China and WTO: From Rule Taker to Rule Maker?

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SIGNING CEREMONY ON CHINA'S ACCESSION TO THE WTO

11 November 2001, Doha
China and the GATT

• 1948: original contracting party (CP) to the GATT
• 1949: PRC established
• 1950: Taiwan withdrew from the GATT: validity?

• 1971: China resumed UN membership

• 1982: participated in GATT CP Conference as observer

• 1986: applied to resume GATT membership
Three Principles on Resumption of CP status

• Resumption, not accession
  – Validity of Taiwan’s withdrawal
  – Can’t invoke Art. XXXV.

• Developing country status
  – S&D treatment

• Tariff concessions, not quantitative import commitments
  – Designed for planned economy w/o tariff regime: first introduced during the Polish accession in 1967
The Long Road to Geneva

• 1987: Working Party on China’s Accession established
  – Bilateral negotiations: 37 CPs
  – Multilateral negotiations:

• 1989……

• 1992: 14th Party Congress made “Socialist Market Economy” goal of the reform
  – What is Socialist Market Economy? D. Newkirk
  – Is it law? (1993 Constitutional amendment)

• 1995: WTO established
China’s Accession to the WTO

• Three Principles:
  – Developing country status
  – Uruguay Round Agreements
  – Balance of rights and obligations

• 1999: Bilateral deal reached with the US

• 2000: Bilateral deal reached with the EC
2001 -- China in the WTO
WTO Accession Package

• Heavy obligations in market access
  – Goods
  – Services

• Many discriminatory terms:
  – WTO+ obligations
  – WTO- rights
How will the “new kid on the block”

• implement its WTO commitments?

• behave in the WTO?
What does the WTO do?

• Three key areas:
  – WTO Negotiations
  – WTO Dispute Settlement
  – Trade Policy Review & FTAs

• China: Rule Taker → Rule Shaker → Rule Maker
WTO Negotiations

• Will China’s accession
  – strengthen the developing country coalition and better balance the World Trading System?
  OR
  – upset the status quo and make it more difficult to reach deals?
Rule Taker: 2001 - 2005

• Main task: understand what’s going on
  – 2001-2005: only 10 submissions

• Reasons:
  – RAM argument
  – Implementation of WTO commitments
  – Lack of expertise
  – Agriculture: of little interest to China
  – China-specific issues
China pushed onto the center stage

• 2006: major breakthrough in agriculture → NAMA

• 2007: G-4 meeting in Potsdam: “policy space” against “de-industrialization” by China

• Calling China to take on “more responsibility”
  – Biggest beneficiary
  – Sectorals: machinery, chemicals, and electronics

• New approach by China
  – Active participation as a normal Member
    • As of 2012: 100+ submissions, but mainly focus on S&D & technical issues
  – Practical positions with flexibility
    • Trade facilitation
  – No leader, but no 2nd class citizen either
    • Conflicting interests with other developing countries
Rule-Maker: 2017 -

• Xi’s speech at WEF 2017

• Amb. Zhang’s speech in May 2017

• New proposals on e-commerce, investment facilitation, trade remedies etc.
WTO Dispute Settlement

- No restrictions on the usage of dispute settlement system

- Will this open the floodgate of cases against/by China?
WTO Disputes against/by China
Most frequent dispute settlement participants

World Trade Organization

- Non-member

Disputes between members:
- 0 cases

• Mar 2004:
  – VAT on IC – 4 months
  – Coke dispute with EU – 2 months

• Jan 2006:
  – Kraft Linerboard – 1 working day
Reasons?

• Cultural

• Wrong perception of the WTO DSS

• Lack of experience
Building the capacity

• Learning through practicing:
  – Aug 2003-2006: 3rd party in every case

• Helped to boost confidence in capacity and fairness in the DSS

• March 2006: Auto parts – put on a good fight

• Strategy: “shaking” existing rules
  – TRIPS, Publications: procedural arguments
Rule Maker: Sept 2008 - Present

• US - Anti-Dumping and Countervailing Duties:
  – Are SOEs public body?
    • Ownership or Control; or
    • Governmental authority?
  – Double remedy:
    • No explicit prohibition = allowed?

• EC – Steel Fasteners:
  – Country-wide margins in EU Basic Anti-Dumping Regulation

• Two NME cases against EU & US
Reasons

• More expertise and more confidence

• Better understanding of the DSS

• More balanced trade profile
Free Trade Agreements

• Pre-accession: no FTA
  – Resource constraint
  – Strategic reason

• 2002: Framework Agreement with ASEAN signed

• Very active player since then
  – 17 FTAs; more in the pipeline
China’s existing FTAs
Most active FTA countries
Rule Shaker: 2002 - 2014

- **Structure:**
  - Narrower focus: traditional issues only

- **Substance:**
  - Market economy status
Rule Maker: 2015 - present

• Challenge of the TPP

• Try to include new issues in its new FTAs:
  – Korea, Australia: inclusion of e-commerce & competition; possibility for negative listing approach, pre-establishment rights etc.
Recap

• WTO Negotiation: taker $\rightarrow$ shaker (-- maker?)

• Dispute Settlement: taker $\rightarrow$ shaker $\rightarrow$ maker

• FTA: shaker $\rightarrow$ maker?
The Future?

• WTO Reform: a “China Round”?

• WTO Dispute Settlement:
  – Hot areas:
    • Defensive interests: industrial policy
    • Offensive interests: trade barriers in foreign markets

• FTA & BRI: an alternative global trade order?
Thank You!

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