PROTOCOL TO INCORPORATE TECHNICAL BARRIERS TO TRADE AND SANITARY AND PHYTOSANITARY MEASURES INTO THE AGREEMENT ON TRADE IN GOODS OF THE FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC CO-OPERATION BETWEEN THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND THE PEOPLE'S REPUBLIC OF CHINA

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic ("Lao PDR"), Malaysia, the Republic of 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 (hereinafter referred to collectively as "ASEAN" or "ASEAN Member States" or singularly as "ASEAN Member State"), and the Government of the People's Republic of China (hereinafter referred to as "China"), (hereinafter referred to collectively as "Parties" or individually as " Party"),

RECALLING the Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China (hereinafter referred to as "TIG Agreement"), signed by Economic Ministers of the ASEAN Member States and China on 29 November 2004 in Vientiane, Lao PDR, and its associated Protocols;

RECOGNISING the need to deepen economic linkages between ASEAN and China by minimising barriers to trade while ensuring the protection of human, animal or plant life or health in their respective territories;

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CONFIDENT that a high-quality TIG Agreement would facilitate and enhance the effective implementation and utilisation of tariff preferences under the ASEAN-China Free Trade Area;

NOTING that Article 18 of the TIG Agreement provides that the TIG Agreement "shall include all future legal instruments agreed pursuant to this Agreement";

SEEKING to incorporate into the TIG Agreement substantive provisions on the application of technical barriers to trade (hereinafter referred to as "TBT") and the application of sanitary and phytosanitary (hereinafter referred to as "SPS") measures;

HAVE AGREED AS FOLLOWS:

CHAPTER 1
TECHNICAL BARRIERS TO TRADE

Article 1
Objective

The objectives of this Chapter are to:

a) facilitate and promote trade in goods among the Parties by ensuring that technical regulations, standards and conformity assessment procedures do not create unnecessary barriers to trade;

b) strengthen cooperation, including information exchange in relation to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures;

c) promote mutual understanding of each Party's standards, technical regulations and conformity assessment procedures; and

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d) effectively solve the problems arising from trade between the Parties.

Article 2
Scope

This Chapter shall apply to all technical regulations, standards and conformity assessment procedures of each Party that may, directly or indirectly, affect trade in goods between the Parties. It shall exclude:

a) SPS measures which are covered in Chapter 2 of this Protocol; and

b) purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies.

Article 3
Definitions

For the purposes of this Protocol, the definitions set out in Annex 1 to the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement (hereinafter referred to as "TBT Agreement") shall apply.

Article 4
Affirmation of the TBT Agreement

The Parties affirm their rights and obligations with respect to each of the other Party under the TBT Agreement.

Article 5
Technical Regulations

1. Where relevant international standards exist or their completion is imminent, each Party shall use them, or relevant parts of them, as a basis for their technical regulations except when such international standards or

relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance, due to fundamental climatic or geographical factors or fundamental technological problems.

2. Each Party shall give positive consideration to accepting as equivalent, technical regulations of another Party, even if these regulations differ from its own, provided it is satisfied that these regulations adequately fulfill the objectives of its own regulations.

3. Where a Party does not accept a technical regulation of another Party as equivalent to its own, it shall, upon request of the other Party, explain the reasons for its decision.

Article 6
Standards

1. With respect to the preparation, adoption and application of standards, each Party shall ensure that its standardising body or bodies accept and comply with Annex 3 to the TBT Agreement.

2. Each Party shall encourage the standardising body or bodies in its territory to cooperate with the standardising body or bodies of other Parties. Such cooperation shall include, but is not limited to:

a) exchange of information on standards;

b) exchange of information relating to standard setting procedures; and

c) cooperation in the work of international standardising bodies in areas of mutual interest.

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Article 7
Conformity Assessment Procedures

1. Each Party shall seek to enhance the acceptance of the results of conformity assessment procedures conducted in the territories of other Parties with a view to increasing efficiency and ensuring cost effectiveness of the conformity assessments.

2. The Parties recognise that a broad range of mechanisms exists to facilitate the acceptance of conformity assessment procedures and the results thereof.

3. The Parties agree to exchange information on conformity assessment procedures, including testing, inspection, certification, accreditation and metrology, with a view to negotiating cooperation agreements in the field of conformity assessment procedures in a manner consistent with the provisions of the TBT Agreement and the relevant domestic legislation of the Parties.

4. When cooperating in conformity assessment, the Parties shall take into consideration their participation in the applicable regional and/or international organisations such as International Accreditation Forum (IAF), International Laboratory Accreditation Cooperation (ILAC), the International Bureau of Weights and Measures (BIPM), the International Organisation of Legal Metrology (OIML) and other relevant international organisations.

5. The Parties agree to encourage their conformity assessment bodies to work closer with a view to facilitating the acceptance of conformity assessment results between both Parties.

6. A Party shall, upon request of another Party, provide its reasons for not accepting the results of any conformity assessment procedure performed in the territory of that other Party.

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Article 8
Transparency

1. Each Party affirms its commitment to ensuring that information regarding proposed new or amended technical regulations, standards and conformity assessment procedures is made available in accordance with the relevant requirements of the TBT Agreement.

2. Each Party shall make available the full text of its notified technical regulations and conformity assessment procedures to the requesting Party within 15 working days after receiving the written request.

3. Each Party shall allow at least 60 days for the other Party to present comments except where risks to health, safety and the environment arising or threatening to arise warrant urgent actions.

4. Each Party should take the comments of the other Party into due consideration and shall endeavour to provide responses to these comments upon request.

Article 9
Technical Consultations

1. When a Party considers that a relevant technical regulation or conformity assessment procedure of the other Party has constituted unnecessary obstacle to its exports, it may request technical consultations. The requested Party shall respond as early as possible to such request.

2. The requested Party shall enter into technical consultations within a period mutually agreed, with a view to reaching a mutually satisfactory solution. Technical consultations may be conducted via any means mutually agreed by the Parties concerned.

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3. When deemed necessary, the relevant Parties should establish an *ad hoc* working group, endorsed by the Sub-committee on Standards, Technical Regulations and Conformity Assessment Procedures referred to in Article 12 of this Chapter, to identify a workable and practical solution that would facilitate trade.

4. If one Party rejects the request of the other Party for the establishment of an *ad hoc* working group, that Party, upon request of the other Party, shall explain its rejection.

5. Where there is a non-compliance of an imported consignment with the technical regulations or conformity assessment procedures of the importing Party, the Parties shall undertake the necessary steps to address the non-compliance without undue delay.

Article 10
Technical Cooperation

1. The Parties shall intensify their joint efforts in the fields of technical regulations, standards and conformity assessment procedures with a view to facilitating access to each other's markets.

2. Each Party shall, upon request of another Party, give positive consideration to proposals to supplement existing cooperation on technical regulations, standards and conformity assessment procedures. Such cooperation, which shall be on mutually determined terms and conditions, may include but is not limited to:

a) advice or technical assistance relating to the development and application of technical regulations, standards and conformity assessment procedures;

b) encouraging cooperation between conformity assessment bodies of the Parties;

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c) use of accreditation to qualify conformity assessment bodies;

d) enhancing technical capacity in calibration, testing, inspection, certification and accreditation to meet relevant international standards, recommendations and guidelines;

e) cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures; and

f) strengthening communication and coordination in the WTO/TBT Committee and other relevant international or regional fora.

Article 11
Contact Points

1. Each Party shall designate a contact point or contact points who shall, for that Party, have the responsibility for coordinating the implementation of this Chapter.

2. Each Party shall provide each of the other Parties with the name of the designated contact point or contact points and the contact details of the relevant official in that organisation, including telephone, facsimile, email and any other relevant details.

3. Each Party shall notify each of the other Parties promptly of any change in their contact points or any amendments to the details of the relevant officials.

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Article 12
Implementation

The Parties hereby establish a Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures (STRACAP Sub-Committee), consisting of representatives of the Parties, to monitor the implementation of this Chapter.

Chapter 2

SANITARY AND PHYTOSANITARY MEASURES

Article 13
Objective

The objectives of this Chapter are to:

a) facilitate trade among the Parties while protecting human, animal or plant life or health in their territories;

b) provide transparency in and understanding of the application of each Party's SPS measures;

c) strengthen cooperation among the competent authorities of the Parties which are responsible for matters covered by this Chapter; and

d) enhance practical implementation of the principles of the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A of the WTO Agreement (hereinafter referred to as the "SPS Agreement").

Article 14
Scope

This Chapter shall apply to all SPS measures, which may, directly or indirectly, affect trade between the Parties.

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Article 15
Definitions

For purposes of this Chapter:

a) the definitions in Annex A of the SPS Agreement shall apply;

b) ***"competent authorities"*** means those authorities within each Party recognised by the national government as responsible for developing and administering the various sanitary and phytosanitary measures within that Party; and

c) international standards, guidelines and recommendations shall have the same meaning as in Annex A, paragraph 3 of the SPS Agreement.

Article 16
General Provisions

1. The Parties affirm their rights and obligations with respect to each other under the SPS Agreement.

2. The Parties commit to apply the principles of the SPS Agreement in the development and application of any SPS measure.

Article 17
Risk Analysis

The Parties recognise that risk analysis is an important tool for ensuring that SPS measures have scientific basis. The Parties shall ensure that their SPS measures are based on an assessment of the risks to human, animal or plant life or health as provided in Article 5 of the SPS Agreement, taking into account the risk assessment techniques developed by the relevant international organisations.

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Article 18
Harmonisation

1. The Parties shall make best endeavour to base their SPS measures on international standards, guidelines or recommendations where they exist.

2. The Parties shall strengthen communications, cooperation and coordination with each other, where appropriate, in the International Plant Protection Convention (IPPC), the *Codex Alimentarius* Commission (Codex) and the World Organisation for Animal Health (OIE).

Article 19
Regionalisation

The Parties recognise the principles of regionalisation and its implementation as provided for in Article 6 of the SPS Agreement and the relevant standards and guidelines established by the relevant international organisations.

Article 20
Equivalence

1. Each Party shall give positive consideration to accepting as equivalent the SPS measures of the other Party that can achieve the same appropriate level of protection.

2. The Parties shall, upon request, enter into consultations with the aim of achieving recognition arrangements of the equivalence of specified SPS measures.

Article 21
Transparency

1. The Parties shall notify each other electronically through their respective WTO/SPS Enquiry Points of their proposed SPS measures at the same time as they submit

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notifications to the WTO Secretariat in accordance with relevant provisions of the SPS Agreement.

2. Each Party shall make available the full text of its notified SPS measures to the requesting Party within 15 working days after receiving the written request.

3. Each Party shall allow at least 60 days for the other Party to present comments except where risks to human, animal or plant life or health arising or threatening to arise warrant urgent actions.

4. Each Party shall provide timely information related to any SPS matter which may arise from bilateral trade between the Parties.

Article 22
Technical Cooperation

1. The Parties agree to explore the opportunity for technical cooperation and technical assistance on SPS issues, with a view to enhancing the mutual understanding of the regulatory systems of the Parties and facilitating access to each other's markets.

2. Each Party, on request, shall give due consideration to cooperation in relation to SPS issues. Such cooperation, which shall be on mutually agreed terms and conditions, may include, but are not limited to:

a) strengthening exchange of experience and cooperation in the development and application of SPS measures;

b) cooperation on the implementation of the concept of regionalisation in accordance with Article 6 of the SPS Agreement and the relevant international standards, guidelines, and recommendations, in order to facilitate trade between the Parties;

c) strengthening cooperation with respect to, *inter alia*, laboratory testing techniques, disease/pest control methods and risk analysis methodology; and

d) enhancing cooperation and exchange of experience between the WTO/SPS Enquiry Points of the Parties.

Article 23
Competent Authority and Contact Points

1. Each Party shall designate a contact point to facilitate distribution of enquiries, requests or notifications made in accordance with this Chapter.

2. Each Party shall provide a description of its competent authorities and their division of functions and responsibilities.

Article 24
Implementation

The Parties hereby establish a Sub-Committee on Sanitary and Phytosanitary Matters (SPS Sub-Committee), consisting of representatives from the relevant government agencies of the Parties, to monitor the implementation of this Chapter.

Chapter 3

FINAL PROVISIONS

Article 25
Amended or Successor International Agreements

If any international agreement, or a provision therein, referred to in this Protocol (or incorporated into this Protocol) is amended, the Parties shall consult on whether it is necessary to amend this Protocol, unless this Protocol provides otherwise.

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Article 26
Amendments

This Protocol may be amended by agreement in writing by the Parties and such amendment shall come into force on such date or dates as may be agreed among them.

Article 27
Dispute Settlement

The Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China shall apply to this Protocol.

Article 28
Depositary

For the ASEAN Member States, this Protocol shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof, to each ASEAN Member State.

Article 29
Entry Into Force

1. This Protocol shall enter into force on 1 January 2013.

2. The Parties shall undertake to complete their internal procedures for the entry into force of this Protocol prior to 1 January 2013.

3. A Party shall, upon the completion of its internal procedures for the entry into force of this Protocol, notify all the other Parties in writing.

4. Where a Party is unable to complete its internal procedures for the entry into force of this Protocol by 1

January 2013, the rights and obligations of that Party under this Protocol shall commence on the date of the Party's written notification to all the other Parties that it has completed its internal procedure for the entry into force of this Protocol.

IN WITNESS WHEREOF, the undersigned being duly authorised by their respective Governments, have signed this Protocol to Incorporate Technical Barriers to Trade and Sanitary and Phytosanitary Measures into the Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China.

DONE at Phnom Penh, Cambodia, this 19 November in the Year Two Thousand and Twelve, in duplicate copies in the English language.

For Brunei Darussalam:

LIM JOCK SENG
Second Minister of Foreign Affairs and Trade

For the People's Republic of China:

CHEN DEMING
Minister of Commerce

For the Kingdom of Cambodia:

CHAM PRASIDH
Senior Minister and Minister of Commerce

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For the Republic of Indonesia:

GITA IRAWAN WIRJAWAN
Minister of Trade

For the Lao People's Democratic Republic:

NAM VIYAKETH
Minister of Industry and Commerce

For Malaysia:

MUSTAPA MOHAMED
Minister of International Trade and Industry

For the Republic of the Union of Myanmar:

KAN ZAW
Union Minister for National Planning and Economic Development

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For the Republic of the Philippines:

GREGORY L. DOMINGO
Secretary of Trade and Industry

For the Republic of Singapore:

LIM HNG KIANG
Minister for Trade and Industry

For the Kingdom of Thailand:

BOONSONG TERIYAPIROM
Minister of Commerce

For the Socialist Republic of Viet Nam:

VU HUY HOANG
Minister of Industry and Trade

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