Open for Business? Australian Interests and the OECD's Multilateral Agreement on Investment (MAI)

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THE CENTRE FOR INDEPENDENT STUDIES

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Executive Summary

This first Issue Analysis deals with the OECD's Multilateral Agreement on Investment (MAI) which the Australian government has been helping to negotiate.

The proposed MAI will not mean a dramatic change to Australia's current practice in controlling foreign investment. The MAI will promulgate uniform principles that will curb the scope of governments for arbitrary, case-specific interventions. The key provisions of the MAI are the application of the most-favoured-nation clause to signatories of the MAI, and the stipulation that the signatories must not discriminate between national and foreign investors, and must forswear the power to control international payments and personnel exchanges tied to border-crossing investments.

If history is any guide, these ***fundamental principles*** of the MAI will not only serve economic growth and job creation, but also help to protect the basic civil and economic liberties of Australians. The agreement may, however, limit the influence of established industrial and special-interest lobbies.

Unfortunately, four years of expert negotiation in Paris have yielded an MAI draft that does not confine itself to affirming time-tested, first-best principles. The present draft is riddled with ***numerous exemptions and reservations***, which indicate poor institutional design. They fuzzy up the global investment rules and make them incomprehensible and untrustworthy for international investors. The primary intent of the MAI – to strengthen the confidence of international investors – is not promoted by the draft as it presently stands.

A simple and principled MAI would be in the interest of Australia, a small country with considerable untapped development opportunities. Only by providing simple and reliable rules can we attract foreign capital, knowledge and enterprise. The institutional framework of the MAI principles would promote our individual and national interests in prosperity, liberty, justice, security and peace. The Australian government should therefore work towards a simplication of the MAI draft.

The Dynamic Rise in International Capital Flows

Progress and Mobility

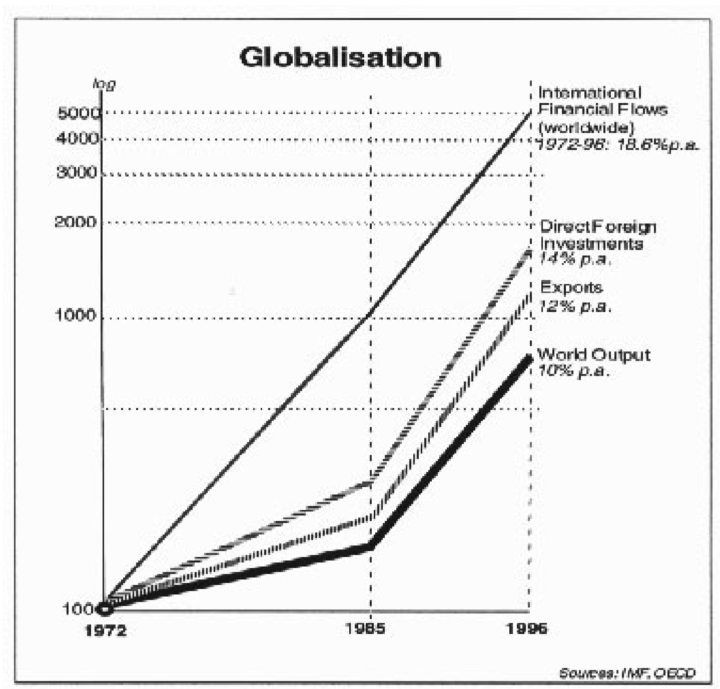
Ever since our distant forebears were driven by curiosity and need to settle new regions, people have engaged in mutually beneficial trade and foreign investment. It has always been advantageous for people in a region or country to draw on the capital, the knowledge and the enterprise of people in other regions. This is, for example, how the Australian colonies on the periphery of the known world developed with amazing speed and vigour into one of the most affluent societies of the late 19th century. Locally immobile production factors, especially local workers, natural resources and government administrations, combined with mobile capital, knowledge and enterprise – often in bundles that we call 'firms' – to create new wealth. Human progress benefited, not only because the owners of local and external production factors could share in the resulting material gains, but also because openness stimulated creativity and controlled power abuses, which are easily possible in closed societies. Capital mobility helped more than mere trade to spread useful ideas and concepts to distant corners of the world.

The Open Order of the Past Half Century

The calamities of the great depression and the Second World War taught people that the fashion of economic nationalism of the first half of the 20th century had to be restrained, if the Western world was to flourish again. This insight inspired the reformers of the 1940s to forge an institutional and organisational framework for more international cooperation and increasing openness. They created the General Agreement on Tariffs and Trade (GATT), the International Monetary Fund (IMF), the World Bank, and the Organisation for European Economic Cooperation (OEEC), which later became the Organisation for Economic Cooperation and Development (OECD). These organisations developed and fostered rules of international cooperation which gradually freed up international trade and payments and paved the way for an unprecedented growth of international exchange and living standards. Without open international trade and payments and the freer flow of capital and useful knowledge, the old industrial countries (now OECD) could not have managed to attain 3.5% pa growth in real per-capita incomes from 1950 to the onset of the oil crisis in 1973. The inhabitants of the Third World would not have built so many new industrial centres and would not have gained access in such large numbers to the amenities of modernity. Since then, world economic growth has continued, albeit at somewhat lesser rates. As a consequence, many more people are now able to live longer, healthier and more satisfying lives

International flows of capital – and in particular direct investments1 – have played a crucial role in this development, first among the old industrial countries of what is now the OECD, and increasingly also for a growing orbit of new industrial locations around the globe. The progressive liberalisation of trade, payments and investment combined with the reduction in transport and communications costs, the greater convenience of containers, air and sea transport, the growing frequencies of shipping and air connections, innovations such as the fax and the Internet, peace among the core countries of the global economy and the emergence of a shared, global business culture, to create a rising trend in international investment. Between 1972 and 1996, direct foreign investments have grown from less than US$25 bn to $350 bn per annum (at an average of 12.2% each year!). Over the past quarter century, direct investments and financial flows have far outstripped trade and national production (compare Graph). This has been a source of massive job-creation in recipient countries. Profits are now often reinvested in the host countries, being then recorded as further capital inflows. As capital owners are increasingly loath to place all their eggs into the one national basket and expose themselves to the blunders of just one government, most countries around the world are now 'being taken over by foreigners.' The growing feeling that directors in far-away board rooms decide over activities nearby is not unique to Australia – it is an unavoidable aspect of what future historians may well come to dub the age of globalisation.

The expansion of international trade over the past half century benefitted from a shared and fairly uniform institutional basis: the GATT laid down rules with a degree of enforceability which gave international traders a reasonably stable, predictable and confidence-inspiring institutional framework. Gross, opportunistic national intervention, such as the one-sided erection of a tariff wall or discrimination against citizens of one country by another, has been made much harder for populist politicians. Trade conflicts were often avoided by the GATT rules, and – where they arose – were mostly sorted out in non-violent ways within the predictable institutions of the GATT. The GATT also created a framework for rounds of progressive trade liberalisation and an extension of some free-trade principles to the trade in agricultural products and services under the World Trade Organisation (WTO), which took over from the GATT secretariat in 1994. The GATT has not worked 'perfectly,' but has certainly facilitated great improvements as compared to the disastrous trade wars and international economic conflicts of the 1930s. Its rules have frequently bound even the big and powerful players, such as the United States and Europe, despite the fact that there is no supranational enforcement by a 'world government.' Moral suasion and mutual education in the community of trading nations have generally been effective in preventing backsliding.



The Fuzzy Rules on Foreign Investment

In contrast to international trade, international capital flows have not been based on a shared body of institutional principles. Instead, there have been numerous bilateral agreements spelling out a confusing variety of specific rules. On latest count, some 1,630 bilateral government-to-government agreements are in force, often distorting investment flows (OECD, 1998: preamble). This system of bilateral deals is full of contradictions and inconsistencies and has had numerous unforeseen and deleterious side effects.

This is why there have long been efforts to create a shared body of rules similar to the GATT. These efforts have centred on the OECD, partly because it is a smaller, more homogenous club than the WTO, and partly because OECD countries dominate global investment flows, both as source countries (85% of global outflows) and hosts (60% of inflows).

As far back as the late 1950s, the costs of selective controls of capital flows had become apparent, and most OECD countries began to liberalise their international capital flows and direct foreign investment. In 1961, the OECD adopted a 'Code of Liberalisation of Capital Movements,' which committed OECD member countries to 'progressively abolish ... restrictions of capital' (OECD, 1961). Gradually, the benefits of this code became evident (OECD, 1982). Some countries, for example Germany in the late 1950s and Thatcher's Britain in the late 1970s, unilaterally abolished most controls of international capital flows and disbanded the regulatory agencies needed to intervene.

The German economic 'miracle' in the 1950s and 1960s and the revival of the British economy in the 1990s owe much to the influx of foreign capital and enterprise. Britain captured a large share of the foreign investment inflows into Europe; the British economy has gained much industrial rejuvenation from Japanese and Korean car makers, American computer producers, Swiss, German and American financial operators, etc. The observers who had predicted dire consequences for the pound sterling (International Currency Review, 1979) were proven wrong. On the contrary, sterling strengthened, and unemployment gradually dropped as openness fostered the cultivation of competitive advantage. More recently, in early 1998, Thailand dropped many administrative controls on investment, which immediately triggered a strengthening of the currency and a rise in the share market. This heralds a revival of the Thai economy.

Australia against the Global Trend

There has thus been a worldwide trend for the liberalisation of capital flows. Yet, from the mid-1960s, Australia moved against the trend. Up to then, foreign investment had not been a political issue in this country and had been free of political controls other than general foreign exchange controls (Arndt, 1977). Australia's traditional open door was closed by the Liberal/Country Party governments of the late 1960s and early 1970s. Prime Minister John Gorton reserved the government's right to prevent foreign takeovers that politicians or their advisers happened to consider to be contrary to the national interest (Kasper, 1984: 40-43) – always of course assuming that they could know what the national interest was! The Whitlam Labor government introduced a Foreign Takeovers Bill in 1972 which became law in 1975. It imposed formal controls on direct foreign investment in Australia. The controls echoed the nationalist and socialist sentiments of that era, namely that Australia should 'sell off the farm to pay for the mortgage' (Crough and Wheelwright, 1982) or even that the government should borrow to 'buy back the farm' (ALP Minister Rex Connor). The trade unions and the ACTU gave strong support to controls on capital inflows and outflows (Arndt, 1977: 136-138). Had the Australian government followed that advice, it would have had to nationalise foreign-owned industries and assets.

The Fraser government changed the policy implementation somewhat, because the Whitlam era controls had led to capital flight. But it retained the Foreign Takeovers Act of 1975, which was implemented through the Foreign Investment Review Board

(FIRB) in Treasury. Since then, the operations of the FIRB have been changed frequently and have been repeatedly liberalised. Most applications to invest here are nowadays approved. But in essence Australia still controls foreign investment. Consequently, there is scope for political and bureaucratic intervention. The intricacy of the rules and constant changes have led to a lack of transparency, and many potential foreign job creators simply will not incur the compliance costs of applying for the privilege of setting up activities in Australia (Kasper, 1984). Sensitive areas and sectors considered strategic by the policy makers of the day, such as banks, media ownership, communications, transport and large real-estate holdings, are formally restricted. This underpins the dubious politicisation of certain markets, such as shipping or the media.

Australia could get away with the move against the international trend, because Australia does not matter to the big global players. The Australian public has long believed in the wisdom and even-handedness of government. Only in the 1980s and 1990s has cynicism about political agents grown. There is now a wider acceptance – implicitly or explicitly – of public choice theories which show that politicians and bureaucrats tend to act in self-serving ways at the expense of the shared national interest (Buchanan, 1988). It is now more apparent that government promises to create certainty are not sustainable or credible (Kelly, 1992).

In the 1980s and 1990s, it has been recognised more widely that the Australian economy is developing well short of its potential because of pervasive, specific government meddling in market processes and because of cumulative, unforeseen side effects. More observers are therefore now advocating simple, non-discriminatory rules. This is in line with world-wide trends in favour of privatisation, strengthening private property rights and private competition by deregulation, as a means of channelling entrepreneurial energies into wealth creation. The mood worldwide is to back away from the tribal-redistributive games of political interventionism. It is likely, therefore, that Australia's residual controls on foreign investors and what is left of the Foreign Investment Review Board will sooner or later come under renewed scrutiny.

The MAI

Calls for a Global Code on Investment

Meanwhile, the OECD developed 'Codes of Liberalisation' and a 'Declaration and Decisions on International Investment and Multinational Enterprises.' These documents established shared rules for signatories to follow. They gave national governments experience in administering such rules and sorting out conflicts. In the course of the Uruguay Round, which liberalised trade further, attempts were made to extend the spirit of the WTO to international lending and borrowing (the capital account). This proved an impossible aspiration – negotiations on trade among more than 100 diverse and self-seeking parties had been frustrating enough.

As a consequence, the OECD in 1995 was given the task of creating a framework for inter-governmental negotiations to establish a uniform, multilateral institutional framework governing international investment flows – a GATT for capital flows, so to speak. The negotiators were given a deadline of 27 April 1998. It is now evident that this deadline will not be met. Nevertheless, it is an appropriate time to review the work done to date and to evaluate its possible impact on Australia's national interests.

The Fundamental Principles

The MAI proposes to cover both the act of making the investment and the capital asset once the investment has been made.2 The agreement will protect not only direct and portfolio investments by foreigners, but also real-estate acquisitions and rights under contract. It will bind all levels of government (central, state, local) in their interventions by legislation, regulation and administrative practice. In short, the MAI will be given a wide scope. This seems appropriate, since these activities are closely related and are close substitutes. A narrower coverage would only lead to distortions.

The draft MAI is strongly inspired by the time-tested principles of the General Agreement on Tariffs and Trade (GATT):

(a) All signatories to the MAI will be bound by the most-favoured nation (MFN) principle (as in the GATT). It says that a favour extended to citizens of one nation has to be automatically extended to all signatories who join the 'MAI family.' This rule prohibits political discrimination between the citizens of different MAI countries, thereby avoiding many conflicts amongst signatories and preventing the unforeseeable side effects of specific interventions. Of course, the MFN principle only applies to signatories; it does not prevent differential treatment of investors from nations that have not joined the MAI.

(b) A second key principle of the MAI is that members bind themselves – except in cases where exemptions are expressly registered at the time of signing the agreement – to treat foreign investors no less favourably than national investors. This 'national treatment rule' means that foreign investors have a credible commitment that no future discriminations will be implemented against them. National governments will not be able to introduce new discriminatory measures, for example of the sort that Australian conservative and Labor governments adopted in the early 1970s (see above). This creates a ratchet effect similar to that achieved by the GATT. Signatories will have to go against an international, multilateral agreement, if they want to close off national markets to the detriment of non-citizens – which generally means to the detriment of less well-organised nationals as well.

(c) Whilst the most-favoured nation clause and the national treatment rule are the central institutions of the MAI framework, the proposed agreement provides for a few further, important restraints on the interventionism of national governments:

(i) All national rules must be made publicly available. Secret deals with particular investors are no longer possible (transparency). In Australia, where many applications by foreigners to invest are decided on a case-by-case basis and the rules are often re-written by press release, this will constrain political intervention. The transparency of the FIRB will be correspondingly enhanced.

(ii) All investment-related international payments must be free of controls. In other words, MAI members have to guarantee full currency convertibility to investing capital owners from other MAI countries. This rules out payment controls of the sort widely practiced in the post-war period (and in Australia until the early 1980s, when the Hawke government liberalised foreign exchange and capital flows). This provision is, however, in practice not a great or novel concession. At a time when money travels around the world by wire, governments have lost control over international payments anyway.

(iii) Since many types of investment require the close attention of experts to make them work, MAI signatories cannot prohibit the entry and temporary stay of key managers or skilled technicians needed for a foreign investment project. In some instances, this may oblige Australia to be more liberal in its immigration rules – but details of how this principle is to be implemented have yet to be sorted out in the negotiations. It of course also means that Australian firms who wish to develop new ventures in other MAI countries will find it easier in future to rely on their own trusted managers and technical staff.

(iv) MAI governments will be prohibited from making foreign investment approval conditional on meeting certain stipulations, such as export targets or the purchase of local content by a new venture.

(v) If foreign investors are expropriated for a valid public purpose (e.g. their land being resumed for a road), they must be compensated promptly and effectively at market value.

(vi) The MAI encourages dispute resolution by government-to-government consultation. But it also provides a binding arbitration procedure between governments, as well as between foreign investors and their host governments. The MAI draft proposes to give the arbitration power to one monopoly 'court', whose precise shape is not yet clearly defined.3 This will give foreign investors the legal power to take government agencies to court. As such, it constitutes an important innovation compared to most of the 1,600-odd bilateral investment accords and, in particular, compared to the practice in Third World countries, where foreign investors may get initial tax or other privileges, but remain second-class corporate citizens.

The Loopholes

To date, these key provisions in the draft agreement are far from uniformly accepted – indeed the present draft seems to contain less agreed main text than footnotes which signal national wishes for variations and for modifying the principles. The universal principles outlined above, which would make for an effective institutional foundation of growing international capital flows, are fuzzied up by 'general exceptions' and 'temporary safeguards,' as well as an almost open-ended provision for national reservations.

General exceptions from the MAI principles allow governments to intervene in capital flows to protect national security and to ensure the stability and soundness of the financial system.4 Parties joining the MAI will also have the right to register existing laws and regulations which interfere with the free flow of capital as exemptions from the MAI principles – for example, rules on national media ownership, or what passport entitles a manager to run a bank. There will be other categories of specific exceptions from the general principles (for example to protect the environment, labour standards, or a national culture). In any event, it has been explicitly recognised in the MAI draft that the agreement must not constrain a government's freedom to pursue environmental goals and to uphold national labour standards. The provision for the protection of national cultures seems to have even more potential for becoming an omnibus excuse to escape from the obligations of the MAI principles. So far, the negotiations have not yielded clear-cut, acceptable definitions of the exemptions.

The plethora of exemptions from the principles will open numerous loopholes for opportunistic politicians and the bureaucrats in regulatory agencies. These safeguards will also be a source of risk and insecurity for international investors, and may undo a major part of the gains from the sound non-discrimination principles of the MAI. If accepted, the loopholes would open the gates for lobbying by business and lobby groups with an interest in restricting openness to capital and enterprises, and would be the source of stifling uncertainty. Much arbitration will have to take place and much case law be created to give international investors a degree of trust as to what the exemptions rule in or rule out.

We shall return to the consequences of the many exemptions below when we evaluate the present draft. But first we have to discuss the pros and cons of allowing foreign capital owners and entrepreneurs to contribute to national economic life.

The Pros and Cons of Foreign Investment, Revisited

The current debate about MAI again raises the more fundamental arguments for and against foreign investment, and in particular direct foreign investment. These are well rehearsed in Australia (for example, Kasper, 1984: 10-34; Wallace, 1989: 138-143; Kasper, 1989: 135-138; Economic Planning Advisory Council, 1991).

One could by now be excused for being flippant about the insistent opposition to foreign ownership, and ask: What difference does it make to national interests if we drink Fosters or XXXX? Both breweries provide Australians with good jobs, both use Australian raw materials, both cater to our thirst. The daily business of both breweries is managed in Australia, and both pay Australian taxes. Australians can buy shares in both companies. The only difference is that the headquarters of one company are in Victoria, the other in New Zealand. Moreover, if foreign ownership in breweries were banned in a global fit of nationalism, Fosters' numerous overseas production units would be expropriated, to the detriment of many Australians.

Yet, economic nationalism and foreign ownership of capital touch on emotive nerves that seem to tap into deeper atavistic roots. The arguments therefore need to be revisited.

Concerns with Foreign Investments

One argument against allowing foreigners to acquire national assets is that national owners who sell out have to be protected by the authorities from their short-sightedness. It has for example been said that the American Indians who sold Manhattan in 1626 for mere trinkets would be extremely rich now (Wallace, 1989: 138-39). Not so! It was the Dutch investors in Manhattan who saw future opportunities and had the knowledge and skills to turn the barren peninsula into a centre of trade and production. Had no one imported the knowledge and taken a proprietary interest, the land would in all likelihood still be of little value.

In our diverse, evolving world, some people have ideas which they can only realise with access to property in a specific location. Because of their vision and knowhow, foreigners sometimes value certain assets more highly than the locals. Selling property rights to such newcomers opens the door for wealth-creation. A good price normally allows the old national owners to reap some of the benefits which they would be denied if the market were restricted to nationals. A prohibition of foreign investment can act as a part-expropriation of the original national property owners. Had Australians last century followed the prescriptions of the latter-day economic nationalists, this would still be an underdeveloped, peripheral country.

Another often-heard concern of economic nationalists is that Australia will not be able to pay off the foreign investment debts (Wallace, 1989: 139). In the case of direct investment this is a concern of the foreign investors. They have a direct interest and numerous means to make their Australian investments pay. Of course, they will not always be successful and may incur a loss of value of their Australian assets. But, on the whole, foreign investors cannot be assumed to act stupidly, buying loss-making assets. Indeed, a high influx of productive direct foreign investments can be seen as a sign that people are prepared to entrust their property to Australians in the expectation that this is a profitable place to produce. By doing so they often enhance the chances of all enterprising people here to become profitable.

High debt burdens from private and public borrowing are more of a concern, if the loans have not been invested in profitable ventures. But this problem cannot be convincingly addressed by the crude and superficial means of selective investment controls. Government regulators would simply not know which foreign borrowings make economic sense and which not.

A related concern is that profits may be transferred overseas. The first thing to note in this context is that profitability is not guaranteed. Whether profits are earned depends on the owners' and managers' technical knowledge, organisational skills and enterprise in exploring promising uses of the asset, as well as on luck. If foreigners are, in some instances, better at this than Australians, then they add to incomes, job creation and wealth in Australia. We gain even if profits are repatriated. Parochial concerns with profit remittances also overlook the fact that foreign investors tend to plough their profits back into the Australian economy as long as production conditions here are welcoming.

We should finally note that Australians are nowadays free to buy shares in overseas companies. In contrast to the bad old days of foreign-exchange regulation, Australians can now participate in the profits made by overseas firms in Australia. They can buy shares in the parent company. In addition, we must note that international companies may move their headquarters here, and thus change their 'nationality'. Indeed, the history of countries that have long attracted foreign investors is full of examples where a growing asset base eventually attracted the headquarters to the new location. Thus, to cite but one example, the Australia New Zealand Bank, once a British foreign investor, has long since become an Australian bank. Capital xenophobia of course would make such 'patriations' less likely. It is therefore plain wrong to assert that the profit of a foreign-owned company is an outright loss for Australia (Wallace, 1989: 140).

Another concern of economic nationalists deals with transfer pricing and tax payment. Multinational firms that trade within their international network may export goods to branches in low-tax countries at a low price, thus depressing local profits (and reducing their profit taxes) and boosting their profitability in low-tax locations. This amounts to a transfer of tax burdens. However, it exerts a certain pressure on high-tax countries to lower their tax rates, often a blessing for the majority of national citizens. In any event, transfer pricing can be monitored and controlled. Multinational companies are typically rather exposed and visible and will therefore often be loath to risking dubious tax avoidance tactics. To this author's knowledge there is no evidence that shows multinational companies to be less honest tax payers than national companies, which – indeed – often enjoy better political connections and may exploit them. Observers who assert the opposite need to produce evidence.

It has also been argued that multinationals do not conduct research and development in foreign countries. This allegation has long been debunked by factual research (Parry, 1983; 1988). Of course, multinational companies often develop innovative products and processes in their sophisticated high-income home countries, simply because rich, sophisticated buyers are often essential to testing innovations and because advanced countries have better skills for producing and distributing them. However, there can be no doubt that multinational networks have been central to the transfer of innovative technologies and products to new locations. In the process, foreign investors train local employees in new skills and adapt the product to local conditions, in itself an innovative act.

Australians have in the past been seen to be quite inventive, but Australian industry used to reap relatively little gain from technical innovation and advances in knowledge (Robertson, 1978; Kasper, 1980). This paradox is explained by past protection and regulation – Australian producers used to get their profits from political action and were able to shirk the costs and risks of innovation. This hypothesis has been proven correct by the liberalisation of trade in the 1980s: more competitive Australian producers, including Australian branches of multinationals, have begun to rely more on innovation. And many Australian products are now much more innovative and competitive than they were, say, in the 1960s.

The argument can be heard that 'Australia must assist national strategic industries' by keeping them in national ownership. But what industries will later prove to be strategic? Who knows beforehand? Who knows whether government assistance does not kill off the innovative drive in favoured industries, as it has so often in the past?

An argument can be made for a country that is geographically isolated and endowed with such specific conditions to keep strict ownership control of production activities that are essential to national defence. But such control is likely to be costly and must be kept within very strict limits, particularly in defence industries where rapid technical innovation involves high fixed costs. It is no coincidence that much of Australia's defence industry is foreign-owned or has foreign partners. In this dynamic high-tech age, the alternative advocated by economic nationalists would weaken the nation's defence capabilities. Given the high specialisation and sophistication of modern defence industries, a small country like Australia will increasingly have to depend on much imported knowledge and knowhow to build defence equipment. It is therefore a choice between fully importing the equipment or producing it here in partly or fully foreign-owned ventures. Subsequent maintenance and modifications of the equipment would be correspondingly more complicated if foreign investment in these industries were restricted. If the economic nationalists had their way, Australia might get defence equipment of a quality equivalent Indian 'import substitution Cola,' after India's economic nationalists had got rid of Coca Cola!

A rather novel argument against the free flow of capital across national boundaries contends that openness to capital flows erodes local communities and their sense of security. This will lead, it is said, to a political backlash and eventually to international conflict (Gray, 1998). The history of the first 'golden era of international investment' – the second half of the 19th century – is cited, and it is said that this led inevitably to the conflagration of the Great War. This theory has a kernel of truth: capital mobility is indeed a revolutionary force in history and demands adjustments. Economic progress comes at the price of a degree of insecurity.

However, apart from being reminiscent of Marx's iron laws of history, which have lately lost some credibility, the conflict argument overlooks the enormous differences in technology and politics between then and now. The First World War was not brought about by free trade and free capital flows – to the contrary, it had much to do with the rising political and economic nationalism of the time. Governments – including the government of the new Australian Commonwealth – then believed that they could shape domestic industries by push-button measures such as tariffs, imperial preferences, national investment laws and the like. They often acted out of narrow national opportunism, disregarding the harm done to the interests of foreigners.

We have learnt since that such roguish economic nationalism can lead to international conflicts and many other unforeseen side effects. In addition, millions of people in different countries now have rapid and direct communications and belong to international communities. Basic international institutions are now better observed, and conflict-creating provocations meet spontaneous international disapproval. The high tide of aggressive nationalism has long subsided, and the MAI is one belated manifestation of this fact.

Fears that international capital flows will dominate communities and will bring about divisive income distributions, so that conflict is inevitable, are predicated on the assumption that capital and power will be concentrated in the hands of a few multinationals. This revival of the Marxist-Leninist theory of monopoly capitalism is surprising, because it has been proven wrong by history. The concentration of economic power depends in reality on the intensity of competition. In an open, evolving world, established powerful producers are all the time challenged by innovative, entrepreneurial outsiders. This is why few of the much-feared 'robber barons' and international finance giants of the turn of the century still make the Fortune 500.

Lively competition of course depends also on the policies of government. These should be inspired by the insight that competition is a public good worth defending, and that governments must not side with monopolies. Such a policy stance is promoted when economies are open to trade and factor flows (Giersch, 1993; Kasper, forthcoming, 1998). GATT and the existing web of institutions that now underpin free international capital flows have been key obstacles to the formation of abusive monopolies and the emergence of social division and conflict. Impeding the MAI because of these fears could make them self-fulfilling.

What can be observed worldwide is a certain erosion of the central power of the nation state. Regional and local identities are asserting themselves again, and federalism is on the increase. This is so because sub-national units are now often able to compete for internationally mobile assets and because new transport and communications technologies empower the smaller units. Civil societies and regionally based institutions constitute globally competitive assets. Far from disenfranchising local communities, globalisation has often weakened a domineering national focus and strengthened more traditional regionalism (Naisbitt, 1994). Local pride and regional patriotism are frequently found to be emotionally more satisfying; no wonder, given the consequences of nationalism this century! If border-ignoring capital movements are enhanced, the nation state will be further eroded.

The Arguments for Openness to Foreign Investment

It has already been argued that openness to foreign investors means openness to world-best knowledge and management practices. Hence it is essential to the best possible use of our resources, to fast economic growth and to job creation. Foreign investments are often necessary to develop marketing networks. Preventing them would exclude Australian citizens from choosing from the best products and services available and would exclude Australian producers from many overseas markets and technologies. Such free choices are in the national interest.

We have also argued that foreign investment controls often have the side effect of partly expropriating Australians, an unjust act. Governments which undermine private property rights typically white-ant personal freedom, whereas governments that are obliged to behave as support organisations to internationally mobile capital and enterprise lose the habit of treating domestic firms and national citizens badly.

The most important argument for free international capital flows seems – at least to this observer – to be that such mobility controls the arbitrary powers of the rulers, as well as of organised special interest groups and monopolies. Whilst this explains some of the resistance to measures such as the MAI, it promotes the autonomy of citizens. Power tends to corrupt, and absolute power corrupts absolutely, as Lord Acton expressed it so memorably. Competition by authorities to attract mobile investors acts as a valuable and effective constraint on the arbitrary use of political power.

Just as the absolutist princes of early modern Europe created the rule of law and protected private property rights not out of love for their merchants and citizens, but to cultivate the tax base for their treasuries, so do modern politicians provide and protect citizen-friendly and economically advantageous law and regulations. They have an interest in a solid and growing tax base. By this indirect incentive mechanism, openness tends to curb the rule of men and enhance the rule of law. The fact that good institutions are only the by-product of such efforts does not diminish the value of the 'social capital' that governments produce in the process.

Openness to foreign investment and the possibility of capital flight help to move the cultures of collective action away from the closed world of redistribution and exploitation of given resources to a setting of creativity, growth and discovery of resources. The game plan of public policy and social life is switched from zero-sum games and power plays, to positive-sum games and getting on with the business of wealth creation. This has consequences far beyond economic prosperity, affecting the national psyche in positive ways.

Openness to capital flows is enhanced by momentous technical changes, which now force policy makers to avoid destabilising experiments. This admittedly limits their sovereignty to commit policy blunders and unsustainable experiments. However, is this not in the interest of the individual citizens who have to pay the long term cost of such experiments? Openness also limits the capacity for policy interventions which protect firms and workers from necessary structural adjustments. On-going adjustments impose costs, but they are the unavoidable price to be paid for the benefits of economic growth.

Politicians often side with established, powerful and vocal industry groups who resist adjustments to changing circumstances. Such resistance is to the disadvantage of the not-yet-established jobs of the future and the millions of buyers who cannot be easily organised against supplier lobbies. To the extent that openness serves as a curb on opportunistic political action, it directly benefits new industries, young workers and consumers – in short, the majority of citizens. Seen in this light, it is amazing that Australian consumer organisations oppose the MAI – one would have thought that they would favour a more intense, more open rivalry of suppliers for the consumer.

This also applies to labour. Established industries, including foreign-owned industries, are often supported by Australian labour unions that have organised themselves to capture a part of the protection of investment controls (and tariffs). If new investors can come in freely, they may create additional jobs and will be rivals for workers. What is in the interest of workers may, however, not be in the interest of the unions who are beneficiaries of border controls. This explains why many unions argue against openness of the sort signalled by the MAI. They appeal to feelings of tribal nationalism – 'us and them!' – to prevent unionised jobs being fully exposed to international competition and world-best management practices. Even if these motivations are understandable, they should not be respected. They are short-sighted, because controls on foreign investment only undercut economic growth, productivity increases and job creation – benefits that favour the workers in the long run, though not necessarily union power.

In the final analysis, the issue of controlling foreign participation in the Australian economy boils down to one's perception of economic life. If one sees the national economy as a self-contained, static apparatus of relationships, one is likely to favour interventions and controls. If, however, one has grasped that modern economic life is complex and evolves constantly due to the decisions of millions of decision makers, then one will favour the participation of know-ledgeable and moneyed specialists from other countries. Interventions in the economy, such as specific capital controls, are then as harmful as interventions in the complex, evolving web of ecology. If one understands the essence of modern economic life correctly, one will favour simple, universal rules such as the principles of MAI.

Criteria for Evaluation

Against this general background, we can now evaluate the draft MAI to see whether it promotes or impedes the Australian national interest, and whether it complies with some fundamental principles of institutional design.

The National Interest

The 'national interest' is not something separate from, or opposed to, the individual aspirations of the citizens. Collectivist notions of a separate national interest probably derive from an earlier age when rulers were in conflict with the pursuits of the citizens. When judging instruments of policy such as the MAI, we must base our judgement on the individualistic notion of a citizen-centred public policy. In a democracy such as Australia, the temporarily elected and empowered politicians and their bureaucratic assistants are no more than the agents of the citizen-principals. Of course, agents may wish to act in their own interest, and may try to disguise their selfishness behind notions of 'national interest.' However, the well-being of Australians requires that the political agents are induced to do the citizen's bidding.

Public choice theory has demonstrated that this is not always easy to achieve (principal-agent problem in politics: Kasper, forthcoming, 1998). However, if our political agents are forced by openness to compete with government agencies in other countries, they will lose their power monopoly over the citizens and are more likely to do the bidding of the principals – nationals and foreigners alike.

Although individual citizens pursue a great diversity of changing purposes of their own, a good yardstick for evaluating a policy measure is how well helps people to attain freedom, security, justice, peace, material welfare, and the conservation of a livable environment. If the MAI provisions are found to promote these objectives, then they have to be deemed in the national interest. To tackle this question it is necessary to ask, what devices have proven effective in protecting and promoting these fundamental values? The answer is: universal, non-discriminatory institutions which facilitate the voluntary co-ordination of citizens. Let me explain.

Principles of Institutional Design

Any discussion of a system of rules, such as those outlined in the MAI, must be based on a realistic notion of the human character. For present purposes, it is important to note that all humans suffer from the 'knowledge problem' – the fundamental condition that no single citizen and no policy maker will ever know enough to operate a complex, evolving society (Kasper, forthcoming, 1998; Kasper and Streit, forthcoming, 1998). We can only register a limited number of impressions and can only reflect on limited bits of information to integrate them into the body of what we already know.

A second fundamental is that our living standards depend crucially on how effectively we coordinate our activity with that of others. How well is the division of expert knowledge and of labour ordered? Devices that order complex reality ease our cognitive task and allow more effective creation of wealth (Hayek, 1973: 35-70; 1988: 38-47; Kasper, forthcoming, 1998).

Order can be made by an ordering hand: someone designs an order and imposes it ('made order'). However, the more complex and changeable the subject matter, the harder it will be for any one authority to design and impose a made order. The alternative is to design and enforce a set of abstract rules which the many interacting elements spontaneously obey. Then, a spontaneous order evolves. An example of a made order is the coordination of trains by a timetable committee, whereas the orderly flow of road traffic emerges spontaneously when all drivers obey rules. They then appear to be guided as if by an 'invisible hand.'

It has been found that rules or institutions need to have certain characteristics to be effective in facilitating spontaneous coordination (Leoni, 1961; Hayek, 1973; Walker, 1988):

- The rules must be general and abstract, i.e. not specific to persons or cases. Generality implies that they must be non-discriminatory.
- The rules must be knowable and certain, i.e. not opaque or hard to identify for those who are to act on them. Certainty also requires clear and understandable sanctions for rule violations.
- The rules must also be open, so that decision makers can immediately follow them in the future when new circumstances emerge and new decisions come up.

We call rules that conform with these basic maxims 'universal.' Given everyone's cognitive limitations, simple, universal institutions are most likely to coordinate actions effectively. Universality is enhanced when the different rules form a cohesive, ordered, and mutually enforcing system.

Universality is most easily achieved by prohibitive rules ('thou shalt not steal,' or the most-favoured nation clause: 'thou shalt not discriminate among potential investors from different countries'). Prohibitive rules are necessary to delineate what free people can do without impinging on the freedom of others. Liberty, after all, can never be license. However, it is sometimes necessary to supplement prohibitive rules by prescriptive rules, directing people to do something. Good rule systems use such prescriptive institutions sparingly because they tend to be less universal and – as a consequence of the fundamental knowledge problem in complex societies – prescriptions often have unforeseen side effects.

The Benefits of Universal Rules

Universal rules have a number of benefits in terms of the fundamental aspirations mentioned above:

- They order human behaviour. This is central to the attainment of prosperity. In particular, enterprising market participants who want to test new knowledge (innovations, including locational innovations by foreign investors) depend on a framework of universal rules to keep the inevitable uncertainties of entrepreneurship within manageable limits.
- They can do a great deal to enhance security: they lay down what can and cannot be done. In so far, they help to avoid conflicts. And where inevitable conflicts arise nevertheless, rules foreshadow how such conflicts will be adjudicated. This not only promotes security, but also peace.
- They militate against discrimination, furthering justice.
- They protect individual spheres of freedom, telling people where to respect the freedom of others and how one's own freedom is defined. Freedom is important to motivate people to risk their own property and time. Slaves have little motivation to find and test new knowledge and to exploit their skills and labour. By contrast, free people, who know that they are protected from expropriation and that their gains and losses impact on them, are motivated to add to the stock of knowledge and to mobilise resources to meet the wants of other people.
- Where they establish an exclusive private interest in an asset (private property rights), they are also a great inducement to wise stewardship of that resource. This is important for resource and nature conservation. The Greek philosopher Aristotle already knew this when he said: 'What is common to many is least taken care of, for all men have greater regard for what is their own than what they possess in common with others.' This wisdom has again been borne out by the devastation which the socialised ownership of resources wreaked on the now defunct communist countries.

We can conclude that universal institutions indeed promote the fundamental values that define our national interest.

Are the MAI Rules Universal?

We can now draw on these principles to ask: are the rules of the MAI universal? To the extent that the answer is affirmative, we should conclude that the MAI is conducive to a better attainment of Australia's national interest.

It is obvious that the principal features of the MAI's institutional design are indeed universal:

- All international investment flows and all capital assets are treated the same.
- All measures of investment policy, by all levels of government, are equally affected.
- The 'national treatment rule' and the 'most favoured nation clause' are clear-cut prohibitions of arbitrary government actions. They have the archetypical

quality of being universal. The MFN clause in the GATT has demonstrated, time and again, over the past 50 years, the considerable power of such universal, prohibitive rules.
- The transparency provision enhances certainty, hence universality, as against the present Byzantine proliferation of bilateral regulations.
- The provisions that aim to ensure the openness of national borders to investment-related payments and complementary personnel and skills, again, support universality.
- The prohibition of expropriation without compensation in the MAI strengthens the universal device of private property rights, which are central to the creative powers of free, capitalist civilisation (Hayek, 1960: chapter 2; Kasper, 1998, forthcoming: ch. 4).
- Since rules without sanctions are of little normative value, the inclusion of binding arbitration when disputes arise serves an important aspect of universality, namely enhancing certainty.
- We can, therefore, conclude that the major principles of the MAI serve universality, and that MAI principles are likely to advance the interests of Australians.

The MAI will subject foreign investors to the same laws and regulations that apply to national investors. To that extent, fears that multinationals will be above the law are groundless. Of course, it is always a challenge to subject powerful firms and individuals to the rule of law. However, the MAI stipulations do not make it harder for national governments to meet that challenge. Indeed, some non-discrimination provisions will probably make political cronyism and industrial favouritism less likely. They will enhance openness, which has, on the whole, always strengthened the rule of law and weakened the hand of political populists.

Exemptions and Special Clauses Weaken Universality

Unfortunately, the present draft of the MAI does not stop with affirming time-tested principles. The MAI, as it presently stands, promises to be full of loopholes and escape clauses that threaten its universality and invite arbitrary national interventions. Although one cannot, as of April 1998, be sure of the precise wording of a final MAI text, the present draft is littered with so many provisos that they have the potential – nay, the certain consequence – of obscuring the principal rules and undermining their universality. These exemptions and special clauses will go against the ultimate purpose of the MAI, namely to allow a better distribution of capital among nations and higher rates of return to savers and investors. The MAI draft, as a whole, fails the basic institutional test of universality. At present, it is simply too complicated and too administratively clever to be of great help to investors.

The Australian negotiators seem to have contributed their share to the exceptions and reservations. They bear their share of responsibility for a draft that will be beyond the comprehension of those who typically make international investment decisions. Australia has already signalled that it will claim extensive and intricate exemptions from the MAI principles: retention of the Foreign Investment Review Board, restriction of real estate and media investments, special limitations in telecommunications, fisheries and aviation. The government wants to protect current immigration policies, monopoly policies, foreign aid contracting rules, selective government subsidies, social services, industry standards, Aboriginal and numerous other specific policies – over and above the general exemptions already in the draft.

If every MAI signatory were to be equally driven by political and administrative self-interest to register so many special stipulations, then the universal character of the agreement would be destroyed, and potential foreign investors would probably be more confused than before.

It might be asked, 'are not national exemptions such as these made to protect the national interest?' This harks back directly to what is meant by 'national interest.' It must not be equated with administrative and political convenience and the interest of specific groups. If 'national interest' is equated, for example, with a wish to control industries, it will favour numerous exemptions. If, however, we take the aspirations of average citizens to freedom, justice, security and prosperity as the yardstick of national interest, then we must conclude that the Australian negotiators and their political masters have in reality been conspiring against it.

Much hinges on the assumptions made about the motives and capabilities of policy makers. If the reader shares the basic presumptions of public choice economics – that policy makers are driven by the re-election motive and not the genuine interest of the citizen-principal – then she will argue for few, universal principles.

The MAI draft has to be judged in this context, and it must be concluded that it is wanting. It suffers from a fundamental contradiction:

(a) Its principles are a collection of general, abstract commitments that prevent policy makers from acting in short-sighted, outcome-specific ways and from committing the unavoidable blunders of such a style of public policy.

(b) The proliferation of exemptions which the negotiating bureaucrats propose to write into the agreement will frustrate the very benefits which the principles aim to promote. Those who will be given the task of administering so many general and specific exemptions from the first-best principles can simply not know enough to sort investments that will be good for Australians from those that will not. Instead, politicians will be given leeway to act in self-seeking ways that hurt our national interest.

Who Has an Interest in Specific Exemptions?

Since the expert negotiations at OECD in Paris since 1995 have yielded a plethora of exemptions, one must ask why such long and costly negotiations have not yielded clearer rules. Cui bono?

Universal rules tend to work spontaneously, with relatively moderate transaction costs for dispute resolution. The fuzzier the rules, the more likely there will be a demand for ad hoc rulings, administrative re-arrangements, lobbying of politicians etc. This means jobs for the boys and girls! The regulators and politicians have an administrative self-interest in keeping the rules complicated. They have influence and income to lose from simple, universal investment rules.

Moreover, universal investment rules limit the scope for unconstrained action by national authorities. Were capital owners to find it extremely easy to vote with their feet, the rulers would be compelled to confine themselves to providing support services to the private economy so that private residents – foreigners and nationals – flourish. The MAI principles would empower the citizens and private enterprises and limit the scope for self-serving political action.

The MAI and Developing Countries

Another objection to the MAI is that it is an agreement negotiated among the affluent and economically dominant OECD countries. They are suspected of paying scant regard to the interest of the developing countries that depend on foreign investments and the flow of aid. The fear has been expressed that future aid donations to Third World governments will be made conditional on their subscribing to MAI, thus depriving them of their sovereignty.

Just as the original GATT was negotiated in the late 1940s amongst the key trading nations of the day, so has the MAI been negotiated predominantly by the big investor countries. The OECD negotiations have been kept open to non-members, and all nations will be invited to join the shared institutional framework once it is put in place. Thus, non-members of OECD – among them Slovakia, Argentina and Brazil – have taken the trouble of negotiating the agreement. They are, no doubt, bringing the perspective of transformation economies and developing countries to the negotiation, and will not sign the MAI if it is inimical to transformation and development.

Nothing in the principles of the MAI is in the way of economic development – quite the contrary. Among the main obstacles to modern economic development are institutional deficiencies which allow governments in poor countries to act against the interest of their citizens. MAI curbing the 'sovereignty' of national rulers who impinge on peoples' private property rights, their civil liberties and the rule of law. Indeed why should aid-giving governments not tie their aid to the adherence of recipient governments to the MAI principles? It would seem advisable to make aid conditional transfers on political behaviour that ensures a good effect of the aid payments.

Tying aid to the introduction and enforcement of universal rules that have worked well elsewhere, such as the GATT and MAI rules, would go a long way to promoting the purported purpose of aid, namely to contribute to the advancement of underdeveloped communities. This would indeed seem a mechanism to promote the institutional development in Third World countries in a direction supportive of economic development. Australian aid, for example to PNG and South Pacific island countries, has not always been conducive to competition and economic liberties. It would have more benefit for long-run development if it were made conditional on opening up the recipient economies and hence, indirectly, on controlling rent-seeking political and bureaucratic lobbies in those countries.

MAI – An Abdication of Sovereignty by International Treaties?

Over recent decades, a great many detailed, prescriptive treaty obligations have been entered into by the Australian government. These often clash with the informal institutions of our society and our formal laws. This has rightly been criticised, most notably by Liberal Senator Rod Kemp (Kemp, 1994). Many undiscussed rule changes have disenfranchised the elected Australian parliament. Surreptitious adoption of new UN-instigated obligations imposes costs on the taxpayer and creates uncertainty; legal change is made non-transparent. This is rightly resented by people who sense that a proliferation of UN-inspired 'positive liberties' (claims to something) erode our classical freedoms. The Australian Government has now promised to subject all international treaties to parliamentary scrutiny.

In due course, the MAI will also come before the Australian parliament for scrutiny. Should it be rejected because it is yet one more infringement of our sovereignty?

The basic bones of the MAI do not fall into the category of prescriptive interference with our economic and civil liberties. To the contrary, they underpin those basic institutions by underwriting an open economy. They are likely to help to protect Australian citizens from arbitrary, detailed government interference. It is therefore to be hoped that the elected Australian parliamentarians, when scrutinising the MAI, will endorse its principles and thus, by and large, reaffirm the foreign investment policies of recent years. It is also to be hoped that they will control the temptations of political opportunism and be critical of Australia's many registered exceptions.

The MAI principles should be endorsed by all signatories as a truce in harmful interventionism and as a pact to disarm many of the existing controls of foreign investment. We now understand the perils of past interference with international exchanges much better. Had Australia, for example, honoured the spirit of the GATT and got rid of its tariffs in the 1950s and 1960s, Australian citizens would have been spared the costs of industrial protectionism and enjoyed cheaper prices, better quality and the other benefits of trade liberalisation that we came to discover in the last ten years.

The MAI and Lobby Groups

The MAI principles can also be seen as constraints on specific interest groups. Industry lobbies or special-issues groups lose political clout in an open economy when they go against the general interest. Particular environmental or health protections may, of course, serve the long-term common interest; they may protect producers and foreign investors from themselves. In the long-term, a livable environment and healthy work practices make location in Australia more attractive for foreign investors. And the dispersal of the benefits of economic growth to the population makes for social stability, which is a competitive asset in international competition.

Appropriate protections, designed to ensure low compliance and transaction costs and to create attractive standards of live and work here, are important attractions also to internationally mobile investors and top managers. The argument that interjurisdictional competition inevitably lowers environmental, health or work standards overlooks the fact that mobile investors evaluate the long-term costs and benefits of local conditions. Locations which simply guarantee the lowest production costs are often shunned because they do not offer corresponding benefits. Otherwise, all multinationals would set up shop in Somalia or Mozambique. The empirical evidence supports this: locations that have attracted foreign investments, for example in East Asia, have gradually improved regulatory protections of health, safety and pollution control.

However, activist single-issue groups have become aware of the constraints that flow from international capital mobility. Aggressive labour organisations and activist industry regulators, who pay no heed to compliance costs, are increasingly confronted with the 'no-confidence votes' of capital owners – capital outflows. This explains the vehemence of current single-issue group agitation against the MAI by green lobbies, consumer groups, social welfare activists and some unions. They correctly perceive that their target politicians are less likely to be captured by them if their proposals harm Australia's competitiveness and lead to capital outflow and economic stagnation.

The lobbying against the MAI in Australia in early 1998 is, nonetheless, surprising. For most practical purposes, the MAI rules will not change the present mobility of capital in and out of Australia, as our current bilateral agreements have for some time been roughly in line with long-standing OECD practices and standards.

The same cannot be said for many new industrial countries and some of the more interventionist-nationalist regimes overseas. It seems to be from there that the Internet traffic is fed, to be echoed by Australian lobby organisations and letters to the editor. Australians react, no doubt, partly because of past nationalist ideologies. However, payments, trade and investments have meanwhile been greatly liberalised and technology now guarantees a much greater openness of the Australian economy. These facts cannot be turned back by Australia not joining the MAI.

In Summary: What Should be Done?

The MAI's general principles deserve to be reaffirmed by Australia. This would reduce legal uncertainties and the transaction costs of international investment. Whilst these principles are not new, their reaffirmation and generalisation would constitute institutional progress and would strengthen our economic and civil liberties. Through practice, the MAI principles could become credible obstacles to short-sighted political interventionism.

However, the negotiations at the OECD, which set out to produce a mountain of reform, have so far yielded a molehill with all too many loopholes for governments. If the present draft were jettisoned, not much would be lost. In any event, it would seem advisable for Australia to register as few national reservations as possible and to castigate the exemptions and conditions of other negotiating parties as signs of poor global citizenship. The pursuit of numerous specific environmental, cultural or labour outcomes will be at the expense of the spontaneous forces of economic growth. Yet, in the long-term, economic growth will serve the environmental, cultural and labour aspirations of free citizens better than interventionist activism.

Adopting such a classical liberal line in Australia will require political self-discipline on the part of politicians and bureaucrats who are used to endless intervention in market processes. Modest members of parliament will realise that anything but the stipulation of universal, general rules transcends what government officials can know and implement, and what free, entrepreneurial investors can comprehend.

Australia is a small country with great development potential. We are not in the limelight at the centre of the global economy. Therefore, we will not attract sufficient capital, knowledge and enterprise at conditions which are attractive to us, if we play by complicated, changeable and uncertain Australian rules. We have much to gain by adopting the world's best-practice code on investment – non-discrimination without any qualifying adjectives.

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Endnotes

1 We speak of a direct foreign investment (DFI) when the acquisition of capital assets in a country by a foreigner is coupled with a degree of managerial control by the foreigner. By contrast, foreign portfolio investments imply a mere injection of capital without influence over how the business is managed.

2 OECD, Directorate for Financial, Fiscal and Enterprise Affairs, The MAI Negotiating Text (as of 14 February 1998, updated 26 February) from OECD's MAI Home Page: <http://www.oecd.org/daf/cmis/mai/maindex.htm>. This draft is the result mainly of expert working groups and has not yet been adopted by the official MAI Negotiating Group, let alone national governments.

3 It is not surprising that the civil servants who are negotiating the MAI draft wish to claim a government monopoly for adjudication. However, it should be noted that disputes among international traders typically go first to (competing) private arbitrators who decide expeditiously. Private arbitration deals with 90% of all private trade disputes, and 90% of these arbitration decisions are accepted. Admittedly, the case of foreign investment disputes differs from trade disputes among private citizens in that one party is likely to be a government authority. Nevertheless, the possibility of going to competing private arbitrators should be left open.

4 There will also be an escape clause on 'temporary safeguards' in a balance of payments crisis – even though these are the result of fixed exchange rates and short-sighted national policies. Dropping this safeguard clause would help to educate the managers of monetary policy in managing monetary affairs more responsibly.