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The US-China Safeguard Provision, the GATT, and Thinking Long Term

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The US is currently caught between its international obligations to the World Trade Organization (“WTO”) and its domestic obligations to US workers in the textile and clothing industries. As of January 1, 2005, quantitative restrictions on Chinese imports have been officially phased out—under the auspices of the WTO—thereby allowing a greater influx of Chinese goods into Member countries. The US, however, has contracted with the People’s Republic of China (“China”) to work around this phase-out. By means of the US-China Safeguard Provision (“Safeguard Provision”), the US has contracted with China to allow the US to institute restrictions on Chinese imports for three additional years between January 1, 2005 and December 31, 2008. Thus, during this transition period, the US violates the WTO’s mission of ensuring equality in international trade by creating its own exception to the WTO’s nondiscrimination rule, as opposed to confining itself to a WTO-created exception. While China has announced its intent to impose tariffs on some of its own textile exports, such measures will not release the US from its responsibility to actively enforce WTO principles when vast numbers of cheap Chinese goods continue to enter the US market.

The actions of the US are problematic from a policy perspective, though not necessarily from a legal one, for two reasons. First, the influence of the US in working toward liberalized trade is diminished when the US chooses not to follow the uniform rules of the GATT but instead creates its own, more favorable safeguard provision, thereby opening the door for other Members to follow in its footsteps. Accordingly, as a leader in the international community and a founding member of the WTO, the US must avoid any appearance of impropriety and must avoid setting a precedent for accepted defiance of the GATT. Second, it is unclear that the Safeguard Provision actually benefits the

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US and its WTO trading partners in the long term. Therefore, instead of simply holding onto uncompetitive US industries for three extra years, the US must innovate to become competitive in new industries.

I. A SERIES OF PIVOTAL AGREEMENTS OUTLINE THE
RESPECTIVE RIGHTS OF THE US AND CHINA WITHIN THE
BROADER WTO FRAMEWORK

A. THE GENERAL AGREEMENT ON TARIFFS AND TRADE
GUARANTEES EQUALITY IN INTERNATIONAL TRADE

The purpose of the WTO—as expressed in its General Agreement on Tariffs and Trade (“GATT”)¹—is to facilitate the ability of Members to enter “into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce.”² Thus, the purpose is to ensure equal treatment of domestic and imported goods, and to ensure equal treatment from every Member of the WTO to every other Member. Accordingly, the GATT’s Most-Favoured-Nation (“MFN”) treatment guarantees that “any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.”³ The GATT, therefore, requires that any quantitative restrictions be applied equally to the imports of all Members.⁴

¹ Marrakesh Agreement Establishing the World Trade Organization, Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Legal Instruments—Results of the Uruguay Round vol 1 (1994), 33 ILM 1125 (1994) (including the 1994 GATT in Annex 1A) (Apr 15, 1994).

² General Agreement on Tariffs and Trade, 61 Stat A11, TIAS No 1700 (Oct 30, 1947), as amended by the Marrakesh Agreement Establishing the WTO (cited in note 1). Current amended form available online at <http://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm> (visited Mar 14, 2005).

³ Id art I, ¶ 1.

⁴ Id art VIII, ¶ 4.

B. THE MULTI-FIBER ARRANGEMENT ALLOWED A DISPARITY IN QUANTITATIVE RESTRICTIONS AMONG MEMBERS, BUT HAS BEEN PHASED OUT OF APPLICATION

The Multi-Fiber Arrangement (“MFA”),⁵ now phased out of application, has largely regulated the international trade of textiles since 1974⁶ and has stood as an exception to the equality principles of the GATT.⁷ The MFA allowed different quantitative restrictions to be placed on the textiles of different Members despite the requirements of MFN status under the GATT. While the GATT requires that the same tariffs and quotas be applied to the same goods imported from any Member of the WTO, the MFA allowed “a complex system of unilateral and bilateral quotas, on a product-by-product and country-by-country basis.”⁸ Under the MFA, therefore, the US had been free to arrange for more restrictive quotas on Chinese imports and less restrictive quotas on imports from other Members. This arrangement, however, has been phased out of use as of January 1, 2005.

C. THE AGREEMENT ON TEXTILES AND CLOTHING HAS PHASED OUT THE MFA AND ALL OTHER NON-UNIFORM QUANTITATIVE RESTRICTIONS, REESTABLISHING EQUALITY IN INTERNATIONAL TRADE

The Agreement on Textiles and Clothing (“ATC”) was designed to gradually phase out the quantitative restrictions of the MFA and reestablish equality in the international trade of textiles and clothing. The ATC instituted uniform quantitative restrictions. In fact, it introduced uniform multilateral trading standards to replace the unilateral and bilateral quotas that had persisted under the MFA. Accordingly, the ATC enforced the WTO ideal of liberalizing international trade in textiles and apparel.⁹

The ATC and its phase-out of the MFA were self-terminating, as the ATC states: “This Agreement and all restrictions thereunder shall stand terminated on the first day of the 121st month that the WTO Agreement is in effect, on which

⁵ Multi-Fiber Arrangement, Formerly the Arrangement Regarding International Trade in Textiles, 25 UST 1001, TIAS No 7840 (Dec 20, 1973).

⁶ Dries Van Eeckhoutte and K.U. Leuven, *Case C 149/96, Portuguese Republic v. Council of the European Union* (*Eur Ct J November 23, 1999*), 1999 E.C.R. I-8395, 7 Colum J Eur L 280, 280 (2001).

⁷ Alice J.-H. Wohn, *Towards GATT Integration: Circumventing Quantitative Restrictions on Textiles and Apparel Trade under the Multi Fiber Arrangement*, 22 U Pa J Ind Econ L 375, 394 (2001).

⁸ Id at 395 (citation omitted).

⁹ See id at 375.

date the textiles and clothing sector shall be fully integrated into GATT 1994. There shall be no extension of this Agreement.”¹⁰ Therefore, since the ATC entered into effect—with the Marrakesh Agreement Establishing the WTO—on January 1, 1995, US-specific quotas on imported Chinese textiles and apparel should have expired on January 1, 2005. After all, with the end of the ten-year phase-out period, all Member imports should be governed by the same set of quantitative restrictions, apart from specific WTO-created exceptions.

D. THE AGREEMENT ON SAFEGUARDS DICTATES THE PRINCIPLE EXCEPTION UNDER WHICH THE WTO ALLOWS DISCRIMINATION IN INTERNATIONAL TRADE

The WTO’s Agreement on Safeguards provides for an exception to nondiscrimination and MFN status, stating:

A Member may apply a safeguard measure to a product only if that Member has determined . . . that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.¹¹

Under its WTO obligations, therefore, the US may only implement safeguard measures against China, if: (1) there is an absolute or relative increase in the quantity of imports; (2) the increase causes—or threatens to cause—serious injury to US textile and clothing industries; and (3) there is a causal link between the increased imports and the injury—or threat of injury.¹²

E. THE 1997 US-CHINA BILATERAL TEXTILES AGREEMENT CREATED ITS OWN SAFEGUARD PROVISION

The February 1997 US-China Bilateral Textiles Agreement created the Safeguard Provision to protect US industry without resorting to the burden of proof established by the Agreement on Safeguards. This agreement has now been superseded by the WTO China Accession Agreement, which includes the Safeguard Provision from the 1997 bilateral agreement:

(a) *In the event that a WTO Member believed that imports of Chinese origin of textiles and apparel products covered by the ATC as of the date the WTO Agreement entered*

¹⁰ Agreement on Textiles and Clothing, art 9, (Apr 15, 1994), available online at <http://www.wto.org/english/docs_e/legal_e/16-tex.pdf> (visited Mar 14, 2005), Annex 1A to the Marrakesh Agreement Establishing the WTO (cited in note 1).

¹¹ Agreement on Safeguards, art 2, ¶ 1 (footnote omitted), (Apr 15, 1994), Annex 1A to the Marrakesh Agreement (establishing the WTO) (cited in note 1).

¹² Joel B. Blank, *Remolding China’s Iron Rice Bowl: An Opportunity for United States Agricultural Commodities behind the Great Wall of China*, 18 Am U Int L Rev 753, 789 (2003).

into force, were, due to market disruption, threatening to impede the orderly development of trade in these products, such Member could request consultations with China with a view to easing or avoiding such market disruption. The Member requesting consultations would provide China, at the time of the request, with a detailed factual statement of reasons and justifications for its request for consultations with current data which, in the view of the requesting Member, showed: (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption . . . ; (c) Upon receipt of the request for consultations, China agreed to hold its shipments to the requesting Member of textile or textile products in the category or categories subject to these consultations to a level no greater than 7.5 per cent (6 per cent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made; (d) If no mutually satisfactory solution were reached during the 90-day consultation period, consultations would continue and the Member requesting consultations could continue the limits under subparagraph (c) . . . ; (e) The term of any restraint limit established under subparagraph (d) would be effective for the period beginning on the date of the request for consultations and ending on 31 December of the year in which consultations were requested, or where three or fewer months remained in the year at the time of the request for consultations, for the period ending 12 months after the request for consultations; (f) No action taken under this provision would remain in effect beyond one year, without reapplication, unless otherwise agreed between the Member concerned and China.¹³

Accordingly, until December 31, 2008, the US can take action to restrict Chinese imports for up to one year at a time without proving the three elements of the Agreement on Safeguards: (1) that there is an absolute or relative increase in Chinese imports, (2) that the imports are causing or threatening to cause serious injury to US industry, and (3) that there is a causal link between the harm and the Chinese imports. Thus, the US can act on a belief that Chinese imports are “threatening to impede the orderly development of trade” without having to support that belief pursuant to the Agreement on Safeguards.¹⁴ Plus, the US can take action to limit Chinese imports without having to prove that the “products of [China] are introduced into the commerce of . . . [the US] at less than the normal value of the products” or that they cause or threaten to cause “material injury to an established industry,” as required by the GATT.¹⁵

The US has not, therefore, incorporated a safeguard provision created by the WTO but has created its own exception—the Safeguard Provision—to the nondiscrimination rule of the GATT to avoid preserving the MFN status of a

¹³ WTO China Accession Agreement, ch IV, ¶ 242, available online at <<http://www.tcc.mcc.doc.gov/cgi-bin/doiit.cgi?204:64:724547569:300>> (visited Mar 14, 2005) (emphasis added).

¹⁴ ATC art 2, ¶ 1 (cited in note 10).

¹⁵ GATT art VI, ¶ 1 (cited in note 2).

fellow Member. This provision lowers the threshold for implementing safeguard mechanisms, including the implementation of quotas. It is important to note, however, that while the director of the WTO's textiles division stated that the termination of the quotas was an integral part of the Uruguay Round negotiations and could not be changed or postponed,¹⁶ the US-created Safeguard Provision has been incorporated into a WTO document: the China Accession Agreement.

F. THE 1999 US-CHINA AGREEMENT MAINTAINED THE SAFEGUARD PROVISION

On November 15, 1999, China and the US entered into a bilateral agreement, maintaining the Safeguard Provision. This agreement, in effect, provided a transition between the 1997 US-China Bilateral Textiles Agreement and the WTO China Accession Agreement. It smoothed the way for US support of China's accession to the WTO.

In fact, during the protracted negotiations for WTO accession, China conceded to the three main US requirements concerning the importation of Chinese textiles and apparel. The first concession states that for fifteen years after China's accession to the WTO, the US will maintain its current antidumping measures, continuing to treat China as a non-market economy so as to place high tariffs on allegedly unfair Chinese dumping.¹⁷ The second concession states that for twelve years after China's accession, the US-China Product-Specific Safeguard will "address increased imports that cause or threaten to cause market disruption to a [US] industry."¹⁸ Finally, the third concession reiterates the Safeguard Provision of the 1997 bilateral agreement that was later preserved in the WTO China Accession Agreement. This final concession, the Safeguard Provision, "permits [US] companies and workers to respond to increased imports of textile and apparel products . . . until December 31, 2008" by unilaterally restraining Chinese imports using lower standards than those outlined in the WTO Safeguard Agreement.¹⁹ Moreover, this Safeguard

¹⁶ TDC, *Textile Quotas Will Phase Out Despite Fears of EU Industry*, 10 Indus News (2004), available online at <<http://www.tdctrade.com/alert/eu0410a.htm>> (visited Mar 14, 2005).

¹⁷ White House National Economic Council, *Summary of the US-China Bilateral WTO Agreement, Prepared by the White House National Economic Council*, Nov. 15, 1999, 16 Intl Trade Rep (BNA) 1888, 1890 (Nov 17, 1999). See also US-China WTO Agreement on Market Access, § III, available online at <<http://www.uschina.org/public/wto/market/>> (visited Mar 14, 2005), also available in James V. Feinerman and B. Thomas Peele III, eds, *China After the WTO: What You Need to Know Now* 251, 493 (Practicing Law Institute 2001).

¹⁸ White House National Economic Council, 16 Intl Trade Rep (BNA) at 1890 (cited in note 17).

¹⁹ Id.

Provision stands in contrast to the equality goals of the ATC and violates the equality terms of the GATT.

II. THE SAFEGUARD PROVISION VIOLATES THE MISSION OF THE WTO AS IT WAS SPECIFIED IN THE GATT

The Safeguard Provision—China's concession to the US—actively violates both the mission and the specific requirements of the WTO as expressed in the GATT. At the same time, however, the Safeguard Provision aims to protect American jobs and the viability of American textile and clothing manufacturing. In light of this apparent inconsistency, there are two important questions. The first is whether the Safeguard Provision should necessarily comply with the GATT. The second is whether the US government has a greater responsibility to free trade in the international market or to US workers who may be forced into unemployment when companies—including US companies—can take advantage of inexpensive Chinese labor not subject, for example, to US minimum wage requirements.

To answer the first question, the Safeguard Provision, as incorporated into a WTO document, should necessarily comply with WTO principles and foundational WTO documents, such as the GATT. Thus, a related question is why the WTO allowed the Safeguard Provision to survive in the WTO China Accession Agreement. The only apparent explanation is that the WTO did not consider this provision problematic—whether as a temporary inconsistency or as an actual amendment to the GATT—because it was temporary, transitional, and tied to a trade-related justification.²⁰ As a *legal* matter, therefore, the US does not appear to violate the WTO, as voiced by the GATT. Again, however, despite its confined reach, the Safeguard Provision is problematic from a policy perspective because it allows the US to publicly disregard WTO principles specified in the GATT by taking unilateral action to restrict Chinese imports using lower standards than those dictated by the WTO's Agreement on Safeguards.

The second question—deciphering the US government's responsibility in light of both international and domestic pressures—is more difficult. Ideally, the purpose of the WTO and the GATT is to facilitate equality in trade. In practice, this ideal should enable consumers to make their own choices about which product, domestic or imported, to purchase without the influence of tariffs and quotas. The real world of international trade, conversely, shows influential countries, such as the US, taking steps to protect their domestic industries by

²⁰ See Charles Tiefer, *Sino 301: How Congress Can Effectively Review Relations with China After WTO Accession*, 40 Cornell Intl LJ 55, 69 (2001).

preventing imports from less-developed countries—with abundant inexpensive labor—from flooding or threatening to flood domestic markets. “The history of textiles and apparel trade in the global system evidences the persistent institutionalization of protectionist policies, despite the principal purpose of the [GATT] of moving the global trading system towards liberalized trade.”²¹ The US, therefore, must be cautious. As a leader in the international community, the US should not maintain a protectionist image, but should demonstrate its willingness to bring equality to international trade.

In fact, the US has successfully contracted to disregard two important GATT principles: (1) MFN status, or treating all foreign imports the same, and (2) treating domestic products and foreign imports the same.²² Moreover, the Safeguard Provision has already been used to limit the import of Chinese bras, dressing gowns, and knit fabrics into the US.²³ Accordingly, despite the WTO granting China full membership on December 11, 2001 after more than fifteen years of negotiations²⁴ and despite completion of the ATC phase-out as of January 1, 2005, the Safeguard Provision prevents China from achieving the full equality of MFN status.

III. ALTHOUGH THERE ARE VALID DOMESTIC PROTECTIONIST CONSIDERATIONS, THE US MUST AVOID THE APPEARANCE OF IMPROPRIETY

Despite the valid domestic crisis concerning the textile and clothing industries due to cheap foreign imports, the US must avoid the appearance of impropriety. This means not enforcing the Safeguard Provision. The Safeguard Provision violates the principles of the GATT and therefore violates the mission of the WTO, even in light of the WTO apparently condoning the Safeguard Provision by incorporating it into the China Accession Agreement. Consequently, by enforcing the Safeguard Provision, the US diminishes its ability to legitimately demand that other Members liberalize their trading practices and opens the door for other Members to similarly seek out protectionist opportunities to violate the GATT’s rule of nondiscrimination. The US, therefore, must either adhere to the nondiscrimination policies of the GATT and the more stringent WTO-created safeguard provisions, such as the

²¹ Wohn, 22 U Pa J Intl Econ L at 375 (cited in note 7).

²² See, for example, GATT arts I, III, VIII, XI, XIII (cited in note 2); Tiefer, 40 Cornell Intl L J at 67 (cited in note 20).

²³ Paul Blustein, *China Could Rule Textile Market After 2005: Study Sees Impending Industry Shake-Up*, Wash Post E01 (Aug 12, 2004), available online at <<http://www.washingtonpost.com/wp-dyn/articles/A58429-2004Aug11.html>> (visited Mar 14, 2005).

²⁴ See Blank, 18 Am U Intl L Rev at 754 (cited in note 12).

Agreement on Safeguards, or look for domestic alternatives to competing unsuccessfully with these specific Chinese imports. If the US determines that the textile and clothing industries are viable endeavors, it should work to protect their competitive edge pursuant to the GATT and the Agreement on Safeguards.

Unfortunately, solutions—besides restrictive safeguard provisions—that can fit more precisely within WTO and GATT policy and thereby remove the appearance of impropriety have proven elusive. The GATT forbids more than just quantitative restrictions such as internal quotas on imports. It also outlaws, for example, internal taxation and other internal charges on imported products, in addition to subsidies and other benefits for domestic products, all of which work to the benefit of domestic products and to the detriment of imported products.²⁵ Accordingly, limiting imports has been the principle method of safeguarding domestic industries, where allowable. The US, however, has chosen to demand a more lenient standard for instituting such safeguard measures rather than work within the standard created by the WTO Agreement on Safeguards.

The leadership authority of the US within the WTO is meaningless, though, if it is seen to say one thing while doing another. Consequently, the US must be seen as working toward the liberalized trade goals of the WTO—and more specifically of the GATT—and not as merely protecting its own interests by creating a special safeguard provision to suit its own needs. Admittedly and unfortunately, a considerable number of American jobs will most likely be lost as a result of the termination of quotas on Chinese imports and the consequent destruction of the American textile and clothing industries in the face of less expensive Chinese goods.²⁶ After all, in November 2003 alone, the US imported 4.3 billion dollars of Chinese textiles while only exporting 192.5 million dollars of its own textiles back to China.²⁷ And, while cheap Chinese clothing has already destroyed much of the US clothing industry, it is poised to control 50 percent of the US clothing market in 2005 if quotas are allowed to expire without further restrictions, as compared to 16 percent in 2002.²⁸ Accordingly, Representative John M. Spratt, Jr., has argued that:

²⁵ GATT, arts III, VIII, XVI (cited in note 2).

²⁶ China has access to low-waged workers and “the efficiencies of modern economies.” Tyler Marshall, Evelyn Iritani, and Marla Dickerson, *Clothes Will Cost Less, but Some Nations Pay*, LA Times (Jan 16, 2005), available online at <<http://www.latimes.com/business/la-fi-quotaone16jan16,0,3076753.story?coll=la-home-headline>> (visited Mar 14, 2005).

²⁷ US-China Economic and Security Review Commission, *Field Investigation on China's Impact on the US Manufacturing Base*, available online at <http://www.uscc.gov/hearings/2004hearings/written_testimonies/04_01_30wrts/spratt.htm> (visited Mar 14, 2005).

²⁸ Blustein, *China Could Rule Textile Market After 2005*, Wash Post E01 (cited in note 23).

The safeguard was designed to protect [US] textile and apparel products from disruption by large volumes of Chinese imports. This safeguard was included as [a] key provision in the Chinese/[US] textile bilateral in 1997 and reaffirmed as part of China's WTO accession agreement in 2001. It should be used and used aggressively, and having agreed to the safeguard twice, China should not be heard to complain when it is used fairly.²⁹

Despite Representative Spratt's position, the Safeguard Provision only provides the US with three extra years of protectionist measures against China, and more is at stake than simply the relationship between the US and China. Actions taken by the US influence and affect all other Members.

IV. THE US MUST SEEK OUT EFFECTIVE, LONG-TERM SOLUTIONS INSTEAD OF THE SHORT-TERM QUICK FIX OF THE SAFEGUARD PROVISION

The US must seek out a solution to the domestic crisis of the textile and clothing industries that will benefit its workers and its trading partners in the WTO over the long term, as opposed to simply using the Safeguard Provision to hold onto American jobs for another three years. The US would not pursue the Safeguard Provision without specific objectives, but it is far from evident that the Safeguard Provision gives US domestic industries enough time to make any substantive long-term changes so as to effectively compete with Chinese imports at the end of three years. While the Safeguard Provision may be a tool for American politicians to portray themselves as fighting for American workers, it may do more harm than good in the long term.

Economist Adam Smith wrote: "It is the maxim of every prudent master of a family never to attempt to make at home what it will cost him more to make than to buy," and "[i]f a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry employed in a way in which we have some advantage."³⁰ After all, "[t]he natural advantages which one country has over another in producing particular commodities are sometimes so great that it is acknowledged by all the world to be in vain to struggle with them."³¹ Accordingly, if China can produce textiles and clothing cheaper than the US, Adam Smith suggests that the US is actually harming itself, its workers, and all Members of the WTO by trying to compete ineffectively with China as opposed

²⁹ US-China Economic and Security Review Commission, *Field Investigation on China's Impact on the US Manufacturing Base* (cited in note 27).

³⁰ Adam Smith, *An Inquiry Into The Nature And Causes Of The Wealth Of Nations*, Ch IV, §§ 2.11-12, available online at <<http://www.econlib.org/library/Smith/smWN.html>> (visited Mar 14, 2005).

³¹ Id at Ch IV § 2.15.

to innovating and finding its own “advantage.” If, instead, the US effectively specializes, it can benefit itself and its trading partners with new innovation, and it can benefit its workers with a strong, new, competitive industry.

By acting on its rights under the Safeguard Provision, however, the US will unnecessarily delay the pursuit of innovation. Thus, instead of encouraging innovation, the US will encourage workers to continue in industries for which their skills will become unnecessary. In the long term, unless the US can use the three extra years of restrictions to make its textile and clothing products less expensive and thus competitive with Chinese goods, it will actually disserve the workers in these industries that will eventually be wiped out by cheaper Chinese goods, and it will disserve other Members who will lose out on possible US innovation. While the US needs to maintain certain domestic industries for reasons of national security even when it is less efficient to do so, the US does not need to hold onto its textile and clothing industries if it can harness those workers and resources in new and more effective domestic arenas. US jobs lost in the textile and clothing industries can be replaced by US jobs in the new industries. Hence, if the US determines that it is unable to effectively compete with cheap Chinese imports of textiles and clothing, it should look for new niches in which it can specialize, thus remaining a competitive and beneficial trading partner over the long term of its WTO participation. To do otherwise may simply delay the inevitable: the fall of the textile and clothing industries to less expensive Chinese alternatives.

V. CHINA’S SELF-IMPOSED TARIFFS ON EXPORTED TEXTILES MOST LIKELY WILL NOT NEGATE THE DESIRE OR ABILITY OF THE US TO ENFORCE THE SAFEGUARD PROVISION

While China’s self-imposed tariffs on exported textiles have the potential to negate any need for the US to enforce the Safeguard Provision, the reality of the situation is to the contrary. On December 12, 2004, China’s Commerce Minister announced that China would impose tariffs on certain of its own textile exports in order “to ensure a smooth transition for textile integration following the end of the quota system.”³² According to the announcement, one minimum, uniform tax will be imposed on all Chinese exports regardless of the cost of a particular textile or garment, thereby encouraging the manufacture of high-end products, as opposed to less expensive ones.³³ After all, sufficiently large tariffs will make it unprofitable to manufacture cheap goods. Nevertheless, no definite

³² Keith Bradsher, *China Relents, and Promises Textile Tariffs*, NY Times A1 (Dec 13, 2004) (quoting Chong Quan, a ministry spokesman).

³³ Id.

tariff levels have been specified, and the tariffs may not truly reduce the large-scale manufacturing of cheap Chinese textiles and clothing at all.³⁴ China's announcement, therefore, does not take any pressure off of the US in light of persistent cheap Chinese goods threatening domestic textile and clothing industries. In reality, "[i]f the tariffs are not high enough to limit the competitiveness of Chinese exports, then the Bush administration could still proceed with recent threats to impose new limits on shipments by China," such as its commitment to disallow shipments in excess of 2004 quotas to enter the US domestic market.³⁵ Accordingly, despite China's announcement, the US most likely will still have an opportunity to enforce the protectionist measures of the Safeguard Provision. Such enforcement, however, continues to be irreconcilable with GATT equality principles, the US's WTO responsibilities, and the best interests of long-term international trade.

VI. CONCLUSION

In spite of China's actions, the US still must adhere to GATT principles by refraining from enforcing the Safeguard Provision. As a powerful international body and as a founding member of the WTO, the US must avoid the appearance of impropriety that can diminish its influential voice and set unwanted protectionist precedent. Furthermore, despite the short-term goals of the Safeguard Provision, the US must look for innovative solutions that are not just political sound bytes but will effectively create long-term US jobs and international trading partners.

³⁴ Id.

³⁵ Id.