

CHAPTER 1

INTRODUCTION

I. MEANING OF WTO-PLUS

1. WTO-Plus in the Context of WTO Accessions

The term “WTO-plus” is applied in different situations and various contexts. It is basically to reflect the commitments made or the obligations assumed being greater than what are currently imposed or required by the agreements under the World Trade Organization (hereinafter WTO).¹

“WTO-plus” is commonly used to describe the commitments made by acceding Members during their accessions to the WTO with the contents and levels of obligations exceeding those required by WTO agreements. When a country negotiates its accession to the WTO, it could be requested to make concessions exceeding the requirements of the existing WTO agreements or to commit to follow rules stricter than what are required under the WTO. These are “WTO-plus” commitments or concessions.² China’s accession to the WTO is a salient example in this regard and the safeguards provision in its accession protocol is of this nature.

¹ The term “plus” is also used in many other contexts. For instance, since the negotiated Free Trade Agreement of the Americas (FTAA) is modeled on North American Free Trade Agreement (NAFTA), it has been described as “NAFTA plus”. San Sebastián M, Hurtig, A. *Moving on from NAFTA to the FTAA?: the impact of trade agreements on social and health conditions in the Americas*, in *Rev Panam Salud Publica*. 2004;16(4):272-8, cited from http://journal.paho.org/?a_ID=358.

² Nhan Nguyen, *WTO Accession at Any Cost? Examining the Use of WTO-Plus and Obligations for Least-Developed Country Applicants*, 22 Temp. Int’l & Comp. L.J. 243 (2009).

2 WTO-Plus in Free Trade Agreements

When China acceded to the WTO, it was required by WTO Members to accept special safeguard provisions in its WTO accession protocol. Under such safeguard provisions, other WTO Members are entitled to make country-specific safeguard measures specifically against China,³ while if

³ Section 16 (Transitional Product-Specific Safeguard Mechanism) of Protocol on the Accession of the People's Republic of China has the following provisions:

"1. In cases where products of Chinese origin are being imported into the territory of any WTO Member in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products, the WTO Member so affected may request consultations with China with a view to seeking a mutually satisfactory solution, including whether the affected WTO Member should pursue application of a measure under the Agreement on Safeguards. Any such request shall be notified immediately to the Committee on Safeguards."

"2. If, in the course of these bilateral consultations, it is agreed that imports of Chinese origin are such a cause and that action is necessary, China shall take such action as to prevent or remedy the market disruption. Any such action shall be notified immediately to the Committee on Safeguards."

"3. If consultations do not lead to an agreement between China and the WTO Member concerned within 60 days of the receipt of a request for consultations, the WTO Member affected shall be free, in respect of such products, to withdraw concessions or otherwise to limit imports only to the extent necessary to prevent or remedy such market disruption. Any such action shall be notified immediately to the Committee on Safeguards."

"4. Market disruption shall exist whenever imports of an article, like or directly competitive with an article produced by the domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury to the domestic industry. In determining if market disruption exists, the affected WTO Member shall consider objective factors, including the volume of imports, the effect of imports on prices for like or directly competitive articles, and the effect of such imports on the domestic industry producing like or directly competitive products."

"5. Prior to application of a measure pursuant to paragraph 3, the WTO Member taking such action shall provide reasonable public notice to all interested parties and provide adequate opportunity for importers, exporters and other interested parties to submit their views and evidence on the appropriateness of the proposed measure and whether it would be in the public interest. The WTO Member shall provide written notice of the decision to apply a measure, including the reasons for such measure and its scope and duration."

"6. A WTO Member shall apply a measure pursuant to this Section only for such period of time as may be necessary to prevent or remedy the market disruption. If a measure is taken as a result of a relative increase in the level of imports, China has the right to suspend the application of substantially equivalent concessions or obligations under the GATT 1994 to the trade of the WTO Member applying the measure, if such measure remains in effect more than two years. However, if a measure is taken as a result of an absolute increase in imports, China has a right to suspend the application of substantially equivalent concessions or obligations under the GATT 1994 to the trade of the WTO Member applying the measure, if such measure remains in effect more than three years. Any such action by China shall be notified immediately to the Committee on Safeguards."

"7. In critical circumstances, where delay would cause damage which it would be difficult to repair, the WTO Member so affected may take a provisional safeguard measure pursuant to a preliminary determination that imports have caused or threatened to cause market disruption. In this case, notification of the measures taken to the Committee on Safeguards and a request for bilateral consultations shall be effected immediately thereafter. The

WTO Members are to resort to safeguard measures against other WTO Members, such measures need to be applied in a non-discriminatory manner under Article XIX of the General Agreement on Tariffs and Trade 1994 (hereinafter GATT 1994) and to be applied to an imported product irrespective of its source under Article 2.2 of the Agreement on Safeguards.⁴

Safeguards measure is only an example in China's accession protocol having such WTO-plus nature. As a writer commented, "Unlike any other WTO protocol of accession, the China Protocol is not a standardized document. Instead, it contains a large number of special provisions that elaborate, expand, modify or deviate from the existing WTO agreements... [with] obligations exceeding the existing requirements of the WTO agreements..."⁵ These expanded obligations can all be generally considered as the "WTO-plus" obligations.

As a matter of fact, WTO-plus elements regarding acceding Members are not just found in China's accession protocol. As a general principle, most countries acceding to the WTO are requested to assume obligations not limited to those required by the WTO agreements existing at the time of their accessions. For instance, when Cambodia joined the WTO in October 2004, it agreed to achieve full implementation of the Agreement on Trade Related

duration of the provisional measure shall not exceed 200 days during which the pertinent requirements of paragraphs 1, 2 and 5 shall be met. The duration of any provisional measure shall be counted toward the period provided for under paragraph 6."

"8. If a WTO Member considers that an action taken under paragraphs 2, 3 or 7 causes or threatens to cause significant diversions of trade into its market, it may request consultations with China and/or the WTO Member concerned. Such consultations shall be held within 30 days after the request is notified to the Committee on Safeguards. If such consultations fail to lead to an agreement between China and the WTO Member or Members concerned within 60 days after the notification, the requesting WTO Member shall be free, in respect of such product, to withdraw concessions accorded to or otherwise limit imports from China, to the extent necessary to prevent or remedy such diversions. Such action shall be notified immediately to the Committee on Safeguards."

"9. Application of this Section shall be terminated 12 years after the date of accession."

The text of Protocol can be obtained from the WTO website at http://www.wto.org/English/thewto_e/acc_e/completeacc_e.htm#cam.

⁴ Hua Liu and Laixiang Sun, *Beyond the Phase out of Quotas in the Textile and Clothing Trade: WTO-Plus Rules and the Case of US Safeguards against Chinese Exports in 2003*, Asia-Pacific Development Journal, Vol. 11, No. 1, at 49, June 2004. This paper basically explains the difference between China-specific safeguard provisions in China's WTO accession protocol and the general WTO Agreement on Safeguard. The paper can be found at http://www.unescap.org/pdd/publications/apdj_11_1/liu&sun.pdf#search=WTO%20plus.

⁵ Julia Ya Qin, "WTO-Plus" Obligations and Their Implications for the World Trade Organization Legal System: An Appraisal of the China Accession Protocol, *Journal of World Trade* 37(3), 483-522, (2003).