

Protocol on Dispute Settlement Mechanism

The Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Vietnam, Member States of the Association of South East Asian Nations (ASEAN);

RECALLING the Framework Agreement on Enhancing ASEAN Economic Cooperation signed in Singapore on 28 January 1992, as amended by the Protocol to Amend the Framework Agreement on Enhancing ASEAN Economic Cooperation signed in Bangkok on 15 December 1995 (the "Agreement");

RECOGNIZING the need to expand Article 9 of the Agreement to strengthen the mechanism for the settlement of disputes in the area of ASEAN economic cooperation;

HAVE AGREED AS FOLLOWS :

ARTICLE 1 **Coverage and Application**

1. The rules and procedures of this Protocol shall apply to disputes brought pursuant to the consultation and dispute settlement provisions of the Agreement as well as the agreements listed in Appendix 1 and future ASEAN economic agreements (the "covered agreements").
2. The rules and procedures of this Protocol shall apply subject to such special or additional rules and procedures on dispute settlement contained in the covered agreements. To the extent that there is a difference between the rules and procedures of this Protocol and the special or additional rules and procedures in the covered agreements, the special or additional rules and procedures shall prevail.
3. The provisions of this Protocol are without prejudice to the rights of Member States to seek recourse to other fora for the settlement of disputes involving other Member States. A Member State involved in a dispute can resort to other fora at any stage before the Senior Economic Officials Meeting ("SEOM") has made a ruling on the panel report.

ARTICLE 2

Consultations

1. Member States shall accord adequate opportunity for consultations regarding any representations made by other Member States with respect to any matter affecting the implementation, interpretation or application of the Agreement or any covered agreement. Any differences shall, as far as possible, be settled amicably between the Member States.
2. Member States which consider that any benefit accruing to them directly or indirectly, under the Agreement or any covered agreement is being nullified or impaired, or that the attainment of any objective of the Agreement or any covered agreement is being impeded as a result of failure of another Member State to carry out its obligations under the Agreement or any covered agreement, or the existence of any other situation may, with a view to achieving satisfactory settlement of the matter, make representations or proposals to the other Member State concerned, which shall give due consideration to the representations or proposals made to it.
3. If a request for consultations is made, the Member State to which the request is made shall reply to the request within ten (10) days after the date of its receipt and shall enter into consultations within a period of no more than thirty (30) days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

ARTICLE 3

Good Offices, Conciliation or Mediation

1. Member States which are parties to a dispute may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated at any time. Once procedures for good offices, conciliation or mediation are terminated, a complaining party may then proceed to raise the matter to SEOM.
2. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds.

ARTICLE 4

Senior Economic Officials Meeting

1. If the consultations fail to settle a dispute within sixty (60) days after the date of receipt of the request for consultations, the matter shall be raised to the SEOM.
2. The SEOM shall:

a) establish a panel; or

b) where applicable, raise the matter to the special body in charge of the special or additional rules and procedures for its consideration.

3. Notwithstanding Article 4 paragraph 2, if the SEOM considers it desirable to do so in a particular case, it may decide to deal with the dispute to achieve an amicable settlement without appointing a panel. This step shall be taken without any extension of the thirty (30)-day period in Article 5 paragraph 2.

ARTICLE 5

Establishment of Panel

1. The function of the panel is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with the sections of the Agreement or any covered agreement, and make such other findings as will assist the SEOM in making the rulings provided for under the Agreement or any covered agreement.

2. The SEOM shall establish a panel no later than thirty (30) days after the date on which the dispute has been raised to it.

3. The SEOM shall make the final determination of the size, composition and terms of reference of the panel.

ARTICLE 6

Function of the Panel

1. The panel shall, apart from the matters covered in Appendix 2, regulate its own procedures in relation to the rights of parties to be heard and its deliberations.

2. The panel shall submit its findings to the SEOM within sixty (60) days of its formation. In exceptional cases, the panel may take an additional ten (10) days to submit its findings to SEOM. Within this time period, the panel shall accord adequate opportunity to the parties to the dispute to review the report before submission.

3. The panel shall have the right to seek information and technical advice from any individual or body which it deems appropriate. A Member State should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate.

4. Panel deliberations shall be confidential. The reports of panels shall be drafted without the presence of the parties to the dispute in the light of the information provided and the statements made.

ARTICLE 7

Treatment of Panel Result

The SEOM shall consider the report of the panel in its deliberations and make a ruling on the dispute within thirty (30) days from the submission of the report by the panel. In exceptional cases, SEOM may take an additional ten (10) days to make a ruling on the dispute. SEOM representatives from Member States which are parties to a dispute can be present during the process of deliberation but shall not participate in the ruling of SEOM. SEOM shall make a ruling based on simple majority.

ARTICLE 8

Appeal

1. Member States, who are parties to the dispute, may appeal the ruling by the SEOM to the ASEAN Economic Ministers ("AEM") within thirty (30) days of the ruling.
2. The AEM shall make a decision within thirty (30) days of the appeal. In exceptional cases, AEM may take an additional ten (10) days to make a decision on the dispute. Economic Ministers from Member States which are parties to a dispute can be present during the process of deliberation but shall not participate in the decision of AEM. AEM shall make a decision based on simple majority. The decision of the AEM on the appeal shall be final and binding on all parties to the dispute.
3. Since prompt compliance with the rulings of the SEOM or decisions of the AEM is essential in order to ensure effective resolution of disputes, Member States who are parties to the dispute shall comply with the ruling or decision, as the case may be, within a reasonable time period. The reasonable period of time shall be a period of time mutually agreed to by the parties to the dispute but under no circumstances should it exceed thirty (30) days from the SEOM's ruling or in the event of an appeal thirty (30) days from the AEM's decision. The Member States concerned shall provide the SEOM or the AEM, as the case may be, with a status report in writing of their progress in the implementation of the ruling or decision.

ARTICLE 9

Compensation and the Suspension of Concessions

1. If the Member State concerned fails to bring the measure found to be inconsistent with the Agreement or any covered agreement into compliance therewith or otherwise comply with SEOM's rulings or AEM's decisions within the reasonable period of time, such Member State shall, if so requested, and no later than the expiry of the reasonable period of time, enter into negotiations with any party having invoked the dispute settlement procedures, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within 20 (twenty) days after the date of expiry of the reasonable period of time, any party having invoked the dispute settlement procedures may request authorization from the AEM to suspend the application to the Member State concerned of concessions or other obligations under the Agreement or any covered agreements.

2. However, neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with the Agreement or any covered agreements.

ARTICLE 10 Maximum Time-Frame

Member States agree that the total period for the disposal of a dispute pursuant to Articles 2, 4, 5, 6, 7, 8 and 9 of this Protocol shall not exceed two hundred and ninety (290) days.

ARTICLE 11 Responsibilities of the Secretariat

1. The ASEAN Secretariat shall have the responsibility of assisting the panels, especially on the historical and procedural aspects of the matters dealt with, and of providing secretarial and technical support.

2. The ASEAN Secretariat shall have the responsibility of monitoring and maintaining under surveillance the implementation of the SEOM's ruling and AEM's decision as the case may be.

3. The ASEAN Secretariat may offer good offices, conciliation or mediation with the view to assisting Members to settle a dispute.

ARTICLE 12

Final Provisions

1. This Protocol shall be deposited with the Secretary-General of ASEAN who shall promptly furnish a certified copy thereof to each Member State.
2. This Protocol shall enter into force upon the deposit of instruments of ratification or acceptance by all signatory governments with the Secretary-General of ASEAN.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the Protocol on Dispute Settlement Mechanism.

DONE at Manila, this 20th day of November 1996 in a single copy in the English Language.

For the Government of Brunei Darussalam :

(signed)

ABDUL RAHMAN TAIB

Minister of Industry and Primary Resources

For the Government of the Republic of Indonesia:

(signed)

T. ARIWIBOWO

Minister of Industry and Trade

For the Government of Malaysia:

(signed)

RAFIDAH AZIZ

Minister of International Trade and Industry

For the Government of the Republic of the Philippines :

(signed)

CESAR B. BAUTISTA
Secretary of Trade and Industry

For the Government of the Republic of Singapore:

(signed)

YEO CHEOW TONG
Minister for Trade and Industry

For the Government of the Kingdom of Thailand:

(signed)

SUKON KANCHANALAI
Deputy Minister of Commerce

For the Government of the Socialist Republic of Vietnam:

(signed)

LE VAN TRIET
Minister of Trade

APPENDIX 1

COVERED AGREEMENTS

1. Multilateral Agreement on Commercial Rights of Non-Scheduled Services among ASEAN, Manila, 13 March 1971.
2. Agreement on ASEAN Preferential Trading Arrangements, Manila, 24 February 1977.
3. Memorandum of Understanding on the ASEAN Swap Arrangements, Kuala Lumpur, 5 August 1977.
4. Supplementary Agreement to the Memorandum of Understanding on the ASEAN

Swap Arrangement, Washington D.C., 26 September 1978.

5. Second Supplementary Agreement to the Memorandum of Understanding on the ASEAN Swap Arrangement, Denpasar, Bali, 9 September 1979.

6. Agreement on the ASEAN Food Security Reserve, New York, 4 October 1979.

7. Basic Agreement on ASEAN Industrial Projects, Kuala Lumpur, 6 March 1980.

8. Supplementary Agreement of the Basic Agreement on ASEAN Industrial Projects ASEAN Urea Project (Indonesia), Kuala Lumpur, 6 March 1980.

9. Supplementary Agreement of the Basic Agreement on ASEAN Industrial Projects ASEAN Urea Project (Malaysia), Kuala Lumpur, 6 March 1980.

10. Amendments to the Memorandum of Understanding on the ASEAN Swap Arrangement Colombo, Sri Lanka, 16 January 1981.

11. Basic Agreement on ASEAN Industrial Complementation, Manila, 18 June 1981.

12. Third Supplementary Agreement to the Memorandum of Understanding on the ASEAN Swap Arrangement, Bangkok, 4 February 1982.

13. ASEAN Ministerial Understanding on Plant Quarantine Ring, Kuala Lumpur, 8-9 October 1982.

14. ASEAN Ministerial Understanding on the Standardization of Import and Quarantine Regulation on Animal and Animal Products, Kuala Lumpur, 8-9 October 1982.

15. Protocol to Amend the Agreement on the ASEAN Food Security Reserve, Bangkok, 22 October 1982.

16. ASEAN Customs Code of Conduct, Jakarta, 18 March 1983.

17. ASEAN Ministerial Understanding on Fisheries Cooperation, Singapore, 20-22 October 1983.

18. Basic Agreement on ASEAN Industrial Joint Ventures, Jakarta, 7 November 1983.

19. ASEAN Ministerial Understanding on ASEAN Cooperation in Agricultural Cooperatives, Manila, 4-5 October 1984.

20. ASEAN Ministerial Understanding on Plant Pest Free Zone, Manila, 4-5 October 1984.

21. Agreement on ASEAN Energy Cooperation, Manila, 24 June 1986.
22. ASEAN Petroleum Security Agreement, Manila, 24 June 1986.
23. Agreement on the Preferential Shortlisting of ASEAN Contractors, Jakarta, 20 October 1986.
24. Supplementary Agreement to the Basic Agreement on ASEAN Industrial Joint Ventures, Singapore, 16 June 1987.
25. Fourth Supplementary Agreement to the Memorandum of Understanding on the ASEAN Swap Arrangement, Kathmandu, Nepal, 21 January 1987.
26. Protocol on Improvements on Extensions of Tariff Preferences under the ASEAN Preferential Trading Arrangement, Manila, 15 December 1987.
27. Memorandum of Understanding on Standstill and Rollback on Non-Tariff Barriers among ASEAN Countries, Manila, 15 December 1987.
28. Revised Basic Agreement on ASEAN Industrial Joint Ventures, Manila, 15 December 1987.
29. Agreement Among the Government of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore, and the Kingdom of Thailand for the Promotion and Protection of Investments, Manila, 15 December 1987.
30. Protocol on Improvements on Extension of Tariff Preferences under the ASEAN Preferential Trading Arrangement, Manila, 15 December 1987.
31. Agreement on the Establishment of the ASEAN Tourism Information Centre, Kuala Lumpur, 26 September 1988.
32. Financial Regulations of the ASEAN Tourism Information Centre, Kuala Lumpur, 26 September 1988.
33. Memorandum of Understanding Brand-to-Brand Complementation on the Automotive Industry Under the Basic Agreement on ASEAN Industrial Complementation (BAAIC), Pattaya, Thailand, 18 October 1988.
34. Protocol to Amend the Revised Basic Agreement on ASEAN Industrial Joint Ventures, 1 January 1991.
35. Supplementary Agreement to the Basic Agreement on ASEAN industrial Projects - ASEAN Potash Mining Projects (Thailand), Kuala Lumpur, 20 July 1991.

36. Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area, Singapore, 28 January 1992.
37. Second Protocol to Amend the Revised Basic Agreement on ASEAN Industrial Joint Ventures, Manila, 23 October 1992.
38. Ministerial Understanding on ASEAN Cooperation in Food, Agriculture and Forestry, Bandar Seri Begawan, 28-30 October 1993.
39. Memorandum of Understanding on ASEAN Cooperation and Joint Approaches in Agriculture and Forest Products Promotion Scheme, Langkawi, Malaysia, 1994.
40. Third Protocol to Amend the Revised Basic Agreement on ASEAN Industrial Joint Ventures, 2 March 1995.
41. Protocol to Amend the Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA), Bangkok, 15 December 1995.
42. Protocol to Amend the Agreement on ASEAN Preferential Trading Arrangements, Bangkok, 15 December 1995.
43. ASEAN Framework Agreement on Services, Bangkok, 15 December 1995.
44. ASEAN Framework Agreement on Intellectual Property Cooperation, Bangkok, 15 December 1995.
45. Protocol Amending the Agreement on ASEAN Energy Cooperation, Bangkok, 15 December 1995.
46. Basic Agreement on ASEAN Industrial Cooperation, Singapore, 26 April 1996.
47. Protocol to Amend the Agreement Among the Government of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore, and the Kingdom of Thailand for the Promotion and Protection of Investments, Jakarta, 12 September 1996.

APPENDIX 2

WORKING PROCEDURES OF THE PANEL

I. Composition of Panels

1. Panels shall be composed of well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member State. In the nomination to the panels, preference shall be given to individuals who are nationals of ASEAN Member States.

2. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

3. Nationals of Member States whose governments are parties to the dispute shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise.

4. To assist in the selection of panelists, the Secretariat shall maintain an indicative list of governmental and non-governmental individuals possessing the qualifications outlined in paragraph 1, from which panelists may be drawn as appropriate. Members may periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matter of the covered agreements, and those names shall be added to the list upon approval by the SEOM. For each of the individuals on the list, the list shall indicate specific areas of experience or expertise of the individuals in the sectors or subject matter of the covered agreements.

5. Panels shall be composed of three panelists unless the parties to the dispute agree, within 10 days from the establishment of the panel, to a panel composed of five panelists. Members shall be informed promptly of the composition of the panel.

6. The Secretariat shall propose nominations for the panel to the parties to the dispute. The parties to the dispute shall not oppose nominations except for compelling reasons.

7. If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, at the request of either party, the Secretary-General, in consultation with the SEOM Chairman, shall determine the composition of the panel by appointing the panelists whom the Secretary-General considers most appropriate in accordance with any relevant special or additional rules or procedures of the covered agreement or covered agreements which are at issue in the dispute, after consulting with the parties to the dispute. The SEOM Chairman shall inform the Members of the composition of the panel thus formed no later than 10 days after the date the Chairman receives such a request.

8. Member States shall undertake, as a general rule, to permit their officials to serve as panelists.

9. Panelists shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Member States shall therefore not give them instructions nor seek to influence them as individuals with regard to

matters before a panel.

II. Panel Proceedings

1. In its proceedings the panel shall follow the relevant provisions of this Protocol. In addition, the following working procedures shall apply.
2. The panel shall meet in closed session. The parties to the dispute, and interested parties, shall be present at the meetings only when invited by the panel to appear before it.
3. The deliberations of the panel and the documents submitted to it shall be kept confidential. Nothing in this Protocol shall preclude a party to a dispute from disclosing statements of its own positions to the public. Member States shall treat as confidential information submitted by another Member State to the panel which that Member State has designated as confidential. Where a party to a dispute submits a confidential version of its written submissions to the panel, it shall also, upon request of a Member State, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.
4. Before the first substantive meeting of the panel with the parties, the parties to the dispute shall transmit to the panel written submissions in which they present the facts of the case and their arguments.
5. At its first substantive meeting with the parties, the panel shall ask the party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the party against which the complaint has been brought shall be asked to present its point of view.
6. Formal rebuttals shall be made at a second substantive meeting of the panel. The party complained against shall have the right to take the floor first to be followed by the complaining party. The parties shall submit, prior to that meeting, written rebuttals to the panel.
7. The panel may at any time put questions to the parties and ask them for explanations either in the course of a meeting with the parties or in writing.
8. The parties to the dispute shall make available to the panel a written version of their oral statements.
9. In the interest of full transparency, the presentations, rebuttals and statements referred to in paragraphs 5 to 9 shall be made in the presence of the parties. Moreover, each party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the panel, shall be made available to the other party or parties.

10. Any additional procedures specific to the panel.