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PROTOCOL GOVERNING THE IMPLEMENTATION OF THE ASEAN HARMONISED TARIFF NOMENCLATURE

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, Lao People's Democratic Republic, Malaysia, Union of Myanmar, the Republic of Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam of the Association of South East Asian Nations (hereinafter referred to as "ASEAN"):

RECALLING the mandate of the Fifth ASEAN Summit to harmonise tariff nomenclature among all ASEAN Member States so as to enhance the flow of goods in the region;

DESIRING to promote regional economic integration, and in particular, to support the establishment of the ASEAN Free Trade Area (AFTA) which envisages tariffs of 0-5% in the year 2002 for the original six ASEAN Member States, 2006 for Viet Nam, 2008 for Lao PDR and Myanmar, and 2010 for Cambodia, and further reduction to end tariffs of 0% by 2010/2015;

RECALLING Article 4 of the ASEAN Agreement on Customs signed on 1 March 1997, which provides that Member States shall, for tariff purposes, use a common tariff nomenclature at the 8-digit level;

RECALLING FURTHER that Article 13(2) of the ASEAN Agreement on Customs provides that annexes may be introduced to the Agreement and shall form an integral part thereof;

DESIRING to simplify intra-ASEAN trade transactions through a common tariff nomenclature, supported by clear and transparent implementation rules, explanatory notes and uniformity in its application;

HAVING REGARD to the negotiations, which have been directed towards the formulation of an ASEAN Harmonised Tariff Nomenclature (hereinafter referred to as "AHTN"), its implementation rules and explanatory notes;

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DESIRING to establish a legal framework to govern the AHTN, its implementation rules and explanatory notes through this Protocol Governing the Implementation of the ASEAN Harmonised Tariff Nomenclature (hereinafter referred to as "the Protocol");

HAVE AGREED AS FOLLOWS:

ARTICLE 1
Objectives

The objectives of the Protocol are as follows:

a) to establish and implement the AHTN so as to facilitate trade in the region;

b) to establish clear rules which govern the implementation of the AHTN, its explanatory notes, and their amendments;

c) to establish uniformity of application in the classification of goods in ASEAN;

d) to enhance transparency in the classification process for goods in the region;

e) to simplify the AHTN; and

f) to create a nomenclature which conforms to international standards, which is a model of technical excellence and which reflects the changing patterns of international trade and technology.

ARTICLE 2
Principles

Member States will be guided by the following principles:

a) Transparency

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Member States will publish all laws, regulations and administrative guidelines pertaining to the AHTN thus making them publicly available in a prompt, transparent and readily accessible manner;

b) Consistency
Member States will ensure the consistent application of the AHTN within each Member State;

c) Efficiency
Member States will ensure that the AHTN is used for the efficient administration and expeditious clearance of goods to facilitate trade;

d) Appeals
Member States shall make available an appeal mechanism for importers and exporters on the classification decisions made on the AHTN.

ARTICLE 3
Structure of the ASEAN Harmonised Tariff Nomenclature

1. The AHTN shall be an 8-digit nomenclature, consisting of the latest version of the Harmonised Commodity Description and Coding System (hereinafter referred to as "HS Code") of the World Customs Organization and the amendments thereto, with the addition of the seventh and eighth digits and commodity descriptions for tariff purposes (the seventh and eighth digits and commodity descriptions hereinafter referred to as "ASEAN subheadings").

2. The AHTN and the Supplementary Explanatory Notes (SEN) relating to the ASEAN subheadings are annexed to the Protocol. The SEN shall form an integral part of the AHTN.

ARTICLE 4
Obligations of Member States

1. Member States shall abide by the HS Code, including its General Rules for the Interpretation of the Harmonised System, Section, Chapter and Subheading Notes, and its amendments thereto.

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2. Member States shall apply the AHTN, up to the 8-digit level, for all trade transactions for tariff, the collection of statistical data and other purposes.

3. Member States may further sub-divide the AHTN, beyond the 8-digit level, for the collection of statistical data or other non-tariff purposes.

4. Amendments to the AHTN shall only be made in accordance with Articles 5 and 6 of the Protocol. Notwithstanding any provision to the contrary, no ASEAN subheading already incorporated in the AHTN can be removed without the consent of the affected Member State.

ARTICLE 5
Amendments to the ASEAN Harmonised Tariff Nomenclature

1. Proeedures for amendments to the AHTN, as set out in Article 6 of the Protocol, may be effected if:

   a) amendments have been made to the HS Code and/or descriptions;

   b) amendments to the ASEAN subheadings in the AHTN for the purposes of simplification are being proposed;

   c) amendments are proposed which arise from the requirements of Member States, changes in technology or in patterns of international trade, or in other circumstances deemed desirable in accordance with the objectives of this Protocol as set out in Article 1.

2. The AHTN shall be continuously reviewed and amended with the view to simplifying the nomenclature, so as to facilitate trade. Member States shall regularly review their national tariff requirements and forward proposals for simplification of the AHTN.

ARTICLE 6
Amendment Procedures

1. Proposals for amendments shall be made by Member States to the ASEAN Directors-General of Customs, as referred to in Article 7 of the Protocol.

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2. The ASEAN Directors-General of Customs shall study all proposals with the view to determining the acceptability of such amendments.

3. The ASEAN Directors-General of Customs shall be the body responsible for allowing amendments to the AHTN.

ARTICLE 7
Institutional Arrangements

The ASEAN Directors-General of Customs, under the purview of the ASEAN Finance Ministers Meeting, shall be the body responsible for monitoring, reviewing and supervising all aspects relating to the implementation of the Protocol. The Experts Committee on Customs Matters (ECCM) shall assist the ASEAN Directors-General of Customs in all matters relating thereto.

ARTICLE 8
Responsibilities of the ASEAN Secretariat

1. The ASEAN Secretariat shall provide the necessary support for supervising, coordinating and reviewing the implementation of the Protocol, and shall assist the ASEAN Directors-General of Customs on matters relating thereto.

2. The ASEAN Secretariat shall have the responsibility of assisting the experts panel, whenever it is convened, especially on procedural aspects of the matters dealt with, and of providing secretarial and technical support.

3. The ASEAN Secretariat shall have the responsibility of assisting Member States in monitoring and reviewing the AHTN with the view to simplification.

ARTICLE 9
Dispute Settlement

1. Member States shall, at the written request of a Member State, enter into consultations with a view to seeking a prompt, equitable and mutually satisfactory solution, if that Member State considers that:

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a) an obligation under the Protocol has not been fulfilled, is not being fulfilled or may not be fulfilled; or

b) any objectives of the Protocol is not being achieved or may be frustrated.

2. Any differences between Member States concerning the interpretation or application of the Protocol shall, as far as possible, be settled amicably between the Member States. If a settlement cannot be reached, the dispute shall be submitted to the ASEAN Directors-General of Customs. If a settlement still cannot be reached by the ASEAN Directors-General of Customs, the dispute shall be referred to the ASEAN Finance Ministers Meeting.

ARTICLE 10
Final Provisions

1. The Protocol may be amended by mutual agreement of all Member States.

2. Annexes may be introduced to the Protocol and shall form an integral part thereof. Any reference to the Protocol is deemed to include also a reference to the Annexes.

3. Member States shall undertake appropriate measures to fulfill the obligations arising from the Protocol.

4. Member States shall make no reservations with respect to any of the provisions of the Protocol.

5. The Protocol shall enter into force on 7 August 2003. However, Member States may defer the obligation to apply the AHTN under paragraph 2 of Article 4 of the Protocol, to a date no later than 1 January 2004.

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

IN WITNESS WHEREOF the undersigned, being duly authorized to sign the Protocol, have signed this Protocol Governing the Implementation of the ASEAN Harmonised Tariff Nomenclature.

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DONE at Makati, Philippines on the 7th day of August 2003, in a single copy in the English Language.

For the Government of Brunei Darussalam

PEHIN DATO HAJI ABDUL AZIZ UMAR
Minister Representing the Ministry of Finance

For the Government of the Kingdom of Cambodia

KEAT CHHON
Senior Minister, Minister of Economy and Finance

For the Government of the Republic of Indonesia

BOEDIONO
Minister of Finance

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For the Government of the Lao People's Democratic Republic

PHOUPHET KHAMPHOUNVONG
Deputy Governor, Bank of the Lao PDR

For the Government of Malaysia

DATO' DR. JAMALUDIN BIN MOHD. JARJIS
Finance Minister II

For the Government of the Union of Myanmar

MAJOR GENERAL HLA TUN
Minister of Finance and Revenue

For the Government of the Republic of the Philippines

JOSE ISIDRO N. CAMACHO
Secretary of Finance

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For the Government of the Republic of Singapore

LIM HNG KIANG
Second Minister for Finance

For the Government of the Kingdom of Thailand

SUCHART JAOVISIDHA
Minister of Finance

For the Government of the Socialist Republic of Viet Nam

NGUYEN SINH HUNG
Minister of Finance

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INTERPRETATIVE NOTES OF THE PROTOCOL GOVERNING THE IMPLEMENTATION OF THE ASEAN HARMONISED TARIFF NOMENCLATURE

ARTICLE 2

d) Importers and exporters shall not have recourse to the Dispute Settlement Mechanism as set out in Article 9 of the Protocol. Their recourse lies with their respective customs administrations.

ARTICLE 3 (1)

a) Within the AHTN, the HS Code must be adhered to. Where no further subdivisions of an HS 6-digit Code are made, the digits "00" shall appear in the seventh and eighth positions of the AHTN codes.

b) Where an HS Code and commodity description is sub-divided in the AHTN, the 6-digit HS Code shall be shown against the line which is sub-divided, and the text of the HS commodity description shall terminate with a colon. In the codes of the subdivisions, the seventh and eighth positions shall be filled with digits appropriate to the context.

c) The AHTN shall conform to the following dash system of integrated hierarchy:

i). ASEAN subheadings, where the HS headings have no subheadings, will start at a one-dash level;

ii). ASEAN subheadings of a one-dash HS subheading will start at a two-dash level; and

iii). ASEAN subheadings of a two-dash HS subheading will start at a three-dash level.

ARTICLE 4 (3)

a) Additional subdivisions must adhere to the structure of the AHTN, as set out in Article 3 of the Protocol.



b) Member States must notify their national nomenclatures to the ASEAN Directors-General of Customs, through the ASEAN Secretariat, whenever amendments for the purposes of Article 4 (3) have been effected nationally.

ARTICLE 5 (1)

a) All amendments to the ASEAN subheadings must abide by the "Understanding on the Criteria for Classification in the ASEAN Harmonised Tariff Nomenclature", (hereinafter referred to as the "the Understanding"), signed by the ASEAN Directors-General of Customs. Additional ASEAN subheadings should be created only in exceptional circumstances.

b) Member States wishing to have additional subheadings shall forward details and reasons of the proposal to the ASEAN Directors-General of Customs, through the ASEAN Secretariat, wherein procedures for amendments under Article 6 of the Protocol shall be invoked.

ARTICLE 5 (2)

a) The process of review will be conducted in accordance with review guidelines to be formulated by the ASEAN Directors-General of Customs. A cycle of one year duration will be established to institutionalise the review process.

b) Member States proposing simplification should also advise how the structure of a subheading could be simplified while meeting their respective national requirements.

ARTICLE 6 (1)

Proposals to the ASEAN Directors-General of Customs will be made through the ASEAN Secretariat, and shall include justifications.

ARTICLE 6 (2)

a) Assessment of the proposed amendments to the AHTN must take into account the Objectives of the Protocol as set out in Article 1, and the Understanding.

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b) Where necessary, the ASEAN Directors-General of Customs shall convene an experts panel (as referred to in Article 7) to make an objective assessment of the acceptability of the proposal, including an examination of the facts of the proposal and the applicability of and conformity with the rules as referred to in 2 (a), and make such other findings as will assist the ASEAN Directors-General of Customs in making a decision. The meeting of the experts panel must be unanimously agreed to by the ASEAN Directors-General of Customs. The experts panel shall promptly submit their report to the ASEAN Directors-General of Customs to facilitate their decision making.

c) The experts panel shall consist of representatives from all the Member States.

d) The experts panel shall regulate its own procedures to perform its functions.

e) Measures should be undertaken to ensure that amendment procedures are efficient and effected expeditiously.

f) The ASEAN Secretariat shall provide the necessary secretariat support in the amendment procedures.

ARTICLE 6 (3)

a) Decisions by the ASEAN Directors-General of Customs shall be made by consensus.

b) Appropriate measures will be undertaken to bring any approved amendments to the AHTN into effect.

ARTICLE 9 (1)

a) Member States are encouraged to settle their differences through consultations. If a solution cannot be reached, Member States can submit the dispute to the ASEAN Directors-General of Customs for a decision without necessarily involving the dispute settlement procedures in Article 9.

b) In the interest of uniformity, settlements at the consultation level must be notified to the ASEAN Directors-General of Customs. Where applicable, such settlements shall be subject to agreement by the ASEAN Directors-General of Customs.

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ARTICLE 9 (2)

a) Recourse can be made to the World Customs Organisation for expert opinion on differences in the interpretation or application of the AHTN.

b) The ASEAN Finance Ministers Meeting shall be the final arbiter in any dispute relating to the implementation of the Protocol.

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