



AGREEMENT ON TRADE IN GOODS UNDER THE FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC COOPERATION BETWEEN THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND THE REPUBLIC OF INDIA

PREAMBLE

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

RECALLING the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India, signed by the Heads of Government/State of ASEAN Member States and India in Bali, Indonesia on 8 October 2003 and the Protocol to Amend the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India, signed in Bangkok on 13 August 2009;

RECALLING FURTHER Articles 2 and 4 of the Protocol to Amend the Framework Agreement on Comprehensive Economic Cooperation between the Association of

Southeast Asian Nations and the Republic of India which reflect the commitment of ASEAN and India to establish the ASEAN-India Free Trade Area covering trade in goods by 2013 for Brunei Darussalam, Indonesia, Malaysia, Singapore and Thailand and India; by 2018 for the Philippines and India; and by 2013 for India and by 2018 for Cambodia, Lao PDR, Myanmar and Viet Nam;

REITERATING the importance of special and differential treatment to ensure the increasing participation of the new ASEAN Member States in economic integration and cooperation activities between ASEAN and India;

REAFFIRMING the Parties' commitment to establish the ASEAN-India Free Trade Area while allowing flexibility to Parties to address their sensitive areas as provided in the Framework Agreement;

HAVE AGREED as follows:

ARTICLE 1 **Definitions**

For the purposes of this Agreement, the term:

- (a) **AIFTA** means the ASEAN-India Free Trade Area under the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India;
- (b) **applied MFN tariff rates** shall include in-quota rates, and shall:
 - (i) in the case of ASEAN Member States (which are WTO Members as of 1 July 2007) and India, refer to their respective applied rate as of 1 July 2007, except for products identified as Special Products in the Schedules of Tariff Commitments set out in Annex 1; and

- (ii) in the case of ASEAN Member States (which are non-WTO Members as of 1 July 2007), refer to the rates as applied to India as of 1 July 2007, except for products identified as Special Products in the Schedules of Tariff Commitments set out in Annex 1;
- (c) **ASEAN** means the Association of Southeast Asian Nations which comprises Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the 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 and whose members are referred to in this Agreement collectively as the ASEAN Member States and individually as an ASEAN Member State;
- (d) **Framework Agreement** means the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India, signed in Bali, Indonesia on 8 October 2003, as amended;
- (e) **GATT 1994** means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, including its Notes and Supplementary Provisions;
- (f) **goods** means materials and/or products;
- (g) **originating good** means a good that qualifies as originating under Article 7;
- (h) **new ASEAN Member States** refers to Cambodia, Lao PDR, Myanmar and Viet Nam;
- (i) **Parties** means ASEAN Member States and India collectively;

- (j) **Party** means an ASEAN Member State or India;
- (k) **WTO** means the World Trade Organization; and
- (l) **WTO Agreement** means the Marrakesh Agreement Establishing the World Trade Organization, done on 15 April 1994.

ARTICLE 2

Scope

This Agreement shall apply to trade in goods and all other matters relating thereto as envisaged in the Framework Agreement.

ARTICLE 3

National Treatment on Internal Taxation and Regulations

Each Party shall accord national treatment to the goods of the other Parties in accordance with Article III of GATT 1994, which shall apply, *mutatis mutandis*, to this Agreement.

ARTICLE 4

Tariff Reduction and Elimination

1. Except as otherwise provided for in this Agreement, each Party shall gradually liberalise, where applicable, applied MFN tariff rates on originating goods of the other Parties in accordance with its schedule of tariff commitments as set out in Annex 1.

2. Nothing in this Agreement shall preclude any Party from unilaterally accelerating the reduction and/or elimination of the applied MFN tariff rates on originating goods of the other Parties as set out in its tariff reduction/elimination schedule in Annex 1.

3. Except otherwise provided in paragraph 1, all commitments undertaken by each Party under this Article shall be applied to all the other Parties.

ARTICLE 5 Transparency

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

ARTICLE 6 Administrative Fees and Formalities

Each Party reaffirms its commitments under Article VIII.1 of GATT 1994.

ARTICLE 7 Rules of Origin

The Rules of Origin and Operational Certification Procedures applicable to the goods covered under this Agreement are set out in Annex 2 and its Appendices.

ARTICLE 8 Non-Tariff Measures

1. Each Party shall:
 - (a) not institute or maintain any non-tariff measure on the importation of goods from the other Parties or on the exportation or sale for export of goods destined for the territory of the other Parties, except in accordance with its WTO rights and obligations or other provisions in this Agreement; and
 - (b) ensure the transparency of its non-tariff measures allowed under subparagraph (a) and their full compliance with its obligations under the

WTO Agreement with a view to minimising possible distortions to trade to the maximum extent possible.

2. The Parties reaffirm their rights and obligations under the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement and the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement, including notification procedures on the preparation of relevant regulations to reduce their negative effect on trade as well as to protect human, animal or plant life or health.

3. Each Party shall designate its contact point for the purpose of responding to queries related to this Article.

ARTICLE 9 Modification of Concessions

1. The Parties shall not nullify or impair any of the concessions made by them under this Agreement, except as provided in this Agreement.

2. Any Party may, by negotiation and agreement with any other Party to which it has made a concession, modify or withdraw such concession made under this Agreement. In such negotiations and agreement, which may include provision for compensatory adjustment with respect to other goods, the Parties concerned shall maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided in this Agreement prior to such agreement.

ARTICLE 10 Safeguard Measures

1. Each Party, which is a WTO Member, retains its rights and obligations under Article XIX of GATT 1994 and the Agreement on Safeguards in Annex 1A to the WTO

Agreement (Agreement on Safeguards) and Article 5 of the Agreement on Agriculture in Annex 1A to the WTO Agreement (Agreement on Agriculture). Any action taken pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture shall not be subject to the Agreement on Dispute Settlement Mechanism under the Framework Agreement (ASEAN-India DSM Agreement).

2. A Party shall have the right to initiate a safeguard measure under this Article (an AIFTA safeguard measure) on a good within the transition period for that good. The transition period for a good shall begin from the date of entry into force of this Agreement and end five (5) years from the date of completion of tariff reduction/elimination for that good.

3. A Party shall be free to take an AIFTA safeguard measure if, as an effect of the obligations incurred by that Party under this Agreement, a good is being imported from the other Parties to which tariff concession was made for that good in such increased quantities, absolute or relative to domestic production, and under such conditions so as to substantially cause or threaten to cause serious injury to the domestic industry of the importing Party that produces like or directly competitive goods in its territory.

4. If an AIFTA safeguard measure is taken, a Party taking such a measure may:

- (a) suspend the further reduction of any tariff rate under this Agreement for the good; or
- (b) increase the tariff rate on the good concerned to a level not to exceed the lesser of:
 - (i) the applied MFN tariff rate on the good in effect at the time the action is taken; or

- (ii) the applied MFN tariff rate on the good in effect on the day immediately preceding the date of entry into force of this Agreement.

5. An AIFTA safeguard measure may be maintained for an initial period of up to three (3) years and may be extended for a period not exceeding one (1) year if it is determined pursuant to the procedures referred to in paragraph 6 that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting. Notwithstanding the duration of an AIFTA safeguard measure on the good, such a measure shall terminate at the end of the transition period for that good.

6. In applying an AIFTA safeguard measure, the Parties shall adopt and apply, *mutatis mutandis*, the rules for the application of safeguard measures, including provisional measures, as provided under the Agreement on Safeguards, with the exception of the quantitative restriction measures set out in Articles 5 and 7, and also, Articles 9, 13, and 14 of the Agreement on Safeguards.

7. An AIFTA safeguard measure shall not be applied against a good originating in the territory of a Party so long as its share of imports of the good concerned in the importing Party does not exceed three (3) per cent of the total imports of that good from the other Parties.

8. In seeking compensation under Article 8 of the Agreement on Safeguards for an AIFTA safeguard measure, the Parties concerned shall seek the good offices of the Joint Committee established under Article 17 to determine the substantially equivalent level of concessions to that existing under this Agreement between the Party taking the safeguard measure and the exporting Parties which would be affected by such a measure prior to any suspension of equivalent concessions. Any proceedings arising from such

good offices shall be completed within 90 days from the date on which the AIFTA safeguard measure was applied.

9. If no agreement on the compensation is reached within the timeframe specified in paragraph 8, the Parties concerned shall be free to suspend the application of tariff concessions under this Agreement, which is substantially equivalent to the AIFTA safeguard measure on originating goods of the Party applying the AIFTA safeguard measure.

10. On a Party's termination of an AIFTA safeguard measure on a good, the tariff rate for that good shall be the rate that, according to that Party's schedule of tariff reduction and elimination as set out in Annex 1 would have been in effect had the measure not been applied.

11. Notwithstanding the provisions of this Article, no Party may impose an AIFTA safeguard measure on a good to which actions are being applied pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture. When a Party intends to apply, pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture, an action on a good to which an AIFTA safeguard measure is being applied, it shall terminate the AIFTA safeguard measure prior to the imposition of the action to be applied pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture.

12. All official communications and documentations exchanged among the Parties and with the Joint Committee relating to an AIFTA safeguard measure shall be in writing and shall be in the English language.

ARTICLE 11
Measures to Safeguard the Balance of Payments

Nothing in this Agreement shall be construed to prevent a Party from taking any measure for balance of payments purposes. A Party 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 12
General Exceptions

Each Party retains its rights and obligations under Article XX of GATT 1994, which shall be incorporated, *mutatis mutandis*, into and form an integral part of this Agreement.

ARTICLE 13
Security Exceptions

Nothing in this Agreement shall be construed:

- (a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests;
- (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests, including:
 - (i) action relating to fissionable materials or the materials from which they are derived;
 - (ii) action relating to the traffic in arms, ammunition and implements of war and to such traffic on other goods and materials as is carried on directly or indirectly for the purpose of supplying

- a military establishment;
 - (iii) action taken so as to protect critical communications infrastructure from deliberate attempts intended to disable or degrade such infrastructure;
 - (iv) action taken in time of war or other emergency in international relations; or
- (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

ARTICLE 14

Customs Procedures

1. Each Party shall endeavour to apply its customs procedures in a predictable, consistent and transparent manner.
2. Recognising the importance of improving transparency in the area of customs procedures, each Party, at the request of an interested person, shall endeavour to provide, as expeditiously and accurately as possible, information relating to its customs procedures to the interested person concerned. Each Party shall endeavour to supply not only the information specifically requested but also any other pertinent information which it considers the interested person should be made aware of.
3. For prompt customs clearance of goods traded among the Parties, each Party, recognising the significant role of customs authorities and the importance of customs procedures in promoting trade facilitation, shall endeavour to:
 - (a) simplify its customs procedures; and

- (b) harmonise its customs procedures, to the extent possible, with relevant international standards and recommended practices such as those made under the auspices of the World Customs Organization.

ARTICLE 15

Regional and Local Governments

In fulfilling its obligations and commitments under this Agreement, each Party shall, in accordance with the provisions of Article XXIV.12 of GATT 1994 and the Understanding on the Interpretation of Article XXIV of GATT 1994, take such reasonable measures as may be available to it to ensure observance by state, regional and local governments and authorities within its territories.

ARTICLE 16

Relation to Other Agreements

1. Each Party reaffirms its rights and obligations vis-à-vis another Party under the WTO Agreement and other agreements to which these Parties are party. A Party, which is not a party to the WTO Agreement, shall abide by the provisions of the said Agreement in accordance with its accession commitments to the WTO.
2. Nothing in this Agreement shall be construed to derogate from any right or obligation of a Party under the WTO Agreement and other agreements to which these Parties are party.
3. In the event of any inconsistency between this Agreement and any other agreement to which two or more Parties are party, such Parties shall immediately consult with a view to finding a mutually satisfactory solution.
4. This Agreement shall not apply to any agreement among ASEAN Member States or to any agreement between

any ASEAN Member State and India unless otherwise agreed by the parties to that agreement.

ARTICLE 17

Joint Committee

1. A Joint Committee shall be established under this Agreement.
2. The functions of the Joint Committee shall be to:
 - (a) review the implementation and operation of this Agreement;
 - (b) submit a report to the Parties on the implementation and operation of this Agreement;
 - (c) consider and recommend to the Parties any amendments to this Agreement;
 - (d) supervise and coordinate the work of all Sub-Committees established under this Agreement; and
 - (e) carry out other functions as may be agreed by the Parties.
3. The Joint Committee:
 - (a) shall be composed of representatives of the Parties; and
 - (b) may establish Sub-Committees and delegate its responsibilities thereto.
4. The Joint Committee shall meet at such venues and times as may be mutually agreed by the Parties.

ARTICLE 18
Dispute Settlement

Unless otherwise provided in this Agreement, any dispute concerning the interpretation, implementation or application of this Agreement shall be resolved through the procedures and mechanisms as set out in the ASEAN-India DSM Agreement.

ARTICLE 19
Review

The Joint Committee shall meet within one (1) year from the date of entry into force of this Agreement and then biennially or otherwise as appropriate to review this Agreement for the purpose of considering additional measures to further enhance the AIFTA as well as develop disciplines and negotiate agreements on relevant matters as may be agreed.

ARTICLE 20
Annexes and Future Legal Instruments

1. The Annexes and Appendices shall form an integral part of this Agreement.
2. The Parties may adopt legal instruments in the future pursuant to the provisions of this Agreement, including those proposed to them by the Joint Committee. Upon their respective entry into force, such instruments shall form an integral part of this Agreement.

ARTICLE 21
Amendments

1. This Agreement may be modified through amendments mutually agreed upon in writing by the Parties. Any amendment shall enter into force after all Parties have notified all the other Parties in writing of the completion of

their internal procedures for the entry into force of such amendment.

2. Notwithstanding paragraph 1, amendments relating to:
 - (a) Annex 1, provided that the amendments are made in accordance with the amendment of the Harmonized System and include no change on tariff rates applied to the originating goods of the other Parties in accordance with Annex 1; and
 - (b) Annex 2,

may be made by mutual agreement in writing by all Parties.

ARTICLE 22

Depositary

For the ASEAN Member States, 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 23

Entry into Force

1. Each Party shall notify all the other Parties in writing upon completion of its internal requirements¹ necessary for the entry into force of this Agreement. This Agreement shall enter into force on 1 January 2010 or the date by which such notifications have been made by the Governments of India and at least one (1) ASEAN Member State.

2. Where a Party is unable to complete its internal requirements for the entry into force of this Agreement by 1 January 2010, this Agreement shall enter into force for that Party on 1 June 2010 or upon the date by which that Party

¹ For greater certainty, the term "internal requirements" may include obtaining governmental approval or parliamentary approval in accordance with domestic law.

notifies the completion of its internal requirements, whichever is earlier. In exceptional circumstances where a Party is unable to complete its internal requirements for the entry into force of this Agreement by 1 June 2010, this Agreement shall enter into force for that Party on a mutually agreed date after that Party has informed all Parties of the completion of its internal requirements.

3. In relation to Parties making the notification referred to in paragraph 2, those Parties shall be bound by the same terms and conditions of this Agreement, including any further commitments that may have been undertaken by the other Parties under this Agreement by the time of such notification, as if it had notified all the other Parties in writing of the completion of its internal requirements before the date of entry into force of this Agreement.

ARTICLE 24 Termination

This Agreement shall remain in force until either India or ASEAN Member States collectively give written notice to the other of their intention to terminate it, in which case this Agreement shall terminate 12 months after the date of the notice of termination.

IN WITNESS WHEREOF, the undersigned being duly authorised by their respective Governments, have signed this Agreement.

DONE at Bangkok, Thailand this thirteenth day of August 2009 and at Ha Noi, Viet Nam on the day of 2009, in two (2) originals in the English language.

For the Government of
Brunei Darussalam:

For the Government of the
Republic of India:

LIM JOCK SENG
Second Minister for Foreign
Affairs and Trade

ANAND SHARMA
Minister of Commerce and
Industry

For the Royal Government of
Cambodia:

CHAM PRASIDH
Senior Minister and Minister
of Commerce

For the Government of the
Republic of Indonesia:

MARI ELKA PANGESTU
Minister of Trade

For the Government of the
Lao People's Democratic
Republic:

NAM VIYAKETH
Minister of Industry and
Commerce

For the Government of
Malaysia:

MUSTAPA MOHAMED
Minister of International
Trade and Industry

For the Government of the
Union of Myanmar:

U SOE THA
Minister for National Planning
and Economic Development

For the Government of the
Republic of the Philippines:

PETER B. FAVILA
Secretary of Trade and
Industry

For the Government of the
Republic of Singapore:

LIM HNG KIANG
Minister for Trade and
Industry

For the Government of the
Kingdom of Thailand:

PORNTIVA NAKASAI
Minister of Commerce

For the Government of the
Socialist Republic of Viet
Nam:

VU HUY HOANG
Minister of Industry and
Trade

Schedules of Tariff Commitments

Explanatory Notes

1. The tariff lines subject to tariff reduction and/or elimination under this Annex are categorised as follows:

(a) Normal Track

(i) Applied MFN tariff rates for tariff lines placed in the Normal Track will be reduced and subsequently eliminated in accordance with the following tariff reduction and elimination schedule:

- Normal Track 1:

1 January 2010 to 31 December 2013
for Brunei Darussalam, Indonesia,
Malaysia, Singapore and Thailand,
and India

1 January 2010 to 31 December 2018
for the Philippines and India

1 January 2010 to 31 December 2013
for India and 1 January 2010 to 31
December 2018 for Cambodia, Lao
PDR, Myanmar and Viet Nam

- Normal Track 2:

1 January 2010 to 31 December 2016
for Brunei Darussalam, Indonesia,
Malaysia, Singapore and Thailand,
and India

1 January 2010 to 31 December 2019
for the Philippines and India

1 January 2010 to 31 December 2016
for India and 1 January 2010 to 31
December 2021 for Cambodia, Lao
PDR, Myanmar and Viet Nam

- (ii) Where the applied MFN tariff rates are at 0 per cent, they shall remain at 0 per cent. Where they have been reduced to 0 per cent, they shall remain at 0 per cent. No Party shall be permitted to increase the tariff rates for any tariff line, except as otherwise provided in this Agreement.

(b) Sensitive Track

- (i) Applied MFN tariff rates above five (5) per cent for tariff lines in the Sensitive Track will be reduced to five (5) per cent in accordance with the following tariff reduction schedules:

1 January 2010 to 31 December 2016 for
Brunei Darussalam, Indonesia, Malaysia,
Singapore and Thailand, and India

1 January 2010 to 31 December 2019 for
the Philippines and India

1 January 2010 to 31 December 2016 for
India and 1 January 2010 to 31 December
2021 for Cambodia, Lao PDR Myanmar
and Viet Nam

- (ii) Applied MFN tariff rates of five (5) per cent can be maintained for up to 50 tariff lines.

For the remaining tariff lines, applied MFN tariff rates are reduced to 4.5 per cent upon entry into force of the Agreement for ASEAN 6² and five (5) years from entry into force of the Agreement for Cambodia, Lao PDR, Myanmar and Viet Nam. The AFTA preferential tariff rate for these tariff lines are further reduced to four (4) per cent in accordance with the end-date set in subparagraph (i).

- (iii) Applied MFN tariff rates on four (4) per cent of the tariff lines placed in the Sensitive Track, as will be identified by each Party on its own accord and exchanged with other Parties, will be eliminated by:

31 December 2019 for Brunei Darussalam, Indonesia, Malaysia, Singapore³ and Thailand, and India

31 December 2022 for the Philippines and India

31 December 2024 for Cambodia, Lao PDR, Myanmar and Viet Nam

(c) Special Products

- (i) Special Products refer to India's crude and refined palm oil (CPO and RPO, respectively), coffee, black tea and pepper.
- (ii) Applied MFN tariff rates for the Special Products will be reduced in accordance with the following tariff reduction schedules:

² Special arrangements for Thailand apply

³ Modality for Sensitive Track does not apply to Singapore

Tariff Line	Base Rate	AIFTA Preferential Tariffs										
		Not later than 1 January										31.12.2019
		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	
CPO	80	76	72	68	64	60	56	52	48	44	40	37.5
RPO	90	86	82	78	74	70	66	62	58	54	50	45
Coffee	100	95	90	85	80	75	70	65	60	55	50	45
Black Tea	100	95	90	85	80	75	70	65	60	55	50	45
Pepper	70	68	66	64	62	60	58	56	54	52	51	50

- (iii) Any better offers made by India to other competing oils/fats shall also be duly offered to palm products.
- (iv) If the applied MFN tariff rate for CPO and RPO is lower than the preferential tariff under the AIFTA, the lower applied rate shall prevail.

(d) Highly Sensitive Lists⁴

Tariff lines placed by the Parties in the Highly Sensitive List are classified into three (3) categories, i.e.:

- (i) Category 1: reduction of applied MFN tariff rates to 50 per cent;
- (ii) Category 2: reduction of applied MFN tariff rates by 50 per cent; and
- (iii) Category 3: reduction of applied MFN tariff rates by 25 per cent,

and such tariff reduction shall be achieved by 31 December 2019 for Indonesia, Malaysia and Thailand, 31 December 2022 for the Philippines,

⁴ Modality for Highly Sensitive List does not apply for Brunei Darussalam, Lao PDR, Myanmar and Singapore

and 31 December 2024 for Cambodia and Viet Nam.

(e) Exclusion List

Exclusion Lists shall be subject to an annual tariff review with a view to improving market access.

2. No applied tariff among the Parties shall exceed the rates scheduled in this Agreement. However, if the applied MFN tariff rate is lower than the scheduled rate, it shall be applied to all Parties.

3. For tariff lines subject to specific tariff rates, tariff reduction and/or elimination are in accordance with the modality and timeframes of the category within which such tariff lines are placed. The proportion of tariff reduction for these tariff lines is equal to the average margin of tariff reduction of the tariff lines with *ad-valorem* tariff rates that are subject to tariff reduction in the same year.

4. Notwithstanding the Schedules in this Annex, nothing in this Agreement shall prevent any Party from unilaterally accelerating the tariff reduction or unilaterally transferring any of the products or tariff lines in the Highly Sensitive or Special Product Lists to the Sensitive Track or Normal Track, or tariff lines in the Sensitive Track to the Normal Track.

5. Parties shall enjoy the tariff concessions made by the other Parties for tariff lines as specified in and applied pursuant to the relevant tariff reduction/elimination schedule in this Annex together with the undertakings and conditions set out therein as long as that Party adheres to its own commitments for tariff reduction/elimination for that tariff line.

6. The tariff rates specified in the Schedules in this Annex set out only the level of the applicable AIFTA preferential tariff rates to be applied by each Party for the tariff lines concerned in the specified year of implementation and do not

prevent any Party from unilaterally accelerating its tariff reduction or elimination at any time.

7. For a Party for which this Agreement enters into force at a date later than 1 January 2010, the initial reduction or elimination of customs duties shall be implemented at the level specified in that Party's schedule of tariff commitment for the year in which the Agreement enters into force for that Party.

Schedule of Tariff Commitments

LIST A

Brunei Darussalam

Cambodia

India

Indonesia

Lao PDR

Malaysia

Myanmar

Singapore

Thailand

Viet Nam

LIST B

India

The Philippines

**RULES OF ORIGIN FOR THE
ASEAN-INDIA FREE TRADE AREA (AIFTA)**

In determining the origin of products eligible for the preferential tariff treatment under ASEAN-India Free Trade Area pursuant to Article 4 of this Agreement, the following Rules shall be applied:

**RULE 1
Definitions**

For the purposes of this Annex, the term:

- (a) **CIF** means the value of the good imported, and includes the cost of freight and insurance up to the port or place of entry into the country of importation;
- (b) **FOB** means the free-on-board value as defined in paragraph 1 of Appendix A;
- (c) **material** means raw materials, ingredients, parts, components, subassembly and/or goods that are physically incorporated into another good or are subject to a process in the production of another good;
- (d) **originating products** means products that qualify as originating in accordance with the provisions of Rule 2;
- (e) **production** means methods of obtaining goods including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing or assembling a good;
- (f) **Product Specific Rules** are rules that specify that the materials have undergone a change in tariff

classification or a specific manufacturing or processing operation, or satisfy an *ad valorem* criterion or a combination of any of these criteria;

- (g) **product** means products which are wholly obtained/produced or being manufactured, even if it is intended for later use in another manufacturing operation;
- (h) **identical and interchangeable materials** means materials being of the same kind possessing similar technical and physical characteristics, and which once they are incorporated into the finished product cannot be distinguished from one another for origin purposes.

RULE 2

Origin Criteria

For the purposes of this Annex, products imported by a Party which are consigned directly within the meaning of Rule 8 shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:

- (a) Products which are wholly obtained or produced in the exporting Party as set out and defined in Rule 3; or
- (b) Products not wholly produced or obtained in the exporting Party provided that the said products are eligible under Rule 4 or 5 or 6.

RULE 3

Wholly Produced or Obtained Products

Within the meaning of Rule 2(a), the following shall be considered as wholly produced or obtained in a Party:

- (a) plant¹ and plant products grown and harvested in the Party;
- (b) live animals² born and raised in the Party;
- (c) products³ obtained from live animals referred to in paragraph (b);
- (d) products obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in the Party;
- (e) minerals and other naturally occurring substances, not included in paragraphs (a) to (d), extracted or taken from the Party's soil, waters, seabed or beneath the seabed;
- (f) products taken from the waters, seabed or beneath the seabed outside the territorial waters of the Party, provided that that Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with the United Nations Convention on the Law of the Sea, 1982;
- (g) products of sea-fishing and other marine products taken from the high seas by vessels registered with the Party and entitled to fly the flag of that Party;
- (h) products processed and/or made on board factory ships registered with the Party and entitled to fly the flag of that Party, exclusively from products referred to in paragraph (g);

¹ Plant here refers to all plant life, including forestry products, fruit, flowers, vegetables, trees, seaweed, fungi and live plants.

² Animals referred to in paragraphs (b) and (c) covers all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, and living organisms.

³ Products refer to those obtained from live animals without further processing, including milk, eggs, natural honey, hair, wool, semen and dung.

- (i) articles collected in the Party which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts of raw materials, or for recycling purposes⁴; and
- (j) products obtained or produced in the Party solely from products referred to in paragraphs (a) to (i).

RULE 4
Not Wholly Produced or Obtained Products

- (a) For the purposes of Rule 2(b), a product shall be deemed to be originating if:
 - (i) the AIFTA content is not less than 35 per cent of the FOB value; and
 - (ii) the non-originating materials have undergone at least a change in tariff sub-heading (CTSH) level of the Harmonized System,

provided that the final process of the manufacture is performed within the territory of the exporting Party.

⁴ This would cover all scrap and waste including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded packaging and all products that can no longer perform the purpose for which they were produced and are fit only for disposal for the recovery of raw materials. Such manufacturing or processing operations shall include all types of processing, not only industrial or chemical but also mining, agriculture, construction, refining, incineration and sewage treatment operations.

(b) For the purposes of this Rule, the formula for the 35 per cent AIFTA content is calculated respectively as follows⁵:

(i) Direct Method

$$\frac{\text{AIFTA Material Cost} + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Other Cost} + \text{Profit}}{\text{FOB Price}} \times 100 \% \geq 35\%$$

(ii) Indirect Method

$$\frac{\text{Value of Imported Non-AIFTA Materials, Parts or Produce} + \text{Value of Undetermined Origin Materials, Parts or Produce}}{\text{FOB Price}} \times 100 \% \leq 65\%$$

(c) The value of the non-originating materials shall be:

- (i) the CIF value at the time of importation of the materials, parts or produce; or
- (ii) the earliest ascertained price paid for the materials, parts or produce of undetermined origin in the territory of the Party where the working or processing takes place.

(d) The method of calculating the AIFTA content is as set out in Appendix A.

⁵ The Parties shall be given the flexibility to adopt the method of calculating the AIFTA Content, whether it is the direct or indirect method. In order to promote transparency, consistency and certainty, each Party shall adhere to one method. Any change in the method of calculation shall be notified to all the other Parties at least six (6) months prior to the adoption of the new method. It is understood that any verification of the AIFTA content by the importing Party shall be done on the basis of the method used by the exporting Party.

RULE 5
Cumulative Rule of Origin

Unless otherwise provided for, products which comply with origin requirements provided for in Rule 2 and which are used in a Party as materials for a product which is eligible for preferential treatment under the Agreement shall be considered as products originating in that Party where working or processing of the product has taken place.

RULE 6
Product Specific Rules

Notwithstanding the provisions of Rule 4, products which satisfy the Product Specific Rules shall be considered as originating from that Party where working or processing of the product has taken place. The list of Product Specific Rules shall be appended as Appendix B.

RULE 7
Minimal Operations and Processes

- (a) Notwithstanding any provisions in this Annex, a product shall not be considered originating in a Party if the following operations are undertaken exclusively by itself or in combination in the territory of that Party:
 - (i) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine, ventilation, spreading out, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations);
 - (ii) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting, cutting;

- (iii) changes of packing and breaking up and assembly of consignments;
 - (iv) simple cutting, slicing and repacking or placing in bottles, flasks, bags, boxes, fixing on cards or boards, and all other simple packing operations;
 - (v) affixing of marks, labels or other like distinguishing signs on products or their packaging;
 - (vi) simple mixing of products whether or not of different kinds, where one or more components of the mixture do not meet the conditions laid down in this Annex to enable them to be considered as originating products;
 - (vii) simple assembly of parts of products to constitute a complete product;
 - (viii) disassembly;
 - (ix) slaughter which means the mere killing of animals; and
 - (x) mere dilution with water or another substance that does not materially alter the characteristics of the products.
- (b) For textiles and textile products listed in Appendix C, an article or material shall not be considered to be originating in a Party by virtue of merely having undergone any of the following:
- (i) simple combining operations, labelling, pressing, cleaning or dry cleaning or packaging operations, or any combination thereof;

- (ii) cutting to length or width and hemming, stitching or overlocking fabrics which are readily identifiable as being intended for a particular commercial use;
- (iii) trimming and/or joining together by sewing, looping, linking, attaching of accessory articles such as straps, bands, beads, cords, rings and eyelets;
- (iv) one or more finishing operations on yarns, fabrics or other textile articles, such as bleaching, waterproofing, decating, shrinking, mercerizing, or similar operations; or
- (v) dyeing or printing of fabrics or yarns.

RULE 8
Direct Consignment

The following shall be considered as consigned directly from the exporting Party to the importing Party:

- (a) If the products are transported passing through the territory of any other AIFTA Parties;
- (b) If the products are transported without passing through the territory of any non-AIFTA Parties;
- (c) The products whose transport involves transit through one or more intermediate non-Parties with or without transshipment or temporary storage in such non-Parties provided that:
 - (i) the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;

- (ii) the products have not entered into trade or consumption there; and
- (iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.

RULE 9
Treatment of Packing

- (a) Packages and packing materials for retail sale, when classified together with the packaged product, shall not be taken into account in considering whether all non-originating materials used in the manufacture of a product fulfil the criterion corresponding to a change of tariff classification of the said product.
- (b) Where a product is subject to an *ad valorem* percentage criterion, the value of the packages and packing materials for retail sale shall be taken into account in its origin assessment, in case the packing is considered as forming a whole with products.
- (c) The containers and packing materials exclusively used for the transport of a product shall not be taken into account for determining the origin of any good.

RULE 10
Accessories, Spare Parts, Tools and Instructional or
Other Information Material

The origin of accessories, spare parts, tools and instructional or other information materials presented with the products shall not be taken into account in determining the origin of the products, provided that such accessories, spare parts, tools and instructional or other information materials are:

- (a) in accordance with standard trade practices in the domestic market of the exporting Party; and
- (b) classified with the products at the time of assessment of customs duties by the importing Party.

However, if the products are subject to a qualifying AIFTA content requirement, the value of such accessories, spare parts tools and instructional or other information material shall be taken into account as originating or non-originating materials, as the case may be, in calculating the qualifying AIFTA content.

RULE 11
Indirect Materials

In order to determine whether a product originates in a Party, any indirect material such as power and fuel, plant and equipment, or machines and tools used to obtain such products shall be treated as originating whether such material originates in non-Parties or not, and its value shall be the cost registered in the accounting records of the producer of the export goods.

RULE 12
Identical and Interchangeable Materials

For the purposes of establishing if a product is originating when it is manufactured utilising both originating and non-originating materials, mixed or physically combined, the origin of such materials can be determined by generally accepted accounting principles of stock control applicable/inventory management practised in the exporting Party.

RULE 13
Certificate of Origin

A claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin issued by a government authority designated by the exporting Party and notified to the other Parties in accordance with the Operational Certification Procedures as set out in Appendix D.

RULE 14
Review and Modification

This Annex and the Operational Certification Procedures may be reviewed and modified, as and when necessary, upon request of a Party and as may be agreed upon by the Joint Committee.

APPENDIX A

METHOD OF CALCULATION FOR THE AIFTA CONTENT

1. FOB price shall be calculated as follows:
 - (a) **FOB Price = Ex-Factory Price + Other Costs**
 - (b) **Other Costs** in the calculation of the FOB price shall refer to the costs incurred in placing the products in the ship for export, including but not limited to, domestic transport costs, storage and warehousing, port handling, brokerage fees, service charges, etc.
2. Formula for ex-factory price:
 - (a) **Ex-Factory Price = Production Cost + Profit**
 - (b) Formula for production cost,
 - (i) **Production Cost = Cost of Raw Materials + Labour Cost + Overhead Cost**
 - (ii) **Raw Materials** shall consist of:
 - Cost of raw materials
 - Freight and insurance
 - (iii) **Labour Cost** shall include:
 - Wages
 - Remuneration
 - Other employee benefits associated with the manufacturing process
 - (iv) **Overhead Costs**, (non-exhaustive list) shall include, but not limited to:

- real property items associated with the production process (insurance, factory rent and leasing, depreciation on buildings, repair and maintenance, taxes, interests on mortgage)
- leasing of and interest payments for plant and equipment
- factory security
- insurance (plant, equipment and materials used in the manufacture of the goods)
- utilities (energy, electricity, water and other utilities directly attributable to the production of the good)
- research, development, design and engineering
- dies, moulds, tooling and the depreciation, maintenance and repair of plant and equipment
- royalties or licenses (in connection with patented machines or processes used in the manufacture of the good or the right to manufacture the good)
- inspection and testing of materials and the goods
- storage and handling in the factory
- disposal of recyclable wastes

- cost elements in computing the value of raw materials, i.e. port and clearance charges and import duties paid for dutiable component

PRODUCT SPECIFIC RULES