Chapter VIII

Protectionism in services during the global crisis – a (trade) war in shallow trenches?

By Martín Molinuevo

Introduction

Amongst the several alarms triggered by the global economic crisis, the one alerting against a possible global return to protectionism sounded particularly loud. Warnings against the perils of beggar-thy-neighbor policies were voiced by government officials of all levels and institutions of all kinds, recalling in cases images of the dark days of the 1930s. As the crisis spread geographically and affected more economic sectors, fears that domestic pressures for protectionism would not be resisted gained intensity.

Has it happened? Has there been a worldwide surge of protectionism in trade policy during the crisis? While it seems that the 1930s remain a distant memory, there have been a number of indications that trade protectionism has indeed increased during the course of the crisis. Where did all that protectionism go? Available literature focuses largely on the impact of the crisis on merchandise trade, and, to some degree, on foreign investment.

The current study attempts to assess the main governmental measures during the crisis in the area of trade and investment in services, and whether the global crisis has had impacts on the regulatory frameworks in the services sector. It does so by reviewing the main measures introduced by a number of countries during the crisis and considering if, and how, they restrict international trade and investment in services.

The author is grateful to Mia Mikic, Pierre Sauvè, Simon Evenett and the participants to the UNESCAP/UNCTAD/WTO Research Workshop on Rising Non-Tariff Protectionism and Crisis Recovery, Macao, China, 14-15 December 2009, for valuable comments and suggestions. The usual caveats apply.

“President Obama to water down 'Buy American' plan after EU trade war threat”; TimesOnline, 4. February 2009, http://www.timesonline.co.uk/tol/news/world/europe/article5655115.ece;
The paper has four sections. Following this introduction, section A recalls the existent international framework that governs trade and investment in services and points out the main legal limitations faced by the countries in the regulation of services. Section B observes the vast array of measures affecting international trade and investment introduced during the global economic crisis. In particular, this third section attempts to determine if, or to what extent, measures taken in response to the economic crisis have contributed to extend protectionism in international trade and investment in services. The reviewed measures are collected from measures reported by the G20 countries, as well as by a few other medium-sized economies, to international organizations as measures that affect international trade and investment, as well as from an online database on trade measures. While some of these actions relate directly to the financial crisis, the connection of some other measures with the global crisis is less evident. However, being impossible to tell what measures are indeed related to the economic crisis, we consider here all reported measures introduced during the months of the current crisis, namely, since the second half of 2008 to December 2009. The final section summarizes the main findings, and ventures some considerations on the reasons that may have played a role in this outcome.

A. The current international legal framework

The 2008-2009 economic crisis took place against the background of an international legal framework for international trade and investment radically different to any other comparable crisis that has occurred to date.

The global depression of the 1930s does not even allow for a comparison, taking place in what could be described as the pre-history of international trade and investment regulation. But even more recent crises, (but smaller in terms of the countries affected) are strikingly dissimilar to the current one from the point of view of the international obligations that limited the policy options of the Governments involved. During the 1997-1998 Asian financial crisis, for instance, trade in services between the affected countries was governed only by the General Agreement on Trade in Services (GATS) and one regional trade agreement, the ASEAN Framework Agreement on Services (AFAS), at its first round of negotiations. Today, over 30 agreements covering trade in services can be counted in Asia alone.

1. Geographical coverage of services agreements

The current framework is composed by the nearly-universal WTO rules on trade and investment in services, embodied in GATS, together with a myriad of bilateral and “regional” preferential trade agreements. By December 2006, 43 bilateral or regional agreements on services had been notified to WTO, a number likely to double within five years.113

In terms of geographical coverage, the multilateral disciplines of the GATS, together with the preferential trade agreements (PTAs) signed in the last decade, effectively entail that virtually all countries are subject to binding international rules on

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112 OECD, WTO and UNCTAD, 2009; WTO, 2009a; WTO 2009b; and Global Trade Alert database (available at http://www.globaltradealert.org/).
113 Fiorentino, Verdeja and Toqueboeuf, 2007, pp. 3-5.
trade and investment in services. Indeed, by the end of the 2009, it appears that the Russian Federation is the only major economy (and not a member to WTO) not having concluded an agreement providing for the liberalization of international trade and investment in services.

Multilateral and bilateral disciplines on trade and investment in services are to some complemented by a vast international network of bilateral investment treaties (BITs). These agreements overlap with disciplines on services to the extent that both types of instruments provide coverage for the supply of services through “commercial presence”, i.e. foreign direct investment in the services sector. The 2,600 treaties forming this web effectively connect almost all countries in the world – Brazil being the only major economy to escape this trend.

2. Main obligations

In terms of obligations, GATS and the services chapters featured in PTAs seek to ensure an equal treatment between national and foreign services suppliers by providing a national treatment obligation. Most agreements also feature an obligation on “market access” that bans quantitative restrictions on trade and investment in services, including restrictions on the number of service suppliers that may provide a services, the value of services that may be provided, as well as measures that limit the form of legal establishment that the (foreign) services company may acquire.

GATS also enshrines a broad most-favoured-nation principle that applies to the treatment of foreign services and services suppliers. The fact that a number of PTAs do not include such a provision does not diminish its legal value, as it in any case applies to all WTO Members through GATS. Provisions on transparency and on domestic regulation are also present in GATS and the vast majority of PTAs, requiring participants to make publicly available measures that affect trade and investment in services, and to administer them in a reasonable, objective, and impartial manner.

The scope of these obligations tends to be broad, catching all governmental measures that apply to trade and investment in services, except those that concern exclusively public services provided by the Government. However, the main obligations of services agreements, including those on national treatment and market access, are commonly restricted in their sectoral coverage. The same is true for disciplines on “domestic regulation” which normally only apply to the sectors covered by national treatment and/or market access obligations.

3. Sectoral coverage

The reach of these obligations is commonly determined by country-specific lists of commitments or reservations which indicate which disciplines apply to which sectors. In trade agreements, this can be done either by including a list of the sectors that are covered by those disciplines, or a list of the sectors that are excluded from such obligations. In any case, both “positive list” and “negative list” agreements fall short from universal coverage, and allow for exclusions from the main obligations enshrined in the agreements.
The sectoral coverage of GATS is determined by “schedules of specific commitments”, organized as positive lists. GATS’ national treatment and market access obligations only apply to the sectors included in the schedules, and subject to any limitations set out therein. GATS has been criticized for its limited sectoral coverage, with only four out of 12 services subsectors having received at least one commitment by more than half the WTO Members.

Only tourism has received some commitment by almost all WTO Members, followed by financial services and business services, as seen in figure 1. Out of approximately 160 services sub-sectors, an average of only 52 sub-sectors has been listed under GATS market access and national treatment.

Figure 1 suggests that while GATS has succeeded in providing an overarching set of rules on, and a framework for the liberalization of trade and investment in services, the number of actual services sectors covered by the agreement’s market access and national treatment obligations is rather limited. This is especially true for the developing world, since commitments by developing countries reach in average only one fourth of the universe of services, and these commitments fall short of the actual level of openness featured in the domestic laws and regulations.

The void left by the limited sectoral reach of the multilateral framework provided by GATS is partially filled by the growing network of PTAs in services. Comparative studies between GATS and disciplines in trade and investment in services featured in PTAs suggest that while preferential agreements have not gone beyond GATS in terms of substantial obligations (not even in rules areas such as subsidies, safeguards or government procurement in services, where multilateral negotiations are ongoing) they do provide greater sectoral reach for treatment and market access obligations.

PTAs have extended liberalization obligations across all services subsectors. Construction and tourism are the services sub-sectors that have seen the most improvements through bilateral and regional agreements, followed by recreational, business services, communications and education services. The smallest contributions by PTAs are found in services sectors in which countries have been cautious towards liberalizations obligations, such as environmental services, health and transport.

Services commitments in PTAs go beyond those found in GATS not only in terms of the number of sectors covered, but also with regard to the actual level of liberalization committed to. A few agreements provide for actual liberalization in some services sectors, although the overwhelming majority of commitments in PTAs remain of a partial nature, as suggested in figure 2.

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114 Adlung and Roy, 2005, pp. 8-10.
116 Fink and Molinuevo, 2007, pp. 59-60.
117 Roy, Marchetti and Lim, 2007, p. 27.
Figure 1. Sector pattern of commitments, March 2005

Source: Adlung and Roy (2005).
Note: Figure shows a number of WTO Members with at least one commitment in the relevant sector; percentage of total membership with commitments in the sector concerned.
4. Measures excluded

One other type of limitation of services agreements is particularly relevant when considering the types of measures most often used in the financial stimulus packages. The scope of services agreements is typically limited with regard to certain types of governmental measures, so that the main obligations do not apply to those kinds of measures independent to the services sector they touch upon. Under GATS as well as under the services chapters of PTAs, this is the case for measures relating to the public procurement of services.

Importantly, most PTAs also exclude governmental subsidies from the disciplines of the services chapters – an area where PTAs show less ambition than GATS, which does apply to public aid measures. A number of WTO Members have introduced
horizontal restrictions allowing for the discriminatory use of subsidies, particularly those oriented towards research and development activities. However, most Members, especially developed countries, including the European Union and the United States, remain bound to apply general subsidies on a non-discriminatory manner in those sectors subject to specific commitments, including financial services.

**B. Services measures during the economic crisis**

Against this backdrop, how have countries reacted to the global economic crisis on trade in services? Have the fears about a wide-spread return to protectionism been warranted? A review of the varying measures taken during the recent months may help shed some light to these questions.

While the economic crisis has sparked the introduction of measures not seen before (in that magnitude, at least), the trade and investment related measures taken during the crisis, (and not necessarily because of it) go of course well beyond the rescue measures for banks exposed to “toxic” assets.

In an attempt to monitor the implications of the economic crisis, Governments from developed and developing countries (most of them G20 members), have collaborated with international economic organizations reporting the measures that they have undertaken in the ambit of international trade and investment. Over 230 governmental measures taken between September 2008 and August 2009 were notified to the WTO, UNCTAD and the OECD. These measures relate to international trade on goods and services, foreign investment policy, and either individual or general rescue schemes. 120 of those 230 relate directly to border tariffs or trade remedy measures, which, for the purposes of this study, have not been taken into account.

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119 The figures are based on OECD, WTO and UNCTAD, 2009; WTO, 2009a; and WTO 2009b. Given that ample spectrum of the notified measures, from individual measures to very general ones, or notifications that included several different measures, a strict reading of the figures involved would be inappropriate. However the figures do allow identifying the sectors where the governmental measures focused most prominently during the crisis.
Figure 3. Measures on trade and investment

Private initiatives have also contributed to follow trade policy developments during the economic crisis and watch whether new restrictions to international trade and investment were found. The Global Trade Alert website accounts for over 150 measures introduced since December 2008 to December 2009. For the purposes of this analysis, only measures falling in the categories of “bail out”, “investment”, “trade finance” and “other service sector” were taken into account, as these are regulations that may be applicable on trade and investment in goods as well as in services.

The combination of these different sources brings about a total of over 260 non-tariff, behind-the-border measures that broadly depict the areas of international trade and investment that have received the most governmental attention in 2009. A brief consideration of their nature further allows for a grouping of the reported measures according to their main effects on international trade and investment, where they are favourable. Therefore, international trade and investment measures that lift restrictions, ease procedures, or eliminate discrimination are grouped under the “green” category. Measures that increase or expressly maintain trade and investment restrictions, or discriminate between foreign and domestic goods or services, fall under the “red” category. Measures with ambiguous or undetermined outcome form the “yellow” group.

Global Trade Alert (GTA) features over 600 measures reported in the course of 2009. For the current study, however, we have limited our sample to the types of measures more directly relevant to trade and investment in services. In using the GTA database, we have hence avoided including measures falling exclusive on trade in goods, as well as in areas such as intellectual property and public procurement.
1. General trade and trade-related measures

Trade and trade-related measures encompass different forms of behind-the-border domestic regulations that may affect trade and goods and/or services. Reported trade related regulation include licensing procedures, taxation measures (excluding border tariffs), trade facilitation measures, and some trade-related aspects of government procurement regulations.

As portrayed in figure 3, the great majority of the domestic regulation measures affecting trade and investment that were passed during the 2008-2009 economic crisis were relate to trade in merchandise. Since it is the more traditional aspect of international trade, a bias towards finding more measures on international trade in goods could indeed be expected, particularly for measures notified to the WTO, and those reported privately to the Global Trade Alert database.

However, these figures suggest that cross-border trade in services seem to fall largely off the radar of international trade regulation, even in times of crisis. Indeed, out of almost 60 behind-the-border laws and regulations introduced in 2009, only two pertained to cross-border trade in services; therefore confirming in part, the traditional difficulties in regulating international trade of services. The only trade-related measures directly oriented to the services sector, concerns a service typically sensitive to foreign intervention, this being postal services. The measure at issue re-states a ban on foreign courier companies to deliver express letters.

Table 1. Trade and trade-related measures (September 2008 / August 2009)

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<th></th>
<th>Red</th>
<th>Yellow</th>
<th>Green</th>
<th>Total</th>
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<tbody>
<tr>
<td>Goods</td>
<td>22</td>
<td>16</td>
<td>12</td>
<td>50</td>
</tr>
<tr>
<td>Services</td>
<td>1</td>
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<tr>
<td></td>
<td>29</td>
<td>16</td>
<td>13</td>
<td>58</td>
</tr>
</tbody>
</table>

Source: Author’s based on OECD, WTO and UNCTAD, 2009, and WTO, 2009b.

Restrictive horizontal measures affecting trade in services relate to government procurement procedures confirming or strengthening “buy local” directives, an instrument that gained great popularity during the crisis,\(^{121}\) as well as measures relating to horizontal limitations on foreign ownership of domestic companies. The only “green” horizontal measure was reported by Canada, which lowered restrictions and allowed higher foreign ownership in invested companies, including in the transport sector. The bulk of measures on trade in goods relate to the adoption or elimination of licensing procedures; also, a number of measures favourable to trade in goods concern the facilitation of import/export procedures.

Arguably, none of these measures feature an evident link with the economic crisis, or is an obvious emergency measure. Only one trade-related measure, introduced by Indonesia, seems to fall outside the trade every-day, ordinary, regulation: a requirement to

\(^{121}\) On the discriminatory use of government procurement procedures during the crisis, see Evenett, 2009a.
support exports of certain products value exceeding $US 1 million by letters of credit issued by domestic banks.

2. Investment measures

Over 50 per cent of world trade in services, as defined in GATS, occurs through the establishment of a foreign invested company. Domestic regulation on foreign direct investment is thus one of the most relevant components of domestic rules on trade in services. Foreign investment policies, however, tend to affect investment in goods and services alike, setting an overarching, common framework to all investment in all sectors of the economy, with particular complementary disciplines in the most sensitive sectors. The adoption of general policies that do not distinguish between investment in goods or services is reflected in table 2, which shows that almost 70 per cent of the investment regulation passed during 2009 was of a horizontal nature.

The figures confirm a traditional perception: countries strive to attract foreign investment. Indeed, it could be argued that, in times of economic downturn, the urge to receive external funds to increase employment and expand domestic demand is even more acute. From an economic perspective, it would make little sense to inject public funds in the market while restricting private investment.

Table 2. Investment measures (September 2008 / November 2009)

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<th>Green</th>
<th>Total</th>
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<tbody>
<tr>
<td>Goods</td>
<td>--</td>
<td>3</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Services</td>
<td>1</td>
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<td>28</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>12</td>
<td>25</td>
<td>41</td>
</tr>
</tbody>
</table>

Source: Own based on OECD, WTO and UNCTAD, 2009, and Global Trade Alert database.

Accordingly, only four measures unfavourable to foreign investment have been introduced during the course of the crisis. The only measure focused specifically on the services sector consist of the investment angle of postal services regulation mentioned above, which restates restrictions to foreign participation in the area. The remaining horizontal investment-restrictive regulation relate to tax measures (Algeria, Saudi Arabia), and investment bans on security grounds (Germany). Investment liberalization measures in the service sector concerned the lifting of caps on foreign ownership on banks (Nigeria), relaxed rules on foreign investments in print media (India), measures relating to the financial sector (Viet Nam), and the permission to foreign travel agencies established in China to open local branches.

On the contrary, almost 15 countries have passed general regulation improving investment conditions in their territory. Measures range from elimination of restrictions on real estate acquisition by foreigners (Australia, Republic of Korea), to facilitation of foreign investment procedures (Indonesia, Mexico), and increases in foreign ownership (Malaysia). Some countries, such as Argentina, India and the Russian Federation have reduced limitations on financial investments. The only investment measure strictly related
to goods concerned the authorization by Canadian authorities for the take-over of a domestic technology enterprise by a foreign company.

Similar to measures related to trade in services, no clear signs of protectionist intents can be found in the ambit of domestic regulation on foreign investment. On the contrary, the great majority of policy changes have been directed to attracting foreign investment by relaxing restrictions and facilitating investment procedures. These domestic measures are paralleled in the international scene by the continued trend to sign bilateral investment agreements as a means to attract foreign investment, with 25 bilateral investment treaties concluded in the first six months of 2009.122

3. Bail-out measures

Rather than general trade and investment policy regulation, the measures that will distinguish the 2008-2009 global economic crisis will undoubtedly be the introduction of multi-billion-dollar bail out measures for financial institutions by Governments alarmed at the perspective of a massive collapse of the financial systems worldwide.

While a detailed analysis of these measures would exceed the limited scope of this study, a mapping of the sectors where the bail-out measures have fallen may contribute to the question of whether the economic crisis has triggered a regulatory stampede towards protectionist measures on trade in services.123

The implementation of bail-out measures would, almost by definition, be considered a trade and investment restrictive measure to the extent that they are aimed at ensuring the continued existence of economic agents that would otherwise be driven out of the market. Furthermore, to the extent that they are normally granted to domestic companies, they are discriminatory in nature, enhancing the distortive effects of measures. It is thus unsurprising that 104 out of 113 reported bail-out measures fall in the “red”, trade-restrictive, category (the “yellow” includes announces of measures not implemented and measures for which no details were available).

122 UNCTAD, 2009, p. 32.
123 For a more in-depth review of bail-out measures and their compliance with the international trade and investment legal framework, see van Aaken and Kurtz, 2009.
### Table 3. Bail-out measures (September 2008 / November 2009)

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<th>Red</th>
<th>Yellow</th>
<th>Green</th>
<th>Total</th>
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<tbody>
<tr>
<td>Goods</td>
<td>29</td>
<td>2</td>
<td>1</td>
<td>32</td>
</tr>
<tr>
<td>Services - Financial</td>
<td>44</td>
<td>18 specific + 26 general</td>
<td>--</td>
<td>44</td>
</tr>
<tr>
<td>Services - Non-financial</td>
<td>5</td>
<td>--</td>
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<td>5</td>
</tr>
<tr>
<td>Horizontal</td>
<td>26</td>
<td>6</td>
<td>--</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>104</td>
<td>8</td>
<td>1</td>
<td>113</td>
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*Source:* Own based on Global Trade Alert database.

The non-discriminatory, trade-friendly use of rescue measures would consist in the adoption of subsidies to consumers for the purchase of domestic or foreign goods according to their preferences. Surprisingly, such an honourable exception can indeed be found. The one “green” state aid measure featured in Table 3, which relates to the non-discriminatory subsidization of the purchase of eco-friendly automobiles passed in the United States.

The overwhelming majority of bail-out measures, however, consist of producer subsidies limited to domestic companies, thus, being discriminatory in nature. Therefore, what sectors have benefited from this discriminatory state funding? Financial institutions were clearly the primary candidate for the rescue packages, and indeed, as expected, the majority of bail-outs were directed to banks and, to a smaller degree, insurance companies. While more transparent and less discriminatory eligibility requirements for access to the “special purpose vehicles” would have been desirable, the need to provide for immediate stability to a systemic sector such as financial services could not be argued. In those circumstances, it may not come as a surprise that all 25 bail-outs destined to financial institutions reported in OECD, WTO and UNCTAD (2009) where granted to domestic banks or insurers. The same is true for the 18 specific measures reported to the GTA database indicated above.

It is significant, instead, that only slightly fewer measures were used in industries not directly related to financial services. While 44 bail-out measures were directed to banks and insurance companies (i.e. the companies at the core of the financial crisis), 34 stimulus packages were used in other areas. Five were directed to other (non-financial) services companies, and the remaining 29 measures were applied in the goods-producing industry. Horizontal measures, establishing mainly increased funding for government procurement and general schemes of direct grants to companies in financial difficulty, accounted for 26 measures.

State-aid measures in the non-financial services sector were implemented by Germany with regard to transport and logistic services, as well as for research and development services related to transport and to organic farming. The United Kingdom provided subsidized interest rates for construction companies and the Republic of Korea assisted maritime transport companies in the leasing of ships.
In the goods sector, the bulk of bail-out measures fell on the automotive and machinery industry (Australia, Canada, Russian Federation and the United States), followed by agriculture (France, Switzerland and the European Union). The bail-outs also reached other less traditional economic sectors, such as green products (Spain and Italy) or the production of chocolate and sugar confectionery (Germany). While it may be argued that the whole of these measures where functional to expand aggregate demand, the systemic necessity for the rescue of those producers remains unclear.

C. Main findings and implications

The above review of behind-the-border regulation affecting trade and investment in services suggests that protectionism of local services suppliers has been remarkably absent from the regulatory agenda during the 2008-2009 global crisis.

Clearly, favouring national financial firms has been a not-so-hidden driving element in the selection of candidates for rescue measures for the financial system. Indeed, an implicit agreement may have developed amongst trading partners, in the understanding that the different domestic rescues would balance each other off – eventually preventing major distortive effects. In any case, the alternative to national bail-outs of domestic institutions would have likely required the development of joint, coordinated action plans that would have demanded more time than that available. From this perspective, it would seem that a sense of urgency, more than protectionism, directed governmental action towards the rescue of domestic financial institutions.

However, while a slight element of protectionism could be discerned in the bail-outs directed to bank and insurance companies, the landscape of the services sector as a whole is governed by the absence of general restrictions to cross border service suppliers. Several factors may have contributed to this outcome:

- In the first place, international trade in services has performed very well during the crisis, without showing the steep plunges that have affected trade in goods. Therefore, Governments may not have felt the demand to introduce new regulations (new restrictions) in this field, as strong protectionist pressures did not develop.
- The traditional challenges in regulating cross-border trade in services and difficulties in the actual implementation of restrictions may have acted as an effective deterrent to any protectionist considerations.
- The nature of some service sectors present additional challenges for the immediate implementation of cross-border restrictions. Business services, for instance, are typically based on standing contracts which cannot be easily terminated; furthermore, business services tend to be tailored to the needs and conditions of the consumer, so that they are usually not immediately fungible.
- Other services sectors are complementary to other economic activities, and therefore follow their fluctuations. That is the case for transport services, the services sector most heavily affected by the global crisis, which is inherently linked to international trade in goods.\(^\text{124}\) Having international trade see a plunge of around 20 per cent, protectionist regulation could do little to soften the impacts of such falls in global demand for a services industry so closely linked to trade in goods.

\(^{124}\) Borchert and Mattoo (2009), p. 6.
With regard to investment in services, as well as in goods, economic crises create incentives to maintain and enhance the level of openness towards foreign involvement, rather than to introduce restrictions. The regulatory trends observed in this study confirm this assumption, as the bulk of foreign policy changes during the crisis were directed towards simplifying regulations and expanding foreign participation. In this sense, foreign investment policies seem to follow patterns contrary to international trade in merchandise: protectionist pressures are more likely to gain momentum in periods of economic expansion, while times of economic downturn tend to foster greater market opening.

Finally, one institutional element adds to the factual and economic forces that work against a widespread boom of protectionism in international trade and investment in services. As described in section A, virtually all countries in the world have accepted international obligations that limit their capacity to enact domestic regulations that may restrict international trade and investment in services. The international framework on trade and investment in services thus presents a legal and institutional impediment to the general surge of protectionism. This is so to the extent that violation of these agreements, while possible, is not free from negative impacts: it may not only trigger the same reaction from the trading partners, thus losing the trade benefits, but these instruments commonly feature strong dispute settlement procedures that may lead to the imposition of trade sanctions.

The analysis of the measures taken during the 2008-2009 global economic crisis suggests that, when it comes to international trade and investment in services, the scenario of a global trade war or restrictive measures, has not really ever become a real one. Clearly, the crisis seems to have granted the opportunity to some countries to give in to protectionist pressures, particularly in industries where such pressures are traditionally strong, such as automobiles, machinery industries and agriculture. To that end, Governments have resorted to measures that tend to be poorly covered by the international legal framework, such as subsidies schemes and government procurement. With regard to international trade and investment in services, the analysis suggests that a number of economic, legal and institutional factors complement each other to create strong incentives against a general surge of protectionism. These elements, indeed, de facto eliminate from the domestic regulatory capacity a number of instruments that would allow Governments to protect domestic industries and isolate them from the global economy. In such a legal, economic and institutional context, a trade war seems unlikely.

The above findings confirm the general perception that international trade in services remains an area which is less accessible to direct governmental intervention. While in the area of trade in goods, the Governments have a number of instruments to affect particular, chosen goods, at their disposal. When it comes to trade in services, regulatory action for individual sectors tends to be more costly and less readily available, which acts as a disincentive for the introduction of protectionist measures. National policymakers are better equipped to focus on the development of general legal frameworks, leaving sector-specific matters to be developed by specialized agencies with expertise in the individual sector. In the negotiating context, this translates into a need for trade and foreign ministries to maintain close contacts with specific regulatory agencies.
Another implication relates to the strengthening of the multilateral trading system, and highlights apparent contradictions between negotiations and actual policy needs. The above observations suggest that services generate less protectionist pressures than trade in goods. Yet, at the multilateral level, a number of developing countries seem reluctant to advance in international commitments in this area. This may in part be due to particular regulatory concerns associated with certain services industries. However, more active discussions on trade and investment in services in multilateral negotiations would sustain the international trading rules and would enhance coherence of the system, in particular vis-à-vis the proliferation of preferential trade agreements.

The regulatory developments on trade and investment in services observed during the crisis also have strong implications for two matters on the multilateral agenda on services disciplines. Some Asian WTO Members have devoted significant efforts to gather support for the introduction of a special safeguard mechanism under GATS, with limited success. Such an instrument seems to offer few advantages for regulators for the defense of domestic services in emergency situations. Indeed, no measure taken during the economic crisis was aimed in that direction, not even in the financial sector. Trade negotiators would hence be well advised to consider whether an emergency mechanism, that does not seem to attract major interest from their own regulators in times of economic crisis, is worth investing such negotiating capital in.

Conversely, the most popular emergency measure resorted to during the crisis, subsidies, has received little interest at the multilateral table. However, the GATS disciplines on non-discrimination do apply to state aid measures. The regulatory practice during the global crisis has shown that “emergency subsidies”, temporary in nature, can prove a valuable instrument in times of crisis (i.e. promoting trade and investment rather than restricting it). WTO Members may draw on this experience in developing joint rules that would ensure that subsidies remain a valuable tool in the policy options for Governments in times of crises, while setting limits to the discriminatory and distortive effects that they may bring about.
References


