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

**SUMMARY RECORD**

**Meeting on 14-16 May 1997**

# NEGOTIATING GROUP ON THE MULTILATERAL AGREEMENT ON INVESTMENT

## SUMMARY RECORD

14-16 May 1997

### 1. Adoption of the Agenda

The Group adopted the agenda [DAFFE/MAI/A(97)5].

### 2. Approval of the Summary Record of the meeting held on 22-25 April 1997

The Group approved the Summary Record [DAFFE/MAI/M/(97)4].

### 3. Contributions from Delegations

The Chairman noted that there were no contributions for discussion under this item.

### 4. Report to OECD Ministerial Meeting and Draft Ministerial Statement

The Negotiating Group discussed the draft Report to Ministers [DAFFE/MAI(97)20/REV1] which reflected comments by delegations on a first draft [DAFFE/MAI(97)20]. The Group approved the Report to Ministers and the draft Ministerial Statement annexed thereto which would be submitted to the OECD Ministerial meeting on 26-27 May<sup>1</sup>.

The Chairman noted the concerns expressed by one delegation regarding paragraph (ii) of the draft Ministerial Statement on achieving a satisfactory scope and balance of commitments in the MAI. The Chairman stated that this has been a goal from the start of negotiations but whether, in fact, a satisfactory balance has been achieved would be more a matter of political judgement, rather than a quantifiable assessment. He also thought that delegations would keep in mind the liberalisation efforts made by the delegation as part of its recent accession process to the OECD.

### 5. Participation of Non-Member countries

The Chairman noted broad support for the proposal that some non-Members become observers in the MAI and for intensifying outreach to others.

With respect to observership criteria, the Chairman concluded that most delegations could accept the criteria of observership in CIME/Trade Committees and written requests to become observers in the Negotiating Group. The Chairman reported that Hong Kong and Argentina had sent written requests to that effect. Other countries that might qualify would be Brazil, Chile, and Slovakia, provided they also submit similar requests.

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<sup>1</sup> The Report was forwarded to Ministers as C/MIN(97)16 and derestricted as OECD/GD(97)82. The Ministers Statement on the MAI [SG/COM/NEWS(97)45] was annexed to the Ministerial Communique.

The Chairman thought these criteria could be interpreted with some flexibility so as to be able to consider granting observership to other non-Members that could be possible candidates for founding members. For the time being, however, the Negotiating Group would apply the agreed criteria and requests going beyond that would have to be agreed by the Negotiating Group.

Delegations considered the rules which should apply to participation by observers in the Negotiating Group. The Chairman noted the Group's wish that observers not be given an automatic right to participate in the discussions. He agreed to explore several ways to ensure that non-Members' views be brought to the attention of the Negotiating Group. Documentation should be the same as for the Negotiating Group.

Observership should begin at the September session of the Negotiating Group, when the other non-Members might have already sent in their requests. The Chairman noted that observers should be represented by government officials responsible for investment policies. There should be no more than two representatives per observer.

Most delegations agreed that letters of acceptance be sent to Hong Kong and Argentina. These letters should clearly indicate the basis on which the requests had been accepted and should state the rules for participation by observers, including rules on confidentiality. The Chairman noted that two delegations had to refer to their capitals<sup>2</sup>.

Concerning the Liaison Group, the Chairman recalled that this had been proposed to take care of countries that are not in a position to become observers but which are seriously interested in the MAI, perhaps also in joining the MAI at an early date. Most delegations thought that it would not be useful to set criteria for membership in this group and that the process should be largely self-selecting. In particular, non-Members would have to be willing to send investment policy experts from capitals. The Chairman noted a proposal, supported by many countries, not to immediately institutionalise such a group but to have it start on an ad hoc basis. The Chairman suggested to begin with a conference in September, bringing together MAI negotiators and officials from non-Members interested in the MAI. The briefings with embassy representatives in Paris would continue for now.

The Chairman agreed with a proposal by some delegations that the decisions to intensify outreach be given public recognition, including the decision to hold the September conference.

## **6. Special Topics**

The Negotiating Group examined the selected policy issues on Monopolies/State Enterprises/Concessions raised in the Chairman' Note [DAFFE/MAI(97)22].

The Chairman noted that a majority of delegations had expressed doubts about the desirability of developing special MAI disciplines on the behaviour of designated monopolies in non-monopolised markets which they saw as an intrusion into competition policy. Some delegations argued, however, that the National Treatment obligation would not capture the adverse effects on foreign investors and their investments caused by such monopolistic anti-competitive practices as cross-subsidisation and that this would constitute a significant shortcoming in the MAI. The Chairman concluded that this subject is a particularly difficult one, both from a technical and policy point of view. He invited delegations to pursue

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<sup>2</sup> Subsequently, the two delegations confirmed their agreement to invite Hong Kong and Argentina as observers.

their reflection on the proposals made so far and suggested that the Negotiating Group come back to this issue at a later time.

On the subject of the lodging of country-specific reservations at the time of demonopolisation, the Chairman observed that a majority of delegations were inclined to consider a solution similar to the proposal examined in the context of privatisation, namely that Contracting Parties should be allowed, upon entry into force of the MAI, to identify the sectors where they might need to list further reservations in case of demonopolisation. The Chairman also noted that this matter was related to the eventual coverage of the MAI article on the lodging of country reservations (see item 7) and should therefore be revisited by the Negotiating Group when all relevant issues would be more advanced.

Finally, on the subject of concessions, the Chairman felt that this issue had not been discussed sufficiently at the technical level for the Negotiating Group to come to any decision on the need for special provisions on this area. An appropriate step would be to discuss this subject in the framework of an informal expert group which could meet in the fall. He indicated he would submit ideas for the organisation of this group at the next meeting of the Negotiating Group.

## **7. Liberalisation and the lodging of country specific reservations**

i) The Negotiating Group discussed questions relating to the lodging of country specific reservations, including a proposal by the Chairman that, in parallel to the bilateral discussions on reservations, the Group, in plenary session, look at reservations horizontally - perhaps starting with a group of non-services sectors, in order to assist delegations in understanding the basis or assumptions underlying some reservations.

The Chairman concluded that all delegations recognise the importance of this exercise for the MAI negotiations. He noted the need to continue in parallel both bilateral consultations between delegations on draft lists of reservations and plenary discussions on more general questions encountered by delegations in preparing their own submission or when comparing them with other country submissions. These are mutually beneficial and complementary processes.

The Chairman noted that an important role for plenary discussions is to ensure that delegations proceed on the basis of the same working assumptions and the presentation of reservations follow the same format. It would therefore be useful to set time aside at the next meeting to discuss these matters on the basis of a Chairman's note. This note could take stock of the reservations that have been made so far and note any differences in the working assumptions made by delegations. It could also provide the opportunity to discuss some of the generic or technical issues raised orally or in writing by delegations and which may not have been fully addressed by the Chairman notes on the liberalisation and the lodging of country-specific reservations [DAFFE/MAI(97)11 and DAFPE/MAI(97)14]. The Chairman proposed that the result of this discussion and those that may be pursued in the fall could eventually lead to the elaboration of "guidelines" for the lodging of reservations, as was done in the GATS.

ii) The Negotiating Group also held an initial exchange of views on the draft article on the lodging of country specific reservations elaborated by Drafting Group n°3. The Chairman concluded that there was considerable support for Paragraph A of the Draft Article which embodies the concept of "standstill", although it remained to be determined what categories of non-conforming measures would be covered by it. He also noted that several delegations had, for the same reason, strong reservations about the derogation to this principle provided by Paragraph B while other delegations found it indispensable.

The Chairman noted, in addition, that some of the remarks made were reminiscent of the discussions on demonopolisation and privatisation.

The Chairman invited Drafting Group n°3 to pursue its work on the draft article taking into account proposals made by delegations and to report back to the Negotiating Group.

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

### Other Business

On the proposal of one delegation, the Chairman agreed to add a sentence in the commentary to the dispute settlement chapter of the Consolidated Text [DAFFE/MAI(97)1/REV2], reflecting the delegation's concerns regarding Article C.6.c (iii) and (iv). This would be included in the next revision of the Consolidated Text.

### Future meetings

The Group approved the draft agendas for 30 June-2 July 1997 and 16-19 September [DAFFE/MAI/RD/(97)34]. The agendas are attached as Annex 1.

## Annex 1

### Draft Agendas for June and September 1997

#### 30 June - 2 July

1. Liberalisation and the lodging of country specific reservations
2. Contributions from Delegations
3. DG3 Results and Institutional Matters
4. General Exceptions
5. Exceptions to MFN Treatment
6. Reports on Informal Consultations

Lunch topic: (1 July) Overview of the Agreement: Main outstanding issues

- 30 June            **DG3**

#### **Informal Consultations**

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|-----------|-------------------------|
| 9-10 June | Financial Matters       |
| 1 July    | Intellectual Property   |
| 1 July    | Bilateral Consultations |
| 2 July    | Special Topics          |
| 3-4 July  | Bilateral Consultations |

#### 16-19 September

1. Contributions from Delegations
2. Taxation
3. Selected Issues on Special Topics
4. Dispute Settlement
5. Report by DG3
6. Liberalisation and country specific reservations

Lunch topic: (18 Sept) Overview of the Agreement: Main Outstanding Issues

- 15 Sept            **Conference with Interested Non-Member countries**
- 15-16 Sept        **DG3**

#### **Informal Consultations**

- 17 Sept    Bilateral Consultations
- Dispute Settlement
- Concessions