
Economic Security is National Security: Regulatory Competition and the U.S. Regulation of Foreign Direct Investments in a Post-Crisis World

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Résumé

Conventional literature concerning regulatory competition assumes governments, through their interactions with mobile capital and other jurisdictions in a globalizing economy, will engage in regulatory competition, i.e. a process of regulatory relaxation (race-to-the-bottom) or convergence to desirable international standards (race-to-the-top), both aiming to attract further investments. Nevertheless, FDI flows have been received with increasing caution in the past years, particularly by developed countries. In the wake of the enactment of the Foreign Investment Risk Review Modernization Act (FIRRMA), this paper aims at investigating how the national security-based FDI regulation in the U.S. responded to the global financial crisis, and which factors can explain such response. For that purpose, besides the regulatory competition literature, two theories were employed: (i) the world-system approach, describing the world-economy as a hierarchized structure; and (ii) economic nationalism, correlating a country's opulence and its technological capabilities. The methodology involved (i) quantitatively, the analysis of 1410 cases examined by CFIUS during the 2005-2015 period; and (ii) qualitatively, the investigation of primary sources, such as governmental reports related to CFIUS and its efficacy, secondary sources, such as newspaper material, reports from experts, and the study of a recent case (Broadcom-Qualcomm) in which CFIUS unprecedentedly exposed its decision-making reasoning. It was possible to conclude that, against the predictions of conventional literature, a regulatory backlash against globalization is likely to occur when economic integration (a) is extensively utilised by a nation perceived as a threat for U.S. global hegemony; or (b) enables foreign agents to purchase strategic technologies for the future of U.S. economy.

Mots-Clés: Regulation, Foreign Direct Investments, CFIUS, Political Economy of Law

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