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

**Expert Group No.1 on Selected Issues Concerning Dispute Settlement and Geographical Scope**

**CONFLICTING REQUIREMENTS: REPORT TO THE NEGOTIATING GROUP**

## **REPORT BY EG1 ON DISPUTE SETTLEMENT AND GEOGRAPHICAL SCOPE**

### **CONFLICTING REQUIREMENTS**

1. In accordance with its mandate, Expert Group 1 on Dispute Settlement and Geographical Scope reviewed the existing OECD instruments on conflicting requirements and addressed the questions raised by the Chairman in his note [DAFFE/MAI/EG1(96)10] with regard to the instruments.
2. Many delegations drew attention to the practical relevance of this issue for their investors who are concerned that failure to effectively address conflicts in this area would impact negatively on the security of investment. For many delegations, this issue is of significant importance to the investment community and could affect acceptance of the MAI. These delegations were of the opinion that restraints on conflicting requirements are the counter side of national treatment. One delegation pointed to developments in the Inter-American Juridical Committee on the issue of jurisdiction which may be of interest to this Group.
3. Delegations considered that the OECD instruments in the area of conflicting requirements have been relatively successful. In comparison, however, with other areas, such as competition, taxation, and securities regulations, it was recognised that conflicts involving foreign policy concerns, particularly economic sanctions taken for foreign policy reasons, have been more difficult.
4. Most delegations drew attention to perceived inadequacies in the existing instruments which would limit their effectiveness in dealing with these issues, including the lack of binding obligations, the absence of compensation of investors for damages caused by conflicting requirements and the absence of mandatory consultation and dispute settlement mechanisms. These delegations considered that these issues need to be more fully addressed in the context of the MAI in order to effectively achieve the objectives of the instrument. One delegation believes that the existing instrument based on notification, consultation, co-operation and policy discussion is adequate.