2008 AGREEMENT ON COMPREHENSIVE ECONOMIC PARTNERSHIP AMONG JAPAN AND MEMBER STATES OF THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS

Signed in respective capitals at various dates in 2008

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PREAMBLE

The Governments of Japan, and Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, 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 referred to as "ASEAN");

Recalling the Joint Declaration signed in Phnom Penh, Cambodia on 5 November 2002 and the Framework for Comprehensive Economic Partnership between Japan and the Association of Southeast Asian Nations signed in Bali, Indonesia on 8 October 2003;

Desiring to deepen the relationship between Japan and ASEAN, which is built on mutual confidence and trust in wide-ranging fields covering not only political and economic areas, but also social and cultural areas;

Inspired by the continuous development of ASEAN through economic activities among Japan and ASEAN Member States, and the significant progress in the relationship between Japan and ASEAN which has spanned thirty years of economic ties that have been expanding over a wide range of areas;

Confident that a comprehensive economic partnership between Japan and ASEAN (hereinafter referred to as "AJCEP") will strengthen their economic ties, create a larger and more efficient market with greater opportunities and larger economies of scale, and enhance their attractiveness to capital and talent, for mutual benefit;

Recognising that multi-layered and multi-faceted bilateral and regional efforts towards strengthening economic relations among Japan and ASEAN Member States will facilitate the realisation of such comprehensive economic partnership;

Sharing the view that such comprehensive economic partnership should benefit from, and be complementary to, the economic integration and integrity of ASEAN;

Recognising further the various stages of economic development among the ASEAN Member States;

Confident that this Agreement, covering areas such as trade in goods and services, and investment, would serve as an important building block towards economic integration in East Asia;

Recalling Article XXIV of the General Agreement on Tariffs and Trade 1994 and Article V of the General Agreement on Trade in Services in Annex 1A and Annex 1B, respectively, to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, 15 April 1994 (hereinafter referred to as "WTO Agreement");

Recognising the role of regional trade agreements as a catalyst in accelerating regional and global liberalisation in the framework of the multilateral trading system;

Reaffirming the rights and obligations of each Party under the WTO Agreement and multilateral, regional and bilateral agreements and arrangements; and

Determined to establish a legal framework for such comprehensive economic partnership among the Parties,

HAVE AGREED as follows:

CHAPTER 1
GENERAL PROVISIONS

ARTICLE 1
GENERAL DEFINITIONS

For the purposes of this Agreement, the term:

(a) "ASEAN Member States" means Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, 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 collectively;

(b) "customs authority" means the competent authority that is responsible for the administration and enforcement of customs laws and regulations;

(c) "days" means calendar days, including weekends and holidays;

(d) "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement;

(e) "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement. For the purposes of this Agreement, references to articles in GATT 1994 include its Notes and Supplementary Provisions;

(f) "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, and adopted and implemented by the Parties in their respective laws;

(g) "newer ASEAN Member States" means the Kingdom of Cambodia, the Lao People's Democratic Republic, the Union of Myanmar and the Socialist Republic of Viet Nam;

(h) "Parties" means Japan and those ASEAN Member States for which this Agreement has entered into force collectively; and

(i) "Party" means either of Japan or one (1) of ASEAN Member States for which this Agreement has entered into force.

ARTICLE 2
PRINCIPLES

The Parties reaffirm the importance of realising the AJCEP through both this Agreement and other bilateral or regional agreements or arrangements, and are guided by the following principles:

(a) the AJCEP shall involve Japan and all ASEAN Member States and includes a broad range of sectors focusing on liberalisation, facilitation and economic cooperation;

(b) the integrity, solidarity and integration of ASEAN shall be maintained in the realisation of the AJCEP;

(c) special and differential treatment is accorded to ASEAN Member States, especially the newer ASEAN Member States, in recognition of their different levels of economic development; additional flexibility is accorded to the newer ASEAN Member States;

(d) recognition shall be given to the provisions of the ministerial declarations of the World Trade Organization on measures in favour of least-developed countries;

(e) flexibility should also be given to address the sensitive sectors in Japan and each ASEAN Member State; and

(f) technical assistance and capacity building are important elements of economic cooperation provided under this Agreement.

ARTICLE 3
OBJECTIVES

The objectives of this Agreement are to:

(a) progressively liberalise and facilitate trade in goods and services among the Parties;

(b) improve investment opportunities and ensure protection for investments and investment activities in the Parties; and

(c) establish a framework for the enhancement of economic cooperation among the Parties with a view to supporting ASEAN economic integration, bridging the development gap among ASEAN Member States, and enhancing trade and investment among the Parties.

ARTICLE 4
TRANSPARENCY

1. Each Party shall, in accordance with its laws and regulations, make publicly available its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements to which the Party is a party, that pertain to or affect the implementation and operation of this Agreement.

2. Each Party shall make publicly available the names and addresses of the competent authorities responsible for laws, regulations, administrative procedures and administrative rulings, referred to in paragraph 1.

3. Each Party shall, upon the request by another Party, respond to specific questions from, and provide information to, the latter, in the English language, with respect to matters referred to in paragraph 1.

ARTICLE 5
CONFIDENTIALITY

1. Nothing in this Agreement shall require a Party to provide confidential information, the disclosure of which would impede law enforcement of the Party, 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 Party to provide information relating to the affairs and accounts of customers of financial institutions.

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

ARTICLE 6
TAXATION

1. Unless otherwise provided for in this Agreement, the provisions of this Agreement shall not apply to any taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

3. Articles 4 and 5 shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures.

ARTICLE 7
GENERAL EXCEPTIONS

For the purposes of Chapters 2 through 5, Article XX of GATT 1994 is incorporated into and forms part of this Agreement, mutatis mutandis.

ARTICLE 8
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; or

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

ARTICLE 9
NON-GOVERNMENTAL BODIES

In fulfilling its obligations and commitments under this Agreement, each Party 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 the Party.

ARTICLE 10
RELATION TO OTHER AGREEMENTS

1. Each Party reaffirms its rights and obligations vis-à-vis another Party under the WTO Agreement and/or other agreements to which these Parties are parties.

2. Nothing in this Agreement shall be construed to derogate from any obligation of a Party vis-à-vis another Party under agreements to which these Parties are parties, if such an obligation entitles the latter Party to treatment more favourable than that accorded by this Agreement.

3. In the event of any inconsistency between this Agreement and the WTO Agreement, the WTO Agreement shall prevail to the extent of the inconsistency.

4. In the event of any inconsistency between this Agreement and any agreement other than the WTO Agreement to which more than one (1) Party are parties, these Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law.

5. 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 World Trade Organization.

ARTICLE 11
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;

(e) adopt:

(i) the Implementing Regulations referred to in Rule 11 of Annex 4; and

(ii) any necessary decisions; and

(f) carry out other functions as may be agreed by the Parties.

3. The Joint Committee:

(a) shall be composed of representatives of Japan and ASEAN Member States; 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 agreed by the Parties.

ARTICLE 12
COMMUNICATIONS

Each Party shall designate a contact point to facilitate communications among the Parties on, except as otherwise provided for in Article 61, any matter relating to this Agreement. All official communications in this regard shall be done in the English language.

CHAPTER 2
TRADE IN GOODS

ARTICLE 13
DEFINITIONS

For the purposes of this Chapter, the term:

(a) "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 consistently with the provisions of Article VI of GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 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;

(b) "customs laws" means such laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation, and transit 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 Party;

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

(d) "domestic industry" means the producers as a whole of the like or directly competitive goods operating in a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;

(e) “originating goods” means goods that qualify as originating in accordance with the provisions of Chapter 3;

(f) “serious injury” means a significant overall impairment in the position of a domestic industry; and

(g) “threat of serious injury” means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent.

ARTICLE 14
CLASSIFICATION OF GOODS

The classification of goods in trade between the Parties shall be in conformity with the Harmonized System.

ARTICLE 15
NATIONAL TREATMENT ON INTERNAL TAXATION AND REGULATION

Each Party shall accord national treatment to the goods of the other Parties in accordance with Article III of GATT 1994, which to this end is incorporated into and forms part of this Agreement, mutatis mutandis.

ARTICLE 16
ELIMINATION OR REDUCTION OF CUSTOMS DUTIES

1. Except as otherwise provided for in this Agreement, each Party shall, in accordance with its Schedule in Annex 1, eliminate or reduce its customs duties on originating goods of the other Parties. Such elimination or reduction shall be applied to originating goods of all the other Parties on a non-discriminatory basis.

2. The Parties shall endeavour to take further steps towards liberalisation of trade in goods through unilateral, bilateral or regional efforts consistent with GATT 1994.

3. The Parties reaffirm that, as is provided for in Article 7, nothing in this Chapter shall be construed to prevent a Party 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 hazardous substances based on its laws and regulations, in accordance with such international agreements.

ARTICLE 17
CUSTOMS VALUATION

For the purposes of determining the customs value of goods traded between the Parties, the provisions of Part I of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement (hereinafter referred to as “the Agreement on Customs Valuation”) shall apply, mutatis mutandis.

Note: In the case of the Kingdom of Cambodia, the Agreement on Customs Valuation, as implemented in accordance with the provisions of the Protocol on the Accession of the Kingdom of Cambodia to the World Trade Organization, shall apply, mutatis mutandis.

ARTICLE 18
NON-TARIFF MEASURES

1. Each Party shall not institute or maintain any non-tariff measures including quantitative restrictions on the importation of any good of the other Parties or on the exportation or sale for export of any good destined for another Party, except the same measures as those permitted under the WTO Agreement.

2. Each Party shall ensure transparency of its non-tariff measures permitted under paragraph 1, including quantitative restrictions. Each Party which is a member of the World Trade Organization shall ensure full compliance with the obligations under the WTO Agreement with a view to minimising possible distortions to trade to the maximum extent possible.

ARTICLE 19
MODIFICATION OF CONCESSIONS

1. The Parties shall not nullify or impair any of the concessions under this Agreement, except in cases provided for in this Agreement.

2. Any Party may negotiate with any interested Party to modify or withdraw its concession made under this Agreement. In such negotiations, which may include 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 for in this Agreement prior to such negotiations. In reflecting the results of such negotiations to this Agreement, Article 77 shall apply.

ARTICLE 20
SAFEGUARD MEASURES

1. A Party which is a member of the World Trade Organization may apply a safeguard measure to an originating good of the other Parties in accordance with Article XIX of GATT 1994 and the Agreement on Safeguards in Annex 1A to the WTO Agreement (hereinafter referred to as “the Agreement on Safeguards”), or Article 5 of the Agreement on Agriculture in Annex 1A to the WTO Agreement (hereinafter referred to as “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 Chapter 9 of this Agreement.

2. Each Party shall be free to apply a safeguard measure provided for under this Article (hereinafter referred to as “an AJCEP safeguard measure”), to the minimum extent necessary to prevent or remedy the serious injury to a domestic industry of that Party and to facilitate adjustment, if as an effect of the obligations incurred by that Party under this Agreement, including tariff concessions, or if as a result of unforeseen developments and of the effects of the obligations incurred by that Party under this Agreement, an originating good of the other Parties is being imported in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry of the importing Party that produces like or directly competitive goods in the importing Party.

3. An AJCEP safeguard measure shall not be applied against an originating good of a Party which is an ASEAN Member State, as 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 from the other Parties, provided that those Parties with less than three (3) per cent import share collectively account for not more than nine (9) per cent of total imports of the good concerned from the other Parties.

4. A Party shall not apply an AJCEP safeguard measure to an originating good imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance with its Schedule in Annex 1.

5. A Party applying an AJCEP safeguard measure may:

   (a) suspend the further reduction of any customs duty on the originating good of the other Parties provided for under this Chapter; or

   (b) increase the customs duty on the originating good of the other Parties to a level not to exceed the lesser of:

      (i) the applied most-favoured-nation rate (hereinafter referred to as "applied MFN rate") on the good in effect on the day when the AJCEP safeguard measure is applied; and

      (ii) the applied MFN rate on the good in effect on the day immediately preceding the date of entry into force of this Agreement pursuant to paragraph 1 of Article 79.

6. (a) A Party may apply an AJCEP safeguard measure only after an investigation has been carried out by the competent authorities of that Party in accordance with the same procedures as those provided for in Article 3 and paragraph 2 of Article 4 of the Agreement on Safeguards.

   (b) The investigation referred to in subparagraph (a) shall be completed within one (1) year following its date of initiation.

7. The following conditions and limitations shall apply with regard to an AJCEP safeguard measure:

   (a) A Party shall immediately give a written notice to the other Parties upon:

      (i) initiating an investigation referred to in subparagraph 6(a) relating to serious injury, or threat of serious injury, and the reasons for it;

      (ii) making a finding of serious injury or threat of serious injury caused by increased imports; and

      (iii) taking a decision to apply or extend an AJCEP safeguard measure.

   (b) The Party giving the written notice referred to in subparagraph (a) shall provide the other Parties with all pertinent information, which shall include:

      (i) in the written notice referred to in subparagraph (a)(i), the reason for the initiation of the investigation, a precise description of an originating good subject to the investigation and its heading or subheading of the Harmonized System, on which the Schedules in Annex 1 are based, the period subject to the investigation and the date of initiation of the investigation; and

      (ii) in the written notice referred to in subparagraphs (a)(ii) and (iii), the evidence of serious injury or threat of serious injury caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed safeguard measure and its heading or subheading of the Harmonized System, on which the Schedules in Annex 1 are based, a precise description of the AJCEP safeguard measure, the proposed date of its introduction and its expected duration.

(c) A Party proposing to apply or extend an AJCEP safeguard measure shall provide adequate opportunity for prior consultations with those Parties which would be affected by the AJCEP safeguard measure with a view to reviewing the information arising from the investigation referred to in subparagraph (a), exchanging views on the AJCEP safeguard measure and reaching an agreement on compensation set out in paragraph 8.

(d) No AJCEP safeguard measure shall be maintained except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such time shall not exceed a period of three (3) years. An AJCEP safeguard measure may be extended, provided that the conditions set out in this Article are met. The total duration of the AJCEP safeguard measure, including any extensions thereof, shall not exceed four (4) years. In order to facilitate adjustment in a situation where the expected duration of an AJCEP safeguard measure is over one (1) year, the Party maintaining the AJCEP safeguard measure shall progressively liberalise the AJCEP safeguard measure at regular intervals during the period of application.

(e) No AJCEP safeguard measure shall be applied again to the import of a particular originating good which has been subject to such an AJCEP safeguard measure, for a period of time equal to the duration of the previous safeguard measure or one (1) year, whichever is longer.

(f) Upon the termination of an AJCEP safeguard measure on a good, the rate of the customs duty for that good shall be the rate that, in accordance with the Schedule of the Party applying the AJCEP safeguard measure set out in Annex 1, would have been in effect had the AJCEP safeguard measure not been applied.

8. (a) A Party proposing to apply or extend an AJCEP safeguard measure shall provide to the other Parties mutually agreed adequate means of trade compensation in the form of substantially equivalent level of concessions or other obligations to that existing under this Agreement between the Party applying the AJCEP safeguard measure and the exporting Parties which would be affected by such a measure.

(b) In seeking compensation provided for in subparagraph (a), the Parties shall hold consultations in the Joint Committee. Any proceedings arising from such consultations shall be completed within thirty (30) days from the date on which the AJCEP safeguard measure was applied.

(c) If no agreement on the compensation is reached within the time frame specified in subparagraph (b), the Parties other than the one applying the AJCEP safeguard measure shall be free to suspend concessions of customs duties under this Agreement, which is substantially equivalent to the AJCEP safeguard measure, on originating goods of the Party applying the AJCEP safeguard measure. The Parties may suspend the concessions only for the minimum period necessary to achieve the substantially equivalent effects and only while the AJCEP safeguard measure is maintained. The right of suspension provided for in this subparagraph shall not be exercised for the first two (2) years that an AJCEP safeguard measure is in effect, provided that the AJCEP safeguard measure has been applied as a result of an absolute increase in imports and that such an AJCEP safeguard measure conforms to the provisions of this Article.

9. (a) A Party applying a safeguard measure in connection with an importation of an originating good of another Party in accordance with Article XIX of GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture, shall not apply the AJCEP safeguard measure to that importation.

(b) The period of application of the AJCEP safeguard measure referred to in subparagraph 7(d) shall not be interrupted by the Party's non-application of the AJCEP safeguard measure in accordance with subparagraph (a).

10. (a) Within ten (10) years after the entry into force of this Agreement pursuant to paragraph 1 of Article 79, the Parties shall review this Article with a view to determining whether there is a need to maintain the AJCEP safeguard mechanism.

(b) If the Parties do not agree to remove the AJCEP safeguard mechanism during the review pursuant to subparagraph (a), the Parties shall thereafter conduct reviews to determine the necessity of the AJCEP safeguard mechanism, in conjunction with the general review pursuant to Article 75.

11. (a) In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may apply a provisional AJCEP safeguard measure, which shall take the form of the measure set out in subparagraph 5(a) or 5(b), pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry.

(b) A Party shall give a written notice to the other Parties prior to applying a provisional AJCEP safeguard measure. Consultations by the Parties in the Joint Committee on the application of the provisional AJCEP safeguard measure shall be initiated immediately after the provisional AJCEP safeguard measure is applied.

(c) The duration of a provisional AJCEP safeguard measure shall not exceed two hundred (200) days. During that period, the pertinent requirements of paragraph 6 shall be met. The duration of the provisional AJCEP safeguard measure shall be counted as a part of the period referred to in subparagraph 7(d).

(d) Paragraph 3 and subparagraph 7(f) shall apply, mutatis mutandis, to the provisional AJCEP safeguard measure.

(e) The customs duty imposed as a result of the provisional AJCEP safeguard measure shall be refunded if the subsequent investigation referred to in subparagraph 6(a) does not determine that increased imports of the originating good have caused or threatened to cause serious injury to a domestic industry.

12. All official communications and documentations exchanged among the Parties relating to an AJCEP safeguard measure shall be in writing and shall be in the English language.

ARTICLE 21
MEASURES TO SAFEGUARD THE BALANCE OF PAYMENTS

Nothing in this Chapter 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 the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement.

ARTICLE 22
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, subject to its laws and regulations, and available resources, shall endeavour to provide information relating to specific matters raised by interested persons of the Parties pertaining to its customs laws. Each Party shall endeavour to supply not only such information but also other pertinent information which it considers the interested persons 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 Customs Co-operation Council.

CHAPTER 3
RULES OF ORIGIN

ARTICLE 23
DEFINITIONS

For the purposes of this Chapter, the term:

(a) “exporter” means a natural or juridical person located in an exporting Party who exports a good from the exporting Party;

(b) “factory ships of the Party” or “vessels of the Party” respectively means factory ships or vessels:

   (i) which are registered in the Party;

   (ii) which sail under the flag of the Party;

   (iii) which are owned to an extent of at least fifty (50) per cent by nationals of one or more of the Parties, or by a juridical person with its head office in a Party, of which the representatives, chairman of the board of directors, and the majority of the members of such board are nationals of one or more of the Parties, and of which at least fifty (50) per cent of the equity interest is owned by nationals or juridical persons of one or more of the Parties; and

(iv) of which at least seventy-five (75) per cent of the total of the master, officers and crew are nationals of one or more of the Parties;

(c) "generally accepted accounting principles" means the recognised consensus or substantial authoritative support in a Party, 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;

(d) "good" means any merchandise, product, article or material;

(e) "identical and interchangeable materials" means materials being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which once they are incorporated into the good cannot be distinguished from one another for origin purposes by virtue of any markings;

(f) "importer" means a natural or juridical person who imports a good into the importing Party;

(g) "materials" means any matter or substance used or consumed in the production of a good, physically incorporated into a good, or used in the production of another good;

(h) "originating good" or "originating material" means a good or material that qualifies as originating in accordance with the provisions of this Chapter;

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

(j) "preferential tariff treatment" means the rate of customs duties applicable to an originating good of the exporting Party in accordance with paragraph 1 of Article 16; and

(k) "production" means methods of obtaining a good including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, processing or assembling.

ARTICLE 24
ORIGINATING GOODS

For the purposes of this Agreement, a good shall qualify as an originating good of a Party if it:

(a) is wholly obtained or produced entirely in the Party as provided for in Article 25;

(b) satisfies the requirements of Article 26 when using non-originating materials; or

(c) is produced entirely in the Party exclusively from originating materials of one or more of the Parties, and meets all other applicable requirements of this Chapter.

ARTICLE 25
GOODS WHOLLY OBTAINED OR PRODUCED

For the purposes of paragraph (a) of Article 24, the following shall be considered as wholly obtained or produced entirely in a Party:

(a) plant and plant products grown and harvested, picked or gathered in the Party;

Note: For the purposes of this paragraph, the term “plant” refers to all plant life, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants.

(b) live animals born and raised in the Party;

Note: For the purposes of paragraphs (b) and (c), the term “animals” covers all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, bacteria and viruses.

(c) goods obtained from live animals in the Party;

(d) goods obtained from hunting, trapping, fishing, gathering or capturing conducted in the Party;

(e) minerals and other naturally occurring substances, not included in paragraphs (a) through (d), extracted or taken from soil, waters, seabed or beneath the seabed of the Party;

(f) goods taken from the waters, seabed or beneath the seabed outside the territorial waters of the Party, provided that the Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with its laws and regulations and international law;

Note: Nothing in this Agreement shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea.

(g) goods of sea-fishing and other marine products taken by vessels of the Party from outside the territorial sea of any Party;

(h) goods processed and/or made on board factory ships of the Party exclusively from products referred to in paragraph (g);

(i) articles collected in the Party which can no longer perform their original purpose or be restored or repaired, and are fit only for disposal, for the recovery of parts or raw materials, or for recycling purposes;

(j) scrap and waste derived from manufacturing or processing operations, including mining, agriculture, construction, refining, incineration and sewage treatment operations, or from consumption, in the Party, and fit only for disposal or for the recovery of raw materials; and

(k) goods obtained or produced in the Party exclusively from goods referred to in paragraphs (a) through (j).

ARTICLE 26
GOODS NOT WHOLLY OBTAINED OR PRODUCED

1. For the purposes of paragraph (b) of Article 24, a good shall qualify as an originating good of a Party if:

   (a) the good has a regional value content (hereinafter referred to as "RVC"), calculated using the formula set out in Article 27, of not less than forty (40) per cent, and the final process of production has been performed in the Party; or

   (b) all non-originating materials used in the production of the good have undergone in the Party a change in tariff classification (hereinafter referred to as "CTC") at the 4-digit level (i.e. a change in tariff heading) of Harmonized System.

Note: For the purposes of this subparagraph, "Harmonized System" is that on which the product specific rules set out in Annex 2 are based.

Each Party shall permit the exporter of the good to decide whether to use subparagraph (a) or (b) when determining whether the good qualifies as an originating good of the Party.

2. Notwithstanding paragraph 1, a good subject to product specific rules shall qualify as an originating good if it satisfies the applicable product specific rules set out in Annex 2. 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 Party shall permit the exporter of the good to decide which rule to use in determining whether the good qualifies as an originating good of the Party.

3. For the purposes of subparagraph 1(a) and the relevant product specific rules set out in Annex 2 which specify a certain RVC, it is required that the RVC of a good, calculated using the formula set out in Article 27, is not less than the percentage specified by the rule for the good.

4. For the purposes of subparagraph 1(b) and the relevant product specific rules set out in Annex 2, the rules requiring that the materials used have undergone CTC, or a specific manufacturing or processing operation, shall apply only to non-originating materials.

5. For the purposes of this Chapter, Annex 3 shall apply.

ARTICLE 27
CALCULATION OF REGIONAL VALUE CONTENT

1. For the purposes of calculating the RVC of a good, the following formula shall be used:

RVC = [(FOB-VNM)/FOB] X 100%

2. For the purposes of this Article:

   (a) "FOB" is, except as provided for in paragraph 3, the free-on-board value of a good, inclusive of the cost of transport from the producer to the port or site of final shipment abroad;

   (b) "RVC" is the RVC of a good, expressed as a percentage; and

   (c) "VNM" is the value of non-originating materials used in the production of a good.

3. FOB referred to in subparagraph 2(a) shall be the value:

(a) adjusted to the first ascertainable price paid for a good from the buyer to the producer of the good, if there is free-on-board value of the good, but it is unknown and cannot be ascertained; or

(b) determined in accordance with Articles 1 through 8 of the Agreement on Customs Valuation, if there is no free-on-board value of a good.

4. For the purposes of paragraph 1, the value of non-originating materials used in the production of a good in a Party:

(a) shall be determined in accordance with the Agreement on Customs Valuation and shall include freight, insurance, and where appropriate, packing and all other costs incurred in transporting the material to the importation port in the Party where the producer of the good is located; or

(b) if such value is unknown and cannot be ascertained, shall be the first ascertainable price paid for the material in the Party, but may exclude all the costs incurred in the Party in transporting the material from the warehouse of the supplier of the material to the place where the producer is located such as freight, insurance and packing as well as any other known and ascertainable cost incurred in the Party.

5. For the purposes of paragraph 1, the VNM of a good shall not include the value of non-originating materials used in the production of originating materials of the Party which are used in the production of the good.

6. For the purposes of subparagraph 3(b) or 4(a), in applying the Agreement on Customs Valuation to determine the value of a good or non-originating material, the Agreement on Customs Valuation shall apply, mutatis mutandis, to domestic transactions or to the cases where there is no domestic transaction of the good or non-originating material.

ARTICLE 28
DE MINIMIS

1. A good that does not satisfy the requirements of subparagraph 1(b) of Article 26 or an applicable CTC-based rule of origin set out in Annex 2 shall be considered as an originating good of a Party if:

(a) in the case of a good classified under Chapters 16, 19, 20, 22, 23, 28 through 49, and 64 through 97 of the Harmonized System, the total value of non-originating materials used in the production of the good that have not undergone the required CTC does not exceed ten (10) per cent of the FOB;

(b) in the case of a particular good classified under Chapters 18 and 21 of the Harmonized System, the total value of non-originating materials used in the production of the good that have not undergone the required CTC does not exceed ten (10) per cent or seven (7) per cent of the FOB, as specified in Annex 2; or

(c) in the case of a good classified under Chapters 50 through 63 of the Harmonized System, the weight of all non-originating materials used in the production of the good that have not undergone the required CTC does not exceed ten (10) per cent of the total weight of the good,

provided that it meets all other applicable criteria set out in this Chapter for qualifying as an originating good.

Note: For the purposes of this paragraph, subparagraph 2(a) of Article 27 shall apply.

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

ARTICLE 29
ACCUMULATION

Originating materials of a Party used in the production of a good in another Party shall be considered as originating materials of that Party where the working or processing of the good has taken place.

ARTICLE 30
NON-QUALIFYING OPERATIONS

A good shall not be considered to satisfy the requirements of CTC or specific manufacturing or processing operation merely by reason of:

(a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine) and other similar operations;

(b) changes of packaging and breaking up and assembly of packages;

(c) disassembly;

(d) placing in bottles, cases, boxes and other simple packaging operations;

(e) collection of parts and components classified as a good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System;

(f) mere making-up of sets of articles; or

(g) any combination of operations referred to in subparagraphs (a) through (f).

ARTICLE 31
DIRECT CONSIGNMENT

1. Preferential tariff treatment shall be accorded to an originating good satisfying the requirements of this Chapter and which is consigned directly from the exporting Party to the importing Party.

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

   (a) a good transported directly from the exporting Party to the importing Party; or

   (b) a good transported through one or more Parties, other than the exporting Party and the importing Party, or through a non-Party, provided that the good does not undergo operations other than transit or temporary storage in warehouses, unloading, reloading, and any other operation to preserve it in good condition.

ARTICLE 32
PACKING MATERIALS AND CONTAINERS

1. Packing materials and containers for transportation and shipment of a good shall not be taken into account in determining the origin of any good.

2. Packing materials and containers in which a good is packaged for retail sale, when classified together with the good, shall not be taken into account in determining whether all of the non-originating materials used in the production of the good have met the applicable CTC-based rule of origin for the good.

3. If a good is subject to a RVC-based rule of origin, the value of the packing materials and containers in which the good is packaged for retail sale shall be taken into account as originating or non-originating materials, as the case may be, in calculating the RVC of the good.

ARTICLE 33
ACCESSORIES, SPARE PARTS, TOOLS AND

Instructional or Other Information Materials

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 a 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 goods.

ARTICLE 34
INDIRECT MATERIALS

1. Indirect materials shall be treated as originating materials regardless of where they are produced.

2. For the purposes of this Article, the term “indirect materials” means goods used in the production, testing, or inspection of a good but not physically incorporated into the good, or goods used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

   (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) catalysts and solvents; and

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

ARTICLE 35
IDENTICAL AND INTERCHANGEABLE MATERIALS

The determination of whether identical and interchangeable materials are originating materials shall be made by the use of generally accepted accounting principles of stock control applicable, or those of inventory management practised, in the exporting Party.

ARTICLE 36
OPERATIONAL CERTIFICATION PROCEDURES

The operational certification procedures, as set out in Annex 4, shall apply with respect to procedures regarding certificate of origin and related matters.

ARTICLE 37
SUB-COMMITTEE ON RULES OF ORIGIN

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Rules of Origin (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 11.

2. The functions of the Sub-Committee shall be to:

   (a) review and make appropriate recommendations, as needed, to the Joint Committee on:

      (i) the implementation and operation of this Chapter;

      (ii) any amendments to Annexes 2 and 3, and Attachment to Annex 4, proposed by any Party; and

      (iii) the Implementing Regulations referred to in Rule 11 of Annex 4;

   (b) consider any other matter as the Parties may agree related to this Chapter;

   (c) report the findings of the Sub-Committee to the Joint Committee; and

   (d) carry out other functions as may be delegated by the Joint Committee pursuant to Article 11.

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

4. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

CHAPTER 4
SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 38
SCOPE

This Chapter shall apply to all sanitary and phytosanitary (hereinafter referred to as "SPS") measures of the Parties as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement (hereinafter referred to as "SPS Agreement") that may, directly or indirectly, affect trade between the Parties.

ARTICLE 39
REAFFIRMATION OF RIGHTS AND OBLIGATIONS

The Parties reaffirm the rights and obligations relating to SPS measures under the SPS Agreement among those Parties that are parties to the said Agreement.

ARTICLE 40
SUB-COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Sanitary and Phytosanitary Measures (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 11.

2. The functions of the Sub-Committee shall be to:

   (a) exchange information on such matters as occurrences of SPS incidents in the Parties and non-Parties, and change or introduction of SPS-related regulations and standards of the Parties, which may, directly or indirectly, affect trade between Japan and more than one (1) ASEAN Member State which are the Parties;

   (b) facilitate cooperation in the area of SPS 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 Party;

   (c) undertake science-based consultations to identify and address specific issues that may arise from the application of SPS measures and are shared by Japan and more than one (1) ASEAN Member State which are the Parties;

   (d) review the implementation and operation of this Chapter; and

   (e) report, where appropriate, its findings to the Joint Committee.

3. The Parties shall coordinate their undertakings with the activities conducted in the bilateral, regional and multilateral context, with the objective of avoiding unnecessary duplication and maximising efficiency of efforts of the Parties in this field.

4. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

5. The Sub-Committee shall be:

   (a) composed of government officials of the Parties with responsibility for SPS measures; and

(b) co-chaired by an official of the Government of Japan and an official of one of the Governments of the ASEAN Member States which are the Parties.

ARTICLE 41
ENQUIRY POINTS

Each Party shall designate an enquiry point to answer all reasonable enquiries from another Party regarding SPS measures and, if appropriate, provide the latter with relevant information.

ARTICLE 42
NON-APPLICATION OF CHAPTER 9

The dispute settlement procedures provided for in Chapter 9 shall not apply to this Chapter.

CHAPTER 5
STANDARDS, TECHNICAL REGULATIONS AND CONFORMITY ASSESSMENT PROCEDURES

ARTICLE 43
OBJECTIVES

The objectives of this Chapter are to promote trade among the Parties by:

(a) ensuring that standards, technical regulations and conformity assessment procedures do not create unnecessary obstacles to trade;

(b) promoting mutual understanding of the standards, technical regulations and conformity assessment procedures in each Party;

(c) strengthening information exchange and cooperation among the Parties in relation to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures;

(d) strengthening cooperation among the Parties in the work of international bodies related to standardisation and conformity assessments; and

(e) providing a framework to realise these objectives.

ARTICLE 44
SCOPE

1. This Chapter shall apply to standards, technical regulations and conformity assessment procedures as defined in the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement (hereinafter referred to as “TBT Agreement”).

2. This Chapter shall not apply to purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies and sanitary and phytosanitary measures as defined in Annex A of the SPS Agreement.

3. Nothing in this Chapter shall limit the right of a Party to prepare, adopt and apply standards and technical regulations, to the extent necessary, to fulfil a legitimate objective. Such legitimate objectives are, inter alia, national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In

pursuance of this, each Party retains all authority to interpret its laws, regulations and administrative provisions.

ARTICLE 45
REAFFIRMATION OF RIGHTS AND OBLIGATIONS

The Parties reaffirm the rights and obligations relating to standards, technical regulations and conformity assessment procedures under the TBT Agreement among those Parties that are parties to the said Agreement.

ARTICLE 46
COOPERATION

1. For the purposes of ensuring that standards, technical regulations and conformity assessment procedures do not create unnecessary obstacles to trade in goods among the Parties, the Parties shall, where possible, cooperate in the field of standards, technical regulations and conformity assessment procedures.

2. The forms of cooperation pursuant to paragraph 1 may include the following:

   (a) conducting joint studies and holding seminars, in order to enhance mutual understanding of standards, technical regulations and conformity assessment procedures in each Party;

   (b) exchanging information on standards, technical regulations and conformity assessment procedures;

   (c) developing and implementing joint programmes for building and/or upgrading capacity in the Parties for advancement of activities within the scope of the TBT Agreement;

   (d) encouraging the bodies responsible for standards, technical regulations and conformity assessment procedures in each Party to cooperate on matters of mutual interest;

   (e) contributing, where appropriate, jointly to the activities related to standards, technical regulations and conformity assessment procedures in international and regional fora; and

   (f) jointly identifying work in the field of standards, technical regulations and conformity assessment procedures, where appropriate, to avoid unnecessary obstacle to trade among the Parties.

3. The implementation of this Article shall be subject to the availability of appropriated funds and the applicable laws and regulations of each Party.

ARTICLE 47
ENQUIRY POINTS

1. Each Party shall designate an enquiry point which shall have the responsibility to coordinate the implementation of this Chapter.

2. Each Party shall provide the other Parties with the name of its designated enquiry point and the contact details of relevant officials in that organisation including information on telephone, facsimile and e-mail and other relevant details.

3. Each Party shall notify the other Parties promptly of any change of its enquiry point or any amendments to the information of the relevant officials.

ARTICLE 48
SUB-COMMITTEE ON STANDARDS, TECHNICAL REGULATIONS AND CONFORMITY ASSESSMENT PROCEDURES

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 11.

2. The functions of the Sub-Committee shall be to:

   (a) coordinate cooperation pursuant to Article 46;

   (b) identify mutually agreed priority sectors for enhanced cooperation, including giving favourable consideration to any proposal made by a Party;

   (c) establish work programmes in mutually agreed priority areas to facilitate the acceptance of conformity assessment results and equivalence of technical regulations;

   (d) monitor the progress of work programmes;

   (e) review the implementation and operation of this Chapter;

   (f) facilitate technical consultations;

   (g) report, where appropriate, its findings to the Joint Committee; and

   (h) carry out other functions as may be delegated by the Joint Committee pursuant to Article 11.

3. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

4. The Parties shall coordinate their undertakings with the activities conducted in the bilateral, regional and multilateral context, with the objective of avoiding unnecessary duplication and maximising efficiency of efforts of the Parties in this field.

5. The Sub-Committee shall be:

   (a) composed of representatives of the Governments of the Parties; and

   (b) co-chaired by an official of the Government of Japan and an official of one of the Governments of the ASEAN Member States, which are the Parties.

ARTICLE 49
NON-APPLICATION OF CHAPTER 9

The dispute settlement procedures provided for in Chapter 9 shall not apply to this Chapter.

CHAPTER 6
TRADE IN SERVICES

ARTICLE 50
TRADE IN SERVICES

1. Each Party shall endeavour to, in accordance with its laws, regulations and policies, take further steps towards the expansion of trade in services among or between the Parties consistent with GATS.

2. The Parties shall, with the participation of Japan and all ASEAN Member States, continue to discuss and negotiate provisions for trade in services with a view to exploring measures towards further liberalisation and facilitation of trade in services among Japan and ASEAN Member States and to enhance cooperation in order to improve the efficiency and competitiveness of services and service suppliers of Japan and the ASEAN Member States. For this purpose, a Sub-Committee on Trade in Services, which shall be composed of representatives of the Governments of Japan and all ASEAN Member States, shall be established in accordance with Article 11 within one (1) year from the date of entry into force of this Agreement pursuant to paragraph 1 of Article 79.

3. The results of the negotiations referred to in paragraph 2, if any, shall be incorporated into this Chapter in accordance with Article 77.

CHAPTER 7
INVESTMENT

ARTICLE 51
INVESTMENT

1. Each Party shall endeavour to, in accordance with its laws, regulations and policies, create and maintain favourable and transparent conditions in the Party for investments of investors of the other Parties.

2. The Parties shall, with the participation of Japan and all ASEAN Member States, continue to discuss and negotiate provisions for investment, with a view to improving the efficiency and competitiveness of the investment environment of Japan and ASEAN Member States through progressive liberalisation, promotion, facilitation and protection of investment. For this purpose, a Sub-Committee on Investment, which shall be composed of the representatives of the Governments of Japan and all ASEAN Member States, shall be established in accordance with Article 11 within one (1) year from the date of entry into force of this Agreement pursuant to paragraph 1 of Article 79.

3. The results of the negotiations referred to in paragraph 2, if any, shall be incorporated into this Chapter in accordance with Article 77.

CHAPTER 8
ECONOMIC COOPERATION

ARTICLE 52
BASIC PRINCIPLES

1. The Parties shall, subject to the availability of resources as well as their respective applicable laws and regulations, promote cooperation under this Agreement for their mutual benefits in order to liberalise and facilitate trade and investment among the Parties and to promote the well-being of the peoples of the Parties, taking into account the different levels of economic development among ASEAN Member States.

2. The Parties shall promote regional and sub-regional development through economic cooperation activities including capacity building, technical assistance, and other such activities as may be mutually agreed upon among the Parties.

ARTICLE 53
FIELDS OF ECONOMIC COOPERATION

The Parties, on the basis of mutual benefit, shall explore and undertake economic cooperation activities in the following fields:

(a) Trade-Related Procedures;

(b) Business Environment;

(c) Intellectual Property;

(d) Energy;

(e) Information and Communications Technology;

(f) Human Resource Development;

(g) Small and Medium Enterprises;

(h) Tourism and Hospitality;

(i) Transportation and Logistics;

(j) Agriculture, Fisheries and Forestry;

(k) Environment;

(l) Competition Policy; and

(m) Other fields as may be mutually agreed upon among the Parties.

ARTICLE 54
SUB-COMMITTEE ON ECONOMIC COOPERATION

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Economic Cooperation (hereinafter referred to in this Article as "the Sub-Committee") shall be established in accordance with Article 11 on the date of entry into force of this Agreement pursuant to paragraph 1 of Article 79.

2. The functions of the Sub-Committee shall be to:

   (a) modify and formulate relevant Work Programmes setting out areas and forms of each field of economic cooperation;

   (b) make recommendations on existing and new economic cooperation activities under this Chapter in accordance with the priorities of the Parties;

   (c) review and monitor the implementation and operation of this Chapter and the application and fulfilment of its basic principles; and

(d) report the findings and the outcome of its discussions to the Joint Committee.

3. The Sub-Committee shall be:

(a) composed of representatives of the Governments of Japan and all ASEAN Member States; and

(b) co-chaired by an official of the Government of Japan and an official of one of the Governments of ASEAN Member States.

ARTICLE 55
WORK PROGRAMMES FOR ECONOMIC COOPERATION

1. Work Programmes setting out areas and forms of each field of cooperation activities shall be set forth in Annex 5.

2. Any modification of existing Work Programmes or formulation of new Work Programmes shall be made in accordance with paragraph 2 of Article 54 and through amending Annex 5 pursuant to the procedures set out in Article 77.

ARTICLE 56
RESOURCES FOR ECONOMIC COOPERATION

Taking into account the different levels of economic development and capacity among the Parties, resources for economic cooperation under this Chapter shall be provided in such a manner as may be mutually agreed upon among the Parties.

ARTICLE 57
IMPLEMENTATION OF ECONOMIC COOPERATION ACTIVITIES

1. Economic cooperation activities shall involve Japan and at least two (2) ASEAN Member States.

2. Notwithstanding paragraph 1, economic cooperation activities may also involve Japan and one (1) ASEAN Member State, provided that those activities are regional in nature and of benefit to other ASEAN Member States. Such activities shall aim at narrowing the gaps of economic development among ASEAN Member States or at promoting the well-being of the people of ASEAN Member States towards further integration of ASEAN.

3. The Parties shall undertake economic cooperation activities at mutually agreed time.

ARTICLE 58
NON-APPLICATION OF CHAPTER 9

The dispute settlement procedures provided for in Chapter 9 shall not apply to this Chapter.

CHAPTER 9
SETTLEMENT OF DISPUTES

ARTICLE 59
DEFINITIONS

For the purposes of this Chapter, the term:

(a) "complaining party" means any Party or Parties that request consultations under paragraph 1 of Article 62;

(b) "party to a dispute" means any Party which is a complaining party or a party complained against;

(c) "party complained against" means any Party or Parties to which the request for consultations is made under paragraph 1 of Article 62; and

(d) "third party" means a Party, other than the parties to a dispute, that notifies its interest in writing in accordance with Article 66.

ARTICLE 60
SCOPE OF APPLICATION

1. Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of all disputes between the Parties concerning the interpretation or application of this Agreement.

2. This Chapter may apply to measures affecting a Party's observance of this Agreement taken by regional or local governments or authorities within the Party. When the arbitral tribunal has awarded that a provision of this Agreement has not been observed in accordance with Article 67, the responsible Party shall take such reasonable measures as may be available to it to ensure its observance. Paragraphs 3 and 4 of Article 71 shall apply in cases where it has not been possible for the Party to secure such observance.

3. Nothing in this Chapter shall prejudice any rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which all of the parties to a dispute are parties.

4. Notwithstanding paragraph 3, once dispute settlement proceedings have been initiated under this Chapter or under any other international agreement to which all of the parties to a dispute are parties with respect to a particular dispute, the forum selected by the complaining party shall be used to the exclusion of any other fora for that particular dispute. However, this shall not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.

5. For the purposes of paragraphs 3 and 4, the complaining party shall be deemed to have selected a forum when it has requested the establishment of, or referred a dispute to, an arbitral tribunal or a dispute settlement panel, in accordance with this Chapter or any other international agreement to which the parties to a dispute are parties.

ARTICLE 61
CONTACT POINTS

1. For the purposes of this Chapter, a Party may designate a contact point responsible for communications on all matters referred to in this Chapter. The submission of any request, notice or other document under this Chapter to the contact point so designated shall be deemed to have been made to that Party.

2. Where a Party chooses not to designate a contact point pursuant to paragraph 1, the submission of any request, notice or other document under this Chapter shall be made to the contact point which the Party designates in accordance with Article 12.

3. Any Party receiving any request, notice or other document under this Chapter shall acknowledge receipt in writing.

ARTICLE 62
CONSULTATIONS

1. A Party or Parties may make a request in writing for consultations to other Party or Parties concerning any matter on the interpretation or application of this Agreement where the complaining party considers that any benefit accruing to it under this Agreement is being nullified or impaired as a result of the failure of the party complained against to carry out its obligations under this Agreement, or as a result of the application by the party complained against of measures which are in conflict with its obligations under this Agreement.

2. Any request for consultations shall be submitted in writing, containing the identification of the specific measures at issue and indication of the factual and legal basis (including the provisions of this Agreement alleged to have been breached and any other relevant provisions) of the complaint. The complaining party shall at the same time notify the rest of the Parties thereof.

3. Upon receipt of the request referred to in paragraph 1, the party complained against shall promptly acknowledge receipt of such request to the complaining party and the rest of the Parties at the same time.

4. If a request for consultations is made, the party complained against shall reply to the request within ten (10) days after the date of receipt of the request and shall enter into consultations in good faith within a period of not more than thirty (30) days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

5. The parties to a dispute shall make every effort to reach a mutually satisfactory resolution of any matter through consultations under this Article. To this end, the parties to the dispute shall provide each other with sufficient information to enable a full examination of the dispute.

6. Consultations shall be confidential between the parties to the dispute and are without prejudice to the rights of any Party in any further proceedings under this Chapter or in other proceedings. The parties to the dispute shall inform the rest of the Parties of the outcome of the consultations.

7. In cases of urgency, including those which concern perishable goods, the parties to the dispute shall enter into consultations within a period of no more than ten (10) days after the date of receipt of the request by the party complained against.

8. In cases of urgency, including those which concern perishable goods, the parties to the dispute shall make every effort to accelerate the consultations to the greatest extent possible.

ARTICLE 63
GOOD OFFICES, CONCILIATION AND MEDIATION

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree.

2. Good offices, conciliation or mediation may be requested at any time by any party to a dispute. They may begin at any time by agreement of the parties to the dispute and be terminated at any time upon the request of any party to the dispute.

3. If the parties to the dispute agree, good offices, conciliation or mediation may continue while the proceedings of the arbitral tribunal provided for in this Chapter are in progress.

4. Proceedings involving good offices, conciliation or mediation, and, in particular, positions taken by the parties to the dispute during these proceedings, shall be kept confidential and without prejudice to the rights of any Party in any proceedings under this Chapter or in other proceedings.

ARTICLE 64
ESTABLISHMENT OF ARBITRAL TRIBUNALS

1. The complaining party may request in writing, to the party complained against, the establishment of an arbitral tribunal:

   (a) if the party complained against does not respond within ten (10) days, or does not enter into such consultations within thirty (30) days after the date of receipt of the request for such consultations; or

   (b) if the parties to the dispute fail to resolve the dispute through such consultations within sixty (60) days after the date of receipt of the request for such consultations, or within twenty (20) days after such date in cases of urgency including those which concern perishable goods.

2. A copy of the request referred to in paragraph 1 shall also be communicated to the rest of the Parties.

3. Where more than one (1) complaining party request the establishment of an arbitral tribunal related to the same matter, a single arbitral tribunal may, whenever feasible, be established by the parties to the dispute to examine the matter, taking into account the rights of each party to the dispute.

4. Where a single arbitral tribunal is established pursuant to paragraph 3, the arbitral tribunal shall organise its examination and present its findings to all the parties to the dispute in such a manner that the rights which the parties to the dispute would have enjoyed had separate arbitral tribunals examined the same matter are in no way impaired. If any of the parties to the dispute so requests, the arbitral tribunal may make separate awards on the dispute concerned as long as the timeframe for making the awards so permits. The written submissions by a party to the dispute shall be made available to the other parties to the dispute, and each party to the dispute shall have the right to be present when any other party to the dispute presents its views to the arbitral tribunal.

5. Where more than one (1) arbitral tribunal are established to examine the dispute related to the same matter, to the greatest extent possible, the same persons shall be appointed by the parties to the disputes to serve on each of the separate arbitral tribunals.

6. Any request for the establishment of an arbitral tribunal shall indicate whether consultations under Article 62 have been held, identify the factual basis for the complaint including the specific measures at issue and provide the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions.

ARTICLE 65
COMPOSITION OF ARBITRAL TRIBUNALS

1. An arbitral tribunal shall consist of three (3) arbitrators.

2. The complaining party and the party complained against shall, within thirty (30) days after the date of receipt of the request for the establishment of an arbitral tribunal, each appoint one (1)

arbitrator who may be a national of any party to the dispute and propose up to three (3) candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal. The third arbitrator shall not be a national of any party to the dispute, nor have his or her usual place of residence in any party to the dispute, nor be employed by any party to the dispute, nor have dealt with the dispute in any capacity.

3. The complaining party and the party complained against shall agree on and appoint the third arbitrator within forty-five (45) days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed pursuant to paragraph 2. If either the complaining party or the party complained against has not appointed an arbitrator pursuant to paragraph 2, or if the parties to the dispute fail to agree on and appoint the third arbitrator pursuant to this paragraph, the Director-General of the World Trade Organization shall immediately be requested to make the necessary appointments. In the event that the Director-General is a national of any party to the dispute, the Deputy Director-General or the officer next in seniority who is not a national of any party to the dispute shall be requested to make the necessary appointments. Appointments made pursuant to this paragraph other than that of the third arbitrator shall be deemed to have been made by the complaining party or the party complained against which has failed to make such an appointment.

4. The date of establishment of an arbitral tribunal shall be the date on which the third arbitrator is appointed pursuant to paragraph 3.

5. If an arbitrator appointed under this Article resigns or becomes unable to act, a succeeding arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the succeeding arbitrator shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended until the succeeding arbitrator is appointed.

6. Any person appointed as an arbitrator shall have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements. An arbitrator shall be chosen strictly on the basis of objectivity, reliability, sound judgment and independence and shall conduct himself or herself on the same basis throughout the course of the arbitral tribunal proceedings. If a party to the dispute believes that an arbitrator is not adhering to the basis stated above, the parties to the dispute shall consult and if they agree, the arbitrator shall be removed and a new arbitrator shall be appointed in accordance with this Article.

ARTICLE 66
THIRD PARTIES

1. Any Party having a substantial interest in a dispute before an arbitral tribunal and having notified its interest in writing to the parties to the dispute and the rest of the Parties shall have an opportunity to make written submissions to the arbitral tribunal. These submissions shall also be given to the parties to the dispute and may be reflected in the award of the arbitral tribunal.

2. A third party shall receive the submissions of the parties to the dispute to the first meeting of the arbitral tribunal.

3. If a third party considers that a measure that is already the subject of any arbitral tribunal proceedings nullifies or impairs benefits accruing to it under this Agreement, such third party may have recourse to normal dispute settlement procedures under this Chapter.

ARTICLE 67
FUNCTIONS OF ARBITRAL TRIBUNALS

1. The arbitral tribunal established pursuant to Article 64:

   (a) should make an objective assessment of the matter before it, including an examination of the facts of the case and the applicability of and conformity with the Agreement;

   (b) should consult with the parties to the dispute as appropriate and provide them with adequate opportunities for the development of a mutually satisfactory resolution;

   (c) shall make its award in accordance with this Agreement and applicable rules of international law;

   (d) shall set out, in its award, its findings of law and fact, together with the reasons therefor;

   (e) may, apart from giving its findings, include in its award suggested implementation options for the parties to the dispute to consider in conjunction with Article 71; and

   (f) cannot, in its award, add to or diminish the rights and obligations of any Party provided in this Agreement.

2. The arbitral tribunal may seek, from the Parties, such relevant information as it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the arbitral tribunal for such information.

3. The arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to factual issues concerning a scientific or other technical matter raised by any party to the dispute, the arbitral tribunal may request advisory reports in writing from experts. The arbitral tribunal may, at the request of any party to the dispute or on its own initiative, select, in consultation with the parties to the dispute, no fewer than two (2) scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award. Any information and technical advice so obtained shall be made available to the parties to the dispute.

ARTICLE 68
PROCEEDINGS OF ARBITRAL TRIBUNALS

1. The rules and procedures as set out in this Article shall apply to the proceedings of an arbitral tribunal.

2. The parties to the dispute, in consultation with the arbitral tribunal, may agree to adopt additional rules and procedures not inconsistent with the provisions of this Article.

Terms of Reference for Arbitral Tribunals

3. An arbitral tribunal shall have the following terms of reference:

"To examine, in the light of (the relevant provisions in this Agreement to be cited by the parties to the dispute), the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 64, and to issue awards including findings, determinations and suggested implementation options, if any, as provided for in Article 67."

Written Submissions and Other Documents

4. Each party to the dispute shall deliver to the other parties to the dispute a copy of its written submissions to the arbitral tribunal.

5. In respect of any request, notice or other documents related to the arbitral tribunal proceedings that is not covered by paragraph 4, each party to the dispute may deliver a copy of the documents to the other parties to the dispute by facsimile, e-mail or other means of electronic transmission.

6. Any party to the dispute may at any time correct minor errors of a clerical nature in any request, notice, written submission or other documents related to the arbitral tribunal proceedings by delivering a new document clearly indicating the changes.

Timetable

7. After consulting the parties to the dispute, the arbitral tribunal shall as soon as practicable and whenever possible within seven (7) days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The timetable fixed for the arbitral tribunal shall include precise deadlines for written submissions by the parties to the dispute. Modifications to such timetable may be made by the agreement of the parties to the dispute in consultation with the arbitral tribunal.

Operation of Arbitral Tribunals

8. An arbitral tribunal shall meet in closed session. The parties to the dispute shall be present at the meetings only when invited by the arbitral tribunal to appear before it.

9. All third parties which have notified their interest in the dispute shall be invited in writing to present their views during a session of the first meeting of the arbitral tribunal proceedings set aside for that purpose. All such third parties may be present during the entirety of this session.

10. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.

11. Notwithstanding paragraph 10, any party to the dispute may make public statements of its positions and its views regarding the dispute, but shall treat as confidential, information and written submissions made by the other parties to the dispute to the arbitral tribunal which the other parties to the dispute have designated as confidential. Where a party to the dispute

submits a confidential version of its written submissions to the arbitral tribunal, it shall also, upon request of another party to the dispute, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

12. The venue for the arbitral tribunal proceedings shall be decided by mutual agreement between the complaining party and the party complained against. If there is no agreement, the venue shall alternate among the capitals of the parties to the dispute with the first meeting of the arbitral tribunal proceedings to be held in one (1) of the capitals of the party complained against.

13. The parties to the dispute shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceedings. Any information provided and written submissions made to the arbitral tribunal by a party to the dispute, including any comments on the descriptive part of the draft award and responses to questions put by the arbitral tribunal, shall be made available to the other parties to the dispute.

ARTICLE 69
DRAFT AWARD AND AWARD

1. The award of the arbitral tribunal shall be drafted without the presence of the parties to the dispute and in the light of the information provided and the statements made in the proceedings. Opinions expressed in the award of the arbitral tribunal by its individual arbitrator shall be anonymous.

2. The arbitral tribunal shall, within ninety (90) days after the date of its establishment, issue to the parties to the dispute its draft award including both the descriptive part and its findings and conclusions for the purposes of enabling the parties to the dispute to review precise aspects of the draft award.

3. When the arbitral tribunal considers that it cannot issue its draft award within the ninety (90) day period referred to in paragraph 2, it shall inform the parties to the dispute in writing of the reasons for the delay together with the estimate of the period within which it will issue its draft award.

4. The parties to the dispute may submit comments in writing to the arbitral tribunal on the draft award within fifteen (15) days after the date of issuance of the draft award.

5. Where written comments by the parties to the dispute as provided for in paragraph 4 are received, the arbitral tribunal, on its own initiative or at the request of a party to the dispute, may reconsider its award and make any further examination that it considers appropriate.

6. The arbitral tribunal shall issue its award to the parties to the dispute within thirty (30) days after the issuance of the draft award.

7. The arbitral tribunal shall make its decisions, including its award, by consensus, failing which it may make its decisions by majority vote.

8. The award of the arbitral tribunal shall be final and binding on the parties to the dispute.

9. The award of the arbitral tribunal shall be circulated to the Parties within ten (10) days after its issuance to the parties to the dispute.

ARTICLE 70
SUSPENSION AND TERMINATION OF PROCEEDINGS

1. Where the parties to the dispute agree, the arbitral tribunal may suspend its work at any time for a period not exceeding twelve (12) months from the date of the joint notification of such agreement to the chair of the arbitral tribunal by the parties to the dispute. Upon the request of any party to the dispute, the arbitral tribunal proceedings shall be resumed after such suspension. If the work of the arbitral tribunal has been suspended for more than twelve (12) months, the authority of the arbitral tribunal shall lapse unless the parties to the dispute agree otherwise.

2. The parties to the dispute may agree to terminate the proceedings of an arbitral tribunal at any time before the issuance of the award by jointly so notifying the chair of the arbitral tribunal.

3. Before the arbitral tribunal issues its draft award, it may, at any stage of the proceedings, propose to the parties to the dispute that the dispute be settled amicably.

ARTICLE 71
IMPLEMENTATION OF AWARD

1. The party complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 69.

2. The party complained against shall, within twenty (20) days after the date of issuance of the award, notify the complaining party of the period of time in which to implement the award. If the complaining party considers the period of time notified to be unacceptable, it may refer the matter to an arbitral tribunal which then determines the reasonable implementation period. The arbitral tribunal shall inform the parties to the dispute of its determination within thirty (30) days after the date of the referral of the matter to it.

3. If the party complained against considers it impracticable to comply with the award within the implementation period as determined pursuant to paragraph 2, the party complained against shall, no later than the expiry of that implementation period, enter into consultations with the complaining party, with a view to developing mutually satisfactory compensation. If no satisfactory compensation has been agreed within twenty (20) days after the date of expiry of that implementation period, the complaining party may request an arbitral tribunal to determine the appropriate level of any suspension of the application to the party complained against of concessions or other obligations under this Agreement.

4. If the complaining party considers that the party complained against has failed to comply with the award within the implementation period as determined pursuant to paragraph 2, the complaining party may refer the matter to an arbitral tribunal to confirm the failure and to determine the appropriate level of any suspension of the application to the party complained against of concessions or other obligations under this Agreement.

5. The arbitral tribunal established under this Article shall, wherever possible, have as its arbitrators, the arbitrators of the original arbitral tribunal. If this is not possible, then the arbitrators of such arbitral tribunal shall be appointed pursuant to paragraphs 2 and 3 of Article 65.

6. Unless the parties to the dispute agree to a different period, the arbitral tribunal established under paragraphs 3 and 4 shall issue its award within sixty (60) days after the date when the matter is referred to it.

7. The award of the arbitral tribunal established under this Article shall be binding on all the parties to the dispute.

ARTICLE 72
COMPENSATION AND THE SUSPENSION OF CONCESSIONS

1. Compensation and the suspension of concessions or other obligations under this Agreement are temporary measures available in the event that the award is not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations under this Agreement is preferred to full implementation of the award to bring a measure into conformity with this Agreement. Compensation, if granted, shall be consistent with this Agreement.

2. The application of concessions or other obligations under this Agreement shall not be suspended before the commencement and during the course of the proceedings under paragraphs 3 and 4 of Article 71.

3. The suspension of the application of concessions or other obligations under paragraphs 3 and 4 of Article 71 may only be implemented after the complaining party notifies the party complained against and the rest of the Parties that the complaining party intends to suspend the application to the party complained against of concessions or other obligations under this Agreement. The party complained against and the rest of the Parties shall be informed of the commencement of the suspension and which concessions or other obligations under this Agreement would be suspended.

4. In considering what concessions or other obligations under this Agreement to be suspended under paragraphs 3 and 4 of Article 71, such suspension shall:

   (a) be temporary, and be discontinued when the parties to the dispute reach a mutually satisfactory resolution or where compliance with the award is effected;

   (b) be restricted to the same level of nullification or impairment that is attributable to the failure to comply with the award; and

   (c) be restricted to the same sector or sectors as those in which the arbitral tribunal has found the nullification or impairment, unless it is not practicable or effective to suspend the application of concessions or obligations in such sector or sectors, in which case, the complaining party may suspend concessions or benefits in other sectors under this Agreement.

5. If the party complained against considers that the suspension of concessions or other obligations under this Agreement by the complaining party is inconsistent with the provisions of paragraph 4, the matter shall be referred to an arbitral tribunal. For the purposes of the arbitral tribunal established under this Article, paragraph 5 of Article 71 shall apply, mutatis mutandis.

6. Unless the parties to the dispute agree to a different period, the arbitral tribunal established under this Article shall issue its award within sixty (60) days after the date when the matter is referred to it. Such award shall be binding on all the parties to the dispute.

ARTICLE 73
EXPENSES

1. The complaining party and the party complained against shall respectively bear the costs of the arbitrators which they appointed, and their own expenses and legal costs.

2. Unless the parties to the dispute otherwise agree, the costs of the chair of the arbitral tribunal and other expenses associated with the conduct of the proceedings of the arbitral tribunal shall be borne in equal parts by the parties to a dispute.

3. The arbitral tribunal shall keep a record and render a final account of all general expenses incurred in connection with the proceedings, including those paid to their assistants, designated note takers or other individuals that it retains.

CHAPTER 10
FINAL PROVISIONS

ARTICLE 74
TABLE OF CONTENTS, HEADINGS AND SUBHEADINGS

The table of contents, headings and subheadings are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

ARTICLE 75
REVIEW

The Parties shall undertake a general review of the implementation and operation of this Agreement in the fifth calendar year following the calendar year in which this Agreement enters into force pursuant to paragraph 1 of Article 79, and every five (5) years thereafter, unless otherwise agreed by the Parties.

ARTICLE 76
ANNEXES AND NOTES

The Annexes including attachment and Notes to this Agreement shall form an integral part of this Agreement.

ARTICLE 77
AMENDMENTS

1. This Agreement may be amended by agreement among the Parties.

2. The Government of each Party shall notify the Governments of the other Parties in writing that its legal procedures necessary for entry into force of the amendment have been completed. Such amendment shall enter into force on the first day of the second month following the date by which such notifications have been made by the Governments of Japan and at least one (1) ASEAN Member State, which is a Party, in relation to those Parties whose Governments have made such notifications by that date.

3. Where an ASEAN Member State, which is a Party, makes the notification referred to in paragraph 2 after the date by which the notifications have been made by the Governments of Japan and at least one (1) ASEAN Member State, which is a Party, as referred to in paragraph 2, the amendment referred to in paragraph 1 shall enter into force in relation to that ASEAN Member State on the first day of the second month following the date on which it makes the notification.

4. Notwithstanding paragraphs 2 and 3, the number of ASEAN Member States referred to in paragraph 2 which is necessary for entry into force of the amendment may be increased by agreement among the Parties.

5. Notwithstanding paragraph 2, amendments relating only 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);

   (b) Annex 2;

   (c) Attachment to Annex 4; or

   (d) Annex 5,

may be made by diplomatic notes exchanged among the Governments of the Parties. Such amendments shall enter into force in relation to all the Parties on the date specified in such diplomatic notes.

ARTICLE 78
DEPOSITARY

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

ARTICLE 79
ENTRY INTO FORCE

1. The Government of each signatory State shall notify the Governments of other signatory States in writing that its legal procedures necessary for entry into force of this Agreement have been completed. This Agreement shall enter into force on the first day of the second month following the date by which such notifications have been made by the Governments of Japan and at least one (1) ASEAN Member State, in relation to those signatory States that have made such notifications by that date.

2. In relation to an ASEAN Member State making the notification referred to in paragraph 1 after the date by which the notifications have been made by the Governments of Japan and at least one (1) ASEAN Member State as referred to in paragraph 1, this Agreement shall enter into force on the first day of the second month following the date on which that ASEAN Member State makes the notification. That ASEAN Member State shall be bound by the existing terms and conditions of this Agreement, including any amendments that may have entered into force pursuant to Article 77 by the time of such notification. For the purposes of Annex 1, the staging of tariff elimination or reduction of that ASEAN Member State shall also commence from the date of entry into force of this Agreement pursuant to paragraph 1.

ARTICLE 80
WITHDRAWAL AND TERMINATION

1. Any Party may withdraw from this Agreement by giving one (1) year's advance notice in writing to the other Parties.

2. This Agreement shall terminate either when all ASEAN Member States which are Parties withdraw in accordance with paragraph 1 or when Japan does so.

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

DONE in duplicate in the English language and SIGNED

at Tokyo on the day 28 of March in the year 2008,

at Bandar Seri Begawan on the day 3 of April in the year 2008,

at Phnom Penh on the day 7 of April in the year 2008,

at Jakarta on the day 31 of March in the year 2008,

at Vientiane on the day 4 of April in the year 2008,

at Kuala Lumpur on the day 14 of April in the year 2008,

at Nay Pyi Taw on the day 10 of April in the year 2008,

at Manila on the day 2 of April in the year 2008,

at Singapore on the day 26 of March in the year 2008,

at Bangkok on the day 11 of April in the year 2008,

and at Hanoi on the day 1 of April in the year 2008.

(Signatories not listed on ASEAN Secretariat versions of this document)

For the Government of Japan:

For the Government of Brunei Darussalam:

For the Government of the Kingdom of Cambodia:

For the Government of the Republic of Indonesia:

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

For the Government of Malaysia:

For the Government of the Union of Myanmar:

For the Government of the Republic of the Philippines:

For the Government of the Republic of Singapore:

For the Government of the Kingdom of Thailand:

For the Government of the Socialist Republic of Viet Nam: