CHAPTER IV

THE BILL H.R 2378

The bill H.R 2378 is the bill was proposed by session of congress, in the United States on May 13, 2009. It was passed on to the House committee and the Senate Finance committee on September 28, 2010, on that day, it was passed on to the House of Representatives by 348 votes in favour, 79 opposed and 6 abstains[52]. The congress was pioneered by Tim Ryan and Murphy with the aim to protect the United States from Yuan currency exchange in economic sector.

The House bill in 1930 amended the Tariff Act which requires the President's administration to: Define a policy based on the requirements that have been determined, if the exchange rate of a State who perform export trade or in the form of services to the United States was "fundamentally and actionably undervalued or overvalued "against the American dollar for an 18-month period. If this happens, the United States Government must decide a form of "countervailing duty or antidumping duty" in order to offset such a misalignment.

Bill HR 2378 was designed to adapt the anti-dumping and countervailing conducted by the Ministry of commerce for the purpose of seeing where a currency does not obey the rules. Another hand, it is called by undervalued. This bill is not the task of the department of commerce raised serious concerns under the United States

[52] http://en.wikipedia.org/wiki/Currency_Reform_for_Fair_Trade_Act_2010
Internet Accessed on 10 March 2011

in WTO obligations. In addition, the bill is expected to have two effects on trade in the United States, namely[53]:

1. Export subsidy

2. Benefit conferred

"H.R. 2378 changes the definitions related to the second tests, but leaves untouched the definition of "financial contribution".

The United States Government policy issue on export subsidy protecting the industry sectors in the United States so that it can compete with other competitors, especially China. This policy is issued by the United States Government which expects to increase the United States export volume in the future because the United States domestic products can compete with other products coming from overseas. Benefit conferred is the policy which concern on how the goods coming from China should not be distributed massively in the United States with the low prices because it would damage the domestic market of the United States. Through the bill H.R 2378, the United State has expectation to protect the industry in the United States from a huge China hegemony.

The confrontation between the United States and China over currency policy illustrates a broader phenomenon: exchange-rate misalignments tend to increase trade protectionism. Here, this research wants to demonstrate the effects of exchange rates on protectionism in several ways. First of all, the aggregate protectionist activity in

[53] http://www.gop.gov/bill/111/2/hr2378
Internet Accessed on 10 March 2011

the United States (as a measurement of anti-dumping petitions and trade legislation in Congress) is positively related to the level of the real exchange rate. Secondly, the protectionist response to exchange rates varies by industry.

The combination of four specific characteristics in industrial sector create whether an industry favors (opposes) industry to specific protection during appreciations: the share of exports in industry revenue, the share of imports in domestic consumption, the share of imported intermediate inputs in total loss, and the level of exchange .The steel industry, for example, is very sensitive to exchange rate movements because it passes through which is low in metals processing industries and firms must absorb the loss of exchange rate changes in margin profits. Thirdly, the lobbies and congressional voting patterns on H.R. 2378, The Currency Reform for Fair Trade Act, which would impose trade barriers on nations with misaligned currencies, reflect the differential impact of exchange rates across industries, in which exporters and import competing industries explicitly lobbied the legislation while non-traded good producers, importers, and users of imported intermediate products lobbied against it[54].

[54] http://ncgg.princeton.edu/IPES/2010/papers/S200_paper1.pdf
Internet Accessed on 10 March 2011

A. THE PROCESS OF BILL H.R 2378

RMB (Renminbi) is the official currency that today is prevailed by China as the world's exchange rate. RMB represents Chinese government's policy as facilities to protect China's product in the global market. RMB currency rate policy is settled lower than the other value of currencies because Yuan could survive in the global crisis despite the impact on Chinese exports which is cheaper than in the other state. In addition, the excess of RMB policy settled by the Chinese government made the policy of import from abroad to China tend to be more expensive due to undervalued of Yuan. In June 2010, the Chinese government allows RMB to strengthen less than 2 percent against the dollar.

Economists from the United States took the hypotheses that the RMB policy adopted by the Chinese government has given the economic growth in The United States which affected the trade balance deficit in The United States indirectly because the product could not compete with the products from China. However, other Economists suggest that even if China allows its currency to rise the value of Yuan toward U.S. dollar, the United States economy would stay in deficit condition. This is because the market in the United States is already in crisis, especially in structural and administrative sides.

In fact, the policy implemented by China government plans to support the companies which exist in China to compete with other companies coming from overseas. Not only using the RMB, China also used a multitude of non-tariff barrier to build "national champion" for China companies that will compete directly with foreign competitors. For example, in order to enter the China market, foreign companies are often forced to share appropriate technology with domestic China firms.

The policy determined by the Chinese RMB is harmful that suffered by The United States commerce, this case was proven by deficit when the United States traded with China in post 2000 to 2009. Tim Murphy and Tim Ryan put forward a resolution that the International Commerce Commission being difficult to the China when Chinese RMB determined the product would weaken with US dollar of the United States product which cannot compete with products from China. In this case, Murphy's team said the demand in the resolution to a simple point, "If china is found to be manipulating their currency by the International Trade Commission, for the purpose of unfair trade practices, the ITC could put upon them tariffs to bring the loss of their goods back in line[55] ."

Murphy also argues that: "protect domestic manufacturers and the steel industry from countries unwilling to Compete Fairly in the global marketplace." One of Murphy fear the weakening of Yuan in the international markets could make the United States economy becomes less than 40 percent. On the other hand, Murphy also believes that currency manipulation by China government will weaken its currency become an obstacle for the smooth economy of the United States. Thus, Yuan currency is indirectly facing and hampering the United States dollar in the

[55] wduqnews.blogspot.com/2010/09/murphy-rallies-for-hr-2378.html
Internet Accessed on 11 March 2011

international world. In September 2010, the United States Department of Commerce issued the several policies, which are[56]:

1. At the beginning of the month, Import Administration, the US Department of Commerce (DOC) agency is tasked with enforcing US antidumping (AD) and countervailing duty (CVD) laws, unleashed a proposed "trade law enforcement package," comprised largely of technical changes in AD/CVD policies and regulations focused on China. If it is implemented, the proposed AD/CVD-related changes could make it more difficult for China exporters to access and remain in U.S. market.
2. On September 9th, United Steelworkers Union (USW) filed with U.S. Trade Representative (USTR), a Section 301 petition alleging "unfair" China government support for China's clean energy sector. The petition calls for Obama Administration to initiate WTO dispute settlement proceedings aimed at ending the China government's subsidies and other programs that the USW believes make it difficult to compete with China for green-technology market share and jobs.
3. On September 29th, U.S. House of Representatives approved a bill authorizing DOC to impose countervailing duties on importing from countries, including China, deemed to have fundamentally "misaligned"

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56 www.whitecase.com/files/Publication/a5b790c9-3b24-4e77-bc23-33e215daf119/Presentation / Publication Attachment/ce0d85cf-29b6-497d-aca6-3849b3c12492/ China Regulation Business Trade and_Competition _Bulletin_October_2010.pdf
Internet Accessed on 11 March 2011

currencies. Even if the House bill, or some version of the bill, did not become law, Obama Administration will be under increasing pressure from U.S. labor unions and manufacturers to address undervaluation of the China currency.

B. PACKAGE OF TRADE LAW ENFORCEMENT

President Obama takes the initiative to provide the solution as the impact of commerce deficit of the United States toward China by Non-Export initiative (NEI), in this case, the Department of Commerce shown two ways: anti-dumping (AD) and countervailing duty (CD). Department of Commerce is trying to run what they want as the president Obama initiatives is anti-dumping and countervailing duty in order to protect domestic industry. In the United States which will be facilitated in terms of export and to be competed then Chinese products. In this case, The United States government put on non-export initiative, specifically involving anti-dumping program toward China known by non-market economy (NME).

Department of Commerce wants to run non-market economy and anti-dumping by refusing the production loss of individual exporters and calculating the margin of AD, the value of material exporter. Based on that, NME puts forward by president Obama DOC has several main objectives, which are[57]:

1. Adding additional right and handling charges to surrogate loss:

2. Deducting export taxes and VAT from exporters' selling prices, thus increasing overall AD margins;
3. Adding employee benefit loss and taxes to surrogate labor rates and;
4. Tightening restrictions in which NME exporters can substitute their own market economy material purchase prices for less favorable surrogate loss.

Finally, Department of Commerce shows the policy pursued by the good plan about industry in the United States. Meanwhile, within the present time DOC also begins to implement some proposals in terms of AD or CVD which expect that China cannot massively sell its product in the United States market. Then the products which are provided by the United States can survive over undervalued Yuan currency.

C. THE CONGRESS OF BILL H.R 2378

The emergence of HR 2378 contains a trade sanction toward China by the United States which made the situation between both countries being worse. The United States refused because they faced the trade deficit in commerce when trading with China. And, China did not easily accept the trade sanctions which were proposed by the government of the United States in strengthening Yuan. Bad relations between the United States and china were triggered by the approval of 348 members of the U.S. House of Representatives on HR 2378, Wednesday (29 / 9) in

Washington. It resulted in 79 rejections and 6 abstain from members in deciding H.R 2378[58].

The Bill of H.R 2378 was presented by The United States government to accomplish trade sanctions for state which is suspected of doing the manipulation in its currency exchange rate toward the U.S. dollar such as China. However, the actions of The United States government toward China in the term of trade sanctions by reasoning currency manipulation, were prevailed for the first time in the United States history.

However HR 2378 does not just impose the trade sanctions due to exchange rate manipulation. The United States government also suspected China for breaking the copyright of infringement and the imposition of tariffs and non-tariff recently which was proclaimed by the government of China toward products comes from the United States. Nancy Pelosi, the chairman of the U.S. House of Representatives argued that the United States toward China has increased about currency. In the past, the deficit was only U.S. $ 5 billion per year but now, the deficit is up to 5 billion U.S. dollars per week illustrating the United States suffering loss per year toward China.

At the end of 2000-2010, the United States government conducted a survey on its population and found the surprising result that there were 2 million jobs lost in the United States due to the collapse of industry in the United States caused by the

[58] http://bisniskeuangan.kompas.com/read/2010/10/01/03245086/.AS-China.Saling.Serang Internet Accessed on 23 March 2011

rise of China products in the United States. It is expected that by the imposition of trade sanctions HR 2378 will make the product from China increase 10 percent on price. Moreover, products in the domestic of the United States can compete and then the domestic industry can survive automatically which will create at least 1 million jobs in the United States. U.S. Treasury Secretary, Timothy Geithner and President Barack Obama said that China is not fulfilling the promise of reforming Yuan exchange rate, which is considered 40 percent weaker than the agreement, in which One U.S. dollar similar 6.8 Yuan.

D. CHINA CURRENCY LEGISLATION

China's government rejected legislation that was imposed by the United States with the aim to impose the sanctions on countries that manipulate its currency exchange rate such as China. In this case, China warned the United States that strengthening Yuan currency could trigger a bad trading relation between the United States and China; if the United States stands in its opinion that China manipulates its Yuan currency. In addition, China's government stated that the rules in the form of bill which was passed by the United States House of Representatives. On Wednesday (29/09/2010) violated the rules of the World Trade Organization (WTO)[59]. USA imposing sanctions is not objective because the United States only found the fault which was prevailed by China in this case. Finally, the United States did want to lose

[59] http://news.okezone.com/read/2010/10/01/213/377931/china-kecam-legislasi-as-untuk-yuan

their market in selling their product over China's product, even if The United States products were more expensive than products which are originating from China.

The Government of China assumed that the United States government suspected Yuan currency is about the undervalued currency which was done by the China's government. Another hand, one of the United States Member of Parliament argued that the China government maintained Yuan exchange rate for protecting and giving advantages to exporters from China at low level artificially. It was an unfair trade between both countries while the price of products which were originating from The United States could not compete with China's products because the price was not affordable. In addition, the United States administration has accused the government of China decline Yuan currency and gives the impact for The United States economy such as unemployment that was increasing during the trade with China. "*We strongly oppose the United States Congress approval of this rule,*" said Foreign Ministry Jiang Yu when interviewed by reporters in Beijing.

The policy applied by the United States government toward China in protecting US economic side. Moreover, the reasons for the undervalued of Yuan exchange rates will destroy the economic and have a negative impact for both countries. Meanwhile, China Commerce Ministry, Yao Jian, said that the United State Bill on Yuan was not consistent with relevant rules of WTO about anti-subsidy investigation on the grounds of the exchange rate. "China never made the currency undervalued to gain the United States in a competitive market for gaining the advantages". The United States could not use the trade deficit as the reason to adopt protectionism in trade.

The bill passed in the United States with the results of 384:79 voting, that voice is one of effort to take the citizens sympathy of the United States before the senate elections on November 2010. The question is whether this problem is really a problem that is problematic or only issues that were developed for political goals. As we know that, recent condition of the United States economy is declined and according to this case, the United States was looking on problem and aiming on resolve the problem itself. The example is the unemployment which reached 9.6 percent. While, the consideration of The United States and China relation are needed for increasing the economic. It cannot be imagined what would happen if the relation between both countries are no longer good. However, president Obama viewpoint that Yuan still undervalued and it caused an increasing deficit for the United States, especially in the trade sector with China.

Central Bank of China (the People Bank of China / PBOC) determines that Yuan exchange rate was allowed to trade at 6.7011 levels against the dollar. PBOC tolerates Yuan to move up or down 0.5 percent on the day when trading. Last week, while in New York, China Prime Minister, Wen Jiabao refused to submit to The United States which wants Yuan exchange rates to be strengthened. He mentioned, it would lead to bankruptcy of China companies and citizens would lose their jobs[60]. Towards the voting in the United States House of Representatives, PBOC promised to increase the flexibility of Yuan and gradually improve the exchange rate prevailing mechanism. Criticism also came from the United States businessmen in China because of Chinese efforts to impose sanctions on those votes will destroy trade relations with the United States.

E. CONTENT OF THE BILL 2378

According to International Monetary Fund, U.S. Commerce Department, and congressionally chartered of U.S. and China Economic and Security Review Commission, as well as many economists notes, China's currency, the Renminbi (RMB), is significantly undervalued as much as 40 percent by some accounts.

The protracted undervaluation of the RMB by the People's Republic of China contributes significantly to China's large trade imbalance with U.S., makes China's exports to U.S. artificially cheaper than if China allowed its currency to appreciate to its standard level, makes U.S. exports to China artificially more expensive in the China market, and hampers U.S. competitiveness in third-country markets where U.S. exports go head to head with China exports for sales. At the same time, dollar investments made in China receive an artificial bonus, promoting the outsourcing of American production and jobs.

As a result, products made in America have been undercut by China goods, which are effectively subsidized by China government's policy of manipulating the value of its currency. In an apparent effort to deflect the demands of its trading partners, Beijing announced that it was revaluing the RMB a few days before the opening of the G-20 summit in late June. Since that time, RMB has appreciated less than one percent on a nominal basis. China contravention of established trade laws has imposed significant hardship on American manufacturers and workers continues to imperil our economic recovery.

Economist, Paul Krugman has written that China exchange rate "is the most distortionary exchange rate policy any major nation has ever followed." Fred Bergsten of the Peterson Institute for International Economics believes that resolution of this issue could create as many as 1 million American jobs. A report by the Economic Policy Institute concluded that between 2001 and 2008, 2.4 million jobs were lost and thousands of workers were displaced in every U.S. congressional district as a result of China currency manipulation and unfair trade policies.

In its most recent report to Congress, U.S.-China Economic and Security Review Commission "recommend that Congress consider legislation that has the effect of offsetting the impact on the U.S. economy of China currency manipulation." It is critically important for their constituents and for their economy that they government the necessary tools to address this issue, and they argued to bring the Currency Reform for Fair Trade Act to a vote.

There are several content of Bill H.R. 2378, which are[61]:

Sec 1:

This Act may be cited as the ''Currency Reform''

Sec 2:

Findings.

Congress makes the following findings:

(1) The strength, vitality, and stability of the United States economy and, more broadly, the openness and effectiveness of the global trading system are critically dependent upon an international monetary regime of orderly and flexible exchange rates.

(2) Increasingly in recent years, a number of foreign governments have undervalued their currencies by means of protracted, large-scale intervention directly or indirectly through surrogates in foreign exchange markets, and this fundamental misalignment has substantially contributed to distortions in trade flows, unsustainable current account imbalances, and serious competitive problems for countries like the United States that permit their currencies to fluctuate in response to changes in market forces.

(3) This exchange depreciation serves as a subsidy for, and facilitates dumping of, exports from countries that engage in this mercantilist practice.

[61] http://www.gpo.gov/fdsys/pkg/BILLS-111hr2378ih/pdf/BILLS-111hr2378ih.pdf
Internet Accessed on 18 March 2011

(4) It is consistent with the agreements of the World Trade Organization and the International Monetary Fund that the United States trade law be amended to clarify and make explicit that fundamental undervaluation by an exporting country of its currency is actionable as a counter available export subsidy and alternatively can be offset by antidumping duties when injury to producers and workers in the United States is caused by such subsidized and dumped imports.

Sec 3:

Fundamental and actionable misalignment of a currency.

(a) Fundamental and actionable undervaluation of a currency purposes of subsection the currency of an exporting country is fundamentally and actionably undervalued:

1. the real effective exchange rate of the exporting country' currency is undervalued by at least 5 percent, on average, during an 18-month period that represents the most recent 18 months for which the information required under subsection is reasonably available, but that does not include any time later than the final month in the period of investigation or the period of review, as applicable

(2) During part or all of the 18-month period, the government of the exporting country has engaged directly or indirectly through surrogates in protracted, large-scale intervention in foreign exchange markets, and that intervention has involved the direct transfer of funds or the potential direct transfer of funds or liabilities

(3) During part or all of the 18-month period, the exporting country has experienced a significant and prolonged global current account surplus

(4) During part or all of the 18-month period, the exporting country has experienced a significant and prolonged bilateral current account surplus with the United States

(5) During part or all of the 18-month period, the foreign exchange reserves held or controlled by government of the exporting country have exceeded the amount necessary to repay its external debt obligations falling due within the coming 12 months, except that the requirement of this paragraph shall not be satisfied and no fundamental and actionable undervaluation shall be found as to the currency of an exporting country if the exporting country during any part of the 18-month period has been allowed under article XII or article XVIII, section B of the GATT 1994 (as defined in section 2(1)(B) of the Uruguay Round Agreements Act (19 U.S.C. 3501(1)(B)) to impose restrictions to safe guard its balance of payments