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CERTIFYING STATEMENT

Third Protocol to Amend the Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation among the Governments of Member Countries of the Association of Southeast Asian Nations and the Republic of Korea

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 Third Protocol to Amend the Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation among the Governments of Member Countries of the Association of Southeast Asian Nations and the Republic of Korea, signed on 22 November 2015 in Kuala Lumpur, Malaysia, the original of which has been deposited with the Secretary-General of ASEAN.

Jakarta, 22 December 2015

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

THIRD PROTOCOL TO AMEND THE AGREEMENT ON TRADE IN GOODS UNDER THE FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC COOPERATION AMONG THE GOVERNMENTS OF THE MEMBER COUNTRIES OF THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND THE REPUBLIC OF KOREA

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 Countries of the Association of Southeast Asian Nations (hereinafter referred to collectively as "ASEAN" or "ASEAN Member Countries" or individually as "ASEAN Member Country") and the Republic of Korea (hereinafter referred to as "Korea") (hereinafter referred to individually as "Party" and collectively as the "Parties"),

RECALLING the Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation Among the Governments of the Member Countries of the Association of Southeast Asian Nations and Republic of Korea (hereinafter referred to as the "Agreement"), signed in Kuala Lumpur, Malaysia on the twenty-fourth day of August, 2006;

RECOGNISING the need for effective cooperation among the Parties on trade facilitation;

DESIRING to clarify the scope and conditions under which certain Parties may apply reciprocal arrangement in regard to tariff rate treatment;

SEEKING to provide a line-by-line tariff reduction and/or elimination schedule according to each Party's commitment under the Agreement; and

NOTING that Article 17 of the Agreement provides for any amendments thereto to be mutually agreed upon in writing by the Parties;

HAVE AGREED as follows:

Article 1
Amendment of Article 4 of the Agreement

Article 4 of the Agreement shall be amended and replaced by a new Article 4 as set out below:

"**Article 4**
Transparency, Customs Procedures and Trade Facilitation

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

2. The Parties will facilitate the timely publication and dissemination of statutory and regulatory information, decisions and rulings on customs matters in accordance with the Parties' respective laws and regulations.

3. The Parties shall publish on the internet and/or in print form all statutory and regulatory provisions and any customs administrative procedures applicable or enforceable by their customs administrations, except for law enforcement procedures and internal operational guidelines and matters which by their nature are classified to be confidential."

Article 2
Amendment to Insert New Articles 4 *bis* and 4 *ter* into the Agreement

The Agreement shall be amended by inserting new Articles 4 *bis* and 4 *ter* after Article 4 of the Agreement as set out below:

"Article 4 *bis*
Advance Rulings

1. Each Party, through its customs administration and/or other relevant authorities, shall, to the extent permitted by its respective laws, regulations and administrative determinations, provide in writing advance rulings, upon the application of a person described in paragraph 2(a) of this Article, in respect of a tariff classification, questions arising from the application of the principles of the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, in Annex 1A to the WTO Agreement (Customs Valuation Agreement) and/or the origin of goods.

2. Where available, each Party shall adopt or maintain procedures for advance rulings, which shall:

(a) provide that an importer in the territory of that Party or an exporter or producer in the territory of another 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 to process the application for an advance ruling;

(c) provide that its customs administration and/or other relevant authorities may, at any time during the course of the 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 customs administration and/or other relevant authorities; and

(e) provide that an advance ruling be issued to the applicant expeditiously, within the period specified in each Party's respective laws, regulations or administrative determinations.

3. A Party may reject requests for an advance ruling where the additional information requested in accordance with paragraph 2(c) is not provided within a specified time.

4. A Party may decline to issue an advance ruling to an applicant where the question raised in the application:

(a) is already pending in the applicant's case before any governmental agency, appellate tribunal or court; or

(b) has already been decided by any appellate tribunal or court.

5. Subject to paragraphs 1 and 6 and where available, each Party shall apply an advance ruling

to all importations of goods described in that ruling imported into its territory for three (3) years from the date of that ruling, or such other period as specified in each Party's respective laws, regulations or administrative determinations.

6. A Party may revoke, modify, or invalidate an advance ruling if it determines that:

(a) the ruling was based on an error in applying fact or law;

(b) incomplete, incorrect, false or misleading information was provided;

(c) there is a change in the relevant law(s), provided that such law(s) is/are consistent with this Agreement; or

(d) there is a change in material facts or circumstances on which the ruling was based.

7. Where a Party revokes, modifies, or invalidates an advance ruling with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false or misleading information.

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

9. Subject to any confidentiality requirements in its laws and regulations, each Party shall endeavour to

make available to the public its advance rulings on tariff classifications.

Article 4 *ter*
Enquiry Points

Each Party shall, within its available resources, designate one or more enquiry points to address enquiries from interested persons of the Parties concerning customs and, to the extent possible, other trade-related matters, and shall make available on the internet and/or in print form, information concerning the procedures for making such enquiries."

Article 3
Amendment of Footnote to Paragraph 2 of Rule 4 of Annex 3 to the Agreement

The footnote to paragraph 2 of Rule 4 of Annex 3 to the Agreement shall be amended and replaced by a new footnote as set out below:

"[3]An exporter or producer of the exporting Party shall be given the flexibility to adopt the method of calculating the RVC, whether it is the build-up or the build-down method. The exporter or producer shall continue to use the selected method of calculating the RVC throughout the same fiscal year. It is understood that any verification of the RVC by the importing Party shall be done on the basis of the method used by the exporter or producer."

Article 4
Amendment of Paragraph 1 of Rule 5 of Appendix 1 to Annex 3 to the Agreement

Paragraph 1 of Rule 5 of Appendix 1 to Annex 3 to the Agreement shall be amended and replaced by a new paragraph 1 as set out below:

"1. A Certificate of Origin shall be:

(a) in a printed format[1];

(b) on A4 size paper;

(c) in the attached Form [Attachment 1] (hereinafter referred to as "Form AK"); and

(d) in the English language."

Article 5
Amendment of Paragraph 7 of Annex 2 to the Agreement

Paragraph 7 of Annex 2 to the Agreement shall be amended and replaced by a new paragraph 7 as set out below:

"7. The reciprocal tariff rate treatment of tariff lines placed by an exporting Party in the Sensitive Track, excluding Group E, while the same tariff lines are placed by the importing Party in the Normal Track, shall be governed by the following conditions:

(i) the tariff rate for a tariff line placed by an exporting Party in the Sensitive Track, excluding Group E, must be at 10% or below, and the exporting Party has given

[1] A printed format means a Certificate of Origin manually or electronically signed, stamped and issued directly by the issuing authorities of the exporting Party.

notification[1] to that effect to the other Parties in order for that exporting Party to enjoy reciprocity;

(ii) the reciprocal tariff rate to be applied to a tariff line placed by an exporting Party in the Sensitive Track shall be either the tariff rate of that exporting Party's tariff line, or the Normal Track tariff rate of the same tariff line of an importing Party from whom reciprocity is sought, whichever is higher;

(iii) notwithstanding sub-paragraph (ii), the importing Party can, at its discretion, apply its Normal Track tariff rate even if such rate is lower than the tariff rate of the exporting Party; and

(iv) the reciprocal tariff rate to be applied to a tariff line placed by an exporting Party in the Sensitive Track shall in no case exceed the applied MFN rate of the same tariff line of an importing Party from whom reciprocity is sought."

Article 6
Amendment to Insert a New Paragraph 7 *bis* into Annex 2 to the Agreement

Annex 2 to the Agreement shall be amended by inserting a new paragraph 7 *bis* after the existing paragraph 7 of Annex 2 to the Agreement as set out below:

"7 *bis* (a) Notwithstanding paragraph 7 of this Annex and the *Interpretative Notes to the*

[1] The Parties shall adhere to the notification procedure set out in the *Interpretative Notes to the Reciprocal Arrangement* as amended by the Special Meeting of the AKFTA Implementing Committee held on 17-18 November 2014. The Interpretative Notes may be subject to further amendments by the Implementing Committee.

Reciprocal Arrangement, two or more Parties may agree, in writing, to waive their right to apply reciprocal arrangement in regard to tariff rate treatment. Such agreement shall be reported to the Implementing Committee[2].

(b) Where the agreement in sub-paragraph (a) has been made, the concerned exporting Party shall enjoy the tariff concessions which the concerned importing Party has made for that tariff line as specified in and applied pursuant to Annex 1 to the Agreement.

Article 7
Amendment of Paragraph 8 of Annex 1 to the Agreement

Paragraph 8 of Annex 1 to the Agreement shall be amended and replaced by a new paragraph 8 as set out below:

"8. Each Party shall specify in the Consolidated Appendix to Annexes 1 and 2 its tariff lines placed in the Normal Track along with the tariff elimination schedule for each tariff line in accordance with paragraph 5."

Article 8
Amendment of Paragraph 8 of Annex 2 to the Agreement

Paragraph 8 of Annex 2 to the Agreement shall be amended and replaced by a new paragraph 8 as set out below:

"8. Each Party shall specify in the Consolidated

[2] The right to apply reciprocal arrangement shall be waived permanently between Korea and Brunei, Korea and Laos, Korea and Malaysia, Korea and Myanmar, Korea and Singapore, and Korea and Viet Nam on a bilateral basis from the date this Protocol takes effect for Korea and the relevant Party. Between Korea and Cambodia, Korea and Indonesia, Korea and the Philippines, and Korea and Thailand, the number of tariff lines subject to reciprocal arrangement as of 1 January 2014 shall not be increased.

Appendix to Annexes 1 and 2 its tariff lines placed in the Sensitive Track along with the tariff reduction schedule for each tariff line in accordance with this Annex."

Article 9
Amendment to Delete Appendices 1 and 2 to Annex 2 and Insert a New Consolidated Appendix to Annexes 1 and 2 to the Agreement

The Agreement shall be amended by deleting Appendices 1 and 2 to Annex 2, and inserting a new Consolidated Appendix to Annexes 1 and 2 as set out below:

"**Consolidated Appendix to Annexes 1 and 2**
Tariff Reduction and/or Elimination Schedule

1. Brunei Darussalam
2. Cambodia
3. Indonesia
4. Korea
5. Laos
6. Malaysia
7. Myanmar
8. Philippines
9. Singapore
10. Thailand
11. Viet Nam"

Article 10
Entry into Force

1. This Protocol shall form an integral part of the Agreement. It shall enter into force on 1 January 2016, provided that Korea and at least one ASEAN Member Country have by then notified all the other Parties in writing of the completion of their internal procedures necessary for the entry into force of this Protocol. In the event that this Protocol does not enter into force on 1 January 2016, it shall enter into force on the

first day of the second month following the latter date on which Korea and at least one ASEAN Member Country have notified all the other Parties in writing of the completion of their internal procedures.

2. Each Party, upon completion of its internal procedures for the entry into force of this Protocol, shall notify all the other Parties in writing.

3. Where a Party is not able to complete its internal procedures for the entry into force of this Protocol by the entry into force date set in paragraph 1, this Protocol shall enter into force in relation to that Party on the date of notification of completion of such internal procedures.

Article 11
Depositary

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

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Third Protocol to Amend the Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Republic of Korea and the Member Countries of the Association of Southeast Asian Nations.

DONE at Kuala Lumpur, Malaysia, this 22nd of November , 2015, in duplicate copies in the English language.



For the Government of
Brunei Darussalam:

LIM JOCK SENG
Second Minister of Foreign
Affairs and Trade

For the Government of the
Republic of Korea:

YOON SANG-JICK
Minister for Trade, Industy,
and Energy

For the Royal Government of
Cambodia:

SUN CHANTHOL
Senior Minister, Minister of
Commerce

For the Government of the
Republic of Indonesia:

THOMAS TRIKASIH LEMBONG
Minister of Trade

For the Government of the Lao
People's Democratic Republic:

KHEMMANI PHOLSENA
Minister of Industry and Commerce

For the Government of Malaysia:

MUSTAPA MOHAMED
Minister of International Trade and Industry

For the Government of the Republic of the Union of Myanmar:

KAN ZAW
Union Minister for National Planning and Economic Development

For the Government of the Republic of the Philippines:

GREGORY L. DOMINGO
Secretary of Trade and Industry

For the Government of Republic of Singapore:

LIM HNG KIANG
Minister for Trade and Industry

For the Government of the
Kingdom of Thailand:

APIRADI TANTRAPORN
Minister of Commerce

For the Government of the
Socialist Republic of Viet Nam:

VU HUY HOANG
Minister of Industry and Trade