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Treaty design under geopolitical constraint: Managed legal uncertainty and trade policy risk in the ASEAN-China framework

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ABSTRACT

This study examines how geopolitical pressures shape treaty architecture in the ASEAN-China trade policy framework. It focuses on how treaty design manages trade-policy risk while preserving cooperation between ASEAN member states and China in a geoeconomically fragmented environment. Using provision-level doctrinal analysis, the study analyzes the ASEAN-China Trade in Goods Agreement and the ASEAN-China Dispute Settlement Mechanism Agreement, with particular attention to security exceptions, dispute-settlement clauses, forum-selection rules, implementation procedures, committee governance, and review mechanisms. The findings show that the treaty framework does not merely contain institutional gaps or legal weaknesses. Instead, it deliberately structures regulatory discretion through self-referential security language, bounded adjudicatory mandates, procedural flexibility, and committee-based governance. These design features allow parties to retain policy space while sustaining credible commitments to trade cooperation. The study further finds that legal uncertainty operates as a managed institutional feature rather than an accidental consequence of weak enforcement. Practically, the analysis helps public policymakers, trade officials, and public-administration actors understand how treaty architecture can balance cooperation, sovereignty, and security-sensitive discretion under geopolitical pressure. The study contributes to public policy and international economic law by explaining how ASEAN-China treaty design manages trade-policy risk through layered textual, procedural, and institutional flexibility.

Contribution/Originality: This study contributes to existing literature by showing how ASEAN-China treaty architecture manages trade-policy risk through security exceptions, bounded dispute settlement, and committee-based governance, linking doctrinal treaty interpretation with public-policy concerns over regulatory discretion, policy space, and cooperative commitments under geopolitical pressure.

1. INTRODUCTION

Today, geopolitical rivalry is a key aspect of trade governance. International trade commitments are designed and implemented in an increasingly strategic manner, with strategic competition among the major powers, supply-chain securitization, export controls, investment screening, and technology restrictions becoming more important. Market access is no longer, therefore, evaluated solely based on efficiency or welfare gains. It is also measured using vulnerability, leverage, and strategic autonomy (Aggarwal & Reddie, 2021; Farrell & Newman, 2019; Roberts, Choer, & Ferguson, 2019).

This development presents a policy challenge for public administrators and public negotiators of treaties. Trade agreements ought to increase the stability of expectations and discipline noncompliance, but governments should also have discretion in the face of shocks with security concerns. If treaty commitments are too binding, they can limit the scope of legitimate responses by public policies. If they are not precise enough, they can lead to a decrease in trust in cooperation. The design challenge is thus to retain policy space while making credible commitments.

The article seeks to remedy this issue by utilizing the idea of managed legal uncertainty. Ambiguity is a term used to describe treaty design choices that provide for structural, textual, procedural, and institutional ambiguity. Treaty architecture does not aim at eradicating uncertainty; rather, it uses it as a means to pass it along through security exceptions, dispute-settlement provisions, and committee-driven governance. The latter is especially relevant for public policy and administration to demonstrate the possibilities of legal design in regulatory discretion, implementation review, and conflict management in a geopolitically challenged environment.

The central research question is: What are the implications of the ASEAN-China treaty regime in the maintenance of regulatory discretion under geopolitical constraints and legalized cooperation? More specifically, the article explores the combined effect of discretion and adjudicatory exposure of exceptions to security, dispute-settlement mechanisms, and committee governance in the context of the management of trade-policy risk.

The approach used in the study is a qualitative, design, doctrinal approach. It examines the official documents of the ASEAN-China Free Trade Area, particularly the Agreement on Trade in Goods and the Agreement on the Dispute Settlement Mechanism. The consequences of conflicts, as well as firm-level behavior, are not measured in the article. Rather, it focuses upon how the treaty provisions distribute authority before the generation of disputes and how the distribution of authority can impact public policy space, administrative coordination, and cooperative stability.

The article continues as follows. In Section 2, we review the literature on trade policy uncertainty, regulatory discretion, security exceptions, and treaty design. The data and methodology are described in Section 3. The theoretical background is presented in Section 4. The provision-level analysis is presented in Section 5. Section 6 presents the theoretical, practical, policy, and research implications.

2. LITERATURE REVIEW AND RESEARCH GAP

The literature pertinent to the present topic can be divided into four overlapping fields: the concept of trade policy uncertainty, the role of regulatory discretion in public administration, security exceptions in trade law, and the design of institutions in PTAs. Although these are developed individually, they are seldom connected at the level of treaty architecture.

Economic research on public policy uncertainty of trade policies indicates that uncertainty in trade policies can impact investments, sourcing, and compliance expectations. Policy uncertainty can postpone investment choices and amplify the perceived costs of cross-border trade due to uncertainty over whether prevailing market-access conditions will stay constant (Caldara, Iacoviello, Molligo, Prestipino, & Raffo, 2020; Handley & Limão, 2017). Uncertainty also has an impact on governmental implementation; in order to implement broad obligations contained in treaties, government agencies must make day-to-day regulatory decisions in a changing political environment.

The administrative issue is key, and it is based on the virtue of regulatory discretion. While public authorities must have discretion for security, public health, financial stability, and other public interests, there may also be predictability issues, as discretion is not inherently institutionally channeled. Recently, regulatory autonomy has been seen as a central issue of international economic law, particularly when trade pledges overlap with sensitive areas like digital trade, screening of investments, and national security (Burri & Kugler, 2024; Voon & Merriman, 2022; Yoon, 2024). This literature provides some insight into the need for a treaty design that must combine commitment and flexibility instead of merely maximizing legal rigidity.

The public administration approach also demonstrates the significance of treaty design not only in terms of formal legal doctrines but also in practical terms. Trade-policy uncertainty influences the coordination of ministries, communications with firms by implementation agencies, the evaluation of security-sensitive measures, and the documentation of administrative support for regulatory activity. The treaty provisions, which include exceptions, consultation arrangements, review bodies, and contact points, provide the practical processes for public administrators to implement policy flexibility while ensuring predictable implementation. This administrative aspect is particularly relevant within the ambit of a regional concept like the ASEAN-China Free Trade Area (ACFTA), where national agencies will have to balance their own discretionary powers with multilateral obligations and a common monitoring mechanism (Christensen, Lægreid, & Lægreid, 2019; Howlett, 2019).

One other strand of legal scholarship deals with security exceptions, in particular the resurgence of GATT Article XXI and analogous provisions in preferential trade agreements. The key issue is whether security exceptions are self-judging or objectively reviewable, or whether they must be interpreted in good faith or within a particular context (Pinchis-Paulsen, 2022; Pinchis-Paulsen, Saggi, & Mavroidis, 2024; Prazeres, 2020). While this debate is important, much of the literature regards security clauses as primarily an ex post adjudicatory issue. Less emphasis is placed on the fact that they are clauses that are part of a broader treaty framework involving dispute settlement and committee governance.

A second perspective is given by the regime complexity scholarship. It outlines the functioning of preferential trade agreements in a layer of law alongside WTO disciplines (Hofmann, Osnago, & Ruta, 2019; Kim & Yoo, 2023). Research on forum interaction and the overlapping of jurisdictions demonstrates that uncertainty may occur when forum, regional, and multilateral obligations interact (Shaffer & Winters, 2017; Zang, 2019). It is worth noting, however, that this scholarship tends to focus on how one set of legal regimes interrelates with another without considering the internal arrangement of discretion in a particular agreement.

The geopolitical context is added by the scholarship on international political economy. Both the notions of weaponized interdependence and geoeconomic statecraft demonstrate that states utilize trade, finance, technology, and network position as strategic instruments (Aggarwal & Reddie, 2021, 2024; Farrell & Newman, 2019). This literature helps shed light on the rationale behind states' attempts to gain more policy discretion in trade governance. It, however, rarely relates those pressures to specific drafting decisions in treaties.

Therefore, there is a research gap at the architectural level. Security review, regime fragmentation, and geoeconomic pressure are explained in the existing literature, but not yet adequately demonstrated as translated pressures in treaty design and coordination. This article aims to bridge the gap by analyzing the relationship between security exceptions, dispute settlement, and committee-based governance in the framework of ASEAN and the People's Republic of China (PRC). It claims that these mechanisms rather provide the "structure of legal uncertainty" and do not simply generate it.

3. DATA AND METHODOLOGY

3.1. Data and Treaty Materials

The main legal documents in the study were the official texts of ACFTAs and legal documents adopted under the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and the PRC. Table 1 details the specific versions used, information on the sources, the extent of the pages, provisions selected, and how the supplementary material has been treated analytically for source transparency.

The ACFTA Legal Text inventory maintained by Enterprise Singapore, which was updated in October 2025, was the legal text used in the inventory for document selection. In the detailed provision-based analysis, two key documents of the treaties – the Agreement on Trade in Goods, ASEAN Framework Agreement on Comprehensive Economic Cooperation and China, and the Agreement on Dispute Settlement Mechanism, ASEAN Framework

Agreement on Comprehensive Economic Cooperation and China – were selected. Both agreements were signed on 29 November 2004 at Vientiane, Lao PDR.

The treaty materials were gathered from, or corroborated with, official repositories. These repositories were the Enterprise Singapore ACFTA Legal Text repository, as well as the ASEAN official legal-text pages for the Trade in Goods and Dispute Settlement Mechanism Agreements. Source checks were done regarding treaty titles and dates, scope of documents, references to annexes, and whether or not the versions used for the analysis were publicly available legal texts.

The number of pages in the documentary corpus was 296. It consisted of a 4-page inventory of ACFTA legal text, a 275-page file of the Trade in Goods Agreement, including Articles, Annexes, and Tariff Schedules, and a 17-page file of the Dispute Settlement Mechanism Agreement containing Articles 1–18 and the treaty's own Annex 1, titled "Rules and Procedures for the Arbitral Proceedings." The reference to Annex 2 in this section therefore refers to an annex contained in the official Dispute Settlement Mechanism Agreement, not to a separate appendix created by the authors. Not all pages in the documentary corpus were treated as central to the detailed doctrinal analysis. The analysis focused on provisions directly related to trade policy risk, regulatory discretion, exceptions, safeguards, dispute settlement, review, and institutional governance.

For the Trade in Goods Agreement, the full text was reviewed, while detailed analysis focused on Articles 6, 8, 9, 11, 12, 13, 15, 16, 17, 18, 19, 20, and 21. The Dispute Settlement Mechanism Agreement was fully examined, and key parts of the agreement, including Articles 2, 3, 4, 6, 8, 9, 12, 13, 14, and the treaty's Annex 1 on arbitral proceedings, were analyzed in detail. Contextual materials, such as annexes, tariff schedules, lists of products, rules of origin annexes, and subsequent protocols, were reviewed. These were not analyzed comprehensively since the article does not test tariff-line outcomes, sector-specific market-access effects, or product compliance.

Bilateral free trade agreements between China and the individual ASEAN member states, such as the China–Singapore FT Agreement, were not included in the main corpus. While they might be relevant in future research for comparison, they will not be discussed in this article, as this study focuses on the multilateral framework between ASEAN and China and not the bilateral treaty-making framework between China and individual ASEAN member states.

Table 1 provides information on the specific treaty material that was used, source information on the official treaty volumes, version information, scope of the tables, selection of provisions for analysis, and how the annexes, protocols, tariff schedules, and excluded bilateral documents are treated. For this source check, treaty dates, scope of documents, references to annexes, status of public legal texts of versions used for analysis, and treaty titles were confirmed.

Table 1. Treaty materials, official sources, and analytical treatment.

Treaty material	Exact version/source details	Scope reviewed	Analytical use
ACFTA legal-text inventory	ACFTA Legal Text inventory, PDF updated October 2025; Enterprise Singapore official legal-text repository; accessed/cross-checked 6 May 2026	4-page inventory listing the ACFTA 3.0 Upgrade Protocol, Framework Agreement, Trade in Goods, Trade in Services, Investment, Dispute Settlement, protocols, annexes, and related instruments	Used to identify the ACFTA treaty corpus and document inclusion/exclusion decisions
Trade in Goods Agreement	Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China, signed 29 November 2004, Vientiane, Lao PDR; ASEAN	Full 275-page PDF reviewed, including 23 articles and annexes/tariff schedules. Detailed analysis focuses on	Primary source for security exceptions, safeguards, balance-of-payments restrictions, institutional arrangements, review clauses, annexes/future

Treaty material	Exact version/source details	Scope reviewed	Analytical use
	official legal text; cross-checked against Enterprise Singapore ACFTA repository	Articles 6, 8, 9, 11–13, and 15–21	instruments, and DSM linkage
Dispute Settlement Mechanism Agreement	Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China, signed 29 November 2004, Vientiane, Lao PDR; ASEAN official legal text; cross-checked against Enterprise Singapore ACFTA repository	Full 17-page PDF reviewed, including Articles 1–18 and the treaty's own Annex 1, titled "Rules and Procedures for the Arbitral Proceedings." Detailed analysis focuses on Articles 2, 3, 4, 6, 8, 9, 12, 13, 14, and the treaty's Annex 1.	Primary source for forum selection, consultations, tribunal design, mandate limits, implementation, remedies, confidentiality, language, and arbitral proceeding rules.
Annexes, tariff schedules, product lists, rules-of-origin appendices, and subsequent protocols	Reviewed through the TIG Agreement file, ACFTA legal-text inventory, and listed protocol/annex materials; accessed/cross-checked 6 May 2026	Reviewed selectively as contextual legal materials rather than exhaustively coded	Included where they clarify treaty architecture, sensitive-track flexibility, safeguards, future instruments, or institutional implementation; excluded from product-level analysis
Bilateral FTAs between China and individual ASEAN member states	Not part of the ACFTA multilateral legal corpus used for this study	Excluded from primary analysis	Excluded to maintain consistency with the article's focus on the multilateral ASEAN-China framework

Note: TIG Agreement = Agreement on Trade in Goods; DSM Agreement = Agreement on Dispute Settlement Mechanism. "Annex 1" in relation to the DSM Agreement refers to the treaty's own Annex 1, "Rules and Procedures for the Arbitral Proceedings," not to a manuscript appendix. The table distinguishes materials reviewed as part of the treaty corpus from provisions selected for detailed doctrinal analysis.

3.2. Doctrinal and Interpretive Legal Analysis

In this study, the analysis of the text of legal documents, the structure of law, and the design of institutions in treaties was examined from a doctrinal law perspective. Doctrinal analysis was appropriate, as the research question was on the allocation of power, maintenance of discretion, and the institutional review framework in the legal provisions. The approach emphasizes the language of the treaty terms and phrases, how they are connected to the other provisions in the treaty, and how they fit in the overall treaty.

This was also an interpretive analysis. It did not assume that the meaning of a treaty is mechanically determined solely by the text of the treaty. The interpretation was based on the ordinary meaning of the text of the treaty, the context of the provisions, the object and purpose of the agreement, as well as the relation between the provisions within the whole treaty.

This interpretive approach is congruent with general guidance in the Vienna Convention on the Law of Treaties, instructing direct interpretation by the text and context, by object and purpose, and by supplementary means where appropriate, Articles 31 and 32 of the (Vienna Convention on the Law of Treaties, 1969).

Thus, if a clause offers more than one reasonable interpretation, the study first notes all the possible interpretations before making a restricted interpretation of the clause. This will prevent provision-level analysis from being offered as if it were an ultimate court decision.

This was not a quantitative content analysis, and by no means did it purport to count the instances of specific words or specific behavioral impacts of treaty language. It was also not an empirical evaluation of the outcomes of a dispute nor of compliance performance. The value added is in understanding how, before formal disputes, exceptions, procedures, and institutions can be designed to allocate authority under treaties in an ex ante fashion.

3.3. Alternative Interpretations and Analytical Procedure

The analysis does not offer the authors' interpretation as the sole understanding of how the text of the treaty can be legally understood, since there is more than one reasonable legal interpretation. The key provisions were explored with counterreading, and only then was an interpretive inference made. This is particularly important for security-related clauses granting powers or rights to the security interest, such as "which it considers necessary," which could be interpreted either as a broad discretion on the part of the security interest or as one that is subject to the principles of good faith, context, and object and purpose. An equivalent caution was used concerning the dispute-settlement and committee-governance clauses, as they could, at the same time, be interpreted as a matter of discretion, or of curbing fragmentation, or of a lesser degree of legalization.

There were three steps in the analytical procedure. First, the relevant ACFTA instruments were read in their entirety to identify any provisions relating to commitments, exceptions, dispute avoidance and resolution, institutional review, and future adjustment. Second, it was developed based on three analytical layers of provisions: the textual formulation, the procedural structuring, and the institutional governance. Third, the study analyzed the interaction between these layers that shapes regulatory discretion and exposure to adjudicatory processes.

Given that some provisions might have seemed to have multiple purposes, the interpretation was guided by the predominant meaning they had in the overall treaty context. For instance, a security exception is able to maintain discretion at the textual level, and there are dispute settlement rules that make it possible to organize the review at a later level. The analysis, thus, takes each finding as a reflection of the level of architecture and not necessarily a prediction of how a tribunal will rule in a case in the future. This enables the analysis to be doctrinal while acknowledging the possibility of interpretive uncertainty, a different understanding of the law, and the boundaries of inference at the level of the provision.

4. THEORETICAL FRAMEWORK: TREATY DESIGN, POLICY UNCERTAINTY, AND REGULATORY DISCRETION

4.1. Geopolitical Pressure as Institutional Constraint

Within this context, geopolitical pressure can be regarded as an institutional impediment to the management of trade. It involves pressure from outside actors stemming from strategic competition between states or blocs that could lead the target actor to change policies, alliances, or bargaining positions. This kind of pressure may work in an overt way, with the imposition of explicit demands accompanied by potential or actual costs, which is a coercive extortion logic. It can also function via structural actions, which lessen a target's de facto ability to exercise regulatory discretion and policy space, viewed as a coercive mode of control (Milanovic, 2023). Legally, it means that there is more to pressure than just background politics. It is manifested by instruments and by a justificatory vocabulary which directly involves treaty commitments and institutional processes.

Today, geopolitical pressure is increasingly being exerted through geoeconomic means in the field of trade governance. These involve trade, finance, investment, and technology controls utilized as grand strategy and leverage based on asymmetric interdependence in the world of networks. When authority is centralized at a small number of key hubs, the leverage can be achieved through monitoring information flows (also known as a panopticon effect) or through restricting access at chokepoints (also known as a chokepoint effect) (Farrell & Newman, 2019; Kim, 2021). Such dynamics are often described as 'economic coercion,' which is the use of economic ties to influence the actions of another state (Chachko & Newman, 2025). The institutional implication is structural – access to markets and governance of strategic vulnerabilities becomes an internal affair.

This constraint primarily applies to the trade–security nexus. The cross-border movement of goods and services, as well as investment, data, and technology, has become increasingly seen as a source of strategic exposure, in addition to being a means of welfare-enhancing exchange (Mola, 2023; Rosén & Meunier, 2023). The law has a greater impact by increasing the use of extraordinary devices that decrease, define, or entitle ordinary pledges. Security exceptions, especially GATT Article XXI, come to the fore once more, and questions are raised about the possible opportunistic use of such exceptions, as well as the enforcement capacity of the judiciary (Pinchis-Paulsen, 2022; Pinchis-Paulsen et al., 2024; Prazeres, 2020). Fundamental concepts like essential security interests are not clearly specified; this introduces indeterminacy into the system (Henckels, 2024).

Geopolitical pressure is reinforced further through economic statecraft and technology governance. Restrictions on trade, industrial policy, investment screening, and technology controls are becoming more common in the form of behind-the-border, at-the-border, and beyond-the-border restrictions. These measures are meant to be incorporated into everyday economic ties and have a strategic character (Aggarwal & Reddie, 2021, 2024; Farrell & Newman, 2019). Autonomy in the regulatory aspect is now seen not just as a commercial but as a strategic aspect in areas like digital trade and cross-border data flows. As a consequence, treaty writing often features carefully drafted "carve-outs" where the multilateral baseline is not fully agreed upon (Burri & Kugler, 2024; Mitchell & Mishra, 2019). The overall impact is a modified environment that is structurally changed to give importance to economic security and strategic autonomy for the states. This alters the incentives to make treaties and adds to fragmentation forces (Babić, de Graaff, Linsi, & Weinhardt, 2024; Dadush & Prost, 2023; Roberts et al., 2019).

This section lays the groundwork for the article's framework in terms of mechanism. In a government, credible commitment and exceptional action are more likely to be reconciled when geopolitical pressure acts as an institutional constraint. How that constraint is turned into law via institutional flexibility mechanisms in treaty design is illustrated in the next sections.

4.2. Institutional Flexibility in Preferential Trade Agreements

Preferential trade agreements (PTAs) represent a key model of treaties by which states' cooperative implementation is determined under geopolitical constraints. They make reciprocal market-access allowances and set up ad hoc governance arrangements. They can frequently be based on textual and conceptual multilateral baselines and interdependencies with WTO disciplines (Allee, Elsig, & Lugg, 2017; Claussen, 2022). As opposed to being neatly arranged in a hierarchy with WTO law, PTAs are a series of parallel obligations in a multi-tiered treaty system (Kim & Yoo, 2023). This article will depict the suggested mechanisms based on the ASEAN-China instruments as a multilateral preferential arrangement. It also offers the possibility of using the analytical categories in a portable manner for bilateral preferential agreements in the future.

Geopolitical limitations give PTAs new lines of significance as tools of sound government. However, in situations where multilateral rulemaking is slow or has come under dispute, it becomes strategically important to make treaties outside of the multilateral forum (Dadush & Prost, 2023). Today, agreements are increasingly designed as policy constitutions for cross-border economic relations, which attribute competences across domains in and outside of the WTO's mandate (Hofmann et al., 2019). It posits that PTA design retains institutions that provide mechanisms for flexibility while maintaining regulatory agency and limiting conflict, while still ensuring cooperation.

There are three key mechanisms.

(1) Security exceptions and carve-outs

Security clauses ensure the regulatory room for manoeuvre of security-driven measures. They are evident when looking at the recent use of GATT Article XXI and similar provisions in the preferential agreements (Pinchis-Paulsen, 2022; Prazeres, 2020). They give far greater scope for discretion and put into question the reviewability of such action due to open-textured notions like essential security interests. Security carve-outs permit, under geopolitical pressure, that agreements include exceptional action without having to break with the normal formalities.

(2) Dispute settlement design

Dispute settlement architecture also provides flexibility. Adjudicatory avenues under a preferential agreement may be seen as more manageable than multilateral litigation but build on multilateral templates (Stiller, 2024). Consider how and when the forum selection clause, carve-out, review limits, and calibrated procedural sequencing will come into play. This is institutionally important in the context of a layered system where the interaction between the RTA and WTO is unresolved (Shaffer & Winters, 2017; Zang, 2019). The design of dispute settlement, then, sets up the level of susceptibility to authoritative constraint instead of eliminating contestation.

(3) Committee-based governance and review clauses

More recently, PTAs are adopting living-agreement architectures, such as committees, dialogues, and regulatory cooperation mechanisms, as ways to move from general agreement to concrete coordination mechanisms (Gari, 2020; Gray, Laukkala, & Findlay, 2022). The structures can help move governance out of the binary compliance ethos and into an iterative management approach by helping with clarification, monitoring, and making adjustments. In this way, committee processes can act as 'shock absorbers' in order to deter the escalation of disagreement to the formal litigation process.

All these mechanisms are only different ways of putting a geopolitical constraint into a treaty that can be enforced. Security exceptions allow for exceptional action, dispute settlement points out exposure to adjudication, and committees provide for ongoing management. More importantly, they cannot remove ambiguity. They organize it. The analytical challenge is thus to articulate the nature of this structured ambiguity as a form of managed legal uncertainty as part of a treaty design.

4.3. Legal Uncertainty as a Designed Outcome

Legal uncertainty occurs when the necessary rules are available but fail to give the actors enough indication of what is legal or what consequences will occur, which can be due to the contested thresholds of legality or to the unpredictable consequences of the enforcement of the rules (Broulík, 2024; Lang, 2017). Uncertainty in international contexts can also be the result of divergent interpretations of the authoritative texts, such as the treaty, jurisprudence, and state practice (Yüksel, 2025).

In this understanding, legal uncertainty is not a mere incidental of complex legal orders nor something that can simply be overlooked. In some ways, flexibility mechanisms can reflect geopolitical constraints as they create room for manoeuvre, but at the same time, they can create uncertainties with several thresholds that are open to interpretation. Open-textured security concepts add to unilateral assessment possibilities but create the challenge of limited predictability (Henckels, 2024). Systemic credibility may be called into question, and it may lead to greater contestation of its interpretations based on orality security-related ones (Pinchis-Paulsen, 2022; Prazeres, 2020). Economic coercion in areas where constraints are relatively loose can further complicate the situation, and legal limits can become more subject to political evaluations and institutional forum selection (Chachko & Newman, 2025).

Managed legal uncertainty is a design strategy consciously used in some agreements whereby uncertainty about actors' rights and duties is maintained in order to allow for greater discretion when faced with geopolitical risk. In some states where there is a higher expectation of sensitivity and adjudication is more politically expensive, states could insert some flexibility that allows for a margin of error while ensuring institutional mechanisms to prevent the collapse of cooperation. While ambiguity is maintained, it is its use that is regulated by design choices in terms of allocating authority to text, procedure, and institutions.

Preferential trade agreements have the potential to mitigate and create uncertainty. They create more certainty by commitment entrenchment as well as by offering procedural protections against unexpected shifts (Caldara et al., 2020; Handley & Limão, 2017). Meanwhile, compliance costs and unpredictability in practice may result from operational elements like rules of origin, the level of administrative complexity, and the enforcement of these regulations (Beyer, 2021; Legge & Lukaszuk, 2024). This means there is no certainty removed, only structured.

Managed legal uncertainty can be seen as an intermediate link between institutional flexibility and preserved regulatory discretion in a geoeconomic environment of strategic vulnerabilities, where legal expectations are driven by it (Babić et al., 2024; Roberts et al., 2019).

Security exception drafting in the textual layer affords discretion by using thresholds that refer to themselves and through the use of interpretive override language. Moreover, it is based on open-textured notions that broaden the space of necessity and disclosure evaluations.

On the procedural front, dispute resolution design can be tuned to the exposure of powerful oversight by means of scope-of-claim rules, such as the ban on non-violence complaints. It also utilizes jurisdiction and forum-selection provisions, admissibility filters, mandate limits, remedies, and confidentiality rules that provide a structure to the compliance sequence and information disclosure.

Committee-based governance takes the form of oversight or implementation-review bodies, periodic review clauses, and delegated governance via annexes or future instruments to facilitate incremental adjustment at the institutional level. These analytical categories reflect the provision-level mapping tables found in Sections 5.1–5.3 and entail the delegation of discretionary authority and cooperation within the layers of text, procedure, and institution (Gari, 2020; Gray et al., 2022).

4.4. Regulatory Discretion and Policy Space Preservation through Treaty Architecture

Regulatory discretion is understood as regulatory autonomy, as the state's right to regulate in the interests of the public within the limits of the treaty (Yoon, 2024). The use of discretion-preserving mechanisms, such as exceptions and carve-outs, a right-to-regulate clause, and transition periods in modern treaty practice is on the rise, especially in key areas such as digital trade and investment screening (Burri & Kugler, 2024; Voon & Merriman, 2022). This is the context for the functioning of regulatory discretion: as an output of treaty architecture, as opposed to being an abstract principle.

This framework draws a path between a geopolitically pressured market and regulatory autonomy that is based on a mechanism. Treaty-based flexibility structures through institutional design, and geopolitical pressure adds demand for flexibility. Managed legal uncertainty is a design strategy that specifies how ambiguity can be maintained and how it can be structured to give discretion without a loss of governability with respect to cooperation. The more deeply such agreements penetrate a larger number of policy areas, the greater the sensitivity of the regulatory autonomy, and the more institutionalized governance can play a role in making deep and broad agreements possible without any formal compromise of domestic competencies (Gray et al., 2022; Hofmann et al., 2019).

These dynamics are exacerbated by security-related measures. Increased geopolitical risk may lead to thicker safeguard and exception architectures in treaties to give more discretion, as such interests are invoked more often (Pinchis-Paulsen, 2022; Prazeres, 2020). Preserving regulatory discretion does not mean removing indeterminacy but should be structured as a consequence of design choices on the textual, procedural, and institutional levels.

This architecture is based on the design of dispute settlement. However, in a layered governance setting, where legal commitments in preferential agreements and WTO rules co-exist and interact, there are several ways for states to map the set of circumstances when they will be subject to authoritative review, such as claim exemptions, forum-selection clauses, limits on mandates, and procedural sequencing (Zang, 2019). Within a framework of interpretive approaches like systemic integration, there is even evidence of regulatory autonomy, which relies upon the coordination of regulations between legal instruments, and not on hierarchy (Apaza & Steinbach, 2017). Committee-based governance gives an extra review and monitoring, as well as an adjustment mechanism. This channel has the potential to lower the risk of escalating critical disagreements into the formal legal arena (Gray et al., 2022).

All of these elements are conducive to the main argument of the article: that treaty architecture, under geopolitical pressure in a geoeconomic setting, can maintain regulatory discretion, understood as regulatory autonomy, by the incorporation of institutional flexibility mechanisms, which are deliberate and legally organized institutions of managed legal uncertainty. Agreements can shift authority in text, procedure, and institutions, and maintain the credibility of cooperation while leaving room for discretion to deal with geopolitical risk.

The main aim of this paper is to summarize the emergence of the need for regulatory discretion due to geopolitical constraints, as illustrated in Figure 1, and its institutionalization by coordinated textual, procedural, and institutional design. Such mechanisms give effect to managed legal uncertainty and help to maintain cooperative stability and regulatory autonomy.

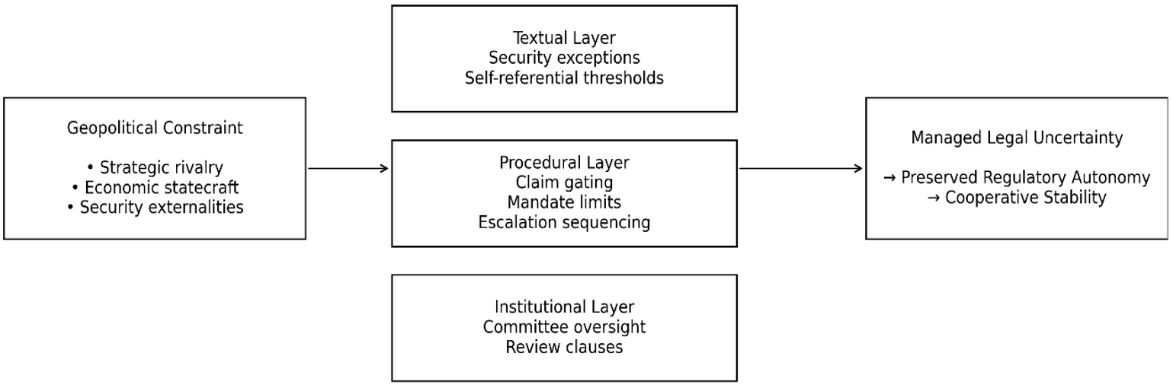

Figure 1. Managed Legal Uncertainty as a Three-Layer Institutional Response to Geopolitical Constraint.

5. PROVISION-LEVEL ANALYSIS: INSTITUTIONAL DESIGN UNDER GEOPOLITICAL CONSTRAINT

5.1. Security Exception Architecture

The security-exception features in the Trade in Goods Agreement are provided in Table 2. The table serves as a tool to analyze the data and not as a quantitative coding tool.

Table 2. Security exception analytical categories and referenced provisions.

Indicator (a priori)	Design feature	Treaty provision(s)	Interpretive implication
Disclosure carve-out	Self-referential disclosure control ('it considers')	TIG Agreement, Article 13(a)	Preserves informational sovereignty and limits compelled disclosure.
Necessity carve-out	Self-referential necessity threshold ('it considers necessary')	TIG Agreement, Article 13(b)	Expands discretion at the threshold stage; organizes interpretive uncertainty.
Illustrative typology	Non-exhaustive enumeration ('including but not limited to')	TIG Agreement, Article 13(b)	Signals security categories while avoiding a closed list; it widens policy space.
Enumerated security categories	Illustrative categories (fissionable, arms, critical communications, emergency)	TIG Agreement, Articles 13(b)(i)-(iv)	Provides a typology that guides argumentation while retaining flexibility.
UN Charter linkage	Action in pursuance of UN Charter obligations	TIG Agreement, Article 13(c)	Anchors unilateral action to external obligations; supports legitimacy framing.

Note: TIG Agreement = Agreement on Trade in Goods. Provision references are used as analytical anchors, not as quantitative coding categories.

5.1.1. Textual Architecture of the Security Exception

The Trade in Goods Agreement has a specific security exception similar to security exceptions typically found in international trade agreements and also offers specific examples. Under Article 13(a), no Party is under an obligation to provide information, the disclosure of which would be contrary to its essential security interests. Article 13(b) allows a Party to take action to the extent it considers necessary for the protection of its essential security interests. The provision then lists examples of such instances, including in relation to 'fissionable material,' 'arms-related trade,' 'critical communications infrastructure,' and 'action taken in the event of war or in the event of any other emergency in domestic or international relations' (The Association of Southeast Asian Nations, 2004b) Art. 13(a)-(b). Article 13(c) also allows for action under obligations which arise in effecting the purpose of the United Nations Charter, namely to maintain international peace and security (The Association of Southeast Asian Nations, 2004b) Art. 13(c).

5.1.2. Alternative Readings of Self-Referential Language

The words 'which it considers necessary' have more than one legally available interpretation. One possible interpretation of the clause is that it provides the invoking Party with a wide self-judging discretion: the assessment of necessity appears to be bound up with the invoking Party's own assessment. This reading backs up the article by asserting that the clause takes into account the policy space during the threshold stage. A second (and more plausible) reading is less broad. In that interpretation, the wording might yet be subject to contextual interpretation, good-faith limits, and the wider purpose and object of the Agreement. On this interpretation, the clause does not eliminate review, but it may result in more-limited review and/or more context-specific review.

This article takes the more confined reading of Article 13 as an avenue for interpretive space and not as an absolute power of self-judging. The self-referential language increases flexibility, but the functioning is within the general picture of the treaty as a whole, with its dispute settlement and committee management. This reading does not offer such a strong case for unrestricted unilateralism as the provision itself.

5.1.3. Discretion-Preserving Drafting and Structured Ambiguity

The decision to draft in two instances is particularly important. First, Article 13(a) and Article 13(b) tie in disclosure and necessity determiners with the invoking Party's assessment. Second, by using the words 'including but not limited to,' it is meant to imply that the categories listed are for illustrative purposes only. These features ensure that regulatory discretion is not taken away, but offer a typology that is poly-centric around security. The outcome is a clause that does not clear up the uncertainty but structures it by placing security-motivated measures in the text of the agreement.

5.1.4. Multilateral Effects within the ASEAN-China Framework

There is also a multilateral setup for the operation of the clause. Although the evaluation of the need for security starts with the invoking Party, a Party's invoking can impact the overall scheme of reciprocal obligations about goods. This is why it is called a provision; it spreads the possible exposure around a larger number of members. Each Party maintains evaluative control, but invoking is within a common framework, which also has institutional mechanisms and review provisions ((The Association of Southeast Asian Nations, 2004b) Arts. 16-17).

5.1.5. Synthesis

Security-exception architecture is a discretion-preserving drafting approach to the allocation of security interpretive authority. It employs self-reflective language and examples that are not comprehensive, which result in regulatory discretion, whilst allowing for an alternative reading of the law. This renders the provision providing structured ambiguity rather than exempting itself from legal discipline. The following section thus explores the effect of dispute-settlement design on review exposure or escalation risk.

5.2. Dispute Settlement Architecture and Jurisdictional Constraint

Table 3 shows the analytical mapping that was employed in the study of the ASEAN-China Dispute Settlement Mechanism Agreement.

Table 3. Dispute settlement analytical categories and referenced provisions.

Indicator (a priori)	Design feature	Treaty provision(s)	Interpretive implication
Scope of claims	Included or excluded claim types, including non-violation exclusion	DSM Agreement, Articles 4(1) footnote 1 and 4(2)	Narrows justiciability by restricting expectation-based claims.
Jurisdiction and forum	Forum selection and exclusivity rules	DSM Agreement, Articles 2(5)-(8)	Limits parallel proceedings and reduces regime shopping.
Admissibility filters	Consultation sequencing, urgency timelines, escalation triggers	DSM Agreement, Articles 4(3), 4(7), and 6(1)	Structures' entry into adjudication preserves space for negotiated settlement.
Mandate limits	Tribunal restraint clause prohibiting adding to or diminishing obligations	DSM Agreement, Article 8(1)	Constrains adjudicatory expansion and preserves regulatory discretion.
Remedies and compliance	Reasonable period, compliance review, compensation, and suspension sequencing	DSM Agreement, Articles 12(2)-(3) and 13(1)-(6)	Calibrates escalation and operationalizes managed non-compliance.
Confidentiality and transparency	Confidential consultations, closed sessions, controlled disclosure, publication timing	DSM Agreement, Articles 4(4)-(5), 9(1), 9(4), and 9(9)	Balances information control with limited endpoint transparency.

Note: DSM Agreement = Agreement on Dispute Settlement Mechanism. The table identifies procedural design features relevant to review exposure and escalation control.

5.2.1. Scope of Claims and the Exclusion of Non-Violation Complaints

One important gatekeeping element of the ASEAN-China dispute settlement mechanism is that it explicitly excludes non-violation nullification or impairment claims. Article 4(1) provides for consultations when a "benefit" has been "annulled or impaired" or when an "objective" has been "prevented" due to a Party's "lack of performance." According to the footnote attached, it is not allowed to file non-violation disputes (Agreement on Dispute Settlement Mechanism, 2004, Art. 4(1) and fn. 1). This reduces justiciability because it disregards claims for expectation and only takes into account any violations of obligation.

5.2.2. Forum Selection and Exclusivity

The mechanism also gives a choice with regard to forums. Article 2(5) leaves a general right to engage in other treaties' dispute-settlement procedures. With the initiation of proceedings under one forum, however, Article 2(6) provides for the use of the proceedings under the forum selected to the exclusion of any other forum in that dispute. Article 2(8) is an addition, putting into focus when the forum is deemed to be chosen (The Association of Southeast Asian Nations, 2004a), Art. 2(5-8). This design makes sure that the initial choice is retained and that parallel proceedings and the 'shopping' of regimes after escalation start are reduced.

This forum-selection structure must be interpreted with care, however, and should not be viewed as a panacea for all problems of overlapping jurisdiction. A possible interpretation is restrictive, which would mean that forum exclusivity would exclude the possibility of parallel proceedings and decrease the possibilities for forum shopping after a dispute is formally instituted.

A second possible interpretation is discretion-preserving—the complaining Party still has a primary choice of forum before exclusivity kicks in. The present analysis thus views it as both a restriction on further fragmentation and as a procedural discretion over the issue of forum selection remaining at the point of forum selection. It does not presume that Article 2 removes any fragmentation in future conflicts; it just makes the limited inference that the treaty guides the forum choice once the formal proceedings are commenced.

5.2.3. Admissibility Filters and Accelerated Pathways

To discipline the procedural entry, consultation requirement, and timeframe are enforced. The responding party has seven days in which to reply and thirty days in which to enter consultations. In the absence of such action, the complaining party may go straight to call for an arbitral tribunal (The Association of Southeast Asian Nations, 2004a) Art. 4(3). In the case of urgent cases, shorter timeframes have been agreed (The Association of Southeast Asian Nations, 2004a) Art. 4(7); consultations are to take place within 10 days, and escalation is allowed only after 20 days. These provisions allow for negotiated settlement and also provide a pathway to adjudication in a credible manner.

5.2.4. Mandate Limits and Interpretive Restraint

Article 8(1) of the Agreement on Dispute Settlement Mechanism, 2004 (Framework Agreement), requires the arbitral tribunal to make an objective assessment of the dispute, but also states that the arbitral tribunal should neither expand nor trim the parties' rights and obligations in the Framework Agreement. This mandate limit is significant as it does not allow the adjudicatory to expand. It does not remove the review but does put a constraint on the review that is set by the treaty commitment.

5.2.5. Compliance Time, Compensation, and Constrained Retaliation

Implementation sequencing and calibrated remedies are elements of post-award flexibility. In cases of impracticability of immediately complying with Article 12(2), a reasonable time is granted. Article 12(3) provides for the referral of disagreement over measures taken to the referring tribunal if possible (The Association of Southeast Asian Nations, 2004a) Art. 12(2)-(3). According to Article 13, the compensation or suspension of concessions or benefits shall be temporary. In addition, it limits the possibility of suspension to benefits that accrue under the Framework Agreement (The Association of Southeast Asian Nations, 2004a) Art. 13(1), 13(4)-(6). Such rules provide for the escalation of the problem and limit the range of counter-productive action.

5.2.6. Confidentiality and Controlled Transparency

There is a balance of information control and transparency in the mechanism. Consultations are confidential, and confidential information has to be protected (The Association of Southeast Asian Nations, 2004a) Art. 4(4)-(5). The meetings of the Tribunal are closed, its documents are confidential, and the final report will be published no later than 10 days after it is made available to the parties (The Association of Southeast Asian Nations, 2004a) Art. 9(1), 9(4), 9(9). This is to safeguard any sensitive positions during the dispute formation process, but also to some extent to maintain public accountability at the end of the process.

5.2.7. Synthesis

The dispute-settlement architecture provides for review and limits the risk of exposure to adjudicatory expansion. It restricts potential forum selection, orders and sequences consultations, restricts claim types, and limits the authority of the tribunal and remedies. Such features can help decrease the ambiguity and escalation risks and allow for administrative or negotiated settlement.

5.3. Committee-Based Governance and Institutional Flexibility

Table 4 operationalizes the committee-governance dimension and provides a list of indicators under the umbrella of oversight and review, and the provision to which it applies in the Trade in Goods Agreement and the Dispute Settlement Mechanism Agreement.

Table 4. Committee governance, analytical categories, and referenced provisions.

Indicator (a priori)	Design feature	Treaty provision(s)	Interpretive implication
Oversight body	AEM–MOFCOM oversight; SEOM–MOFCOM support	TIG Agreement, Article 16(1)	Creates a standing supervision and coordination capacity outside litigation.
Secretariat monitoring	ASEAN Secretariat monitoring and reporting	TIG Agreement, Article 16(2)	Institutionalizes reporting and information flows; supports compliance management.
Contact points	Designated contact points for communications	TIG Agreement, Article 16(3)	Reduces transaction costs; enables rapid de-escalation and clarification.
Periodic review	Scheduled review and further liberalization/disciplines	TIG Agreement, Article 17(1)	Provides an adaptive governance channel for updating commitments.
Sensitive Track review	Targeted review of sensitive products and reciprocity conditions	TIG Agreement, Article 17(2)	Formalizes recalibration without formal dispute escalation.
Future instruments	Annexes integral; future legal instruments included	TIG Agreement, Articles 18(a)-(b)	Enables incremental legalization via negotiated instruments.
DSM linkage	DSM Agreement applies to TIG Agreement	TIG Agreement, Article 21	Connects governance and adjudication layers; clarifies institutional architecture.
Committee substitution (safeguards)	WTO safeguards bodies mapped to AEM–MOFCOM/SEOM–MOFCOM	TIG Agreement, Article 9(12)	Relocates safeguards administration into the committee system.
Administrative routinization	Liaison offices for notices and submissions	DSM Agreement, Articles 3(1)-(2)	Operationalizes institutional connectivity and procedural regularity.

Note: AEM = ASEAN Economic Ministers; MOFCOM = Ministry of Commerce of China; SEOM = ASEAN Senior Economic Officials Meeting; DSM = Dispute Settlement Mechanism.

5.3.1. Oversight and Implementation Review Bodies

The framework of the implementation of the Trade in Goods Agreement provides for committee-based governance. The AEM-MOFCOM (under the support of the SEOM-MOFCOM) is responsible for overseeing, supervising, coordinating, and reviewing implementation until there is a permanent body (The Association of Southeast Asian Nations, 2004b), Art. 16(1). The monitoring and reporting are related to Article 16(2), where the ASEAN Secretariat has monitoring and reporting responsibilities. Article 16(3) stipulates the appointment of a contact point by each Party (The Association of Southeast Asian Nations, 2004b), Art. 16(2)-(3). These provide a regular administrative mechanism in which to communicate, monitor, and coordinate.

There are two ways of reading committee governance. Coordination-oriented reading allows for AEM-MOFCOM, SEOM-MOFCOM, Secretariat monitoring, and contact points to be flexible administrative bodies for review, clarification, and de-escalation. A more skeptical interpretation of legalization would highlight the fact that these bodies do not seem to provide an interpretive, binding power similar to adjudication and thus may be characterized by a lesser level of legal discipline. A more restrictive inference drawn from the article considers committee governance to be providing an administrative mechanism for dealing with uncertainty. It does not assume that these bodies resolve all legal disagreements or that these bodies are where adjudicatory interpretation takes place.

5.3.2. Review Clauses and Adaptive Adjustment Mechanisms

A periodic review is a mechanism for adaptive governance, which is built into the Agreement. Article 17(1) stipulates that AEM-MOFCOM or its designees convene within one year after entry into force of the Agreement and every two years thereafter, or more frequently as deemed necessary, to review the Agreement. It is possible to review the sensitive track in order to improve market access conditions and perhaps decrease the number of sensitive products (The Association of Southeast Asian Nations, 2004b) Art. 17(1)-(2). These clauses provide for recalibration and will avoid a formal dispute escalation at the time of execution.

5.3.3. Annexes, Future Instruments, and Dispute Settlement Linkage

Article 18 states that annexed instruments are an integral part of the Agreement and that the Agreement does incorporate any instruments that are agreed to under the Agreement (The Association of Southeast Asian Nations, 2004b) Art. 18(a)-(b). The Trade in Goods Agreement also links to the Dispute Settlement Mechanism (The Association of Southeast Asian Nations, 2004a) Art. 21, which operates separately. Liaison offices also play a role in the communication and regularity in the procedures within the framework of the DSM Agreement (The Association of Southeast Asian Nations, 2004a) Arts. 3(1)-(2). These are provisions that establish management links for adaptation, which may be negotiated, and provide coordination.

5.3.4. Committee Substitution in Safeguards Administration

The safeguards provisions are an example of administrative functions that can be transferred to the system of committees within the ACFTA. Currently, in the absence of a permanent body, references in the incorporated WTO Agreement on Safeguards to the Council for Trade in Goods or the Committee on Safeguards shall mean AEM-MOFCOM and SEOM-MOFCOM, respectively (The Association of Southeast Asian Nations, 2004b) Art. 9(12). This plan enables implementation via standing bodies and requires not just ad hoc escalation.

5.3.5. Synthesis

Thus, at the level of the institutions as well as at the level of exceptions and in the procedure of dispute settlement, flexibility is at stake. There are mechanisms for monitoring, clarifying, and recalibrating through oversight bodies, scheduled review, future instruments, contact points, and committee substitution. These elements, in combination, serve to structure uncertainty in the treaty system instead of having it managed or ignored.

To sum up, the ASEAN-China format is a multi-layered design that is a response to the geopolitical constraints. Security exceptions uphold the discretion of evaluation. Dispute-settlement procedures promote review without giving room to too much adjudication. Committee governance provides operational means for oversight and also change. This allows the outcome to be a treaty structure that de facto leaves regulatory powers unaffected while still maintaining the formal continuity of commitment to cooperation.

6. CONCLUSION AND BROADER IMPLICATIONS

In this article, the author explored how the ASEAN–China treaty framework provides for regulatory discretion in the face of geopolitical constraint and yet for legalized cooperation. Its key takeaway: exit, breach, or noncompliance does not provide adequate protection for policy space. Additionally, it has been integrated to some degree in treaty architecture. The allocation of authority occurs in layers of text, procedures, and committees.

The article takes a fresh look at flexibility and sees it as structured discretion. Security clauses allow for a space of exceptional action and have a meaning subject to other interpretations. Dispute settlement involves review, limits the types of claims, forum shopping, adjudicatory expansions, and the ability to retaliate. Committee governance provides practical aspects of monitoring and making adjustments. These features have a public policy role in conjunction, as they assist governments in controlling the danger of applying trade policy while maintaining formal cooperation.

6.1. Theoretical Implications

International economic law and the international political economy benefit from the demonstration of this possibility of design and the channeling of uncertainty. It refines the narrative of legalization; the ASEAN-China framework does not just back away from law in the face of security. Rather, it is bounded legalization: it does not preclude adjudication; it is merely restricted institutionally.

The analysis also makes a contribution to the field of 'regime complexity.' Fragmentation is not necessarily a cause of disorder. Some ambiguity and processes, which include mechanisms to mediate disagreements and discuss matters with each other, can be essential to the sustainability of a treaty. Managed legal uncertainty is thus an intermediate form of governance between the rigid, rule-based type of governance and the very discretionary type of power politics.

6.2. Practical and Policy Implications

The results indicate that there will be policy space within the legal commitments for public policymakers and treaty negotiators. Discretion, combined with procedural containment and institutional oversight, is still viable within a rules-based approach to cooperation. Security clauses should, therefore, be coupled with consultation requirements, limits, review procedures, and committees.

Monitoring by the secretariat, contact points, review clauses, and implementation bodies are the key aspects of the findings for public administration. These mechanisms can assist agencies involved in treaty implementation in reviewing security-sensitive trade measures, recording the grounds for resorting to exceptions, liaising with customs and trade ministries, and utilizing the committee channels in order to avoid conflict situations. These routines can facilitate enhancement of information flows, decrease transaction costs, and/or nonadjudicatory de-escalation. Normative dispute-settlement processes may also play a major role in a contentious geoeconomic landscape, as they facilitate day-to-day governance, policy continuity, and adjustment in a contested geoeconomic environment.

Treaty text needs to be interpreted not only as a schedule of market access but also as a risk-governance tool for firms and investors. The use of security exceptions can lead to greater policy risks being perceived. In contrast, dispute settlement limits and committee-review mechanisms can bring some clarity in terms of shaping the uncertainty of further escalation and retaliatory action. This has implications in terms of sourcing, investment plans, and compliance strategies.

6.3. Limitations and Future Research

This article only focuses on ex ante treaty design and on the level of provisions of the ASEAN-China legal instruments. It does not look at the type of security to be invoked, the number of times that security is invoked, empirical results of the disputes, compliance behavior, or firm-level issues. It also does not offer a comprehensive jurisprudential analysis of the WTO security-exception case law. These restrictions are made on purpose, as the article's focus is on the architecture of the treaty and not on the application ex post.

Other preferential trade agreements, such as bilateral instruments, can be analyzed in a similar manner to examine if other design features have equivalent impacts in different geopolitical and/or economic circumstances. Comparative research may be performed to check if other clauses, such as mandates, committee review mechanisms, forum-exclusivity clauses, and comparative clauses of non-violation, are linked to a decrease in the escalation of disputes or more frequent administrative settlement.

The following four propositions can lead to future empirical testing.

P1: More agreements with explicit language excluding disputes over non-violation, impairment, and nullification relate to lower rates of formal escalation of trade disputes in times of geopolitical shocks, controlling for trade exposure.

P2: Agreements with mandate-limiting clauses demonstrate a more homogeneous pattern of reasoning and remedies by tribunals, in line with an interpretation of restraint.

P3: Agreement-based mechanisms that establish committee review and time periods for adjustment are likely to yield less retaliation and more administrative coordination to solve cagey trade disputes.

P4: Forum exclusivity clauses limit parallel proceedings and 'regime shopping' and diminish legal-fragmentation costs for states and firms.

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Annex 1. Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-Operation between the People's Republic of China and the Association of Southeast Asian Nations.

The Government of the People's Republic of China ("China") and the Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic ("Lao PDR"), Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member States of the Association of Southeast Asian Nations ("ASEAN"), (collectively, "the Parties", or individually referring to an ASEAN Member State or to China as a "Party").

Recalling the Framework Agreement on Comprehensive Economic Cooperation ("the Framework Agreement") between China and ASEAN signed by the Heads of Government/State of China and ASEAN Member States in Phnom Penh on the 4th day of November 2002.

Recalling paragraph 1 of Article 11 of the Framework Agreement on the establishment of appropriate formal dispute settlement procedures and mechanisms for the Framework Agreement within 1 year after the date of entry into force of the Framework Agreement.

Have Agreed as Follows:

Article 1. Definitions

For this Agreement, the following definitions shall apply unless the context otherwise requires.

(a) All the definitions in the Framework Agreement shall apply to this Agreement.

(b) "Days" means calendar days, including weekends and holidays.

(c) "Parties to a dispute", "parties to the dispute", or "parties concerned" means the complaining party and the party complained against.
(d) "Complaining party" means any party or parties that requests consultations under Article 4.
(e) "Party complained against" means any party to which the request for consultations is made under Article 4.

Article 2. Scope and Coverage

1. This Agreement shall apply to disputes arising under the Framework Agreement which shall also include the Annexes and the contents therein. Hereinafter, any reference to the Framework Agreement shall include all future legal instruments agreed pursuant to it unless the context otherwise provides.
2. Any special or additional rules and procedures on dispute settlement contained in the Framework Agreement may be listed administratively by the ASEAN Secretariat as an Appendix to this Agreement with the consent of the Parties.
3. Unless otherwise provided for in this Agreement or in the Framework Agreement, or as the Parties may otherwise agree, the provisions of this Agreement shall apply with respect to the avoidance or settlement of disputes between or among the Parties concerning their respective rights and obligations under the Framework Agreement.
4. The provisions of this Agreement may be invoked in respect of measures affecting the observance of the Framework Agreement taken by central, regional or local governments or authorities within the territory of a Party.
5. Subject to paragraph 6, 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.
6. 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 Framework Agreement or that other treaty, the forum selected by the complaining party shall be used to the exclusion of any other for such dispute.
7. Paragraphs 5 and 6 above shall not apply where the parties to a dispute expressly agree to the use of more than one dispute settlement forum in respect of that particular dispute.
8. For paragraphs 5 to 7, 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 or tribunal in accordance with this Agreement or any other agreement to which the parties to a dispute are parties.

Article 3. Liaison Office

1. For this Agreement, each Party shall.

(a) Designate an office that shall be responsible for all liaison affairs referred to in this Agreement.
(b) Be responsible for the operation and costs of its designated office.
(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 or document under this Agreement to the designated office of any Party shall be deemed to be the submission of that request or document to that Party.

Article 4. Consultations

1. A party complained against shall accord due consideration and adequate opportunity for consultations regarding a request for consultations made by a complaining party with respect to any matter affecting the implementation or application of the Framework Agreement whereby.

(a) Any benefit accruing to the complaining party directly or indirectly under the Framework Agreement is being nullified or impaired.

(b) The attainment of any objective of the Framework Agreement is being impeded.

As a result of the failure of the party complained against to carry out its obligations under the Framework Agreement. [1]

2. Any request for consultations shall be submitted in writing, which shall include the specific measures at issue, and the factual and legal basis (including the provisions of the Framework Agreement 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 acknowledge receipt of such request to the complaining party and the rest of the Parties simultaneously.
3. If a request for consultations is made, the party complained against shall reply to the request within 7 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 7 days, or does not enter into consultations within the aforesaid 30 days, then the complaining party may proceed directly to request for the appointment of an arbitral tribunal under Article 6.
4. The parties to a dispute shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the parties concerned shall.

(a) Provide sufficient information to enable a full examination of how the measure might affect the operation of the Framework Agreement.

(b) Treat as confidential any information exchanged in the consultations which the other party concerned has designated as confidential.

5. Consultations shall be confidential, and are without prejudice to the rights of any Party in any further or other proceedings.
6. Whenever a Party (other than the parties to a dispute) considers that it has a substantial interest in consultations being held pursuant to this Article, such Party may notify the parties to a dispute in writing of its desire to be joined in the consultations within 10 days after the date of receipt of the request for consultations by the party complained against. Such Party shall be joined in the consultations provided that the party complained against agrees that the claim of substantial interest is well founded. The party complained against shall inform the complaining party and the rest of the Parties of its decision before the commencement of the consultations. If the request to be joined in the consultations is not accepted, the requesting Party shall be free to request separate consultations under this Article.
7. In cases of urgency, including those which concern perishable goods, the parties concerned shall enter into consultations within a period of no more than 10 days after the date of receipt of the request by the party complained against. If the consultations have failed to settle the dispute within a period of 20 days after the date of receipt of the request by the party complained against, the complaining party may proceed directly to request the appointment of an arbitral tribunal under Article 6.
8. In cases of urgency, including those which concern perishable goods, the parties to a dispute and arbitral tribunals shall make every effort to accelerate the proceedings to the greatest extent possible.

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

Article 5. Conciliation or Mediation

1. The parties to a dispute may at any time agree to conciliation or mediation. They may begin at any time and be terminated by the parties concerned at any time.
2. If the parties to a dispute agree, 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 tribunal appointed under Article 6.
3. Proceedings involving conciliation and mediation and 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 or other proceedings.

Article 6. Appointment of Arbitral Tribunals

1. If the consultations referred to in 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 appoint an arbitral tribunal under this Article. A copy of this request shall also be communicated to the rest of the Parties.
2. A request for the appointment of an arbitral tribunal shall give the reasons for the request, including the identification of:

(a) The specific measure at issue.

(b) The factual and legal basis (including the provisions of the Framework Agreement alleged to have been breached and any other relevant provisions) for the complaint sufficient to present the problem clearly.

3. Where more than 1 complaining party requests the appointment of an arbitral tribunal related to the same matter, a single arbitral tribunal may, whenever feasible, be appointed by the parties concerned to examine the matter, taking into account their respective rights.
4. Where a single arbitral tribunal is appointed under paragraph 3, it shall organize its examination and present its findings to all the parties to the dispute in such manner that the rights which they would have enjoyed had separate arbitral tribunals examined the same matter are in no way impaired. If one of the parties to the dispute so requests, the arbitral tribunal may submit separate reports on the dispute to the parties 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, and each party to the dispute shall have the right to be present when any of the other parties to the same dispute presents its views to the arbitral tribunal.
5. Where more than 1 arbitral tribunal is appointed under paragraph 3 to examine the same matter, to the greatest extent possible, the same arbitrators shall be appointed by the parties concerned to serve on each of the separate arbitral tribunals, and the timetable for the proceedings of each separate arbitral tribunal shall be harmonised.

Article 7. Composition of Arbitral Tribunals

1. Unless otherwise provided in this Agreement or the parties to the dispute agree, the arbitral tribunal shall have three members.
2. The complaining party shall appoint an arbitrator to the arbitral tribunal pursuant to Article 6 within 20 days of the receipt of the request for appointment of the arbitral tribunal under Article 6. The party complained against shall appoint an arbitrator to the arbitral tribunal pursuant to Article 6 within 30 days of its receipt of the request for appointment of the arbitral tribunal 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 of the tribunal.

3. Once the complaining party and the party complained against have appointed their respective arbitrators subject to paragraph 2, the parties concerned shall endeavour to agree on an additional arbitrator who shall serve as chair. If the parties concerned are unable to agree on the chair of the arbitral tribunal within 30 days after the date on which the last arbitrator has been appointed under paragraph 2, they shall request the Director-General of the World Trade Organization (WTO) to appoint the chair and such appointment shall be accepted by them. If 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 either party to the dispute shall be requested to appoint the chair. If one of the parties to the dispute is a non-WTO member, the parties to the dispute shall request the President of the International Court of Justice to appoint the chair and such appointment shall be accepted by them. If the President is a national of one of the parties to the dispute, the Vice President or the officer next in seniority who is not a national of either party to the dispute shall be requested to appoint the chair.
4. The date of composition of the arbitral tribunal shall be the date on which the chair is appointed under paragraph 3, or the 30th day after the receipt of the request under Article 6 where only a sole arbitrator of the tribunal is available.
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 and the successor shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended during the appointment of the successor arbitrator.
6. Any person appointed as a member or chair of the arbitral tribunal shall have expertise or experience in law, international trade, other matters covered by the Framework Agreement or the resolution of disputes arising under international trade agreements, and shall be chosen strictly based on objectivity, reliability, sound judgement and independence. Additionally, the chair shall not be a national of any party to a dispute and shall not have his or her usual place of residence in the territory of, nor be employed by, any party to a dispute.
7. Where the original arbitral tribunal is required for a matter as provided in this Agreement but cannot hear the matter for any reason, a new tribunal shall be appointed under this Article.

Article 8. Functions of Arbitral Tribunals

1. The function of an arbitral tribunal is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with the Framework Agreement. Where the arbitral tribunal concludes that a measure is inconsistent with a provision of the Framework Agreement, it shall recommend that the party complained against bring the measure into conformity with that provision. In addition to its recommendations, the arbitral tribunal may suggest ways in which the party complained against could implement the recommendations. In its findings and recommendations, the arbitral tribunal cannot add to or diminish the rights and obligations provided in the Framework Agreement.
2. The arbitral tribunal shall have the following terms of reference unless the parties to a dispute agree otherwise within 20 days from its composition.

"To examine, in the light of the relevant provisions in the Framework Agreement, the matter referred to this arbitral tribunal by (name of party)… and to make findings, determinations and recommendations provided for in the Framework Agreement."

The arbitral tribunal shall address the relevant provisions in the Framework Agreement cited by the parties to a dispute.

3. The arbitral tribunal shall be established pursuant to Article 6 above.

(a) Shall consult regularly with the parties to the dispute and provide adequate opportunities for the development of a mutually satisfactory resolution.
(b) Shall make its decision in accordance with the Framework Agreement and the rules of international law applicable between the parties to the dispute.
(c) Shall set out, in its decision, its findings of law and fact, together with the reasons therefore.

4. The decision of the arbitral tribunal shall be final and binding on the parties to the dispute.
5. An arbitral tribunal shall take its decision by consensus; provided that where an arbitral tribunal is unable to reach consensus, it may take its decision by majority opinion.
6. The arbitral tribunal shall, in consultation with the parties to the dispute and apart from the matters set out in paragraphs 2, 3, 4 of Article 6 and Article 9, regulate its own procedures in relation to the rights of parties to be heard and its deliberations.

Article 9. Proceedings of Arbitral Tribunals

1. An arbitral tribunal shall meet in closed session. The parties to the dispute shall be present at the meetings only when invited by the arbitral tribunal to appear before it.
2. The venue for the substantive meetings of the arbitral tribunal shall be decided by mutual agreement between the parties to the dispute, failing which the first substantive meeting shall be held in the capital of the party complained against, with the second substantive meeting to be held in the capital of the complaining party.
3. After consulting the parties to the dispute, the arbitral tribunal shall, as soon as practicable and possible within 15 days after the composition of the arbitral tribunal, fix the timetable for the arbitral process. In determining the timetable for the arbitral process, the arbitral tribunal shall provide sufficient time for the parties to the dispute to prepare their respective submissions. The arbitral tribunal should set precise deadlines for written submissions by the parties to the dispute, and they shall respect these deadlines.
4. The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a party to a dispute from disclosing statements of its own positions or its submissions to the public; a party to a dispute shall treat as confidential information submitted by any of the other parties concerned to the arbitral tribunal which the submitting party has designated as confidential. Where a party to a dispute submits a confidential version of its written submissions to the arbitral tribunal, it shall also, upon request of any of the other parties concerned, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.
5. The rules and procedures about the proceedings before the arbitral tribunal as set out in Annex 2 of this Agreement shall apply unless the arbitral tribunal decides otherwise after consulting the parties to the dispute.
6. The report of the arbitral tribunal shall be drafted without the presence of the parties to the dispute in the light of the information provided and the statements made. The deliberations of the tribunal shall be confidential. Opinions expressed in the report of the arbitral tribunal by an individual arbitrator shall be anonymous.
7. Following the consideration of submissions, oral arguments and any information before it, the arbitral tribunal shall issue a draft report to the parties concerned, including both a descriptive section relating to the facts of the dispute and the arguments of the parties to the dispute and the arbitral tribunal's findings and conclusions. The arbitral tribunal shall accord adequate opportunity to the parties concerned to review the entirety of its draft report prior to its finalization and shall include a discussion of any comments by the parties concerned in its final report.

8. The arbitral tribunal shall release to the parties to the dispute its final report within 120 days from the date of its composition. In cases of urgency, including those relating to perishable goods, the arbitral tribunal shall aim to issue its report to the parties to the dispute within 60 days from the date of its composition. When the arbitral tribunal considers that it cannot release its final report within 120 days, or within 60 days in cases of urgency, it shall inform the parties concerned in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. In no case should the period from the composition of an arbitral tribunal to the release of the report to parties to the dispute exceed 180 days.
9. The final report of the arbitral tribunal shall become a public document within 10 days after its release to the parties concerned.

Article 10. Third Parties

1. Any Party having a substantial interest in a dispute before an arbitral tribunal and having notified its interest in writing to the parties to such a dispute and the remaining Parties (hereinafter referred to as a "third party"), shall have an opportunity to make written submissions to the tribunal. These submissions shall also be given to the parties to a dispute and may be reflected in the report of the arbitral tribunal.
2. Third parties shall receive the submissions of the parties to a dispute to the first meeting of the arbitral tribunal.
3. If a third party considers that a measure already the subject of an arbitral tribunal proceeding nullifies or impairs benefits accruing to it under the Framework Agreement, such Party may have recourse to normal dispute settlement procedures under this Agreement.

Article 11. Suspension and Termination of Proceedings

1. Where the parties to the dispute agree, the arbitral tribunal 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 a dispute, the arbitral proceeding shall be resumed after such suspension. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse unless the parties concerned agree otherwise.
2. The parties to a dispute may agree to terminate the proceedings of an arbitral tribunal established under this Agreement before the release of the final report to them, if a mutually satisfactory solution to the dispute has been found.
3. Before the arbitral tribunal 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 12. Implementation

1. The party complained against shall inform the complaining party of its intention in respect of implementation of the recommendations and rulings of the arbitral tribunal.
2. If it is impracticable to comply immediately with the recommendations and rulings of the arbitral tribunal, the party complained against shall have a reasonable period of time in which to do so. The reasonable period of time shall be mutually determined by the parties to the dispute or, where the parties concerned fail to agree on the reasonable period of time within 30 days of the release of the arbitral tribunal's final report, any of the parties to the dispute may refer the matter to the original arbitral tribunal wherever possible which shall, following consultations with the parties concerned, determine the reasonable period of time within 30 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the parties concerned in writing of the reasons for the delay and shall submit its report no later than 45 days after the date of the referral of the matter to it.

3. Where there is disagreement as to the existence or consistency with the Framework Agreement of measures taken within the reasonable period of time referred to in paragraph 2 to comply with the recommendations of the arbitral tribunal, such dispute shall be referred to the original arbitral tribunal, wherever possible. The arbitral tribunal shall provide its report to the parties to the dispute within 60 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the parties concerned in writing of the reasons for the delay and shall submit its report no later than 75 days after the date of the referral of the matter to it.

Article 13. Compensation and Suspension of Concessions or Benefits

1. Compensation and the suspension of concessions or benefits are temporary measures available if the recommendations and rulings 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 a recommendation to bring a measure into conformity with the Framework Agreement. Compensation is voluntary and, if granted, shall be consistent with the Framework Agreement.
2. If the party complained against fails to bring the measure found to be inconsistent with the Framework Agreement into compliance with the recommendations of the arbitral tribunal within the reasonable period of time determined pursuant to paragraph 2 of Article 12, that party 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 20 days after the request of the complaining party to enter into negotiations on compensatory adjustment, the complaining party may request the original arbitral tribunal to determine the appropriate level of any suspension of concessions or benefits conferred on the party which has failed to bring the measure found to be inconsistent with the Framework Agreement into compliance with the recommendations of the arbitral tribunal. The arbitral tribunal shall provide its report to the parties to the dispute within 30 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the parties concerned in writing of the reasons for the delay and shall submit its report no later than 45 days after the date of the referral of the matter to it. Concessions or benefits shall not be suspended during the course of the arbitral proceedings.
4. Any suspension of concessions or benefits shall be restricted to those accruing under the Framework Agreement to the party which has failed to bring the measure found to be inconsistent with the Framework Agreement into compliance with the recommendations of the arbitral tribunal. That party 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.

(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 tribunal has found to be inconsistent with the Framework Agreement or to have caused nullification or impairment;

(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 the measure found to be inconsistent with the Framework Agreement has been removed, or the Party that must implement the arbitral tribunal's recommendations has done so, or a mutually satisfactory solution is reached.

Article 14. 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.

Article15. Expenses

1. Each party to a dispute shall bear the costs of its appointed arbitrator and its own expenses and legal costs.
2. The costs of the chair of the arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the parties to a dispute.

Article 16. Amendments

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

Article 17. Depositary

For ASEAN, 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 18. Entry Into Force

1. This Agreement shall enter into force on 1 January 2005.
2. The Parties undertake to complete their internal procedures for the entry into force of this Agreement before 1 January 2005.
3. Where a Party is unable to complete its internal procedures for the entry into force of this Agreement by 1 January 2005, the rights and obligations of that Party under this Agreement shall commence on the date of the completion of such internal procedures.
4. 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.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Cooperation between the People's Republic of China and the Association of Southeast Asian Nations.
DONE at Vientiane, Lao PDR, this Twenty-Ninth Day of November in the Year Two Thousand and Four, in duplicate copies in the English Language.

For the People's Republic of China

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Minister of Commerce

For Brunei Darussalam

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PEHIN DATO ABDUL RAHMAN TAIB
Minister of Industry and Primary Resources

For the Kingdom of Cambodia

CHAM PRASIDH
Senior Minister and Minister of Commerce

For the Republic of Indonesia

MARI ELKA PANGESTU
Minister of Trade

For the Lao People's Democratic Republic

SOULIVONG DARAVONG
Minister of Commerce

For Malaysia

RAFIDAH AZIZ
Minister of International Trade and Industry

For the Union of Myanmar

SOE THA
Minister of National Planning and
Economic Development
Page 14 of 14

For the Republic of the Philippines

CESAR V. PURISIMA
Secretary of Trade and Industry

For the Republic of Singapore

LIM HNG KIANG
Minister for Trade and Industry

For the Kingdom of Thailand

WATANA MUANGSOOK
Minister of Commerce

For the Socialist Republic of Viet Nam

TRUONG DINH TUYEN
Minister of Trade

Annex 2. Rules and Procedures for the Arbitral Proceedings

1. Before the first substantive meeting of the arbitral tribunal with the parties to the dispute, the parties concerned shall transmit to the arbitral tribunal written submissions in which they present the facts of their case and their arguments.
2. The complaining party shall submit its first submission in advance of the first submission of the party complained against unless the arbitral tribunal decides, in fixing the timetable referred to in paragraph 3 of Article 9 and after consultations with the parties to the dispute, that the parties concerned should submit their first submissions simultaneously. When there are sequential arrangements for the submission of first submissions, the arbitral tribunal shall establish a firm time period for receipt of the submission of the party complained against. Any subsequent written submissions shall be submitted simultaneously.
3. At its first substantive meeting with the parties to the dispute, the arbitral tribunal shall ask the complaining party to present its submissions. Subsequently, and still at the same meeting, the party complained against shall be asked to present its submissions.
4. Formal rebuttals shall be made at the second substantive meeting of the arbitral tribunal. The party complained against shall have the right to present its submission first, and shall be followed by the complaining party. The parties to the dispute shall submit, prior to the meeting, written rebuttals to the arbitral tribunal.
5. The arbitral tribunal may at any time put questions to the parties to the dispute and ask them for explanations either in the course of a meeting with the parties concerned or in writing.
6. The parties to the dispute shall make available to the arbitral tribunal a written version of their oral statements.
7. In the interests of full transparency, the presentations, rebuttals and statements referred to in paragraphs 2 to 6 shall be made in the presence of the parties to the dispute. Moreover, each party's written submissions, including any comments on the draft report, written versions of oral statements and responses to questions put by the arbitral tribunal, shall be made available to the other party. There shall be no ex parte communications with the arbitral tribunal concerning matters under its consideration.
8. The arbitral tribunal may consult experts to obtain their opinion on certain aspects of the matter. With respect to factual issues concerning a scientific or other technical matter raised by a party to the dispute, the arbitral tribunal may request advisory reports in writing from an expert or experts. The arbitral tribunal may, at the request of a party or parties to the dispute, or on its own volition, select, in consultation with the parties to the dispute, scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal.