January 31, 2011

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Secretary Timothy Geithner Department of the Treasury 1500 Pennsylvania Avenue, NW Washington, D.C. 20220

Ambassador Ron Kirk Office of the United States Trade Representative 600 17th Street NW Washington, DC 20508

Dear Secretary Clinton, Secretary Geithner, and Ambassador Kirk:

We, the undersigned economists, write to alert you to important new developments in the economics literature pertaining to prudential financial regulations, and to express particular concern regarding the extent to which capital controls are restricted in U.S. trade and investment treaties.

Authoritative research recently published by the National Bureau of Economic Research, the International Monetary Fund, and elsewhere has found that limits on the inflow of short-term capital into developing nations can stem the development of dangerous asset bubbles and currency appreciations and generally grant nations more autonomy in monetary policy-making.<sup>i</sup>

Given the severity of the global financial crisis and its aftermath, nations will need all the possible tools at their disposal to prevent and mitigate financial crises. While capital account regulations are no panacea, this new research points to an emerging consensus that capital management techniques should be included among the "carefully designed macro-prudential measures" supported by G-20 leaders at the Seoul Summit.<sup>ii</sup> Indeed, in recent months, a number of countries, from Thailand to Brazil, have responded to surging hot money flows by adopting various forms of capital regulations.

We also write to express our concern that many U.S. free trade agreements and bilateral investment treaties contain provisions that strictly limit the ability of our trading partners to deploy capital controls. The "capital transfers" provisions of such agreements require governments to permit all transfers relating to a covered investment to be made "freely and without delay into and out of its territory."

Under these agreements, private foreign investors have the power to effectively sue governments in international tribunals over alleged violations of these provisions. A few recent U.S. trade agreements put some limits on the amount of damages foreign investors may receive as compensation for certain capital control measures and require an extended "cooling off" period before investors may file their claims.<sup>iii</sup> However, these minor reforms do not go far enough to ensure that governments have the authority to use such legitimate policy tools. The trade and investment agreements of other major capital-exporting nations allow for more flexibility.

We recommend that future U.S. FTAs and BITs permit governments to deploy capital controls without being subject to investor claims, as part of a broader menu of policy options to prevent and mitigate financial crises.

Sincerely,

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## Organizations listed for identification purposes only.

<sup>i</sup> For some of the most important recent studies see: Ostry JD, Ghosh AR, Habermeier K, Chamon M, Qureshi MS and Reinhardt DBS (2010). Capital Inflows. The Role of Controls. IMF Staff Position Note, SPN/10/04.

Washington, DC, International Monetary Fund. Magud N and Reinhart CM (2006). Capital Controls: An Evaluation. NBER Working Paper 11973. Cambridge, MA, National Bureau of Economic Research. Further studies are available upon request.

<sup>&</sup>lt;sup>ii</sup> "Seoul Summit Document," Nov. 12, 2010.

<sup>&</sup>lt;sup>iii</sup> See, for example, <u>Annex 10-E</u> of the U.S.-Peru FTA.