



The Rule of Law in Monetary Affairs

World Trade Forum

Edited by

Thomas Cottier

Rosa M. Lastra

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CAMBRIDGE

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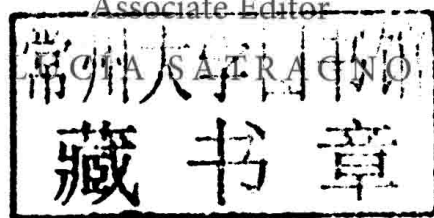
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THE RULE OF LAW IN MONETARY AFFAIRS

The global financial crisis and the subsequent sovereign debt crisis in Europe demonstrated that the relationship between law and economics in the design of the monetary system must be revisited. International monetary affairs are usually conducted via domestic monetary policies which are formulated by independent central banks and informed mainly by economics, without much room being left to substantive law. Based on the 2012 World Trade Forum, this volume brings together leading scholars, practitioners and policy-makers in international economic law in order to examine the potential of law and legal methodology to contribute to international monetary stability. It explores the links between and lessons to be learnt from existing international investment and trading systems and studies some specific policy issues which have a direct impact on monetary affairs, such as exchange rate policy, sovereign debt, taxation, competitiveness, trade imbalances, austerity programmes and human rights.

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PREFACE

The World Trade Forum series was established in 1997 as a meeting hub for academia, policy-makers, international organisations and civil society representatives, with the aim of addressing some of the most pertinent questions facing the international trading system. The global financial crisis of 2007–9 gravely affected international trade, and although it was able to recover, high levels of protectionism are still being kept at bay. Hence, fundamental questions remain as to the role of law and legal principles in monetary affairs. Much attention has been paid to the law regulating financial services and to the supervision of private banking but much less has been given to monetary issues, albeit the two cannot be separated. The matter is essentially left to economic analysis, models and policy-making and the law plays little or no role in defining the monetary policies of central banks worldwide. It has been limited to allocating regulatory and discretionary powers, essentially safeguarding the independence of central banks. The rule of law in monetary affairs is thus both a provocative and a normative programme that we intend to explore in this volume.

Based upon the experiences in the field of trade regulation and investment, the World Trade Forum 2012 seeks to expound the potential of legal principles and substantive norms, beyond allocation of powers and the establishment of institutions. It explores the legal foundations and evolution of monetary affairs and the main policy and procedural issues by discussing its relationship with the international trading and investment systems, in particular the lessons to be learnt from the institutional architecture of the World Trade Organization (WTO), its global rules on trade and its dispute settlement mechanism.

This book is based upon papers presented at the World Trade Forum held in October 2012 at the World Trade Institute, University of Bern, Switzerland. It brought together leading scholars and practitioners and policy-makers from the monetary and trade fields in an effort to learn more about the role and rule of law in what may be called trade in

monies. Particular thanks are owed to the authors of the chapters who agreed to present and debate the preliminary versions of their papers at the Forum and promptly went on to produce revised versions for publication. We should very much like to thank for their participation and most enriching comments during the debates: Marc Auboin, Ernst Baltensperger, Jappe Eckhardt, Manfred Elsig, Matthias Goldmann, Christian Häberli, Peter Kugler, Rafael Leal-Arcas, Georg Rich, Frieder Roessler, Anirudh Shingal and Matthias Oesch.

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ABBREVIATIONS

AB	Appellate Body
ABSs	asset-backed securities
ACP	African, Caribbean and Pacific Group of States
AD	anti-dumping
AIG	American International Group Ltd.
AML/CFT	anti-money laundering and countering the financing of terrorism
ASCM	Agreement on Subsidies and Countervailing Measures
ASEAN	Association of Southeast Asian Nations
BBA	British Bankers' Association
BBAIRS	BBA standard for interest rate swaps
BCBS	Basel Committee on Banking Supervision
BCEAO	Central Bank of the West African States
BIS	Bank for International Settlements
BIT	bilateral investment treaty
BOP	balance of payment
BRICS	Brazil, Russia, India, China, South Africa
CACs	collective action clauses
CDOs	collateralised debt obligations
CDS	credit default swap
CEREP	central repository for publishing the rating activity statistics and rating performance statistics of credit rating agencies
CESR	Committee of European Securities Regulators
CFTC	Commodity Futures Trading Commission (US)
CGFS	Committee on the Global Financial System
CLOs	collateralised loan obligations
CPC	Ceylon Petroleum Corporation
CPI	consumer price index
CPSS	Committee on Payment and Settlement Systems
CRA's	credit rating agencies
CRD	Capital Requirements Directive
CSCE	Commission on Security and Cooperation in Europe
CV Agreement	Customs Valuation Agreement
CVDs	countervailing duties

DBB	debt-buy-back scheme
DSB	Dispute Settlement Body
DM	Deutsche Mark
DSM	Dispute Settlement Mechanism
DSU	Dispute Settlement Understanding
EBA	European Banking Authority
ECAI	External Credit Assessment Institution
ECB	European Central Bank
ECCU	East Caribbean Currency Union
ECMH	efficient capital market hypothesis
ECOFIN	Economic and Financial Affairs Council
ECOWAS	Economic Community of West African States
ECRM	European Crisis Resolution Mechanism
EEA	European Economic Area
ECOSOC	Economic and Social Council
ECSR Committee	Committee on Economic, Social and Cultural Rights
ECT	European Community Treaty
ED	Executive Director
EDRC	Economic and Development Review Committee
EEC	European Economic Community
EFAC	Exchange Fund Advisory Committee
EFC	Economic and Financial Committee
EFSF	European Financial Stability Facility
EFSM	European Financial Stabilisation Mechanism
EIB	European Investment Bank
EIOPA	European Insurance and Occupational Pensions Authority
EMIR	European Market Infrastructure Regulation
EMU	European Economic and Monetary Union
ESCB	European System of Central Banks
ESM	European Stability Mechanism
ESMA	European Securities and Markets Authority
ESR	External Sector Report
ESRB	European Systemic Risk Board
ETS	emission trading scheme
EU	European Union
Euribor	Euro Interbank Offered Rate
EWE	Early Warning Exercise
FATF	Financial Action Task Force on Money Laundering
FCA	Financial Conduct Authority
FDI	foreign direct investment
FOGS	Functioning of the GATT System
FOMC	Federal Open Market Committee

FRBNY	Federal Reserve Bank of New York
FSA	Financial Services Authority (UK)
FSAP	Financial Sector Assessment Program
FSAs	Financial Stability Assessments
FSB	Financial Stability Board
FSF	Financial Stability Forum (now Financial Stability Board)
FSSA	Financial System Stability Assessment
FTA	free trade agreement
G-20	Group of Twenty
G-20 MAP	G-20 Mutual Assessment Program
GATS	General Agreement on Trade in Services
GAL	global administrative law
GATT	General Agreement on Tariffs and Trade
GC	General Comment
GDDS	General Data Dissemination System
GDP	gross domestic product
GFSR	Global Financial Stability Report
GFTEI	Global Forum on Transparency and Exchange of Information
HIPC initiative	Heavily Indebted Poor Countries initiative
HKMA	Hong Kong Monetary Authority
HRL	human rights law
IAASB	International Auditing and Assurance Standards Board
IADI	International Association of Deposit Insurers
IAIS	International Association of Insurance Supervisors
IASB	International Accounting Standards Board
IBRD	International Bank for Reconstruction and Development
ICANN	Internet Corporation for Assigned Numbers and Names
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICSID	International Centre for Settlement of Investment Disputes
IEL	international economic law
IFI	international financial institution
IFSs	international financial standards
IIA	international investment agreement
IIF	Institute of International Finance
ILA	International Law Association
ILC	International Law Commission
ILO	International Labour Organization
IMF	International Monetary Fund
IMFC	International Monetary and Financial Committee
IMS	international monetary system

IOPS	International Organisation of Pension Supervisors
IOSCO	International Organization of Securities Commissions
ISD	Integrated Surveillance Decision
ISIN	International Securities Identification Number
ITO	International Trade Organization
Libor	London Interbank Offered Rate
LTROs	long-term refinancing operations
MAD	Market Abuse Directive
MDRI	Multilateral Debt Relief Initiative
MFN	most-favoured nation
MiFID	Markets in Financial Instruments Directive
MIST	Mexico, Indonesia, South Korea and Turkey
MoU	memorandum of understanding
MPC	Monetary Policy Committee (of the Bank of England)
MROs	mainstream refinancing operations
NAFTA	North American Free Trade Agreement
NCBs	national central banks
NIFA I	New International Financial Architecture I
NRSRO	Nationally Recognised Statistical Rating Organisation
NTB	non-tariff barriers
NYSE	New York Stock Exchange
OECD	Organisation for Economic Co-operation and Development
OECS	Organisation of Eastern Caribbean States
OMT	Outright Monetary Transactions Programme
OSI	Official Sector Involvement
OSCE	Organisation for Security and Cooperation in Europe
OTC	over-the-counter
OTS	Office of Thrift Supervision
PBOC	People's Bank of China
PIN	public information notice
PIOB	Public Interest Oversight Board
PRA	Prudential Regulation Authority
PSI	Private Sector Involvement
PTA	preferential trade agreement
QFII Program	Qualified Foreign Institutional Investor Program
REO	Regional Economic Outlook
ROSCs	Reports on Observance of Standards and Codes
RTGS	real-time gross settlement
SCIMF	Subcommittee of the Economic and Financial Committee
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SDDS	Special Data Dissemination Standard
SDRs	special drawing rights

SDRM	Sovereign Debt Restructuring Mechanism
SEC	US Securities and Exchange Commission
SEZs	special economic zones
SGP	Stability and Growth Pact
SOBs	state-owned commercial banks
Sibor	Singapore Interbank Offered Rate
SIFI	systemically important financial institutions
SMP	Securities Markets Programme
SNB	Swiss National Bank
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures
SSBs	standard-setting bodies
SSM	Single Supervisory Mechanism
TBT	technical barriers to trade
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TPRB	Trade Policy Review Body
TPRD	Trade Policies Review Division
TPRM	Trade Policy Review Mechanism
TSC	Treasury Select Committee
TSCG	Treaty on Stability, Coordination and Governance
Tibor	Tokyo Interbank Offered Rate
TSR	Triennial Surveillance Review
UCITS	Undertakings for Collective Investment in Transferable Securities
UDHR	Universal Declaration of Human Rights
UEMOA	West African Economic and Monetary Union
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
USD	US dollar
VCLT	Vienna Convention on the Law of Treaties
WAEMU	West African Economic and Monetary Union
WB	World Bank
WEO	World Economic Outlook
WGTFD	Working Group on Trade, Debt and Finance
WTO	World Trade Organization

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