Proposed goal 9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation

9.2 promote inclusive and sustainable industrialization, and by 2030 raise significantly industry's share of employment and GDP in line with national circumstances, and double its share in LDCs

Ensuring adequate policy space for industrial development

Particular policy tools prove historically indispensable to the autonomous and

UN General Assembly and other experts recognize the role of **capital controls** on hot money inflows and outflows to reduce the likelihood of financial crisis and prevent quicker and easier exit of such volatile short-term capital flows. Yet some BITs and investment chapters under FTAs prevent capital controls, even under financial crises.

The severity of development challenges imposed by bilateral investment treaties and free trade agreements is acutely highlighted by the **investor-state dispute settlement mechanisms**. The investor-state-dispute-settlement clause allows transnational corporations to sue governments in closed-door international arbitration cases for extraordinary financial sums. This phenomenon is freezing public interest policy regulation worldwide. Most developing country governments lose these cases due to lack of adequate financial resources to fight. More than 50% of these cases are in the area of natural resources threatening access to clear water and air, land, and preventing environmental sustainability and conservation. They also disproportionately punish women and children, indigenous and local communities, and the elderly.

In fact the majority of the known outstanding investor-state dispute cases under the USA's FTAs and BITs (totaling $11 billion in claims) relate to natural resource policies. Nearly half of the 129 cases pending before the World Bank's investment dispute facility relate to natural resources. Threats to natural resources and access to water also have a disproportionate impact on marginalized groups such as indigenous peoples, women and children.

In a growing number of cases, transnational corporations (TNCs) have sued governments for implement regulations, often those related to health or environmental concerns that could harm their current or future potential corporate profits. For example, several Latin American Governments have been facing a proliferation of lawsuits brought to them by transnational corporations due to bilateral investment treaties (BITs) that were signed back in the 1990s.

This includes, most prominently, a legal battle between the Government of Ecuador and the oil company Chevron. In November 2013, Ecuador's highest court upheld a ruling against Chevron that found the US oil company responsible for the contamination of large parts of Ecuador's Amazon region. The court ordered Chevron to pay US$9.5 billion. Chevron turned the table and instead is seeking to evade this ruling by asking an investor-state tribunal to second guess the decision.

raise Intellectual Property standards, which push smaller and cheaper producers in developing countries out of production while also raising costs of essential medicines and health care, agricultural inputs and therefore food prices.

Even the use of TRIPS flexibilities allowed by the WTO to protect public health or the environment are being challenged. The definition of investment under investment chapters is now including Intellectual Property Rights, which automatically gives them a high level of protection.

While these treaties and agreements are supposed to both protect foreign investors and benefit recipient countries, the World Bank and others have found that there is little correlation between having an investment treaty and increased investment.

Recommendations in the area of trade and investment agreements

- A comprehensive **review of all trade agreements and investment treaties,** and in particular the investor-state dispute settlement mechanism, to identify all areas where they may limit developing countries' sovereign right to carry out key regulations, including the ability to prevent and manage crises, regulate capital flows, protect the right to livelihoods and decent jobs, enforce fair taxation, deliver essential public services and ensure sustainable economic and social development;

- A **review of all intellectual property rights regimes** that have been introduced in developing countries through FTAs, to identify adverse impacts on public health, the environment and technology development, among other areas;

- Governments must undertake mandatory **human rights impact assessment** of multilateral, plurilateral and bilateral trade and investment agreements, especially North-South agreements, focusing especially on the rights to development, and the specific rights to food, health, and livelihood taking into account the impact on marginalised groups;

- Address the long-standing problem of **agricultural subsidies** in developed countries that threaten the stability of agricultural growth and productivity in developing countries, especially for small farmers;

- Provide a permanent solution f4(i)Wrnvin

negotiations on sectorals, Information Technology Agreement (ITA) and environmental goods;

• Establish a permanent exception to the prohibition of **local-content requirements** for developing countries in the Agreement on Trade-Related Investment Measures (TRIMs), as local-content requirements are a key tool for the domestic industrialisation process; and,

• Reverse the ban on export taxes on raw materials in Free Trade Agreements (FTAs) and protect its use in the World Trade Organization (WTO), as export taxes are a fundamental tool to achieve value addition in domestic economies and thereby spur economic and social development.

It is obvious that a serious rethink of global trade and investment rules is needed if they are to move in tandem with the world's development needs. If the global leadership is serious about delivering on a global development agenda, development-centered changes in trade-related rules and institutions are a prerequisite.