



Negotiating Group on the Multilateral Agreement on Investment (MAI)

Drafting Group No.1 on Selected Topics Concerning Investment Protection

ADDITIONAL COMMENTS ON DRAFT ARTICLE B

EXPROPRIATION AND COMPENSATION

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The following additional comment by one of the delegations has been agreed by the Group which has also agreed to add it to its report:

One of the delegations asked whether the drafting of Article B was adequate to avoid excessive scope, raising as an example the case of an investor which had received a permit or authorization for an investment but then ceased to meet the necessary conditions for it. The Group was of the opinion that this should pose no problem under Article B as drafted: cancellation or withdrawal of the permit or authorization in these circumstances by the Government would not constitute a direct or indirect expropriation or nationalisation of the investment. Comment 2 to Article B, on loss of an investment through proper application of criminal laws, was not exhaustive.

The Group agreed to add to its report the following additional comment of another delegation:

This delegation, supported by one of the other delegations, believes it is important to provide guidance to arbitrators on how to determine the "fair market value". This paragraph could read as follows:

“Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine the fair market value.”