

**2009 AGREEMENT ON TRADE IN GOODS UNDER THE  
FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC  
COOPERATION BETWEEN THE ASSOCIATION OF SOUTHEAST  
ASIAN NATIONS AND THE REPUBLIC OF INDIA (TIG INDIA)**

*Signed in Bangkok, Thailand on 13 August 2009*

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## **2009 AGREEMENT ON TRADE IN GOODS UNDER THE FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC COOPERATION BETWEEN THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND THE REPUBLIC OF INDIA (TIG INDIA)**

*Signed in Bangkok, Thailand on 13 August 2009*

### **PREAMBLE**

The Governments of Brunei Darussalam, the Kingdom of Cambodia (Cambodia), the Republic of Indonesia (Indonesia), the Lao People's Democratic Republic (Lao PDR), Malaysia, the Union of Myanmar (Myanmar), the Republic of the Philippines (the Philippines), the Republic of Singapore (Singapore), the Kingdom of Thailand (Thailand) and the Socialist Republic of Viet Nam (Viet Nam), Member States of the Association of Southeast Asian Nations (collectively, "ASEAN" or "ASEAN Member States", or individually, "ASEAN Member State") and the Government of the Republic of India (India),

RECALLING the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India, signed by the Heads of Government/State of ASEAN Member States and India in Bali, Indonesia on 8 October 2003 and the Protocol to Amend the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India, signed in Bangkok on 13 August 2009;

RECALLING FURTHER Articles 2 and 4 of the Protocol to Amend the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India which reflect the commitment of ASEAN and India to establish the ASEAN-India Free Trade Area covering trade in goods by 2013 for Brunei Darussalam, Indonesia, Malaysia, Singapore and Thailand and India; by 2018 for the Philippines and India; and by 2013 for India and by 2018 for Cambodia, Lao PDR, Myanmar and Viet Nam;

REITERATING the importance of special and differential treatment to ensure the increasing participation of the new ASEAN Member States in economic integration and cooperation activities between ASEAN and India;

REAFFIRMING the Parties' commitment to establish the ASEAN-India Free Trade Area while allowing flexibility to Parties to address their sensitive areas as provided in the Framework Agreement;

HAVE AGREED as follows:

## ARTICLE 1: DEFINITIONS

For the purposes of this Agreement, the term:

- (a) AIFTA means the ASEAN-India Free Trade Area under the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India;
- (b) applied MFN tariff rates shall include in-quota rates, and shall:
  - (i) in the case of ASEAN Member States (which are WTO Members as of 1 July 2007) and India, refer to their respective applied rate as of 1 July 2007, except for products identified as Special Products in the Schedules of Tariff Commitments set out in Annex 1; and
  - (ii) in the case of ASEAN Member States (which are non-WTO Members as of 1 July 2007), refer to the rates as applied to India as of 1 July 2007, except for products identified as Special Products in the Schedules of Tariff Commitments set out in Annex 1;
- (c) ASEAN means the Association of Southeast Asian Nations which comprises Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the 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 and whose members are referred to in this Agreement collectively as the ASEAN Member States and individually as an ASEAN Member State;
- (d) Framework Agreement means the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India, signed in Bali, Indonesia on 8 October 2003, as amended;
- (e) GATT 1994 means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, including its Notes and Supplementary Provisions;
- (f) goods means materials and/or products;
- (g) originating good means a good that qualifies as originating under Article 7;
- (h) new ASEAN Member States refers to Cambodia, Lao PDR, Myanmar and Viet Nam;
- (i) Parties means ASEAN Member States and India collectively;
- (j) Party means an ASEAN Member State or India;
- (k) WTO means the World Trade Organization; and
- (l) WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, done on 15 April 1994.

## **ARTICLE 2: SCOPE**

This Agreement shall apply to trade in goods and all other matters relating thereto as envisaged in the Framework Agreement.

## **ARTICLE 3: NATIONAL TREATMENT ON INTERNAL TAXATION AND REGULATIONS**

Each Party shall accord national treatment to the goods of the other Parties in accordance with Article III of GATT 1994, which shall apply, *mutatis mutandis*, to this Agreement.

## **ARTICLE 4: TARIFF REDUCTION AND ELIMINATION**

1. Except as otherwise provided for in this Agreement, each Party shall gradually liberalise, where applicable, applied MFN tariff rates on originating goods of the other Parties in accordance with its schedule of tariff commitments as set out in Annex 1.
2. Nothing in this Agreement shall preclude any Party from unilaterally accelerating the reduction and/or elimination of the applied MFN tariff rates on originating goods of the other Parties as set out in its tariff reduction/elimination schedule in Annex 1.
3. Except otherwise provided in paragraph 1, all commitments undertaken by each Party under this Article shall be applied to all the other Parties.

## **ARTICLE 5: TRANSPARENCY**

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

## **ARTICLE 6: ADMINISTRATIVE FEES AND FORMALITIES**

Each Party reaffirms its commitments under Article VIII.1 of GATT 1994.

## **ARTICLE 7: RULES OF ORIGIN**

The Rules of Origin and Operational Certification Procedures applicable to the goods covered under this Agreement are set out in Annex 2 and its Appendices.

## **ARTICLE 8: NON-TARIFF MEASURES**

1. Each Party shall:
  - (a) not institute or maintain any non-tariff measure on the importation of goods from the other Parties or on the exportation or sale for export of goods destined for the territory of the other Parties, except in accordance with its WTO rights and obligations or other provisions in this Agreement; and
  - (b) ensure the transparency of its non-tariff measures allowed under subparagraph (a) and their full compliance with its obligations under the WTO Agreement with a view to minimizing possible distortions to trade to the maximum extent possible.
2. The Parties reaffirm their rights and obligations under the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement and the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement, including notification procedures on the preparation of relevant regulations to reduce their negative effect on trade as well as to protect human, animal or plant life or health.
3. Each Party shall designate its contact point for the purpose of responding to queries related to this Article.

## **ARTICLE 9: MODIFICATION OF CONCESSIONS**

1. The Parties shall not nullify or impair any of the concessions made by them under this Agreement, except as provided in this Agreement.
2. Any Party may, by negotiation and agreement with any other Party to which it has made a concession, modify or withdraw such concession made under this Agreement. In such negotiations and agreement, which may include provision for compensatory adjustment with respect to other goods, the Parties concerned shall maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided in this Agreement prior to such agreement.

## **ARTICLE 10: SAFEGUARD MEASURES**

1. Each Party, which is a WTO Member, retains its rights and obligations under Article XIX of GATT 1994 and the Agreement on Safeguards in Annex 1A to the WTO Agreement (Agreement on Safeguards) and Article 5 of the Agreement on Agriculture in Annex 1A to the WTO Agreement (Agreement on Agriculture). Any action taken pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture shall not be subject to the Agreement on Dispute Settlement Mechanism under the Framework Agreement (ASEAN-India DSM Agreement).
2. A Party shall have the right to initiate a safeguard measure under this Article (an AFTA safeguard measure) on a good within the transition period for that good. The transition period for a good shall begin from the date of entry into force of this Agreement and end five (5) years from the date of completion of tariff reduction/elimination for that good.

3. A Party shall be free to take an AIFTA safeguard measure if, as an effect of the obligations incurred by that Party under this Agreement, a good is being imported from the other Parties to which tariff concession was made for that good in such increased quantities, absolute or relative to domestic production, and under such conditions so as to substantially cause or threaten to cause serious injury to the domestic industry of the importing Party that produces like or directly competitive goods in its territory.
4. If an AIFTA safeguard measure is taken, a Party taking such a measure may:
  - (a) suspend the further reduction of any tariff rate under this Agreement for the good; or
  - (b) increase the tariff rate on the good concerned to a level not to exceed the lesser of:
    - (i) the applied MFN tariff rate on the good in effect at the time the action is taken; or
    - (ii) the applied MFN tariff rate on the good in effect on the day immediately preceding the date of entry into force of this Agreement.
5. An AIFTA safeguard measure may be maintained for an initial period of up to three (3) years and may be extended for a period not exceeding one (1) year if it is determined pursuant to the procedures referred to in paragraph 6 that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting. Notwithstanding the duration of an AIFTA safeguard measure on the good, such a measure shall terminate at the end of the transition period for that good.
6. In applying an AIFTA safeguard measure, the Parties shall adopt and apply, mutatis mutandis, the rules for the application of safeguard measures, including provisional measures, as provided under the Agreement on Safeguards, with the exception of the quantitative restriction measures set out in Articles 5 and 7, and also, Articles 9, 13, and 14 of the Agreement on Safeguards.
7. An AIFTA safeguard measure shall not be applied against a good originating in the territory of a Party so long as its share of imports of the good concerned in the importing Party does not exceed three (3) per cent of the total imports of that good from the other Parties.
8. In seeking compensation under Article 8 of the Agreement on Safeguards for an AIFTA safeguard measure, the Parties concerned shall seek the good offices of the Joint Committee established under Article 17 to determine the substantially equivalent level of concessions to that existing under this Agreement between the Party taking the safeguard measure and the exporting Parties which would be affected by such a measure prior to any suspension of equivalent concessions. Any proceedings arising from such good offices shall be completed within 90 days from the date on which the AIFTA safeguard measure was applied.
9. If no agreement on the compensation is reached within the timeframe specified in paragraph 8, the Parties concerned shall be free to suspend the application of tariff concessions under this Agreement, which is substantially equivalent to the AIFTA safeguard measure on originating goods of the Party applying the AIFTA safeguard measure.
10. On a Party's termination of an AIFTA safeguard measure on a good, the tariff rate for that good shall be the rate that, according to that Party's schedule of tariff reduction and elimination as set out in Annex 1 would have been in effect had the measure not been applied.

11. Notwithstanding the provisions of this Article, no Party may impose an AIFTA safeguard measure on a good to which actions are being applied pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture. When a Party intends to apply, pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture, an action on a good to which an AIFTA safeguard measure is being applied, it shall terminate the AIFTA safeguard measure prior to the imposition of the action to be applied pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture.
12. All official communications and documentations exchanged among the Parties and with the Joint Committee relating to an AIFTA safeguard measure shall be in writing and shall be in the English language.

## **ARTICLE 11: MEASURES TO SAFEGUARD THE BALANCE OF PAYMENTS**

Nothing in this Agreement shall be construed to prevent a Party from taking any measure for balance of payments purposes. A Party 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 12: GENERAL EXCEPTIONS**

Each Party retains its rights and obligations under Article XX of GATT 1994, which shall be incorporated, mutatis mutandis, into and form an integral part of this Agreement.

## **ARTICLE 13: SECURITY EXCEPTIONS**

Nothing in this Agreement shall be construed:

- (a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests;
- (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests, including:
  - (i) action relating to fissionable materials or the materials from which they are derived;
  - (ii) action relating to the traffic in arms, ammunition and implements of war and to such traffic on other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
  - (iii) action taken so as to protect critical communications infrastructure from deliberate attempts intended to disable or degrade such infrastructure;
  - (iv) action taken in time of war or other emergency in international relations; or
- (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

## **ARTICLE 14: CUSTOMS PROCEDURES**

1. Each Party shall endeavour to apply its customs procedures in a predictable, consistent and transparent manner.
2. Recognising the importance of improving transparency in the area of customs procedures, each Party, at the request of an interested person, shall endeavour to provide, as expeditiously and accurately as possible, information relating to its customs procedures to the interested person concerned. Each Party shall endeavour to supply not only the information specifically requested but also any other pertinent information which it considers the interested person should be made aware of.
3. For prompt customs clearance of goods traded among the Parties, each Party, recognising the significant role of customs authorities and the importance of customs procedures in promoting trade facilitation, shall endeavour to:
  - (a) simplify its customs procedures; and
  - (b) harmonise its customs procedures, to the extent possible, with relevant international standards and recommended practices such as those made under the auspices of the World Customs Organization.

## **ARTICLE 15: REGIONAL AND LOCAL GOVERNMENTS**

In fulfilling its obligations and commitments under this Agreement, each Party shall, in accordance with the provisions of Article XXIV.12 of GATT 1994 and the Understanding on the Interpretation of Article XXIV of GATT 1994, take such reasonable measures as may be available to it to ensure observance by state, regional and local governments and authorities within its territories.

## **ARTICLE 16: RELATION TO OTHER AGREEMENTS**

1. Each Party reaffirms its rights and obligations vis-à-vis another Party under the WTO Agreement and other agreements to which these Parties are party. A Party, which is not a party to the WTO Agreement, shall abide by the provisions of the said Agreement in accordance with its accession commitments to the WTO.
2. Nothing in this Agreement shall be construed to derogate from any right or obligation of a Party under the WTO Agreement and other agreements to which these Parties are party.
3. In the event of any inconsistency between this Agreement and any other agreement to which two or more Parties are party, such Parties shall immediately consult with a view to finding a mutually satisfactory solution.
4. This Agreement shall not apply to any agreement among ASEAN Member States or to any agreement between any ASEAN Member State and India unless otherwise agreed by the parties to that agreement.



## **ARTICLE 17: JOINT COMMITTEE**

1. A Joint Committee shall be established under this Agreement.
2. The functions of the Joint Committee shall be to:
  - (a) review the implementation and operation of this Agreement;
  - (b) submit a report to the Parties on the implementation and operation of this Agreement;
  - (c) consider and recommend to the Parties any amendments to this Agreement;
  - (d) supervise and coordinate the work of all Sub-Committees established under this Agreement; and
  - (e) carry out other functions as may be agreed by the Parties.
3. The Joint Committee:
  - (a) shall be composed of representatives of the Parties; and
  - (b) may establish Sub-Committees and delegate its responsibilities thereto.
4. The Joint Committee shall meet at such venues and times as may be mutually agreed by the Parties.

## **ARTICLE 18: DISPUTE SETTLEMENT**

Unless otherwise provided in this Agreement, any dispute concerning the interpretation, implementation or application of this Agreement shall be resolved through the procedures and mechanisms as set out in the ASEAN-India DSM Agreement.

## **ARTICLE 19: REVIEW**

The Joint Committee shall meet within one (1) year from the date of entry into force of this Agreement and then biennially or otherwise as appropriate to review this Agreement for the purpose of considering additional measures to further enhance the AIFTA as well as develop disciplines and negotiate agreements on relevant matters as may be agreed.

## **ARTICLE 20: ANNEXES AND FUTURE LEGAL INSTRUMENTS**

1. The Annexes and Appendices shall form an integral part of this Agreement.
2. The Parties may adopt legal instruments in the future pursuant to the provisions of this Agreement, including those proposed to them by the Joint Committee. Upon their respective entry into force, such instruments shall form an integral part of this Agreement.

## **ARTICLE 21: AMENDMENTS**

1. This Agreement may be modified through amendments mutually agreed upon in writing by the Parties. Any amendment shall enter into force after all Parties have notified all the other Parties in writing of the completion of their internal procedures for the entry into force of such amendment.
2. Notwithstanding paragraph 1, amendments relating to:
  - (a) Annex 1, provided that the amendments are made in accordance with the amendment of the Harmonized System and include no change on tariff rates applied to the originating goods of the other Parties in accordance with Annex 1; and
  - (b) Annex 2,may be made by mutual agreement in writing by all Parties.

## **ARTICLE 22: DEPOSITARY**

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

## **ARTICLE 23: ENTRY INTO FORCE**

1. Each Party shall notify all the other Parties in writing upon completion of its internal requirements<sup>1</sup> necessary for the entry into force of this Agreement. This Agreement shall enter into force on 1 January 2010 or the date by which such notifications have been made by the Governments of India and at least one (1) ASEAN Member State.
2. Where a Party is unable to complete its internal requirements for the entry into force of this Agreement by 1 January 2010, this Agreement shall enter into force for that Party on 1 June 2010 or upon the date by which that Party notifies the completion of its internal requirements, whichever is earlier. In exceptional circumstances where a Party is unable to complete its internal requirements for the entry into force of this Agreement by 1 June 2010, this Agreement shall enter into force for that Party on a mutually agreed date after that Party has informed all Parties of the completion of its internal requirements.
3. In relation to Parties making the notification referred to in paragraph 2, those Parties shall be bound by the same terms and conditions of this Agreement, including any further commitments that may have been undertaken by the other Parties under this Agreement by the time of such notification, as if it had notified all the other Parties in writing of the completion of its internal requirements before the date of entry into force of this Agreement.

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<sup>1</sup> For greater certainty, the term "internal requirements" may include obtaining governmental approval or parliamentary approval in accordance with domestic law.

## **ARTICLE 24: TERMINATION**

This Agreement shall remain in force until either India or ASEAN Member States collectively give written notice to the other of their intention to terminate it, in which case this Agreement shall terminate 12 months after the date of the notice of termination.

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

DONE at Bangkok, Thailand this thirteenth day of August 2009 and at Ha Noi, Viet Nam on the twenty fourth day of October 2009, in two (2) originals in the English language.

For the Government of Brunei Darussalam  
**LIM JOCK SENG**  
Second Minister for Foreign Affairs and Trade

For the Government of the Republic of India  
**ANAND SHARMA**  
Minister of Commerce and Industry

For the Royal Government of Cambodia  
**CHAM PRASIDH**  
Senior Minister and Minister of Commerce

For the Government of the Republic of  
Indonesia  
**MARI ELKA PANGESTU**  
Minister of Trade

For the Government of the Lao People's  
Democratic Republic  
**NAM VIYAKETH**  
Minister of Industry and Commerce

For the Government of Malaysia  
**MUSTAPA MOHAMED**  
Minister of International Trade and Industry

For the Government of the Union of Myanmar  
**U SOE THA**  
Minister for National Planning and Economic  
Development

For the Government of the Republic of  
Philippines  
**PETER B. FAVILA**  
Secretary of Trade and Industry

For the Government of the Republic of  
Singapore  
**LIM HNG KIANG**  
Minister for Trade and Industry

For the Government of the Kingdom of  
Thailand  
**PORNTIVA NAKASAI**  
Minister of Commerce

For the Government of the Socialist Republic  
of Viet Nam  
**VU HUY HOANG**  
Minister of Industry and Trade