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Prudence or Discrimination? Emergency Measures, the Global Financial Crisis and International Economic Law

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Abstract

Economists and political scientists have begun to isolate the causes and implications of the spread of the global financial crisis in late 2008. Critical attention—often accompanied by strident disagreement—has also focused on the efficacy of various domestic plans implemented in response to the crisis. International economic lawyers have started to explore the legal implications of these developments. Our analysis offers a contribution by examining whether and how certain aspects of international economic law might act as a credible constraint on state tendencies toward domestic preference when formalizing emergency responses to the crisis. We begin by offering a typology of emergency measures implemented to date. We then assess whether particular international economic law rules can target the nuanced forms of protectionism embedded in those responses. We survey both treaty commitments on trading relations (especially under the World Trade Organization) and the treatment of foreign investors. We argue that international investment law is, in the short term due to legal and extra-legal factors, more likely than any other area of international economic law to give rise to initiation of legal action and examine the most probable substantive norms likely to be violated.

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