

2018 ASEAN SECTORAL MUTUAL RECOGNITION ARRANGEMENT FOR INSPECTION AND CERTIFICATION SYSTEMS ON FOOD HYGIENE FOR PREPARED FOODSTUFF PRODUCTS

Signed in Singapore on 27 April 2018

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2018 ASEAN SECTORAL MUTUAL RECOGNITION ARRANGEMENT FOR INSPECTION AND CERTIFICATION SYSTEMS ON FOOD HYGIENE FOR PREPARED FOODSTUFF PRODUCTS

Signed in Singapore on 27 April 2018

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Viet Nam, Member States of the Association of Southeast Asian Nations ("ASEAN") (hereinafter collectively referred to as "Member States" or singularly as "Member State");

MINDFUL of the goals of establishing ASEAN as a single market and production base characterised by the free flow of goods, services, investment, skilled labour and freer flow of capital envisaged in the ASEAN Charter, the Declaration of the ASEAN Economic Community Blueprint signed by the ASEAN Leaders on 20 November 2007 in Singapore and the ASEAN Economic Community Blueprint 2025 adopted by the ASEAN Leaders on 22 November 2015 in Kuala Lumpur, Malaysia;

RECALLING that the ASEAN Trade in Goods Agreement ("ATIGA") signed on 26 February 2009 in Cha-am, Thailand has the objective of achieving free flow of goods in ASEAN as one of the principal means of establishing a single market and production base for the deeper economic integration of the region towards the realisation of the ASEAN Economic Community;

RECALLING the goals and objectives of the ASEAN Framework Agreement on Mutual Recognition Arrangement signed on 16 December 1998 in Hanoi, Viet Nam to provide a basis for developing and implementing mutual recognition arrangements in specified product sectors or what are known as sectoral mutual recognition arrangements;

RECOGNISING that mutual recognition arrangements for conformity assessment activities is an important means of eliminating technical barriers to trade as well as sanitary and phytosanitary measures which may, directly or indirectly, affect trade and enhance market access, and that such mutual recognition could be of particular interest to small and medium-sized businesses in ASEAN;

RECOGNISING further that mutual recognition arrangements will supplement and contribute positively to the harmonisation of standards, technical regulations, conformity assessment procedures and sanitary and phytosanitary measures in ASEAN;

MINDFUL of the different levels of infrastructure for standards and conformity assessment and economic development of Member States;

REITERATING Member States' commitments to the World Trade Organization Agreements on Technical Barriers to Trade ("TBT Agreement") as well as on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"), as reaffirmed in ATIGA, which may, directly or indirectly affect trade;

NOTING that the TBT Agreement encourages Members to enter into negotiations for the conclusion of agreements for the mutual recognition of the results of each other's conformity assessment procedures, and the SPS Agreement encourages Members to accept the sanitary or phytosanitary measures of other Members as equivalent; and

DESIRING to establish a Sectoral Mutual Recognition Arrangement for Inspection and Certification Systems on Food Hygiene for Prepared Foodstuff Products (hereinafter referred to as "Sectoral MRA"), to facilitate the movement of prepared foodstuff products in ASEAN,

HAVE AGREED AS FOLLOWS:

ARTICLE 1 DEFINITIONS

For purposes of this Sectoral MRA, the following definitions shall apply:

- a. **"ASEAN Food Safety Network ("AFSN")"** means a web-based platform operated on website for information exchanges and consultation among Member States;
- b. **"certification"** means the procedure by which official certification bodies and officially recognised certification bodies provide written or equivalent assurance that foods or food control systems conform to requirements. Certification of food may be, as appropriate, based on a range of inspection activities which may include continuous on-line inspection, auditing of quality assurance systems, and examination of finished products;
- c. **"certification system"** means official and officially recognised certification systems;
- d. **"Competent Authority"** means the official government agency having jurisdiction;
- e. **"conformity assessment"** means systematic examination to determine the extent to which a product, process or service fulfills specified requirements;
- f. **"food"** means any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drinks, chewing gum and any substance which has been used in the manufacture, preparation or treatment of "food" but does not include cosmetics or tobacco or substances used only as drugs;
- g. **"food hygiene"** means all conditions and measures necessary to ensure the safety and suitability of food at all stages of the food chain;
- h. **"inspection"** means the examination of food or systems for control of food, raw materials, processing and distribution, including in-process and finished product testing, in order to verify that they conform to requirements;
- i. **"inspection system"** means official and officially recognised inspection systems;
- j. **"legislation"** means acts, regulations, requirements or procedures, issued by public authorities, related to foods and covering the protection of public health, the protection of consumers and conditions of fair trading;
- k. **"official accreditation"** means the procedure by which a government agency having jurisdiction formally recognises the competence of an inspection and/or certification body to provide inspection and certification services;
- l. **"official inspection systems" and "official certification systems"** means systems administered by a government agency having jurisdiction empowered to perform a regulatory or enforcement function, or both;

- m. **"officially recognised inspection systems" and "officially recognised certification systems"** means systems which have been formally approved or recognised by a government agency having jurisdiction;
- n. **"Party" or "Parties"** means a Member State that is, or Member States that are given approval to participate in this Sectoral MRA by the Joint Sectoral Committee;
- o. **"prepared foodstuff"** means food that undergoes any action that substantially alters the initial products, including, but not limited to, heating, smoking, curing, maturing, drying, marinating, extraction or a combination of those processes; and
- p. **"Regulatory Authority"** means an entity that exercises a legal right to control the import, use or sale of products within a Member State's jurisdiction and may take enforcement action to ensure that products marketed within its jurisdiction comply with legal requirements.

ARTICLE 2 OBJECTIVE

The objective of this Sectoral MRA is to enable the mutual recognition of inspection and certification systems on food hygiene with regard to the production, import and export of prepared foodstuff products in order to facilitate trade in ASEAN and protect the health of consumers.

ARTICLE 3 GENERAL PROVISIONS

This Sectoral MRA sets out the arrangement under which Member States shall ensure that their inspection systems and certification systems on food hygiene are consistent with the provisions of this Sectoral MRA and its Annexes.

ARTICLE 4 SCOPE AND COVERAGE

- 1. This Sectoral MRA shall apply to the prepared foodstuff products specified under HS Code 16-22.
- 2. The coverage of this Sectoral MRA shall apply to the mutual recognition of inspection and certification systems on food hygiene in ASEAN.

ARTICLE 5 MUTUAL RECOGNITION OBLIGATIONS

- 1. Parties shall ensure that their national food control systems are consistent with the provisions of Annex 1 of this Sectoral MRA.
- 2. Parties shall ensure that their production systems meet the general principles of food hygiene contained in Annex 2 of this Sectoral MRA.
- 3. Parties shall ensure that their inspection and certification systems are based on the principles contained in Annex 3 of this Sectoral MRA. The systems shall be implemented in accordance with Section 6 to 10 of Annex 4 of this Sectoral MRA.
- 4. Parties shall establish and maintain import control systems for prepared foodstuff products in a manner consistent with all the provisions of Annex 5 of this Sectoral MRA.

5. Member States shall recognise the results of inspection and certification systems for food hygiene of Parties in accordance with the provisions of this Sectoral MRA.
6. Where differences exist in product standards and requirements, the exporting Party shall comply with those standards and requirements of the importing Member States.

ARTICLE 6 TRANSPARENCY

1. Each Member State shall designate a contact point for exchange of information and shall notify the ASEAN Secretariat of its designated contact point. The ASEAN Secretariat shall establish and maintain the list of contact points for Member States in this Sectoral MRA.
2. Member States shall endeavour to exchange updated information on their regulatory systems in English, through publication on the AFSN's website, on the following:
 - a. legislation, including the texts of all relevant legislation relating to the food control system for prepared foodstuff products;
 - b. all existing technical regulations, sanitary and phytosanitary measures and standards for the prepared foodstuff sector in each Member State, including labelling requirements; and
 - c. conformity assessment requirements for the import of prepared foodstuff products, including but not limited to certification, inspection, sampling and analysis required and import product registration requirements in each Member State.
3. Any changes to the information referred to in paragraph 2 and other measures affecting the implementation of this Sectoral MRA shall be promptly notified to the contact points in a timely manner in compliance with Annex B of the SPS Agreement. The notification should be made in advance within a reasonable period to permit the exporting Parties to make necessary changes in accordance with the new requirements and measures.
4. Member States shall provide immediate notification to the contact points and the ASEAN Secretariat of significant risks to public health related to product safety, manufacturing conditions, recalls, and other instances that involve significant hazard to health with regard to the prepared foodstuff products covered by this Sectoral MRA.
5. When the rejection of the prepared foodstuff products under the scope of this Sectoral MRA arises, the importing Member State shall immediately notify the exporting Party of the situation and information for the exporting Party to investigate the causes of the problem in accordance with Annex 6 of this Sectoral MRA.

ARTICLE 7 COMPETENT AUTHORITY

1. Member States shall identify their Competent Authority and notify the ASEAN Secretariat accordingly.
2. Member States having multiple Competent Authorities shall submit the names of all them and clearly define the assigned roles and responsibilities within the scope of this Sectoral MRA. Member States shall ensure that the competent authorities operate in a coordinated manner with no duplication and/or gaps.

3. The Competent Authority(ies) of a Party shall have the ability to enforce and take action based on adequate legislation in accordance with Section 6 of Annex 4 of this Sectoral MRA.
4. The Competent Authority(ies) of a Party shall ensure the integrity, impartiality and independence of inspection and certification systems to ensure that the inspection and certification programme complies with Annex 4 of this Sectoral MRA.
5. The Competent Authority(ies) of a Party may recognise officially accredited inspection or certification bodies located in ASEAN to provide services on behalf of official agencies. The Competent Authority(ies) of a Party shall ensure that officially accredited inspection or certification bodies are assessed against objective criteria and comply at least with Section 8 of Annex 4 of this Sectoral MRA, particularly in relation to the competence, independence and impartiality of personnel. The performance of officially accredited inspection or certification bodies shall be regularly assessed by the Competent Authority(ies) of a Party. Procedures should be initiated to correct deficiencies and, as appropriate, enable withdrawal of official accreditation.

ARTICLE 8 JOINT SECTORAL COMMITTEE ("JSC")

1. A JSC shall be established, and shall be responsible for the effective functioning of this Sectoral MRA. The JSC shall comprise official representatives designated by each Member State. Each Member State shall designate one representative and the representative may be accompanied by his/her delegates with the status of observers at meetings of the JSC.
2. The JSC shall be responsible for:
 - a. identifying the elements of inspection and certification systems on food hygiene of the prepared foodstuff products in accordance with Annex 3 and Annex 4 of this Sectoral MRA;
 - b. establishing the requirements, rules and procedures for the notification, evaluation, and approval of the inspection and certification systems of a Party;
 - c. evaluating and approving that the inspection and certification systems of a Party are consistent with the provisions of the Article 3, Article 5 and Article 7;
 - d. listing and withdrawing the approved scope of recognition of a Party;
 - e. considering any other matters and taking appropriate technical decisions relating to the effective functioning of this Sectoral MRA;
 - f. providing a forum for discussion of issues that may arise concerning the implementation of this Sectoral MRA; and
 - g. proposing amendment to this Sectoral MRA.
3. The JSC may establish technical and ad-hoc working groups, as required, for the purposes of this Sectoral MRA. The outcome of the technical and ad-hoc working groups shall be reported to the JSC.
4. The JSC shall establish its own rules of procedures and take its decisions by consensus.

5. The JSC shall meet to review the implementation of this Sectoral MRA, at least once a year, or as the need arises.

ARTICLE 9 IMPLEMENTATION

1. This Sectoral MRA is intended to be a multilateral arrangement in which all Member States are required to participate. However, taking into consideration paragraph 3 of Article 1 of the Framework Agreement on Enhancing ASEAN Economic Cooperation signed on 28 January 1992 in Singapore and paragraph 7 of Article 3 of the ASEAN Framework Agreement on Mutual Recognition Arrangements signed on 16 December 1998 in Hanoi, Viet Nam, a Member State which is not ready to fully implement this Sectoral MRA may withhold from participating in this Sectoral MRA subject to Article 13. The withholding period shall not exceed five years after the entry into force of this Sectoral MRA.
2. Any Member State that is ready to participate in this Sectoral MRA shall notify the JSC through the ASEAN Secretariat in writing of its intention to participate.
3. The notification for participation shall be followed by a submission of information and evidence of the Member State's compliance with the requirements of this Sectoral MRA to the JSC through the ASEAN Secretariat in a format as determined by the JSC. Upon receiving the submission of information and evidence, the JSC shall evaluate the inspection and certification systems of the Member State and undertake the decision on approval of participation as set out in its established rules and procedures.
4. The approval of participation of the Party in this Sectoral MRA shall be notified by the JSC through ASEAN Secretariat to the Party. The effective dates of implementation of the mutual recognition obligations of the Member States shall commence as soon as at least two Member States are approved to participate in this Sectoral MRA as Parties.
5. The ASEAN Secretariat will make available the list of Parties and scope of recognition that have been approved by the JSC.

ARTICLE 10 PRESERVATION OF REGULATORY AUTHORITY

1. Subject to the provisions of this Sectoral MRA, nothing in this Sectoral MRA shall be construed to:
 - a. limit the authority of a Party to determine, through its legislative, regulatory and administrative measures, the level of protection it considers appropriate for the safety and protection of human, animal, or plant life or health, environment and consumers; and
 - b. limit the authority of a Regulatory Authority of a Party to take all appropriate and immediate measures whenever it ascertains that a prepared foodstuff product may:
 - i. compromise the health or safety of persons in its territory;
 - ii. not meet the legislative, regulatory, or administrative provisions within the scope of this Sectoral MRA; or
 - iii. fail to satisfy a requirement within the scope of this Sectoral MRA.

2. If the Regulatory Authority of a Party takes such measures pursuant to paragraph 1, it shall inform its counterpart Regulatory Authority in the affected Parties and other Member States of such measures taken and provide reasons thereof.
3. If such measures taken are import rejection, nothing will prevent the affected Party to conduct its investigation subject to paragraph 5 of Article 6.

ARTICLE 11 SETTLEMENT OF DISPUTES

1. Member States shall at all times endeavour to agree on the interpretation or implementation of this Sectoral MRA and shall make every attempt through communication, dialogue, consultation and cooperation to arrive at a mutually satisfactory resolution of any matter that might affect the implementation of this Sectoral MRA.
2. The ASEAN Protocol on Enhanced Dispute Settlement Mechanism, signed on 29 November 2004 in Vientiane, Lao PDR and amendments thereto, shall apply to disputes concerning the interpretation or implementation of any of the provisions of this Sectoral MRA.

ARTICLE 12 INSTITUTIONAL ARRANGEMENTS

1. The JSC shall monitor all aspects relating to the implementation of this Sectoral MRA.
2. The ASEAN Consultative Committee for Standards and Quality ("ACCSQ"), Prepared Foodstuff Product Working Group ("PFPWG") and the ASEAN Secretariat shall provide the support for coordinating and reviewing the implementation of this Sectoral MRA and assist the JSC in all matters relating thereto.

ARTICLE 13 COOPERATION AND TECHNICAL ASSISTANCE

1. Noting the different levels of development of the national food control systems and the Initiative for ASEAN Integration launched in 2000 by the ASEAN Leaders to narrow the development gap and to accelerate economic integration, Member states will seek to enhance cooperation and provision of technical assistance.
2. In order to facilitate effective implementation of this Sectoral MRA, each Member State will upon request, cooperate in technical assistance on mutually agreed terms and conditions, on building up and/or maintaining technical competence of inspection and certification systems for food hygiene of the prepared foodstuff products of other Member States. In particular, Member States shall consider cooperation and technical assistance towards:
 - a. enhancing exchange of information, technical experts among the Member States; and
 - b. providing training to other Member States for the purposes of enhancing the capacity for the inspection and certification system for food hygiene and other related activities of national food control systems.

ARTICLE 14 CONFIDENTIALITY

1. Member States shall maintain, to the extent permitted under their laws and regulations, the confidentiality of information exchanged under this Sectoral MRA.

2. Member States shall take all precautions reasonably necessary to protect information exchanged under this Sectoral MRA from unauthorised disclosure.

ARTICLE 15
RIGHTS AND OBLIGATIONS UNDER
EXISTING INTERNATIONAL AGREEMENTS OR CONVENTIONS

This Sectoral MRA or any actions taken pursuant thereto shall not affect the rights and obligations of any Member State under any existing international agreements or conventions to which it is also a party.

ARTICLE 16
ANNEXES

The Annexes to this Sectoral MRA shall form an integral part of this Sectoral MRA.

ARTICLE 17
FINAL PROVISIONS

1. This Sectoral MRA may be reviewed by the Member States for the purpose of fulfilling the objective of this Sectoral MRA.
2. The provisions of this Sectoral MRA may only be amended by mutual written agreement of all the Member States.
3. Notwithstanding paragraph 2 of this Article, the Annexes to this Sectoral MRA may be amended subject to the endorsement of the PFPWG. Such amendments shall be administratively annexed to this Sectoral MRA by the Depositary and form an integral part of this Sectoral MRA.
4. Any amendment shall not prejudice the rights and obligations of the Member States arising from or based on this Sectoral MRA before the entry into force of such amendment.
5. Member States shall undertake appropriate measures to fulfill the agreed obligations arising from this Sectoral MRA.
6. Member States shall make no reservations with respect to any of the provisions of this Sectoral MRA.
7. This Sectoral MRA shall enter into force on the date of its signature.
8. This Sectoral MRA 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 by their respective Governments, have signed this ASEAN Sectoral Mutual Recognition Arrangement for Inspection and Certification Systems on Food Hygiene for Prepared Foodstuff Products.

Done at Singapore, this Twenty seventh day of April in Year Two Thousand and Eighteen, in a single copy in the English Language.

For Brunei Darussalam:

LIM JOCK SENG

Minister at the Prime Minister's Office and Second Minister of Foreign Affairs and Trade

For the Kingdom of Cambodia:

PAN SORASAK

Minister of Commerce

For the Republic of Indonesia:

ENGGARTIASTO LUKITA

Minister of Trade

For the Lao People's Democratic Republic:

KHEMMANI PHOLSENA

Minister of Industry and Commerce

For Malaysia:

MUSTAPA MOHAMED

Minister of International Trade and Industry

For the Republic of the Union of Myanmar:

KYAW WIN

Union Minister for Planning and Finance

For the Republic of the Philippines:

RAMON M. LOPEZ

Secretary of Trade and Industry

For the Republic of Singapore:

LIM HNG KIANG

Minister for Trade and Industry (Trade)

For the Kingdom of Thailand:

APIRADI TANTRAPORN

Minister of Commerce

For the Socialist Republic of Viet Nam:

TRAN TUAN ANH

Minister of Industry and Trade