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

**Informal Consultations on Dispute Settlement**

**DISPUTE SETTLEMENT: RESPONSE TO NON-COMPLIANCE**

## DISPUTE SETTLEMENT: RESPONSE TO NON-COMPLIANCE

### 9. Response to Non-compliance

- a. If a Contracting Party fails within a reasonable period of time to comply with its obligations as determined in the award, such Contracting Party shall, at the request of any Contracting Party in whose favour the award was rendered, enter into consultations with a view to reaching a mutually acceptable solution. If no satisfactory solution has been agreed within thirty days after the date of the request for consultations, any Contracting Party in whose favour the award was rendered, shall notify the other Contracting Party and the Parties Group if it intends to **[take measures in response][suspend the application to the other Contracting Party of obligations under this agreement]**. The effect of such responsive measures must be proportionate to the effect of the other Party's non-compliance.<sup>1</sup>
- b. At the request of any Party to the award upon conclusion of the thirty day period for consultation, the Parties Group shall consider the matter. **[Until twenty days after the receipt by the Parties Group Secretariat of the request, responsive measures shall not be taken.]** The Parties Group may:
  - i. make recommendations, by consensus minus the disputing Contracting Parties;
  - ii. suspend the non-complying Party's right to participate in decisions of the Parties Group, by consensus minus the non-complying Contracting Party; and
  - iii. **[until such time as an arbitral tribunal is seized of the question, decide, by consensus minus the Contracting Party which had intended to take responsive measures, that some or all of the responsive measures shall not be taken. The Contracting Party shall comply with that decision.]**
- c. Any dispute concerning the alleged failure of a Contracting Party to comply with its obligations as determined in an award or the lawfulness of any responsive measures shall, at the request of any Contracting Party that is party to the dispute, be submitted for decision to the arbitral tribunal which rendered the award or, if the original tribunal is unavailable, to a single member or three member arbitral tribunal designated by the Secretary-General. The request shall be submitted in the same fashion, and the proceedings carried out in accordance with the same rules as are applicable to a request made under paragraph 1.a of this Article, with such modifications as the tribunal deems appropriate, and the final award shall be issued no later than 60 days after the date of the request, in case of the original tribunal, or after the date of its formation, in the case of a new tribunal.

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<sup>1</sup> As variant of this approach, one delegation suggests utilizing language based on the WTO agreements:

**“The level of the suspension of benefits ... shall be equivalent to the level of the nullification or impairment of benefits, which the aggrieved Party reasonably expected to accrue to it, resulting from the non-compliance.”**