

**AGREEMENT ON DISPUTE SETTLEMENT MECHANISM OF THE
FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC CO-
OPERATION BETWEEN THE ASSOCIATION OF SOUTHEAST ASIAN
NATIONS AND THE PEOPLE'S REPUBLIC OF CHINA**

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic ("Lao PDR"), Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Vietnam, Member States of the Association of Southeast Asian Nations ("ASEAN") and the People's Republic of China ("China"), (collectively, "Parties", or individually referring to an ASEAN Member State or to China Party);

RECALLING the Framework Agreement on Comprehensive Economic Cooperation ("the Framework Agreement") between ASEAN and China signed by the Heads of Government/State of ASEAN Member States and China in Phnom Penh on the 4th day of November 2002;

RECALLING paragraph 1 of Article 11 of the Framework Agreement on the establishment of appropriate formal dispute settlement procedures mechanism for the purposes of the Framework Agreement within 1 year the date of entry into force of the Framework Agreement;

HAVE AGREED AS FOLLOWS:

**ARTICLE 1
DEFINITIONS**

For the purposes of this Agreement, the following definitions shall apply unless the context otherwise requires:

- (a) All the definitions in the Framework Agreement shall apply to Agreement;
- (b) "days" means calendar days, including weekends and holidays;
- (c) "parties to a dispute", "parties to the dispute", or "parties concerned", means the complaining party and the party complained against;
- (d) "complaining party" means any party or parties that requests for consultations under Article 4; and
- (e) "party complained against" means any party to which the request for consultations is made under Article 4.

**ARTICLE 2
SCOPE AND COVERAGE**

1. This Agreement shall apply to disputes arising under the Framework Agreement which shall also include the Annexes and the contents therein. Hereinafter, any reference to the Framework Agreement shall include all future legal instruments agreed pursuant to it unless where the context otherwise provides.

2. Any special or additional rules and procedures on dispute settlement contained in the Framework Agreement may be listed administratively by the ASEAN Secretariat as an Appendix to this Agreement with the consent of the Parties.
3. Unless otherwise provided for in this Agreement or in the Framework Agreement, or as the Parties may otherwise agree, the provisions of this Agreement shall apply with respect to the avoidance or settlement of disputes between or among the Parties concerning their respective rights and obligations under the Framework Agreement.
4. The provisions of this Agreement may be invoked in respect of measures affecting the observance of the Framework Agreement taken by central, regional or local governments or authorities within the territory of a Party.
5. Subject to paragraph 6, nothing in this Agreement shall prejudice the right of the Parties to have recourse to dispute settlement procedures available under any other treaty to which they are parties.
6. Once dispute settlement proceedings have been initiated under this Agreement or under any other treaty to which the parties to a dispute are parties concerning a particular right or obligation of such parties arising under the Framework Agreement or that other treaty, the forum selected by the complaining party shall be used to the exclusion of any other forum for such dispute.
7. Paragraphs 5 and 6 above shall not apply where the parties to a dispute expressly agree to the use of more than one dispute settlement procedure in respect of that particular dispute.
8. For the purposes of paragraphs 5 to 7, the complaining party shall be deemed to have selected a forum when it has requested the establishment of, or referred a dispute to, a dispute settlement panel or tribunal in accordance with this Agreement or any other agreement to which the parties to a dispute are parties.

ARTICLE 3 LIAISON OFFICE

1. For the purpose of this Agreement, each Party shall:
 - (a) designate an office that shall be responsible for all liaison affairs referred to in this Agreement;
 - (b) be responsible for the operation and costs of its designated office; and
 - (c) notify the other Parties of the location and address of its designated office within 30 days after the completion of its internal procedures for the entry into force of this Agreement.
2. Unless otherwise provided in this Agreement, the submission of any request or document under this Agreement to the designated office of any Party shall be deemed to be the submission of that request or document to that Party.

ARTICLE 4 CONSULTATIONS

1. A party complained against shall accord due consideration and adequate opportunity for consultations regarding a request for consultations made by a complaining party with respect to any matter affecting implementation or application of the Framework Agreement whereby:

(a) any benefit accruing to the complaining party directly or indirectly under the Framework Agreement is being nullified or impaired; or

(b) the attainment of any objective of the Framework Agreement is being impeded,

as a result of the failure of the party complained against to carry out obligations under the Framework Agreement.^[1]

2. Any request for consultations shall be submitted in writing, which include the specific measures at issue, and the factual and legal basis (including the provisions of the Framework Agreement alleged to have been breached and any other relevant provisions) of the complaint. The complaining party shall send the request to the party complained against and the rest of the Parties. Upon receipt, the party complained against shall acknowledge receipt of such request to the complaining party and the rest of the Parties simultaneously.

3. If a request for consultations is made, the party complained against shall reply to the request within 7 days after the date of its receipt and shall enter into consultations in good faith within a period of not more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. If the party complained against does not respond within the aforesaid 7 days, or does not enter into consultations within the aforesaid 30 days, then the complaining party may proceed directly to request for the appointment of an arbitral tribunal under Article 6.

4. The parties to a dispute shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, parties concerned shall:

(a) provide sufficient information to enable a full examination of how the measure might affect the operation of the Framework Agreement; and

(b) treat as confidential any information exchanged in the consultations which the other party concerned has designated as confidential.

5. Consultations shall be confidential, and are without prejudice to the rights of any Party in any further or other proceedings.

6. Whenever a Party (other than the parties to a dispute) considers that it has a substantial interest in consultations being held pursuant to this Article, such Party may notify the parties to a dispute in writing of its desire to be joined in the consultations within 10 days after the date of receipt of the request for consultations by the party complained against. Such Party shall be joined in the consultations provided that the party complained against agrees that the claim of substantial interest is well founded. The party complained against shall inform the complaining party and the rest of the Parties of its decision prior to the commencement of the consultations. If the request to be joined in the consultations is not accepted, the requesting Party shall be free to request for separate consultations under this Article.

7. In cases of urgency, including those which concern perishable goods the parties concerned shall enter into consultations within a period of no more than 10 days after the date of receipt of the request by the party complained against. If the consultations have failed to settle the dispute within a period of 20 days after the date of receipt of the request by the party complained against, the complaining party may proceed directly to request for the appointment of an arbitral tribunal under Article 6.

8. In cases of urgency, including those which concern perishable goods the parties to a dispute and arbitral tribunals shall make every effort to accelerate the proceedings to the greatest extent possible.

ARTICLE 5 CONCILIATION OR MEDIATION

1. The parties to a dispute may at any time agree to conciliation mediation. They may begin at any time and be terminated by the parties concerned at any time.

2. If the parties to a dispute agree, conciliation or mediation proceedings may continue before any person or body as may be agreed by the parties to the dispute while the dispute proceeds for resolution before an arbitral tribunal appointed under Article 6.

3. Proceedings involving conciliation and mediation and positions taken by the parties to a dispute during these proceedings, shall be confidential, and without prejudice to the rights of any Party in any further or other proceedings.

ARTICLE 6 APPOINTMENT OF ARBITRAL TRIBUNALS

1. If the consultations referred to in Article 4 fail to settle a dispute within 60 days after the date of receipt of the request for consultations or within 20 days after such date in cases of urgency including those which concern perishable goods, the complaining party may make a written request to the party complained against to appoint an arbitral tribunal under this A copy of this request shall also be communicated to the rest of the Parties.

2. A request for the appointment of an arbitral tribunal shall give reasons for the request, including the identification of

(a) the specific measure at issue; and

(b) the factual and legal basis (including the provisions of the Framework Agreement alleged to have been breached and any other relevant provisions) for the complaint sufficient to the problem clearly.

3. Where more than 1 complaining party requests the appointment arbitral tribunal related to the same matter, a single arbitral tribunal may, whenever feasible, be appointed by the parties concerned to examine matter, taking into account their respective rights.

4. Where a single arbitral tribunai is appointed under paragraph 3, it shall organize its examination and present its findings to all the parties to the dispute in such manner that the rights which they would have enjoyed had separate in such manner that the rights which they would have enjoyed had separate arbitral tribunals

examined the same matter are in no way impaired. If one of the parties to the dispute so requests, the arbitral tribunal may submit separate reports on the dispute to the parties concerned if the timeframe for writing the report so permits. The written submissions by a party to the dispute shall be made available to the other parties and each party to dispute shall have the right to be present when any of the other parties to the same dispute presents its views to the arbitral tribunal.

5. Where more than 1 arbitral tribunal is appointed under paragraph 3 to examine the same matter, to the greatest extent possible, the same arbitrators shall be appointed by the parties concerned to serve on each of the separate arbitral tribunals and the timetable for the proceedings of each separate arbitral tribunal shall be harmonised.

ARTICLE 7

COMPOSITION OF ARBITRAL TRIBUNALS

1. Unless otherwise provided in this Agreement or the parties to the dispute agree, the arbitral tribunal shall have three members.

2. The complaining party shall appoint an arbitrator to the arbitral tribunal pursuant to Article 6 within 20 days of the receipt of the request for appointment of the arbitral tribunal under Article 6. The party complained against shall appoint an arbitrator to the arbitral tribunal pursuant to Article 6 within 30 days of its receipt of the request for appointment of the tribunal under Article 6. If any party to the dispute fails to appoint an arbitrator within such period, then the arbitrator appointed by the other party to the dispute shall act as the sole arbitrator of the tribunal.

3. Once the complaining party and the party complained against have appointed their respective arbitrators subject to paragraph 2, the parties concerned shall endeavor to agree on an additional arbitrator who shall serve as chair. If the parties concerned are unable to agree on the chair of the arbitral tribunal within 30 days after the date on which the last arbitrator has been appointed under paragraph 2, they shall request the Director-General of the World Trade Organization (WTO) to appoint the chair and such appointment shall be accepted by them. In the event that the Director-General is a national of one of the parties to the dispute, the Deputy Director-General or the officer next in seniority who is not a national of either party to the dispute shall be requested to appoint the chair. If one of the parties to the dispute is a non-WTO member, the parties to the dispute shall request the President of the International Court of Justice to appoint the chair and such appointment shall be accepted by them. In the event that the President is a national of one of the parties to the dispute, the Vice President or the officer next in seniority who is not a national of either party to the dispute shall be requested to appoint the chair.

4. The date of composition of the arbitral tribunal shall be the date on which the chair is appointed under paragraph 3, or the 30th day after the receipt of the request under Article 6 where only a sole arbitrator of the tribunal is available.

5. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended during the appointment of the successor arbitrator.