

ANNEX 8

OPERATIONAL CERTIFICATION PROCEDURE FOR THE RULES OF ORIGIN UNDER CHAPTER 3

For the purposes of implementing the Rules of Origin set out in Chapter 3 (hereinafter referred to as “ASEAN ROO”), the following operational procedures on the issuance and verification of the Certificate of Origin (Form D) and other related administrative matters shall be observed.

Rule 1 Definitions

For the purposes of this Annex:

- (a) **back-to-back Certificate of Origin** means a Certificate of Origin issued by an intermediate exporting Member State based on the Certificate of Origin issued by the first exporting Member State;
- (b) **exporter** means a natural or juridical person located in the territory of a Member State where a good is exported from by such a person;
- (c) **importer** means a natural or juridical person located in the territory of a Member State where a good is imported into by such a person;
- (d) **issuing authority** means the Government authority of the exporting Member State designated to issue a Certificate of Origin (Form D) and notified to all the other Member States in accordance with this Annex; and
- (e) **producer** means a natural or juridical person who carries out production as set out in Article 25 of this Agreement in the territory of a Member State.

Rule 2 Specimen Signatures and Official Seals of the Issuing Authorities

1. Each Member State shall provide a list of the names, addresses, specimen signatures and specimen of official seals of its issuing authorities, in hard copy and soft copy format, through the ASEAN Secretariat for dissemination to other Member States in

soft copy format. Any change in the said list shall be promptly provided in the same manner.

2. The specimen signatures and official seals of the issuing authorities, compiled by the ASEAN Secretariat, shall be updated annually. Any Certificate of Origin (Form D) issued by an official not included in the list referred to in paragraph 1 shall not be honoured by the receiving Member State.

Rule 3 Supporting Documents

For the purposes of determining originating status, the issuing authorities shall have the right to request for supporting documentary evidence or to carry out check(s) considered appropriate in accordance with respective laws and regulations of a Member State.

Rule 4 Pre-exportation Verification

1. The producer and/or exporter of the good, or its authorised representative, shall apply to the issuing authority, in accordance with the Member State's laws and regulations, requesting pre-exportation examination of the origin of the good. The result of the examination, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in determining the origin of the said good to be exported thereafter. The pre-exportation examination may not apply to the good of which, by its nature, origin can be easily determined.
2. For locally-procured materials, self-declaration by the final manufacturer exporting under this Agreement shall be used as a basis when applying for the issuance of the Certificate of Origin (Form D).

Rule 5 Application for Certificate of Origin

At the time of carrying out the formalities for exporting the products under preferential treatment, the exporter or his authorised representative shall submit a written application for the Certificate of Origin (Form D) together with appropriate supporting documents proving that the products to be exported qualify for the issuance of a Certificate of Origin (Form D).

Rule 6
Examination of Application for a Certificate of Origin

The issuing authority shall, to the best of its competence and ability, carry out proper examination, in accordance with the laws and regulations of the Member State, upon each application for a Certification of Origin (Form D) to ensure that:

- (a) The application and the Certificate of Origin (Form D) are duly completed and signed by the authorised signatory;
- (b) The origin of the product is in conformity with the provisions of Chapter 3 of this Agreement;
- (c) The other statements of the Certificate of Origin (Form D) correspond to supporting documentary evidence submitted;
- (d) Description, quantity and weight of goods, marks and number of packages, number and kinds of packages, as specified, conform to the products to be exported;
- (e) Multiple items declared on the same Certificate of Origin (Form D) shall be allowed provided that each item qualifies separately in its own right.

Rule 7
Certificate of Origin (Form D)

- 1. The Certificate of Origin (Form D) must be on ISO A4 size white paper in conformity to the specimen shown in Annex 7 of this Agreement. It shall be made in the English language.
- 2. The Certificate of Origin (Form D) shall comprise one (1) original and two (2) carbon copies (Duplicate and Triplicate).
- 3. Each Certificate of Origin (Form D) shall bear a reference number separately given by each place or office of issuance.
- 4. Each Certificate of Origin (Form D) shall bear the manually executed signature and seal of the authorised issuing authority.
- 5. The original copy shall be forwarded by the exporter to the importer for submission to the customs authority at the port or place of importation. The duplicate shall be retained by the issuing authority in the exporting Member State. The triplicate shall be retained by the exporter.

Rule 8
Declaration of Origin Criterion

To implement the provisions of Article 26 of this Agreement, the Certificate of Origin (Form D) issued by the final exporting Member State shall indicate the relevant applicable origin criterion in Box 8.

Rule 9
Treatment of Erroneous Declaration in the Certificate of Origin

Neither erasures nor superimpositions shall be allowed on the Certificate of Origin (Form D). Any alteration shall be made by:

- (a) striking out the erroneous materials and making any addition required. Such alterations shall be approved by an official authorised to sign the Certificate of Origin (Form D) and certified by the issuing authorities. Unused spaces shall be crossed out to prevent any subsequent addition; or
- (b) issuing a new Certificate of Origin (Form D) to replace the erroneous one.

Rule 10
Issuance of the Certificate of Origin

- 1. The Certificate of Origin (Form D) shall be issued by the issuing authorities of the exporting Member State at the time of exportation or soon thereafter whenever the products to be exported can be considered originating in that Member State within the meaning of Chapter 3 of this Agreement.
- 2. In exceptional cases where a Certificate of Origin (Form D) has not been issued at the time of exportation or no later than three (3) days from the declared shipment date, due to involuntary errors or omissions or other valid causes, the Certificate of Origin (Form D) may be issued retroactively but no longer than one (1) year from the date of shipment and shall be duly and prominently marked "Issued Retroactively".

Rule 11
Back-to-Back Certificate of Origin

The issuing authority of the intermediate Member State may issue a back-to-back Certificate of Origin in an application is made by the exporter, provided that:

- (a) a valid original Certificate of Origin (Form D) is presented. In the case where no original Certificate of Origin (Form D) is presented, its certified true copy shall be presented;
- (b) the back-to-back Certificate of Origin issued should contain some of the same information as the original Certificate of Origin (Form D). In particular, every column in the back-to-back Certificate of Origin should be completed. FOB price of the intermediate Member State in Box 9 should also be reflected in the back-to-back Certificate of Origin;
- (c) For partial export shipments, the partial export value shall be shown instead of the full value of the original Certificate of Origin (Form D). The intermediate Member State will ensure that the total quantity re-exported under the partial shipment does not exceed the total quantity of the Certificate of Origin (Form D) from the first Member State when approving the back-to-back Certificate of Origin to the exporters;
- (d) In the event that the information is not complete and/or circumvention is suspected, the final importing Member State(s) could request that the original Certificate of Origin (Form D) be submitted to their respective customs authority;
- (e) Verification procedures as set out in Rules 18 and 19 are also applied to Member State issuing the back-to-back Certificate of Origin.

Rule 12
Loss of the Certificate of Origin

In the event of theft, loss or destruction of a Certificate of Origin (Form D), the exporter may apply in writing to the issuing authorities for a certified true copy of the original and the triplicate to be made out on the basis of the export documents in their possession bearing the endorsement of the words "CERTIFIED TRUE COPY" in Box 12. This copy shall bear the date of issuance of the original Certificate of Origin. The certified true copy of a Certificate of Origin (Form D) shall be issued no longer than one (1) year from the date of issuance of the original Certificate of Origin (Form D).

Rule 13
Presentation of the Certificate of Origin

1. For the purposes of claiming preferential tariff treatment, the importer shall submit to the customs authority of the importing

Member State at the time of import, a declaration, a Certificate of Origin (Form D) including supporting documents (i.e. invoices and, when required, the through Bill of Lading issued in the territory of the exporting Member State) and other documents as required in accordance with the laws and regulations of the importing Member State.

2. In cases when a Certificate of Origin (Form D) is rejected by the customs authority of the importing Member State, the subject Certificate of Origin (Form D) shall be marked accordingly in Box 4 and the original Certificate of Origin (Form D) shall be returned to the issuing authority within a reasonable period not exceeding sixty (60) days. The issuing authority shall be duly notified of the grounds for the denial of tariff preference.
3. In the case where Certificates of Origin (Form D) are not accepted, as stated in the preceding paragraph, the importing Member State should accept and consider the clarifications made by the issuing authorities and assess again whether or not the Form D application can be accepted for the granting of the preferential treatment. The clarifications should be detailed and exhaustive in addressing the grounds of denial of preference raised by the importing Member State.

Rule 14 **Validity Period of the Certificate of Origin**

The following time limit for the presentation of the Certificate of Origin (Form D) shall be observed:

- (a) The Certificate of Origin (Form D) shall be valid for a period of twelve (12) months from the date of issuance and must be submitted to the customs authorities of the importing Member State within that period.
- (b) Where the Certificate of Origin (Form D) is submitted to the customs authorities of the importing Member State after the expiration of the time limit for its submission, such Certificate of Origin (Form D) is still to be accepted when failure to observe the time limit results from *force majeure* or other valid causes beyond the control of the exporter; and
- (c) In all cases, the customs authorities in the importing Member State may accept such Certificate of Origin (Form D) provided that the goods have been imported before the expiration of the time limit of the said Certificate of Origin (Form D).

Rule 15
Waiver of Certificate of Origin

In the case of consignments of goods originating in the exporting Member State and not exceeding US\$ 200.00 FOB, the production of Certificate of Origin (Form D) shall be waived and the use of simplified declaration by the exporter that the goods in question have originated in the exporting Member State will be accepted. Goods sent through the post not exceeding US\$ 200.00 FOB shall also be similarly treated.

Rule 16
Treatment of Minor Discrepancies

1. Where the ASEAN origin of the goods is not in doubt, the discovery of minor discrepancies, such as typographical error in the statements made in the Certificate of Origin (Form D) and those made in the documents submitted to the customs authorities of the importing Member State for the purpose of carrying out the formalities for importing the goods shall not *ipso facto* invalidate the Certificate of Origin (Form D), if it does in fact correspond to the goods submitted.
2. In cases where the exporting Member State and importing Member State have different tariff classifications for a good subject to preferential tariffs, the goods shall be released at the MFN rates or at the higher preferential rate, subject to the compliance of the applicable ROO, and no penalty or other charges shall be imposed in accordance with relevant laws and regulations of the importing Member State. Once the classification differences have been resolved, the correct rate shall be applied and any overpaid duty shall be refunded if applicable, in accordance with relevant laws and regulations of the importing Member State, as soon as the issues have been resolved.
3. For multiple items declared under the same Certificate of Origin (Form D), a problem encountered with one of the items listed shall not affect or delay the granting of preferential treatment and customs clearance of the remaining items listed in the Certificate of Origin (Form D). Rule 18(c) may be applied to the problematic items.

Rule 17
Record Keeping Requirement

1. For the purposes of the verification process pursuant to Rules 18 and 19, the producer and/or exporter applying for the issuance of a Certificate of Origin (Form D) shall, subject to the laws and regulations of the exporting Member State, keep its supporting records for application for not less than three (3) years from the date of issuance of the Certificate of Origin (Form D).
2. The application for Certificates of Origin (Form D) and all documents related to such application shall be retained by the issuing authorities for not less than three (3) years from the date of issuance.
3. Information relating to the validity of the Certificate of Origin (Form D) shall be furnished upon request of the importing Member State by an official authorised to sign the Certificate of Origin (Form D) and certified by the appropriate Government authorities.
4. Any information communicated between the Member States concerned shall be treated as confidential and shall be used for the validation of Certificates of Origin (Form D) purposes only.

Rule 18
Retroactive Check

The importing Member State may request the issuing authority of the exporting Member State to conduct a retroactive check at random and/or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the goods in question or of certain parts thereof. Upon such request, the issuing authority of the exporting Member State shall conduct a retroactive check on a producer/exporter's cost statement based on the current cost and prices, within a six-month timeframe, specified at the date of exportation subject to the following conditions:

- (a) The request for retroactive check shall be accompanied with the Certificate of Origin (Form D) concerned and shall specify the reasons and any additional information suggesting that the particulars given on the said Certificate of Origin (Form D) may be inaccurate, unless the retroactive check is requested on a random basis;

- (b) The issuing authority receiving a request for retroactive check shall respond to the request promptly and reply within ninety (90) days after the receipt of the request;
- (c) The customs authorities of the importing Member State may suspend the provisions on preferential treatment while awaiting the result of verification. However, it may release the goods to the importer subject to any administrative measures deemed necessary, provided that they are not held to be subject to import prohibition or restriction and there is no suspicion of fraud;
- (d) the issuing authority shall promptly transmit the results of the verification process to the importing Member State which shall then determine whether or not the subject good is originating. The entire process of retroactive check including the process of notifying the issuing authority of the exporting Member State the result of determination whether or not the good is originating shall be completed within one hundred and eighty (180) days. While awaiting the results of the retroactive check, paragraph (c) shall be applied.

Rule 19 Verification Visit

If the importing Member State is not satisfied with the outcome of the retroactive check, it may, under exceptional cases, request for verification visits to the exporting Member State.

- (a) Prior to the conduct of a verification visit, an importing Member State, shall:
 - (i) Deliver a written notification of its intention to conduct the verification visit to:
 - (1) the exporter/ producer whose premises are to be visited;
 - (2) the issuing authority of the Member State in whose territory the verification visit is to occur;
 - (3) the customs authorities of the Member State in whose territory the verification visit is to occur; and
 - (4) the importer of the goods subject of the verification visit.

- (ii) The written notification mentioned in paragraph (a)(i) shall be as comprehensive as possible including, among others:
 - (1) the name of the customs authorities issuing the notification;
 - (2) the name of the exporter/producer whose premises are to be visited;
 - (3) the proposed date for the verification visit;
 - (4) the coverage of the proposed verification visit, including reference to the goods subject of the verification; and
 - (5) the names and designation of the officials performing the verification visit.
 - (iii) Obtain the written consent of the exporter/producer whose premises are to be visited.
- (b) When a written consent from the exporter/producer is not obtained within thirty (30) days upon receipt of the notification pursuant to paragraph (a)(i), the notifying Member State, may deny preferential treatment to the goods that would have been subject of the verification visit.
 - (c) The issuing authority receiving the notification may postpone the proposed verification visit and notify the importing Member State of such intention. Notwithstanding any postponement, any verification visit shall be carried out within sixty (60) days from the date of such receipt, or for a longer period as the concerned Member States may agree.
 - (d) The Member State conducting the verification visit shall provide the exporter/producer whose goods are the subject of the verification and the relevant issuing authority with a written determination of whether or not the subject goods qualify as originating goods.
 - (e) Any suspended preferential treatment shall be reinstated upon the written determination referred to in paragraph (d) that the goods qualify as originating goods.

- (f) The exporter/producer will be allowed thirty (30) days, from receipt of the written determination, to provide in writing comments or additional information regarding the eligibility of the goods. If the goods are still found to be non-originating, the final written determination will be communicated to the issuing authority within thirty (30) days from receipt of the comments/additional information from the exporter/producer.
- (g) The verification visit process, including the actual visit and determination of whether the subject goods are originating or not, shall be carried out and its results communicated to the issuing authority within a maximum of one hundred and eighty (180) days. While awaiting the results of the verification visit, Rule 18(c) on the suspension of preferential treatment shall be applied.

**Rule 20
Confidentiality**

Member States shall maintain, in accordance with their laws, the confidentiality of classified business information collected in the process of verification pursuant to Rules 18 and 19 and shall protect that information from disclosure that could prejudice the competitive position of the person who provided the information. The classified business information may only be disclosed to those authorities responsible for the administration and enforcement of origin determination.

**Rule 21
Documentation for Implementing Article 32(2)(b)
(Direct Consignment)**

For the purposes of implementing Article 32(2)(b) of this Agreement, where transportation is effected through the territory of one or more non-Member State, the following shall be produced to the Government authorities of the importing Member State:

- (a) A through Bill of Lading issued in the exporting Member State;
- (b) A Certificate of Origin (Form D) issued by the relevant Government authorities of the exporting Member State;
- (c) A copy of the original commercial invoice in respect of the goods; and

- (d) Supporting documents in evidence that the requirements of Article 32(2)(b) paragraphs (i), (ii) and (iii) of this Agreement are being complied with.

Rule 22
Exhibition Goods

1. Goods sent from an exporting Member State for exhibition in another Member State and sold during or after the exhibition for importation into a Member State shall be granted preferential treatment accorded under this Agreement on the condition that the goods meet the requirements as set out in Chapter 3 of this Agreement, provided that it is shown to the satisfaction of the relevant Government authorities of the importing Member State that:
 - (a) An exporter has dispatched those goods from the territory of the exporting Member State to the Member State where the exhibition is held and has exhibited them there;
 - (b) The exporter has sold the goods or transferred them to a consignee in the importing Member State;
 - (c) The goods have been consigned during the exhibition or immediately thereafter to the importing Member State in the state in which they were sent for the exhibition.
2. For the purposes of implementing paragraph 1, the Certificate of Origin (Form D) shall be provided to the relevant Government authorities of the importing Member State. The name and address of the exhibition must be indicated. The relevant Government authorities of the Member State where the exhibition took place may provide evidence together with supporting documents prescribed in Rule 21(d) for the identification of the products and the conditions under which they were exhibited.
3. Paragraph 1 shall apply to any trade, agricultural or crafts exhibition, fair or similar show or display in shops or business premises with the view to the sale of foreign goods and where the goods remain under customs control during the exhibition.

Rule 23
Third Country Invoicing

1. Relevant Government authorities in the importing Member State shall accept Certificates of Origin (Form D) in cases where the sales invoice is issued either by a company located in a third country or by an ASEAN exporter for the account of the said company, provided that the goods meet the requirements of Chapter 3 of this Agreement.
2. The exporter shall indicate “third country invoicing” and such information as name and country of the company issuing the invoice in the Certificate of Origin (Form D).

Rule 24
Action against Fraudulent Acts

1. When it is suspected that fraudulent acts in connection with the Certificate of Origin (Form D) have been committed, the Government authorities concerned shall cooperate in the action to be taken in the respective Member State against the persons involved.
2. Each Member State shall provide legal sanctions for fraudulent acts related to the Certificate of Origin (Form D).