

SECTION D - MEDIATION MECHANISM

ARTICLE 24.26 - Objective

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

ARTICLE 24.27 - Request for information

1. At any time before the initiation of the mediation procedure, a Party may deliver a written request for information regarding a measure adversely affecting trade or investment between the Parties. The Party receiving the request shall, within 20 days after the date of delivery of the request, deliver a written response containing its comments on the requested information.
2. If the Party receiving the request considers it will not be able to deliver a response within 20 days after the date of delivery 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 deliver its response.
3. A Party is normally expected to deliver a written request for information under this Article before requesting to enter into a mediation procedure pursuant to Article 24.28 (Initiation of the mediation procedure).

ARTICLE 24.28 - Initiation of the mediation procedure

1. A Party may at any time request to enter into a mediation procedure with respect to any measure by a Party adversely affecting trade or investment between the Parties.
2. The request shall be made in writing and delivered to the other Party. The request shall be sufficiently detailed to present the concerns of the requesting Party 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 effects are linked to the measure.
3. The mediation procedure may only be initiated by agreement of the Parties, which may include an agreement on a mediator, 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 (hereinafter referred to as "the requested Party") shall give good faith consideration to the request and deliver its

written acceptance or rejection of the request to the requesting Party within 10 days after the date of its delivery. Otherwise, the request shall be regarded as rejected.

ARTICLE 24.29 - Selection of the mediator

1. If a mediator has not been agreed pursuant to Article 24.28(3) (Initiation of the mediation procedure), the Parties shall endeavour to agree on a mediator within 10 days after the date of delivery of the written acceptance to mediate.
2. In the event that the Parties are unable to agree on the mediator within 10 days after the date of delivery of the written acceptance to mediate, either Party may request the co-chair of the Trade Committee from the requesting Party to select the mediator by lot, within five days from the request, from the list of possible mediators referred to in Article 24.7(4) (Lists of panellists). The co-chair of the Trade Committee from the requesting Party may delegate such selection by lot of the mediator. The requested Party may be present during the lot.
3. If the sub-list of chairpersons referred to in Article 24.7 (Lists of panellists) is not established at the time a request is made pursuant to Article 24.28 (Initiation of the mediation procedure), the mediator shall be drawn by lot from the individuals formally proposed by one Party or both Parties for that sub-list. Where applicable, the selection by lot shall be limited to the individuals identified in such proposals as possible mediators.
4. The Parties shall notify, in writing, the individual who has been selected to serve as mediator and invite that individual to confirm their availability. Unless the Parties agree otherwise, the date of the appointment of the mediator shall be the date on which the selected individual confirms their availability. If the selected individual notifies that he or she is unavailable or does not confirm their availability within 10 days, a new individual shall be selected. To that end, the procedure provided in this Article shall be repeated, starting with the selection method that led to the selection of the unavailable individual.
5. A mediator shall not be a natural person of either Party or employed by either Party, unless the Parties otherwise agree.
6. A mediator shall comply with Annex 24-B (Code of conduct for panellists and mediators).

ARTICLE 24.30 - Rules of the mediation procedure

1. Within 10 days of the appointment of the mediator, the requesting Party shall deliver to the mediator and to the requested 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 date of delivery of such description, the requested Party may deliver written comments on that description. Either Party may include any information that it deems relevant in its description or comments.
2. The mediator shall assist the Parties in a transparent manner to understand the measure at

issue 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. Engagement of experts shall be subject to any terms and conditions agreed by the Parties, where applicable.

3. 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.

4. The mediation procedure shall take place in the territory of the requested Party, or by mutual agreement in any other location or by any other means.

5. The Parties shall endeavour to reach a mutually agreed solution within 70 days after the date of the appointment of the mediator. Pending a final agreement, the Parties may consider possible interim solutions, particularly if the mediation procedure relates to matters of urgency.

6. On request of either Party, the mediator shall deliver a draft factual report to the Parties within 20 days after the date of such a request. The draft factual report shall provide:

- (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.

7. The mediator shall allow the Parties to submit comments on the draft factual report within 15 days after the date of delivery of that report.

8. The mediator shall deliver a final factual report to the Parties within 30 days after the date of delivery of the draft factual report. The final factual report shall clearly address the comments made by each Party, if any. Neither the draft nor the final factual report shall include any interpretation of this Agreement or reach any conclusions on the consistency of the measure at issue with this Agreement.

9. The mediation procedure shall be terminated by:

- (a) the adoption of a mutually agreed solution by the Parties, on the date of the adoption thereof;
- (b) mutual agreement of the Parties at any stage of the mediation procedure, on the date of that agreement;

- (c) 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) a written declaration of a Party after the time period specified in paragraph 5 has expired, on the date of that declaration, provided that the Parties have first explored a mutually agreed solution under the mediation procedure and considered any advice and solutions proposed by the mediator.

ARTICLE 24.31 - Confidentiality

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

ARTICLE 24.32 - Relationship to dispute settlement procedures

1. The mediation procedure is without prejudice to each Party's rights and obligations under Sections B (Consultations) and C (Panel procedures) or under dispute settlement procedures under any other agreement.
2. If a Party requests the establishment of a panel in accordance with Article 24.5 (Initiation of panel procedures) in relation to the measure that is the subject of the mediation, the other Party may terminate the mediation by written declaration and without complying with point (d) of Article 24.30(9) (Rules of the mediation procedure).
3. 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 pursuant to Article 24.30(2) (Rules of the mediation procedure);
 - (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.
4. 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 agreement involving the same matter for which he or she has been a mediator.