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**DRAFT**
**Corner House Briefing Paper**

# The facilitating framework for free investment and capital

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24 October 2008

## Table of Contents

I Introduction

II Why Too Risky Financial Products Could Be Designed And Spread Around
- Slow regulation and lacking supervision at EU level
- No binding regulation at international level

III The Neo-Liberal Pro-Investment Drive In Policies Especially FDI
- Investment promotion mechanisms by the North at policy level
- Direct support to foreign investors by investment promotion mechanisms of the North
- How developing countries have reformed of their investment policies and practices
- The shortcomings of the investment promotion mechanisms

IV Binding Obligations To Liberalise Investment And Capital
- The OECD Code of Liberalisation of Capital Movements
- Bilateral investment agreements (BITS) provide international legal protection to foreign investors
- Double tax treaties
- Trade Related Investment Measures (TRIMS)
- General Agreement on Trade in Services (GATS)
- Free trade agreements (FTAs)

V Conclusion

# I Introduction

The financial crisis that has erupted since Summer 2007 and intensified since Autumn 2008 has highlighted how financial products can be constructed without any due systems in place to avoid them making havoc. It also showed how these products as well as other huge amounts can easily be moved around the world, while governments seem not to have been aware what was going on, let alone know what to do when the crisis strikes.

This paper tries to explain how for years governments have created a facilitating environment for such free capital moves and financial products. This [area] also includes how foreign (direct ) investment has been liberalised and promoted.[1]

# II Why Too Risky Financial Products Could Be Designed And Spread Around

The dominance of neo-liberal thinking, with freedom of capital and free markets as its central theme, was translated in lack of political will to stop highly speculative capital movements and risky financial products. This was reflected at the highest international forums where decisions about international financial stability can be taken, such as the meeting of Ministers of Finance of the Group of Seven richest countries (G-7) and the International Financial Committee that meets at the bi-annual meetings of the IMF and is attended by most Ministers of Finance (but developing countries lack of proper voting rights). A remarkable example of lack of political will to interfere in the financial markets, which was particular strong in the Anglo-Saxon world, was the refusal of Germany's proposal to regulate hedge funds at the time of Germany's presidency of the G-7. Also, the Financial Stability Forum that was created by a selective group of countries after the Asian financial crisis (1999) to improve the functioning of markets and reduce systemic risk, did not make far reaching proposals and had no enforcement mechanisms. Even in a forum where developing countries had a voice, such as the UN Conference on Finance for Development (Monterrey, Mexico, 2002) did not deal with instability risks in the international financial system. On the contrary, because of lack of aid (ODA), the Monterrey consensus promoted foreign capital in the form of direct foreign investment and portfolio investment in developing countries (see below). One of the reasons why efforts to restructure the financial system have been undermined, was the refusal by the US and other Western countries who were being lobbied by their powerful financial industry.

The dominance of neo-liberal thinking of free capital and free markets has had a particular influence in the financial services sector. Not only were banks, insurance companies, securities traders, investment banks and others allowed to move capital around the world, these actors themselves were allowed to establish themselves around the world (see also below). Traditionally, banks and insurance companies had been subject to strict control because they perform a pivotal role in the economy and their instability might have a far reaching effects on society and the use of tax payers' money. Therefore, central banks and other supervisors had been put in place to control such financial institutions with strict regulations to protect the public interest. However, increasingly these strict regulations were being seen as undermining the free

[1] Most of the contents of this paper was presented in a workshop in Kolkata, in February 2008, but some updating until 20 October 2008 was included.

movement of capital as well as the operations and profitability of the financial industry around the world. Gradually, the role of the regulators and supervisors changed and their defence of the public interest was interpreted as only avoiding major financial instability which would affect the whole economy, economic growth and free markets. The dominant neo-liberal thinking and even political pressure made supervisors apply their role in a less strict way to allow the financial markets and financial sector to thrive rather than also considering how avoid how this system of financing and financial products could cause social or environmental problems. Financial regulators and supervisors saw the many innovative financial products as a proof that free financial markets had major benefits and made an important contribution to economic growth. This convinced financial regulators and supervisors that they should not interfere in the market – which was a strong held vision even during the financial crises before 2007 – and that the markets would be able to sort themselves out in times of market instability. A resulting reasoning was therefore that supervisors should not be influenced by politics and politicians or parliaments, with their market distorting and costly interventions, but only being responsible for macro-economic and financial market stability and fighting inflation. In many countries, including in developing countries through conditionalities of the IMF, central banks and other supervisory structures were made independent from politics and left with a reduced mandate.

However the question is whether these supervisors, who also gave advise to regulators, were really independent. Because they were more in contact with the financial industry than with politicians, parliamentarians and civil society, supervisors became more susceptible to the thinking of the financial industry. They were also under constant pressure from the lobby of the financial industry when they were discussing new regulations and supervisory mechanisms, at national, EU and international level. For instance, when the Basel Committee on Banking Supervision[2] discussed new standards for capital reserve requirements for banks in case they are lending ('Basel II'), there was a huge lobby organised by and a close relationship with the financial industry and the Institute of International Finance[3] that constitutes the most important international lobby of a large group of large banking and non banking financial companies.[4]

One of the reasons behind this huge lobbying by the financial industry is that the implementation of regulation is considered as very costly and burdensome to financial companies, undermining their freedom to operate and make profits. Regulation is therefore also considered to potentially undermine the competitiveness of the financial industry of a country. The proposal at the G-7 by Germany to regulate Hedge Funds was opposed by the UK and the US who feared that their financial centres would have less business to do. Also, if one country has stricter regulations than another country, the financial industry of the former country could be put at a disadvantage by higher costs from applying such regulation and from lack of business opportunities e.g. when (complex) innovative financial products are not allowed through strict regulations. Another example is that regulations who promote the interests of consumers e.g. an obligation to lend to poorer consumers to buy a house, are being threatened by arguments from the national and foreign financial industry that new regulations will make a country's financial industry less competitive compared to other foreign financial industries whose home regulators did not impose

[2] Forum of supervisors form some major countries who develop non-binding international supervisory standards; for more explanation see: www.bis.org/bcbs
[3] See among others: http://www.iif.com/regulatory/basel/
[4] See among others: http://www.iif.com/membership/members/

such conditions. Regulators and supervisors have been under constant pressure not to undermine the competitiveness of their home country financial industry. Given that most competitive financial industry was based in the UK and the US where regulation and supervision had been relaxed, e.g. for investment banks, the competitiveness pressure was high and the stability supervision became limited. Also, governments like the US were quite susceptible to the lobby of the financial industry on which they were dependent to finance their deficit and whose profitability was seen as contributing to GDP and economic growth.

As a result, there was no, or only limited, legally binding regulation for instance on new financial products –with no verification and testing of their impact on financial stability before being introduced onto the markets-, and new players such as huge funds or private equity. Taxes on capital movements, such as promoted by the ATTAC movement, was considered inconceivable. Worse, there was quite some complacency about the prospects of a new financial crisis.

This limited supervision also resulted in the lack of knowledge by supervisors and regulators about how exactly innovative products and risk management systems of the financial industry -who wanted to avoid to be hit by unprofitable instability- were functioning. There was too little monitoring capacity the supervisors to recognize when all these products became a systemic risk. Indeed, the new Basel II requirements on capital reserves were based on the credit providers' own risks management systems with more general guidelines and supervision by the supervising authorities. Given the lack of influence of civil society, Basel II did not require to take into account the environmental and social risks of lending. Also, assessing the risks of credit receivers and (complex) financial products was left to the market operators , i.e. for-profit rating agencies. These rating agencies were not being regulated, notwithstanding their conflict of interest (being paid by those they had to rate), their oligopolistic presence in the markets, and their failure to do proper rating before the Asian financial crisis. Basel II even gave rating agencies an important role in the risk management systems of the banks. When the sub-prime crisis broke out in 2007, the failures of the rating agencies became again evident but new regulations were not introduced speedily. In addition, none of the risk and liquidity management systems of the large banks had been able to calculate the occurrence of a worldwide systemic risk.

## Slow regulation and lacking supervision at EU level

The European Union (EU) and the implementation of the Single market, as well as GATS (see below), have allowed free movement of capital and free movement of financial services in the EU. Some European and non-European larger banks and financial services providers established themselves in several European countries or even offered cross-border financial services without establishment. In some Central and Easter European countries, Western European banks even became dominant.

In the EU's Lisbon Strategy to make the European economy the most competitive in the world, an important aspect was making the EU's financial industry competitive and capable of expanding in Europe and around the world. It meant, among others, to allow the financial industry to consolidate within Europe to become more profitable by increasing market shares and economies of scale. At international level, this meant aggressive negotiations by the EU to open up markets though the GATS and free trade agreements (see below).

However, EU wide regulation was much slower to follow eventhough it was considered as being part of setting up competitive EU wide financial actors. One problem was that, since regulation and its implementation by the financial industry was considered burdensome and potentially undermining competitiveness, there were conflicts of interest. The Commission (DG Markt) who was responsible for improving the European financial industry's competitiveness, was also responsible for initiating and implementing financial regulation at EU level. DG Markt continuously consulted with the financial industry and not with civil society -only the European umbrella of consumer organisations and trade unions participated in some official consultation bodies but lack capacity. The European Parliament and the Council of Financial Ministers have no right to initiate regulation but have co-decision rights. Another problem is that the regulatory and supervisory cultures have been quite different between the countries. Introducing regulation that would be more costly in one country than in another was considered to undermine the competitiveness of the financial industry of a particular country. Nevertheless, a whole structure to decide and implement EU financial regulation was set up, called the Lamfalussy process, with committees of national regulators and supervisors of the banking, insurance and securities' sectors. Note that these committees were still being divided in the three financial sub-sectors while the largest actors in the financial industry combine all sub-sectors. A committee on financial conglomerates was therefore set up to try to come up with a system of EU wide supervision of activities of financial conglomerates with cross-border activities in the EU. Quite some regulation was enacted, for instance, on capital reserves by credit providers –based on Basel II –, and to deal with market abuse in the securities market.

However, the main bottleneck, has been the lack of implementation and the monitoring of these EU rules (mostly in the form of directives) by the supervisors. Supervision at EU level was not part of the European constitution and remained a national mandate of the EU member states. Although there were some non-binding agreements on how national supervisors should coordinate as well as respect each other's interests in times of crisis, these were not really applied as became very visible during the financial crisis of Autumn 2008. By that time, there was still not a fully functioning supervision structure of European cross-border financial conglomerates, amongst others because of different interests between the home and the host country supervisors. The diverse responses by EU member states to the credit and bank crisis in September 2008, and the gradual concerted action by EU member states (rather than the Commission) in October 2008 were an expression of the failure by the EU to have a good financial supervisory and stability system in place.

The European Central Bank (ECB) has no mandate to supervise banks as still some central banks are doing, but only an advisory function regarding banking supervision in Europe. In its responsibility for money supply, however, the ECB became active since 2007 to deal with the credit crunch among banks in the EU. Since the central banks of the 27 countries also gather at the ECB and provide the financial reserves to the ECB, they were able to take some concerted action to avoid the worse. Tax payers' money had to be used to clean the mess of the unregulated liberalised financial sector.

## No binding regulation at international level

Although banks, insurance companies and other financial services providers were allowed to operate in many countries around the world, and investment funds and securities' trading were transferring billions of dollars around the world every day, there has been, and still is, no binding international regulation and supervision to be applied by the international financial operators or to be imposed on the latter by governments.

As explained in the box below, there are quite some multilateral committees in which national supervisors, regulators and financial institutions which are discussing stability issues and are setting international standards. However, they have not agreed on binding agreements or legal treaties to make the standards being applied worldwide. Exchange of information and expertise, and peer pressure is the way these committees try to have their members to apply the international standards they have agreed upon.
In addition, there has been no agreed continuous structure for international supervision, and regulation, of large internationally operating financial conglomerates.

## BOX: International standard setting and discussing committees related to banking, insurance and supervision

*** International standard setting organisations:**

- Basel Committee on Banking Supervision (BCBS): http://www.bis.org/bcbs/index.htm
- International Association of Deposit Insurers (IADI): http://www.iadi.org
- International Association of Insurance Supervisors (IAIS): http://www.iaisweb.org
- International Organisation of Securities Commissions (IOSCO): http://www.iosco.org
- Committee on Payment and Settlement Systems (CPSS): http://www.bis.org/cpss/
- CPSS-IOSCO Task Force on Securities Settlement Systems: http://www.bis.org/cpss/index.htm; http://www.iosco.org
- International Accounting Standards Board (IASB): http://www.iasc.org.uk
- International Auditing and Assurance Standards Board (IAASB): http://www.ifac.org

*** International organisations with no standard setting goals include:**

Committee on the Global Financial System: http://www.bis.org/bcbs/index.htm

Financial Stability Forum

Markets Committee: http://www.bis.org/about/factmktc.htm

Irving Fisher Committee on Central Bank Statistics: http://www.bis.org/ifc/index.htm

Another weakness of the structure of international committees and supervisors is that they are still being structured among the sub-sectors of banking, insurance and securities. Each of them were being subject to lobbying by the financial industry or were organised by the industry itself such as IOSCO and IASB.

There is some cooperation among the international financial bodies through joint discussing committees such as for instance:

- The Joint Forum[5]
- CPSS-IOSCO Task Force on Securities Settlement Systems[6]
- BCBS Transparency Group and IOSCO TC Working Party on the Regulation of Financial Intermediaries[7]

After the Asian financial crisis in 1997-1998, the IMF set up different programmes to improve financial regulation and supervision in developing countries where it was considered that 'crony capitalism' had been causing the financial crisis – while in fact it had been the risky lending by internationally operating financial conglomerates. These financial programmes to change regulation and supervision in developing countries, based on neo-liberal thinking, were:

- The Financial Sector Assessment Programme (FSAP)
- The Financial Sector Reform and Strengthening Initiative (FIRST)

Although many international financial conglomerates were allowed to operate world wide, the international structures on financial regulation and supervision failed to address the enormous concentration and consolidation in the financial services sector, often leading to oligopolistic situations in different sub-sectors at world wide level, such as rating agencies. As a result, many financial firms became too big to fail, and too interconnected to fail. The financial crisis has shown that an unprecedented massive bail-out was necessary to prevent the financial sector from a total collapse, affecting all economies and societies. The 'moral hazard' problem has come back full swing.

Apart from failing their main function of ensuring financial stability, many international, regional and national supervisors and regulators failed to include a mandate (and criteria) for the supervisors to ensure that all financing, investment, insurance etc. promotes sustainable development, or at least does not cause too much harm.

[5] http://www.bis.org/bcbs/jointforum.htm
[6] http://www.bis.org/cpss/index.htm; http://www.iosco.org
[7] http://www.bis.org/bcbs/index.htm; http://www.iosco.org

## III. The Neo-Liberal Pro-Investment Drive In Policies Especially FDI

The neo-liberal mind-set of academics, business, officials and politicians who believed that the private sector and free markets were more efficient, had also important consequences on policies dealing with foreign direct investment. Because aid and government intervention in developing countries was seen to have been inefficient and insufficient, private foreign direct investment (FDI) has been considered to be the best way to enhance economic development in developing countries. The new 'development mantra' argues that there will be no development without business development and private sector involvement and that FDI plays an important role to that extend. As the Investment Climate Facility (see below) puts it: "Investment is essential for economic growth, which leads to job creation, better services, and greater prosperity."[8] The European Commission clearly argues that there is no development without foreign investment in developing countries.[9] From this perspective, privatisation of public services was being promoted or imposed, including privatisation of publicly owned banks in many developing countries.

The question is how much of these capital flows -which are concentrated in a few countries- actually contributed to economic growth, sustainable development, job creation, better services, and greater well-fare? Have these flows only provided benefits to the host countries or have there also been costs, negative impacts and outflows of capital? The academic literature about the link between FDI and development provides no overall evidence that FDI contributes to economic development and growth, but rather many aspects are playing a role.[10] Nevertheless, during the implementation of all measures mentioned below, the underlying argument is that FDI automatically promotes economic growth and thus development.

A forgotten factor are the many policy measures and reforms, policy and financial instruments, donor and other aid, agreements and other instruments which have been used to implement this neo-liberal approach that only focuses on attracting FDI. These measures and instruments were implemented at the national as well as at the international level, with the latter having a major influence on national measures by developing countries. These investment promotion mechanisms were mainly implemented :

- at policy level,
- by direct support of foreign investors, i.e. at the level of FDI itself.

### Investment promotion mechanisms by the North at policy level

The donor community and the international or regional financial institutions have a huge amount of FDI promotion mechanisms at policy level. Through these instruments developing countries were advised or forced to implement policies and laws which would attract FDI. "There is growing consensus that a favourable investment climate is vital for economic development"[11]. Although there was some attention to improve domestic investment, promoting investment often equalled attracting FDI through a favourable investment climate that was interpreted to contain

[8] http://www-usa.investmentclimatefacility.org/about.htm
[9] See many statements during the EPA negotiations; see quote in : EPA negotiations do not promote the right investment policies in Africa, SOMO Briefing paper, September 2006.
[10] Is foreign investment good for development? A literature review, SOMO Paper, March 2008.
[11] http://www-usa.investmentclimatefacility.org/about.htm

mostly the following aspects:

- liberalisation of investment i.e. fully opening up markets rather than selecting foreign investors,
- giving guarantees and rights to investors so that they could operate freely and profitably, and without being discriminated against domestic investors,
- providing a stable macro-economic and political environment which would not disadvantage investments through changing laws and political unrest,
- capital was to move as freely as possible, at least capital related to investments,
- reliability of good infrastructure such as transport and roads, telecoms, electricity and water.

The donor countries grouped in the rich country club of the OECD spent 15% to 20% of their annual bilateral ODA on instruments to attract investment between 2001 and 2003, including by improving infrastructure (see box).

**"A significant share of aid expenditures helps to promote investment"**[12]

The 2005 World Development Report found that "assistance provided by major bilateral and multilateral development agencies for investment climate improvements averaged US$ 21 billion per year between 1998 and 2002 — or about 26% of all development assistance. The bulk of that assistance went to infrastructure development." The World Bank's methodology can also be used to determine how much of the bilateral ODA provided by the 22 DAC member countries [i.e. OECD countries giving ODA] goes towards promoting investment in developing countries. DAC member countries spent between about US$ 8 and US$ 10 billion per year between 2001 and 2003, or 15% to 20% of their bilateral ODA. Infrastructure development was again the largest component."

Some international instruments to implement the above investment promotion policies have been used since a long period and are quite well known (and not explained extensively in this paper). For instance, the World Bank and the IMF used conditionalities attached to their loans in order to make developing countries open up their markets for all kind of investments and to create an attractive macro-economic and business environment. The World Bank and its member organisation, the International Finance Corporation (IFC), have mechanisms to create a business friendly environment with as little regulations and bureaucracy as possible from the perspective of the investors, and not in the least foreign investors. The "Doing Business"[13] project is a benchmarking project on investment climate in which each country is being ranked according to how its laws and administration are investor-friendly and make it easy for business to operate. For many developing countries, getting higher up in this world ranking of doing business is a major policy objective.
Another example is the Africa Growth and Opportunity Act (AGOA) of the US. AGOA provides

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12 Source: OECD (2006), *Promoting Private Investment for Development - the role of ODA,* DAC Guidelines and Reference Series, using sources from the World Bank (2004) and OECD

13 http://www.doingbusiness.org/

African countries with better access to US markets for their exports (often produced by foreign investors in Africa) but has as one of its conditions that African markets open up for US investment.

There are also less known international instruments that promote foreign investment in the same way as described above. Here are some examples.

* The **Foreign Investment Advisory Service (FIAS)**[14] is part of the IFC in the World Bank Group[15]. It gives policy advise through advisory projects per country, sometimes several per year per country. The advise primarily only focuses on how to attract FDI and how to accommodate to the needs foreign investors according to neo-liberal thinking. Projects sometimes include transforming domestic investment laws according to FIAS advise, as was the case in Indonesia. "FIAS is developing a new global benchmarking initiative for measuring the ease of establishing and operating a foreign-owned business in countries across the world. Modeled after the Doing Business indicators, the FDI Indicators project aims to compare the quality of investment climates across countries, identify good practices in investment policy design and implementation, and stimulate and advise investment policy reforms." For Africa, the advise of the IFC is being channelled through the IFC program on Private Enterprise Partnership for Africa (PEP-Africa).[16]

*** UNCTAD** has been very active on many aspects related to foreign investment in developing countries. Its annual World Investment Report (WIR) gives figures about FDI inflows around the world while focussing on one particular issue. The neo-liberal promotion of investment is most visible in UNCTAD's Investment Policy Reviews of individual developing countries. In these assessments, it indicates how developing countries are not yet up the main stream neo-liberal model of attracting investment. Following up from the reviews, UNCTAD publishes a "Blue Books on Best Practices in Investment Promotion and Facilitation" which focus on "strengthening the country´s investment climate".[17] UNCTAD also supports the World Association of Investment Promotion Agencies, and international discussion forums where business strategies and business needs of investors, to be accommodated by host countries, are being discussed, such as the World Investment Forum (18-22 April 2008) at the UNCTAD XII in Accra (20-25 April 2008).

None the less, UNCTAD sometimes publishes more critical documents such as "Economic development in Africa – Rethinking the role of foreign direct investment", in which it argues that although African countries have implemented all (neo-liberal) policies as advised, investment has not come. Overall, UNCTAD concluded that attracting FDI is not the same thing as development

[14] http://www.fias.net/ifcext/fias.nsf/Content/AboutFIAS
[15] "FIAS is managed by the International Finance Corporation (IFC) and supported by the Multilateral Investment Guarantee Agency (MIGA) and the World Bank (IBRD)" according to its website <http://www.fias.net/ifcext/fias.nsf/Content/AboutFIAS>
[16] For more information see: <http://www.ifc.org/ifcext/africa.nsf/Content/PEPAFRICA>
[17] UNCTAD, Blue Book on Best Practice in Investment Promotion and Facilitation: Zambia, March 2007: quote on < http://www.unctad.org/Templates/Webflyer.asp?intItemID=1397&docID=8183> (downloaded on 20 October 2008)

and that the higher efficiency of foreign companies cannot compensate for the failures of the state.[18]

*** UNIDO** implements investment policy reviews of different countries, and supports for investment promotion agencies in developing countries to attract industrial and technological FDI, as well as South- South investment.

** The **Cotonou Agreement** between the EU and African Caribbean and Pacific (ACP) countries that includes an investment promotion programme and a chapter dedicated to the support of investment and private sector development, including instruments to implement regulations for a “predictable and secure investment climate”.

* A major international institution that promotes foreign direct investment in developing countries is the **Organisation for Economic Cooperation and Development (OECD),** the think thank of the rich countries and now including South Korea and Mexico. Within the “OECD Initiative on Investment for Development” the OECD has a whole range of different instruments to increase FDI in developing countries in the neo-liberal way and in the interest of the transnational corporations based in the OECD. However, the OECD claims to base its activities on the Monterrey Consensus at the UN Conference on Financing for Development. Very little monitoring and intervention by civil society takes place on these OECD investment promotion mechanisms. Some of the most important OECD instruments are:

> ** The **OECD Declaration on International Investment and Multinational Enterprises**, which is being promoted to developing countries to sign up in order to attract more FDI. It contains 4 elements which the signatories voluntary commit to implement: (1) the national treatment principle whereby foreign investors are treated no less favourable than domestic enterprises, (2) avoiding or minimising the imposition of conflicting requirements on multinational enterprises; (3) incentives and disincentives for international investment need to be transparent and take all foreign investors’ interests into account; (4) Guidelines for Multinational Enterprises which include recommendations how investing multinationals should behave responsibly.
>
> ** the **OECD Policy Framework On Investment (PFI)** is a document that supports a new method and technique to reform the investment policies of developing countries. The document is an instrument of assessment by which developing countries themselves have to evaluate their investment policies and regulations through answering a number of questions raised by the PFI document that also provides the answers. During special workshops in developing countries or regions, discussions are organized on assessments made by developing countries to evaluate whether their own policies and regulations are in line with the answers proposed in the PFI. As a result, participating developing countries feel the need to change their investment policies and laws towards foreign investors.

[18] UNCTAD, Economic development in Africa – Rethinking the role of foreign direct investment , 2005, p. 82.

**Box: The Policy Framework for Investment**

"The *Policy Framework for Investment* is intended to assist governments to create an environment that attracts domestic and foreign investment, taking into account the broader interests of the communities in which investors operate. The *Framework* helps countries to develop a sound investment environment by fostering an informed process of policy formulation and implementation across government agencies. Based on best practices drawn from OECD and non-OECD experiences, it proposes a set of practical policy considerations in ten inter-related areas that, beyond stable macroeconomic conditions, contribute to such an investment environment.

Governments can consider these policy considerations in country self-evaluation and for reform implementation, in regional co-operation and peer reviews and in multilateral discussions.

A checklist of questions in each of the following ten policy areas is included in the Framework:

*i)* investment policy;
*ii)* investment promotion and facilitation;
*iii)* trade policy;
*iv)* competition policy;
*v)* tax policy;
*vi)* corporate governance;
*vii)* promoting responsible business conduct;
*viii)* human resource development;
*ix)* infrastructure and financial sector development; and
*x)* public governance.

The *Framework* also provides explanatory background material on these various issues."

*Quote from: OECD, Promoting Private Investment for Development - the role of ODA (DAC Guidelines and Reference Series), OECD, 2006, p. 14.*

The PFI has been criticized by NGOs for, amongst others, being too much foreign investment oriented rather than promoting domestic investment, and for being very imbalanced regarding the rights and benefits for investors compared to the weak rights and guarantees for governments and the population of the host countries.

** the **OECD Principles for Private Sector Participation in Infrastructure**[19] define and assesses how governments should work with private sector partners and foreign investors to finance and operate infrastructure projects in areas such as transport, water and power supply.

[19] www.oecd.org/daf/investment/ppp

** The **OECD Investment Policy Reviews of particular countries**[20] provide assessments and advice on investment policies, measures and laws that hamper or benefit (foreign) investors.

** The **OECD Global Forum on International Investment** is an annual international conference where ways to attract foreign direct investment by developing countries are being discussed within the mainstream neo-liberal framework.

** The OECD's Development Co-operation Directorate (DCD-DAC) is active about the **role of ODA to promote foreign investment**, mainly through the "DAC's policy guidance for donors on using ODA to promote private investment for development"[21] and a set of "Policy lessons on the role of ODA in mobilising private investment" which was developed jointly by the DAC and the OECD Investment Committee.

** The **NEPAD-OECD Africa Investment Initiative**[22] aims to promote the capacity in Africa to reform investment policies and improve the so-called investment climate in African countries so as to "mobilize private investment for poverty reduction, job creation, and sustainable development in Africa".[23] In practice, the Policy Framework for Investment (PFI) and other instruments are used as a "self diagnostic tool" to identify obstacles to investment and priorities for reform and to help prepare and implement NEPAD regarding investment issues (peer review mechanisms, developing an action plan).

* The **Investment Climate Facility for Africa** (**ICF)**, also called the NEPAD Investment Climate Facility, is a public private partnership that started in 2006 to encourage private investment, intra Africa trade and entrepreneurship in Africa and is seen to provide "the private sector, G8 countries, and donor agencies with a practical opportunity for reducing barriers to investment in Africa". Targeting rules and regulations that impede (foreign) investors is a major focus to achieve the aim of increased FDI, portfolio inflows and domestic investment. The ICF does not support companies or commercial projects, but funds activities like include: legislative review and reform; research and analysis; capacity building of institutions such as land registries and commercial courts; and facilitation of better public private dialogue. The ICF has a target budget of $110 Million for its first three-year phase and has already secured funding from amongst others Anglo American and Unilever –whose former CEOs sit on the Board of Trustees-, Shell and SAB Miller (S Africa), as well as some donor agencies.

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[20] For a full list of countries and more information see: <http://www.oecd.org/document/40/0,3343,en_2649_34893_1933032_1_1_1_1,00.html>
[21] Published in "Promoting Private Investment for Development: the Role of ODA", 2006, <http://www.oecd.org/dataoecd/23/40/36566902.pdf>
[22] For more information on the NEPAD-OECD Africa Investment Initiative, see <http://www.oecd.org/document/51/0,2340,en_2649_34893_36167091_1_1_1_1,00.html>.
[23] OECD, Investment Newsletter, February 2007, Issue 3, p. 4.

## Direct support to foreign investors by investment promotion mechanisms of the North

In order to promote foreign investment in developing countries, donors and financial institutions have developed mechanisms to directly support foreign investors and to increase dialogue and cooperation between governments and investors, often excluding other stakeholders.

Some of these direct FDI support mechanisms are well-known such as the World Bank's risk mitigation systems e.g.

* the **Multilateral Investment Guarantee Agency (MIGA)** aims at reducing risks of foreign investors in developing countries by amongst others insuring investors against political or non-commercial risks such as war or civil disturbance, and advising governments on attracting investment.[24]
* the **International Finance corporation (IFC)** [25] according to its own words, finances private sector investments in the developing world, mobilizes capital in the international financial markets, helps developing countries improve social and environmental sustainability, and provides technical assistance and advice to governments and businesses.

Less known direct investment support are:
* The **Export Credit Agencies** and Investment Insurance Agencies, commonly known as ECAs, provide loans, guarantees, credits and insurance backed by OECD country governments to their companies exporting, investing and implementing projects in (risky) developing countries.[26]

* **Pro€invest** is a programme within the context of the Cotonou agreement. Pro€Invest aims to promote investment and technology flows to enterprises operating within key sectors in the ACP countries States, build capacity of intermediary organisations and professional associations, and to develop inter-enterprise partnerships. It has a budget of 110 million Euro over a period of 7 years, financed by the European Development Fund.

**Some of the least known investment promotion mechanisms include:**

* The **MENA-OECD Good Governance and Investment for Development Initiative**, launched includes diverse initiatives to promote investment in the Middle East and North Africa (MENA) region.[27]

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[24] http://www.miga.org/: research based on MIGA's own information..
[25] For more information see: <http://www.ifc.org/about>

[26] See ECa-Watch: ; http://www.eca-watch.org/eca/ecas_explained.html :+ According to Wikipedia without sources to verify: ECAs currently finance or underwrite about $430 billion of business activity abroad - about $55 billion of which goes towards project finance in developing countries - and provide $14 billion of insurance for new foreign direct investment, dwarfing all other official sources combined (such as the World Bank and Regional Development Banks, bilateral and multilateral aid, etc.). As a result of the claims against developing countries that have resulted from ECA transactions, ECAs hold over 25% of these developing countries' US$2.2 trillion debt. Sadly, these data are unreliable in the absence of source, definition, or date < http://en.wikipedia.org/wiki/Export_Credit_Agencies>.

[27] http://www.oecd.org/document/56/0,3343,en_2649_34893_39688120_1_1_1_1,00.html

* The **EU-SADC Investment Promotion Programme** (ESIPP) includes so-called capacity building which consists among others in initiating policy dialogue between the private sector and local authorities, key sector support which covers the organisation of business to business meetings, and direct project support through conducting surveys to identify key growth sectors to attrack FDI.

## How developing countries have reformed of their investment policies and practices

Many of the above mentioned donor driven neo-liberal investment promotion mechanisms and their advice have resulted in developing countries adopting national investment policies, measures, regulations and laws that are fully benefiting foreign investors. This process has included the privatisation of many public services and the buying up of privatised services by foreign investors, which has resulted in an important increase in the figures about FDI flowing to developing countries. Most developing countries have abandoned investment policies through which they select investors and imposed conditions on investors with the aim to benefit the local economy. They have unilaterally implemented investment law reforms which would in the past only be part of bilateral investment agreements with particular host countries (see below: BITs).

Given that international financial institutions and the donor community have stressed how important foreign investment is for development and economic growth in developing countries, and given the lack of aid, many developing countries have become desperate to receive foreign investment which they have made key to their economic strategy. Since investors are only interested in countries and sectors in which they can make profit, developing countries are competing to attract foreign investment and introducing ever better conditions for foreign investors such as:

- tax holidays,
- tariff exemptions on imports or exports,
- free transfer of capital and free repatriation of profits,
- deregulation of interest rates and foreign exchange rates,
- building (free) infrastructure for investors and sometimes even the factories.

## The shortcomings of the investment promotion mechanisms

The investment promotion mechanisms have a very limited remit, namely to protect foreign direct investment. It has made developing countries reforming their investment laws and abandoning regulations which might be intended to protect people, workers and the environment from the negative impacts of foreign investment. The competition to attract investment –which might never come - is so fierce that some developing countries are in practice not implementing their own labour and environmental laws. One of the reasons is that civil society, communities, workers and other stakeholders affected by foreign investments are hardly involved in any of the discussions about investment policies or the above mentioned mechanisms. And even if they do, their warnings and case studies about the negative effects of FDI are very often ignored. However, at the four-annual UNCTAD conference in April 2008 (UNCTAD XII, in Accra) there was more recognition that rights and obligations of investors need to be more balanced and that one also needs to look at the negative impact of FDI.

One of the major gaps in the current investment promotion mechanisms is the lack of proper criteria to evaluate the effect of those mechanisms and make a cost-benefit analysis of the promotion mechanisms itself as well as the foreign investment entering the country based on advise given - which relates to discussion on effectiveness of aid. There are no clear criteria being designed nor evaluation mechanisms set up to assess concretely whether FDI results in less poverty, better wages/income and working conditions for workers and employees, or positive effects on communities and the environment. For instance, the ICF sees itself as a means to achieve the millennium goals and states that it will measure its success according to the following core indicators:

1. Sustained increase in economic growth (GDP)
2. Increase in FDI and portfolio inflows
3. Increase in gross fixed capital investments
4. Increase in domestic investments and African Diaspora investment (gross fixed capital)
5. Increase in new businesses registered
6. Increased private sector employment
7. Ease of doing business - cost and time associated with compliance

The ICF does not have criteria to assess the direct impact on people, poverty eradication or environmental degradation. Even criteria number 6, assessing private sector employment, does not look whether workers are getting decent wages and working conditions, which are important criteria giving the raising figures of working poor.
As a result of this gap in all investment promotion mechanisms, most governments have not set up mechanisms to evaluate the real effect of FDI on their people and societies, nor made the costs-benefit analysis. Their measures to attract investment are still very blunt and civil society or grass roots organisations who are struggling against negative effects are getting little ear, let alone support from their authorities or from home and donor countries.

## IV Binding Obligations To Liberalise Investment And Capital

The arguments to implement the neo-liberal model of investment promotion have not only been restricted to adoption of unilateral reforms in (developing) countries and direct support for investors. In order to provide investors with the security that governmental measures would not change or at least not easily, and that restrictions on foreign investors would not be re-introduced, it was seen necessary to adopt bilateral, regional or international treaties that would guarantee investors' rights. Some foreign investors are financial service providers and they have been included in free trade agreements such as GATS and FTAs (see below) because in order to 'trade' or sell a financial products in another country, it is often necessary to be established in a country (e.g. having a bank branch). In addition, removing restrictions of capital have been secured through special agreements as well as through inclusion of clauses to that extent in trade and investment agreements. Such agreements have not only been signed by developing countries but by developed countries as well. However, these investment and trade agreements were negotiated without ensuring that the necessary (international) (financial) regulation and supervision was in place. The above described investment promotion mechanisms made it possible that countries accepted to sign binding agreements to liberalise investment, capital and trade, as an indication to foreign investors that they were willing to keep their regulatory framework stable and according to internationally accepted principles such as non-discrimination. The current crisis indicates how imbalanced that resulting trade, investment and capital regime is and how people's interests have been left unprotected against those from all kind of investors and even speculators.

## The OECD Code of Liberalisation of Capital Movements

OECD members are obliged through the OECD Code of Liberalisation of Capital Movements to liberalise capital flows related to direct investment (FDI), securities (includes portfolio investment), services, loans, insurance, foreign exchange, payments for imports and exports, and personal capital movements. This agreement has plaid a very important role in liberalizing capital flows but also to spreading of financial risks across the border. According to some analysts, the fact that South Korea had to adhere to the Code when it became OECD member has contributed to the Asian crisis in 1997-1998.

Although the code is legally binding for OECD members it is not a treaty under international law and therefore not sanctionable under international law but only subject to peer review, which gives OECD members some leeway in implementing the code. This contrasts with binding agreements signed with developing countries such as BITS, GATS and FTAs as described below.

## Bilateral investment agreements (BITS) provide international legal protection to foreign investors

BITS aim to protect foreign investment and are therefore claimed to attract foreign investment especially through its rules on expropriation, non-discrimination, fair treatment and transfer of capital are important (see box for the main BIT rules). The resulting disciplining and restricting of some regulations and governmental measures are considered to provide for the stable and predictable regulatory environment investors want. This has resulted in an important imbalance between the rights and guarantees provided to foreign investors on the one hand, and the lack of obligations, duties or corporate social responsibility mechanisms on the other hand. People negatively affected by foreign investors mining and extractives activities do not receive international protection through BITs. Worse, it prevents governments to introduce some progressive legislation such as Black economic empowerment laws in South Africa because they are against the non-discrimination rule of BITs.

It is to be noted that there are no BITs between industrialised countries.

**Box: The most common rules covered by BITs**

- **A broad definition of investment**: not only including foreign direct investment but also portfolio investment, property, shares and bonds, intellectual property rights, licences , concessions and "rights to prospect, explore, extract and win natural resources"[28]. The Netherlands – South Africa BIT contains this broad definition.

- **Non-discrimination principles**: once a foreign investor is operating in a country, governments cannot give that investor any treatment "less favourable" than that given to domestic investors ("**national treatment**" principle) and other foreign investors ("**Most favoured Nation"** clause or MFN).

- **Fair treatment**: host governments are required to give foreign investors fair and equitable treatment, as well as full protection and security. This gets a very broad interpretation and is an important cause for disputes that need to be settled.

- **Freedom of capital movements**: investors are guaranteed that they can freely transfer payments related to, or in connection with, their investments. This includes repatriation of profits without conditions. Sometimes BITs include rules for an exception on a temporary basis in the case of balance-of-payment (BoP) problems. This exception is not included in the Netherlands-South Africa BIT and the Netherlands – Zambia.

- **Expropriation rules and compensation**: a state may not nationalise or expropriate the property of a foreign investor except for a public purpose, in a non-discriminatory manner, in accordance with due process of law and upon payment of compensation. Increasingly, measures considered equivalent to expropriation are explicitly or implicitly included. This means in practice that new governmental laws that prohibit products or operations from which foreign investors intend to make profits, can be sued by foreign investors, even if the products or operations are have damaging effects on people or the environment.

- **Investor-to-state dispute settlement and state-to-state dispute settlement**: disputes about non-compliance with BIT rules between a state and foreign investors, or between 2 states which have signed a BIT, can be resolved within a small number of agreed international dispute-settlement mechanisms such as the International Centre for Settlement of Investment Disputes (ICSID). This includes the right for foreign investors to sue host governments outside the country, but not vice versa.

*Source: compilation by M. Vander Stichele*

[28] For the full text of the Netherlands – South Africa BIT, see <http://www.minez.nl/dsc?c=getobject&s=obj&objectid=147363&!dsname=EZInternet&isapidir=/gvisapi/>

## Double tax treaties ensure investors are not paying too many taxes

Industrialised and developing countries have signed among themselves and between themselves more than 2000 double tax treaties. Such treaties ensure that foreign investors are not taxed both by the host and the home country.

## Trade Related Investment Measures (TRIMS) agreement prohibits conditions on foreign investors

The TRIMs agreement is part of the current WTO agreements on trade in goods. It and prohibits regulations and measures through which (developing) countries have attempted to obtain economic benefits from foreign investors. However, these measures have been seen by foreign investors as undermining their profitability. Northern governments have consequently successfully argued that the following measures are restricting the imports and exports of foreign investors and increasing inefficiency:

- **Local content requirements**: obligation to purchase or use products of host country origin;
- **Import restrictions**: limitation on the use of imported products, depending of the amount of (local) products that a foreign investing company exports;
- **Foreign exchange limitations**: access by an investor to foreign exchange is limited to the amount of foreign exchange inflow generated by the investor;
- **Export restrictions**: exports by an investor are limited in volume or in value, according to its domestic production or because they belong to a certain category.

However, these measures might undermine the industrialisation and monetary policies of developing countries. The TRIMS rules also thwart solutions to be found in the current increasing discussions that there should be better 'linkages' between foreign investors and local business.

## GATS liberalises and protects financial services providers and their products

The General Agreement on Trade in Services (GATS) is part of the current WTO agreements. It covers all services sectors such as distribution services (supermarkets), tourism, privatised public services such as energy, health or water services, as well as "services incidental to mining" including prospecting services and drilling services. GATS intends to liberalise all forms what it defines as trade in services i.e. cross-border movement of services, investment or establishment by services providers, the temporary presence of managers and specialists in services. Since the main form of trade in services is in practice through investment or establishment of foreign investment providers, the GATS is mainly an investment agreement in the services sector.

Liberalisation of services under GATS is often presented to help attract foreign investment. Since the GATS provides for clear rules to which governments should abide and makes the committed liberalisation very difficult to reverse, GATS provides transparency and long term security which foreign investors need. Proponents of GATS argue that foreign services investors will bring new capital and skills which might not be present in developing countries. This should improvement of the service sector, more efficiency and economic growth.

What is often forgotten is that the GATS agreement restricts governments room of manoeuvre to regulate, protects the interests of foreign service companies rather than democratic needs of other stakeholders, and reflects the huge lobbying by big (financial) service companies that are in search of more profits and want to enter new markets in an unrestricted way. Because there are no tariffs in trade in services, regulations are seen as barriers to trade to be removed. This can be explained by looking at how the financial services are being dealt with in GATS.

**** Liberalisation of risky and unstable financial services**

WTO members liberalise the entry of financial services providers and financial services when they make specific 'commitments' to that extend in special lists annexed to the GATS agreement. The financial services sub-sectors they can liberalise include trading in securities, exchange rate swaps and derivatives as well as for instance private pension management and trust services (often used for tax evasion).

**** Deregulation rather than securing proper regulation**

Once WTO members have made commitments in financial services, they have to be subject to some particular GATS rules that restrict how governments can regulate and deal with foreign financial service companies, except if they make written exemptions in their GATS commitments lists. The GATS rule on domestic regulation on qualification requirements, standards and licensing should not be unnecessary barriers to trade. GATS rules also include the national treatment principle by which foreing investors should not be treated less equal than national investors. Also, GATS 'market access' rule prohibits restrictions for instance on the number or value of financial services operations and restrictions on foreign ownership of banks, insurance companies etc. The latter means that 100% foreign ownership and mergers & aquistions are to be allowed. This leads to a financial industry world wide that becomes too big to fail since there is no proper international financial supervision or competition authorities.

**** Attacking prudential regulations**

In addition, during the secret negotiations on further liberalisation of (financial) services which are now part of the Doha Round negotiations at the WTO, but already started in 2000, industrialised countries are requesting that developing countries remove financial prudential regulations. For instance the EU had requested in 2002 to remove host country requirements to keep money reserves in the host country. This was based on demands from the financial industry to be able to move around financial reserves to make the most profit out of it. This contrasts with the many calls to increase capital reserves at banks since the financial crisis started in 2007. There are many other prudential regulations which were introduced after the Asian crisis which the EU requested in 2002 to be removed. Since the Doha Round is not finalised, no decisions have yet be taken to remove these prudential measures, which is to the benefit of developing countries in the current financial crisis.

Nevertheless, the GATS Annex on financial services (Art. 2) specifies that WTO members can take measures for prudential reasons such as protecting investors and depositors, and ensuring the stability and integrity of the financial system even if such measures do not conform with GATS rules. Some WTO want to restrict such prudential measures to the international standards as described in chapter 1 but this was opposed by developing countries. However, the GATS Annex can be undermined since it also stipulates that prudential measures should not be abused to circumvent GATS rules nor liberalisation commitments made under GATS.

**** Uncontrolled liberalisation**

The **GATS Understanding on Commitments in Financial Services** is a model of broad and quick liberalisation of different financial sub-sectors that is being implemented by mostly industrialised countries. More advanced developing countries have been asked to also liberalise according to this model in the Doha Round. It results in uncontrolled liberalisation of financial service providers and financial services by requiring among others:

- to remove any obstacle to foreign financial services that remains even if all the provisions of the GATS agreement have been respected
- to permit that foreign financial service suppliers can offer **any new financial service**

**** GATS liberalises capital flows**

GATS rules prohibit restrictions on international payments for current transactions related to committed (financial) services (Art. XI) except in case of balance of payment problems (Art. XII) subject to a lot of conditions. In addition, when a country has made commitments in particular (financial) sectors regarding their cross border movement and establishment, it has to allow the cross-border movement of capital which is which is essential to those committed services. In the financial sector, this can result in movements of huge amount of capital in or out of the country but which cannot be controlled by the national authorities.

**** GATS undermines undemocratic processes and meeting the needs of societies**

The reason why the GATS agreement and GATS negotiations are so imbalanced to the interests of the (financial) services industry is because they are heavily influenced by the (financial) services lobby. This lobby is behind the proposal during the Doha Round the GATS negotiations on domestic regulation to include a rule whereby (foreign)service suppliers should be allowed to give comments before legislation is adopted in parliament. However, foreign companies already have much influence on legislation in host countries. The new GATS rules would not provide guarantees, regulation or means to protect that other stakeholders in the host country such as customers, workers etc.

There current financial crisis indicates that a huge rethinking is needed about how GATS deals with financial crisis and whether it would not be better to take financial services out of the GATS. The international financial industry operating in developing countries, backed by the GATS, has proved not to provide services to poor or to remote rural areas, sometimes to resort to too high fees, to resist credit to the domestic industry and farmers, and to invest less than 1% of the billions of assets in its management in sustainable projects or companies. In general, they have used liberalisation to take more risks and increase the spreading of speculative products, resulting in high volatility and financial instability. The GATS underscored the fierce competition between the big financial conglomerates, making them to take more risks and urging them to become ever larger companies in search of economies of scale and more profits. This fierce competition also increased the pressure on regulators and supervisors not to impose too many regulations that would undermine the financial industry of a certain country compared to the one from countries with more relaxed rules.

## The free trade agreements (FTAs) result in more unrestricted capital flows and financial services

The FTAs negotiated by the US and EU with developing countries also include a chapter on services and investment. In the case of the EU's FTA negotiations with ACP countries in the Economic Partnership Agreements (EPAs) this results in GATS 'plus plus' as can be seen in the EPA signed between the EU and the Caribbean group: because of GATS art. V developing countries have to make quite some liberalisation commitments, the EPA includes elements which are not yet decided in the GATS negotiations or even elements which have been rejected in GATS negotiations, liberalisation of investment in non-services sectors is being subjected to the to the same rules as services investment, which include a hybrid mix of different GATS rules. During FTA negotiations, the financial services sector is a major target of EU to achieve liberalisation. This can be seen by the many articles on liberalisation of financial services in the FTAs the EU has signed with Chile and Mexico. The Caribbean EPA contains far reaching, sometimes modified[29], elements of the GATS Annex on financial services and the GATS Understanding on Commitments in Financial Services.

Recently, the EU tries to introduce obligations on authorities to implement standards which would guarantee stability for their financial services sectors – an attempt which the Caribbean negotiators refused. The international standards which the EU wants to include in FTAs are many of those which are described in chapter 1 and hardly negotiated by developing countries, are:

- the Basel Committee's "Core Principle for Effective Banking Supervision",
- the International Association of Insurance Supervisors' "Insurance Core Principles",
- the International Organisation of Securities Commissions' "Objectives and Principles of Securities Regulation",
- the OECD's "Agreement on exchange of information on tax matters",
- the G20 "Statement on Transparency and exchange of information for tax purposes" and
- the Financial Action Task Force's "Forty Recommendations on Money Laundering" and
- "Nine Special recommendations on Terrorist Financing".
- The Parties also take note of the "Ten Key Principles for Information Exchange" promulgated by the Finance Ministers of the G7 Nations, and will take all steps necessary to try to apply them in their bilateral contacts

[29] For instance the rule in the Caribbean EPA on introducing new financial services is somewhat more nuanced than the GATS and stipulates: Each Party shall permit a financial service supplier of the other Party to provide any new financial service of a type similar to those services that the Party permits its own financial service suppliers to provide under its domestic law in like circumstances. A Party may determine the juridical form … a decision shall be made within a reasonable time the authorisation may only be refused for prudential reasons is required

**** Worrying restrictions to control capital flows**

A very worrying aspect of the FTAs such as the Caribbean EPA is that it restricts even further the authorities' capacity to control capital flows. The rules go beyond what is being agreed in the GATS which already prohibits restrictions on all payments for **current** transactions in sectors which have been liberalised under GATS. However the Caribbean EPAs goes further to:

- prohibit restrictions on all payments for current transactions **between residents** of the signatory countries
- prohibit restrictions on the free movement of capital relating to direct investments with regard to transactions on **the capital account** of balance of payments
- to require that measures ensuring the **integrity and stability** of a Party's financial system…shall not be more burdensome than necessary to achieve their aim, and shall not discriminate against financial service suppliers of the other Party in comparison to its own like financial service suppliers.
- To limit the ways safeguard measures with regard to capital movements can be taken: only "**in exceptional circumstances**" when payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in one or more [signatory States]; and only those safeguard measures with regard to capital movements "that are **strictly necessary** may be taken" for a period not exceeding six months.

Such rules prohibit countries to have the necessary flexibility to prevent a financial crisis or to act during times of financial crisis.

# V Conclusion

International agreements to liberalise investment, capital movements and financial services were signed while there was no political will to set up international financial supervision. Also, national regulation and supervision were softened in order to keep the financial industry competitive. This has resulted in a very unbalanced financial regime that protect investors and the financial industry, and their capital movements, while no legal obligations or regulations have been built in at international level to protect other stakeholders such as workers and communities, but also customers (as some clients of failing foreign saving banks are experiencing in the current financial crisis). The complexity, the lack of democratic decision making, and the dominance of the well-resourced financial and business lobby have made these international agreements and international standards at the service of business, investors and speculators. The increasing competition as well as mergers and acquisitions supported by these international liberalisation agreements, has not only lead to risky and speculative practices that have resulted in financial instability. Also, many instabilities were created in societies such as the widening gap between rich and poor, climate change and protests by indigenous people who are losing their livelihoods because of foreign investment.

The financial crisis has finally allowed discussions about financial reforms and increased political will to implement better financial regulation and supervision at international level. The question remains how far reaching will implementation be, and whether some fundamental problems will be solved. The current economy which is based on constant growth and has led to risky behaviour to win the increasing competition : the whole society was being organised to win that global competitive battle. The following proposals provide some elements to change direction and re-orient the financial system to support society:

- Clear criteria need to be introduced for all financial activities and financial players so that financial products, financial transfers and all financial players only contribute to environmentally and socially sustainable activities, with priority to fight climate change and poverty.

- International instruments on financial regulation and supervision need to involve the UN and its member states.

- The mandate of supervisors have to be changed not only to stricter supervision to avoid any instability that affects society, but also to avoid that the richer are better serviced ("finance economy") and that poorer customers, including SMEs, are having nor, less or more expensive financial services and credit. Protection of, and servicing of, the most needy should receive priority, not in the least in the farming and agricultural sector.

- All stakeholders should have the capacity and right to voice their views and concerns. Specific laws need to be introduced to stop lobbying by the financial industry, at least their non-transparent methods and their dominant voice while other stakeholders are hardly heard.

- Prohibition of speculative products and players, including hedge funds and certainly food and commodity speculation.

- Taxation on capital flows, especially speculative flows, with increasing taxes the more speculative the nature or the circumstances of the capital transfers are (in case speculation would not be prohibited). Progressive taxation on rich individuals.

- Set up all necessary instruments to prevent that banks and other financial market participants become too big to fail, or too interconnected to fail.

- Splitting up financial conglomerates to separate again banking, insurance, securities trading and investment banking.

- Financial services is a 'public good' that needs to be in the hands or at least full control of government: no financial services providers should be listed on the stock market and rather be in full public hands with no profit or loss mandate.

- In case financial services are still left to be commercial companies, no further liberalization of financial services in GATS, FTAs etc., certainly not until a new tested financial supervision and restrictive regulation is in place at the global level.

- Closure of tax havens and finding ways how small countries are not being marginalized in an international liberalized economy in which they cannot compete (enough) and thus resort to tax evasion mechanisms to get some income. Taxing all individuals and firms that avoided taxes or gave advise thereto.