

## DECLARATION OF ASEAN CONCORD II (BALI CONCORD II)

The Sultan of Brunei Darussalam, the Prime Minister of the Kingdom of Cambodia, the President of the Republic of Indonesia, the Prime Minister of the Lao People's Democratic Republic, the Prime Minister of Malaysia, the Prime Minister of the Union of Myanmar, the President of the Republic of the Philippines, the Prime Minister of the Republic of Singapore, the Prime Minister of the Kingdom of Thailand and the Prime Minister of the Socialist Republic of Viet Nam;

**RECALLING** the Declaration of ASEAN Concord adopted in this historic place of Bali, Indonesia in 1976, the Leaders of the Association of Southeast Asian Nations (ASEAN) expressed satisfaction with the overall progress made in the region;

**NOTING** in particular the expansion of ASEAN to ten countries in Southeast Asia, the deepening of regional economic integration and the impending accession to the Treaty of Amity and Cooperation (TAC) by States outside Southeast Asia;

**CONSCIOUS** of the need to further consolidate and enhance the achievements of ASEAN as a dynamic, resilient, and cohesive regional association for the well being of its member states and people as well as the need to further strengthen the Association's guidelines in achieving a more coherent and clearer path for cooperation between and among them;

**REAFFIRMING** their commitment to the principles enshrined in the ASEAN Declaration (Bangkok, 1967), the Declaration on Zone of Peace, Freedom, and Neutrality (Kuala Lumpur, 1971), the Treaty of Amity and Cooperation in Southeast Asia (Bali, 1976), the Declaration of ASEAN Concord (Bali, 1976), and the Treaty on the Southeast Asia Nuclear Weapons Free Zone (Bangkok, 1995);

**COGNIZANT** that the future of ASEAN cooperation is guided by the ASEAN Vision 2020, the Hanoi Plan of Action (1999-2004), and its succeeding Plans of Action, the Initiative for ASEAN Integration (IAI), and the Roadmap for the Integration of ASEAN (RIA);

**CONFIRMING** further that ASEAN Member Countries share primary responsibility for strengthening the economic and social stability in the region and ensuring their peaceful and progressive national development, and that they are determined to ensure their stability and security from external interference in any form or manner in order to preserve their national interest in accordance with the ideals and aspirations of their peoples;

**REAFFIRMING** the fundamental importance of adhering to the principle of non-interference and consensus in ASEAN cooperation;

**REITERATING** that the Treaty of Amity and Cooperation in Southeast Asia (TAC) is an effective code of conduct for relations among governments and peoples;

**RECOGNIZING** that sustainable economic development requires a secure political environment based on a strong foundation of mutual interests generated by economic cooperation and political solidarity;

**COGNIZANT** of the interdependence of the ASEAN economies and the need for ASEAN member countries to adopt “Prosper Thy Neighbour” policies in order to ensure the long-term vibrancy and prosperity of the ASEAN region;

**REITERATING** the importance of rules-based multilateral trading system that is equitable and that contributes towards the pursuit of development;

**REAFFIRMING** that ASEAN is a concert of Southeast Asian nations, bonded together in partnership in dynamic development and in a community of caring societies, committed to upholding cultural diversity and social harmony;

**DO HEREBY DECLARE THAT:**

1. An ASEAN Community shall be established comprising three pillars, namely political and security cooperation, economic cooperation, and socio-cultural cooperation that are closely intertwined and mutually reinforcing for the purpose of ensuring durable peace, stability and shared prosperity in the region;

2. ASEAN shall continue its efforts to ensure closer and mutually beneficial integration among its member states and among their peoples, and to promote regional peace and stability, security, development and prosperity with a view to realizing an ASEAN Community that is open, dynamic and resilient;

3. ASEAN shall respond to the new dynamics within the respective ASEAN Member Countries and shall urgently and effectively address the challenge of translating ASEAN cultural diversities and different economic levels into equitable development opportunity and prosperity, in an environment of solidarity, regional resilience and harmony;

4. ASEAN shall nurture common values, such as habit of consultation to discuss political issues and the willingness to share information on matters of common concern, such as environmental degradation, maritime security cooperation, the enhancement of defense cooperation among ASEAN countries, develop a set of socio-political values and principles, and resolve to settle long-standing disputes through peaceful means;

5. The Treaty of Amity and Cooperation in Southeast Asia (TAC) is the key code of conduct governing relations between states and a diplomatic instrument for the promotion of peace and stability in the region;

6. The ASEAN Regional Forum (ARF) shall remain the primary forum in enhancing political and security cooperation in the Asia Pacific region, as well as the pivot in building peace and stability in the region. ASEAN shall enhance its role in further advancing the stages of cooperation within the ARF to ensure the security of the Asia Pacific region;

7. ASEAN is committed to deepening and broadening its internal economic integration and linkages with the world economy to realize an ASEAN Economic Community through a bold, pragmatic and unified strategy;
8. ASEAN shall further build on the momentum already gained in the ASEAN+3 process so as to further draw synergies through broader and deeper cooperation in various areas;
9. ASEAN shall build upon opportunities for mutually beneficial regional integration arising from its existing initiatives and those with partners, through enhanced trade and investment links as well as through IAI process and the RIA;
10. ASEAN shall continue to foster a community of caring societies and promote a common regional identity;

**DO HEREBY ADOPT:**

The framework to achieve a dynamic, cohesive, resilient and integrated ASEAN Community:

**A. ASEAN SECURITY COMMUNITY (ASC)**

1. The ASEAN Security Community is envisaged to bring ASEAN's political and security cooperation to a higher plane to ensure that countries in the region live at peace with one another and with the world at large in a just, democratic and harmonious environment. The ASEAN Security Community members shall rely exclusively on peaceful processes in the settlement of intra-regional differences and regard their security as fundamentally linked to one another and bound by geographic location, common vision and objectives.
2. The ASEAN Security Community, recognizing the sovereign right of the member countries to pursue their individual foreign policies and defense arrangements and taking into account the strong interconnections among political, economic and social realities, subscribes to the principle of comprehensive security as having broad political, economic, social and cultural aspects in consonance with the ASEAN Vision 2020 rather than to a defense pact, military alliance or a joint foreign policy.
3. ASEAN shall continue to promote regional solidarity and cooperation. Member Countries shall exercise their rights to lead their national existence free from outside interference in their internal affairs.
4. The ASEAN Security Community shall abide by the UN Charter and other principles of international law and uphold ASEAN's principles of non-interference, consensus-based decision-making, national and regional resilience, respect for national sovereignty, the renunciation of the threat or the use of force, and peaceful settlement of differences and disputes.
5. Maritime issues and concerns are transboundary in nature, and therefore shall be addressed regionally in holistic, integrated and comprehensive manner. Maritime cooperation between and among ASEAN member countries shall contribute to the evolution of the ASEAN Security Community.

6. Existing ASEAN political instruments such as the Declaration on ZOPFAN, the TAC, and the SEANWFZ Treaty shall continue to play a pivotal role in the area of confidence building measures, preventive diplomacy and the approaches to conflict resolution.
7. The High Council of the TAC shall be the important component in the ASEAN Security Community since it reflects ASEAN's commitment to resolve all differences, disputes and conflicts peacefully.
8. The ASEAN Security Community shall contribute to further promoting peace and security in the wider Asia Pacific region and reflect ASEAN's determination to move forward at a pace comfortable to all. In this regard, the ARF shall remain the main forum for regional security dialogue, with ASEAN as the primary driving force.
9. The ASEAN Security Community is open and outward looking in respect of actively engaging ASEAN's friends and Dialogue Partners to promote peace and stability in the region, and shall build on the ARF to facilitate consultation and cooperation between ASEAN and its friends and Partners on regional security matters.
10. The ASEAN Security Community shall fully utilize the existing institutions and mechanisms within ASEAN with a view to strengthening national and regional capacities to counter terrorism, drug trafficking, trafficking in persons and other transnational crimes; and shall work to ensure that the Southeast Asian Region remains free of all weapons of mass destruction. It shall enable ASEAN to demonstrate a greater capacity and responsibility of being the primary driving force of the ARF.
11. The ASEAN Security Community shall explore enhanced cooperation with the United Nations as well as other international and regional bodies for the maintenance of international peace and security.
12. ASEAN shall explore innovative ways to increase its security and establish modalities for the ASEAN Security Community, which include, inter alia, the following elements: norms-setting, conflict prevention, approaches to conflict resolution, and post-conflict peace building.

#### **B. ASEAN ECONOMIC COMMUNITY (AEC)**

1. The ASEAN Economic Community is the realisation of the end-goal of economic integration as outlined in the ASEAN Vision 2020, to create a stable, prosperous and highly competitive ASEAN economic region in which there is a free flow of goods, services, investment and a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities in year 2020.
2. The ASEAN Economic Community is based on a convergence of interests among ASEAN members to deepen and broaden economic integration efforts through existing and new initiatives with clear timelines.
3. The ASEAN Economic Community shall establish ASEAN as a single market and production base, turning the diversity that characterises the region into opportunities for business complementation making the ASEAN a more dynamic and stronger segment of the global supply chain. ASEAN's strategy shall consist of

the integration of ASEAN and enhancing ASEAN's economic competitiveness. In moving towards the ASEAN Economic Community, ASEAN shall, inter alia, institute new mechanisms and measures to strengthen the implementation of its existing economic initiatives including the ASEAN Free Trade Area (AFTA), ASEAN Framework Agreement on Services (AFAS) and ASEAN Investment Area (AIA); accelerate regional integration in the priority sectors; facilitate movement of business persons, skilled labour and talents; and strengthen the institutional mechanisms of ASEAN, including the improvement of the existing ASEAN Dispute Settlement Mechanism to ensure expeditious and legally binding resolution of any economic disputes. As a first step towards the realization of the ASEAN Economic Community, ASEAN shall implement the recommendations of the **High Level Task Force on ASEAN Economic Integration as annexed.**

4. The ASEAN Economic Community shall ensure that deepening and broadening integration of ASEAN shall be accompanied by technical and development cooperation in order to address the development divide and accelerate the economic integration of Cambodia, Lao PDR, Myanmar and Viet Nam through IAI and RIA so that the benefits of ASEAN integration are shared and enable all ASEAN Member Countries to move forward in a unified manner.

5. The realization of a fully integrated economic community requires implementation of both liberalization and cooperation measures. There is a need to enhance cooperation and integration activities in other areas. These will involve, among others, human resources development and capacity building; recognition of educational qualifications; closer consultation on macroeconomic and financial policies; trade financing measures; enhanced infrastructure and communications connectivity; development of electronic transactions through e-ASEAN; integrating industries across the region to promote regional sourcing; and enhancing private sector involvement.

### **C. ASEAN SOCIO-CULTURAL COMMUNITY (ASCC)**

1. The ASEAN Socio-cultural Community, in consonance with the goal set by ASEAN Vision 2020, envisages a Southeast Asia bonded together in partnership as a community of caring societies.

2. In line with the programme of action set by the 1976 Declaration of ASEAN Concord, the Community shall foster cooperation in social development aimed at raising the standard of living of disadvantaged groups and the rural population, and shall seek the active involvement of all sectors of society, in particular women, youth, and local communities.

3. ASEAN shall ensure that its work force shall be prepared for, and benefit from, economic integration by investing more resources for basic and higher education, training, science and technology development, job creation, and social protection. The development and enhancement of human resources is a key strategy for employment generation, alleviating poverty and socio-economic disparities,

and ensuring economic growth with equity. ASEAN shall continue existing efforts to promote regional mobility and mutual recognition of professional credentials, talents, and skills development.

4. ASEAN shall further intensify cooperation in the area of public health, including in the prevention and control of infectious diseases, such as HIV/AIDS and SARS, and support joint regional actions to increase access to affordable medicines. The security of the Community is enhanced when poverty and diseases are held in check, and the peoples of ASEAN are assured of adequate health care.

5. The Community shall nurture talent and promote interaction among ASEAN scholars, writers, artists and media practitioners to help preserve and promote ASEAN's diverse cultural heritage while fostering regional identity as well as cultivating people's awareness of ASEAN.

6. The Community shall intensify cooperation in addressing problems associated with population growth, unemployment, environmental degradation and transboundary pollution as well as disaster management in the region to enable individual members to fully realize their development potentials and to enhance the mutual ASEAN spirit.

We hereby pledge to our peoples our resolve and commitment to bring the ASEAN Community into reality and, for this purpose, task the concerned Ministers to implement this Declaration.

**DONE** in Bali, Indonesia, on the Seventh Day of October in the Year Two Thousand and Three.

For Brunei Darussalam: **HAJI HASSANAL BOLKIAH**, Sultan of Brunei Darussalam

For the Kingdom of Cambodia: **SAMDECH HUN SEN**, Prime Minister

For the Republic of Indonesia: **MEGAWATI SOEKARNOPUTRI**, President

For the Lao People's Democratic Republic: **BOUNNHANG VORACHITH**, Prime Minister

For Malaysia: **DR MAHATHIR BIN MOHAMAD**, Prime Minister

For the Union of Myanmar: **GENERAL KHIN NYUNT**, Prime Minister

For the Republic of the Philippines: **GLORIA MACAPAGAL-ARROYO**, President

For the Republic of Singapore: **GOH CHOK TONG**, Prime Minister

For the Kingdom of Thailand: **THAKSIN SHINAWATRA**, Prime Minister

For the Socialist Republic of Viet Nam: **PHAN VAN KHAI**, Prime Minister

**ANNEX TO THE 2003 DECLARATION OF ASEAN CONCORD II:**  
**RECOMMENDATIONS OF THE HIGH-LEVEL TASK FORCE ON**  
**ASEAN ECONOMIC INTEGRATION**

**INTRODUCTION**

1. The realization of a fully integrated economic community requires implementation of both liberalization and cooperation measures. The Task Force while focusing its recommendations relating to liberalization and facilitation measures in the area of trade in goods, services and investment, acknowledges on the need to enhance cooperation and integration activities in other areas. These will involve among others, human resource development and capacity building; recognition of educational qualifications; closer consultations on macroeconomic and financial policies; trade financing measures; enhanced infrastructure and communications connectivity; development of electronic transactions through e-ASEAN; integrating industries across the region to promote regional sourcing; and enhancing private sector involvement.

**ASEAN ECONOMIC COMMUNITY**

2. As a step towards the realization of ASEAN Economic Community for trade in goods, services and investment, the HLTF took into account the experience of other Regional Trading Arrangements (RTAs), ASEAN's own experience, the development perspective in ASEAN and also the views contained in the following documents:

- (i) ASEAN Vision 2020, the Hanoi Plan of Action (HPA), and RIA;
- (ii) ASEAN Competitiveness Study;
- (iii) ASEAN Economic Community: Concept Paper by ISEAS; and
- (iv) ASEAN ISIS: Towards an ASEAN Economic Community.

3. The HLTF is of the view that the elements of the AEC in the area of goods, services and investment have been elaborated in ASEAN Vision 2020, HPA and RIA, and recommends that the AEC should be:

- (i) The end-goal of economic integration as outlined in the ASEAN Vision 2020;
- (ii) Characterized as a single market and production base, with free flow of goods, services, investment and skilled labour, and freer flow of capital by 2020; and
- (iii) Approached on a progressive basis with clear timelines by strengthening existing initiatives and building new initiatives to enhance economic integration.

**RECOMMENDATIONS**

4. Recognizing that not all ASEAN member countries can meet the recommended deadlines, the HLTF recommends that flexibility be allowed in its implementation to enable those member countries that are ready to proceed first.

## I. CURRENT ECONOMIC COOPERATION INITIATIVES

5. The HLTF recommends that cooperation under the current economic initiatives be further strengthened in the following areas:

### A. Trade in Goods

(i) By end-2004, finalize the improvement to the CEPT Scheme Rules of Origin (ROO) by:

- Making it more transparent, predictable and standardized and taking into account the best practices of other RTAs including the WTO ROO; and
- Adopting substantial transformation as alternative criteria for conferring origin status.

(ii) Ensure transparency on Non-Tariff Measures (NTMs) and eliminate those that are barriers to trade:

- Establish ASEAN Database of NTMs by mid-2004;
- Set clear criteria to identify measures that are classified as barriers to trade by mid-2005;
- Set a clear and definitive work programme for the removal of the barriers by 2005; and
- Adopt the WTO agreements on Technical Barriers to Trade; Sanitary and Phyto-Sanitary and Import Licensing Procedures and develop implementation guidelines appropriate for ASEAN by end-2004.

### Customs

(i) Ensure full implementation of the Green Lane system for CEPT products at entry points of all Member Countries by 2004;

(ii) Adopt WTO agreement on Customs Valuation and develop implementation guidelines appropriate for ASEAN by end-2004;

(iii) Adopt service commitment (client charter) by ASEAN customs authorities; and

(iv) Adopt the Single Window approach including the electronic processing of trade documents at national and regional level.

### Standards

(i) Accelerate the completion and implementation of the Mutual Recognition Arrangements (MRAs) for the five identified priority sectors (electrical and electronic equipment, cosmetics, pharmaceuticals, telecommunications equipment and prepared foodstuff) within 2004/2005; and other sectors with significant potential for trade;

(ii) Set specific targets for the harmonization of standards and technical regulations to trade focusing on sectors with significant trade value and those with potential for trade in the future; and

(iii) Develop ASEAN technical regulations, where possible, for national applications.

### B. Trade in Services

(i) Set clear targets and schedules of services liberalization for each sector and each round towards achieving free flow of trade in services; and AEM to provide specific mandate in every round of services negotiations. The end date to achieve free flow of trade in services earlier than 2020;

- (ii) Accelerate services liberalization in specific sectors earlier than end-date by countries which are ready, through the application of the ASEAN-X formula;
- (iii) Complete MRAs for qualifications in major professional services by 2008 to facilitate free movement of professional/skilled labor/talents in ASEAN;
- (iv) Promote the use of ASEAN professional services through the establishment of a “Professional Exchange” by 2008;
- (v) Recognise the AEM as the coordinator for services liberalization across all sectors; and
- (vi) Each country to be represented by senior officials who are authorized to negotiate on behalf of the government.

### **C. Investment**

- (i) Speed up the opening of sectors currently in the sensitive list to TEL, using the ASEAN-X formula, beginning 2004;
- (ii) Encourage and promote companies to relocate within ASEAN and where appropriate, special incentives should be given;
- (iii) Institute a mechanism to monitor the specific activities and timelines undertaken by each country vis-à-vis their submitted planned actions/activities on annual basis;
- (iv) Establish a network of ASEAN free trade zones (FTZs) so that companies could structure their manufacturing processes across different ASEAN countries to take advantage of their comparative strengths; and in the process increase intraASEAN trade and investment. Special marketing efforts should be undertaken for ASEAN-based companies; and
- (v) Undertake more effective joint ASEAN facilitation and promotion measures and develop new sources of inward FDI, particularly from potential countries such as China, India and ROK.

### **D. Intellectual Property Rights (IPRs)**

6. ASEAN IPR cooperation beyond trademarks and patents by including cooperation in copyrights information exchange and enforcement by 2004.

### **E. Capital Mobility**

7. To facilitate trade and investment flows, expedite the implementation of the Roadmap for Integration of ASEAN in Finance.

## **II. NEW INITIATIVES AND MEASURES**

### **Priority Integration Sectors**

8. The Special Informal AEM agreed to accelerate 11 priority sectors for integration to be coordinated by the following countries.

- (i) Indonesia: Wood-Based Products and Automotives;
- (ii) Malaysia: Rubber-Based Products; Textiles and Apparels;
- (iii) Myanmar: Agro-Based Products and Fisheries;
- (iv) Philippines: Electronics;
- (v) Singapore: e-ASEAN and Healthcare; and

(vi) Thailand: Air Travel and Tourism

9. The approach recommended for the integration of these priority sectors be premised on:

- (i) Combine the economic strengths of ASEAN Member Countries for regional advantage;
- (ii) Facilitate and promote intra-ASEAN investments;
- (iii) Improve the condition to attract and retain manufacturing and other economic activities within the region;
- (iv) Promote out-sourcing programme within ASEAN; and
- (v) Promote the development of “Made in ASEAN” products and services.

10. Roadmap should be developed for each of the priority sectors and be implemented with the active involvement of the private sector, beginning 2004.

11. Possible measures proposed for the goods sector:

- (i) Zero internal tariffs;
- (ii) Immediate removal of barriers to trade;
- (ii) Faster customs clearance and simplified customs procedures; and
- (iii) Accelerated development of MRAs and harmonization of products standards and technical regulations.

12. Integration of services sectors be implemented through:

- (i) Accelerated liberalization of these priority sectors by 2010;
- (ii) Accelerated development of MRAs; and
- (iii) Promote joint ventures and cooperation, including in third country markets.

13. Facilitate mobility of business people and tourists through:

- (i) Visa exemption for intra-ASEAN travel by ASEAN nationals by 2005
- (ii) Harmonizing the procedures for issuing visas to international travelers in ASEAN by 2004; and
- (iii) Developing ASEAN agreement to facilitate movement of business persons and skilled labour and talents by 2005.

### **III. INSTITUTIONAL STRENGTHENING**

14. To streamline the decision-making process and ensure effective implementation of all ASEAN economic initiatives, the following measures are recommended:

- (i) Re-affirm the AEM as the coordinator of all ASEAN economic integration and cooperation issues;
- (ii) Issues of policy in nature to be resolved by AEM/AFTA Council/AIA Council;
- (iii) Technical/operational issues to be resolved by SEOM and the various committees/working groups;
- (iv) Decision-making process by economic bodies to be made by consensus, and where there is no consensus, ASEAN to consider other options with the objective of expediting the decision-making process.

(v) By end-2004, establish an effective system to ensure proper implementation of all economic agreements and expeditious resolution of any disputes. The new system should provide for advisory, consultative, and adjudicatory mechanisms as follows:

Establish a legal unit within the ASEAN Secretariat; (Advisory - the legal unit will provide legal advice on trade disputes)

- Establish the ASEAN Consultation to Solve Trade and Investment Issues (ACT); (Consultative - the ACT is the ASEAN equivalent of the EU SOLVIT mechanism to provide quick resolution to operational problems)
- Establish the ASEAN Compliance Body (ACB); and (Adjudication - modeled after the WTO Textile Monitoring Body and make use of peer pressure)
- Enhanced ASEAN DSM to make it more practical. (Adjudication – amend the ASEAN DSM to ensure expeditious and legally binding decision in resolving trade disputes) The proposed concept, elements and flow chart of the new system appear as ANNEX 1

(vi) Enhance the capability of the ASEAN Secretariat to conduct research and analytical studies related to trade, investment and finance.

#### **IV. OUTREACH**

15. To promote better appreciation and understanding of ASEAN economic issues among business/investor community and public sector agencies, the HLTF recommends the following:

- (i) Conduct out-reach programmes annually at both national and regional level; and
- (ii) Consult regularly with private sector representatives at national and regional level to address issues of concern/interest relating to the implementation of ASEAN economic initiatives.

#### **V. DEVELOPMENT AND TECHNICAL COOPERATION**

16. The recommendations to address the development divide and accelerate economic integration of CLMV:

- (i) Expand the coverage of the AISP products; and
- (ii) Implement IAI projects through mobilization of resources from within ASEAN.

#### **CONCLUSION**

17. The HLTF recommends that a review be made after one year of its implementation and the Secretary General of ASEAN to submit an annual progress report of its implementation to the AEM.

**ANNEX 1**  
**MECHANISM OF THE DISPUTE SETTLEMENT SYSTEM**

**Advisory Mechanism**

**ASEAN Consultation to Solve Trade and Investment Issues (ACT)**

- (i) The ACT is adapted from the EU SOLVIT mechanism. It is a network of government agencies (one from each country) to allow the private sector to cut through red tape and achieve speedy resolution of operational problems encountered, thus helping to create a pro-business environment in ASEAN.
- (ii) Private individuals and businesses faced with operational problems related to countries' ASEAN commitments, either at home or in other ASEAN countries, can highlight these problems to the ACT in their country (Host ACT). For problems encountered within the home country, the Host ACT will direct the problem to the appropriate government agencies, and ensure that a proposed solution is sent to the individuals/businesses within 30 calendar days.
- (iii) For problems encountered in other ASEAN countries, the Host ACT will forward the problem to the other countries' ACT (Lead ACT). The Lead ACT will be responsible for directing the problem to the appropriate government agencies in its country, and ensuring that a proposed solution is sent to the individuals/businesses via the Host ACT within 30 calendar days. To minimise delays, communication between Host and Lead ACTs should be via electronic means, for instance an online database accessible to all member countries.
- (iv) If the proposed solution does not resolve the problem highlighted, the private individuals/businesses can request that their government raise this issue to the other dispute settlement mechanisms described below.

**ASEAN Legal Unit**

- (i) The ASEAN Legal Unit will be staffed by qualified lawyers specialising in trade laws employed by the ASEAN Secretariat. The unit will offer legal interpretation/ advice on potential trade dispute issues upon request from countries. The advice is purely advisory and non-binding in nature.
- (ii) The ASEAN Legal Unit would play a useful role in screening out issues that are operational/technical in nature which could be resolved through bilateral consultations, rather than being surfaced to the ASEAN Compliance Monitoring Body or the Enhanced ASEAN Dispute Settlement Mechanism. The ASEAN Legal Unit will also be responsible for providing legal advice and secretariat support to the ASEAN Compliance Monitoring Body and enhanced ASEAN Dispute Settlement Mechanism.

**Consultative Mechanism**

**ASEAN Compliance Monitoring Body (ACMB)**

- (i) The ACMB is modelled after the Textile Monitoring Body of the WTO, and makes use of peer adjudication, which is less legalistic and offers a speedier channel, to help countries resolve their disputes.

- (ii) In cases of non-compliance by one or more ASEAN Member Country/Countries in any ASEAN economic integration agreement, ACMB members from countries not involved in the dispute will upon request, review and issue findings on the case within a stipulated timeframe. The case findings of the ACB are not legally-binding. However, any opinion pointing to non-compliance should lead to the offending ASEAN Member Country/Countries to seriously consider measures to rectify the non-compliance. Moreover the ACMB's findings would be tabled as inputs to the DSM should the case be raised to the DSM.
- (iii) Subject to agreement by both Parties, Member Countries who do not wish to avail of the ACMB after going through the ACT can go directly to the ASEAN DSM panel.
- (iv) AEM had earlier directed SEOM to work out a Terms of Reference for this monitoring body.

#### **Conciliation and mediation processes**

- (i) Upon mutual voluntary agreement, member countries can at any time, engage in conciliation and mediation procedures to resolve their dispute before it is surfaced for adjudication at the enhanced ASEAN Dispute Settlement Mechanism.
- (ii) Proceedings under these conciliation and mediation procedures, including respective positions taken by parties to the dispute during the proceedings, shall be confidential.
- (iii) The ASEAN Secretary General may, acting in an ex officio capacity, offer good offices, conciliation and mediation procedures.

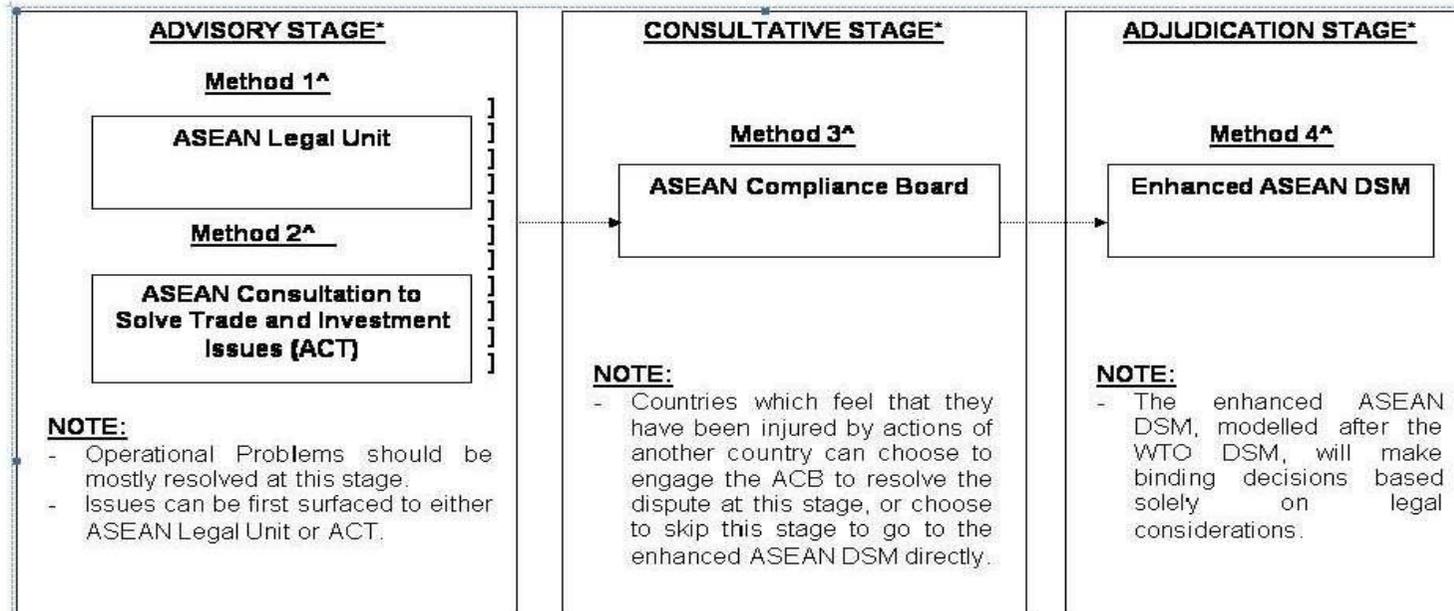
#### **Enforcement Mechanism**

##### **Enhanced ASEAN Dispute Settlement Mechanism (DSM)**

- (i) To ensure that binding decisions can be made based solely on legal considerations, changes should be made to the procedures of the existing ASEAN DSM to depoliticise the entire process.
  
- (ii) The enhanced ASEAN DSM would be modeled after the WTO DSM, which have already established a proven track record in resolving trade disputes. It would include the following key features: (i) having panels of three independent professionals from countries not involved in the disputes (including non-ASEAN countries) to rule on the disputes and administer the appellate process. To ensure de-politicisation of the processes, ASEAN should replace the AEM with an appellate body comprising of well-qualified, independent and experienced professionals as the appeal body for the panels' decisions, and adopt the existing WTO DSM panel selection procedures, including the listing of qualified individuals who can serve as panelists and members of the appellate body (maintained by the WTO Secretariat); (ii) strict and detailed procedures and timeline governing each stage of the dispute settlement process (adopted from the WTO DSM procedure) to ensure speedy progress towards a fair outcome, and (iii) effective mechanisms, including the possibility of imposing sanctions on non-compliant countries, to ensure full implementation of the DSM rulings.

(See below for flowchart)

## FLOWCHART OF MECHANISMS AND PROCESSES OF THE ASEAN DISPUTE SETTLEMENT SYSTEM



### **Note:**

\* While resolution of disputes should generally advance from the advisory stage to the consultative stage, and finally the adjudicative stage as shown in the flowchart, this is not mandatory. Countries may choose to make use of the appropriate mechanisms as they wish.

^ Countries do not need to go through the four methods sequentially. After surfacing the issue at either the ASEAN Legal Unit or ACT, they can either go to the ACB or proceed directly to the enhanced ASEAN DSM.

- Upon mutual agreement, involved countries should engage in consultations or avail themselves of the good offices of the ASEAN Secretary General to engage in concurrent conciliation and mediation processes at any stage.