

# Flaws emerge in global web of treaties

By Alan Beattie in Washington

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Two names have been invoked more than any others during the current outburst of fear about protectionism: Willis Hawley and Reed Smoot, the US lawmakers whose eponymous 1930 bill raised national trade tariffs across the board.

Ferdinand de Mateo, Mexico's World Trade Organisation ambassador, even brandished pictures of the pair at recent WTO talks. But those anxiously watching to see their modern equivalents emerge may be looking in the wrong place. Trade experts say that deals put in place since the 1930s have prevented traditional naked protectionism such as wholesale raising of tariffs.

**Economic nationalism afoot in today's troubled times is more diverse and more subtle – and, accordingly, can slip more easily through holes in the web of international treaties. Gary Horlick, a trade lawyer in Washington, says: “We are about to see all the flaws in the WTO that people have known about for years but didn't have the guts to fix when the going was good.”**

True, there has been a small flurry of old-fashioned tariff rises in recent months, despite the Group of 20's pledge in November to refrain from doing so. But most of these, such as India's decision to raise import barriers to soyabean, iron and steel, are relatively small and well within ceilings agreed at the WTO.

They largely involve reversing emergency cuts in protection undertaken during the 2007-08 commodity price shock, when countries were trying to encourage the supply of food and raw materials. Indeed, some recent actions have even reduced blocks on trade. New Delhi, for example, has also relaxed restrictions on rice exports.

More insidious is the small but accelerating growth in “anti-dumping” measures – targeted tariff rises against imports seen as being priced unfairly low. Research by Hylke Vandenbussche at the Catholic University of Leuven, Belgium, shows that anti-dumping is essentially a substitute for traditional protection. As standard tariffs are cut, governments reach instead for supposedly emergency measures. Countries such as China and India, which have had anti-dumping rules used against them, have become big users themselves. “Retaliation is at the heart of anti-dumping proliferation,” says Professor Vandenbussche.

Other ways of favouring domestic industries, such as the “Buy American” provisions in the US economic stimulus bill, are also only partially restrained by existing rules. Like the Smoot-Hawley tariff, the Buy American Act, dating from 1933, was a child of the Great Depression. While its provisions are circumscribed by the government procurement agreement (GPA) – a plurilateral deal within the WTO – key manufacturing powers such as China are not signatories and so cannot use it. The GPA is also shot through with exemptions. For example, trade lawyers say that in the current US House of Representatives's version of the stimulus bill, provisions to restrict federal iron-and-steel purchases to US companies are quite probably legal.

Similarly, the financial sector bail-outs, which may tend to favour domestic banks, are not prohibited by international accords on trade in services, which do not cover subsidies.

**Even where laws do exist, fewer governments can now bring cases without inviting retaliation or looking hypocritical. Unlike the European Commission, which can restrain member governments using overarching rules against state aid, global trade law generally requires one government to litigate against another. Shanker Singham, a lawyer at Squire, Sanders and Dempsey in Washington, says: “There will be fewer and fewer governments that do not find themselves on both sides of the same issue.”**

The US, for example, is currently defending a case against China in the WTO to justify a “countervailing duty” tariff that it imposed on Chinese imports because they were made with cheap loans from state-owned banks – an argument that now looks faintly ridiculous given the massive government intervention in the US banking system. “In about six months’ time, some [US trade representative] lawyer will have to stand up and argue that China is unfairly subsidising its exporters by owning equity in banks and keeping interest rates low,” says Mr Horlick. “That is a harder argument to make now than a year ago.”

Similarly, European carmakers such as BMW have complained about the US auto bail-out, which could violate anti-subsidy rules. But several EU governments are intervening to help their own car industries.

Fredrik Erixon, of the European Centre for International Political Economy, a free-market think-tank in Brussels, says: “WTO rules are effective where you have one country behaving badly. Where there is a protectionist power balance between all the big countries, they aren’t of much use.”