

1977 AGREEMENT ON ASEAN PREFERENTIAL TRADING ARRANGEMENTS

Adopted in Manila, the Philippines on 24 February 1977

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1977 AGREEMENT ON ASEAN PREFERENTIAL TRADING ARRANGEMENTS

Adopted in Manila, the Philippines on 24 February 1977

The Governments of the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand:

RECALLING the Declaration of ASEAN Concord signed in Bali, Indonesia on 24 February 1976, which provides that Member States shall take cooperative action in their national and regional development programmes, utilizing as far as possible the resources available in the ASEAN region to broaden the complementarity of their respective economies;

EMPHASIZING that preferential trading arrangements among ASEAN Member States will act as a stimulus to the strengthening of national and ASEAN economic resilience and the development of the national economics of the Member States by expanding investment and production opportunities, trade and foreign exchange earnings;

NOTING that the International Community has fully recognized the importance of encouraging the establishment of preferences among developing countries at the international, regional and sub-regional levels, particularly through the resolution of the United Nations General Assembly establishing the International Development Strategy for the Second UN Development Decade and the Declaration on the Establishment of a New International Economic Order and the Programme of Action for the Establishment of a New International Economic Order; the Declaration on Trade Expansion, Economic Cooperation and Regional Integration among Developing Countries adopted at UNCTAD II and Resolution 92 (IV) of UNCTAD IV; as well as of the General Agreement on Tariffs and Trade, particularly Part IV, and decisions made in pursuance thereof;

NOTING further that developed and developing countries have taken some decisions to promote preferential arrangements among developing countries as well as between developed and developing countries in terms favourable to the latter;

HAVE AGREED to establish ASEAN Preferential Trading Arrangements as stipulated by the following provisions:

CHAPTER I GENERAL PROVISIONS

ARTICLE 1

1. The respective Governments of ASEAN Member States on whose behalf the present Agreement is accepted, hereinafter referred to as the "Contracting States", have agreed to extend trade preferences to each other in accordance with the provisions of this Agreement and the rules, regulations and decisions agreed within its framework.
2. The Contracting States agree to establish Preferential Trading Arrangements among them through the adoption of instruments, as may be appropriate, for ASEAN trade expansion.
3. Upon entry into force of this Agreement, concession on products originating from all Contracting States agreed upon among them through rounds of negotiations shall be implemented by them in accordance with the provisions of this Agreement and any other supplementary agreements and/or contracts which may be concluded within the context of the Preferential Trading Arrangements on the individual products or groups of products.
4. The Contracting States agree that the Preferential Trading Arrangements among them shall be implemented in the spirit of ASEAN cooperation and mutual benefits.

ARTICLE 2

Contracting States shall cooperate through mutual assistance in respect of basic commodities, particularly food and energy; provision of market support for the products of the ASEAN industrial projects; expansion of intra-ASEAN trade and increase in the utilization of raw materials available in the Contracting States.

CHAPTER II INSTRUMENTS AND DEFINITION OF PREFERENTIAL TRADING ARRANGEMENTS

ARTICLE 3

The Contracting States agree to adopt the following instruments for Preferential Trading Arrangements: long-term quantity contracts; purchase finance support at preferential interest rates; preference in procurement by Government entities; extension of tariff preferences; liberalisation of non-tariff measures on a preferential basis; and other measures.

ARTICLE 4

The Preferential Trading Arrangements shall be applied to Basic Commodities particularly rice and crude oil; products of the ASEAN industrial projects; products for the expansion of intra-ASEAN trade; and other products of interest to Contracting States.

ARTICLE 5

Long-term Quantity Contracts shall apply to selected products subject to specific agreement negotiated among the Contracting States or their nominated agencies. Long-term contracts shall be for a period of three years to five years depending on the products and quantities to be agreed upon subject to annual

review where appropriate. However, this provision does not preclude contracts of less than three years as may be agreed upon by the Contracting States.

ARTICLE 6

Purchase finance support at preferential interest rates may be applied to either exports to or imports from Contracting States of selected products of ASEAN domestic origin to be covered by the Preferential Trading Arrangements.

ARTICLE 7

1. Pre-tender notices for international tenders in respect of procurement by Government entities should be sent to the Missions of the Contracting States in the relevant ASEAN capital.
2. Subject to such provisions as may be embodied in supplementary agreements on Government procurement and to the rules of origin to subsequently be decided, Contracting States shall accord each other a preferential margin of 2-1/2% which should not exceed US\$40,000 worth of preferences per tender in respect of international tenders for Government procurement of goods and auxiliary services from untied tenders submitted by ASEAN countries vis-a-vis non-ASEAN countries.
3. The preferential margin should be applied on the basis of the lowest evaluated and acceptable tender.

ARTICLE 8

1. An effective ASEAN margin of tariff preference should be accorded on a product-by-product basis.
2. Where tariff preferences have been negotiated on multilateral or bilateral basis, the concessions so agreed should be extended to all Contracting States on an ASEAN most-favoured-nation basis, except where special treatment is accorded to products of ASEAN industrial projects.
3. In the negotiation on tariff preferences, consideration for the balancing of preferences should take into account the possibility of using other instruments of preferential trading arrangements.
4. The effective ASEAN margin of tariff preferences to be accorded to the selected products should take into account existing levels of tariffs in the respective Contracting States.

ARTICLE 9

Without prejudice to the provisions in Articles 5, 6, 7, and 8, the Contracting States may decide on other preferences as may be mutually agreed upon.

CHAPTER III PREFERENTIAL TREATMENT OF THE PRODUCTS OF ASEAN INDUSTRIAL PROJECTS AND INDUSTRIAL COMPLEMENTATION SCHEMES

ARTICLE 10

1. Notwithstanding the provisions of articles 5, 6, 7, 8, 9 and 15 of this Agreement, the Contracting States shall establish special preferential trading arrangements in respect of products of ASEAN industrial projects which shall be embodied in supplementary agreements. Such supplementary agreements shall include the provision that trade preferences shall be extended exclusively to the products of the ASEAN industrial projects within agreed time frames and subject to such other conditions as may be set forth in the supplementary agreements.
2. The products of the ASEAN Industrial Complementation Projects shall qualify for preferential trading arrangements, provided that these individual industrial complementation schemes or projects fall within the guidelines approved by competent Committees of ASEAN Economic Ministers and that the specific schemes or projects are approved by the Committee on Industry, Minerals and Energy.

CHAPTER IV MAINTENANCE OF CONCESSIONS

ARTICLE 11

Contracting States shall not diminish or nullify any of the concessions as agreed upon through the application of any new charge or measure restricting trade except in cases provided for in this Agreement.

CHAPTER V EMERGENCY MEASURES

ARTICLE 12

1. If as a result of the implementation of this Agreements imports of a particular product eligible for Preferential Trading Arrangements are increasing in such a manner as to cause or threaten to cause serious injury to sectors producing like or similar products in the importing Contracting States, the importing Contracting State may suspend provisionally and without discrimination, the Preferences included in this Agreement.
2. Without prejudice to existing international obligations, a Contracting State, which finds it necessary to institute or intensify quantitative restriction or other measures limiting imports with a view to forestalling the threat of or stopping a serious decline in its monetary reserves or limiting exports due to serious decline in supplies shall endeavour to do so in a manner which safeguards the value of the concessions agreed upon.
3. Where, however, emergency measures are taken in pursuance to this Article, immediate notice of such action must be given to the Committee referred to in Article 13 and such action may be the subject of consultations as provided for in Article 14.

CHAPTER VI INSTITUTIONAL ARRANGEMENTS

ARTICLE 13

The ASEAN Committee on Trade and Tourism (hereinafter referred to as THE COMMITTEE) is hereby directed and authorized to conduct trade negotiations within the framework of this Agreement and to review and supervise the implementation of the Agreement. In respect of all matters concerning the implementation of the Agreement, all decisions of the Committee shall be taken by consensus. The ASEAN Secretariat shall monitor the implementation of Agreement pursuant to Article III.2.8 of the Agreement on the Establishment of the ASEAN Secretariat.

CHAPTER VII CONSULTATIONS

ARTICLE 14

1. Each Contracting State shall accord adequate opportunity for consultations regarding such representations as may be made by another Contracting State/States with respect to any matter affecting the implementation of this Agreement. The Committee may, at the request of the Contracting State/States, consult with any other Contracting State/States with respect of any matter for which it has not been possible to find a satisfactory solution during previous consultations.
2. If any Contracting State should consider that any other Contracting State has not carried out its obligations under this Agreement so that it nullifies or impairs any benefit accruing to it, the affected Contracting State, with a view to the satisfactory adjustments of the matter, may make representations or proposals to the other Contracting State concerned which thus approached shall give due consideration to the proposals made to it.
3. If no satisfactory adjustment is effected between the Contracting States concerned within 60 days from the date on which such representation or request for consultation was made, the matter may be referred to the Committee which shall consult with the Contracting States concerned and arrive at a solution mutually acceptable to the States concerned. Where the circumstances are serious enough a Contracting State may temporarily suspend the application of the concession to the Contracting State/States concerned until a mutually satisfactory solution is arrived at. A Contracting State suspending the concession shall give written notification to the other Contracting States within 30 days prior to such action.

CHAPTER VIII RULES OF ORIGIN

ARTICLE 15

Products mentioned in Article 4 of this Agreement shall be eligible for preferential treatment if they satisfy the Rules of Origin set out in Annex I which is an integral part of this Agreement.

CHAPTER IX GENERAL EXCEPTIONS

ARTICLE 16

Nothing in this Agreement shall prevent any Contracting State, from taking action and adopting measures which it considers necessary for, the protection of its national security, the protection of public morality, the protection of human, animal and plant life and health, and the protection of articles of artistic, historic and archaeological value.

CHAPTER X MISCELLANEOUS AND FINAL PROVISIONS

ARTICLE 17

1. This Agreement shall enter into force on the 30th day after the deposit of the Fifth Instrument of Ratification.
2. This Agreement may not be signed with reservation nor shall reservations be admitted at the time of ratification.
3. All articles of this Agreement may be modified through amendments to this Agreement agreed upon by consensus. All amendments shall become effective upon acceptance by all Contracting States.
4. This Agreement shall be deposited with the Secretary-General of the ASEAN Secretariat who shall promptly furnish a certified copy thereof to each Contracting State.
5. Each Contracting State shall deposit the Instrument of Ratification with the Secretary-General of the ASEAN Secretariat who shall likewise promptly inform each Contracting State of such deposit.

IN WITNESS WHEREOF, the undersigned being duly authorized thereto by their respective Governments have signed this Agreement on ASEAN Preferential Trading Agreements.

DONE at Manila, this twenty-fourth day of February 1977 in a single copy in the English Language:

For the Government of the Republic of Indonesia:

ADAM MALIK,

Foreign Minister of Indonesia

For the Government of Malaysia:

TENGGU AHMAD RITHAUDDEEN,

Foreign Minister of Malaysia

For the Government of the Republic of Philippines:

CARLOS P. ROMULO,

Secretary of Foreign Affairs

For the Government of the Republic of Singapore:

S. RAJARATNAM,

Foreign Minister of Singapore

For the Government of the Kingdom of Thailand:

UPADIT PACHARIYANGKUN,

Foreign Minister of Thailand

ANNEX 1. RULES OF ORIGIN FOR THE ASEAN PREFERENTIAL TRADING ARRANGEMENTS

For determining the origin of products eligible for preferential concessions under the Agreement on ASEAN Preferential Trading Arrangements, the following Rules shall be applied:

RULE 1. ORIGINATING PRODUCTS

Products covered by preferential trading arrangements within the framework of this Agreement, imported into the territory of Contracting State from another Contracting State which are consigned directly within the meaning of Rule 5 hereof, shall be eligible for preferential concessions if they conform to the origin requirement under any one of the following conditions:

- (a) Products wholly produced or obtained in the exporting Contracting State as defined in Rule 2; or
- (b) Products not wholly produced or obtained in the exporting Contracting State, provided that the said products are eligible under Rule 3 or Rule 4.

RULE 2. WHOLLY PRODUCED OR OBTAINED

Within the meaning of Rule 1 (a), the following shall be considered as wholly produced or obtained in the exporting Contracting State:

- (a) mineral products extracted from its soil, its water or its seabeds;
- (b) agriculture products harvested there;
- (c) animals born and raised there;
- (d) products obtained from animals referred to in paragraph (c) above;
- (e) products obtained by hunting or fishing conducted there;
- (f) products of sea fishing and other marine product taken from the sea by its vessels^{1/3};
- (g) products processed and/or made on board its factory ships^{2/3} exclusively from products referred to in paragraph (f) above;
- (h) used articles collected there, fit only for the recovery of raw materials;

¹ "vessels" - shall refer to fishing vessels engaged in commercial fishing, registered in a Contracting State and operated by a citizen or citizens or government of such Contracting State, or partner corporation or association, duly registered in such Contracting State, at least 60% of the equity of which is owned by a citizen or citizens of such Contracting State or 75% by citizens or governments of the Contracting States, provided that the conduct of fishing activities or operation in the territorial waters of any of the Contracting States, shall be subject to the provisions of the Constitution and existing laws of the respective Contracting States.

² "factory ships" - shall refer to special types of vessels equipped with processing facilities and able to do processing operations offshore and in the high seas, registered in a Contracting State and operated by a citizen or citizens or governments of such Contracting State, or partnership, corporation or association, duly registered in such Contracting State, at least 60% of the equity of which is owned by citizen or citizens or government of such Contracting State, or 5% by citizens or governments of the Contracting States, provided that the conduct of fishing activities or operations in the territorial waters of any of the Contracting States, shall be subject to the provisions of the Constitution and existing laws of the respective Contracting States.

³ In respect of vessels or factory ships operated by government agencies, the requirement of flying the flag of a Contracting State does not apply.

- (i) waste and scrap resulting from manufacturing operations conducted there;
- (j) goods produced there exclusively from the products referred to in paragraph (a) to (i) above.

RULE 3. NOT WHOLLY PRODUCED OR OBTAINED

- (a) (i) Subject to sub-paragraph (ii) below, for the purpose of implementing the provisions of Rule 1(b) and subject to the provisions of Rule 4, products worked on and processed as a result of which the total value of the materials, parts or products originating from non-ASEAN countries or of undetermined origin used does not exceed 50% of the FOB value of the products produced or obtained and the final process of manufacture is performed within the territory of the exporting Contracting State.
- (ii) In respect of Indonesia, the percentage referred to in sub-paragraph (i) above is 40%. On certain categories of manufactured products to be agreed upon from time to time, the requirement of 50% of non-ASEAN content may apply.
- (b) In respect of the ASEAN industrial projects, the percent criterion of Rule 3(a) may be waived.
- (c) The value of the non-originating materials, parts or products shall be: -
 - (1) The CIF value at the time of importation of the products or importation can be proven; or
 - (2) The earliest ascertainable price paid for the products of undetermined origin in the territory of the Contracting State where the working or processing takes place.

RULE 4. CUMULATIVE RULE OF ORIGIN

Products which comply with the requirements provided for in Rule 1 and which are used in a Contracting State as inputs for a finished product eligible for preferential treatment in another Contracting State/States shall be considered as a product originating in the Contracting State where working or processing of the finished product has taken place, provided that the aggregate ASEAN content of the final product is not less than 60%.

RULE 5. DIRECT CONSIGNMENT

The following shall be considered as directly consigned from the exporting Contracting State to the importing Contracting State:

- (a) if the products are transported without passing through the territory of any other non-ASEAN country;
- (b) the products whose transport involves transit through one or more intermediate non-ASEAN countries with or without transshipment or temporary storage in such countries provided that:
 - (1) the transit entry is justified for geographical reason or by considerations related exclusively to transport requirements;
 - (2) the products have not entered into trade or consumption there; and

- (3) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.

RULE 6. TREATMENT OF PACKING

- (a) Where for purpose of assessing customs duties a Contracting State treats products separately from their packing, it may also, in respect of its imports consigned from another Contracting State, determine separately the origin of such packing.
- (b) Where paragraph (a) above is not applied, packing shall be considered as forming a whole with the products and no part of any packing required for their transport or storage shall be considered as having been imported from outside the ASEAN region when determining the origin of the products as a whole.

RULE 7. CERTIFICATE OF ORIGIN

A claim that products shall be accepted as eligible for preferential concession by a government authority designated by the exporting Contracting State and notified to the other Contracting States in accordance with the Certification Procedures to be developed and approved by the Committee on Trade and Tourism.

RULE 8. REVIEW

These Rules may be reviewed as and when necessary upon request of a Contracting State and may be open to such modifications as may be agreed upon by Ministers responsible for trade of the Contracting States.

ANNEX 2. OPERATIONAL CERTIFICATION PROCEDURES FOR THE RULES OF ORIGIN OF THE ASEAN PREFERENTIAL TRADING ARRANGEMENTS

(This applies to the operational procedures on the issuance and verification of the Certificate of Origin, and other related administrative measures. They are not included here, but interested parties may apply for them).