World Trade Organization

# WORLD TRADE REPORT 2009

## Trade Policy Commitments and Contingency Measures

## How can trade remain open in times of crisis?





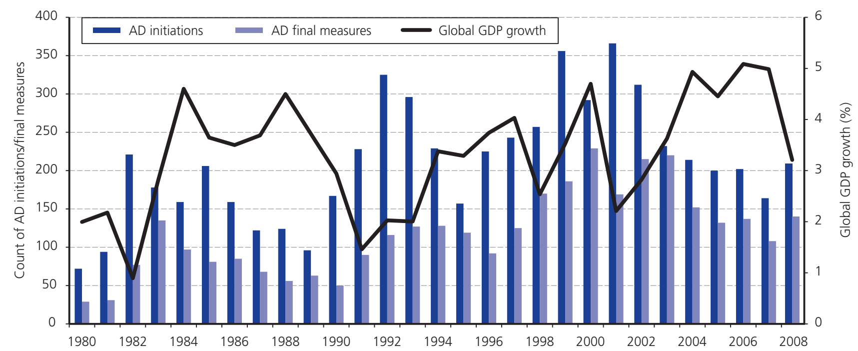
# WORLD TRADE REPORT 2009

The World Trade Report 2009 examines the range of measures that governments may call upon in trade agreements and the role that these measures can play when governments face an economic crisis. The Report provides an economic, legal and political economy analysis of the key features of different types of measures and illustrates the benefits and costs associated with such measures.

The Report also analyses whether WTO provisions provide a balance between giving governments the necessary flexibility to face difficult economic situations and at the same time limiting the use of these provisions for protectionist purposes.

One of the conclusions of the Report is that transparency and effective monitoring make a decisive contribution to managing trade policy, especially in adverse economic circumstances.

**Trade contingent measures and the global business cycle**




*Note:* Global GDP growth is from the IMF World Economic Outlook database (April 2009).
*Source:* WTO Secretariat.

***"The choice of topic for this year's World Trade Report is highly relevant to the challenge of ensuring that the channels of trade remain open in the face of economic adversity. Well-balanced contingency measures, designed primarily to deal with a variety of unanticipated market situations, are fundamental to the effectiveness and stability of trade agreements. The Report explores this proposition from a variety of angles."***

Pascal Lamy,
Director-General of the WTO


Patrick Low, Director of the WTO Economic Research and Statistics Division and Pascal Lamy, Director-General of the WTO

# Key elements of the Report

- **Trade agreements foresee a range of measures, commonly referred to as contingency measures or safety valves, that countries may use to manage adverse circumstances.** The Report adopts a broad definition of contingency measures, which can take many forms. These include anything that modifies or reverses a commitment under a trade agreement. They can also include actions that take advantage of a gap between commitments and policies actually applied, or simply involve measures not covered by an agreement but which have trade implications.

- **The design of contingency measures is frequently a central element of negotiations and is instrumental to the achievement of deeper commitments.** Contingency measures provide a trade agreement with a certain degree of flexibility that is essential to allow parties to make long-term commitments while preserving their ability to adapt to a changing environment. Therefore, they are essential instruments to allow countries to make greater liberalization commitments.

- **Contingency measures are essential for the effectiveness and stability of a trade agreement, but they need to be well balanced.** Contingency measures preserve the credibility of an agreement. An agreement that foresees the possibility to use certain measures to manage unforeseen circumstances of economic or non-economic difficulties has a better chance of remaining robust than an agreement that results in regular non-compliance. But contingency measures need to strike a balance between flexibility and commitments. Too much flexibility may undermine the value of commitments but too little may render the rules unsustainable.

- **Trade contingency measures adopted by members can involve both benefits and costs. Therefore, the design of such measures should aim at limiting the circumstances when they can be used as a protectionist device.** It is important to distinguish between the motivation for having flexibilities in trade agreements and their effects. Flexibilities allow governments to commit to deeper liberalization 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 liberalization does not mean that there are no negative consequences. In the absence of market failures, trade restrictions will cause losses in economic welfare.

- **The design of contingency measures should not undermine the role of trade agreements.** Contingency measures should not be designed in a way that upsets the balance of concessions that parties commit to in a trade agreement, and they should not be so flexible to undermine the government's objective of making a binding commitment to the private sector.

- **Some features of the multilateral rules that apply to trade contingency measures have an important bearing on how the balance between flexibility and commitments is struck.** These features include the standards for testing injury to domestic industry and causality, whether compensation is required, and whether a measure is temporary. 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.

- **Differences in legal frameworks and political economy factors help to explain how governments choose among contingency measures.** This decision depends on how easy it is to invoke a measure, the possibility to discriminate among sources of 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.

- **In times of economic difficulties governments are often under pressure to adopt measures to restrict trade. Contingency measures play an important role in maintaining a rule-based system of multilateral trade.** In the last few months trade has contracted more than at any time since the 1930s, as a consequence of the dramatic downturn provoked in the first instance by a financial crisis. In the 1930s the contraction in trade was accompanied by a strong wave of protectionism. But resorting to protectionist measures appears to have prolonged and deepened the crisis. Evidence to date shows a certain increase in the use of measures that restrict trade in 2008 compared with 2007, but so far against a background of general restraint.

- **Transparency and effective monitoring make a decisive contribution to managing trade policy, especially in adverse economic circumstances.** Free-flowing information on policies affecting trade is essential for cooperation among countries seeking to manage the crisis. Comprehensive and timely notification of trade contingency measures to the relevant WTO bodies is needed to ensure proper monitoring.

The World Trade Report is an annual publication that aims to deepen understanding about trends in trade, trade policy issues and the multilateral trading system.

The theme of this year's Report is "Trade policy commitments and contingency measures". The Report examines the range of contingency measures available in trade agreements and the role that these measures play. Also referred to as escape clauses or safety valves, these measures allow governments a certain degree of flexibility within their trade commitments and can be used to address circumstances that could not have been foreseen when a trade commitment was made. Contingency measures seek to strike a balance between commitments and flexibility. Too much flexibility may undermine the value of commitments, but too little may render the rules unsustainable. The tension between credible commitments and flexibility is often close to the surface during trade negotiations. For example, in the July 2008 mini-ministerial meeting, which sought to agree negotiating modalities - or a final blueprint - for agriculture and non-agricultural market access (NAMA), the question of a "special safeguard mechanism" (the extent to which developing countries would be allowed to protect farmers from import surges) was crucial to the discussions.

One of the main objectives of this Report is to analyze whether WTO provisions provide a balance between supplying governments with necessary flexibility to face difficult economic situations and adequately defining them in a way that limits their use for protectionist purposes. In analysing this question, the Report focuses primarily on contingency measures available to WTO members when importing and exporting goods. These measures include the use of safeguards, such as tariffs and quotas, in specified circumstances, anti-dumping duties on goods that are deemed to be "dumped", and countervailing duties imposed to offset subsidies. The Report also discusses alternative policy options, including the renegotiation of tariff commitments, the use of export taxes, and increases in tariffs up to their legal maximum ceiling or binding. The analysis includes consideration of legal, economic and political economy factors that influence the use of these measures and their associated benefits and costs.

## Further information:

The World Trade Report is published by the World Trade Organization (WTO).

The Report is available in English, French and Spanish:

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| World Trade Report 2009 | 978-92-870-3513-4 |
| Rapport sur le commerce mondial 2009 | 978-92-870-3514-1 |
| Informe sobre el Comercio Mundial 2009 | 978-92-870-3515-8 |

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