



**MEMORANDUM OF UNDERSTANDING
BETWEEN THE GOVERNMENTS OF
THE PARTICIPATING MEMBER STATES OF
THE ASSOCIATION OF SOUTH-EAST ASIAN NATIONS
(ASEAN)
ON THE PILOT PROJECT FOR THE IMPLEMENTATION
OF
A REGIONAL SELF-CERTIFICATION SYSTEM**

PREAMBLE

The Governments of Brunei Darussalam, Malaysia and the Republic of Singapore:

RECALLING the Leaders decision to establish an ASEAN Economic Community by 2015 and the adoption of the ASEAN Economic Community Blueprint at the 13th ASEAN Summit on 20 November 2007, and that the ASEAN Economic Community will establish ASEAN as a single market and production base, making ASEAN more dynamic and competitive, as an economic region in which there is a free flow of goods, services, investment and a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities;

RECOGNISING the crucial role that rules of origin play in the achievement of a free flow of goods within the ASEAN single market;

CONSCIOUS of the agreed objective of putting in place rules of origin which are responsive to the dynamic changes in global production processes so as to facilitate trade and investment among ASEAN Member States, promote a regional production network, encourage development of Small-Medium Enterprises and the narrowing of

development gaps and promote the increased usage of the AFTA CEPT Scheme, as established under the ASEAN Economic Community Blueprint;

RECALLING that, to meet this objective, the Leaders agreed to simplify the Operational Certification Procedures and to ensure its continuous enhancement, including the introduction of facilitative processes such as the electronic processing of certificates of origin and the harmonisation or alignment of national procedures to the extent possible;

AGREEING that the ASEAN Trade in Goods Agreement signed on 26 February 2009 in Cha-am, Thailand, provides for the most comprehensive framework to realise the free flow of goods in the region;

RECALLING that Article 38 and Annexes 7 and 8 of the ASEAN Trade in Goods Agreement provide for the relevant modalities and procedures for the application of the preferential tariff treatment to goods falling within the ASEAN Free Trade Area; and

RECOGNISING the need to streamline the rules of origin procedures to facilitate the trade of ASEAN originating goods, including the introduction of a regional self-certification scheme, in line with the objectives of the ASEAN Economic Community Blueprint as discussed at the 22nd AFTA Council Meeting, and by the High Level Task Force on Economic Integration, the Coordinating Committee on the Implementation of the CEPT Scheme for AFTA (CCCA) and the ASEAN Task Force on Rules of Origin;

HAVE DECIDED to enter into a Memorandum of Understanding for purposes of introducing a pilot project for the implementation of a regional self-certification system ahead of the extension of such system to all Member States of the ASEAN Free Trade Area by 2012.

MEMORANDUM OF UNDERSTANDING

Article 1 Definitions

For the purposes of this Memorandum of Understanding (MOU):

1. "ASEAN" means the Association of Southeast Asian Nations, which comprises Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, Lao PDR, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam
2. "*Participating Member States*" are the Member States that have agreed to participate in the pilot project for the implementation of a regional self-certification scheme;
3. "*Agreement*" means the ASEAN Trade in Goods Agreement;
4. "*Exporter*" means a natural or juridical person located in the territory of a Participating Member State where a good is exported from by such a person;
5. "*Importer*" means a natural or juridical person located in the territory of a Participating Member State where a good is imported into by such a person;
6. "*Certified Exporter*" means an exporter duly authorised to make out Invoice Declarations on the origin of a good exported;

7. "*Invoice Declaration*" means a declaration on the origin, according to the model established, made out by a Certified Exporter on the origin of goods covered by the invoice in question;
8. "*Issuing Authority*" means the Government authority of the exporting Participating Member State designated to authorise certified exporters, notified to all the other Participating Member States in accordance with Annex I of this MOU; and
9. "*Certificate of Origin*" means of the Certificate of Origin (Form D) under Article 38 and Annex 7 of the Agreement.

Article 2

General Provisions

1. The Participating Member States agree to introduce a pilot project for the implementation of a regional self-certification system within the ASEAN Free Trade Area.
2. ASEAN Member States that are not Participating Member States can apply to become Participating Member States at any time, subject to the agreement of the Participating Member States at the level of their representatives to the Senior Economic Officials Meeting in line with the provisions of this MOU for the accession of new Participating Member States under paragraph 7 of Article 8.

Article 3

Obligations of the Participating Member States

Throughout the pilot project, Participating Member States shall accord to goods originating in the other Participating

Member States the preferential tariff treatment set out in Article 19 of the Agreement, upon submission of either:

- (a) A Certificate of Origin as set out in Article 38 and Annex 7 of the Agreement; or
- (b) An Invoice Declaration made out by a Certified Exporter, according to the procedures set out in Annex I of this MOU.

Article 4 Procedural Arrangements

Participating Member States agree that the pilot project will be carried out according to the modalities and the procedures set forth in Annex I of this MOU.

Article 5 Suspension

Each Participating Member State reserves the right for reasons of national security, national interest, public order or public health to suspend temporarily, either in whole or in part, the implementation of this MOU which suspension shall take effect immediately after notification has been given to the other Participating Member State through diplomatic channels or the ASEAN Secretariat.

Article 6 Confidentiality

1. Each Participating Member State shall undertake to observe the confidentiality and secrecy of documents, information and other data received from, or supplied to other Participating Member States during the period of the implementation of this MOU.

2. Each Participating Member State shall not:
 - (a) directly or indirectly disclose any confidential information provided by other Participating Member States ; nor
 - (b) use Confidential information provided by another Participating Member State for any purpose other than for those specified in this MOU without the prior authorisation of such Participating Member State.
3. Participating Member States agree that paragraphs 1 and 2, of this Article shall continue to be binding between them notwithstanding the suspension or termination of this MOU.

Article 7 Consultation/Negotiation

Any difference or dispute between the Participating Member States concerning the interpretation and/or implementation and/or application of the provisions of this MOU shall be settled amicably through consultation and/or negotiation between the participating Member States.

Article 8 Final Provisions

1. This MOU shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified true copy to each Participating Member State.
2. This MOU is subject to ratification or acceptance by all Participating Member States. The Instruments of ratification or letters of acceptance shall be deposited with the

Secretary-General of ASEAN, who shall promptly inform each Participating Member State of such deposit.

3. This MOU shall enter into force upon the deposit of Instruments of ratification or letters of acceptance by all Participating Member States with the Secretary-General of ASEAN.

4. This MOU shall remain in force for a period of 1 year, unless terminated earlier by agreement of all Participating Member States. The expiry or termination of this MOU shall not prejudice the rights and obligations of all Participating Member States established under this MOU before or up to the effective date of such expiry or termination except by agreement of all Participating Member States.

5. This MOU may be extended beyond its period of validity, as stipulated in paragraph 4 of this Article, with the agreement of all Participating Member States.

6. Any Participating Member State may propose any amendment to the provisions of this MOU. Such amendment shall be effected by written consent of all Participating Member States at the level of their representatives to the Senior Economic Officials Meeting and a certified true copy of the amended MOU shall be furnished to each Participating Member State. Any amendment to this MOU shall not prejudice the rights and obligations of the Participating Member States established under this MOU before or up to the effective date of such amendment except by agreement of all Participating Member States. The effective date of such amendment shall be the date of the written consent of all Participating Member States.

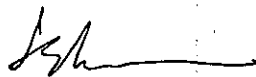
7. ASEAN Member States that are not Participating Member States can accede to this MOU at any time subject to the agreement of the Participating Member States at the level of their representatives to the Senior Economic Officials Meeting. This MOU shall enter into force for the acceding

ASEAN Member States upon the deposit of their instruments of ratification or letters of acceptance with the Secretary-General of ASEAN, who shall promptly inform each Participating Member State of such deposit.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this MOU on the pilot project for the implementation of a regional self-certification system within the ASEAN Free Trade Area.

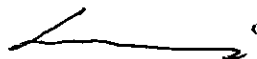
DONE at Da Nang, this Thirtieth day of August in the Year Two Thousand and Ten, in a single original copy in the English language.

For Brunei Darussalam:



LIM JOCK SENG
Second Minister of Foreign Affairs and Trade

For Malaysia:



DATO' SRI MUSTAPA MOHAMED

Minister of International Trade and Industry

For the Republic of Singapore:



LIM HNG KIANG

Minister for Trade and Industry

ANNEX I

OPERATIONAL CERTIFICATION PROCEDURE

For the purposes of implementing the Rules of Origin set out in Chapter 3 (hereinafter referred to as "ASEAN ROO") for the Pilot Project for the implementation of a regional self-certification system, the following operational procedures on

- (i) the issuance of the Certificate of Origin (Form D);
- (ii) the Certified Exporter regime and its inherent Invoice Declaration;
- (iii) the verification of Certificates of Origin (Form D) and Invoice Declarations; and
- (iii) 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) certified exporter means an exporter duly authorized to make out invoice declarations on the origin of a good exported;
- (d) invoice declaration means a declaration, according to the model duly established, made out by a certified exporter on an invoice or any other commercial document, which describes the goods concerned in sufficient detail to enable them to be identified, on the origin of goods covered by the document in question;
- (e) 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;

- (f) issuing authority means the Government authority of the exporting Member State designated to issue a Certificate of Origin (Form D) and to authorize certified exporters, notified to all the other Member States in accordance with this Annex;
- (g) competent authority means the Government authority of the Member State designated to exercise the rights under Rule 12A (2)(b), Rule 12C and Rule 18; and
- (h) 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; List of Certified Exporters

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.
3. Each Member State shall communicate to the ASEAN Secretariat, in soft copy format, (i) Legal name of the company; (ii) Registration of the company; (iii) Location of the Company; and (iv) Authorization code issued by the issuing authorities, including date of issuance and expiry date of the authorizations, immediately after their authorization. Withdrawal or suspension of authorizations should be provided in the same manner.
4. The ASEAN Secretariat shall promptly include the information in a database containing all Certified Exporters, which can be consulted online by Member States. Any Invoice Declaration made out by an exporter not included in the database 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 for the issuance of a Certificate of Origin

1. The producer and/or exporter – other than a Certified Exporter - of the good, or its authorised representative, shall, with a view to the issuance of a Certificate of Origin (Form D), 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

1. 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).
2. A Certified Exporter may, at his own discretion, apply for a certificate of origin (Form D) in place of making out invoice declaration.

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 12A Certified Exporter

1. The issuing authorities of the exporting Member State may authorise an exporter who makes shipments of products under the Agreement, hereinafter referred to as 'Certified Exporter', to make out Invoice Declarations with regard to the originating status of the goods concerned. An exporter seeking such authorisation must apply in writing and must offer to the satisfaction of the issuing authorities all guarantees necessary to verify the originating status of the goods for which an invoice declaration was made out.
2. The issuing authorities may grant the status of Certified Exporter subject to any conditions which they consider appropriate, including in any case the following:
 - (a) The exporter must grant the competent authorities access to records for the purpose of monitoring the use of the authorisation and of the verification of the correctness of declarations made out. The records and accounts must allow for the identification and verification of the originating status of goods for which an invoice declaration was made out, during at least three years from the date of making out the declaration in accordance with domestic laws and regulations;
 - (b) The exporter must undertake to make out Invoice Declarations only for goods for which he has all appropriate documents proving the origin status of the goods concerned at the time of making out the declaration;
 - (c) The exporter must undertake to ensure that the person or persons responsible for making out the Invoice Declarations in the undertaking know and understand the Rules of Origin as laid down in the Agreement;
 - (d) The exporter accepts the full responsibility for all Invoice Declarations made out on behalf of the company, including any misuse.
3. An authorisation shall be given in writing. The issuing authorities shall grant the Certified Exporter an authorisation number which must be included in the Invoice Declaration. They shall communicate the

authorisation granted to the ASEAN Secretariat, in conformity with Rule 2(3).

Rule 12 B

Invoice Declaration

1. The Certified Exporter shall, in the case of export of goods satisfying the origin criteria of the Agreement, put the following declaration on the invoice:

*"The exporter of the product(s) covered by this document (Certified Exporter No.....) declares that, except where otherwise clearly indicated, the products satisfy the Rules of Origin to be considered as ASEAN Originating Products under ATIGA (ASEAN country of origin:)
with origin criteria:"*

2. For the purpose of origin determination, in the events that the invoice made out by the certified exporter may not be available to the importer at the time of exportation, the invoice declaration can be made out by a certified exporter on any of the commercial documents as follows:

- i) Billing statements; or
- ii) Delivery order; or
- iii) Packing list

3. These documents should describe the goods in sufficient details to enable them to be identified for origin determination purposes.

4. The declaration must be signed by hand, with the addition of the name of the person.

Rule 12C

Monitoring and verification

The competent authorities shall monitor the proper use of the authorisation, including verification of the correctness of Invoice Declarations made out. Decisions on the frequency and depth of such actions should be risk-based. Furthermore, the competent authorities will act on retrospective verification requests by the customs authorities of the importing Member State, in conformity with Rule 18.

Rule 12D
Withdrawal of the authorisation

The issuing authorities may withdraw the authorisation at any time. They shall do so where the Certified Exporter no longer offers the guarantees referred to in Rule 12A(1), no longer fulfils the conditions referred to in Rule 12A(2) or otherwise abuses the authorisation. A withdrawal shall be immediately communicated to the ASEAN Secretariat, in conformity with Rule 2.

Rule 13
Presentation of the Certificate of Origin or the Invoice Declaration

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:

- (i) a Certificate of Origin (Form D) including supporting documents (i.e. invoices); or
- (ii) an Invoice Declaration made out by a Certified Exporter; or
- (iii) an Invoice Declaration made out by any exporter provided that the total value of the consignment does not exceed USD 200.00 FOB;

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 or the Invoice Declaration

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

- (a) The Certificate of Origin (Form D) and the Invoice Declaration shall be valid for a period of twelve (12) months for origin certification purposes, from the date of issuance or – in the case of the Invoice Declaration – making out, and must be submitted to the customs authorities of the importing Member State within that period.
- (b) Where the Certificate of Origin (Form D) or the Invoice Declaration 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) or the Invoice Declaration 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 other cases of belated presentation, the customs authorities in the importing Member State may accept such Certificate of Origin (Form D) or the Invoice Declaration provided that the goods have been imported before the expiration of the time limit.

Rule 15
Waiver of Proof 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 a Certificate of Origin (Form D) or an Invoice Declaration shall be waived and the use of a 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 errors, between the statements made in the Certificate of Origin (Form D) or in

the Invoice Declaration 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 document if it is duly established that the document 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 exporter applying for the issuance of a Certificate of Origin (Form D) and the Certified Exporter or non-certified exporter as referred to in Rule 13(iii) making out an Invoice Declaration 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) or the making out of the Invoice Declaration.

2. The application for Certificates of Origin (Form D) and for the authorization of Certified Exporters, and all documents related to such applications shall be retained by the competent authorities for not less than three (3) years from the date of issuance of the certificate or of the granting of the authorisation.

3. Information relating to the validity of the Certificate of Origin (Form D) and to the correctness of an Invoice Declaration shall be furnished upon request of the importing Member State 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) and Invoice Declarations purposes only.

Rule 18

Retroactive Check

The importing Member State may request the competent 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 competent 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 (6) 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) or the Invoice Declaration concerned and shall specify the reasons and any additional information suggesting that the particulars given on the said Certificate of Origin (Form D) or the Invoice Declaration may be inaccurate, unless the retroactive check is requested on a random basis;
- (b) The competent 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 competent 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 competent 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 or an Invoice Declaration made out by a Certified Exporter established in the exporting Member State;
- (c) A copy of the original commercial invoice in respect of the goods, where applicable; 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) or, in the case of a Certified Exporter, the Invoice Declaration, 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) or Invoice Declaration 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).

3. 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, the Certified Exporter may make out the Invoice Declaration on a document other than the invoice

Rule 24
Action against Fraudulent Acts

1. When it is suspected that fraudulent acts in connection with the Certificate of Origin (Form D) or the Invoice Declaration 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) and to the Invoice Declaration.