

ANNEX I

RULES OF PROCEDURE

General Provisions

1. In Chapter X (Dispute Settlement) and under these rules:

“adviser” means a person retained by a Party to the dispute to advise or assist that Party in connection with the arbitration panel proceeding;

“arbitrator” means a member of an arbitration panel established under Article 7 of Chapter X (Dispute Settlement);

“assistant” means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator;

“complaining Party” means any Party that requests the establishment of an arbitration panel under Article 5 of Chapter X (Dispute Settlement);

“Party complained against” means the Party that is alleged to be in violation of the provisions referred to in Article 2 of Chapter X (Dispute Settlement);

“arbitration panel” means a panel established under Article 7 of Chapter X (Dispute Settlement);

“representative of a Party” means an employee or any person appointed by a government department or agency or any other public entity of a Party who represents the Party for the purposes of a dispute under this Agreement;

“day” means a calendar day.
2. The Party complained against shall be in charge of the logistical administration of hearings, unless otherwise agreed. The Parties shall share the expenses derived from organisational matters, including the remuneration and the expenses of the arbitrators.

Notifications

3. Each Party to the dispute and the arbitration panel shall transmit any request, notice, written submission or other document by e-mail to the other Party and, as regards written submissions and requests in the context of arbitration, to each of the arbitrators. The arbitration panel shall circulate documents to the Parties also by e-mail. Unless proven otherwise, an e-mail message shall be deemed to be received on the date of its sending. If any of the supporting documents are above 10 MB, they shall be provided in another electronic format to the other Party and, where relevant, to each of the arbitrators within two days from the sending of the e-mail.
4. A copy of the documents transmitted in accordance with rule 3 shall be submitted to the other Party and, where relevant, to each of the arbitrators on the day of sending the e-mail by either facsimile transmission, registered post, courier, delivery against receipt or any other means of telecommunication that provides a record of the sending thereof.

5. All notifications shall be addressed to the Ministry of Industry and Trade of Viet Nam and to the Directorate-General for Trade of the Commission of the European Union, respectively.
6. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceeding may be corrected by delivery of a new document clearly indicating the changes.
7. If the last day for delivery of a document falls on an official legal holiday of Viet Nam or of the European Union, the document shall be deemed received on the next business day.

Commencing the Arbitration

8.
 - (a) If pursuant to Article 7 of Chapter X (Dispute Settlement) or to rules 18, 19 and 44 of these Rules of Procedure, an arbitrator is selected by lot, the lot shall be carried out at a time and place decided by the complaining Party to be promptly communicated to the Party complained against. The Party complained against may, if it so chooses, be present during the lot. In any event, the lot shall be carried out with the Party or Parties that are present.
 - (b) If pursuant to Article 7 of Chapter X (Dispute Settlement) or to rules 18, 19 and 44 of these Rules of Procedure an arbitrator is selected by lot and there are two chairpersons of the Trade Committee, both chairpersons, or their delegates, or one chairperson alone in cases where the other chairperson or his delegate does not accept to participate in the lot, shall perform the selection by lot.
 - (c) The Parties shall notify the selected arbitrators regarding their appointment.
 - (d) An arbitrator who has been appointed according to the procedure established in Article 7 of Chapter X (Dispute Settlement) shall confirm his/her availability to serve as an arbitrator to the Trade Committee within five days of the date in which s/he was informed of his/her appointment.
 - (e) The remuneration and expenses to be paid to the arbitrators will be in accordance with WTO standards. The remuneration for each arbitrator's assistant shall not exceed 50% of the remuneration of that arbitrator.
9. The Parties must notify the agreed terms of reference as referred to in Article 6 of Chapter X (Dispute Settlement) to the arbitration panel within three days of their agreement.

Initial Submissions

10. The complaining Party shall deliver its initial written submission no later than 20 days after the date of establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than 20 days after the date of receipt of the initial written submission.

Working of Arbitration Panels

11. The chairperson of the arbitration panel shall preside at all its meetings. An arbitration panel may delegate to the chairperson authority to make administrative and procedural decisions.
12. Unless otherwise provided in Chapter X (Dispute Settlement), the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.
13. The drafting of any ruling shall remain the exclusive responsibility of the arbitration panel and must not be delegated.
14. Where a procedural question arises that is not covered by the provisions of Chapter X (Dispute Settlement) and its annexes, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.
15. When the arbitration panel considers that there is a need to modify any of the time limits for its proceedings other than the time-limits set out in Chapter X (Dispute Settlement) or to make any other procedural or administrative adjustment, it shall inform the Parties to the dispute in writing of the reasons for the change or adjustment and of the period of time or adjustment needed.

Replacement

16. If in an arbitration proceeding under Chapter X (Dispute Settlement) an arbitrator is unable to participate, withdraws, or must be replaced because she or he does not comply with the requirements of the Code of Conduct, a replacement shall be selected in accordance with Article 7 of Chapter X (Dispute Settlement) and rule 8 of these Rules of Procedure.
17. Where a Party to the dispute considers that an arbitrator does not comply with the requirements of the Code of Conduct and for this reason should be replaced, this Party should notify the other Party within 15 days from the time at which it obtained evidence of the circumstances underlying the arbitrator's material violation of the Code of Conduct.
18. Where a Party to the dispute considers that an arbitrator other than the chairperson does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, select a new arbitrator in accordance with Article 7 of Chapter X (Dispute Settlement) and rule 8 of these Rules of Procedure.

If the Parties fail to agree on the need to replace an arbitrator, any Party may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

If, pursuant to such a request, the chairperson finds that an arbitrator does not comply with the requirements of the Code of Conduct, the new arbitrator shall be selected in accordance with Article 7 of Chapter X (Dispute Settlement) and rule 8 of these Rules of Procedure.

19. Where a Party considers that the chairperson of the arbitration panel does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, select a new chairperson in accordance with Article 7 of Chapter X (Dispute Settlement) and rule 8 of these Rules of Procedure.

If the Parties fail to agree on the need to replace the chairperson, any Party may request that such matter be referred to one of the remaining members of the pool of individuals from the sub-list of chairpersons established under Article 23 paragraph 1 of Chapter X (Dispute Settlement). Her or his name shall be drawn by lot by the chair of the Trade Committee, or the chair's delegate. The decision by this person on the need to replace the chairperson shall be final.

If this person decides that the original chairperson does not comply with the requirements of the Code of Conduct, she or he shall select a new chairperson by lot among the remaining pool of individuals from the sub-list of chairpersons referred to under Article 23 paragraph 1 of Chapter X (Dispute Settlement). The selection of the new chairperson shall be done within five days of the date of the submission of the date of the decision abovementioned.

20. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in rules 17, 18 and 19.

Hearings

21. The chairperson of the arbitration panel shall fix the date and time of the hearing in consultation with the Parties and the arbitrators, and she or he shall confirm this in writing to the Parties. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings, unless the hearing is closed to the public. Unless a Party disagrees, the arbitration panel may decide not to convene a hearing.
22. The arbitration panel may convene additional hearings if the Parties so agree.
23. All arbitrators shall be present during the entirety of any hearings.
24. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:
 - (a) representatives of the Parties;
 - (b) advisers to the Parties;
 - (c) experts;
 - (d) administrative staffs, interpreters, translators and court reporters; and
 - (e) arbitrators' assistants.Only the representatives and advisers of the Parties may address the arbitration panel.
25. No later than five days before the date of a hearing, each Party shall deliver to the arbitration panel a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.
26. The arbitration panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time:

Argument

- (a) argument of the complaining Party;
- (b) argument of the Party complained against.

Rebuttal Argument

- (a) argument of the complaining Party.
 - (b) counter-reply of the Party complained against.
- 27. The arbitration panel may direct questions to the Parties or the experts at any time during the hearing.
 - 28. The arbitration panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the Parties. The Parties may comment on the transcript and the arbitration panel may consider those comments.
 - 29. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within 10 days of the date of the hearing.

Questions in writing

- 30. The arbitration panel may at any time during the proceedings address questions in writing to one or both Parties. Each of the Parties shall receive a copy of any questions put by the arbitration panel.
- 31. A Party shall provide a copy of its written response to the arbitration panel's questions to the other Party. Each Party shall be given the opportunity to provide written comments on the other Party's reply within five days of the date of receipt of such reply.

Confidentiality

- 32. Each Party and its advisers shall treat as confidential any information submitted by the other Party to the arbitration panel which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitration panel, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public no later than 15 days after the date of either the request or the submission, whichever is later and an explanation why the non-disclosed information is confidential. Nothing in these rules shall preclude a Party from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential. The arbitration panel shall meet in closed session when the submission and arguments of a Party contains confidential information. The Parties and their advisers shall maintain the confidentiality of the arbitration panel hearings where the hearings are held in closed session.

Ex parte contacts

- 33. The arbitration panel shall not meet or communicate with a Party in the absence of the other Party.
- 34. No arbitrator may discuss any aspect of the subject matter of the proceedings with one Party or both Parties in the absence of the other arbitrators.

***Amicus curiae* submissions**

35. Unless the Parties agree otherwise within three days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions from natural or legal persons established in the territory of a Party who are independent from the governments of the Parties, provided that they are made within 10 days of the date of the establishment of the arbitration panel, that they are concise and in no case longer than 15 pages typed at double space and that they are directly relevant to a factual or a legal issue under consideration by the arbitration panel.
36. The submission shall contain a description of the person making the submission, whether natural or legal, including its nationality or place of establishment, the nature of its activities, its legal status, general objectives and the source of its financing, and specify the nature of the interest that the person has in the arbitration proceeding. It shall be drafted in the languages chosen by the Parties in accordance with rules [39 and 40] of these Rules of Procedure.
37. The arbitration panel shall list in its ruling all the submissions it has received that conform to rules 35 and 36. The arbitration panel shall not be obliged to address in its ruling the arguments made in such submissions. Any such submission shall be submitted to the Parties for their comments. The comments of the Parties shall be submitted within 10 days and any such comments shall be taken into consideration by the arbitration panel.

Urgent cases

38. In cases of urgency referred to in Chapter X (Dispute Settlement), the arbitration panel, after consulting the Parties, shall adjust the time limits referred to in these Rules of Procedure, as appropriate, and shall notify the Parties of such adjustments.

Translation and interpretation

39. During the consultations referred to in Article 3 of Chapter X (Dispute Settlement), and no later than the meeting referred to in Article 8 of Chapter X (Dispute Settlement), the Parties shall endeavour to agree on a common working language for the proceedings before the arbitration panel.
40. If the Parties are unable to agree on a common working language, each Party shall make its written submissions in its chosen language which shall be one of the working languages of the WTO.
41. Arbitration panel rulings shall be issued in the language or languages chosen by the Parties.
42. Any Party may provide comments on the accuracy of the translation of any translated version of a document drawn up in accordance with these Rules of Procedure.
43. Any costs incurred for translation of an arbitration ruling shall be borne equally by the Parties.

Other procedures

44. These Rules of Procedure are also applicable to procedures established under Article 3, 13(2), 14(2), 15(3) and 16(2) of Chapter X (Dispute Settlement). In this case, the time-limits laid down in these Rules of Procedure shall be adjusted in line with the special time-limits provided for the adoption of a ruling by the arbitration panel in those other procedures.