Changing the Investment Policy Menu

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Abstract

While there is indeed a menu of options before host countries for regulating foreign investment, some of them might not be compatible with their obligations under the various international agreements signed up by them. Thus UNCTAD's Investment Policy Framework for Sustainable Development has done an excellent job in putting the focus on the interactions between national investment policymaking and international investment agreements. But when it comes to policy coherence between investment policies and other policy areas, the lack of integration of financial stability objective in the new framework makes its agenda (of investment policymaking for "sustainable development") an incomplete one.

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Introduction

Marshalling evidence from three and a half decades of research into the positive and negative consequences of foreign direct investment (FDI) for host economies, the UNCTAD in its latest World Investment Report (WIR, 2012)[1] has come out with a new Investment Policy Framework for Sustainable Development (IPFSD).

Before free trade and the free capital flows became the dominant issues on developing countries' global integration agenda from the 1980s onwards, the fact that policies for the promotion of foreign investments should be in consonance with a country's overall development strategy was generally accepted. Investment policy is not, and should not be, made in a vacuum, since it is only one element within a coherent industrial policy, which in turn is only one element in a country's development strategy. These have also been the lessons from the experiences of the successful and not-so-successful newly industrialised countries in East and Southeast Asia and elsewhere. It is pertinent to recollect that in the 1970s when within the discussions on a New International Economic Order there was a demand from developing countries to regulate the role and influence of FDI in host countries following a series of scandals involving multinational corporations (MNCs), the idea of creating a code of conduct for transnationals to set the framework for investor obligations was also debated at the UN. Thus the crucial need for a dynamic and nuanced approach and for coherence between investment policies and policies for industrial and technology development, trade, labour market regulation, taxation environment, etc. and above all, poverty alleviation, as well as for a balance between investors' rights and obligations have been highlighted by development economists and policy analysts, including those from the UNCTAD, for decades now.

However, from the eighties, national and international norms for regulating foreign investment flows have seen an overall drift towards a regime that typically ensures legal protection for cross-border investments, rather than ensuring that they contribute to the

development of host country economies. This led to a hands-off approach to investment policy making in several countries, while the overemphasis on investor “protection” and competition for FDI between countries typically meant that investor obligations were ignored. Even as the UN has continued to set voluntary codes of behaviour for the business sector,[2] increasing competition among developing countries to play host to FDI led to an increasing need for bilateral investment treaties (BITs) to ensure “protection” to foreign investors.

Apart from a multitude of bilateral investment treaties (BITs), countries have been entering into a complex web of bilateral and regional economic agreements going by the name of Free Trade Agreements (FTAs), Economic Partnership Agreements (EPAs), Comprehensive Economic Cooperation Agreements (CECAs), etc. A prominent feature of many of these is the inclusion of investment provisions as an ‘article’ or ‘chapter’, and sometimes as a separate agreement on investment, involving profound public policy commitments. These provisions then set the legally binding regulatory framework for foreign investments in the signatory countries.

Thus since the 1990s developing country governments trying to regulate FDI have been constrained by the fact that domestic laws can come into conflict with obligations under international agreements and expose host countries to costly investment disputes from private foreign investors – as investment policy analysts have been warning for years now. However, these facts have been largely ignored in mainstream academic and policy analyses of investment policies. It is probably the first time that an international organisation has come out pointedly stating that while there is indeed a menu of options before host countries for regulating foreign investment, some of them might not be compatible with their obligations under the various international agreements signed up by them.

IPFSD: Integrating Old Concerns with Recent Ones

Research on several country experiences has clearly established that only strategic use of FDI-related policy measures can ensure that foreign invested companies will establish substantial linkages with the domestic economy and that foreign-invested sectors do not become enclaves (often with exploitative labour relations and severe environmental impacts). However, the broad “scope of application” and detailed “treatment” and “protection” provisions in international investment agreements (IIAs) lead to drastic erosion of national

regulatory flexibility, and therefore the ability of developing countries to derive net benefits from foreign investments.[3] As WIR (2012) emphasises, coherence between national and international investment policies therefore becomes crucial, with a view, among others, to avoid policy discrepancies that reduce the beneficial development impacts of FDI or/and exacerbate its negative fallouts on the host economy and lead to the additional burden of costly investor-State disputes.

It is crucial to strengthen the "sustainable development" dimension of investment policies given that many other "investment stakeholders" are putting forward revised guidelines and frameworks that will shape the future of investment policymaking.[4] The Report points out that there is a window of opportunity to do so given that since the 2008 global meltdown, governments have become decidedly less reluctant to regulate and steer the economy, reflecting a renewed realism about the economic and social costs of unregulated market forces. Making strategic investment policy choices assumes ever more significance for developing and transition countries given that they received more than half of global FDI flows in 2010 and 2011. At the same time, developing countries are increasingly large investors themselves, with their share in world FDI outflows approaching 30 per cent. In the face of competition from increasingly active developing-country investors, there is waning support for open investment climates in developed market economies. Thus the WIR points out that the stakes in having transparent investment regimes have become more crucial for developing countries.

But transparent investment policy frameworks are by no means synonymous with fully liberalised investment regimes with no regulatory space. Both in the case of developed or developing countries, the interests of outward investors need to be contextualised by the home countries within a strategic national development framework.

Here it is important to highlight a related risk facing developing countries, which is not observed in the Report. In the context of increasing outward investments by developing country firms, it has been seen that large capital from the developed and developing economies behave similarly and seek increased market access for exports and FDI. The emergence of developing countries' export interests and increased number of outward investors from developing countries in particular sectors have meant that these interests come to dominate the negotiating position of their governments in bilateral and regional trade agreements containing investment disciplines. But benefits from an agreement – whether

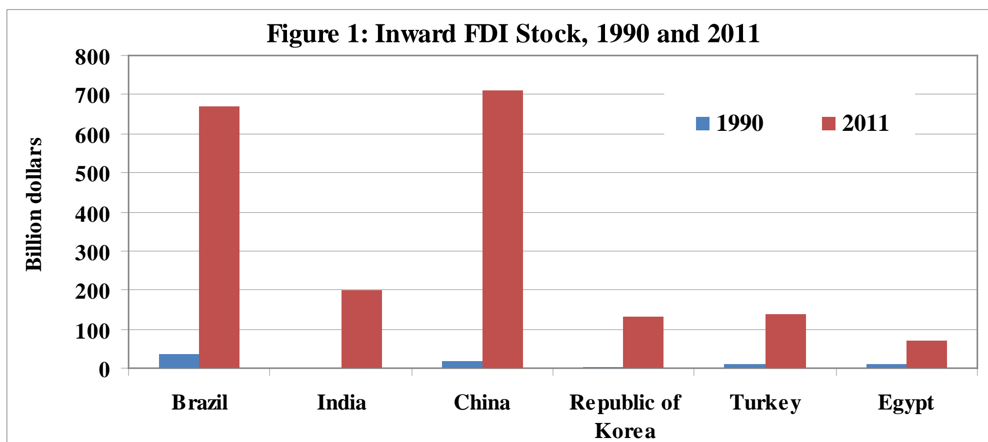
North-South or South-South – have to consider its impact on all sections of the society and the externalities of investments. Further, the sustainability of outward investments (and exports) itself depends crucially on developing and maintaining the dynamic competitiveness of domestic entrepreneurs. The latter calls for strategic industrial and technological development policies, which are incompatible with fully liberalised FDI regimes.

Against this backdrop, the Investment Policy Framework for Sustainable Development (IPFSD) is a major effort from the UNCTAD to integrate the post-crisis global consensus on "sustainable development" and investor responsibilities in these areas, into mainstream investment policymaking. While UNCTAD has previously also pointed to the need for integrating investment policy into a "sustainable development" strategy at the national level, what is new is the focus on forging an investment framework at the international level through a systemic approach that examines the combined universe of national policies and international investment agreeements and their crucial interactions.

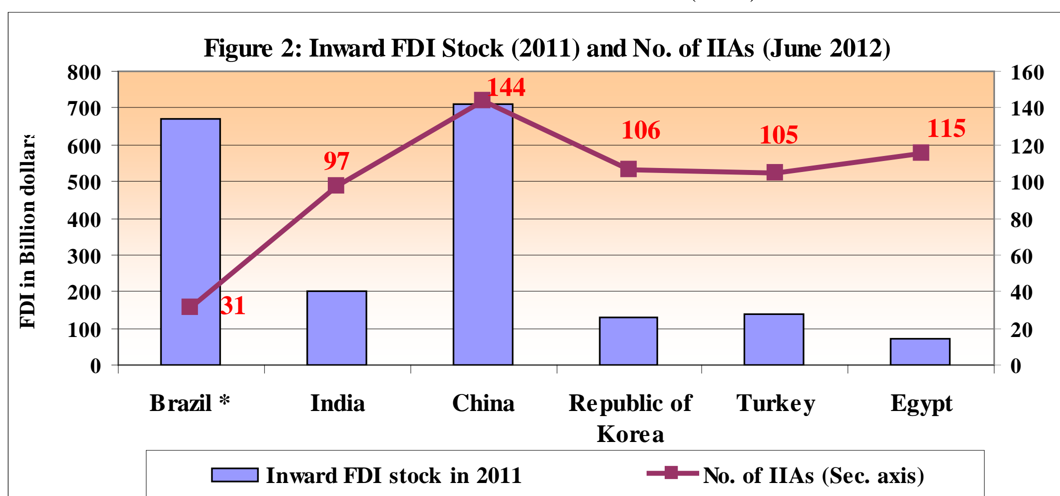
The IIA Universe and the Challenge of the ISDS Mechanism

At the end of 2011, the IIA universe consisted of 3,164 agreements, which included 2,833 bilateral investment treaties (BITs) and 331 "other IIAs". Overlapping and increasingly complex IIAs have been getting concluded despite the fact that there is no mono-causal link between the conclusion of an IIA and FDI inflows into a country as WIR (2012) categorically states. But the fact that Brazil – one of the BRICs that has accumulated significant stock of FDI and remained by far the largest FDI recipient in Latin America – has never ratified a single bilateral investment treaty (BIT)[5] is not something that is highlighted. This is a significant fact that counters the oversold neoliberal story that developing country governments need to offer treaty protection to foreign investors for attracting FDI into their economies.

The WIR data on IIAs includes not only agreements that are signed and have entered into force, but also agreements where negotiations are only concluded (as of mid-June 2012). Thus in the case of Brazil it shows a total of 14 BITs, although none of these have entered into force.[6] On the other side of the IIA universe are China (128) followed by Egypt (100), South Korea (90), Turkey (84) and India (83), which have the largest number of BITs signed by developing countries outside the EU. The charts below reveal the lack of direct correlation between the number of IIAs and the volume of foreign investment inflows.



Source: Based on data from WIR (2012)



Note: The 'No. of IIAs' given in Chart 2 differ from the numbers referred to in the text because the chart gives the combined strength of BITs and "other IIAs" concluded by the represented countries.
Source: Based on data from WIR (2012)

In almost all IIAs and trade agreements containing substantive disciplines on investment, the investor-State dispute settlement (ISDS) – enshrined as the main option through which foreign investors can pursue investment disputes against States – is a core element of investment protection. Foreign investors have been increasingly using this option to make frivolous claims and seeking huge compensation for damage to their investment by challenging legitimate policies taken by a sovereign State as breach of some treaty commitment. According to the WIR, the number of known ISDS cases filed under IIAs grew by at least 46 in 2011, which constitutes the highest number of known treaty-based disputes ever filed within a year. Given the expansion of outward FDI by developing countries, there is also growing risk that developed countries themselves – which have traditionally

concluded IIAs with high levels of investor protection to shield their own investors abroad – risk being confronted with ISDS rulings as host countries.[7]

The recent multiplication of investor-State disputes, the expansive or contradictory interpretations of key IIA provisions by arbitration tribunals leading to unpredictability of tribunal decisions, the increase in financial amounts involved, the challenges to public policy acts and some shortcomings of international arbitration itself have raised concerns on the part of developed and developing countries, and of academia and civil society about the usefulness and legitimacy of the ISDS mechanism.[8]

While even the idea of excluding ISDS provision from an investment agreement would have been considered too radical, there is an emerging consensus that even existing treaties will need to be reviewed to correct the imbalance. This owes a lot to the exemplary stance taken by a number of countries, both developing and developed. Following major concerns and recent experience with ISDS cases involving costly compensation awards, Bolivia and Ecuador had already denounced the ICSID in 2007 and 2009 respectively. In January 2012, Venezuela also notified its intention to withdraw from the ICSID Convention. Bolivia also denounced its BIT with the United States in June 2011, thereby terminating the ISDS mechanism. Meanwhile, the Australian Government issued a trade policy statement in April 2011 announcing that it would stop including ISDS clauses in its future IIAs. The WIR reveals that the Australian government took this decision because it believed that ISDS gives foreign businesses greater legal rights than domestic businesses[9] and also constrains the government's public policymaking ability (e.g. the adoption and implementation of social, environmental and economic laws). Indeed, there is no ISDS mechanism in Australia's FTAs with New Zealand, Malaysia and the US. Australia has also exempted itself from the ISDS mechanism in the proposed Trans-Pacific Partnership (TPP) trade agreement involving the US, New Zealand, Brunei Darussalam, Chile, Malaysia, Peru and Singapore.[10] While the US is still insisting on an investment regime that is based on the existing template, in an open letter to negotiators of the trans-pacific partnership, US state legislators have recently urged for rejection of investor-state dispute settlement in the TPP Agreement. India has also made it known that it might exclude the controversial clause in future treaties.[11] Yet another policy option highlighted by the WIR is the renegotiation of investment contracts by Ecuador, Argentina, etc. to make them more balanced.

IPFSD's Conflicting Positions on "Sustainable Development"

It is in the backdrop of these encouraging developments in the international/national investment policymaking arenas that the UNCTAD puts forth the IPFSD, attempting to incorporate a broader development policy agenda. The IPFSD consists of: (i) Core Principles for investment policymaking, (ii) guidelines for national investment policies, and (iii) options for the design and use of IIAs. The new framework considers the urgent need to strengthen the development dimension of IIAs, manage their complexity, and balance the rights and obligations of States and investors.

There are a number of noteworthy features of the IPFSD. For instance, the Framework warns against lowering environmental, labour and other regulatory standards as a means to attract investment in a "regulatory race to the bottom". Investment incentives should be granted on the basis of a set of pre-determined, objective and transparent criteria. Additional requirements should be attached for granting investment incentives over and above pre-defined incentives, which, in the first place, must be shown to make an exceptional contribution to development objectives, in order to avoid a "race to the top of incentives". Additionally, where sub-national entities have the discretion to grant incentives over and above the pre-defined limits, their investment incentives should be coordinated by a central investment authority to avoid investors "shopping around".[12]

However, when it comes to providing options in the formulation of treaty language for international investment policymaking, the IPFSD is (strangely?) ambiguous. Policy options are organised from most investor-friendly (i.e. highest level of liberalisation) to those providing fewer investor rights and more flexibility to the prospective host State. Thus, at one level, it advises that given their adverse implications for "sustainable development", controversial provisions such as unqualified national treatment, fair and equitable treatment (FET) clauses, free transfer of capital, and umbrella clauses should be avoided or only incorporated with explicit qualifications in the treaty. At the same time, under each of these treatment/protection/general provisions, the Framework retains the unqualified, open-ended treaty formulations known to be the least development-friendly.

Standards of Treatment of Investment

For instance, by the Framework's own admission, almost all claims brought to date by investors against States have included an allegation of the breach of the FET – an all-encompassing standard of treatment, wherein the notions of "fairness" and "equity" have been open to subjective interpretations. Through an unqualified promise to treat investors "fairly and equitably", a country risks posing limits on its policy space to pursue development objectives, raising its exposure to foreign investors' claims and resulting financial liabilities. Despite this, the IPFSD maintains the policy option to give unqualified commitment to treat foreign investors/investments "fairly and equitably".

Similar is the policy option suggested in the case of "pre-establishment IIAs", which grant "right to establishment". The latter means that domestic and foreign investments have to be treated alike before they are even established in the host Party. This will automatically take away host countries' right to regulate the entry of foreign investment. Pre-establishment national treatment should not be granted under an IIA even using a positive list (i.e., selective liberalisation of entry in specific activities or industries), because in changing circumstances it might be necessary for host governments to place limitations on admission and establishment of investments. Employment outcomes, indigenous technology development needs, environmental impacts, or other strategic/sustainable development concerns (including financial stability) are all factors that warrant host country flexibility for investment regulation. It would be reasonable to believe that if "market opening has to be in line with the host countries' development strategies" as the Framework advocates, it should not include binding rules on the pre-establishment phase of investments. But the Framework maintains policy options for pre-establishment IIAs, subject to restrictions on public policy grounds (the EU treaty approach) or by providing that admission of investments should be in accordance with domestic laws of the host State. However, there are a number of issues with interpreting "public policy grounds", where they are not defined appropriately. Similarly, granting rights to investors in accordance with domestic laws of the host State has the effect of binding national investment liberlisation at the levels existing at the time of treaty ratification and therefore restricts policy flexibility for meeting changing development goals. This can be problematic if national laws are already too liberal or development-unfriendly.[13]

Investment Definition, "Protection" Provisions and "Sustainable Development"

One of the significant course corrections that the IPFSD has attempted is to settle the debate on what constitutes FDI. If capital flows are to supplement domestic savings for financing the investments required for sustained development, it is important to understand what kind of investments needs to be promoted. Thus the new framework focuses investment policymaking only on direct private investment in productive assets. It excludes other capital flows, which it says should be addressed by the financial system and policies. It re-states what economic theory has always maintained – the fact that FDI is more than a flow of capital that can stimulate economic growth and is distinguishable from foreign portfolio investments that are pure financial investments, because FDI comprises a package of assets that includes long-term capital, technology, market access, skills and know-how.

Analysts have been warning for many years now that one of the serious problems in IIAs has been the broad open-ended investment definition. A broad definition typically states that "investment means every kind of assets" and covers equities, securities, loans, derivatives, sovereign debt, as well as a wide range of intangible assets. Apart from FDI, such a definition covers investments by portfolio investors, private equity, hedge funds, etc. Including portfolio and other speculative investments as well as financial assets such as sovereign debt or loans to state enterprises in the definition of investment has adverse development implications, which several analysts have been warning against.[14]

It has been widely recognised that in countries integrated with international financial markets and open capital accounts, dynamic capital account regulations are necessary to: (i) manage exchange rate volatility and avoid currency mismatches to improve macroeconomic stability; (ii) provide the policy space for independent/counter-cyclical monetary policy management (avoiding the monetary policy trilemma) and reduce the various economic and social costs of excessive foreign exchange reserve accumulation; (iii) limit speculative activity, asset price inflation and the pro-cyclical nature of capital flows leading up to increased financial fragility and crisis;[15] (iv) guide the composition of capital flows towards more long-term, less debt-creating and productive types of foreign investments and to complement fiscal policy and industrial policy for realising equitable income distribution, employment generation and sustainable industrial development objectives;[16] etc. It has also been established that the nations that deployed capital account management techniques in the years leading up to the global financial crisis were among the least hard hit during the 2008 global crisis.[17]

However, in many IIAs, the use of capital controls is not allowed at all or is allowed only as defined under the safeguard measures in each IIA – that is, only under emergency situations in case of "serious difficulties" with monetary policy, exchange rate policy, or balance of payments, and that too only temporarily. With broad investment definitions covering portfolio and other non-FDI foreign investments, sovereign debt, etc., the provision for guarantee of 'free transfer of funds' in many IIAs prevent countries from making use of different kinds of capital account regulations in order to *prevent* "serious difficulties". Thus the free capital transfer provision associated with broad investment definitions in IIAs erodes national policy making ability to regulate different forms of capital flows.

Similarly, in the case of investor definitions, if a treaty determines the nationality of a legal entity solely on the basis of the place of incorporation, this creates opportunities for "treaty shopping" or free riding by investors not originally meant to be treaty beneficiaries (as the WIR recognises). Thus broad investment and loose investor definitions will significantly erode policy sovereignty over capital account regulatory measures that are required to address issues related to financial and macroeconomic stability and sustainable development.[18] Further, because of the protection provisions related to expropriation and dispute settlement, broad definitions of investment and investors could also lead to situations where host country governments can be sued even by investors in financial assets and instruments from non-signatory countries, by deeming legitimate regulatory policies as expropriation.

It is therefore baffling that despite the lessons learned in terms of what options/measures do not work well in most circumstances,[19] especially in the presence of ISDS that exposes states to unexpected liabilities, the Framework chooses to keep the traditional open-ended investment definition that grants protection to all types of assets as an option that can be considered. Should UNCTAD downplay the severe adverse development implications of policy options such as having open-ended investment and investor definitions in IIAs? Clearly, open-ended definitions are not appropriate even from developed countries' point of view, given that this would contradict efforts at financial re-regulation even for them.[20]

IPFSD's Critical Weakness: Neglecting the financial stability imperative

This could probably be explained by a structural weakness in the IPFSD framework. While UNCTAD aims at integrating inclusive and sustainable development as core features of a new investment policy framework, one major shortcoming is the near absence of reference to

financial stability consideration, which is the fundamental cornerstone of "sustainable development". Integrating investment policies into the overall development strategy of an economy cannot but consider their compatibility with the financial stability objective. Unfortunately, it seems that the fact that financial stability is crucial for macroeconomic stability, which in turn is crucial for investment growth and development, needs reiteration, despite being proven time and again during and after financial crises.

The issue of prudential financial regulation and the inclusion of investment disciplines under IIAs cannot and should not be handled separately if a country's financial stability is to be taken care of and international financial stability as a global public good is to be achieved. The presumption that the probability of a crisis is high only among developing and emerging market economies with "poorly developed domestic financial systems" has been laid to rest with the global financial crisis that originated in the developed countries. Further, given the extent of financial entanglement, all countries with open financial sectors will be affected by the volatile functioning of unregulated financial markets elsewhere. There is an emerging consensus that all these mean that governments should have the ability to frame regulations as and when required depending on changing financial sector dynamics. But even as the global financial and economic crisis finds new expression in sovereign debt crises across the world with severe development impacts on generations of people, UNCTAD's new Framework fails to take cognisance of the post-crisis consensus on financial re-regulation.[21]

Thus while the "interconnect" between national investment policies and other policy areas such as trade, industrial policy, competition or environmental policies is established explicitly in the Framework, financial sector policies are mentioned only in passing. For instance, the IPFSD states that inclusive and sustainable development strategy requires investment policy coherence for productive capacity-building, which involves coordination with policies for human resource development, technology and know-how, infrastructure and enterprise development. But investment policy coherence for productive capacity-building calls for coherence with financial sector policies too because financial fragility which blows up in a financial crisis can completely derail a country off its development trajectory. As experiences in other countries have shown, [22] short-run macroeconomic adjustment problems triggered by a BoP or financial crisis often severely limit the policy options available for pursuing industrial growth and diversification needs and can also truncate indigenously-driven industrial development trajectories.

But the IPFSD also does not suggest the inclusion of financial stability in the preamble of IIAs as one of the explicit public policy objectives that could warrant regulatory measures on the part of the signatory host State/s. Another option would be to bring in public measures "necessary to ensure financial stability" under the general exceptions article, similar to the objectives of public order and health objectives, and make general exceptions non-justiciable or justiciable only under domestic legal processes.

By way of conclusion, it can be said that the WIR has done an excellent job in putting the focus on the interactions between national investment policymaking and international investment agreements (IIAs) and in making several noteworthy policy options for making IIAs compatible with the development needs of individual host countries. But in the context of policy coherence between investment policies and other policy areas, the inadequate attention given to integrating the financial stability objective does make its agenda (of investment policymaking for "sustainable development") an incomplete one.

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[1] UNCTAD (2012): *World Investment Report: Towards a new generation of investment policies*.
[2] These remain at the voluntary level, and include the Global Compact, a voluntary partnership between the UN, the private sector, and nongovernmental organisations (NGOs), launched by the UN in 1999 and the 'Guiding Principles on Business and Human Rights' endorsed by the UN Human Rights Council in June 2011.
[3] For more discussion, see IDEAs (2011): 'Investment Provisions in Trade Agreements: Crucial issues', IDEAs Policy Brief No. 02/2011.
[4] The OECD has announced its intention to start work on an update of its policy framework for investment. The International Chamber of Commerce (ICC) launched its contribution in the form of (revised) Guidelines for International Investment at UNCTAD's 2012 World Investment Forum. Recently, the European Union-United States Statement on Shared Principles for International Investment was released, while the United States has brought out a new model BIT.
[5] Luiz Fernando de Paula and Daniela Magalhães Prates (2012): "Capital Account Regulation, Trade and Investment Treaties and Policy Space in Brazil", Paper presented at the CEDES Workshop on "Compatibility Review of the Trade Regime and Capital Account Regulations", Co-organised by CEDES, GEGI and GDAE, Buenos Aires, 28-29 June.
[6] See Stanley, Leonardo (2011): "Smoke but do not inhale": Capital Inflows, Financial Markets and Institutions, a Tale from Three Emerging Giants", Working Group on Development and Environment in the Americas, Discussion Paper Number 31. Similarly, in the case of India, only 72 BITs have entered into force.
[7] Developed countries are already facing unexpected consequences of the treaties they had formulated as home countries. For example, see Philip Morris vs. Government of Australia and Vattenfall vs. Government of Germany, discussed in WIR (2012).
[8] See UNCTAD (2010): Investor-State Disputes: Prevention and alternatives to arbitration, UNCTAD Series on International Investment Policies for Development, New York and Geneva.
[9] Indeed Brazil cited this precise reason for not ratifying BITs at all. See Stanley (2011).

[10] Anderson, Sarah (2012): “The Trans-Pacific Partnership and Capital Account Regulations”, Paper presented at the CEDES Workshop on “Compatibility Review of the Trade Regime and Capital Account Regulations”, Co-organised by CEDES, GEGI and GDAE, Buenos Aires, 28-29 June 2012.
[11] However, it should be noted that the draft investment chapter in the India-EU trade and investment agreement under negotiation is hardly a departure from existing IIAs.
[12] Clearly, these are also crucial for preventing undue fiscal burden from investment incentives, given that they entail a loss of revenue.
[13] For a discussion related to the Indian case, see Francis, Smitha (2010): “National FDI Concepts: Implications for investment negotiations”, *EPW*, Vol. XLV, No. 22.
[14] For an overview of the related issues, see Smith, Sanya (2009): “Preliminary Note on Financial Crisis and Trade and Investment Treaties”, Third World Network; IDEAs (2011), and Gallagher, Kevin P. (2010): “Policy Space to Prevent and Mitigate Financial Crises in Trade and Investment Agreements”, *G-24 Discussion Paper* No. 58.
[15] See Epstein, Gerald, Ilene Grabel and K.S. Jomo (2003): “Capital Management Techniques in Developing Countries” in Ariel Buira (ed.), *Challenges to the World Bank and the IMF: Developing Country Perspectives,* London: Anthem Press, Ch. 6.; and Gallagher, Kevin P, Stephany Griffith-Jones and José Antonio Ocampo (ed.) 2012: *Regulating Global Capital Flows for Long-Run Development*, Pardee Center Task Force Report; etc.
[16] See Ghosh, Jayati (2010): “The Economic and Social Effects of Financial Liberalization: A Primer for Developing Countries”, available at http://www.networkideas.org/featart/sep2005/Financial_Liberalization.pdf; Epstein, Gerald (2012): “Capital Outflow Regulation: Economic management, development and transformation, in Gallagher, Griffith-Jones and Occampo ed. (2012); etc..
[17] See Ostry, Jonathan D., Atish R. Ghosh, Karl Habermeier, Marcos Chamon, Mahvash S. Qureshi and Dennis B. S. Reinhardt (2010): “Capital Inflows: The role of controls.” IMF Staff Position Note, SPN/10/04.
[18] The exhaustive list of permitted assets and specific limitations on the type of assets considered as investments under the investment definition in the India-Mexico BIT offers a useful formulation for consideration. See the discussion on India’s IIAs in Francis, Smitha (2012): “Capital Account Regulatory Space under India’s Investment and Trade Agreements”, Paper presented at CEDES Workshop on “Compatibility Review of the Trade Regime and Capital Account Regulations”, Co-organised by CEDES, GEGI and GDAE, Buenos Aires, 28-29 June.
[19] See for instance reports from within the UN such as the UN Commission of Experts Report on Reforms of the International Monetary and Financial System:
http://www.un.org/ga/econcrisissummit/docs/FinalReport_CoE.pdf
[20] See Gallagher (2010) for a detailed discussion of the problems with some of the developed country IIAs.
[21] See the various papers available at
http://www.networkideas.org/feathm/jan2010/ft21_Reregulating_Finance_Index.htm
[22] For instance, see Dhar, Biswajit and Murali Kallummal (2002): “Capital Inflows and Effects of Market-driven Investments: A focus on Southeast Asian Crisis”, RIS Occasional Paper No. 66.