

**PROTOCOL TO AMEND THE AGREEMENT ON
ASEAN PREFERENTIAL TRADING ARRANGEMENTS**

The Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand, Member States of the Association of South East Asian Nations (ASEAN);

NOTING the Agreement on ASEAN Preferential Trading Arrangements (PTA) signed in Manila on 24 February 1977;

RECALLING the decision of the Sixth ASEAN Free Trade Area (AFTA) Council in Phuket, Thailand on 27 April 1995 to phase in all PTA products into the CEPT Scheme;

DESIRING to amend the Rules of Origin and its Operational Certification Procedures in the Agreement on ASEAN Preferential Trading Arrangements in accordance with Article 17 (3) of the Agreement which provides for the amendment to the Agreement, so as to implement this decision;

HAVE AGREED AS FOLLOWS:

Annex 1 of the Agreement on "Rules of Origin for the ASEAN Preferential Trading Arrangements", previously amended by the Protocol on Improvements on Extension of Tariff Preferences under the ASEAN Preferential Trading Arrangements signed in Manila on 15 December 1987, and the "Operational Certification Procedures for the Rules of Origin of the ASEAN Preferential Trading Arrangements" shall be substituted with the "Rules of Origin for the Common Effective Preferential Tariff (CEPT)" Scheme for the ASEAN Free Trade Area and the "Operational Certification Procedures for the Rules of Origin of the ASEAN Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area" set out in ANNEX 1 and ANNEX 2 respectively which shall form an integral part of this Protocol.

This Protocol shall enter into force upon the deposit of instruments of ratification or acceptance by all signatory governments with the Secretary-General of ASEAN which shall be done not later than 1 January 1996.

This Protocol shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish certified copies thereof to all Member Countries.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed the Protocol to Amend the Agreement on ASEAN Preferential Trading Arrangements.

DONE at *Bangkok*, this **15th day of December 1995** in a single copy in the English Language.

ANNEX 1

RULES OF ORIGIN FOR THE CEPT

In determining the origin of products eligible for the CEPT Scheme under the Agreement on the CEPT, the following Rules shall be applied:

Rule 1: Originating Products

Products under the CEPT imported into the territory of a Member State from another Member State which are consigned directly within the meaning of Rule 5 hereof, shall be eligible for preferential concessions if they conform to the origin requirements under any one of the following conditions:

- (a) Products wholly produced or obtained in the exporting Member State as defined in Rule 2; or
- (b) Products not wholly produced or obtained in the exporting Member State, provided that the said products are eligible under Rule 3 or Rule 4.

Rule 2: Wholly Produced or Obtained

Within the meaning of Rule 1(a), the following shall be considered as wholly produced or obtained in the exporting Member State:

- (a) Mineral products extracted from its soil, its water or its seabeds;
- (b) *Agricultural products harvested there;*
- (c) Animals born and raised there;
- (d) Products obtained from animals referred to in paragraph (c);
- (e) Products obtained by hunting or fishing conducted there;
- (f) Products of sea fishing and other marine products taken from the sea by its vessels;
- (g) Products processed and/or made on board its factory ships exclusively from products referred to in paragraph (f) above;
- (h) Used articles collected here, fit only for the recovery of raw materials;
- (i) *Waste and scrap resulting from manufacturing operations conducted there; and*
- (j) Goods produced there exclusively from the products referred to in paragraph (a) to (i) above.

Rule 3: Not Wholly Produced or Obtained

- (a) (i) A product shall be deemed to be originating from ASEAN Member States, if at least 40% of its content originates from any Member States.
 - (ii) Subject to Sub-paragraph (i) above, for the purpose of implementing the provisions of Rule 1(b), products worked on and processed as a result of which the total value of the materials, parts or produce originating from non-ASEAN countries or of undetermined origin used does not exceed 60% of the FOB value of the product produced or obtained and the final process of the manufacturer is performed within the territory of the exporting Member State.
- (b) The value of the non-originating materials, parts or produce shall be:
- (i) The CIF value at the time of importation of the products or importation can be proven; or
 - (ii) The earliest ascertained price paid for the products of undetermined origin in the territory of the Member State where the working or processing takes place.

The formula for 40% ASEAN Content is as follows:

$$\frac{\text{Value of Imported Non-ASEAN Materials, Parts of Produce} + \text{Value of Undetermined Origin Materials, Parts or Produce}}{\text{FOB Price}} \times 100\% < 60\%$$

Rule 4: Cumulative Rule of Origin

Products which comply with origin requirements provided for in Rule 1 and which are used in a Member State as inputs for a finished product eligible for preferential treatment in another Member States shall be considered as products originating in the Member State where working or processing of the finished product has taken place provided that the aggregate ASEAN content of the final product is not less than 40%.

Rule 5: Direct Consignment

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

- (a) If the products are transported passing through the territory of any other ASEAN country;
- (b) If the products are transported without passing through the territory of any other non-ASEAN country;
- (c) The products whose transport involves transit through one or more intermediate non-ASEAN countries 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 6: Treatment of Packing

- (a) Where for purposes of assessing customs duties a Member State treats products separately from their packing, it may also, in respect of its imports consigned from another Member State, 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 ASEAN region when determining the origin of the products as a whole.

Rule 7: 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 Member State and notified to the other Member States in accordance with the Certification Procedures to be developed and approved by the Senior Economic Officials Meeting (SEOM).

Rule 8: Review

These rules may be reviewed as and when necessary upon request of a Member State and may be open to such modifications as may be agreed upon by the Council of Ministers.

ANNEX 2

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

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

Authorities

Rule 1

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

Rule 2

- (a) The Member State shall inform every other Member State of the names and addresses of the Government authorities issuing the Certificate of Origin and shall provide specimen signatures and specimen of officials seals used by the Government authorities.
- (b) The above information and specimens shall be provided to every other Member State 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 manufacturer and/or exporter of the products qualified for preferential treatment shall apply in writing to the relevant Government authorities requesting for the pre-exportation verification of the origin of the products. The result of the verification, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in verifying the origin of the said products to be exported thereafter. The pre-exportation verification may not apply to the products of which, by their nature, origin can be easily verified.

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

Original	-	light violet
Duplicate	-	orange
Triplicate	-	orange
Quadruplicate	-	orange
- (c) Each Certificate of Origin shall bear a reference number separately given by each place or office of issuance.

- (d) The Original copy shall be forwarded, together with the triplicate, by the exporter to the importer for submissions to the Customs Authority at the port or place of importation. The duplicate shall be retained by the issuing authority in the exporting Member State. The quadruplicate shall be retained by the exporter. After the importation of the products, the triplicate shall be marked accordingly in box 4 and returned to the issuing authority within a reasonable period of time.

Rule 8

To implement the provisions of Rule 3 and Rule 4 of the Rules of Origin, the Certificate of Origin issues by the final exporting Member State shall indicate the relevant rules and applicable percentage of ASEAN content in Box 8.

Rule 9

Neither erasures nor superimpositions shall be allowed on the Certificate of Origin. Any alteration shall be made by striking out the erroneous materials and making any addition required. Such alterations shall be approved by 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 Member State at the time of exportation or soon thereafter whenever the products to be exported can be considered originating in that Member State within the meaning of the Rules of Origin.
- (b) 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 out on the basis of the export documents in their possession bearing the endorsement of the words "CERTIFIED TRUE COPY" in Box 12. This copy shall bear the date of issuance of the original Certificate of Origin. The *certified true copy* of a Certificate of Origin shall be issued 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 must be submitted to the Customs Authorities of the importing Member State within four (4) months from the date of endorsement by the relevant Government authorities of the exporting Member State;
- (b) Where the products pass through the territory of one or more non-ASEAN countries in accordance with the provisions of Rule 5(c) of the 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 Member State after the expiration of the time-limit for its submission, such Certificate is still to be accepted when failure to observe the time-limit results from force majeure or other valid causes beyond the control of the exporter; and
- (d) In all cases, the relevant Government authorities in the importing Member State may accept such Certificate of Origin provided that the products have been imported before the expiration of the time-limit of the said Certificate of Origin.

Rule 14

In the case of consignments of products originating in the exporting Member State and not exceeding US\$200.00 FOB, the production of 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 Member State 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 Member State for the purpose of carrying out the formalities for importing the products shall not ipso-facto invalidate the Certificate of Origin, if it does in fact correspond to the products submitted.

Rule 16

- (a) the importing Member State may request a retroactive check at random and/or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the products in question or of certain parts thereof.
- (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 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 Government authorities receiving a request for retroactive check shall respond to the request promptly and reply within three (3) months after the receipt of the request.

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

Special Cases

Rule 18

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

- (a) If the products have already been submitted to the Customs Authorities in the specified importing Member State, the Certificate of Origin shall, by a written application of the importer, be endorsed to this effect for all or parts of

products by the said authorities and the original returned to the importer. The triplicate shall be returned to the issuing authorities.

- (b) If the changing of destination occurs during transportation to the importing Member State as specified in the Certificate of Origin, the exporter shall apply in writing, accompanied with the issued Certificate of Origin, for the new issuance for all or parts of products.

Rule 19

For the purpose of implementing Rule 5(c) of the Rules of Origin, where transportation is effected through the territory of one or more non-ASEAN countries, the following shall be produced to the Government authorities of the importing Member State:

- (a) A through Bill of Lading issued in the exporting Member State;
- (b) A Certificate of Origin issued by the relevant Government authorities of the exporting Member State;
- (c) A copy of the original commercial invoice in respect of the product; and
- (d) Supporting documents in evidence that the requirements of Rule 5(c) subparagraphs (i), (ii) and (iii) of the Rules of Origin are being complied with.

Rule 20

- (a) Products sent from an exporting Member State for exhibition in another country and sold during or after the exhibition for importation into a Member State shall benefit from the CEPT Scheme on the condition that the products meet the requirements of the Rules of Origin provided that it is shown to the satisfaction of the relevant Government authorities of the importing Member State that:
 - (i) an exporter has despatched those products from the territory of the exporting Member State 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 Member State;
 - (iii) 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.
- (b) For the purpose of implementing the above provisions, the Certificate of Origin must be produced to the relevant Government authorities of the importing Member State. The name and address of the exhibition must be indicated. As an evidence for the identification of the products and the conditions under

which they were exhibited, a certificate issued by the relevant Government authorities of the country where the exhibition took place together with supporting documents prescribed in Rule 19(d) may be required.

- (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 cooperate in the action to be taken in the respective State against the persons involved.
- (b) Each Member State shall be responsible for providing legal sanctions for fraudulent acts related to Certificate of Origin.

Settlement of Disputes

Rule 22

- (a) In the case of a dispute concerning origin determination, classification of products or other matters, the Government authorities concerned in the importing and exporting Member States shall consult each other with a view to resolving the dispute, and the result shall be reported to the other Member States for information.
- (b) In the case of where no settlement can be reached bilaterally, the issue concerned shall be decided by the SEOM.