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

**FOLLOW-UP TO THE PROPOSAL BY ONE COUNTRY FOR AN  
ENVIRONMENTAL REVIEW OF THE MAI**

**(Non-Paper from one country)**

## **Follow-up to the Proposal by one country for Environmental Review of the MAI**

### **(Non-Paper from one country)**

#### **Introduction**

There have been continued calls for environmental review of the MAI from various quarters outside the negotiations, most recently during the meeting with NGOs on 27 October.

At the last meeting of the Negotiating Group, one country formally proposed an environmental review of the MAI (DAFFE/MAI/RD(97)43). It suggested that such a review might have three aims: informed policy co-ordination in capitals before MAI signature by Parties; reassurance to NGOs and concerned citizens that environmental implications of the MAI were being considered; and to enable adjustments to the final text of the agreement, if necessary. The proposal posed six specific questions that could be addressed by an environmental review.

Some delegations expressed support for the proposal, but there were also reservations about the practicality of the task, particularly given time constraints. There were questions about methodology and about who would conduct such a review. It was suggested that the objectives of such a review needed to be identified in greater detail for the Negotiating Group to consider how to proceed.

The purpose of this paper is to reflect further on this issue and provoke thinking among delegations about such an exercise, how it might be conducted and by whom, and to propose a way forward.

#### **Timing**

Environmental reviews are planning processes designed to inform decision-makers. By definition, environmental reviews need not await a final decision on completion of project design, or policy drafting.

Given the MAI negotiating deadline, an MAI review would clearly need to begin soon.

#### **Role of OECD Members and OECD Secretariat**

In initial response to the country's proposal at least one Delegation suggested that it was incumbent upon OECD members to conduct their own reviews of the environmental implications of the MAI. This is consistent with the OECD Council recommendation in June 1993 that Member governments "examine or review trade and environmental policies and agreements with potentially significant effects on the other policy area early in their development to assess the implications for the other policy area and to identify alternative policy options for addressing concerns". In a narrow sense, the first of the six questions set out in this country proposal could only be answered by MAI Parties through their own internal reviews. These would account for possible effects at a national level, in the context of national legal systems, and subsequent national reservations. The results of such national reviews could usefully be shared within the OECD in order to allow broader consideration of the environmental implications of the MAI. The other questions in this country proposal might be more directly amenable to an OECD-wide review. Such a review could be conducted by the OECD Secretariat, based as far as possible on existing material, drawing if necessary on external expertise.

We therefore propose that DG3 is mandated to:

- act as a forum for compiling and sharing information provided by member states on a national basis, including the outcome of national environmental reviews;
- oversee, or commission a review of the international, or collective environmental impacts of the MAI, including on other international agreements, on the basis of questions (ii) - (vi) of this country's paper;
- report to the Negotiating Group by January 1998

## ANNEX TO ONE COUNTRY'S NON-PAPER ON MAI ENVIRONMENTAL REVIEW

### Methodologies

There is no one detailed methodology for such an environmental review. As the OECD noted in 1994, “[t]here remains a significant amount of analytical work to be done on how to apply EIA [Environmental impact assessment] methodology to policies, including trade policies.” At a conceptual level, a 1992 United Nations Task Force (on the application of environmental impact assessment principles to policies, plans and programmes) identified an environmental review of “policies, plans and programmes” as having seven main stages:

1. Initiation
2. Scoping (especially identification of the environmental implications that need to be considered and of alternatives -- including the no-action alternative -- to the policy, plan or programme)
3. Outside Review (by relevant government authorities, independent experts, interest groups and the general public)
4. Public Participation (unless confidentiality or timing requirements limit participation)
5. Documentation and Information (primarily for the decision-maker to explain the analysis and its conclusions)
6. Decision Making (including a public “record of decision”)
7. Post-decision Analysis (Monitoring) (where there may be significant environmental impacts)

One country's analyst, speaking of trade agreements, says that the analysis itself should have four main components:

1. Description of the draft agreement and description of the concrete actions likely to follow from its implementation (such as major changes in the level, composition and locations of production and traffic flows).
2. Description of the environmental “character” of those areas most likely to be affected by the implementations of the agreement.
3. Prediction of magnitude and determination of significance of the principal impacts (including satisfactory handling of “uncertainty” in view of the compounded effect of uncertainty in economic forecasts and environmental predictions).

4. Identification of mitigation measures to eliminate or reduce unacceptable impacts (which could involve changes to the draft agreement, changes to policies of parties to the agreement or further environmental review and follow-up -- with the possibility of additional mitigative action -- after implementation).

By way of an example, one country environmental review of the Uruguay Round negotiations and results describes its methodology as essentially an interdepartmental exercise within the Government of this country:

“One of this country’s departments was responsible for co-ordinating the Government’s environmental review of the Uruguay Round and ensuring that its outcomes were measured against this country’s commitment to protect the environment and to promote sustainable development.

“The Review was conducted by the Environmental Review Committee, comprising representatives of several departments. The Committee undertook to address, as comprehensively as practicable, the wide range of environmental concerns raised by governmental and non-governmental organisations over the course of the Uruguay Round negotiations. These views were compiled through an examination of published sources and a review of letters received from concerned members of the public. Supplementary views were acquired through contact with a number of non-governmental organisations in this country and abroad.”

The resulting document proceeds to deal with the Uruguay Round Agreements one-by-one, in each case giving an “overview of the agreement” of one to two pages, and a discussion of “potential environmental implications” of one to seven pages. In each case, the environmental implications for this country of the Uruguay Round agreements are found to be benign, described, for example, as “positive and small”, “consistent with current country practice” or “consistent with the country laws and practices concerning environmental protection and conservation”. In some cases, alternatives are described and rejected. Separate sections deal with “The Environment and the Uruguay Round” (two pages touching on matters such as the 1992 Earth Summit and multilateral environmental agreements, such as the Montreal Protocol on Substances and Depletion of the Ozone Layer and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes) and on “Dispute Settlement” (three pages). In all, the country environmental review is a document of about forty pages.

A delegation conducted an environmental review of the Single Market in 1992, mandated by this delegation Environment ministers in 1988. This was an in-depth comprehensive study but might provide useful examples of how to tackle particular issues.