

MEDIATION MECHANISM

ARTICLE 1

Objective

The objective of this Annex is to facilitate the finding of mutually agreed solutions through a comprehensive and expeditious procedure with the assistance of a mediator, referred to in Article 3.4 (Mediation Mechanism).

SECTION A

MEDIATION PROCEDURE

ARTICLE 2

Request for Information

1. Before the initiation of the mediation procedure, a Party may request, at any time and in writing, information regarding a measure adversely affecting investment between the Parties. The Party to which such request is made shall provide, within 20 days, a written response containing its comments on the information contained in the request.

2. Where the responding Party considers that a response within 20 days is not practicable, it shall inform the requesting Party of the reasons for not meeting that deadline, together with an estimate of the shortest period within which it will be able to provide its response.

ARTICLE 3

Initiation of the Mediation Procedure

1. A Party may at any time request that the Parties enter into a mediation procedure. Such request shall be addressed to the other Party in writing. The request shall be sufficiently detailed, clearly present the concerns of the requesting Party and shall:
 - (a) identify the specific measure at issue;
 - (b) provide a statement of the alleged adverse effects on investment between the Parties that the requesting Party considers the measure has or could have; and
 - (c) explain how the requesting Party considers that those effects are linked to the measure.
2. The mediation procedure may only be initiated by mutual agreement of the Parties. The Party to which a request pursuant to paragraph 1 is addressed shall give sympathetic consideration to the request and reply by accepting or rejecting it in writing within 10 days of the date of its receipt.

ARTICLE 4

Selection of the Mediator

1. Upon launch of the mediation procedure, the Parties shall endeavour to agree on a mediator no later than 15 days after the date of receipt of the reply referred to in paragraph 2 of Article 3 (Initiation of the Mediation Procedure) of this Annex.
2. In the event that the Parties are unable to agree on a mediator within the time limit laid down in paragraph 1, either Party may request the chairperson of the Committee, or the chairperson's delegate, to select the mediator by lot from the list established under Article 3.23 (List of Arbitrators). Representatives of the Parties shall be invited, with due notice, to be present when lots are drawn. In any event, the lot shall be carried out with the Party or Parties that are present.
3. The chairperson of the Committee, or the chairperson's delegate, shall select the mediator within five working days of the reply referred to in paragraph 2 by either Party.
4. Should the list provided for in Article 3.23 (List of Arbitrators) not be established at the time a request is made pursuant to Article 3 (Initiation of the Mediation Procedure) of this Annex, the mediator shall be drawn by lot from the individuals who have been formally proposed by one or both of the Parties.
5. A mediator shall not be a citizen of either Party, unless the Parties agree otherwise.

6. The mediator shall assist, in an impartial and transparent manner, the Parties in bringing clarity to the measure and its possible trade effects, and in reaching a mutually agreed solution. Annex 8 (Code of Conduct for Arbitrators and Mediators) applies to mediators *mutatis mutandis*. Rules 3 to 7 (Notifications) and 44 to 48 (Translation and Interpretation) of Annex 7 (Rules of Procedure) apply *mutatis mutandis*.

ARTICLE 5

Rules of the Mediation Procedure

1. Within 10 days of the date of appointment of the mediator, the Party having invoked the mediation procedure shall present, in writing, a detailed description of the problem to the mediator and to the other Party, in particular of the operation of the measure at issue and its trade effects. Within 20 days of the date of delivery of that description, the other Party may provide, in writing, its comments to the description of the problem. Either Party may include in its description or comments any information that it deems relevant.
2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned and its possible trade effects. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the Parties. Before seeking the assistance of, or consulting with, relevant experts and stakeholders, the mediator shall consult with the Parties.

3. The mediator may offer advice and propose a solution for the consideration of the Parties which may accept or reject the proposed solution or may agree on a different solution. The mediator shall not advise or give comments on the consistency of the measure at issue.
4. The mediation procedure shall take place in the territory of the Party to which the request was addressed or, by mutual agreement, in any other location or by any other means.
5. The Parties shall endeavour to reach a mutually agreed solution within 60 days of the appointment of the mediator. Pending a final agreement, the Parties may consider possible interim solutions, especially if the measure relates to perishable goods.
6. The solution may be adopted by means of a decision of the Committee. Either Party may make such solution subject to the completion of any necessary internal procedures. Mutually agreed solutions shall be made publicly available. The version disclosed to the public may not contain any information that a Party has designated as confidential.
7. Upon request of the Parties, the mediator shall issue to the Parties, in writing, a draft factual report, providing a brief summary of:
 - (a) the measure at issue in the mediation procedure;
 - (b) the procedures followed; and

- (c) any mutually agreed solution reached as the final outcome of the mediation procedure, including possible interim solutions.

The mediator shall provide 15 days for the Parties to comment on the draft factual report. After considering the comments of the Parties submitted within that period, the mediator shall issue, in writing, a final factual report to the Parties within 15 days. The factual report shall not include any interpretation of this Agreement.

8. The mediation procedure shall be terminated by:

- (a) the adoption of a mutually agreed solution by the Parties, on the date of its adoption;
- (b) mutual agreement of the Parties at any stage of the mediation procedure, on the date of that agreement;
- (c) a written declaration of the mediator, after consultation with the Parties, that further efforts at mediation would be to no avail, on the date of that declaration; or
- (d) a written declaration of a Party after exploring mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that declaration.

SECTION B

IMPLEMENTATION

ARTICLE 6

Implementation of a Mutually Agreed Solution

1. Where the Parties have agreed to a solution, each Party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.
2. The implementing Party shall inform the other Party in writing of any steps or measures taken to implement the mutually agreed solution.

SECTION C

GENERAL PROVISIONS

ARTICLE 7

Confidentiality and Relationship to Dispute Settlement

1. Unless the Parties agree otherwise, and without prejudice to paragraph 6 of Article 5 (Rules of the Mediation Procedure) of this Annex, all steps of the mediation procedure, including any advice or proposed solution, are confidential. However, either Party may disclose to the public the fact that mediation is taking place.

2. The mediation procedure is without prejudice to the Parties' rights and obligations under Chapter 3 (Dispute Settlement) or any other agreement.
3. Consultations under Chapter 3 (Dispute Settlement) are not required before initiating the mediation procedure. However, a Party should avail itself of the other relevant cooperation or consultation provisions in this Agreement before initiating the mediation procedure.
4. A Party shall not rely on or introduce as evidence in other dispute settlement procedures under this Agreement or any other agreement, nor shall a panel take into consideration:
 - (a) positions taken by the other Party in the course of the mediation procedure or information gathered under paragraph 2 of Article 5 (Rules of the Mediation Procedure) of this Annex;
 - (b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation; or
 - (c) advice given or proposals made by the mediator.
5. A mediator may not serve as an arbitrator or panellist in dispute settlement proceedings under this Agreement or under the WTO Agreement involving the same matter for which he has been a mediator.

ARTICLE 8

Time Limits

Any time limit referred to in this Annex may be modified by mutual agreement between the Parties.

ARTICLE 9

Costs

1. Each Party shall bear its own expenses derived from the participation in the mediation procedure.
2. The Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of a mediator. The remuneration of a mediator shall be the same as that provided for the chairperson of an arbitration panel in accordance with Rule 12 of Annex 7 (Rules of Procedure).
