

CHAPTER I

Introduction

A. Background

China is the largest country in East Asia. China also becomes the most populous country in the world with over than 1,5 billion people which is meant that approximately a fifth of world population live in this country.¹ Thus, the government of China has a huge responsibility to take care of its people and guarantee their viability. The big number of citizens also result in a strict rivalry especially in economic. There should be a lot of work field available for the people. Therefore, no wonder that we knew Chinese people as hard workers because they should compete one another to survive and to keep their life viability.

Since 1979, China has reformed and opened its economy. The Chinese leadership has adopted a more pragmatic perspective on many political and socioeconomic problems, and has reduced the role of ideology in economic policy. China's ongoing economic transformation has had a profound impact not only on China but also on the world. The market-oriented which have been implemented in China over the past two decades have unleashed individual initiative and entrepreneurship. The result has been the largest reduction of poverty and one of the fastest increases in income levels ever seen. China today is the fourth-largest economy in the world. It has sustained average

¹ Central Intelligence Agency, The World Factbook, *China* (accessed on November 18, 2008); available from <https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html>

economic growth of over 9.5% for the past 26 years. In 2006 its \$2.68 trillion economy was about one-fifth the size of the U.S. economy.²

The effort to increasing the economic condition can't be separated from the export commodity of China. Trade data of 2007 showed that the export of China cost \$1.221 trillion with electronics; machinery; apparel; optical, photographic, and medical equipment; and furniture as their main export commodity.³ Thus, China has to maintain the good relation with other countries to keep the sustainability of its economic condition. One of them is United States of America. United States included as the biggest contributor to Chinese export. Many Americans also become the investor to the country. U.S. direct investment in China covers a wide range of manufacturing sectors, several large hotel projects, restaurant chains, and petrochemicals. U.S. companies have entered agreements establishing more than 20,000 equity joint ventures, contractual joint ventures, and wholly foreign-owned enterprises in China. More than 100 U.S.-based multinationals have projects in China, some with multiple investments. Cumulative U.S. investment in China is estimated at \$57 billion, through the end of 2007, making the United States the sixth-largest foreign investor in China. Total two-way trade between China and the United States grew from \$33 billion in 1992 to over \$386 billion in 2007. The United States is China's second-largest trading partner, and China is now the third-largest trading partner for the United States (after Canada and Mexico). U.S. exports to China have been growing more rapidly than to any other

² U.S Department of State, Bureau of East Asian and Pacific Affairs. *Background Note: China*. October, 2008(accessed on November 23, 2008); available from <http://www.state.gov/r/pa/ei/bgn/18902.htm>

³ Ibid

market (up 21% in 2005, 32% in 2006, and 18% in 2007). U.S. imports from China grew 12% in 2007.⁴

United States is the potential market for China and United States also depends on China's export since the products which are imported from China is no longer produced within United States. Although U.S and China have different state ideology, these countries have to manage good relation and create mutual cooperation in order to keep their economic sustainability. Beside the corporation, sometimes the disputes between these countries also emerge. The infringement of intellectual property rights did by Chinese become one of the factors. This piracy action results a massive loss to intellectual industries in a whole world.

The United States of America is one of the victims of Chinese intellectual property rights violation. U.S suffers a huge loss because many Chinese pirated their intellectual product. The protection of Intellectual Property Right is very important because it will allow the inventor to earn a return on their inventions and to provide incentive for the technology to develop. The intellectual property rights itself means a bundle of exclusive rights over creations of the mind, both artistic and commercial such as musical, literary, and artistic works, inventions, and symbols, names, images, and designs used in commerce.⁵ Intellectual Property means intangible rights protecting the products of human intelligence and creation, such as copyrights, works, patented

⁴ Ibid

⁵ *Intellectual Property* (accessed on November 23, 2008); available from http://en.wikipedia.org/wiki/Intellectual_property

inventions, trademark and trade secrets.⁶This right may give the copyright holder exclusive right to control reproduction or adaptation of such works for a certain period of time.⁷ According to the International Intellectual Property Rights Alliance, more than 80 percent of pirated goods come from China, costing U.S. firms \$3.5 billion in 2007 (compared to \$2.4 billion in 2006). A surprising fact tells that nine out of 10 digital video discs for sale in China are pirated copies, and the Motion Picture Association of America estimated that intellectual property rights violations cost the motion picture industry more than \$244 million each year.⁸ This violation of intellectual property cost a lot of loss to U.S especially in business and economy because it might be said that piracy is costing American jobs. And these things surely affect the relation between United States and China.

The intellectual property rights infringement become a serious problem which is needed to be solved. Protection of Intellectual Property Rights (IPR) in China is one of the more intractable and vexing issues in the U.S.-China relationship. From movies and music to books, medicines, designer accessories and software, one can find counterfeited copies of just about anything a typical consumer uses in daily life. American businesses are crying foul over the billions of dollars lost to counterfeiting in China. To be sure, it is not just foreign intellectual property rights that are infringed upon. There is a high level of infringement of Chinese domestic intellectual property by

⁶ Jeffrey Lehmann, "Intellectual Property" in *West Encyclopedia of American Law*, 2nd ed. Thompson Gale, MI 2005 p. 424

⁷ Arai Hisamitsu. *Intellectual Property Policies for the Twenty-First Century: The Japanese Experience in Wealth Creation*, WIPO Publication Number 834 (E). 2000

⁸ Mary Bono Mack, *China Must Show Respect for Intellectual Property Rights*. The Dessert Sun. August 23rd 2008.

other Chinese as well. Online piracy is also common thing, the illegal downloading of movies, software and music constitutes the most prevalent form of online piracy in China.⁹ The following numbers illustrate the scope of the problem:¹⁰ The Business Software Alliance estimates that in 2005, 86% of all software used in China was pirated, accounting for a \$3.9 billion dollar sales loss; The U.S. music industry estimates the market for sound recordings in China is almost 90% pirated, resulting in losses of more than \$200 million per year; Nine out of every 10 DVDs sold in China is an illegal copy, according to the Motion Picture Association.

The violation of intellectual property rights did by China needs a serious response and effective strategy because it made U.S suffer a huge loss. The effective strategies also need to be made because there are many challenges will be faced such as:¹¹

1. Counterfeiting Creates Economic Growth: the production of counterfeit in a massive amount in cities like Taizhou (auto parts), Chaozhou (cosmetics), and Wengang (pens) where people's livelihoods and the cities' economic prosperity are often dependent on some amount of counterfeiting.
2. Weak Enforcement: The collusion of local authorities, driven by the desire to get the economic profit from counterfeit products, leads to weak to non-existent IPR

⁹ Zhu Zhe, *Net Piracy Still Poses A Challenge*, China Daily, January 18, 2008, (accessed on 23 November 2008) available from http://www.chinadaily.com.cn/china/2008-01/18/content_6402839.htm

¹⁰ Committee of 100, Issue Brief, *Intellectual Property Rights and the World Trade Organization*, April 2007, (accessed on 23 November 2008) available from http://committee100.org/publications/publications_issue.htm

¹¹ *World Trade Organization Membership and Intellectual Property Rights* (accessed on January 15, 2009) available from http://www.aasc.ucla.edu/uschina/trade_wtoipr.shtml#three

enforcement. Despite periodic crackdowns, counterfeiting activities are merely driven underground, not eradicated.

3. People Want Cheap Goods: Continuing demand by consumers and tourists for cheaper versions of expensive/luxury goods.
4. Lax Penalties: Court fines and sentences are usually not hard enough to be a deterrent. Some judgment awards are too small to be able to pay for investigative and legal costs.

By facing these several problems which is faced in forcing the implementation of intellectual property right, United States Government needs good strategies. Since the U.S Constitution also rule on the protection of intellectual property in Article I, Section 8, Clause 8 reads, *“the Congress shall have power... to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries”*, U.S government has the obligation to protect the American intellectual property right.

Research Question

Chinese pirate many American products of intellectual such as software, CDs, music, movies, clothing and many more. As a result, American suffers from loss and did not get the royalty from their products. This will derive into a bad economic situation and the decreasing of American intension to develop their creativity. From the demand of many Americans which already distribute their idea or creation, Government respond it by doing many efforts to protecting their intellectual property rights from piracy in

China. Then it will derive a question: *How are the strategies of the United States of America government to protect the American Intellectual Property Rights in China?*

B. Theoretical Frameworks

1. Rational Actor Model

In this sub chapter, the writer will use 'model' as the tools to explain. Model is an abstraction of reality¹². For answering the question: what are the strategies of United States of America government to protect the American Intellectual Property Rights in China, it will be proper to use Rational Actor Model. According to Graham T. Allison, *model of rational actor views foreign politic as rational action of government or leader to determine the state behavior or to reach the goals.*¹³ The main consideration of this model is about win and loss. This model does not include the role the organization of the country or the politics of the country plays in the decision making of the nation-states. This model only recognizes the leader. The leader can then be examined for the decisions he makes assuming that he makes rational decisions.¹⁴ To determine the cause of nation's actions, Rational Actor Model may analyze: (1) the Goals and Objectives of the Nation, (2) the Alternatives, (3) the Consequences, and (4) the Choice the nation made.¹⁵ The Government, in this case, acts as the actor who acts rationally. Government is a group of people who govern a country or a state.¹⁶ Government also as an institution

¹² Mohtar Mas' oed, *Ilmu Hubungan Internasional: Disiplin dan Methodologi*, (Jakarta, PT. Pustaka LP3ES 1990)

¹³ Mohtar Mas' oed, *Ilmu Hubungan Internasional: Disiplin dan Methodologi*, (Jakarta, PT. Pustaka LP3ES 1990) p. 186

¹⁴ Graham T. Allison and Philip Zelikow. *Essence of Decision*. (New York: Longman,1999)

¹⁵ Ibid

¹⁶ Oxford Learner's Pocket Dictionary, 3rd ed. (Oxford: Oxford University Press,2000) p. 186

that established and enforces rules, provide services, and managed other affairs for a group of people.¹⁷ Thus, for deciding the foreign policies, government should identifies and analyze the option related with the problem. It has to estimate the consequences of each option. Then choose the best options which will bring benefits and close with the goals.

The infringement of intellectual property rights by China on American product cause huge losses to U.S. One of the U.S's economic goals is satisfactory rate of economic growth.¹⁸ Economic growth is measured by gross domestic product (GDP). Economic growth is defined as positive rate of change in real GDP. A satisfactory rate of economic growth is one where positive per capita rates of growth in real GDP take place. That is, the economy grows faster than the population, increasing standards of living for individuals in an economy. In practical terms, per capita economic growth should be around 1 to 1.5% for a satisfactory growth rate, most economists would say. In many cases, population growth is ignored to some extent. In those cases, a satisfactory rate of growth might be around 3% - a rate of growth that the United States has remarkably averaged for over 200 years.

Because of this IPR infringement, the rate of economic can not rapidly grow fast. Moreover, people will buy the imitation product and it will not give income to the intellectual property rights owner as well as United States. Thus, U.S government has to do a rational action to prevent the country from suffering more losses. U.S, moreover,

¹⁷ *The World Book Encyclopedia*. (Chicago: World Book Inc. 2007) p 282

¹⁸ *Economic Goals* (accessed on February 3, 2009); available from <http://www.sbea.mtu.edu/jrgale/EC3001/ECONOMICGOALS.htm>

arranges some action, MOUs, and forms a special agent to eliminate the IPR infringement in China. The aim of U.S government in doing this certain action is to demolish the circulation of illegal CDs, DVDs, clothing, software, etc. if the government does not do this certain action, the economic growth of United States will not grow and even worst it will lead them to the crisis.

2. Concept of Strategy

According to Jack C. Plano and Roy Olton, foreign policy is a strategy or action plan which is shaped by the decision makers of a state in confronting other state or other international political unit and controlled for reaching the specific national goals which is founded in the term of national interest.¹⁹

In line with the understanding of foreign policy, John Lovell gave the definition of strategy as any pre-designed set of moves, or series of decisions, in a competitive situation where the outcome is not governed purely by chance.²⁰

According to this concept, the decision makers are the autonomous and rational actor in confronting the international political problem, moreover, the foreign politic action of a state must be directed to reach one or more aims. And every single action taken should be purposed as a move to the goals. In this case, the decision makers

¹⁹ Jack C.Plano dan Roy Olton, *Kamus Hubungan Internasional*, (terj. Wawan Juanda), Putra A. Baradin, 1999, p 6

²⁰ John P.Lovell, *Foreign Policy in Perspective*, Holt, Reinalt & Winston, New York, 1970, p 65, in Mochtar Mas'oed, *Studi Hubungan Internasional:Tingkat Analisis dan Teorisasi*,PAU UGM, Yogyakarta, p.90

always try to maximize the result for their nation-state by examining many alternatives of the action which is fulfill the criteria of efficiency.

Government in United States is the representatives of the American which will serve the people and bring the nation to reach the goals. The Intellectual property right infringement did in China not only creates international economic problem but also international political problem. Moreover, the U.S government should decide the foreign policies to be directed in aiming a high economic condition. Thus, for deciding the foreign policies, government should identifies and analyze the option related with the problem. It has to estimate the consequences of each option. Then choose the best options which will bring benefits and close with the goals.

The obligation of U.S government to protect the intellectual property rights had written on the U.S Constitution Article I, Section 8, Clause 8 reads, "*the Congress shall have power... to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries*". And the effort to fulfill this obligation and to protect the national interest was implemented trough the cooperation rather than opposition. Opposing China hardly, such as declaring war or launch the missile, regarded ineffective and will spent more cost. Moreover, it will harm their bilateral relation also because China has the strong bargaining position toward U.S. trade. Thus, U.S. chosen the cooperation because it will be more effective without spent more cost, victim and would not harm their bilateral relation. It also would bring the good image of U.S. because they not attacking China but they defense the good thing that IPR should be protected and piracy should be eradicated.

The cooperation to strengthen the enforcement of IPR in China were implemented through multilateral and bilateral. Multilateralism in international politics means that a state pursues its interests and goals beyond its national borders, not alone, but in cooperation and coalitions with other states.²¹ Moreover, Bilateralism is a term referring to trade or political relations between two states.²² Thus, besides pushing China by themselves in bilateralism, U.S. also asked the other party to give more pressure toward China in order to protect intellectual property rights.

C. The Hypothesis

By the explanation of illustration and theory above, the writer offers the hypotheses on strategies of United States of America government to protect the American Intellectual Property Rights in China.

1. Bilateral: U.S and China arranged some MOUs and maximizing the U.S – China bilateral joint commission in settling the dispute related with American intellectual property protection.
2. Multilateral: in order to strengthen intellectual property protection, WTO appeared as the international organization which both, U.S and China, were the member of it. TRIPS as the international regime also push China to implement the intellectual property right regulation in their constitution.

²¹ *Multilateralism* (accessed on April 15th, 2009) available from; <http://www.nationmaster.com/encyclopedia/Multilateralism>

²² *Bilateralism* (accessed on April 15th, 2009) available from; <http://www.nationmaster.com/encyclopedia/Bilateralism>

D. The Range of Research

The main focus of this research is laid on the strategy of United States Government which is related with the protection of American intellectual property rights in People's Republic of China. These strategies are important to discuss since it will influence the relation between two countries. In this research, the writer will make limitation related to the cases from 1991 until 2007. The reason why the data is taken from 1991 is because it was the year when U.S and China started to sign the bilateral agreement related with intellectual property protection. Then, 2007 is also chosen as the limitation because at that time U.S and China held the conference and still discussing about intellectual property right.

After all, it does not cover the possibilities the writer will add another data beyond the time and explain other phenomenon which have a strong relation with the issue.

E. The Methodology of Research

In order to support this research process, the writer applies the deductive method. It means that theoretical frameworks and approaches are explored first then the hypothesis can be drawn. The hypothesis will be proven through data and analysis. Library research is chosen as the data collecting method in which the data are secondary sources. Therefore, all data are taken from books, scientific papers, magazines, newspapers, websites, electronic journals such as EBSCO and other relevant data. Those data will be analyzed with the theories that are determined before. It is to prove that the hypothesis is accurate and finally answers the core problem. Although this

paper uses secondary data, the author selects the accuracy and checks the reliability of the data to accomplish the trustworthy research.

F. The Composition of Research

The first chapter describes the brief explanation of the paper. It explains about the background and also the core problem that needs to be figured out. Besides, it also shows the framework of theories that are used to explain the problem on the paper and from the theories; it draws the hypothesis that will be proven in the next chapter. Furthermore, it also explains the objectives, range, method, and system of the research.

The second chapter will explain about the U.S foreign policy related with intellectual property rights in America. This chapter describes about the history of intellectual property rights in America, regulations and implementations.

The third chapter will explain about the U.S – China relation in the matter of intellectual property right issue. It describes about U.S – China dispute over intellectual property infringement and several American products which are pirated by China.

And the fourth chapter will explain about the strategy of U.S government to protect the American intellectual property right. It will be classified into bilateral way and multilateral way.

Then the last chapter will be the conclusion from the first chapter until the fourth chapter.