



Negotiating Group on the Multilateral Agreement on Investment (MAI)

SUMMARY RECORD

Meeting on 26-28 September 1995

NEGOTIATING GROUP ON THE MULTILATERAL AGREEMENT ON INVESTMENT

SUMMARY RECORD

26-28 September 1995

1. Election of Officers

The Negotiating Group (NG) elected Mr. F. A. Engering, Director General for Foreign Economic Relations in the Economic Affairs Ministry of the Netherlands as chairman of the Negotiating Group. It also elected two vice-chairmen: Mr. A. P. Larson, Deputy Assistant Secretary for Economic and Business Affairs at the United States Department of State and Mr. A. Saiki, Director of the OECD Division in the Economic Affairs Bureau of the Japanese Ministry of Foreign Affairs.

2. Adoption of the Agenda

The Negotiating Group adopted the agenda [DAFFE/MAI/A(95)1/REV1].

3. Procedural Arrangements

The Negotiating Group held a discussion on procedural arrangements for carrying out the negotiations on the basis of contributions from Member countries [DAFFE/MAI/RD(95)1 and ADD1, 2 and 3] and notes to the Agenda DAF/MAI/A(95)1/REV1.

a) Working Procedures

The Negotiating Group agreed that working procedures should be flexible and respond to the dynamics of the negotiations. The NG would be the forum for negotiations and the decision-making body. It might create "drafting groups" or "working groups" comprised of technical experts to provide assistance as required. These groups, open to all NG participants, would be created for short periods for the purpose of carrying out specific tasks. The NG would remit questions to the experts when it considered particular issues ripe for the drafting of texts or for other purposes. Reports would then be submitted to the NG for discussion and decision.

b) Working Methods

Delegates noted that the Negotiating Group and any of its subsidiary bodies would follow the working methods (e.g. simultaneous interpretation, translation of documents, distribution via OLIS etc.) which apply to all OECD bodies.

c) Reports to Council

The Negotiating Group agreed that it will prepare written reports to the Council meetings at Ministerial level in 1996 and 1997. The chairman, or a vice-chairman of the NG, stands ready to make periodic oral reports to the Council at the level of Permanent Representatives.

d) Relation to CIME/CMIT

The Negotiating Group noted the extensive preparatory work carried out by Member countries and the CIME/CMIT and agreed to make use of this existing expertise, whenever possible. The Group confirmed its relation to the CIME/CMIT as set out in the Committees' Report to the Council [C(95)136, paragraph 5].

e) Frequency and duration of meetings

The Group agreed to meet every six weeks in principle. Drafting, or working groups, would meet in the same week as the Negotiating Group, but may need to hold additional meetings. Many Delegations expressed a strong preference for avoiding parallel meetings of the groups and the Negotiating Group.

f) Observers

The Negotiating Group agreed that the WTO should become a permanent observer in the Group.

Other international organisations which had expressed an interest in observer status, such as ECT, IMF, World Bank Group (ICSID, MIGA ...), could be invited on an ad hoc basis and whenever the NG felt they could make a particular contribution to the issue under discussion. The NG could decide, however, to hold a meeting without the presence of observers whenever it so desired.

g) Consultations

The Negotiating Group agreed that the CIME/CMIT should serve as the main forum for consultations on the MAI with other OECD committees, with BIAC/TUAC and with other non-governmental organisations. However, the Bureau might decide to establish informal contact with BIAC and TUAC, as necessary.

Information on the progress of the negotiations for non-Members in the process of accession to OECD Membership (PITs and Korea) would continue to be provided by the CIME/CMIT. These Committees were encouraged to arrange with Council to invite these countries to participate henceforth in any Committee discussions on the MAI.

For other non-Member countries, contacts would be assured by the CIME/CMIT through its outreach activities, such as the DNME workshops, the Advisory Group on Investment (AGI) and the Emerging Market Economies Forum. Officers of the Negotiating Group may participate in these activities.

4. Checklist of Substantive Issues

The Negotiating Group noted that the Checklist of Substantive Issues [DAFFE/MAI(95)1] was an indicative list of issues. It did not limit the conceptual approach that Delegations might want to take in addressing the issues in the negotiations.

Delegates agreed that selected issues concerning scope and definitions, the treatment of an investor and an investment, taxation, investment protection, and dispute settlement will first be discussed in the Negotiating Group. They adopted a programme of work reflecting the order in which the Group would discuss these issues (see attached draft agendas for October and December 1995 , annexes 1 and 2). A luncheon will be organised at the December meeting for the MAI Heads of Delegations to discuss the application of MAI to different levels of government and to regional economic integration organisations.

The NG created a Drafting Group on Selected Topics concerning Investment Protection to be chaired by Mr. Jérôme Haas (France) charged with preparing specific investment protection provisions (see attached mandate, annex 3). The Drafting Group would report back to the Negotiating Group in December.

The Negotiating Group agreed that the basis for its forthcoming discussions would be notes to be provided by the Chairman and notes to be provided by Delegations wishing to make written contributions. The Secretariat would make available reference material drawing on the compilation of relevant articles to existing international investment agreements, as proposed by the preparatory meeting for the Negotiating Group which took place on 29 June 1995 [DAFFE/INV/IME(95)35].

5. Other Business

See Dates of Next Meetings, annex 4.

ANNEX 1

REVISED

DRAFT AGENDA OF THE NEGOTIATING GROUP ON THE MAI

FOR 24-26 OCTOBER 1995

1. Definition and Scope
 - a. Definition of the Investor
 - b. Definition of Investment, including intellectual property.

2. Treatment of Investors and Investments (pre/post-establishment)
 - a. National Treatment
 - b. Non-discrimination/MFN
 - c. Standstill
 - d. Rollback
 - e. Transparency
 - f. General Exceptions
 - g. Reservations
 - h. Temporary Derogations

3. Taxation

Report on CIME/CMIT meeting on 18 October 1995

4. Next Steps
 - a. Agenda for December meeting of the Negotiating Group.
 - b. Possible referral of issues to working/drafting groups.

ANNEX 2

REVISED

DRAFT AGENDA OF THE NEGOTIATING GROUP ON THE MAI

4-8 DECEMBER 1995*

1. Scope of the Agreement
Territorial scope of application
2. Special topics
 - a. Key personnel
3. Investment protection
 - a. Report of Drafting Group
 - b. Protecting investor rights arising from other agreements
4. Dispute Settlement
 - a. Consultation and conciliation
 - b. State-to-State
 - c. Investor-to-State
5. Next steps

* The Negotiating Group will meet on 7-8 December. The meeting of the Negotiating Group may be preceded by meetings of the working groups.

ANNEX 3

MANDATE OF DRAFTING GROUP ON

"SELECTED TOPICS CONCERNING INVESTMENT PROTECTION"

1. The Drafting Group, open to the participation of all delegations, is charged with drafting specific investment protection provisions to be included in the MAI.
2. Topics:
 - General Standard of Treatment
 - Expropriation
 - Compensation
 - Transfer of Funds
 - Protection from strife
 - Subrogation
3. The Group will submit proposals for texts to the Negotiating Group at its session in December 1995.
4. The Group will terminate after its report to the Negotiating Group, unless the Negotiating Group decides otherwise.

ANNEX 4

DATES OF NEXT MEETINGS

OCTOBER 1995

23 - 24 (am)	Drafting Group on Selected Topics concerning investment protection
24 (pm) - 26 (am)	Negotiating Group
26 (pm) - 27	Drafting Group on Selected Topics concerning investment protection

NOVEMBER 1995

Dates to be decided	Drafting Group on Selected Topics concerning investment protection
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DECEMBER 1995

4 - 6	Working Group/Drafting Group(s)
7 - 8	Negotiating Group

TENTATIVE DATES FOR 1996

January 29 - February 2

March 11-15

April 15-19

June 17-21

September 9-13

October 21-25

December 9-13