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## **Agreement on Dispute Settlement Mechanism Under the Framework Agreement on Comprehensive Economic Cooperation Among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea Kuala Lumpur, 13 December 2005**

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 Vietnam, Member Countries of the Association of Southeast Asian Nations, and the Republic of Korea,

RECALLING the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea signed in Kuala Lumpur, Malaysia on the thirteenth day of December 2005; and

FURTHER RECALLING Article 5.1 of the Framework Agreement, which provides for the dispute settlement procedures and mechanism for the Framework Agreement and any other Agreement to be concluded thereunder,

HAVE AGREED as follows:

### **Article 1 Definitions**

For the purposes of this Agreement, unless the context otherwise requires:

**ASEAN** means the Association of Southeast Asian Nations which comprises 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 Vietnam;

**ASEAN Member Countries** means 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 Vietnam collectively;

**ASEAN Member Country** means 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 or the Socialist Republic of Vietnam individually;

**chair** means the member of an arbitral panel who serves as the chair of the arbitral panel;

**complaining party** means any Party that requests consultations under paragraph 1 of Article 3;

**covered agreements** means:

- (a) the Framework Agreement;
- (b) the Agreement on Trade in Goods under the Framework Agreement;
- (c) this Agreement;
- (d) any agreement to be concluded among the Parties pursuant to the relevant provisions of the Framework Agreement unless provided otherwise therein;

**days** means calendar days, including weekends and holidays;

**Framework Agreement** means the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the ASEAN Member Countries and the Republic of Korea;

**Korea** means the Republic of Korea;

**Parties** means the ASEAN Member Countries and Korea collectively;

parties to a dispute, or parties to the dispute means both the complaining party and the party complained against;

**Party** means an ASEAN Member Country or Korea;

**party complained against** means any Party to which the request for consultations is made under

paragraph 1 of Article 3;

**third party** means a Party, other than the parties to a dispute, that delivers a written notice in accordance with Article 7; and

**WTO** means the World Trade Organisation.

## **Article 2 Coverage and Application**

1. This Agreement shall apply with respect to the avoidance or settlement of all disputes arising between the Parties under the covered agreements. Unless otherwise provided in this Agreement or any other covered agreement, this Agreement shall apply to all disputes between the Parties.

2. The rules and procedures of this Agreement shall apply subject to special or additional rules and procedures on dispute settlement, if any, contained in the other covered agreements. To the extent that there is a conflict between the rules and procedures of this Agreement and such special or additional rules and procedures on dispute settlement contained in a covered agreement, the special or additional rules and procedures shall prevail. In disputes involving rules and procedures under more than one covered agreement, if there is a conflict between special and additional rules and procedures of such covered agreements, the chair of the arbitral panel, in consultation with the parties to the dispute, shall determine the rules and procedures to be followed for that dispute within ten (10) days after a request by any party to the dispute.

3. The provisions of this Agreement may be invoked in respect of measures affecting the operation of any covered agreement taken within the territory of a Party by:

(a) central, regional or local governments and authorities; or

(b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.

4. Subject to paragraph 5, nothing in this Agreement shall prejudice any right of the Parties to have recourse to dispute settlement procedures available under any other treaty to which they are parties.

5. 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 covered agreements or that other treaty, the forum selected by the complaining party shall be used to the exclusion of any other for such dispute.

6. For the purposes of paragraphs 4 and 5, 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 in accordance with this Agreement or any other treaty to which the parties to a dispute are parties.

## **Article 3**

## Consultations

1. A party complained against shall accord due consideration to and afford adequate opportunity for consultations regarding a request for consultations made by a complaining party with respect to any matter affecting the interpretation, implementation or application of any covered agreement, wherever the complaining party considers that:

(a) a measure of the party complained against is inconsistent with its obligations under the covered agreements; or

(b) the party complained against has otherwise failed to carry out its obligations under the covered agreements, which results in nullification or impairment of any benefits accruing to the complaining party under the covered agreements or impediment of the attainment of any objective of the covered agreements.

2. Any request for consultations shall be submitted in writing, and include the specific measures at issue, and the factual and legal basis (including the provisions of any of the covered agreements alleged to have been breached and any other relevant provision) 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 promptly acknowledge receipt of such request to the complaining party and the rest of the Parties at the same time.

3. If a request for consultations is made, the party complained against shall reply to the request within seven (7) days after the date of its receipt and shall enter into consultations in good faith within a period of not more than thirty (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 seven (7) days, or does not enter into consultations within the aforesaid thirty (30) days, then the complaining party may proceed directly to request for the establishment of an arbitral panel under Article 5.

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

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

(b) treat as confidential any information exchanged in the course of consultations which the other party to the dispute has designated as confidential.

5. Consultations shall be confidential and without prejudice to the rights of any Party in any further proceedings under this Agreement or other proceedings before a forum selected by the Parties. The parties to the dispute shall inform the rest of the Parties the outcome of the consultations.

6. In cases of urgency, including those which concern perishable goods, the parties to the dispute shall enter into consultations within a period of no more than ten (10) days after the date of receipt by the party complained against of the request. If the consultations have failed to settle the dispute within a period of twenty (20) days after the date of receipt by the party complained against of the request, the complaining

party may proceed directly to request for the establishment of an arbitral panel under Article 5.

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

#### **Article 4 Good Offices, Conciliation and Mediation**

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree.
2. Good offices, conciliation or mediation may be requested at any time by any party to a dispute. They may begin at any time and be terminated by any party to a dispute at any time.
3. If the parties to a dispute agree, good offices, 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 panel established under Article 5.
4. Proceedings involving good offices, conciliation and mediation, and in particular, 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 proceedings under this Agreement or other proceedings before a forum selected by the Parties.

#### **Article 5 Establishment of Arbitral Panels**

1. If the consultations under Article 3 fail to settle a dispute within sixty (60) days after the date of receipt of the request for consultations or within twenty (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 establish an arbitral panel. A copy of this request shall also be communicated to the rest of the Parties.
2. A request for the establishment of an arbitral panel shall give the 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 any of the covered agreements alleged to have been breached and any other relevant provisions) for the complaint sufficient to present the problem clearly.
3. Upon delivery of the request, an arbitral panel shall be established.

4. Unless otherwise agreed by the parties to the dispute, an arbitral panel shall be established and perform its functions in accordance with the provisions of this Agreement, and the Annex on the Rules and Procedures for the Arbitral Panel Proceedings.
5. Where more than one complaining party requests the establishment of an arbitral panel related to the same matter, a single arbitral panel may, whenever feasible, be established by the parties to the dispute to examine the matter, taking into account their respective rights.
6. Where a single arbitral panel is established under paragraph 5, the arbitral panel shall organise its examination and present its findings to all the parties to the dispute in such manner that the rights which the parties to the dispute would have enjoyed had separate arbitral panels examined the same matter are in no way impaired. If one of the parties to the dispute so requests, the arbitral panel may submit separate reports on the dispute 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 to the dispute, and each party to the dispute shall have the right to be present when any of the other parties to the dispute presents its views to the arbitral panel.
7. Where more than one arbitral panel is established to examine the same matter, to the greatest extent possible, the same persons shall be appointed by the parties to the disputes to serve on each of the separate arbitral panels and the timetable for the proceedings of each separate arbitral panel shall be harmonised.

#### **Article 6** **Composition of Arbitral Panels**

1. Unless otherwise provided in this Agreement or agreed by the parties to the dispute, an arbitral panel shall consist of three (3) members.
2. Each party to the dispute shall appoint one member of the arbitral panel within thirty (30) days after the date of receipt of the request under Article 5. If any party to the dispute fails to appoint a member of the arbitral panel within such period, then the member of the arbitral panel appointed by the other party to the dispute shall act as the sole member of the arbitral panel, notwithstanding paragraph 1.
3. The parties to the dispute shall endeavour to agree on the third member who shall serve as the chair of the arbitral panel within thirty (30) days of the appointment of the second member. If the parties to the dispute are unable to agree on the chair within this period, the chair shall be jointly appointed, by the members of the arbitral panel who have been appointed under paragraph 2, within a further period of thirty (30) days. If the members of the arbitral panel fail to appoint the chair within the aforesaid period, the chair shall be appointed at the request of the members of the arbitral panel by the Director-General of the WTO within thirty (30) days after the date of receipt of the request. 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 any party to the dispute shall be requested to appoint the chair.
4. The date of establishment of the arbitral panel shall be the date on which the chair is appointed under paragraph 3 or, the 30th day after the date of receipt of the request under Article 5 where only a sole member of the arbitral panel is available.

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

6. Any person appointed as a member of an arbitral panel shall have expertise or experience in law, international trade, other matters covered by the covered agreements or the resolution of disputes arising under international trade agreements. A member shall be chosen strictly on the basis of objectivity, reliability, sound judgment and independence and shall conduct himself or herself on the same basis throughout the course of the arbitral panel proceedings. If a party to the dispute believes that a member is in violation of the basis stated above, the parties to the dispute shall consult and if they agree, the member shall be removed and a new member shall be appointed in accordance with this Article. Additionally, the chair shall not be a national of any party to the dispute and shall not have his or her usual place of residence in the territory of, nor be employed by, any party to the dispute nor have dealt with the referred matter in any capacity.

7. Where the original arbitral panel is required for a matter as provided in this Agreement but cannot hear the matter for any reason, a new arbitral panel shall be established in accordance with this Article. The same timeframe which would have applied, had the original arbitral panel heard the matter, shall apply for the newly established arbitral panel.

#### **Article 7 Third Parties**

1. Any Party having a substantial interest in a dispute before an arbitral panel and having notified its interest in writing to the parties to such a dispute and the rest of the Parties, shall have an opportunity to make written submissions to the arbitral panel. These submissions shall also be given to the parties to the dispute and may be reflected in the report of the arbitral panel.

2. Third parties shall receive the submissions of the parties to the dispute at the first meeting of the arbitral panel.

3. If a third party considers that a measure that is already the subject of an arbitral panel proceeding nullifies or impairs benefits accruing to it under the covered agreements, such Party may have recourse to normal dispute settlement procedures under this Agreement.

#### **Article 8 Suspension and Termination of Proceedings**

1. Where the parties to the dispute agree, the arbitral panel may suspend its work at any time for a period not exceeding twelve (12) months from the date of such agreement. Upon the request of any party to the dispute, the arbitral panel proceeding shall be resumed after such suspension. If the work of the arbitral panel has been suspended for more than twelve (12) months, the authority of the arbitral panel shall lapse unless the parties to the dispute agree otherwise.



2. The parties to the dispute may agree to terminate the proceedings of an arbitral panel at any time before the presentation of the final report to them, in the event that a mutually satisfactory solution to the dispute has been found.
3. Before the arbitral panel makes its decision, it may, at any stage of the proceedings, propose to the parties to the dispute that the dispute be settled amicably.

### **Article 9 Functions of Arbitral Panels**

An arbitral panel shall make an objective assessment of the matter before it, including an examination of the facts of the case and the applicability of and conformity with the relevant covered agreements. Where the arbitral panel concludes that a measure is inconsistent with a provision of any of the covered agreements, it shall recommend that the party complained against bring the measure into conformity with that provision. In addition to its recommendations, the arbitral panel may suggest means by which the party complained against could implement the recommendations. The arbitral panel shall consult regularly with the parties to the dispute and provide them adequate opportunities for the development of a mutually satisfactory resolution. The arbitral panel shall interpret the relevant provisions of the covered agreements in accordance with customary rules of interpretation of public international law. In its findings and recommendations, the arbitral panel cannot add to or diminish the rights and obligations provided in the covered agreements.

### **Article 10 Proceedings of Arbitral Panels**

1. The rules and procedures pertaining to the proceedings before an arbitral panel as set out in the Annex on the Rules and Procedures for the Arbitral Panel Proceedings shall apply unless the parties to the dispute agree otherwise. The arbitral panel may, after consulting the parties to the dispute, adopt additional rules and procedures not inconsistent with the Annex on the Rules and Procedures for the Arbitral Panel Proceedings.
2. In any event the proceedings of the arbitral panel shall be in accordance with the following principles:
  - (a) a right to at least one hearing before the arbitral panel;
  - (b) an opportunity for each party to the dispute to provide initial and rebuttal submissions;
  - (c) a reasonable opportunity for each party to the dispute to submit comments on the interim report presented pursuant to Article 11; and
  - (d) the protection of confidential information.
3. An arbitral panel shall meet in closed session. The parties to the dispute shall be present at the meetings only when invited by the arbitral panel to appear before it.



## **Article 11 Interim Report**

1. Unless the parties to the dispute otherwise agree, the arbitral panel shall base its report on the relevant provisions of the relevant covered agreement, on the submissions and arguments of the parties to the dispute, and on any information before it, pursuant to Article 13.
2. Unless the parties to the dispute otherwise agree, the arbitral panel shall, within ninety (90) days from the date of its establishment, present to the parties to the dispute an interim report containing:
  - (a) findings of law and/or fact together with reasons;
  - (b) its determination as to the interpretation, implementation or application of the relevant covered agreement or whether the measure at issue is inconsistent with obligations of the party complained against under the relevant covered agreement or whether the party complained against has otherwise failed to carry out its obligations under the relevant covered agreement or whether the measure at issue causes nullification or impairment of any benefit accruing to the complaining party under the relevant covered agreement or impediment of the attainment of any objective of the relevant covered agreement, or any other determination requested in the terms of reference; and
  - (c) where it determines that the measure at issue is inconsistent with the obligations under the relevant covered agreement, its recommendations to bring the measure into conformity with such covered agreement and its suggestion, if any, on means by which the party complained against could implement the recommendations.
3. When the arbitral panel considers that it cannot present its interim report within the period of time referred to in paragraph 2, it shall inform the parties to the dispute in writing of the reasons for the delay together with the estimate of the period within which it will issue its interim report.
4. The parties to the dispute may submit written comments on the interim report within fourteen (14) days of its presentation.
5. In case that such written comments by the parties to the dispute are received as provided for in paragraph 4, the arbitral panel, on its own initiative or at the request of a party to the dispute, may reconsider its report and make any further examination that it considers appropriate.

## **Article 12 Final Report**

1. The arbitral panel shall present a final report to the parties to the dispute, within thirty (30) days of presentation of the interim report.
2. The arbitral panel shall present to the parties to the dispute its final report within 120 days from the date of its establishment. In cases of urgency, including those relating to perishable goods, the arbitral panel

shall aim to present its final report to the parties to the dispute within ninety (90) days from the date of its establishment. When the arbitral panel considers that it cannot present its final report within 120 days, or within ninety (90) days in cases of urgency, it shall inform the parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will present its report. In no case, however, should the period from the establishment of an arbitral panel to the presentation of the final report to parties to the dispute exceed 180 days or 120 days in the case of urgency, unless the parties to the dispute otherwise agree.

3. The final report of the arbitral panel shall be made publicly available within ten (10) days of its presentation to the parties to the dispute.

### **Article 13 Information and Technical Advice**

1. Upon request of a party to the dispute, or on its own initiative, the arbitral panel may seek information and technical advice from any person or body that it deems appropriate. Any information and technical advice so obtained shall be made available to the parties to the dispute.

2. With respect to factual issues concerning a scientific or other technical matter raised by a party to the dispute, the arbitral panel may request advisory reports in writing from an expert or experts. The arbitral panel may, at the request of a party to the dispute or on its initiative, select, after a consultation with the parties to the dispute, scientific or technical experts who shall assist the arbitral panel throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral panel.

### **Article 14 Implementation of the Final Report**

1. The final report of an arbitral panel shall be binding on the parties to the dispute and shall not be subject to appeal.

2. If, in its final report, the arbitral panel determines that the party complained against has not conformed to its obligations under the relevant covered agreement, or that the party's measure has caused nullification or impairment, the means to implement the recommendations shall be to eliminate the non-conformity, or the nullification or impairment.

3. The parties to the dispute, shall, within twenty (20) days upon presentation of the final report of an arbitral panel, agree on:

(a) the means to implement the recommendations of the arbitral panel; and

(b) the reasonable period of time which is necessary to implement the recommendations of the arbitral panel.

4. If the parties to the dispute fail to agree, a party to the dispute may refer the matter to the original arbitral

panel. The party complained against shall, within fifteen (15) days after the date of referral of the matter to the arbitral panel, propose the means to implement the recommendations of the original arbitral panel. The arbitral panel shall determine the consistency of the means proposed by the party complained against with the recommendations and/or the reasonable period of time. The arbitral panel shall present its report to the parties to the dispute within thirty (30) days after the date of the referral of the matter to it. No measure can be taken under Article 15 without any determination by the arbitral panel under this paragraph.

5. Where there is disagreement as to the existence or consistency of measures taken with the recommendation of the arbitral panel within the reasonable period of time, such dispute shall be referred to the original arbitral panel. The arbitral panel shall present its report within thirty (30) days after the date of referral of the matter to it.

### **Article 15** **Compensation and the Suspension of Concessions or Benefits**

1. Compensation and the suspension of concessions or benefits are temporary measures available in the event that the recommendations are not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or benefits is preferred to full implementation of the recommendations 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 party complained against fails to bring the measure found to be inconsistent with the relevant covered agreement into compliance with the recommendations of the arbitral panel within the reasonable period of time determined pursuant to paragraph 3 of Article 14, the party complained against shall, if so requested, enter into negotiations with the complaining party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

3. If no mutually satisfactory agreement on compensation has been reached within twenty (20) days after the date of receipt of the request of the complaining party to enter into negotiations on compensatory adjustment, the complaining party may at any time thereafter provide a written notice to the party complained against and the rest of the Parties that it intends to suspend the application to the party complained against of concessions or benefits of equivalent effect and may begin suspending concessions or benefits thirty (30) days after the date of receipt of the notice. The notice shall specify the level of concessions or benefits proposed to be suspended and the relevant covered agreement and sector(s) which the concessions or benefits are related to. Within thirty (30) days from the date of receipt of the notice, the party complained against may request the original arbitral panel to rule on whether the benefits which the complaining party proposes to suspend are equivalent to those affected by the measure found to be inconsistent with the relevant covered agreement, and whether the proposed suspension is in accordance with paragraphs 4 and 5. The ruling of the arbitral panel shall be given within forty-five (45) days from the date of receipt of that request. Concessions or benefits shall not be suspended until the arbitral panel has issued its ruling.

4. Any suspension of concessions or benefits shall be restricted to the concessions or benefits granted to the party complained against under the relevant covered agreement, subject to paragraph 5. The party complained against and the rest of the Parties shall be informed of the commencement and details of any such suspension.

5. In considering what concessions or benefits to suspend under paragraph 3:

(a) the complaining party should first seek to suspend concessions or benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral panel has found to be inconsistent with the relevant covered agreement or to have caused nullification or impairment; and

(b) the complaining party may suspend concessions or benefits in other sectors if it considers that it is not practicable or effective to suspend concessions or benefits in the same sector.

6. The suspension of concessions or benefits shall be temporary and shall only be applied until such time as the measure found to be inconsistent with the relevant covered agreement, has been removed, or the party complained against that must implement the arbitral panel's recommendations has done so, or a mutually satisfactory solution is reached.

7. If the party complained against considers that:

(a) the level of concessions or benefits suspended by the complaining party is manifestly excessive; or

(b) it has eliminated the non-conformity, or the nullification or impairment that the arbitral panel has found;

it may request the original arbitral panel to determine the matter. The arbitral panel shall present its determination to the parties to the dispute within thirty (30) days after it reconvenes.

#### **Article 16 Official Language**

1. All proceedings pursuant to this Agreement shall be conducted in the English language.
2. Any document submitted for use in any proceedings pursuant to this Agreement shall be in the English language. If any original document is not in the English language, a Party submitting it for use in the proceedings pursuant to this Agreement shall provide an English translation of that document.

#### **Article 17 Expenses**

1. Each party to a dispute shall bear the costs of the arbitral panel member, appointed by that party to the dispute, and its own expenses and legal costs.
2. Unless the parties to the dispute otherwise agree, the costs of the chair of the arbitral panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the parties to a dispute.

### **Article 18 Annex**

The Annex on the Rules and Procedures for the Arbitral Panel Proceedings and the contents therein shall form an integral part of this Agreement.

### **Article 19 Amendments**

The provisions of this Agreement may be modified through amendments mutually agreed upon in writing by the Parties.

### **Article 20 Depositary**

For the ASEAN Member Countries, this Agreement shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof, to each ASEAN Member Country.

### **Article 21 Entry into Force**

1. This Agreement shall enter into force on 1 July 2006, provided that at least one ASEAN Member Country and Korea are among the Signatory Countries that have by then notified all the other Parties in writing of the completion of their internal procedures. In the event this Agreement does not enter into force on 1 July 2006, it shall enter into force on the first day of the second month following the latter date on which at least one ASEAN Member Country and Korea have notified all the other Parties in writing of the completion of their internal procedures.

2. A Party shall, upon the completion of its internal procedures for the entry into force of this Agreement, notify all the other Parties in writing.

3. Where a Party is unable to complete its internal procedures for the entry into force of this Agreement by the date as set out in paragraph 1, this Agreement shall come into force for that Party upon the date of notification of the completion of its internal procedures.

**IN WITNESS WHEREOF**, the undersigned, being duly authorised thereto, have signed this Agreement on Dispute Settlement Mechanism under the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea.

DONE at Kuala Lumpur, Malaysia this                      day of December 2005, in duplicate copies in the English language.

For the Government of Brunei Darussalam

**LIM JOCK SENG**

Second Minister of Foreign Affairs and Trade

For the Royal Government of Cambodia

**CHAM PRASIDH**

Senior Minister and 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

**RAFIDAH AZIZ**

Minister of International Trade and Industry

For the Government of the Union of Myanmar

**SOE THA**

Minister for National Planning and Economic Development

For the Government of the Republic of the Philippines

**PETER B. FAVILA**

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 Thailand

**SOMKID JATUSRIPITAK**

Deputy Prime Minister and  
Minister of Commerce

For the Government of the Socialist Republic of Vietnam

**TRUONG DINH TUYEN**

Minister of Trade

For the Government of the Republic of Korea

**KIM HYUN-CHONG**

Minister for Trade



## ANNEX RULES AND PROCEDURES FOR THE ARBITRAL PANEL PROCEEDINGS

### *Application*

1. These Rules are established under Article 10 and shall apply to arbitral panel proceedings under this Agreement unless the parties to the dispute otherwise agree.
2. Any reference made in these Rules to an Article is a reference to the appropriate Article in this Agreement.

### *Terms of Reference for Arbitral Panels*

3. An arbitral panel shall have the following terms of reference unless the parties to the dispute agree otherwise within ten (10) days from the date of the establishment of an arbitral 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 in the request for the establishment of an arbitral panel pursuant to Article 5, to make findings, determinations, recommendations and suggestions, if any, as provided in Article 11, and to present the written reports referred to in Articles 11 and 12."

4. The parties to the dispute shall promptly deliver the agreed terms of reference to the arbitral panel. The arbitral panel shall address the relevant provisions in the covered agreements cited by the parties to the dispute.

### *Written Submissions and Other Documents*

5. Each party to the dispute shall deliver no less than four copies of its written submissions to the arbitral panel and a copy to the other party to the dispute.
6. A complaining party shall deliver its initial written submission to the party complained against no later than twenty (20) days after the date of the establishment of the arbitral panel. The party complained against shall deliver its written submission to the complaining party no later than twenty (20) days after the date of receipt of the initial written submission of the complaining party.
7. In respect of any request, notice or other document(s) related to the arbitral panel proceeding that is not covered by paragraphs 5 and 6, each party to the dispute may deliver a copy of the document(s) to the other party to the dispute by facsimile, email or other means of electronic transmission.
8. A party to the dispute may at any time correct minor errors of a clerical nature in any request, notice, written submission or other document(s) related to the arbitral panel proceeding by delivering a new document clearly indicating the changes.

### *Operation of Arbitral Panels*

9. The chair of the arbitral panel shall preside at all of its meetings. An arbitral panel may delegate to the chair authority to make administrative and procedural decisions.

10. Except as otherwise provided in these Rules, the arbitral panel may conduct its business by any means, including by telephone, facsimile transmission and computer links.

11. Only members of the arbitral panel may take part in the deliberations of the arbitral panel, but the arbitral panel may, in consultation with the parties to the dispute, retain such number of assistants, interpreters or translators, or designated note takers as may be required for the proceeding and permit them to be present during such deliberations. The members of the arbitral panel and the persons retained by the arbitral panel shall maintain the confidentiality of the arbitral panel proceeding unless such information is already made available to the public.

12. Where a procedural question arises that is not addressed by these Rules, an arbitral panel may adopt an appropriate procedure that is not inconsistent with this Agreement, unless it considers that the procedural question may affect in a meaningful manner the way in which it examines matters before it, in which case it shall consult with the parties to the dispute.

13. Any time period applicable to the arbitral panel proceeding shall be suspended for a period that begins on the date on which any member of the arbitral panel becomes unable to act and ends on the date on which the successor member is appointed.

14. An arbitral panel may, in consultation with the parties to the dispute, modify any time period applicable in the arbitral panel proceeding and make such other procedural or administrative adjustments as may be required in the proceeding.

15. The venue for the arbitral panel proceedings shall be decided by mutual agreement between the parties to the dispute. If there is no agreement, the venue shall alternate between the capitals of the parties to the dispute with the first session of the arbitral panel proceeding to be held in the capital of the party complained against.

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

17. The interim and final report of the arbitral panel shall be drafted without the presence of the parties to the dispute in the light of the information provided and the statements made. Opinions expressed in the report of the arbitral panel by its individual member shall be anonymous.

18. Following the consideration of submissions, arguments and any information before it, the arbitral panel shall present an interim report to the parties to the dispute, including both a descriptive section relating to the facts of the dispute and the arguments of the parties to the dispute and the arbitral panel's findings and conclusions. The arbitral panel shall accord adequate opportunity to the parties to the dispute to review the entirety of its interim report prior to its finalisation and shall include a discussion of any comments by the

parties concerned in its final report.

#### *Timetable*

19. After consulting the parties to the dispute, the chair of the arbitral panel shall, as soon as practicable and whenever possible within fifteen (15) days after the establishment of the arbitral panel, fix the timetable for the arbitral panel process. In determining the timetable for the arbitral panel process, the arbitral panel shall provide sufficient time for the parties to the dispute to prepare their respective submissions. The arbitral panel should set precise deadlines for written submissions by the parties to the dispute and they shall respect those deadlines.

#### *Decisions of the Arbitral Panel*

20. The arbitral panel shall take its decisions by consensus; provided that where the arbitral panel is unable to reach consensus, it may take its decisions by majority vote.

#### *Availability of Information*

21. The deliberations of the arbitral panel and the documents submitted to it shall be kept confidential. No party to the dispute shall be precluded from disclosing statements of its own positions to the public. The parties to the dispute shall treat as confidential information submitted by the other party to the dispute to the arbitral panel which that party has designated as confidential. Where a party to the dispute submits a confidential version of its written submissions to the arbitral panel, it shall also, upon request of the other party to the dispute, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

#### *Remuneration and Payment of Expenses*

22. The arbitral panel shall keep a record and render a final account of all general expenses incurred in connection with the proceedings, including those paid to their assistants, designated note takers or other individuals that it retains pursuant to paragraph 11.