

Look Out Below: MAI Is About to Fly

BY MARJORIE KELLY

This stealth trade agreement is out to bomb democracy.



In a democracy, a nation's people rule—right? Not if an international trade agreement trumps their decisions. Consider, for example, that the people of the European Union decided to ban the import of hormone-treated beef. The people decided. But the World Trade Organization decided otherwise, and overturned the ban after the U.S. sued.

In Canada, the people decided to ban the import of MMT—a toxic fuel additive, believed to damage control equipment in cars and thus cause higher emissions. But its U.S. manufacturer, Ethyl Corp., argued the ban was “expropriation,” and in April 1997 demanded compensation of \$251 million from the Canadian government. Under the terms of NAFTA, an international panel—not a domestic court—will make the final ruling. Its proceedings will be secret, its records closed, and its decision binding. The people decided against MMT. But a NAFTA panel may decide differently. And there will be no appeal.

Something unprecedented is at work here: the use of international trade law to overturn domestic law. In another case, Venezuela and Brazil challenged the U.S. Clean Air Act before the WTO, and the law was changed. To avoid a similar challenge, the U.S. House gutted dolphin protection. The people rule? Sometimes—but not if their decisions interfere with international business.

As frightening as these cases are, they're rivulets before the flash flood that's building with the proposed Multilateral Agreement on Investment (MAI). Scheduled to come before Congress May 1998, it's been secretly in the works at the Paris-based Organization for Economic Cooperation and Development (OECD) since 1995. As one OECD negotiator crowed, “We're writing the constitution of a single global economy.” MAI is, in essence, a Bill of Rights for Corporations. It seeks to create a worldwide level playing field for foreign investors and corporations—while relegating everyone else's interests to the sidelines.

While NAFTA involves only North America, MAI would involve all 29 OECD nations (the world's richest), as well as other nations that choose to join. While NAFTA allows exceptions for existing domestic laws, MAI aggressively seeks to negate current laws, or penalize governments for them. The Western Governors' Association (WGA) offers this preview of laws that could be attacked under MAI, if it is enacted in its present form:

1. State enterprises would be required to act “solely in accordance with commercial considerations,” and could no longer use financial policies to promote social objectives. Arizona, for example, might no longer use its bonding authority to promote investment in pollution-control technology. California could have to give up its moratorium on commercial salmon fishing licenses. In short, states could no longer hold state resources in trust for state residents. To do so might exclude new market entrants, to the disadvantage of foreign investors.

At the federal level, the government could not impose sanctions on human rights violators—as with South Africa or Burma, without having such moves challenged as barriers to trade.

2. A limitation on “Performance Requirements” might make community reinvestment laws and recycled content laws illegal. Some 20 states—including Washington, Iowa, Minnesota, and Pennsylvania—allow investors to acquire banking assets only if they reinvest locally. Arizona, New Mexico, Iowa, Ohio and another 16 states deposit state funds only with local banks, or banks that invest locally. Under MAI, they could no longer make it a requirement to do so. Similarly, Wisconsin mandates a minimum percentage of recycled content in glass or plastic containers, but foreign investors could argue this amounts to an investment-distorting performance requirement.

3. If corporations receive tax breaks or free training, they could not be required to give anything in return. When Colorado offers customized job training, it could no longer attach “clawback” provisions requiring companies to certify how many jobs they will create and how much they will pay workers. Enterprise zones, like Oregon's property tax exemption for businesses that locate in economically disadvantaged areas, could become illegal.

4. Laws requiring companies to reclaim strip-mined areas could be challenged as “expropriation of assets.” Maryland, Virginia, and Pennsylvania use coordinated wetlands laws to protect the Chesapeake Bay—placing restrictions on destruction of plant life and changes to drainage patterns. Such laws could be challenged as “creeping expropriation.” American courts say these regulations don't require compensation to owners—but OECD arbitrators might see things differently. And once they rule, there is no appeal.

As an enforcement mechanism, MAI will grant investors and corporations the right to sue governments—forcing them to change their laws, or pay out hundreds of millions. But MAI does not grant governments reciprocal rights to sue corporations for damages.

Perhaps most frightening, MAI is flying below media radar as it moves toward enactment—like the invisible approach of a stealth bomber. And if President Clinton has his way with fast-track negotiating authority, debate on MAI in Congress would be strictly limited, and amendments prohibited. This agreement must find its way into public debate soon. The MAI stealth agreement is far-reaching, destructive, and invisible—and it's out to bomb democracy. It must be stopped.

Information on laws in jeopardy comes from “MAI: Potential Effects on State and Local Governments,” by Thomas Singer and Paul Orbuch of WGA, 600 17th St. Suite 1705, South Tower, Denver, CO 80202. Phone 303/623-9378. On-line see www.islandnet.com/plethora, which links to numerous reports.

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