



Negotiating Group on the Multilateral Agreement on Investment (MAI)

SUMMARY RECORD

Meeting on 17-19 March 1998

NEGOTIATING GROUP ON THE MAI

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1. Adoption of the Agenda

The Negotiating Group adopted the agenda [DAFFE/MAI/A(98)4].

2. Approval of the Summary Record of the meeting held on 19 February

The Group approved the Summary Record [DAFFE/MAI/M(98)2].

3. Contributions from Delegations

The Chairman noted contributions by: one delegation on the relationship between the MAI and domestic environmental laws [DAFFE/MAI/RD(98)15] and the application of the dispute settlement procedure to pre-investment disputes [DAFFE/MAI/RD(98)18], by one other delegation on “Labour and Environment” (Not Lowering Standards) [DAFFE/MAI/RD(98)16] and Response to Non-Compliance - Suggestion for Dispute Settlement Experts [DAFFE/MAI/RD(98)21], by one delegation on the Adherence to the MAI by Non-Members, including in particular Developing Countries [DAFFE/MAI/RD(98)19] and Investor-State Procedures, Article D, paragraph 3 - Contracting Party Consent [DAFFE/MAI/RD(98)20]

4. Contributions from Observers

One delegation informed the Negotiating Group that its government had taken the decision to present a preliminary list of country specific exceptions [DAFFE/MAI/NM(98)6]. The representative reaffirmed his government’s interest in the MAI and their readiness to make a constructive contribution to the negotiations.

5. Progress in Informal Consultations and DG3

Mr. Sikkel reported that the meeting of **DG3** on 20 January, had focused on labour and environment matters in the MAI. The results are reflected in the DG3 report to the Negotiating Group [DAFFE/MAI/DG3/M(98)3] ^{*}.

The Technical Group on country specific exceptions, chaired by Mr. Treanor, met on 16-17 March. Its report [DAFFE/MAI/EX(98)26] was submitted to the Negotiating Group

* The Group also met on 19 March to discuss matters relating to the article on the lodging of country specific exceptions.

The Negotiating Group also noted the reports of the informal consultations on institutional matters held on 20 February 1998 [DAFFE/MAI/IN(98)1] and on dispute settlement on 23-24 February 1998 [DAFFE/MAI/DS(98)1].

6. Environment and Labour

a) Reports on national environmental reviews

Four delegations [DAFFE/MAI/RD(98)13, DAF/MAI/DG3/RD(98)9, DAF/MAI/RD(98)15 and DAF/MAI/RD(98)17] reported on their national environmental reviews. The Chairman invited other delegations to report at the next meeting of the Negotiating Group.

b) Environment, labour and related matters

The Negotiating Group considered the note by the Chairman [DAFFE/MAI(98)10] and the package of proposals annexed thereto. The Chairman explained that the package should define the contours of how the MAI will deal with environment and labour. He suggested that any additional elements could be captured in a political declaration accompanying the adoption of the MAI. The Chairman concluded that whereas some delegations could not support all the seven elements of the proposed package, a large majority expressed support for the overall approach and believed that it could be a basis for further work. He noted that some delegations would prefer to treat environment and labour questions separately but that the majority wanted them examined in parallel. He also noted that there were different views on the language to be used.

The Negotiating Group also discussed the “status” of the proposed package and its possible release to the public. While some delegations expressed caution in releasing prematurely proposals which have not been fully agreed, there was also support for the view that this issue is part of a public debate and that the Consolidated Text, as it stands, does not accurately reflect the state of discussions on these matters. It was agreed that the Chairman’s note on environment and labour could be annexed, without modification, to the Consolidated Text when next revised.

The Chairman also reminded delegations that the revised Secretariat paper “Relationship between the MAI the Selected Multilateral Environmental Agreements (MEAs) [DAFFE/MAI(98)1/REV1] had been issued for further consideration and comment.

7. Liberalisation and Exceptions

a) Interface of GATS and MAI

The Chairman noted that all delegations agreed with the analysis contained in his note [DAFFE/MAI(98)11]. There was also a large majority that did not think that it necessary to include in the MAI a specific provision addressing the relation between the MAI and the WTO.

The Chairman concluded that there was an overall consensus that there should be no general carve-out from national treatment obligations on services covered by the GATS. Each country should examine its own particular circumstances and limit its exceptions as far as possible so as to maximise their commitment to liberalisation in the MAI while preserving necessary freedom for future services negotiations.

b) Departures from Standstill

The Negotiating Group discussed the note by the Chairman [DAFFE/MAI(98)13]. The Chairman noted that most delegations welcomed the proposal for technical annexes on specific topics where other international agreements apply to some aspects of investment. These solutions follow the principle of maximising the liberalisation possibilities of the MAI while avoiding interference with the functioning of other international agreements. This would be the approach, for example, for the annex on air transport. A different solution could be considered for exceptions for preferential policies favouring aboriginal or other minorities where each country concerned would define the precise scope of the exception needed. The Chairman proposed that the Technical Group on country specific exceptions be invited to further study these questions.

8. Selected issues on dispute settlement

The note by the Chairman [DAFFE/MAI(98)12] set out a package of proposals for specific issues on dispute settlement which were addressed by the Negotiating Group. The Chairman concluded that although some countries were prepared to accept the proposals as a package, for most other delegations these issues still needed further discussion.

The Chairman noted that the proposal for language regarding the initiation of state-state dispute settlement (“ripeness”) was well received by many delegations in the spirit of compromise, even if a few delegations expressed a preference for the language in the present Consolidated Text. On the issue of counter-measures for non-compliance with an arbitral award, views were more divergent. The Chairman invited Mr. Baldi to continue informal consultations to seek a compromise based on his proposal, perhaps reinforced with more procedural limitations. Informal consultations should also further discuss whether the MAI should provide for the creation of an appeals body.

9. Conflicting Requirements

The Negotiating Group heard reports on the continuing bilateral discussions on the issues relating to conflicting requirements.

10. Next Steps/Other business

a) *Next Steps*

The Group adopted a supplementary mandate for the Technical Group on Selected Issues raised by country specific exceptions. This Group would meet in April and report to the Negotiating Group. (See Annex 1). The Negotiating Group decided to invite the Baltic countries to attend the April session of the Technical Group as observers.

b) *Future meetings*

The Group approved the draft agenda for April 1998 [DAFFE/MAI/RD(98)22]. The agenda is attached as Annex 2.

Annex 1

Technical Group on Selected Issues Raised by Country Specific Exceptions

Supplementary Mandate

1. To carry forward the technical analysis of possible annexes in the MAI on issues arising from international agreements, including:
 - a. air transport
 - b. land transport
 - c. maritime transport
 - d. fisheries
 - e. aboriginal/minority affairs
2. The work of the Group should take account of the March discussion in the Negotiating Group.
3. Paragraphs 1-5 of the Group's existing Mandate remain in effect.
4. The Group will meet in April 1998, under the chairmanship of Mr. Robin Morgan (United Kingdom), and report to the Negotiating Group at its April meeting.

Annex 2

Draft Agenda

14 (pm) - 16 April 1998

1. Report to Ministers and Draft Ministerial Statement
2. Contributions from Delegations
3. Contributions from Observers
4. Chairman's proposals
 - a. Scope and Application
 - b. Treatment and Protection of Investors and Investments
5. Liberalisation and Exceptions
6. Conflicting Requirements
7. Next Steps

HOD Lunch 15 April: Main Outstanding Issues

14-15(am) April - Country Specific Exceptions

27-28 April - OECD Council Meeting at Ministerial Level

Possible Future Meeting Dates^{*}

June/July

September

December

* Subject to change in light of discussion at the OECD Council Meeting at Ministerial Level.