



Negotiating Group on the Multilateral Agreement on Investment (MAI)

SUMMARY RECORD

Meeting on 3-5 December 1997

NEGOTIATING GROUP ON THE MULTILATERAL AGREEMENT ON INVESTMENT

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1. Adoption of the Agenda

The Negotiating Group adopted the agenda [DAFFE/MAI/A(97)9].

2. Approval of the Summary Record of the meeting held on 29-30 October 1997

The Group approved the Summary Record [DAFFE/MAI/M(97)8].

3. Contributions from Delegations

The Chairman noted contributions from one delegation on Special and Differential Treatment for Developing Countries [DAFFE/MAI/RD(97)56] and one other delegation on Article X on REIO [DAFFE/MAI/RD(97)59] and Increasing the Clarity of Reservations: A Procedural Suggestion [DAFFE/MAI/RD(97)60].

4. Progress in Informal Consultations and DG3

Concessions [DAFFE/MAI/ST(97)14]. Mr. Varkonyi held an informal consultation on concessions on 1 December. He reported that many delegations could accept a draft proposal by one delegation as a basis for clarifying the treatment under the MAI of the granting of authorisations for the prospection, exploitation and production of minerals, including hydrocarbons. Some delegations had reserved their positions to allow time for scrutiny in capitals.

The Group agreed on a further round of consultations to resolve this issue.

Special Topics [DAFFE/MAI/ST(97)14]. Mr. Anhlid noted that progress continued to be made on the refinement of texts on special topics. For some issues, delegations were close to finalising agreements and other issues had been taken as far as possible in the context of technical discussions. He proposed that one additional consultation be held to try to finalise some of the outstanding matters.

The Group agreed that informal consultations on special topics should be held in January to produce a final report.

Intellectual Property [DAFFE/MAI/IN(97)2]. Mr. Gero introduced the report on intellectual property issues summarising the results of the informal consultations on 2 and 3 December. Delegations continued to refine text in certain areas and examined a proposal which would have the effect of isolating the economic aspects of IPRs for coverage by the MAI, leaving substantive IP obligations to existing international IPR regimes.

The Group agreed that IP experts should continue their discussions and make appropriate proposals to the Negotiating Group.

Taxation. Mr. Suganuma presented the results of his informal consultations on taxation matters held on 4 December which could be the basis of an agreement for the treatment of taxation in the MAI.

The Chairman recalled the working hypothesis on taxation that had been accepted by the Negotiating Group. He also noted that some delegations were still considering the need for an interpretative note to deal with the dispute settlement element of that hypothesis. He thanked Mr. Suganuma and encouraged delegations to study the results of this latest round of consultations before this is taken up again in the Negotiating Group

Professional Services [DAFFE/MAI(97)35]. Informal consultations were held on 3 December. Mr. Karl reported that delegations had examined whether or not certain requirements relating to the provision of professional services through an investment in a host country would be regarded as consistent with the obligations of the agreement. These consultations provided additional clarification as to the necessity of lodging country specific exceptions. Delegations stressed however that the need to lodge an exception will require in many instances a case by case examination by the Contracting Party.

The Chairman thanked Mr. Karl for this report and noted that the clarifications could provide further guidance in the lodging of country specific exceptions in the way that the Chairman's Guidelines are intended. A few delegations have remaining questions and the Chairman proposed that Mr. Karl handle these in a flexible manner and come back to the Negotiating Group with any further clarifications.

Drafting Group 3 [DAFFE/MAI/DG3(97)19] The Group met on 4 December . Its chairman, Mr. Sikkel, reported that good progress had been made on the article on the lodging of country specific exceptions. Much of the technical work had been done and the Group was ready to submit an article and some policy choices. Article A will have an automatic ratchet effect under which the schedule of non-conforming measures can be amended only in the direction of liberalisation and once restrictions have removed, they cannot be restored.

There are some policy choices for consideration by the Negotiating Group, in particular, whether it is necessary for a country to notify any change in its legislation and to amend the annex of measures accordingly; the role of the Parties Group in any notification process; and how to deal with errors and omissions in good faith.

Mr. Sikkel's report on Drafting Group 3's examination of labour and environment matters is recorded under item 5, below.

5. Labour and Environment

The Chairman noted that these issues are assuming increasing importance for many delegations which are prepared to give further consideration to ensuring that the MAI will account for concerns about the environment and labour standards in an appropriate manner. Most delegations believe specific treatment for either or both these issues is required. A few delegations disagree.

The Negotiating Group examined the Secretariat note [DAFFE/MAI(97)33] on the relationship between FDI and the environment. The Chairman noted the favourable comments by delegations and agreed to provide a short period for any written comments or suggestions. He agreed with the proposal by some delegations that the revised paper be made publicly available and posted on the Internet.

As part of the conclusions on labour and environment agreed at the last meeting of the MAI [DAFFE/MAI/M(97)8, annex 1] the Chairman reminded delegations that the Negotiating Group is expecting a report in January on the national reviews of the implications for the MAI for domestic legal regimes on the environment and labour. The Secretariat is also preparing for the January meeting of the

Negotiating Group an analysis of the relationship between the MAI and existing and proposed multilateral environmental agreements.

The chairman of Drafting Group 3, Mr. Sikkel, reported on the Group's work on draft text on labour and environmental matters. The Group is refining the "three anchor" approach (preambular language; language in the text (particularly proposals for a "not lowering standards" article along the lines of NAFTA 1114(2)); and association of the OECD Guidelines on Multinational Enterprises with the MAI). It is preparing options for text that reflect the policy choices the Negotiating Group must make for treatment of these matters, including a clause taking into account Article XX in the GATT paragraph 4 in the Draft MAI article on Performance Requirements and NAFTA paragraph 1114(1). The Group is giving further consideration to the proposal that environment and labour be treated separately in the text.

Mr. Sikkel also called attention to a matter raised in the Group concerning the risk that the current draft on expropriation in the Consolidated Text might unintentionally expose normal governmental regulations to dispute settlement claims by investors. The Chairman of the Negotiating Group agreed that this issue should be taken up at the January meeting.

6. Guidelines for Multinational Enterprises

Mr. Bridge noted that he had had some informal contacts with a number of delegations on principally three outstanding issues, i.e., the language of the preamble, the question to which document the Guidelines should be annexed, and the designation of national contact points. In his view, there continues to be a significant majority for a particular solution, with minority positions. He reported that he is continuing to seek consensus on the first issue. On national contact points, delegations are close to consensus that Contracting Parties should be obliged to nominate national contact points. The remaining issue is the annexation of the Guidelines, including a more technical issue of how to take account of revisions of the Guidelines without formal amendment of the agreement. Mr. Bridge was consulting some delegations with the text of a possible solution which might, for some delegations, resolve the overall question of the location of the Guidelines text.

The Chairman concluded that Mr. Bridge should continue informal consultations on institutional matters particularly to take account of country positions on the possible solutions. These consultations should also look at procedures concerning accession of non-Members and any other institutional matters that may need to be dealt with before the end of the negotiations and what could be mandated to the Preparatory Group.

7. Exceptions, Derogations and Reservations

This item was extensively discussed at the Heads of Delegations lunch (3 December) which focused on the political questions that need to be resolved in finding a satisfactory solution to the overall set of issues concerning exceptions to MAI obligations. These matters will be pursued in January.

The Negotiating Group also examined a proposal by one delegation [DAFFE/MAI/RD(97)60] to clarify the scope and content of measures underlying the preliminary lists of country specific exceptions. The Chairman noted that there was support for this proposal.

The Negotiating Group agreed to set up a technical group to examine selected issues raised by country specific exceptions. This Group would meet in January to carry out its specific mandate (see item 8, below).

8. NEXT STEPS/OTHER BUSINESS

a) Next Steps

The Negotiating Group decided to set up a Technical Group on Selected Issues Raised by Country Specific Exceptions. The mandate is set out in Annex 1.

b) Future Meetings

The Group agreed to meet with the investment policy experts from the Baltic countries on 15 January to discuss the MAI. Consultations with business and labour representatives would also be held on that day. A briefing with NGOs was scheduled for 16 January.

The Group approved the draft agendas for 12-16 January and 16-20 February [DAFFE/MAI/RD(97)61]. Some delegations indicated that they would welcome the opportunity to discuss dispute settlement issues at the Negotiating Group or at the Heads of Delegations lunch. They recommended that further informal consultations be held on these matters.

The agendas are attached as Annex 2.

Annex 1

Technical Group on Selected Issues Raised by Country Specific Exceptions

Mandate:

1. To clarify the scope and content of measures underlying the preliminary lists of country specific exceptions, taking account of their practical application.
2. In particular, the task of the Group would be to clarify:
 - a. the scope and content of exceptions;
 - b. how measures are applied;
 - c. the scope for changing the scope of measures.
3. The work of the Group would be organised by categories or sectors of exceptions.
4. The Group would base its work primarily on contributions from delegations, with technical support by the Secretariat.
5. The work of the Group would be without prejudice to the position of delegations with respect to exceptions.
6. The Group would meet in January 1998 and report to the Negotiating Group at its February meeting.

Chair: Mr. Colm Treanor (Ireland)

Annex 2

Draft Agendas for January and February 1998

12-16 January 1998

1. Contributions from Delegations
2. Progress in DG3 and Informal Consultations
3. Financial Services
4. Labour and Environment Matters
5. Conflicting Requirements
6. Contributions from Observers

Extended Lunch (14 January) Preparation of the High Level meeting, Exceptions and Dispute Settlement

- 12-13 Jan Bilateral Consultations
- 12 Jan (pm) Concessions
- 12(am)-13 Jan Special Topics
- 13-14 Jan Intellectual Property
- **14 Jan Negotiating Group in Plenary**
- 15 Jan Working Lunch with Baltic Countries
- 15 Jan (am) Consultations with Labour
- 15 Jan (pm) Consultations with Business
- 15 Jan (am) Institutional Matters
- 15 Jan DG3
- **16 Jan (am) Negotiating Group in Plenary**
- 16 Jan (pm) Consultations with NGOs
- 19-20 Jan DG3
- 21-23 Jan Country Specific Exceptions

16-20 February 1998

1. Contributions from Delegations
2. Progress in DG3 and Informal Consultations
3. Contributions from Observers
- [4. Other items to be added]

- **16-17 Feb High Level Meeting**
- 16-17 Feb Intellectual Property
- **18 Feb Negotiating Group in Plenary**
- 19 Feb Bilateral Consultations
- 19 Feb DG3^{*}
- **20 Feb Negotiating Group in Plenary**
- Financial Services

Extended Lunch 18 February : Follow-up to the High Level Meeting

*. DG3 may continue on 23-24 February

TENTATIVE SCHEDULE OF MEETINGS

12-16 January

16-20 February: including High Level Meeting (16-17 February)

16-20 March

14-17 April

[For Information: 27-28 April - OECD Council at Ministerial Level]