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CERTIFYING STATEMENT

Protocol to Amend the Framework Agreement on Comprehensive Economic Co-operation and Certain Agreements thereunder between the Association of Southeast Asian (ASEAN) and the People's Republic of China

I, THE UNDERSIGNED Deputy Secretary-General of ASEAN for Community and Corporate Affairs, hereby certify that the attached text is **a true and complete copy** of the Protocol to Amend the Framework Agreement on Comprehensive Economic Co-operation and Certain Agreements thereunder between the Association of Southeast Asian (ASEAN) and the People's Republic of China, signed on 21 November 2015 in Kuala Lumpur, Malaysia, the original of which has been deposited with the Secretary-General of ASEAN.

Jakarta, 16 December 2015

AKP Mochtan
Deputy Secretary-General of ASEAN
Community and Corporate Affairs
Department
The ASEAN Secretariat

Protocol to Amend the Framework Agreement on Comprehensive Economic Co-operation and Certain Agreements thereunder between the Association of Southeast Asian Nations (ASEAN) 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, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member States of the Association of Southeast Asian Nations (hereinafter referred to collectively as "ASEAN Member States", or individually as "ASEAN Member State"), and the People's Republic of China (hereinafter referred to as "China"), hereinafter referred to collectively as "Parties" or individually as "Party";

RECALLING the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations (ASEAN) and the People's Republic of China (hereinafter referred to as the "Framework Agreement") signed on 4 November 2002 in Phnom Penh, Cambodia;

RECALLING the Agreement on Trade in Goods of the Framework Agreement (hereinafter referred to as the "TIG Agreement") signed on 29 November 2004 in Vientiane, Lao PDR;

RECALLING the Agreement on Trade in Services of the Framework Agreement (hereinafter referred to as the "TIS

Agreement") signed on 14 January 2007 in Cebu, Philippines;

RECALLING the Agreement on Investment of the Framework Agreement (hereinafter referred to as the "Investment Agreement") signed on 15 August 2009 in Bangkok, Thailand;

RECALLING the Joint Statement of the 16th ASEAN-China Summit held on 9 October 2013, taking note of the positive role that the ASEAN-China Free Trade Area (ACFTA) has played in promoting economic and trade relations and welcoming the initiative for the upgrading of the ACFTA by, among others, improving market conditions and trade balance among the Parties as well as expanding the scope and coverage of the Framework Agreement;

DESIRING to improve the ACFTA to better respond to the evolving global economic architecture through reaffirmation of the commitment, and to deepen economic linkages between ASEAN and China through the progressive liberalisation of trade in goods and trade in services, more trade-facilitative rules of origin, better customs procedures and trade facilitation measures, improved investment liberalisation, protection, promotion, and facilitation, enhanced economic and technical cooperation; and

CONFIDENT that an upgrade of the ACFTA would contribute to increasing the depth and expanding the scope of cooperation, and promoting trade, services and investment among the Parties.

HAVE AGREED AS FOLLOWS:

CHAPTER 1
AMENDMENT TO THE TIG AGREEMENT

SECTION A: RULES OF ORIGIN

ANNEX 3 on the Rules of Origin (ROO) of the TIG Agreement shall be substituted by ANNEX 1 of this Protocol.

SECTION B: CUSTOMS PROCEDURES AND TRADE FACILITATION

This Section on the Customs Procedures and Trade Facilitation (CPTF) shall be incorporated into the TIG Agreement:

Article 1
Objectives

The objectives of this Section are to:

(a) ensure predictability, consistency and transparency in the application of customs law of the Parties;

(b) promote efficient, economical administration of customs procedures, and the expeditious clearance of goods;

(c) simplify and harmonise customs procedures to the extent possible; and

(d) promote co-operation among the customs administrations of the Parties.

Article 2
Scope

This Section applies, in accordance with the Parties' respective domestic laws and regulations, to customs procedures applied to goods traded and the movement of means of transport among the Parties.

Article 3
Definitions

For the purposes of this Section:

customs administration means:

(a) in relation to China, the General Administration of Customs of the People's Republic of China; and

(b) in relation to ASEAN, the customs administration of each ASEAN Member State and/or competent authorities[1] that are responsible under the law of a Party for the administration of customs law.

customs law means the statutory and regulatory provisions relating to the importation, exportation, movement or storage of goods, the administration and enforcement of which are specifically charged to the customs administrations, and any regulations made by the customs administrations under their statutory powers;

customs procedures means the treatment applied by the customs administration of a Party to goods and the means of transport, which are subject to that Party's customs law;

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT) 1994, contained in Annex 1A to the WTO Agreement; and

means of transport means various types of vessels, vehicles, aircraft and pack-animals which enter or leave the territory of a Party carrying persons, goods or articles, where applicable under each Party's domestic laws and regulations.

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[1] The list of competent authorities and any future changes should be conveyed to all the Parties in a timely manner.

Article 4
Facilitation

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and trade-facilitating, including through the expeditious clearance of goods.

2. Customs procedures of each Party shall, where possible and to the extent permitted by its respective customs law, conform with the trade-related instruments and recommended practices of the World Customs Organisation to which that Party is a contracting Party.

3. The customs administration of each Party shall review its customs procedures to facilitate trade.

4. Customs control shall be limited to that which is necessary to ensure compliance with customs law of the respective Parties.

Article 5
Customs Co-operation

To the extent permitted by its domestic laws and regulations, the customs administration of each Party may, as deemed appropriate, cooperate with the customs administration of each other, in relation to:

(a) the implementation and operation of this Section;

(b) such other issues as the Parties mutually determine.

Article 6
Use of Automated Systems

1. The customs administration of each Party, where applicable, shall endeavour to have its own system that

supports electronic customs transactions.

2. In implementing initiatives, the customs administration of each Party, taking into consideration the available infrastructure and capabilities of each Party, shall take into account the relevant standards and best practices recommended by the World Customs Organisation.

Article 7
Customs Valuation

The Parties shall apply Article VII of GATT 1994 and the Customs Valuation Agreement to goods traded among them.

Article 8
Tariff Classification

The Parties shall apply the International Convention on the Harmonised Commodity Description and Coding System to goods traded among them.

Article 9
Risk Management

1. The Parties shall use risk management to determine control measures with a view to facilitating legitimate trade, and expediting customs clearance and release of goods.

2. In applying a risk management approach to customs control, the customs administration of each Party shall regularly review the performance, effectiveness and efficiency of its systems.

Article 10
Advance Rulings

1. Each Party, through its customs administration, to the extent permitted by its domestic laws and regulations, on the application of a person described in Paragraph 3(a), shall

provide in writing, advance rulings in respect of tariff classification and origin of goods.

2. In addition to Paragraph 1, the Parties are encouraged to provide advance rulings on the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts.

3. Each Party, in accordance with its domestic laws and regulations, shall adopt or maintain procedures for advance rulings, which shall:

(a) provide that an importer or an exporter or a producer, authorised by the importing Party, may apply for an advance ruling before the importation of the goods in question;

(b) require that an applicant for an advance ruling provide a detailed description of the goods and all relevant information needed for the issuance of an advance ruling;

(c) provide that its customs administration may, at any time during the course of an evaluation of an application for an advance ruling, request that the applicant provide additional information within a specified period;

(d) provide that any advance ruling be based on the facts and circumstances presented by the applicant, and any other relevant information in the possession of the decision-maker; and

(e) provide that the advance ruling be issued to the applicant expeditiously on receipt of all necessary information.

4. A Party may reject requests for an advance ruling where the additional information requested by it in

accordance with Paragraph 3(c) is not provided within the specified period.

5. Subject to Paragraphs 1 and 6, each Party shall apply an advance ruling to all importations of goods described in that ruling within three (3) years from the date of that ruling or such other period as specified in that Party's respective domestic laws and regulations.

6. A Party may modify or revoke an advance ruling:

(a) upon determination that the ruling was based on an error of fact or law, or the information provided is false or inaccurate;

(b) if there is a change in its domestic laws and regulations consistent with this Agreement; or

(c) if there is a change in a material fact or circumstance on which the ruling is based.

7. Subject to the confidentiality requirements of a Party's domestic laws and regulations, each Party may publish its advance rulings.

8. Where an importer claims that the treatment accorded to an imported good should be governed by an advance ruling, the customs administration may evaluate whether the facts and circumstances of the said importation are consistent with the facts and circumstances upon which a ruling was based.

Article 11
Review and Appeal

1. Each Party shall, in accordance with its domestic laws and regulations, provide that the importer, exporter or any other person affected by its administrative rulings, determinations or decisions, have access to:

(a) a level of administrative review by its customs administrations independent of the official or office responsible for the administrative rulings, determinations or decisions, under review. The level of administrative review may include any authority supervising the customs administration subject to domestic laws and regulations; or

(b) judicial review.

2. The decision on review and/or appeal shall be given to the applicant and/or appellant, and subject to the Party's domestic laws and regulations, the reasons for such decision shall be provided in writing.

Article 12
Review of Customs Procedures

The Parties shall, under the mechanism of the ASEAN-China FTA Joint Committee (ACFTA-JC), periodically review the implementation of the Section on CPTF with a view to further simplifying and harmonising customs procedures to the extent possible and developing mutually beneficial arrangements to facilitate trade among the Parties. A sub-committee on CPTF will be formed and convened as necessary.

Article 13
Publication and Enquiry Points

1. Each Party shall publish on the internet and/or in print form all statutory and regulatory provisions and any customs administrative procedures applied or enforced by its customs administration, except law enforcement procedures and internal operational guidelines.

2. Each Party shall designate one or more enquiry points to deal with enquiries from interested persons concerning customs matters, and shall make available on the internet

and/or in print form, information concerning procedures for making such enquiries.

Article 14
Consultations

1. The customs administrations of the Parties shall encourage consultations with each other on issues related to trade in goods arising from the operation or implementation of this Section.

2. Such consultations shall be conducted through the relevant contact points of the respective customs administrations.

3. Each Party shall provide information on the contact points of its customs administration to the other Parties and promptly notify the other Parties of any amendment thereto.

Article 15
Pre-arrival Documentation

The customs administrations of the Parties shall endeavour to make provision for the lodging and registering or checking of the goods declaration and its supporting documents prior to the arrival of the goods.

Article 16
Authorised Economic Operators

1. The customs administrations of the Parties shall endeavour to establish the programme of Authorised Economic Operators (AEO) to promote informed compliance and efficiency of customs control.

2. The customs administrations of the Parties shall endeavour to work towards mutual recognition of AEO.

Article 17
Repayment, Drawback and Security

1. Decisions on claims for repayment shall be reached and notified in writing to the persons concerned, without undue delay, and repayment of amounts overcharged shall be made as soon as possible after the verification of such claims.

2. Drawback shall be paid as soon as possible after the verification of such claims.

3. Where security has been furnished, it shall be discharged as soon as possible after the customs administration is satisfied that the obligations under which the security was required, have been duly fulfilled.

Article 18
Post Clearance Audit

The customs administrations of the Parties shall establish and operate post clearance audit for expeditious customs clearance and enhanced customs control.

Article 19
Temporary Admission

The customs administrations of the Parties shall facilitate the movement of goods under temporary admission to the greatest extent possible, in accordance with domestic laws and regulations of each Party.

Article 20
Confidentiality

1. Nothing in this Section shall be construed to require any Party to furnish or allow access to confidential information, the disclosure of which the Party considers would:

(a) be contrary to the public interest as determined by its domestic laws and regulations;

(b) be contrary to any of its domestic laws and regulations, including but not limited to, those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;

(c) impede law enforcement; or

(d) prejudice legitimate commercial interests, which may include the competitive position of particular enterprises, public or private.

2. Where a Party provides information to another Party in accordance with this Section and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information, use it only for the purposes specified by the Party providing the information, and not disclose it without the specific written permission of the Party providing the information.

CHAPTER 2

AMENDMENT TO THE AGREEMENT ON TRADE IN SERVICES

1. Pursuant to paragraph 3 of Article 23 of the TIS Agreement, the third package of specific commitments of each Party, which shall become an integral part of the TIS Agreement, is hereby annexed as ANNEX 2 to this Protocol.

2. ANNEX 2 shall apply to the Parties that have submitted their respective specific commitments to the Secretary-General of ASEAN.

CHAPTER 3

AMENDMENT TO THE INVESTMENT AGREEMENT

Article 1
Promotion of Investment

Article 20 of the Investment Agreement shall be substituted by:

"

1. Each Party shall further cooperate in promoting and increasing investment activities by building upon existing agreements or arrangements already in place for economic cooperation in order to strengthen the economic relationship among the Parties.

2. For the mutual benefit of the Parties, each Party shall encourage and create favourable conditions for investors and their investments.

3. The Parties shall cooperate in promoting and increasing awareness of the Parties as an investment area, through, among others:

(a) increasing investments among the Parties;
(b) organising investment promotion activities, including business matching events;
(c) enhancing industrial complementation and production networks;
(d) organising and supporting the organisation of various briefings and seminars on investment opportunities and on investment laws, regulations and policies; and
(e) conducting information exchanges on other issues of mutual concern relating to investment promotion and facilitation."

Article 2
Facilitation of Investment

Article 21 of the Investment Agreement shall be substituted by:

"

1. Each Party should endeavour to further create stable, favourable and transparent conditions in order to encourage greater investment by investors of another Party in its territory.

2. Subject to their laws and regulations, the Parties shall cooperate to facilitate investments among the Parties through, among others:

(a) creating the necessary environment for all forms of investment;
(b) simplifying procedures for investment applications and approvals;
(c) promoting dissemination of investment information, including investment laws, rules, regulations, policies and procedures; and
(d) utilising existing Investment Promotion Agencies or, where necessary, establishing one-stop investment centres or similar mechanisms in the respective host Parties, to provide assistance and advisory services to the business sectors including facilitation of operating licences and permits."

CHAPTER 4

AMENDMENT OF PROVISIONS RELATING TO ECONOMIC AND TECHNICAL COOPERATION UNDER THE FRAMEWORK AGREEMENT

Articles 2(g), 7 and 8(4) of the Framework Agreement shall be deleted. Article 7 of the Framework Agreement shall read as follows:

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Article 7(I)
Basic Principles

1. The Parties shall undertake economic and technical cooperation activities of mutual benefit to deepen trade and investment among the Parties with a view to promoting economic cooperation pursuant to the Framework Agreement.

2. The Parties shall, subject to the availability of resources and in accordance with their respective domestic laws and regulations, endeavour to facilitate economic and technical cooperation among the Parties. The Parties shall explore ways to expand economic and technical cooperation in areas of mutual interest, including recommendations to enhance existing economic and technical cooperation as well as develop new initiatives.

3. The Parties agree to implement capacity-building programmes and technical assistance, particularly projects that are to address the specific needs and requirements consistent with the priority areas of economic and technical cooperation under the ACFTA. Special consideration shall be provided to Cambodia, Lao PDR, Myanmar and Viet Nam with regard to their participation in these projects and their proposed projects.



Article 7 (II)
Areas of Economic and Technical Cooperation

1. The Parties, on the basis of mutual benefit, shall explore and undertake economic cooperation activities in the following areas:

(a) Trade-related issues;
(b) Agriculture, Fishery, Forestry and Forestry Products;
(c) Information and Communications Technology;
(d) Human Resource Development;
(e) Investment;
(f) Trade in Services;
(g) Tourism;
(h) Industrial Cooperation;
(i) Transport;
(j) Intellectual Property Rights;
(k) Small and Medium Enterprises;
(l) Environment; and
(m) Other fields related to economic and technical cooperation as may be mutually agreed upon by the Parties.

2. The Parties agree to focus on the economic and technical cooperation to support other Working Groups under the ACFTA-JC for better utilisation of the Framework Agreement and agreements thereunder.

Article 7 (III)
Cross-border Electronic Commerce (E-commerce)

1. The Parties recognise the economic growth and opportunity that e-commerce provides and the importance of promoting its use and development.

2. The Parties agree to share information, expertise and conduct dialogue on issues related to e-commerce, including laws and regulations, rules and standards, and best practices with a view to creating a favourable environment

for e-commerce development.

3. The Parties shall encourage participation from business communities and facilitation from government agencies to take advantage of e-commerce platforms to enhance trade and investment relations among the Parties.

4. The Parties shall encourage capacity-building cooperation by supporting workshops and training programmes on e-commerce to enhance the capability of Micro, Small and Medium Enterprises (MSMEs) to expand into regional and international markets.

Article 7 (IV)
Resources for Economic and Technical Cooperation Activities

1. With the aim of operationalising this Chapter, activities could be in the form of economic and technical cooperation, including seminars, trainings, policy dialogues, studies as well as other activities agreed upon by the Parties.

2. The Parties agree to source the funding for economic and technical cooperation activities under ACFTA from existing appropriate ASEAN-China resources, or other resources available in the future.

3. The Parties agree to enhance economic and technical cooperation activities under ACFTA by expediting the appraisal and approval process, developing clear guidelines and facilitating enquiries on economic and technical cooperation projects with a view to helping prospective project proponents to better utilise the available resources.

Article 7 (V)
Implementation of Economic and Technical Cooperation Activities

1. Economic and technical cooperation activities shall involve China and at least two (2) ASEAN Member States, provided that those activities are regional in nature and of benefit to ASEAN Member States and China.

2. The Parties shall undertake economic and technical cooperation activities at a mutually agreed time.

Article 7 (VI)
Settlement of Dispute

1. The Agreement on Dispute Settlement Mechanism of the Framework Agreement shall not apply to this Chapter.

2. Any dispute concerning the interpretation, implementation or application of this Chapter shall be settled amicably by the Parties.

CHAPTER 5
FUTURE WORK PROGRAMME

1. Consistent with Article 17 of the TIG Agreement, the Parties shall enter into negotiations, to further liberalise trade in goods on a date to be mutually agreed upon by the Parties. The Parties shall undertake to finalise the negotiations within two (2) years from the date of commencement of the negotiations.

2. The Parties shall enter into negotiations on Product Specific Rules (PSRs) with a view to reaching a mutually satisfactory outcome that improves utilisation of ACFTA within one (1) year from the date of entry into force of this Protocol.



3. The Parties shall conclude the discussions with respect to investment liberalisation and protection within three (3) years from the date of entry into force of this Protocol, unless the Parties agree otherwise.

CHAPTER 6
FINAL PROVISIONS

Article 1
Amendment

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

Article 2
Depositary

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

Article 3
Entry Into Force

1. Each Party shall notify the Secretary-General of ASEAN of the completion of its internal procedures[2] necessary for entry into force of this Protocol in writing. This Protocol shall enter into force on 1 May 2016, provided that China and at least one (1) ASEAN Member State have notified the Secretary-General of ASEAN of the completion of their internal procedures in writing.

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[2] For clarity, the term "internal procedures" may include ratification, acceptance or approval by the Parties in accordance with their respective domestic laws and regulations.

2. If this Protocol does not enter into force on 1 May 2016, it shall enter into force sixty (60) days after the date by which China and at least one (1) ASEAN Member State have notified the Secretary-General of ASEAN of the completion of their internal procedures in writing.

3. After the entry into force of this Protocol pursuant to Paragraph 1 or 2, this Protocol shall enter into force for any remaining Party sixty (60) days after the date of its notification to the Secretary-General of ASEAN of the completion of its internal procedures in writing.

IN WITNESS WHEREOF, the undersigned being duly authorised by their respective Governments, have signed this Protocol.

DONE at Kuala Lumpur, Malaysia, this Twenty First day of November in the Year Two Thousand and Fifteen, in duplicate copies in the English language.[3]

For Brunei Darussalam:

LIM JOCK SENG
Minister at Prime Minister's Office and Minister of Foreign Affairs and Trade II

For the People's Republic of China

GAO HUCHENG
Minister of Commerce

[3] For the Parties that sign this Protocol after 21 November 2015, the date of signing of the Protocol for that Party shall be the date on which the Protocol is signed by that Party.

For the Kingdom of Cambodia:

SUN CHANTHOL
Senior Minister and Minister of
Commerce

For the Republic of Indonesia:

THOMAS TRIKASIH LEMBONG
Minister of Trade

For the Lao People's Democratic Republic:

KHEMMANI PHOLSENA
Minister of Industry and Commerce

For Malaysia:

MUSTAPA MOHAMED
Minister of International Trade and
Industry

For the Republic of the Union of Myanmar:

KAN ZAW
Union Minister for National Planning and
Economic Development

For the Republic of the Philippines:

GREGORY L. DOMINGO
Secretary of Trade and Industry

For the Republic of Singapore:

VIVIAN BALAKRISHNAN
Minister for Foreign Affairs

For the Kingdom of Thailand:

APIRADI TANTRAPORN
Minister of Commerce

For the Socialist Republic of Viet Nam:

VU HUY HOANG
Minister of Industry and Trade