



Negotiating Group on the Multilateral Agreement on Investment (MAI)

**AIDE MEMOIRE OF THE MEETING OF THE NEGOTIATING GROUP
ON THE MAI HELD ON 22-25 APRIL 1997**

AIDE MEMOIRE OF THE MEETING OF THE NEGOTIATING GROUP ON THE MAI HELD ON 22-25 APRIL 1997

The Chairman thanked Mr. Revilla and EG2 for the report on Taxation Matters. He agreed that these issues were important to the credibility of the MAI and he recognised their sensitivity. The Chairman concluded that there was broad support for the provision on expropriation, but further reflection was needed with respect to the text proposed by EG2 on transparency and dispute settlement. A large majority of delegations favoured no carve-in provision for national treatment on taxes, but seven delegations supported inclusion of such a text and one or two others were undecided. He thought that many delegations were in favour of a carve-out for tax from investment incentives and performance requirements, but others considered that the questions should be re-examined once the MAI disciplines in these areas have been decided. The relation between taxation and the accession provision of the MAI also merited further reflection.

The Chairman thanked Mrs. Riordon and the Group on Financial Services Matters for their work. The Chairman noted that delegations could agree with a proposed provision to maintain countries' freedom of action on prudential matters and with the proposed definition of financial services. There was broad support for texts on recognition arrangements, authorisation procedures, transparency, information transfer and data processing, and membership of self-regulatory bodies and associations. He requested DG3 to review these provisions and advise which of them might also be relevant for the MAI as a whole. The Chairman noted different views on the transfers article (4.6) which had been developed by EG5. The Chairman also noted that many delegations were in favour of making it explicit, e.g. in an interpretative note that the MAI does not cover cross-border services.

The Chairman concluded that the Negotiating Group should come back to financial services issues at a future meeting. He emphasised that in these future discussions, account should be taken of the overall horizontal approach taken in the MAI.

The Chairman noted that views were converging on the provisions concerning the temporary, entry and stay of investors and key personnel. There was agreement to drop the bracketed anti-abuse clause temporarily, until the question of a general anti-abuse clause in the MAI was decided. The Negotiating Group would have to come back to the questions of a minimum period of employment requirement and to the inclusion of permanent residents, at least for some categories of key personnel.

The Chairman noted a large majority in favour of including the requirement to establish a joint venture in the list of prohibited performance requirements. Most countries did not think it necessary to have an interpretative note regarding the application of national treatment and MFN to performance requirements. He suggested that further reflection be given to the question of an interpretative note to allow measures to be adopted or maintained when necessary to secure compliance with environmental and other laws and regulations.

On investment incentives, the Chairman noted that this topic was an important one for international investment and the role they play in the globalisation process. It would be desirable, if at all possible, to limit the competitive use between countries of investment incentives to attract foreign investment because they are costly to governments and detrimental to economic efficiency. Delegations should examine further what could be feasible in the time remaining to conclude an agreement and what should be left to a built-in agenda.

On privatisation, the Chairman concluded that there was genuine interest in a solution whereby special share arrangements would be considered to be contrary to National Treatment and MFN obligations if they explicitly discriminate against foreign investors and their investments or if they give rise to de facto discrimination in their application. On the lodging of country specific reservations, the Chairman also noted the suggested possible compromise that Contracting Parties could designate, upon entry into force of the MAI, sectors in which they wished to keep the right to lodge future reservations.

The Chairman noted that some delegations had conducted bilateral consultations on their lists of country specific reservations and he urged that this process continue and be extended to other delegations.

The Negotiating Group discussed the question of decision making rules in the MAI. The Chairman stated that all delegations agreed that the Preparatory and Parties Groups should make decisions, as a general rule, by consensus. Most delegations also thought that the Preparatory and Parties Groups should have express authority to make some decisions, failing consensus, by majority vote. There were varying views on what the voting formula for such an express rule should be (e.g.. three quarters, two thirds, simple majority). The Chairman thought there was broad support for the proposal that some decisions, such as decisions on accession, amendment and annual budget, should be the subject of a special rule (e.g.. consensus, three quarters, two thirds, weighted majority).

The Negotiating Group also discussed the role of the Signatories to the MAI in deciding on the date for entry into force of the Agreement and related matters. There appeared to be wide support for the proposition that the decision on setting a date for entry into force should be taken by majority vote, and that Signatories will need to decide whether there is a critical mass to proceed with entry into force of the Agreement. The Chairman concluded that further work to refine the proposals on these matters should be carried out.

The Group approved the draft agendas for 14-16 May 1997 and 30 June-2 July 1997. The agendas are attached (Annex 1).

The Group also took note of the tentative schedule of further meetings through to January 1998 (Annex 2).

Annex 1

Draft Agendas for May and June 1997

14 - 16 May 1997

1. Contributions from Delegations
2. Report to OECD Ministerial meeting
3. Draft Ministerial Declaration
4. Participation of Non-Member countries
5. Special Topics
6. Liberalisation and the lodging of country specific reservations

Lunch topic: (15 May) Overview of the Agreement: Main outstanding issues

- 12 May **DG3**

Informal Consultations

- 14 May Institutional Matters
- 14 May Special Topics

30 June - 2 July

1. Contributions from Delegations
2. General Exceptions
3. Exceptions to MFN Treatment
4. DG3 Results and Institutional Matters
5. Reports on Informal Consultations
6. Liberalisation and the lodging of country specific reservations

Lunch topic: (1 July) Overview of the Agreement: Main outstanding issues

DG3^{*}

Informal Consultations^{*}

Special Topics
Financial Matters
Intellectual Property
Dispute Settlement

* Dates to be announced

Annex 2

Tentative Schedule of Meetings*

1997

12-16 May

[26-27 May- Meeting of the OECD Council at Ministerial Level]

30 June-2 July

15-19 September

27-31 October

1-5 December

1998

12-16 January: including High Level Meeting

* Including meetings with Non-Members.