

The Subcommittee's recommendation is that Canada should seek the inclusion in the MAI of language equivalent to the one found in existing investment agreements negotiated by Canada. (1) Such language states that MAI signatories should accord to foreign investors treatment in accordance with international law. Canadian laws already provide for better treatment than international law.

Recommendation 10

The key issue of what constitutes an expropriation or a measure having equivalent effect to expropriation (Article IV 2.1 on page 51 of the MAI draft text), or a measure that "impairs" investment, (as outlined in Article 1.2 of the draft MAI text), should be narrowly defined to accord with Canadian and NAFTA practice.

The Government agrees with this recommendation.

As the Government has stated publicly, Canada will only accept an MAI that provides 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 such action has adverse profitability consequences for companies or investors.

Recommendation 11

Canada should continue to press for open, accessible and transparent procedures for dispute resolution.

The Government agrees with this recommendation.

Confidentiality is widely regarded as a traditional feature, and at times a major advantage, of international arbitration. Confidential arbitrations are provided for in the NAFTA and Canada's Foreign Investment Protection Agreements (FIPAs). They are the subject of the New York Convention, the International Centre for the Settlement of Investment Disputes (ICSID) Convention and the International Chamber of Commerce and United Nations Convention on International Trade Law (UNCITRAL) arbitration rules. Nonetheless, the Government has advocated more openness and transparency to international dispute settlement in a number of forums, including the WTO and the MAI negotiations. Greater openness and transparency would increase the level of public confidence in international dispute settlement and the legal certainty provided thereby.

Recommendation 12

Canada should insist on strong references to International Labour Organization (ILO) core labour standards in the text of the agreement -- including supporting Alternative 2 on page 50 of the English MAI draft text -- which will ensure their protection at a level at least as high as that obtained in the NAFTA. Canada should also require the incorporation of the OECD Guidelines for Multinational Enterprises into the text of the agreement.

The Government agrees with this recommendation, to the extent that it refers to a strong reference to ILO core labour standards in the agreement, the inclusion of a provision not to lower standards in the text of the agreement, and to the association of the OECD Guidelines for Multinational Enterprises.

While recognizing that the ILO is the proper forum for advancing international labour law, Canada, like