

**Presentation on Rules of Origin for “Exchange of Letters of SPT
Treatment Granted by China to Laos, Cambodia and
Myanmar ” and Customs Clearance Procedures**

Ladies and Gentlemen:

Today, it's my great honor to make a presentation on rules of origin for “Exchange of Letters of Granting SPT Treatment to Laos, Cambodia and Myanmar by China ” and relevant customs clearance procedures of China.

China and Cambodia have forged long-term and traditional friendship. On July 19th, 1958, the two countries established formal diplomatic relationship. Leaders of Chinese government and Norodom Sihanouk, King of Cambodia, formed deep friendship, which laid a solid foundation for the sustainable development of the relations between the two countries. China and Myanmar, which call each other “brothers”, are good neighbors with long-term and traditional relationship. On June 8th, 1950, the formal diplomatic relationship was established between the two countries. In 1950s, China and Myanmar supportively advocated the five principles of peaceful co-existence. In 1960s, China and Myanmar successfully solved the historical border problems under the principle of being friendly, coordinated and in the spirit of mutual understanding and mutual accommodation, which set a good example for the settlement of border issues among nations and regions. China and Myanmar have been persisting in good-neighbor relations and maintaining favorable co-operations in international and regional affairs and the bilateral relations have been on a sound track. China and Laos are good neighbors linked by common mountains and rivers with long-term and peaceful co-existence. On April 25th, 1961, China and Laos established formal diplomatic relationship. From late 1970s to mid-1980s, the relations between the two countries once experienced twists and turns. In 1989, Sino-Laos relationship returned to the normal track. In the last ten years, the bilateral relationship has been developing soundly and in an all-round way. The exchanges and

co-operations between the two countries have been strengthened in the political, economic, military, cultural and sanitary sectors. Two sides have also been maintaining close co-ordinations and co-operations in the international and regional affairs. Economic globalization and regional economic integrity are the developing trends of current economic development. Economic integrity is conducive to the regional and global economic development and to the improvement of comprehensive competitiveness. With the development of economic globalization, cooperations in trade and economy between China and Laos (Myanmar/Cambodia) have been increasingly enhanced. In November, 2003, Chinese government and the three governments respectively signed "Exchange of Letters of SPT treatment granted by China to Cambodia", "Exchange of Letters SPT treatment granted by China to Myanmar", "Exchange of Letters of SPT treatment granted by China to Laos" (hereinafter referred to as "Exchange of letters"). According to the provisions of "Exchange of letters", since January 1st, 2004, China has granted SPT treatment to goods of Cambodia, Myanmar and Laos origin in 330, 131 and 239 tariff headings respectively in accordance with the Customs Tariff of Import and Export of PRC, 2004. China customs thus promulgated the Announcement No. 82 of General Administration of Customs of China in December, 2003, which prescribed that the origin for imported goods declared for Cambodia, Myanmar or Laos origin should be verified and determined according to the rules of origin for ASEAN-China FTA under the Framework Agreement on Comprehensive Economic Co-operation between ASEAN and China (United Announcement No. 81) and rule 5, "cumulative rule of origin", in rules of origin for ASEAN-China FTA is not applicable.

Next, I will make a presentation on the rules of origin for ASEAN-China FTA. First of all, let's overview the rules of origin to get an overall picture.

I. Overview of Rules of Origin

Origin is the "economic" nationality of goods in international trade. Rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any Member to determine the country of origin of goods. Rules of origin are divided into two categories: preferential and

non-preferential rules of origin, according to their different applications.

Non-preferential rules of origin, which are also called autonomous rules of origin, are formulated in accordance with national legislation, customs tariff and relevant trade measures. The application of non-preferential rules of origin must be in line of the MFN principle, i.e. indiscriminatory principle. Non-preferential rules of origin are used for determining the origin of products subject to all kinds of commercial policy measures (such as anti-dumping measures, quantitative restrictions) or subject to tariff quotas. They are also used for origin marking, government procurement and statistical purposes. WTO non-preferential rules of origin are under harmonization and review, which will take place of non-preferential rules of origin of different countries after being reviewed.

Preferential rules of origin are laws and regulations for the implementation of national preferential policies and the application of preferential trading measures. They are formulated through negotiations. Preferential rules of origin are exclusive and discriminatory with the objectives of promoting trade development among contracting parties and increasing investment and job opportunities and etc. Preferences will only be granted to the imported goods of origin of beneficiary countries. Preferential rules of origin are special criteria for origin determination and formulated in accordance with the general situations of the beneficiary countries and preferential scope. These criteria are formulated between beneficiary countries and preference-granting countries through bilateral or multi-lateral agreements, therefore they are also called contractual rules of origin. They are opposite to autonomous rules of origin and applied to preferential treatments in relevant countries. Preferential rules of origin fall into two categories. One is unilateral and non-reciprocal (such as GSP) and the other is reciprocal and granted in bilateral and regional trading agreements (such as NAFTA and Bangkok Agreement). Preferential rules of origin are formulated for applying preferential treatments to the imported goods, therefore they are more stringent than non-preferential rules of origin. In order to prevent from violating and evading such preferential measures, generally speaking, import countries require export countries to designate agencies responsible for issuing preferential certificates

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of origin of the export countries in accordance with the applicable preferential rules of origin. Besides, direct consignment rule is stipulated to specify the requirements and supporting documents for imported goods eligible to SPT treatment transported through the non-contracting third party.

Preferential rules of origin include origin criteria, direct consignment rule, issue, record and verification of certificate of origin and the regular review and modification of rules of origin and etc. Rules of origin for "Exchange of Letters" are preferential rules of origin for SPT treatment unilaterally granted by China.

II. Origin Criteria

Origin criteria consist of "wholly obtained" and "not wholly obtained" criteria. "Not wholly obtained" criteria include change in tariff heading, value-added content (Ad valorem percentage), manufacturing and processing operations and mixed criterion.

"Change in tariff heading" refers to the processing and manufacturing operations of non-originating materials carried out in the country of origin and resulting in a product of different tariff heading in a certain digit under the "Product Description and Harmonized System Codes";

"Manufacturing or processing operations" refers to the principal manufacturing or processing operations carried out in the country of origin, which confer essential characteristics to the goods derived after the operations

"Mixed criteria" refers to the use of two or more of the above criteria in determining origin.

Direct Consignment Rule is about the transport requirements for rules of origin in preferential trade agreements. Exported goods eligible to SPT treatment must be directly transported to the preference-granting countries from beneficiary countries without intermediate trade or substantial manufacturing or processing operations. However, the transit entry may be justified for geographical reason or by consideration related exclusively to transport requirements, provided that at the consignment of the goods preference-granting countries have already known that the final destinations of the exported goods are the preference-granting countries and the

goods must be subject to the control of transit customs without entering into the market of the third party.

III. Rules of Origin for ACFTA

"Rules of Origin for ACFTA" include such clauses as definition, origin criteria, wholly obtained products, not wholly produced or obtained, cumulative rules of origin, product specific criteria, direct consignment, minimal operations and processes and certificate of origin and etc.

i. Within the meaning of Rule 2, origin criteria fall into two categories of "wholly obtained products" and "not wholly produced or obtained products".

"Wholly obtained products" refer to

- (a) Plant¹ and plant products harvested, picked or gathered there;
- (b) Live animals² born and raised there;
- (c) Products³ obtained from live animals referred to in paragraph (b) above;
- (d) Products obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted there;
- (e) Minerals and other naturally occurring substances, not included in paragraphs (a) to (d) above, extracted or taken from its soil, waters, seabed or beneath their seabed;
- (f) Products taken from the waters, seabed or beneath the seabed outside the

¹ Plant here refers to all plant life, including fruit, flowers, vegetables, trees seaweed, fungi and live plants.

² Animals referred to in paragraph (b) and (c) covers all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, bacteria and viruses.

³ Products refer to those obtained from live animals without further processing, including milk, eggs, natural honey, hair, wool, semen and dung.

territorial waters of that Party; provided that that Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with international law;

(g) Products of sea fishing and other marine products taken from the high seas by vessels registered with a Party or entitled to fly the flag of that Party;

(h) Products processed and/or made on board factory ships registered with a Party or entitled to fly the flag of that Party, exclusively from products referred to in paragraph (g) above;

(i) Articles collected there which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts of raw materials, or for recycling purposes⁴; and

(j) Goods obtained or produced in a Party solely from products referred to in paragraphs (a) to (i) above.

ii. Not wholly Produced or Obtained refers to

(a) A product shall be deemed to be originating if:

(i) Not less than 40% of its content originates from any Party; or

(ii) the total value of the materials, part or produce originating from

⁴ This would cover all scrap and waste including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded packaging and all products that can no longer perform the purpose for which they were produced and are fit only for discarding or for the recovery of raw materials. Such manufacturing or processing operations shall include all types of processing, not only industrial or chemical but also mining, agriculture, construction, refining, incineration and sewage treatment operations.

outside of the territory of a Party (i.e. non-ACFTA) does not exceed 60% of the FOB value of the product so produced or obtained provided that the final process of the manufacture is performed within the territory of the Party.

The formula for the 40% ACFTA content is calculated as follows:-

$$\frac{\text{Value of Non-ACFTA materials} + \text{Value of materials of Undetermined origin}}{\text{FOB Price}} \times 100 \% < 60\%$$

Therefore, the ACFTA content = 100% - non-ACFTA material
= at least 40%

(the originating criteria set out in Rule 4(a) (ii) shall be referred to as the "ACFTA content")

The value of the non-originating materials shall be: the CIF value at the time of importation of the materials; or the earliest ascertained price paid for the materials of undetermined origin in the territory of the Party where the working or processing takes place.

iii. The following operations or processes undertaken shall not be taken into account in determining whether a good has been wholly obtained:

- (a) Minimal operations and processes for the purposes of transport, storage, shipment, transportation or sale
- (b) Neutral Elements

(c) Accessories, Spare parts and Tools

iv. "Direct Consignment" Rule

All the products of Laos, Myanmar or Cambodia origin eligible to SPT treatment under "Exchange of Letters" shall be directly consigned into the territory of PRC from Laos, Myanmar or Cambodia; or transported passing through the territory of any other ACFTA member states; or transported without passing through the territory of any non-ACFTA member states. The products whose transport involves transit through one or more intermediate non-ACFTA member states with or without transshipment or temporary storage in such countries shall be considered as consigned directly from China to Laos, Myanmar or Cambodia, provided that:

- (i) the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;
- (ii) the products have not entered into trade or consumption there;
- (iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.

In order to conduct effective customs control and to improve the customs clearance efficiency, General Administration of Customs of PRC stipulated the documentation requirements for transshipment in Announcement No. 78. 2003 of the General Administration of Customs of the People's Republic of China on December 29th, 2003. According to the provisions of the announcement, for goods of Laos, Myanmar and Cambodia origin eligible to SPT treatment under the "Exchange of Letters" transshipped through Hong Kong and Macao, importers shall, at customs declarations, submit the all-course B/L and "Certificate of Non-manipulation" issued by China Inspection (Hong Kong or Macao) Company, Ltd. to China Customs. For preferential products transported through any non-ACFTA member states, importers shall submit, at customs declarations, "Certificate of Non-manipulation" issued by the Customs of the non-ACFTA member states under transshipment, and the all-course B/L.

IV. Certificate of Origin and Customs Control Mode

According to the provisions of Rules of Origin for ACFTA, The original Certificate of Origin issued by the designated Government authorities of Laos, Myanmar and Cambodia shall be submitted together with the **triplicate** to China Customs at the time of lodging the import entry for the products applicable to SPT treatment. The names and addresses of respective Government authorities issuing the Certificate of Origin and specimen signatures and specimen of official seals used by the said Government authorities shall be informed to China Customs. Being different from the C/O Form E for ACFTA, C/O for SPT treatment to Laos, Myanmar and Cambodia is in the SPT Form determined by the four Parties. China Customs check C/O against the specimen of signature and official seals at ports of entry, and send the triplicates of C/O in question to the issuing authorities for verification.

V. Customs Clearance Procedures of China to Products under SPT Treatment

At customs declaration for imported goods under "Exchange of Letters", consignee shall apply for SPT treatment under "Exchange of Letters" to China Customs at ports of entry:and furnish up the following documents:

- i. Customs Declarations for Imported Goods of PRC;
- ii. C/O issued by designated issuing authorities of Laos, Myanmar and Cambodia;
- iii. Contract between buyer and seller;
- iv. Duplicate of the Original Invoice;
- v. B/L issued by the exporting countries;

If products are transported through one or more non-contracting territories, the following supporting documents complying with the direct consignment rule shall be furnished up:

- i. Documents about transshipment, unloading and reloading and temporary storage in territories of non-contracting parties;
- ii. Certificate of non-manipulation

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- iii. Supporting documents for ensuring preservation of goods in good condition provided that B/L and documents for unloading and reloading and storage are not sufficient;

Other relevant supporting documents which the corporations are competent to provide.

SPT treatment under "Exchange of Letters" is not applicable to goods without prescribed documents. Customs duties and taxes will be correspondingly collected by China Customs at applicable rate. If supporting documents are submitted by the consignee after 90 days from the date of entry, the extra customs duties will be refunded after the documents are verified by China Customs.

VI. Importation of goods of Laos, Myanmar and Cambodia Origin from Jan 1st to May 30th, 2004

Goods imported from Laos are valued at 2,741,730 RMB Yuan with customs duties and taxes of 388,933 RMB Yuan and 0 tax reduction and exemption. Goods imported from Cambodia are valued at 34,314,820 RMB Yuan with customs duties and taxes of 6,555,829 RMB Yuan and tax reduction and exemption of 2,341 RMB Yuan. Goods imported from Myanmar are valued at 64,918,794 RMB Yuan with customs duties and taxes of 11,975,409 RMB Yuan and tax reduction and exemption of 480,874 RMB Yuan.

Reasons for not being eligible to SPT: not being able to furnish up C/O complying with requirement to China Customs