

ATTACHMENT A

REVISED OPERATIONAL CERTIFICATION PROCEDURES (OCP) FOR THE RULES OF ORIGIN FOR THE ASEAN-CHINA FREE TRADE AREA

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

DEFINITIONS

Rule 1

For the purposes of this Attachment:

‘Movement Certificate’ means a Certificate of Origin (Form E) issued by an intermediate exporting Party, based on the original Certificate of Origin (Form E) issued by the first exporting Party proving the origin status of the products in question;

‘Customs Authority’ means the competent authority that is responsible under the law of a Party for the Authority of customs laws and regulations¹;

‘Exporter’ means a natural or juridical person located in the territory of a Party from where a product is exported by such a person;

‘Importer’ means a natural or juridical person located in the territory of a Party into where a product is imported by such a person;

¹ Such laws and regulations administered and enforced by the Customs Authority of each Party concerning importation, exportation and transit of products as they relate to customs duties, charges or other taxes or prohibitions, restrictions and controls with respect to the movement of controlled items across the boundary of the Customs Authority of each Party.

'Issuing Authority' means any government authority or other entity authorised under the domestic laws, regulations and administrative rules of a Party to issue a Certificate of Origin (Form E).

ISSUING AUTHORITIES

Rule 2

The Certificate of Origin (Form E) shall be issued by the Issuing Authorities of the exporting Party.

Rule 3

a) Each Party shall inform all the other Parties of the names and addresses of its respective Issuing Authorities and shall provide specimen signatures and specimen of official seals, and correction stamps, if any, used by its Issuing Authorities.

b) The above information shall be provided by the contact points electronically to all the other Parties to the Agreement through the ASEAN Secretariat, to the extent possible, at least one month before they take effect. A Party shall promptly inform all the other Parties of any changes in names, addresses, or official seals in the same manner.

c) All Parties shall promptly provide confirmation that they have received the information to the ASEAN Secretariat, who will forward the compiled confirmation to the submitting Party.

Rule 4

For the purpose of verifying the conditions for preferential treatment, the Issuing Authorities shall have the right to call for any supporting documentary evidence or to carry out any checks considered appropriate.

If such right cannot be obtained through the existing domestic laws, regulations and administrative rules, it shall be inserted as a clause in the application form referred to in Rules 5 and 6 of this Attachment.

APPLICATIONS

Rule 5

a) The exporter and/or the manufacturer of the products which qualify for preferential treatment shall apply in writing to the Issuing Authorities requesting 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 which, by their nature, origin can be easily verified.

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

Rule 6

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 E) together with appropriate supporting documents proving that the products to be exported qualify for the issuance of a Certificate of Origin (Form E)².

² For China, a Chinese manufacturer can apply for a Certificate of Origin (Form E) in the case where the manufacturer needs to authorise other agencies to export on its behalf.

PRE-EXPORTATION EXAMINATION

Rule 7

The Issuing Authorities of each Party shall, to the best of their competence and ability, carry out proper examination of each application for the Certificate of Origin (Form E) to ensure that:

- a) the application and the Certificate of Origin (Form E) are duly completed in accordance with the requirements as defined in the overleaf notes of the Certificate of Origin (Form E), and signed by the authorised signatory;
- b) the origin of the product is in conformity with the Rules of Origin for the ACFTA;
- c) the other statements made in the Certificate of Origin (Form E) correspond to the supporting documentary evidence submitted;
- d) the description, quantity and weight of products, 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 E) shall be allowed subject to the domestic laws, regulations and administrative rules of the importing Party provided each item must qualify separately in its own right.

ISSUANCE OF CERTIFICATE OF ORIGIN (FORM E)

Rule 8

- a) The Certificate of Origin (Form E) must be on ISO A4 size white paper in conformity to the specimen shown in Appendix 1 of this OCP. It shall be filled out in English. The Certificate of Origin (Form E) shall comprise one (1) original and two (2) copies, namely, the

duplicate and triplicate copies.

b) For a Certificate of Origin (Form E) with multiple pages, the Parties shall use the attached Form shown in Appendix 1. The continuing page(s) shall bear the same signature, seal and reference number as those on the first page.

c) Each Certificate of Origin (Form E) shall contain a unique reference number and cover one or more goods under one consignment.

d) The original copy of the Certificate of Origin (Form E) shall be forwarded by the exporter to the importer for submission to the Customs Authority at the port or place of importation. The duplicate copy shall be retained by the Issuing Authority in the exporting Party. The triplicate copy shall be retained by the exporter.

e) In the case where a Certificate of Origin (Form E) is rejected by the Customs Authority of the importing Party, the said rejected Certificate of Origin (Form E) shall be marked accordingly in Box 4.

f) In the case where a Certificate of Origin (Form E) is not accepted, as stated in paragraph (e), the Customs Authority of the importing Party shall consider the clarifications made by the Issuing Authorities of the exporting Party and assess whether or not the Certificate of Origin (Form E) can be accepted for the granting of the preferential treatment. The clarification shall be detailed and exhaustive in addressing the grounds for denial of preferential treatment raised by the importing Party.

Rule 9

To implement the provisions of Article 2 of the Rules of Origin for the ACFTA, the Certificate of Origin (Form E) issued by the final exporting Party shall indicate the origin criteria or applicable percentage of ACFTA value content in Box 8.

Rule 10

Neither erasures nor superimposition shall be allowed on the Certificate of Origin (Form E). Any alteration shall be made by 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 E) and certified with official seals or correction stamps of the Issuing Authority. Unused spaces shall be crossed out to prevent any subsequent addition.

Rule 11

In principle, a Certificate of Origin (Form E) shall be issued prior to or at the time of shipment. In exceptional cases where the Certificate of Origin (Form E) has not been issued by the time of shipment or no later than three (3) days from the date of shipment, at the request of the exporter, the Certificate of Origin (Form E) shall be issued retroactively in accordance with the domestic laws, regulations and administrative rules of the exporting Party within twelve (12) months from the date of shipment, in which case it is necessary to indicate "ISSUED RETROACTIVELY" in Box 13. In such cases, the importer claiming preferential treatment for the product may, subject to the domestic laws, regulations administrative rules of the importing Party, provide the Customs Authority of the importing Party with the Certificate of Origin (Form E) issued retroactively.

Rule 12

- a) The Issuing Authorities of the intermediate Party within the ACFTA may issue a Movement Certificate (MC), if an application is made by the exporter while the product is passing through the territory, provided that:
- (i) the importer of the intermediate Party and the exporter who applies for the MC in the intermediate Party are the same;
 - (ii) a valid original Certificate of Origin (Form E) issued by the first

exporting Party is presented;

- (iii) information on the MC includes the name of the Issuing Authority of the Party which issued the original Certificate of Origin (Form E), date of issuance and reference number. The indicated invoice value shall be the invoice value of the products exported from the intermediate Party; and
- (iv) the total quantity of each product covered in the MC does not exceed the total quantity of each product covered in the original Certificate of Origin (Form E).

b) In the case of China, the MC shall be issued by Customs Authority. In the case of ASEAN Member States, the MC shall be issued by the Issuing Authorities.

c) The validity of the MC shall have the same end-date as the original Certificate of Origin (Form E).

d) The product which is to be re-exported using the MC shall be under the control of the Customs Authority of the intermediate Party. The products shall not undergo any further processing in the intermediate Party, except for repacking and logistics activities consistent with Article 8 of the Rules of Origin for the ACFTA³.

e) The verification procedure in Rule 18 of this Attachment shall also apply to the MC. In particular, the Customs Authority of the importing Party may simultaneously request the original exporting Party and the intermediate Party to provide information regarding the original Certificate of Origin (Form E) and the MC respectively, such as, the first exporter, last exporter, reference number, description of the products, country of origin and the port of discharge, within thirty (30) days from the date of receipt of the request, as the case maybe.

³ The products under control of the Customs Authority of the intermediate Party shall include products that remain in free trade zones or locations approved by the said Customs Authority.

Rule 13

In the event of theft, loss or destruction of a Certificate of Origin (Form E), the exporter may apply in writing to the Issuing Authority which issued it for a certified true copy of the original and the triplicate to be made on the basis of the export documents in its possession bearing the endorsement of the words "CERTIFIED TRUE COPY" in Box 12. The certified true copy of the original Certificate of Origin (Form E) shall bear the date of the original Certificate of Origin (Form E). The certified true copy of the original Certificate of Origin (Form E) shall be issued no later than one (1) year from the date of issuance of the original Certificate of Origin (Form E) and on condition that the exporter provides to the relevant Issuing Authority the triplicate copy of the Certificate of Origin (Form E) or any proof of the issuance of the original Certificate of Origin (Form E).

PRESENTATION

Rule 14

The original Certificate of Origin (Form E) shall be submitted to the Customs Authority at the time of import declaration for the products concerned claiming for preferential treatment in accordance with the domestic laws, regulations and administrative rules of the importing Party.

Rule 15

The Certificate of Origin (Form E) shall remain valid and must be submitted to the Customs Authority of the importing Party within one (1) year from the date of its issuance by the Issuing Authority of the exporting Party.

Rule 16

(a) In the case of the consignment of products originating in the exporting Party and not exceeding US\$ 200.00 FOB, the production of a Certificate of Origin (Form E) shall be waived and the use of a simplified declaration by the exporter that the products in question originated in the exporting Party shall be accepted. Products sent through the post not exceeding US\$200.00 FOB shall also be similarly treated.

(b) Waivers provided for in paragraph (a) shall not be applicable when it is established by the customs authorities of the importing Party that the importation forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the submission of a Certificate of Origin or Certificates of Origin.

Rule 17

(a) Where the ACFTA origin of the product is not in doubt, unsubstantial discrepancies such as tariff classification differences between the statements made in the Certificate of Origin (Form E) and those made in the documents submitted to the Customs Authority 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 (Form E), if it does in fact correspond to the products submitted.

(b) In cases where there are only unsubstantial discrepancies as indicated in paragraph (a) between the exporting Party and importing Party, the products shall be released without any delay subject to administrative measures, such as imposition of customs duties at the higher applied rate or its equivalent amount of deposit. Once the discrepancies have been resolved, the correct ACFTA rate is to be applied and any overpaid duty shall be refunded, in accordance with the domestic laws, regulations and administrative rules of the importing Party.

(c) For multiple items declared under the same Certificate of Origin (Form E), 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 E). Rule 18(a)(ii) of this Attachment may be applied to the problematic items.

Rule 18

(a) The Customs Authority of 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.

- (i) The request shall be made in writing, accompanied by a copy of the Certificate of Origin (Form E) and shall specify the reasons and any additional information suggesting that the particulars given on the said Certificate of Origin (Form E) may be inaccurate, unless the retroactive check is requested on a random basis.
- (ii) The Customs Authority of the importing Party may suspend the granting of preferential treatment while awaiting the result of the verification. However, it may release the products to the importer subject to any administrative measures deemed necessary, including imposition of customs duties at the higher applied rate or equivalent amount of deposit, provided that they are not held to be subject to import prohibition or restriction and there is no suspicion of fraud.
- (iii) The Customs Authority or the Issuing Authority of the exporting Party receiving a request for retroactive check shall respond to the request promptly and reply not later than ninety (90) days after the receipt of the request. The Customs Authority or the

Issuing Authority of the exporting Party may request, in writing, an extension of time of up to ninety (90) days as long as the extension request is made within the initial ninety (90) day - period.

(b) If the Customs Authority of the importing Party is not satisfied with the outcome of the retroactive check, it may, in exceptional cases, request verification visits to the exporting Party.

(i) Prior to the conduct of a verification visit pursuant to the provisions herein, the Customs Authority of the importing Party shall notify the competent authority of the exporting Party with the aim of mutually agreeing on the conditions and means of the verification visit.

(ii) The verification visit shall be conducted not later than sixty (60) days after receipt of the notification pursuant to sub-paragraph (b)(i).

(c) The verification process, including the retroactive check and verification visit, shall be carried out and its results communicated to the Customs Authority and/or the Issuing Authority of the exporting Party within a maximum of one hundred and eighty (180) days after the receipt of the request. In the event that an extension request has been made pursuant to sub-paragraph a(iii), the verification process, including the retroactive check and verification visit, shall be carried out and its results communicated to the Customs Authority and/or the Issuing Authority of the exporting Party shall be extended from one hundred and eighty (180) days to a maximum of two hundred and seventy (270) days after the receipt of the request. While awaiting the results of the verification visit, sub-paragraph (a)(ii) on the suspension of preferential treatment shall be applied.

(d) All exchanges of information regarding the verification request should be done only through the respective contact points of the Parties.

(e) The preferential treatment may be denied when the exporting Party fails to respond to the request to the satisfaction of the Customs Authority of the importing Party in the course of a retroactive check or verification process, as the case may be, within the time frame for verification specified in paragraphs (a), (b) and (c).

(f) Each Party shall maintain the confidentiality of the information and documents provided by the other Party in the course of the verification process. Such information and documents shall not be used for other purposes, including being used as evidence in administrative and judicial proceedings, without the explicit written permission of the Party providing such information.

RECORD KEEPING REQUIREMENT

Rule 19

(a) The application for the Certificate of Origin (Form E) and all documents related to such application shall be retained by the Issuing Authority for not less than three (3) years from the date of issuance.

(b) Information relating to the validity of the Certificate of Origin (Form E) shall be furnished upon request by the importing Party.

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

(d) For the purposes of the verification process/retroactive check pursuant to Rule 18 of this Attachment, the producer and/or exporter applying for the issuance of a Certificate of Origin (Form E) shall, subject to the domestic laws, regulations and administrative rules of the exporting Party, keep the supporting records for the said application for not less than three (3) years from the date of issuance of the Certificate of Origin (Form E).

SPECIAL CASES

Rule 20

When the destination 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 Authority in the specified importing Party, the Certificate of Origin (Form E) shall, by a written application of the importer, be endorsed to address the situation. The original shall be kept by the Customs Authority and the photocopy of the Certificate of Origin (Form E) shall be provided to the importer.
- b) If the changing of destination occurs during transportation to the importing Party as specified in the Certificate of Origin (Form E), the exporter shall apply in writing, accompanied by the issued Certificate of Origin (Form E), for the issuance of a new Certificate of Origin (Form E).

Rule 21

For the purpose of implementing Article 8 of the Rules of Origin for the ACFTA, where transportation is effected through the territory of one or more non-ACFTA Parties, the following shall be submitted to the Customs Authority of the importing Party:

- a) A through Bill of Lading issued in the exporting Party;

- b) A Certificate of Origin (Form E) issued by the relevant Issuing Authorities of the exporting Party;
- c) A copy of the original commercial invoice in respect of the product; and
- d) Supporting documents evidencing that the requirements of Article 8.2(b) sub-paragraphs (i), (ii) and (iii) of the Rules of Origin for the ACFTA are being complied with.

Rule 22

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

- (i) an exporter has dispatched those products from the territory of the exporting Party to another Party where the exhibition is held and has exhibited them there;
- (ii) the exporter has sold the products 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 (Form E) must be submitted to the Customs Authority of the importing Party. The name and address of the exhibition must be indicated, a certificate issued by the Issuing Authority of the Party where the exhibition took place together with supporting documents prescribed

in Rule 21(d) of this Attachment 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 a view to the sale of foreign products and where the products remain under customs control during the exhibition.

Rule 23

The Customs Authority of the importing Party shall accept a Certificate of Origin (Form E) in cases where the sales invoice is issued either by a company located in a third country or by an ACFTA exporter for the account of the said company, provided that the product meets the requirements of the Rules of Origin for the ACFTA. The invoice-issuing third party can be an ACFTA Party or non-ACFTA Party. The original invoice number or the third party invoice number shall be indicated in Box 10 of the Certificate of Origin (Form E), the exporter and consignee must be located in the Parties and the third party invoice shall be attached to the Certificate of Origin (Form E) when presenting the said Certificate of Origin (Form E) to the Customs Authority of the importing Party.

ACTION AGAINST FRAUDULENT ACTS

Rule 24

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

(b) Each Party shall be responsible for providing legal sanctions for

fraudulent acts committed in relation to the Certificate of Origin (Form E) in accordance with its domestic laws, regulations and administrative rules.

Rule 25

In the case of a dispute concerning origin determination, classification of products or other matters, the Government authorities concerned in the importing and exporting Parties shall consult each other with a view to resolving the dispute, and the result shall be reported to the other Parties for information.

CONTACT POINTS

Rule 26

Each Party shall designate contact points to ensure the effective and efficient implementation of this Attachment.