

MEDIATION PROCEDURE FOR DISPUTES BETWEEN PARTIES

ARTICLE 1

Objective and Scope

1. 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.
2. This Annex shall apply to any measure that is within the scope of this Agreement and that adversely affects investment between the Parties, except as otherwise provided.

ARTICLE 2

Request for Information

1. At any time before the initiation of the mediation procedure, a Party may request the other Party in writing to provide information regarding a measure that adversely affects investment between the Parties. The Party to which such request is made shall provide a written response within 20 days.

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

ARTICLE 3

Initiation of the Procedure

1. At any time, a Party may 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 to present clearly the concerns of the requesting Party 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 investment between the Parties; and
 - (c) explain how the requesting Party considers that those effects are linked to the measure.
2. The Party to which such request is addressed shall give sympathetic consideration to the request and reply by accepting or rejecting it in writing within ten days of its receipt.

ARTICLE 4

Selection of the Mediator

1. The Parties shall endeavour to agree on a mediator no later than 15 days after the receipt of the reply to the request referred to in paragraph 2 of Article 3 (Initiation of the Procedure) of this Annex.
2. If the Parties cannot agree on the mediator within the established time frame, 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 paragraph 2 of Article 3.44 (Lists of Arbitrators). Representatives of both Parties are entitled to be present when the lots are drawn.
3. The chairperson of the Committee or the chairperson's delegate shall select the mediator within five working days of the request referred to in paragraph 2.
4. The mediator shall not be a national of either Party, unless the Parties agree otherwise.
5. The mediator shall assist the Parties, in an impartial and transparent manner, in bringing clarity to the measure and its possible adverse effects on investment, and in reaching a mutually agreed solution. Annex 11 shall apply to mediators, *mutatis mutandis*. Rules 4 to 8 and Rules 45 to 48 of Annex 9 shall also apply, *mutatis mutandis*.

ARTICLE 5

Rules of the Mediation Procedure

1. Within ten days of the appointment of the mediator, the Party having invoked the mediation procedure shall present to the mediator and to the other Party a detailed written description of the problem, describing in particular the operation of the measure at issue and its adverse effects on investment. Within 20 days of the date of delivery of that submission, the other Party may provide its written comments on the description of the problem. Either Party may include any information that it deems relevant in its description of the problem or its comments thereon.
2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned and its possible adverse effects on investment. In particular, the mediator may organise meetings between the Parties, may consult the Parties jointly or individually, may seek the assistance of or consult with relevant experts and stakeholders and may provide any additional support requested by the Parties. However, 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 may propose a solution for the consideration of the Parties, who may accept or reject the proposed solution or may agree on a different solution. However, the mediator shall not advise or give comments on whether the measure at issue is consistent with this Agreement.

4. The mediation procedure shall take place in the territory of the Party to which the request was addressed or, by mutual agreement, at 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.
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. However, the version disclosed to the public may not contain any information that a Party has designated as confidential.
7. The mediation procedure shall be terminated:
 - (a) by the adoption of a mutually agreed solution by the Parties, in which case the mediation procedure shall terminate on the date of adoption;
 - (b) by the mutual agreement of the Parties at any stage of the mediation procedure, in which case the mediation procedure shall terminate on the date of that agreement;
 - (c) by the written declaration of the mediator, after having consulted with the Parties, that further efforts at mediation would be to no avail, in which case the mediation procedure shall terminate on the date of such declaration; or

- (d) by the written declaration of either Party, after having explored mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, in which case the mediation procedure shall terminate on the date of that declaration.

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.
3. At the request of the Parties, the mediator shall issue to the Parties a draft written factual report, which shall provide a brief summary of: (i) the measure at issue in these proceedings; (ii) the procedures followed; and (iii) any mutually agreed solution reached as the final outcome of these proceedings, including possible interim solutions. The mediator shall provide the Parties 15 days to comment on the draft report. After considering the comments of the Parties submitted within that period, the mediator shall submit a final written factual report to the Parties within 15 days. The final written factual report shall not include any interpretation of this Agreement.

ARTICLE 7

Relationship to Dispute Settlement

1. The mediation procedure is without prejudice to the Parties' rights and obligations under Chapter Three (Dispute Settlement) Section B (Resolution of Disputes between Parties).
2. The mediation procedure is not intended to serve as a basis for dispute settlement procedures under this Agreement or any other agreement. A Party shall not rely on or introduce as evidence in such dispute settlement procedures, nor shall an arbitration panel take into consideration:
 - (a) positions taken by a Party in the course of the mediation procedure;
 - (b) the fact that a 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. Without prejudice to paragraph 6 of Article 5 (Rules of the Mediation Procedure) of this Annex, and unless the Parties agree otherwise, all steps of the mediation procedure, including any advice that may be given or solution that may be proposed, are confidential. However, each Party may disclose to the public the fact that mediation is taking place.

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 arising from the participation in the mediation procedure.
2. The Parties shall share equally the expenses that arise from organisational matters, including the remuneration and expenses of the mediator. The remuneration of the mediator shall be in accordance with that provided for in Rule 9(b) of Annex 9.

ARTICLE 10

Review

Five years after the date of entry into force of this Agreement, the Parties shall consult each other on the need to modify the mediation procedure in light of their experience of using the mediation procedure and in light of the development of a corresponding mechanism in the WTO.
