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The EU-Mercosur Agreement: what are the rules of procedure for arbitration and mediation?

Abstract

On 17 January 2026, the EU and the four Mercosur countries signed the EU-Mercosur Agreement, which will be provisionally applied from 1 May 2026. The treaty is attracting growing attention because of its great, in particular, economic significance. The main objective of this study is to analyse and evaluate the rules of procedure for arbitration and mediation, as well as the "code of conduct for members of arbitration panels and mediators" included in the EU-Mercosur Agreement. This article has sought to identify the strengths and weaknesses of the mechanisms adopted by the parties to the agreement.

The approach is mainly based on the analysis and criticism of relevant primary source text, in particular the text of the EU-Mercosur Agreement, as well as relevant secondary literature and reliable websites. A reading of the provisions on arbitration and mediation has allowed the author to make a hypothesis that these rules were specific and detailed enough in order to help resolve the dispute. This hypothesis is then verified in the course of the study.

This work is making a significant contribution to the research field addressing the EU-Mercosur Agreement. While most studies focus on its trade effects and the environmental and labour issues, this study concentrates on arbitration and mediation procedures.

Keywords: EU-Mercosur Agreement, dispute settlement, rules of procedure for arbitration, mediation

Introduction

Having regard to the need to create opportunities for growth, jobs and sustainable development, on 6 December 2024, the EU and Mercosur countries, namely Argentina, Brazil, Paraguay and Uruguay, reached a political agreement for a ground-breaking partnership agreement. This was a breakthrough event given the fact that the negotiations were launched on 28 June 1999. On 3 September 2025, the European Commission adopted proposals for Council decisions to sign and conclude two related legal agreements: the EU-Mercosur Partnership Agreement (EMPA) and an interim Trade Agreement (iTA).[1] The iTA is intended as a temporary measure and will be repealed and replaced once the EMPA is fully ratified and comes into force. On 17 January 2026, the European Commission President Ursula von der Leyen and European Council President António Costa, and the four Mercosur countries formally signed the Partnership Agreement (EMPA) alongside the interim Trade Agreement (iTA). On 27 February 2026, the European Commission stated that it would move ahead with the provisional application (from 1 May 2026) of the EU-Mercosur interim Trade Agreement (iTA), despite the European Parliament's request to first obtain an opinion from the Court of Justice of the European Union regarding the agreement's compliance with EU law. The objectives of the new EU-Mercosur trade agreement (hereinafter referred to as "agreement" or "FTA") are enumerated in Article 1.2 of Chapter 1, titled "Initial Provisions". Among them are the following: to increase bilateral trade and investment, lower both tariff and non-tariff trade barriers, in particular for small and medium sized enterprises; to create more stable and predictable rules for trade and investment; to promote shared values such as sustainable development, by increasing environmental protection, fighting climate change, encouraging

1 Interim Agreement on Trade between the European Union, of the one part, and the Common Market of the South, the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, of the other part, ST/12419/2025/INIT, OJ L, 2026/184, 27.2.2026, ELI: http://data.europa.eu/eli/agree_internation/2026/184/oj. See also: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement/text-agreement_en. With regard to the agreement, it is worth noting the implementing acts that have been adopted recently: Regulation (EU) 2026/687 of the European Parliament and of the Council of 11 March 2026 implementing the bilateral safeguard clauses of the EU-Mercosur Partnership Agreement and the EU-Mercosur Interim Trade Agreement for agricultural products, PE/56/2025/REV/1, OJ L, 2026/687, 19.3.2026, ELI: http://data.europa.eu/eli/reg/2026/687/oj; Commission implementing regulation (EU) 2026/888 of 20 April 2026 laying down rules for the application of Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards opening and providing for the management of Union tariff quotas for products originating in Mercosur, OJ L, 2026/888, 21.4.2026, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202600888 (access: 30.04.2026).

companies to act responsibly, improving worker's rights, as well as upholding high food safety standards.[2]

The importance of this agreement is immense. It is sufficient to note that the EU is Mercosur's most important trade and investment partner. It is the biggest foreign investor in Mercosur with a stock of €340 billion in 2021. The last available data indicate that the EU exports to Mercosur were €56 billion in goods in 2023 and €28 billion in services in 2022.[3] According to Ursula von der Leyen: "This is a win-win agreement, which will bring meaningful benefits to consumers and businesses, on both sides. We are focused on fairness and mutual benefit. We have listened to the concerns of our farmers and we acted on them. This agreement includes robust safeguards to protect your livelihoods. EU-Mercosur is the biggest agreement ever, when it comes to the protection of EU food and drinks products. More than 350 EU products now are protected by a geographical indication. In addition, our European health and food standards remain untouchable. Mercosur exporters will have to comply strictly with these standards to access the EU market. This is the reality of an agreement that will save EU companies €4 billion worth of export duties per year".[4]

Everything sounds great in theory, but in practice serious disputes may arise between the parties. A reading of the provisions on arbitration and mediation gives the impression that these rules are specific and detailed enough in order to help resolve the dispute. However, this is only a hypothesis that should be confirmed in the course of research.

The aim of this article is to conduct an analysis and assess the rules of procedure for arbitration and mediation, the "code of conduct for members of arbitration panels and mediators", as well as the mediation procedure included in the EU-Mercosur Agreement.

The research method is based on the analysis and criticism of relevant primary source text, in particular the text of the EU-Mercosur Agreement, as well as relevant secondary literature and reliable websites.

This article represents the first such comprehensive analysis of arbitration and mediation in this most recent agreement. While there are studies that focus generally

2 https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement_en (access: 01.04.2026); https://ec.europa.eu/commission/presscorner/detail/en/qanda_24_6245 (access: 01.04.2026); https://ec.europa.eu/commission/presscorner/detail/bg/statement_26_500 (access: 01.04.2026).

3 https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement_en (access: 01.04.2026).

4 https://ec.europa.eu/commission/presscorner/detail/en/ip_24_6244 (access: 01.04.2026).

on the EU-Mercosur Agreement (or its diverse aspects),[5] there are hardly any that focus specifically on arbitration and mediation procedures. This article bridges that gap.

1. The rules of procedure for arbitration and mediation

The chapter entitled Dispute Settlement (last time revised by the parties to the agreement in 2024), as a general rule applies to the entire text of the trade deal, except for chapters expressly indicated, e.g. Trade and Sustainable Development. It is also important to note that special rules apply to disputes involving tariff rate quotas, staged liberalisation, and landlocked developing countries (Article 21.20 titled Temporary remedies in the event of non-compliance). Moreover, pursuant to Article 21.23(1), the complaining party may choose the forum for dispute settlement: "Disputes related to the same matter arising under the covered provisions and under the WTO Agreement or under any other agreement to which the relevant parties are party may be settled under this Chapter, under the DSU or under the dispute settlement procedures of that other agreement at the discretion of the complaining party".

According to the chapter on Dispute Settlement, the parties try to resolve any dispute regarding the alleged non-compliance with the provisions referred to in the FTA "by entering into consultations in good faith with the aim of reaching a mutually agreed solution". The same chapter states that a party may request "to enter into mediation with respect to any measure by a party adversely affecting trade between the parties". Clearly, "mediation may only be initiated by mutual consensus

5 J.A. Sanahuja, J.D. Rodríguez, *Twenty Years of EU–MERCOSUR Negotiations: Inter-regionalism and the Crisis of Globalization*, in: A. Gómez Arana, M.J. García (eds.), *Latin America-European Union Relations in the Twenty-First Century*, Manchester 2022; E.R. Sanguinet, A.M. Alvim, *The Effects of the EU-MERCOSUR Agreement on Bilateral Trade: the Role of Brexit*, "International Economics and Economic Policy" 2024, No. 21, pp. 227–249; J. Timini, F. Viani, *A Highway Across the Atlantic? Trade and Welfare Effects of the EU-Mercosur Agreement*, "International Economics" 2022, Vol. 169, pp. 291–308; M. Torres Jarrín, L.G. Daza Aramayo, *The Historical and Legal Context of the European Union-MERCOSUR Relations*, in: M. Torres Jarrín, L.G. Daza Aramayo, *EU-MERCOSUR Interregionalism. United Nations University Series on Regionalism*, Cham 2023, Vol. 21; L. Krämer, *A Lost Opportunity? The Environment and the EU-Mercosur Trade Agreement*, "Journal for European Environmental & Planning Law" 2021, No. 18 (1–2), pp. 143–163; E.B. Bonanomi, T. Tribaldos, *PPM-Based Trade Measures to Promote Sustainable Farming Systems? What the EU/EFTA-Mercosur Agreements Can Learn from the EFTA-Indonesian Agreement*, in: M. Bungenberg, M. Krajewski, C.J. Tams, J.P. Terhechte, A.R. Ziegler (eds.), *European Yearbook of International Economic Law*, Vol. 11, Cham 2020; E. Gomez-Herrera, N. Duch-Brown, M.C. Latorre, *EU-Mercosur Free Trade Agreement: Exploring the Impact on E-Commerce*, "Review of Network Economics" 2022, Vol. 21, No. 1, pp. 29–50; L. Pantaleo, F. Seatzu, *Protecting Workers' Rights and Freedoms under the EU-MERCOSUR Trade Agreement: a Dream Coming True?*, "Il Diritto dell'Unione Europea" 2023, No. 2, pp. 278–304.

of the parties". When it comes to arbitration, if no dispute settlement is achieved through consultations, or if the complaining party finds that the partner has not complied with "a solution mutually agreed during consultations", the complaining party is given the option to set up an arbitration panel.

The question arises as to how arbitrators are appointed. The first remark concerns the requirement of "specialised knowledge or experience in law and international trade". Moreover, arbitrators must be "independent", "serve in their individual capacity", cannot "take instructions from any organisation or government or be affiliated to any government or governmental organization" of a party to the agreement. An arbitration panel consists of three individuals (three arbitrators).

It is worth noting that the "hearings of the arbitration panel" are open to the public. The binding force of this norm is relative (*ius dispositivum* as opposed to *ius cogens* norms which are mandatory) because the parties may act otherwise (here: "unless the parties to the dispute decide otherwise"). The hearings of the arbitration panel are "partially or completely closed to the public" in one circumstance, namely "when the submission or arguments of a party contain information which that party has designated as confidential".

The panel delivers an "interim arbitral report" to both parties no later than, as a general rule, ninety days after the creation of the panel. As for the arbitral award, it should be delivered by the arbitration panel no later than one hundred and twenty days after the creation of the arbitration panel (and under no circumstances later than one hundred and fifty days).

The arbitration panel should do everything to take any decision by consensus. If this is not possible, the "majority vote" is required.

The arbitrators cannot "issue dissenting or separate opinions" and shall "maintain confidentiality as regards the voting".

The analysis of the text of the agreement reveals that the arbitral award sets out "the findings of fact, the applicability of covered provisions where relevant, and the basic rationale behind the findings and recommendations". The arbitral award includes "sufficient analysis of the arguments made" by both partners, and clearly responds "to the questions and observations of both parties including those made to the interim arbitral report".

The provision according to which "The arbitral award shall be binding on the parties from the date on which it is delivered and shall not be subject to appeal" seems to be the most controversial solution and the author of this article would postulate to establish a review process of the arbitral award. A significant portion of disputes concerning the application of trade agreements concluded by the EU, likely the vast majority of them, such as disputes related to products registration and marketing authorisation or the regulation of customs tariffs, are of an administrative nature.

Pan-European standards in that area expressed in the Council of Europe (hereinafter as: CoE) Recommendation[6] indicate that, in principle, the use of arbitration should exclude legal proceedings (Section II(iii) of the Appendix). Of course, disabling the option of appeal (or judicial review) would be easier to implement and would not require any additional measures. Let us remember, however, that the CoE is an organisation with a larger scope than the EU. The latter often successfully sets more ambitious goals and I believe that it should also be the case here. Moreover, it should be noted that even according to the CoE, the use of alternative dispute resolution in all cases should allow for appropriate judicial review which constitutes the ultimate guarantee for protecting parties rights (Section II(iv) of the Appendix to Rec(2001)9).

An interesting solution to this problem has been proposed in a study by Pantaleo and Seatzu. According to the authors, "[a] process for appeal along the lines of the WTO's standing Appellate Body can be a good (though not the only) solution to address this need, namely to increase the effectiveness and efficiency" of the Dispute Settlement provisions applicable to trade issues under the EU-Mercosur agreement.[7] Of course, it should be taken into account that while the absence of an appeals mechanism ensures speed and the conclusive nature of decisions, it nevertheless creates certain drawbacks. These may include, for example, the risk of legal errors, inconsistent interpretations, reduced legitimacy, as well as potentially weaker compliance by the parties. Introducing an appellate body could enhance the system's effectiveness by improving the accuracy and coherence of decisions. It could also strengthen trust and predictability, and increase the acceptance of decisions. An appellate body in the EU-Mercosur dispute settlement system (and also other agreements) could indeed function similarly to the WTO Appellate Body, which was established under Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and hears appeals from panel reports in disputes between WTO members, with the authority to "uphold, modify or reverse the legal findings and conclusions of a panel". Appellate Body Reports are adopted by the Dispute Settlement Body (DSB) unless there is a consensus to reject them.[8]

6 See Recommendation Rec(2001)9 of the Committee of Ministers to member states on alternatives to litigation between administrative authorities and private parties, adopted by the Committee of Ministers on 5 September 2001 at the 762nd meeting of the Ministers' Deputies, https://rm.coe.int/16805e2b59 (access: 01.04.2026).

7 L. Pantaleo, F. Seatzu, *One Step Forward, Two Steps Back?: The EU-MERCOSUR Dispute Settlement Mechanism in the Light of the EU´s Experience with Free Trade Agreements (FTAs)*, "Il Diritto dell'Unione Europea" 2021, No. 1.

8 https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm (access: 01.04.2026).

According to Mitsuo Matsushita, although the Appellate Body can be criticised in various ways, it must be acknowledged that "Principles of interpretation of WTO agreements, as established by the Appellate Body, have become the cornerstones of the stability and predictability of the international trading system".[9] Unfortunately, the Appellate Body is currently facing a crisis and cannot review appeals.

Turning back to the EU-Mercosur Agreement, it furthermore provides that a party may submit to the arbitration panel, a written request for clarification with regard to specific aspects of any finding or recommendation in the arbitral award that the requesting party considers ambiguous. The other trade partner (the other party to the dispute) may submit comments on that request to the arbitration panel. Significantly, "the defending party" takes "any measure necessary to comply promptly and in good faith with the arbitral award". The agreement establishes "reasonable period of time for compliance", and "temporary remedies in the event of non-compliance".

A comprehensive approach to the examined topic requires an analysis of annexes to the chapter on dispute settlement that regulate the procedures in question. According to the "Rules of procedure for arbitration" (Annex I – annex numbering at the time of writing), as far as the commencement of the arbitration procedure is concerned, if "any member of the arbitration panel is selected by lot, representatives of both parties" are invited "to be present when lots are drawn". In any event, the lot is taken with any disputing trade partner present at the time.

It should be highlighted that the list of arbitrators may be amended at any time by initiative of any party. Any party can present new candidates by notifying the other party of the proposed names. The parties discuss the proposal and the Trade Committee takes the decision to amend the list.

"Unless the parties to the dispute agree otherwise", they meet (even via telephone or video conference) the arbitration panel within 7 days of its establishment "in order to determine such matters that the parties or the arbitration panel deem appropriate".

An important part of the procedure consists in initial submissions. The complainant submits "its initial written submission" no later than thirty days "after the date of establishment of the arbitration panel". The other trade partner, namely the defending party, submits its "written counter-submission" no later than thirty days after the receipt of the initial submission. Each party has the right to comment

9 M. Matsushita, *The Dispute Settlement Mechanism At The WTO: The Appellate Body – Assessment And Problems*, in: M. Daunton (ed.) et al., *The Oxford Handbook on The World Trade Organization*, Oxford 2012, p. 510.

on the evidence submitted by the other trade partner. It is important to note that the arbitration panel may hear witnesses and/or experts only in the presence of both parties.

It is also worth taking a look at the "working of arbitration panels". First, the "chairperson of the arbitration panel" presides "at all its meetings". "An arbitration panel may delegate to the chairperson authority to make administrative and procedural decisions". These decisions are "notified to the other arbitrators and, where appropriate, to the parties". Second, "the arbitration panel may conduct its activities by any means", e.g. telephone. Third, "only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants to be present at its deliberations". Fourth, "the drafting of any ruling" remains "the exclusive responsibility of the arbitration panel and must not be delegated". Fifth, where "a procedural question arises" that is not covered by the given provisions of the FTA, "the arbitration panel, after consulting the parties, may adopt an appropriate procedure that is compatible with those provisions". Sixth, if there is a situation in which the arbitration panel determines the need to change "any time limit applicable in the proceedings or to make any other procedural or administrative adjustment", it notifies the parties of the reasons for the change, as well as of "the period of time or adjustment needed". "The arbitration panel may adopt such change or adjustment after consulting the parties".

It seems natural to ask whether it is possible to replace an arbitrator if for any reason there is a need to do so, e.g. she or he cannot take part in the proceeding or simply withdraws. The answer is affirmative, but a replacement shall be guaranteed. Special procedures for replacement are established for the situation in which an arbitrator (other than the chairperson), as well as the chairperson do not adhere to the code of conduct.

Hearings are an integral part of the procedure and are also regulated by the "Rules of procedure for arbitration" of Annex I. Unless otherwise agreed, the defending party is "in charge of the logistical administration of dispute settlement hearings". The chairperson of the panel fixes "the date and time of the hearing in consultation with" both trade partners and the other members of the panel. This information is confirmed to the parties and is "made publicly available by the party in charge of the logistical administration of the hearing unless the hearing is closed to the public". Unless a trade partner disagrees, "the panel may decide not to convene a hearing". All arbitrators are "present during the entirety of any hearings". Should the parties agree to have additional hearings, they may be organised by the panel.

Among those who are allowed to attend the hearing, regardless of whether the proceedings are open to the public or not, are the following: "representatives of the parties to the dispute", "advisers to the parties to the dispute", "administrative staff, interpreters, translators", as well as "arbitrators' assistants". Further, the FTA states that "only the representatives and advisers of the parties to the dispute may address the arbitration panel". On the one hand, the hearings of the arbitration panel are open to the public, unless the parties to the dispute decide otherwise. On the other hand, the hearings of the arbitration panel are "partially or completely closed to the public when the submission and arguments of a party contains information which that party has designated as confidential". Both the parties and their advisers "maintain the confidentiality of the arbitration panel hearings where the hearings are held in closed session". They also "treat as confidential any information submitted by the other party to the arbitration panel which that party has designated as confidential".

Upon notification to the parties, the arbitration panel may request the opinion of experts or information from any relevant source.

Not astonishingly, submitting *amicus curiae* briefs is possible in the framework of the procedure in question. Unless the parties agree otherwise (they have five days of the establishment of the arbitration panel), the arbitration panel receives "unsolicited written briefs" from interested natural and legal persons (of a party or established in the territory of a party, respectively) and which are "independent from the government of any" of the parties, on the condition that they are received by the panel within ten days of the establishment of the panel. In the ruling the panel enumerates all the received submissions that conform to rules regarding *amicus curiae* briefs.

Last but not least, the arbitral award must contain the following details: 1) "the parties"; 2) "the name of each of the members of the arbitration panel and the date of its establishment"; 3) "the terms of reference of the arbitration panel, including a description of the measure at issue"; 4) "the arguments of each of the parties"; 5) "a description of the development of the arbitration procedure, including a summary of the actions taken"; 6) "a description of the factual elements of the dispute"; 7) "the decision reached in relation to the dispute, indicating the factual and legal grounds"; 8) "the date of issue"; and 9) "the signature of all the members of the arbitration panel".

It is surely correct to support a solution in the light of which it is a non-exhaustive catalogue of details. Thus, any other elements which the arbitration panel may consider appropriate for inclusion may be added.

2. "Code of conduct for members of arbitration panels and mediators"

The EU-Mercosur Agreement introduces the "Code of conduct for members of arbitration panels and mediators". As rightly highlighted by Ghiotto and Echaide, "[c]ivil society movements around the world have been continuously demanding such a code, in the absence of transparency and recurring conflicts of interest seen in the arbitration forums".[10] The EU-Mercosur Agreement establishes a very specific and detailed regulation, a model regulation indeed, which is worth examining in detail. It aligns with international standards and practices, and arbitrators may also be subject to applicable professional rules of conduct. Annex II (annex numbering at the time of writing) introduces a "code of conduct for members of arbitration panels and mediators". Pursuant to its provisions, every candidate (a person who is on the list of arbitrators and is under consideration for selection as a member of an arbitration panel) and arbitrator "avoid impropriety and the appearance of impropriety", is "independent and impartial", "avoid direct and indirect conflicts of interests" and "observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved". All former arbitrators are bound by the principles of confidentiality and must avoid taking actions that might give the impression that they have been biased in the performance of their duties or have benefited from the decision/ruling of the panel.

Some disclosure obligations are imposed on candidates and arbitrators. Before being chosen as an arbitrator, a candidate discloses "any interest, relationship or matter that is likely to affect" her or his "independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding". For this purpose, a candidate makes "all reasonable efforts to become aware of any such interests, relationships and matters". Once selected, an arbitrator continues to "make all reasonable efforts to become aware of" any above-mentioned interests, relationships or matters and discloses them. The solution according to which the disclosure obligation is a continuing duty deserves credit.

Turning to the duties of arbitrators, it should be raised that after confirmation of her or his selection an arbitrator is ready to carry out and carries out her or his duties "thoroughly and expeditiously throughout the course of the proceeding", and with fairness and diligence. An arbitrator considers "only those issues raised in the proceeding and necessary for a ruling" and does not "delegate this duty to any other person".

10 L. Ghiotto, J. Echaide, *Analysis of the Agreement between the European Union and the Mercosur*, Berlin, Buenos Aires, Brussels 2019, p. 113, https://www.annacavazzini.eu/wp-content/uploads/2020/01/Study-on-the-EU-Mercosur-agreement-09.01.2020-1.pdf (access: 01.07.2025).

An arbitrator takes "all appropriate steps to ensure that" her or his "assistant and staff are aware of, and comply with the relevant provisions" of the code of conduct, *mutatis mutandis*. An arbitrator does not "engage in ex parte contacts concerning the proceeding".

Important rules have been made in regard to "independence and impartiality of arbitrators". An arbitrator is "independent", "impartial", avoids giving "an appearance of impropriety or bias" and is not "influenced by self-interest, outside pressure, political considerations, public opinion, and loyalty" to a party or even "fear of criticism". An arbitrator cannot be instructed by "any organisation or government or be affiliated to a government", including governmental organisation, of a party to the agreement. Arbitrators cannot (directly or indirectly) enter into any commitments or earn any profit that could (appear to) interfere with the proper compliance with her/his obligations. Moreover, arbitrators cannot use his or her "position in the arbitration panel to advance any personal or private interests" and avoids "actions that may create the impression that others are in a special position to influence" him or her. Arbitrators "may not allow financial, business, professional, family or social relationships or responsibilities to influence her or his conduct or judgement". They must also "avoid entering into any relationship or acquiring any financial interest that is likely to affect her or his impartiality or that might reasonably create an appearance of impropriety or bias". The author of this article is of the opinion that these rules are clear and sufficiently detailed.

The disciplines described in the code of conduct as applying to arbitrators or former arbitrators apply, *mutatis mutandis*, to mediators and, where applicable, to former mediators. Specific rules listed in the code of conduct apply to experts whose opinion is requested by the arbitration panel.

3. Mediation

The objective of Annex III entitled "Mediation" (annex numbering at the time of writing) is to "facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator". Significant attention should be given to the fact that "the mediation procedure is without prejudice" to the parties' obligations and rights resulting from "the provisions on Dispute Settlement" in the agreement, "or any other agreement".

The Article on the "Provision of Information" states that at the request of one of the trade partners, the other partner supplies information without delay and answers questions concerning "any existing or proposed measure that materially affects the operation" of part on trade of the FTA. Information supplied under the Article in question "is without prejudice as to whether the measure is consistent with" the part on trade of the agreement.

As regards the "initiation of the procedure", a trade partner may request that the partners "enter into a mediation procedure at any time, by means of a written request delivered to the other" partner. The request should be "sufficiently detailed" in order to explain the concerns of the requesting party in a clear way. It also identifies "the specific measure at issue"; provides "a statement of the alleged adverse effects that the requesting party believes the measure has, or will have, on trade between the parties"; and "explains how the requesting party considers that those effects are linked to the measure".

Clearly, the mutual agreement of both trade partners is required in order to trigger the mediation procedure. When the request is lodged, the party to which it is lodged gives "sympathetic consideration to the request" and delivers "its written acceptance or rejection to the requesting party" (within ten days of its receipt).

Interestingly, there is no obligation to proceed with consultation (including under the Dispute Settlement chapter) before starting the mediation procedure. However, a trade partner "should normally avail itself of the other relevant cooperation or consultation provisions" envisaged in the FTA before starting the mediation procedure.

The Annex further regulates "the selection of the mediator". The parties try to "agree on a mediator" within fifteen days of the delivery of his/her acceptance. Obviously, a mediator cannot be "a national of either party, unless the parties agree otherwise". If the partners are unable to decide on the mediator within the imposed time frame, either trade partner is entitled to request that the chair of the Trade Committee, or the chair's delegate, choose the mediator "by lot from the list" established under the Dispute Settlement chapter. Representatives of both parties are invited, "with sufficient advance notice, to be present when the lots are drawn". The drawing of lots is always carried out in the presence of the trade partners.

Given this, alternatively – the chair of the Trade Committee or the chair's designee, should choose the mediator within five days of the request made pursuant to the above-mentioned rules of the Annex. If the list mentioned in the Dispute Settlement chapter is not created at the time a request is made, the mediator will be drawn by lot from the candidates who have been proposed by one or both of the trade partners in a formal way.

The role of the mediator is to, "in an impartial and transparent manner", "assist" the trade partners "in bringing clarity to the measure and its possible trade effects, and in reaching a mutually agreed solution". It must be highlighted that the "code of conduct for members of arbitration panels and mediators", which was discussed above, applies to mediators, *mutatis mutandis*.

Detailed "rules of the mediation procedure" have been laid down in the Annex. First, within ten days "of the appointment of the mediator", the party "which invoked the mediation procedure" delivers "a detailed, written description of its concerns to the mediator and to the other" trade partner, "in particular of the operation of the measure at issue and its trade effects". Next, within twenty days of the receipt of the above-mentioned description, "the other party may deliver written comments on the description. Either party may include any information that it deems relevant in its description or comments". Second, "the mediator may decide on the most appropriate way of bringing clarity to the measure concerned and its possible trade effects" (e.g. he or she may organise meetings between the trade partners or consult them jointly/individually). If agreed by the partners, the mediator seeks "the assistance of, or consults with, relevant experts and stakeholders". Third, the mediator does not "advise or comment on the consistency of the measure at issue with" the agreement. "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". Fourth, the mediation procedure takes 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". Fifth, the parties try to reach "a mutually agreed solution" within sixty days "of the appointment of the mediator". "Pending a final agreement, the parties may consider possible interim solutions, particularly if the measure relates to perishable goods". Sixth, either trade partner "may make the solution subject to the completion of any necessary internal procedures". "Mutually agreed solutions" are "made publicly available". "The version disclosed to the public" cannot "contain any information a party has designated as confidential". Seventh, if it is requested by the partners, the mediator will submit "a draft factual report" to the parties and gives them fifteen days to comment on it. After considering these comments, the mediator, within fifteen days, submits "a final factual report" to the parties, which cannot include any interpretation of the FTA. Eighth, the procedure is terminated: 1) "by the adoption of a mutually agreed solution by the parties, on the date of the adoption thereof"; 2) "by mutual agreement of the parties at any stage of the procedure, on the date of that agreement"; 3) "by 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 4) "by a written declaration of a party after exploring any possible mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that declaration". A separate Article is related to the "implementation of a mutually agreed solution".

Conclusion

The main goal of this article was to analyse and assess the rules of procedure for arbitration and mediation in the EU-Mercosur Agreement, and its code of conduct for members of arbitration panels and mediators. The results broaden our understanding of the above-mentioned procedures because earlier works in this area focused primarily on the agreement's trade effects and its environmental and labour matters.

This article has generally confirmed the hypothesis that that the rules established in the EU-Mercosur Agreement are specific and detailed enough in order to help resolve disputes that may arise between the parties. A general positive assessment may be due not only to clear procedures for arbitration and mediation, but also to the establishment of the code of conduct for members of arbitration panels and mediators, which in the opinion of the author of this article, could be perceived as a model code. These words can be further supported by the fact that various authors propose introducing similar solutions, namely Alternative Dispute Resolution, within the WTO. For example, Lee "argues that mediation will offer a useful tool in resolving certain types of disputes, and that a future WTO DSM should contemplate including mediation as one of the major avenues of settling disputes".[11]

Given that the aim of this work was also to identify the weaknesses of the mechanisms adopted by the parties to the agreement, it should be stressed that one questionable aspect emerged from the analysis. From the perspective of administrative procedural law, the provision according to which "The arbitral award (…) shall not be subject to appeal" cannot be viewed as appropriate. A review process of the arbitral award should be provided for in the agreement. The author of this study agrees with the proposal presented by Pantaleo and Seatzu, according to which an example of a procedure that could be used is "[a] process for appeal along the lines of the WTO's standing Appellate Body".

Another drawback may be that the chapter entitled Dispute Settlement applies to the entire agreement as a general rule only. It seems that more effectiveness could be achieved if there were no exceptions (e.g. concerning the chapter on Trade and Sustainable Development).

Further research is needed to investigate each subsequent chapter of the agreement, its effectiveness and the effects it will bring about in the long run.

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Umowa UE–Mercosur: jaki jest kształt przepisów proceduralnych w zakresie arbitrażu i mediacji?

Streszczenie

W dniu 17 stycznia 2026 r. Unia Europejska i cztery państwa Mercosur podpisały umowę UE–Mercosur, która będzie stosowana tymczasowo od 1 maja 2026 r. Umowa UE–Mercosur cieszy się coraz większym zainteresowaniem ze względu na jej ogromne znaczenie, zwłaszcza gospodarcze. Głównym celem niniejszego artykułu jest analiza i ocena przepisów w zakresie arbitrażu i mediacji oraz nowości – w porównaniu do innych porozumień o wolnym handlu – w postaci kodeksu postępowania członków organów arbitrażowych i mediatorów zawartego w umowie UE–Mercosur. W artykule podjęto próbę identyfikacji mocnych i słabych stron mechanizmów przyjętych przez strony porozumienia.

Metoda badawcza opiera się głównie na analizie i krytyce odpowiednich pierwotnych tekstów źródłowych, w szczególności tekstu umowy UE–Mercosur, a także literatury i wiarygodnych stron internetowych. Lektura przepisów na temat arbitrażu i mediacji pozwoliła postawić hipotezę, że zasady ich dotyczące są na tyle szczegółowe i konkretne, iż rzeczywiście mogą przyczynić się do rozwiązania sporu. Hipoteza ta została następnie zweryfikowana w toku badań.

Artykuł w znaczący sposób przyczynia się do rozwoju badań nad umową UE–Mercosur. Podczas gdy większość dotychczasowych opracowań koncentrowała się na skutkach handlowych oraz kwestiach środowiska i pracy, autor niniejszego artykułu skupił się na procedurach arbitrażowych i mediacyjnych.

Słowa kluczowe: umowa UE–Mercosur, rozwiązywanie sporów, reguły postępowania arbitrażowego, mediacja

CYTOWANIE

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