

# TRADE AGREEMENT AMONG THE MELANESIAN SPEARHEAD GROUP COUNTRIES

## PREAMBLE

*The Government of the Independent State of Papua New Guinea, the Government of the Solomon Islands and the Government of the Republic of Vanuatu (hereafter referred to as "the Parties");*

*Conscious of the overriding need to foster, accelerate and encourage the economic and social development of their States in order to improve the living standards of their peoples;*

*Convinced that the promotion of harmonious economic development of their States calls for effective economic cooperation largely through a determined and concerted policy of greater self-reliance;*

*Recalling the Agreed Principles of Co-operation Among Independent States of Melanesia signed by the Parties in Port Vila on 14 March 1988, wherein the Parties undertake *inter alia* to promote economic co-operation between States;*

*Determined to foster closer economic and other relationships among their States and to contribute to the progress and development of their three countries as well as the South Pacific Islands region; and*

*Bearing in mind the principles of international law governing relations between nations, such as principles as sovereignty, equality and independence of all States and non-interference in the domestic affairs of States.*

Have agreed as follows:

### *Article 1*

#### Definition and interpretation

1. In this Agreement unless the context otherwise requires:
  - (a) "Agreement means the "Trade Agreement among the Melanesian Spearhead Group Countries" established by Article 2 of this Agreement.
  - (b) "Customs Duties" means import duties and other changes of equivalent effect levied on goods by reason of their importation and includes suspended duties and fiscal duties or taxes where such duties or taxes affect the importation of goods but does not include internal duties and taxes such as sales, turnover, consumption of service taxes nor import levies and export tax.
  - (c) "Goods and Services" means goods and services specified in Schedule 1 of this Agreement and shall include such other goods and services that may be included in the said Schedule 1 by mutual Agreement between the Parties.
  - (d) "Party" means a State Party to the Trade Agreement.
  - (e) "Persons" means a natural and legal person.
  - (f) "Third Country" means any country other than a Party.

2. In this Agreement, unless the context otherwise require:
  - (a) the headings are inserted for convenience only and do not affect the interpretation or construction of this Agreement; and
  - (b) words importing the singular include the plural and vice versa.

*Article 2*

Membership to Trade Agreement

Membership in the Agreement shall initially be opened to the Independent State of Papua New Guinea, Solomon Islands and the Republic of Vanuatu.

*Article 3*

Objectives

1. The Objectives of the Parties in concluding this Agreement are:
  - (a) to promote and facilitate the free flow of identified goods and services;
  - (b) to ensure as far as possible that trade between the Parties takes place under conditions of fair competition; and

to contribute to the harmonious development and expansion of world trade and to progressive removal of barriers thereto.

*Article 4*

General undertakings

1. The Parties shall make every effort to plan and direct their development policies with a view to creating conditions favourable for the achievement of the objectives of the Agreement and the implementation of the provisions of this Agreement and shall abstain from taking any measures likely to jeopardize the achievement of its objectives and the implementation of its provisions.
2. The Parties shall extend the product coverage in this Agreement in order to ensure that the duties and other restrictive regulation of commerce are eliminated on substantially all the trade between the Parties.
3. Requests for such extension shall be presented by interested Parties in accordance with the procedure laid down in Article 18.

*Article 5*

Most Favoured Nation Treatment (MFN)

1. The Parties shall accord to one another in relation to trade between them the most favoured nation (MFN) treatment.
2. The provisions of paragraph 1 of this article shall not apply to:
  - (a) tariff preferences or other advantages granted by either Party consequent on the membership of the Party in other free trade agreements or customs unions or on

interim agreement leading to the formation of another free-trade area or custom union; and

- (b) such measures as either Party may take pursuant to a multilateral international commodity agreement or arrangement.

*Article 6*

Customs duties

1. Each Party should reduce and eventually eliminate, in accordance with the provisions of this Article; Customs Duties imposed on or in connection with the importation of goods specified in Schedule 1 to this Agreement imported from the territory of the other Parties.
2. The Parties shall not levy customs duties on goods appearing in Schedule 1 to this Agreement in excess of the rates referred to therein.
3. The Annual Summit of Heads of Governments of the Parties shall, after considering proposals from the meeting of Trade Officials convened in accordance with Paragraph 3 of Article 18 or from other Technical Committees established pursuant to Paragraph 4 or the same Article, consider and approve a programme for the progressive reduction of Customs Duties among the Parties with a view to eliminating such duties. Such a programme shall take into account the effects of the reduction and elimination of Custom Duties on the revenues of the Parties.

*Article 7*

Quantitative import restrictions

1. The Parties shall neither maintain nor introduce quantitative import restrictions on trade in products listed in Schedule 1.
2. Notwithstanding the provisions of paragraph 1 of this Article, a Party may, after consultations with the other parties reimpose quantitative import restrictions or introduce new quantitative import restrictions on trade in goods listed in Schedule 1 of this Agreement, provided such restrictions are imposed to prevent prejudice to balance of payment in accordance with such Party's international obligations.
3. At the request of any of the Parties consultation shall be held regarding the application and effect of the restrictions referred to in paragraph 1 and 2 of this Article. In the event that such restrictions are interfering unduly, with conditions of fair competition the Parties shall in those consultations consider appropriate measures to remedy the situation.
4. A Party which is maintaining quantitative import restrictions from the other Parties shall ensure, to the extent permitted by its balance-of-payments, that the administration of such restrictions is in conformity with the objective of the gradual elimination of barriers to trade between the Parties to this Agreement.

*Article 8*

Quantitative export restrictions

1. Subject to the provisions of paragraph 2 of this Article, a Party shall not impose new prohibitions or restrictions, or intensify existing prohibitions or restrictions on exports to the other Parties.

2. A Party may take such measures as may be necessary to prevent evasion, by means of re-export, of restrictions, which it applies in respect of export to third countries.

*Article 9*

Revenue duties or taxes

A Party may levy revenue duties or taxes or taxes on goods contained in Schedule 1 to this Agreement imported from the territory of the other Parties, but such duties or taxes shall not be levied at a rate higher than the rate to which such goods would be subject if produced or manufactured in the territory of the importing Party.

*Article 10*

Deflection of trade

1. If in the opinion of a Party (hereinafter referred to as "the first Party") the import of any goods specified in Schedule 1 of this Agreement from the territory of the other Parties causes or threatens to cause serious injury to its producers of like or directly competitive goods and the other Parties are deriving advantage because:

- (a) the duties or taxes by the other Parties on raw materials, intermediate products or machinery, imported from a third country and used in the production of those goods, are significantly lower than the duties or taxes levied by the first party on import of similar raw materials, intermediate products or machinery, imported from third countries, or
- (b) the prices of raw materials, intermediate products or machinery, used in the production of those goods, are unduly low by reason of dumping or subsidization by third countries; or
- (c) drawback, exemption or remission of import duties is allowed by the other Parties on raw materials, intermediate products or machinery, imported from third countries and used in the production of those goods;
- (d) then the first Party if it considers that action may be necessary to offset the advantage, shall in writing request consultation with the other Parties on the situation which has developed. Such consultation shall be as full as circumstances permit, and the first Party shall consider any measures taken or proposed to be taken by the other Parties to offset the advantage.

2. Unless, in the consultation referred to in paragraph 1 of this Article, some alternative solution acceptable to the first Party is found, the first Party may, in respect of the goods referred to in paragraph 1 of this Article, suspend the application of provisions of Article 6 and 7 of this Agreement to those goods to such extent and for such time, as it considers necessary to offset the advantage, provided that during any such suspension the first Party shall not levy on those goods revenue duties or taxes higher than those which could have been levied prior to the entry into force of this Agreement, or import duties at rates higher than the lowest rate applicable to imports of similar goods from any third country.

*Article 11*

Development of industry

1. A Party after the consultation with the other Parties may for the purpose of encouraging new productive activities which contribute to economic development, whether by the establishment of a new industry or an extension of the range of commodities produced or manufactured by an existing industry suspend for a period of 3 years the application of the provisions of Article 6 of this Agreement and levy customs duties on goods contained in Schedule 1 to this Agreement which are imported from the territory of the other parties and which are like, or competing with, goods produced by the new activities.

2. Duties shall not be levied under the provisions of paragraph 1 of this Article at a rate higher than the lowest rate applicable to import of similar goods from any third country.

3. In exceptional circumstances and after consultation and renegotiations with other Parties a Party may, for the purpose of establishing new industries or encouraging the expansion of established industries, withdraw items from Schedule 1 to this Agreement.

#### *Article 12*

##### Temporary suspension of obligations

1. If as a result of the application of any of the provisions of Articles 6 and 7 of this Agreement, goods contained in Schedule 1 to this Agreement are, in the opinion of a Party being imported into the territory of that Party in such increased quantity and under such conditions as to cause or threaten serious injury to its producers of like or directly competitive products, that Parties may in writing request consultations with the other parties on measures to prevent future injury and shall consider any measures taken or proposed by the other Parties. For the purpose of this Article consultations shall be deemed to have commenced on the day on which the request was made.

2. If the Parties do not reach a satisfactory solution on the matter within sixty days from the commencement of the consultations referred to in paragraph 1 of this Article, the Party in whose territory the goods are being imported may after giving notice in writing to the other Parties suspend, to such extent and for such time as it considers necessary to prevent future injury to its producers of like or directly competitive products, the application of those goods of all or any of the provisions of Articles 6 and 7 of this Agreement.

3. In that event, the Party whose exports are affected may after giving notice in writing to the other Parties suspend, for an equivalent period the application of all or any of the provisions of Articles 6 and 7 of this Agreement to goods imported from the territory of the first Party the value of which is equal to the value of goods affected by the measures taken by the first Party pursuant to the provisions of this Article.

4. A Party taking action in accordance with the provisions of paragraph 2 of this Article shall not levy on the goods referred to in that paragraph revenue duties or taxes of rates higher than the lowest rate applicable to imports of similar goods from any third country.

#### *Article 13*

##### Preferential treatment

1. For the purpose of this Agreement, goods shall be accepted as eligible for preferential treatment if such goods:

- (a) originate in the Parties in accordance with the rules of origin applicable to this Agreement as set forth in Annex I;
- (b) are specified in Schedule 1 to this Agreement.

*Article 14*

Suspension of obligations

1. Dumped or subsidized imports.
2. If in the opinion of a Party goods being imported into it from the other Parties are being dumped or are being subsidized by the other Parties so as to cause or threaten material injury to an industry producing like or directly competitive goods or to materially retard the establishment of an industry to produce like or directly competitive goods, it may request the other Parties to consult with it on measures to reduce or prevent such injury or retardation.
3. If a mutually acceptable solution is not reached within sixty days of the date of the request referred to in paragraph 1 of this Article, the Importing Party may, after giving notice to the other Parties, suspend the application of Article 6 of this Agreement to the extent necessary to enable it to levy dumping or countervailing duties on the goods concerned.

*Article 15*

Exceptions

1. Provided that such measures are not used as a means of arbitrary or unjustifiable discrimination or as a disguised restriction on trade between the Parties nothing in this Agreement shall prevent the adoption or enforcement by a Party of measures:
  - necessary for the protection of its essential security interests;
  - necessary to protect public morals;
  - necessary for the prevention of public disorder or crime;
  - imposed for the protection of its national treasures or artistic, historical, anthropological geological, paleontological or archaeological value;
  - necessary to reserve for approval purposes the use of the national and provincial costs of arms, flags and seats;
  - necessary to protect human, animal or plant life or health;
  - necessary to protect its indigenous flora and fauna;
  - undertaken in pursuance of obligations in international commodity agreements;
  - necessary to prevent or relieve critical shortages of foodstuffs or other essential goods;
  - relating to the conservation of limited natural resources;
  - necessary to protect industrial property or copyrights or prevent deceptive practices ;
  - necessary for the application of standards or of regulations for the classifications, grading or making of goods; or
  - relating to the products of prison labour.

*Article 16*

Association with the Agreement

1. The Parties may agree to the association of any other member of the Melanesian Spearhead Group or any other country, which is a member of the South Pacific Forum.
2. The terms and conditions of the association referred to in paragraph 1 of this Article shall be negotiated between the parties and the other member of the Melanesian Spearhead Group or a country, which is a member of the South Pacific Forum.

*Article 17*

Administrative Co-operation

The Parties shall, having regard to the desirability of reducing as far as practicable the formalities required in connection with trade between them take appropriate measures, including arrangements relating to administrative co-operation, to promote the effective and harmonious application of the provisions of this Agreement.

*Article 18*

Institutional framework

1. The Parties shall utilize the existing Melanesian Spearhead Group Institutional framework for the purposes of overseeing the implementation of this Agreement.
2. In accordance with paragraph 1 of this Article the Annual Summit of Heads of Governments of the Melanesian Spearhead Group shall provide policy directions with respect to the implementation of this Agreement.
3. Trade officials of the Parties shall meet annually prior to the Annual Summit of Heads of Governments to jointly review trade among parties including goods not listed in Schedule 1 to this Agreement with the review to inclusion of additional items in that Schedule.
4. The Annual Summit of the Heads of Governments may decide from time to time to establish technical committees to oversee the implementation of specific fields of activity of this Agreement such as quarantine customs and trade.

*Article 19*

Consultation and review

1. In addition to the provisions for consultation elsewhere in this Agreement, consultation shall take place between the Parties if a Party is of the opinion that any benefits conferred on it by this Agreement are not being achieved and if it requests such consultation in writing. In such consultations, which shall take place as soon as practicable, the Parties shall consider appropriate measures to remedy the situation, which has prompted the request.
2. The consultations provided for in this Article shall take place through the institutional framework established under Article 18 of this Agreement.

*Article 20*

Notices

1. The Parties agree in addition to the provisions of Article 18 of this Agreement that any notice or request required or permitted to be given or made under this Agreement and any Agreement between the parties contemplated by this Agreement shall be in writing.
2. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail or facsimile to the Party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Independent State of Papua New Guinea:

Secretary, Department of Trade & Industry  
P.O. Box 375  
WAIGANI  
New Capital District  
PORT MORESBY, Papua New Guinea  
Telephone: (675) 325 6699/325 5351/325 5311  
Facsimile: (675)325 4482/325 3302

For Solomon Islands:

Permanent Secretary  
Ministry of Foreign Affairs  
P.O. Box G10  
HONIARA  
Solomon Islands  
  
Telephone: (677) 21250  
Facsimile: (677) 20351

For the Republic of Vanuatu:

The Secretary  
Department of Foreign Affairs  
Private Mail Bag 051  
PORT VILA  
Republic of Vanuatu  
  
Telephone: (678)22913 or (678) 22347  
Facsimile: (678) 23142

*Article 21*

Entry into force and duration

1. This Agreement shall be subject to ratification by the Parties and shall enter into force on the thirtieth day following the day on which they exchange instruments of ratification
2. The Agreement shall remain in force unless terminated in accordance with the provisions of paragraph 3 of this Article.
3. A Party which desires that this Agreement be terminated shall give to the other Parties notice in writing of its desire and consultations shall then take place between the Parties as soon as practicable. If at the end of one hundred and eightieth (180<sup>th</sup>) day from the day on which notice was given, the Party which has given notice still desires that this Agreement be terminated and again gives to the other Parties notice in writing to this effect, this Agreement shall cease to have effect on the one hundred and eightieth (180<sup>th</sup>) day from the day on which the last mentioned notice is given.



### SCHEDULE 1

- A. For the purpose of Article 6, the tariff concessions granted by Papua New Guinea consist of the following goods:

PNG Customs Tariff	Description	Rate of Duty
	Meat of bovine animals: Fresh or chilled	0
02.02	Meat of bovine animals: Frozen	0
	Tunas, skipjack and atlantic bonito	0

- B. For the purpose of Article 6, the tariff concessions granted by Vanuatu consist of the following goods:

Vanuatu Customs Tariff	Description	Rate of Duty
09.02	Tea	0
16.04	Canned tuna	0

- C. For the purpose of Article 6, the tariff concessions granted by Solomon Islands consist of the following goods:

Solomon Islands Tariff	Description	Rate of Duty
02.01	Fresh or chilled beef	0
02.02	Frozen beef	0
09.02	Tea	0

### EXPANDED LIST OF PRODUCTS

The goods specified in the Schedule are goods imported from the Solomon Islands, Vanuatu or Papua New Guinea, and are certified as originating from these countries in accordance with the Rules of Origin prescribed in the MSG Trade Agreement as being exempt from import duty.

Tariff Heading	Description of Goods
0101-0104	Live animals of all kinds
	Meat of bovine animals, fresh or chilled
02.02	Meat of bovine animals, frozen
0203	Meat of swine, fresh or chilled
0204	Meat of sheep and goats, fresh or chilled
0206	Edible offals of animals
0208.90	Crocodile meat
0301	Live fish
0302	Fish, fresh or chilled
0303	Fish, frozen
0304	Fish fillet, fresh, chilled or frozen
0305	Fish, dried or salted
0306	Crustaceans, prawns, lobsters, etc.
0307	Molluscs, oysters, clams
0401-3020	UHT milk processed in retail packets
0403.10	Yoghurt
0406	Cheese and curd
0409.00	Natural honey

Tariff Heading	Description of Goods
0508	Shell honey
0701-0714	Edible vegetables and certain roots and tubers as classified within these tariff headings
0801-0814	Edible fruits and nuts; peel of citrus fruits or melons as classified within these tariff headings
0901	Coffee whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion Tea Coconut milk powder Kava Coconut oil Canned beef Canned tuna
1902-30	Noodles (2 minutes)
1905.10 to 1905.40	Crisp bread, gingerbread and the like, sweet biscuits; waffles and wafers, rusks, toasted bread and similar toasted products and other products in tariff heading 1905 (but excluding cabin biscuits) Jams, fruit jellies, marmalades, fruit or nut purée and fruit or nut paste, being cooked Ice cream (but excluding other edible ice)
2301 to 2309	Residues and waste from the food industries; prepared animal fodder Portland cement Liquid bleaches put for retail sales Matches Plastic shopping bags
4401 to 4421	Wood and article of wood
4601 to 4602	Manufactures of straw of espado or of other plaiting materials, basked-ware and wickerwork Toilet paper Steel tanks Wire mesh chain mesh and barbed wire Iron or steel nails Ships, or wood and steel Fibre glass manufactured banana boats Wooden furniture of a kind used in offices Wooden furniture of a kind used in the kitchen Wooden furniture of a kind used in the bedroom Other wooden furniture Furniture of case, osier, bamboo or rattan Prefab steel

## ANNEX I

### Rules of Origin

For the purpose of this Agreement goods shall be accepted as originating in a Party if it has been either wholly obtained or sufficiently worked or processed in a Party territory

The following shall be considered as wholly obtained in the Parties territories:

- mineral products extracted from their soil or from their seabed;
- vegetable products harvested there;
- live animals born and raised there;
- products from live animals raised there;
- products obtained by hunting or fishing conducted there;
- products of sea fishing and other products taken from the sea by their vessels;
- products made aboard their factory ships exclusively from products referred to in sub-paragraph (f);
- used articles collected there fit only for the recovery of raw materials;
- waste and scrap resulting from manufacturing operations conducted there;
- goods produce there exclusively from products specified in subparagraph (a) to (l)

The following shall be considered as sufficient working and processing.

When the product obtained is classified in a heading which is different from those in which all the non originating materials used in its manufacture are classified, subject to paragraph 4.

The expression "heading" shall mean the 4 digit headings used in the Harmonized Commodity Description and Coding System.

The following shall be considered as insufficient working or processing to confer the status of originating products whether or not there is a change of heading:

- operations to ensure the preservation of merchandise in good condition during transport and storage (ventilation, spreading out, drying, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations);
- simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including making up of sets of articles), washing, painting, cutting up:
  - (i) changes of packing and breaking up and assembly of consignments;
  - (ii) simple placing in bottles, flasks, bags, cases, boxes, fixing on cards or boards, etc., and all other simple packaging operations;
  - (iii) affixing marks, labels or other like distinguishing signs on products or their packaging;
  - (iv) simple mixing of products, whether or not of different kinds, where one or more components of the mixtures do not meet the conditions laid down in this Annex to enable them to be considered as originating products;
  - (v) simple assembly of parts of articles to constitute a complete article;

- (vi) a combination of two or more operations specified in subparagraphs (a) to (f);
- (vii) slaughter of animals;

The preferential treatment provided for under this Agreement applies to products or materials, which are transported directly between the territories of the Parties.

However, goods originating in the parties and constituting one single shipment which is not split up may be transported through territory other than that of the Parties with, should the occasion arise, transshipment or temporary warehousing in such territory, provided that the crossing of the latter territory is justified for geographical reasons, that the goods have remained under the surveillance of the customs authorities in the country of transit or warehousing, that they have not entered into the commerce of such countries nor been delivered for home use there and have not undergone operations other than unloading, reloading or any operation designed to preserve them in good condition.

- (a) Originating products within the meaning of this Annex shall, on import into the Parties benefit from the Agreement upon submission of a certificate of origin, Form A, a specimen of which appears in Annex II, signed by the exporter and certified by the Parties respective Customs Authorities.
- (b) The exporter shall be prepared to submit a declaration setting forth all pertinent details concerning the production or manufacture of the articles covered by the certificates of origin upon request by a Party. A declaration should only be requested when a Party has reason to question the accuracy of the statement on a certificate of origin or when a Party randomly verifies certificates of origin.

The parties shall agree to assist each other in obtaining information for the purpose of reviewing transactions made under this Agreement in order to verify compliance with the conditions set forth in this Agreement

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