Framework Agreement on Comprehensive Economic Cooperation Between the Republic of India and the Association of Southeast Asian Nations

PREAMBLE

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

RECALLING that in 2002, we had agreed on the importance of enhancing our close economic cooperation and to work towards an ASEAN-India Regional Trade and Investment Area (RTIA) as a long-term objective;

DESIRING to adopt a Framework Agreement on Comprehensive Economic Cooperation (this Agreement) between ASEAN and India (collectively, "the Parties", or individually referring to an ASEAN Member State or to India as a "Party") that is forward-looking in order to forge a closer economic partnership 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;

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 cooperation and utilisation of greater business opportunities provided by the ASEAN-India RTIA;

RECOGNISING the different stages of economic development among ASEAN Member States and the need for flexibility, including the need to facilitate the increasing participation of Cambodia, Lao PDR, Myanmar and Viet Nam (the New ASEAN Member States) in the ASEAN-India economic co-operation and the expansion of their exports, 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; and

RECOGNISING 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:

1. Strengthen and enhance economic, trade and investment co-operation between the Parties;

2. Progressively liberalise and promote trade in goods and services as well as create a transparent, liberal and facilitative investment regime;

3. Explore new areas and develop appropriate measures for closer economic co-operation between the Parties; and

4. Facilitate the more effective economic integration of the new ASEAN Member States and bridge the development gap among the Parties.

Article 2. Measures for Economic Cooperation

The Parties agree to enter into negotiations in order to establish an ASEAN-India Regional Trade and Investment Area (RTIA), which includes a Free Trade Area (FTA) in goods, services and investment, and 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 liberalisation of trade in services with substantial sectoral coverage;

(c) Establishment of a liberal and competitive investment regime that facilitates and promotes investment within the ASEAN-India RTIA;

(d) Provision of special and differential treatment to the New ASEAN Member States;

(e) Provision of flexibility to the Parties in the ASEAN-India RTIA negotiations to address their sensitive areas in the goods, services and investment sectors with such flexibilities 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 cooperation 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.

Article 3. Trade In Goods

1. 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) "applied Most Favoured Nation (MFN) tariff rates" shall refer to the respective applied rates of the Parties as of 1 July 2004; and

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

3. Upon signing of this Agreement, the Parties shall commence consultations on each other's trade regime, including, but not limited to the following:

(a) trade and tariff data;

(b) customs procedures, rules and regulations;

(c) non tariff measures including, but not limited to import licensing requirement and procedure, quantitative restrictions, technical barriers to trade, sanitary and phytosanitary;

(d) intellectual property rights rules and regulations; and

(e) trade policy.

4. 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.

5. 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 (EHP) under Article 7 of this Agreement, and such products shall be categorised into two tracks as follows:

(a) 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 or eliminated in accordance with specified schedules and rates (to be mutually agreed by the Parties) over a period from:

(i) 1 January 2006 to 31 December 2011 for Brunei Darussalam, Indonesia, Malaysia, Singapore and Thailand, and India;

(ii) 1 January 2006 to 31 December 2016 for the Philippines and India; and

(iii) 1 January 2006 to 31 December 2011 for India and 1 January 2006 to 31 December 2016 for the New ASEAN Member States.

In respect of those tariffs which have been reduced but have not been eliminated, they shall be progressively eliminated within timeframes to be mutually agreed between the Parties.

(b) Sensitive Track:

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

(ii) Products listed in the Sensitive Track by a Party on its own accord shall, where applicable, have their respective applied MFN tariff rates progressively reduced/eliminated within timeframes to be mutually agreed between the Parties.

6. The commitments undertaken by the Parties under this Article and Article 7 of this Agreement shall fulfil the WTO requirements to eliminate tariffs on substantially all the trade between the Parties.

7. The specified tariff rates/tariff preferences to be mutually agreed between the Parties pursuant to this Article shall set out only the limits of the applicable tariff rates/preferences or range for the specified year of implementation by the Parties.

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

(a) modalities, including detailed rules governing the tariff reduction and/or elimination;

(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 WTO agreements;

(e) non-tariff measures/barriers, 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 sanitary and phytosanitary measures and technical barriers to trade;

(f) safeguards based on the WTO agreements;

(g) disciplines on subsidies and countervailing measures and anti-dumping measures based on the existing WTO agreements; 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 Organisation (WIPO) and other relevant agreements.

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 on a preferential basis 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(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 ASEAN Member States and India under the GATS; and

(c) enhanced cooperation 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 their investment regimes;

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

(c) provide for the protection of investments.

Article 6. Areas of Economic Cooperation

1. Where appropriate, the Parties agree to strengthen their cooperation in the following areas, including, but not limited to:

(a) Trade Facilitation:

(i) Mutual Recognition Arrangements, conformity assessment, accreditation procedures, and standards and technical regulations;

(ii) non-tariff measures;

(iii) customs cooperation;

(iv) trade financing; and

(v) business visa and travel facilitation.

(b) Sectors of Cooperation:

(i) agriculture, fisheries and forestry;

(ii) services: media and entertainment, health, financial, tourism, construction, business process outsourcing, environmental;

(iii) mining and energy: oil and natural gas, power generation and supply;

(iv) science and technology: information and communications technology, electronic-commerce, biotechnology;

(v) transport and infrastructure: transport and communication;

(vi) manufacturing: automotive, drugs and pharmaceuticals, textiles, petrochemicals, garments, food processing, leather goods, light engineering goods, gems and jewellery processing;

(vii) human resource development: capacity building, education, technology transfer; and

(viii) others: handicrafts, small and medium enterprises, competition policy, Mekong Basin Development, intellectual property rights, government procurement.

(c) Trade and Investment Promotion:

(i) fairs and exhibitions;

(ii) ASEAN-India weblinks; and

(iii) business sector dialogues.

2. The Parties agree to implement capacity building programmes and technical assistance, particularly for the New ASEAN Member States, in order to adjust their economic structure and expand their trade and investment with India.

3. Parties may establish other bodies as may be necessary to coordinate and implement any economic cooperation activities undertaken pursuant to this Agreement.

Article 7. Early Harvest Programme

1. With a view to accelerating the implementation of this Agreement, the Parties agree to implement an EHP, which is an integral part of the ASEAN-India RTIA, for products covered under paragraph 3(a) below. The progressive tariff reduction under the EHP shall commence from 1 November 2004, and tariff elimination shall be completed by 31 October 2007 for ASEAN-6 and India, and 31 October 2010 for the New ASEAN Member States.

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

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

(b) “applied MFN tariff rates” shall refer to the respective applied rates of the Parties as of 1 July 2004.

3. The product coverage, tariff reduction and elimination, removal of non-tariff barriers, rules of origin, trade remedies and emergency measures applicable to the EHP shall be as follows:

(a) Product Coverage

(i) Common products on which the Parties agree to exchange tariff concessions are listed in Annex A.

(ii) Products on which India accords concessions to the New ASEAN Member States are listed in Annex B.

(b) Modality for Tariff Reduction and Elimination

The modality for tariff reduction and elimination for the products covered by the EHP shall be finalised under Article 8(2) of this Agreement.

(c) Removal of non-tariff measures

In order to fully realise the potential benefits of the EHP, the parties shall promote and facilitate trade in all products listed in the EHP. The parties shall also endeavour to refrain from using non-tariff measures adversely affecting trade in Early Harvest products.

(d) Rules of Origin

Products covered by the EHP shall qualify for tariff preferences in accordance with the Rules of Origin to be agreed under Article 8(2) of this Agreement.

(e) 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 EHP 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. The Parties shall also explore the feasibility of cooperation in the areas listed in Annex C.

Article 8. Timeframes

1. For trade in goods, negotiations on the agreement for tariff reduction/elimination and other matters as set out in Article 3 of this Agreement shall commence in January 2004 and be concluded by 30 June 2005 in order to establish the ASEAN-India FTA.

2. The negotiations on Rules of Origin for trade in goods under Articles 3 and 7 and modality for tariff reduction and elimination under Article 7 shall be concluded no later than 31 July 2004.

3. For trade in services and investments, the negotiations on the respective agreements shall commence in 2005 and be concluded by 2007. The identification, liberalisation, etc., of the sectors of services and investment shall be finalised 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 New ASEAN Member States.

4. For other areas of economic cooperation, the Parties shall continue to build upon existing or agreed programmes set out in Article 6 of this Agreement, develop new economic cooperation programmes and conclude agreements on the 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. The agreements shall include timeframes for the implementation of the commitments therein.

Article 9. Most-Favoured Nation Treatment

India shall continue to 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-India FTA, 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 11. Dispute Settlement Mechanism

1. The Parties shall, within one (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 mutual consultations.

Article 12. Institutional Arrangements for the Negotiations

1. There shall be established an ASEAN-India Trade Negotiating Committee (TNC) to carry out the programme of negotiations set out in this Agreement.

2. The ASEAN-India TNC may invite experts or establish any Working Group as may be necessary to assist in the negotiations of all sectors in the ASEAN-India RTIA.

3. The ASEAN-India TNC shall regularly report to the Minister of Commerce and Industry of India and the ASEAN Economic Ministers (AEM-India Consultations), through the meetings of the ASEAN Senior Economic Officials and India (SEOM-India Consultations), on the progress and outcome of its negotiations.

4. The Ministry of Commerce and Industry, Government of India, and the ASEAN Secretariat shall jointly provide the necessary secretariat support to the ASEAN-India Trade Negotiating Committee (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.

4. Any ASEAN Member State may defer its participation in the implementation of this Agreement provided that a notification is given to the other parties within twelve (12) months from the date of signing of this Agreement. Any extension of the negotiated concessions to such ASEAN Member State shall be voluntary on the part of the parties participating in such implementation. The ASEAN Member State concerned shall participate in the implementation of this Agreement at a later date on the same terms and conditions, including any further commitments that may have been undertaken by the other parties by the time of such participation.

Article 14. Amendments

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

Article 15. Depository

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 and India.

Article 16. Entry Into Force

1. This Agreement shall enter into force on 1 July 2004.

2. The Parties undertake to complete their internal procedures for the entry into force of this Agreement prior to 1 July 2004.

3. Where a Party is unable to complete its internal procedures for the entry into force of this Agreement by 1 July 2004, the Agreement shall come into force for that Party upon the date of notification of the completion of its internal procedures. The Party concerned, however, shall be bound by the same terms and conditions, including any further commitments that may have been undertaken by the other Parties under this Agreement by the time of such notification.

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 Cooperation between the Association of Southeast Asian Nations and the Republic of India.

DONE at Bali, this 8th day of October, 2003 in duplicate copies in the English Language.