

## APPENDIX D

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

For the purpose of implementing the Rules of Origin for the Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area (hereinafter referred to as “CEPT-AFTA ROO”), 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.

#### DEFINITIONS

##### Article 1

For the purpose of this Appendix:

- (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) **“customs authority”** means the competent authority that is responsible under the law of a Member State for the administration of customs laws and regulations<sup>1</sup>;
- (c) **“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;
- (d) **“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;
- (e) **“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 Appendix; and
- (f) **“producer”** means a natural or juridical person who carries out production as set out in Article 1 of the CEPT-AFTA ROO in the territory of a Member State.

#### ISSUING AUTHORITIES

##### Article 2

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

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<sup>1</sup> Such laws and regulations administered and enforced by the customs authority of each Member State concerning the importation, exportation and transit of goods as they relate to customs duties, charges and other taxes or prohibitions, restrictions and controls with respect to the movement of controlled items across the boundary of the customs authority of each Member State.

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.

### **Article 3**

For the purpose 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 domestic laws and regulations of a Member State.

### **Article 4**

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 domestic 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 the CEPT Scheme for AFTA shall be used as a basis when applying for the issuance of the Certificate of Origin (Form D).

## **APPLICATIONS**

### **Article 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 (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).

## **PRE-EXPORTATION EXAMINATION**

### **Article 6**

The issuing authority shall, to the best of its competence and ability, carry out proper examination, in accordance with the domestic 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 CEPT-AFTA ROO;

- (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.

## **ISSUANCE OF CERTIFICATE OF ORIGIN**

### **Article 7**

1. The Certificate of Origin (Form D) must be on ISO A4 size white paper in conformity to the specimen shown in Attachment 3. It shall be made in English.
2. The Certificate of Origin (Form D) shall comprise one 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. 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.
5. In cases when a Certificate of Origin (Form D) is rejected by the customs authorities 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.
6. In cases where Certificates of Origin (Form D) are not accepted, as stated in the preceding paragraph, the importing Member State should accept the clarifications made by the issuing authorities to accept the Certificate of Origin (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 Member State.

### **Article 8**

To implement the provisions of Article 2 of the CEPT-AFTA ROO, the Certificate of Origin (Form D) issued by the final exporting Member State shall indicate the relevant applicable origin criterion in Box 8.

## **Article 9**

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.

## **Article 10**

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 the CEPT-AFTA ROO.
2. The issuing authority of the intermediate Member State may issue a back-to-back Certificate of Origin if 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 Article 17 are also applied to Member State issuing the back-to-back Certificate of Origin.
3. 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

year from the date of shipment and shall be duly and prominently marked "Issued Retroactively".

#### **Article 11**

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 year from the date of issuance of the original Certificate of Origin (Form D).

### **PRESENTATION**

#### **Article 12**

For the purpose 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 domestic laws and regulations of the importing Member State.

#### **Article 13**

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

- (a) Certificate of Origin (Form D) must be submitted to the customs authorities of the importing Member State within one year from the date of endorsement by the relevant Government authorities of the exporting Member State;
- (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 products have been imported before the expiration of the time limit of the said Certificate of Origin (Form D).

#### **Article 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 (Form D) 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.

### **Article 15**

1. 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 (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 products shall not *ipso-facto* invalidate the Certificate of Origin (Form D), if it does in fact correspond to the products submitted.
2. In cases where the exporting Member State and importing Member State have different tariff classification for a good subject to preferential tariffs, the goods shall be released at the higher CEPT rate and no penalty or other charges shall be imposed. Once the classification differences have been resolved, the correct CEPT rate shall be applied and any overpaid duty shall be refunded, in accordance with relevant rules and regulations of the importing Member State, after the issue has 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). Article 17(1)(c) may be applied to the problematic items.

### **RECORD KEEPING REQUIREMENT**

#### **Article 16**

1. For the purposes of the verification process pursuant to Article 17, the producer and/or exporter applying for the issuance of a Certificate of Origin (Form D) shall, subject to the domestic 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.

## Article 17

1. 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 products 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 authorities 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 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 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 180 days. While awaiting the results of the retroactive check, paragraph 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, 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:
      - (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(a)(i) 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/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 2(a)(i), the notifying Member State, may deny preferential treatment to the product 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 days (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 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.
  - (e) Any suspended preferential treatment shall be reinstated upon the written determination referred to in paragraph 2(d) that the good qualifies as an originating good.
  - (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 product. If the product is 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 product is originating or not, shall be carried out and its results communicated to the issuing authorities within a maximum of 180 days. While awaiting the results of the verification visit, paragraph 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**

### **Article 18**

For the purpose of implementing Article 7.2.(c) of the CEPT-AFTA ROO, 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 product; and
- (d) Supporting documents in evidence that the requirements of Article 7.2.(c) subparagraphs (i), (ii) and (iii) of the CEPT-AFTA ROO are being complied with.

### **Article 19**

1. Products 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 benefit from the CEPT Scheme on the condition that the products meet the requirements of the CEPT-AFTA ROO 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 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 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 provisions in paragraph 1, the Certificate of Origin (Form D) must be produced 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 Article 18(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 products and where the products remain under customs control during the exhibition.

#### **Article 20**

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 non-Member State or by an ASEAN exporter for the account of the said company, provided that the product meets the requirements of the CEPT-AFTA ROO.

### **ACTION AGAINST FRAUDULENT ACTS**

#### **Article 21**

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 be providing legal sanctions for fraudulent acts related to the Certificate of Origin (Form D).

### **SETTLEMENT OF DISPUTES**

#### **Article 22**

1. 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.
2. In the case where no settlement can be reached bilaterally, the issue concerned shall be decided by the Senior Economic Officials Meeting.
3. The ASEAN Protocol on Enhanced Dispute Settlement Mechanism 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.