



Negotiating Group on the Multilateral Agreement on Investment (MAI)

PACKAGE OF ADDITIONAL ONE COUNTRY ENVIRONMENTAL PROPOSALS

(Contribution by one country)

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In addition to the environmental elements in the preamble, the article based on NAFTA 1114, and the association of the OECD Guidelines for Multinational Enterprises, one country proposes the following additional language to address environmental issues in the MAI.

1) **Health, Safety and Environment**

Two new paragraphs, to add to the already tabled NAFTA 1114.2-type provision (regarding the lowering of standards for the purpose of attracting investment).

- a) **“Nothing in this Agreement shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Agreement that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.”** (Text same as NAFTA 1114.1)
- b) **“Parties, through the cooperation of relevant international organizations and industry, where appropriate, should encourage investors wherever they operate to introduce policies and make commitments to follow environmentally protective standards regarding toxic chemicals and hazardous waste generation and disposal.”**

2) **Maintaining and Enforcing High Environmental Standards**

“Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws and regulations, each Party should ensure that its laws and regulations provide for high levels of environmental protection and should continue to improve those laws and regulations. Moreover, each Party should effectively enforce its environmental laws and regulations through appropriate governmental action.”

3) **Environmental Impact Assessments**

“Each Party should require or undertake, as appropriate, and consistent with Articles ** on most-favoured national and national treatment, environmental impact assessments for proposed investment in its territory that is likely to have a significant adverse impact on health or the environment and is subject to a decision of a competent national authority.”

In addition, we propose the following additional language. While this language is not strictly environmental, it addresses some environmental concerns that were identified during our analysis of the potential environmental implications of the MAI.

4) “In Like Circumstances”

The following language already tabled for a footnote or interpretive note to “in like circumstances” in the national and MFN treatment articles would also include new language **in bold**:

“National Treatment and most favoured nation treatment are relative standards requiring a comparison between treatment of a foreign investor and its investment and treatment of domestic or third country investors and investments. The goal of both standards is to prevent discrimination in fact or in law compared with domestic investors or investments of those of a third country. At the same time, however, governments may have legitimate policy reasons to accord differential treatment to different types of investments. **Similarly, governments may have legitimate policy reasons to accord differential treatment as between domestic and foreign investors and their investments in certain circumstances, for example where needed to secure compliance with domestic laws that are not inconsistent with national treatment and most favoured nation treatment. Moreover, the fact that a measure applied by a government has a different effect on an investment or investor of another Party would not in itself render the measure inconsistent with national treatment and most favoured nation treatment.**

“ ‘In like circumstances’ ensures that comparisons are made between investors and investment on the basis of characteristics that are relevant for the purposes of the comparison. The objective is to permit the consideration of all relevant circumstances, including those relating to a foreign investor and its investment, in deciding to which domestic or third country investors and investments they should appropriately be compared, while excluding from consideration those characteristics that are not germane to such a comparison.”

5) Transparency

A new phrase (**in bold**) would be added to the already tabled articles on Transparency. The brackets in the text below are presently in the draft MAI text itself.

“2.3 Nothing in this Agreement shall prevent a Contracting Party from requiring an investor of another Contracting Party, or its investment, **to provide or allow the verification of information to ensure compliance with the first Contracting Party’s laws and regulations,** or to provide routine information concerning that investment solely for information or statistical purposes. No contracting Party shall be required to furnish or allow access to information concerning particular investors or investments the disclosure of which would impede law enforcement or would be contrary to its laws [policies, or practices] protecting confidentiality.”

In addition, this country is continuing to consider the need to address other environmental concerns in the text. In particular, we are continuing to review the expropriation and general treatment articles to ensure concerns in that area are addressed. We also note that we will need to ensure that MAI obligations do not conflict with the Climate Change Convention.