

ANNEX 14-A

MEDIATION MECHANISM FOR NON-TARIFF MEASURES

ARTICLE 1: OBJECTIVE

The objective of this Annex is to facilitate the finding of a mutually agreed solution to non-tariff measures adversely affecting trade between the Parties through a comprehensive and expeditious procedure with the assistance of a mediator.

ARTICLE 2: SCOPE

The mediation mechanism shall apply to any measure, other than customs duties, which a Party believes adversely affects trade between the Parties and which is related to any matter falling under market access in goods¹ including under Chapter Two (National Treatment and Market Access for Goods) and the Annexes pertaining thereto.

SECTION A PROCEDURE UNDER THE MEDIATION MECHANISM

ARTICLE 3: INITIATION OF THE MEDIATION PROCEDURE

1. A Party may request, at any time, that the other Party 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 on trade between the Parties; and
- (c) explain how the requesting Party considers that those trade effects are linked to the measure.

2. The Party to which such request is addressed shall favourably consider the request and provide a written reply to the request within 15 days of its receipt.

¹ For the purposes of this Annex, market access in goods covers non-agricultural market access (NAMA) and its related trade rules including trade remedies, technical barriers to trade, sanitary and phytosanitary measures, trade facilitation, rules of origin, safeguards and the Sectoral Annexes to Chapter Two (National Treatment and Market Access for Goods). It excludes trade in agricultural products, services and establishment, cultural cooperation, government procurement, competition, intellectual property rights, payments and capital movements and trade and sustainable development.

ARTICLE 4: SELECTION OF MEDIATOR

1. Upon launch of the mediation procedure, the Parties are encouraged to agree on a mediator no later than 15 days after the receipt of the reply to the request. If the Parties cannot agree on the mediator within the established time frame, either Party may request appointment of the mediator by lot. Within five days of the submission of the request, each Party shall establish a list of at least three persons who are not nationals of that Party, fulfil the conditions of paragraph 2 and may act as mediator. Within five days of submission of the list, each Party shall select at least one name from the other Party's list. The chair of the Trade Committee or the chair's delegate shall then select the mediator by lot among the selected names. The selection by lot shall be made in the presence of representatives of the Parties and within 15 days of the submission of the request for appointment by lot.

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

ARTICLE 5: RULES OF THE MEDIATION PROCEDURE

1. In the initial stage of the procedure, within 10 days of the appointment of the mediator, the Party having launched 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 20 days of the date of delivery of this 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.

3. Following the initial stage, the mediator may provide an advisory opinion and propose a solution for the Parties' consideration. In any such opinion, the mediator shall not consider whether the measure at issue is consistent or not with this Agreement; nor shall the mediator question the legitimacy of the policy objectives of the measure. The mediator may meet individually or jointly with the Parties in order to facilitate a mutually agreed solution. This stage of the procedure shall normally be completed within 60 days of the date of the appointment of the mediator.

4. The procedure shall be confidential and shall take place in the territory of the Party to which the request was addressed, or by a mutual agreement in any other location or by any other means.

5. The procedure shall be terminated:

(a) by the signature of a settlement agreement by the Parties, on the date of that

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

signature;

- (b) by a mutual agreement of the Parties 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, that further efforts at mediation are no longer justified; or
- (d) by a written declaration of a Party after exploring mutually agreed solutions under the mediation procedure and after having considered any advisory opinions and proposals by the mediator.

SECTION B IMPLEMENTATION

ARTICLE 6: IMPLEMENTATION OF A MUTUALLY AGREED SOLUTION

1. Where the Parties have agreed to a solution, each Party 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 steps or measures taken to implement the mutually agreed solution.

SECTION C GENERAL PROVISIONS

ARTICLE 7: RELATIONSHIP TO DISPUTE SETTLEMENT

1. The procedure under this mediation mechanism is not intended to serve as a basis for dispute settlement procedures under this Agreement or another agreement. A Party shall not rely on or introduce as evidence in such dispute settlement procedures:
 - (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.
2. The mediation mechanism is without prejudice to the Parties' rights and obligations under Chapter Fourteen (Dispute Settlement).

ARTICLE 8: TIME LIMITS

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

ARTICLE 9: COSTS

1. Each Party shall bear its own expenses derived from the participation in the mediation procedure.
2. The Parties shall share the expenses derived from organisational matters, including the expenses of the mediator.

ARTICLE 10: REVIEW

1. The Parties agree that any matter not falling within the scope defined in Article 14.2 shall become subject to the mediation mechanism if WTO Members agree on the establishment of a corresponding mechanism³ that covers such matter. The extension of the scope of application shall be as from the date of application of the latter agreement. This shall also apply to any further extensions of the scope of application of the WTO corresponding mechanism.
2. Five years after the entry into force of this Agreement, the Parties shall consult each other on the need to modify the mediation mechanism in light of the experience gained and the development of a corresponding mechanism in the WTO.

³ The Parties understand that “corresponding mechanism” means the mechanism proposed by the African Group, Canada, European Union, LDC Group, NAMA -11 Group of Developing Countries, New Zealand, Norway, Pakistan and Switzerland in the document TN/MA/W/88 of 23 July 2007, “Non Tariff Barriers – Proposal on Procedures for the Facilitation of Solutions to NTBs”, or any other similar mechanism proposed in documents replacing document TN/MA/W/88 of 23 July 2007.