II TRADE POLICY COMMITMENTS AND CONTINGENCY MEASURES

A Introduction

Trade agreements define rules for the conduct of trade policy. These rules must strike a balance between commitments and flexibility. Too much flexibility may undermine the value of commitments, but too little flexibility may render the rules politically unsustainable. This tension between credible commitments and flexibility is often close to the surface during trade negotiations. For example, the question of a "special safeguard mechanism" (the extent to which developing countries would be allowed to protect farmers from import surges) was crucial in the discussion of the July 2008 mini-ministerial meeting, which sought to agree negotiating modalities – or a final blueprint – for agriculture and non-agricultural market access (NAMA).

Many of the kinds of flexibilities associated with trade agreements are generally referred to as escape clauses, contingency measures, trade remedies or safety valves. These terms will often be used interchangeably. The fundamental reason for incorporating escape clauses of various kinds into trade agreements is for governments to manage circumstances that cannot be anticipated prior to their occurrence. These may involve unexpected increases in imports from foreign suppliers or "unfair" trade practices, such as dumping and subsidies or the political desire to modify existing policy commitments. A trade agreement that offers such possibilities without unduly weakening existing contractual commitments has a better chance of remaining robust than an agreement that results in regular non-compliance by World Trade Organization (WTO) members in response to such circumstances. In addition, these measures allow governments to undertake deeper commitments, while reducing the political costs of signing the agreement.

The *World Trade Report 2009* focuses primarily on contingency measures available to WTO members in the import/export of goods. The legal framework for such measures is much less developed in services trade, although these will also be discussed. The Report will focus on safeguard measures, anti-dumping duties, and countervailing duties.[1] In order to appreciate better the trade-off among alternative policy instruments available to governments to address difficult economic situations, or situations in which a government decides to modify a policy stance, the Report also discusses a number of other mechanisms of flexibility available to WTO members. These include the renegotiation of tariff commitments, export taxes, and increases in tariffs up to the maximum ceiling that each WTO member has negotiated – known as tariff bindings.

More indirect measures, such as restrictive safety, health and technical standards, or managed exchange rates may be used by governments in a way that makes them similar to contingency measures. For example, if a government introduces stricter rules to assess whether a certain product complies with domestic regulations, this may increase the time required for imports to cross the border and increase trade costs.[2] Since these measures may have similar effects to a temporary increase in tariffs, they may be used to protect a sector that is struggling to compete with imports and have the same impact as escape clauses built into the WTO agreements. These indirect measures are not covered in this Report.

The design of contingency measures is frequently a central element of negotiations. This indicates the importance that governments attach to these instruments. Moreover, it is often possible to trace periods of particular economic difficulty, either at the sectoral level or more generally, when contingency measures were applied with greater intensity. Data from 2008 show that in the face of recession in the global economy, the use of trade remedies increased significantly. The WTO Secretariat reported that in 2008, there was a 28 per cent increase in anti-dumping investigations compared with 2007.

Apart from the obvious relevance of contingency measures in relation to the integrity and durability of trade agreements, the topic merits attention as little research has been undertaken in this area. Perhaps one reason for this is that contingency policy is an interdisciplinary field, requiring both legal and economic expertise. The *World Trade Report 2009* seeks to fill an important gap in the existing literature on the subject. The Report looks into the different approaches to the design and content of contingency measures and provides insight into how governments make policy choices.

The next section examines flexibilities in trade agreements, in terms of their theoretical justification, and outlines the range of contingency measures available. Section C explores contingency measures in more detail, looking at both the economic and legal aspects of contingent trade policy. Section D focuses on data and empirical evidence, regarding the frequency and usage of various contingency measures. It also summarises research seeking to explain the application of such measures. Section E briefly concludes the Report.

Endnotes

1 Safeguard measures are invoked to counter increased imports deemed injurious to domestic industry, anti-dumping duties respond to alleged injury caused by dumped imports, and countervailing duties react to foreign subsidies considered injurious to domestic industry. Definitions of these terms and the way the relevant rules work form a major part of the analysis of this Report.

2 Using gravity models, recent studies find that a 10 per cent increase in time to import decreases trade by between 5 and 25 per cent depending on the sector and destination. See Hausman et al. (2005), Djankov et al. (2006), and Nördas et al. (2006).