



Negotiating Group on the Multilateral Agreement on Investment (MAI)

**MULTILATERAL AGREEMENT ON INVESTMENT
DRAFT PROGRESS REPORT TO MINISTERS**

SUMMARY

In May 1995, OECD Ministers agreed to negotiate a multilateral agreement on investment. The agreement would build on the experiences with the existing OECD investment instruments, consolidate the results achieved, and create new disciplines in order to provide a comprehensive framework for international investment. It would set high standards for investment liberalisation and investment protection and contain dispute settlement procedures. A Negotiating Group¹ has been working towards the objective of reaching an agreement by Spring 1997 for submission to the OECD Council at Ministerial level.

Overall, the negotiations are on course. Most substantive issues have been examined and a framework for the MAI is evolving. Rapid progress was made in the area of investment protection. There is agreement that the MAI will provide comprehensive coverage through a broad definition of investors and investments. Key provisions on national treatment, MFN, and transparency are well advanced. Mechanisms for standstill and rollback and for the listing of country specific reservations have been identified as have the main components of a dispute settlement mechanism, both state-state and investor-state.

However, much remains to be done. In areas where texts have been developed, some outstanding issues remain. Discussions aimed at raising the level of liberalisation need to be deepened. Taxation aspects of the MAI and the scope for new or increased disciplines need further consideration. Issues relating to the application of the MAI at different levels of government need to be resolved. Measures taken in the context of regional economic integration organisations have to be discussed. Consultations to inform non-Member countries as negotiations proceed and to solicit their views need to be intensified.

Some difficult choices remain. Certain issues might only be resolved in the final phase of the negotiation, but work should progress to identify possible solutions. The next phases of negotiations will require a spirit of creative compromise to ensure the full achievement of the objectives set by Ministers last May. Maintaining the present momentum will be decisive in achieving an agreement by the 1997 Ministerial.

Ministers are invited to:

- welcome the progress made so far in the negotiation of a Multilateral Agreement on Investment;
- reaffirm their determination to conclude an agreement by the Ministerial meeting in 1997, with high standards of investment liberalisation and protection and effective dispute settlement procedures, and which goes beyond existing commitments to achieve a higher level of liberalisation; and
- underline the importance of engaging non-Member countries in a dialogue aimed at encouraging them to become parties to the MAI.

¹ Chaired by Mr. Frans Engering (Netherlands); Mr. Alan P. Larson (United States) and Mr. Akitaka Saiki (Japan) are vice-chairmen.

Results So Far

1. The Negotiating Group began negotiations in September 1995. All OECD Member countries and the Commission of the European Communities take part in the negotiations. The WTO is a permanent observer in the Negotiating Group and on occasion participates in technical discussions at expert group level. The IMF and ICSID (International Center for the Settlement of Investment Disputes) have also attended meetings of the drafting or expert groups as observers.

2. The following paragraphs provide a brief description of the topics which have been examined so far.

a) definitions and scope of the MAI

3. The aim is that the MAI should provide comprehensive coverage through a broad definition of investors and investments even if there are some limits in how the definition would apply to certain MAI obligations.

b) the treatment of investors and investments

4. National treatment, non-discrimination/MFN and transparency obligations are designed to apply to both pre and post-establishment. Mechanisms have been identified to achieve standstill and rollback and to list country specific reservations which are essential to liberalisation. General exceptions to the basic obligations of the agreement, in particular national security, are under consideration, but it is necessary to avoid abusive recourse to these provisions.

c) special topics

5. Going beyond existing liberalisation commitments means breaking new ground in areas not covered, or only partially covered, by other international agreements bearing on investment matters. Examples exist for dealing with issues such as key personnel, performance requirements, and monopolies and state enterprises. More innovative will be any MAI disciplines on privatisation, investment incentives, and corporate practices.

d) investment protection

6. OECD Member countries drew upon their considerable collective experience in negotiating bilateral investment protection treaties to design a high standard investment protection text which was submitted to the Negotiating Group in December 1995. This includes provisions on the general standard of treatment, compensation in the event of expropriation, protection from strife, free transfer of funds and subrogation.

e) state-state and investor-state dispute settlement

7. Most investment disputes that might arise under the MAI should be settled in an amicable manner and procedures to encourage amicable solutions would be an important feature of the MAI's dispute settlement mechanism. However, binding state-state and investor-state arbitration would be available to ensure effective recourse for breach of the agreement by any contracting party. In this area, the interface with WTO dispute settlement procedures is of particular importance.

f) the treatment of taxation issues under the MAI

8. Issues arising at the interface between MAI obligations and tax policy concerns are currently being addressed.

g) Accession by non-Members

9. The MAI will be a free standing international treaty, open to accession by non-Members countries. Accession procedures for the MAI and what actions could be taken to facilitate non-Member accession are being considered.

Outreach activities

10. The Negotiating Group is engaged in an active programme of seminars and informal consultations to provide information on the negotiations and to hear the views of non-Members. Consultations are carried out through a wide range of mechanisms, including the "policy dialogue workshops" with nine dynamic non-OECD economies of Asia and Latin America, and the Emerging Market Economy Forum launched this April. Most of the countries of Central and Eastern Europe and the former Soviet Union are also informed through the OECD Advisory Group on Investment. The Russian Federation is briefed through the special Investment Expert Group. A meeting with Latin American countries will take place in Rio de Janeiro in July.

Future Work

11. Following the Ministerial meeting, the Negotiating Group will start work on the issues arising from the integration of the different elements identified so far. In doing so, it will try to negotiate the remaining square brackets in the texts which have been presented. The Negotiating Group needs to complete the work on taxation measures and on special topics. Definitive solutions on questions concerning the scope of the dispute settlement mechanism, the application of the agreement at different levels of government, or the treatment of measures taken in the context of REIOs are not expected at this stage, but broad solutions should be identified.

12. The Negotiating Group must also address a number of important issues relating to the institutional framework for implementing the MAI, including the role of a "Parties Group"; and the relationship between existing OECD instruments -- the Codes of Liberalisation and the 1976 Declaration and Decisions on International Investment and Multinational Enterprises.

13. In its discussion of issues relating to intellectual property, investment incentives, and dispute settlement, the Group has been sensitive to concerns of potential overlap with other international agreements such as TRIPS, TRIMS, the WTO/GATS. The Group will examine the issue of overall relationship between the MAI and other international agreements, including bilateral investment protection treaties, when MAI obligations have been decided.