

“Protectionist” measures in the current economic crisis and actions by the Ministry of Economy, Trade and Industry

Abstract

Since the start of the economic crisis, the tendency towards protectionism has accelerated in countries around the globe. International efforts are under way to combat this. This paper attempts to provide an overview of these trends. It has been compiled by the Ministry of Economy, Trade and Industry (METI), and does not comprise a part of the “Report on Compliance by Major Trading Partners with Trade Agreements”, but as its contents are closely associated with the Report, is being published as an annex. (For an explanation of the relationship between protectionism and the guiding principles of the Report, the “Rule-Based Criteria”, see the note at the end of this paper.)

1. How should we deal with “protectionist” measures?

Since the start of the global economic crisis triggered by the Lehman Brothers collapse last September, political pressure has been building in various nations for the introduction of protectionist measures, purportedly to support domestic industries and secure employment.

If nations give in to such domestic pressures and indulge in protectionism, there is a fear that a series of similar or retaliatory responses could occur, leading to the spread of protectionism on a global scale. The multilateral free trade system established after World War II is a bulwark against such a spread of protectionism.

One of the causes of World War II was a series of protectionist measures in the 1930s, including tariffs raises, exchange rate devaluation, and establishment of economic blocs by various nations, in response to the Great Depression that started with the Black Thursday stock market crash in 1929¹. The Bretton Woods System that includes the GATT, the predecessor to the WTO, was established so as not to repeat these mistakes.

Concluding the Doha Round, currently under negotiation, is the most important step to avoid the “spread of protectionism,” following lessons learned from the 1930s. It is also necessary for nations to mutually monitor trade measures in order to dissuade each other from resorting to protectionist measures, a potential trigger of a cascade of protectionist actions.

It is, however, not constructive to hastily label all trade restricting measures as “protectionist”. Level-headed discussions could solve problems by identifying an alternative, less-trade-distorting measure.

Accordingly, it is necessary to identify the appropriate way to deal with the problem, from dialogue to resorting to legal means, for each of the measures.

¹ John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations (second edition)*, The MIT Press Cambridge, Massachusetts London, England.
John H. Jackson, William J. Davey, and Alan O. Sykes, Jr. (1995) *Legal Problems of International Economic Relations 3rd ed.: cases, materials and text on the national and international regulation of transnational economic relations*, West Publishing Co.

2. The WTO's fight against protectionism

In the current economic crisis, Argentina has introduced import licensing requirements for a wide range of goods since October 2008, India has raised tariffs on steel products since November, and Russia has raised tariffs on cars since January 2009. In February, the United States introduced the Buy American provisions in the American Recovery and Reinvestment Act of 2009. Thus, the trend of taking trade-limiting measures is increasing in major countries. Finding a way to stop this trend has become a global issue.

As part of the WTO's response to the economic crisis, Director-General Pascal Lamy reported to the General Council on October 14, 2008, that he had "constituted a Task Force within the Secretariat to follow up the effects of the financial crisis on (the WTO's) different areas of work."

International concerns were reflected in a commitment to refrain from protectionism, expressed in the Washington Declaration of the G20 Leaders on November 15 and the APEC Leaders' Statement on November 22.

Then, at the WTO Trade Negotiations Committee and the General Council meeting on December 17 and 18, Director-General Pascal Lamy stated: "the WTO has a particular responsibility to follow up on the trade measures which had been taken in the wake of the financial crisis", and that the Task Force would "produce regular updates of these measures."

On January 26, 2009, the WTO Secretariat reported to its members the results of the monitoring of the trade measures undertaken by the Task Force. The report, however, was treated as a working document, not to be made public, and issued under the sole responsibility of the Director-General in accordance with Paragraph G (Overview of Developments in the International Trading Environment) of the TPRM (Trade Policy Review Mechanism) mandate. This was intended to be a purely factual report on policies having an impact on the multilateral trading system, with no legal effect or implication.

An informal WTO TPRB (Trade Policy Review Body) meeting was held on February 9 based on this report. Many members expressed support and cooperation for the monitoring conducted by the WTO Secretariat, although some countries questioned the legitimacy of such monitoring by the TPRB. Members also discussed ways to improve the accuracy and comprehensiveness of the information covered by the reports in the future, as well as the need for widening the scope of trade measures monitored to cover a broad range of measures affecting trade. In particular, many of the developing nations pointed out that subsidies to specific industries with high trade distorting effects, which were noticeable in advanced nations, should be monitored.

The WTO Director-General Pascal Lamy released a revision of the report dated January 26 to member nations on March 26 based on the information provided by Japan and other member nations.

The Director-General, based on this revised report, discussed the state of the protectionist measures introduced by various nations and urged self-restraint at the G20 Summit in London on April 2. The Leaders' Declaration reaffirmed the leaders' commitment "to refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions, or implementing World Trade Organization (WTO) inconsistent measures to stimulate exports. Additionally, we will rectify promptly any such measures". Moreover, at the informal meeting of the WTO TPRB held on April 14, it was proposed that trade-related developments be reported by the WTO Secretariat every three months and made publicly available on the WTO

website. This was approved by members.²

3. METI's response: monitor, analyze and act

The METI has been gathering information on the measures taken by foreign governments that may impede business activities by Japanese companies, and has worked to rectify problems as needed since before the start of the current economic crisis. After the outbreak of the crisis, however, the number of measures taken by foreign governments that may impact the economic activities of companies have increased rapidly. Therefore, it has become even more necessary to respond swiftly and fairly. This entails, firstly, confirming the provisions of foreign laws and regulations that are the basis of the measure in question, then assessing the relationship with the WTO and other international rules, and finally, requesting and proposing improvement to the trading partner in question.

The WTO has moved to strengthen its activities to monitor trade measures as described above. At the meeting between METI Minister Toshihiro Nikai and Director General Pascal Lamy in Davos on January 31, Mr. Lamy requested Japan to provide information to help the WTO monitor trade measures. In these circumstances, the Japanese Government expressed its support for the monitoring by the WTO and cooperation for increased transparency. On February 12, the METI joined forces with relevant ministries and agencies, as well as related public bodies, such as the Japan External Trade Organization (JETRO), to reinforce the monitoring system for protectionist measures, while also contributing information to the WTO.³

Based on the understanding that the status and contents of any foreign government measure that may be trade-restricting should be verified with reliable sources, it is METI policy to directly confirm government announcements and official documents in order to accurately grasp the situation. At the same time, as it is important to properly understand the background and purpose of the measures adopted, Japan has collected relevant information, made analyses in collaboration with relevant ministries, agencies and other public bodies, and made requests individually to the countries concerned, and will continue to do so.

Around 130 trade measures implemented by 30 nations have been identified through the strengthened monitoring system, some of which are noted on the attached list, based on the following criteria (with measures noted as of May 2009):

² Report to the TPRB from the Director-General on the financial and economic crisis and trade-related developments dated March 26, 2009

(http://www.wto.org/english/news_e/news09_e/trdev_dg_report_14apr09_e.doc)

³ "On the strengthening of the monitoring system of protectionist measures" dated February 12, announced by the METI

1. On the basis of the current situation with the growing protectionist trend worldwide in the serious economic crisis, the Ministry of Economy, Trade and Industry has decided to collaborate with the Japan External Trade Organization (JETRO) (*) and the ministries and agencies concerned to strengthen the system to swiftly identify and address the trade measures that may impact corporate activities.
2. The information obtained will be provided to the World Trade Organization (WTO), as currently, the WTO is also monitoring the trade policies of respective nations.

* The Japan External Trade Organization (JETRO) announced the "JETRO Overseas Business Emergency Support Measure" on January 30 and is ready to gather/provide information on protectionist trends as well.

- Measures introduced after the start of the financial crisis last September (or those that have been revealed as being under consideration)
- Measures that are in violation of the commitment to “refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions, or implementing World Trade Organisation (WTO) inconsistent measures to stimulate exports” made in the Washington G20 Summit Declaration (Note 2) on November 15, the APEC Leaders' Statement on November 22, and the London G20 Summit Declaration issued on April 2 (Note 3) AND may impact Japan’s economy and corporate activities
- * Some of the measures listed separately do not constitute a clear violation of any existing rule, and accordingly, no legal measures have been taken against them. As mentioned above, however, the METI has collaborated with relevant ministries, agencies and government-affiliated bodies to urge the trading partners concerned to improve the situation.

Note: The relationship between protectionism and the “Rule-Based Criteria”

Measures reported in the “Report on Compliance by Major Trading Partners with Trade Agreements” are selected from those that infringe international rules, such as the WTO agreements, based on the “Rule-Based Criteria”, as noted in the introduction to the Report.

“Protectionist” measures, however, refer to a wide range of measures that inhibit trade and/or investment in order to protect domestic industries or employment. Some of these are permitted by the WTO agreements. For instance, raising tariffs within the limits of tariff bindings are legal under WTO rules, but depending on the objectives and designs, such actions could be regarded as protectionist.

The measures that the G20 Leaders’ Declaration called for restraint of are “new barriers to investment or to trade in goods and services”, “new export restrictions” and “WTO inconsistent measures to stimulate exports”. The last, “measures to stimulate exports”, are not subject to restraint if they are consistent with the WTO, but the two preceding measures are to be refrained from even if they are allowed by the WTO rules. This follows from the idea that given the severity of the “once in a century” economic crisis, major countries which account for around 80 to 90 per cent of the world economy and trade should refrain from adopting measures which would worsen the global economic outlook, even if they have a legal right to do so. It is, however, up to individual countries to decide whether specific actions are subject to the G20 political commitment. Given a situation where agreeing on a formal “standstill” pact, which promises to maintain current levels of trade liberalization, was not feasible, leaders chose to issue a timely and positive message to the international community and kept the declaration to a simple statement without spelling out exactly what measures were subject to its terms.

The quarterly report by the Director General of the WTO to the TPRB is a compilation of the results from monitoring trade measures by the WTO secretariat. The fact that a specific measure is noted in the report does not mean that the WTO secretariat considers the measure to be protectionist, or as having protectionist intentions (paragraph 12 of the April 14 report). Indeed, the report contains measures that liberalize or facilitate trade (paragraph 25). As monitoring and reporting trade measures will increase transparency, leading to pressure to refrain from introducing the most egregious measures, it was chosen to set up the monitoring and reporting process quickly without courting controversy over which measures should be included in the report.