

FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC CO-OPERATION BETWEEN THE ASSOCIATION OF SOUTH EAST ASIAN NATIONS AND THE PEOPLE'S REPUBLIC OF CHINA

PREAMBLE

WE, the Heads of Government/State of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic ("Lao PDR"), Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member States of the Association of South East Asian Nations (collectively, "ASEAN" or "ASEAN Member States", or individually, "ASEAN Member State"), and the People's Republic of China ("China"):

RECALLING our decision made at the ASEAN-China Summit held on 6 November 2001 in Bandar Seri Begawan, Brunei Darussalam, regarding a Framework on Economic Co-operation and to establish an ASEAN-China Free Trade Area ("ASEAN-China FTA") within ten years with special and differential treatment and flexibility for the newer ASEAN Member States of Cambodia, Lao PDR, Myanmar and Viet Nam ("the newer ASEAN Member States") and with provision for an early harvest in which the list of products and services will be determined by mutual consultation;

DESIRING to adopt a Framework Agreement on Comprehensive Economic Co-operation ("this Agreement") between ASEAN and China (collectively, "the Parties", or individually referring to an ASEAN Member State or to China as a "Party") that is forward-looking in order to forge closer economic relations in the 21st century;

DESIRING to minimise barriers and deepen economic linkages between the Parties; lower costs; increase infra-regional trade and investment; increase economic efficiency; create a larger market with greater opportunities and larger economies of scale for the businesses of the Parties; and enhance the attractiveness of the Parties to capital and talent;

BEING confident that the establishment of an ASEAN-China FTA will create a partnership between the Parties, and provide an important mechanism for strengthening co-operation and supporting economic stability in East Asia;

RECOGNISING the important role and contribution of the business sector in enhancing trade and investment between the Parties and the need to further promote and facilitate their co-operation and utilisation of greater business opportunities provided by the ASEAN-China FTA;

RECOGNISING the different stages of economic development among ASEAN Member States and the need for flexibility, in particular the need to facilitate the increasing participation of the newer ASEAN Member

States in the ASEAN-China economic cooperation and the expansion of their exports, including, inter alia, through the strengthening of their domestic capacity, efficiency and competitiveness;

REAFFIRMING the rights, obligations and undertakings of the respective parties under the World Trade Organisation (WTO), and other multilateral, regional and bilateral agreements and arrangements;

RECOGNISING the catalytic role that regional trade arrangements can contribute towards accelerating regional and global liberalisation and as building blocks in the framework of the multilateral trading system;

HAVE AGREED AS FOLLOWS:

ARTICLE 1 OBJECTIVES

The objectives of this Agreement are to:

- (a) strengthen and enhance economic, trade and investment co-operation between the Parties;
- (b) progressively liberalise and promote trade in goods and services as well as create a transparent, liberal and facilitative investment regime;
- (c) explore new areas and develop appropriate measures for closer economic co-operation between the Parties; and
- (d) facilitate the more effective economic integration of the newer ASEAN Member States and bridge the development gap among the Parties.

ARTICLE 2 MEASURES FOR COMPREHENSIVE ECONOMIC CO-OPERATION

The Parties agree to negotiate expeditiously in order to establish an ASEAN-China FTA within 10 years, and to strengthen and enhance economic co-operation through the following:

- (a) progressive elimination of tariffs and non-tariff barriers in substantially all trade in goods;
- (b) progressive liberalisation of trade in services with substantial sectoral coverage;
- (c) establishment of an open and competitive Investment regime that facilitates and promotes investment within the ASEAN-China FTA;
- (d) provision of special and differential treatment and flexibility to the newer ASEAN Member States;
- (e) provision of flexibility to the Parties in the ASEAN-China FTA negotiations to address their sensitive areas in the goods, services and investment sectors with such flexibility to be negotiated and mutually agreed based on the principle of reciprocity and mutual benefits;
- (f) establishment of effective trade and investment facilitation measures, including, but not limited to, simplification of customs procedures and

development of mutual recognition arrangements;

(g) expansion of economic co-operation in areas as may be mutually agreed between the Parties that will complement the deepening of trade and investment links between the Parties and formulation of action plans and programmes in order to implement the agreed sectors/areas of co-operation; and

(h) establishment of appropriate mechanisms for the purposes of effective implementation of this Agreement,

PART 1

ARTICLE 3 TRADE IN GOODS

1. In addition to the Early Harvest Programme under Article 6 of this Agreement, and with a view to expediting the expansion of trade in goods, the Parties agree to enter into negotiations in which duties and other restrictive regulations of commerce (except, where necessary, those permitted under Article XXIV (8)(b) of the WTO General Agreement on Tariffs and Trade (GATT)) shall be eliminated on substantially oil trade in goods between the Parties.

2. For the purposes of this Article, the following definitions shall apply unless the context otherwise requires:

(a) "ASEAN 6" refers to Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand;

(b) "applied MFN tariff rates" shall include in-quota rates, and shall:

(i) in the case of ASEAN Member States (which are WTO members as of 1 July 2003) and China, refer to their respective applied rates as of 1 July 2003; and

(ii) in the case of ASEAN Member States (which are non-WTO members as of 1 July 2003), refer to the rates as applied to China as of 1 July 2003;

(c) "non-tariff measures" shall include non-tariff barriers.

3. The tariff reduction or elimination programme of the Parties shall require tariffs on listed products to be gradually reduced and where applicable, eliminated, in accordance with this Article.

4. The products which are subject to the tariff reduction or elimination programme under this Article shall include all products not covered by the Early Harvest Programme under Article 6 of this Agreement, and such products shall be categorised into 2 Tracks as follows:

(a) Normal Track: Products listed in the Normal Track by a Party on its own accord shall:

(i) have their respective applied MFN tariff rates gradually reduced or eliminated in accordance with specified schedules and rates (to be mutually agreed by the Parties) over a period from 1 January 2005 to 2010 for ASEAN 6 and China, and in the case of the newer ASEAN Member States, the period shall be from 1 January 2005 to 2015 with higher starting tariff rates and different staging; and

(ii) in respect of those tariffs which have been reduced but have not been eliminated under paragraph 4(a)(i) above, they shall be progressively eliminated within timeframes to be mutually agreed between the Parties.

(b) Sensitive Track: Products listed in the Sensitive Track by a Party on its own accord shall:

(i) have their respective applied MFN tariff rates reduced In accordance with the mutually agreed end rates and end dates; and

(ii) where applicable, have their respective applied MFN tariff rates progressively eliminated within timeframes to be mutually agreed between the Parties.

5. The number of products listed in the Sensitive Track shall be subject to a maximum ceiling to be mutually agreed among the Parties.

6. The commitments undertaken by the Parties under this Article and Article 6 of this Agreement shall fulfil the WTO requirements to eliminate tariffs on substantially all the trade between the Parties.

7. The specified tariff rates to be mutually agreed between the Parties pursuant to this Article shall set out only the limits of the applicable tariff rates or range for the specified year of implementation by the Parties and shall not prevent any Party from accelerating its tariff reduction or elimination if it so wishes to.

8. The negotiations between the Parties to establish the ASEAN-China FTA covering trade in goods shall also include, but not be limited to the following:

(a) other detailed rules governing the tariff reduction or elimination programme for the Normal Track and the Sensitive Track as well as any other related matters, including principles governing reciprocal commitments, not provided for in the preceding paragraphs of this Article;

(b) Rules of Origin;

(c) treatment of out-of-quota rates;

(d) modification of a Party's commitments under the agreement on trade in goods based on Article XXVIII of the GATT;

(e) non-tariff measures imposed on any products covered under this Article or Article 6 of this Agreement, including, but not limited to quantitative restrictions or prohibition on the importation of any product or on the export or sale for export of any product, as well as scientifically unjustifiable sanitary and phytosanitary measures and technical barriers to trade;

(f) safeguards based on the GATT principles, including, but not limited to the following elements: transparency, coverage, objective criteria for action, Including the concept of serious injury or threat thereof, and temporary nature;

(g) disciplines on subsidies and countervailing measures and anti-dumping measures based on the existing GATT disciplines; and

(h) facilitation and promotion of effective and adequate protection of trade-related aspects of intellectual property rights based on existing WTO, World Intellectual Property Organization (WIPO) and other relevant disciplines.

ARTICLE 4

TRADE IN SERVICE

With a view to expediting the expansion of trade in services, the Parties agree to enter into negotiations to progressively liberalise trade in services with substantial sectoral coverage. Such negotiations shall be directed to:

(a) progressive elimination of substantially all discrimination between or among the Parties and/or prohibition of new or more discriminatory measures with respect to trade in services between the Parties, except for measures permitted under Article V(l)(b) of the WTO General Agreement on Trade in Services (GATS);

(b) expansion in the depth and scope of liberalisation of trade in services beyond those undertaken by ASEAN Member States and China under the GATS; and

(c) enhanced co-operation in services between the Parties in order to improve efficiency and competitiveness, as well as to diversify the supply and distribution of services of the respective service suppliers of the Parties.

ARTICLE 5

INVESTMENT

To promote investments and to create a liberal, facilitative, transparent and competitive investment regime, the Parties agree to: