

Framework Agreement on the BIMST-EC Free Trade Area

THE GOVERNMENTS of the Kingdom of Bhutan, the Republic of India, the Union of Myanmar, the Kingdom of Nepal, the Democratic Socialist Republic of Sri Lanka and the Kingdom of Thailand, Member States of BIMST-EC (Bangladesh, India, Myanmar, Sri Lanka and Thailand Economic Cooperation), hereinafter referred to collectively as "the Parties" and individually as "a Party";

TAKING NOTE of the Agreed Conclusions of the BIMST-EC Economic Ministerial Retreat held in Bangkok, Thailand, on 7 August, 1998, that BIMST-EC should aim and strive to develop into a Free Trade Arrangement and should focus on activities that facilitate trade, increase investments and promote technical cooperation among member countries;

MOTIVATED by the need for strengthening economic cooperation in the region to fully realise the potential of trade and development for the benefit of their people;

RECOGNIZING the need to harmonize with the changing global economic environment and the catalytic role that regional trading arrangements can play towards accelerating global liberalization as building blocks in the framework of the multilateral trading system;

CONVINCED that a BIMST-EC Free Trade Area will act as a stimulus to the strengthening of economic cooperation among 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;

REAFFIRMING the rights, obligations and undertakings of the respective Parties under the World Trade Organization (WTO) and other multilateral, regional and bi-lateral agreements and arrangements; and

RECOGNIZING that the least developed countries in the region need to be accorded special and differential treatment commensurate with their development needs;

HAVE AGREED AS FOLLOWS:

Article 1. Objectives

The objectives of this Agreement are to:

- (a) strengthen and enhance economic, trade and investment cooperation among the Parties;
- (b) progressively liberalize and promote trade in goods and services, create a transparent, liberal and facilitative investment regime;
- (c) explore new areas and develop appropriate measures for closer cooperation among the Parties; and
- (d) facilitate the more effective economic integration of the least developed countries in the region, and bridge the development gap among the Parties.

Article 2. Measures for Comprehensive Free Trade Area (fta)

The Parties agree to negotiate expeditiously in order to establish a BIMST-EC FTA to strengthen and enhance economic cooperation through the following:

- (a) progressive elimination of tariffs and non-tariff barriers in substantially all trade in goods;
- (b) progressive liberalization of trade in services with substantial sectoral coverage;
- (c) establishing an open and competitive investment regime that facilitates and promotes investments within the BIMST-EC

FTA;

(d) provision for special and differential treatment and flexibility to the least developed countries in the region;

(ec) flexibility to the Parties in the BIMST-EC FTA negotiations to address their sensitive areas in the goods, services and investment sectors based on agreed principles of reciprocity and mutual benefits;

(f) establishing effective trade and investment facilitating measures, including, but not limited to, simplification of customs procedures and development of mutual recognition arrangements;

(g) expanding economic cooperation in areas as may be mutually agreed among the Parties that will complement the deepening of trade and investment links among the Parties and formulating action plans and programmes in the agreed sectors/areas of cooperation; and

(h) establishing appropriate mechanisms for implementation of this Agreement.

Article 3. Trade In Goods

1. The Parties agree to enter into negotiations for eliminating the tariffs and non-tariff barriers in substantially all trade in goods between the Parties, except, where necessary, those permitted under Article XXIV (8) (b) of the General Agreement on Tariffs and Trade (GATT) 1994.

2. The products, except those included in the Negative List, shall be subject to tariff reduction or elimination on the following two tracks:

(a) Fast Track: Products listed in the Fast Track by a Party on its own accord shall have their respective applied MFN tariff rates gradually reduced/eliminated in accordance with specified rates to be mutually agreed by the Parties, within the following timeframe:

Countries	For Developing Country Parties	For LDC Parties
India, SriLanka & Thailand	1 July 2006 to 30 June 2009	1 July 2006 to 30 June 2007
Bhutan, Myanmar & Nepal	1 July 2006 to 30 June 2011	1 July 2006 to 30 June 2009

(b) Normal Track: Products listed in the Normal Track by a Party on its own accord shall have their respective applied MFN tariff rates gradually reduced/eliminated in accordance with specified rates to be mutually agreed by the Parties, within the following timeframe:

Countries	For Developing Country Parties	For LDC Parties
India, SriLanka & Thailand	1 July 2007 to 30 June 2012	1 July 2007 to 30 June 2010
Bhutan, Myanmar &	1 July 2007 to Nepal 30 June 2017	1 July 2007 to 30 June 2015

(c) The number of products in the Negative List shall be subject to a maximum ceiling to be mutually agreed among the Parties, with flexibility to the LDC Parties to seek derogation, in one form or the other, in respect of products of their export interest.

3. Negotiations among the Parties to establish the BIMST-EC FTA covering trade in goods shall also include, but not be limited to the following:

(a) detailed modalities governing the tariff reduction or elimination programmes as well as any other related matter, 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 1994;

(e) Non-tariff measures/barriers imposed on any product covered under this Agreement; and

(f) Detailed procedures for safeguards based on GATT principles;

Article 4. Trade In Services

With the 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 through a positive list approach. 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(1)(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 the Parties under the GATS;

(c) enhance cooperation in services among 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 facilitative, transparent and competitive investment regime, the Parties agree to:

(a) provide for the promotion and protection of investments;

(b) strengthen cooperation in investment, facilitate investment and improve transparency of investment rules and regulations; and

(c) enter into negotiations in order to progressively liberalise the investment regime through a positive list approach.

Article 6. Areas of Economic Cooperation

1. The Parties agree to strengthen cooperation in the already identified sectors of technology, transportation and communication, energy, tourism and fisheries.

2. The Parties further agree to enhance trade facilitation in areas, including but not limited to, the following:

(a) Mutual Recognition Arrangements (MRAs), conformity assessment, accreditation procedures, and standards & technical regulations;

(b) Customs cooperation;

(c) Trade finance;

(d) E-commerce; and

(e) Business visa and travel facilitation.

3. The Parties agree to implement capacity building programmes and technical assistance, particularly for the least developed countries of the BIMST-EC, in order to adjust their economic structure and expand their trade and investment with other Parties.

4. The Parties further agree to provide technical support, to the extent possible, to the LDC Parties in their efforts to comply with the SPS and TBT requirements of the BIMST-EC countries. For this purpose, bilateral negotiations for fast tracking the process of MRAs, conformity assessment, accreditation procedures or any other necessary arrangements will be carried out in parallel with negotiations for FTA in goods.

Article 7. Timeframes

1. The negotiations for tariff reduction/elimination and other matters as set out in Article 3 of this Agreement shall commence in July 2004 and be concluded by December 2005 .

2. For trade in services and investments, the negotiations on respective agreements shall commence in 2005 and be

concluded by 2007. The identification, liberalisation, etc., of the sectors of services and investments shall be finalized for implementation subsequently 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 LDC Parties.

3. The Parties shall continue to build upon existing or agreed programmes, develop new economic cooperation programmes and conclude agreements on various areas of economic cooperation. The Parties shall do so expeditiously for early implementation in a manner and at a pace acceptable to all the Parties concerned.

Article 8. 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 BIMST-EC, nothing in this Agreement shall prevent any Party from taking action 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, health and conservation of exhaustible natural resources.

Article 9. Dispute Settlement Mechanism

1. The Parties shall establish appropriate formal dispute settlement procedures and mechanism for the purpose of this Agreement by December 2005.

2. Pending the establishment of the formal dispute settlement procedures and mechanism under paragraph 1 of this Article, any dispute arising between the Parties regarding the interpretation, application or implementation of this Agreement shall be settled amicably through mutual consultations.

Article 10. Institutional Arrangements

1. BIMST-EC Trade Negotiating Committee (BIMST-EC TNC) shall be established to carry out the programme of negotiations as set out in this Agreement.

2. The BIMST-EC TNC may involve other experts or establish any working group as may be necessary to assist in their negotiations, as also to coordinate and implement any economic cooperation activities undertaken pursuant to this Agreement.

3. The BIMST-EC TNC shall regularly report to the BIMST-EC Trade/Economic Ministers through the Senior Trade and Economic Officials Meeting on the progress and outcome of its negotiations.

Article 11. Amendments

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

Article 12. Miscellaneous Provisions

1. Any subsidiary agreement or arrangement, which may be concluded by the Parties pursuant to the provisions of this Agreement, shall form an integral part of this Agreement and be binding on the Parties.

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

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

Article 13. Withdrawal from the Agreement

1. A Party may withdraw from the Agreement by giving a six months' notice in writing to the other Parties.

2. Subject to the dispute settlement procedures and mechanisms to be established pursuant to Article 9, the rights and obligations of a Party which has withdrawn from this Agreement shall cease to apply six months after the date of such notice.

Article 14. Accession

1. This Agreement shall be open for accession to any member country of BIMST-EC which notifies its intention in writing to the Parties.

2. Accession shall be subject to acceptance by that country of all the rights and obligations accrued as on the date of accession, and such other terms and conditions as may be agreed by the Parties.

3. The acceding country may become a Party to this Agreement by submitting an instrument of accession through diplomatic channels to the Parties.

Article 15. Entry Into Force

1. This Agreement shall enter into force on 30 June 2004, by which time the Parties undertake to complete their internal procedures required for this purpose.

2. A Party shall, upon the completion of its internal procedures for entry into force of this Agreement, notify all other Parties in writing through diplomatic channels.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Framework Agreement on BIMST-EC Free Trade Area.

Done in Phuket, Kingdom of Thailand, on 8th February 2004 in Six (6) originals in the English language.

For the Government of the Kingdom of Bhutan

(H.E. Lyonpo Chenkyab Dorji) Ambassador of Bhutan in Thailand

For the Government of Republic of India

(H.E. Mr. Arun-Jaitley) Minister of Commerce and Industry

For the Government of Union of Myanmar

(H.E. Brigadier General Pyi Sone) Minister of Commerce

For His Majesty's Government of Nepal

(H.E. Dr. Bhekh B. Thapa) Ambassador-at-Large

For the Government of the Democratic Socialist Republic of Sri Lanka

(H.E. Mr. Ravi Karunanayake) Minister of Commerce and Consumer Affairs

For the Government of the Kingdom of Thailand

(H.E. Mr. Watana Muangsook) Minister of Commerce