

TO: The Joint Standing Committee on Treaties
The Parliament of Australia
Parliament House
CANBERRA ACT 2600

DATE: 28 April, 1998

SUBJECT: Multilateral Agreement on Investment

INTRODUCTION

Due to the constraint of time this submission presents only a brief expression of the concerns, of the members of The Council for the National Interest in Western Australia, about the implications for Australia if it becomes a signatory to the MAI being negotiated by OECD countries. The topic deserves much more comprehensive treatment than time allows us to so do.

SUMMARY

For reasons relating to protection of sovereignty, determination of national priorities, preservation and enhancement of taxation revenues, maintenance of control of currency and interest rates and the integrity of Australia's ability to determine national priorities and address its deep seated economic and social problems, it is clearly against the national interest for Australia to sign the MAI.

It is RECOMMENDED that Australia withdraws from the MAI process.

THE SUBMISSION

Sovereignty

It is our understanding that once a country has signed the MAI, it cannot withdraw for 5 years, and even then, it is bound by the conditions of entry for a further 15 years.

Comment - In a world where technology is changing rapidly and circumstances, not yet dreamed of, or industries and financial mechanisms not yet envisaged, could arise within these time parameters, it would be contemptible for the Government to sign the MAI, even if it had a mandate to do so.

The Chairman of the Negotiating Group on MAI, Mr Frans Engering, is reported as saying at a symposium in Korea, April 1997, inter alia, "... A country which signs up to the MAI, will of course, remain totally responsible for its policies...the only requirement is that these (policies) be applied on a non-discriminatory basis ie. the same rules should apply to both domestic and foreign companies." and "...if domestic investors are allowed to invest in a sector, foreign investors should be allowed to invest in that sector (on the same terms)."

Comment - both of these aspects breach the fundamental principle that foreign investors must abide by the spirit and letter of the laws of the countries in which they invest. All nations, including Australia, have a right and duty to protect their own citizens and their own industries according to their own national priorities.

The MAI specifically state that Capital must be allowed to be transferred without delay.

Comment - Australia is already dangerously exposed to the unregulated march of global financial markets. It is a chilling thought that Indonesia's economic fundamentals were, arguable, more favourable than Australia's before the financial markets lost confidence in Indonesia.

Australia's ability to defend its currency in a crisis, weak as it is, would be further weakened by signing the MAI.

Taxation Revenues and Social Priorities

The Australian Taxation Office, International Division has state that of the 7,760 transnational corporations operating in Australia, around 4,300 of them paid no tax in Australia.

The ability of the Australian Government to pass specific laws to regulate excessive transfer pricing by which, it is recognised, these companies avoid paying tax, would be negated by signing the MAI.

The avoidance of fair taxation by these corporations places a heavier burden on Australian taxpayers and inhibits the ability of government to address domestic, social and economic priorities.

Immigration

The MAI provides that foreign corporations must be able to transfer key personnel into a country, in which it invests, without restriction by labour or immigration laws.

Comment - It is not difficult to conjure up scenarios in which “key personnel” could be stretched to cover a wide variety of employees, denying Australians training and jobs. Any attempt to impose requirements for percentages of Australian workers, training of workers, Australian components, export and local sales etc. would not be allowed. In other words any attempt to attract specific foreign investment, judged to be good for the nation, on specified terms would be banned. At the same time competitor nations, not signatories to the MAI, could do as they like.

Exceptions/Reservations

There is a facility for signatories to specify exceptions or reservation when signing the MAI. It is reported that Australia has signalled that it will seek exceptions to a number of areas such as media, real estate, fisheries, telecommunications, aviation, privatisation, monopolies, etc.

Comment - The comments by Frans Engering, referred to above, and the draft itself give little comfort in relation to these exceptions. It seems clear that there will be either commitments to “rollback” initial reservations over time or inexorable pressure on governments to regularly “justify” every exception and to work towards the elimination of all exceptions and reservations.

CONCLUSION AND RECOMMENDATION

The MAI if signed by Australia would extent to all levels of government in Australia. Even on the evidence of this limited submission it is starkly clear that for Australia to sign the MAI would be tantamount to surrendering our political, economic and financial sovereignty to the dictates of foreign investors. Our sovereignty is already at serious risk to the unregulated forces of “globalization” in all its guises.

The Australian Government has no mandate to sign this Agreement. To sign and bind Australia in such a straight jacked would be utterly contemptuous of future governments, citizens and the national interest.

It is **RECOMMENDED** THAT Australia should immediately withdraw from negotiations and participation in the MAI process.

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