

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.

<p>For the Government of Brunei Darussalam</p> <p>ABDUL RAHMAN TAIB Minister of Industry and Primary Resources</p>	<p>For the Government of the Kingdom of Cambodia</p> <p>CHAM PRASIDH Senior Minister Minister of Commerce</p>
<p>For the Government of the Republic of Indonesia</p> <p>MARI ELKA PANGESTU Minister of Trade</p>	<p>For the Government of the Lao People's Democratic Republic</p> <p>SOULIVONG DARAVONG Minister of Commerce</p>
<p>For the Government of Malaysia</p> <p>RAFIDAH AZIZ Minister of International Trade and Industry</p>	<p>For the Government of the Union of Myanmar</p> <p>SOE THA Minister of National Planning and Economic Development</p>

<p>For the Government of the Republic of the Philippines</p> <p>CESAR V. PURISIMA Secretary of Trade and Industry</p>	<p>For the Government of the Republic of Singapore</p> <p>LIM HNG KIANG Minister for Trade and Industry</p>
<p>For the Government of the Kingdom of Thailand</p> <p>WATANA MUANGSOOK Minister of Commerce</p>	<p>For the Government of the Socialist Republic of Vietnam</p> <p>TRUONG DINH TUYEN Minister of Trade</p>

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.