

for government today produces a vicious circle that makes government worse.

I am well aware of the problems we have today in government, but I am also impressed with the miracle of our constitutional structure. It is a commonplace observation to praise the wisdom of the founding fathers, but it is also necessary for us to continually appreciate the remarkable system they put together. The representative democracy envisioned by our Constitution is strong enough to preserve the fragile union, strong enough to promote the general welfare, and strong enough to ward off the power of the special interests.

I do not want to see a federal government that is crippled or incapable of playing a significant role in the life of this country. Government should be able to provide for the national security, help address social problems, protect the environment, and to do the many other things we have come to expect it to do. Sometimes government gets in our way, but other times it can be helpful to ordinary people in their effort to succeed, to have opportunity, and to correct instances of oppression and injustice.

#### CONFIDENCE IN GOVERNMENT

Our country has seen major changes in recent years—the globalization of our economy, the federal deficit constraining government's ability to deal with problems, the end of the Cold War and the less coherent framework for international relations, and the shift of many Americans toward individual freedom and consumption and away from restraint and sense of duty. All of this change has brought formidable challenges to policymakers, and government has not always performed well. Confidence in government has declined.

Government has lost so much respect in recent years that it threatens the ability to make good policy. If we are to have effective government and effective public policy then we must improve the confidence of the people in government. Several steps would be helpful. I believe we need more of what the politicians call "retail politics"—direct contact between the elected representative and the people. Today too much of our politics is based on the work of consulting firms, pollsters, and media advisors, and voters have difficulty feeling real ties to the people they elect to govern them. We will strengthen the confidence of the people in government if we can engage them more in the process. Elected officials can also help restore confidence in government by promising less and producing more, focussing better on what the citizens want, working together across party and ideological lines for shared goals, and restoring greater civility to the political debate.

But perhaps the most important step is to improve public understanding of what government has done and can do. Those of us who see important reasons for government to act must be willing not just to criticize government and point out its faults, but also to make clear what government has been able to accomplish—from preserving our security and building the interstate highway system to setting up the national parks and sharply reducing poverty among older persons through Social Security. It is important that all of us have an understanding of the limits of government but also an understanding that government works well in many areas. I simply do not see how it is possible to deal with many of our problems without a minimal public confidence in government.

#### CONCLUSION

I know there are a lot of voices today saying that representative democracy in this country just doesn't work very well. And it's certainly not difficult to point to instances

when it does not. But on the other hand, given the number and complexity of the problems we confront, my view is that our representative democracy works reasonably well. I do not for a moment agree with those who think that the American system has failed or that the future of the country is bleak.

#### PERSONAL EXPLANATION

#### HON. SOLOMON P. ORTIZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 17, 1997*

Mr. ORTIZ. Mr. Speaker, on rollcall Nos. 398 and 399. I was unavoidably absent. Had I been present, I would have voted "aye" on both accounts.

#### UPDATE ON MULTILATERAL AGREEMENT ON INVESTMENT

#### HON. RICHARD E. NEAL

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 17, 1997*

Mr. NEAL of Massachusetts. Mr. Speaker, over the last several years, the United States has led an effort in the Organization for Economic Cooperation and Development [OECD] to develop a binding and comprehensive agreement on investment. In May 1995, the OECD Ministers launched the negotiation of a Multilateral Agreement on Investment [MAI]. At the OECD ministerial meeting in May 1997, the OECD Ministers agreed to extend the negotiations until May 1998. Negotiating sessions are scheduled every 6 weeks beginning the week of September 15.

Recently, Dr. Witherell, Director for Financial Fiscal and Enterprise Affairs of the OECD gave a speech entitled "The Multilateral Agreement Investment (MAI) Negotiations: The State of Play and Implications for the Asia Pacific Region." Issues involved in the agreement are complex and time consuming. Dr. Witherell's speech presented a clear and objective analysis of the issues.

I suggest that interested Members review extracts from Dr. Witherell's speech. His speech presented the issues of the MAI and discussed which issues need to be resolved in order to conclude a successful MAI.

I request that a copy of extracts from Dr. Witherell's speech dated September 1, 1997, be printed in the CONGRESSIONAL RECORD.

#### EXTRACTS FROM MAI SPEECH BY WILLIAM WITHERELL, SYDNEY, SEPTEMBER 1, 1997

One of the central objectives of the OECD since its creation in 1961 has been the development of a liberal environment for international investment. A very important step was taken at the OECD Ministerial meeting of May '95 when the governments of the 29 OECD Member countries' decided to commence negotiations on a Multilateral Agreement on Investment (the MAI). The private business sector was a strong advocate for developing a comprehensive legal framework for foreign direct investment which would consolidate and extend the present system of bilateral, regional and sectoral agreements. While the negotiations are between the OECD Member countries and the European Commission, the resulting agreement is to

be a free standing treaty, open to any country willing and able to assume the obligations of the agreement.\*

The OECD Ministers initially targeted the completion of the negotiations for May of this year; but that proved to be too optimistic despite the strong commitment and political will of our Member countries and a very intensive schedule. The issues are complex and time-consuming; and some, especially those of a more "political nature," might not be resolved until the liberalization commitments among the participating countries are fully agreed. So a modest extension of the timetable until next April has been set. This extra time will ensure that the result is indeed a high standard agreement with a satisfactory balance of commitments by all parties. Extra time also has opened up the possibility for non-OECD countries to be involved more closely. Indeed, some may even become founding members of the Agreement.

We now have—in almost final form—the main building blocks of this Agreement. Of course, there remain a number of outstanding issues—the inclusion of a special clause for regional economic integration agreements such as the EU, the coverage of sub-national measures, the treatment of cultural measures, the issue of conflicting jurisdiction and the treatment of labor and environment matters, to name some. Some, especially the more politically sensitive ones, are likely to remain unsettled until the last minute. This is to be expected in such a negotiation. But the ground has been prepared for a successful outcome in the coming months. A satisfactory agreement for all concerned—including interested non-OECD countries—is clearly within our reach.

#### WHAT WILL THE MAI LOOK LIKE?

The MAI will be the first multilateral agreement to include disciplines in three key areas of investment rule-making: investment protection, investment liberalization and binding dispute settlement. As such, it is undoubtedly the most complex multilateral negotiation on investment ever undertaken.

The MAI aims to provide a "level playing field" for international investors by eliminating distortions to investment flows and facilitating a more efficient allocation of capital. This will contribute to the ultimate objectives of economic growth and development. In the MAI contracting parties will undertake obligations aimed at reducing barriers and discriminatory treatment of FDI (investment liberalization) and increasing legal security for international investment and investors (investment protection). These obligations will be legally enforceable through provisions for settling disputes—including investor-to-state as well as state-to-state disputes. In all of these areas, the negotiators are seeking to incorporate high standards.

The MAI will bind the Contracting Parties to a set of fundamental rules governing the treatment of MAI investors and investments. The non-discrimination principles of National Treatment and most-favored nation treatment (MFN) will be the norms for all phases of investment from the entry of the investor and its investments to the treatment of the investor and its investments after they are established. These central principles will assure foreign investors non-discriminatory access to a sector and equitable treatment after they are established.

Some who are not familiar with the negotiations have misunderstood these provisions as requiring a wholesale dismantling of governmental regulations. The clearly is not the case. The MAI will not deprive national authorities of their sovereign right to promote

\*Footnotes appear at end of speech.

economic development, a cleaner environment and other public policy goals. What the MAI will require is the provision of fair and non-discriminatory treatment of foreign investors, not deregulation.

Aside from general exceptions or derogations, any measures of participating countries that do not conform to the MAI obligations will need to be notified as country-specific reservations when the countries adhere to the MAI. Early this year, the negotiators tabled their initial lists of country-specific reservations. The scope of these reservations is subject to negotiation with other parties to the agreement. Thus another crucial aspect of the negotiations, the liberalization of existing investment restrictions, has begun. In the end, the overall assessment that each country will make of the results of the negotiations will likely take account of both the rules of the Agreement and the liberalization commitments as reflected in the reservation lists.

The OECD has made important contributions towards the policy objectives of protection and conservation of the environment and promoting sustainable development. Questions have been raised as to how the MAI will relate to these objectives. As noted above, the important positive role of foreign investment in promoting development is now widely recognized. Several approaches to addressing environmental policy concerns in the MAI are being examined and further proposals are likely as the debate continues. For examples, one provision under consideration would call upon governments not to lower environmental standards in an effort to attract foreign investment. Similar approaches are being considered for labor standards. It should be emphasized that nothing in the agreement would prevent participating countries from developing of maintaining effective measures for the protection of the environment or promoting sustainable development or improving labor standards. There is no convincing case, however, why such measures would need to discriminate against foreign investors.

There is strong support for a provision that would associate with the agreement OECD's Guidelines for Multinational Enterprises, without changing their voluntary character. These Guidelines set international standards, which are non-binding, to encourage multinational enterprises to behave responsibly as good corporate citizens in the countries in which they operate. The cover corporate activities in a wide range of areas, including, inter alia, environment and employment and industrial relations.

Most investment disputes that might arise under the MAI should be settled without recourse to formal procedures. Accordingly, the agreement provides for consultation arrangements to encourage amicable solutions. Nevertheless, the credibility of the MAI will require the binding arbitration of disputes between states, or between an investor and a participating government, be available to ensure effective recourse in the event of breach of the agreement. These provisions will be the "teeth" of the MAI. They will be one of the major innovations of the agreement because they go further than GATS (which has only state-to-state dispute settlement) and further than most bilateral treaties, which, unlike the MAI, deal only with established investment and not the conditions for entry and establishment.

#### WHY THE MAI?

The OECD countries have long recognized that foreign direct investments is central to the process of international economic integration—or globalisation—fueling development of advanced economies and developing countries alike. Foreign direct investment offers recipient countries the opportunity to upgrade productivity and competitiveness, benefit from the transfer of technical and

managerial expertise, and promote integration into the international economy. And increased investment very often leads to increased trade, creating a powerful engine of prosperity.

In recent years the critical role played by foreign direct investment has become more widely appreciated. In the new environment characterized by liberalization of trade and investment regimes and by privatization, regulatory reform and demonopolisation of domestic industries, the potential gains from inward investment are more likely to be realized than ever before.

Foreign direct investment has been growing rapidly: over the past three years the global stock of foreign direct investment has doubled. Particularly welcome in 1996 was the dramatic increase by one third in the inflows to developing countries.<sup>2</sup>

The multilateral system lacks a comprehensive and coherent framework—or "rules of the game"—for investment. We have come to the stage where international investment rules can begin to be multilateralised. From the perspective of international firms, fixed investment commitments are long term, and firms seek assurances that the investment regimes will not become more adverse over the period of these commitments. While market factors are the primary determinants of investment decisions, investors are seeking long term stability of rules and procedures, guarantees for entry and establishments, equal competitive opportunities and protection of existing investments. To become irreversible, commitments need to be locked in through binding international obligations enforceable by dispute settlement.

From the perspective of governments, the global competition for capital in the coming years will be intense. Countries not providing sufficient assurances to investors will likely be charged higher risk premiums by the market. Moreover, governments recognize that the remaining investment restrictions and discriminatory treatment of foreign firms are a potential source of international friction, not the least because these are often barriers to market access. Such restrictive or discriminatory measures distort market-determined flows of capital and have a detrimental effect on economic growth and development. The greater the role of investment in the global economy, the more important it becomes to avoid, or have a framework to address such frictions.

Such considerations led the governments of the OECD countries to conclude in 1995 that the time was ripe for establishing a system of rules to safeguard the future of international investment and to provide the legal protection that would encourage more investment between countries. After some sixteen meetings of the high level Negotiating Group over the past two years, the main elements of the MAI are now in place, and draft text or options for text are available for most outstanding issues.

#### SOME IMPLICATIONS FOR THE ASIA-PACIFIC REGION

Since the MAI negotiations are taking place between the twenty-nine OECD Member countries and the European Commission, successful conclusion of the MAI negotiations will mean that a major portion of the world's investment flows will be covered by a comprehensive framework of international rules of the game. Indeed, the vast bulk of FDI originates within OECD countries and is destined for other markets within the OECD area—some 85% of all outflows and almost 70% of inflows in recent years.

But, a number of non-OECD countries are important hosts, and in some cases also home countries, for foreign investment. Among the top thirty host countries for foreign direct investment in the 1990's,<sup>3</sup> are ranked seven of the non-OECD members of

APEC: China, Malaysia, Singapore, Indonesia, Thailand, Hong Kong (China), and Chinese Taipei.

While other regions are also significant, the role the MAI will come to play in the Asia-Pacific will be of critical importance. The member countries of APEC, for example, have accounted for about 50% of global foreign direct investment inflows thus far in the present decade. The non-OECD Asian economies as a group have also become an important source of outward investment. The share of these economies in world outflows has increased from almost nothing in 1981 to 12 per cent today. A striking fact is that, as a group, these economies invest more abroad than any single OECD economy except the United States.

In view of this situation, it was decided that the MAI should be a free standing treaty, open to accession by interested non-OECD countries and on equal footing with OECD Members. Each country will be able to negotiate its terms of accession, i.e. its own schedule of reservations. Adherence of all parties to the basic rules of the agreement will be essential, but different levels of economic development can be reflected in individual country reservations, which might, in some cases, include transition periods.

The OECD is undertaking an unprecedented dialogue with non-OECD countries as the negotiations progress, focusing, in particular, on the growing number who appear to be interested in acceding to the MAI. The next meeting of the Negotiating Group in mid-September will represent a new stage in this respect. Four non-OECD economies—Argentina, Brazil, Hong Kong(China), and the Slovak Republic—will join the Negotiating Group as "Observers" for the first time. During the same week, a special session of the MAI Negotiating Group will bring together the negotiators from the OECD countries and senior investment policy officials from a number of interested non-OECD countries. This meeting could lead to further consultations at this level. It is hoped that these processes will facilitate some of these countries joining the MAI as founding Members, or soon after the agreement is put in place.

<sup>1</sup>The OECD Member countries are the following: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Norway, New Zealand, Netherlands, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.

<sup>2</sup>UNCTAD Press Release: TAD/INF/2710, 10 July, 1997.

<sup>3</sup>"Special Feature: Recent Trends in Foreign Direct Investment" in Financial Market Trends. Vol. 76, OECD, Paris, June 1997.

#### TRIBUTE TO GENERAL J.H. BINFORD PEAY III

#### HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1997

Mr. SKELTON. Mr. Speaker, today I wish to congratulate and pay tribute to Gen. J.H. Binford Peay III who will retire from the U.S. Army on October 1, 1997. General Peay's career spans more than 35 years, during which he has offered selfless and distinguished service as a soldier, teacher, leader, military