# 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 Sen 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 forwardlooking 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 intra-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 cooperation; and

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

# Part I.

### 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 all 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 ASEANChina 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 Services

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:

(a) enter into negotiations in order to progressively liberalise the investment regime;

(b) strengthen co-operation in investment, facilitate investment and improve transparency of investment rules and regulations; and

(c) provide for the protection of investments.

## Article 6. Early Harvest

1. With a view to accelerating the implementation of this Agreement, the Parties agree to implement an Early Harvest Programme (which is an integral part of the ASEAN-China FTA) for products covered under paragraph 3 (a) below and which will commence and end in accordance with the timeframes set out in this Article.

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 tariff rates as applied to China as of 1 July 2003.

3. The product coverage, tariff reduction and elimination, implementation timerrames, rules of origin, trade remedies and emergency measures applicable to the Early Harvest Programme shall be as follows:

(a) Product Coverage

(i) All products in the following chapters at the 8/9 digit level (HS Code) shall be covered by the Early Harvest Programme, unless otherwise excluded by a Parry in its Exclusion List as set out in Annex 1 of this Agreement, in which case these products shall be exempted for that Party:

| Chapter | Description |
|---|---|
| 01 | Live Animals |
| 02 | Meat and Edible Meat Offal |
| 03 | Fish |
| 04 | Dairy Produce |
| 05 | Other Animals Products |
| 06 | Live Trees |
| 07 | Edible Vegetables |
| 08 | Edible Fruits and Nuts |

(ii) A Party which has placed products in the Exclusion List may, at any time, amend the Exclusion List to place one or more

of these products under the Early Harvest Programme.

(iii) The specific products set out in Annex 2 of this Agreement shall be covered by the Early Harvest Programme and the tariff concessions shall apply only to the parties indicated in Annex 2. These parties must have extended the tariff concessions on these products to each other.

(iv) For those parties which are unable to complete the appropriate product lists in Annex 1 or Annex 2, the lists may still be drawn up no later than 1 March 2003 by mutual agreement.

(b) Tariff Reduction and Elimination

(i) All products covered under the Early Harvest Programme shall be divided into 3 product categories for tariff reduction and elimination as defined and to be implemented in accordance with the timeframes set out in Annex 3 to this Agreement. This paragraph shall not prevent any Party from accelerating its tariff reduction or elimination if it so wishes.

(ii) All products where the applied MFN tariff rates are at 0%, shall remain at 0%.

(iii) Where the implemented tariff rates are reduced to 0%, they shall remain at 0%.

(iv) A Party shall enjoy the tariff concessions of all the other parties for a product covered under paragraph 3(a)(i) above so long as the same product of that Party remains in the Early Harvest Programme under paragraph 3(a)(i) above.

(c) Interim Rules of Origin The Interim Rules of Origin applicable to the products covered under the Early Harvest Programme shall be negotiated and completed by July 2003. The Interim Rules of Origin shall be superseded and replaced by the Rules of Origin to be negotiated and implemented by the Parties under Article 3(8)(b) of this Agreement.

(d) Application of WTO provisions

The WTO provisions governing modification of commitments, safeguard actions, emergency measures and other trade remedies, including anti-dumping and subsidies and countervailing measures, shall, in the interim, be applicable to the products covered under the Early Harvest Programme and shall be superseded and replaced by the relevant disciplines negotiated and agreed to by the Parties under Article 3(8) of this Agreement once these disciplines are implemented.

4. In addition to the Early Harvest Programme for trade in goods as provided for in the preceding paragraphs of this Article, the Parties will explore the feasibility of an early harvest programme for trade in services in early 2003.

5. With a view to promoting economic co-operation between the Parties, the activities set out in Annex 4 of this Agreement shall be undertaken or implemented on an accelerated basis, as the case may be.

# Part 2.

## Article 7. Other Areas of Economic Co-operation

1. The Parties agree to strengthen their co-operation in 5 priority sectors as follows:

(a) agriculture;

(b) information and communications technology;

(c) human resources development;

(d) investment; and

(e) Mekong River basin development.

2. Co-operation shall be extended to other areas, including, but not limited to, banking, finance, tourism, industrial co-operation, transport, telecommunications, intellectual property rights, small and medium enterprises (SMEs), environment, bio-technology, fishery, forestry and forestry products, mining, energy and subregional development.

3. Measures to strengthen co-operation shall include, but shall not be limited to:

(a) promotion and facilitation of trade in goods and services, and investment, such as:

(i) standards and conformity assessment;

(ii) technical barriers to trade/non-tariff measures; and

(iii) customs co-operation;

(b) increasing the competitiveness of SMEs;

(c) promotion of electronic commerce;

(d) capacity building; and

(e) technology transfer.

4. The Parties agree to implement capacity building programmes and technical assistance, particularly for the newer ASEAN

Member States, in order to adjust their economic structure and expand their trade and investment with China.

# Part 3.

## Article 8. Timeframes

1. For trade in goods, the negotiations on the agreement for tariff reduction or elimination and other matters as set out in Article 3 of this Agreement shall commence in early 2003 and be concluded by 30 June 2004 in order to establish the ASEAN-China FTA covering trade in goods by 2010 for Brunei, China, Indonesia, Malaysia, the Philippines, Singapore and Thailand, and by 2015 for the newer ASEAN Member States.

2. The negotiations on the Rules of Origin for trade in goods under Article 3 of this Agreement shall be completed no later than December 2003.

3. For trade in services and investments, the negotiations on the respective agreements shall commence in 2003 and be concluded as expeditiously as possible for implementation in accordance with the timeframes to be mutually agreed:

(a) taking into account the sensitive sectors of the Parties; and

(b) with special and differential treatment and flexibility for the newer ASEAN Member States.

4. For other areas of economic co-operation under Part 2 of this Agreement, the Parties shall continue to build upon existing or agreed programmes set out in Article 7 of this Agreement, develop new economic co-operation programmes and conclude agreements on the various areas of economic co-operation. The Parties shall do so expeditiously for early implementation in a manner and at a pace acceptable to all the parties concerned.

The agreements shall include timeframes for the implementation of the commitments therein.

## Article 9. Most-Favoured Nation Treatment

China shall accord Most-Favoured Nation (MFN) Treatment consistent with WTO rules and disciplines to all the non-WTO ASEAN Member States upon the date of signature of this Agreement.

## Article 10. General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between or among the Parties where the same conditions prevail, or a disguised restriction on trade within the ASEAN-China FTA, nothing in this Agreement shall prevent any Party from taking and adopting measures for the protection of its national security or the protection of articles of artistic, historic and archaeological value, or such other measures which it deems necessary for the protection of public morals, or for the protection of human, animal or plant life and health.

## Article 11. Dispute Settlement Mechanism

1. The Parties shall, within 1 year after the date of entry into force of this Agreement, establish appropriate formal dispute settlement procedures and mechanism for the purposes of this Agreement.

2. Pending the establishment of the formal dispute settlement procedures and mechanism under paragraph 1 above, any disputes concerning the interpretation, implementation or application of this Agreement shall be settled amicably by consultations and/or mediation.

## Article 12. Institutional Arrangements for the Negotiations

1. The ASEAN-China Trade Negotiation Committee (ASEAN-China TNC) that has been established shall continue to carry out the programme of negotiations set out in this Agreement.

2. The Parties may establish other bodies as may be necessary to co-ordinate and implement any economic co-operation activities undertaken pursuant to this Agreement.

3. The ASEAN-China TNC and any aforesaid bodies shall report regularly to the ASEAN Economic Ministers (AEM) and the Minister of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) of China, through the meetings of the ASEAN Senior Economic Officials (SEOM) and MOFTEC, on the progress and outcome of its negotiations.

4. The ASEAN Secretariat and MOFTEC shall jointly provide the necessary secretariat support to the ASEAN-China TNC whenever and wherever negotiations are held.

## Article 13. Miscellaneous Provisions

1. This Agreement shall include the Annexes and the contents therein, and all future legal instruments agreed pursuant to this Agreement.

2. Except as otherwise provided in this Agreement, this Agreement or any action taken under it shall not affect or nullify the rights and obligations of a Party under existing agreements to which it is a party.

3. The Parties shall endeavour to refrain from increasing restrictions or limitations that would affect the application of this Agreement.

## Article 14. Amendments

The provisions of this Agreement may be modified through amendments mutually agreed upon in writing by the Parties.

## Article 15. Depositary

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

## Article 16. Entry Into Force

1. This Agreement shall enter into force on 1 July 2003.

2. The Parties undertake to complete their internal procedures for the entry into force of this Agreement prior to 1 July 2003.

3. Where a Party is unable to complete its internal procedures for the entry into force of this Agreement by 1 July 2003, the rights and obligations of that Party under this Agreement shall commence on the date of the completion of such internal procedures.

4. A Party shall upon the completion of its internal procedures for the entry into force of this Agreement notify all the other parties in writing.

IN WITNESS WHEREOF, WE have signed this Framework Agreement on Comprehensive Economic Co-operation between the Association of South East Asian Nations and the People's Republic of China.

DONE at Phnom Penh, this 4th day of November, 2002 in duplicate copies in the English Language.

For Brunei Darussalam

HAJI HASSANAL BOLKIAH

Sultan of Brunei Darussalam

For the People's Republic of China

ZHU RONGJI

Premier

For the Kingdom of Cambodia

HUN SEN

Prime Minister

For the Republic of Indonesia

MEGAWATI SOEKARNOPUTRI

President

For the Lao People's Democratic Republic

BOUNNHANG VORACHITH

Prime Minister

For Malaysia

MAHATHIR BIN MOHAMAD

Prime Minister

For the Union of Myanmar

SENIOR GENERAL THAN SHWE

Chairman of the State Peace and Development

Council And Prime Minister

For the Republic of the Philippines

GLORIA MACAPAGAL-ARROYO

President

For the Repuhtitfof Singapore

GOB CHOK TONG

Prime-Minister

For the Kingdom of Thailand

POL. LT. COL. THAKSIN SHINAWATRA

Prime Minister

For the Socialist Republic of Viet Nam

PHAN VAN KHAI

Prime Minister