



---

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

**INSTITUTIONAL MATTERS**

**REPORT TO THE NEGOTIATING GROUP**

**INSTITUTIONAL MATTERS**  
**REPORT TO THE NEGOTIATING GROUP**

1. In April 1997, the Negotiating Group considered a Chairman's Note [MAI/NG Room Document dated 23 April 1997] on decision-making under the MAI. On 15 May, delegations built on that discussion by developing draft language on decision-making by the Preparatory Group and the Parties Group modelled on Article IX of the Marrakesh Agreement. In addition, delegations discussed a proposal on voting by a REIO [DAFFE/MAI/IN/RD(97)1].

**Decision-making by the Preparatory Group and the Parties Group**

2. The draft text on institutional matters [DAFFE/MAI/(97)1/REV2] contemplates that:

- 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 section XI of the Consolidated Text, 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 section XI of the Consolidated Text, Parties Group).

3. During the April 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:

“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.”<sup>1</sup>

4. Additionally, most delegations believe that the Preparatory Group and Parties Group should have express authority to make some decisions by majority vote (without having first to decide by consensus to do so). There are varying views on whether the voting formula should be three quarters or two thirds. In addition, delegations agree that decisions on amendment, accession and annual budget should be the subject of a special rule. While not directly related to the question of decision-making by the Preparatory Group and the Parties Group, it should be noted that decision-making on entry into force and related matters may also require a special rule.

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

---

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. On 15 May, delegations developed the following draft text on decision-making by the Preparatory Group:

“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.<sup>3</sup>

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

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

(a) decisions under paragraph 5; [and]

(b) decisions under Article ... [see section XI of the Consolidated Text on decisions by the Preparatory Group on the eligibility of non-signatories to the Final Act to become a Signatory to the Agreement], which shall be made by [consensus] [a majority comprising ...]; [and]

(c) ...”<sup>4</sup>

8. The text on decision-making by the Parties Group, except for the last paragraph, would read substantially the same:

“5. Except where otherwise provided, the Parties Group shall make decisions by consensus. A Contracting Party may abstain and express a differing view without barring consensus.

6. Decisions under paragraph 5 may include a decision to adopt a different voting rule for a particular question or category of questions.<sup>5</sup>

7. Where a decision cannot be made by consensus, the decision shall be made by a majority comprising [three quarters] [two thirds] of the Contracting Parties.

---

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. Delegations discussed the question of whether this paragraph should be deleted and concluded that the question requires further consideration.

4. The Final Act may require an article on the costs of the Preparatory Group, in which case there may be a need for a paragraph that addresses the question of how the Preparatory Group will make financial decisions.

5. See footnote 3.

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

- (a) decisions under paragraph 6;
- (b) decisions under Article ... [see section XII of the Consolidated Text on amendment], which shall be made by consensus;
- (c) decisions under Article ... [see Section XII of the Consolidated Text on accession], [which shall be made by consensus] [which shall be made, failing consensus, by a [three quarters] [two thirds] majority] [which shall be made by a [three quarters] [two thirds] majority]; and
- (d) decisions on budgetary matters, which shall be made by [consensus] [a [three quarters] [two thirds] majority] [of Contracting Parties whose assessed contributions represent, in combination, at least two thirds of the total assessed contributions].”

9. Delegations also discussed a non-paper that explored the possibility that decisions on entry into force and related matters and decisions by the Preparatory Group and the Parties Group might be made, failing consensus, by a majority of Parties representing a certain percentage of stocks or flows of foreign direct investment. Such a scheme could be based on the flow of outward investment, the flow of outward and inward investment, the stocks of outward investment or the stocks of outward and inward investment.

10. Delegations concluded that weighted decision-making based on FDI flows or stocks presents significant policy and practical problems and that it is unlikely to provide a satisfactory solution to the problem of decision-making. Delegations decided not to undertake further work on this option.

#### **Voting by a REIO in the Preparatory Group and Parties Group**

11. Delegations had a preliminary discussion on a proposal by one delegation [DAFFE/MAI/IN/RD(97)1] on voting by a REIO in the Preparatory Group and Parties Group. The proposal assumes that the MAI will authorise the Preparatory Group and Parties Group to make some decisions by majority vote. Under the proposal, the MAI would contain the following language:

“Where a REIO exercises its right to vote, it shall have a number of votes equal to the number of its Member States which are Contracting Parties to this Agreement. The number of votes of a REIO and its Member States shall in no case exceed the number of the Member States of the REIO which are Contracting Parties to this Agreement.”

12. Some delegations said that they want to consider whether the MAI should contain such a provision. Assuming that it should, two questions were raised: whether the provision should apply only in cases where a REIO has competence and whether a REIO should be restricted to casting a number of votes equal to the number of its Member States that are present when the vote takes place. It was also suggested that a provision might be drafted that applied to Regional Economic Integration Organisations in general rather than to one specific REIO.

13. At the conclusion of the discussion, the Chair proposed that the interested delegations consult on precedents for a REIO voting in other international agreements and on the questions noted in the preceding paragraph of this Report.

Chair