JOURNAL
OF EUROPEAN ECONOMY
Vol. 5 (№ 3). September 2006
Publication of Ternopil State Economic University

Financial and Banking Services Market

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STATE INVESTMENT MANAGEMENT IN THE LIGHT OF INTERNATIONAL EXPERIENCE

Abstract

The author considers major goals of state investment management. Special attention is focused at measures taken by state authorities to attract and use foreign direct investments (FDIs). Also analyzed are the international experience, especially the EU practice, of state investment management organisations and the WTO requirements in the context of Ukraine's integration strategy and WTO-accession perspectives.

Key words:

European Union, foreign investments, public administration, the World Trade Organisation, Ukrainian Investment and Innovation Agency.

All countries of the world, regardless of their economic development, agree that foreign direct investments are of great and ever increasing importance as a source for growth and diffusion of innovation technologies. At the present, 45000 small and medium-sized companies operate outside of their countries of origin. Today, the world capital market belongs to investors, with intense

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Translated by Demchenko H.

competition among the recipient countries for attracting foreign investments. Therefore, each country including Ukraine, being short of national capital for rapid economic development, needs to «win the investors' likings» by offering advantageous investment conditions and security of the invested capital, i. e. guaranteeing liberal, stable, predicted legal regime compliant with the WTO standards.

The total volume of foreign direct investments amounts to extreme figures (though tending to decrease lately), making in 1970 – $13 bln., in 1980 – $55 bln., in 1990 – $208 bln., in 2000 – $1.4 trln., in 2001 – $0.8 trln., in 2002 – $0.7 trln., and in 2003 – $0.6 trln. According to the UNCTAD (World Investment Report), the aggregate volume of foreign direct investment in 2004 amounted to and stabilized at $648 bln. Surmounting the latter financial crisis must have brought about a subsequent increase in investments. The total accumulated volume of FDIs, according to expert estimations, amounts to $8trln.

The modern economic theory, as Oxford economic scientist B. Fitzgerald notes, in principle, allows for the necessity of state regulatory interventions at the market. Primarily, it refers to security of property rights, corrections of economic conditions and prevention of market monopolization [1]. Worth noting is the fact that all the named cases refer to the process of regulation of the attraction and use of foreign investments.

With regard to international investment projects, the asymmetric nature of international capital markets makes the situation even more complicated. The developing and transition economies, as well as large industrial countries, face a so called «excess demand for capital», that is, as their governments suppose, the countries need more FDIs than they get, which results in competition among them. Therefore, in this case, the governments have to offer investors extra regulatory stimuli (in addition to tax benefits and public subsidies).

The competition for foreign investments is a rugged and complicated competitive struggle. Even Russia, in experts' opinion, that had attracted much more investments as against Ukraine (in general, per capita) «lost the decade of competing against the neighbours for «cultured» Western and Eastern investors» [2]. Proceeding from the above, any negative estimations of foreign investment attraction by Ukraine could hardly be regarded as too pessimistic, especially if we compare the result achieved by the countries with economic potential comparable with our own. As they say in such cases, figures speak for themselves.

It is clear, that Ukraine's yearly volume of foreign investments equalling 14% of that of the neighbouring Poland can hardly be regarded as successful. It is true that in 2005, a considerable «burst out» of FDIs reaching $7.3 bln. was noted, which was caused by the resale of *Kryvorizhstal* and the sale of the privately owned *Aval* bank to Austrian investors. Nevertheless, we managed to reach the level usual for the neighbouring Poland. At that, the objective is not only to keep up to the achieved level, but also to ensure the influx of investments into the Ukrainian economy (i. e. the creation of new production and workplaces), not simply «allocate» the returns on previous investments.

Table 1.

Foreign Investments in 1992–2004 (mln. USD)

Year	Poland	Ukraine
1992	678	200
1993	1715	200
1994	1875	159
1995	3659	267
1996	4498	521
1997	4908	623
1998	6365	743
1999	7270	496
2000	9343	595
2001	5714	792
2002	4131	693
2003	4123	1424
2004	6159	1715
In average	4649	648

Source: World Investment Report, UNCTAD, 2005.

Although the volume of FDIs has increased, it is still insufficient. In 2004, the amount of FDIs per capita made, for example, in Poland $1538, in Czech Republic – $5321, while in Ukraine – only $173. Even if to take into account the considerable increase in FDIs in 2005, this indicator did not exceed $350.

Essential is also the problem of the geographic structure of foreign investments, which is clearly demonstrated by the presence of Cyprus and the Virginia Islands among major investors. These areas are offshore zones, which serve not as much to provide investments as to return the illegally «removed» previously Ukrainian capital (which in itself would not be so bad, hadn't it reflected completely different processes).

At that, it should be taken into account that the true owners of the investor companies from many other countries (the USA, Germany, etc.) are also the Ukrainian physical and juridical persons. Suffice it to say that only legal investments of Ukrainian capital abroad amount to more than $ 200mln.

The geographic distribution of FDIs throughout Ukraine is also problematic. The city of Kyiv and Eastern industrial regions still remain the priority. On the whole, it is logical and understandable. However, the problem consists in considerable «breakaway» of these regions.

Table 2.

Foreign Direct Investments into Ukraine[1]

	Volume of FDIs as of 01.01.2006, (mln. USD)	% of Total
Total	16375.2	100.0
Germany		
Cyprus	5505.5	33.6
Austria	1562.0	9.5
USA	1423.6	8.7
Great Britain	1374.1	8.4
Russian Federation	1155.3	7.1
Netherlands	799.7	4.9
Virgin Islands, British	721.8	4.4
Switzerland	688.7	4.2
Poland	445.9	2.7
Hungary	224.0	1.4
Korea, Republic	191.1	1.2
Other countries	172.2	1.1
Total	2111.3	12.8

Notes:

1. The figures are presented as accumulated sum to initial investment. The list of countries was made based on the largest volumes of investments brought into the Ukrainian economy and other economies.
2. The volumes of direct investments in Ukraine made by separate investor countries are cited taking into account the data of the National Bank of Ukraine (NBU) and the Fund of State Property of Ukraine (FSPU) (concerning the difference in market and nominal values of assets, property, etc., which is not accounted for in statistic records of some enterprises).

Source: State Statistics Committee of Ukraine.

From the point of view of the national economy, the priority areas for foreign investments in Ukraine, according to opinions of many experts, should rather include the following:

- Western region (Lviv, Ivano-Frankivsk, Trans-Carpathian, Ternopil, Volyn oblasts), where it could be efficient to set up production with employment of local natural resources, i.e. sulphur, potassium and sodium salts, coal, oil and gas, as well as to develop a network of health resorts and tourist recreation complexes.
- Donetsk-Prydniprovsk region (Donetsk, Luhansk, Zaporizhzhya, Dnipropetrovsk oblasts), where it is necessary to reconstruct and reno-

vate the mines, metallurgic and chemical industries on the basis of waste-free, low-waste and pollution-free technologies, as well as to provide a powerful stimulus to development of energy-saving production of medium-sized and precision engineering, motor and aircraft industries.

- Southern region (Odessa, Mykolaiv, Kherson oblasts), where it would be most advantageous to reconstruct and technically re-equip the port economy, to develop the production of equipment for food and canning industries, as well as expand the network of health resorts and tourist complexes.
- Regions of Ukraine (polluted in result of the accident at Chornobyl nuclear power plant), where – along with unique researches – it is necessary to introduce the newest technologies and carry out a set of measures directed at ecological, economic and social revival of the territories.

Table 3.

Direct Investments from Ukraine into Economies of Other Countries[1]

	Volume of FDIs as of 01.01.2006, (mln. USD)	% of Total
Total	218.2	100.0
including		
Russian Federation	102.5	47.0
Poland	20.3	9.3
Panama	18.9	8.7
Vietnam	15.9	7.3
Great Britain	13.9	6.4
Spain	13.8	6.3
USA	5.6	2.6
Hong-Kong	5.4	2.5
Austria	4.6	2.1
Switzerland	4.0	1.8
Georgia	2.2	1.0
Cyprus	2.1	0.9
Rest of the world	9.0	4.1

Note:

1. The figures are presented as accumulated sum to initial investment.

Source: State Statistics Committee of Ukraine.

Table 4.

Foreign Direct Investments into the Regions of Ukraine

	Number of enterprises	Investment volume as of			
		01.01.2003		01.10.2003	
		Total	% of Total	Total	% of Total
Ukraine	9161	5471345.20	100.0	6212944.43	100.0
Crimean Autonomous Republic	173	194796.20	3.6	211943.71	3.4
Vinnytsya	115	47843.54	0.9	60205.99	1.0
Volyn	90	53559.77	1.0	80906.53	1.3
Dnipropetrovsk	482	427732.91	7.8	484810.81	7.8
Donetsk	304	389327.77	7.1	408821.33	6.6
Zhytomyr	169	58169.66	1.1	71067.58	1.1
Trans-Carpathia	473	127688.52	2.3	168803.43	2.7
Zaporizhzhya	228	366747.67	6.7	419996.65	6.8
Ivano-Frankivsk	238	69890.37	1.3	88482.09	1.4
Kyiv oblast	236	423112.70	7.7	462491.72	7.4
Kirovohrad	63	38030.52	0.7	52400.75	0.8
Luhansk	110	51567.68	1.0	59350.86	1.0
Lviv	1036	220107.32	4.0	282790.72	4.5
Mykolaiv	101	64295.93	1.2	72143.69	1.2
Odessa	553	291209.30	5.3	361160.85	5.8
Poltava	138	152735.26	2.8	167261.09	2.7
Rivne	83	51050.25	0.9	50951.18	0.8
Sumy	67	128288.36	2.3	140976.15	2.3
Ternopil	86	26906.16	0.5	29751.38	0.5
Kharkiv	341	164629.91	3.0	220205.19	3.5
Kherson	72	55198.39	1.0	61251.08	1.0
Khmelnytsk	91	28533.32	0.5	39549.60	0.6
Cherkasy	172	83282.73	1.5	90698.93	1.5
Chernivtsi	148	16625.22	0.3	19260.48	0.3
Chernihiv	46	61288.73	1.1	72790.12	1.2
Kyiv (city)	3528	1863250.83	34.1	2012465.30	32.4
Sevastopol	18	15476.18	0.3	22407.22	0.4

Source: State Statistics Committee of Ukraine.

Among the priority directions of foreign investments in Ukraine is also the creation of the modern infrastructure, including transport, technically-equipped warehousing, telecommunications, business infrastructure (e. g. offices, business centres, databases, etc.), and everyday services. Without the named measures, the transition to full-fledged market – based economy, as well as intense development of international investment activity, will not be possible. The development of this field is not only urgent, but also attractive for foreign investors, since these areas yield short pay-back period and, at the same time, a favourable material base is being formed for further activity of the foreign capital. When determining the priorities of foreign investment, the focus on the short pay-back periods is dictated by the known reasons. Today, as never before, the quick return on invested funds is needed to maximally contribute to overcoming the crisis. At the same time, it will improve the reputation of investment activity throughout the CIS. In addition to the named priority areas, fields and objects for foreign investment, the ecological problems of national, regional and global character are becoming more important and vital. Investments develop production potential on the new research and technical basis and predetermine the country's competitive positions at the world markets. At that, for many countries, especially those trying to surmount economic and social poverty, the attraction of foreign capital as direct investments, portfolio investments and other assets plays far from the minor role.

Meeting those quantitative and qualitative problems is the key target of state regulation. Regulated should be all stages of the investment process: «selection of the country of investment» – «selection of the form of investment» – «selection of the field/project» – «allocation of investment» – «registration/recognition of property rights» – «investment management / enterprise functioning» – «income distribution» – «withdrawal of investment». Thus, only the comprehensive approach or continuous «escort» of state authorities could ensure the effective regulation of foreign investments. The practitioners badly need this regulation saying that «the increase in investment inflows can only be possible on the condition of development of the whole complex of factors forming the investment climate. Underestimation of at least one component will unavoidably unbalance and stain the situation on the Ukrainian investment market» [3].

Regulatory standards produce three major effects on investment decisions. First, the amount of future expenditures will be affected by standards of wages (including minimal wages), labour conditions (sanitary standards, job safety, etc.,) social guarantees, and the standards of environmental protection. Second, the uncertainty effect in relation to possible changes of the standard in future, as well as guarantees of the property rights. Third, the effect produced on the asset value of a certain industrial and finance group caused by the shareholders, consumers and employees in the donor-country. This effect is transferred on the daughter companies of the same group abroad. Naturally, the effect produced on different corporate investors varies depending on the size of the company, the sector of its activity, etc. For example, big high-tech compa-

nies, on the contrary, could be attracted by high standards of labour rights (since this potentially implies the availability of highly qualified employees) [4].

As a whole, the system of state investment regulation consists of the following elements:

- financing of state investment programs;
- direct state investments;
- budget of development.

State regulation of investment activity in the form of capital investments, stipulates for the following:

- improvement of the tax system and methods of calculating depreciation and deductions;
- introducing special tax treatment of investors (but not on the individual basis);
- protection of investors' interests;
- granting privileges to subjects of investment activity as for the use of land and natural resources;
- creation and development of a network of information and analytical centres, including rating agencies;
- implementation of antimonopoly measures;
- development of financial services;
- re-appraisal of capital assets according to rates of inflation;
- etc.

There is no telling that foreign investments were lacking state regulation in Ukraine. Suffice it to remind such «milestones» as the Law «About State Programme of Encouraging Foreign Investment in Ukraine» adopted in December 1993 (№ 3744-XII), the activity of the Ukrainian National Agency on Development and European Integration, or the establishment of the Ukrainian Investment and Innovation Agency.

The recipient countries recognized the stabilizing or «grandfather clause» in their legislation as an international standard of legal regulation of foreign investment. The clause provides that the tax rates, customs rates and other conditions which existed at the time of initial investment realized by an investor be valid for the whole pay-back (or other specifically set) period. These legislative guarantees were supposed to be included into the first Ukrainian law on foreign investment regulation. Unfortunately, the well-known story of the annulled clause of the Law harmed immensely the investment image of the country and somewhat decreased its foreign capital influx. This is an old story, but it shows that

the state regulation of foreign investments is still not effective enough and contradictory because of the absence of the concept of national interests. Naturally, without such a conceptual approach, a comprehensive legislative base with an efficient control mechanism can be hardly created. Moreover, without such an approach, an active policy based on comparison of potential benefits from foreign investments can hardly be ensured, which can probably threaten the economic and (sometimes) political independence. Such a policy should be oriented at immediate attraction (or even access) of foreign investments to certain industries, thus promoting their short – or long- term development.

Incidentally, when speaking of state authorities' regulation of investment processes, we can not but point to the fact that it is just the administrative barriers that hamper foreign investments in the Ukrainian economy (something what foreign experts call a «red tape», implying the tape of red colour used to bind official documents). Expert estimations show that passing through all bureaucratic procedures takes from 6 to 9 months. The corruption of public officials drives investors into substantial transaction costs, especially at the pre-investment stage, when an investor incurs most of the expenses spent on permits. In view of this, the necessity of introducing a «single window» has been broadly discussed recently, which will allow investors to deal with only one authorised body. In our opinion, the function of the «single window» should be assigned to the newly-created State Agency of Ukraine on Investments and Innovations.

In general, the determination of the place the state regulation takes and the rate of its intervention is likely to be a key question for each country. Proceeding from all the available factors, the country should determine the scale of its intervention, from «laissez fair-laissez passer» to the policy of «administrative regulation». Taking into account the Euro-integration priorities of Ukraine, we take specific interest primarily in the European practice.

The state regulation of economic processes as a whole, and foreign investments in particular, could be divided into national and international. The latter includes bilateral and multilateral agreements, conventions and international regulations recognized by national bodies of state administration. The most frequently applied traditional regulation is bilateral agreements on promotion and reciprocal security of investments (implying, first of all, the application of the national regime of regulation to foreign investors as well).

The EU has no direct bilateral investment agreements in the traditional sense (even though they are signed separately by EU member countries). However, the EU has a number of agreements on trade preferences with separate countries and their integration alliances. These agreements usually enclose clauses on investment activity (setting up of foreign companies, capital and dividend repatriation, etc.). The mentioned criteria should be taken into account in the process of Ukraine's integration into the European Union.

Worth noting is that, on the whole, the European Union provides the most open and attractive climate for FDIs. The position of the European business community lies in admitting the fact that investing abroad should be based on

the analysis of the market factors only. Naturally, legal issues are also taken into account since they have a considerable influence on the level of investment risk. Traditionally, the EU bodies do not directly set any conditions of FDI attraction by the member-states. The main requirement consists in not exposing any company created on the territory of the EU (local or the one that belongs to a non-member-state) to discrimination on the territory of the EU. What concerns investors from the EU countries, according to Article 43 of the Agreement about the EU, all member-states of the Union should allow them to create or buy companies on conditions set for their residents. Should this requirement be violated, the government's decision can be voided in the European Court. Moreover, in some cases, investors from the other EU countries can have even better conditions than the local companies – for example, in the finance sector. For example, German full-service banks can engage in operations with securities in other EU countries, even if national legislation demands strict detachment of credit-deposit and investment operations (as it is in Great Britain). It is important to note that, in principle, the power of the European Commission with regard to international investments regulation have somewhat increased after elimination of barriers on capital movement both within the EU and between the EU and «third countries» in 1993. For example, in 1997, the Commission issued an interpretation (confirmed in 2001) which stated that investors from any EU member-state had a right to establish control over companies in other EU-countries. (This was made in response to endeavours of several countries to limit the right of foreign investors to buy control stock with voting authority during the privatization process.)

Nevertheless, such an approach does not mean that the European Commission does not regulate the process of international investing at all. Thus, under the EU laws, the right to providing aerial services is granted only to companies which are fully owned or controlled by EU owners. Similar restrictions are established for marine steam shipment. While a so-called «Hydro-carbonate Directive» of 1994 (Directive 94/22/EC) stipulates for «mirror-image» reciprocal treatment, which implies that an international investor can be denuded of the license for work with hydro-carbonate resources, if his own country does not allow the EU residents to carry out similar activities on the terms comparable to those existing in the EU countries. Currently, the EU directive on banking, insurance and investment encloses a clause on reciprocal treatment, according to which the financial companies of the «third country» can be denuded of the right to create a new company in the EU countries, if it is decided that the companies from the EU member-states do not enjoy equal rights with local companies in this country. In this respect, we can recall (even though it is an example of a more complicated situation) that in 2005 the owners of an Austrian bank Burgenland – the administration of the Burgenland land (which owned 82.12% of the bank's shares) – declared their intentions to sell this financial institution. Among the interested parties were Ukrainian investors as well. At the end of 2005, Mariupol Metallurgical Works, Donetsk plant «Ukrpidshypnyk», ActyvBank, and Slav AG (Austria) signed the memorandum of creating a consortium in order to participate in the Bank Burgenland's sales tender. In March 2006, an

Austrian financial company Grazer Wechselseitige Versicherung AG (GRAWE) was announced the winner. Meanwhile, Mariupol Metallurgical Works and Ukrpidshypnyk stated this decision to be biased, since the offer of the Ukrainian side was much more attractive financially (€140mln – against €63.5mln of the Austrian company). Their position was supported by the Ministry of Economy of Ukraine, which also declared the decision of the bank's owners as discriminative. In the opinion of the Ministry of Economy, the offer of Mariupol Metallurgical Works and Ukrpidshypnyk fully met the conditions of the tender in terms of financial, economic and social indicators and was much more beneficial than the offer of GRAWE. The arguments of the Burgerland's local government in favour of the Austrian company, particularly regarding the in-transparency of financial resources of the Ukrainian consortium, were, in the opinion of the Ministry, discriminatory and harmed Ukrainian image at the European market. The consortium itself addressed the European Commission with the claim to evaluate the decision of the owners of the Austrian bank.

The EU continues to develop and update its domestic legislation on international investment regulation. Thus, in May 2006, the EU Directive on takeover bids came into force. It details the cross-border transaction of a corporate takeover (cross-border transaction) and not only protects the rights of minority shareholders, but also forbids protecting from hostile takeovers with such widely-spread instruments as «poison pills» or multiple voting rights stock.

It is worth paying attention to the fact, that, as a member of the European community, Ukraine acknowledges and uses regulatory mechanisms of different international organizations and unions it belongs to (or will have to recognize the corresponding rules of the organizations it intends to join).

Meanwhile, the international legislation regarding investments is still in its embryonic stage. On the one hand, according to the data of the UN Conference on Trade and Development (UNCTAD), approximately 1600 bilateral agreements are dedicated to mutual security of investments, but most of the developed legislation applies mainly to domestic regional relations (within such integration unions as the EU, MERCASUR or NAFTA). The WTO rules apply only to certain forms of investing («commercial representation» for suppliers of services under the GATS – General Agreement on Trade in Services) or touch upon questions that have indirect relation to investments (status of a branch); but they do not regulate the protection of investments abroad. We can probably recall only the Supplementary Treaty to the Energy Charter Treaty as an example of an international sectoral agreement which takes up most aspects of investment relations. As it is known, the Energy Charter Treaty itself (in force since 1998) was developed in order to adapt the relations in the field of power engineering between the countries of western Europe and the former «socialist camp» to new conditions.

It is understandable, however, that international rules do not guarantee the attraction of foreign investments to all the developing countries. Because of that, they have to take their own steps directed at strengthening the desire of

TNCs to invest, thus improving their investment climate. It is important to mention the fact that such conditions, including the transparency requirements, additionally contribute to fighting corruption and resisting tax-evasion and money-laundering.

In order to be «operational» during a long period of time, international investment regulations should satisfy at least two conditions:

1) they should assure such legal frames that would allow all interested parties of both donor – and recipient-country take direct (in case of governments) or indirect (in case of civil institutions) part in regulation of foreign investments;

2) they should ensure considerable legal confidence regarding terms of foreign investing, keeping in mind that only in this case investments will contribute to sustained economic growth.

Thus, on the one hand, legal support should guarantee effective protection of investors based on the non-discrimination principle. On the other hand, it is necessary to insure the balance of interests regarding stability and legal protection of foreign investors and to make provisions for national governments to regulate economic processes inside their countries. It is important to remember another significant factor – the impact of foreign investments on environmental protection and employment policy, because these aspects gain on international, global significance, under conditions of globalization.

From the donor-country's point of view, international agreements are useful because they create equal legal conditions for investing in the whole world and, therefore, simplify the choice of the geographical direction for the investor.

From the recipient-country's point of view, international agreements enable implementation of modern investments legislation (simultaneously decreasing the risk of introducing certain regulations that will considerably decrease the effectiveness of measures that are being launched, but will meet the standards of conservative authorities which always try to point out certain «peculiarities», to find a «third path» etc., in order to block the economic reformation *de facto*). Affiliation to the countries which have signed a certain agreement provides a possibility of further collective cooperation, participation in international negotiations together with other countries that have mutual interests, receiving certain grants and subsidies, etc.

As a rule, along with agreements on assistance to and mutual protection of investments, countries try to order into their bilateral relations in the taxation area.

Tax treaties can support investment growth in several ways. First, they provide an opportunity to prevent double taxation of the profits generated abroad. Second, they reduce the risk of tax uncertainty for investors, scaling down the possibility of governmental changes in the tax policy. Such an uncertainty is reduced by the fact that treaties usually stipulate some code of conduct

between the governments, and between the government and international companies in case of a tax conflict. Therefore, tax agreements provide the same stability of the «rules of play» that international investors need so much [5].

Some differences exist between the models of tax agreements recommended by the Organization for Economic Cooperation and Development (OECD) and the United Nations Organization (UNO). Thus, G. Owen, having analyzed in details the two models [6], asserts that the UN agreements prefer source taxation, while the OECD agreements are based on the principle of residence-based taxation. For example, the latter imply withholding tax caps. In such a way, we can consider contract drafts based on the UN recommendations as more flexible and suitable for negotiations between rich and poor countries (because they ease the problematic question of cross-border transfer of profits). As a country's economy and GDP grow, it can switch from the UN models to types of agreements used by the OECD countries.

Since international investing is directly connected with cross-border capital flow, a special role in the international regulation of this process belongs to the International Monetary Fund – IMF (Ukraine is the member of IMF since 1992). The growing significance of capital flows in the world economy has made a significant mark on the system of international regulation of economic processes. Suffice it to mention the changes that have taken place in the IMF activities. The transition from Breton-Woods to Kingston system was marked not only by a change in the nature of exchange-rate determination (from fixed to floating exchange rates), but also by the fundamental liberalization of capital flows. In its time, the main statute goal of the IMF was to provide the convertibility of member-countries' currencies only in current (trade) operations (requirement of Article VIII of the IMF Statute). The IMF Statute still does not require member-countries to support convertibility of their currencies at capital operations, but such goals are always mentioned in the IMF documentation. The Nobel laureate G. Stigliz even claims that the IMF tries to change its Statute in order to force member-countries to liberalize their capital markets, since the cross-border movement of capital and the requests of its liberalization became parts of the modern monetary system. As the studies of the IMF show, «during the last few years, the access to international financial markets became easier for many developing countries, and capital flows in big loads. Such favourable market conditions, among others, assisted structural changes both in the developed and developing countries…» [7]. Although, even such a novelty of the IMF as floating exchange rates has been recently considered primarily as a precautionary measure against negative influence of capital flows, as points out Anna Kruger, First Deputy CEO of the IMF. This was predetermined by the fact that trade, as a driver of economic development, has long given in to such branches as services, «knowledge economy» and investments. As a result, the deviations of exchange rates from purchasing power parity (PPP) have become so significant and long-term that one cannot speak of PPP as their basis any more. Today, the formation of exchange rates and currency flows starts to follow other rules stemming from the task of optimization of saving and increasing the accumulated capital.

That is why money-, credit-, and investment-markets are closely intertwined not only functionally, but also institutionally (suffice is to mention, for example, the so-called Financial Stability Forum).

The IMF's regulative influence on the cross-border movement of capital has considerably increased after the series of financial crises. The first serious signal was the debt crisis of 1980s in Mexico and several other Latin American countries (first of all, in Argentina, Brazil and Venezuela), which were forced to announce their inability to pay back debts and interest. As a result, the Mexican Peso devaluated by 80%. The next signal, again, became the Mexican «tequila crisis» in 1994-1995, which quickly spread to Argentina and Brazil. It was caused not so much by economic factors as by the short life of economic reforms and their inadequate testing, which spread panic among the investors. Such behaviour of investors is called «a feeling of insecurity» or «moral hazard», which has entered since then the daily lexicon of currency analysts.

At the same time, the same IMF analysts mention that the FDI performance during those crises was rather flexible: for example, during the Asian crisis, the level of FDIs was stable, while the other forms of private capital inflows (portfolio investments or acquisition of state securities) demonstrated negative reaction and decreased considerably. The same was true for Latin America [8].

All this caused the situation when even in the IMF, considered as a «fortress of liberalism», they started to talk about the need to improve the regulatory system (including or primarily capital flows). At that, H. Kohler, the former CEO of the IMF, accented that multilateral agreements would work only if they did not substitute for national responsibility.

In connection with an expected entrance of Ukraine into the WTO, special attention should be paid to liberalization of the legal regime of foreign investments related to foreign trade. There is a special agreement among the WTO-members about this (Agreement on Trade Related Investment Measures), which determines the requirements regarding the national share in the products of companies with foreign investments, limitations on foreign currency payments, special requirements regarding the share of products exported by such companies. The corresponding novelties should be introduced in the Ukrainian legislation too.

Within the WTO, the work related to investment regulation takes on several directions:

1. The Working Group on Trade and Investment Relations – founded in 1996 at the conference of ministers of the WTO member-countries in Singapore – aims at analysing the existing relations, not at negotiating the new rules;

2. Agreement on Trade Related Investment Measures – which was designed during the Uruguay Round – touches upon investments that influence the commodity trade only. The agreement is based on the recognition of the fact that certain investment measures may produce a restrictive or a destructive effect. That is why none of the WTO member-countries will establish measures that ex-

clude equal working conditions for foreign and domestic companies. (Article III, GATT) or are prohibited by Article XI, GATT («Quantitative restrictions»). The examples of unacceptable measures are listed in the corresponding appendix and include, for example, the requirements regarding export and import balancing or the share of domestic manufacturing in the final product. However, the agreement provides for a transition period, during which such measures may be used (two years for developed countries, five years for developing countries, and seven years for under-developed countries). A special committee monitors the implementation of those prerequisites.

3. General Agreement on Trade in Services (GATS) considers the questions of the access and treatment of investors the services sector (including financial services).

4. Agreement on Subsidies and Countervailing Measures deals with investment privileges and subsidies after the companies' production is launched.

In the last few years (during the Doha Development Round), special attention of the WTO member-countries was paid to investment problems singled out into a separate patch of the so-called «Singapore Issues». In particular, those were the most important questions discussed during the meeting of ministers of the WTO member-countries in Cancun (Mexico) in 2003. As it is known, the Cancun negotiations were ineffective, since the developed countries, such as the USA and the EU-countries, did not agree with the position of the so-called «Group 21» (later called «Group 20+»), which represented developing countries (led by China, South Africa, India, and Brazil).

When considering the question of the WTO-countries' investment policies, it is important to understand that the developing countries cannot be equated to recipient-countries, while the developed countries – to donor-countries. Indeed, the developed countries prevail among the donor-states, but the recent changes in the tendencies on the world capital market have considerably complicated its geographical structure. It is true that all developed countries are recipient-countries (first of all, the USA and the EU-countries), while increasingly more emerging economies act as donor-states (China, Brazil, India, South Africa, Russia, etc.). As a result, during international negotiations, the developed countries more often bring forward suggestions directed at consolidation of the rights of national regulatory authorities, whereas developing countries plead for liberalization of the international investment process. In particular, this was demonstrated during Cancun negotiations, when the Republic of South Africa took a double stand. On the one hand, the SAR positioned itself as a developing country determined to play a leading role among this group of countries. Objectively, it has common interests with those countries in the questions of access of its agricultural products to the markets of industrially-developed countries, the right to use medications manufactured without payments to license holders, receiving customs and other privileges within the frames of certain bi- and multilateral treaties and agreements (like in AGOA – from the USA, and Cotton Treaty – from the EU). On the other hand, the level of economic development of the SAR

is much higher than the average for this group of countries. (With per capita GDP of more than $10400 and income of $4100, the Republic of South Africa can be affiliated with middle-level industrially-developed countries). The activity of the SAR's investors also attracts attention. It especially concerns investments into the developing countries: the SAR realizes major direct investments in the other African countries (which in terms of volume (more than $12 bln) exceed the US' direct investments in the countries of the continent). In view of this, we can make a conclusion that the SAR would be interested in liberalization of the investment procedure in the developing countries, as well as other problems of the «Singapore Issues» – which is exactly what the industrially-developed countries wanted to reach in Cancun.

Taking into consideration these aspects, even though the SAR joined the «Group 21», it tried not to take a confrontation stand and not to make an impression that the two alternative solutions (suggested by the USA together with the EU and «Group 21») testified to the «North»- «South» conflict. In addition, even before the beginning of the Cancun meeting, the majority of the delegates was pessimistically tuned regarding the possibility of successful results and, thus, did not feel like sharpening relations with industrially-developed countries. Especially in connection with the interest of creating a free trade zone between the USA and the countries of the South African customs union. In addition, customs tariffs in the SAR are relatively lower than in the other countries of «Group 21» and thus, from the practical point of view, the SAR does not have any reasons for strict confrontation with industrially-developed countries in questions of liberalization of international trade rules.

We cannot but point to the fact that, in perspective, Ukraine will also appear in such a double situation, since the affiliation with the group of emerging markets is conditioned mainly by the problems of the transition period. As it will be solving these problems, Ukraine will face the problems peculiar to the industrially-developed countries, which will inevitably influence its foreign-economic policy.

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The article was received on July 29, 2006.