The Multilateral Agreement on Investments

Liberalisation of Foreign Direct Investment and the effects on labour standards.

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Foreword

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INTRODUCTION

Since May 1995, the 29 OECD-, Organisation for Economic Development and Cooperation, member states are negotiating on the Multilateral Agreement on Investment (MAI). The main objective of the MAI is enlarging the protection and freedom of international investments. Although the negotiations are taking place within the framework of the OECD, it is envisaged that the Agreement will be a free-standing one open to accession by non-OECD member countries. The negotiating deadline was in first instance set for april 1998 however the negotiations have been extended because there were internal disagreements between the different governments which were difficult to solve. The U.S.- negotiators said that 'European countries were demanding too much, too fast and that there was no point in pushing to agree the treaty at the OECD's annual ministerial meeting on April 27-28. Between the negotiators there is friction over the U.S. Helms-Burton legislation, the French and Canadian demand for a cultural exception, the exception for Regional Integration Economic Orders (REIO) such as the EU and whether or not to accept a binding clause on not lowering standards in order to attract investment.

Despite these differences all member states of the OECD agreed that there was a genuine will to have a multilateral treaty which would provide clear rules for investors. At the 1998 OECD Ministerial in April it was decided to allow for a period of assessment and further consultations till October 1998. It is questionable how far the MAI negotiations will succeed but even if there will be no MAI treaty next year April, the negotiators will still continue their efforts to conclude an agreement, if it is not in the OECD than it might appear in other fora such as WTO.

A heated debate has started between on the one hand the NGO-community and trade unions and on the other, the MAI negotiators and the international business community. The debate is focussed at the consequences of the MAI, which is considered as an extension of the already existing liberalisation in trade. The essence of the discussion is, next to lack of transparency in the negotiations, the effect of ongoing liberalisation in trade and investment on environmental and social standards in developed as well as developing countries.

Research Project

The discussion between proponents and critics of the MAI will continue as long as the negotiations are not suspended. The different positions have been exchanged in several meetings, debates and seminars but up till now there is no real breakthrough. NGO's have asked for assessment studies to enable a balanced decision on MAI. For this reason SOMO and IRENE have taken up the challenge to study the liberalisation of Foreign Direct Investment (FDI) regimes and its influence on labour standards. The main question in this research is how far liberalisation has an automatically positive influence on labour and if not, how far international regulations as being referred at in the MAI are a safeguard versus possible negative consequences.

We have chosen to discuss this question in two countries which have recently changed their investment regimes in the direction of liberalisation, India and Mexico. Both of the countries are set to become the world's investment hotspots over the next three years.[1]

India is an interesting case study because of the phase of transition which India has experienced since 1991. India has a long history of import substitution policy and used to have high protective regulations concerning FDI. The last decennium, the Indian economy is gradually opening up granting major advantages to foreign investors.

Mexico is of high interest because it is an OECD-member and has a longer record of liberalisation than India. The year 1977 marked the beginning of the reorientation of economic policy away from import-substitution towards export-orientation. Since the implementation of the NAFTA the Mexican government has implemented a significant deregulation program on foreign investment law. Comparing the experiences of the two countries will give us some understanding of developments which occur after a change of policy towards liberalisation and the consequences of it on labour standards.

Within these countries one sector has been selected to study the effects of liberalisation more closely, the automotive sector. This sector is in both countries very important for industrial development and export performances. Both countries have highly liberalised the investment regulations within this sector, although India is still in its first stage. At the moment, this sector is in both countries dominated by foreign investors.

The structure of the research is as follows: Chapter 1 is focussed at the general principles of the research. The trend which resulted in the MAI negotiations will be referred at shortly after which a survey of the main principles of the MAI and the proponents and opponents views on it will be discussed. The section on MAI and labour standards is important since it deals with the question in which way the MAI negotiators have integrated the protection of labour in the treaty.

In Chapter 2 deals with the case studies based on fieldtrips in India and Mexico. In this chapter the questions about the consequences of liberalisation of investment regimes in the automotive industry in Mexico and India will be described. First the general policies on investment and the overall trend towards liberalisation in India and Mexico is further examined after which the discussion is more focussed at the automotive industry. The Mexican and Indian policies will be compared with each other. After comparing these it is very interesting to see the effects of liberalisation on the automotive industry in India and Mexico and the respective future prospects of these sectors.

The influence of government regulations on the development of the automotive industry is out of the primary scope of this research which is focussed on the effects on labour standards. However, some of these regulations will not be allowed anymore under a MAI regime and are therefore quite interesting. The regulations also have important consequences on the structure of the automotive industry and on labour standards and will therefore be discussed in chapter 2.3 as well.

In chapter 3, the study will focus at the either positive or negative consequences of liberalisation in the automotive industry on labour standards. After this the question how far the three anchor

[1] Corporate location, Novermber/December 1997.

approach within the MAI, reference to the ILO, attachment of the OECD Guidelines and a not-lowering standards clause will effectively safeguard labour standards in India and Mexico will be discussed.

For this study, there were interviews with important car manufacturers. Next to that there were meetings with automobile representative organisations, researchers, trade unions, NGO's, industrial representatives and international organisations (see appendix 1). The persons interviewed for this study are in no way responsible for the contents of the report.

CHAPTER 1

1.1 The Regulation of International Investments

The MAI is a logical result of a continuously growing flow of Foreign Direct Investments (FDI) and has been preceded by agreements in other multilateral fora such as WTO and UNCTAD. In the 70's and 80's several attempts have been made to control the behaviour of foreign investors and to regulate investments to minimalise the negative results of foreign investments. The MAI is mainly focused on the protection of foreign investors without a proper balance between rights and obligations of foreign investors.

This is not surprising within the globalisation and liberalisation trend of the 90's. This trend is based on the neo-classical analysis assuming perfect markets with perfect competition. In this theory, regulation of investment is considered as being a distortion to perfect competition in international markets.
There is growing international consensus on the beneficiaries of investments in terms of productivity and competitiveness, transfer of technology and integration in a changing international economy. The growing importance of investments is shown by the strong growth of investment flows and liberalisation policies versus investment conducted by many governments.[2] In 1996, all records were broken in the field of FDI. The inflows increased with 3,9% while the outflows increased with 2%.[3]

This increase was only possible through a continuous process of liberalisation of foreign investment regimes. This trend continued in 1996 with a total of 114 adjustments in bilateral investment treaties of which 98 contained liberalisation. In the period of 1991 - 1996, 95% of the changes was directed towards liberalisation. (see table 1) While incentives introduced by developing countries in 1996 were more targeted towards regional development, they were also rationalised and reduced in number. As a result, the share of changes aimed at reducing incentives accounted for 7 percent of the total number of regulatory changes in 1996, higher than in 1995 (5 per cent).

Table 1
Changes in investment treaties

	1991	1992	1993	1994	1995	1996
Number of countries which changed its investment treaties	35	43	57	49	64	65
Total of changed investment treaties	82	79	102	110	112	114
which in the direction of liberalisation and promotion	80	79	101	108	106	98
which in the direction of restriction	2	-	1	2	6	16

Source: UNCTAD, World Investment Report 1997, p. 18

2 W.H. Witherell, director for Financial, Fiscal and Enterprise Affairs, OECD, 'The OECD Multilateral Agreement on Investment', Transnational Corporations, vol.4, no.2, p3.

3 World Investment Report 1997, UNCTAD, p 18.

The ambition of governments to facilitate foreign investments as good as possible is reflected in an increase of the number of bilateral investment treaties (BIT's) for the protection and promotion of investments during the 90's. At the first of January 1997, there were 1330 BIT's in the world. In 1996 every two days one new BIT was concluded, 180 in total.[4]

Not only on bilateral level but also in multilateral context, countries are working towards the removal of barriers facing FDI. The Uruguay Round, which was finalised in 1994, accelerated the global liberalisation process. Besides trade liberalisation new fields were covered such as services, intellectual property and investments. This was promoted by the capital exporting countries who wanted to remove all obstacles to the growth of the integrated world economy. The developing countries however opposed to this trend since they feared that via excessive liberalisation their local companies would be wiped out by TNC's.

Although developing countries continuously stressed that investment related issues should not be dealt with in the GATT, the Trade Related Investment Property Issues (TRIP's) and the Trade Related Investment Measures (TRIMS) were adopted in the GATT negotiations framework.

The TRIPS treaty accepts the principle that intellectual property rights are private rights which should be protected. The treaty grants the national treatment and Most Favoured Nation (MFN) principle to foreign companies.[5] The agreement on TRIMs is related to performance requirements which are a concern of the United States because they often cause a distortion of the international investment flows. Two groups of TRIM's which go against the GATT rulings were specified in the GATT Agreement. The first group consists of TRIM's which are not based on national treatment and the second group are the ones which equal quantitative restrictions banned by GATT art. XI (1).

The General Agreement on Trade in Services (GATS) however contains the largest number of investment-related provisions to be found in the Final Act of the Uruguay Round. It addresses explicitly the issue of investment in services as one of the four modes of supply of services to foreign markets, and as part of progressive liberalisation in the services sector. The GATS is the WTO's real investment agreement, nevertheless its structure and the various limitations applied in the schedules, continue to be a cause of concern of the OECD.[6]

Therefore, after an initiative of Europe, Canada and Japan to put negotiations on a Multilateral Framework on the WTO agenda at the Singapore Ministerial Conference was blocked by the developing countries, the OECD countries decided to launch negotiations among the member countries aimed at reaching a Multilateral Agreement on Investment by mid-1997. Once agreed, the MAI will be open to signature by non-member countries which were consulted as the negotiations proceeded.

4 Ibidem, UNCTAD, p 19.

5 For the definition of national treatment and MFN see page 5 of the report.

6 Magda Shahin, Transnational Corporations, vol. 6 no.2, august 1997.

1.2 The Principles of the Multilateral Agreement on Investment

The MAI initiative aims at providing a strong and comprehensive framework for FDI, widening the scope of existing liberalisation and providing legal security for international investors.[7]

Here follows a short survey of the basic principles in the MAI.

Definition of investment
Investment means: every kind of asset owned or controlled directly or indirectly, by an investor. This is a very broad definition including e.g. intellectual property rights, stocks, bonds and concession rights.

National Treatment
A country that signs the MAI has to give foreign investors 'treatment no less favourable than the treatment it accords to its own investors.' However, this is something different than non-discrimination. More favourable treatment of foreign investors is still permitted.

Most Favoured National Principle
The host country is not allowed to distinguish between investments of different countries. This means it will not be possible anymore to sanction a country which violates human rights.

Performance Requirements
A country is not allowed to impose certain performance requirements anymore such as: take on a local partner, hire a certain number of local people, invest a minimum amount in the local community or to transfer technology to the government or local companies.

Stand still and roll back
Countries which sign the MAI are not allowed to adopt new laws which impose restrictions on investments and all existing laws should be adapted to the MAI.

Definition of expropriation
A contracting party shall not expropriate or nationalise directly or indirectly an investment in its territory of an investor of another Contracting Party, or <u>take any measures having equivalent effect.</u> This means that e.g. environmental regulations that restrict the use of property can be considered as expropriation which should be compensated (see box 1).

Binding Dispute Resolution
The MAI incorporates state-to-state and investor-to-state dispute resolution. The MAI allows foreign corporations to directly sue governments in international dispute resolution processes rather than in the countries' domestic courts. Citizens, indigenous peoples, local governments and NGO's do not have access to the dispute resolution system and subsequently can neither hold multinational investors accountable to the communities which host them, nor comment in cases where an investor sues a government.

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[7] William H. Witherell, 'The OECD Multilateral Agreement on investment' Transnational Corporations, vol. 4, no.2, august 1995.

Strict withdrawal rules
After five years from the date on which the MAI has entered into force, a party may give written notice of its withdrawal. However, the provisions of the MAI shall continue to apply for a period of 15 years from the date of notification of withdrawal to an investment existing at that date.

Box 1

Ethyl Corporation versus Government of Canada

The danger of letting foreign corporations sue over laws that 'have the effect' of expropriating assets is demonstrated by the $251 million lawsuit filed by Ethyl Corporation against Canada.

The government of Canada passed a law in parliament banning the import and inter provincial transport of the gasoline additive MMT, considered by Environment Canada to be a public health hazard. The U.S. EPA has already banned MMT for use in formulated gasoline, accounting for 1/3 of the gasoline market in that country. California has a total ban on MMT.

Ethyl Corporation based in the U.S. is the only producer of MMT. Ethyl Corporation claims that the Canadian ban on MMT import and transport violates various provisions of the North American Free Trade Agreement (NAFTA). The corporation claims its MMT production plant has essentially been 'expropriated' and its good reputation harmed by Canada and was seeking restitution of US $251 million to cover losses.

After a year the Canadian government has decided to back off on its ban of the trade in the gasoline additive MMT, despite new evidence the manganese in the octane enhancer can cause problems in the nervous system. The dispute settlement panel ruled that the law restricting trade in MMT contravenes a four-year-old agreement on internal trade. The two sides have agreed that Canada would drop its ban on trade in MMT and pay the company an estimated $10 million for legal costs and lost profit. In return, Ethyl would drop its NAFTA challenge and its claim for $250 million in damages.

The MAI clause on expropriation and the dispute settlement is based on the NAFTA rulings. The concern of environmental organisations that MAI's rules on expropriation and compensation might directly impinge on the rights of governments to regulate to protect the environment has proven to be right.

1.3 Proponents and critics views of the MAI

Proponents of the MAI argue that a MAI is a necessary step toward minimising the substantial risks of investing overseas. A set of global rules governing investment is needed to lock in the liberalisation that has already taken place over the last decades; protect the rights of investors to free, equal and safe access to markets. The primary purpose of a MAI would be to reduce the distorting effects of performance requirements which require TNC's to respond to a discipline other than that of market forces in making their production decisions.

According to the OECD, FDI is the key to achieving the high-performing world economy we envisage. It offers all recipient countries the opportunity to upgrade productivity and competitiveness, to benefit from the transfer of technical and managerial expertise, and to promote their integration into the global economy. Foreign investment very often leads to increased trade, creating a powerful engine of prosperity. Foreign investment and increased competition provide benefits to everyone by increasing consumer choice, improving quality and lowering prices.[8]

Development, environment and consumer groups from around the world have opposed the development of the MAI. They do agree on the obvious need for multilateral regulation of investment in view of the scale of social and environmental disruption created by the increasing mobility of capital. However as a result of negotiating within the OECD without participation of non-OECD countries and civil society, including Trade Unions representing the interest of workers, consumers, farmers or organisations concerned with the environment, development and human rights, the draft MAI is completely unbalanced.[9] The MAI provides binding legal protections for the rights of investors, but imposes no binding obligations on investors with respect to labour rights or environmental standards.

This research is focussed on the effects of Foreign Direct Investment on labour standards. How far is it necessary to protect labour standards in binding language in the MAI? Is the OECD approach towards labour standards sufficient to guarantee the implementation of core labour standards by TNC's? What are the major issues in the discussion on labour standards between the OECD and the trade unions?

1.4 MAI and Labour standards

There are some specific provisions in the MAI which have a direct influence on labour.

- The rules on performance requirements: It prevents governments from requiring foreign corporations to hire a minimum number of local workers. This could decrease the chances of local people getting senior posts. Foreign investors could bring in management and staff from their home country to fill key positions.

- The rules on privatisation: Governments will not be able to give preference to employee buyouts when they privatise state assets. Some countries privatise public assets through methods that give workers and management or the general public the first opportunity to buy stock to broaden ownership and share profits widely. With the MAI foreign investors would also have the right to participate in all stages of privatisation.

- A not lowering standards clause: It is inappropriate and economically inefficient to encourage investment by lowering domestic health, safety or environmental standards or relaxing domestic core labour standards.

More important is the fact that provisions which defend workers rights are not included , or not binding adopted in the MAI. The principal criticism of Trade Unions is focussed on the absence of a binding requirement that Multinational Corporations should operate in ways that respect worker rights.

[8] Opening remarks by Donald J. Johnston, Secretary-General of the OECD during the informal consultation with NGO's on the MAI, 27 October 1997.

[9] Joint NGO Statement on the multilateral agreement on investment, 27 Oktober 1997, Paris.

Trade Unions have long advanced the case for a strong international framework to control the power of multinationals and to maximise the positive impact of increased international trade and investment.[10] The Trade Union Advisory Committee (TUAC) to the OECD is seeking stronger protection of labour standards in the MAI. An investment agreement which guarantees the rights of investors, but does not include their obligations, is unbalanced and opposed by Trade Unions.

TUAC made different suggestions on how to include labour issues in the MAI.[11] One of them was the incorporation of the OECD-guidelines for Multinational Enterprises into the MAI through an extended reference in the Agreement's Preamble and the annexing of the full text of the guidelines to the MAI. This idea was debated amongst the OECD member states, NGO's and business representatives.

The Business and Industry Advisory Committee (BIAC) to the OECD stated that any formal linkage between the MAI and the Guidelines may undermine the objectives of the MAI by needlessly raising investor uncertainty while for BIAC the most important objective for MAI is confidence building.[12] Some NGO's held the view that since the guidelines are voluntary and non-binding it would be worthless to refer to them in the MAI. However, TUAC stresses the moral weight of the guidelines.

At the start of the negotiations few member states supported the idea for associating the guidelines. New Zealand, Mexico, Korea and to a lesser extend Australia were resisting environment and labour text fiercely. It seems however that there appears to be a consensus emerging on integration. Mexico is an exception on this consensus. The negotiators explicitly proclaimed that a MAI with labour standards and environmental standards is not interesting for Mexico anymore. An investment treaty should only deal with investments no more, no less.

A second advice of TUAC is the incorporation into the MAI of the legal obligations on all the parties (OECD members and non-members alike) to set up National Contact Points to implement the guidelines.

Another supportive element in the MAI concerning labour issues would be a commitment in the Preamble of the MAI by governments to protect, enhance and enforce basic workers' rights and a specific provision in the MAI by which governments in a binding commitment are bounded not to seek to attract foreign investment by suppressing domestic labour standards or violating internationally recognised core workers rights.

[10] ICFTU, Time for a full and open debate on the MAI, adopted by the ICFTU Executive Board 17 - 19 december 1997, Brussels.
[11] Report of observation of TUAC and BIAC consultations, 15 january 1998.
[12] BIAC Position paper on the MAI and the OECD guidelines/ Environment, Labour and Consumer matters.

At the present stage of the MAI negotiations labour standards are integrated in the so-called three-anchor approach:

1. Reference to core labour standards in the Preamble, mentioning OECD Guidelines on MNE's, and referring to the ILO.
2. Including a clause on not lowering standards (labour, environment and health) into the agreement, referring only to domestic standards not core (labour) standards, with apparently a slight majority in favour of binding status.
3. Annexing the OECD Guidelines on MNE's which is meant to lead to the establishment of contact points for implementation in signatory countries, as a hard result.

A majority in the MAI-negotiations favours this approach to labour standards.

The question remains how far the three-anchor approach will prove to be sufficient to secure protection for workers in a liberalised investment structure. The case studies in India and Mexico will be focussed on this thesis.

CHAPTER 2

Case studies in India and Mexico

2.1 The change of policies on investment regulations in India and Mexico [13]

In India, after gaining independence in 1947, government has played a dominant role within India's Industrial Policy. Protectionism and import substitution were the tools via which the Nehru government wanted to stimulate industrial growth, which would finally lead to agricultural advance. The Nehruvian philosophy which dominated India's investment policy for 40 years was based on 'self-reliance'. Within the context of planned development these policies sought to accelerate the rate of economic growth, develop basic industries and lay down a sound economic foundation. The government exercised considerable control over the private sector through licensing for additional manufacturing capacity control over imports of capital, raw material, technology and capital goods and allocation of basic raw material.

In the mid-sixties India experienced a severe drought and a long industrial recession slowed down India's economic growth. In the beginning of the 1980's India had to turn to the World Bank and the IMF for financial support and from this moment onwards, the liberalisation period has started slowly. India recovered relatively quickly and experienced an accelerated economic growth. Because of India's economic recovery there seemed to be no reason to implement more structural adjustment policies. However in 1991, India faced a Balance of Payment crisis which induced the Indian government, under influence of the IMF, to accelerate economic liberalisation and to announce a New Industrial and Economic Policy (NIP).

The NIP liberalised the laws regulating domestic industry and took measures to promote foreign investment with a view to make the Indian economy more dynamic and to provide a free business environment. It was stated that the relationship between domestic and foreign enterprise needs to be much more dynamic than in the past, and that foreign investment would bring attendant advantages of technology transfer, marketing expertise, introduction of modern technology and new export possibilities. It further affirms categorically that the government will welcome foreign investment, which is in the interest of India's industrial development.

The NIP provides for an increased role for the private sector, including foreign investment, with further investment in the public sector reduced to a small list of strategically important sectors. To facilitate the increasing role of the private sector, substantial deregulation has taken place. A very important difference between the old investment regime and the NIP is the fact that it is possible for foreign investors to acquire a majority equity in certain areas.

Although some aspects of the liberalisation process have been severely criticised, the overall opinion is that FDI is necessary to meet India's need for infrastructure, to modernise inefficient sectors and to sustain a higher economic growth rate.

[13] Sources: Dietmar Rothermund, Liberalising India, progress and problems (1996) Singhania & Co, Foreign Collaborations and Investments in India, Law and Procedure (1997) Price Waterhouse, Doing Business in India (1996), EVD, Overzicht Overheidsmaatregelen India (1998), Royal Netherlands Embassy, India- An investment guide 1997.

This opinion is shared by the new nationalist Bharatiya Janata Party (BJP) Government which came into power after the 1998 elections. Possibly under influence of the recent economic slowdown the BJP's 'Swadeshi' (doing it ourselves) slogan was brushed aside and BJP announced to be committed to keep in step with the WTO. This became particularly apparent after the announcement of BJP's new export/import policy which further liberalised the capital goods import scheme.

BJP is ambivalent though since the budget, which was released in June 1998, includes a proposed eight percent hike in import tariffs. The tariff increase was hailed by a number of Indian industry leaders. In the words of one manufacturer, ' The duty gives India's industry the breathing space to meet the challenges of globalisation.'[14] Others however express their concerns by saying that rather than creating a level playing field for Indian industry the hikes would place Indian industry among the most non-competitive in the world.

The new Finance Minister Yashwant Sinha explained that 'Swadeshi' does not mean defending the inefficiencies of Indian industry or protecting the high cost industry. It does however mean that the BJP welcomes foreign investment in areas which are important to India nationally.[15] These include infrastructure, core industries, export-oriented production, and industries where we need foreign technology. Non-priority areas are those in which India is self-sufficient, where it does not need the aid of foreign technology or foreign capital. He further claimed that he was committed to double the foreign investment in two years and to remove hassles.

Mexico has followed the same economic strategies as India to develop its industry. In the 40's and 60's Mexico is actually very successful with its Import Substitution Industrialisation Policy. (ISI). The economic growth rates are very high and inflation figures are low. In the early sixties, the governing party PRI was seeking to deepen its import-substituting model of industrialisation by rationalising industry according to the needs of a relatively small domestic market. In order to finance its imports the Mexican government run up debts.

So, in 1976 when President José López Portillo came into office it was necessary to reduce government expenditure and with the support of the IMF, Mexico started a three-year -period austerity program. This policy marked the beginning of the reorientation of public policy away from import-substitution . Mexico recovered quickly though because of the booming oil prices and just like India in the seventies, beginning of the eighties, did not see any reason to introduce more structural reforms. Government started spending again and relied again on external credits for its imports. When in 1981 oil prices began to drop, Mexico's foreign debt increased tremendously.

As in India, it was only after crisis, in 1982, when Mexico announced it was no longer able to pay its foreign debt, that Mexico had to abandon more decisively the import substitution orientation of previous industrial policy.[16] The new president Miguel de la Madrid announced a new policy of stimulating export growth of manufactured goods. Mexico lowered its tariffs and attained a more flexible approach towards FDI.

[14] Bridges Weekly Trade News Digest, vol 2, number 21, June 8 ,1998
[15] Business Today, april 22, 1998,' Swadeshi is very pro-consumer', 78.
[16] For more details on the Mexican debt crisis see box 2

Box 2 [17]

The Mexican debt Crisis

in 1982, Mexico announced that it lacked funds to repay loans and stood on the verge of default. In the early 1980's, when the oil prices began to drop, Mexico faced an almost $6 billion drop in its oil revenues. Declining oil revenues coupled with growing external borrowings and an overvalued exchange rate (which encouraged imports and discouraged exports) led to the situation of default.

Mexico owed large sums to private banks in the U.S. and other Northern countries. Anticipating a crisis which would not only hurt Mexico but the U.S. based banks too, the U.S. government stepped in to provide emergency short-term financing so that Mexico could repay its debt.

Mexico subsequently entered into negotiations with the IMF and its private bank creditors, during which debt payments were suspended for 120 days. Ultimately, a new financing plan was prepared by the IMF which led to repayments over a longer time period. In return, Mexico agreed to follow a stabilisation plan designed by IMF officials which included devaluation of the peso, erudition in its budget deficit, cuts in food subsidies and a freeze on wages. As more and more countries started facing a debt crisis, the IMF assumed the central role by designing stabilisation and austerity programmes.

Despite this bail out, Mexico once again found itself approaching default, which led to another rescheduling agreement, and other measures such as debt-for-equity swaps were also taken up. Finally, in 1989 the Mexican government signed a plan with a committee of creditor banks.

Before the restructuring of its external debt, Mexico was a net exporter of capital. The reduction of external debt service and the growing investment opportunities created by adjustment opportunities made Mexico a favourite destination of foreign investment.

In 1988, when Carlos Salinas de Gortari assumed the presidency, the neo-liberal restructuring program was strengthened by the Pact for Economic Stability and Growth (PECE). The program emphasised the government's commitment to neo-liberal export-led development focussing on further privatisation, the opening of the market, export promotion and on attracting foreign investment.

In 1993, a new foreign investment law was enacted. It derogated the 'Law for promoting Mexican Investment and Regulating Foreign Investment', which had severely restricted foreign investment in Mexico by forbidding or limiting foreign participation in over 160 different economic activities. The Foreign Investment Law significantly reduced the number of activities in which foreign participation is forbidden or restricted. The Law states that all activities that it does not specifically mention are now completely deregulated, effectively allowing for up to 100% foreign ownership without prior authorisation, in the majority of economic sectors.

On December 24, 1996, the Mexican Government published reforms to the Foreign Investment Law of 1993. These legislative measures were adopted in an attempt to simplify the procedures for investment in Mexico and aimed at furthering the goals established under the North American Free Trade Agreement (NAFTA) [18]. The general rule under the Foreign Investment Law permits the ownership by foreign investors of any percentage (including a controlling interest) in Mexican corporations.

[17] Source: Kavaljit Singh, Public Interest Research Group, Globalisation of Finance (New Delhi 1998) 47.

[18] Chapter 11 of the NAFTA deals with the regulations on investment. The MAI is based on these regulations.

Next to that a 100% foreign ownership is permitted in the in-bond industry, the so called Maquiladores. Maquiladoras are assembly plants which import parts and supplies duty free into Mexico from around the world and export their production largely to the United States.

Although the crisis in Mexico in 1982 was different from the crisis in India in 1991 the consequences were equal. The two governments turned to the IMF and Worldbank and under their auspices the two countries experienced a transformation from a highly protected economy based on import substitution to an export-led economy with a far more liberal approach towards FDI.

However, the difference is that Mexico has a much longer history of liberalisation of its economy and is, with the NAFTA and the membership of the OECD, far more integrated within the world economy than India. India, although member of the WTO regulates its imports and exports via tariffs and has a more restricted policy towards FDI than Mexico. It will be interesting to see how the automotive industry in Mexico has developed after 25 years of liberalisation policies and in which way the automobile industry in India which is still in its infancy, responded on the liberalisation of FDI since 1991. How far are there any similarities between the development of the automotive industry in Mexico and India and how far were government regulations conducive to this development?

2.2 State regulation in the Indian and Mexican automotive industry

In India, the automobile sector was one of the industrial sectors which used to be strongly protected and highly regulated. In the beginning of the 40's two local manufacturing plants were established, Hindustan Motors and Premier Automobiles. In 1953, the imports of cars and assembly activities by foreign automobile manufacturers were banned to encourage local production of vehicles by the establishment of a component manufacturing base. A demanding manufacture programme was installed on the industry. The government restricted the car production via production licences and set limits on production capacities what resulted in many automobile producers producing under their optimum capacity. There were strong requirements to localise production. The import duties which were paid on CKD - (Completely Knocked Down) kits had to be equal on the amount of production which was localised. Passenger cars were regarded as luxuries and the industry was therefore never encouraged to grow. During the 1980's there were only three vehicle manufacturers in the country, producing around 120.000 vehicles a year.[19]

The liberalisation process in vehicle production started slowly in 1983 with the entrance of Suzuki on the Indian market in a joint venture with Maruti, a state-owned company. They started the production of a small passengers car. Other Japanese firms established joint venture operations for the production of commercial vehicles. Foreign companies were allowed to come into the industry however, only with minority stakes.

In the automotive industry in Mexico until the late 1950's the Mexican auto industry was primarily composed of assemblers of CKD kits. The government first took deliberate steps to promote the industry in the early 1960's.

[19] Motor Business International 2nd quarter 1996, 79.

The Automobile Manufacturing Decree of 1962 was aimed at deepening import-substitution industrialisation and the automobile industry.[20] This decree is commonly known as the decree of National Integration. Important provisions of the 1962 decree included the prohibition of imports of finished vehicles and the establishment of production quotas for assemblers and price controls on domestic vehicle sales. The government also restricted the number of producers, models and lines in order to rationalise the industry and to better fit the domestic market. The most significant element of the 1962 decree was the requirement that vehicles incorporate at least 60% locally manufactured content.

In the beginning of the seventies the Mexican automotive industry was facing a balance of trade deficit. The decree for the development of the automotive industry in 1972 was focussed at solving this problem. Increases in each assembler's production quota was linked to its export performance. Another important element was the requirement for assemblers to export vehicles with increased levels of domestically manufactured content. For 1973 this level was 30% and rose to 60% in 1976. Next to that, vehicles were required to contain parts manufactured by Mexican suppliers equal to the value of imports.

The respective state policies in the automotive industry in India till 1993 and in Mexico till 1977 Show three important similarities:

- A strong indigenisation policy.
- Restricted car production via production quota's, licences and limits on production capacities.
- Limits on the number of manufacturers and different models and lines.

An important difference though is the policy towards FDI. Although the Mexican government wanted to limit the number of manufacturers and models to promote national companies, it has never banned foreign companies as the Indian government did till 1983.

The automotive industry in India has entered a period of transformation since 1993. In 1993, licensing controls were lifted entirely from the industry and duties on both, components and cars are gradually being rolled back. The automobile industry is still regulated though, in the field of import and export and localisation of production.

In India, till 1997, the allowance to import CKD kits and the level of import duties used to be dependent on the individual corporate plans in which the different manufacturers explain their plans on investment, localisation, employment etc. Based on these plans they were allowed to import CKD kits. However, because all manufacturers had different plans and since there was no transparency on decisions of government it was a source of corruption.

In 1997, the government of India put up clear lines for the whole industry for the import of CKD- (Completely Knocked Down) kits.[21] The joint venture motor vehicle manufacturing companies were required to sign a new Memorandum of Understanding (MOU) with the Government of India. The manufacturers can only receive licences for importation of CKD/SKD kits on the basis of this MOU.

[20] Details on the different automotive decrees in this chapter are from John T. Morris,'The Mexican Automotive Industry in the North American Auto Complex: A model for export?', 1996 and interviews with Associacion Mexicana de la Industria Automotriz, Mexico city and Industria Nacional de Autoparts, Mexico City 1998.

[21] Government of India, Ministry of Commerce, Public notice No. 60 (PN)/97-02 New Delhi, 12th of december 1997.

The MOU shall be based on the following parameters:

- Establishment of actual production facilities for manufacture of cars and not for mere assembly of imported kits/components.
- A minimum foreign equity of US $ 50 Million to be brought in by the foreign partner within the first three years of start of operations, if the Joint Venture involves majority foreign equity ownership. However, this condition will apply to new Joint Ventures companies only.
- Indigenisation of components up to a minimum level of 50% in the third year or earlier from the clearance of first import consignment of CKD/SKD Kits/Components and 70% in the 5th year or earlier. Once the MOU signing firm has reached an indigenisation level of 70%, there will be no need for further import licences from the Director General of Foreign Trade (DGFT). As and when the firms achieve 70% indigenisation, they would go outside the ambit of the MOU automatically. However, they will discharge the export obligation corresponding to the imports made by them till that time.
- From the third year of commencement of production the car manufacturer has an export obligation equivalent to the CIF value of import made by them till that time. The firms need to achieve a balance between the actual CIF value of imports of CKD/SKD kits/components and the FOB value of exports of cars and auto components over the said period.

The MOU is a guideline and not a legal document. If manufacturers do not abide with these guidelines they cannot be taken to court. However, the licence to import CKD's could be withdrawn. In a recent statement India's government stressed again that indigenisation is a key element in its approach towards the car manufacturing industry; 'We will be more flexible on meeting export-requirements with those manufacturers who focus on local sourcing systems.'[22]

In Mexico, the decree for the promotion of the automotive industry in 1977 marked the beginning of a change in policy. Price controls were eliminated and the limits on the number of lines and models were loosened.

After the crisis in Mexico in 1982, the program for the rationalisation of the automotive industry was introduced in 1983. This program was incorporated in the National Program for Industrial and Foreign Trade Promotion which was focussed at a more open and internationally competitive pattern of industrialisation that would generate self-sustaining growth. The automotive decree was the first significant attempt by the government to support the vehicle assemblers in integrating Mexican operations into the rapidly changing international productive system.[23]

Local content requirements for existing models were raised from 50% in 1984-1985 to 60% beginning in 1987, but these requirements could be reduced for particular existing models that improved their export performance. Assemblers were permitted to introduce new model lines for export, with 20% of production eligible for sale in the domestic market, provided that the new lines became self-sufficient in foreign exchange by 1987 and maintained at least 30% local content. Although the introduction of new models was permitted the government continued regulating the sort of models. They required that 25% of passengers vehicles be cheaper models with no optional equipment, prohibited V-8 engines for domestic consumption and limited the importation of luxury equipment.

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[22] Indian Economic Times, june 1997.
[23] Quote Mortimore (1995), p. 61 in: John T. Morris (1996) 9.

The 1989 automotive decree implemented a gradual but definite liberalisation of automotive production both in terms of export requirements and domestic parts requirements. The most significant element was the possibility to import finished vehicles, although under certain restrictions. Assemblers with positive trade balances initially could import finished vehicles equal to 15% of domestic sales. However, for every dollar in the value of imported new cars, the assembler had to export $2.50 for 1991, $2.00 for 1992-1993, and $1.75 for 1994. Three other very important changes were the lowering of domestic content requirements to 36% for national models, while export models continued with the 30% minimum local content. Second, the list of obligatory domestically produced parts was eliminated, freeing assemblers to select their own domestic or foreign suppliers. Third, the limits on makes and models were eliminated.

The 1989 decree shows a definite deviation of the Mexican policy from the Indian policy. While in India indigenisation still is a key element in governments approach towards the car manufacturing industry, the Mexican policy is focussed at stimulating exports and integration into the global industry. In India import of complete vehicles is still not allowed and the import of CKD kits is dependent on the percentage of indigenisation. In Mexico, domestic content requirements were reduced and the allowance to import finished vehicles increased the possibility for assemblers to integrate Mexican operations into their North American operations.

The NAFTA which came into force in 1994 further strengthened this trend. Table 2 specifies the different NAFTA regulations for the automotive industry. The regional content requirement and the fact that only companies already operating in Mexico are allowed to import completed vehicles reflects the trend towards regional integration.

Table 2
Mexico: NAFTA regulations for the automotive industry.

Regulation	NAFTA ruling
Local content	34% from 1994 to 1998, 33% in 1999, 32% in 2000, 32% in 2001, 31% in 2002 & 29% from 2003
Rule of Origin (for free trade within NAFTA)	Cars & light commercial vehicles: 50% of regional (North American) content from 1994, 56% from 1998 & 62.5% from 2003; heavy commercial vehicles: 50% from 1994, 54% from 1998 & 60% from 2003
Import - Export compensation	Exports of $ 0.8 for every $ 1 of import; to be reduced to $0.55/$1 by 2003.
Import tariffs for new vehicles (within NAFTA)	Passenger cars: 10% from 1994 & 0% from 2003; light commercial vehicles: 10% from 1994 & 0% from 1998; heavy commercial vehicles: to be phased out after ten years.
Import restrictions	Only local manufacturers can import
Import of used vehicles	Gradual elimination of used car import ban, starting from 2009 & ending in 2018
Foreign investments	100% ownership allowed from 1994; Maquiladores can supply local car manufacturers once local content reaches 20%.

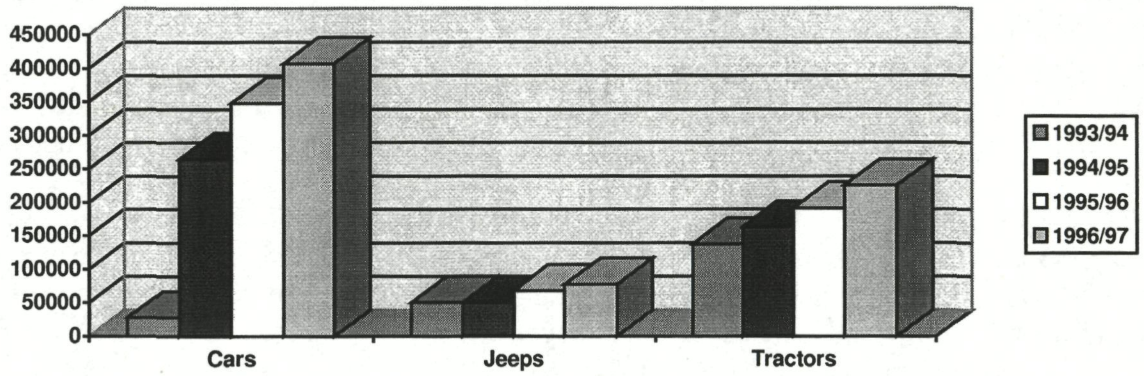
Source: The Economist Intelligence Unit, The Automotive sectors of South America and Mexico, 1997

The regulating policies of Mexico towards the automotive industry is further liberalised than the policies of India. One of the important rules with which both governments regulated the development of the automotive industry is the local content rule. This local content rule is a forbidden performance requirement within the MAI. For Mexico this rule is already of far less importance than for India and will be phased out within a few years. What kind of effect did this local content rule have on the development of the automotive industry in India and Mexico? And what is the effect of the described trade and investment liberalisation on the automotive industry? To answer these questions the next chapter discusses the way in which the automotive industry developed after liberalisation in India and Mexico.

2.3 A sector overview of the Indian Automotive Industry

By international standards, the Indian car industry is minuscule. The small size of the industry is explained partly by the discouraging policy of the past but also by the small purchasing power of the majority of the Indians. Though, after the announcement of the NIP in 1991, the Indian automobile industry experienced a booming growth. (see figure1)

Figure 1
Vehicle Production in India (1993 - 1997)



Source: ACMA

This growth led to an increased presence of new foreign manufacturers but not new Indian manufacturers. Because of the deregulation and latent demand for cars, many global car manufacturers got attracted to the Indian market. Five new joint-ventures in the passengers cars sector have come up in the last five years which have already started commercial production and whose passengers cars are already driving on the Indian roads. (see table 3)

Table 3
Joint Ventures in the automotive industry in India

Name of Indian Partner	Name of foreign partner	Vehicle produced
TELCO (50%)	Mercedes Benz (50%) Germany	Mercedes E-220 & E-250 D Cars
Mahindra & Mahindra Ltd. (50%)	Ford (50%)	Escort Cars
Premier Automobiles Ltd. (49%)	Fiat, Italy (51%)	Uno Cars
	Peugeot, France (Peugeot pulled out of this venture at the end of ‘ 97)	Peugeot’s 309 Cars
Birla Group of Co. (50%)	General Motors, (50%) U.S.A.	Opel Astra
DCM (9%)	Daewoo (91%) South Korea	1500 cc Cielo Cars

Source: ACMA, A status Report (Delhi 1997)

Many more vehicle joint-ventures have come up recently but their commercial production is yet to commence. Volkswagen, Honda, BMW, Mitsubishi, Volvo and Toyota have already established joint ventures and are planning to launch models in the coming years. Some companies have also established 100% owned companies such as FIAT with the production of the PALIO and Hyundai with the production of the Accent.

The focus of the new producers is almost entirely on the passenger car market. Many new models, also in the middle and upper segment, have been introduced since 1995. All types of vehicles showed very high grates of growth. Incomes in India have risen, prices have fallen and the liberalisation drive, together with the vast number of investments in the production of new car models, has stimulated the market. Foreign investors are likely to continue to be drawn by the huge and expanding middle class segment of India's fast growing population.

The origin of the Indian component industry dates back to 1953, when the Indian Government decided to develop its own manufacturing base with the principal intention of import substitution.

However, in the 70's and early 80's the auto component manufacturers were long neglected. The automobile manufacturers were dependent on in-house components. This was due to poor quality and low manufactured volumes. The automobile manufacturer used to spread its orders across multiply suppliers. Therefore the auto component producers were reluctant to make any large investments. Since they were working on low margins it was too risky to make these investments.

The entrance of Suzuki on the market in the joint venture with Maruti (Maruti Udyog Ltd, MUL) changed the relationship between automobile manufacturers and component producers. Since MUL started production when the fierce Manufacturing Programme was still in effect and indigenisation was a very strict rule, they had to acquire a high grade of localisation of their production. Maruti/Suzuki (MUL) established close links with the auto component producers. It provided financial and technical assistance to its vendors. This helped the component manufacturers to manufacture high quality, low cost components and introduce new products. Maruti has established joint ventures with its main component suppliers such as e.g. Asahi India (glass), Machino Plastics Sona Steering, Clutch Auto, Subros (air conditioning) and Ucal Fuel Systems. Some of these supply 90-100% of its sales to MUL. Others do also supply other automobile producers.[24]

MUL's entry into the Indian automobile sector has pushed a boom in the auto components sector, which has registered a 22% growth since 1986.[25] As being the producer of more than 80% of the passenger car market MUL has had and still has a major influence on the development of the local components producers by continuously stressing the importance of high quality.

Over the years quality in the auto component industry has been making rapid strides towards achievement of world-class Quality systems such as ISO9000 / QS9000 Quality systems.

[24] Economic Times,'Riding a Maruti for success', 10 February 1997.
[25] Economic times,' Maruti drives up auto parts demand: Report' 8 May 1998.

2.4 Future prospects of the Indian automotive industry

The future prospects of the automobile industry looked bright in 1996. Further high growth was anticipated reaching 625.000 units a year in 2000.[26] The most optimistic forecast for the car market called for even 850.000 units by 2000 (Association of Indian Automobile Manufacturers). At the end of 1997 however, the enthusiasm for India's market potential appeared to have been too optimistic. Due to poor demand the growth in automobile sales slid sharply to 3,5% way in 1997/1998, below its spectacular 22,3 % growth in the previous year (see table 4). The industry is facing 25-30% excess capacity. [27]

Table 4
Growth Rates in the Indian Automotive Industry

Production Passenger cars						**% Growth Rate**			
Passenger Cars	93/94	94/95	95/96	96/97	97/98	94/95	95/96	96/97	97/98
Daewoo Motors	0	0	9155	17514	1197	0	0	91,3	-93,2
General motors	0	0	0	7482	7433	0	0	0	-0,7
Hindustan Motors	25893	26177	27978	25412	20894	1,1	6,8	-9,2	-17,8
Maruti Udyog	149743	198603	269809	330497	314143	32,6	35,3	22,5	-4,9
Mercedes Benz	0	0	669	1649	2254	0	0	246,5	36,7
PAL Peugeot	0	0	10384	8887	3716	0	0	-14,4	-58,2
Premier Automob	24718	27213	20322	10334	10761	10	-25,3	-49,1	4,1
Telco	7304	12475	10498	7413	4905	70,8	-15,8	-29,3	-33,8

Source ACMA, Facts and Figures 1996/1997

There are several reasons for the slow down of growth in the automobile manufacturing sector:

1. Some people say that the Indian market has been overestimated by marketing specialists. The middle class who would be able to buy a car is much smaller than expected. Next to that is consumer behaviour in India different than expected. The people in India are very cost sensitive, not the quality but much more price and the use of fuel is what determines their choice of car. That's why Maruti has been able to keep its dominant position in the passenger car market. Maruti Udyog continues to retain a dominant presence in India's new passenger car market, accounting for 80,7 % of production in the period from April 1997 till February 1998. Since Maruti is already producing for more than 15 years on the Indian market, they have localised their production for more than 95%, which makes their cars comparatively cheap because of relatively low labour costs.

2. Another miscalculation being made on consumer behaviour of people in India is the drive of consumers to buy a better or bigger car after a few years time. For most of the people who are able to buy a car, it does not matter how big or good looking the car is. People buy a small car, which is cheap and cost effective and they do not have the drive to buy a bigger car,

[26] Economist Intelligence Unit, Motor Business International, 2nd quarter 1996.
[27] Business World ,'Is the economy in bad shape', 22 April 1998, New Delhi.

which uses more fuel, in a few years time. Up till now, most Indians buy a new car after which they drive in it for the following 15 years until it is totally finished.

Another reason why it is difficult to sell a larger car in India is the visibility of a more expensive car for the tax authorities. Next to that, it is also reasoned by the middle and upper class Indians, that the expensive models which are introduced in India are old models in Europe and therefore not attractive to buy.

These consumer trends have an enormous influence on the middle and upper segment in the passenger car industry.

3. The large number of new entrants into the industry had a negative impact on the industry. The growth in capacity in India is far greater than even the most optimistic projections can justify. The capacity to build motor vehicles in India will exceed demand by more than 200% in 2000.[28] Government did not keep any control on the new entrants in the automotive sector after they liberalised their policy. Therefore too many came in, which resulted in a fragmented market and small scale production. Production is not economically viable. This also has consequences for the component industry. Volumes are too low for the local component industry which results in global sourcing. There is need for a higher volume of production to localise. That's why some manufacturers choose to produce components in higher volumes on the Indian market for the export.

4. The automotive industry is suffering from the slow down of economic growth in India on the whole. The growth in gross domestic product in the last fiscal year is estimated to be 5,5%, down from 6.8% in the preceding year. The slow down in India's economy has forced many manufacturers to cut production. Daewoo e.g. has started working on a single-shift production schedule, compared with its usual three-shift programme.

5. The economic crisis and consequently the depreciation of currency of the so-called Asian Tigres makes exports from India to one of these countries very expensive. So much so that it will be cheaper to manufacture their own cars and components than to source them from a base like India. This has major consequences for e.g. Daewoo, which was planning to use India as sourcing centre for cars and associated components and therefore has undertaken massive expansion plans.

The prospects for the future of the Indian economy are dependent on several factors, some of which are not, such as the Asian crisis, easy to influence, others which could be improved. During the three-day annual spring meetings of the World Bank and the International Monetary Fund (IMF), the IMF projected a growth rate of only 5.2% in 1998. To put India back on an sustainable faster growth path, the IMF recommended: stronger efforts to reduce the large fiscal deficit, liberalisation of foreign trade and investment, removal of infrastructure bottlenecks, deregulation of domestic product markets and reforming the financial and enterprise sectors.[29]

[28] Economist Intelligence Unit, Motor-Business Asia-Pacific, 4th quarter 1997.
[29] Indian express, 15 April 1998.

According to some critics however, one of the reasons for the slow down of growth in the automobile sector is a result of the unlimited liberalisation and uncontrolled inflow of foreign investors which resulted in a fragmented market and small scale production. Therefore, some propose a regulated automobile market which should be divided in a small, middle and big segment. Government could have prevented the present situation in which too many entrants in one segment cause too much competition which is disastrous for investments.

2.5 A sector overview of the Mexican Automotive Industry

The Mexican market has never been as severely protected as the Indian market. The automobile production in Mexico began in the 1920's and foreign manufacturers have always been present. However, as was mentioned earlier on in this paper, in these early days, the auto industry was primarily composed of assemblers of imported CKD kits.

From 1962 till 1972 the industry experienced significant growth with an increase of FDI, tripled sales while employment grew almost fourfold. The local content rule had a tremendous effect on sales of nationally produced parts, they increased from $17 to &320 million.[30] The automotive industry continued to expand over the 1972 - 1977 period. The industry had expanded at more than twice the rate of the whole manufacturing sector since the early 1960's, increasing production between 1970 and 1975 by almost 87%, and representing seven percent of the value of manufacturing by 1977.[31]

The period from 1978 till 1982 is sometimes described as the import substitution boom[32] and came to be viewed as the golden era for domestic market sales, most likely a result of the enormous expansion of domestic demand resulting from the petroleum boom that spanned the same period. Employment more than doubled from 40,800 to 94,300.

During this petrol boom of the late 1970's, the Mexican government forced auto companies to purchase a given percentage of parts from domestic manufacturers. Under this protectionist regime the auto components industry grew significantly. However, during this import substitution era productivity in the automotive industry was negatively effected. The average productivity in the auto parts industry during that period was as much as two times lower than in the assembly plants.[33] From 1979 till 1982 the productivity in the assembly industry itself also decreased. In the assembly plants 4.1 vehicles were produced per employee in 1979 and 3.0 in 1982. Some say that Mexican suppliers did not make necessary quality and technology improvements when they had a protected market.[34]

The golden era came to an abrupt end in 1982, the year of the foreign debt crisis. It was not until 1989 that the Mexican automobile industry overtook 1981 levels. Since then, Mexico steadily increased the production of vehicles through 1992 -1994. The growth of the

[30] Michael Mortimore,'Transforming sitting ducks into flying geese: The Mexican Automobile Industry' in: John T. Morris (1996).
[31] John T. Morris (1996).
[32] Jorge Carillo, The integration of the Mexican automobile industry to the USA: between policies and corporate strategies', Sixth International Colloquium of Gerpisa.
[33] ibidem, 61.
[34] Garance Burke,'Mexican suppliers find themselves disadvantaged', El Financiero International Edition June 30 - July 6, 1997.

automotive sector during the eighties was based on exports. The value of Mexican automotive exports rose steadily from 1980 through 1992. In 1988, the nominal value of Mexican automotive exports was more than 8 times the 1980 level and more than 6.5 times the 1982 level. Export continued their growth through 1992 when the nominal value of Mexican automotive exports was over US$ 9 billion, or more than 20 times the 1980 level.

The effects of the Pesos crisis in 1994 (see box 3, page 23) on the Mexican automotive industry were devastating. Unemployment rose dramatically and wages fell abruptly. This resulted in a fall of domestic demand for cars. The only reason why the Mexican automotive industry survived was because of its booming exports (see table 5)

Table 5
Annual production of the automotive Industry in Mexico subdivided in Production by export and Internal Market Sales

Companies	1993	1994	1995	1996	1997	1998
Chrysler	228,428	243,701	205,575	361,212	355,914	185,064
Export	138,182	161,738	179,797	325,300	298,170	153,820
Internal sales	90,246	81,963	25,778	35,912	57,744	31,244
Ford Motor	209,359	242,083	227,354	213,513	247,363	110,184
Export	117,398	179,745	210,818	179,384	206,438	91,807
Internal sales	91,961	62,338	16,536	34,129	40,925	18,377
GM	192,279	161,099	198,823	267,133	300,900	148,747
Export	90,760	70,383	164,269	202,858	209,462	86,803
Internal sales	101,519	90,716	34,554	64,275	91,438	61,944
Nissan	185,922	193,591	106,794	135,637	172,763	102,509
Export	49,593	64,293	68,663	85,359	82,224	31,484
Internal sales	136,329	129,298	38,131	50,278	90,539	71,025
Volkswagen	238,992	256,317	191,438	231,078	257,366	178,177
Export	97,250	98,872	155,131	177,973	188,136	131,808
Internal sales	141,742	157,445	36,307	53,105	69,230	46,369
Total	1,054,980	1,096,791	928,984	1,208,573	1,334,306	724,681
Export	493,183	575,031	778,678	970,874	984,430	495,722
Internal sales	562,027	522,350	152,500	240,423	354,846	233,374

1998 figures are up to June
Source: AMIA Homepage

These exports were possible through several factors: of course the devaluation of the Peso gave Mexican products an extra competitive boost, next to that was the integration of the Mexican and US automotive industries under NAFTA highly important. More than 80% of the Mexican automotive exports are directed towards the USA.[35] Actually , it was since the decree of 1989, when the talks on the NAFTA were initiated that the automotive industry has been preparing itself for the NAFTA. Between 1989 and 1994, the Mexican automotive industry received some $5.9bn in direct and indirect investment, most geared towards plant and product modernisation, quality and productivity gains, and integration within manufacturers' global plans.[36]

[35] The Economist intelligence Unit, The Automotive sectors of South America and Mexico,' Gearing up for the 21st century', 1997.
[36] Ibidem, 177

Box 3

The Mexican Pesos crisis[37]

As was described in chapter 2.1. Mexico experienced major economic reforms after 1982. Due to these neo-liberal economic policies, foreign investors started investing heavily in Mexico and over $90 billion flowed into the country during 1990-1993. Almost two-thirds of these investments were in the form of portfolio investments. Only a small portion of portfolio investments was used to create new physical assets, such as factories or machinery.

The entry of Mexico into the NAFTA with the U.S. and Canada also enhanced the creditworthiness of Mexico in the eyes of foreign investors.

With the increased availability of foreign funds and growing dependence on them, Mexico was confronted by a sharp fall in the domestic savings which came down from 22% of the GDP in 1988 to 16% in 1994. Mexico used these funds to finance its import consumption. Despite the fact that during this period the exports from Mexico also picked up, the import bill rose more rapidly, leading to a current account deficit.[38] The Mexican government used portfolio investment inflows to finance 72% of this deficit.
Two major developments took place which led to the collapse of the peso and later of the economy. Firstly, interest rates in the U.S. began riding in conjunction with an economic recovery which led to sudden flight of portfolio investments and short-term funds from Mexico back to U.S. financial markets. Secondly, Mexico suffered a series of political upheavals during this period which eroded investor confidence (Chiapas).

For too long the financial authorities failed to carry out remedial policy measures as presidential elections were near. Only after the re-election of Zedillo, government moved to devalue the peso on December 20, 1994. The next day rich Mexicans converted billions of pesos into dollars and foreign investors started pulling out their money out of Mexico.

Three months after the Peso devaluation the peso had lost 50% of its value against the US dollar and the Mexican stock market lost one half of its value.

Another important effect of the 1989 decree and the NAFTA is the deregulation regarding local component requirements. The deregulation has taken effect in different phases: from 1994 - 1998, vehicles manufactured in Mexico for the domestic market must contain a minimum of 34% Mexican parts. From 1999 to 2003, however, the percentage of Mexican parts required will decrease by one point a year and all protection will be removed from the domestic market in the year 2004. As table 3 shows the domestic market counts for the minority of production in Mexico. The local content rule does not hold for the majority of production, the export. The internal market has become very small for the local parts suppliers.

The deregulation in the automotive sector on the whole has restructured the industry. Automotive companies prefer a few large global suppliers that can design and produce complete systems. Smaller companies which cannot offer these services will not be able to face competition. Local firms have not been able to integrate into the production chain of the major automobile manufacturers. Foreign firms continue to supply the bulk of the parts required by the industry.[39] ' Traditional local suppliers tend to be excluded from the stable relationships between auto parts manufacturers and assemblers. Local producers are simply

[37] Source Kavaljit Singh, 1998.

[38] Current Account is a summary item in the balance of payments which measures the net of exports and imports of merchandise and services, investment ncome and payments, and government transactions

[39] Claudia Herrera Alcaide, 'Domestic industry squeezed out of development plans' El financiero International Edition, 1997.

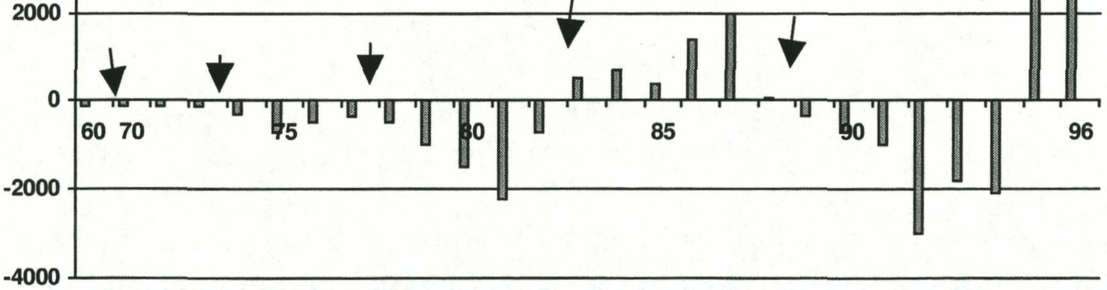
unable to meet new norms, quality standards, volume and required frequency of deliveries.'[40] The trend is integration with the North American auto industry. Currently an overwhelming 70.8% of all imported parts come from the United States; 69% of exported parts are sent to the same destination.[41]

2.6 Future Prospects of the Mexican automotive industry

After the pesos crisis the Mexican automotive industry started to improve in 1996. Domestic vehicle sales grew slowly (see table 5, page 23) in 1996, 1997 and the first half of 1998. However, although the Mexican automobile industry has experienced an important transformation and high growth since 1980, which has resulted in increased international competitiveness in both price and quality, there are some very concerning issues which need to be discussed here in view of the discussion on the MAI.

The major concerning issue is the trade deficit of the automotive sector in Mexico. The balance of trade of the automotive industry is very important for the Mexican economy since it is one of the most important manufacturing sectors. A trade surplus or deficit in the automotive industry inherently affects the national balance of trade. In figure 2 you see that trade surpluses only occurred after the two crises in 1982 and 1994, after the Peso was strongly devalued. These surpluses are not sustainable however and the surplus will most probably turn into another deficit after 2000. After the automotive decree of 1989 the balance of trade turned negative. The effects of the 1989 decree and the disappearance of the local content rule is shown in figure 3 on page 25, which shows the import and export and balance of auto parts. The impressive exports of Mexico in the automotive industry are unfortunately diminished by imports of auto assembly materials.

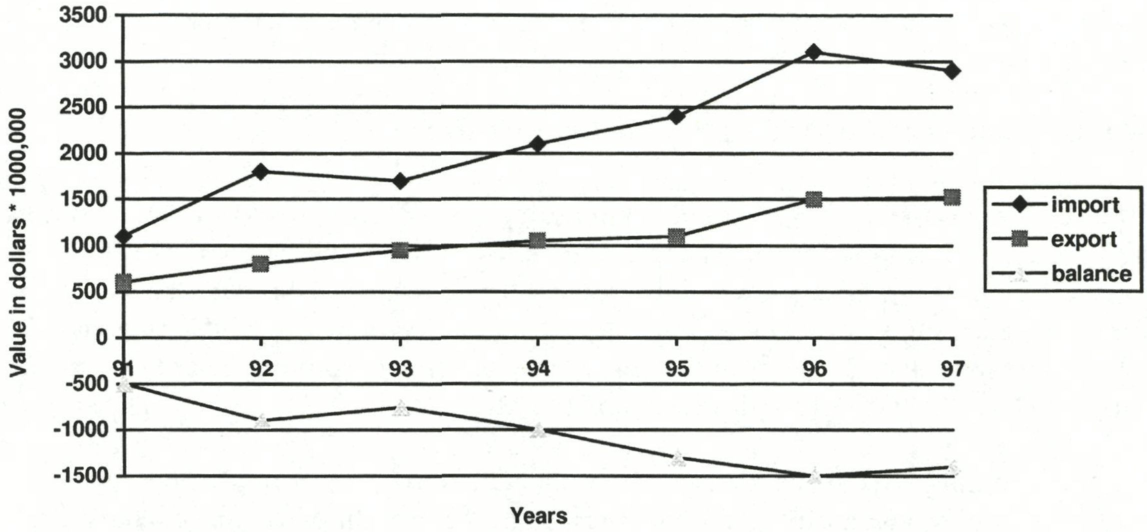
Figure 2: Balance of Trade of the automotive industry in Mexico



Source: Industria Nacional de Autoparts, 1997

[40] Quote from Humberto Juarez Nunez in El financiero International Edition, 1997.
[41] El financiero International Edition, 1997.

Figure 3 Balance of Trade in auto parts



Source INA

A second concerning feature of the growth of the automotive sector in Mexico is its destination of exports. As table 6 shows, the destination of the Mexican exports is extremely concentrated on the U.S. The Mexican production of automobiles is therefore very dependent on the US market and US demand.

Table 6
Export by region in 1998

Region	**Chrysler**		**Ford**		**GM**		**Nissan**		**VW**	**Total de**
Segments	auto	cam	auto	cam	auto	cam	auto	cam	auto	Total
AMERICA	46,043	107,858	73,512	13,261	25,681	60,400	23,347	6,345	117,849	474,296
North	46,043	107,129	73,512	13,261	21,650	59,588	10,213	0	110,373	441,769
Central & Caribbean	-	-	-	-	3,200	650	3,107	1,564	313	8,834
South	-	729	-	-	831	162	10,027	4,781	7,163	23,693
Europe	-	-	-	-	-	-	-	-	89	89
Asia	-	-	-	-	-	-	363	-	-	363
Oceanië	-	-	-	-	571	-	-	-	-	571
Sales not specific	-	-	-	-	25	-	-	-	1,711	1,736

1998 figures are up to June
Source: AMIA

This focus on North America, since Mexico reoriented its public policy away from import substitution, produced a two-tiered system consisting of the old industrial heartland in and around Mexico City, and a new, modern sector in the North, particularly in border states. The first tier produced largely outdated models for the national market, while the second tier was oriented toward external markets. This had major consequences for labour which will be discussed in Chapter 3.

Conclusions Chapter 2

The question how far there are any similarities between the development of the automotive industry in Mexico and India is interesting. Both countries of our study, Mexico and India wanted to integrate the automotive industry in its national economies via imposing local content requirements. Since local input would reduce imports this would also improve the sectoral balance of payments.

In India the local content rule is still highly important. It dates back to 1953, when the Indian government decided to develop its own manufacturing base. The government wants the establishment of actual production facilities for manufacture of cars and not for mere assembly of imported kits and components. They have therefore at the beginning of the liberalisation of the automobile industry demanded for high localisation of production. Suzuki was required to indigenise and thus had to improve quality of its component producers and now has a localised production of up to 90%. This requirement has been a major boost for the auto components industry which has generated an employment of 10 million people in the auto components industry in India.

While India continuously stresses the importance of local content, Mexico chose for more definite liberalisation and reorientation towards exportation. In 2004, the local content rule under NAFTA will be phased out entirely. It is peculiar to see that the reason to start implementing local content rules in Mexico namely the balance of trade deficit is still a major concern of the Mexican government.

The consequence of the phasing out of the local content rule for the Mexican component producers is tough. It is very difficult for them to survive in the highly competitive global automotive industry. In that sense the fear of the developing countries who opposed to the liberalisation trend because they feared that via excessive liberalisation their local companies would be wiped out by TNC's seems to be genuine.

It is doubtful how far the development of a local component industry would have occurred without regulations on foreign investors. As one of the foreign automobile manufacturers in India already stated: 'without these regulations and the high import tariffs we would have used our global sourcing companies.' It is also doubtful however, how far the auto components industry would have developed into such high quality without competition and technology from foreign manufacturers. In India and Mexico the component industry was not able to meet the international quality requirements. So, the liberalisation of investments has been positive for the development of the auto component industry but when liberalisation goes too far the local component industry does not survive. Therefore, the local content rule did have an enormous effect on the development of the automotive industry in both India and Mexico.

Although one agrees with the statement of the OECD that liberalisation of investment regimes is essential for economic development, the experience with the development of the automobile industry in Mexico and India once again strengthens the opinion that without any regulation, it is difficult to get the best results out of the inflow of FDI.

There are major differences between the two countries as well. Looking at the reasons why foreign investors decided to start investing in the two countries we see a completely different picture.

In Mexico, foreign manufacturers have always been present and the effect of the liberalisation of the economy and investment has been the phasing out of all Mexican owned auto manufacturers who could not cope with the high competition of the global players. Since NAFTA it is possible for these global players to integrate Mexico in its global strategies. Although Mexico has always been used mainly for assembly activities because of low labour costs and large production capacities, the NAFTA has enforced this trend because of high yielding economies of scale.

Reasons for foreign investors to enter the Indian automobile market have been the entrance to the domestic market and the large population with a high growth rate. The most important player within the automotive industry is a joint venture between the Indian government and a foreign company.

The fact that foreign investors are interested in Mexico by using it as an export base to the United States and in India because of the domestic market might have different consequences for labour standards which will be discussed in the next chapter.

CHAPTER 3

The effects of liberalisation of investment in India and Mexico on labour standards in the automotive industry and the MAI.

How far has liberalisation of trade and investment and its effects on the automotive sector as described in chapter 2 had effects on labour standards? And how far will the three anchor approach within the MAI (reference to the ILO, the OECD Guidelines and a not-lowering standards clause) effectively safeguard possible negative consequences of the trend towards liberalisation on labour standards in India and Mexico?

The ILO core labour standards and OECD guidelines are both voluntary. The ILO is dependent on the conduct of governments and their co-operation in ratifying and implementing the core labour standards. The OECD guidelines will only be implemented on a voluntary basis and it depends on the responsibility of the companies if they will abide by the guidelines or not. In this chapter it will be examined how far the confidence of the OECD in these two actors, government and multinationals and their sense of responsibility towards labour standards is justified.

3.1 The effects of liberalisation in the automotive industry on labour standards

In India, after 1991 when the reform process started, technology and FDI flew into the country. The central trade unions have been unaware of this liberalisation process up until 1993. Only then, they responded with organising strikes. There was however no response from government.

Although the Central Trade Unions in India are politically affiliated, the strong links between political parties and trade unions are however one-way. Government has never asked the trade unions for their opinion on liberalisation. The present trade union leaders are former political leaders so their close links with politics is not surprising.

The membership of the central trade unions comes basically from the public entities which used to be heavily protected. Therefore it was important for the trade unions to maintain its status quo. The Trade Unions that were interviewed had strong sentiments against liberalisation. According to them the New Industrial Policy, NIP was invented by the then ruling parties and the present trade unions differ from these political stands. The NIP was dictated upon India by the WTO and IMF. India does not need foreign investors. Most of the products which are manufactured by foreign companies can be made by Indians themselves.

These strong sentiments are not illustrative for the opinion of trade unions on the whole. In the interviews it was pointed out that the old leadership of the trade unions does not understand the new challenges of globalisation. It was explained that 60 - 70% of the working force in India stands outside the economy and will therefore not notice anything from the NIP. The formal sector in India is very small, even 60-70% of the graduates is unemployed. That is why no one in India has problems with FDI as long as it generates employment and as long as TNC's use local input and transfer of technology is taking place. At the moment, on the national level, the central trade unions agree with the need to liberalise, it is however the speed of liberalisation which is debated. The speed should be matched with the speed that the workers need to adapt to the new situation.

There are several problems which the trade unions are facing in India after liberalisation: These problems are encountered in TNC's and local companies:

- Outsourcing. It is difficult to organise workers when sourcing companies come from all over the world.
- Since the eighties most new employment is contract labour. For these labourers it is more difficult to join trade unions.
- Because of privatisation and contract labour, the amount of organised workers has been reduced. This reduces the bargaining power of the trade unions.
- New foreign companies try to block central trade unions.
- New entrants bring new management styles that are often consensus-based and imply a 'controlled' trade union environment; There is a policy to set up or allow in-house trade unions or in-house representative structures for workers.
- Strict labour laws in India induce local companies and TNC's to circumvent law by introducing Voluntary Retirement Schemes to be able to lay off workers.

Up till now the trade unions in India have not found an adequate answer to these new challenges.

Because Trade Unions in Mexico are incorporated in the government's structure they do not respond on the new challenges of liberalisation such as flexibility of work and casual labour either. The enormous effect which e.g. the Pesos crisis had on real wages would in most countries have evicted a fierce reaction from organised labour. However, organised labour has co-operated with the government, often agreeing real wages reductions and providing political support in exchange for protection of Mexico's corporatist labour legislation.

This government-labour alliance grew strongly after the 1982 economic crisis. At the end of the 80's, the official trade unions helped to develop and implement the Pacts for Stability and Economic growth. These pacts established government mandated minimum wages and set the standards for salary increases in both unionised and non-unionised workplaces. Under the Pacts, the official labour sector accepted a 75 % decline in the real value of the minimum wage and a 50% decline in the medium-level salary.

There are signs though that the power of the CTM has begun to erode and space and influence for independent unions is growing. The opinions differ about the reasons for this trend. Some say it is a result of economic liberalisation. For President Salinas the first priority was economic liberalisation and only after economic liberalisation you see more political liberalisation. Others point at the NAFTA negotiations which strengthened solidarity and co-operation with international networks of trade unions and trade unions from the US. AFL/CIO was in the same network with CTM and never had any contact with the independent unions in Mexico. However, during the NAFTA negotiations AFL/CIO was opposing NAFTA just like the independent unions in Mexico. CTM supported the governments positions in the NAFTA negotiations and was therefore in favour of the NAFTA.

The independent trade unions themselves are very strong in their opinion that economic liberalisation has had no effect on the growing influence of independent trade unions.

According to them it has been the bloody fight of the unions themselves to create spaces. It has been a grassroots struggle which has resulted in independent unions.

The difficulties which the trade unions are facing in Mexico because of liberalisation of the economy do have equivalence's with the problems encountered by Indian trade unions.

- The reduction of bargaining power is one of the most concerning factors in Mexico. One of the reasons is a result of liberalisation namely the trend of companies to move their plants to the Northern border of Mexico. This geographical relocation to new industrial zones has been accompanied by a reduction in real wages, an erosion of traditional labour protections such as seniority provisions and the reinforcement of official unionism.[42] Whenever a plant opens a new plant it starts with paying lower wages. As shown in table 6, page 33, the CTM has the right of representation at all the new automotive plants. The new contracts between management and workers are generally already signed before the plant actually starts producing, the so called protected contracts. Workers most of the time do not know who is representing them or what is adopted in the contract.

  The reduced bargaining power of trade unions has also been effected by Mexican labour law. In this law two types of workers are defined: unionised and non-unionised. Beforehand technicians used to be counted as unionised. Lately the Mexican government declared them non-unionised which shows it is not possible to decide for the workers themselves to belong to a union or not. It is not only quantity of members which the unions are losing because of the new regulations but they are also losing quality. Many of the workers which are declared non-unionised are workers in positions of trust and finances. Therefore the trade unions lose valuable information sources.

- Another problem, which also counts for India, is the amount of temporary workers which has raised steadily the last few years. One of the trade unions which was interviewed explained that the amount of accidents which occurred on the plant among temporary workers is much higher than among regular workers. The temporary workers put themselves in danger because they do not know the job well enough and are not trained well enough. Another problem is that these temporary workers are not allowed to join unions, what again has a negative effect on the bargaining power of unions.

- A trend which also contributes to the reduction of bargaining power is the increased practice of outsourcing which moves work from the unionised sector to the non-unionised sector of the industry. One of the independent trade unions in the automotive industry wants to organise the canteen workers as well but up till now has not been allowed to.

After discussing the problems which the trade unions are facing in the process towards liberalisation, it will be interesting to see how the MAI which will only strengthen the liberalisation trend, incorporates strategies to reduce the negative effects on labour standards.

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[42] Different interviews and John T. Morris (1996).

3.2 A reference to the ILO Labour standards

Participants at the 1995 Copenhagen World Social Summit agreed to voluntarily promote adherence to the provisions of the ILO Conventions which deal with core labour standards. As has been noted in a OECD study there is indeed wide recognition that the ILO has a primary role in promoting these standards.[43] In the preamble of the MAI text reference has been made to the standards of the ILO.

There is broad consensus on four categories of core standards, which embody basic human rights and are internationally recognised. The four core standards are based on seven key ILO conventions.

1. Freedom of association and collective bargaining, i.e. the right of workers to form organisations of their own choice and to negotiate freely their working conditions with their employers.
2. Elimination of exploitative forms of child labour, such as bonded labour and forms of child labour that put the health and safety of children at serious risk.
3. Prohibition of forced labour, in the form of slavery and compulsory labour.
4. Non-discrimination in employment, i.e. the right to equal respect and treatment for all workers.

Since the fourth core labour standard is difficult to measure this research has basically been focussed at the first three standards. Next to these three core standards the health and safety standards were studied in the plants we visited.

India has not a very good record with the ILO. It has only ratified 37 of the 181 ILO conventions of which only four of the key ILO Conventions. India has not ratified art 87, freedom of association, 138, the minimum age convention and 98, the right to organise and collective bargaining. Since India did not ratify these articles, it is difficult for the ILO to follow up the restricted trade unions activities in e.g. the Economic Processing Zones. Mexico has a slightly better record. From the seven key conventions five conventions were ratified. However not art 98, and not 138.

Besides that, even if India and Mexico would ratify the seven key conventions it does not necessarily mean that it would automatically lead to implementation. Implementation of law by the government is the basic problem in India and Mexico and not the labour laws itself.

There are strict labour laws in India. However, they are not very effective and enforceable. E.g., in India contract labour is not permitted. Many of the Indian workers are working on the basis of a contract though. In Mexico the 1970 labour law which is still in force is generally supportive of union rights. In practice however they are not enforced. When large scale strikes break out, the government has tended to break them forcibly.

Therefore, for India and Mexico, a reference made to ILO conventions in the preamble of the MAI would make no difference to the practice of labour standards.

[43] OECD, Open markets matter, the benefits of trade and investment liberalisation (Paris 1998) 91.

3.3 OECD Guidelines

How far do multinationals in the auto manufacturing industry abide by the core labour standards of the ILO and OECD Guidelines in which the freedom of association and collective bargaining is also specifically recognised?

In India and Mexico, two of the above mentioned core labour standards of the ILO, the elimination of exploitative forms of child labour and prohibition of forced labour are respected by the automotive assemblers which were visited during the field study.

The automobile industry is capital intensive which makes quality of high importance in the assembly and component production. It is argued therefore, that it is necessary to employ a well trained and educated workforce. Labour productivity is also highly important within this sector. Child labour or forced labour is not an option for the automotive sector.

Although there were no violations of these two core standards in the assembly plants, it is difficult to make statements on the whole automotive sector since the assemblers are working with first, second and third tier suppliers. The assemblers only have quality controls on their first tier suppliers. These first tier suppliers have the responsibility for the quality of the second tier producers and so on. The suppliers were out of the scope of this research and additional research is therefore recommended.

In India, health and safety standards were equally high in the plants of the local manufacturer and in the plants of one of the 'new' automobile manufacturers. We did not encounter any dangerous situations. In Mexico as well, health and safety standards were very high and the production process was highly technological.

A totally different story is the respect of the core labour standard of freedom of association and collective bargaining and the right of workers to form organisations of their own choice. In both countries many companies do either not allow trade unions or do not respect the choice of workers for their own unions. In India, the two foreign automobile manufacturers which we visited both declared that they did not want any of the five **central** trade unions in their plants. One of them did not want trade unions at all. It was stated that the assembler only has skilled and semi -skilled labour which is paid better than in general in India so there would be no need for trade unions. The other manufacturer has a company linked trade union and does not allow any other trade unions on its plant.

In Mexico, the history of trade unions in the automotive sector is very complex and too extended to cover all the ins and outs in this field study. The following cases however show clearly how major auto companies in Mexico act in defiance of the right of free association.

In Mexico the majority of workers which is unionised is represented by the official trade union the CT. CT is the Labour Congress, an umbrella group which incorporates the Confederation of Mexican Workers (CTM) and 40 other labour organisations. Generally, 'official' labour refers to the members of the CT. CTM is closely linked with the government and after the 1982 crisis the CTM leadership worked hand-in-hand with the government to maintain labour peace. CTM persuaded union leaders to accept drastic modifications in collective contracts in exchange for free security, health care and education and access to power and privilege.[44]

As table 6 shows it has been very difficult for independent unions to challenge the status quo of CTM in the automotive sector.

Table 6

Plants of the automotive industry in Mexico by location, year of inauguration, products, number of workers, and union affiliates

Company	Location	Year	Number of workers	Union Affiliation
Chrysler	Federal District	1938	NA	CTM
Chrysler	State of Mexico	1964	NA	CTM
Chrysler	Coahuila	1981	1200	CTM
Ford	State of Mexico	1970	4200	CTM
Ford	Chihuahua	1983	811	CTM
Ford/Mazda	Sonora	1986	2100	CTM
GM (closed 1994)	Federal District	1935	2100	CROC
GM	State of Mexico	1965	2787	CTM
GM	Coahuila	1981	5525	CTM
GM	Coahuila	1981	NA	CTM
GM	Guanajuato	1992	NA	CTM
Nissan	Morelos	1966	3100	Indep.
Nissan	State of Mexico	1978	857	CTM
Nissan	Aguascalientes	1984	3000	CTM
Mercedes Benz	State of Mexico	1990	NA	CTM
Renault	Durango	1984	460	CTM
Volkswagen	Puebla	1966	10,100	Indep

Source: John T. Morris, 'Independent and official unionism and democratic transition in Mexico: labour conflict in the automobile industry'

Whenever independent or dissident trade union members did try to press for greater democratisation within the union or wanted to elect an independent trade union leader, the efforts were oppressed by government.

An interesting case its the situation at the FORD plant in Cuautitlan at the end of the eighties. In 1987, FORD wanted to close its plant in Cuautitlan. The trade union of FORD, CTM agreed with this policy. All the workers were fired since FORD management was saying that the plant was not profitable anymore. Only one month later the plant was reopened again. FORD rehired the workers with worse contracts and lower wages.

In 1989, FORD fired the local trade union leaders of two plants. At the end of 1989 FORD refused to pay the bonuses to the workers. At the beginning of 1990 the fired local trade union leaders went to the plant and started to cheer slogans. They were beaten up by thugs. The workers decided to interrupt their work. All of this happened on a Friday. When the workers returned to work after the weekend they encountered a group of thugs which started to beat them up and even shot at them. One of the workers was killed. During these fights the management of the company did not interfere. The worker interviewed for this research was

[44] David Brooks and Jim Cason, 'Mexican unions: Will turmoil lead to independence?', in Working USA, March/April 1998, 28.

convinced that the thugs were there with support of FORD. After the fighting and shootings the workers took over control of the plant for 15 days. After these days the police came in and expelled the workers from the plant.

After this event the plant was not producing for six months. The company fired 1000 workers. There were negotiations with government and the workers returned to work. One year later the workers tried to form another union. The election was however rigged and CTM is still the official Trade Union in FORD. However, the workers continue to elect dissident democratic union leaders.

This event is one of the many examples of workers being suppressed in their choice of independent trade unions or trade union leaders. The space for independent trade unions is very limited. At the end of 1997 workers at the Han Young factory in Tijuana voted 54 to 34 in favour of an independent, FAT-affiliated union[45]. The labour board there refused to certify the election results and denied them recognition. After local and international pressure, the federal labour authorities reversed this decision and the FAT won legal recognition, but the company refuses to negotiate a contract with the union.

These cases in Mexico but also in India show the need for protection of the workers against suppression by manufacturers and government. In India and Mexico, the official trade unions are not really representing the workers but cooperate closely with governments to their own good. Foreign companies in India and Mexico deny the right to the workers to choose which union they want to belong to via in-house unions, corporate unions and the complete refusal to accept any unions. After concluding that the ILO's power is not strong enough to really protect workers against excesses and violation of national labour law and ILO conventions, the second finding is that the confidence of the OECD in the responsibility of foreign manufacturers towards the labour rights of workers of a host country is not justified.

3.4 The not lowering standards clause

The third element of the three anchor approach, including a clause on not lowering standards has been debated in the MAI negotiating group. The Netherlands is proponent of a binding clause however limited to domestic measures and the circumstances of a particular investment. Domestic is chosen as the main qualifier because approaches to core or core international labour standards appear to vary greatly among MAI parties. It is rather interesting to see that in the preamble of the MAI the negotiators refer to the core labour standards! It seems to be easier to agree on core labour standards when they are not binding and they are in pre-ambular language then when they are binding in the main body of the text. Measures has been chosen for consistency with MAI drafting where there is a need to refer to the means by which governments take action (by domestic legislation, regulation, directives, policy etc.). The interpretative note spells out the widely-shared views that governments must have the ability to adjust their overall labour market policies as appropriate over time, and that investment should not be enticed by relaxing standards.[46] This means that it still is possible to

[45] FAT is the oldest independent labour organisation in Mexico; this broad front was formed in 1960 to represent workers and worker owned cooperatives.

[46] DAFFE/MAI/NM(98)2/REV 1, Chairman's proposals on environment and related matters and on labour.

lower domestic standards to attract investments in general. Therefore this clause will not have any effect either.

Next to that there is the problem of implementation of labour law. India and Mexico have high standard labour laws in theory, however in practice they are not implemented. So, not lowering their domestic standards to attract investments does not give any guarantee to the workers.

Mexico is already prohibited from lowering its labour standards in order to attract investment by NAFTA Rules. This is not very effective though. The Mexican minimum wage which remain low by the standards of developed countries and are a prime attraction as regards FDI, minimum wages have been further lowered since 1994.[47] One also sees that within Mexico itself the different states are lowering labour states to attract FDI to their states.

A binding clause on 'not lowering standards' could have effect as long as it would be subject to dispute settlement, and covering all investments and investors, not specific ones. Within the dispute settlement system workers should be included as well to enforce this binding clause.

[47] Business Monitor International Ltd, Mexico 1996 - 1998, Londen 1996.

Conclusions Chapter 3

The liberalisation trend and the consequently inflow of FDI in Mexico and India have had different consequences for labour standards. Workers are facing production methods and managerial styles which are not familiar to them and which demand adequate response of the trade unions. Some of the problems they are facing are: Outsourcing strategies, flexibilisation and the growing amount of contract labour and temporary work. An important consequence of these trends is a reduction of bargaining power of trade unions.

When we focus at the four core labour standards, liberalisation and the inflow of FDI has had mixed effects. Because of the increasing competition in the automotive sector it is necessary to produce better quality which, as was argued implies better labour standards. The inflow of FDI has also introduced new technologies with a generally positive influence on health and safety standards in the assembly plants. More pressure of companies on productivity did create more stress on workers though.

Foreign companies in the automobile sector tend to have a slightly better record on wages than in other industries. In India foreign companies also have a better record on compliance with national labour laws. One of the reasons of this better record is the visibility of the TNC's in India.

However, in India and Mexico, the most gross violation of labour rights is the violation of ILO conventions 87 and 98, freedom of association and collective bargaining, the right of workers to form organisations of their own choice and to negotiate freely their working conditions with their employers. This has major complications for the workforce in India and Mexico where trade unions already have problems facing the new challenges of globalisation.

It is difficult to find out how far liberalisation and the inflow of FDI has contributed to these trends. In India and Mexico before liberalisation labour standards were already very low. The governments do not take care of the implementation of labour laws and it is not sure how far these countries would have done better without liberalisation. However, the policy of many foreign investors to ban Trade Unions in their plants or only allow officially incorporated unions or in house unions certainly does not positively contribute to the improvement of labour standards.

Therefore the three anchor approach towards labour standards in the MAI negotiations which is heavily dependent on the responsibility of governments and companies to be effective, seems to be a mere eyewash only with the purpose to keep quiet the genuine concerns and criticism of Trade Unions and NGO's instead of really striving for the protection of workers rights.

SUMMARY, FINAL CONCLUSIONS AND RECOMMENDATIONS

The main question in this research was how far liberalisation of foreign direct investment has a positive influence on labour and if not, how far international regulations as being referred at in the MAI are a safeguard versus possible negative consequences.

The study was focussed at two countries, India and Mexico, which both have experienced a major transformation from an protected import-led economy to an open export-oriented one. Within these countries the research studied the sector which for both countries is of high economic importance for industrial development and export, the automotive industry.

Next to the main focus on labour standards, the research was focussed at the effects of liberalisation policies of the Indian and Mexican governments on the structure of the automotive sector. There was specific attention for those elements in the Indian and Mexican policies which regulated the development of the automotive sector and will not be allowed anymore after the regime of the MAI comes into effect.

The MAI and the effects of liberalisation of FDI on labour standards

The liberalisation trend and the consequently inflow of FDI in Mexico and India in the automotive sector have had different consequences on labour standards. Workers are facing production methods and managerial styles which are not familiar to them and which demand adequate response of the trade unions. Some of the problems the unions are facing are: Outsourcing strategies, flexibilisation and the consequently growing amount of contract labour and temporary work. An important consequence of these trends is a reduction of bargaining power of trade unions.

FDI has had positive effects as well. Because of the increasing competition in the automotive sector it is necessary to produce better quality which, as was argued, implies better labour standards. The inflow of FDI has also brought in new technologies with a generally positive influence on health and safety standards in the assembly plants. Higher pressure on productivity did create more stress among the workers though.

Trade Unions in India and Mexico have not responded adequately on the negative effects of liberalisation. Reasons for that are:

- The reduction of bargaining power of the trade unions.
- The political affiliation of trade unions
- New foreign entrants who try to block independent trade unions or only allow in-house trade unions

The MAI will further strengthen the trends towards liberalisation and the consequent inflow of FDI. How far is the approach towards labour standards within this treaty effective and will it reduce the negative effects of these trends?

Labour standards in the MAI negotiations are integrated in the so-called three-anchor approach:

1. Reference to core labour standards in the Preamble, mentioning OECD Guidelines on MNE's, and referring to the ILO
2. Annexing the OECD Guidelines on MNE's which is meant to lead to the establishment of contact points for implementation in signatory countries, as a hard result.
3. Including a clause on not lowering standards (labour, environment and health) into the agreement, referring only to domestic standards not core (labour) standards, with apparently a slight majority in favour of binding status.

The principal criticism of trade unions is focussed on the absence of a binding requirement that multinational corporations should operate in ways that respect worker rights since the ILO core labour standards and OECD guidelines are both not binding. The ILO is dependent on the conduct of governments and their co-operation in ratifying and implementing the core labour standards. The effectiveness of the OECD guidelines is dependent on the sense of responsibility of multinational corporations.

In both of the case studies the need for binding requirements is shown to be very urgent. In both countries government and multinationals violate core labour rights based on ILO conventions 87 and 98, freedom of association and collective bargaining, the right of workers to form organisations of their own choice and to negotiate freely their working conditions with their employers. Reference to non binding ILO core labour standards and non binding OECD guidelines will not prove to be very effective in fighting the negative effects of liberalisation and FDI on labour standards.

Another conclusion which came forward in this research was that including a clause on not lowering national standards, even if it would be binding would not have any effect either since not the national labour law itself is the problem but the implementation of these laws.

Conclusion

Liberalisation of Foreign Direct Investment does have, next to some positive effects, also negative effects and the three anchor approach on labour standards in the MAI does not effectively protect workers against these negative effects. The reduced bargaining power of trade unions as a consequence of liberalisation is further strengthened by the practise of foreign investors to ban independent trade unions.

Recommendations

- To adopt binding requirements in the MAI that Multinational Corporations and governments should operate in ways that respect the ILO core labour rights.

- To effectively enforce these requirements trade unions and other citizen groups need to have the right next to governments and corporations to sue each other, to sue both governments and corporations for breach of their obligation towards labour standards.

The effects of liberalisation policies of the Indian and Mexican governments on the development of the automotive sector

The automotive sector was one of the industrial sectors which used to be strongly protected and highly regulated in both India and Mexico. Therefore, liberalisation of FDI and deregulation has had an enormous effect on the automotive industry. In India, the number of foreign manufacturers has increased tremendously. In Mexico deregulation and liberalisation has resulted in the phasing out of Mexican manufacturers and the sector is now dominated by the big three of the United States, FORD, Chrysler and GM and Nissan and Volkswagen.

In Mexico liberalisation in the automotive industry has gone much further though than in India. While in India indigenisation still is a key element in the government's approach towards the automotive industry, the Mexican policy is focussed at stimulating exports and integration into the global industry. In India import of complete vehicles is still not allowed and the import of CKD kits is dependent on the percentage of indigenisation. In Mexico, local content requirements were reduced and the allowance to import finished vehicles increased the possibility for assemblers to integrate Mexican operations into their North American operations.

While India continuously stresses the importance of local content, in Mexico, in 2004, the local content rule under NAFTA will be phased out entirely. It is peculiar to see that the reason to start implementing local content rules in Mexico namely the balance of trade deficit still is of major concern for the Mexican government.

The local content rule is a performance requirement which is forbidden under MAI regulations. In India, the local content rule has been a major boost for the auto components industry which has generated an employment of 10 million people in the auto components industry. The consequence of the phasing out of the local content rule for the Mexican component producers is tough. It is very difficult for them to survive in the highly competitive global automotive industry. In that sense the fear of the developing countries who opposed to the liberalisation trend because they feared that via excessive liberalisation their local companies would be wiped out by TNC's seems to be genuine.

The local content rule is very important for the development of a local automotive industry. As one of the foreign automobile manufacturers in India already stated: 'without these regulations and the high import tariffs we would have used our global sourcing companies.' It is doubtful however, how far the auto components industry would have developed into such high quality without competition and technology from foreign manufacturers.

Conclusion

Liberalisation and competition from foreign competitors was of high importance for the development of the automotive industry in India and Mexico. However, the importance of the local content rule for the local industry shows that some regulation might be necessary to get the best out of foreign investments.

Recommendation

Performance requirements which are now forbidden in the MAI do have important influence on the structure of industrial development. Developing countries should have the possibility to make general exceptions on these MAI regulations without a roll back clause.

After a break of six months, the negotiations on the MAI will continue in October 1998. During this six months break several debates between NGO's, the business community and the negotiators have been organised by the Ministry of Economic Affairs of the Netherlands. Although the concerns of the NGO's and trade unions were expressed again it is highly doubtful if many of these concerns will be translated into the MAI text. It is therefore necessary to continue feeding the debate with studies and facts. Hopefully this report will contribute positively to the debate which is focussed on the question how effectively to protect the core labour standards in a world which will continue liberalising at full speed.

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Appendix 1

Persons and organisations which we interviewed in New Delhi and Mexico City

Trade Unions

- Bharatiya Mazdoor Sangh, Mr. R. Venegopal, General Secretary, India.
- Centre of Indian Trade Unions, Dr. M. K. Pandhe, General Secretary, India.
- Frente Auténtico Del Trabajo, Mrs Bertha Lujan and Humberto Soto B, Mexico.
- Hind Mazdoor Sabha, Mr A. Kumar Daur, Information and Research Officer, India.
- Independent Trade Union of DINA, Mr José Luis Guzman Lopez and Mr Lazaro Osorio Zenteno, General Secretary, Mexico.
- Independent Trade Union of Volkswagen, Mr J. Evaristo Alvarez Alonso and Mr Luis Fonte Zenteno, General Secretary, Mexico.
- International Metalworker's Federation, Mr. T. Dyvadheenam, Regional Representative, India.
- International Metalworker's Federation, Mr. P. Unterweger, Autodepartment, Geneva.
- Maruti Udyog Employees Union, Mr Rajesh Malik, Executive member, Mr Mathew Abraham, General Secretary and various representatives, India.
- Red Mexicana de Acción Frente al Libre Comercio, Network of NGO's and Trade Unions, RMALC, Mr A. Villamar, Mrs Bertha Lujan, Mr Manuel Perez Rocha Loyo and others, Mexico.

Companies and Multinational Organisations

- Akzo Nobel, Ir F. H.W.M. van Ooijen, Managing Director and Mr. R.J. Hennink, Marketing and Sales Manager, India.
- Daewoo Motors India Limited, Mr. S.G. Awashti, Managing Director, Mr Shubendu Amitabh, Principal Executive, Mr Shirish Sinha, Asstt Manager, Mr Ranjan Banerjee, Sr General Manager, India.
- General Motors India Limited, Mr. A. Vij, Vice-President Marketing, India.
- Maruti Udyog Limited, Mr. R.S.S.L.N. Bhaskarudu, Managing Director, Ashutosh Joshi, Senior Executive and Mr Arun Arora, Deputy Manager pr, India.
- Volkswagen de México, Mr. Rosa Isela Garrido and Mr.Fausto López Aguilar, Government Affairs and Free Trade Agreements, Mexico.
- DINA, Mr Salvador Flores, Director de Mercadotecnia y Publicidad, Mexico.

NGO's/ Consultancies/ Research Institutes

- Centro de Reflexión y Acción Laboral, CEREAL, Mr Manuel Padrón Flores and Mrs Claudia Guerra, Mexico.
- Centro de Investigación Laboral y Asesoría Sindical, CILAS, Mr Héctor de la Cueva Díaz, General Coordinator, Mexico.
- Centro de Investigaciones y Estudios Superiores en Antropologia Social, Mrs Yolanda Montiel H., Investigador Titular, Mexico.
- Comission Méxicana de defensa y Promocion de los Derechos Humanos, Ms Sarah Phillips and Mr Richard Dvorak, Mexico.
- Equipo Pueblo, Mr Manuel Pérez Rocha Loyo, Mexico.

- Friedrich Ebert Stiftung India, Dr. P. Sinha, Project Adviser, India.
- Friedrich Ebert Stiftung Mexico, Mr Ekart Wild, Director and Mr Carlos Garcia, Researcher, Mexico.
- Marketing Systems Mr. P. Blokland, Regional Manager India/SE Asia, India.
- Public Interest Research Group, PIRG, Mr. Kavaljit Singh, India.

Intra Governmental / Governmental Organisations/ Dutch Embassies

- Royal Netherlands Embassy in India, Mr. H.W. van Santen and Mr P. van der Vliet, First Secretary of Economic and Commercial Affairs, India.
- Royal Netherlands Embassy in Mexico, Mr. C.J. Groeneveld, First Secretary of Economic and Commercial Affairs, Mexico.
- Confederation of Indian Industry, Mr. A. Khosla, Deputy Director, India.
- International labour Organization, ILO, Mr Tim de Meyer, Specialist on International Labour Standards, India.
- Mexican Investment Board, Mr Alberto Usobiaga, Executive Vice president, Mexico.
- Secretariat of Commerce and Industrial development Directorate General of Foreign investment, Mexico, SECOFI, Mr Carlos García Fernández, LL.M., Director General, Mexico.

Representative organisations of the Automotive Industry

- Association of Indian Automobile Manufacturers Dr. Shripad Bhat, Assistent Director, India.
- Automotive Component Manufacturers Association of India, Mr V. Mathur, Executive Director, India.
- Asociacion Mexicana de la Industria Automotriz, Mr Fausto Cuevas Mesa, Director General, Mexico.
- Industria Nacional de Autopartes, Mr. Oscar Véjar de la Barrera, Director General, Mexico.

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