

iii) *The MAI*

The members of the Organization for Economic Cooperation and Development (OECD) agreed to begin negotiations on a Multilateral Agreement on Investment (MAI) in 1995. The agreement is supposed to provide a comprehensive multilateral framework of principles to govern the treatment of foreign investment. The agreement is intended to provide National Treatment to protect investments and investors. The draft agreement, which has not been finalized, recognizes that countries have different priorities and interests, and thus it allows each country to lodge exceptions to the basic rules established in the MAI.

There has been concern expressed about culture and/or cultural industries, and some countries, including Canada, filed an exception for their cultural industries during the negotiations, which are not yet complete. Canada and others have expressed fears about culture and believe that a cultural exemption is necessary to preserve cultural and linguistic diversity in their respective countries. Canada has supported a French proposal for a cultural exemption. The basic argument is that countries have the legitimate right to introduce policies that promote or protect cultural identity and linguistic diversity.

The problem with this, Canada has argued, is that the use of these measures in the cultural sector raises problems with respect to national treatment and MFN, and thus a cultural exemption in the MAI is necessary. Given that the United States and others oppose broad cultural exemptions, the question remains what exactly can be achieved through this measure. William Merkin, a former United States trade negotiator, states that "the United States is not in position either politically or from a commercial perspective to grant any nation carte blanche to restrict our access in . . . the entertainment sector, which is an important export earner for the U.S." He predicts that both sides will agree on a NAFTA-like measure, which allows countries to maintain current measures.<sup>22</sup>

For Canada, this exemption would be relevant for the film industry. In Canada, foreign-content movies represent 90 per cent of film distribution revenues. The argument has been made that without investment measures Canada would find it even more difficult to preserve space for Canadian product. Those who espouse this view assume that without the foreign investment policy for film distribution, Canada would lose even more control of its film distribution sector. Even if Canada is successful in negotiating an exemption, the question will be to what extent investment measures can remain effective given the changing nature of the United States industry, of distribution as a result of technological advancement, and of international trade.

The MAI negotiations have been suspended at least until the autumn of 1998 as a result of missing the deadline of April 1998. This deadline was not met because a variety of issues, including the cultural one, remained outstanding. Negotiations could resume again at the OECD,

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<sup>22</sup> Rosanna Tamburri, "Canada Considers New Stand Against American Culture" *The Wall Street Journal*, February 4, 1998.