

CanadaWatch

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SPECIAL ISSUE: FOCUS ON THE MAI

CULTURAL PRESERVATION OR VULGAR PROTECTIONISM? OPPOSITION TO THE GLOBALIZATION OF CULTURAL INDUSTRIES IN MAI NEGOTIATIONS

BY MICHELLE SFORZA

Historically, France (and the other francophone nations) have drawn the line against international economic integration at their cultural borders. They argue that the cultural industries (movies, broadcast and print media, art and literature) do not simply yield tradable commodities but serve as the wellspring of national identity. Therefore, cultural industries and institutions should be protected from market liberalization agreements like GATT and the proposed Multilateral Agreement on Investment (MAI), in the name of preserving cultural heritage.

Yet the United States government claims that protections for domestic culture are nothing more than a mechanism for countries to shield domestic firms from legitimate competition (in violation of the principles of free trade and the free flow of investment).

The setting for the latest fight over liberalization of cul-

tural industries is the Organization for Economic Cooperation and Development (OECD), where the group of 29 mostly industrialized countries is negotiating the MAI. Modeled on the investment chapter of the North American Free Trade Agreement (NAFTA), the MAI would obligate member gov-

ernments to open almost all economic sectors to foreign investment, and would prevent them from placing certain conditions on that access. It would bar governments from treating foreign investors or their products "any less favourably" than their domestic counterparts in terms of regulations or eligibility for government subsidies. It would prohibit any restrictions on the purchase of domestic firms by foreign investors. And the MAI would grant multinational corporations the standing to sue sovereign governments in international courts when they

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THE MULTILATERAL AGREEMENT ON INVESTMENT IS LOST IN WASHINGTON

BY STEPHEN BLANK

Unlike the punch-up over fast track authorization or the Kyoto meeting on global warming, which drew all sorts of interest groups into play, the MAI scarcely tracks on the American radar. It is being low-balled by the President and has barely surfaced in Congress. There is little trace of it in the print media, and a voyage across the World Wide Web finds few U.S. sites, other than those of some of the environmental groups. Not that we are completely oblivious. The U.S. embassy in Ottawa has good MAI references on its

Web site (presumably for Canadian use).

But the MAI is way down on the agenda. A source in a business organization that is working for MAI says that there is no indication it has a high level of support in the Administration. After the rough handling the President received on fast track, it is hard to believe that anyone will risk his or her neck for MAI.

Why? One hypothesis focuses on America's propensity to isolationism. Martin

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ward pressures flowing from globalization.

The core concern of the environmental movement is that the ability of states to regulate not be undercut by the expropriation clauses of the MAI, which could be used by corporations to challenge domestic measures which reduce anticipated profits.

A parallel provision has been proposed to prohibit countries from relaxing environmental standards in order

to attract investment, such as exists in the NAFTA. However, most environmental organizations rightly see the practical impact of such a clause as very limited, and arguably counter-productive. Given that much environmental regulation is site specific, the existence of such a clause might deter governments from setting high standards in the first place.

The broader difficulty is that, in the environmental area, there is no agreed set of core or minimum standards and, even if it existed, it would be regarded by many environmentalists as much weaker than desirable domestic regulations. The core concern of the environmental movement is that the ability of states to regulate not be undercut by the expropriation clauses of the MAI, which could be used

by corporations to challenge domestic measures which reduce anticipated profits. This will require, at the minimum, a strongly worded carve-out of environmental regulation from measures subject to challenge under the MAI, and even that is highly likely to be interpreted in the narrowest possible way by dispute settlement panels.

Many critics of the MAI are quite prepared to contemplate positive international agreements rather than just defend national sovereignty in the abstract. However, the current reality is that the entire thrust of the MAI, like the WTO and trade and investment agreements like NAFTA, is deregulatory, prescribing what governments cannot do rather than specifying at least a minimum level or standard of what should be done.

In this context, the MAI should and will be opposed by those who want corporate rights balanced against by corporate responsibilities. States subject to democratic political pressures are still best placed to perform this crucially important balancing act.

Debate on the MAI should, however, be used to advance debate and discussion over international regulation of international capital. We do need new sets of rules to deal with new realities, and progressives should reflect more on how to pool sovereignty in very different kinds of international institutions.



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Walker, the Washington-based Assistant Editor of the *Guardian*, has recently described America's "retreat from internationalism": "Not since the 1930s", he says, "has the United States appeared so ready to turn inwards again, back to that isolationism which President Franklin Roosevelt said had finally been sunk at Pearl Harbor".¹

Isolationism has long been a core element of America's political culture and, with the end of the Cold War, might re-surface as a controlling value as it did in the 1920s and 1930s. Then, after WWI, Americans were determined to avoid involvement in European conflicts ever again. In 1935, FDR warned that if wars occurred in Europe or Asia, "the United States and the rest of the Americas can play but one role—through adequate

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defense to save ourselves from embroilment and attack". In 1937, Gallup found that three-quarters of the country favored the "Peace Amendment", which provided that unless the U.S. was actu-

ally invaded, Congress could not declare war without a nation-wide referendum. The Amendment was defeated in the House by a vote of only 209 to 188.² Now, once again, Americans have widely come to believe that the U.S. has few fundamental security interests at stake in the world and that much more attention should be focused on domestic problems.

It is true that isolationism is on the rise. But this is not the whole answer. Many political insiders feel that Americans are uninformed and uninterested about the world outside their borders, but research suggests that public opinion has not shifted so sharply towards isolationism—that while Americans are less interested in traditional military or political developments, they are deeply

concerned about a wide array of global issues, such as drugs, crime, and threats to health and the environment. Polls find that public support for the United Nations, for example, is significantly greater than for Congress.³

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bivalent about trade, particularly about the impact on jobs and income. But while globalization has raised levels of anxiety, it has also created new interests that favour liberalization. Many Americans work for foreign firms and many more have jobs in export-oriented industries. There is little enthusiasm for cutting America off from world trade, but there is also profound hostility to anything that might "erode" America's sovereignty. Americans are prepared to use the power of access to their markets to force other nations to conform to what they feel are "fair" trade practices and "higher standards" of environmental protection, human rights, or worker safety.

Within Congress, critical changes have taken place as well. The center has weakened dramatically, and political extremes are much stronger. The internationalist trade-liberal coalition that linked both ends of Pennsylvania Avenue and both sides of Congress is much diminished. Many of the last members of this group left Congress—and the Senate in particular—in 1992 and 1994.

President Clinton is much criticized for failing to lay out a coherent, long-term strategy or vision for foreign affairs and for the *ad hocism* that dominates his foreign policy, which is often geared toward satisfying domestic constituencies. The President's leadership can be questioned. But his agenda also poses tremendous problems. Among the urgent foreign policy issues on his desk are UN arrears, the IMF and the Asia bailout, the Middle East, troops in Bosnia, the expansion of NATO, the authorization of fast track and, way down the list, MAI. And his life is scarcely dominated by foreign policy. He has little political capital, and has to make tough decisions on where to bet it.

The President's faults are not as important as other changes now underway. The Cold War provided a critical organizing principle for policy and politics. But the clarity of the struggle between the forces of good and evil in the world, as vivid as a Hollywood western, is gone. The rise of new global issues—from trade and jobs to human rights and sweatshops and the environment—makes developing a coherent international posture far more difficult. The debate over many of these issues cuts across party lines; it reduces party coherence and has made American politics even less manageable.

It is not just that issues are more complex. America's system of government is changing, too. One critical aspect has to do with the President. Strong executive leadership has been associated only with crises in American history, and only during the mid-twentieth century was power centralized in Washington, and there, in the executive. Joseph Califano, a member of Lyndon Johnson's cabinet, reflected

As America's economy has become more interdependent with those of other nations, and as U.S. firms face greater competition from foreign firms both at home and abroad, trade policy has become increasingly a center of interest politics. Securing passage of NAFTA revealed clearly the new parameters of trade policymaking.

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on the "imperial presidency": "When we wanted to close post offices, consolidate regional centers or shut down military bases, we did it. L.B.J. stiff-armed Congressional attempts to trim our efforts, vetoing legislation to limit his power to close bases as an unconstitutional intrusion on Presidential prerogatives. When Johnson wanted to step up military action in Vietnam, he had Congress pass the sweeping Gulf of Tonkin resolution which he (and later Richard Nixon) used as authority to wage a full-scale war

without asking Congress to declare one".⁴

Now, the era of strong executive leadership in the United States seems to be over. With the end of the Cold War, power has begun to flow away from the center, from the executive to Congress, and from Washington to states and localities, all of which makes the formulation and implementation of foreign policy much more difficult. No one has described these changes better than Allan Gotlieb, one of Canada's best ambassadors in Washington: "Congress now micro-manages many foreign issues", he observes. "For the past decade and a half or so, since the time of Watergate and Vietnam, Congress has asserted this role with increasing vigour and shows no signs of desisting from doing so. Indeed, in my time I heard more about 'the imperial Congress' than about 'the imperial Presidency'."⁵

What is going on, however, is not just a shift but a real fragmentation of power. Gotlieb speaks of "the doctrine of the sub-separation of powers ... a decentralizing process that began with the breakdown of party discipline, changes to the seniority system, and other political reforms in Congress in the post-Watergate era. As a consequence, political power in Congress has become diffused, fragmented, and atomized". Many new players are involved in formulating foreign policy; now state and local governments, non-governmental organizations, and individuals all play in the game.

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Policy today is less often framed by strategic interests than shaped by special interests. America's system based on the separation of powers and federalism has always been highly permeable to interests. Developments from Watergate to the end of the Cold War opened the policy process to interest involvement even more, and the social and economic changes of the past decades have vastly enlarged the number of groups that seek to influence policy and the intensity of their demands. Permeability is magnified in economic and trade policy. As America's economy has become more interdependent with those of other nations, and as U.S.

firms face greater competition from foreign firms both at home and abroad, trade policy has become increasingly a center of interest politics. Securing passage of NAFTA revealed clearly the new parameters of trade policymaking. NAFTA was not so much sold to Congress as a policy ideal, as bought from individual Congressmen in return for a wide range of goodies. Califano observes that “while no President in this century has lost a legislative contest over trade, none had to pay so much in the way of tribute to Congress: hundreds of millions in subsidies for fruits and nuts, lower cigarette tax increases and barrels of other pork”.

Power in the American government is deeply fragmented; leadership is far more difficult; and what coherence there was in the policy process is much diminished. The President, individual members of Congress, and even state governments, all say different things. The fragmentation of power and the breakdown of leadership have, however, heightened inwardness. Even more than isolationism, however, these developments encourage unilateral actions driven at times by a single member of Congress who can bend policies or hold them for ransom.

Congressman Smith from New Jersey brought down the carefully crafted compromise worked out by the State Department and Senator Helms which would have paid nearly \$1 billion in arrears to the United Nations and provided \$5 billion to the IMF. What undid the agreement was not isolationism, but rather Smith's determination to deny U.S. aid to foreign groups that perform or advocate abortions—

Democrats in the House have widely opposed President Clinton's trade policies. But if the White House would force worker protection on our trading partners, then, says one, “they could have us” on their side. Use trade barriers or sanctions to force our enemies and friends as well to straighten up, to fight the persecution of Christians, to keep the French from doing dastardly deals in Iran, to overthrow Castro. But in this erratic interventionism, there is little room and little support for multilateral ventures like the MAI.

to use U.S. foreign policy, that is, to achieve very specific and wide-ranging social goals. Democrats in the House have widely opposed President Clinton's trade policies. But if the White House would force worker protection on our trading partners, then, says one, “they could have us” on their side. Use trade barriers or sanc-

tions to force our enemies and friends as well to straighten up, to fight the persecution of Christians, to keep the French from doing dastardly deals in Iran, to overthrow Castro. But in this erratic interventionism, there is little room and little support for multilateral ventures like the MAI. They are seen as restricting America's freedom of action. We prefer to work by thunderbolt. The fate of the MAI? Don't hold your breath. 

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1. M. Walker, “A new American isolationism?” *International Journal*, Summer 1997.
2. E. May, “National Security in American History” in G. Allison & G. Treverton, eds., *Rethinking America's Security: Beyond the Cold War to New World Order* (New York: W.W. Norton, 1992) at 98; and A. Schlesinger Jr., *The Imperial Presidency* (New York: Popular Library Edition, 1974) at 101, 103-104.
3. See B. Crossette, “On Foreign Affairs, U.S. Public Is Nontraditional”, *New York Times*, December 28, 1997.
4. J. Califano, Jr., “Imperial Congress”, *The New York Times Magazine*, January 23, 1994.
5. A. Gotlieb, *I'll be with you in a minute, Mr. Ambassador: The Education of a Canadian Diplomat in Washington* (Toronto: University of Toronto Press, 1991).