



Negotiating Group on the Multilateral Agreement on Investment (MAI)

**DRAFTING GROUP NO. 3 RESULTS AND INSTITUTIONAL MATTERS:
LABOUR AND THE ENVIRONMENT**

(Note by the Chairman)

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1. The current draft of the MAI would address labour and environmental concerns through three anchor points, i.e. preambular language, a provision on not lowering standards, and through associating the OECD Guidelines with the MAI. The Group is invited to take stock of the approach to labour and the environment to date and to consider whether any additional elements should be built into the Agreement. As some delegations have expressed the view, in previous discussions, that the MAI should not contain any texts on labour and the environment, the Negotiating Group is invited to discuss the issues raised in this Note without prejudice to that view.

I. PREAMBULAR LANGUAGE ON LABOUR AND THE ENVIRONMENT

2. Drafting Group No. 3 has developed square-bracketed draft language [DAFFE/MAI(97)1/REV2, pp. 9-10] under which the Contracting Parties would, in particular:

- resolve to implement the MAI in a manner consistent with environmental protection and conservation;
- reaffirm their commitment to the RIO Declaration on Environment and Development and Agenda 21, including their commitment to sustainable development; and
- renew their commitment to the observance of internationally recognised core labour standards.

3. Drafting Group No. 3 would benefit from guidance from the Negotiating Group on whether these are the right points to make in the Preamble or whether there are different or additional points that should be made. Such guidance would enable the Drafting Group to make further progress on, and to refine, the preambular text. Within the Drafting Group, two delegations have indicated that they support the inclusion of five additional points on the environment and three on labour [DAFFE/MAI(97)1/REV2, p. 98.]

II. PROVISION ON NOT LOWERING HEALTH, SAFETY, ENVIRONMENT OR LABOUR STANDARDS

4. Drafting Group No. 3 has developed two options for a provision under which Contracting Parties would be expected to refrain from lowering health, safety, environment or labour standards for the purpose of encouraging the establishment, acquisition, expansion or retention of an investment or an investor [DAFFE/MAI/DG3(97)8].

5. Most delegations believe that Contracting Parties should acknowledge the inappropriateness of lowering standards to attract an investment and agree to enter into consultations if it appears that such conduct is occurring. These delegations support language closely modelled on Article 1114(2) of the NAFTA. The draft text for this option reads as follows:

“The Parties recognise that it is inappropriate to encourage investment by lowering [domestic] health, safety or environmental [standards] [measures] or relaxing [domestic] [core] labour standards. 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.”

6. Some delegations believe that the MAI should prohibit the Contracting Parties from lowering standards to encourage an investment. Absent an express provision to the contrary, a failure to abide by this obligation would be subject to dispute settlement. These delegations support language along the following lines:

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

7. Drafting Group No. 3 would benefit from guidance from the Negotiating Group on which option is preferred. Guidance would also be helpful on an issue that arises under both options; namely, whether Contracting Parties should be expected, in the case of labour standards, to refrain from relaxing “domestic” standards or only “core” standards.

III. THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

8. The participants in informal consultations on institutional matters have presented the Negotiating Group with a Report [DAFFE/MAI/IN(97)2] containing draft texts on associating the OECD Guidelines for Multinational Enterprises with the MAI. The Report contains a text for the MAI Preamble, a text on associating the Guidelines and an introductory text for the Annex that would contain the Guidelines. The Guidelines contain two chapters that address labour and environmental concerns; namely, Chapter 7 on Employment and Industrial Relations and Chapter 8 on Environmental Protection. The Report to the Negotiating Group notes that there are still some outstanding issues to resolve on the association of the OECD Guidelines with the MAI.

IV. TAKING STOCK

9. As noted, the current draft of the MAI addresses labour and environmental concerns primarily through the Preambular text, the text on not lowering standards and the texts on the OECD Guidelines.

Question:

Does the current draft of the MAI adequately address labour and environmental concerns?

Should additional elements addressing these concerns be built into the Agreement and, if so, what should they be?