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## The Implications of the China Tires Decision

As everyone has probably heard by now (although you may not have heard, as the decision was announced late on Friday night) the Obama administration has decided to impose tariffs on Chinese tire imports pursuant to the China-specific safeguard mechanism. The rates are 35 percent ad valorem in the first year, 30 percent in the second year, and 25 percent in the third year

The reactions are not too surprising. Free trader Dan Ikenson of the Cato Institute is not happy:

American credibility on trade is spent. And maybe Obama will find comfort in that fact because he won't be burdened with that historic responsibility, as he signs off on the slew of new requests for trade restrictions (which are undoubtedly coming soon) under this law from other U.S. industries seeking handouts.

By contrast, the AFL-CIO is pleased:

President Obama took decisive action yesterday to provide relief to the domestic consumer tire industry in response to surging exports of tires from China. His actions will bring relief to many workers and their families and reverse course after eight years of neglect of trade laws by the Bush administration.

I'm just going to make two quick, general comments on all of this. First, regardless of where you stand on the issue of free trade versus protectionism, I don't see how this action can be characterized as anything other than protectionism. These are tariffs imposed on foreign products without any finding of wrongdoing by the foreign companies or governments. That's protectionism. So, I didn't find these comments by U.S. government officials defending the tariffs to be very convincing:

"The president is very committed to open and free trade," the official added. "Part of that is being committed to enforcing trade laws and trade agreements."

...

"We don't view enforcing trade laws as protectionism," the White House official said.

With regard to the part about trade agreements, I don't think these actions can be accurately described as enforcing trade agreements. In my view, enforcing a trade agreement would mean bringing a complaint under the trade agreement dispute procedures, alleging that someone is violating the agreement. That's not what is happening here. There is no allegation that China is violating a trade agreement. Rather, the situation is that the trade agreement permits governments to take action to limit imports in certain circumstances, pursuant to domestic procedures. So, yes, the action is an effort to "enforce [domestic] trade laws." However, that does not mean the action is not protectionist. When the domestic trade law creates a mechanism to impose protective tariffs in these circumstances, actions under that law are protectionist.

But that may be a bit nit-picky. The bigger question is, what are the implications of this decision for U.S. trade policy? On this one, I'm inclined to agree with Charlene Barshefsky:

Charlene Barshefsky, who served as United States Trade Representative under President Clinton, said she did not think the decision signals any broad reversal in trade policy. "The administration has made it clear that it recognizes that open markets are one of the keys to the economic recovery," Ms. Barshefsky said.

Yes, this particular action is protectionist, and as Dan Ikenson notes above, there may be similar actions coming (and perhaps the administration could have made clear they would look critically at future requests). But these actions are fairly minor in the grand scheme of trade policy. The overall Obama trade policy will be motivated by free trade, even though we will see more individual protectionist actions than under the previous administration.

Posted by Simon Lester on September 13, 2009 at 05:37 AM | [Permalink](#)

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## Comments

Julia Qin said...

The China-specific safeguard is the most naked protectionist provision in the WTO Agreement (of which the China accession protocol forms an integral part). It directly contradicts the requirement of the Safeguard Agreement that all safeguard measures must be applied on a nondiscriminatory basis, irrespective of the origin of the products. Of all WTO Members, China is the only country that is subject to such selective safeguard. And there is not a single articulation of its rationale in the publicly available WTO documents.

Yes, Obama's decision is a sheer protectionist move based on his political calculations. But the US government does have the "right" to do so under WTO law. The problem originates in that WTO law.

BTW, Barshefsky was responsible for drafting and successfully negotiating that provision with the Chinese government.

Many countries have already used this provision against China's products, but the US has not done so until now. I can only hope that this high-profile case will teach another lesson to those advising the Chinese government who do not believe law (as opposed to economic power) matters in the WTO.

[Reply September 13, 2009 at 08:46 AM](#)

anon99 said...

My comment is not about the substance of this measure, but about the discourse used above, and more generally it seems in trade policy context. Specifically, I question the utility (outside of the context of broad political rhetoric, in which it has utility) of the concept of "protectionist" measures.

Generally, all tariffs, anti-dumping duties, countervailing duties, and safeguard measures are protectionist. By definition, these instruments aim to protect the domestic industry from foreign competition. Many subsidies are also aimed to protect the domestic industry from foreign competition.

Thus, if a measure is unjustifiable for some reason, I am inclined to say that the measure is "unjustifiable" (or "unfair", or "bad") as opposed to saying that the measure is "protectionist".

With respect to some of the formulations above, if the imposition of tariffs on foreign products "without any finding of wrongdoing by the foreign companies or governments" constitutes unacceptable "protectionism" (Simon), then it would seem that all tariffs are unacceptable "protectionism". Border tariffs are not predicated on any finding of wrongdoing by foreign companies or governments.

If the imposition of safeguard or other measures on a discriminatory basis (i.e. singling out some countries, while excluding others from the scope of their application) makes those measures unacceptable "protectionism" (Julia), then all free trade agreements (e.g. NAFTA) are "protectionist". That is, under this formulation, when the US or Canada or Mexico exclude one another's imports from the scope of application of a safeguard measure (as opposed to applying it on a nondiscriminatory basis), they are engaging in unacceptable "protectionism".

I note that Simon and Julia's formulations (explicit and implicit) of what is "protectionist" are as good as any other formulations used in the discourse. I don't have a better formulation. My view is that outside of the context of political rhetoric, the word has little or no utility as a concept.

[Reply September 14, 2009 at 03:16 AM](#)

Simon Lester said...

anon99,

Thanks for your comment. Let me just note at the outset that I only focused on the word "protectionism" because the U.S. government official said: "We don't view enforcing trade laws as protectionism." I wanted to point out that this seemed incorrect to me.

As to your general point that "all tariffs, anti-dumping duties, countervailing duties, and safeguard measures are protectionist," I agree with you on this (although there are some who would argue that AD/CV duties are a response to improper behavior and thus are not protectionist). To some extent, then, I agree that "protectionist" is not that useful a term in the context of tariffs.

On the other hand, when we move beyond tariffs to internal measures, I think that "protectionism" is one of the most useful terms in the trade policy/trade law context. The language you suggested, "aim to protect the domestic industry from foreign competition," provides an excellent definition. It is these measures, I would argue, that are at the core of what trade agreements should be trying to reduce or eliminate. "Unjustifiable" is a fine word, but we need to explain why a particular measure is "unjustifiable". One good reason, in my view, is that it is protectionist.

Simon

Reply September 14, 2009 at 05:34 AM

Julia Qin said...

anon99,

Thank you for the thought-provoking comment. I have two responses.

First, in the trade law context, because "protectionism" is the opposite of trade liberalization, which is the mission of the WTO, the term is useful to describe things that are not desirable in the spirit of the WTO. Hence, high tariffs are protectionist, and need be reduced, even if they are permitted under the GATT schedules. Antidumping and safeguard measures are subject to WTO disciplines because they are inherently protectionist. As for internal measures, as Simon already said, the term is very useful. Indeed, the term "protection" is used in GATT Article III:1.

Second, on the issue of justification for discriminatory rules, there are fundamental differences between PTAs and selective safeguards. PTAs are justified by the principle of liberal trade - that is the only reason why they are allowed to derogate from MFN. And such derogation is not country-specific, i.e., the discrimination is against any and all Members outside the PTA. In contrast, selective safeguards restrict trade that has already been liberalized under the WTO rules. In the China case the discrimination is against a specific member, and there is no justification offered for its derogation from the MFN requirement of the Safeguard Agreement.

Reply September 14, 2009 at 06:54 AM

steve charnovitz said...

Simon, Certainly you are correct that the measure is protectionist. You are also correct that it cannot be viewed as enforcing a US trade agreement. I have a question that you did not address in your post. Does imposing a safeguard under the Protocol mean that China has given away its normal Safeguard "right" to retaliate? I would also be interested in your views as to what other benefits the US has to act under the Protocol rather than the Safeguards Agreement. Also does GATT Article XIX apply to the US tariff increase on tires?

Reply September 14, 2009 at 07:20 AM

Simon Lester said...

Steve,

These are great questions. I've been meaning to look this all up, but have not gotten to it yet. If anyone else knows, feel free to post a comment here. I've still got a little more to do with the Cotton 22.6 decisions, but will try to sort through the safeguard issues when I'm done (if no one else has explained it at that point).

With the caveat that I have not actually looked at this part of the Protocol, my instinct is that there are at least two benefits to relying on the Protocol rather than using normal Safeguards: (1) a slightly easier legal standard; and (2) only Chinese imports have to be considered, rather than the world as a whole.

Simon

[Reply September 14, 2009 at 07:44 AM](#)

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