

## **PART II**

### **OPERATIONAL CERTIFICATION PROCEDURES FOR THE RULES OF ORIGIN OF THE ASEAN COMMON EFFECTIVE PREFERENTIAL TARIFF SCHEME FOR THE ASEAN FREE TRADE AREA**

For the purpose of implementing the Rules of Origin for the CEPT Scheme and the CEPT Rules of Origin for Textiles and Textile Products, the following operational procedures on the issuance and verification of the Certificate of Origin (Form D) and the other related administrative matters, shall be observed.

#### **AUTHORITIES**

##### **Rule 1**

The Certificate of Origin shall be issued by the Government of the exporting Member State.

##### **Rule 2**

- (a) The Member State shall inform every other Member State of the names and addresses of the Government authorities issuing the Certificate of Origin and shall provide specimen signatures and specimen of official seals used by the Government authorities.
- (b) Member States shall submit to the ASEAN Secretariat ten (10) sets of the above information and specimens for dissemination to other Member States. Any change in names, addresses, or official seals shall be promptly informed in the same manner.
- (c) The specimen signatures and official seals of officials authorized by Member States to issue the Certificate of Origin, compiled by the ASEAN Secretariat, shall be updated annually. Any Certificate of Origin issued by an official not included in the said list shall not be honored by the receiving Member State.

##### **Rule 3**

For the purpose of verifying the conditions for preferential treatment, the Government authorities designated to issue the Certificate of Origin shall have the right to call for any supporting documentary evidence or to carry out any check considered appropriate. If such right cannot be obtained through the existing national laws or regulations, it shall be inserted as a clause in the application form referred to in the following Rules 4 and 5.

#### **APPLICATIONS**

##### **Rule 4**

- (a) The manufacturer and/or exporter of the products qualified for preferential treatment shall apply in writing to the relevant Government authorities requesting for the pre-exportation verification of the origin of the products. The result of the verification, subject to review periodically or whenever

appropriate, shall be accepted as the supporting evidence in verifying the origin of the said products to be exported thereafter. The pre-exportation verification may not apply to the products of which, by their nature, origin can be easily verified.

- (b) For locally-procured materials, self-declaration by the final manufacturer exporting under the CEPT shall be used as basis when applying for the issuance of the Certificate of Origin Form D.

#### **Rule 5**

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

### **PRE-EXPORTATION EXAMINATION**

#### **Rule 6**

The Government authorities designated to issue the Certificate of Origin shall, to the best of their competence and ability, carry out proper examination upon each application for the Certificate of Origin to ensure that -

- (a) the application and the Certificate of Origin are duly completed and signed by the authorized signatory;
- (b) the origin of the product is in conformity with the Rules of Origin;
- (c) the other statements of the Certificate of Origin 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 Form D shall be allowed provided each item must qualify separately in its own right.

## ISSUANCE OF CERTIFICATE OF ORIGIN

### Rule 7

- (a) The Certificate of Origin must be on ISO A4 size paper in conformity to the specimen shown in Appendix "A". It shall be made in English.
- (b) The Certificate of Origin shall comprise one original and three (3) carbon copies of the following colours:

Original	light violet
Duplicate	orange
Triplicate	orange
Quadruplicate	orange

- (c) Each Certificate of Origin shall bear a reference number separately given by each place or office of issuance.
- (d) The original copy, together with the triplicate, 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 quadruplicate shall be retained by the exporter. After the importation of the products, the triplicate shall be marked accordingly in box 4 and returned to the issuing authority within reasonable period of time.
- (e) In cases when a Form D is rejected by the customs authorities of the importing Member State, the subject Form D shall be marked accordingly in box 4 and both the original and triplicate copies of the Form D shall be returned to the Issuing Authority within a reasonable period but not to exceed two (2) months. The Issuing Authority shall be duly notified of the grounds for the denial of tariff preference.
- (f) In cases where Form Ds are not accepted, as stated in the preceding subparagraph, the importing countries should accept the clarifications made by the Issuing Authorities to accept the Form D and reinstate the preferential treatment. The clarifications should be detailed and exhaustive in addressing the grounds for denial of preference raised by the importing country.

### Rule 8

- (a) To implement the provisions of Rule 3 and Rule 4 of the Rules of Origin, the Certificate of Origin issued by the final exporting Member State shall indicate the relevant rules and applicable percentage of ASEAN content in Box 8.
- (b) To implement Rules 5 and 6 of the CEPT Rules of Origin for Textiles and Textile Products, the Certificate of Origin issued by the final exporting Member State shall indicate in Box 8 whether these rules have been satisfied.

**Rule 9**

Neither erasures nor superimpositions shall be allowed on the Certificate of Origin. Any alteration shall be made by striking out the erroneous materials and making any addition required. Such alterations shall be approved by an official authorized to sign the Certificate of Origin and certified by the appropriate Government authorities. Unused spaces shall be crossed out to prevent any subsequent addition.

**Rule 10**

- (a) The Certificate of Origin shall be issued by the relevant Government 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 the Rules of Origin.
- (b) The Issuing Authority of the third ASEAN country may issue the back-to-back Certificate of Origin, subject to the satisfactory presentation of a valid original Certificate of Origin, if an application is made by the exporter while the goods are passing through its territory, with the exception of specific additional requirements by Malaysia and Thailand.
- (c) In exceptional cases where a Certificate of Origin has not been issued at the time of exportation or soon thereafter due to involuntary errors or omissions or other valid causes, the Certificate of Origin may be issued retroactively but no longer than one year from the date of shipment, bearing the words "ISSUED RETROACTIVELY"

**Rule 11**

In the event of theft, loss or destruction of a Certificate of Origin, the exporter may apply in writing to the Government authorities which issued it 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 shall be issued no longer than one year from the date of issuance of the original Certificate of Origin and on condition that the exporter provides to the relevant issuing authority the fourth copy.

**PRESENTATION****Rule 12**

The Original Certificate of Origin shall be submitted together with the triplicate to the Customs Authorities at the time of lodging the import entry for the products concerned.

**Rule 13**

The following time limit for the presentation of the Certificate of Origin shall be observed:

- (a) Certificate of Origin must be submitted to the Customs Authorities of the importing Member State within six (6) months from the date of endorsement by the relevant Government authorities of the exporting Member State;
- (b) Where the Certificate of Origin is submitted to the relevant Government authorities of the importing Member State after the expiration of the time-limit for its submission, such Certificate 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 relevant Government authorities in the importing Member State may accept such Certificate of Origin provided that the products have been imported before the expiration of the time limit of the said Certificate of Origin.

**Rule 14**

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

**Rule 15**

- (a) Where the ASEAN origin of the product is not in doubt, the discovery of minor discrepancies, such as tariff classification differences between the Issuing and Receiving Authorities, or between the statements made in the Certificate of Origin 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 products shall not ipso-facto invalidate the Certificate of Origin, if it does in fact correspond to the products submitted.
- (b) For multiple items declared under the same Certificate of Origin, 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. Rule 16(1)(a)(iii) may be applied to the problematic items.

**Rule 16**

- (a) The application for Certificates of Origin and all documents related to such application shall be retained by the issuing authorities for not less than two (2) years from the date of issuance.
- (b) Information relating to the validity of the Certificate of Origin shall be furnished upon request of the importing Member State by an official authorized to sign the Certificate of Origin and certified by the appropriate Government Authorities.

- (c) Any information communicated between the Member States concerned shall be treated as confidential and shall be used for the validation of Certificates of Origin purposes only.

## **Rule 17**

1. The importing Member State may request 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 products in question or of certain parts thereof. The Issuing Authority 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.

- (a) The request for retroactive check shall be accompanied with the Certificate of Origin concerned and shall specify the reasons and any additional information suggesting that the particulars given on the said Certificate of Origin may be inaccurate, unless the retroactive check is requested on a random basis.
- (b) The issuing Government Authorities receiving a request for retroactive check shall respond to the request promptly and reply within three (3) months 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 products 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 retroactive check process, including the actual process and the determination of whether the subject product is originating or not, should be completed and the result should be communicated to Issuing Authorities within six (6) months. While awaiting the results of the retroactive check, Rule 17(1)(c) shall be applied.

2. If the importing Member State is not satisfied with the outcome of the retroactive check, it may, under exceptional cases<sup>1</sup>, request for verification visits to the exporting Member State.

- (a) Prior to the conduct of a verification visit pursuant to Rule 17(2), an importing Member State, shall -
  - (i) deliver a written notification of its intention to conduct the verification visit simultaneously to -
    - (A) the exporter/ producer whose premises are to be visited;
    - (B) the Issuing Authority of the Member State in whose territory the verification visit is to occur;

- (C) the customs administration of the Member State in whose territory the verification visit is to occur; and
    - (D) the importer of the product subject of the verification visit.
  - (ii) the written notification mentioned in paragraph 2.1.1 shall be as comprehensive as possible including, among others -
    - (A) the name of the customs administration issuing the notification;
    - (B) the name of the exporter/producer whose premises are to be visited;
    - (C) the proposed date for the verification visit;
    - (D) the coverage of the proposed verification visit, including reference to the product subject of the verification; and
    - (E) the names and designation of the officials performing the verification visit.
  - (iii) obtain the written consent of the exporter or producer whose premises are to be visited.
- (b) When a written consent from the exporter/producer is not obtained within 30 days upon receipt of the notification pursuant to paragraph 2(a)(i), the notifying Member State, may deny preferential treatment to the product that would have been subject of the verification visit.
- (c) Each Member State shall provide that, where its customs administration receives a notification pursuant to paragraph 2(a)(i), the customs administration may postpone, within 15 days of receipt of notification, the proposed verification visit for a period not to exceed 60 days from the date of such receipt, or for a longer period as the parties may agree.
- (d) The Member State conducting the verification visit shall provide the exporter/producer whose product is the subject of the verification and the relevant Issuing Authority with a written determination of whether or not the subject product qualifies as an originating product.
  - (i) The determination of whether the product qualifies as an originating product shall take effect upon receipt of the written notification by both exporter and producer, and the relevant Issuing Authority. Any suspended preferential treatment shall be reinstated upon the effectivity of the determination.
  - (ii) The exporter/producer will be allowed 30 days from receipt of the written determination to provide in writing comments or

additional information regarding the eligibility of the product. If the product is still found to be non-originating, the final written determination will be communicated to the Issuing Authority within 30 days from receipt of the comments/additional information from the exporter/producer.

- (e) The verification visit process, including the actual visit and determination of whether the subject product is originating or not, shall be carried out and its results communicated to the Issuing Authorities within a maximum of six months. While awaiting the results of the verification visit, Rule 17(1)(c) on the suspension of preferential treatment shall be applied.

3. Member States shall maintain, in accordance with their laws, the confidentiality of classified business information collected in the process of verification 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.

### **SPECIAL CASES**

#### **Rule 18**

When destination of all or parts of the products exported to specified Member State is changed, before or after their arrival in the Member State, the following Rules shall be observed:

- (a) If the products have already been submitted to the Customs Authorities in the specified importing Member State, the Certificate of Origin shall, by a written application of the importer, be endorsed to this effect for all or parts of products by the said authorities and the original returned to the importer. The triplicate shall be returned to the issuing authorities.
- (b) If the changing of destination occurs during transportation to the importing Member State as specified in the Certificate of Origin, the exporter shall apply in writing, accompanied with the issued Certificate of Origin, for the new issuance for all or parts of products.

#### **Rule 19**

For the purpose of implementing Rule 5(c) of the Rules of Origin, where transportation is effected through the territory of one or more non- ASEAN countries, 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 issued by the relevant Government authorities of the exporting Member State;
- (c) a copy of the original commercial invoice in respect of the product; and



- (d) supporting documents in evidence that the requirements of Rule 5(c) subparagraphs (i), (ii) and (iii) of the Rules of Origin are being complied with.

## **Rule 20**

1. Products sent from an exporting Member State for exhibition in another country and sold during or after the exhibition for importation into a Member State shall benefit from the CEPT Scheme on the condition that the products meet the requirements of the Rules of Origin 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 products from the territory of the exporting Member State to the Country 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 products 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 purpose of implementing the above provisions, the Certificate of Origin must be produced to the relevant Government authorities of the importing Member State. The name and address of the exhibition must be indicated. As an evidence for the identification of the products and the conditions under which they were exhibited, a certificate issued by the relevant Government authorities of the country where the exhibition took place together with supporting documents prescribed in Rule 19(d) may be required.

3. Paragraph (a) 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 products and where the products remain under Customs control during the exhibition.

## **Rule 21**

Relevant Government Authorities in the importing Member State may accept Certificates of Origin in cases where the sales invoice is issued either by company located in a third country or by an ASEAN exporter for the account of the said company, provided that the product meets the requirements of the CEPT Rules of Origin.

### **ACTION AGAINST FRAUDULENT ACTS**

## **Rule 22**

- (a) When it is suspected that fraudulent acts in connection with the Certificate of Origin have been committed, the Government Authorities concerned shall cooperate in the action to be taken in the respective State against the persons involved.

- (b) Each Member State shall be providing legal sanctions for fraudulent acts related to the Certificate of Origin.

### **SETTLEMENT OF DISPUTE**

#### **Rule 23**

- (a) In the case of a dispute concerning origin determination, classification of products or other matters, the Government authorities concerned in the importing and exporting Member States shall consult each other with a view to resolving the dispute, and the result shall be reported to the other Member States for information.
- (b) In the case of where no settlement can be reached bilaterally, the issue concerned shall be decided by the SEOM.
- (c) The Protocol on Dispute Settlement Mechanism for ASEAN shall apply in relation to any dispute arising from, or any difference between Member States concerning the interpretation or application of the CEPT Rules of Origin and its Operational Procedures.

<sup>1</sup> Criteria to define “exceptional case” to conduct on-site verification: (i) cost-benefit analysis. i.e. it should be established that the benefit accruing from the on-site verification should outweigh the cost to be incurred; and (ii) systematic fraud. The two criteria on the cost-benefit analysis and systematic fraud shall both be applied prior to invoking on-site verification.