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**Negotiating Group on the Multilateral Agreement on Investment (MAI)**

**SUMMARY RECORD**

**Meeting on 24-27 March 1997**

# NEGOTIATING GROUP ON THE MULTILATERAL AGREEMENT ON INVESTMENT

## SUMMARY RECORD

24-27 March 1997

### 1. Adoption of the Agenda

The Group adopted the agenda [DAFFE/MAI/A(97)3].

### 2. Approval of the Summary Record of the meeting held on 26-28 February 1997

The Group approved the Summary Record [DAFFE/MAI/M/(97)2].

### 3. Report by:

#### a. Drafting Group 3

Mr. Gero reported on the consultations which took place on 24-25 March on intellectual property [DAFFE/MAI(97)13]. He noted that the discussion had clarified delegations' positions and begun a process of technical analysis that might permit the MAI to offer value-added in the field of Intellectual Property Rights while avoiding conflict with existing international agreements in this area. Further discussions on intellectual property would be needed before the experts could make recommendations to the Negotiating Group.

Drafting Group 3 had met on 26 March. Mr. Ahnliid reported that the Drafting Group had had a first discussion of text on the lodging of country specific reservations. The Drafting Group had also produced draft text with alternatives on a provision calling on countries not to lower labour and environmental standards in order to attract investment.

#### b. EG2 on the Treatment of Tax Measures in the MAI

Ms. Ryckman, presented the report of Expert Group 2 [DAFFE/MAI/EG2(97)1]. She noted that the report recommends that all tax matters be dealt with in a single article of the MAI. On behalf of the EG2 Chairman, Ms. Ryckman suggested that if agreement could be reached to exclude tax measures from the national treatment obligation, other issues covering taxes could be quickly resolved.

The Chairman thanked EG2 for its work but noted that delegations had not yet had sufficient time to fully consider the report. He nevertheless invited delegations to offer preliminary comments, after a brief exchange of views. He noted the contribution by one delegation [DAFFE/MAI/RD(97)28] but concluded that most delegations were unprepared for a substantive debate and therefore reconfirmed the Negotiating Group's earlier decision to deal with the report only at the April session of the Negotiating Group.

#### c. EG5 on Financial Services Matters

Expert Group No. 5's report [DAFFE/MAI/EG5(97)4] was presented by Mr. Ley, on behalf of the Chair who was unable to attend. The report includes agreed text for many financial services issues, but there remain unsettled questions. The experts would be ready to further discuss these questions.

The Chairman thanked EG5 for the report. He took note of EG5's readiness to continue informal consultations on remaining issues, in particular the scope of a safeguards derogation, and public debt. While the Expert Group as such would no longer exist, continued work by financial experts on specific issues in the format of informal consultations might be productive.

#### **4. Selected Issues:**

##### **Special Topics**

Mr. Ahnliid summarised the results of the informal discussion on Special Topics held on 24-26 March [DAFFE/MAI/ST(97)9].

The Chairman noted that important progress has been made in many areas and circulated a list of questions with a view to finding solutions to some of the outstanding issues [DAFFE/MAI(97)17]. He invited delegations to consider these proposals and to address the issues at the next session of the Negotiating Group. He noted that informal discussions should continue, in particular on monopolies/concessions where more work is needed before these questions could usefully be addressed by the Negotiating Group.

##### **Institutional Matters**

Mr. Bridge reported that delegations had held informal consultations on 26 March on institutional matters and had succeeded in refining the draft MAI texts on implementation and operation of the MAI [DAFFE/MAI/IN(97)3].

The Chairman concurred that further policy consideration needs to be given to the question of decision making by the Preparatory and Parties Groups.

#### **5. Dispute Settlement**

Informal consultations on dispute settlement took place on 24-25 March. Mr. Baldi reported that the experts had produced a comprehensive text on all aspects of dispute settlement, state-to-state and investor-state [DAFFE/MAI/DS(97)4]. Three major outstanding questions remained:

- countermeasures against States which do not respect arbitral awards [DAFFE/MAI/DS(97)5];
- recourse to MAI dispute settlement to enforce obligations arising from investor-state contracts;
- liability of the Community and its Member states for measures arising from Community acts.

The Negotiating Group held an extensive discussion on the status to be given to the texts generated by the Experts. It was finally agreed to include the texts into the Consolidated Text and Commentary with appropriate introductory language as follows:

“It is understood that for a number of delegations further work is needed on dispute settlement. In particular; different options remain in the field of multilateral consultations and scope of dispute settlement. The present text has been prepared by the Chairman of the Expert Group on Dispute Settlement on the basis of the discussions in the Group. It needs to be discussed by the Negotiating Group.” [DAFFE/MAI(97)12]

## **6. Liberalisation and Lodging of Country Specific Reservations**

The Chairman remarked that almost all countries had now submitted their draft lists of reservations available and that these submissions, for the most part, confirmed the basic working assumptions of the agreement - the top-down approach and standstill. Nevertheless there were important differences in countries' approaches to the listing of reservations. The Chairman thought that there was a need to increase transparency and harmonisation and the additional note by the Chairman [DAFFE/MAI(97)14] addressed this concern, as well as specific questions raised by seven delegations in their written contributions [ (DAFFE/MAI/RD(97)17, (DAFFE/MAI/RD(97)18, (DAFFE/MAI/RD(97)19, (DAFFE/MAI/RD(97)21, (DAFFE/MAI/RD(97)22, (DAFFE/MAI/RD(97)24, (DAFFE/MAI/RD(97)26].

In closing the discussion of these matters, the Chairman concluded that the debate had provided useful insight on conceptual issues arising with respect to the lodging of reservations. It is clear that efforts are required to present country reservations in a coherent manner circumscribing non conforming measures as narrowly as possible. The Chairman proposed that future meetings of the Negotiating Group - in plenary or through a sub-group - focus more closely on the following categories:

- reservations lodged in the area of services and their relations with GATS commitments;
- MFN exceptions and reciprocity requirements;
- reservations relating to new disciplines.

The question of admitting special treatment for certain measures - i.e. exemption from standstill and rollback - will require particular attention, including which measures might qualify for special treatment and under what conditions.

The Chairman thought some countries might be in a position to review their lists of reservations in light of these discussions.

## **7. Other Issues**

The Negotiating Group noted the contribution by 5 delegations requesting special coverage for integrated labour markets in the MAI [DAFFE/MAI/RD(97)27].

The Negotiating Group took note of the letter from BIAC dated 24 March and Comments on the Consolidated Texts of the MAI by the BIAC Expert Group [DAFFE/MAI/RD(97)29].

## **8. Next Steps/Other Business**

### **a. Future meetings**

The Group approved the draft agendas for 22-25 April and 13-16 May 1997 [DAFFE/MAI/RD/(97)23]. The agendas are attached as Annex 1.

### **b. Revised mandate for DG3**

The Negotiating Group approved the revised mandate for DG3 as set out in Annex 2.

## Annex 1

### Draft Agendas for April and May 1997

#### 22-25 April 1997

1. Taxation Matters
2. Contributions from Delegations
3. Special Topics
4. Financial Services Matters
5. Liberalisation and the lodging of country specific reservations

Lunch Topic: (23 April) Overview of the Agreement: Main outstanding issues  
Preparation of OECD Ministerial Meeting

#### **Drafting Group**

April 24-25            DG3

#### **Informal Consultations**

April 14-15            Financial Matters  
April 21                Special Topics  
April 21                Institutional Matters  
April 22-24            Other topics to be announced

#### 13 (p.m.)-16 May 1997

1. Contributions from Delegations
2. Dispute Settlement
3. DG3 Results and Institutional Matters
4. Liberalisation and the lodging of country specific reservations
5. Report to OECD Ministerial meeting
6. [Other issues]

Lunch topic: (14 May) Overview of the Agreement: Main outstanding issues

#### **26-27 May: OECD Ministerial Meeting**

Annex 2

**REVISED MANDATE FOR DRAFTING GROUP N° 3**

1. The Drafting Group, open to the participation of all delegations, is charged with drafting proposed solutions to the outstanding issues in the consolidated texts and commentaries.
2. The Group will report to the Negotiating Group as appropriate.