

RESIST US PROTECTIONISM: THE TOP TRADE PRIORITY FOR THE G20

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The motto of the G20 leader's forthcoming London Summit is "Stability Growth Jobs." The world economy is producing an insufficient amount of all three of these economic virtues and so it is appropriate for powerful governments to get together in London to try to improve and coordinate their social, economic, and environmental policies.

The most important thing the G20 leaders can do is to take a strong stand against trade protectionism. A hundred years of economic history has shown that the erection of import barriers diminishes economic growth and creates instability. While tariff and non-tariff barriers can "save" some jobs from import competition, such policies will necessarily reduce other jobs in companies that depend on imports or exports. Although the net effect of protectionist policies on the quantity of jobs is impossible to predict, we do know that the inefficiencies of protection lower the aggregate real income to workers through labor markets.

Thus, promoting freer trade should be a core component of any international plan to promote long term global economic prosperity. Trade needs to be accompanied by complementary policies on saving and investment, technology, corporate governance, training, education, health, energy, and public infrastructure. Moreover, governments need to coordinate these various policies domestically and internationally so that they do not work at cross purposes. No policy should be used in the short-run, for example trade restrictions or wasteful government spending, that does not also make sense in the long run.

All G20 countries should be the object of the G20 recommendations, but the government most in need of external normative pressure from other governments is the United States. That's so for several reasons: First the United States has the largest and wealthiest economy at the G20 meeting and therefore has the weakest excuse to adopt beggar-thy-neighbor policies. Second, if

the United States gives in to sirens of protection, other countries as a practical matter will find it much harder to resist. Third, as a result of the 2008 election, the Democratic party in the United States has gained firm control of the Congress and the Executive Branch, and so the usual internal checks and balances against wasteful and counterproductive policies have been attenuated.

Vibrant world trade and a strong World Trade Organization (WTO) are terrible things to waste. And yet the Obama Administration and the new Congress have been quick to adopt protectionist policies, some of which violate WTO rules.

Consider the American Recovery and Reinvestment Act of 2009, better known as the First Obama Stimulus. As the title indicates, the new law is inward looking. The Act has 20 titles, none of which recognize, at least in name, the rest of the world or the interdependence of the US within the world economy. Perhaps the most notorious provision of the Act is Section 1605 titled "Buy American." According to this provision, with certain exceptions, "None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States." In those 51 words, the Congress and Obama Administration repudiate the benefits of open trade and embrace domestic content policies that will make it harder for the US economy to stabilize, grow, and create good jobs. Those cruel words also send a signal to private social and economic actors in the United States that discriminating against America's trading partners is now thought by Washington elites to be good governance.

In addition to being bad for the US taxpayer and bad for countries that produce manufactured goods and steel, the Buy American provision, if implemented, also violates WTO rules. While it is true that the Act has a provision saying that

it “shall be applied in a manner consistent with United States obligations under international agreements,” any application of the provision to make the subsidies conditional on domestic content is a *per se* violation of the WTO Agreement on Subsidies and Countervailing Measures (SCM), Article 3.1(b). The Act was signed into law on February 17, 2009 by the President who urged that the funds be disseminated quickly. One can only assume that serious WTO violations by the United States are already occurring.

Article 3.1(b) of the SCM Agreement contains an absolute ban on domestic content requirements linked to subsidies. Specifically, the treaty language prohibits “subsidies contingent, whether solely or as one of several other considerations, upon the use of domestic over imported goods.” Although the SCM Agreement does not contain a preamble stating its purposes, the WTO’s Appellate Body has explained that the Agreement is designed to address “unfair” trade practices. Certainly, an official government preference for domestically produced over foreign goods is unfair. But that is not the main reason why Article 3.1(b) prohibits such restrictions. Article 3.1(b) is not a simple national treatment requirement. Instead, the unfair practice prohibited is preconditioning a subsidy on using domestic content. The unfairness is not just the trade distortion, but more importantly the fact that the richer a country is, the more able it will be to compete in subsidy wars.¹ Thus, Article 3.1(b) contains an absolute prohibition on practices that tilt toward higher-income governments that will have the ready cash to expend on such subsidies.

Unfortunately, most commentators have missed the big picture when analyzing the new US Buy American provision by examining it solely through the lens of the WTO’s Government Procurement Agreement.² That lens is appropriate for the federal procurement spending in the Stimulus Act. But other provisions in the Act provide many billions of dollars of grants to US states and local governments that are subsidies to them. It should be noted that there is no WTO caselaw yet on whether subsidies from one part of a government to another are immune from SCM disciplines.

Another autarchic provision in the Act (Section 1612) will make it harder for banks and other large companies receiving government subsidies to hire foreign-born workers. Such labor market discrimination against aliens is not a violation of the WTO, but it is a violation of another international agreement, the International Labour Organization (ILO) Convention on Discrimination (Employment and Occupation), No. 111. Unfortunately, the United States is not a party to that Convention. Indeed, of the countries invited to attend the G20 meeting, only the United States and Saudi Arabia have refused to sign on to this Convention.

In taking note of the worst provisions in the Stimulus Act with respect to international economic policy, I should also mention that there are also some constructive provisions, such as the Trade and Globalization Adjustment Assistance Act of 2009 (Section 1800 of the Stimulus). This Act makes some improvements in the US trade adjustment assistance programs that help economic actors that are injured due to trade. A workable and effective adjustment assistance program needs to be a central part of every country’s trade policy if governments are to obtain and maintain public support for trade liberalization. Unfortunately, there are no WTO requirements that governments operate such programs and no international surveillance. The United States commenced an adjustment assistance program when it launched what became known as the Kennedy Round of GATT negotiations in 1962, but the US programs have never been effective at helping workers or at building public support for trade. The new Act authorizes more spending for worker training and makes some supply-side improvements through community colleges and on-the-job training. But the new Act sadly misses an opportunity to cure the central problem in the existing program which is its reliance upon the flawed delivery system of moribund state agencies rather than seeking to empower workers through adjustment vouchers. Perhaps the best feature of the Act is the re-establishment of an adjustment assistance program for communities beset by major layoffs (Section 1872). Community adjustment assistance had been part of major reforms enacted in the Trade Act of 1974, but that program was abolished by the US Congress in 2001 at the request

of President Ronald Reagan, whose Administration preferred voluntary export restraints by trading partners rather than adjustment assistance for US workers, firms, and communities.

In addition to the Economic Stimulus Act, the Obama Administration has signaled that it will continue the policies of the Bush Administration in bailing out US manufacturers, such as automobile companies, that request financial aid. Subsidies to domestic firms are not per se WTO violations, but can violate the SCM Agreement (Article 5) if they cause adverse effects on other WTO members by promoting the relative competitiveness of exports or reducing the competitiveness of imports. On March 11, 2009, US Representative Sander Levin, a Michigan Democrat and chair of the House Trade subcommittee, defended such subsidies by saying that "In this time of crisis, countries also need the temporary flexibility to help rescue their own industries—through loans, incentives, and regulations—without charges of "protectionism."³ Yet in the same speech, he also called for "the creation of an interagency team led by the Department of Commerce and USTR to investigate subsidies by leading trade partners." Presumably other G20 countries are now considering whether to ask their agencies to investigate US subsidies to see if they are actionable or countervailable under the SCM Agreement.

The new 2009 Trade Policy Agenda issued by the Obama Administration on March 2, 2009 sends a mixed message. On the one hand, the President's Trade Agenda states that "The President's approach will be to promote adherence to the rule-based international trading system in order to promote economic stability, while introducing new concepts - including increasing transparency and promoting broader participation in the debate - to help revitalize economic growth and promote higher living standards at home and abroad" (page 1). Yet this positive message is not backed up with anything concrete such as a commitment by the United States to follow WTO rules and comply with the numerous WTO decisions in which the United States was found to be a scofflaw. These included decisions on cases on anti-dumping, *Cotton*, *Stainless Steel*, and *Gambling*. Embarrassingly, the United States

has lost more WTO disputes as a defendant than any other G20 country. Nor did the Administration take the opportunity in its 2009 Trade Agenda to publicly pledge its long overdue compliance with Mexico's 2001 case against the United States on trucking services under the North American Free Trade Agreement (NAFTA). Even worse, in early March 2009, the Obama Administration gave the go-ahead to the Congress to cut off funds for the cross-border trucking pilot project that had been launched by the Bush Administration to show that Mexican trucks do not present a safety hazard to the United States. The Administration also signed onto legislative provisions serving to maintain nontariff barriers on certain poultry imports from China and beef or lamb from Argentina.

The Obama Administration has been timid on the issue of securing Congressional approval of the three pending US free trade agreements with Colombia, Panama, and Korea. To be sure, Senator Obama made clear in his campaign that he did not support these agreements. But many observers had hoped that once he became President he would adopt a more centrist position on trade. Perhaps he will, but so far the President's Trade Agenda pledges only that "We are in the process of developing a plan of action to address the pending trade agreements in consultation with the Congress" and that "we will promptly, but responsibly, address the issues surrounding the Colombia, Korea and Panama Free Trade Agreements" (President's Trade Agenda, pages 2 and 4).

On labor, the "President's Trade Agenda" states: "To make support for global markets sustainable, our consideration of the effects of trade can not stop at the edge of our borders. Trade is more beneficial for the world, and fairer for everyone, if it respects the basic rights of workers. Our trade policies should build on the successful examples of labor provisions in some of our existing agreements" (page 2).

As someone who has worked on labor rights and trade for 32 years, let me make a few comments about that puzzling paragraph. First, trade is an economic transaction, not a human being, and so trade itself cannot respect or fail to respect the basic rights of workers. Instead protecting the basic

rights of workers is the role of governments, the private sector, and the voluntary nongovernmental sector. Sadly, the United States government has been derelict in failing to ratify the ILO Convention on Freedom of Association and the Right to Organize (No. 87) which has been sitting on a dusty shelf in the US Senate since 1949. On labor policy and on foreign policy, the Obama Administration should be judged on whether it asks the Senate to approve this treaty, which has been ratified by Colombia and Panama (but not South Korea). Second, there are no truly "successful" examples of labor provisions in any of the existing US free trade agreements. Of course, every US free trade agreement (except Israel) contains a labor chapter or side agreement. But the only labor language within a free trade agreement that has produced anything at all is the side agreement to the NAFTA which ironically is the one that Obama was vociferous in criticizing during his Presidential campaign. While it is true that the NAFTA labor side agreement has produced some output, it would go too far to say that it has been successful, even on the very limited ambitions its tri-governmental authors gave it.

The connection between trade and environment is another issue that may arise in the G20 Summit. If it does, there are several concrete steps that governments can take: First, there should be a commitment to a moratorium on trade or border measures used to level the playing field between countries that have different prices for carbon emissions. For example, the leading industrial countries could pledge a three-year moratorium to allow negotiations to occur within the United Nations Framework Convention on Climate Change (UNFCCC) on what border measures are appropriate and when. Second, the G20 could establish benchmarks for progress in the ongoing WTO negotiations on the liberalization of environmental goods and services and on the supervision of fishery subsidies. Third, governments could pledge greater cooperation to address illegal trade that harms the environment such as trade in chlorofluorocarbons (CFCs) (which

contribute both to climate change and to ozone depletion) or endangered species. Fourth, the G20 countries could ask the United States to stop blocking an invitation to the Secretariat of the UN Convention on Biological Diversity (CBD) for observer status at the WTO's Council for Trade-related Intellectual Property Rights (TRIPS). The G20 countries could also support observer status for the International Union for Conservation of Nature (IUCN), an important international organization with a hybrid membership that includes 87 states. These steps could improve the mutual coherence of the trade and environment regimes and provide for more transparency in the WTO's work.

In summary, because trade is so beneficial, the G20 should take a strong stand against protection and should call on the United States to back away from its recent protectionist tendencies. Amazingly, the US Trade Policy Agenda (page 2) takes note of the November 2008 G20 commitment to "refrain from raising new barriers to investment or to trade in goods and services" and then goes on to criticize other countries by name (Argentina, Brazil, France, India, and Russia) for having "faltered" in that commitment. Yet the US document omits any mention of recent US protectionism or any self-criticism for the faltering in Washington. Can such omission be anything other than hypocrisy in a President's Trade Agenda that includes among its goals: to "Advance the social accountability and political transparency of trade policy" (page 3)? The G20 leaders should summon the courage to insist that the US government repeal its new barriers to imports of goods, especially from developing countries.

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- 1 Evenett, Simon J. and Frédéric Jenny (2009), "Bailouts: how to discourage a subsidies war," in Richard Baldwin and Simon Evenett, *The Collapse of Global Trade, Murky Protectionism, and the Crisis: Recommendations for the G20* (VoxEU.org), at 81, 84.
- 2 Pruzin, Daniel, "US Provides WTO Members Assurances on 'Buy American' Provisions," *BNA Daily Report for Executives*, February 26, 2009, at A-11.
- 3 Levin, Sander M., "A New Trade Policy that Meets the Challenges of the Global Economic Crisis," Remarks to the Washington International Trade Association, March 11, 2009, available at www.wita.org.

