

No. 46744

Multilateral

**ASEAN Protocol on enhanced dispute settlement mechanism (with appendices).
Vientiane, 29 November 2004**

Entry into force: *29 November 2004, in accordance with article 21 for all States
members of ASEAN*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Association of South-East
Asian Nations, 30 October 2009*

Multilatéral

**Protocole de l'ASEAN relatif à un mécanisme amélioré de règlement des différends
(avec annexes). Vientiane, 29 novembre 2004**

Entrée en vigueur : *29 novembre 2004, conformément à l'article 21 pour tous les États
membres de l'ASEAN*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *Association des Nations de
l'Asie du Sud-Est, 30 octobre 2009*

[ENGLISH TEXT – TEXTE ANGLAIS]

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