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A BAILOUT FOR THE INTERNATIONAL TRADE SYSTEM: RESCUING THE WTO FROM TARP

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A BAILOUT FOR THE INTERNATIONAL TRADE SYSTEM: RESCUING THE WTO FROM TARP

FABIO LEONARDI*

Abstract

Asset Guarantee Program – Capital Assistance Program – Capital Purchase Program – Emergency Economic Stabilization Act – Financial Institutions – Financial Services – General Agreement on Trade in Services – Global Financial Crisis – Troubled Asset Relief Program – World Trade Organization.

During 2008 the world's economy experienced a systemic financial crisis that nearly led the international financial system to collapse for the first time since the Great Depression. In response to this fragile economic situation and sharp contraction of the global economy, the world's governments adopted numerous measures aimed at ensuring the integrity and stability of their financial systems. This Article will address one of the emergency measures adopted by the US government, namely the Troubled Asset Relief Program, and will review its implementation under the law of the World Trade Organization. In particular, it will analyse the programs that the US Department of the Treasury adopted under the authority conferred by the Emergency Economic Stabilization Act of 2008, and will conclude that the federal bailout of the financial industry violates WTO law. Indeed, by disguising discriminatory measures in programs allegedly adopted for domestic regulation, the US failed to fulfil the international obligations that it assumed under the General Agreement on Trade in Services.

I INTRODUCTION

There is no such thing as a 'one-size-fits-all' model for financial reform. However, the experience has shown that trade liberalization and domestic reform in the area of financial services can and should be mutually reinforcing. Adequate prudential regulation and supervision, enhanced transparency and corporate governance, strengthened competition policy, proper legal and accounting systems are all preconditions to benefiting from liberalization.*

– Supachai Panitchpakdi¹

During 2008 the world's economy experienced a systemic financial crisis that almost led the international financial system to collapse for the first time since the Great Depression.² This time of intense economic difficulty began in 2007, when a US-originated sub-prime mortgage emergency evolved into a credit crunch, credit crisis, and international systemic crisis that affected nearly every financial institution of the world. In response to this extremely fragile economic situation and sharp contraction of the global economy, the world's governments

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¹ Supachai Panitchpakdi, (Speech delivered at the World Trade Organization, General Assembly of the Swiss Bankers Association, 20 September 2002).

² Douglas W Arner, 'The Global Credit Crisis of 2008: Causes and Consequences' (2009) 43 *International Lawyer* 91.