DISCUSSION PAPER SERIES

No. 8687

DID WTO RULES RESTRAIN PROTECTIONISM DURING THE RECENT SYSTEMIC CRISIS?

Simon J Evenett

INTERNATIONAL TRADE AND REGIONAL ECONOMICS

Centre for Economic Policy Research

www.cepr.org

ISSN 0265-8003

DID WTO RULES RESTRAIN PROTECTIONISM DURING THE RECENT SYSTEMIC CRISIS?

Simon J Evenett, Universität St Gallen and CEPR

Discussion Paper No. 8687
December 2011

Centre for Economic Policy Research
77 Bastwick Street, London EC1V 3PZ, UK
Tel: (44 20) 7183 8801, Fax: (44 20) 7183 8820
Email: cepr@cepr.org, Website: www.cepr.org

CEPR Discussion Paper No. 8687

December 2011

ABSTRACT

Did WTO rules restrain protectionism during the recent systemic crisis?*

This paper challenges the contention that WTO rules had much impact on state behaviour during the recent global economic crisis. Evidence on the variety of discrimination implemented by governments, characteristics of the recent systemic crisis, as well as on certain, often overlooked features of WTO obligations are used to support a conclusion that the WTO rules altered at most the composition of crisis-era protectionism. As to the quantum of protectionism, it is unclear how WTO rules could have prevented many governments from adopting tariff increases on the scale of the Smoot Hawley tariff. Pessimistic implications are drawn concerning the future restraining role that multilateral trade obligations could ever play during systemic economic crises. Realistically, the fate of the open world trading system must rely on other incentives to refrain from protectionism.

JEL Classification: F02, F13 and F53
Keywords: crisis, protectionism and WTO

Simon J Evenett
Swiss Institute for
International Economics (SIAW)
University of St. Gallen
Bodanstrasse 8
9000 St Gallen
SWITZERLAND
Email: simon.evenett@unisg.ch

For further Discussion Papers by this author see:
www.cepr.org/pubs/new-dps/dplist.asp?authorid=144850

* The views represented in this paper are those of the author alone and should not be attributed to anyone else associated with the Global Trade Alert. I thank Kamala Dawar and Johannes Fritz for their reactions to a first draft of this paper. Other comments on this paper are most welcome.

Submitted 30 November 2011

> "The multilateral trading system was instrumental in helping governments successfully resist intense protectionist pressures during the recent global recession. It is vital to preserve this system to be able to face future crisis. Any weakening of the multilateral trading system and the insurance policy that the WTO represents would provide grounds for renewed calls to retreat into protectionism." --------WTO (2011), page 3.

1. Introduction.

According to surveys of the profession, economists favour free trade and more open markets to the alternative, protectionism – and by large majorities. Almost by implication, many are predisposed to believe an international organisation that advances across-the-board trade liberalisation, such as the World Trade Organization (WTO), must be doing good. Perhaps unsurprisingly then, when a global economic crisis unfolds and there are no Smoot Hawley-like increases in tariffs, many economic analysts are inclined to give the WTO plenty of credit.

Using evidence on the range of protectionist measures employed by governments during the crisis era, the incentives created for trade policy and diplomacy during a systemic economic crisis, and information on the actual state of WTO rules and dispute settlement procedures, this paper seeks to challenge the final inference in the previous paragraph. Readers are essentially being challenged to think through precisely how the WTO might have affected actual state behaviour during a global economic crisis, when policymakers are under considerable pressure to intervene. Doing so allows some realities to intrude on the more stylised theory-motivated accounts of the WTO. Moreover, this approach might reveal weaknesses in the current multilateral trading system that could be taken up in future international negotiations.

Being confronted with the realities of contemporary protectionism and the incentives created by global economic crises leads to a more qualified view of what the WTO can accomplish during times of systemic economic duress. The objective here is not to rubbish the WTO but rather, in terms of the quotation from the latest WTO monitoring report reproduced above, to question the contention in the first sentence and downplay the claim made in the second, without encouraging the weakening of the multilateral trading system mentioned in the third sentence. As the evidence presented here casts doubt upon whether WTO rules actually constrained protectionism during the recent systemic crisis, the credit for any restraint should go elsewhere.

This subject matter is important for reasons other than assessing the contemporary impact of the WTO, which, as noted, above has tended to get a very good press from economists.[2] It will interesting to see whether recent developments conform to patterns witnessed in the past and the extent to which lessons learned from previous bouts of protectionism can inform our understanding of the incentive to resort to protectionism. For example, one reaction to the current systemic crisis might be to call for more demanding multilateral trade disciplines. However, in extremis, governments have been known to abandon cast iron constraints on their policymaking, witness the fate of the Gold Standard in the 1930s (Eichengreen and Irwin, 2009; Irwin, 2012). At what point would a strengthened set of WTO rules risk suffering a similar fate in a future global systemic crisis?

A related theme is the extent to which international institutions actually constrain sovereign governments, especially during times of extreme stress (Mearsheimer, 1994). Realist scholars

[2] As an example of that good press, Bagwell and Staiger (2010) note in a recent survey article on the WTO: "the GATT/WTO is widely acknowledged to be one of the most successful international institutions ever created" (page 224).

in international relations have tended to be sceptical, thereby asserting the importance of national factors over regional and multilateral obligations. What, if anything, does the experience with WTO's rules during the recent global economic crisis imply about the validity of Realists' claims?

Another significant theme is to what extent policymakers "learn from history" and adjust their behaviour accordingly. After the Great Depression protectionism has had a very bad name and many public officials have not wanted to be associated with it. Yet the stigma associated with introducing protectionism cannot be that bad because it has continued, often in new and less transparent forms. Do the "lessons from history" affect more the composition of protectionism rather than the amount implemented?

Moreover, the set of policy instruments that analysts perceive as protectionist may differ from that of some public officials, allowing the latter to deny that they have engaged in less well-known forms of protectionism.[3] There was plenty of such double-talk in the recent global economic crisis, so much so that Richard Baldwin and I introduced the phrase "murky protectionism" precisely to identify forms of state intervention that discriminated against foreign commercial interests, were often hard to document (and therefore, easier to deny or ignore), and typically only lightly regulated by WTO rules.[4] These comments raise the deeper question as to what is the best way to characterise protectionism in the 21st century and therefore what policies should fall within the scope of monitoring exercises and research on contemporary protectionism.

The rest of this paper is organised as follows. Sections 2 and 3 describe the key concepts and elements of the factual record. Since the goal is to assess what role the WTO could have played, it is essential that consideration is given beforehand to the appropriate definition of protectionism and to the manner in which global economic crises (as opposed to national recessions) might affect the incentives of governments.

Section 3 provides an overview on contemporary trade protectionism and liberalisation based on the independent protectionism monitoring initiative, the Global Trade Alert. The design of the Global Trade Alert reflected many of the considerations raised in Sections 2 and 3 as well as those pertinent to understanding the sharp global economic downturn in the early 1980s. Variation across country, time, and sector, as well as across G20 membership, is exploited to provide a detailed account of contemporary protectionism. This account may be of use to scholars for other purposes.

The assessment of the contribution of the WTO to the resort to protectionism is presented in section 4. Implications for the reform of the WTO are considered. The likelihood of those reforms being implemented given the deadlock over the Doha Round will be considered as well.[5] Concluding remarks are presented in section 5.

2. Twenty-first century protectionism in an era of systemic crisis: some preliminary considerations.

[3] This practice of policymakers has a long pedigree. Irwin (2012, page 27, footnote 16) quotes from a discussion on the "new protectionism" described by a 1933 League of Nations Report!

[4] Baldwin and Evenett (2009).

[5] In this respect the sharp global economic downturn in the early 1980s may well have a greater long run effect on the development of multilateral trade rules than now. The former era also had an official GATT monitoring exercise which produced, at the start at least, some pretty tough reports. The facts described in those reports--especially as they relate to newer forms of protectionism--were taken up by some trade delegations when the agenda for the Uruguay Round was decided in the mid-1980s. This time around, however, there appears to be little appetite to complete the ongoing multilateral trade negotiation (the Doha Round), let alone start a new negotiation.

The starting point is to acknowledge the diverse nature of cross-border commercial movements in the early 21st century. Cross-border movement of goods are now complemented by similar movements of services, financial payments (associated with current and capital account transactions), people (short-term and migration), as well as intellectual property. Moreover, the development of cross-border supply chains has further raised demands for short term finance (to cover the period between production and revenue receipt) as well as the increased reliance on transportation and telecommunications infrastructure.

Almost every type of cross-border movement can be the target of discrimination by government. Sometimes the discrimination directly targets the transaction or individual as it crosses the border. In other cases, domestic regulations are used to reduce the commercial prospects of actual or potential suppliers that, initially at least, are based abroad. Utilities and managers of transportation facilities could, upon the instruction of government, treat domestic firms differently from foreign firms as well. Surely one criteria for a sensible definition of contemporary protectionism is that it covers all types of cross-border commercial transaction?

If so, then long standing accounts of trade policy intervention may not be sufficient. Irwin (2012) usefully distinguishes between "protectionism" and "mercantilism." Import restrictions are taken to be an example of the former because, he argues, they increase domestic production of those goods that compete with the imports that comply with the restriction. Irwin argues that, because this protectionism is often in response to pressures from special interest groups, it can be quite targeted. Tariffs, quotas, and antidumping duties would fall under this definition of protectionism. Export restrictions and subsidies would not as they do not relate to imports. Nor would visa restrictions as their imposition may actually reduce industry output, not increase it. Limitations on domestic banks to lend to overseas customers might fall under this definition of protectionism if the alternative borrowers were domestic firms seeking to expand output. Overall, then, defining protectionism as import-restrictions-leading-to-domestic-output-expansion does not cover all of the 21st century forms of commerce.

Mercantilism, on the other hand, has been motivated by macroeconomic considerations. Improvement in the trade balance, which under the Gold Standard was associated with gold inflows or less gold outflow, provides another rationale for trade policy interventions (Irwin 2012, page 160ff). This rationale typically calls for across-the-board measures (as seen in the 1930s) and could apply to export promotion as well as import restriction. For countries heavily reliant on imported resources, parts, or components, a naïve application of mercantilism would see large tariffs applied on imports even though they could ultimately reduce exports and the trade balance. Other forms of mercantilism include export-promoting trade-related investment measures and export credits. The relationship, however, between migration policy and mercantilism is unclear as well as the relationship between the latter and the protection of foreign intellectual property.

The very diversity of 21st century commerce calls for a definition of protectionism that moves beyond trade in goods and the balance of trade in goods. For the purposes of this paper, a state measure is said to be protectionist if its implementation discriminates against one or more foreign commercial interests. The latter can be foreign importers, exporters, customers (including borrowers), workers, owners of foreign direct investments, and owners of foreign intellectual property. A state measure is not protectionist, then, if it does not discriminate between competing domestic and foreign commercial interests and between competing foreign commercial interests. The implicit, motivating assumption is that discrimination worsens the competitive position of at least one commercial party and so distorts market outcomes.

Several comments about this definition of protectionism are in order. First, the range of potential discrimination envisaged goes well beyond those state measures covered by existing WTO agreements. In principle, compliance with WTO agreements in the early 21st century need not imply the absence of discrimination. Confining the monitoring or analysis of protectionism to state measures covered by WTO accords may miss commercially significant forms of discrimination.

Second, a state measure may include discrimination against foreign commercial interests but be motivated by some other, perhaps reasonable, policy objective. During the recent global economic crisis some of the discriminatory measures in the financial sector were discriminatory but were motivated by the desire to stabilise financial markets. What is important here is to discern whether the discrimination was absolutely necessary to achieve financial market stabilisation. Just because a discriminatory component was included in a state measure does not imply that discrimination is central to solving the market failure in question.[6]

Indeed, one might ask what evidence is there that non-discriminatory alternatives were considered to the discriminatory alternative and the appropriate comparisons concerning effectiveness made. Without these justifications, there probably ought to be a presumption that the state decision-maker in question was acting as if they wanted to secure a non-discriminatory policy objective partly or wholly at the expense of foreign commercial interests.

Third, if it could be shown that a discriminatory state measure was the first best response of a government to a market failure then there might be a case for excluding such a measure from the definition of protectionism, or at least differentiating between those discriminatory measures that are first best policy responses and those that are not. It has yet to be established how much contemporary discrimination can be so defended. Now that there is a substantial paper trail on contemporary protectionism,[7] it is not enough to note the logical possibility that some discrimination could be first best. It would be all the more convincing to show that much contemporary discrimination is first best.

Overall, a discrimination-based definition of protectionism better meets the realities of 21st century commerce than one based on restricting imports or improving the trade balance. A shift towards a broader definition is not without its costs (in terms of data availability) and opponents (the innate conservatism of researchers and policymakers.) With respect to the researchers, it is understandable that the risk-averse prefer to analyse policy instruments for which there is an established literature and easily downloadable datasets. With respect to the policymakers, it may be convenient to narrowly define protectionism if that discourages the media, international organisations, and others for looking for discrimination elsewhere. For some the choice of the width of definition of protectionism is quite possibly a strategic matter.

In addition to a broader notion of protectionism, in considering the performance of the WTO due account should be taken of the nature of the systemic economic crisis facing governments. The working assumption here is that the recent systemic economic crisis saw a substantial contraction in many leading macroeconomic aggregates, was almost simultaneous in its timing, and started with the freezing up of financial markets and associated short-term lending to commercial enterprises, including those engaged in cross-border commerce. Such

[6] On this view, then, a state measure could include more than one component with some being discriminatory and others being non-discriminatory.

[7] To facilitate research on such matters the data source used in this paper states in its publicly-available reports when a neutral public policy objective is used to justify the implementation of a discriminatory measure and, wherever available, the official source describing the state measure.

crises are unlike ordinary business cycles, industry-specific collapses, or one-off sharp movements in nominal exchange rates that motivate many analyses of commercial policy choice. Arguably the demands upon and constraints faced by policymakers are different during systemic crises and this ought to be taken into account when considering the impact of international accords, such as the WTO.

The first important point to be made here is that the financial nature of the systemic crisis had important implications for the form of help sought by firms and the discrimination employed by governments. It is now widely accepted that the real consequences of the failure of financial markets to advance funds began in 2008. Firms faced being starved of short-term finance, which in a modern monetary economy allows them to cover the period between cost outlays and the receipt of sales revenue. Unable to pay their staff or suppliers, firms with limited cash reserves found they had to sell off assets, lay off staff or, in the limit, shut down. The system-wide nature of the financial market collapse meant that the real economy quickly faced substantial bankruptcies, output declines, and employment losses unless governments intervened. Associated fears caused firms and employees to retrench, cutting aggregate demand. The fall in imports and exports was reinforced by a collapse in trade finance.[8]

The economy-wide demand for cash by firms at the beginning of the systemic crisis made import-restricting measures a particularly blunt instrument for transferring resources from foreigners to local firms, not least because local buyers of imports would take time to complete or cancel existing contracts and switch to domestic suppliers.[9] Far faster was to offer cash to firms operating within a government's jurisdiction, either through loans, subsidies, credit guarantees paid for directly by governments or through national banking systems instructed to advance funds (possibly in return for bailouts received by those same banks.)

Where does the potential for discrimination against foreign commercial interests arise in offering short-term finance? In two ways, inadvertently and deliberately. With respect to the former, recall that domestic firms' motives in seeking state aid was to their prevent or limit capacity and employment reductions. Even those governments that did not impose conditions on recipients of financial aid ought to have realised that slowing down capacity reduction at home will keep more goods on world markets, shifting the burden of supply contraction (demand had contracted during the crisis) to rival firms in other jurisdictions.[10]

In other cases during the recent systemic crisis, on certain occasions 'strings' were deliberately attached to the receipt of financial aid.[11] Some strings called for repatriation of production from abroad, others to limit or avoid job losses at production plants at home, and

[8] See Baldwin (2009) for an account of the collapse of world trade during the recent systemic crisis.

[9] Furthermore the falling imports at the beginning of the crisis would have made it particularly difficult to show that foreign rivals to domestic firms had "materially" injured the latter, as is required in most national antidumping and countervailing duty laws. At the onset of the crisis only across-the-board import restrictions would have helped domestic firms generate cash, but as argued in the main text advancing funds directly or through the banking system was a more effective alternative.

[10] Sharp demand falls in a sector may have resulted in a market price below the minimum levels of average variable costs of numerous domestic firms. Faced with the prospect of widespread shutdowns in sector, with its associated knock-on effects on unemployment and business confidence, governments subsidies related to variable costs or output may have kept firms producing when they would have otherwise terminated production in the short run. The impact of the subsidies will be to effectively steepen the world supply curve in the sector in question, causing price to fall further and possibly below the shutdown conditions of firms operating in jurisdictions where governments are not offering such subsidies or offering less generous subsidies. In this manner the apparently innocuous short term financial assistance of governments to firms during the recent crisis may have shifted the burden of adjustment to jurisdictions unable, less able, or unwilling to offer comparable subsidies.

[11] It is possible that special interest groups influenced governments in the design of these conditions.

others for greater sourcing of inputs and materials for domestic suppliers. Indeed, other than collect revenues, much of what could be accomplished by the imposition of headline-catching tariffs could be delivered far more quietly through financial aid injections with strings attached.

In sum, while short term financial aid stabilised production at low prices, sector-by-sector it also stalled the reduction of over-capacity and thereby hampered the restoration of profitability. The demand for short-term cash injections from domestic firms provided governments with plenty of leverage over applicants for state aid, leverage that could be far more targeted than imposing tariffs. Some governments used that leverage to force firms to retreat from their longer term strategies of integration into the world economy. Combined with the depth and uncertain length of the systemic crisis, even those firms that did not need financial injections initially thought twice about criticising any discrimination, lest their firm too need aid in the future. Under these circumstances, corporate opposition was muted, probably far more so than if tariffs had been employed. The financial nature of the recent systemic crisis, and the fears it induced, shaped the form of government intervention sought and created plenty of opportunities for discrimination against foreign commercial interests.

Once the crisis got under way other opportunities for discrimination against foreign commercial interests presented themselves. Three come to mind. First, the fiscal stimulus packages enacted in the first half of 2009 afforded an opportunity to shift demand away from foreign suppliers. Second, as imports began to stabilise in 2009 and then rebound in 2010, the rising level of imports made it easier for domestic firms to show they had been "materially injured" by foreign sales, thereby making filing trade defence cases more attractive. Third, as unemployment levels rose, discrimination against foreign workers or against foreign migrants became more politically attractive in some jurisdictions.

The second important feature of the systemic crisis is its simultaneous effect on trading nations, in particular the larger trading nations. A systemic crisis is, by definition, far reaching and affects many national economies at the same time. Given the highly interconnected nature of financial markets and bank linkages, those affected economies faced the same financial market freeze at roughly the same time. As a result governments almost certainly faced similar, acute pressures for state intervention and the temptation to discriminate when designing initially financial aid packages and, subsequently, fiscal stimulus packages.

Most game theoretic models of trade policy choice consider deviations by a single government. Typically, the assessment of the effectiveness of a proposed international trade rule turns on whether the short-term gains to a party deviating from such a rule are less than the longer term losses once retaliation by other parties is taken account of. The techniques used to assess international trade rules ought to be revised for systemic crises when many, possibly every, government has an incentive to deviate from a given rule at the same time.[12]

Under these circumstances an alternative to punishing unilateral deviations presents itself. It is not beyond the wit of the larger players to either turn a blind eye to other players' deviations in return for similar treatment. The recognition also that "those who live in glass houses do not throw stones" is important in that it reminds each player that every other player has evidence on the former's transgressions, evidence which can be used to great effect later. Under such an alternative scenario governments might also take another step. Such players may deliberately adopt and promote a definition of protectionism--such as tariffs and quotas

[12] Those trained in game theory will recognise the distinction being made here as that between Nash deviations and Coalitional deviations, and the solution concepts Strong Nash Equilibrium and Coalition-Proof Nash Equilibrium associated with the latter (see Aumann, 1959 and Bernheim, Peleg, and Whinston, 1987, respectively.)

or even "compliance with existing WTO rules"--that conveniently excludes much of the meaningful discrimination being undertaken. In a systemic crisis, then, it is not clear that "tough" unilateral enforcement of each party's rights is the only outcome. Conspiracies of silence may be an attractive alternative.

Having said this, is it not clear that a tacit agreement to refrain from complaining about each other's discrimination is a particularly robust outcome. If every player has plenty of information about everyone else's misdeeds, then a set of accusations (perhaps triggered by some external foreign policy or other circumstance) might quickly degenerate into mutual recrimination.[13] The considerations in this paragraph and the last one suggest that absence of bitter recrimination at the WTO during the recent systemic crisis may not be such a mystery after all and may not last either.

In short, that the simultaneous nature of systemic crises and the fact that the potentially sharp economic contractions create similar incentives to intervene in markets for governments may call for a rethink in how to model the incentives to deviate from WTO accords and the incentives to engage in dispute settlement or other forms of conflict management (including outright denial.) Knowing how these incentives play out during a systemic crisis might affect the types of binding multilateral trade accords governments are willing to sign in the first place, bearing in mind those governments will anticipate that from time to time there may be a systemic economic crisis.[14]

The purpose of this section has been to reorient the discussion of protectionism towards 21st century circumstances. Once due account is taken of the various characteristics of contemporary cross-border transactions and of the recent systemic economic crisis, in particular its simultaneous nature, then it is possible to rationalise some of what has been observed over the past few years and the importance of much of what is to be documented in the section to come. Ultimately these considerations and others that follow will shape the assessment of the effectiveness of the WTO's obligations during the recent global economic downturn.

3. The resort to discrimination against foreign commercial interests since the first crisis-era G20 summit in November 2008.

This account of contemporary protectionism is based upon the data collected by the independent trade policy monitoring initiative, the Global Trade Alert (GTA).[15] Launched in June 2009, this initiative has sought to document as many state measures as possible that may affect foreign commercial interests and that were implemented during or after November 2008. This start date coincides with the first crisis-era heads-of-government G20 summit in Washington DC, when government leaders pledged to eschew protectionism. As such the Global Trade Alert initiative was able to monitor compliance with the G20 pledge and, consistent with that role, ten reports have been issued by the GTA team and a website maintained that can be accessed by all. By November 2011, over 16,800 distinct visitors to the GTA website had visited this site 15 times or more since its creation, a number which represents a large share of the (admittedly informal) initial estimates of the likely interested

[13] The recent (October 2011) compilation by the United States of a list of crisis-era subsidies that China has allegedly implemented and the official Chinese response, both communicated through the WTO, might signal the start of mutual recriminations. Likewise, the growing number of disputes concerning subsidies to solar power, which has involved disagreements among China, the European Communities, India, and the United States, is another example. See the 10th report of the *Global Trade Alert* (Evenett 2011a) for details.

[14] Barrett (1999) takes some interesting first steps in this regard.

[15] As indicated earlier, the author is the coordinator of the GTA initiative.

expert audience.[16] A more extensive account of the GTA database and practice can be found in Evenett (2009) and on the initiative's website.

The work of the Global Trade Alert has received considerable attention since it was launched in June 2009. Senior policymakers, including the President of the World Bank, the President of the European Central Bank, the President of Switzerland, among others, have mentioned the GTA in their speeches, as have Ministers and Ambassadors from developing countries. According to one academic citation website[17], in its two-and-a-half year history the phrase "Global Trade Alert" had by November 2011 been mentioned in 281 papers. One of the earlier phrases used to characterise contemporary protectionism, namely, "murky protectionsm," that was based on evidence collected by the GTA and introduced by Baldwin and Evenett (2009), has also been mentioned in 294 academic papers. *Factiva* identifies 282 distinct reports in national and international media referring to the Global Trade Alert's work.

In the GTA database the unit of analysis is the announcement of a state measure. The announcement could contain a single change in government policy or many changes. Rather than arbitrarily chop up each state measure into component parts, the GTA team seeks to identify which policy changes are associated with an announcement and whether those policy changes alter the relative treatment of any potentially competing domestic and foreign commercial interests. Consistent with the arguments made in the previous section concerning the diverse nature of 21st century cross-border commerce, the GTA does not confine itself to a predefined set of possibly relevant policy measures, nor to the policy measures that are covered by WTO accords.

Announcements of intentions to change policies are included in the GTA database as well as implemented measures, the former being consistent with the goal of shedding light on government plans as well as their acts. By November 2011, just over 2000 state measures had been investigated by the GTA team and reports published on the GTA website, www.globaltradealert.org. Table 1 also provides an annual breakdown in measures investigated by the GTA team.

It is important to bear in mind that the less transparent forms of discrimination (which it turns out that governments have resorted to frequently in recent years) take longer to discover, document, and analyse. As a result, there are reporting lags which tend to yield unduly low initial estimates of the quantum of protectionism in the most recent quarters and years. As many GTA reports have shown, initial estimates of the number of protectionist measures implemented per quarter have had to be revised substantially upwards over time. Consequently, little can be really learned from a low first estimate of protectionism in any given quarter.[18] On the contrary, a high first estimate (as was found in Q1 2009 and Q3 2011) may be much more serious for, if anything, quarterly totals get substantially revised upwards over time.

The GTA employs a traffic light system to characterise the likely discriminatory impact of a state measure, should it be implemented. A state measure that has been implemented and is "almost certainly" harmful to some foreign commercial interests is classified "red." An amber indicator is given in the following three circumstances: when a state measure is implemented

[16] When the GTA was launched its associates were asked to estimate the likely number of repeat users of the website. Every estimate lied between 10,000 to 20,000. It is, of course, possible that these initial estimates were wrong or that the community interested in commercial policy matters has expanded during the crisis.

[17] *Harzing's Publish or Perish*.

[18] Little faith should therefore be placed in news or international organisation reports that claim loudly that they have found few protectionist measures in a recent quarter. As argued in the main text later, such instant assessments in 2010 may have lulled some into a false sense of security.

and is "likely" to harm foreign commercial interests; when a state measures is implemented and includes two or more policy changes, one of which when implemented will "likely" harm a foreign commercial interest; and those state measures that are pending and, if implemented, would be "almost certainly" discriminatory. In what follows, the total number of protectionist or discriminatory measures is referred to as the sum of the implemented red and amber measures (bearing in mind that not every amber measure is an implemented measure.) A state measure is labelled green if its implementation involves an improvement in the treatment of a foreign commercial interest or no change.

A state measure is tracked over time and its classification can change as the evidential base changes. For example, the announcement of an investigation of an antidumping investigation is initially listed as amber (as the measure has yet not been implemented). Should the investigation result in duties being imposed the measure switches to red; if the investigation results in no duties being imposed the measure switches to green.[19]

Tables 1-3 provide summary statistics by year and by traffic light classification (discriminatory impact) for all the measures in the GTA database, for the implemented measures in the GTA database, and for the measures implemented by the G20 countries in the GTA database (the latter being of interest given the pledges concerning protectionism made at successive G20 summits.) The differences in totals between Table 1 and 2 reflect the fact that nearly 20 percent of the entries in the GTA database (around 400 state measures) concern pending state measures, announced but not implemented. Over half of the state measures reported by the GTA team are classified red or almost certainly discriminatory (see Table 1). Of the total number of implemented measures, the share of almost certainly discriminatory measures rises over time to two-thirds. Comparing Tables 2 and 3, and examining Figure 1, it is clear that the proportion of contemporary protectionism accounted for by the G20 countries has actually risen through the crisis.

While the focus during the recent crisis has tended to be on protectionism, in fact a number of state measures to liberalise state commerce have been implemented. Table 2 and Figure 1 summarise some of the key evidence in this regard. Three-hundred-and-fifty-five liberalising measures have been undertaken as compared to 954 measures involving some discrimination. If anything the ratio of liberalising to discriminatory measures has been rising over time, as has the G20's share of the world total. The last two paragraphs suggest there is interesting within-crisis variation in the resort to protectionism that could be subject of further analysis.

The quarter-by-quarter variation in the resort to protectionism is plotted in Figure 2. Experience has shown that the reporting lags associated with finding and documenting the less transparent forms of protectionism produced a downward bias in the reported totals for later quarters. For example, by November 2011 the GTA had documented 150 discriminatory measures implemented in Q1 2009, when fears about protectionism were acute. The GTA's first estimate of Q1 2009 protectionism, published in September 2009, was only 77. It has been quite remarkable how much some quarterly totals have been revised upwards over time and this has complicated the interpretation of the intertemporal record. At first, it looked as if 2009

[19] This has important implications for the interpretation of the total number of "green" measures in the GTA database. Table 2 reports 406 green measures have been implemented as of November 2011. It would be wrong to conclude that these were all measures that benefit foreign commercial interests. Some of the 406 measures are trade defence investigations that have concluded with no duties being imposed. For this reason, as well as the disagreement among the trade policy community as to whether trade defence measures are discriminatory, Tables 1-3 reported in this paper include totals with and without trade defence investigations. Table 2, therefore, reports that 355 state measures not involving trade defence were implemented by November 2011 and were classified as green. This is a more accurate estimate of the total number of liberalising measures implemented during the crisis era.

saw a terrible outbreak of protectionism followed by a much calmer 2010, hence the title of the GTA's November 2010 report "Tensions Contained…For Now." However, it now seems that Q3 2010 was an outlier, coinciding with what it turned out to be overoptimistic estimates of the pace of the global economic growth in the second half of 2010 and expected for the first half of 2011. The rate implementation of discriminatory measures jumped up in Q4 2010 and Q1 2011. The initial estimates for protectionism implemented in Q3 2011 are particularly worrying, especially given the precedent of Q1 2009. Worse, as the latest GTA report has documented, a number of these protectionist measures were across-the-board measures taken by larger trading nations.

It would be fair to say that the GTA's reporting on protectionism over time has been summarised in less sanguine terms than the reports prepared for the G20 leaders by the World Trade Organization, United Nations Conference on Trade and Development, and Organisation of Economic Cooperation and Development. Interestingly, in the first half of 2009 and second half of 2011 there was little difference in the interpretation of the factual record between the GTA and official reports (both reports expressed considerable concern about protectionism.) During the intervening period (second half of 2009 to first half of 2011), in particular in 2010, differences emerged in interpreting the falls in initial totals of protectionism from the 2009 highs. With the publication of each GTA report, the upward revisions of the total protectionism imposed in Q1 2010 are such that they do not look very dissimilar to the quarterly totals in the nadir of 2009. The increases in the totals for Q2 and Q4 2010, if continued, will soon yield results not dissimilar from 2009. All of this points to the unusual dip in protectionism in Q3 2010, which some may have over-interpreted.

One underlying factor that probably contributed to differences in views as to the seriousness of protectionism in the recent is that the range of state measures that the GTA considers is wider than that of certain official reports. Some of the official reports included estimates of the total amount of trade covered by selected trade barriers (typically tariff changes and trade defence measures) and even reputable media sources, such as *The Financial Times*, occasionally reported the total trade affected as if that accurately reflected the sum of the trade affected by all crisis-era protectionism. It was for this reason that in 2010 Johannes Fritz and I assembled data on the likely trade impact of 22 deliberately discriminatory, wide-ranging state interventions[20] that fell outside the narrow range considered by the official organisations. We were confident of the data collected on 15 of these 22 measures. Together, these 15 discriminatory measures alone affected over US$1.6 trillion of trade, more than ten percent of total world imports in 2008. Given that many other discriminatory measures have been imposed during the crisis era, the total amount of commerce affected will be larger. To date, no one has challenged the estimates of "jumbo protectionism" produced found in Evenett and Fritz (2010). Those estimates are summarised by measure in Appendix Table 1 of this paper.

One of the most significant findings of the Global Trade Alert monitoring concerns the composition of discriminatory measures that governments have resorted to since November 2008. Tables 4 and 5 provide information on the composition of discrimination and its inter-temporal variation. While 416 reports in the GTA database relate to tariffs, only 188 of those

[20] The list of 22 state measures, therefore, includes three currency devaluations where the implementing government publicly stated that the purpose of the devaluation was to help domestic commercial interests at the expense of importers etc. Not every government that devalues their currency makes blatant statements in this regard. The GTA team took the view that only where the stated intention of the government to devalue its currency was to harm foreign commercial interests would such a competitive devaluation be listed in the GTA database. For this reason, as of November 2011, only 5 competitive devaluations are listed in the GTA database. Given the difficulties interpreting exchange rate movements, it is quite possible that other perfectly reasonable analysts might have adopted a different classification system.

involve restrictions on trade. In contrast, 273 state measures involved some form of discriminatory bailout or subsidy (see Table 4).[21] The top 10 most used discriminatory state measures include non-tariff barriers, export taxes and restrictions, migration measures, and public procurement measures, all of which are subject to limited or no multilateral trade rules. Taken together tariff increases and trade defence measures account for no more than 37 percent of all the protectionist measures taken since November 2008.[22] In the light of this finding, the emphasis on the former two measures in many official reports and in much recent research purporting to analyse contemporary protectionism is bewildering.

Another important difference concerns the estimates of the number of jurisdictions that the GTA team estimates are harmed by each type of measure. Trade defence measures target specific products and named trading partners, whereas tariff measures--like discriminatory bailouts, export taxes, and export subsidies--can distort the trade in many products and harm many trading partners' commercial interests. The last column in Table 4 highlights how few trading partners have been affected by trade defence measures in contrast to other forms of contemporary protectionism, with the exception of investment measures.

The variation in protectionism implemented in the three years since November 2008 is summarised in Table 5. For the first two years, discriminatory bailouts were the most frequently used form of protectionism. Only in the third year of the crisis (November 2010-October 2011) did trade defence measures become the most resorted to discriminatory measure, whereas that year saw a collapse in the number of bail outs and tariff increases. In fact, non-tariff barriers come a close second to trade defence measures in the third year of the crisis. Overall, in none of the three years since November 2008 have the number of tariff increases and trade defence measures accounted for more than 40 percent of the protectionism imposed.

The fact that no countries have appeared to have broken their tariff bindings at the WTO seems to have deflected attention away from the question as whether the crisis has induced patterns of defensive behaviour by governments towards imported goods. Evenett (2011b) examined changes in various characteristics of national tariff regimes between 2005/6 and 2009/10, as reported in the relevant editions of the WTO publication *World Tariff Profiles*. While average tariff rates applied did not change much, those WTO members that tended to lower their tariffs during the crisis also tended to adopt a less uniform tariff regime (see Figure 3). The implications for welfare are ambiguous as the latter is known to lower welfare and the former is typically associated with improved resource allocation. Moreover, WTO members that tended to impose more tariff peaks during the crisis era (that is, tariffs above 15 percent) also tended to reduce the number of tariff lines where goods were imported duty-free (see Figure 4). Interesting cross-country variation in tariff responses requires further analysis, all the more interesting for such variation was accomplished within the constraints of WTO membership.

Important differences were found between the composition of protectionism implemented during the crisis and those pending measures, the potentially protectionist impact of which overhangs the multilateral trading system (see Figures 5 and 6). While the composition of implemented protectionism has already been discussed, the composition of pending protectionism is heavily skewed towards trade defence measures. As counted by the number of state measures, 51 percent of pending measures are trade defence measures. Given the targeted

[21] Let's set to one side one possible concern. In the GTA database 201 of the 273 discriminatory bailouts and subsidies were paid to firms outside of the financial sector. The extent of discriminatory subsidisation of the manufacturing sector in a number of industrialised countries is perhaps one of the least appreciated facts of contemporary protectionism.

[22] See also Figure 5.

nature of trade defence measures and the propensity for other measures to affect more products and trading partners, it is quite possible that the pending public procurement, state aids, and other less traditional state measures would--if implemented--still have greater effect on resource allocation, trade flows, and welfare.

Turning from the form of protectionism to its perpetrators, Tables 6 and 7 and Figure 7 report the principal findings. Because the GTA initiative did not have the resources to conduct econometric analyses of every reported state measure, it was decided to report information that could be aggregated into (intermediate) indicators of harm done by each jurisdiction. Four such indicators were calculated for each jurisdiction: the number of almost certainly discriminatory measures implemented; the number of tariff lines affected by almost certainly discriminatory measures (where appropriate, zero otherwise); the number of sectors affected by almost certainly discriminatory measures; and the number of trading partners affected by almost certainly discriminatory measures. The methodology used to compute the final three measures is very conservative and is available from the author upon request. What has proved to be of some comfort is that the rankings of countries on all four metrics have proved to be highly correlated (see Evenett 2011c).

Table 6 ranks countries on all four metrics, listing the top 10 worst performers. The G20 countries are well represented in those lists. What is more the lists of top 5 worst jurisdictions are dominated by the EU 27 (that is, the combined effect of the measures taken by the European Commission and the 27 member states), China, and Argentina. One piece of good news implied by the data in Table 6 and on the GTA website is that only 11 nations have implemented discriminatory measures that cover more than a quarter of the possible product categories (and there are a number of larger trading nations not among this eleven.) This is in marked contrast to the Great Depression when many countries are said to have raised tariffs on all of their imports.

Interesting inter-temporal variation is reported in Tables 7 and Figure 7 for individual jurisdictions and for certain groups of countries. The worldwide share of discriminatory measures imposed by the G20 countries has risen in each of the three years since their leaders declared their intention to eschew protectionism! Over time there has been a marked tendency to downplay trade policy matters at the G20 and perhaps the G20's growing worldwide share should be interpreted as evidence of weakened resolve against protectionism. No doubt defenders of the G20 will argue the "pledge worked" because the share would have been higher or possibly risen more. To be credible such a defence would have to account for the significant variation across the G20 in the resort to protectionism (shown in part in Figure 7). For example, the EU 27 group appears responsible for a falling share of measures implemented over time, while the BRIC nations account for a rising share.[23]

The frequency with which a jurisdiction's commercial interests have been harmed by contemporary protectionism is summarised in Table 8 and Figure 8. No single jurisdiction has been harmed more often that China, with a total of 574 measures harming at least some Chinese commercial interests. The numbers reported in Table 8 reveal that, with the exception of Brazil and India, every major trading jurisdiction has seen its commercial interests harmed over 300 times in the three years since the November 2008 summit. The fact that trade wars

[23] Leaving aside the matter of whether the G20 pledge on protectionism had any effect, the intertemporal changes witnessed are important. In terms of the number of measures implemented, the EU 27 group were quick to impose protectionism, whereas the BRICs only ratched up their share of worldwide protectionism well into the crisis. Whether this reflected tit-for-tat behaviour or emulation by the BRICs nations or differences in the degree or extent of economic harm felt between the BRICs nations and the EU 27 group is certainly worthy of further analysis. More generally, the differences with the G20 group and over time again reinforce the subtle point that it is most unlikely that the same factors drove protectionism before and during the crisis.

have not broken out does not mean that trading nations interests are unharmed. Water doesn't have to be at boiling point to cause considerable harm.

Approximately 70 percent of all measures harm one or more G20 country's trading interests. In fact, over time the proportion of discriminatory measures implemented that harm at least one G20 country has risen (Figure 8), a pattern found for the BRICs nations too. Interestingly, in the third year of the crisis (November 2010-October 2011) the proportion of measures harming the EU 27 group and the USA fell.

Last, but not least in this overview of contemporary protectionism, is the sectoral incidence of discriminatory measures. That the financial sector is at the top of the list of beneficiaries of discrimination is perhaps not surprising, a finding that is almost entirely the consequence of bailouts given during November 2008-October 2009 (see Table 9). In terms of number of discriminatory measures, what is striking about Table 9 is that so many of most frequent recipients of contemporary protectionism are the very smokestack and agricultural sectors that have traditionally been shielded from international competition by their governments. So while much has been made in policy circles of measures to support "green growth" and other new "economic growth poles". In fact, on some metrics, much contemporary protectionism has been captured by those sectors that have been successful in securing protectionism in the past (Aggarwal and Evenett 2009). This finding is a useful reminder that while some aspects of contemporary protectionism may be different, not every aspect has changed. Sorting out explanations that accounts for what has changed (the composition of protectionism) and what has not (the sectoral composition of protectionism) may keep analysts busy for some time.

The purpose of this section has been to give a comprehensive overview of crisis-era protectionism. These facts will partially inform the assessment of the effectiveness of multilateral trade disciplines that follows. While the focus here has been on contemporary protectionism the finding that the composition of recent protectionism differs from that seen previously is both old and new. "New" in the sense that most recent protectionism was not in the form of tariff increases and trade defence measures, as has been the focus of so many studies of trade policy over the business cycle. "Old" in the sense that the historical pattern that in crises "new" forms of protectionism come to the fore--witnessed in the 1930s and documented then by the League of Nations and witnessed in the slump of the early 1980 and documented then by the GATT secretariat--has reasserted itself.

4. An assessment of the impact of WTO rules during the recent systemic crisis.

The arguments made in this section will be principally qualitative, although they are informed by the quantitative evidence discussed earlier. Given the global economic crisis is not over, it is also appropriate to add that the assessment here is best thought of as one that is informed by the first three years of the recent systemic crisis. Subsequent events may confound the points that follow. Moreover, over time more data will undoubtedly be collected on behaviour before and after the crisis, and this may facilitate the type of statistical examination that some find persuasive. Still, there are a number of useful points that can be made at this juncture.

One starting point is to ask the question on what basis could the WTO influence government behaviour during a systemic crisis? Here it will be useful to quote Irwin (2012, page 171) at length, for the argument presented is fairly representative of the views of many economists that follow WTO matters:[24]

[24] Fairness to Irwin requires noting that a few pages later he offers some, in my view, realistic caveats to this starting view.

> "In the early 1930s, countries could impose higher tariff barriers unilaterally, without violating any international agreements or necessarily anticipating much of a foreign reaction. Today, WTO rules constrain the use of discretionary trade policy interventions. Countries may be tempted to violate WTO agreements for domestic political reasons, but they will have few illusions that they will escape from retaliation if they do. The WTO's dispute settlement mechanism has been a deterrent to the imposition of new trade barriers, forcing countries to think twice about taking actions that will reduce imports."

This quotation nicely distinguishes the 1930s situation from the incentives at work now, incentives that are based on binding WTO disciplines and dispute settlement. Some build upon this argument by noting that tariff barriers were raised across the board in the 1930s but not in the recent crisis--and then conclude that--the WTO has stopped an economically destructive trade war. But does this story really hang together? What follows are some doubts.

The first doubt concerns the statement "WTO rules constrain the use of discretionary trade policy interventions." For many WTO members for all intents and purposes this is simply not the case. Much has been made of the 1930s that saw the imposition of the infamous Smoot Hawley tariffs which raised US tariffs by approximately 6 percent. Readers may be surprised to learn that in 2006, one year before the financial crisis began, no less than 85 members had average maximum allowed (that is, bound) tariff rates on manufactured goods that were 6 or more percentage points higher than their applied rates (*World Tariff Profiles* 2006).

These 85 WTO members, representing more than half of the WTO membership and including important trading nations such as Australia, Brazil, India, Indonesia, Mexico Nigeria, South Africa, and Turkey, could all implement a Smoot Hawley-like tariff without breaking their WTO obligations.[25] This is a matter of fact, not opinion. For 85 of the WTO's members the legal constraints on discretionary trade policy are so weak that they could not stop the return of 1930-style global protectionism![26] Readers might want to bear in mind that the above finding applies to manufactured imports, where it is widely acknowledged that multilateral trade rules are more stringent.[27] For most governments, the potential to discriminate in agricultural and service sector commerce without violating WTO obligations is even greater.

One could repeat the same exercise for circumstances that might be more appropriate to a systemic crisis. In a crisis a government may not want, or need, to raise tariffs across the board. Rather, the government might want to raise tariffs above 15 percent--normally, associated with a "tariff peak" as it conveys a lot of protection to the import-competing firms in question--for a select group of industries. One might be interested in asking how many governments have such weak WTO limits on their tariffs that they could raise 15 percent or more tariffs on product categories equal to 5 percent or more of that country's tariff lines? On the eve of the crisis, the answer is that 67 WTO members were in the position to create so many tariff peaks without breaking their WTO obligations.

[25] So long as they organised each tariff increase that it did not exceed the bound level for the product in question.

[26] For many of these WTO members what has led to this outcome is that, since they last negotiated their maximum bound tariff rates on imported manufacturers in the Uruguay Round, they have unilaterally lowered their applied tariffs and this creates a larger gap between the average tariffs that they do charge and the maximum tariff rate that they are allowed to charge. In short, something other than WTO tariff bindings in manufacturing, has encouraged many WTO members to refrain from sizeable tariff increases during the recent crisis.

[27] Even with manufactured goods casual inspection of the WTO's *World Tariff Profiles* publication reveals that there are a large number of WTO members that have not agreed to bind 100 percent of their tariffs on imported manufacturers.

In sum, when it comes to their tariff regimes, the quintessential element of discretionary trade policy, it is not enough to look for violations to tariff bindings during the recent crisis and, having found none, conclude that all is well with WTO rules. Given the latitude in existing WTO bindings on tariffs, surely the correct question to ask is to what extent those rules could ever have been a constraint on tariff setting by many governments during the recent crisis?[28] If preventing the implementation of a Smoot Hawley tariff is the right metric (and many making comparisons to the 1930s implicitly raise this standard), then for over half the WTO membership their tariff obligations could not prevent a determined government from repeating the mistakes of the 1930s. If governments chose not to raise tariffs much during the recent systemic crisis, then it is because those governments had other reasons not to restrict imports. The WTO cannot be credited with inducing such tariff restraint.

Two other important institutional considerations ought to be borne in mind when considering the bite of WTO rules. Both considerations relate to the WTO dispute settlement procedure, which is arguably much weaker than many realise. One less-well-known feature of the WTO dispute settlement mechanism is that should a WTO member have a case brought against it for violating its trade obligations, and should that WTO member lose the case before the Panel, and subsequently lose an appeal before the Appellate Body, then that WTO member faces no sanctions and need offer no compensation to its harmed trading partner(s) so long as the WTO member withdraws the state measure that was found to have broken WTO rules.

What is the significance of this provision? Whether in a crisis or not, it is now far from clear that governments will, as Irwin puts it, "have few illusions that they will escape from retaliation if they do" break WTO rules. A cynical government could deliberately break the WTO's rules, knowing that it will take between several years before, ultimately, the Appellate Body ruling is handed down and the government has to withdraw the illegal measure. Factor in the allowed time to withdraw the offending measure and effectively a government is allowed to break WTO rules for three years without facing any threat of retaliation. Until the WTO Dispute Settlement Understanding is reformed, multi-year respite from any WTO rule is possible.

Worse, a deeply cynical government could implement illegal measure A, obtain relief from competition for some domestic commercial interests for around three years, withdraw measure A and then replace it (after a small period of time not to look too suspicious) with a different measure B, which may or may not be contested by trading partners at the WTO. If the cynical government has anything to fear, it is not the retaliation but rather the expectation that their measures will be challenged.[29]

These are not hypothetical considerations. Such loopholes in the WTO's Dispute Settlement Understanding have already been exploited by governments needing a medium term respite from multilateral trade rules. The leading example is surely the US government's imposition of a blatantly WTO-illegal safeguard action on steel imports in the early part of the first administration of President George W. Bush. That measure was withdrawn after the WTO ruled against the United States in a ruling handed down in November 2004 that came well after the midterm elections of 2002, an election that the illegal measure was supposed to have influenced. It is unfortunate that President Bush said at the time the measure was removed "…these safeguard measures have now achieved their purpose…it is time to lift them." In sum,

[28] In this sense the question posed in the title of this paper may already cede too much ground to those who believe that the current multilateral trade disciplines have substantially constrained protectionism.

[29] And possibly gaining a reputation as a serial flouter of WTO rules. But even the latter argument raises the awkward question that it is something other than the WTO dispute settlement understanding that may be effectively discouraging governments from flouting multilateral trade rules.

only a poorly briefed government need worry about retaliation under the current WTO Dispute Settlement Understanding.

The second consideration is that whatever threat the WTO Dispute Settlement Understanding constitutes, it requires another WTO member to bring a case against an errant government. There are plenty of reasons in normal business conditions why some governments do not bring cases against others (foreign policy considerations, risking aid flows, doubts about ultimate compliance, as well as a reluctance to raise tariffs on own imports to "punish" a trading partner.) While these reasons may well apply during a systemic crisis another factor, alluded to earlier, comes into play. The simultaneous and deeply painful nature of a systemic crisis may mean that governments want to deviate from any international rules--including WTO rules--in similar ways.

Under these circumstances, governments do not have to go so far as to suspend the WTO's rules when they can just quietly agree not to bring dispute settlement cases against one another. With a relatively small number of large trading nations, orchestrating a policy of "turning a blind eye" to each others' infractions may not be that difficult and might appeal to the sensibilities of diplomats who do not want inter-governmental disputes during a time of adverse economic circumstances. In this manner a collective deviation from the WTO rules could be effected while the polite fiction could be maintained that multilateral trade rules are being adhered to.

The last argument, however, cannot quite account for the contemporary protectionism documented in the last section. The argument in the last paragraph would allow for collective violations of the most transparent WTO rules and these have not been observed in recent years. One countervailing factor is probably the media, whose reporting would probably expose any serial attempt to blatantly break WTO rules, pose difficult questions, and so make it hard to sustain the polite fiction of compliance. Instead, the final piece of the puzzle is provided by the financial origins of the recent systemic crisis.

As argued earlier, once financial markets froze and the real sector could not rollover their loans, then the principle demand of business from government was for cash not customers (the latter of which the traditional forms of protectionism can deliver to import-competing interests.) The simultaneous nature of the crisis meant that many governments faced pressure to bail out firms around the same time. As some started giving bailouts these measures forced the burden of adjustment on to trading partners' firms and employees, whose governments then retaliated by granting bailouts of their own. For sure, some governments added blatantly discriminatory strings (often unofficially) to the bailouts.

The demands for bailouts become so frequent that by the time each major trading nation appreciated the damage being done to their commercial interests by the bailouts of others, each had implemented so many discriminatory bailouts that the less confrontational approach was to adhere to the rule that "people who live in glass houses don't throw stones."[30] Add to this the facts that the WTO rules on subsidies are not that far reaching, that no organisation was in place to actively monitor this less than conventional form of discrimination, and that therefore there was no smoking gun that the media could report on without doing a substantial amount of research on its own. Taken together, this meant that all the preconditions for a collective deviation from WTO principles could be effected. A similar dynamic almost certainly

[30] Plus, once each government had offered subsidies to the firms in a given sector then they had a strong disincentive to be the first to withdraw those subsidies, doing so would inflict most of the adjustment on own firms. Essentially, once the subsidies were imposed a game of chicken followed in which each party waited for the other to blink or fold, which in this case meant withdraw their subsidies first. The subsequent emphasis on austerity packages in 2010 and 2011 may have brought some of these games to an unexpected end.

developed with respect to discriminatory stimulus packages, implemented in 2008 and 2009, where too WTO rules remain underdeveloped.

That so many governments simultaneously wanted to act to counter the credit freeze, provide stimuli to national economies, create employment opportunities for citizens probably accounts for the drive to exploit the looseness (or absence) of the WTO rules on subsidies, public procurement, and migration, respectively. Combined with many developing countries worries about commodity prices and pressures to exploit weak WTO rules on export taxes and quotas together account for much of the composition of recent protectionism.

A crucial part of the argument in the previous paragraphs is that the WTO rules in many areas of government policy where discrimination is possible are weak, remain underdeveloped, or do not exist at all. Furthermore, since the WTO tends to systematically collect information in the areas where its rules are strongest, there is relatively little monitoring of other areas of policymaking. What this implies is that at most the WTO rules affected the composition of crisis-era protectionism, with pressures for discrimination channelled towards those areas where the WTO rules are weaker. With such a patchwork of strong, weak, and missing multilateral trade rules, why would a government refrain from using a less regulated protectionist tool to help a desperate domestic commercial interest, just because some other tools have been banned by WTO rules? A good answer is needed to this question before a plausible story can be told that the current WTO rules limited the total amount of crisis-era protectionism.

In drawing implications from the above arguments for the potential reform of the WTO rules so as to better cope with systemic economic crises, certain considerations should be borne in mind. One reaction is to repeat what GATT members did after the sharp slump of the 1980s, namely, to put reforms to multilateral trade rules on some of the "newer" forms of protectionism witnessed on to the agenda of the next round of global trade negotiations. Following this approach would imply, in current circumstances, strengthening the WTO's subsidies code, expanding the scope and membership of the WTO Agreement on Public Procurement, and developing a set of disciplines on export taxes and the like.

However, there are good reasons for doubting that this path will be taken or, even if it is, whether it will fundamentally alter state behaviour during systemic economic crises. First, and it cannot be avoided, the lessons from the *de facto* failure of the Doha Round have yet to be agreed upon, let alone digested. Furthermore, there must be real doubts as to whether some of the BRICs are willing to subject their governments to international disciplines that they will regard as intruding further on their national sovereignty.[31] Second, for so long as only WTO members (and not some advocate independent of government) can only bring cases to the WTO dispute settlement mechanism, there must be some scepticism that when a systemic crisis occurs a collective, unofficial deviation from WTO rules will not be orchestrated.

Third, even if new rules could be negotiated and unofficial deviations cannot be pulled off, then the new WTO rules are still likely to be incomplete and so will afford opportunities for circumvention should domestic pressures mount up on governments to deliver discrimination. And, finally, even if new WTO rules were complete--that is, covering every possible form of discrimination--and for some reason unofficial deviations don't happen, then surely the lesson of the Gold Standard's demise in many countries during the Great Depression is relevant. During a severe systemic crisis where governments are under substantial pressure to intervene then should binding rules be seen to be preventing governments from implementing measures

[31] The BRICs may not be alone in this regard.

that are thought to have major (even short term) benefits, then there is a serious risk that the rules are repudiated.[32]

The depressing conclusion to draw is that either future WTO rules remain substantially incomplete, in which case during future systemic crises governments will merely circumvent those WTO rules. Or, future WTO rules become complete and when faced with the pressures of a systemic crisis, governments may openly repudiate them. Put this way, the fate of the WTO's rules during future systemic crises is to be either circumvented or violated outright. In the light of these circumstances perhaps less should be expected of binding WTO rules when desperate politicians are taking steps to counter systemic economic crises.

The arguments made in this section were based on observations from the factual record as well as consideration of certain often-overlooked institutional features of the WTO. Once the incentives associated with the latter and with systemic economic crises are taken into account, then the current multilateral trade system is not as strong as much writing on the WTO leads one to believe. Worse, should the set of WTO disciplines expand over time then there may come a point where, during a systemic economic crisis, some governments openly repudiate them. The pessimistic conclusions reached in this section do not arise from any differences in normative view from most international economists (such as the merits of an open trading system), rather they arise from considering the implications of incentives that to date few have chosen to consider.

5. Concluding remarks.

Since its creation analysts broadly sympathetic to the benefits of an open world trading system have lauded the World Trade Organization. This adulation has gone too far, or at least too far for the factual record and for logic to bear. The recent global economic crisis affords an excellent opportunity to revisit the effectiveness of the WTO, examining how much it really affects behaviour when member governments are under tremendous pressure to restore health to national economies. It should be understood, however, that the contribution of the WTO to an open trading system may differ between systemic economic crises and less strained economic circumstances, and only the former was examined here.

During the recent global economic crisis much has been made of the fact that governments have not resorted to Smoot Hawley-like tariff increases that were condemned after the Great Depression. Contemporary analysts of protectionism have thus been lectured on the lessons of history, notably by those wanting to credit the WTO. Unfortunately, the Smoot Hawley tariff argument cuts both ways and is not the only important historical point of reference. At least two others are relevant. First, during dire economic circumstances governments create new forms of protectionism, that circumvent existing multilateral trade rules and are not picked up by monitoring exercises whose scope are typically circumscribed by prevailing trade rules. In any systemic crisis sticking rigidly to inherited notions of protectionism will almost certainly create a misleading, incomplete understanding of contemporary protectionism.

The second historical lesson of relevance is that when a policy choice (such as being on the Gold Standard) becomes the ultimate constraint preventing desperate policymakers from taking certain actions thought to provide sizeable relief, then the odds are that the constraint gets overthrown. What this means for the WTO is that those who view binding multilateral trade rules as the best way to prevent discrimination against foreign commercial interests had

[32] In his account of the fate of the Gold Standard in the 1930s, Irwin (2012) observes:

> "Despite the gold standard's importance and the efforts to keep it intact, the pressures on financial crises and deflation became so strong that eventually every country was driven off it" (page 42).

better ensure that every redesign of those rules allows for non-discriminatory means to be available to tackle each future systemic crisis. Moreover, since the nature of the latter are unknown and potentially unknowable, one might question whether such redesigns are possible and, therefore, the wisdom of relentlessly pursuing ever more multilateral trade disciplines. Practical considerations in times of extremis overturn the tidy visions of an ever-expanding architecture of legally binding commercial rules. Rather than banning every form of discrimination perhaps revisions to multilateral trade rules should channel discrimination into less harmful and shorter-lived forms.

To the extent that governments have shown restraint towards protectionism during the recent global economic crisis it is difficult to give much credit to the existing multilateral trading obligations for the reasons presented above. So weak and easy to evade are those obligations that other factors had to been more important. Noting in addition the regrettable breakdown of the Doha Round negotiations, it is just as well that the medium term health of the world trading system does not rely solely on multilateral trade rules and the international organisation established to administer them. The ultimate conclusion of this paper is that in times of systemic economic crisis the prevailing patchwork of multilateral trading obligations is much weaker than many realise. Expectations need to be realigned accordingly.

References.

Aggarwal and Evenett (2009). Vinod K. Aggarwal and Simon J. Evenett. "Have Long Established Patterns of Protectionism Changed During The Crisis? A Sectoral Perspective." Chapter 4 in Simon J. Evenett (ed.) Broken Promises: A G-20 Summit Report by Global Trade Alert. Pages 124-131.

Aumann (1959). R.J. Aumann. "Acceptable points in general cooperative n-person games," *Annals of Mathematics Studies* 40. Pages 287-324.

Bagwell and Staiger (2010). Kyle Bagwell and Robert Staiger. "The World Trade Organization: Theory and Practice." *Annual Reviews of Economics* 2. Pages 223-256.

Baldwin (2009). Richard E. Baldwin (ed.) The Great Trade Collapse: Causes, Consequences and Prospects. VoxEU.org. Available at http://www.voxeu.org/index.php?q=node/4297

Baldwin and Evenett (2009). Richard Baldwin and Simon J. Evenett (eds). *The collapse of global trade, murky protectionism, and the crisis: Recommendations for the G20.* VoxEU.org. Available at http://www.voxeu.org/index.php?q=node/3199

Barrett (1999). Scott Barrett. "A Theory of Full International Cooperation," *Journal of Theoretical Politics* 11(4). Pages 519-541.

Bernheim, Peleg, and Whinston (1987). B.Douglas Bernheim**,** Bezalel Peleg**,** Michael D Whinston. "Coalition Proof Nash Equilibria. I. Concepts." *Journal of Economic Theory* 42. Pages 1-12.

Eichengreen and Irwin (2009). Barry Eichengreen and Douglas A. Irwin. "The Slide to Protectionism in the Great Depression: Who Succumbed and Why?" NBER Working Paper number 15142. July.

Evenett (2009). Simon J. Evenett. "What can be learned from Crisis-era Protectionism? An Initial Assessment." *Business and Politics* 11(3). Pages 1-26.

Evenett (2011a). Simon J. Evenett. *Trade Tensions Mount: The 10th GTA Report*. Available at www.globaltradealert.org

Evenett (2011b). Simon J. Evenett. "Did Tariff Regimes on Manufactured Goods Change during the Recent Global Economic Crisis?" Chapter 4 of Evenett (2011a). Pages 27-43.

Evenett (2011c). Simon J. Evenett. "Indicators of the harm done by discriminatory measures: Many indicators, one message" Chapter 4 of Simon J. Evenett (ed). Resolve Falters As Global Prospects Worsen: The 9th GTA Report. Available at http://globaltradealert.org/sites/default/files/Chapter4.pdf

Evenett and Fritz (2010). Simon J. Evenett and Johannes Fritz. " 'Jumbo' Discriminatory Measures and the Trade Coverage of Crisis-Era Protectionism" Chapter 4 of Simon J. Evenett (eds.) Unequal Compliance: The 6th GTA Report. Available at http://www.globaltradealert.org/sites/default/files/GTA6_Evenett_Fritz.pdf Pages 49-58.

Irwin (2012). Douglas A. Irwin. *Trade Policy Disaster. Lessons from the 1930s.* MIT Press.

Mearsheimer (1994). John J. Mearsheimer. "The False Promise of International Institutions." *International Security.* 19(3). Pages 5-49.

WTO (2011). World Trade Organization. *Report To The TPRB From the Director-General On Trade-Related Developments*. 7 September 2011. Document number WT/TPR/OV/W/5/Rev.1.

Table 1. Total number of state measures reported in the GTA database, by year.

Statistic	As of November 2011		November 2008-October 2009		November 2009-October 2010		November 2010-October 2011	
	Total	Total except unfair trade and safeguards investigations	Total	Total except unfair trade and safeguards investigations	Total	Total except unfair trade and safeguards investigations	Total	Total except unfair trade and safeguards investigations
Total number of measures in GTA database	2001	1484	664	496	606	469	463	354
Total number of measures coded green	484	397	129	94	167	147	133	123
Total number of measures coded amber	490	282	96	56	110	59	89	54
Total number of measures coded red	1027	805	439	346	329	263	241	177

Table 2. Total number of measures implemented worldwide, by year.

Statistic	As of November 2011		November 2008-October 2009		November 2009-October 2010		November 2010-October 2011	
	Total	Total except unfair trade and safeguards investigations	Total	Total except unfair trade and safeguards investigations	Total	Total except unfair trade and safeguards investigations	Total	Total except unfair trade and safeguards investigations
Total number of measures in GTA database	1593	1309	606	483	537	458	435	349
Total number of measures coded green	406	355	122	92	154	143	131	121
Total number of measures coded amber	160	149	45	45	54	52	63	51
Total number of measures coded red	1027	805	439	346	329	263	241	177

Table 3. Total number of measures implemented by the G20 countries, by year.

Statistic	As of November 2011		November 2008-October 2009		November 2009-October 2010		November 2010-October 2011	
	Total	Total except unfair trade and safeguards investigations	Total	Total except unfair trade and safeguards investigations	Total	Total except unfair trade and safeguards investigations	Total	Total except unfair trade and safeguards investigations
Total number of measures in GTA database	1046	805	359	258	336	266	342	273
Total number of measures coded green	265	229	70	49	93	84	103	97
Total number of measures coded amber	103	97	19	19	36	35	47	42
Total number of measures coded red	678	479	270	190	207	147	192	134

Figure 1. The G20's rising share of protectionist measures.

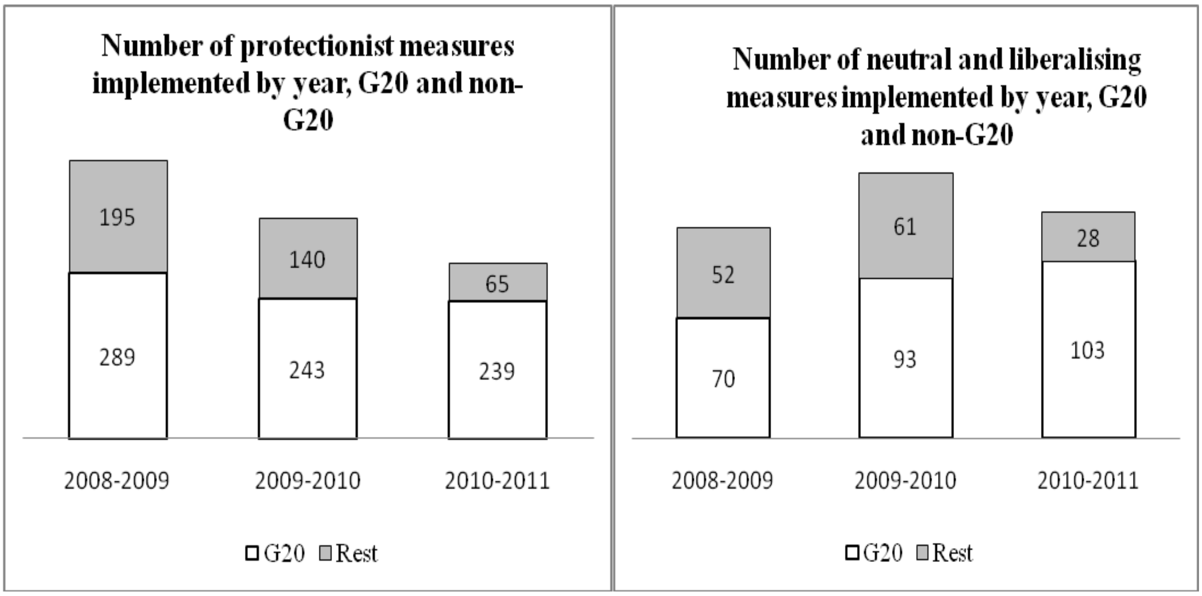
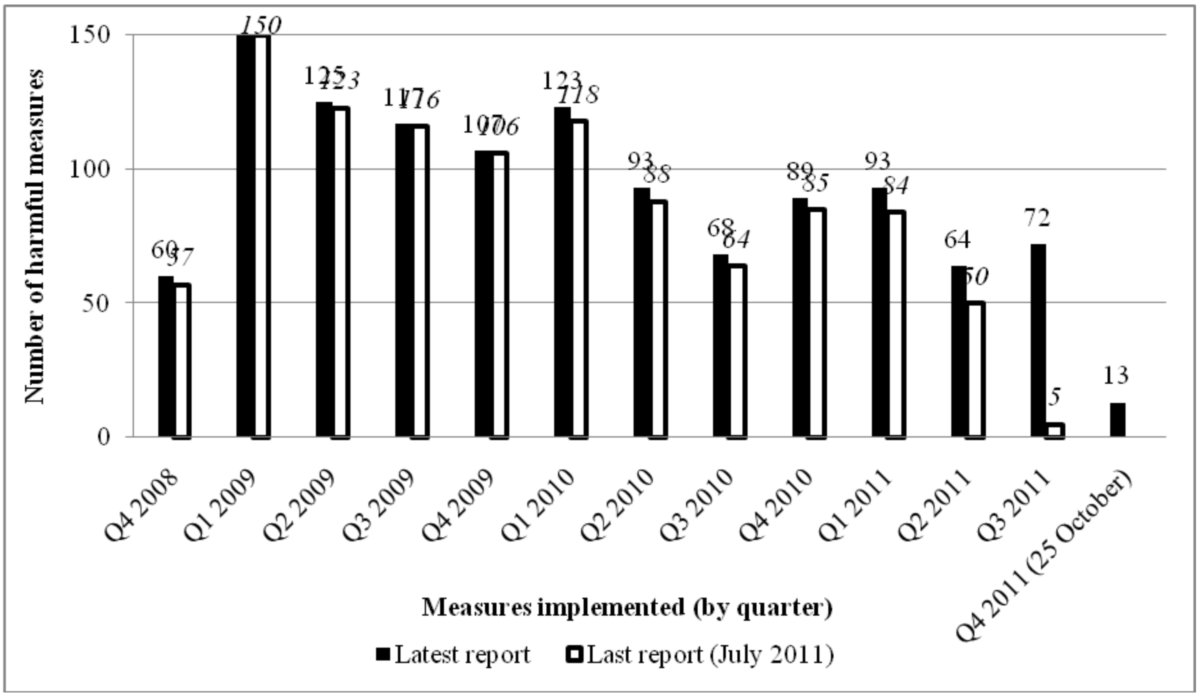


Figure 2. Deteriorating prospects for the world economy since Q4 2010 coincided with an increased resort to discrimination in 2011.



Notes:

The total quarterly number of harmful measures for Q1-Q3 2011 are converging quickly to the 100-120 range seen in 2009. Q3 2010 seems more anomalous as time goes by.

In Figure 2.2. a harmful measure is taken to be one which has been implemented since November 2008 and is almost certainly discriminatory (coded red) or likely to be discriminatory (coded amber).

Table 4. Ten most used state measures to discriminate against foreign commercial interests since the first G20 crisis meeting.

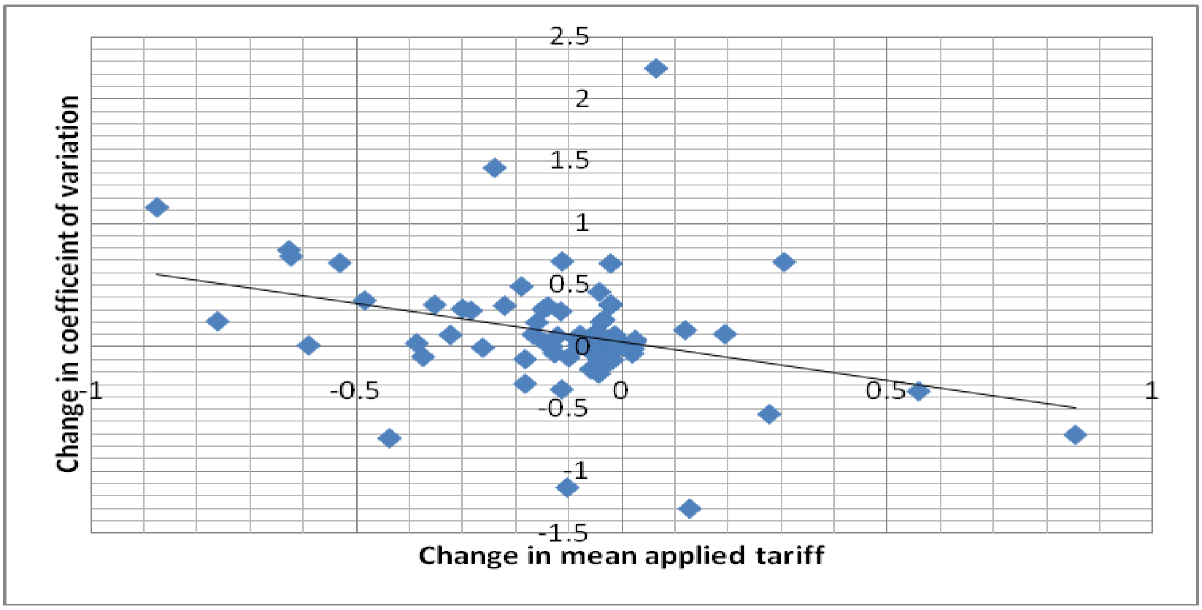
Ranked by the total number of discriminatory measures imposed since November 2008.

State measure	Number of discriminatory (red) measures imposed.	Number of measures implemented (red, amber, or green).	Number of jurisdictions that imposed these discriminatory measures.	Number of jurisdictions harmed by these discriminatory measures.
	As of November 2011	As of November 2011	As of November 2011	As of November 2011
Bail out / state aid measure	273	298	49	186
Trade defence measure (AD, CVD, safeguard)	223	285	58	81
Tariff measure	132	416	63	157
Non tariff barrier (not otherwise specified)	88	119	24	153
Export taxes or restriction	70	122	54	186
Migration measure	44	73	24	104
Investment measure	42	105	28	81
Public procurement	39	49	21	135
Export subsidy	37	54	42	199
Local content requirement	25	34	14	124

Table 5. Ten most used state measures to discriminate against foreign commercial interests, by year.
Ranked by total number of discriminatory measures imposed since November 2008.

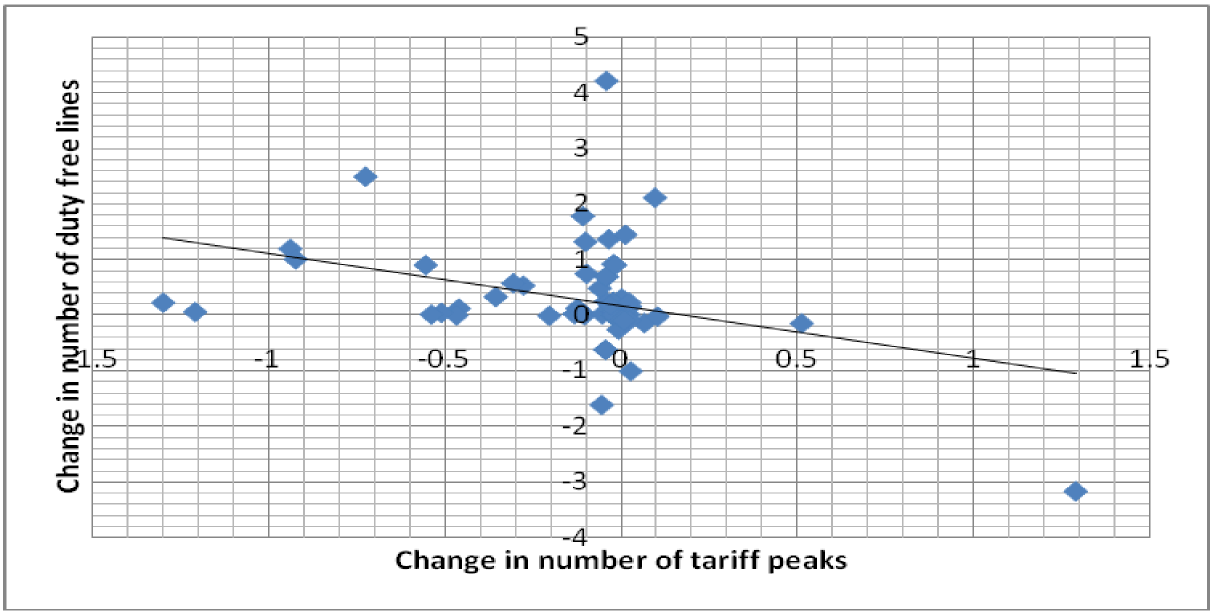
State measure	Number of discriminatory (red and amber) measures implemented.			
	As of November 2011	November 2008-October 2009	November 2009-October 2010	November 2010-October 2011
Bail out / state aid measure	274	168	84	24
Trade defence measure (AD, CVD, safeguard)	236	93	68	76
Tariff measure	188	72	75	41
Non tariff barrier (not otherwise specified)	111	26	20	65
Export taxes or restriction	91	14	43	34
Investment measure	64	15	27	22
Migration measure	53	19	18	16
Export subsidy	49	26	15	9
Public procurement	47	29	13	5
Local content requirement	33	12	13	8

Figure 3: During the crisis-era liberalisation of tariff regimes was confined to lowering applied tariff rates, not the variance in those tariff rates.



Source: Evenett (2011b).

Figure 4: Of those countries that altered their average tariff rates during the crisis, those that created more tariff peaks also extended duty free market access to fewer products.



Source: Evenett (2011b).

Figure 5. Top 10 implemented measures used to discriminate against foreign commercial interests since the first G20 crisis meeting.

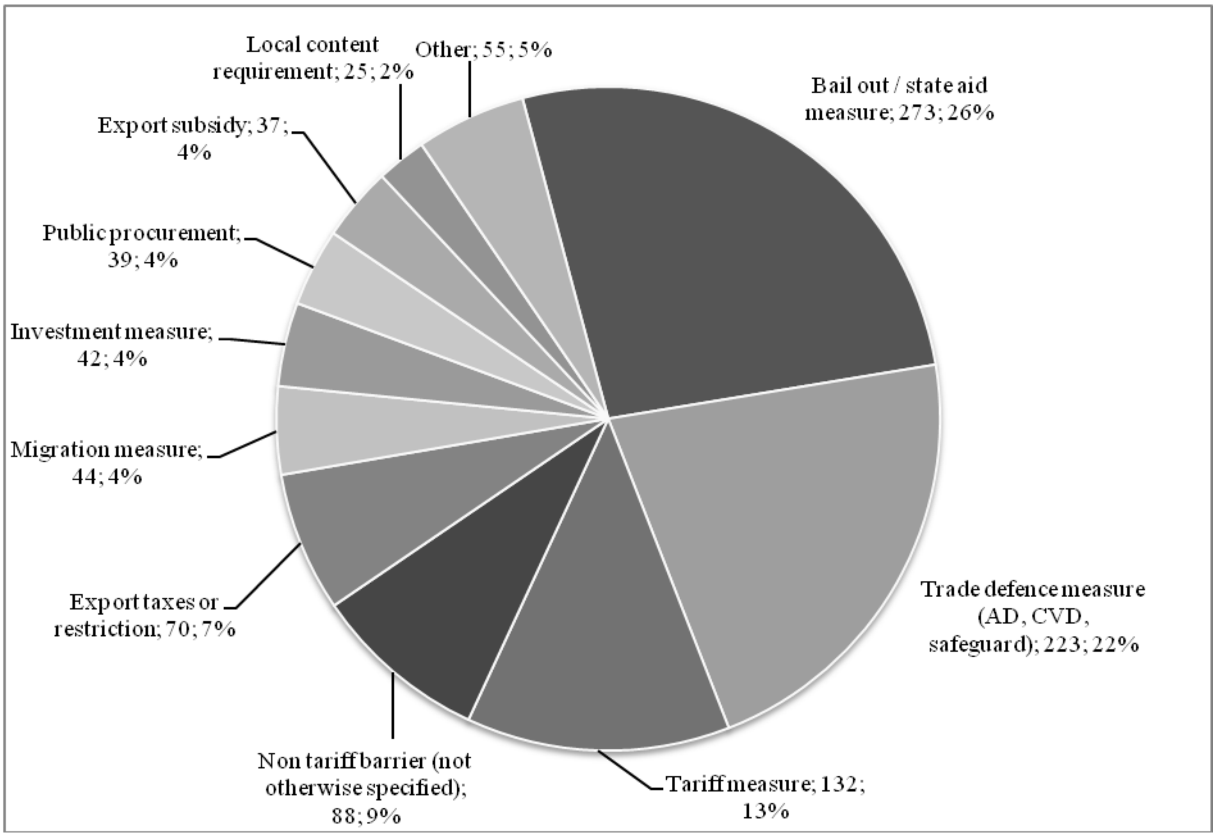


Figure 6. Top 10 pending measures that target foreign commercial interests.

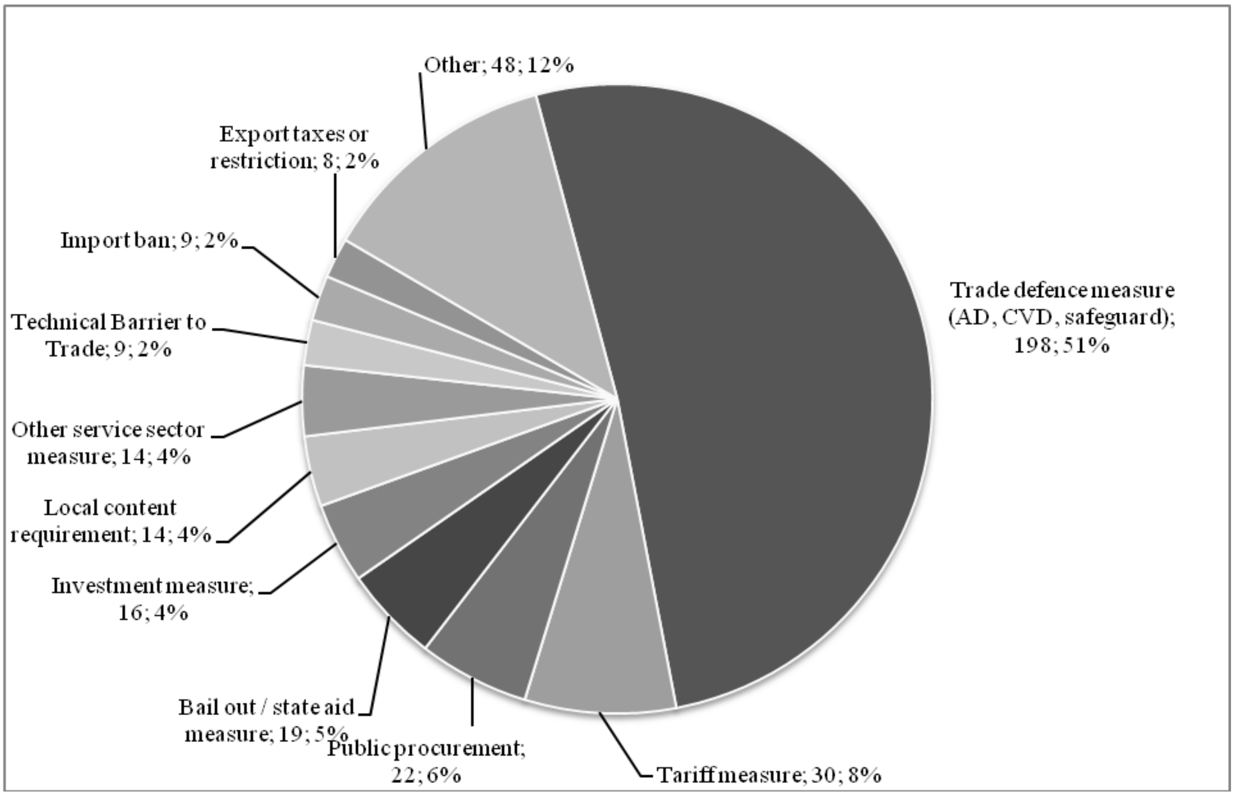


Table 6. Which countries have inflicted the most harm?

Note: *There is no single metric to evaluate harm. Different policy measures affect different numbers of products, economic sectors, and trading partners. GTA reports four measures of harm.*

Rank	Metric, Country in specified rank, Number			
	Ranked by number of (almost certainly) discriminatory measures imposed	Ranked by the number of tariff lines (product categories) affected by (almost certainly) discriminatory measures	Ranked by the number of sectors affected by (almost certainly) discriminatory measures	Ranked by the number of trading partners affected by (almost certainly) discriminatory measures
1.	EU 27 (242)	Viet Nam (927)	Algeria (62)	China (195)
2.	Russian Federation (112)	Venezuela (786)	EU 27 (58)	EU 27 (181)
3.	Argentina (111)	Kazakhstan (729)	China (47)	Argentina (175)
4.	UK (59)	China (698)	Nigeria (45)	Germany (161)
5.	Germany (58)	Nigeria (599)	Kazakhstan (43)	India (154)
6.	India (56)	EU 27 (550)	Germany (42)	UK (154)
7.	China (55)	Algeria (476)	USA (42)	Belgium (153)
8.	France (51)	Russian Federation (439)	Ghana (41)	Finland (153)
9.	Brazil (49)	Argentina (429)	Indonesia (40)	Indonesia (151)
10.	Italy (47)	Indonesia (388)	Russian Federation (40)	France (150)

Table 7. Protectionist measures implemented by leading trading jurisdictions, by year.
Ranked by total number of discriminatory measures imposed since November 2008

Implementing jurisdiction or group	Number of discriminatory (red and amber) measures implemented.			
	As of November 2011	November 2008-October 2009	November 2009-October 2010	November 2010-October 2011
G20	786	289	243	239
BRICs	313	120	93	101
EU 27	252	141	59	36
Russian Federation	127	53	46	28
Argentina	123	18	37	67
India	73	28	12	18
UK	62	18	15	22
Germany	61	27	13	18
Brazil	57	17	23	17
China	56	22	12	38
France	56	22	12	21
USA	29	9	12	7

Figure 7. The G20 are responsible for a growing share of contemporary protectionism.

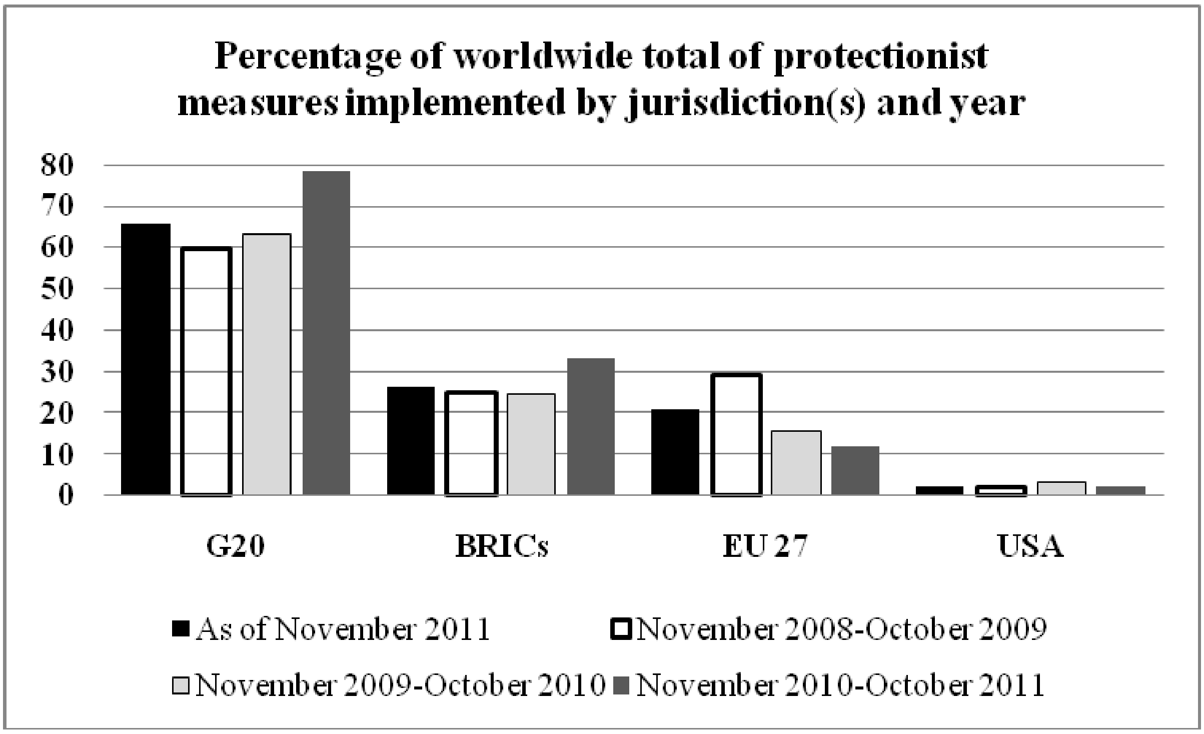


Figure 8. The BRICs and some other G20 members--but not the EU 27 and USA--are the target of a growing proportion of contemporary protectionism.

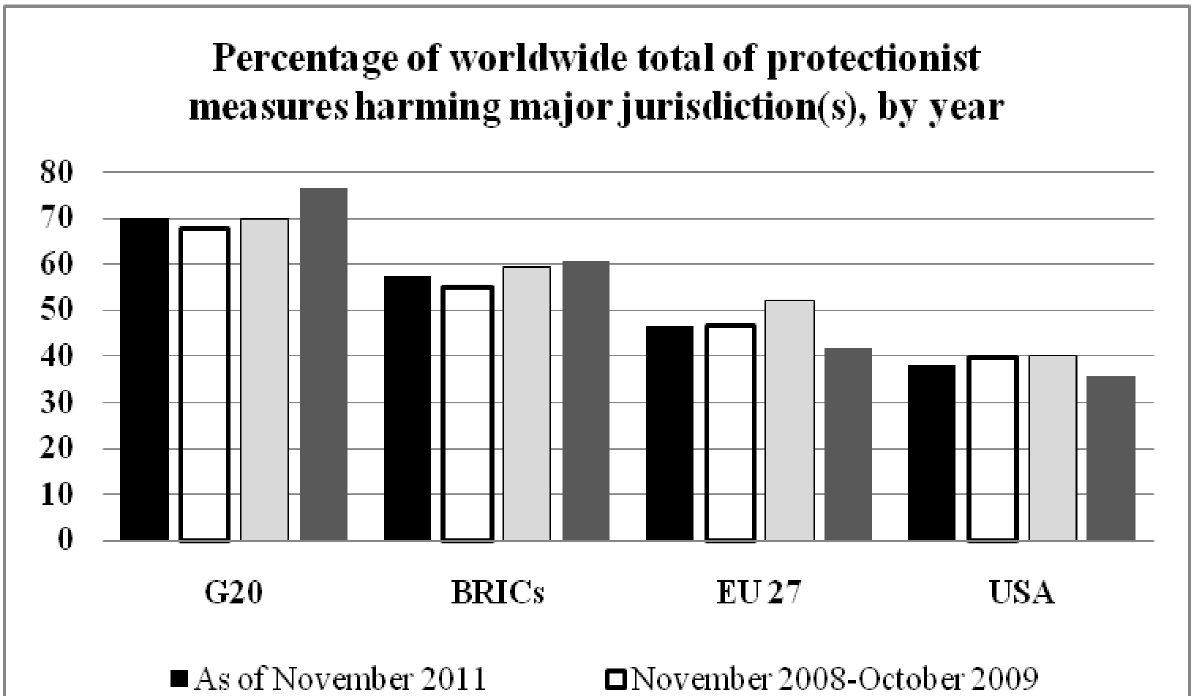


Table 8. Number of times a leading trading jurisdiction's commercial interests have been harmed, by year.
Ranked by total number of discriminatory measures imposed since November 2008.

Affected jurisdiction or group of jurisdictions	Number of discriminatory (red and amber) measures implemented that harm the jurisdiction in question.			
	As of November 2011	November 2008-October 2009	November 2009-October 2010	November 2010-October 2011
G20	835	328	267	232
BRICs	684	267	227	184
China	574	229	190	151
EU 27	557	226	200	127
USA	457	193	154	108
Germany	425	184	153	86
France	370	161	134	71
UK	367	151	136	77
Italy	365	152	132	78
Korea	352	133	109	107
Netherlands	330	144	110	72
India	325	111	112	99
Brazil	250	116	82	49
Russia	195	88	74	31

Table 9. Number of times commercial interests in an economic sector have been harmed, by year.
Ranked by total number of discriminatory measures imposed since November 2008.

Sector	Number of discriminatory (red and amber) measures implemented that harm the sector in question.			
	As of November 2011	November 2008-October 2009	November 2009-October 2010	November 2010-October 2011
81 (Financial intermediation services and auxiliary services therefore)	106	66	19	8
01 (Products of agriculture, horticulture and market gardening)	132	43	57	32
34 (Basic chemicals)	127	47	49	30
49 (Transport equipment)	124	61	45	18
41 (Basic metals)	123	62	37	23
44 (Special purpose machinery)	116	57	38	20
21 (Meat, fish, fruit, vegetables, oils and fats)	103	46	35	22
42 (Fabricated metal products, except machinery and equipment)	91	44	30	16
23 (Grain mill products, starches and starch products; other food products)	91	38	31	21
26 (Yarn and thread; woven and tufted textile fabrics)	91	33	36	22

Appendix Table 1. The list of jumbo discriminatory measures prepared in 2010, presented in descending order of trade covered.

No.	Implementing jurisdiction: Title of measure	Tariff lines affected	Percentage of total tariff lines	Trading partners affected	G20 members affected	Implementer is G20 member?	Total trade value (2008, billions US$) potentially affected	Share of relevant national trade flow	Trade flow used to compute last column	Included in conservative estimate of trade coverage?
1.	China: Export tax rebates.	243	22.17%	155	17	Yes	412.0	28.80%	Total exports	
2.	United States of America: Buy American provisions in stimulus package	113	9.63%	106	16	Yes	337.8	15.60%	Total imports	No
3.	China: Implementation of State Council Opinions on imported goods	80	7.64%	61	15	Yes	243.2	21.47%	Total imports	No
4.	Russia and Belarus: Increase in export tariffs on crude oil and oil products	5	0.90%	78	15	Yes	243.0	48.51%	Sum of total exports for Russia and Belarus	
5.	UK: Temporary aid for the production of green products	121	10.65%	98	18	Yes	161.1	25.49%	Total imports	
6.	China: Adjustment of import tariffs policy on key technical equipment	82	7.83%	52	15	Yes	112.4	9.92%	Total imports	
7.	Venezuela: Devaluation of the Bolivar	784	100.00%	71	17	No	108.6	82.97%	Total imports plus total exports	
8.	Kazakhstan:	716	100.00%	96	19	No	106.5	97.76%	Total imports	

No.	Implementing jurisdiction: Title of measure	Tariff lines affected	Percentage of total tariff lines	Trading partners affected	G20 members affected	Implementer is G20 member?	Total trade value (2008, billions US$) potentially affected	Share of relevant national trade flow	Trade flow used to compute last column	Included in conservative estimate of trade coverage?
	Announced 25% devaluation of the national currency.								plus total exports	
9.	Nigeria: Deliberate devaluation of the Naira	561	100.00%	105	19	No	104.8	95.26%	Total imports plus total exports	
10.	Russia: The programme of the anti-crisis measures of the Russian Government - 2009	120	12.33%	95	18	Yes	70.0	26.21%	Total imports	
11.	Japan: State endorsement of private initiative to raise food self-sufficiency	130	11.67%	110	15	Yes	53.4	7.00%	Total imports	
12.	Brazil: New credit line for exports of consumer goods	196	25.49%	131	18	Yes	50.6	25.55%	Total exports	
13.	Russia: Subsidized loans to producers of certain type of machineries	87	8.94%	62	15	Yes	48.4	18.14%	Total imports	
14.	India: Extension of service tax refund for exporters	146	17.40%	122	18	Yes	45.0	24.73%	Total exports	
15.	India: Pre- and post-shipment export	146	17.40%	122	18	Yes	45.0	24.73%	Total exports	No

No.	Implementing jurisdiction: Title of measure	Tariff lines affected	Percentage of total tariff lines	Trading partners affected	G20 members affected	Implementer is G20 member?	Total trade value (2008, billions US$) potentially affected	Share of relevant national trade flow	Trade flow used to compute last column	Included in conservative estimate of trade coverage?
	credit									
16.	Indonesia: Import tariff increases on certain products that compete with locally manufactured products	216	24.00%	92	17	Yes	33.7	26.04%	Total imports	
17.	Indonesia, Malaysia, and Thailand: Limiting rubber exports to 915,000 tons during 2009.	26	3.48%	105	18	Yes	26.3	5.14%	Sum of total exports for all 3 implementers.	
18.	Argentina: Extension of tax exemptions for locally produced capital goods	194	24.84%	63	17	Yes	25.0	43.49%	Total imports	No
19.	Russia: Public procurement price advantage to domestic producers	180	18.50%	89	17	Yes	23.0	8.62%	Total imports	No
20.	Russia: Preferences to domestic producers in ammendments to Government Procurement Law	174	17.88%	88	17	Yes	21.8	8.17%	Total imports	
21.	Russia: Temporary import tariff	26	2.67%	57	16	Yes	20.6	7.71%	Total imports	

No.	Implementing jurisdiction: Title of measure	Tariff lines affected	Percentage of total tariff lines	Trading partners affected	G20 members affected	Implementer is G20 member?	Total trade value (2008, billions US$) potentially affected	Share of relevant national trade flow	Trade flow used to compute last column	Included in conservative estimate of trade coverage?
	introduction on certain type of machinery									
22.	France: More restrictive public procurement rules for construction work tenders	24	2.08%	60	15	Yes	12.3	1.76%	Total imports	No

Estimates of total trade covered by jumbo measures.

1) (Most conservative estimate): All five public procurement measures (where the total import numbers include sales to the private sector) and one of the Indian export promotion measures (see measures 14 or 15) are excluded from the calculation. The total trade coverage of the remaining jumbo measures is US$1.618.1 trillion, or 10.45% of total world imports in 2008.

2) (Least conservative estimate): The total trade coverage of the all the jumbo measures listed above is US$2.304 trillion, or 14.77% of total world imports in 2008.

Source: Evenett and Fritz (2010).