Domestic Constituencies

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Let's begin with some simple points, assuming conditions that now prevail–not, of course, the terminus of the unending struggle for freedom and justice.

There is a "public arena" in which, in principle, individuals can participate in decisions that involve the general society: how public revenues are obtained and used, what foreign policy will be, etc. In a world of nation-states, the public arena is primarily governmental, at various levels. Democracy functions insofar as individuals can participate meaningfully in the public arena, meanwhile running their own affairs, individually and collectively, without illegitimate interference by concentrations of power. Functioning democracy presupposes relative equality in access to resources–material, informational, and other–a truism as old as Aristotle. In theory, governments are instituted to serve their "domestic constituencies" and are to be subject to their will. A measure of functioning democracy, then, is the extent to which the theory approximates reality, and the "domestic constituencies" approximate the population.

In the state capitalist democracies, the public arena has been extended and enriched by long and bitter popular struggle. Meanwhile concentrated private power has labored to restrict it. These conflicts form a good part of modern history. The most effective way to restrict democracy is to transfer decision-making from the public arena to unaccountable institutions: kings and princes, priestly castes, military juntas, party dictatorships, or modern corporations. The decisions reached by the directors of GE affect the general society substantially, but citizens play no role in them, as a matter of principle (we may put aside transparent myth about market and stockholder "democracy").

Systems of unaccountable power do offer some choices to citizens. They can petition the King or the CEO, or join the ruling Party. They can try to rent themselves to GE, or buy its products. They can struggle for rights within tyrannies, state and private, and in solidarity with others, can seek to limit or dismantle illegitimate power, pursuing traditional ideals, including those that animated the U.S. labor movement from its early origins: that those who work in the mills should own and run them.

The "corporatization of America" during the past century was an attack on democracy–and on markets, part of the shift from something resembling "capitalism" to the highly administered markets of the modern state/corporate era. A current variant is called "minimizing the state," that is, transferring decision-making power from the public arena to somewhere else: "to the people," in the rhetoric of power; to private tyrannies, in the real world. All such measures are designed to limit democracy and to tame the "rascal multitude," as the population was called by the self-designated "men of best quality" during the first upsurge of democracy in the modern period, in 17th century England; the "responsible men," as they call themselves today. The basic problems persist, constantly taking new forms, calling forth new measures of control and marginalization, and leading to new forms of popular struggle.

The so-called "free trade agreements" are one such device of undermining democracy. They are designed to transfer decision-making about people's lives and aspirations into the hands of private tyrannies that operate in secret and without public supervision or control. Not surprisingly, the public doesn't like them. The opposition is almost instinctive, a tribute to the care that is taken to insulate the rascal multitude from relevant information and understanding.

Much of the picture is tacitly conceded. We've just witnessed yet another illustration: the effort of the past months to pass "Fast Track" legislation that would permit the Executive to negotiate trade agreements without congressional oversight and public awareness; a simple Yes or No will do. "Fast Track" had near-unanimous support within power systems, but as the *Wall*

St. Journal ruefully observed, its opponents may have an "ultimate weapon": the majority of the population. The public continued to oppose the legislation despite the media barrage, foolishly believing that they ought to know what is happening to them and have a voice in determining it. Similarly, NAFTA was rammed through over public opposition, which remained firm despite the near unanimous and enthusiastic backing of state and corporate power, including their media, which refused even to allow the position of the prime opponents (the labor movement) to be expressed while denouncing them for various invented misdeeds.

Fast Track was portrayed as a free trade issue, but that is inaccurate. The most ardent free trader would strongly oppose Fast Track if s/he happened to believe in democracy, the issue at stake. That aside, the planned agreements hardly qualify as "free trade agreements" any more than NAFTA or the GATT/WTO treaties, matters discussed elsewhere.

The official reason for Fast Track was articulated by Deputy U.S. Trade Representative Jeffrey Lang: "the basic principle of negotiations is that only one person [the President] can negotiate for the U.S." The role of Congress is to rubber stamp; the role of the public is to watch–preferably, to watch something else.

The "basic principle" is real enough, but its scope is narrow. It holds for trade, but not for other matters: human rights, for example. Here the principle is the opposite: members of Congress must be granted every opportunity to ensure that the U.S. maintains its record of non-ratification of agreements, one of the worst in the world. The few enabling conventions even to reach Congress have been held up for years, and even the rare endorsements are burdened with conditions rendering them inoperative in the United States; they are "non self-executing" and have specific reservations.

Trade is one thing, torture and rights of women and children another.

The distinction holds more broadly. China is threatened with severe sanctions for failing to adhere to Washington's protectionist demands, or for interfering with its punishment of Libyans. But terror and torture elicit a different response: in this case, sanctions would be "counterproductive." They would hamper our efforts to extend our human rights crusade to suffering people in China and its domains, just as reluctance to train Indonesian military officers "diminishes our ability to positively influence [their] human rights policies and behavior," as the Pentagon recently explained. The missionary effort in Indonesia therefore must proceed, evading Congressional orders. That is only reasonable. It suffices to recall how U.S. military training "paid dividends" in the early 1960s, and "encouraged" the military to carry out their necessary tasks, as Defense Secretary McNamara informed Congress and the President after the huge army-led massacres of 1965, which left hundreds of thousands of corpses in a few months, a "staggering mass slaughter" *(New York Times*) that elicited unconstained euphoria among the "men of best quality" (the *Times* included), and rewards for the "moderates" who had conducted it. McNamara had particular praise for the training of Indonesian military officers in U.S. universities, "very significant factors" in setting the "new Indonesian political elite" (the military) on the proper course.

In crafting its human rights policies for China, the Administration might have also recalled the constructive advice of a Kennedy military mission to Colombia: "as necessary execute paramilitary, sabotage and/or terrorist activities against known communist proponents" (a term that covers peasants, union organizers, human rights activists, etc.). The pupils learned the lessons well, compiling the worst human rights record of the '90s in the hemisphere by the recommended means, to be rewarded by increasing military aid and training under "drug war" pretexts dis-

missed as "a myth" by Amnesty International, Colombian human rights activists (those who survive), and other competent observers.

Reasonable people can easily understand, then, that it would be counterproductive to press China too hard on such matters as torture of dissidents or atrocities in Tibet. That might even cause China to suffer the "harmful effects of a society isolated from American influence," the reason adduced by a group of corporate executives for removing the U.S. trade barriers that keep them from Cuban markets, where they could labor to restore the "helpful effects of American influence" that prevailed from the "liberation" 100 years ago through the Batista years, the same influences that have proven so benign in Haiti, El Salvador, and other contemporary paradises–by accident, yielding profits as well.

Such subtle discriminations must be part of the armory of those who aspire to respectability and prestige. Having mastered them, we can see why investors' rights and human rights require such different treatment. The contradiction about the "basic principle" is only apparent.

Black Holes

It is always enlightening to seek out what is omitted in propaganda campaigns. Fast Track received enormous publicity. But several crucial issues disappeared into the Black Hole that is reserved for topics rated unfit for public consumption. One is the fact, already mentioned, that the issue was not trade agreements, but rather democratic principle; and that in any event the agreements were not about <I>free trade. Still more striking was that throughout the intense campaign, there appears to have been no public mention of the upcoming treaty that must have been at the forefront of concern for every knowledgeable participant: the Multilateral Agreement on Investment (MAI), a far more significant matter than bringing Chile into NAFTA or other tidbits served up to illustrate why the President alone must negotiate trade agreements, without public interference.

The MAI has powerful support among financial and industrial institutions. Why then the silence? A plausible reason comes to mind. Few political and media leaders doubt that were the public to be informed, it would be less than overjoyed about the MAI. Opponents might once again brandish their "ultimate weapon," if the facts break through. It only makes sense, then, to conduct the negotiations under a "veil of secrecy," to borrow the term used by the former Chief Justice of Australia's High Court, Sir Anthony Mason, condemning his government's decision to remove from public scrutiny the negotiations over "an agreement which could have a great impact on Australia if we ratify it."

No similar voices were heard here. It would have been superfluous: the veil of secrecy remained impenetrable, defended with much greater vigilance in our free institutions.

Within the United States, readers of this journal are among the lucky few who know something about the MAI, which has been under intensive negotiation in the OECD ("the rich men's club") since May 1995. The original target date was May 1997. Had the goal been reached, the public would have known as much about the MAI as they do about the Telecommunications Act of 1996, another huge public gift to concentrated private power, kept largely to the business pages. But the OECD countries could not reach agreement on schedule, and the target date was delayed a year. The current deadline is April 27, only a month away, as I write.

The original and preferred plan was to forge the treaty in the World Trade Organization. But that effort was blocked by Third World countries, particularly India and Malaysia, which recognized that the measures being crafted would deprive them of the devices that had been employed by the rich to win their own place in the sun. Negotiations were then transferred to the safer quarters of the OECD, where, it was hoped, an agreement would be reached "that emerging countries would want to join," as the London *Economist* delicately put it–on pain of being barred from the markets and resources of the rich, the familiar concept of "free choice" in systems of vast inequality of power and wealth.

For almost three years, the rascal multitude has been kept in blissful ignorance of what is taking place. But not entirely. In the Third World it was a live issue by early 1997. In Australia, the news broke through in January 1998, in the business pages, eliciting a flurry of reports and controversy in the national press; hence Sir Anthony's condemnation, speaking at a convention in Melbourne. The opposition party "urged the Government to refer the agreement to the Parliamentary committee on treaties before signing it," the press reported. The Government refused to provide Parliament with detailed information or to permit parliamentary review. Our "position on the MAI is very clear," the Government responded: "We will not sign anything unless it is demonstrably in Australia's national interest to do so." In brief, "We'll do as we choose"–or more accurately, as our masters tell us; and following the regular convention, the "national interest" will be defined by power centers, operating in closed chambers.

Under pressure, the Government agreed a few days later to allow a Parliamentary committee to review the MAI. Editors reluctantly endorsed the decision: it was necessary in reaction to the "xenophobic hysteria" of the "scaremongerers" and the "unholy alliance of aid groups, trade unions, environmentalists and the odd conspiracy theorist." They warned, however, that after this unfortunate concession, it is "vitally important that the Government does not step back any further from its strong commitment" to the MAI. The Government denied the charge of secrecy, noting that a draft of the treaty was available on the internet–thanks to the activist groups that placed it there, after it was leaked to them.

We can be heartened: Democracy flourishes in Australia after all.

The derisive dismissal of the charge of secrecy, a device that might be adopted by more cynical U.S. commentators when they finally agree to mention the issue, has consequences that merit some thought. It entails that the media should gracefully exit the stage. After all, any meaningful evidence they use could be discovered by ordinary folk with diligent search, and analysis/commentary/debate are declared irrelevant. (Just as this was sent to press, Fred Hiatt obliged in the <I>Washington Post, speaking for the editors, though he failed to draw the obvious conclusions about the journal's future).

In Canada, now facing a form of incorporation into the United States accelerated by "free trade, the "unholy alliance" achieved much greater success. For a year, the treaty has been discussed in leading dailies and news weeklies, on prime time national TV, and in public meetings. The Province of British Columbia announced in the House of Commons that it "is strongly opposed" to the proposed treaty, noting its "unacceptable restrictions" on elected governments at the federal, provincial, and local levels; its harmful impact on social programs (health care, etc.) and on environmental protection and resource management; the extraordinary scope of the definition of "investment"; and other attacks on democracy and human rights. The provincial government was particularly opposed to provisions that allow corporations to sue governments while they remain immune from any liability, and to have their charges settled in "unelected and unaccount-

able dispute panels," which are to be constituted of "trade experts," operating without rules of evidence or transparency, and with no possibility of appeal.

The veil of secrecy having been shredded by the rude noises from below, it became necessary for the Canadian government to reassure the public that ignorance is in their best interest. The task was undertaken in a national CBC TV debate by Canada's Federal Minister of International Trade, Sergio Marchi: he "would like to think that people feel reassured," he said, by the "honest approach that I think is exuded by our Prime Minister" and "the love of Canada that he has."

That ought to settle the matter. So democracy is healthy north of the border too.

According to CBC, the Canadian government–like Australia–"has no plans at this time for any legislation on the MAI," and "the trade minister says it may not be necessary," since the MAI "is just an extension of NAFTA."

There has been discussion in the national media in England and France, but I do not know whether there or elsewhere in the Free World it was felt necessary to assure the public that their interests are best served by faith in the leaders who "love them," "exude honesty," and steadfastly defend "the national interest."

Not too surprisingly, the tale has followed a unique course in the world's most powerful state, where "the men of best quality" declare themselves the champions of freedom, justice, human rights, and–above all–democracy. Media leaders have surely known all along about the MIA and its broad implications, as have public intellectuals and the standard experts. The business world has been intimately involved in planning and implementation from the outset: for example, the United States Council for International Business, which, in its own words, "advances the global interests of American business both at home and abroad." In January 1996, the Council even published *A Guide to the Multilateral Agreement on Investment*, available to its business constituencies and their circles, surely to the media. But in a most impressive show of self-discipline, the Free Press has succeeded in keeping those who rely on it in the dark–no simple task in a complicated world. We return to details.

The corporate world overwhelmingly supports the MAI. Though silence precludes citation of evidence, it is a fair guess that the sectors of the corporate world devoted to "enlightening the public" are no less enthusiastic. But once again, they understand that the the "ultimate weapon" may well be unsheathed if the rascal multitude gets wind of the proceedings. The dilemma has a natural solution. We've been observing it now for almost three years.

Worthy and Unworthy Constituencies

Defenders of the MAI have one strong argument: critics do not have enough information to make a fully convincing case. The purpose of the "veil of secrecy" has been to guarantee that outcome, and the efforts have had some success. That is most dramatically true in the United States, which enjoys the world's most stable and long-lasting democratic institutions and can properly claim to be the model for state-capitalist democracy. Given this experience and status, it is not surprising that the principles of democracy are clearly understood in the United States, and lucidly articulated in high places. For example, by the distinguished Harvard political scientist Samuel Huntington, in his text *American Politics*, where he observes that power must remain invisible if it is to be effective: "The architects of power in the United States must create a force that can be felt but not seen. Power remains strong when it remains in the dark; exposed to the

sunlight it begins to evaporate." He illustrated the thesis in the same year (1981) while explaining the function of the "Soviet threat": "you may have to sell [intervention or other military action] in such a way as to create the misimpression that it is the Soviet Union that you are fighting. That is what the United States has been doing ever since the Truman Doctrine."

Within these bounds–"creating misimpressions" to delude the public, and excluding them entirely–responsible leaders are to pursue their craft in democratic societies.

Nonetheless, it is unfair to charge the OECD powers with conducting the negotiations in secret. After all, activists did succeed in putting a draft version on the internet, having illicitly obtained it. Readers of the "alternative press" and Third World journals, and those infected by the "unholy alliance," have been following the proceedings since early 1997 at least. And keeping to the mainstream, there is no gainsaying the direct participation of the organization that "advances the global interests of American businesses," and their counterparts in other rich countries.

But there are a few sectors that have somehow been overlooked: the U.S. Congress, for example. Last November, 25 House representatives sent a letter to President Clinton stating that the MAI negotiations had "come to our attention"–presumably, through the efforts of activists and public interest groups. They asked the President to answer three simple questions.

"First, given the Administration's recent claims that it cannot negotiate complicated, multisectoral, multilateral agreements without fast track authority, how has the MAI nearly been completed," with a text "as intricate as NAFTA or GATT" and with provisions that "would require significant limitations on U.S. laws and policy concerning federal, state and local regulation of investment?"

Second, "how has this agreement been under negotiation since May 1995, without any Congressional consultation or oversight, especially given Congress' exclusive constitutional authority to regulate international commerce?"

"Third, the MAI provides expansive takings language that would allow a foreign corporation or investor to directly sue the U.S. government for damages if we take any action that would restrain 'enjoyment' of an investment. This language is broad and vague and goes significantly beyond the limited concept of takings provided in U.S. domestic law. Why would the U.S. willingly cede sovereign immunity and expose itself to liability for damages under vague language such as that concerning taking any actions 'with an equivalent effect' of an 'indirect' expropriation?"

On point three, the signatories might have had in mind the suit by the Ethyl Corporation–famous as the producer of leaded gasoline–against Canada, demanding $250 million to cover losses from "expropriation" and damages to Ethyl's "good reputation" caused by pending Canadian legislation to ban a gasoline additive that Canada regards as a dangerous toxin and significant health risk–in agreement with the U.S. Environmental Protection Agency, which has sharply restricted its use, and the State of California, which has banned it entirely. Or perhaps the signers were thinking of the suit against Mexico by the U.S. hazardous-waste management firm Metalclad, asking $90 in damages for "expropriation" because a site they intended to use for hazardous wastes was declared part of an ecological zone.

These suits are proceeding under NAFTA rules. The intention presumably is to explore and if possible expand their (vague) limits. In part they are probably just intimidation, a standard and often effective device available to those with deep pockets to obtain what they want through legal threats that may be completely frivolous.

"Considering the enormity of the MAI's potential implications," the congressional letter to the President concluded, "we eagerly await your answers to these questions." An answer reached

the signers a few months later, saying nothing. The media were advised of all of this, but I know of no coverage.

Another segment of the population that has been overlooked, along with Congress, is the population. Apart from trade journals, the first articles in the mainstream appeared at the end of 1997, in local journals. The <I>Chicago Tribune (Dec. 4, 1997) reviewed some of the terms of the MAI and noted that the matter has "received no public attention or political debate," apart from Canada. In the U.S., "this obscurity seems deliberate," the <I>Tribune reports. "Government sources say the administration…is not anxious to stir up more debate about the global economy." In the light of the public mood, secrecy is the best policy, relying on the collusion of the information system.

The Newspaper of Record broke its silence a few months later, permitting a paid advertisement by the International Forum on Globalization, which opposes the treaty (Feb. 13, 1998). The ad quotes <I>Business Week (Feb. 9), which described the MAI as "The most explosive trade deal you've never heard of…[it] would rewrite the rules of foreign ownership, affecting everything from factories to real estate and even securities. But most lawmakers have never even heard of the Multilateral Agreement on Investment," let alone the public. Why not, the Forum asks, implicitly answering with a review of the basic features of the treaty.

A few days later (Feb. 16), NPR's Morning Edition ran a segment on the MAI, and NPR has had further coverage since. A week later, the *Christian Science Monitor* ran a (rather thin) piece. <I>The New Republic had already taken notice of rising public concern over the MAI. The issue had not been properly covered in respectable sectors, <I>TNR concluded, because "the mainstream press," while "generally skewed to the left…is even more deeply skewed toward internationalism." Press lefties therefore failed to recognize the public opposition to Fast Track in time and have not noticed that the same troublemakers "are already girding [for] battle" against the MAI. The press should confront its responsibilities more seriously and launch a preemptive strike against the "MAI paranoia" that has "ricocheted through the Internet" and even led to public conferences. Mere ridicule of "the flat earth and black helicopter crowd" may not be enough. Silence may not be the wisest stance if the rich countries are to be able to "lock in the liberalization of international investment law just as GATT codified the liberalization of trade."

Perhaps in reaction to the congressional letter or the surfacing of the crazies, Washington issued an official statement on the MAI on February 17 1998. The statement, by Under Secretary of State Stuart Eizenstat and Deputy U.S. Trade Representative Jeffrey Lang, received no notice to my knowledge. The statement is boilerplate, but deserves front-page headlines by the standards of what had already appeared (essentially nothing). The virtues of the MAI are taken as self-evident; no description or argument is offered. On such matters as labor and the environment, "takings," etc., the message is the same as the one delivered by the governments of Canada and Australia: "Trust us, and Shut Up."

Of greater interest is the good news that the U.S. has taken the lead at the OECD in ensuring that the agreement "complements our broader efforts," hitherto unknown, "in support of sustainable development and promotion of respect for labor standards." Eizenstat and Lang "are pleased that participants agree with us" on these matters. Furthermore, the other OECD countries now "agree with us on the importance of working closely with their domestic constituencies to build a consensus" on the MAI. They join us in understanding "that it is important for domestic constituencies to have a stake in this process."

"In the interest of greater transparency," the official statement adds, "the OECD has agreed to make public the text of the draft agreement," perhaps even before the deadline is reached.

Here we have, at last, a ringing testimonial to democracy and human rights. The Clinton Administration is leading the world, it proclaims, in ensuring that its "domestic constituencies" play an active role in "building a consensus" on the MAI.

Who are the "domestic constituencies"? The question is readily answered by a look at the uncontested facts. The business world has had an active role throughout, as we learn, for example, from the publications of the U.S. Council for International Business. Congress has not been informed. The annoying public–the "ultimate weapon"–has been consigned to ignorance. A straightforward exercise in elementary logic informs us exactly who the Clinton Administration takes to be its "domestic constituencies."

That is a useful lesson. The operative values of the powerful are rarely articulated with such candor and precision. To be fair, they are not a U.S. monopoly. The values are shared by state/private power centers in other parliamentary democracies, and by their counterparts in societies where there is no need to indulge in rhetorical flourishes about "democracy."

The lessons are crystal clear. It would take real talent to miss them, and to fail to see how well they illustrate Madison's warnings over 200 years ago, when he deplored "the daring depravity of the times" as the "stockjobbers will become the pretorian band of the government–at once its tools and its tyrant; bribed by its largesses, and overawing it by clamors and combinations."

These observations reach to the core of the MAI. Like much of public policy in recent years, particularly in the Anglo-American societies, the treaty is designed to undercut democracy and rights of citizens by transferring even more decision-making authority to unnacountable private institutions, the governments for whom they are "the domestic constituencies," and the international organizations that serve their interests at public expense.

The Terms of the MAI

What do the terms of the MAI actually state, and portend? If the facts and issues were allowed to reach the public arena, what would we discover?

There can be no definite answer to such questions. Even if we had the full text of the MAI, a detailed list of the reservations introduced by signatories, and the entire verbatim record of the proceedings, we would not know the answers. The reason is that the answers are not determined by words, but by the power relations that impose their interpretations. Two centuries ago, in the leading democracy of his day, Oliver Goldsmith observed that "laws grind the poor, and rich men make the law"–the <I>operative law, that is, whatever fine words may say. The principle remains valid.

These are, again, truisms, with broad application. In the U.S. Constitution and its Amendments, one can find nothing that authorizes the grant of human rights (speech, freedom from search and seizure, the right to buy elections, etc.) to what legal historians call "collectivist legal entities," organic entities that have the rights of "immortal persons"–rights far beyond those of real persons, when we take into account their power. One will search the U.N. Charter in vain to discover the basis for the authority claimed by Washington to use force and violence to achieve "the national interest," as defined by the immortal persons who cast over society the shadow called "politics," in John Dewey's evocative phrase. The U.S. Code defines "terrorism" with great clarity, and U.S.

law provides severe penalties for the crime. But one will find no wording that exempts "the architects of power" from punishment for their exercises of state terror, not to speak of their monstrous clients (as long as they enjoy Washington's good graces): Suharto, Saddam Hussein, Mobutu, Noriega, and others great and small. As the leading Human Rights organizations point out year after year, virtually all U.S. foreign aid is illegal, from the leading recipient on down the list, because the law bars aid to countries that engage in "systematic torture." That may be law, but is it the meaning of the law?

The MAI falls into the same category. There is a "worst case" analysis, which will be the right analysis if "power remains in the dark," and the corporate lawyers who are its hired hands are able to establish their interpretation of the purposely convoluted and ambiguous wording of the draft treaty. There are less threatening interpretations, and they could turn out to be the right ones, if the "ultimate weapon" cannot be contained and democratic procedures influence outcomes. Among these possible outcomes is the dismantling of the whole structure and the illegitimate institutions on which it rests. These are matters for popular organization and action, not words.

Here one might raise some criticism of critics of the MAI (myself included). The texts spell out the rights of "investors," not citizens, whose rights are correspondingly diminished. Critics accordingly call it an "investor rights agreement," which is true enough, but misleading. Just who are the "investors"?

Half the stocks in 1997 were owned by the wealthiest 1 percent of households, and almost 90 percent by the wealthiest tenth (concentration is still higher for bonds and trusts, comparable for other assets); adding pension plans leads only to slightly more even distribution among the top fifth of households. The enthusiasm about the radical asset inflation of recent years is understandable, considering which voices are heard, sometimes believed. And effective control of the corporation lies in very few institutional and personal hands, with the backing of law, after a century of judicial activism.

The innocent talk of "investors" should not conjure up pictures of Joe Doakes on the plant floor, but of the Caterpillar corporation, which has just succeeded in breaking a major strike by reliance on the foreign investment that is so highly lauded: using the remarkable profit growth it shares with other "domestic constituencies" to create excess capacity abroad to undermine efforts by working people in Illinois to resist the erosion of their wages and working conditions. These developments result in no slight measure from the "financial liberalization" of the past 25 years, which is to be enhanced by the MAI; it is worth noting too that this era of financial liberalization has been one of unusually slow growth (including the current "boom," the poorest recovery in postwar history), low wages, high profits–and, incidentally, trade restrictions by the rich.

A better term for the MAI and similar endeavors is not "investor rights agreements" but "corporate rights agreements."

The relevant "investors" are collectivist legal entities, not persons as understood by common sense and the tradition, before the days when modern judicial activism created contemporary corporate power. That leads to another criticism. Opponents of the MAI often allege that the agreements grant too many rights to corporations. But to speak of granting too many rights to the king, or the dictator, or the slaveowner, is to give away too much ground. Why should they have any rights at all? Rather than "corporate rights agreements," these measures might be termed, more accurately, "corporate power agreements," since it is hardly clear why such institutions should have any rights at all.

When the corporatization of the state capitalist societies took place a century ago, in part in reaction to massive market failures, conservatives–a breed that no longer exists–bitterly objected to this attack on the fundamental principles of classical liberalism. And rightly so. One may recall Adam Smith's critique of the "joint stock companies" of his day, particularly if management is granted a degree of independence; and his attitude toward the inherent corruption of private power, probably a "conspiracy" against the public when businessmen meet for lunch, in his acid view, let alone when they form collectivist legal entities and alliances among them, with extraordinary rights granted by state power.

With these provisos in mind, let us recall some of the intended features of the MAI, relying on what information has reached the concerned public, thanks to the "unholy alliance."

"Investors" are accorded the right to move assets freely, including production facilities and financial assets, without "government interference" (meaning a voice for the public). By modes of chicanery familiar to the business world and corporate lawyers, the rights granted to "foreign investors" transfer easily to "domestic investors" as well. Among democratic choices that might be barred are those calling for local ownership, sharing of technology, local managers, corporate accountability, living wage provisions, preferences (for deprived areas, minorities, women, etc), labor-consumer-environmental protection, restrictions on dangerous products, small business protection, support for strategic and emerging industries, land reform, community and worker control (that is, the foundations of authentic democracy), labor actions (which could be construed as illegal threats to order), and so on.

"Investors" are permitted to sue governments at any level for infringement on the rights granted them. There is no reciprocity: citizens and governments cannot sue "investors." The Ethyl and Metalclad suits are exploratory initiatives.

No restrictions are allowed on investment in countries with human rights violations: South Africa in the days of "constructive engagement," Burma today, etc. It is to be understood, of course, that the Don will not be hampered by such constraints. The powerful stand above treaties and laws.

Constraints on capital flow are barred: for example, the conditions imposed by Chile to discourage inflows of short-term capital, widely credited with having insulated Chile somewhat from the destructive impact of highly volatile financial markets subject to unpredictable herd-like irrationality. Or more far-reaching measures that might well reverse the deleterious consequences of liberalizing capital flows. Serious proposals to achieve these ends have been on the table for years, but have never reached the agenda of the "architects of power." It may well be that the economy is harmed by financial liberalization, as the evidence suggests. But that is a matter of little moment in comparison with the advantages conferred by the liberalization of financial flows for a quarter-century, initiated by the governments of the U.S. and U.K., primarily. These advantages are substantial. Financial liberalization contributes to concentration of wealth and provides powerful weapons to undermine social programs. It helps bring about the "significant wage restraint" and "atypical restraint on compensation increases [which] appears to be mainly the consequence of greater worker insecurity," which so encourage Fed chair Alan Greenspan and the Clinton Administration, sustaining the "economic miracle" that arouses awe among its beneficiaries and deluded observers, particularly abroad.

Enthusiasm for these wonders is ebbing, however, among the managers of the global economy, as the near-disasters that have accelerated since financial flows were liberalized from the 1970s have begun to threaten the "domestic constituencies" as well as the general public. Chief

economist of the World Bank Joseph Stiglitz, the editors of the London *Financial Times*, and others close to the centers of power have begun to call for steps to regulate capital flows, following the lead of such bastions of respectability as the Bank for International Settlements. The World Bank has also somewhat reversed course. Not only is the global economy very poorly understood, but serious weaknesses are becoming harder to ignore and patch over. There may be changes, in unpredictable directions.

Returning to the MAI, signatories are to be "locked in" for 20 years. That is a "U.S. government proposal" according to the spokesperson for the Canadian Chamber of Commerce, who doubles as senior adviser of Investment and Trade for IBM Canada, and is selected to represent Canada in public debate.

The Treaty has a built-in "ratchet" effect, a consequence of provisions for "standstill" and "rollback." "Standstill" means that no new legislation is permitted that is interpreted as "non-conforming" to the MAI. "Rollback" means that governments are expected to eliminate legislation already on the books that is interpreted as "non-conforming." Interpretation, in all cases, is by you-know-who. The goal is to "lock countries into" arrangements which, over time, will shrink the public arena more and more, transferring power to the approved "domestic constituencies" and their international structures. These include a rich array of corporate alliances to administer production and trade, relying on powerful states that are to maintain the system while socializing cost and risk for nationally-based transnational corporations–virtually all TNCs, according to recent technical studies.

The current target date for the MAI is April 27, but further delays are likely because of disputes within the club. According to rumors filtering through the organs of power (mainly the foreign business press), these include efforts by the European Union and the United States to allow certain rights to constituent states (perhaps affording the EU something like the vast internal market that U.S.-based corporations enjoy), reservations by France and Canada to maintain some control over their cultural industries (a still greater problem for smaller countries), and European objections to the more extreme and arrogant forms of U.S. market interference, such as the Helms-Burton act.

The *Economist* reports further problems. Labor and environmental issues, which "barely featured at the start," are becoming harder to suppress. It is becoming more difficult to ignore the paranoids and flat-earthers who "want high standards written in for how foreign investors treat workers and protect the environment." Worse still, "their fervent attacks, spread via a network of internet websites, have left negotiators unsure how to proceed." One possibility would be to pay attention to what the public wants. But, quite properly, that option is not mentioned: it is excluded in principle, since it would undermine the whole point of the enterprise.

Even if the deadline isn't met and the MAI is abandoned, that wouldn't show that it has "all been for nothing," the *Economist* informs its constituency. Progress has been made, and "with luck, parts of MAI could become a blueprint for a global WTO accord on investment," which the recalcitrant "developing countries" may be more willing to accept–after a few years of battering by market irrationalities, the subsequent discipline imposed on the victims by the world rulers, and growing awareness by elite elements that they can share in concentrated privilege by helping to disseminate the doctrines of the powerful, however fraudulent they may be, however others may fare; and we can expect "parts of MAI" to take shape elsewhere, perhaps in the IMF, which is suitably secretive.

From another point of view, further delays give the rascal multitude more opportunity to rend the veil of secrecy.

It is important for the general population to discover what is being planned for them. The efforts of governments and media to keep it all under wraps, except for their officially-recognized "domestic constituencies," are surely understandable. But such barriers have been overcome by vigorous public action before, and can be again.

Noam Chomsky
Domestic Constituencies
May 1998

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