

RULES OF PROCEDURE FOR MEDIATION

I. Objective

1. Further to Article 26.25 (Mediation), 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.

II. Request for information

2. At any time before the initiation of the mediation procedure, a Party may deliver a written request for information regarding a measure allegedly adversely affecting trade or investment between the Parties. The Party to which such request is made shall, within 20 days after delivery of the request, deliver a written response containing its comments on the requested information.

3. When the responding Party considers it will not be able to deliver a response within 20 days after delivery of the request referred to in Rule 2, it shall promptly notify the requesting Party, stating the reasons for the delay and providing an estimate of the shortest period within which it will be able to deliver its response.

4. A Party is normally expected to avail itself of the possibility to deliver a request for information before initiating the mediation procedure.

III. Initiation of the mediation procedure

5. A Party may at any time request to enter into a mediation procedure with respect to any measure by a Party allegedly adversely affecting trade or investment between the Parties.

6. The request shall be made by means of a written request delivered to the other Party. 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 adverse effects that the requesting Party considers the measure has, or will have, on trade or investment between the Parties; and
- (c) explain how the requesting Party considers that those adverse effects are linked to the measure.

7. The mediation procedure may only be initiated by mutual agreement of the Parties in order to explore mutually agreed solutions and consider any advice and proposed solutions by the mediator. The Party to which the request is made shall give sympathetic good faith consideration to the request and deliver its written acceptance or rejection to the requesting Party within 10 days after its delivery. Otherwise, the request shall be regarded as rejected.

IV. Selection of the mediator

8. The Parties shall endeavour to agree on a mediator within 15 days of the initiation of the mediation procedure.

9. In the event that the Parties are unable to agree on the mediator within the time period set out in Rule 8, either Party may request the co-chair of the Trade Committee from the complaining Party to select the mediator by lot, within five days after the request, from the sub-list of chairpersons established under Article 26.6 (Lists of panellists). The co-chair of the Trade Committee from the complaining Party may delegate such selection by lot of the mediator.

10. Should the sub-list of chairpersons referred to in Article 26.6 (Lists of panellists) not be established at the time a request is made pursuant to Rules 5 to 7, the mediator shall be drawn by lot from the individuals formally proposed by one Party or both of the Parties for that sub-list.

11. A mediator shall not be a national of either Party or employed by either Party, unless the Parties agree otherwise.

12. A mediator shall comply with Annex 26-B (Code of conduct for panellists and mediators).

V. Mediation procedure

13. Within 10 days after the appointment of the mediator, the Party which invoked the mediation procedure shall deliver to the mediator and to the other Party a detailed written description of its concerns, in particular of the operation of the measure at issue and its possible adverse effects on trade or investment. Within 20 days after the delivery of such description, the other Party may deliver written comments on such description. Either Party may include any information that it deems relevant in its description or comments.

14. The mediator shall assist the Parties in a transparent manner in bringing clarity to the measure concerned and its possible adverse effects on trade or investment. 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. The mediator shall consult with the Parties before seeking the assistance of, or consulting with, relevant experts and stakeholders.

15. 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. The mediator shall not advise or comment on the consistency of the measure at issue with this Agreement.

16. 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.

17. The Parties shall endeavour to reach a mutually agreed solution within 60 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 seasonal goods or services that rapidly lose their trade value.

18. The solution may be adopted by means of a decision of the Trade Committee. Either Party may make the solution subject to the completion of any necessary internal procedures. Mutually agreed solutions shall be made publicly available. The version disclosed to the public shall not contain any information a Party has designated as confidential.

19. Upon request of either Party, the mediator shall deliver a draft factual report to the Parties, providing:

(a) a brief summary of the measure at issue;

- (b) the procedures followed; and
- (c) if applicable, any mutually agreed solution reached, including possible interim solutions.

The mediator shall allow the Parties 15 days to comment on the draft report. After considering the comments of the Parties received, the mediator shall, within 15 days after the delivery of the Parties' comments, deliver a final factual report to the Parties. The factual report shall not include any interpretation of this Agreement.

20. 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 that mutual 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 mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that written declaration.

VI. Confidentiality

21. Unless the Parties agree otherwise, all steps of the mediation procedure, including any advice or proposed solution, are confidential. A Party may disclose to the public the fact that a mediation procedure is taking place.

VII. Relationship to dispute settlement procedures

22. The mediation procedure is without prejudice to each Party's rights and obligations under Sections B (Consultations) and C (Panel procedures) of Chapter 26 (Dispute settlement) or under dispute settlement procedures under any other agreement.

23. 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 exclusively gathered under Rule 14;

- (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.

24. Unless the Parties agree otherwise, a mediator shall not serve as a member of a panel in dispute settlement procedures under this Agreement or under any other international trade agreement to which both Parties are party involving the same matter for which he or she has been a mediator.
