



Negotiating Group on the Multilateral Agreement on Investment (MAI)

SUMMARY RECORD

Meeting on 18-19 September 1997

MAI NEGOTIATING GROUP

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1. Adoption of the Agenda

The Negotiating Group adopted the agenda [DAFFE/MAI/A(97)7].

The Chairman welcomed representatives from Argentina, Brazil, Chile, Hong Kong and the Slovak Republic who will henceforth attend meetings of the Negotiating Group and Drafting Group N°3 as observers. Upon invitation by the Chairman, observers made statements which underlined their desire to learn more about the MAI and to make positive contributions to the discussions. They highlighted issues which were of particular importance to their governments.

2. Approval of the Summary Record of the meeting held on 30 June - 2 July 1997

The Group approved the Summary Record [DAFFE/MAI/M(97)6].

3. Contributions from Delegations

The Chairman noted the following written submissions:

- Environmental Review of the MAI by one delegation [DAFFE/MAI/RD(97)43];
- REIO Clause (Art. A3 and D2 on Dispute Settlement by one delegation [DAFFE/MAI(97)44].

The delegation also noted that it was reviewing the text of REIO clause set out in the annex to the Consolidated Text and Commentary in the MAI and would come forward with a new proposal in October, together with a response to specific questions raised by some delegations.

4. Taxation

Mr Sukanuma reported on the results of informal consultations on taxation. He noted that delegations were closer to finding a compromise solution based on a contribution by one delegation. The Chairman noted that the delegation's proposal supported by others [DAFFE/MAI/RD(97)45], provides a basis for consensus. He thanked Mr Sukanuma for his efforts and noted that some further work would be necessary to finalise the text. He encouraged Mr Sukanuma to continue informal consultations on this issue in view of the December meeting of the Negotiating Group.

5. Dispute Settlement

The Negotiating Group heard the report by Mr Baldi who chaired the informal consultations on dispute settlement. Delegations reviewed some of the open issues, particularly substantive issues concerning ripeness of a dispute, pecuniary compensation, prior consent, the respect clause, and countermeasures in case of non-compliance. On some of these issues, informal consultations might make more progress but guidance from the Negotiating Group would be necessary.

Several delegations expressed concerns on issues which are of particular sensitivity to their governments, they noted that dispute settlement is a fundamental element of the agreement and they attached great importance to finding solutions to these concerns.

The Chairman noted that the Consolidated Text stated that the dispute settlement chapter was a proposal by the chairman and that further discussion by the Negotiating Group was expected. It was clear that, despite different views, all delegations recognised the need to provide for a strong dispute settlement system in the MAI.

The Chairman invited Mr Baldi to try to continue his consultations on issues where he thinks progress can be made and to report back to the Negotiating Group when these consultations have made some headway. The Chairman recognised that some issues could not be advanced in this manner: hence the Negotiating Group would have to come back to them at a later time.

The Chairman noted the presentation by one delegation of the REIO clause for dispute settlement [DAFFE/MAI(97)44] He invited Mr Baldi to take this up in his informal consultations.

6. OECD Guidelines for Multinational Enterprises

The Chairman reported that Mr Bridge had reviewed some of the outstanding issues relating to the Guidelines with a number of delegations. The Chairman noted that no new proposals had resulted from these talks. He proposed that Mr Bridge continue with these consultations, looking also at a number of the technical issues that some delegations had raised in the meeting.

7. Report by DG3

Mr Sikkel noted that the result of DG3's meeting could be found in DAF/MAI/DG3(97)14. The Drafting Group made progress on the article on the lodging of country specific reservations. Draft Paragraph A and Annex A would address the maintenance of existing non-conforming measures. There were differing views with regard to the desirability of Paragraph B and Annex B which would give the opportunity to adopt new measures with respect to specified sectors, sub-sectors, or activities. The Drafting Group felt that some guidance would be needed from the Negotiating Group before it could be decided whether to start drafting a provision along the lines of Paragraph B. The Drafting Group had also discussed the desirability of an article modelled on GATS Article XXI which would allow countries to modify their schedules of reservations in the future provided they offered compensation. However, Delegations considered that guidance from the Negotiating Group would be required on this matter.

The Drafting Group also continued to study issues arising from EG5 and made some proposals to the Negotiating Group relating to the generalisation of certain financial services provisions.

The Negotiating Group had an intensive discussion of the implications of a List B approach in the MAI. In the view of the Chairman, such an approach would mean a breach of the standstill principle which he believed to be a fundamental feature of the MAI negotiations. He noted that a number of delegations had expressed interest in a GATS Article XXI approach which would permit departure from standstill but would require some compensation. He considered that these issues required high level attention in capitals.

The Chairman invited delegations to consult with their financial experts in capitals concerning the advice of DG3 to generalise some financial services provisions. He encouraged DG3 to continue work particularly on the transparency and transfer provisions.

8. Liberalisation and the lodging of country specific reservations

The Chairman summarised the discussion based on his note DAF/MAI(97)29. Delegations also commented on a proposal by one delegation for a clause on the relation between the MAI and the GATS [DAFFE/MAI/DG3(97)11].

The Chairman commented that the Guidelines for lodging of country specific reservations were designed to clarify the basis for lodging reservations; they were not meant to -- and could not -- take away the responsibility from each country to specify its reservations to the agreement. He noted, however, that questions of substance were inevitably linked to the procedures for lodging reservations. For example, what to do about bilateral or multilateral investment agreements that might go beyond the MAI? Another question was the relation between the MAI and commitments made under the GATS. He noted there were divergent views concerning the proposal put forward by the delegation.

The Chairman concluded that further work and clarity was needed, particularly with regard to the concept of “*de facto*” discrimination and the treatment of mutual recognition arrangements. On “*de facto*” discrimination, he agreed with one delegation’s proposal to hold informal consultations on problems that could arise on the interpretation of National Treatment obligations. He encouraged delegations to try to reach an understanding on whether mutual recognition arrangements are covered by MFN or whether reservations would be needed.

9. Next Steps/Other Business

Future Meetings

The Negotiating Group agreed to hold a one day consultation with NGOs on **27 October**.

It also agreed to hold another special session with interested non-Member countries at the beginning of 1998.

The Group approved the draft agendas for 27-31 October and for 1-5 December [DAFFE/MAI/RD(97)47].