

PROTOCOL
REGARDING THE IMPLEMENTATION OF THE
CEPT SCHEME TEMPORARY EXCLUSION LIST

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, 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 (hereinafter referred to as "ASEAN");

NOTING the Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA) (hereinafter referred to as "the Agreement") signed in Singapore on 28 January 1992, and its relevant protocols;

REITERATING their commitment to accelerating the liberalisation of intra-ASEAN trade and investment through AFTA using the CEPT Scheme;

RECALLING the decision of the ASEAN Economic Ministers Retreat in Yangon, Myanmar on 1 May 2000 to allow limited flexibility in the implementation of the CEPT Scheme Temporary Exclusion List (hereinafter referred to as "TEL");

DESIRING to provide the flexibility in the form of a new Protocol to the Agreement, in accordance with Articles 2 and 10 thereof, so as to implement the decision;

HAVE AGREED AS FOLLOWS:

ARTICLE 1
Objective and Scope

The objective of this Protocol is to allow a Member State to temporarily delay the transfer of a product from its TEL into the Inclusion List (hereinafter referred to as "IL"), or to temporarily suspend its concession on a product already transferred into the IL, if such a transfer or concession would cause or have caused real problems, by reasons which are not covered by Article 6 (Emergency Measures) of the Agreement.

The provisions of this Protocol shall apply only to the last tranche of TEL manufactured products which were in the TEL as at 31 December 1999 or the relevant dates applicable to Cambodia, Lao PDR, Myanmar and Viet Nam.

ARTICLE 2
Submission

A Member State which seeks to invoke the provisions of this Protocol (hereinafter referred to as the "applicant Member State"), shall make a written submission

(hereinafter referred to as the "Submission") to the ASEAN Free Trade Area Council (hereinafter referred to as the "AFTA Council").

A copy of the Submission shall be extended immediately by the ASEAN Secretariat to the Senior Economic Officials Meeting (hereinafter referred to as "SEOM") and to the Coordinating Committee on the Implementation of the CEPT Scheme for AFTA (hereinafter referred to as the "CCCA").

The Submission shall include information on the product whose transfer is to be temporarily delayed or the concession of which is temporarily suspended, the duration of the delay or the suspension requested, the reason for the request and the real problems faced.

ARTICLE 3 Consideration by the CCCA

Subject to any decision or any other directions of the AFTA Council, the Submission shall be considered within the CCCA jointly and also separately between the applicant Member State and other Member States having principal or substantial supplying interest in the particular product.

In the event that separate discussions are held, outcomes which have direct relevance to the implementation of the Agreement shall be reported to the CCCA.

Such separate discussions may include provision for compensatory adjustment measures which may take any form including those under the Agreement, mutually agreed to by the applicant Member State and Member States having principal or substantial supplying interest. Member States shall ensure a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for and prevailing under the Agreement prior to such discussions.

The CCCA shall submit its report on the outcome of the discussions on the Submission, including its recommendations in relation to it, to SEOM within 50 days of the date of the receipt by it of the Submission.

ARTICLE 4
Consideration by SEOM and AFTA Council

The SEOM shall consider the report of the CCCA and forward its own report, including its recommendations, to the AFTA Council, within 50 days of the receipt by it of the report of the CCCA.

The AFTA Council shall consider and decide on the report of the SEOM within 50 days of its receipt by the Council.

The delay in the transfer or the suspension of the concession shall be effective upon the decision of and for the period decided by the AFTA Council.

The total time period allowed under Articles 3 and 4, including any extension decided by the AFTA Council, shall not exceed 180 days from the date of receipt of the Submission by the AFTA Council.

ARTICLE 5
Most Favoured Nation Treatment

Any compensatory adjustment negotiated in relation to the Submission, in whatever form, to be provided by the applicant Member State, shall be extended on the most favoured nation basis to all other Member States, where applicable.

ARTICLE 6
Non-Agreement Situation

If no agreement is reached on the Submission at the latest by 180 days of the date of receipt of the Submission by the AFTA Council and the applicant Member State nevertheless insists on proceeding with the delay of the transfer or the suspension of the concession, Member States with principal or substantial supplying interest and which have entered into separate discussions with the applicant Member State shall be free, not later than 90 days after such action is taken, to withdraw substantially equivalent concessions from the applicant Member State, upon the expiration of 30 days from the

date on which written notice of the intention to make such withdrawal is received by all Member States.

ARTICLE 7 Change of Circumstances

In the event that the circumstances giving rise to the request for the delay in transfer or the suspension of the concession cease to exist, the applicant Member State shall immediately inform all the Member States and the Secretary-General of ASEAN and, within 30 days of the date of notification, transfer the product in question from the TEL to the IL or terminate the suspension.

Any compensatory adjustment provided in relation to the delayed or suspended product shall automatically cease upon the transfer of the product into the IL or the cessation of the suspension under paragraph 1 above.

ARTICLE 8 Annual Review

The AFTA Council shall review the delay or suspension annually.

The applicant Member State shall report each year to the AFTA Council on the status of the delay or suspension.

ARTICLE 9 Applicable Rate

The CEPT rate to be applied to a TEL product, from the date it is to be transferred to the IL following the transfer or termination of a suspension, shall be the rate which would have applied in the particular year according to the scheduled commitments as if the delay or suspension had not occurred, or a phased reduction, with specific timeframes or schedules, to such rate, subject to the agreement of the applicant Member State and Member States having principal or substantial supplying interest.

ARTICLE 10 Settlement of Disputes

The Protocol on Dispute Settlement Mechanism for ASEAN shall apply in relation to any

dispute arising from, or any difference between Member States concerning the interpretation or application of this Protocol.

ARTICLE 11
Amendments

Any amendment to this Protocol shall be made by consensus and shall become effective upon acceptance by all Member States.

ARTICLE 12
Final Provisions

This Protocol shall be effective upon signing.

This Protocol shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof to each Member State.

IN WITNESS WHEREOF, the undersigned being duly authorised by their respective Governments, have signed this Protocol Regarding the Implementation of the CEPT Scheme Temporary Exclusion List.

DONE at Singapore this 23rd day of November 2000 in a single copy in the English language.