



Negotiating Group on the Multilateral Agreement on Investment (MAI)

PARTICIPATION OF NON-MEMBERS

(Note by the Chairman)

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1. In their mandate to launch MAI negotiations, Ministers agreed that the MAI should be a free standing treaty, open to participation by non-Member countries. The draft article on accession contained in the Consolidated Texts provides for the possibility of accession by any country willing and able to meet the obligations of the MAI.

2. Since the negotiations began, many outreach events have been held aimed at increasing the level of understanding about the MAI. These activities began with broader international investment discussions, primarily through the OECD's Dialogue with Dynamic Non-Member Economies and the Emerging Markets Economy Forum. As negotiations progressed, more detailed information was disseminated through meetings focused on the main elements of the MAI. Most recent events included two workshops in Brazil for Latin American countries, a symposium for Asian countries in Seoul which included Egypt and Israel, and a seminar with the Baltic countries in Riga. A regional meeting for Africa is under consideration. MAI briefings with embassy representatives have become a regular feature preceding Negotiating Group meetings.

3. Dissemination of information on the MAI has also been extensive. Non-Members receive documentation which includes the notes by the Chairman of the Negotiating Group, Aide Memoires of Negotiation Group sessions, documents prepared specifically for the outreach events, such as papers describing the main features of the MAI, as well as the proceedings of workshops and symposia.

4. Non-Members have a more open attitude towards the MAI and have engaged in constructive dialogue on the objectives of the MAI and the contribution it could make to improving investment flows and economic development. More countries are requesting to be kept informed of MAI developments and some have expressed keen interest in becoming associated with the MAI.

5. At the Heads of Delegation luncheon on 24 April, there was support for the Chairman's proposal for more focused outreach activities modulated to the different levels of interest expressed by non-Members. This could be based on a three-tier approach:

- observership in the Negotiating Group for a limited number of non-Members;
- creation of a Liaison Group to provide more in-depth consultations with other interested countries;
- continued non-Member briefings with embassy representatives, coinciding with the Negotiating Group sessions, for countries who are generally interested in receiving information about the MAI but not ready to commit themselves to intensive dialogue.

MAI Observers

6. Most OECD countries welcomed the idea of a restricted number of non-Members becoming observers in the Negotiating Group although some delegations urged caution that such a decision should not inhibit the pace of negotiations.

7. Observers would generally be those countries which are potential candidates for early participation in the MAI. Negotiating Group observership would enable them to rapidly increase their knowledge and understanding of the MAI. It would help them to prepare for possible accession and enter into consultations on the country specific reservations they might need. They might then be in a better position to sign as founding members and to become full partners in the Preparatory Group.

8. It has been proposed that, at least initially, participation be based on objective criteria, such as observer status in the CIME or the Trade Committee which would include countries that are already committed to OECD instruments or that are familiar with OECD procedures. On this basis, countries that would qualify could include Argentina, Brazil, Chile, Slovakia, and Hong Kong. Criteria should be interpreted flexibly to allow other non-Members to become observers.

9. Non-Members who wish to become observers should send a written request to this effect. Observers, representing the competent ministries, could be invited to attend as of the September meeting of the Negotiating Group. The Bureau could meet with these non-Members prior to the September session.

Liaison Group

10. A Liaison Group could be created to prepare countries for possible accession to the MAI and to provide a forum for in-depth consultations between MAI delegates and non-Members on matters relating to the MAI. Meetings of the Liaison Group should take place in Paris with experts from capitals of non-Member countries.

11. Participation should be more selective than that of the Paris briefings, but there should be sufficient flexibility to accommodate countries with real interest. Participation could be open to non-Members that are willing to consider MAI accession or to be associated with the MAI process.

Documentation

12. There should be a rationale for distinguishing among the MAI documentation that could be made available to non-Members.

- Observers would automatically receive all MAI documentation available to OECD countries, including the Consolidated Text and Commentary and the draft lists of country specific reservations.
- Non-Members in the Liaison Group could be provided with a version of the Consolidated Text and Commentary that did not include reference to specific countries. They could also receive other non-Member documentation prepared in the context of special regional events. They would continue to receive the documents that are made available at the Paris non-Member briefings.

- Participants in the regular Paris briefings could continue to receive MAI documentation they receive now, i.e., aide-memoires, Chairman's notes and outreach documentation, including texts on specific topics to be determined case-by-case.

QUESTIONS:

1. Do Delegates agree with the proposed criteria for observership in the Negotiating Group? If so, should the Negotiating Group invite Argentina, Brazil, Chile, Slovakia, Hong Kong to become observers, provided they expressly so request?
2. What should be the basis for participation by non-Members in the Liaison Group?
3. Do delegates agree with the proposals for documentation in paragraph 12?