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SPECIAL ISSUE

ENHANCING STABILITY IN THE INTERNATIONAL ECONOMIC ORDER  
SPECIAL ISSUE EDITORS: ALBERTO COSTI AND SUSY FRANKEL

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THIS ISSUE INCLUDES CONTRIBUTIONS BY:

David A Wirth  
Baris Karapinar and Kateryna Holzer  
Alistair Birchall

Krystyna Zoladkiewicz  
Sofya Matteotti and Olga Nartova  
Jo Feldman and David Brightling

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THE NEW ZEALAND CENTRE OF  
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# FOREWORD

*Alberto Costi and Susy Frankel\**

We are pleased to introduce this Special Conference Issue entitled “Enhancing Stability in the International Economic Order”. The articles in this issue were developed from a conference, of the same name, which the New Zealand Centre of International Economic Law (NZCIEL) hosted in 2011. The NZCIEL is a research centre based at the Faculty of Law, Victoria University of Wellington. The aim of the NZCIEL is to foster research and debate about all aspects of international economic law. The conference was made possible with support of the New Zealand Law Foundation and a donation to the NZCIEL, which was made in honour of Dan Chan, to support conferences and publications.

The 2011 conference brought together speakers from around the world and New Zealand to discuss ways in which global crises, particularly connected to international economic law, including the financial crisis and climate change issues, could be addressed in order to enhance stability.

The conference contributed to the dialogue of legal, political and economic theory about how to develop better regulation of the world trading system and financial markets. In order to achieve this, speakers looked at specific crises and evaluated the response of the international community. The conference papers progress these themes and offer some analysis on the development of a more equitable and ethical economic order.

The theme that pervaded the conference and is common to the articles in this issue is that the economic crisis has led to a genuinely new and continuing scrutiny of the international economic system. As of 2012, the world has not yet been able to escape the recession caused by that economic crisis and so it is an appropriate time to analyse some of the issues that have arisen, particularly in the last two decades. In an issue such as this, the "magic solution" cannot be found. The articles discuss laws, policies and ethical norms which might contribute to avoiding the mistakes of the past and a new approach to the future conduct of international economic relations.

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Professor David Wirth's keynote address begins this issue. He identifies the fundamental and dynamic attributes of globalisation. He examines the need to confront the institutional failures and systemic challenges of multilateral governance. Perhaps provocatively, Professor Wirth suggests:<sup>1</sup>

Global economic collapse, spearheaded by the subprime mortgage crisis originating in the United States, has been repeatedly blamed on overreaching made possible by insufficient oversight of financial instruments. Perhaps it is only human nature to look for responses that bring, in the words of this special issue's title, "stability". There is also, however, a lurking anxiety that a disproportionate emphasis on stability will inevitably bring stagnation.

With this observation, Wirth offers some insight into issues, which he also describes as apparent contradictions, such as deregulation versus market correction, and unilateralism versus multilateralism. This leads to a discussion of institutional failure and systemic challenges culminating with observations about structural and institutional evolution.

Baris Karapinar and Kateryna Holzer discuss "Legal Implications of the Use of Export Taxes in Addressing Carbon Leakage: Competing Border Adjustment Measures". They focus on the uncertainties, post-Kyoto, of the international legal framework for climate mitigation. This uncertainty, they say, is likely to increase because of unilateral trade interventions such as the European Union initiative to include the aviation industry in its emissions trading system. The article discusses the discourse in the literature about border carbon adjustment measures of importing countries and the likely trade disputes under World Trade Organization (WTO) legal agreements. But the disputes will not only arise from border adjustments imposed by importing countries; exporting countries might also impose restrictions on carbon-intensive products.

Export restrictions are becoming an increasingly difficult kind of trade barrier and Professor Krystyna Zoladkiewicz discusses the Russian Federation's use of trade barriers, against Poland and other countries, as one part of her economic analysis of the benefits of Russia joining the WTO. The core of her thesis is that a full recovery of the world economy from global economic recession depends on trade performance, "as international trade is a powerful engine for economic growth".<sup>2</sup> Based on this, she argues that the WTO should improve the predictability of trade policy and, consequently, all countries should seek membership of the WTO. Zoladkiewicz uses the example of the 19-year process of Russia's accession to the WTO to demonstrate the complexities and legislative demands of accession. She argues that as WTO membership is in the global interest, finalising accession talks should accelerate so that countries can trade with each other under predictable and transparent rules. This will assist the world to progress out of economic recession.

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1 David A Wirth "A World of Choices" (2012) 10 NZJPIIL 1 at 2.

2 Krystyna Zoladkiewicz "Development of the International Economic Order: Constraints on Non-WTO Members" (2012) 10 NZJPIIL 75 at 75.

Next, the issue turns to look at the financial crisis. Alistair Birchall takes the view that the effectiveness of regulatory structures should be measured primarily on efficiency grounds. He acknowledges that because of the enormous social costs of the financial crisis there must be deference to approaches which promote systemic resilience. Therefore, he reasons that the financial regulatory reforms should address the externalities within the international financial architecture that served to facilitate and exacerbate the development of systemic risk; because the current reforms do not do so, they are unlikely to be effective. The article optimistically advocates for greater international institutional co-operation and offers an alternative vision for financial regulation. That is a model for systemic risk regulation based around the devolution of substantive hard law power to a newly formed international systemic risk regulator. Birchall concludes that the window of opportunity for such reforms has passed and he, perhaps pessimistically, argues that the only way to escape systemic risk is if nations are less self-interested and more neutral in their regulatory approach.

In the article by Sofya Matteotti and Olga Nartova, a different part of the financial services industry is examined, that is, insurance and reinsurance. Bringing together the financial crisis and issues of climate change, the authors discuss how the impacts of climate change on the financial services industry are expected to be significant. Yet, little is known about what the effects will be and how the industry will respond. The authors' focus is on the role of the reinsurance industry and climate change adaptation. They discuss the possible contribution of the reinsurance industry to two climate change response strategies – mitigation and communication. The authors conclude that there is a compelling need for research about the extent to which the regulation of financial services, as part of international trade, could assist in adapting the industry to effectively embrace the needs of climate change. While this adaptation requires an international framework, the article concludes that a sound solution needs to be matched to regional or country specific needs and conditions, and that this can only occur with the expertise of the reinsurance industry.

Jo Feldman and David Brightling conclude this issue with "Imagining a Post-Doha Future: The Future Stability of the Global Trading System". The authors examine ways in which the Doha Development round of negotiations at the WTO might be progressed. In particular, the authors draw on what we can learn from previous rounds of multilateral negotiations, particularly the Uruguay Round. From this history, the authors discuss whether and how plurilateral agreements might be used as a stepping stone to reglvanising the multilateral process. They note that sometimes plurilateral agreements may not be possible, but in other instances they may provide a way forward and eventually, perhaps, a return to the multilateral process.

Cycles of booms and busts have been a persistent feature of economic life. From the Great Depression to the Oil Shock of the 1970s, from the Asian Financial crisis in the late 1990s to the South American crises, we have witnessed periods of regulation, de-regulation and re-regulation. In 2007, the global economy and financial system entered into a severe crisis. The incidence and ramifications of the crisis were unexpected and so were its knock-on effects on the world economy.

The full dimensions and consequences are still being debated, but almost certainly this crisis will prove to be the most severe as regards its extent and the intensity of its global impact and depth since the end of World War II.

This financial crisis has simply demonstrated once more that the world economy has become amalgamated, affecting equally all continents. The financial crisis has highlighted major deficiencies in the values and principles behind the decision-making process of the political elite. These events have also cast doubt on the roles of economic actors and traditional foundations of economics that the pursuit of one's own self-interest will maximise the good to society as a whole.

Crises provide us with an opportunity to reflect on the society we want to build. Although the financial crisis may prompt fundamental changes to economic regulation and capacity building at the national level, an increasingly globalised world means that national solutions no longer suffice. By requiring international cooperation on macroeconomic policies, trade and financial regulations, the global financial crisis may more importantly provide an opportunity for states to take the first step towards the consensus required to address far deeper global problems. It is hoped that both at the national level and on the international plane, as well as in the private and public sector, we may witness the development of a culture of integrity, the blossoming of ethical decision-making and the capacity to foresee risks and issues and address them through the right mix of soft law and hard law measures.

*Alberto Costi and Susy Frankel*  
*Editors of this Special Issue*