



ASEAN India Free Trade Agreement 2009 Agreement on Dispute Settlement Mechanism

Completed on August 13, 2009

DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

This document was downloaded from ASEAN Briefing (www.aseanbriefing.com) and was compiled by the tax experts at Dezan Shira & Associates (www.dezshira.com).

Dezan Shira & Associates is a specialist foreign direct investment practice, providing corporate establishment, business advisory, tax advisory and compliance, accounting, payroll, due diligence and financial review services to multinationals investing in emerging Asia.



**AGREEMENT ON DISPUTE SETTLEMENT MECHANISM
UNDER THE FRAMEWORK AGREEMENT ON
COMPREHENSIVE ECONOMIC COOPERATION
BETWEEN THE ASSOCIATION OF SOUTHEAST ASIAN
NATIONS AND THE REPUBLIC OF INDIA**

PREAMBLE

The Governments of Brunei Darussalam, the Kingdom of Cambodia (Cambodia), the Republic of Indonesia (Indonesia), the Lao People's Democratic Republic (Lao PDR), Malaysia, the Union of Myanmar (Myanmar), the Republic of the Philippines (the Philippines), the Republic of Singapore (Singapore), the Kingdom of Thailand (Thailand) and the Socialist Republic of Viet Nam (Viet Nam), Member States of the Association of Southeast Asian Nations and the Government of the Republic of India (India),

RECALLING the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India, signed in Bali, Indonesia on 8 October 2003, as amended by the Protocol to Amend the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India (the Protocol), signed in Bangkok on 13 August 2009; and

FURTHER RECALLING Article 11 of the Framework Agreement as amended by Article 5 of the Protocol, which provides for the establishment of 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:

- (a) **ASEAN** means the Association of Southeast Asian Nations which comprises Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam and whose members are referred to in this Agreement collectively as the ASEAN Member States and individually as an ASEAN Member State;
- (b) **chair** means the member of an arbitral panel who serves as the chair of the arbitral panel;
- (c) **Complaining Party** means any Party that requests consultations under paragraph 1 of Article 4;
- (d) **covered agreements** means:
 - (i) the Framework Agreement;
 - (ii) the Agreement on Trade in Goods under the Framework Agreement;
 - (iii) this Agreement; and
 - (iv) any agreement to be concluded among the Parties pursuant to the relevant provisions of the Framework Agreement unless provided otherwise therein;
- (e) **days** means calendar days, including weekends and holidays;

- (f) **dispute arising under the covered agreements** means a complaint made by a Party concerning any measure affecting the operation, implementation or application of the covered agreements whereby any benefit accruing to the Complaining Party under the covered agreements is being nullified or impaired, or the attainment of any objective of the covered agreements is being impeded as a result of:
- (i) a measure of the Party Complained Against is in conflict with its obligations under the covered agreements; or
 - (ii) the failure of the Party Complained Against to carry out its obligations under the covered agreements¹;
- (g) **Framework Agreement** means the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India (as amended);
- (h) **Parties** means ASEAN Member States and India collectively;
- (i) **parties to a dispute**, or **parties to the dispute** means both the Complaining Party and the Party Complained Against;
- (j) **Party** means an ASEAN Member State or India;
- (k) **Party Complained Against** means any Party to which the request for consultations is made under paragraph 1 of Article 4;

¹ Non-violation disputes are not permitted under this Agreement.

- (l) **Third Party** means a Party which has a substantial interest in a dispute before a panel, other than the parties to a dispute, that delivers a written notice in accordance with Article 8; and
- (m) **WTO** means the World Trade Organization.

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 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 a Party by:

- (a) central, regional or local governments or 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 and 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, an arbitral panel in accordance with this Agreement or any other treaty to which the parties to a dispute are parties.

ARTICLE 3

Liaison Office

1. For the purposes of this Agreement, each Party shall:
 - (a) designate an office that shall be responsible for all matters 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, notice or any other document under this Agreement to the designated office of any Party shall be deemed to be the submission of that request, notice or any other document under this Agreement to that Party.

ARTICLE 4 Consultations

1. Any Party may request consultations with any other Party with respect to any dispute arising under the covered agreements. The Party Complained Against shall accord due consideration and adequate opportunity for consultations regarding a request for consultations made by the Complaining Party.

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 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 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 ten (10) 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 ten (10) days, or does not enter into consultations within the aforesaid 30 days, then the Complaining Party may proceed

directly to request for the establishment of an arbitral panel under Article 6.

4. The parties to a dispute shall make every effort in good faith 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 as may be reasonably available 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 not more than ten (10) days after the date of receipt by the Party Complained Against of the request. If the Party Complained Against does not enter into consultations within ten (10) days after the date of receipt of the consultations request, the Complaining Party may proceed directly to request for the establishment of an arbitral panel under Article 6.

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 5
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 and be terminated at any time by any party to a dispute.

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 6.

4. All proceedings involving good offices, conciliation or 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 before any other forum selected by the parties to the dispute.

ARTICLE 6
Establishment of Arbitral Panels

1. If the consultations under 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 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(s) 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 receipt of the request, an arbitral panel shall be established. The date of establishment of the arbitral panel shall be the date on which the chair is appointed under paragraph 3 of Article 7 or the 30th day after the date of receipt of the request under this Article where only a sole arbitrator is available.

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, wherever feasible, be established by the parties to the dispute to examine the matter taking into account their respective rights.

6. The single arbitral panel shall organise its examination and present its findings in such a manner that the rights which the parties to the dispute would have enjoyed had separate arbitral panels examined the complaints 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 such reports so

permit. 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 other party 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.

8. 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 6, to make findings, determinations, recommendations and suggestions, if any, and to present the written reports referred to in Articles 12 and 13."

ARTICLE 7

Composition of Arbitral Panel

1. Unless otherwise provided in this Agreement or agreed by the parties to the dispute, an arbitral panel shall consist of three (3) arbitrators.

2. Each party to the dispute shall appoint one (1) arbitrator within 30 days after the date of receipt of the request 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.

3. The parties to the dispute shall endeavour to agree on the third arbitrator within 30 days after the date of appointment of the second arbitrator. The third arbitrator shall serve as the chair. If the parties to the dispute are unable to agree on the chair within the aforesaid 30 days, the chair shall be jointly appointed, by the arbitrators who have been appointed under paragraph 2, within a further period of 30 days. If the third arbitrator has not been appointed within 30 days by the arbitrators appointed under paragraph 2, the parties to the dispute shall consult each other in order to jointly appoint the chair within a further period of 30 days.

4. Any person appointed as an arbitrator 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. An arbitrator 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 an arbitrator is in violation of the basis stated above, the parties to the dispute shall consult and if they agree, the arbitrator shall be removed and a new arbitrator 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, unless the parties to the dispute agree otherwise.

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. The successor arbitrator shall have all the powers and duties of the original arbitrator. The work of the arbitral panel shall be suspended until the successor arbitrator is appointed.

6. If the sole arbitrator or the chair appointed in accordance with paragraph 2 or 3 is replaced or succeeded, any hearings held previously by the arbitral panel shall be repeated.

ARTICLE 8 Third Parties

1. If the Party Complained Against agrees, 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. A Third Party 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 proceedings 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 9 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 12 months from the date of such agreement. Upon the request of any party to the dispute, the arbitral panel proceedings shall be resumed after such suspension. If the work of the arbitral panel has been suspended for more than 12 months, the authority of the arbitral panel shall lapse unless the parties to the dispute otherwise agree.

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 10

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. 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. Where the arbitral panel concludes that a measure is in conflict 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 ways by which the Party Complained Against could implement its recommendations. The arbitral panel shall interpret the relevant provisions of the covered agreements in accordance with customary rules of interpretation of public international law. The arbitral panel cannot add to or diminish the rights and obligations under the covered agreements in its findings and recommendations.

ARTICLE 11

Proceedings of Arbitral Panels

1. Unless the parties to the dispute agree otherwise, the rules and procedures set out in the Annex on the Rules and Procedures for the Arbitral Panel Proceedings shall apply. The arbitral panel may, after consulting the parties to the dispute, adopt additional rules and procedures not

inconsistent with the provisions in this Agreement or the Annex on the Rules and Procedures for the Arbitral Panel Proceedings.

2. In the proceedings of the arbitral panel, each party to the dispute shall have:

- (a) a right to at least one (1) hearing before the arbitral panel;
- (b) an opportunity to provide initial and rebuttal submissions;
- (c) a reasonable opportunity to submit comments on the interim report presented pursuant to Article 12; and
- (d) a right to the protection of confidential information.

3. An arbitral panel shall meet in closed sessions. The parties to the dispute shall be present at the meetings only when invited by the arbitral panel to appear before it.

ARTICLE 12 Interim Report

1. Unless the parties to the dispute otherwise agree, the arbitral panel shall base its report on the relevant provisions of the covered agreements, on the submissions and arguments of the parties to the dispute, and on any information before it, pursuant to Article 14.

2. Unless the parties to the dispute otherwise agree, the arbitral panel shall, within 90 days from the date of its establishment, present to the parties to the dispute an interim report containing:

- (a) a descriptive section summarising the arguments of the parties to the dispute;
- (b) its findings on the facts of the case and on the applicability of the provisions of the covered agreements;
- (c) its determinations on the consistency of the measure at issue with the covered agreements; and
- (d) its determinations on whether the Party Complained Against has otherwise failed to carry out its obligations under the covered agreements.

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 14 days of its presentation. The arbitral panel shall include in its final report a discussion on the comments of the parties to the dispute.

ARTICLE 13

Final Report

1. The arbitral panel shall present a final report to the parties to the dispute, within 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 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 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. However, the period between the establishment of an arbitral panel and the presentation of the final report to parties to the dispute shall not exceed 180 days or 120 days in the case of urgency, unless the parties to the dispute otherwise agree.

3. The final report of an arbitral panel shall be final and binding on the parties to the dispute.

4. 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 14

Information and Technical Advice

1. Upon the 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, provided that the parties to the dispute so agree and subject to such terms and conditions as the parties to the dispute may agree. 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 matters 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 own initiative, select, after consultations 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 15

Implementation of Final Report

1. The Party Complained Against shall promptly comply with the award of the arbitral panel issued pursuant to Article 13.

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 agreements, it shall recommend that the Party Complained Against bring the measure into conformity with the covered agreements and may suggest ways in which the Party Complained Against could implement the recommendations.

3. The Party Complained Against shall, within 20 days after the date of issuance of the award, notify the Complaining Party of the period of time required to implement the award. If such notified period of time is unacceptable, the Complaining Party may refer the matter to an arbitral panel, which shall then determine the reasonable implementation period. The arbitral panel shall inform the parties to the dispute of its determination within 30 days after the date of the referral of the matter to it.

4. If the Party Complained Against considers it impracticable to comply with the award within the implementation period as determined pursuant to paragraph 3, it shall, not later than the expiry of that implementation period, enter into consultations with the Complaining Party, with a view to developing mutually satisfactory compensation. If no satisfactory compensation has been agreed within 20 days after the date of expiry of that implementation period, the Complaining Party may request an arbitral panel to determine the appropriate level of suspension of concessions or benefits under the covered agreements in respect of the Party Complained Against.

5. If the Complaining Party considers that the Party Complained Against has failed to comply with the award within the implementation period as determined pursuant to paragraph 3, the Complaining Party may refer the matter to an arbitral panel to confirm the failure and to determine the appropriate level of suspension of concessions or benefits under the covered agreements in respect of the Party Complained Against.

6. The arbitral panel established under this Article shall, wherever possible, have as its arbitrators, the arbitrators of the original arbitral panel. If this is not possible, then the arbitrators of such arbitral panel shall be appointed pursuant to paragraphs 2 and 3 of Article 7.

7. Unless the parties to the dispute agree to a different period, the arbitral panel established under paragraphs 4 and 5 shall issue its award within 60 days after the date when the matter is referred to it.

8. The award of the arbitral panel established under this Article shall be binding on all the parties to the dispute.

ARTICLE 16

Compensation and the Suspension of Concessions or Benefits

1. Compensation and the suspension of concessions or benefits under the covered agreements are temporary measures available in the event that the award is not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or benefits under the covered agreements is preferred to full implementation of the award to bring a measure into conformity with the covered agreements. Compensation, if granted, shall be consistent with the covered agreements.

2. The suspension of concessions or benefits under paragraphs 4 and 5 of Article 15 may only be implemented after the Complaining Party notifies the Party Complained Against and the rest of the Parties of its intention to suspend the concessions or benefits under the covered agreements in respect of the Party Complained Against. The Party Complained Against and the rest of the Parties shall be informed of the commencement of the suspension and which concessions or benefits under the covered agreements would be suspended.

3. In considering what concessions or benefits under the covered agreements are to be suspended under paragraphs 4 and 5 of Article 15, the Complaining Party shall consider that such suspension shall be:

- (a) temporary, and be discontinued when the parties to the dispute reach a mutually satisfactory resolution or where compliance with the award is effected;
- (b) restricted to the same level of nullification or impairment that is attributable to the failure to comply with the award; and
- (c) restricted to the same sector or sectors as those in which the arbitral panel has found the nullification or impairment. If it is not practicable or effective to suspend the concessions or benefits in such sector or sectors, the Complaining Party may suspend concessions or benefits in other sectors of the covered agreements.

4. If the Party Complained Against considers that the suspension of concessions or benefits under the covered agreements by the Complaining Party is inconsistent with the provisions of paragraph 4 of Article 15, it may refer the

matter to an arbitral panel. For the purposes of establishing the arbitral panel under this Article, paragraph 6 of Article 15 shall apply *mutatis mutandis*.

5. Unless the parties to the dispute agree to a different period, the arbitral panel established under this Article shall issue its award within 45 days after the date when the matter is referred to it. Such award shall be binding on all the parties to the dispute.

ARTICLE 17

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, the Party submitting such document shall provide an English translation of that document.

ARTICLE 18

Expenses

1. Each party to a dispute shall bear the costs of its appointed arbitrator and its own expenses and legal costs.

2. Unless the parties to the dispute otherwise agree, the costs of the chair or sole arbitrator and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the parties to a dispute.

ARTICLE 19

Annex

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

ARTICLE 20
Amendments

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

ARTICLE 21
Depositary

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

ARTICLE 22
Entry into Force

1. The Parties shall notify each other in writing upon completion of their internal requirements² necessary for entry into force of this Agreement. This Agreement shall enter into force on the date by which such notifications have been made by India and at least one (1) ASEAN Member State.

2. Where a Party is unable to complete its internal requirements for the entry into force of this Agreement by 1 June 2010, this Agreement shall enter into force for that Party upon the date of notification of the completion of its internal requirements.

IN WITNESS WHEREOF, the undersigned being duly authorised by their respective Governments, have signed this Agreement.

² For greater certainty, the term "internal requirements" may include obtaining governmental approvals or parliamentary approval in accordance with domestic law.

DONE at Bangkok, Thailand this thirteenth day of August 2009 in two (2) originals in the English language.

For the Government of
Brunei Darussalam:

For the Government of the
Republic of India:

LIM JOCK SENG
Second Minister for Foreign
Affairs and Trade

ANAND SHARMA
Minister of Commerce and
Industry

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:

NAM VIYAKETH
Minister of Industry and
Commerce

For the Government of
Malaysia:

MUSTAPA MOHAMED
Minister of International
Trade and Industry

For the Government of the
Union of Myanmar:

U 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 the
Kingdom of Thailand:

PORNTIVA NAKASAI
Minister of Commerce

For the Government of the
Socialist Republic of Viet
Nam:

NGUYEN CAM TU
Vice Minister of Industry and
Trade

ANNEX
RULES AND PROCEDURES FOR THE ARBITRAL PANEL
PROCEEDINGS

Application

1. These Rules shall apply to arbitral panel proceedings under this Agreement unless the parties to the dispute otherwise agree.
2. The arbitral panel shall address the relevant provisions in the covered agreements cited by the parties to the dispute.
3. Following the consideration of submissions, arguments and any information made pursuant to Article 14, the arbitral panel shall present an interim report to the parties to the dispute.

Written Submissions and Other Documents

4. Each party to the dispute shall deliver at least four (4) copies of its written submissions to the arbitral panel and a copy to the other party to the dispute.
5. Each party to the dispute may deliver a copy of any request, notice, written submission or other document(s) to the other party to the dispute by facsimile, e-mail or other electronic means.
6. A party to the dispute may at any time correct minor errors of clerical nature in any of its request, notice, written submission or other document(s) related to the arbitral panel proceedings by delivering a new document clearly indicating the changes.

Operation of Arbitral Panels

7. The chair shall preside over all the meetings of the arbitral panel. An arbitral panel may delegate to the chair authority to decide administrative and procedural matters.

8. Except as otherwise provided in these Rules, the arbitral panel may conduct its business by any means, including telephone, facsimile, e-mail or other electronic means.

9. Only arbitrators may take part in the deliberations of the arbitral panel. The arbitral panel may, however, 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 proceedings and permit them to be present during such deliberations. The arbitrators and the persons retained by the arbitral panel shall maintain the confidentiality of the arbitral panel proceedings.

10. An arbitral panel may, in consultation with the parties to the dispute, modify any time period applicable to the arbitral panel proceedings and make such other procedural or administrative adjustments as may be required in the proceedings. After consulting the parties to the dispute, the chair shall, within 15 days after the establishment of the arbitral panel, fix the timetable for the arbitral panel process. In determining the timetable, the arbitral panel shall provide sufficient time for the parties to the dispute to prepare their respective submissions. The arbitral panel may set precise deadlines for written submissions by the parties to the dispute and they shall respect those deadlines.

11. 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 parties to the dispute with the first session to be held in the territory of the Party Complained Against.

12. All Third Parties which have notified their interest in the dispute shall be invited in writing to present their views only during the first session of the arbitral panel proceedings set aside for that purpose. All such Third Parties may be present during the entirety of this session.

13. The interim and final reports of the arbitral panel shall be drafted without the presence of the parties to the dispute. The arbitral panel shall make its decisions by consensus. Where the arbitral panel is unable to reach a consensus, it may make its decisions by a majority vote. Opinions expressed in the report by individual arbitrators shall be anonymous.

Availability of Information

14. 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 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.

Record of Expenses

15. 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 9.