

ANNEX 4-A

OPERATIONAL CERTIFICATION PROCEDURE

For the purposes of implementing the rules of origin applicable to this Agreement, the following operational procedures on the issuance and verification of the Certificate of Origin as set out in Annex 4-C and other related administrative matters shall apply:

Rule 1: Certification of Origin

- (a) The Certificate of Origin shall be issued by the Competent Authority of the exporting Party.
- (b) Each Party shall inform the other Party of the names and addresses of its respective Competent Authorities and shall provide the official seals used by such authorities. Any change in names, addresses or official seals shall be promptly informed in the same manner.
- (c) The Certificate of Origin shall remain valid for a period of one year from the date the document was issued.
- (d) The original of the Certificate of Origin shall be submitted at the time the declaration of the goods is made.
- (e) Parties should implement an electronic system of certification of origin. Parties also recognise the validity of the digital signature.

Rule 2: Certificate of Origin

- (a) The Certificate of Origin shall be in ISO A4 size paper and in conformity to the form as shown in Annex 4-C.
- (b) The Certificate of Origin shall be in English.
- (c) Each Certificate of Origin shall bear a serial reference number.
- (d) The Certificate of Origin shall comprise one original and two carbon copies or photocopies.
- (e) The exporter shall indicate the applicable rule of origin of this Agreement in Box 9 of the Certificate of Origin.

Rule 3: Amendments to the Certificate of Origin

- (a) Neither erasures nor superimposition shall be allowed on the Certificate of Origin. Any alteration shall be made by striking out the erroneous information and making any addition required. Such alterations shall be approved by an official authorised to sign the Certificate of Origin and certified by the Competent Authority.
- (b) Unused spaces in the Certificate of Origin shall be crossed out by the Competent Authority to prevent any subsequent addition.

Rule 4: Verification Prior to Issuance

For the purposes of verifying whether a good is an originating good, the Competent Authority shall have the right to call for any supporting documentary evidence or to carry out any check considered appropriate.

Rule 5: Application for Certificate of Origin

At the time of carrying out the formalities for exporting the goods under preferential treatment, the exporter or its authorised representative shall submit a written application for the Certificate of Origin together with appropriate supporting documents proving that the goods to be exported fulfil the originating criteria under this Agreement.

Rule 6: Obligations of the Competent Authority

The Competent Authority shall carry out proper examination upon each application for the Certificate of Origin to ensure that:

- (a) the application and the Certificate of Origin are duly completed and signed by the authorised signatory;
- (b) the origin of the good is in conformity with the provisions of this Agreement;
- (c) other statements on the Certificate of Origin correspond to the supporting documentary evidence submitted; and
- (d) HS code, description, quantity, weight and value of goods, marks, number and kinds of packages, as specified, conform to the goods to be exported.

Rule 7: Issuance of Certificate of Origin

- (a) The Certificate of Origin shall be issued by the Competent Authority of the exporting Party at the time of exportation or soon thereafter.
- (b) Where a Certificate of Origin has not been issued at the time of exportation or soon thereafter due to involuntary errors or omissions or other valid causes, the Certificate of Origin may be issued retroactively within one year from the date of shipment.

Rule 8: Duplicate

- (a) In the event of theft, loss or destruction of the Certificate of Origin, the exporter, by stating the reasons for his request, may apply to the Competent Authorities which issued the Certificate of Origin for a duplicate to be made out on the basis of the export documents in their possession.
- (b) The duplicate shall be endorsed with an official seal and bear the date of issue of the original certificate and shall take effect from the date of issuance of the original Certificate of Origin.

Rule 9: Exceptions

- (a) In the case of consignments of goods originating in the exporting Party and not exceeding US\$200.00 FOB, the requirement of a Certificate of Origin may be waived, provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of this Annex.
- (b) An importation of originating goods of the exporting Party, for which the Customs Authority of the importing Party has waived the requirement for a Certificate of Origin.

Rule 10: Minor Discrepancies

Minor discrepancies in the Certificate of Origin may not, *ipso facto*, invalidate the Certificate of Origin, if it does, in fact, correspond to the goods submitted.

Rule 11: Request for Information Concerning Certificate of Origin

- (a) For the purposes of determining whether a good imported from the exporting Party under preferential tariff treatment qualifies as an originating good of the exporting Party, the Customs Authority of the importing Party may request information relating to the origin of the good from the Competent Authority of the exporting Party on the basis of a Certificate of Origin, where it has reasonable doubt as to the authenticity of the Certificate of Origin or the accuracy of the information included in the Certificate of Origin.
- (b) For the purposes of paragraph (a), the Competent Authority of the exporting Party shall provide the information requested within a period of three months from the date of receipt of the request. If the Customs Authority of the importing Party considers necessary, it may require additional information relating to the origin of the good. If additional information is requested by the Customs Authority of the importing Party, the Competent Authority of the exporting Party shall, in accordance with the laws and regulations of the exporting Party, provide the information requested within a period of three months from the date of receipt of the request.
- (c) For the purposes of paragraph (b), the Competent Authority of the exporting Party may request the exporter to whom the Certificate of Origin has been issued, to provide the information requested.
- (d) The request of information in accordance with paragraph (a) shall not preclude the use of the verification method provided for in Rule 12.

Rule 12: Verification Visit

- (a) The Relevant Authority of the importing Party may request the Competent Authority of the exporting Party:
 - (i) to conduct a visit, whereby it shall deliver a written communication with such request to the Competent Authority of the exporting Party at least 40 days in advance of the proposed date of the visit, the receipt of which is to be confirmed by the Competent Authority of the exporting Party. The Competent Authority of the exporting Party shall request the written consent of the exporter or the producer of the good in the exporting Party whose premises are to be visited; and
 - (ii) to provide information relating to the origin of the good in the possession of the Competent Authority of the exporting Party during the visit pursuant to subparagraph (i).
- (b) The communication referred to in paragraph (a) shall include:

- (i) the identity of the Relevant Authority issuing the communication;
 - (ii) the name of the exporter whose premises are requested to be visited;
 - (iii) the proposed date and place of the visit;
 - (iv) the objective and scope of the proposed visit, including specific reference to the good subject to the verification, referred in the Certificate of Origin; and
 - (v) the names and titles of the officials of the Relevant Authority of the importing Party to be present during the visit.
- (c) The Competent Authority of the exporting Party shall respond in writing to the Relevant Authority of the importing Party, within 30 days of the receipt of the communication referred to in paragraph (b), if it accepts or refuses to conduct the visit requested pursuant to paragraph (a).
- (d) For the compliance of subparagraph (a)(i), the Competent Authority of the exporting Party shall collect and provide information relating to the origin of a good and check, for that purpose, the facilities used in the production of the good, through a visit with the Relevant Authority of the importing Party to the premises of the exporter to whom the Certificate of Origin has been issued, of the good in the exporting Party referred to in Rule 5 and 6.
- (e) The Competent Authority of the exporting Party shall, in accordance with the laws and regulations of the exporting Party, provide information within 45 days or any other mutually agreed period from the last day of the visit, to the Relevant Authority of the importing Party pursuant to paragraph (a).

Rule 13: Determination of Origin and Preferential Tariff Treatment

- (a) The Customs Authority of the importing Party may deny preferential tariff treatment to a good for which an importer claims preferential tariff treatment where the good does not qualify as an originating good of the exporting Party or where the importer fails to comply with any of the relevant requirements of Chapter 4 (Rules of Origin).
- (b) The Customs Authority of the importing Party may determine that a good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment in the following cases:

- (i) where the Competent Authority of the exporting Party fails to respond to the request within the period referred to in paragraph (b) of Rule 11 or paragraph (b) of Rule 12;
- (ii) where the Competent Authority of the exporting Party refuses to conduct a visit, or fails to respond to the communication referred to in paragraph (a) of Rule 11 within the period referred to in paragraph (b) of Rule 12; or
- (iii) where the information provided to the Customs Authority of the importing Party pursuant to Rule 11 or 12, is not sufficient to prove that the good qualifies as an originating good of the exporting Party.

In such cases, a written determination thereof shall be sent to the Competent Authority of the exporting Party:

- (c) After carrying out the procedures outlined in Rule 11 or 12 as the case may be, the Customs Authority of the importing Party shall provide the Competent Authority of the exporting Party with a written determination of whether or not the good qualifies as an originating good of the exporting Party, including findings of fact and the legal basis for the determination, within 45 days from the date of receipt of the information provided by the Competent Authority of the exporting Party pursuant to Rule 11 or 12. The Competent Authority of the exporting Party shall inform such determination by the Customs Authority of the importing Party to the exporter, of the good in the exporting Party, whose premises were subject to the visit referred to in Rule 12.
- (d) The Competent Authority of the exporting Party shall, when it cancels the decision to issue the Certificate of Origin, promptly notify the cancellation to the exporter to whom the Certificate of Origin has been issued, and to the Customs Authority of the importing Party except where the Certificate of Origin has been returned to the Competent Authority of the exporting Party. The Customs Authority of the importing Party may deny preferential tariff treatment when it receives the notification.

Rule 14: Records and Confidentiality

- (a) The application for Certificates of Origin and all documents related to such application shall be kept by the Competent Authorities and exporters for not less than three years from the date of issuance.
- (b) Information relating to the validity of the Certificate of Origin shall be furnished upon request.

- (c) Any confidential information shall be treated as such in accordance with the Parties domestic legislation and shall be used for the validation of Certificates of Origin purposes only.

Rule 15: Exhibition

- (a) Originating goods, sent for exhibition in a country other than Malaysia or Chile and sold after the exhibition for importation in Malaysia or Chile shall be deemed as originating and eligible for preferential treatment provided it is shown to the satisfaction of the Customs Authority of the importing Party that:
 - (i) an exporter has consigned the goods from Malaysia or Chile to the country in which the exhibition is held and has exhibited there;
 - (ii) the goods has been sold or otherwise dispose of by that exporter to a importer in Malaysia or Chile;
 - (iii) the goods have been consigned during the exhibition or immediately thereafter in the Party in which they were sent for exhibition and have not been used for a purpose other than demonstration at the exhibition; and
 - (iv) the goods have remained during the exhibition under Customs control.
- (b) A Certificate of Origin must be issued or made out in accordance with the provision of Chapter 4 (Rules of Origin). The name of the place of the exhibition must be indicated in the Certificate of Origin. Where necessary, additional documentary evidence of the conditions under which they have been exhibited may be required.
- (c) Paragraph (a) shall apply to any trade, industrial, agricultural or craft exhibitions, fair or similar public show or display which is not organized for private purposes in shops or business premises with a view to the sale of foreign goods.

Rule 16: Penalties Against False Declaration

- (a) Each Party shall establish or maintain appropriate penalties or sanctions against its exporters to whom a Certificate of Origin has been issued, for providing false declaration or documents to the Competent Authority of the exporting Party, prior to the issuance of the Certificate of Origin.
- (b) Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against its exporters to whom a Certificate of Origin has been issued if they fail to notify in writing to the Competent Authority

of the exporting Party without delay after having known, after the issuance of Certificate of Origin, that such good does not qualify as an originating good of the exporting Party.

- (c) When the exporter repeatedly provided false information or documentation, the Competent Authority may temporarily suspend the issuance of new Certificate of Origin.

Rule 17: Obligations of the Exporter

The exporter to whom a Certificate of Origin has been issued in the exporting Party referred to in Rule 1, shall notify in writing to the Competent Authority of the exporting Party without delay when such exporter knows that such good does not qualify as an originating good of the exporting Party.

Rule 18: Obligations of the Importer

- (a) Except as otherwise provided for in Chapter 4 (Rules of Origin), the Customs Authority of the importing Party shall require an importer who claims preferential tariff treatment for goods imported from the other Party to:
 - (i) make a customs declaration, based on a valid Certificate of Origin, that the goods qualify as an originating good of the exporting Party;
 - (ii) have the Certificate of Origin in its possession at the time the declaration is made;
 - (iii) provide the Certificate of Origin on the request of the Customs Authority of the importing Party; and
 - (iv) promptly notify the Customs Authority and pay any duties owing where the importer has reason to believe that the Certificate of Origin on which a declaration was based contains information that is not correct.
- (b) An importer claiming preferential tariff treatment for goods imported into the Party's territory shall maintain, for a period after the date of importation of the goods, a Certificate of Origin or other information demonstrating that the goods qualify as originating, and all other documents that the Party may require relating to the importation of the goods, in accordance to the domestic laws and regulations.

Rule 19: Customs Duty Refund

Each Party shall provide that, where an originating good was imported into the territory of that Party but no claim for preferential tariff treatment was made at the time of importation, the importer of the good may, no later than one year after the date on which the good was imported, apply for a refund of any excess duties paid to the Customs Authority of the importing Party as the result of the good not having been accorded preferential tariff treatment, on presentation of:

- (i) a written declaration that the good qualified as originating at the time of importation;
- (ii) a Certificate of Origin or other information demonstrating that the good qualifies as originating; and
- (iii) such other documentation relating to the importation of the good as the importing Party may require.

Rule 20: Non-Party Invoices

- (a) The Customs Authority of the importing Party shall accept Certificate of Origin in cases where the invoice is issued by a company located in a non-Party provided that the goods meet the requirements of Chapter 4 (Rules of Origin).
- (b) The exporter shall indicate “non-Party invoicing” in the Certificate of Origin.