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AGREEMENT ON TRADE IN SERVICES 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 ("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 ("Philippines"), the Republic of Singapore ("Singapore"), the Kingdom of Thailand ("Thailand") and the Socialist Republic of Viet Nam ("Viet Nam"), Member Countries of the Association of Southeast Asian Nations (collectively, "ASEAN" or "ASEAN Member Countries", or individually, "ASEAN Member Country"), 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 Country or to China as a "Party") signed by the Heads of Government/State of ASEAN Member Countries and China in Phnom Penh on the 4th day of November 2002;

RECALLING Articles 4 and 8(3) of the Framework Agreement on conclusion as expeditiously as possible of the negotiations of the agreement on trade in services so as to progressively liberalise and eliminate substantially all discrimination and/or prohibition of new or more discriminatory measures with respect to trade in services between the Parties, and to expand the depth and scope of

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such trade with substantial sectoral coverage beyond those undertaken by the ASEAN Member Countries and China under the World Trade Organisation ("WTO") General Agreement on Trade in Services;

STRIVING to enhance co-operation in services between the Parties in order to improve efficiency and competitiveness, as well as to diversify the supply and distribution of services of the respective service suppliers of the Parties, for implementation in accordance with the timeframes to be mutually agreed by the Parties to the Framework Agreement taking into account the sensitive sectors of the Parties, and with special and differential treatment and flexibility for the newer ASEAN Member Countries of Cambodia, Lao PDR, Myanmar and Viet Nam;

RECOGNISING the right of the Parties to regulate, and to introduce new regulations, on the supply of services in the territories of the Parties in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulation within the Parties, the particular need of the Parties to exercise this right,

HAVE AGREED AS FOLLOWS:

PART I: DEFINITIONS AND SCOPE

Article 1
Definitions

For the purposes of this Agreement:

(a) "a service supplied in the exercise of governmental authority" means any service which is supplied neither

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on a commercial basis, nor in competition with one or more service suppliers;

(b) "commercial presence" means any type of business or professional establishment, including through

(i) the constitution, acquisition or maintenance of a juridical person, or

(ii) the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purpose of supplying a service;

(c) "direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;

(d) "GATS" means the General Agreement on Trade in Services;

(e) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(f) "juridical person of another Party" means a juridical person which is either:

(i) constituted or otherwise organised under the law of that other Party, and is engaged in substantive

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business operations in the territory of that Party or any other Party; or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

1. natural persons of that Party; or

2. juridical persons of that other Party identified under subparagraph (i);

(g) a juridical person is:

(i) "owned" by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;

(ii) "controlled" by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

(iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

(h) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

(i) "measures by Parties" means measures taken by

(i) central, regional or local governments and authorities; and

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(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

(j) "measures by Parties affecting trade in services" include measures in respect of

(i) the purchase, payment or use of a service;

(ii) the access to and use of, in connection with the supply of a service, services which are required by the Parties to be offered to the public generally;

(iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;

(k) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;

(l) "natural person of another Party" means a natural person who resides in the territory of that other Party or elsewhere, and who under the law of that other Party:

(i) is a national of that other Party; or

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(ii) has the right of permanent residence[1] in that other Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified after the entry into force of this Agreement provided that no Party is obliged to accord to such permanent residents treatment more favourable than would be accorded by that other Party to such permanent residents. Such notification shall include the assurance to assume, with respect to the permanent residents, in accordance with its laws and regulations, the same responsibilities that other Party bears with respect to its nationals;

(m) "person" means either a natural person or a juridical person;

(n) "sector" of a service means,

(i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule,

(ii) otherwise, the whole of that service sector, including all of its subsectors;

(o) "services" includes any service in any sector except services supplied in the exercise of governmental authority;

[1] In the case of Indonesia, Lao PDR, Thailand, Viet Nam and China, natural person of another Party shall be limited to a natural person who resides in the territory of that other Party or elsewhere and who under the law of that other Party is a national of that other Party. Therefore, in line with the principle of reciprocity, this Agreement shall not apply to the permanent residents of Indonesia, Lao PDR, Thailand, Viet Nam, and China. Once any of these Parties enacts its domestic law on the treatment of permanent residents of another Party or non-party, there shall be negotiations on the issue of whether to include permanent residents in the coverage of natural person under this Agreement in respect of that Party.

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(p) "service consumer" means any person that receives or uses a service;

(q) "service of another Party" means a service which is supplied,

(i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or

(ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;

(r) "service supplier" means any person that supplies a service;[2]

(s) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;

(t) "trade in services" is defined as the supply of a service

(i) from the territory of a Party into the territory of any other Party ("cross-border");

(ii) in the territory of a Party to the service consumer of any other Party ("consumption abroad");

[2] Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

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(iii) by a service supplier of a Party, through commercial presence in the territory of any other Party ("commercial presence");

(iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of any other Party ("presence of natural persons");

(u) "qualification procedures" means administrative procedures relating to the administration of qualification requirements; and

(v) "qualification requirements" means substantive requirements which a service supplier is required to fulfil in order to obtain certification or a license.

Article 2
Scope

1. This Agreement applies to measures[3] by the Parties affecting trade in services.

2. This Agreement shall not apply to:

(a) services supplied in the exercise of governmental authority within the territory of each Party;

(b) regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with

[3] The exclusion of taxation measures by the Philippines from the scope of this Agreement shall be further discussed by all Parties before the entry into force of the Agreement.

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a view to use in the supply of services for commercial sale.

PART II: OBLIGATIONS AND DISCIPLINES

Article 3
Transparency

Article III of the GATS is, *mutatis mutandis,* incorporated into and shall form an integral part of this Agreement.

Article 4
Disclosure of Confidential Information

Article III *bis* of the GATS is, *mutatis mutandis*, incorporated into and shall form an integral part of this Agreement.

Article 5
Domestic Regulation

1. In sectors where specific commitments are undertaken under Part III, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. (a) Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the

administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

(b) The provisions of subparagraph (a) shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

3. Where authorisation is required for the supply of a service on which a specific commitment under this Agreement has been made, the competent authorities of each Party shall:

(a) in the case of an incomplete application, at the request of the applicant, identify all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;

(b) at the request of the applicant, provide without undue delay, information concerning the status of the application; and

(c) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing and without delay the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application.

4. With the objective of ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the negotiations on disciplines on these measures, pursuant to Article VI.4

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of GATS, with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements are, *inter alia*:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service;

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

5. (a) In sectors in which a Party has undertaken specific commitments under Part III, pending the incorporation of the disciplines referred to in paragraph 4 of this Article, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligation under this Agreement in a manner which:

(i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c) of this Article; and

(ii) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

(b) In determining whether a Party is in conformity with the obligation under paragraph 5(a) of this Article, account shall be taken of international

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standards of relevant international organisations[4] applied by that Party.

6. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of any other Party.

Article 6
Recognition

1. For the purposes of fulfilment of their respective standards or criteria for the authorisation, licensing or certification of service suppliers, each Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in another Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or the relevant competent bodies or may be accorded autonomously.

2. Two or more Parties may enter into, or encourage their relevant competent bodies to enter into, negotiations on recognition of qualification requirements, qualification procedures, licensing and/or registration procedures for the purposes of fulfilment of their respective standards or criteria for the authorisation, licensing or certification of service suppliers.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1 of this Article, whether existing or future, shall afford adequate opportunity for other interested Parties to negotiate

[4] The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of at least all Parties of this Agreement.

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their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognised.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing or certification of services suppliers, or a disguised restriction on trade in services.

Article 7
Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under specific commitments.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. If any Party has reason to believe that a monopoly supplier of a service of any other Party is acting in a manner inconsistent with paragraph 1 or 2 of this

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Article, that Party may request the Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

4. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect,

   (a) authorises or establishes a small number of service suppliers; and

   (b) substantially prevents competition among those suppliers in its territory.

Article 8
Business Practices

1. The Parties recognise that certain business practices of services suppliers, other than those falling under Article 7, may restrain competition and thereby restrict trade in services.

2. Each Party shall, at the request of any other Party (the "Requesting Party"), enter into consultations with a view to eliminating practices referred to in paragraph 1 of this Article. The Party addressed (the "Requested Party") shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Requested Party shall also provide other information available to the Requesting Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the Requesting Party.

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Article 9
Safeguards

1. The Parties note the multilateral negotiations pursuant to Article X of the GATS on the question of emergency safeguard measures based on the principle of non-discrimination. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

2. In the event that the implementation of this Agreement causes substantial adverse impact to a service sector of a Party before the conclusion of the multilateral negotiations referred to in paragraph 1 of this Article, the affected Party may request for consultations with the other Party for the purposes of discussing any measure with respect to the affected service sector. Any measure taken pursuant to this paragraph shall be mutually agreed by the Parties concerned. The Parties concerned shall take into account the circumstances of the particular case and give sympathetic consideration to the Party seeking to take a measure.

Article 10
Payments and Transfers

1. Except under the circumstances envisaged in Article 11, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Agreement shall affect the rights and obligations of any Party who is a member of the International Monetary Fund under the Articles of

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Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 11 or at the request of the Fund.

Article 11
Restrictions to Safeguard the Balance of Payments

Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may adopt or maintain restrictions on trade in services in accordance with Article XII of the GATS.

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 Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures:

(a) necessary to protect public morals or to maintain public order;[5]

(b) necessary to protect human, animal or plant life or health;

[5] The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety;

(d) inconsistent with Article 19, provided that the difference in treatment is aimed at ensuring the equitable or effective[6] imposition or collection of direct taxes in respect of services or service suppliers of other Parties;

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[6] Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

(i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or

(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or

(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or

(iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or

(v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or

(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in subparagraph (d) of Article 12 and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

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(e) provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

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; or

(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:

(i) action relating to fissionable and fusionable 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;

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(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
Subsidies

1. Except where provided in this Article, this Agreement shall not apply to subsidies or grants provided by a Party, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers. If such subsidies or grants significantly affect trade in services committed under this Agreement, any Party may request for consultations with a view to an amicable resolution of this matter.

2. Pursuant to this Agreement, the Parties shall:

   (a) on request, provide information on subsidies related to trade in services committed under this Agreement to any requesting Party; and

   (b) review the treatment of subsidies when relevant disciplines are developed by the WTO.

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Article 15
WTO Disciplines

Subject to any future agreements as may be agreed pursuant to reviews of this Agreement by the Parties under Article 27, the Parties hereby agree and reaffirm their commitments to abide by the provisions of the WTO agreements as are relevant and applicable to trade in services.

Article 16
Cooperation

The Parties shall strengthen cooperation efforts in services sectors, including sectors which are not covered by existing cooperation arrangements. The Parties shall discuss and mutually agree on the sectors for cooperation and develop cooperation programmes in these sectors in order to improve their domestic capacities, efficiencies and competitiveness.

Article 17
Increasing Participation of Cambodia, Lao PDR, Myanmar and Viet Nam

The increasing participation of Cambodia, Lao PDR, Myanmar, and Viet Nam in this Agreement shall be facilitated through negotiated specific commitments, relating to:

(a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis;

(b) the improvement of their access to distribution channels and information networks;

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(c) the liberalisation of market access in sectors and modes of supply of export interest to them; and

(d) appropriate flexibility for Cambodia, Lao PDR, Myanmar, and Viet Nam for opening fewer sectors, liberalising fewer types of transactions and progressively extending market access in line with their respective development situation.

PART III: SPECIFIC COMMITMENTS

Article 18
Market Access

1. With respect to market access through the modes of supply identified in Article 1(t)(i)-(iv), a Party shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.[7]

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

   (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

[7] If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 1(t)(i) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 1(t)(iii), it is thereby committed to allow related transfers of capital into its territory.

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(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[8]

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 19
National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each

[8] Subparagraph 2(c) of this Article does not cover measures of a Party which limit inputs for the supply of services.

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Party shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers[9].

2. A Party may meet the requirement of paragraph 1 of this Article by according to services and service suppliers of any other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of any other Party.

Article 20
Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 18 and 19 including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule.

Article 21
Schedule of Specific Commitments

1. The Parties shall enter into negotiations to conclude the packages of specific commitments under this

[9] Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

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Agreement pursuant to Article 23. The Parties shall endeavour to achieve commitments which are beyond those undertaken under the GATS.

2. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 18, 19 and 20. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

   (a) the sectors in which such commitments are undertaken;

   (b) terms, limitations and conditions on market access;

   (c) conditions and qualifications on national treatment;

   (d) undertakings relating to additional commitments; and

   (e) where appropriate the time-frame for implementation of such commitments.

3. Measures inconsistent with both Articles 18 and 19 shall be inscribed in both the columns relating to Articles 18 and 19.

4. The schedules of specific commitments of a Party shall apply only to those Parties who have completed their respective schedule of specific commitments through negotiations.

5. The Parties' schedules of specific commitments shall be annexed to this Agreement upon completion of the negotiations and shall form an integral part thereof.

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Article 22
Application and Extension of Commitments

1. China shall make a single schedule of specific commitments under Article 21 and shall apply this Schedule to all ASEAN Member Countries.

2. Each ASEAN Member Country shall make its individual schedule of specific commitments under Article 21 and shall apply this Schedule to China and the rest of the ASEAN Member Countries.

Article 23
Progressive Liberalisation

1. The first package of specific commitments of each Party is hereby annexed to this Agreement.

2. The Parties shall, with the aim of substantially improving on the first package of specific commitments, conclude the second package of specific commitments within a year from the date of entry into force of this Agreement.

3. At subsequent reviews pursuant to Article 27, the Parties shall enter into successive rounds of negotiations to negotiate further packages of specific commitments under Part III of this Agreement so as to progressively liberalise trade in services between the Parties.

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Article 24
Modification of Schedules

1. A Party may modify or withdraw any commitment in its Schedule, at any time after three years from the date on which that commitment has entered into force provided that:

   (a) it notifies the Parties as well as the ASEAN Secretariat of its intention to modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal; and

   (b) it enters into negotiations with any affected Party to agree to the necessary compensatory adjustment.

2. In achieving a compensatory adjustment, Parties shall ensure that the general level of mutually advantageous commitment is not less favourable to trade than provided for in the Schedules prior to such negotiations.

3. Any compensatory adjustment pursuant to this Article shall be accorded on a non-discriminatory basis to all Parties.

4. If the Parties concerned are unable to reach an agreement on the compensatory adjustment, the matter shall be resolved by arbitration under the Agreement on Dispute Settlement Mechanism of the Framework Agreement. The modifying Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.



5. If the modifying party implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any Party that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding Article 22, such a modification or withdrawal may be implemented solely with respect to the modifying Party.

PART IV: OTHER PROVISIONS

Article 25
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 26
Contact Point

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement, including the exchange of information relevant to the implementation and operation of this Agreement.

2. At the request of any 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.

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Article 27
Review

The ASEAN Economic Ministers and the Minister of the Ministry of Commerce of China or their designated representatives shall meet within a 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 further measures to liberalise trade in services as well as to develop disciplines and negotiate agreements on matters referred to in Article 15 or any other relevant matters as may be agreed.

Article 28
Miscellaneous Provisions

1. The GATS Annexes, namely: Annex on Movement of Natural Persons Supplying Services, Annex on Air Transport Services, Annex on Financial Services, and Annex on Telecommunications shall apply to this Agreement, *mutatis mutandis*.

2. 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.

3. 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.

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Article 29
Amendments

This Agreement may be amended by agreement in writing by the Parties and such amendments shall enter into force on such date or dates as may be agreed by the Parties.

Article 30
Dispute Settlement

The Agreement on Dispute Settlement Mechanism of the Framework Agreement shall apply to this Agreement.

Article 31
Denial of Benefits

A Party may deny the benefits of this Agreement:

(a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Party;

(b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:

  (i) by a vessel registered under the laws of a non-Party; and

  (ii) by a person of a non-Party which operates and/or uses the vessel in whole or in part.

(c) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Party.

Article 32
Entry into Force

1. This Agreement shall enter into force on 1 July 2007.

2. The Parties undertake to complete their internal procedures for the entry into force of this Agreement prior to 1 July 2007.

3. Where a Party is unable to complete its internal procedures for the entry into force of this Agreement by 1 July 2007, 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.

Article 33
Depositary

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

IN WITNESS WHEREOF, the undersigned being duly authorised by their respective Governments, have signed the Agreement on Trade in Services of the Framework Agreement on the Comprehensive Economic Co-operation between the Association of the Southeast Asian Nations and the People's Republic of China.



Done at Cebu, the Philippines, this Fourteenth Day of January in the Year Two Thousand and Seven, in duplicate copies in the English Language.

For Brunei Darussalam:

MOHAMED BOLKIAH
Minister of Foreign Affairs and Trade

For the People's Republic of China:

LI ZHAOXING
Minister of Foreign Affairs

For the Kingdom of Cambodia:

CHAM PRASIDH
Senior Minister and Minister of Commerce

For the Republic of Indonesia:

MARI ELKA PANGESTU
Minister of Trade

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SECRETARY-GENERAL, THE ASEAN SECRETARIAT

For the Lao People's Democratic Republic:

NAM VIYAKETH
Minister of Industry and Commerce

For Malaysia:

DATO' SERI RAFIDAH AZIZ
Minister of International Trade and Industry

For the Union of Myanmar:

U SOE THA
Minister for National Planning and Economic Development

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SECRETARY GENERAL, THE ASEAN SECRETARIAT

For the Republic of the Philippines:

PETER B. FAVILA
Secretary of Trade and Industry

For the Republic of Singapore:

LIM HNG KIANG
Minister for Trade and Industry

For the Kingdom of Thailand:

KRIRK-KRAI JIRAPAET
Minister of Commerce

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For the Socialist Republic of Viet Nam:

TRUONG DINH TUYEN
Minister of Trade

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