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

**SECONDARY INVESTMENT BOYCOTTS**

**(Note by the Chairman)**

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1. The Negotiating Group has agreed to examine the issue of secondary investment boycotts. A specific proposal has been submitted by one delegation [DAFFE/MAI/RD(96)24].
2. A secondary investment boycott may be described generally as a measure penalising a foreign investor or its investment in some way because of business activities with respect to a boycotted third country.
3. Many countries have express policies against compliance by their companies with foreign boycotts. The anti-boycott provisions of the United States Export Administration Act prohibit compliance by U.S. persons with foreign boycotts not supported by the United States.
4. This form of extraterritoriality is particularly sensitive when the boycotting country has no generally recognised jurisdictional link to the sanctioned business activity or when the boycott is not supported by the home state of the entity which carried out the activity. Whatever their legal status, it is clear that secondary economic boycotts can injure established foreign investments and raise a barrier to the freedom or liberalised flow of investment that the MAI seeks to promote. Preventing or mitigating the effects of such measures could be relevant to the MAI.
5. Part of the problem, the imposition of liabilities or penalties on an established investment, might be inconsistent with various MAI treatment obligations which have already been worked out in drafting groups. Thus, a partial discipline might already be implicit in the MAI.
6. If a general discipline on conflicting requirements were included in the MAI [see DAFFE/MAI(96)18], it might render a specific secondary boycott discipline redundant.
7. Delegations are invited to address the following questions:
  - a) Should the MAI deal with secondary investment boycotts other than to the extent the presently drafted provisions on treatment, including the international law standard, are found to be applicable?
  - b) If so, should secondary investment boycotts be dealt with through a broader conflicting requirements discipline or should the MAI have a specific secondary investment provision?
  - c) If a specific secondary investment provision is to be developed, is the proposal made by one of the delegations [DAFFE/MAI/RD(96)24] a promising approach? In particular,
    - i) should the provision be limited to cases in which investment activity in the third country was the basis for the measure, or should it be broader?
    - ii) should cases where the boycott was supported by the investor's home country be exempt from the prohibition?
  - d) Are there other approaches or elements that could be considered?