10. Regulating Foreign Investment & Financial Speculation

NZ allows almost unrestricted foreign investment. The TPPA would limit our ability to tighten the rules by locking in a minimum threshold for vetting foreign investments. That is likely to be the new level of $100 million for Australian government investors or $477 million for non-government ones. A ratchet would apply so every time the threshold increases it would automatically be locked in; that already exists in the Singapore NZ FTA.

China and Taiwan are entitled to any better treatment we give other countries in future agreements, including the TPPA.

Hopefully National would insist on keeping the limited exceptions for fishing quotas, sensitive rural land and islands, and rights to give NZers preferences in privatisations. But moves to take back control of failed privatisations could face threats of and actual investment disputes, unless governments pay over the odds to investors from TPPA countries – even if they have asset-stripped the business.

The Global Financial Crisis and our own finance company collapses show the risks of globally integrated financial markets and industry self-regulation. The Stiglitz Commission report on the financial crisis and the IMF have both expressed concern that free trade and investment agreements, especially the US model, may prevent governments from adjusting effectively. A recent taskforce found that US agreements were the least compatible with the new thinking and policy.

The TPPA's financial services and investment chapters are based on the US model. That will make it more difficult for NZ to rein in and re-regulate the finance industry or to stem speculative and destabilising capital flows.

The right of countries in the TPPA to adopt capital controls is especially sensitive. The US requires that its FTAs guarantee unrestricted capital flows, with no exception - even for balance of payments emergencies. Over 250 globally renowned economists, including Nobel prize winners, called on the US to show more flexibility. More countries are adopting taxes on short-term inflows, regulating foreign exchange derivatives, and restricting outflows, and the IMF has approved their use.

Chile and Malaysia successfully re-regulated cross-border finance in the 1990s to prevent and mitigate severe financial crises. They and others have tabled proposals in the TPPA negotiations, but the US has rejected them.

Financial investors can threaten or bring investor-state disputes if governments move to reduce risks from the instability that the investors create. 'Investment' in the leaked TPPA text includes financial institutions and shares in them, bonds, derivatives and *sovereign debt*; several countries tried to have this removed, so far without success.

Argentina faces claims totalling $65 billion arising from the successful measures to address its financial crisis in 2001. The most outrageous involve vulture funds that bought debt on which reduced payment had already been agreed, and insist that Argentina pays on the full face value. Tribunals have produced widely varying decisions, provoking Argentina to announce it would withdraw from the World Bank's investment arbitration facility – the same one proposed in the TPPA.

The TPPA would seriously fetter NZ's ability to tighten foreign investment rules and pre-empt or respond to future financial crises, including hot money flows.