CHAPTER 10

Safeguard actions for economic development purposes: special flexibility available to developing countries

Summary

GATT rules provide special flexibility to developing countries to take safeguard measures to restrict imports, for temporary periods, in order to promote the development of new or infant industries. However, GATT lays down strict conditions for the invocation of these rules. Furthermore, safeguard measures can ordinarily be introduced only with WTO approval.

GATT 1994, Article XVIII: Section C; Tokyo Round Declaration: Safeguard Action for Development Purposes

The GATT rules recognize that governments of developing countries, in pursuance of their programmes and policies of economic development, may find it necessary to provide assistance to new or infant industries or for the further development of existing industries and that such assistance may take the form of safeguard actions restricting imports for temporary periods. As the imposition of these restraints could adversely affect the interests of exporting countries, the rules lay down stringent conditions for their adoption.

Conditions for the invocation of safeguard provisions

A government wishing to provide higher protection through the imposition of restrictions is expected to notify the WTO Secretariat of the:

- Particular industry or industries, either existing or new, for the development of which such higher protection is necessary;
- The nature of the proposed restrictive measure (increase in tariffs that are bound against further increases, imposition of quantitative restrictions on imports or the introduction of a licensing system);
- The special difficulties that imports pose for the development of such industries; and
- Why measures other than import restrictions are not practicable.

The notification must be made before the measure is introduced. In exceptional cases, where delay in the introduction of the measure is expected to pose special difficulties to the industry concerned, the notification can be made immediately after the measure is imposed.

The introduction of safeguard measures or their continuation where notification is made after the measures have been introduced is ordinarily[15] possible if WTO member countries, after examining the reasons for it, approve it.

Business implications

In practice, the special flexibility available to developing countries under these provisions has rarely been invoked. One of the main reasons for this was that, until the conclusion of the Uruguay Round, the tariffs of nearly all developing countries were not bound against increases. This enabled them to protect developing infant industries, where necessary, by raising their tariffs.

In the Uruguay Round, as noted earlier, a large proportion of the tariffs of developing countries has been bound against further increases. Enterprises in developing countries which believe that they need more protection to develop new industries or further develop existing ones will therefore have to request their governments to invoke the provisions on "safeguard actions for development purposes". On their part, the governments will have to obtain approval from WTO prior to taking such measures (e.g. increase in bound rates of tariffs or imposition of quantitative restrictions).

As the adoption of such measures will be a derogation from the basic rules, WTO will grant such approval only if member countries are satisfied that, taking into account such factors as available natural resources and existing production and consumption trends, the higher level of protection will help the industry to become internationally competitive within a reasonable period. Furthermore, in granting such approval, WTO may impose strict conditions to ensure that the restrictions are maintained only for temporary periods and that steps are taken for their gradual withdrawal during these periods.

15 If the tariff on a product is bound against further increases, restrictive measures can be taken only with WTO's prior approval. Where, however, the duty is not bound, two courses are open to the developing country wishing to give higher protection. It may raise the rate of duty. As a rise in the rates of tariffs that are not bound is permissible under GATT rules, it can take such an action without invoking the provisions of GATT Article XVIII:C. Where, however, it proposes to give higher protection by imposing restrictions that are not permissible under GATT (such as the application of quantitative restrictions or a restrictive licensing system), it has to notify WTO and enter into consultations with other member countries in order to obtain approval of the proposed measure. While the Article provides that, in such cases, the developing country concerned could apply the measure even if the approval is not granted, in practice this is not possible. The reason is that the Article also gives other member countries the right to take retaliatory actions if they consider the measure to be adverse to their trade interests.