PROCEEDINGS OF THE SPECIAL SESSION ON THE MULTILATERAL AGREEMENT ON INVESTMENT HELD IN PARIS ON 17 SEPTEMBER 1997

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Paris

58750

FOREWORD

The following is a selection of papers presented at the Special Session on the Multilateral Agreement on Investment, held in Paris on 17 September 1997.

This document is published on the responsibility of the Secretary-General of the OECD.

Table of Contents

STATE OF PLAY OF MAI NEGOTIATIONS

Ambassador Alan P. Larson[1]

I would like to say it is good to see so many representatives from non-OECD countries. We genuinely welcome your interest in the MAI and I look forward to a productive exchange. Before going into the architecture and the progress we have made to date in the MAI, I would like to add a few quick comments on the general topic of why we are doing this agreement and why we are doing it within the OECD.

As the Secretary-General indicated, the OECD has a long history of working on investment-related issues, and this goes back to the very foundations of the organisation. At the same time, most OECD countries also have a long history of negotiating bilateral treaties on investment. We see investment as an area where rules are reciprocal or beneficial and we have actually seen an increase in recent years in the importance of having rules for investment. One of the reasons for this is the growing inter-relationship between trade and investment. Increasingly, countries are finding that if they are going to trade freely, they need to be able to invest freely. If they want to trade in services, they almost always need a presence in the market. This is also true in the goods sector because of the need for differentiated products to meet local requirements, for after-sale service, as well as because of the growing complexity of international trade that requires an on-site presence in order to trade effectively. That has stimulated our interest in developing rules for ourselves as we relate to each other.

We agreed in 1995, as has already been mentioned, on a mandate for negotiations. Since that time we have been actively pursuing an agreement that we consider a "state-of-the-art agreement"; an agreement that would not only deal with the traditional topics in the area of investment, but also with new topics and issues.

The basic architecture of an investment agreement begins of course with a definition of investment. One of the issues we have been dealing with, and on which I think considerable progress has been made, is this definition. We are opting for a rather broad definition that includes what is traditionally thought of as FDI, but which would also include portfolio investment and many contractual arrangements that have the character of investment. Our colleagues will be working with you later in the programme to talk through this issue, but I think it is important to underscore that we are looking at investment in a very broad way.

One of the cornerstones of an investment treaty is the protection of investment. Here are provisions found in most investment treaties relating to protection against expropriations that are not conducted for a public purpose, that do not involve prompt, adequate and effective compensation. In addition, most investment treaties have provisions to protect investors' ability to transfer funds freely in and out of the country in which they have invested. Those types of provisions are in our emerging treaty and you will be briefed in more detail on them.

Another fundamental feature of an investment treaty, and of this investment treaty, is a standard of non-discrimination. As the Secretary-General said, the basic principal is that foreign investors should

---

1. Ambassador Larson, U.S. State Department, is Vice-Chairman of the Negotiating Group on the MAI.

be treated no less favourably in like circumstances than the investors of the host country. This is the national treatment principle. A related principle is the most-favoured nation principle: that foreign investors of one country should be treated no less favourably than the investors of another country.

These are the bedrock of an investment treaty. It is really the idea of non-discrimination. We are moving beyond this in the sense that we are trying to apply this basic non-discrimination principle to new aspects and new problems of investment policy and we are trying to develop stronger disciplines and stronger protection for foreign investors in some new areas. I will give you the examples that are perhaps the most important.

In the area of performance requirements we are trying to establish agreed disciplines that would limit the types of requirements that a government could levy on a foreign investor at the time the investor is proposing to enter into a market or to establish. We are also trying to develop agreed disciplines that would limit the types of requirements that a government could impose as the condition of receiving some type of government benefit. These all fall into the category of performance requirements and we have made a great deal of progress in this area.

At the same time, we are discovering that many of our countries for domestic policy reasons are engaging in processes of privatisation and demonopolisation. There is nothing in the MAI that is going to say that a country must privatise or must demonopolise certain sectors. That is obviously up to the countries themselves. We will, however, try to develop disciplines saying that as countries, or if countries engage in privatisation or demonpolisation, the basic non-discrimination principles will apply to this aspect of investment policy as well.

We are dealing with the important issue of the movement of key personnel. For investors to be able to invest effectively abroad it is often important for them to be able to have key management and key technical personnel to be able to come and go freely. We want to be assured that subject to each countries' own immigration laws, there are provisions that will offer some reassurance and protection for investors in this area. In addition, we are dealing with the complex issue of investment incentives and trying to determine whether there can be disciplines in this area or whether at a minimum we can have rules that would provide for transparency and non discrimination when investment incentives are offered by governments.

I think it is important to underscore, as Mr Johnston and Mr Engering have done, that while this agreement is structured as a top down and comprehensive agreement, it is not meant to be an agreement that would prevent governments from carrying out their responsibilities in regulating economic activity, protecting the environment, or anything of that nature. It is true that the basic structure of investment agreements is top-down; they establish basic principles that are applicable to all segments of the economy and to all aspects of the treatment of investors. In that sense they differ from some other types of agreements that take the principle that nothing is permitted unless it is explicitly provided for. In general, an investment agreement works the other way. Everything is permitted unless it is specifically excepted or reserved. We do have provisions for these types of exceptions to the broad principles of national treatment and MFN treatment. There will be in this agreement, for example, general exceptions. Those of you who are familiar with the WTO will be quite familiar with these provisions because there are in the WTO and the GATS national security exceptions and there is, I believe in the GATS, a public order exception. So these exceptions make sure that governments are assured they have the ability, subject to certain constraints, to do what they feel is necessary to carry out some of the core responsibilities of government.

At the same time, is will be scope for country-scope exceptions. In other words, no OECD country would be able to accept all the obligations of the agreement we are trying to negotiate without any exception. All of us have some sectors where we have laws and regulations in conflict with the principle of non-discrimination. We would like to get rid of as many of these laws and regulations as possible, but where we cannot we will need to list them so that there is absolute clarity about the types of commitments we are engaging in. It may also be necessary, although this is still a matter of on-going discussion, to have some provision that would allow countries to list areas where they feel unable to make firm commitments that they may not need in the future to introduce certain policies or measures that would be inconsistent with the overall principle of non-discrimination.

On of the fundamental features of an investment agreement of the type we are trying to negotiate is that there should be effective dispute settlement. In most cases the mere existence of an effective dispute settlement mechanism means that less formal methods of conciliation actually result in resolution of investment dispute. We will nonetheless provide for in this agreement for state-to-state dispute settlement that could involve international arbitration and, unlike trade agreements, there is provision for investor-to-state dispute settlement. In other words, an investor who believes he has been treated in a way inconsistent with the obligations of the agreement, could invoke dispute settlement.

Let me quickly touch upon some topics we will need to deal with as we move into this last year of the negotiations. The Secretary-General and Mr Engering both mentioned the fact that the OECD is a place where there is a long tradition of reflecting not only on the obligations of government vis-à-vis foreign investors, but also the responsibilities that foreign investors themselves should have. This is reflected in the OECD Guidelines and Multinational Enterprises. These guidelines treat, among other things, the issues of labour standards, of environmental protection and the obligations of international firms in those areas. More generally, we will be dealing with concerns that exist in many of our countries that an agreement that talked only about the obligations of governments towards foreign investors might inadvertently produce a situation where in the competition to attract foreign capital we were driving down our standards of environmental protection, our standards of respect for core liberal rights in a pursuit of foreign capital. We will be introducing some provisions that deal with those concerns, although the precise scope of those provisions has not yet been agreed.

In the interest of time I am not going into detail on the other issues that we are going to need to address, but simply say that we recognise that in certain areas such as taxation we will need to make sure that there is a clear dovetailing of the provisions of this agreement with the provisions of the rather extensive tax treaty network. We recognise as well that the basic principle of non-discrimination remains the objective. We will be addressing the question of culture and the interest that many of our countries have in ensuring that certain measures they want to preserve within their countries to protect cultural diversity will not be impeded upon by this agreement. We will be addressing the issue of regional economic integration organisations and the fact that many of our Members are in the process of drawing themselves closer together and have said that they would like to have some protection to make sure that as they integrate further the obligations they have do not interfere with that integration. At this stage, this is essentially an issue for the European Union.

I would like to say, Mr Chairman, in conclusion that I have always thought this agreement is one that is profoundly in the interest of all of the OECD countries. That that is why we have undertaken it in the sort of free and voluntary way and have accepted the notion that it is in our interest to have obligations with respect to each other and that in doing so we not only protect our investors as they move overseas, but we also establish a sense of security for foreign investors that want to come into our countries and that is profoundly in our interests. This agreement is worth doing even if it is only the 29 OECD countries, as

well as the European Union, that become a part of it. At the same time, we feel profoundly that the door ought to be open to other countries that also see it in their interest to be part of an agreement that has strong rules for foreign investors and that would protect their investors as they go overseas, but also would provide assurance to foreign investors that want to come into their countries. It seems to me that in a world where international financial flows are growing rapidly and where they are becoming one of the most powerful and dynamic forces in the world economy that many countries may find it in their interest to be part of this type of agreement. Of course, that is for them to decide. Our interest is not in recruiting people for this agreement, but into making sure there is full information about it and a very open door so any country which sees it in its national interest to be part of this agreement would have a genuine opportunity to be a part of this agreement.

Remarks by Ricardo Guerra de Araujo[1]

Mr. Chairman, Mr. Secretary-General, Ms. Deputy Secretary-General, distinguished delegates,

It is a pleasure to be here today among officials we already know from other activities Brazil has been conducting on a bilateral and a plurilateral basis within OECD. My delegation would like to compliment you, Mr. Chairman, and the Secretariat for the organisation of this session and the opportunity given to us to express our views on the present ongoing negotiating process dealing with one of the most important subjects of the current international economic agenda. For the first time Brazil is attending a formal working session of the Negotiating Group of the Multilateral Agreement on Investment, as an ad hoc observer, upon the invitation of the OECD Council. Before this formal invitation was made, Brazil had been following the negotiating process of the MAI through regular informal consultations with the Secretariat and member countries of the Organisation. As you know, Mr. Chairman, Brazil had the pleasure to host in 1996 and during the current year two OECD seminars on multilateral rules on foreign direct investments which constituted invaluable opportunities for non-member countries in Latin America to gather information and exchange views about the negotiation process of the MAI. It is worth recalling that Brazil had been pursuing closer co-operation ties with OECD since its admission to the Development Center in 1994 and to the Steel Committee in 1996. Following this trend, Brazil has recently become and observer member of the Trade and Investment and Multinational Enterprises Committees, has taken part in several activities organised by OECD and is applying for observership status in other committees of the Organisation.

A future MAI, as described in the last consolidated text, will cover a large field in the world international economic relations. The very ambitious scope of the MAI proposes provisions in an innovative way compared with the existing international instruments.

The broad coverage of the agreement will have a significant impact not only on the negotiations on investment *strict sense* taking place in other fora such as UNCTAD and WTO, but also on other important issues treated in the WTO such as government procurement, competition policy, TRIMS, TRIPS, environment, subsidies, investment incentives, technical barriers, services and regional agreements.

The future MAI, therefore, will constitute an important instrument with undeniable implications worldwide for investors and investment recipient countries in areas of production, services and financial and capital markets. How the provisions proposed in the draft agreement will be made compatible with existing multilateral (GATT/WTO) regional and bilateral agreements remains an open question for Brazil at this point of the negotiations. One cannot deny, however, the intrinsic importance of the future MAI in and its likely effects in international business transactions. As you know, trade and investment remain two of the most important triggers of economic growth, employment and transfer of technology among nations. As one of the emerging economies in the closing years, of this century and beginning of the next, Brazil certainly welcomes a broad discussion and further institutionalisation of equitable and stable rules aimed at promoting international investment and business transactions. As an observer of this Negotiating Group, Brazil is looking forward to confirming the expectations of the international community that the future MAI will provide this fair and equitable instrument that investors and investment recipient countries are looking for.

Thank you.

---

1. Deputy Head, Financial Policy and Development Division, Ministry of External Relations, Brazil

SCOPE OF THE MAI

Xavier Musca[1]

The general presentation by Ambassador Larson clearly demonstrated that the Multilateral Agreement on Investment is an ambitious instrument. I assume any negotiator must be tempted to describe his creation in such terms. However, the MAI *really* is an ambitious agreement. This is shown in particular by its scope of application, which is the issue I propose to address.

The text of the MAI is not yet in final form. Technical details and some political choices are still outstanding, but the main elements of its scope of application are now in place.

I propose to examine three questions:

-- firstly, the definition, which is a broad one, of the terms "investor" and "investment";

-- secondly, the limits that will nevertheless be placed on this broad definition; and,

-- thirdly, relations between the MAI and other international agreements dealing with investment, notably the WTO agreements.

To proceed to the first question: **the definition of the terms "investor" and "investment**". In practice, it would be difficult to make that definition any broader.

Firstly, the scope of application of the MAI is very broad in that it covers all economic sectors. At the WTO, with the GATT and GATS agreements, negotiations were "*bottom up*": only those sectors expressly mentioned come within the scope of application of the agreements and sectors not mentioned are free from any obligations. With the MAI, on the other hand, a "*top down*" approach was adopted. This means that all sectors are by definition included in the agreement, and only the introduction of a specific reservation can enable a Contracting Party to suspend the application of the agreement to a particular sector that it wishes to protect. The MAI is therefore a horizontal treaty, in contrast to the sectoral approach used today at the WTO.

Secondly, the scope of application of the MAI is very broad in that it covers all forms of investment. *An investor* is defined as any natural or legal person of a Contracting Party. For the MAI an investor can be anyone, and it is difficult to imagine a broader definition. What is more, *investment* is also given a very extensive meaning. It covers, and I quote "any kind of asset owned or controlled, directly or indirectly, by an investor". In practice, this means that the MAI goes beyond the traditional concept of foreign direct investment (establishment of branches and subsidiaries, acquisition of permanent holdings in local companies, purchase of tangible assets). It also comprises portfolio investment (i.e. equity participation for investment purposes), financial investment (bonds, debentures, loans) and intangible property. New forms of investment likely to emerge in the future will also be covered by the MAI, and it will be able to adapt to the changing nature of international investment as a result of its definition of investment in the form of an open list.

---

1. Treasury Directorate, Ministry for the Economy and Financ, France

Thirdly, the scope of application of the MAI is very broad in that it covers all stages of investment. To quote once again, it includes "the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposition" of investments.

Lastly, the scope of the MAI is broad in that it covers all types of measures that a Contracting Party may take to restrict freedom to invest. It covers all types of normative instrument: laws, regulations, judicial decisions, and international treaties. It applies to all levels of government, both national and subnational. For any given level of government it includes both government authorities and legally independent agencies to which those authorities have delegated their prerogatives.

Such extensive scope of application is consistent with the MAI's main objective, namely to make the existing system of bilateral investment protection agreements into a multilateral one. Bilateral treaties do indeed have a similar scope of application. Moreover, within a multilateral framework, the situation is not an entirely new one, since a similar approach was adopted with the Energy Charter Treaty.

Total and unconditional liberalisation of international investment could lead to economic destabilisation and would have been counterproductive. The MAI negotiators thus established **limits to its scope of application**.

The first such limits concern the definition of investment itself. In this connection work is still under way to determine the appropriate treatment of *indirect investment*. Numerous delegations are in fact in favour of excluding from the scope of the MAI investments by a subsidiary or branch established in a non-Member country. The possibility is also envisaged of limiting the scope of the MAI in regard to *intellectual property rights*, so as to avoid any conflict with existing international agreements in this field. Other possible "carve-outs" relate to *public debt*, *real estate* and *licences*.

Another type of limits to the scope of the MAI meets the need to allow for the specific features of certain sectors. Two sectors are concerned in practice:

-- the *financial services* sector is covered, but the rules applied to it are less demanding than the normal rules in the agreement. In particular, restrictions on freedom to invest are permitted on prudential grounds and to qualify the obligation of transparency which, if fully applied, might interfere with the confidentiality inherent to certain financial information;

-- *taxation* comes closer to total "carve out". At this stage of the negotiations only a limited transparency clause and a clause prohibiting extreme cases where financial measures amount to expropriation are envisaged. Numerous delegations consider that taxation is a world on its own and that bilateral double taxation conventions are the most appropriate instrument in this field.

The last type of limitations to the scope of the MAI relates to what it calls "general exceptions" and "safeguard clauses":

-- A *general exception* is a provision enabling a Contracting Party to take measures contrary to the Treaty on a permanent basis. The "national security clause" in the MAI thus authorises Contracting Parties to take any steps necessary to protect their vital security interests or in performance of their obligations under the United Nations Charter for purposes of maintaining international peace and security. A general exception in respect of public order is also included in the MAI. Some delegations have also proposed a general exception for culture.

-- A *safeguard clause* is a provision enabling Contracting Parties temporarily to suspend application of certain disciplines in the agreement. The MAI contains such a safeguard clause to cover serious balance-of-payments and external financial difficulties of a Member State. Resort to this clause is subject to review by the Parties Group and the IMF.

Overall, despite the few limitations I have just listed, and which are moreover mostly strictly technical, the scope of application of the MAI remains very broad. And this is largely what makes the MAI an ambitious agreement. This finding leads on to the last question regarding the scope of application of the MAI -- namely **its compatibility with other international agreements on investment**.

As regards bilateral investment protection treaties the situation is relatively straightforward. For Contracting Parties to the MAI any provision in a bilateral treaty that is not in accordance with it must be the subject of a specific reservation if that provision is not to lose all effect.

As regards multilateral treaties the situation is far more complex. The main difficulty derives from the link up with WTO agreements, particularly GATS. In theory, the scope of application of the MAI and the GATS is mutually exclusive: the former deals with investment and the latter with trade. In practice, *the two agreements partially overlap*. If reference is made to the nomenclature of service provision as defined in the GATS, it will be seen that mode 2 (consumption abroad), mode 3 (establishment of commercial presence) and mode 4 (transborder movements of natural persons) fall at least partly within the scope of the MAI: only mode 1 (transborder services) appears specific to the GATS.

In areas where there is duplication, *certain MAI obligations will undoubtedly be stricter* than those in the GATS. Detailed examination is not yet terminated but this does emerge clearly from the general tenor of the MAI, which is indeed broader in scope. Its provisions are also more elaborate. As will be explained to you in the next intervention by my Canadian colleague William Dymond, the MAI goes beyond the general principles of liberalisation of investments (national treatment, most favoured nation clause, transparency) to include specific principles (performance requirements, enterprise behaviour, key personnel).

This leads to a major difficulty. Owing to the MFN clause in the GATS, Parties to the MAI, all of whom are WTO members, will automatically have *to extend all additional liberalisation commitments* they assume under the MAI to all other members of the WTO. They will thus have to grant advantages "free of charge", without obtaining anything in return. This shortcoming of the multilateral architecture is a source of concern for OECD members and we are examining closely how appropriately to remedy it.

To conclude, I do hope the dry technicality of what I have said has not discouraged you too much. I have to admit that the complexity of the MAI does sometimes give food for thought. But this is no doubt the price to be paid for its being so ambitious.

However, were only three of my ideas to impress themselves on your minds, I would propose the following:

-- firstly, the scope of application of the MAI is very broad and is part of the general approach to a high standard agreement;

-- secondly, some limitations have however been included, but most of them are purely technical ones;

-- thirdly, the MAI is intended to be compatible with the WTO agreements and every effort is being made to ensure that it does not impose obligations on the Contracting Parties which would conflict with their obligations under those agreements.

THANK YOU FOR YOUR PATIENT ATTENTION.

THE MAIN SUBSTANTIVE PROVISIONS OF THE MAI

William A. Dymond[1]

The Canadian media reports with a sense of awe that the current consolidated text of the MAI is 168 pages long. The horrors hidden within such a lengthy text can scarcely be imagined.

We explain that this is a working text, replete with alternative formulations, footnotes, trenchant observations by the Secretariat, and that the final text will be much shorter.

If the final product amounts to such a prodigious number of pages, we will have failed as negotiators.

Our purpose is not to complicate but to simplify. The concept that we are trying to codify in a treaty is simple. Non- discrimination, that is, equal treatment between foreign and domestic investors.

The heart of the MAI is non-discrimination. The value of the MAI will be measured by the extent to which it embeds non- discrimination into a treaty binding among its signatories and ensuring the practical application of this principle in national investment policies. In effect, the MAI will be binding, not only among its signatories as a whole, but between each signatory and all the others.

Negotiating non-discrimination as the informing principle of an agreement does not constitute a journey into uncharted territory. On the contrary, the path is well trodden.

Since at least the 11th century, the principle of non- discrimination has underpinned commercial treaties, deriving, for example, from the efforts of Italian merchants to secure access to the markets of the Levant, by preventing the grant of monopolies to other traders.

The 1713 Treaty of Utrecht between England and France provided that "... all and singular the subjects of each Kingdom shall ... have and enjoy at least the same privileges, liberties and immunities as to all duties, impositions, or customs ... and shall have the like favour in all things as the Subjects of France or any other foreign nation the most favoured, have possess and enjoy or at any time hereafter may have possess or enjoy."

Modern experience with non-discrimination dates back to the 1860 Cobden-Chevalier Treaty between Britain and France which ushered in a network of mutually reinforcing MFN agreements. Of equal importance is the disaster for the world economy resulting from the widespread departure from the principle of non- discrimination in trade and investment relations which reached its apogee in the 1930's.

It is, therefore, not surprising that more than fifty years ago, the visionaries who laid the basis for the post war trade and payments system made a determined assault on discriminatory polices and succeeded in the General Agreement on Tariffs and
Trade.

---

1. Department of Foreign Affairs and International Trade, Canada

The GATT has proved its worth many times, both as originally formulated and as expanded and improved over the years. The latest manifestation extends the WTO into important areas of investment, notably in services and trade related investment measures.

Most bilateral investment treaties prescribe, separately or in combination, national treatment, MFN and fair and equitable treatment according to international law.

These are the principles of chapter 11 of the North American Free Trade Agreement which currently join Canada, the United States and Mexico.

The current working texts of the MAI for most favoured national treatment and national treatment can be found in any number of existing investment protection agreements. Certain elements will need to be looked again as negotiations develop in other areas, for example, intellectual property.

Extending most favoured nation and national treatment to investment is more complicated than importing clauses from trade agreements.

We have been having a lively discussion whether the application of most favoured nation treatment and national treatment should be qualified by the reference to like circumstances.

Some delegations consider that such a qualifying reference is open to abuse; others believe that there are circumstances where differential treatment can and should be applied to foreign investment without such different treatment constituting discrimination.

There is some but not definitive guidance to be had from existing current agreements since some, such as the NAFTA, contain the phrase while others, such as the Energy Charter Treaty, do not.

The draft text contains a series of standard provisions found in most agreements or recognised as constituting customary international law respecting transparency, fair and equitable treatment, expropriation and compensation, protection from strife, transfers, subrogation and the protection of existing investments.

Such provisions are part of the essential building blocks of any investment agreement and have aroused little controversy. One reason for this tranquil state of debate is that the policies followed by the OECD countries already conform in large part to the principles laid out therein.

Standing by themselves, the draft texts on most favoured nation treatment and national treatment and the other provisions constitute bold statements. They cannot be read, however, without the reservations which will form an integral and equal part of the rights and obligations of the MAI.

Some of the criticism of the MAI in Canada and other countries is based on the misconception that the MAI will allow no reservations.

It is inconceivable to imagine that the MAI or any other economic treaty will be free of reservations of either a general or specific character. Without reservations which allow governments to balance the economic benefits of foreign investment against other national objectives, there would be no basis for negotiation.

We are now moving intensively into a consideration of reservations and it is worth spending a little time on what the reservations are and where they will fit.

As a first point, it is important to be clear about the limits of non-discrimination. The most favoured nation rule does not require a country to establish or maintain particular conditions of access for foreign investment; it requires that those conditions of access be the same for all countries.

The national treatment rule does not require that foreign investment in a country be subject to particular treatment; it requires that foreign and domestic investment be treated the same way, for example respecting corporate taxation, the environment, labour, indeed every area of regulation by government of business activities.

Each country retains the right to legislate and regulate the domestic economy to achieve its own national objectives. The non- discrimination principle requires that such legislation and regulation make no distinction between foreign and domestic investment.

Reservations set out the policy areas or sectors which countries exclude from most favoured nation and national treatment and from other rules of the agreement and as a consequence from dispute settlement.

Second, there will be a number of general reservations. The most obvious one will be measures taken to protect national security since no country will condition the right to defend itself. How broad the exception should be, whether the need to invoke the exception is self-judging or subject to review, or whether there should be notification and consultation procedures are matters of continuing debate. However that debate evolves, it is important to remember that the reservation should be seen as a contingency, used only in dire and exceptional circumstances. And indeed that has been the practice in agreements such as the GATT where the national security reservation has been seldom invoked or bilateral agreements between Canada and the United States where it has never been invoked.

There are proposals on the table for general exceptions covering cultural polices, and measures taken for public order. The issue for most, though not all delegations, is not whether countries can defend their culture or uphold public order. These matters are not in dispute. The issue is whether, for example the cultural reservation, should be general or specific to countries such as Canada which require such a reservation.

The important issue, of course, is not the number of specific country reservations that eventually are lodged. We are not in a beauty contest with the winner's crown, a recording contract and an appearance on Larry King Live to be awarded to the country with the fewest number of reservations.

The essential test is the manner in which the country reservations combined with the general reservation affect the implementation of the MAI.

In other words, it is quality not quantity which counts.

It is interesting to note that a high percentage of the reservations fall within the area of regulated services sectors such as transportation and telecommunication. A pessimist might say that this is evidence that governments have little appetite for negotiating in these areas. The reality is that in the World Trade Organization the MAI countries have already set their sights on negotiating services liberalisation in current or planned rounds of multilateral trade negotiations.

To reiterate, no assessment of the value of the MAI can be made until the negotiations on reservations are complete. These reservations will be the essential measuring rod against which can be judged the value of the rights and obligations of the MAI and, in large measure, determine the readiness of countries to adhere to the MAI.

We are increasingly hearing the criticism that the MAI is a multinational enterprise agenda and that the negotiations are driven and informed by the needs of multinationals.

This is untrue. The opposite is the case.

This is not the corporate agenda we are negotiating. This is a government agenda we are negotiating — to negotiate and apply investment rules and level the playing field.

We are seeking to replace the partial, piecemeal and largely unsatisfactory rules that now govern foreign investment with more comprehensive and widely accepted rules.

The irony is that unless governments set the rules of foreign investment and do so in a coherent and co-ordinated way bound by international law, multinational enterprises will set their own rules and those rules will come at a heavy price.

This is not a charter for corporations to evade environmental laws, to exploit labour, or to invade critical areas of national endeavour such as cultural or social policies.

It is in fact the opposite. So long as governments set the rules, they will ensure that areas of national endeavour are nourished and protected.

The MAI is an opportunity to negotiate a multilateral agreement based on the rules of non-discrimination which have fostered the enormous and hugely beneficial expansion of international trade in goods and services over almost 50 years.

Its beneficiaries will be, not just businesses in the global economy, but the millions of ordinary citizens whose savings and pension funds make up the bulk of investment. They deserve a set of rules which are as clear and transparent as those long applied in international trade.

THE OECD GUIDELINES AND THE MAI

Charles Bridge[1]

1. In my talk, I should like to discuss three main topics:

- the background to the OECD Guidelines for Multinational Enterprises, and how they have been drawn in to the MAI negotiations;

- the status and content of the Guidelines; looking in particular at the environment and at labour standards;

- how the Guidelines might be linked to the MAI, and the implications for countries considering accession.

2. It takes an effort of imagination to think back to the middle of the nineteen-seventies. The OECD economies were rapidly becoming more closely integrated through trade and investment flows and the central role played in this process by multinational enterprises was growing more obvious. But neither Mrs Thatcher nor Mr Reagan was yet in power. There was nothing odd in calling for social responsibilities to be imposed on economically powerful corporations. The question was, rather: should OECD Governments collectively impose social responsibility through voluntary guidelines and moral pressure; or did the power of multinationals require equally powerful, binding, regulation on a multinational basis? Of course, the first of these alternatives was pursued. There was no prospect, in 1976, of international agreement on binding rules in areas of great domestic sensitivity such as labour relations.

3. Now, more than 20 years later, we can look back at a period in which, at least in some OECD countries including my own, the United Kingdom, the influence of the Guidelines has been, frankly, modest, though there have probably not been many flagrant breaches. And explicit calls from labour or environmental pressure groups for clear monitoring of the Guidelines have been conspicuously absent.

4. But the political pendulum has now started to swing back. Concern for labour standards and, more strikingly, environmental protection is stronger than in the 1980s. And we are now negotiating an agreement which will give international investors new rights - rights which they will probably be able to use as powerful weapons in their relationship with host governments and potential host governments. It is not surprising, then, that attention has swung back to the question of whether it is necessary to ensure more effective influence over the social aspects of multinationals' behaviour - some might say 'regulate them more effectively' . Well, at the level of influence, the Guidelines are already there. Why not try to give them a new lease of life in the context of the MAI? That is what all but a small minority of OECD countries have accepted should happen.

5. So, what of the content of the Guidelines? They cover a wide range of issues, by no means just labour and the environment: very general points are included, e.g. "Enterprises should ..... favour close co-operation with the local community and business interests"; as are more specific requirements on information disclosure, on avoidance of anti-competitive behaviour, financial management, taxation and science and technology. However, in practice the most important elements have been "Employment and

---

1. Department of Trade and Industry, United Kingdom

Industrial Relations" and "Environmental Protection", which was added to the text in 1991. The Guidelines text on these subjects is reproduced at the back of the written version of this talk.

6. There is no time to discuss the detail of the text today. And in any case there is general agreement that the Guidelines need to be reviewed, and the plan is to do this after the MAI negotiations are completed. But it is worth drawing to your attention that the passage on employment in particular is quite specific and unambiguous in setting out some minimum standards for labour relations.

7. However, the Guidelines are just that: guidelines only. More precisely, OECD Governments declared in 1976 "That they jointly recommend to multinational enterprises operating in their territories the observance of the Guidelines .....". I will come back to the voluntary status of the Guidelines in a moment.

8. If we look at the MAI as a whole, it seems most likely that the issues of labour standards and environmental protection will arise in at least three forms: in the preamble to the Agreement; in the Guidelines, however they may be associated with the MAI; and in at least one substantive provision of the Agreement itself, which will deal with the possible lowering of environmental or labour standards. Some want to include a legally binding commitment, subject to the full dispute settlement provisions of the Agreement, that contracting parties will not lower standards in order to attract a particular investment. Others argue for a declaratory provision only, discouraging the lowering of standards. The hard-liners, adopting the first position, seem to have the upper hand at present. But the debate is fluid. Discussion continues on whether the provision should be drafted in terms of domestic or international standards. And in any case it is likely that some delegations will bring forward additional proposals on the subject before long.

9. How are the Guidelines to be linked to the MAI? Well, there has been a rather dry technical debate about the legal modalities, which I will not bore you with. The interesting questions are:

- Should the voluntary status of the Guidelines be preserved?

- What degree of reaffirmation will OECD Governments give to their commitment to the Guidelines?

- What commitment will be required of non-OECD countries joining the Agreement?

10. We do not yet have a firm answer to any of these questions. But the emerging majority view is that the voluntary status should be unchanged; commitment to the Guidelines should be not merely noted but unambiguously reaffirmed; and non-OECD countries should take on a similar commitment on joining the MAI. I should make clear that this means not just a commitment which, once made, can be quietly forgotten. OECD countries have since 1991 been under a binding obligation to set up "National Contact Points for undertaking promotional activities, handling inquiries and for discussion with the parties concerned on all matters related to the Guidelines .....". Again the full text is attached. Notice in particular that an OECD Committee is "responsible for clarification of the Guidelines" but "shall not reach conclusions on the conduct of individual enterprises." The majority view is that these arrangements should all carry over to non-OECD countries joining the MAI.

11. The implications for those considering whether to join the MAI? Potentially, there are wide-ranging implications. But it is not easy to pin them down exactly. It seems very likely that joiners will take on more of a moral and political commitment than a legal obligation, though there will probably be at least a small element of legal obligation, in particular to set up National Contact Points. In return, MAI

members are likely to have a moral and political right to expect multinational enterprises from other MAI parties to respect the Guidelines in their territories.

12. For some non-OECD countries this may turn out to be quite significant: not just a minor appendage to the Agreement but an element which could make a valuable contribution. In the prolonged discussions about the Guidelines which we have had in the negotiations, many of us have been tempted to use arguments based on what we have thought might be the views of non-OECD countries. So, for example, those sceptical about the value of the Guidelines have argued that, if non-OECD countries are obliged to sign up to the Guidelines as a condition of MAI membership, many will be deterred. Analogies have been drawn with the controversies in the WTO about trade and the environment and trade and labour standards. Those who hold the Guidelines in higher regard have argued that the debate here is really quite different from the debate in the WTO and that many non-OECD parties will see political and economic advantage in having the Guidelines in operation in their countries. I believe this view was expressed by a number of participants at the meeting in Seoul earlier this year.

13. No doubt there is no single "non-OECD view." But I should be very interested to hear your views on whether the inclusion of the Guidelines in the MAI is likely to have a significant impact, in either direction, on your Governments' assessment of whether they should aim to join the Agreement.

14. Thank you very much.

EMPLOYMENT AND INDUSTRIAL RELATIONS (Extract from Guidelines)

Enterprises should, within the framework of law, regulations and prevailing labour relations and employment practices, in each of the countries in which they operate:

1. Respect the right of their employees to be represented by trade unions and other bona fide organisations of employees, and engage in constructive negotiations, either individually or through employers' associations, with such employee organisations with a view to reaching agreements on employment conditions, which should include provisions for dealing with disputes arising over the interpretation of such agreements, and for ensuring mutually respected rights and responsibilities;

2. a) Provide such facilities to representatives of the employees as may be necessary to assist in the development of effective collective agreements;

   b) Provide to representatives of employees information which is needed for meaningful negotiations on conditions of employment;

3. Provide to representatives of employees where this accords with local law and practice, information which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole;

4. Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;

5. In their operations, to the greatest extent practicable, utilise, train and prepare for upgrading members of the local labour force in co-operation with representatives of their employees and, where appropriate, the relevant governmental authorities;

6. In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and where appropriate to the relevant governmental authorities and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects;

7. Implement their employment policies including hiring, discharge, pay, promotion and training without discrimination unless selectivity in respect of employee characteristics is in furtherance of established governmental policies which specifically promote greater equality of employment opportunity;

8. In the context of bona fide negotiations with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to utilise a capacity to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise;

9. Enable authorised representatives of their employees to conduct negotiations on collective bargaining or labour management relations issues with representatives of management who are authorised to take decisions on the matters under negotiation.

ENVIRONMENTAL PROTECTION

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and recalling the provisions of paragraph 9 of the Introduction to the Guidelines that, inter alia, multinational and domestic enterprises are subject to the same expectations in respect of their conduct whenever the Guidelines are relevant to both, take due account of the need to protect the environment and avoid creating environmentally related health problems. In particular, enterprises, whether multinational or domestic, should:

1. Assess, and take into account in decision making, foreseeable environmental and environmentally related health consequences of their activities, including siting decisions, impact on indigenous natural resources and foreseeable environmental and environmentally related health risks of products as well as from the generation, transport and disposal of waste;

2. Co-operate with competent authorities, inter alia, by providing adequate and timely information regarding the potential impacts on the environment and environmentally related health aspects of all their activities and by providing the relevant expertise available in the enterprise as a whole;

3. Take appropriate measures in their operations to minimise the risk of accidents and damage to health and the environment, and to co-operate in mitigating adverse effects, in particular:

    a) by selecting and adopting those technologies and practices which are compatible with these objectives;

    b) by introducing a system of environmental protection at the level of the enterprise as a whole including, where appropriate, the use of environmental auditing;

    c) by enabling their component entities to be adequately equipped, especially by providing them with adequate knowledge and assistance;

    d) by implementing education and training programmes for their employees;

    e) by preparing contingency plans; and

    f) by supporting, in an appropriate manner, public information and community awareness programmes.

1991 COUNCIL DECISION

1. Member Governments shall set up National Contact Points for undertaking promotional activities, handling inquires and for discussions with the parties concerned on all matters related to the Guidelines so that they can contribute to the solution of problems which may arise in this connection. The business community, employee organisations and other interested parties shall be informed of the availability of such facilities.

2. National Contact Points in different countries shall co-operate if such need arises, on any matter related to the Guidelines relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.

3. The Committee on International Investment and Multinational Enterprises (hereinafter called "the Committee") shall periodically or at the request of a Member country hold an exchange of views on matters related to the Guidelines and the experience gained in their application. The Committee shall be responsible for clarification of the Guidelines. Clarification will be provided as required. The Committee shall periodically report to the Council on these matters.

4. The Committee shall periodically invite the Business and Industry Advisory Committee to OECD (BIAC) and the Trade Union Advisory Committee to OECD (TUAC) to express their views on matters related to the Guidelines. In addition, exchanges of views with the advisory bodies on these matters may be held upon request by the latter. The Committee shall take account of such views in its reports to the Council.

5. If it so wishes, an individual enterprise will be given the opportunity to express its views either orally or in writing on issues concerning the Guidelines involving its interests.

6. The Committee shall not reach conclusions on the conduct of individual enterprises.

7. This Decision shall be reviewed at the latest in six years. The Committee shall make proposals for this purpose as appropriate.

8. This Decision shall replace Decision [C(79)143].

NEW DISCIPLINES

Anders Ahnlid[1]

What is so special with the "Special Topics", you may ask? First, they relate to obligations that are seen as complementary to the key MAI principle of non-discrimination. That means that they go beyond the rules on national and most favoured nation treatment. Second, they relate to issues that are not commonly dealt with in investment treaties. Thus, some new ground will have to be broken in this field.

We are working on five main "special topics": 1) Key Personnel (and related provisions), 2) Performance Requirements, 3) Privatisation, 4) Monopolies/State Enterprises and 5) Investment Incentives.

I will concentrate my remarks today on the latter three, and leave the main presentation on the two first to Jo Brooks, who will speak after me. I would, however, take the liberty to say a few words about key personnel and performance requirements as well.

The article on key personnel is almost agreed. Only a few issues, which do not belong to the most difficult ones, remain to be solved. The main purpose of the article is to ensure that investors are not faced with restrictions in relation to the temporary entry, stay and work of individual investors, managers, executives and specialist in a MAI country beyond what follows from the ordinary application of the immigration and labour laws and regulations in that country. While some participants wanted to go further than that, a majority made it clear, early in the discussions, that they were not willing to let the MAI override national legislation in this field.
What the article does, therefore, is basically to ensure that the temporary entry, stay and work of the categories of individuals that I just mentioned is not restricted by numeric quotas and/or economic need tests.

In addition to the article on key personnel we have reached agreement on an article on employment requirements, stating that an investor shall be free to employ any natural person of the investor's choice regardless of nationality or citizenship, provided that that person is holding valid permits for work and stay.

We have also agreed to insert an article in the MAI which would prohibit nationality requirements for senior management of investors, and possibly also for members on boards of directors. Concerning this provision, it is likely that some countries will have to take reservations to allow them to continue certain nationality requirements that are already in the books.

Concerning performance requirements we have come quite a long way in drafting an article that would discipline the use of these measures. The article will prohibit several performance requirements totally and a number of others when they are not connected to the granting of an advantage. The precise scope of the prohibition is not yet finalised, and recently we have spent much time trying to define necessary exceptions to the article, e.g. for export promotion schemes, development aid, public procurement and environmental concerns.

---

1. Deputy Permanent Representative, Swedish Delegation to the OECD and Chairman of MAI Expert Group on Special Topics

The MAI will seek to break some new ground in the area of privatisation. Neither existing OECD rules, nor rules found in other international agreements cover this issue fully.

A fundamental point of departure for the draft provision on privatisation is that any decision to privatise an enterprise remains in the hands of the government.

We have agreed in principle that the MAI rules on non-discrimination should apply to all phases of the privatisation process, i.e. both to the initial sales of publicly owned assets, and the subsequent sales of these assets.

Views have differed, however, on precisely how the rules on non-discrimination should apply to the privatisation process. Some have argued that the national and most favoured nation obligations should cover privatisation just as they cover any other activity in which signatories engage. Others have held the view that it should be made clear that certain forms of so called special share arrangements -- for example golden shares, management buy-outs and special schemes for the public -- should not be deemed to cause de facto discrimination under the agreement.

Under a compromise proposal, which is now considered, Contracting Parties would be allowed to designate, upon entry into force of the MAI, sectors in which they keep the right to lodge additional reservations in the future. More work is needed in order to finalise the formulation of such a compromise.

In addition to this, the MAI will most probably contain specifically designed transparency rules for privatisation, the purpose of which will be to make sure that foreign investors are not put in a disadvantageous position due to lack of information.

Turning to monopolies, there is agreement that government designated monopolies should be covered by the MAI in order to ensure that they do not treat foreign investors less favourably than national enterprises. Again, the point of departure is that governments retain their sovereign right to create, maintain or abolish monopolies.

It is still debated to what extent non-discrimination should be observed when a monopoly is created. However, there is agreement that, once created, a government designated monopoly must observe the MAI rules on non-discrimination, mainly in its sales and purchases. In addition to this, we are still discussing the proposals that have been made concerning provisions that would prohibit covered monopolies from exploiting monopoly gains by engaging in anti-competitive practices in non-monopolised markets.

Concerning the issue of demonopolisation, the Negotiating Group has recognised that there might be a need for some deviation from the obligation of non-discrimination when monopolies are abolished. The Group has discussed a solution similar to the one examined in the context of privatisation, that is to allow Contracting Parties identify sectors where they might need to list future reservations in case of demonopolisation, upon the entry into force of the agreement.

Concerning state enterprises, or entities with which a Government has a specific relationship, it has been proposed that an anti-abuse clause should be introduced, stating that these entities should not act in a manner that would be contrary to MAI rules when they exercise regulatory authority. Some more discussion is needed before this matter can be settled, but the result might be that we end up with one general anti-abuse clause in the MAI, which would cover both monopolies and other entities to which the government has delegated authority.

In this context, I would also note that the Negotiating Group has concluded that the subject of concessions, which is linked to the monopoly and state enterprise provisions, needs further technical work before it can be decided whether specific rules for concessions are required, or not.

The subject of investment incentives remain the most difficult one among the "special topics". The positions held by delegations continue to range from having no separate provision at all to specific disciplines that would constrain the use of investment incentives beyond the applicability of national and most favoured nation treatment.

There is agreement that the MAI rules on non-discrimination should apply to incentives. However, we will probably see some quite broad requests for reservations in this field.

Additional disciplines -- such as a prohibition of "positive discrimination", i.e. more favourable treatment of foreign investors as compared to domestic investors and/or caps on specific incentives -- have been proposed, but not considered in depth.

A number of factors have contributed to the difficulties relating to incentives. Governments are reluctant to give up their freedom to offer subsidies to attract foreign direct investment. In addition, the potential for overlap with WTO rules and negotiations is another factor. The fact that incentives are often granted on the sub-federal level and through tax measures has probably also contributed.

In order to reconcile the different views it has been proposed that issues relating to incentives are inscribed on a built in agenda for further work after the entry into force of the MAI. In addition to that, the MAI might contain some additional rules on transparency for incentives, as well as a definition.

PERFORMANCE REQUIREMENTS

Jo Brooks[1]

It is a pleasure to participate in this part of the program with Anders Ahnlid, who has guided so ably the complex discussions we have had regarding special topics. Mr. Ahnlid has provided an overview of the five special topics. I will use my time to discuss one of those topics -- performance requirements -- in greater detail.

Since this is a complex topic and our drafting has been particularly intricate, I invite you to refer to pages 17-21 of the consolidated text, which you have, so that it will be easier to follow my remarks. I also note at the outset that this article is very much a "work in progress" -- you will see a number of brackets and footnotes in the text and I will tell you about some changes that were made just this week.

This article is divided into five paragraphs. The first paragraph sets forth the conduct that is prohibited. The remaining paragraphs are in essence exceptions or clarifications, identifying conduct that is not meant to be prohibited by paragraph 1.

Looking at the first paragraph, it prohibits each contracting party from mandating or enforcing certain conditions -- which we call performance requirements -- in connection with various phases of an investment in its territory. Those phases or aspects are now listed as "establishment, acquisition, expansion, management, operation, or conduct" of an investment.

Paragraph 1 currently lists a dozen categories of requirements covered by the prohibition. The reason that these categories are disciplined in this article is that requirements imposed by governments in these areas are major burdens on investors and impair the competitiveness of their investments. Some of these practices are already prohibited to some extent in the WTO Agreement on Trade- Related Investment Measures -- the TRIMS Agreement -- or in other agreements such as the Energy Charter Treaty and in US BITs.

I will mention some items on the list in a moment, but I'll first note that the first five categories -- 1(a) through 1(e) are generally considered to be ones that are the most likely to distort patterns of trade and investment. For this reason, such requirements are prohibited in all circumstances: they are prohibited when they are imposed as a condition for allowing various phases of an investment (such as establishment or operation) to proceed -- in our shorthand, we call this a "straight performance requirement;" moreover, they are prohibited even when the host government offers an advantage to the investor in connection with the requirement -- we call this a "performance requirement linked to an advantage."

Again, the five performance requirements prohibited in all circumstances are those listed in paras. 1(a)-1(e).

The remainder of the list is prohibited only as a "straight performance requirement." Paragraph 2 (which no longer includes a reference to item 1(a), for those of you wanting to update your text) specifies that items 1(f) through 1(l) are not prohibited by paragraph 1 when they are linked to an advantage. Just as an aside, I would note that paragraph 2 was written carefully. It does not say "a CP is permitted to impose the performance requirements in paras. 1(f) through 1(l) when linked to an advantage" -- it just says that paragraph 1 does not prohibit it. If such a requirement were imposed only on foreign investors, not

---

1. United States Department of State

domestic investors, it would violate the basic national treatment obligation of the agreement. Similarly, if another agreement prohibits such conduct, that prohibition is not meant to be modified here.

I won't read all the items in paragraphs 1(f) through 1(l), but I will note a few changes you may be interested in, which you may want to mark in your copy of the text. Paragraph 1(i) remains in brackets, but it now is much shorter. References to "production, investment, sales, [and] employment" have been deleted. So 1(i) would only prohibit a requirement, not linked to an advantage, "to achieve a given level or value of research and development in [the CP's] territory."

Paragraph 1(j) has also been modified, so I believe it now reads "to hire a given level of nationals." Keep in mind, other items on the list are still bracketed or footnoted and remain under discussion.

Before I move to Paragraph 3, I want to direct your attention back to the chapeau of the first paragraph and note that the prohibitions reach performance requirements imposed on an investor in the contracting party's territory -- not just an investor of another contracting party (as some of you may be familiar with in US BITs, for example), but also you own investors and investors of a non-contracting party. So this is a powerful provision. It is not novel, though -- it is found in NAFTA.

Why so broad? Because this makes economic sense. Otherwise, the inability to impose a performance requirement on an investor from a CP may provide a reason for the host government to prefer to deal with an investor of a non-CP. We want to make sure that the performance requirements do not end up causing a detriment, rather than a benefit, for the investors of MAI parties.

Paragraph 3 is meant to offer comfort to contracting parties that certain conditions that governments often impose in connection with granting a subsidy or other advantage should not be construed to run afoul of the performance requirements that are prohibited in all circumstances, even when linked to an advantage.

Paragraph 4 is still bracketed and a number of issues remain to be addressed. Should it be limited to environmental measures? Should it apply (as it is now written) only to requirements relating to domestic content and preferences for local goods and services -- or should it be broadened? Should it be in the text itself, or should it appear as an interpretive note?

Paragraph 5 also contains brackets. It identifies a number of exceptions, some highly technical, that are pertinent to particular items listed in para. 1. I won't try to elaborate on them in the limited time I have been given to make my initial presentation, but I would be happy to answer questions on them.

One final point before concluding: CPs are permitted to identify annex exceptions to the performance requirements article, if they have particular programs that do not comply fully with the article.

DISPUTE SETTLEMENT

Ambassador Marino Baldi[1]

The MAI shall be an agreement with high standards for the treatment and protection of investments. In order that such high standards are properly implemented by Contracting Parties, an effective dispute settlement system is necessary which, in principle, covers all obligations under the MAI. Such a dispute settlement system is needed not only because it helps to solve possible disputes under the MAI through formal proceedings, but also -- and perhaps even more importantly -- because it encourages dispute avoidance and helps to resolve divergencies of views informally. It is, therefore, in any case, highly important for the credibility and the viability of the MAI that parties to a dispute have recourse to binding arbitration in the event of an alleged breach of the Agreement and this in two ways: for States wishing to take action against another state (state-to-state arbitration) and for investors wishing to directly submit a case to arbitration against their host country (investor-to-state arbitration).

The MAI Negotiating Group entrusted Expert Group N°1 on Dispute Settlement and Geographical Scope with the task of developing a dispute settlement system. After thorough discussions on the scope and the possible features of such a system, broad agreement was reached on the basic elements and on most of the issues that came up in the negotiations. The text that resulted from this work was submitted a few months ago to the Negotiating Group for further consideration and resolution of the outstanding points. In my presentation, I shall first give an overview of the main elements of the dispute settlement system, after which I shall briefly explain some of the issues that proved the more difficult ones in our negotiations.

I. Main characteristics of the system

i) State-to-state arbitration

With regard to state-to-state arbitration, five points can be highlighted:

a) Following the precedent set by the WTO, the Contracting Parties to the dispute should, as a first step, attempt to resolve their dispute through consultations. If the Contracting Parties fail to come to an amicable solution, the dispute may, at the request of any Contracting Party to the dispute, be submitted to an arbitral panel.

b) Panels shall consist of either three of five members. Three members will be selected by agreement of the Parties to the dispute, based on a proposal made by the Secretary-General of ICSID. Either disputing Party can opt for a five member panel, in which case each will appoint one additional member. This represents a compromise between those favouring an arbitrator being appointed by each of the two disputing parties (“party arbitrators”), as in most bilateral investment agreements, and those believing that a majority of non-party arbitrators is preferable for a multilateral agreement, which should develop an institutional jurisprudence.

---

1. Ambassador Baldi is Chairman of Expert Group N°1 on Dispute Settlement and Geographical Scope. He is also Deputy-Director of the Federal Office of External Economic Affairs, Bern, Switzerland.

c) The MAI will set out basic rules and procedures for state-to-state arbitration. However, for particular disputes, the Parties to the dispute can always agree to apply modified rules. If gaps in the MAI rules appear during a dispute and the Parties are not able to agree on supplementary rules, the PCA Optional Rules for Arbitrating Disputes between two States (=UNCITRAL rules) serve as default rules.

d) The substantive law to be applied would be the provisions of the MAI, but other international law would be relevant as concerns the interpretation and application of a treaty. Domestic law could be taken into account where it is relevant to and consistent with the MAI.

e) Awards issued by a Panel will be final and binding upon the Parties to the dispute. An award shall be provided first to the Parties as a draft to give them the opportunity to comment. This procedural safety valve should help to avoid aberrant decisions, particularly with respect to questions of fact. Possible remedies that a panel may include in an award are: a declaration that an action is in contravention of a provision of the MAI; the granting of a pecuniary award; a recommendation that a Party bring its measures into conformity with the MAI; or any relief to which the Party against whom the award is made consents (this may include restitution in kind).

ii) Investor to state arbitration

There has always been agreement that in addition to state-to-state arbitration there should exist an investor-to-state procedure. Investors generally wish to have at their disposal a dispute settlement mechanism that they can activate. Governments also see advantages in dispute settlement procedures to which they do not need to become a party. Yet, if there is general agreement that the MAI should provide for investor-to-state arbitration, it is not yet absolutely clear whether such arbitration should cover all disciplines of the MAI.

What would be the main characteristics of investor-to-state arbitration? Three basic elements may be mentioned:

a) The investor may choose whether to submit the dispute for resolution to one of the following:

- -- any competent court or administrative tribunal of the Contracting Party to the dispute;
- -- in accordance with any dispute settlement procedure agreed on prior to the dispute arising; or
- -- the procedures provided for by the MAI.

b) MAI Parties, through the adoption of the Agreement, will give unconditional consent to submission of a covered dispute to arbitration, under:

- -- the ICSID rules of arbitration or under the rules of the ICSID Additional Facility;
- -- the UNCITRAL rules; or
- -- the ICC Court of Arbitration.

Prior consent by the Contracting Parties practically means that in a given case it is exclusively up to the investor to decide whether or not to refer the dispute to arbitration.

c) The forms of relief that awards of any of these tribunals may provide will be specified in the MAI. They include: a declaration that the Contracting Party has failed to comply with its obligations under the MAI; pecuniary compensation; restitution in kind in appropriate cases and, with the consent of all Parties to the dispute, any other form of relief.

II. Difficult issues and open questions

Let me now, after this description of the dispute settlement system as a whole, turn to some of the issues that in our negotiations proved to be politically sensitive and on which it was, or still is, particularly difficult to find solutions.

a) State-to-state arbitration

Role of the Parties Group

An important question, which may still not be entirely solved, is whether the Parties Group should have a role in dispute settlement, particularly as a forum for multilateral consultations that precede state-to-state arbitration in addition to bilateral consultations. We tentatively agreed that the Parties Group should have such a role, though a limited one: in the event bilateral consultations have failed to resolve a dispute, the Parties to the dispute may, by agreement, request the Parties Group to consider the matter and to make the recommendations it deems appropriate. The more straightforward solution supported by some delegations would have been a unilateral right of the Parties to the dispute to request multilateral consultations.

Ripeness of a dispute for arbitration

Another difficult issue within the state-to-state procedure that so far has only been solved on a provisional basis, relates to the question of when a dispute is ripe for arbitration. The main question is whether a Party that wants to challenge a measure of another Contracting Party would have to demonstrate concrete harmful effects of that measure or whether potential harmful effects (abstract non-compliance with the MAI) would suffice. As a result of our discussions we drew the line somewhat differently: on the one hand we found that merely theoretical harmful effects should not prompt a "legal dispute". On the other hand an immediate threat of harm or damage could in our view well constitute a case for arbitration. At what point a dispute would be ripe for arbitration would ultimately be for an arbitral panel to decide, in the light of all the relevant circumstances.

Enforcement of awards

Another important unsolved question concerns the enforcement of awards. What measures or countermeasures shall be permitted to bring about compliance with an arbitral award? Possible measures are the suspension of the non-complying Party's voting right in the Parties Group and its right to invoke the dispute settlement provisions of the MAI. The point at issue is what countermeasures should be allowed: should the MAI explicitly provide for measures which could be taken against a Contracting Party that does not comply with an arbitral award? If so, should such measures be confined to the withdrawal of concessions under the MAI or should no such limits be imposed (with the consequence that countermeasures would be allowed if taken in conformity with general principles of public international law)? Another possible approach would be not to permit countermeasures and instead provide for the payment of pecuniary compensation (punitive damages).

b) Investor to state arbitration

Scope of arbitration procedure

The scope of investor-to-state arbitration has been debated at great length. The main question was whether investor-to-state procedures should apply to all MAI obligations, including those relating to the pre-establishment phase of an investment, or whether such procedures should only be applicable to post-establishment questions? We eventually decided not to make use of the distinction between pre-and post-establishment issues in relation to dispute settlement (the distinction would anyway not have been very practicable) and in principle to subject all MAI obligations to both dispute settlement procedures, i.e. state-to-state and investor-to-state procedures. It should, however, be mentioned in this context that some delegations take the view that a few particular MAI disciplines should be excluded from investor-to-state dispute settlement.

Prior consent

Although I mentioned prior consent as one of the main characteristics of the investor-to-state procedure, which it undoubtedly is, it should be noted that a few delegations still do not accept the idea of prior consent at all. The draft dispute settlement text provides for prior consent without mentioning any possibility for country specific reservations. The countries in question will therefore have to find a solution to their problem. There is one important qualification to the prior consent rule: Contracting Parties will be allowed to withhold consent in cases where the investor has previously submitted the dispute either to a national court or to international arbitration in accordance with any other dispute settlement procedure. In other words: Contracting Parties are entitled to impose what is called a "fork in the road".

Standing

There was much debate in the negotiations on whether a company established in a MAI country that is controlled by an investor of another MAI country would have standing to act as the foreign investor in bringing a claim to arbitration against the host government. To take an example: would, in a case involving Volkswagen United States as an investment of Volkswagen Germany, the former company, i.e. Volkswagen US, have standing before an arbitral tribunal or would only Volkswagen Germany, as the investor, be entitled to submit the case to international arbitration? There are good arguments in favour of the more generous of these solutions (the two companies would alternatively have standing) but also understandable concerns about it. The Expert Group on Dispute Settlement decided to give standing to the investment (in my example, Volkswagen US) but also to allow country specific reservations with respect to this rule.

DISPUTE SETTLEMENT

Diana Padt[1]

Ladies and Gentlemen,

Allow me to follow up on this presentation by highlighting some of the peculiarities of the MAI dispute settlement system and to raise and hopefully answer some of the questions about the envisaged system.

I would like to raise 2 additional points:

1. What is the Value Added of MAI system in comparison to other systems ?
2. What are some of the Concerns often raised ?

1. Value Added

Let us compare:

A. MAI vs. Customary International Law

Under customary international law, there is no compulsory binding arbitration. The consent of both states concerned is a prerequisite for arbitration between them.

The idea of prior consent to international arbitration initiated by an investor is even more far-reaching and needless to say, not embodied in customary international law.

Under customary international law an offending state can thus avoid or delay resolution of a dispute. Moreover, the content of the rules of international law related to investment can be debated. Even if it comes to trial, economic and/or political interests often lead to settling for minimal amount of damages or to the dropping of claims altogether.

The MAI will provide for automatic procedures which are compulsory and binding. The applicable rules will be clear and the adjudicatory panel will be independent of political pressure. Moreover, the MAI Investor-State procedures will provide a direct remedy for investors without the necessity of diplomatic protection.

---

1. Ministry of Economic Affairs, The Netherlands

B. MAI vs. BIT's

Many BIT's already provide for direct Investor-State and State-State dispute settlement. The MAI system will be very similar, but with some differences:

The MAI will contain clear procedural rules including time-frames and possible forms_of relief. It will provide for an institutionalised panel with a majority of non-party_arbitrators in State-State procedures with a view to creating jurisprudence and uniformity in the interpretation of the agreement.

Moreover, the MAI will lay down a true choice of forum for the investor in an Investor-State arbitration. Another important aspect is the strengthening of the bi- and multilateral consultation mechanisms in order to encourage dispute avoidance.

C. MAI vs. WTO

The State-State dispute settlement system of the MAI will be similar to the WTO: ad hoc panels can be constituted with the help of an indicative roster.

The big difference is of course the Investor-State dispute settlement which gives the investor the right to bring his claim directly against the host state.

D. MAI vs. National Law

National courts are named as a possible forum to be chosen in a Investor-State dispute. The main difference to the existing situation is that an investor can also chose to go to international arbitration and in that event, there is no need to exhaust local_remedies first.

It must be noted here that the MAI will include a 'fork in the road' possibility, for states which consider it necessary, which entails that once the investor has made its choice (national courts or international arbitration), there is no turning back.

In summary:

General Value Added:

- direct access to dispute settlement for investors
- relatively short time periods
- effective enforcement mechanisms

2. Examples of the Concerns often raised with respect to the MAI d-s system

Overlap of dispute settlement systems (eg. WTO)

Yet this already holds true under eg. the BIT's. In practice this has not proven to be a great problem; I refer here to the very small number of cases brought to arbitration which are based on BIT provisions. Moreover, this is inherent in dispute settlement systems in general where different rights may merit different judgements.

In the MAI we have included a provision stating that if a Contracting Party has a choice of the available fora, it should make its choice and thereby waive its right to submit the matter under the other agreement.

Investor can take a State to arbitration, but not vice-versa

This is true, but it is also a consequence of the fact that this is a negotiation between states; signing up to the agreement will only bind the states concerned.

Besides, the MAI will not preclude or affect the national legal remedies States already have against investors in their territory.

Will sufficient Expertise (eg. on environmental concerns or scientific measures) be available to a panel?

Yes, the dispute settlement provisions allow for consultations and advice by experts, both at the request of a CP to the dispute and, by agreement, at the suggestion of a panel.

SPECIAL SESSION ON THE MAI

17 SEPTEMBER 1997

PARTICIPANTS LIST

Country	Name and Function	Telephone and Fax
Afrique du Sud	Mr. Gordon Glemius Counsellor, Economic Affairs Embassy of South Africa	Tel: Fax:
	Ms. Nathalie Africa Counsellor, Multilateral Affairs Embassy of South Africa	Tel: 33 1 53 59 23 23 Fax: 33 1 53 59 23 09
Allemagne	Mr. Wolfgang Stöckl Permanent Mission of Germany to the OECD	Tel: 33 1 44 17 16 05 Fax: 33 1 45 01 29 77
Argentine	Mr. Jorge Riaboi Ministre	
	Mr. Enrique Carrier Fonctionnaire, Bureau de Liaison de l'OCDE à Buenos Aires	Tel: 54 1 349 5221
	Mr. Felipe Alejandro Gardella Conseiller, Ambassade de l'Argentine à Paris	
Autriche	Mr. Johannes Dumbacher Austrian National Bank	Tel: 43 1 404 20 5331 Fax: 43 1 404 20 5399
Bélarus	Mr. Valéry Drozd Vice-Ministre de l'Economie	Tel: 220 74 69
	Mr. Sergueï Anochko Adjoint au directeur du département Ministère des Relations Economiques Extérieures	Tel: 220 96 22 Fax: 227 39 27
	Mr. Viktar Shykh Conseiller économique Ambassade du Bélarus à Paris	
Belgique	Mr. Jacques Thinsy Ministère des Affaires Etrangères	Tel: 32 2 501 81 88 Fax: 32 2 501 88 27

Brésil	Mr. Ricardo Guerra de Araujo Counsellor, Deputy Head of Financial Policy and Development Division Ministerio das Relacoes Exteriores, Anexo I, 724 (DPFD)	Tel: 55.61 211-6905/6925/ 6935/6945 Fax: 55 61 322-8245
	Mr. Antonio Martins da Cunha Filho Deputy Manager, Central Bank of Brazil, Foreign Capital Department	Tel: 55 61 414 1380
	Mr. Carlos Alberto de Niza e Castro Ministry of Finance	Tel: 55 61 223 2959
	Mr. Denis Pinto de Souza Embassy of Brazil	
Bulgarie	Mlle Magdalena Couneva Chef du Département juridique Agence pour les investissements étrangers	
	M. Nicolay Trifonov First Secretary, Coordinateur pour les questions de l'OCDE Ministère des Affaires étrangères	Tel: 3592 7143 2486
Canada	Mr. William A. Dymond Department of Foreign Affairs and International Trade	Tel: 1 613 944 43 38 Fax: 1 613 944 00 23
Chili	Mr. Alejandro Buvinic Head of Investment Division, Directorate of Economic Multilateral Affairs, Ministry of External Relations	
	Mr. Alexis Guardia Economist, Embassy of Chile in Paris	Tel: 33 1 44 18 59 60

Chine	Mr. Yang Weihong Division Director, Department of International Trade & Economic Relations Ministry of Foreign Trade and Economic Cooperation	Tel: 65 19 7202
	Dr. Zhao Hong Department of Treaty and Law Ministry of Foreign Trade and Economic Cooperation	
	Miss Qui Lixin Principle Administrator, Foreign Investment Administration Ministry of Foreign Trade and Economic Cooperation	
	Mr. Wang Yu Embassy of China	
Colombie	Madame Olga Bula Ministre Conseiller, Ambassade de Colombie	Tel: 33 1 42 65 46 08 Fax: 33 1 42 66 18 60
	M. Fernando Pabon Santander Premier Secrétaire, Ambassade de Colombie	Tel: 33 1 42 65 46 08 Fax: 33 1 42 66 18 60
Corée	Mr. KIM Kwan-ho Korea Institute for Economic Policy	
Costa Rica	Mr. Carlos Murillo Rodríguez Vice Minister of Foreign Trade Ministry of Foreign Trade	
	Mr. Jaime Granados Ministry of Foreign Trade	
	Mr. Bruno Stagno Consul General, Minister Counsellor Embassy of Costa Rica	
Croatie	Mrs. Ankica Vlasic Deputy Head of Department for Economic Integrations Ministry of Foreign Affairs	Tel: 358 1 45 69 946 Fax: 358 1 42 75 94
	Mr. Nevin Odrljin Head of Department for International Cooperation Ministry of Economy	Tel: 358 1 61 06 950 Fax: 358 1 61 09 116

Danemark	Mr. Hedeman Olsen Ministry of Trade and Industry	Tel: 45 35 86 86 86 Fax: 45 35 85 46 18
Egypte	Dr. Hassan El Badrawy Legal Department Ministry of Justice Dr. Samir El Sharkawy Professor of Commercial Law Mr. Ahmed Ismail First Secretary, Egyptian Embassy	
Equateur	Mr. Ruben Rivadeneira Minister Embassy of Ecuador	Tel: 33 1 45 61 10 21 Fax: 33 1 42 56 06 64
Espagne	Mrs. Pilar Moran Ministry of Economy and Finance Mme Soledad Abad Permanent Delegation to OECD	
Estonie	Mr. Alar Streimann Director General, Foreign Economic Policy Department Ministry of Foreign Affairs Mrs. Marika Kuznetsova Economic Counsellor, Estonian Embassy	
Etats Unis	Ambassador Alan Larson Department of State Ms Jo Brooks Department of State	Tel: 33 1 45 24 74 14 Fax: 33 1 45 24 74 80
Finlande	Mr. Veli J. Ollikainen Ministry of Foreign Affairs	Tel: 358 9 13 41 55 32 Fax: 358 9 13 41 55 99
France	Mr. Xavier Musca Ministère de l'Economie et des Finances	Tel: 33 1 44 87 73 70 Fax: 33 1 40 04 29 25
Grèce	Mr. P. Spathopoulos Ministry of National Economy	Tel: 30 1 333 23 43 Fax: 30 1 324 41 82
Guatemala	Ms. Gloria Chirouze Ambassadeur du Guatemala	
Hong Kong	Ms. Annie Tang Deputy Director General, Industry Department	

	Mr. Stephen Chung Hong Kong Economic & Trade Office	Tel: 41 22 734 9040 Fax: 41 22 733 9904
	Mr. Chi-hong Lo Principal Trade Officer, Industry Department	
Hongrie	Dr. Zoltan Bodnar Vice Governer, National Bank of Hungary	Tel: 36 1 269 4298
	Ms. Annamaria Ivanics Director General, Ministry of Finance	
Inde	Mr. Atul Kaushik Under Secretary, Trade Policy Division Ministry of Commerce	Tel: 91 11 3013642 Fax: 91 11 3013583
	Mr. Sandeep Kumar First Secretary (Economic), Embassy of India	Tel: 33 1 40 50 70 70 Fax: 33 1 40 50 09 96
Indonésie	Mr. Sugihono Kadarisman Deputy Minister for Promotion Ministry of Investment/Investment Coordinating Board (BKPM)	Tel: 62 21 5202047 Fax: 62 21 5254945
	Mr. H. Suralaga Director for Promotion Ministry of Investment/Investment Coordinating Board (BKPM	
	Mr. R.D. Ardihermawan Second Secretary Embassy of Indonesia	
	Mr. J.S. George Lantu Attaché, Economic Affairs Embassy of Indonesia	
Irlande	Mr. Colm Treaonor Department of Enterprise, Trade & Employment	Tel: 353 1 661 4444 ext 3891 Fax: 353 1 676 6154
Israel	Mr. Izi Kaplan Ministry of Finance	Tel: 972 2 5317488 Fax: 972 2 5618446

Italie	Mr. Gianfranco Colognato Ministry of Foreign Affairs	Tel: 39 636 912 448 Fax: 39 6 323 0315
	Prof. Luigi Sico University of Naples	Tel: 39 81 64 03 62
Japon	Mr. Kenichi Suganuma Director Ministry of Foreign Affairs	Tel: 81 3 3581 00 18 Fax: 81 3 3581 94 70
	Mr. Yoshi Kodama Ministry of Foreign Affairs	Tel: 81 3 3581 00 18 Fax: 81 3 3581 94 70
	Mr. Kazuyuki Yamazaki Permanent Mission of Japan	
Lettonie	Ms. Maija Manika Head of Foreign Economic Policy Division Ministry of Foreign Affairs	Tel: 371 7016249 Fax: 371 7828121
	Mr. Edvards Kušners, Head of Legal Division Latvian Development Agency	Tel: 371 7 288 842 Fax: 371 7 820 458
Lituanie	Ms. Gitana Grigaityte Head of Division, International Economic Organizations Ministry of Foreign Affairs	Tel: 370 2 62 97 46 Fax: 370 2 22 41 68
	Mr. Tomas Bliznikas Head of Subdivision, International Economic Treaties Ministry of Foreign Affairs	Tel: 370 2 61 59 95 Fax: 370 2 61 69 63
	Mr. Vytautas Nauduzas Embassy of Lithuania	Tel: 33 1 45 23 19 23 Fax: 33 1 48 01 03 31
Malaisie	Mr. Syed Munshe Counsellor, Embassy of Malaysia	Tel: 33 1 45 53 11 85 Fax: 33 1 47 27 34 60
	Mr. Che Din Yusoh Counsellor, Embassy of Malaysia	Tel: 33 1 45 53 11 85 Fax: 33 1 47 27 34 60
Maroc	Mr. Ali Lamrani Chef de Division Direction du Trésor et des Finances Extérieures, Ministère des Finances et des Investissements Extérieurs	Tel: 212 276 37 60 Fax: 212 764 950
	Mr. Fayçal El Fassi Attaché Economique et Commercial Ambassade du Maroc	Tel: 33 1 45 20 69 35 Fax: 33 1 45 20 22 58

Mexique	Mr. Miquel Flores Directorate General for Foreign Investment Ministry of Commerce	Tel: 525 229 61 67 Fax: 525 229 65 07
Moldavie	Mr. Emil Druc Conseiller Economique et Commercial Ambassade de Moldavie, Paris	
Norvège	Ambassador Kjell Lillerud Ministry of Foreign Affairs	Tel: 47 22 24 36 74 Fax: 47 22 24 27 84
	Mrs. Margrethe r. Norum Ministry of Trade and Industry	Tel: 47 22 24 33 21 Fax: 47 22 24 38 75
Pays Bas	Ms. Diana Padt Ministry of Economic Affairs	Tel: 31 70 379 65 52 Fax: 31 70 379 79 24
Pérou	Mr. Carlos Herrera Secrétaire Exécutif du Comité National de l'Investissement et la Technologie Etrangère (CONITE)	
	Madame Aline Perez Section économique et commerciale Ambassade du Pérou	
Philippines	Ms. Junever M. Mahilum Economic Officer, Embassy of the Philippines	Tel: 33 1 44 14 57 00 Fax: 33 1 46 47 56 00
Pologne	Mr. Andizej Guzik Ministry of Economics	Tel: 48 22 693 54 72 Fax: 48 22 629 23 59
Portugal	Ms. Paula Rodriguez ICEP - Ministry of Economy	Tel: 351 1 352 6525 Fax: 351 1 353 6482
République Dominicaine	Dra. Margarita Cedeño Sub-Consultora Jurídico del Poder Ejecutivo	
	Dra. Angela Vigliotta Unidad de Negociaciones Internacionales de la Oficina de Promoción de Inversiones	Tel: 683 66 33 Fax: 683 66 41
République Tchèque	Mr. Pavel Klima Permanent Delegation to the OECD	Tel: 33 1 45 20 35 30 Fax: 33 1 45 20 35 54

Roumanie	Mr. Constantin Ene General Director General Directorate for Government Agencies and European Integration Ministry of Finance	Tel: 40 1 410 05 92 Fax: 40 1 410 05 92
	Ms. Gabriela-Adina Burcea General Directorate for Government Agencies and European Integration Ministry of Finance	
	Mr. Ovidiu Ierulescu Attaché, Department for UN and other international organizations Ministry of Foreign Affairs	
	Mr. Mihai Grigoroscuta Minister-Counsellor, Economic Affairs Embassy of Romania	
Royaume Uni	Mr. Tony Sims Department of Trade and Industry	Tel: 44 171 215 45 47 Fax: 44 171 215 45 77
Russie	Mr. Borissov Deputy Head, Department for International Investment Cooperation Ministry of Economy	
	Mr. Matery Head of Investment Policy Division, Economic Cooperation Department Foreign Ministry	
Slovaquie	Mr. Juraj Sipko Director, Department of International Relations Ministry of Finance	
	Ms. Marcela Sajtlavova Director, Department of Industrial Policy Ministry of Economy	
	Ms. Adriana Ujlakyova Department of International Relations Ministry of Finance	
	Mr. Dušan Bella Counsellor, Head of the OECD Section Embassy of the Slovak Republic	

	Mr. Jan Jursa Counsellor, OECD Section Embassy of the Slovak Republic	
Slovénie	Ms. Tatjana Bruncek-Jovicevic Undersecretary of State Ministry of Economic Relations and Development	
Suède	Mr. Lemart Klackenberg Head of Delegation	
	Mr. Anders Ahnlid Permanent Mission to the OECD	Tel: 33 1 45 24 98 51 Fax: 33 1 45 24 98 65
	Mr. Sven Östberg Ministry of Finance	Tel: 46 8 405 19 70 Fax: 46 8 796 90 98
Suisse	Mr. Marino Baldi Ambassador Office Fédéral des Affaires Economiques Extérieures, Berne	Tel: 41 31 324 07 55 Fax: 41 31 323 03 33
Chinese Taipei	Mr. Chiang Nailiang Director, Centre Asiatique de Promotion Economique et Commerciale	
	Mr. Kao-Huang Chen Centre Asiatique de Promotion Economique et Commerciale	
Thaïlande	Mr. Somprasong Khomapat Economic Counsellor (Investment) Office of Thailand Board of Investment	Tel: 33 1 46 92 27 40/41 Fax: 33 1 46 92 27 42
Turkménistan	Mr. Iakoup Khanberdiev Counsellor, Embassy of Turkmenistan	
Turquie	Mr. Osman Emed Permanent Mission to the OECD	Tel: 33 1 42 88 50 02 Fax: 33 1 45 27 28 24
Zambie	Mr. C.S. Chileshe Trade Attache Embassy of Zambia	Tel: 32 2 343 56 49 Fax: 32 2 347 43 33
Commission Européenne	Mr. G. Lemonidis Permanent Delegation to the OECD	Tel: 33 1 44 05 31 63 Fax: 33 1 44 05 31 79

INTERNATIONAL ORGANISATIONS

Organisation	Name and Function	Telephone and Fax
Energy Charter Secretariat	Mr. Leif K. Ervik Negotiations Directorate	Tel: 32 2 775 9841 Fax: 32 2 775 9842
International Monetary Fund	Mr. Harilaos Vittas Deputy Director, European Office	Tel: 33 1 40 69 30 80 Fax: 33 1 40 69 30 70
Organisation of American States	Ms. Maryse Robert OAS Trade Unit	Tel: 1 202 458 3600 Fax: 1 202 458 3561
United Nations Conference on Trade and Development	Mr. P. Roffe International Investment, Transnationals and Technology Branch, UNCTAD Mrs. A. Joubin-Bret International Investment, Transnationals and Technology Branch, UNCTAD	
World Trade Organisation	Mr. Mark Koulen Counsellor, Intellectual Property and Investment Division	Tel: 41 22 739 5224 Fax: 41 22 739 5790
Trade Union Advisory Committee to the OECD	Mr. Roy Jones Counsellor	Tel: 33 1 47 63 42 63 Fax: 33 1 47 54 98 28