

Foreign Policy In Focus



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Multilateral Agreement on Investment

by Mark Vallianatos, Friends of the Earth

International flows of private investment have risen sharply in recent years. New foreign direct investment jumped from \$200 billion in 1990 to \$315 billion in 1995. An increasing share of this investment goes to developing countries—32% in 1995, up from 17% in 1990. Added to this annually are hundreds of billions of dollars in portfolio investments, loans, and bonds. Advocates of globalization cite these figures as evidence that removing barriers to foreign investment will spur even greater international capital flows.

A look beyond the surface of investment statistics reveals a more complicated picture. Much of the world risks being marginalized in the emerging economic

Key Points

- International investment flows have increased rapidly in recent years.
- Liberalized investment rules, under which money and production facilities can be moved internationally without restrictions, give corporations more power in the global economy.
- International rules on investment should protect workers and the environment and should require corporate investors to act responsibly.

order, as 70% of international investment to developing countries goes to just twelve newly industrialized nations in East Asia and Latin America. In addition, the numbers don't capture the varied effects of investment on sustainability and societies. Governments need to maintain regulatory flexibility in order to respond to the wide range of impacts on employment and the environment. Finally, rising capital flows raise the question of who is doing the investing. Essentially, the largest corporations and financial institutions control most foreign invest-

ment. The top 100 corporations (in terms of overseas assets) control fully one-third of worldwide direct investments; by contrast, all the small and medium-sized companies in the world control only 10%.

The fewer international barriers there are to the movement of resources, money, and products, the more power and influence large corporations and investors have in the global economy. Over the past decades, international trade agreements—like the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO)—and regional trade agreements have gone a long way toward deregulating trade.

Because there is no similar international agreement on investment, multinational corporations, the U.S. and

other industrialized countries are advocating a Multilateral Agreement on Investment (MAI), which is currently being negotiated at the Organization for Economic Cooperation and Development (OECD), a grouping of 29 of the most developed countries. The MAI would do for capital mobility what GATT has taken forty years to achieve in the trade arena: require nations to open virtually all sectors of their economies to foreign investment, treat foreign corporations the same as local companies, and bar governments from altering these new investor rights. This would represent a large step in the direction of global investment liberalization and economic globalization.

To illustrate, it helps to consider trade and investment as alternative but complementary routes toward globalization—different ways for corporations to expand their activities outside their home countries. The combination of investment liberalization and free trade allows corporations to pick and choose how to structure their operations on a global level.

A typical international economic transaction—for example a U.S. company wanting to sell equipment in Brazil—is composed of several stages and decisions: where to get the raw materials, how and where to produce the products, how to finance the deal, how to reach consumers. Free trade agreements make it easier for corporations to acquire natural resources, subcontract for components, and reach customers throughout the world. Investment liberalization provides the rest of the pieces of the puzzle.

An MAI would guarantee each company's ability to relocate to the lowest cost production sites. Investment liberalization would extend to flows of money, letting investors fund their deals on international financial markets and send profits back to the parent company.

As the U.S. and the rest of the world consider international rules for investment, any new rights and powers given to foreign investors need to be balanced by policies that ensure corporate accountability. As currently drafted, the MAI includes no requirement that investors abide by international labor standards, human rights practices, or environmental regulations.

As the world's largest source and destination of international investment, the U.S. has an understandable interest in the way foreign investment is regulated at home and abroad. Unfortunately, the U.S. government is facing the challenges of globalization and sustainable development with an outdated mindset that considers its primary role in the global economy to be the zealous protector of U.S. corporations overseas. U.S. foreign policy is part offensive—pressuring nations to open their economies to foreign investors—and part defensive—policing the globe for instances where U.S. investors are unfairly treated.

Washington has long used diplomatic pressure, international advocacy, and the leverage of bilateral and multilateral aid to encourage nations to deregulate foreign investment (not to mention some sordid episodes of gunboat diplomacy and covert operations against governments perceived as threatening large U.S. investors). Increasingly, the U.S. is also turning to investment agreements that directly guarantee rights for foreign investors.

In the past decade, the U.S. has signed bilateral investment agreements with 38 countries. Recent trade agreements, such as the 1994 North American Free Trade Agreement (NAFTA) between the U.S., Canada, and Mexico, have been as much about investment as trade, containing detailed rules on foreign investor rights. Now, with the MAI, the U.S. is seeking to expand these rules internationally. The agreement would cover the 29 member countries of the OECD, which are the sources of 85% of the world's foreign investment and the destination for 65% of investment funds.

The U.S. also anticipates using the MAI as a lever to pry open developing nations whose governments are likely to impose restrictions on foreign investment. This will be done in three ways: encouraging developing countries to join the MAI when negotiations are completed, promoting the rules of the MAI as a benchmark of what is an acceptable level of protection for foreign investors, and eventually attempting to incorporate the MAI as the investment rules for the WTO, a trade body that includes almost all the world's nations.

Meanwhile, the WTO is taking early steps toward its own rules on investment. The U.S. has given only lukewarm support to the WTO initiative, preferring that international rules be developed at the OECD, where developing countries do not participate, and the result is more likely to reflect a consensus on the virtues of economic liberalization.

The process by which the MAI has been negotiated is therefore flawed, excluding important constituencies from the bargaining table. Developing nations, which will be encouraged to join the agreement, did not participate in drafting the rules. Additionally, the U.S. and other OECD countries have treated the MAI as a technical agreement, negotiated by low-profile expert groups without public awareness or input.

The MAI as currently drafted is built on the principle that international corporate investors should be able to compete with local companies for all the world's resources, labor, and consumer markets. Translated into international law, this means a standard of national treatment, where governments have to treat foreign investors no less favorably than domestic investors. The MAI will give foreign corporations a right to invest in almost all sectors of nations' economies, with the exception of national security industries. Countries are also negotiating specific reservations that will allow them to maintain restrictions that would otherwise violate the agreement's rules.

In general, however, the MAI will mean that countries cannot prevent large foreign companies from overwhelming smaller local industries. This could cause particular harm in socially and environmentally significant sectors. For example, the Philippines currently bans foreign investment in rural banking, and Honduras limits foreign investors in forestry to a minority stake. Such protective measures would not be allowed under the MAI as it is currently written.

Once established in a country, foreign investors would be guaranteed equal treatment in the way they are regulated. Other MAI provisions go further than equal treatment. The MAI bars many types of performance requirements, or conditions, even if those conditions are imposed on local companies. Examples of forbidden conditions include requiring investors to form a partnership with a local company and requiring a minimum number of local employees—the types of policies governments use to help ensure that local people benefit from foreign investment. The MAI also lets foreign investors repatriate their assets and profits unrestricted by government controls aimed at cooling down destabilizing investment flows, such as those that contributed to the Mexican peso crash in late 1994.

The MAI matters because its rules can be enforced. If a foreign investor thinks a country where it has invested is violating the MAI, the investor has a choice: to complain to its own government, which can take the host country to binding international arbitration, or to directly challenge the host country. In either case, the arbitration process is closed—citizens cannot participate—and one-sided, as neither governments nor affected communities can challenge the behavior of investors. This imbalance points out the MAI's fundamental flaw: despite the need for corporate accountability in the international economy, current versions of the MAI contain no binding obligations on corporate investors.

Key Problems

- Investment agreements, culminating in the MAI, are a core component of the U.S. policy of promoting investment liberalization.
- The Multilateral Agreement on Investment has been negotiated without democratic input.
- The proposed MAI is one-sided, giving corporate investors substantial rights without requiring appropriate responsibilities.

The MAI was scheduled to be completed by May of 1997. But because the agreement's rules are so far-reaching, negotiators have not obtained consensus on all the provisions of the MAI, and the OECD was forced to extend negotiations until 1998. From the point of view of civil society, the risk is that an extra year will allow the OECD—if unchallenged—to meet its goal of unrestricted international capital mobility. The extension could present an opportunity for citizen activism, however, if developing nations and citizens use the delay to examine the agreement's implications and demand input into negotiations.

It is an open question whether the OECD's closed negotiation process is salvageable, or if discussions on international investments should be moved to a more open forum such as the United Nations Conference on Trade and Development (UNCTAD). To gain legitimacy in the public eye, the OECD should invite developing nations to participate in MAI negotiations so that the agreement's core rules reflect the varied needs of rich and poor countries. Public participation would require the OECD to publicly release the draft text of the MAI.

utive agreement needing a majority in both houses. The administration is likely to include the MAI in a request for fast track authority, under which Congress agrees to consider trade agreements with limited debate and through an up or down vote (no amendments allowed). Congress should resist this request and should not give up the right to fully debate the MAI.

A more open negotiating process should lead to major changes in the substance of the MAI. Governments need to retain the authority to respond to changing economic, social, and environmental needs. For example, regulation of foreign investment could help ensure that private development projects don't undermine a country's plan for sustainable development. There should be an approval process in which proposed foreign investors and deals would be assessed, and damaging projects and corporations with bad environmental or labor records could be screened out. Specific investment contracts with foreign investors should contain enforceable provisions to deal with the environmental and social challenges of each project. The revenue stream from approved projects could fund monitoring, social benefits, and environmental mitigation, particularly in countries without developed regulatory systems.

Governments should also retain the authority to favor local industry and sustainable development options. Many of the emerging economies of Asia have pursued policies that combine conditioned, targeted foreign investment with promotion of domestic industry. The rest of the developing world, as well as developed countries, should be free to use similar strategies to suit their needs, rather than be forced to adopt complete liberalization. It is particularly appropriate for governments to give preferences to small-scale, local economic activity, rather than rely on the speculative capital and the cross-border mergers and acquisitions that characterize the international economy.

Finally, an agreement on foreign investment needs to do more than preserve regulatory authority. A truly balanced agreement would include measures designed to hold corporations accountable to the communities in which they invest. The MAI should include strong, enforceable rules requiring investors to behave responsibly. For example, corporations should be required to operate under the stronger of home or host country core environmental and labor standards. These standards should be enforceable through the MAI's dispute resolutions system. Only a balanced agreement will do justice to the challenges and risks of a globalized economy.

Key Recommendations

- The U.S. government should open up the negotiating process to ensure the full participation of Congress and the public.
- Any international investment agreement should maintain each government's ability to screen and condition foreign investment and to promote local, sustainable industries.
- A balanced agreement on investment should include strong, enforceable provisions for holding corporations accountable to the communities in which they invest.

The U.S. government has a special obligation to ensure the full, democratic participation of Congress and the U.S. public. The Office of the U.S. Trade Representative and the State Department, which are joint leaders in MAI negotiations, should increase consultations with interested parties, taking efforts to ensure that citizens' groups and labor organizations are given the same access as private sector business interests. These consultations should be more than briefings on the progress of negotiations; Washington should actively seek input on what positions to take at the negotiating table. The U.S. should carry out environmental and social assessments of the

MAI to allow the public debate and the negotiating process to be fully informed about the agreements' implications.

President Clinton has not decided how to bring a completed MAI to Congress for ratification: as a treaty requiring a two-thirds vote in the Senate, or as an exec-

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Editors
Martha Honey (IPS)
Tom Barry (IRC)

Production
Grant Moser

Communications Director
Erik Leaver (IRC)

Orders and subscription information:

Mail: PO Box 4506
Albuquerque, New Mexico 87196-4506
Phone: (505) 842-8288
Fax: (505) 246-1601
Email: resourcectr@igc.apc.org

Editorial inquiries and information:

IRC Editor	IPS Editor
Phone: (505) 388-0208	Phone: (202) 234-9382/3 ext. 232
Fax: (505) 388-0619	Fax: (202) 387-7915
Email: resourcectr@igc.apc.org	Email: ipsps@igc.apc.org
Website: http://www.zianet.com/infocus	

Sources for More Information

Organizations

Friends of the Earth

1025 Vermont Ave NW, 3rd Floor
Washington, DC 20005
Voice: (202) 783-7400
Fax: (202) 783-0444

Email: foedc@igc.apc.org

Website: <http://www.foe.org>

Harrison Institute for Public Law

111 F Street NW, Suite 102
Washington, DC 20001
Voice: (202) 662-9600
Fax: (202) 662-9613
Website: <http://www.ll.georgetown.edu/lc/clinics/hi/harrison.html>

Preamble Collaborative

1737 21st Street NW, Ste. 20
Washington, DC 20009
Voice: (202) 265-3263
Fax: (202) 265-3647
Email: preamble@rtk.net
Website: <http://www.rtknet.org/preamble>

Public Citizen

E. 1600 20th Street NW
Washington, DC 20009
Voice: (202) 588-1000
Email: public_citizen@citizen.org
Website: <http://www.citizen.org>

Third World Network

228 Macalister Road
10400 Penang, Malaysia
Fax: 60-4-2264505
Email: twn@igc.apc.org

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World Wide Web

Multinational Monitor (full text of draft MAI)
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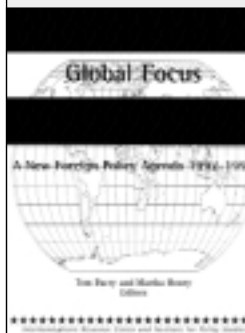
Official OECD statements on the MAI:
<http://www.oecd.org/daf/cmis/mai.html>

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