



Council of the
European Union

039135/EU XXVI. GP
Eingelangt am 19/10/18

Brussels, 19 October 2018
(OR. en)

Interinstitutional File:
2018/0359(NLE)

13314/18
ADD 2

WTO 266
SERVICES 64
FDI 42
COASI 251

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	19 October 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 694 final - ANNEX 2
Subject:	ANNEX to the Proposal for a Council Decision on the signing, on behalf of the European Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam of the other part

Delegations will find attached document COM(2018) 694 final - ANNEX 2.

Encl.: COM(2018) 694 final - ANNEX 2



EUROPEAN
COMMISSION

Brussels, 17.10.2018
COM(2018) 694 final

ANNEX 2

ANNEX

to the

Proposal for a Council Decision

**on the signing, on behalf of the European Union, of the Investment Protection
Agreement between the European Union and its Member States, of the one part, and the
Socialist Republic of Viet Nam of the other part**

ANNEXES
TO THE INVESTMENT PROTECTION AGREEMENT
BETWEEN THE EUROPEAN UNION AND ITS MEMBER STATES, OF THE ONE PART,
AND THE SOCIALIST REPUBLIC OF VIET NAM, OF THE OTHER PART:

Annex 1: Competent Authorities

Annex 2: Exemption for Viet Nam on National Treatment

Annex 3 Understanding on Treatment of Investment

Annex 4: Understanding on Expropriation

Annex 5: Public Debt

Annex 6: List of Investment Agreements

Annex 7: Rules of Procedure

Annex 8: Code of Conduct for Arbitrators and Mediators

Annex 9: Mediation Mechanism

Annex 10: Mediation Mechanism for Disputes between Investors and Parties

Annex 11: Code of Conduct for Members of the Tribunal, the Appeal Tribunal and Mediators

Annex 12: Concurring Proceedings

Annex 13: Working Procedures for the Appeal Tribunal

COMPETENT AUTHORITIES

In the case of the EU Party, the competent authorities entitled to order the actions referred to in paragraph 4 of Article 2.2 (Investment and Regulatory Measures and Objectives) are the European Commission, the European Court of Justice or, when applying Union law on state aid, an administration, authority, court or tribunal of a Member State. In the case of Viet Nam, the competent authorities entitled to order the actions referred to in paragraph 4 of Article 2.2 (Investment and Regulatory Measures and Objectives) are the Government of Viet Nam or the Prime Minister of Viet Nam, an administration, authority or a court.

EXEMPTION FOR VIET NAM ON NATIONAL TREATMENT

1. In the following sectors, subsectors or activities, Viet Nam may adopt or maintain any measure with respect to the operation of a covered investment that is not in conformity with Article 2.3 (National Treatment), provided that such measure is not inconsistent with the commitments set out in Annex 8-B (Viet Nam's Schedule of Specific Commitments) to the Free Trade Agreement:
 - (a) newspapers and news-gathering agencies, printing, publishing, radio and television broadcasting, in any form;
 - (b) production and distribution of cultural products, including video records;
 - (c) production, distribution, and projection of television programmes and cinematographic works;
 - (d) investigation and security;
 - (e) geodesy and cartography;
 - (f) secondary and primary education services;
 - (g) oil and gas, mineral and natural resources exploration, prospecting and exploitation;

- (h) hydroelectricity and nuclear power; power transmission and/or distribution;
- (i) cabotage transport services;
- (j) fishery and aquaculture;
- (k) forestry and hunting;
- (l) lottery, betting and gambling;
- (m) judicial administration services, including but not limited to services relating to nationality;
- (n) civil enforcement;
- (o) production of military materials or equipment;
- (p) operation and management of river ports, sea ports and airports; and
- (q) subsidies.

2. If Viet Nam adopts or maintains such a measure after the date of entry into force of this Agreement, it shall not require an investor of the EU Party, by reason of its nationality, to sell or otherwise dispose of an investment existing when that measure enters into effect.

UNDERSTANDING ON TREATMENT OF INVESTMENT

The Parties confirm their common understanding on the application of paragraph 6 of Article 2.5 (Treatment of Investment):

1. Notwithstanding the condition set out in subparagraph 6(a) of Article 2.5 (Treatment of Investment), an investor which has a dispute that falls within the scope of Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Disputes Settlement) with the Party with which it has entered into a written agreement that is concluded and has taken effect before the date of entry into force of this Agreement may claim the benefit of paragraph 6 of Article 2.5 (Treatment of Investment) in accordance with the procedures and conditions set out in this Annex.
2. Written agreements that are concluded and have taken effect before the date of entry into force of this Agreement and that fulfil the conditions set out in this paragraph may be notified within one year from the date of entry into force of this Agreement. Such written agreements shall:
 - (a) satisfy all conditions set out in subparagraphs 6(b) to (d) of Article 2.5 (Treatment of Investment); and

(b) have been entered into either:

(i) by Viet Nam with investors of the Member States of the Union, referred to in paragraph 8 of this Annex, or their covered investments; or

(ii) by one of the Member States of the Union referred to in paragraph 8 of this Annex with investors of Viet Nam or their covered investments.

3. The procedure for notifying the written agreements referred to in paragraph 1 shall be as follows:

(a) the notification shall include:

(i) the name, nationality and address of the investor which is a party to the written agreement being notified, the nature of the covered investment of that investor and, where the written agreement is entered into by the covered investment of that investor, the name, address and place of incorporation of the investment; and

(ii) a copy of the written agreement, including all of its instruments;

and

(b) the written agreements shall be notified in writing to the following competent authority:

(i) in the case of Viet Nam, the Ministry of Planning and Investment; and

(ii) in the case of EU Party, the European Commission.

4. The notification referred to in paragraphs 2 and 3 does not create any substantive rights of the investor which is a party to that notified written agreement or its investment.
5. The competent authorities referred to in subparagraph 3(b) shall compile a list of the written agreements that have been notified in accordance with paragraphs 2 and 3.
6. Should a dispute arise in connection with one of the notified written agreements, the relevant competent authority shall verify if the agreement satisfies all conditions set out in subparagraphs 6(b) to (d) of Article 2.5 (Treatment of Investment) and the procedures set out in this Annex.
7. An investor shall not claim that paragraph 6 of Article 2.5 (Treatment of Investment) applies to the written agreement if the verification in accordance with paragraph 6 of this Annex concludes that the requirements referred to in that paragraph are not met.
8. The Member States of the Union referred to in subparagraph 2(b) of this Annex are Germany, Spain, the Netherlands, Austria, Romania, and the United Kingdom.

UNDERSTANDING ON EXPROPRIATION

The Parties confirm their common understanding on expropriation:

1. Expropriation as referred to in paragraph 1 of Article 2.7 (Expropriation) may be either direct or indirect as follows:
 - (a) direct expropriation occurs if an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and
 - (b) indirect expropriation occurs if a measure or series of measures by a Party has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its investment including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure.

2. The determination of whether a measure or series of measures by a Party, in a specific factual situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, *inter alia*:
 - (a) the economic impact of the measure or series of measures, although the fact that a measure or series of measures by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that such an expropriation has occurred;
 - (b) the duration of the measure or series of measures or of its effects; and
 - (c) the character of the measure or series of measures, in particular its object, context and intent.
3. Non-discriminatory measures or series of measures by a Party that are designed to protect legitimate public policy objectives do not constitute indirect expropriation, except in the rare circumstances where the impact of such measure or series of measures is so severe in light of its purpose that it appears manifestly excessive.

PUBLIC DEBT

1. No claim that a restructuring of debt of a Party breaches an obligation under Chapter 2 (Investment Protection) may be submitted or, if already submitted, be pursued under Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Disputes Settlement) if the restructuring is a negotiated restructuring at the time of submission or becomes a negotiated restructuring after such submission, except for a claim that the restructuring breaches Article 2.3 (National Treatment) or 2.4 (Most-Favoured-Nation Treatment).
2. Notwithstanding Article 3.33 (Submission of a Claim) of Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Disputes Settlement), and subject to paragraph 1 of this Annex, an investor shall not submit a claim under Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Disputes Settlement) that a restructuring of debt of a Party breaches Article 2.3 (National Treatment) or 2.4 (Most-Favoured-Nation Treatment)¹ or any obligation under Chapter 2 (Investment Protection), unless 270 days have elapsed from the date of submission by the claimant of the written request for consultations pursuant to Article 3.30 (Consultations).

¹ For greater certainty, a breach of the Article 2.3 (National Treatment) or Article 2.4 (Most-Favoured-Nation Treatment) does not occur merely by virtue of a different treatment provided by a Party to certain categories of investors or investments on grounds of a different macroeconomic impact, for instance to avoid systemic risks or spillover effects, or on grounds of eligibility for debt restructuring.

3. For the purposes of this Annex:

(a) "negotiated restructuring" means the restructuring or rescheduling of debt of a Party that has been effected through:

(i) a modification or amendment of debt instruments, as provided for under their terms, including their governing law; or

(ii) a debt exchange or other similar process in which the holders of no less than 66 percent of the aggregate principal amount of the outstanding debt subject to restructuring, excluding debt held by that Party or by entities owned or controlled by it, have consented to such debt exchange or other process;

and

(b) "governing law" of a debt instrument means a country's legal and regulatory framework applicable to that debt instrument.

4. For greater certainty, "debt of a Party" includes, in the case of EU Party, debt of a government of a Member State of the Union, or of a government in a Member State of the Union, at central, regional or local level.

LIST OF INVESTMENT AGREEMENTS

	Agreements	"Sunset Clauses"
1	Agreement between the Socialist Republic of Viet Nam and the Republic of Austria for the Promotion and Protection of Investments, signed on 27 March 1995.	Paragraph 3 of Article 11
2	Agreement between the Belgium-Luxembourg Economic Union and the Socialist Republic of Viet Nam for the Promotion and Reciprocal Protection of Investment, signed on 24 January 1991.	Paragraph 2 of Article 14
3	Agreement between the Government of the Republic of Bulgaria and the Socialist Republic of Viet Nam Government of the on Mutual Promotion and Protection of Investments, signed on 19 September 1996.	Paragraph 2 of Article 13
4	Agreement between the Government of the Czech Republic and the Government of the Socialist Republic of Viet Nam for the Promotion and Reciprocal Protection of Investment, signed on 25 November 1997, as amended on 21 March 2008.	Paragraph 3 of Article 10

	Agreements	"Sunset Clauses"
5	Agreement between the Government of the Kingdom of Denmark and the Government of the Socialist Republic of Vietnam concerning the Promotion and Reciprocal Protection of Investments, signed on 25 August 1993.	Paragraph 2 of Article 16
6	Agreement between the Government of the Republic of Estonia and the Government of the Socialist Republic of Viet Nam on the Promotion and Protection of Investments, signed on 24 September 2009, amended on 3 January 2011.	Paragraph 3 of Article 16
7	Agreement between the Government of the Republic of Finland and the Government of the Socialist Republic of Viet Nam on the Promotion and Protection of Investments, signed on 21 February 2008.	Paragraph 4 of Article 16
8	Agreement between the Government of the French Republic and the Government of the Socialist Republic of Viet Nam for the Promotion and Reciprocal Protection of Investments, signed on 26 May 1992.	Article 12
9	Agreement between the Federal Republic of Germany and the Socialist Republic of Viet Nam and on the Promotion and Reciprocal Protection of Investments, signed on 3 April 1993.	Paragraph 3 of Article 13
10	Agreement between the Government of the Hellenic Republic and the Government of the Socialist Republic of Viet Nam on the Promotion and Reciprocal Protection of Investments, signed on 13 October 2008.	Paragraph 3 of Article 13
11	Agreement between the Republic of Hungary and the Socialist Republic of Viet Nam for the Promotion and Reciprocal Protection of Investments, signed on 26 August 1994.	Paragraph 3 of Article 12
12	Agreement between the Italian Republic and the Socialist Republic of Viet Nam on the Promotion and Protection of Investments, signed on 18 May 1990.	Paragraph 2 of Article 14

	Agreements	"Sunset Clauses"
13	Agreement between the Government of the Republic of Latvia and the Government of the Socialist Republic of Viet Nam for the Promotion and Protection of Investments, signed on 6 November 1995.	Paragraph 4 of Article 13
14	Agreement between the Government of the Republic of Lithuania and the Government of the Socialist Republic of Viet Nam for the Promotion and Protection of Investments, signed on 27 September 1995.	Paragraph 4 of Article 13
15	Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of Netherlands and the Socialist Republic of Viet Nam, signed on 10 March 1994.	Paragraph 3 of Article 14
16	Agreement between the Republic of Poland and the Socialist Republic of Viet Nam for the Promotion and Reciprocal Protection of Investments, signed on 31 August 1994.	Paragraph 3 of Article 12
17	Agreement between the Government of Romania and the Government of the Socialist Republic of Viet Nam on the Promotion and the Reciprocal Protection of Investments, signed on 1 September 1994.	Paragraph 2 of Article 11
18	Agreement between the Government of the Slovak Republic and the Government of the Socialist Republic of Viet Nam for the Promotion and Reciprocal Protection of Investments, signed on 17 December 2009.	Paragraph 4 of Article 14

	Agreements	"Sunset Clauses"
19	Agreement between the Government of the Kingdom of Sweden and the Government of the Socialist Republic of Viet Nam on the Promotion and Reciprocal Protection of Investments, signed on 8 September 1993.	Paragraph 3 of Article 11
20	Agreement between the Kingdom of Spain and the Socialist Republic of Viet Nam on the Promotion and Reciprocal Protection of Investments, signed on 20 February 2006.	Paragraph 3 of Article 13
21	Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Socialist Republic of Viet Nam for the Promotion and Protection of Investments, signed on 1 August 2002.	Article 14

RULES OF PROCEDURE

General Provisions

1. For the purposes of Section A (Resolution of Disputes between Parties) of Chapter 3 (Dispute Settlement) and these Rules of Procedures (hereinafter referred to as "Rules"):
 - (a) "adviser" means a person retained by a Party to the dispute to advise or assist that Party in connection with the arbitration panel proceedings;
 - (b) "arbitration panel" means a panel established under Article 3.7 (Establishment of the Arbitration Panel);
 - (c) "arbitrator" means a member of an arbitration panel established under Article 3.7 (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 any Party that requests the establishment of an arbitration panel under Article 3.5 (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 3.2 (Scope);
 - (h) "proceedings" means, unless otherwise specified, dispute settlement proceedings of an arbitration panel under Section A (Resolution of Disputes between Parties) of Chapter 3 (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 European Commission, 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 an official legal holiday of Viet Nam or of the Union, the document shall be deemed received on the next business day.

Commencing the Arbitration

8. If pursuant to Article 3.7 (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 3.7 (Establishment of the Arbitration Panel) and to Rules 22, 23 and 49 an arbitrator is selected by lot and there are two chairpersons of the 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.
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 3.7 (Establishment of the Arbitration Panel) shall confirm the availability to serve as an arbitrator to the Committee within five days of the date in 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 3.6 (Terms of Reference of the 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 the authority to the chairperson authority to make administrative and procedural decisions.
16. Unless otherwise provided for in Chapter 3 (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 Section A (Resolution of Disputes between Parties) of Chapter 3 (Dispute Settlement) and Annexes 7 (Rules of Procedure), 8 (Code of Conduct for Arbitrators and Mediators) and 9 (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 Section A (Resolution of Disputes between Parties) of Chapter 3 (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 arbitration proceedings an arbitrator is unable to participate, withdraws, or has to be replaced because the arbitrator does not comply with the requirements of Annex 8 (Code of Conduct for Arbitrators and Mediators), a replacement shall be selected in accordance with Article 3.7 (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 8 (Code of Conduct for Arbitrators and Mediators) and for that reason should be replaced, that Party should notify the other Party within 15 days from when it obtained evidence of the circumstances underlying the arbitrator's material violation of Annex 8 (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 8 (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 3.7 (Establishment of the Arbitration Panel) and Rules 8 to 11.

If the Parties fail to agree on the need to replace an arbitrator, either 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 Annex 8 (Code of Conduct for Arbitrators and Mediators) and for that reason should be replaced, the new arbitrator shall be selected in accordance with Article 3.7 (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 8 (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 3.7 (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 is referred to one of the other persons remaining on the sub-list of chairpersons established under subparagraph 1(c) of Article 3.23 (List of Arbitrators). The name of that person shall be drawn by lot by the chairperson of the Trade Committee, or the chairperson'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 8 (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 3.23 (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 for which 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 39 and 40.

42. The arbitration panel shall list in its ruling all the submissions it has received that conform to Rules 41 and 42. 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 Section A (Resolution of Disputes between Parties) of Chapter 3 (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 3.3 (Consultations), and no later than the date of the meeting referred to in paragraph 2 of Article 3.8 (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. Either 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 are also applicable to proceedings under Articles 3.3 (Consultations), 3.13 (Reasonable Period of Time for Compliance), 3.14 (Review of Measure Taken to Comply with the Final Report), 3.15 (Temporary Remedies in Case of Non-Compliance) and 3.16 (Review of Measure Taken to Comply After the Adoption of Temporary Remedies for Non-Compliance). In that case, 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.

CODE OF CONDUCT FOR ARBITRATORS AND MEDIATORS

Definitions

1. For the purposes of this Code of Conduct:
 - (a) "arbitrator" means a member of an arbitration panel established under Article 3.7 (Establishment of the Arbitration Panel);
 - (b) "assistant" means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator;
 - (c) "candidate" means an individual whose name is on the list of arbitrators referred to in Article 3.23 (List of Arbitrators) and who is under consideration for selection as a member of an arbitration panel under Article 3.7 (Establishment of the Arbitration Panel);
 - (d) "mediator" means a person who conducts a mediation procedure in accordance with Annex 9 (Mediation Mechanism);

- (e) "proceedings", unless otherwise specified, means dispute settlement proceedings of an arbitration panel under Section A (Resolution of Disputes between Parties) of Chapter 3 (Dispute Settlement); and
- (f) "staff", in respect of an arbitrator, means a person under the direction and control of the arbitrator, other than assistants.

Responsibilities

- 2. Every candidate and arbitrator shall avoid impropriety and the appearance of impropriety, be 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. Former arbitrators shall comply with the obligations set out in Rules 15 to 18 of this Code of Conduct.

Disclosure Obligations

- 3. Prior to the appointment as an arbitrator under Section A (Resolution of Disputes between Parties) of Chapter 3 (Dispute Settlement), a candidate shall disclose any interests, relationships, or matters, that are likely to affect that candidate's independence or impartiality, or that might reasonably create an appearance of impropriety or bias in the proceedings. To that end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships or matters.

4. A candidate or arbitrator shall communicate, in writing, matters concerning actual or potential violations of this Code of Conduct to the Committee for consideration by the Parties.
5. Once appointed, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in Rule 3 of this Code of Conduct and shall disclose them by informing the Committee, in writing, for consideration by the Parties. The disclosure obligation is a continuing duty which requires an arbitrator to disclose any such interests, relationships or matters that may arise during any stage of the proceedings.

Duties of Arbitrators

6. An arbitrator shall be available to perform, and shall perform, his duties thoroughly, expeditiously, and with fairness and diligence, throughout the course of the proceedings.
7. An arbitrator shall consider only those issues raised in the proceedings and necessary for a ruling and shall not delegate this duty to any other person.
8. An arbitrator shall take all appropriate steps to ensure that his assistant and staff are aware of, and comply with, Rules 2, 3, 4, 5, 16, 17 and 18 of this Code of Conduct.
9. An arbitrator shall not engage in *ex parte* contacts concerning the proceedings.

Independence and Impartiality of Arbitrators

10. An arbitrator shall avoid creating an appearance of bias and shall not be influenced by self-interest, outside pressure, political considerations, public clamour and loyalty to a Party or fear of criticism.
11. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his duties.
12. An arbitrator shall not use his position on the arbitration panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence him.
13. An arbitrator shall not allow financial, business, professional, personal or social relationships or responsibilities to influence his conduct or judgment.
14. An arbitrator shall avoid entering into any relationship or acquiring any financial interest that is likely to affect his impartiality or that might reasonably create an appearance of impropriety or bias.

Obligations of Former Arbitrators

15. All former arbitrators shall avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decisions or rulings of the arbitration panel.

Confidentiality

16. No arbitrator or former arbitrator shall at any time disclose or use any non-public information concerning proceedings or acquired during proceedings except for the purposes of those proceedings and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interest of others.
17. An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with Section A (Resolution of Disputes between Parties) of Chapter 3 (Dispute Settlement).
18. An arbitrator or a former arbitrator shall not disclose the deliberations of an arbitration panel, or any arbitrator's view at any time.

Expenses

19. Each arbitrator shall keep a record and render a final account of the time devoted to the procedure and of his expenses, as well as the time and expenses of his assistant and staff.

Mediators

20. This Code of Conduct applies to mediators, *mutatis mutandis*.

MEDIATION MECHANISM

ARTICLE 1

Objective

The objective of this Annex is to facilitate the finding of mutually agreed solutions through a comprehensive and expeditious procedure with the assistance of a mediator, referred to in Article 3.4 (Mediation Mechanism).

SECTION A

MEDIATION PROCEDURE

ARTICLE 2

Request for Information

1. Before the initiation of the mediation procedure, a Party may request, at any time and in writing, information regarding a measure adversely affecting investment between the Parties. The Party to which such request is made shall provide, within 20 days, a written response containing its comments on the information contained in the request.

2. Where the responding Party considers that a response within 20 days is not practicable, it shall inform the requesting Party of the reasons for not meeting that deadline, together with an estimate of the shortest period within which it will be able to provide its response.

ARTICLE 3

Initiation of the Mediation Procedure

1. A Party may at any time request that the Parties enter into a mediation procedure. Such request shall be addressed to the other Party in writing. The request shall be sufficiently detailed, clearly present the concerns of the requesting Party and shall:
 - (a) identify the specific measure at issue;
 - (b) provide a statement of the alleged adverse effects on investment between the Parties that the requesting Party considers the measure has or could have; and
 - (c) explain how the requesting Party considers that those effects are linked to the measure.
2. The mediation procedure may only be initiated by mutual agreement of the Parties. The Party to which a request pursuant to paragraph 1 is addressed shall give sympathetic consideration to the request and reply by accepting or rejecting it in writing within 10 days of the date of its receipt.

ARTICLE 4

Selection of the Mediator

1. Upon launch of the mediation procedure, the Parties shall endeavour to agree on a mediator no later than 15 days after the date of receipt of the reply referred to in paragraph 2 of Article 3 (Initiation of the Mediation Procedure) of this Annex.
2. In the event that the Parties are unable to agree on a mediator within the time limit laid down in paragraph 1, either Party may request the chairperson of the Committee, or the chairperson's delegate, to select the mediator by lot from the list established under Article 3.23 (List of Arbitrators). Representatives of the Parties shall be invited, with due notice, to be present when lots are drawn. In any event, the lot shall be carried out with the Party or Parties that are present.
3. The chairperson of the Committee, or the chairperson's delegate, shall select the mediator within five working days of the reply referred to in paragraph 2 by either Party.
4. Should the list provided for in Article 3.23 (List of Arbitrators) not be established at the time a request is made pursuant to Article 3 (Initiation of the Mediation Procedure) of this Annex, the mediator shall be drawn by lot from the individuals who have been formally proposed by one or both of the Parties.
5. A mediator shall not be a citizen of either Party, unless the Parties agree otherwise.

6. The mediator shall assist, in an impartial and transparent manner, the Parties in bringing clarity to the measure and its possible trade effects, and in reaching a mutually agreed solution. Annex 8 (Code of Conduct for Arbitrators and Mediators) applies to mediators *mutatis mutandis*. Rules 3 to 7 (Notifications) and 44 to 48 (Translation and Interpretation) of Annex 7 (Rules of Procedure) apply *mutatis mutandis*.

ARTICLE 5

Rules of the Mediation Procedure

1. Within 10 days of the date of appointment of the mediator, the Party having invoked the mediation procedure shall present, in writing, a detailed description of the problem to the mediator and to the other Party, in particular of the operation of the measure at issue and its trade effects. Within 20 days of the date of delivery of that description, the other Party may provide, in writing, its comments to the description of the problem. Either Party may include in its description or comments any information that it deems relevant.
2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned and its possible trade effects. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the Parties. Before seeking the assistance of, or consulting with, relevant experts and stakeholders, the mediator shall consult with the Parties.

3. The mediator may offer advice and propose a solution for the consideration of the Parties which may accept or reject the proposed solution or may agree on a different solution. The mediator shall not advise or give comments on the consistency of the measure at issue.
4. The mediation procedure shall take place in the territory of the Party to which the request was addressed or, by mutual agreement, in any other location or by any other means.
5. The Parties shall endeavour to reach a mutually agreed solution within 60 days of the appointment of the mediator. Pending a final agreement, the Parties may consider possible interim solutions, especially if the measure relates to perishable goods.
6. The solution may be adopted by means of a decision of the Committee. Either Party may make such solution subject to the completion of any necessary internal procedures. Mutually agreed solutions shall be made publicly available. The version disclosed to the public may not contain any information that a Party has designated as confidential.
7. Upon request of the Parties, the mediator shall issue to the Parties, in writing, a draft factual report, providing a brief summary of:
 - (a) the measure at issue in the mediation procedure;
 - (b) the procedures followed; and

- (c) any mutually agreed solution reached as the final outcome of the mediation procedure, including possible interim solutions.

The mediator shall provide 15 days for the Parties to comment on the draft factual report.

After considering the comments of the Parties submitted within that period, the mediator shall issue, in writing, a final factual report to the Parties within 15 days. The factual report shall not include any interpretation of this Agreement.

8. The mediation procedure shall be terminated by:

- (a) the adoption of a mutually agreed solution by the Parties, on the date of its adoption;
- (b) mutual agreement of the Parties at any stage of the mediation procedure, on the date of that agreement;
- (c) 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
- (d) 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.

SECTION B

IMPLEMENTATION

ARTICLE 6

Implementation of a Mutually Agreed Solution

1. Where the Parties have agreed to a solution, each Party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.
2. The implementing Party shall inform the other Party in writing of any steps or measures taken to implement the mutually agreed solution.

SECTION C

GENERAL PROVISIONS

ARTICLE 7

Confidentiality and Relationship to Dispute Settlement

1. Unless the Parties agree otherwise, and without prejudice to paragraph 6 of Article 5 (Rules of the Mediation Procedure) of this Annex, all steps of the mediation procedure, including any advice or proposed solution, are confidential. However, either Party may disclose to the public the fact that mediation is taking place.

2. The mediation procedure is without prejudice to the Parties' rights and obligations under Chapter 3 (Dispute Settlement) or any other agreement.
3. Consultations under Chapter 3 (Dispute Settlement) are not required before initiating the mediation procedure. However, a Party should avail itself of the other relevant cooperation or consultation provisions in this Agreement before initiating the mediation procedure.
4. A Party shall not rely on or introduce as evidence in other dispute settlement procedures under this Agreement or any other agreement, nor shall a panel take into consideration:
 - (a) positions taken by the other Party in the course of the mediation procedure or information gathered under paragraph 2 of Article 5 (Rules of the Mediation Procedure) of this Annex;
 - (b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation; or
 - (c) advice given or proposals made by the mediator.
5. A mediator may not serve as an arbitrator or panellist in dispute settlement proceedings under this Agreement or under the WTO Agreement involving the same matter for which he has been a mediator.

ARTICLE 8

Time Limits

Any time limit referred to in this Annex may be modified by mutual agreement between the Parties.

ARTICLE 9

Costs

1. Each Party shall bear its own expenses derived from the participation in the mediation procedure.
 2. The Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of a mediator. The remuneration of a mediator shall be the same as that provided for the chairperson of an arbitration panel in accordance with Rule 12 of Annex 7 (Rules of Procedure).
-

**MEDIATION MECHANISM FOR THE RESOLUTION OF DISPUTES
BETWEEN INVESTORS AND PARTIES**

ARTICLE 1

Objective

The objective of the mediation mechanism is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator referred to in Article 3.31 (Mediation).

SECTION A

PROCEDURE UNDER THE MEDIATION MECHANISM

ARTICLE 2

Initiation of the Procedure

1. Either disputing party may request, at any time, the commencement of a mediation procedure. Such request shall be addressed to the other party in writing.

2. Where the request concerns an alleged breach of this Agreement by the authorities of the Union or by the authorities of a Member State of the Union it shall be addressed to the respondent as determined pursuant to Article 3.32 (Notice of Intent to Submit a Claim). If no respondent has been determined, it shall be addressed to the Union. Where the request is accepted, it shall specify whether the Union or the Member State of the Union concerned is a party to the mediation¹.
3. The disputing party to which the request is addressed shall give sympathetic consideration to the request and accept or reject it in writing within 45 days or, where such request is submitted after a request for consultation has been submitted pursuant to Article 3.30 (Consultations), within 30 working days of its receipt.
4. The request shall contain:
 - (a) a summary of the differences or disputes, including, where appropriate, an identification of relevant legal instruments sufficient to identify the matter giving rise to the request;
 - (b) the names and contact details of the requesting party and its representatives; and

¹ For greater certainty, where the request concerns treatment by the Union, the party to the mediation shall be the Union and any Member State of the Union concerned shall be fully associated in the mediation. Where the request concern exclusively treatment by a Member State of the Union, the party to the mediation shall be the Member State of the Union concerned, unless it requests the Union to be party.

- (c) either a reference to the agreement to mediate or an invitation to the other disputing party or parties to mediate under this mediation mechanism.

ARTICLE 3

Selection of the Mediator

1. If both disputing parties agree to a mediation procedure, the disputing parties shall endeavour to agree on the choice of a mediator within 15 working days from the receipt of the reply to the request.
2. If the disputing parties cannot agree on the choice of the mediator within the established time frame, either disputing party may request the President of the Tribunal to draw by lot and appoint a mediator from among the Members of the Tribunal who are neither nationals of a Member State of the Union, nor of Viet Nam.
3. The President of the Tribunal shall appoint the mediator within five working days of the request referred to in paragraph 2.
4. The mediator shall assist, in an impartial and transparent manner, the disputing parties in reaching a mutually agreed solution.

ARTICLE 4

Rules of the Mediation Procedure

1. As soon as practicable following the mediator's designation, the mediator shall discuss with the disputing parties, whether in person, by telephone or by any other means of communication:
 - (a) the conduct of the mediation, in particular any outstanding procedural issues such as the languages and location of the mediation sessions;
 - (b) a provisional timetable for the conduct of the mediation;
 - (c) any legal disclosure obligation that may be relevant to the conduct of the mediation;
 - (d) whether the disputing parties wish to agree in writing not to commence or not to continue any other dispute settlement proceedings relating to the differences or disputes that are subject of the mediation while mediation is pending;
 - (e) whether special arrangements for the approval of a settlement agreement need to be made; and
 - (f) the financial arrangements, such as the calculation and payment of the mediator's fees and expenses in accordance with Article 8 (Costs) of this Annex.

2. The mediator may decide on the most appropriate way of bringing clarity to the measure at issue. In particular, the mediator may organise meetings between the disputing parties, consult the disputing parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the disputing parties. However, before seeking the assistance of or consulting with relevant experts and stakeholders, the mediator shall consult with the disputing parties.
3. The mediator may offer advice to, and propose a solution for the consideration of, the disputing parties which may accept or reject the proposed solution or may agree on a different solution. However, the mediator shall not advise or give comments on the consistency of the measure at issue with this Agreement.
4. The procedure shall take place in the territory of the Party concerned or, by mutual agreement, in any other location or by any other means.
5. Subject to subparagraph 1(b), the disputing parties shall endeavour to reach a mutually agreed solution within 60 days from the appointment of the mediator. Pending a final agreement, the disputing parties may consider possible interim solutions.
6. Either the Union, a Member State of the Union or Viet Nam, when acting as a party to a mediation procedure, may make publicly available mutually agreed solutions, subject to the redaction of any information designated as confidential or protected.

7. The procedure shall be terminated by:

- (a) the adoption of a mutually agreed solution by the disputing parties, on the date of adoption;
- (b) a written declaration of the mediator, after consultation with the disputing parties, that further efforts at mediation would be to no avail; or
- (c) written notice of a disputing party.

SECTION B

IMPLEMENTATION

ARTICLE 5

Implementation of a Mutually Agreed Solution

1. Where a solution has been agreed, each disputing party shall endeavour to take the measures necessary to implement the mutually agreed solution within the agreed timeframe.
2. The implementing disputing party shall inform the other disputing party in writing of any steps or measures taken to implement the mutually agreed solution.

3. On request of the disputing parties, the mediator shall issue to the disputing parties, in writing, a draft factual report, providing a brief summary of:
 - (a) the measure at issue in these procedures;
 - (b) the procedures followed; and
 - (c) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions.
4. The mediator shall provide the disputing parties with 15 working days to comment on the draft factual report. After considering the comments of the disputing parties submitted within that period, the mediator shall submit, in writing, a final factual report to the disputing parties within 15 working days. The factual report shall not include any interpretation of this Agreement.

SECTION C

GENERAL PROVISIONS

ARTICLE 6

Relationship to Dispute Settlement

1. The procedure under this mediation mechanism is not intended to serve as a basis for dispute settlement procedures under this Agreement or any other agreement. A disputing party shall not rely on or introduce as evidence in such dispute settlement procedures, nor shall any adjudicate body take into consideration:
 - (a) positions taken by a disputing party in the course of the mediation procedure;
 - (b) the fact that a disputing party has indicated its willingness to accept a solution to the measure subject to mediation; or
 - (c) advice given or proposals made by the mediator.
2. Subject to any agreement pursuant to subparagraph 1(d) of Article 4 (Rules of the Mediation Procedure) of this Annex, the mediation mechanism is without prejudice to the rights and obligations of the Parties and the disputing parties under Chapter 3 (Dispute Settlement).

3. Unless the disputing parties agree otherwise, and without prejudice to paragraph 6 of Article 4 (Rules of the Mediation Procedure) of this Annex, all steps of the procedure, including any advice or proposed solution, shall be confidential. However, any disputing party may disclose to the public that mediation is taking place.

ARTICLE 7

Time Limits

Any time limit referred to in this Annex may be modified by mutual agreement between the disputing parties.

ARTICLE 8

Costs

1. Each disputing party shall bear its own expenses derived from the participation in the mediation procedure.
2. The disputing parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the mediator. Remuneration of the mediator shall be in accordance with that provided for the Members of the Tribunal under paragraph 16 of Article 3.38 (Tribunal).

CODE OF CONDUCT FOR MEMBERS OF THE TRIBUNAL,
MEMBERS OF THE APPEAL TRIBUNAL AND MEDIATORS

ARTICLE 1

Definitions

For the purposes of this Code of Conduct:

- (a) "Member" means a Member of the Tribunal or a Member of the Appeal Tribunal established pursuant to Section B (Resolution of Disputes between Investors and Parties);
- (b) "mediator" means a person who conducts the mediation procedure in accordance with Article 3.31 (Mediation) and Annex 10 (Mediation Mechanism for Disputes between Investors and Parties);
- (c) "candidate" means an individual who is under consideration for selection as a Member of the Tribunal or a Member of the Appeal Tribunal;
- (d) "assistant" means a person who, under the terms of appointment of a member, assists the member in his research or supports him in his duties;

- (e) "staff", in respect of a member, means persons under the direction and control of the member, other than assistants.

ARTICLE 2

Responsibilities to the Process

Every candidate and every Member shall avoid impropriety and the appearance of impropriety, shall be independent and impartial and shall avoid direct and indirect conflicts of interest.

ARTICLE 3

Disclosure Obligations

1. Prior to their appointment, candidates shall disclose to the Parties any past and present interest, relationship or matter that is likely to affect their independence or impartiality or that might reasonably create an appearance of impropriety or bias. To that end, a candidate shall make all reasonable efforts to become aware of any such interest, relationship or matter.
2. Members shall communicate matters concerning actual or potential violations of this Code of Conduct in writing to the disputing parties.

3. Members shall at all times continue to make all efforts to become aware of any interest, relationship or matter referred to in paragraph 1. Members shall disclose such interests, relationships or matters to the disputing parties.¹

ARTICLE 4

Duties of Members

1. Members shall perform their duties thoroughly and expeditiously throughout the course of the proceedings and shall do so with fairness and diligence.
2. Members shall consider only those issues raised in the proceedings which are necessary for a ruling and shall not delegate this duty to any other person.
3. Members shall take all appropriate steps to ensure that their assistants and staff are aware of, and comply with, Articles 2, 3, 5 and 7 of this Code of Conduct.
4. Members shall not discuss any aspect of the subject matter of the proceedings with a disputing party or the disputing parties in the absence of the other members of the division of the Tribunal or the Appeal Tribunal.

¹ For greater certainty, this obligation does not extend to information which is already in the public domain or was known, or should have reasonably been known, by all disputing parties.

ARTICLE 5

Independence and Impartiality of Members

1. Members shall be independent and impartial and avoid creating an appearance of bias or impropriety and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or disputing party or fear of criticism.
2. Members shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere or appear to interfere with the proper performance of their duties.
3. Members shall not use their position as a member to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence them.
4. Members shall not allow financial, business, professional, family or social relationships or responsibilities to influence their conduct or judgment.
5. Members shall avoid entering into any relationship or acquiring any financial interest that is likely to affect their impartiality or that might reasonably create an appearance of impropriety or bias.¹

¹ For greater certainty, the fact that a Member receives an income from a government or has a family relationship with a person who receives an income from the government shall not in itself be considered to be inconsistent with paragraph 2 and 5.

ARTICLE 6

Obligations of Former Members

1. All former members shall avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decisions or awards of the Tribunal or the Appeal Tribunal.
2. Without prejudice to paragraph 5 of Article 3.38 (Tribunal) and paragraph 9 of Article 3.39 (Appeal Tribunal), members shall undertake that after the end of their term, they shall not become involved in:
 - (a) investment disputes which were pending before the Tribunal or the Appeal Tribunal before the end of their term;
 - (b) investment disputes with which they dealt with as members of the Tribunal or the Appeal Tribunal and other disputes that have matters of fact in common with such disputes or arise out of the same events and circumstances as such disputes.
3. Members shall undertake that for a period of three years after the end of their term, they shall not act as representatives of one of the disputing parties in investment disputes before the Tribunal or the Appeal Tribunal.

4. If the President of the Tribunal or of the Appeal Tribunal is informed or otherwise becomes aware that a former Member of the Tribunal or of the Appeal Tribunal, respectively, is alleged to have acted inconsistently with the obligations set up in paragraphs 1 to 3, the President shall examine the matter, provide the opportunity to the former member to be heard, and, after verification, inform thereof:
- (a) the professional body or other such institution with which that former Member is affiliated;
 - (b) the Parties; and
 - (c) the President of any other relevant investment tribunal or appeal tribunal in view of the initiation of appropriate measures.

The President of the Tribunal or of the Appeal Tribunal shall make public its decision to take any actions referred to in subparagraphs (a) to (c), together with the reasons therefore.

ARTICLE 7

Confidentiality

1. Members and former Members shall not disclose or use at any time any non-public information concerning proceedings or acquired during proceedings, except for the purposes of the proceedings, and shall not, in any event, disclose or use such information to gain personal advantage or advantage for others or to adversely affect the interest of others.

2. Members shall not disclose a decision or award or parts thereof prior to its publication in accordance with the transparency provisions of Article 3.36 (Transparency of Proceedings).
3. Members and former Members shall not disclose at any time the deliberations of the Tribunal or the Appeal Tribunal, or any member's views, whatever they may be.

ARTICLE 8

Expenses

Each Member shall keep a record and render a final account of the time devoted to the procedure and of the expenses incurred.

ARTICLE 9

Mediators

The rules set out in this Code of Conduct as applying to Members or former Members apply, *mutatis mutandis*, to mediators.

ARTICLE 10

Consultative Panel

1. The President of the Tribunal and the President of the Appeal Tribunal shall be assisted by a Consultative Panel for ensuring the proper application of this Code of Conduct, of Article 3.40 (Ethics) and for the execution of any other task, where so provided.
 2. The Consultative Panel shall be composed of the respective Vice-Presidents and of the two most senior Members of the Tribunal or of the Appeal Tribunal.
-

CONCURRING PROCEEDINGS

1. Notwithstanding paragraph 1 of Article 3.34 (Other Claims), an investor of the EU Party shall not submit to the Tribunal under Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Dispute Settlement) a claim that Viet Nam has breached a provision referred to in Article 2.1 (Scope) if the investor has submitted a claim alleging a breach of that same provision referred to in Article 2.1 (Scope) in proceedings before a court or administrative tribunal of Viet Nam or any international arbitration.¹

¹ The fact that an investor has submitted a claim that Viet Nam has breached a provision of Chapter 2 in proceedings before a court or administrative tribunal of Viet Nam or any international arbitration with respect to one of its investments does not prevent the same investor from submitting a claim alleging a breach of the same provisions to the Tribunal under Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Dispute Settlement) with respect to its other investments where such other investment is allegedly affected by the same measure.

2. Notwithstanding paragraphs 2 and 3 of Article 3.34 (Other Claims), in the event that Viet Nam is the respondent, an investor of the EU Party shall not submit a claim to the Tribunal under Section B (Resolution of Disputes between Investors and Parties) of Chapter 3 (Dispute Settlement) that a measure is inconsistent with the provisions of Chapter 2 if any person who directly or indirectly controls or is directly or indirectly controlled by the investor (hereinafter referred to as "related person") has submitted a claim to the Tribunal or any other domestic or international court or tribunal alleging a breach of the same provisions, with respect to the same investment and:
 - (a) the claim of that related person was addressed by an award, judgment, decision or other settlement; or
 - (b) the claim of that related person is pending and that person has not withdrawn such pending claim.
3. Claims that do not fall into the scope of paragraph 1 or 2 of this Annex shall be subject to Article 3.34 (Other Claims).

WORKING PROCEDURES FOR THE APPEAL TRIBUNAL

1. The working procedures of the Appeal Tribunal established in accordance with paragraph 10 of Article 3.29 (Appeal Tribunal) shall include and address, *inter alia*:
 - (a) practical arrangements relating to the deliberations of the divisions of the Appeal Tribunal and to the communication between the members of the Appeal Tribunal;
 - (b) arrangements for the service of documents and of supporting documentation, including rules on the correction of clerical errors in such documents;
 - (c) procedural aspects relating to the temporary suspension of proceedings in the event of death, resignation, incapacity or removal of a member of the Appeal Tribunal from a division or from the Appeal Tribunal;
 - (d) arrangements for the rectification of clerical errors in decisions of the divisions of the Appeal Tribunal;
 - (e) arrangements for the joinder of two or more appeals relating to the same provisional award; and

(f) arrangements for the language of the appeal procedure which shall, in principle, be conducted in the same language as the proceedings before the Tribunal which has rendered the provisional award subject to appeal.

2. The working procedures may also include guiding principles with regard to the following aspects which may subsequently be addressed through procedural orders of the divisions of the Appeal Tribunal:

- (a) indicative timelines and the sequencing of submissions to and hearings of the divisions of the Appeal Tribunal;
- (b) logistical aspects relating to the conduct of the proceedings, such as the places of deliberations and hearings of the divisions of the Appeal Tribunal and the modalities of representation of the disputing parties; and
- (c) preliminary procedural consultations and possible pre-hearing conferences between a division and the disputing parties.
