Early Warning Report on potentially protectionist measures

February 2009

Report to the 133 Committee

This note responds to the recent request from Member States in the 133 Committee to report on new potentially protectionist measures planned or implemented by our trading partners in the face of the economic crisis. DG Trade has asked its Delegations / Market Access Teams in G-20 countries and other key EU markets to coordinate locally the monitoring and gathering of information. This information will be reported to DG Trade on a monthly basis. The report below provides an overview of the first batch of data received by 1 February 2009. The report outlines an overall assessment of the situation and concludes at this stage that while protectionist pressures are growing the trickle of measures so far seen has not yet transformed itself into a flood; however there are good reasons for continued vigilance. These conclusions should be considered as work in progress. More complete and updated information will be provided for the next report in March.

Over the past weeks we have received increasing evidence that the economic downturn is hitting trade flows hard around the world. The data now available for the last months of 2008 reveals substantial falls in import and export flows not only in the US and the EU where the financial crisis was first felt, but also very notably in Asia. Overall, both the IMF and the World Bank are now projecting that world trade activity will decline by between 2.1% and 2.8% in 2009. This would be the first fall in global trade since 1982.

In the face of this challenging economic environment some governments are coming under severe pressure to shield their economies and favour local production by either hampering imports, or by artificially boosting exports. However, if an escalation of new protectionist measures is triggered, the fall in global trade activity risks being even greater and the economic downturn more severe and protracted.

To prevent such a scenario, the G20[1] leaders last November made two specific commitments to keep trade open and transparent. First, they pledged that: *within the next 12 months*, they *will 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.* Second, they agreed to: *strive to reach agreement this year on modalities that leads to a successful conclusion to the WTO's Doha Development Agenda with an ambitious and balanced outcome.*

The EU has been actively pushing its main trade partners to deliver on these two commitments. Completing the DDA is the most effective way to guard our individual trade interests and the multilateral trading system against the threat of an outbreak of protectionism, and we will continue to push for conclusion of modalities. Regarding the commitment not to

---

[1] The 20 members are the finance ministers and central bank governors of 19 countries: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, United Kingdom, United States; plus the European Union (EU).

raise new barriers, the EU welcomes the recent WTO initiative to develop a formal monitoring mechanism using the existing Trade Policy Review Body as the forum to implement it. The WTO Secretariat released its first report at the end of January, identifying several (potentially) trade restrictive measures, while concluding that there is no general escalation of protectionism so far. A further edition of the WTO report will be prepared for mid-March. This report will be particularly useful for the April G20 summit as a basis for a political discussion on how to address trade restrictive measures that WTO members may be tempted to put in place as a reaction to the current crisis. In the spirit of the G20 declaration it is also a useful tool to improve transparency, to help understand the risks of growing protectionism, and to generate peer pressure.

The EU, being the world's largest trader, would stand to lose the most if the trading environment was indeed becoming less open and transparent. In order to be pro-active in this regard, and as discussed in the 133 Committee, DG Trade has intensified its own intelligence gathering and monitoring of trade restrictive measures in third countries. This will naturally be a continuous exercise and will feed our day to day work to keep markets open and tackle market access barriers through the use of our trade toolbox.

To this effect we requested our Market Access teams (European Commission delegations, Member States and business associations) established in key markets to produce and then keep up to date an inventory of measures that may affect our export interests. The report is factual, and agreed within the Market Access Team or trade counsellors' meetings. It sets out our first assessment and is a useful tool for transparency and early warning – alongside the more structured work in Geneva. DG Trade shares this information with the 133 Committee and invites Member states actively to contribute to the exercise.

Monitoring of trade restrictive and distortive measures in key trade partners

Reports were requested from 36 European Commission Delegations in key export markets. Among these, attention focused in particular on the G20 countries.

Since the start of the financial crisis in September 2008, there have been several restricting and/or distorting trade measures that go against the spirit of the G20 commitment.

Out of the 36 countries analysed the Market Access Teams identified new potentially trade restrictive and distortive measures in 14 countries, including 10 in the G20 (e.g. Argentina, Canada, India, Indonesia, Russia, Turkey, South Africa, South Korea, the US and China). In the case of China, reporting concern stimulus measures in some sectors that might contribute to 'export' problems abroad and the announcement of financial aid schemes which will need to be monitored further.

In 13 markets no trade restrictive measures were reported so far. In some G20 countries, despite announcements, no measures have actually been implemented. This is the case in Brazil, Mexico and Japan. In Australia, none of the new national level measures have been identified as potentially trade restrictive; however, at sub-national (state) level some measures may be inconsistent with Federal Government’s strong pro-G20 policy stance.

This reporting exercise is work in progress. In some cases the measures reported need to be complemented with further information from the Delegations so that a more accurate assessment of their potential impact on trade can be made. We also recognise the difficulty to sometimes distinguish whether at this stage specific measures are trade distorting, or trade creating.

Member States are invited to complement this information either via the Commission in Brussels or via the EU Delegations in the countries concerned.

Overall Assessment

On the basis of the information received so far the conclusion is that for the moment there is no generalised race towards protectionism. However, there are reasons for concern that justify continued vigilance.

An important number of trade restrictive measures have already been implemented. India, Argentina and Indonesia have so far been the countries which used most measures. Other countries have also announced trade restrictive or distortive measures that have eventually been watered down or abandoned after strong reactions by trading partners, notably following pressure from the EU. Nonetheless they clearly reveal that there are important underlying political pressures building up in some of our trading partners. Notable examples are the discussions around the inclusion of "Buy American" clauses in the new US fiscal stimulus package, the American Recovery and Reinvestment Act (ARRA) and Brazil's announcement and subsequent withdrawal of a proposal to impose new restrictive licensing requirements for a wide range of products (around 70% of Brazil's imports).

Table 1.Potential trade restrictive/distortive measures –sectoral coverage reported for January

Country/Sector

Country	Textile	Toys	Telecom	Agri-food	Raw Material	Iron, Steel, Metal	Pharma	Auto	Services	Other	Total
Argentina*	8	3				5		3		3	22
Canada*				1				1		1	3
China (sectoral stimulus)*	1		1			1		1		5	9
Ecuador		1		1				1		1	4
Egypt				2	1	1				1	5
India*	1	1			2	2		1		2	9
Indonesia*	1	1	1	2	1		1			1	8
Russia*				3		1		1		2	7
South Korea*				2		1		1		1	5
Turkey*		1	1							1	3
Ukraine	1			1				1		1	4
USA*	1					1				1	3
Vietnam				1				3		1	5
TOTAL	**13**	**7**	**3**	**13**	**4**	**12**	**1**	**13**	**0**	**21**	**87**

* G-20 members

Overall, the risk of an escalation of trade restrictive measures seems to be at the moment concentrated in three or four sectors, namely textiles, agricultural and food products, automobiles, iron/steel/metal and toys. However, while textiles is the sector for which most measures have been reported these are mostly coming from one country: Argentina. In contrast in the steel, cars and toy industries, as well as in the agricultural and foodstuff sectors trade restrictive measures have been reported in several countries, raising concerns of a potential retaliation dynamics emerging. The proliferation of these measures in the steel and car industries is not surprising given that these industries have borne the brunt of the economic slowdown so far, being directly exposed to the fall out of the financial crisis and the ensuing credit crisis. Regarding the toy industry, the measures are mostly targeting imports from China, while in the agricultural and agri-food sectors both developing (such as Indonesia, Ecuador, Ukraine and Egypt) and developed countries (Canada and South Korea) have undertaken or are planning to undertake various trade restrictive or trade distorting measures.

So far trade restrictive and distortive measures have been more evident in developing and emerging countries. They have resorted more often to cross border measures that directly hamper trade – also due to the fact that most developing members may not have the financial capacity to make use of stimulus packages or other forms of subsidy. Examples of tariff increases come from Argentina, India (although India has not made active use so far of the tariff margins between applied and bound rates), Ukraine, Russia, Egypt, Ecuador, and South Korea. Other instruments have also been used such as import licenses (Argentina, Indonesia, India), quotas (Ecuador), and other customs procedures (Argentina, Turkey, Indonesia and India). Overall, the sectoral coverage of new border barriers has been most extensive in Argentina, Ukraine, Russia and Ecuador. Regarding measures targeting exports, Indonesia is the only country from which there are reports of new export restrictions being introduced (on minerals and coal), while China seems to be the main focus for concern regarding the introduction of measures to boost exports (e.g. through increases of VAT rebates, incentives and financial support for foreign trade) that could prove disruptive in light of reduced global demand.

In terms of barriers to investment, these seem to have been used only in Vietnam to tackle difficulties of the banking sector[2]. However, Indonesia is introducing local content requirements in pharmaceuticals and telecommunications equipment. Other countries are introducing more subtle behind the border measures, namely Vietnam (imposing a distorting consumption tax on some types of cars) and Russia (introducing a discriminatory road tax on freight transport and new restrictive applications of public procurement rules).

There are fewer measures reported from delegations in developed economies. This partly reflects their higher level of binding in terms of their WTO commitments, as a result of which they tend to resort to more complex protectionist measures that are often more difficult to monitor, such as "buy local" clauses which are applied in public procurement. Also, some EU Member states have been criticized for potentially trade distorting elements included in aid packages to rescue sectors that have been affected by the crisis.

Furthermore, while on the part of developed countries there seems to be a concern to respect WTO commitments, such policy stance may not be sufficient for other countries and may not be enough to avoid retaliatory actions. For instance, the discussion around the inclusion of a "Buy America" clause in the new fiscal stimulus package was crucial in that sense. While the original formulation was changed to meet US legal obligations under international agreements (notably the WTO Government Procurement Agreement) it still does not necessarily go in the direction of respecting the G20 standstill commitment. As it stands, the "Buy American"

[2] The barrier has already been removed due to EU pressure.

clause continues to discriminate against emerging countries which are important suppliers of US steel imports. This could possibly put additional pressure on the EU market and at the same time unleash retaliatory measures from emerging countries. Indeed, it was noted that steel is one of the sectors where trade restrictive dynamics seem to be already present.

Table 2. Potential trade restrictive/distortive measures by country reported in January 2009[3]

Country/measures

Country	New barriers to investment	Border barriers	Behind the border measures	New export restrictions	Measures to stimulate exports	Other measures
Argentina*		5				
Brazil*						1
Canada*						1
China*					1	1
Ecuador		1				
Egypt		1				
Hong Kong						
India*		3	3			
Indonesia*		3	1	1		
Japan*						
Russia*			2			
South Korea*		1				1
Turkey*		1				
Ukraine		1				
USA*			1			1
Vietnam	1	1	1			
TOTAL	**1**	**17**	**8**	**1**	**1**	**5**

* G-20 members

The proliferation of fiscal stimulus packages across emerging and developed economies, while necessary to kick start the economy, could in some cases include measures that are trade distortive. Several delegations reported fiscal programmes being announced or in implementation phase and most of them include sector specific measures: China (light industry, textiles, non-ferrous industry, steel and iron, auto, petrochemicals, shipbuilding, electronics, information communication), Canada (auto, forestry, agriculture, slaughterhouses), Egypt (auto, weaving and textiles, tourism, and pharmaceutical sectors), South Korea (banks and nine key manufacturing sectors namely auto, semiconductors, petrochemicals, textiles, shipbuilding, steel, displays, mobile phone and machinery), and Brazil (auto). Some of these, such as the plans of Egypt and China, explicitly refer to the need to "stabilise" or promote exports. Further scrutiny of the specific contents of these fiscal stimulus packages is warranted in order to fully identify whether there are trade distortive elements.

[3] For the purpose of this report, we have not yet included TDI aspects.

Steps forward

Since the start of this exercise in January, our services in Brussels and EC Delegations have been vigilant and active in addressing the most urgent issues raised by our Market Access Teams.

Furthermore, as appropriate, we intend to raise in regular WTO committees any specific restrictive measures that have negative implications on EU exporters. This is another useful way to generate peer pressure, especially if done in cooperation with other affected WTO members. Such an approach has already been adopted e.g. in the Committee on Import Licensing (concerning recently introduced Indonesian import licensing measures), and it could also be pursued in the TRIMs Committee in the coming months (concerning local content requirements by Indonesia on pharmaceuticals and telecoms equipment, and by Venezuela on cars).

There are some examples of actions on the most urgent pieces of legislation in the process of adoption:

- In the case of Ukraine/draft law on temporary 13% import surcharge on valid import duties for certain goods, there are currently high level talks with the Ukrainian officials.

- In Indonesia, DG Trade services are analysing from a WTO legal perspective the Indonesia regulation on the "import of certain goods" with regard to entry port restrictions, import licenses, and pre-shipment inspections. The outcome of this analysis will guide any actions to address the above restrictions.

- In India, our joint efforts have proven successful in contributing to the delay in implementation of import restrictions on steel and steel products. This positive step has been made possible through close cooperation and coordination between the Commission and Member States on the one hand, and with like-minded countries such as Japan and Korea on the other.

- In Vietnam, the European Commission Delegation has succeeded in lobbying effectively for the removal of a newly introduced automatic licensing regime, or the delay in issuance of licenses for the establishment of foreign banks.

- In Ecuador, proposals have been made which could lead to import restrictions from additional tariffs to quota affecting a large number of products (adopted on 22 January). Coordinated dialogues involving the European Commission Delegation and EU Member States are taking place with Ecuadorian authorities to find solutions to reduce the economic impact of these import restrictions. Once the measure is notified at the WTO, the respective procedures will be applied immediately.

This shows that progress can be achieved by using the wide range of instruments available: from the case-by-case work of Local Market Access Teams to the formal routes of dispute settlement panels and Trade Barrier Regulations.

Finally, working closely with Member States and business through the Market Access Strategy has proven effective and should continue to give results in our market access work to ensure that the world trade environment remains open.

Conclusion

In this report we have presented an assessment of potentially trade restrictive measures planned or implemented in our key trade partners. Several issues should be highlighted.

First, this is a rolling document and will be updated in March when more cases are reported and clarified.

Second, while reporting on potential trade restrictive and trade distortive measures in key EU markets, we should also be aware that measures taken by the EU have been perceived negatively by our trading partners. The reintroduction of export refunds for milk products (butter, skimmed milk powder, whole milk powder and some cheeses) due to the recent fall in world prices has provoked strong reactions from trading partners. Moreover, some of the EU policies to support sectors affected by the crisis are raising concerns and some Member States' initiatives to help sectors in crisis have also been controversial.

Third, it should be noted that for the moment the situation in key EU trade markets gives rise to concern but is not dramatic. Therefore, our key message would be that restrictive and distortive measures, are so far, rather limited, but there is no reason for complacency. The trends we can see are worrying and therefore we should remain alert to further deterioration. This judgement is confirmed by the recent emergence of further protectionist measures. Vigilance is necessary. The March exercise will also be complemented with input from industry, through *Business Europe,* which will provide us with a similar type of information, gathered from its members (industry associations).

Last but not least, working closely with Member States and business through the Market Access teams in European Commission Delegations on this particular exercise has helped to promote open markets and fair trading regimes, and identify specific new market barriers. It showed that trade policy can play an active role in supporting the EU economy through a renewed focus on the Market Access Strategy.

We should continue in this direction. Completing the DDA is of course crucial; and it needs to be complemented by an immediate policy response and by continued efforts in using our usual trade toolbox. Most of all, we also must ensure that the G20 political commitment is respected by all members. Finally, continuing to drive forward global consensus on limiting potential protectionism will help ensure that Europe confirms its place as a central player in the world economy.

<u>Annex: Overview of measures currently in place or planned in key third countries</u>

ANNEX

1.1. NEW BARRIERS TO INVESTMENT

Vietnam:

- Delayed issuance of licenses for the establishment of 100% foreign owned banks. Once given, the government is slowing down the transferring of assets from formerly existing branches to new 100 % foreign owned entities. The barrier has already been removed due to EU pressure.

1.2. BARRIERS TO TRADE IN GOODS AND SERVICES

1.2.1. BORDER BARRIERS

Argentina:

- In October 2008, controls of all imports were increased with the stated objective of "preventing commercial fraud" in the context of the global financial turmoil. (The Customs Administration set new revised "reference prices" (which will be used to apply tariffs) for sensitive imported goods (toys, textiles, footwear, steel,…) . The Customs Administration also set alerts to increase border controls for sensitive goods.

- Since 15 October 2008, tariff increases have been applied on toys, textiles, footwear and home appliances.
- On 24 December 2008 the government announced that it will increase use of automatic and non-automatic licenses for sensitive sectors (footwear, textiles, tyres, metallic products, white line home appliances,…). Also the government updated the list of merchandise subject to automatic import licenses (LAPI).
- In the first half of November 2008 Certificate of Imports (CIM) requirement for metallurgic products, yarns and fabrics, and footwear was implemented, through several resolutions.
- Between September and November 2008 an update of reference values for imports took place in order to avoid fraud (under invoicing) for several sectors, among which textiles, metallic products, and tyres was implemented.

Indonesia:

- A regulation which entered into force on 15 December 2008 imposed burdensome requirements on imports on over 500 products. Imports are subject to licenses, must undergo pre-shipment inspection and can only enter the country through six seaports and international airports.

- In August - September 2008 the Indonesia food and drug regulatory agency started to vigorously enforce the requirement that all foodstuffs must be approved and registered.

- Ministry of Health Decree 1010/2008 restricts the scope of imported drugs that can be registered and obliges drugs that are currently imported to be manufactured locally within 5 years. Although the Ministry of Health had given some indications that the position of existing foreign importers would be preserved, they seem now to be able to pursue their import operations and drug registrations only to the extent that such imported drugs are not produced domestically and are essential for public health. The decree was adopted and became effective on 3 November 2008.

Ukraine:

- Ongoing discussions of a temporary 13% import surcharge on valid import duties for certain goods for the reasons of Balance of Payment equilibrium. The Draft Law (No 3379) imposing the new tariffs was passed by the Parliament on 23 December 2008 but vetoed by the President. On 4 February 2009 the Parliament did not override the President's veto but adopted a slightly modified version of the law which continues to impose tariff increases on a number of products. The new law should again be submitted to the President. The most affected sectors are agri-food, textiles, construction, electronics, and automobiles.

Turkey:

- Adoption of new import procedures, in place since 1 January2009. These new procedures entail a major change in the treatment of imports originating from third countries. Turkey requires products manufactured outside the EU to be subject to the conformity assessment of the Turkish Standard Institute.

Russia:

- Since January 2009, the government has increased import duties on cars, combined harvesters, rolled steel products and steel tubes. Import duties for certain types of milk and cream, butter and other dairy fats and soy meal were also increased.

Vietnam:

- The Vietnam Steel Association has proposed the government to increase tariffs on imported pipe steel to 10% and galvanised steel sheets to 12% from the current 5% and 7%. The proposal was submitted to the Ministry of Finance and the Ministry of Industry and Trade in the first week of January 2009.

Ecuador:

- On 22 January 2008 Ecuador has adopted import restrictions from additional tariffs to quotas affecting a large number of products, including cosmetics, perfumes, alcoholic beverages, plastic articles, electrical products and car parts. This measure has been taken in response to current balance of payment difficulties of Ecuador. A notification of this measure is expected at the WTO.

Egypt:

- On 23 January 2009 the government imposed an additional duty of 70 euros per ton on imports of white sugar.

South Korea:

- As of March 2009, there will be an increase in import tariffs on crude oil from 1% to 3%.

India:

- Steel products were also put on the list of restricted imports, for which an import licence is requested (see below). India also initiated two anti-dumping investigations on steel products on 25 and 28 November 2008 concerning imports of 8 and 15 countries respectively.

- Increased use of licences: India is increasingly using import licences at the discretion of the authorities to limit imports of sensitive products. On 21 and 24 November 2008, less than one week after the G-20 declaration on standstill, several products were moved from the "free" to the "restricted" list of imports involving import licences. In January, several products were brought back onto the "free" list of imports (including seamless tubes/pipes, parts and accessories of motor vehicles and carbon black – only the upmarket segment of the latter being liberalised).

- Ban on Chinese toys: India has decided on 26 January 2008 to ban the import of Chinese toys for six months, without indicating any official reason. Chinese toys account for half of India's toy market.

1.2.2. BEHIND THE BORDER BARRIERS

Russia:

- A new road charge for EU Member States, Switzerland and Turkmenistan was introduced as of 1 February 2009. Other foreigners and Russians are not subject to such a charge. It applies to freight vehicles weighing over 3.5 tonnes.

- The Russian Government issued a decree related to the application of procurement procedures, giving discriminatory advantages to domestic suppliers.[4]

Indonesia:

- In November 2008 the Ministry of Communications published a draft Decree on its web-site (for public consultation) that imposes a minimum 30% local content requirement on telecom equipment acquired by local operators. The Decree has still not been adopted.

US:

- "Buy American" provisions on steel and iron to be included in the economic stimulus legislation.

Vietnam:

- From 1 April 2009 a change in the special consumption tax on cars and motorbikes will increase prices of cars with engines over 3000cc capacity.

[4] Russia is not yet a WTO member and not a member of the GPA.

India:

- Several steps have been taken to shelter local steel producers from foreign competition. Most worrying are the steel certification requirements adopted in September 2008, which make it mandatory for 17 steel products to meet new national standards and be certified by the Bureau of Indian Standards (BIS).

- Moreover, certification procedures leave a discretion to the BIS. They not only appear to be very time-consuming but also place a heavy financial burden on the company, with almost prohibitive costs for importers (need to pay 1% of the value of imports as royalty to the BIS), in particular when compared to the low flat rate levied on local producers.

Australia:

- The State of Victoria (sub-national level) announced that Victorian Government procurement for declared strategic projects greater than $A250mn should be subject to local (Australian and New Zealand) content requirements. The measure will have a potential adverse impact over a broad range of sectors. Specifically in relation to passenger rail rolling stock, the measure will potentially adversely impact on previous and existing EU-based suppliers to the Victorian Government.

1.3. NEW EXPORT RESTRICTIONS

Indonesia:

- A new mining law adopted on 16 Dec 2008 requires that minerals and coal must be processed before export. The Government has 1 year to put into place the necessary implementing regulations to give effect to the provisions of the law.

1.4. MEASURES TO STIMULATE EXPORTS

China:

- Increased VAT refunds and frequent adjustments of the export tax regime, financial support.

2. OTHER MEASURES

China:

- Measures contain provisions relating to funding of external expansion of Chinese companies, which need to be monitored closely.

US:

- Draft bills have been presented to the House and the Senate concerning taxation of international reinsurance transactions emanating from US domestic companies and reinsured to foreign incorporated affiliates. These bills create unfair tax disadvantages for EU owned US subsidiaries compared to US owned companies. Senate Finance Committee Staff draft issued for comments by 28 February 2009.

Brazil:

- The creation of a new sovereign wealth fund was announced, aiming to protect the country from the global financial crisis, and to help Brazilian companies to boost trade and to expand overseas.

Canada:

- in the recent federal budget, the Canadian government announced initiatives that could possibly apply subsidies to various industries. For the automotive industry there is an offer of short-term repayable loans to the industry; Creation of a $12 billion credit facility to support vehicle and equipment financing ; $170 million over two years to support innovation and marketing for the forestry sector ; $500 million over five years to facilitate new agricultural initiatives ; $50 million over three years to strengthen slaughterhouse capacity ; enhance the resources and scope of action available to Export Development Canada (EDC).

South Korea:

- The government unveiled, in December 2008, an outline of industry support measures to be taken in the coming months, with a view to covering liquidity and corporate tax exemptions to the nation's 9 key industries, namely auto, semiconductors, petro-chemicals, textiles, shipbuilding, steel, displays, mobile phones and machinery.

3. COUNTRIES FOR WHICH THERE ARE NO MEASURES REPORTED

Japan, Mexico, Brazil**,** Singapore, Philippines, Thailand, Switzerland, Norway, Kazakhstan, New Zealand, Morocco, Tunisia, and Venezuela. Further information will be provided in the March report.

4. COUNTRIES THAT ARE FACILITATING TRADE

Mexico:

- Unilateral decision to gradually eliminate, by 2013, tariff lines on over 70% of products. Has also engaged in an ambitious plan to modernise its customs infrastructure and procedures.

Tunisia:

- As part of an economic stimulus plan presented on 23 December 2008, the government announced a reduction of customs duties to boost the companies' competitiveness.

China:

- Trade facilitation measures announced are (including customs and quarantine clearance in 24 hours, reduced costs for textile, clothing, agricultural products border inspections)