



Negotiating Group on the Multilateral Agreement on Investment (MAI)

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

GEOGRAPHICAL SCOPE OF APPLICATION OF THE MAI

(Note by the Chairman)

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Exclusive Economic Zone and Continental Shelf

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1. The question whether the MAI should apply to investments in the Exclusive Economic Zone (EEZ) and continental shelf of the Parties was examined by the Negotiating Group in December 1995 [DAFFE/MAI/M(95)3].
2. Following the outcome of these discussions, the Expert Group met on 29-31 January and on 6-8 March to consider drafting proposals which would reflect the fact that MAI should have as wide as possible geographical application, including investments in the EEZ and the continental shelf.
3. At its meeting of 6-8 March the Expert Group examined a draft article by the Chairman [DAFFE/MAI/EG1(96)4]. One delegation presented several alternative proposals for a draft article [DAFFE/MAI/EG1/RD(96)4]. In the course of discussion, one other delegation also submitted a proposal.
4. The following texts were retained by the Expert Group as representing approaches that needed further consideration. The Group agreed to review these at its next meeting with a view to deciding on a draft text to present to the Negotiating Group. A final text might need to be reconsidered in light of other provisions in the MAI, in particular the definition of investors and investments.

PROPOSED TEXTS

I. Chairman's proposal

The MAI shall apply to investments in:

(a) the territory of a Contracting Party, including its territorial sea; and

(b) any maritime area beyond the territorial sea within which a Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction over the sea-bed, subsoil and the natural resources.

II. Proposal from one delegation

The MAI shall apply to investments in:

(a) the territory of a Contracting Party, including its territorial sea; and

(b) any maritime area beyond the territorial sea in relation to matters over which a Contracting Party exercises sovereign rights or jurisdiction in accordance with international law.

III. Proposal from one other delegation (alternative A)

This Agreement shall apply to investments in each Contracting Party's territory and to investments related to economic activities beyond the territorial sea under the jurisdiction of a Contracting Party.

Definition of territory:

Territory includes:

- a) Land territory
- b) Internal waters
- c) The territorial sea

IV. Proposal from the delegation (alternative B)

This Agreement shall apply in each Contracting Party's territory.

In the exclusive economic zone and on the continental shelf the Agreement shall apply to investments in artificial islands, installations and structures as well as submarine cables and pipelines over which a Contracting Party has jurisdiction in accordance with international law.

Definition of territory:

Territory includes:

- a) Land territory
- b) Internal waters
- c) The territorial sea