

MEDIATION

ARTICLE 1

Objective

The objective of this Annex is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.

ARTICLE 2

Provision of information

1. At the request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any existing or proposed measure that materially affects the operation of this Agreement.

2. The information provided under this Article is without prejudice as to whether the measure is consistent with this Agreement.

ARTICLE 3

Initiation of the procedure

1. A Party may at any time request in writing to enter into a mediation procedure with respect to any measure by a Party adversely affecting trade between the Parties. The request shall be sufficiently detailed to present the concerns of the requesting party clearly and shall:
 - (a) identify the specific measure at issue;
 - (b) provide a statement of the alleged adverse effects that the requesting party believes the measure has, or will have, on trade between the parties; 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. If a request is made pursuant to paragraph 1, the party to which the request is made shall give sympathetic consideration to the request and deliver its written acceptance or rejection to the requesting party no later than 10 (ten) days after its receipt. Otherwise, the request shall be regarded as rejected.
3. Consultations, including under Chapter 21, are not required before initiating the mediation procedure. A party should in principle, nevertheless, avail itself of the other relevant cooperation or consultation provisions provided for in this Agreement before initiating the mediation procedure.

ARTICLE 4

Selection of the mediator

1. The parties shall endeavour to agree on a mediator no later than 15 (fifteen) days after the delivery of the acceptance referred to in Article 3(2) of this Annex.
2. A mediator shall not be a national of either party, unless the parties agree otherwise.
3. If the parties are unable to agree on the mediator within the time frame laid down in paragraph 1, either party may request the co-chair of the Trade Committee from the requesting party, or the co-chair's designee, to select the mediator by lot from the sub-list established under point (c) of Article 21.8(3). Representatives of both parties shall be invited, with sufficient advance notice, to be present when the lots are drawn. In any event, the drawing of lots shall be carried out with the party or parties that are present.
4. The co-chair of the Trade Committee from the requesting party, or the co-chair's designee, shall select the mediator within 5 (five) days of the request made pursuant to Article 3(2) of this Annex.
5. Should the sub-list referred to in point (c) of Article 21.8(3) of this Agreement not be established at the time a request is made pursuant to paragraph 3 of this Article, the mediator shall be drawn by lot from the individuals who have been formally proposed by one or both parties.
6. The mediator shall, in an impartial and transparent manner, assist the parties in bringing clarity to the measure and its possible trade effects, and in reaching a mutually agreed solution.
7. Annex 21-B applies to mediators, *mutatis mutandis*.

8. Rules 2 to 9 and 56 to 59 of the Rules of Procedure for Arbitration set out in Annex 21-A apply, *mutatis mutandis*.

ARTICLE 5

Rules of the mediation procedure

1. No later than 10 (ten) days after the appointment of the mediator, the party which invoked the mediation procedure shall deliver a detailed, written description of its concerns to the mediator and to the other party, in particular of the operation of the measure at issue and its trade effects. No later than 20 (twenty) days after the receipt of that description, the other party may deliver written comments on the description. Either party may include any information that it deems relevant in its description or comments.
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 them jointly or individually, and provide any additional support requested by the parties. The mediator shall seek the assistance of, or consult with, relevant experts and stakeholders upon agreement of the parties.
3. The mediator shall not advise or comment on the consistency of the measure at issue with this Agreement. The mediator may offer advice and propose a solution for the consideration of the parties. The parties may accept or reject the proposed solution, or agree on a different solution.
4. The mediation procedure shall take place in the territory of the party to which the request was addressed or, by mutual agreement of the parties, in any other location or by any other means.

5. The parties shall endeavour to reach a mutually agreed solution no later than 60 (sixty) days after the appointment of the mediator. Pending a final agreement, the parties may consider possible interim solutions, particularly if the measure relates to perishable goods or other goods or services that rapidly lose their quality.

6. The solution may be adopted by means of a decision of the Trade Committee. The conclusion of the mutually agreed solution between the parties may be subject to the completion of any necessary internal procedures. Mutually agreed solutions shall be made publicly available without containing information that a party has designated as confidential.

7. On request of the parties, the mediator shall deliver a draft factual report to the parties, providing a brief summary of the measure at issue, the procedures followed and any mutually agreed solution reached, including possible interim solutions. The mediator shall allow the parties 15 (fifteen) days to comment on the draft report. After considering the comments of the parties received within that period, the mediator shall, within 15(fifteen) days, deliver a final factual report to the parties. The factual report shall not include any interpretation of this Agreement.

8. The procedure shall be terminated:

- (a) by the adoption of a mutually agreed solution by the parties, on the date of the adoption thereof;
- (b) by mutual agreement of the parties at any stage of the procedure, on the date of such agreement;
- (c) by 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) by a written declaration of a party after exploring any possible 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.

ARTICLE 6

Implementation of a mutually agreed solution

1. If the parties reached agreement on a solution, each party shall take the measures it considers necessary to implement the mutually agreed solution within the agreed timeframe.
2. The implementing party shall notify the other party, in writing, of any steps or measures taken to implement the mutually agreed solution.

ARTICLE 7

Confidentiality

Unless the parties agree otherwise, and without prejudice to Article 5(6), all steps of the procedure, including any advice or proposed solution, are confidential. However, any party may disclose to the public the fact that mediation is taking place.

ARTICLE 8

Relationship to dispute settlement procedures

1. The mediation procedure is without prejudice to the Parties' rights and obligations under dispute settlement procedures of this Agreement, or any other agreement.
2. A party shall not rely on, or introduce as evidence in other dispute settlement procedures of this Agreement or of 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 Article 5;
 - (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.
3. A mediator shall not serve as a member of a panel in dispute settlement proceedings under this Agreement or under the WTO Agreement, or any other agreement to which the Parties are party, involving the same matter for which he or she has been a mediator.