Conflicts in Global Currency Regulations: The Case of Chinese Currency Devaluation Policy

By

Ajit Kaushal

COLLEGE OF LEGAL STUDIES

Submitted

IN PARTIAL FULFILLMENT OF THE REQUIREMENT OF THE DEGREE OF DOCTOR OF PHILOSOPHY

TO

UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

DEHRADUN

June, 2016

Under the Guidance of

Name: Dr. Tabrez Ahmad (Internal Guide)

Designation: Director

Institution: College of Legal Studies, UPES (Dehradun) &

Name: Dr. S.G. Sreejith (External Co – Guide)

Designation: Associate Dean (Academic Affairs)

Institution: Centre for International Legal Studies, Jindal Global Law School.

Conflicts in Global Currency Regulations: The Case of Chinese Currency Devaluation Policy

By

Ajit Kaushal

COLLEGE OF LEGAL STUDIES

Submitted

IN PARTIAL FULFILLMENT OF THE REQUIREMENT OF THE DEGREE OF DOCTOR OF PHILOSOPHY

TO

UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

DEHRADUN

June, 2016

Under the Guidance of

Name: Dr. Tabrez Ahmad (Internal Guide)

Designation: Director

Institution: College of Legal Studies, UPES (Dehradun) &

Name: Dr. S.G. Sreejith (External Co – Guide)

Designation: Associate Dean (Academic Affairs)

Institution: Centre for International Legal Studies, Jindal Global Law School.

UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

www.upes.ac.in

UPES THE NATION BUILDERS UNIVERSITY

THESIS COMPLETION CERTIFICATE

This is to certify that the thesis on "Conflicts in Global Currency Regulations: The Case of Chinese Currency Devaluation Policy" by Ajit Kaushal in Partial completion of the requirements for the award of the Degree of Doctor of Philosophy (Law) is an original work carried out by him under our joint supervision and guidance.

It is certified that the work has not been submitted anywhere else for the award of any other diploma or degree of this or any other University.

External Co - Guide (Dr. S. G. Sreejith)

20.6.16

Name & signatures

Internal Guide (Dr. Tabrez Ahmad)

20/06/2016

Name & signatures

BIDHOLI CAMPUS Energy Acres, PO Bidholi Via Prem Nagar, Dehradun 248007 (UK), INDIA, T +91-135-2102690/1, 2694201/3/8 F +91-135-2694204
KANDOLI CAMPUS Knowledge Acres, Vill. Kandoli, PO Bidholi Via Premnagar, Dehradun 248007 (UK), INDIA, T +91-135-2102647/2102760
CORPORATE OFFICE 2nd Floor, 210, Okhla Industrial Estate, Phase III, New Delhi-110020, INDIA, T +91-11-41730151-53 F +91-11-41730154

Declaration

"I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person nor material which has been accepted for the award of any other degree or diploma of the university or other institute of higher learning, except where due acknowledgment has been made in the text.

Ajit Kaushal

Ajit Kaushal

21.06.2016

(Signature/name/date)

Acknowledgements

Firstly, I would like to express my sincere gratitude to my GuideDr. Tabrez Ahmad and Co –Guide Dr. S.G. Sreejith for the continuous support for my Ph.D. and for their patience, motivation, and immense knowledge. Their guidance has helped me in all the time of research and writing of this thesis. I could not have imagined having better advisors and mentors for my Ph.D. study.Besides my guides, I would like to thank to the members of faculty research committee: for their insightful comments and encouragement, but also for the hard question which incented me to widen my research from various perspectives.

I thank my fellow colleagues' for the stimulating discussions and suggestions which helped me to shape up my research work. Last but not the least, I would like to thank my family members: to my parents and to my wife for supporting me spiritually throughout writing this thesis and my life in general.

AJIT KASUHAL

Executive summary

In the area of international trade, currency and exchange rate play a pivotal role but generally it has been mostly neglected by the researcher and lawmakers. Even while entering into any international treaty the lawmakers seldom discuss any potential threat of currency manipulation by any party of the treaty. The evolution of Chinese currency policy of devaluation against US dollar has invoked so many discussions among jurists, economists and policy makers. Being the largest trading partner of China, United States is particularly concerned about the Chinese currency devaluation as its market is flooded with cheaper Chinese goods and its trade deficit with China has been growing faster than ever. This trade deficit is an obvious burden on the US economy which is already struggling to come out of the recessionary trends.

There is a close nexus between currency manipulations and international trade. A case of currency manipulation challenges the very subsistence of the international currency regime and trade regime. Recently business world has seen numerous cases of currency manipulations including the well-known case of (alleged) Chinese currency devaluation. According to an estimate currency manipulations affect the flow of currencies worth \$1.5 trillion per year. As it has been alleged by the United States that the policy of keeping the currency artificially devalued by China has the potential to make Chinese products cheaper and more competitive in the United States, simultaneously it makes the US products costlier in the domestic market of china. This price differential harmed the business of United States as the demand of the products manufactured by the United States declined and its manufacturing sector suffered very heavy losses. This loss has translated into millions of job losses in manufacturing sector of the United States which has worsened the sufferings of the United States. The United States criticism of Chinese policy reached to its culmination when the US lawmakers called China a "currency manipulator" (without formally designating China as a currency manipulator).

A currency manipulation occurs when a government buys or sells a foreign currency to push the exchange rate of its own currency away from its equilibrium value or to prevent the exchange rate from moving toward its equilibrium value.

The major part of the dispute covered the Chinese currency policy between the periods of 2002 -2005 when China allowed a de facto peg of its currency (Yuan, also known as RMB) against the US dollar at the rate of 8.28 Yuan/Dollar. For the purpose of keeping the exchange rate at the fixed level China regularly intervened in the market. The Chinese policy of (protracted intervention) in the market was termed as an act of currency manipulation under the Art. IV (1) (iii) of Article of Agreement of International Monetary Fund read with IMF 1977 decisions.

A set of policy tools that influences the exchange rate is capital control measures such as taxes or regulatory restrictions on private capital inflows and outflows. Regulatory restrictions, in the form of taxes etc., on capital inflows tends to depreciate a currency, whereas a tax or restriction on capital outflows tends to appreciate a currency. The primary motivation for such controls is domestic financial stability (Ostry et al. 2011).

Besides government's act, the acts of private players also have an impact upon the value of the domestic currency, e.g. the preferences made by the private parties for their investments and balance of the current account etc. A private player is further induced to sell foreign currencies whereas the domestic currency being sold off at a declined rate. If there is a legal barrier to hold the domestic currencies then the depreciation in the domestic currency will be steeper.

Although currency manipulation is a violation of various international agreements including IMF but IMF does not intend to provide sanction against any currency manipulation. WTO provides some sigh of relief to the regulators which works in consultations with IMF. The WTO rules authorize to impose tariffs on imports.

China Foreign Exchange Legal Regime

In People's Republic of China it is the State Administration of Foreign Exchange (see Regulations on the Foreign Exchange System of the People's Republic of China) which performs the task of drafting the rules & regulations governing foreign exchange market activities, and managing the foreign exchange reserves. Simultaneously it is also the monitoring body to watch the balance of payment and external debts.

China's current exchange policy is the result of the economic liberalization they had started in 1978 and has seen a gradual transformation in different periods. China started a process of devaluation of its currency in 1980s. Since then China has tried to balance the value of its currency on numerous occasions. In Mid 1980s, China had resorted to dual exchange rate policy (official and swap market rate) which was applicable in and out of Chinese market. The dual exchange rate policy effectively allowed getting more RMB to Chinese exporter for a unit of foreign currency as the exporters sold their earnings in a regulated market separate than the inner circle of China market. The foreign exchange reserve of People's Republic of China stood at whopping US$3.44 trillion (by March, 2013) as per the official records. At the same time the RMB exchange rate was 6.2689 Yuan per US dollar and foreign currency deposits rose by US$31.4 billion in Q1. A major chunk of Chinese currency investment has been made in high end dollar denominated debts such as US treasury bills etc.

China Exchange Rate Policy and International Law

Since the time of Jean Bodin (16th Century) power over money has been recognized as the core element of statehood and sovereignty. Emergence of currency exclusive to a particular territory is closely seen as the formation of the modern nation state. In various cases the Permanent Court of justice has also recognized that generally accepted principle of public international law recognizes that a country has a right to regulate its own currency.

The public international law empowers a sovereign right to a country to determine its exchange rate policy and the value of its currency. Since long China has maintained that it is its sovereign right to decide the value of its currency and which is entirely an internal matter and exclusion to the any external scrutiny. Noted economist Mussa calls this argument as nonsense and absurd. Mussa suggests that the value of the currency of one country is measured in terms of the value of the currency of the other hence it falls within the ambit of logical absurdity. Hence a country alone could not decide its value of its currency its own without affecting the rights of others.

Many academicians, though, think differently. Many argue that a party is not simply deprived of his rights simply because it conflicts with the right of another party. Same is applicable in case of rights of the nation also and an inference can be drawn that if there is the impossibility to arrive at a logical compromises the accused to be allowed to maintain its status quo.

Currency Manipulations and IMF – WTO

The argument that the exchange rate of a country is entitled to exercise complete sovereignty over its exchange rate is neither palatable nor desirable for the development of a healthy business environment. The position as adopted by various international treaties including IMF and WTO are the idea of governing the currency may not be purely a domestic affair.

An analysis of Article IV of revised Articles of Agreement of the International Monetary Fund gives an idea that it contains the Preamble of the obligations of the members, general obligations and four specific obligations. The preamble provides the essential purpose and principle objective of the international monetary system. The essential purpose of the international monetary system is to provide a framework that facilitates the exchange of goods, services, and capital among countries, and that sustains sound economic growth whereas a principal objective is the continuing development of the orderly underlying conditions that is necessary for financial and economic stability. Hence, the preamble assumes that the underlying motive of the general obligations as it is set forth in Article IV, Section 1, to enhance the effectiveness and functioning of the international monetary system to contribute to the realization of the broader economic benefits as identified in the Section. Even though the Preamble does not impose an obligation on the member nations, it provides important guidelines to interpret the various clauses of Art IV.

WTO has rules against subsidies though it is not sure if it encompasses the area of currency manipulations because the export subsidy rules of WTO are applicable on the basis of the particular sector of trade. We hope that such issues may be resolved by dispute resolution panel of WTO. Nowadays it is greatly debatable whether currency issues fall under the ambit of WTO.

List of Abbreviations

1TO - International Trade Organization

AFL-CIO - American Federation of Labor and Congress of Industrial Organizations

CFETS - China's Foreign Exchange Trading System

EWE - Early Warning Exercise

FFE - Foreign Funded Enterprises

FOMC - Federal Open Market Committee

FTA – Free Trade Agreement

FTC - Foreign Trade Corporations

GATT- General Agreement of Trade & Tariff

GDP – Gross Domestic Product

GFSR - Global Financial Stability Report

GPIF - Government Pension Investment Fund

IBRD - International Bank for Reconstruction and Development

IMF – International Monetary Fund

LOLR - Lender of Last Resort

OECD - Organization for Economic Co-operation and Development

PBC – People's Bank of China

QE- Quantitative Easing

RMB – Renminbi (Yuan).

SAFE - State Administration of Foreign Exchange

SCM Agreement - Subsidies and Countervailing Measures

TPP - Trans-Pacific Partnership

TSR- Triennial Surveillance Review

TTIP - Transatlantic Trade and Investment Partnership

US – United States

USA – United States of America

USD – American Dollar

WEO - World Economic Outlook

WTO – World Trade Organization

List of diagrams Page No.

Content

Chapter – I -*Introduction and Evolution of the China's Exchange Rate Policy in the Reform Era –*

Chapter – II -China Exchange Rate Policy: It's Consistency with the International Legal Framework –

Chapter – III - IMF and Currency Manipulation

Chapter -IV–Appropriate Jurisdiction for the Dispute Settlement of the Case of a Currency Manipulation -

Chapter – I - Introduction and Evolution of the China's Exchange Rate Policy in the Reform Era

PART 1 – Introduction

1.1.1 - Problem

Time and again United States has alleged that China has adopted a currency policy which is adversely impacting the fair competition situation in the international trade regime (for example, Report to Congress of the U.S.-China Economic and Security Review Commission, Nov 2010). It has been alleged by US that in order to gain an unfair advantage in the international trade China has artificially devalued its currency against dollar which makes its export to US cheaper and simultaneously it makes any import in China costlier. Although it is consistently maintained by China that deciding the valuation of currency is its sovereign right and it is merely a domestic measure which China has adopted in the exclusion of any external interference (Michael Mussa, IMF Surveillance over China's Exchange Rate Policy, Oct. 2007).

The evolution of Chinese currency policy of devaluation against US dollar has invoked so many discussions among jurists, economists and policy makers. People from various sections have been analyzing the overall impact on international trade with concerns as it is (allegedly) impacting a fair competition scenario of international trade. Being the largest trading partner of China, United States is particularly concerned about the Chinese currency devaluation as its market is flooded with cheaper Chinese goods and its trade deficit with China is growing faster than ever. This trade deficit is an obvious burden on the US economy which is already struggling to come out of the recessionary trends. This research work deals with the legitimacy of the Chinese currency policy which involves many unresolved questions in the area of international trade. Most importantly the quantum and impact on the international trade of such alleged manipulation is beyond imagination as the dollar is an international currency and any devaluation of RMB against dollar will make Chinese exports cheaper to the world over. China has consistently maintained that the valuation of its currency is a domestic measure and is an expression of it being a sovereign State. Hence, there is a crying need for systematic research to arrive at a conclusion whether the China is a currency manipulator or not in the existing international regime which is the objective of this research. At the same time one of the major objective of this research is to deal with the dispute settlement system for any currency manipulations, if it exists any in the present trading regime.

1.1.2 Research Methodology

The research method of this research work is 'Regime Theory.' Regime theory has been proved to be a very effective tool for the purpose of interpreting the behavior of the nation states in the arena of international cooperation between the States. Within the framework of any international institution which has been formed for the purpose of achieving certain political or economic goal, the nation states have to find their own ways to cooperate with each other amidst the rising complexities. Here a valid question may be asked, how the cooperation between the nation states is possible. The answer is the cooperation between the various nation States is possible through the 'international regimes'. The settlement of many issue areas in the international arena is achieved by forming international regimes. International regimes are concerned with the activities of the members which generally take place out of the jurisdictional boundaries of the member states which may or may not be formally articulated. For example, act of the international financial institutions during the time of recession (an example of informal international regimes), Bretton Woods, WTO, high seas fishing etc.

As per the regime theory principles, the international institutions like IMF & WTO are considered as international regimes (IMF & WTO are the examples of formal international regimes as they have been created by the express agreements of the member states). For the past three decades, the ‘regime theory’ has been playing a pivotal role in studying the international relations between the parties. For the formation of an international regime it is not mandatory that the essential elements of the formation of the international regimes i.e. convergence of expectation and pattern of behaviors should occur simultaneously. Even the occurrences of behavioral patterns may give rise to convergence of interest. The study of international regimes provides the dynamics of means and condition within which the States cooperate with each other. It involves the evolution of regimes, how a regime survives with the other regime, sustenance of the regimes etc.

Regimes are social institutions governing the actions of those interested in specifiable activities (or accepted sets of activities). Like all social institutions, they are recognized patterns of behavior or practice around which expectations converge[1]. Even the occurrences of behavioral patterns may give rise to convergence of interest[2].

The exchange rate system (be that of China, India or US) operates within the currency regime (IMF). A currency regime, as every other regime, has implicit “principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations” (see Krasner 1983). This currency regime has its own standards of behavior, beliefs of fact, causation, or rectitude. Various trading regimes such as WTO regime and OECD regime act in consonance with the currency regime as these trade regimes survive on the ground of fair competition scenario in the international trade and currency

---

[1] Oran R. Young, *International Organization*, 36:2, Regime Dynamics: The Rise and Fall of International Regimes, (Spring, 1982), 277-297, 277; Oran R. Young has differed with Stephen D. Krasner while defining regimes but at the same time it accepts the authoritative definition of ‘regimes’ given by Stephen D. Krasner [See, Footnote 2 at 277].

[2] *Id.* at 278.

manipulations may adversely affect or even challenge the survival of these trade regimes. Since IMF is a regime as per the regime theory principles and this research work is relating to IMF, USA and currency devaluation policy of China, the regime theory and its principles are appropriately applied in the ongoing conflict of currency between USA and China.

The structural and functional specialty of a regime can be witnessed in the currency regimes (as IMF is a regime for money management). China is a signatory of the IMF which is based upon the Dollar. Deducing from the regime theory, in IMF regime US is a hegemon who governs the regime as a dominant actor (an application of Hegemonic Stability Theory).

Within the regime theory 'Regime Dynamics' plays an important role to link the development pattern with the life cycle of the regime. The intent as expressed by China to replace dollar (with RMB) as the major international currency by yuan internationalization is an example of 'Regime Dynamics' which deals with the rise, fall, emergence of new regime and change in pattern of behaviors of the actors within the regime.

A regime is a social structure and should not be confused with the functions of such structures. Regimes are more than the temporary arrangements of the parties which changes with the every shift of power. Regimes are different from the agreements. Agreements are the one shot arrangement between the parties hence it is ad hoc. But the regimes might encourage the parties to enter into the agreements. Regimes are not the short term calculations of interest.[3]

Presently we live in the world which is full of international regimes. There has been a massive growth in the international regimes after the World War –II. International regimes are defined as principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area.

[3] Stephen D. Krasner, International Organization, Vol. 36, No. 2, International Regimes, 185-205 (Spring, 1982).

Principles are beliefs of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice.[4]. The increasing popularity of the international regime has lured the political scientists to study about the formation, change and death of the regimes. Now there are the endless numbers of regimes, whether they are formally or informally created, making their presence in all the wakes of our life, say in the fields of politics, economy, commerce, security etc. As it is maintained in the words of Donald Puchala and Raymond Hopkins that the regimes as a pervasive characteristic of the international system[5]. Puchala and Raymond have maintained that behind every political system there is a corresponding regime. Various international institutions by the definition of the regimes are the international regimes. But there is a thin line of distinction between the international regime and the international organizations. The international organizations are the subparts of the international regimes which are formally created whereas the international regimes may or may not be formally created.

The study of international regimes provides us the terms and ways under which the nation states cooperate with each other. The means and ways of the mutual cooperation between the nation states remain in the core of the study of the international regimes. The study of the international regimes marked a shift in the study of international relations because it helped the lawmakers to shift their focus upon not only the formal but informal international organizations also. It has also helped in understanding the change in the internal dynamics of any well-established system (for example, Yuan is trying to replace US dollar as the main

[4] This is the most acceptable definition of the "international regimes" which has been given by Stephen D. Krasner, International Organization 36, No. 2, International Regimes, Massachusetts Institute of Technology (Spring 1982).

[5] Stephen D. Krasner, Structural causes and regime consequences: regimes as intervening variables. International Organization, 36, 185-205, 185 (1982).

international currency in the prevalent system under the IMF). Examples of regimes are CITES [6], Basel Convention for governing the hazardous wastes, International Atomic Energy Agency, [7] Bretton Woods, WTO etc. Hence, an international regime exists where there is the regularity of behavior, and some kinds of principles, norms or rules must exist to account for it.

Formation of Regimes

There are different theoretical schools which put forward their viewpoint regarding the formation and origin of the regimes. The main schools of thoughts depicting the different approaches regarding the formation of international regimes are –

I - Realism (Based on Power).

II – Neoliberalism (Based on Interest).

III – Cognitivism (Based on Knowledge).

I – Realists approach of the formation of Regimes

The nature of anarchy in the international system makes the states concerned about the relative gains. The situation of anarchy compels the participating states in the system to think its position Vis – a –Vis others. Focus of realists remains on power relationships. This perspective is reflected in the power based principle, i.e. "theory of hegemonic stability." This theory assumes an approach that the international regimes are established and maintained by actors who hold the power and resources. Such resources may be in terms of money, might or both which they use against the other actors (states) to keep them into the regime. A powerful state creates regimes to serve their security and economic interests. For example, as a victor of the world war – II, USA created various international

[6] CITES stands for Convention on International Trade in Endangered Species of Wild Flora and Fauna.

[7] International Atomic Energy Agency is global nuclear regulatory regime.

institutions like, IMF, World Bank, OECD, WTO which set the tone of the new world order. These institutions are the part of grand US strategy where US plays the role of hegemon. According to this principle, an international regime becomes strong as the power of the hegemon grows more powerful and the regime wanes as the power of the hegemon wanes.

II – Neoliberalism (Based on Interest)

Neoliberalists principle is the interest based theories of international regimes which propounds that the states are the rational egoists who are careful for their gains. The liberal interest based approach presumes that there may be cooperation between the parties even in the case of anarchy as there shall be convergence of expectations among the participants. An international regime facilitates cooperation by establishing the standard of behavior and according to neoliberals international regimes provide conducive environment for such cooperation.

Ian Hurd writes…

The liberal approach to world politics begins with an emphasis on the choices that actors make in the pursuit of their interests, in relation to the choices and interests of other actors. This generally means the choices of states but it can also refer to how domestic actors such as firms, leader, and political parties make choices that shape the "national interest" at the international level[8].

This principle assumes that in the given anarchic nature of international system, states are concerned about their relative gains over other states in the system of cooperation. States have the common interest in cooperating with each other. As per this principle, states are the self-interested, goal seeking actors who want to achieve the maximum individual gain. Even though the presence of conflict of interest in eminent within a system of international cooperation, the international regimes facilitate the process of achieving the goals by the actors.

---

[8] IAN HURD, INTERNATIONAL ORGANIZATIONS, POLITICS, LAW, PRACTICE, 2ND EDITION, CAMBRIDGE UNIVERSITY PRESS (2010).

Liberals and realists disagree on two matters in the arena of international regimes; oneisthe nature of international
cooperation and the role of international institutions. In sum, the liberals believe the main reason for the formation of regime is the convergence of interest whereas the realists believe on the distribution of powers for the formation of regime.

III – Cognitivism (Based on Knowledge)

The regime begins with an understanding that the actor's behavior is shaped by his role in the society not so much by material interest. Regime theory experts have divided the cognitivist approach into weak and strong Cognitivism.

…network of knowledge-based communities with an authoritative claim to policy - relevant knowledge within their domain of expertise. Their members share knowledge about the causation of social or physical phenomena in an area for which they have a reputation for competence, and a common set of normative beliefs about what actions will benefit human welfare in such a domain[9].

Weak cognitivism is based on three assumptions -

- The knowledge possessed by the actors influences his behavior and expectations in the international relations.
- Policy makers require high level of information to formulate the decisions.
- An understanding of the issue is essential for the expectations of the actors to converge.

Strong cognitivists take intersubjectivity more seriously recognizing that regime is embedded in the broader international social structure.

[9] Peter M. Haas, "Epistemic Communities and the Dynamics of International Environmental Co-operation" in Volker Rittberger, ed., Regime Theory and International Relations (Oxford: Clarendon Press, 1993) 168 at 179.

The abovementioned categories of the regimes are the most generally accepted but political scientists have made different categories also. For example, Oran R. Young have categorized the regimes into three categories, spontaneous order (does not involve a conscious coordination between the members), negotiated order (explicit consent between the individual participants), imposed order (fostered by the dominant power/powers on the participants)[10].

It is necessary to distinguish between the changes in regime and weakening of regime. A regime weakens when the actual practice of the members is different from the set norms and practices of the regime. The regime may weaken even if there is no direct challenge has been posed to its existence. For example, there is an internationally accepted practice of the providing diplomatic cover to the diplomats. But the incidences like bugging the embassies, killing of diplomats by the terrorists or failure of the local police to provide the security to such diplomats weaken such regime.

A regime has to be seen in dynamic sense and not in purely static sense. Since the regimes are the social institutions, it is evolved over the period of time and it may have a life cycle after which such regime may wane. Within the framework of international regimes it is not essential that the members will observe a strict compliance with the norms of the regime. The deviance from the conventionalized behavior may be frequent but it does not impact the existence of the regime as long as the members in general follow the generally recognized pattern of behavior within the framework of the social institution.

A regime, like any other social institution, has a propensity to change[11]. Hence, the established regimes with no possibility of an immediate change may be

---

[10] Hedley Bull, The *Anarchical Society: A Study of Order in World Politics* , NEW YORK: COLUMBIA UNIVERSITY PRESS, 54 (1977) at 282-84.

[11] The most authoritative work on change of regime is Regime Dynamics, see, Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* , NEW YORK: COLUMBIA UNIVERSITY PRESS, 54 (1977).

distinguished with the other regime which is changeable. The fact remains that the regimes are the creations of human being and they are the product of human behavior but it will be very difficult task to engineer the regime as a whole. The social practice and actor's expectations act as a resistance for the regime to be affected by the acts of the individual actors. Any given regime just reflects the general behavior of the actor[12]. It is true that on the international stage there is so much conflict of interest between the parties which makes the process of generating convergence of interest very slow. It is why the negotiation for any international arrangement (like CISG, WTO etc.) takes years and years[13].

But regimes do go through the process of transformations and even may collapse. In the international arena regimes are formed and collapse as per the actor's expectations and requirements. For example, during the time of recession banks may act in a particular way to prevent the financial contagion to percolate within the system or to mitigate the impacts of the recession in the system. But such preventive measures just disappear as the recessionary trend goes away from the system.

There may be several factors due to which a regime breaks down or a regime may be replaced by another or there may be an extensive alteration within the regime due to which it takes the form of a new regime. A regime can breakdown due to the internal conflicts between the members which may or may not be intrinsic to the formation of a regime.

The biggest advantage with the spontaneous order is it does not involve any transactional costs as it is required in the case of negotiated order. It does not

[12] Oran R. Young, International Organization, Vol. 36, No. 2, International Regimes (Spring, 1982), 277-297, 280.

[13] One of the goals of the study of regime theory to analyze and understand the methodology of interaction of the members of an international institution according to which they try to achieve convergence of goal. Such study may be helpful to speed up the attainment of goals by the members.

involve any conscious procedure also which the participants to know while forming a regime. A spontaneous order is generally free from any kind of restriction and hence cannot give rise to a strong social order. In case of the negotiated order restrictions may be severer and it is why it can give rise to a strong order.

1.1.3 - Rationale

In terms of applying the percepts of the regime theory in case of Chinese currency policy and internationalization of RMB what we extract from the Regime Theory that –

(I) Changes in the Regime due to power factor

A regime is formed by the hegemon and it shall continue as long as the hegemon is powerful to drive the regime. The regime wanes as the hegemonic power wanes (i.e. Role of Hegemon and Regime Formation) –

The main protagonists of hegemonic stability theory (like Joseph Grieco) have asserted that the regimes are formed and firmed up by the hegemon to further its goal. Powerful states create regime to serve their economic and financial needs. The hegemonic stability theory is very near to the imposed order as discussed by Oran R. Young as a reflection of power. According to Oran R. Young (Regime Dynamics, spring 1982), imposed order is designed for the benefit of the hegemon and the regime shall continue as long as the hegemon is powerful and is able to impose power distribution within the system. Historically, United States has been the hegemon of currency & world trade since the World War II. But its control over the currency and trade has been on decline for the past three decades after the emergence of few Asian countries like Japan, South Korea, Singapore, Hong Kong and the most prominently, China on the world trade theatre. And notably, the 2008 recession has provided China a golden opportunity to declare its emergence as the new hegemon of the international trade.

Internationalization of RMB is an important milestone in the relationship of US & China. The reasons of conflict between these two giants are rooted in the history, especially in the history of China after the World War –II. Both of the nations had allied with each other in the World War –II to stop the menace of Japanese expansionist ambitions around the Asia pacific regions. During the World War – II China was governed by the US democratic ally in China, Ching Kai Shek. But after the conclusion of the war, China was gripped in the civil war (1945-49) between the democrats and the communists in which communists under the strong leadership of Mao had defeated the (America supported) military command of democrats. Since then China is being governed by the communists.

Immediately after the civil war (and in the beginning of the cold war) communist China sided with Russia to counterbalance the American interference around the pacific, Japan and Korean peninsula. The recently formed communist China was largely ravaged and it had lost millions of its men in the decades of wars and internal strife between the communist and democrats. The country was in the dire need of food, technology and rapid industrialization. There were threats to the safety of boundary from the all sides. In this situation Mao relied heavily on Russia with whom China had shared historic link and people to people contact. Mao was also an ardent supporter of Russia Stalin's economic policies, such as the five years plan, farm collectivization etc. Later he implemented the same economic policy in China (which was a big fail). In this situation USA and China treated each other as rivals (rather as enemies). Both of the nations were involved in many direct and indirect military conflicts (like one in Korean War).

From 1949 to 1979 China remained as a close economy firming up its communist ideology. Its trade was very limited with the outside world. A major shift in the Chinese policy came up in 1978 when China embarked upon the policy of liberalization. In 1979, China was formally recognized as a nation by USA. In the coming next two decades China had rapidly developed its economy in all aspects. It established itself as the world manufacturing hub. Between the periods of 1980

– 2000 China became a net exporter country from a net importer country. But at the outset of the new millennium it was still very much backward from the other European countries. But again a major shift came in the growth story of China in 2001 when China became the member of WTO after the negotiation of five years with USA[14]. Now onwards cheaper Chinese goods flooded the markets of the whole world. Its production and export increased manifold in the next 15 years. In 2012, China surpassed Japan as the second largest economy and it is estimated that in the coming two decades it will surpass USA as the largest economy of the world.

Hence, it can be concluded on the basis of above discussion that the rivalry between the US and China which was earlier marked by military conflicts post World War – II is now marked by the conflict for grabbing the market space.

In the realm of competition between US and China, currency has played its own role. Today dollar is the most important reserve currency of the world and it is vastly used in the international transactions and in international trade[15]. But this is one of the imposed orders which USA has been governing to further its grand strategy to control the world trade. In order to see the grand strategy of the USA one has to look into the prevailing world order post 1945. The World War – II was the worst misery which was ever showered upon the mankind in the human history. After the World War – II, Asian and European economy was on the verge of collapse. The great British Empire was on the brink of bankruptcy and it was in the dire need of bailout. The roads, railway, airports, bridges etc. in Europe were totally destroyed in the war and no country was financially able to restore the infrastructure. In this situation USA came up with the Marshall plan which involved an aid of $13 billion to restore the normalcy in Europe. Acting as

[14] China accession to WTO has been discussed in detail in Chapter IV of this research work.

[15] Eswar Prasad, The Dollar Reigns Supreme, by Default, FINANCE & DEVELOPMENT, March 2014, Vol. 51, No. 1, *available at*http://www.imf.org/external/pubs/ft/fandd/2014/03/prasad.htm (accessed on 05.April.2016).

hegemon in the coming year USA established many international regime, notably under the aegis of Bretton Woods (which was to become IMF), World Bank and GATT. While establishing these international regimes the United States played the pivotal role in the international trade. Under the new world order dollar became the major international currency through which the international trade became functional.

But the emergence of China as a major trade participant in the international trade has now questioned the American supremacy in international trade[16]. China has made such a growth story due to which it is set to become the largest economy of the world surpassing USA before 2030. There is a clear trend since the liberalization of China that the manufacturing business has been shifting from USA to China which has established China as a net exporter country. Simultaneously, China has notably maintained a quite favorable currency policy which obviously has a positive impact on the price of its exported goods. China is maintaining the world largest reserve of foreign currency (in terms of US dollars) of 3.8 trillion dollars. These economic factors have put China on the path of becoming the next superpower of the world.

---

[16] Donald J. Puchala and Raymond F. Hopkins, International Organization, Vol. 36, No. 2, International Regimes (Spring, 1982), pp. 245- 275, at 259-
While our description of the colonial regime only hints at its transformation in the middle of the 20th century, the change was obviously of the revolutionary variety. There was little changing of minds or goals on the part of the colonial powers (save perhaps for the United States, whose government began to seek decolonialization almost as soon as the Pacific territories were annexed). Instead, counterregime norms took form in the European colonies in the 1920s and 1930s as nationalist elites emerged and movements were organized. The Russian Revolution created a formally anti-imperialistic state, thus breaking the European consensus that supported the principles of colonialism and modestly transferring power from the forces of imperialism to its challengers. Two world wars in the first half of the 20th century eclipsed European power and with it the capacity to retain great empires. After World War II the United States became aggressively anti-imperialistic for a time, thus shifting more power away from the supporters of the colonial regime. With the onset of the Cold War the United States subdued its anticolonialism in the interest of western unity (but Washington never admitted the legitimacy of empires). Meanwhile, counterregime norms prescribing decolonization had been legitimized and institutionalized by the United Nations General Assembly and its subsidiary bodies in the early 1960s. As the power to preserve the old regime waned, the power to replace it expanded. Personalities changed, norms changed, and power changed. As a result an international regime was discredited, eliminated, and replaced. The transformation was nothing less than a comprehensive change in the principles by which governments conducted their international relations.

Diagram – 1.1 - *Increase in Trade of China after its accession in WTO*[17]

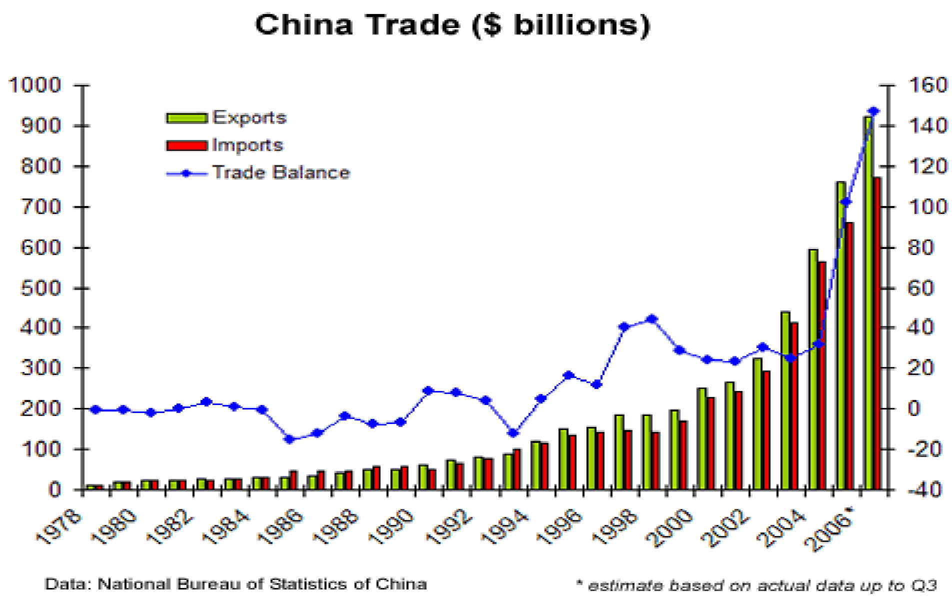

Diagram – 1.2 - Increase in Trade of China post liberalization[18]

[17] http://www.economist.com/node/21541408 accessed on 05.April.2016.

[18] http://apjjf.org/-Ming-WAN/2576/article.html (accessed on 05.April.2016).

(II) – International Regimes and Mutual benefit

An international regime survives on the percept that two or more states, aimed at working collectively on shared problems, even at the short term risk of suffering relative losses, which are offset by the expectation that the parties will be benefitted and realize absolute gains[19].

The secret of a flourishing regime lies in the fact of some sort of gains and mutual benefit by the parties to the international regimes. It is true that international regimes are established by the hegemon as a part of its grand design to cultivate benefits but for hegemons are the essential evil for a flourishing regime. According to the hegemonic stability theory, the hegemon establishes the regime and set up its norms and rules. But it is also true that for the purpose of surviving a regime the hegemon has to be a benevolent, i.e. he should not gain at the absolute cost of the other members of the regime, or he should not act in such a way that he should divert all the benefits towards himself and leave none for the other members. In the case of China we find that it is not only trying to replace dollar as a major international currency but also want to divert all the trade gains towards itself leaving just losses for others.

As it has been discussed that after the world war – II, United States of America emerged as the hegemon and it established IMF along with other European countries in which the scale was USD. But the establishment of IMF and the conduct of United States as a hegemon have beenbenevolent to the international trade and development. The major beneficiaries of the free trade & regulated currency has not been only the United States rather the benefit of the free trade was reaped by many countries of Europe and other Asian and North American countries (like, South Korea, Singapore, Japan, Brazil, Mauritius etc.). Of late such benefit has arisen to even the third world countries of Asia and Africa also (like India, Brazil, South Africa, Malaysia etc.).

[19] Charles W. Kegley, World Politics: Trends and Transformation, 10^{th} ed. (Belmont: Thomson Wadsworth, 2006) at 157.

US has maintained a big brother attitude in the world market but at the same time it has provided major financial support to developing nations and largely kept its policy free from severe restrictions (like one China had in the form of its managed peg) and manipulations. It has been the largest participant in the international trade but it has also suffered with the trade losses with many Asian and European countries. Its trade deficit has been depicted in the following map –

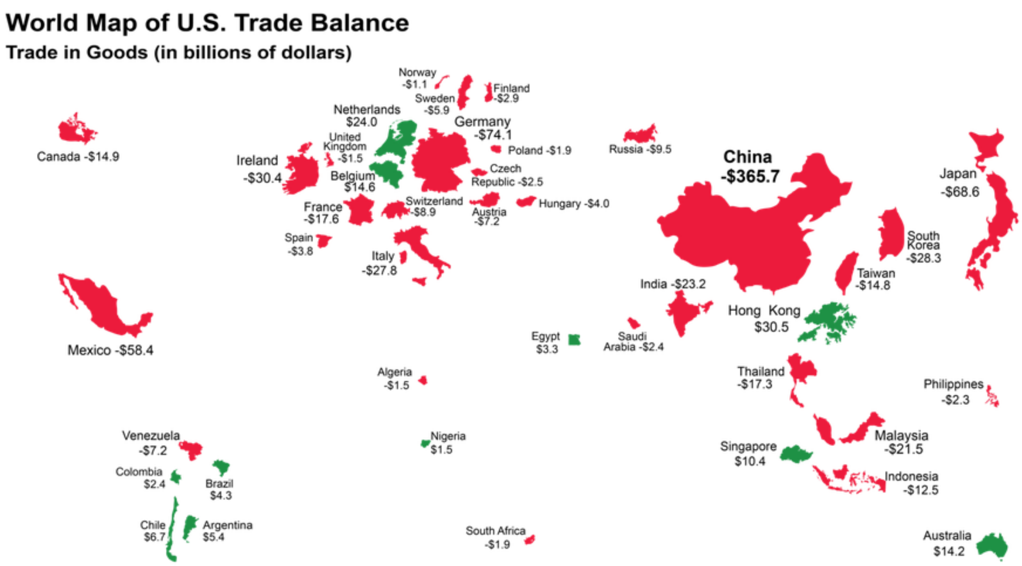

Diagram – 1.3 *-U.S. trade in goods by selected countries and world region for 2015*[20].

Looking at the trading pattern of the United States we find that it has been a benevolent hegemon when it comes to the international trade. For the purpose of obtaining any unfair gains, it has not indulged into any long term protectionist measure against the smaller countries and largely disseminated the trade benefit to other participants of the regime also.

[20] Available at - https://mishtalk.com/2016/03/02/visualizing-u-s-exports-imports/ (accessed on June 1. 2016).

On the other hand, Chinese act of protracted currency devaluation has been unilateral, protectionist and oppressive to the other trade participants in the international regimes. China has been substantially diverting the trade benefits towards himself at the cost of others[21]. It has evolved the managed currency peg to support its massive export design to reap maximum trade benefits.

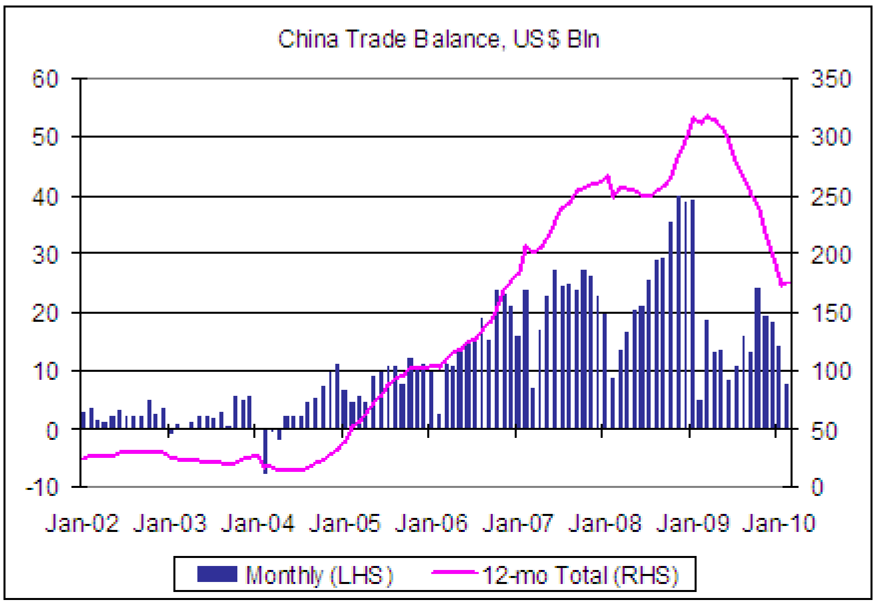

Diagram – 1.4 -China Trade balance with US.

Almost all its trading partners have been suffering massive losses and trade deficits including India –

[21] China's currency Imbalances revisited, *available at*, http://www.economist.com/blogs/freeexchange/2010/03/chinas_currency_2 (Mar 16th 2010), (accessed on June 1, 2016).

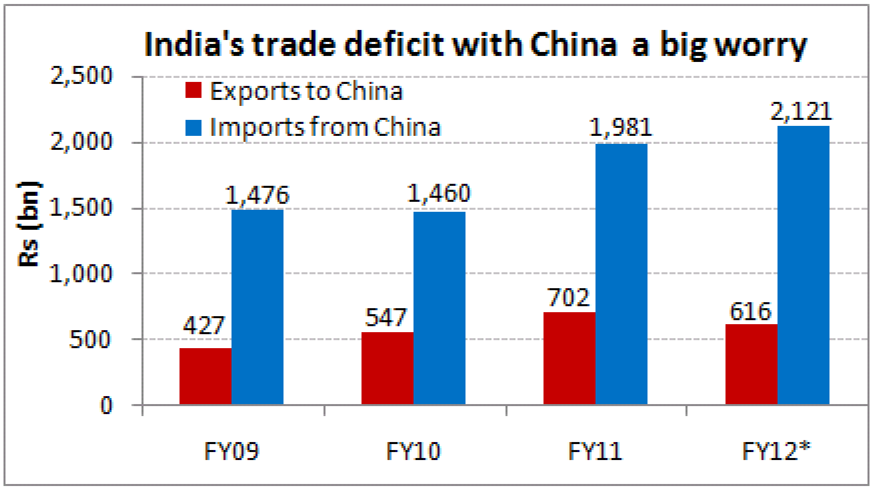

Diagram – 1.5 -*India's burgeoning trade deficit with China.*[22]

In the above stated scenario, China is trying to replace USD as a major international currency and to create its own hegemony. But the Chinese maneuvering in the currency market is not based upon the system of mutual gain and cooperation within the international currency regime. By diverting the major benefit towards itself, China is infringing the norms of international currency regime, and hence there is no surprise that Chinese currency policy is not compatible to IMF rules.

1.1.4 - Objectivesof Research

This research work regarding the international currency regime involves very significant repercussion on business and commerce. According to an estimate various governments in the world over affect the flow of currency about $1.5 trillion per year (Policy Brief Peterson Institute of International Economics) by adopting manipulative exchange rate policies. Various allegation of currency manipulations have been made on China in the backdrop of increasing supremacy

[22] Available at, https://www.equitymaster.com/5minWrapUp/charts/index.asp?date=08/04/2012&story=1&title=Indias-huge-trade-deficit-with-China (accessed on June 1, 2016).

of China in the international trade. The mere fact is that the domestic markets of all the major economies (including Europe and USA) are flooded with the cheaper Chinese products. China has a huge advantage of balance of payment over its largest trade partner USA ($1.76 trillion during 2001 to 2010). The Forex reserve of China stood at whopping US$3.44 trillion, out of which foreign currency deposits rose by US$31.4 billion in Q1 of 2013 itself.

The scope and objective of this research work is to make an enquiry over the Chinese currency policy and to conclude whether it is compatible with the rules provided under IMF or not. This is also to be decided that whether any devaluation of currency is treated as the export subsidy under WTO regime. There is still lack of clarity on these issues and this situation may have a great bearing upon international trade.

Research Questions:

1. Whether the currency valuation is purely a domestic measure and any dispute regarding it is only encompassed by the domestic jurisdiction on the exclusion to any external scrutiny (from IMF or WTO)?
2. Whether China's Exchange policy of currency devaluation violates Article IV (1) of IMF which deals with currency manipulations? In other words, whether China by adopting the policy of devaluation of currency becomes a currency manipulator under the provisions of Article IV of IMF?
3. What should be an appropriate jurisdiction for dispute settlement; whether it falls under the domestic jurisdiction or under IMF/WTO?
4. Whether the currency manipulations can be treated as an export subsidy under the WTO regime?

1.1.5 - Hypothesis

A case of currency manipulations cannot be treated as the export subsidy under the WTO regime.

1.1.6 - Chapters

I. ***Introduction and Evolution of the China's Exchange Rate Policy in the Reform Era***

This chapter will contain the definition part of the problemalong with an analysis of the factors affecting the valuation of the currency and the exchange rates. This chapter will also investigate the impact of currency manipulation on international trade and fair competition. A detailed analysis of the currency policy adopted by China will also be provided in this research work along with its alleged impact on US market.

II. ***China Exchange Rate Policy: Its Consistency with the International Legal Framework***

It is generally acceptable fact under the International Law that issuing currency is the sovereign right to issue the currency and determine the value of the currency. Whenever under pressure to adjust the value of RMB, China has maintained that the currency valuation is a domestic measure and any dispute regarding it is encompassed by the domestic jurisdiction only to the exclusion of any external scrutiny. Under this chapter this particular stand of China shall be analyzed in the light of various international agreements.

III. ***IMF and Currency Manipulation***

The International Monetary Fund is the universal regulator of currency/exchange rate. What are the circumstances under which a devaluation of currency is allowed and whether Chinese devaluation of currency falls under those category? How IMF deals with the issue of currency manipulations and whether the Chinese currency policy is in tandem with the rules as provided under IMF? Most notable point to discuss in this chapter that even though there has been a number of cases regarding currency manipulation but no State has been declared as manipulator till date by IMF. Whether the IMF provisions are too broad to cover the cases of currency manipulations?

IV. ***Appropriate Jurisdiction for the Dispute Settlement of the Case of a Currency Manipulation***

In the past many experts have stressed upon the need of collaboration between IMF and the WTO. This chapter will answer the question that how a State is dealt under WTO regime once it is declared to be manipulator under the IMF regime. In other words, whether a currency manipulation is an export subsidy under WTO regime? It may be noted that no country has been declared as currency manipulator till now. It is always desirable that IMF and the WTO should collaborate with each other in order to implement an orderly exchange rate regime in the world.

V. ***Yuan Internationalization and the Existing International Trade Regime.***

Since the outset of the general recession of 2008 China has been proposing a view point to place yuan as a major reserve currency in the world. During the 2008 recession, the US economy has been badly hit and it is becoming difficult for the dollar to maintain the status of the major reserve currency. This chapter deals with the special drawing rights and increasingly internationalizing yuan in the present trade regime.

VI. **Conclusion,*Suggestions and Remedies.***

1.1.7 - REVIEW OF LITERATURE

2010 Report to Congress of the U.S.–China Economic and Security Review Commission One Hundred Eleventh Congress Second Session, November 2010-

The timing of preparation of this report was very important for United States. This Report was prepared in 2010 when United States was still trying to come out of the worst recession after the World War II and to generate jobs within its economy. The US market was flooded with the cheaper Chinese goods and the balance of payment was acting heavily against US interests. United States had alleged that millions of its citizen lost their jobs because of the Chinese policy of currency devaluation. It was alleged by US, due to this policy of China, the Chinese goods in USA became cheaper and on the other hand the USA export to China became costlier in the Chinese market. US corporate lobby was pressurizing the government to declare China as currency manipulator. The report provides –

> Despite the effects of the global financial crisis, China's economy has continued to grow rapidly in 2010, surpassing Japan as the world's second largest economy this year. As a result, China has grown more assertive in pressing its interests in economic fora such as the International Monetary Fund (IMF) and the Group of Twenty nations (G–20). China maintains an export-driven economy through policies such as undervaluation of its currency, the Renminbi (RMB), and support for domestic companies to the detriment of foreign competitors. The Chinese government has been reluctant to revalue its currency due

> to its expressed concerns that it may damage its exporting industries, thus threatening social stability and continued economic growth. In order to support its export-promoting economic policies and suppress the value of the RMB, the Chinese government has continued channeling its foreign exchange earnings into U.S. government debt, becoming the single largest foreign purchaser of U.S. Treasuries. Although the size of China's holdings has raised concerns about the degree of influence China has on the U.S. economy, the lack of alternatives and the potential detrimental impacts on China's economy make it unlikely that China would stop buying U.S. debt or liquidate its holdings altogether.[23]

Even though the Report delineates the whole gamut of the affairs of the US – China relationships but it has put special emphasis upon the currency policy of the China. It alleges that RMB remains artificially devalued which subsidized (it should be noted that the term "subsidy" has been used for the currency devaluation in this report but it is not clear whether the currency devaluation may be called as subsidy in the WTO parlance. One of the goals of this research to arrive at a conclusion whether a currency manipulation by one State may be considered as subsidies under WTO rule so that the other State will have the right to impose duty as per the WTO rules).

This report is probably the finest official document which elaborates the US concern about the Chinese currency policy. However, the report provides a one-sided official position (that of US but not of China). In order to assess whether

[23] 2010 Report to Congress of the U.S.–China Economic and Security Review Commission One Hundred Eleventh Congress Second Session, 1, November 2010.

there is a currency manipulation or not by a certain state, relevant provisions of the IMF and WTO rules should be discussed which is absent in the report. Therefore the Report has more utility in terms of stating the problem.

Melissa Murphy & Wen Jin Yuan, ***INTERNATIONALIZATION OF THE RENMINBI AND ITS IMPLICATIONS FOR THE UNITED STATES: A REPORT OF THE CSIS FREEMAN CHAIR IN CHINA STUDIES, CSIS*** **(2009)**

This report has a focus on the challenges posed by China to replace dollar as an international currency. Since dollar is an internationally accepted currency since the end of World War – II. On many occasions China has reflected its intention to replace US dollar with RMB as the generally accepted international currency. Though the Chinese officials are asserting their intention to replace US dollar as an international currency but this is not going to happen any time soon, as recognized it by the authors themselves. China has accumulated a dollar reserve of 1.4 trillion and any devaluation of dollar will badly impact the Chinese economy. It is stated in this report –

> Although such headlines make thrilling copy it would be a mistake to conclude that China is ready to ditch the dollar anytime soon, let alone seek to replace the dollar with the Renminbi as a reserve currency. On the contrary, Beijing has accumulated around 1.4 trillion in U.S. dollar reserves and is keen to avoid any precipitous decline in the dollar's value—which would in turn devalue its own holdings. Reflecting China's concerns, a statement issued at the end of the BRIC summit did not in fact contain any call to develop a new reserve currency. Moreover, as Arthur Kroeber of the China Economic Quarterly points out, many commentators tend to confuse three distinct concepts when

> interpreting China's recent moves—currency internationalization; achieving reserve currency status; and being the dominant global reserve currency—leading them to reach erroneous conclusions about the status of the Renminbi[24].

Chinese authorities have also been concerned with the bond buying policy (quantitative easing) of United States. They have fear that rising fiscal deficit of United States during the widespread recession will rid the US dollar of its value as higher deficit going to have an inflationary trend. But the fear has been allayed by the US policymakers themselves that once the US economy is recovered it will go through a reverse process of bond buying programme to restore the value of the dollar.

The economy of China has grown to greater extent by far. It's the 2nd largest economy of the world now (replacing Japan in 2012). Way back in 2009 itself an open declaration of China to replace dollar as a reserve currency looks only a premature statement but it has some substance. Though the authors of this report see this declaration merely as a political statement to appease the anti US lobby within the Chinese government, but it might be indicating a future strategy. China works within the timeline and it might have an obvious goal to replace dollar as an international currency for creating foreign reserve. If China has a serious intention to replace dollar as an international currency then devaluation of Chinese currency is a critical issue for the United States as it is helping China not only enriching its economy but also to create big dollar reserve.

---

[24]Melissa Murphy & Wen Jin Yuan, Internationalization of the Renminbi and its Implication for the United States: A Report of the CSIS Freeman Chair in China Studies, CSIS, 1 (2009), *available at*, http://www.voltairenet.org/IMG/pdf/Is_China_Ready_to_Challenge_the_Dollar_.pdf (accessed on 15 April, 2015).

Morris Goldstein & Nicholas R. Lardy, The Future of China's Exchange Rate Policy,* PETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS *(2009) -

In this Policy Analysis, Goldstein and Lardy update and expand their overview about the growth of China with the outset of the new millennium and the contribution of its currency policy in its growth. During the period of 1997 - 2005 China had adopted the policy of a de facto peg of RMB against the US Dollars. It was a crawling peg with a narrow band within which the RMB was allowed to move. RMB showed a good appreciation in the period 1994 to 1996 from 8.7 RMB per US$ in 1994 to 8.3 RMB per US Dollar. This de facto peg was further narrowed down during the Asian financial crisis and it stood at 0.4 per cent around the RMB/US$ 8.28 peg. This peg was further tightened in November 2000 as 0.04% which was continued until 21 July 2005. The period of 1994 to 2009 had established China as a very successful economy on the world stage. In this period China was able to convert its trade deficit into trade surplus. This e-book has been written in this background. It is an informative piece of work in which the authors stated the general concern of United States that during the period of 2005 to 2009 (during which the world - wide recession hit) the Chinese currency though appreciated but such appreciation was artificially controlled and manufactured by the Chinese lawmakers.

In other words it can be said that, whereas because of the fall in the value of USA dollar other currencies had appreciated greatly up to a very high level, the Chinese currency did not appreciated as much as it should have been appreciated. Its valuation was artificially kept low. It has been stated,

> First, the cumulative real effective appreciation of the Renminbi between the July 2005 reform and year-end 2008 is sizable, ranging from 17 to 20 percent according to the three indices. It is worth noting that the cumulative real effective appreciation of the Renminbi would be considerably smaller if one used some alternative benchmarks that have sometimes

> been used in the wider and longer-running discussions about the adjustment of external imbalances among the major economies. For example, 2002 is a relevant benchmark because (1) the US dollar, a key variable in the external imbalance problem, hit its peak (in February) and (2) China's external imbalance began its prolonged rise that continued through 2008. If February 2002 is used as the base, then the cumulative real effective appreciation of the Renminbi (as of December 2008) is substantially less, ranging from negligible to 7.5 percent. This earlier period illustrates how the three indices of real effective exchange rates can sometimes produce quite divergent answers.[25]

The book also focuses upon how China rebalances its domestic economy. In this research work a passing reference may be made to the Chinese maneuvering on the domestic monetary policy to keep the economy on track amidst its currency devaluation. In this regard, the authors say,

> China can run an independent monetary policy under any Renminbi regime." He believes China's capital controls are relatively effective and that sterilization, implemented mainly via the sale of central bank bills and increases in the required reserve ratio for banks, has been successful and can be maintained indefinitely. Thus, increases in China's international reserves—whether generated by a growing current account surplus, by the capital account (motivated variously in different periods by the expectation of currency appreciation, rising Shanghai property prices, or a booming domestic stock market), or by errors and

[25] Morris Goldstein & Nicholas R. Lardy, The Future of China's Exchange Rate Policy, 18 (PETERSON INST. INT'L. ECON) (2009), *available at*http://www.lapres.net/goldstein.pdf (accessed on 15 April, 2015)

> omissions in the balance of payments—"have had virtually no impact on domestic liquidity conditions" (Anderson 2006a, 19).[26]

The book further discusses about the external aspect of the issue and elaborates the relevant provision of IMF. It raises the fear of rising protectionism because such currency policy. This also elaborates the WTO provisions but major focus of this book remains upon the interaction of the issue between USA –China and the remedial provisions are not discussed in detail. Though the book provides a good account of the emerging currency issue and becomes an adorable piece of work to start of the research but it is merely an elaboration of the US point of view regarding the Chinese currency policy. Remedies have been provided but these remedies are mostly unilateral and retaliatory in nature by US.

IMF, Article IV of the Fund's Articles of Agreement: An Overview of the Legal Framework, Legal Department In consultation with the Policy Development and Review Department (2006) –

As far as the remedies of the currency manipulations under IMF regime are concerned, the Art IV of provides the remedies. This article is a good explanation of the various provisions of the Article IV and can be helpful in facilitating the research work as this research work is related to an alleged currency manipulation policy adopted by China. But at the same time it also states the inherent problem with currency manipulations:

---

[26] *Id.* at 28.

> Article IV, Section 1(iii) is a relatively complex provision and not all of its terms are easily understood— or easily applied. In particular, it is not clear what type of activity was intended to be covered by the phrase "manipulating the international monetary system" (as distinguished from the other prohibited activity, that of manipulating "exchange rates"). In addition, the determination as to whether the competitive advantage obtained by a member through manipulation is "unfair" would require the exercise of considerable judgment.[27]

Andrew Mitchell and Jennifer K. Hawkins, China's Currency and IMF Issues, Melbourne Legal Studies Research Paper No. 598

The purpose and relevance of this Article is stated in its introduction part:

> This chapter sets out the current legal framework at the International Monetary Fund ("IMF" or "Fund") governing its members' exchange rate policies, and the global system of exchange rates. In doing this, the chapter notes the rationale underlying the current framework, assesses the IMF consistency of China's policies, and reviews proposed reforms of the framework. We conclude that it would not appear that China is in breach of its obligations under

[27] IMF, Article IV of the Fund's Articles of Agreement: An Overview of the Legal Framework, Legal Department In consultation with the Policy Development and Review Department, p15 (2006)

> Article IV, Section 1, but that legitimate concerns have been raised over the adequacy of Section 1 with regards to members' obligations and the Fund's oversight role.[28]

This Article though addresses the IMF rules for the alleged Chinese currency manipulations though it does not address the rules of WTO and interaction between the IMF and WTO regarding currency manipulations.

Rathin Roy and Raquel Almeida Ramos, IMF Article IV Reports: An Analysis of Policy Recommendations, International Policy Centre for Inclusive Growth (IPC-IG)

Article IV of the IMF is a key to deal with the currency manipulations situation in the international trade and this report analyze one of the important aspects of the Art. IV of IMF which is known as "policy recommendations" made by the IMF Executive Boards. At Page 1 of the Report the authors provides the background and necessity of such Policy Recommendations:

> Another important attribute of Article IV is that it foresees the exercise of surveillance by the IMF on member States' policies: "[the IMF shall] exercise firm surveillance over the exchange rate policies of members, and shall adopt specific principles for the guidance of all members with respect to those policies." This surveillance process takes the form of 'Article IV Consultations', which are normally done annually by the staff and result in a report in which the IMF's Executive Board presents its view on a State's policy and indicates recommendations.

[28] Andrew Mitchell & Jennifer Hawkins,China's Currency and IMF Issue, Melbourne Legal Studies, 5, Research Paper No. 598 (2012).

These reports can be made public or not, depending on the preferences of the States' authorities.[29]

Though one of the focus areas of the Report is to address how the policy report addresses the internal economic issue of any State like inflation, capital controls and social stability to growth. The main focus area of this research work to analyze the external aspect of the currency manipulations done by a State though a passing reference can be made in this direction as the devaluation of the currency may have an inflationary trend within an economy. This report may be useful to deal such issue. Secondly, this report provides a good account of the various aspects the Art IV of the IMF which is important for the currency manipulations aspects.

The Missing Link" Between the WTO and IMF, J INT'L Economic Law (2013) 16 (2): 353-381 -

This article deals with an important aspect of this research work, i.e. how the WTO provides a remedy to an aggrieved State once it is established that it suffered loss because of the currency manipulations policy adopted by the other State. In other words, it deals with an issue where a State is held to be currency manipulator under the provisions of IMF, what the remedied available under WTO rules to the other State. There is a lack of clarity over this issue and it is generally felt by the policy makers that WTO rules are grossly insufficient to provide the remedial rights. This article delves into the broader relationship between the exchange rate and trade. The article searches the reasons for a gap between the WTO and the IMF concerning the relationship between exchange rates and trade. Besides, the Article provides a very systematic account of the chequered history of the Fund and firm surveillance by it. It provides -

[29] Rathin Roy and Raquel Almeida Ramos, International Policy Centre for Inclusive Growth (IPC-IG), IMF Article IV Report: An Analysis of Policy Recommendation, Working Paper number 86, 1(2012).

> The WTO Secretariat presented its Note on a Review of Economic Literature in September 27th, 2011 (WT/WGTDF/W/57), as mandated by the Working Group. It was an extensive research, but curiously it speaks the "language of the IMF" and not "WTO language". It did not touch the issue of the impacts of exchange rate misalignment on WTO principles, rules and its instruments.
>
> It is worth noticing that exchange rate devaluations have the same economic effects of horizontal subsidies, promoting exports while also inhibiting imports into the domestic market. The effects of exchange rate misalignments on tariffs have been discussed elsewhere (Footnote Omitted), but also other trade instruments are potentially affected by exchange rate misalignments, such as: tariffs, antidumping, subsidies, safeguards, rules of origin, GATT Articles I, II, III, XXIV, just to name some of the rules that are certainly being affected by exchange rates.[30]

Though while opining that the case of currency may have the same status as subsidies have in WTO regime but the authors have done a commendable job by not unilaterally concluding it rather it has raised the contentious issue of subsidy in the next paragraph on which the academicians are deeply divided –

> Due to the historical and political developments commented above, many trade and finance experts believe that the exchange rate issue is one solely under the auspices of the IMF. The problem with that conception is that, although the contracting parties/members to the

[30] The Missing Link" Between the WTO and IMF, J INT'L Economic Law 16 (2): 353-381, 370-71 (2013).

> GATT/WTO did not negotiate new specific rules to deal with the new reality of floating exchange rates, the old GATT rules are still in place and have been incorporated into the WTO legal system[31].

Recognizing the "missing link" between the IMF and WTO the learned authors have concluded rather with a negative note -

> Criticisms of both the IMF and the WTO handling of the situation are growing between States suffering the consequences of what has come to be recognized as a "currency war". Many argue that the IMF, through Article IV surveillance mechanism, is the best institution to deal with the issue. But, for decades, IMF has done nothing to countervail the impacts of currency on trade instruments. WTO was left alone to handle this crucial issue because the link between trade and currency was lost in the fragmentation of Bretton Woods system[32].

The discussion regarding this article can be summed as, though the Article has made a very good account of gaps between the IMF and WTO in the case of exchange manipulations with a historical approach of the issue, it fails to provide any substantial recommendation for the resolution of this issue. Further a great miss has been made by the authors in the sense that they have not touched the dispute settlement mechanism of WTO. Hence, these issue need to be revisited once again.

[31]*Id*, at 371.
[32]*Id*, at 374.

IMF, The Fund's Mandate: An Overview, Prepared by the Strategy, Policy, and Review Department, (In consultation with the Legal Department), 2010

Though the Fund (International Monetary Fund) does not provide any mechanism to punish the offenders, but sanction comes under its regime other way round. The State which does not fulfill the requirements enumerated under its various Articles is not entitled to receive loans and other financial helps from IMF. Hence, a State which is declared as a currency manipulator shall not be entitled to receive any assistance from IMF. This Article talks about the provision of Surveillance [multilateral surveillance originates in Article IV, Section 3 (a) requirement]. The surveillance may be bilateral or multilateral and it is an important tool in the hands of Fund to adjudge the exchange rate policy on a State

> Bilateral surveillance, focusing on domestic and exchange rate policies, has long been the foundation of Fund analysis, and has underpinned much of its multilateral outputs. What members' value most from bilateral surveillance is an international perspective with regard to their domestic policies. A new multilateral procedure to cover the systemic effects of large States' domestic policies would certainly bring such a perspective to the surveillance of large States. At the same time, it will be important to continue shifting the content of bilateral surveillance to emphasize cross-State comparison (of greater interest to the growing number of States that have built up the capacity to

> analyze their own policies) and more analysis of regional spillovers[33].

IMF, *The Fund's Mandate—The Legal Framework,* LEGAL DEPARTMENT (IN CONSULTATION WITH THE STRATEGY, POLICY AND REVIEW DEPARTMENT) (2010)

The Article is concerned with the stability of internal monetary system and Article IV, surveillance provisions of International Monetary Fund. It is states:

> Notwithstanding the above, an important element of the reforms introduced at the time of the Second Amendment was the explicit recognition that domestic policies, including financial sector policies, can have an important impact on the stability of the overall system of exchange rates and, accordingly, are a subject of international concern. To that end, Article IV establishes specific obligations for members not only with respect to the conduct of exchange rate policies (i.e., policies that are specifically designed to influence a member's exchange rate) but also domestic policies that can indirectly affect exchange rates[34].

The Article does not deal with the whole gamut of the problem. It deals with the IMF provisions regarding the stability of exchange rate and monetary but it is just a part of the problem.

[33]IMF, *The Fund's Mandate—An Overview*, LEGAL DEPARTMENT (IN CONSULTATION WITH THE STRATEGY, POLICY AND REVIEW DEPARTMENT, 6 (2010), *available at*http://www.imf.org/external/np/pp/eng/2010/022210.pdf (accessed on 15 April, 2015).

[34] IMF, *The Fund's Mandate—The Legal Framework*,LEGAL DEPARTMENT (IN CONSULTATION WITH THE STRATEGY, POLICY AND REVIEW DEPARTMENT),4 (2010), *available at*http://www.imf.org/external/np/pp/eng/2010/022210.pdf (accessed on 15 April, 2015).

IMF, *The IMF's Advice on Exchange Rate Policy,* ISSUE PAPER FOR AN EVALUATION BY THE INDEPENDENT EVALUATION (IEO) (2006)

The goal behind the establishment of the IMF is to avoid any competitive devaluation (the one which took place after the world war one).

The present form of Article IV was devised in the Second Amendment of Articles of Agreement in 1978. The Article IV established a new set of rules after the crash of Par value system. Under the Par value the choice of a member that how it values its currency as to the value of the currency of any other nation was very limited. The value of the currency by a member nation had to be determined in terms of certain amount of gold or through the U.S. dollars. The Article IV of the revised agreement is based upon the party autonomy that a member nation could chose an exchange arrangement as it wishes to have. Surveillance is an important aspect of Art IV and this seminal work makes a summary of the procedure of surveillance by IMF -

> Exchange rate surveillance is a continuous process. For each "cycle," however, the process of providing advice on exchange rate policy can be represented by a multi-stage "results chain" that connects "inputs" with IMF activities and their outcomes (Figure 1). The evaluation covers three (partially overlapping) stages of this process: (i) analysis and assessments; (ii) communication of policy advice (including review by the Executive Board); and (iii) follow-up, including continuous monitoring between cycles. Each stage embodies bilateral and multilateral components, which we consider to be two complementary perspectives inherent in any surveillance activity[35].

[35]IMF, *The IMF's Advice on Exchange Rate Policy,* ISSUE PAPER FOR AN EVALUATION BY THE INDEPENDENT EVALUATION (IEO) (2006), *available at*https://www.imf.org/external/np/ieo/2005/ar/pdf/chap3.pdf (accessed on 15 Aril, 2015).

There is a good utility of this work undertaken by IEO as it gives a full description of the process of surveillance which is the key of Art IV. It ought to be noted that the Art. IV is the important to resolve the currency manipulations issues.

PART2 - Evolution of the China's Exchange Rate Policy in the Reform Era

Since the beginning of the new millennium United States has alleged that China has artificially devalued its currency for the purpose of getting an unfair advantage over the United States in the international trade. As it has been alleged by the United States that the policy of keeping the currency artificially devalued by China has the potential to make Chinese products cheaper and more competitive in the United States, simultaneously it makes the US products costlier in the domestic market of china. This price differential harmed the business of United States as the demand of the products manufactured by the United States declined and its manufacturing sector suffered very heavy losses. This loss has translated into millions of job losses in manufacturing sector of the United States which has worsened the sufferings of the United States. The United States criticism of Chinese policy reached to its culmination when the US lawmakers called China a "currency manipulator."

Currency manipulation is the biggest threat for the international trade which is prohibited under the Article IV of the International Monetary Fund, Articles of Agreement. But it is very surprising that till now no government has been declared as the currency manipulator since the introduction of the IMF. This research work has been undertaken to emphasize the gaps in the applicable Laws because of which there has been no case of currency manipulation made by the IMF till now.

This chapter will contain the definition part of the problem along with an analysis of the factors affecting the valuation of the currency and the exchange rates. This chapter will also investigate the impact of currency manipulation on international trade and fair competition. A detailed analysis of the currency policy adopted by China will also be provided in this research work along with its alleged impact on US market.

1.2.1 - What is Currency Manipulations?

Currency manipulation occurs 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[36]. A currency manipulation may be caused by official financial flows through the government's act. To depreciate the value of its currency a government sells its domestic currency to buy foreign currency. On the other hand, a government may raise the value of currency by selling the foreign financial assets (typically retained officially in the form of a bond and bank deposits).[37] Besides government's act, the act of private players also has an impact upon the value of the domestic currency, e.g. the preferences made by the private parties for their investments and balance of the current account etc. A private player is further induced to sell foreign currencies where the domestic currency being sold off at a declined rate. If there is a legal barrier to hold the domestic currencies then the depreciation in the domestic currency will be steeper.[38]

---

[36] Joseph E. Gagnon, Policy Brief (Number PB12-19), U.S.-CHINA ECONIMIC AND SECURITY REVIEW COMMISSION, PETERSON INST. INT'L. ECON. 1 (2014), *available at*https://piie.com/publications/pb/pb12-19.pdf (accessed on 05.April.2016).

[37]*Id.* at 2. It should be noted that China and many other countries in the past have heavily resorted to this kind of mechanism in order to manage the value of domestic currencies. There are loads of writings and academic essays which have referred this kind of activities as examples of manipulations.

See Also, PART II of the scholarly writing, Bryan Mercurio & Celine Sze Ning Leung*, "Is China a "Currency Manipulator"? The Legitimacy of China's Exchange Regime Under the Current International Legal Framework" 43 THE INT'L LAWYER 1257 (2009).*

[38]*Id.* at 2.

Another set of policy tools that influences the exchange rate is capital control measures such as taxes or regulatory restrictions on private capital inflows and outflows[39]. A higher interest rate keeps the domestic currency more demanding and thereby pushes up its rate. Similarly, regulatory restrictions, in the form of taxes etc., on outflow and inflow of currency also impact its value. A tax or restriction on capital inflows tends to depreciate a currency, whereas a tax or restriction on capital outflows tends to appreciate a currency. The primary motivation for such controls is domestic financial stability (Ostry et al. 2011)[40].

According to an estimate, various governments in the world affect the flow of currency about $1.5 trillion per year[41]. Although currency manipulation is a violation of various international agreements including IMF but IMF does not intend to provide sanction against any currency manipulation. WTO provides some sigh of relief to the regulators which works in consultations with IMF. The WTO rules authorize to impose tariffs on imports.

1.2.2 - China Legal Regime and Exchange Rate

Peoples Bank of China is the Central Bank of China. But its role and function is different in many aspects from its western counterparts. Generally the Central Banks are autonomous bodies and they have independence in framing the credit policy for the nations[42]. In China the independence of the Central Bank is subject to the government interference[43] and because of the communist set up of the government it lacks complete transparency.

[39] *Id*.

[40] *Id*.

[41] *Id*. at 1.

[42] The Indian Central Bank, Reserve Bank of India is an example of it.

[43] The policy framework for PBoC is subject to the standing committee approval. The Article 6 of Law of the People's Republic of China on The People's Bank of China provides, "The People's

As per the Law of the land in China, it is the duty of the People's Bank of China to constitute the Monetary Policy Committee (MPC) whose working is governed by the State Council and shall be filed to the Standing Committee of the National People's congress. The People's Bank of China is wholly funded and owned by the State[44]. The Committee plays its role to manage macroeconomic tasks and making adjustment in the monetary policy. For the purpose of formulating the monetary policy the Committee advises the People's Bank of China after making extensive research of the economy and on the basis of the economic target set by the government.

The MPC contains generally15 officials including the bank officials, ministers etc. from various department and external experts. Thought it seems the number of members change as per the requirement and government decision. For example, recently in 2015, the number of members increased from 13 to 15.

The Article 4 of Law of the People's Republic of China on The People's Bank of China provides the following –

(1) Promulgating orders and rules related to the fulfillment of its functions andresponsibilities;

(2) Formulating and implementing monetary policy in accordance with the Law;

(3) Issuing the renminbi (RMB) and supervising its circulation;

(4) Regulating the inter-bank lending market and the inter-bank bond market;

Bank of China shall submit work reports to the Standing Committee of the National People's Congress on the conduct of monetary policy and the operations of the financial sector."

[44] The People's Bank of China, art. 8, *available at*,

http://www.pbc.gov.cn/english/130733/2941519/2015082610501049304.pdf (accessed on 05. April.2016).

.

(5) Administering foreign exchange regulation and supervising the inter-bank foreign exchange market;

(6) Regulating the gold market;

(7) Holding and managing the foreign exchange and gold reserves of the State;

(8) Managing the State treasury;

(9) Maintaining the normal operation of the payment, clearing and settlement systems;

(10) providing guidance and making plans for the fight against money laundering in the financial industry and being responsible for monitoring the movement of funds for the purpose of anti-money laundering;

(11) Being responsible for statistics, survey, analysis and projection concerning the financial industry;

(12) Engaging in relevant international financial activities in its capacity as the Central Bank of the State; and

(13) Other functions and responsibilities prescribed by the State Council.[45]

The formal objective of the monetary policy is to maintain the value of the currency and to promote growth. But the main task of the PBC is to curb inflation for the purpose so that other policy tasks may be facilitated. The central government sets up the economic goal for China at the annual Central Economic Work Conference and the PBC fulfills the goal by preparing an appropriate credit policy.

---

[45] The People's Bank of China, art. 4, *available at,http://www.pbc.gov.cn/english/130733/2941519/2015082610501049304.pdf*(accessed on 05.April.2016).

.

To achieve the target set by the central government, the PBC adjusts the base money supply with the help of various quantitative and qualitative techniques. The PBC maintains the financial stability with the help of three institutions, the China Security Regulatory commission, the China prudential Regulatory Commission and the China Banking Regulatory Commission. As China modernizes its credit regimes, it has started adopting more internationally acceptable instruments for credits control like, reserve requirements, open market operation etc. Out of all the instruments of credit control requirements, cash reserve requirement, benchmark lending and deposit rates have been widely used in China. The reserve requirements set the ratio of reserve which the deposit bank must hold. Currently the limit is set as 17.5 % for small and medium size depository institutions, 19.5 for large depository institutions and 16 % for rural cooperatives and small financial institutions. The reserve requirement is the most widely used tool for the credit control in the big economies and in case of China too it remains most successful tool of credit control.

The credit control regime in China is different from the big economies. In the big economies generally the rate of currency and the bond interest rates are decided by the market. But in China PBC still controls the benchmark interest rates. During the initial years of reform period, there was limited use of open market operation due to less expertise and experience. But now with the gradual development of foreign exchange and Treasury bill market open market operation has become a very part of the credit control policy instruments of China.

Regarding the business operation and the possible policy instruments Article 23 of Peoples Bank of China Law provides–

Article 23 To implement monetary policy, the People's Bank of China may use the following monetary policy instruments:

(1) Requiring banking financial institutions to place deposit reserves at a prescribed ratio;

(2) Deciding on the benchmark interest rates of the Central Bank;

(3) Providing discount services to banking financial institutions that have opened accounts in the People's Bank of China;

(4) Providing loans to commercial banks;

(5) Purchasing and selling central government bonds and other government securities, financial bonds, and foreign exchange on the open market; and

(6) Other monetary policy instruments decided by the State Council. The People's Bank of China may prescribe specific conditions and procedures to use the monetary policy instruments listed in the preceding paragraph in order to implement monetary policy.

1.2.3 – Ideological Foundation of Chinese Exchange Rate System in China

Before opening its market (i.e. before embarking the economic reform policy in 1978) China was mostly a small and close economy which had been fighting many wars for the last eighty years[46]. In 1949, the Communist Party of china took over the rein of China from the Democrats under the leadership of Mao. But the country was largely ravaged by wars and its human potential was low because the country had lost millions of its people in the wars with Japan. From 1949 – 78 China focused on consolidating the communist ideology within its boundary. During the period of 1949 -78, even though China successfully completed many military expeditions but its economy was largely like the newly independent Asian countries. In 1978, by opening its economy, the People's Republic of China turned its attention to develop its poor economic situation.

[46] China entered into decades long conflict with the Japanese Manchurian expedition in 1897 and afterwards China fought many wars on various fronts including with Japan in World War – II.

After opening its economy China made a history of growth and development which brought millions of its citizens out of poverty. In 1978, China was a net importer country and its trade with the other country was at a very low level. Its total trade in 1978 was $20.7 billion, or around ten percent of GDP. External trade was carried out by a few of foreign trade corporations (FTCs) and all the forex transaction was done through the Bank of china which is the Central Bank of china. All the foreign exchange receipts had to be sold with to the government at the Chinese government's determined rate. In the coming few decades it became the second largest economy of the world with its most liberalized economic system. Soon after the economic liberalization it started getting rid of the government control and socialist ideology. It encouraged FDI and for the purpose of facilitating the trade and commerce it embarked into the nationwide infrastructure development program, thereby making the largest infrastructure in the world.

During the period of globalization China adopted the policy of managed exchange rate system. In the next three decades the trade of China had to grow by 70 times, the share of trade in GDP became five-fold and the country's share in world trade grew from 0.8 percent to 7.7 percent during 1978-2005[47]. Many critics of Chinese exchange policy believes that it was possible due to its manipulative currency policy.

[47] Min Zhao, *External Liberalization and the Evolution of China's Exchange System: an Empirical Approach*, THE WORLD BANK BEIJING OFFICE, World Bank China Office Research Paper No. 4, at 5 (2006), *available at* http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/12/19/000020953_20071219140301/Rendered/PDF/418560CHA0Liberalization0WP401PUBLIC1.pdf (accessed on 05.April.2016).

The ideological basis of such an economic policy has been explained meticulously by Min Zhao –

> In mid-1978 the China Communist Party reviewed the lessons of the culture revolution. The review established a philosophy that "Practice is the sole criterion to test truth", which helped the authorities to overcome the obstacle of doctrinarism—communist ideology in economic management. This basic philosophy has guided the decision making in the whole reform and liberalization process. Following this philosophy, external liberalization has been experimental and gradual, making it evolutionary rather than revolutionary. The empirical approach has allowed China to draw lessons from experiments, and subsequently establish or adapt the institution and administration system that are appropriate for the particular stage of liberalization. The empirical approach has been supported by a strong political commitment to reform and opening up. Over time, China has developed a comprehensive exchange control and monitoring system, which allows for a deep integration in the world economy in terms of trade and investment, but which has shielded China from external crisis in the process[48].

The PBC is not wholly independent from the political influence. The Bank acts under the aegis of State Council which has the right to approve the key issues of monetary policy. It is counted among the least transparent Central Bank in the world over.

[48]*Id.* at 6.

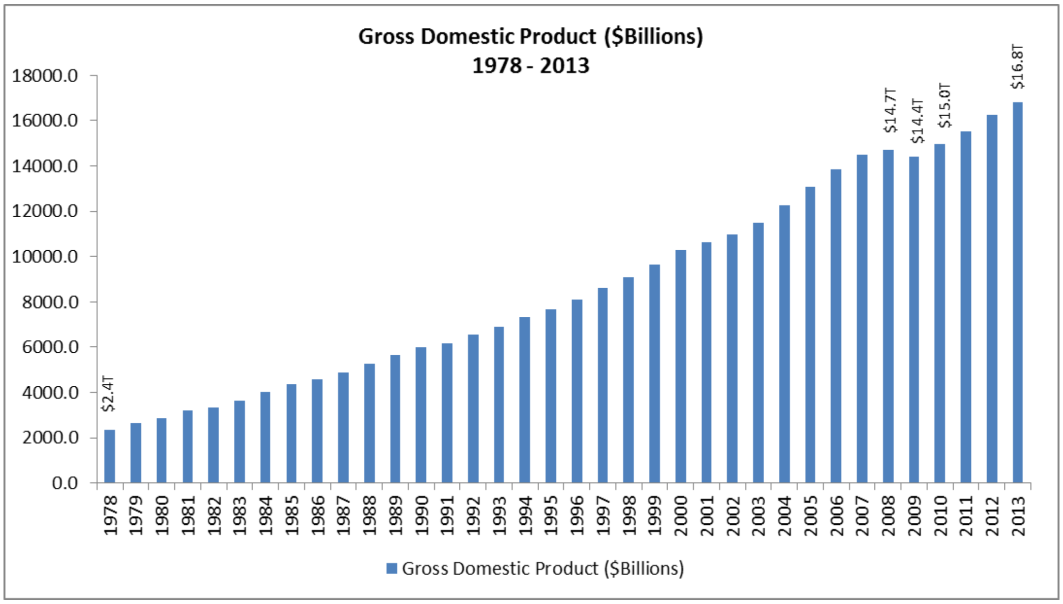

Diagram – 1.6[49] [Growth of GDP of China after the liberalizing its economy, from 1978 to 2013].

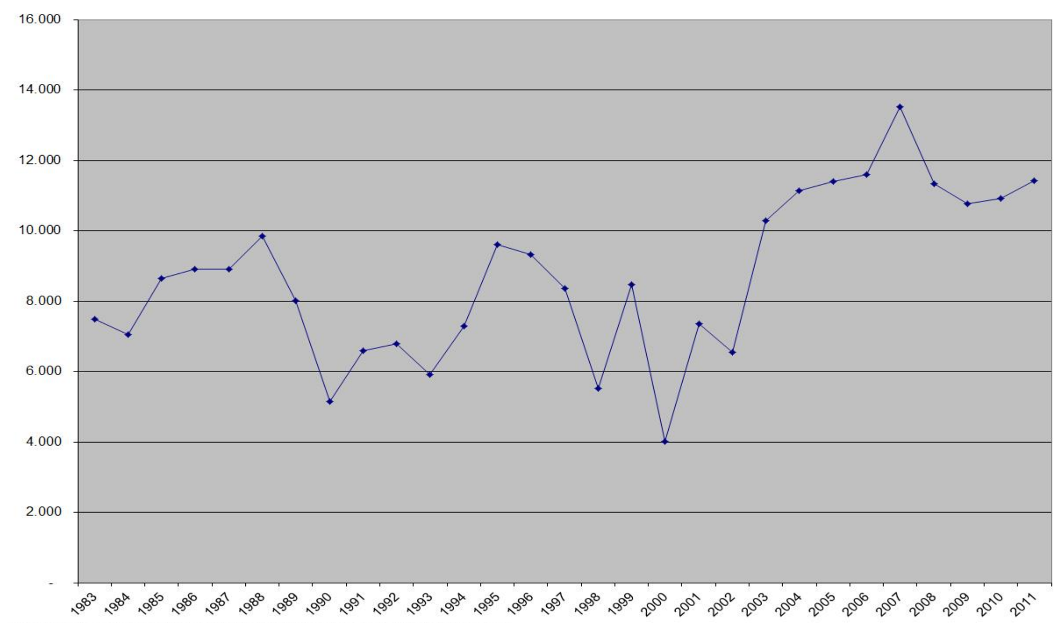

Diagram – 1.7[Growth of GDP of China from 1983 to 2011] [50]

---

[49] Available at, http://www.realforecasts.com/wp-content/uploads/2014/03/Gross-Domestic-Product-Billions-1978-2013.png accessed on (05.April.2016).

[50] *Available at*, http://www.econlib.org/library/Columns/y2012/GregoryChina.html (accessed on 05.April.2016).

1.2.4 - The US China Dispute on Chinese Currency

A prosperous economy is always created out of good economic policies. It is generally understood that an economic policy will be translated into the economic development if it ensures a lower flat tax regime, controlled spending, lower inflation and free trade. The collapse of the gold standard in 1971 turned the big economies from the fixed to floating exchange rate regime which allowed the Central Banks to devise its monetary policy with more flexibility and independence. With the collapse of the fixed exchange rate the Central Bank of a country is not forced to maintain the value of the currency to its par level. One member is not compelled to cope up the inflation exported by its trade partners.[51] The floating exchange rate acts like a stabilizer regarding the external inflation. But the move of IMF (or being more precise, by USA) to have a shift from fixed to floating exchange rate had reignited the old bogey of competitive devaluation. The old problem of competitive devaluation had a major role to play in destroying the international trade between the intervening periods of Wars.

The introduction of floating exchange rate policies provided more flexibility in the hands of the Central Banks of various countries so that they could maintain a desirable parameter of the economy. But the very notation of the floating exchange rate is based on the principle that the a member may take few intervening steps in the market but will not manipulate its real exchange rate, i.e. the member will not adopt any policy of intervening in the market to buy and sell bonds domestically for the purpose of obtaining a particular exchange rate. Even though sporadic interventions are never undesirable but a long term and massive intervention in the currency market coupled with the export driven tactics will surely fall into the category of currency manipulation. In the case of manipulation of currency, the currency and the exchange rate of the country does not reflect the real economic fundamentals. Hence, in such cases the currency is misaligned to

[51] It should be noted here that the export of inflation from one nation to another was one of the reason of great recession on 1929-30.

the economy. When a country makes a persistent and long term intervention in the currency market for devaluation of the currency along with the sterilization of the domestic price, it is said to have adopted currency manipulation or “beggar-thy-neighbor” policies. When a country manipulates the currency to procure a devalued exchange rate it has an upper hand in the international trade as the goods exported from the country becomes cheaper in the international market and at the same time it becomes costlier in the domestic market of the manipulating country.

In case of devalued currency regime the economy of scale is particularly important. When a country devalues its currency artificially the domestic consumers will import lesser amount of foreign goods as the export in the domestic market of the importing countries becomes costlier. It will lead the domestic producers of the manipulating country to produce more goods and commodities to replace what could have been sold by the foreign producers. It will help the domestic producers to sell more; it will further generate employment and will help growing the economy. But in reality all these things are achieved at the cost of loss to the other trading partners. Such acts are completely forbidden under the IMF regime but there is no specific procedure to ensure compliance in the Articles of Agreement of IMF.

It is estimated that in 2012 only, currency manipulation is estimated to have impacted the currency flow of approximately $1.5 trillion per year. Generally the economists from the United States have warned that there have been millions of job losses due to the current account deficit of United States with China. The solution lies in the further movement of the exchange rate and a movement towards the full capital account convertibility[52], which will help reducing the economic and financial risks.

[52] There is an inherent risk attached with the full convertibility of the capital account that the economy is more exposed to the global economic risks.

US lawmakers have incessantly raised the issue about the undervaluation of Chinese currency (RMB)[53]. Some of the experts have alleged that RMB is artificially depreciated and thereby providing an unfair gain to Chinese currency against the American Dollars. Critics of Chinese currency policy have perpetually raised the claim that that the RMB is undervalued and it illegally decreases the price of the goods exported from China and simultaneously increases the price of the goods imported. Since the time of the great recession in 2007 – 08, many believed that US economy had borne the brunt of Chinese currency manipulations[54] as the US market was flooded with the cheaper Chinese exported commodities, and doubly inflicting US economy by rendering the US exports to China on a much increased price by devaluation of currency. The factor of currency manipulations may have caused millions of job losses alone in USA.

1.2.5 - China Foreign Exchange Legal Regime

In People's Republic of China it is the State Administration of Foreign Exchange (SAFE) which performs the task of drafting the rules & regulations governing foreign exchange market activities, and managing the foreign exchange reserves.

[53] Very recently - Alliance for American Manufacturing (AAM) Demands Action on Currency Manipulation in Talks with China http://www.pcb007.com/pages/zone.cgi?a=93358 accessed on (05.April.2016); China to talk currency, procurement reforms with US http://www.chinapost.com.tw/international/americas/2013/07/14/383708/China-to.htm accessed on 05.April.2016; US Calls on China to Let Currency Rise Further http://www.industryweek.com/trade/us-calls-china-let-currency-rise-further (accessed on 05.April.2016).

[54] "China Currency Manipulation" - as many experts and economists have called this issue via their writings and anecdotes. Though there is a lack of clarity because of equivocal data and lack of legal precedence. It is worth mentioning about the point of views as eloquently expressed by the then U.S. Treasury Secretary Timothy Geithner accusing China of "manipulating" its currency; *See* Bryan Mercurio & Celine Sze Ning Leung, *Is China a "Currency Manipulator"? The Legitimacy of China's Exchange Regime Under the Current International Legal Framework*, *43 THE INT'L LAWYER 1257, 1259 (2009)*.

Simultaneously it is also the monitoring body to watch the balance of payment and external debts.

The foreign exchange reserve of People's Republic of China stood at whopping US$3.44 trillion[55] (by March, 2013) as per the official records. At the same time the RMB exchange rate was 6.2689 Yuan per US dollar and foreign currency deposits rose by US$31.4 billion in Q1.[56] A major chunk of Chinese currency investment has been made in high end dollar denominated debts such as US treasury bills.

China's current exchange policy is the result of the economic liberalization they had started in 1978 and has seen a gradual transformation in different periods. China started a process of devaluation of its currency in 1980s. Since then China has tried to balance the value of its currency on numerous occasions[57]. In Mid 1980s, China had resorted to dual exchange rate policy (official and swap market rate) which was applicable in and out of Chinese market. The dual exchange rate policy effectively allowed getting more RMB to Chinese exporter for a unit of

---

[55] Financial Statistics, Q1 2013 *available at,*http://www.pbc.gov.cn/publish/english/955/2013/20130417083528793671703/20130417083528793671703_.html(accessed on 05.April.2016).

Many analysts see this huge quantum of reserve as a potential threat to US economy. See, Christoph Herrmann, *Don Yuan: China's "Selfish" Exchange Rate Policy and International Economic Law*, European Yearbook of International Economic Law 2010, *p.31*. China could "pull the plug" on the American economy, write off its US dollar reserves and cause the dollar to crash by putting the dollar share of its foreign reserves of about 2 trillion US dollar, approximately 650billion US dollar in treasury bonds, on the market.

[56] Financial Statistics, Q1 2013 *available at,*http://www.pbc.gov.cn/publish/english/955/2013/20130417083528793671703/20130417083528793671703_.html(accessed on 05.April.2016).

[57] *See Also*, Bryan Mercurio & Celine Sze Ning Leung, *Is China a "Currency Manipulator"? The Legitimacy of China's Exchange Regime Under the Current International Legal Framework*, *43 THE INT'L LAWYER 1257, 1265(2009).*

foreign currency as the exporters sold their earnings in a regulated market separate than the inner circle of China market.[58]

1.2.6 - China Exchange Rate Policy from 1994 to 2005

Post 1990 monetary policy as adopted by China is emphasized by the fact of targeting the rate of money supply growth by People Bank of China. People's Bank policy appears responsive to the gap between target and actual nominal GDP as well as to external pressure[59].

The trend shows that China adopted a tight monetary policy rule in the period 1994 to 2001. The inflation rate was alarmingly higher at the rate of 24 at consumer price index. Tight monetary policy helped the policy makers of China to lower the rate of inflation to single digit without harming financial and economic prospects. During the Asian financial crisis though many Asian currencies depreciated dramatically against the US dollars but RMB loosening its value only to the extent of continuing commitment to the fixed exchange rate with the US dollar[60].

Despite of the several attempts made by the government of China to keep the growth rate at the higher rate so that the large scale unemployment could be curbed, deflation set in and persisted until 2002[61]. Deflation in consumer prices remained quite mild (around 1% in the first half of 2002, for example) but was

---

[58] *See, e.g., Id.* at 1261; See Also, BARRYNAUGHTON, THE CHINESE ECONOMY: TRANSITIONS AND GROWTH 383 (2007).

[59] Richard C. K. Burdekin & Pierre L. Siklos, *What Has Driven Chinese Monetary Policy Since 1990*, EAST WEST PAPERS, abstract, No. 85 (Aug. 2005), *available at* *http://www.eastwestcenter.org/fileadmin/stored/pdfs/ECONwp085.pdf*(accessed on 05.April.2016).

[60] *Id.* at 2-3. Currency devaluation and flight of capital were the root cause of the Asian financial crisis. The Asian financial crisis and its ramifications on the international trade have been discussed in detail in the Chapter IV.

[61] *Id.*

more pronounced for commodity and raw material prices, which fell by nearly 5% over the same period[62]. Continued higher productivity also must have contributed to the deflation. People's bank then raised the money growth targets in order to bring deflation to an end.

The deflationary pressure and devaluation of currency were abruptly replaced by the pressure of revaluation of RMB because of the change in trend of US dollars against the world currencies. Now upward pressure on the RMB provided more room in the hands of the People's bank to fight inflation[63]. Fueled by surging inflows of reserves (increasing by 40.8% in2003 alone), broad money growth rose from 14.4% in 2001 to 19.6% in 2003 -- subsequently rebounding to 17.6% in 2005 after a return to 14.4% in 2004[64].

The burgeoning confidence because of accelerating economy led People's Bank of China to set its money growth rate target to 18% in the first quarter of the year 2003. Growth in foreign exchange reserves subsequently shot up to $US 207 billion in 2004 before increasing by a further US $ 209 billion in 2005[65]. To sterilize the impact of fast swelling reserve, the People's Bank sought to perform the open market operation and raised the reserve requirements. It raised the percentage of reserve requirement by one percentage point in September 2003 and another 0.5 percentage point in April 2004. In order to rein in the overheating monetary growth rate the Bank performed the short term sale of Treasury bonds. Simultaneously, the administrative controls on bank lending rates prompted the People's Bank to raise its benchmark of one-year lending rate from 5.58% to 5.85% in April 2006 and announced two further half percentage point hikes in reserve requirements in June 2006 and July 2006. He et al. (2005, p. 5) estimate

[62] *Id*.

[63] *Id*.

[64] *Id*.

[65] *Id*. at 4.

2% of the overall domestic liquidity effects of the foreign reserve growth were offset in 2004, up from 25% in 2003.[66]

During the period of 1997 - 2005 China had adopted the policy of a de facto peg of RMB against the US Dollars. It was a crawling peg with a narrow band within which the RMB was allowed to move. RMB showed a good appreciation in the period 1994 to 1996 from 8.7 RMB per US$ in 1994 to 8.3 RMB per US Dollar. This de facto peg was further narrowed down during the Asian financial crisis and it stood at 0.4 per cent around the RMB/US$ 8.28 peg. This peg was further tightened in November 2000 as 0.04% which was continued until 21 July 2005.

The period of 1994 to 2009 had established China as a very successful economy on the world stage. In this period China was able to convert its trade deficit into trade surplus. In this period China had grown with the fastest rate in the world and achieved an average growth rate of more than 10% Per annum, and most alarmingly export grew with a rate of 18.4 % p.a. It brought China on the verge of becoming the second largest economy of the world. In 1994, China had shunned its exchange rate policies and unified its official and swap market rates at the swap market rate of Yuan 8.7 per US dollar[67] and adopted a market based managed floating exchange rate policy with a band of 0.3% around which the banks trade RMB[68]. This step was taken in line with Yuan devaluation shock and it was one among the many steps which was taken by China to promote its competitiveness and to set up a national foreign exchange markets[69].The system of dual exchange rate policy remained at place until the spread of Asian Financial

---

[66]*Id*. at 4.

[67] Nguyen Phuc Hien, *China's Exchange Rate Policy And International Competitiveness (Export) 1994-2005 : Is It A Lesson For Vietnam ?*, ECONOMIC RESEARCH CENTER DISCUSSION PAPER No.183, 4, available at http://www.soec.nagoya-u.ac.jp/erc/DP/paper183.pdf (accessed on 05.April.2016); *See Also*, Supra Note 57, at 1261;.

[68] See supra note 57, at 1261.

[69]Nguyen Phuc Hien, supra Note 67, at 5-6.

Crisis during which China pegged its currency with the US dollars. The foreign exchange retention scheme was abolished and the foreign exchange swap business for domestic enterprises ended accordingly[70].

Under this policy of foreign exchange, local enterprises were required to sell their foreign exchange to the government designated foreign exchange banks.

The new policy on foreign exchange also lifted control over imports. It enabled the domestic importers to buy foreign currencies from the government designated banks after tendering valid commercial papers. FFEs (Foreign Funded Enterprises) were allowed to continue with the swap market exchange rate in order to gain more foreign exchanges. For other players swap market system was replaced by China's Foreign Exchange Trading System (CFETS). CFETS was a market based upon interbank transfer of foreign exchanges which was an alternative to China foreign exchange swap market.[71]

The change in policy of foreign exchange market greatly impacted the Chinese export quantum in the next years to come. China was able to rapidly reverse its trade deficit of 1993 into trade surplus in 1994 -95. At the same time the foreign exchange reserve also increased greatly.[72]

During the Asian financial crisis the SAFE was doubly concerned about the Yuan value and illegal capital flight because of bad outlook of the economy. Hence SAFE completely stopped the swap center for FFEs in Dec. 1998 as it had become a vehicle of illegal capital outflow of Yuan causing unnecessary pressure on it. Now for all the domestic foreign exchange players the market was unified and for the FFEs such transaction had taken place by inter-bank market. Yuan was able to maintain its value despite the huge pressure during the Asian crisis despite

[70]*Id*. at 4.

[71]*Id.* at 4-5.

[72]*Id.* at 4. The total foreign exchange reserves therefore reached to 819 USD billion (2005), or 36 percent of GDP from a small amount of 21.2 USD billion in 1993, or 3.5 percent of GDP (ADB 2010) - NGUYEN Phuc Hien, Supra at 5.

of the fact that its neighbor had faced heavy currency devaluation. China maintained a good economic fundamental and Yuan had maintained a good value 8.27 Yuan per the dollar until July 2005[73].

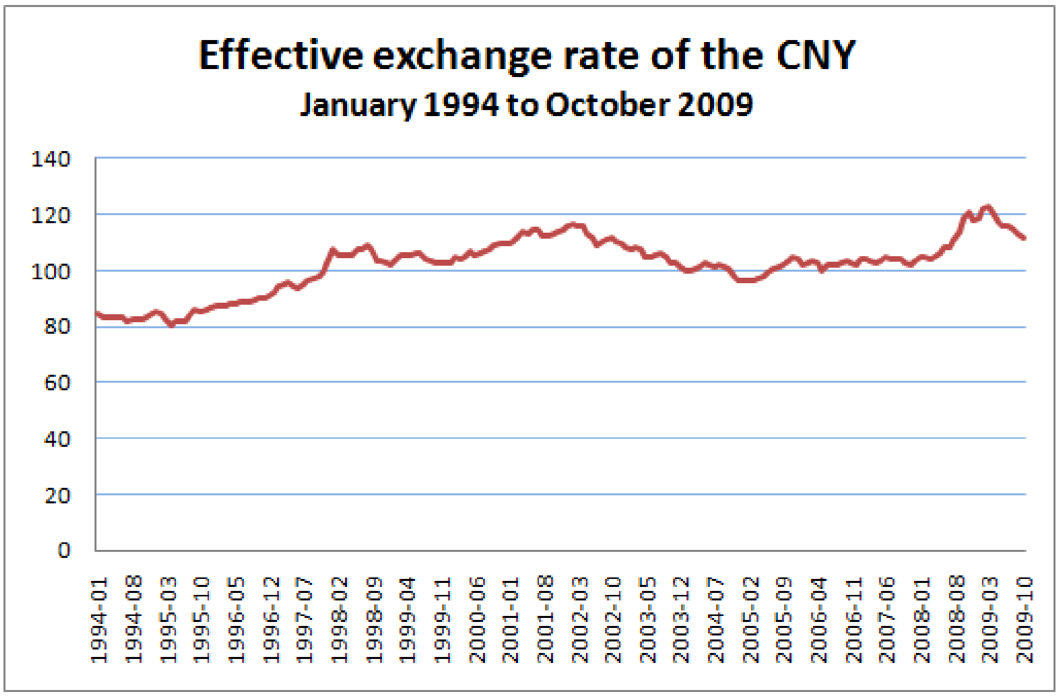

Diagram –1.8 - **Effective Exchange rate 1994-2010**[74]

[73] *Id.* at 6.

[74] *available at*http://www.chinability.com/CNY%20effective%20exchange%20rate.htm (accessed on 05.April.2016).

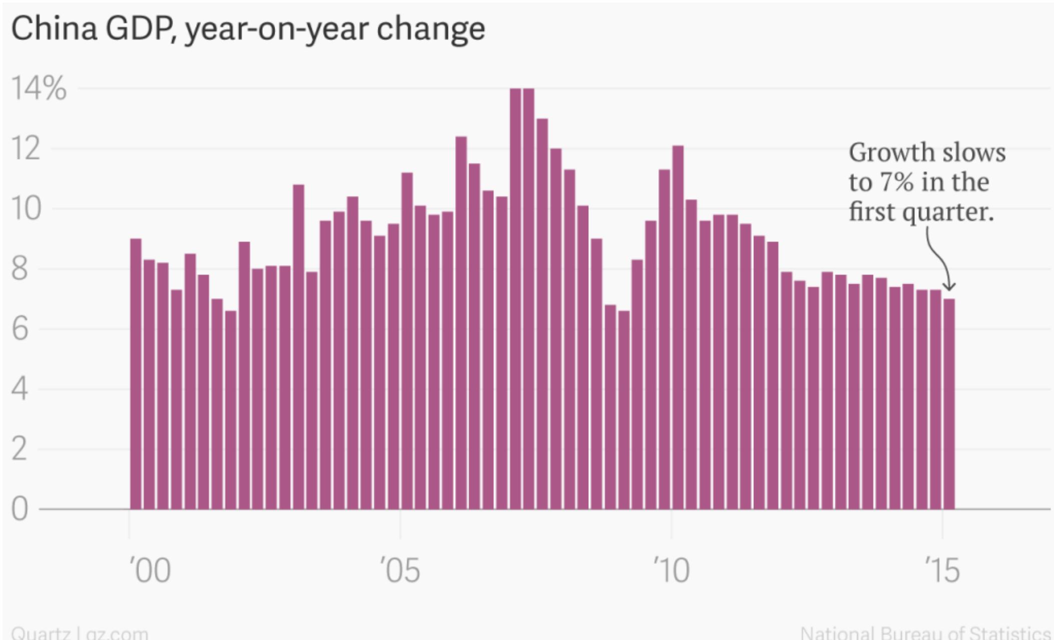

Diagram – 1.9 - China GDP Year on Year Change (From 2000 -10) - Growth Slowing after 2010[75]

[75] *available at*http://qz.com/386421/why-chinas-economy-is-slowing-and-what-it-means-for-everything/ (accessed on 05.April.2016).

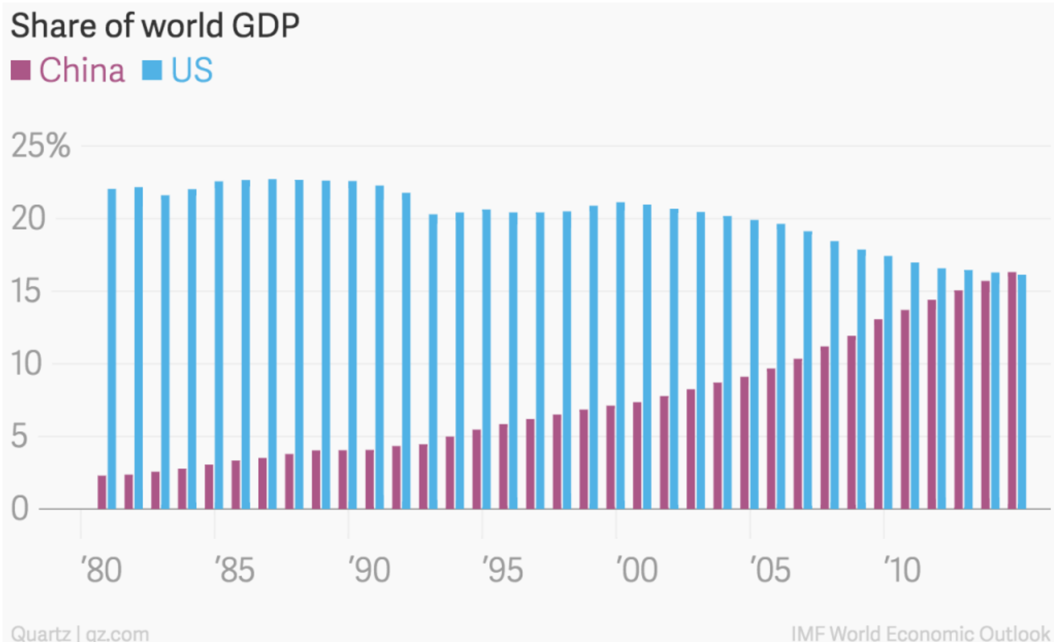

Diagram – 1.10 - ***Reducing Gap in the Shares of world GDP between US & China.***[76]

[76] *Available at*http://qz.com/386421/why-chinas-economy-is-slowing-and-what-it-means-for-everything/ (accessed on 05.April.2016).

1.2.8 - RMB Reform in July 2005

The immediate changes of the RMB reform in July 2005 included:

(i) an outright appreciation of the RMB against the US$ of 2.1 per cent from 8.28 to 8.11;

(ii) the change from a peg versus the US Dollars towards a peg against a basket of currencies (Consisting US Dollar, Euro, Yen and other currencies); and

(iii) the reversion to the crawling peg system in which the RMB can be allowed to fluctuate against the US$ up to 0.3 per cent against the exchange rate of the previous day.

As a result, in the 18 months between July 2005 and December 2006, the exchange rate appreciated by a total of 6 per cent from 8.28 to 7.81 RMB/US$[77].

Though the crawling peg system was repealed merely after seven days of operation but PBC had effectively retained the right to decide the value of RMB as and when it liked. The Central Bank also announced that henceforth the Chinese currency would be more flexible (post 2005) and would be more driven by market supply and demand. By the end of July 2008 the nominal rate of RMB stood at 6.83/ US Dollar with an approx. appreciation of 21%. There were the further appreciation in the RMB vis-à-vis US dollar but it was alleged by the US policymakers that the appreciation was moreover and market controlled and it was not as much as it should have been.

[77] Michael Geiger, *Instruments Of Monetary Policy In China And Their Effectiveness: 1994–2006*, 3 (Box 1), Paper No. 187 (2008), *available at*http://unctad.org/en/Docs/osgdp20082_en.pdf (accessed on 05.April.2016).

.

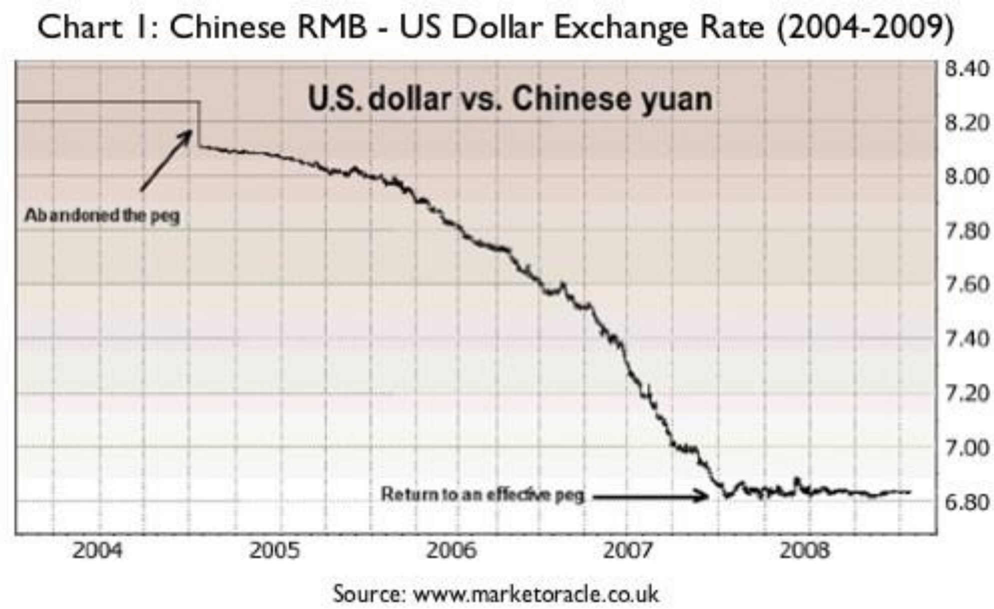

Diagram – 1.11 - ***Exchange Rate of China after the abandonment of Peg in 2005.***[78]

[78] *Available at*http://strategic-metal.com/wp-content/uploads/2015/09/Chart-1-Exch_-Rate.jpg (accessed on 05.April.2016).

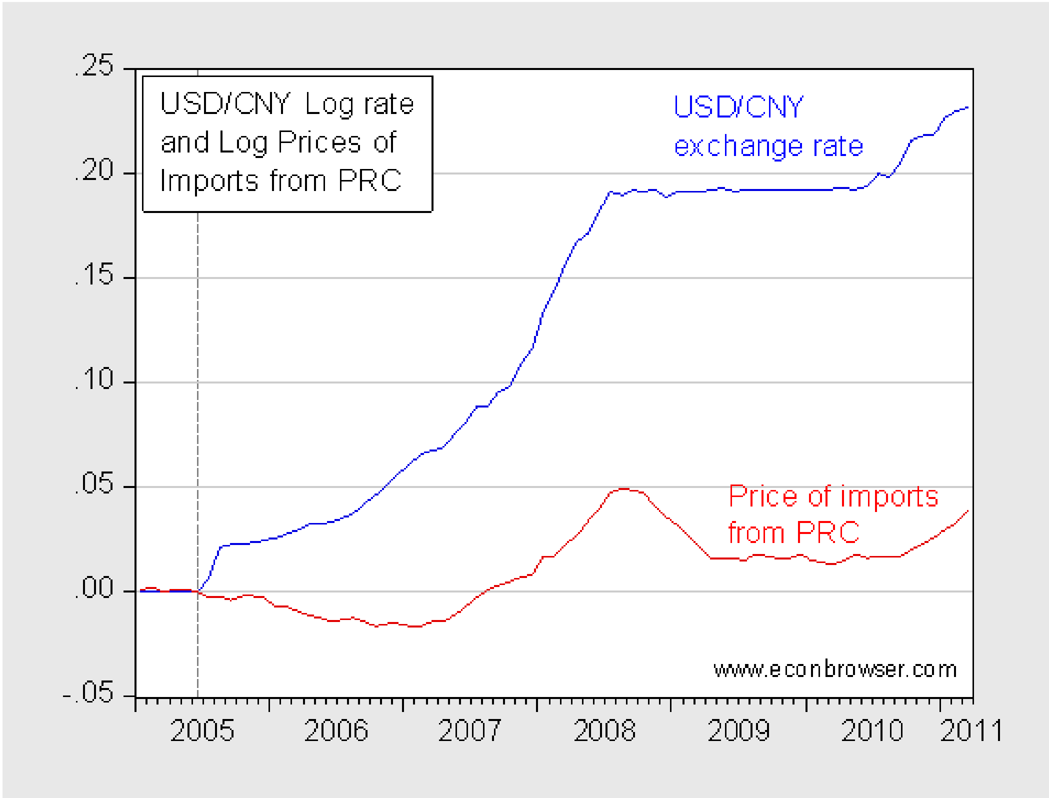

Diagram – 1.12 -***Relationship between US Dollar Rate and Exports from China***[79]

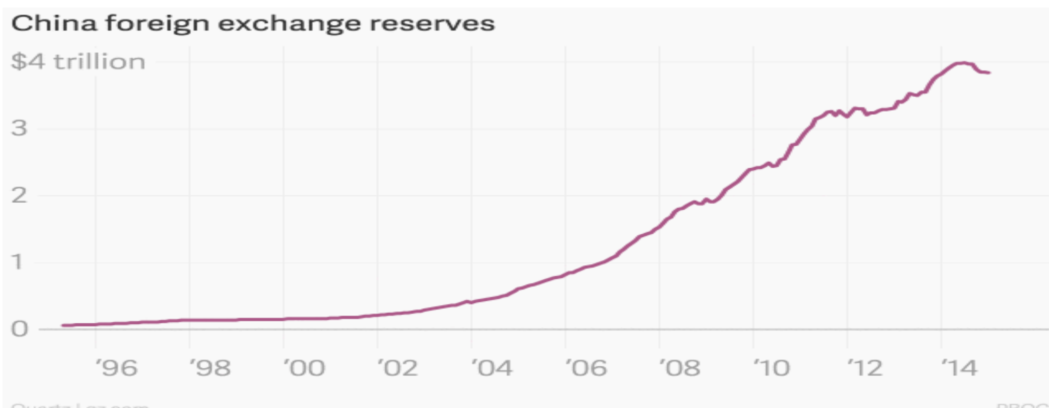

Diagram – 1.13 - ***Increasing Foreign Exchange Reserve of China***[80] - (economists

[79] *Available at*http://econbrowser.com/archives/2011/04/chinese_inflati (accessed on 05.April.2016).

[80] *Available at*http://qz.com/386421/why-chinas-economy-is-slowing-and-what-it-means-for-everything/ (accessed on 05.April.2016).

in US have attributed this manifold increase in Forex reserve in China with currency manipulation).

N°	Country or territory	2010	2011	2012	2013	2014	2015	2016
175	United States	14,526,550	15,064,816	15,495,389	15,990,779	16,623,431	17,398,536	18,250,647
35	China	5,878,257	6,988,470	7,744,133	8,609,312	9,560,367	10,607,641	11,779,979
83	Japan	5,458,797	5,855,383	6,125,842	6,248,777	6,440,080	6,610,868	6,782,937
62	Germany	3,286,451	3,628,623	3,707,790	3,758,608	3,819,678	3,874,970	3,929,110
58	France	2,562,742	2,808,265	2,888,907	2,970,273	3,062,220	3,161,483	3,267,606
23	Brazil	2,090,314	2,517,927	2,616,986	2,788,947	2,971,121	3,165,559	3,373,015
174	United Kingdom	2,250,209	2,480,978	2,603,880	2,742,861	2,893,520	3,052,828	3,223,731
81	Italy	2,055,114	2,245,706	2,287,704	2,322,407	2,363,689	2,417,237	2,476,318
134	Russia	1,479,825	1,884,903	2,117,245	2,342,138	2,569,676	2,810,953	3,088,061
75	India	1,631,970	1,843,382	2,012,760	2,235,241	2,476,945	2,738,272	3,026,909
30	Canada	1,577,040	1,758,680	1,826,240	1,894,893	1,965,011	2,035,791	2,105,838
148	Spain	1,409,946	1,484,708	1,524,063	1,563,633	1,607,659	1,654,964	1,703,443
8	Australia	1,235,539	1,448,154	1,470,027	1,573,996	1,552,456	1,662,750	1,697,220

Diagram – 1.14 - *Comparative growth in the big economies since 2010.*[81]

[81] *Available at* http://defence.pk/threads/indian-economy-news-updates.27787/page-159 (accessed on 05.April.2016).

1.2.9 - United States Exchange Rate Policy

The United States has been labeling allegations on other countries also than China regarding the currency manipulations, be it Japan, Malaysia, Korea or India[82]. The trade lobbies in the United States have many complaints to the developing countries that they adopt the currency policies which make the US made goods costlier in the international market which has a direct impact on the manufactured industry of USA. The US manufacturing sector has suffered with loss and joblessness and the labour organizations of USA have pressurized the government to take action against the major Asian countries like Japan, China, Singapore, Malaysia, South Korea and India. They have the major allegation against these economies (mostly with China in the past two decades) that they systematically devalue their currency to gain an unfair trade advantages. To the some extent these concerns are justified as United States has been pursuing the policy of determining the exchange rate purely based on market and there has been very few occasion when the US government has intervened in the market.

The major goal of a monetary policy is to maintain the balance of demand and supply of money within the economy. Money implies not only the currency notes rather it includes the coins, treasury bills, commercial deposits too. In United States, the Central Bank of United States, Federal Reserve (i.e. Fed), has been conferred the task of the credit control within the system, i.e. the Congress has entrusted Federal Reserve to maintain the demand and supply of the currency within USA[83]. The Federal Reserve of USA fixes the terms and condition under

[82] See, 2010 Report to Congress of the U.S. – China Economic and Security Review Commission, PETERSON INST. of INT'L. ECON., *available at* http://origin.www.uscc.gov/sites/default/files/annual_reports/2010-Report-to-Congress.pdf (accessed on 05.April.2016).

[83] *See Also*, Aaron Steelman, Federal Reserve Bank of Richmond, Full Employment and Balanced Growth Act of 1978, commonly called Humphrey-Hawkins, *available at*http://www.federalreservehistory.org/Events/DetailView/39 (accessed on 05.April.2016).

which money is supplied within the system. The Federal Reserve Act is the major legislation for the Congress to set up the rule & regulations for the purpose of supply of money. Further, Full Employment and Balanced Growth Act of 1978 also referred as the Humphrey-Hawkins Act, provide the framework to establish annual growth targets for monetary and credit policy[84]. Through its regulations, the Federal Reserve ensures the sustained economic expansion of United States. Established in 1913, Federal Reserve is a quasi-public institution. There are total 12 members in the Fed and seven members constitute the majority. Out of the total number of members seven are appointed by the president to serve a full term of the 14 years of period. The President of the United States also appoints Chairman and Vice Chairman in the board of the Fed for four year term. The primary responsibility of the board is to set up the monetary policy which is done by the vote of majority. The Federal Open Market Committee (FOMC) is the group which makes the key decisions regarding the availability of money and credit in the economy. The board set up the reserve requirement and shares the responsibility with the Reserve Banks. The reserve requirement, open market operation and discount rate policy constitute major components of monetary policy of the US. Besides setting up the policy part of the United States, the Federal Reserve also performs the supervisory role over the banks. Each Federal Reserve Banks have its own research staffs that collect the economic data and interpret them for the purpose of achieving the task of economic development. The Fed also provides various other services to the government, quasi government bodies, international government and institutions. The Fed holds collateral for government agencies to secure the funds which are kept with the private depositories.

An exchange rate policy of a country is the international dimension of the monetary policy of any country. United States is an open economy and cannot

---

[84] *Id.*

operate in isolation with the other countries. After the World War II there has been a rapid expansion in the US economy. Now US are the largest player in the market and it gets affected by the currency policy of the other nations.

1.2.10 - Currency Manipulations & its Impact on US Trade

1.2.10.1 - The South East Asian Angle of US Trade Deficit

After recovering from the worst recession after the World War – II, the United States government has once again started focusing upon the enhancement of its trade relationship with the other countries. Since then US has been the most important participator in the international trade. The present US president Obama entered into the trade deals with the countries like Colombia, Panama, and South Korea and the talks have been going for the trade deal of Trans-Pacific Partnership (TPP).Separate deals with the European Union, the Transatlantic Trade and Investment Partnership (TTIP) etc. remain under negotiation. The trade deals like TPP and TTIP are the next generation mega-regional deals which have the focus upon the broad based areas of trade like agriculture, intellectual property rights, goods & services etc.[85] The TPP extended to the largest economies of Asia like china & Japan. These agreements are the parts of the broader USA policy of 'focus on Asia' where from it wants to curb the assertiveness of China in the Asia -Pacific region.

But many business experts in USA have believed otherwise. According to these experts whenever USA has entered into any trade agreements with any nation it has almost always given rise to the trade deficit and job losses. For example, in North American Free Trade Agreement with Mexico Americans lost approx. more than half a million job to Mexico. It was also expected that with the trade agreement with Korea, USA would be able to increase its exports by $10 billion

[85]James McBride, The Future of U.S. Trade Policy, available *at*http://www.cfr.org/trade/future-us-trade-policy/p36422 (accessed on 05.April.2016).

which would provide jobs to 70,000 Americans[86]. The free trade agreement (FTA) was signed between the USA and Korea on 15th June 2012 which provided the following in its letters and agreement-

"The entry into force of the U.S.-Korea trade agreement on March 15, 2012 means countless new opportunities for U.S. exporters to sell more Made-in-America goods, services, and agricultural products to Korean customers – and to support more good jobs here at home. If you're an American exporter, here are resources to answer your questions about how the U.S.-Korea trade agreement can work for you…"

Diagram – 1.15 -*Increasing trade deficit for United States*[87]

But in contrary to the export expectation, the actual export of United States went down drastically and due to the declined export of United States some 60,000 Americans became jobless. The TPP countries account for 44 percent of total U.S.

[86] Details of the FTS between US-Korea is *available at*https://ustr.gov/trade-agreements/free-trade-agreements/korus-fta (accessed on 05.April.2016).

[87] International Trade Administration, *available at http://www.cfr.org/trade/future-us-trade-policy/p36422 (*accessed on 05.April.2016).

goods exports and 85 percent of total U.S. agriculture exports.[88] But the leading experts have expressed their concerns regarding the agreements like TPP and TTIP. The experts in United States are concerned about the employment, national sovereignty; deficit, safety standards etc. and the US experts have been particularly concerned about the trade losses of the country arisen out of the (currency) manipulative practices and policies adopted by its trade partners. The economists have believed that USA has incurred huge trade deficit and job loss because of the managed protracted peg adopted by the Chinese government.

But it is not only China rather other Asian – European countries like Singapore, Malaysia, UK too have also been pursuing for artificial devaluation of its currency in order to gain an unfair advantage over USA. Now when China has appreciated its currency to an extent the Peterson Institute of Economics of USA has stressed upon preventing any future possibility of currency manipulation.[89]

Asian countries like Singapore, Malaysia and Japan have contributed more than China in the US trade deficit by adopting the policy of artificial devaluation of the currency. There is no dearth of the economists who have warned United States to not to sign any deal with the country who have not strongly curbed the currency manipulations. Although the record shows that while negotiating the trade deals United States does not negotiate the currency manipulation issue with its trading partners specifically and many have criticized the Obama government for this omission. Elimination of the currency manipulations is essential from the world trade and it is estimated that by eliminating the currency manipulations with at least 20 developing and developed countries like India, China, Malaysia, Singapore and Japan, U.S. could reduce its global trade deficit by between $200

---

[88] James McBride, The Future of U.S. Trade Policy, *Available at*http://www.cfr.org/trade/future-us-trade-policy/p36422 (accessed on 05.April.2016).

[89]*Id.*

billion and $500 billion each year and could create U.S. jobs between 2.3 million and 5.8 million[90].

1.2.10.2 - The Japanese Angle of US Trade Deficit

Along with the other countries Japan has also badly contributed to the currency to the trade deficit with USA. The U.S.-Japan trade deficit grew up to $78.3billion in 2013[91]. It is estimated that in 2013 alone Japan displaced 896,600 U.S. jobs denting badly the US commodity and manufacturing industries market. It has the potential to increase the budgetary deficit and reducing the revenue collection via taxes. In the last two years Japan has been focusing upon the large purchase of the financial assets by selling its own currency. It has reduced the value of the Yen badly. It is the policy of the bank of Japan to purchase and hold the foreign assets which is done via Japan's Government Pension Investment Fund (GPIF). Japan adjusts the value of its currency by sustained and massive purchase of the foreign assets which also helps it maintain a favorable balance of payment with large trade and current account surpluses. An act of currency manipulation by a State against its trading partner acts as export subsidy for the goods being exported by the manipulating State and tax on the goods imported to the manipulating State. After China, Japan has the highest contribution to the plight of US trade deficit and the reason cited as currency manipulation which does not let the deficit to reverse in the positive direction.

The most popular tool of currency manipulation is the purchase of financial assets denominated in the foreign currencies. Such purchase of foreign assets increases the demand of the foreign currency. It has the impact of appreciating the value of the foreign currency and depreciating the value of the currency of the country

---

[90] By Robert E. Scott, CURRENCY MANIPULATION AND THE 896,600 U.S. JOBS LOST DUE TO THE U.S.-JAPAN TRADE DEFICIT, February 4, 2015, available at http://www.epi.org/publication/currency-manipulation-and-the-896600-u-s-jobs-lost-due-to-the-u-s-japan-trade-deficit/ (accessed on 05.April.2016).

[91] *Id.*

which is buying such assets. Such foreign assets include Treasury bills, foreign stocks, bonds etc. Various researches have proved the clear correlation between the protracted long term intervention in the market and trade surpluses.

Between the periods of 2000 to 2014 assets denominated in the foreign currency increased by almost four times[92]. Japan's real effective exchange rate index declined steadily from 131.4 in 2000 to 74.5 in 2007, a decline of 43.3 percent (International Monetary Fund 2015)[93]. After the 2011 earthquake and Tsunami first time in the decade Japan had a negative global trade balance. To improve the economy of japan its Prime Minister Shinzo Abe worked upon the three pronged plan, an increase in the government spending, liberalization of monetary policy and deregulation of the Japanese economy. After this three pronged policy, Yen fell sharply to support the much required export for Japan to build up its economy. But simultaneously it had a negative impact on the US trade balance. As the deficit for Japan decreased the trade deficit of USA increased.

One has to distinguish between the quantitative easing and currency interventions. Quantitative easing reflects the actions taken by the Central Bank of the country which is generally considered to be independent[94] which is executed by the Central Banksby buying the assets denominated in its own currency in the monetary market. During and after the 2008 depression, the countries like Japan, US and Australia engaged in the process of quantitative easing for the purpose of dealing with the economic problems. Both the US and Japan adopted for the similar amount of quantitative easing but considering the US economy is three times bigger than Japan, the quantity of easing in Japan much larger than USA.

---

[92]*Id.*

[93]*Id.*

[94] There has been some debates whether the central bank of any country to be reckoned as independent from the government or not. But Zimmerman has supported the view that the government has to be covered by the action of the Central Bank of the country. See, Claus D. Zimmerman, *Exchange Rate Misalignment and International Law*, 105 A.J.I.L. 423,442 (2011).

But the currency intervention is part of the policy of the government and it is affected by the purchases of assets denominated in foreign currencies[95]. Many economists have considered that the quantitative easing is the part of the domestic policy of a State and a State has the right to set the target of its quantitative easing for the purpose of moderating the inflationary pressure, domestic employment and wage targets. Once it is labeled as the part of the domestic policy, it will be excluded from the ambit of the International Law. Further, it is not desirable for the international treaties to bring domestic policies within the ambit of it otherwise it will give rise to confusion and uncertainty in the international scenario. Where the State is trying to overcome the short term economic problem through the mechanism of printing its own currency it cannot be termed as currency manipulator and this is something not banned under the legal regime of either IMF or WTO. On the other hand, investing in the foreign currencies in the foreign denominated financial assets will surely attract the application of Article IV, Section 1(iii) if it is done for the purpose of artificially devaluing the currency for gaining unfair competitive advantage. Hence, it is always suggested that while negotiating any trade deal, the contracting parties should firmly raise the issue of currency manipulations. Even though, it will be a very difficult task for any country to arrive at any decisive exchange rate in its future course of action but some sorts of solution may be expected if the parties are sitting on the negotiating table to negotiate the possibilities of the currency manipulations. It will have the impact of infusing more certainties in the area of international trade.

[95] It is also a very much debatable that whether the act of quantitative easing is legal under the IMF regime or not.

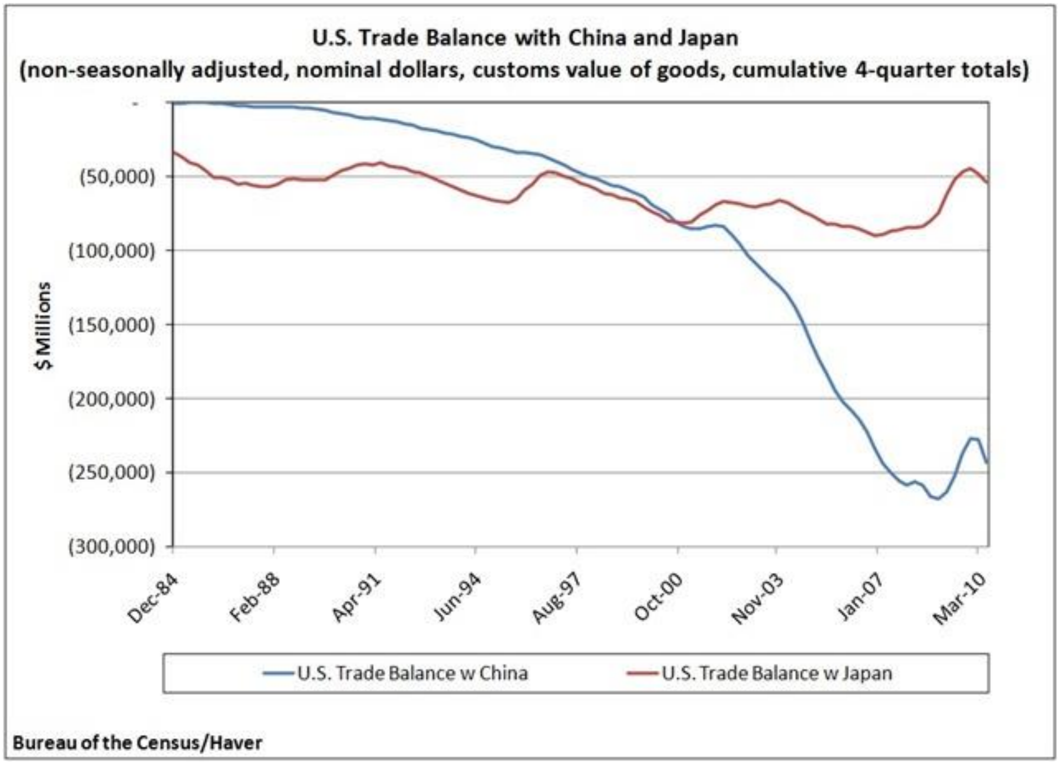

Diagram – 1.16 -*Increasing trade deficit for United States:A comparative Graph of US Trade Deficit with China and Japan*[96].

[96] *Available at https://www.creditwritedowns.com/2010/10/no-white-flag-in-this-currency-war.html (*accessed on 05.April.2016).

1.11 - Conclusion

United States is the largest player of the international trade. There is a marked difference in the currency policy of United States and China (and even other Asian countries like Singapore, Malaysia, and India etc.). United States has a more inclination to let its currency float freely in order to assume its rate in the currency market. Its currency may hardly be misaligned with its economy whereas the Asian countries have the propensity to manage their currency market to adopt any particular rate. In the last two decades US has massively suffered with regards to its negative balance of payments which has raised a huge fiscal issues before the Fed. More particularly, the manufacturing sector of US has been under pressure and its factories have been shifted to China. There is the general resentment within USA regarding the fiscal pressure and the job losses being suffered by its economy. Many believe in USA that one of the reasons of sufferings of the economy is the manipulative exchange rate adopted by various Asian countries, and more particularly by China. Various influential trade groups have been demanding a retaliatory action against China for its protracted artificial devaluation of its currency in one direction.

Even though there has been a big hue and cry regarding the Chinese currency policy in China, but the United States has never taken an official position to declare China as a currency manipulator. Rather, it has relied upon the tactics of engagement, pressure building and diplomacy for the purpose of settling the currency disputes with China. To some extent these tactics seem to be working but this is not a very desirable scenario for the international trade. Currency and exchange rates are the subject matters of the IMF and it should be dealt as per the mandate of IMF only. If the parties are compelled to deal with the disputes on the basis of politics and diplomacy it is bound to threat the international peace.

Currency manipulation has emerged as the greatest problem in the area of international trade considering the fact that the legal regime relating to the currency and its flow is far from settled.

Chapter – II -China Exchange Rate Policy: It's Consistency with the International Legal Framework

2.1 - Introduction

Under the customary International Law a State has the right to issue and decide the value of its currency. In the modern era the value of currency is a vital issue in the field of economics because there has been a massive increase in international trade as compared to the last centuries. Hence, it is required to examine the role of currency in the realm of International Law with a new perspective. It needs to be decided whether the customary International Law approach that a State should have an absolute control over its currency and exchange rate is still acceptable or it requires a relook, considering the fact of increased people to people contacts, the interdependence between the nation States and the massive presence of the private players who largely act like free entities within the given legal framework.

The US – China dispute of currency has brought the weaknesses in International Law regarding the currency on the surface. Whenever under pressure to adjust the value of RMB, China has maintained that the currency valuation is a domestic measure and any dispute regarding it is encompassed only by the domestic jurisdiction to the exclusion of any external scrutiny. Can this argument, which is made in reference to the customary International Law, is still valid?

This chapter puts a special emphasis on the role of the private players and their impact on the monetary sovereignty of a government. The interplay between the private players has severely curtailed the freedom of the national government to formulate the economic policies and the international institutions like IMF and WTO stresses upon the idea of free trade.

2.2 – Monetary Sovereignty and International Law

The role of Law in international monetary relation has been misunderstood, misaligned and malnourished[97]. The misalignment in the role of Law in the field of exchange rate is not a matter of surprise given the fact of lack of coordination between the lawyers and economists. The exchange rate policy of any State is decided by the panel of economists and on the basis of the existing economic model they decide the value of the currency. A lawyer is largely blinded by the technicalities in such fields and this lack of coordination creates misalignment in the Law relating to exchange rate. It seems the international community has a lack of consensus regarding some key matters relating to international monetary problem which has given rise to multiple interpretations, lack of transparency and lack of enforcements. Hence, the elaborate construction of IMF jurisprudence characterizes the soft Law instead of a firm peace of Law.

The International Monetary Fund (Fund) is the first and foremost legal institution whose object is to attain certain international monetary relations (and primarily not to provide its members any financial assistance). The basic tenets of the IMF as an international treaty is same like the other international obligations. The member nations surrender their sovereignty to an extent and as a quid pro quo the other members also do the same. In the time of crisis IMF also provides certain assistance (IMF provides foreign exchange for the current account transactions). If this is true, will it be safe to say that a full sovereignty relating to the monetary policy lies in the hands of a few countries who are not the signatories of the IMF?

The concept of monetary sovereignty is not explicitly recognized by the international community either in the IMF Articles of Agreement or in any other

---

[97] ASIF H. QURESHI & ANDREAS ZIEGLER, Second Edition, *p.* 121, INTERNATIONAL ECONOMIC LAW (London, Sweet & Maxwell 2007)

key instrument of international Law.[98] In the 'Serbian Loan Case'[99]the permanent Court of justice first time officially recognized the monetary sovereignty in modern International Law. It was observed in this case that a state has a right to regulate its own currency. Many authors have analyzed monetary sovereignty as a positive and static concept, i.e. they have described monetary sovereignty as a feature of state competence. It is generally understood that the increasing financial integration has largely eroded the State's sovereignty but its exact implication is yet to be analyzed. Various international institutions act as the constraints to such sovereignty. We find the trace of monetary sovereignty in the ancient European theological writings thousands of years before. Earlier the rulers exercised their monetary sovereignty with the help of changing the mixture of their coins.

Since the time of jean Bodin (16th Century) power over money has been recognized as the core element of statehood and sovereignty. Emergence of currency exclusive to a particular territory is closely seen as the formation of the modern nation state[100]. In various cases the Permanent Court of justice has also recognized that the generally accepted principle of public International Law recognizes that a country has a right to regulate its own currency[101].

One of the aspects of the monetary sovereignty is to create money, i.e. to decide what is or is not legal tender. Monetary independence also implies the power to decide the value of the currency as to the other currency. In the last few decades there have been a renewed interest in terms of broader sovereignty but as far as monetary sovereignty is concerned there has been few research and discussions.

[98] Claus D. Zimmermann, *The Concept of Monetary Sovereignty Revisited*, 798, 24-3 A.J.I.L. (2013).

[99] 2 July 1929, PCIJ Rep Series A Nos 20–21.

[100] Christoph Herrmann, *Don Yuan: China's "Selfish" Exchange Rate Policy and International Economic Law*, European Yearbook of International Economic Law 2010, *p* 38.

[101] See supra note 57, at 1268; *Id.*

Monetary sovereignty includes essentially three exclusive rights for a given State[102]:

1. The right to issue currency, that is, coins and banknotes that are legal tender within its territory – The well-recognized principles of monetary sovereignty allows the States to issue currency (coins, paper currencies, bank notes etc.) through its central banks. A state controls the supply of its currency through its Central Banks.
2. The right to determine and change the value of the currency – A State has the right to determine and change the value of its currency. A State is also free to peg its currency with any other currency (like dollar etc. but a member may not peg its currency with gold as it is prohibited under IMF Articles of Agreement). At the same time it is not allowed for any State to follow the policy of multiple exchange rates[103]. A change in the value of its currency is not a breach of the International Law nor does it make any State liable to any debtor or creditor because of its change in the valuation of currency.
3. The right to regulate the use of that currency or any other currency within its territory – A State may regulate (or restrict) the use of its currency in relation to cross border transactions, payment obligations etc. or set a limit periodically for the purpose of exchange control. A State is entitled to regulate all modes of payments which are denominated in that currency like bank accounts. Although it is also true that all the restrictions on the smooth flow of currency may not be desirable and such restrictions may not be desirable for the international trade. There are various conventions and treaties like IMF, WTO, and OECD which prohibit such kinds of restrictions. For example, a member of the IMF may exercise reasonable

---

[102] Francois Gianviti, *Current Legal Aspects of Monetary Sovereignty*, 2 (May 24, 2004), *available at (IMF Resources)*https://www.imf.org/external/np/leg/sem/2004/cdmfl/eng/gianvi.pdf (accessed on 05.April.2016).

[103] IMF Articles of Agreement, Article IV & Article VIII, Section 3.

> restriction on the capital account transaction but he may not restrict the current account transactions without the Fund approval[104].

Various aspects of monetary sovereignty are subject to the rules of customarily International Law and various legal agreements (like IMF). Article IV of IMF (which obligates the member regarding exchange rate arrangement) and Article VIII of IMF (it deals with the general obligations of the members) invoke merely minor constraints and they provide a weaker regime within the ambit of IMF. By introducing the second amendment of IMF the fixed exchange rate regime was converted into the fluctuating exchange rate regime. The amendment had conferred a wide discretion in the hands of the State's government to manage exchange rate based upon economic reality. Hence, the factual constrains (e.g. business requirements or integration of financial market) have also an important role to play with regard to the exchange rate control. Although it does not seem to be right to presume that in the light of various constraints a state has surrendered its right over its exchange rate.

Zimmerman has supported a point of view that monetary sovereignty is a contested concept. He has provided the following in his seminal work –

Monetary sovereignty may be best understood as what has been called an 'essentially contested concept' in the philosophy of language. Samantha Besson appears to have been the first to analyse sovereignty as an 'essentially contested concept' and Dan Sarooshi further added to this analysis. In the words of Besson:

> [An essentially contested concept] is a concept that not only expresses a normative standard and whose conceptions differ from one person to the other, but whose correct application is to create disagreement over its correct application or, in other words, over what the concept is itself. … [T]he recognition of the essentially contestable nature of a concept is an analytical statement. It

[104] By introducing FEMA India made its foreign exchange policy compatible with IMF.

> implies the possibility of conceiving a concept as normative that is to say as encompassing a contestable value[105].

2.3 - Political Aspect of Monetary Sovereignty

The political science aspect of sovereignty has been discussed by Mundell which provides an important guideline -

> Monetary sovereignty might be thought of as one of the dimensions of political sovereignty. But therein lies a problem. According to political scientists, the concept of political sovereignty was developed in Renaissance times, starting importantly with Jean Bodin in 1576. But the concept of monetary sovereignty is far older. It goes back to the Romans and before; quite probably it goes back to the ancient empires of Sumer, India, Babylon and Egypt. The literature in the ancient world is explicit and substantial. First, however, let us see what sovereignty means in political science. According to one view, the concept of sovereignty "implies a theory of politics which claims that in every system of government there must be some absolute power of final decision exercised by some person or body recognized as competent to decide and able to enforce the decision".[106]

History provides us many examples where the States have exercised sovereignty in order to intervene for the purpose of influencing the exchange rate. Conflicts

[105]Supra note 98, at 805-06

[106] Mundell, *Money And The Sovereignty Of The State,INTERNATIONAL ECONOMIC ASSOCIATION CONFERENCE PAPER*, *6* (1997), http://www-ceel.economia.unitn.it/events/monetary/mundell14.pdf (accessed on 05.April.2016).

.

between the world wars are not only marked by the armed struggle in the battlefield but also with currency wars with the help of currency devaluation. The dynamics of power plays an important role in setting the rules in the field of monetary sovereignty. The financial structure really has two inseparable aspects. It comprises not just the structures of the political economy through which credit is created but also the monetary system or systems which determine the relative values of the different moneys in which credit is denominated.[107]

2.4 - Globalization and Monetary Sovereignty

The factor of global monetary market has created a situation where few are able to exercise a greater degree of authority in this field. It is important to note that with regard to the exchange rate manipulations, the government structure relating to the monetary sovereignty now greatly relies on two factors, one is the state policy of the individual state and the other is global monetary market. For the past few decades there have been a diffusion of power in the realm of monetary sovereignty and the subject of monetary sovereignty is no longer an essential aspect of the royal function of any state only. This phenomenon has been called as leaderless diffusion[108]. The incidence of the leaderless diffusion has given rise to uncertainty in the governance of monetary policy. It is clearly evident in the recent complication in formulation of exchange and monetary policies and to deal with these uncertain factors while formulating the economic policies now the economists take help of the various statistical models.

For example, not long ago the world monetary market was controlled by the handful of players (national governments). Immediately after the World War – II, United States of America emerged as the prime lender for all the European countries for the purpose of restoring the infrastructure which was destroyed in

[107] Benjamin J. Cohen, *THE INTERNATIONAL MONETARY SYSTEM: Diffusion And Ambiguity*, 90, 3 (1994).

[108] *Id.* at 3.

the World War -II[109]. In the coming few decades, more specifically till the end of the millennium, the United States completely dominated the world monetary and exchange rate market. Even the European countries also understood their compulsion to dance on the tune of USA.

But now with the introduction of Euro, emergence of China as the second largest economy (which is going to be the largest economy of the world may be in the coming two decades) and globalization of financial market severely depleted the autonomy of USA. The result is reflected in the widening global imbalance of United States.

Among all these factors the Euro has been very important factor for the purpose of affecting the international exchange and autonomy of Dollars. The introduction of Euro in 1999 has been momentous in the history of currency Law when the whole continent (except Britain and few other nations) decided to adopt Euro as their common currency. The introduction of Euro potentially made European Union a major competitor of United States under the banner of Euro. Even though such a great expectation of becoming a rival for the dollar is not yet realized by the Euro but it is beyond any reasonable doubt that it poses a serious threat to dollar as a major international currency[110]. Euro is now the second most widely used currency in the world and the Eurozone is continuously expanding. It may be

---

[109] The American bailout for the restoration of infrastructure in Europe is popularly known as Marshall Plan.

[110] Even though Cohen calls the introduction of Euro as major success but the recent trend shows otherwise and this fact has also been partially accepted in the Article, *See*, Benjamin J. Cohen, *supra note 72, at 6*. This viewpoint has been generally supported by many, e.g.The Failure of the Euro *available at http://www.nber.org/feldstein/fa121311.html (*accessed on 05.April.2016); Ramesh Ponnuru, Why the Euro Is Failing, JUL 6, 2015 1:57 PM EDT If the euro fails, Europe fails, *available at*http://www.bloombergview.com/articles/2015-07-06/why-the-euro-is-failing (accessed on 05.April.2016); according to German chancellor Angela Merkel. And if Europe fails, we all fail, *available at*http://csis.org/publication/if-euro-fails-europe-fails-according-german-chancellor-angela-merkel-and-if-europe-fails (accessed on 05.April.2016).

also noted that the influence factor of the Euro may be doubtful but the autonomy of the Euro is beyond the doubt. Europeans have the history of conflict and competitive currency devaluation. But Euro has brought important change in the European currency market. Because of the presence of a strong common currency the European Union is free from any fear of competitive currency devaluation and it is also widely insulated from any external dollar shock. Now various European countries have their single international currency and any trade deficit has to be compensated not by buying the foreign currency rather with their own currency.

The national economy of any country is impartially attached to the international balance of payments. Where the balance of payments situation is not good for any state it will affect the freedom of the state to devise independent economic policies. In case of negative balance of payment situation, a nation may have to rely upon others for the purpose of loans and other financial assistance. This will impact the autonomy of the state. Hence, the political aspect of the monetary power implies the power of the state to avoid the burden of adjustment required by payments imbalance.

Even though the market has a dominant role to play, it will be incorrect to say that the legal jurisdiction has no role to play in this leaderless diffusion. In the globalized monetary market system the financial market plays its dominant role but the individual state has its sovereignty within its boundaries. The gaps between these two players provide enough space for the private enterprises to play their own games.

Now it seems China is in the better position of influencing dollar as an international currency than the Euro. The huge foreign currency reserve of China provides an edge in the hands of China to manipulate and impact the valuation of currency. As Jonathan Kirshner (1995: 8) reminds us, “currency manipulation is the simplest instrument of monetary power and.... can be used with varying degrees of intensity, ranging from mild signaling to the destabilization of national regimes.”

Cohen meticulously decodes the dual nature of (alleged) Chinese currency manipulation –

> The advantages for China are enormous. As Jonathan Kirshner (1995: 8) reminds us, "currency manipulation is the simplest instrument of monetary power and.... can be used with varying degrees of intensity, ranging from mild signaling to the destabilization of national regimes." The advantages for China are enormous. But there are also disadvantages, as the Chinese themselves well know. Beijing's dollar hoard could hardly be sold all at once. Hence any depreciation of the greenback would impose costs on China as well, in the form of capital losses on its remaining holdings. Dollar reserves today are equal to about one-third of China's GDP. For every ten percent depreciation of the greenback, therefore, China would lose something in excess of three percent of GDP – no small amount. In addition, dollar depreciation would greatly erode the competitiveness of the exports that are so vital to China's economic growth. In reality, currency manipulation is a two-edged sword that could end up doing China far more harm than good – a kind of "nuclear option," to be used only in extremis. [111].

In the present global financial market the instances of currency manipulations have become very sophisticated, embedded and concealed. China has asserted that its policy of managed currency peg is the feature of its monetary sovereignty which cannot be examined or changed at the instance of IMF or USA. The customary International Law has always recognized the right of monetary

[111]Supra note 107, at 8.

.

sovereignty within its ambit and during the mid-twentieth century monetary sovereignty became a norm.

But the history provides us the precedence in the realm of monetary sovereignty. The bad impact of the popular notion of the monetary sovereignty was felt during the general recession of 1930s where the recovery became very difficult due to competitive currency practices of various European countries. In the present global world it is very safe to say that the era of monetary sovereignty is largely gone and even if it exists, it exists subject to many terms and conditions based upon the international agreements (like IMF) and global financial cooperation. Currency now may not be totally attached with a particular State (as in the case of Euro). Hence, as of now the monetary sovereignty of a State exists more for the purpose of managing the public spending and preserving the market confidence which is done by creating money supply for the public spending, fixation of interest rate and credit creation.

The change in the monetary sovereignty has come by way of globalization. Whereas earlier the market of every country was isolated, the economy of any nation was insulated from the impact and policy of the other nations. But the globalization has changed the situation. Due to the globalization the barriers in the currency market have been largely done away. Hence, globalization has badly dented the monetary sovereignty of a State by integrating the private players in the financial market. Now, much more depends upon these free market leaders as far as the monetary sovereignty is concerned. In the free market situation, the market agents become the dominant player of the market challenging the absolute monetary sovereignty of the governments.

It is to be noted that the institutions like IMF or WTO have been established in order to promote free market and globalization. At one side the legal regimes of such institutions give rise to free market economy and on the other hand it also makes it undesirable (if not completely illegal) to disturb the market forces or interfere in the market for the purpose of any unfair gain (a protracted large scale managed peg under the IMF or allowing subsidies on the product under the WTO are examples of this principle). Going by the principle of the free market economy which are impartially embedded under the rules & regulations of the international financial institutions provides ample opportunities for the private players to navigate between the potential government decisions. Globalization has made these private players more independent and more autonomous to the government decisions. Elimination of the trade barriers now has provided multifarious options in the hands of these private actors to make forum shopping and look beyond the boundary of the state to take recourse in the business. For example, if any state has higher tax regime, the private parties could invest in that state by routing their investments through cheaper tax jurisdictions, or tighter monetary policies may be evaded with the help of external source of finance. The function of the money is no longer strictly related to the boundary of particular state[112]. Once the line of distinction between the national money is ceased (or ceasing with a faster pace) there is a fair competition between the currencies which generates the currency market wholly dependent upon the demand & supply factors of economics like any other commodity. The rising globalization will give rise to more demand of the strong currencies and weaker currencies will be traded for the stronger currency[113].

---

[112]Cohen calls this incidence as "deterritorialization", supra note 107, at 9, ("Currencies have become increasingly deterritorialized, their circulation determined not by Law or politics but by the preferences of market agents").

[113] This is one of the reasons of debacle of stock market in India. The Foreign institutional Investors are withdrawing their investment from the Indian security market as US has announced the increase in its interest rate. The FIIs are obviously expecting more gains by investing in the US market after the interest rate rise. The same situation had happened in the case of Asian financial market crisis during 1997 when US currency became stronger and higher interest rate regime was set in US. It had caused flight of capital from the East Asian countries to USA due to which these countries faced sudden recession. See, What will the next economic crisis look like? *available at* *http://timesofindia.indiatimes.com/business/india-business/What-will-the-next-economic-crisis-look-like/articleshow/51164638.cms* *(*accessed on 05.April.2016); *Asian shares rebound as US*

Such dilution in the state authority severely challenges the states while making their economic policies. In this situation, while formulating the economic policies the government has to operate in the troubled water because of uncertainty. It is now increasingly difficult to arrive at consensus over the complex economic questions.

For the purpose of avoiding the difficulty in policy formulations major economies have taken various steps. Some states have chosen to establish and develop the regional currencies (as it happened in the case of Euro) or some states may adopt the policy of full dollarization (i.e. to promote and use of any foreign currency or basket of currency, mainly US dollar, for the purpose of furnishing their all transactions). Both of these methods incorporate a common phenomenon, that is, delegation and dilution of national monetary sovereignty. In both of these currency policies the currency is deterritorialized.

The use of US dollar (or any other foreign currency as own currency, i.e. full dollarization) is popular in the cases of developing countries. The biggest benefit of the full dollarization is, the country adopting such policy may avoid acute devaluation of currency as the currency remains fully pegged to a strong currency (or basket of currencies). But while adopting the policy of full dollarization a country will have to assess that whether giving up its own currency will provide enough advantages. One important question here is, if the national sovereignty is

---

Fed Reserve opt no interest rate hike in 2016, Thu, 4 Feb 2016-08:27am , Sydney , Reuters, available at, http://www.dnaindia.com/money/report-asian-shares-rebound-as-us-fed-reserve-opt-no-interest-rate-hike-in-2016-2173779 (accessed on 05.April.2016); *'RBI may not opt for more open market operations to infuse liquidity',* February 22, 2016, *available at, http://www.thehindubusinessline.com/money-and-banking/rbi-may-not-opt-for-more-open-market-operations-to-infuse-liquidity/article8268214.ece (*accessed on 05.April.2016); *Fed rate rise: 3 scenarios for Indian equity markets,* September 16, 2015, *available at,* http://www.business-standard.com/article/markets/fed-rate-rise-3-scenarios-for-indian-equity-markets-115091600192_1.html (accessed on 05.April.2016).

sacrificed by any (small) economy then where the sovereignty does go. One opinion ascribes the transfer of the sovereignty to a hegemon. The economy which has pegged its currency to any foreign currency or basket of currencies effectively loses its control over its currency. The pegging country will also be affected by the steps taken by the hegemon for the purpose of credit control and other mechanism to design the rate of inflation within the economy.

The governments have relied on formal or informal negotiations for the purpose of bargaining the power arisen out of monetary sovereignty. Bretton woods system has been one out of a series of these negotiations. The governments have bargained the monetary powers via negotiations not only during their normal course of business but also during the financial crisis. For example, IMF has played a role to control the competitive devaluation during the Asian financial crisis. Since 1999 the G-20 finance ministers have been meeting annually to discuss various monetary and financial issues. IMF also provides for the voting power for the members within its system.

But it is also true that negotiating the sovereignty over the currency is not an easy task. The problem is increased when there is the case of multilateral negotiations. Secondly, the power to sanction the misbehaviors of the nation is always under question. There are many forums in the world where the States have chosen to negotiate their monetary sovereignty but out of these all probably IMF is the only forum where there may be some enforceability. And this is also very questionable that to which extent IMF has the power to curb any undesirable step taken by any member. Various forums like the G7 or G20 regularly meet for the purpose of the fixing the liabilities of the members but they seldom act more than the negotiating stage. A major problem during such negotiations is to regulate the action of the private parties who act in an autonomous manner as their action is now less affected by an individual State. In this situation it is almost an impossible task to impose the decisions of the governments on these private parties where the decision does not satisfy their interests. Although it is also true that these forums have played an important role for the purpose of exchange of information and data among the members.

There are many experts and academicians who have deemed policy sovereignty and legal sovereignty as the essential features of the monetary sovereignty of a state[114]. Whereas the policy sovereignty involves the ability of a sovereign state to devise its own policies in an independent manner, the legal sovereignty implies the power of a state to make its own rules and regulations without the limitations imposed by any outside authorities.

But, the system of fixed exchange rates, which helps in monetary integration and currency unifications with freely flexible exchange rates has led to the sacrifice of the policy sovereignty in the field of money as when a country opts for fixed exchange rates, it sacrifices monetary policy autonomy in favor of mechanism of adjustment for correcting the balance of payments[115].

Among a small country and its powerful and larger neighbor, in effect the small country will transfer the policy sovereignty to that larger neighbor if the currency of the small country is pegged to the currency of the larger neighbor. In result, the small country will lose its sovereignty as the small country no longer controls its own monetary value. This will clearly result into a situation where the dominant country will have a clout in the international currency system because of such currency pegs. A continuance of such practice will establish the currency of the larger country as a key currency in the international market[116].

But a system of fixed exchange rate with a central control does not give rise to a monetary union. During the Bretton Woods meeting, the plan to form a world currency with a legal tender power was set up by Keynes and White. But the plan was rejected by the United States as it would question its hegemonic power.

---

[114] Mundell, supra note 106.

[115]*Id.* at 1-14.

[116]*Id.* at 3.

Ultimately the negotiation was settled on the SDR[117]. But the SDR proved to be a too weak or unimportant to have any impact on the international monetary system. It only meant that the bigger economies were very unwilling to confer their monetary sovereignty to a supranational institution whether it is in the form of policy sovereignty or legal sovereignty. The same case took place with regard to the creation of European Monetary System (ECU) which ultimately took the form of Euro in 1999. It was also patterned on the basis of Bretton Woods as there was a very wide scope of discretions provided to the members. Use of the common currency was purely voluntary. Hence, ECU was also a weak institution as a matter of fact because the parties to it did not sacrifice either the policy or legal sovereignty.

2.5 - Monetary Sovereignty in United States

United States has gone through a chequered history as far as the monetary sovereignty is concerned. It started with the English rule and the English currency as a colony of England. Afterwards it broke free itself to assert its own monetary sovereignty. In the colonial USA there were acute shortages of pounds as the pounds were quickly used for the purpose to buy the imports. After the liberation from English rule the drafting committee proposed to issue coin and the paper bills to assert its monetary sovereignty over the territory. But it gave rise to debate and counter arguments on the matter of issuing the paper currency. Ultimately the matter was settled with an agreement within the committee on the basis of issuing the coin without having any express prohibition over the issue paper currency. As to the issue of distributing the money power between the center and states, the drafting committee proposed to bar the states from issuing their own coins with discretion of the congressional government. But in the final draft the bar was extended to the issuance of any credit bills also and it was not left upon the

[117] SDR (the basket of reserve currency under the IMF regime) has been discussed in detail in the Chapter V of this research work.

congress whether to allow the states or not to issue their coins rather the bar was made absolute.

2.7 - United States Law against the Currency Manipulations

United States Laws contain several unilateral provisions against the currency manipulations. For example U.S. Omnibus Trade and Competitiveness Act of 1988 which was preponed due to the misalignment in the dollar in 1980s. The Federal rule of United States (Title III of USC) obligates the United States to collaborate with the Fund in order to assess the exchange rate policies of its major trade partners. The US prepares such report on the semiannual basis u/s 304(b) whether any trading partner is manipulating its currency against the US dollar in order to take any unfair trade advantage or for the purpose of getting a favorable trade balance against USA. Though it is important to note for this research point of view that in no such report China has been labeled as the currency manipulator. If any of the trading partners is found to have been pursuing such manipulating policy the matter could be sorted out through bilateral negotiations unless such negotiation is undesirable for the security or economic interest of USA.

The dispute over the currency policy of China has driven United States to think over various legislative options to curb the alleged losses. Many bills have been introduced in the congress though they have not been given the shape of Law as yet. Any bill which has not been passed within the two years period of Congress automatically becomes a peace of Law if not introduced again. As a part of the tradition of Congress these bills were reproduced and the same has happened with one of the key bills dealing with Chinese currency manipulations i.e. the famous Currency Exchange Rate Oversight Reform Act of 2010 (Schumer-Stabenow-Graham bill).

The Currency Exchange Rate Oversight Reform Act of 2010 was introduced in order to fill up the gaps in the US Laws and to replace the U.S. Omnibus Trade and Competitiveness Act of 1988 of Title III. It is an international trade bill which would enable USA to impose tariff on imports coming from the country which is devaluing its currency. This bills calls upon the treasury department to identify currencies which are devalued. But the treasury department has not identified any of such country post 1994. Many have concluded this Act as part of the US protectionist policy and it was thought of US double standards[118]. One of the contentious provisions in the Schumer-Stabenow-Graham bill was to take the currency manipulations into account while calculating the margin of dumping in antidumping investigation. Obviously the overall idea behind such rules is to pressurizing China.

Since no such bill was converted into a piece of Law the U.S. House of Representatives passed a bill providing that countervailing duties may be imposed relating to the subsidies of the products coming from foreign country having a fundamentally undervalued currency[119]. This bill received an overwhelming approval of the House of Representatives. But this bill did not reach to Senate for voting it never became a piece of Law. But the manner in which it contained the anti-China rhetoric it shows the frustration about the Chinese currency policy which is not moving into any direction.

---

[118] See e.g. Yoo Seungki, Coexistence of liberalism and protectionism in U.S., 2011-10-14 21:16:01, *available at* http://news.xinhuanet.com/english2010/indepth/2011-10/14/c_131192137.htm *(*accessed on 05.April.2016).

[119] Currency Reform for Fair Trade Act (Ryan-Murphy bill).

2.8 – Conclusion

The international institution like IMF, WTO and OECD give rise to free trade and their fundamental principle is based upon the fact that international trade enhances enrichment, reduces poverty and increases prosperity within the economy. Hence the basic constructions of the agreements of these international institutions are based upon the notion that the free market economy promotes the welfare and it ought now to be disturbed. Hence, the members ought not to intervene in the free market economy and even if they intervene such intervention should be guided by an emergent domestic requirement which should not be permanent in nature.

The Chinese protracted exchange rate intervention in the market to keep the exchange rate (of Yuan) unchanged is not as per the spirit of the IMF to which it is a signatory. Such kinds of interventions have kept IMF to be a weak institution containing the Laws which are soft in nature. China has adopted the point of view that guiding its currency and fixing the exchange rate value of its currency is a matter of sovereignty which cannot be scrutinized by any external agency. China maintained this point of view when IMF staffs questioned its exchange rate policies during the surveillance meetings under the IMF provisions.

But such conclusion as given by China cannot be accepted. The customary International Law approach may palatable with regard to a socio - economic situation which were prevalent in the past centuries. At that time there were a few international trades, and the currency value was truly a domestic affair. But in the previous century the international trade scenario was completely changed and interdependence between the countries relating to certain matters with regard to trade, commerce, currency and exchange have increased. Now the currency is not purely a domestic affair of the country rather it is very desirable that the currency policies to be guided by the agreements between the parties.

China is providing it’s pleading as per the norms provided under the customary International Law. But accepting such pleading will produce an absurd result which could threaten the existing international system of currency. With the formation of IMF, the members pledge to submit their monetary sovereignty to IMF and as a quid pro quo the other members also do the same. If we go by the pleading taken by China that it has a full sovereignty over its currency and exchange rate exclusion to any outsider interference it will produce a drastic contradictory result which will make the formation of IMF redundant.

Chapter – III - IMF and Currency Manipulation

3.1 - Introduction

International monetary fund (or "Fund") is the sole international institution which patronizes the world currency and exchange system. Hence an analysis of role & function of the IMF is central for this research work. It is the duty of the IMF to regulate a just and equitable currency flow within the system. Simultaneously IMF plays a key role to prevent economic crisis, crisis response and provides stability for the reserves.

But the exchange rate dispute of USA with China has raised a critical question regarding the competency and power of the IMF to regulate the currency. Whether IMF provides a weak regime to regulate the currency? This chapter tries to find out the answer of all these questions.

For the purpose of performing its tasks and to supervise the exchange and currency policy of its member nations IMF undertakes the bilateral as well as multilateral surveillance functions under Article IV of the Articles of Agreement. But whether such surveillance functions are effective or not as far as the currency dispute between US and China is concerned?

IMF does not have any dispute settlement system like WTO has. But the case of Chinese currency policy has surely posed the major challenges before the IMF to deal with the cases of manipulations where the breaches have not been so obvious like earlier but now the breaches are more sophisticated and concealed in nature. The IMF is regularly coming with the new sets of regulations in order to deal with any potential threat to the stability of world economy. But the currency remains an intricate aspect of Law which needs a relook.

3.2 - Bretton Woods in 21st Century and China Exchange Rate Policy

The international economic relation between the nations in the modern world is prominently marked by investment, trade and money. The economic conflict may be costly for the various nations and for the resolution of international economic conflicts a rule based framework is always required. Origin of such a framework may be traced way back in 1940s to Bretton Woods conference. The historic Bretton Woods system foresaw the establishment of three international organizations: the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), and an International Trade Organization (1TO).

Out of these three organizations, the IMF had to play the most important role in the coming decades. Both of the chief proponents of IMF John Maynard Keynes of the UK and Harry Dexter White of the US referred in their proposals to the need to 'win the peace'. The Bretton Woods system was conceived with the bitter memories of high unemployment, hyperinflation, recession and fluctuating exchange rates still fresh.[120]

A primary objective of IMF to restore peaceful business environment so the economic relationship between the countries does not turn into political or military conflict. Hence, the proposals made by Keynes and White were drafted (in 1941 – 42), negotiated (in 1943) and adopted (in 1944) in Bretton Woods by the member nations. Since its inception, the Fund has been playing a pivotal role in dealing with the exchange rate stability, currency convertibility to various financial matters such as banking and capital markets, payment system, financial

[120] M. Lastra, *The Bretton Woods Institutions in the XXIst Century*, REFORM OF THE INTERNATIONAL FINANCIAL ARCHITECTURE, 69-70 (R. Lastra, ed., 2001).

crises, etc. At the same time, the IMF also acts as an international lender of last resort (LOLR).

3.3 - The Goal of International Monetary Fund

The purposes of the International Monetary Fund are[121]:

(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.

(iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.

(v) To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.

(vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members. The Fund shall be guided in all its policies and decisions by the purposes set forth in this Article.

[121] Article I of IMF: Purposes

The long history of International Monetary Fund started in May 1946 with the Par Value regime[122] (which is also known as the Bretton Woods regime). Under the par value regime currency implied 1 US Dollar of July 1, 1944, which had a fixed gold value (one ounce of gold was equal to USD 35). All other members defined their currencies in terms of US Dollars. Subsequent to Bretton Woods, US Dollar appreciated fully and became the key currency in the world. But in early 1970s, par value regime (or fixed currency regime) was replaced by the floating currency regime which triggered the second amendment in the Article of IMF.

3.4 - Exchange Rate Policy and Exchange Arrangement

The term "exchange rate policy" and "exchange arrangement" are used interchangeably. Though it seems such notion is wrong and this is emphasized in one of the IMF paper based on the Article IV overview -

> "Although the term "exchange rate policies" is also not defined, principles of statutory construction require that these two terms be given different meanings from each other. In that regard, it has been noted that "exchange arrangements refer to a broad classification or framework of a member's exchange system, while the term 'exchange rate policies' refer to the actions or inactions of

[122]**The par value system or Bretton Woods** system was the culmination of two and half years of rigorous negotiations between the forty four member nations. The par value regime was continued from the World War II to 1970s. The member nations discussed whether the floating or fixed exchange rate to be adopted by the world. Ultimately, the long deliberations found the way out between the polar alternatives of the free float and irrevocable fixed exchange rates. The solution emerged as 'adjustable peg' currency regime, which is also known as the par value system. Under this system the members declared a par value for their national money and to intervene within a band of one per cent above or below the parity to curb currency fluctuation.

This regime was also known for a notorious omission. But the member nations had also the right to intervene to adjust the rate of currency in case of 'fundamental disequilibrium in the balance of payment. But unfortunately the term 'fundamental disequilibrium was never widely discussed.

> members in the operation of their arrangements." However, where the line is drawn between these two terms depends on the exchange arrangement adopted by the member. For example, a member may notify the Fund that its exchange arrangement under Article IV, Section 2 is one where its currency is allowed to float, subject to periodic intervention it amounts to be determined from time to time in the light of developing economic conditions. It has been understood that, in this circumstance, a member's policy as to how it would approach intervention decisions would constitute its exchange rate policy rather than its exchange arrangement. However, in circumstances where a member chooses an exchange arrangement that involves pegging its currency to the currency of another member (or a basket of currencies), it has also been understood that the "exchange arrangement." [123]

It is important to note in this regard that the IMF enjoys its jurisdiction both in the cases of exchange rate arrangement and exchange rate policy. The Article IV, Section 2 of the IMF provides sufficient freedom to the members to choose their suitable exchange rate arrangement within the framework of the IMF Articles of Agreement.

3.5.1 - Article IV, Section 1: Obligations Regarding Exchange Arrangements

The present form of Article IV was devised in the Second Amendment of Articles of Agreement in 1978. The Article IV established a new set of rules after the crash of Par value system. Under the Par value system the freedom of the members as to the value of the currency of any other nation was very limited. The value of the currency of a member nation had to be determined in terms of a fixed amount of gold or through the U.S. dollars. But the Article IV of the revised

[123] Sean Hagan, Fund's Articles of Agreement, art. IV: *An Overview of the Legal Framework*, 5, (June 28, 2006), *available at*https://www.imf.org/external/np/pp/eng/2006/062806.pdf

.

agreement is based upon the party autonomy and a member nation could choose an exchange arrangement as per its economic needs.

Article IV of the IMF revised Articles of Agreement of the International Monetary Fund provides the rules and guidelines of obligations of the parties regarding exchange rate arrangements. Section 1 of the Article IV enumerates the essential purpose of the international monetary system –

“The goal is to provide a framework that facilitates the exchange of goods, services, and capital among countries, and that sustains sound economic growth, and that a principal objective is the continuing development of the orderly underlying conditions that are necessary for financial and economic stability, each member undertakes to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates”.

An analysis of Section 1 of the Article IV gives an idea that it contains the Preamble, general obligations and four specific obligations of the members[124].

The preamble part of Article IV, Section 1 does not provide any obligations of its own. It merely provides the guidelines through which the flow of economic benefit could be ensured to its member i.e. to provide a sound framework in order to sustain a sound economic growth and an orderly underlying condition that is necessary for financial and economic stability.[125]

---

[124] For the purpose of systematic analysis of Art IV, Section 1, the academicians have conveniently divided it into three parts. *Id.* at 7.

[125]*Id. See Also*, Michael Mussa, *IMF Surveillance over China’s Exchange Rate Policy, Paper presented at the Conference on China's Exchange Rate Policy*, 10-11(PETERSON INST. INT’L. ECON).

October 19, 2007). Section 1 of Article IV makes clear that IMF members cannot do whatever they like with respect to their exchange arrangements or exchange rate policies. Article IV Section 2 (b) specifically precludes pegging to gold as an acceptable exchange arrangement. This is a

The preamble provides the essential purpose and principle objective of the international monetary system. The essential purpose of the international monetary system is to provide a framework that facilitates the exchange of goods, services, and capital among countries, and that sustains sound economic growth whereas a principal objective is the continuing development of the orderly underlying conditions that are necessary for financial and economic stability.[126] Hence, the preamble assumes that the underlying motive of the general obligations as it is set forth in Article IV, Section 1, to enhance the effectiveness and functioning of the international monetary system to contribute to the realization of the broader economic benefits as identified in the Section[127] (even though the Preamble does not impose an obligation on the member nations though it provides important guidelines to interpret the various clauses of Art. IV).

The **general obligation** of the member countries is to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates.

3.5.2 The specific obligations

Besides above the code also provides four specific obligations of the member countries in order to infuse a healthy exchange rate system in the world. The specific obligations are –

---

complete reversal of the original Article IV which required members to establish a parity for their currencies in terms of gold. (Michael Mussa, Supra note 89 at 9 (footnote 7)).

[126] Art IV, § 1.

[127] *See Also*, supra note 123, at 8. The identification of these broader economic benefits in the preamble does not mean that the achievement of these benefits has become a purpose of the Fund. The preamble sets forth the purposes of the international monetary system—not those of the Fund.

(i) Endeavour to direct its economic and financial policies towards the objective of fostering orderly economic growth with reasonable price stability, with due regard to its circumstances;

(ii) Seek to promote stability by fostering orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions;

(iii) 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; and

(IV) Follow exchange rate policies compatible with the undertakings under this Section[128].

The sentence which links the general obligations with the particular obligations uses the phrase “In particular, each member shall:” and then enumerates the specific obligations. It implies the list of particular obligations are not exhaustive they must be seen in the light of the general obligations as enumerated and the general obligation of collaboration is broader in scope than the sum total of the four specific obligations[129].

[128] Art IV, § 1 imposes obligations upon its members that are both positive and negative in character. The positive obligations are the ones described in Article IV, Section 1 (i), (ii) and (iv). The negative obligation is the one described in Article IV Section 1(iii), which is written in rather forceful terms: to ‘avoid manipulating exchange rates’ – See Rosa M Lastra, The Role Of The IMF As A Global Financial Authority, at 7, School of Law Legal Studies Research Paper No. 55(Queen Mary University of London ,2010).

[129] See at 9, supra note 123.

A contrary interpretation—one which would conclude that the specific obligations exhaust the content of the general obligation—would render the general obligation redundant, contrary to general principles of statutory construction[130].

The "collaboration" as mentioned in general obligations mandates the members to perform specific actions and to refrain from performing some actions as per the provisions in the revised agreement. It further implies if a member is in breach of the Law made by the Fund, then the Fund is rightful enough to take corrective actions. It can recommend certain positive act or omission on the part of the wrong party. A failure on the part of a party to abide by such collaborative recommendation by the Fund would not constitute the breach in itself. In that case the Fund could revisit the case and decide if it needs any firmer approach to take[131].

With regards to the four specific obligations of Article IV (1), the third obligation is the key to the currency manipulations. The first two deal with the macroeconomic policies to foster growth with low inflation and to promote financial stability and economic growth. And the fourth is a general injunction to "…follow exchange rate policies compatible with this section.[132]

---

[130] *Id.*

[131] *Id*. at 8 [See Footnote 13, Sir Joseph Gold writes as noted by Sir Joseph Gold, it was recognized that, if members did not adhere to recommendations, the Fund could revisit the issue and determine whether a firmer approach was needed. "Although provisions imposing obligations to collaborate are expressed in mandatory terms, the IMF has assumed that the exacting administration authorized by such a provision permits a less rigorous approach, without any sacrifice of authority should firmer administration of it become advisable"; Interpretation: The IMF and International Law, at p. 337

[132] *Id*. at 10-11.

The Article IV also provides the specific obligations. The Article IV makes such a legislative arrangement that if a party is in breach of any of the specific obligations he will be in the breach of the general obligations also[133].

Article IV, Section 1(i) mandates that each member shall endeavor to direct its economic and financial policies towards the objective of fostering orderly economic growth with reasonable price stability, with due regard to its circumstances.

As above stated, the exchange rate of any member nation is allowed to move in accordance with the domestic requirement though the overall scenario of the exchange rate system will improve if the member nation adopts an appropriate economic policy.In that regard, it recognizes that the exchange rate system will only be stable on a sustainable basis if domestic policies are directed towards economic growth—albeit the type of growth that is "orderly" and is accompanied by "reasonable price stability"[134].

This specific obligation purportedly extends the jurisdiction of the Fund to the domestic policy of the member nations.

However, this obligation is a particularly weak one—precisely because it does relate to domestic policies. As noted above, members are only required to

---

[133] Supra note 123, at 13.

[134]*Id.* at 14. One of the most important functions undertaken by the IMF is to advise the member nations on the financial matters to overcome financial issues. The IMF is the central institution in the international monetary system. It serves as a forum for consultation and collaboration by members on international monetary and financial matters, and works with other multilateral institutions to devise international rules that would facilitate the prevention and orderly resolution of international economic problems [See International Monetary Fund Handbook, Its Functions, Policies and Operation (January 2007), *available at* *https://www.imf.org/external/pubs/ft/imfhb/eng/handbook.pdf (accessed on 31st May, 2016).*

"endeavor" to direct domestic policies towards the "objective" of fostering orderly economic growth and with "due regard to the circumstances"[135].

Article IV, Section 1(ii) mandates that each member shall:

"Seek to promote stability by fostering orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions".

The Article IV, Section 1(ii) is again a specific obligation which relates with the member's domestic obligation. In particular, efforts in the Executive Board to insert the word "exchange" before stability were rejected[136].

The Article IV, Section (ii) is again like Article IV, Section (i) sets an example of a weak Law. The member nation has no legal liability more than to "seek." The term monetary system must be seen in reference to the term "International monetary system" as used as the essential purpose in the Preamble part of the Section 1. The very legislative intent was to let the member nation to foster orderly underlying economic and financial conditions so that the goal of stable exchange rate could be achieved.

It was not very clear whether "erratic disruptions" was used merely in terms of the international exchange system or in broader way. But even if it is not specifically relating to international exchange system it will cover the cases of such disruptions that are not the result of orderly underlying economic and financial conditions.

---

[135]*See Also*, *Id*.

[136]*Id.See Also*, Bryan Mercurio & Celine Sze Ning Leung, *Is China a "Currency Manipulator"? The Legitimacy of China's Exchange Regime Under the Current International Legal Framework*, *43 THE INT'L LAWYER 1257, 1282(2009)*

3.6- Article IV - Section 2

Article IV of Section 2 contains three main provisions –

(1) The Member nations are obliged to notify the Fund promptly (within 30 days) of any changes in its exchange arrangements with regard to its obligations under Section 1 of this Article[137].
(2) As drafted under the Second Amendment, exchange arrangements may include (i) the maintenance by a member of a value for its currency in terms of the special drawing right or another denominator, other than gold, selected by the member, or (ii) cooperative arrangements by which members maintain the value of their currencies in relation to the value of the currency or currencies of other members, or (iii) other exchange arrangements of a member's choice[138].
(3) To accord with the development of the international monetary system, the Fund, by an eighty-five percent majority of the total voting power, may make provisions relating to general exchange arrangements without limiting the rights of the members to have exchange arrangements of their choice consistent with the purposes of the Fund and the obligations under Section 1 of this Article[139]. It is to be noted that the amended version of Article IV reflects a shift in objective from achieving a stable exchange rate to achieving a stable exchange rate system[140].

The obligation part of the Fund is the most important and most complicated set of rules with regard to the policies of the member countries. Since the inception of the second amendment to the Articles, which came into effect in 1978, under Art

[137] Article IV § 2(a). of IMF Articles of Agreement.

[138] IMF Articles of Agreement, art IV § 2(b).

[139] IMF Articles of Agreement, art IV § 2(c).

[140] Bryan Mercurio & Celine Sze Ning Leung, *Is China a "Currency Manipulator"? The Legitimacy of China's Exchange Regime Under the Current International Legal Framework*, 43 THE INT'L LAWYER 1257, 1271 (2009), [footnotes Omitted].

IV [Sec. 2 (b)] member countries of the IMF are free to adopt fix or floating rate of exchange against other currencies. Even though one of the main purposes of the IMF is "to promote exchange stability, to maintain orderly exchange arrangements amongst members and to avoid competitive exchange depreciation" (see Art. I (iii) IMF), there is "no clearly defined and self-standing legal duty to maintain stable currencies" presently laid down in the IMF Articles. Thus Art. IV, Sec. 2 (b) provides the Members of IMF a general freedom to devise its own exchange system while the provisions of the present Article IV continue to reflect the view that a country's exchange rate policies are the matter of international concern[141]. The assumption underpinning the Second Amendment was that if exchange rates reflected underlying conditions, the overall system would be more stable, even if this resulted in fluctuations in members' exchange rates. Reflecting this approach, a key obligation under the original Article IV—the requirement to collaborate to promote "exchange stability"—was modified in the Second Amendment to become the requirement to collaborate to promote a "stable system of exchange rates." The stated objective is to achieve the stability of the system—not the stability of exchange rates as such—and such stability would be best served if exchange rates were permitted to fluctuate in response to underlying conditions.[142]

Further, the Second Amendment of the revised Articles of Agreement further firms up and accepts the relationship between a member's exchange rate and its domestic policy[143]. Though there may be fluctuations in the exchange rate of any member nation but gross irregularity could be avoided with regard to the exchange rate system if the members pursue an appropriate domestic policy with

[141] Supra note 123, at 1.

[142]*Id* at 2.

[143] This focus on domestic policies differs from the Article's first version, which was centered on exchange rate policies and on exchange arrangements exclusively. This important shift extended members' obligations and the Fund's jurisdiction; See Rathin Roy and Raquel Almeida Ramos, *P. 1, IMF Article IV Reports: An Analysis Of Policy Recommendations*.

regard to the exchange rate. Article IV of the revised agreement also introduces obligations with regard to the domestic policies of the member nations[144]. Though such obligations may have a limited practical application as the members may not be compelled to compromise with their sovereignty. But the Section 1 of the Article definitely obliges the member nations not to adopt any manipulative

---

[144] *See* Sean Hagan, Fund's Articles of Agreement, art. VI: *An Overview of the Legal Framework*, 5, (February 22, 2010). (Footnote Omitted), available at, https://www.imf.org/external/np/pp/eng/2010/012210a.pdf (accessed on 05.April.2016); the obligation as enumerated in Article IV with regard to domestic exchange rate policies (including with respect to financial sector) are limited in two aspects, First, the relevant text reveals that these obligations (Article IV, Section 1(i) and (ii)) are of a "soft" nature: taking into account the fact that members retain great sovereignty in terms of the conduct of their domestic policies, they are only required to exercise "best efforts" in this area. Second, members' obligations respecting domestic policies only require members to take action to promote their own domestic stability. As long as a member is implementing domestic policies in a manner that ensures such stability, it is under no obligation to change these policies, even if a change would further enhance the stability of the overall exchange rate system.

Domestic stability refers to orderly economic growth with reasonable price stability, with due regard to the circumstances of the relevant members, and orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions (see Article IV, Section 1). Whereas the term external stability was replaced by balance of payments stability in the ISD to ensure clarity that this concept refers to a country's own stability as opposed to systemic stability. However, there is no difference in the definition of these two terms – as noted in Guidance Notes for Surveillance under Article IV Consultations, Executive Summary, October 10, 2012, *available at*http://www.imf.org/external/np/pp/eng/2012/101012.pdf (accessed on 05.April.2016).

See Also, Rosa M Lastra, *The Role Of The IMF As A Global Financial Authority*, at 128-9, School of Law Legal Studies Research, Paper No. 55(Queen Mary University of London ,2010)

(the language of Article IV Section 1 reflects the 'labour pains' of the origins of this provision, which came to replace the legal certitude and simplicity of the original par value regime. The choice of verbs (endeavor, seek to promote, fostering, follow), the introduction of a preamble, and what I would describe as a 'hesitant tone' in the new mandate, suggest that the drafters of the provision were unsure about the direction that the new regime would follow and did not want to preclude an eventual return to the regime that they had just abandoned)).

currency policy (in the forms of overvalued or undervalued) currency in order to gain an unfair competitive advantage[145].

The fund has also not sought to elucidate the meaning of member's obligation as enumerated under the Article IV. The substantial provisions of Art. IV were negotiated by a small group of members outside of the executive board with an understanding that there was a limited scope to modify the provision of Art IV despite of the fact a number of officers and members had expressed their concern about the vagueness of Art. IV. Hence, the fact remains that there is a very little legislative history is there to throw light on this issue[146].

3.7 - Exchange Rate Manipulation (Article IV, Section 1(iii))

Article IV, Section 1(iii) mandates that each 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[147].

Article IV, Section 1(iii) provides the hard and fast obligations for the parties concerning to the external policy of the members. It provides probably most important but most complicated arrangements of the member's obligations. It is

[145]Sean Hagan, *Id* at 2.

[146]*Id.* at 4.

[147] This is the key specific obligation that relates to exchange rates. The first two deals with macroeconomic policies to foster growth with low inflation and policies to promote economic and financial stability; and the fourth is a general injunction to "…follow exchange rate policies compatible with this section." - Michael Mussa, supra note 96, at 11-12.

.

also not very clear that what kind of acts would be covered under the phrase “manipulating the international monetary system.”

A member can manipulate its currency by numerous ways. It can manipulate through excessive exchange control or by preventing the rates to move or through the capital control. Simultaneously, the term “in order to prevent balance of payments adjustment” broadly covers any potential act of the members to gain balance of payment advantage by over or under valuation of the currency.

Article IV, Section 1(iv) mandates that each member shall:

(iv) follow exchange policies compatible with the undertakings under this Section.

Article IV, Section 1(iv) relating to an external aspect of the currency policy of any member. It imposes a hard duty upon the member to ensure the desirable result as intended in this Section. It is not merely “endeavoring” or “seeking” to achieve results[148]. The Section uses the term “exchange policies” which is different from “exchange rate policy.” It was intended to provide a broader term than “exchange rate policy.”

It is important to note regarding the Article IV obligations –

1. The relevant text of Article IV (Section 1(i) and (ii)) deal with the domestic policy of the members where the members enjoy a great degree of sovereignty. But in the cases where it deals with the external aspect of the policies, the guidelines of the relevant sections remain hard in nature (e.g. Article IV, Section 1 (iii) and (iv)) which impose positive obligations upon the parties to achieve an orderly exchange rate.
2. The Fund provides a greater flexibility with regard to the domestic policies which requires the member nations to stabilize their exchange

[148]Supra note 144, at 16.

rates. But the Fund cannot put pressure on the individual State to change its exchange rate obligation for the sake of better external stability if the State is already pursuing orderly exchange rate and it is not creating either internal or external stability.

The obligations under the Article IV, Section 1 (iii) covers both overvalued and undervalued exchange rate. Section 1 of the Article may limit the member's ability to act in such a manner which has been expressly provided by the IMF. For example the Articles of Agreement confers members the right to exercise controls on capital movements. But such controls may be prohibited in the cases where the controls are tantamount to currency manipulations.

Article IV, Section 1 also provides for specific obligations respecting a member's external policies. Hence a member will be in the breach of the provision of Section 1 (iii) of Article IV, if it is done for the purpose of preventing effective balance of payments adjustment. The use of phrase "in order to" shows that intent of manipulation is required and only the measure for the purpose of preventing balance of payment adjustment is not sufficient. For this purpose it is not essential that the members own explanation of its motive to be accepted by the Fund. For the purpose of imposition of liability, 2007 decision can be of use, i.e. the member can be asked to provide clarification regarding its "protracted largescale intervention in one direction in the exchange market". The member is provided an opportunity to be heard where it can represent the purpose of such exchange rate measure. The benefit of doubt during such discussions may be given to the member if it is demanded by the situation. The Fund is obligated to make an independent analysis, after hearing the member, whether the measure adopted by the member is justified taking all the relevant information and circumstances into account and should fall under the ambit of Article IV, Section 1(iii). Hence, the obligation under Article IV, Section 1(iii) is an obligation of restraint.

3.8 - Legal Mandate of the Fund

Exchange arrangement is adopted by a member in order to determine the value of its currency. The "Communique of the International Monetary and Financial Committee of the Board of Governors of the International Monetary Fund" (dated October 4, 2009) obligated the Fund to review its mandate to supervise the microeconomics and financial sector policies. The Fund is the guardian of world financial and economic stability and in order to promote stability the Fund carries on bilateral surveillance on the country level. The 'Fund's mandate' encompasses two sets of ideas – first, specific power granted to the Fund and secondly the purpose for which the power is granted.[149]

The purpose of the Fund remained unchanged since its inception. The construct of the Articles of Agreement provides that the purpose of the Fund is exhaustive rather illustrative. The purpose of the Fund is not political rather financial. The last sentence of the text of Article 1 provides the guideline about its power to be exercised under Article of Agreement of IMF.

All the international organizations have been created to enhance prosperity and IMF is not an exception of this concept. The very assumption underlying behind the factum of creation of different international organization like, IMF or WTO is that each organization will make a distinctive contribution in their specialized fields. The Fund's legal mandate is embedded in its charter, the Articles of Agreement which specify its power and purpose.

The Fund performs mainly three kinds of functions –

1. Oversight Functions – The oversight functions of the Fund relates prominently to the Fund's obligations to monitor whether the member nations are following the rules provided under the Articles of Agreement or not.

[149] Reza Moghadam, *The Fund's Mandate—The Legal Framework*, 1, STRATEGY, POLICY, AND REVIEW DEPARTMENT, (In consultation with the Legal Department).

2. The Fund is empowered to provide a financial assistance to the members in case they need and request.
3. Advisory powers.

The oversight function of the Fund is embedded in the Article IV (3) of the Articles of Agreement. The Article IV (3) provides –

“Section 3. Surveillance over exchange arrangements

(a) The Fund shall oversee the international monetary system in order to ensure its effective operation, and shall oversee the compliance of each member with its obligations under Section 1……….”

Article IV (3) (b) empowers the Fund to perform the firm surveillance over the exchange rate policy of the members for the purpose of observance of its oversight power. This sort of surveillance is also referred as bilateral surveillance. The bilateral surveillance assists the Fund staff to deduct whether there is any possibility of fundamental misalignment of exchange rate.

3.9 –Fund Surveillance

3.9.1- Types of surveillance

The Fund performs its surveillance[150] function through its so-called ‘Article IV consultations’ with each individual member country. This consultation is held in accordance with the Article IV of the agreement. Article IV of the IMF provides for the legal basis and modes of the bilateral and multilateral surveillance by the Fund. Section 3(a) of the revised Article IV of the IMF Articles of Agreement provides that the International Monetary fund is duty bound to observe

[150] In its report on surveillance of China exchange policy in 2006 summer the Executive Board of IMF had made a vague reference about the need of more flexibility of Chinese Exchange Rate Policy. When China decided to allow a moderate appreciation in 2005 July, the need for a more appreciation was discussed in IMF – noted by Michael Mussa, supra note 96, at 4.

compliance from its member countries and the members will refrain from violating the provisions enumerated under Article I of the fund. The revised Articles of Agreement also imposes a duty upon the fund to oversee “the international monetary system in order to insure its effective operation.” The fund is obliged to make a firm surveillance and adopt specific principles for the guidance of all members with respect to those policies. The Section also imposes a substantive duty on the members that they will provide the Fund with the information necessary for such surveillance, and, when requested by the Fund, shall consult with it on the member’s exchange rate policies.

Through the method of surveillance the Fund performs two sets of functions – first analysis of policies of the member countries (bilateral surveillance) and secondly, ensuring the development of the system as a whole (in the form of the World Economic Outlook (WEO), the Global Financial Stability Report (GFSR) and the Early Warning Exercise (EWE)). The goal of the bilateral surveillance is to focus upon the impact of the member’s exchange rate policies on its balance of payment stability.

The Decision on Bilateral and Multilateral Surveillance (or Integrated Surveillance Decision (i.e. ISD), adopted by the Fund‘s Executive Board on July 18, 2012, establishes a comprehensive framework for integrating bilateral and multilateral surveillance and provides guidance for the Fund and the members in the conduct of surveillance[151].

Article IV, Section 3(a) and 3(b)[152] require the Fund to oversee members’ compliance with regard to the obligations as enumerated under Article IV, Section

[151] Guidance Notes for Surveillance under Article IV Consultations, Executive Summary, October 10, 2012, *available at*http://www.imf.org/external/np/pp/eng/2012/101012.pdf (accessed on 05.April.2016).

[152] The obligation to provide information to the Fund ‘as it deems necessary for its activities’, is also provided in Article VIII, Section 5.

1 and to exercise firm surveillance over members' exchange rate policies (bilateral surveillance).

3.9.2- Bilateral Surveillance

In accordance with the provisions of Art. IV of the Revised Agreement their staffs hold annual bilateral meetings with officials from the member country to ensure member countries are complying with the various provisions of the Fund[153]. The Fund staff team (which is known as IMF "mission") collects the information of the concerned member nation about its macroeconomic policies. The information may be mainly related to fiscal, monetary, exchange rate, the soundness of financial system or any other policy of the member nation. The mission holds discussion about the member's current and prospective changes of the domestic economy and its balance of payment situations. After such discussion the IMF team prepares a preliminary report about its findings and observations and subsequently the Executive Board discusses the staff report. After the discussion the team provides a summary of the discussion to the member nation government. If the country consents for the publication, the conclusion of the discussion is published.

Article IV specifies members' substantive obligations with regard to the Fund's surveillance. It provides a general obligation that each member shall undertake to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates[154]. Besides the general obligations the Fund provides four Specific Obligations also for its members, as stated earlier. In addition to the substantive obligations, members also have procedural obligations to consult with the Fund, and to provide certain

---

[153] In the bureaucratic organization of the IMF staff, the area departments are primarily responsibility for the staff work underlying "bilateral surveillance" that focuses on the specific obligations of members listed in Article IV Section 1 - supra note 123, at 10.

[154] Section 1 of Article IV

information deemed necessary by the Fund for carrying out its bilateral surveillance mandate.

The Fund is thus provided a broad based right of surveillance and the Fund makes a biannual review of the principles and procedures that guide its surveillance.

3.9.3- Multilateral Surveillance

Article IV, Section 3(a) also requires the Fund to oversee the international monetary system to ensure its effective operation ("multilateral surveillance). In contrast to bilateral surveillance, the Articles of Agreement do not establish any substantive policy obligations of members in connection with the Fund‘s multilateral surveillance mandate. Pursuant to the ISD, members are encouraged to implement such exchange rate, domestic, economic and financial policies that, in them or in combination with the policies of other members, are conducive to the effective operation of the international monetary system. They have, however, no obligation to change their domestic economic and financial policies that may give or are giving rise to spillovers that may have a significant impact on global stability, as long as they promote their own domestic or balance of payments stability. Members have, however, a procedural obligation to consult with the Fund and to provide relevant data so that the Fund can exercise its multilateral surveillance responsibilities[155].

In order to fulfill its condition of firm surveillance, the Fund requires adopting specific principles for the guidance of all members with respect to those policies. The Fund may also guide the members with regard to the conduct of their domestic economic and financial policies. This idea is based upon the principle that member‘s overall mix of economic and financial policies which includes both exchange rate and domestic policies, contributes to the members‘ balance of

[155] *Supra* note 151 at 40-41.

payments and domestic stability and may impact the stability of the international monetary system.[156]

The IMF is simply justified to extend its ambit of surveillance to the extent of domestic exchange rate policy and the steps taken by a member in the direction of maintaining a strong balance of payment case. Considering the fact of no member's economy may be divorced with the other economies and the imperative impact of a member nation's policy upon the international exchange rate policy, it is very much upon the IMF that in order to regulate international exchange rate it has to take the domestic and financial market currency policy into account. Surveillance involves the continuous monitoring of members' economic and financial policies and their impact on their own and global stability[157]. The principle of surveillance was set out in 1977 decision[158] which has been replaced by 2007 decision[159]. The Decision of 15 June 2007 crystallizes a common of the best practice of surveillance, and covers exchange rate policies and also relevant domestic economic and financial policies. External stability in the Decision of 2007 encompasses both current account and the capital account of the balance of payments, consistent with the members' obligations under Article IV[160]. Time and again a need of a new set of decisions has been felt since the last one seeing the disputed and discomfort with regard to the exchange policy of one member nation with another member to support the external exchange market stability.

After the abandonment of par value system the Second amendment put an emphasis on the surveillance function of the Fund. The surveillance function of

---

[156]*Id.* 42.

[157] This generic definition of "surveillance" has been provided in Guidance Notes for Surveillance under Article IV Consultations, Executive Summary, *Id.* at 6.

[158] The 1977 Decision was adopted by the Executive Board after the Board of Governors' adoption of the Second Amendment (but before the Second Amendment entered in force).

[159]http://www.imf.org/external/np/sec/pn/2007/pn0769.htm#decision (accessed on 05.April.2016).

[160] Rosa M Lastra, *The Role Of The IMF As A Global Financial Authority*, 7 School of Law Legal Studies Research Paper No. 55(Queen Mary University of London ,2010).

the Fund became central to the Fund. In the words of the late Manuel Guitián, 'the IMF is primarily a surveillance institution' and the in charge of the oversight of an international financial code of conduct'[161].

The surveillance function of the IMF is a jurisdictional function within which the exchange arrangement, exchange rates and balance of payment of the parties fall. Hence overall area of surveillance would not be just the exchange rate arrangement and fiscal policies of the party but it will also cover a wide range of the area encompassing financial sector issues, structural issues and institutional developments also.[162]

Overall the role of surveillance function of IMF remains critical and complex in nature considering the fact that it deals with the complicated interaction between the domestic and external exchange policies of the member nation and it makes it difficult to take a the judgment that how this exchange rate policy would impact the exchange rate market.

3.9.4 - 1977 Decision on Surveillance over Exchange Rate Policies

The 1977 Decision[163] on Surveillance provides that the principle and procedure is applicable on all the members whatever their exchange arrangements and whatever their balance of payments position, and such principles and procedures are adopted for the purpose of performing surveillance by the Fund under Section

[161] *Id.* at 6; Footnote Omitted.

[162] *Id.* at 6.

(The focus of the obligation relates to exchange rate policies; other policies (such as trade and investment policies) do not constitute 'an obligation under Article IV' even if they are an important element to assess exchange rate policies. However, he acknowledges that the practice of surveillance is expanding beyond the actual obligations of Article IV through the conduct of Article IV consultations. He warns against an undue extension in this practice: if surveillance is perceived more as a form of peer pressure than as compliance with obligations specified in the Articles of Agreement, this may lead to a dilution of its objectives).

[163] Decision No. 5392-(77/63) April 29, 1977, as amended by Decision Nos. 8564-(87/59), April 1, 1987, 8856(88/64), April 22, 1988, and 10950-(95/37), April 10, 1995

3(b). The decision recognized the close association between the domestic and international economic policies. The decision provides the three basic guidelines for the Members' Exchange Rate Policies.

Principles for the Guidance of Members' Exchange Rate Policies

A. 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.
B. 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.
C. Members should take into account in their intervention policies the interests of other members, including those of the countries in whose currencies they intervene.

Principles of Fund Surveillance over Exchange Rate Policies

1977 decision provides three basic principles of Fund Surveillance over Exchange Rate Policies –

Principle 1 – The process of surveillance over any member should take into the account of the proper functioning of the international adjustment process. As per the decision Executive Board and Interim Committee held responsible to review the international adjustment process.

Principle 2 – under principle 2, the decision provides certain indicators where the fund might require discussing the matter with the member –

(a) Protracted large-scale intervention in one direction in the foreign exchange market.

(b) Excessive and prolonged short-term official or quasi-official lending, for balance of payments purposes.

(c) The introduction, substantial intensification, or prolonged maintenance for balance of payments purposes any restrictions on, or incentives for current account transaction or inflow or outflow of capital.

(d) Any domestic financial policies that provide abnormal encouragement or discouragement to capital flows.

(e) Exchange rate that appears to be unrelated to underlying economic and financial conditions.

(f) Unsustainable flows of private capital.

Principle 3 – Under the principle 3, the Fund needs to consider various developments in a country's exchange rate and balance of payments with regard to the domestic economy and the country's policy objectives. Such surveillance has to be made with respect to comprehensive analysis of the general economic situation and economic policy strategy of the member in order to effect a timely adjustment of the balance of payments.

3.9.5- 2007 Decision Relating to Fund Surveillance and Currency Manipulations

i. The new Decision clarifies the concept of exchange rate manipulation in order to gain an unfair competitive advantage over other members, which is prohibited under Article IV and referred to in the previous Decision. In particular, the new Decision relates such behavior to the concept of fundamental exchange rate misalignment.

ii. The 1977 Decision enjoined members to avoid exchange rate manipulation for specific purposes, in particular to gain an unfair competitive advantage over other Fund members. The new Decision adds a principle recommending the members to avoid exchange rate policies that result in external instability, regardless of their purpose, thereby capturing exchange rate policies that have proven to be a major source of instability over the past decades.

iii. Directors recognized that exchange rate manipulation can take many different forms, including intervention in the exchange markets and the imposition of capital controls for the purpose of directly targeting the exchange rate. They noted that, as explained in the Annex to the Decision, under Article IV, Section 1 (iii), a member is only required to avoid exchange rate manipulation when such manipulation is engaged in for one of the purposes identified in that provision.

iv. 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.

v. 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 rate of its currency.

vi. "Manipulation" of the exchange rate is only carried out through policies that are targeted at—and actually affect—the level of an exchange rate. Moreover, manipulation may cause the exchange rate to move or may prevent such movement.[164]

2007 SURVEILLANCE DECISION: PRINCIPLES AND INDICATORS

The decision provides various exchange principles to prevent exchange rate manipulations-

i. A member shall avoid exchange rate manipulations to gain competitive advantage.

[164] Source – *available at* *https://www.imf.org/external/np/sec/pn/2007/pn0769.htm* (accessed on 05.April.2016).

ii. A member is obligated to intervene in the market in case of disorderly conditions disruptive short-term movements in the exchange rate of its currency.
iii. While preparing any intervention policy in the exchange rate market, a member should take into account, the interest of the other members as well.
iv. A member should avoid any exchange rate policy which could cause any external instability.

3.9.6- Bilateral Surveillance Guidance Notes

i. Surveillance involves the continuous monitoring of members 'economic and financial policies, and regular Article IV consultations[165].
ii. IMF staff holds 'pointed discussions with the authorities of the members regarding their economic situation and their policies. The outcome of the discussions is reported to the Fund's Executive Board for their considerations.
iii. Executive Board then analyses the report through the candid discussions, and a peer-review mechanism. The goal of such consultations is to promote the stability in the domestic and external stability.
iv. For a successful surveillance it is essential that the surveillance should be collaborative, due regard to be paid to the nature of economy of the State (even if the economy is small), staff's advice should be practical, forward looking (a medium term approach is recommended) and should be specific (i.e. should not be just a prescriptive list based upon the broad parameters).
v. Basic principle for surveillance is stability. The 2011 Triennial Surveillance Review (TSR) has found the overall surveillance process as

[165] BILATERAL SURVEILLANCE GUIDANCE NOTE, IMF, Approved By Siddharth Tiwari, Prepared by the Strategy, Policy, and Review Department In consultation with other departments, *available at*, http://www.imf.org/external/np/pp/eng/2012/061312.pdf.

satisfactory but there has been some scope of improvement. Good communication is the key to effective surveillance. To make the surveillance better it is preferable to make it clear, concise and focused on a few key points.

vi. One of the goals of surveillance is also to provide an early warning to the member nations for any future risks relating to the economy and the exchange rate so that the member could be ready with the both contingency plan and prevention.

The Exchange Rate Surveillance Indicators

i. It is not recommended for any member nation to cause large scale intervention in one direction for a very long time.
ii. Any official or quasi-official borrowing which brings high liquidity risks for Balance of Payments purpose should be avoided.
iii. Any policy adopted by the member nation involving abnormal encouragement or discouragement of capital flow is prohibited.
iv. Fundamental exchange rate misalignment.
v. Large and prolonged current account deficits or surpluses.
vi. Large external sector vulnerabilities, including liquidity risks, arising from private capital flows.

3.10 - Chinese Currency Policy and Its compatibility with the IMF Rules

IMF provides the General exchange arrangements[166]. Under Article XII, Section 3(a), the Executive Board of the Fund is responsible for conducting the general business of the Fund. Besides the bilateral surveillance, the Executive board also discusses an overall functioning of the world economy, international finance and business (i.e. multilateral surveillance) on the semi-annual basis in the World Economic Outlook. Section 3 (a) also obligates the Executive board to oversee whether an individual member of IMF is compliant to the IMF provisions or not, which gives rise to Article IV consultation with the individual members. The IMF staffs visit the individual country to perform the task of the consultation and prepare a report for consideration by the Executive Board. Sometimes (as there has been a recent trend) the IMF team also issues the statement at the conclusion of the visit which is further endorsed by the fund. The Article IV consultation is conducted annually by the Fund with each member. Besides the Article IV consultation, the Fund is also entitled to do informal discussion with the members if the Fund has the reasons to believe that the member's exchange rate policy is not in the line of IMF mandates. In such informal discussions the IMF management maintains confidentiality[167].

Out of the thousands of consultation undertaken by the IMF, member's exchange rate and exchange rate policy have received very wide attention. The worst surprise is given by the fact that out of these thousands of consultation the Fund has never concluded that the member exchange rate policy is not compatible to the Fund's obligation for the member. This evidences gaps and deficiencies in the actual practice of IMF surveillance policy. It clearly shows the unwillingness of

[166] See IMF Articles of Agreement, art IV § 2.

[167] The frequency of such consultation is very low. There have been two such informal meetings till now - with Sweden in 1982 and with South Korea in 1987.

the Fund staff to draw the attention of the Executive board even in the cases of fundamental misalignment.

Whereas China has adopted the managed exchange rate policy, US consistently followed the policy of free floating exchange rate[168]. Its current account surplus decreased from 0.7% of GDP in 1994 to a deficit of 6.4% of GDP in 2006[169]. The large growing current account deficit and a strong dollar was already a matter of concern for the world economies in the late 1990s. The US economy began to slow from the mid-2000 and shown the sign of recession from year 2001. But dollar was still strong and appreciating in its real effective term till 2002.

In 1994 China had tied its currency with the US dollar at a lower rate than the usual exchange rate of dollar in order to make RMB more competitive in the export market. In 1994 it pegged RMB with the US dollar and continued this rate till 2005. In the meantime it exercised a firm control in order to maintain its exchange rate and allowed the currency to move with a small margin. Everyday PBC announced a base rate around which the RMB could be transacted against the four major currencies, i.e. US dollar, Yen, Hong Kong Dollar and Euro with a small variation around the base rate.

In furtherance to tighten the control over the value of its currency, in 1996 China introduced a directive (Directive No. 193 of the State Council of the PRC (1996), further amended on Jan. 14, 1997). This directive had provided a difficult set of rules and procedure for the purpose of converting RMB into foreign exchange. The rule was applicable on any business entity carrying its business within the territory of china including foreign exchange revenues and expenditures of foreign operations within China. These rules prevented the foreign companies

[168] It is also pertinent to mention that USA free float policy is subject to various domestic checks for the purpose of maintaining the supply of currency within USA.

[169] Sebastian Edwards, The U.S. current account deficit: Gradual correction or abrupt adjustment? Journal of Policy Modeling 28 (2006) 629–643.

who were operating in China to transfer their fund out of China[170]. Chinese government was pressed to push its currency market liberalization but the ultimate result was merely few cautious steps taken by China. The stable RMB contributed to the exemplary growth of Chinese economy which had set an example before the world. China became the country having the largest foreign exchange reserve in the world[171].

Increasing trade deficit with China and shifting of manufacturing units from USA alarmed the US policy makers to take urgent steps. An ESRC (U.S.-China Economic and Security Review Commission) was created by the US congress to investigate the security implications of economic relationship with China. This ESRC had been in the view that the RMB is artificially undervalued due to manipulative policy of the Chinese government and it had an adverse impact over the export and job industries of USA[172]. The major concern for the USA was manufacturing sector. The cheaper RMB reduced the competitiveness of US manufactured products in the world market and eroded US manufacturing industries. The policymakers were specifically concerned with the recessionary pattern of the United States where both the income and demand of the people were going down. The sector where the joblessness was most rampant in the United States was its manufacturing sector[173]. The biggest labour union in the

---

[170] Tu Hong, *Foreign Exchange Control in China*,KLUWER LAW INTERNATIONAL 331-339 (1st. ed. 2004).

[171] The Forex reserve was around 3.557 trillion USD in 2015, see http://www.cnbc.com/2015/09/07/china-foreign-currency-reserves-fall-by-record-amount-in-august.html accessed on 05.April.2016.

[172] See http://www.uscc.gov/about (accessed on 10. May.2016).

[173] The 2014 Report to Congress of the U.S. – China Economic and Security Review Commission, PETERSON INST. INT'L. ECON *available at* http://origin.www.uscc.gov/sites/default/files/annual_reports/Complete%20Report.PDF (accessed on 10. May.2016),provided the below at (iii):

ECONOMIC TRANSFERS—The qualitative and quantitative nature of the transfer of United States production activities to the People's Republic of China, including the relocation of high

United States, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) accused Chinese government of stealing the jobs from manufacturing sector and its competitive advantage by devising an undervalued currency value. The largest labour union encouraged the US government to take swift retaliatory action to mitigate the impact of cheaper RMB on US industries.

When criticized for its 'neighbor thy beggar' policy it switched to a managed exchanged rate policy to allow RMB to appreciate gradually. During the 2007-08 the Chinese government again halted its policy of RMB appreciation because of widespread recession which was impacting its exports to the other nations. The appreciation of RMB was again resumed in 2010[174].

The Section 1 of the Article IV provides the preamble part of the Article and imposes a positive duty on the members to pursue the policy which could promote an orderly exchange rate in the international monetary system, i.e. the members should refrain from adopting any manipulating exchange rate policy in order to maintain an effective balance of payment or to gain an unfair competitive advantage in the international trade over the other members (Article IV (1) (iii)). Hence, the Article IV (1) (iii) clearly delineates that merely devaluing the exchange rate is not disallowed rather only that type of devaluations are prohibited which have the impact of providing an unfair competitive advantage or favorable balance of payment for the manipulating members. Hence, it can be deducted that any devaluation of currency even if it is artificial in nature cannot

---

technology, manufacturing, and research and development facilities, the impact of such transfers on United States national security, the adequacy of United States export control Laws, and the effect of such transfers on United States economic security and employment; *available at* *http://origin.www.uscc.gov/sites/default/files/annual_reports/Complete%20Report.PDF (accessed on 10. May.2016).*

[174]Supra note 57, 1261-62.

be said to be a manipulation if such devaluation of currency is not inconsistent with Article IV of Articles of Agreement of IMF[175].

It is not only USA which has expressed its concern regarding the Chinese currency policy. But there have been other instances also where other countries expressed their dissatisfactions with the protracted Chinese currency policy[176]. Rather it would not be an exaggeration to say that with the outset of the new millennium many countries together made a broad coalition, which included Japan, Europe, USA and Brazil etc., to pressurize China to free up its currency. Now a question arises whether China has manipulated its currency by adopting a policy of managed peg against the US currency in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members (under Article IV (1)(iii) of Articles of Agreement). The answer of this question depends upon the construct of the Article IV (1) (iii). The Articles of Agreement stresses a lot upon the orderly exchange rate but does not define the term 'manipulation' or 'unfair competitive advantage'.

At this juncture it will be pertinent to discuss the outcome of the IMF consultation with China in 2004[177]. As a part of assessing the economic and financial policy of the members, the Fund conducts annual consultations with its members. These consultations are the part and parcel of the firm surveillance undertaken by the Fund. The Article IV consultation was conducted by China when it was on the path of rapid development. The report had stated that the flexible exchange rate

[175]See also, Supra note 125 at 10-11.

[176] See e.g. Xinchen Sofia Lou, *Challenging China's Fixed Exchange Rate Regime: An Analysis of U.S. Options*, 28 HASTINGS INT'L & COMP. L. REV. 455 (2005)

[177] Public Information Notice (PIN) No.04/99 (August 25, 2004), International Monetary Fund, IMF Concludes 2004 Article IV Consultation with the People's Republic of China, PIN No. 04/99 (Aug. 25, 2004), *available at*http://www.imf.org/external/np/sec/pn/2004/pn0499.htm (accessed on 05.April.2016).

policy is in the favour of China. But the report had also reflected the disagreement between the directors regarding China's foreign exchange policy. The Fund was of the view that China should pursue the policy of greater exchange rate flexibility without undue delay. They had also welcome and stressed upon about the intent of China to free up its managed exchange rate policy and suggested that China should exit from its exchange rate policy as soon as possible. But During the consultation the Fund did not go into the question whether the China exchange rate policy is compatible to the existing legal regime or not.

It seems the exceptional nature of scale and duration of the Chinese currency policy and its impact upon the China's balance of payment shows that China has been in the breach of Art. IV of IMF. Further the IMF has been stressing upon to remove the trade imbalances between US and other countries especially with China. Except China all the major trade partner of USA implemented the IMF direction to mitigate trade balance. But China emerged as a major exception. Its trade surplus with USA shows there is something terribly wrong with Chinese trade policy.

Even if the soft regime of Article IV IMF has been criticized by many experts, some have taken a very different point of view. Michael Mussa, a senior fellow in Peterson Institute for International Economics and noted economist, has badly criticized the soft stance adopted by the IMF.

IMF Director, Rodrigo de Rato, saw the only way to resolve the issue of Chinese currency manipulation is to gently persuade China to free up its currency policy[178]. And there have been several instances that the Fund staff generally refrained from talking publically on this issue[179]. Mussa has been severely critical in this approach and he has noted that this attitude of the IMF has created

[178] Michael Mussa, *IMF Surveillance over China's Exchange Rate Policy, Paper presented at the Conference on China's Exchange Rate Policy*, 5 (PETERSON INST. INT'L. ECON).
[179] *Id*.

misfeasance, malfeasance, and nonfeasance by the Managing Director and more generally by the IMF[180].

The 1977 guideline lists the factors where the Fund should take a serious note and one of such factor is "protracted large-scale intervention in one direction in the exchange market."[181] Testing the Chinese currency policy on this parameter tells an entirely different story. The sovereign intervention (if it is artificial in nature) made by any country in its exchange market has an impact on a key measure of a country's balance of payments, the official settlement balance. China followed a policy of managed peg for a quite long period in which official intervention to keep the rate unchanged at a large scale was the permanent feature of this currency policy. The idea of including a protracted large scale intervention in the exchange market in the Second Amendment is to make it a prohibitive provision which remained indicative of disequilibrium. This protracted large scale intervention has taken a shape of disequilibrium and has caused trade imbalance with the other trading partners of China. It is important to note here that an official intervention in the currency market is done with the purpose of achieving a particular rate of exchange for gaining an unfair advantage in trade and to achieve a favorable balance of payment.

When a country adopts the policy of managed peg it requires a very large amount of reserve as the government sells the domestic currency in the money market to keep the exchange rate consistent. Generally a reserve sufficient to two to three months import considered good. A reserve below this level may be alarming for the economy and can create a foreign exchange crisis. But when a country makes an excessive and large scale surplus for a quite long time (thereby creating a large

---

[180] *Id*.

[181] Principles of Fund Surveillance over Exchange Rate Policies [Principle 2(1) of 1977 Decision on Surveillance over Exchange Rate Policies, Decision No. 5392-(77/63), April 29, 1977, as amended by Decision Nos. 8564-(87/59), April 1, 1987, 8856-(88/64), April 22, 1988, and 10950-(95/37), April 10, 1995.

foreign reserve), in this situation the Fund should take a judgement that how much reserve a country could create after taking into consideration of its economic situation[182].

Such a large trade surplus of China (or deficit for US) put pressure on the US economy. The large US current account deficit has been financed by the accumulations of U.S. Treasury obligations. Hence, it is alleged by the United States that it is running official settlements deficit since the outset of the millennium because of Chinese currency manipulations. This large official settlements deficit is measured in terms of a net increase in its official foreign exchange liabilities for the reserve currency country. The Executive board of IMF consistently expressed their concern regarding the growing deficit of the United States of America. China used massive, protracted and sovereign sterilized intervention to keep Yuan from appreciating. It is generally believed that while doing firm surveillance over the China currency policy the IMF should apply the Principle 1 for Fund Surveillance over Exchange Rate Policies (PFS), 1977. It seems that massive sterilization made by China to keep the exchange rate of Yuan unchanged prevented the real exchange rate and actual balance of payment to realize.

There are important links of forbidden intent to devalue Yuan with the protracted and sterilized exchange rate policy[183]. Time to time, the Chinese officials have stressed upon the more competitive Yuan in order to keep China on the path of

---

[182] Creation of large amount of reserve refers to the market intervention made by China which is itself an evidence of currency manipulation. Regarding the market intervention and sterilization see supra note 57, at 1295*;* Michael Mussa, *IMF Surveillance over China's Exchange Rate Policy, Paper presented at the Conference on China's Exchange Rate Policy*, 5 (PETERSON INST. INT'L. ECON)..

[183]*See Also*, supra note 57, at 1278-82*;* Michael Mussa, *IMF Surveillance over China's Exchange Rate Policy, Paper presented at the Conference on China's Exchange Rate Policy*, 5 (PETERSON INST. INT'L. ECON).

.

development and for the purpose of creating enough job opportunities for the millions of Chinese youths who foray into the job market every year. This is probably a clear infringement of Article IV (1) (iii) which prohibits competitive devaluation of currency for the purpose of gaining unfair competitive advantages.

Whereas China has intervened in the market on a regular basis at a large scale, on the other hand America rarely intervened in the exchange rate market and its exchange rate remained fully market driven. The Federal Reserve bears the prime responsibility of setting the interest rate and adjusts the interest rate by setting the funds with the interbank transfers. The Federal Reserve intervenes in the market by regulating the federal fund rate[184] on the regular basis) to keep the inflation contained and avoid unnecessary fluctuation in the economy. This policy allows the supply of dollar to expand and contract in the domestic market to meet the level of inflation and at the same time allows the US authority to not to intervene in the foreign exchange market to control the rate of dollar. Hence, the rate of dollar fluctuates freely by the market forces.

For the purpose of manipulation, interpretation of Article IV has a very high importance as it deals with both obligations of the members and the authority of the Fund. Executive board's decisions are particularly importantly for the purpose conducting the Fund surveillance. As far as China is concerned the 1977 decision

[184] The interest rate at which a depository institution lends funds maintained at the Federal Reserve to another depository institution overnight. The federal funds rate is generally only applicable to the most creditworthy institutions when they borrow and lend overnight funds to each other. The federal funds rate is one of the most influential interest rates in the U.S. economy, since it affects monetary and financial conditions, which in turn have a bearing on key aspects of the broad economy including employment, growth and inflation. The Federal Open Market Committee (FOMC), which is the Federal Reserve's primary monetary policymaking body, telegraphs its desired target for the federal funds rate through open market operations. It is also known as the "fed funds rate".
http://www.investopedia.com/terms/f/federalfundsrate.asp (accessed on 05.April.2016).

on Fund surveillance is of particular importance as China embarked on the policy of raising its exchange rate after 2005.

3.11 - Currency Manipulation

The term "manipulation" is not defined under the Articles of Agreement[185]. This is one of the reasons why there has been so much uncertainties regarding any incidence of currency manipulations. The fact that the incidence of manipulation is not defined in the IMF Articles of Agreement keeps the matter open for debates and discussions which add to the complication. In this situation experts have come up with the different point of views and have tried to approach the problem with the different methods. Some have taken the point of view that China has not manipulated the exchange rate as it kept the rate unchanged, and manipulations essentially means changes[186]. At the same time there are the experts who claimed that China manipulated the currency because of its "protracted large-scale intervention in one direction" in the currency market[187].

---

[185]*See Also*, Haneul Jung, *Tackling Currency Manipulation with International Law: Why and How Currency Manipulation should be Adjudicated?* 9 Manchester Journal of International Economic Law, 184-200, 185 (2012).

[186]*Id.* [at footnotes 7 - The author recognizes that there are many plausible arguments against branding China as a 'currency manipulator'. Moreover, China is not the only country undervaluing its currency. The currencies of Hong Kong, Malaysia, Singapore, Republic of China (Taiwan), and Japan have all been undervalued by 14 to 35 percent, in estimation. See Robert E. Scott, Economic Policy Institute, Policy Memorandum # 164, 'Currency Manipulation – History Shows that Sanctions are Needed' (2010), available at www.epi.org/publication/pm164. The US-China example will nonetheless be used heavily in this paper, because it is representative of the international dispute on currency manipulation].

[187] See e.g. Michael Mussa, *IMF Surveillance over China's Exchange Rate Policy, Paper presented at the Conference on China's Exchange Rate Policy*(PETERSON INST. INT'L. ECON).

.

In general, the US treasury department has refrained from expressly declaring China as a currency manipulator. Although, as it has been stated earlier that the department (i.e. government) has been under tremendous pressure from the various corners to take action against China for its alleged currency manipulations which is evidenced from its currency policy. The unprecedented level and sustainable trade deficit of US with China is now responsible for roughly a quarter of the entire U.S. trade deficit, which has reached a startling 6% of gross domestic product (GDP) (in 2006)[188]. The US government has always an understanding that the Yuan exchange rate is the key to reduce its overall trade deficit, looking at the quantum of trade deficit with China. In 2006, China's global account surplus was 7% of GDP which was up 5 percentage point in the last 5 years which many experts understand it itself as an evidence of manipulations. Economists believe that China has made such a massive foreign exchange reserve to prevent any kind of appreciation in its currency to gain unfair advantage in the international trade market and this situation creates an exchange rate misalignment. It is to be noted that exchange rate misalignment is itself a prima facie evidence of currency manipulations. But it is not only the foreign exchange reserve or misalignment but a member can manipulate the currency by various ways, as in excess intervention in the currency market and by imposition of the capital control. Though the problem remains with such a definition and it's too broad a definition.

A soft regime for the IMF surveillance will be potentially failed in fulfilling such requirements of removing disequilibrium from the international trade regime. Mussa calls the attitude of Fund towards the Chinese currency policy as misfeasance, malfeasance, and nonfeasance[189]. A major problem lies in IMF

---

[188] Robert E. Scott and Josh Bivens, *Report on Trade and Globalization*, ECONOMIC POLICY INSTITUTE *available at* http://www.epi.org/publication/pm116/ (accessed on 05.April.2016).

[189] Michael Mussa, *IMF Surveillance over China's Exchange Rate Policy, Paper presented at the Conference on China's Exchange Rate Policy, 5*(PETERSON INST. INT'L. ECON).

surveillance that it should include a keen attention to and better analysis of global economic and financial developments and risks attached to the financial development of the members as well as the world which is consistent with the Fund's provisions so that an effective operation of International Monetary Fund could be ensured. The surveillance as a process is convened as semi-annual assessments in order to recognize the risks relating to the world economy. Since 2000 itself the IMF staffs recognized the growing and unsustainable current account deficit of United States with China as a major problem of the world economy. Since 2002 China has adopted the policy of a large scale official intervention in the market to achieve certain trade goals which kept the RMB at the consistent rate of 8.28 per US dollar till 2005 and appreciated around 8% in next two years. But it is notable that even if Chinese currency was appreciated 8% between the periods of 2005 to 2007, the currency of the countries like Korea, India, Indonesia, Thailand etc. saw much more appreciation during this period. Hence, the real rate of appreciation in RMB remained lesser and it was alleged by the United States that RMB was still very much low in value.

A surge in the Chinese current account surpluses after the outset of the millennium proves the fact of insufficiency of IMF surveillance. This surge in the current account balance comes despite of an astounding growth and massive oil import. But the IMF report remained merely vague due to lack of clarity and softness of itslegal provisions. Yet, in its surveillance of China before the summer of 2006, the IMF staff reports and the Summings Up of the IMF Executive Board deliberations on these reports spoke only vaguely about the desirability of "greater flexibility" in the yuan's exchange rate. After the Chinese authorities decided (in July 2005) to allow modest and gradual appreciation of the yuan against the U.S. dollar, the desirability of greater appreciation was noted in the 2006 discussions of the IMF[190].

[190]*Id.* at 4.

The soft regime of surveillance does not augur well for the world economic health as it is in the breach of the purposes of the IMF which is reflected by the Article 1 of IMF Articles of Agreement. Article (1)(6) provides,

“In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.”

In case of the Fund surveillance, the politics and customary International Law have to play their own role[191]. China has taken the approach that the fixing its own rate of exchange is its sovereign right and if any advice is emerging from any corner including the Fund China has taken the point of view that it has the right to refuse any such request (observation) from the Fund.

In the fixed exchange rate system (i.e. in the par value system) this problem was already addressed. Under the par value system all the parties had to peg their currencies with the gold (or US dollar). Change in the exchange rate was allowed in par value system only to the extent of minor fluctuations. Hence, in the old Article IV there were very less scope of manipulating the exchange rate of the currency.

The Section 1 of the Article IV provides the general obligations of the members to collaborate with the Fund. The general obligations of the member under the Article IV (1) prohibit the Fund members to take any arbitrary decisions regarding their exchange rate. The general obligations of the member are broader than the four specific obligations which are enumerated subsequently in Article. This particular broadness of the Article (IV) (1) gives the Fund discretion to call upon the government of any member to perform advisory function and it can advise the government to do or not to do certain actions. But the noted economist Michael Mussa retains a different opinion regarding the interpretation of the Article IV,

[191] China has been taking the plea of customarily International Law. The role of customary International Law in the field of currency has been discussed in detail in Chapter II of this research work.

Section1 of the Fund. He takes a point of view that the Section 1 providing the general obligations of the members to "call on its members' general obligation to collaborate with it and with each other as required to remove any significant impairment or forestall any threatened impairment of the effective functioning of the international monetary system[192]." This shows a big gap in the IMF Article IV Laws. Article IV is a very important Article as far as manipulations are concerned and if it is open to many interpretations (or in other words if it keeps the scope open for the members to take resort to their own interpretations) it effectively becomes vague in nature. This vagueness further creates uncertainties in the currency market which is reflected into various principles. Some experts nurture the notions that the China does not manipulate the currency as it has not changed the exchange rate[193]. Some have the point of view that China manipulates the currency because it has adopted the policy of managed peg. The variations in the opinions do not seem good for the world currency regulation. Although it is generally an accepted fact that the overvaluation of the currency value by any nation is not manipulation as the currency overvaluation refers to competitive disadvantage.

3.12 - The issue of Intent

Under Section 1(iii) of Article IV, it is not sufficient to establish the fact that a member is adopting the manipulative exchange rate policies but it is also important to prove that there has been forbidden intent behind such manipulative exchange rate, i.e. it needs to be proved that the member adopted the manipulative exchange rate policy for the purpose of preventing effective balance of payments adjustment or to gain an unfair competitive advantage over other members[194].

---

[192] Michael Mussa, *IMF Surveillance over China's Exchange Rate Policy, Paper presented at the Conference on China's Exchange Rate Policy, 10* (PETERSON INST. INT'L. ECON).

[193] *Id.* at 11.

[194] Supra note 57, 1278-82.

But again there is a huge problem regarding the interpretation of the terms. Like "manipulation" the terms "unfair competitive advantage" or "forbidden intent" keeps the scope open for the varying interpretations. This problem of interpretation is more critical than it seems. Many noted writers[195] have expressed the underlying nature of impossibility in the interpretations of these terms. The preconditions of applicability of Article IV (1) (iii) are satisfied only when the act of manipulation is proved with the forbidden intent, i.e. the manipulating party accepts that it intended to adopt such a currency policy for the purpose of gaining an unfair competitive advantage. It is just impossible to think that any country which has devalued its currency will not try to defend or provide justification to it. Given the freedom which a sovereign nation enjoys regarding the valuation of the currency, it is just impossible that a member will have dearth of justification for its manipulative exchange rate. Chinese government has consistently maintained that the purpose of its exchange regime is to enable the country to experience stable growth and to protect the economy from instability flowing from its underdeveloped banking and financial system.[196] Whether Chinese currency policy satisfies the criteria of forbidden intent?

The noted economist Michael Mussa has not agreed with the principle of giving a "reasonable doubt to China for which he cites reasons[197]. First, a member can manipulate the currency by variety of ways. Secondly, "in order to prevent

---

[195] See, e.g., *Id.* at 1279. The noted writer has supported the viewpoint taken on this matter by Mussa and referred it but ultimately counters the conclusion (see the subsequent paragraph, at 1279, whereas Bryan Mercurio & Celine Sze Ning Leung give to China "a benefit of doubt", Mussa calls the underlying possibility of multiple interpretation as nonsense, see Michael Mussa, at 11, IMF Surveillance over China's Exchange Rate Policy, Paper presented at the Conference on China's Exchange Rate Policy, Peterson Institute, October 19, 2007).

[196] *Id.* Footnote omitted

[197] He refers to the observations made in the IMF Legal Department paper - Prepared by the Legal Department, IMF, Approved by Sean Hagan, In consultation with the Policy Development and Review Department, at 15, Article IV of the Fund's Articles of Agreement: An Overview of the Legal Framework.

balance of payments adjustment" (as mentioned in Section 1 (iii)) is broad enough to cover the cases of currency manipulations whatever the case may be of overvaluation[198] or undervaluation. Third is the element of intent (as earlier discussed). A member may be in the breach of the Article IV, Section 1(iii) only if the member manipulated the exchange rate for the purpose of preventing effective balance of payments adjustment or to gain an unfair advantage over others with the forbidden intent. The phrase "in order to" in Article IV, Section 1(iii) compulsorily links the act with the intent. Thought the Fund is not bound to accept the interpretation of the member as a reason to its manipulative act. Generally the rule is that the Fund would seek an explanation from the member regarding the motivation behind its exchange rate policy. After that the Fund would make an independent assessment regarding the intent of the member after taking all the circumstances into account.

The Fund imposes the general and specific obligations upon the members. The language of the Article IV (1)(iii) clearly refers that the issue of intent is relevant with regard to the specific obligations of the member and not with regard to the general obligations of the member under Article IV.

The 2007 decision on bilateral surveillance (in its annexure) addresses the broad scope of the exchange rate "manipulation." It provides that the manipulation of the exchange rate is effected only through the policies which impact the level of the exchange rate. A manipulation may be effected by either causing the exchange rate to move or not to move. Hence, as per the 2007 decision on bilateral surveillance China currency policy will fall under the ambit of the currency manipulation as it prevented its exchange rate to move for many years.

[198] It is to be noted that there cannot be any manipulation by the overvaluation of the currency as it does not give rise to any competitive advantage.

The fact remains that the Fund has the authority to call upon the members to modify their exchange rates by virtue of the Article of Agreements[199]. This right is important as without such authority the Fund cannot carry on its responsibility.

3.13 - Exchange Rate Misalignment and International Monetary Fund

One of the goals of the surveillance is to find whether the currency of the member is misaligned[200]. Misaligned currency is an indicator of the currency manipulation and in the modern history there is no dearth of examples where the states have maneuvered in the exchange rate market in order to achieve a particular level of currency value. Since the time of the World Wars currency value has played a pivotal role on the world stage. This is a known fact for the world that the World Wars were espionage wars too but it is lesser known fact that during the world wars (and during the intervening period between the world wars) the states have used the exchange rate market for their strategic purposes and for the purposes of getting an unfair competitive advantage by resorting to competitive devaluation. Nowadays the phenomenon of competitive currency devaluation is more like corporate frauds where the breach is not straight rather it is becoming more and more concealed and sophisticated in nature. Now the states devise their protectionist design by way of competitive devaluations.

The situation of exchange rate misalignment occurs where the exchange rate of any country is deviated from its economic equilibrium. The exchange rate misalignment occurs quite often in the currency market and such manipulations are becoming complicated day by day. Now the currency manipulation and misalignment are not completely open to the eyes rather they are very sophisticated. Recently many states have adopted the exchange rate policies which are directly or sometime indirectly resorted to manipulative measures regarding the currency, sometime very sophisticated and concealed in nature.

---

[199] See Section 3, Article IV.

[200] Claus D. Zimmermann, *Exchange Rate Misalignment and International Law*, 105 A.J.I.L. 423, 430-32 (2011).

Very recently, especially after the great recession of 2008, some other States have also resorted to currency undervaluation. The prime cases of United States and Japan among those have to be considered for this purpose where they have resorted to quantitative easing (QE). During the peak of the economic recession, the Fed had announced its bond buying program to provide the stimulus to the US economy. The United States embarked on the plans to buy 85 billion of Treasury bonds every month to keep the interest rate low and to reduce the costs of domestic borrowings. It had a potential to divert the financial investment to other emerging market[201] and it gave rise to a demand of the foreign currency due to which the United States could keep its valuation of the currency low.

In the early April 2013 Japan also began the plan to purchase the bonds via open market operation. It planned to buy bonds for the purpose of quantitative easing of 70 billion every month which double the currency supply in the Japanese market. Since the 1990s Japan economy has been showing the signs of stagnation and in order to provide the stimulus the Central Bank of Japan kept the interest rate near zero to provide the stimulus to the Japanese economy. The said plan of quantitative easing plan provided much needed stimulus to the Japanese economy

---

[201] India is one of such emerging market which was benefitted due to quantitative easing plan of United States after the great recession. It prompted the foreign institutional investor to investment more in Indian equity market which helped the share market to grow. Now when the Fed has announced its plan to increase its interest rate India has expressed its concern regarding the growth of security market. See, India Is Prepared for a Fed Rate Rise But Could Still Catch Cold, *available at*, http://blogs.wsj.com/indiarealtime/2015/12/16/india-is-prepared-for-a-fed-rate-rise-but-could-still-catch-cold/ (accessed on 05.April.2016), WSJ Survey: Economists Still See Fed Rate Increase in 2015, *available at*, http://www.wsj.com/articles/wsj-survey-economists-still-see-fed-rate-increase-in-2015-1444312800 (accessed on 05.April.2016), Economists still see Fed rate rise before year-end, *available at*, http://www.ft.com/intl/cms/s/0/be1ba54e-7459-11e5-bdb1-e6e4767162cc.html#axzz3zDWZjMUs (accessed on 05.April.2016), Rate-Rise Bets Heat Up After Fed Minutes, *available at*, http://www.wsj.com/articles/rate-rise-bets-heat-up-after-fed-minutes-1447890850 (accessed on 05.April.2016).

and helped the value of Yen to remain low. Once Japan embarked the plan of QE Yen suddenly devalued up to 3 per cent against USD[202].

Due to the act of these big economies, emerging countries also retaliated with increased tax liability and other charges on the gains of the foreign investors in those markets. Brazil doubled the tax liability on the foreign purchases on its domestic debts. Thailand also came up with the plans to increase 15% tax on the gains over such investments. Disgusted by the currency policies adopted by the US – Japan – currency, and subsequent retaliation by the other countries, Brazilian finance minister went on to the extent of declaring it as an act of currency war, which was not totally misplaced[203] even Wikipedia had termed this phenomena as a "Currency War of 2009–11."[204]

---

[202] A*vailable at*, A bigger bazooka, http://www.economist.com/blogs/banyan/2014/10/japans-quantitative-easing (accessed on 05.April.2016); http://www.wsj.com/articles/rate-rise-bets-heat-up-after-fed-minutes-1447890850 (accessed on 05.April.2016); Will Quantitative Easing Be Japan's Savior?, *available at*, http://www.investopedia.com/articles/investing/041913/will-quantitative-easing-be-japans-savior.asphttp://www.wsj.com/articles/rate-rise-bets-heat-up-after-fed-minutes-1447890850 (accessed on 05.April.2016); Japan announces "new dimension" in quantitative easing, *available at*, https://www.wsws.org/en/articles/2013/04/06/japa-a06.html (accessed on 05.April.2016), Japan aims to jump-start economy with $1.4tn of quantitative easing, *available at*, http://www.theguardian.com/business/2013/apr/04/japan-quantitative-easing-70bn (accessed on 05.April.2016).

[203] Brazil in 'currency war' alert, *available at*, http://www.ft.com/intl/cms/s/0/33ff9624-ca48-11df-a860-00144feab49a.html#axzz3zDWZjMUs (accessed on 05.April.2016), Brazilian Finance Minister Warns of 'International Currency War', *available at*, http://www.ictsd.org/bridges-news/bridges/news/brazilian-finance-minister-warns-of-%E2%80%98international-currency-war%E2%80%99 (accessed on 05.April.2016).

[204] Currency War of 2009–11, *Available at*, https://en.wikipedia.org/wiki/Currency_War_of_2009%E2%80%9311 (accessed on 05.April.2016).

3.14 – Relationship between the Exchange Rate Misalignment, Surveillance and IMF Decisions

Articles of Agreement provide the exchange arrangement between the parties. The IMF provides the freedom to the members to choose their own exchange arrangement as per their suitability. A member can have floating or pegging the currency to USD or the currency of any other country or the basket of currency[205]. Article IV, Section 1 provides the obligations of the members to collaborate with the Fund and maintain an orderly exchange rate policy. The construct of the Article IV is based upon the fact of interdependence of the economies with each other as far as the modern economic world is concerned. The obligation part of the Article IV recognizes the fact that the impact of the exchange rate policy of the member is never purely domestic in nature rather it will also impact the other members of the IMF. This fact makes the IMF competent enough to discuss and guide the economic policy of the members. To perform such obligation and to assess the potential impact of the member's exchange rate policy the Fund undertakes the task of firm surveillance under Article IV of the IMF. IMF Article IV:3(b) further provides that "the Fund shall exercise firm surveillance over the exchange rate policies of members, and shall adopt specific principles for the guidance of all members with respect to those policies." The 1977 guidance of the IMF provided the extensive guidance regarding the bilateral surveillance which went through a complete overhaul in 2007. Under the process of bilateral surveillance, the IMF staffs regularly visit the member countries to prepare the report on bilateral surveillance and they meet the government officials, Central Bank officials, industrialists, representatives to the civil society in that country. The IMF delegation prepares the report which is reviewed by the IMF Executive Board.

The Principle A of the 2007 decision is a mere reiteration of the notion as propounded by Article IV: 1(iii). The annexures of the 2007 decision provide that

[205] General exchange arrangements, as provided under the Section 2, Article IV.

a member will be in the breach of the obligation as provided under Article IV: 1(iii) if (a) the member was manipulating its exchange rate or the international monetary system and (b) such manipulation was being carried out [either in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members[206]. With regards to establishment of guilt of currency manipulation, the 2007 decision did not make any difference over the 1977 decision. A breach of Principle A will constitute the breach of obligations under Article IV but a breach of Principle B, C or D under the 2007 Decision will not put any member in the breach of the Article (IV)(1) obligations unless certain conditions are fulfilled. The Para 50 of Review of the 1977 Decision on bilateral surveillance provides the following -

> As noted earlier, the failure of a member to follow a recommendation would not, in itself, give rise to a breach of obligation under Article IV, Section 1. Rather, several steps would be necessary before a member that was not following a recommendation could be found in breach of the general obligation of collaboration under Article IV, Section 1. First, the Fund would need to adopt a policy of general applicability that provided that observance of the conduct contemplated in the recommendation (i.e., engaging in or refraining from a particular action) is required for members to comply with the general obligation of collaboration under Article IV, Section 1. This decision would need to be general in application because the principle of uniformity of treatment would preclude the Fund from requiring certain conduct from one country and only recommending it from another in the exact same circumstances. After such a policy was introduced, members, having been placed on notice that the conduct in

[206] A case under the Article IV: 1(iii) against the members is established only after these two criteria are established.

> question is now mandatory, would also need to be given a reasonable time to engage in or refrain from such conduct. Only if a member were to fail to do so would it be open to the Fund (i.e., the Executive Board) to adopt a decision finding the member to be in breach[207].

If any member breaches the rules of the IMF it can be denied the access of IMF resources[208]. Unlike the WTO, IMF does not have any system of dispute settlement but it can exert pressure upon the member to rectify exchange rate misalignment through the process of consultation and surveillance. As per the construct of IMF, the rights and obligations under the Articles of Agreement exist between the Fund and members and not between the members of IMF. Hence, under the Articles of Agreement a member does not have any claim against the other member even if it is in the violation of any provision of Articles of Agreement. This is again distinctive to the WTO regime where members have vertical as well as horizontal right, i.e. in case of breach a member could invoke proceeding against the other members[209]. Somehow, the principle D of the 2007 decision attempts to compensate the absence of this horizontal right in the IMF regime by providing –

"A member should avoid exchange rate policies that result in external instability."[210]

---

[207] Para 50, Review of the 1977 Decision on Surveillance over Exchange Rate Policies Further Considerations, and Summing Up of the Board Meeting (February 14, 2007), *available at*https://www.imf.org/external/np/pp/2007/eng/fc.pdf (05.April.2016).

[208] IMF Article XXVI: 2.

[209] The wide provision of dispute settlement system under the WTO regime can be seen as a feature of horizontal right according to which a member of WTO can invoke an action against the other members of the WTO.

[210] It should be noted that it is difficult to bring any member under the ambit of the Principle D and for the purpose of establishing guilt under the Principle D there is the requirement of reasonable doubt which should be fulfilled, i.e. it will not be enough to prove the member has the intervention

This principle extends the ambit of bilateral surveillance to the extent of 'external stability'. Hence, any policy which is adopted by any member for a favorable balance of payment should not give rise to disruptive exchange rate movements. It is why the area of bilateral surveillance now is not just limited to the exchange rate policies rather it also covers the monetary and fiscal policies which have the potential to impact the members exchange rate stability[211]. For the purpose of judging the external instability the Fund has to see the issue of fundamental[212] misalignment[213].

The 2007 decision is applicable in the cases of exchange rate interventions by the members in the exchange market for the purpose of achieving a favorable balance of payments. The Principle A to D of the 2007 decision shall not be applicable

---

policies but it will also be require to be proved that such polies give rise to significant external instability.

[211] It is one of the reasons that while performing the bilateral surveillance the Fund staffs have meetings with the people belonging to different sectors in the member's country including the people from the banks, miniseries and even from civil societies.

[212] Misalignment is here characterized as "fundamental" to distinguish it from temporary misalignments, e.g., any misalignment which is driven by cyclical or other transient factors and not permanent in nature [footnote 12, at page 20, Review of the 1977 Decision on Surveillance over Exchange Rate Policies Further Considerations, and Summing Up of the Board Meeting February 14, 2007].

[213] The situation of fundamental misalignment occurs when there is disequilibrium between the member's exchange rate and its current account balance. It should be noted that IMF advised its staff to not to use any term like fundamental misalignment during the Article IV consultations and advised the staff to use like economic terms "under- or overvaluation" to avoid confusion. The IMF has considered using the specific terms like fundamental misalignment as an 'impediment' to effective implementation of the Decision [See Para 2, Reza Moghadam, *The Fund's Mandate—The Legal Framework*, 1, STRATEGY, POLICY, AND REVIEW DEPARTMENT, (In consultation with the Legal Department)(June 22, 2009), available at https://www.imf.org/external/np/pp/eng/2009/062209.pdf (05.April.2016).

Though the term 'fundamental misalignment' still holds well and it is officially imbedded in the 2007 decision of IMF.

where any member has not intervened to influence its exchange rate in such a manner to attain a favorable balance of payments. A country with a floating exchange rate with a minimal intervention in the currency market is least likely to be affected by the 2007 decisions. But in certain circumstances even the floating exchange rate may also be undervalued or overvalued.

The 2007 Surveillance Decision: Revised Operational Guidanceprovides[214] -

This may happen as a result of domestic policies (e.g., a depreciation induced by large fiscal surpluses), as a result of other countries' policies affecting the exchange rate of the country at issue, or because of market imperfections such as a bubble (which may burst in a disorderly way). Thus, even fully market determined exchange rates can result in disruptive adjustments. As a result, assessments should be applied evenly across members, regardless of the exchange rate regime that is in place.

But the IMF provisions are moreover in the nature of consultation and cooperation. The 2007 decision of bilateral surveillance have important additions to deal with the cases of exchange rate manipulations but as far as the recent sophistications have developed in the cases of fundamental misalignment IMF 2007 falls insufficient.

Not only the undervalued currency, but sometimes overvalued currency may also be a reason of fundamental misalignment for the currency. Under the Article IV (1)(iii) a fundamental misalignment takes place due to the devaluation of the currency. This features more in the cases of developing nations. But after a long term overvalued currency peg, this may be unsustainable to carry and the member has to resort to devaluation of the currency and which may give rise to an economic crisis. Argentinian economy is the prime example of such crisis. Such kind of forced devaluation of currency which is made for the purpose of adjusting the exchange rate after the unsustainable overvaluation is different from the

[214] *Id.* at 11 (FAQ - Q6.).

devaluation done to gain a favorable exchange rate policy or to gain an unfair competitive advantage over others to increase the exports. It will not be a manipulation because of difference in purposes[215].

The undervalued exchange rate has an impact over the both imports and exports. An undervalued currency has the potential to reduce import and increase export for the member who has resorted to such manipulative exchange rate system. Many experts have believed that in the cases of such a scenario an aggrieved member should take either a unilateral action to save its falling balance of payment or it should invoke the WTO dispute settlement system. But generally the economists have believed that there is so much underlying complexities remain in the misaligned exchange rate that it would be impossible to give a policy recommendations.

The underlying problem with the Chinese exchange rate could be summed up in the following words. For a very long time the Chinese economy has shown the sign of persistent growth. China has shown a surplus in both current and capital account balance. This had to trigger a strong demand for the Chinese currency which would have the impact of appreciation of currency. An appreciated currency will always mean that the Chinese goods would be dearer in the international market which would reduce the demand of its goods and services. TO avoid such situation China adopted a currency policy under which it kept the rate of its currency at a fixed rate by buying the foreign currency (mainly dollar) and sell RMB on huge level. It prevented its currency from appreciating. By adopting the managed peg it kept the value of RMB at a constant rate of 8.28/dollar for a very long time (from 2002-05) and then allowed it to be appreciated. While doing the consultation the IMF staff report did not show that there was the unity of opinion regarding the china manipulative exchange rate policy. It could only express that there was the fundamental misalignment with

[215] Claus D. Zimmermann, *Exchange Rate Misalignment and International Law*, 105 A.J.I.L. 423, 437 (2011).

regard to the Chinese currency but it could not give any quantitative estimation regarding the misalignment. Many staffs were agreed and even many disagreed that there was the real exchange rate devaluation taking all the circumstances into account[216].

3.15 - Conclusion

IMF provides extensive sets of right to its member with regard to maintenance of the currency. China has been maintaining a currency peg against a basket of currency and systematically proceeded to keep its currency at a required level. For the purpose of keeping Yuan at a desirable level China continuously maneuvered in the currency market and bought foreign currency at a huge quantity for years to keep the rate of dollars at lower level. It had another positive outcome for China that it was able to make the world largest foreign currency reserve (approx. 3.8 trillion dollars as of now). But these kinds of activities will fall under the large protracted intervention in the market under the 1977 decision of IMF which is not going to infuse a good culture within the system of currency and exchange. By adopting a policy of protracted intervention (with sterilization) which is forbidden under the 1977 decision of IMF along with its own version of justification that the purpose of its exchange regime is to enable the country to experience stable growth and to protect the economy from instability flowing from its underdeveloped banking and financial system[217] is itself a reflection of forbidden intent and a breach of IMF provisions of Article IV (1) (iii) of IMF Article of Agreement. It is also important to note that the Fund has the right to seek

[216] *Available at*https://www.imf.org/external/np/sec/pn/2010/pn10100.htm (accessed on 05.April.2016).

[217]Supra note 57, at 1279 (Footnote omitted).

explanation from the members for its protracted intervention and on the basis of the explanation given by the members it can make an independent assessment[218].

For the purpose of supervising the conduct of the members IMF pursues the bilateral and multilateral surveillance which has only persuasive impact over the parties. IMF does not have any dispute settlement mechanism for the purpose of settling the dispute relating to the currencies and exchange rates. But having a dispute settlement mechanism is hardly desirable in the realm of currency. Currency is not a commodity nor is goods. It should be differentiated from the WTO regime which deals with the dispute settlement mechanism relating to the goods and commodities. There are the regulatory (or restrictive) approach regarding the flow of commodities in the system but as far as the currency is concerned it retains the sovereignty aspect of a State and hence the regulatory approach regarding the currency has been to keep it free from hard restrictions. But whether such uncertainty will operate in the case of Chinese currency policy or not it remains doubtful. The exceptional nature of scale and duration of the Chinese intervention in the currency market and its impact upon the China’s balance of payment shows that China has been in the breach of Art. IV of IMF.

It is always alleged that the IMF provisions are vague and not sufficiently clear to hold any nation as a currency manipulator. But the vagueness relating to IMF provision (i.e. Article IV) will operate in only those cases where either the quantum of intervention by the manipulating country or the advantages arisen out of such manipulation is smaller. But as far as Chinese currency policy is concerned the quantum of intervention and trade advantage has been so big that the case of manipulation is firmly established.

[218] *See Also*, Michael Mussa, *IMF Surveillance over China’s Exchange Rate Policy, Paper presented at the Conference on China's Exchange Rate Policy*, 12 (PETERSON INST. INT’L. ECON).

Chapter IV

Appropriate Jurisdiction for the Dispute Settlement of the Case of a Currency Manipulation

4.1 - Introduction

The IMF and WTO relation is highly contentious, complex and lacks clarity. WTO is the guardian of the international trade, and this chapter attempts to decode the role of WTO in the cases where trade distortions arises out of manipulative currency policy adopted by a member. In the area of relationship between the IMF and WTO an important change came by the act of USA calling Chinese policy of devaluation as an export subsidy (in its annual policy briefs)[219].

But the main question here is whether such incidence of currency devaluation will fall under the jurisdiction of IMF only as the IMF is the caretaker of currency and exchange rate matters or being a matter of grave trade distortion it will fall under the ambit of WTO. This chapter also tries to find the answer of this question. For the purpose of finding the answer of this question a historical approach has been adopted in order to explain how USA became instrumental in killing ITO and devising GATT which was ultimately translated into WTO. It seems during the fixed currency regime the link between the GATT and IMF was stronger and the problem became severer when the floating regime was introduced under the amended Articles of Agreement. Multiple currency practices is also barred under the GATT regime which is a matter relating to currency. It seems there are gaps between the IMF and WTO relationship and this research work attempts to understand the gaps in Law relating to IMF and WTO relation.

---

[219] See the policy brief 2010 onwards - 2010 Report to Congress of the U.S. – China Economic and Security Review Commission, PETERSON INST. INT'L. ECON., available at http://origin.www.uscc.gov/sites/default/files/annual_reports/2010-Report-to-Congress.pdf (accessed on 05.April.2016).

4.2 - International Trade Regime and China-US Dispute

It has been pointed out earlier that as per the principles of customary International Law a State has the freedom to determine the value of its currency. The issue of alleged Chinese currency devaluation has exposed the weakness of the contemporary international economic Law framework in regulating the sovereign intervention on foreign exchange rate[220]. This 'weakness' is specifically to be taken care by the international institutions because of two reasons – first, there is no authoritative Law to ensure whether the currency devaluation by China constitutes a currency manipulation. Secondly, there is no clear mandate in our international legal regime according to which international institutions have the authority to adjudicate and resolve the issues regarding the currency manipulations. One of the most prominent goals of this research work is to find out the answer of these two questions.

Currently, for the purpose of dealing with the currency manipulation issue various States are resorting to politics and diplomacy[221] but not the rule of Law which is not a very desirable situation for an International Legal Regime[222] as it can give rise to conflicts between the States.

Primarily it is WTO which has the adjudicatory authority to resolve the disputes relating to international trade. The IMF is the international institution which has the expertise in dealing with the problems relating to currency and exchange rate matters but it lacks the dispute settlement mechanism to resolve a dispute.

[220] See also, supra note 185, at 184.

[221] For example, the US strategy to pressurize China through its diplomatic channels to appreciate its currency is well known. US also brought Currency Exchange Rate Oversight Reform Act of 2011 to exert pressure on China. These efforts were successful in many ways as it resulted into appreciation of Chinese currency.

[222] Supra note 150, at 185.

4.3.1 - China Accession to WTO

The case of China's accession to WTO highlights the conflict of jurisdiction between IMF & the WTO. The conflict of jurisdiction came on surface when United States attempted to include an obligation relating to exchange system in the draft protocol on China's accession to the WTO. It (the draft protocol) required that China would comply with the obligations under Article VIII of the IMF by an agreed date. The Article VIII of the Articles of Agreement of IMF provides for the general obligations of the members including an obligation to avoid the discriminatory exchange rate policy. The draft protocol also obligated china to limit its rights to use foreign exchange restrictions in future. The objections were raised by the International Monetary Fund regarding such inclusion in the draft protocol by the United States. One of the objections regarding the draft protocol was that it contravened the ministerial declaration in the Uruguay Round Final Act. The Uruguay Round Final Act had expressly recognized the IMF jurisdiction over exchange rate matters. By posing the draft obligations on China it would be a contravention of the Final Act and would be tantamount to create two sets of classes of members which was against the letter and spirit of IMF. Later on China accepted the IMF mandate of Article VIII in 1996 but the accession protocol was not resolved for another 5 years until China acceded to the WTO in 2001[223].

[223] Background Document of IMF, Cooperation Between the IMF and the WTO, *p.59, Available at* http://www.ieo-imf.org/ieo/files/completedevaluations/Background%20Document%202.pdf (accessed on 05.April.2016).

4.3.2 – History

Joining WTO was a historic moment for China in the light of its strained relation with the United States. Both of the countries had joined hands in the Asian theater of the World War II to defeat Japan but they became enemies after the defeat of the democratic force in China in 1949 by the communists. Since then the relationship between the both of the countries were marked by the suspicion, armed struggle (e.g. during Korean War) and rivalry. It took almost three decades for communist China to restore diplomatic relation and trade ties with USA. The normalcy of the trade ties with United States and its accession to the WTO had a great impact upon global economy & politics as it firmly placed china as a military and economic superpower in the world. Since the time China has liberalized its economy (in 1978) it has emerged as a manufacturing hub of the world flooding its exported goods & commodity to the Europe, USA and other parts of the world. World major powers are now compelled to see China as an equal partner. After China's accession to the WTO the world market is open for the Chinese exported goods. The Chinese accession in WTO was a forward move in the direction of the global governance[224].

America played an important role in the China's accession in the WTO regime. China's efforts to join WTO dated back to 1986 when it made an effort to join GATT as a contracting party. There was the multilateral negotiation going on to fix the modalities of Chinese accession to WTO for the next 15 years[225].

For the purpose of accession of China three conditions were put forward - to reduce the tariff on the imported goods, to allow the foreign firms to sell in the China market and to open the telecommunication and financial sector for foreign competition. It was also agreed that foreign manufacturers would sell directly their goods to Chinese people; foreign investors could hold 40% shares in Chinese

[224] *Id*.

[225] Although the negotiation was interrupted many times due to various extra ordinary incidences like Tiananmen Square killings, China poor record in human rights etc. See also, *Id.*

commercial banks, up to 48% shares in the telecom companies and foreign firms would be able to provide various professional services in the field of accounting, management, engineering etc.

It seems, the inclusion of China in the WTO has a great economic ramification for the international trade along with politics. In 2001 at its WTO accession, China's GDP stood at 1.33 trillion USD, ranking the world's 6th, while in 2014, it topped 10 trillion USD, increasing by nearly 8 times, and ranking the 2nd largest economy globally. Still in 2001, China's trade in goods was valued at 0.51 trillion USD, ranking the 6th in the world, while in 2014, it reached 4.3 trillion USD, growing over 8 times, and ranking the world's first for the second consecutive year. China boasts of being the largest trading partner of over 120 WTO members today[226].

Implementation of China's WTO commitments, included but not limited to the reduction of tariffs for agricultural products and industrial goods by 8 and nearly 6 percentage points respectively, all of them bound tariffs, the elimination of non-tariff measures for products of 424 tariff headings, the opening of 100 out of the 160 service sectors categorized by the WTO, and more forceful IPR protection have, all facilitated the access of foreign goods and services into the huge Chinese market[227].

---

[226] Yuan Yuan, Intervention at Session 2 of Day 1: Transition from Accession to Membership—Maximizing the Benefits of WTO Membership and Global Economic Integration, Third China Round Table on WTO Accessions, *p.2*, available at https://www.wto.org/english/thewto_e/acc_e/Session2YuanYuanPostAccessionLookingback14yearafter.pdf (accessed on 05.April.2016).

[227] *Id.*

4.4.1 - Currency Manipulation as a Subsidy

Presently, in controlling the cases of currency and exchange rate matters IMF has a role to play in the cases of trade distortion arises out of sovereign interference in the exchange rates[228]. But IMF lacks an adjudication system to resolve the disputes between the members hence a good number of legal experts and economists have adopted a viewpoint that the currency manipulations should be treated as a Subsidy. By declaring a currency manipulation as an export subsidy the dispute (of currency manipulation) will fall under the auspices of WTO which has a proper adjudication mechanism at place. After having a reach to the WTO, the aggrieved party could get the dispute resolved and will have the right to ban (or impose duty on) the goods being exported by the manipulating country.

[228] Serious reservations have been expressed by the policymakers and economists against this prevailing situation. Most notable in the Background Document of IMF, *Id.* at 78.

"The two institutions did not come to grips with the potential jurisdictional overlap between trade and exchange rate measures. As noted earlier, the IMF considers exchange rate measures to fall solely within its jurisdiction but there is a possibility that exchange rate measures with significant trade effects may fall within the WTO's jurisdiction as well".

It is further provided, whereby the Fund has no capacity to enforce its prohibition of exchange rate manipulation while the WTO has the capacity to adjudicate trade disputes but it is unclear whether currency disputes fall within its jurisdiction. Along the same lines but more concretely, Mattoo and Subramanian (2008) argued that the IMF has not been effective in addressing currency manipulation "[f]or reasons of inadequate leverage and eroding legitimacy" and that the two institutions should thus cooperate "with the IMF providing the essential technical expertise in the WTO enforcement process" under "new rules in the WTO to discipline cases of significant undervaluation that are clearly attributable to government action."

4.4.2 –Subsidy Rules and GATT

The question of subsidy is not merely legal but also economic and political. Indeed, the General Agreement on Tariffs and Trade, which forms much of the foundation for the subjects addressed (in this volume,) is clearly based on the perception that international trade is beneficial, that the gains to society from trade outweigh the losses to those who are hurt by competition from abroad, and that the value is created through specialization and exchange in open markets. It is this perception which leads to the overriding principle of the GATT/WTO system that barriers to the trade imposed by government should be subjected to international discipline, and that regular procedures should be established looking to reduction or elimination of such barriers.[229].

GATT remained provisional for nearly half century between the periods of 1947 - 94. It was the time when the world saw the fastest growth of science & technology and trade, and GATT seemed to be firmly established even though it was a provisional agreement during this period[230].

Formation of the GATT was the result of a series of interesting developments. Immediately after the World War II the major economies wanted to form a third organization, other than the two under the Bretton Woods regime, i.e. International Monetary Fund and World Bank, to regulate the international trade. For that purpose more than 50 countries started negotiation to establish International Trade Organization (ITO). The draft of ITO was an inclusive draft which included the rules relating to trade, employment, international investment of goods & services etc. The intention of the parties was to regulate the world trade and employment and they decided to meet first in Havana (Cuba).

---

[229] Andreas F. Lowenfeld, *International Economic Law*, OXFORD UNIVERSITY PRESS, 5 (2nd ed. 2008).

[230] UNDERSTANDING THE WTO: BASICS, The GATT years: from Havana to Marrakesh *available at*https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm (accessed on 05.April.2016).

In the meantime 15 countries started negotiation immediately after the World War - II to reduce tariff and other trade barriers. The parties to the negotiation were still able to reflect the damages done to the international trade by the protectionist measures adopted by the various nations in 1930s. The negotiating States wanted to avoid any of such competitive protectionist measures after the World War II.

After a series of deliberations on 30th October 1947 the GATT was signed by the 23 countries which were parts of the larger negotiation for ITO. On the other hand negotiation round for ITO was started in Havana on 21st Nov. 1947and it was finalized in March 1948. But the same was never ratified by the US congress. In 1950, United States government declared that it would not seek the congress ratification for ITO any more. ITO was effectively doomed.

In the absence of a proper regulatory regime for international trade GATT was the only generally accepted code to regulate the conduct of the parties. Though, time to time it grabbed focus of the international trade world to include suitable trade provisions and remained the only legal code regulating international trade until WTO came into picture. There were eight rounds of negotiations commenced between the contracting parties[231].

But there were inherent limitations in the GATT. GATT was never formally declared as a permanent code governing the international trade. It remained merely a provisionally declared code having a limited legal force. The provisions of GATT were binding only to the extent of not in conflict with the domestic Laws. It kept the scope of manipulations wide open as the GATT provisions could be contravened in the cases of political and economic needs. But the increasing popularity of GATT like institution emphasized the requirement of a formally

---

[231] See e.g. The WTO in Brief: Part 1, The multilateral trading system—past, present and future, *available at*https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr01_e.htm (accessed on 05.April.2016); Understanding the WTO: Basics, The GATT years: from Havana to Marrakesh, *available at, https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm (accessed on 05.April.2016).*

declared institution to facilitate international trade and it led the path of formalization of GATT into the WTO. In 1988, US Congress passed the Omnibus Trade and Competitiveness Act, which called upon for a more effective trade dispute settlement mechanism which ultimately resulted into the WTO in Uruguay Round (1986-1993) of GATT.GATT provisions were adopted in the WTO after its formation[232].

4.4.3 - Question of Subsidy in WTO

Probably, the question of subsidy is the most complicated issue in the GATT/WTO regime. Subsidies are the transfers of wealth from the general treasury to a particular group of beneficiaries, who, it is believed, could not survive, or at least could not maintain their standing, on the basis of market forces alone[233]. These transfers always allowed by a State (government) in the forms of export credits, grants, tax exemptions, low interest financing, to a domestic producer for the purpose of attainment of certain trade goals. Such grants (i.e. financial contributions) by the government are seen as an excessive protection to their domestic industries. Such financial contributions by the governments may distort the fresh competitions and may cause an artificial advantage for beneficiary in the international market.

Even though subsidies are provided by the government for the purpose of achieving certain trade objectives, subsidizing a commodity has a bearing upon the growth of international trade because a subsidy may distort free competition and hurt the interest of the contracting parties. A valid international Law question may be, to which extent a subsidy may be allowed to be given by a particular State and after which the other State will have the right to counteract[234].

---

[232] See e.g. *Id.*

[233] Supra note 229, at 216.

[234] See *Id.*

4.4.4 - Types of Subsidies

As per the Subsidies & Countervailing Measures Agreement, there are six categories of subsidies based on the purposes

1. Export Subsidies,
2. Subsidies contingent upon the use of domestic over imported goods,
3. Industrial promotion subsidies,
4. Structural adjustment subsidies,
5. Regional development subsidies, and
6. Research and development subsidies.

With regard to the beneficiary there are two categories of subsidies –

1. Specific subsidies, and
2. Nonspecific subsidies.

4.4.5 - Legal Framework for Subsidies

The basic legal principles regarding the subsidies are provided under the Article VI & Article XVI of GATT. Besides these Articles under the GATT regime the provisions of "Agreement of Subsidies and Countervailing Measures" are also important which further clarifies the GATT provisions.

4.4.5.1 - Subsidies under GATT regime

Under the GATT regime the question of subsidy was not dealt firmly by the lawmakers and even if it was applicable it had limited applicability. Under the GATT system export subsidies on industrial product was completely prohibited whereas there were limitation to such prohibition with respect to the export subsidies on agriculture products. Article VI & XVI provide the basic legal framework of GATT

GATT provides regarding the 'subsidies' –

> If any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the CONTRACTING PARTIES in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary. 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[235].

After studying the construction of the Art. XVI one can easily perceive that the scheme under this Article regarding the prohibition on subsidies remains very weak, rather it has a "no prohibition" criteria. It seems the original Article XVI merely provides the criteria for notification, meeting and discussion between the parties in case a contracting party allowed any export subsidy without imposing any substantial obligations on the parties regarding subsidies, the Article uses the term "discussion" in case a contracting party provides export subsidies. On the other hand in MFN clause (Article I), national treatment (Article III) and XXVIII

[235] Article XVI, Section A _ Subsidies in General, GATT 1947.

(negotiations of modification) the term “negotiation” has been used which is a stronger term than “discussion”[236].

Hence, the original Article XVI of the GATT provided a weak regime to prevent (i.e. there was no discouragement at all) export subsidies allowed by a contracting party. The subject was once again discussed in the review session of the GATT in 1954-55. An addition of Section B in Article XVI was the outcome of such review session under which Para 2-5 were added. Paragraph 1 of Article XVI (i.e. Section A of Article XVI) was based upon the Article 25 of the draft Charter whereas the text of Section B of Article XVI was based on the Article 26 to 28 of the Havana Charter (it is notable here that the Section B was drafted by the review commission but Paragraph 1 remained same as it was originally drafted in the 1947 draft). The new addition, i.e. Section B was applicable only to export subsidies.But due to its inherent inadequacies the amended Article XVI was also failed to provide any respite from subsidies. The amended Articles XVI was not acceptable to the developing nations. The amended Article had distinguished between the primary and other products. Under the GATT Article XVI (Section B), a “primary product” is understood to be any product of farm, forest or fishery, or any mineral, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade[237].

The prohibitions were applicable in the case of primary products to the effect of a subsidy which increased the share of the export which is inequitable in nature

[236] See Also, WTO ANALYTICAL INDEX: GATT 1994, General Agreement on Tariffs and Trade 1994, *available at,,* https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_06_e.htm*(accessed on 05.April.2016)*; TEXT OF ARTICLE XVI AND INTERPRETATIVE NOTE AD ARTICLE XVI, *available at*https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art16_e.pdf*(accessed on 05.April.2016).*

[237] General Agreement on Tariffs and Trade, Interp. Note to XVI from Annex I, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.

regards being had to the shares of the contracting parties in such trade of the product during a previous representative period. In the case of non-primary products prohibition operated on the basis of the distinction between the prices at which the product benefitted from a subsidy is exported and a comparable price which is charged for the like product to buyers in the domestic market. Under the subsidy code it was not required for the government to notify where the contribution was made by the private players who acted independent to the government. The requirement of notification depended upon the source of fund and the extent of government contribution in that fund. In other words where there is involvement of an independent party in an incidence of subsidy the burden of notification will depend upon some form of government action. The other government actions like allowing export credit at a rate of interest which is lower than the prevailing rate of interest in the market, granting of reduced internal transport charges on goods for export, tax exemptions which are generally payable have been considered as the examples of subsidies under the GATT system. Such subsidies shall attract the applicability of Para 3 of Article XVI even if allowed directly or indirectly by a government[238].

For primary products, the GATT consensus in the early 1960s was still weaker[239]. Article XVI (3) provides, only that Contracting Parties 'should seek to avoid' the use of subsidies on the export of primary products, quite different from the words 'shall cease to grant' in XVI (4) with respect to non-primary products. The next sentence of Article XVI(3) is baffling by any standard, reflecting the lack of

[238]Supra note 229, at 16.

[239] See Also, WTO ANALYTICAL INDEX: GATT 1994, General Agreement on Tariffs and Trade 1994, *available at*, https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_06_e.htm*(accessed on 05.April.2016)*; TEXT OF ARTICLE XVI AND INTERPRETATIVE NOTE AD ARTICLE XVI, *available at*https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art16_e.pdf*(accessed on 05.April.2016).*

consensus and multiple ambivalence that have characterized the discourse of the GATT Contracting Parties on the subject for close to half of century.[240]

Hence, on the basis of Art. XVI (4) of GATT it can be said that in case there is no difference between the home market price and export price, subsidies allowed on the product will be free from any kind of prohibitions even if such subsidies affect the quantum of export as well as the domestic sales. In short, it will not be an exaggeration to say that the provisions for subsidies under Article XVI remained grossly insufficient to deal with the problem of subsidies.

The lawmakers have been familiar with the complications attached to 'subsidies' since the very beginning. For the purpose of reviewing the operations of Article XVI of GATT a 'panel on subsidies' was set up in 1959-61. In 1961, in its final report the panel had observed that it is 'neither necessary nor feasible' to seek a common interpretation of what could constitute subsidies. Further, the panel had noted that it would be impossible to devise a definition which could include all the measures intended within the parameters of Article XVI and without including others which are outside the parameter of Article XVI[241].

Under the GATT Article XVI regime there was also the problem of notification. The 1961 Report on "Operation of the Provisions of Article XVI" had highlighted the issue of failure to provide the notification by the contracting parties. It was observed in the report that the contracting parties were reluctant to expose themselves by providing accurate information regarding their subsidies. Although there was no avail of not notifying the concerned subsidy because according to the rule under Article XVI a contracting party has to be consulted whether a notification of the subsidy has been given or not.

[240]Supra note 229, at 221.

[241] L/1442 and Add.1-2, adopted on 21 November 1961, 10S/201, 209, para. 23.

4.4.5.2 - Subsidies under SCM Agreement

The SCM agreement was negotiated during the Uruguay round of negotiations and adopted during the Tokyo round. The provisions of the Agreement are more explicit in nature and they give a clearer picture on subsidies. The Agreement on Subsidies and Countervailing Measures ("SCM Agreement") addresses two separate but closely related topics: multilateral disciplines regulating the provision of subsidies, and the use of countervailing measures to offset injury caused by subsidized imports.[242] It is to be noted that the multilateral discipline is enforced through the WTO dispute settlement system. Under the SCM Agreement there is the provision of a unilateral measure which could be invoked by the member after an investigation and determination that the preconditions as set in the agreement are satisfied. Part one of the Agreement defines the concept of "Subsidy" and "Specificity" whereas the Part II, Part III & Part IV provides the categorization of subsidies as per their purpose, nature and specificity. Simultaneously, the Part II, Part III & Part IV also provide the substantive rules and procedure to deal with such subsides and remedies. Part V of the Agreement provides the specific rules and procedure which are necessary for a member to follow in order to impose the countervailing duties.

Only a measure which is a "specific subsidy" within the meaning of Part - I is subject to multilateral disciplines and can be subject to countervailing measures[243].

There are four types of specificity under the SCM Agreement –

1. Enterprise-specificity.
2. Industry-specificity
3. Regional specificity.

[242] SUBSIDIES AND COUNTERVAILING MEASURES: OVERVIEW, *available at* *https://www.wto.org/english/tratop_e/scm_e/subs_e.htm* (accessed on 05.April.2016).

[243] *Id.*

4. Prohibited subsidies [Article 2.1 of SCM Agreement].

Hence, even if any measure is falling under the definition of subsidy, it will not be a subject to SCM Agreement if it is not specific in nature. Hence any nonspecific subsidy does not entitle any aggrieved party to impose any countervailing measure against such general subsidy[244].

Definition of Subsidies under SCM Agreement

Article 1 - Definition of a Subsidy –

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:

(a)(1) There is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:

(i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);

(ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits);

(iii) a government provides goods or services other than general infrastructure, or purchases goods;

(iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments; or,

[244] This particular attitude of WTO becomes the core of the problem as far as a currency manipulation is concerned.

(a)(2) there is any form of income or price support in the sense of Article XVI of GATT 1994, and

(b) a benefit is thereby conferred.

<u>4.4.6 - Categories of Subsidies – Legislative Arrangement</u>

The SCM Agreement divides subsidies into two basic categories as per the purpose, nature and specificity –

1. Prohibited Subsidies [Defined in the Part – II of the SCM Agreement] – Prohibited subsidies include export subsidies (which are given on export performance, in Law or in fact, whether solely or as one of several other conditions) and local content subsidies (i.e. subsidies given for the use of domestic goods over the imported goods). The SCM Agreement extended the ambit of prohibited subsidies to even developing nations[245]. These provisions (relating to the prohibited subsidies) were already applicable for the developed nations by virtue of Tokyo Round of the Subsidies & Countervailing Measures and prohibitions regarding the local content were merely an extension of the Article III of GATT.
   A detailed list of the export subsidies is provides in Annex I to the SCM Agreement.
2. Actionable Subsidies [Defined in the Part – III of the SCM Agreement] - Such subsides are not absolutely prohibited like prohibited subsidies but they can be challenged through the dispute settlement system of countervailing measures.

[245] These provisions (relating to the prohibited subsidies) were already applicable for the developed nations by virtue of Tokyo Round of the Subsidies & Countervailing Measures and prohibition regarding the local content was already present in the Article III of GATT.

4.4.7 - Is Chinese Currency Policy a Financial Contribution Under Article 1.1(a)(1) of the SCM Agreement

The SCM Agreement lists the financial contributions which are considered to be subsidies if allowed by the governmental authorities which includes the direct transfer of funds, any government revenue, government purchase of goods or any support of funds other than general infrastructure or any support under Article XVI of GATT[246].

It is a noteworthy argument that Chinese currency policy in itself a kind of financial contribution by the government. At one point of time China had implemented a managed currency exchange regime, i.e. a system of foreign exchange transaction at the government determined rate instead of market driven rate. Many economists and legal experts argued that this particular stance of the Chinese government is tantamount to provide a financial contribution under Article 1 (1.1).

This system of foreign exchange transaction was adopted by China in addition to the implementation of traditional methods exchange control, like purchase and sell of currency in the currency market (although such intervention on the part of China was also controversial as it was done on a very large scale).

Generally speaking, such a notion of treating a managed exchange rate might not be compatible with the existing GATT or SCM regime. First, a currency exchange by the banks may not be deemed to be a currency intervention to cause a currency manipulation. Buy and sell of the currency by the government is probably the most prominent source of the currency intervention but not the incidence of currency exchange by a bank at a rate which is predetermined.

Any form of income or price support is treated as a subsidy under Article XVI, by virtue of Article 1.1(a) (2) of the SCM Agreement, if a contracting party grants

[246]Article 1.1(a) (1) of the SCM Agreement

directly or indirectly any form of support on any product which operates to increase the export of any primary product from its territory[247]. But a major problem comes up because of a fact that the income or price support has not been elaborately interpreted by the DSB (Dispute Settlement Board). Hence with the regard to the 'income or price' support requirement it is very difficult to say whether a currency manipulation will fulfill the criteria.

4.4.8 - Rule of Specificity of Subsidies and Countervailing Measures

Article 2 of SCM Agreement provides the rules relating to specificity, i.e. only that financial contributions or price supports qualify to be subsidies which are specific in nature, i.e. allowed to 'certain enterprises'. Article 2 is read as under -

In order to determine whether a subsidy, as defined in paragraph 1 of Article 1, is specific to an enterprise or industry or group of enterprises or industries (referred to in this Agreement as "certain enterprises") within the jurisdiction of the granting authority…

The Article 2.1 also clarifies the meaning of specificity. In the following cases such subsidies shall be deemed to be specific -

---

[247] We find the relevant guidelines regarding such subsides under the Paragraphs 2 & 3 (Article XVI, Part B) of GATT which provide –

Section B – Additional Provisions on Export Subsidies

2. The contracting parties recognize that the granting by a contracting party of a subsidy on the export of any product may have harmful effects for other contracting parties, both importing and exporting, may cause undue disturbance to their normal commercial interests, and may hinder the achievement of the objectives of this Agreement.

3. Accordingly, contracting parties should seek to avoid the use of subsidies on the export of primary products. If, however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period, and any special factors which may have affected or may be affecting such trade in the product.

a. Where the granting authority, or the legislation explicitly limits access to a subsidy to certain enterprises only.
b. If the granting authority or any piece of legislation has established any objective criteria or conditions (which are economic in nature and horizontal in application, such as the number of employees or size of enterprise) governing the eligibility for the purpose for providing subsidy which is neutral in nature or which do not favour certain enterprises over others are not specific.
c. Notwithstanding of any provision under paragraph (a) or (b) above, the subsidy will be considered as specific if there is the situation where the use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy[248].

2.2 A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. It is understood that the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Agreement.

2.3 Any subsidy falling under the provisions of Article 3 shall be deemed to be specific.

2.4 Any determination of specificity under the provisions of this Article shall be clearly substantiated on the basis of positive evidence.

[248] Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Article 2.1—Results of the Uruguay Round, 33 I.L.M. 1125 (1994).

With regard to currency manipulations Article 2 of the SCM Agreement provides a very hard standard. Whenever any government adopts any policy of manipulating its exchange rates such manipulation is not going to impact merely few industries rather it will impact all the firms, industries, and enterprises situated within the territory of such state. In other words a case of currency manipulation is not going to impact only 'certain enterprises' as contemplated under Article 2.1. The issue, that whether a currency manipulation is subsidy or not, has been meticulously dealt by Haneul Jung in his scholarly article. He has provided -

> This provision expands the scope of specificity, and raises a question whether currency undervaluation subsidizes exporters, the biggest beneficiary of currency undervaluation. But currency undervaluation almost equally benefits most domestic market players by placing them in an advantageous position against imported goods in terms of pricing. Even under the standard of Article 2.1(c), any argument attempting to prove specificity of currency undervaluation is likely to fail[249].

4.5 - How Currency Manipulations should be adjudicated?

It is the sovereign right of a state to determine the value of its currency. Hence an intervention in the value of its currency by a State is in the nature of sovereign intervention which makes it very difficult to be dealt under the existing economic Law framework. Since the impact of an exchange rate manipulation on the trade is similar to be subsidy given by a country many experts have believed it to be coutervailable. One of the goals of this research work is to enquire whether the currency manipulation is a subsidy or not, and whether such dispute is to be adjudicated by a collaborative effort of the IMF and WTO.

[249]Supra note 185, at 191.

For the purpose of deciding whether a sovereign intervention in the valuation of the currency is a coutervailable subsidy or not GATT and SCM (Subsidies and Countervailing Measures) Agreement of WTO are relevant. A government support to the exporter is treated as coutervailable if it satisfies the following three conditions –

1. There is a financial support by the government under Article 1.1(a) (1) of the SCM Agreement or an income support under Article XVI of GATT.
2. Exporters of the states have been benefitted by such government supports, i.e. the exporters have competitive edge over others player of the market due to these price/income/ financial supports.
3. Such assistance provided by the government is specific in nature, i.e. specific to certain company or industry.[250]

Historically, it seems the coordination between the WTO and IMF was present during the GATT 1947 though the link was forgotten afterwards. During the UN conference on Trade & Employment the contracting parties were highly concerned about the dangerous impact of currency manipulations on trade, as the policy makers were still reminiscent about the competitive currency devaluation before the period of World War II. The issue of currency manipulations was more or less settled during the Bretton Woods of fixed currency regime. In the GATT regime, member states sought to prevent any kind of unilateral measure taken by a country which could hamper a fair international trade scenario in the world. During the conception stage of GATT the negotiators intended to restrict all sorts of unilateral measures which could distort the international trade. Rules were framed to prevent various protectionist measures like import tariffs, subsidies and dumping. The history of negotiation shows that the other kinds of dumping were also negotiated between the parties and one of them was the competitive exchange

[250] See also, *Id.* 188-189; supra note 57, at 1293-94.

rate manipulations.[251] Protection against the competitive devaluation was given via Bretton Woods agreements. The Bretton Woods fixed currency regime provided a shield to the international trade against the competitive devaluation. The GATT 1947 linked currency with the international trade, via Articles II: 6 and VI: 4.

<u>4.6.1 - Role of Article XV to link currency and trade</u>

"The policy of liberalizing world trade cannot be carried out successfully in the absence of parallel efforts to set up a monetary system which shields the world economy from the shocks and imbalances which have previously occurred. The Ministers will not lose sight of the fact that the efforts which are to be made in the trade field imply continuing efforts to maintain orderly conditions and to establish a durable and equitable monetary system."[252]

Article XV of the GATT provided a link between the GATT and Bretton Woods, and the same attitude was maintained even after the Bretton Woods system collapsed. The Article XV (1) mandates cooperation (as it uses 'shall' as a positive obligation). It should be noted that the tone & tenor of the Article to deal with the sovereign interference as it provides a positive obligation of the member to cooperate with the other parties even if unilateral measures have been taken by any signatory of the agreement. It provides –

Article XV - Exchange Arrangements

> 1. The CONTRACTING PARTIES shall seek co-operation with the International Monetary Fund to the end that the

[251] Social dumping was also conceived between the parties during the GATT negotiation. Social dumping implies keeping the labor cost low to attain a more competitive advantage in international trade. Remedies were conceived to absolve the issue of social dumping but could not find place in the final draft of GATT. Later, the issue of social dumping sought to be dealt under the aegis of ILO.

[252]The Tokyo Declaration of 1973 (Para 7)

> CONTRACTING PARTIES and the Fund may pursue a coordinated policy with regard to exchange questions within the jurisdiction of the Fund and questions of quantitative restrictions and other trade measures within the jurisdiction of the CONTRACTING PARTIES.

Article II: 6 further established that the contracting parties would negotiate their specific bound tariffs after a 20% devaluation of its currency. This renegotiation was done by the parties even if there is no violation of the Fund's rules by such devaluation.

After the collapse of the par value system, the contracting parties adopted Guidelines for Decisions under Article II: 6(a) of the General Agreement (L/4938, 27S/28-29), on January 29th 1980 for the purpose of renegotiating the policy of devaluation of currency by the contracting parties. The Guideline reaffirmed the Fund's power to review the sovereign interference made by the contracting parties in the area of exchange rate policies.

4.6.2 - Mandate under Art. XV (4)

The most important rules regarding the relationship between the trade and exchange have been provided under Art. XV (4) of the GATT. A trade action can create an exchange rate issue and an exchange action can impact the international trade. Article XV of GATT links the trade and exchange rate policy. GATT provides –

"Contracting parties shall not (1) by exchange action, frustrate the intent of the provisions of this Agreement (i.e. GATT) & (2) by trade action, frustrate the intent of the provisions of the Articles of Agreement of the International monetary Fund."[253]

[253] Article XV (4) of GATT.

The GATT trade regime was well connected to the fixed currency regime of Bretton Woods. Under the GATT regime the policymakers paid enough heed to relate the trade action with exchange action. A special committee was set up for the purpose of examining the GATT-IMF relation in 1954. One of the goals of the committee was also to examine the balance of payment provision of GATT. A government may adopt various options in order to attain unfair advantages in international trade and sometimes the exchange action and trade action is so much interrelated that it becomes difficult to decide whether any given act of the government will fall under the category of the exchange action or trade action[254].

It was the 9th (review) Session, which took place from 28 October 1954, to 18 March 1955, when first time in the GATT history the review session was held along with the annual session. It was generally recognized in the review session that the objective of the GATT was largely hindered by high tariffs and other obstructions. The review session amended the Article XVIII of GATT which now had the special provisions for the developing countries regarding the balance of payment. Now the amended Article XVIII provided a better flexibility for the developing nations to manage their tariff for an effective balance of payment and for economic development. Regarding the IMF/GATT relationship the working group on quantitative restrictions devised a sub group on IMF/GATT relationship. The subgroup on IMF/GATT had recognized the grey area between the IMF and GATT relation. The subgroup had also recognized that the acts of the contracting parties may be so intermingled that it would be difficult to segregate the jurisdiction of the IMF/GATT. The group left the question of jurisdiction and they found that the gaps may be bridged with the help of regular consultation and cooperation between the Fund and GATT contracting parties. The sub group stressed upon a better liaison between the two institutions. In order to fill up the

[254]*See Also*, Thorstensen, V., Ramos, D. & Muller, D.; *The 'Missing Link' between the WTO and the IMF*, JOURNAL OF INTERNATIONAL ECONOMIC LAW (2013) (This scholarly article was written on the basis that the IMF & WTO were well coordinated during the fixed currency regime but the link was lost during the floating currency regime of IMF).

gaps the sub group made five recommendations which were accepted by the Working Party on Quantitative Restrictions[255] –

1. The Contracting parties should discuss the trade matters which has the implication for the exchange rates. The contracting parties were also obligated to inform the Fund that the GATT staff would be willing to discuss such acts of the parties if Fund feels such discussions to be feasible to undertake.
2. Pursuant to this intention, the Executive Secretary should be authorized to work out with the Fund procedures for ensuring maximum practicable degree of co-operation between the two staffs on matters of mutual concern to the contracting parties and the Fund.
3. The Intersessional Committee should be authorized to conduct such consultations with the Fund.
4. The contracting parties should draw the attention of the IMF to the new arrangements with respect to the Intersessional Committee the new arrangements with respectto the Intersessional Committee, should explain that this would make consultation between the contracting parties and the Fund easier and more expeditious.
5. The Executive Secretary should be requested to pursue consultations with representatives of the Fund.

Hence, on the above discussion on the 9th review session, it can be said that it was an important initiative taken to enhance the cooperation between the IMF & GATT. The group was of opinion that whether any governmental measure is an exchange action or a trade action will depend upon the technical criterion according to which the measure was adopted rather than on the effect of these measures on international trade and finance. But more stress was given in the

[255] *Available at*https://www.wto.org/gatt_docs/English/SULPDF/92020247.pdf accessed on 05.April.2016.

report on the fact of cooperation between the two institutions instead of decision of jurisdiction. [256]

The test of technical criterion was used in the Italy Deposit case in 1981[257]. On 7th May 1974 Italy introduced a deposit requirement for the purchase of foreign currency. The matter was referred to the Committee on Balance-of-Payments Restrictions. The question before the Committee on Balance-of-Payments Restrictions was, whether the Italian scheme represented a charge on import (i.e. a trade action) or a charge on the transfer of payments (i.e. an exchange action). The analysis of the question was important considering the fact that it had an impact over the trade and exchange of Italy both as it was intended to improve exchange as well as trade in favor of Italy.

The 1981 Secretariat Background Paper on the consultation with Italy concerning the Italian deposit requirement for purchases of foreign currency noted –

If however the distinction were made by looking at the restrictive technique used, the Italian deposit scheme would probably have to be regarded as an exchange measure since it is formulated and operated as a requirement to be fulfilled for the purchase of foreign exchange rather than for importation.

"The Executive Directors of the International Monetary Fund have decided in 1960 that, for the purposes of Article VIII of the Fund Agreement, the criterion for distinguishing between trade and exchange measures should normally be the technique used. 'The guiding principle', they determined, 'in ascertaining whether a measure is a restriction on payments and transfers for current transactions under Article VIII Section 2, is whether it involved a direct governmental limitation on

---

[256] See para 6, a*vailable at*https://www.wto.org/gatt_docs/English/SULPDF/92020247.pdf accessed on 05.April.2016. (accessed on 05.April.2016).

[257] ANALYTICAL INDEX OF THE GATT, ARTICLE XV, INTERPRETATION AND APPLICATION OF ARTICLE XV, 436, available at https://www.wto.org/english/res_e/booksp_ e/gatt_ai_e/art15_e.pdf (accessed on 05.April.2016).

the availability or use of exchange as such' (Decision No. 1034 - (60/27) of 1 June 1960). In conformity with this principle the Fund has regarded the Italian measures as constituting a restriction on current international transactions requiring Fund approval under Article VIII Section 2, an approval which it has granted until 30 September 1981 (C/M/149, page 12)."[258]

It seems that there has been a focus on distinction between the exchange measures and the trade measures under the IMF though the GATT/WTO never focused upon such a distinction. The attitude of GATT has been to examine any particular restrictive measures independent of the form of such measures. On the basis of above discussions the 1981 Report of the Committee on Balance-of-Payments Restrictions on the "Italian Deposit Requirement for Purchases of Foreign Currency" noted that the deposit scheme was monetary in nature and the GATT rules on trade measures for balance of payment did not apply on the deposit scheme considering the fact its impact was monetary and financial. Hence, even though there were some effects on the trade because of the deposit scheme, it cannot be said in the spirit of the Declaration on Trade Measures Taken for Balance-of-Payments Purposes.

The importance of a well-functioning international financial system has always been a matter of priority for international trade and the multilateral trading system[259]. While drafting GATT, the policymakers kept in mind to bridge the gap between exchange matters and trade matters. GATT provisions became a quintessential of the fact that multilateral trade rules and the financial policy disciplines complement each other. A disciplined financial system with a sound exchange rate regime makes the business more predictable to

[258] BOP/W/51, p. 4, paras. 9-10, Cited in ANALYTICAL INDEX OF THE GATT, ARTICLE XV, INTERPRETATION AND APPLICATION OF ARTICLE XV, Page 435, available at https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art15_e.pdf (accessed on 05.April.2016).

[259] Note by the Secretariat, *WTO Provisions Relevant to the Relationship between Trade and Finance And Trade and Debt*, WORKING GROUP ON TRADE, DEBT AND FINANCE, 1.

undertake contractual transactions. The WTO/GATT and IMF both functions in furtherance of the abovementioned trade goals and GATT Article XV binds trade measure with exchange actions i.e. it bridges WTO and IMF. The other important provisions of GATT which seeks cooperation of both the institutions are Article II: 3, Article VI: 2 and 3, Article VII and Article XVI.

During 1970-80s also the concern was expressed regarding the coordination between the IMF and GATT. One of the focus of the Consultative Group of Eighteen ("CG-18") [260] was to review the coordination between the IMF and WTO. In 1984 IMF prepared a study on "Exchange Rate Volatility and World Trade" after the GATT council made a formal request to IMF to review the interrelationship between the exchange rate instability and international trade. The GATT contracting parties discussions culminated into Punta del Este Declaration, that initiated the Uruguay Round negotiations, where Ministers declared themselves "mindful of the negative effects of prolonged financial and monetary instability in the world economy, the indebtedness of a large number of less-developed contracting parties, and considering the linkage between trade, money, finance and development."[261]

---

[260] The Consultative Group of Eighteen was formed by the eighteen contracting parties under the decision of the GATT council in 1975. The objective of the consultative group was to further the agendas of multilateral trade regime and remove disturbances which had threatened international trade to flourish.

[261] Note by the Secretariat, *WTO Provisions Relevant to the Relationship between Trade and Finance And Trade and Debt*, WORKING GROUP ON TRADE, DEBT AND FINANCE.3.

4.6.3 - "Frustration" Element in Article XV

There is no express provision on exchange rate in GATT as exchange rate matters are handled by IMF though the GATT provides extensive rules on trade remedies and WTO-IMF interaction[262]. As it has been stated earlier that Article XV of the GATT bridges the gap between the IMF and the WTO/GATT, and hence it links the trade and exchange rate policies. The Article XV (1) mandates the general requirement of cooperation between the IMF & WTO. It obligates the members of the GATT to seek cooperation of IMF for the purpose of pursuing a coordinated policy with regard to exchange questions within the jurisdiction of the Fund. It provides –

"The CONTRACTING PARTIES shall seek co-operation with the International Monetary Fund to the end that the CONTRACTING PARTIES and the Fund may pursue a co-ordinated policy with regard to exchange questions within the jurisdiction of the Fund and questions of quantitative restrictions and other trade measures within the jurisdiction of the CONTRACTING PARTIES."

When Article XV of the GATT was first devised IMF had adopted the fixed exchange rate policies. Now the IMF has been amended and its members are following the floating exchange rate arrangements. But the Article XV is still relevant as far as the current trading system is concerned. Article XV of the GATT requires the GATT contracting parties to cooperate with IMF in the broad spectrums of exchange rate matters like reserves, balance of payments or foreign exchange.

As far as the question of Chinese currency policy is concerned the Article XV, Paragraph 4 is the key to assess the Chinese policy. Article XV (4) provides –

---

[262] See Also, Catharina E. Koops, *Manipulating The WTO? The Possibilities For Challenging Undervalued Currencies Under WTO Rules*, AMSTERDAM CENTER FOR INTERNATIONAL LAW, (2010) (footnote 4).

"Contracting parties shall not, by exchange action, frustrate the intent of the provisions of this Agreement, nor, by trade action, the intent of the provisions of the Articles of Agreement of the International Monetary Fund."

Arguably, "exchange action" as used in Art. XV: 4 GATT refers to the liberalization of payments or "convertibility", which is also meant by the terms "exchange policies" and "exchange measures" as mentioned in the IMF Articles. The determination of the value of a local currency expressed in a foreign currency is referred to by terms like "exchange rate policies" or "exchange rate arrangements" as used in the IMF Articles. According to this line of argument, as it was put forward by Denters (2003), the term "exchange action" in Art. XV:4 does in fact not refer to exchange rates at all, but to convertibility.[263].

The key question over here whether China, by its exchange policy, frustrates the intent of GATT. The answer to this question involves two questions –

1. Whether US – China dispute has arisen out of exchange action or trade action?
2. Whether such policies frustrate the intent of the GATT provisions?

While negotiating GATT the policymakers were aware that an exchange action could potentially affect trade and a trade action may impact the exchange matters. Even though the trade action and exchange actions are interrelated with each other, Article XV of GATT makes trade action and exchange action distinctive with each other[264]. An exchange action may be related to currency, capital or movement of capital whereas a trade action is related to movement of goods & services. The Chinese currency policy may be categorized as an exchange action as it involves a currency peg. It has an impact upon the international trade because the Chinese currency policy also involves the regulation of capital movement and currency convertibility.

[263]*Id.* at 10 (Footnote Omitted).

[264] See Article XV (4) of the GATT.

Now the important question remains whether the Chinese exchange action, i.e. currency policy frustrates the intent of GATT[265]. Article XV of the GATT provides some help as far as interpreting the meaning of the terms "frustration" and "intent of the GATT" is concerned. The Interpretative Note of Article XV provides – "The word "frustrate" is intended to indicate, for example, that infringements of the letter of any Article of this Agreement by exchange action shall not be regarded as a violation of that Article if, in practice, there is no appreciable departure from the intent of the Article. Thus, a contracting party which, as part of its exchange control operated in accordance with the Articles of Agreement of the International Monetary Fund, requires payment to be received for its exports in its own currency or in the currency of one or more members of the International Monetary Fund will not thereby be deemed to contravene Article XI or Article XIII. Another example would be that of a contracting party which specifies on an import license the country from which the goods may be imported, for the purpose not of introducing any additional element of discrimination in its import licensing system but of enforcing permissible exchange controls."[266]

After the reading the interpretative note one can conclude that merely an infringement of the GATT provision will not be sufficient to frustrate the intent of GATT unless a contracting party by its exchange action makes an appreciable departure from the spirit of the Agreement. But this is too vague an obligation to provide a basis for effective enforcement (Hufbauer, Wong, and Sheth 2006). Indeed, there is no jurisprudence on this provision of the GATT, and it is highly

[265] This is the most critical question with regard to the IMF and WTO relation. Whereas BRYAN MERCURIO & CELINE SZE NING LEUNG has criticized the construct of Article XV uncertain and vague, Michael Mussa has declared it as a complete code of Law holding Chinese currency policy as frustrating. *See Also*, Bryan Mercurio & Celine Sze Ning Leung, supra note 57; Michael Mussa, *IMF Surveillance over China's Exchange Rate Policy, Paper presented at the Conference on China's Exchange Rate Policy*, 10-11(PETERSON INST. INT'L. ECON).

[266]General Agreement on Tariffs and Trade, Interp. Note to XV(4), Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194, 429 [para.4 of Interpretative Note Ad Article XV from Annex I].

unlikely that WTO dispute settlement panels would be willing to rule against undervalued exchange rates on this tenuous basis.[267]

In order to frustrate the intent of GATT it is essential that any specific GATT provision should be infringed. First of all, there is no provision in the GATT stating that there should be bi- or multilateral trade balance, meaning that the mere fact that an undervalued exchange rate causes global trade imbalances has no ramifications under GATT[268].

It is really difficult to know the real intent of GATT which may or may not be "objective." It is a general trend to read preamble for the purpose of inferring the intent of the legislations. The preamble of the GATT provides – "Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce." Hence the most important purpose of the GATT trade liberalization and free trade, i.e. to articulate the conduct of the contracting parties to promote trade in place of posing any disturbance to the international trade by arbitrary action of the contracting parties. Preamble part of the GATT is critical for the purpose of China –US dispute regarding currency. Protracted intervention of Chinese policy has been distorting the free trade and thereby frustrating the intent of GATT.

Discussions about the legal aspects of the relationship, however, including recent WTO dispute settlement cases concerning the Fund, reflect misunderstandings about the legal nature of Fund activities and how they relate to the WTO

[267] Arvind Subramanian & Aaditya Mattoo, 4, *Currency Undervaluation and Sovereign Wealth Funds: A New Role for the World Trade Organization*, PETERSON INST. INT'L. ECON., Working Paper Series, WP 08-2 (2008) available at https://piie.com/sites/default/files/publications/wp/wp08-2.pdf (Footnote Omitted) (accessed on 05.April.2016).

[268] Catharina E. Koops, *Manipulating The WTO? The Possibilities For Challenging Undervalued Currencies Under WTO Rules*, AMSTERDAM CENTER FOR INTERNATIONAL LAW, 10 (2010).

provisions on this relationship. In addition, certain issues about the Fund/WTO relationship are not clearly resolved in the text of the WTO Agreements.[269]

Silence of these two institutions has caused irreparable loss to international trade and this silence has been interpreted as a lack of cooperation between these two institutions. Relating to all the 'exchange questions' IMF has the jurisdiction[270] and the WTO contracting parties are bound to accept the all findings of statistical and other facts presented by the Fund relating to foreign exchange, monetary reserves and balances of payments[271]. But as discussed earlier, IMF lacks an adjudicatory mechanism for dispute settlement, many contracting parties of WTO found an easy alternative solution of currency manipulations to gain an unfair advantage in trade. Most of the legal debates regarding the currency manipulations rely on the question whether the currency manipulation is an export subsidies or coutervailable subsidies or not. There has been a growing clamor in USA that Chinese currency manipulation should be treated as an export subsidy[272] which is an urge of treating the currency manipulations as prohibited subsidies. An undervalued exchange rate exactly acts like an import tax and export subsidy because it has the potential to make the import costlier (in the domestic market of the manipulating country) and export cheaper for the manipulating country. Hence, naturally an aggrieved party of the currency manipulation would be tempted to apply countervailing duties for every case of currency manipulations. But the broader question over here is whether currency manipulation is a subsidy under the auspices of WTO.

Article XV (2) of the GATT provides –

[269] Deborah E. Siegel, *Legal Aspects Of The IMF/WTO Relationship: The Fund's Articles Of Agreement And The WTO Agreements*, 96 Am. J. INT'L. L. 561.

[270] Article XV (1) of GATT.

[271] Article XV (2).

[272] See, supra note 219.

.

> 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……[273]

This Article which is the part of the GATT 1994 which calls upon the WTO to consult with the Fund in the matters relating to monetary reserves, balances of payments or foreign exchange arrangements is incomplete in nature as it does not specify that whether or not this obligation extends to dispute settlement proceedings. Although there have been some WTO disputes but these proceedings are of no avail to remove the ambiguity under the Article XV (2). The matter of consultation under Article XV (2) of GATT was raised in the case of Argentina--Textiles and Apparel case[274]. Argentina had imposed an import surcharges on Footwear, Textiles, Apparel and Other Items. Argentina argued that the surcharges were imposed as the part of its commitment with the IMF adjustment program and does not lead to a breach of WTO rules. Regarding the consultation requirement Argentina contended that the panel failed to make an objective assessment of the matter under DSU Article 11 by not consulting with the Fund to obtain its opinion on specific aspects of the matter. But the Appellate Body upheld the finding of the panel and it held, even if the Article XV (2) provides for the IMF consultation, the IMF sponsored economic adjustment programs are not among them. While delivering the judgment in this case no further explanation was provided on the consultation requirements[275].

---

[273] Article XV (2) of the GATT

[274] Appellate Body Report, Argentina--Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items, para 82-86, WTIDS56/AB/R & Corr. 1 (adopted Apr. 22, 1998).

[275] *Id.* There are the other cases also in this series where the matter of IMF consultation was raised but not clarified properly by the Appellate Body like Panel Report, India--Quantitative Restrictions on Imports of Agricultural Textile and Industrial Products, WT/DS90/R (adopted Sept. 22, 1999), upheld by Appellate Body Report, India--Quantitative Restrictions on Imports of

The requirement under Article XV: 2 of GATT to consult the IMF do not imply that the WTO has to surrender all of its power to the IMF on the issues covered under the Article. The IMF is consulted because of its expertise in the given field and its findings may be treated as either factual or legal. The role of IMF here is not to provide decision whether the balance-of-payments exception of Article XII applies or not rather to provide the basis for the legal assessment to be undertaken by the competent WTO panel.

The disputes like these have underlined the need to clarify the relationship between the IMF and WTO whether consultation requirement in GATT Article XV: 2 extend to dispute settlement proceedings. Simultaneously it is required to draw a clear line of distinction between the consultation requirements under Article XV: 2 and the panel's discretionary rights as per DSU Article 13 to obtain information and technical advice from any individual or body deemed appropriate. Such clarification on these matters will be helpful to resolve the trade distortion arisen out of currency. It will open the door to resolve the disputes like US & China in the instant case.

Further, Article XV (9) provides

> Nothing in this Agreement shall preclude: (a) the use by a contracting party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund or with that contracting party's special exchange agreement with the CONTRACTING PARTIES…..[276]

Agricultural Textile and Industrial Products, WT/DS90/AB/R (adopted Sept. 22, 1999); Panel Report, Dominican Republic--Measures Affecting the Importation and Internal Sale of Cigarettes, WT/DS302/R (adopted May 19, 2005), modified by Appellate Body Report, Dominican Republic--Measures Affecting the Importation and Internal Sale of Cigarettes, WT/DS302/AB/R (adopted May 19, 2005).

[276] Article XV (9) of GATT.

The meaning of the above provision can be interpreted as; any exchange rate policy which is consistent with the IMF Articles of Agreement cannot breach the provisions of the GATT 1994. Hence, it can be deducted that the measures taken by the State for a currency devaluation which is as per the mandate of IMF, such as exchange control or restriction cannot be in breach of the WTO/GATT Articles. The correct application regarding the exchange restrictions as per the IMF has been provided under the 1960 decision by the IMF[277] executive board. The 1960 decision relies on the technical question that whether the measure incorporates the direct government limitation on the use of exchange. Hence, any government restriction which is not mandated by the IMF will be under the breach of the GATT Article XV: 9(a). GATT Article XV: 9(a) does not only incorporate exchange restriction but also the exchange control which includes the nonrestrictive measures under IMF Article VIII: 2(a).

Even though the IMF – WTO relation has been complex in nature and it is in the dire need of further clarification it will be wrong to say that WTO-IMF relation is irrelevant from the legal point of view. The GATT 1994 has to be interpreted in the light of the changes it has seen in the WTO. As per the WTO Agreement, GATT 1947 was replaced with the GATT 1994 and the existing provisions of the GATT 1947 were incorporated under the paragraph 1(a) of the GATT 1994. Hence while interpreting the terms of the GATT 1994 some modification in the interpretation of the provisions are essential in the light of the amended provisions under 1994.

4.7.1 - Cooperation between the IMF & WTO

The legal mandate and the purpose of IMF have been provided under the Article 1(ii) of the Articles of Agreement. It provides the purpose of IMF as –

[277] Annual Report 1960, *available at*https://www.imf.org/external/pubs/ft/ar/archive/pdf/ar1960.pdf accessed on 05.April.2016 (accessed on 05.April.2016).

…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[278].

An interpretation of the Article 1(ii) would lead us to a conclusion that the IMF mandate is not very precise in nature. Problem remained with IMF mandate which makes it specific about the exchange rate policy but vague as far as the trade policy is concerned. The term 'facilitate' in the Article indicates that IMF has an important role to encourage free trade among the member States but it would not control anyhow the actions and policies of the members. Probably, it is why the IMF does not have regulatory jurisdiction over international trade. As noted by Siegel (2002), "while a restriction on payments for particular imports is covered by Fund jurisdiction, an outright ban on the imports (i.e., the underlying transaction) is not. Fund members are obliged to avoid restrictions that are not maintained consistently with the Fund's Articles, but the Articles impose no such obligation with respect to trade restrictions."[279]

Hence, it can be safely stated that the jurisdiction of IMF is limited to promote a stable system of exchange rates and payments for the purpose of facilitating trade but it cannot enjoy its jurisdiction over the trade policy of the member States which prominently falls under the jurisdiction of WTO. Even under the Article IV surveillance of IMF there is the legal mandate of narrow role of IMF for surveillance. IMF cannot undertake any generic trade policy unless specifically enacted for a favorable balance of payment. As per the Articles of Agreement of IMF it would not allow it to cross over the exchange measures and if IMF enters

[278] Article 1(ii) of the Articles of Agreement of IMF.

[279] Supra note 269, at 567.

into the territory of generic trade policy of the members it would be amount to a trespass against the multilateral institutions[280].

The objectives of the establishment of the WTO are set out in the WTO Ministerial "Coherence[281] Mandate" which links the WTO with World Bank and IMF. One of the main focuses of the WTO is to achieve more coherent global economic policy-making (Article III: 5 of the WTO Agreement). But it is obvious from the above discussion that it is not easier to achieve this task. It is imperative to fulfill certain preconditions for the purpose of a coherent global economic policy like, discipline among the member nations, a rule based trading system and contributing to policy surveillance. The WTO regime is meant to provide its members a trading regime where the economic policy is more predictable and which helps the member to manage their trade more efficiently by ensuring macroeconomic and financial stability. For ensuring the policy coherence among the member nations it is essential that the policy coherence must begin at the national level.

It has been around two decades that IMF & WTO have struck an agreement regarding their mutual cooperation. The Agreement between IMF and the WTO (1996) (hereinafter "Agreement") enumerates two corresponding provisions of IMF (Article X) & WTO (Article III.5) –

> HAVING REGARD to Article X of the Fund's Articles of Agreement, which provides that "the Fund shall cooperate within the terms of this Agreement with any general international

[280] As stated earlier, the case of China accession to WTO is a classic example of conflict of jurisdictions.

[281] Coherence is the result of the fact of policy-makers achieving greater harmony between trade policies and other economic policies, e.g., macroeconomic, financial and development policies, See, Marc Auboin, *Fulfilling Marrakesh Mandate of Coherence: Ten Years of Cooperation between the WTO, IMF and World Bank*, WTO DISCUSSION PAPER NO. 13, 12, *available at*https://www.wto.org/english/res_e/booksp_e/discussion_papers13_e.pdf (accessed on 19.May.2016).

> organization and with public international organizations having specialized responsibility in related fields";
>
> HAVING REGARD to Article III.5 of the Marrakesh Agreement Establishing the World Trade Organization, which provides that "with a view to achieving greater coherence in global economic policymaking, the WTO shall cooperate, as appropriate, with the International Monetary Fund"

After establishment of the WTO, the committee, i.e. Executive Board's Committee on Liaison with the Contracting Parties to the GATT (CGATT), which was set up for the purpose of liaising between the IMF & WTO was reorganized and renamed as Committee on Liaison with the WTO (CWTO). The Agreement also identifies the provisions of WTO which bridge the gap between the IMF and WTO. Such as-

> HAVING REGARD to the Declarations in the Marrakesh Agreement on the Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policymaking and on the Relationship of the WTO with the Fund, and to the provisions of *Article XV:1, XV:2, XV:3 and Articles XII and XVIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and of Articles XI, XII, and XXVI of the General Agreement on Trade in Services (GATS)* concerning cooperation and consultation, including on exchange and trade matters…[282]

The design of the Agreement between the IMF & WTO has played an important part to enhance cooperation between these two global institutions. The agreement has resulted that the WTO & IMF is coordinating with each other at the department and staff level. All the divisions of WTO remain in touch with their

---

[282] Preamble, The Agreement between IMF and the WTO (1996), *avaialable at*, https://www.imf.org/external/pubs/ft/history/2012/pdf/3b.pdf(accessed on 19.May.2016).

counterpart of Fund. Highlighting the cooperation between Fund and the WTO Marc Auboin has written –

> Daily cooperation takes place during and outside periods of negotiations in nearly all areas of WTO activity; rules, technical assistance, surveillance, economic analysis and others areas described in this report, thereby greatly contributing to the fulfilment of policy coherence objectives: helping strengthen developing countries' capacity to reap the benefits of the multilateral trading system; contributing to global policy surveillance and economic analysis on cross-cutting issues; improving the timing and sequencing of trade liberalization so that it fits with other policy objectives (financial stability, poverty reduction), etc.[283]

Both of the institutions make effort to protect their jurisdictional rights though the grey area remains where there are the possibilities of conflicts. One of the major problems of conflicts (probably the vital greyest area in their institutional regime) and which is an important question of this research work to decide the jurisdiction of the institution in the cases of exchange measures. With regard to the jurisdictional conflict Background Document – 2 (Page 2 of Cooperation between the IMF and the WTO) of IMF provides –

> Both institutions defended their respective jurisdictions, but grey areas and areas of conflict emerged. The IMF's Geneva Office and Legal Department worked to preserve the clarity of the legal relationship that had existed under Article XV of GATT 1947, specifically with regard to exchange measures, on which it was expected that the WTO would defer to the IMF's findings and its jurisdiction. Nonetheless the possibility remained—especially

[283] Marc Auboin, supra note 281, at 1.

> given the strengthened dispute settlement procedures of the WTO—that exchange measures consistent with the IMF's Articles could be subject to countermeasures under the WTO (IMF, 1994c). More generally, there were issues of jurisdictional consistency that remained unresolved from GATT days, and had their roots in different approaches to distinguishing between trade and exchange measures. Whereas the IMF used a technical criterion to delineate between trade and exchange measures, the GATT had at times favored a different approach based on the effect on trade of the measure in question; this opened the door for exchange measures that had trade effects to fall under the WTO's jurisdiction as well (IMF, 1994c). IMF staff favored seeking an early resolution to these issues, but the Board was divided and left the matter for further discussion with the WTO[284]

But it would be appropriate to mention here that as far as jurisdictional conflict is concerned there is a lack of clarity especially with regard to the application of the technical criterion of the IMF and trade measures of the WTO. Later, the case of Chinse accession to the WTO illustrated the intrinsic complications of the jurisdictional conflict. Such a lack of clarity is probably experienced most in the cases of currency manipulation considering the fact that till now no country has been declared as a manipulator by the IMF and hence it is absolutely unclear how a case of currency manipulation should be adjudicated by the WTO once it is referred by the IMF.

[284] Background Document, Cooperation Between the IMF and the WTO, at 59, *available at* http://www.ieo-imf.org/ieo/files/completedevaluations/06162009Trade_BD2_Cooperation_Between_the_IMF_and_WTO.pdf (accessed on 19.May.2016) (footnotes omitted).

4.7.2 - IMF & WTO Agreement of 1996 and Cooperation Arrangement

Because of the intrinsic complications in the relationship and jurisdictional conflict [285] between the IMF & WTO, the lawmakers have relied upon the cooperation between these two institutions. The Agreement of 1996 is also made in furtherance of the cooperation arrangement between these two intuitions. The 1996 agreement sets out the explicit cooperation arrangement between these two institutions. Further the Preamble of the 1996 Agreement sets out the objective. The objective of the agreement is to enhance interaction between the institutions in the wake of globalization the increasing linkages between the various aspects of economic Law making which fall within the respective mandates of the IMF & WTO.

The fine points of cooperation arrangement between these two intuitions can be summarized as below –

- Mutual Cooperation –The Fund and WTO shall cooperate and consult with each other for a greater coherence in global economic policymaking[286].
- Balance of Payment consultation - The International Monetary Fund agreed to participate in consultations (as per the provisions of Paragraph 14 of the Agreement) carried out by the WTO Committee on BoP

[285] Jurisdictional conflict may also arise due to any act of the party in which the trade action & exchange actions may be intermingled. There are only two known examples of trade measures equivalent to changes in the exchange rate for commercial transactions. In late 1968 Germany instituted a special 4 per cent refund on imports together with a 4 per cent turnover tax levy on exports. In 1982, Uruguay imposed a 10 per cent import surcharge and a 10 per cent export rebate [Page 9, General Agreement on Tariffs and Trade, Interp. Note to XV(4), Oct. 30, 1947, 61 Stat. A-11,55 U.N.T.S. 194].

[286] Paragraph 1&2 1996 Agreement between IMF and WTO, *available at*, https://www.imf.org/external/pubs/ft/history/2012/pdf/3b.pdf (accessed on 19.May.2016)

(Balance of Payments) Restrictions on measures taken by a WTO member to safeguard its balance of payments[287]. (Paragraph 4)

- Communication on restrictive currency practices – Under this Agreement the Fund agreed to inform the WTO of any decisions in the cases of restrictive currency practices such as on the making of payments or transfers for current international transactions, discriminatory currency arrangements or multiple currency practices.[288]
- The WTO shall invite the Fund to send a member of its staff as an observer to the meetings of the Ministerial Conference, General Council, and Trade Policy Review Body. Further the WTO is obligated to invite the Fund to send a member of its staff as an observer to meetings of the WTO Dispute Settlement Body where matters of jurisdictional relevance to the Fund are to be considered. Agenda of such meeting is conveyed to each other in advance[289].
- The Fund shall provide the WTO, promptly after circulation to the Executive Board, for the confidential use of its Secretariat, with staff reports and related background staff papers on Article IV consultations and on use of Fund resources on common members and on Fund members seeking accession to the WTO, subject to the consent of the member[290].

Soon after the agreement between the IMF and WTO (in 1996), the East Asian economic crisis had tested the cooperation between these two institutions. Recession spread through the financial contagion in entire South Asia. The cooperation between these two institutions successfully prevented any unilateral and protectionist measures by any economy to gain an unfair trade advantage by devaluing the currency.

---

[287] *Id.* Paragraph 4.

[288] *Id.* Paragraph 3.

[289] *Id.* Paragraph 6.

[290] *Id.* Paragraph 11.

4.8.1 - East Asian Crisis of 1997 – Causes & Lesson

The East Asian Crisis (or Asian Financial Crisis) which started in July 1997 became another big case of financial contagion. The crisis was marked by major turnarounds in the macroscopic situation in the East Asian countries, most prominently seen in 4 countries: Indonesia, Korea, Malaysia and Thailand. The common feature of the East Asian crisis was heavy external debts, the debts were a big part of their GDP, reduction in production, bleeding exchange rate and crashing trade deficit level. The 1997 crisis started from Thailand slowly spread to other Asian countries[291].

4.8.2 - Causes of East Asian Crisis

The causes of Asian financial crisis were precisely described in "What Caused the Asian Currency and Financial Crisis?[292]" -

Two main hypothesis and interpretations have emerged in the aftermath of the crisis. According to one view, sudden shift in the market expectations and confidence were the key sources of the financial turmoil, its propagation over time and regional contagion. While the macroeconomic performance of some countries had worsened in the mid-1990s, the extent and depth of the 1997-98 crisis should not be attributed to a deteriorations in fundamentals but rather to panic on the part of domestic and international investors somewhat to be reinforced by the faulty policy response of the international monetary Fund (IMF) and the international financial community. According to other view – advanced in

[291] Indonesia, South Korea and Thailand were the countries mostly affected by the crisis. But its impact was felt in other Asian countries also. Countries like Brunei, China, Singapore, Taiwan and Vietnam were less affected though these countries had also felt the economic weaknesses.

[292] Moh Khusaini, *The Role of Economic Fundamentals in Explaining Indonesian Currency Crisis*, Working Paper 02-19, Andrew Young, School of Policy Studies, Georgia State University, at 7 (April 2002), *available at*http://icepp.gsu.edu/files/2015/03/ispwp0219.pdf (accessed on 05.April.2016).

this paper – the crisis reflected the structural and policy distortions in the countries of the region. Fundamental imbalances triggered the currency and financial crisis in 1997, even, once the crisis started, market overreaction and herding caused the plunge of exchange rates, assets prices and economic activity to be more severe than warranted the initial weak economic conditions.

Several factors were responsible for the crisis such as lack of incentive-compatible deposit insurance schemes; insufficient expertise in the regulatory institutions; distorted incentives for project selection and monitoring; outright corrupt lending practices; non-market criteria of credit allocation etc.[293] The situation was worsened because of rapid liberalization of the capital market and financial market without having enough expertise or experience. Now the financial and capital markets of these economies were exposed to these foreign economic problems because of the over liberalization. The extensive liberalization of capital markets was consistent with the policy goal of providing a large supply of low-cost funds to national financial institutions and the domestic corporate sector. The same goal motivated exchange rate policies aimed at reducing the volatility of the domestic currency in terms of the US dollar, thus lowering the risk premium on dollar-denominated debt.

Besides the above factors the competitive devaluation of the currency by Chinese and Japanese currency and a strong US dollar (in other words, rising US interest rates) was also responsible for the fall of Asian. Rising interest rates in United States had already made it a favorite destination for the international institutions. South Asian countries had pegged their currencies with United States and an increased value of the Dollar made their exports less demanding in the

[293] See generally, Bijan B. Aghevli, Finance & Development, June 1999 - The Asian Crisis: Causes and Remedies, June 1999, Volume 36, Number 2, available at, http://www.imf.org/external/pubs/ft/fandd/1999/06/aghevli.htm (accessed on 19.May.2016); Giancarlo Corsetti, Paolo Pesenti & Nouriel Roubini, What Caused the Asian Currency and Financial Crisis? Part I: A Macroeconomic Overview, NBER Working Paper No. 6833 (Dec. 1998).

international market. Hence, the Asian countries were suffering on the two fronts, because of the higher interest rates in United States the international institutions were routing their investments from Asian countries to USA. Secondly, increased value of Dollar (with which their currencies were pegged) made the south Asian exports costly in the world market. It gave a golden opportunity for the Chinese goods to grab the market which had recently started the policy of devaluation of currency[294].

4.9 - Multiple Currency Practices and Article XVI (V) of GATT & IMF Article VIII

When the GATT was drafted, the par value system of IMF was at place. It means the intrinsic value of the currency remained fixed in terms of certain amount of gold and no transaction were allowed to take place beyond this value with an allowed variation of one percent. But even during this fixed regime of currency there were several systems of exchanges were prevalent in the world over. Many members followed the policy of multiple currency practice. For example until recently Philippines had followed the different exchange rate systems for the purpose of major exports and for all other transactions. With regards to Columbia, it followed a very complicated set of exchange rate policies which had varied between 9 peso/dollar to 18 peso/dollar.

When the Fund was created it was opposed to such kinds of discriminatory exchange practices. During the great depression of 1930s the discriminatory rates were followed and encouraged by the Latin American and European countries which were retaliated by the other countries in the same fashion. A practice of multiple currency involves any action by a member or its fiscal agencies that of

[294] It is not only the East Asian economies rather there are many examples recently where various countries have suffered because of bad management of full capital convertibility, Mexican crisis, 1994-94,Brazil (1998), Russian exchange crunch of 1998, Argentinian Depression 1998-2001, Turkey currency crisis of 1994 are just a few example of it.

itself gives rise to a spread of more than 2 percent between buying and selling rates for spot exchange transactions between the member's currency and any other member's currency would be considered a multiple currency practice and would require the prior approval of the Fund.[295] One of the objectives of the Fund was to control and abolish such kinds of discriminatory practices. Article VIII, Section 3 of IMF prohibits any practice of multiple currencies without the express permission of the Fund –

Section 3. Avoidance of discriminatory currency practices

No member shall engage in, or permit any of its fiscal agencies referred to in Article V, Section 1 to engage in, any discriminatory currency arrangements or multiple currency practices, whether within or outside margins under Article IV or prescribed by or under Schedule C, except as authorized under this Agreement or approved by the Fund. If such arrangements and practices are engaged in at the date when this Agreement enters into force, the member concerned shall consult with the Fund as to their progressive removal unless they are maintained or imposed under Article XIV, Section 2, in which case the provisions of Section 3 of that Article shall apply.

Further, Interpretative Note Ad Article XVI from Annex I for **Sec B** provides-

---

[295] The International Monetary Fund and Current Account Convertibility, IMF Resources, *available at*https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0CCcQFjACahUKEwjciKvQqunIAhWFpYgKHUixBU4&url=https%3A%2F%2Fwww.imf.org%2Fexternal%2Fnp%2Fleg%2Fsem%2F2004%2Fcdmfl%2Feng%2Felizal.pdf&usg=AFQjCNHxYNpOWoIZyNwa05JUdoNHbK-4Tg&sig2=eLsWwwRsCjgxQf3QaU4Ogg&bvm=bv.106379543,d.dGY (accessed on 05.April.2016).

Nothing in Section B shall preclude the use by a contracting party of multiple rates of exchange in accordance with the Articles of Agreement of the International Monetary Fund[296].

Hence the GATT regime merely prevents and not prohibited the multiple exchange rates. It is worth noting that the Section B of Article XVI was drafted in the Review Session. The above *Interpretative Note* for Section B was also drafted in this Review Session of 1954-55. In this Review Session a report was prepared on the "Other Barriers to Trade" in which it was observed –

A number of members of the Working Party were concerned as to the possible effect of the proposed additional provisions on the right of countries to use multiple exchange rates in accordance with the Articles of Agreement of the International Monetary Fund. The Working Party has therefore recommended an interpretative note to cover this case[297].

A clarification regarding the requirement of notification was provided under the 1960 Report on the "Review Pursuant to Article XVI: 5" had noted that even if a party is pursuing the policy of multiple exchange rate with the express permission of the IMF, still it would not be completely absolved from the obligation to notify the other contracting parties. In other words wherever such exchange rates acted as subsidy on the product, the party would be under the duty to notify the other party even if such policy has been made by the express permission by the IMF.

---

[296] GATT Interpretative Note Ad Article XVI from Annex I for Sec B.

[297] Interpretative Note 1 ad Section B of Article XVI, added at the Review Session in 1954-55, available at https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjZxbj7k7TNAhXJO48KHWKRBvkQFggeMAA&url=https%3A%2F%2Fwto.org%2Fenglish%2Fres_e%2Fbooksp_e%2Fgatt_ai_e%2Fart16_e.doc&usg=AFQjCNE8UtqQL_E0jOZmYTLa8NTitpjj3Q&sig2=ceF-qZflL4lp-tEuPWYdfQ(accessed on 05.April.2016).

Note 2 to paragraphs 2 and 3 of Article VI provides, "Multiple currency practices can in certain circumstances constitute a subsidy to exports which may be met by countervailing duties under paragraph 3 or can constitute a form of dumping by means of a partial depreciation of a country's currency which may be met by action under paragraph 2. By "multiple currency practices" is meant practices by governments or sanctioned by governments".

Hence, it is quite conspicuous that any depreciation of currency has been considered as a subsidy under the GATT system.

4.10 - WTO Rules and Fundamental Misalignment

WTO provides the legal relief with respect to the measures taken by the other members against that member[298]. Article 3.3 of the WTO Dispute Settlement Understanding (DSU) gives the members the right to settle the dispute in case of infringement of its rights by the measures of the other members. It provides the prompt settlement of dispute, where a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by the measures taken by another Member, is essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members.

Measures taken by the members are attributed there to any measure which has been taken by any other member of the WTO. But whether the term "measures taken by another member" will cover the cases of the steps taken by the Central Bank of the member nation? As many a times the Central Bank of the country enjoys the formal independence as per the Law of the land[299]. A nation state being

[298] As discussed earlier, this is the feature of horizontal rights of the members which is absent in the cases of IMF.

[299] Indian is one of such nations where the central bank, i.e. the Reserve Bank of India is given the formal independence. Also it might be a faulty proposition to say that the member cannot be held

sovereign may choose whether and to what extent freedom may be given to its Central Bank. Hence there is a good merit in the argument that a State cannot take the defense that any act has been done by the Central Bank. The State will have to bear the liability for the acts done by its Central Bank.

For the purpose of bringing the case against the currency policy of any member within the parameters of WTO the complainant has to consider the undervaluation of currency along with the wholesome economic circumstances under which the other State devalues its currency. For the purpose of devaluing its currency for a long term a State has to maintain the artificial low price which will require it to take some specific measures like capital control and sterilization. These measures will enable the State to use its currency policy for taking the protectionist measures as to the adjustment of the prices at the lower level. For this purpose the State will have to create a very large foreign currency reserve also as it will require to intervene in the market in order to maintain the currency level at lower level.[300] If all these factors have been shown by the claimant there may be a valid case against the manipulating country. But it can be a difficult task to prove that there is a real-time impact of such economic policy on the price of commodity.

Even if any member is providing any export subsidy maintaining devaluation, the other party cannot impose any countervailing measures unless it has shown that the measure is a type of prohibited subsidies and its domestic industry has suffered any injury because of it.

---

liable for the steps taken by its central banks. A sovereign country can always set the limits of the right of the central banks by framing appropriate policies. Hence, it seems the member has to be ultimately liable for the policy actions taken by its central banks.

[300] The same has been done by China to keep the currency at a fixed level.

4.11 - Conclusion

The IMF and WTO both have been formed to prevent any protectionist measures taken by a country. Further the WTO silence on the matter of currency manipulations is not a good sign for the international trade as the parties could be encouraged to resort to politics and diplomacy instead of invoking the jurisdiction of WTO. Article XV of the WTO is full of ambiguities. Under the provisions of the Article XV (2) the WTO is obligated to consult with IMF in the exchange related matters, there are the exceptions under the GATT Article XV:9(a) which have legal value and the use of Article XV:4 as an independent legal claim.

It cannot be said that despite making a regular and massive intervention in the currency market China has not made an appreciable departure from the real intent of IMF & GATT. Hence, there is a clear case against China under GATT Article XV (4) as it frustrates the spirit of GATT due to its currency policy. But by adopting such currency policy it cannot be said that China has been providing any export subsidies on its product. The SCM agreement provides for the prohibited subsidies and for the purpose of being prohibited such subsidies should fulfill the following two conditions (1) financial contribution made by the government, and (2) subsidy to be specific to the industry.

In the present WTO regime Chinese currency regime cannot be said to be the providing a financial contribution. The question may be raised about the Chinese design of driving its exchange rate. This is beyond any reasonable doubt that China influenced and controlled its exchange rate. Most importantly while driving its exchange rate at a desirable level the conversion of dollar and Yuan took place at the government notified institution at its desirable rates. Whether it is an example of financial contribution made by the government Article 1.1(a) (1) of the SCM Agreement as it helps Chinese exporter to earn extra dollars for every unit of goods and commodity exported from China? The answer is simply 'no' under the present legal regime of WTO. Even if it is deemed to be the financial contribution, the subsidy (or benefit) arisen out of such currency policy is not limited to a particular sector or industry. It is not specific in nature and hence cannot be considered to be prohibited subsidies.

But it is highly recommended to amend the SCM provisions to include the benefit arisen out of protracted government interventions which drives the exchange rate and currency value at a massive level. If such benefits are treated as subsidy, it will be possible to deal with such government intervention in the currency market in a more acceptable fashion. Such amendment will also fill up the gaps between the IMF and WTO relation which is the need of the hour.

Chapter – V -Yuan Internationalization and the Existing International Trade Regimes

5.1 - Introduction

Since the outset of the general recession of 2008-09 there has been a widespread view of a prolonged weakening of dollar. At the same time, the emergence of China as the second largest economy and a major military might, and its role to bail out the drowning economy of the western countries raised a question, "is RMB going to replace dollar" as a major reserve currency of the world. The legality of the Chinese currency policy has been dealt extensively in the previous chapters in the light of International Law, IMF and WTO rules. This chapter produces an important aspect relating to currency, reserve currency under the rule of IMF. A reserve currency is internationally accepted and widely used currency for the performance of international transactions. So far the US dollar has been the mostly used currency in the international trade depicting the financial might of the United States. For the past few years (especially since the general recession of 2008) China has been trying to set RMB as an international currency. For this purpose it has reduced restrictions over the liquidity of the RMB to a great extent and tried to set it float free.

But the United States has been questioning the legality of currency policy of China. For the purpose of understanding the dispute between the USA and China, regime theory principles are of great help. Regime theory is a concept of political science which is extensively used for the purpose of performing legal research. This theory is particularly more useful for the purpose of understanding the socio

– economic aspect of Law having international implications. As per the principle of regime theory, international institutions like IMF and WTO fall under the categories of 'international regimes' and hence regime theory is of great help to understand the function and operation of these international institutions.

5.2 - What is a Reserve Currency?

In 1960 Robert Triffin had maintained in his seminal work[301] that the fixed exchange rate regime could not function for long in the Bretton Woods legal arrangement. He had opined that the existing system under the Bretton Woods Agreement could not last long and the system will break down due to its internal contradictions. He had stressed on the creation of reserve to support the expanding demand of liquidity due to burgeoning international trade. He propounded the famous theory of 'Triffin's dilemma' which was based upon the conflicting choices of running short of liquidity and undermining confidence in the dollar. The IMF officials decided to create a reserve to supplement the supply of gold and to deal with the Triffin's dilemma.

The Special Drawing Rights ('SDR') was created by the IMF in 1969 for the purpose of providing support to its member's official reserve. The first SDR of 3 billion was created and distributed among the members as per their quotas on January 1, 1970. It was also agreed between the members that an additional 3 billion reserve will be added. Consequently the allocations of SDR 2.9 billion in 1971 and 3.4 billion in 1972 were made. A further development came in 1973 when the Bretton Woods regime finally broke down and the regime was changed from the fixed to floating. In this situation it became impossible to designate the SDRs purely in terms of US dollars. It was decided to reflect SDRs in terms of a basket of currency. Initially, this basket of currency contained the currencies of 16 countries having more than one per cent of participation in the world export. Later the numbers of reserved currency were fixed from sixteen to five to reflect the

[301] Robert Triffin, *Gold and the Dollar Crisis: The Future of Convertibility*, YALE UNIVERSITY PRESS (1960).

currencies of major exporter countries (G-5 currencies). After the introduction of Euro the number of reserve currencies became four due to the merger of French franc and the Deutschmark into Euro. Since 1972, the Fund has designated the SDRs as its unit of account and all the IMF transactions are denominated as SDRs.

At present the SDR is contained by a basket of currency containing the currencies of four nations. The SDR should not be confused with either currency or a claim against the IMF. The fifth currency (i.e. RMB) will be included to expand the SDR effective from October 1, 2016. SDRs can be exchanged for freely usable currencies. As of November 30, 2015, 204.1 billion SDRs had been created and allocated to members (equivalent to about $285 billion)[302].

SDR was created by the IMF as a supplementary international reserve asset which had the relevancy for the fixed exchange rate regime of the Bretton Woods. Under the Bretton Woods system of fixed currency regime the Central Bank of all the member nations had to maintain an official reserve. Gold was one of the most widely accepted modes of the official reserve. But this arrangement created problem in the fixed currency regime of the Bretton Woods regime as the reserve of dollars and gold both fell short to accommodate the increasing need due to the international trade expansion. Hence, the international community decided to create a reserve Fund under the aegis of IMF.

It all happened when the end of the Bretton Woods regime was near. The Bretton Woods system collapsed due to its own inadequacies. The world decided to embark upon the floating exchange rate system. Since then the SDR has been less popular than earlier as the members created their reserve in terms of the reliable currencies (like US dollars). But the huge SDR reserve which was created under the IMF played a very useful role in supplying liquidity in the market during the general recession of 2008 to bring the world out of economic crisis.

[302] Special Drawing Right (SDR) Factsheet, International Monetary Fund, *available at* *https://www.imf.org/external/np/exr/facts/pdf/sdr.pdf (*accessed on 05.April.2016).

In the beginning the value of SDR was determined as 0.888671 grams of fine gold or equal to the value of 1 USD at that time. After the collapse of the Bretton Woods regime in 1973 SDR was redefined as a basket of currency which now contained the currencies of USA, Japanese Yen, ponds and euro. This composition of basket of currencies is reviewed by the IMF on every five years. A new currency RMB is being included by the IMF effective Oct. 1, 2016 in this basket of currency. There are two criteria for the inclusion of any currency in this basket of currency. First, the country whose currency is to be included in the basket must be an important participant of international trade. Secondly, the currency should be freely used for furnishing the transactions in the international trade and must be widely used in the major foreign exchange market.

A new weighting formula was also adopted in the 2015 review. It is based on the value of the issuers' exports, the amount of reserves denominated in the respective currencies that were held by other members of the IMF, foreign exchange turnover, and international bank liabilities and international debt securities denominated in the respective currencies. The respective weights of the U.S. dollar, euro, Chinese renminbi, Japanese yen, and pound sterling are 41.73 percent, 30.93 percent, 10.92 percent, 8.33 percent, and 8.09 percent. These weights will be used to determine the amounts of each of the five currencies to be included in the new SDR valuation basket that will take effect on October 1, 2016. The next review is currently scheduled to take place by September 30, 2021[303]. Today total value of the SDRs is 21.4 billion dollars which is just 0.5% of the total non-gold reserves. The SDR is currently defined as a basket consisting of:

- US dollar, 63.2 cents;
- Euro, 41.0 euro cents;
- Japanese yen, 18.4 yen; and

[303] *Id.*

- Pound sterling, 9.03 pence.[304].

For the purpose of using the resource of the members interest is paid to them. The interest is charged for the SDR allocations. The interest is charged on the weekly basis on SDR and is based on the weighted average of representative interest rates on short-term debt instruments in the money markets of the SDR basket currencies[305].

IMF allocates the quota of SDR to its members as per the norms of Article XV, Section 1, and Article XVIII. The IMF may provide the SDR to its members in proportion their quotas. The SDR is self-financed mechanism. If any member holds the SDR more than his quota then he receives the excess interest. But if any member holds SDR less than allocation it has to pay the interest. The SDRs have been created on the basis of the historical experiences for the long term gains. The IMF members need to buy the SDRs in order to complete their obligations under the IMF Article of Agreement. For the purpose of adjusting the composition of reserves the IMF members may also sell their allocated SDRs. SDRs can be exchanged as freely usable currencies. But there are the marked differences between the SDRs centered system and the dollar centered system.

Some members of the IMF oppose the proposition of SDRs on the ground that the SDRs are the liabilities on the members. Some members express their concern regarding the SDR that it is the liabilities of all the members and the moneys should be supported by the creditworthy parties. Since the SDR is an interest based assets it should be ensured with certainty that the interest will be paid by the holders of the SDR. Hence, in order to ensure more creditability and to reform the system of SDR it is suggested SDR to be treated as the privately held asset. If the SDRs are allowed to be used by the private parties it will become a tool of intervention in the market. At this juncture there is the problem regarding the

---

[304] John Williamson, Understanding Special Drawing Rights (SDRs), at 3, Peterson Institute for International Economics, Policy Brief, Number Pb 09 - 11.

[305]See supra note 302, at 2.

SDR and intervention. Now for the purpose of intervention the SDR has to be converted into intervention currency.

Time to time IMF conducts the review of the method of valuing the basket of reserve currency. Under the IMF framework, the Executive Board determines the currencies constituting the SDR which should be the freely usable currencies as per Article XXX (f) of the IMF's Articles of Agreement. On the contrary, the sixth edition of the Balance of Payments and International Investment Position Manual (BPM6)[306] that the reserve assets should be denominated in terms of convertible foreign currency. As of now all the currencies which are included in the SDR basket are the reserve currencies along with some other currencies which are included in the COFER list. For the purpose of surveillance and for assessing gross and international reserves it is important to determine the reserve currency.

According to the Balance of Payments and International Investment Position Manual (BPM6), "reserve assets are those external assets that are readily available to and controlled by monetary authorities for meeting balance of payments financing needs, for intervention in exchange markets to affect the currency exchange rate, and for other related purposes (such as maintaining confidence in the currency and the economy, and serving as a basis for foreign borrowing)."Whether the concept of convertibility under BPM6 and the concept of free usability of currency under SDRs are same? This question has been answered negatively by IMF –

> So while being close, the BPM6 concept of convertibility (freely usable for settlement of international transactions) and the SDR concept of freely usable (widely used and widely traded) are not

[306] A very good guidance on the relationship of reserve currency and balance of payment has been provided in, Samar Maziad, Pascal Farahmand, Shengzu Wang, Stephanie Segal, & Faisal Ahmed, *Internationalization of Emerging Market Currencies: A Balance Between Risks and Rewards*, IMF Staff Discussion Note, SDN/11/17 (October 2011), *available at*, https://www.imf.org/external/pubs/ft/sdn/2011/sdn1117.pdf (accessed on 05.April.2016) .

> synonymous. Indeed, the August 4, 2015 IMF factsheet "Review of the Special Drawing Rights (SDR) Currency Basket" noted that a currency can be widely used and widely traded even if it is subject to some capital account restrictions; on the other hand, a currency that is convertible is not necessarily widely used and widely traded. Nonetheless, the widely traded criteria indicates that a currency can be exchanged in markets for another currency to meet the member's balance of payments need with reasonable assurances of no substantial adverse exchange rate effect. Therefore, it is plausible to consider that the IMF operational definition of freely usable also implies convertibility[307].

Main attributes that would qualify an asset as reserve assets are: the asset should actually exist and it should be an external asset, be under effective control of monetary authorities, and be readily available.[308] For the purpose of being readily available the reserve currency must fulfill certain criteria like it must be liquid and denominated in a convertible currency. Liquidity makes the reserve currency for the purpose of buying – selling against the foreign currency quickly at the nick of time. It is also essential that there is no presence of restriction in flow or convertibility in the relevant policies with regard to its liquidity.

The last financial crisis has given rise to a renewed interest in SDRs when the US dollar liquidity dried up. The US Federal Reserve had to pump dollars into the system and it established bilateral swap agreements with major Central Banks. Like any other country IMF also explored possibilities to deal with the contingencies of recession. During the time of recession the policymakers first

[307] Clarifying the Concept of Reserve Assets and Reserve Currency, Page 4, Prepared by the Statistics Department, INTERNATIONAL MONETARY FUND, BOPCOM—15/14, October 27–29, 2015, *available at*, https://www.imf.org/external/pubs/ft/bop/2015/pdf/15-14.pdf (accessed on 05.April.2016).

[308] *Id.*

time in 30 years looked to SDRs for the purpose of providing much needed supply of liquidity to the system. During this time of emergency the IMF approved an increase in SDR up to ten fold at the subsequent G-20 summit in London in April 2009. The questions were raised about the sufficiency of the US dollars to perform the role of major reserve currency of the world. The 2008 recession has been a lesson for the world that there should be more than one major reserve currency at a time. After the fall of Bretton Woods regime the requirement of US dollar is not a legal requirement rather it was a financial convenience. In other words, after the fall of Bretton Woods regime US dollar was chosen for the financial reason to maintain the reserve currency by any Central Bank of any country. Chinese huge reserve of US dollar is a reflection of its policy to maintain a close link between the US dollar and RMB. General recession reduced the flow and share of dollar in the SDR basket.

5.3 - America's Loss is China's Gain

It is now generally understood that the US grip has weakened over the currency market. The major factor of this weakening of the currency is Chinese supremacy in manufacturing sector, the rising US trade deficit with its European & Asian trade partners and jobless growth of USA in the past decade[309].

During the great recession of 2008-09, China declared its intention to establish Yuan as a major international currency of the world. US & European economies have been suffering due to the recessionary trend but China has been growing fast and with its huge foreign currency reserve China is ready to provide credit to its Asian and European trade partners. In furtherance of this goal China provided a line of credit of $10 billion to Central and Eastern Europe through loans and the acquisitions of firms, it established a BRICS bank, which is headquartered in Shanghai, along with India, Russia, Brazil and South Africa in which China has

[309] See, America's jobless recovery The big picture, Aug 3rd 2012, 13:56 BY R.A. | WASHINGTON, available at http://www.economist.com/blogs/freeexchange/2012/08/americas-jobless-recovery (accessed on 05.April.2016).

the majority stake and it established Asian Infrastructure Investment Bank (AIIB) in which China has the highest stake. [310]

China is not only extending its area of trade and cooperation by extending the line of credits to the large economies to the world but is also cooperating with the other nations to build cross border infrastructure so that an incessant supply of its exported goods could be ensured to every part of the world. In furtherance of this object China has embarked upon the policy of 'one belt one road'[311] (improved connectivity across Eurasia); it revived the plan to rejuvenate the historic silk route and making China – Pakistan economic corridor (to link its trade with the West Asian oil rich region). China has also won many contracts to build the fast railways in many European and Asian countries and for all the projects it is providing the loans to its trading partners. These massive credits support by China to other economies shows its strength, and can only be compared with the US Marshall Plan which was introduced to restore the infrastructure of Europe after the World War –II. It has brought China in the line of powerful countries which could set the future of international trade.

In the past two decades China has established itself as the central economy of the world but the role of Yuan has been minimal in comparison to Chinese assertiveness in the world trade. One of the reasons of such a minimal role has been the control over the RMB. But during the general recession, the senior officials of China in 2009 have expressed their intention to replace USD as the major international currency[312]. For the purpose of internationalizing RMB China adopted a two pronged strategy. First of all it launched a pilot program to settle

---

[310] China parliament ratifies $100 bn Asian Infrastructure Investment Bank, November 4, 2015, 9:29 am *available at*http://thebricspost.com/china-parliament-ratifies-100-bn-asian-infrastructure-investment-bank/#.Vt_AN5x97IU (accessed on 05.April.2016).

[312] Jamil Anderlini, China calls for new reserve currency, *available at* *http://www.ft.com/intl/cms/s/0/7851925a-17a2-11de-8c9d-0000779fd2ac.html#axzz46SXAx7fz* *(*accessed on 05.April.2016).

the cross border transactions with trading enterprises. This pilot program was launched in the five commercial cities of China. It was later extended to whole of the China. China also adopted bilateral Central Bank currency swap scheme. Now the trading enterprises from the partner nations were able to obtain Yuan from their Central Bank itself to trade with china. These steps have the impact of increasing the demand of Yuan[313].

The financial crisis of 2008 raised many questions about the current challenges which the world has been facing due to large scale crisis in USA. The question has been raised whether United States can still play its predominant role as the major economic power or the emerging economy like China will be able to play its part to architect the economy of the world. During the great recession many experts believed that the Chinese government is now making the ground for massive plans for Yuan internationalization[314]. Rather China has been better placed to provide a reserve currency for 21st century than USA given its large current account surplus, massive foreign exchange reserves and burgeoning economy.

Though there is the downside of such kinds of claims. In the near future China could not even abandon the use of US dollars. China has created a large reserve of US treasury reserve (of approx. Dollar 1.4 Trillion) and systematic decline in US dollar will impact this huge foreign currency reserve of China. In order to avoid the 2008 like situations China has also proposed an international currency which is not attached to any individual nation. So that the foreign reserve created by a nation should not depend upon the economy of the other nations.

---

[314] See e.g. James Quinn, Wall Street Correspondent, China's yuan 'set to usurp US dollar' as world's reserve currency, 7:46PM BST 14 May 2009 *available at* http://www.telegraph.co.uk/finance/financialcrisis/5325805/Chinas-yuan-set-to-usurp-US-dollar-as-worlds-reserve-currency.html (accessed on 05.April.2016).

5.9 - Conclusion

Declaration of Yuan as a reserve currency will help China to increase its influence in the international trade and currency market. But till now Chinese currency is not free float and it will be yet to see what is the impact on its trade due to any 'liberalization' of currency. It has been mentioned earlier that with the internationalization of Yuan there will be clear application of regime theory. By applying the "theory of hegemonic stability" of international regimes we find an unflinching conclusion that the existing regime of the USA is weakening and China is the new hegemon as far as currency and international trade are concerned. The maneuverings made by China in the last two decades in the realm of currency & exchange, establishment of China centric international institutions like BRICS bank, Asian development Bank, and creating infrastructure across the globe, is the part of its grand strategy to create hegemony in the world trade by replacing present dominant power of international trade and currency, i.e. United States of America. But by adopting a protracted managed exchange rate policy China has been destroying fair competition in the international trade and attracting all the trade benefits. This approach is quite conspicuous by the fact of an incomparable development China has done in merely two decades. This is an infringement of the norms of international currency regime because in this scenario a fair competition vanishes. This selfish design will cause the mutual cooperation among the participants of international regime to hamper. It is also very much sure that at one point of time this design will collapse, because other participants will see their benefit to come out of the regime, which will prevent China to create a world order based on RMB.

Chapter – VI –Conclusion, Suggestion & Remedies

USA – China dispute over the currency devaluation of China has exposed the weaknesses of the current economic Law framework to regulate the sovereign intervention in the market[315]. Two of the most important international institutions IMF and WTO have played just a little role in resolving the dispute between US and China. Can it be safely said that no international institution has the mandate to deal with the cases of currency manipulation? Whereas IMF has failed to display its authority over the cases of currency manipulations, the role of WTO in the cases of currency remains questionable. In this scenario the silence of WTO will be reckoned as the passive surrender of jurisdiction of WTO to IMF.

Historically there have been several cases of currency manipulations but the dispute between the USA and China over the Chinese currency policy is distinguishable considering its scale and implication on the world stage. This time the currency devaluation has been done by the world second largest economy with a massive manufacturing base capable of exporting its products to all over the world and with a motive to replace the dollar regime with Yuan.

In 1978 the communist China embarked on the policy of liberalizing its trade and since that time China has tried to balance its currency for so many times. In mid 1980s China embarked for a policy of dual exchange rate policy which allowed it to get more number of units of foreign currency for its exports. From 1994 to 2001 China adopted a very tight monetary policy to reduce its double digit inflation at that time. Even during the East Asian crisis China did not devalue its currency drastically but maintained its rate with respect to the US dollars.

[315] See, Haneul Jung, Tackling Currency Manipulation with International Law: Why and How Currency Manipulation should be Adjudicated? (abstract) Manchester Journal of International Economic Law Volume 9, Issue 2: 184-200, 184 (2012).

The period of 1997 -2005 was crucial for the Chinese economy. During this period, China pursued the policy of a de facto peg of RMB against the US Dollars. In the meantime its foreign reserves, trade & business of China increased with faster ever rate. In 2001 China made an accession to WTO. After its accession to the WTO it was possible for China to take the benefit of WTO rules for the purpose of exporting its goods to foreign countries.

International Law and Chinese Currency Policy

Under the customary International Law a State enjoys a near absolute control over the currency, and the matters like, creation of currency or fixing the exchange rate was considered to be a sovereign right of the State. Since the time of jean Bodin (16^{th} Century) power over money has been recognized as the core element of statehood and sovereignty. Even the Article 2(2) of the 1974 Charter of Economic Rights and Duties of States also provided that every State has the sovereign and inalienable right to choose its economic system.[316] At the same time monetary sovereignty also implies that a State will not be responsible for the profit or loss to any other State or any other private parties which arises out of change in exchange rates of the state. The permanent court of justice has also recognized the monetary sovereignty of the States in the 'Serbian Loan Case'[317] (in 1929).

During the course of surveillance whenever asked to modify or review its exchange rate policy, China has always maintained the approach of the customary International Law, i.e. fixing the exchange rate is its sovereign right and it is not open for any outside subject to scrutinize it. But under the International Law it is also within the sovereignty of the State to modify or waive its sovereign rights, which is the basis of all the multilateral agreements. The waiver of sovereign rights becomes crucial in the case where the State is a signatory of any

[316] This cannot be treated as a strong piece of Law as this provision was opposed by the developed countries having the free economy. Further this provision also did not refer to the

[317] 2 July 1929, PCIJ Rep Series A Nos 20–21.

international agreement. Hence, whenever any State becomes the signatory of any international agreement it waives its sovereign rights in lieu of the other States do the same.

China is signatory of many international agreements including IMF and WTO. Being the signatory of IMF, China undertakes to waive its rights relating to currency in favour of the institution and as a quid pro quo the other members also waive their sovereign rights to the institution. Hence China is bound to follow the norms as provided in the Articles of Agreement of the IMF in its letters and spirits.

But it seems China is lacking to perform its own part of the obligations as undertaken under the IMF Articles of Agreements. China has a case of fundamental misalignment of currency[318]. Its currency and exchange rate did not depict the real exchange rate as per its burgeoning economy. The misalignment of currency may emerge due to undervaluation or overvaluation of the currency. Further China adopted a protracted exchange rate policy to keep its exchange rate consistent for a very long time which is clearly a breach of the 2007 decision of IMF.

One of the methods which have been adopted to misalign the exchange rate is quantitative easing (or QE)[319]. The tool of quantitative easing has been adopted by many developed economies such as USA and Japan after the spread of great recession of 2008 to support their economies. But such support has been provided

[318] It is important to note that the fact of misalignment of Chinese currency has been generally accepted by economists. See e.g. Claus D. Zimmermann, The Concept of Monetary Sovereignty Revisited, EJIL (2013), Vol. 24 No. 3, 798; Michael Mussa, at 5, IMF Surveillance over China's Exchange Rate Policy, Paper presented at the Conference on China's Exchange Rate Policy, Peterson Institute, October 19, 2007.

[319] Paul R. La Monica, China (Chinese media) has been contending that America's QE is itself an example of currency manipulations as it generates a fundamental misalignment of currency. See China isn't the only currency 'manipulator' http://money.cnn.com/2011/10/06/news/economy/thebuzz/ (accessed on 05.April.2016).

to keep the exchange rate and interest rate at an artificial level. Whether the policy of quantitative easing is the USA version of currency manipulation? And if the Chinese currency policy has been questioned for its protracted peg between the periods of 2002 to 2005, then why the question should not be raised regarding the US QE policy of massive bond buying which has been going on for the past several years. United States may draw a line of convenience for the purpose of accusing China but at the same time it is also taking an approach that QE is the domestic measure, the same approach which China had adopted regarding its protracted currency peg.

In the present era of globalization the matter of monetary sovereignty has to be revisited. Now, globalization has created a situation that few are able to exercise a greater degree of authority in the currency market. Due to the act of the private players in the market the monetary sovereignty of the governments stands diffused [320] . In the present market scenario where the private players are participating in the business and economy worldwide it is very difficult to go by the traditional notion that monetary sovereignty is an essential aspect of royal function[321]. This incidence of leaderless diffusion gives rise to an uncertainty in the market.

The international institution like IMF, WTO and OECD give rise to free trade and their fundamental principle is based upon the fact that international trade enhances enrichment, reduces poverty and increases prosperity within the economy. Hence the basic constructions of the agreements of these international

---

[320] Benjamin J. Cohen, THE INTERNATIONAL MONETARY SYSTEM: DIFFUSION AND AMBIGUITY, Prepared for a special issue of International Affairs, quoting Susan Strange (1994: 90); Mundell, Money and the Sovereignty of the State', International Economic Association Conference Paper (1997), available at: www-eel.economia.unitn.it/events/monetary/mundell14.
pdf (accessed 1 Sept. 2011)

[321] Cohen calls this phenomenon as leaderless diffusion. Benjamin J. Cohen, Page 3, THE INTERNATIONAL MONETARY SYSTEM: DIFFUSION AND AMBIGUITY, Prepared for a special issue of International Affairs.

institutions are based upon the notion that the free market economy promotes the welfare and it ought not to be disturbed. Hence, the members ought not to intervene in the free market economy, and even if they intervene, such intervention should be guided by an emergent domestic need which should not be permanent and massive in nature. Any act by a government (as China has done) which tries to curb the freedom of these free entities in the exercise of its sovereign power will create economic distortions, conflicts and disturbance within the system.

The currency policy of China is not as per the mandate of modern monetary sovereignty as it has made a sustainable and massive intervention in the currency market in order to attain a particular level of exchange rate. It has hindered a fair market competition by making regular interventions in the currency market.

International Monetary Fund and Chinese Currency Policy

International monetary fund (or "Fund") is the sole international institution which patronizes the world currency and exchange. Its journey from the Bretton Woods to the second amendment of the Article of Agreement shows the various phases of transitions it has gone thorough merely in 30years of its history. It is the duty of the IMF to maintain a just and equitable currency flow within the system. Besides the above mentioned duties IMF also plays a key role to prevent economic crisis, crisis response and provides stability for the reserves. But the exchange rate dispute of USA with China has raised a critical question regarding the efficacy and power of the IMF to regulate the currencies. Whether IMF provides a weak regime to regulate the currency?

First and foremost thing regarding the IMF is it does not have a dispute settlement system like WTO has. It has its own mechanism to supervise and for the purpose of supervising the conduct of the members IMF pursues the bilateral and multilateral surveillance which has only persuasive impact over the parties.

By pegging RMB with a basket of currency China did not violate the rules of IMF and it is not inconsistent with the mandate as provided under Article IV (2). But Article IV (1) (iii) mandates that its members to not to adopt the manipulative exchange rate policies for the purpose of getting an unfair advantage in the international trade. It should be noted that merely currency devaluation is not enough to constitute the currency manipulation but it should also be coupled with the forbidden intent to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members.

Given the wide freedom which a sovereign nation enjoys regarding the valuation of the currency, it is just impossible that a member will have deficiency of justification for its manipulative exchange rate. By adopting a policy of protracted intervention (with sterilization) which is forbidden under the 1977 decision of IMF along with its own version of justification that the purpose of its exchange regime is to enable the country to experience stable growth and to protect the economy from instability flowing from its underdeveloped banking and financial system[322] is itself a reflection of forbidden intent and a breach of IMF provisions of Article IV (1) (iii) of IMF Article of Agreement. It is also important to note that the Fund has the right to seek explanation from the membersfor its protracted intervention and on the basis of the explanation given by the members it can make an independent assessment[323].

It is always alleged that the IMF provisions are vague and not sufficiently clear to hold any nation as a currency manipulator. But the vagueness relating to IMF provision (i.e. Article IV) will operate in only those cases where either the

---

[322] BRYANMERCURIO & CELINESZENINGLEUNG, *p*. 1279, "Is China a "Currency Manipulator"? The Legitimacy of China's Exchange Regime Under the Current International Legal Framework." (Footnote omitted)

[323] See Also, Michael Mussa, at 16, IMF Surveillance over China's Exchange Rate Policy, Paper presented at the Conference on China's Exchange Rate Policy, Peterson Institute, October 19, 2007

quantum of intervention by the manipulating country or the advantages arisen out of such manipulation is smaller. But as far as Chinese currency policy is concerned the quantum of intervention and trade advantage has been so big that the case of manipulation is firmly established.

Even if IMF has no dispute settlement system and its remedy is limited to the surveillance and consultation but as this institution is growing more experienced it is becoming more capable to deal with the problem of currency devaluation. The examples can be seen in the light of the role of IMF to curb the cases of financial contagion during the Asian financial crisis. As it has been discussed earlier (in the Chapter IV) the crisis began with the devaluation of the Thai currency (Baht) but IMF played its commendable role to prevent any situation of competitive currency devaluation (by consultation and giving policy advice) to mitigate the impact of recession. It has been provided by the IMF -

> The financial crises that erupted in Asia beginning in mid-1997 are now behind us and the economies are recovering strongly. This rebound did not happen spontaneously, but came about as a result of steadfast policy implementation by the affected countries and large-scale financial support from the international community, especially under IMF-supported programs for Indonesia, Korea, and Thailand. Economic recovery is also pronounced in Malaysia and the Philippines. While, with the benefit of hindsight, the IMF's policy advice to these countries during the emergency was not flawless, corrections and adjustments to circumstances were made promptly, and the strategies adopted proved successful in restoring financial market confidence and stability, and in achieving a resumption of economic growth, in most cases by late 1998. Sustaining the recovery and making long-term progress in reducing poverty depend critically on the continued maintenance of

> macroeconomic stability and firm implementation of key structural reforms[324].

Even if IMF provides a weak Law but it is also true that the sanction under it is becoming stricter year on year. This is reflected in various decisions, 1996 decision or 2007 decision, which are more stringent in nature than the 1977 decision and these decisions address the cases of currency manipulations in a more efficient fashion than the 1977 decision. IMF has been engaging China through the process of surveillance and consultation and it is one of the reasons why China has been compelled to appreciate its currency post 2005.

As far as dispute settlement process is concerned IMF does not have any dispute settlement mechanism for the purpose of settling the dispute relating to the currencies and exchange rates. But having a dispute settlement mechanism is hardly possible (though it may be desirable) in the realm of currency& exchange rate at this juncture. Currency is neither a commodity nor goods. It should be differentiated from the WTO regime which deals with the dispute settlement mechanism relating to the goods and commodities. There are the regulatory (or restrictive) approach regarding the flow of commodities in the system but as far as the currency is concerned it symbolizes the sovereignty aspect of State also. When the Bretton Woods was negotiated immediately after the World War – II, currency was the subject matter of a government only and there was no participation of the private players. But now the role of private players has been massive and the sovereignty of the state relating to the currency stands diffused[325].

---

[324] *Available at* - https://www.imf.org/external/np/exr/ib/2000/062300.htm (accessed on 05.April.2016).

[325] See Benjamin J. Cohen, THE INTERNATIONAL MONETARY SYSTEM: DIFFUSION AND AMBIGUITY, Prepared for a special issue of International Affairs, quoting Susan Strange (1994: 90); Mundell, Money and the Sovereignty of the State', International Economic Association Conference Paper (1997), available at: www-eel.economia.unitn.it/events/monetary/mundell14.

In this changed scenario the members of the IMF are expected to sit together to negotiate the matter of sovereign intervention regarding currency as it has questioned the overall credibility of IMF. The whole construction of IMF is threatened to be anachronistic if the issue of sovereign intervention is not resolved by the members of IMF firmly.

World Trade Organization and Chinese Currency Policy

In its policy briefs United States has called the Chinese currency policy as an export subsidy which is a matter under the jurisdiction of WTO[326]. Further, Chinse accession in WTO has highlighted the conflict of jurisdiction between the IMF and WTO. A subsidy is allowed by the government of the member nation which falls under the jurisdiction of WTO. Under the GATT system Article XVI deals with the subsidies but the original Article XVI was merely a no prohibition criteria as far as subsidies were concerned. The amended Article XVI added Part B for the purpose of curbing export subsidies but these provisions for subsidies under Article XVI remained grossly insufficient to deal with the problem of subsidies. For the purpose of reviewing the operations of Article XVI of GATT a 'panel on subsidies' was set up in 1959-61. In 1961, in its final report the panel had observed that it is 'neither necessary nor feasible' to seek a common interpretation of what could constitute subsidies. Further, the panel had noted that it would be impossible to devise a definition which could include all the measures intended within the parameters of Article XVI and without including others which are outside the parameter of Article XVI[327].

The application of countervailing duty may be a natural remedy under the Subsidies and Countervailing Agreement of WTO but it is a very debatable issue.

[326] See the policy brief 2010 onwards - 2010 Report to Congress of the U.S. – China Economic and Security Review Commission, PETERSON INST. INT'L. ECON., available at http://origin.www.uscc.gov/sites/default/files/annual_reports/2010-Report-to-Congress.pdf (accessed on 05.April.2016).

[327] L/1442 and Add.1-2, adopted on 21 November 1961, 10S/201, 209, para. 23.

In order to constitute subsidies under the SCM agreement it is essential that a financial contribution by a government or by any public body needs to be conferred, and the benefit must be specific in nature, i.e. such benefit must be specific to an enterprise, industry, or group of enterprises or industries within the jurisdiction of the granting[328]. Article 1.1(a) (1) of the SCM Agreement provides the detailed list which is considered to be the financial contributions by a government. Such list is exhaustive in nature and does not include the cases of currency manipulations.

As far as Chinese currency policy is concerned it has been a managed currency peg and Bank of China allowed the conversion of USD with RMB at the government determined rate. Whether such act will constitute direct transfer under Article 1.1(a)(1) of the SCM Agreement? The answer is in negative. A currency intervention is made by a country by purchase and sale of its own currency in the foreign exchange market. If the Bank of China exchanged one currency against the other on a predetermined rate it cannot be termed as a direct transfer or financial contribution by a government. Hence the China currency policy does not give rise to a case of subsidy under the SCM agreement[329].

Article XV of the GATT, titled 'Exchange Arrangements,' is the only WTO provision which deals with the currency and trade. Article XV (4) of GATT provides, Contracting parties shall not (1) by exchange action, frustrate the intent of the provisions of this Agreement (i.e. GATT) & (2) by trade action, frustrate the intent of the provisions of the Articles of Agreement of the International Monetary Fund.

The term frustration has been defined as "appreciable departure from the real intent of IMF & GATT[330]." Even though the trade action and exchange actions

[328] Article 1.1(a)(1) and 1.1(a)(2) of the SCM Agreement.

[329] See Also, Haneul Jung, Tackling Currency Manipulation with International Law: Why and How Currency Manipulation should be Adjudicated? *pp.* 189-192, MJIEL Vol. 9 Iss. 2 2012.

[330] ANNEX I of the GATT, Ad Article XV.

are interrelated with each other, Article XV of the GATT makes trade action and exchange action distinctive with each other. An exchange action may be related to currency, capital or movement of capital whereas a trade action is related to movement of goods & services. The Chinese currency policy may be categorized as an exchange action as it involves a currency peg. It has an impact upon the international trade because the Chinese currency policy also involves the regulation of capital movement and currency convertibility.

After reading the interpretative note under the ANNEX I of the GATT, Ad Article XV one can conclude that merely an infringement of the GATT provision will not be sufficient to frustrate the intent of GATT unless a contracting party by its exchange action makes an appreciable departure from the spirit of the Agreement. And according to Hufbauer, Wong, and Sheth (2006) this is too vague an obligation to provide a basis for effective enforcement. It has also been said that it was highly unlikely that WTO dispute settlement panels would be willing to rule against undervalued exchange rates on this tenuous basis.[331]

But the argument put forward by Subramanian & Mattoo could lead to a dangerous consequence. It has been discussed earlier that a case against China under the IMF is firmly established. An exchange action which is legal in nature and according to the rules of IMF will not frustrate the intent of the GATT but a case of currency manipulation will surely threaten the safety of the international trade. It cannot be said that despite making a regular and massive intervention in the currency market China has not made an appreciable departure from the real intent of IMF & GATT. Hence, there is a clear case against China under GATT Article XV (4) as it frustrates the spirit of GATT due to its currency policy. But it is true that it will not be possible to initiate a dispute settlement process against China because it is an exchange action.

[331] See e.g. Arvind Subramanian & Aaditya Mattoo, *P.4*, Currency Undervaluation and Sovereign Wealth Funds: A New Role for the World Trade Organization, Policy Research Working Paper, 4668, The World Bank (Footnote Omitted).

As far as jurisdiction is concerned WTO lacks the jurisdiction in the cases of currency manipulations as a currency manipulation is not a subsidy under the present regime of the WTO. Under the SCM Agreement a subsidy has to be specific in nature. But in the cases of currency manipulation the benefit is not limited to a particular sector only or a particular industry but it benefits all products exported from the manipulating country. To bring the cases of currency manipulations it is suggested that an amendment is brought to change the SCM agreement for the purpose of bringing the case of currency manipulation under the dispute settlement process of WTO.

Result of Hypothesis

If the drafter of GATT/WTO Agreement had wanted to include the incidence of currency devaluation as a prohibited subsidy, it would be included in the SCM Agreement. Chinese currency policy does not fit into the criteria provided in the list of financial contribution under the Article 1.1 (a)(1) of the SCM Agreement. Further benefit arisen out of currency manipulation to the manipulator is also not sector specific which is a key condition under the SCM Agreement.Hence, a case of currency manipulation does not fulfill the criteria of export subsidy under the GATT/WTO regime. Hypothesis for this research work is proved.

Suggestions& Remedies

It has been concluded earlier that the currency manipulation is an important aspect of the international trade but the Laws relating to it has been subjected with diversified interpretations. Till now IMF has been solely providing the effective provisions relating to the currency manipulations. But IMF does not have the dispute settlement system. To deal firmly with the currency manipulations it is important to develop a better collaboration between the IMF and WTO.

It is suggested that two important steps have to be takento deal with the currency manipulations. Firstly, WTO should be allowed to exercise its jurisdiction over the cases of currency manipulations. For this purpose the WTO code on subsidies will be required to be amended in such a manner thatit could cover the cases of currency manipulations. Presently, the subsidies code (as has been discussed in detail) covers only those subsidies which are industry specific.[332]Due to non – fulfillment of the 'specificity', the WTO rules of subsidies are not applicable on the cases of currency manipulations. The WTO code of subsidies should be amended in such a manner that it could also cover the non – specific nature of government assistances to the private players so that the incidences of currency manipulations could be curbed.

It is worth noting that there is no disconnect between the currency practice and subsidies. An example under the WTO regime can be cited, which is key to this research work, like one in Note 2 to paragraphs 2 and 3 of Article VI of GATT provides, "Multiple currency practices can in certain circumstances constitute a subsidy to exports which may be met by countervailing duties under paragraph 3 or can constitute a form of dumping by means of a partial depreciation of a country's currency which may be met by action under paragraph 2. By "multiple currency practices" is meant practices by governments or sanctioned by governments".

[332]Article 2 of SCM Agreement.

Secondly, since the amendment in the rules/ regulations of the multilateral institutions like IMF/WTO takes decades, it is suggested that until such amendment is implemented, the parties of international treaties are advised to give due regard to the currency matters (more particularly sovereign interference in the currency market) while entering into any trade agreement. Till now sovereign interference has not been a decisive element in the international agreement and generally the parties to the agreement do not focus on it while entering into a trade agreement. But encompassing the currency issue into the international agreement will help curbing the issues of currency manipulations.

Select Bibliography

(I) Scholarly Articles

1. 2014 Report to Congress of the U.S.-China Economic and Security Review Commission, One Hundred Thirteenth Congress Second Session (2014).
2. Arthur *A*. Stein, *Coordination and Collaboration: Regimes in an Anarchic World*, 36 INT'L ORG 417 (1982).
3. Arvind Subramanian & Aaditya Mattoo, Currency Undervaluation and Sovereign Wealth Funds: A New Role for the World Trade Organization, Policy Research Working Paper, 4668, The World Bank.
4. Barry Eichengreen & Hui Tong, *The External Impact of China's Exchange Rate Policy: Evidence from Firm Level Data*, NATIONAL BUREAU OF ECONOMIC RESEARCH, 2011.
5. Benjamin Blase Caryl, Is *China's Currency Regime A Countervailable Subsidy? A Legal Analysis Under the World Trade Organization's SCM Agreement*,KLUWER LAW INTERNATIONAL BV (2011).
6. Catharina E. Koops, MANIPULATING THE WTO? THE POSSIBILITIES FOR CHALLENGING UNDERVALUED CURRENCIES UNDER WTO RULES, *p.10*, University of Amsterdam, Amsterdam Center for International Law, 2010 Research Paper Series
7. Charles Lipson, *The Transformation of Trade: The Sources and Effects of Regime Change*, 36 INT'L ORG 417 (1982).
8. Christoph Herrmann*, The Legitimacy of China's Exchange Regime*, Don Yuan: *China's "Selfish" Exchange Rate Policy under the Current International Legal Framework."* European Yearbook of International
9. CLAUS D. ZIMMERMANN, EXCHANGE RATE MISALIGNMENT AND INTERNATIONAL LAW, Page 437, American Journal of International Law, 105 A.J.I.L. 423 (2011).

10. Claus D. Zimmermann, The Concept of Monetary Sovereignty Revisited, EJIL (2013), Vol. 24 No. 3, 798; Michael Mussa, IMF Surveillance over China’s Exchange Rate Policy, Paper presented at the Conference on China's Exchange Rate Policy, Peterson Institute, October 19, 2007.
11. Deborah E. Siegel, Page 1, LEGAL ASPECTS OF THE IMF/WTO RELATIONSHIP: THE FUND’S ARTICLES OF AGREEMENT AND THE WTO AGREEMENTS, THE AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol. 96:561, THE AMERICAN JOURNAL OF INTERNATIONAL LAW.
12. Donald J. Puchala & Raymond F. Hopkins, *Lessons from Inductive Analysis*, INTERNATIONAL ORGANIZATION, 36 INT’L ORG 245 (1982). Economic Law 2010.
13. Frequently Asked Questions on the 2007 Surveillance Decision (FAQs), The 2007 Surveillance Decision: Revised Operational Guidance, Prepared by the Strategy, Policy, and Review and the Legal Departments, IMF, In consultation with other Departments, Approved by Reza Moghadam and Sean Hagan, June 22, 2009.
14. Haggard, Stephan, and Beth A. Simmons, *Theories of international regimes*, 41 INT’L ORG 491 (1987).
15. Haneul Jung, *Tackling Currency Manipulation with International Law: Why and How Currency Manipulation should be Adjudicated?* Manchester Journal of International Economic Law, Volume 9, Issue 2: 184-200, 2012.
16. Hedley Bull, The Anarchical Society: A Study of Order in World Politics (New York: Columbia University Press, 1977), p. 54.
17. IMF Decision No. 5392-(77/63) April 29, 1977, as amended by Decision Nos. 8564-(87/59), April 1, 1987, 8856(88/64), April 22, 1988, and 10950-(95/37), April 10, 1995.
18. IMF Executive Board Adopts New Decision on Bilateral Surveillance Over Members' Policies, Public Information Notice (PIN) No. 07/69, June

21 2007, *available at*https://www.imf.org/external/np/sec/pn/2007/pn0769.htm

19. IMF Legal Department paper - Prepared by the Legal Department, IMF, Approved by Sean Hagan, In consultation with the Policy Development and Review Department, at 15, Article IV of the Fund's Articles of Agreement: An Overview of the Legal Framework.
20. IMF, *Article IV of the Fund's Articles of Agreement: An Overview of the Legal Framework,* Legal Department In consultation with the Policy Development and Review Department (2006).
21. IMF, *Article IV of the Fund's Articles of Agreement: An Overview of the Legal Framework*, LEGAL DEPARTMENT IN CONSULTATION WITH THE POLICY DEVELOPMENT AND REVIEW DEPARTMENT (2006).
22. IMF, *Guidance Note For Surveillance Under Article IV Consultation*,STRATEGY, POLICY, AND REVIEW DEPARTMENT, INTERNATIONAL MONITORY FUND, (2012).
23. IMF, *IMF Involvement in International Trade Policy Issues*, INDEPENDENT EVALUATION OFFICE OF THE INTERNATIONAL MONETARY FUND, EVALUATION REPORT (2009).
24. IMF, *The Fund's Mandate—An Overview*, PREPARED BY THE STRATEGY, POLICY, AND REVIEW DEPARTMENT, (IN CONSULTATION WITH THE LEGAL DEPARTMENT), 2010.
25. IMF, *The Fund's Mandate—The Legal Framework,* Legal Department (In Consultation with the Strategy, Policy and Review Department (2010).
26. IMF, *The IMF's Trade Restrictiveness Index*, INDEPENDENT EVALUATION OFFICE OF THE INTERNATIONAL MONETARY FUND, BP/09/02 (2009).
27. Jaime de Melo, *Preferential Trade Agreements in IMF Economic Work 1996–2007: An Assessment,* INDEPENDENT EVALUATION OFFICE OF THE INTERNATIONAL MONETARY FUND, BP/09/01 (2009).
28. Jianhuai Shi, *Are Currency Appreciations Contractionary in China?*NATIONAL BUREAU OF ECONOMIC RESEARCH (2006).

29. John Gerard Ruggie, *International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order*, INTERNATIONAL ORGANIZATION, 36 INT'L ORG 379 (1982).
30. Jonathan E. Sanford, *Currency Manipulation: The IMF and WTO*, CRS REPORT FOR CONGRESS, CONGRESSIONAL RESEARCH SERVICE (2011).
31. Joseph E. Gagnon, *Combating Widespread Currency Manipulation*, *Policy Brief*, PETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS (2012).
32. Marc Auboin & Michel Ruta, *The Relationship Between the Exchange Rates and International Trade: A Review of Economic Literature*, ECONOMIC RESEARCH AND STATISTICS DIVISION, WORLD TRADE ORGANIZATION (2011).
33. Marvin Goodfriend & Eswar Prasad, *A Framework for Independent Monetary Policy in China*, INTERNATIONAL MONETARY FUND (2006).
34. Michael Geige, *Instruments of Monetary Policy in China and Their Effectiveness: 1994-2006*UNITED NATIONS CONFERENCE ON TRADE & DEVELOPMENT, PAPER NO. 187 (2008).
35. Michael Mussa, *IMF Surveillance over China's Exchange Rate Policy* PETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS (2007).
36. Min Zhao, *External Liberalization and the Evolution of China's Exchange System: An Empirical Approach*, World Bank, China Office Research Paper No. 4, (2007).
37. Money and the Sovereignty of the State', International Economic Association Conference Paper (1997), available at: www-eel.economia.unitn.it/events/monetary/mundell14.
38. Morris Goldstein & Nicholas R. Lardy, *The Future of China's Exchange Rate Policy*, PETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS, (2009).
39. Mu-jeung Yang & Seok-Hyun Yoon, What Determines IMF Involvement in Trade Policy? INDEPENDENT EVALUATION OFFICE OF THE INTERNATIONAL MONETARY FUND, BP/09/03(2009).

40. Nguyen Phuc Hien, *China's Exchange Rate Policy and International Competitiveness (Export) 1994-2005: Is IT A Lesson for Vietnam?* Economic Research Center (2011).

41. Oran R. Young, Regime Dynamics: The Rise and Fall of International Regimes, International Organization, Vol. 36, No. 2, International Regimes (Spring, 1982), 277-297.

42. *Policy Brief, NUMBER PB12-19, Page 1, Peterson Institute for International Economies.*

43. Principles of Fund Surveillance over Exchange Rate Policies [Principle 2(1) of 1977 Decision on Surveillance over Exchange Rate Policies, Decision No. 5392-(77/63), April 29, 1977, as amended by Decision Nos. 8564-(87/59), April 1, 1987, 8856-(88/64), April 22, 1988, and 10950-(95/37), April 10, 1995.

44. Public Information Notice (PIN) No.04/99 (August 25, 2004), International Monetary Fund, IMF Concludes 2004 Article IV Consultation with the People's Republic of China, PIN No. 04/99 (Aug. 25, 2004), *available at*http://www.imf.org/external/np/sec/pn/2004/pn0499.htm accessed on 05.April.2016.

45. *Rathin Roy & Raquel Almeida Ramos*, *IMF Article IV Reports: An Analysis of Policy Recommendations*, International Policy Centre for Inclusive Growth (2012).

46. Richard C. K. Burdekin & Pierre L. Siklos, *What Has Driven Chinese Monetary Policy Since 1990? Investigating the People's Bank's Policy Rule*, Journal of International Money and Finance, Volume 27, Issue 5, 2008.

47. Richard C. K. Burdekin & Pierre L. Siklos, *What Has Driven Chinese Monetary Policy Since 1990? Investigating the People's Bank's Policy Rule*, Claremont McKenna College and Wilfrid Laurier University, (2006).

48. Robert Jervis, *Security Regimes*, 36 INT'L ORG 357 (1982).
49. Robert M. Stern, *Trade in Financial Services—Has the IMF Been Involved Constructively?*INDEPENDENT EVALUATION OFFICE OF THE INTERNATIONAL MONETARY FUND, BP/09/05 (2009).
50. Robert O. Keohane, *The Demand for International Regimes, International Organization*, 36 INT'L ORG 325 (1982).
51. Robert Triffin, 1960, Gold and the Dollar Crisis: The Future of Convertibility, New Haven: Yale University Press.
52. Robert W. Staiger & Alan O. Sykes, *Currency manipulation' and world trade*, WORLD TRADE REVIEW (2010).
53. Rosa M Lastra, *The role of the IMF as a Global Financial Authority*, Queen Mary University of London, SCHOOL OF LAW LEGAL STUDIES RESEARCH PAPER NO. 55/2010 (2010).
54. Rosa M. Lastra, THE BRETTON WOODS INSTITUTIONS IN THE XXIST CENTURY KLUWER LAW INTERNATIONAL 2001.
55. Seok-Hyun Yoon, *Re-Evaluating the Effectiveness of Trade Conditions in Fund-Supported Programs, INDEPENDENT EVALUATION OFFICE OF THE INTERNATIONAL MONETARY FUND*, BP/09/04 (2009).
56. Stephen D. Krasner, *Regimes and the Limits of Realism: Regimes as Autonomous Variables*, 36 INT'L ORG 497 (1982).
57. Stephen D. Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, 36 INT'L ORG 185 (1982).
58. Xinchen Sofia Lou, Challenging China's Fixed Exchange Rate Regime: An Analysis of U.S. Options, at 455, 28 HASTINGS INT'L & COMP. L. REV. 455 (2005)

(II) Books

1. ANDREAS F. LOWENFELD, SECOND EDITION, THE QUESTION OF SUBSIDIES, INTERNATIONAL ECONOMIC LAW, SECOND EDITION, OXFORD UNIVERSITY PRESS, 2008.
2. DANIEL SLANE, REPORT TO CONGRESS OF THE U.S. CHINA ECONOMIC AND SECURITY REVIEW COMMISSION (2010).
3. ESWAR PRASAD, THE DOLLAR TRAP: HOW THE U.S. DOLLAR TIGHTENED ITS GRIP ON GLOBAL FINANCE (2014).
4. FREYA BAETENS & JOSÉ CAIADO, FRONTIERS OF INTERNATIONAL ECONOMIC LAW (2014).
5. IMAD MOOSA, THE US-CHINA TRADE DISPUTE: FACTS, FIGURES AND MYTHS (2012)
6. JOHN MAYNARD KEYNES, HARRY DEXTER WHITE, AND BENN STEIL, THE BATTLE OF BRETTON WOODS (2013)
7. JOSEPH GOLD, LEGAL EFFECTS OF FLUCTUATING EXCHANGE RATES (1990)
8. LAWRENCE C. HILBERT, CURRENCY INTERVENTIONS, FLUCTUATIONS AND ECONOMIC ISSUES, (2007)
9. MELISSA MURPHY & WEN JIN YUAN, IS CHINA READY TO CHALLENGE THE DOLLAR? INTERNATIONALIZATION OF THE RENMINBI AND ITS IMPLICATIONS FOR THE UNITED STATES (2009).
10. PETER NAVARRO & GREG AUTRY, DEATH BY CHINA: CONFRONTING THE DRAGON—A GLOBAL CALL TO ACTION (2011).
11. ROSA M. LASTRA, THE RULE OF LAW IN MONETARY AFFAIRS (2014).
12. SURJIT S. BHALLA, DEVALUING TO PROSPERITY: MISALIGNED CURRENCIES AND THEIR GROWTH CONSEQUENCE (2012).

(III) Online Resources

1. James Quinn, Wall Street Correspondent, China's yuan 'set to usurp US dollar' as world's reserve currency, 7:46PM BST 14 May 2009 *available at* http://www.telegraph.co.uk/finance/financialcrisis/5325805/Chinas-yuan-set-to-usurp-US-dollar-as-worlds-reserve-currency.htmlaccessed on 05.April.2016.

2. Jamil Anderlini, China calls for new reserve currency, *available at* *http://www.ft.com/intl/cms/s/0/7851925a-17a2-11de-8c9d-0000779fd2ac.html#axzz46SXAx7fz*accessed on 05.April.2016.

3. China parliament ratifies $100 bn Asian Infrastructure Investment Bank, November 4, 2015, 9:29 am *available at*http://thebricspost.com/china-parliament-ratifies-100-bn-asian-infrastructure-investment-bank/#.Vt_AN5x97IU accessed on 05.April.2016.

4. America's Jobless Recovery: The big picture, Aug 3rd 2012, 13:56 BY R.A. | WASHINGTON, available at http://www.economist.com/blogs/freeexchange/2012/08/americas-jobless-recovery accessed on 05.April.2016.

5. Special Drawing Right (SDR) Factsheet, International Monetary Fund, available at https://www.imf.org/external/np/exr/facts/pdf/sdr.pdf accessed on 05.April.2016.

6. Clarifying the Concept of Reserve Assets and Reserve Currency, Page 4, Prepared by the Statistics Department, INTERNATIONAL MONETARY FUND, BOPCOM—15/14, October 27–29, 2015, available at, https://www.imf.org/external/pubs/ft/bop/2015/pdf/15-14.pdf accessed on 05.April.2016.

7. The International Monetary Fund and Current Account Convertibility, IMF Resources, *available at*https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0CCcQFjACahUKEwjciKvQqunIAhWFpYgKHUixBU4&url=https%3A%2F%2Fwww.imf.org%2Fexternal%2Fnp%2Fleg%2Fsem%2F2004%2Fcdmfl%2Feng%2Felizal.pdf&usg=AFQjCNHxYNpOWoIZyNwa05JUdoNHbK-4Tg&sig2=eLsWwwRsCjgxQf3QaU4Ogg&bvm=bv.106379543,d.dGY accessed on 05.April.2016.

8. BOP/W/51, p. 4, paras. 9-10, Cited in ANALYTICAL INDEX OF THE GATT, ARTICLE XV, INTERPRETATION AND APPLICATION OF ARTICLE XV, Page 436, available at https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art15_e.pdf

9. ANALYTICAL INDEX OF THE GATT, ARTICLE XV, INTERPRETATION AND APPLICATION OF ARTICLE XV, Page 436, available at https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art15_e.pdf

10. SUBSIDIES AND COUNTERVAILING MEASURES: OVERVIEW, *available at* *https://www.wto.org/english/tratop_e/scm_e/subs_e.htm*accessed on 05.April.2016.

11. SUBSIDIES AND COUNTERVAILING MEASURES: OVERVIEW, *available at* *https://www.wto.org/english/tratop_e/scm_e/subs_e.htm* accessed on 05.April.2016.

12. WTO ANALYTICAL INDEX: GATT 1994, General Agreement on Tariffs and Trade 1994, available at, https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_06_e.htm ; TEXT OF ARTICLE XVI AND INTERPRETATIVE NOTE AD ARTICLE XVI, available at https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art16_e.pdf

13. TEXT OF ARTICLE XVI AND INTERPRETATIVE NOTE AD ARTICLE XVI, *available at*https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art16_e.pdf

14. Basics, The GATT years: from Havana to Marrakesh, *available at,* *https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm*

15. The WTO in Brief: Part 1, The multilateral trading system—past, present and future, *available at*https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr01_e.htm

16. Yuan Yuan, Intervention at Session 2 of Day 1: Transition from Accession to Membership—Maximizing the Benefits of WTO Membership and Global Economic Integration, Third China Round Table on WTO Accessions, *p.2*, available at https://www.wto.org/english/thewto_e/acc_e/Session2YuanYuanPostAccessionLookingback14yearafter.pdf accessed on 05.April.2016.

17. Background Document of IMF, Cooperation Between the IMF and the WTO, *p.78*, *Available at* http://www.ieo-imf.org/ieo/files/completedevaluations/Background%20Document%202.pdf accessed on 05.April.2016.

18. Brazil in 'currency war' alert, *Available at*, http://www.ft.com/intl/cms/s/0/33ff9624-ca48-11df-a860-00144feab49a.html#axzz3zDWZjMUs , Brazilian Finance Minister Warns of 'International Currency War', *Available at*, http://www.ictsd.org/bridges-news/bridges/news/brazilian-finance-minister-warns-of-%E2%80%98international-currency-war%E2%80%99 .

19. Currency War of 2009–11, *available at*, https://en.wikipedia.org/wiki/Currency_War_of_2009%E2%80%9311

20. A bigger bazooka, http://www.economist.com/blogs/banyan/2014/10/japans-quantitative-easing accessed on 05.April.2016;

21. Will Quantitative Easing Be Japan's Savior?, *Available at*, http://www.investopedia.com/articles/investing/041913/will-quantitative-easing-be-japans-savior.asphttp://www.wsj.com/articles/rate-rise-bets-heat-up-after-fed-minutes-1447890850 accessed on 05.April.2016;

22. Japan announces "new dimension" in quantitative easing, *Available at*, https://www.wsws.org/en/articles/2013/04/06/japa-a06.html accessed on 05.April.2016,

23. Japan aims to jump-start economy with $1.4tn of quantitative easing, *Available at*, http://www.theguardian.com/business/2013/apr/04/japan-quantitative-easing-70bn accessed on 05.April.2016.

24. India Is Prepared for a Fed Rate Rise But Could Still Catch Cold, *Available at*, http://blogs.wsj.com/indiarealtime/2015/12/16/india-is-prepared-for-a-fed-rate-rise-but-could-still-catch-cold/ accessed on 05.April.2016.

25. WSJ Survey: Economists Still See Fed Rate Increase in 2015, *Available at*, http://www.wsj.com/articles/wsj-survey-economists-still-see-fed-rate-increase-in-2015-1444312800 accessed on 05.April.2016.

26. Economists still see Fed rate rise before year-end, *Available at*, http://www.ft.com/intl/cms/s/0/be1ba54e-7459-11e5-bdb1-e6e4767162cc.html#axzz3zDWZjMUs , accessed on 05.April.2016.

27. Rate-Rise Bets Heat Up After Fed Minutes, *Available at*, http://www.wsj.com/articles/rate-rise-bets-heat-up-after-fed-minutes-1447890850 accessed on 05.April.2016.

28. Robert E. Scott and Josh Bivens, Economic Policy Institute, Report on Trade and Globalization, *available at* *http://www.epi.org/publication/pm116/*accessed on 05.April.2016.

(IV) Web links

1. https://www.imf.org/external/np/exr/ib/2000/062300.htm accessed on 05.April.2016.

2. *https://www.imf.org/external/np/sec/pn/2007/pn0769.htm*accessed on 05.April.2016.
   http://www.fas.org/sgp/crs/row/RS21625.pdf

3. http://www.cnbc.com/2015/09/07/china-foreign-currency-reserves-fall-by-record-amount-in-august.html

4. http://www.chinacurrencycoalition.org/petition.html

5. http://www.piie.com/publications/papers/paper.cfm?ResearchID=747

6. http://www.brookings.edu/opinions/2007/0614globaleconomics_brainard.aspx

7. www.ssrn.com

8. http://www.jstor.org

9. http://finance.senate.gov/sitepages/leg/LEG%202009/012209%20TFG%20Questions.pdf

10. http://nytimes.com/2009/01/23/business/worldbusiness/23treasury.html?_r=1

11. http://www.treas.gov/offices/international-affairs/economic-exchange-rates/

12. http://www.accruent.com/Documents/Articles/Economist_Trading_Down_0509.pdf

13. http://www.ustr.gov/countries-regions/china

14. http://www.marketoracle.co.uk/Article11046.html

15. http://www.bloomberg.com/apps/news?pid=20601070&sid=apSqGtcNsqSY&refer=politics

16. http://news.smh.com.au/breaking-news-world/us-lawmakers-target-china-currency-policy-20090514-b408.html

17. http://schumer.senate.gov/new_website/record.cfm?id=260875&

18. http://www.cato.org/pub_display.php?pub_id=3946

19. http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/12/19/000020953_20071219140301/Rendered/PDF/418560CHA0Liberalization0WP401PUBLIC1.pdf

20. http://www.pbc.gov.cn/english/detail.asp?col=6400&ID=542

21. http://fpc.state.gov/documents/organization/57797.pdf

22. http://www.iie.com/publications/papers/mussa1007.pdf

23. http://www.imf.org/external/np/sec/pr/1996/pr9658.htm

24. http://www.kingandwood.com/en/article/revolution-in-chinas-foreign-exchange-control-10-china-bulletin-2009

25. http://www.brookings.edu/~/media/Files/rc/articles/2005/06globaleconomics_mckibbin/20050610.pdf

26. http://www.reuters.com/article/usDollarRpt/idUSWAT01129420090416

27. http://www.economist.com/finance/displaystory.cfm?story_id=13059709

28. http://www.imf.org/external/np/pp/eng/2006/083006.pdf

29. http://www.bls.gov/iag/tgs/iag31-33.htm

30. http://www.thehindubusinessline.com/2007/10/20/stories/2007102050720800.htm

31. http://www.imf.org/external/np/sec/pn/2007/pn0769.htm

32. http://www.thehindubusinessline.com/2004/10/01/stories/2004100101960800.htm

33. http://www.imf.org/external/np/sec/pn/2007/pn0769.htm

34. http://www.imf.org/EXTERNAL/PUBS/FT/FANDD/2007/09/xiaolian.htm

35. http://www.foreignaffairs.com/articles/60825/neil-c-hughes/a-trade-war-with-china?

36. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=115467

37. http://www.faircurrency.org/presscenter/survey_of_views0407.pdf

Curriculum Vitae

AJIT KAUSHAL

LL.M (INTERNATIONAL BUSINESS LAWS), NATIOANL UNIVERSITY OF SINGAPORE (2011 – 12).

Email: ajitkaushal1@gmail.com
Contact No: +91 8126302083.
DOB – 7th May 1979

Education

- B.COM (Hons.), with Accountancy from Patna University (India)
- L.L.B from Campus Law Center, University of Delhi. (2004 to 2007)
- **1 Year PG Diploma in Corporate Laws and Management**, ILI (Supreme Court of India), New Delhi. (2008)

- **Master in International Business Laws (Completed)** (National University of Singapore, Shanghai ECUPL Campus) (2011 – 12).
  Subject studied – Comparative Corporate Gov. (US, Singapore, China, and UK), Contract Drafting (Oil & Gas), Choice of Law (International Commercial Contract), International Commercial Arbitration and Contract, International Taxation, Cross – Border Transactions, International Trusts, Intellectual Property Rights.

- ***Pursuing PhD*** (Chinese Currency Manipulation), from UPES, Dehradun.

- ***List of Publications:***
  1. Currency Manipulations and Poverty, Edited volume in the memory of Justice Krishna Iyer entitled "Humanitarian Jurisprudence, Rule of Law and Constitutionalism: Contemporary Issues and Challenges" Satyam Law International, New Delhi.
  2. Currency War and International Trade Law: A Legal Perspective, IUP, Vol 4 @2015 IUP.
  3. An Overview of the Existing IMFLegal Regime, Sales, Sales Tax (VAT) Journal, 2015 (65) Part – I.

Work Experience - 8 YEARS

University of Petroleum and Energy Studies, Dehradun (Faculty of Law)

Position - Senior Lecturer

Duration – Since Nov. 2, 2012 to till date.

Roles and Responsibilities –

Teaching Law (Corporate Laws).

Duane Morris & Selvam LL.P, Singapore (An International Law Firm)

Position - Intern

Duration – 2 weeks (Sept. 12 – Sept. 23, 2011)

Roles and Responsibilities –

Drafting of production sharing contract for an oil company of China, worked upon the dispute resolution for Oil Company.

Thomson Reuter Corp. – A US based company, Delhi (India)

Position – Associate

Duration – 7.5 Moths (15 Nov. 2010 to 29th June 2011)

Roles and Responsibilities –

- Worked upon US laws;
- Software Licensing Contract (trainee).
- e – Discovery (litigation support) – Prepared the process of discovery in US – UK law environment; worked for litigation document review of various cases in UK & US. Reviewed documents on various legal databases such as Kroll and Relativity.

Mindcrest India Pvt. Limited, A US based company, Pune (India).

Position – Senior Attorney Associate -2 (Research and Training)

Duration – 3years and 2 months (3rd Sept. 2007 to 3rd Nov. 2010)

Roles and Responsibilities –

- Research and training, preparation of training materials.
- Made extensive case research on Lexis – Nexis & Bloomberg Legal Databases.
- Made extensive case research on progression of the cases in the US courts for the development of a legal database, performed in depth legal research on the cases of United States jurisdictions and decided their history in various courts **and provided training to the newcomers – both project related and fundamentals of contract and company laws.**
- Federal and State Court structure.
- Preparation of case summary.

Technical Skills

- Microsoft Office
- Bloomberg ® and Lexis/Nexis ® on-line research systems

AJIT KAUSHAL