

**RULES OF ORIGIN FOR THE
ASEAN-CHINA FREE TRADE AREA**

In determining the origin of products eligible for the preferential tariff concession pursuant to the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China (hereinafter referred to as "the Agreement"), the following Rules shall be applied:

Rule 1: Definitions

For the purpose of this Annex:

- (a) "a Party" means the individual parties to the Agreement i.e. Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic ("Lao PDR"), Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, the Socialist Republic of Vietnam and the People's Republic of China ("China").
- (b) "materials" shall include ingredients, parts, components, subassembly and/or goods that were physically incorporated into another good or were subject to a process in the production of another good.
- (c) "Originating goods" means products that qualify as originating in accordance with the provisions of Rule 2.
- (d) "production" means methods of obtaining goods including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing or assembling a good.
- (e) "Product Specific Rules" are rules that specify that the materials have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy an ad valorem criterion or a combination of any of these criteria.

Rule 2: Origin Criteria

For the purposes of this Agreement, products imported by a Party shall be deemed to be originating and eligible for preferential concessions if they conform to the origin requirements under any one of the following:

- (a) Products which are wholly obtained or produced as set out and defined in Rule 3; or
- (b) Products not wholly produced or obtained provided that the said products are eligible under Rule 4, Rule 5 or Rule 6.

Rule 3: Wholly Obtained Products

Within the meaning of Rule 2 (a), the following shall be considered as wholly produced or obtained in a Party:

- (a) Plant [1] and plant products harvested, picked or gathered there;
- (b) Live animals [2] born and raised there;
- (c) Products [3] 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), 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 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 purposes [4]; and

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

Rule 4: Not Wholly Produced or Obtained

(a) For the purposes of Rule 2(b), a product shall be deemed to be originating if:

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

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

(b) For the purposes of this Annex, the originating criteria set out in Rule 4(a)(ii) shall be referred to as the “ACFTA content”. The formula for the 40% ACFTA content is calculated as follows:

Value of of Non-ACFTA materials origin	+	Value of materials Undetermined origin
<hr/>		
x 100 % < 60%		
FOB Price		
Therefore, the ACFTA content: 100% - non-ACFTA material = at least 40%		

(c) The value of the non-originating materials shall be:

(i) the CIF value at the time of importation of the materials; or

(ii) the earliest ascertained price paid for the materials of undetermined origin in the territory of the Party where the working or processing takes place.

(d) For the purpose of this Rule, "originating material" shall be deemed to be a material whose country of origin, as determined under these rules, is the same country as the country in which the material is used in production.

Rule 5: Cumulative Rule of Origin

Unless otherwise provided for, products which comply with origin requirements provided for in Rule 2 and which are used in the territory of a Party as materials for a finished product eligible for preferential treatment under the Agreement shall be considered as products originating in the territory of the Party where working or processing of the finished product has taken place provided that the aggregate ACFTA content (i.e. full cumulation, applicable among all Parties) on the final product is not less than 40%.

RULE 6: PRODUCT SPECIFIC CRITERIA

Products which have undergone sufficient transformation in a Party shall be treated as originating goods of that Party. Products which satisfy the Product Specific Rules provided for in Attachment B shall be considered as goods to which sufficient transformation has been carried out in a Party.

RULE 7: MINIMAL OPERATIONS AND PROCESSES

Operations or processes undertaken, by themselves or in combination with each other for the purposes listed below, are considered to be minimal and shall not be taken into account in determining whether a good has been wholly obtained in one country:

- (a) ensuring preservation of goods in good condition for the purposes of transport or storage;
- (b) facilitating shipment or transportation;
- (c) packaging [5] or presenting goods for sale.

Rule 8: Direct Consignment

The following shall be considered as consigned directly from the exporting Party to the importing Party:

- (a) If the products are transported passing through the territory of any other ACFTA member states;
- (b) If the products are transported without passing through the territory of any non-ACFTA member states;
- (c) 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, 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; and
 - (iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.

Rule 9: Treatment of Packing

- (a) Where for purposes of assessing customs duties, a Party treats products separately from their packing, it may also, in respect of its imports consigned from another Party, determine separately the origin of such packing.
- (b) Where paragraph (a) above is not applied, packing shall be considered as forming a whole with the products and no part of any packing required for their transport or storage shall be considered as having been imported from outside the ACFTA when determining the origin of the products as a whole.

Rule 10: Accessories, Spare Parts and Tools

The origin of accessories, spare parts, tools and instructional or other information materials presented with the goods therewith shall be neglected in determining the origin of the goods, provided that such accessories, spare parts, tools and information materials are classified and collected customs duties with the goods by the importing member state.

RULE 11: NEUTRAL ELEMENTS

Unless otherwise provided, for the purpose of determining the origin of goods, the origin of power and fuel, plant and equipment, or machines and tools used to obtain the goods, or the materials used in its manufacture which do not remain in the goods or form part of the goods, shall not be taken into account.

Rule 12: Certificate of Origin

A claim that products shall be accepted as eligible for preferential concession shall be supported by a Certificate of Origin issued by a government authority designated by the exporting Party and notified to the other Parties to the Agreement in accordance with the Operational Certification Procedures, as set out in Attachment A.

Rule 13: Review and Modification

These rules may be reviewed and modified as and when necessary upon request of a Member State and may be open to such reviews and modifications as may be agreed upon by the AEM-MOFCOM.

ATTACHMENT A

OPERATIONAL CERTIFICATION PROCEDURES FOR THE RULES OF ORIGIN OF THE ASEAN-CHINA FREE TRADE AREA

For the purpose of implementing the rules of origin for the ASEAN-China Free Trade Area, the following operational procedures on the issuance and verification of the Certificate of Origin (Form E) and the other related administrative matters shall be followed:

AUTHORITIES

Rule 1

The Certificate of Origin shall be issued by the Government authorities of the exporting Party.

Rule 2

(a) The Party shall inform all the other Parties of the names and addresses of their respective Government authorities issuing the Certificate of Origin and shall provide specimen signatures and specimen of official seals used by their said Government authorities.

(b) The above information and specimens shall be provided to every Party to the Agreement and a copy furnished to the ASEAN Secretariat. Any change in names, addresses, or official seals shall be promptly informed in the same manner.

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 and regulations, it shall be inserted as a clause in the application form referred to in the following rules 4 and 5.

APPLICATIONS

Rule 4

The exporter and/or the manufacturer of the products qualified for preferential treatment shall apply in writing to the 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-verification may not apply to the products of which, by their nature, origin can be easily verified.

Rule 5

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 together with appropriate supporting documents proving that the products to be exported qualify for the issuance of a 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 authorised signatory;
- (b) The origin of the product is in conformity with the ASEAN-China 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.

ISSUANCE OF CERTIFICATE OF ORIGIN

Rule 7

(a) The Certificate of Origin must be in ISO A4 size paper in conformity to the specimen as shown in Attachment C. 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 - Beige (Pantone color code: 727c)
- Duplicate - Light Green (Pantone color code: 622c)
- Triplicate - Light Green (Pantone color code: 622c)
- Quadruplicate - Light Green (Pantone color code: 622c)

(c) Each Certificate of Origin shall bear a reference number separately given by each place of office of issuance.

(d) The original copy shall be forwarded, together with the triplicate, 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 Party. 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 a reasonable period of time.

Rule 8

To implement the provisions of Rules 4 and 5 of the ASEAN-China Rules of Origin, the Certificate of Origin issued by the final exporting Party shall indicate the relevant rules and applicable percentage of ACFTA content in Box 8.

Rule 9

Neither erasures nor superimposition 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 the person who made them 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 Party at the time of exportation or soon thereafter whenever the products to be exported can be considered originating in that Party within the meaning of the ASEAN-China Rules of Origin.

(b) 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 the certified true copy of the original and the triplicate to be made 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 the original Certificate of Origin. The certified true copy of a Certificate of Origin shall be issued not 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 shall be submitted to the Customs Authorities of the importing Party within four (4) months from the date of endorsement by the relevant Government authorities of the exporting Party;
- (b) Where the products pass through the territory of one or more non-parties in accordance with the provisions of Rule 8 (c) of the ASEAN-China Rules of Origin, the time limit laid down in paragraph (a) above for the submission of the Certificate of Origin is extended to six (6) months;
- (c) Where the Certificate of Origin is submitted to the relevant Government authorities of the importing Party 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
- (d) In all cases, the relevant Government authorities in the importing Party 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 Party and not exceeding US\$200.00 FOB, the production of a 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 Party will be accepted. Products sent through the post not exceeding US\$200.00 FOB shall also be similarly treated.

Rule 15

The discovery of minor discrepancies between the statements made in the Certificate of Origin and those made in the documents submitted to the Customs Authorities of the importing Party 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.

Rule 16

(a) The importing Party 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.

(b) The request 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.

(c) The Customs Authorities of the importing Party 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 issuing Government authorities receiving a request for retroactive check shall respond to the request promptly and reply not later than six (6) months after the receipt of the request.

Rule 17

(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 Party.

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

SPECIAL CASES

Rule 18

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

- (a) If the products have already been submitted to the Customs Authorities in the specified importing Party, 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 Party 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 8(c) of the ASEAN-China Rules of Origin, where transportation is effected through the territory of one or more non-ACFTA member states, 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 8(c) sub-paragraphs (i),(ii) and (iii) of the ASEAN-China Rules of Origin are being complied with.

Rule 20

(a) Products sent from an exporting Party for exhibition in another Party and sold during or after the exhibition into a Party shall benefit from the ASEAN-China preferential tariff treatment on the condition that the products meet the requirements of the ASEAN-China Rules of Origin provided it is shown to the satisfaction of the relevant Government authorities of the importing Party that:

- (i) an exporter has dispatched those products from the territory of the exporting Party to the country where the exhibition is held and has exhibited them there;
- (ii) the exporter has sold the goods or transferred them to a consignee in the importing Party; and
- (iii) the products have been consigned during the exhibition or immediately thereafter to the importing Party in the state in which they were sent for exhibition.

(b) For purposes of implementing the above provisions, the Certificate of Origin must be produced to the relevant Government authorities of the importing Party. The name and address of the exhibition must be indicated, a certificate issued by the relevant Government authorities of the Party where the exhibition took place together with supporting documents prescribed in rule 19(d) may be required.

(c) 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.

ACTION AGAINST FRAUDULENT ACTS

Rule 21

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

(b) Each Party shall be responsible for providing legal sanctions for fraudulent acts related to the Certificate of Origin.

Rule 22

In the case of a dispute concerning origin determination, classification or 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.

ATTACHMENT B

PRODUCT SPECIFIC RULES

(To be negotiated commencing January 2004)

[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.

[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.

[5] This excludes encapsulation which is termed "packaging" by the electronics industry.