

CONFIDENT that a comprehensive ASEAN Trade in Goods Agreement would minimise barriers and deepen economic linkages among Member States, lower business costs, increase trade, investment and economic efficiency, create a larger market with greater opportunities and larger economies of scale for the businesses of Member States and create and maintain a competitive investment area;

RECOGNISING the different stages of economic development between and among Member States and the need to address the development gaps and facilitate increasing participation of the Member States, especially Cambodia, Lao PDR, Myanmar and Viet Nam, in the AEC through the provision of flexibility and technical and development co-operation;

RECOGNISING FURTHER the provisions of the ministerial declarations of the World Trade Organization on measures in favour of least-developed countries;

ACKNOWLEDGING the important role and contribution of the business sector in enhancing trade and investment among Member States and the need to further promote and facilitate their participation through the various ASEAN business associations in the realisation of the ASEAN Economic Community; and

RECOGNISING the role of regional trade arrangements as a catalyst in accelerating regional and global trade liberalisation and trade facilitation and as building blocks in the framework of the multilateral trading system;

HAVE AGREED AS FOLLOWS:

CHAPTER 1 GENERAL PROVISIONS

Article 1 Objective

The objective of this Agreement is to achieve free flow of goods in ASEAN as one of the principal means to establish a single market and production base for the deeper economic integration of the region towards the realisation of the AEC by 2015.

Article 2 General Definitions

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

- (a) **ASEAN** means the Association of Southeast Asian Nations, which comprises Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, 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;
- (b) **customs authorities** means the competent authorities that are responsible under the law of a Member State for the administration of customs laws;
- (c) **customs duties** means any customs or import duty and a charge of any kind imposed in connection with the importation of a good, but does not include any:
 - (i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of GATT 1994, in respect of the like domestic goods or in respect of goods from which the imported goods have been manufactured or produced in whole or in part;
 - (ii) anti-dumping or countervailing duty applied consistent with the provisions of Article VI of GATT 1994, the Agreement on Implementation of Article VI of GATT 1994, and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement; or
 - (iii) fee or any charge commensurate with the cost of services rendered.
- (d) **customs laws** means such laws and regulations administered and enforced by the customs authorities of each Member State concerning the importation, exportation, transit, transshipment, and storage of goods as they relate to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Member State;

- (e) **customs value of goods** means the value of goods for the purposes of levying ad valorem customs duties on imported goods;
- (f) **days** means calendar days, including weekends and holidays;
- (g) **foreign exchange restrictions** means measures taken by Member States in the form of restrictions and other administrative procedures in foreign exchange which have the effect of restricting trade;
- (h) **GATT 1994** means the General Agreement on Tariffs and Trade 1994, including its Notes and Supplementary Provisions, contained in Annex 1A to the WTO Agreement;
- (i) **Harmonized System** or **HS** means the Harmonized Commodity Description and Coding System set out in the Annex to the *International Convention on the Harmonized Commodity Description and Coding System*, including any amendments adopted and implemented by the Member States in their respective laws;
- (j) **MFN** means Most-Favoured-Nation treatment in the WTO;
- (k) **non-tariff barriers** means measures other than tariffs which effectively prohibit or restrict imports or exports of goods within Member States;
- (l) **originating goods** means goods that qualify as originating in a Member State in accordance with the provisions of Chapter 3;
- (m) **preferential tariff treatment** means tariff concessions granted to originating goods as reflected by the tariff rates applicable under this Agreement;
- (n) **quantitative restrictions** means measures intended to prohibit or restrict quantity of trade with other Member States, whether made effective through quotas, licences or other measures with equivalent effect, including administrative measures and requirements which restrict trade;

- (o) **this Agreement** or **ATIGA** means the ASEAN Trade in Goods Agreement;
- (p) **WTO** means the World Trade Organization; and
- (q) **WTO Agreement** means the Marrakesh Agreement Establishing the World Trade Organization, done on 15 April 1994 and the other agreements negotiated thereunder.

2. In this Agreement, all words in the singular shall include the plural and all words in the plural shall include the singular, unless otherwise indicated in the context.

Article 3 Classification of Goods

For the purposes of this Agreement, the classification of goods in trade between and among Member States shall be in accordance with the ASEAN Harmonised Tariff Nomenclature (AHTN) as set out in the Protocol Governing the Implementation of the ASEAN Harmonised Tariff Nomenclature signed on 7 August 2003 and any amendments thereto.

Article 4 Product Coverage

This Agreement shall apply to all products under the ASEAN Harmonised Tariff Nomenclature (AHTN).

Article 5 Most Favoured Nation Treatment

With respect to import duties, after this Agreement enters into force, if a Member State enters into any agreement with a non-Member State where commitments are more favourable than that accorded under this Agreement, the other Member States have the right to request for negotiations with that Member State to request for the incorporation herein of treatment no less favourable than that provided under the aforesaid agreement. The decision to extend such tariff preference will be on a unilateral basis. The extension of such tariff preference shall be accorded to all Member States.

Article 6

National Treatment on Internal Taxation and Regulation

Each Member State shall accord national treatment to the goods of the other Member States in accordance with Article III of GATT 1994. To this end, Article III of GATT 1994 is incorporated into and shall form part of this Agreement, *mutatis mutandis*.

Article 7

Fees and Charges Connected with Importation and Exportation

1. Each Member State shall ensure, in accordance with Article VIII.1 of GATT 1994, that all fees and charges of whatever character (other than import or export duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III.2 of GATT 1994, and anti-dumping and countervailing duties) imposed on or in connection with import or export are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation on imports or exports for fiscal purposes.
2. Each Member State shall promptly publish details of the fees and charges that it imposes in connection with importation or exportation, and shall make such information available on the internet.

Article 8

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination among Member States where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Member State of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the importations or exportations of gold or silver;
- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII of GATT

1994, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;

- (e) relating to the products of prison labour;
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- (h) undertaken in pursuance of the obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the WTO and not disapproved by it or which is itself so submitted and not so disapproved;
- (i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan, provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination; and
- (j) essential to the acquisition or distribution of products in general or local short supply, provided that any such measures shall be consistent with the principle that all Member States are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

Article 9

Security Exceptions

Nothing in this Agreement shall be construed:

- (a) to require any Member State to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any Member State from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to fissionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - (iii) taken so as to protect critical public infrastructure, including communications, power and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructure;
 - (iv) taken in time of domestic emergency, or war or other emergency in international relations; or
- (c) to prevent any Member State from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 10

Measures to Safeguard the Balance-of-Payments

Nothing in this Agreement shall be construed to prevent a Member State from taking any measure for balance-of-payments purposes. A Member State taking such measure shall do so in accordance with the conditions established under Article XII of GATT 1994 and *the Understanding on Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement.

Article 11

Notification Procedures

1. Unless otherwise provided in this Agreement, Member States shall notify any action or measure that they intend to take:

- (a) which may nullify or impair any benefit to other Member States, directly or indirectly under this Agreement; or
- (b) when the action or measure may impede the attainment of any objective of this Agreement.

2. Without affecting the generality of the obligations of Member States under paragraph 1 of this Article, the notification procedures shall apply, but need not be limited, to changes in the measures as listed in Annex 1 and amendments thereto.

3. A Member State shall make a notification to Senior Economic Officials Meeting (SEOM) and the ASEAN Secretariat before effecting such action or measure referred to in paragraph 1 of this Article. Unless otherwise provided in this Agreement, notification shall be made at least sixty (60) days before such an action or measure is to take effect. A Member State proposing to apply an action or measure shall provide adequate opportunity for prior discussion with those Member States having an interest in the action or measure concerned.

4. The notification of the intended action or measure submitted by a Member State shall include:

- (a) a description of the action or measure to be taken;
- (b) the reasons for undertaking the action or measure; and
- (c) the intended date of implementation and the duration of the action or measure.

5. The contents of the notification and all information relating to it shall be treated with confidentiality.

6. The ASEAN Secretariat shall act as the central registry of notifications, including written comments and results of discussions. The Member State concerned shall furnish the ASEAN Secretariat with a copy of the comments received. The ASEAN Secretariat shall draw the attention of individual Member States to notification requirements, such as those stipulated in paragraph 4 of this Article, which remain

incomplete. The ASEAN Secretariat shall make available information regarding individual notifications on request to any Member State.

7. The Member State concerned shall, without discrimination, allow adequate opportunities for other Member States to present their comments in writing and discuss these comments upon request. Discussions entered into by the Member State concerned with other Member States shall be for the purpose of seeking further clarification about the action or measure. The Member State may give due consideration to these written comments and the discussion in the implementation of the action or measure.

8. Other Member States shall present their comments within fifteen (15) days of the notification. Failure of a Member State to provide comments within the stipulated time shall not affect its right to seek recourse under Article 88.

Article 12

Publication and Administration of Trade Regulations

1. Article X of GATT 1994 shall be incorporated into and form an integral part of this Agreement, *mutatis mutandis*.

2. To the extent possible, each Member State shall make laws, regulations, decisions and rulings of the kind referred to in Article X of GATT 1994 available on the internet.

Article 13

ASEAN Trade Repository

1. An ASEAN Trade Repository containing trade and customs laws and procedures of all Member States shall be established and made accessible to the public through the internet.

2. The ASEAN Trade Repository shall contain trade related information such as (i) tariff nomenclature; (ii) MFN tariffs, preferential tariffs offered under this Agreement and other Agreements of ASEAN with its Dialogue Partners; (iii) Rules of Origin; (iv) non-tariff measures; (v) national trade and customs laws and rules; (vi) procedures and documentary requirements; (vii) administrative rulings; (viii) best practices in trade facilitation applied by each Member State; and (ix) list of authorised traders of Member States.

3. The ASEAN Secretariat shall maintain and update the ASEAN Trade Repository based on the notifications submitted by Member States as set out in Article 11.

Article 14

Confidentiality

1. Nothing in this Agreement shall require a Member State to provide confidential information, the disclosure of which would impede law enforcement of the Member State, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of any particular enterprise, public or private.
2. Nothing in this Agreement shall be construed to require a Member State to provide information relating to the affairs and accounts of customers of financial institutions.
3. Each Member State shall, in accordance with its laws and regulations, maintain the confidentiality of information provided as confidential by another Member State pursuant to this Agreement.
4. Notwithstanding the above, paragraphs 1, 2 and 3 of this Article shall not apply to Chapter 6.

Article 15

Communications

All official communications and documentation exchanged among the Member States relating to the implementation of this Agreement shall be in writing and in the English language.

Article 16

Participation Enhancement of Member States

Enhancing participation of Member States shall be facilitated through a negotiated pre-agreed flexibility on provisions under this Agreement. Such pre-agreed flexibility shall be captured in the respective provisions hereunder.

Article 17

Capacity Building

Capacity building shall be provided through effective implementation of programmes to strengthen individual Member States' domestic capacity, efficiency and competitiveness, such as the Work Programme under the Initiative for ASEAN Integration (IAI) and other capacity building initiatives.

Article 18
Regional and Local Government and Non-Governmental Bodies

1. Each Member State shall take such reasonable measures as may be available to it to ensure observance of provisions of this Agreement by the regional and local government and authorities within its territories.
2. In fulfilling its obligations and commitments under this Agreement, each Member State shall endeavour to ensure their observance by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities within its territory.

CHAPTER 2
TARIFF LIBERALISATION

Article 19
Reduction or Elimination of Import Duties

1. Except as otherwise provided in this Agreement, Member States shall eliminate import duties on all products traded between the Member States by 2010 for ASEAN-6¹ and by 2015, with flexibility to 2018, for CLMV².
2. Each Member State shall reduce and/or eliminate import duties on originating goods of the other Member States in accordance with the following modalities:
 - (a) Import duties on the products listed in Schedule A of each Member State's tariff liberalisation schedule shall be eliminated by 2010 for ASEAN-6 and 2015 for CLMV, in accordance with the schedule set out therein. Schedule A of each Member State shall ensure the following conditions are met:
 - (i) For ASEAN-6, by 1 January 2009:
 - Import duties of at least eighty percent (80%)

¹ "ASEAN-6" refers to Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand.

² "CLMV" refers to Cambodia, Lao PDR, Myanmar and Viet Nam.