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

**SUMMARY RECORD**

**Meeting on 26-28 February 1997**

# NEGOTIATING GROUP ON THE MULTILATERAL AGREEMENT ON INVESTMENT

## SUMMARY RECORD

26-28 February 1997

### 1. Adoption of the Agenda

The Group adopted the agenda [DAFFE/MAI/A(97)2].

### 2. Approval of the Summary Record of the meeting held on 29-31 January 1997

The Group approved the Summary Record [DAFFE/MAI/M/(97)1].

### 3. Report by Drafting Group 3

The Chairman of Drafting Group 3, Mr. Haas, 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. Mr. Haas reported that 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.

The Negotiating Group Chairman thanked Mr. Haas for this report and proposed that the Negotiating Group hold a plenary discussion on intellectual property.

The 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 Mr. Gero (Canada) to act as co-ordinator and to organise informal consultations on this issue. The results of that debate should be reported to the Negotiating Group through Drafting Group 3.

### 4. Selected Issues:

#### Special Topics

The Chairman proposed that the special topics be taken up as a cluster at the Negotiating Group's next meeting in March, at which time he would like to conclude on as many of these issues as possible.

## **Institutional Matters**

Mr. Bridge reported 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.

The Chairman thanked Mr. Bridge and stated that the Negotiating Group would be prepared to re-examine these questions at a future meeting.

## **Dispute Settlement**

Informal consultations on dispute settlement led by Mr. Baldi, had resulted in resolving nearly all of the outstanding issues. Mr. Baldi noted that experts had agreed to review the text in capitals and to reflect further on the outstanding issues concerning the coverage of investor rights arising from investment contracts with governments and the response to non-compliance with arbitral awards. Two countries were still reserving their positions on dispute settlement text. Delegations would be ready to give the text a final reading in March. Mr. Baldi expects to present it and any remaining questions to the Negotiating Group at the March session.

The Chairman thanked Mr. Baldi for this work and noted that the Negotiating Group would take up the final text on dispute settlement in March.

## **5. Liberalisation and Lodging of Country Specific Reservations**

The Chairman thanked those countries that had submitted their lists of reservations [DAFFE/MAI/RES(97)1-25] 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 welcomed the note by the Chairman [DAFFE/MAI(97)11] as 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 (see item 8, below).

## **6. Subnational Measures**

The delegations of seven countries made presentations regarding the situation in their respective countries concerning the applicability of the MAI to all levels of government. One of them also submitted a written contribution [DAFFE/MAI/RD(97)16] regarding recent reforms in its treaty-making process.

The Chairman concluded that while there are different internal legal processes in these countries, ratification of the MAI at the federal level would 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 consultation 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.

One delegation requested that the record show that it had not taken part in this discussion and did not participate in the Chairman's conclusions.

The Chairman noted that a specific question relating to the standard for interpreting the national treatment obligation in the context of a federal state and which was addressed by one delegation in DAFFE/MAI/RD(97)12, would be taken up in future discussions on country reservations.

## **7. Other Issues**

The Chairman noted contributions by one delegation on the geographical scope of application of the MAI [DAFFE/MAI/RD(97)10], by three delegations on a proposed annex on the Sami people [DAFFE/MAI/RD(97)13], and by one other delegation as concerns a draft clause on public order [DAFFE/MAI/RD(97)11].

The Chairman remarked that the issue of geographical scope was not on the agenda for the time being and recommended that the three delegations consider taking country specific reservations to cover the concerns relating to the Sami people. The Chairman stated he intended to continue informal contacts on the issue of public order.

## **8. Next Steps/Other Business**

### **a. Future meetings**

The Group approved the draft agendas for 24-27 March 1997 and for 21-25 April 1997 [DAFFE/MAI/RD/(97)9]. The agendas are attached as Annex 1. The dates for the meetings in May are 12-16 May 1997.

### **b. Revised mandate for DG3**

The Negotiating Group approved the revised mandate for DG3 as set out in Annex 2.

## Annex 1

### MAI Draft Agendas for March and April 1997

#### 24-27 March 1997

1. Reports by the Drafting/Expert Groups
  - a. DG3
  - b. EG2 on Taxation Matters
  - c. EG5 on Financial Services Matters
2. Selected Issues on
  - a. Special Topics
  - b. Institutional Matters
3. Dispute Settlement
4. Liberalisation and the lodging of country specific reservations
5. Other issues based on contributions from delegations

Lunch Topic: (25 March)      Overview of the Agreement: Main outstanding issues  
   Organising the Remainder of the Negotiations

#### **Drafting/Expert Groups**

March 13-14      EG5 on Financial Services Matters  
March 19-21      EG2 on Taxation Matters  
March 25-26      DG3

#### **Informal Consultations**

March 24      Intellectual Property  
March 24      Dispute Settlement  
March 24-25      Special Topics  
March 26-27      Institutional Matters  
March 26-27      Other topics to be announced

#### 21-25 April 1997

1. Report by DG3
2. Financial Services
3. Taxation Matters
4. Selected Issues on Protection and Treatment of Investors and Investments
5. Preamble and Not Lowering Standards
6. Liberalisation and the lodging of country specific reservations
7. Other issues based on contributions from delegations

Lunch topic: (22 April)      Overview of the Agreement: Main outstanding issues

#### **Informal Consultations**

April 21-25      Topics to be announced

**12-16 May: Negotiating Group**

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**26-27 May: OECD Ministerial Meeting**

Annex 2

**REVISED MANDATE FOR DRAFTING GROUP N° 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 the items in paragraph 2 in March 1997, and on other topics as appropriate.