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Mediation Mechanisms under the EU's Modernised Global Agreement with Mexico and Beyond: Evaluation of the Provisions and Their Practical Applicability

Mechanizmy mediacyjne w ramach zmodernizowanej umowy globalnej UE z Meksykiem i ich szersze implikacje: ocena postanowień i ich praktycznego zastosowania

ABSTRACT

On January 17, 2025, the EU concluded negotiations with Mexico on a “modernised Global Agreement” aimed at replacing the current EU–Mexico Economic Partnership, Political Coordination and Cooperation Agreement of 2000. It is expected that the modernised Global Agreement will considerably increase trade in goods and services between both partners. The aim of this research article is to conduct an analysis and evaluate the mediation mechanisms, including an annex (to the chapter on “Dispute Settlement”) on the “Code of Conduct for panellists and mediators” under the EU–Mexico Modernised Global Agreement, against the background of the EU’s agreements with Chile, Viet Nam, and the Mercosur countries. The hypothetico-deductive methodology is applied in this article. Throughout the research, the author develops and confirms three hypotheses. This article of international research relevance makes a significant contribution to the topic of the EU–Mexico modernised Global Agreement. While most studies concentrated on the EU–Mexico relations in more general terms, the negotiated procedure itself, trade and foreign direct investment, trade and sustainable development or even – more specifically – environmental issues, this study focuses on mediation mechanisms.

Keywords: the EU–Mexico Modernised Global Agreement; dispute settlement; Code of Conduct for panellists and mediators; mediation mechanism

INTRODUCTION

In recent years, the European Commission has been very active in concluding free trade agreements (FTAs). Taking into consideration the change in the world situation in the context of President Donald Trump's policy and the tariffs he imposes, Ursula von der Leyen said that "Europe continues to focus on diversifying its trade partnerships, engaging with countries that account for 87 percent of global trade and share our commitment to a free and open exchange of goods, services, and ideas."¹ Indeed, the EU is currently negotiating FTAs with, e.g. Australia, Malaysia and Philippines. Moreover, in April 2025, the EU and the United Arab Emirates have begun negotiations for an FTA, which will have the potential to become the first comprehensive EU FTA in the Gulf region.² It should be added that the European Commission has recently concluded negotiations, e.g. with Mercosur four countries, namely Brazil, Argentina, Uruguay and Paraguay,³ as well as Chile, India, Indonesia and Mexico.

Let us examine more closely the last of those mentioned. As far as trade relations between the EU and Mexico are concerned, they are currently regulated by the trade pillar of the EU–Mexico Economic Partnership, Political Coordination and Cooperation Agreement of 2000. However, in May 2016, the EU and Mexico launched the negotiations for a new agreement and finally, on January 17, 2025, the EU concluded negotiations with Mexico on a "modernised Global Agreement" (hereinafter also referred to as the "Agreement"). On 22 May 2026, the EU and Mexico signed the Agreement. Once ratified will replace the agreement currently in force.⁴ According to von der Leyen,

[t]he EU and Mexico are already trusted partners. Now, we want to deepen our cooperation even further, strongly benefiting our people and economies. EU exporters will gain new commercial opportunities, including our farmers and agri-food companies. This landmark deal proves that open, rules-based trade can deliver for our prosperity and economic security, as well as climate action and sustainable development. I look forward to working with President Sheinbaum to deliver on the promise of this Agreement.⁵

¹ France 24, *Jolted by Trump, EU Woos New Partners from Asia to Latin America*, 2025, <https://www.france24.com/en/live-news/20250411-jolted-by-trump-eu-woos-new-partners-from-asia-to-latin-america> [access: 19.06.2026].

² European Commission, *EU and UAE launch free trade talks*, May 28, 2025, https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1252 [access: 19.06.2026].

³ More on this, see: 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, https://www.dirittounioneuropea.eu/Article/Archive/index_html?ida=204&idn=25&idi=-1&idu=-1 [access: 19.06.2026].

⁴ Basic information about the EU–Mexico agreement: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mexico/eu-mexico-agreement_en [access: 19.06.2026].

⁵ European Commission, *Negotiators Conclude on Modernised Global Agreement with Mexico*, Jan 17, 2025, https://ec.europa.eu/commission/presscorner/detail/en/ip_25_248 [access: 19.06.2026].

It is expected that the modernised Global Agreement will considerably increase trade in goods and services between both partners. It is worth adding that already now the situation is not bad, namely in 2023 the EU–Mexico trade in goods amounted to EUR 82 billion, whereas their trade in services reached EUR 22 billion in 2022.

Apart from boosting trade and enhancing economic security, it is also envisaged that the new trade deal will trigger new economic opportunities for both parties, promote shared values and the sustainable development framework, combat corruption both in private and public sectors, increase protection of human rights, as well as efforts related to migration issues, transnational organised crime and gender equality.⁶

The objective of this article is to conduct an analysis and assess the mediation mechanisms, including an annex (to the chapter on “Dispute Settlement”) on the “Code of Conduct for panellists and mediators” under the EU–Mexico Modernised Global Agreement. The author will draw conclusions in the context of comparisons between this Agreement and the EU’s agreements with Chile, Viet Nam and Mercosur countries. Another aim is to investigate the practical utilisation of mediation provisions in FTAs and to assess whether, if such provisions were introduced into the WTO Dispute Settlement Mechanism (DSM) framework, they would likely be regularly and effectively applied in practice within that system. The author of this article has formulated three research hypotheses, which he seeks to confirm or (partially) challenge.

The first research hypothesis is that the mediation mechanisms adopted in the Agreement with Mexico, even if they could be further improved, are sufficiently specific and detailed to help resolve disputes.

The second research hypothesis is that although the mediation mechanisms and codes of conduct for mediators appear to be well-designed from a theoretical perspective, they have limited potential for frequent use in practice.

Should the second hypothesis be confirmed, the third hypothesis will be developed based on the findings of Jaemin Lee,⁷ as follows: the introduction of a detailed, systematised, and institutionalised mediation procedure into the WTO DSM is normatively justified because it could complement existing panel and appellate proceedings and offer “an alternative path to resolve certain complex and sensitive disputes.” However, the author of this article argues that in light of the limited practical use of mediation in the EU FTAs, the actual utilisation of mediation within the WTO framework would likely remain modest, too. The author cannot fully share Lee’s optimism that “mediation will have a good chance of taking root in the WTO DSM.”

⁶ *Ibidem*.

⁷ J. Lee, *Long-Term Relationship over Litigation: Mediation in WTO Dispute Settlement Proceedings*, “World Trade Review” 2025, no. 24.

MATERIALS AND METHODS

The adopted research method is based on the analysis and criticism of relevant primary source texts, in particular the texts of FTAs and their annexes, as well as relevant secondary literature and reliable official websites, such as “Negotiations and agreements,” namely the official website of the European Commission.⁸

In terms of the EU–Mexico Modernised Global Agreement, the author discusses the chapter entitled “Dispute Settlement,” as well as the “Annex on the Code of Conduct for panellists and mediators.” At the same time, he draws conclusions by comparing this agreement to other trade deals, including:

- the EU–Chile Interim Trade Agreement, its “Dispute Settlement” chapter, and the “Annex on Code of Conduct for panellists and mediators;”
- Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam, its “Dispute Settlement” chapter, Annex 15-B – Code of Conduct for Arbitrators and Mediators, and Annex 15-C – Mediation Mechanism;
- the EU–Mercosur Interim Trade Agreement with its “Dispute Settlement” chapter, Annex 21-B entitled “Code of Conduct for Members of Arbitration Panels and Mediators,” and Annex 21-C entitled “Mediation.”

Overall, the method of analysis and criticism of literature, as well as the dogmatic-legal method (or, in other words, analytical method) allowing for the analysis and interpretation of legal acts are employed. Auxiliarily, comparative legal methodology is used with regard to the need to analyse and compare diverse FTAs. Finally, the hypothetico-deductive methodology is applied in this article. This means that “a causal hypothesis is initially formulated, some observational consequences are predicted on the base of this hypothesis and they are finally confronted with the data.”⁹ Shortly speaking, the author starts with “probable hypotheses and find[s] further support for them through positive confirmations.”¹⁰ The research hypotheses were formulated in the “Introduction” to this article, *in fine*. It should be emphasised that the third hypothesis regarding the WTO was established based on the research findings presented in the article by Lee entitled “Long-Term Relationship over Litigation: Mediation in WTO Dispute Settlement Proceedings” (mentioned above).

⁸ European Commission, *Negotiations and Agreements*, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/negotiations-and-agreements_en [access: 19.06.2026].

⁹ S. Mateiescu, *The Limits of Interventionism – Causality in the Social Sciences* [in:] *Probabilities, Laws, and Structures*, eds. D. Dieks, W.J. González, S. Hartmann, M. Stöltzner, M. Weber, Springer 2012, p. 152. More: F. Russo, *Causality and causal modelling in the social sciences. Measuring variations. Methodos Series*, New York 2009, p. 70 *et seq.*

¹⁰ W.C. Salmon, *The Foundations of Scientific Inference. 50th Anniversary Edition*, Pittsburgh 2017, p. 115.

This contribution represents the first such comprehensive analysis of mediation mechanisms in the above-mentioned most recent agreement. While there are studies that focus generally on the EU–Mexico relations,¹¹ the negotiated procedure itself,¹² trade and foreign direct investment,¹³ trade and sustainable development¹⁴ or even more specifically environmental issues,¹⁵ there are hardly any that focus concretely on the topic of mediation. Moreover, academic studies that address mediation typically do not focus exclusively on it, but rather cover the broader topic of dispute settlement.¹⁶ This article attempts to bridge that gap.

RESEARCH AND RESULTS

Mediation mechanisms have been included in section 4 of the chapter entitled “Dispute Settlement” of the EU–Mexico Modernised Global Agreement. According to these provisions, the mediation is aimed at facilitating the development of a mutually agreed solution via a comprehensive and expeditious procedure with the assistance of a third party called “mediator.”

The first question that comes to mind is the question of how mediation relates to dispute settlement procedures. The Agreement specifies that “[t]he mediation procedure is without prejudice to the Parties’ rights and obligations under Sections 2 and

¹¹ A. Oberda Monkiewicz, *Evolution of EU–Mexico Relations: Time for Real Partnership?*, “Anuario Latinoamericano Ciencias Políticas y Relaciones Internacionales” 2017, vol. 4.

¹² R. Domínguez, *Resilience in the Modernization of the EU–Mexico Global Agreement*, “Análisis Carolina” 2020, vol. 45, <https://www.fundacioncarolina.es/wp-content/uploads/2020/07/AC-45.-2020en.pdf> [access: 19.06.2026].

¹³ L. Barrios, A. de Manrique, *The Free Trade Agreement Between the European Union and Mexico – Impact on Trade and Foreign Direct Investment*, “Revista Chilena de Derecho” 2016, vol. 43(1).

¹⁴ J. Ramirez, L.A. Huacuja Acevedo, G. Sánchez Gutiérrez, M. Torres Jarrín, M. Velasco Pufleau, *Towards the Modernisation of the European Union-Mexico Global Agreement: Together for a More Sustainable Trade and Development*, Ciudad de México 2022, https://orbilu.uni.lu/bitstream/10993/64845/1/IB22-034%20Nota%20de%20Pol%C3%ADtica%20P%C3%ABlica%20No.%201_EN.pdf [access: 19.06.2026].

¹⁵ J. Caceres Bustamante, Ch. Delev, *Where to Next? Modernizing Environmental Commitments in EU-Latin America Free Trade Agreements*, “Legal Issues of Economic Integration” 2023, vol. 50(3); R. Verheyen, G. Winter, V.I. Arndt, A. Bustami, *Legal Analysis. The EU–Mercosur Free Trade Agreement’s impacts on greenhouse gas emissions and compatibility with EU and international law*, Hamburg, Bremen 2024, <https://www.greenpeace.de/publikationen/Rechtsanalyse%20Handelsvertrag%20EU-Mercosur%20verst%C3%B6%C3%9Ft%20gegen%20Klimagesetze%20englisch.pdf> [access: 19.06.2026].

¹⁶ L. Lonardo, *Dispute Settlement Mechanisms in International Agreements of the European Union*, “Nordic Journal of European Law Issue” 2024, vol. 7(3); K. Claussen, *The Future of Trade Agreement Dispute Settlement Provisions*, [in:] *The Concept Design of a Twenty-First Century Preferential Trade Agreement. Trends and Future Innovations*, eds. K. Claussen, M. Elsig, R. Polanco, Cambridge 2025.

3 or under dispute settlement procedures under any other agreement.” In addition, a greater certainty has been established in the light of which a mediation may be triggered or continue while panel procedures are in progress. It has been specified that a party shall not introduce as evidence or rely on, in other dispute settlement procedures under the Agreement or any other agreement, nor shall a panel take into account: 1) positions taken by the other party during the mediation phase or information collected under the rules of the mediation procedure, 2) the fact that the other party has indicated its willingness to accept a solution to the measure subject to mediation, or 3) proposals made or advice given by the mediator.¹⁷

When it comes to the commencement of the mediation procedure, each party is entitled to request the other party, at any time, to enter into a mediation procedure “with respect to any measure of that Party adversely affecting trade or investment between the Parties.” Before starting the mediation, no consultations are required. However, it should be highlighted that only mutual agreement of the parties can lead to the initiation of a mediation procedure.

Importantly, the Agreement sets a ten day time limit for the delivery of a written acceptance or rejection of the request by the party to which it is made. In the case of silence, it is presumed that the request was rejected.

There is also a crucial question about the way mediators are selected. Basically, the parties themselves should try to agree on the mediator within the time specified in the Agreement (generally 15 days). If they do not succeed, each party may request the “Appointing Authority” regulated by the “Rules of Procedure” to select the mediator (by lot) from the sub-list of chairpersons from the “Lists of Panellists.” The third option would be to draw a mediator by lot from the individuals indicated by one or both of the parties for that sub-list. The latter applies if the sub-list of chairpersons has not been adopted by the “Joint Committee” at the time a request is submitted.

The rules of the mediation procedure are the heart of the discussed part of the Agreement. Going into a little bit of detail, the party which invoked the mediation procedure has ten days of the appointment of the mediator to deliver to the mediator and to the other party a detailed written description of its concerns, especially of the operation of the measure at issue, as well as its possible adverse effects on trade or investment. The other party is entitled to deliver written comments on this description within twenty days of its receipt. The role of the mediator is invaluable for he/she assists the parties (in a transparent manner) in bringing clarity

¹⁷ “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.” See Article X.31 of the chapter “Dispute Settlement,” <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/e9f4a7d9-f048-40ba-9e96-05f31b51ec37/details> [access: 19.06.2026].

to the measure concerned and its possible adverse effects on trade or investment. It is particularly emphasised that “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” (Article X.29 paragraph 2 of the chapter “Dispute Settlement”). It is also possible that the mediator offers advice and proposes a solution for the consideration of the parties, which may accept or reject it. Obviously, the parties can go a step further and agree on a different solution.

The parties have 60 days of the appointment of the mediator to try to reach a mutually agreed solution. Moreover, the agreement provides for the possibility that the parties – pending a final agreement – consider an interim solution. In fact, such a provision may seem useful especially in the context of perishable goods.

At the request of either party the mediator delivers to the parties a “draft factual report” that – apart from a brief summary of the measure at issue – includes the procedures followed, as well as any mutually agreed solution reached (including any possible interim solutions). The parties are given 15 days to comment on the draft version of this document. Next, a further 15 days is allotted to the mediator to deliver a final factual report to the parties.

There are four methods of terminating the mediation procedure: 1) by the adoption of a mutually agreed solution by the parties (on the date of its adoption), 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 such a declaration) and 4) by a written declaration of a party after exploring 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 legal norm related to the confidentiality obligations is a relatively binding legal norm, in other words *ius dispositivum* (Article X.30 of the chapter “Dispute Settlement”). It states that “unless the [p]arties agree otherwise, all steps of the mediation procedure, including any advice or proposed solution, are confidential.” However, each of the parties is entitled to disclose to the public the fact that mediation is taking place.

If the parties manage to reach a solution during mediation, they shall inform the mediator together. Once they do so, the mediation process ends. The parties shall then take the steps needed to put the agreed solution into effect within the timeframe they have set. By the end of that agreed period, the party responsible for implementing the solution shall notify the other party in writing about the measures it has taken to carry it out.

A comparative read of the mediation mechanisms in the EU's agreements with Mexico, Chile, Viet Nam and Mercosur countries shows a high degree of convergence. It certainly reflects a common institutional template. All four agreements establish mediation as a voluntary, mutually agreed, time-bound procedure based on a neutral mediator who may facilitate dialogue, consult experts, propose solutions, and issue draft and final factual reports without engaging in legal interpretation. All the agreements establish strict confidentiality rules, evidentiary safeguards protecting mediation from subsequent dispute settlement proceedings and explicit prohibitions on mediators later serving as panellists in the same dispute. Shortly speaking, there is a high level of convergence between the four agreements with some slight differences in particular provisions. For example, the EU–Chile Interim Trade Agreement introduces minor procedural differences, such as a shorter deadline for agreeing on a mediator (14 days). Another example is that the EU–Mexico Modernised Global Agreement clearly separates mediation from formal dispute settlement.

Obviously, even if the given provisions are well-formulated, it is still possible to recommend minor improvements. These could simply enhance clarity and effectiveness. For example, deadlines for submissions, responses and mediator selection could be standardised in all of the EU's agreements. Besides, while all agreements emphasise impartiality and transparency, the agreements with Viet Nam and Mercosur countries provide more detailed procedures for consulting experts. It would be good to adopt these detailed procedural safeguards in all agreements in order to improve the fairness and thoroughness of mediation procedures. Another recommendation concerns interim solutions and perishable goods. Only one agreement, namely the EU–Chile Interim Trade Agreement, mentions interim solutions or perishable/seasonal goods. The author of this article suggests that making this provision uniform across all the EU's agreements could enhance its practical effect. Moreover, in the opinion of the author of this study, it would be ideal to include in all the EU's agreements a provision following a model of Article 2 entitled "Request for Information" of the FTA with Viet Nam, namely a request for information before the initiation of the mediation procedure. Unfortunately, this provision is currently less detailed in other agreements.

The EU–Mexico Modernised Global Agreement introduces the "Annex on Code of Conduct for panellists and mediators." Such an approach does not differ significantly from the three other agreements mentioned in this article. The EU–Chile Interim Trade Agreement embraces the "Annex on Code of Conduct for panellists and mediators," the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam has its Annex 15-B entitled "Code of Conduct for Arbitrators and Mediators," the EU–Mercosur Interim Trade Agreement includes Annex 21-B entitled "Code of Conduct for Members of Arbitration Panels and Mediators." As rightly highlighted by Luciana Ghiotto and Javier 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.”¹⁸ Similar codes of conduct are often included in diverse FTAs. Another example of such an approach can be found in the EU–South Korea FTA, which embraces Annex 14-C entitled “Code of Conduct for Members of Arbitration Panels and Mediators.”

The “Annex on Code of Conduct for panellists and mediators” of the EU–Mexico Modernised Global Agreement has established several key “governing principles.” According to its provisions, with the aim of preserving the “integrity and impartiality” of the mediation mechanism, the mediator shall: 1) get acquainted with the above-mentioned Code of Conduct, 2) be independent and impartial, 3) avoid direct or indirect conflicts of interests, 4) avoid impropriety and the appearance of impropriety or bias, 5) respect the confidentiality of the procedure, 6) observe high standards of conduct, and 7) not be influenced by self-interest, outside pressure, political considerations, public clamour, and loyalty to a party or fear of criticism. Moreover, the mediator shall not: 1) (directly or indirectly) incur any obligation/accept benefit(s) that would in any way interfere (or appear to interfere) with the proper performance of his/her duties, 2) use his/her position to advance any personal or private interests, 3) allow past or existing financial, business, professional, personal or social relationships or responsibilities to influence his/her conduct or judgement. The mediator shall “avoid entering into any relationship or acquiring any financial interest that is likely to affect his or her impartiality or that might reasonably create an appearance of impropriety or bias.”¹⁹

Attention should be paid to some praiseworthy obligations regarding “disclosure” matters. Prior to the acceptance of his/her appointment as a mediator, a candidate shall disclose the existence of “any interest, relationship or matter” that is likely to have a negative impact on his/her independence or impartiality or that “might reasonably create an appearance of impropriety or bias in the proceedings.” For this purpose, a candidate (and then a mediator because this is a continuing duty) makes “all reasonable efforts to become aware of any such interests, relationships and matters, including financial interests, professional interests, or employment or family interests.” A candidate or a mediator shall communicate to the parties for their consideration, any matters concerning actual or potential violations of the Code of Conduct in question at the earliest time he/she becomes aware of them.²⁰

¹⁸ 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: 19.06.2026].

¹⁹ Point II of the Annex on Code of Conduct for panellists and mediators to the chapter on Dispute Settlement in the EU–Mexico Free Trade Agreement, <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/f0580377-68d8-4b72-87d4-9f64108c95da/details> [access: 19.06.2026].

²⁰ Point III of the Annex appointed above.

It should be appreciated that the “Code of Conduct for panellists and mediators” introduces clear and precise duties of mediators and obligations of former mediators. In respect of the duties of mediators, upon acceptance of his/her appointment, a mediator shall be available to perform and shall perform his/her duties “thoroughly and expeditiously” throughout the mediation procedure and “with fairness and diligence.” A mediator shall consider only the issues raised in the procedure and shall not delegate this duty to any other person. When it comes to the obligations of former mediators, each former mediator shall avoid actions that may create the appearance that he/she was biased in carrying out the duties or derived advantage from the final solution/agreement.

The Code of Conduct establishes some important “confidentiality” rules highlighting that the mediator shall not (at any time) disclose any non-public information concerning the procedure or acquired during the procedure for which he/she has been appointed. Besides, a mediator shall not (in any case) disclose or use such information to gain personal advantage or advantage for others or to adversely affect the interest of others. Any report shall be disclosed prior to its publication. Importantly, each former mediator shall also comply with the obligations regarding “confidentiality.”

The codes of conduct in the EU’s FTAs with Mexico, Chile, Viet Nam and Mercosur, similarly to mediation mechanisms, show a high degree of convergence from a normative point of view. It may be even argued that they reflect a common EU model for ethical standards in dispute settlement mechanisms. They are consistent and comprehensive, and embrace clear provisions on independence, impartiality, disclosure obligations, duties of panel members, confidentiality, as well as the responsibilities of former members. The differences are mainly terminological and institutional. For example, the titles of the codes of conduct, as indicated in the section entitled “Materials and Methods” differ. Another example is the explicit role of the Trade Committee in the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam and the EU–Mercosur Interim Trade Agreement. Anyway, the comparison proves that, *ad substantiam*, the EU ethical frameworks in dispute settlement chapters are similar. Obviously, this does not mean that further improvements to these provisions cannot be suggested. For example, in order to support future practical implementation, the codes could introduce clearer guidance on the role and oversight of assistants and administrative staff.

Evaluating all the above provisions, it is clear from a theoretical point of view that they are well-structured and clearly formulated. The question arises, however, regarding their practical applicability. Although no formal consultations are required before initiating mediation, in practice, disputes under EU mechanisms are much more often resolved during the consultation stage. Mediation can only be initiated through the mutual agreement of the parties. This reflects its voluntary nature and dependence on political will. Moreover, mediation is non-binding, which may limit

its perceived utility in politically sensitive contexts. In addition, power asymmetries may further complicate the process. The EU represents a very large market and smaller partners to FTAs may be hesitant to escalate disputes formally. Thus, they may prefer less formal political negotiation instead of mediation. Moreover, mediation would be most effective in technical disputes where there is some space for compromise. Consequently, as assessed by the author of this article, although theoretically well-structured, provisions on mediation in FTAs may have limited practical applicability in the resolution of complex trade disputes. Indeed, to date, no mediation proceedings provided for under the EU's agreements have been initiated in practice (or at least no publicly available data exist on this matter).

In the context of these considerations, it is worth asking whether the introduction of detailed regulations concerning mediation into the WTO DSM framework, as proposed by Lee, would indeed translate into broader practical use of this instrument. According to this author, "there is no knowing what has caused the almost complete non-utilization of mediation [in the WTO Agreements – author's note], but the absence of detailed provisions on mediation seems to be one of the important reasons in this regard." The author points out that "mediation utilization is arguably dependent on the existence of detailed provisions so as to overcome the otherwise prevailing mediation-averse atmosphere from government officials' perspectives."²¹ However, as the experience of FTAs shows, even well-designed provisions on mediation do not automatically guarantee their broader practical application. The author of this article believes that although the introduction of detailed regulations concerning mediation into the WTO DSM is, of course, desirable, it would have a more theoretical than practical dimension. Put simply, the mediation mechanisms within the WTO DSM would likely face the same fate as those included in the EU's FTAs in terms of their practical application. Moreover, as Lee himself observes, mediation in the WTO DSM could lead to further problems such as "[f]urther delays, confidentiality traps, due process myriads, and enforcement loopholes."²²

DISCUSSION AND CONCLUSIONS

The purpose of this article was to analyse and evaluate the mediation mechanisms, including the annex to the "Dispute Settlement" chapter entitled "Code of Conduct for panellists and mediators," contained in the EU–Mexico Modernised Global Agreement, against the background of other EU's agreements with Chile, Viet Nam, and the Mercosur countries. The results broaden our understanding of the mediation procedures because earlier works in this area concentrated mainly

²¹ J. Lee, *op. cit.*, p. 56, 59.

²² *Ibidem*, p. 74.

on the EU–Mexico relations in more general terms, the negotiated procedure itself, trade and foreign direct investment, trade and sustainable development or even, more specifically, environmental issues. A further objective of this study was to examine the practical use of mediation provisions in FTAs and to assess whether, if similar provisions were incorporated into the WTO DSM, they would be applied on a regular basis in practice.

In connection with these research problems, the author has formulated three hypotheses, which have been confirmed in this article. In the light of the first research hypothesis, the mediation mechanisms incorporated into the Agreement with Mexico (and other EU's FTAs), although they could be further improved, are sufficiently precise, comprehensive and well-structured to facilitate the resolution of disputes. A general positive assessment emerges on the background of clear procedures for mediation and the establishment of the Code of Conduct for panellists and mediators. On the positive side, rules of the mediation procedure are transparent enough and useful. The author of this article also welcomes governing principles, disclosure obligations, duties of mediators and obligations of former mediators, as well as confidentiality issues included in the Code of Conduct. The second confirmed hypothesis asserts that, while the mediation mechanisms and the associated codes of conduct for mediators are theoretically well-structured, their practical applicability and likelihood of regular use remain limited. The third hypothesis, formulated based on Lee's findings, is as follows: the adoption of a detailed, systematised, and institutionalised mediation procedure within the WTO DSM is theoretically justified. It could complement existing panel and appellate mechanisms and provide an alternative path to dispute resolution. Nonetheless, considering the limited practical application of mediation in EU FTAs, its use within the WTO is likely to remain constrained. Consequently, the author does not fully share Lee's assessment that "mediation will have a good chance of taking root in the WTO DSM."²³

In general, the author of this article believes that, in the face of the current impasse in the Appellate Body of the WTO, and in the light of the threats made by the President of the US, Donald Trump, the search for new trade partners and the conclusion of new FTAs can contribute to combating protectionist tendencies.

Further research is needed not only on mediation mechanisms in FTAs concluded by the EU, but also on those concluded by the US, e.g. the agreement between the US, Mexico and Canada (the USMCA), so as to try to draw valuable lessons for the EU, particularly in the context of the practical application of mediation.²⁴

²³ *Ibidem*.

²⁴ See, e.g.: B. Polak, *Mediacje i arbitraż w relacjach polityczno-gospodarczych na przykładzie Umowy o Wolnym Handlu między Stanami Zjednoczonymi, Meksykiem i Kanadą (USMCA) 2020–2023*, "ADR. Arbitraż i Mediacja" 2023, vol. 16(1).

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ABSTRAKT

17 stycznia 2025 roku UE zakończyła negocjacje z Meksykiem w sprawie „zmodernizowanej Umowy Globalnej”, mającej zastąpić obowiązującą Umowę o Partnerstwie Gospodarczym, Koordynacji Politycznej i Współpracy z 2000 roku. Oczekuje się, że zmodernizowana Umowa Globalna w znacznym stopniu zwiększy handel towarami i usługami między obiema stronami. Celem niniejszego artykułu badawczego jest przeprowadzenie analizy i ocena mechanizmów mediacyjnych, w tym załącznika (do rozdziału „Rozstrzygnięcie sporów”) dotyczącego „Kodeksu postępowania dla członków paneli i mediatorów” w ramach zmodernizowanej Umowy Globalnej UE–Meksyk, w kontekście umów UE z Chile, Wietnamem i państwami Mercosur. W artykule zastosowano metodologię hipotetyczno-dedukcyjną. W trakcie badań autor formułuje i potwierdza trzy hipotezy. Artykuł o międzynarodowym zasięgu badawczym wnosi istotny wkład w tematykę zmodernizowanej Umowy Globalnej UE z Meksykiem. Podczas gdy większość badań koncentrowała się na stosunkach UE–Meksyk w szerszym ujęciu, samej procedurze negocjacyjnej, handlu i bezpośrednich inwestycjach zagranicznych, handlu i zrównoważonym rozwoju, czy nawet – bardziej szczegółowo – kwestiach środowiskowych, niniejsze opracowanie skupia się na mechanizmach mediacyjnych.

Słowa kluczowe: zmodernizowana Umowa Globalna UE z Meksykiem; rozstrzygnięcie sporów; Kodeks postępowania dla członków paneli i mediatorów; mechanizm mediacyjny