

AMENDMENT TO THE FIRST AGREEMENT ON TRADE NEGOTIATIONS AMONG  
DEVELOPING MEMBER COUNTRIES OF THE ECONOMIC AND SOCIAL COMMISSION  
FOR ASIA AND THE PACIFIC (BANGKOK AGREEMENT)

## ASIA-PACIFIC TRADE AGREEMENT

### PREAMBLE

**RECOGNIZING** the urgent need to take action to implement a trade expansion programme among the developing member countries of the Economic and Social Commission for Asia and the Pacific (ESCAP) pursuant to the decisions contained in the Kabul Declaration of the Council of Ministers on Asian Economic Co-operation and within the framework of the Asian Trade Expansion Programme which was adopted by the Intergovernmental Committee on a Trade Expansion Programme created under the Kabul Declaration;

**GUIDED** by the principles contained in the New Delhi Declaration adopted at the thirty-first session of the Economic and Social Commission for Asia and the Pacific;

**REALIZING** that the expansion of trade could act as a powerful stimulus to the development of their national economies, by expanding investment and production opportunities through benefits to be gained from specialization and economies of scale, thus providing greater opportunities of employment and securing higher living standards for their populations;

**MINDFUL** of the importance of expanding access on favourable terms for their goods to each other's markets and of developing trade arrangements which promote the rational and outward-oriented expansion of production and trade;

**NOTING** that the international community has fully recognized the importance of encouraging the establishment of preferences among developing countries at the international, regional and subregional levels, particularly through the resolutions of the General Assembly of the United Nations establishing the International Development Strategy for the Second United Nations Development Decade and the Declaration on the Establishment of a New International Economic Order and the Programme of Action for the Establishment of a New International Economic Order; the Concerted Declaration on Trade Expansion, Economic Co-operation and Regional Integration among Developing Countries adopted at UNCTAD II; as well as Part IV of the General Agreement on Tariffs and Trade and Article V of the General Agreement on Trade in Services and decisions made in pursuance thereof;

**NOTING FURTHER** that developing countries have already taken some major decisions intended to promote such type of preferential arrangements among themselves such as the Global System of Trade Preferences;

**CONVINCED** that the establishment of preferences among the developing member countries of ESCAP, complementary to other efforts undertaken in other international forums, could make an important contribution to the development of trade among developing countries;

The Governments of the People's Republic of Bangladesh, the People's Republic of China, the Republic of India, the Lao People's Democratic Republic, the Republic of Korea and the Democratic Socialist Republic of Sri Lanka HAVE AGREED as follows:

## **Chapter I – GENERAL PROVISIONS**

### **Article 1 Definitions**

For the purposes of this Agreement, the following definitions shall apply:

- 1) “Participating State” means a State which has consented to be bound by the Agreement by deposition of its instrument of accession or ratification with the Executive Secretary of ESCAP.
- 2) “Original Participating States” means the People's Republic of Bangladesh, the Republic of India, the Lao People's Democratic Republic, the Republic of Korea and the Democratic Socialist Republic of Sri Lanka.
- 3) “Developing member countries of ESCAP” means those countries included in paragraphs 3 and 4 of the terms of reference of the Economic and Social Commission for Asia and the Pacific, including any future amendments thereto.
- 4) “Least developed country” means a country designated as such by the United Nations.
- 5) “Products” means all products including manufactures and commodities in their raw, semi-processed and processed forms.
- 6) “Like product” is a product which is identical to the product under consideration or, in the absence of such a product, another product which, although not identical, has characteristics closely resembling those of the product under consideration.
- 7) “Tariffs” means customs duties included in the national tariff schedules of the Participating States.

- 8) “Border charges and fees” means border charges and fees, other than tariffs, on foreign trade transactions with a tariff-like effect which are levied solely on imports, but are not indirect taxes and charges which are levied in the same manner on like domestic products. Import charges corresponding to specific services rendered are not considered border charges and fees.
- 9) “Non-tariff measures” means any measures, regulations or practices, other than tariffs and border charges and fees, the effect of which is to restrict imports or to significantly distort trade.
- 10) “Margin of preference” means the percentage difference between the Most-Favoured-Nation (MFN) rate of duty and the preferential rate of duty for the like product, and not the absolute difference between those rates. Thus,

$$\text{Margin of preference} = \frac{(\text{MFN duty} - \text{tariff rate conceded under the Agreement})}{\text{MFN duty}} \times 100 \text{ (per cent)}$$

- 11) “Value of the concessions” means the extent of benefits received by other Participating States from the tariff/non-tariff preferences given by each Participating State through its National List of Concessions agreed upon under this Agreement. In the case of tariff preferences, the value of the concessions shall be deemed to be preserved if margins of preference are maintained.
- 12) “Serious injury” means significant damage to domestic producers of like or similar products resulting from a substantial increase of preferential imports in situations which cause substantial losses in terms of earnings, production or employment unsustainable in the short term. The examination of the impact on the domestic industry concerned shall also include an evaluation of other relevant economic factors and indices having a bearing on the state of the domestic industry of that product.
- 13) “Threat of serious injury” means a situation in which a substantial increase of preferential imports is of a nature to cause serious injury to domestic producers, and that such injury, although not yet existing, is clearly imminent. A determination of threat of serious injury shall be based on facts and not on mere allegations, conjecture, or remote or hypothetical possibility.

## **Article 2 Objectives**

The objectives of this Agreement are to promote economic development through a continuous process of trade expansion among the developing member countries of ESCAP and to further international economic co-operation through the adoption of mutually beneficial trade liberalization measures consistent with their respective present and future development and trade needs.

### **Article 3 Principles**

The Agreement shall be governed in accordance with the following general principles:

- (i) The Agreement shall be based on overall reciprocity and mutuality of advantages in such a way as to benefit equitably all Participating States;
- (ii) The principles of Transparency, National Treatment and Most-Favoured-Nation Treatment shall apply to the trade relations among the Participating States;
- (iii) The special needs of least developed country Participating States shall be clearly recognized and concrete preferential measures in their favour shall be agreed upon.

## **Chapter II – PROGRAMME OF TRADE LIBERALIZATION**

### **Article 4 Negotiation of Concessions**

This Agreement may, inter-alia, consist of arrangements relating to: (a) tariffs; (b) border charges and fees; (c) non-tariff measures. Participating States may conduct their negotiations for tariff concessions in accordance with any one or a combination of the following approaches and procedures: (a) product-by-product basis; (b) across-the-board tariff reductions; (c) sectoral basis. The tariff negotiations should be based on the current MFN rates applied by each Participating State. Participating States shall enter into periodic negotiations with a view to further expanding this Agreement and the fuller attainment of its aims.

### **Article 5 Application of Concessions**

Each Participating State shall apply such tariff, border charge and fee, and non-tariff concessions in favour of the goods originating in all other Participating States as are set out in its National List of Concessions. These National Lists of Concessions are attached as annex I, which is an integral part of this Agreement.

### **Article 6 Non-Tariff Measures**

Each Participating State shall take appropriate measures, consistent with its development needs and objectives, for the gradual relaxation of non-tariff measures which may affect the importation of products covered by its National List of Concessions. Issues relating to technical barriers to trade and sanitary and phytosanitary measures among Participating States shall be dealt with, as far as practicable, in accordance with the WTO provisions on these subjects. Participating States shall also make available to one another on a transparent basis a list of non-tariff measures existing on conceded products.

## **Article 7**

### **Special Concessions to Least Developed Country Participating States**

Notwithstanding the provisions of article 5 of this Agreement, any Participating State may grant to least developed country Participating States special concessions which shall apply to all least developed country Participating States and shall not be extended to other Participating States. These special concessions shall be included in the National List of Concessions of the preference-giving Participating State.

## **Article 8**

### **Rules of Origin**

Products contained in the National Lists of Concessions annexed to this Agreement shall be eligible for preferential treatment if they satisfy the Rules of Origin set out in annex II, which is an integral part of this Agreement.

## **Article 9**

### **Preservation of the Value of the Concessions**

Except as provided for elsewhere, in order to secure preservation of the value of the concessions set out in the attached National Lists of Concessions, the Participating States shall not abrogate or reduce the value of these concessions after the entry into force of this Agreement through the application of any charge or measure restricting commerce other than those existing prior thereto, except where a charge corresponds to: (a) an internal tax imposed on a similar domestic product; (b) an anti-dumping or countervailing duty; or (c) fees commensurate with the cost of services rendered.

## **Article 10**

### **Re-establishment of Margins of Preference**

If, as a result of a tariff revision, a Participating State reduces or abrogates the value of the concessions granted to the other Participating States, it shall within a reasonable period of time take mutually acceptable compensatory action to re-establish margins of preference of equivalent value or enter into prompt consultations with the other Participating States as provided for in chapter IV in order to negotiate a mutually satisfactory modification of its National List of Concessions. For the purposes of this article, a reasonable period of time means not exceeding six months from the date of issue of the notification of tariff revision. A Participating State exceeding this period shall provide justification as to the reasons thereof.

## **Article 11**

### **Coverage of the Agreement**

The Agreement shall cover all products including manufactures and commodities in their raw, semi-processed and processed forms. Participating States shall explore further areas of cooperation with regard to border and non-border measures to supplement and complement the liberalization of trade. These may include, among others, the harmonization of standards, mutual recognition of tests and certification of products, macroeconomic consultations, trade facilitation measures and trade in services.

## **Chapter III – TRADE EXPANSION**

### **Article 12** **Trade Expansion and Diversification**

To ensure the consolidation, continued expansion and further diversification of trade, the Participating States agree to keep in view the objectives and provisions set out in the following subparagraphs and shall strive to implement them expeditiously in a manner consistent with their national policies and procedures:

- a. To the fullest extent possible, Participating States shall grant to one another, in relation to imports originating in the territory of any one of them, a treatment no less favourable than that which prevailed prior to the entry into force of this Agreement;
- b. With respect to taxes, rates and other internal duties and charges, products originating in the territory of a Participating State shall enjoy in the territory of every other Participating State a treatment no less favourable than that accorded by that other Participating State to similar products of domestic origin;
- c. Participating States shall endeavour, in relation to each other, not to introduce or increase the incidence of tariffs, border charges and fees, and non-tariff measures on products of current or potential export interest to the other Participating States. For purposes of determination of the products that fall within the purview of this paragraph, the Participating States shall submit, and the Standing Committee shall decide on, lists of products in this category from time to time;
- d. Whenever considered necessary, Participating States shall take appropriate measures for co-operation, particularly in customs administration, to facilitate implementation of this Agreement and to simplify and standardize procedures and formalities relating to reciprocal trade. For this purpose the Standing Committee shall take the required administrative action;
- e. The Participating States shall, as far as practicable, follow the provisions of relevant WTO Agreements including the Agreement on the Implementation of Article VI of the GATT 1994 and the Agreement on Subsidies and Countervailing Duties, and ensure that the provisions of this Agreement are harmoniously applied;
- f. Participating States shall adopt the latest version of the Harmonized Commodity Description and Coding System of the World Customs Organization as a common tariff nomenclature and, as far as practicable, conduct further negotiations on the basis of the six-digit level of the HS classification of goods;
- g. Through further negotiations, Participating States shall take steps to expand the coverage and value of the concessions on products of export interest to one another. To this end, the Standing Committee shall adopt from time to time a programme of action to accelerate the process of negotiations, including additional negotiating techniques and the possible establishment of specific targets for the negotiations.

## **Article 13**

### **Extension of Advantage, Benefit, Franchise, Immunity or Privilege**

In matters of trade, any advantage, benefit, franchise, immunity or privilege applied by a Participating State in respect of a product originating in or intended for consignment to any other Participating State or any other country shall be immediately and unconditionally extended to the like product originating in or intended for consignment to the territories of the other Participating States.

## **Article 14**

### **Non-Application of Preferences**

The provisions of article 13 shall not apply in relation to preferences granted by Participating States:

- a. Through bilateral trade agreements, to other Participating States and to third countries;
- b. Exclusively to other developing countries prior to the entry into force of this Agreement;
- c. To least developed country Participating States under article 7 of this Agreement;
- d. To other Participating States which may be classified by the Participating States as at a relatively less advanced stage of economic development, provided that such preferences are accorded without full reciprocity from the relatively less advanced country. The Standing Committee shall decide from time to time which Participating States shall be considered to be in the category of countries at a relatively less advanced stage of economic development;
- e. To any other Participating State(s) and/or other developing member countries of ESCAP with which the Participating State engages in the formation of an economic integration grouping;
- f. To any other Participating State(s) and/or other developing countries with which the Participating State enters into an industrial co-operation agreement or joint venture in other productive sectors, within the purview of article 16.

Notwithstanding the above exceptions, each Participating State shall take the necessary steps to reconcile, to the extent possible, the provisions of agreements entered into with third countries with the provisions of this Agreement.

## **Article 15**

### **Special Consideration for Least Developed Country Participating States**

Special consideration shall be given by Participating States to requests from least developed country Participating States for technical assistance and cooperation arrangements designed to assist them in expanding their trade with other Participating States and in taking advantage of the potential benefits of this Agreement.

## **Article 16**

### **Extension of Special Tariff and Non-Tariff Preferences**

The Participating States agree to consider extending special tariff and non-tariff preferences in favour of products included in industrial co-operation agreements and joint ventures in other productive sectors reached among some or all of them, and/or with the participation of other developing member countries of ESCAP, which will apply exclusively in favour of the countries participating in the said agreements or ventures. Provisions for such agreements or ventures shall be embodied in protocols, which shall enter into force for the Participating States concerned after the Standing Committee has declared their compatibility with this Agreement.

## **Chapter IV – SAFEGUARD MEASURES AND CONSULTATIONS**

### **Article 17**

#### **Suspension of Concessions**

- (i) If, as a result of the implementation of this Agreement, imports of a particular product included in the National List of Concessions of a Participating State originating in the territory of another Participating State or other Participating States, are increasing in such a manner as to cause, or threaten to cause, serious injury to domestic industry that produces like or directly competitive products in the importing Participating State, the importing Participating State may suspend, provisionally and without discrimination, concessions included in its National List of Concessions in respect of that particular product and shall simultaneously notify the Standing Committee and enter into consultations with the other Participating State(s) concerned, with a view to reaching agreement to remedy the situation, keeping the Standing Committee duly informed of progress in these consultations.
- (ii) If agreement among the Participating States concerned cannot be reached within 90 days, the Standing Committee shall then seek to obtain a mutually acceptable solution through:
  - (a) confirmation of the suspension; or (b) modification of the concession; or (c) its replacement by a concession of equivalent value. If the Standing Committee cannot reach a satisfactory solution within 90 days from that date, the Participating State(s) affected by the suspension shall then be free to temporarily suspend the application to the trade of the Participating State which has taken such action of substantially equivalent concessions, subject to notification to and further negotiation for a mutually acceptable solution by the Standing Committee, which shall adopt its final decision by at least a two-thirds majority vote within 90 days following the date of receipt of the latter notification.
- (iii) The preconditions and circumstances for the legitimate application of safeguard measures shall, as far as possible, be the same as provided under the WTO Agreement on Safeguards.

## **Article 18**

### **Balance of Payments Restrictions**

- (i) Notwithstanding the provisions of article 9 of this Agreement and without prejudice to existing international obligations, a Participating State which finds it necessary to introduce restrictions on imports for the purpose of safeguarding its balance of payments may do so while endeavouring to safeguard the value of the concessions embodied in its National List of Concessions. If, however, such restrictions are applied by a Participating State in respect of products included in its National List of Concessions, such restrictions shall apply provisionally and without discrimination, and notice thereof must immediately be given to the Standing Committee with a view to negotiating a mutually satisfactory solution, in accordance with the procedures set out in articles 19 and 20 of this Agreement. Notwithstanding these consultation procedures, Participating States applying balance of payments restrictions with respect to products included in their National Lists of Concessions shall progressively relax such restrictions as their balance of payments situation improves and shall eliminate such restrictions when conditions no longer justify their maintenance.
- (ii) The preconditions and circumstances for the legitimate application of balance of payments safeguards shall, as far as practicable, be the same as provided under WTO's Understanding on Balance of Payments Provisions of the GATT 1994.

## **Article 19**

### **Remedy of Trade Disadvantages**

If, as a result of the implementation of this Agreement, significant and persistent disadvantages are created in respect of the trade between one Participating State and the others as a whole, those Participating States shall, at the request of the affected Participating State, accord sympathetic consideration to the representation or request of the latter, and the Standing Committee shall afford adequate opportunity for consultations with a view to taking the necessary steps to remedy such disadvantages through the adoption of suitable measures, including additional concessions, designed to further expand multilateral trade.

## **Article 20**

### **Non-Compliance**

If a Participating State should consider that another Participating State is not duly complying with any given provision under this Agreement, and that such non-compliance adversely affects its own trade relations with that Participating State, the former may make formal representation to the latter, which shall give due consideration to the representation made to it. If no satisfactory adjustment is effected between the Participating States concerned within 120 days following the date on which such representation was made, the matter may be referred to the Standing Committee, which may decide to make to any Participating State such recommendation as it considers appropriate. If the Participating State concerned does not comply with the recommendation of the Standing Committee, the latter may authorize any Participating State to suspend, in relation to the non-complying State, the application of such obligations under this Agreement as the Standing Committee considers appropriate.

## **Article 21**

### **Dispute Settlement**

Any dispute that may arise among Participating States regarding the interpretation and application of the provisions of this Agreement or any instrument adopted within its framework shall be amicably settled by an agreement between the parties concerned. In the event of Participating States' failure to settle a dispute among themselves, the dispute will be brought to the Standing Committee to resolve. The Standing Committee shall review the matter and make a recommendation thereon within 120 days from the date on which the dispute was submitted to it. The Standing Committee shall adopt appropriate rules for this purpose.

## **Chapter V – THE STANDING COMMITTEE AND ADMINISTRATION OF THE AGREEMENT**

### **Article 22**

#### **Standing Committee**

A Standing Committee, consisting of the representatives of the Participating States (hereinafter referred to as the “Committee”), shall meet at least once a year and be responsible for reviewing the application of this Agreement, carrying out consultations, making recommendations and taking decisions as required, and, in general, undertaking whatever measures may be required to ensure the adequate implementation of the objectives and provisions of this Agreement.

### **Article 23**

#### **Ministerial Council**

The Participating States, for the purpose of supervising, coordinating and reviewing the implementation of this Agreement, establish a Council at minister level comprising of one minister from the relevant economic ministry of each Participating State. The Council shall meet at least once every two years, or whenever it becomes necessary. The Committee shall provide support to the Ministerial Council for the discharge of its responsibilities.

### **Article 24**

#### **Decision-Making**

The practice of decision-making by consensus will be the preferred practice of the Committee, and will be implemented whenever possible. If the need arises, however, the Committee shall, by a two-thirds majority vote, adopt such rules of procedure as may be required for the performance of its functions, provided that at least two thirds of the Participating States are present to cast votes. The Committee shall communicate with third countries and international organizations in matters relating to the interpretation and operation of this Agreement, and may request the technical advice and the co-operation of national and international organizations.

## **Chapter VI – REVIEW AND MODIFICATIONS**

### **Article 25**

#### **Review of the Agreement**

- (i) At each session, the Committee shall review progress made in the implementation of this Agreement, taking into account the objectives and principles set out in articles 2 and 3.
- (ii) At least once a year, the Committee shall make a critical review of reciprocal trade with a view to making the necessary corrections and improvements in the National Lists of Concessions to ensure that the benefits deriving from the application of this Agreement accrue to all Participating States in a mutually satisfactory manner, consistent with each country's contribution to the Programme of Trade Liberalization set out in chapter II.
- (iii) Every three years the Committee shall undertake a major review in order to determine means of advancing the aims of promoting trade expansion among the developing member countries of ESCAP.

### **Article 26**

#### **Amendments to the Agreement**

Except where provision for modification is made elsewhere in this Agreement all articles of this Agreement may be modified through amendments to the Agreement. Amendments to the provisions of chapters II and III and of article 26 shall become effective upon acceptance by all Participating States. For all other amendments, the Committee will make every effort to adopt a decision by consensus as to whether the amendments in question shall become effective; if a consensus decision is not reached, however, these amendments shall become effective upon acceptance by two thirds of the Participating States.

### **Article 27**

#### **Duration of Application of Concessions**

Except for the special circumstances listed under chapter IV, the concessions contained in the National Lists of Concessions shall have a minimum duration of application of three years from the date of their entry into force. If at the end of that period they are modified or withdrawn, the Participating States concerned shall enter into consultations with a view to re-establishing a general level of the value of the concessions which shall be at least as favourable to their mutual trade as that existing prior to the modification or withdrawal.

### **Article 28**

#### **Replacement of Concessions**

In the case of concessions withdrawn or modified in accordance with provisions set out under chapter IV, the Participating State concerned shall attempt to replace such concessions by other concessions of at least equivalent value.

## **Article 29**

### **Promotion of Concessions and Participation**

The Committee shall continuously promote negotiations for additions to the National Lists of Concessions and for increasing the number of Participating States and shall sponsor such negotiations at the time of the annual trade reviews provided for under article 25 or at any other time it may deem desirable.

## **Chapter VII – ACCESSION AND WITHDRAWAL**

### **Article 30**

#### **Accession to the Agreement**

- (i) After its entry into force, this Agreement shall be open for accession by any developing member country of ESCAP.
- (ii) Upon notification being received by the Committee through the Executive Secretary of ESCAP from any such country regarding its intention to accede to this Agreement, the Committee shall take the necessary steps to facilitate accession of the applicant country to this Agreement on terms consistent with the latter's present and future development and trade needs as well as with the principle of mutual benefit.
- (iii) The applicant country shall offer concessions in exchange for the existing concessions of Participating States and, unless otherwise decided, shall not ask for additional concessions from Participating States through a request list or otherwise.
- (iv) After due negotiations, the applicant country may accede to the Agreement by consensus. If consensus is not reached, however, the applicant country may accede to the Agreement if at least two thirds of the Participating States recommend its accession. If any of the Participating States objects to such accession, however, the provisions of the Agreement shall not apply as between that country and the acceding country.
- (v) This Agreement shall come into force for an eligible acceding State on the date of deposit of its corresponding instrument of accession, accompanied by the National List of Concessions and the related administrative notification, with the Executive Secretary of ESCAP.
- (vi) For the purposes of this article, a related administrative notification means a government notification, such as a customs notification, that gives practical effect to the acceding State's obligations under the Agreement.

### **Article 31**

#### **Notification of Accession, Ratification and Entry into Force**

The Executive Secretary of ESCAP shall notify the Participating States and other developing member countries of ESCAP of: (a) accessions to and ratifications of this Agreement; and (b) the date on which this Agreement enters into force for a new Participating State.

### **Article 32**

#### **Withdrawal from the Agreement**

Any Participating State may withdraw from this Agreement, such withdrawal to take effect six months following the day on which written notice of the same is served to the Participating States through the Executive Secretary of ESCAP. The rights and obligations of a Participating State which has withdrawn from this Agreement shall cease to apply as of that date. After that date, the Participating States and the withdrawing country shall jointly decide whether to withdraw in whole or in part the concessions received by the latter from the former and vice versa.

## **Chapter VIII – MISCELLANEOUS AND FINAL PROVISIONS**

### **Article 33**

#### **Amendments to National Lists of Concessions**

Amendments to annex I in pursuance of the provisions of article 29 shall consist of:

- ( a ) The reduction of tariffs, border charges and fees, and non-tariff measures on products already included in the National Lists of Concessions of the Participating States;
- ( b ) The reduction of tariffs, border charges and fees, and non-tariff measures on products not yet included in the National Lists of Concessions of the Participating States;
- ( c ) The reduction of tariffs, border charges and fees, and non-tariff measures on products included in the National Lists of Concessions of acceding States.

### **Article 34**

#### **Entry Into Force of National Lists of Concessions**

Upon receipt by the Committee of the respective notification of intention by the Participating State concerned, any amendment to annex I shall enter into force 30 days after the date on which the Committee, by a two-thirds majority vote, has declared the compatibility of such proposed amendment with the objectives of this Agreement. The Governments of the Participating States bind themselves to undertake whatever internal administrative measure as may be required to comply with this provision. The National Lists of Concessions of acceding States shall enter into force 30 days after the dates on which the respective instruments of accession have been deposited with the Executive Secretary of ESCAP.

## **Article 35**

### **Exceptions**

Nothing in this Agreement shall prevent any Participating State from taking action and adopting measures which it considers necessary for the protection of its national security, the protection of public morality, the protection of human, animal and plant life and health, and the protection of articles of artistic, historical and archaeological value.

## **Article 36**

### **Non-Application of the Agreement**

This Agreement shall not apply as between any Participating States if they have not entered into direct negotiations with each other and if either of them, at the time of its signature, deposit of instrument of ratification or of accession, does not consent to such application.

## **Article 37**

### **Reservations**

Except for the provisions made under article 36, this Agreement may not be signed with reservations nor shall reservations be admitted at the time of ratification or accession.

## **Article 38**

### **Depository**

The original of this Agreement, as well as any amendments to the Agreement, shall be deposited with the Executive Secretary of ESCAP, who shall transmit a certified copy thereof to each Participating State.

## **Article 39**

### **Registration of the Agreement**

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

## **Article 40**

### **Name of the Agreement**

This Agreement, which was hitherto called the First Agreement on Trade Negotiations Among Developing Member Countries of the Economic and Social Commission for Asia and the Pacific, as also the Bangkok Agreement, shall henceforth be called the Asia-Pacific Trade Agreement.

**Annex I:**

**National Lists of Concessions**

1. National List of Concessions: Bangladesh

2. National List of Concessions: India

2-1. List of Special Concessions by India to least developed countries

3. National List of Concessions: Korea

3-1. List of Special Concessions by Korea to least developed countries

4. National List of Concessions: Sri Lanka

4-1. List of Special Concessions by Sri Lanka to least developed countries

5. National List of Concessions: China

5-1. List of Special Concessions by China to least developed countries

## **Annex II:**

### **Rules of Origin for the Asia-Pacific Trade Agreement**

For determining the origin of products eligible for preferential concessions under the Asia-Pacific Trade Agreement in the light of Article 8 of the Agreement, the following Rules shall be applied:

#### **RULE 1: Originating products**

Products covered by preferential trade within the framework of the Agreement imported into the territory of a Participating State from another Participating State which are consigned directly within the meaning of Rule 5 hereof, shall be eligible for preferential concessions if they conform to the origin requirement under any one of the following conditions:

- (a) Products wholly produced or obtained in the exporting Participating State as defined in Rule 2; or
- (b) Products not wholly produced or obtained in the exporting Participating State, provided that the said products are eligible under Rule 3 or Rule 4.

#### **RULE 2: Wholly produced or obtained**

Within the meaning of Rule 1 (a) the following shall be considered as wholly produced or obtained in the exporting Participating State:

- (a) raw or mineral products extracted from its soil, its water or its seabeds;<sup>1</sup>
- (b) agricultural products harvested there;<sup>2</sup>
- (c) animals born and raised there;
- (d) products obtained from animals referred to in paragraph (c) above;
- (e) products obtained by hunting or fishing conducted there;
- (f) products of sea fishing and other marine products taken from the high seas by its vessels;<sup>3/4</sup>
- (g) products processed and/ or made on board its factory ships<sup>4/5</sup> exclusively from products referred to in paragraph (f) above;
- (h) parts or raw materials recovered there from used articles which can no longer perform their original purpose nor are capable;
- (i) used articles collected there which can no longer perform their original purpose there nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials;
- (j) waste and scrap resulting from manufacturing operations conducted there;
- (k) goods produced there exclusively from the products referred to in paragraph(a) to (j) above.

#### **RULE 3: Not wholly produced or obtained**

- (a) Within the meaning of Rule 1(b), products worked on or processed as a result of which the total value of the materials, parts or produce originating from non- Participating States or of undetermined origin used does not exceed 55 per cent of the f.o.b. value of the products produced or obtained and the final process of manufacture is performed within the territory of the exporting Participating State shall be eligible for preferential concessions, subject to the provisions of Rule 3(c), (d) and (e).

(b) Sectoral agreements<sup>6</sup>

(c) The formula for calculating the content of non-originating materials, and its requirement for obtaining the originating status referred to in Rule 3(a) is as follows:

$$\frac{\text{Value of imported non-originating materials, parts or produce} + \text{Value of undetermined origin materials, parts or produce}}{\text{f.o.b. price}} \times 100 \leq 55\%$$

(d) The value of the non-originating materials, parts or produce shall be:

- (i) the c.i.f. value at the time of importation of materials, parts or produce where this can be proven; or
- (ii) The earliest ascertainable price paid for the materials, parts or produce of undetermined origin in the territory of the Participating State where the working or processing takes place.

(e) Whether or not the requirements of Rule 1(b) are satisfied, the following operations or processes are considered to be insufficient to confer the status of originating products:

- i) Operations to ensure the preservation of products in good condition either for transportation or storage (ventilation, spreading out, drying, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations);
- ii) Simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting, cutting up;
- iii) Changes of packaging and breaking up and assembly of consignments;
- iv) Simple slicing, cutting or repacking or placing in bottles, flasks, bags, boxes, fixing on cards or boards, etc.
- v) The affixing of marks, labels or other like distinguishing signs on products or their packaging;
- vi) Simple mixing;
- vii) Simple assembly of parts of products to constitute a complete product;
- viii) Slaughter of animals;
- ix) Peeling, unflaking, grain removing and removal of bones; and
- x) A combination of two or more operations specified above.

#### **RULE 4: Cumulative rules of origin**

Products which comply with origin requirements provided for in Rule 1 and which are used by a Participating State as input for a finished product eligible for preferential treatment by another Participating State shall be considered as a product originating in the territory of the Participating State where working or processing of the finished product has taken place provided that the

aggregate content originating in the territory of the Participating States is not less than 60 percent of its f.o.b. value.<sup>7</sup>

#### **RULE 5: Direct consignment**

The following shall be considered as directly consigned from the exporting Participating State to the importing Participating State :

- (a) if the products are transported without passing through the territory of any non- Participating State :
- (b) the products whose transport involves transit through one or more intermediate non-Participating States with or without transshipment or temporary storage in such countries, provided that :
  - (i) the transit entry is justified for geographical reason or by considerations related exclusively to transport requirements;
  - (ii) the products have not entered into trade or consumption there ; and
  - (iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.

#### **RULE 6: Treatment of packing**

When determining the origin of products, packing should be considered as forming a whole with the product it contains. However, packing may be treated separately if the national legislation so requires.

#### **RULE 7: Certificate of origin**

Products eligible for preferential concessions shall be supported by a Certificate of Origin<sup>8</sup> issued by an authority designated by the government of the exporting Participating State and notified to the other Participating States in accordance with the attached sample Certificate of Origin and notes for the completion thereof.

#### **RULE 8: Prohibition and co-operation**

- (a) Any Participating State may prohibit importation of products containing any inputs originating from States with which it does not have economic and commercial relations.
- (b) Participating States will do their best to co-operate in order to specify origin of inputs in the Certificate of Origin.

#### **RULE 9: Review**

These Rules may be reviewed as and when necessary upon request of one-third of the Participating States and may be open to such modifications as may be agreed upon.

#### **RULE 10: Special criteria percentage**

Products originating in least developed Participating States can be allowed a favorable 10 percentage points applied to the percentages established in Rules 3 and 4. Thus, for Rule 3, the

percentage would not exceed 65 percent, and for Rule 4, the percentage would not be less than 50 percent.

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## **Footnotes**

1. Includes mineral fuels, lubricants and related materials as well as minerals or metal ores.
2. Includes forestry products.
3. “Vessels”- shall refer to fishing vessels engaged in commercial fishing, registered in a Participating State and operated by a citizen or citizens or governments of Participating States or partnership, corporation or association, duly registered in such Participating State, at least 60 per cent of equity of which is owned by a citizen or citizens and/or government of such Participating State or 75 per cent by citizens and/or governments of the Participating States. However, the products taken from vessels engaged in commercial fishing under bilateral agreements which provide for chartering/leasing of such vessels and/or sharing of catch between Participating States, will also be eligible for preferential concessions.
4. In respect of vessels or factory ships operated by government agencies the requirement of flying the flag of a Participating State shall not apply.
5. For the purpose of this Agreement, the term “factory ship” means any vessel, as defined, used for processing and/or making on board products exclusively from those products referred to in paragraph (f) above.
6. In respect of products traded within the framework of sectoral agreements negotiated under this Agreement, provision may need to be made for special criteria to apply. Consideration may be given to these criteria as and when the sectoral agreements are negotiated.
7. “Partial” cumulation as implied by Rule 4 above means that only products which have acquired originating status in the territory of one Participating State may be taken into account when used as inputs for a finished product eligible for preferential treatment in the territory of another Participating State subject to Rule 3 (e).
8. A standard Certificate of Origin to be used by all Participating States is annexed and approved by the Participating States.

## SAMPLE CERTIFICATE OF ORIGIN

### Asia-Pacific Trade Agreement (Combined declaration and certificate)

1. Goods consigned from: (Exporter's business name, address, country)		Reference No.  Issued in ..... (Country)			
2. Goods consigned to: (Consignee's name, address, country)		3. For Official use			
4. Means of transport and route:					
5. Tariff item number:	6. Marks and number of Packages:	7. Number and kind of packages/ description of goods:	8. Origin criterion (see notes overleaf)	9. Gross weight or other quantity:	10. Number and date of invoices:
11. Declaration by the exporter :  The undersigned hereby declares that the above details and statements are correct: that all the goods were produced in .....  (Country) and that they comply with the origin requirements specified for these goods in the Asia-Pacific Trade Agreement for goods exported to .....  (Importing Country)			12. <u>Certificate</u>  It is hereby certified on the basis of control carried out, that the declaration by the exporter is correct.  ..... Place and date, signature and Stamp of Certifying Authority		
Place and date, signature of authorized Signatory					

## Notes for completing Certificate of Origin

### I. General Conditions:

To qualify for preference, products must:

- a) fall within a description of products eligible for preference in the list of concessions of an Asia-Pacific Trade Agreement country of destination;
- b) comply with Asia-Pacific Trade Agreement rules of origin. Each article in a consignment must qualify separately in its own right; and
- c) comply with the consignment conditions specified by the Asia-Pacific Trade Agreement rules of origin. In general, products must be consigned directly within the meaning of Rule 5 hereof from the country of exportation to the country of destination.

### II. Entries to be made in the boxes

#### **Box 1 Goods Consigned from**

Type the name, address and country of the exporter. The name must be the same as the exporter described in the invoice.

#### **Box 2 Goods Consigned to**

Type the name, address and country of the importer. The name must be the same as the importer described in the invoice. For third party trade, the words "To Order" may be typed.

#### **Box 3 For Official Use**

Reserved for use by certifying authority.

#### **Box 4 Means of Transport and Route**

State in detail the means of transport and route for the products exported. If the L/C terms etc. do not require such details, type "By Air" or "By Sea". If the products are transported through a third country this can be indicated as follows:

*e.g. "By Air"*

*"Laos to India via Bangkok"*

#### **Box 5 Tariff Item Number**

Type the 4-digit HS heading of the individual items.

#### **Box 6 Marks and Numbers of Packages**

Type the marks and numbers of the packages covered by the Certificate. This information should be identical to the marks and numbers on the packages.

#### **Box 7 Number and Kind of Packages; Description of Goods**

Type clearly the description of the products exported. This should be identical to the description of the products contained in the invoice. An accurate description will help the Customs Authority of the country of destination to clear the products quickly.

#### **Box 8 Origin Criterion**

Preference products must be wholly produced or obtained in the exporting Participating State in accordance with Rule 2 of the Asia-Pacific Trade Agreement Rules of Origin, or where not

wholly produced or obtained in the exporting Participating State must be eligible under Rule 3 or Rule 4.

- a) Products wholly produced or obtained: enter the letter “A” in Box 8.
- b) Products not wholly produced or obtained: the entry in Box 8 should be as follows:
  - 1. Enter letter “B” in Box 8, for products which meet the origin criteria according to Rule 3. Entry of letter “B” would be followed by the sum of the value of materials, parts or produce originating from non-Participating States, or undetermined origin used, expressed as a percentage of the f.o.b. value of the products; (example “B” 50 per cent);
  - 2. Enter letter “C” in Box 8 for products which meet the origin criteria according to Rule 4. Entry of letter “C” would be followed by the sum of the aggregate content originating in the territory of the exporting Participating State expressed as a percentage of the f.o.b. value of the exported product; (example “C” 60 per cent);
  - 3. Enter letter “D” in Box 8 for products which meet the special origin criteria according to Rule 10.

#### **Box 9 Gross Weight or Other Quantity**

Type the gross weight or other quantity (such as pieces, kg) of the products covered by the Certificate.

#### **Box 10 Number and Date of Invoices**

State number and date of the invoice in question. The date of the invoice attached to the Application should not be later than the date of approval on the Certificate.

#### **Box 11 Declaration by the Exporter**

The term “Exporter” refers to the shipper who can either be a trader or a manufacturer. Type the name of the producing country and the importing country and the place and date when the declaration is made. This box must be signed by the Company’s authorized signatory.

#### **Box 12 Certification**

The certifying authority will certify in this Box.