

good model on which to base other negotiations. It is the model used for the provisions on investment in the 1997 Canada-Chile Free Trade Agreement (CCFTA). Canada is also actively involved in regional investment discussions with Pacific Rim countries through the APEC initiative, and with our investment partners in the Americas through FTAA investment discussions. The latter discussions are expected to evolve into the commencement of negotiations this year.

Multilateral Initiatives

Multilateral Agreement on Investment (MAI)

In May 1995, the member countries of the Organization for Economic Co-operation and Development (OECD) agreed to launch negotiations for a Multilateral Agreement on Investment (MAI), open to accession by non-OECD countries.

Canada's participation in the OECD MAI negotiations is an important part of Canadian efforts to develop international rules on investment. A successful MAI negotiation will not only provide a stable, transparent and open environment between Canada and its major investment partners, but also represent a first step in pursuing Canada's investment objectives for a worldwide treaty negotiated through the WTO, the ultimate destination and most effective home for a truly multilateral investment agreement.

The MAI constitutes a first attempt to elaborate a set of multilateral investment disciplines, similar to those governing international trade. It would complement the investment rules of the NAFTA, the existing, but limited rules of the WTO, and the bilateral investment agreements of Canada and many other countries.

Under the MAI, Canadian investors abroad would be accorded a similar level of protection and fair treatment that foreign investors currently receive in Canada. This is particularly important as the level of Canadian investment abroad increases and as Canada seeks to diversify its markets beyond the United States.

The MAI would include two "core" principles: non-discrimination (i.e. national treatment and most-favoured nation treatment); and investment protection (i.e. clear rules governing expropriation, requirements for prompt and effective compensation, and unrestricted transfer of funds). These principles would be supported by an effective dispute settlement mechanism, similar to that of the NAFTA, allowing for resolution of state-to-state and investor-to-state disputes.

The MAI will also provide for general exceptions and country specific reservations from MAI disciplines. In particular, Canada will ensure that the government preserves its full freedom of action in key areas, including health care, social programs, education, culture and programs for aboriginal peoples and programs for minority groups. Canada will also ensure that the MAI includes a narrow interpretation of "expropriation" that makes it entirely clear that legislative or regulatory action by government in the public interest is not expropriation requiring compensation, even if it has adverse profitability consequences for companies or investors.

In areas such as performance requirements, temporary entry and stay of key personnel, privatization, and actions of monopolies and state enterprises, the MAI would provide similar rules to those found in existing investment agreements.

Canada's objective in the MAI negotiations is to get from OECD countries the same rights we have secured from our NAFTA partners and some 24 other countries through our Foreign Investment Protection Agreements. The MAI also offers an opportunity for Canada to address other issues that are not covered in existing agreements. For example, Canada is seeking the inclusion in the MAI of provisions to provide greater protection to our investors and their investments abroad from the extraterritorial application of domestic jurisdiction.

As of February 1998, it appears unlikely that the April 1998 deadline for conclusion of the negotiations will be met.

The WTO

A multilateral rules-based system of universal membership, encompassing both trade and investment disciplines, is the preferred means of providing a stable, secure and fair international environment for Canadian firms operating abroad and for attracting foreign investment to Canada. Historically the GATT (and now the WTO) has been the cornerstone of Canadian trade policy, and trade's close relationship with investment makes it desirable that investment disciplines be fully integrated into the WTO. Consistent with this objective, Canada was a leading advocate for the establishment of the WTO Working Group on Trade and Investment at the 1996 Singapore Ministerial Meeting, and since then has played an active role in Working Group activities.