

MEDIATION MECHANISM FOR NON-TARIFF MEASURES

SECTION 1

MEDIATION MECHANISM

ARTICLE 1

Scope of Application

The mediation mechanism shall apply to any non-tariff measure considered by a Party to adversely affect trade with another Party and which is related to any matter falling under Title III (Trade in Goods) of this Agreement¹.

¹ For greater certainty, this mediation mechanism shall not apply to matters covered under Annex II (Concerning the Definition of the Concept of "Originating Products" and Methods for Administrative Cooperation).

ARTICLE 2

Initiation of the Mediation Procedure

1. Any Party may request, at any time, that another Party enter a mediation procedure. Such request shall be addressed to that other Party in writing, with copy to the Trade Committee. The request shall include a description of the matter sufficient to present the measure in question and its trade effects clearly.
2. The Party to which such request is made shall accord sympathetic consideration to that request. Within 10 days of the date of receipt of such request, the requested Party shall provide a written reply to the requesting Party, with copy to the Trade Committee, indicating whether it agrees or not to enter the mediation procedure.

ARTICLE 3

Selection of Mediator

1. Upon launch of the mediation procedure, the Parties to the mediation shall endeavour to agree on a mediator no later than 15 days after the receipt of a positive reply by the requested Party to the request to initiate the mediation procedure. If these Parties fail to reach an agreement on the mediator within the established time period, either Party may request the Chair of the Trade Committee to appoint the mediator by lot. Within five days following the submission of the request, each Party to the mediation shall establish a list of at least three persons who are not nationals of that Party, who fulfil the conditions of paragraph 2 and who may act as mediator. Within five days following the date of submission of the lists, each Party participating in the mediation shall select at least one name from the list submitted by the other Party to the mediation. The Chair of the Trade Committee or the Chair's delegate shall then select the mediator by lot among the selected names. The representatives of both Parties to the mediation shall be invited with due anticipation to be present when lots are drawn. In any event, the lot shall be carried out with any such Parties present at the time within 15 days following the date of the request for the selection of the mediator by lot.

2. Any candidate to act as a mediator shall be an expert on the subject matter to which the measure in question relates². The mediator shall assist the Parties to the mediation in an impartial and transparent manner in bringing clarity to the measure and its possible trade effects, and in reaching a mutually agreed solution.

ARTICLE 4

Rules of the Mediation Procedure

1. In the initial stage of the procedure, within 15 days after the appointment of the mediator, the Party invoking 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 10 days after the date of delivery of the submission, 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 conducting the initial stage, in particular whether to consult the Parties jointly or individually, seek the assistance of or consult with relevant experts and stakeholders of the Parties participating in the mediation.

² For example, in cases concerning standards and technical requirements, the mediator should have a background in relevant international standard setting bodies.

3. Following the initial stage, the mediator may provide an advisory opinion and propose a solution for consideration of the Parties. Any such opinion shall not pertain to the consistency of the measure at issue with this Agreement. The mediator may meet the Parties participating in the mediation individually or jointly in order to facilitate a mutually agreed solution.
4. The procedure shall be confidential and shall take place in the territory of the Party to which the request was addressed, or by mutual agreement of the Parties participating in the mediation in any other location or by any other means.
5. The procedure shall normally be completed within 60 days following the date of the appointment of the mediator. At any stage of the procedure, the Parties to the mediation may discontinue the procedure by mutual agreement.

SECTION 2

IMPLEMENTATION

ARTICLE 5

Implementation of a Mutually Agreed Solution

1. Where the Parties to the mediation have agreed on a solution to the trade obstacles caused by the measure subject to this procedure, the Parties shall take any measure necessary to implement the mutually agreed solution without undue delay.
2. The implementing Party shall inform the other Party in writing of any step or measure taken to implement the mutually agreed solution.

SECTION 3

GENERAL PROVISIONS

ARTICLE 6

Relation with the Dispute Settlement Mechanism

1. The procedure under this mediation mechanism is not intended to serve as a basis for dispute settlement procedures under Title XII (Dispute Settlement) of this Agreement or any other agreement.
2. No Party to a mediation shall rely on or introduce as evidence in a dispute settlement procedure:
 - (a) positions taken by the other Party in the course of the mediation procedure;
 - (b) the fact that the other Party has indicated its willingness to accept a solution to the non-tariff measure subject to mediation; or
 - (c) proposals made by the mediator.

3. An arbitration panel established according to this Agreement shall not take into account any information exchanged or any position expressed by either party to the mediation procedure as evidence in any dispute settlement procedure.
4. The mediation mechanism is without prejudice to the rights and obligations of the Parties under Title XII (Dispute Settlement) of this Agreement.

ARTICLE 7

Time Limits

Any time limit referred to in this Annex may be extended by mutual agreement of the Parties to the mediation.
