NB323

ASEAN FRAMEWORK AGREEMENT

ON MUTUAL RECOGNITION ARRANGEMENTS

The Governments of Brunei Darussalam, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Vietnam, Member States of the Association of Southeast Asian Nations (hereinafter referred to as "ASEAN");

MINDFUL that in 1992 the ASEAN Heads of Government declared that an ASEAN Free Trade Area shall be established in the region and that in 1995 they agreed to accelerate its implementation to the year 2003;

NOTING the Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area signed on 28 January 1992, which provides for the border and non-border areas of cooperation to supplement and complement the liberalisation of trade including, among others, the harmonisation of standards, reciprocal recognition of tests and certification of products;

RECALLING that in 1995, the ASEAN Heads of Governments adopted, in the Bangkok Summit Declaration, the Agenda for Greater Economic Integration, which includes, among others, the introduction of greater transparency in standards and conformance, the alignment of national standards with international standards and undertaking projects to facilitate mutual recognition arrangements (hereinafter referred to as "MRAs") to facilitate greater intra-regional trade;

RECOGNISING that MRAs for conformity assessment activities could be an important means of eliminating Technical Barriers to Trade and enhancing market access and that such mutual recognition could be of particular interest to small and medium-sized businesses in ASEAN;

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RECOGNISING further that MRAs could contribute positively in encouraging greater international harmonization of standards and regulations and that any such MRAs would require confidence in the other Member States' capacity and competence to test or assess conformity to a Member State's own requirements;

MINDFUL of the different levels of infrastructure for Standards and Conformity Assessment and economic development of ASEAN Member States;

REITERATING their commitments under the World Trade Organization Agreement on Technical Barriers to Trade and noting that the Agreement encourages Contracting Parties to enter into negotiations for the conclusion of agreement for the mutual recognition of results of each other's conformity assessment; and

DESIRING to formulate a framework agreement to deepen and broaden cooperation on Standards and Conformance in ASEAN and to provide a basis for developing and implementing MRAs in specific product sectors, (hereinafter referred to as "Sectoral MRAs"), to facilitate the realization of the ASEAN Free Trade Area.

HAVE AGREED AS FOLLOWS :

ARTICLE 1

DEFINITIONS

1. General terms concerning conformity assessment used in this Framework Agreement and the Sectoral MRAs shall have the meaning given in the definitions contained in the Guide 2 (1996 edition) of the International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC) with the exception of the following terms which shall contain definitions herein:

   "Conformity Assessment" means systematic examination to determine the extent to which a product, process or service fulfills specified requirements;

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"Conformity Assessment Body" means a body whose activities and expertise include performance of all or any stage of the conformity assessment process except for accreditation;

"Regulatory Authority" means an entity that exercises a legal right to control the import, use or sale of products within a Member State's jurisdiction and may take enforcement action to ensure that products marketed within its jurisdiction comply with legal requirements.

2. In addition, the following terms and definitions shall apply to this Framework Agreement and the Sectoral MRAs:

"Designation" means the authorisation by a Designating Body of a Conformity Assessment Body to perform conformity assessment activities as specified under this Framework Agreement and the relevant Sectoral MRAs;

"Designating Body" means a body appointed by a Member State to a Sectoral MRA, with responsibility to identify and monitor Conformity Assessment Bodies as specified under this Framework Agreement and the relevant Sectoral MRAs.

ARTICLE 2
OBJECTIVES

The objectives of this Framework Agreement are:

a) to stipulate the general principles for developing Sectoral MRAs amongst Member States and other related cooperative activities to facilitate elimination of technical barriers to trade within ASEAN; and

b) to stipulate the general conditions under which each Member State to a Sectoral MRA shall accept or recognize results of conformity assessment procedures, produced by the Conformity Assessment Bodies of the other Member States to the Sectoral MRA in question in assessing conformity to the requirements, as specified in the Sectoral MRA.

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ARTICLE 3
GENERAL PROVISIONS

1. Member States to the Sectoral MRAs shall accept or recognize the conformity assessment results, which have been issued in accordance with the provisions in the Sectoral MRAs, by the listed Conformity Assessment Bodies of other Member States to the Sectoral MRAs.

2. Where sectoral transition arrangements have been specified in the Sectoral MRAs, the above obligations shall apply following the successful completion of those transition arrangements.

3. Member States to the Sectoral MRAs shall ensure that the Designating Bodies specified in the Sectoral MRAs have the power and competence in their respective territories to carry out decisions required of them under this Framework Agreement and the relevant Sectoral MRAs.

4. Member States to the Sectoral MRAs shall ensure that the Conformity Assessment Bodies listed in the Sectoral MRAs fulfill the conditions of eligibility to assess conformity in relation to requirements as specified in the Sectoral MRAs, and shall observe the procedures set out in Article 6 of this Framework Agreement.

5. Member States shall strengthen and enhance existing cooperation efforts in confidence building and develop cooperation in areas that are not covered by existing cooperation arrangements, through inter alia:

    a) harmonization of standards with relevant international standards, particularly those relevant to the Sectoral MRAs;

    b) establishing or improving of infrastructure in calibration, testing, certification and accreditation to meet relevant international requirements ;

    c) actively participating in relevant arrangements undertaken by specialist regional and international bodies;

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d) effectively using the existing MRAs developed by regional and international bodies which majority of ASEAN Member States are parties to;

e) research and development; and

f) exchange of information and training .

6. Member States shall identify sectors for developing MRAs based on the following criteria:

a) with special focus on but not limited to the list of 20 priority product groups identified for harmonization of standards;

b) the volume of intra-ASEAN trade affected;

c) the existence and extent of technical barriers to trade;

d) the readiness of technical infrastructure in the majority of Member States, which shall include the existence of Conformity Assessment Bodies that satisfy the procedures and criteria stated in Article 6, clause 1; and

e) the interest of the majority of Member States.

7. All Sectoral MRAs are intended to be multilateral agreements in which all Member States are encouraged to participate. However, taking cognizance of paragraph 3 of Article I of the Framework Agreement on Enhancing ASEAN Economic Cooperation signed on 28 January 1992 in Singapore, two or more Member States may proceed first if other Member States are not ready to participate in the Sectoral MRAs.

8. All documents issued for the purpose of information exchange, verification, provision of evidence and other activities arising from obligations of both the Framework Agreement and Sectoral MRAs, if not in English, shall be accompanied by certified translated copies in English.

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ARTICLE 4

ELEMENTS OF SECTORAL MRA

1. A Sectoral MRA shall include:

   a) scope and coverage with respect to products;

   b) a list of the relevant legislative, regulatory and administrative provisions pertaining to the conformity assessment procedures and technical regulations for the specified products and provisions to update other Member States to the Sectoral MRA on changes;

   c) a list of Designating Bodies;

   d) the procedures and criteria for listing Conformity Assessment Bodies;

   e) the current list of agreed Conformity Assessment Bodies and a statement of the scope of the conformity assessment and relevant procedures for which each has been accepted;

   f) a description of the mutual recognition obligations;

   g) a sectoral transition arrangement that provides for a specified time period where Member States to a Sectoral MRA require time to implement legislative or regulatory changes to effect the Sectoral MRA;

   h) a list of contact points, who shall not be members of the relevant Joint Sectoral Committee;

   i) provisions for the establishment of a Joint Sectoral Committee; and

   j) additional provisions as required.

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2. The Sectoral MRAs may include a statement or arrangement related to mutual acceptance of the standards or technical regulations or mutual recognition of the equivalence of such standards or technical regulations.

ARTICLE 5

JOINT SECTORAL COMMITTEE

1. For each Sectoral MRA, a Joint Sectoral Committee shall be established, which shall be responsible for the effective functioning of that Sectoral MRA. The Joint Sectoral Committee shall comprise one official representative designated by each Member State to the Sectoral MRA. The representative shall not be from a Conformity Assessment Body.

2. The Joint Sectoral Committee may consider any matter and take appropriate actions relating to the effective functioning of the Sectoral MRA. In particular it shall be responsible for:

    a) listing, suspension, withdrawal, removal, reinstating and verification of Conformity Assessment Bodies in accordance with the Sectoral MRA;

    b) amending transition arrangements in the Sectoral MRA;

    c) providing a forum for discussion of issues that may arise concerning the implementation of the Sectoral MRA; and

    d) considering ways to enhance the operation of the Sectoral MRA.

3. The Joint Sectoral Committee shall take its decisions by consensus.

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ARTICLE 6

LISTING OF CONFORMITY ASSESSMENT BODIES

The following procedures shall apply with regard to the listing of Conformity Assessment Bodies in a Sectoral MRA:

1. Each Designating Body specified in a Sectoral MRA shall identify Conformity Assessment Bodies for listing, in accordance with the procedures and criteria set forth in that Sectoral MRA and shall apply one of the following ways to demonstrate technical competence of the Conformity Assessment Bodies:

    a) accreditation by an accreditation body that is a signatory to a regional or international MRA, which is conducted in conformance with the relevant ISO/IEC Guides; or

    b) participation in regional/international mutual recognition arrangements for testing and certification bodies, which are conducted in conformance with the relevant ISO/IEC Guides; or

    c) regular peer evaluations which are conducted in conformance with the relevant ISO/IEC Guides.

2. The Designating Body shall ensure that identified Conformity Assessment Bodies have adequate knowledge of the applicable technical regulations.

3. All Designating Bodies relevant to the Sectoral MRAs shall forward in writing required details of all Conformity Assessment Bodies that they identified, to the relevant Joint Sectoral Committee and the ASEAN Secretariat for the Committee members' confirmation or opposition.

    a) Within 60 days following receipt of a Designating Body's submission, the members of the Joint Sectoral Committee shall indicate their position regarding either their confirmation or their opposition, to the ASEAN Secretariat. No response within 60 days shall be taken as abstention. Upon confirmation, the

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inclusion of the proposed Conformity Assessment Body or Bodies in the list of accepted Conformity Assessment Bodies shall take effect;

b) If one or more of the Member States to the Sectoral MRA requests verification of the technical competence or compliance of a proposed Conformity Assessment Body, such request shall be made an objective and reasoned manner in writing to the ASEAN Secretariat, which shall forward it to the relevant Joint Sectoral Committee for a decision. The Joint Sectoral Committee may decide that the body concerned be more fully verified in accordance with Article 9 of this Framework Agreement; and

c) The proposed Conformity Assessment Body shall not be included in the list of accepted Conformity Assessment Bodies in the applicable Sectoral MRA until a decision has been made to include such Conformity Assessment Body.

ARTICLE 7
SUSPENSION OF LISTED CONFORMITY ASSESSMENT BODIES

The following procedures shall apply with regard to the suspension of a Conformity Assessment Body listed in a Sectoral MRA:

a) Any Member State to a Sectoral MRA which contests the technical competence or compliance of a listed Conformity Assessment Body shall, through its contact point to submit a proposal to suspend such a Conformity Assessment Body, to the relevant Joint Sectoral Committee and the ASEAN Secretariat. Such contestation shall be exercised when justified in an objective and reasoned manner in writing;

b) The ASEAN Secretariat shall promptly inform the Conformity Assessment Body concerned. The Conformity Assessment Body shall be given an opportunity to present information in

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order to refute the contestation or to correct the deficiencies which form the basis of the contestation;

c) Any such contestation shall be discussed by the relevant Joint Sectoral Committee, which may decide to suspend the Conformity Assessment Body in question;

d) If the matter has not been resolved by the Joint Sectoral Committee within 21 days of the notice of contestation, the Conformity Assessment Body shall be suspended upon the request of the contesting Member State;

e) Where the Joint Sectoral Committee decides that verification of technical competence or compliance is required, such verification shall be carried out in accordance with Article 9 of this Framework Agreement;

f) Upon the suspension of a Conformity Assessment Body listed in a Sectoral MRA, Member States to the Sectoral MRA are no longer obligated to accept or recognize the results of conformity assessment procedures performed by that Conformity Assessment Body subsequent to suspension. Member States to the Sectoral MRA shall, subject to Article 11, continue to accept the results of conformity assessment procedures performed by that Conformity Assessment Body prior to suspension; and

g) The suspension shall remain in effect until an agreement has been reached by Member States to the Sectoral MRA upon the future status of that Conformity Assessment Body.

ARTICLE 8

REMOVAL OF LISTED CONFORMITY ASSESSMENT BODIES

The following procedures shall apply with regard to the removal of a listed Conformity Assessment Body from a Sectoral MRA:

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a) A Member State to a Sectoral MRA proposing to remove a Conformity Assessment Body listed in a Sectoral MRA shall, through its contact point for the Sectoral MRA, forward its proposal in an objective and reasoned manner in writing to the relevant Joint Sectoral Committee and the ASEAN Secretariat;

b) Such a Conformity Assessment Body shall be promptly notified by the ASEAN Secretariat and shall be provided a period of at least 30 days from receipt of the notification to provide information in order to refute or to correct the deficiencies which form the basis of the proposed removal;

c) Within 60 days following receipt of the proposal, the members of the Joint Sectoral Committee shall indicate their positions regarding either their confirmation or their opposition to the ASEAN Secretariat. No response within 60 days shall be taken as abstention. Upon confirmation, the removal from the Sectoral MRA of the proposed Conformity Assessment Body or Bodies shall take effect;

d) If the Joint Sectoral Committee finds sufficient grounds based on the evidence submitted, it may decide to carry out a joint verification of the body concerned. Pending completion of the joint verification, the Conformity Assessment Body shall not be removed from the list of Conformity Assessment Bodies in the applicable Sectoral MRA; and

e) Subsequent to the removal of a Conformity Assessment Body listed in a Sectoral MRA, Member States to the Sectoral MRA shall, subject to Article 11, continue to accept the results of conformity assessment procedures performed by that Conformity Assessment Body prior to removal.

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ARTICLE 9

VERIFICATION OF TECHNICAL COMPETENCE AND COMPLIANCE

OF CONFORMITY ASSESSMENT BODIES

1. The Designating Bodies shall ensure that Conformity Assessment Bodies identified by them will be available for verification of their technical competence and compliance with applicable requirements when required by the relevant Joint Sectoral Committee.

2. Any request for verification of technical competence or compliance of the Conformity Assessment Body shall be justified in an objective and reasoned manner in writing to the ASEAN Secretariat, which shall forward it to the relevant Joint Sectoral Committee for a decision.

3. Where the Joint Sectoral Committee decides that verification of technical competence or compliance is required, it will be carried out in a timely manner, jointly by all interested Member States to the relevant Sectoral MRA, based on the procedures and criteria set forth in the relevant Sectoral MRA and the provisions of Article 6 of this Framework Agreement.

4. The result of this verification shall be discussed by the relevant Joint Sectoral Committee with a view to resolving the issue as soon as possible.

ARTICLE 10

MONITORING OF CONFORMITY ASSESSMENT BODIES

1. Designating Bodies shall ensure that Conformity Assessment Bodies identified by them and listed in a Sectoral MRA are capable and remain capable of properly assessing conformity of products or processes, as applicable, and as covered in the applicable Sectoral MRA. Designating Bodies shall maintain monitoring of such

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Conformity Assessment Bodies listed in a Sectoral MRA by means of regular audit or assessment.

2. Designating Bodies shall compare methods used to verify that the Conformity Assessment Bodies listed by the Joint Sectoral Committee comply with the relevant requirements of the Sectoral MRAs.

3. Designating Bodies shall consult as necessary with their counterparts in other Member States to the Sectoral MRAs, to ensure the maintenance of confidence in conformity assessment procedures. This consultation may include joint participation in audits/inspections related to conformity assessment activities or other assessments of Conformity Assessment Bodies listed in a Sectoral MRA.

4. Designating Bodies shall consult, as necessary, with relevant Regulatory Authorities to ensure that all technical requirements identified in the relevant Sectoral MRAs are satisfactorily addressed.

ARTICLE 11

PRESERVATION OF REGULATORY AUTHORITY

1. Nothing in this Framework Agreement shall be construed to limit the authority of a Member State to determine, through its legislative, regulatory and administrative measures, the level of protection it considers appropriate for safety; for protection of human, animal, or plant life or health; for the environment and for consumers.

2. Nothing in this Framework Agreement shall be construed to limit the authority of a Regulatory Authority to take all appropriate and immediate measures whenever it ascertains that a product may:

   a) compromise the health or safety of persons in its territory;

   b) not meet the legislative, regulatory, or administrative provisions within the scope of the applicable Sectoral MRA ; or

   c) otherwise fail to satisfy a requirement within the scope of the applicable Sectoral MRA.

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If the Regulatory Authority takes such measures, it shall inform its counterpart authority in the affected Member State and other Member States to the relevant Sectoral MRA of such measures taken, providing reasons, within a period of time defined in the relevant Sectoral MRA.

ARTICLE 12

CONSULTATIONS AND SETTLEMENT OF DISPUTES

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

    a) an obligation under this Framework Agreement has not been fulfilled, is not being fulfilled, or may not be fulfilled; or

    b) any objective of this Framework Agreement is not being achieved or may be frustrated.

2. Any differences between Member States concerning the interpretation or application of this Framework Agreement and the Sectoral MRAs shall, as far as possible, be settled amicably between the Member States concerned or within the relevant Joint Sectoral Committee if applicable. If a settlement cannot be reached, thus, it shall be subjected to the Dispute Settlement Mechanism of ASEAN in accordance with the Protocol on Dispute Settlement Mechanism, which was signed on 20 November 1996 in Manila, the Philippines.

ARTICLE 13

INSTITUTIONAL ARRANGEMENTS

1. Progress of the implementation of this Framework Agreement shall be reported to the AFTA Council through the Senior Economic Officials

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Meeting (SEOM). The SEOM shall monitor all aspects relating to the implementation of this Framework Agreement. The Joint Sectoral Committees shall monitor all aspects relating to the implementation of the relevant Sectoral MRAs.

2. The ASEAN Consultative Committee for Standards and Quality (ACCSQ) and the ASEAN Secretariat shall provide the support for coordinating and reviewing the implementation of this Framework Agreement and the Sectoral MRAs and assist the SEOM and the Joint Sectoral Committees in all matters relating thereto.

3. The ACCSQ shall be the forum for linkages with industries with respect to the implementation of this Framework Agreement and the Sectoral MRAs.

ARTICLE 14

TECHNICAL ASSISTANCE AND FUNDING

1. Member States shall, if requested, advise other Member States, and shall grant them technical assistance on mutually agreed terms and conditions, where applicable on building up and/or maintaining technical competence of relevant Conformity Assessment Bodies in their territories so that they can fulfil the obligations as specified in the Sectoral MRAs or participate in the Sectoral MRAs.

2. Member States which are members or participants of international or regional systems for conformity assessment shall, if requested, advise other Member States, and shall grant them technical assistance on mutually agreed terms and conditions, where applicable regarding the establishment of the institutions and legal framework which would enable them to fulfil the obligations of membership or participation in such systems.

3. Member States to a Sectoral MRA may engage the services of Conformity Assessment Bodies of other Member States to undertake the requisite conformity assessment activities, should they not have their own facilities to do so.

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4. Member States shall accord priority to funding for activities under this Framework Agreement and the Sectoral MRAs. Expenses incurred as a result of any activity undertaken by a Member State to fulfill the objectives of this Framework Agreement and the Sectoral MRAs shall be borne by the Member State concerned unless all Member States decide otherwise.

ARTICLE 15
CONFIDENTIALITY

1. Member States shall maintain, to the extent permitted under its laws and regulations, the confidentiality of information exchanged under this Framework Agreement and the Sectoral MRAs.

2. Member States shall take all precautions reasonably necessary to protect information exchanged under this Framework Agreement and the Sectoral MRAs from unauthorized disclosure.

ARTICLE 16
ACCESSION OF NEW MEMBERS

New Members of ASEAN may accede to this Framework Agreement through the signing and depositing of the instrument of accession to this Framework Agreement with the Secretary-General of ASEAN, who shall promptly furnish each Member State a certified copy thereof.

ARTICLE 17
RIGHTS AND OBLIGATIONS UNDER EXISTING INTERNATIONAL AGREEMENTS OR CONVENTIONS

This Agreement or any actions taken thereto shall not affect the rights and obligations of the contracting Member States under any existing international agreements or conventions to which it is also a party.

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ARTICLE 18

FINAL PROVISIONS

1. The provisions of this Framework Agreement may be reviewed or amended by agreement of all Member States.

2. Member States shall undertake appropriate measures to fulfill the agreed obligations arising from this Framework Agreement.

3. Member States shall make no reservations with respect to any of the provisions of this Framework Agreement.

4. This Framework Agreement shall be deposited with the Secretary General of ASEAN, who shall promptly furnish each Member State a certified copy thereof.

5. This Framework Agreement shall enter into force upon deposit of instruments of ratification or acceptance by all signatory Governments with the Secretary- General of ASEAN.

IN WITNESS WHERE OF the undersigned, being duly authorized by their respective Governments, have signed this ASEAN Framework Agreement on Mutual Recognition Arrangements.

DONE at Hanoi, Vietnam, on the 16th day of December 1998, in a single copy in the English Language.

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SECRETARY GENERAL OF ASEAN
ASEAN

For the Government of Brunei Darussalam

ABDUL RAHMAN TAIB
Minister of Industry and Primary Resources

For the Government of the Republic of Indonesia

GINANDJAR KARTASASMITA
Coordinating Minister for Economy, Finance and Industry

For the Government of the Lao People's Democratic Republic

SOULIVONG DARAVONG
Minister of Industry and Handicrafts

For the Government of Malaysia

16/12/98

DATO' SERI RAFIDAH AZIZ
Minister of International Trade and Industry

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For the Government of the Union of Myanmar

BRIGADIER GENERAL DAVID O. ABEL
Minister at the Office of the Chairman
of the State Peace and Development Council

For the Government of the Republic of the Philippines

JOSE TRINIDAD PARDO
Secretary of Trade and Industry

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For the Government of the Socialist Republic of Vietnam

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Minister of Trade

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