

TITLE XI

MEDIATION MECHANISM FOR NON-TARIFF MEASURES

CHAPTER 1

SCOPE

ARTICLE 329

Scope

1. The Mediation Mechanism shall apply to non – tariff measures which adversely affect trade between the Parties under Part IV of this Agreement.
2. The Mediation Mechanism shall not apply to any measure or other matter arising under:
 - (a) Title VIII on Trade and Sustainable Development;
 - (b) Title IX on Regional Economic Integration;

- (c) Integration processes of the EU Party and of the Republics of the CA Party;
 - (d) Matters in which dispute settlement procedures have been excluded; and
 - (e) Provisions of an institutional nature in this Agreement.
3. This Title shall apply bilaterally between the EU Party on one side, and each of the Republics of the CA Party, on the other.
4. The mediation procedure shall be confidential.

CHAPTER 2

PROCEDURE UNDER THE MEDIATION MECHANISM

ARTICLE 330

Initiation of the Procedure

1. A Party may, at any time, request in writing that the other Party partakes in the mediation procedure. The request shall include a description of the matter sufficient to present clearly the measure in question and its trade effects.

2. The Party to which such request is made shall favourably consider the request and provide a written reply within ten days of the date of receipt of the request.
3. Prior to the selection of the mediator pursuant to Article 331, the Parties to the procedure shall endeavour in good faith to reach an agreement through direct negotiations, to which effect they shall have a time period of twenty days.

ARTICLE 331

Selection of the Mediator

1. The Parties to the procedure are encouraged to agree on a mediator no later than fifteen days after the expiration of the time period referred to in Article 330 paragraph 3, or earlier if one Party notifies the other that an agreement is not feasible without the assistance of a mediator.

2. If the Parties to the procedure cannot agree on the mediator within the established time period, either Party may request appointment of the mediator by lot. Within five days of the submission of such request, each Party shall establish a list of at least three individuals that are not nationals of that Party, who fulfil the conditions of paragraph 4 and may act as mediator. Within five days of the submission of the list, each Party shall select at least one name from the other Party's list. The Chair of the Association Committee or the Chair's delegate shall then select the mediator by lot among the selected names. The selection by lot shall be made within fifteen days of the submission of the request for appointment by lot, at a time and venue to be promptly communicated to the Parties. The Parties may, if they so choose, be present at the time of the selection by lot.
3. If a Party to the procedure fails to establish the list or to select one name from the other Party's list, the Chair or the Chair's delegate shall select the mediator by lot from the list of the Party that complied with the requirements in paragraph 2.
4. The mediator shall be an expert on the subject matter to which the measure in question relates⁵¹. The mediator shall assist the Parties to the procedure, in an impartial and transparent manner, in bringing clarity to the measure and its possible trade effects, and in reaching a mutually agreed solution.

⁵¹ For example, in cases concerning standards and technical requirements, the mediator should have a background in relevant international standard setting bodies.

5. When a Party to the procedure considers that the mediator is in violation of the Code of Conduct, his removal may be requested and a new mediator shall be selected in accordance with paragraphs 1 to 4.

ARTICLE 332

Rules of the Mediation Procedure

1. The Parties shall participate in the mediation procedure in good faith and shall endeavour to reach a mutually satisfactory solution.

2. Within fifteen days of the appointment of the mediator, the Party having initiated the mediation procedure shall present, in writing, a detailed description of the problem to the mediator and to the other Party to the procedure, in particular of the operation of the measure at issue and its trade effects. Within ten days after the date of receipt of this submission, the other Party may provide, in writing, its comments regarding the description of the problem. Either Party may include in its description or comments any information that it deems relevant.

3. The mediator may decide on the most appropriate way of conducting the procedure, in particular whether, when and how to consult the Parties to the procedure, jointly or individually. The mediator may also determine where certain information has not been made available by the Parties, or where such information is not in the possession of the Parties, whether the circumstances necessitate the assistance of or consultation with relevant experts, government agencies and other legal or natural persons with specialised knowledge relating to the matter. Where the assistance of or consultation with relevant experts, government agencies and other legal or natural persons with specialised knowledge relating to the matter involves confidential information as defined in Article 336 of this Title, such information can only be made available after informing the Parties to the procedure and with the express condition that such information be treated as confidential information at all times.
4. Once the necessary information has been collected, the mediator may provide an assessment of the matter and the measure in question and propose a solution for consideration by the Parties to the procedure. Any such assessment shall not pertain to the consistency of the measure at issue with this Agreement.
5. The procedure shall take place in the territory of the Party to which the request was addressed, or by mutual agreement in any other location or by any other means.
6. For the fulfilment of his duties, the mediator may use any means of communication including, among others, telephone, facsimile transmissions, web links or videoconference.

7. The procedure shall normally be completed within sixty days from the date of the appointment of the mediator. At any stage, the Parties to the procedure may discontinue the procedure by mutual agreement.

CHAPTER 3

IMPLEMENTATION

ARTICLE 333

Implementation of a Mutually Agreed Solution

1. Where the Parties to the procedure have agreed on a solution to the trade obstacles caused by the measure subject to this procedure, each Party shall take any measure necessary to implement said solution without undue delay.
2. The implementing Party shall regularly inform the other Party in writing, as well as the Association Committee, of any steps or measures taken to implement the mutually agreed solution. This obligation shall cease to exist once the mutually satisfactory solution has been adequately and completely implemented.

CHAPTER 4

GENERAL PROVISIONS

ARTICLE 334

Relationship to Title X on Dispute Settlement

1. The procedure under this Mediation Mechanism is independent of Title X (Dispute Settlement) of Part IV of this Agreement and not intended to serve as a basis for dispute settlement procedures under that Title or any another agreement. A request for mediation, and possible procedures under the Mediation Mechanism, shall not exclude recourse to Title X.
2. The Mediation Mechanism is without prejudice to the Parties' rights and obligations under Title X.

ARTICLE 335

Time Periods

Any time period referred to in this Title may be modified by mutual agreement of the Parties to the procedure.

ARTICLE 336

Confidentiality of Information

1. A Party to the procedure submitting documentation or submissions as part of the mediation procedure may designate such documentation or submissions, or any part thereof, as confidential.
2. Where documentation or submissions, or any part thereof, have been designated as confidential by one Party, the other Party and the mediator shall either return or destroy such documents no later than fifteen days from the conclusion of the mediation procedure.
3. Similarly, where documentation or submissions, or any part thereof, designated as confidential have been made available to relevant experts, government agencies or other natural or legal persons with specialised knowledge related to the matter, such documentation or submissions shall be returned or destroyed no later than fifteen days from the termination of the assistance or the mediators consultations.

ARTICLE 337

Costs

1. All costs of the mediation procedure shall be borne by the Parties to the procedure in equal shares. Costs shall be understood as the mediator's remuneration, his transportation, accommodation and alimentation expenses, and all general administrative costs of the mediation procedure, according to the expense claim submitted by the mediator.
2. The mediator shall maintain a complete and detailed record of all relevant expenses incurred and submit an expense claim to the Parties to the procedure, along with the supporting documents.
3. The Association Council shall establish all eligible costs as well as the remuneration and allowances to be paid to the mediator.