ASEAN TRADE IN GOODS AGREEMENT

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic (Lao PDR), Malaysia, 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 collectively referred to as "Member States" or singularly as "Member State"):

RECALLING the Leaders' decision to establish the ASEAN Community, comprising three pillars, namely the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC) and the ASEAN Socio-Cultural Community (ASCC), made in the Declaration of ASEAN Concord II signed on 7 October 2003 in Bali, Indonesia, and in the ASEAN Charter signed on 20 November 2007 in Singapore;

DETERMINED to realise the goals of establishing ASEAN as a single market and production base characterised by free flow of goods, services, investment, skilled labour and freer flow of capital envisaged in the ASEAN Charter and the Declaration on the ASEAN Economic Community Blueprint signed by the Leaders on 20 November 2007 in Singapore;

RECOGNISING the significant achievements and contribution of the existing ASEAN economic agreements and instruments in various areas in facilitating free flow of goods in the region, including the Agreement on ASEAN Preferential Trading Arrangements (1977), the Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area (1992), the ASEAN Agreement on Customs (1997), the ASEAN Framework Agreement on Mutual Recognition Arrangements (1998), the e-ASEAN Framework Agreement (2000), the Protocol Governing the Implementation of the ASEAN Harmonised Tariff Nomenclature (2003), the ASEAN Framework Agreement for the Integration of Priority Sectors (2004), the Agreement to Establish and Implement the ASEAN Single Window (2005);

DESIRING to move forward by developing a comprehensive ASEAN Trade in Goods Agreement which is built upon the commitments under the existing ASEAN economic agreements to provide a legal framework to realise free flow of goods in the region;

CONFIDENT that a comprehensive ASEAN Trade in Goods Agreement would minimise barriers and deepen economic linkages among Member States, lower business costs, increase trade, investment and economic efficiency, create a larger market with greater opportunities and larger economies of scale for the businesses of Member States and create and maintain a competitive investment area;

RECOGNISING the different stages of economic development between and among Member States and the need to address the development gaps and facilitate increasing participation of the Member States, especially Cambodia, Lao PDR, Myanmar and Viet Nam, in the AEC through the provision of flexibility and technical and development co-operation;

RECOGNISING FURTHER the provisions of the ministerial declarations of the World Trade Organization on measures in favour of least-developed countries;

ACKNOWLEDGING the important role and contribution of the business sector in enhancing trade and investment among Member States and the need to further promote and facilitate their participation through the various ASEAN business associations in the realisation of the ASEAN Economic Community; and

RECOGNISING the role of regional trade arrangements as a catalyst in accelerating regional and global trade liberalisation and trade facilitation and as building blocks in the framework of the multilateral trading system;

HAVE AGREED AS FOLLOWS:

CHAPTER 1
GENERAL PROVISIONS

Article 1
Objective

The objective of this Agreement is to achieve free flow of goods in ASEAN as one of the principal means to establish a single market and production base for the deeper economic integration of the region towards the realisation of the AEC by 2015.

Article 2
General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

(a) **ASEAN** means the Association of Southeast Asian Nations, which comprises Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, Lao PDR, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam;

(b) **customs authorities** means the competent authorities that are responsible under the law of a Member State for the administration of customs laws;

(c) **customs duties** means any customs or import duty and a charge of any kind imposed in connection with the importation of a good, but does not include any:

(i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of GATT 1994, in respect of the like domestic goods or in respect of goods from which the imported goods have been manufactured or produced in whole or in part;

(ii) anti-dumping or countervailing duty applied consistent with the provisions of Article VI of GATT 1994, the Agreement on Implementation of Article VI of GATT 1994, and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement; or

(iii) fee or any charge commensurate with the cost of services rendered.

(d) **customs laws** means such laws and regulations administered and enforced by the customs authorities of each Member State concerning the importation, exportation, transit, transhipment, and storage of goods as they relate to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Member State;

(e) **customs value of goods** means the value of goods for the purposes of levying ad valorem customs duties on imported goods;

(f) **days** means calendar days, including weekends and holidays;

(g) **foreign exchange restrictions** means measures taken by Member States in the form of restrictions and other administrative procedures in foreign exchange which have the effect of restricting trade;

(h) **GATT 1994** means the General Agreement on Tariffs and Trade 1994, including its Notes and Supplementary Provisions, contained in Annex 1A to the WTO Agreement;

(i) **Harmonized System** or **HS** means the Harmonized Commodity Description and Coding System set out in the Annex to the *International Convention on the Harmonized Commodity Description and Coding System,* including any amendments adopted and implemented by the Member States in their respective laws;

(j) **MFN** means Most-Favoured-Nation treatment in the WTO;

(k) **non-tariff barriers** means measures other than tariffs which effectively prohibit or restrict imports or exports of goods within Member States;

(l) **originating goods** means goods that qualify as originating in a Member State in accordance with the provisions of Chapter 3;

(m) **preferential tariff treatment** means tariff concessions granted to originating goods as reflected by the tariff rates applicable under this Agreement;

(n) **quantitative restrictions** means measures intended to prohibit or restrict quantity of trade with other Member States, whether made effective through quotas, licences or other measures with equivalent effect, including administrative measures and requirements which restrict trade;

(o) **this Agreement** or **ATIGA** means the ASEAN Trade in Goods Agreement;

(p) **WTO** means the World Trade Organization; and

(q) **WTO Agreement** means the Marrakesh Agreement Establishing the World Trade Organization, done on 15 April 1994 and the other agreements negotiated thereunder.

2. In this Agreement, all words in the singular shall include the plural and all words in the plural shall include the singular, unless otherwise indicated in the context.

Article 3
Classification of Goods

For the purposes of this Agreement, the classification of goods in trade between and among Member States shall be in accordance with the ASEAN Harmonised Tariff Nomenclature (AHTN) as set out in the Protocol Governing the Implementation of the ASEAN Harmonised Tariff Nomenclature signed on 7 August 2003 and any amendments thereto.

Article 4
Product Coverage

This Agreement shall apply to all products under the ASEAN Harmonised Tariff Nomenclature (AHTN).

Article 5
Most Favoured Nation Treatment

With respect to import duties, after this Agreement enters into force, if a Member State enters into any agreement with a non-Member State where commitments are more favourable than that accorded under this Agreement, the other Member States have the right to request for negotiations with that Member State to request for the incorporation herein of treatment no less favourable than that provided under the aforesaid agreement. The decision to extend such tariff preference will be on a unilateral basis. The extension of such tariff preference shall be accorded to all Member States.

Article 6

National Treatment on Internal Taxation and Regulation

Each Member State shall accord national treatment to the goods of the other Member States in accordance with Article III of GATT 1994. To this end, Article III of GATT 1994 is incorporated into and shall form part of this Agreement, *mutatis mutandis*.

Article 7
Fees and Charges Connected with Importation and Exportation

1. Each Member State shall ensure, in accordance with Article VIII.1 of GATT 1994, that all fees and charges of whatever character (other than import or export duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III.2 of GATT 1994, and anti-dumping and countervailing duties) imposed on or in connection with import or export are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation on imports or exports for fiscal purposes.
2. Each Member State shall promptly publish details of the fees and charges that it imposes in connection with importation or exportation, and shall make such information available on the internet.

Article 8
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 among Member States where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Member State of measures:

(a) necessary to protect public morals;

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

(c) relating to the importations or exportations of gold or silver;

(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII of GATT

1994, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;

(e) relating to the products of prison labour;

(f) imposed for the protection of national treasures of artistic, historic or archaeological value;

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

(h) undertaken in pursuance of the obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the WTO and not disapproved by it or which is itself so submitted and not so disapproved;

(i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan, provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination; and

(j) essential to the acquisition or distribution of products in general or local short supply, provided that any such measures shall be consistent with the principle that all Member States are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

Article 9
Security Exceptions

Nothing in this Agreement shall be construed:

(a) to require any Member State to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Member State from taking any action which it considers necessary for the protection of its essential security interests:

(i) relating to fissionable materials or the materials from which they are derived;

(ii) 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) taken so as to protect critical public infrastructure, including communications, power and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructure;

(iv) taken in time of domestic emergency, or war or other emergency in international relations; or

(c) to prevent any Member State from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 10
Measures to Safeguard the Balance-of-Payments

Nothing in this Agreement shall be construed to prevent a Member State from taking any measure for balance-of-payments purposes. A Member State taking such measure shall do so in accordance with the conditions established under Article XII of GATT 1994 and *the Understanding on Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement.

Article 11
Notification Procedures

1. Unless otherwise provided in this Agreement, Member States shall notify any action or measure that they intend to take:

(a) which may nullify or impair any benefit to other Member States, directly or indirectly under this Agreement; or

(b) when the action or measure may impede the attainment of any objective of this Agreement.

2. Without affecting the generality of the obligations of Member States under paragraph 1 of this Article, the notification procedures shall apply, but need not be limited, to changes in the measures as listed in Annex 1 and amendments thereto.

3. A Member State shall make a notification to Senior Economic Officials Meeting (SEOM) and the ASEAN Secretariat before effecting such action or measure referred to in paragraph 1 of this Article. Unless otherwise provided in this Agreement, notification shall be made at least sixty (60) days before such an action or measure is to take effect. A Member State proposing to apply an action or measure shall provide adequate opportunity for prior discussion with those Member States having an interest in the action or measure concerned.

4. The notification of the intended action or measure submitted by a Member State shall include:

(a) a description of the action or measure to be taken;

(b) the reasons for undertaking the action or measure; and

(c) the intended date of implementation and the duration of the action or measure.

5. The contents of the notification and all information relating to it shall be treated with confidentiality.

6. The ASEAN Secretariat shall act as the central registry of notifications, including written comments and results of discussions. The Member State concerned shall furnish the ASEAN Secretariat with a copy of the comments received. The ASEAN Secretariat shall draw the attention of individual Member States to notification requirements, such as those stipulated in paragraph 4 of this Article, which remain

incomplete. The ASEAN Secretariat shall make available information regarding individual notifications on request to any Member State.

7. The Member State concerned shall, without discrimination, allow adequate opportunities for other Member States to present their comments in writing and discuss these comments upon request. Discussions entered into by the Member State concerned with other Member States shall be for the purpose of seeking further clarification about the action or measure. The Member State may give due consideration to these written comments and the discussion in the implementation of the action or measure.

8. Other Member States shall present their comments within fifteen (15) days of the notification. Failure of a Member State to provide comments within the stipulated time shall not affect its right to seek recourse under Article 88.

Article 12
Publication and Administration of Trade Regulations

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

2. To the extent possible, each Member State shall make laws, regulations, decisions and rulings of the kind referred to in Article X of GATT 1994 available on the internet.

Article 13
ASEAN Trade Repository

1. An ASEAN Trade Repository containing trade and customs laws and procedures of all Member States shall be established and made accessible to the public through the internet.

2. The ASEAN Trade Repository shall contain trade related information such as (i) tariff nomenclature; (ii) MFN tariffs, preferential tariffs offered under this Agreement and other Agreements of ASEAN with its Dialogue Partners; (iii) Rules of Origin; (iv) non-tariff measures; (v) national trade and customs laws and rules; (vi) procedures and documentary requirements; (vii) administrative rulings; (viii) best practices in trade facilitation applied by each Member State; and (ix) list of authorised traders of Member States.

3. The ASEAN Secretariat shall maintain and update the ASEAN Trade Repository based on the notifications submitted by Member States as set out in Article 11.

Article 14
Confidentiality

1. Nothing in this Agreement shall require a Member State to provide confidential information, the disclosure of which would impede law enforcement of the Member State, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of any particular enterprise, public or private.

2. Nothing in this Agreement shall be construed to require a Member State to provide information relating to the affairs and accounts of customers of financial institutions.

3. Each Member State shall, in accordance with its laws and regulations, maintain the confidentiality of information provided as confidential by another Member State pursuant to this Agreement.

4. Notwithstanding the above, paragraphs 1, 2 and 3 of this Article shall not apply to Chapter 6.

Article 15
Communications

All official communications and documentation exchanged among the Member States relating to the implementation of this Agreement shall be in writing and in the English language.

Article 16
Participation Enhancement of Member States

Enhancing participation of Member States shall be facilitated through a negotiated pre-agreed flexibility on provisions under this Agreement. Such pre-agreed flexibility shall be captured in the respective provisions hereunder.

Article 17
Capacity Building

Capacity building shall be provided through effective implementation of programmes to strengthen individual Member States' domestic capacity, efficiency and competitiveness, such as the Work Programme under the Initiative for ASEAN Integration (IAI) and other capacity building initiatives.

Article 18
Regional and Local Government and Non-Governmental Bodies

1. Each Member State shall take such reasonable measures as may be available to it to ensure observance of provisions of this Agreement by the regional and local government and authorities within its territories.

2. In fulfilling its obligations and commitments under this Agreement, each Member State shall endeavour to ensure their observance by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities within its territory.

CHAPTER 2
TARIFF LIBERALISATION

Article 19
Reduction or Elimination of Import Duties

1. Except as otherwise provided in this Agreement, Member States shall eliminate import duties on all products traded between the Member States by 2010 for ASEAN-6[1] and by 2015, with flexibility to 2018, for CLMV[2].

2. Each Member State shall reduce and/or eliminate import duties on originating goods of the other Member States in accordance with the following modalities:

(a) Import duties on the products listed in Schedule **A** of each Member State's tariff liberalisation schedule shall be eliminated by 2010 for ASEAN-6 and 2015 for CLMV, in accordance with the schedule set out therein. Schedule A of each Member State shall ensure the following conditions are met:

(i) For ASEAN-6, by 1 January 2009:

- Import duties of at least eighty percent (80%)

[1] "ASEAN-6" refers to Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand.

[2] "CLMV" refers to Cambodia, Lao PDR, Myanmar and Viet Nam.

tariff lines are eliminated;

- Import duties on all Information and Communications Technology (ICT) products, as defined in the e-ASEAN Framework Agreement, are eliminated;

- Import duties on all Priority Integration Sectors (PIS) products are at zero percent (0%), except those listed in the accompanying negative lists to the Protocols of the ASEAN Framework Agreement for the Integration of Priority Sectors and any amendments thereto; and

- Import duties on all products are equal to or less than five percent (5%);

(ii) For Lao PDR, Myanmar and Viet Nam, import duties on all products are equal to or less than five percent (5%) by 1 January 2009;

(iii) For Cambodia, import duties of at least eighty percent (80%) tariff lines are equal to or less than five percent (5%) by 1 January 2009; and

(iv) Import duties on some products of CLMV, not exceeding seven percent (7%) of tariff lines, shall be eliminated by 2018. The list of the products and schedule of import duties reduction of these products shall be identified by CLMV no later than 1 January 2014;

(b) Import duties on ICT products listed in Schedule **B** of each CLMV Member State shall be eliminated in three (3) tranches by 2008, 2009 and 2010 in accordance with the schedule set out therein;

(c) Import duties on PIS products listed in Schedule **C** of each CLMV Member State shall be eliminated by 2012 in accordance with the schedule set out therein;

(d) Import duties on unprocessed agricultural products listed in Schedule **D** of each Member State on its own accord shall be reduced or eliminated to zero to five percent (0-5%) by 2010 for ASEAN-6; 2013 for Viet Nam; 2015 for

Lao PDR and Myanmar; and 2017 for Cambodia, in accordance with the schedule set out therein. Notwithstanding this, import duties on sugar products of Viet Nam shall be reduced to zero to five percent (0-5%) by 2010;

(e) Unprocessed agricultural products placed in Schedule **E** of each Member State on its own accord shall have their respective applied MFN import duties reduced in accordance with the schedule set out therein;

(f) The products listed in Schedule **F** of Thailand and Viet Nam, respectively, shall have their out-quota tariff rates reduced in accordance with the tariff reduction schedules corresponding to their respective product classification;

(g) Import duties on petroleum products listed in Schedule **G** of Cambodia and Viet Nam, respectively, shall be reduced in accordance with the schedule as mutually agreed by all Member States and set out therein;

(h) The products placed in Schedule **H** of each Member State shall not be subject to import duties reduction or elimination for the reasons as provided in Article 8;

(i) Reduction and elimination of import duties shall be implemented on 1 January of each year; and

(j) The base rates from which import duties are to be reduced or eliminated shall be the Common Effective Preferential Tariffs (CEPT) rates at the time of entry into force of this Agreement.

3. Except as otherwise provided in this Agreement, no Member State shall nullify or impair any tariff concessions applied in accordance with the tariff schedules in Annex 2 referred to in paragraph 5 of this Article.

4. Except as otherwise provided in this Agreement, no Member State may increase an existing duty specified in the schedules made pursuant to the provisions of paragraph 2 of this Article on imports of an originating good.

5. Except as provided in paragraph 2(a)(iv) of this Article, the detailed tariff schedules to implement the modalities of reduction and/or elimination of import duties set out in paragraph 2 of this Article shall be finalised before the entry into force of this Agreement for ASEAN-6

and six (6) months after the entry into force of this Agreement for CLMV, and form an integral part of this Agreement as Annex 2.

Article 20
Elimination of Tariff Rate Quotas

1. Unless otherwise provided in this Agreement, each Member State undertakes not to introduce Tariff Rate Quotas (TRQs) on the importation of any goods originating in other Member States or on the exportation of any goods destined for the territory of the other Member States.

2. Viet Nam and Thailand shall eliminate the existing TRQs as follows:

   (a) Thailand shall eliminate in three (3) tranches by 1 January 2008, 2009 and 2010;

   (b) Viet Nam shall eliminate in three (3) tranches by 1 January 2013, 2014 and 2015, with flexibility up to 2018.

Article 21
Issuance of Legal Enactments

1. (a) Each Member State shall, no later than ninety (90) days for ASEAN-6 and six (6) months for CLMV after the entry into force of this Agreement, issue a legal enactment in accordance with its laws and regulations to give effect to the implementation of the tariff liberalisation schedules committed under Article 19.

   (b) The legal enactments issued pursuant to paragraph 1(a) of this Article shall have retroactive implementation with effect from 1 January of the year of the entry into force of this Agreement.

   (c) In the case where a single legal enactment could not be issued, the legal enactments to give effect to the implementation of tariff reduction or elimination of each year shall be issued at least three (3) months before the date of its effective implementation.

2. Member States may decide to conduct reviews of the products in Schedules **D** and **E** with a view to improving the market access for these products. If a product subject to the review is agreed to be phased out of the said Schedules, it will be placed in Schedule A of the

respective Member State(s) and be subjected to the import duty elimination of that Schedule.

Article 22
Enjoyment of Concessions

1. Products on which tariffs of the exporting Member State have reached or are at the rate of twenty percent (20%) or below, and satisfy the requirements on rules of origin as set out in Chapter 3 shall automatically enjoy the concessions offered by importing Member States as stated in accordance with the provisions of Article 19.

2. Products listed in Schedule **H** shall not be entitled for tariff concessions offered under this Agreement.

Article 23
Temporary Modification or Suspension of Concessions

1. In exceptional circumstances other than those covered under Article 10, Article 24 and Article 86 where a Member State faces unforeseen difficulties in implementing its tariff commitments, that Member State may temporarily modify or suspend a concession contained in its Schedules under Article 19.

2. A Member State which seeks to invoke the provision of paragraph 1 of this Article (hereinafter referred to as the "applicant Member State"), shall notify in writing of such temporary modification or suspension of concessions to the ASEAN Free Trade Area (AFTA) Council at least one hundred and eighty (180) days prior to the date when the temporary modification or suspension of concessions is to take effect.

3. Member States who are interested in engaging in consultations or negotiations with the applicant Member State, pursuant to paragraph 4 of this Article, shall notify all ASEAN Member States of this interest within ninety (90) days following the applicant Member State's notification of the temporary modification or suspension of concessions.

4. After making the notification pursuant to paragraph 2 of this Article, the applicant Member State shall engage in consultations or negotiations with the Member States who have made notification pursuant to paragraph 3 of this Article. In negotiations with Member

States with substantial supplying interest[3], the applicant Member State shall maintain a level of reciprocal and mutually advantageous concessions no less favourable to the trade of all other Member States of substantial supplying interest than that provided in this Agreement prior to such negotiations, which may include compensatory adjustments with respect to other goods. Compensatory adjustment measures in form of tariffs shall be extended to all Member States on a non-discriminatory basis.

5. The AFTA Council shall be notified of the outcome of the consultations or negotiations pursuant to paragraphs 3 and 4 of this Article at least forty five (45) days before the applicant Member State intends to effect the temporary modification or suspension of concessions. The notification shall include the applicant Member State's justifications for needing to adopt such measures and shall provide the Member State's intended schedule pertaining to the modification or suspension of concessions and the time period for which the Member State intends to apply the measures.

6. In the event that no agreement is reached after the consultations or negotiations pursuant to paragraphs 3 and 4 of this Article, the notification to the AFTA Council shall also include the request for the AFTA Council's recommendation.

7. The AFTA Council shall issue its approval or recommendation within thirty (30) days upon receipt of the notification pursuant to paragraph 5 of this Article.

8. In the event that the circumstances giving rise to the request for the temporary modification or suspension of concessions cease to exist, the applicant Member State shall immediately restore the tariff concessions and notify the AFTA Council accordingly. Upon restoration of tariff concessions or termination of the suspension, the applicant Member State shall apply the rate which it would have applied according to the scheduled commitments as if the delay or suspension had not occurred.

9. In the event that there is no approval or recommendation by the AFTA Council pursuant to paragraph 7 of this Article, and the applicant Member State nevertheless proceeds with the temporary modification

[3] A Member State shall be deemed to have "substantial supplying interest" if it has, or because of the tariff concessions, it is to be reasonably expected to have, a significant share of at least twenty percent (20%) of the total import from ASEAN of such products during the past three (3) years in average in the market of the applicant Member State.

or suspension of the concession, Member States with substantial supplying interest shall be free to take action after thirty (30) days, but not later than ninety (90) days after the applicant Member State effects its modification or suspension of concessions, to modify or suspend substantially equivalent concessions from the applicant Member State. The concerned Member States shall immediately notify the AFTA Council of such actions.

Article 24
Special Treatment on Rice and Sugar

The *Protocol to Provide Special Consideration for Rice and Sugar* signed on 23 August 2007 shall form an integral part of this Agreement.

CHAPTER 3
RULES OF ORIGIN

Article 25
Definitions

For the purposes of this Chapter:

(a) **aquaculture** means the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from feedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators;

(b) **Costs, Insurance and Freight (CIF)** means the value of the goods imported, and includes the costs of freight and insurance up to the port or place of entry into the country of importation. The valuation shall be made in accordance with Article VII of GATT 1994 and *the Agreement on the Implementation of Article VII of GATT 1994* as contained in Annex 1A to the WTO Agreement;

(c) **FOB** means the free-on-board value of the goods, inclusive of the costs of transport to the port or site of final shipment abroad. The valuation shall be made in accordance with Article VII of GATT 1994 and the *Agreement on the Implementation of Article VII of GATT 1994* as contained in Annex 1A to the WTO Agreement;

(d) **generally accepted accounting principles (GAAP)** means the recognised consensus or substantial authoritative support in the territory of a Member State, with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

(e) **goods** shall include materials and/or products, which can be wholly obtained or produced, even if they are intended for later use as materials in another production process. For the purposes of this Chapter, the terms “goods” and “products” can be used interchangeably;

(f) **identical and interchangeable materials** means materials being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which after being incorporated into the finished product cannot be distinguished from one another for origin purposes by virtue of any markings, etc.;

(g) **materials** means any matter or substance used or consumed in the production of goods or physically incorporated into another good or are subject to a process in the production of another good;

(h) **originating goods** or **originating material** means goods or material that qualifies as originating in accordance with the provisions of this Chapter;

(i) **packing materials and containers for transportation** means the goods used to protect a good during its transportation, different from those containers or materials used for its retail sale;

(j) **production** means methods of obtaining goods, including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing or assembling goods; and

(k) **product specific rules** means rules that specify that the materials have undergone a change in tariff classification

or a specific manufacturing or processing operation, or satisfy a Regional Value Content criterion or a combination of any of these criteria.

Article 26
Origin Criteria

For the purposes of this Agreement, a good imported into the territory of a Member State from another Member State shall be treated as an originating good if it conforms to the origin requirements under any one of the following conditions:

(a) a good which is wholly obtained or produced in the exporting Member State as set out and defined in Article 27; or

(b) a good not wholly obtained or produced in the exporting Member State, provided that the said goods are eligible under Article 28 or Article 30.

Article 27
Wholly Obtained or Produced Goods

Within the meaning of Article 26(a), the following shall be considered as wholly obtained or produced in the exporting Member State:

(a) Plant and plant products, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown and harvested, picked or gathered in the exporting Member State;

(b) Live animals, including mammals, birds, fish, crustaceans, molluscs, reptiles, bacteria and viruses, born and raised in the exporting Member State;

(c) Goods obtained from live animals in the exporting Member State;

(d) Goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing conducted in the exporting Member State;

(e) Minerals and other naturally occurring substances, not included in paragraphs (a) to (d) of this Article, extracted or taken from its soil, waters, seabed or beneath its seabed;

(f) Products of sea-fishing taken by vessels registered with a Member State and entitled to fly its flag and other products[4] taken from the waters, seabed or beneath the seabed outside the territorial waters[5] of that Member State, provided that that Member State has the rights to exploit such waters, seabed and beneath the seabed in accordance with international law[6];

(g) Products of sea-fishing and other marine products taken from the high seas by vessels registered with a Member State and entitled to fly the flag of that Member State;

(h) Products processed and/or made on board factory ships registered with a Member State and entitled to fly the flag of that Member State, exclusively from products referred to in paragraph (g) of this Article;

(i) Articles collected there which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts of raw materials, or for recycling purposes;

(j) Waste and scrap derived from:

(i) production in the exporting Member State; or
(ii) used goods collected in the exporting Member State, provided that such goods are fit only for the recovery of raw materials; and

(k) Goods obtained or produced in the exporting Member State from products referred to in paragraphs (a) to (j) of this Article.

Article 28
Not Wholly Obtained or Produced Goods

[4] "Other products" refers to minerals and other naturally occurring substances extracted from the waters, seabed or beneath the seabed outside the territorial waters.

[5] For products of sea-fishing obtained from outside the territorial waters (e.g. Exclusive Economic Zone), originating status would be conferred to that Member State with whom the vessels used to obtain such products are registered with and whose flag is flown in the said vessel, and provided that that Member State has the rights to exploit it under international law.

[6] In accordance with international law, registration of vessels could only be made in one Member State.

1. (a) For the purposes of Article 26(b), goods shall be deemed to be originating in the Member State where working or processing of the goods has taken place:

(i) if the goods have a regional value content (hereinafter referred to as "ASEAN Value Content" or the "Regional Value Content (RVC)") of not less than forty percent (40%) calculated using the formula set out in Article 29; or

(ii) if all non-originating materials used in the production of the goods have undergone a change in tariff classification (hereinafter referred to as "CTC") at four-digit level (i.e. a change in tariff heading) of the Harmonized System.

(b) Each Member State shall permit the exporter of the good to decide whether to use paragraph 1(a)(i) or 1(a)(ii) of this Article when determining whether the goods qualify as originating goods of the Member State.

2. (a) Notwithstanding paragraph 1 of this Article, goods listed in Annex 3 shall qualify as originating goods if the goods satisfy the product specific rules set out therein.

(b) Where a product specific rule provides a choice of rules from a RVC-based rule of origin, a CTC-based rule of origin, a specific manufacturing or processing operation, or a combination of any of these, each Member State shall permit the exporter of the goods to decide which rule to use in determining whether the goods qualify as originating goods of the Member State.

(c) Where product specific rules specify a certain RVC, it is required that the RVC of a good is calculated using the formula set out in Article 29.

(d) Where product specific rules requiring that the materials used have undergone CTC or a specific manufacturing or processing operation, the rules shall apply only to non-originating materials.

3. Notwithstanding paragraphs 1 and 2 of this Article, a good which is covered by Attachment A or B of the *Ministerial Declaration on Trade in Information Technology Products* adopted in the Ministerial

Conference of the WTO on 13 December 1996, set out as Annex 4, shall be deemed to be originating in a Member State if it is assembled from materials covered under the same Annex.

Article 29
Calculation of Regional Value Content

1. For the purposes of Article 28, the formula for calculating ASEAN Value Content or RVC is as follows:

(a) Direct Method

$$RVC = \frac{\text{ASEAN Material Cost} + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Other Cost} + \text{Profit}}{\text{FOB Price}} \text{ X } 100\ \%$$

or

(b) Indirect Method

$$RVC = \frac{\text{FOB Price} - \text{Value of Non-Originating Materials, Parts or Goods}}{\text{FOB Price}} \text{ x } 100\ \%$$

2. For the purposes of calculating the RVC provided in paragraph 1 of this Article:

(a) **ASEAN Material Cost** is the CIF value of originating materials, parts or goods that are acquired or self-produced by the producer in the production of the good;

(b) **Value of Non-Originating Materials, Parts or Goods** shall be:

(i) The CIF value at the time of importation of the goods or importation can be proven; or

(ii) The earliest ascertained price paid for the goods of undetermined origin in the territory of the Member State where the working or processing takes place;

(c) **Direct labour cost** shall include wages, remuneration and other employee benefits associated with the manufacturing process;

(d) **The calculation of direct overhead cost** shall include, but is not limited to, real property items associated with the production process (insurance, factory rent and leasing, depreciation on buildings, repair and maintenance, taxes, interests on mortgage); leasing of and interest payments for plant and equipment; factory security; insurance (plant, equipment and materials used in the manufacture of the goods); utilities (energy, electricity, water and other utilities directly attributable to the production of the goods); research, development, design and engineering; dies, moulds, tooling and the depreciation, maintenance and repair of plant and equipment; royalties or licences (in connection with patented machines or processes used in the manufacture of the goods or the right to manufacture the goods); inspection and testing of materials and the goods; storage and handling in the factory; disposal of recyclable wastes; and cost elements in computing the value of raw materials, i.e. port and clearance charges and import duties paid for dutiable component; and

(e) **FOB price** means the free-on-board value of the goods as defined in Article 25. FOB price shall be determined by adding the value of materials, production cost, profit and other costs.

3. Member States shall determine and adhere to only one (1) method of calculating the RVC. Member States shall be given the flexibility to change their calculation method provided that such change is notified to the AFTA Council at least six (6) months prior to the adoption of the new method. Any verification to the ASEAN Value Content calculation by the importing Member State shall be done on the basis of the method used by the exporting Member State.

4. In determining the ASEAN Value Content, Member States shall closely adhere to the guidelines for costing methodologies set out in Annex 5.

5. Locally-procured materials produced by established licensed manufacturers, in compliance with domestic regulations, shall be deemed to have fulfilled the origin requirement of this Agreement; locally-procured materials from other sources shall be subjected to the origin verification pursuant to Article 57 for the purpose of origin determination.

6. The value of goods under this Chapter shall be determined in accordance with the provisions of Article 57.

Article 30
Accumulation

1. Unless otherwise provided in this Agreement, goods originating in a Member State, which are used in another Member State as materials for finished goods eligible for preferential tariff treatment, shall be considered to be originating in the latter Member State where working or processing of the finished goods has taken place.

2. If the RVC of the material is less than forty percent (40%), the qualifying ASEAN Value Content to be cumulated using the RVC criterion shall be in direct proportion to the actual domestic content provided that it is equal to or more than twenty percent (20%). The Implementing Guidelines are set out in Annex 6.

Article 31
Minimal Operations and Processes

1. Operations or processes undertaken, by themselves or in combination with each other for the purposes listed below, are considered to be minimal and shall not be taken into account in determining whether a good has been originating in one Member State:

(a) ensuring preservation of goods in good condition for the purposes of transport or storage;

(b) facilitating shipment or transportation; and

(c) packaging or presenting goods for sale.

2. A good originating in the territory of a Member State shall retain its initial originating status, when exported from another Member State, where operations undertaken have not gone beyond those referred to in paragraph 1 of this Article.

Article 32
Direct Consignment

1. Preferential tariff treatment shall be applied to goods satisfying the requirements of this Chapter and which are consigned directly between the territories of the exporting Member State and the importing Member State.

2. The following shall be considered as consigned directly from the exporting Member State to the importing Member State:

(a) goods transported from an exporting Member State to the importing Member State; or

(b) goods transported through one or more Member States, other than the exporting Member State and the importing Member State, or through a non-Member State, provided that:

(i) the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;

(ii) the goods have not entered into trade or consumption there; and

(iii) the goods have not undergone any operation there other than unloading and reloading or any other operation to preserve them in good condition.

Article 33
De Minimis

1. A good that does not undergo a change in tariff classification shall be considered as originating if the value of all non-originating materials used in its production that do not undergo the required change in tariff classification does not exceed ten percent (10%) of the FOB value of the good and the good meets all other applicable criteria set forth in this Agreement for qualifying as an originating good.

2. The value of non-originating materials referred to in paragraph 1 of this Article shall, however, be included in the value of non-originating materials for any applicable RVC requirement for the good.

Article 34
Treatment of Packages and Packing Materials

1. Packaging and Packing Materials for retail sale:

(a) If a good is subject to the RVC-based rule of origin, the value of the packaging and packing materials for retail sale shall be taken into account in its origin assessment, where the packaging and packing materials for retail sale are considered to be forming a whole with the good.

(b) Where paragraph 1 (a) of this Article is not applicable, the packaging and packing materials for retail sale, when classified together with the packaged good shall not be taken into account in considering whether all non-originating materials used in the manufacture of a product fulfils the criterion corresponding to a change of tariff classification of the said good.

2. The containers and packing materials exclusively used for the transport of a good shall not be taken into account for determining the origin of the said good.

Article 35
Accessories, Spare Parts and Tools

1. If a good is subject to the requirements of CTC or specific manufacturing or processing operation, the origin of accessories, spare parts, tools and instructional or other information materials presented with the good shall not be taken into account in determining whether the good qualifies as an originating good, provided that:

(a) the accessories, spare parts, tools and instructional or other information materials are not invoiced separately from the good; and

(b) the quantities and value of the accessories, spare parts, tools and instructional or other information materials are customary for the good.

2. If a good is subject to the RVC-based rule of origin, the value of the accessories, spare parts, tools and instructional or other

information materials shall be taken into account as the value of the originating or non-originating materials, as the case may be, in calculating the RVC of the originating good.

Article 36
Neutral Elements

In order to determine whether a good originates, it shall not be necessary to determine the origin of the following which might be used in its production and not incorporated into the good:

(a) fuel and energy;

(b) tools, dies and moulds;

(c) spare parts and materials used in the maintenance of equipment and buildings;

(d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;

(e) gloves, glasses, footwear, clothing, safety equipment and supplies;

(f) equipment, devices and supplies used for testing or inspecting the good;

(g) catalyst and solvent; and

(h) any other goods that are not incorporated into the good but of which use in the production of the good can reasonably be demonstrated to be a part of that production.

Article 37
Identical and Interchangeable Materials

1. The determination of whether identical and interchangeable materials are originating materials shall be made either by physical segregation of each of the materials or by the use of generally accepted accounting principles of stock control applicable, or inventory management practice, in the exporting Member States.

2. Once a decision has been taken on the inventory management method, that method shall be used throughout the fiscal year.

Article 38
Certificate of Origin

A claim that a good shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin (Form D), as set out in Annex 7 issued by a Government authority designated by the exporting Member State and notified to the other Member States in accordance with the Operational Certification Procedures, as set out in Annex 8.

Article 39
Sub-Committee on Rules of Origin

1. For the purposes of the effective and uniform implementation of this Chapter, a Sub-Committee on Rules of Origin shall be established pursuant to Article 90.

2. The functions of the Sub-Committee on Rules of Origin shall include:

(a) monitoring of the implementation and operation of this Chapter;

(b) reviewing, as and when necessary, this Chapter to provide appropriate recommendations with the view to enhancing this Chapter to make it responsive to the dynamic changes in the regional and global production processes so as to facilitate trade and investment among Member States, promote a regional production network, encourage the development of Small and Medium Enterprises (SMEs) and narrowing the development gaps;

(c) reviewing, as and when necessary, the operational procedures of this Chapter with the view to simplifying the procedures and making them transparent, predictable and standardised, taking into account the best practices of other regional and international trade agreements;

(d) considering any other matter as Member States may agree related to this Chapter; and

(e) carrying out other functions as may be delegated by the CCA, SEOM and the AFTA Council.

3. The Sub-Committee on Rules of Origin shall be composed of representatives of the Governments of Member States, and may invite representatives of relevant entities other than the Governments of the Member States with necessary expertise relevant to the issues to be discussed, upon agreement of all Member States.

CHAPTER 4
NON-TARIFF MEASURES

Article 40
Application of Non-Tariff Measures

1. Each Member State shall not adopt or maintain any non-tariff measure on the importation of any good of any other Member State or on the exportation of any good destined for the territory of any other Member State, except in accordance with its WTO rights and obligations or in accordance with this Agreement.

2. Each Member State shall ensure the transparency of its non-tariff measures permitted in paragraph 1 of this Article in accordance with Article 12 and shall ensure that any such measures are not prepared, adopted or applied with the view to, or with the effect of, creating unnecessary obstacles in trade among the Member States.

3. Any new measure or modification to the existing measure shall be duly notified in accordance with Article 11.

4. The database on non-tariff measures applied in Member States shall be further developed and included in the ASEAN Trade Repository as referred in Article 13.

Article 41
General Elimination of Quantitative Restrictions

Each Member State undertakes not to adopt or maintain any prohibition or quantitative restriction on the importation of any goods of the other Member States or on the exportation of any goods destined for the territory of the other Member States, except in accordance with its WTO rights and obligations or other provisions in this Agreement. To this end, Article XI of GATT 1994, shall be incorporated into and form part of this Agreement, *mutatis mutandis.*

Article 42
Elimination of Other Non-Tariff Barriers

1. Member States shall review the non-tariff measures in the database referred to in paragraph 4 of Article 40 with a view to identifying non-tariff barriers (NTBs) other than quantitative restrictions for elimination. The elimination of the identified NTBs shall be dealt with by the Co-ordinating Committee for the Implementation of the ATIGA (CCA), the ASEAN Consultative Committee on Standards and Quality (ACCSQ), the ASEAN Committee on Sanitary and Phytosanitary (AC-SPS), the working bodies under ASEAN Directors-General of Customs and other relevant ASEAN bodies, as appropriate, in accordance with the provisions of this Agreement, which shall submit their recommendations on the identified non-tariff barriers to the AFTA Council through SEOM.

2. Unless otherwise agreed by the AFTA Council, the identified NTBs shall be eliminated in three (3) tranches as follows:

(a) Brunei, Indonesia, Malaysia, Singapore and Thailand shall eliminate in three (3) tranches by 1 January of 2008, 2009 and 2010;

(b) The Philippines shall eliminate in three (3) tranches by 1 January of 2010, 2011 and 2012;

(c) Cambodia, Lao PDR, Myanmar and Viet Nam shall eliminate in three (3) tranches by 1 January of 2013, 2014 and 2015 with flexibilities up to 2018.

3. The list of identified NTBs to be eliminated in each tranche shall be agreed upon by the AFTA Council meeting in the year before the effective elimination date of such NTBs.

4. Notwithstanding paragraphs 1 to 3 of this Article, the CCA, in consultation with the relevant ASEAN bodies, shall review any non-tariff measure notified or reported by any other Member State or by the private sector with a view to determining whether the measure constitutes as a NTB. If such review results in an identification of a

NTB, the NTB shall be eliminated by the Member State applying such NTB in accordance with this Agreement.

5. The CCA shall serve as a focal point for the notification and review referred to in paragraph 4 of this Article.

6. Exceptions to this Article shall be allowed for the reasons provided in Article 8.

7. Nothing in this Agreement shall be construed to prevent a Member State, which is a party to the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* or other relevant international agreements, from adopting or enforcing any measure in relation to hazardous wastes or substances based on its laws and regulations, in accordance with such international agreements.

Article 43
Foreign Exchange Restrictions

Member States shall make exceptions to their foreign exchange restrictions relating to payments for the products under this Agreement, as well as repatriation of such payments without prejudice to their rights under Article XVIII of GATT 1994 and relevant provisions of the *Articles of Agreement of the International Monetary Fund (IMF)*.

Article 44
Import Licensing Procedures

1. Each Member State shall ensure that all automatic and non-automatic import licensing procedures are implemented in a transparent and predictable manner, and applied in accordance with the *Agreement on Import Licensing Procedures* as contained in Annex 1A to the WTO Agreement.

2. Promptly after entry into force of this Agreement, each Member State shall notify the other Member States of any existing import licensing procedures. Thereafter, each Member State shall notify the other Member States of any new import licensing procedure and any modification to its existing import licensing procedures, to the extent possible sixty (60) days before it takes effect, but in any case no later than the effective date of the licensing requirement. A notification provided under this Article shall include the information specified in Article 5 of the *Agreement on Import Licensing Procedures* as contained in Annex 1A to the WTO Agreement.

3. Each Member State shall answer within sixty (60) days all reasonable enquiries from another Member State with regard to the criteria employed by its respective licensing authorities in granting or denying import licences. The importing Member State shall also consider publication of such criteria.

4. Elements in non-automatic import licensing procedures that are found to be impeding trade shall be identified, with a view to remove such barriers, and to the extent possible work towards automatic import licensing procedures.

CHAPTER 5
TRADE FACILITATION

Article 45
Work Programme on Trade Facilitation and its Objectives

1. Member States shall develop and implement a comprehensive ASEAN Trade Facilitation Work Programme, which sets out all concrete actions and measures with clear targets and timelines of implementation necessary for creating a consistent, transparent, and predictable environment for international trade transactions that increases trading opportunities and help businesses, including small and medium sized enterprises (SMEs), to save time and reduce costs.

2. The ASEAN Trade Facilitation Work Programme shall set out actions and measures to be implemented at both ASEAN and national levels.

Article 46
Scope of the ASEAN Trade Facilitation Work Programme

The ASEAN Trade Facilitation Work Programme referred to in Article 45 shall cover the areas of customs procedures, trade regulations and procedures, standards and conformance, sanitary and phytosanitary measures, ASEAN Single Window and other areas as identified by the AFTA Council.

Article 47
Principles on Trade Facilitation

Member States shall be guided by the following principles in relation to trade facilitation measures and initiatives at both ASEAN and national levels:

(a) Transparency: Information on policies, laws, regulations, administrative rulings, licensing, certification, qualification and registration requirements, technical regulations, standards, guidelines, procedures and practices relating to trade in goods (hereinafter referred to as "rules and procedures relating to trade") to be made available to all interested parties, consistently and in a timely manner at no cost or a reasonable cost;

(b) Communications and Consultations: The authorities shall endeavour to facilitate and promote effective mechanisms for exchanges with the business and trading community, including opportunities for consultation when formulating, implementing and reviewing rules and procedures relating to trade;

(c) Simplification, practicability and efficiency: Rules and procedures relating to trade to be simplified to ensure that they are no more burdensome or restrictive than necessary to achieve their legitimate objectives;

(d) Non-discrimination: Rules and procedures relating to trade to be applied in a non-discriminatory manner and be based on market principles;

(e) Consistency and predictability: Rules and procedures relating to trade to be applied in a consistent, predictable and uniform manner so as to minimise uncertainty to the trade and trade related parties. Rules and procedures relating to trade to provide clear and precise procedural guidance to the appropriate authorities with standard policies and operating procedures and be applied in a non-discretionary manner;

(f) Harmonisation, standardisation and recognition: While accepting the need of each Member State to regulate or set rules for legitimate objectives such as protection of health, safety or public morals and conservation of exhaustible natural resources, regulations, rules and

procedures affecting the acceptance of goods between Member States to be harmonised as far as possible on the basis of international standards where appropriate. The development of mutual recognition arrangements for standards and conformity assessment results, and continuing co-operation on technical infrastructure development, are encouraged;

(g) Modernisation and use of new technology: Rules and procedures relating to trade to be reviewed and updated if necessary, taking into account changed circumstances, including new information and new business practices, and based on the adoption, where appropriate, of modern techniques and new technology. Where new technology is used, relevant authorities shall make best efforts to spread the accompanying benefits to all parties through ensuring the openness of the information on the adopted technologies and extending co-operation to authorities of other economies and the private sector in establishing inter-operability and/or inter-connectivity of the technologies;

(h) Due process: Access to adequate legal appeal procedures, adding greater certainty to trade transactions, in accordance with the applicable laws of Member States; and

(i) Co-operation: Member States shall strive to work closely with private sector in the introduction of measures conducive to trade facilitation, including by open channels of communication and co-operation between both governments and business. Member States shall continue to work in partnership to focus on opportunities for increased co-operation including integrated technical assistance and capacity-building; exchanges of best practices critical to implementing trade facilitation initiatives and the co-ordination of positions concerning topics of common interest discussed in the framework of regional and international organisations.

Article 48
Progress Monitoring of Trade Facilitation

1. Member States, individually and collectively, shall undertake assessments once in every two (2) years, on implementation of the trade facilitation measures set out in this Agreement and in the ASEAN

Trade Facilitation Work Programme to ensure effective implementation of trade facilitation measures. For this purpose, an ASEAN Trade Facilitation Framework shall be agreed by Member States within six (6) months after entry into force of this Agreement, to serve as a guideline to further enhance trade facilitation in ASEAN.

2. The ASEAN Work Programme on Trade Facilitation shall be reviewed based on the results of the regular assessment pursuant to paragraph 1 of this Article. The ASEAN Trade Facilitation Work Programme and the ASEAN Trade Facilitation Framework and any revisions thereto shall be administratively annexed to this Agreement and serve as an integral part of this Agreement.

Article 49
Establishment of the ASEAN Single Window

Member States shall undertake necessary measures to establish and operate their respective National Single Windows and the ASEAN Single Window in accordance with the provisions of the *Agreement to Establish and Implement the ASEAN Single Window* and the *Protocol to Establish and Implement the ASEAN Single Window*.

Article 50
Implementation Arrangement

1. The progress in the implementation of the ASEAN Work Programme on Trade Facilitation and the outcomes of its assessment shall be reported to the AFTA Council. The SEOM, assisted by the CCA, shall be the main co-ordinator in monitoring the progress of the implementation of the ASEAN Work Programme on Trade Facilitation, in close co-ordination with the various ASEAN Committees in charge of the implementation of the measures under the Work Programme.

2. Each Member State shall establish a Trade Facilitation Co-ordinating Committee or relevant focal point at the national level.

CHAPTER 6
CUSTOMS

Article 51
Objectives

The objectives of this Chapter are to:

(a) ensure predictability, consistency and transparency in the application of customs laws of Member States;

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

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

(d) promote cooperation among the customs authorities.

Article 52
Definitions

For the purposes of this Chapter:

(a) **Authorised Economic Operator** means a party involved in the international movement of goods in any function that has been approved by the customs authorities as complying with statutory and/or regulatory requirements of Member States, taking into account international supply chain security standards;

(b) **customs control** means measures applied by the customs authorities to ensure compliance with customs laws of Member States;

(c) **customs procedures** means the treatment applied by the customs authorities of each Member State to goods, which are subject to customs laws;

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

(e) **drawback** means the amount of import duties and taxes repaid under the drawback procedure;

(f) **drawback procedure** means customs procedures which, when goods are exported, provide for a repayment (total or partial) to be made in respect of the import duties and taxes charged on the goods, or on materials contained in them or consumed in their production;

(g) **goods declaration** means a statement made in the manner prescribed by the customs authorities, by which the persons concerned indicate the customs procedure to be applied to the goods and furnish the particulars which the customs authorities require for its application;

(h) **repayment** means the refund, in whole or in part, of duties and taxes paid on goods and the remission, in whole or in part, of duties and taxes where payment has not been made;

(i) **security** means that which ensures to the satisfaction of the customs authorities that an obligation to the customs authorities will be fulfilled; and

(j) **temporary admission** means customs procedures under which certain goods can be brought into a customs territory conditionally relieved totally or partially from payment of import duties and taxes; such goods must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

Article 53
Scope

This Chapter applies, in accordance with the Member States' respective laws, regulations and policies, to customs procedures applied to goods traded among Member States.

Article 54
Customs Procedures and Control

1. Each Member State 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 Member States shall, where possible and to the extent permitted by their respective customs law, conform to standards and recommended practices of the World Customs Organisation and other international organisations as relevant to customs.

3. The customs authorities of each Member State shall review its customs procedures with a view to their simplification to facilitate trade.

4. Customs control shall be limited to that which is necessary to ensure compliance with customs laws of Member States.

Article 55
Pre-arrival Documentation

Member States 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 56
Risk Management

Member States shall use risk management to determine control measures with the view to facilitate customs clearance and release of goods.

Article 57
Customs Valuation

1. For the purposes of determining the customs value of goods traded between and among the Member States, provisions of Part I of *Customs Valuation Agreement*, shall apply *mutatis mutandis*[7].

2. Member States shall harmonise, to the extent possible, administrative procedures and practices in the assessment of value of goods for customs purposes.

Article 58
Application of Information Technology

Member States, where applicable, shall apply information technology in customs operations based on internationally accepted standards for expeditious customs clearance and release of goods.

[7] In the case of Cambodia, the Agreement on Customs Valuation, as implemented in accordance with the provision of the protocol on the Accession of the Kingdom of Cambodia to the WTO, shall apply *mutatis mutandis.*

Article 59
Authorised Economic Operators

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

2. Member States shall endeavour to work towards mutual recognition of AEO.

Article 60
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 claims.

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

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

Article 61
Post Clearance Audit

Member States shall establish and operate Post Clearance Audit (PCA) for expeditious customs clearance and enhanced customs control.

Article 62
Advance Rulings

1. Each Member State, through its customs authorities and/or other relevant authorities, shall, to the extent permitted by its respective laws, regulations and administrative determinations, provide in writing advance rulings on the application of a person described in paragraph 2(a) of this Article, in respect of the tariff classification, questions arising from the application of the principles of *Customs Valuation Agreement* and/or origin of goods.

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

(a) provide that an importer in its territory or an exporter or producer in the territory of another Member State may apply for an advance ruling before the importation of 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 an application for an advance ruling;

(c) provide that its customs authorities may, at any time during the course of 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 an advance ruling be issued to the applicant expeditiously, within the period specified in each Member State's respective laws, regulations or administrative determinations.

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

4. Subject to paragraphs 1 and 5 of this Article and where available, each Member State 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 that Member State's respective laws, regulations or administrative determinations.

5. A Member State may modify or revoke an advance ruling upon a determination that the ruling was based on an error of fact or law (including human error), the information provided is false or inaccurate, there is a change in its law consistent with this Agreement, or there is a change in a material fact, or circumstances on which the ruling was based.

6. Where an importer claims that the treatment accorded to an imported good should be governed by an advance ruling, the customs

authorities may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which an advance ruling was based.

Article 63
Temporary Admission

Member States shall facilitate movement of goods under temporary admission to the greatest extent possible.

Article 64
Customs Co-operation

To the extent permitted by their laws, Member States may, as deemed appropriate, assist each other on customs matters.

Article 65
Transparency

1. Member States will facilitate the timely publication, dissemination of statutory and regulatory information, decisions and rulings on customs matters.

2. Each Member State shall publish on the internet and/or in print form all statutory and regulatory provisions and any customs administrative procedures applicable or enforceable by its customs administration, except law enforcement procedures and internal operational guidelines.

Article 66
Enquiry Points

Each Member State shall designate one (1) or more enquiry points to address 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 67
Consultation

The customs authorities of Member States will encourage consultation with each other regarding customs issues that affect goods traded between and among Member States.

Article 68
Confidentiality

1. Nothing in this Chapter shall be construed to require any Member State to furnish or allow access to confidential information pursuant to this Chapter the disclosure of which it considers would:

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

(b) be contrary to any of its laws, 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 competitive position of particular enterprises, public or private.

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

Article 69
Review and Appeal

1. Each Member State shall ensure that any person, in its territory, being aggrieved by any customs decision pertinent to this Agreement have access to administrative review within the customs authorities that issued the decision subject to review or, where applicable, by the higher authority supervising the administration and/or judicial review of the determination taken at the final level of administrative review, in accordance with the Member State's law.

2. The decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

Article 70
Implementation and Institutional Arrangements

The ASEAN Directors-General of Customs, supported by customs working bodies, shall be responsible to implement the provisions of this Chapter and any other provisions relevant to customs in this Agreement.

CHAPTER 7
STANDARDS, TECHNICAL REGULATIONS AND CONFORMITY ASSESSMENT PROCEDURES

Article 71
Objective

The objective of this Chapter is to establish provisions on standards, technical regulations and conformity assessment procedures to ensure that these do not create unnecessary obstacles to trade in establishing ASEAN as a single market and production base, and at the same time ensure that the legitimate objectives of Member States are met.

Article 72
Terms and Definitions

General terms concerning standardisation and conformity assessment used in this Chapter have the meaning given to them in the definitions contained in the appropriate editions of ISO/ IEC Guide 2 and ISO/ IEC 17000 of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) as cited in the *ASEAN Framework Agreement on Mutual Recognition Arrangements* and the relevant ASEAN Sectoral Mutual Recognition Arrangements.

Article 73
General Provisions

1. Member States reaffirm and are committed to abide by the rights and obligations under *the Agreement on Technical Barriers to Trade* contained in Annex 1A to the WTO Agreement.

2. Member States shall take any of the following possible measures or their combinations to mitigate, if not totally eliminate, unnecessary technical barriers to trade:

(a) harmonise national standards with relevant international standards and practices;

(b) promote mutual recognition of conformity assessment results among Member States;

(c) develop and implement ASEAN Sectoral Mutual Recognition Arrangements and develop ASEAN Harmonised Regulatory Regimes in the regulated areas where applicable; and

(d) encourage the co-operation among National Accreditation Bodies and National Metrology Institutes (NMIs) including relevant legal metrology authorities in ASEAN to facilitate the implementation of Mutual Recognition Arrangements (MRAs) in regulated and non-regulated sectors.

3. To facilitate the free movement of goods within ASEAN, Member States shall develop and implement a Marking Scheme, where appropriate, for products covered under the ASEAN Harmonised Regulatory Regimes or Directives.

Article 74
Standards

1. Each Member State undertakes that its national standards authorities accept and follow the *Code of Good Practice for the Preparation, Adoption and Application of Standards* as provided for in Annex 3 of *the Agreement on Technical Barriers to Trade* as contained in Annex 1A to the WTO Agreement.

2. In harmonising national standards, Member States shall, as the first and preferred option, adopt the relevant international standards when preparing new national standards or revising existing standards. Where international standards are not available, national standards shall be aligned among Member States.

3. Member States are encouraged to actively participate in the development of international standards, particularly in those sectors that have trade potential for ASEAN.

4. Harmonisation of the existing national standards and adoption of

international standards into new national standards should be based on "*Adoption of International Standards as Regional or National Standards*", as contained in the ISO/IEC Guide 21 or its latest edition.

5. Whenever modifications of contents and structure of the relevant international standards are necessary, Member States shall ensure an easy comparison of the contents and structure of their national standards with the referenced international standards and provide information to explain the reason(s) for such modifications.

6. Member States shall ensure that:

(a) the modifications of contents of international standards are not prepared and adopted with a view to, or with the effect of, creating unnecessary technical barriers to trade; and

(b) the modifications of contents shall not be more restrictive than necessary.

Article 75
Technical Regulations

1. In adopting technical regulations, Member States shall ensure that:

(a) these are not adopted with a view, to or with the effect of, creating technical barriers to trade;

(b) these are based on international or national standards that are harmonised to international standards, except where legitimate reasons for deviations exist;

(c) alternative means that are least trade restrictive to achieve the desired objectives are considered before a decision is taken on the adoption of technical regulations;

(d) the adoption of prescriptive standards is avoided to ensure that unnecessary obstacles to trade are not introduced, to enhance fair competition in the market or that it does not lead to a reduction of business flexibility; and

(e) treatment accorded to products imported from Member States is no less favourable than that accorded to like products of national origin and to like products originating

from any other Member State.

2. Member States shall ensure that only those parts of a standard that represent minimum requirements to fulfil the desired objectives are referred to in the technical regulations.

3. Member States shall also ensure that, wherever applicable, the preparation, adoption and application of technical regulations are to facilitate the implementation of the respective ASEAN Sectoral Mutual Recognition Arrangements.

4. Whenever the need for technical regulations is urgent for overcoming problems that arise or threaten to arise within the territory of a Member State and the available time does not allow such Member State to harmonise the relevant national standards, that Member State shall consider using the appropriate international standards or the relevant parts of them as the first alternative.

5. Member States shall comply with the notification procedures as stipulated in Article 11. However, in the case of technical regulations under this Article, other Member States shall present their comments, if any, within sixty (60) days of the notification. Member States shall, upon request, provide to other Member States the draft of the technical regulation and other information regarding the deviations from the relevant international standards and the applicable pre-market conformity assessment procedure.

6. Except in urgent circumstances, Member States shall allow at least six (6) months between the publication of technical regulations and their entry into force in order to provide sufficient time for producers in exporting Member States to adapt their products or methods of production to the requirements of importing Member States.

Article 76
Conformity Assessment Procedures

1. Member States shall ensure that conformity assessment procedures are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary technical barriers to trade and that conformity assessment procedures that have to be complied with by suppliers of products originating in the territories of other Member States are not more stringent than those accorded to suppliers of like products of national origin.

2. Member States shall adopt conformity assessment procedures

that are consistent with international standards and practices and wherever such procedures cannot be achieved because of differences in legitimate objectives, the differences of conformity assessment procedures shall be minimised as far as possible.

3. Member States shall develop and implement ASEAN Sectoral Mutual Recognition Arrangement in the regulated areas, where appropriate, in accordance with the provisions of *the ASEAN Framework Agreement on Mutual Recognition Arrangements.*

4. Member States shall accept the results of conformity assessment produced by conformity assessment bodies designated by other Member States in accordance with the provisions of *the ASEAN Framework Agreement on Mutual Recognition Arrangements* and the provisions of the respective ASEAN Sectoral Mutual Recognition Arrangements in all regulated areas.

5. Member States shall establish co-operation among National Accreditation Bodies and National Metrology Institutes (NMIs), including legal metrology in ASEAN to facilitate the implementation of MRAs in regulated and non-regulated sectors.

Article 77
Post Market Surveillance

1. Member States shall establish post market surveillance systems to complement the implementation of the ASEAN Sectoral Mutual Recognition Arrangements and ASEAN Harmonised Regulatory Regimes and/or Directives.

2. The relevant authority that undertakes the post market surveillance system of the Member States shall take the necessary actions to ensure compliance of products placed in the market with the applicable ASEAN Sectoral Mutual Recognition Arrangements and ASEAN Harmonised Regulatory Regimes and/or Directives.

3. Member States should ensure that the necessary laws and technical infrastructure are in place to support post market surveillance systems.

4. The effectiveness of the post market surveillance systems shall be further enhanced through the establishment of Alert Systems among Member States.

Article 78
Implementation

1. Member States shall take all necessary measures to ensure implementation of all the ASEAN Sectoral Mutual Recognition Arrangements, ASEAN Harmonised Regulatory Regimes and the relevant provisions of this Agreement within the time frame stipulated in the aforesaid agreements and to ensure compliance with aforesaid harmonised requirements.

2. The following instruments, and any future instruments agreed by Member States to implement the provisions of this Agreement, shall form an integral part of this Agreement:

(a) *ASEAN Framework Agreement on Mutual Recognition Arrangements*;

(b) *ASEAN Sectoral Mutual Recognition Arrangement for Electrical and Electronic Equipment*;

(c) *Agreement on the ASEAN Harmonized Electrical and Electronic Equipment (EEE) Regulatory Regime*; and

(d) *Agreement on the ASEAN Harmonized Cosmetic Regulatory Scheme*.

3. The ASEAN Consultative Committee for Standards and Quality (ACCSQ) shall be responsible for:

a) identifying and initiating sectoral MRAs;

b) monitoring the effective implementation of the relevant provisions of this Agreement in respect of standards, technical regulations and conformity assessment procedures;

c) providing support to the respective Joint Sectoral Committees when required; and

d) collaborating with the ASEAN Secretariat to provide regular feedback on the implementation of this Agreement.

4. The ACCSQ shall provide support and co-operation under the relevant ASEAN Free Trade Agreements (FTAs) with Dialogue Partners, including capacity building and institutional strengthening

programmes for Standards, Technical Regulations and Conformity Assessment Procedures Chapters in such ASEAN FTAs.

5. The ACCSQ shall take the necessary actions to ensure effective implementation of the ASEAN Sectoral Mutual Recognition Arrangements and ASEAN Harmonised Regulatory Regimes.

CHAPTER 8
SANITARY AND PHYTOSANITARY MEASURES

Article 79
Objectives

The objectives of this Chapter are to:

(a) facilitate trade between and among Member States while protecting human, animal or plant life or health in each Member State;

(b) provide a framework and guidelines on requirements in the application of sanitary and phytosanitary measures among Member States, particularly to achieve commitments set forth in the ASEAN Economic Community Blueprint;

(c) strengthen co-operation among Member States in protecting human, animal or plant life or health; and

(d) facilitate and strengthen implementation of this Chapter in accordance with the principles and disciplines in the *Agreement on the Application of Sanitary and Phytosanitary Measures* contained in Annex 1A to the WTO Agreement and this Agreement.

Article 80
Definitions

For the purposes of this Chapter:

(a) **international standards, guidelines and recommendations** shall have the same meaning as in Annex A of paragraph 3 to the *SPS Agreement*;

(b) **sanitary or phytosanitary measures** shall have the same meaning as in Annex A of paragraph 1 to the *SPS Agreement*; and

(c) ***SPS Agreement*** means the *Agreement on the Application of Sanitary and Phytosanitary Measures* contained in Annex 1A to the WTO Agreement.

Article 81
General Provisions and Obligations

1. The provisions of this Chapter apply to all sanitary and phytosanitary measures of a Member State that may, directly or indirectly, affect trade between and among Member States.

2. Member States affirm their rights and obligations with respect to each other under the *SPS Agreement*.

3. Each Member State commits to apply the principles of the *SPS Agreement* in the development, application or recognition of any sanitary or phytosanitary measures with the intent to facilitate trade between and among Member States while protecting human, animal or plant life or health in each Member State.

4. In the implementation of their sanitary or phytosanitary measures, Member States agree to be guided, where applicable, by relevant international standards, guidelines and recommendations developed by international organisations such as, the Codex Alimentarius Commission (Codex), the World Organisation for Animal Health (OIE), the International Plant Protection Convention (IPPC) and ASEAN.

5. Member States hereby agree that the laws, regulations, and procedures for application of SPS measures in their respective territories shall be listed in Annex 9, which form an integral part of this Agreement. Member States hereby agree to ensure that their respective national sanitary and phytosanitary laws, regulations and procedures as listed in Annex 9 are readily available and accessible to any interested Member States.

6. Any change to national sanitary and phytosanitary laws, regulations and procedures shall be subject to Article 11.

Article 82
Implementation and Institutional Arrangements

1. For effective implementation of this Chapter, an ASEAN Committee on Sanitary and Phytosanitary Measures (AC-SPS) shall be established to conduct committee meetings at least once a year among Member States.

2. The functions of the AC-SPS shall be to:

(a) facilitate exchange of information on such matters as occurrences of sanitary or phytosanitary incidents in the Member States and non-Member States, and change or introduction of sanitary and phytosanitary-related regulations and standards of the Member States , which may, directly or indirectly, affect trade between and among Member States;

(b) facilitate co-operation in the area of sanitary or phytosanitary measures including capacity building, technical assistance and exchange of experts, subject to the availability of appropriated funds and the applicable laws and regulations of each Member State;

(c) endeavour to resolve sanitary and phytosanitary matters with a view to facilitate trade between and among Member States. The AC-SPS may establish *ad hoc* task force to undertake science-based consultations to identify and address specific issues that may arise from the application of sanitary or phytosanitary measures; and

(d) submit regular reports of developments and recommendations in the implementation of this Chapter to the AFTA Council, through SEOM for further action.

3. Each Member State shall establish a contact point for effective communication and co-operation. The list of respective designated contact points appears in Annex 10.

4. Each Member State shall ensure the information in Annex 10 is updated.

Article 83
Notification under Emergency Situation

1. Each Member State acknowledges the value of exchanging information, particularly in an emergency situation on food safety crisis, interception, control of pests and/or disease outbreaks and its sanitary or phytosanitary measures.

2. Member States shall immediately notify all contact points and the ASEAN Secretariat should the following situations occur:

(a) in case of food safety crisis, pest or disease outbreaks; and

(b) provisional sanitary or phytosanitary measures against or affecting the exports of the other Member States are considered necessary to protect the human, animal or plant life or health of the importing Member State.

3. The exporting Member State should, to the extent possible, endeavour to provide information to the importing Member State if the exporting Member State identifies that an export consignment which may be associated with a significant sanitary or phytosanitary risk has been exported.

Article 84
Equivalence

1. Each Member State shall initiate and further strengthen co-operation on equivalence in accordance with the *SPS Agreement* and relevant international standards, guidelines and recommendations, in order to facilitate trade between and among the Member States.

2. To facilitate trade, Member States may develop equivalence arrangements and recommend equivalence decisions, in particular in accordance with Article 4 of the *SPS Agreement* and with the guidance provided by the relevant international and regional standard setting bodies namely Codex, OIE, IPPC and ASEAN and by the Committee on Sanitary and Phytosanitary Measures established in accordance with Article 12 of the *SPS Agreement*.

3. Each Member State shall, upon request, enter into consultations with the aim of achieving bilateral and/or regional recognition arrangements of the equivalence of specified sanitary or phytosanitary measures.

Article 85
Co-operation

1. Each Member State shall explore opportunities for further co-operation, technical assistance, collaboration and information exchange with other Member States on sanitary and phytosanitary matters of mutual interest consistent with the objectives of this Chapter and the commitments set forth in the ASEAN Economic Community Blueprint.

2. Member States shall further strengthen co-operation for the control and eradication of pests and disease outbreaks, and other emergency cases related to sanitary or phytosanitary measures as well as to assist other Member States to comply with SPS requirements**.**

3. In implementing the provisions of paragraph 1 of this Article, Member States shall co-ordinate their undertakings with the activities conducted in the regional and multilateral context, with the objectives of avoiding unnecessary duplication and maximising efficiency of efforts of the Member States in this field.

4. Any two (2) Member States may, by mutual agreement, co-operate on adaptation to regional conditions including the concept of pests and disease free areas and areas of low pests or disease prevalence, in accordance with the *SPS Agreement* and relevant international standards, guidelines and recommendations, in order to facilitate trade between the Member States.

CHAPTER 9
TRADE REMEDY MEASURES

Article 86
Safeguard Measures

Each Member State which is a WTO member retains its rights and obligations under Article XIX of GATT 1994, and the *Agreement on Safeguards* or Article 5 of the *Agreement on Agriculture*.

Article 87
Anti-dumping and Countervailing Duties

1. Member States affirm their rights and obligations with respect to each other relating to the application of anti-dumping under Article VI of GATT 1994 and the *Agreement on Implementation of Article VI of General Agreement on Tariffs and Trade 1994* as contained in Annex 1A to the WTO Agreement.

2. Member States affirm their rights and obligations with respect to each other relating to subsidies and countervailing measures under Article XVI of GATT 1994 and the *Agreement on Subsidies and Countervailing Measures* as contained in Annex 1A to the WTO Agreement.

CHAPTER 10
INSTITUTIONAL PROVISIONS

Article 88
Advisory and Consultative Mechanism

The ASEAN Consultations to Solve Trade and Investment Issues (ACT) and the ASEAN Compliance Monitoring Body (ACB) as contained in the *Declaration on ASEAN Concord II (Bali Concord II)* may be invoked to settle disputes that may arise from this Agreement. Any Member State who does not wish to avail of the ACT/ACB may resort to the mechanism provided in the *ASEAN Protocol on Enhanced Dispute Settlement Mechanism*.

Article 89
Dispute Settlement

The *ASEAN Protocol on Enhanced Dispute Settlement Mechanism*, signed on 29 November 2004 in Vientiane, Lao PDR and amendments thereto, shall apply in relation to any dispute arising from, or any difference between Member States concerning the interpretation or application of this Agreement.

Article 90
Institutional Arrangements

1. The ASEAN Economic Ministers (AEM) shall, for the purposes of this Agreement, establish an ASEAN Free Trade Area (AFTA) Council comprising one (1) ministerial-level nominee from each Member State and the Secretary-General of ASEAN. In the performance of its functions, the AFTA Council shall also be supported by the Senior Economic Officials' Meeting (SEOM). In the fulfilment of its functions, the SEOM may establish bodies, as appropriate, to assist them such as the Coordinating Committee on the implementation of ATIGA (CCA). The SEOM, assisted by the CCA, shall ensure the effective implementation of this Agreement and, shall coordinate and be supported by technical bodies and committees under this Agreement.

2. Each Member State shall establish a National AFTA Unit, which shall serve a national focal point for the coordination of the implementation of this Agreement.

3. The ASEAN Secretariat shall:

(a) provide support to the AEM and AFTA Council in supervising, co-ordinating and reviewing the implementation of this Agreement as well as assistance in all related matters; and

(b) monitor and regularly report to the AFTA Council on the progress in the implementation of this Agreement.

CHAPTER 11
FINAL PROVISIONS

Article 91
Relation to Other Agreements

1. Subject to paragraph 2 of this Article, all ASEAN economic agreements that exist before the entry into force of ATIGA shall continue to be valid.

2. Member States shall agree on the list of agreements to be superseded within six (6) months from the date of entry into force and such list shall be administratively annexed to this Agreement and serve as an integral part of this Agreement.

3. In case of inconsistency between this Agreement and any ASEAN economic agreements that are not superseded under paragraph 2 of this Article, this Agreement shall prevail.

Article 92
Amended or Successor International Agreements

If any international agreement or a provision therein referred to, or incorporated into, this Agreement, and such agreement or provision is amended, the Member States shall consult on whether it is necessary to amend this Agreement, unless this Agreement provides otherwise.

Article 93
Annexes, Attachments and Future Instruments

1. The Annexes and Attachments to this Agreement shall form an integral part of this Agreement.

2. Member States may adopt legal instruments in the future pursuant to the provisions of this Agreement. Upon their respective entry into force, such instruments shall form part of this Agreement.

Article 94
Amendments

1. The provisions of this Agreement may be modified through amendments mutually agreed upon in writing by the Member States.

2. Notwithstanding paragraph 1 of this Article, the Annexes and Attachments to this Agreement may be modified through amendments endorsed by the AFTA Council. The said amendments shall be administratively annexed to this Agreement and serve as an integral part of this Agreement.

Article 95
Review

The AFTA Council or their designated representatives shall meet within one (1) year of the date of entry into force of this Agreement and then every two (2) years or otherwise as appropriate to review this Agreement for the purpose of fulfilling the objective of this Agreement.

Article 96
Entry into Force

1. This Agreement shall be signed by the ASEAN Economic Ministers.

2. This Agreement shall enter into force, after all Member States have notified or, where necessary, deposited instruments of ratifications with the Secretary-General of ASEAN upon completion of their internal procedures, which shall not take more than one hundred and eighty (180) days after the signing of this Agreement.

3. The Secretary-General of ASEAN shall promptly notify all Member States of the notifications or deposit of each instrument of ratification referred to in paragraph 2 of this Article.

Article 97
Reservations

No reservations shall be made with respect to any of the provisions of this Agreement.

Article 98
Depositary

This Agreement 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 authorised thereto by their respective Governments, have signed the ASEAN Trade in Goods Agreement.

DONE at Cha-am, Thailand, this Twenty Sixth Day of February in the Year Two Thousand and Nine, in a single original copy in the English language.

For Brunei Darussalam:

LIM JOCK SENG
Second Minister of Foreign Affairs and Trade

For the Kingdom of Cambodia:

CHAM PRASIDH
Senior Minister and Minister of Commerce

For the Republic of Indonesia:

MARI ELKA PANGESTU
Minister of Trade

For the Lao People's Democratic Republic:

NAM VIYAKETH
Minister of Industry and Commerce

For Malaysia:

MUHYIDDIN BIN MOHAMMAD YASSIN
Minister of International Trade and Industry

For the Union of Myanmar:

U SOE THA
Minister for National Planning and Economic Development

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:

PORNTIVA NAKASAI
Minister of Commerce

For the Socialist Republic of Viet Nam:

VU HUY HOANG
Minister of Industry and Trade

ANNEX 7

Original (Duplicate/Triplicate)

1. Goods consigned from (Exporter's business name, address, country)	Reference No. ASEAN TRADE IN GOODS AGREEMENT/ ASEAN INDUSTRIAL COOPERATION SCHEME CERTIFICATE OF ORIGIN (Combined Declaration and Certificate) FORM D Issued in _____ (Country) See Overleaf Notes
2. Goods consigned to (Consignee's name, address, country)	
3. Means of transport and route (as far as known) Departure date Vessel's name/Aircraft etc. Port of Discharge	4. For Official Use ☐ Preferential Treatment Given Under ASEAN Trade in Goods Agreement ☐ Preferential Treatment Given Under ASEAN Industrial Cooperation Scheme ☐ Preferential Treatment Not Given (Please state reason/s) ..... Signature of Authorised Signatory of the Importing Country

5. Item number	6. Marks and numbers on packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Overleaf Notes)	9. Gross weight or other quantity and value (FOB)	10. Number and date of invoices

11. Declaration by the exporter The undersigned hereby declares that the above details and statement are correct; that all the goods were produced in ..... (Country) and that they comply with the origin requirements specified for these goods in the ASEAN Trade in Goods Agreement for the goods exported to ..... (Importing Country) ..... Place and date, signature of authorised signatory	12. Certification It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. ..... Place and date, signature and stamp of certifying authority
13 □ Third Country Invoicing □ Exhibition □ Accumulation □ De Minimis □ Back-to-Back CO □ Issued Retroactively □ Partial Cumulation	

OVERLEAF NOTES

1. Member States which accept this form for the purpose of preferential treatment under the ASEAN Trade in Goods Agreement (ATIGA) or the ASEAN Industrial Cooperation (AICO) Scheme:

BRUNEI DARUSSALAM	CAMBODIA	INDONESIA
LAO PDR	MALAYSIA	MYANMAR
PHILIPPINES	SINGAPORE	THAILAND
VIETNAM		

2. CONDITIONS: The main conditions for admission to the preferential treatment under the ATIGA or the AICO Scheme are that goods sent to any Member States listed above must:

   (i) fall within a description of products eligible for concessions in the country of destination;

   (ii) comply with the consignment conditions in accordance with Article 32 (Direct Consignment) of Chapter 3 of the ATIGA; and

   (iii) comply with the origin criteria set out in Chapter 3 of the ATIGA.

3. ORIGIN CRITERIA: For goods that meet the origin criteria, the exporter and/or producer must indicate in Box 8 of this Form, the origin criteria met, in the manner shown in the following table:

Circumstances of production or manufacture in the first country named in Box 11 of this form	Insert in Box 8
(a) Goods wholly obtained or produced in the exporting Member State satisfying Article 27 (Wholly Obtained) of the ATIGA	"WO"
(b) Goods satisfying Article 28 (Non-wholly obtained) of the ATIGA	
• Regional Value Content	Percentage of Regional Value Content, example "40%"
• Change in Tariff Classification	The actual CTC rule, example "CC" or "CTH" or "CTSH"
• Specific Processes	"SP"
• Combination Criteria	The actual combination criterion, example "CTSH + 35%"
(c) Goods satisfying paragraph 2 of Article 30 (Partial Cumulation) of the ATIGA	"PC x%", where x would be the percentage of Regional Value Content of less than 40%, example "PC 25%"

4. EACH ARTICLE MUST QUALIFY: It should be noted that all the goods in a consignment must qualify separately in their own right. This is of particular relevance when similar articles of different sizes or spare parts are sent.

5. DESCRIPTION OF PRODUCTS: The description of products must be sufficiently detailed to enable the products to be identified by the Customs Officers examining them. Name of manufacturer and any trade mark shall also be specified.

6. HARMONISED SYSTEM NUMBER: The Harmonised System number shall be that of in ASEAN Harmonised Tariff Nomenclature (AHTN) Code of the importing Member State.

7. EXPORTER: The term "Exporter" in Box 11 may include the manufacturer or the producer.

8. FOR OFFICIAL USE: The Customs Authority of the importing Member State must indicate (√) in the relevant boxes in column 4 whether or not preferential treatment is accorded.

9. MULTIPLE ITEMS: For multiple items declared in the same Form D, if preferential treatment is not granted to any of the items, this is also to be indicated accordingly in box 4 and the item number circled or marked appropriately in box 5.

10. THIRD COUNTRY INVOICING: In cases where invoices are issued by a third country, "the Third Country Invoicing" box should be ticked (√) and such information as name and country of the company issuing the invoice shall be indicated in box 7.

11. BACK-TO-BACK CERTIFICATE OF ORIGIN: In cases of Back-to-Back CO, in accordance with Rule 11 (Back-to-back CO) of Annex 8 of the ATIGA, the "Back-to-Back CO" box should be ticked (√).

12. EXHIBITIONS: In cases where goods are sent from the exporting Member State for exhibition in another country and sold during or after the exhibition for importation into a Member State, in accordance with Rule 22 of Annex 8 of the ATIGA, the "Exhibitions" box should be ticked (√) and the name and address of the exhibition indicated in box 2.

13. ISSUED RETROACTIVELY: In exceptional cases, due to involuntary errors or omissions or other valid causes, the Certificate of Origin (Form D) may be issued retroactively, in accordance with paragraph 2 of Rule 10 of Annex 8 of the ATIGA, the "Issued Retroactively" box should be ticked (√).

14. ACCUMULATION: In cases where goods originating in a Member State are used in another Member State as materials for finished goods, in accordance with paragraph 1 of Article 30 of the ATIGA, the "Accumulation" box should be ticked (√).

15. PARTIAL CUMULATION (PC): If the Regional Value Content of the material is less than forty percent (40%), the Certificate of Origin (Form D) may be issued for cumulation purposes, in accordance with paragraph 2 of Article 30 of the ATIGA, the "Partial Cumulation" box should be ticked (√).

16. DE MINIMIS: If a good that does not undergo the required change in tariff classification does not exceed ten percent (10%) of the FOB value, in accordance with Article 33 of the ATIGA, the "De Minimis" box should be ticked (√).

ANNEX 8

OPERATIONAL CERTIFICATION PROCEDURE FOR THE RULES OF ORIGIN UNDER CHAPTER 3

For the purposes of implementing the Rules of Origin set out in Chapter 3 (hereinafter referred to as "ASEAN ROO"), the following operational procedures on the issuance and verification of the Certificate of Origin (Form D) and other related administrative matters shall be observed.

Rule 1
Definitions

For the purposes of this Annex:

(a) **back-to-back Certificate of Origin** means a Certificate of Origin issued by an intermediate exporting Member State based on the Certificate of Origin issued by the first exporting Member State;

(b) **exporter** means a natural or juridical person located in the territory of a Member State where a good is exported from by such a person;

(c) **importer** means a natural or juridical person located in the territory of a Member State where a good is imported into by such a person;

(d) **issuing authority** means the Government authority of the exporting Member State designated to issue a Certificate of Origin (Form D) and notified to all the other Member States in accordance with this Annex; and

(e) **producer** means a natural or juridical person who carries out production as set out in Article 25 of this Agreement in the territory of a Member State.

Rule 2
Specimen Signatures and Official Seals of the Issuing Authorities

1. Each Member State shall provide a list of the names, addresses, specimen signatures and specimen of official seals of its issuing authorities, in hard copy and soft copy format, through the ASEAN Secretariat for dissemination to other Member States in

soft copy format. Any change in the said list shall be promptly provided in the same manner.

2. The specimen signatures and official seals of the issuing authorities, compiled by the ASEAN Secretariat, shall be updated annually. Any Certificate of Origin (Form D) issued by an official not included in the list referred to in paragraph 1 shall not be honoured by the receiving Member State.

Rule 3
Supporting Documents

For the purposes of determining originating status, the issuing authorities shall have the right to request for supporting documentary evidence or to carry out check(s) considered appropriate in accordance with respective laws and regulations of a Member State.

Rule 4
Pre-exportation Verification

1. The producer and/or exporter of the good, or its authorised representative, shall apply to the issuing authority, in accordance with the Member State's laws and regulations, requesting pre-exportation examination of the origin of the good. The result of the examination, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in determining the origin of the said good to be exported thereafter. The pre-exportation examination may not apply to the good of which, by its nature, origin can be easily determined.

2. For locally-procured materials, self-declaration by the final manufacturer exporting under this Agreement shall be used as a basis when applying for the issuance of the Certificate of Origin (Form D).

Rule 5
Application for Certificate of Origin

At the time of carrying out the formalities for exporting the products under preferential treatment, the exporter or his authorised representative shall submit a written application for the Certificate of Origin (Form D) together with appropriate supporting documents proving that the products to be exported qualify for the issuance of a Certificate of Origin (Form D).

Rule 6
Examination of Application for a Certificate of Origin

The issuing authority shall, to the best of its competence and ability, carry out proper examination, in accordance with the laws and regulations of the Member State, upon each application for a Certification of Origin (Form D) to ensure that:

(a) The application and the Certificate of Origin (Form D) are duly completed and signed by the authorised signatory;

(b) The origin of the product is in conformity with the provisions of Chapter 3 of this Agreement;

(c) The other statements of the Certificate of Origin (Form D) correspond to supporting documentary evidence submitted;

(d) Description, quantity and weight of goods, marks and number of packages, number and kinds of packages, as specified, conform to the products to be exported;

(e) Multiple items declared on the same Certificate of Origin (Form D) shall be allowed provided that each item qualifies separately in its own right.

Rule 7
Certificate of Origin (Form D)

1. The Certificate of Origin (Form D) must be on ISO A4 size white paper in conformity to the specimen shown in Annex 7 of this Agreement. It shall be made in the English language.

2. The Certificate of Origin (Form D) shall comprise one (1) original and two (2) carbon copies (Duplicate and Triplicate).

3. Each Certificate of Origin (Form D) shall bear a reference number separately given by each place or office of issuance.

4. Each Certificate of Origin (Form D) shall bear the manually executed signature and seal of the authorised issuing authority.

5. The original copy shall be forwarded by the exporter to the importer for submission to the customs authority at the port or place of importation. The duplicate shall be retained by the issuing authority in the exporting Member State. The triplicate shall be retained by the exporter.

Rule 8
Declaration of Origin Criterion

To implement the provisions of Article 26 of this Agreement, the Certificate of Origin (Form D) issued by the final exporting Member State shall indicate the relevant applicable origin criterion in Box 8.

Rule 9
Treatment of Erroneous Declaration in the Certificate of Origin

Neither erasures nor superimpositions shall be allowed on the Certificate of Origin (Form D). Any alteration shall be made by:

(a) striking out the erroneous materials and making any addition required. Such alterations shall be approved by an official authorised to sign the Certificate of Origin (Form D) and certified by the issuing authorities. Unused spaces shall be crossed out to prevent any subsequent addition; or

(b) issuing a new Certificate of Origin (Form D) to replace the erroneous one.

Rule 10
Issuance of the Certificate of Origin

1. The Certificate of Origin (Form D) shall be issued by the issuing authorities of the exporting Member State at the time of exportation or soon thereafter whenever the products to be exported can be considered originating in that Member State within the meaning of Chapter 3 of this Agreement.

2. In exceptional cases where a Certificate of Origin (Form D) has not been issued at the time of exportation or no later than three (3) days from the declared shipment date, due to involuntary errors or omissions or other valid causes, the Certificate of Origin (Form D) may be issued retroactively but no longer than one (1) year from the date of shipment and shall be duly and prominently marked “Issued Retroactively”.

Rule 11
Back-to-Back Certificate of Origin

The issuing authority of the intermediate Member State may issue a back-to-back Certificate of Origin in an application is made by the exporter, provided that:

(a) a valid original Certificate of Origin (Form D) is presented. In the case where no original Certificate of Origin (Form D) is presented, its certified true copy shall be presented;

(b) the back-to-back Certificate of Origin issued should contain some of the same information as the original Certificate of Origin (Form D). In particular, every column in the back-to-back Certificate of Origin should be completed. FOB price of the intermediate Member State in Box 9 should also be reflected in the back-to-back Certificate of Origin;

(c) For partial export shipments, the partial export value shall be shown instead of the full value of the original Certificate of Origin (Form D). The intermediate Member State will ensure that the total quantity re-exported under the partial shipment does not exceed the total quantity of the Certificate of Origin (Form D) from the first Member State when approving the back-to-back Certificate of Origin to the exporters;

(d) In the event that the information is not complete and/or circumvention is suspected, the final importing Member State(s) could request that the original Certificate of Origin (Form D) be submitted to their respective customs authority;

(e) Verification procedures as set out in Rules 18 and 19 are also applied to Member State issuing the back-to-back Certificate of Origin.

Rule 12
Loss of the Certificate of Origin

In the event of theft, loss or destruction of a Certificate of Origin (Form D), the exporter may apply in writing to the issuing authorities for a certified true copy of the original and the triplicate to be made out on the basis of the export documents in their possession bearing the endorsement of the words “CERTIFIED TRUE COPY” in Box 12. This copy shall bear the date of issuance of the original Certificate of Origin. The certified true copy of a Certificate of Origin (Form D) shall be issued no longer than one (1) year from the date of issuance of the original Certificate of Origin (Form D).

Rule 13
Presentation of the Certificate of Origin

1. For the purposes of claiming preferential tariff treatment, the importer shall submit to the customs authority of the importing

Member State at the time of import, a declaration, a Certificate of Origin (Form D) including supporting documents (i.e. invoices and, when required, the through Bill of Lading issued in the territory of the exporting Member State) and other documents as required in accordance with the laws and regulations of the importing Member State.

2. In cases when a Certificate of Origin (Form D) is rejected by the customs authority of the importing Member State, the subject Certificate of Origin (Form D) shall be marked accordingly in Box 4 and the original Certificate of Origin (Form D) shall be returned to the issuing authority within a reasonable period not exceeding sixty (60) days. The issuing authority shall be duly notified of the grounds for the denial of tariff preference.

3. In the case where Certificates of Origin (Form D) are not accepted, as stated in the preceding paragraph, the importing Member State should accept and consider the clarifications made by the issuing authorities and assess again whether or not the Form D application can be accepted for the granting of the preferential treatment. The clarifications should be detailed and exhaustive in addressing the grounds of denial of preference raised by the importing Member State.

Rule 14
Validity Period of the Certificate of Origin

The following time limit for the presentation of the Certificate of Origin (Form D) shall be observed:

(a) The Certificate of Origin (Form D) shall be valid for a period of twelve (12) months from the date of issuance and must be submitted to the customs authorities of the importing Member State within that period.

(b) Where the Certificate of Origin (Form D) is submitted to the customs authorities of the importing Member State after the expiration of the time limit for its submission, such Certificate of Origin (Form D) is still to be accepted when failure to observe the time limit results from *force majeure* or other valid causes beyond the control of the exporter; and

(c) In all cases, the customs authorities in the importing Member State may accept such Certificate of Origin (Form D) provided that the goods have been imported before the expiration of the time limit of the said Certificate of Origin (Form D).

Rule 15
Waiver of Certificate of Origin

In the case of consignments of goods originating in the exporting Member State and not exceeding US$ 200.00 FOB, the production of Certificate of Origin (Form D) shall be waived and the use of simplified declaration by the exporter that the goods in question have originated in the exporting Member State will be accepted. Goods sent through the post not exceeding US$ 200.00 FOB shall also be similarly treated.

Rule 16
Treatment of Minor Discrepancies

1. Where the ASEAN origin of the goods is not in doubt, the discovery of minor discrepancies, such as typographical error in the statements made in the Certificate of Origin (Form D) and those made in the documents submitted to the customs authorities of the importing Member State for the purpose of carrying out the formalities for importing the goods shall not *ipso facto* invalidate the Certificate of Origin (Form D), if it does in fact correspond to the goods submitted.

2. In cases where the exporting Member State and importing Member State have different tariff classifications for a good subject to preferential tariffs, the goods shall be released at the MFN rates or at the higher preferential rate, subject to the compliance of the applicable ROO, and no penalty or other charges shall be imposed in accordance with relevant laws and regulations of the importing Member State. Once the classification differences have been resolved, the correct rate shall be applied and any overpaid duty shall be refunded if applicable, in accordance with relevant laws and regulations of the importing Member State, as soon as the issues have been resolved.

3. For multiple items declared under the same Certificate of Origin (Form D), a problem encountered with one of the items listed shall not affect or delay the granting of preferential treatment and customs clearance of the remaining items listed in the Certificate of Origin (Form D). Rule 18(c) may be applied to the problematic items.

Rule 17
Record Keeping Requirement

1. For the purposes of the verification process pursuant to Rules 18 and 19, the producer and/or exporter applying for the issuance of a Certificate of Origin (Form D) shall, subject to the laws and regulations of the exporting Member State, keep its supporting records for application for not less than three (3) years from the date of issuance of the Certificate of Origin (Form D).

2. The application for Certificates of Origin (Form D) and all documents related to such application shall be retained by the issuing authorities for not less than three (3) years from the date of issuance.

3. Information relating to the validity of the Certificate of Origin (Form D) shall be furnished upon request of the importing Member State by an official authorised to sign the Certificate of Origin (Form D) and certified by the appropriate Government authorities.

4. Any information communicated between the Member States concerned shall be treated as confidential and shall be used for the validation of Certificates of Origin (Form D) purposes only.

Rule 18
Retroactive Check

The importing Member State may request the issuing authority of the exporting Member State to conduct a retroactive check at random and/or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the goods in question or of certain parts thereof. Upon such request, the issuing authority of the exporting Member State shall conduct a retroactive check on a producer/exporter's cost statement based on the current cost and prices, within a six-month timeframe, specified at the date of exportation subject to the following conditions:

(a) The request for retroactive check shall be accompanied with the Certificate of Origin (Form D) concerned and shall specify the reasons and any additional information suggesting that the particulars given on the said Certificate of Origin (Form D) may be inaccurate, unless the retroactive check is requested on a random basis;

(b) The issuing authority receiving a request for retroactive check shall respond to the request promptly and reply within ninety (90) days after the receipt of the request;

(c) The customs authorities of the importing Member State may suspend the provisions on preferential treatment while awaiting the result of verification. However, it may release the goods to the importer subject to any administrative measures deemed necessary, provided that they are not held to be subject to import prohibition or restriction and there is no suspicion of fraud;

(d) the issuing authority shall promptly transmit the results of the verification process to the importing Member State which shall then determine whether or not the subject good is originating. The entire process of retroactive check including the process of notifying the issuing authority of the exporting Member State the result of determination whether or not the good is originating shall be completed within one hundred and eighty (180) days. While awaiting the results of the retroactive check, paragraph (c) shall be applied.

Rule 19
Verification Visit

If the importing Member State is not satisfied with the outcome of the retroactive check, it may, under exceptional cases, request for verification visits to the exporting Member State.

(a) Prior to the conduct of a verification visit, an importing Member State, shall:

(i) Deliver a written notification of its intention to conduct the verification visit to:

(1) the exporter/ producer whose premises are to be visited;

(2) the issuing authority of the Member State in whose territory the verification visit is to occur;

(3) the customs authorities of the Member State in whose territory the verification visit is to occur; and

(4) the importer of the goods subject of the verification visit.

(ii) The written notification mentioned in paragraph (a)(i) shall be as comprehensive as possible including, among others:

(1) the name of the customs authorities issuing the notification;

(2) the name of the exporter/producer whose premises are to be visited;

(3) the proposed date for the verification visit;

(4) the coverage of the proposed verification visit, including reference to the goods subject of the verification; and

(5) the names and designation of the officials performing the verification visit.

(iii) Obtain the written consent of the exporter/producer whose premises are to be visited.

(b) When a written consent from the exporter/producer is not obtained within thirty (30) days upon receipt of the notification pursuant to paragraph (a)(i), the notifying Member State, may deny preferential treatment to the goods that would have been subject of the verification visit.

(c) The issuing authority receiving the notification may postpone the proposed verification visit and notify the importing Member State of such intention. Notwithstanding any postponement, any verification visit shall be carried out within sixty (60) days from the date of such receipt, or for a longer period as the concerned Member States may agree.

(d) The Member State conducting the verification visit shall provide the exporter/producer whose goods are the subject of the verification and the relevant issuing authority with a written determination of whether or not the subject goods qualify as originating goods.

(e) Any suspended preferential treatment shall be reinstated upon the written determination referred to in paragraph (d) that the goods qualify as originating goods.

(f) The exporter/producer will be allowed thirty (30) days, from receipt of the written determination, to provide in writing comments or additional information regarding the eligibility of the goods. If the goods are still found to be non-originating, the final written determination will be communicated to the issuing authority within thirty (30) days from receipt of the comments/additional information from the exporter/producer.

(g) The verification visit process, including the actual visit and determination of whether the subject goods are originating or not, shall be carried out and its results communicated to the issuing authority within a maximum of one hundred and eighty (180) days. While awaiting the results of the verification visit, Rule 18(c) on the suspension of preferential treatment shall be applied.

Rule 20
Confidentiality

Member States shall maintain, in accordance with their laws, the confidentiality of classified business information collected in the process of verification pursuant to Rules 18 and 19 and shall protect that information from disclosure that could prejudice the competitive position of the person who provided the information. The classified business information may only be disclosed to those authorities responsible for the administration and enforcement of origin determination.

Rule 21
Documentation for Implementing Article 32(2)(b)
(Direct Consignment)

For the purposes of implementing Article 32(2)(b) of this Agreement, where transportation is effected through the territory of one or more non-Member State, the following shall be produced to the Government authorities of the importing Member State:

(a) A through Bill of Lading issued in the exporting Member State;

(b) A Certificate of Origin (Form D) issued by the relevant Government authorities of the exporting Member State;

(c) A copy of the original commercial invoice in respect of the goods; and

(d) Supporting documents in evidence that the requirements of Article 32(2)(b) paragraphs (i), (ii) and (iii) of this Agreement are being complied with.

Rule 22
Exhibition Goods

1. Goods sent from an exporting Member State for exhibition in another Member State and sold during or after the exhibition for importation into a Member State shall be granted preferential treatment accorded under this Agreement on the condition that the goods meet the requirements as set out in Chapter 3 of this Agreement, provided that it is shown to the satisfaction of the relevant Government authorities of the importing Member State that:

   (a) An exporter has dispatched those goods from the territory of the exporting Member State to the Member State where the exhibition is held and has exhibited them there;

   (b) The exporter has sold the goods or transferred them to a consignee in the importing Member State;

   (c) The goods have been consigned during the exhibition or immediately thereafter to the importing Member State in the state in which they were sent for the exhibition.

2. For the purposes of implementing paragraph 1, the Certificate of Origin (Form D) shall be provided to the relevant Government authorities of the importing Member State. The name and address of the exhibition must be indicated. The relevant Government authorities of the Member State where the exhibition took place may provide evidence together with supporting documents prescribed in Rule 21(d) for the identification of the products and the conditions under which they were exhibited.

3. Paragraph 1 shall apply to any trade, agricultural or crafts exhibition, fair or similar show or display in shops or business premises with the view to the sale of foreign goods and where the goods remain under customs control during the exhibition.

Rule 23
Third Country Invoicing

1. Relevant Government authorities in the importing Member State shall accept Certificates of Origin (Form D) in cases where the sales invoice is issued either by a company located in a third country or by an ASEAN exporter for the account of the said company, provided that the goods meet the requirements of Chapter 3 of this Agreement.

2. The exporter shall indicate “third country invoicing” and such information as name and country of the company issuing the invoice in the Certificate of Origin (Form D).

Rule 24
Action against Fraudulent Acts

1 When it is suspected that fraudulent acts in connection with the Certificate of Origin (Form D) have been committed, the Government authorities concerned shall cooperate in the action to be taken in the respective Member State against the persons involved.

2. Each Member State shall provide legal sanctions for fraudulent acts related to the Certificate of Origin (Form D).