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ANNEX 17-C

MODEL Mediation PROCEDURES

SECTION A

OBJECTIVE

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

SECTION B

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 alleged to adversely affect trade between the Parties. The Party to which such request is made shall, within 30 days of the date of its delivery, deliver a written response.

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2. A Party is normally expected to avail itself of this provision before the initiation of the mediation procedure.

SECTION C

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 alleged to adversely affect trade between the Parties.

2. The request shall be made by means of a written request delivered to the other Party. The request shall be sufficiently detailed to present the concerns of the requesting Party clearly and shall:

- (a) identify the specific measure at issue;
- (b) identify the adverse effects that the requesting Party considers the measure has or may have on trade between the Parties; and
- (c) explain how the requesting Party considers that those effects are linked to the measure.

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3. The mediation procedure may only be initiated by mutual agreement of the Parties. The Party to which the request is made shall give sympathetic consideration to the request and deliver its written reply, indicating whether it is willing to consider mediation, within 30 days of the date of its delivery. Otherwise, the request shall be regarded as rejected.

SECTION D

SELECTION OF THE MEDIATOR

1. If the Party to which the request is made is willing to consider mediation, the Parties shall, within 30 days after the delivery of the reply referred to in paragraph 3 of Section C (Initiation of the mediation procedure) or any other period agreed by the Parties, endeavour to agree on a mediator or on a procedure to select the mediator. To that end, the Parties may have recourse to:

- (a) a pre-established list of mediators, which the Joint Committee may adopt at any moment;
- (b) the sub-list of chairpersons established pursuant to Article 17.8 (Lists of panellists); or
- (c) any other means that may facilitate the selection of a mediator.

2. If the Parties are unable to agree on the mediator within the time period set out in paragraph 1, the request for mediation shall be regarded as rejected.

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3. The mediator shall not be a national of either Party or employed by either Party, unless the Parties agree otherwise.
4. The selected mediator is appointed by the signature of the appointment contracts.
5. The mediator shall comply with Annex 17-B (Code of Conduct for panellist and alternative dispute resolution providers).

SECTION E

CONDUCT OF THE MEDIATION PROCEDURE

1. Within 20 days after the appointment of the mediator, the Party which requested mediation shall deliver to the mediator and to the other Party a detailed written description of its concerns, in particular of the operation of the measure at issue and its alleged adverse effects on trade. Within 30 days after the date of delivery of this description, the other Party may deliver written comments. 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 in bringing clarity to the measure at issue and its possible effects. 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 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.

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3 The mediator shall endeavour to offer advice and propose a solution for the consideration of the Parties. Such advice or solution shall not be binding on 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 Party to which the request was addressed, 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 60 days after the appointment of the mediator. During the mediation procedure, the Parties may also consider possible interim solutions, particularly if the measure relates to perishable goods or seasonal goods or seasonal services.

6. Each Party may make a mutually agreed solution subject to the completion of any necessary internal procedures. Each Party shall take the measures necessary to implement the mutually agreed solution within the agreed time period. No later than at the expiry of the agreed time period the implementing Party shall inform the other Party, in writing, of any measure that it has taken to implement the mutually agreed solution.

7. Each Party may make public the fact that a mutually agreed solution has been reached.

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8. Unless the Parties agree otherwise, the mediator shall deliver a draft factual report to the Parties, upon expiry of the time period referred to in paragraph 5, providing:

- (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.

The mediator shall allow the Parties 15 days to comment on the draft factual report. After considering the comments of the Parties received, the mediator shall, within 15 days, deliver a final factual report to the Parties. The factual report shall not include any interpretation of 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 procedure, on the date of that agreement;

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- (c) a written declaration of the mediator, after consultation with the Parties, that further efforts to mediate would be to no avail, on the date of that declaration; or
 - (d) a written declaration of a Party after exploring mutually agreed solutions under the mediation procedure or after having considered any advice and solutions proposed by the mediator, on the date of that declaration.
10. Article 17.29 (Time periods) and Article 17.30 (Expenses) apply mutatis mutandis.

SECTION F

RELATIONSHIP TO DISPUTE SETTLEMENT PROCEDURES

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 gathered exclusively under the mediation procedure;
- (b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation;
- (c) advice given or proposals made by the mediator; or
- (d) the factual report submitted by the mediator.