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ENVIRONMENTAL REVIEW OF THE MAI

(Country Contribution)

This text was contributed by a delegation for the meeting of the Negotiating Group on 18-19 September 1997. It was declassified in accordance with a proposal by the Secretary-General [C(99)187] which was adopted by the Council at its 964th Session on 9 December 1999.

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ENVIRONMENTAL REVIEW OF THE MAI

(Contribution by the one country)

Context

1. An environmental review of the MAI could not be an environmental impact assessment (EIA) of the sort conducted for specific investment projects where there are potential direct adverse impacts on a particular environment from construction and pollution, where the risk analysis includes assessment of the locality (which might include sensitive habitats or conservation areas).
2. The questions raised by the MAI have been more about its potential to circumscribe governments' ability to act or to "chill" governments' will to develop regulatory responses where new environmental problems arise, or to prevent the promulgation of global best practice. Fears have also been raised that the MAI might encourage the creation of "pollution havens". These are in the first instance procedural and process effects rather than direct impacts on the environment. Of course, if environmental policy-making were over-constrained by the MAI, there could eventually be actual adverse environmental impacts on local environments and/or the global environment as a result. But these could not be quantified without answering questions about the MAI's impact on policy making and implementation.
3. Environmental reviews of international/regional measures are relatively new. The most notable recent environmental reviews have been conducted by one country of the North American Free Trade Agreement (NAFTA) and of the Uruguay Round of the GATT. At a recent meeting of the WTO's Committee on Trade and the Environment (CTE), this country made a presentation on these, saying that they had been mainly procedural undertakings to identify environmental policy issues raised by new trade policies and that, although the causal link between trade liberalisation and specific environmental impacts of proposed trade policies could not always be established in advance, this country felt such reviews promoted informed decision making. The Chairman of the CTE asked WTO Members to contribute their national experiences of environmental reviews to the CTE in future. Such experience may be of help in developing ways of reviewing the potential impact of an international investment agreement.

Aims, Content and Timing

4. The aims of an environmental review of the MAI would be to:
 - promote informed policy coordination in capitals prior to MAI signature by Parties,
 - assure NGOs and concerned citizens that the potential environmental impacts of the MAI are not being ignored during negotiations,

- ensure that impact analysis is undertaken in time for adjustments to be made to the final text, if necessary.

These aims all point to a review being undertaken before negotiations are complete, but this raises the problem of assessing potential MAI impacts from unfinished text subject to change. However, if a review is conducted only after closure of the text, important benefits would be lost e.g. the presentational aspects and the opportunity to make adjustments in the light of findings.

5. The issues an environmental review of the MAI should explore relate to existing as well as future environmental policy making and implementation in the national as well as the multilateral contexts. Possible questions to be addressed by a review are:

- i) Could MAI obligations affect Contracting Parties implementation and enforcement of their existing national and regional environmental laws?
- ii) Could the MAI affect Contracting Parties' ability to address environmental problems in future (i.e. the creation of new policy means to tackle known problems or the creation of new policies/regulation to deal with problems yet to be identified)?
- iii) Will MAI obligations conflict with any obligations under existing Multilateral Environmental Agreements (MEAs)? (Could limit scope of study to a list of most important MEAs.)
- iv) Could MAI obligations constrain the future development of existing MEAs or the development of new MEAs?
- v) Could the MAI encourage either MAI Parties or non-signatories to slacken environmental regulation in order to attract investment?
- vi) What impact is the MAI likely to have on the development of global best practice in environmental management for multinational enterprises (MNEs)?

6. OECD's recent study *Economic Globalisation and the Environment* touched briefly on foreign direct investment. This could provide a basis for further *economic* study of the environmental impact of the anticipated changes in investment flows post MAI.