



---

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

**THE MULTILATERAL AGREEMENT ON INVESTMENT:  
LABOUR AND ENVIRONMENT**

**(Note by the Chairman)**

## THE MULTILATERAL AGREEMENT ON INVESTMENT LABOUR & ENVIRONMENT

### (Note by the Chairman)

1. The purpose of the Multilateral Agreement on Investment (“MAI”) is to provide a comprehensive framework of rules for the liberalisation and protection of foreign investment, together with dispute settlement procedures. There is agreement among negotiators that the MAI should not infringe on normal regulatory powers of Governments which are exercised in a non-discriminatory manner and that the MAI should be fully compatible with the pursuit of high labour and environmental standards. Negotiators fully subscribe to the goals of sustainable development as expressed in the Rio Declaration and Agenda 21.<sup>1</sup> Provisions addressing the labour and environmental aspects of the MAI are under consideration.

2. There is ongoing analysis of the implications of the MAI, both by Parties individually and by the OECD. The OECD Secretariat has recently conducted two broader analyses. The first, entitled *FDI and the Environment -- An Overview of the Literature* concludes that there is substantial evidence that international investment can contribute to better environmental performance and enhanced environmental quality in host countries. The second study is entitled: *Consideration of Relationship Between the MAI and Selected Multilateral Environmental Agreements (MEAs)*. While its conclusions are provisional, it suggests that there are few, if any, inherent conflicts between MAI disciplines and the provisions of multilateral environmental agreements.

3. Extensive efforts are continuing to promote a dialogue about the MAI with those outside the negotiations, including non-OECD members interested in joining the MAI, business and labour groups, and NGOs.

4. Negotiators have developed a “three anchors” approach on labour and environment: the Preamble; provisions in the text; and the association with the MAI of the OECD Guidelines on Multinational Enterprises (“OECD Guidelines”). There are still differing views on questions of substance and presentation, as discussed below.

5. **Preamble:** Options for the text: recognition of the link between investment and environmental policy in promoting sound economic growth; and reference to implementing the MAI in a manner consistent with sustainable development and the Rio Declaration and Agenda 21 (with explicit mention of the principles of the polluter pays and the precautionary approach).

6. The draft Preamble also refers to labour standards: there is a renewal of Parties’ commitment to the Copenhagen Declaration of the World Summit on Social development; mention of the five main internationally recognised “core” labour standards; and acknowledgement of the role of the International Labour Organisation.

7. **Text:** Negotiators are considering a provision in the Agreement to discourage or prohibit lowering environmental, health and safety standards and labour standards in order to attract or retain investment. To be determined is whether or not separate provisions are required for labour and environmental standards. It also needs to be decided whether the text should refer to domestic or international standards, or both, whether the language should be hortatory or binding, whether a clarification is needed to ensure that the clause would not affect changes in national regimes that are not specifically targeted to attract or retain investment.

---

<sup>1</sup> Agenda 21 provides that investment -- foreign as well as domestic -- “is critical” for developing countries to achieve economic growth to improve the welfare of their populations (paragraphs 2.23 and 33.1). Paragraph 33.17 continues: “Mobilization of higher levels of foreign direct investment and technology transfers should be encouraged through national policies that promote investment and through joint ventures and other modalities.”

8. The national treatment provision implies a comparative assessment taking into account the particular circumstances of the investor and the investment. There is consensus to state in the agreement that regulatory powers which are exercised in a manner consistent with the agreement are not inhibited by the MAI disciplines, but specific language needs to be determined.<sup>2</sup> The Negotiating Group is also considering a statement to clarify that normal regulatory should not by themselves be considered expropriation under the MAI.

9. Other ideas and proposals have been presented but not fully considered. They include hortatory language to support international efforts on handling of toxic chemicals and hazardous wastes, to promote high levels of environmental protection and enforcement, and to encourage environmental impact assessment by host countries when an investment could have a significant environmental impact. They also include an addition to the transparency article that verification of information essential to environmental and other regulation may require different treatment for foreign and domestic investors in some instances. Finally, there is a proposal to qualify the National Treatment/Most Favoured Nation Treatment article by a footnote explaining that this does not always preclude different treatment of domestic and foreign investors. The question has been raised whether such additional elements should find their place in the agreement or whether could be treated in another way, for example, in a political declaration by the Signatories.

10. **OECD Guidelines:** These set voluntary standards for behaviour for international investors. They can be associated with the MAI, including a preambular reference, without changing their legal status as non-binding recommendations. A mechanism can be designed to permit non-OECD member countries party to the MAI to participate in the review and follow-up of the Guidelines and to have them establish national contact points.

\*\*\*\*\*

1. *Do Delegations agree to provide language in the MAI to explicitly preserve the capacity of Governments to take non-discriminatory measures in areas such as labour and environment?*
2. *Should the MAI include a strong commitment not to lower standards in order to attract or retain a specific investment?*
3. *Should the MAI contain hortatory provisions to promote specific labour and environmental policy objectives? Are there alternative ways in which such statements can be made?*

---

<sup>2</sup> One approach is a general exception based on the wording of GATT Article XX. A second approach is an affirmative statement modelled on NAFTA Article 1114(1). There is also broad agreement that the particular circumstances of an investment should be considered when judging government measures against MAI disciplines.