THE NEED TO OPPOSE THE EMERGENCE OF AN MAI IN THE WTO

Martin Khor (Third World Network)

The MAI is facing serious difficulties in the OECD. Many OECD countries have submitted long reservation lists. Many issues also remain unresolved. Citizen groups in many OECD countries have launched strong protests against their governments entering an MAI. The OECD ministerial meeting in Paris in April 1998 decided to suspend the negotiations for six months.

As the OECD negotiations resume in Paris on 19-20 October 1998, there is now a danger of a decision to shift the centre of negotiations to the World Trade Organisation, a move that seems to be favoured by the European Union. The European Parliament, in their critical resolution on the OECD-MAI, had also called for the negotiations to shift to the WTO. The OECD ministerial declaration of April 98 states that OECD governments "support the current work programme on investment in the WTO and once the work programme has been completed will seek support of all their partners for the next steps towards the creation of investment rules in the WTO."

At the WTO Ministerial Conference (Geneva May 1998) and at the recent meetings (in June and October 1998) of the WTO's Trade and Investment Working Group, many Northern countries have been intensifying their pressures on developing countrie to agree to start a negotiation on an investment agreement.

The next meeting of the Working Group on 23-24 November is crucial. It may decide on recommendations on its future work. This includes the option of starting negotiations for an investment agreement.

The EU is championing a new "Millennium Round" in the WTO, which would include upgrading the investment issue from the present work ing group (whose mandate is to "study the relation between trade and investment") to a group negotiating a MAI-type agreement.

Many countries, including European countries (backed by the EC) and Canada, have been saying that the MAI should now be negotiated in the WTO. To boost this move, the EC has also claimed that at the WTO the developing countries can also participate, and this is thus more participatory. Proponents of an MAI in the WTO can also be expected to claim that labour and environmental issues will be taken care of, and also that suggestions to balance the rights and obligations of corporations can be considered.

NGOs should not be taken in by such an argument and should reject any move to get the WTO to negotiate an investment treaty. Getting the MAI or a similar investment treaty in the WTO would be even worse for developing countries. This is because:

(1) Most developing countries are members in WTO and if a treaty is concluded there they would have to join it. If the MAI is at the OECD, each developing country can decide whether or not to join.

(2) The WTO is not democratic or transparent. Developing countries in reality won't have much say in determining the final outcome. Nor will most of them be able to participate in the real negotiations, that often take place in "informal meetings" to which a few key countries may be invited. For example, during the Uruguay Round, although many developing countries opposed many aspects of the TRIPS treaty, in the end the US had its way.

Although some developing countries may oppose a MAI-type proposal in the WTO, eventually it is likely they could be isolated and in the end an MAI will emerge.

(3) The WTO's dispute settlement system will be effective in tying down developing countries to implement an MAI there. Countries that don't comply with some parts could face trade sanctions or at least the threat of being taken to a WTO panel. Thus the WTO is popular with the rich countries as they can use it to enforce the rules on the South.

(4) WTO is supposed to be a TRADE organisation. Its mandate should not be expanded to INVESTMENT policies and rules. If an MAI-type treaty is negotiated in WTO, then the existing principles of the WTO such as NATIONAL TREATMENT could quite easily be extended to INVESTMENT (it applies now to goods).

(5) The OECD countries are likely to shape a WTO agreement to be as much as the OECD-MAI as possible. In the WTO working group meetings, they have already insisted that the definition of investment in the WTO's present discussions should include not only FDI (as originally defined) but also portfolio investment and "other investments."

The history of MAI-type investment rules in the WTO is that the rich countries, especially the US, tried to introduce in as part of the TRIMS (trade-related investment measures) negotiations during the Uruguay Round. This attempt failed as there was strong opposition from many developing countries to introduce investment policies and rules per se in the negotiations.

Therefore the TRIMS agreement is now limited only to preventing trade-related investment measures, such as requiring investors to follow a requirement to have a minimum level of local content in their product. (It is argued that local content policy would adversely affect imports and thus distorts trade). Investment policies per se (such as a country's policy on foreign investment, such as criteria for entry of firms, the conditions for their establishment, whether or not to grant national treatment) are thus excluded from TRIMS. Most developing countries thus maintain their regulatory control over foreign investment.

In 1995-96 the EC led a campaign within the WTO to get a negotiation process going for a MIA (multilateral investment agreement). Many developing countries (including India, Indonesia, Malaysia, Tanzania, Uganda) opposed it. Investment became the biggest and most controversial issue in the run-up to the WTO's first Ministerial Conference in 1996. In the face of the strong opposition from developing countries, the rich countries including Japan and Canada) then downgraded their demand to creating a working group to STUDY the relation between trade and investment.

This working group for a study process was agreed to at the WTO Ministerial Conference (Singapore - December 1996). There was an explicit agreement that the working group on trade and investment would only STUDY the relation, and WOULD NOT BE ENGAGED IN NEGOTIATIONS for an investment agreement.

Any decision, if any, to start a negotiation process has to be EXPLICITLY taken by consensus. After 2 years (Dec 1998) the working group will decide how to proceed. The group has been meeting in Geneva for discussion but not for any negotiation.

Now that the OECD process has slowed down, the EC (led by Sir Leon Brittan), Canada, the WTO Director General (Renato Ruggiero) will now PUSH VERY HARD to intensify the WTO process. They will push to intensify the discussion in the working group on trade and investment and will propose that this be upgraded to a NEGOTIATION for an investment treaty. The pressure will heighten in the next few weeks as a decision will be made, probably at the 23-24 November meeting of the WTO Working Group.

The treaty they have in mind is THE SAME AS THE MAI. This is clear from the EC paper "A Level Playing Field for Foreign Investment Worldwide" (1995) which describes the EC strategy of pushing for an MIA/MAI at both the WTO and the OECD. The main features(including the right to establishment, national treatment, banning of performance requirements, right of entry and exit of funds, etc) are similar to what emerged in the OECD-MAI.

Therefore NGOs should not be swayed or taken in by arguments from the EC, Canada or other countries, that public concerns (such as labour or environmental issues) and the South's interests would be better taken care of by initiating an agreement at the WTO.

In reality, it would be WORSE for developing countries and for the world because an MAI in the WTO would have over 130 countries involved.

PROPOSALS:

1   Therefore NGOs should OPPOSE strongly now any proposal or pressure to upgrade the present STUDY GROUP in the WTO into a NEGO TIATING GROUP.

2.   This opposition should be made clear during the Paris meetings in October 1998 and at subsequent NGO activities.

3. A campaign at national (and regional) levels should be conducted specifically to stop attempts to upgrade the WTO Working Group on Trade and Investment from a study group into a negotiating group.

4.   NGOs involved in the MAI issue should now take this up as their main issue. They could press their Trade Ministers to commit that they would not press for investment negotiations in the WTO. The European Commission should also specifically be lobbied as it is the EC (not individual European governments) that negotiate in the WTO.

5.   NGOS can also contact members of the media covering the event to brief them on the issue and make clear to them that NGOs oppose shifting the MAI to the WTO.

6.   Moreover, NGOs should also campaign that the existing WTO working group on trade and investment conclude their discussions with a decision that the WTO should not take up investment policy or rules as part of their mandate. The working group itself should be wound up.

7.   The European Parliament members should be persuaded to withdraw from their stand (in their resolution on the MAI) that the MAI negotiations should shift to the WTO. In fact, Parliament arians, citizen groups, municipalities etc should be informed of the greater dangers of an MAI in the WTO and asked to also oppose such a development from taking place.

BEWARE ALSO OF THE IMF

The IMF Secretariat and some G7 want to amend the IMF Articles of Association to introduce "CAPITAL ACCOUNT LIBERALISATION" as part of the IMF's objectives or operations. This would allow IMF to discipline and pressurise developing countries to increasingly open their doors to capital flows such as portfolio investment, FDI, loans, bonds and the outflow capital funds. This is another route for MAI-type rules on investments. This proposal will continue to be discussed at IMF meetings this year. THIS AMENDMENT SHOULD ALSO BE OPPOSED. (Such an amendment would among other things enable the IMF to have a much stronger hand to discipline developing countries to deregulate financial flows and open up their financial markets, a process that was largely responsible for the East Asian financial crisis. There will likely be more Mexican and Asian type crises if the IMF amendment is carried).

(Paper written in 1998.)