

RULES OF PROCEDURE

General Provisions

1. For the purposes of Chapter 15 (Dispute Settlement) and these Rules of Procedures (hereinafter referred to as "Rules"):
 - (a) "adviser" means a person retained by a Party to advise or assist that Party in connection with the arbitration panel proceedings;
 - (b) "arbitration panel" means a panel established under Article 15.7 (Establishment of the Arbitration Panel);
 - (c) "arbitrator" means a member of an arbitration panel established under Article 15.7 (Establishment of the Arbitration Panel);

- (d) "assistant" means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator;
- (e) "complaining Party" means the Party that requests the establishment of an arbitration panel under Article 15.5 (Initiation of the Arbitration Procedure);
- (f) "day" means a calendar day;
- (g) "Party complained against" means the Party that is alleged to be in violation of the provisions referred to in Article 15.2 (Scope);
- (h) "proceedings", unless otherwise specified, means dispute settlement proceedings of an arbitration panel under Chapter 15 (Dispute Settlement);
and
- (i) "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.

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 and the arbitration panel shall transmit any request, notice, written submission or any 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 megabytes, they shall be provided in another electronic format to the other Party and, where relevant, to each of the arbitrators within two days of the date of 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 of that 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 Union, respectively.
6. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceedings 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 a Saturday, Sunday or an official legal holiday of Viet Nam or of the Union, the document shall be deemed to be delivered within the deadline if the document is delivered on the next business day.

Commencing the Arbitration

8. If pursuant to Article 15.7 (Establishment of the Arbitration Panel) and to Rules 22, 23 and 49 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.

9. If pursuant to Article 15.7 (Establishment of the Arbitration Panel) and to Rules 22, 23 and 49 an arbitrator is selected by lot and there are two chairs of the Trade Committee, both chairs, or their delegates, or one chair alone in cases where the other chair or his delegate does not accept to participate in the lot, shall perform the selection by lot.
10. The Parties shall notify the selected arbitrators regarding their appointment.
11. An arbitrator who has been appointed according to the procedure established in Article 15.7 (Establishment of the Arbitration Panel) shall confirm the availability to serve as an arbitrator to the Trade Committee within five days of the date on which that arbitrator was informed of the appointment.
12. 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 per cent of the remuneration of that arbitrator.
13. The Parties must notify the agreed terms of reference referred to in Article 15.6 (Terms of Reference of Arbitration Panel) to the arbitration panel within three days of their agreement.

Written Submissions

14. The complaining Party shall deliver its 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 written submission of the complaining Party.

Working of Arbitration Panels

15. 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.
16. Unless otherwise provided for in Chapter 15 (Dispute Settlement), the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.
17. The drafting of any ruling shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.

18. When a procedural question arises that is not covered by Chapter 15 (Dispute Settlement) and Annexes 15-A (Rules of Procedure), 15-B (Code of Conduct for Arbitrators and Mediators) and 15-C (Mediation Mechanism), the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.

19. 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 15 (Dispute Settlement) or to make any other procedural or administrative adjustment, it shall inform, in writing, the Parties of the reasons for the change or adjustment and of the period of time or adjustment needed.

Replacement

20. If in an arbitration proceeding an arbitrator is unable to participate, withdraws, or must be replaced because the arbitrator does not comply with the requirements of Annex 15-B (Code of Conduct for Arbitrators and Mediators), a replacement shall be selected in accordance with Article 15.7 (Establishment of the Arbitration Panel) and Rules 8 to 11.

21. When a Party considers that an arbitrator does not comply with the requirements of Annex 15-B (Code of Conduct for Arbitrators and Mediators) and for that reason should be replaced, that Party should notify the other Party within 15 days of the date on which it obtained evidence of the circumstances underlying the arbitrator's material violation of Annex 15-B (Code of Conduct for Arbitrators and Mediators).

22. When a Party considers that an arbitrator other than the chairperson does not comply with the requirements of Annex 15-B (Code of Conduct for Arbitrators and Mediators) and for that reason should be replaced, the Parties shall consult and, if they so agree, select a new arbitrator in accordance with Article 15.7 (Establishment of the Arbitration Panel) and Rules 8 to 11.

If the Parties fail to agree on the need to replace an arbitrator, any Party may request that this 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 Annex 15-B (Code of Conduct for Arbitrators and Mediators) and for that reason should be replaced, the new arbitrator shall be selected in accordance with Article 15.7 (Establishment of the Arbitration Panel) and Rules 8 to 11.

23. When a Party considers that the chairperson of the arbitration panel does not comply with the requirements of Annex 15-B (Code of Conduct for Arbitrators and Mediators) and for that reason should be replaced, the Parties shall consult and, if they so agree, select a new chairperson in accordance with Article 15.7 (Establishment of the Arbitration Panel) and Rules 8 to 11.

If the Parties fail to agree on the need to replace the chairperson, a Party may request that this matter be referred to one of the other persons remaining on the sub-list of chairpersons established under subparagraph 1(c) of Article 15.23 (List of Arbitrators). The name of that person shall be selected by lot by the chair of the Trade Committee, or the chair's delegate. The decision by that person concerning the need to replace the chairperson shall be final.

If that person decides that the original chairperson does not comply with the requirements of Annex 15-B (Code of Conduct for Arbitrators and Mediators) and for that reason should be replaced, that person shall select a new chairperson by lot among the other persons remaining on the sub-list of chairpersons established under subparagraph 1(c) of Article 15.23 (List of Arbitrators). The selection of the new chairperson shall be done within five days of the date of the submission of the date of the decision provided for under this Rule.

24. The arbitration panel proceedings shall be suspended for the period during which the procedures provided for in Rules 21 to 23 are carried out.

Hearings

25. The chairperson of the arbitration panel shall fix the date and time of the hearing in consultation with the Parties and the arbitrators. The chairperson shall confirm, in writing, the date and time 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.
26. The arbitration panel may convene additional hearings if the Parties so agree.
27. All arbitrators shall be present during the entirety of any hearings.
28. 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 staff, interpreters, translators and court reporters; and

(e) arbitrators' assistants.

29. Only the representatives and advisers of the Parties and experts may address the arbitration panel.
30. No later than five days before the date of a hearing, each Party shall deliver to the arbitration panel a list of names of the 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.
31. The arbitration panel shall conduct the hearing in the following order, 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

- (a) reply of the complaining Party;
 - (b) counter-reply of the Party complained against.
32. The arbitration panel may direct questions to the Parties or the experts at any time during the hearing.
33. 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.
34. 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

35. The arbitration panel may, at any time during the proceedings, address questions in writing to one Party or both Parties. Each Party shall receive a copy of any questions put by the arbitration panel.

36. 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

- 37 Each Party and its advisers shall treat as confidential any information submitted to the arbitration panel and designated as confidential by the other Party. When 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 may 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 of the reasons 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 when the hearings are held in closed session.

Ex parte Contacts

38. The arbitration panel shall not meet or communicate with a Party in the absence of the other Party.
39. An arbitrator shall not 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

40. 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.

41. 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 proceedings. It shall be drafted in the languages chosen by the Parties in accordance with Rules 44 and 45.

42. The arbitration panel shall list in its ruling all the submissions it has received that conform to Rules 40 and 41. The arbitration panel shall not be obliged to address in its ruling the arguments made in those 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 they shall be taken into consideration by the arbitration panel.

Urgent Cases

43. In cases of urgency referred to in Chapter 15 (Dispute Settlement), the arbitration panel, after consulting the Parties, shall adjust the time limits referred to in these Rules, as appropriate, and shall notify the Parties of such adjustments.

Translation and Interpretation

44. During the consultations referred to in Article 15.3 (Consultations), and no later than the date of the meeting referred to in paragraph 2 of Article 15.8 (Dispute Settlement Proceedings of the Arbitration Panel), the Parties shall endeavour to agree on a common working language for the proceedings before the arbitration panel.
45. 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.
46. Arbitration panel rulings shall be issued in the language or languages chosen by the Parties.
47. 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.
48. Any costs incurred for translation of an arbitration ruling shall be borne equally by the Parties.

Other Procedures

49. These Rules also apply to proceedings under Articles 15.3 (Consultations), 15.13 (Reasonable Period of Time for Compliance), 15.14 (Review of any Measure Taken to Comply with the Final Report), 15.15 (Temporary Remedies in Case of Non-Compliance) and 15.16 (Review of Measure Taken to Comply After the Adoption of Temporary Remedies for Non-Compliance). The time limits laid down in these Rules 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.