



Council of the  
European Union

Brussels, 19 October 2018  
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## PROPOSAL

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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) 691 final - ANNEX 8
Subject:	ANNEX to the Proposal for a Council Decision on the conclusion of the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam

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Delegations will find attached document COM(2018) 691 final - ANNEX 8.

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Encl.: COM(2018) 691 final - ANNEX 8



Brussels, 17.10.2018  
COM(2018) 691 final

ANNEX 8

**ANNEX**

*to the*

**Proposal for a Council Decision**

**on the conclusion of the Free Trade Agreement between the European Union and the  
Socialist Republic of Viet Nam**

SPECIFIC RULES FOR VIET NAM  
ON STATE-OWNED ENTERPRISES,  
ENTERPRISES GRANTED SPECIAL RIGHTS OR PRIVILEGES,  
AND DESIGNATED MONOPOLIES

1. Chapter 11 (State-Owned Enterprises, Enterprises Granted Special Rights or Privileges, and Designated Monopolies) does not apply to the adoption, enforcement or implementation of the privatisation, equitisation, restructuring or divestment of assets owned or controlled by the Government of Viet Nam.
2. Chapter 11 (State-Owned Enterprises, Enterprises Granted Special Rights or Privileges, and Designated Monopolies) does not apply to measures by the Government of Viet Nam with a view to ensuring the economic stability in Viet Nam. To that end, the Government of Viet Nam may require or direct a state-owned enterprise or a designated monopoly to sell or purchase at a regulated price, in a quantity or on terms and conditions other than those which that enterprise or designated monopoly could decide on the basis of commercial consideration, subject to its laws, regulations or governmental measures.

3. Chapter 11 (State-Owned Enterprises, Enterprises Granted Special Rights or Privileges, and Designated Monopolies) does not apply to measures by the Government of Viet Nam relating to development issues in Viet Nam, such as income security and insurance, social security, social welfare, social development, social housing, poverty reduction, public education, public training, public health, and childcare, promoting the welfare and employment of ethnic minorities and people living in disadvantaged areas, provided that the activities undertaken to implement such measures do not circumvent Article 11.4 (Non-Discrimination and Commercial Considerations) with respect to the commercial activities of the enterprises and entities referred to in Article 11.1 (Definitions).
  
4. Article 11.4 (Non-Discrimination and Commercial Considerations) does not apply to the purchase of goods or services by a state-owned enterprise or a designated monopoly from Vietnamese small or medium-sized enterprises as defined by Viet Nam's laws and regulations if that purchase is made pursuant to domestic laws and regulations or a governmental measure.

5. Articles 11.4 (Non-Discrimination and Commercial Considerations) and 11.6 (Transparency) do not apply to the following enterprises, their subsidiaries and successors pursuing the same public mandate, engaged in, and limited to, the activities described below:

5.1. Viet Nam Oil and Gas Group (PETROVIETNAM)

Activities: Prospecting, exploration and exploitation of oil and gas and flight operation services for oil and gas activities.

5.2. Viet Nam Electricity (EVN) and any enterprise

Activities: Power generation by hydropower, nuclear power and security-related power generators; transmission; distribution of all types of electricity, power and alternatives or substitutes for electricity.

5.3. Viet Nam National Coal – Minerals Holding Corporation Limited (Vinacomin)

Activities: Sale of coal and minerals, pursuant to laws and regulations of Viet Nam.

#### 5.4. State Capital Investment Corporation (SCIC)<sup>1</sup>

Activities: Asset management, investment and related activities, using financial assets of the Government of Viet Nam.

#### 5.5. Debt and Asset Trading Corporation (DATC)

Activities related to the restructuring of debts pursuant to a law, regulation or governmental measure limited to the fulfilment of a public purpose or mandate.

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<sup>1</sup> For greater certainty, this provision does not include SCIC's portfolio investments. Within five years after the entry into force of this Agreement, SCIC shall endeavour to become a member of the International Forum of Sovereign Wealth Funds or endorse the Generally Accepted Principles and Practices ("Santiago Principles") issued by the International Working Group of Sovereign Wealth Funds, October 2008, or such other principles and practices as may be agreed by the Parties.

5.6. Airport Corporation of Viet Nam

Activities: Ground handling services.

5.7. State-owned enterprises in the printing, publishing, mass-communication and audio-visual services sectors

Activities: Any activities in the printing, publishing and mass-communication sectors; sale and purchase of audio-visual productions and distribution services.

LIST OF GEOGRAPHICAL INDICATIONS

Part A

Geographical Indications (GI) of the Union  
as referred to in Article 12.6 (Geographical Indications)

GI No	Designation Name	Product Class	Product
	Country of origin: Austria		
1	Steirisches Kürbiskernöl	Oils and animal fats	Pumpkin seed oil
2	Tiroler Speck	Fresh, frozen and processed meats	Bacon
3	Inländerrum	Spirit	Spirit
4	Jägertee/Jagertee/Jagatee	Spirit	Spirit



GI No	Designation Name	Product Class	Product
	Country of origin: Cyprus		
5	Ζιβανία/Τζιβανία/Ζιβάνα/Zivania	Spirit	Spirit
6	Κουμανδάρια/Commandaria	Wine	Wine
	Country of origin: Czech Republic		
7	České pivo	Beer	Beer
8	Českobudějovické pivo	Beer	Beer
9	Žatecký chmel	Hops	Hops
	Country of origin: Germany		
10	Bayerisches Bier	Beer	Beer
11	Lübecker Marzipan	Confectionery and baked products	Marzipan
12	Nürnberger Bratwürste; Nürnberger Rostbratwürste	Fresh, frozen and processed meats	Sausage
13	Münchener Bier	Beer	Beer
14	Schwarzwälder Schinken	Fresh, frozen and processed meats	Ham
	Country of origin: Germany, Austria, Belgium (German speaking community)		
15	Korn/Kornbrand	Spirit	Spirit

GI No	Designation Name	Product Class	Product
Country of origin: Germany			
16	Franken	Wine	Wine
17	Mittelrhein	Wine	Wine
18	Mosel	Wine	Wine
19	Rheingau	Wine	Wine
20	Rheinhessen	Wine	Wine
Country of origin: Denmark			
21	Danablu	Cheese	Cheese
Country of origin: Spain			
22	Antequera	Oils and animal fats	Olive oil
23	Azafrán de la Mancha	Spices	Saffron
24	Baena	Oils and animal fats	Olive oil
25	Cítricos Valencianos; Cítricos Valencians <sup>1</sup>	Fresh and processed fruits and nuts	Oranges, mandarins and lemons

<sup>1</sup> Varietal names containing or consisting of "Valencia" may continue to be used on similar product, provided the consumer is not misled on the nature of such term or the precise origin of product.

GI No	Designation Name	Product Class	Product
26	Jabugo	Dry-cured meats	Ham
27	Jamón de Teruel/Paleta de Teruel	Dry-cured meats	Ham
28	Jijona	Confectionery and baked products	Nougat
29	Priego de Córdoba	Oils and animal fats	Olive oil
30	Queso Manchego	Cheese	Cheese
31	Sierra de Segura	Oils and animal fats	Olive oil
32	Sierra Mágina	Oils and animal fats	Olive oil
33	Turrón de Alicante	Confectionery and baked products	Nougat
34	Brandy de Jerez	Spirit	Spirit
35	Pacharán navarro	Spirit	Spirit
36	Alicante	Wine	Wine
37	Bierzo	Wine	Wine
38	Cataluña	Wine	Wine
39	Cava	Wine	Wine

GI No	Designation Name	Product Class	Product
40	Empordà	Wine	Wine
41	Jerez-Xérès-Sherry	Wine	Wine
42	Jumilla	Wine	Wine
43	La Mancha	Wine	Wine
44	Málaga	Wine	Wine
45	Manzanilla-Sanlúcar de Barrameda	Wine	Wine
46	Navarra	Wine	Wine
47	Penedès	Wine	Wine
48	Priorat	Wine	Wine
49	Rías Baixas	Wine	Wine
50	Ribera del Duero	Wine	Wine
51	Rioja	Wine	Wine
52	Rueda	Wine	Wine
53	Somontano	Wine	Wine
54	Toro	Wine	Wine
55	Valdepeñas	Wine	Wine
56	Valencia	Wine	Wine

GI No	Designation Name	Product Class	Product
	Country of origin: Finland		
57	Suomalainen Vodka/Finsk Vodka/Vodka of Finland	Spirit	Spirit
	Country of origin: France		
58	Brie <sup>1</sup> de Meaux	Cheese	Cheese
59	Camembert <sup>2</sup> de Normandie	Cheese	Cheese
60	Canard à foie gras du Sud-Ouest (Chalosse, Gascogne, Gers, Landes, Périgord, Quercy)	Fresh, frozen and processed meats	Processed meat product of duck
61	Comté	Cheese	Cheese
62	Emmental <sup>3</sup> de Savoie	Cheese	Cheese
63	Jambon de Bayonne	Dry-cured meats	Ham
64	Pruneaux d'Agen; Pruneaux d'Agen mi-cuits	Fresh and processed fruits and nuts	Prunes

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<sup>1</sup> The protection of the term "brie" is not sought.

<sup>2</sup> The protection of the term "camembert" is not sought.

<sup>3</sup> The protection of the term "emmental" is not sought.

GI No	Designation Name	Product Class	Product
65	Reblochon; Reblochon de Savoie	Cheese	Cheese
66	Roquefort	Cheese	Cheese
67	Armagnac	Spirit	Spirit
68	Calvados	Spirit	Spirit
69	Cognac; Eau-de-vie de Cognac; Eau-de-vie des Charentes	Spirit	Spirit
70	Alsace/Vin d'Alsace	Wine	Wine
71	Anjou	Wine	Wine
72	Beaujolais	Wine	Wine
73	Bordeaux	Wine	Wine
74	Bourgogne	Wine	Wine
75	Chablis	Wine	Wine
76	Champagne	Wine	Wine
77	Châteauneuf-du-Pape	Wine	Wine
78	Languedoc	Wine	Wine
79	Côtes de Provence	Wine	Wine

GI No	Designation Name	Product Class	Product
80	Côtes du Rhône	Wine	Wine
81	Côtes du Roussillon	Wine	Wine
82	Graves	Wine	Wine
83	Bergerac	Wine	Wine
84	Haut-Médoc	Wine	Wine
85	Margaux	Wine	Wine
86	Médoc	Wine	Wine
87	Pomerol	Wine	Wine
88	Pays d'Oc	Wine	Wine
89	Saint-Emilion	Wine	Wine
90	Sauternes	Wine	Wine
91	Touraine	Wine	Wine
92	Ventoux	Wine	Wine
93	Val de Loire	Wine	Wine

GI No	Designation Name	Product Class	Product
Country of origin: Greece			
94	Ελιά Καλαμάτας <sup>1</sup> (transcription into Latin alphabet: Elia Kalamatas)	Table and processed olives	Table olive
95	Κασέρι (transcription into Latin alphabet: Kasseri)	Cheese	Cheese
96	Φέτα (transcription into Latin alphabet: Feta )	Cheese	Cheese
97	Καλαμάτα (transcription into Latin alphabet: Kalamata)	Oils and animal fats	Olive oil
98	Μαστίχα Χίου (transcription into Latin alphabet: Masticha Chiou)	Natural gums and resins	Natural gum and chewing gum
99	Σητεία Λασιθίου Κρήτης (transcription into Latin alphabet: Sitia Lasithiou Kritis)	Oils and animal fats	Olive oil
Country of origin: Greece, Cyprus			
100	Ούζο (transcription into Latin alphabet: Ouzo)	Spirit	Spirit

<sup>1</sup> The varietal name "Kalamata" may continue to be used on similar product, provided that the consumer is not misled on the nature of such term or the precise origin of product.



GI No	Designation Name	Product Class	Product
Country of origin: Greece			
101	Νεμέα (transcription into Latin Alphabet: Nemea)	Wine	Wine
102	Ρετσίνα Αττικής (transcription into Latin alphabet: Retsina Attikis)	Wine	Wine
103	Πελοποννησιακός (transcription into Latin alphabet: Peloponnese)	Wine	Wine
104	Σάμος (transcription into Latin Alphabet: Samos)	Wine	Wine
Country of origin: Croatia			
105	Dingač	Wine	Wine
Country of origin: Hungary			
106	Pálinka	Spirit	Spirit
107	Törkölypálinka	Spirit	Spirit
108	Tokaj/Tokaji	Wine	Wine
Country of origin: Ireland			
109	Irish Cream	Spirit	Spirit
110	Irish Whiskey/Uisce Beatha Eireannach/Irish Whisky	Spirit	Spirit

GI No	Designation Name	Product Class	Product
	Country of origin: Italy		
111	Aceto Balsamico di Modena	Vinegar	Vinegar
112	Asiago	Cheese	Cheese
113	Bresaola della Valtellina	Fresh, frozen and processed meats	Dried salted beef
114	Fontina	Cheese	Cheese
115	Gorgonzola	Cheese	Cheese
116	Grana Padano	Cheese	Cheese
117	Kiwi Latina	Fresh and processed fruits and nuts	Kiwi
118	Mela Alto Adige; Südtiroler Apfel	Fresh and processed fruits and nuts	Apple
119	Mortadella Bologna	Fresh, frozen and processed meats	Mortadella

GI No	Designation Name	Product Class	Product
120	Mozzarella <sup>1</sup> di Bufala Campana	Cheese	Cheese
121	Parmigiano Reggiano <sup>2</sup>	Cheese	Cheese
122	Pecorino <sup>3</sup> Romano	Cheese	Cheese
123	Prosciutto di Parma	Dry-cured meats	Ham
124	Prosciutto di San Daniele	Dry-cured meats	Ham
125	Prosciutto Toscano	Dry-cured meats	Ham
126	Provolone <sup>4</sup> Valpadana	Cheese	Cheese
127	Taleggio	Cheese	Cheese
128	Grappa	Spirit	Spirit
129	Acqui/Brachetto d'Acqui	Wine	Wine

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<sup>1</sup> The protection of the term "mozzarella" is not sought.

<sup>2</sup> The provisions of Article 6 shall in no way prejudice the right of any person to use, or to register in Viet Nam a trade mark containing or consisting of the term "parmesan". This does not apply in respect of any use that would mislead the public as to the geographical origin of the good.

<sup>3</sup> The protection of the term "pecorino" is not sought.

<sup>4</sup> The protection of the term "provolone" is not sought.

GI No	Designation Name	Product Class	Product
130	Asti	Wine	Wine
131	Barbaresco	Wine	Wine
132	Bardolino Superiore	Wine	Wine
133	Barolo	Wine	Wine
134	Brunello di Montalcino	Wine	Wine
135	Chianti	Wine	Wine
136	Conegliano Valdobbiadene - Prosecco	Wine	Wine
137	Prosecco	Wine	Wine
138	Dolcetto d'Alba	Wine	Wine
139	Franciacorta	Wine	Wine
140	Lambrusco di Sorbara	Wine	Wine
141	Lambrusco Grasparossa di Castelvetro	Wine	Wine
142	Marsala	Wine	Wine
143	Montepulciano d'Abruzzo	Wine	Wine
144	Sicilia	Wine	Wine
145	Soave	Wine	Wine
146	Toscana/Toscano	Wine	Wine
147	Veneto	Wine	Wine
148	Vino Nobile di Montepulciano	Wine	Wine

GI No	Designation Name	Product Class	Product
	Country of origin: Lithuania		
149	Originali lietuviška degtinė /Original Lithuanian vodka	Spirit	Spirit
	Country of origin: The Netherlands		
150	Gouda <sup>1</sup> Holland	Cheese	Cheese
	Country of origin: Belgium, Netherlands, France, Germany		
151	Genièvre/Jenever/Genever	Spirit	Spirit
	Country of origin: Poland		
152	Polish Cherry	Spirit	Spirit
153	Polska Wódka/Polish vodka	Spirit	Spirit
154	Wódka ziołowa z Niziny Północnopodlaskiej aromatyzowana ekstraktem z trawy żubrowej/Herbal vodka from the North Podlasie Lowland aromatised with an extract of bison grass	Spirit	Spirit

<sup>1</sup> The protection of the term "gouda" is not sought.

GI No	Designation Name	Product Class	Product
Country of origin: Portugal			
155	Pêra Rocha do Oeste	Fruit	Pear
156	Queijo S. Jorge	Cheese	Cheese
157	Alentejo	Wine	Wine
158	Dão	Wine	Wine
159	Douro	Wine	Wine
160	Madeira	Wine	Wine
161	Porto/Port/Oporto	Wine	Wine
162	Vinho Verde	Wine	Wine
Country of origin: Romania			
163	Cotnari	Wine	Wine
164	Dealu Mare	Wine	Wine
165	Murfatlar	Wine	Wine
Country of origin: Sweden			
166	Svensk Vodka/Swedish Vodka	Spirit	Spirit
Country of origin: Slovakia			
167	Vinohradnícka oblasť Tokaj	Wine	Wine
Country of origin: United Kingdom			
168	Scottish Farmed Salmon	Fish	Salmon
169	Scotch Whisky	Spirit	Spirit

Part B

Geographical Indications (GI) of Viet Nam  
as referred to in Article 12.6 (Geographical Indications)

GI No	Designation Name	Product Class	Product description
1	Phú Quốc	Fresh fish, molluscs, and crustaceans and products derived there from	Extract of fish
2	Mộc Châu	Spices	Tea
3	Buôn Ma Thuột	Spices	Coffee beans
4	Đoan Hùng	Fresh and processed fruits and nuts	Pomelo
5	Bình Thuận	Fresh and processed fruits and nuts	Dragon fruit
6	Lạng Sơn	Spices	Star aniseed
7	Thanh Hà	Fresh and processed fruits and nuts	Lychee
8	Phan Thiết	Fresh fish, molluscs, and crustaceans and products derived there from	Extract of fish

GI No	Designation Name	Product Class	Product description
9	Hải Hậu	Cereals	Rice
10	Vinh	Fresh and processed fruits and nuts	Orange
11	Tân Cương	Spices	Tea
12	Hồng Dân	Cereals	Rice
13	Lục Ngạn	Fresh and processed fruits and nuts	Lychee
14	Hòa Lộc	Fresh and processed fruits and nuts	Mango
15	Đại Hoàng	Fresh and processed fruits and nuts	Banana
16	Văn Yên	Spices	Cinnamon bark
17	Hậu Lộc	Fresh fish, molluscs, and crustaceans and products derived there from	Shrimp paste
18	Bắc Kạn	Fresh and processed fruits and nuts	Seedless persimmon
19	Phúc Trạch	Fresh and processed fruits and nuts	Pomelo
20	Bảy Núi	Cereals	Rice



GI No	Designation Name	Product Class	Product description
21	Trùng Khánh	Nuts	Chestnut
22	Bà Đen	Fresh and processed fruits and nuts	Custard apple
23	Nga Sơn		Dried sedge
24	Trà My	Spices	Cinnamon bark
25	Ninh Thuận	Fresh and processed fruits and nuts	Grape
26	Tân Triều	Fresh and processed fruits and nuts	Pomelo
27	Bảo Lâm	Fresh and processed fruits and nuts	Seedless persimmon
28	Bắc Kạn	Fresh and processed fruits and nuts	Mandarin
29	Yên Châu	Fresh and processed fruits and nuts	Mango
30	Mèo Vạc	Honey	Peppermint honey
31	Bình Minh	Fresh and processed fruits and nuts	Pomelo

GI No	Designation Name	Product Class	Product description
32	Hạ Long	Fresh fish, molluscs, and crustaceans and products derived there from	Grilled chopped cuttlefish
33	Bạc Liêu	Spices	Marine salt
34	Luận Văn	Fresh and processed fruits and nuts	Pomelo
35	Yên Tử	Flowers and ornamental plants	Yellow Apricot Blossom
36	Quảng Ninh	Fresh fish, molluscs, and crustaceans and products derived there from	Clam
37	Điện Biên	Cereals	Rice
38	Vĩnh Kim	Fresh and processed fruits and nuts	Star apple
39	Cao Phong	Fresh and processed fruits and nuts	Orange

**PRODUCT CLASSES**

1. "Fresh, frozen and processed meats" means products falling under Chapter 2 and heading 16.01 or 16.02 of the Harmonized System.
2. "Dry-cured meats" means dry cured meat products falling under Chapter 2 and heading 16.01 or 16.02 of the Harmonized System.
3. "Hops" means products falling under heading 12.10 of the Harmonized System.
4. "Fresh, frozen and processed fish products" means products falling under Chapter 3 and heading 16.03, 16.04 or 16.05 of the Harmonized System.
5. "Butter" means products falling under heading 04.05 of the Harmonized System.
6. "Cheeses" means products falling under heading 04.06 of the Harmonized System.

7. "Fresh and processed vegetable products" means products containing vegetables falling under Chapter 7 and Chapter 20 of the Harmonized System;
8. "Fresh and processed fruits and nuts" means products containing fruits falling under Chapter 8 and 20 of the Harmonized System.
9. "Spices" means products falling under Chapter 9 of the Harmonized System.
10. "Cereals" means products falling under Chapter 10 of the Harmonized System.
11. "Products of the milling industry" means products falling under Chapter 11 of the Harmonized System.
12. "Oilseeds" means products falling under Chapter 12 of the Harmonized System.
13. "Beverages from plant extracts" means products falling under heading 13.02 of the Harmonized System.
14. "Oils and animal fats" means products falling under Chapter 15 of the Harmonized System.

15. "Confectionery and baked products" means products falling under heading 17.04, 18.06, 19.04, or 19.05 of the Harmonized System.
16. "Pasta" means products falling under heading 19.02 of the Harmonized System.
17. "Table and processed olives" means products falling under heading 20.01 or 20.05 of the Harmonized System.
18. "Mustard paste" means products falling under sub-heading 2103.30 of the Harmonized System.
19. "Beer" means products falling under heading 22.03 of the Harmonized System.
20. "Vinegar" means products falling under heading 22.09 of the Harmonized System.
21. "Essential oils" means products falling under heading 33.01 of the Harmonized System.
22. "Spirits" mean products falling under heading 22.08 of the Harmonized System.

23. "Wines" mean products falling under heading 22.04 of the Harmonized System.
  24. "Fresh fish, molluscs, and crustaceans and products derived there from" mean products falling under Chapter 03 of the Harmonized System.
  25. "Gums and natural resins" mean products falling under heading 13.01 of the Harmonized System.
  26. "Honey" means products falling under heading 04.09 of the Harmonized System.
  27. "Flowers and ornamental plants" mean products falling under Chapter 6 of the Harmonized System.
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**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 the dispute 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 any 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 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.
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 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 percent 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 from when 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), 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 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 15-B (Code of Conduct for Arbitrators and Mediators), 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), 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 is 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 drawn 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), 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 taken to carry out the procedures provided for in Rules 21 to 23.

## 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 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 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 are also applicable 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). 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.
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**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 15.7 (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 15.23 (List of Arbitrators) and who is under consideration for selection as a member of an arbitration panel under Article 15.7 (Establishment of the Arbitration Panel);



- (d) "mediator" means a person who conducts a mediation procedure in accordance with Annex 15-C (Mediation Mechanism);
- (e) "proceedings", unless otherwise specified, means dispute settlement proceedings of an arbitration panel under Chapter 15 (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 Chapter 15 (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 Trade 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 Trade 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 judgement.
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 Chapter 15 (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 *mutatis mutandis* to mediators.

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**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.

## 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 trade or 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 request, at any time, 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 trade or investment between the Parties that the requesting Party considers the measure has, or will 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 chair of the Trade Committee, or the chair's delegate, to select the mediator by lot from the list established under Article 15.23 (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 chair of the Trade Committee, or the chair'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 15.23 (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. The Code of Conduct for Arbitrators and Mediators, contained in Annex 15-B (Code of Conduct for Arbitrators and Mediators), applies *mutatis mutandis* to mediators. Rules 3 to 7 (Notifications) and 44 to 48 (Translation and Interpretation) of the Rules of Procedure, contained in Annex 15-A (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 Trade 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 the Parties 15 days 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, any 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 15 (Dispute Settlement) or any other agreement.
3. Consultations under Chapter 15 (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 in accordance with that provided for the chairperson of an arbitration panel in Rule 12 of the Rules of Procedure, contained in Annex 15-A (Rules of Procedure).

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