

## Review

# Doing business with China: Is China keeping its legal WTO obligations?

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**Is China keeping its legal world trade organization (WTO) obligations? On December 11, 2001, China became the 143rd member of the WTO after 15 years of negotiations. The accession package approved in Qatar for the People's Republic of China includes commitments on transparency and predictability, tariffs, trading rights and distributions, service agreements, TRIPS, import licensing importation and investment approvals, technical barriers to trade, taxes and subsidies. On September 15, 2010, MarketWatch reported the filing of two new trade cases against China by the United States at the WTO. The two cases were related to China's legal WTO obligations under the 2001 agreement. While these two filings were not the first since the agreement was signed in 2001, one would only hope they will be the last. This paper attempts to examine China's performance under the agreement since it was signed in 2001.**

**Key words:** International trade, international business, global management, world trade organization.

## INTRODUCTION

On Tuesday, September 19th, 2010 the Chinese Yuan strengthened to a new high of 6.7057 against the U.S. dollar as the People's Bank of China fixed the Yuan's daily mid-point rate at a new record high for an eighth straight trading day ([rttnews.com](http://rttnews.com), 2010).

The U.S. president Barack Obama had just criticized the Chinese government the day before claiming the Chinese leaders are not doing all they said they would do to strengthen the Yuan, thereby gaining unfair trade advantages.

The question here is; is China keeping its WTO obligations? This paper would examine China's obligations under the 2001 WTO agreement. The paper would also examine the extent of China's compliance with the obligations. Attempts would also be made to understand the dichotomies if any between China's obligations and its fulfillment. The implications of the study's findings would be analyzed for countries doing business with China.

### What are the obligations?

On December 11, 2001, China became the 143rd member of the WTO after 15 years of negotiations. The accession package approved in Qatar for the People's Republic of China includes the following commitments.

### Tariffs

China committed to reducing most industrial tariffs from 1997 average of 25 to 8.9% by 2005. However, all the parties involved agreed that some tariffs would continue through 2010.

### Service commitments

China agreed to eliminate market access restrictions to a broad range of service sectors, including banking, insurance, telecommunications, professional services, accounting, legal and management consultancy services.

### Trading rights and distribution

China agreed to allow Chinese enterprises to have full trading rights within three years of accession to WTO, subject to certain minimum registered capital requirements. This is in contrast to the pre-accession condition in which China restricts the number of companies that can import and export products. China also had restrictions on products that could be imported or exported. China also agreed to grant product-distributing rights to foreign companies to distribute their own

products in China within three years of accession to WTO. Foreign companies could not distribute their own products in China before 2001.

### **Trade-related intellectual property rights**

China agreed to implement the TRIPS (Trade-related aspects of intellectual property rights) agreement in full from the date of accession. China was notorious for serious Intellectual property rights' infringement before the accession.

### **Taxes**

China agreed to ensure that its laws, regulations and other measures relating to internal taxes and charges levied on imports comply with WTO rules and are applied in a nondiscriminatory manner.

### **Subsidies**

China agreed to eliminate, upon accession, all subsidies on industrial goods that are prohibited under WTO rules, that is export and import substitution subsidies.

### **Did China fulfill her legal obligations?**

The answer to this question seems to be an emphatic number. On September 15, 2010, MarketWatch reported the filing of two new trade cases against China by the U.S. at the WTO (marketwatch.com, Sept 2010). While the Chinese side has made several claims to the contrary, observers are of the opinion that China has failed woefully in meeting its WTO obligations. Overall most of the articles from the Chinese side seem to emphasize the establishment of new rules and regulations designed to satisfy the commitments made to the WTO. Outsiders on the other hand are saying that the various legislations are mere cover up for lack of willingness on China side to implement any of the rules promulgated by the country. By November 11th, 2010 China has participated in a total of 98 WTO cases either as complainant, respondent or third party. In 20 of those cases, China was the respondent. Although the number of cases in itself maybe a misleading factor in assessing China's compliance, the severity and the number of countries that participated in most of the complaints against China would serve as a better measure of China's performance under its WTO legal obligations.

A critical examination of trade statistics also seems to support the opposing view. A very good example is piracy statistics for the last few years. In 2009, Japan had a low piracy rate of 21%, about the same as the United

States at 20%. On the other hand, China had a rate of 79% (Japan Today, September, 2010) According to US customs statistics, counterfeits seizure from China was worth \$87.3 million in 2004 and \$62.5 million in 2003. In 2002, 49% of all counterfeit goods seized came from China compared with 46% in 2001. The percentage for 2003 was 66. Despite all the promises made by China to stamp out piracy, the problem seems to be growing in leaps and bounds. The list of WTO consultations associated with these commitments as well as the current state of the commitments is discussed in the subsequent paragraphs.

### **Tariffs**

On 30 March 2006, Canada, European Communities, and the United States requested consultations with China regarding China's imposition of measures that adversely affect exports of automobile parts from the European Communities, Canada, and the United States to China. The measures according to the United States penalized manufacturers for using imported auto parts in the manufacture of vehicles for sale in China by imposing tariffs on auto parts that are essentially equal to tariffs on complete vehicles. On 11th February, 2009 at the DSB meeting, China informed the DSB that it intends to implement DSB recommendations on the matter and that it requires a reasonable period to do so (DS342). China's average tariff rate currently stands at 9.8% (People's Daily, September 2010). This represents a substantial drop from the 15.3% that existed before it dropped to 12% on the first day of 2002. The rate saw a further drop to 11% in 2003, with some duties on information and technology imports canceled (Xinhua News Agency, 2003).

### **Service commitments**

The Chinese government made amendments to its laws, regulations and other policies concerning service trade. 14 sets of laws were modified, 37 sets of administrative regulations were modified or formulated, and 1,000-plus pieces of departmental regulations were formulated, rectified or repealed according to Chinese sources. However, China used unreasonable capitalization and other requirements to restrict foreign access to the service sectors. The requirements stipulated by China exceeded international norms according to USTR. When US complained about the practice, China began to take steps to reduce capitalization requirements in the insurance sector. The most recent case filed by U.S. against China with the WTO involved credit cards services in China. The other product involved in the case was Steel.

On 15 September 2010, the United States requested consultations with China with respect to unfair treatment

of foreign companies providing financial services in China. The United States claimed that certain restrictions and requirements maintained by China pertaining to electronic payment services for payment card transactions involving Chinese renminbi restricted the ability of foreign financial service providers to participate in the system and that this is inconsistent with Articles XVI and XVII of the GATS (DS413). This dispute is still in the process of being resolved.

### **Trading rights and distribution**

The United States Trade Representative (USTR) accused China of having fallen behind in its implementation of its commitment to ensure the unrestricted rights of Chinese and foreign businesses to engage in importing and exporting by 11th December, 2004. On 3rd March, 2008, the United States requested consultations with China concerning measures relating to restraints of trade in financial services of foreign companies in China (DS373). European communities requested to join the consultation on 14th March, 2008 and the request was subsequently accepted by China. China later signed a memorandum of understanding with the United States on this issue and informed WTO of the same on 4th December, 2008.

### **Trade-related intellectual property rights**

China made important adjustments to its major intellectual property right laws, including laws concerning patents, trademarks and copyright, the report says. Relevant provisions have met the demand from Trade-Related Intellectual Property Rights agreement, it says. On one hand, China has enacted much legislation to improve Intellectual property rights situation but on the other hand, China has done almost nothing to enforce the legislations.

Sources from inside China claimed that the Chinese government did little to control the copyright violation situation. According to annual statistics of Chinese State Administration of Industry and Commerce, of the 22,001 cases registered in 2000, there were 45 criminal prosecutions and the average fine was \$794. The situation has not improved much since then.

On 10th April, 2007, the United States requested consultation with China concerning measures relating to the protection and enforcement of intellectual property rights in China. The complaints covered China's lack criminal procedures and penalties for commercial scale trademark counterfeiting and copyright piracy as well the subsequent release of infringing goods to commerce channels in China. Canada, Japan, European Communities, and Mexico later requested to join the consultation. China and the United States notified the

DSB of agreed procedures under Articles 21 and 22 of DSU on 8th April, 2010 (DS362)

### **Taxes**

China continued to use value-added tax (VAT) policies to encourage domestic production in a number of industrial and agricultural sectors. VAT rebates were provided to domestic semiconductor producers to create disadvantages for United States exports of semiconductors to China. On 18th March, 2004, the United States requested consultations with China concerning China's preferential value-added tax ("VAT") for domestically produced or designed integrated circuits ("IC"). Both parties later agreed to resolve the issue privately.

On 2 February 2007, the United States requested consultations with China concerning measures aimed at rewarding enterprises in China for buying domestic rather than imported goods thereby placing imported goods at disadvantage to domestic products. The measure gave b refunds and exemptions from taxes to enterprises in China for buying domestic rather than imported products. Australia, Canada, Chile, European Communities, Turkey and Chinese Taipei joined the consultation and on 19th December, 2007, China and the United States informed the DSB that they had reached agreement in relation to the dispute (DS358).

### **Subsidies**

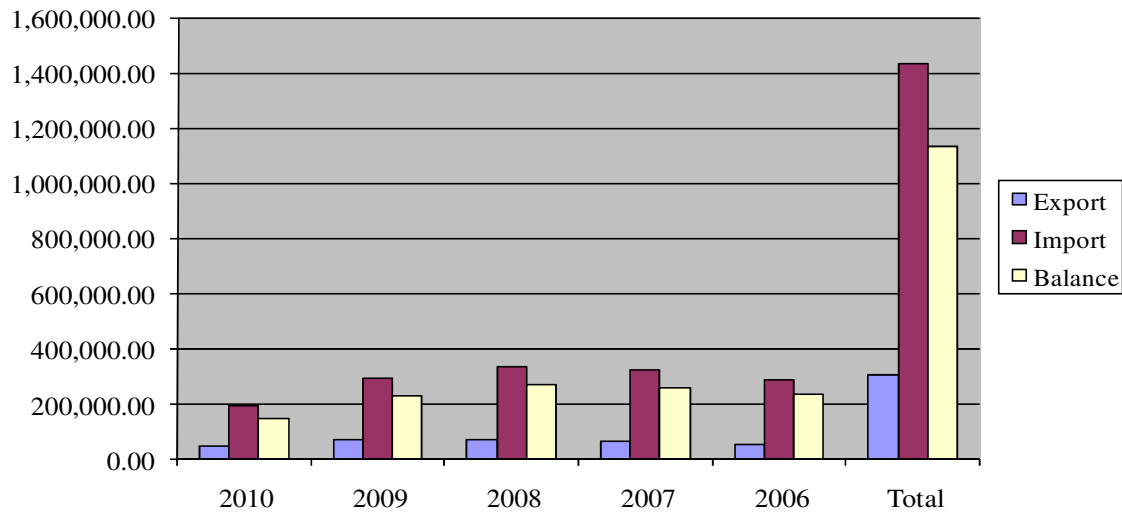
The USTR also claimed that China continued to use subsidies to promote some agricultural exports. On 19 January 2009, Guatemala requested consultations with China about certain measures considered to have the effect of granting subsidies for agricultural products. These measures include offering grants, loans and other incentives rooted in export performance to enterprises in China. Guatemala contends that these measures are inconsistent with Articles 3, 8, 9 and 10, of the Agreement on Agriculture in that the measures benefits products of Chinese origin and not imported products. DS390 is still in process.

### **Why did China fail to meet the obligations?**

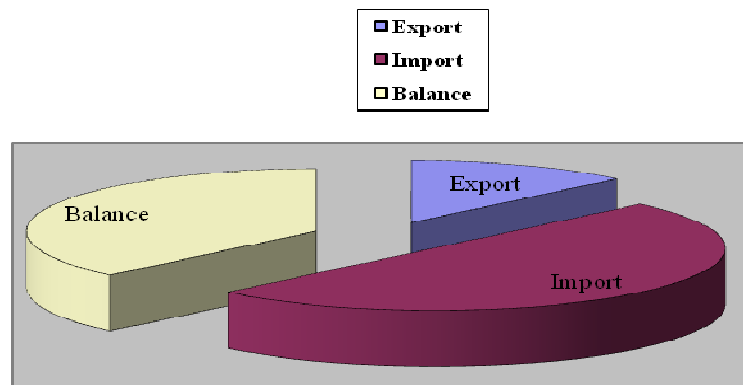
The dichotomy between China's obligations and its performance of those obligations cannot be easily ignored. In 2008, US exports to China was \$69 billion while Import from China was \$337 billion thereby creating a trade deficit of \$268 billion. In 2009, the situation was not much better as indicated in the Table 1 (Table 1 data is also illustrated graphically in Figures 1 and 2. Trade deficit also stood at \$226 billion according to the US Census Bureau. The first step in solving this hydra

**Table 1.** US China Trade data for 2006 to 2010.

Year	Export	Import	Balance
2010	48,551.1	193,918.2	-145,367.1
2009	69,496.7	296,373.9	-226,877.2
2008	69,732.8	337,772.6	-268,039.8
2007	62,936.9	321,442.9	-258,506.0
2006	53,673.0	287,774.4	-234,101.3
Total	304,390.50	1,437,282.00	-1,132,891.40



**Figure 1.** US Export and Import to China from 2006 to 2010.



**Figure 2.** US Balance of Trade with China from 2001 to 2005

headed threat is to diagnose the problem. Scholars should ask such questions as why these people are behaving this way. It is only when the reasons behind China's double standards is fully understood that there can be any serious attempt at arriving at solutions. One of the methods used in the past to try to understand

groups of people is culture study.

**Did China underperform because of culture?**

Culture can be defined as the way of life of a group of

people. Damen (1987) also defined culture as learned and shared human patterns or models for living. These patterns and models pervade all aspects of human social interaction. Why would China commit to certain obligations and not fulfill them, two, three, even four years after making those commitments? Is it something in their culture or outside the culture? This paper would examine the Chinese culture to see if explanations for the dichotomy could be found in the ways of life of the Chinese people. In studying the Chinese culture, Chinese proverbs would be used as a window into the mind of the Chinese culture. The book of Analects is one of the most revered sources of information on Chinese culture. The book contains most of the sayings of Confucius and other highly respected Chinese teachers. Using proverbs or sayings to understand the cultures of a people is a well-known method in Anthropology and that technique would be employed in this paper. The emphasis would be on the value placed on forthrightness in the Chinese culture. Is the Chinese culture favorable to saying one thing and doing something else? This is the question; the proposed study of the book of Analects would try to answer.

A careful look at the book of Analects revealed two sides of the coin. On one hand are tons of sayings that exhort forthrightness and on the other hand are a few sayings that qualified forthrightness. A few of these sayings are enumerated in the following paragraphs. In Chapter 7 verse 24 of the book, the master taught trust. This seems to be contrary to the news coming out of China. How can we trust China, if the engineering department of one of Chinese major Universities is actually in charge of a serial cracking website? However, in verse 18 of the same chapter (7) the master seems to be discouraging people from exposing the evil deeds of their relatives. The sayings in the following paragraphs are different versions of the two sides of the coin.

[1:4] Tseng Tzu said: "Each day I examine myself in three ways: in doing things for others, have I been disloyal? In my interactions with friends, have I been untrustworthy? Have not practiced what I have preached?" This particular saying seems to be teaching loyalty and justice.

[1:5] Confucius said: "If you would govern a state of a thousand chariots (a small-to-middle-size state), you must pay strict attention to business, be true to your word, be economical in expenditure and love the people. You should use them according to the seasons." This saying also emphasizes trustworthiness. [1:13] Yu Tzu said: "When your own trustworthiness is close to rightness, your words can be followed. When your show of respect is according to propriety, you will be far from shame and disgrace. If you have genuine affection within your family, you can become an ancestor." This saying seems to encourage Chinese to keep their words. [2:22] Confucius said: "If a person lacks trustworthiness, I do not know what she or he can be good for. When a pin is missing from the yoke-bar of a large wagon, or from the collar-bar of a small wagon, how can it go?" This saying

is an outright condemnation of the use of double standards.

[7:24] The Master taught four things: Culture, correct action, loyalty and trust. This is also an emphasis on trustworthiness.

[13:4] Fan Chih wanted to ask about agriculture. Confucius said, "Why don't you ask an old farmer?" Fan Chih then said that he would like to learn about gardening. Confucius said, "Why don't you ask an old gardener?" Fan Chih left. Confucius said, "Fan is really simple, isn't he? If the men in charge love propriety, the people cannot stand to be disrespectful. If the men in charge love Rightness, then the people cannot stand not to follow them. If the men in charge love trust, then the people cannot stand not to respond with their emotions. If you were to govern in this way, the people would come flocking to your kingdom, carrying their babies on their backs. Why do you have to worry about agriculture?" This was a direct message to leaders to cherish trustworthiness.

[4:16] Confucius said: "The Superior Man is aware of Rightness, the inferior man is aware of advantage." This saying is one of the few that seems to say that the end does not justify the means.

[7:18] The Duke of Sheh told Confucius: "In my land, there are Just men. If a father steals a sheep, the son will testify against him." Confucius said, "The Just men in my land are different from this. The father conceals the wrongs of his son, and the son conceals the wrongs of his father. This is Rightness!" This is one of the few sayings that seem to qualify trustworthiness. If there is anything in Chinese culture that can explain the current attitude of Chinese leadership towards its WTO obligations, it is this saying. The saying actually encourages people to hide the wrongs of their relatives.

[17:24] Tzu Kung asked, "Does the superior Man also have things that he hates?" Confucius said, "He does. He hates those who advertise the faults of others. He hates those who abide in lowliness and slander the great. He hates those who are bold without propriety. He hates those who are convinced of their own perfection, and closed off to anything else. How about you, what do you hate?" This is another saying that seems to encourage wrongdoing.

[2:10] Confucius said: "See a person's means (of getting things). Observe his motives. Examine that in which he rests. How can a person conceal his character? How can a person conceal his character?" [Comment] People think that they are successfully hiding the devious plots that are going on in their minds. But as the Doctrine of the Mean teaches, "The sincerity on the inside shows on the outside." When someone is deceitful, everyone knows it. When someone is good and honest, everyone knows it. This is also in favor of loyalty and trustworthiness. [4:5 Confucius] said, "Riches and honors are what all men desire. But if they cannot be attained in accordance with the Tao they should not be kept. Poverty

and low status are what all men hate. But if they cannot be avoided while staying in accordance with the Tao, you should not avoid them. If a Superior Man departs from humaneness, how can he be worthy of that name? A Superior Man never leaves humaneness for even the time of a single meal. In moments of haste he acts according to it. In times of difficulty or confusion he acts according to it." This is another saying in favor of trustworthiness.

[4:10] Confucius said: "When the Superior Man deals with the world he is not prejudiced for or against anything. He does what is Right." This is also another saying in favor of justice.

[4:14] Confucius said: "I don't worry about not having a good position; I worry about the means I use to gain position. I don't worry about being unknown; I seek to be known in the right way." This saying, also emphasize the fact that the end does not justify the means.

Trustworthiness is encouraged by ten out of the thirteen sayings quoted in this paper. Only three of the sayings seem to be saying the contrary. With this kind of picture, one wonders why the leadership of such a nation would choose to pitch their tent with the minority rather than the majority. Why would the Chinese leadership ignore all the good admonitions of great leaders like Confucius and focus on some minor exhortations in the book of analects? Many have tried to give different explanations for the disturbing condition. This paper would now focus on one of the theories that seem to be the most sensible of them all. The morality abandonment theory proposed by many Chinese insiders claimed that the Chinese Communist party abandoned the golden elements of the Chinese culture long time ago. The proponents of this theory claims that the current leadership of the party is now working with a different principle. The new principle is "the end justifies the means". If the assertions of this group of people are true, we are all in big trouble.

### **End justifies the means**

Morality: The problem is that so many Chinese now have become victims of this principle, "The ends justify the means" (Man-Yan Ng, 2005) As far as Mr. Ng is concerned; the problem is not with the religion or faith. He further reiterates that all the faiths (Confucianism or Buddhism or Taoism) can be considered to have relatively high moral and ethics. He claimed that it was the Chinese Communist Party, who systematically destroyed all religions and faith-groups since they took power in 1949. As far as he is concerned, the current behavior of the Chinese leadership is a reflection of this new state of mind. They have destroyed all religions and faith groups along with the morality they represent. "A few years ago some Hong Kong Chinese tried to transport about 30 000 bibles of the original version into China. They were sentenced and jailed" (Ng, 2005) Mr. Ng and

the group he represent have made many other assertions that nations doing business with China need to consider carefully. Some of the assertions are presented in the following paragraphs.

Legal system: Mr. Chow and his other Chinese colleagues claim, "The Chinese legal system is a joke". When a Chinese official shows you the legal system, he will show you that they have local courts, provincial high court, Supreme Court; they have the law and so on. However, they will not show you the last step, the last thing: on top of this system- the Chinese Communist Party. One single telephone call from a party boss can decide on the contents of a sentence in a court" How can you do business and feel safe in a country that does not have a functioning legal system? (Ng, 2005) This seems to be in agreement with most of the stories coming out of China about legal nightmares. In the highly publicized Beijing McDonald's case, the Chinese government took back from Mc Donald a piece of property they had actually purchased and developed.

### **Thick and thin rule of law**

The rule of law can be understood as a legal-political regime under which the law restrains the government by promoting certain liberties and creating order and predictability regarding how a country functions. In the most basic sense, the rule of law is a system that attempts to protect the rights of citizens from arbitrary and abusive use of government power (Yu and Guernsey, 2008). Some scholars have tried to approach the China legal issue from a language perspective. They opined that nations sometimes work with different definitions of the rule of law. Scholars in this group are of the opinion that China might be working with a definition of rule of law that is different from the one we work with in the West. These legal theorists have proposed multiple definitions for the rule of law, which can be categorized into two general types: "thick" and "thin". The "thin" version of the rule of law is "a vision of judging that celebrates the systemic virtues of regularity, predictability and certainty over the concern with substantive justice in particular instances: formal rules are the most efficacious and legitimate way to protect substantive values." (Wang, 2004) Arguably, the implication is that "it is possible for a legal system to comply with the rule of law and still be undemocratic and/or unjust in general... and in particular instances." A "thick" version, on the contrary, holds that "the existence of pre-announced, objectively-knowable and impartially applied rules must be supplemented by tying such formal virtues to a substantive account of democratic justice." Law as such becomes inseparable from values and politics (Wang, 2004).

The inconsistencies found in the administration of law in China are being explained by these legal theorists as manifestations of the thick rule of law, which is flexible. The problem with this approach however, lies in the fact

that the Chinese legal environment does not seem to fit into this classification. Some of the other facts coming out of China seem to be too out of the norm to be easily explained by this dichotomy. One of the assertions of Mr. Ng and his colleagues is that the Chinese government could enforce laws that they actually want to enforce. The Tiananmen crackdown and the Fa Lung Goon movement crackdown are examples of the might of the Chinese government and their ability to enforce whatever they want to enforce. What seems to be lacking is the political will to enforce rather than the ability to enforce the legislations. Maybe it is because enforcement would hurt local economy.

### **Implications for trade partners**

#### **Piracy will grow**

The bad news is that the amount of seizures of pirated products is increasing," said Jon W. Dudas, under secretary of Commerce for Intellectual Property. "The percentage is growing. In addition, the dollar figure is rising," 77% of the aggregate value of goods seized in the United States between 2004 and 2009 came from China (Dobson, 2010). Shipments from China accounted for 66% in 2003, or \$62.5 million, 49% in 2002 and 46% in 2001.

A recent study by the Business Software Alliance found that 79 percent of all software used in China was pirated. Altogether, software vendors claim that they suffered \$3.5 billion in losses last year due to Chinese piracy. It is even alleged that the Chinese government strongly supports piracy (Ng, 2005). In a surprise move by the Chinese Academy of Engineering Physics they are now hosting one of the largest crack sites in the world - Odaycn.net.

The web site is quoted as boasting of creating cracks within 1 day of a software title being released. They achieve this by monitoring download websites, publisher's exes and pad files. The Chinese Academy of Engineering Physics, also known as the Southwest Institute, is the primary design laboratory for Chinese nuclear weapons, located in Mianyang (Sichuan). Mian Yang city lies on the northern tip of the Chengdu Plain.

#### **Trade deficit will continue to grow**

U.S.-based Wal-Mart was responsible for 11% of the growth of the total U.S. trade deficit with China between 2001 and 2006 (Scott, 2007) If Wal-Mart continues to expand the way it is right now and if the Yuan continues to exchange at a fictitious rate, US trade deficit with China would continue to grow. Innovation, which is the strength of the American economy, would not be able to bail the country out of her predicament. The likes of Mr. Ng and Mr. Chow keep claiming that the Chinese

government is behind piracy in China. The trade of a nation is defined by what he is able to offer in return for what he takes from the International market. America is currently in a bad situation with respect to its trade with China. On one hand, the country is encouraged to keep taking from China because of the artificially cheap Yuan and on the other hand, the country cannot pay for what it is taking from China with innovation because of piracy. It is a perfect recipe for trade imbalance. If the claim that a Chinese University Engineering department is involved with illegal software piracy is true, the future of US trade is in big trouble.

### **China will continue to manipulate the Yuan**

On Monday September 20th, 2010, the US President complained about the Chinese leader's refusal to do what they promised concerning the value of the Yuan. On December 12th, 2005, bloomberg.com reported on China's Premier's response to the criticism that the Yuan did not adjust properly in value since. Finance ministers and central bankers from the Group of Seven industrial nations had complained that the Yuan's appreciation against the dollar since its revaluation in July 21st, 2005 is not acceptable. In responding to that complaint made on December 3rd, 2005 Premier Wen Jiabao said the rate was adjusted to a reasonable level. US lawmakers have threatened trade sanctions against China, if the country does not make amends. This cat and mouse game would continue for as long as China can afford to keep it going. What the Premier was saying, was we would continue to keep the Yuan at a rate that would allow us to get all the trade surplus we can get. The implication of this type of attitude is scary. It can only mean one thing; China would continue to bleed America until there is no blood left. The only reason people are buying products from China is because they are cheaper and one of the reasons they are cheaper is because of the exchange rate. Since China has refused to play by the rules thus far, it can be safely inferred that the country would continue to manipulate the Yuan to keep Chinese imports cheap. Until the world can find a way to make the Chinese government allow the Yuan to yield to the natural forces of demand and supply, we would continue to be at a disadvantage. Japan used similar strategy in the past.

### **Some of us would have to go and work in China**

Unemployment rate in the US now stands at 9.8% for adult men according to the Bureau of labor statistics report released on August 2010. On November 21st, 2005, General Motors announced its new plan to cut 30,000 jobs by 2008 to the associated press. The news published by news.yahoo.com was later followed on December 7th, 2005 by Ford Motor Company's announcement to cut another 30,000 jobs in North

America within the next five years. Announcing the loss of 60,000 jobs in less than two months within the same geographic zone is not a good sign. Why did those companies and several others reduce their work force? One of the obvious reasons is that they are not competing well. In 2005, General Motors came 3rd on the list of the best 500 companies in the world. Ford placed 4th on the same list. In 2010, the picture was even more dismal General Motors came in 15th and Ford Motors was 8th on the list. Going by those figures alone would be misleading, the fact of the case is that it is costing those companies far much more to produce in North America, than it is costing them to manufacture elsewhere. In 2004, every GM car sold had additional \$1400 health care cost tagged to the price. Global competitors could no longer afford these costs. Japanese car manufacturers are not burdened with such costs, neither are Chinese car manufacturers. On the same fortune 500 list, Wal-Mart came first. On November 29, 2004, China Daily news reported that Wal-Mart is the eighth largest importer from China after U.S., Russia and others.

The newspaper claimed that 70% of what is sold in Wal-Mart is made in China. The paper also claimed that Wal-Mart alone is responsible for a lion share of the trade deficit between US and China. In 2003, Wal-Mart imported over \$15billion dollars worth of goods from China. The implication of all these is that the work of the future would be in China, except things change drastically. Once all the companies close down in America, we would all have to go to China to go and find job. \$15 billion worth of investment in a single economy would sure create many jobs in that country.

One of the major problems facing General Motors is counterfeiting of one of the companies products in China. On September 6, 2004, alwayson-network.com reported that Deputy Commerce Minister Zhang Zhigang claimed that General Motor has not provided enough evidence to prove that Chery Automobile Corp. copied one of its car models. The main point of the whole argument was that General Motors did not register that particular model in China. The smart Chery Automobile Corp. has successfully added more to American job problems by stealing that car model from General Motors.

## CONCLUSION

The consensus seems to be that China has not fulfilled its obligations under the WTO agreement that it signed in 2001. Out of ten major categories listed in the agreement, reports from the Chinese side emphasized performance on only three. The excuse so far is that China has put in place many laws, but as far as enforcement is concerned, all we can see is lip service. In the report published by Xinhua News Agency, TRIPS, service sector access and Tariffs were the three major areas emphasized. The Chinese side did not say much about Import licensing,

tax and subsidy protection, use of technical specifications, full trading rights and the like in their progress report. Moreover, even in the areas emphasized, we all know that performance is not up to par. With 77% of the aggregate value of goods seized in the United States between 2004 and 2009 coming from China, one can hardly say that China has lived up to its commitment to TRIPS. The whole scenario is fast becoming pathetic and the only hope is that someone would soon figure out what should be done to arrest the situation. The pattern that seems to be emerging is that the Chinese leadership waits for others to complain about what they are supposed to do and then try to do a little bit of it after serious complaints. In the case of using VAT to subsidize national companies, US had to report China to WTO before they finally did something about it. This was an obligation that they agreed to when they joined the WTO.

The reasons for lack luster performance could be found in many things. There seems to be a tiny part of the Chinese culture that condones disloyalty but the general tendency found in Chinese culture studies is the promotion of trustworthiness. Other attempts to explain the behavior also include the "end justifies the means" theory proposed by some insiders that feel that the Chinese communist party is no longer committed to morality. This group of people believes that the Chinese communist party has destroyed the conscience of China. They believe that it is the only possible explanation for how China is treating the rest of the world. The final theory is that of thick and thin definition of the rule of law. This theory proposes that China is only trying to practice the thick rule of law, which is flexible in nature. However, the facts coming out of China could not support this last theory.

The implications of this state of affairs to countries doing business with China are enormous. If all the findings of this study are true, it only implies that many of us would have to go and work in China one day. With 9.8% unemployment rate for adult men according to the Bureau of labor statistics report released on August, 2010, the future of employment around here does not seem to be rosy. Trade imbalance between US and China would also continue to worsen as the Chinese leadership continues to manipulate the Yuan. Piracy, according to many is the mainstay of many local economies in China. Some people claim that stopping piracy would actually make many local economies collapse in China. As more well established institutions in China get behind piracy, the situation would only worsen. If there were, any lesson to be learnt from all these, it would be the fact that the rest of the world is not interested in playing the game according to our rules. If we are going to successfully compete against these people, we might have to learn a lot more about them.

## RECOMMENDATIONS

The following recommendations are aimed at eroding the



unfair advantage that China has successfully created for itself by consistently violating the conditions of its accession to WTO.

### Yuan manipulation

The use of International Institutions and the US congress to put pressure on China has been advocated by many although critics has argued that the US trade deficit problem is too deep to be solved by these measures. The goal of these measures is to get the Yuan to appreciate to such a level that Chinese products would no longer be as cheap as they currently are. The most recent release of \$600billion to the US economy might be a stealth approach to solving the currency imbalance problem. IMF's global responsibilities include monitoring global exchange rate manipulation. Interest groups also hoped that a meeting of finance ministers of the Group of Seven (G7) most industrialized countries in London in late November 2005 would be used as a venue to deal with the Chinese currency issue on a global scale. Their hopes were not dashed during the meeting. It was in response to the issues raised during the meeting that China's Premier Wen Jiabao claimed that Yuan's appreciation of less than 0.37 percent since its revaluation in July is reasonable.

On the other side of the spectrum however, are the likes of Mr. Greenspan who said that a violent revaluation of the Yuan would create chaos in the global trade arena. In a letter to the US Senate in March 2005, Mr. Greenspan said that floatation of the Yuan, a move wanted by many in the US, could cause a heavy flow of capital out of China, which would in turn undermine Chinese banks and destabilize the world economy (Greenspan, 2004; China Daily, 2005). However, on September 25, 2010, Ben Bernanke (the new Fed chairperson) expressed a contrary opinion to that of his predecessor. Ben Bernanke said one solution to the current financial crisis in the United States is greater exchange rate flexibility. This essentially implies that certain developing countries, like China, should let their currencies appreciate (International Business Times, Sept. 2010) Others have said that such a move would not solve the trade balance problem, and that it would only make investments flow to other ASEAN countries.

Some have also suggested that the US Congress get tough on China. "Congress should take action immediately," said AFL-CIO Secretary-Treasurer Richard Trumka. "It's time they slapped back. There is a solution in Congress." Labor groups say that Congress should use the Hunter-Ryan bill, World Trade Organization compliance legislation that defines currency manipulation, declares it an illegal subsidy and empowers other agencies of government to act. The 1994 GATT Agreement on Subsidies and Countervailing Measures (SCM) also provide measures for addressing Subsidy related issues. U.S. Senator Charles E. Schumer, a leading critic

of the Chinese currency policy and author of the China Free Trade Act, a bill that would impose 27.5% tariffs on Chinese imports, said that Beijing's "refusal to acknowledge reality and take the necessary corrective actions hurts every American"(IPS, 2005).

The problem with these measures however is that of effectiveness. A recent study by the Asian Development Bank showed that Chinese exports account for a relatively small share of U.S. imports (about 13.4 percent in 2004) while U.S. exports to China constitute an even smaller share of about 4.3 percent of total U.S. exports. This implies that even if the revaluation were to shrink imports from China by half and double U.S. exports to Beijing, it would cut the US trade deficit by only about 29 billion dollars, or 0.24% of GDP (China Daily, 2005).

In summary, uncontrolled Yuan appreciations would most likely harm, rather than help, the sustained development of the Chinese economy. Such a move would create very little benefit for Japan and US.

### Piracy

In China, piracy is so entrenched that even the pirates complain about it.

According to an article by Anne Stevenson-Yang and Ken DeWoskin in the March issue of the "far eastern economic review", Chinese storekeepers who sell fake DVDs for 10 Yuan gripe about street vendors selling them for seven. Moreover, the street vendors complain about competitors offering two-for-one specials (Blodget, 2005). Piracy is a problem that would not go away soon however, some concerned citizens have tried to come up with a few solutions, some of which are discussed thus.

Redesign business processes to make it more difficult to steal stuff, and consider what you do lose as cost of doing business. Pay for your own enforcement raids. Do not do China joint ventures, which function as a siphon tube through which local entrepreneurs suck out ideas, technology, and products.

Design your products to have shorter life cycles, thus leaving pirates stuck with warehouses full of outdated stuff. Cut prices, making piracy less profitable. Give away technology in hopes of establishing a standard that you can control. Offer local pricing: Do not force people who make \$1,000 a year to pay \$250 for an office suite. Shift to a service/support model, and give your products away for free (Blodget, 2005).

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