

- (e) carrying out other functions as may be delegated by the CCA, SEOM and the AFTA Council.

3. The Sub-Committee on Rules of Origin shall be composed of representatives of the Governments of Member States, and may invite representatives of relevant entities other than the Governments of the Member States with necessary expertise relevant to the issues to be discussed, upon agreement of all Member States.

CHAPTER 4 NON-TARIFF MEASURES

Article 40 Application of Non-Tariff Measures

1. Each Member State shall not adopt or maintain any non-tariff measure on the importation of any good of any other Member State or on the exportation of any good destined for the territory of any other Member State, except in accordance with its WTO rights and obligations or in accordance with this Agreement.
2. Each Member State shall ensure the transparency of its non-tariff measures permitted in paragraph 1 of this Article in accordance with Article 12 and shall ensure that any such measures are not prepared, adopted or applied with the view to, or with the effect of, creating unnecessary obstacles in trade among the Member States.
3. Any new measure or modification to the existing measure shall be duly notified in accordance with Article 11.
4. The database on non-tariff measures applied in Member States shall be further developed and included in the ASEAN Trade Repository as referred in Article 13.

Article 41 General Elimination of Quantitative Restrictions

Each Member State undertakes not to adopt or maintain any prohibition or quantitative restriction on the importation of any goods of the other Member States or on the exportation of any goods destined for the territory of the other Member States, except in accordance with its WTO rights and obligations or other provisions in this Agreement. To this end, Article XI of GATT 1994, shall be incorporated into and form part of this Agreement, *mutatis mutandis*.

Article 42

Elimination of Other Non-Tariff Barriers

1. Member States shall review the non-tariff measures in the database referred to in paragraph 4 of Article 40 with a view to identifying non-tariff barriers (NTBs) other than quantitative restrictions for elimination. The elimination of the identified NTBs shall be dealt with by the Co-ordinating Committee for the Implementation of the ATIGA (CCA), the ASEAN Consultative Committee on Standards and Quality (ACCSQ), the ASEAN Committee on Sanitary and Phytosanitary (AC-SPS), the working bodies under ASEAN Directors-General of Customs and other relevant ASEAN bodies, as appropriate, in accordance with the provisions of this Agreement, which shall submit their recommendations on the identified non-tariff barriers to the AFTA Council through SEOM.

2. Unless otherwise agreed by the AFTA Council, the identified NTBs shall be eliminated in three (3) tranches as follows:

- (a) Brunei, Indonesia, Malaysia, Singapore and Thailand shall eliminate in three (3) tranches by 1 January of 2008, 2009 and 2010;
- (b) The Philippines shall eliminate in three (3) tranches by 1 January of 2010, 2011 and 2012;
- (c) Cambodia, Lao PDR, Myanmar and Viet Nam shall eliminate in three (3) tranches by 1 January of 2013, 2014 and 2015 with flexibilities up to 2018.

3. The list of identified NTBs to be eliminated in each tranche shall be agreed upon by the AFTA Council meeting in the year before the effective elimination date of such NTBs.

4. Notwithstanding paragraphs 1 to 3 of this Article, the CCA, in consultation with the relevant ASEAN bodies, shall review any non-tariff measure notified or reported by any other Member State or by the private sector with a view to determining whether the measure constitutes as a NTB. If such review results in an identification of a

NTB, the NTB shall be eliminated by the Member State applying such NTB in accordance with this Agreement.

5. The CCA shall serve as a focal point for the notification and review referred to in paragraph 4 of this Article.

6. Exceptions to this Article shall be allowed for the reasons provided in Article 8.

7. Nothing in this Agreement shall be construed to prevent a Member State, which is a party to the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* or other relevant international agreements, from adopting or enforcing any measure in relation to hazardous wastes or substances based on its laws and regulations, in accordance with such international agreements.

Article 43

Foreign Exchange Restrictions

Member States shall make exceptions to their foreign exchange restrictions relating to payments for the products under this Agreement, as well as repatriation of such payments without prejudice to their rights under Article XVIII of GATT 1994 and relevant provisions of the *Articles of Agreement of the International Monetary Fund (IMF)*.

Article 44

Import Licensing Procedures

1. Each Member State shall ensure that all automatic and non-automatic import licensing procedures are implemented in a transparent and predictable manner, and applied in accordance with the *Agreement on Import Licensing Procedures* as contained in Annex 1A to the WTO Agreement.

2. Promptly after entry into force of this Agreement, each Member State shall notify the other Member States of any existing import licensing procedures. Thereafter, each Member State shall notify the other Member States of any new import licensing procedure and any modification to its existing import licensing procedures, to the extent possible sixty (60) days before it takes effect, but in any case no later than the effective date of the licensing requirement. A notification provided under this Article shall include the information specified in Article 5 of the *Agreement on Import Licensing Procedures* as contained in Annex 1A to the WTO Agreement.

3. Each Member State shall answer within sixty (60) days all reasonable enquiries from another Member State with regard to the criteria employed by its respective licensing authorities in granting or denying import licences. The importing Member State shall also consider publication of such criteria.

4. Elements in non-automatic import licensing procedures that are found to be impeding trade shall be identified, with a view to remove such barriers, and to the extent possible work towards automatic import licensing procedures.

CHAPTER 5 TRADE FACILITATION

Article 45

Work Programme on Trade Facilitation and its Objectives

1. Member States shall develop and implement a comprehensive ASEAN Trade Facilitation Work Programme, which sets out all concrete actions and measures with clear targets and timelines of implementation necessary for creating a consistent, transparent, and predictable environment for international trade transactions that increases trading opportunities and help businesses, including small and medium sized enterprises (SMEs), to save time and reduce costs.

2. The ASEAN Trade Facilitation Work Programme shall set out actions and measures to be implemented at both ASEAN and national levels.

Article 46

Scope of the ASEAN Trade Facilitation Work Programme

The ASEAN Trade Facilitation Work Programme referred to in Article 45 shall cover the areas of customs procedures, trade regulations and procedures, standards and conformance, sanitary and phytosanitary measures, ASEAN Single Window and other areas as identified by the AFTA Council.