



# DSB

# Rules of Procedure

# JUSTINIANUS MOOT COURTS 2019

## DISPUTE SETTLEMENT BODY OF THE WORLD TRADE ORGANIZATION

Republic of Korea

V.

United States of America

### RULES OF PROCEDURE

#### A. GENERAL STATEMENTS

##### Article 1: Definitions

The following definitions will apply for the entirety of Rules of Procedure:

**Court:** Refers to the Dispute Settlement Body of the World Trade Organization.

**Trial:** Refers to whole hearing of the Court.

**Advocate of Applicant:** Refers to the Advocate of Republic of Korea.

**Advocate of Respondent:** Refers to the Advocate of United States of America.

**Parties:** Refers to both Advocate of Applicant and Advocate of Respondent collectively.

**President:** Refers to the President Judge in the Court.

**Vice-President:** Refers to the Vice-President Judge in the Court.

**Board:** Refers to both President and Vice-President in the Court.

**Witnesses:** Refers to all witnesses which the Court accepts to be heard in testimony of witnesses.

**Press:** Collectively refers to press members of the Justinianus Moot Courts 2019.

**Appeal:** Refers to a challenge to a decision of the President or the Board, by Judges and Attorneys.

**Court Room:** Refers to The Court's venue.

**Speaker:** Refers to a member of the Court who has right to speak at the moment.

### **Article 2: Duties of the Secretariat**

The Secretariat shall receive, print and distribute decisions and judgments of the Dispute Settlement Body of the World Trade Organization to the members of the Court and generally perform all other work that the Court may require. For purposes of these rules, Academic Assistants, Secretary-General, and Under Secretaries-General who are designates and agents of the Secretary-General, are collectively referred to as the Secretariat. Members of the Secretariat may delegate their powers to their subordinates under the supervision of the Secretary-General.

### **Article 3: Interpretation**

Interpretation of the rules shall be reserved exclusively to the Secretary-General or designated members of the Secretariat. Such interpretation shall be in accordance with the philosophy and principles of Rules of Procedure, and in furtherance of its mission.

### **Article 4: Language**

English is the official written, spoken and working language of the conference. If a member wishes to present a document in any other language, the translation of this document in English must be provided to the Board. The Board will allow any such document to be distributed within the Court upon the Board's discretion.

### **Article 5: Credentials**

The credentials of all participants have been accepted upon registration. Actions relating to the modification of rights, privileges, or credentials of any member may not be initiated without the written consent of the Secretary-General. Any representative whose admission raises an objection by another member will provisionally be seated with the same rights as other representatives, pending a decision from the Secretary-General.

### **Article 6: Dress Code**

The dress code is formal business attire. This is mandatory during the JUSTINIANUS MOOT COURTS 2019.

### **Article 7: Statements by the Secretariat**

The Secretary-General or a member of the Secretariat designated by him/her may, at any time, make either written or oral statements to the Court.

### **Article 8: Electronic Devices**

Usage of any electronic devices including laptops and cell phones during sessions is in order only for the purpose of note taking, checking Court related documents, using dictionary, drafting the judgement, drafting individual opinions in the Court. It is strictly prohibited to use electronic devices to communicate other Members of the Court or people outside the Court.

### **Article 9: Message Papers**

Message papers are the means of communication between members not recognized to speak. Message Papers are to be distributed by administrative staff member in the Court Room. All messages must be in English and if deemed necessary, the Board has the authority to suspend note-passing.

### **Article 10: Quorum**

The quorum is met when simple majority of the registered Judges, and Attorneys for both party are present in each session.

The quorum shall be determined at the beginning of each session through a roll-call by the Board.

**Members who arrive to the sessions late, shall pass a message paper to the Board in order to be eligible to participate in the proceedings!**

## **B. COMPOSITION OF THE COURT**

### **Article 11: Composition of the Court**

The Court is composed of President, Vice-President, Rapporteur and two Attorneys for each party to the case and Judges of the Court.

### **Article 12: Board**

Court will have one President and one Vice-President and a Rapporteur as the moderator of debates and representative of the Secretariat in general.

Board will ensure the implementation of Rules of Procedure.

President and Vice-President shall vote along with and as equal to other Judges of the Court in both substantive and procedural voting procedures.

### **Article 13: Oaths and Taking Notes**

Rapporteur will be also responsible for taking notes of court proceedings, arguments of the both parties, substantive deliberations of Judges, testimonies of Witnesses, and procedural decisions taken by the Board. When needed, these notes will be used in deliberations and judgment writing.

Rapporteur shall also record the oaths of Judges, Attorneys and Witnesses before the commencement of the Trial, the opening statements and testimonies respectively.

- The oath for Judges shall go as follows:

*“I, Judge <Surname>, solemnly declare that I will perform my duties and exercise my powers as judge of the Dispute Settlement Body of the World Trade Organization; honorably, faithfully, impartially and consciously, and that I will respect the confidentiality of the deliberations”.*

- The oath for Attorneys and Witnesses shall go as follows:

*“I solemnly declare upon my conscious and honor that I will speak the truth, the whole truth and nothing but the truth”.*

### **Article 14: Judges**

Each judge shall make the solemn undertaking in Article 13/3 before the commencement of the proceedings. Should any judge refuse the undertaking, they will not be able to participate in the proceedings.

Judges are responsible for determining the applicable law and reaching a judgment. The final judgment of the Court will be written by Judges and announced by the President.

Each judge shall have one vote in substantive and procedural votes. *In procedural votings, you may not abstain, meaning that each one of you have to say yes or no. In substantial votings where judges vote about the substance of the matter, before the final voting, judges may abstain. But in final voting before writing the verdict, a judge may not abstain, meaning one should say yes or no.*

Judges, with respect to the solemn undertaking, are expected to be impartial during the proceedings. Should any judge fail to do so; official warning from the Board and the Secretariat will be in order respectively.

Judges may question Attorneys or Witnesses in the designated phases of the Trial.

Judges will draft a judgment in accordance with the verdict of the Jury.

### **Article 15: Attorneys**

Each attorney shall take the oath under Article 13/4. Should any attorney refuse to do so, they will not be able to participate in the proceedings.

Attorney of the Applicant is responsible for bringing charges on substantial grounds before the Court against the defendant, presenting its case through evidence material and testimonies of witnesses.

Attorney of the Respondent represent the defendant and is expected to defend their best interest presenting the case through evidence material and testimonies of witnesses.

Attorneys shall submit their memorial or counter-memorial to the Secretariat prior to oral proceedings. The Secretariat and the Board shall ensure that Judges are well aware of the content of the memorials.

Attorneys are expected to abide by the Rules of Procedure. The official warning procedure for Judges recognized in Article 14/4 shall apply to the Attorneys as well.

Attorneys will be required to submit their stipulations to the Court, after opening statements.

Attorneys do not have the right to vote in procedural or substantive processes. They may raise motions to alter speakers' time or Appeal the Board's decision in designated phases.

They may raise points of order, parliamentary inquiry, personal privilege and information.

They are the primary addressees of Section E of Rules of Procedure.

Attorneys shall make all of their statements **standing** in front of the Court *which means you have to raise before talking to any respectful judge*, during opening speeches, presentation of evidence and witness testimonies and while answering questions from directed by Judges.

### **C. ORAL PROCEEDINGS OF THE COURT**

#### **Article 16: Opening Statements**

After the solemn undertaking of Judges and oaths of Attorneys the Court shall proceed with the opening statements of Parties.

Applicant shall be the first to make an opening statement followed by Respondent.

The opening speech shall briefly summarize the arguments of each party mentioned in the written proceedings and what they will pursue during oral proceedings.

The time allocated for opening statements will be determined by the President equally for each party, before the commencement of speeches. Immediately after its announcement, attorneys may raise a motion to alter the speakers' time once. Should the Board accept the motion, the speakers' time will be altered for both Parties.

#### **Article 17: Presentation of Evidence**

Bilateral or multilateral agreements, reports, resolutions of international organizations, news articles, visuals, audio files or anything in essence that can help Attorneys to present their cases, shall be presented before the Trial as evidence. Each evidence material shall be submitted to the Court before its presentation to be formally recognized and presented.

The Board shall ensure that both Parties use the same amount of time during their presentations of evidence.

The opposing party may raise an objection of immaterial pursuant to Article 37, irrelevant of Article 39 and prejudicial of Article 42 or the Board may decide likewise. This decision must be

announced to the Court and is subject to Appeal by one of the Judges or Attorneys. Appeals will be elaborated in accordance with Rules of Procedure.

If a piece of evidence is deemed unacceptable, it can never be referred in the Trial.

### **Article 18: Questioning of the Attorneys by Judges**

After the presentation of evidence, Judges, the President and the Vice-President may ask questions to the Attorneys. The phase will be monitored by the Board. Judges, the President and the Vice-President may also ask questions between each evidence.

The Board may rule out any question or answer. The decision of the Board cannot be appealed.

The Judges may ask one question at a time, yet the number of questions per judge will not be limited. The Board may allow follow-up questions if the request is raised by the Judge whose question has just been answered. The Board shall have absolute discretion on this matter.

There shall not be a certain time limitation for this phase; yet the Board, in accordance with the flow of the discussions shall have the discretion to terminate questioning of Attorneys. The decision shall not be appealed.

### **Article 19: Testimony of Witnesses**

Witnesses shall be called upon by Parties to the Court with their identification and relevance to the case confirmed by the Board. Witnesses shall be called upon by Applicant and Respondent respectively.

Following the oaths of Witnesses, the Court proceeds with examination of witnesses which is composed of two parts: direct examination and cross examination.

During direct examination, Parties shall question their own witnesses **without leading questions**.

To indicate that the direct examination is finished; Attorneys shall say “your witness” directing the opposing party. President shall then give the floor to opposing party for cross examination.

During cross examination, Parties shall question unlimited amount of witness. The content of questions shall be limited with the answers given or statements made during direct examination.



Any other question may be subject to objection on competence grounds or ruled out by the Board. **Leading questions shall be in order during cross examination.**

To indicate that cross examination is finished; Attorneys shall say “no further questions” directing to the President. The floor shall then be open for questions of Judges to Witnesses.

Parties may also introduce other evidence material while examining a witness for the purpose of showing the item to the witness and asking about it.

Following the cross examination, Judges may ask questions to Witnesses under the Board’s moderation. However, the content of the questions shall not be limited with the answers given or statements made during direct examination. Also questions must not damage Witnesses’ identity.

There shall not be a certain time limitation for this phase; yet the Board, in accordance with the flow of the discussions, shall have the discretion to terminate it or warn Parties or Judges to conclude the questioning. The decision shall not be appealed.

Upon the motion of one Judge, with a simple majority, the witness may be re-called to the Court to be questioned by the Judges only. The content of the questioning shall be limited to the answers given in the previous testimony and only for clarification. The motion shall be raised through a message paper unless the Court is in a recess or deliberation.

#### **Article 20: Rebuttal**

Evidences presented, questions posed by the Judges and witness testimonies shall constitute the content of rebuttal. **Presentation of new evidence is strictly prohibited.**

Time allocation shall be decided by the Board, treating each party equally.

During and following the rebuttal, Judges shall have the opportunity to question Parties. Article 14 provisions shall apply to this phase.

#### **Article 21: Closing Statements**

Attorneys shall make closing statements at the end of the presentation of their respective cases.

During the closing statements, Parties shall briefly summarize what they have proven during the presentation of the case. Each statement should include a suggestion to the Judges for the final adjudication, in accordance with their memorials.

Respondent will be the last to make their closing statement.

Time allocation for opening statements shall apply to closing statements as well.

#### **D. RULES GOVERNING THE DELIBERATION OF THE JUDGES**

##### **Article 22: Judges' Deliberations**

Judges' deliberations are the periods embedded in between phases of the Trial and Judges discuss the merits of the case in private.

President shall dismiss Attorneys and Press from the Court Room prior to the commencement of deliberations.

The deliberations shall follow the Rules of Procedure of JUSTINIANUS MOOT COURTS in rules governing debate and points. Judges shall not be required to stand up during deliberations.

Judges' Deliberations will be held simultaneously.

The length of deliberations shall be determined by the President. Judges may raise a motion to alter deliberation time.

##### **Article 23: Yields**

A judge can yield his/her granted right to speak to another judge in one of two ways:

- Yield to another judge/President: Judge's remaining time will be offered to another judge. If the second judge accepts the yield, the President shall recognize the second judge for the remaining time. The second judge speaking may only yield back to the Board.
- Yield to Points of Information: Questioner will be selected by the President and limited to one question each. Follow-up questions will be allowed only at the discretion of the President.

Only Speaker's answer shall be deducted from the Speaker's remaining time.

#### **Article 24: Unmoderated Caucus**

A motion for an unmoderated caucus can be entertained any time when the floor is open.

In any case, duration of unmoderated caucus cannot exceed twenty minutes.

The motion for an unmoderated caucus requires simple majority of Judges to pass.

The Board may prematurely end an unmoderated caucus if they feel that unmoderated caucus has ceased to be productive. This decision is not subject to appeal.

An unmoderated caucus may be extended once with a shorter timeframe. The Board may overrule a motion to extend an unmoderated caucus and their decision is not subject to appeal. This Motion shall be put a vote immediately after its proposal and its adoption requires a simple majority of the Judges.

#### **Article 25: Moderated Caucus**

A motion for moderated caucus can be entertained any time when the floor is open.

The floor could be opened during by the President pursuant to their discretion.

The topic and total duration of moderated caucus and the time per each Speaker should be specified when proposing a motion. In any case, duration of moderated caucus cannot exceed twenty minutes.

The motion for a moderated caucus requires simple majority of Judges to pass.

The Board may prematurely end a moderated caucus if they feel that the caucus has ceased to be productive and none of Judges would like to speak. This decision is not subject to appeal.

A moderated caucus may be extended once with a shorter timeframe. The Board may overrule a motion to extend the moderated caucus and their decision is not subject to appeal. This Motion shall be put a vote immediately after its proposal and its adoption requires a simple majority of the Judges.

The Board may alter the total duration and the time per each Speaker and the topic of moderated caucus without any possibility to appeal.

The Board may rule any motion for moderated caucus out of order and this decision cannot be appealed.

#### **Article 26: Points of Order**

Members of the Court may raise a point of order if there is an improper implementation of the parliamentary rules by the Board or any other member of the Court.

The Board shall immediately take into consideration the Point pursuant to the Rules of Procedure. A point of order which is dilatory or improper may be ruled out of order. This decision cannot be appealed.

Members of the Court raising a point of order, may speak on substance of the matter under discussion.

A point of order may only interrupt a speech in exceptional circumstances where there is a serious violation of the Rules of Procedure.

#### **Article 27: Points of Personal Privilege**

Members of the Court may request the President to correct discomforts provided that such a discomfort prevents their ability to participate in the proceedings.

Point of personal privilege may not interrupt the speaker unless it is raised due to inaudibility. But this point cannot be used against the good faith rule.

#### **Article 28: Points of Parliamentary Inquiry**

Members of the Court may raise a point of parliamentary inquiry, if a member has a question regarding the parliamentary procedure. The President will answer it according to the Rules of Procedure.

A point of parliamentary inquiry may not interrupt a speech.

Questions regarding issues other than parliamentary procedure should not be asked by raising a point of parliamentary inquiry, rather a message paper should be sent to the President.

### **Article 29: Point of Information**

A point of information may be raised to the Board, at any time during the Deliberations, to raise a substantial question regarding the case.

A point of information can never interrupt a speaker.

### **Article 30: Closure of the Deliberations**

A motion for the closure of the deliberations shall be raised by the Judges.

The Motion shall pass with the simple majority of the Judges.

When the Deliberations are closed, President, Vice-President and Judges shall move onto the announcement of the judgment.

### **Article 31: Points and Motions**

In case where multiple Points and Motions are proposed at the same time, the proposed Points and Motions shall be ranked pursuant to the provisions stipulated in this Section and then will be entertained accordingly by the Board.

Points shall have precedence over Motions at all times.

The precedence shall go as follows:

- Point of Personal Privilege
- Point of Order
- Point of Parliamentary Inquiry
- Point of Information
- Motion for Suspension/Adjournment of the Deliberations/Court
- Motion for the Closure of the Deliberations
- Motion for an Extension of the Previous Caucus
- Motion for an Unmoderated Caucus
- Motion for a Moderated Caucus

When more than one motion for unmoderated or moderated caucus proposed, the longer shall be put into the vote first.

## **E. OBJECTIONS**

### **Article 32: General Provisions**

If any of the situations listed in this section emerges in a party's actions or statements, as a general rule, the opposing party shall have the right to raise an objection stating its ground as listed below.

The outcome of the objections shall always be determined by the Board and unless otherwise is provided below, the decision of the Board shall be final and not subject to appeal.

The Board shall announce the outcome of the objection as either granted or overruled. If an objection is granted, the subject of the objection shall immediately be abandoned and removed from Court records.

The Board, upon their own discretion, may consult to the Judges for granting or overruling an objection.

Objections may interrupt the Speaker.

### **Article 33: Ambiguous**

During direct or cross examination, Parties shall ask precise questions. If the questions are vague or confusing preventing the witness to give a proper answer, objections shall be in order.

### **Article 34: Argumentative**

If Parties give statements during direct or cross examination instead of asking a question; objection shall be in order.

### **Article 35: Badgering**

During examination of witnesses, Parties must refrain from distressing the witness.

### **Article 36: Compound Question**

Parties may ask one question at a time. Should any Party combine multiple questions, objection shall be in order.

### **Article 37: Hearsay**

During examination, parties may only ask for Witnesses' personal observations and experience. Should the questions concern any information the witness has received from another source, it shall be in order.

### **Article 38: Immaterial**

An objection of immaterial may be raised if a Party presents any piece before the Court that aims to prove some fact which lacks any logical connection with the consequential facts or whose authenticity is not proven. The decision of the Board upon this objection is open for Appeal by a judge or the opposing Party.

### **Article 39: Incompetent**

Where a speaker is requested to make a statement or assessment outside the scopes of their technical knowledge or solely during indirect examination, outside the content of the direct examination, competence objection may be raised by the opposing Party.

### **Article 40: Irrelevant**

All asseverations of Parties shall be relevant to the case at hand.

### **Article 41: Leading Question**

Leading question occurs when the only possible answer given to the particular question asked by an advocate to the witness is either yes or no. Leading questions shall be prohibited only during direct examination.

### **Article 42: Nothing Pending**

Should a witness make a statement which does not answer the question asked during direct or cross examination; the Party not questioning the witness may make an objection.

### **Article 43: Prejudicial**

Should an assertion harm the personal integrity of a Court member, an objection may be raised by the Court member whose integrity has been harmed. This is the only objection that judges are allowed to raise.

#### **Article 44: Speculation**

Speculation occurs when a witness is asked to predict the possible outcome of a situation, theorizing about them without their certain knowledge.

### **F. JUDGEMENT**

#### **Article 45: Verdict**

The majority required for a verdict is simple majority of the judges present, including President and Vice-President Judge.

#### **Article 46: Judgment**

After the Verdict, in their final Deliberation, Judges are expected to write a Judgment regarding the sentencing.

A Judgment shall pass with the simple majority of the Judges. Abstentions shall not be in order in final voting.

The President shall announce the Judgment submitted and passed by the majority with all Members present in the Courtroom and the Judgment shall be made public through the presence of Press.

Judges who are in the minority may submit their dissenting opinion(s) in groups or individually.

Judges who are in the majority but have arrived the conclusion on different and/or additional legal grounds may submit their concurring opinion(s) in groups or individually.

Concurring and dissenting in part opinions shall be in order.

The Judgment shall include the following elements:

- a. Heading (Name of the Case)
- b. Date
- c. Name of the Advocate of the Applicant



- d. Name of the Advocate of the Respondent
- e. Procedural History of the Case
- f. Submissions of the Advocate of the Applicant
- g. Submissions of the Advocate of the Respondent
- h. Statement of Facts
- i. The Applied Law
- j. The Decision
- k. Concurring Opinions
- l. Dissenting Opinions
- m. Declaration