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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 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 (collectively, "ASEAN" or "ASEAN Member States", or individually, "ASEAN Member State"), and the People's Republic of China ("China");

RECALLING the Framework Agreement on Comprehensive Economic Co-operation ("the Framework Agreement") between ASEAN and China (collectively, "the Parties", or individually referring to an ASEAN Member State or to China as a "Party") signed by the Heads of Government/State of ASEAN Member States and China in Phnom Penh, Cambodia on the 4th day of November 2002 and the Protocol to Amend the Framework Agreement on Comprehensive Economic Co-operation on the Early Harvest Programme signed by the Economic Ministers of the Parties in Bali, Indonesia on the 6th day of October 2003;

RECALLING further Articles 2(a), 3(1) and 8(1) of the Framework Agreement, which reflect the Parties' commitment to establish the ASEAN-China Free Trade Area (ACFTA) covering trade in goods by 2010 for ASEAN 6 and China and by 2015 for the newer ASEAN Member States;

REAFFIRMING the Parties' commitment to establish the ASEAN-China Free Trade Area within the specified timeframes, while allowing flexibility to the Parties to address their sensitive areas as provided in the Framework Agreement,

HAVE AGREED AS FOLLOWS:

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ARTICLE 1
Definitions

For the purposes of this Agreement, the following definitions shall apply unless the context otherwise requires:

(a) "WTO" means the World Trade Organization;

(b) "the GATT 1994" means the General Agreement on Tariffs and Trade 1994, including Annex I (Notes and Supplementary Provisions);

(c) "ASEAN 6" refers to Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand;

(d) "newer ASEAN Member States" refers to Cambodia, Lao PDR, Myanmar and Viet Nam;

(e) "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 2003) and China, refer to their respective applied rates as of 1 July 2003; and

  (ii) in the case of ASEAN Member States (which are non-WTO members as of 1 July 2003), refer to the rates as applied to China as of 1 July 2003;

(f) "non-tariff measures" shall include non-tariff barriers;

(g) "AEM" means ASEAN Economic Ministers;

(h) "MOFCOM" means Ministry of Commerce of China;

(i) "SEOM" means ASEAN Senior Economic Officials Meeting.

ARTICLE 2
National Treatment on Internal Taxation and Regulation

Each Party shall accord national treatment to the products of all the other Parties covered by this Agreement and the Framework Agreement in accordance with Article III of the GATT 1994. To this end, the provisions of Article III of the GATT 1994 shall, *mutatis mutandis*, be incorporated into and form an integral part of this Agreement.

ARTICLE 3
Tariff Reduction and Elimination

1. The tariff reduction or elimination programme of the Parties shall require the applied MFN tariff rates on listed tariff lines to be gradually reduced and where applicable, eliminated, in accordance with this Article.

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2. The tariff lines which are subject to the tariff reduction or elimination programme under this Agreement shall include all tariff lines not covered by the Early Harvest Programme under Article 6 of the Framework Agreement, and such tariff lines shall be categorised for tariff reduction and elimination as follows:

(a) Normal Track: Tariff lines placed in the Normal Track by each Party on its own accord shall have their respective applied MFN tariff rates gradually reduced and eliminated in accordance with the modalities set out in Annex 1 of this Agreement with the objective of achieving the targets prescribed in the thresholds therein.

(b) Sensitive Track: Tariff lines placed in the Sensitive Track by each Party on its own accord shall have their respective applied MFN tariff rates reduced or eliminated in accordance with the modalities set out in Annex 2 of this Agreement.

3. Subject to Annex 1 and Annex 2 of this Agreement, all commitments undertaken by each Party under this Article shall be applied to all the other Parties.

ARTICLE 4
Transparency

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

ARTICLE 5
Rules of Origin

The Rules of Origin and the Operational Certification Procedures applicable to the products covered under this Agreement and the Early Harvest Programme of the Framework Agreement are set out in Annex 3 of this Agreement.

ARTICLE 6
Modification of Concessions

1. Any Party to this Agreement may, by negotiation and agreement with any Party to which it has made a concession under this Agreement, modify or withdraw such concession made under this Agreement.

2. In such negotiations and agreement, which may include provision for compensatory adjustment with respect to other products, the Parties concerned shall maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this Agreement prior to such negotiations and agreement.

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ARTICLE 7
WTO Disciplines

1. Subject to the provisions of this Agreement and any future agreements as may be agreed pursuant to reviews of this Agreement by the Parties under Article 17 of this Agreement, the Parties[1] hereby agree and reaffirm their commitments to abide by the provisions of the WTO disciplines on, among others, non-tariff measures, technical barriers to trade, sanitary and phytosanitary measures, subsidies and countervailing measures, anti-dumping measures and intellectual property rights.

2. The provisions of the WTO Multilateral Agreements on Trade in Goods, which are not specifically mentioned in or modified by this Agreement, shall apply, *mutatis mutandis*, to this Agreement unless the context otherwise requires.

ARTICLE 8
Quantitative Restrictions and Non-Tariff Barriers

1. Each Party undertakes not to maintain any quantitative restrictions at any time unless otherwise permitted under the WTO disciplines.[2]

2. The Parties shall identify non-tariff barriers (other than quantitative restrictions) for elimination as soon as possible after the entry into force of this Agreement. The time frame for elimination of these non-tariff barriers shall be mutually agreed upon by all Parties.

3. The Parties shall make information on their respective quantitative restrictions available and accessible upon implementation of this Agreement.

ARTICLE 9
Safeguard Measures

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

2. With regard to ACFTA safeguard measures, a Party shall have the right to initiate such a measure on a product within the transition period for that product. The transition period for a product shall begin from the date of entry into force of this Agreement and end five years from the date of completion of tariff elimination/reduction for that product.

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[1] Non-WTO members of ASEAN shall abide by the WTO provisions in accordance with their accession commitments to the WTO.

[2] Non-WTO members of ASEAN shall phase out their quantitative restrictions 3 years [Viet Nam: 4 years] from the date of entry into force of this Agreement or in accordance with their accession commitments to the WTO, whichever is earlier.

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3. A Party shall be free to take ACFTA safeguard measures if as an effect of the obligations incurred by that Party, including tariff concessions under the Early Harvest Programme of the Framework Agreement or this Agreement, or, if as a result of unforeseen developments and of the effects of the obligations incurred by that Party, including tariff concessions under the Early Harvest Programme of the Framework Agreement or this Agreement, imports of any particular product from the other Parties increase in such quantities, absolute or relative to domestic production, and under such conditions so as to cause or threaten to cause serious injury to the domestic industry of the importing Party that produces like or directly competitive products.

4. If an ACFTA safeguard measure is taken, a Party taking such a measure may increase the tariff rate applicable to the product concerned to the WTO MFN tariff rate applied to such product at the time when the measure is taken.

5. Any ACFTA safeguard measure may be maintained for an initial period of up to 3 years and may be extended for a period not exceeding 1 year. Notwithstanding the duration of an ACFTA safeguard measure on a product, such measure shall terminate at the end of the transition period for that product.

6. In applying ACFTA safeguard measures, the Parties shall adopt the rules for the application of safeguard measures as provided under the WTO Agreement on Safeguards, with the exception of the quantitative restriction measures set out in Article 5, and Articles 9, 13 and 14 of the WTO Agreement on Safeguards. As such, all other provisions of the WTO Agreement on Safeguards shall, *mutatis mutandis,* be incorporated into and form an integral part of this Agreement.

7. An ACFTA safeguard measure shall not be applied against a product originating in a Party, so long as its share of imports of the product concerned in the importing Party does not exceed 3% of the total imports from the Parties.

8. In seeking compensation under Article 8 of the WTO Agreement on Safeguards for an ACFTA safeguard measure, the Parties shall seek the good offices of the body referred to in paragraph 12 to determine the substantially equivalent level of concessions 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 ACFTA safeguard measure was applied.

9. On a Party's termination of an ACFTA safeguard measure on a product, the tariff rate for that product shall be the rate that, according to that Party's tariff reduction and elimination schedule, as provided in Annex 1 and Annex 2 of this Agreement, would have been in effect commencing on 1 January of the year in which the safeguard measure is terminated.

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10. All official communications and documentations exchanged among the Parties and to the body referred to in paragraph 12 relating to any ACFTA safeguard measures shall be in writing and shall be in the English language.

11. When applying ACFTA safeguard measures, a Party shall not have simultaneous recourse to the WTO safeguard measures referred to in paragraph 1.

12. For the purpose of this Article, any reference to "Council for Trade in Goods" or the "Committee on Safeguards" in the incorporated provisions of the WTO Agreement on Safeguards shall, pending the establishment of a permanent body under paragraph 1 of Article 16, refer to the AEM-MOFCOM, or the SEOM-MOFCOM, as appropriate, which shall be replaced by the permanent body once it is established.

ARTICLE 10
Acceleration of Commitments

Nothing in this Agreement shall preclude the Parties from negotiating and entering into arrangements to accelerate the implementation of commitments made under this Agreement, provided that such arrangements are mutually agreed to and implemented by all the Parties.

ARTICLE 11
Measures to Safeguard the Balance of Payments

Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may, in accordance with the GATT 1994 and the Understanding on Balance-of-Payments Provisions of the GATT 1994, adopt restrictive import measures.

ARTICLE 12
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 between the Parties 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 Party 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;

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(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 the GATT 1994, the protection of patents, trade marks 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 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 stabilization 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;

(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 Parties 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 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 but not limited to:

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(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 in 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 domestic or 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
Recognition of China's Market Economy Status

Each of the ten ASEAN Member States agrees to recognise China as a full market economy and shall not apply, from the date of the signature of this Agreement, Sections 15 and 16 of the Protocol of Accession of the People's Republic of China to the WTO and Paragraph 242 of the Report of the Working Party on the Accession of China to WTO in relation to the trade between China and each of the ten ASEAN Member States.

ARTICLE 15
State, Regional and Local Government

In fulfilling its obligations and commitments under this Agreement, each Party shall ensure their observance by regional and local governments and authorities in its territory as well as their observance by non-governmental bodies (in the exercise of powers delegated by central, state, regional or local governments or authorities) within its territory.

ARTICLE 16
Institutional Arrangements

1. Pending the establishment of a permanent body, the AEM-MOFCOM, supported and assisted by the SEOM-MOFCOM, shall oversee, supervise, coordinate and review the implementation of this Agreement.

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2. The ASEAN Secretariat shall monitor and report to the SEOM-MOFCOM on the implementation of this Agreement. All Parties shall cooperate with the ASEAN Secretariat in the performance of its duties.

3. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. On the request of a Party, the contact point of the requested Party shall identify the office or official responsible for the matter and assist in facilitating communication with the requesting Party.

ARTICLE 17
Review

1. The AEM-MOFCOM or their designated representatives shall meet within a year of 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 further measures to liberalise trade in goods as well as develop disciplines and negotiate agreements on matters referred to in Article 7 of this Agreement or any other relevant matters as may be agreed.

2. The Parties shall, taking into account their respective experience in the implementation of this Agreement, review the Sensitive Track in 2008 with a view to improving the market access condition of sensitive products, including the further possible reduction of the number of products in the Sensitive Track and the conditions governing the reciprocal tariff rate treatment of products placed by a Party in the Sensitive Track.

ARTICLE 18
Annexes and Future Instruments

This Agreement shall include:

(a) the Annexes and the contents therein which shall form an integral part of this Agreement: and

(b) all future legal instruments agreed pursuant to this Agreement.

ARTICLE 19
Amendments

This Agreement may be amended by the mutual written consent of the Parties.

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ARTICLE 20
Miscellaneous Provisions

Except as otherwise provided in this Agreement, this Agreement or any action taken under it shall not affect or nullify the rights and obligations of a Party under existing agreements to which it is a party.

ARTICLE 21
Dispute Settlement

The Agreement on Dispute Settlement Mechanism between ASEAN and China shall apply to this Agreement.

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. This Agreement shall enter into force on 1 January 2005.

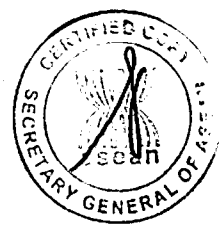
2. The Parties undertake to complete their internal procedures for the entry into force of this Agreement prior to 1 January 2005.

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

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

IN WITNESS WHEREOF, the undersigned being duly authorised by their respective Governments, have signed this 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, Vientiane, Lao PDR this Twenty Ninth Day of November in the Year Two Thousand and Four, in duplicate copies in the English Language.



For Brunei Darussalam

PEHIN DATO ABDUL RAHMAN TAIB
Minister of Industry and Primary Resources

For the People's Republic of China

BO XILAI
Minister of Commerce

For the Kingdom of Cambodia

CHAM PRASIDH
Senior Minister and Minister of Commerce

For the Republic of Indonesia

MARI ELKA PANGESTU
Minister of Trade

For the Lao People's Democratic Republic

SOULIVONG DARAVONG

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SECRETARY GENERAL OF ASEAN

For Malaysia

RAFIDAH AZIZ
Minister of International Trade and Industry

For the Union of Myanmar

SOE THA
Minister of National Planning and
Economic Development

For the Republic of the Philippines

CESAR V. PURISIMA
Secretary of Trade and Industry

For the Republic of Singapore

LIM HNG KIANG
Minister for Trade and Industry

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For the Kingdom of Thailand

WATANA MUANGSOOK
Minister of Commerce

For the Socialist Republic of Viet Nam

TRUONG DINH TUYEN
Minister of Trade

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BỘ NGOẠI GIAO

Số: 402 /2005/NG-LPQT

THÔNG BÁO NGÀY ĐIỀU ƯỚC QUỐC TẾ NHIỀU BÊN CÓ HIỆU LỰC ĐỐI VỚI VIỆT NAM

Hiệp định thương mại hàng hóa thuộc Hiệp định khung về hợp tác kinh tế toàn diện giữa Hiệp hội các quốc gia Đông Nam Á (ASEAN) và nước Cộng hòa nhân dân Trung Hoa, ký tại Viêng-chăn ngày 29 tháng 11 năm 2004, có hiệu lực đối với Việt Nam kể từ ngày 19 tháng 10 năm 2005.

Hà Nội, ngày 48 tháng 11 năm 2005

TL. BỘ TRƯỞNG
KT. Vụ trưởng Vụ Luật pháp và Điều ước quốc tế
Phó Vụ trưởng

Nguyễn Thị Hoàng Anh

Nơi nhận :
- Văn phòng Quốc hội (để báo cáo),
- Văn phòng Chủ tịch nước (để báo cáo),
- Văn phòng Chính phủ (để báo cáo),
- Phòng Công báo, Văn phòng Chính phủ (để đăng Công báo),
- Các Bộ: Thương mại, Tài chính, Kế hoạch và Đầu tư, Quốc phòng, Công nghiệp, Nông nghiệp và Phát triển nông thôn, Thuỷ sản, Xây dựng, Y tế, Giao thông vận tải, Tài nguyên và Môi trường;
- Phòng Thương mại và Công nghiệp Việt Nam;
- Sở Ngoại vụ Tp. Hồ Chí Minh;
- Vụ ASEAN, Bộ Ngoại giao,
- Vụ Hợp tác kinh tế đa phương, Bộ Ngoại giao,
- Vụ Luật pháp và Điều ước quốc tế, Bộ Ngoại giao,
- Lưu trữ, Bộ Ngoại giao.