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**Negotiating Group on the Multilateral Agreement on Investment (MAI)**

**Drafting Group No.3 on Definition, Treatment and Protection of Investors and Investments**

**REPORT TO THE NEGOTIATING GROUP**

## **REPORT TO THE NEGOTIATING GROUP**

The Drafting Group met on 26 March 1997 and prepared the attached report on Not Lowering Standards. It may be useful for the text in the Alternatives 1 and 2 in the attachment to be further refined before being considered by the Negotiating Group.

The Group also held a useful preliminary discussion of a proposed Article on Lodging Country Specific Reservations. This matter needs considerable further technical work.

The Negotiating Group has already received a separate report on Intellectual Property [DAFFE/MAI(97)13].

## Provision on Not Lowering Standards<sup>1</sup>

### [Alternative 1

The Parties recognise that it is inappropriate to encourage investment by lowering [domestic] health, safety or environmental [standards] [measures]<sup>2</sup> or relaxing [domestic] [core]<sup>3</sup> labour standards.<sup>4</sup> Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such [standards] [measures] as an encouragement for the establishment, acquisition, expansion or retention of an investment in its territory of an investment or an investor. If a Party considers that another Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.

### Alternative 2

A Contracting Party [shall] [should]<sup>5</sup> not waive or otherwise derogate from, or offer to waive or otherwise derogate from [domestic] health, safety or environmental [measures] [standards] or lower [domestic] [core] labour standards as an encouragement for the establishment, acquisition, expansion or retention of an investment or an investor.]

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- 1 Five delegations oppose any provision on these matters. One other delegation could accept only a non-binding provision.
  - 2 If “measure” is preferred, then the word “lowering” should be replaced by “relaxing”. In either case, the term selected should be defined. For reference purposes, delegations mentioned the definition of “measure” in NAFTA or to be found in the Transparency Article of the MAI [DAFFE/MAI(97)1, page 11] and the definition of “standard” in NAFTA and in the WTO Agreement on Technical Barriers to Trade.
  - 3 Delegations noted that no universally accepted definitions existed for “core” or “domestic” standards. Most delegations preferred “domestic” which was recognised to be wider in scope.
  - 4 A major difference of view as between Alternative 1 and Alternative 2 concerns the first sentence of Alternative 1. This sentence is part of a difference of approach as to whether the provision should refer to respect for universal standards or only to the relaxation of domestic standards. Views differ on whether this sentence is useful or necessary.
  - 5 If “should” were preferred, it might be desirable to add the last sentence of Alternative 1. Those preferring “should” argued that use of the word “shall” would prevent the authorities offering necessary waivers under domestic law, for example, to help resolve a specific case of damage to the environment and might prevent resolution of particular cases through consultations and persuasion. Those preferring “shall” argued that the purpose of this Article is to prohibit a waiver or derogation only if used as an encouragement to an investment.