

E CONCLUSIONS

The present Report coincides with a severe global economic crisis. The serious deterioration in the economic situation of many countries around the world is provoking protectionist pressures.

In the present circumstances, transparency and effective monitoring of trade and trade-related measures make a decisive contribution to helping WTO members manage their trade policies. Free-flowing information on policies affecting trade is essential to cooperation among countries seeking to manage the crisis.

This Report is intended to contribute to a better understanding of WTO trade contingency measures, thus helping WTO members weather the current crisis.

Three main themes have emerged from the Report. First, a trade-off exists for WTO members between wanting flexibility in a trade agreement and making binding commitments. Second, there are both benefits and costs associated with trade contingency measures which members adopt to address increases in import competition. Third, differences in legal framework and political economy factors help to explain how governments choose which contingency measures to use.

It is important to distinguish between the motivation for having flexibilities in trade agreements and their effects. Flexibilities allow governments to commit to deeper opening in a trade agreement while reducing the economic and political opposition to the agreement. However, the fact that trade contingency measures are necessary to ensure further trade opening does not mean that there are no negative consequences. In the absence of market failures, trade restrictions will cause losses in economic welfare.

One of the main questions examined in the Report is whether WTO provisions provide a balance between supplying a government with sufficient flexibility to address unanticipated economic difficulties and limiting the use of that flexibility for protectionist purposes. The answer to this question depends on the role of trade agreements.

If trade agreements are intended to allow trading partners to escape a “prisoners’ dilemma” – where the absence of cooperation results in making

both parties worse off than they would be with cooperation – the inclusion of escape clauses should not upset the balance of concessions that parties commit to within the agreement. If trade agreements are intended as a way for governments to make binding commitments to their private sector, escape clauses should not undermine that objective.

In this respect the Report highlights features of contingency measures that have an important bearing on how the balance is struck. They include the standards for the injury test and causality, whether compensation is required, and whether a measure is temporary.

The Report has examined multilateral rules that apply to trade contingency measures. Despite some differences, the legal provisions on safeguards, anti-dumping actions and countervailing duties ensure that these measures can be used when domestic industry is injured. No consideration is taken of how the economy as a whole is affected – a feature of the system regarded as a weakness by some.

A second aim of the Report has been to identify the factors that explain why a government chooses a particular contingency measure. We have indicated that this decision depends on how easy it is to invoke a measure, the possibility to discriminate among sources on imports, the possibility to extend the period of applicability of a measure, reputation costs, and whether the government may be required to provide compensation. While multilateral agreements have increased uniformity among countries in respect of trade remedy practices, significant differences nevertheless remain in terms of procedural and substantive issues. These issues have an impact on which measure is chosen, the likelihood of measures actually being taken, and the effect of the measure.

The existing empirical evidence on contingency measures supports the theoretical argument that flexibilities are needed in a trade agreement to address future difficulties that cannot be foreseen at the time that an agreement is signed. Contingency measures are more likely to be used in difficult economic circumstances, be they sector-specific or of wider application. Nevertheless, existing evidence cannot exclude the possibility that these measures are used as a protectionist device. Although there is case

study evidence that flexibilities allow countries to commit to deeper market opening, recent attempts to show this on the basis of economic analysis offer ambiguous results.

The empirical section of the Report has identified the need for better data and more timely notification by WTO members of contingency measures. In addition, it has emphasized the need for further empirical research on a number of issues, including the links between flexibilities and depth of commitments in a trade agreement, the role of contingency measures as a deterrent, the cost of contingency measures and the choices made among alternative measures of contingent protection.

The decision to impose contingency measures is made by individual members. Data for 2008 show an increase in WTO-sanctioned trade remedies. The number of anti-dumping actions, in particular, has increased. Export taxes have been introduced in response to the food crisis. In the midst of a global recession, the fact that decisions on contingency measures are made at the national level may simply lead to higher protection, with limited benefits in terms of meaningful relief from injury.

The global recession has uncovered what could be considered a coordination problem. A single country's use of a contingency measure within a trade agreement, triggered by unexpected import competition or a downturn in its domestic industry,

gives the industry the opportunity and time to recover. However, such a reprieve will be difficult in the midst of a global recession, particularly when other countries are imposing trade contingency measures.

The Great Depression in the 1930s showed that protectionism in the face of a global crisis can deepen and lengthen a crisis. While WTO members have an unchallenged right to use contingency measures that are consistent with WTO rules, at a time of global crisis the proliferation of such measures among trading partners would have adverse economic effects with few of the positive offsetting effects that are invoked to justify such measures.

Restraint in the use of restrictive trade measures will contribute to a more rapid recovery from the current crisis. Evidence to date suggests some increase in the use of measures that restrict trade, but so far against a background of general restraint. While it is a comparatively straightforward matter to detect the use of contingency measures of the kind analysed in this Report, it is more difficult to identify trade-restrictive measures and subsidies with adverse trade effects that may be embedded in financial rescue and fiscal stimulus packages. In all cases, a better use of the current WTO transparency and peer review mechanisms can make an important contribution to helping members better prepare for exiting the current crisis.