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Estimada Secretaria Clinton, y estimados Secretario Geithner y Embajador Kirk:

Nosotros, los economistas que subscribimos esta carta, escribimos a ustedes para alertarles sobre nuevos e importantes desarrollos en la literatura económica relacionados con regulaciones financieras prudentes, así como para expresar nuestra particular preocupación en torno al grado en que los controles de capital están siendo restringidos en los tratados comerciales y de inversión de Estados Unidos.

El *National Bureau of Economic Research*, el Fondo Monetario Internacional y otras instancias han publicado recientemente investigaciones bien sustentadas en las que se concluye que el poner límites a la entrada de capitales de corto plazo en los países en desarrollo puede cortar el desarrollo de peligrosas burbujas especulativas y apreciaciones de la divisa y, en general, aportar a las naciones una mayor autonomía para el diseño y aplicación de políticas monetarias<sup>i</sup>.

Dada la severidad de la crisis financiera mundial y sus repercusiones, las naciones necesitarán de todas las herramientas posibles a su disposición para prevenir y mitigar las crisis financieras. Aunque las regulaciones a las cuentas de capital no son una panacea, las investigaciones recientes apuntan hacia un emergente consenso en torno a que las técnicas para el control de capital deben de ser incluidas entre “las cuidadosamente diseñadas medidas macro-prudentes”, apoyadas por los líderes del G-20 en la Cumbre de Seúl<sup>ii</sup>. De hecho, en meses recientes, un número de países, de Tailandia a Brasil, han respondido al surgimiento de flujos de dinero caliente adoptando diversas formas de regulaciones de capital.

También escribimos para expresar nuestra preocupación dado que muchos de los tratados de libre comercio y acuerdos de inversión de Estados Unidos contienen cláusulas que limitan de manera estricta la habilidad de nuestros socios comerciales para desplegar controles de capital. Las cláusulas sobre “transferencias de capital” de estos acuerdos requieren que los gobiernos permitan toda las transferencias relacionadas a una inversión cubierta “libremente y sin retraso hacia o desde su territorio”.

Bajo estos acuerdos, los inversionistas extranjeros privados tienen el poder de demandar a gobiernos en tribunales internacionales bajo el argumento de supuestas violaciones a estas provisiones. Unos cuantos acuerdos comerciales de Estados Unidos ponen algunos límites a la cantidad de daños que inversionistas extranjeros pueden recibir como compensación por ciertas medidas de control de capital y requieren un periodo de “enfriamiento” antes de que los inversionistas puedan presentar sus demandas<sup>iii</sup>. Sin embargo, estas reformas son menores y no van lo suficientemente lejos para asegurar que los gobiernos cuenten con la autoridad para usar estas legítimas herramientas. Los acuerdos de comercio y de inversión de otros países exportadores de capital permiten mayor flexibilidad.

Recomendamos que los futuros TLC y BIT (por sus siglas en inglés) de Estados Unidos permitan a los gobiernos el desplegar controles de capital sin quedar sujetos a demandas de inversionistas, como parte de un menú más amplio de opciones de políticas para prevenir y mitigar las crisis financieras.

Sinceramente,

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<sup>i</sup> Algunos de los estudios recientes mas importantes incluyen: Ostry JD, Ghosh AR, Habermeier K, Chamon M, Qureshi MS y Reinhart DBS (2010). *Capital Inflows. The Role of Controls. IMF Staff Position Note, SPN/10/04*. Washington, DC, International Monetary Fund. Magud N y Reinhart CM (2006). *Capital Controls: An Evaluation. NBER Working Paper 11973*. Cambridge, MA, National Bureau of Economic Research. Otros estudios pueden ser solicitados.

<sup>ii</sup> Documento de la Cumbre de Seúl, 12 de noviembre de 2010.

<sup>iii</sup> Ver por ejemplo, *Anexo 10-E del TLC E.U. - Perú*.