



Negotiating Group on the Multilateral Agreement on Investment (MAI)

ACCESSION OF NON-MEMBER COUNTRIES

(Note by the Chairman)

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1. OECD Ministers agreed that the MAI will be a free standing international treaty, open to accession by non-Members countries. Delegations will need to consider what kind of an accession process they wish to develop for the MAI and to what extent accession rules should be included in the MAI. They may also wish to consider actions to facilitate non-Member accession.

2. In formulating an accession process for non-Members, the question arises "which non-Members"? The accession process might be open to all countries that are willing and able to take on the MAI obligations. MAI Parties could also potentially identify countries according to a set of criteria to be agreed by the Parties. This could involve a preliminary assessment of a country's investment policies to determine whether it is likely to meet the accession criteria.

Accession procedures

3. Applicant countries would be expected to aim as high as possible in their accession bids to the MAI. This might imply the definition of a "standard" against which to assess eligibility. Standards might be either qualitative, quantitative, or both. An example of a quantitative standard would be the setting of core conditions, such as investment protection obligations and dispute settlement procedures, which countries would be expected to comply with fully. Qualitative standards would focus more on the nature and type of an applicant country's proposed list of reservations. This could be based, for example, on the overall number of proposed reservations, the type of reservations, or the sectors in which the reservations are found.

4. Besides the issue of how to define the standards, questions relating to their application would also arise. Would countries be required to match the "highest" standards set by existing Parties or should they be expected only to do no worse than the "lowest" standards? Could a "benchmark" standard be developed?

5. An examination procedure might help MAI Parties in determining whether the "standard" has been met by providing a country the opportunity to explain its foreign investment policies and by allowing an applicant country to negotiate the terms of its entry.

6. Once the accession procedures were completed, the Parties could decide on accession on the basis of unanimity, consensus (possibility for a country which does not agree to abstain), a qualified majority, or any other basis acceptable to the Parties.

Transition and Assistance

7. Non-OECD countries acceding to the MAI would be expected to meet high standards of compliance. In particular, they might be expected to accept all the obligations on investment protection and participate fully in the dispute settlement regime from the outset. However, each country would have the opportunity to lodge reservations to the national treatment and MFN obligations. Non-OECD countries might also be permitted, for example, to lodge balance of payments derogations on the free transfer of funds. Transition periods, as well as temporary reservations to be phased out over time, could serve to accommodate specific needs of developing countries.

8. In connection with MAI accession, the Parties Group could consider providing interested countries with policy advice and assistance on how to bring their laws and policies in line with the standards of the agreement. Depending on available resources, such countries could be provided access to the Organisation's assistance activities on investment promotion and private sector development. These activities which have been developed for transition economies are in the process of being extended to other countries and include tax and financial sector reform, privatisation, foreign direct investment and competition policy.

Questions:

- a) Should accession be open to any country willing and able to meet the obligations of the MAI or should additional criteria apply?
- b) Is it desirable and feasible to define a "standard" for accession to the MAI? On what basis should such a standard be formulated - in terms of "core conditions" which non-Members would be expected to adopt, or in terms of an acceptable level of reservations, or a combination of the two?
- c) Should accession standards and procedures be set out in an accession provision in the MAI, perhaps supplemented by guidelines to be agreed by the Parties Group? Should the MAI explicitly provide for the voting rules concerning accession or should the matter be left to the Parties Group as part of their rules of procedure?