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

**AIDE MEMOIRE OF THE MEETING OF THE NEGOTIATING GROUP  
ON THE MAI HELD ON 26-28 FEBRUARY 1997**

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The Chairman of Drafting Group 3 reported that the Drafting Group had examined issues relating to intellectual property, including artistic and literary works, a preamble to the MAI, and a provision that MAI Parties should not lower labour and environmental standards to attract investment. He noted that discussion had produced text on the Preamble but further work was needed on the other two issues.

Informal consultations had taken place during the week on most of the special topics including key personnel, privatisation, monopolies, and performance requirements. These issues were in varying stages of advancement. Important progress had been achieved particularly in the areas of key personnel and privatisation where major technical issues were resolved and questions for Negotiating Group guidance clearly identified.

Plenary discussion on intellectual property which took place later in the meeting revealed divergent views on the appropriate treatment of intellectual property in the MAI. The Chairman noted that many delegations favoured a compromise solution which could include protecting existing agreements (TRIPS and WIPO) but supplementing them where there are gaps. Some delegations also pointed to the ECT solution on intellectual property. The Chairman invited one delegation to act as co-ordinator and to organise informal consultations on this issue.

The Negotiating Group received a report that informal consultations on associating the Guidelines with the MAI had permitted the preparation of a single text amalgamating two previous options. Differences remained with respect to a few key questions which could only be resolved by the Negotiating Group.

Informal consultations on dispute settlement had resolved all of the outstanding issues. Experts had agreed to review the text in capitals and to reflect further on the outstanding issues, especially concerning the coverage of investor rights arising from investment contracts with governments and the response to non-compliance with arbitral awards. The Chairman noted that the Negotiating Group would take up a revised text on dispute settlement in March.

The Chairman thanked those countries that had submitted their preliminary lists of reservations and urged those that had not already done so to submit them as soon as possible. He noted that the process of bilateral and multilateral discussion of country specific reservations should proceed in parallel to the development of texts.

Delegations emphasised that the lists of reservations were preliminary and that having examined contributions by other countries, they had questions concerning the general principles and methodology for lodging of reservations. Delegations discussed a note by the Chairman providing general guidance but raised other specific issues that need addressing. The Chairman took note of these and invited countries to send any further conceptual questions concerning their own reservations as well as reservations proposed by other countries to the Secretariat. The Chairman charged Drafting Group 3 with the task of developing an article on the lodging of country specific reservations.

Several delegations made presentations regarding the situation in their respective countries concerning the applicability of the MAI to all levels of government.

The Chairman concluded that while there are different internal legal processes in these countries, ratification of the MAI at the federal level would provide a mechanism to bind the country with regard to its subnational entities. He agreed that ratification itself is subject to a favourable assessment that the MAI provides a satisfactory balance of commitments, but this is true for all countries and not just those with a federal structure of government. The Chairman acknowledged that the process of continuous consultations between the federal government and subfederal authorities is essential to acceptance of the MAI. He urged countries to continue this process and asked to be kept informed of any potential difficulty.

The Chairman noted that a specific question relating to the standard for interpreting the national treatment obligation in the context of a federal state would be taken up in future discussions on country reservations.

The Chairman noted country contributions on public order, the geographical scope of application of the MAI and on the treatment of native peoples.

The Group approved the draft agendas for 24-27 March 1997 and for 21-25 April 1997. The dates for the meetings in May are 12-16 May 1997.

The Negotiating Group also approved a revised agenda for Drafting Group 3 as set out in Annex 1.

Annex 1

**REVISED MANDATE FOR DRAFTING GROUP No. 3**

1. The Drafting Group, open to the participation of all delegations, is charged with drafting proposed solutions to the outstanding issues in the consolidated texts and commentaries.
2. In particular, the Group will prepare draft text on:
  - a. Issues concerning intellectual property, including artistic and literary property.
  - b. A provision which calls for MAI countries not to lower standards in order to attract investment.
  - c. An Article dealing with the lodging of country specific reservations.
3. The Group will report to the Negotiating Group on items in paragraph 2 in March 1997, and on other topics as appropriate.