



Negotiating Group on the Multilateral Agreement on Investment (MAI)

**AIDE MEMOIRE OF THE MEETING OF THE NEGOTIATING GROUP
ON THE MAI HELD ON 14-16 MAY 1997**

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The Negotiating Group approved the Report to Ministers and the draft Ministerial Statement annexed thereto which would be submitted to the OECD Ministerial meeting on 26-27 May¹.

The Chairman noted broad support for the proposal that some non-Members become observers in the MAI and for intensifying outreach to others.

With respect to observership criteria, the Chairman concluded that most delegations could accept the criteria of observership in CIME/Trade Committees and written requests to become observers in the Negotiating Group. The Chairman reported that Argentina and Hong Kong had sent written requests to that effect.

Delegations considered the rules which should apply to participation by observers in the Negotiating Group. The Chairman agreed to explore several ways to ensure that non-Members' views be brought to the attention of the Negotiating Group. Documentation should be the same as for the Negotiating Group.

Observership should begin at the September session of the Negotiating Group. The Chairman noted that observers should be represented by government officials responsible for investment policies. There should be no more than two representatives per observer.

Delegations agreed that letters of acceptance be sent to Argentina and Hong Kong. These letters should clearly indicate the basis on which the requests had been accepted and should state the rules for participation by observers, including rules on confidentiality.

The Chairman recalled that countries that are not in a position to become observers may be seriously interested in the MAI, perhaps also in joining the MAI at an early date. The Chairman suggested to begin with a conference in September, bringing together MAI negotiators and officials from non-Members interested in the MAI. Non-Members would have to be willing to send investment policy experts from capitals.

The briefings with embassy representatives in Paris would continue.

The Chairman agreed with a proposal by some delegations that the decisions to intensify outreach be given public recognition, including the decision to hold the September conference.

The Negotiating Group examined the selected policy issues on Monopolies/State Enterprises/Concessions raised in the Chairman' Note [DAFFE/MAI(97)22].

The Chairman noted that a majority of delegations had expressed doubts about the desirability of developing special MAI disciplines on the behaviour of designated monopolies in non-monopolised markets which they saw as an intrusion into competition policy. Some delegations argued, however, that the National Treatment obligation would not capture the adverse effects on foreign investors and their

¹ The Report was derestricted as OECD/GD(97)82. The Ministers Statement on the MAI was annexed to the Ministerial Communique [SG/COM/NEWS(97)45].

investments caused by such monopolistic anti-competitive practices as cross-subsidisation and that this would constitute a significant shortcoming in the MAI. The Chairman concluded that this subject is a particularly difficult one, both from a technical and policy point of view. He invited delegations to pursue their reflection on the proposals made so far and suggested that the Negotiating Group come back to this issue at a later time.

On the subject of the lodging of country-specific reservations at the time of demonopolisation, the Chairman observed that a majority of delegations were inclined to consider a solution similar to the proposal examined in the context of privatisation, namely that Contracting Parties should be allowed, upon entry into force of the MAI, to identify the sectors where they might need to list further reservations in case of demonopolisation. The Chairman also noted that this matter was related to the eventual coverage of the MAI article on the lodging of country reservations (see item 7) and should therefore be revisited by the Negotiating Group when all relevant issues would be more advanced.

Finally, on the subject of concessions, the Chairman felt that this issue had not been discussed sufficiently at the technical level for the Negotiating Group to come to any decision on the need for special provisions on this area. An appropriate step would be to discuss this subject in the framework of an informal expert group which could meet in the fall. He indicated he would submit ideas for the organisation of this group at the next meeting of the Negotiating Group.

The Negotiating Group discussed questions relating to the lodging of country specific reservations, including a proposal by the Chairman that, in parallel to the bilateral discussions on reservations, the Group, in plenary session, look at reservations horizontally - perhaps starting with a group of non-services sectors, in order to assist delegations in understanding the basis or assumptions underlying some reservations.

The Chairman concluded that all delegations recognise the importance of this exercise for the MAI negotiations. He noted the need to continue in parallel both bilateral consultations between delegations on draft lists of reservations and plenary discussions on more general questions encountered by delegations in preparing their own submission or when comparing them with other country submissions. These are mutually beneficial and complementary processes.

The Chairman noted that an important role for plenary discussions is to ensure that delegations proceed on the basis of the same working assumptions and the presentation of reservations follow the same format. It would therefore be useful to set time aside at the next meeting to discuss these matters on the basis of a Chairman's note. This note could take stock of the reservations that have been made so far and note any differences in the working assumptions made by delegations. It could also provide the opportunity to discuss some of the generic or technical issues raised orally or in writing by delegations and which may not have been fully addressed by the Chairman notes on the liberalisation and the lodging of country-specific reservations [DAFFE/MAI(97)11 and DAFPE/MAI(97)14]. The Chairman proposed that the result of this discussion and those that may be pursued in the fall could eventually lead to the elaboration of "guidelines" for the lodging of reservations, as was done in the GATS.

The Negotiating Group also held an initial exchange of views on the draft article on the lodging of country specific reservations elaborated by Drafting Group n°3. The Chairman concluded that there was considerable support for Paragraph A of the Draft Article which embodies the concept of "standstill", although it remained to be determined what categories of non-conforming measures would be covered by it. He also noted that several delegations had, for the same reason, strong reservations about the derogation to this principle provided by Paragraph B while other delegations found it indispensable. The Chairman

noted, in addition, that some of the remarks made were reminiscent of the discussions on demonopolisation and privatisation.

The Chairman invited Drafting Group n°3 to pursue its work on the draft article taking into account proposals made by delegations and to report back to the Negotiating Group.

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At its 30 June-2 July meeting, the Group approved the draft agendas for September and October 1997. The agendas are attached as Annex 1.

Annex 1

Draft Agendas for September and October 1997

15-19 September^{*}

1. Contributions from Delegations
2. Taxation
3. Dispute Settlement
4. OECD Guidelines for Multinational Enterprises
5. Reports on DG3 and Informal Consultations
6. Liberalisation and country specific reservations

Lunch topic: (18 Sept) Relations with Non-Member countries
Overview of the Agreement: Main Outstanding Issues

- 15-16 Sept DG3
- 15-16 Sept Special Topics
- 15-16 Sept Taxation
- 17 Sept Bilateral Consultations
- 17 Sept Conference with Interested Non-Member countries
- Concessions

27-31 October^{**}

1. Contributions from Delegations
2. Special Topics
3. Labour and Environment Matters
4. Conflicting Requirements and Related Matters
5. Reports on DG3 and Informal Consultations
6. Liberalisation and Country Specific Reservations

Lunch topic: (28 Oct) Relations with Non-Member countries
Overview of the Agreement: Main Outstanding Issues

- 27 Oct DG3
- 28-29 Oct Intellectual Property
- 30 Oct Meeting with Non-Member countries
- 30 Oct Meeting with NGOs on Environment
- 30-31 Oct Bilateral Consultations
- Concessions
- Financial Matters

* The Negotiating Group will meet in plenary only on 18-19 September

** The Negotiating Group will meet in plenary only on 28-29 October