

Annex.

Disavowing Protectionism: A Strengthened G20 Standstill and Surveillance

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The G20 standstill on protectionism, agreed less than five months ago at a Washington D.C., has lost much of its force. This calls into question the credibility of leaders' claims to disavow beggar-thy-neighbor responses to the global economic downturn. While no major trading power has yet to resort to across-the-board restrictions on international trade and investment, enough elements of many national economic recovery programmes contain discriminatory measures--or appear to--that a new approach is needed, especially as the measures of greatest concern today are very different from the protectionist measures of yesteryear. The purpose of this chapter is to argue for a strengthened G20 standstill, that covers the new, murkier forms of protection as well as traditional discriminatory measures, backed up a tough real-time surveillance mechanism.

The original rationales for a G20 standstill--avoiding beggar-thy-neighbor measures and the almost inevitable retaliation and descent into trade wars that would follow--are sound. That's why the G20 shouldn't abandon its standstill. Even so, recognition of the many--some blatant, some far more subtle--ways in which discrimination against foreign traders, investors, and workers, can creep into national, sectoral, and firm-specific government measures calls for a new form of standstill. Moreover, many non-discriminatory recovery measures that governments may take can have the effect of reducing international commerce, even though the latter is not their purpose. A standstill that is both more comprehensive in scope and better able to discourage stealthy as well as blatant protectionism is needed. Plus, any new standstill should not seek to stop government intervention *per se*, but rather to encourage governments to use whatever discretion they have in a non-discriminatory manner when designing and implementing measures to promote economic recovery. To prevent retaliation discretion must not just be used in a non-discriminatory manner, but seen to be so.

In this chapter we propose that the G20 leaders adopt, at their April 2009 summit in London, a comprehensive Protocol that reaffirms their commitment to find non-discriminatory ends and means to combating the global economic downturn. The Protocol would not be permanent and would lapse after two years. Subsequently other, non-G20 nations would be encouraged to sign this Protocol too. As a sign of their willingness to take leadership during the current global economic downturn, the G20 would implement the Protocol on an unconditional most-favored nation basis. Taking these steps would send a strong signal to the financial markets and the private sector, boosting confidence. In addition, signing up to this Protocol would provide useful benchmarks against which state measures could be judged. The combination of these agreed benchmarks and a new real-time surveillance mechanism would generate the necessary peer pressure to discourage governments from taking beggar-thy-neighbor measures.

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G20 leaders would commit to a Protocol which has the following elements:

1. Five principles for state intervention that encourage governments to intervene in an evidence-based, reasoned, and transparent manner without deliberately discriminating against foreign commercial interests or workers, unless such discrimination is absolutely necessary and distorts international commerce to the least possible degree.
2. A commitment by G20 leaders to oppose measures proposed by others at home that needlessly discriminate against international commerce.
3. The continuation of a traditional commercial policy standstill, thereby disavowing blatantly protectionist responses to the global economic downturn.
4. Five commitments concerning the proper implementation of so-called bail-outs to firms.
5. Steps to allow firms more time to meet new costly technical, safety, and health regulations that can affect both domestic and international trade.

This Protocol would be binding on its signatories but would not become a WTO agreement subject to dispute settlement etc. While there are clear attractions to the latter, two practicalities mean the G20's strengthened standstill should stay outside of the WTO. First, negotiating a WTO standstill would take time, time that the world economy does not have. (Plus, any such negotiations could founder and be seen by some as a distraction from completing the Doha Round.) Second, even if a WTO standstill could be negotiated quickly, dispute settlement under the WTO's rules takes so long that any protectionist measures taken in the near term need not be reversed before the end of 2010 (when any WTO case could be drawn out to), in the meantime the damage has been done and the temptation to retaliate remains. Peer pressure and real-time surveillance, coupled with benchmarks for state action embodied in a Protocol of the kind described below, are the only practicable ways to strengthen a G20 standstill commitment at this time.

PROTOCOL ON STATE INTERVENTION DURING THE CURRENT GLOBAL ECONOMIC DOWNTURN

The Parties to this Protocol shall:

1. Adhere to each of the following **Principles of State Intervention** for every state measure¹² taken while this Protocol is in effect:
 - a. No state measure shall have as its purpose to improve the lot of any Party's commercial entities or workers over another Party's. This applies only to those foreign commercial entities and workers whose presence in a Party was legitimately established before 1 January 2008.
 - b. A Party shall come to an informed and reasoned decision as to the form that each state intervention shall take. Parties shall base their decisions on the best available expertise and information concerning effectiveness and cost, shall consider any relevant international best practices, shall not confine themselves to considering one possible measure and preserving the status quo, and shall

¹² For the purposes of this Protocol commitments to state measures are in relation to final or interim laws, administrative measures, rules and notices, or any other form of stipulation or guideline. Any state measure controlled by the central government and associated state organs that potentially affects any foreign commercial interest, taken to include interests associated with trade in goods, trade in services, the operations of foreign commercial entities in a Party, and the commercial activities of foreign workers in a Party falls within the purview of this Protocol, irrespective of whether those measures are implemented for ordinary commerce within a customs territory or within a special economic zone, free trade zone, border area, or other such area.

publish with any announcement of a proposed measure the rationale for the measure's objectives, form, duration, and method of implementation. The time frame over which any particular state intervention is implemented shall be proportionate to the circumstances that the state wishes to address.

- c. No Party shall implement a measure that has the effect of discriminating against foreign commercial interests and workers. However, nothing in this Protocol shall prevent a measure that discriminates against foreign commercial interests being taken by a Party during this crisis so long as at the time of implementation it is the informed and reasoned judgment of the Party in question that the measure has the least adverse effect on foreign commercial interests while attaining, and not going beyond, the Party's goals for the measure. A Party implementing such a discriminatory measure must demonstrate publicly, at the time the measure is proposed, that it has thoroughly examined credible alternative measures and shall provide compelling reasons as to why those alternative measures were rejected in favor of the discriminatory measure.
 - d. In every six month interval following the implementation of a significant state measure, a reasoned review of the measure taken, informed by all the relevant facts, shall be undertaken. These reviews shall establish whether the original measure has attained the purpose for which it was implemented and, if not, examine the reasons why. Such reviews shall examine whether credible alternative measures could achieve the same purpose at less cost, less harm to foreign commercial interests or workers, or better attain the stated purpose of the original measure. Should a review reveal that an alternative measure is preferable, then the Party shall replace the original measure within six months of the conclusion of the review. The conclusions of the review and any decision in respect of replacement of the original measure must be made public as soon as possible, and compelling reasons and evidence provided to justify those decisions.
 - e. For the duration of this agreement the parties shall not undertake any bilateral, regional, multilateral, or other international agreement that involves measures which violate the above mentioned principles.
2. Adhere to each of the following **Commitments to Oppose State Measures that Discriminate Against Foreign Commercial Interests and Workers**. The highest level of the executive branch of a Party's government shall:
- a. Oppose any proposal from the legislature to enact a measure that discriminates against foreign commercial interests and workers or is inconsistent with any of the Principles elucidated in 1. above.
 - b. Subject to the provisions in existing legislation, ensure that when considering state measures that might be implemented government ministries, regulatory agencies (independent or otherwise) exercise any permitted discretion in ways that are entirely consistent with the Principles elucidated in 1. above.
 - c. Oppose any proposal from a sub-central government that discriminates against foreign commercial interests or is inconsistent with the Principles elucidated in 1. above.
 - d. Not encourage others to advocate state measures that discriminate against foreign commercial interests and workers or are inconsistent with any of the Principles elucidated in 1. above.

- e. Dedicate sufficient state resources to monitor effectively the content of proposals advanced for state measures in the Party in question.
3. Implement a **Commercial Policy-Related Standstill** and therefore **Disavow Blatantly Protectionist Measures**. Each Party shall:
- a. Not raise the applied tariff on any good above their level on 1 January 2009.
 - b. Not introduce any new tariff on any good.
 - c. Not raise any export taxes from the levels established on 1 January 2009.
 - d. Not introduce any new export taxes or restrictions, including replacing any such measures due to lapse.
 - e. Not introduce any new export subsidy schemes, including replacing any scheme due to lapse.
 - f. For agricultural products, not raise budgetary outlays on export subsidy or domestic support schemes, nor administered prices and prices used to trigger and/or determine subsidies paid to agricultural producers, above the levels applied on 1 January 2008.
 - g. Ensure that any measures taken in the exercise of existing WTO rights will not go beyond what is strictly necessary to remedy specific situations provided for in the relevant WTO provisions.
 - h. Subject to any relevant provisions in existing national legislation, not engage in any form of import surveillance that monitors specifically a sector (or sectors) or commerce with any other WTO member.
 - i. Not enact any legislation that creates new forms of import surveillance.
 - j. Not negotiate, or encourage others in the negotiation of, a tacit understanding with another WTO member to restrict, distort, or otherwise manage trade between them.
 - k. Fully comply with any commitments the Party has made in WTO agreements and regional trade agreements.
4. Adhere to all of the following commitments concerning the various forms of **Assistance Granted to Firms Previously Operating Solely on a Commercial Basis** that falls short of complete nationalization by the state. Each Party may offer assistance to firms in its customs territory but shall ensure that, in addition to adhering to the Principles elucidated in 1. above,
- a. No obligations are imposed upon a recipient firm, or assurances sought or given by a recipient firm, that prevent or induce the firm in question from operating subsequently solely on a commercial basis. A Party shall not interfere in any manner with the commercial relations between a recipient firm and any other commercial party or entity. Purchases by a recipient firm shall not fall under any state regulation or control, including the public procurement laws and regulations of the Party in question.
 - b. Any obligations imposed upon or assurances given by a recipient firm are made public at the time the Party decides to offer assistance.
 - c. Even if a Party ultimately decides not to award assistance to every firm in a given sector, the Party shall on objective grounds examine whether all of the firms in that sector should receive assistance. This decision should be

reasoned, based on verifiable empirical criteria, and made public at the time the assistance is offered.

- d. The assistance received shall not take the form of the award of contracts for government goods or services, or any step that increases the likelihood that a government contract is awarded to the firm in question. Nor shall the Party instruct or encourage that other private commercial entities purchase from a recipient firm.
 - e. No Party shall instruct or encourage other private commercial entities or state entities to provide goods, services, finance, or other items of commercial value to the recipient firm on terms that are more advantageous than those conditions currently prevailing in the markets in question.
5. Adhere to the following commitments concerning **Technical Barriers to Trade and Sanitary and Phytosanitary measures**. Each Party shall to the extent permitted by national legislation:
- a. Seek to avoid any new Technical Barrier to Trade, but in all cases, unless there is a demonstrable serious threat that merits expeditious action, each Party shall use the maximum available time allowed to consider, notify, receive comments upon, revise, enact or implement any new Technical Barrier to Trade.
 - b. Seek to avoid any new Sanitary and Phytosanitary measure, but in all cases, unless there is a demonstrable serious threat that merits expeditious action, each Party shall use the maximum available time allowed to consider, notify, receive comments upon, revise, enact or implement any new Sanitary and Phytosanitary measure.
6. It is understood by all Parties to this Protocol that the binding commitments contained herein are exceptional and need not reflect the binding commitments at the WTO or elsewhere that any Party would be prepared to accept during ordinary economic circumstances.
7. Every commitment contained in this Protocol will be implemented on a unconditional Most Favored Nation basis.
8. The Parties to this Protocol are the members of the so-called Group of 20 plus any other WTO member that wishes to join. Other WTO members may join this Protocol after it has come into force and are encouraged to do so.
9. Each Party agrees that the implementation of the commitments contained in this Protocol shall be subject to multilateral surveillance so as to ensure that it is effective. The Parties to this Protocol will separately decide on the appropriate mechanisms to carry out the surveillance, including periodic reviews and evaluations. Any Party may bring to the attention of the appropriate surveillance mechanism any actions or omissions it believes to be relevant to the fulfillment of the commitments contained in this Protocol.
10. This Protocol will come into force immediately after it has been agreed.
11. This Protocol will lapse after two years. This Protocol can be terminated before this time should the Parties to this Protocol unanimously so decide.

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