

ANNEX 14-B – MEDIATION MECHANISM

Article 14B.1: Request for Information

1. At any time before the initiation of a mediation procedure, any Party may request any other Party in writing to provide information with respect to any matter described in Article 14.3 (Scope).
2. The Party to which such request is made shall, within 20 days of the date of its receipt of the request, provide a written response containing its comments on the requested information.
3. When the Party to which such request is made considers that it will not be able to respond within 20 days of the date of its receipt of the request, 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 provide its response.
4. Each Party is encouraged to avail itself of this provision before the initiation of a mediation procedure.

Article 14B.2: Initiation of the Mediation Procedure

1. A Party may at any time request to enter into a mediation procedure with any other Party with respect to any matter described in Article 14.3 (Scope).
2. The Party making the request for mediation shall do so in writing and shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint. The requesting Party shall circulate the request concurrently to the other Parties through the overall contact points designated under Article 12.6 (Contact Points).
3. The Party to which a request for mediation is made shall give sympathetic consideration to the request and, unless the Parties to the mediation agree otherwise, reply in writing to the request no later than 14 days after the date of its receipt of the request.¹⁷ That Party shall circulate its reply concurrently to the other Parties through the overall contact points and enter into mediation in good faith.
4. Upon receipt of a request for mediation, the Party to which the request is made may decline to participate in the mediation.
5. A mediation procedure shall not be initiated to review a proposed measure.

¹⁷ For greater certainty, if the Party to which a request for mediation is made does not reply within the time period specified in this paragraph, it shall be deemed to have received the request seven days after the date on which the Party making the request for mediation transmitted that request.

Article 14B.3: Selection of the Mediator

1. The Parties to the mediation shall endeavour to agree on a mediator within 10 days of the initiation of the mediation procedure.
2. In the event that the Parties to the mediation are unable to agree on the mediator within the time period laid down in paragraph 1, either Party may request that the appointment be made by the Director-General of the WTO within a further 15 days.
3. If the Director-General of the WTO notifies the Parties to the mediation that he or she is unavailable, or does not appoint a mediator within 15 days after the date of the request referred to in paragraph 2, either Party may request the Secretary-General of the Permanent Court of Arbitration to make the appointment promptly.
4. Unless the Parties to the mediation agree otherwise, a mediator shall not be a national of, or be employed by, either Party.
5. A mediator shall comply with the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes* (as contained in document WT/DSB/RC/1 and any subsequent amendments), *mutatis mutandis*.

Article 14B.4: Rules of the Mediation Procedure

1. Within 10 days of the appointment of the mediator, the Party which invoked the mediation procedure shall deliver to the mediator and the other Party a detailed written description of its concerns, in particular the operation of the measure at issue and the legal basis for the complaint.
2. Within 20 days of the delivery of this description, the other Party may provide written comments. Either Party may include any information that it deems relevant in its description or comments.
3. The mediator shall assist the Parties to the mediation in an impartial and transparent manner in bringing clarity to the measure or any other matter described in Article 14.3 (Scope) and in reaching a mutually agreed solution. In particular, the mediator may organise meetings between the Parties to the mediation, consult them jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the Parties to the mediation. The mediator shall consult with the Parties to the mediation before seeking the assistance of, or consulting with, relevant experts and stakeholders.
4. The mediator may offer advice and propose a solution for the consideration of the Parties to the mediation. The Parties to the mediation 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.

5. The mediation procedure shall take place in the capital of the Party to which the request for mediation referred to in Article 14B.2 was addressed, or by mutual agreement in any other location or by any other means.

6. The Parties to the mediation shall endeavour to reach a mutually agreed solution within 60 days of the appointment of the mediator. Pending a final agreement, the Parties to the mediation may consider possible interim solutions, particularly if the measure relates to perishable goods, or seasonal goods or services that rapidly lose their trade value.

7. Upon request of either Party to the mediation, the mediator shall issue to the Parties a draft written factual report, providing:

- (a) a brief summary of the measure at issue in the mediation procedure;
- (b) the procedures followed; and
- (c) any mutually agreed solution reached as the outcome of the mediation procedure, including possible interim solutions.

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

9. The mediation procedure may be suspended at any time by notice in writing of either Party to the mediation.

10. The mediation procedure shall be terminated:

- (a) by the adoption of a mutually agreed solution by the Parties to the mediation, on the date of the adoption thereof;
- (b) by mutual agreement of the Parties to the mediation at any stage of the procedure, on the date of that agreement;
- (c) by a written declaration of the mediator, after consultation with the Parties to the mediation, that further efforts at mediation would be to no avail, on the date of that declaration;
- (d) by a written declaration of a Party to the mediation 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; or
- (e) by notice in writing by either Party to the mediation, on the date of that notice.

Article 14B.5: Implementation of a Mutually Agreed Solution

1. Where the Parties to the mediation 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 to the mediation in writing of any steps or measures taken to implement the mutually agreed solution.

Article 14B.6: Time Limits

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

Article 14B.7: Confidentiality

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

Article 14B.8: Costs

1. Each Party to the mediation shall bear its own expenses derived from the participation in the mediation procedure.
2. The Parties to the mediation shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the mediator. The remuneration of the mediator shall be in accordance with that foreseen for a chairperson of an arbitral tribunal in accordance with the Rules of Procedure.