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### China's legal battles in the WTO

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# CHINA'S LEGAL BATTLES IN THE WTO



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*For many observers, a major challenge raised by China's accession to the World Trade Organisation (WTO) is whether the WTO dispute settlement system (DSS) could cope with China, one of the major traders in the world which operates under an economy that is half-way between command economy and market economy. In this article, the author analyzes China's experience in the DSS by reviewing the cases China has participated since its accession, and concludes that the DSS has generally been quite effective in dealing with China. In the author's view, such success is largely due to the fact that the senior leadership in China has so far attached disproportionate importance to the DSS and thus tended to avoid the use of it. This does not necessarily mean, however, that formal WTO dispute settlement should be aggressively pursued in dealing with China. Instead, the over-reliance on formal WTO dispute settlement might well lead to major policy shifts in China, which could in turn greatly undermine the effectiveness of the DSS as a policy tool against China.*

## **Introduction**

For many observers, a major practical question raised by China's accession to the WTO is the following: Can the DSS cope with China? On the one hand, there is a legalistic rule-based dispute settlement system, which has been regarded by some as the "crown-jewel of the WTO" as well as "the most important

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international tribunal".<sup>1</sup> On the other hand, there is a country that has long been perceived as one that defies international standards, one that cherishes its hard-won sovereignty so much that it generally shuns from the jurisdictions of international tribunals, even though some of its citizens have served or are serving as judges in these tribunals. Two more factors further complicate the situation: First, unlike most other international tribunals, which normally do not have compulsory jurisdiction, the WTO dispute settlement body (DSB) does enjoy mandatory jurisdiction for the following reasons: a) The WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding or DSU) is a multilateral agreement rather than pluri-lateral agreement, which means that all WTO members (WTO Members) must accept this agreement as part of their term to get into the WTO; b) according to articles 3 and 23 of the DSU, WTO Members shall adhere to "the rules and procedures" in the DSU, and shall "have recourse to, and abide by, the rules and procedures" of the DSU in seeking "the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements"; and c) thanks to the new "reverse consensus" principle established in articles 6, 16 and 17 of the DSU, the consent of the respondent or losing WTO Member is no longer needed for the initiation of the dispute settlement process or the adoption of panel or appellate body (Appellate Body) reports. Second, as noted by the former Director of the WTO Appellate Body Secretariat, the major traders are usually also the major users of the DSS.<sup>2</sup> For example, the two largest traders, the United States (US) and the European Communities (EC), are the most active participants of the DSS, while the other major traders, such as Australia, Brazil, Canada, India, Japan, Korea, Mexico and New Zealand, are also very active.<sup>3</sup> Even before its accession to the WTO, China was already

<sup>1</sup> Matsushita, Schoenbaum & Mavroidis, *The World Trade Organization: Law, Practice and Policy*, Oxford, 2003, at p18.

<sup>2</sup> Valerie Hughes, *WTO Dispute Settlement: Past, Present and Future*, in Henry Gao and Don Lewis, *China's Participation in the WTO*, Cameron May, 2005, at pp 272-273.

<sup>3</sup> *Id.*

one of the major traders of the world, as well as one of the most important trading partners of most countries in the world. Also, as China has yet to develop a mature market economy, there are many problems in the economic and trade policies of China. Before China's accession to the WTO, its trade partners could only try to resolve these issues through bilateral negotiations. After China's accession, however, they have every right to drag China before DSB for any trade issues. This leads to the worries that China's accession will result in "a flood of disputes [which] could overwhelm the already over-burdened system".<sup>4</sup> The problem, however, is that "Chinese foreign policy is deeply state-centric and protection of sovereignty is at its core".<sup>5</sup> Thus, "[t]here is serious concern that China would likely regard these actions as political and, to save face, simply reject the process itself".<sup>6</sup> If China indeed chooses to reject or attack the DSS, the credibility of the system would be seriously undermined.<sup>7</sup>

On the other hand, some other observers, especially multinational corporations with experience in China, argue that that there will be very few, if any, disputes.<sup>8</sup> The business communities fear that their complaints will not be well-taken by the Chinese government and they might fall out of favour or even be retaliated by the Chinese government for such complaints.<sup>9</sup> Instead, "[t]hey would prefer informal behind-the-scene, government-to-government talks so that some new deal could be worked out".<sup>10</sup> This would result in a two-track trading system: "one set of transparent dispute-settlement rules for all WTO members except China and another set of opaque bilateral arrangements for China".<sup>11</sup> Other WTO Members would question

<sup>4</sup> Sylvia Ostry, *WTO Membership for China: To Be and Not to Be: Is that the Answer?* in Patrick Grady and Andrew Sharpe (eds.), *The State of Economics in Canada: Festschrift in Honour of David Slater*, 2001, p 263.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

the fairness of such arrangements and this again could cast doubt on the credibility or even legitimacy of the system.<sup>12</sup>

In the view of the author, this question is best answered by reviewing China's post-accession experience with the DSS. Since its accession, China has participated in one case as the complainant, i.e. the *US – Definitive Safeguard Measures on Imports of Certain Steel Products (US-Steel Safeguards)* case; two disputes and four cases<sup>13</sup> as the respondent, i.e. *China – Value-Added Tax on Integrated Circuits (VAT Rebate)* case and the *China – Measures Affecting Imports of Automobile Parts*<sup>14</sup> case. In addition, China barely missed being brought before the WTO in two cases, i.e., the case on coke export restraint and the case on antidumping duties on kraft linerboard. In the following part, these cases will be discussed in chronological order.

## US-Steel Safeguards

This case concerns definitive safeguard measures on imports of certain flat steel, hot-rolled bar, cold-finished bar, rebar, certain welded tubular products, carbon and alloy fittings, stainless steel bar, stainless steel rod, tin mill products and stainless steel wire. It was brought by China in March 2002 along with seven other countries, including EC, Japan, Korea, Switzerland, Norway, New Zealand and Brazil. In its request for consultations, China claimed that the US measures were inconsistent with various provisions of The General Agreement on Tariffs and Trade (GATT) 1994 and the Safeguard Agreement. On 11 July 2003, the panel circulated its report and concluded that all the US's safeguard measures at issue

<sup>12</sup> *Id.*

<sup>13</sup> In the WTO, a single trade measure of a Member might be simultaneously challenged by several WTO Members. Each Member is entitled to bring their separate complaint, which will be assigned a unique case number. In order to ensure consistency and efficiency in the dispute settlement Panel's examination of the measure, however, the WTO normally would establish only one Panel for such dispute and the Panel will examine all complaints in this dispute. Thus, one dispute in the WTO might encompass several cases. See eg Article 9 of the DSU.

<sup>14</sup> This case was brought after the article was drafted. As the parties were still in consultation at the time this article is submitted, the author only has limited information available on this case. Thus, this case will not be discussed in this article.

were inconsistent with at least one of the following WTO prerequisites for the imposition of a safeguard measure: lack of demonstration of (i) unforeseen developments; (ii) increased imports; (iii) causation; and (iv) parallelism.<sup>15</sup> These conclusions were ultimately affirmed by the Appellate Body in its report issued on 10 November 2003, albeit on slightly different grounds.<sup>16</sup>

According to article 8 of the Safeguards Agreement, WTO Members which would be affected by safeguard measures have the right to retaliate against the WTO Member invoking such measures by suspending the application of substantially equivalent concessions to the trade of such WTO Member. Of course, the same article also provides that the right of suspension shall not be exercised for the first three years that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports and that such a measure conforms to the provisions of the Safeguards Agreement. Even though, at least according to the US, some of the safeguards measures taken in this case were based on absolute import increase, their conformity with the WTO rules in the Safeguard Agreement had been called into question from the very beginning. Thus, China could have taken justice into its own hands by retaliating against the US. Indeed, that is exactly what the EC, one of the co-complainants in the case, has done. On 13 June 2002, the EC issued Council Regulation No. 1031/2002. According to this regulation, the EC would suspend its tariff concessions granted to the US from 18 June 2002, and apply *additional duties* of up to 100% on such products from as early as 1 August 2002.<sup>17</sup> The retaliation list includes products from many politically sensitive states, such as citrus fruits (Florida), textile (Carolinas), Harley-Davidson

<sup>15</sup> Panel Report, *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS248, WT/DS249, WT/DS251, WT/DS252, WT/DS253, WT/DS254, WT/DS258, WT/DS259, adopted 10 December 2003, as modified by the Appellate Body Report, WT/DS248AB/R, WT/DS249AB/R, WT/DS251AB/R, WT/DS252AB/R, WT/DS253AB/R, WT/DS254AB/R, WT/DS258AB/R, WT/DS259AB/R.

<sup>16</sup> Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS248AB/R, WT/DS249AB/R, WT/DS251AB/R, WT/DS252AB/R, WT/DS253AB/R, WT/DS254AB/R, WT/DS258AB/R, WT/DS259AB/R, adopted 10 December 2003.

<sup>17</sup> Articles 1, 2, 3 and 4 of the Council Regulation No. 1031/2002 (emphasis added)

motorcycles (Wisconsin). Unlike the EC, however, China seems to be content to choose the multilateral route.

Whether the other WTO Members realize it or not, this case reveals a significant shift in China's foreign trade policy. Before this case, China was a frequent user of retaliatory measures. For example, in 2001, when Japan imposed safeguard measures on Chinese onions, mushrooms and tatami rushes valued at 150 million USD, China quickly responded with 100% extra tariffs on the 1 billion USD imports of automobiles, mobile phones and air-conditioners from Japan.<sup>18</sup> In the same year, when Korea slapped a 315% tariff on the imports of Chinese garlic worth some 20 million USD, China threatened with a temporary ban on cellular phones and polyethylene goods from Korea, which together worth more than 660 million USD.<sup>19</sup> One might argue that this policy shift is simply because that, before its accession, China could not use the DSS; while after accession, it is required by article 23 of the DSU to "have recourse to, and abide by, the rules and procedures of [the DSU]". While there is some truth in this argument, it could not explain why article 23 of the DSU has not stopped the US from applying various highly-controversial unilateral measures, such as the Section 301 clauses.<sup>20</sup> Furthermore, as the author pointed out above, article 8 of the Safeguards Agreement does provide the possibility of retaliation without seeking the authorization from the DSB first.

Defying some of the gloomy predictions mentioned earlier, China seems to be quite willing, at least in this case, to abide by the uniform rules for all WTO Members rather than trying to force upon the other WTO Members "another set of opaque bilateral arrangements". Moreover, while this case sets an example of

<sup>18</sup> For the background on this case, see *Japan-China Trade War at a Crossroads: Experts*, available at [http://english.peopledaily.com.cn/200106/25/eng20010625\\_73422.html](http://english.peopledaily.com.cn/200106/25/eng20010625_73422.html). For a detailed discussion of this case, see Junji Nakagawa, *Lessons from the Japan-China "Welsh Onion War"*, (2002) 36 *Journal of World Trade*, at pp. 1019-1036.

<sup>19</sup> For the background on this case, see *South Korea to Import Chinese Garlic to Avoid Trade War*, [http://english.peopledaily.com.cn/english/200104/17/eng20010417\\_67867.html](http://english.peopledaily.com.cn/english/200104/17/eng20010417_67867.html).

<sup>20</sup> For a classical review of the Section 301, see Robert E. Hudec, *Thinking about the New Section 301: Beyond Good and Evil*, in *Essays on the Nature of International Trade Law*, Cameron May, 1999, at pp 153-206.

China trying to defend its interests using the DSS, the subsequent history shows that China has been very cautious even in asserting its rights of using the DSS: more than four years after China's accession, this case remains as the first and the only complaint China ever launched in the WTO. Indeed, as the top target of trade remedies measures worldwide, if China were to challenge each and every trade remedies measures taken against it in the WTO, the DSS would not have any capacity left to deal with any other disputes filed by other WTO Members. Fortunately, China so far has not shown any interest in opening up the floodgate. As the author has argued in another article, China's decision to join the US-Steel Safeguards case was driven almost entirely by a few factors which, put together, make the case a unique one.<sup>21</sup> Once these factors are gone, China has been trying to avoid resorting to the dispute settlement mechanism as much as it could.

### VAT Rebate

This case was brought by the US in March 2004 and is also the first case ever brought against China by any WTO Member. It concerns China's rebates for value-added tax (VAT) on integrated circuits (ICs) manufactured or designed in China. In its request for consultations, the US identified its basis as follows:

"China provides for a 17 per cent VAT on ICs. However, we understand that enterprises in China are entitled to a partial refund of the VAT on ICs that they have produced, resulting in a lower VAT rate on their products. China therefore appears to be subjecting imported ICs to higher taxes than applied to domestic ICs and to be according less favourable treatment to imported ICs.

In addition, we understand that China allows for a partial refund of VAT for domestically-designed ICs that, because of

<sup>21</sup> Henry Gao, *Aggressive Legalism: the East Asian Experience and Lessons for China*, in Henry Gao and Don Lewis, *China's Participation in the WTO*, Cameron May, 2005, at pp 324-329.



technological limitations, are manufactured outside of China. China thus appears to be providing for more favourable treatment of imports from one Member than another, and discriminating against services and service suppliers of other Members".<sup>22</sup>

Even though a total of six regulations issued by various Chinese ministries from June 2000 to December 2003 have been identified by the US as measures at issue,<sup>23</sup> the only thing that really matters is the one regulation that provided the key framework for the rebate scheme. This is the *Notice of the State Council Regarding Issuance of Certain Policies to Promote the Development of the Software Industry and Integrated Circuit Industry* of 24 June 2000, popularly known as "Document 18" because its file number is 2000-18. Article 41 of *Document 18* provides a rebate of the amount of the effective VAT burden in excess of 6% for ICs manufactured within China, while the statutory VAT rate on sales of all imported and domestically-produced ICs is 17%.<sup>24</sup> Article 48 of the same document, together with the *Notice of the Ministry of Finance, State Administration of Taxation Regarding Tax Policies for Imports of Integrated Circuit Products Domestically Designed and Fabricated Abroad*, provides tax rebate of the amount of the effective VAT burden in excess of 6% for ICs designed in China

<sup>22</sup> *China - Value-Added Tax on Integrated Circuits*, Request for Consultations by the United States, WT/DS309/1.

<sup>23</sup> They are: Document 18 (24 June 2000), *Notice of the State Council Regarding Issuance of Certain Policies Concerning the Development of the Software Industry and Integrated Circuit Industry*; Document 25 (22 September 2000), *Notice of the Ministry of Finance, State Administration of Taxation, and General Administration of Customs on Relevant Tax Policy Issues Concerning Encouraging the Development of the Software Industry and the Integrated Circuit Industry*; Document 86 (7 March 2002), *Notice of the Ministry of Information Industry Regarding Issuance of Regulations on Certification of Integrated Circuit Design Enterprises and Products*; Document 70 (10 October 2002), *Notice of the Ministry of Finance, State Administration of Taxation Regarding Furthering Tax Policies to Encourage the Development of the Software Industry and Integrated Circuit Industry*; Document 140 (25 October 2002), *Notice of the Ministry of Finance, State Administration of Taxation Regarding Tax Policies for Imports of Integrated Circuit Products Domestically Designed and Fabricated Abroad*; and Document 1384 (23 December 2003), *Notice of the State Administration of Taxation Regarding Issuance of the Catalogue of Integrated Circuit Products Enjoying Preferential Tax (First Batch)*.

<sup>24</sup> On 10 October 2002, the Ministry of Finance and State Administration of Taxation issued another notice to further expand the VAT rebate to any tax burden that exceeds 3%.

but fabricated abroad due to the lack of technological capacities domestically.

According to the US, these measures violated China's obligations under articles I and III of the GATT 1994, the Protocol on the Accession of the People's Republic of China (WT/L/432), and article XVII of the General Agreement on Trade in Services (GATS). The US did not elaborate on how these measures violated the relevant obligations, but in the view of the author, the arguments would be essentially the following:

1. Article 41 rebate makes the VAT rate for domestically manufactured ICs lower than that for imported ICs, thus violates the national treatment obligation under GATT article III;
2. For imported products, article 48 rebate makes the VAT rate for those designed in China lower than that for those designed abroad, thus violated the most-favored-nation (MFN) obligation under GATT article I;
3. For IC design services and service providers, article 48 rebate makes the VAT rate for those services and service providers in China lower than that for those services and service providers abroad, thus violated the national treatment obligation under GATS article XVII.

China's initial reaction to the US complaint is rather interesting. On 19 March, a day after the US made its request for consultations, Mr. Chong Quan, the spokesperson for the Ministry of Commerce (MOFCOM), announced that China was "confused" by the US's request.<sup>25</sup> According to him, China and the US has held several rounds of bilateral consultations on the IC VAT rebate issue, and made certain progress.<sup>26</sup> Now that the US "suddenly" brought a request for consultation in the WTO while the two parties *are conducting* consultation already, China feels puzzled.<sup>27</sup> Nonetheless, he added, China has started to study the US's

<sup>25</sup> People's Daily, March 20 2004, Headlines, at p 3.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*, emphasis added.

request seriously.<sup>28</sup> Actually, it is probably more accurate to say that China is embarrassed rather than “puzzled”. According to the Confucianism philosophy which is deeply rooted in the Chinese society, litigation would cause irreparable harm to the normal relationships and should be pursued only as a last resort, or, better still, as the great philosopher himself would have preferred, avoided as much as possible.<sup>29</sup> To a large extent, the Chinese leadership still could not disentangle the legal issues from political and diplomatic concerns and views the initiation of legal disputes in the WTO synonymous to the break-up of diplomatic relationship with the other countries. One might argue, however, that China should not “do to others what she do not want done to herself”;<sup>30</sup> as China has sued the US in the WTO in the US-Steel Safeguards case already, it is only fair that China should expect to be sued in the same forum. While this argument seems plausible on its face, the author has to disagree as the US-Steel Safeguards case is very different from the current case. In that case, the US was actually urging the complainants to bring the case to the DSS. In a letter dated 11 March 2002 to the then WTO Director General Mike Moore, Deputy USTR Linnet Deily literally begged the other WTO Members to file a WTO complaint by noting, in three different paragraphs, that “[t]o the extent [a WTO Member] considers that the USITC’s findings ...incorrect”, it must “bring its complaint... before the World Trade Organization to be resolved under multilaterally-agreed dispute settlement procedures”, which is “the right place to resolve differences”.<sup>31</sup> While this seems rather bizarre on its face, it is actually very rational: as discussed above, the Safeguards Agreement explicitly grants affected WTO Members the right to retaliate in such cases; thus, for the US, WTO litigation is actually the lesser of the two evils. In

<sup>28</sup> *Id.*

<sup>29</sup> James Legge, *The Chinese Classics, Volume One: Confucian Analects*, Book XII, Yan Yuan, Chapter XIII, “The Master said, ‘In hearing litigations, I am like any other body. What is necessary, however, is to cause the people to have no litigations.’” The full text is available at <http://www.gutenberg.org/dirs/etext03/cnfnl10u.txt>.

<sup>30</sup> James Legge, *The Chinese Classics, Volume One: Confucian Analects*, Book XII, Yan Yuan.

<sup>31</sup> The United States Mission to the European Union, *USTR’s Deily Defends Steel Tariffs Decision*, *Rebuts EC Demands*, <http://www.usEC.be/Categories/Trade/Steel/Mar1102USTRDeilySteel.html>.

the current case, however, China has preferred consultation over litigation all along the way, and was really caught off-guard by the launch of formal dispute settlement procedure by the US.

After several rounds of consultations, China agreed to settle the case with the US by signing the *Memorandum of Understanding between China and the United States Regarding China's Value-Added Tax on Integrated Circuits* on 14 July 2004. Essentially, China has agreed to give in to the requests of the US, with the detailed terms as follows:

“By 1 November 2004, China will amend the measures described in the US consultation request (WT/DS309/1) to eliminate the availability of VAT refunds to firms producing ICs in China on their domestic sales. The effective date of these amendments will be no later than 1 April 2005. Until the effective date of these amendments, VAT refunds will be available only to integrated circuit enterprises certified under the measures as of 14 July 2004 in respect of products so certified as of 14 July 2004.

By 1 September 2004, China will issue a notice to revoke the measure described in the US consultation request (WT/DS309/1) that provides for VAT refunds on ICs designed in China but manufactured abroad. The effective date of revocation will be no later than 1 October 2004.”

Several factors contribute to the prompt settlement of this dispute. First is the economic factor. Even though Document 18 was drafted with the intention of promoting the development of home-grown IC industry,<sup>32</sup> its practical effect is exactly the opposite. The rebate schemes are based on the effective tax rate, which equals the total tax payable divided by sales.<sup>33</sup> Because China provides 100% VAT rebate for IC products exports, a company has to sell at least 70-80% of its products domestically and achieve a gross margin rate of 30% or more in order to be able

<sup>32</sup> Preamble of *Notice of the State Council Regarding Issuance of Certain Policies to Promote the Development of the Software Industry and Integrated Circuit Industry*.

<sup>33</sup> See e.g., *Behind the Tax Rebate Dispute* (visited August 3, 2005) <[http://www.cw.com.cn/news2/zl/html2004/20040811\\_119N2.asp](http://www.cw.com.cn/news2/zl/html2004/20040811_119N2.asp)>

to enjoy the article 41 rebate.<sup>34</sup> Since most of the Chinese companies export about 70-80% of their products and have a low gross margin rate, very few of them could enjoy the rebates.<sup>35</sup> On the other hand, the foreign-invested IC companies in China focus on high-end products and thus have a much higher gross margin rate.<sup>36</sup> They also sell most of their products within China. As Document 18 applies to all companies irrespective of the ownership structure,<sup>37</sup> most of the companies that were able to benefit from the rebate schemes are actually foreign-invested firms, such as Motorola.<sup>38</sup> Second is the political factor. As mentioned above, the mere threat of legal action itself would be interpreted by the Chinese leadership as something of great political and diplomatic significance. In order to avoid the political embarrassment, China would rather settle it than having to endure the full vigor of the DSS. Another interesting development in this case is that Taiwan has also formally requested to join the consultations.<sup>39</sup> Legally speaking, Taiwan is a WTO Member in its own right in the WTO with the (rather awkward) official name as "The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu", short-handed as "Chinese Taipei". China, however, has consistently claimed Taiwan to be one of its separate custom territories and asked Taiwan to behave accordingly. Actually Taiwan's status in the WTO has never been made clear. Even though article XII of the Marrakech Agreement states that "[a]ny state or separate customs territory possessing full autonomy in the conduct of its external commercial relations" may apply for WTO membership, it is unclear as to whether Taiwan joined as a "state" or "separate customs territory". China and Taiwan seem to have subscribed to different versions of the story. On the one hand,

<sup>34</sup> See *IC Dispute Escalated, the US Brought Lawsuit against China's Discriminative VAT Policy* <<http://it.sohu.com/2004/03/20/82/article219518220.shtml>> (visited 3 August 2005).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Article 52 of *Notice of the State Council Regarding Issuance of Certain Policies Concerning the Development of the Software Industry and Integrated Circuit Industry*.

<sup>38</sup> See *IC Dispute Escalated, the US Brought Lawsuit against China's Discriminative VAT Policy* <<http://it.sohu.com/2004/03/20/82/article219518220.shtml>> (visited 3 August, 2005).

<sup>39</sup> Request to Join Consultations, Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, 5 April 2004, WT/DS309/5.

China claims that Taiwan is a separate customs territory of China, because Taiwan's official title includes the term "Separate Customs Territory" while the short-hand name refers to "Chinese Taipei", which, putting together, mean that Taiwan is a "separate customs territory" of China. On the other hand, Taiwan could claim that, rather than implying Taiwan is part of China, the word "Chinese" in "Chinese Taipei" could simply refer to "people of Chinese descent".<sup>40</sup> Indeed, since Hong Kong Special Administrative Region (Hong Kong) and Macau Special Administrative Region (Macau), two Members which are undoubtedly territories of China, have their names as "Hong Kong, China" and "Macau, China", respectively, and Taiwan joined the WTO after these two territories did, if the WTO Members wanted to confirm that Taiwan has the same status as Hong Kong and Macau, they should have used "Taiwan, China" instead of "Chinese Taipei". Furthermore, its full title does not indicate the proper sovereign of such "separate customs territory". Indeed, a precondition for any separate customs territory to join the WTO is that it has been granted "full autonomy in the conduct of its external commercial relations" by its sovereign, but neither Taiwan has requested China, nor China has granted Taiwan such autonomy. Putting this difficult question aside, Taiwan's request to join consultations has really stepped on China's nerves. Even though the mere participation of a WTO Member in the DSS would not entail any connotations of sovereignty, as a separate customs territory is fully entitled to such right, both China and Taiwan regarded such act as implying that Taiwan is on par with China as an equal sovereign. On 28 April 2004, China filed an Acceptance of the Requests to Join Consultations.<sup>41</sup> In this communication, China acknowledged the requests to join consultations from the EC, Japan, Mexico, and Taiwan, but only the first three requests were declared to be accepted. This is rather strange as request to join consultations have rarely been denied in the WTO. According to article 4.11 of the DSU, "[w]henver a Member other than the consulting Members considers that it has a

<sup>40</sup> Shorter Oxford English Dictionary, 5<sup>th</sup> edition.

<sup>41</sup> WT/DS309/6.

substantial trade interest in consultations being held pursuant to paragraph 1 of article XXII of GATT 1994, paragraph 1 of article XXII of GATS, or the corresponding provisions in other covered agreements, such Member may notify the consulting Members and the DSB, within 10 days after the date of the circulation of the request for consultations under said article, of its desire to be joined in the consultations. Such Member shall be joined in the consultations, provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded." Thus, there are three requirements for a WTO Member to file the request to join consultations. First, the request shall be filed within ten days after the date of the circulation of the request for consultations. In this case, the US request for consultations was circulated on 23 March, while the Taiwan's request was made on 1 April, and thus is within the time limit. Second, such WTO Member has to have "substantial trade interest". Again Taiwan seems to satisfy this requirement as well, as Taiwan noted in its request that "[a]ccording to our customs statistics, we are one of China's largest suppliers of integrated circuits. In 2003, China's imports from us reached a total value of about US\$ 1.8 billion. This figure, as a matter of fact, has been increasing annually at the rates of 13.9%, 181.6% and 105.1% for each of the last three years".<sup>42</sup> Third, the respondent in the case has to agree that the claim of substantial interest is well-founded. This requirement is rather subjective and China, as the respondent in this case, has the full discretion in determining whether Taiwan's claim of substantial interest is well-founded. Even though China has not indicated in its communication as to whether Taiwan's claim is well-founded, this is probably the only ground on which China could deny the request from Taiwan. However, to counter the unrestrained discretion of the respondent, the same DSU article also states that "[i]f the request to be joined in the consultations is not accepted, the WTO applicant Member shall be free to request consultations under paragraph 1 of article XXII or paragraph 1 of article XXIII of GATT 1994, paragraph 1 of article XXII or paragraph 1 of article XXIII of GATS, or the corresponding

<sup>42</sup> WT/DS309/5.

provisions in other covered agreements." Furthermore, according to the well-established WTO jurisprudence, there is no requirement for either an economic/trade interest or legal interest for a WTO Member to invoke the WTO dispute settlement procedures; instead, a potential interest in trade in goods or services at issue and a general interest in preserving the rule-based system is sufficient.<sup>43</sup> Thus, Taiwan could have brought a separate complaint on its own. In the author's view, the public humiliation that such complaint might bring to the Chinese leadership is probably another important reason that made China decide to settle promptly, even though the legal merits of such a case are debatable.<sup>44</sup>

### China - Measures Affecting the Export of Coke

Less than two weeks after the US launched its case against China's VAT rebate on ICs, the EC also openly challenged China's measures affecting the exports of coke, requesting China to abolish the measure or face another case at the WTO.

Coke, which is produced by heating the coal in a high-temperature, oxygen-free furnace, is the main fuel used in making steel from iron ore. China is the world's top producer and exporter of coke. In 2003, the total global coke output is 390 million metric ton (MT), with the Chinese production at 177 million MT, or 45% of the world total production.<sup>45</sup> In the same year, China's coke export reached 14.7 million MT, nearly 60% of the world's total.<sup>46</sup> The EC, in particular, relies heavily on coke imports from China. In 2003 alone, the EC imported from China 4.4 million MT of coke,

<sup>43</sup> Appellate Body Report, *European Communities - Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R, adopted 25 September 1997, DSR 1997:II, 591, paras 136-138; Panel Report, *Korea - Definitive Safeguard Measure on Imports of Certain Dairy Products*, WT/DS98/R and Corr.1, adopted 12 January 2000, as modified by the Appellate Body Report, WT/DS98/AB/R, DSR 2000:1, 49, para 7.13.

<sup>44</sup> See Henry Gao, *Aggressive Legalism: the East Asian Experience and Lessons for China*, in Henry Gao and Don Lewis, *China's Participation in the WTO*, Cameron May, 2005, at pp 332-333.

<sup>45</sup> China Metals Report Weekly, June 8, 2004.

<sup>46</sup> China Metals Report Weekly, June 8, 2004.



which is more than one third of its total coke consumption.<sup>47</sup> On the other hand, the coke production process can cause serious pollution to the environment. Typically, two MT of coal can produce one MT of coke, while the rest turns into pollutants such as waste water, atmospheric emissions, and solid wastes. Among them are sulfur dioxide, a major cause for acid rain, and benzopyrene, one of the worst carcinogenic chemicals. In recent years, many coke plants were closed in the EC due to pressures from environmental protection groups. At the same time, however, the EC is home to four of the top ten steel manufacturers.<sup>48</sup> Thus, the European steel industry relies more and more on coke imports from China. This increasing gap between supply and demand drove the price of coke in international markets from \$56/MT FOB in 2000 to \$400/MT FOB in 2004. Concerned with the potential environmental implications, the Chinese government also started to study the pollution problem caused by coke-production. In July 2003, the Ministry of Commerce and the National Development and Reform Commission held a joint meeting on coke export with several industry associations. At the meeting, many experts suggested that the government limit coke exports to reduce pollution. On 1 January 2004, China announced that it would cut down its coke export quota by 26% from twelve million tons for 2003 to nine million tons to meet the rising demand from its own booming steel and power industries.<sup>49</sup> Worried that it would not have enough coke for its domestic steel industries, the EC demanded China to abolish the quota on 31 March 2004. On 9 May, the EC further announced a five-day deadline for the Chinese to get rid of the quota; otherwise it will initiate a complaint at the WTO. After extensive negotiations, China reached a last-minute deal with the EC on 28 May 2004, removing the imminent threat of a WTO complaint. Under the agreement, the European steel industry would get at least 4.5 million MT of

<sup>47</sup> China Metals Report Weekly, June 8, 2004.

<sup>48</sup> According to the International Iron and Steel Institute, of the top ten steel firms in 2003, four of them are EC firms. They are Arcelor (Luxemburg), LNM Group (Netherlands), Corus Group (UK/Netherlands), and Thyssen Krupp (Germany) (visited 3 August 2005) <<http://www.worldsteel.org/media/wsif/wsif2004.pdf>>.

<sup>49</sup> Xinhua News Agency, May 24, 2004.

coke from China in 2004, the same quantity it imported in 2003. China has also agreed to abolish the fee for the export permit, and this would reduce the price of coke from 450USD/MT to 250USD/MT.

As no formal complaint has been lodged at the WTO, the exact legal basis of the EC's claim is unclear. In the author's view, however, the most likely candidate would be article XI.1 of the GATT, which provides that "[n]o prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party." As the author has discussed in another article, however, the legal claims of the EC might not be as strong as it would want others to believe.<sup>50</sup> Indeed, China could have some strong counter-arguments by making use of the escape clauses provided for under articles XI.2 and XX. Moreover, while the EC itself has closed its coke-production factories for environmental concerns, it still wants China to supply coke to its steel firms at the expenses of polluting the environment in China. In essence, what the EC was doing in this case amounts to exporting pollutions to China. For the EC, launching such a complaint in the WTO might create more trouble than it tries to get rid of. It would put the EC in the same awkward situation as the US was in three years ago, when the US had to withdraw amid worldwide condemnation its complaint against Brazilian law authorizing manufacturing of pharmaceutical products combating HIV/AIDS, a case *Celso Amorim*, the outspoken Brazilian ambassador to the WTO, called as not only "legally unfounded", but also "politically disastrous".<sup>51</sup> So the question is: why did China want to settle, and settle so quickly?

<sup>50</sup> Henry Gao, *Aggressive Legalism: the East Asian Experience and Lessons for China*, in Henry Gao and Don Lewis, *China's Participation in the WTO*, Cameron May, 2005, at pp 334-348.

<sup>51</sup> WTO Reporter, *United States Drops WTO Case Against Brazil Over HIV/AIDS Patent Law*, June 26, 2001).

As discussed above, according to section 15(a) of China's Accession Protocol, WTO Members may treat China as a non-market economy in anti-dumping investigations for fifteen years after China's accession to the WTO. This does not mean, however, that China would always be regarded as non-market economy for the whole period. Indeed, the same section also provides that, once China has established, under the national law of the importing WTO Member, that it is a market economy, the non-market economy method shall be terminated.<sup>52</sup> Since its accession, China has launched a major campaign to lobby other WTO Members to recognize China's market economy status. Typically, this is included as part of the Free Trade Agreement packages that China negotiates with other countries. As a precondition to such FTA negotiations, China maintains that the other party should be prepared to acknowledge that China is a market economy and it would not make use of the discriminatory provision provided for under section 15(a).<sup>53</sup> This strategy has been very successful with many of the smaller trading partners of China, including Australia, New Zealand, Pakistan, Association of Southeast Asian Nations (ASEAN), all of which have recognized China's market economy status in their ongoing FTA negotiations with China. For larger trading partners, however, the FTA strategy seems to be much less effective, as it is generally much more difficult for large traders to enter into FTAs with each other. Instead, China tried to petition for the grant of market economy status through the domestic legal regime of its trade partners. In June 2003, China requested the EC to re-assess its Market Economy Status. To prepare for this examination, the Ministry of Commerce of China issued its own Report on the Development of China's Market Economy 2003 on 13 April.<sup>54</sup> The EC was scheduled to make a decision on the market economy status of China in late June of 2004. Thus, China's decision to settle the coke dispute on 28 May might be part of the

<sup>52</sup> Section 15(d), Accession Protocol of China.

<sup>53</sup> See New Zealand Ministry of Foreign Affairs and Trade, New Zealand-China FTA - FQAs at <http://www.mfat.govt.nz/tradeagreements/nzchinafta/faqs.html>. See also *China Strives for Market Economy Recognition*, <http://www.china.org.cn/english/BAT/98789.htm>.

<sup>54</sup> Available at <http://www.china.org.cn/english/2003chinamarket/79411.htm>.

plan to pave the way for a favorable decision on the market economy status. While the Chinese philosophy teaches people that favors shall be returned, the Europeans, however, always believe in the practical philosophy that “[w]e have no eternal allies, and we have no perpetual enemies. Our interests are eternal and perpetual, and those interests it is our duty to follow”.<sup>55</sup> One month after, the EC announced that China has failed to satisfy the standards for granting market economy status, notwithstanding the “economic progress achieved by China over the past years”.<sup>56</sup> A few days later, the EC gave another blow to China by announcing that it will revamp its Generalized System of Preferences (GSP) trade benefit program for developing countries, with the result that many Chinese products would no longer be able to enjoy the GSP benefits.<sup>57</sup>

In the author's view, another more important reason for China's eagerness to settle is its fear towards the DSS. As the VAT Rebate case was brought only two weeks before the EC threatened WTO action, had China not settled the coke case, China would have to fight two legal battles against two of the most powerful WTO Members. As China lacks expertise and resource on WTO dispute settlement, China would have a very hard time defending itself in the WTO. Thus, China chose to settle the second case instead.

## China - Antidumping Duties on Kraft Linerboard

This case concerns antidumping actions on US kraft linerboard. On 31 January 2004, four Chinese companies filed written application to the MOFCOM of China on behalf of the domestic industry against imports of kraft linerboard from US, Thailand,

<sup>55</sup> Speech by Lord Palmerston to the House of Commons, Hansard, 1 March 1848. See e.g. David Brown, *Palmerston and the Politics of Foreign Policy, 1846-1855*, Manchester, Manchester University Press, 2002, pp 82-83.

<sup>56</sup> CHINA - Market economy status in trade defence investigations, 28 June 2004 available at [http://trade.ec.europa.ec/doclib/docs/2004/june/tradoc\\_117795.pdf](http://trade.ec.europa.ec/doclib/docs/2004/june/tradoc_117795.pdf).

<sup>57</sup> BNA's International Trade Reporter (Europe), *GSP: EC to Revamp to GSP Program to Aid Developing Countries*, July 15, 2004.

Korea and Chinese Taipei.<sup>58</sup> On 31 March 2004, MOFCOM launched the investigations. The preliminary determinations were issued on 31 May 2005, and final determinations were issued on 30 September 2005.<sup>59</sup> In both the preliminary and final determinations, the MOFCOM made positive findings on all three elements of imposition of anti-dumping measures, ie, existence of dumping, substantial injury to the domestic industry, and causal relationship between dumping and injury.<sup>60</sup> According to the final determinations, the dumping margins of the US companies were as high as 65.2%.<sup>61</sup>

The US producers held strong reservations over this decision. On 29 November 2005, the U.S. producers submitted a petition to MOFCOM requesting reconsideration of the September 2005 determination. On 6 January 2006, the United States Trade Representative (USTR) further informed China that it would bring a case in the WTO unless China removes the antidumping order by 9 January 2006. On 9 January 2006, China announced that it has decided to remove the antidumping duties after an administrative reconsideration.

As indicated by a senior US trade official, there are two major problems with the decision: lack of transparency and insufficient evidence for the determination of injury and causation.<sup>62</sup> Indeed, both have been perennial problems in Chinese antidumping proceedings. Even before China's accession to the WTO, many WTO Members have raised these issues in the working party negotiations. According to these WTO Members, "the current investigations by the Chinese authority would be judged to be inconsistent with the [WTO Anti-Dumping Agreement] if China were a WTO Member of the WTO today".<sup>63</sup> Specifically, the WTO Members were most concerned with the following problems:

<sup>58</sup> Ministry of Commerce of China, *Final Determinations on the Antidumping Investigations on the Kraft Linerboard products Originated from the US, Thailand, Korea and Chinese Taipei* (on file with author).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> BNA's International Trade Reporter, *China Lifts Dumping Duties on Linerboard in Face of U.S. Threat of WTO Proceedings*, January 11, 2006.

<sup>63</sup> Working Party Report, para 147.

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“In certain cases, the basis for calculating dumping margins for a preliminary affirmative determination was not disclosed to interested parties. Furthermore, the determination of injury and causation did not appear to have been made on an objective examination of sufficient evidence. In the views of these members, bringing the Chinese anti-dumping rules into compliance with the WTO Agreement on its face was not sufficient. WTO-consistency had to be secured substantively as well”.<sup>64</sup>

After its accession to the WTO, China issued a new Antidumping Regulation, which was further revised in 2004. In order to complement these regulations, the Chinese government also issued several detailed implementing rules, covering virtually every procedural step of the investigations. Problems, however, are far from eliminated. As noted by the USTR in its *2005 Report to Congress on China's WTO Compliance*,

“There continue to be a growing number of reports from US respondents and respondents from other WTO members, complaining about the lack of detailed information made available to parties and the lack of disclosure of the facts that form the basis for decisions made by the administering authorities ... IBII [MOFCOM's Bureau of Industry Injury Investigation] continues to have a spotty record of making available to respondents materials generated and submitted during the course of its injury investigations, a situation that it has not improved. Compounding this problem is the highly limited disclosure to interested parties by China's AD authorities of the essential facts underlying the decisions and calculations in both dumping and injury investigations. This dearth of disclosure impairs the ability of US companies to mount an effective defense in Chinese AD investigations. Like last year, many respondents have criticized China's AD authorities for not providing appropriate opportunities for business to comment on and provide input into the

<sup>64</sup> *Id.*

government's deliberative process, the lack of domestic producer information or untimely access to such information, and the opaque nature of decision making in injury investigations, including demonstrating the causal link between injury and dumping".<sup>65</sup>

In the current case, transparency seems to be lacking in two aspects.<sup>66</sup> First, in its *Public Notice for the Initiation of Antidumping Investigations*, the MOFCOM, in making its determination that the application has been made by or on behalf of the domestic industry, simply noted that the collective output of the domestic producers launching the application accounted for 31.6% and 33.9% of the total production of the like product in 2002 and 2003, while the collective output of the producers supporting the application accounted for 42.6% and 50.5% of the total production of the like product in 2002 and 2003. No further details, such as the exact data on the total domestic production and the collective output of the applicants, have been provided. This might lead to doubts about the legitimacy of the initiation of the investigations. Second, in the determination of normal value, export price and dumping margin, the authorities just gave the facts considered and the determinations made, but it never gave sufficient information on how the relevant data has been obtained, what are the detailed criteria for such analysis, or how the calculations are done. Such comparison normally would involve foreign exchange. The Chinese authorities never made clear, however, as to which rate it uses in the calculation.

With regard to injury determination, article 3.1 of the Anti-dumping Agreement requires such determination to be "based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b)

<sup>65</sup> P 29.

<sup>66</sup> MOFCOM, *Final Determination on the Anti-dumping Investigation on the Imported Unbleached Kraft Linerboard Products from the United States, Thailand, Korea and Chinese Taipei*, 30 September 2005, attachment to MOFCOM Public Notice 2005 No. 60 on the Anti-dumping Investigation on the Imported Unbleached Kraft Linerboard Products, available at <http://www.mofcom.gov.cn/aarticle/b/c/200509/20050900487197.html>.

the consequent impact of these imports on domestic producers of such products". Article 3.4 further demands that "[t]he examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of *all* relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments" (emphasis added). By explicitly stating that "[t]his list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance", the same article also requires the investigating authorities to adopt a balanced approach in such examination. In the current case, however, what the investigating authorities had was at best a mixed picture. Indeed, many key factors have indicated that the Chinese domestic companies are doing very well. For example, the output, volume and revenue of sales, output, wages and market share of domestic companies have all increased significantly over the period under investigation. Even some of the negative impacts are just the natural results of other positive developments: for example, the investigating authorities cited to the decline in employment in the sector, but this is the only logical consequence following rapid increase in productivity. With such mixed picture, the investigating authorities should have at least explained as to why some of the factors were given more weight than other factors in the determination, but unfortunately no such explanation was given.

In terms of the determination of injury, the Anti-dumping Agreement requires the decision to be "based on an examination of all relevant evidence before the authorities".<sup>67</sup> In particular, the authorities shall also "examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not

<sup>67</sup> Article 3.5.



be attributed to the dumped imports”.<sup>68</sup> The article also gives a few examples of the relevant factors, which include, *inter alia*, “the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry”.<sup>69</sup> In this case, however, it seems that the causal relationship between the dumped imports and the injury, if any, is rather tenuous. Instead, as argued by the American Forest & Paper Association, it seems that two domestic factors are principally responsible for driving down prices in the Chinese market over the period of investigation: “(1) rapid expansion of Chinese production capacity for the [product], and (2) overcapacity in the corrugated box industry in China. Put simply, there is too much Chinese domestic capacity for the [product] relative to demand. Exacerbating this relative excess supply situation is the competitive pressure being exerted by corrugated box producers who are also facing an excess capacity situation”.<sup>70</sup>

Even though this determination has been struck down in the administrative reconsideration process, the MOFCOM have chosen to avoid overturning the decision on substantive issues and rely primarily on procedural issues instead. In the Administrative Reconsideration Decision, the MOFCOM only provided one ground for the reversal. That is:

“In our opinion, when an administrative agency makes a specific administrative decision, it shall abide by the relevant legal provisions, including the procedural provisions. According to article 25 of the Antidumping Regulations, before making the final determination, the MOFCOM shall notify all known stakeholders of the basic facts that it relied

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Submission to The Office of The United States Trade Representative on Trade Barriers to Forest Products for The National Trade Estimate Report on Foreign Trade Barriers by American Forest & Paper Association*, 21 December 2004, p 15, available at <http://www.afandpa.org/Template.cfm?Section=International2&template=/ContentManagement/ContentDisplay.cfm&ContentID=10338>.

on in making its final determination. In this case, even though the investigating authority has disclosed to all relevant stakeholders of some of the basic facts that it relied on in making the final determination, it failed to disclose some other relevant basic facts that shall be disclosed according to the law. For example, in Part VI (ii) 5 of the final determinations, the investigating authorities mentioned the facts that Jiangsu Nine Dragons Papers Company and Jiangsu Liwen Paper Mill has put new assembly lines in use and the domestic production capacity of China has further expanded as part of its analysis on whether the establishment of new firms and competition among firms are factors that contribute to the deterioration of the operations (of the domestic firms). When the investigating authorities made the disclosures before the final determinations were given, however, they did not include such basic facts. Thus, it was impossible for the relevant stakeholders to make comments on such facts and this violated the provisions in article 25 of the Antidumping Regulations. According to the provisions under article XXVIII of the Law on Administrative Reconsideration of the People's Republic of China, we hereby decide to revoke Notice [2005]60 of the MOFCOM".<sup>71</sup>

## Conclusions

As we can see from above, contrary to the gloomy predictions made before China's accession, the DSS so far has been quite effective in dealing with China. In the limited number of cases that China has participated, especially in the cases in which China was on the defensive side, China either chose to try to reach some amicable solution before a formal complaint was brought before the WTO or to settle the case through private consultations with the complainants rather than letting the case going all the way to

<sup>71</sup> Ministry of Commerce of China, *Final Determinations on the Antidumping Investigations on the Kraft Linerboard products Originated from the US, Thailand, Korea and Chinese Taipei* (on file with author). Original in Chinese, translated by the author.

the panel and Appellate Body levels. Thus, instead of being the defiant of the multilateral trading system, China is actually much less aggressive than most of the other WTO Members, especially those with trade volumes comparable to that of China. In a recent article, the author has discussed several possible explanations to explain China's policy since its accession.<sup>72</sup> There is no guarantee, however, that these factors will always stay the same. Indeed, an over-aggressive litigation strategy against China in the WTO might be the victim of its own success: when DSS is used too frequently, it might just turn itself into a catalyst for change in the litigation strategy of China at one point. Actually one can start to discern some signs of such policy change in the recent statements made by the senior officials from the MOFCOM. In a recent official interview, for example, Mr. Shang Ming, the Director General of the Treaty and Law Department of MOFCOM, stated that China should not be afraid of using the DSS.<sup>73</sup> Instead, he argues that China should become a more active user of the system.<sup>74</sup> Once such policy is accepted by the senior leadership of China, the other WTO Members will find that they will have to face a much difficult opponent and it will be too late to close the Pandora's Box again.

<sup>72</sup> See Henry Gao, *Aggressive Legalism: the East Asian Experience and Lessons for China*, in Henry Gao and Don Lewis, *China's Participation in the WTO*, Cameron May, 2005, at pp. 348-351.

<sup>73</sup> MOFCOM [http://gzly.mofcom.gov.cn/website/face/www\\_face\\_history.jsp?sche\\_no=948](http://gzly.mofcom.gov.cn/website/face/www_face_history.jsp?sche_no=948), website,

<sup>74</sup> *Id.*