



---

**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**

I am pleased to submit the attached report which presents the results of DG3 discussions on the subjects of Generalisation of Financial Services Provisions and Lodging Country-Specific Exceptions held on 15 January 1998. The results of DG3 discussions on Labour and Environment scheduled to continue on 19-20 January 1998 will be presented in a separate report. (Results on the discussions on the Preamble with respect to Labour and Environment held on 4 December 1997 are reproduced here, from DAFPE/MAI/DG3(97)19.)

Summary of the Group's conclusions on Generalisation of Financial Services Provisions is contained in paragraphs 1 to 4, on page 4 of this report. Several choices for consideration by the Negotiating Group are identified in these paragraphs. With regard to Country-Specific Exceptions, the Group submits in footnotes 7, 16 and 17 policy issues for consideration by the Negotiating Group.

Chairman

## TABLE OF CONTENTS

I.	Generalisation of Financial Services Provisions.....	4
II.	Draft Article on Lodging of Country Specific Exceptions .....	10
III.	Preamble (Labour and Environment).....	15

## I. GENERALISATION OF FINANCIAL SERVICES PROVISIONS

1. Without prejudice to the value of Financial Services texts as they stand now, the Group considered possible broader application of proposed financial services texts.
2. Except four delegations, the Group recommends adoption of the generalised text concerning information transfer and data processing. It also recommends adoption of a new text for paragraph 3 of the Transparency Article.
3. The Group is divided as to the desirability of a generalised text on recognition arrangements and refers the matter to the Negotiating Group for its political decision. Except a few delegations, the Group is not convinced of the value of a generalisation of the financial services text concerning authorisation procedures. It is not convinced of the value of a generalisation concerning membership of self-regulatory bodies and associations.
4. Finally, except a few delegations who were hesitant, the Group recommends adoption of an Interpretative Note stating that “the inclusion of text specific to financial services shall be without prejudice to the interpretation of the obligations of the MAI with respect to other sectors”.

### 1. *Information transfer and data processing*

#### Text

1. No Contracting Party shall take measures that prevent transfers of information or the processing of information outside the territory of a Contracting Party, including transfers of data by electronic means, where such transfer of information or processing of information is:
  - a) necessary for the conduct of the ordinary business of an enterprise located in a Contracting Party that is the investment of an investor of another Contracting Party; or
  - b) in connection with the purchase or sale by an enterprise located in a Contracting Party that is the investment of an investor of another Contracting Party of:
    - i) data processing services; or
    - ii) information, including information provided to or by third parties.

2. Nothing in paragraph 1:

- a) affects the enterprise's obligation to comply with any record keeping and reporting requirements; or
- b) restricts the right of a Contracting Party to protect privacy, including the protection of personal data, intellectual and industrial property<sup>1</sup>, and the confidentiality of individual records and accounts, so long as such right is not used to circumvent the provisions of the Agreement.

Commentary

5. The provision developed by EG5 for financial services on information transfers and data processing guarantees an absolute right, comparable for instance to the right to transfer funds under the Transfer article of the MAI, of free transfer of financial information and data processing outside the territory of the Contracting Party by an established financial services enterprise where this is necessary for the conduct of ordinary business or in connection with the purchase or sale of data processing services or information. Delegations noted that this provision, adapted from the GATS, introduces an element of cross-border services.

6. DG3 developed text extending the EG5 provision to all sectors and recommends its adoption<sup>2</sup>, on the understanding that it is not intended to provide rights to foreign service suppliers established outside the territory of a Contracting Party to supply services on its territory but only to confer rights to an investor established on its territory to have access to data processing services and information available abroad (or to sell them abroad). Several delegations considered that this understanding should be recorded explicitly in the Agreement.

7. It was understood that the above proposed text as it stands covers transfers of information into, as well as out of, the territory of a Contracting Party.

8. Several delegations raised the issue of the relation between this text and on-going discussions on Electronic Commerce.

9. With respect to paragraph 2b), the Group noted that delegations are still examining whether it provides adequate protection. One delegation also expressed a concern as to whether this provision would meet its concerns about protecting the investor's ability to transfer data. It was noted that remaining concerns may be matters for further discussion through consultations among delegations.

---

1. The Group noted that the issue of protection of intellectual property rights should be looked at in the broader context of on-going discussions on the subject.

2. Four delegations reserved their position in respect of such a generalisation. In particular, they are concerned that paragraph 1 of the proposed generalised provision would confer rights to market access to non-resident service suppliers. One of these delegations could support a provision on cross-border information transfer and data processing only if they correspond to operations between an investor and its investment.

## 2. *Transparency*

### Text

Nothing in this Agreement requires a Contracting Party to furnish or allow access to:

- a) information related to the financial affairs and accounts of individual customers of particular investors or investments, or
- b) any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement or be contrary to its laws<sup>3</sup> protecting confidentiality or prejudice legitimate commercial interests of particular enterprises.

### Commentary

10. The Group considered that it is possible to modify the existing text on transparency (page 14 of the Consolidated Text and Commentary [DAFFE/MAI(97)1/REV2]) to accommodate the content of the transparency provision proposed by EG5. The Group recommends replacing the second sentence of paragraph 3 of the existing text by the proposed text.

11. Some delegations expressed concern that the reference to the “public interest” included in the EG5 text is not retained in the present text of the proposed general provision, so that secrecy relating to operations by central banks and monetary authorities may not be protected by paragraph b). However, these delegations consider that this concern could be met through the adoption of text under consideration by financial services experts intended to exclude from the general Transparency obligation of the MAI transactions by central banks and monetary authorities in pursuit of monetary and exchange rate policies. This matter should be reconsidered after the conclusion of the discussions on an article regarding transactions by central banks and monetary authorities in pursuit of monetary and exchange rate policies.

## 3. *Recognition arrangements*

### Text

1. A Contracting Party may recognise prudential measures in financial services of another country, or standards or criteria for the authorisation, licensing or certification of investors of another country and their investments. On the basis of such recognition, a Contracting Party may accord to investors of another country and their investments more favourable treatment than it accords to investors of any other country and its investments. Such recognition, which may be achieved through harmonisation or otherwise, may be based on an agreement or arrangement with any other Contracting Party or non-Contracting Party concerned or may be accorded autonomously.

---

3. Two delegations propose to insert, after “laws”, the terms “policies, or practices”. One of these delegations can only support the proposed text for paragraph 3 of the Transparency article if these terms are inserted.

2. A Contracting Party that is a party to an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for other interested Contracting Parties to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight and implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between parties to the agreement or arrangement. Where a Contracting Party accords recognition autonomously, it shall afford adequate opportunity for any other Contracting Party to demonstrate that these circumstances exist.
3. A Contracting Party shall not accord recognition in a manner which would constitute a means of avoiding the Contracting Party's commitments or obligations under the Agreement.

#### Commentary

12. Some delegations recommend adoption of generalised text. Recognition arrangements might be open to challenge under the MFN obligation of the MAI. These delegations consider that in case of a dispute Contracting Parties might rely on a "like circumstances" test to justify their recognition arrangements and/or the openness of these arrangements to third parties. However, they prefer that this justification is explicitly stated in the Agreement.

13. Many delegations were not in favour of a generalised text on recognition arrangements:

- Some delegations held the view that mutual recognition arrangements are not compatible with the MFN obligation of the MAI and would be better addressed through country-specific reservations;
- Some delegations argued that the text developed by EG5 is specifically related to prudential measures which are unique to the financial services sector;
- Delegations did not identify non-financial services sectors other than professional services which could lend themselves to recognition arrangements.

14. The Group agreed that the desirability of a generalised text on recognition arrangements should be referred to the Negotiating Group as a matter for its political decision.

15. One delegation suggested considering, for paragraph 1, a language similar to that in paragraph 1 of Article VII of the GATS.

#### **4. *Authorisation procedures***

##### Text

1. Each Contracting Party's regulatory authorities shall make available to interested persons their requirements for completing applications relating to an investment.
2. On the request of an applicant, the regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

3. A regulatory authority shall make an administrative decision on a completed application of an investor or an investment of an investor of another Contracting Party within a reasonable period of time, and shall promptly notify the applicant of the decision. An application shall not be considered complete until [all relevant hearings are held and] all necessary information is received.

#### Commentary

16. Some delegations considered that the text proposed in the above paragraph provides additional disciplines which are not covered by the MAI Transparency and National Treatment provisions and which are desirable in order to establish minimum standards for the processing of applications relating to an investment.

17. Many delegations considered that the MAI Transparency and National Treatment provisions would provide sufficient protection for investors.

18. Some delegations considered that paragraph 3 of the above proposed generalised text adds little to the substantive obligations of the MAI.

19. Two delegations reserved their positions on paragraph 3 because the character of a “best endeavour” clause included in the EG5 text is not retained in the present text of the proposed paragraph 3. One delegation has indicated that it may reconsider its position in light of a further examination of commitments already undertaken under Article VI (3) of the GATS.

20. However, there was a concern that, if text is to be adopted for financial services only, there could be a risk that the absence of generalisation could be interpreted as implying that procedures for the processing of applications relating to an investment are not subject to the generic obligations of the MAI. Except a few delegations who were hesitant, the Group recommended to address this concern by introducing an Interpretative Note stating that “the inclusion of text specific to financial services shall be without prejudice to the interpretation of the obligations of the MAI with respect to other sectors”. This Interpretative Note would apply with respect to any financial services-specific texts more generally.

#### **5. *Membership of self-regulatory bodies and associations***

#### Commentary

21. The Group was not convinced of the value of a general provision on self-regulatory bodies and associations:

- It considered that any regulatory requirement to be member of an association or organisation the membership of which is reserved to nationals would fall under the NT obligation. Three delegations gave professional services as an example where such restrictions exist in their countries and with respect to which their countries are prepared to lodge reservations under the MAI, even in the absence of specific provisions on this matter.
- It also considered that the NT obligation of the MAI extends to discriminatory measures taken by self-regulatory bodies and associations to the extent that they perform their

functions under an authority delegated by governments<sup>4</sup>. (Where self-regulatory bodies and associations possess no such delegated authority, they should be treated in the same way as private companies; accordingly, measures they take would fall outside the scope of the MAI, subject to MAI anti-circumvention clauses.)

22. As for the issue of “authorisation procedures” above, if text is to be adopted for financial services only, some delegations noted a possibility that the absence of generalisation could be interpreted as implying that membership requirements and measures by self-regulatory bodies with delegated authority fall outside the scope of the MAI. This concern is addressed by the Interpretative Note proposed in paragraph 20.

---

4. It can be noted that, at the October round of informal consultations on Special Topics, delegations agreed on a draft article for all entities, including private entities, exercising any delegated regulatory, administrative or other governmental authority [DAFFE/MAI/ST(97)13/REV1, Section VI] which confirms this understanding.

## II. DRAFT ARTICLE ON LODGING OF COUNTRY SPECIFIC EXCEPTIONS

### A) *Draft article on lodging of country specific exceptions*<sup>1</sup>

#### Text<sup>2</sup>

A.<sup>3</sup> *Articles X (National Treatment), Y (Most Favoured Nation Treatment), [Article Z, ..., ... and Article ...]*<sup>4</sup>, do not apply to:

(a) *any existing non-conforming measure as set out by a Contracting Party in its Schedule to Annex A of the Agreement, to the extent that the measure is maintained, continued or promptly renewed in its legal system*<sup>5 6</sup>;

- 
1. It is generally agreed to replace the term “reservations” by the term “exceptions”. Under treaty law, “reservations” normally have reciprocal effect unless otherwise specified. This is clearly not intended to be the case with respect to Country Schedules. Any possible confusion with general exceptions could be taken care of by the qualification “country-specific”. The use of the term “exception” would not prevent the listing of a measure with a reciprocity requirement. It would help avoid confusion in the case of any genuine “reservations” in the treaty law sense were to be made and called such. One delegation maintains a scrutiny reserve on this change.
  2. The draft article to address existing measures should be examined in conjunction with the proposed introduction to Annex A of the Agreement and the standard presentation suggested for the lodging of country specific reservations (reproduced in footnote 11). These three elements combined provide the methodology for lodging country specific reservations under the MAI.
  3. It is agreed that part A of the draft article is needed as the core provision to “grandfather” existing non-conforming measures and prevent the introduction of more restrictive measures (“standstill”).
  4. It is agreed that the disciplines listed in the chapeau text of parts A and B of the draft Article should remain incomplete for the time being pending political decisions by the Negotiating Group. The text could also be reviewed after negotiators have decided how measures by sub-national entities and regional economic integration organisations should be treated across the MAI.
  5. All delegations agree that foreign investors should benefit from any liberalisation measure as soon as the relevant law, regulation or practice ... enters into force. The words “continued or promptly renewed in its legal system” at the end of the sentence are intended to make this clear. Two delegations maintain a scrutiny reserve on this addition.

One other delegation maintains a scrutiny reserve on the basis that the words “in its legal system” may not cover government policies. The Group agreed that government policies enunciated under the framework of domestic legislation would be covered by the words “in its legal system”. One delegation would see merit in clarifying in a footnote or in the text that the coverage of “measure” should include any subordinate measure adopted or maintained under the legal authority and consistent with the measure. The Chairman offers, for the consideration of delegations, the following additional explanatory note: “*It is understood that the term “legal system” includes subordinate measures and policies*”.

6. One delegation seeks the opinion of the Group whether and how Part A of Article A can take care of temporary liberalisation undertakings. Some delegations consider that this possibility is provided if the liberalisation measures are announced prior to the entry into force of the MAI. Some delegations consider that the delegation’s question relates to the issue of the implementation of a non-conforming measure. They feel that Part A would provide the possibility to temporarily implement a measure in a more liberal way than the way described in a country schedule. Other delegations, believe on the contrary that this interpretation is not compatible with the ratchet effect built in Part A, namely that a return to a more

*(b) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not increase the non-conformity of the measure, as it existed immediately before the amendment, with Articles X (National Treatment), Article Y (Most Favoured Nation), [Article Z, ..., and Article ...].*

restrictive regime should not be possible. Such an interpretation is also bound to create legal uncertainty for the investor and even encourage a proliferation of temporary measures. Delegations are invited to reflect further on this issue.

7. Delegations agree that notification of a reduction in the non-conformity of a measure would not be necessary for its effective application under the MAI. Notification is a matter of transparency and should be addressed separately.

It is agreed that article 79 of the Vienna Convention concerning Corrections of Errors in texts or Certified Copies of Treaties would do away with the need of a notification obligation for rectifications of errors.

Delegations identified three policy issues for consideration by the Negotiating Group:

- a) First, whether there is a need for a notification obligation for modifications in the non-conformity of measures.

Some delegations consider that a mandatory notification obligation for changes in country exceptions lists would be too cumbersome. Update of the country lists could be a result of a possible review mechanism. Some other delegations consider that it would be highly desirable to ensure that country lists of exceptions are kept up to date as this would enhance the usefulness of the MAI for foreign investors. This could, according to some delegations, be done at regular intervals (for instance once a year).

The Group recalls in this context by way of illustration the following proposal in page 108 the Consolidated Text and Commentary [DAFFE/MAI(97)1/REV1]:

“Each Contracting Party shall notify (the “Parties Group”) promptly and in any case no later than 60 days after their entry into force, of any change in the non-conformity of its measures with obligations under the Agreement, including the motivation or purpose of the change.”

- b) Second, whether such notification obligation would have implications for the role of the Parties Group and, if so, what should be the role of the Parties Group on this regard; and
- c) Third, whether it would be allowed to rectify errors or omissions made in good faith. Delegations note the following proposal made by one delegation to address this issue:

“Modifications made to take care of errors or omissions made in good faith relating to Annex ..., along with information about the likely circumstances of the change, shall be notified to the Parties Group and shall become effective provided there is no objection within 30 days after their notification.”

Several delegations support this proposal given the complexity and novelty of the MAI as regards the top down approach to the lodging of country exceptions. They consider that the safeguard provided by the possibility to object is sufficiently dissuasive to prevent an abusive recourse to this provision. Some delegations, on the contrary, have serious misgivings about the proposal. Some of them point out to the difficulty of defining the terms “good faith”. Others feel the proposal is too broad. Others stress the moral hazards. Two delegations also wonder whether it is necessary to have an explicit provision in this article given existing practice.

The Group notes the technical issue raised by one delegation on how to relate a Contracting Party’s notification to a modification of its Schedule to the Agreement. It also notes the proposal by one other delegation for a possible solution to this issue.

*“(c) A Contracting Party shall notify a change to its Schedule to Annex A of the Agreement to reflect any changes to the non-conformity of measures as provided for in paragraph (b) above.”*

[B.<sup>8</sup> *Articles X; Y, [Article Z, ...,and Article ...] do not apply to any measure that a Contracting Party [adopts] or [maintains] with respect to sectors, subsectors or activities, as set out in its Schedule to Annex B of the Agreement.*]

[C. *No Contracting Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex B<sup>9</sup>, require an investor of another Contracting Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.*]

**B) *Introduction to Annex A<sup>10</sup> of the Agreement listing country-specific exceptions<sup>11</sup>***

1. *The Schedule of a Contracting Party sets out, pursuant to Article ... [on the lodging of country specific exceptions], the exceptions taken by that Party with respect to existing measures that do not conform with obligations imposed by:*

8. There are different views with respect to Part B of the draft article which would allow new non-conforming measures to be introduced after the Agreement comes into force. One view is that such a provision might undermine the MAI disciplines to which it applied. The opposite view is that Part B would make it easier to preserve high standards in the disciplines of the agreement by allowing flexibility to countries in lodging their reservations.

9. It is agreed that Part C is applicable only to non-conforming measures referred to in Part B. The objective of Part C is to protect existing rights of foreign investors against discriminatory treatment resulting from measures permitted under Part B. This situation is different from that of expropriation of assets of established enterprises which is addressed in the expropriation chapter of the MAI. This favourable reaction to the proposed wording does not prejudge acceptance of Part B, however. One delegation can accept Part C subject to an interpretative note which would read as follows:

“A Contracting Party may, under this Article, take steps that seek to ensure compliance with any measure notified under Annex A or Annex B. Any such action shall not be taken as reducing the conformity of the measure notified in Annex A or Annex B.”

10. It was agreed to withhold the drafting of the introduction of “Annex B” until the Negotiating Group had taken a political decision on the status and coverage of Part B of the Article. Moreover, a number of delegations felt that the wording of such introduction might need to be drafted in a limited way (i.e. to cover only cases of privatisation or demonopolisation). Two delegations circulated a proposal for text on the introduction of Annex B [DAFFE/MAI/DG3/RD(97)19] which was not discussed by the Group.

11. The following format has been followed by delegations for submitting their initial lists of country specific exceptions [DAFFE/MAI/RES(97)31]:

“Sector:

Sub-Sector:

Obligation or MAI article in respect of which an Exception is taken:

Level of Government:

Legal source or authority of the Measure:

Succinct Description of the Measure:

Motivation or purpose of the Measure:”

*(a) Article X (National Treatment),*

*(b) Article Y (Most-Favoured-Nation Treatment),*

*(c) Article Z (...), or*

*(...) Article (...).*

*together with any commitment to eliminate or reduce the non-conformity of any of the measures.*<sup>12</sup>

---

12. One delegation reserves its position on the issue of future liberalisation commitments.

2. *Each exception sets out the following elements<sup>13</sup>:*
- (a) Sector refers to the general sector in which the exception is taken;*
  - (b) Sub-Sector refers to the specific sector in which the exception is taken;*
  - (c) Obligation specifies the MAI provision referred to in paragraph 1 for which an exception is taken;*
  - (d) Level of Government indicates the level of government maintaining the measure for which an exception is taken;*
  - (e) Legal source or authority of the measure identifies the specific legal source of the exception, whether in the form of a law, regulation, rule, decision, or any other form;<sup>14</sup>*
  - (f) Succinct Description of the Measure sets out non-conforming aspects of the existing measures for which the exception is taken, together with any commitment to eliminate or reduce the non-conformity of the measure<sup>15</sup>; and*
  - (g) Motivation or purpose describes the rationale for a given measure.<sup>16</sup>*

---

13. A large majority of delegations consider that the presentation would gain in transparency by incorporating an “industry classification” element into the reservation. Both the Common Product Classification (CPC) or Standard Industrial Classification (ISIC) could provide a useful reference for identifying non-conforming measures. The CPC system may perhaps be more appropriate to services sectors given the GATS precedent. But this should not detract from delegations’ ongoing efforts to finalise country exceptions. Delegations thus should feel free to provide such entries on a voluntary basis using the relevant international or comparable domestic classifications. The introduction of an “industry classification” could also be taken up in the context of future updates or negotiations on country schedules

14. In order to clarify the automatic ratchet effect of List A measures, the Chairman proposed the addition of the following phrase at the end of paragraph (e): “as of the date of entry into force of the Agreement, or as continued, renewed or amended after that date.”

This issue is solved by the revised paragraph (a) of Part A or the Article but this language may be relevant to the discussion of a notification obligation.

15. As in footnote 12, one delegation maintains a full reservation with regard to commitments for future liberalisation.

16. A number of delegations could support the inclusion of element (g). A number of delegations supported its deletion. Some delegations could support inclusion provided it would not be considered in the context of dispute settlement. Some delegations considered that this information should be provided in the context of the MAI negotiations but should not be retained in the final text of exceptions.

3. *In the interpretation of an exception, [all the above elements] [elements (a) to (f)<sup>17</sup>] shall be considered. In the event of a discrepancy between the non-conformity of the measure as set out in the legal source or authority identified and the non-conformity as set out in the other elements, the exception shall be deemed to apply to the non-conformity of the measure as set out in the legal source or authority [to the extent that the resulting non-conformity does [not significantly] exceed the scope of the non-conformity as set out in the other elements] [unless any discrepancy between the legal source or authority element and other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the legal source or authority element should prevail, in which case the other elements shall prevail to the extent of that discrepancy]<sup>18</sup>.*

- 
17. Several delegations feel that if element (g) were to be retained, it should not be taken into account in the context of dispute settlement. A few delegations consider that element (g) could provide valuable information in that context as well. One delegation considers that only elements (a) to (e) should be taken into account.
18. The second bracketed phrase, proposed by one delegation, is supported by several delegations. Most delegations consider, however, that the first bracketed phrase is preferable. Some delegations question the meaning of the word “significant”. One delegation also reserves its position, considering that the legal source or authority should always prevail in all circumstances. Delegations are invited to finalise their position on this paragraph.

### III. PREAMBLE (LABOUR AND ENVIRONMENT)

(DAFFE/MAI/DG3(97)18, Annex)

#### *Preamble*<sup>1</sup>

...

Recognising that agreement upon the treatment to be accorded to investors and their investments will contribute to the efficient utilisation of economic resources, the creation of employment opportunities and the improving of living standards;

...

[Resolving to] [Desiring to]<sup>2</sup> implement this agreement in a manner consistent with environmental protection and conservation;

Reaffirming their commitment to the RIO Declaration on Environment and Development and Agenda 21, including to sustainable development as reflected therein, [and including the polluter pays principle and the precautionary principle [and public participation and the right of communities to have access to information, and the avoidance of relocation and transfer of activities causing severe environmental degradation or found to be harmful to human health]]<sup>3</sup>, [and recognising that investment, as an engine of economic growth, can play a key role in ensuring that growth is sustainable, when accompanied by appropriate environmental policies to ensure it takes place in an environmental sound manner] [and recognising that appropriate environmental policies can play a key role in ensuring that economic development, to which investment contributes, is sustainable]<sup>4 5 6 7</sup>

1. A few delegations continued to oppose any reference to labour and the environment in the Preamble. It was the strong feeling of many delegations that preambular reference to the environment be limited to one paragraph and that it be as short as possible. Similarly, it was the feeling of many delegations that preambular reference to labour be limited to one paragraph and that it be as short as possible.
2. Six delegations objected to the introductory phrase “resolving to”. Some of the six would support as an alternative “desiring to”. Two of them preferred to see “environmental protection and conservation” replaced with “sustainable development”.
3. The majority supported explicit reference to some of the particular principles of the Rio Declaration and Agenda 21 set out in the sixth tiret of the alternative for the Preamble proposed by one delegation (DAFFE/MAI/DG3(97)18, Annex, pp. 6-7). There was more support among those delegations for explicit reference to the first two (the polluter pays principle and the precautionary principle) than the latter two (public participation and the right of communities to have access to information, and the avoidance of relocation and transfer of activities causing severe environmental degradation or found to be harmful to human health). There was no consensus whether the principles should be set out in the text or in a footnote. Some delegations noted that there should be consistency with the treatment of the specific principles in the preambular language on labour.
4. Alternative language proposed by one delegation. This proposal was supported by many delegations and is being studied by others. At least three delegations, however, continued to support the earlier text.
5. One delegation proposed additional language: “and recognising that such environmental policies shall not constitute a means of disguised restriction on international trade and investment;”. Some delegations supported this proposal in concept but wondered if it belonged in the Preamble or in a more general anti-abuse clause in the MAI.

Renewing their commitment to the observance of internationally recognised core labour standards, i.e. freedom of association, the right to organise and bargain collectively, prohibition of forced labour, the elimination of exploitative forms of child labour, and non-discrimination in employment,<sup>8</sup> and noting that the International Labour Organisation is the competent body to set and promote [deal with]<sup>9</sup> core labour standards world-wide.<sup>10 11</sup>

- 
6. One delegation, supported by another one, would insert four additional turrets from its alternative for the Preamble (DAFFE/MAI/DG3(97)18, Annex, pp. 6-7):
- Convinced of the need for optimal use of the world's resources in accordance with the objective of sustainable development;
- Recognising that investment can result in changes in the scale and structure of economic activity within countries, with potential effects on health and the environment;
- Recognising the interdependent nature of their environments;
- Encouraging the protection, conservation, preservation and enhancement of the environment;
7. Delegations are invited to reflect further on the content of this turret and of the previous one, and their relationship. A proposal by one delegation for amalgamating the two turrets, supported by a few delegations, was:
- Resolving to implement this agreement in accordance with international environmental law and in a manner consistent with sustainable development, as reflected in the RIO Declaration on Environment and Development and Agenda 21, including the protection and preservation of the environment;
8. These principles reflect the Declaration of the Copenhagen World Summit on Social Development and the Singapore WTO Ministerial. One delegation proposed explicit mention of the Copenhagen Declaration and Singapore Ministerial in the text with the principles set out in a footnote. One other delegation proposed a parenthetical reference to the principles in the text, reflecting the language of the Copenhagen Declaration
9. One delegation, supported by a number of delegations, preferred "deal with" as an alternative to "promote" because it had a somewhat wider meaning.
10. Three delegations continued to oppose any reference to labour in the Preamble. Another delegation could not support a reference to labour in the preamble if it included explicit statement of basic principles of core labour standards.
11. One delegation would insert three additional turrets from its alternative for the Preamble (DAFFE/MAI/DG3(97)18, Annex, pp. 6-7):
- Recognising that development of economic and business ties can promote respect for core labour standards;
- Resolved to foster investment with due regard for the importance of labour laws and core labour standards;
- Noting that, as members of the International Labour Organisation, they have endorsed the Tripartite Declaration of Principles concerning Multilateral Enterprises and Social Policy, and agreeing to renew their support for that voluntary instrument.