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CHINESE CURRENCY MANIPULATION: ARE THERE ANY SOLUTIONS?

Politicians often bellow about currency manipulation in an attempt to prove their toughness on foreign policy.¹ All too often these politicians seem under-informed about the subject.² In recent years, a substantial amount of political rhetoric in the United States has been aimed at addressing the “problem” of Chinese currency manipulation.³ Upon investigation, all of the proposed solutions prove inadequate, whether they call for greater cooperation with multi-national organizations, unilateral actions, or simple diplomacy.⁴

The majority of the discussion on this subject is based on the assumption that China is manipulating its currency, that this manipulation is a problem, and that the United States has a number of options available to address this problem.⁵ This Comment challenges all of those assumptions. First, whether or not China is manipulating its currency is debatable; additionally, many other countries are acting similarly, and this seems to be the norm rather than the exception. Second, the “problem” has less to do with China and the United States and more to do with general inefficiency in global trade. Third, even if Chinese currency manipulation is a problem, the current international framework is inadequate to handle it. Fourth, any bilateral or unilateral actions taken by the United States would either: 1) be ineffective or 2) cause more harm than good.

¹ See, e.g., James Bacchus, *What A Trade War With China Would Look Like*, FORBES (Feb. 2, 2009), http://www.forbes.com/2009/01/31/trade-wto-china-opinions-contributors_0202_james_bacchus.html; Ezra Klein, *Five Facts You Need to Know About China's Currency Manipulation*, WASH. POST: WONKBLOG (Oct. 22, 2012, 11:11 AM), <http://www.washingtonpost.com/blogs/wonkblog/wp/2012/10/22/five-facts-you-need-to-know-about-chinas-currency-manipulation/>; Matthew O'Brien, *Romney's China-Bashing Is 100% Correct . . . But 5 Years Late*, THE ATLANTIC (Oct. 24, 2012, 10:16 AM), <http://www.theatlantic.com/business/archive/2012/10/romneys-china-bashing-is-100-correct-but-5-years-late/264011/>.

² See Klein, *supra* note 1; O'Brien, *supra* note 1; Arvind Subramanian & Martin Kessler, *China's Currency Rises in the US Backyard*, FIN. TIMES, Oct. 21, 2012, www.ft.com/intl/cms/s/0/5a34c410-19d6-11e2-a379-00144feabdc0.html#axzz2BAZ6caYA.

³ See Bacchus, *supra* note 1; Press Release, S. Comm. on Fin., Hatch-Calls on Obama Administration to Outline Position on China Currency Manipulation (Oct. 18, 2012), <http://www.finance.senate.gov/newsroom/ranking/release/?id=2fc3a886-e940-475c-91ee-48861fa338b0>.

⁴ See, e.g., Bacchus, *supra* note 1 (explaining that there might be a better course of action to resolve the currency manipulation issue than “through quiet bilateral diplomacy with China”).

⁵ See Douglas A. Irwin, *Esprit de Currency*, FIN. & DEV., June 2011, at 30, 32–33 (describing the potential consequences of currency manipulation, the actions taken by the United States and Europe to address the problem, and a possible solution).

This Comment proposes that there may not be any adequate solutions to the issue. If an adequate solution exists, it would likely come by means of a new global consensus and international convention, not by any existing mechanisms. Lastly, the problem with Chinese currency manipulation is not the devaluation of currency by China, but the regulatory regimes that enable it.

Part I of this Comment provides historical background, describing the history of exchange rate regulation and the current regulatory environment. Part II of the Comment describes the current currency manipulation by China in depth.⁶ Part III illustrates the inadequacies of the current avenues for multilateral solutions, including mechanisms provided by the World Trade Organization (WTO) and the International Monetary Fund (IMF), as well as other bilateral solutions. Part IV examines the different actions (or inaction) that the United States could take unilaterally. Part V discusses the benefits and feasibility of reaching an international consensus on the issue. Part VI proposes that this problem may actually correct itself in the medium or long term.

I. BACKGROUND

A. *Basics of Currency Manipulation*

Currency manipulation occurs when a country artificially inflates or deflates its exchange rate.⁷ According to the Peterson Institute for International Economics (PIIE), currency manipulation is “when a government buys or sells foreign currency to push the exchange rate of its currency away from its equilibrium value or to prevent the exchange rate from moving toward its equilibrium value.”⁸ One way a country can devalue its currency is to print more money,⁹ and then use that new money to buy foreign debt and foreign currency.¹⁰ This increases the supply of the currency in the country printing

⁶ China has taken a number of different policy stances toward its currency. See TRADE L. ADVISORY GRP., CHINA’S POLICY OF SUBSTANTIALLY UNDERVALUING THE RENMINBI: A CHALLENGE FOR THE INTERNATIONAL MONETARY AND TRADING SYSTEM 43, 46 (2008) [hereinafter TLAG] (discussing China’s four exchange-rate phases since Mao Zedong’s policies of economic isolation).

⁷ See *id.* at 22.

⁸ JOSEPH E. GAGNON, PETERSON INST. FOR INT’L ECON., POLICY BRIEF No. PB12-19, COMBATING WIDESPREAD CURRENCY MANIPULATION I (2012).

⁹ See Tejvan Pettinger, *The Problem With Printing Money*, ECON. HELP BLOG (Aug. 7, 2012, 11:57 AM), <http://www.economicshelp.org/blog/634/economics/the-problem-with-printing-money>.

¹⁰ See, e.g., Brian Palmer, *If Currency Manipulation Is So Great for Exports, Why Don’t We Do It?*, SLATE (Oct. 17, 2012, 3:05 PM), http://www.slate.com/articles/news_and_politics/explainer/2012/10/china_currency_manipulation_how_does_it_harm_the_u_s_and_what_can_we_do.single.html. Because the value of

money, which lowers the value of its currency. In turn, it decreases the supply of the target country's currency, which increases the value of its currency.¹¹

Countries may manipulate their currency for a number of reasons: to boost currency account surpluses,¹² for political gain,¹³ to avoid inflation,¹⁴ to make exports more competitive,¹⁵ or to reduce the inflow of capital into their country.¹⁶ Currency manipulation often causes many harmful effects,¹⁷ both to the domestic manufacturing industries of the non-manipulating countries and, on a larger scale, to the overall amount of world trade.¹⁸

Although research has been contradictory,¹⁹ a few commonly held assumptions exist concerning currency manipulation and its effect on trade. When a country's currency depreciates relative to other currencies, its exports become cheaper to importing countries, at least in the short term.²⁰ Conversely,

currency is no longer tied to a commodity (like gold), countries are able to print as much currency as they desire. *Id.* Printing money does however bring certain risks, such as inflation. Pettinger, *supra* note 9.

¹¹ See, e.g., Palmer, *supra* note 10 (“[T]he [Chinese] government constantly prints new currency and uses it to buy U.S. dollars and U.S. government debt, thereby flooding the market with Chinese currency and increasing demand for American dollars.”).

¹² GAGNON, *supra* note 8, at 2. When a country is doing well economically, its citizens are spending more. OLIVIER BLANCHARD & GIAN MARIA MILESI-FERRETTI, INTERNATIONAL MONETARY FUND [IMF], (WHY) SHOULD CURRENT ACCOUNT BALANCES BE REDUCED? 6 (2011). Typically, this increased spending is more than the domestic production of the country can handle, so consumption of imports increases. When a country has more imports than exports, it creates a currency account deficit where more of its currency is in foreign countries than foreign currencies are in its own borders. See BLANCHARD, *supra*, at 9. Countries with high currency account surpluses are saving more than they are spending. See *id.* The problem with countries maintaining large current account surpluses is that, in theory, it suppresses global demand and causes problems with international trade, all for the benefit of the country amassing this surplus. See *id.* at 8–10.

¹³ See GAGNON, *supra* note 8, at 2.

¹⁴ If a country takes actions to reduce its money supply, the demand for the currency goes up, bringing the value of the currency with it. See Palmer, *supra* note 10.

¹⁵ O'Brien, *supra* note 1.

¹⁶ *Id.*

¹⁷ See Jeffrey S. Beckington & Matthew R. Amon, *Competitive Currency Depreciation: The Need for a More Effective International Legal Regime*, 10 J. INT'L BUS. & L. 209, 209 (2011) (“Such ‘beggar-thy-neighbor’ gains, however, are contrary to the basic international goal of achieving efficient markets for the general welfare.”).

¹⁸ See *id.* at 209, 217–18; cf. Aaditya Mattoo & Arvind Subramanian, *Currency Undervaluation and Sovereign Wealth Funds: A New Role for the World Trade Organization* 4 (Peterson Inst. for Int'l Econ. Working Paper Series, Working Paper No. 08-2, 2008), available at <http://www.iie.com/publications/wp/wp08-2.pdf> (“[B]etween China and the oil-exporting countries, moving toward more appropriate levels of exchange rates could have increased world trade by about half a trillion dollars.”).

¹⁹ Marilyne Huchet-Bourdon & Jane Korinek, *To What Extent Do Exchange Rates and Their Volatility Affect Trade?* 4, 9 (Trade & Agric. Directorate Trade Comm., Org. for Econ. Coop. & Dev., Working Paper No. 119, 2011), available at [http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/TC/WP\(2010\)21/FINAL&docLanguage=En](http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/TC/WP(2010)21/FINAL&docLanguage=En).

²⁰ *Id.* at 7–8.

it makes its imports relatively more expensive.²¹ When domestic goods are more expensive than the imports flooding in, domestic manufacturing suffers.²²

B. History of Currency Manipulation

The dangers of currency manipulation show prominently in the lessons learned from the 1920s and 1930s.²³ In fact, currency manipulation played an important role in ushering in the Great Depression, as nationalistic currency wars increased the rapid descent of an already weak global economy.²⁴ One after another, countries started to devalue their currency in an attempt to boost their exports and rescue their floundering economies.²⁵ This ignited a “race to the bottom,” where one country’s devaluation of their currency, an attempt to boost their exports in the short term, caused another country to respond in kind.²⁶ This competitive devaluation resulted in different manufacturing industries being ruined, as the market for imports and exports was effectively broken.²⁷

Countries believed that they had a sovereign right to value their currency however they decided to meet their economic agenda.²⁸ Countries then took corrective actions against undervalued imports to protect their domestic manufacturing, while at the same time propping up their own exports through the very process that prompted their own protectionist conduct.²⁹ Competitive devaluation led to rampant inflation, and the results proved to be disastrous.³⁰

Even while this competitive devaluation was occurring, at least a few researchers began to realize its negative effects. This emerging consciousness prompted the Federal Trade Commission (FTC) to examine the possible solutions to exchange rate manipulation.³¹ The FTC did not endorse any particular solution, simply noting that “[d]umping has been repeatedly recognized as unfair competition in national legislation and in international

²¹ *See id.*

²² *See* TLAG, *supra* note 6, at 39–40.

²³ *See generally* Beckington & Amon, *supra* note 17, at 211–17.

²⁴ *Id.* at 211.

²⁵ *See id.* at 213.

²⁶ *Id.*

²⁷ *See id.*

²⁸ *Id.*

²⁹ *See id.*

³⁰ *Id.*

³¹ *See* FED. TRADE COMM’N., ANTIDUMPING LEGISLATION AND OTHER IMPORT REGULATIONS IN THE UNITED STATES AND FOREIGN COUNTRIES, S. DOC. NO. 73-112 (1934).

conferences and agreements, although it is sometimes very difficult to draw the line between what is fair and what is unfair in foreign-trade development.”³² Even in the face of such research, an economic catastrophe like the Great Depression and World War II was necessary to induce reformation.

After World War II, the international community decided to prevent this madness—rampant inflation caused by competitive currency devaluation—from happening again.³³ At the 1944 Bretton Woods Conference, the major powers created the International Monetary Fund (IMF) and the World Bank.³⁴ Three years later, the General Agreement on Tariffs and Trade (GATT)³⁵ was finalized, indicating a shift from *laissez faire* economics to a regulatory regime designed to prevent the race to the bottom, which hastened the economic collapse of the Great Depression.³⁶ This was the first time that an international organization purported to regulate inter-state monetary affairs.³⁷ Prior to the formation of this regime, inter-state monetary affairs were either handled by bilateral agreements between countries, or not at all.³⁸

To achieve this goal, the IMF was charged with overseeing the international monetary system, which is “the system of exchange rates and international payments” that facilitates commerce between countries.³⁹ The IMF “ensure[s] exchange rate stability and encourage[s] its member countries to eliminate exchange restrictions that hinder[] trade.”⁴⁰ Initially, the IMF pegged exchange rates to be measured by a standard par-value based on the value of gold.⁴¹ Members could change the par-value of their currency, but only to correct a fundamental disequilibrium.⁴² The IMF Articles of Agreement

³² *Id.* at 2.

³³ Beckington & Amon, *supra* note 17, at 211.

³⁴ Henry Morgenthau, Jr., Secretary of the Treasury, President of the Conference, Closing Address to the Bretton Woods Conference (July 22, 1944).

³⁵ General Agreement of Tariffs and Trade, Oct. 30, 1947, 6 Stat. A-11, 55 U.N.T.S. 194 [hereinafter “GATT”].

³⁶ Beckington & Amon, *supra* note 17, at 210.

³⁷ *See id.* at 211–12.

³⁸ *Id.* Currency regulation was seen as intricately interwoven in a country’s sovereignty. *Id.*

³⁹ *What the IMF Does*, INT’L MONETARY FUND, <http://www.imf.org/external/np/adm/rec/what/whatimf.htm> (last visited Oct. 7, 2013).

⁴⁰ *Cooperation and Reconstruction (1944–71)*, INT’L MONETARY FUND, <http://www.imf.org/external/about/histcoop.htm> (last visited Oct. 7, 2013).

⁴¹ Articles of Agreement of the International Monetary Fund, art. 4(1), Dec. 27, 1945, 60 Stat. 1401, 2 U.N.T.S. 39 [hereinafter IMF Articles of Agreement].

⁴² *Id.* art. 4(v).

do not define fundamental disequilibrium, and the IMF has never defined a standard for it.⁴³

This system worked well, and the next three decades were prosperous.⁴⁴ Unfortunately, the stability of exchange rates would end in the late 1960s.⁴⁵ Countries began to desire more flexibility and sovereignty over their currencies, and by 1971, the gold standard system had completely fallen apart.⁴⁶ In 1971, the IMF's Board of Governors agreed on an amendment to the Articles of Agreement effectively recognizing that the gold standard system was no longer in force.⁴⁷ This amendment allowed IMF members to set their exchange rates as they saw proper.⁴⁸ Exchange-rate policies were still subject to IMF review and had to conform with the IMF Articles of Agreement, but stable exchange rates were no longer the standard.⁴⁹

When currencies are not pegged to a standard, problems arise. When two countries both exercise their sovereign right to set a bilateral exchange rate between their two currencies, they may arrive at two different values.⁵⁰ One country might say that their exchange rate is two to one, whereas another country might put it at three to one. Because of the incentive to manipulate these ratios, to boost exports or to increase current accounts, market distortions likely result. One particular instance where manipulation seems to be causing market distortion is in China, a problem that is discussed in the next section.

II. THE "PROBLEM"

A. *China's Undervalued Currency*

Politicians often decry currency manipulation in campaign speeches, congressional committee meetings, and debates to prove to constituents that they will be tough on countries trying to cheat the free market.⁵¹ The media has

⁴³ Beckington & Amon, *supra* note 17, at 236.

⁴⁴ *Id.*

⁴⁵ *Id.* at 237.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *See id.* at 240–41 (discussing a hypothetical example between China and the United States).

⁵¹ *See, e.g.*, Press Release, Hatch Calls on Obama Adm. to Outline Position on China Currency Manipulation (Oct. 18, 2012), <http://www.finance.senate.gov/newsroom/ranking/release/?id=2fc3a886-e940-475c-91ee-48861fa338b0> [hereinafter Hatch Press Release]; *Transcript and Audio: Third Presidential Debate*,

given particular prominence in recent years to China's currency manipulation, which began concurrently with China's admission to the WTO.⁵² At different times, China's currency, the renminbi (RMB),⁵³ has seen many different policy regimes; it has been pegged to the dollar, allowed to float, and intentionally devalued by the Chinese government.⁵⁴ Through all of that oscillation, the net result is that the Chinese currency has been, and currently still is, undervalued against the dollar compared to what it would be if left to market forces.⁵⁵ The years 2000 to 2010 saw China accumulating currency account surpluses of \$1.8 trillion, while the United States accumulated global trade deficits of \$7.6 trillion.⁵⁶ While a significant amount of those trade imbalances are likely due to China's economy growing rapidly and the United States acting as a "consumer of last resort,"⁵⁷ currency manipulation has likely played a role.

Currency manipulation has serious effects on the global market. Around the globe, currency manipulation is possibly responsible for millions of jobs lost in the United States and a smaller, but still significant, number of jobs lost in Europe.⁵⁸ A large volume of literature illustrates the issue, particularly with respect to China manipulating its currency in the past, as well as in the frame of the current international economic environment.⁵⁹ Scholars have proposed several solutions. Some have argued that new international institutions are

NPR (Oct. 22, 2012), <http://www.npr.org/2012/10/22/163436694/transcript-3rd-obama-romney-presidential-debate>.

⁵² O'Brien, *supra* note 1.

⁵³ Sometimes also referred to as yuan, which is the name of a unit of the renminbi currency. Stephen Mulvey, *Why China's Currency Has Two Names*, BBC NEWS (June 26, 2012), <http://www.bbc.co.uk/news/10413076>.

⁵⁴ From 1995 to 2005, China pegged its currency, holding it steady at slightly over eight RMB to the dollar. China pegged its currency to the dollar between 1995 and 2005, holding it at an exchange rate of roughly eight RMB to the dollar. Edward P. Lazear, *Chinese 'Currency Manipulation' Is Not the Problem*, WALL ST. J. (Jan. 7, 2013), <http://online.wsj.com/article/SB10001424127887323320404578213203581231448.html>. Then, in late 2005, China allowed its currency to appreciate relative to the dollar until July 2008. From late 2005 to July 2008, China let its currency rise in value relative to the dollar. *Id.* For nearly two years, the rate held steady. *Id.* The currency began to gradually appreciate again in 2010. *Id.* Now at 6.2 RMB per dollar, one RMB is worth about 16 cents. *Id.*

⁵⁵ See, e.g., GARY CLYDE HUFBAUER & JEFFREY J. SCHOTT, PETERSON INST. FOR INT'L ECON., POLICY BRIEF No. PB12-19, WILL THE WTO ENJOY A BRIGHT FUTURE? 11 (2012).

⁵⁶ *Id.*

⁵⁷ See Don Lee, *U.S. Once Again Cast as World's Consumer of Last Resort*, L.A. TIMES (June 19, 2010), <http://articles.latimes.com/2010/jun/19/business/la-fi-global-economy-20100620>.

⁵⁸ GAGNON, *supra* note 8, at 1; see *Evaluating China's Past and Future Role in the World Trade Organization: Hearing Before the U.S.-China Economic and Security Review Commission*, 110th Cong. 64 (2010) (prepared statement of Thea Lee, Deputy Chief of Staff, AFL-CIO).

⁵⁹ See, e.g., Irwin, *supra* note 5.

necessary to solve the problems associated with currency manipulation.⁶⁰ Others have argued that China has consciously and flamboyantly disregarded the WTO, rendering any relief through that body unlikely and possibly threatening the overall legitimacy of the WTO.⁶¹ Some have argued that the United States must act unilaterally to put pressure on China due to the lack of effective multilateral resolutions.⁶² With such a wide array of views on the issue, the only common theme is that China manipulating its currency is a problem that demands a remedy.

B. Other Manipulators

China has received a great amount of attention for its exchange-rate policies,⁶³ but China is not the only state engaging in such policies.⁶⁴ Switzerland, for instance, has pegged the franc to the euro, artificially lowering its currency.⁶⁵ Switzerland, however, has seemingly “less objectionable” motives,⁶⁶ as its policy was instituted to halt the franc buying frenzy driven by investors nervous about the Euro crisis.⁶⁷

Of twenty countries that the IIE found manipulating their currencies,⁶⁸ Denmark, Hong Kong, Israel, and Japan are also on the list.⁶⁹ All of the

⁶⁰ See, e.g., Beckington & Amon, *supra* note 17, at 267.

⁶¹ Dan Harris, *Another China WTO Loss. Another Nail in the Coffin of World Trade*, CHINA L. BLOG (Feb. 6, 2012), http://www.chinalawblog.com/2012/02/another_china_wto_loss_another_nail_in_the_coffin_of_world_trade.html.

⁶² See *Evaluating China's Past and Future Role in the World Trade Organization: Hearing Before the U.S.–China Economic and Security Review Commission*, 110th Cong. 21 (2010) (statement of Sen. Charles Schumer).

⁶³ See Brian Scarfe, *China's Monetary and Exchange Rate Policy and the Global Economy*, E. ASIA F. (Oct. 15, 2011), <http://www.eastasiaforum.org/2011/10/15/china-s-monetary-and-exchange-rate-policy-and-the-global-economy/> (“The rest of the world . . . knows that China's [monetary and exchange rate] policy is perverse from an external balance perspective.”).

⁶⁴ See GAGNON, *supra* note 8, at 1, 7.

⁶⁵ Josh Barro, *Switzerland: The Other Currency Manipulator*, BLOOMBERG: THE TICKER (Oct. 23, 2012), <http://www.bloomberg.com/news/2012-10-23/switzerland-the-other-currency-manipulator.html>.

⁶⁶ Whether motives are objectionable depends on the frame of reference. From the standpoint of the country undervaluing its currency, all it is doing is helping to support its export industry. From the perspective of the countries suffering the negative externalities from this undervaluation, the undervalued currency is unfair manipulation.

⁶⁷ See Daniel Gros, *An Overlooked Currency War in Europe*, VOX (Oct. 11, 2012), <http://www.voxeu.org/article/overlooked-currency-war-europe>.

⁶⁸ GAGNON, *supra* note 8, at 7 tbl.1.

⁶⁹ The list includes eight “Advanced economies:” Denmark, Hong Kong, Israel, Japan, Korea, Singapore, Switzerland, and Taiwan. Others listed include: Argentina, Bolivia, China, Malaysia, Philippines, Thailand, Angola, Algeria, Libya, Saudi Arabia, Azerbaijan, and Russia. *Id.*

countries on the list satisfy four criteria. First, they “must have foreign exchange reserves that are greater than the value of six months of goods and services imports.”⁷⁰ This factor indicates an excessive ratio of foreign reserves to the need for such reserves. Second, “[c]ountries must have an average current account balance (as a percent of GDP) between 2001 and 2011 that is greater than zero.”⁷¹ This factor indicates that the country has been steadily manipulating its currency for a while.⁷² Third, “[c]ountries must have increased their reserve stocks relative to their GDP over the past 10 years.”⁷³ Lastly, low-income countries did not make the list, as the researcher operated under the principle that they “should have greater freedom than other countries to pursue economic development policies that may have negative externalities.”⁷⁴

Interestingly, the IIE study, perhaps due to it being framed in relation to U.S. dollars, does not list one of the largest currency manipulators: the United States. Due to the Federal Reserve’s quantitative easing, which “prints money” to add liquidity to the domestic market,⁷⁵ the United States has drawn criticism from the international community for its own currency manipulation.⁷⁶

Currency manipulation is neither new nor isolated to one or two offending countries. Many countries devalue their currencies and have done so throughout history. China is the one that dominates the national media.⁷⁷ However, this Comment does not propose to provide the reason for this discrepancy. The focus of this Comment is on Chinese currency manipulation, and a few possible solutions are presented next in Part III.

⁷⁰ *Id.* at 6.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* Two countries that would have been on the IIE list if not for this requirement are Myanmar and Nepal. *Id.*

⁷⁵ Brad Plumer, *QE3: What is Quantitative Easing? And Will it Help the Economy?*, WASH. POST: WONKBLOG (Sept. 13, 2012, 10:52 AM), http://www.washingtonpost.com/blogs/wonkblog/wp/2012/09/13/qe3-what-is-quantitative-easing-and-will-it-help-the-economy (“Since the Federal Reserve can just create dollars out of thin air, it can buy up assets like long-term Treasuries or mortgage-backed securities from commercial banks and other institutions.”).

⁷⁶ Instead of discussion centering around Chinese currency manipulation, recent international economic summits have been dominated by talk of the United States manipulating its own currency. See Charles V. Archie, Comment, *China Cannot Have Its Cake and Eat It Too: Coercing the PRC to Reform its Currency Exchange Policy to Conform to its WTO Obligations*, 37 N.C.J. INT’L L. & COM. REG. 247, 269 (2011).

⁷⁷ Chinese manipulation dominates the scant media coverage of the topic in the United States. It would be unsurprising if the Chinese media focused on how the United States undervalued the dollar via quantitative easing.

III. MULTILATERAL SOLUTIONS

Two international bodies that could have jurisdiction over currency manipulation currently exist: the IMF and the WTO. However, neither of these bodies, as currently constituted, are adequate. The IMF lacks any viable enforcement mechanism, and the WTO, while it does have different complaint mechanisms, fails to use them effectively. Because these two bodies are continually mentioned as possible solutions for currency manipulation, this Comment will examine each in depth.

A. IMF

1. Jurisdiction

Theoretically, currency manipulation disputes fall under the IMF's jurisdiction. Even though the gold standard has long been discarded, IMF members' exchange-rate policies are still subject to review.⁷⁸ A 1977 decision by the IMF cited three main principles regarding the policies members should follow:

1. A member shall avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members.
2. A member should intervene in the exchange market if necessary to counter disorderly conditions which may be characterized inter alia by disruptive short-term movements in the exchange value of its currency.
3. Members should take into account in their intervention policies the interests of other members, including those of the countries in whose countries they intervene.⁷⁹

Additionally, Article IV, Section 1 of the IMF's Articles of Agreement specifies that members will "avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members."⁸⁰ In the IMF's Articles of Agreement, a few of the purpose statements are described as follows:

⁷⁸ IMF Articles of Agreement, *supra* note 42, art. 4(1)(iii).

⁷⁹ IMF, *Surveillance Over Exchange Rate Policies*, Dec. No. 5392-(77/63) (Apr. 29, 1977), in IMF, ANNUAL REPORT 1977 107, 108 (1977).

⁸⁰ IMF Articles of Agreement, *supra* note 42, art. 4(1)(iii).

- (i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.
- (ii) 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.
- (iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.⁸¹

These purpose statements, read together, indicate that a significant foundation of the IMF is the desire to facilitate free trade, which in large part requires countries not to engage in “competitive exchange depreciation.”⁸²

2. Enforcement

However, since the adoption of Article IV in 1978, the IMF has never publicly declared that any nation is violating this ban on currency manipulation.⁸³ IMF consultations under Article IV are “supposed to occur on an annual basis with each member. This is generally the case with the Fund’s larger members, but frequency is somewhat less than annual with smaller members.”⁸⁴ Since ratification of Article IV, there have been tens of thousands of Article IV consultations, but “[i]n none of these consultations has the Executive Board ever concluded that a member was out of compliance with its obligations regarding its exchange rate policies or any other matter!”⁸⁵

Three explanations for this inaction exist. First, this inaction derives from the inability of countries to file complaints against other countries and the lack of any enforcement mechanisms.⁸⁶ Countries are supposed to abide by the

⁸¹ *Id.* art. 1(i)–(iii) (describing the purposes of the IMF).

⁸² *Id.* art. 1(iii).

⁸³ MICHAEL MUSSA, PETERSON INST. FOR INT’L ECON., *IMF SURVEILLANCE OVER CHINA’S EXCHANGE RATE POLICY* 40 (2007); *see also* MORRIS GOLDSTEIN, PETERSON INST. FOR INT’L ECON., *CURRENCY MANIPULATION AND ENFORCING THE RULES OF THE INTERNATIONAL MONETARY SYSTEM* 9 (2005).

⁸⁴ *Id.* at 40.

⁸⁵ *Id.* (emphasis in original).

⁸⁶ Robert W. Staiger & Alan O. Sykes, ‘*Currency Manipulation*’ and *World Trade*, 9 *WORLD TRADE REV.* 583, 592 (2010). “The weak legal standards under Article IV, the emphasis on non-confrontational consensus building within the IMF, and the absence of credible sanctions for disregarding IMF advice lead us to doubt that the IMF can do much to influence the behavior of a member such as China.” *Id.* at 593.

principles of the IMF, but there is no method for members to bring complaints against other members.⁸⁷ Second, there is significant reluctance on the part of the IMF to reprimand member countries with no foreseeable need to borrow money.⁸⁸ Third, countries are able to successfully argue that their exchange rate policies are not attempts to gain competitive trading advantages, but simply mechanisms to stabilize the value of their currency and prevent disruption in their domestic economy.⁸⁹

Whatever the actual reason for the inaction, the reality remains that the IMF is either unable or unwilling to use any power it might have to combat currency manipulation.⁹⁰ Thus, the IMF seems to cover issues related to currency manipulation, but it does not present an adequate means of enforcing violations.

B. WTO

The WTO presents another possible solution that differs from the IMF in a number of ways. First, the WTO has a functioning dispute resolution system.⁹¹ Second, the WTO seemingly is gaining legitimacy and leverage while the IMF is losing it.⁹² Finally, the WTO has enforcement capabilities.⁹³ The one crucial disadvantage of the WTO, however, is its lack of jurisdiction over exchange rates.⁹⁴ As one scholar summarized: “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 currency manipulation as grounds for recourse.”⁹⁵

⁸⁷ Mattoo & Subramanian, *supra* note 18, at 8.

⁸⁸ See Staiger & Sykes, *supra* note 89, at 593.

⁸⁹ JOSEPH E. SANFORD, CONG. RESEARCH SERV., RL7-5700, CURRENCY MANIPULATION: THE IMF AND THE WTO 1–2 (2011).

⁹⁰ *Id.* at 2; GAGNON, *supra* note 8, at 8.

⁹¹ Mattoo & Subramanian, *supra* note 18, at 8.

⁹² *Id.*

⁹³ *Id.* at 8–9. These enforcement capabilities have had questionable effectiveness, but “[i]t is not necessary that WTO dispute settlement be perfect. It is enough if it is an improvement on virtually nonexistent enforcement in the IMF.” *Id.* at 9.

⁹⁴ See *id.* at 5.

⁹⁵ Archie, *supra* note 76, at 252–53.

1. Violation of GATT

There are two methods by which the WTO can gain jurisdiction over currency manipulation. First, to pursue a complaint in the WTO, a country needs to show that the currency-manipulating country was in violation of GATT.⁹⁶ The intent of the GATT is to reduce barriers to trade and eliminate “discriminatory treatment in international commerce.”⁹⁷ Currency manipulation distorts capital flows between countries and drains demand for developed countries to the effect of over \$1.5 trillion per year.⁹⁸ Therefore, currency manipulation would seemingly be a violation of the intent of GATT. However, “frustrating the intent” of GATT might prove to be too vague a standard for the WTO to rule against undervalued exchange rates.⁹⁹

Moreover, the specific act of a country artificially inflating or deflating its currency is not covered by WTO jurisdiction.¹⁰⁰ Scholars have pointed out that the “only provision of WTO law specifically relating to currency practices is to be found in Article XV(4), concerning ‘exchange action’ that would ‘frustrate the intent’ of GATT.”¹⁰¹ Taking action against a country for currency manipulation would presumably have “major macroeconomic significance.”¹⁰² Thus, the WTO would probably need a stronger basis to rule on than the vague “frustration of intent.”¹⁰³

Another stumbling block to WTO jurisdiction is found in Article XV(2) of the GATT. Article XV(2) of the GATT specifies the following, indicating that currency manipulation issues belong to the IMF:

In all cases in which the CONTRACTING PARTIES are called upon to consider or deal with problems concerning monetary reserves, balances of payments or foreign exchange arrangements, they shall consult fully with the International Monetary Fund. In such consultations, the CONTRACTING PARTIES shall accept all findings of statistical and other facts presented by the Fund relating to foreign

⁹⁶ Staiger & Sykes, *supra* note 86, at 586.

⁹⁷ GATT, *supra* note 35, pmb1.

⁹⁸ GAGNON, *supra* note 8, at 1, 3.

⁹⁹ Mattoo & Subramanian, *supra* note 18, at 6.

¹⁰⁰ See Haneul Jung, *Tackling Currency Manipulation with International Law: Why and How Currency Manipulation should be Adjudicated?*, 9 MANCHESTER J. INT’L ECON. L. 184, 186 (2012) (“The WTO’s silence on the issue of currency manipulation . . . may be regarded as the WTO’s passive surrender of jurisdiction on the issue.”).

¹⁰¹ Staiger & Sykes, *supra* note 86, at 586.

¹⁰² Mattoo & Subramanian, *supra* note 18, at 9.

¹⁰³ GATT, *supra* note 35, art. XV, sec. 4; see Mattoo & Subramanian, *supra* note 18, at 9–10.

exchange, monetary reserves and balances of payments, and shall accept the determination of the Fund as to whether action by a contracting party in exchange matters is in accordance with the Articles of Agreement of the International Monetary Fund, or with the terms of a special exchange agreement between that contracting party and the CONTRACTING PARTIES.¹⁰⁴

Thus, bringing such a complaint in the WTO would present obvious jurisdictional issues.¹⁰⁵

2. *Currency Manipulation as De Facto Trade Subsidy*

Another method of getting WTO jurisdiction exists. This method would require both creativity and good advocacy. A country would have to convince a judge that currency manipulation presents an unfair *de facto* trade subsidy, as it props up its own manufacturing interests.¹⁰⁶ A country could thus employ the WTO's dispute resolution system by looking to the GATT's language on subsidies. Article XVI(1) of the GATT provides the following language regarding unfair subsidies by member countries:

In any case in which it is determined that serious prejudice to the interests of any other contracting party is caused or threatened by any such subsidization, the contracting party granting the subsidy shall, upon request, discuss with the other contracting party or parties concerned, or with the CONTRACTING PARTIES the possibility of limiting the subsidization.¹⁰⁷

The largest obstacle to pursuing such a claim would be forcing currency manipulation under the umbrella of "subsidies."¹⁰⁸ Again, for an issue of such economic importance, it would be a significant challenge for a complaining country to convince a judge to rule based on a creative definition. Additionally,

¹⁰⁴ GATT, *supra* note 35, art. XV, sec. 2.

¹⁰⁵ See Staiger & Sykes, *supra* note 86, at 607. Additionally, should the WTO rules be changed to address currency issues, it could give rise to forum shopping between the IMF and the WTO. See Catharina E. Koops, *Manipulating the WTO? The Possibilities for Challenging Undervalued Currencies under WTO Rules*, (manuscript at 15), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1564093.

¹⁰⁶ The WTO definition of "subsidy" requires three elements: (i) a financial contribution; (ii) by a government or any public body within the territory of a Member; (iii) which confers a benefit. *Subsidies and Countervailing Measures: Overview*, WORLD TRADE ORG., http://www.wto.org/english/tratop_e/scm_e/subs_e.htm (last visited Nov. 5, 2013). Often times the recipient of such a payment would lose money making the product in the absence of such a subsidy. Whether or not a subsidy is unfair, however, probably depends on advocacy and political power.

¹⁰⁷ GATT, *supra* note 35, art. XVI, sec. 1.

¹⁰⁸ Koops, *supra* note 105, at 4.

even if a devalued currency acts as a *de facto* subsidy for exports,¹⁰⁹ no IMF or WTO agreements explicitly state that currency manipulation can be treated as a *de jure* subsidy.¹¹⁰ Thus, a complaining country would have to: 1) convince a judge to make new international law; 2) change the rules of the WTO; or 3) get the currency manipulating country to join in an agreement specifying that the definition of illegal subsidies includes currency manipulation.¹¹¹ Neither of these requirements are likely attainable.¹¹²

Additionally, internal politics might prevent the WTO from providing an adequate remedy to the problem. Although the 157 members of the WTO each have a single vote in the election of officials, the powerful members like China hold a great deal of influence.¹¹³ For example, in his attempt to become director-general of the WTO, politician Herminio Blanco has made very deferential statements related to China and the controversy over currency devaluation.¹¹⁴ In an interview, Blanco stated that the WTO should not hold that a country's foreign-exchange rate policy amounted to an unfair trade subsidy.¹¹⁵ Thus, wildly divergent views on the issue among the WTO's biggest powers seem guaranteed to prevent any resolutions. Additionally, such a divisive issue could split the institution from within.¹¹⁶

C. IMF and WTO Cooperation

To resolve the enforcement issues of the IMF and the jurisdictional issues of the WTO, a number of scholars have suggested that the organizations should cooperate to combat currency manipulation.¹¹⁷ Under these scholars' proposals, countries could file a complaint with the WTO, after which the WTO would ask the IMF to decide on whether and to what degree currency manipulation was occurring.¹¹⁸ If the IMF found a violation, then the WTO would authorize the complainant to impose countervailing tariffs against the

¹⁰⁹ It would likely be difficult to convince an impartial judge to make this classification.

¹¹⁰ See SANFORD, *supra* note 89, at 1–3.

¹¹¹ *Id.* at 5–9.

¹¹² *Id.* at 6, 8.

¹¹³ See JUDITH GOLDSTEIN, *THE EVOLUTION OF THE TRADE REGIME: POLITICS, LAW, AND ECONOMICS OF THE GATT AND WTO* 56 (2008).

¹¹⁴ See *id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ HUFBAUER & SCHOTT, *supra* note 55, at 6; see Irwin, *supra* note 5, at 30; Mattoo & Subramanian, *supra* note 18, at 13.

¹¹⁸ GAGNON, *supra* note 8, at 8 (discussing the scholars' proposals).

offending country.¹¹⁹ One roadblock to such a procedure is that it would require changing the WTO agreements, which require consensus,¹²⁰ and the IMF articles, which require approval from eighty-five percent of voting shares.¹²¹ Additionally, countries that are manipulating currency (and benefitting) might be hesitant to agree to such changes.

Scholars have floated various solutions for this problem. Some have suggested a “plurilateral” approach, by which countries supporting restrictions on currency manipulation form their own agreement outside the boundaries of the WTO.¹²² Such an agreement might exert peer pressure on the worst offenders, gradually winning support from countries like China and the United States.¹²³ Additionally, it might be possible to have bargains “in which restrictions on currency manipulation will be balanced by other changes desired by the countries that believe currency manipulation is an acceptable trade practice.”¹²⁴

However, achieving such a consensus might be impossible—or even undesirable. One scholar notes that “few countries want the IMF to have the kinds of power over their economies that it would need to compel violators [to] comply with its rules.”¹²⁵ If the IMF were able to force China to stop manipulating its currency, it would have the power to regulate the euro or the dollar as well.¹²⁶ As the United States is arguably a currency manipulator itself,¹²⁷ empowering the IMF in such a way would necessarily and severely handicap the sovereignty of the Federal Reserve.

Lastly, the leadership in the IMF and the WTO would have to consent to such drastic overhaul. Large organizations usually hesitate to make great changes without an imminent need. Therefore, the IMF and WTO are unlikely to simultaneously relinquish their sovereignty to address a practice in which the majority of their members engage.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See IMF Articles of Agreement, *supra* note 41, art. 28(a).

¹²² See HUFBAUER & SCHOTT, *supra* note 55, at 6.

¹²³ *Id.* at 22.

¹²⁴ SANFORD, *supra* note 89, at 14–38.

¹²⁵ *Id.* at 5.

¹²⁶ *Id.*

¹²⁷ See *id.* at 1 (explaining that the United States devalued its dollar twice in 1971 without consulting the IMF).

D. Summary

Two international organizations with large memberships, the WTO and the IMF, regulate interstate trade and monetary interaction. The IMF seemingly has a stronger jurisdictional basis for policing exchange rates but lacks meaningful enforcement capabilities. The WTO has some enforcement capability but has jurisdictional hurdles. Cooperation between the two organizations would solve these major issues but is unlikely for a number of reasons. Perhaps the best way to address the issue on an international scale would be to form a new international organization, a possibility discussed in Part V. While probably not the best or most effective way, the easiest and most *efficient* way to address the issue is likely a unilateral action, discussed in Part IV.

IV. UNILATERAL ACTIONS

In the absence of an international remedy, the United States could act unilaterally in the domestic sphere. The United States could either enact new legislation to try to combat the problem, or utilize existing legislation. The United States remains the world's economic superpower.¹²⁸ In theory, it could lean on a smaller country and force the smaller country to stop any competitive currency devaluation that was harming manufacturers in the United States. China is a different story. The United States is dependent upon China for both imports and exports,¹²⁹ and any serious disruptions of their relationship could prove disastrous. Nevertheless, politicians regularly call for unilateral action by the United States with no regard to the international community.¹³⁰ A few of the possibilities for action are presented below.

¹²⁸ See Andrew Bergmann, *World's Largest Economies*, CNN, http://money.cnn.com/news/economy/world_economies_gdp/ (last visited Jan. 5, 2014). In 2012, the GDP of the United States was \$15.7 trillion, almost double the second leading economy in China, with a GDP of \$8.3 trillion. *Id.*

¹²⁹ See *Foreign Trade*, U.S. CENSUS BUREAU, <http://www.census.gov/foreign-trade/statistics/highlights/top/top1212yr.html> (last updated Aug. 6, 2013). China buys 7.1 percent of U.S. exports (third most by a single country), and provides 18.7 percent of its imports (most by a single country). *Id.* Disruption of such a relationship would take away a large market for goods produced in the United States, and deny U.S. citizens a great number of the goods and prices they are accustomed to. See Mary Amiti & Mark Choi, *Consumer Goods from China Are Getting More Expensive*, LIBERTY STREET ECON. (Sept. 7, 2011), <http://libertystreeteconomics.newyorkfed.org/2011/09/consumer-goods-from-china-are-getting-more-expensive.html>

¹³⁰ See Hatch Press Release, *supra* note 52; see also O'Brien, *supra* note 1.

A. *Omnibus Act*

One piece of existing legislation that the United States could employ to address Chinese currency manipulation is the Omnibus Foreign Trade and Competitive Act of 1988 (Omnibus Act).¹³¹ If the Secretary of the Treasury finds a country to be manipulating its currency, the Omnibus Act provides that:

[S]uch manipulation is occurring with respect to countries that (1) have material global current account surpluses; and (2) have significant bilateral trade surpluses with the United States, the Secretary of the Treasury shall take action to initiate negotiations with such foreign countries on an expedited basis, in the International Monetary Fund or bilaterally, for the purpose of ensuring that such countries regularly and promptly adjust the rate of exchange between their currencies and the United States dollar to permit effective balance of payments adjustments and to eliminate the unfair advantage.¹³²

The language above indicates that upon a finding of currency manipulation, the Secretary of the Treasury has the authority either to initiate negotiations directly with the offending country or to bring a complaint to the IMF.¹³³ As discussed earlier, bringing a complaint to the IMF is unlikely to be effective. Similarly, a country that is benefiting from currency manipulation is unlikely to freely negotiate away its sovereignty over its own currency, rendering bilateral negotiations unhelpful.¹³⁴ This is especially true in the case of China-United States relations, as there is an extreme incentive to cheat.¹³⁵

In a bilateral agreement not to manipulate currency, neither party has much incentive to obey the agreement.¹³⁶ The short-term benefits of cheating are much more recognizable than whatever negative consequences might follow.¹³⁷ Additionally, parties to such an agreement are unlikely to write in any legitimate enforcement mechanisms.¹³⁸ Perhaps parties could agree to have

¹³¹ Omnibus Foreign Trade and Competitive Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (codified as amended in scattered titles and sections of the U.S.C.) [Omnibus Act].

¹³² 22 U.S.C. § 5304. (2012).

¹³³ C. RANDALL HENNING, ACCOUNTABILITY AND OVERSIGHT OF US EXCHANGE RATE POLICY 20 (2008).

¹³⁴ See SANFORD, *supra* note 89, at 2.

¹³⁵ See Palmer, *supra* note 10. When such high volumes are being traded, unexpected currency devaluation could cost an unsuspecting trade partner dearly. *See id.* As soon as the victim nation detects the manipulation, it can respond in kind, but the short-term harm may be significant, both to the victim's economy and to the trade relationship's future. *See id.*

¹³⁶ See SANFORD, *supra* note 89, at 6.

¹³⁷ *See id.*

¹³⁸ *See id.* at 5.

any disputes arbitrated by a third party, but sovereignty concerns likely prevent any such concessions by either party to a dispute.¹³⁹ Thus, the only likely agreement possible between two countries would be a sort of gentleman's agreement with more political benefit than actual substance.

Thus, since the Omnibus Act seemingly only authorizes the making of ineffective IMF complaints or the initiation of ineffective bilateral negotiations, relief must be sought elsewhere. One solution that has not only been discussed, but attempted, is the imposition of tariffs.

B. Tariffs

The imposition of tariffs is of questionable legality.¹⁴⁰ However, tariffs are possibly justifiable countermeasures in response to currency manipulation by other nations.¹⁴¹ Tariffs come in many varieties, but they fall into a few major categories. The broadest type of tariff would be to charge a tax on all imports, no matter the type or source of the goods.¹⁴² Tariffs like this would likely help domestic manufacturing in the short term,¹⁴³ but would probably result in a reduced standard of living domestically in the long term.¹⁴⁴ Additionally, tariffs are generally seen as something to avoid,¹⁴⁵ as they create inefficiencies

¹³⁹ See *id.* at 6.

¹⁴⁰ GATT, *supra* note 35, art. VIII, sec. 3; see also Jennifer Freedman, *WTO Rules Chinese Tariffs on U.S. Steel Products Are Illegal*, BLOOMBERG (June 15, 2012, 3:10 PM), <http://www.bloomberg.com/news/2012-06-15/wto-rules-chinese-tariffs-on-u-s-steel-products-are-illegal.html>.

¹⁴¹ See Robert E. Scott, *Currency Manipulation- History Shows That Sanctions Are Needed*, ECON. POLICY INST. 1 (Apr. 28, 2010), <http://www.epi.org/files/page/-/pm164/pm164.pdf>; see also HENNING, *supra* note 133, at 91–92. Countermeasures involve a country responding to a perceived illegal act by another country. *Id.* at 91. Countermeasures are themselves illegal acts, but the illegality is precluded because it is a response to an initial wrongful act. See *id.* at 92. Countermeasures must also be proportional. See *id.* at 92–93.

¹⁴² J. Bradford De Long, *Trade Policy and America's Standard of Living: an Historical Perspective 3* (Sept. 1995) (unpublished manuscript), available at <http://dss.ucsd.edu/~jlbroz/Courses/POLI142B/syllabus/delong.pdf>.

¹⁴³ Tariffs add to the cost of imported goods, making domestically produced goods (unaffected by the tariff) more competitive. Staiger & Sykes, *supra* note 86, at 597–98.

¹⁴⁴ See De Long, *supra* note 145, at 5. In the short run there would be decreased unemployment and gains in the manufacturing sector. See generally Per-Olov Johansson & Karl-Gustaf Löfgren, *The Effects of Tariffs and Real Wages on Employment in a Barro-Grossman Model of an Open Economy*, 82 SCANDINAVIAN J. ECON. 167 (1980). However, there would be negative tradeoffs, as the cheap goods that citizens had been enjoying would either be more expensive or unavailable altogether, resulting in a loss of utility to consumers. See De Long, *supra*, at 3, 5.

¹⁴⁵ See Staiger & Sykes, *supra* note 86, at 602. Recent WTO talks have included discussion of tariff reduction. "One result of the Uruguay Round was countries' commitments to cut tariffs and to 'bind' their customs duty rates to levels which are difficult to raise." *Tariffs*, WORLD TRADE ORG., http://www.wto.org/english/tratop_e/tariffs_e/tariffs_e.htm (last visited Sept. 22, 2013).

in the global market.¹⁴⁶ For a country that is a net importer like the United States,¹⁴⁷ such universal tariffs are especially dangerous as domestic demand is higher than domestic supply, which could bring real risks of inflation¹⁴⁸ and, accordingly, unhappy citizens.

Similar, but a little narrower in scope, would be a tariff on all goods from a certain country. Such sanctions have been used successfully as punishment for certain violations, but carry the same risks as the universal import tariffs discussed above. This is especially true in the context of the United States imposing an import tariff on China, a country that accounts for a very large portion of its imports.¹⁴⁹ Additionally, a country-specific tariff is likely the quickest way to ignite retaliations and possibly an all-out trade war.

Much narrower in scope, and accordingly less risky, would be a sector-specific tariff only targeting goods in a particular industry. The United States has enacted such tariffs already as a response to devalued imports from China.¹⁵⁰ For instance, in recent years the Commerce Department has put various restrictions on imports of goods.¹⁵¹ Most of these restrictions were minor, and China “grumbled” but did little in response.¹⁵² This inaction is probably due to the fact that the United States buys roughly 4.5 times as many goods from China as China buys from the United States.¹⁵³

However, China has not always sat idly in the face of such tariffs. Recently, China retaliated in response to a particularly protectionist action by the United States.¹⁵⁴ In 2009, the United States instituted a tariff of thirty-five percent on

¹⁴⁶ See Staiger & Sykes, *supra* note 88, at 597.

¹⁴⁷ See Press Release, U.S. Census Bureau, U.S. Int'l Trade in Goods & Servs. (Sept. 4, 2013), http://www.census.gov/foreign-trade/Press-Release/current_press_release/ft900.pdf.

¹⁴⁸ See generally Beckington & Amon, *supra* note 17 (discussing the detriments of high tariffs).

¹⁴⁹ Derek Scissors, *Free Markets and National Defense: U.S. Import Dependence on China*, HERITAGE FOUND. (Sept. 21, 2010), <http://www.heritage.org/research/reports/2010/09/free-markets-and-national-defense-us-import-dependence-on-china>.

¹⁵⁰ See Jonathan Weisman, *U.S. to Impose Tariff on Chinese Tires*, WALL. ST. J. (Sept. 13, 2009) <http://online.wsj.com/article/SB125271824237605479.html> (discussing sector-specific import tariffs).

¹⁵¹ Edmund L. Andrews & Edward Wong, *China Denounces New Tire Tariffs*, N.Y. TIMES, Sept. 13, 2009, at A1.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ See *id.* (stating that China announced that it would investigate certain U.S. imports to determine whether the important were “being subsidized or ‘dumped’ below the cost in the Chinese market”).

all Chinese passenger and light truck tire imports.¹⁵⁵ Even assuming that this tariff was legal under international law, at least one major issue remains; it seems to have done more harm than good. One 2011 study has estimated that the cost to Americans from higher prices resulting from safeguard tariffs on Chinese tires was about \$1.1 billion.¹⁵⁶ Presumably, this loss of purchasing power caused an indirect loss of jobs in the retail sector.¹⁵⁷ Additionally, the tire tariff inspired a retaliatory tariff by China on U.S. poultry exports, resulting in a ninety percent decrease of exports from the United States to China.¹⁵⁸ Thus, in attempting to stop the perceived harm from underpriced tire imports, the United States possibly inflicted more harm upon itself than was inflicted by China's imports.

Thus, tariffs are probably not an adequate solution for addressing Chinese currency manipulation. Universal tariffs would likely cause more harm than good, as the United States is dependent upon imports. Country-specific tariffs might be effective, but carry significant risks of retaliation and trade-wars. Industry-specific tariffs carry fewer risks but operate on such a smaller scale that their ability to combat the problem is limited.

C. *New Legislation*

Currency manipulation has become a popular political talking point. Some politicians in the United States have begun to grumble publicly about the issue. For instance, in a letter to the Secretary of the Treasury, Utah Senator Orrin Hatch wrote:

I am writing to express my disappointment that the Obama administration has once again failed to meet its statutory obligations under the Omnibus Trade and Competitiveness Act of 1988. As you know, that law requires the Treasury to 'consider whether countries

¹⁵⁵ *Guidance: Effective September 26, 35% Ad Valorem Duty on Chinese Tires for Passenger Cars, Light Trucks*, U.S. CUSTOMS & BORDER PATROL (Sept. 23, 2009), http://www.cbp.gov/xp/cgov/trade/trade_programs/entry_summary/laws/advalorem_chinese_tires.xml; see also Weisman, *supra* note 151.

Creating jobs in the American manufacturing sector and ensuring that China plays fair on the international market are both worthy policy goals. Trade protection targeted at selected imports, however, is a costly way of going about these tasks. Admittedly, targeted protection can be highly popular with US trade unions and individual firms.

GARY CLYDE HUFBAUER & SEAN LOWRY, PETERSON INST. FOR INT'L ECON., POLICY BRIEF NO. PB12-9, US TIRE TARIFFS: SAVING FEW JOBS AT HIGH COST 14 (2012)

¹⁵⁶ HUFBAUER & LOWRY, *supra* note 155, at 1.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 3.

manipulate the rate of exchange between their currency and the U.S. dollar for purpose of preventing effective balance of payment adjustments or gaining unfair competitive advantage in international trade' and to report these findings annually by October 15th.¹⁵⁹

Hatch is technically correct in his statement, even if his statement does not address that such findings are meaningless in the absence of a means to address the problem. Regardless, his statement is significant because it shows that politicians are at least thinking about addressing the issue domestically.

In a response to this perceived inability or lack of desire to institute counter-measures against currency manipulation, politicians have fashioned proposed bills and amendments, such as the Currency Reform for Fair Trade Act, a bill that never made it to a vote.¹⁶⁰ A 2010 bill proposed by Senator Charles Schumer would have either repealed the relevant provisions of the 1988 Omnibus Act or superseded the Act, and would have reduced much of the procedure that blocks the United States from unilaterally acting against Chinese currency manipulation.¹⁶¹ None of these bills have passed; instead, most simply died in committee.¹⁶²

The saying “the squeaky wheel gets the grease” applies to politics. The people that complain the loudest about their problems are usually the ones who are tended to by politicians. Also, issues perceived to be urgent receive attention more quickly. The people most likely to complain about Chinese currency manipulation are workers (and worker unions) in industries particularly harmed by the practice.¹⁶³ Thus, it is far more likely that any politician, moved to respond to this problem, simply proposes a sector-specific fix, instead of a broader response to the overall practice.¹⁶⁴

This fix, even if it gets through the gridlock in Congress, would likely not be broad enough to combat the overall issue. Additionally, it seems that there are always issues screaming louder for attention than a complex issue like

¹⁵⁹ Hatch Press Release, *supra* note 51.

¹⁶⁰ See S. 328: *Currency Reform for Fair Trade Act & H.R. 639: Currency Reform for Fair Trade Act*, ECON. CRISIS, <http://economyincrisis.org/s-328-currency-reform-for-fair-trade-act-h-r-639-currency-reform-for-fair-trade-act>.

¹⁶¹ Currency Exchange Rate Oversight Reform Act of 2010 S. 3134, 11th Cong. (2010).

¹⁶² Bill Summary & Status: 11th Congress (2009–2010): S.3134, LIBRARY OF CONGRESS: THOMAS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:H.R.3200>: (last visited Jan. 5, 2014).

¹⁶³ See HUFBAUER & LOWRY, *supra* note 155, at 1–2 (discussing how the tire industry successfully lobbied for the tire tariff in 2009).

¹⁶⁴ See Derek Scissors, *U.S.- China Trade: Do's and Don'ts for Congress*, HERITAGE FOUND. (July 20, 2009), <http://www.heritage.org/research/reports/2009/07/us-china-trade-dos-and-donts-for-congress>.

currency manipulation that people struggle to understand.¹⁶⁵ Whether due to a budget crisis, debt ceiling crisis, or social equality crisis, currency manipulation would probably get bumped to the bottom of the agenda.

D. Import Quotas

If the United States were convinced that there were no acceptable resolutions possible through international forums, a much more drastic solution is available. The United States could theoretically institute a strict import-quota on Chinese goods (or a tariff-rate quota), whereby only a very limited number of underpriced exports were allowed to come in.¹⁶⁶ Such a solution would not only deprive United States citizens of imported goods that they are accustomed to and lower their standard of living, but it would, like any other unilateral actions, likely elicit retaliation from China or even a trade war. Most significantly, however, import quotas are prohibited by GATT. Article XIII of GATT provides that:

No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.¹⁶⁷

Thus, to remain in compliance with the WTO, the United States would need to erect the same restrictions against all other member countries that it instituted against China. An import quota or restriction would likely cause more harm than good, and is not an adequate solution.

E. Conclusion

The United States should not unilaterally implement sanctions, duties, or tariffs, for a number of reasons. First, such actions are arguably illegal under

¹⁶⁵ See, e.g., Jeffrey M. Jones, *Americans Want Congress, Obama to Tackle Economic Issues*, GALLUP POL. (Jan. 14, 2011), <http://www.gallup.com/poll/145592/americans-congress-obama-tackle-economic-issues.aspx> (discussing the most important issues that American citizens want their Congressional representatives to address; foreign currency manipulation is not among these issues).

¹⁶⁶ See generally Working Party on the Accession of China, *Report of the Working Party on the Accession of China*, WT/ACC/CHN/49, 14 (Oct. 1, 2001) (discussing the option and legality of tariff-rate quotas); *Absolute vs. Tariff Rate Quotas*, U.S. CUSTOMS & BORDER PROTECTION, https://help.cbp.gov/app/answers/detail/a_id/9/~/-/absolute-vs.-tariff-rate-quotas (last updated July 25, 2013).

¹⁶⁷ GATT, *supra* note 35, art. XIII.

international law.¹⁶⁸ Second, the United States also manipulates its currency,¹⁶⁹ so the lack of clean hands might cause other nations to react negatively. Third, any corrective actions create risk of retaliation,¹⁷⁰ and such risks are spread out and likely minimized in the face of a coalition. Fourth, the effectiveness of corrective actions is uncertain, but a coalition would likely be more effective than unilateral actions. Fifth, an international consensus prohibiting currency manipulation would present more benefit and less risk than attempting to correct every new instance that arises.

V. INTERNATIONAL COALITION

This article proposes that if the United States wants to fight currency manipulation, it should only be as a member of a coalition. Instead of spearheading the drive for sanctions or tariffs, the United States should spearhead the creation of an international currency-monitoring agency (hypothetically called the “ICMA”). The United States has acted as sole international policeman for decades, and the costs have started to catch up in the form of trillions of dollars of national debt.¹⁷¹ The international community has recently proven that it can be effective and produce favorable results even when the United States takes less of a leadership role and instead relies on the strength of the group.¹⁷²

A. *What Would It Take to Form Such An Agency?*

The best possible scenario for combating currency manipulation would be a scenario similar to the post-World War II period. Having seen the destruction caused by competitive currency manipulation, the international community realized the need for a prohibition of such tactics.¹⁷³ If the international community today could reach the same conclusion, the development of an

¹⁶⁸ Staiger & Sykes, *supra* note 88, at 606–16.

¹⁶⁹ Paul R. La Monica, *China Isn't the Only Currency 'Manipulator'*, CNN MONEY (Oct. 6, 2011, 1:24 PM), <http://money.cnn.com/2011/10/06/news/economy/thebuzz/index.htm>.

¹⁷⁰ *See id.*

¹⁷¹ In 2011, the cost of just the wars after September 11, 2001, had reached at least \$4 trillion. *Estimated Cost of Post-9/11 Wars: 225,000 Lives, up to \$4 Trillion*, BROWN U. (June 29, 2011), <http://news.brown.edu/pres/releases/2011/06/warcosts>.

¹⁷² Although there are obvious differences between military action and economic actions, the coalition against Libya during the Arab Spring saw the United States take a more passive role and still produced the desired result, with much of the cost being assumed by other states, instead of predominantly by the United States (as with Iraq). *See* S.C. Res. 1973, U.N. Doc. S/RES/1973 (Mar. 17, 2011) (approving humanitarian intervention in Libya).

¹⁷³ Beckington & Amon, *supra* note 17, at 218.

adequate policing agency might be possible. Under the current regime, a nation has to bring a complaint¹⁷⁴ or take unilateral corrective actions whenever it has suffered domestically.¹⁷⁵ Self-interested actions inherently have a higher standard to meet in seeking legitimacy.

On the other hand, if currency manipulation was an aberration instead of the norm, and the international community coalesced around the need for stable exchange rates, any corrective actions would have a great deal of legitimacy. Refusing to cooperate with judgments or guidelines established by the ICMA would bring at least two negative consequences: 1) heavy fines, penalties, tariffs, etc., or 2) delegitimizing the ICMA and ensuring that neighboring countries will retaliate with their own currency devaluation, a sort of economic mutually assured destruction. Establishment of an agency like the ICMA would take a global consensus on the issue of currency manipulation.

B. Outlook

Unfortunately, recent discussion about currency manipulation has not been promising.¹⁷⁶ Regulation of currency manipulation may have a serious problem: even if every country agreed that currency manipulation is harmful, countries still have an incentive to cheat and to engage in their own currency manipulation.¹⁷⁷ From a strictly economic perspective, countries will not make a policy change unless they can see potential benefits from the change. Any country that unilaterally decides to stop devaluing their currency would almost immediately see the value of its currency rise, its current account deficit increase, and its export levels harmed.¹⁷⁸ Especially if the leadership of such a country is popularly elected, such a unilateral change is extremely unlikely.

Similarly, it would be exceedingly difficult to get a large number of countries to agree to such an arrangement. The only countries that would be likely to agree to a prohibition on currency manipulation would be those countries who are not engaging in currency manipulation, would not benefit

¹⁷⁴ See SANFORD, *supra* note 89, at 2.

¹⁷⁵ See *supra* notes 140–58, and accompanying text.

¹⁷⁶ See, e.g., Jennifer Ryan & Scott Hamilton, *King Sees Risk of More Currency Management as Imbalances Persist*, BLOOMBERG (Dec. 10, 2012, 7:01 PM), <http://www.bloomberg.com/news/2012-12-10/king-sees-risk-of-more-exchange-rate-management-amid-imbalances.html>.

¹⁷⁷ See Nicholas Hastings, *G-20 Brings Currency War One Step Closer*, WALL ST. J. (Feb. 19, 2013), <http://online.wsj.com/article/SB10001424127887323495104578311681662780890.html>.

¹⁷⁸ See Annalyn Censky, *What is Currency Manipulation, Anyway?*, CNN (Nov. 11, 2010), http://money.cnn.com/2010/11/10/news/economy/what_is_currency_manipulation/index.htm#. Although, these are just general assumptions, plenty vulnerable to criticism.

from such manipulation, and are unafraid of political fallout from ceding sovereignty over their currencies. This difficulty has proven formidable in recent days.

Mervyn King, the Governor of the Bank of England, has actually cautioned that countries may begin implementing currency management even more in the coming years.¹⁷⁹ King stated in an interview that his “concern is that in 2013 we’ll see the growth of actively managed exchange rates as an alternative to the use of domestic monetary policy.”¹⁸⁰ In a recent meeting of the Group of Twenty, which includes industrialized and developing countries (G-20), Japan expected to be chastised for its recent monetary policy.¹⁸¹ Japan has seen its currency drop to a three-year low relative to the dollar.¹⁸² Instead of criticizing Japan, however, the G-20 “decided to side step the issue given the number of other countries that continue to pursue policies that will ultimately weaken their currencies too.”¹⁸³

C. Conclusion

The stable exchange rates in the three decades from 1940 to 1970 only arose because of the shock to the system caused by the Great Depression.¹⁸⁴ Countries realized that short-term self-interest actually caused long-term destruction, both to themselves and to the international community.¹⁸⁵ It is unlikely that lessons have been learned, and popularly elected legislators and autocratic dictators will look to the lessons of the past seven decades. It is far more likely countries will continue to use exchange rates in dangerous ways until they are forced to stop. However, of all the possible solutions to competitive currency manipulation, forming a new international agency combines the highest effectiveness with the least risk.

VI. OTHER CONCERNS

In the event that no corrective actions prove possible or adequate, perhaps all is not lost. Inaction may actually prove better than action. As the appreciation of the RMB is not certain to provide much meaningful benefit in

¹⁷⁹ Ryan & Hamilton, *supra* note 176.

¹⁸⁰ *Id.*

¹⁸¹ Hastings, *supra* note 177.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ See Beckington & Amon, *supra* note 17, at 218.

¹⁸⁵ *Id.*

the short-term, perhaps the best policy would be to avoid corrective actions that may result in repercussions. As Secretary of the Treasury Timothy Geithner told Congress in 2010, “Renminbi appreciation will not erase our global trade deficit, nor our deficit with China. Our bilateral trade deficit is likely to persist.”¹⁸⁶

Geithner’s acknowledgement that RMB appreciation will not entirely erase current account deficits might be incomplete; such appreciation might have no impact at all, or even drive the current account deficit even higher.¹⁸⁷ An appreciating RMB could actually cause foreign investment in China to drop, possibly causing China’s surplus to grow even more.¹⁸⁸

A. *Would Appreciation of the RMB Matter?*

A study done by the Organization for Economic Co-Operation and Development (OECD) confirmed that the relationship between exchange rates and trade balances was not a simple cause and effect, and that the “the main driver of trade flows is found to be income—which is specified as domestic income . . . Increases in income in China, in particular, have implied large changes in trade with its partners.”¹⁸⁹ Between 2007 and 2011, the IMF estimated that a surge in domestic investment in China played as large a role as real appreciation of the RMB did in the reduction of China’s current account surplus.¹⁹⁰

Thus, it is far from certain that an instantaneous appreciation of the RMB to “natural levels” would even provide much benefit for the weakened economies of the United States or Europe.¹⁹¹ Even with generous assumptions, numbers from a recent OECD report show that RMB appreciation would not “fix” our

¹⁸⁶ Press Release, Testimony, Treasury Secretary Timothy F. Geithner Before the Senate Banking, Housing, and Urban Affairs and House Ways and Means Committees (Sept. 16, 2010), <http://www.treasury.gov/press-center/press-releases/Pages/tg858.aspx>. He did, however add the following: “But Chinese exchange rate adjustment is critical to removing a major distortion in the global economy, to rebalancing China’s economy, and to ensuring strong, sustainable, and balanced global growth.” *Id.*

¹⁸⁷ Ronald McKinnon, *China’s Exchange Rate Policy and Fiscal Expansion*, STANFORD INST. ECON. POL’Y RES. (Mar. 2009), <http://siepr.stanford.edu/publicationsprofile/1901>; Huchet-Bourdon & Korinek, *supra* note 19, at 21.

¹⁸⁸ See McKinnon, *supra* note 187.

¹⁸⁹ Huchet-Bourdon & Korinek, *supra* note 19, at 21.

¹⁹⁰ Alan Beattie & Alice Ross, *International Trade: A Fragile Armistice*, FIN. TIMES (Oct. 3, 2012), <http://www.ft.com/intl/cms/s/0/49dd4646-0d47-11e2-97a1-00144feabdc0.html#axzz2BOZVvmgL>.

¹⁹¹ See Huchet-Bourdon & Korinek, *supra* note 19, at 4.

deficit problems.¹⁹² The report found that even one of the more generous models only produced an improvement of the 2008 U.S. agricultural trade surplus of \$4.7 billion and a decrease of the US manufacturing deficit of \$30.8 billion.¹⁹³ These numbers might seem large but would only represent a decrease of the bilateral deficit by thirteen percent, from \$270 billion to \$235 billion.¹⁹⁴

Even more importantly, these results were produced under one of the models most generous to the basic assumptions about the link between currency rates and trade.¹⁹⁵ Contradictory empirical models produced far more minimal (or even reverse!) results.¹⁹⁶ Thus, it is far from certain that “fixing” the problem of Chinese currency manipulation would even help reduce the bilateral deficit with China.

It is important to realize however, that while policing one country’s currency manipulation may or may not have any visible benefits, a stable exchange-rate climate is highly desirable. Reduced risk of “currency wars” and higher predictability allow for higher rates of investor confidence, a necessary factor in economic growth.¹⁹⁷

B. Risk of Retaliation

While there is the potential that cracking down on currency manipulation could either prevent manufacturing jobs from leaving the United States, or even bring back jobs that have been lost, it could also result in only marginal significance and could potentially cost the United States dearly. For instance, analysis of counter-measures like the tire tariff has shown that such measures affected the U.S. job market and caused China to retaliate against the United States poultry industry.¹⁹⁸

This type of tit-for-tat retaliation could bloom into a full-scale trade war, which would benefit neither country, especially in the setting of such global economic suffering.¹⁹⁹ Also up for debate is whether “normalized” exchange

¹⁹² *See id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *See id.* at 7, 8, 14, 15.

¹⁹⁶ *See id.* at 17.

¹⁹⁷ *Id.* at 6.

¹⁹⁸ Hufbauer & Lowry, *supra* note 155, at 1.

¹⁹⁹ Bacchus, *supra* note 1.

rates could even marginally help the United States recover manufacturing jobs lost to China, or whether it is a problem due mostly to differences in cost of labor, likely to persist as developing countries now have nearly unlimited access to the global economy.²⁰⁰ Additionally, while employment obviously needs to rise in the United States, the jobs that could be reclaimed from China are likely of the very low income, low quality of life variety.

C. Risk of Ostracizing China

Putting additional pressure on China through the WTO could also result in its withdrawal from the WTO altogether, another extremely undesirable result. Losing China would hurt the legitimacy of the WTO, as it would be losing one of the largest players in the global economy.²⁰¹ It would also harm the countries that have benefitted from increased standard of living due to less expensive imports.

China has lost multiple cases in the WTO in recent years,²⁰² and its leadership may be faced with a discussion on whether the benefits of free trade outweigh the changes it must make to conform to the WTO's rules. It is possible that adding to a string of defeats for China in international disputes might turn the perception of WTO membership from a positive one to a negative one.²⁰³ Continually being on the losing end of disputes leads to the perception that the system is unfair and could cause China to question its WTO membership.

Additionally, some commentators have suggested that China might have no intention of abiding by WTO rulings, hoping to maintain the status quo by playing procedural games.²⁰⁴ Giving lip service to obeying judgments, while

²⁰⁰ Huchet-Bourdon & Korinek, *supra* note 19, at 4, 20.

²⁰¹ Ashvin Ahuja et al., *An End to China's Imbalances?* (Int'l Monetary Fund, Working Paper No. WP/12/100, 2012), available at <http://www.imf.org/external/pubs/ft/wp/2012/wp12100.pdf>.

²⁰² See, e.g., *Dispute Settlement, China – Measures Related to the Exportation of Various Raw Materials*, WTO, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds394_e.htm (last visited Oct. 9, 2013); see also Kanaga Raja, *WTO Upholds Ruling Against China in Raw Materials Dispute*, THIRD WORLD NETWORK (Feb. 1, 2012), <http://www.twinside.org.sg/title2/wto.info/2012/twninfo120206.htm>.

²⁰³ *Time to Reassess Unfair WTO Entry Terms*, GLOBAL TIMES (Feb. 1, 2012, 12:48 AM), <http://www.globaltimes.cn/NEWS/tabid/99/ID/694054/Time-to-reassess-unfair-WTO-entry-terms.aspx> (“The latest WTO ruling has highlighted the urgency of amending some of the unfair terms of The Protocol of China’s Entry into the WTO. It is also necessary to express China’s dissatisfaction and garner public support for the revision.”).

²⁰⁴ Dan Harris, *Another China WTO Loss. Another Nail in The Coffin of World Trade*, CHINA L. BLOG (Feb. 6, 2012), http://www.chinalawblog.com/2012/02/another_china_wto_loss_another_nail_in_the_coffin_of_world_trade.html.

having no intentions to actually act on those judgments, would allow China to “free-ride” and receive the benefits of free trade without any sacrifice.²⁰⁵ In such a scenario, a WTO complaint might not have any effect.

D. Mootness

The discussions about whether China’s currency manipulation derives from a benign purpose and what enforcement mechanisms should be employed seemingly have more questions than answers. Chinese currency manipulation may also be a moot point. In October 2012, the RMB had appreciated two percent against the dollar for three consecutive months, hitting a nineteen-year high.²⁰⁶ Attempts to explain the RMB’s appreciation against the dollar vary.²⁰⁷ Chinese officials might be letting the RMB appreciate to blunt inflation possibly resulting from the U.S. Federal Reserve’s quantitative easing policies, or they might be attempting to maintain stability in times of economic turmoil.²⁰⁸

Whatever the reasons, however, the fact remains: China appears, for the time being, to not be a currency manipulator. Paul Krugman notes that political posturing about Chinese currency manipulation is outdated, writing that “this is an odd time to be making confrontation over China’s currency a centerpiece of your economic policy—unless, of course, it’s just bluster aimed at making voters think you’re tough.”²⁰⁹

However, even if China has currently stopped manipulating its currency, it may start again.²¹⁰ Additionally, other nations are currently engaging in competitive currency devaluation, and the same legal frameworks apply to countries like Hungary and Japan.²¹¹ States in the European Union are presumably under another level of regulation by the European Central Bank, but the Great Recession has seen currency manipulation at unprecedented levels in Europe too.²¹²

²⁰⁵ *Id.*

²⁰⁶ Simon Rabinovitch, *Renminbi Hits 19-year High Against Dollar*, FIN. TIMES (Oct. 12, 2012), <http://www.ft.com/intl/cms/s/0/db89f18e-1422-11e2-8260-00144feabdc0.html#axzz2BOZVvmgL>.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ Paul Krugman, *An Issue Whose Time Has Passed*, N.Y. TIMES: THE CONSCIENCE OF A LIBERAL (Oct. 22, 2012, 12:58 PM), <http://krugman.blogs.nytimes.com/2012/10/22/an-issue-whose-time-has-passed>.

²¹⁰ O’Brien, *supra* note 1.

²¹¹ Michael Steen, *Weidmann Warns of Currency War Risk*, FIN. TIMES (Jan. 21, 2013, 6:27 PM) <http://www.ft.com/intl/cms/s/0/d1d81962-63e7-11e2-b92c-00144feab49a.html#axzz2Li5qRqPr>.

²¹² See GAGNON, *supra* note 8, at 7.

E. *Changing Politics*

There are concerns and counter-arguments that could change the scenario. The Chinese government could undergo a radical policy shift in the event that the makeup of the Standing Committee changes in 2012.²¹³ A conservative takeover could result in a change in policies as fundamental as the scale and scope of governmental control over the economy.²¹⁴ A governmental shift could either attract new waves of investment in China, or it could drive investors away in droves.

The existing instability in China's economy²¹⁵ could also play a major role. If the Chinese economy falters, it would likely cause foreign investors and capital to fly out of the country, reducing the current account surplus.²¹⁶ On the contrary, should the Chinese manufacturing industry continue to grow and the European or American crisis worsen, China might become even more of a safe haven for investors' money.²¹⁷

The flight of manufacturing jobs from China to other neighboring countries with low labor costs could also affect the situation. China could be hit by the "middle income trap," with growth being driven by higher productivity, rather than by resources and cheap labor.²¹⁸ Manufacturing wages in China have risen by about sixteen percent per year over the last decade, outstripping productivity.²¹⁹ China's current path appears unsustainable, and the problem of underpriced exports may yet fix itself.

F. *Continuing Significance of the Issue*

This Comment should not be read as stating that trade imbalances are trivial or inconsequential. The risk persists that continued currency devaluation could help China increase its market shares in manufacturing industries even

²¹³ Ambrose Evans-Pritchard, *China's Economic Destiny in Doubt After Leadership Shock*, TELEGRAPH (Nov. 4, 2012, 5:00 PM), http://www.telegraph.co.uk/finance/comment/ambroseevans_pritchard/9654300/Chinas-economic-destiny-in-doubt-after-leadership-shock.html.

²¹⁴ See generally *id.*

²¹⁵ Evans-Pritchard, *supra* note 213.

²¹⁶ See generally Hutchet-Bourdon & Korinek, *supra* note 19, at 6.

²¹⁷ See *id.*

²¹⁸ *Running Out of Steam*, ECONOMIST (Dec. 22, 2011, 12:04 AM) <http://www.economist.com/blogs/dailychart/2011/12/asias-middle-income-trap> ("As wages rise manufacturers often find themselves unable to compete in export markets with lower-cost producers elsewhere; yet they still find themselves behind the advanced economies in higher-value products.")

²¹⁹ Evans-Pritchard, *supra* note 213.

more, which would in turn increase its pricing power and threaten jobs not just in the United States, but across the globe. Additionally, a reduction of the trade deficit may be helpful (or even necessary) for the United States to see a rapid recovery domestically.²²⁰

Most importantly, though, a “currency war” could prove to be disastrous in an already fragile global economy. The President of Germany’s Bundesbank, Jens Weidmann, recently cautioned that “erosion of central bank independence around the world threatens to unleash a round of competitive exchange rate devaluations.”²²¹ Noting recent interventions by governments in Hungary and Japan into central bank affairs, Weidmann stated that this may lead to an “increased politicisation of the exchange rate,” which could trigger a round of competitive devaluations.²²² Such a result could be disastrous.²²³

VII. SUMMARY AND SOLUTION

China systematically devalued its currency in the 1990s and 2000s. This devaluation policy appears to have, at least temporarily, stopped. The devaluation policy played a role of undetermined significance in China running up a large trade surplus while the United States accumulated a large trade deficit. This trade imbalance likely had some impact on the number of jobs that were lost in the United States during the “Great Recession.”²²⁴

The IMF and the WTO, by themselves, do not appear to present a method of policing this currency manipulation. If the IMF and the WTO were to cooperate, they might be able to regulate currency manipulation. However, such cooperation would likely require the rules of both organizations to change, and the votes necessary to effectuate such changes would likely prove difficult to acquire.

²²⁰ Josh Bivens, *Not Dead Yet: Currency Management and the Need for a More Competitive Dollar*, ECON. CRISIS (Oct. 29, 2012), <http://economyincrisis.org/content/not-dead-yet-currency-management-and-the-need-for-a-more-competitive-dollar>.

We need a lower value of the dollar to reduce our trade deficit, and reducing our trade deficit is the only way we can have a rapid recovery over the medium-run without running larger budget deficits. Given that the politics of the day have (stupidly, but clearly) ruled out larger budget deficits, addressing the over-valued dollar is key.”

Id.

²²¹ Steen, *supra* note 211.

²²² *Id.*

²²³ *See generally id.*

²²⁴ *See supra* Part II.A.

Additionally, targeting currency manipulation might only have a marginal effect on existing trade imbalances. The United States should, instead of pursuing unilateral actions or trying to spearhead a multilateral agreement on the subject, focus on reinventing its economy domestically. If the international community decides that currency manipulation is a problem requiring a resolution, being a follower instead of a leader would prove far less costly and present far less risk of retaliation.

Unfortunately, it appears that there is no solution to the problem of Chinese currency manipulation. Getting a country to stop manipulating its currency is like getting a country to stop polluting. First, implementing such a change is expensive. Second, even if the country were to unilaterally change, the other nations around the world would still engage in the practice and the negative externalities would persist. Third, partly due to expenses, partly due to sovereignty concerns, and partly due to differences between developed and developing countries, achieving a multilateral or international agreement on the issue would be exceedingly difficult.²²⁵

It might take a shock to the system in order to obtain the necessary support for ending currency manipulation. In the case of pollution and climate change, such a shock would likely mean that the damage was already done and no solutions could prevent the coming disaster. Hopefully, the same scenario would not occur as it relates to currency manipulation, and this Great Recession does not turn into another Depression.

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²²⁵ See generally, *supra* Part V.B.

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