



Negotiating Group on the Multilateral Agreement on Investment (MAI)

SUMMARY RECORD

Meeting on 14-16 January 1998

MAI NEGOTIATING GROUP

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1. Adoption of the Agenda

The Negotiating Group adopted the agenda [DAFFE/MAI/A(98)1].

2. Approval of the Summary Record of the meeting held on 3-5 December 1997

The Group approved the Summary Record [DAFFE/MAI/M(97)9].

3. Contributions from Delegations

The Chairman noted contributions by one delegation - Proposal for an article on "Maintaining the overall level of liberalisation" (DAFFE/MAI/RD(98)2) and a Proposal for a clarifying footnote to the article on final awards in investor-state procedures (Art. D 16(a)(iii)), by one other delegation - comments on the clauses on application to overseas territories and non-applicability to MAI (DAFFE/MAI/RD(98)3), by one delegation on De Facto Discrimination (DAFFE/MAI/RD(98)4) and Scope (DAFFE/MAI/RD(98)5), another delegation on a Substantive Approach to the Respect Clause (DAFFE/MAI/RD(98)6), one delegation on a Respect Clause (DAFFE/MAI/RD(98)7), and by one delegation – a package of additional environmental proposals (DAFFE/MAI/RD(98)10).

4. Progress in Informal Consultations and DG3

The Negotiating Group examined the note by the Chairman on Expropriation [DAFFE/MAI(98)2] asking delegations to consider whether the current text on expropriation needs to be modified or clarified to ensure that it would not inadvertently interfere with normal regulatory activities of government.

Summing up the ensuing discussion, the Chairman agreed with the view of some delegations that there exists a sufficient body of customary law and jurisprudence to guide arbitrators in determining the intent of the provision. A large majority of delegations said that they did not want to modify the present text but could consider the possibility of an interpretative note for greater clarity. The Chairman concluded that he would provide the draft text of such a note and would consult with delegations. When appropriate, DG3 could begin to scrutinise the text.

Mr. Ahnlid reported on the progress made in the informal consultations on Special Topics on 12-13 January [DAFFE/MAI/ST(98)1]. The Negotiating Group noted that further consultations had been held on 12 January on matters relating to concessions. These discussions resulted in a draft text which could also be found in the report on Special Topics.

The Negotiating Group noted the report on the consultations (held on 13-14 January) on intellectual property [DAFFE/MAI/IP(98)1]. The Chairman invited delegations to continue their work and hold another round of consultations in February.

Mr. Bridge reported on the informal consultations on institutional matters held on 15 January. Draft texts were being discussed to deal with matters such as revisions of the Guidelines and the powers of the Preparatory Group but no final texts were ready to submit to the Negotiating Group. Delegates decided to invite the OECD Secretariat to provide secretarial support for the Preparatory Group which implied the adoption of OECD budgetary rules and procedures. Other questions, including proposals for a special provision for non-Members, needed further work. The Chairman noted that consultations on institutional matters would continue in February.

The Negotiating Group held a brief discussion on the issue of **non-derogation**. It was decided that one delegation would submit a written contribution for dealing with this matter after consultations with a few delegations. The matter would be reviewed by the Negotiating Group.

Mr. Sikkel reported on the DG3 meeting held on 15 January where the main topic of discussion was the draft article for the lodging of country specific exceptions. The Group was still considering how to deal with omissions or errors in the listing of exceptions. He recalled that the DG3 was scheduled to meet again on 19-20 January and would look at matters relating to labour and environment.

The Chairman reminded those delegations that had not already done so to send their comments on the draft text on taxation circulated by Mr. Sukanuma.

5. Financial Matters

The Group discussed the proposal by one delegation whether to take up the issue of the broader implications of the outcome of the Geneva negotiations on financial services. The Chairman concluded that this should not be part of the mandate for the upcoming round of informal consultations on financial matters (see item 9 on Next Steps, below) but could be taken up by the Negotiating Group at a later time.

6. Labour and Environment

The Negotiating Group examined the Secretariat note [DAFFE/MAI(98)1] on the relationship between the MAI and selected multilateral environmental agreements. The Chairman noted the favourable comments by delegations and agreed to provide a period of two weeks for any written comments or suggestions. He agreed that the revised paper be made publicly available and posted on the Internet.

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. These results are to be presented at the next meeting of the Negotiating Group in February.

The Negotiating Group briefly discussed the package of additional environmental proposals by one delegation [DAFFE/MAI/RD(98)10] and agreed that the meeting of Drafting Group 3 to take place on 19-20 January should examine these more closely and give advise on how to deal with them.

7. Conflicting Requirements and related matters

The Chairman noted the remarks by some delegations that this issue was of major importance for the conclusion of the MAI.

8. Contributions from Observers

The Chairman welcomed the comments made by the observers, Argentina, Brazil, Chile, Hong Kong and the Slovak Republic, in particular the statement that certain countries were making progress in preparing their preliminary lists of country specific exceptions.

9. Next Steps/Other business

a) Next Steps

After some discussion, the Group approved the mandate for informal consultations on financial matters which would be held in February, (see annex 1).

b) Preparation of the High Level Meeting

Delegations discussed preparations for the High Level meeting to be held on 16-17 February, 1998. They approved a draft agenda for that meeting and noted that the Chairman intended to submit notes on (a) Main features of the MAI, including the dispute settlement mechanisms, (b) Labour and environment, and (c) Exceptions.

A fourth item on the agenda, "concluding the agreement", would address all substantive and procedural issues, including conflicting requirements which are important to the conclusion of the agreement and the participation of non-Members.

It was also agreed that the observers would be invited, under item 1, to make statements on any aspect of the MAI.

c) Future meetings

The Group approved the draft agendas for February and March 1998 [DAFFE/MAI/RD(98)9].

The agendas are attached as Annex 2.

Annex 1

Mandate

Informal Consultations on Financial Matters

1. The purpose of the consultations is to complete the development and refinement of text on the following matters:

- a) a temporary safeguard clause, including the role of the Fund;
- b) the treatment of public debt in the MAI;
- c) transactions in pursuit of monetary and exchange rate policies;
- d) payment and clearing systems/lender of last resort;
- e) the dispute settlement procedures for financial services; and
- f) membership of self-regulatory bodies and associations (financial services).

2. One round of consultations shall be held prior to the February meeting of the Negotiating Group so that the results can be reported to that meeting.

Chairman: Mr. Fernando Perreau de Pinninck (European Commission)

Annex 2

18-19 February 1998

1. Contributions from Delegations
2. Contributions from Observers
3. Progress in DG3 and Informal Consultations
4. Labour and Environment
5. Dispute Settlement
6. Next Steps

Extended HOD Lunch 18 February : Follow-up to the High Level Meeting

- 11-13 Feb Financial Matters
- **16-17 Feb High Level Meeting**
- 17-18 Feb Intellectual Property
- **19 Feb Negotiating Group in Plenary**
- 20 Feb Bilateral Consultations
- 20 Feb DG3**
- 20 Feb Institutional Matters
- 23-24 Feb Special Topics
- 23(pm)-25(am) Dispute Settlement*

16-20 March 1998

1. Contributions from Delegations
2. Contributions from Observers
3. Progress in DG3 and Informal Consultations
4. Overview of the Agreement
5. Labour and Environment
6. Conflicting Requirements
7. Next Steps

Extended HOD Lunch: 18 March : Main Outstanding Issues

- Country Specific Exceptions*

** DG3 may need to meet again on 23-25 February.

* Subject to confirmation by the Negotiating Group

Annex 3

TENTATIVE SCHEDULE OF MEETINGS

16-27 February: including High Level Meeting (16-17 February)

16-20 March

14-18 April

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