Our world is not for sale.
STOP corporate globalization.

February 2009

# "FREE TRADE" AGREEMENTS CONTRIBUTE TO FINANCIAL AND OTHER CRISES

***While the financial crisis and its consequences are spreading around the world and even the most erstwhile 'free market' governments are discussing how to re-regulate the financial sector, bilateral and regional 'free trade' agreements continue extreme deregulation of the financial industry. The terms of these agreements prohibit countries from reforming their financial sector so as to remedy the financial, economic, environmental, food and social crises now growing, and from ensuring that finance is directed towards the transformation to sustainable societies.***

Deregulation and liberalisation of financial services is part of the many bilateral and regional free trade agreements (FTAs) that are currently being negotiated or have been implemented over the last years. For instance, the EU-Caribbean Economic Partnership agreement (EPA) exemplifies the model that the EU seeks to impose during all current FTA and EPA negotiations. Some FTAs include a 'review clause' which is a commitment to (further) deregulate and liberalise (financial) services through new negotiations at a certain point in time, without public or parliamentary scrutiny.

## Expansion of financial conglomerates

Under the rules of the services agreement (General Agreement on Trade in Services or "GATS") in the World Trade Organization (WTO), developing countries can choose whether or not to liberalise or deregulate financial services. But a GATS rule determines that an FTA that covers services must include substantial liberalisation and deregulation commitments although developing countries can liberalise somewhat less than developed countries. EU and US negotiators – in close coordination with their financial service industries - have been very keen to secure new deregulated access for their once profitable financial industry (Citigroup profits in 2004 were US$ 17bn). Some existing FTAs have almost 10 pages of commitments and rules on financial services. These rules require that developing countries must admit the presence of all kinds of foreign banks, insurance companies and other financial operators and their services …regardless of whether regulation and supervision, or consumer protection, is established or not.

## Deregulation of foreign banks

While requiring that countries admit more foreign banks and other financials services, the FTAs simultaneously impose the same restrictions on how governments may regulate financial services and their providers as seen in GATS, unless exemptions were made at the time of negotiation:

- allowing 100% foreign ownership of financial operators and the financial sector;
- no restrictions on the size and number of financial operators, nor on the volume of their financial transactions;
- foreign financial operators have to be treated *at least as* favourable as domestic financial operators.

As a result, many measures that are necessary to prevent a financial crisis violate these rules. One such preventive measure is to limit the size of a bank and the volume of its financial transactions, so that it cannot become "too big to fail" – and thus does not need to be bailed out with taxpayer money.

FTA rules also disregard that foreign financial operators behave differently. Foreign banks tend to target the more profitable, rich clients and provide less credit to farmers and small producers, especially in times of a financial crisis. This undermines food production and economic development.

FTAs do not allow host governments to pre-screen foreign financial service investors – for instance to exclude foreign banks that mainly finance socially and environmentally destructive projects or companies, and to only admit those banks that serve their societies.

### FTAs deregulate more than GATS

FTAs contain more rules that deregulate financial services than GATS. For instance, countries are required to permit any new foreign financial service within their territory in those financial sectors they liberalised under NAFTA or an FTA with the EU (Chile, Mexico, Caribbean countries). This means that very risky financial products such as speculative derivative trading can be introduced– a practise which contributed significantly to the financial crisis. Although agreements often contain some exceptions for 'prudential' regulation, it is left to trade tribunals to decide what policies are protected. FTAs therefore can make it very difficult for countries to ban speculation in food prices through banning trade in food derivatives that contribute to the food crisis.
Moreover, the EU seeks to impose through its FTAs, the implementation of many non-binding international norms for financial regulators in developing countries. Yet, these norms completely failed to prevent the financial crisis, and most developing countries have had no say in their design.

### FTAs stop capital controls

During a financial crisis, or in order to prevent it, it is important that countries are able to control capital inflows and outflows, which mainly move through banks. Yet, the FTA model employed by both the EU and the US requires countries to remove restrictions on capital movement and facilitate cross-border capital flows. In the EU-Caribbean EPA, no restrictions on capital transfers between residents of the signatory countries are permitted, not even on large capital account transfers related to investments. Only in "exceptional circumstances" are countries allowed to stop destabilising capital transfers. Also, any prudential measures taken to stop capital or trade flows that are financially destabilising are restricted by many conditions, which undermines many domestic policies to protect economies and societies.

### The dangerous mix of FTAs and BITs

What is often forgotten is that foreign financial investors that enter a country under an FTA, can use already existing bilateral investment agreements (BITs) to sue host governments that introduce new social or environmental regulations. For instance, Argentina has been sued by more then 30 companies for its measures taken during its financial crisis (2000-2001). Foreign investors have already used a BIT to sue South Africa for its policies to reverse the legacy of apartheid and increase black ownership in the mining sector, which could also happen in the financial sector.

### FTAs forgotten during financial reforms

None of the current official discussions about reforms of the financial sector take into account how FTAs and the WTO's GATS further liberalise and deregulate the financial sector. Nor do these reform discussions focus on establishing rules to shift finance to productive rather than speculative ends or to halt investment in companies and projects that are socially and environmentally disruptive. In order to stop the financial sector's contribution to the world's food, climate/environmental and social crises, the extreme deregulation and market opening by FTAs and GATS must be reversed.

## WHAT WE DEMAND:

- **All negotiations in financial services in GATS and FTAs have to be stopped.**
- **Countries should be permitted to reverse their existing GATS and FTA liberalisation commitments of financial services (a roll back).**
- **Countries are permitted to take all necessary measures to prevent financial, social and environmental crises without retaliation threats based on GATS and FTA rules.**
- **Financial services and capital liberalisation are to be taken out of the WTO and all FTAs.**
- **Financial services need to be regulated to urgently support the shaping of sustainable societies – including by serving the poorest communities first.**

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*For more information, see* <http://www.ourworldisnotforsale.org>, <http://somo.nl/dossiers-en/trade-investment/gats>, *or contact <m.vander.stichele@somo.nl>*