2. Replace Chapter 2 (Tariff Liberalisation) with:

CHAPTER 2

NATIONAL TREATMENT AND MARKET ACCESS

Section A
Definitions and Scope

Article 2.1

Definitions

For the purposes of this Chapter, unless the context otherwise requires:

(a) **consular transactions** means any requirements that goods of a Member State intended for export to the territory of another Member State must first be submitted to the supervision of the consul of the importing Member State in the territory of the exporting Member State for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with importation;

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

(c) **duty-free** means free of customs duty;

(d) **import licensing procedure** means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs clearance

purposes, to the relevant administrative body of the importing Member State as a prior condition for importation into the territory of the importing Member State;

(e) **recovered material** means one or more individual parts that results from:

(i) the disassembly of a used good into individual parts; and

(ii) the cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition; and

(f) **remanufactured good** means a good that can be classified under HS Chapters 84 through 90 or under heading 94.02, except goods classified under HS headings 84.18, 85.09, 85.10, 85.16, and 87.03 or subheadings 8414.51, 8450.11, 8450.12, 8508.11, and 8517.11, that is entirely or partially composed of recovered materials and:

(i) has a similar life expectancy and performs the same as or similar to such a good when new; and

(ii) has a factory warranty similar to that applicable to such a good when new.

Section B
National Treatment and Market Access

Article 2.2

National Treatment on Internal Taxation and Regulations

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

Article 2.3

Most-Favoured-Nation Treatment

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

Article 2.4

Reduction or Elimination of Customs Duties

1. Except as otherwise provided in this Agreement, each Member State shall apply the customs duties on originating goods of the other Member States in accordance with its Schedule in Annex I (Schedule of Tariff Commitments).

2. Notwithstanding paragraph 1, nothing prevents a Member State from applying the customs duties in its Schedule in Annex I (Schedule of Tariff Commitments) on originating goods from that same Member State, in accordance with its laws and regulations.

3. Except as otherwise provided in this Agreement, no Member State shall nullify or impair any tariff concessions applied in accordance with the tariff schedules in Annex I (Schedule of Tariff Commitments).

4. Except as otherwise provided in this Agreement, no Member State may increase an existing duty specified in the schedules made pursuant to the provision of paragraph 1 on imports of an originating good.

5. For greater certainty, in accordance with the WTO Agreement, originating goods of the other Member States shall be eligible, at the time of importation, for the most-favoured-nation applied rate of customs duty for those goods in a Member State, where that rate is lower than the rate of customs duty provided for in that Member State's Schedule in Annex I (Schedule of Tariff Commitments). Subject to its laws and regulations, each Member State shall provide that an importer may apply for a refund of any excess duty paid for a good if the importer did not make a claim for the lower rate at the time of importation.

6. Further to subparagraph 1(b) of Article 4.6 (Transparency), each Member State shall make publicly available any amendments to its most-favoured-nation applied rate of customs duty, and the latest customs duty to be applied in accordance with paragraph 1, as soon as practicable but not later than the date of the application.

Article 2.5

Elimination of Tariff Rate Quotas

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

Article 2.6

Acceleration or Improvement in Tariff Commitments

1. Nothing in this Agreement shall preclude the Member States from amending this Agreement in accordance with Article 17.4 (Amendments), to accelerate or improve the tariff commitments set out in their Schedules in Annex I (Schedule of Tariff Commitments).

2. Two or more Member States may, based on mutual consent, consult on the acceleration or improvement of tariff commitments set out in their Schedules in Annex I (Schedule of Tariff Commitments). An agreement to accelerate or improve the tariff commitments between these Member States shall be implemented through a modification to their Schedules in Annex I (Schedule of Tariff Commitments) in accordance with Article 17.4 (Amendments). Any such acceleration or improvement of tariff commitments shall be extended to all other Member States.

3. A Member State may, at any time, unilaterally accelerate or improve its tariff commitments set out in its Schedule in Annex I (Schedule of Tariff Commitments). Any such acceleration or improvement of its tariff commitment shall be extended to all other Member States. Such Member State shall inform the other Member States as early as practicable before the new customs duty takes effect.

4. For greater certainty, following a Member State's unilateral acceleration or improvement of its tariff commitments referred to in paragraph 3, that Member State may raise its customs duty to a level not exceeding the customs duty set out in its Schedule in Annex I (Schedule of Tariff Commitments) for the relevant year. Such Member State shall inform the other Member States of the date from which the new customs duty takes effect, as early as practicable before such date.

Article 2.7

Temporary Modification or Suspension of Concessions

1. In exceptional circumstances other than those covered under Article 2.14 (Special Consideration for Rice and Sugar), Article 7.2 (Global Safeguard Measures), and Article 14.3 (Measures to Safeguard the Balance-of-Payments), where a Member State faces unforeseen difficulties in implementing its tariff commitments, that Member State may, temporarily modify or suspend a concession contained in its Schedule in Annex I (Schedule of Tariff Commitments).

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

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

4. After making the notification pursuant to paragraph 2, the applicant Member State shall engage in consultations or negotiations with the Member States who have made notification pursuant to paragraph 3. In negotiations with Member States with substantial supplying interest [1], the applicant Member State shall maintain a level of reciprocal and mutually advantageous concessions no less favourable to the trade of all other Member States of substantial supplying interest than that provided in this Agreement prior to such negotiations, which may include compensatory adjustments with respect to other goods. Compensatory adjustment measures in form of tariffs shall be extended to all Member States on a non-discriminatory basis.

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

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

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

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

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

9. In the event that there is no approval or recommendation by the AFTA Council pursuant to paragraph 7, and the applicant Member State nevertheless proceeds with the temporary modification or suspension of the concession, Member States with substantial supplying interest shall be free to take action after 30 days, but not later than 90 days after the applicant Member State effects its modification or suspension of concessions, to modify or suspend substantially equivalent concessions from the applicant Member State. The concerned Member States shall immediately notify the AFTA Council of such actions.

Article 2.8

Transposition of Tariff Reduction Schedules

Each Member State shall ensure that the transposition of its Schedule in Annex I (Schedule of Tariff Commitments), undertaken in order to implement Annex I (Schedule of Tariff Commitments) in the nomenclature of the revised HS following periodic amendments to the HS Code, is carried out without impairing the tariff commitments set out in Annex I (Schedule of Tariff Commitments).

Article 2.9

Customs Valuation

For the purposes of determining the customs value of goods traded among the Member States, Article VII of GATT 1994, and Part I and the Interpretative Notes of Annex I of the Customs Valuation Agreement shall apply, *mutatis mutandis*.

Article 2.10

Duty-Free Entry of Samples of No Commercial Value

Each Member State shall grant duty-free entry to samples of no commercial value, imported from the territory of another Member State, subject to its laws and regulations, regardless of their origin.

Article 2.11

Temporary Admission of Goods

1. Each Member State shall allow, as provided for in its laws and regulations, goods to be brought into its customs territory conditionally relieved, totally or partially, from payment of import duties and taxes, if such goods:

(a) are brought into its customs territory for a specific purpose;

(b) are intended for re-exportation within a specific period; and

(c) have not undergone any change, except normal depreciation and wastage due to the use made of them.

2. Each Member State shall, on request of the person concerned and for reasons its customs authority considers valid, extend the time limit for duty-free temporary admission provided for in paragraph 1 beyond the period initially fixed.

3. No Member State shall condition the duty-free temporary admission of a good provided for in paragraph 1, other than to require that the good:

(a) be used solely by or under the personal supervision of a national or resident of another Member State in the exercise of the business activity, trade, profession, or sport of that person;

(b) not be sold or leased while in its territory;

(c) be accompanied by a security or guarantee in an amount no greater than the customs duties, taxes, fees, and charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;

(d) be capable of identification when imported and exported;

(e) be exported on the departure of the person referred to in subparagraph (a), or within such other period related to the purpose of the temporary admission as the Member State may establish, unless extended;

(f) be admitted in no greater quantity than is reasonable for its intended use; and

(g) be otherwise admissible into the Member State's territory under its laws and regulations.

4. If any condition that a Member State imposes under paragraph 3 has not been fulfilled, the Member State may

apply the customs duty and any other charge that would normally be owed on the good, in addition to any other charges or penalties provided for in its laws and regulations.

5. Each Member State shall permit a good temporarily admitted under this Article to be re-exported through a customs port[2] other than that through which it was admitted.

Article 2.12

Temporary Admission for Containers and Pallets

1. Each Member State, as provided for in its laws and regulations, or the provisions of the related international agreements to which it is a Party, shall grant duty-free temporary admission for containers and pallets, regardless of their origin, in use or to be used in the shipment of goods in international traffic.

(a) For the purposes of this Article, **container** means an article of transport equipment (lift-van, movable tank, or other similar structure):

(i) fully or partially enclosed to constitute a compartment intended for containing goods;

(ii) of a permanent character and accordingly strong enough to be suitable for repeated use;

(iii) specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading;

[2] For Lao PDR, **customs port** means an international customs port.

(iv) designed for ready handling, particularly when being transferred from one mode of transport to another;

(v) designed to be easy to fill and to empty; and

(vi) have an internal volume of one cubic metre or more.

Container shall include the accessories and equipment of the container, appropriate for the type concerned, provided that such accessories and equipment are carried with the container.

Container shall not include vehicles, accessories or spare parts of vehicles, or packaging or pallets. Demountable bodies shall be regarded as containers.

(b) For the purposes of this paragraph, **pallet** means a device on the deck of which a quantity of goods can be assembled to form a unit load for the purpose of transporting it, or of handling or stacking it with the assistance of mechanical appliances. This device is made up of two decks separated by bearers, or of a single deck supported by feet; its overall height is reduced to the minimum compatible with handling by fork lift trucks or pallet trucks; it may or may not have a superstructure.

2. Subject to the *ASEAN Framework Agreement on Services* done at Bangkok, Thailand on 15 December 1995, the *ASEAN Trade in Services Agreement* done at Manila, Philippines on 7 October 2020, and the *ASEAN Comprehensive Investment Agreement* done at Cha Am,

Thailand on 26 February 2009, in respect of containers granted temporary admission pursuant to paragraph 1:[3]

(a) each Member State shall allow a container used in international traffic that enters its territory from the territory of another Member State to exit its territory on any route that is reasonably related to the economic and prompt departure of such container;[4]

(b) no Member State shall require any security or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a container;

(c) no Member State shall condition the release of any security that it imposes in respect of the entry of a container into its territory on the container's exit through any particular port of departure; and

(d) no Member State shall require that the carrier bringing a container from the territory of another Member State into its territory be the same carrier that takes the container to the territory of another Member State.

[3] For greater certainty, nothing in this paragraph shall affect the right of a Member State to adopt or maintain measures in accordance with Article 14.1 (General Exceptions) or Article 14.2 (Security Exceptions).

[4] For greater certainty, nothing in this subparagraph shall be construed to prevent a Member State from adopting or maintaining highway and railway safety or security measures of general application, or from preventing a container from entering or exiting its territory in a location where the Member State does not maintain a customs port. A Member State may provide the other Member States with a list of ports available for exit of containers in accordance with its laws and regulations.

Article 2.13

Agricultural Export Subsidies

1. Member States reaffirm their commitments made in the Ministerial Decision of 19 December 2015 on Export Competition (WT/MIN(15)/45, WT/L/980), adopted in Nairobi on 19 December 2015, including elimination of scheduled export subsidy entitlements for agricultural goods.

2. Member States share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work together to prevent their reintroduction in any form.

Article 2.14

Special Consideration for Rice and Sugar

The *Protocol to Provide Special Consideration for Rice and Sugar* done at Makati City, Philippines on 23 August 2007 (Rice and Sugar Protocol) and the *Protocol to Amend the Protocol to Provide Special Consideration for Rice and Sugar* done at Ha Noi, Viet Nam on 28 October 2010 (Rice and Sugar Amending Protocol), shall form an integral part of this Agreement, with the following amendments incorporated:

(a) Article 1 of the Rice and Sugar Protocol, as amended by Article 1 (3) of the Rice and Sugar Amending Protocol shall be amended by substituting “Schedule E of Article 19 (2) of the ATIGA” with “Schedule E in Annex I (Schedule of Tariff Commitments)”;

(b) Article 2 (3) of the Rice and Sugar Protocol, as amended by Article 2 (1) of the Rice and Sugar Amending Protocol shall be amended by substituting “the Coordinating Committee on the Implementation of the ATIGA (hereinafter referred

to as the “CCA”)” with “ATIGA Joint Committee”; and

(c) Article 3 (1) and (2) of the Rice and Sugar Protocol, as amended by Article 2 (2) of the Rice and Sugar Amending Protocol shall be amended by substituting “CCA” with “ATIGA Joint Committee”.

Article 2.15

Remanufactured Goods

1. For greater certainty, paragraph 1 of Article 2.20 (General Elimination of Quantitative Restrictions) shall apply to prohibitions and restrictions on the importation of remanufactured goods.

2. If a Member State adopts or maintains measures prohibiting or restricting the importation of used goods, it shall not apply those measures to remanufactured goods.[5]

3. Paragraphs 1 and 2 shall not apply to Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Thailand, and Viet Nam upon the entry into force of the Second Protocol. These Member States shall enter into discussions with other Member States on the application of paragraphs 1 and 2:

(a) no later than five years after the date of entry into force of the Second Protocol for Indonesia, the Philippines, Thailand, and Viet Nam, with a view to conclude discussions in two years; and

[5] For greater certainty, subject to its obligations under this Agreement and the WTO Agreement, a Member State may require that remanufactured goods:

(a) be identified as such for distribution or sale in its territory; and

(b) meet all applicable technical requirements that apply to equivalent goods in new condition, including requirements imposed for the purpose of consumer protection.

(b) no later than seven years after the date of entry into force of the Second Protocol for Cambodia, Lao PDR, and Myanmar, with a view to conclude discussions in two years.

Article 2.16

Publication and Administration of Trade Regulations

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

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

Article 2.17

Enjoyment of Concessions

1. Products on which the customs duties of the exporting Member State have reached or are at the rate of 20% or below, and satisfy the requirements on rules of origin as set out in Chapter 3 (Rules of Origin) shall automatically enjoy the customs duties committed by importing Member States in accordance with Annex I (Schedule of Tariff Commitments).

2. Products of a Member State excluded from any tariff commitment under this Agreement shall not be entitled to the customs duties committed by other Member States in accordance with Annex I (Schedule of Tariff Commitments).

Section C
Quantitative Restrictions and Non-Tariff Measures

Article 2.18

Application of Non-Tariff Measures

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

2. Each Member State shall ensure the transparency of its non-tariff measures permitted in paragraph 1 in accordance with Article 2.16 (Publication and Administration of Trade Regulations) and shall ensure that any such measures are not prepared, adopted, or applied with the view to, or with the effect of, creating unnecessary obstacles in trade among the Member States.

3. Each Member State reaffirms its commitment to promptly notify the WTO of any new non-tariff measure or modification to an existing non-tariff measure in accordance with the relevant WTO agreements.

4. Nothing in this Agreement shall be construed to prevent a Member State, which is a party to the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* done at Basel, Switzerland on 22 March 1989 or other relevant international agreements, from adopting or enforcing any measure in relation to hazardous wastes or substances based on its laws and regulations, in accordance with such international agreements.

Article 2.19

Notification Procedures

Each Member State shall promptly notify the ATIGA Joint Committee of any new measure or modification to an existing measure that is not required for notification under the relevant WTO agreements, but for which notification is required under this Agreement, in accordance with the following procedures:

(a) A Member State shall notify the ATIGA Joint Committee, through the ASEAN Secretariat, at least 60 days before the date that the new measure or modification to an existing measure is to take effect. The ASEAN Secretariat shall subsequently transmit the notification to the ATIGA Joint Committee as soon as possible.

(b) The notification made by a Member State of a new measure or modification to an existing measure may be in the format of the notification to the WTO, but shall include:

(i) a description of the new measure or modification to an existing measure, including the reasons for undertaking such a measure or modification; and

(ii) the intended date of implementation and the duration of the new measure or modification to an existing measure.

(c) A Member State, which considers that another Member State should have notified a measure under this paragraph, may bring the matter to the attention of that other Member State. If the matter is not satisfactorily resolved promptly thereafter, the Member State which considers that the measure should have been notified may itself

bring the measure to the attention of the other Member States.

(d) A Member State proposing to apply an action or measure shall provide adequate opportunity for other Member States to present their comments in writing and discuss these comments upon request. Member States presenting their comments shall do so within 30 days of the notification. The Member State notifying a new measure or modification to an existing measure shall present its response or provide the requested information, to the extent possible, within 30 days after the receipt of the comments presented by the other Member States. Failure of a Member State to provide comments within the stipulated time shall not affect its right to seek recourse under Chapter 16 (Dispute Settlement).

Article 2.20

General Elimination of Quantitative Restrictions

1. Except as otherwise provided in this Agreement, no Member State shall adopt or maintain any prohibition or restriction other than duties, taxes, or other charges, whether made effective through quotas, import or export licences, or other measures, on the importation of any good of another Member State or on the exportation of any good destined for the territory of another Member State, except in accordance with its rights and obligations under the relevant provisions of the WTO Agreement. To this end, Article XI of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Where a Member State adopts an export prohibition or restriction in accordance with Article XI.2(a) of GATT 1994, that Member State shall, upon request:

(a) inform another Member State or Member States of such prohibition or restriction and its reasons together with its nature and expected duration, or publish such prohibition or restriction; and

(b) provide another Member State or Member States that may be seriously affected with a reasonable opportunity for consultation with respect to matters related to such prohibition or restriction.

Article 2.21

Export Restrictions Measures on Food and Agricultural Products

1. Member States recognise that under Article XI.2(a) of GATT 1994, a Member State may temporarily apply an export prohibition or restriction that is otherwise prohibited under Article XI.1 of GATT 1994 on food and agricultural products[6] to prevent or relieve a critical shortage of food and agricultural products, subject to meeting the conditions set out in Article 12 of the Agreement on Agriculture.

2. Where any Member State institutes any export prohibition or restriction on foodstuffs in accordance with Article XI.2(a) of GATT 1994, that Member State shall give due consideration to the effects of such export prohibition or restriction on other Member States' domestic supply of food and agricultural products. Any export prohibition or restriction adopted by a Member State shall minimise trade distortions as far as possible; and be temporary, targeted, and transparent.

3. In addition to the conditions set out in Article 12.1 of the Agreement on Agriculture under which a Member State may

[6] For greater clarity, "food and agricultural products" also includes agriculture production inputs, such as fertilizers and pesticides for the cultivation of crops, and feed ingredients and veterinary drugs for livestock. It does not include machinery and equipment.

apply an export prohibition or restriction, other than a duty, tax, or other charge, on food and agricultural products:

(a) a Member State that:

(i) imposes such a prohibition or restriction on the exportation or sale for export of food and agricultural products to another Member State to prevent or relieve a critical shortage of food and agricultural products, shall give notice in writing to the other Member States as far in advance as practicable, except when the critical shortage is caused by any event constituting *force majeure*; or

(ii) as of the date of entry into force of the Second Protocol for that Member State, maintains such a prohibition or restriction, shall, within 45 days of that date, notify the measure to the other Member States.

(b) A notification under this paragraph shall include the reason for such prohibition or restriction, together with its nature and expected duration.

(c) The notification requirement under this paragraph shall not apply to a measure prohibiting or restricting the exportation or sale for export only of food and agricultural products imposed by a Member State which has been a net importer of such food and agricultural products during each of the three calendar years preceding the imposition of that measure, excluding the year in which that Member State imposes that measure. In lieu of such notification, that Member State shall, within a reasonable period of time, provide to the other Member States, trade data demonstrating that it

was a net importer of such food and agricultural products during those three calendar years.

4. A Member State that is required to notify a measure under subparagraph 3(a) shall:

(a) upon request, provide the necessary information within 15 days of the request, to the extent possible, or as soon as practicable; and

(b) enter into consultations with the requesting Member States within 45 days or as soon as practicable upon receipt of the request, and endeavour to reach a mutually satisfactory solution as soon as possible. Each Member State participating in the consultations shall endeavour to provide relevant information and shall take due account of any information provided through the consultations.

5. A Member State which considers that another Member State should have notified a measure under subparagraph 3(a) may bring the matter to the attention of that other Member State. If the matter is not satisfactorily resolved promptly thereafter, the Member State which considers that the measure should have been notified may itself bring the measure to the attention of the other Member States.

6. To the extent possible, a Member State should ordinarily terminate such export prohibition or restriction as soon as the condition triggering the prohibition or restriction ceases to exist. The duration of the export prohibition or restriction shall, to the extent possible, not exceed the period necessary for the containment of triggering condition.

7. No Member State shall apply any measure that is subject to notification under subparagraph 3(a) or paragraph 4 to food purchased for non-commercial humanitarian purposes by the World Food Programme and, to the extent

possible, by other non-profit organisations. Nothing in this paragraph shall be construed to prevent the adoption by any Member State of measures to ensure its domestic food security in accordance with the relevant provisions of the WTO agreements.

8. Dispute settlement mechanisms in this Agreement shall not apply to any matters arising under this Article.

Article 2.22

Import Licensing Procedures

1. Each Member State shall ensure that all automatic and non-automatic import licensing procedures are implemented in a transparent and predictable manner, and applied in accordance with the Import Licensing Agreement. No Member State shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Each Member State shall, promptly after the date of entry into force of the Second Protocol for that Member State, notify the other Member States of its existing import licensing procedures. The notification shall include the information specified in paragraph 2 of Article 5 of the Import Licensing Agreement. A Member State shall be deemed to be in compliance with this paragraph if:

(a) it has notified the procedures to the WTO Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement (hereinafter referred to as “WTO Committee on Import Licensing” in this Chapter), together with the information specified in paragraph 2 of Article 5 of the Import Licensing Agreement; and

(b) in the most recent annual submission due before the date of entry into force of the Second Protocol

for that Member State to the WTO Committee on Import Licensing in response to the annual questionnaire on import licensing procedures described in paragraph 3 of Article 7 of the Import Licensing Agreement, it has provided, with respect to those existing import licensing procedures, the information requested in that questionnaire.

3. Each Member State shall notify the other Member States of any new import licensing procedure and any modification it makes to its existing import licensing procedures, to the extent possible 30 days before the new procedure or modification takes effect. In no case shall a Member State provide the notification later than 60 days after the date of its publication. A notification provided under this paragraph shall include the information specified in Article 5 of the Import Licensing Agreement. A Member State shall be deemed to be in compliance with this paragraph if it notifies a new import licensing procedure or a modification to an existing import licensing procedure to the WTO Committee on Import Licensing in accordance with paragraph 1, 2, or 3 of Article 5 of the Import Licensing Agreement.

4. Before applying any new or modified import licensing procedure, a Member State shall publish the new procedure or modification on an official government website. To the extent possible, the Member State shall do so at least 30 days before the new procedure or modification takes effect.

5. The notification required under paragraphs 2 and 3 is without prejudice to whether the import licensing procedure is consistent with this Agreement.

6. A notification made under paragraph 3 shall state if, under any procedure that is a subject of the notification:

(a) the terms of an import licence for any product limit the permissible end users of the product; or

(b) the Member State imposes any of the following conditions on eligibility for obtaining a licence to import any product:

(i) membership in an industry association;

(ii) approval by an industry association of the request for an import licence;

(iii) a history of importing the product or similar products;

(iv) minimum importer or end user production capacity;

(v) minimum importer or end user registered capital; or

(vi) a contractual or other relationship between the importer and distributor in the Member State's territory.

7. Each Member State shall, to the extent possible, answer within 60 days all reasonable enquiries from another Member State regarding the criteria employed by its respective licensing authorities in granting or denying import licences. The importing Member State shall publish sufficient information for the other Member States and traders to know the basis for granting or allocating import licences.

8. No application for an import licence shall be refused for minor documentation errors that do not alter the basic data contained therein. Minor documentation errors may include formatting errors, such as the width of a margin or the font used, and spelling errors which are obviously made without fraudulent intent or gross negligence.

9. If a Member State denies an import licence application with respect to a good of another Member State, it shall, on

request of the applicant and within a reasonable period after receiving the request, provide the applicant with an explanation of the reason for the denial.

Article 2.23

Fees and Formalities Connected with Importation and Exportation

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

2. Each Member State shall promptly publish details of the fees and charges that it imposes in connection with importation or exportation and shall make such information available on the internet.

3. No Member State shall require consular transactions, including related fees and charges, in connection with the importation of a good of another Member State. No Member State shall require that any customs documentation supplied in connection with the importation of any good of another Member State be endorsed, certified, or otherwise sighted or approved by the importing Member State's overseas representatives, or entities with authority to act on the importing Member State's behalf, nor impose any related fees or charges.

Article 2.24

Technical Consultations on Non-Tariff Measures

1. A Member State may request technical consultations with another Member State on a measure it considers to be adversely affecting its trade. The request shall be in writing and shall clearly identify the measure and the concerns as to how the measure adversely affects trade between the Member State requesting technical consultations (hereinafter referred to as "the requesting Member State" in this Article) and the Member State to which a request has been made (hereinafter referred to as "the requested Member State" in this Article).

2. Where the measure is covered by another Chapter, any consultation mechanism provided in that Chapter shall be used, unless otherwise agreed between the requesting Member State and the requested Member State (hereinafter collectively referred to as "the consulting Member States" in this Article).

3. Except as otherwise provided in paragraph 2, the requested Member State shall respond to the requesting Member State and enter into technical consultations within 60 days of the receipt of the written request referred to in paragraph 1, unless otherwise determined by the consulting Member States, with a view to reaching a mutually satisfactory solution within 180 days of the request. Technical consultations may be conducted *via* any means mutually agreed by the consulting Member States.

4. Except as otherwise provided in paragraph 2, the request for technical consultations shall be circulated to all the other Member States. Other Member States may request to join the technical consultations on the basis of interests set out in their requests. The participation of any other Member State is subject to the consent of the consulting Member States. The

consulting Member States shall give full consideration to such requests.

5. If the requesting Member State considers that a matter is urgent or involves perishable goods, it may request that technical consultations take place within a shorter time frame than that provided for under paragraph 3.

6. Notwithstanding paragraphs 1 and 2, the requesting Member State may raise the concerned measure it considers to be adversely affecting its trade, for discussion at relevant ASEAN bodies, as appropriate, in accordance with the provisions of this Agreement.

7. Except as otherwise provided in paragraph 2, each Member State shall submit an annual notification to the ATIGA Joint Committee regarding any use of technical consultations under this Article, whether as the requesting Member State or the requested Member State. This notification shall contain a summary of the progress and outcomes of the consultations.

8. For greater certainty, technical consultations under this Article shall be without prejudice to a Member States' rights and obligations pertaining to dispute settlement proceedings under Chapter 16 (Dispute Settlement) and the WTO Agreement.

Article 2.25

Sectoral Initiatives

1. Member States may decide to initiate discussions on sector-specific issues which may be proposed by any Member State. Should the Member States decide to initiate such a discussion it shall be established and overseen by the responsible ASEAN sectoral bodies.

2. Any discussion initiated under this Article should be conducted to:

(a) enhance the Member States' understanding of the issue;

(b) facilitate input from business and other relevant stakeholders; and

(c) explore the possible actions by the Member States that would facilitate trade.