

September 2012

Think Pieces for 2012 Bridges China Dialogue

Perspective on China and Sustainability



International Centre for Trade
and Sustainable Development



www.bridges-china.com

**PART IV:
FROM CHINA TO CHINESE:
EXPANDING NON-STATE ACTORS
IN GLOBAL GOVERNANCE**

**Scott Kennedy
Director, Research Center for Chinese Politics
& Business
Indiana University**

VI. FROM CHINA TO CHINESE: EXPANDING NON-STATE ACTORS IN GLOBAL GOVERNANCE

Scott Kennedy

*Director, Research Center for Chinese Politics & Business
Indiana University*

China has moved from being an outright opponent to being a quiet observer to playing a more activist role in global governance institutions. As part of this transition, China has come into compliance with its various legal obligations and contributes substantially to deliberations about setting the rules of the game. But, this evolution applies to official China, not non-state actors. Although companies and nongovernmental organizations (NGOs) are increasingly expected to play a role in a wide variety of global governance institutions, Chinese non-state actors have very limited involvement. This reflects China's domestic political environment. Reforms that give greater space and voice to companies, NGOs, and other societal stakeholders in China are a prerequisite to China becoming a more effective global leader.

China Complies and Participates

Since joining the World Trade Organization (WTO), China has revised thousands of regulations and laws at the central and local levels, and the State Council and Ministry of Commerce regularly review drafts of new regulations and laws to compare them against China's commitments. There are occasions where the written text or actual implementation is inconsistent, but foreign governments and industry are quick to point out these weaknesses.

China has been brought to dispute settlement at the WTO on 16 occasions. Nine of those cases have been fully resolved, and by my informal count, China "lost" 8.5 of the 9 cases. It prevailed on important aspects of the intellectual property rights case (DS 362). The WTO made only official rulings on five cases; but, in the other four cases, China made concessions during consultations that by my admittedly arbitrary standard are equivalent to admitting defeat. In four of the five fully completed cases where a WTO panel officially ruled against China, it came into compliance by modifying domestic regulations and laws within the mandated period. In the lone exception, regarding the distribution of audio-visual products (DS 363), China and the United States reached a mutually acceptable settlement before the WTO could have given the US the right to adopt retaliatory penalties against China for noncompliance.

This is a very respectable record. The US has failed to come into compliance on time in at least 7 of 39 cases it has lost at the WTO, and the EU has been found noncompliant in 3 of 21 defeats.

China not only complies, but it actively participates. Since 2008, China has been one of the core participants in the Doha Round, attending all Green Room sessions. And its representatives regularly submit proposals in each of the WTO's committees. Chinese figures have reached senior positions at many international economic organizations, including the World Health Organization, the World Bank, the International Monetary Fund, and the International Telecommunication Union. Chinese activism is greater than ever.

Not Unofficial China

However, this activity refers to official China. Over the last few decades, global governance has come to involve companies, NGOs, scholars, the media, and other important societal

stakeholders, what some refer to as the “third sector.” This is what makes the difference between regulation (管理) and governance (治理). These members of society both provide support to government officials who participate in global governance and directly participate themselves, in what is called, “private governance.” They negotiate, draft principles and agreements, set standards, monitor compliance, and penalize noncompliers.

Non-state Chinese actors are not absent from the global governance scene, but they are in short supply and typically operate on a short leash. This limited activism is surprising given the extent of Chinese international trade and investment. Chinese companies and other parts of society have a strong self-interest in not only understanding the rules of the game, but also in utilizing them and even trying to change them. The Chinese export and invest so much these rules are central to the country’s basic livelihood. Non-state actors from countries with far smaller stakes in the global economy are far more active than their Chinese counterparts.

The only explanation for this surprising paradox is China’s domestic political environment. There are tight constraints on the public activity of non-state actors. Industry associations and other NGOs not only must register with the government, but also often are required to have an official or former official in a leadership role. Also, there is supposed to be only one association representing an industry (一业一会). Because of these constraints, industry associations are more creatures of the government than representatives of their members.

The awkward result is that neither their members nor their government regulators have much faith in these associations and do not depend heavily on them. There have been some reforms since the 1990s. Associations in certain regions are allowed more independence. The cities of Wenzhou, Shenzhen, Guangzhou, and Shanghai are known for relatively vibrant industry associations. And, a minority of national-level associations, particularly those registered under the All-China Federation of Industry and Commerce (工商联), have become more active. These associations are truly independent and initiated by their members, not government agencies. Examples would include the China New Energy Industry Association and the China Mergers & Acquisitions Association. Most active associations are from industries dominated by private companies.

Other non-state NGOs are under even tighter controls than industry associations. Although they can be important in solving social ills, from education to health care, their direct contribution to economic growth is less clear. There is more concern that these organizations will go beyond their regular focus and become politically active. Hence, they are monitored even more closely than industry associations.

Limited Involvement in Global Governance

Chinese industry is most active in bilateral trade disputes. Chinese companies and their lawyers regularly petition the Ministry of Commerce to launch antidumping and countervailing duty investigations against importers. Many of these cases are in the chemical industry and initiated by Sinopec (中石化) or one of its subsidiaries, but applicants are from a wide variety of sectors. Chinese industry and their associations are also active in responding to accusations of dumping abroad. This is particularly true in private-sector dominated sectors, such as light consumer goods and newly emerging industries, such as solar and wind power generation.

But, beyond bilateral trade disputes, Chinese industry, either individual firms or associations, are relatively passive and uninvolved in global governance. During the Doha Round, companies and industry associations from the US and Europe were regular visitors to Geneva. Whenever a ministerial was being held you could be sure representatives of these

companies would be there behind the scenes, briefing officials before negotiations or being briefed afterward. In Dispute Settlement Understanding (DSU) cases, even though these are state-to-state conflicts involving governments, Western businesses most directly affected by the case outcomes regularly meet with their governments at home and in Geneva.

I once ran into an executive of a US express mail company in Geneva who was following the Doha Round and also concerned about China's regulatory regime for express mail. He knew exactly where the negotiations were and was fully conversant in the language of the WTO as well as Chinese law. There must be hundreds, if not thousands of US and European company executives visiting Geneva on a regular basis with that level of knowledge and access.

By contrast, Chinese companies and industry associations are rarely visible in Geneva. They do not follow the Doha Round carefully or lobby the Chinese government to adopt one or another position. Lenovo and Huawei have offices in Geneva, but that is about it, and these offices likely focus on business, not public policy. During an early WTO case involving China, domestic Chinese manufacturers were in Geneva by chance during the dispute, and they made a plea for the Chinese representatives to protect their interests. But, that was a one-off visit not repeated later, and it appears their appeal had no bearing on how the Chinese officials acted in this case.

Chinese companies and NGOs participate to some extent in other areas of global governance, but are far less active than their counterparts from elsewhere. They are less prominent and influential in the discussions over global financial regulation occurring through the Bank for International Settlements and the G20, the UN Framework Convention on Climate Change, World Health Organization activities, and foreign aid discussions. Earlier this year, a Chinese association was participating in a multilateral organization that helps govern a high-tech sector. The group provides recommendations to officials on quality and technical standards, tariffs, and other issues. A consensus on a global tariff proposal was close at hand, but the Chinese association could not determine their government's likely position because, unlike their counterparts, they were unable to engage the relevant official in Beijing. Moreover, the Chinese association wasn't able to effectively press for agreement, because that same official, of course, appoints them to their association roles and is technically their boss. As a result, progress has been slow, and this means higher costs for trade in this hi-tech product, and that cannot be good for Chinese producers or consumers.

The one area in multilateral governance I have been able to identify where Chinese non-state participants are highly active is in the setting of technical standards in the telecommunications sector. Huawei, ZTE, China Mobile, and China Telecom have been deeply involved in the International Telecommunication Union (ITU) and industry consortia, such as the 3GPP that set standards for 3G, 4G, and other aspects of information technology. Their activism seems generated by the existence of a powerful connection between standards and their business models. They are the exception to the rule rather than indicators of a growing trend. But, common to other areas, these companies are motivated by their own accord, not brought to the table by a domestic industry association.

The Chances for Change

As long as Chinese industry and other stakeholders are not active on the global stage, it will be difficult for China to become a leader in global governance. Non-state actors provide information, energy, and organization in ways that governments cannot. China's ability to comply easily with WTO losses may actually be the other side of the same coin; a strong state is able to force its will on industry without facing direct negative consequences. But, this situation may work to the detriment of Chinese officials during multilateral negotiations, and it certainly hurts the interests of Chinese companies' whose business opportunities are

affected by the outcome of negotiations and implementation of the related rules. If the Chinese are not at the table or are unfamiliar with the rules of the game, they do not stand much chance of winning.

It would be simple to say that the key underlying issue is China's political system. Without political reform, there may not be space for a more active and influential society. There may be some merit in this perspective, but China has always surprised observers by being extremely practical in addressing problems even when the solutions may appear to violate standard political logic. Deng Xiaoping launched economic reforms in 1978 by using the language of Mao Zedong thought, not opposing it. China now has private enterprises, huge corporations, stock exchanges, venture capital, and futures markets, and all of this and more is considered consistent with socialist principles. A strong "third sector" is increasingly important for China's economic and social health. And, so I expect there is a way to explain that independent industry associations and NGOs do not necessarily have to be associated with multi-party democracies and, in fact, can help buttress the governing ability of the Chinese Communist Party.

If China is able to facilitate innovative changes in how domestic society is governed, China, both official and unofficial, will become a much greater force across global governance regimes. And, this can only be for the better for China, other countries, and the regimes themselves.