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Public-Private Partnership: The Chinese Dilemma

Henry GAO^{*}

As noted by Greg Shaffer in his book 'Defending Interests: Public-Private Partnerships in WTO Litigation', the US and EU have different approaches to public-private partnership in dealing with foreign trade barriers: the former tends to be more 'bottom-up', while the latter tends to be 'top-down'. Inspired by Shaffer's work, this article examines China's experience in establishing public-private partnership. Initially, China appeared to prefer the American approach by adopting the Rules on Trade Barrier Investigation (TBI), which empowers domestic firms to petition the government directly to launch investigation against foreign trade barriers. However, since 2005, China seems to have shifted to the European approach by adopting a 'Quadrilateral Coordination' system, which pools together the resources of the Ministry of Commerce, local government, and relevant industry associations to help affected individual firms to fight foreign trade barriers. The article analyses the pros and cons of the two systems, the political and social reasons for the shift, and how the new system has worked in practice with case studies. The article concludes with thoughts on the lessons we can draw on the relationship between the government and private firms in China, as well as how the public-private partnership will develop in China in the future.

1 INTRODUCTION

Like most other inter-governmental tribunals, the World Trade Organization (WTO) dispute settlement mechanism may only be used by the governments of its Members. However, as private firms are the main participants in international trade, they are the ones which will ultimately benefit or suffer from the results of the trade disputes. To help private firms protect their trade interests, several major WTO Members have established mechanisms to promote public-private partnership in international trade disputes. The two primary examples are the

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Trade Barrier Regulation of the EU and the Section 301 legislation in the US As noted by Greg Shaffer in his leading work, '[t]he US approach to public-private networks tends to be more "bottom-up", with firms and trade associations playing a proactive role. The EC approach tends to be "top-down," with a public authority (the European Commission) playing the predominant, entrepreneurial role'.¹ According to Shaffer, such divergent approaches reflects the different 'political and economic structures, administrative cultures, and traditions of government-business relations' in the US and Europe.²

Following its accession to the WTO, China also established a trade barrier investigation mechanism. However, for various reasons, the mechanism doesn't work well, as only two investigations have been conducted in the decade following its establishment. Instead, since 2005, the Chinese government seems to prefer another mechanism, i.e., the Quadrilateral Coordination mechanism, which has been used much more frequently. What are the reasons for the low usage of the TBI? What are the reasons for the shift from the TBI to the Quadrilateral Coordination system? What are the differences between the TBI and Quadrilateral Coordination system? How does the Quadrilateral Coordination system work in theory and practice? What does the shift in approach tell us about the nature of public-private partnership in China? In this article, we will explore these important questions, and examine their broader implications on the relationship between the public and private sectors in China in general.

2 THE TRADE BARRIER INVESTIGATION MECHANISM³

To help Chinese firms deal with trade barriers in foreign markets, the Ministry of Foreign Trade and Economic Cooperation of China (hereinafter 'MOFTEC') promulgated Provisional Rules on Foreign Trade Barrier Investigation in 2002.⁴ After three years of provisional application, it was finalized as Rules on Foreign Trade Barrier Investigation (hereinafter 'Rules') in 2005.⁵ According to the Rules, domestic firms may petition the Ministry of Commerce (hereinafter 'MOFCOM')⁶ to launch investigations into foreign trade barriers,⁷ which are defined as measures which violate international agreements, or impede, restrict or

¹ Gregory Shaffer, *Defending Interests: Public-Private Partnership in WTO Litigation* (Washington, DC, Brookings Institution Press, 2003) at 6.

² *Ibid.*

³ For a detailed discussion of the TBI mechanism, see Henry Gao, 'Taking Justice into Your Own Hand: The TBI Mechanism in China', *Journal of World Trade* 44, no. 3 (2010):633–659.

⁴ MOFTEC Order No. 31 of 2002, 23, Sep. 2002.

⁵ MOFCOM Order No. 4 of 2005, 2 Feb. 2005.

⁶ The MOFTEC was restructured in 2003 as Ministry of Commerce of the People's Republic of China (MOFCOM).

⁷ Articles 5–8.

harm China's exports or imports.⁸ If the MOFCOM agrees that the petition is well-founded, it shall launch an investigation.⁹ During the investigation, the MOFCOM may collect information in various ways, such as distributing questionnaires, holding hearings, consulting experts, or conducting field trips in the country under investigation.¹⁰ After investigation, if the MOFCOM determines that the measures indeed constitute trade barriers as defined above, it shall take necessary measures, such as holding bilateral consultations, initiating multilateral dispute settlement procedure, or take other appropriate measures.¹¹

Even though it was introduced with great fanfare, the TBI mechanism did not turn out as expected. In its eleven years of existence, the mechanism has only been invoked in two cases, i.e., the case on Japanese import quota on laver (seaweed) in 2004 and the case on US subsidies in the renewable energy sector in 2012.

In the Laver case, the applicant – Jiangsu Laver Association – filed a petition against the import restrictions on laver imports by Japan on 25 February 2004.¹² Under the Japanese regime, laver imports were subject to quota and licenses which were only granted to imports from Korea. The applicant argued that this violated, *inter alia*, the relevant provisions in the GATT, Agreement on Agriculture and the Import Licensing Agreement. The MOFCOM launched an investigation on 22 April 2004 and found that the Japanese measure indeed constituted a trade barrier in violation of its WTO commitments. During the investigation, MOFCOM held three rounds of consultations with the Japanese government from June to October. To help achieve a mutually acceptable solution, MOFCOM suspended the investigation in October and held many rounds of consultation with Japan. On 21 February 2005, Japan announced a new quota regime for laver imports. Under the new regime, the restrictions on the country of origin for dry and seasoned laver are abolished, and the overall global quota for dry and seasoned laver imports is set at 400 million sheets. As the new regime removed the inconsistency with WTO rules, MOFCOM terminated the investigation on 28 February 2005.¹³

In the *US – Renewable Energy Subsidy* case, the petition was filed by the China Chamber of Commerce for Import and Export of Machinery and Electronic Products and China New Energy Chamber of Commerce of the All-China Federation of Industry and Commerce on 24 October 2011. The applicants alleged that various subsidy schemes maintained by the US federal and state governments constituted prohibited subsidy under the Subsidy and Countervailing

⁸ Article 3.

⁹ Article 12.

¹⁰ Articles 19–22.

¹¹ Article 23.

¹² For a detailed discussion of the laver case, see Henry Gao, *supra* n. 3, at 643–649.

¹³ MOFCOM Announcement No. 10 of 2005, 28 Feb. 2005.

Measures (hereinafter ‘SCM’) Agreement. The MOFCOM launched an investigation on 25 November 2011.¹⁴ In the final decision issued on 20 August 2012, the MOFCOM concluded that the US measures indeed violated the obligations in the SCM Agreement and vowed to take relevant actions to compel the US to remove the WTO-inconsistent measures and provide fair treatment to Chinese renewable energy products.¹⁵ The case is now pending before a WTO panel.¹⁶

Given the high frequency of trade barriers affecting Chinese exports and the relative ease of the TBI procedure, the low usage of the mechanism seems to be puzzling. In a previous article, I noted the following reasons for the apparent anomaly:¹⁷

First, traditionally, private firms in China lack direct access to the government. When they encounter trade barriers abroad, they rarely seek to lobby government to take actions on their behalf but often choose to solve the problems in other ways.

Second, unlike their Western counterparts, the industry associations in China are usually semi-official organizations established by the government. As they are more interested in regulating rather than helping the firms, the private firms are usually reluctant to turn to them for help when they face trade barriers.

Third, until 2006, the Chinese government was quite reluctant to use the WTO dispute settlement system. Such conservative approach greatly reduces the credibility of the threat of WTO action and in turn the appeal of the TBI mechanism.

Fourth, in China, TBI is handled by a low-level division in the Bureau of Fair Trade in the MOFCOM. Moreover, there is no institutional coordination mechanism involving different ministries and agencies as in US and EU. Due to its low-rank and lack of coordination, it is hard for the TBI Division to take major initiatives and make important decisions on TBI activities.

3 THE NEW APPROACH: THE QUADRILATERAL COORDINATION MECHANISM

The lack of usage of the TBI mechanism does not mean that China is doing nothing to curb trade barriers. Instead, since 2004, China has been exploring another mechanism to help Chinese firms protect their interests abroad. As this

¹⁴ MOFCOM Announcement No. 69 of 2011, 25 Nov. 2011.

¹⁵ MOFCOM Announcement No. 52 of 2012, 20 Aug. 2012.

¹⁶ United States – Countervailing Duty Measures on Certain Products from China – Request for Consultations by China, WT/DS437/1, 30 May 2012.

¹⁷ Henry Gao, *supra* n. 3, at 649–655.

mechanism involves the cooperation of four parties, i.e., central government, local government, industry association, and individual firms, it has been dubbed as the 'Quadrilateral Coordination' mechanism by MOFCOM.¹⁸

3.1 THE MOFCOM REGULATION

The main legal basis for the mechanism is the Regulations on Responding to Anti-dumping Cases against Exports, which was promulgated by MOFCOM in 2006.¹⁹ The respective roles and functions of the four parties are defined in the Regulations as follows:

- (i) MOFCOM shall be responsible for the following:
 - (a) Formulate policies and measures to facilitate defence in anti-dumping cases.²⁰
 - (b) Collect information on foreign anti-dumping laws as well as information on new investigations or reviews through the trade offices in China's overseas missions.²¹
 - (c) Disseminate information on anti-dumping cases, such as the initiation of new investigations or reviews, the initiation of anti-offsetting or anti-circumvention investigations, or any other information that may have a major impact on the case.²² Such information is usually circulated to the local government and industry associations first for further dissemination to the responding firms.
- (ii) The industry associations shall be responsible for the following:
 - (a) Establish export statistics monitoring system and appropriate mechanism to collect information and provide feedbacks on foreign trade remedy cases;²³
 - (b) Organize training activities on anti-dumping laws on a regular basis;²⁴
 - (c) Provide assistance to responding firms on on-the-spot investigations by foreign investigating authorities and defence on technical issues

¹⁸ See Pei Yue, 'Mingque Siti Liandong zhong Sifang Zhize' ('Clarifying the Roles of the Four Parties in the Quadrilateral Coordination System'), *Guoji Shangbao* (International Business Daily), 28 Jul. 2006. See also MOFCOM Research Institute, 'Zhongguo Duiwai Maoyi 30 Nian' ['30 Years of China's Foreign Trade'] (Beijing, China Commerce and Trade Press, 2008), at 248.
¹⁹ MOFCOM Order No. 12 of 2006, 14 Jul. 2006.

²⁰ Article 5.

²¹ Article 18.

²² Article 6.

²³ Article 12.1.

²⁴ Article 11.

such as surrogate countries, market economy status and individual dumping margins;²⁵

- (d) Help organize firms to participate in hearings and conduct consultations and negotiations with foreign investigating authorities and relevant industry associations and firms;²⁶
- (e) At the request of responding firms, provide assistance on issues relevant to the negotiation of price undertaking agreements. If the price undertaking agreement or the agreement to cease exports needs to be signed by the government, the industry associations may provide suggestions to the MOFCOM;²⁷
- (f) Help firms seek judicial review on the anti-dumping measures in the investigating country;²⁸
- (g) Provide information on services provided by lawyers and establish database on lawyers;²⁹
- (h) Publish on a regular basis information cases due for administrative reviews in a given year on the websites of International Business Daily and the industry association;³⁰
- (i) When coordinating the response of responding firms, the industry associations shall consult MOFCOM in the following cases:³¹
 - (1) The value of the product under investigation is quite substantial;
 - (2) The market share of the product under investigation is quite substantial and has major impact in the investigating country;
 - (3) The industry associations cannot reach agreement on the coordination of the defence work and this may affect the result of the case;
 - (4) The investigating authorities apply discriminatory policy or investigating method against Chinese firms;
 - (5) Other important cases that merits consultation.
- (j) To facilitate the defence by member firms, the industry associations may establish special funds from its membership dues;³²
- (k) Coordinate the hiring of lawyers.³³

²⁵ Article 12.2.

²⁶ Article 12.3.

²⁷ Article 12.4.

²⁸ Article 12.5.

²⁹ Article 12.6.

³⁰ Article 12.7.

³¹ Article 16.

³² Article 11.

³³ Article 14.

- (1) If the responding firms request the industry association to coordinate the hiring of lawyers, the industry association shall hire lawyers on the basis of the principles of openness, fairness and transparency.
 - (2) If two or more law firms are involved in the same case because the responding firms select lawyers on their own, the industry association shall coordinate the work of the different law firms to ensure the effectiveness of the defence for the industry as a whole.
 - (3) If any lawyer or law firm causes adverse effects or harm to the interests of Chinese firms or industries during their representation, the industry association shall duly notify the responding firms.³⁴
- (iii) The local government shall be responsible for the following:³⁵
- (a) Inform the responding firms immediately upon receiving information from MOFCOM;
 - (b) Collect the data on anti-dumping cases involving local firms, establish system to receive and report the relevant information, and evaluate the impact of foreign anti-dumping actions to local exports;
 - (c) Organize training activities on anti-dumping laws on a regular basis;
 - (d) Formulate policies and measures on the basis of local conditions to facilitate the responses in anti-dumping cases;
 - (e) Coordinate the responses of local firms in anti-dumping cases at the request of industry associations.
- (iv) The rights and responsibilities of the responding firms are as follows:
- (a) If a firm exported the product under investigation to the investigating country during the period under investigation, it shall respond actively to the investigation;³⁶
 - (b) The firms shall regulate their export activities according to the law, help maintain export order in the industry, and collect and collate information on anti-dumping cases to report to the industry associations on a timely basis;³⁷

³⁴ Article 15.

³⁵ Article 17.

³⁶ Article 3.

³⁷ Article 8.

- (c) Responding firms shall enjoy the following rights:³⁸
 - (1) Decide the way to respond to the investigation,
 - (2) Hire lawyers according to their own preferences,
 - (3) Obtain from the industry association information on the overall progress of the investigation and the status of other responding firms,
 - (4) Obtain guidance and assistance on the response from the industry association,
 - (5) Provide advice or suggestions to the government on the discriminatory practices of the investigating authorities.
- (d) A responding firm shall not engage in any activities that may affect the legitimate interests of other responding firms or undermine the overall response of the industry.³⁹

3.2 THE ZHEJIANG RULES

In addition, various local governments also issued more detailed rules on the mechanism. The most representative among them is the Provisional Rules on Responding to Anti-dumping Cases against Exports (hereinafter ‘the Zhejiang Rules’),⁴⁰ which was issued by the People’s Government of Zhejiang Province in the same year as the MOFCOM Regulation. Compared with the MOFCOM Regulation, the Zhejiang Rules mainly focuses on the role of the local government and builds a well-functioning system that involves many different departments in the local government.

First, the Department of Commerce in the Provincial Government shall take charge of dealing with foreign anti-dumping measures against local exports.⁴¹ Its primary tasks include conducting research to formulate relevant policies for the province; guiding, administering and coordinating the relevant work for the province; strengthening the provincial working mechanism to deal with foreign anti-dumping measures; and other relevant work as directed by MOFCOM.⁴² In addition, it shall make adjustment plans for key industries and products on the basis of the anti-dumping pre-warning reports to guide the industrial restructuring.⁴³ Similarly, the Bureaus of Commerce at the county level and above shall take charge of the relevant work for its jurisdiction.⁴⁴

³⁸ Article 9.

³⁹ Article 10.

⁴⁰ Zhezhen Banfa No. 114 of 2006, 25 Aug. 2006.

⁴¹ Article 5.

⁴² *Ibid.*

⁴³ Article 6.

⁴⁴ Article 5.

Second, the other relevant departments shall also provide the necessary support, cooperation and assistance to firms and industry associations responding to foreign anti-dumping measures. The following departments are specifically identified by the Zhejiang Rules:⁴⁵

First, the local Commission on Development and Reform shall make the necessary adjustments and improvements to the industrial development plan of the province and guide the investment flow to fit with the latest developments in the local economic and social conditions and defence work against foreign anti-dumping measures;

Second, the local Department of Justice shall help train lawyers who specialize in responding to foreign anti-dumping measures and strengthen the regulation of legal practice in the field;

Third, the local Department of Finance shall strengthen the financial support, help accounting firms provide the accounting services in the response to foreign anti-dumping actions, and enhance trainings on anti-dumping-related matters for staff in accounting firms;

Fourth, the local Department of Personnel shall help train specialists to respond to foreign anti-dumping actions and nurture the necessary human resources;

Fifth, the local departments in charge of the approval of official overseas business trips and the issuance of exit documents shall help facilitate the approval of the delegations for responding to foreign anti-dumping actions and their applications for exit documents;

Sixth, the local Customs Administration shall strengthen the disciplining of firms with verified records of disrupting export order and violating industry agreements;

Seventh, the local Department of Inspection and Quarantine shall strictly enforce the quality standards on export products, establish a proper system to evaluate the integrity of export firms, and cooperate with firms and industry associations in the response to foreign anti-dumping actions;

Eighth, the administrative departments in charge of public security, civil affairs, agriculture, industry and commerce, ocean, and fisheries at the county level and above are also required to provide the necessary assistance on matters falling under their respective jurisdictions.

The Zhejiang Rules also include additional obligations for industry associations and exporting firms. In addition to assisting exporting firms to respond to the investigations, the industry associations shall help firms to petition the government to request consultations with the countries taking anti-dumping

⁴⁵ Article 6.

actions or resort to other multilateral channels, as well as exchange information with foreign industry associations and help firms to conduct consultations, negotiations or lobbying activities.⁴⁶ However, exporting firms shall not engage in disruptive practices such as price wars, and shall establish proper finance and accounting system and internal management system that conforms to the requirements of modern corporate system.⁴⁷

In addition to allocating specific tasks to different actors, the Zhejiang Rules further streamlines the working procedures through the following innovations:

The first is a pre-warning system for anti-dumping actions against local exports. Established by the industry associations with the guidance of government and the participation of firms, the pre-warning system aims to improve the sharing and exchange of information among the actors.⁴⁸ The pre-warning information covered by the system falls under three categories:⁴⁹ First, pre-warning on specific products, which is based on the analysis of the key data such as export quantity, price and growth rate of the product in question, the preference of the export market in using trade remedies measures, as well as the history of anti-dumping actions against the product. Second, pre-warning on the regulatory environment, especially the change on laws and policies on trade remedies measures. Third, pre-warning on the latest developments in specific cases. Such information is usually obtained through key firms or industry associations, but may also be obtained through foreign law firms or relevant information service providers.⁵⁰ Depending on the degree of urgency of the matter, the warning is denoted in red, amber or green.⁵¹ The highest level of warning is coded in red, which means that there is a real threat of initiation of anti-dumping action based on the current level of export.⁵² The next level is coded in amber, which means a potential threat of anti-dumping action.⁵³ The safest level is coded in green, which means that the threat of anti-dumping action is rather remote and exports may proceed as usual.⁵⁴

The second is strict time-limits for key steps in the process. For example, upon receiving important or urgent pre-warning information, the industry association shall report in writing to the Bureaus of Commerce at the county level

⁴⁶ Article 7.

⁴⁷ Article 8.

⁴⁸ Article 9.

⁴⁹ Zhejiang Department of Foreign Trade and Economic Cooperation, Guanyu Jianshe 'Duiwai Maoyi Yujing Jizhi Shifandian' de Gongzuo Zhidao Yijian (Guiding Advice on Establishing 'Foreign Trade Pre-warning Mechanism Models') (hereinafter 'Guiding Advice'), 29 Mar. 2007, Art. 2.2.

⁵⁰ *Ibid.*

⁵¹ Zhejiang Rules, Art. 10.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

and above within five working days,⁵⁵ which shall in turn report to the Bureau of Commerce at the higher level of government within three working days.⁵⁶ Similarly, when the responding firms and industry associations hire lawyers, they shall report to the provincial Department of Commerce the name, contact information, affiliated law firm, address and the name of the collaborative foreign firm within three working days.⁵⁷ After the end of every quarter, the Bureau of Commerce at the county level and industry associations shall prepare a summary report on the cases in the quarter and report to the provincial Department of Commerce within fifteen days.⁵⁸

3.3 THE MECHANISM IN ACTION

The mechanism works in either of two ways:

First, if the MOFCOM, through its overseas offices, first obtains information on the launch of foreign trade remedy investigations, it shall collect the information and inform the local government and the relevant industry associations. The local government and industry associations will then analyse the information, identify and inform the responding firms, and coordinate actions among them. The firms will then hire the lawyers and make the necessary preparations to respond to the investigations.

However, if the firm first obtains information about possible foreign trade remedy actions through its overseas office or foreign importers or distributors, it shall report the information back to the relevant industry associations. The industry associations will then report to the local government and MOFCOM, and coordinate the actions among the responding firms. Depending on the case, MOFCOM may also engage in consultations with the foreign authorities at the bilateral or multilateral level.

The operation of the mechanism in practice may be illustrated by the response of the Jiaxing producers in the iron and steel fasteners anti-dumping case, which was launched by the EU against China in November 2007.⁵⁹ The case affects a total of USD 760 million worth of exports from China. Among them, USD 320 million are exported from Zhejiang Province, with USD 97 million

⁵⁵ Article 9.

⁵⁶ Zhejiang Department of Foreign Trade and Economic Cooperation, Guanyu Guanche Zhixing <Zhejiangsheng Yingdui Chukou Fanqingxiao Zanzing Banfa> de Tongzhi ('Notice on the Implementation of Zhejiang Provisional Rules on Responding to Anti-dumping Cases against Exports') (hereinafter 'Implementation Notice'), 28 Nov. 2006, Art. 4.

⁵⁷ *Ibid.*

⁵⁸ Zhejiang Rules, Art. 18.

⁵⁹ European Commission, Notice of initiation of an anti-dumping proceeding concerning imports of certain iron or steel fasteners originating in the People's Republic of China, 2007/C 267/11, 9 Nov. 2007.

from Jiaxing, a city in Zhejiang Province. Right after the European Industrial Fasteners Institute lodged the complaint on 26 September 2007, the Jiaxing Fasteners Export and Import Industry Association (hereinafter ‘the Association’) learned the news from the Brussels office of the law firm Mayer Brown and notified its member firms in its monthly newsletter published on 22 October 2007.⁶⁰ The November newsletter made a special feature report which included five articles on the EU anti-dumping case.⁶¹ Before the initiation of the investigation, MOFCOM organized a national pre-warning seminar in Ningbo City to notify the firms and encourage the firms to respond to the investigation.⁶² On 2 November 2007, the Jiaxing Bureau of Foreign Trade also held a pre-warning meeting for the local firms.⁶³ As most of the ninety firms affected by the investigation are smaller firms, the Bureau suggested a collective response strategy, which was adopted by the association.⁶⁴ Pursuant to the strategy, the association hired Guogang Law Firm in Beijing along with its partner firm in Brussels – Crowell & Moring – on behalf of its members to contest the injury finding.⁶⁵ Guogang Law Firm also conducted a group session with the smaller firms to help them complete the EU questionnaire and save the cost of participating in the case.⁶⁶ In addition, six big firms also prepared their own responses.⁶⁷

In addition to helping firms preparing for the legal defence, the association also conducted lobbying activities both domestically and in Europe.⁶⁸ For example, in February 2008, the association sent a six-people delegation to Europe.⁶⁹ They lobbied the Commission officials, European importers (The Foreign Trade Association), distributors (European Fastener Distributor Association), user industries such as shipbuilders (Community of European Shipyards Associations), as well as members of the EU Anti-dumping Advisory

⁶⁰ Newsletter of the Jiaxing Fasteners Export and Import Industry Association, 2007 Vol. 10, 22 Oct. 2007.

⁶¹ Newsletter of the Jiaxing Fasteners Export and Import Industry Association, 2007 Vol. 11, 19 Nov. 2007.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Newsletter of the Jiaxing Fasteners Export and Import Industry Association, 2008 Vol. 1, 15 Jan. 2008.

⁶⁶ Interview with Yang Fengdan at the Jiaxing Fasteners Export and Import Industry Association, 21 Feb. 2013.

⁶⁷ *Ibid.*

⁶⁸ Zhu Zongwen, ‘*Fanqingxiao An Oumeng Zhongcai: 5 Niannei Pingjun Zhengshou 80% Fanqingxiao Shui*’ (‘EU Decided Final Anti-dumping Duty: Average Rate of 80% for the Next Five Years’), 21 Shiji Jingji Baodao [21st Century Business Herald], 3 Feb. 2009.

⁶⁹ Newsletter of the Jiaxing Fasteners Export and Import Industry Association, 2008 Vol. 3, 24 Mar. 2008.

Committee, such as Belgium and the Netherlands.⁷⁰ They also visited China's Mission to the EU, which created a special taskforce headed by Minister Counselor Yin Zonghua, advised the association, and participated in all their lobbying activities in Brussels.⁷¹ Back at home, the Director of the Jiaxing Bureau of Foreign Trade reported the latest development in the case to Director-General Jin of the Provincial Department of Commerce, who promised to report to MOFCOM and try to persuade them to put the case on the agenda of the China-EU High Level Economic and Trade Dialogue to be held in the following month.⁷²

When the Commission finally decided on 26 January 2009 to impose anti-dumping measures, the association fought back through three channels:

First is retaliatory measure. On 4 November 2008, the Commission indicated in its disclosure on definitive measures that high anti-dumping duties would be imposed on most Chinese exporters. The association held an emergency meeting together with the National Fasteners Association and sister associations from cities of Ningbo and Wenzhou on 15 November 2008.⁷³ At the meeting, the associations decided to retaliate with an anti-dumping investigation against European exports.⁷⁴ On 1 December 2008, along with the association, the National Fasteners Association submitted an application for anti-dumping investigation to MOFCOM, which decided to initiate the investigation on 29 December 2008.⁷⁵ In June 2010, MOFCOM announced that final anti-dumping duties ranging from 6.1% to 26% will be imposed on fasteners imported from EU.⁷⁶

Second is WTO litigation. When the Commission announced the definitive measures on 26 January 2009, the association issued a strong-worded statement on 3 February 2009 to express its 'total disagreement and strong dissatisfaction' against the EU measure and 'strongly urged the Chinese government to sue the EU in the WTO'.⁷⁷ Two days later, the official spokesperson for MOFCOM reiterated the strong dissatisfaction and said that 'China will study and evaluate the EU decision

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ Newsletter of the Jiaxing Fasteners Export and Import Industry Association, 2008 Vol. 11, 16 Nov. 2008.

⁷⁴ *Ibid.*

⁷⁵ MOFCOM Announcement 115 of 2008, 29 Dec. 2008.

⁷⁶ MOFCOM Announcement 40 of 2010, 28 Jun. 2010.

⁷⁷ Jiaxing Fasteners Export and Import Industry Association, 'Guanyu Jianjue Fandui Ouweihui dui Wo Jingujian Zhengshou Gaoe Fanqinxiaoshui de Shengming' ('Statement of Strong Opposition Against the High Anti-dumping Duty Imposed by the European Commission against Chinese Fasteners'), Newsletter of the Jiaxing Fasteners Export and Import Industry Association, 2009 Vol. 2, 4 Feb. 2009.

and reserve the right for WTO litigation'.⁷⁸ After several unsuccessful attempts to resolve the matter through bilateral dialogue,⁷⁹ China filed a formal complaint in the WTO on 31 July 2009.⁸⁰ In December 2010, the WTO Panel issued its report and found that the EU violated various provisions in the Anti-dumping Agreement and GATT.⁸¹ In July 2011, the Appellate Body Report also affirmed most of the findings of the Panel Report.⁸²

Third is judicial review. On 26 April 2009, Gem-Year and Jinn-Well Auto-Parts, the presiding member of the association filed a case against the council decision in the European Court of Justice.⁸³ After the General Court dismissed the case on 10 October 2012,⁸⁴ the plaintiff brought an appeal on 20 December 2012.⁸⁵ The case is currently pending in the European Court of Justice.

To ensure the effectiveness of its actions, the association also helped the firms with various follow-up actions, such as providing advice on the anti-circumvention regulations of the EU for firms which wish to invest in third countries and export through them,⁸⁶ urging firms to participate in the interim review⁸⁷ as well as the special review to implement WTO rulings.⁸⁸

⁷⁸ MOFCOM, Shangwubu Xinwen Fayaren jiu Oumeng Duihua Jingujian Caiqu Fanqingxiao Cuoshi Fabiao Tanhua' ('MOFCOM Spokesperson Talks about the EU Anti-dumping Measure against Chinese Fasteners'), 28 Jan. 2009, available at <http://www.mofcom.gov.cn/article/ae/ag/200901/20090106018746.shtml>.

⁷⁹ MOFCOM, Shangwubu Xinwen FayarenYaojian Guanyu Zhongguo jiu Oumeng Duihua Jingujian Fanqingciao Cuoshi Tiqi WTO Zhengduan Jiejue Jizhi xia Cuoshang Qingqiu Fabiao Tanhua, 31 Jul. 2009, available at <http://www.mofcom.gov.cn/article/ae/ag/200907/20090706433189.shtml>.

⁸⁰ European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China – Request for Consultations by China, WT/DS397/1, G/L/891, G/ADP/D79/1, 4 Aug. 2009.

⁸¹ Panel Report, European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China, WT/DS397/R and Corr.1, adopted 28 Jul. 2011, as modified by Appellate Body Report WT/DS397/AB/R.

⁸² Appellate Body Report, European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China, WT/DS397/AB/R, adopted 28 Jul. 2011.

⁸³ Action brought on 24 Apr. 2009 – *Gem-Year and Jinn-Well Auto-Parts (Zhejiang) v. Council*, (Case T-172/09), (2009/C 153/90).

⁸⁴ Judgment of the General Court of 10 Oct. 2012 — *Gem-Year and Jinn-Well Auto-Parts (Zhejiang) v. Council* (Case T-172/09), (2012/C 366/57).

⁸⁵ Appeal brought on 20 Dec. 2012 by Gem-Year Industrial Co. Ltd, Jinn-Well Auto-Parts (Zhejiang) Co. Ltd against the judgment of the General Court (Seventh Chamber) delivered on 10 Oct. 2012 in Case T-172/09: *Gem-Year Industrial Co. Ltd v. Council of the European Union*, (Case C-602/12 P), (2013/C 101/12).

⁸⁶ Newsletter of the Jiaxing Fasteners Export and Import Industry Association: Special Issue on Anti-circumvention (Fan Guibi Zhishi Zhuankan), 2009 Vol. 6, 8 May 2009.

⁸⁷ Newsletter of the Jiaxing Fasteners Export and Import Industry Association, 2012 Vol. 10, 26 Oct. 2012.

⁸⁸ See Newsletter of the Jiaxing Fasteners Export and Import Industry Association, 2012 Vol. 3, 1 Apr. 2012. See also European Commission, Notice regarding the anti-dumping measures in force on imports of certain iron or steel fasteners originating in the People's Republic of China,

4 A BETTER MODEL?

As we can see from the discussions above, the Quadrilateral Coordination mechanism benefits from several important innovations, which makes it a better model for public-private partnership than the TBI mechanism:

4.1 BETTER DESIGN

As mentioned earlier, the TBI mechanism is mainly a bilateral process that involves the firm at one end, and MOFCOM at the other. While the mechanism envisages the possibility of participation by industry associations, most national associations do not provide much help due to their bureaucratic nature. In contrast, by bringing in the local industry associations and local government, the Quadrilateral Coordination mechanism provides the perfect remedy to the design flaw of the TBI mechanism.

Historically, most national associations were established by the functional ministries, which were separate from MOFTEC (the predecessor of MOFCOM) and did not have expertise on foreign trade issues. To solve the problem, in the late 1980s, MOFTEC created seven associations specifically for importers and exporters of various products.⁸⁹ They are: China Chamber of Commerce for Import and Export of Textile and Apparel (CCCT), China Chamber of Commerce for Import and Export of Light Industrial Products and Arts-Crafts (CCCLA), China Chamber of Commerce of Metals Minerals & Chemicals Importers & Exporters (CCCMC), China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME), China Chamber of Commerce of Foodstuffs and Native Produce (CFNA), China Chamber of Commerce for Import & Export of Medicines & Health Products (CCCMHPIE), and China International Contractors Association (CHINCA). While they have much closer links with MOFCOM, they still have several problems. First, as we can see from their names, their scopes are too broad and many products under their coverage do not necessarily share the same traits. To reach a specific product, one has to go through many levels of bureaucracy. For example, steel fasteners, along with many other products such as ball bearings and chains, are under the jurisdiction of the Machinery Components Branch, which is one of the twelve different branches under the Department of Machinery Industry, which in turn is

following the recommendations and rulings adopted by the Dispute Settlement Body of the World Trade Organization on 28 Jul. 2011 in the EC – Fasteners dispute (DS397), (2012/C 66/06), 6 Mar. 2012.

⁸⁹ Xinhua, Qida Shanghui Jiaqiang Hezuo Gongmou Fazhan ('Seven Industry Associations Strengthen their Cooperation for Future Development'), 30 Dec. 2001, available at http://news.xinhuanet.com/chanjing/2001-12/30/content_219122.htm.

one of the three departments in the CCCME.⁹⁰ Thus, it is very difficult for them to effectively identify and protect the interests of specific products. Second, the national associations are typically based in Beijing and do not have branch offices in the provinces. This makes it hard for them to reach out to firms in trade remedies case, as most of them are based in distant provinces like Guangdong, Fujian and Zhejiang. Third, as they target trading firms, the memberships in these associations are typically limited to firms with foreign trade rights. Until the revision of the Foreign Trade Law in 2004, trading rights could only be granted after careful examination and approval from MOFCOM.⁹¹ The high threshold effectively limited trading rights as a special privilege among State-owned Enterprises (hereinafter 'SOE') and big firms. As they did not have trading rights, most small and medium firms could not join the associations.

In comparison, the local industry associations do not have these problems. First, their scopes are very narrow and tend to cover just a single product or several closely-related products, which range from fasteners to parasols and cigarettes lighters. Such high degree of specialization makes it easier for them to identify specific trade measures that might affect the industry. Second, as there are high degrees of specialization among different regions in provinces like Zhejiang and Guangdong, industries tend to concentrate in blocks in specific cities or counties. The establishment of local industry associations usually follows such pattern of specialization and they are typically based in the cities or counties where most of the major firms in the industry are located. This makes it easier for the associations to reach out to the firms. Third, unlike the national associations, the local associations accept both exporters and manufacturers as members, thus they are more representative of the interests of the industry as a whole.

Similarly, the local government is also better positioned than MOFCOM in dealing with the concerns of local firms or industries for several reasons. First, the interests of the local government are closely aligned with the interests of local firms or industries. If the firms do well, the region will have better economic growth, generate more government revenue, and officials will also enjoy better prospects of promotion. If the exports slow down due to foreign trade measures, the officials have to worry about unemployment, sluggish economy, or even demotion. In contrast, while MOFCOM is supposed to watch the export performance of the whole country, it is only one of several economic-related ministries in the central government and does not have responsibilities for the wellbeing of firms in particular regions. To the contrary, at times, it might even

⁹⁰ CCCME, Introduction to Our Organizational Structure, available at http://www.cccme.org.cn/Help/CCCME_Introduction.pdf.

⁹¹ See Henry Gao, 'China's Participation in the WTO: A Lawyer's Perspective', *Singapore Year Book of International Law* 11 (2007): 60–61.

sacrifice the interests of some region to safeguard the interests of the country as a whole. Second, as MOFCOM is only one of many ministries in the central government, the other ministries do not have to listen to them. Things are different at the local government level. As shown by the Zhejiang Rules, the other departments are required by the Provincial Government to cooperate with the work of the provincial Department of Commerce. This makes it much easier for the local government to help the firms. Third, as the local government is located in the same province or city as the firms, it is much easier for them to communicate or collaborate with the local firms. This is especially important for a country the size of China.

4.2 BETTER COORDINATION

Compared to the TBI mechanism, the Quadrilateral Coordination system provides a much better mechanism to coordinate the communication and collaboration among the actors to maximize the synergy of their partnership. Such coordination mechanism works at two levels:

4.2[a] *External Coordination*

This refers to the collaboration between the public sector and private sector, which is also what the Quadrilateral Coordination system is designed for. Among the four parties, MOFCOM and local government belong to the public sector, while the private firm and industry association belong to the private sector. Substantively speaking, the firms and MOFCOM are the two most important actors in the public-private partnership. The firms are familiar with the conditions of the foreign market and ultimately it is their interests that are at stake in trade remedies cases. However, MOFCOM has the best expertise on trade laws and WTO rules. It also has the exclusive power to hold bilateral consultations with the foreign government and bring WTO cases, which are often the most effective ways of dealing with trade barriers. However, as the experience of the TBI mechanism has shown, without a proper coordination mechanism, it is hard to have the two working together in real cases, let alone maximizing the synergy. In this regard, the industry association and local government play key roles in linking up the firm and MOFCOM.

The industry association maintains close links with all other three players. First, as the local associations are typically established by the local firms, it has very close ties to the firms. For example, the Jiaxing Fasteners Association was established in 2005 by Gem-Year and four other firms, all of which are major

players in the fasteners business.⁹² Second, the associations also maintain close relationship with the government. For example, when the association fought the battle against the EU anti-dumping measure, its Secretary General was Chen Lan, who was at the same time the Director of the Division of Fair Trade in the Bureau of Commerce of Jiaying City.⁹³ Up to now, the association is also housed in the same building as the Bureau of Commerce, where the government officials work just next door. Third, the associations also maintain good working relationship with the national associations, which are under the supervision of MOFCOM and thus have closer links. For example, in the EU anti-dumping case, the Jiaying Association worked together with the CCCME to petition the MOFCOM to retaliate by conducting anti-dumping investigation against EU exports and launching WTO litigation.⁹⁴

In contrast, while its link with the firms is weaker, the local government usually has strong links with the other two players. As mentioned above, its link with the industry association is reflected in the cross-staffing and sharing of facilities between the two. Also, it maintains close link with MOFCOM through the provincial Department or Bureau of Commerce, which is under the professional guidance of MOFCOM. To enhance the link, the MOFCOM also has Special Commissioner's Offices in a dozen key cities in China, which can assist the local governments on various trade issues.

4.2[b] *Internal Coordination*

Coordination also takes place among the actors within each sector. As mentioned above, this includes the collaboration between the local government and MOFCOM, as well as between private firms and industry associations. Moreover, each of the four actors also has their internal coordination mechanism. The best example is the division among different functional departments in the local government, as illustrated by the Zhejiang Rules mentioned above. Similarly, different departments within MOFCOM also have different tasks: the Economic and Commercial Offices in China's overseas missions are responsible for collecting information on foreign anti-dumping action, and, with the assistance by the Departments responsible for different regions, liaising with foreign governments, firms and industry associations; the Bureau of Fair Trade is responsible for coordinating the response to foreign anti-dumping actions, as well as conducting

⁹² Jiaying Fasteners Export and Import Industry Association, Qingkuang Jianjie ('About Us'), available at <http://www.jxfastener.org/newsview.asp?folderid=0%3FWW%3F32>.

⁹³ Interview with Yang Fengdan at the Jiaying Fasteners Export and Import Industry Association, 21 Feb. 2013.

⁹⁴ *Ibid.*

anti-dumping investigations against foreign imports; the Bureau of Industry Injury Investigation is responsible for the injury determination in such investigations; the Department of Treaty and Law, along with the Department of WTO Affairs, are responsible for WTO litigations against foreign anti-dumping measures. Among the industry associations, the local ones are responsible for organizing and coordinating the actions of firms in individual cases, while the national associations mainly focus on lobbying MOFCOM and working with their foreign counterparts. As to private firms, the smaller ones only need to submit the completed questionnaires and participate in the collective response, which usually contest only injury determination. As their stakes are smaller, they normally are not expected to hire lawyers on their own on top of the ones assigned by the industry association for the group. For bigger firms, however, they usually hire their own lawyers as they wish to obtain individual dumping margins as well. Also, to prevent the in-fight among the firms, they may not exclude other firms to participate in the response or try to undermine each other.⁹⁵

4.3 BETTER INCENTIVES

Trade remedies actions usually affect more than one firm from the same country. If one firm makes a successful defence, the other firms might be able to free ride. However, generally speaking, anti-dumping is less susceptible to free-riding problem than safeguards or subsidy-countervailing measures. The reason for this is because anti-dumping measures are supposed to be based on the individual dumping margins of separate firms, which are supposed to vary among different exporters. Nevertheless, this is not true in anti-dumping cases involving Chinese firms, as China is regarded as a non-market economy, and normal value is determined on the basis of constructed value in a surrogate country rather than the actual prices charged by individual firms in the home market.⁹⁶ While it is possible to claim market economy treatment under the anti-dumping legislations of some WTO Members such as the US and EU, the burdensome evidentiary standards make such effort worthwhile only for bigger firms. Moreover, the injury determination in anti-dumping cases is also based on the cumulative effects of all dumped imports rather than that of individual firms. Thus, many firms, especially smaller ones, still try to free-ride on the efforts of other firms.

To minimize free-riding problems, the Quadrilateral Coordination system also introduces both rewards and penalties for firms. For example, according to the

⁹⁵ Zhejiang Rules, Art. 12.

⁹⁶ Section 15(a) of China's WTO Accession Protocol, WT/L/432, 23 Nov. 2001. For a detailed discussion of the non-market economy issue, see Henry Gao, *supra* n. 91, at 55.

principle of ‘only those who participate in the defence shall reap the benefits’,⁹⁷ firms that actively participate in the defence shall receive preferential access to the allocation of export quota for the export market upon successful defence. There were also various schemes by the government providing monetary rewards to the firms participating in the defence, but many of them have been discontinued to comply with the rules under the SCM Agreement.

Other than not getting the rewards, the firms which fail to participate actively in the defence may also be subject to the following penalties: public reprimand and derogatory remarks in the credit record of the firm;⁹⁸ expulsion from industry associations, blacklisting and boycotting of firms caught quoting or selling products at below-cost prices;⁹⁹ and for extremely serious cases, revocation or suspension of qualification for earmarked funds for foreign trade promotion or eligibility to participate in various famous export brands programs.¹⁰⁰

4.4 BETTER INSTITUTIONS

Under the TBI mechanism, it is hard for the firms to develop strong partnership with MOFCOM as they only collaborate in individual cases on an ad hoc basis. To solve this problem, the Quadrilateral Coordination system introduces a comprehensive institutional framework, which is exemplified by the Foreign Trade Pre-warning Centre (hereinafter ‘the Centre’). This institutional innovation was first pioneered by Zhejiang Province,¹⁰¹ which also developed a set of guidelines with both qualitative and quantitative requirements.¹⁰²

First, the Centre shall be sponsored by an industry association that is representative of the local industry. The Centre shall cover more than half of the firms with at least USD 5 million worth of exports each;

⁹⁷ MOFCOM Regulation, Art. 6.

⁹⁸ Zhejiang Rules, Art. 21.

⁹⁹ Zhejiang Fasteners Industry Association, Fair Trade Department, Zuzhi Jigou yu Gongzuo Yuan (‘Organizational Structure and Plan of Action’), available at <http://www.zjfastener.org/doc/090829/gongpingmaoyi.htm>.

¹⁰⁰ Zhejiang Department of Foreign Trade and Economic Cooperation, Guanyu Guanche Zhixing <Zhejiangsheng Yingdui Chukou Fanqingxiao Zanxing Banfa> de Tongzhi (‘Notice on the Implementation of Zhejiang Provisional Rules on Responding to Anti-dumping Cases against Exports’), 28 Nov. 2006, Art. 5.

¹⁰¹ Feng Yuan, Zhejiang zai Quanguo Shuaixian Chengqi Duiwai Maoyi Yujingwang (‘Zhejiang Pioneers with the First Foreign Trade Pre-warning Network in the Country’), 14 Apr. 2008, Jingji Cankao Bao (‘Economic Information’), available at http://jjckb.xinhuanet.com/wzpd/2008-04/14/content_92892.htm.

¹⁰² Zhejiang Department of Foreign Trade and Economic Cooperation, Guanyu Jianshe ‘Duiwai Maoyi Yujing Jizhi Shifandian’ de Gongzuo Zhidao Yijian (Guiding Advice on Establishing ‘Foreign Trade Pre-warning Mechanism Models’), 29 Mar. 2007.

Second, the Centre shall have dedicated office facilities and staffed by full or part-time officers. They shall be properly trained with knowledge on fair trade and foreign trade warning system and be responsible for the collection, analysis, dissemination of pre-warning information and the research and implementation of counter measures.

Third, the Centre shall establish a web-based platform dedicated to the collection and publication of pre-warning information. The website shall be properly maintained with regular updates.

Fourth, the Centre shall publish on a regular basis analysis on the industry's exports, with at least two issues every year. It shall compile information on past trade remedies cases affecting the industry. It shall promptly report pre-warning information to the government and notify the firms. It shall compile pre-warning report on a regular basis to monitor and analyse the export trends of the industry, especially those in the key export markets. It shall submit at least two comprehensive pre-warning reports to the Provincial Department of Commerce every year.

Fifth, the Centre shall organize training courses or seminars on trade remedies or technical barriers to trade measures whenever there is a need.

As of late 2011, Zhejiang Province has developed a comprehensive pre-warning system that includes more than 100 pre-warning centres.¹⁰³ Linking up more than 6,000 firms in sectors ranging from textile and clothing, to steel, consumer electronics and agricultural products, these centres cover every major regional economic block in the province.¹⁰⁴ On average, every centre has two full time staff.¹⁰⁵ They distribute pre-warning information to firms through newsletters, websites, bulk text message broadcast, and instant messaging programs.¹⁰⁶ In 2010, for example, more than half a million pre-warning messages was sent to the firms from the centres through websites and text messages.¹⁰⁷ Based on the successful experience of Zhejiang, other provinces also established similar pre-warning centres in recent years.

While the pre-warning system is very effective at warning firms against potential risks, more substantive institutional framework is needed to respond to actual investigations. Such framework is provided by the plan of action in anti-dumping cases, which lays down a detailed working procedure that specifies the course of action in key steps of the process. The Zhejiang Rules provides a

¹⁰³ MOFCOM Buearu of Fair Trade, Jiaru Shijie Maoyi Zuzhi Yilai Zhejiang Yingdui Maoyi Moca de Zuofa ('Zhejiang's Practices in dealing with Trade Frictions since WTO Accession'), 28 Oct. 2011, available at <http://gpj.mofcom.gov.cn/article/d/da/201110/20111007802529.shtml>.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

basic outline of the plan of action, but a more complete version can be found in the Plan of Action (hereinafter the 'Plan of Action') for Anti-dumping Cases drafted by the Department of Fair Trade of Zhejiang Fasteners Industry Association, which states as follows:¹⁰⁸

Before the initiation of investigation, the member firms shall actively participate in the training activities organized by the association. When the firms obtain information on anti-dumping and other important information, they shall promptly report to the association and local government.

Once the investigation is initiated, the association shall immediately hold a meeting to prepare the defense. To ensure timely response, the association shall set up a reserve fund with 400,000 RMB drawing from the membership dues. Small and medium firms shall collectively hire lawyers and prepare defense work. Key firms shall hire lawyers on their own. Before key firms taking any important action, they shall seek advice from the local government and industry association and follow their guidance. The firms shall accept the coordination of the association and cooperate fully with the law firms to complete the questionnaire. To ensure the effectiveness of the collective defense, the firms shall not exclude other firms from participating in the response. If a firm is among the top ten largest exporters or has more than one million USD of exports involved in the case, it is normally expected to participate in the defense. If it doesn't, then it shall submit a written explanation to the local government or association.

5 CONCLUDING THOUGHTS

Since its introduction in 2004,¹⁰⁹ the Quadrilateral Coordination system has quickly become the preferred model for public-private partnership in China. MOFCOM has employed it in many trade remedies cases, especially anti-dumping cases involving chemicals, machineries, and mechanical products. This article discusses the differences between the Quadrilateral Coordination system and the TBI mechanism, and explains why the Quadrilateral Coordination system works better given the socio-economical backgrounds in China.

One thing worth noting is that the rise of the Quadrilateral Coordination system in China appears to coincide with China's rise from a reluctant participant to an active player in the WTO dispute settlement system.¹¹⁰ In the view of the author, this is more than just pure coincidence. Instead, as noted by Shaffer, '[t]o litigate effectively in the WTO system, government officials need the specific

¹⁰⁸ Zhejiang Fasteners Industry Association, *supra* n. 99.

¹⁰⁹ Zhou Yang, 'Siti Liandong' Yingdui Maoyi Xintiaozhan ('Quadrilateral Coordination system' as Response to New Trade challenges), 14 Sep. 2004, 21 Shiji Jingji Baodao (twenty-first Century Business Herald).

¹¹⁰ See Henry Gao, China's Ascent in Global Trade Governance: From Rule Taker to Rule Shaker, and Maybe Rule Maker?, in Carolyn Deere-Birkbeck (ed.), *Making Global Trade Governance Work for Development*, Cambridge University Press, 2011, pp. 167–172; Henry Gao, 'Taming the Dragon: China's Experience in the WTO Dispute Settlement System', *Legal Issues of Economic Integration* 34, no. 4 (2007): 369–392.

information that businesses and their legal representatives can provide. Officials therefore strive to establish better working relations with industry on trade matters'.¹¹¹ Theoretically speaking, the best way to establish the working relations is to build direct link between the firms and the government. However, as the poor record of the TBI mechanism has shown, the Chinese government ran into a dilemma when it tried to follow the American model in establishing the partnership. On the one hand, as the firms did not have the habit of lobbying, the government wants to encourage them to take more initiative. On the other hand, if the firms become too active, they might pressure the government to take courses of action against its wish. The Quadrilateral Coordination system solves the dilemma by bringing in the industry association and local government, which act as both facilitators and buffers. If the firms do not know how to take action, they can help the firms to get on track. If the firms become too active, the industry association and local government can keep them from going too far. In the end, even though the process seems to become more complicated, the collaboration becomes smoother as the two new actors make it easier for the firms and government to communicate with each other.

In the view of the author, the Quadrilateral Coordination is an example of 'managed lobbying' that the government is trying to encourage in its interaction with private firms. While the firms are encouraged to take more initiatives, the government still wishes to manage the process and make sure that things are under the guidance and direction of the government. If the firms get used to lobbying the government on trade issues, they could well try to lobby the government on other issues in due time. To prevent the undesirable spillover, the government has to keep the lobbying carefully managed so that the floodgate will not be opened inadvertently. Given the political reality in China, the Quadrilateral Coordination system is likely to remain as the preferred approach for public-private partnership in trade law for the foreseeable future.

¹¹¹ See Shaffer, *supra* n. 1 at 143.