

MEMORANDUM OF UNDERSTANDING
ON STANDSTILL AND ROLLBACK ON NON-TARIFF BARRIERS
AMONG ASEAN COUNTRIES

THE GOVERNMENTS OF BRUNEI DARUSSALAM, THE REPUBLIC OF INDONESIA, MALAYSIA, THE REPUBLIC OF THE PHILIPPINES, THE REPUBLIC OF SINGAPORE AND THE KINGDOM OF THAILAND (hereinafter referred to as the "Contracting Parties"), Member States of the Association of Southeast Asian Nations (ASEAN):

MINDFUL of the Declaration of ASEAN Concord signed in Bali, Indonesia on 24 February 1976 which provides that Member States shall take cooperative action in their national and regional development programmes, utilizing as far as possible the resources available in the ASEAN region to broaden the complementarity of their respective economies;

AWARE of the Declaration of ASEAN Concord's provision for a programme of action that seeks cooperation in the fields of trade in order to promote development and growth of new production and trade and to improve the trade structures of individual states and among ASEAN countries;

CONSCIOUS of the need to address both tariff and non-tariff barriers to trade as means for achieving these ends;

NOTING that the Agreement on ASEAN Preferential Trading Arrangements (PTA) signed in Manila, Philippines on

24 February 1977 provides for the adoption of various instruments, among them the liberalization of non-tariff barriers on a preferential basis;

DESIRING to effect further the provisions of the ASEAN-PTA in consonance with ASEAN's international commitments;

HAVE agreed to sign a Memorandum of Understanding with the following provisions:

I. DEFINITIONS

1. For the purpose of this Memorandum, all parties agree to the following definitions:

- a) "Standstill Commitment" means the undertaking by and among the Contracting Parties not to introduce new or additional non-tariff measures which would impede intra-ASEAN trade;
- b) "Rollback Commitment" means the undertaking by and among Contracting Parties to phase out or eliminate non-tariff measures which would impede intra-ASEAN trade;
- c) "Non-tariff measures" refer to government measures or policies other than duties which affect trade.

II. EXTENT/COVERAGE OF COMMITMENT

2. The commitments of the Contracting Parties on standstill and rollback shall cover not only non-tariff

measures which are inconsistent with the General Agreement on Tariffs and Trade (GATT) but also non-tariff measures which are consistent with GATT;

3. The Contracting Parties shall implement their commitments on standstill and rollback to categories of non-tariff measures, inter alia, those listed in Annex I, affecting ASEAN products of interest to and being traded in ASEAN;

4. Without prejudice to the obligations of the Contracting Parties under GATT, ASEAN products shall be taken to mean products which qualify as such in accordance with the rules of origin in Chapter VIII, Article 15 of the PTA.

III. MODALITIES

5. The Contracting Parties shall implement their standstill commitments under this Memorandum from its date of entry into force;

6. The Contracting Parties reiterate their commitments made on standstill at Punta del Este. Non-tariff measures which are consistent with GATT, if introduced, shall not be applied, or may be applied to a lesser degree, on imports from the Contracting Parties if they qualify under the rules of origin in the PTA;

7. The Contracting Parties shall continue with the unilateral rollback of all measures inconsistent with GATT.

Non-tariff measures which are consistent with GATT shall be negotiated for rollback by the Contracting Parties on a preferential basis;

8. The negotiations referred to in paragraph 7 shall be undertaken by the Trade Preferences Negotiating Group (TPNG) established by the Committee on Trade and Tourism (COTT) and shall commence at the 23rd Meeting of COTT;

9. Negotiations shall be undertaken in any of the following manners: a product-specific approach or a barrier-specific approach or a sector-specific approach;

10. Each Contracting Party shall extend all concessions agreed upon in the negotiations to all the Contracting Parties on an ASEAN Most-Favoured Nation (MFN) basis.

IV. SURVEILLANCE

11. The ASEAN Secretariat shall function and serve as the surveillance body responsible for monitoring the adherence to the commitments and obligations of the Contracting Parties under this Memorandum;

12. The ASEAN Secretariat shall receive all notifications and reverse notifications on the suspension and violation of commitments under this Memorandum and report all such notifications to COTT to enable consultations and negotiations to take place between Contracting Parties at COTT;

13. The ASEAN Secretariat shall report to all the Contracting Parties on a semi-annual basis and in a consolidated fashion all developments on the implementation of this Memorandum.

V. NOTIFICATION PROCEDURES

14. The Contracting Parties shall notify the ASEAN Secretariat of any imposition of new non-tariff measures by them and shall also submit periodically to the said body an updated list of non-tariff measures maintained by them;

VI. CONSULTATIONS

15. Consultations may be undertaken by the Contracting Parties in accordance with the provisions of Chapter VII, Article 14 of the ASEAN-PTA.

VII. EMERGENCY/SAFEGUARD MEASURES/ DEVELOPMENTAL ASSISTANCE

16. Contracting Parties may suspend provisionally and without discrimination the application of their standstill or rollback commitments with respect to particular product(s) with concurrent notification to the ASEAN Secretariat if imports of such product(s) are increasing in such a manner as to cause or threaten to cause serious injury to sectors producing like or similar products in the importing Contracting Parties. The examination of injury shall include an evaluation of the state of the industry such as actual and potential decline in output, sales,

market share, profits, productivity, return on investments or utilization of capacity.

17. Without prejudice to its international obligations, a Contracting Party may institute or intensify quantitative restrictions to forestall the threat of or to stop a serious decline in monetary reserves;

18. Where any of the aforesaid emergency/safeguard measures in paragraphs 16 and 17 are taken, concurrent notification of such action must be given to the ASEAN Secretariat. The suspension shall be for a period of ninety days during which there shall be consultation and negotiations among interested Contracting Parties with the view to arriving at a satisfactory solution including compensatory adjustments, if necessary;

19. Without prejudice to the commitment of Contracting Parties to GATT, protection of deserving infant industries will be allowed provided that immediate notification is served to other Contracting Parties. The duration of protection will be for a specific period of time with possible preferential treatment to be negotiated with affected Contracting Parties.

VIII. GENERAL EXCEPTIONS

20. Exceptions to this Memorandum shall be allowed for the protection of national security, public morality, human and plant life, health, and articles of artistic,

historic and archaeological value as provided for under Article XX of the GATT,

IX. ENTRY INTO FORCE

21. This Memorandum of Understanding shall enter into force from the date of its signature and shall initially apply for a period of five (5) years. It may be extended by the consensus of all member states beyond the original five-year period.

X. FINAL PROVISIONS

22. This Memorandum of Understanding may be amended by consensus of the Contracting Parties;

23. This Memorandum of Understanding shall be deposited with the Secretary-General of the ASEAN Secretariat who shall promptly furnish a certified copy thereof to each of the Contracting Parties.

In witness whereof, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in Manila, Philippines this Fifteenth day of December Nineteen Hundred Eighty Seven in one original copy in the English language.



LIST OF NON-TARIFF MEASURES

I. GOVERNMENT PARTICIPATION IN TRADE AND RESTRICTIVE PRACTICES TOLERATED BY GOVERNMENTS

Government aid
Countervailing duties
Government procurement
Restrictive practices tolerated by governments
State trading, government monopoly practices, etc.

II. CUSTOMS AND ADMINISTRATIVE ENTRY PROCEDURES

Anti-dumping duties
Valuation
Customs classification
Consular formalities and documentation
Samples
Rules of origin
Customs formalities

III. TECHNICAL BARRIERS TO TRADE

General
Technical regulations and standards
Testing and certification arrangements

IV. SPECIFIC LIMITATIONS

Quantitative restrictions and import licensing
Embargoes and other restrictions of similar effect
Screen-time quotas and other mixing regulations
Exchange control
Discrimination resulting from bilateral agreements
Discriminatory sourcing
Measures to regulate domestic price
Requirements concerning marking, labelling and packaging
Tariff quotas

V. CHARGES ON IMPORTS

Prior import deposits
Surcharges, port taxes, statistical taxes, etc.
Discriminatory film taxes, use taxes, etc.
Discriminatory credit restrictions
Border tax adjustments
Emergency action