



## **ASEAN PROTOCOL ON ENHANCED DISPUTE SETTLEMENT MECHANISM**

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member States of the Association of South East Asian Nations (hereinafter collectively referred to as "ASEAN" or "Member States" or singularly as "Member State");

**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") and the Protocol on Dispute Settlement Mechanism signed in Manila on 20 November 1996 ( the "1996 Protocol on DSM");

**FURTHER RECALLING** that the 9th ASEAN Summit held in Bali on 7-8 October 2003, had decided on institutional strengthening of ASEAN, including the improvement of the ASEAN Dispute Settlement Mechanism, as reflected in the Bali Concord II;

**DESIRING** to replace the 1996 Protocol on DSM with the ASEAN Protocol on Enhanced Dispute Settlement Mechanism (hereinafter referred to as "Protocol");

**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 I 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 a party has made a request to the Senior Economic Officials Meeting ("SEOM") to establish a panel pursuant to paragraph 1 Article 5 of this Protocol.

## **ARTICLE 2 Administration**

1. The SEOM shall administer this Protocol and, except as otherwise provided in a covered agreement, the consultation and dispute settlement provisions of the covered agreements. Accordingly, the SEOM shall have the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of findings and recommendations of panel and Appellate Body reports adopted by the SEOM and authorise suspension of concessions and other obligations under the covered agreements.
2. The SEOM and other relevant ASEAN bodies shall be notified of mutually agreed solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements.

## **ARTICLE 3 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. All such requests for consultations shall be notified to the SEOM. Any request for consultations shall be submitted in writing and shall give the reason for the request including identification of the measures at issue and an indication of the legal basis for the complaint.
4. 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 thirty (30) days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.
5. In cases of urgency, including those which concern perishable goods, the parties to the dispute, panels and the Appellate Body shall make every effort to accelerate the proceedings to the greatest extent possible.

#### **ARTICLE 4**

##### **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 with a request to the SEOM for the establishment of a panel.
2. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel process proceeds.
3. The Secretary-General of ASEAN may, acting in an *ex officio* capacity, offer good offices, conciliation or mediation with the view to assisting Member States to settle a dispute.

#### **ARTICLE 5**

##### **Establishment of Panels**

1. If the Member State to which the request for consultations is made does not reply within ten (10) days after the date of receipt of the request, or does not enter into consultations within a period of thirty (30) days after the date of receipt of the request, or the consultations fail to settle a dispute within sixty (60) days after the date of receipt of the request, the matter shall be raised to the SEOM if the complaining party wishes to request for a panel. The panel shall be established by the SEOM, unless the SEOM decides by consensus not to establish a panel.
2. A panel shall be established at the meeting of the SEOM held immediately after the receipt of the request for a panel and accordingly the request shall be placed on the agenda of the SEOM at that meeting.

In the event that no the SEOM meeting is scheduled or planned within forty five (45) days of receipt of the request, the establishment of the panel or the decision not to establish it shall be done or taken, as the case may be, by circulation. A non-reply shall be considered as agreement to the request for the establishment of a panel. The issue of the establishment of the panel shall be settled within the forty five (45) day-period, irrespective of whether it is settled at the SEOM or by circulation.

3. The request for the establishment of a panel shall be made in writing. It shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. In case the complainant requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of the special terms of reference.

#### **ARTICLE 6** **Terms of Reference of Panels**

1. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise prior to the establishment of a panel:  
  
"To examine in the light of the relevant provisions in (name of the covered agreement(s) cited by the parties to the dispute), the matter referred to the SEOM by (name of party) in (document) ... and to make such findings as will assist the SEOM in the adoption of the panel report or in making its decision not to adopt the report."
2. Panels shall address the relevant provisions in any covered agreement or agreements cited by the parties to the dispute.
3. In establishing a panel, the SEOM may authorise its Chairman to draw up the terms of reference of the panel in consultation with the parties to the dispute, notwithstanding the provisions in paragraph 1 hereof. The terms of reference thus drawn up shall be circulated to all Member States. If other than standard terms of reference are agreed upon, any Member State may raise any point relating thereto with the SEOM at the time of establishment of a panel.

#### **ARTICLE 7** **Function of Panel**

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 agreements) and its findings and recommendations in relation to the case.

**ARTICLE 8**  
**Panel Procedures, Deliberations and Findings**

1. A panel shall, apart from the matters covered in Appendix II regulate its own procedures in relation to the rights of parties to be heard and its deliberations.
2. A panel shall submit its findings and recommendations to the SEOM in the form of a written report within sixty (60) days of its establishment. In exceptional cases, the panel may take an additional ten (10) days to submit its findings and recommendations to the SEOM.
3. Before submitting its findings and recommendations to the SEOM, the panel shall accord adequate opportunity to the parties to the dispute to review the report.
4. A panel shall have the right to seek information and technical advice from any individual or body which it deems appropriate. A Member State shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate.
5. 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 9**  
**Treatment of Panel Report**

1. The SEOM shall adopt the panel report within thirty (30) days of its submission by the panel unless a party to the dispute formally notifies the SEOM of its decision to appeal or the SEOM decides by consensus not to adopt the report. If a party has notified its decision to appeal, the report by the panel shall not be considered for adoption by the SEOM until after the completion of the appeal. SEOM representatives from Member States which are parties to a dispute can be present during the deliberations of the SEOM.
2. In the event that no meeting of the SEOM is scheduled or planned to enable adoption or non-adoption of the panel report, as the case may be, within the thirty (30) day period in paragraph 1 hereof, the adoption shall be done by circulation. A non-reply shall be considered as acceptance of the decision and/or recommendation in the panel report. The adoption or non-adoption shall be completed within the thirty (30) day

period in paragraph 1 hereof, notwithstanding the resort to a circulation process.

## **ARTICLE 10**

### **Procedures for Multiple Complainants**

1. Where more than one Member State requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all Member States concerned. A single panel should be established to examine such complaints whenever feasible.
2. The single panel shall organize its examination and present its findings and recommendations to the SEOM in such a manner that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel shall submit separate reports on the dispute concerned. The written submissions by each of the complainants shall be made available to the other complainants, and each complainant shall have the right to be present when any one of the other complainants presents its views to the panel.
3. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible, the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

## **ARTICLE 11**

### **Third Parties**

1. The interests of the parties to a dispute and those of other Member States under a covered agreement at issue in the dispute shall be fully taken into account during the panel process.
2. Any Member State having a substantial interest in a matter before a panel and having notified its interest to the SEOM (referred to in this Protocol as a "third party") shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.
3. Third parties shall receive the submissions of the parties to the dispute to the first substantive meeting of the panel.
4. If a third party considers that a measure already the subject of a panel proceeding nullifies or impairs benefits accruing to it under any covered agreement, that Member State may have recourse to normal dispute settlement

procedures under this Protocol. Such a dispute shall be referred to the original panel wherever possible.

## **ARTICLE 12** **Appellate Review**

1. An Appellate Body shall be established by the ASEAN Economic Ministers ("AEM"). The Appellate Body shall hear appeals from panel cases. It shall be composed of seven (7) persons, three (3) of whom shall serve on any one case. Persons serving on the Appellate Body shall serve on cases in rotation. Such rotation shall be determined in the working procedures of the Appellate Body.
2. The AEM shall appoint persons to serve on the Appellate Body for a four-year term, and each person may be reappointed once. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term.
3. The Appellate Body shall comprise of persons of recognised authority, irrespective of nationality, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. They shall be unaffiliated with any government. All persons serving on the Appellate Body shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of ASEAN. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.
4. Only parties to the dispute, not third parties, may appeal a panel report. Third parties, which have notified the SEOM of a substantial interest in the matter pursuant to paragraph 2 of Article 11 may make written submissions to, and be given an opportunity to be heard by the Appellate Body.
5. As a general rule, the proceedings of the Appellate Body shall not exceed sixty (60) days from the date a party to the dispute formally notifies its decision to appeal to the date the Appellate Body circulates its report. In fixing its timetable the Appellate Body shall take into account the provisions of paragraph 5 of Article 3. When the Appellate Body considers that it cannot provide its report within sixty (60) days, it shall inform the SEOM in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed ninety (90) days.
6. An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel.

7. The Appellate Body shall be provided with the appropriate administrative and legal support as it requires.
8. Working procedures of the Appellate Body shall be drawn up by the SEOM. Any amendments thereto, shall be drawn up from time to time as necessary by the Appellate Body in consultation with the SEOM and the Secretary-General of ASEAN, and communicated to the Member States for their information.
9. The proceedings of the Appellate Body shall be confidential. The reports of the Appellate Body shall be drafted without the presence of the parties to the dispute and in the light of the information provided and the statements made.
10. Opinions expressed in the Appellate Body report by the individuals serving on the Appellate Body shall be anonymous.
11. The Appellate Body shall address each of the issues raised in accordance with paragraph 6 hereof during the appellate proceeding.
12. The Appellate Body may uphold, modify or reverse the legal findings and conclusions of the panel.
13. An Appellate Body report shall be adopted by the SEOM and unconditionally accepted by the parties to the dispute unless the SEOM decides by consensus not to adopt the Appellate Body report within thirty (30) days following its circulation to the Member States. In the event that no meeting of the SEOM is scheduled or planned to enable adoption or non-adoption of the report, as the case may be, within the thirty (30) day period, adoption shall be done by circulation. A non-reply within the said thirty (30) day period shall be considered as an acceptance of the Appellate Body report. This adoption procedure is without prejudice to the rights of Member States to express their views on an Appellate Body report. The adoption process shall be completed within the thirty (30) day period irrespective of whether it is settled at the SEOM or by circulation.

### **ARTICLE 13**

#### **Communications with the Panel or Appellate Body**

1. There shall be no *ex parte* communications with the panel or Appellate Body concerning matters under consideration by the panel or the Appellate Body.
2. Written submissions to the panel or the Appellate Body shall be treated as confidential, but it shall be made available to the parties to the dispute. Nothing in this Protocol shall preclude a party to a dispute from

disclosing statement of its own positions to the public. Member States shall treat as confidential information submitted by another Member State to the panel or the Appellate Body which that Member State has designated as confidential. A party to a dispute shall also, upon request of a Member State, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

#### **ARTICLE 14**

##### **Panel and Appellate Body Recommendations**

1. Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member State concerned bring the measure into conformity with that agreement. In addition to its recommendations, a panel or the Appellate Body may suggest ways in which the Member State concerned could implement the recommendations.
2. In their findings and recommendations, a panel and the Appellate Body cannot add to or diminish the rights and obligations provided in the covered agreements.
3. The panels and the Appellate Body shall also deal with the issue of expenses to be borne by the parties to the dispute, including third parties, to replenish the ASEAN Dispute Settlement Mechanism ("DSM") Fund as part of their findings and recommendations. The panels and the Appellate Body may apportion the expenses in the manner appropriate to the particular case.

#### **ARTICLE 15**

##### **Surveillance of Implementation of Findings and Recommendations**

1. Since prompt compliance with the findings and recommendations of panel and Appellate Body reports adopted by the SEOM is essential in order to ensure effective resolution of disputes, parties to the dispute who are required to do so shall comply with the findings and recommendations of panel reports adopted by the SEOM within sixty (60) days from the SEOM's adoption of the same, or in the event of an appeal sixty (60) days from the SEOM's adoption of the findings and recommendations of the Appellate Body reports, unless the parties to the dispute agree on a longer time period.
2. When a party to the dispute requests for a longer time period for compliance, the other party shall take into account the circumstances of the particular case and accord favourable consideration to the complexity of the actions required to comply with the findings and

recommendations of panel and Appellate Body reports adopted by the SEOM. The request for a longer period of time shall not be unreasonably denied. Where it is necessary to pass national legislation to comply with the findings and recommendations of panel and Appellate Body reports, a longer period appropriate for that purpose shall be allowed.

3. The decision of the parties on the extension of time shall be made within fourteen (14) days from the SEOM's adoption of the findings and recommendations of the panel report, or in the event of an appeal fourteen (14) days from the SEOM's adoption of the findings and recommendations of the Appellate Body's reports.
4. Any party required to comply with the findings and recommendations shall provide the SEOM with a status report in writing of their progress in the implementation of the findings and recommendations of panel and Appellate Body reports adopted by the SEOM.
5. Where there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the findings and recommendations of panel and Appellate Body reports adopted by the SEOM such dispute shall be decided through recourse to these dispute settlement procedures, including wherever possible resort to the original panel. The panel shall circulate its report within sixty (60) days, after the date of referral of the matter to it. When the panel considers that it cannot provide its report within this time frame, it shall inform the SEOM in writing of the reasons for the delay together with an indication of the period within which it will submit its report. In no case shall the proceedings for this purpose and the submission of the report exceed ninety (90) days after the date of reference of the matter to the panel.
6. The SEOM shall keep under surveillance the implementation of the findings and recommendations of panel and Appellate Body reports adopted by it. The issue of implementation of the findings and recommendations of panel and Appellate Body reports adopted by the SEOM may be raised at the SEOM by any Member State at any time following their adoption. Unless the SEOM decides otherwise, the issue of implementation of the findings and recommendations of panel and Appellate Body reports adopted by the SEOM shall be placed on the agenda of the SEOM meeting and shall remain on the SEOM's agenda until the issue is resolved. At least ten (10) days prior to each such the SEOM meeting, the party concerned shall provide the SEOM with a status report in writing of its progress in the implementation of the findings and recommendations of panel and Appellate Body reports adopted by the SEOM.

**ARTICLE 16**  
**Compensation and the Suspension of Concessions**

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the findings and recommendations of panel and Appellate Body reports adopted by the SEOM are not implemented within the period of sixty (60) days or the longer time period as agreed upon by the parties to the dispute as referred to in Article 15. 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 covered agreements. Compensation is voluntary and, if granted, shall be consistent with the covered agreements.
2. If the Member State concerned fails to bring the measure found to be inconsistent with a covered agreement into compliance therewith or otherwise comply with the findings and recommendations of panel and Appellate Body reports adopted by the SEOM within the period of sixty (60) days or the longer time period as agreed upon by the parties to the dispute as referred to in Article 15, such Member State shall, if so requested, and no later than the expiry of the period of sixty (60) days or the longer time period referred to in Article 15, 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 twenty (20) days after the date of expiry of the period of sixty (60) days or the longer time period as agreed upon by the parties to the dispute as referred to in Article 15, any party having invoked the dispute settlement procedures may request authorization from the SEOM to suspend the application to the Member State concerned of concessions or other obligations under the covered agreements.
3. In considering what concessions or other obligations to suspend, the complaining party shall apply the following principles and procedures:
  - (a) the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment;
  - (b) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sector(s) under the same agreement;
  - (c) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sector(s) under the same agreement, and that the circumstances

are serious enough, it may seek to suspend concessions or other obligations under another covered agreement;

- (d) in applying the above principles, that party shall take into account:
    - (i) the trade in the sector or under the agreement under which the panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party;
    - (ii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations;
  - (e) for purposes of this paragraph, "sector" means:
    - (i) with respect to goods, all goods;
    - (ii) with respect to services, a principal sector as identified in the current schedules of commitments under the ASEAN Framework Agreement on Services (AFAS).
  - (f) for purposes of this paragraph, "agreement" means:
    - (i) with respect to goods, the agreements in relation to goods listed in Appendix I to this Protocol;
    - (ii) with respect to services, the ASEAN Framework Agreement of Services and subsequent protocols;
    - (iii) any other covered agreement as defined in Article 1 of this Protocol.
- 4 The level of the suspension of concessions or other obligations authorized by the SEOM shall be equivalent to the level of the nullification or impairment.
  5. The SEOM shall not authorise suspension of concessions or other obligations if a covered agreement prohibits such suspension.
  6. When the situation described in paragraph 2 hereof occurs, the SEOM, upon request, shall grant authorization to suspend concessions or other obligations within thirty (30) days of the expiry of the sixty (60) day-period or the expiry of the longer period agreed upon by the parties to the dispute, as the case may be, referred to in Article 15, unless the SEOM decides by consensus to reject the request. In the event that no meeting of the SEOM is scheduled or planned to enable authorisation to suspend concessions or other obligations within the thirty (30) day

period, the authorisation shall be done by circulation. A non-reply within the said thirty (30) day period shall be considered as an acceptance of the authorisation. The authorisation process shall be completed within the thirty (30) day period irrespective of whether it is settled at the SEOM or by circulation.

7. However, if the Member State concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 3 have not been followed where a complaining party has requested authorisation to suspend concessions or other obligations pursuant to paragraph 3(b) or (c), the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitration appointed by the Secretary-General of ASEAN and shall be completed within sixty (60) days after the date of expiry of the sixty (60) day period or the expiry of the longer period agreed upon by the parties to the dispute, as the case may be, referred to in Article 15. Concessions or other obligations shall not be suspended during the course of the arbitration.
8. The arbitrator acting pursuant to paragraph 7 hereof shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator may also determine if the proposed suspension of concessions or other obligations is allowed under the covered agreement. However, if the matter referred to arbitration includes a claim that the principles and procedures set forth in paragraph 3 hereof have not been followed, the arbitrator shall examine that claim. In the event the arbitrator determines that those principles and procedures have not been followed, the complaining party shall apply them consistent with paragraph 3 hereof. The parties shall accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration. The SEOM shall be informed promptly of the decision of the arbitrator and shall, upon request, grant authorisation to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the SEOM decides by consensus to reject the request.
9. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed, or the Member State that must implement recommendations and findings of the panel and Appellate Body reports adopted by the SEOM provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached. In accordance with paragraph 6 of Article 15, the SEOM shall continue to keep under surveillance the implementation of adopted recommendations and findings of the panel and Appellate Body reports adopted by the SEOM, including those cases where compensation has been provided or concessions or other

obligations have been suspended but the recommendations to bring a measure into conformity with the covered agreements have not been implemented.

10. The dispute settlement provisions of the covered agreements may be invoked in respect of measures affecting their observance taken by regional or local governments or authorities within the territory of a Member State. When the SEOM has ruled that a provision of a covered agreement has not been observed, the responsible Member State shall take such reasonable measures as may be available to it to ensure its observance. The provisions of the covered agreements and this Protocol relating to compensation and suspension of concessions or other obligations shall apply in cases where it has not been possible to secure such observance.

#### **ARTICLE 17 ASEAN DSM Fund**

1. There shall be established an ASEAN DSM Fund (hereinafter referred to as 'the Fund') for the purposes of this Protocol. The Fund shall be a revolving fund, separate from ASEAN Secretariat's regular budget. The initial sum for the Fund shall be contributed equally by all the Member States. Any drawdown from the Fund shall be replenished by the parties to the dispute in line with the provision of paragraph 3 of Article 14. The ASEAN Secretariat shall be responsible for administering the Fund.
2. The Fund shall be used to meet the expenses of the panels, the Appellate Body and any related administration costs of the ASEAN Secretariat. All other expenses, including legal representation, incurred by any party to a dispute shall be borne by that party.
3. The subsistence allowances and other expenses of the panels and the Appellate Body shall be in accordance with the criteria approved by the AEM on the recommendations of the ASEAN Budget Committee.

#### **ARTICLE 18 Maximum Time-Frame**

The total period for the disposal of disputes under this Protocol until the stage contemplated under paragraph 7 of Article 16, shall not exceed 445 days, unless the longer time period under Article 15 applies.

**ARTICLE 19**  
**Responsibilities of the Secretariat**

1. The ASEAN Secretariat shall have the responsibility of assisting the panels and the Appellate Body, especially on the legal, historical and the procedural aspects of the matters dealt with, and of providing secretarial and technical support.
2. The ASEAN Secretariat shall assist the SEOM to monitor and maintain surveillance of the implementation of the findings and recommendations of the panel and Appellate Body reports adopted by it.
3. The ASEAN Secretariat shall be the focal point to receive all documentations in relation to disputes and shall deal with them as appropriate.
4. The ASEAN Secretariat in consultation with the SEOM shall administratively update the list of covered agreements in Appendix I, as may be required from time to time. The Secretariat shall inform Member States as and when the changes have been made.

**ARTICLE 20**  
**Venue for Proceedings**

1. The venue for proceedings of the panels and the Appellate Body shall be the ASEAN Secretariat.
2. Notwithstanding the provisions of paragraph 1 above, panel and Appellate Body proceedings, apart from substantive meetings, may be held at any venue which the panels and the Appellate Body consider appropriate in consultation with the parties to the dispute, having regard to the convenience and cost effectiveness of such venue.

**ARTICLE 21**  
**Final Provisions**

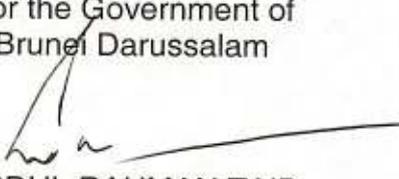
1. This Protocol shall enter into force upon signing.
2. This Protocol shall replace the 1996 Protocol on DSM and shall not apply to any dispute which has arisen before its entry into force. Such dispute shall continue to be governed by the 1996 Protocol on DSM.
3. The provisions of this Protocol may be modified through amendments mutually agreed upon in writing by all Member States.

4. This Protocol shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof, to each ASEAN Member State.

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

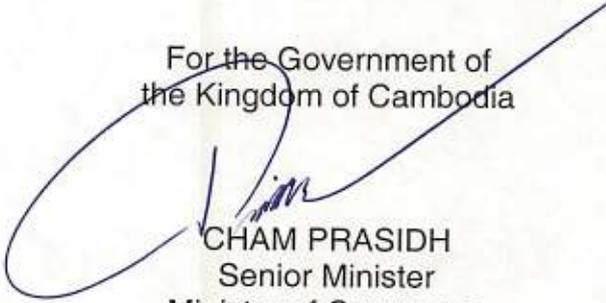
**DONE** at Vientiane, Lao PDR on 29 November 2004, in a single copy in the English language.

For the Government of  
Brunei Darussalam



ABDUL RAHMAN TAIB  
Minister of Industry and  
Primary Resources

For the Government of  
the Kingdom of Cambodia



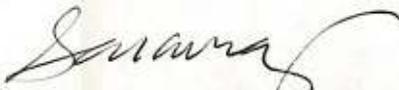
CHAM PRASIDH  
Senior Minister  
Minister of Commerce

For the Government of  
the Republic of Indonesia



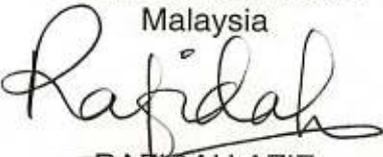
MARI ELKA PANGESTU  
Minister of Trade

For the Government of  
the Lao People's Democratic Republic



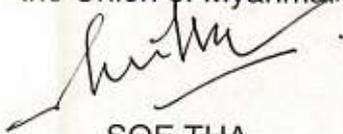
SOULIVONG DARAVONG  
Minister of Commerce

For the Government of  
Malaysia



RAPIDAH AZIZ  
Minister of International Trade  
and Industry

For the Government of  
the Union of Myanmar



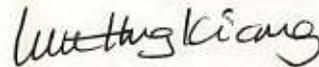
SOE THA  
Minister of National Planning and  
Economic Development

For the Government of  
the Republic of the Philippines



CESAR V. PURISIMA  
Secretary of Trade and Industry

For the Government of  
the Republic of Singapore



LIM HNG KIANG  
Minister for Trade and Industry

For the Government of  
the Kingdom of Thailand



WATANA MUANGSOOK  
Minister of Commerce

For the Government of  
the Socialist Republic of Vietnam



TRUONG DINH TUYEN  
Minister of Trade

## APPENDIX I COVERED AGREEMENTS

1. Agreement on ASEAN Preferential Trading Arrangements, Manila, 24 February 1977.
2. Agreement on the ASEAN Food Security Reserve, New York, 4 October 1979.
3. Basic Agreement on ASEAN Industrial Projects, Kuala Lumpur, 6 March 1980.
4. Supplementary Agreement of the Basic Agreement on ASEAN Industrial Projects ASEAN Urea Project (Indonesia), Kuala Lumpur, 6 March 1980.
5. Basic Agreement on ASEAN Industrial Joint Ventures, Jakarta, 7 November 1983.
6. Agreement on ASEAN Energy Cooperation, Manila, 24 June 1986.
7. ASEAN Petroleum Security Agreement, Manila, 24 June 1986.
8. Agreement on the Preferential Shortlisting of ASEAN Contractors, Jakarta, 20 October 1986.
9. Supplementary Agreement to the Basic Agreement on ASEAN Industrial Joint Ventures, Singapore, 16 June 1987.
10. Protocol on Improvements on Extensions of Tariff Preferences under the ASEAN Preferential Trading Arrangement, Manila, 15 December 1987.
11. Revised Basic Agreement on ASEAN Industrial Joint Ventures, Manila, 15 December 1987.
12. 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.
13. Protocol to Amend the Revised Basic Agreement on ASEAN Industrial Joint Ventures, 1 January 1991.
14. Framework Agreement on Enhancing ASEAN Economic Cooperation, Singapore, 28 January 1992.

15. Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area, Singapore, 28 January 1992.
16. Second Protocol to Amend the Revised Basic Agreement on ASEAN Industrial Joint Ventures, Manila, 23 October 1992.
17. Third Protocol to Amend the Revised Basic Agreement on ASEAN Industrial Joint Ventures, 2 March 1995.
18. Protocol to Amend the Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA), Bangkok, 15 December 1995.
19. Protocol to Amend the Agreement on ASEAN Preferential Trading Arrangements, Bangkok, 15 December 1995.
20. ASEAN Framework Agreement on Services, Bangkok, 15 December 1995.
21. ASEAN Framework Agreement on Intellectual Property Cooperation, Bangkok, 15 December 1995.
22. Protocol Amending the Agreement on ASEAN Energy Cooperation, Bangkok, 15 December 1995.
23. Basic Agreement on ASEAN Industrial Cooperation, Singapore, 26 April 1996.
24. 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.
25. ASEAN Agreement on Customs, Phuket, Thailand, 1 March 1997
26. Protocol Amending the Agreement on the ASEAN Energy Cooperation, Kuala Lumpur, Malaysia, 23 July 1997
27. 2nd Protocol to Amend the Agreement on the ASEAN Food Security Reserve, Subang Jaya, Malaysia, 23 July 1997
28. Protocol to Implement the Initial Package of Commitments Under the ASEAN Framework Agreement on Services, Kuala Lumpur, Malaysia, 15 December 1997
29. Agreement on the Establishment of the ASEAN Center for Energy, Manila, Philippines, 22 May 1998

30. Protocol on Notification Procedures, Makati, Philippines, 7 October 1998
31. Framework Agreement on the ASEAN Investment Area, Makati, Philippines, 7 October 1998
32. ASEAN Framework Agreement on Mutual Recognition Arrangement (MRAs), Ha Noi, Viet Nam, 16 December 1998
33. Protocol to Implement the Second Package of Commitments Under the ASEAN Framework Agreement on Services, Ha Noi, Viet Nam, 16 December 1998
34. ASEAN Framework Agreement on the Facilitation of Goods in Transit, Ha Noi, Viet Nam, 16 December 1998
35. Protocol on the Special Arrangement for Sensitive and Highly Sensitive Products, Singapore, 30 September 1999
36. Protocol regarding the Implementation of the CEPT Scheme Temporary Exclusion List, Singapore, 23 November 2000
37. E-ASEAN Framework Agreement, Singapore, 24 November 2000
38. Protocol 5: ASEAN Scheme of Compulsory Motor Vehicle Insurance, Kuala Lumpur, Malaysia, 8 April 2001
39. Protocol to Amend the Framework Agreement on the ASEAN Investment Area, Ha Noi, Viet Nam 14 September 2001
40. Protocol to Implement the Third Package of Commitments Under the ASEAN Framework Agreement Services, Ha Noi, Viet Nam, 31 December 2001
41. ASEAN Sectoral Mutual Recognition Arrangement for Electrical and Electronic Equipment, Bangkok, Thailand, 5 April 2002
42. Protocol to Implement the Second Package of Commitments on Financial Services Under the ASEAN Framework Agreements on Services, Yangon, Myanmar, 6 April 2002
43. Protocol to Amend the Agreement the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA) for the Elimination of Import Duties, 31 January 2003
44. Protocol Governing the Implementation of the ASEAN Harmonized Tariff Nomenclature, Makati, Philippines, 7 August 2003

45. Agreement on the ASEAN Harmonized Cosmetic Regulatory Scheme, Phnom Penh, Cambodia, 2 September 2003
46. Protocol to Amend the Protocol Governing the Implementation of the ASEAN Harmonised Tariff Nomenclature, Jeju Island, Korea, 15 May 2004

**APPENDIX II  
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 ten (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 twenty (20) days of the decision of the SEOM to establish a panel, at the request of either party, the Secretary-General of ASEAN, in consultation with the SEOM shall, within ten (10) days determine the composition of the panel by appointing the panelists whom the Secretary-General of ASEAN considers most appropriate, and if so relevant, in accordance with any relevant special or additional rules or

procedures of the covered agreed or covered agreements which are at issue in the dispute, after consulting the parties in the dispute. The ASEAN Secretariat shall inform the Member States of the composition of the panel thus formed.

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. All third parties which have notified their interest in the dispute to the SEOM shall be invited in writing to present their views during a session of the first substantive meeting of the panel set aside for that purpose. All such third parties may be present during the entirety of this session.

7. 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.

8. 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.

9. The parties to the dispute and any third party invited to present its views in accordance with Article 11 shall make available to the panel a written version of their oral statements.

10. The parties to the dispute shall make available to the panel a written version of their oral statements.

11. In the interest of full transparency, the presentations, rebuttals and statements referred to in paragraphs 5 to 8 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.

12. Any additional procedures specific to the panel.

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**ASEAN PROTOCOL ON  
ENHANCED DISPUTE SETTLEMENT MECHANISM  
WORKING PROCEDURES FOR APPELLATE REVIEW**

(drawn up pursuant to paragraph 8 of Article 12 of the Protocol)

**Definitions**

1. In these Working Procedures for Appellate Review,

"AEM" means ASEAN Economic Ministers referred to in paragraph 1 of Article 12 of the Protocol;

"appellant" means any party to the dispute that has filed a Notice of Appeal pursuant to Rule 20;

"appellate report" means an Appellate Body report as described in Article 12 of the Protocol;

"appellee" means any party to the dispute that has filed a submission pursuant to Rule 22 or paragraph 4 of Rule 23;

"ASEAN" means the Association of South East Asian Nations;

"ASEAN Member State" means any State which is a Member of ASEAN;

"consensus" a decision is deemed to be made by consensus if no Member formally objects to it;

"covered agreements" has the same meaning as "covered agreements" in paragraph 1 of Article 1 of the Protocol;

"division" means the three Members who are selected to serve on any one appeal in accordance with paragraph 1 of Article 12 of the Protocol and paragraph 2 of Rule 6;

"documents" means the Notice of Appeal, any Notice of Other Appeal and the submissions and other written statements presented by the participants or third participants;

"Member" means a Member of the Appellate Body who has been appointed by the AEM in accordance with Article 12 of the Protocol;

"other appellant" means any party to the dispute that has filed a Notice of Other Appeal pursuant to paragraph 1 of Rule 23;

"participant" means any party to the dispute that has filed a Notice of Appeal pursuant to Rule 20, a Notice of Other Appeal pursuant to Rule 23 or a submission pursuant to Rule 22 or paragraph 4 of Rule 23;

"party to the dispute" means any ASEAN Member State who was a complaining or defending party in the panel dispute, but does not include a third party;

"proof of service" means a letter or other written acknowledgement that a document has been delivered, as required, to the parties to the dispute, participants, third parties or third participants, as the case may be;

“Protocol” means the ASEAN Protocol on Enhanced Dispute Settlement Mechanism signed in Vientiane, Lao PDR, on 29 November 2004;

"Rules" means these Working Procedures for Appellate [Review];

"Rules of Conduct" means the Rules of Conduct for the Protocol as attached in Annex II to these Rules;

"Secretariat" means the ASEAN Secretariat;

“Secretary-General” means the Secretary-General of ASEAN;

“SEOM” means the ASEAN Senior Economic Officials Meeting referred to in paragraph 3 of Article 1 of the Protocol;

"service address" means the address of the party to the dispute, participant, third party or third participant notified to the ASEAN Secretariat and to all ASEAN Member States for the purposes of these Working Procedures;

"third participant" means any third party that has filed a written submission pursuant to paragraph 1 of Rule 24; or any third party that appears at the oral hearing, whether or not it makes an oral statement at that hearing;

"third party" means any ASEAN Member State who has notified the SEOM of its substantial interest in the matter before the panel pursuant to paragraph 2 of Article 11 of the Protocol;

"WTO" means the World Trade Organization;

**PART I**  
**MEMBERS**

**Duties and Responsibilities**

2. (1) A Member shall abide by the terms and conditions of the Protocol, these Rules and any decisions of the SEOM affecting the Appellate Body.
- (2) During his/her term, a Member shall not:
- (a) accept any employment; or
  - (b) pursue any professional activity
- that is inconsistent with his/her duties and responsibilities.
- (3) A Member shall exercise his/her office without accepting or seeking instructions from any international, governmental, or non-governmental organization or any private source.
- (4) A Member shall be available at all times and on short notice.

**Decision-Making**

3. (1) In accordance with paragraph 1 of Article 12 of the Protocol, decisions relating to an appeal shall be taken solely by the division assigned to that appeal. Other decisions shall be taken by the Appellate Body as a whole.
- (2) The Appellate Body and its divisions shall make every effort to take their decisions by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by a majority vote.

**Collegiality**

4. (1) To ensure consistency and coherence in decision-making, and to draw on the individual and collective expertise of the Members, the Members shall [convene once a year to discuss] [correspond as and when necessary] matters of policy, practice and procedure.
- (2) The Members shall stay abreast of dispute settlement activities and other relevant activities of the WTO and ASEAN and, in particular, each Member shall receive all documents filed in an appeal.
- (3) In accordance with the objectives set out in paragraph 1, the division responsible for deciding each appeal shall exchange views with the other Members before the division finalizes the appellate report for circulation to the ASEAN Member States. This paragraph is subject to paragraphs 2 and 3 of Rule 11.
- (4) Nothing in these Rules shall be interpreted as interfering with a division's full authority and freedom to hear and decide an appeal assigned to it in accordance with paragraph 1 of Article 12 of the Protocol.

### **Chairman**

5. (1) There shall be a Chairman of the Appellate Body who shall be elected by the Members [through correspondence].
- (2) The term of office of the Chairman of the Appellate Body shall be one year. The Appellate Body Members may decide to extend the term of office for an additional period of up to one year. However, in order to ensure rotation of the Chairmanship, no Member shall serve as Chairman for more than two consecutive terms.
- (3) The Chairman shall be responsible for the overall direction of the Appellate Body business, such as:
  - (a) the supervision of the internal functioning of the Appellate Body; and
  - (b) any such other duties as the Members may agree to entrust to him/her.
- (4) Where the office of the Chairman becomes vacant due to permanent incapacity as a result of illness or death or by resignation or expiration of his/her term, the Members shall elect a new Chairman who shall serve a full term in accordance with paragraph 2.
- (5) In the event of a temporary absence or incapacity of the Chairman, the Appellate Body shall authorise another Member to act as Chairman ad interim, and the Member so authorised shall temporarily exercise all the powers, duties and functions of the Chairman until the Chairman is capable of resuming his/her functions.

### **Divisions**

6. (1) In accordance with paragraph 1 of Article 12 of the Protocol, a division consisting of three Members shall be established to hear and decide an appeal.
- (2) The Members constituting a division shall be selected on the basis of rotation, while taking into account the principles of random selection, unpredictability and opportunity for all Members to serve regardless of their national origin.
- (3) A Member selected pursuant to paragraph 2 to serve on a division shall serve on that division, unless:
  - (i) he/she is excused from that division pursuant to Rules 9 or 10;
  - (ii) he/she has notified the Chairman and the Presiding Member that he/she is prevented from serving on the division because of illness or other serious reasons pursuant to Rule 12; or
  - (iii) he/she has notified his/her intentions to resign pursuant to Rule 14.

### **Presiding Member of the Division**

7. (1) Each division shall have a Presiding Member, who shall be elected by the Members of that division.
- (2) The responsibilities of the Presiding Member shall include:
  - (a) coordinating the overall conduct of the appeal proceeding;
  - (b) chairing all oral hearings and meetings related to that appeal; and
  - (c) coordinating the drafting of the appellate report.

- (3) In the event that a Presiding Member becomes incapable of performing his/her duties, the other Members serving on that division and the Member selected as a replacement pursuant to Rule 13 shall elect one of their number to act as the Presiding Member.

### **Rules of Conduct**

8. The Rules of Conduct attached at Annex II to these Rules shall be deemed to have been adopted by the Appellate Body once it is established.
9.
  - (1) Upon the filing of a Notice of Appeal, each Member shall take the steps set out in Article IV:4(b)(i) of Annex II, and a Member may consult with the other Members prior to completing the disclosure form.
  - (2) Upon the filing of a Notice of Appeal, the staff of the Secretariat assigned to that appeal shall take the steps set out in Article IV:4(b)(ii) of Annex II.
  - (3) Where information has been submitted pursuant to Article IV:4(b)(i) or (ii) of Annex II, the Appellate Body shall consider whether further action is necessary.
  - (4) As a result of the Appellate Body's consideration of the matter pursuant to Article IV:3 the Member or the staff member concerned may continue to be assigned to the division or may be excused from the division.
10.
  - (1) Where evidence of a material violation is filed by a participant pursuant to Article VI of Annex II, such evidence shall be confidential and shall be supported by affidavits made by persons having actual knowledge or a reasonable belief as to the truth of the facts stated.
  - (2) Any evidence filed pursuant to Article VI:1 of Annex II shall be filed at the earliest practicable time: that is, forthwith after the participant submitting it knew or reasonably could have known of the facts supporting it. In no case shall such evidence be filed after the appellate report is circulated to the ASEAN Member States.
  - (3) Where a participant fails to submit such evidence at the earliest practicable time, it shall file an explanation in writing of the reasons why it did not do so earlier, and the Appellate Body may decide to consider or not to consider such evidence, as appropriate.
  - (4) While taking fully into account paragraph 5 of Article 12 of the Protocol, where evidence has been filed pursuant to Article VI of Annex II, an appeal shall be suspended for fifteen days or until the procedure referred to in Article VI:14-16 of Annex II is completed, whichever is earlier.

- (5) As a result of the procedure referred to in Article VI:14-16 of Annex II, the Appellate Body may decide to dismiss the allegation, to excuse the Member or the staff member concerned from being assigned to the division or make such other order as it deems necessary in accordance with Article VI of Annex II.
11. (1) A Member who has submitted a disclosure form with information attached pursuant to Article IV:4(b)(i) or is the subject of evidence of a material violation pursuant to Article VII:1 of Annex II, shall not participate in any decision taken pursuant to paragraph 4 of Rule 9 or paragraph 5 of Rule 10.
- (2) A Member who is excused from a division pursuant to paragraph 4 of Rule 9 or paragraph 5 of Rule 10 shall not take part in the exchange of views conducted in that appeal pursuant to paragraph 3 of Rule 4.
- (3) A Member who, had he/she been a Member of a division, would have been excused from that division pursuant to paragraph 4 of Rule 9, shall not take part in the exchange of views conducted in that appeal pursuant to paragraph 3 of Rule 4.

### **Incapacity**

12. (1) A Member who is prevented from serving on a division by illness or for other serious reasons shall give notice and duly explain such reasons to the Chairman and to the Presiding Member.
- (2) Upon receiving such notice, the Chairman and the Presiding Member shall forthwith inform the Appellate Body.

### **Replacement**

13. Where a Member is unable to serve on a division for a reason set out in paragraph 3 of Rule 6, another Member shall be selected forthwith pursuant to paragraph 2 of Rule 6 to replace the Member originally selected for that division.

### **Resignation**

14. (1) A Member who intends to resign from his/her office shall notify his/her intention in writing to the Chairman of the Appellate Body who shall immediately inform the AEM, the Secretary-General and the other Members of the Appellate Body.
- (2) The resignation shall take effect 90 days after the notification has been made pursuant to paragraph 1, unless the AEM, in consultation with the Appellate Body, decides otherwise.

### **Transition**

15. A person who ceases to be a Member of the Appellate Body may, with the authorization of the Appellate Body and upon notification to the AEM, complete the disposition of any appeal to which that person was assigned while a Member, and that person shall, for that purpose only, be deemed to continue to be a Member of the Appellate Body.

## **PART II**

## **PROCESS**

## **General Provisions**

16. (1) In the interests of fairness and orderly procedure in the conduct of an appeal, where a procedural question arises that is not covered by these Rules, a division may adopt an appropriate procedure for the purposes of that appeal only, provided that it is not inconsistent with the Protocol, the other covered agreements and these Rules. Where such a procedure is adopted, the division shall immediately notify the parties to the dispute, participants, third parties and third participants as well as the other Members of the Appellate Body.
- (2) In exceptional circumstances, where strict adherence to a time-period set out in these Rules would result in a manifest unfairness, a party to the dispute, a participant, a third party or a third participant may request that a division modify a time-period set out in these Rules for the filing of documents or the date set out in the working schedule for the oral hearing. Where such a request is granted by a division, any modification of time shall be notified to the parties to the dispute, participants, third parties and third participants in a revised working schedule.
17. (1) Unless the SEOM decides otherwise, in computing any time-period stipulated in the Protocol or in the special or additional provisions of the covered agreements, or in these Rules, within which a communication must be made or an action taken by an ASEAN Member State to exercise or preserve its rights, the day from which the time-period begins to run shall be excluded and, [subject to paragraph 2], the last day of the time-period shall be included.
- (2) If any time period expires on an ASEAN Secretariat non-working day, any communication or action to be taken before the expiration of such a time-period shall be accepted on the first subsequent ASEAN Secretariat working day.

## **Documents**

18. (1) No document is considered filed with the Appellate Body unless the document is received by the Secretariat within the time-period set out for filing in accordance with these Rules.
- (2) Except as otherwise provided in these Rules, every document filed by a party to the dispute, a participant, a third party or a third participant shall be served on each of the other parties to the dispute, participants, third parties and third participants in the appeal.
- (3) A proof of service on the other parties to the dispute, participants, third parties and third participants shall appear on, or be affixed to, each document filed with the Secretariat under paragraph 1 above.
- (4) A document shall be served by the most expeditious means of delivery or communication available, including by:
- (a) delivering a copy of the document to the service address of the party to the dispute, participant, third party or third participant; or
  - (b) sending a copy of the document to the service address of the party to the dispute, participant, third party or third participant by facsimile transmission, expedited delivery courier or expedited mail service.

- (5) Upon authorization by the division, a participant or a third participant may correct clerical errors in any of its documents (including typographical mistakes, errors of grammar, or words or numbers placed in the wrong order). The request to correct clerical errors shall identify the specific errors to be corrected and shall be filed with the Secretariat no later than 30 days after the date of the filing of the Notice of Appeal. A copy of the request shall be served upon the other parties to the dispute, participants, third parties and third participants, each of whom shall be given an opportunity to comment in writing on the request. The division shall notify the parties to the dispute, participants, third parties and third participants of its decision.

### **Ex Parte Communications**

19. (1) Neither a division nor any of its Members shall meet with or contact one party to the dispute, participant, third party or third participant in the absence of the other parties to the dispute, participants, third parties and third participants.
- (2) No Member of the division may discuss any aspect of the subject matter of an appeal with any party to the dispute, participant, third party or third participant in the absence of the other Members of the division.
- (3) A Member who is not assigned to the division hearing the appeal shall not discuss any aspect of the subject matter of the appeal with any party to the dispute, participant, third party or third participant.

### **Commencement of Appeal**

20. (1) An appeal shall be commenced by notification in writing to the SEOM in accordance with paragraph 1 of Article 9 of the Protocol and simultaneous filing of a Notice of Appeal with the Secretariat.
- (2) A Notice of Appeal shall include the following information:
- (a) the title of the panel report under appeal;
  - (b) the name of the party to the dispute filing the Notice of Appeal;
  - (c) the service address, telephone and facsimile numbers of the party to the dispute; and
  - (d) a brief statement of the nature of the appeal, including:
    - (i) identification of the alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel;
    - (ii) a list of the legal provision(s) of the covered agreements that the panel is alleged to have erred in interpreting or applying; and
    - (iii) without prejudice to the ability of the appellant to refer to other paragraphs of the panel report in the context of its appeal, an indicative list of the paragraphs of the panel report containing the alleged errors.

### **Appellant's Submission**

21. (1) The appellant shall, within 7 days after the date of the filing of the Notice of Appeal, file with the Secretariat a written submission prepared in accordance with paragraph 2 and serve a copy of the submission on the other parties to the dispute and third parties.
- (2) A written submission referred to in paragraph 1 shall:
  - (a) be dated and signed by the appellant; and
  - (b) set out:
    - (i) a precise statement of the grounds for the appeal, including the specific allegations of errors in the issues of law covered in the panel report and legal interpretations developed by the panel, and the legal arguments in support thereof;
    - (ii) a precise statement of the provisions of the covered agreements and other legal sources relied on; and
    - (iii) the nature of the decision or ruling sought.

### **Appellee's Submission**

22. (1) Any party to the dispute that wishes to respond to allegations raised in an appellant's submission filed pursuant to Rule 21 may, within 25 days after the date of the filing of the Notice of Appeal, file with the Secretariat a written submission prepared in accordance with paragraph 2 and serve a copy of the submission on the appellant, other parties to the dispute and third parties.
- (2) A written submission referred to in paragraph 1 shall:
  - (a) be dated and signed by the appellee; and
  - (b) set out:
    - (i) a precise statement of the grounds for opposing the specific allegations of errors in the issues of law covered in the panel report and legal interpretations developed by the panel raised in the appellant's submission, and the legal arguments in support thereof;
    - (ii) an acceptance of, or opposition to, each ground set out in the appellant's submission;
    - (iii) a precise statement of the provisions of the covered agreements and other legal sources relied on; and
    - (iv) the nature of the decision or ruling sought.

### **Multiple Appeals**

23. (1) Within 12 days after the date of the filing of the Notice of Appeal, a party to the dispute other than the original appellant may join in that appeal or appeal on the basis of other alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel. That party shall notify the SEOM in writing of its appeal and shall simultaneously file a Notice of Other Appeal with the Secretariat.
- (2) A Notice of Other Appeal shall include the following information:
  - (a) the title of the panel report under appeal;
  - (b) the name of the party to the dispute filing the Notice of Other Appeal;

- (c) the service address, telephone and facsimile numbers of the party to the dispute; and either
  - (i) a statement of the issues raised on appeal by another participant with which the party joins; or
  - (ii) a brief statement of the nature of the other appeal, including:
    - (A) identification of the alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel;
    - (B) a list of the legal provision(s) of the covered agreements that the panel is alleged to have erred in interpreting or applying; and
    - (C) without prejudice to the ability of the other appellant to refer to other paragraphs of the panel report in the context of its appeal, an indicative list of the paragraphs of the panel report containing the alleged errors.
- (3) The other appellant shall, within 15 days after the date of the filing of the Notice of Appeal, file with the Secretariat a written submission prepared in accordance with paragraph 2 of Rule 21 and serve a copy of the submission on the other parties to the dispute and third parties.
- (4) The appellant, any appellee and any other party to the dispute that wishes to respond to a submission filed pursuant to paragraph 3 may file a written submission within 25 days after the date of the filing of the Notice of Appeal, and any such submission shall be in the format required by paragraph 2 of Rule 22.
- (5) This Rule does not preclude a party to the dispute which has not filed a submission under Rule 21 or a Notice of Other Appeal under paragraph 1 of this Rule from exercising its right of appeal pursuant to paragraph 1 of Article 9 of the Protocol.
- (6) Where a party to the dispute which has not filed a submission under Rule 21 or a Notice of Other Appeal under paragraph 1 of this Rule exercises its right to appeal as set out in paragraph 5, a single division shall examine the appeals.

#### **Amending Notices of Appeal**

- 24. (1) The division may authorise an original appellant to amend a Notice of Appeal or another appellant to amend a Notice of Other Appeal.
- (2) A request to amend a Notice of Appeal or a Notice of Other Appeal shall be made as soon as possible in writing and shall state the reason(s) for the request and identify precisely the specific amendments that the appellant or other appellant wishes to make to the Notice. A copy of the request shall be served on the other parties to the dispute, participants, third participants and third parties, each of whom shall be given an opportunity to comment in writing on the request.
- (3) In deciding whether to authorise, in full or in part, a request to amend a Notice of Appeal or Notice of Other Appeal, the division shall take into account:
  - (a) the requirement to circulate the appellate report within the time-period set out in paragraph 5 of Article 12 of the Protocol; and,
  - (b) the interests of fairness and orderly procedure, including the nature and extent of the proposed amendment, the timing of the request to amend a Notice of Appeal or Notice of Other Appeal, any reasons why the proposed amended Notice of Appeal or Notice of Other Appeal was not or could not have been

filed on its original date, and any other considerations that may be appropriate.

- (4) The division shall notify the parties to the dispute, participants, third participants, and third parties of its decision. In the event that the division authorises an amendment to a Notice of Appeal or a Notice of Other Appeal, it shall provide an amended copy of the Notice to the SEOM.

### **Third Participants**

25. (1) Any third party may file a written submission containing the grounds and legal arguments in support of its position. Such submission shall be filed within 25 days after the date of the filing of the Notice of Appeal.
- (2) A third party not filing a written submission shall, within the same period of 25 days, notify the Secretariat in writing if it intends to appear at the oral hearing, and, if so, whether it intends to make an oral statement.
- (3) Third participants are encouraged to file written submissions to facilitate their positions being taken fully into account by the division hearing the appeal and in order that participants and other third participants will have notice of positions to be taken at the oral hearing.
- (4) Any third party that has neither filed a written submission pursuant to paragraph 1, nor notified the Secretariat pursuant to paragraph 2, may notify the Secretariat that it intends to appear at the oral hearing, and may request to make an oral statement at the hearing. Such notifications and requests should be notified to the Secretariat in writing at the earliest opportunity.

### **Transmittal of Record**

26. (1) Upon the filing of a Notice of Appeal, the Secretary-General shall transmit forthwith to the Appellate Body the complete record of the panel proceeding.
- (2) The complete record of the panel proceeding includes, but is not limited to:
  - (a) written submissions, rebuttal submissions, and supporting evidence attached thereto by the parties to the dispute and the third parties;
  - (b) written arguments submitted at the panel meetings with the parties to the dispute and the third parties, the recordings of such panel meetings, and any written answers to questions posed at such panel meetings;
  - (c) the correspondence relating to the panel dispute between the panel or the ASEAN Secretariat and the parties to the dispute or the third parties; and
  - (d) any other documentation submitted to the panel.

### **Working Schedule**

27. (1) Forthwith after the commencement of an appeal, the division shall draw up an appropriate working schedule for that appeal in accordance with the time-periods stipulated in these Rules.
- (2) The working schedule shall set forth precise dates for the filing of documents and a timetable for the division's work, including where possible, the date for the oral hearing.

- (3) In accordance with paragraph 5 of Article 3 of the Protocol, in appeals of urgency, including those which concern perishable goods, the Appellate Body shall make every effort to accelerate the appellate proceedings to the greatest extent possible. A division shall take this into account in drawing up its working schedule for that appeal.
- (4) The Secretariat shall serve forthwith a copy of the working schedule on the appellant, the parties to the dispute and any third parties.

### **Oral Hearing**

28. (1) A division shall hold an oral hearing, which shall be held, as a general rule, between 35 and 45 days after the date of the filing of a Notice of Appeal.
- (2) Where possible in the working schedule or otherwise at the earliest possible date, the Secretariat shall notify all parties to the dispute, participants, third parties and third participants of the date for the oral hearing.
- (3) Any third party that has:
  - (a) filed a submission pursuant to paragraph 1 of Rule 25, or has notified the Secretariat pursuant to paragraph 2 of Rule 25 that it intends to appear at the oral hearing, may appear at the oral hearing, make an oral statement at the hearing, and respond to questions posed by the division.
  - (b) notified the Secretariat pursuant to paragraph 4 of Rule 25 that it intends to appear at the oral hearing may appear at the oral hearing.
  - (c) made a request pursuant to paragraph 4 of Rule 25 may, at the discretion of the division hearing the appeal, taking into account the requirements of due process, make an oral statement at the hearing, and respond to questions posed by the division.
- (4) The Presiding Member may set time-limits for oral arguments.

### **Written Responses**

29. (1) At any time during the appellate proceeding, including, in particular, during the oral hearing, the division may address questions orally or in writing to, or request additional memoranda from, any participant or third participant, and specify the time-periods by which written responses or memoranda shall be received.
- (2) Any such questions, responses or memoranda shall be made available to the other participants and third participants in the appeal, who shall be given an opportunity to respond.
- (3) When the questions or requests for memoranda are made prior to the oral hearing, then the questions or requests, as well as the responses or memoranda, shall also be made available to the third parties, who shall also be given an opportunity to respond.

### **Failure to Appear**

30. Where a participant fails to file a submission within the required time-periods or fails to appear at the oral hearing, the division shall, after hearing the views of the participants, issue such order, including dismissal of the appeal, as it deems appropriate.

### **Withdrawal of Appeal**

31. (1) At any time during an appeal, the appellant may withdraw its appeal by notifying the Appellate Body, which shall forthwith notify the SEOM.
- (2) Where a mutually agreed solution to a dispute which is the subject of an appeal has been notified to the SEOM pursuant to paragraph 2 of Article 2 of the Protocol, it shall be notified to the Appellate Body.

#### **Entry into Force and Amendment**

32. (1) These Rules shall enter into force on [15-17 March 2005].
- (2) The Appellate Body may amend these Rules in compliance with the procedures set forth in paragraph 8 of Article 12 of the Protocol.
- (3) Whenever there is an amendment to the Protocol or to the special or additional rules and procedures of the covered agreements, the Appellate Body shall examine whether amendments to these Rules are necessary.
- (4) In considering amendments to these Rules, the Appellate Body shall take note of any changes in the current practices of the Appellate Body of the WTO.

ANNEX I

**TIMETABLE FOR APPEALS<sup>1</sup>**

	<u>General Appeals</u>
	Day
Notice of Appeal <sup>2</sup>	0
Appellant's Submission <sup>3</sup>	7
Notice of Other Appeal <sup>4</sup>	12
Other Appellant(s) Submission(s) <sup>5</sup>	15
Appellee(s) Submission(s) <sup>6</sup>	25
Third Participant(s) Submission(s) <sup>7</sup>	25
Third Participant(s) Notification(s) <sup>8</sup>	25
Oral Hearing <sup>9</sup>	35-45
Circulation of Appellate Report	60-90 <sup>10</sup>
Adoption by SEOM	90 – 120 <sup>11</sup>

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<sup>1</sup>Rule 17 applies to the computation of the time-periods below.

<sup>2</sup>Rule 20.

<sup>3</sup>Rule 21(1).

<sup>4</sup>Rule 23(1).

<sup>5</sup>Rule 23(3).

<sup>6</sup>Rules 22 and 23(4).

<sup>7</sup>Rule 25(1).

<sup>8</sup>Rule 25(2).

<sup>9</sup>Rule 28.

<sup>10</sup>Article 12(5), Protocol.

<sup>11</sup> Article 12(13),Protocol

## ANNEX II

### RULES OF CONDUCT

These rules of conduct are designed to maintain the integrity, impartiality and confidentiality of proceedings conducted under the Protocol thereby enhancing confidence under the ASEAN Protocol on Enhanced Dispute Settlement Mechanism.

#### **I. Governing Principle**

Each person covered by these Rules (as defined in paragraph III:1 below and hereinafter called "covered person") shall be independent and impartial, shall avoid direct or indirect conflicts of interest and shall respect the confidentiality of proceedings of bodies pursuant to the dispute settlement mechanism, so that through the observance of such standards of conduct the integrity and impartiality of that mechanism are preserved. These Rules shall in no way modify the rights and obligations of ASEAN Member States under the Protocol nor the rules and procedures therein.

#### **II. Observance of the Governing Principle**

1. To ensure the observance of the Governing Principle of these Rules, each covered person is expected to:

- (a) adhere strictly to the provisions of the Protocol;
- (b) disclose the existence or development of any interest, relationship or matter that that person could reasonably be expected to know and that is likely to affect, or give rise to justifiable doubts as to, that person's independence or impartiality; and
- (c) take due care in the performance of their duties to fulfil these expectations, including through avoidance of any direct or indirect conflicts of interest in respect of the subject matter of the proceedings.

2. Pursuant to the Governing Principle, each covered person, shall be independent and impartial, and shall maintain confidentiality. Moreover, such persons shall consider only issues raised in, and necessary to fulfil their responsibilities within, the dispute settlement proceeding and shall not delegate this responsibility to any other person. Such person shall not incur any obligation or accept any benefit that would in anyway interfere with, or which could give rise to, justifiable doubts as to the proper performance of that person's dispute settlement duties.

#### **III. Scope**

1. These Rules shall apply, as specified in the text, to each person serving:

- (a) on a panel;
- (b) on the Appellate Body;
- (c) as an arbitrator pursuant to the provisions mentioned in paragraphs 7 and 8 of Article 16 of the Protocol; or
- (d) as an expert participating in the dispute settlement mechanism pursuant to paragraph 4 of Article 8 of the Protocol.

These Rules shall also apply, as specified in this text to those members of the Secretariat called upon to assist the panel in accordance with Article 19 of the Protocol or to assist in formal arbitration proceedings pursuant to paragraphs 7 and 8 of Article 16 of the Protocol; and to Appellate Body.

2. The application of these Rules shall not in any way impede the Secretariat's discharge of its responsibility to continue to respond to Members' requests for assistance and information.

#### **IV. Self-Disclosure Requirements by Covered Persons**

1. (a) Each person requested to serve on a panel, on the Appellate Body, as an arbitrator, or as an expert shall, at the time of the request, receive from the Secretariat these Rules, which include an Illustrative List (Annex 1) of examples of the matters subject to disclosure.

(b) Any member of the Secretariat described in paragraph III:1, who may expect to be called upon to assist in a dispute shall be familiar with these Rules.

2. As set out in paragraph IV:4 below, all covered persons described in paragraph IV.1(a) and IV.1(b) shall disclose any information that could reasonably be expected to be known to them at the time which, coming within the scope of the Governing Principle of these Rules, is likely to affect or give rise to justifiable doubts as to their independence or impartiality. These disclosures include the type of information described in the Illustrative List, if relevant.

3. These disclosure requirements shall not extend to the identification of matters whose relevance to the issues to be considered in the proceedings would be insignificant. They shall take into account the need to respect the personal privacy of those to whom these Rules apply and shall not be so administratively burdensome as to make it impracticable for otherwise qualified persons to serve on panels, the Appellate Body, or in other dispute settlement roles.

4. (a) All panelists, arbitrators and experts, prior to confirmation of their appointment, shall complete the form at Annex 2 of these Rules. Such information would be disclosed to the SEOM for consideration by the parties to the dispute.

(b) (i) Persons serving on the Appellate Body who, through rotation, are selected to hear the appeal of a particular panel case, shall review the factual portion of the Panel report and complete the form at Annex 2. Such information would be disclosed to the Appellate Body for its consideration whether the member concerned should hear a particular appeal.

(ii) The staff members of the Secretariat shall disclose any relevant matter to the Appellate Body, for its consideration in deciding on the assignment of staff to assist in a particular appeal.

(c) When considered to assist in a dispute, members of the Secretariat shall disclose to the Secretary-General the information required under paragraph IV:2 of these Rules and any other relevant information required under the ASEAN Secretariat Staff Regulations.

5. During a dispute, each covered person shall also disclose any new information relevant to paragraph IV:2 above at the earliest time they become aware of it.

6. The SEOM, Appellate Body, the Secretariat, parties to the dispute, and other individuals involved in the dispute settlement mechanism shall maintain the confidentiality of any information revealed through this disclosure process, even after the panel process and its enforcement procedures, if any, are completed.

## **V. Confidentiality**

1. Each covered person shall at all times maintain the confidentiality of dispute settlement deliberations and proceedings together with any information identified by a party as confidential. No covered person shall at any time use such information acquired during such deliberations and proceedings to gain personal advantage or advantage for others.
2. During the proceedings, no covered person shall engage in ex parte contacts concerning matters under consideration. Subject to paragraph V:1, no covered person shall make any statements on such proceedings or the issues in dispute in which that person is participating, until the report of the panel or the Appellate Body has been declassified.

## **VI. Procedures Concerning Subsequent Disclosure and Possible Material Violations**

1. Any party to a dispute, conducted pursuant to the Protocol, who possesses or comes into possession of evidence of a material violation of the obligations of independence, impartiality or confidentiality or the avoidance of direct or indirect conflicts of interest by covered persons which may impair the integrity, impartiality or confidentiality of the dispute settlement mechanism, shall at the earliest possible time and on a confidential basis, submit such evidence to the SEOM, the Secretary-General or the Appellate Body, as appropriate according to the respective procedures detailed in paragraphs VI:5 to VI:17 below, in a written statement specifying the relevant facts and circumstances. Other ASEAN Member States who possess or come into possession of such evidence, may provide such evidence to the parties to the dispute in the interest of maintaining the integrity and impartiality of the dispute settlement mechanism.
2. When evidence as described in paragraph VI:1 is based on an alleged failure of a covered person to disclose a relevant interest, relationship or matter, that failure to disclose, as such, shall not be a sufficient ground for disqualification unless there is also evidence of a material violation of the obligations of independence, impartiality, confidentiality or the avoidance of direct or indirect conflicts of interests and that the integrity, impartiality or confidentiality of the dispute settlement mechanism would be impaired thereby.
3. When such evidence is not provided at the earliest practicable time, the party submitting the evidence shall explain why it did not do so earlier and this explanation shall be taken into account in the procedures initiated in paragraph VI:1.
4. Following the submission of such evidence to the SEOM, the Secretary-General or the Appellate Body, as specified below, the procedures outlined in paragraphs VI:5 to VI:17 below shall be completed within fifteen working days.

### **Panelists, Arbitrators, Experts**

5. If the covered person who is the subject of the evidence is a panelist, an arbitrator or an expert, the party shall provide such evidence to the SEOM.
6. Upon receipt of the evidence referred to in paragraphs VI:1 and VI:2, the SEOM shall forthwith provide the evidence to the person who is the subject of such evidence, for consideration by the latter.
7. If, after having consulted with the person concerned, the matter is not resolved, the SEOM shall forthwith provide all the evidence, and any additional information from the person concerned, to the parties to the dispute. If the person concerned resigns, the SEOM shall inform the parties to the dispute and, as the case may be, the panelists, the arbitrator(s) or experts.
8. In all cases, the SEOM, in consultation with the Secretary-General and after having provided a reasonable opportunity for the views of the person concerned and the parties to the dispute to be heard, would decide whether a material violation of these Rules as referred to in paragraphs VI:1 and

VI:2 above has occurred. Where the parties agree that a material violation of these Rules has occurred, it would be expected that, consistent with maintaining the integrity of the dispute settlement mechanism, the disqualification of the person concerned would be confirmed.

9. The person who is the subject of the evidence shall continue to participate in the consideration of the dispute unless it is decided that a material violation of these Rules has occurred.

10. The SEOM shall thereafter take the necessary steps for the appointment of the person who is the subject of the evidence to be formally revoked, or excused from the dispute as the case may be, as of that time.

### **Secretariat**

11. If the covered person who is the subject of the evidence is a staff member of the Secretariat, the party shall only provide the evidence to the Secretary-General, who shall forthwith provide the evidence to the person who is the subject of such evidence and shall further inform the other party or parties to the dispute, and the panel or the Appellate Body, as appropriate.

12. It shall be for the Secretary-General to take any appropriate action in accordance with the ASEAN Secretariat Staff Regulations.\*\*\*

13. The Secretary-General shall inform the parties to the dispute, the panel and the SEOM of his decision, together with relevant supporting information.

### **Appellate Body**

14. If the covered person who is the subject of the evidence is a member of the Appellate Body, the party shall provide the evidence to the other party to the dispute and the evidence shall thereafter be provided to the Appellate Body.

15. Upon receipt of the evidence referred to in paragraphs VI:1 and VI:2 above, the Appellate Body shall forthwith provide it to the person who is the subject of such evidence, for consideration by the latter.

16. It shall be for the Appellate Body to take any appropriate action after having provided a reasonable opportunity for the views of the person concerned and the parties to the dispute to be heard.

17. The Appellate Body shall inform the parties to the dispute and the SEOM of its decision, together with relevant supporting information.

18. Following completion of the procedures in paragraphs VI:5 to VI:17, if the appointment of a covered person, other than a member of the Appellate Body, is revoked or that person is excused or resigns, the procedures specified in the Protocol for initial appointment shall be followed for appointment of a replacement, but the time-periods shall not exceed half those specified in the Protocol, and the timelines in relation to panel and Appellate Body proceedings are maintained. The member of the Appellate Body who, under that Body's rules, would next be selected through rotation to consider the dispute, would automatically be assigned to the appeal. The panel, members of the Appellate Body hearing the appeal, or the arbitrator, as the case may be, may then decide after consulting with the parties to the dispute, on any necessary modifications to their working procedures or proposed timetable.

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\*\*\*Pending adoption of the Staff Regulations, the Secretary-General would act in accordance with the following draft provision for the Staff Regulations: "If paragraph VII:11 of the Rules of Conduct for the

19. All covered persons and Members concerned shall resolve matters involving possible material violations of these Rules as expeditiously as possible so as not to delay the completion of proceedings, as provided in the Protocol.

20. Except to the extent strictly necessary to carry out this decision, all information concerning possible or actual material violations of these Rules shall be kept confidential.

## **VII. Review**

1. These Rules of Conduct may be reviewed, if necessary.

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Protocol governing the settlement of disputes is invoked, the Secretary-General shall consult with the person who is the subject of the evidence and the panel and shall, if necessary, take appropriate disciplinary action”

## ANNEX 1

### ILLUSTRATIVE LIST OF INFORMATION TO BE DISCLOSED

This list contains examples of information of the type that a person called upon to serve in a dispute should disclose pursuant to the Rules of Conduct for the ASEAN Protocol on Enhanced Dispute Settlement Mechanism.

Each covered person, as defined in paragraph III:1 of these Rules of Conduct has a continuing duty to disclose the information described in paragraph IV:2 of these Rules which may include the following:

- (a) financial interests (e.g. investments, loans, shares, interests, other debts); business interests (e.g. directorship or other contractual interests); and property interests relevant to the dispute in question;
- (b) professional interests (e.g. a past or present relationship with private clients, or any interests the person may have in domestic or international proceedings, and their implications, where these involve issues similar to those addressed in the dispute in question);
- (c) other active interests (e.g. active participation in public interest groups or other organisations which may have a declared agenda relevant to the dispute in question);
- (d) considered statements of personal opinion on issues relevant to the dispute in question (e.g. publications, public statements);
- (e) employment or family interests (e.g. the possibility of any indirect advantage or any likelihood of pressure which could arise from their employer, business associates or immediate family members).

ANNEX 2

Dispute Number: : \_\_\_\_\_

ASSOCIATION OF SOUTH EAST ASIAN NATIONS

DISCLOSURE FORM

I have read the ASEAN Protocol on Enhanced Dispute Settlement Mechanism (“Protocol”) and the Rules of Conduct for the Protocol I understand my continuing duty, while participating in the dispute settlement mechanism, and until such time as the ASEAN Senior Economic Officials Meeting (SEOM) makes a decision on adoption of a report relating to the proceeding or notes its settlement, to disclose herewith and in future any information likely to affect my independence or impartiality, or which could give rise to justifiable doubts as to the integrity and impartiality of the dispute settlement mechanism; and to respect my obligations regarding the confidentiality of dispute settlement proceedings.

Signed:

Dated:

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