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

**INFORMAL CONSULTATIONS ON INSTITUTIONAL MATTERS  
DECISION-MAKING**

**(Note by the Chair)**

## INFORMAL CONSULTATIONS ON INSTITUTIONAL MATTERS DECISION-MAKING

### (Note by the Chair)

1. In April, the Negotiating Group considered a Note from the Chair [MAI/NG Room Document dated 23 April 1997] on decision-making by the Preparatory Group, the Parties Group and the Signatories to the MAI. This note attempts to build on that discussion by presenting, for consideration, draft language on decision-making by the Preparatory Group and the Parties Group. The language is based on the approach adopted in Article IX of the Marrakesh Agreement. In the course of our meeting, it may also be useful to try to identify the kinds of decisions that might be the subject of a special voting rule and to further discuss decision-making on entry into force and related matters. In addition, it would be useful to discuss the proposal that has been made by one delegation on voting by a REIO [DAFFE/MAI/IN/RD(97)1].

### **Decision-Making by the Preparatory Group and the Parties Group**

2. The current draft text on institutional matters [DAFFE/MAI/IN(97)4] contemplates:

- the Preparatory Group would make decisions relating to preparation for entry into force of the Agreement and decisions on the eligibility of non-signatories to the Final Act to become a Signatory (see the Article on the Preparatory Group); and
- the Parties Group would make decisions relating to the operation of the Agreement and particular functions, such as accession, assigned to it under the Agreement (see the Article on the Parties Group).

3. During the Negotiating Group meeting, delegations agreed that the Preparatory Group and the Parties Group should make decisions, as a general rule, by consensus, but that they should have authority to make some decisions by majority vote. Some delegations believe that the following provision provides sufficient flexibility to accommodate this principle:<sup>1</sup>

“The Preparatory Group shall make decisions by consensus. Such decisions may include a decision to adopt a different rule for a particular question or category of questions. A Signatory may abstain and express a differing view without barring consensus.”

4. However, most delegations thought that the Preparatory and Parties Groups should have express authority to make some decisions by majority vote. There were varying views on what the voting formula should be (e.g. three quarters, two thirds, simple majority). In addition, delegations agreed that some decisions, such as decisions on accession, amendment and annual budget, should be the subject of a special rule (e.g. consensus, three quarters, two thirds, weighted majority).

5. The Negotiating Group authorised the informal consultation participants to develop draft language modelled on Article IX of the Marrakech Agreement. The draft language will be considered, at the appropriate time, by the Negotiating Group.

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1. The Article on the Parties Group contains the same language with consequential amendments.

6. Article IX of the Marrakesh Agreement reads, in part, as follows:

“The WTO shall continue the practice of decision-making by consensus followed under GATT 1947. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting.”<sup>2</sup>

7. In April, the participants in informal consultations on institutional matters used Article IX to develop the following language:<sup>3</sup>

“However, except as otherwise provided, where a decision cannot be made by consensus, the decision shall be made by a majority comprising [two thirds] of the Signatories.”<sup>4</sup>

8. However, it was recognised that this draft might require further work. One delegation has made a drafting suggestion that may represent an improvement. The draft language would replace paragraphs 4 and 5 of the Article on the Preparatory Group and, with consequential amendments, paragraphs 5 and 6 of the Article on the Parties Group. The proposed draft reads as follows:

“4. Except where otherwise provided, the Preparatory Group shall make decisions by consensus. A Signatory may abstain and express a differing view without barring consensus.

5. Decisions under paragraph 4 may include a decision to adopt a different voting rule for a particular question or category of questions.

6. Where a decision cannot be made by consensus, the decision shall be made by a majority comprising [two thirds] of the Signatories.

7. Paragraph 6 shall not apply to the following decisions:

(a) decisions under paragraph 5;

(b) decisions under Article B.2 [decisions on the eligibility of non-signatories to the Final Act to become a Signatory to the Agreement]<sup>5</sup>, which shall be made by [consensus] [a majority comprising...];

(c) ...”

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2. Article IX of the Marrakesh Agreement is accompanied by a footnote, which reads as follows: “The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision.”

3. The Article on the Parties Group contains the same language with the phrase “Contracting Parties” substituted for “Signatories”.

4. While this clause refers to a majority comprising two thirds, other formulas are possible, such as consensus minus one (or some number greater than one), three quarters, simple majority and weighted majority.

5. In the case of the Parties Group, this clause would refer to the Article on Accession.

9. In addition to considering this language, delegations may wish:
- to consider the possible formulae for a voting rule failing consensus, with a view to narrowing the options (see paragraph 7 above and footnote 4); and
  - to identify the decisions, such as those on amendment, accession and annual budget, that should be the subject of a special voting rule and to consider what the rule should be in each case.

### **Decision-Making on Entry into Force and Related Matters**

10. In April, the Negotiating Group also discussed the role of the Signatories to the MAI in deciding on the date for entry into force of the Agreement and related matters. There appeared to be widespread support for the proposition that the decision on setting a date for entry into force should be taken by majority vote, and that Signatories will need to decide whether there is a critical mass to proceed with entry into force of the Agreement.

11. The draft text on this issue currently reads as follows:

“Not later than [date], the Signatories to this Agreement will meet to determine the date for entry into force and related matters. Decisions shall be made by [consensus] [a [two thirds] majority of the Signatories].”<sup>6</sup>

12. Delegations may want to discuss the various possible voting formulae with a view to narrowing the options. The options include: consensus minus one (or some number greater than one), three quarters, two thirds and decision-making in accordance with a certain percentage of investment stocks or flows).

### **Voting by a REIO**

13. Delegations may want to discuss the proposal that has been made by one delegation on voting by a REIO [DAFFE/MAI/IN/RD(97)1].

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6. This provision would be accompanied by an interpretative note, as follows: ““Related matters” includes such matters as whether there is a critical mass to proceed with entry into force of the Agreement, but not changes to the Agreement.”