



18 September 2020
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WARTA KERAJAAN PERSEKUTUAN

FEDERAL GOVERNMENT GAZETTE

PERINTAH DUTI KASTAM
(BARANG-BARANG BERASAL DARI NEGERI-NEGERI ASEAN)
(TATANAMA TARIF BERHARMONIS ASEAN DAN
PERJANJIAN PERDAGANGAN BARANGAN ASEAN)
(PINDAAN) (NO. 3) 2020

*CUSTOMS DUTIES
(GOODS OF ASEAN COUNTRIES ORIGIN)
(ASEAN HARMONISED TARIFF NOMENCLATURE AND
ASEAN TRADE IN GOODS AGREEMENT) ORDER
(AMENDMENT) (NO. 3) 2020*

DISIARKAN OLEH/
PUBLISHED BY
JABATAN PEGUAM NEGARA/
ATTORNEY GENERAL'S CHAMBERS

AKTA KASTAM 1967

PERINTAH DUTI KASTAM (BARANG-BARANG BERASAL DARI NEGERI-NEGERI ASEAN)
(TATANAMA TARIF BERHARMONIS ASEAN DAN
PERJANJIAN PERDAGANGAN BARANGAN ASEAN) (PINDAAN) (NO. 3) 2020

PADA menjalankan kuasa yang diberikan oleh subseksyen 11(1) Akta Kastam 1967 [*Akta 235*], Menteri membuat perintah yang berikut:

Nama dan permulaan kuat kuasa

1. (1) Perintah ini bolehlah dinamakan **Perintah Duti Kastam (Barang-Barang Berasal dari Negeri-Negeri ASEAN) (Tatanama Tarif Berharmonis ASEAN dan Perjanjian Perdagangan Barangan ASEAN) (Pindaan) (No. 3) 2020**.

(2) Perintah ini mula berkuat kuasa pada 20 September 2020.

Pindaan Jadual Pertama

2. Perintah Duti Kastam (Barang-Barang Berasal dari Negeri-Negeri ASEAN) (Tatanama Tarif Berharmonis ASEAN dan Perjanjian Perdagangan Barangan ASEAN) 2017 [*P.U. (A) 100/2017*] dipinda dalam Jadual Pertama—

(a) dengan menggantikan Artikel 38 dengan Artikel yang berikut:

**“Article 38
Proof of Origin**

A claim that a good shall be accepted as eligible for preferential tariff treatment shall be supported by a Proof of Origin in accordance with the Operational Certification Procedures as set out in Annex 8.”; dan

(b) dengan menggantikan Annex 8, dengan Annex yang berikut:

“ANNEX 8**OPERATIONAL CERTIFICATION
PROCEDURE FOR THE RULES OF
ORIGIN UNDER CHAPTER 3**

For the purposes of implementing the Rules of Origin set out in Chapter 3 of this Agreement, the following operational procedures on the issuance and verification of the Proof of Origin and other related administrative matters shall be observed.

Rule 1**Definitions**

- (a)* **ASW** means ASEAN Single Window as defined in Article 5(a) of the PLF;
- (b)* **Back-to-back Proof of Origin** means a Proof of Origin issued by an intermediate exporting Member State based on the Proof of Origin issued by the first exporting Member State;
- (c)* **Certified Exporter (CE)** means an exporter duly authorised to make out an Origin Declaration on the origin of a good exported;
- (d)* **Competent Authority** means the Government authority of the exporting Member State designated to authorise CEs;
- (e)* **Electronic Certificate of Origin (e-Form D)** means a Certificate of Origin (Form D) that is structured in accordance with the ATIGA e-Form D Process Specification and Message Implementation Guideline, and is transmitted electronically between Member States via the ASW in accordance with the security provisions specified in Article 9 of the PLF;

- (f)* **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;
- (g)* **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;
- (h)* **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 Annex;
- (i)* **NSW** means National Single Window as defined in Article 5(c) of the PLF;
- (j)* **Origin Declaration** means a declaration on the origin of the goods exported made by a CE in accordance with Rule 12 B;
- (k)* **PLF** means the Protocol on the Legal Framework to Implement the ASEAN Single Window done at Ha Noi, Viet Nam on 4 September 2015;
- (l)* **Producer** means a natural or juridical person who carries out production, as set out in Article 25(j) of this Agreement, in the territory of a Member State; and
- (m)* **Proof of Origin** means a document which certifies that the goods exported meets the rules of origin provisions set out in Chapter 3 of this Agreement.

Rule 1A

Proof of Origin

Proof of Origin may be in the form of:

- (a)* Certificate of Origin (Form D);

- (b) Electronic Certificate of Origin (e-Form D); or
- (c) Origin Declaration.

Rule 2

Specimen Signatures and Official Seals of the Issuing Authority and ASEAN-wide Self-Certification Database

1. Each Member State shall provide a list of the names, addresses, specimen signatures and specimen of official seals of its Issuing Authority, 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 Authority, 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. Notwithstanding paragraphs 1 and 2, where a Member State only issues Electronic Certificates of Origin (e-Form D), that Member State need not provide a list of specimen signatures and specimen of official seals of its Issuing Authority.
4. Immediately after the grant of CE status, each Member State shall promptly include the following in the ASEAN-wide Self-Certification database:
 - (a) Legal name and address of the company;
 - (b) CE authorisation Code;

- (c) Issuance date and expiry date, if applicable, of CE authorisation;
- (d) List of products subject of the authorisation, including product description HS in six digit or AHTN Code/s¹ ; and
- (e) List of authorised signatories and their respective specimen signatures, not exceeding ten (10)² persons per company³ .

Any change in subparagraphs (a) to (e) above shall be promptly included in the same manner. Withdrawal or suspension of the authorisation shall also be included in the same manner.

5. The ASEAN Secretariat shall be the custodian of the ASEAN-wide Self-Certification database, which can be accessed online by Member States.
6. Any Origin Declaration made out by an exporter or signatory not included in the database or for a product not included in the database shall not be honoured by the receiving Member State.

¹ The necessity of retaining this requirement is subject to review after two (2) years from the date of implementation of the ASEAN- wide Self-Certification.

² The necessity of retaining this requirement will be reviewed after two (2) years from the date of implementation of the ASEAN-wide Self-Certification.

³ The necessity of retaining this requirement is subject to review after two (2) years from the date of implementation of the ASEAN- wide Self-Certification.

Rule 3

Supporting Documents

1. For the purposes of determining originating status, the Issuing Authority or Competent Authority shall have the right to request for supporting documentary evidence or to carry out check(s) considered appropriate in accordance with the respective laws and regulations of a Member State.

2. Member States are encouraged to allow the submission of electronic supporting documents, if available, to carry out check(s) related to Proof of Origin, considered appropriate in accordance with the respective laws and regulations of a Member State.

Rule 4

Pre-exportation Examination

1. The producer and/or exporter, or its authorised representative, shall apply to the Issuing Authority or Competent Authority for the issuance of a Proof of Origin or as a CE, requesting pre-exportation examination of the origin of the good or CE status, in accordance with the Member State's laws and regulations. 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 in determining the originating status of the good.

Rule 5

Application for Certificate of Origin (Form D)

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 CE may, at his own discretion, apply for a Certificate of Origin (Form D) in place of making out an Origin Declaration.

Rule 6

Examination of Application for a Certificate of Origin (Form D)

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 with 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 authorised signature and official seal of the issuing authority. Such signature and seal may be applied manually or electronically⁴.
5. The original copy shall be forwarded by the exporter to the importer for submission to the customs authority or relevant Government authorities 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.

⁴ Signature and seal applied electronically does not mean digital signature. A Member State's acceptance of the signature and seal applied electronically is subject to its laws and regulations.

Rule 8

Declaration of Origin Criterion in the Certificate of Origin (Form D)

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.

Rule 9

Treatment of Erroneous Declaration in the Certificate of Origin (Form D)

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 Authority. 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 (Form D)

1. Subject to the submission of all documentary requirements, the Certificate of Origin (Form D) shall be issued by the Issuing Authority of the exporting Member State prior to or at the time of shipment or soon thereafter but not more than three (3) days from the declared shipment date, whenever the good 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 Proof of Origin

1. The Issuing Authority of the intermediate Member State may issue a back-to-back Certificate of Origin (Form D) if an application is made by the exporter, provided that:

- (a) a valid original Proof of Origin is presented. In the case where no original Proof of Origin is presented, its certified true copy shall be presented;
- (b) the back-to-back Certificate of Origin (Form D) issued should contain some of the same information as the original Proof of Origin. In particular, every column in the back-to-back Certificate of Origin (Form D) 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 (Form D);
- (c) for partial export shipments, the partial export value shall be shown instead of the full value of the original Proof of Origin. The intermediate Member State will ensure that the total quantity re-exported under the partial shipment does not exceed the total quantity of the Proof of Origin from the first Member State when approving the back-to-back Certificate of Origin (Form D) 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 Proof of Origin be submitted to their respective customs authority;
- (e) verification procedures as set in Rules 18 and 19 are also applies to a Member State issuing the back-to-back Certificate of Origin (Form D);
- (f) information on the back-to-back Certificate of Origin (Form D) includes the date of issuance and reference number of the original Proof of Origin. Such information shall be indicated in Box 7 of the back-to-back Certificate of Origin (Form D).

2. A CE may make out a Back-to-back Origin Declaration provided that:
- (a)* the said CE has a valid original Proof of Origin from the first exporting Member State. In the case where no original Proof of Origin is available, its certified true copy shall be used;
 - (b)* the back-to-back Origin Declaration made out should contain some of the same information as the original Proof of Origin. The FOB price of the intermediate Member State should also be reflected in the back-to-back Origin Declaration;
 - (c)* for partial export shipments, the partial export value shall be shown instead of the full value of the original Proof of Origin. The CE making out a back- to-back Origin Declaration will ensure that the total quantity re-exported under the partial shipment does not exceed the total quantity of the original Proof of Origin;
 - (d)* verification procedures as set out in Rules 18 and 19 are also applied to a Member State issuing the back-to-back Origin Declaration;
 - (e)* information on the back-to-back Origin Declaration includes the date of issuance and reference number of the original Proof of Origin;
 - (f)* the CE making out the back-to-back Origin Declaration should be a CE authorised to make out Origin Declarations for the same goods.

Rule 12**Loss of the Certificate of Origin (Form D)**

In the event of theft, loss or destruction of a Certificate of Origin (Form D), the exporter may apply in writing to the Issuing Authority 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 (Form D). 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 Competent Authority 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 Origin Declarations with regard to the originating status of the goods concerned. An exporter seeking such authorisation must apply in writing or electronically and must offer to the satisfaction of the Competent Authority all guarantees necessary to verify the originating status of the goods for which an Origin Declaration was made out.
2. The Competent Authority may grant the status of CE subject to any conditions which they consider appropriate, including in any case the following:
 - (a) the exporter is duly registered in accordance with the laws and regulations of the exporting Member State;
 - (b) the exporter must undertake to ensure that the authorised signatories responsible for making out the Origin Declarations,

in the undertaking, know and understand the Rules of Origin as laid down in the Agreement;

- (c) the exporter should have a satisfactory level of experience in export in accordance with the laws and regulations of the exporting Member State;
- (d) the exporter has no record of any Rules of Origin fraud, in accordance with the laws and regulations of the exporting Member State;
- (e) the exporter must have a good compliance measured by risk management of the Competent Authority of the exporting Member State;
- (f) the exporter, in the case of a trader, must have a “manufacturer’s declaration” indicating the origin of the product to be subject to self-certification and readiness of the manufacturer to cooperate in retroactive check and verification visit should the need arise; and
- (g) the exporter must have a sound bookkeeping and record-keeping system, in accordance with the laws and regulations of the exporting Member State.

3. An authorisation shall be given in writing. The Competent Authority shall grant the CE an authorisation code which must be included in the Origin Declaration. Member States shall promptly include the information on the authorisation granted in the ASEAN-wide Self-Certification database, in conformity with Rule 2(4).

4. A CE shall have the following obligations:
 - (a) grant the Competent Authority access to records and premises for the purpose of monitoring the use of 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 Origin Declaration was made out, during at least three (3) years from the date of making out the declaration in accordance with the laws and regulations of the exporting Member State;
 - (b) make out Origin Declarations only for goods for which the CE has been authorised to make out an Origin Declaration and for which the CE has all appropriate documents proving the originating status of the goods concerned at the time of making out the declaration;
 - (c) continue to comply with the conditions set out in Paragraph 2 of this Rule;
 - (d) cooperate in retroactive checks and verification visits;
 - (e) accept full responsibility for all Origin Declarations made, including any misuse; and
 - (f) promptly inform the Competent Authority of any changes related to the information submitted under Rule 2(4) of this Annex.

Rule 12B
Origin Declaration

1. The Origin Declaration shall contain the data requirements listed in Attachment 1 of this Annex.

Attachment 1
List of Data Requirements

1.	CE Details	The CE Authorisation Code.	
2.	Description of the Goods	(i)	Name of the Product;
		(ii)	HS in six digit or AHTN Code;
		(iii)	Origin conferring criterion;
		(iv)	Country of Origin;
		(v)	FOB price when the regional value content origin criterion is used;
		(vi)	Quantity of goods;
		(vii)	Trademark, if applicable; and
		(viii)	For the case of Back-to-back Origin Declaration, original Proof of Origin reference number, date of issuance, Country of Origin of the first exporting country, and, if applicable, CE Authorisation Code of the first exporting country.
3.	Certification by an authorized signatory ¹	(i)	Certification by an authorized signatory of the CE that the goods specified in the Origin Declaration meet all the relevant requirements of Chapter 3 of this Agreement based on the evidence provided.
		(ii)	Authorised signature over printed/stamped name of the Signatory.

¹The necessity of retaining this requirement is subject to review after 2 years from the date of implementation of the ASEAN-wide Self- Certification Scheme.

2. Origin Declarations should be made out on the commercial invoice. However, if the Origin Declaration cannot be made out on the commercial invoice at the time of exportation, it may be made out on any of the following commercial documents: billing statement, delivery order or

packing list, and will be accepted at the time of importation if submitted together with the commercial invoice.

3. The document containing the Origin Declaration should describe the goods in sufficient details to enable them to be identified for origin determination purposes.
4. The Origin Declaration shall bear the name and manually executed signature of the authorised signatories.
5. The date of the document containing the Origin Declaration shall be considered as the issuance date of the Origin Declaration.
6. The reference number of the document containing the Origin Declaration shall be considered as the reference number of the Origin Declaration.
7. If in case the space provided for in the Origin Declaration is not sufficient to list out all the products, additional page/s containing information as set out in Attachment 1 could be attached.

Rule 12C

Monitoring and Verification

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

Rule 12D**Withdrawal of the Authorisation**

The Competent Authority may withdraw the authorisation at any time. It shall do so where the CE 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 included in the ASEAN-wide Self-Certification database by the Member State, in conformity with Rule 2.

Rule 13**Presentation of the Proof of Origin**

1. For the purposes of claiming preferential tariff treatment, the importer shall submit to the customs authority or relevant Government authorities of the importing Member State at the time of import:
 - (a) a Certificate of Origin (Form D) including supporting documents; or
 - (b) an Origin Declaration made out by a CE including supporting documents.
2. In cases when a Certificate of Origin (Form D) is rejected by the customs authority or relevant Government 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.
3. In cases when an Origin Declaration is rejected by the customs authority of the importing Member State, the subject Origin Declaration shall be returned to the Competent Authority within a reasonable period

not exceeding sixty (60) days. The Competent Authority shall be duly notified of the grounds for the denial of tariff preference.

4. In the case where the Proof of Origin is not accepted, as stated in the preceding paragraphs 2 and 3 of this Rule, the importing Member State should accept and consider the clarifications made by the Issuing Authority or Competent Authority and assess again whether or not the Proof of Origin 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 Proof of Origin

The following time limit for the presentation of the Proof of Origin shall be observed:

- (a) The Proof of Origin 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 Origin Declaration, making out, and must be submitted to the customs authority of the importing Member State within that period.
- (b) Where the Proof of Origin is submitted to the customs authority of the importing Member State after the expiration of the time limit for its submission, such Proof of Origin 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 authority in the importing Member State may accept such Proof of Origin 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 Proof of Origin shall be waived and the use of 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 Proof of Origin and those made in the documents submitted to the customs authority 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 Proof of Origin, 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 Proof of Origin. 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 producer and/or exporter applying for the issuance of a Certificate of Origin (Form D) and the CE making out an Origin Declaration shall, subject to the laws and regulations of the exporting Member State, keep its supporting records in relation to the Proof of Origin for not less than three (3) years from the date of issuance of the Proof of Origin.
2. The application for Certificates of Origin (Form D) 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 of the Certificate of Origin (Form D).
3. The application as a CE and all documents related to such application shall be retained by the Competent Authority for not less than three (3) years from the date of expiry or revocation of the authorisation.
4. Information relating to the validity of the Certificate of Origin (Form D) and to the correctness of an Origin Declaration 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 or the Competent Authority of the exporting Member State, respectively.

- 5 Any information communicated between the Member States concerned shall be treated as confidential and shall be used for the validation of Proof of Origin purposes only.

Rule 18

Retroactive Check

The importing Member State may request the Issuing Authority or 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 Issuing Authority or 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 Proof of Origin concerned and shall specify the reasons and any additional information suggesting that the particulars given on the said Proof of Origin may be inaccurate, unless the retroactive check is requested on a random basis;
- (b) The Issuing Authority or 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 authority 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; and

- (d) The Issuing Authority or 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 Issuing Authority or 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

1. 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.
2. Prior to the conduct of a verification visit, an importing Member State, shall 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 or Competent Authority of the Member State in whose territory the verification visit is to occur;
- (c) the customs authority or relevant Government authorities of the Member State in whose territory the verification visit is to occur; and
- (d) the importer of the goods subject of the verification visit;

3. The written notification mentioned in paragraph 2 shall be as comprehensive as possible including, among others:
 - (a) the name of the customs authority or relevant Government authorities 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 goods subject of the verification; and
 - (e) the names and designation of the officials performing the verification visit.
4. The importing Member State shall obtain a written consent of the exporter/producer whose premises are to be visited as mentioned in paragraph 2 prior to the proposed verification visit.
5. When a written consent from the exporter/producer is not obtained within thirty (30) days upon receipt of the notification pursuant to paragraph 2, the notifying Member State, may deny preferential treatment to the goods that would have been subject of the verification visit.
6. The Issuing Authority or Competent 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.

7. 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 or Competent Authority with a written determination of whether or not the subject goods qualify as originating goods.
8. Any suspended preferential treatment shall be reinstated upon the written determination referred to in paragraph 7 that the goods qualify as originating goods.
9. 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 or Competent Authority within thirty (30) days from receipt of the comments/additional information from the exporter/producer.
10. 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 or Competent 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 and regulations, 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 Origin Declaration made out by a CE 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; and
 - (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 CE, the Origin 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 Proof of Origin 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 CE may make out the Origin Declaration on the billing statement, delivery order or packing list.

Rule 24

Action against Fraudulent Acts

1. When it is suspected that fraudulent acts in connection with the Proof of Origin 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 Proof of Origin.

Rule 25

FOB Price

For the purposes of this Agreement, notwithstanding Rule 11(b), the Proof of Origin and the back-to-back Proof of Origin shall only reflect the FOB Price, as required by the Member States listed in the paragraph relating to the FOB Price in the Overleaf Notes of the Certificate of Origin (Form D), in cases where the regional value content calculated using the formula set out in Article 29 of this Agreement is applied in determining origin.

Rule 26

Equivalence of Paper and Electronic Certificate of Origin (e-Form D)

1. A Certificate of Origin (Form D) in electronic format may be applied for, issued, and accepted in lieu of one in paper format, with equivalent legal effect.
2. Rules 27 to 31 shall apply to Electronic Certificates of Origin (e-Form D). Unless otherwise specified in Rules 27 to 31, Rules 1 to 6, 8, 10, 11, 14 to 16, and 18 to 25 shall also apply to the processing of Electronic Certificates of Origin (e-Form D).

Rule 27

Electronic Certificate of Origin (e-Form D)

1. In order to ensure interoperability, Member States shall exchange Electronic Certificates of Origin (e-Form D) in accordance with the *ATIGA e- Form D Process Specification and Message Implementation Guideline*, as may be updated from time to time.
2. In the event a Member State does not wish to implement all the electronic processes and related information elements specified in the *ATIGA e- Form D Process Specification and Message Implementation Guideline*, that Member State shall inform the other Member States, through the ASEAN Secretariat, which processes and related information elements it wishes to implement.

Rule 28

Examination of Application for an Electronic Certificate of Origin (e-Form D)

In place of Rule 6(a), an application for an Electronic Certificate of Origin (e-Form D) shall electronically be accepted, verified to be duly completed and authenticated.

Rule 29

Issuance of an Electronic Certificate of Origin (e-Form D)

1. In exceptional cases, an exporter may apply to the Issuing Authority, in accordance with the Issuing Authority's procedures, to re-issue an Electronic Certificate of Origin (e-Form D), within one (1) year from the date of issuance of the original Electronic Certificate of Origin (e-Form D).
2. In addition to the electronic process specified in the *ATIGA e-Form D Process Specification and Message Implementation Guideline*, an Electronic Certificate of Origin (e-Form D) may be forwarded directly to the exporter by the NSW of the issuing Member State and the Electronic Certificate of Origin (e-Form D) may be forwarded directly to the importer by the exporter or by the NSW of the importing Member State.
3. In exceptional cases, such as, but not limited to, technical failures that trigger a loss of data, the receiving Member State may request a re-transmission of an Electronic Certificate of Origin (e-Form D) from the sending Member State.
4. An alteration to an Electronic Certificate of Origin (e-Form D) shall be made by issuing a new Electronic Certificate of Origin (e-Form D), and the previous Electronic Certificate of Origin (e-Form D) shall be cancelled, in accordance with the process specified in the *ATIGA e-Form D Process Specification and Message Implementation Guideline*.

Rule 30

Presentation of the Electronic Certificate of Origin (e-Form D)

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, an import declaration containing information on the

Electronic Certificate of Origin (e-Form D) reference number, 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 laws and regulations of the importing Member State.

2. The customs authority in the importing Member State may generate an electronic Customs Response indicating the utilisation status of the Electronic Certificate of Origin (e-Form D) in accordance with the message implementation guideline for Customs Response specified in the *ATIGA e-Form D Process Specification and Message Implementation Guideline*. The utilisation status, if generated, shall be transmitted electronically via the ASW to Issuing Authority either soon after the import or as and when it has been generated, within the validity period of the Electronic Certificate of Origin (e-Form D).
3. In cases when an Electronic Certificate of Origin (e-Form D) is rejected by the customs authority of the importing Member State, the customs authority of the importing Member State shall:
 - (a) generate an electronic Customs Response indicating the rejection status with reasons for the rejection, including, as appropriate, the reason for denial of tariff preference, in accordance with the *ATIGA e-Form D Process Specification and Message Implementation Guideline*. The electronic Customs Response, if generated, shall be transmitted electronically via the ASW to the Issuing Authority in the exporting Member State within a reasonable period not exceeding sixty (60) days from the date of receipt of the Electronic Certificate of Origin (e-Form D); or
 - (b) in cases where the procedure in paragraph 3(a) is not available, the customs authority of the importing Member State may notify

the Issuing Authority of the exporting Member State in writing of the grounds for the denial of tariff preference together with the reference number of the Electronic Certificate of Origin (e-Form D), within a reasonable period not exceeding sixty (60) days.

4. In the case where an Electronic Certificate of Origin (e-FormD) is not accepted, as stated in the preceding paragraph, the importing Member State should accept and consider the clarifications made by the Issuing Authority and assess again whether or not the e-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 31

Electronic Archiving and Data Retention

1. For the purposes of the verification process pursuant to Rules 18 and 19, the producer and/or exporter applying for the issuance of an Electronic Certificate of Origin (e-Form D) shall, subject to the laws and regulations of the exporting Member State, provide for the storage of supporting records for application for an Electronic Certificate of Origin (e-Form D) for not less than three (3) years from the date of issuance of the Electronic Certificate of Origin (e-Form D).
2. The application for an Electronic Certificate of Origin (e- Form D) 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 of the Electronic Certificate of Origin (e-Form D).
3. Information relating to the validity of the Electronic Certificate of Origin (e-Form D) shall be furnished upon request of the importing Member State, by an authorised official of the Issuing Authority.

4. Any information communicated between the Member States concerned shall be treated as confidential and shall be used for the purpose of Electronic Certificate of Origin (e-Form D) validation only.”.

Dibuat 18 September 2020

[SULIT KE.HT(96)515/11-2-1Klt.3Sk.19; Perb.MOF.TAX(S)700-12/4/9(23); PN(PU2)338/LX]

DATO' SRI TENGKU ZAFRUL BIN TENGKU ABDUL AZIZ
Menteri Kewangan

[Akan dibentangkan di Dewan Rakyat menurut subseksyen 11(2) Akta Kastam 1967]

CUSTOMS ACT 1967

CUSTOMS DUTIES (GOODS OF ASEAN COUNTRIES ORIGIN)
(ASEAN HARMONISED TARIFF NOMENCLATURE AND
ASEAN TRADE IN GOODS AGREEMENT) ORDER (AMENDMENT) (NO. 3) 2020

IN exercise of the power conferred by subsection 11(1) of the Customs Act 1967 [*Act 235*], the Minister makes the following order:

Citation and commencement

1. (1) This order may be cited as the **Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) Order (Amendment) (No. 3) 2020**.

(2) This Order comes into operation on 20 September 2020.

Amendment of First Schedule

2. The Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) Order 2017 [*P.U. (A) 100/2017*] is amended in the First Schedule—

(a) by substituting for Article 38 the following Article:

**“Article 38
Proof of Origin**

A claim that a good shall be accepted as eligible for preferential tariff treatment shall be supported by a Proof of Origin in accordance with the Operational Certification Procedures as set out in Annex 8.”; and

(b) by substituting for Annex 8 the following Annex:

“ANNEX 8
OPERATIONAL CERTIFICATION
PROCEDURE FOR THE RULES OF
ORIGIN UNDER CHAPTER 3

For the purposes of implementing the Rules of Origin set out in Chapter 3 of this Agreement, the following operational procedures on the issuance and verification of the Proof of Origin and other related administrative matters shall be observed.

Rule 1

Definitions

- (a)* **ASW** means ASEAN Single Window as defined in Article 5(a) of the PLF;
- (b)* **Back-to-back Proof of Origin** means a Proof of Origin issued by an intermediate exporting Member State based on the Proof of Origin issued by the first exporting Member State;
- (c)* **Certified Exporter (CE)** means an exporter duly authorised to make out an Origin Declaration on the origin of a good exported;
- (d)* **Competent Authority** means the Government authority of the exporting Member State designated to authorise CEs;
- (e)* **Electronic Certificate of Origin (e-Form D)** means a Certificate of Origin (Form D) that is structured in accordance with the ATIGA e-Form D Process Specification and Message Implementation Guideline, and is transmitted electronically between Member States via the ASW in accordance with the security provisions specified in Article 9 of the PLF;
- (f)* **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;

- (g) **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;
- (h) **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 Annex;
- (i) **NSW** means National Single Window as defined in Article 5(c) of the PLF;
- (j) **Origin Declaration** means a declaration on the origin of the goods exported made by a CE in accordance with Rule 12 B;
- (k) **PLF** means the Protocol on the Legal Framework to Implement the ASEAN Single Window done at Ha Noi, Viet Nam on 4 September 2015;
- (l) **Producer** means a natural or juridical person who carries out production, as set out in Article 25(j) of this Agreement, in the territory of a Member State; and
- (m) **Proof of Origin** means a document which certifies that the goods exported meets the rules of origin provisions set out in Chapter 3 of this Agreement.

Rule 1A

Proof of Origin

Proof of Origin may be in the form of:

- (a) Certificate of Origin (Form D);
- (b) Electronic Certificate of Origin (e-Form D); or
- (c) Origin Declaration.

Rule 2

Specimen Signatures and Official Seals of the Issuing Authority and ASEAN-wide Self-Certification Database

1. Each Member State shall provide a list of the names, addresses, specimen signatures and specimen of official seals of its Issuing Authority, 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 Authority, 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. Notwithstanding paragraphs 1 and 2, where a Member State only issues Electronic Certificates of Origin (e-Form D), that Member State need not provide a list of specimen signatures and specimen of official seals of its Issuing Authority.

4. Immediately after the grant of CE status, each Member State shall promptly include the following in the ASEAN-wide Self-Certification database:
 - (a) Legal name and address of the company;

 - (b) CE authorisation Code;

 - (c) Issuance date and expiry date, if applicable, of CE authorisation;

 - (d) List of products subject of the authorisation, including product description HS in six digit or AHTN Code/s¹ ; and

- (e) List of authorised signatories and their respective specimen signatures, not exceeding ten ²(10) ³persons per company .

Any change in subparagraphs (a) to (e) above shall be promptly included in the same manner. Withdrawal or suspension of the authorisation shall also be included in the same manner.

5. The ASEAN Secretariat shall be the custodian of the ASEAN-wide Self-Certification database, which can be accessed online by Member States.
6. Any Origin Declaration made out by an exporter or signatory not included in the database or for a product not included in the database shall not be honoured by the receiving Member State.

¹ The necessity of retaining this requirement is subject to review after two (2) years from the date of implementation of the ASEAN- wide Self-Certification.

² The necessity of retaining this requirement will be reviewed after two (2) years from the date of implementation of the ASEAN-wide Self-Certification.

³ The necessity of retaining this requirement is subject to review after two (2) years from the date of implementation of the ASEAN- wide Self-Certification.

Rule 3

Supporting Documents

1. For the purposes of determining originating status, the Issuing Authority or Competent Authority shall have the right to request for supporting documentary evidence or to carry out check(s) considered appropriate in accordance with the respective laws and regulations of a Member State.
2. Member States are encouraged to allow the submission of electronic supporting documents, if available, to carry out check(s) related to Proof of Origin, considered appropriate in accordance with the respective laws and regulations of a Member State.

Rule 4
Pre-exportation Examination

1. The producer and/or exporter, or its authorised representative, shall apply to the Issuing Authority or Competent Authority for the issuance of a Proof of Origin or as a CE, requesting pre-exportation examination of the origin of the good or CE status, in accordance with the Member State's laws and regulations. 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 in determining the originating status of the good.

Rule 5
Application for Certificate of Origin (Form D)

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 CE may, at his own discretion, apply for a Certificate of Origin (Form D) in place of main gout an Origin Declaration.

Rule 6

Examination of Application for a Certificate of Origin (Form D)

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 with 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 authorised signature and official seal of the issuing authority. Such signature and seal may be applied manually or electronically⁴.
5. The original copy shall be forwarded by the exporter to the importer for submission to the customs authority or relevant Government authorities 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.

⁴ Signature and seal applied electronically does not mean digital signature. A Member State's acceptance of the signature and seal applied electronically is subject to its laws and regulations.

Rule 8

Declaration of Origin Criterion in the Certificate of Origin (Form D)

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.

Rule 9

Treatment of Erroneous Declaration in the Certificate of Origin (Form D)

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 Authority. 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 (Form D)

1. Subject to the submission of all documentary requirements, the Certificate of Origin (Form D) shall be issued by the Issuing Authority of the exporting Member State prior to or at the time of shipment or soon thereafter but not more than three (3) days from the declared shipment date, whenever the good 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 Proof of Origin

1. The Issuing Authority of the intermediate Member State may issue a back-to-back Certificate of Origin (Form D) if an application is made by the exporter, provided that:
 - (a) a valid original Proof of Origin is presented. In the case where no original Proof of Origin is presented, its certified true copy shall be presented;
 - (b) the back-to-back Certificate of Origin (Form D) issued should contain some of the same information as the original Proof of Origin. In particular, every column in the back-to-back Certificate

of Origin (Form D) 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 (Form D);

- (c) for partial export shipments, the partial export value shall be shown instead of the full value of the original Proof of Origin. The intermediate Member State will ensure that the total quantity re-exported under the partial shipment does not exceed the total quantity of the Proof of Origin from the first Member State when approving the back-to-back Certificate of Origin (Form D) 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 Proof of Origin be submitted to their respective customs authority;
- (e) verification procedures as set out in Rules 18 and 19 are also applied to a Member State issuing the back-to-back Certificate of Origin (Form D);
- (f) information on the back-to-back Certificate of Origin (Form D) includes the date of issuance and reference number of the original Proof of Origin. Such information shall be indicated in Box 7 of the back-to-back Certificate of Origin (Form D).

2. A CE may make out a Back-to-back Origin Declaration provided that:

- (a) the said CE has a valid original Proof of Origin from the first exporting Member State. In the case where no original Proof of Origin is available, its certified true copy shall be used;
- (b) the back-to-back Origin Declaration made out should contain some of the same information as the original Proof of Origin.

The FOB price of the intermediate Member State should also be reflected in the back-to-back Origin Declaration;

- (c) for partial export shipments, the partial export value shall be shown instead of the full value of the original Proof of Origin. The CE making out a back-to-back Origin Declaration will ensure that the total quantity re-exported under the partial shipment does not exceed the total quantity of the original Proof of Origin;
- (d) verification procedures as set out in Rules 18 and 19 are also applied to a Member State issuing the back-to-back Origin Declaration;
- (e) information on the back-to-back Origin Declaration includes the date of issuance and reference number of the original Proof of Origin;
- (f) the CE making out the back-to-back Origin Declaration should be a CE authorised to make out Origin Declarations for the same goods.

Rule 12

Loss of the Certificate of Origin (Form D)

In the event of theft, loss or destruction of a Certificate of Origin (Form D), the exporter may apply in writing to the Issuing Authority 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 (Form D). 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 Competent Authority 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 Origin Declarations with regard to the originating status of the goods concerned. An exporter seeking such authorisation must apply in writing or electronically and must offer to the satisfaction of the Competent Authority all guarantees necessary to verify the originating status of the goods for which an Origin Declaration was made out.

2. The Competent Authority may grant the status of CE subject to any conditions which they consider appropriate, including in any case the following:
 - (a) the exporter is duly registered in accordance with the laws and regulations of the exporting Member State;

 - (b) the exporter must undertake to ensure that the authorised signatories responsible for making out the Origin Declarations, in the undertaking, know and understand the Rules of Origin as laid down in the Agreement;

 - (c) the exporter should have a satisfactory level of experience in export in accordance with the laws and regulations of the exporting Member State;

 - (d) the exporter has no record of any Rules of Origin fraud, in accordance with the laws and regulations of the exporting Member State;

- (e) the exporter must have a good compliance measured by risk management of the Competent Authority of the exporting Member State;
 - (f) the exporter, in the case of a trader, must have a “manufacturer’s declaration” indicating the origin of the product to be subject to self-certification and readiness of the manufacturer to cooperate in retroactive check and verification visit should the need arise; and
 - (g) the exporter must have a sound bookkeeping and record-keeping system, in accordance with the laws and regulations of the exporting Member State.
- 3. An authorisation shall be given in writing. The Competent Authority shall grant the CE an authorisation code which must be included in the Origin Declaration. Member States shall promptly include the information on the authorisation granted in the ASEAN-wide Self-Certification database, in conformity with Rule 2(4).
- 4. A CE shall have the following obligations:
 - (a) grant the Competent Authority access to records and premises for the purpose of monitoring the use of 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 Origin Declaration was made out, during at least three (3) years from the date of making out the declaration in accordance with the laws and regulations of the exporting Member State;
 - (b) make out Origin Declarations only for goods for which the CE has been authorised to make out an Origin Declaration and for which the CE has all appropriate documents proving the originating status

of the goods concerned at the time of making out the declaration;

- (c) continue to comply with the conditions set out in Paragraph 2 of this Rule;
- (d) cooperate in retroactive checks and verification visits;
- (e) accept full responsibility for all Origin Declarations made, including any misuse; and
- (f) promptly inform the Competent Authority of any changes related to the information submitted under Rule 2(4) of this Annex.

Rule 12B **Origin Declaration**

1. The Origin Declaration shall contain the data requirements listed in Attachment 1 of this Annex.

Attachment 1 **List of Data Requirements**

1.	CE Details	The CE Authorisation Code.
2.	Description of the Goods	(i) Name of the Product; (ii) HS in six digit or AHTN Code; (iii) Origin conferring criterion; (iv) Country of Origin; (v) FOB price when the regional value content origin criterion is used; (vi) Quantity of goods; (vii) Trademark, if applicable; and (viii) For the case of Back-to-back Origin Declaration, original Proof of Origin reference number, date of issuance, Country of Origin of the first exporting country, and, if applicable, CE Authorisation Code of the first exporting country.

3. Certification by an authorized ¹ signatory	(i) Certification by an authorized signatory of the CE that the goods specified in the Origin Declaration meet all the relevant requirements of Chapter 3 of this Agreement based on the evidence provided. (ii) Authorised signature over printed/stamped name of the Signatory.
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¹The necessity of retaining this requirement is subject to review after 2 years from the date of implementation of the ASEAN-wide Self- Certification Scheme.

2. Origin Declarations should be made out on the commercial invoice. However, if the Origin Declaration cannot be made out on the commercial invoice at the time of exportation, it may be made out on any of the following commercial documents: billing statement, delivery order or packing list, and will be accepted at the time of importation if submitted together with the commercial invoice.
3. The document containing the Origin Declaration should describe the goods in sufficient details to enable them to be identified for origin determination purposes.
4. The Origin Declaration shall bear the name and manually executed signature of the authorised signatories.
5. The date of the document containing the Origin Declaration shall be considered as the issuance date of the Origin Declaration.
6. The reference number of the document containing the Origin Declaration shall be considered as the reference number of the Origin Declaration.
7. If in case the space provided for in the Origin Declaration is not sufficient to list out all the products, additional page/s containing information as set out in Attachment 1 could be attached.

Rule 12C
Monitoring and Verification

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

Rule 12D
Withdrawal of the Authorisation

The Competent Authority may withdraw the authorisation at any time. It shall do so where the CE 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 included in the ASEAN-wide Self-Certification database by the Member State, in conformity with Rule 2.

Rule 13
Presentation of the Proof of Origin

1. For the purposes of claiming preferential tariff treatment, the importer shall submit to the customs authority or relevant Government authorities of the importing Member State at the time of import:
 - (a) a Certificate of Origin (Form D) including supporting documents; or
 - (b) an Origin Declaration made out by a CE including supporting documents.

2. In cases when a Certificate of Origin (Form D) is rejected by the customs authority or relevant Government 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.
3. In cases when an Origin Declaration is rejected by the customs authority of the importing Member State, the subject Origin Declaration shall be returned to the Competent Authority within a reasonable period not exceeding sixty (60) days. The Competent Authority shall be duly notified of the grounds for the denial of tariff preference.
4. In the case where the Proof of Origin is not accepted, as stated in the preceding paragraphs 2 and 3 of this Rule, the importing Member State should accept and consider the clarifications made by the Issuing Authority or Competent Authority and assess again whether or not the Proof of Origin 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 Proof of Origin

The following time limit for the presentation of the Proof of Origin shall be observed:

- (a) The Proof of Origin 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 Origin Declaration, making out, and must be submitted to the customs authority of the importing Member State within that period.

- (b) Where the Proof of Origin is submitted to the customs authority of the importing Member State after the expiration of the time limit for its submission, such Proof of Origin 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 authority in the importing Member State may accept such Proof of Origin 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 Proof of Origin shall be waived and the use of 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 Proof of Origin and those made in the documents submitted to the customs authority 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 Proof of Origin, 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 Proof of Origin. 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 producer and/or exporter applying for the issuance of a Certificate of Origin (Form D) and the CE making out an Origin Declaration shall, subject to the laws and regulations of the exporting Member State, keep its supporting records in relation to the Proof of Origin for not less than three (3) years from the date of issuance of the Proof of Origin.
2. The application for Certificates of Origin (Form D) 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 of the Certificate of Origin (Form D).
3. The application as a CE and all documents related to such application shall be retained by the Competent Authority for not less than three (3) years from the date of expiry or revocation of the authorisation.

- 4 Information relating to the validity of the Certificate of Origin (Form D) and to the correctness of an Origin Declaration 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 or the Competent Authority of the exporting Member State, respectively.
- 5 Any information communicated between the Member States concerned shall be treated as confidential and shall be used for the validation of Proof of Origin purposes only.

Rule 18

Retroactive Check

The importing Member State may request the Issuing Authority or 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 Issuing Authority or 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 Proof of Origin concerned and shall specify the reasons and any additional information suggesting that the particulars given on the said Proof of Origin may be inaccurate, unless the retroactive check is requested on a random basis;
- (b) The Issuing Authority or 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 authority 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; and
- (d) The Issuing Authority or 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 Issuing Authority or 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

1. 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.
2. Prior to the conduct of a verification visit, an importing Member State, shall 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 or Competent Authority of the Member State in whose territory the verification visit is to occur;

- (c)* the customs authority or relevant Government authorities of the Member State in whose territory the verification visit is to occur; and
 - (d)* the importer of the goods subject of the verification visit;
- 3. The written notification mentioned in paragraph 2 shall be as comprehensive as possible including, among others:
 - (a)* the name of the customs authority or relevant Government authorities 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 goods subject of the verification; and
 - (e)* the names and designation of the officials performing the verification visit.
- 4. The importing Member State shall obtain a written consent of the exporter/producer whose premises are to be visited as mentioned in paragraph 2 prior to the proposed verification visit.
- 5. When a written consent from the exporter/producer is not obtained within thirty (30) days upon receipt of the notification pursuant to paragraph 2, the notifying Member State, may deny preferential treatment to the goods that would have been subject of the verification visit.

6. The Issuing Authority or Competent 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.
7. 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 or Competent Authority with a written determination of whether or not the subject goods qualify as originating goods.
8. Any suspended preferential treatment shall be reinstated upon the written determination referred to in paragraph 7 that the goods qualify as originating goods.
9. 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 or Competent Authority within thirty (30) days from receipt of the comments/additional information from the exporter/producer.
10. 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 or Competent 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 and regulations, 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 Origin Declaration made out by a CE 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; and
 - (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 CE, the Origin 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 Proof of Origin 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 CE may make out the Origin Declaration on the billing statement, delivery order or packing list.

Rule 24

Action against Fraudulent Acts

1. When it is suspected that fraudulent acts in connection with the Proof of Origin 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 Proof of Origin.

Rule 25
FOB Price

For the purposes of this Agreement, notwithstanding Rule 11(b), the Proof of Origin and the back-to-back Proof of Origin shall only reflect the FOB Price, as required by the Member States listed in the paragraph relating to the FOB Price in the Overleaf Notes of the Certificate of Origin (Form D), in cases where the regional value content calculated using the formula set out in Article 29 of this Agreement is applied in determining origin.

Rule 26
Equivalence of Paper and Electronic Certificate of Origin (e-Form D)

1. A Certificate of Origin (Form D) in electronic format may be applied for, issued, and accepted in lieu of one in paper format, with equivalent legal effect.
2. Rules 27 to 31 shall apply to Electronic Certificates of Origin (e-Form D). Unless otherwise specified in Rules 27 to 31, Rules 1 to 6, 8, 10, 11, 14 to 16, and 18 to 25 shall also apply to the processing of Electronic Certificates of Origin (e-Form D).

Rule 27
Electronic Certificate of Origin (e-Form D)

1. In order to ensure interoperability, Member States shall exchange Electronic Certificates of Origin (e-Form D) in accordance with the *ATIGA e-Form D Process Specification and Message Implementation Guideline*, as may be updated from time to time.
2. In the event a Member State does not wish to implement all the electronic processes and related information elements specified in the *ATIGA e-Form D Process Specification and Message Implementation*

Guideline, that Member State shall inform the other Member States, through the ASEAN Secretariat, which processes and related information elements it wishes to implement.

Rule 28

Examination of Application for an Electronic Certificate of Origin (e-Form D)

In place of Rule 6(a), an application for an Electronic Certificate of Origin (e-Form D) shall electronically be accepted, verified to be duly completed and authenticated.

Rule 29

Issuance of an Electronic Certificate of Origin (e-Form D)

1. In exceptional cases, an exporter may apply to the Issuing Authority, in accordance with the Issuing Authority's procedures, to re-issue an Electronic Certificate of Origin (e- Form D), within one (1) year from the date of issuance of the original Electronic Certificate of Origin (e-Form D).
2. In addition to the electronic process specified in the *ATIGA e- Form D Process Specification and Message Implementation Guideline*, an Electronic Certificate of Origin (e-Form D) may be forwarded directly to the exporter by the NSW of the issuing Member State and the Electronic Certificate of Origin (e-Form D) may be forwarded directly to the importer by the exporter or by the NSW of the importing Member State.
3. In exceptional cases, such as, but not limited to, technical failures that trigger a loss of data, the receiving Member State may request a re-transmission of an Electronic Certificate of Origin (e-Form D) from the sending Member State.

4. An alteration to an Electronic Certificate of Origin (e-FormD) shall be made by issuing a new Electronic Certificate of Origin (e-Form D), and the previous Electronic Certificate of Origin (e-Form D) shall be cancelled, in accordance with the process specified in the *ATIGA e-Form D Process Specification and Message Implementation Guideline*.

Rule 30

Presentation of the Electronic Certificate of Origin (e-Form D)

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, an import declaration containing information on the Electronic Certificate of Origin (e-Form D) reference number, 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 laws and regulations of the importing Member State.
2. The customs authority in the importing Member State may generate an electronic Customs Response indicating the utilisation status of the Electronic Certificate of Origin (e-Form D) in accordance with the message implementation guideline for Customs Response specified in the *ATIGA e-Form D Process Specification and Message Implementation Guideline*. The utilisation status, if generated, shall be transmitted electronically via the ASW to Issuing Authority either soon after the import or as and when it has been generated, within the validity period of the Electronic Certificate of Origin (e-Form D).
3. In cases when an Electronic Certificate of Origin (e-Form D) is rejected by the customs authority of the importing Member State, the customs authority of the importing Member State shall:

- (a) generate an electronic Customs Response indicating the rejection status with reasons for the rejection, including, as appropriate, the reason for denial of tariff preference, in accordance with the ATIGA e-Form D Process Specification and Message Implementation Guideline. The electronic Customs Response, if generated, shall be transmitted electronically via the ASW to the Issuing Authority in the exporting Member State within a reasonable period not exceeding sixty (60) days from the date of receipt of the Electronic Certificate of Origin (e-Form D); or
 - (b) in cases where the procedure in paragraph 3(a) is not available, the customs authority of the importing Member State may notify the Issuing Authority of the exporting Member State in writing of the grounds for the denial of tariff preference together with the reference number of the Electronic Certificate of Origin (e-Form D), within a reasonable period not exceeding sixty (60) days.
4. In the case where an Electronic Certificate of Origin (e-FormD) is not accepted, as stated in the preceding paragraph, the importing Member State should accept and consider the clarifications made by the Issuing Authority and assess again whether or not the e-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 31

Electronic Archiving and Data Retention

1. For the purposes of the verification process pursuant to Rules 18 and 19, the producer and/or exporter applying for the issuance of an Electronic Certificate of Origin (e-Form D) shall, subject to the laws and regulations of the exporting Member State, provide for the storage of supporting records for application for an Electronic Certificate of Origin

(e-Form D) for not less than three (3) years from the date of issuance of the Electronic Certificate of Origin (e-Form D).

2. The application for an Electronic Certificate of Origin (e- Form D) 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 of the Electronic Certificate of Origin (e-Form D).
3. Information relating to the validity of the Electronic Certificate of Origin (e-Form D) shall be furnished upon request of the importing Member State, by an authorised official of the Issuing Authority.
4. Any information communicated between the Member States concerned shall be treated as confidential and shall be used for the purpose of Electronic Certificate of Origin (e-Form D) validation only.”.

Made 18 September 2020

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DATO' SRI TENGKU ZAFRUL BIN TENGKU ABDUL AZIZ
Minister of Finance

[To be laid before the Dewan Rakyat pursuant to subsection 11(2) of the Customs Act 1967]