

ภาคผนวก ข

## RULES OF ORIGIN FOR THE ASEAN-CHINA FREE TRADE AREA

In determining the origin of products eligible for the preferential tariff concession pursuant to the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China (hereinafter referred to as "the Agreement"), the following Rules shall be applied:

### **RULE 1: DEFINITIONS**

For the purpose of this Annex:

- (a) "a Party" means the individual parties to the Agreement i.e. Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic ("Lao PDR"), Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, the Socialist Republic of Vietnam and the People's Republic of China ("China").
- (b) "materials" shall include ingredients, parts, components, subassembly and/or goods that were physically incorporated into another good or were subject to a process in the production of another good.
- (c) "Originating goods" means products that qualify as originating in accordance with the provisions of Rule 2.
- (d) "production" means methods of obtaining goods including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing or assembling a good.

(e) "Product Specific Rules" are rules that specify that the materials have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy an ad valorem criterion or a combination of any of these criteria.

## **RULE 2: ORIGIN CRITERIA**

For the purposes of this Agreement, products imported by a Party shall be deemed to be originating and eligible for preferential concessions if they conform to the origin requirements under any one of the following:

- (a) Products which are wholly obtained or produced as set out and defined in Rule 3; or
- (b) Products not wholly produced or obtained provided that the said products are eligible under Rule 4, Rule 5 or Rule 6.

## **RULE 3: WHOLLY OBTAINED PRODUCTS**

Within the meaning of Rule 2 (a), the following shall be considered as wholly produced or obtained in a Party:

- (a) Plant<sup>1</sup> and plant products harvested, picked or gathered there;
- (b) Live animals<sup>2</sup> born and raised there;
- (c) Products<sup>3</sup> obtained from live animals referred to in paragraph (b) above;

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<sup>1</sup> Plant here refers to all plant life, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants

<sup>2</sup> Animals referred to in paragraph (b) and (c) covers all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, bacteria and viruses.

<sup>3</sup> Products refer to those obtained from live animals without further processing, including milk, eggs, natural honey, hair, wool, semen and dung.

- (d) Products obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted there;
- (e) Minerals and other naturally occurring substances, not included in paragraphs (a) to (d), extracted or taken from its soil, waters, seabed or beneath their seabed;
- (f) Products taken from the waters, seabed or beneath the seabed outside the territorial waters of that Party, provided that that Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with international law;
- (g) Products of sea fishing and other marine products taken from the high seas by vessels registered with a Party or entitled to fly the flag of that Party;
- (h) Products processed and/or made on board factory ships registered with a Party or entitled to fly the flag of that Party, exclusively from products referred to in paragraph (g) above;
- (i) Articles collected there which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts of raw materials, or for recycling purposes<sup>4</sup>; and
- (j) Goods obtained or produced in a Party solely from products referred to in paragraphs (a) to (i) above.

**RULE 4: NOT WHOLLY PRODUCED OR OBTAINED**

- (a) For the purposes of Rule 2(b), a product shall be deemed to be originating if:

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<sup>4</sup> This would cover all scrap and waste including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded packaging and all products that can no longer perform the purpose for which they were produced and are fit only for discarding or for the recovery of raw materials. Such manufacturing or processing operations shall include all types of processing, not only industrial or chemical but also mining, agriculture, construction, refining, incineration and sewage treatment operations.

(i) Not less than 40% of its content originates from any Party; or

(ii) If the total value of the materials, part or produce originating from outside of the territory of a Party (i.e. non-ACFTA) does not exceed 60% of the FOB value of the product so produced or obtained provided that the final process of the manufacture is performed within the territory of the Party.

(b) For the purposes of this Annex, the originating criteria set out in Rule 4(a)(ii) shall be referred to as the "ACFTA content". The formula for the 40% ACFTA content is calculated as follows:

$\frac{\text{Value of Non-ACFTA materials} + \text{Value of materials of Undetermined origin}}{\text{FOB Price}} \times 100 \% < 60\%$
<p>Therefore, the ACFTA content: 100% - non-ACFTA material = at least 40%</p>

(c) The value of the non-originating materials shall be:

(i) the CIF value at the time of importation of the materials;  
or

(ii) the earliest ascertained price paid for the materials of undetermined origin in the territory of the Party where the working or processing takes place.

(d) For the purpose of this Rule, "originating material" shall be deemed to be a material whose country of origin, as determined under these rules, is the same country as the country in which the material is used in production.

**RULE 5: CUMULATIVE RULE OF ORIGIN**

Unless otherwise provided for, products which comply with origin requirements provided for in Rule 2 and which are used in the territory of a Party as materials for a finished product eligible for preferential treatment under the Agreement shall be considered as products originating in the territory of the Party where working or processing of the finished product has taken place provided that the aggregate ACFTA content (i.e. full cumulation, applicable among all Parties) on the final product is not less than 40%.

**RULE 6: PRODUCT SPECIFIC CRITERIA**

Products which have undergone sufficient transformation in a Party shall be treated as originating goods of that Party. Products which satisfy the Product Specific Rules provided for in Attachment B shall be considered as goods to which sufficient transformation has been carried out in a Party.

**RULE 7: MINIMAL OPERATIONS AND PROCESSES**

Operations or processes undertaken, by themselves or in combination with each other for the purposes listed below, are considered to be minimal and shall not be taken into account in determining whether a good has been wholly obtained in one country:

- (a) ensuring preservation of goods in good condition for the purposes of transport or storage;
- (b) facilitating shipment or transportation;
- (c) packaging<sup>5</sup> or presenting goods for sale.

**RULE 8: DIRECT CONSIGNMENT**

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<sup>5</sup> This excludes encapsulation which is termed "packaging" by the electronics industry.

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

- (a) If the products are transported passing through the territory of any other ACFTA member states;
- (b) If the products are transported without passing through the territory of any non-ACFTA member states;
- (c) The products whose transport involves transit through one or more intermediate non-ACFTA member states with or without transshipment or temporary storage in such countries, provided that:
  - (i) the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;
  - (ii) the products have not entered into trade or consumption there; and
  - (iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.

**RULE 9: TREATMENT OF PACKING**

- (a) Where for purposes of assessing customs duties, a Party treats products separately from their packing, it may also, in respect of its imports consigned from another Party, determine separately the origin of such packing.
- (b) Where paragraph (a) above is not applied, packing shall be considered as forming a whole with the products and no part of any packing required for their transport or storage shall be considered as having been imported from outside the ACFTA when determining the origin of the products as a whole.

**RULE 10: ACCESSORIES, SPARE PARTS AND TOOLS**

The origin of accessories, spare parts, tools and instructional or other information materials presented with the goods therewith shall be neglected in determining the origin of the goods, provided that such accessories, spare parts, tools and information materials are classified and collected customs duties with the goods by the importing member state.

**RULE 11: NEUTRAL ELEMENTS**

Unless otherwise provided, for the purpose of determining the origin of goods, the origin of power and fuel, plant and equipment, or machines and tools used to obtain the goods, or the materials used in its manufacture which do not remain in the goods or form part of the goods, shall not be taken into account.

**RULE 12: CERTIFICATE OF ORIGIN**

A claim that products shall be accepted as eligible for preferential concession shall be supported by a Certificate of Origin issued by a government authority designated by the exporting Party and notified to the other Parties to the Agreement in accordance with the Operational Certification Procedures, as set out in Attachment A.

**Rule 13: Review and Modification**

These rules may be reviewed and modified as and when necessary upon request of a Member State and may be open to such reviews and modifications as may be agreed upon by the AEM-MOFCOM.