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Weekend Release
September 20, 1997

Multinationals Close to Securing Unprecedented Power over Third World Nations

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- *Less-developed countries not permitted to participate in negotiations; offered only "observer status"*
- *Temptations will exist for developing nations to lower worker health and living standards, as well as ease environmental regulations, in order to attract desperately needed foreign capital*
- *Unprecedentedly tough dispute resolution mechanism is binding and will result in governments being financially liable to multinationals for any infractions*
- *Agreement could compromise the economic sovereignty and well-being of developing nations.*

The proposed Multilateral Agreement on Investment (MAI) is being pushed forward in an international forum where only the "rich" nations are formally represented, and where representatives of multi-billion dollar multinationals (MNCs) dominate the wings as well as the corridors of power at the gathering. The quasi-surreptitious manner in which the negotiations have been carried out should be of great concern and be the basis for serious skepticism on the part of poorer nations. If the agreement comes into force, it inevitably will have a worldwide transformative effect on the current system of international investment and trade.

Because of its unpopularity among poorer nations during the proposed agreement's initial round of negotiations, which took place at the World Trade

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Organization, the proceedings to draft the MAI were later moved to the much more congenial OECD, representing the world's most wealthy nations, where less developed nations have been all but excluded from contesting many of the pact's most controversial provisions. By moving the talks to the OECD, U.S. business interests were also able to ram through the immensely important right of private investors to sue national governments for breaches of contract, which would equip the MNCs with broad interventionist legal powers far beyond those they already possess.

The MAI could also pose a serious threat to the social, economic and environmental welfare of developing nations. In a worldwide competition to attract foreign investment, governments of developing countries will implicitly or explicitly risk being pressured to lower their labor and environmental standards in an effort to reduce their barriers to trade in order to best their competitors in a race towards the lowest common denominator. Although accession to the pact will be voluntary, this becomes an almost irrelevant distinction, because of the Third World's craving for foreign capital and new investments. Inevitably, less-developed countries will feel coerced into accepting the terms of a agreement which is elective only in name.

Non-OECD Nations only have "Observer Status"

Negotiated for well over two years, the proposed Multilateral Agreement on Investment inevitably will have an epochal impact on the world's poor, even though much of this will be behind the scenes. Propelled by U.S. and European Union MNCs, the agreement calls for the removal of nearly all restraints on investment by signatory countries, and will equip outside Goliath corporations with almost unprecedented leverage. Only Argentina, Brazil and Hong Kong have been granted "observer status" at the gathering, which allows them to do nothing more than monitor the negotiation process, *not* participate in it. No other developing nation even has been consulted, but because of a desperate need for foreign capital, MAI proponents smugly believe that the poor countries will have little choice but, in an orderly manner, to adopt the treaty, which ultimately could prove highly injurious to their economies. The United States Council on International Business in an unveiled moment of candor, predicted that "given the current competition for capital, accession to the MAI, particularly by developing countries, will serve as a 'seal of approval.'" To avoid legislative delays and amendments, the Clinton Administration, heavily influenced by the USCIB, will soon submit a request to allow the treaty to obtain "fast track" authority from Congress. If approved, the pact cannot be amended by Congress, and will require only a majority vote.

As was previously noted, the proposed agreement started off by being negotiated within the WTO, where every nation casts only one vote. But because of intense opposition among the less-developed countries (LDCs), the U.S. (and its corporate interests), as well as other OECD members, decided to move the negotiations to the OECD, the industrialized nations' "country club," where global business interests routinely obtain a privileged hearing. By this move, the U.S. and its confreres would secure their paramount objective: the right for a private corporation to sue a foreign government if such an entity believes that it is being unfairly affected by some Third World national investment requirement. Such a development most definitely would have been blocked by the LDCs in the WTO. In the words of the USCIB, "investors must be

protected from the arbitrary seizure of their investments." Corporations have relied upon a similar dispute resolution process in the NAFTA to challenge pending and existing environmental regulations seen as unfair to open market competition.

Environmental Protectionism Challenged by Charges of Trade Restraint

NAFTA's experience has shown that by allowing corporations broad access to a dispute resolution mechanism, environmental, health and worker rights legislation often suffer. For example, the U.S.-based Ethyl Corporation has threatened the Canadian government with a $251 million suit if Ottawa enacts a bill banning the use of fuel additive MMT, a known human toxic that has been established as being detrimental to air pollution-control technologies. Ethyl claims that the Canadian ban on MMT is equivalent to an "expropriation," because it negatively affects the company financially through potential market loss. Big business argues that "any expropriation must be accompanied by prompt, adequate and effective compensation," but the real question is what constitutes an "expropriation?" While maybe not the case with Canada, the mere threat of a multi-million dollar lawsuit could be enough to browbeat a struggling third world government to loosen its environmental regulations and yield to an aggressive corporation's intimidation.

Under the current WTO agreement (as was the case for the past 50 years under GATT), the right of investors to sue governments is not recognized. Non-OECD members have voiced concern that the MAI would give "all rights to foreign companies and all obligations to host country governments." As a trade agreement, the MAI will be legally binding, with enforcement by means of stiff monetary fines aimed directly at the offending nation. This means that national laws and policies must be consistent with the treaty's provisions, or the government could be financially liable. Major conditions affecting foreign capital flows would be determined by a set of multilateral investment rules, determined entirely by the OECD nations, with the resulting policy options available to poor nations being entirely defined by rich nations' guidelines. The envisaged dispute-resolution system could be particularly onerous for the LDCs, which almost certainly will be intimidated by the exorbitant sums likely demanded by offended MNC's for any putative defiance of the MAI by host countries. Invariably then, the LDCs will acquiesce to the MNCs' demand to lower labor and environmental standards or be put against the wall through economic asphyxiation.

A Clean Sweep by the Multinationals

The current international system doesn't allow any outside private entity the right of unrestricted access to the marrow of another country's economy. But with the MAI, almost all barriers to trade and investment will be dismantled and all economic sectors will be opened to untrammeled foreign investment, including 100% equity deals. That means that special strategic sectors previously reserved solely for domestic enterprises, such as telecommunications, will routinely be fully owned and operated by foreign corporations, a trend which already has become a stampede. Further, domestic policies designed to even slightly favor local national companies and meant to protect local culture would risk being challenged as prejudicial, which could be highly wounding to the relatively small and vulnerable economies of the southern nations, some of whom are currently experimenting with encouraging local entrepreneurs and micro-credit programs.

Such small-scale efforts cannot hope to compete with the well-muscled multinationals headquartered in the industrialized nations. The USCIB claims that the pact is needed to protect the rights of investors and "reduce the distortions and inefficiencies caused by excessive regulations," a.k.a. "economic nationalism." However, it could be argued that public policies favoring local enterprise are not necessarily meant to create an unfair barrier to penetration by multinational corporations, but are aimed at empowering local producers and workers, and giving meaning to the phrase "economic sovereignty."

Experience shows that without the ability to regulate multinationals and the power to establish conditions on their operations in a given country, foreign corporations may not play an entirely positive role from the perspective of the LDC, with the latter being at risk of being reduced to little more than a surrogate parent for some foreign progeny.

Authored by Will Morgan, a Research Associate at the Washington, D.C.-based Council on Hemispheric Affairs (COHA). Founded in 1975 as a non-partisan research and information organization, COHA has been described on the Senate floor as "one of our nation's most respected bodies of scholars and policy makers."