Unravelling the Faustian Bargain: Non-State Actors and the Multilateral Agreement on Investment

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List of abbreviations:

ACTPN	Advisory Committee on Trade Policy Negotiations (USTR)
APEC	Asia Pacific Economic Cooperation
ASEAN	Association of South East Asian Nations
BIAC	Business and Industry Advisory Council (OECD)
BIT	bilateral investment treaty
EU	European Union
FTAA	Free Trade Area of the Americas
FDI	foreign direct investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
ICC	International Chamber of Commerce
IMF	International Monetary Fund
MAI	Multilateral Agreement on Investment
MFN	most favoured nation
Mercosur	*Mercado Común del Sur*
MNC	multinational corporation
NAFTA	North American Free Trade Area
NGO	non-governmental organization
OECD	Organization for Economic Cooperation and Development
TRIMS	Trade-Related Investment Measures
TRIPS	trade-related intellectual property rights
TUAC	Trade Union Advisory Committee (OECD)
USCIB	US Council for International Business
USTR	United States Trade Representative
WTO	World Trade Organization

Unravelling the Faustian Bargain: Non-State Actors and the Multilateral Agreement on Investment[1]

This chapter examines the influence of non-state actors in the recent controversial and ultimately unsuccessful negotiations concerning a Multilateral Investment Agreement (MAI) at the OECD. For many, these negotiations have epitomized the growing influence of non-state actors in international affairs, and particularly of multinational business. Launched in 1995 at the behest of the US government, the quest for a liberal multilateral regime governing international investment appeared to reflect growing corporate power in the new global economy. In the wake of the Uruguay Round of the GATT, with its controversial agreements in areas like services trade and TRIPS (trade-related intellectual property rights), these new negotiations reflected a new boldness of global firms. These firms, rather than governments and citizens, appeared to be directing the new agenda of global economic governance.

The perception that the OECD and major governments had been captured by special corporate interests bent on imposing a ‘charter for global business’ on countries both inside and out of the OECD fuelled a remarkable backlash by opponents of this agenda. Notably, it was not traditional labour groups critical of multinational corporations (hereafter MNCs), or even developing countries opposed to a liberal multilateral regime that led this backlash. Rather, it was a diverse collection of self-styled ‘civil society’ non-governmental organizations (NGOs), especially environmental groups, that mobilized opposition to the negotiations in a number of important countries, including in the US itself. Labour and developmental NGOs soon attached themselves to this bandwagon, as did some important developing countries vocally opposed to MAI. Eventually, political support for MAI eroded in important countries like the US and France to the point where the negotiations were abandoned in 1998.

The MAI story is important because it reflects two developments in international economic governance. First, the recent rapid growth of foreign direct investment and spread of MNCs, to the point where local (foreign) sales by MNC affiliates have become more important than 'traditional' international trade flows, led many to argue that an international investment regime is necessary (see Graham 1996). International businesses and business organizations have also argued that a multilateral regime on investment is needed to replace the patchwork quilt of regional and bilateral agreements relating to investment, and to reduce the high degree of variance in national investment regimes. This demand produced a series of initiatives within the GATT, the OECD, and in regional forums such as NAFTA and the EU to strengthen rules relating to international investment (see Walter 1999).

Importantly, however, in undertaking such initiatives governments relied upon a very traditional political mechanism used to sell reciprocal trade liberalization agreements domestically. In the case of investment rules, as historically with the GATT and regional trade agreements, this essentially meant the mobilization of pro-trade business organizations to sell the case for *foreign* (not domestic) liberalization. Not only was business mobilization important for establishing national negotiating positions, it was essential for post-negotiation domestic ratification (Hoekman and Kosteki 1995: 66-8; Krugman 1997).

The second development, often also linked with globalization, is the emergence of non-business NGO groups with a growing interest in international economic regimes and negotiations. Having come late to this particular game, many of these groups have been horrified by the reliance of governments upon the political mechanism referred to above. It confirmed the worst fears of such groups that international economic regimes operate primarily in the interest of big business. Not only has it been easy for such groups to expose the Faustian bargain between governments and big business; they have also rather successfully threatened to halt the entire process of liberalization itself by targeting the

domestic ratification process. What was remarkable about the MAI negotiations was not the initial influence of pro-liberalization business lobbies in the corridors of government and international organizations. Rather, it was the rapidity with which these business lobbies lost the moral high ground and effective control over the liberalization agenda.

The first section below discusses the two trends referred to above, the impact of MNCs and of non-business NGOs in the global political economy. It outlines various mechanisms by which these groups can influence public policy. Much stress is usually placed upon the impact of capital mobility in enhancing the influence of business groups over policy. However, I argue that more important has been the exposure and associated unravelling of the Faustian bargain referred to above. As such negotiations have come to focus increasingly upon direct market access (investment) and regulatory barriers to such access, the traditional coalition between pro-liberalization business and government has unravelled under pressure from NGO opponents. This has worked in favour of non-business NGOs and against international business, and has also contributed to the growing incoherence of foreign economic policymaking in the major countries.

Following this is a discussion of the origins and course of the MAI negotiations up to their collapse in late 1998. A final section concludes on the question of the relative influence of business and non-business actors in these negotiations. I argue that the credible threat of NGO opponents of MAI to threaten domestic ratification gained them substantial influence over the outcome, reducing business interest in it and thereby unravelling government support for MAI. In part this credible threat derived from the effects of the communications revolution, particularly the internet, in reducing the political transactions costs of advocacy. But it also derived from the fundamental vulnerability of the whole postwar liberalization process to the politicization of the Faustian bargain on which it was based.

This implies that it will be difficult to turn the clock back. I argue that the MAI project represents the high watermark of the peculiar political economy of postwar trade and investment liberalization, in which governments and pro-trade business colluded. At the least, the major governments will need to rethink their whole approach to negotiating international liberalization agreements. Re-branding and re-legitimising the liberalization process is likely to involve opening it up to much greater NGO participation, both at the domestic and international levels. This raises many difficult problems regarding legitimacy and the likely effects of expanding participation, and is likely to be resisted by pro-liberalization lobbies. As the old ways have little political legitimacy left, however, some move in this direction would seem to be the only way forward. Given that it by no means clear at present how such a reconfiguration of the liberalization process can take place, this will be a long and difficult road to travel.

1 Nonstate actors and the political economy of liberalization

Various theories suggest why non-state actors might enjoy growing influence in the international political economy. The transnationalism and interdependence literature of almost three decades ago suggested that this was one consequence of the declining salience of security issues in world politics and greater centrality of economic interdependence. Non-state actors such as MNCs were seen to be in the forefront of this process, though even then this literature pointed to the role of various kinds of advocacy and special interest group. (Keohane and Nye 1971, 1977; Mansbach 1976; Barnet and Müller 1974). As interdependence rose, domestic policies and structures became matters for international negotiation, leading some of these groups to resist liberalization.

There are many echoes of this literature in the current globalization debate.[2] Here, the view is widely held that some form of fundamental technological shift is taking place that enhances the power of certain kinds of non-state actor against others, including the state

itself. It is particularly apparent in the argument that technological change has increased the power of mobile capital vis-à-vis immobile actors in general (Ohmae 1995; Cerny 1995; George 1999; Korten 1995). The core of this argument is that enhanced mobility constitutes a form of 'exit' power for capital agents, providing them with a form of structural power. In the present context, it is commonly claimed that mobile MNCs can 'arbitrage' different political and economic jurisdictions, producing a 'race to the bottom' in terms of regulatory policy and the costs of doing business. Although this implicit threat of exit by itself may tend to bias economic policy in favour of business preferences, it is also sometimes held to increase the political 'voice' of international business (cf. Hirschman 1970; Gill 1995). In this view, we ought to see an increase over time in the influence of business over policy, including an increase in the direct representation of business in key policy networks.

Such structural power might enable international business to bypass and undermine the competitive political lobbying process typically emphasized in pluralist theories of democratic politics (Dahl 1989; Bauer et al. 1971). Some versions of dependency literature had long relied upon such arguments about the structural power accruing to MNCs investing in host jurisdictions, particularly in those with underdeveloped pluralist institutions (Evans 1978; Newfarmer 1985). Much of the globalization literature amounts to the claim that growing capital mobility has generalized this relationship between business and the state for all countries.

One of the problems with this literature is that it often exaggerates the impact of rising capital mobility upon the influence of business in policymaking. The empirical evidence for a generalized race to the bottom is very mixed and appears to vary considerably by issue-area. There are a number of reasons why this might be so,[3] but here I focus on the influence of business in the area of international trade and investment liberalization. The most obvious piece of counter-evidence is that most countries retain important restrictions on trade and

investment flows in a number of sectors. Indeed, in the developing world, countries that have been most successful in attracting large inflows of FDI have been able to do so while at the same time maintaining restrictions to which international business lobbies clearly object. A number of the East Asian developing countries fall into this category (Walter 1999). This is inconsistent with the strong form of the capital mobility argument, which holds that such policies tend to be arbitraged away by the threat of non-investment or capital exit. This evidence also suggests that MNCs enjoy less influence in the policy networks of these host countries than is sometimes claimed.

The result has been that MNCs have tended to rely upon what I term 'indirect lobbying' to improve their market access in important developed and developing countries. This has been conspicuously evident for American MNCs, still by far the single largest national group of such firms. Indirect lobbying of host country governments occurs when MNCs lobby their home governments to pressure host governments to treat the MNC more favourably. This form of corporate influence in the international political economy is of course reliant on a rather traditional form of interstate bargaining of a multilateral, regional or bilateral kind. However, it is plausible that as business has become more reliant upon access to foreign markets, the demand for such liberalizing initiatives by home governments has increased over time. One might interpret the increased activism of the US since the mid-1980s in such terms. Its 'multi-track' market-opening strategy, involving a series of multilateral, regional and bilateral liberalization initiatives, has often been explicitly framed as a response to the needs of American business.

It is important to recognize, however, that the relationship between home governments and international business lobbies has a considerably older pedigree, and is not simply a result of recent trends. Crucially, governments in the developed countries, in pushing trade and investment liberalization agreements, have been as reliant upon big

business as the latter has been upon home governments. This is closely associated with strategies of 'reciprocal' liberalization, as institutionalized in the GATT since 1947 and the standard model in most other forums. Rarely have governments felt able to rely upon standard economic welfare arguments in favour of international trade in goods, services and assets to sell reciprocal liberalization (if they did, they might favour unilateral liberalization). On the contrary, in selling liberalization governments they have usually relied upon mercantilist arguments that domestic liberalization is a necessary 'concession' in order to gain greater 'reciprocal' access to markets abroad.

Demonstrating the benefits of such reciprocal agreements has therefore involved asking business lobbies to provide political support on the basis of the benefit to them of foreign countries' concessions. In the American case, for example, export-oriented industries have been mobilized through the Industry Advisory Committees that provide advice to the Office of the United States Trade Representative (USTR). This injection of business preferences into the process helps USTR to set the liberalization agenda and also provides ongoing contact between government and business during international negotiations. It also provides political cover for members of Congress, who must ultimately ratify trade (and trade-related) agreements. In addition, broad industry groupings of pro-trade firms such as the Emergency Committee for American Trade, the US Chamber of Commerce, and the Business Roundtable have played an important role in cultivating Congressional support in the final ratification process both for multilateral agreements and for regional deals like NAFTA. (Destler 1992: 192; Milner 1997: 206-14).

It is notable in the American case that the mobilization of pro-liberalization lobbies to counter more protectionist industrial and labour groups has been domestic in character, both in terms of the objects of the lobbying (federal politicians) and the lobbies themselves. The anti-liberalization lobbies tend to be domestically organized because they are usually made

up of domestically oriented firms and associated labour groups. Although pro-liberalization groups such as ECAT and the Business Roundtable include major multinationals, their political marketing efforts have accordingly stressed the benefits of liberalization for *American* firms and jobs. In the case of MAI, as we argue in section 2.1 below, the US Council for International Business took the lead in political lobbying and the highest profile in the media battle. The Organization for International Investment, a lobby group that represents US affiliates of foreign multinational firms in Washington D.C., much preferred to keep a low political profile.[4]

The main point is that interest groups/NGOs form at least in part in response to institutional political structures. This is clear in the case of Europe, where the institutional structure of policymaking is more complex than in the US or Japan. In the US, the key political institutions for agenda setting, negotiation and ratification are based in Washington D.C., whereas in Europe, lobbies are forced to divide their lobbying efforts between national capitals and Brussels. Europe-wide business groupings such as the European Roundtable of Industrialists, the Union of Industrial and Employers' Confederations of Europe (UNICE) or more recently the 'Friends of the [Millennium] Round' assist the European Commission in agenda setting.[5] However, the ratification process in Europe remains largely a national affair, given the strength of national parliaments and the weakness of the European Parliament in economic policy, and lobbies tend to focus at this stage on national capitals.

Indeed, it is clear that the pro-liberalization lobbies are sometimes national, sometimes regional, and even sometimes global in form. The European-wide industry groupings noted above tend flexibly to dissolve into domestic actors when necessary, and to reconstitute at the European level when pressure needs to be applied on the Commission. A sectoral example is British Invisibles, which has pushed for financial services liberalization in the UK, and 'transnationally' through its membership of the transatlantic Financial Leaders

Group, which was influential in the WTO Financial Services Agreement of 1997. In the case of MAI, as I explain below, broadly pro-liberalization chambers of commerce were active in national capitals and internationally through the OECD's Business and Industry Advisory Council (BIAC).

In contrast, traditional anti-liberalization business lobbies tended to be organized more on sectoral lines and tend to be made up of smaller, domestic-oriented firms and associated labour groups (Milner 1997: 206). This made it easier for pro-liberalization lobbies to argue that they represented the broader national (or in Europe, the regional) interest. Broad and encompassing labour groups were often split along sectoral lines, which made them easier to counter or to buy off; one characteristic method was to make sectoral exceptions to broad liberalization deals. Agriculture and textiles are classic examples in the GATT.

What seems to have changed in recent years is that this strategy becomes problematic when reciprocal liberalization deals go beyond the traditional trade agenda, as pro-liberalization business groups increasingly demand they must. The argument that mutual liberalization would create jobs was also an essential part of the political marketing strategy of most governments, in an effort to keep voters and unions in competitive sectors on side. But this argument was easier to make when the liberalization was demonstrably about promoting the home country's competitive export sectors, in which the interests of pro-trade business and associated union groups could be expected to be aligned. This form of sectoral coalition between business and labour unravels with increasing FDI. Labour representatives have increasingly argued that capital mobility produces strong 'race to the bottom' effects on job security, wages and labour standards. This is evident even in countries such as the US where rapid increases in *inward* compared to outward FDI flows have occurred.

The unravelling of the domestic political economy of reciprocal liberalization has also occurred as deals have focused increasingly on *regulatory* barriers to market access for both exporters and MNCs. Pro-liberalization business lobbies, on whom governments are dependent for setting the agenda and mobilizing support, have increasingly pushed governments in the major countries to focus on reciprocal deregulation in key sectors. In addition, they have tended to demand enhanced dispute settlement mechanisms to improve enforcement, which is considerably more difficult in the area of regulatory barriers than in the area of tariff and quota reduction. This strategy has had notable successes. The European Single Market Programme and NAFTA, both strongly promoted by pro-liberalization business lobbies, are typical examples at the regional level; the Uruguay Round of the GATT is the archetypal multilateral example.

The NAFTA side-agreements on labour and environmental standards might look like the traditional means of buying off labour opposition to liberalization, but they were much more general than the usual sectoral exceptions. And since then, NAFTA has increased rather than reduced concern on the part of non-business NGOs such agreements threaten existing and future possible achievements in the area of social and environmental regulation of various kinds. Recent NGO opposition to the MAI and to the WTO in general provide other examples of this growing opposition. Therefore, it is becoming increasingly apparent that the very nature of the new international economic liberalization agenda can dramatically multiply the degree of domestic opposition to liberalization. Pro-liberalization lobbies now not only have to counter traditional opposition from uncompetitive industries and firms; opposition can now come from a wide range of broadly based societal groups.

Moreover, these groups, unlike the old sectoral opposition to liberalization but like MNCs themselves, have found it easier to organize flexibly at national *and* at regional and transnational levels. NGO or 'civil society' groups have utilized modern technology and

falling communications costs to organize transnationally in a wide range of issue-areas (Keck and Sikkink 1998; Simmons 1998). Below, we investigate how these factors combined to undermine OECD government and MNC promotion of the MAI.

2 Towards a multilateral agreement on investment?

The annual global flow of FDI increased from $60 billion in 1985 to $315 billion in 1995. Sales by foreign affiliates of parent MNCs were estimated at $6 trillion in 1993, greater than total world trade in goods and services of $4.7 trillion (of which MNCs accounted for two-thirds). (UN 1996: 4-5). To a limited extent, this rapid increase in the economic importance of FDI has been reflected in new international rules for the regulation of inward investment policy. This includes the TRIMS and GATS agreements in the Uruguay Round, recent developments in regional organizations such as the EU, NAFTA, Mercosur, ASEAN, APEC and FTAA, and the proliferation of bilateral investment treaties (BITs) since the 1980s.

However, international business lobbies have remained highly dissatisfied with this list of achievements, and have particularly criticized their limited relevance to the major emerging market economies of East Asia and Latin America. Countries of growing importance for MNCs, such as Indonesia, Brazil and China retained substantial entry and post-entry operating restrictions upon MNCs wishing to invest there. In addition, existing international agreements were inadequate to 'lock in' the partial liberalization that has occurred. This dissatisfaction was the main factor behind the efforts of business lobbies in a few key countries, above all the US, to push for a new international investment regime in the wake of the 1993 Uruguay Round agreement.

2.1 Setting the MAI agenda: business-government collusion

US business lobbies, still the largest and best organized both domestically and often abroad, led the push for a new investment regime in coordination with the US government. I

argue here that this did not represent a significant departure from the traditional strategy of pro-liberalization collusion between the US government and business lobbies; indeed, it picked up from where the Uruguay Round, NAFTA and BITs strategies left off. Both the USTR and the State Department have been very responsive to the concerns of US MNCs, particularly those demanding better access to important developing country markets. For example, the Coalition of Service Industries and the Securities Industry Association felt at a particular disadvantage in the big Asian developing countries, and were early supporters of the MAI strategy.

The lead business lobby on the issue was the US Council for International Business (USCIB), the American affiliate of the International Chamber of Commerce which represents the US corporate sector in BIAC at the OECD. Recalling the difficulties of negotiating strong market access concessions from developing countries in the services negotiations of the Uruguay Round, USCIB pushed strongly for a new forum for initiating a 'high standard' international investment regime. Key industry representatives were directly represented in policymaking in this area through the broad industry Advisory Committee on Trade Policy Negotiations (ACTPN). Through this and other important groups like USCIB, MNCs could help set the MAI agenda and strategy. Again, it is important to stress that this kind of direct involvement was only common practice in US policymaking in trade and investment, as it is in many other countries.

The consensus in USCIB and USTR was that it was better to aim for a strong regime within the OECD, which could then be extended to cover the more recalcitrant developing country non-members. The alternative, the WTO, was ruled out as unlikely to deliver a regime that US business could support and help to ratify domestically.[6] A 'high standard regime' for US MNCs meant one that would deliver consistent and enforceable rules to maximize their operating flexibility in host countries. (see USTR 1996). NAFTA and the

US's 40-odd BITs provided a high degree of investment protection in some cases, but these had little relevance in East Asia and much of Latin America.

There were three main demands that business groups articulated. First was non-discriminatory treatment (the better of national and MFN treatment) for US investors and their international investments, with limited and specific exceptions. This included a 'pre-establishment' right (i.e. full access in principle to any sector in any signatory) as well as post-establishment treatment. Second, high standard investor protection, including clear limits to expropriation, a right to due legal process and compensation in such an event, and most importantly, the right of investors to impartial international arbitration in the event of a dispute with a host government ('investor-state dispute settlement'). Third, full operating freedom for investors, including the right to all investment-related financial transfers, prohibitions from the imposition of performance requirements, and the right to transfer managerial personnel.

Although international business lobbies in much of the rest of the OECD shared this basic agenda, there was considerably less agreement over strategy. Most importantly, European business favoured the WTO over the OECD as the forum for negotiation, arguing that broader coverage was more important than high standard rules. The Japanese Keidanren business organization was similarly concerned that the US strategy could be interpreted by developing countries as coercive, and that high standards would reduce the likelihood that developing countries would adhere to MAI. These disagreements made it more difficult for the broad grouping of the International Chamber of Commerce (ICC) to support MAI as strongly as did its US chapter (Huner 1998). Nevertheless, the combination of strong US government and business support for the OECD MAI strategy proved difficult for the other groups to resist, partly because the US did not rule out a move to the WTO at a later stage.[7]

2.2 The unravelling of the MAI coalition

Acceding to American pressure, the OECD Council of Ministers agreed in May 1995 to launch the MAI negotiations. The goal was 'to establish strong rules relating to national treatment, consistent treatment of foreign investment, high standards of liberalization and investment protection (particularly the principle of right of establishment), and an effective dispute settlement mechanism.' The US government and business sector also set the basic tone and strategy of the OECD initiative, including the free-standing nature of any forthcoming agreement, to which non-OECD countries could accede. Negotiations began in September 1995 between 29 OECD countries and the European Commission.

Once the negotiations were under way, some non-member states joined as observers, which gave added support to the US strategy. However, within a year, the coalition that had set the MAI agenda was moving onto the defensive. The initial deadline for agreement was May 1997, but growing opposition from NGOs over 1996 led to its postponement to May 1998. A number of drafts of the agreement were produced during the course of the negotiations, but the evident difficulty the negotiators had in resolving key issues only added to the growing public controversy surrounding the negotiations.[8] Under pressure domestically, many governments retreated from the initial strategy, including the US government itself. Eventually, France's declared withdrawal from the negotiations in October 1998 led to the effective collapse of the talks.

NGO opposition to MAI was especially pronounced on the issue of its perceived environmental impact. Here, there was considerable negative spillover from NAFTA, the chapter 11 of which US business lobbies pushed as a model for the kind of high standard multilateral regime they desired. NAFTA's chapter 11, relating to the treatment of investment, provided for investor-state dispute settlement of the kind envisaged by US business in MAI. It also contained a 'takings' clause, which allowed firms to sue a NAFTA

government for damages if a policy change (such as a punitive and discriminatory tax) could be shown to amount to effective expropriation of the firm's assets. This was a politically volatile mixture, as demonstrated by the controversy surrounding the dispute between the Canadian government and an American firm, Ethyl Corporation, which began in April 1996.

The Canadian government, reacting to domestic consumer and environmental group pressure, had banned the production and inter-provincial trade of a gasoline additive (MMT), of which Ethyl was a monopoly producer. The firm, arguing there was no scientific evidence that could justify such a ban, sued the government for effective expropriation of its Canadian assets under the NAFTA treaty. This provoked a torrent of protest from environmental groups all over North America. The Canadian government's unexpected decision to settle the case out of court with a $13 million payment to Ethyl further underlined to environmental groups the potential for MNCs to challenge national environmental standards.

The Ethyl case, and others that followed it, mobilized NGO opposition not only against NAFTA but also against MAI, with its similar but more extensive implications. US business lobbies fuelled such opposition by stressing as one of MAI's key objectives the need to 'multilateralize' the investment chapter of NAFTA. At this point, other non-environmental NGOs, notably labour unions in North America, began to mobilize against MAI. Labour was in fact represented at the OECD itself through TUAC, the Trade Union Advisory Committee, as the other 'social partner' (BIAC was the other). Environmental and labour NGOs now formed an informal coalition to demand the inclusion of binding and enforceable minimal environmental and labour standards by MAI signatories, the stronger of home or host country standards for investors, and the access of NGOs to dispute settlement panels.[9] The clear intent was to prevent MAI from becoming a source of leverage for global firms that objected to particular social and environmental policies on the grounds that they raised business costs or limited market access.

The reaction of business lobbies, particularly American lobbies, was hostile. Their first strategy was to reject such demands outright, claiming it would jeopardize business support and deter developing countries from joining.[10] As this threatened the very basis of the traditional pro-liberalization political coalition, the US government negotiators adopted a similar line. If other OECD government delegations were more moderate and open to the possibility of concessions in this area, this was in large part because their business delegations were also more relaxed on this issue.[11] Most felt that some concessions to the NGOs had to be made. Though strong opposition to binding clauses on not lowering standards remained in some countries like Mexico, Korea and Australia as well as the US, it became increasingly clear that the US government was isolated on the issue. This isolation was increased by the defection of Britain to the moderate camp after the election of the Labour government in May 1997, producing a majority consensus within Europe on the issue.[12]

But it was domestic NGO opposition in the US that had most effect in terms of unravelling the business-government MAI coalition. This is not surprising given that this was always the basis on which international liberalization deals could be ratified domestically. After all, the US government was willing on other issues, such as the contemporaneous telecoms and financial services negotiations within the WTO, to remain isolated internationally if its domestic coalition held. However, it became increasingly clear to the Clinton administration that MAI would be a vote-loser. Numerous state and local government authorities in the US concluded MAI would undermine their political and Constitutional autonomy. Many cities and local authorities declared themselves 'MAI-Free Zones' (Longworth 1999). Sensing the shifting political climate, Congress became increasingly hostile to the negotiations.[13] By February 1998, the US negotiators accepted that 'there is… a

consensus that normal regulatory action, even when it affects the value of investments, should not be considered an expropriation or "taking" requiring compensation.'[14]

A similar and possibly even more dramatic unravelling of the domestic pro-liberalization coalition was occurring in France and Canada, where a number of groups saw MAI as an Anglo-Saxon threat to local culture. But most striking was the way in which the NGO coalition had spread throughout the OECD and well beyond, providing a constant barrage of anti-MAI propaganda on the internet. The large transnational environmental NGOs such as Friends of the Earth and the World Wildlife Fund for Nature were prominent in this coalition. However, national groups such as the Preamble Center and Ralph Nader's Global Trade Watch for Public Citizen, both based in Washington D.C., helped to coordinate the strategy locally and target national politicians.[15]

The collapse of the business-government coalition was a major setback for US international business lobbies in particular. The OECD had proven to be a much more hostile forum than initially envisaged for the negotiation of an investment regime acceptable to US MNCs. Most galling was the way in which business steadily lost control over the negotiations and its privileged status of partnership with government as the debate dragged on. As one delegate to the negotiations argued, 'the main problem with the MAI is that its negotiators did not expect to have to sell it politically.'[16] This expectation was consistent with the tradition of national policymaking in the area of international trade and investment policy, in which a strong pro-liberalization coalition of business and government could count on limited domestic opposition.

3 The high watermark of liberalization?

If the initial expectation that MAI would not have to be sold domestically is understandable, it nevertheless reflected poor judgement on the part of its proponents. As argued above, the political preconditions for the coherence of the pro-liberalization business-

government coalition had been eroding for some time. Although NAFTA could have been seen as an indication that such agreements could be ratified domestically, even if with difficulty, this agreement (and the creation of the WTO) played an important part in eroding the traditional political economy underpinnings of postwar liberalization. Moreover, both NAFTA and WTO were much wider in scope than MAI and could be sold at the time as broadly balanced agreements.

By contrast, the MAI agenda itself was precisely focused in those areas of policy most likely to mobilize a broad range of opposition well beyond the traditional import-competing sector coalition. NAFTA was a foretaste of the tendency of labour to object to the whole concept of investment liberalization. Although this meant that unions were always likely to defect to the broad anti-MAI opposition, the opposition to NAFTA-style labour standards clauses in MAI in the US and elsewhere in the OECD made this inevitable. The defection of labour to the 'civil society' NGO ranks is probably in part mere opportunism (given traditional union ambivalence on issues such as the environment), but it also reflects deep labour concerns about capital mobility.

Moreover, MAI's potential intrusion into social, environmental and developmental policies maximized the potential for opposition from a wide range of social activist and even 'consumer' groups. Economists have normally portrayed consumers as a category that benefits from liberalization even if they are unlikely to mobilize against it. But the achievement of the diverse NGO coalition was to mobilize normally uninterested consumers and voters against MAI, people who felt in an often ill specified way that somehow this agreement would erode their democratic choice.

Is the MAI agenda likely to represent the high watermark of MNC influence in the international political economy? The above analysis might suggest that MAI is an isolated case because of the peculiarly controversial nature of its agenda and associated strategy. But

the events surrounding the Seattle meeting of the WTO in November 1999 suggest otherwise. The Seattle meeting broke up in disarray partly because of the highly visible opposition of a coalition of NGOs similar to that which sank MAI. Indeed, it seems clear that there is an important connection between the two.

The first and most obvious connection is that NGOs were flush with victory over MAI in 1998 and utilized many of the network linkages developed in the anti-MAI campaign to mobilize against the WTO and the proposed Millennium Round. Second, and perhaps more permanently, these groups see in WTO and the other multilateral and regional organizations the same kind of threat to national and local regulatory autonomy constituted by MAI. After Seattle, the next target of this transnational coalition is the IMF and World Bank meeting in April 2000:

> In April, the struggle continues in Washington, DC - the very heart of political and institutional control over the global economy: the U.S. Treasury, the International Monetary Fund (IMF) and the World Bank. They are the chief instruments used by political and corporate elites to create today's unjust, destructive global economic order. The World Bank and the IMF have been quietly writing the rules that keep the world safe for multinational corporations while economically depriving billions around the world.[17]

Amazingly, in view of the MAI débâcle, NGO opposition to the Seattle meeting appeared to take the WTO itself and a number of key governments by surprise. This was despite US insistence on a limited WTO negotiating agenda, and one that specifically excluded investment rules. The EU and Japan were in favour of placing investment rules on the WTO agenda despite the failure of MAI, consistent with their long-held view that the WTO was the appropriate and more legitimate forum for any such negotiations. They also argued that it was more realistic and hopefully less controversial to aim at a less ambitious regime than that initially envisaged at the OECD, but one with greater country coverage. In

addition, WTO negotiations on investment would imply the rejection of some of the more controversial aspects of MAI, most notably investor-state dispute settlement.[18]

This position underestimated the depth of opposition amongst many NGO groups to the investment rules agenda in almost any form. Unfortunately for the WTO, other concerns such as the question of trade and the environment ensured NGO interest and criticism. Finally, although there is no investor-state dispute settlement mechanism in WTO, its enhanced state-state dispute settlement mechanism (compared to the GATT) has made it an easy target for NGO critics. These critics argue that state-state dispute settlement can be used by governments on behalf of MNCs to demand changes in domestic policies elsewhere detrimental to environmental, labour or developmental policies. With governments so evidently reliant upon business support (and limited labour opposition) in setting their liberalization agenda and strategy, it is not easy to dismiss such concerns.

Fundamentally, as this chapter has argued, the difficulties of MAI and the WTO are symptomatic of a deeper unravelling of the postwar political economy of liberalization. This is perhaps most evident in the US but is more widespread than this. What is surprising in retrospect is how long this mechanism took to unravel, given its evident susceptibility to disruption. This vulnerability lay partly in the difficulty of selling the mechanism as legitimate once it was uncovered and politicized by activist groups. It also lay in the tension in the argument for liberalization that underlay it. If domestic liberalization was sold only as a necessary concession to gain foreign opening, it was open to opponents to brand the whole process as beneficial only to global firms, and detrimental to environmental, labour and other standards, and possibly even democratic governance itself. It hardly matters that such general claims might be wide of the mark, since it is always possible to point to ad hoc examples (such as the Ethyl case). The evident public appeal of this argument and the ability of NGOs

to utilize modern communications and old-fashioned activism to mobilize voter opposition has arguably more than compensated for their immobility compared to global firms.

4 Conclusion

This chapter has argued that the postwar political coalitions that facilitated reciprocal liberalization have unravelled and that it is by no means clear they can be reconstituted. An important reason is that the liberalization agenda itself has moved on, with market access and dispute settlement being key demands of pro-liberalization lobbies. This in turn has fostered an anti-liberalization coalition that is broader and more transnational than the old-style sectoral protectionist opposition, and also pushed labour unions into this grouping. The result is that pro-liberalization business has found it much more difficult to determine the agenda than in the past, and the negotiation and ratification processes have become highly politicized. That these new anti-liberalization NGOs often refuse to play by the old rules has increased the frustration of business lobbies and government officials.

Business groups still enjoy privileged access to the agenda-setting process, but as NGOs have increasingly threatened the negotiation and ratification of liberalization agreements, the legitimacy of this business privilege has become more difficult to sustain. Once exposed, this Faustian bargain between government and pro-liberalization business has begun to unravel, and politicians have been forced to distance themselves from it.

What does this imply for the general questions addressed in this book? That NGOs have been able to organize transnationally with more coherence than unions could manage in the past has contributed to their perceived legitimacy by creating the impression of a groundswell of support against the onward march of global capitalism. But in many ways it has been the ability of NGOs to portray themselves as defenders of *local* interests and autonomy against transnational capitalism that has been their greatest political weapon. Like MNCs in fact, NGOs have successfully and flexibly been local and transnational at once.

Even their limited resources compared to MNCs has been turned into a media advantage, though it is apparent that many of the larger NGOs can in fact draw upon considerable international human and financial resources. A small number of NGOs successfully used the internet to achieve a broad (and sufficiently vague) transnational anti-globalization consensus, which was then used to share propaganda, mobilize support, and gain media attention. Often the language is crude and overblown, but as the public debate over trade liberalization was never especially sophisticated, it has proved sufficient to achieve considerable appeal. Not only this, but the appeal (to the horror of business and academic economists) has been greatest among the educated middle classes of the major industrial economies.

Meanwhile, the tenuous commitment of developed country governments to trade and investment liberalization has left many international economic institutions, including the WTO, the IMF, and OECD, in an increasingly difficult position. Officials in these organizations, often committed to liberalization for economically compelling reasons and without real political constituencies, have sometimes also had to rely upon pro-liberalization business groups to bolster their political position. This has made them suspect in the eyes of the non-business NGOs, making it increasingly difficult for them to maintain the low political profile to which they had become accustomed. But mainly it has been the willingness of most OECD governments to distance themselves from the Faustian bargain with globally-oriented firms that has led to a growing crisis of legitimacy for multilateral institutions. Governments have not rushed to point out that international institutions are mostly intergovernmental in nature and often (as in the case of the OECD and WTO) merely forums for information provision and negotiation.

At the least, the major governments will need to rethink their whole approach to negotiating international liberalization agreements. Opening up the agenda-setting process to

a much broader set of interest groups than in the past seems inevitable, but it is very unclear how to achieve this without creating further problems of legitimacy, not to mention incoherence. The argument in this chapter suggests that this will need to occur at national, regional and international levels. Since agenda setting by governments and bureaucracies (before the bargaining stage) remains a largely national process, it is this arena where most change may be needed. National polities also offer the best available means of deciding which groups have a legitimate input into the agenda-setting process. In order to facilitate their inclusion, 'civil society' NGOs may also need to transform themselves from sometimes ill informed opposition groups to 'epistemic communities', with a greater claim to possess useful knowledge. It remains to be seen whether greater inclusion will make NGOs more willing to compromise in their current opposition to globalization in almost all its forms.

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Bibliography

Barnet, Richard J. and Müller, Ronald E. *Global Reach: The Power of the Multinational Corporations*. New York: Simon & Shuster, 1974.

Bauer, Raymond A., de Sola Pool, Ithiel and Dexter, Lewis A. *American Business and Public Policy: The Politics of Foreign Trade.* New York: Atherton, 1963.

Cerny, Philip G. 'Globalization and the changing logic of collective action', *International Organization* 49 (1995) 595-625.

Dahl, Robert A. *Democracy and its Critics.* New Haven: Yale University Press, 1989.

Destler, I.M. *American Trade Politics.* Washington D.C. and New York: Institute for International Economics and Twentieth Century Fund, 2nd edition, 1992.

Dunning, John H. ed. *Governments, Globalization, and International Business.* Oxford: Oxford University Press, 1997.

Durbin, Andrea. 'Transnational Bill of Rights: Negotiations for a Multilateral Agreement on Investment', *Tools for Change Newsletter* 1 (1997) mimeo.

Evans, Peter. *Dependent Development: The Alliance of Multinational, State, and Local Capital in Brazil.* Princeton: Princeton University Press, 1978.

George, Susan. 'State Sovereignty Under Threat', *Le Monde Diplomatique*, July 1999.

Gill, Stephen. 'Globalisation, market civilisation, and disciplinary neoliberalism', *Millennium* 24 (1995) 399-423.

Gill, Stephen and Law, David. *The Global Political Economy.* Hemel Hempstead: Harvester-Wheatsheaf, 1988.

Graham, Edward M. *Global Corporations and National Governments.* Washington: Institute for International Economics, 1996.

Held, David, McGrew, Anthony, Goldblatt, David and Perraton, Jonathan. *Global Transformations.* Cambridge, UK: Polity, 1999.

Henderson, David. *The MAI Affair: A Story and its Lessons.* Melbourne: Melbourne Business School, Pelham Paper No. 5, 1999.

Hirschman, Albert O. *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations and States.* Cambridge, MA: Harvard University Press, 1970.

Hoekman, Bernard and Kosteki, Michel. *The Political Economy of the World Trading System.* Oxford: Oxford University Press, 1995.

Huner, Jan. Introductory speech to Chatham House conference on Trade, Investment and the Environment, London, 29 October 1998, published on Public Citizen's MAI-NOT listserve, 3 November 1998.

Keck, M. and Sikkink, K. eds. *Activists Beyond Borders.* Ithaca: Cornell University Press, 1998.

Keohane, Robert O. and Nye, Joseph S. eds. *Transnational Relations and World Politics.* Cambridge, MA: Harvard University Press, 1971.

Keohane, Robert O. and Nye, Joseph S. *Power and Interdependence: World Politics in Transition.* Boston: Little, Brown, 1977.

Kobrin, Stephen J. 'The MAI and the Clash of Globalizations', *Foreign Policy* Fall 1998.

Korten, David. *When Corporations Rule the World.* West Hartford and San Francisco: Kumarian Press/Berrett-Koehler, 1995.

Krugman, Paul. 'What should trade negotiators negotiate about?', review essay 1997 (http://web.mit.edu/krugman/www/).

Lindblom, Charles E. *Politics and Markets: The World's Political and Economic Systems*. New York: Basic Books, 1977.

Longworth, R.C. 'Activists on Internet Reshaping Rules for Global Economy', *Chicago Tribune* July 5 1999.

Maggs, John. 'OECD advisory panel slams proposed investment treaty', *Journal of Commerce* 16 January 1998.

Mansbach, Robert, Ferguson, Yale and Lampert, Donald. *The Web of World Politics: Non-State Actors in the Global System.* Englewood Cliffs, NJ: Prentice Hall, 1976.

Milner, Helen V. *Interests, Institutions, and Information*. Princeton: Princeton University Press, 1997.

Newfarmer, Richard ed. *Profits, Poverty and Progress: Case Studies of International Industries in Latin America.* South Bend: Notre Dame University Press, 1985.

Ohmae, Kenichi. *The End of the Nation State.* New York: Free Press, 1995.

Risse-Kappan, T. ed. *Bringing Transnational Relations Back In.* Cambridge, UK: Cambridge University Press, 1995.

Simmons, P.J. 'Learning to Live with NGOs', *Foreign Policy* Fall 1998.

UN. *World Investment Report, 1996: Investment, Trade and International Policy Arrangements.* New York & Geneva: UN, 1996.

US Department of Commerce, National Trade Data Base. *Switzerland: Investment Climate Report 1996.* July 26, 1996.

USTR. *ACTPN Discussion Draft on Investment.* Washington, D.C.: USTR, September 1996, mimeo.

Walter, Andrew. 'Globalization and policy convergence: the case of direct investment rules', in R. Higgott and A. Beiler eds. *Non-State Actors in the Global Economy.* London: Routledge, forthcoming 1999.

Williamson, Edwin D. Vice Chairman of the Committee on Multinational Enterprises and International Investment of the US Council for International Business, testimony before the House Committee on International Relations, Subcommittee on International Economic Policy and Trade, March 5, 1998.

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[2] See Held et al. (1999) and Risse-Kappan (1995).

[3] Here the literature on state-MNC bargaining is relevant, e.g. Newfarmer (1985). For a recent account see Dunning 1997. This literature emphasizes how the bargaining power of

firms is likely to depend upon the kind of industry in which investment occurs, the comparative attractiveness of the host location, and the degree of inter-MNC competition for access to the jurisdiction.

[4] Interview, Todd Malan (OFII), 24 June 1996.

[5] For a useful catalogue of corporate lobbies in Europe, see the Corporate European Observatory at http://www.xs4all.nl/~ceo/.

[6] USCIB interview, 6 June 1996, Washington DC. See also testimony of Edwin D. Williamson (1998).

[7] Interview, USTR, 25 July 1996, Washington D.C.

[8] For analyses of the various disputes over culture, extra-territoriality, sub-federal binding, and developing country accession among others see Kobrin 1998; Henderson 1999.

[9] Friends of the Earth, letter to USTR Ambassador Charlene Barshevsky on the MAI, 13 February 1997.

[10] Abraham Katz, President USCIB, Letter to Ambassador Jeffrey Lang, Deputy USTR, 11 July 1997. See also Williamson (1998).

[11] Japanese Canadian business representatives made it clear they could accept binding commitments on not lowering standards. (Letter from Kozo Uchida, Director General, Keidanren, to Abraham Katz, 29 July 1997, and Letter from Tom Drucker, Chairman of Committee on Multinational Enterprise and Investment, Canadian Council for International Business, to William Dymond (Canadian Department of Foreign Affairs), 5 December 1996).

[12] Interview with OECD negotiator, 22 November 1997, London; 'Chairman's Conclusions: High Level Meeting On The Multilateral Agreement On Investment Paris', Memo, 18 February 1998.

[13] US House of Representatives, *Congressional Record*, 25 September 1997, H.7873-7879.

[14] Under Secretary of State Stuart Eizenstadt and Deputy US Trade Representative Jeffrey Lang, Statement on the MAI, February 17, 1998.

[15] 'Network Guerillas', *Financial Times*, 30 March 1998.

[16] Huner 1998.

[17] 'Come to DC for the IMF/World Bank Spring Meetings!', message posted on the MAI-NOT listserve, 24 January 2000, available at http://lists.essential.org/pipermail/mai-not/.

[18] Discussion with senior EU negotiator, 23 September 1999, London.