

APPENDIX II
RULES OF CONDUCT

These rules of conduct are designed to maintain the integrity, impartiality and confidentiality of proceedings conducted under the Protocol thereby enhancing confidence under the Protocol.

I. Governing Principle

Each person covered by these Rules (as defined in paragraph III:1 and hereinafter called "covered person") shall be independent and impartial, shall avoid direct or indirect conflicts of interest and shall respect the confidentiality of proceedings of bodies pursuant to the dispute settlement mechanism, so that through the observance of such standards of conduct the integrity and impartiality of that mechanism are preserved. These Rules shall in no way modify the rights and obligations of Member States under the Protocol nor the rules and procedures therein.

II. Observance of the Governing Principle

1. To ensure the observance of the Governing Principle, each covered person is expected to:

- (a) adhere strictly to the provisions of the Protocol;
- (b) disclose the existence or development of any interest, relationship or matter that that person could reasonably be expected to know and that is likely to affect, or give rise to justifiable doubts as to, that person's independence or impartiality; and
- (c) take due care in the performance of their duties to fulfil these expectations, including through avoidance of any direct or indirect conflicts of interest in respect of the subject matter of the proceedings.

2. Pursuant to the Governing Principle, each covered person, shall be independent and impartial, and shall maintain confidentiality. Moreover, such persons shall consider only issues raised in, and necessary to fulfil their responsibilities within, the dispute settlement proceeding and shall not delegate this responsibility to any other person. Such person shall not incur any obligation or accept any benefit that would in any way interfere with, or which could give rise to, justifiable doubts as to the proper performance of that person's dispute settlement duties.

III. Scope

1. These Rules shall apply, as specified in the text, to each person serving:
 - (a) on a panel;
 - (b) on the Appellate Body;
 - (c) as an arbitrator pursuant to the provisions mentioned in paragraphs 7 and 8 of Article 18 of the Protocol; or
 - (d) as an expert participating in the dispute settlement mechanism pursuant to paragraph 5 of Article 10 of the Protocol.

These Rules shall also apply, as specified in this text, to those members of the Secretariat called upon to assist the panel and the Appellate Body in accordance with Article 22 of the Protocol or to assist in formal arbitration proceedings pursuant to paragraphs 7 and 8 of Article 18 of the Protocol.

2. The application of these Rules shall not in any way impede the Secretariat's discharge of its responsibility to continue to respond to Member States' requests for assistance and information.

IV. Self-Disclosure Requirements by Covered Persons

1. (a) Each person requested to serve on a panel, on the Appellate Body, as an arbitrator, or as an expert shall, at the time of the request, receive from the Secretariat these Rules, which include an Illustrative List at Annex 1 of examples of the matters subject to disclosure.

(b) Any member of the Secretariat described in paragraph III:1, who may expect to be called upon to assist in a dispute shall be familiar with these Rules.

2. As set out in paragraph IV:4, all covered persons described in paragraph IV:1 shall disclose any information that could reasonably be expected to be known to them at the time which, coming within the scope of the Governing Principle, is likely to affect or give rise to justifiable doubts as to their independence or impartiality. These disclosures include the type of information described in the Illustrative List at Annex 1, if relevant.

3. These disclosure requirements shall not extend to the identification of matters whose relevance to the issues to be considered in the proceedings would be insignificant. They shall take into account the need to respect the personal privacy of those to whom these Rules apply and shall not be so administratively burdensome as to make it impracticable for otherwise

qualified persons to serve on panels, the Appellate Body, or in other dispute settlement roles.

4. (a) All panelists, arbitrators and experts, prior to confirmation of their appointment, shall complete the form at Annex 2. Such information would be disclosed to the SEOM for consideration by the parties to the dispute.

(b) (i) Persons serving on the Appellate Body who, through rotation, are selected to hear the appeal of a particular panel case, shall review the factual portion of the panel report and complete the form at Annex 2. Such information would be disclosed to the Appellate Body for its consideration whether the member concerned should hear a particular appeal.

(ii) The staff members of the Secretariat shall disclose any relevant matter to the Appellate Body, for its consideration in deciding on the assignment of staff to assist in a particular appeal.

(c) When considered to assist in a dispute, members of the Secretariat shall disclose to the Secretary-General of ASEAN the information required under paragraph IV:2 and any other relevant information required under the ASEAN Secretariat Staff Regulations.

5. During a dispute, each covered person shall also disclose any new information relevant to paragraph IV:2 at the earliest time they become aware of it.

6. The SEOM, Appellate Body, the Secretariat, parties to the dispute, and other individuals involved in the dispute settlement mechanism shall maintain the confidentiality of any information revealed through this disclosure process, even after the panel or appellate review process and its enforcement procedures, if any, are completed.

V. Confidentiality

1. Each covered person shall at all times maintain the confidentiality of dispute settlement deliberations and proceedings together with any information identified by a party as confidential. No covered person shall at any time use such information acquired during such deliberations and proceedings to gain personal advantage or advantage for others.

2. During the proceedings, no covered person shall engage in *ex parte* contacts concerning matters under consideration. Subject to paragraph V:1, no covered person shall make any statements on such proceedings or the issues in dispute in which that person is participating, until the report of the panel or the Appellate Body has been declassified.

VI. Procedures Concerning Subsequent Disclosure and Possible Material Violations

1. Any party to a dispute, conducted pursuant to the Protocol, who possesses or comes into possession of evidence of a material violation of the obligations of independence, impartiality or confidentiality or the avoidance of direct or indirect conflicts of interest by covered persons which may impair the integrity, impartiality or confidentiality of the dispute settlement mechanism, shall at the earliest possible time and on a confidential basis, submit such evidence to the SEOM, the Secretary-General of ASEAN or the Appellate Body, as appropriate according to the respective procedures detailed in paragraphs VI:5 to VI:17, in a written statement specifying the relevant facts and circumstances. Other Member States who possess or come into possession of such evidence, may provide such evidence to the parties to the dispute in the interest of maintaining the integrity and impartiality of the dispute settlement mechanism.

2. When evidence as described in paragraph VI:1 is based on an alleged failure of a covered person to disclose a relevant interest, relationship or matter, that failure to disclose, as such, shall not be a sufficient ground for disqualification unless there is also evidence of a material violation of the obligations of independence, impartiality, confidentiality or the avoidance of direct or indirect conflicts of interests and that the integrity, impartiality or confidentiality of the dispute settlement mechanism would be impaired thereby.

3. When such evidence is not provided at the earliest practicable time, the party submitting the evidence shall explain why it did not do so earlier and this explanation shall be taken into account in the procedures initiated in paragraph VI:1.

4. Following the submission of such evidence to the SEOM, the Secretary-General of ASEAN or the Appellate Body, as specified below, the procedures outlined in paragraphs VI:5 to VI:17 shall be completed within 15 working days.

Panelists, Arbitrators, Experts

5. If the covered person who is the subject of the evidence is a panelist, an arbitrator or an expert, the party shall provide such evidence to the SEOM.

6. Upon receipt of the evidence referred to in paragraphs VI:1 and VI:2, the SEOM shall forthwith provide the evidence to the person who is the subject of such evidence, for consideration by the latter.

7. If, after having consulted with the person concerned, the matter is not resolved, the SEOM shall forthwith provide all the evidence, and any additional information from the person concerned, to the parties to the

dispute. If the person concerned resigns, the SEOM shall inform the parties to the dispute and, as the case may be, the panelists, the arbitrator(s) or experts.

8. In all cases, the SEOM, in consultation with the Secretary-General of ASEAN and after having provided a reasonable opportunity for the views of the person concerned and the parties to the dispute to be heard, would decide whether a material violation of these Rules as referred to in paragraphs VI:1 and VI:2 has occurred. Where the parties to the dispute agree that a material violation of these Rules has occurred, it would be expected that, consistent with maintaining the integrity of the dispute settlement mechanism, the disqualification of the person concerned would be confirmed.

9. The person who is the subject of the evidence shall continue to participate in the consideration of the dispute unless it is decided that a material violation of these Rules has occurred.

10. The SEOM shall thereafter take the necessary steps for the appointment of the person who is the subject of the evidence to be formally revoked, or excused from the dispute as the case may be, as of that time.

Secretariat

11. If the covered person who is the subject of the evidence is a staff member of the Secretariat, the party shall only provide the evidence to the Secretary-General of ASEAN, who shall forthwith provide the evidence to the person who is the subject of such evidence and shall further inform the other party or parties to the dispute, and the panel or the Appellate Body, as appropriate.

12. It shall be for the Secretary-General of ASEAN to take any appropriate action in accordance with the ASEAN Secretariat Staff Regulations.

13. The Secretary-General of ASEAN shall inform the parties to the dispute, the panel and the SEOM of his decision, together with relevant supporting information.

Appellate Body

14. If the covered person who is the subject of the evidence is a member of the Appellate Body, the party shall provide the evidence to the other party to the dispute and the evidence shall thereafter be provided to the Appellate Body.

15. Upon receipt of the evidence referred to in paragraphs VI:1 and VI:2, the Appellate Body shall forthwith provide it to the person who is the subject of such evidence, for consideration by the latter.

16. It shall be for the Appellate Body to take any appropriate action after having provided a reasonable opportunity for the views of the person concerned and the parties to the dispute to be heard.

17. The Appellate Body shall inform the parties to the dispute and the SEOM of its decision, together with relevant supporting information.

18. Following completion of the procedures in paragraphs VI:5 to VI:17, if the appointment of a covered person, other than a member of the Appellate Body, is revoked or that person is excused or resigns, the procedures specified in the Protocol for initial appointment shall be followed for appointment of a replacement, but the time-periods shall not exceed half those specified in the Protocol, and the timelines in relation to panel and Appellate Body proceedings are maintained. The member of the Appellate Body who, under that Body's rules, would next be selected through rotation to consider the dispute, would automatically be assigned to the appeal. The panel, members of the Appellate Body hearing the appeal, or the arbitrator, as the case may be, may then decide after consulting with the parties to the dispute, on any necessary modifications to their working procedures or proposed timetable.

19. All covered persons and Member States concerned shall resolve matters involving possible material violations of these Rules as expeditiously as possible so as not to delay the completion of proceedings, as provided in the Protocol.

20. Except to the extent strictly necessary to carry out this decision, all information concerning possible or actual material violations of these Rules shall be kept confidential.

VII. Review

These Rules may be reviewed, if necessary.

ANNEX 1

ILLUSTRATIVE LIST OF INFORMATION TO BE DISCLOSED

This list contains examples of information of the type that a person called upon to serve in a dispute should disclose pursuant to the Rules of Conduct for the ASEAN Protocol on Enhanced Dispute Settlement Mechanism.

Each covered person, as defined in paragraph III:1 of these Rules has a continuing duty to disclose the information described in paragraph IV:2 of these Rules which may include the following:

- (a) financial interests (e.g. investments, loans, shares, interests, other debts); business interests (e.g. directorship or other contractual interests); and property interests relevant to the dispute in question;
- (b) professional interests (e.g. a past or present relationship with private clients, or any interests the person may have in domestic or international proceedings, and their implications, where these involve issues similar to those addressed in the dispute in question);
- (c) other active interests (e.g. active participation in public interest groups or other organisations which may have a declared agenda relevant to the dispute in question);
- (d) considered statements of personal opinion on issues relevant to the dispute in question (e.g. publications, public statements); and
- (e) employment or family interests (e.g. the possibility of any indirect advantage or any likelihood of pressure which could arise from their employer, business associates or immediate family members).

ANNEX 2

Dispute Number: _____

ASSOCIATION OF SOUTHEAST ASIAN NATIONS

DISCLOSURE FORM

I have read the ASEAN Protocol on Enhanced Dispute Settlement Mechanism (Protocol) and the Rules of Conduct in Appendix II of the Protocol. I understand my continuing duty, while participating in the dispute settlement mechanism, and until such time as the ASEAN Senior Economic Officials Meeting (SEOM) makes a decision on adoption of a report relating to the proceeding or notes its settlement, to disclose herewith and in future any information likely to affect my independence or impartiality, or which could give rise to justifiable doubts as to the integrity and impartiality of the dispute settlement mechanism; and to respect my obligations regarding the confidentiality of dispute settlement proceedings.

Signed:

Dated: