international issues making it difficult for the international community to function efficiently, if at all.

Finally, there can be no assurances that the WTO would find in favor of the Untied States if it were to pursue this avenue of recourse. The legal issues have been discussed above. Ultimately, however, the decision would fall to a panel comprised of three to five specialists agreed to by both countries to make a determination.\textsuperscript{277} An adverse opinion by the WTO against U.S. interests would only embolden other countries to manipulate the exchange system.

\textsuperscript{275} See Pauwelyn, supra note 58, at 15.
\textsuperscript{276} See SCM Agreement, art. 2, ¶ 2.3.
C. Multilateral Negotiations Provide a Flexible Approach and Strength in Numbers to Affect Reform in China

The academic support behind multilateral diplomacy to defuse the conflict between the United States and China is both rational and persuasive. Negotiations within diplomatic channels in general should be favored over the options contemplated above because they offer a capable forum of discussion without the threat of sanctioning. Negotiations also allow greater flexibility in setting the tone of interactions between nations as well as any potential concessions or future obligations by one or both nations. They further offer a more accessible forum for all interested parties both in the interest of time and formality. Though some diplomatic settings call for a certain amount of pomp and tradition, other diplomatic situations are fly-by-night arrangements scheduled at the convenience or necessity of the participants. Multilateral diplomatic events, though conceding a certain level of logistical flexibility, offer far more in developing consensus on global agenda items. They also provide a forum where consensus building can help persuade other parties to conform to global policy initiatives. This persuasion can either operate in a conciliatory or firm manner. The greater the consensus, the more likely interested parties would be willing to agree to and even commit themselves to certain actions.

This is at least the design in forecasting multilateral diplomacy as the most effective option in coercing more rapid currency and

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278 See, e.g., Subramanian, supra note 35 (discussing the use of the G-20 or another international forum to develop multilateral trade initiatives that would make it very difficult for China to resist reform); Williamson, supra note 40 (highlighting the effectiveness of international organizations to bring about policy changes).

279 Relative to WTO dispute settlement proceedings, regular or ad hoc diplomatic discussions do not in and of themselves create antagonistic circumstances. However, given a particular economic or political climate, say pre-G-20 Summit in Seoul or, better, pre-Potsdam Conference in 1945, the circumstances surrounding a certain diplomatic encounter can certainly affect the mood and outcome of the event.

280 For example, President Hu's recent diplomatic visit to America or any G-20-sanctioned gathering.

281 This is not to insinuate that such brief, bilateral meetings are not carefully orchestrated and detailed. Cf. Marc Ambinder, Inside the Secret Service, THE ATLANTIC, Mar. 2011 (providing an excellent account of the risks and immensely precise efforts taken by security details in ensuring delegates' safety). Such meetings are not, of course, as simple as inviting your best friend to stay over for mom's spaghetti.
economic reform in China. There is already a legitimate structure, the G-20, in place to coalesce a consensus among global powers that China's currency policy must be reformed at a more rapid rate.  

Leaders of G-20 nations also acknowledge that a macro-level problem already exists regarding oversight of the currency exchange and market control systems within member nations; once these leaders move affirmatively towards firm commitments on currency exchange reform, the onus will be on the Chinese government to risk ostracizing itself from the global political community for the sake of an untenable currency policy that has begun to falter in the face of free market forces.

In modern history, there has been evidence of China's willingness to invest in global causes, but that typically does not occur unless there is a significant and meaningful support (and pressure) from other nations. It will certainly take commitment from most, if not all, major global economic actors to convince China that progressive steps to currency reform can stabilize and support its growing economy through transition to a more balanced economic system. Any multilateral agreement involving China will most likely require some sort of explicit supervisory provisions or contemplate ad hoc oversight by other signatories in order to compel China to move in the right direction.

There has also been evidence of success in implementing a diplomatic approach to solving trade disputes between the United States and China. In 2004, the United States, along with four other WTO members, confronted China over its VAT designed to benefit domestic semiconductors over foreign semiconductors. In its Request for Consultation, the United States claimed the

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282 See Chan, supra note 107.
283 See id. and accompanying text.
284 See A Newly Cooperative China, supra note 32; see also Alderman, supra note 148. Calls for China to become less dependent on exports and an enormous trade deficit became a bit more realistic when inflation crept into China's domestic markets. See Krugman, supra note 19.
286 See Chinese Superconductors, supra note 238; see also Yu Min-you, supra note 71, at 134.
Chinese government, in conflict with its WTO commitments, provided refunds on VATs paid by domestic producers of semiconductors as well as preferential treatment to certain importers of semiconductors designed by domestic firms yet manufactured overseas. Instead of forging ahead with its initial WTO claims, the United States worked with China through the Joint Commission on Commerce and Trade (hereinafter “JCCT”) to settle the dispute. In a statement filed with the WTO notifying that body of the settlement reached, both countries acknowledged productive bilateral and multilateral discussions with other complainants regarding China’s VAT policy and agreed that China’s policy reforms in this area had been sufficiently implemented. Granted, these discussions came amongst the specter of WTO involvement; it remains, however, that an ameliorative solution was taken, agreed to, and conformed with. It is worth noting that during President George W. Bush’s administration, the JCCT became a functional tool in resolving potential disputes between the two nations before any adversarial positions were taken. These examples highlight the effectiveness of how diplomatic entreaties to China can help mold Chinese economic policy.

Multilateral diplomatic measures have been similarly successful in other forums in coercing Chinese commitment to globally beneficial policies. Though China is not a signatory to the Kyoto Protocol, it has ratified the agreement and has subjected itself unilaterally to the emissions targets established in that international agreement. It would be unwise to attach too much meaning to this ratification in and of itself; however, the Chinese government has targeted increased capacity for clean

287 See Chinese Superconductors, supra note 238, at 1.
288 The JCCT was formed specifically to engage high-level U.S. and Chinese officials in an effort to resolve surging trade disputes and improve trade relations between the two nations. See Min-you, supra note 71, at 134.
289 See Value-Added Tax, supra note 240.
290 See Yu Min-you, supra note 71, at 134.
291 See, Dieter Helm, Climate-Change Policy: Why has so Little been Achieved?, in THE ECONOMICS AND POLITICS OF CLIMATE CHANGE 10 (Dieter Helm & Cameron Hepburn, eds. 2009).
292 See CHEN GANG, POLITICS OF CHINA’S ENVIRONMENTAL PROTECTION PROBLEMS AND PROGRESS 108-09 (Benjamin Richardson, et al. eds., 2009).
energy production and directed government subsidies to clean energy industry manufacturers to implement those goals.\textsuperscript{293} The Chinese government has also attempted to implement this national strategy by passing reform legislation, the National Renewable Energy Law,\textsuperscript{294} and organizing a Chinese National Development and Reform Commission to drive increased investment in renewable energy projects.\textsuperscript{295}

The course of these negotiations and the resulting non-binding goals set by the United States and China regarding carbon emissions provides an indication of global commitment to secure policy change in China. During the course of negotiating climate change policy, there was substantial criticism of developing nations like China for their carbon footprints.\textsuperscript{296} There was also equally substantial push-back from China regarding the historic and current carbon emissions of developed nations like the United States.\textsuperscript{297} The parallels to the current dispute over China’s currency policy should be evident at this point: China appeared less willing to discuss currency manipulation when evidence existed of other nations’ currency manipulation, intended or not. Essentially, each party to the dispute had a vested interest in maintaining its position on the issue. However, the key difference is that, within the context of climate change legislation, China realized the pressures of a concerted global effort to address climate change and the perception of what non-compliance would do to its global stature. It did not hurt that there was economic incentive to incubate a growing clean energy industry within China.\textsuperscript{298} Nevertheless, China’s conformity with the Kyoto Protocol goals, though not binding, was an indication of China’s ability to cooperate with the global community.

China’s desire to accede and its eventual accession to the

\textsuperscript{293} See Joanna I. Lewis, China’s Strategic Priorities in International Climate Change Negotiations, 33 WASH. Q. 155, 160-61 (2007).
\textsuperscript{294} Id. at 160.
\textsuperscript{295} See Cameron Hepburn, International Carbon Finance and the Clean Development Mechanism, in THE ECONOMICS AND POLITICS OF CLIMATE CHANGE 413 (Dieter Helm & Cameron Hepburn, eds. 2009).
\textsuperscript{296} Editorial, See Climate Trap, N.Y. TIMES, June 16, 2009, at A20.
\textsuperscript{297} See id.
WTO was another example, in theory, of China replacing its historically government-controlled economy in favor of a free market economy supported by the major international economic powers. Upon China’s accession in 2001, Mike Moore, former WTO Director-General, felt that “[w]ith China’s membership, the WTO will take a major step towards becoming a truly world organization . . . [and] acceptance of [the WTO’s] rules-based system will serve a pivotal role in underpinning global economic cooperation.”

Expectations for China were clearly set out in its Accession Agreement; nevertheless, there was an understanding that China’s conformity to its economic obligations would take a reasonable period of time. What wasn’t anticipated was China’s dogged persistence in maintaining some aspects of its centrally-planned economy to further its rapid economic growth.

After a party’s accession, the WTO framework leaves little room for further negotiation of compliance; other member nations have the right to bring complaints against an infringing nation and implement remedial measures if that party cannot comply with its WTO obligations. That is where the distinction should be drawn between the active diplomatic measures supported here and the involvement of the WTO, regardless of its authority. Only ten years have elapsed since China’s accession, a period certainly not long enough to judge the overall effect of WTO accession and the diplomatic measures of other nations in dictating the terms of China’s accession on economic policy in China.

Analyzing the issue at hand, the mere fact that China has allowed a steady, albeit slow, appreciation of the renminbi over the past several years is an indication that though China is not where the United States and other developed nations would want it to be in terms of a free market economy, China is making some progress towards full integration into the WTO framework. There are many self-serving reasons for China to move towards a more flexible currency exchange policy: less dependence on U.S. currency reserves, flexibility in transitioning its economy from export-driven to domestic/service providing, and ultimate

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299 Yu Min-you, supra note 71, at 108 fn. 18 (quoting WTO Successfully Concludes Negotiations on China’s Entry, PRESS/243 (Sep. 17, 2001)).
300 See Yu Min-you, supra note 71, at 133-37.
301 Id. at 116-17, 133-37.
ascendance as a global reserve currency. There is also understandable concern from the Chinese government, especially during precarious economic times, to facilitate transition in a controlled, cautious manner. It would be inaccurate, however, not to acknowledge the influence of the G-20 and in particular U.S. officials have had in prodding China towards accelerated currency appreciation. The forceful diplomacy the U.S. administration has displayed in dealing with this issue has emboldened other nations to press China similarly on its currency issue. These aggregate positions, especially when coalesced under the auspices of the G-20, have provided sufficient pressure to move China in the proper direction.

A more recent example of multinational diplomacy at work is the drafting of agreed upon international factors for determining global economic imbalances by G-20 representatives. At a meeting in Paris, G-20 delegates of other major nations were able to coax China into supporting the inclusion of currency exchange rates and monetary policies in the list of factors that would establish the basis for monitoring global economic distress and the causes of such imbalances. The agreement was not reached without struggles, as China initially refused to adopt any list that included currency exchange and monetary policy as indicators of global financial misconduct. This agreement is a demonstrative shift from the fractured discussion on monetary discretion held in Seoul in late 2010. It shows how far these parties have come in a short period of time, perhaps prodded along by the prospect of greater social unrest due to destabilizing forces bearing down on working class citizens around the world. Though not a major step, it is a significant, intermediate one – one that was precipitated by firm, multilateral negotiating towards a common

303 See id.
304 See Alderman, supra note 148.
305 See id.
306 See id. The implication, here, being that nations like China that have experienced net growth without realized benefits trickling to the working class could cause social unrest similar to that in the Middle East and North Africa. The prime mover is clearly inflationary driven rises in commodity prices.
The role of multilateral diplomacy cannot be understated in manipulating Chinese domestic and foreign policies. The circumstances and importance of such assistance are abundantly clear:

[I]f left to its own devices, China would continue down a path designed to exploit the global system to its sole benefit; with helpful advice and understanding from other economic leaders, China could develop and implement a policy that is mutually beneficial to the development and recovery of global economies as well.307

This quotation highlights the prevailing opinion that China has become an integral part of the global community such that its economic policies affect the wellbeing of other nations. It also emphasizes the paramount importance that other nations work with and not against the Chinese government in finding “mutually beneficial” solutions to the unique and prescient issue that is China’s currency devaluation. Past incidents show that when other nations work together to impress the global need for reforms, China has been willing to come to the table and work towards an amenable solution.

IV. Conclusion

The choice the United States faces in determining a course of action on China’s currency devaluation does not exist in a bubble. The global economic and political landscape is ever-changing, to the point that it is difficult to crystallize exactly what factors are in play in making that decision. Though it is difficult, and somewhat insensitive,308 to characterize commodities inflation in China as a positive development in the global system, it is one wild card that has been dealt over the past several months that has forced China to reevaluate its monetary policy.

307 See id.
308 Indeed, inflation has made it increasingly difficult for Chinese citizens to afford daily necessities especially on the meager wages that the majority of Chinese citizens live off. See China Importing U.S. Food Inflation, NATIONAL INFLATION ASSOCIATION (Dec. 3, 2010), http://inflation.us/chinaimportingfoodinflation.html.
Somewhat ironically, civil unrest was a factor in the Chinese government’s hesitance to liberalize its economy further: Artificially devaluing its currency was consistent with the success of its export-driven economy, the continued employment of its industry workers, and its double digit annual economic growth. Casting its lot too quickly with an economy centered on a freely exchanged currency meant the Chinese government would risk mass unemployment, stagnated growth, and disgruntled citizens. All this does not mean the Chinese government did not or does not intend on complying with its obligations as a WTO signatory, obligations that include “[p]rice controls will not be used for purposes of affording protection to domestic industries or service providers.” What it does mean is that China has shown it has little impetus in implementing fair and nondiscriminatory trade policies in the near future and other global economies will continue to suffer the consequences of China’s protectionist economic policies.

In order to remedy these patented unfair practices, the United States should take a diplomatic approach that incorporates other nations’ interests. Any other approach entails too much risk of (1) disenchanting other nations through unilateral actions; (2) providing impetus for further Chinese non-compliance; (3) aggravating an already frayed relationship with China; (4) escalating a trade dispute into a currency war; or (5) causing general discord and discontent amongst global leaders. China has shown an ability to not only act petulantly to leverage its position in foreign affairs, but also to extend protectionist policies imperiously. An effort to reign in China’s currency policy on an acceptable timetable should avoid these threats, and multilateral diplomacy accomplishes that.

It should be noted that efforts to rebalance China’s currency is not a silver bullet that will correct the major inequities that exist in the global economy. Developing economies must become more diverse and less dependent on export-driven surpluses to stimulate growth. Likewise, developed economies should avoid deficit

309 Yu Min-you, supra note 71, at 104.
310 See, e.g., Bradsher, supra note 263 (discussing the freezing of rare earth exports to Japan in order to influence foreign policy dispute).
311 See, e.g., Bradsher, supra note 132 and accompanying text.
spending and feeding into the inequitable system that has proliferated.\textsuperscript{312} Without such a fundamental shift in the framework of the global economy, world leaders will simply feed into a cycle of disparity between global economies that merely resets at the behest of global leaders in power at a given moment. Nevertheless, rebalancing China’s currency is a sufficient step in the right direction.\textsuperscript{313}

The support the U.S. administration has garnered for addressing China’s currency manipulation has not substantially developed because global leaders are not primarily concerned about U.S. jobs and the U.S. economy. Recent G-20 discussions have shown that global leaders are concerned about the improvement of the global economy; China’s currency manipulation is merely Exhibit A in the eyes of these representatives of a global system that is in need of greater accountability and oversight. The more each nation, including the United States, can do to perpetuate an atmosphere of cooperation, the greater chance each nation can realize the benefits of a more cohesive global economy.

This paper has outlined several avenues the United States may take to approach the currency manipulation issue. Multilateral diplomacy offers the most complete and far reaching benefits of any approach, providing an opportunity to address macro issues as opposed to micro-issues affecting solely the United States. Though hawkish observers feel China has been able to take advantage of the global system for long enough, steady diplomacy will ensure nations to avoid a system of cyclical deficit/surplus development in favor of a more balanced and prosperous global economy.

\textsuperscript{312} See Cline & Williamson, \textit{supra} note 36, at 8.

\textsuperscript{313} See Alderman, \textit{supra} note 115 (emphasizing that addressing currency exchange rates is one part of a larger problem).