



Negotiating Group on the Multilateral Agreement on Investment (MAI)

SUMMARY RECORD

Meeting on 19 February 1998

MAI NEGOTIATING GROUP

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Designation of Bureau Vice-Chairman

The Negotiating Group welcomed Mr. Kazuhide Ishikawa, head of the Japanese Delegation, as vice-chairman of the Negotiating Group, replacing Mr. K. Suganuma.

Outcome of High Level Meeting

The Negotiating Group took note of the outcome of the High Level meeting on 16-17 February 1998 and of the Chairman's conclusions (Annex 1).

1. Adoption of the Agenda

The Negotiating Group adopted the agenda [DAFFE/MAI/A(98)2].

2. Approval of the Summary Record of the meeting held on 14-16 January 1998

The Group approved the Summary Record [DAFFE/MAI/M(98)1].

3. Contributions from Delegations

The Chairman noted contributions by: one delegation on Dispute Settlement [DAFFE/MAI/RD(98)11], one other delegation on Government Procurement [DAFFE/MAI/RD(98)12], one delegation on Environmental Matters [DAFFE/MAI/RD(98)13], one other delegation - comments on the relationship between MAI and Domestic Environment Laws [DAFFE/MAI/RD(98)15], and one delegation - Draft Position Paper on Labour and Environment [DAFFE/MAI/RD(98)16].

4. Contributions from Observers

There were no contributions from observers.

5. Labour and Environment Matters

It was recalled that as part of the conclusions on labour and environment [DAFFE/MAI/M(97)8, annex 1], delegations had undertaken to report on results of national reviews of the implications for the MAI for domestic legal regimes on the environment and labour. One delegation presented the results of their review, and other countries reported that their national reviews were well advanced. Several of these reports will be ready in time for the March meeting of the Negotiating Group.

The Chairman thanked the delegation and noted that it was a helpful analysis which pointed to the need to find the right balance between national treatment and MFN and the normal regulatory powers

of government. He proposed that the Negotiating Group meeting in March address ways of dealing with this issue.

Delegations also briefly discussed a contribution by one delegation on Not Lowering Standards [DAFFE/MAI/RD(98)16]. The Chairman thought that the discussion demonstrated the need for clarity about the international standards that are being referred to and the importance of translating this into text.

6. Dispute Settlement

One delegation introduced its proposal on certain dispute settlement matters submitted to the High Level meeting [DAFFE/MAI/RD(98)11]. Delegations discussed, in particular, the proposal for an appeals mechanism in the MAI for both state-state and investor-state dispute settlement. There were questions whether an appeals mechanism might help to alleviate some of the concerns with investor-state dispute settlement. Some delegations recalled that other proposals have been contributed that deal more directly with their concerns and requested that these be considered at the same time as the delegation's proposal.

The Chairman concluded that there was considerable sympathy for the objective of ensuring coherent jurisprudence in the MAI. He noted that Mr. Baldi would hold informal consultations on dispute settlement matters on 23-25 February. The Chairman invited experts to examine the delegation's proposals, in particular, the technical feasibility of creating an appeals body in the MAI, and to consider other issues which Mr. Baldi and certain delegations had identified as unresolved questions in the dispute settlement chapter in the Consolidated Text. The Chairman noted that dispute settlement would be on the agenda for the March meeting of the Negotiating Group.

7. Progress in Informal Consultations and DG3

Informal consultations on *Financial Matters* were held on 11-13 February 1998. The results of these consultations are found in the report DAF/MAI/FS(98)1.

Intellectual Property experts held informal consultations on 17-18 February 1998 and reviewed outstanding issues. Mr. Gero noted that as regards the relationship between expropriation and intellectual property, most delegations thought that the concerns raised might be resolved more generally in the ongoing discussions on the scope of the expropriation article. Delegations will need to consider the results of these discussions at an appropriate time.

Consultations with the *Baltic countries* were held on 18 February to discuss their lists of country specific exceptions. Mr. Ahnlid reported that on a preliminary examination, delegations thought that these lists were of good quality although further work is needed. The Baltic countries had requested that they be associated to the technical work of the Working Group on Country Specific Exceptions and had reaffirmed their interests to become founding members of the MAI.

The Chairman concluded that the Negotiating Group might take up this request in the course of its meetings in March. In the meantime, he proposed that the Secretariat respond to inquiries concerning the lists of country specific exceptions.

The Negotiating Group also heard a report on the 15 and 19 January meeting of Drafting Group 3. The results of that meeting are contained in DAF/MAI/DG3(98)1 and DAF/MAI/DG3(98)2.

8. Next Steps/Other business

a) Next Steps

The Group agreed to extend the mandate of the technical Group on Selected Issues raised by country specific Exceptions. This Group would meet in March and report to the Negotiating Group. (See Annex 2).

b) Future meetings

The Group approved the draft agendas for March and April 1998 [DAFFE/MAI/RD(98)14]. The agendas are attached as Annex 3.

Annex 1

High Level Meeting on the Multilateral Agreement on Investment

Chairman's Conclusions

1. High level officials of the 29 OECD countries and the European Commission met in Paris on 16-17 February to discuss the main outstanding questions concerning the MAI and to give political impetus to concluding the negotiations, based on the mandate established by OECD Ministers in May 1997. The five Observer Delegations - Argentina, Brazil, Chile, Hong Kong (China) and the Slovak Republic -- also participated in the discussions.

2. Delegations reaffirmed the importance they attach to achieving a comprehensive multilateral framework for investment with high standards of liberalisation and investment protection with effective dispute settlement procedures and open to Non-Member countries. They regard investment as an essential agent of economic growth, employment, sustainable development and rising living standards.

3. The High Level Meeting made progress on the outstanding issues of political importance. Discussions focused in particular on three areas: labour and the environment, liberalisation and exceptions, and conflicting requirements.

a) Labour and Environment

There is growing convergence of views on the need for the MAI to address social concerns and particularly environmental protection and labour issues. Most Delegations believe that the MAI should contain a strong commitment by governments not to lower environmental or labour standards in order to attract or retain investment. Delegations agree to make it clear that the MAI will not inhibit the exercise of the normal regulatory powers of government and that the exercise of such powers will not amount to expropriation. They also agree to associate the OECD Guidelines for Multinational Enterprises which highlight investors' responsibilities in the fields of labour and environment.

b) Liberalisation and Exceptions

Delegations confirmed that the MAI is to be an ambitious comprehensive agreement covering, in principle, all sectors and economic activities. Exceptions will nevertheless be needed for overriding and widely-shared policy reasons, such as national security, and to respect political sensitivities and priorities, taking into account other international agreements. The discussion focused particularly on the treatment of measures taken for reasons of national security, public order, regional economic integration organisations, culture, subsidies and government procurement. In judging proposed exceptions, Delegations agreed to be guided by the need to preserve the quality of the Agreement and to achieve a satisfactory balance of rights and obligations among the Parties.

c) Extraterritoriality

Delegates discussed the issues arising from conflicting requirements, secondary investment boycotts and illegal expropriations. A solution to these issues seems necessary to ensure a successful outcome of the MAI negotiations.

4. Delegations are ready to intensify their efforts to reach agreement on all outstanding issues.

5. Delegations also agree to pursue their dialogue with interested Non-Member countries to facilitate their early participation in the Agreement.

Annex 2

Technical Group on Selected Issues Raised by Country Specific Exceptions

Mandate:

1. To clarify the scope and content of measures underlying the preliminary lists of country specific exceptions, taking account of their practical application.
2. In particular, the task of the Group would be to clarify:
 - a. the scope and content of exceptions;
 - b. how measures are applied;
 - c. the scope for changing the scope of measures.
3. The work of the Group would be organised by categories or sectors of exceptions.
4. The Group would base its work primarily on contributions from delegations, with technical support by the Secretariat.
5. The work of the Group would be without prejudice to the position of delegations with respect to exceptions.
6. The Group would meet in March 1998 and report to the Negotiating Group at its March meeting.

Chair: Mr. Colm Treanor (Ireland)

Annex 3

17(pm) - 19 March 1998

1. Contributions from Delegations
2. Contributions from Observers
3. Progress in DG3 and Informal Consultations
4. Social Issues:
 - a) Environment and related matters
 - b) Labour
5. Liberalisation and Exceptions
6. Dispute Settlement
7. Conflicting requirements
8. Next Steps

HOD Lunch 18 March: Main Outstanding Issues

16-17(am) Mar	Country specific exceptions
17(pm)-19 Mar	Negotiating Group
20 Mar	DG3

14-18 April*

1. Contributions from Delegations
2. Contributions from Observers
3. Main outstanding issues of the agreement
4. Liberalisation and Exceptions
5. Conflicting requirements
6. Report to Ministers

HOD Lunch: 16 April: Main Outstanding Issues

[20-24 April]

[For information: 27-28 April - OECD Council at Ministerial Level]

* Negotiating Group in Plenary

If necessary, DG3 and the Technical Group on Country Specific Exceptions would meet in parallel to the NG