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SELF-CERTIFICATION IN ASEAN

AN ASSESSMENT OF PHILIPPINE IMPLEMENTATION OF THE
SECOND ASEAN SELF-CERTIFICATION PILOT PROJECT

03 March 2016

This document was produced for review by the United States Agency for International Development. It was prepared by Deloitte Consulting for the Trade-Related Assistance for Development Project, under Contract Number AID-492-C-13-00011

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**AN ASSESSMENT OF PHILIPPINE IMPLEMENTATION
OF THE SECOND ASEAN SELF-CERTIFICATION
PILOT PROJECT**

**USAID TRADE RELATED ASSISTANCE FOR
DEVELOPMENT (TRADE)**

CONTRACT NUMBER: AID-492-C-13-00011

DELOITTE CONSULTING LLP

USAID/PHILIPPINES

03 MARCH 2016

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ABBREVIATIONS

AEC	ASEAN Economic Community
AFTA	ASEAN Free Trade Area
AOCG	Assessment and Operations Coordinating Group
ASEAN	Association of Southeast Asian Nations
ATIGA	ASEAN Trade in Goods Agreement
BoC	Bureau of Customs
CAO	Customs Administrative Order
CCA	Coordinating Committee on ATIGA
CMO	Customs Memorandum Order
CMTA	Customs Modernization and Tariff Act
CO	Certificate of Origin
CPRS	Client Profile Registration System
DTI	Department of Trade and Industry
ECD	Export Coordination Division
EO	Executive Order
GSP	Globalized System Preferences
MICP	Manila International Container Port
MOU	Memorandum of Understanding
NAIA	Ninoy Aquino International Airport

SELF-CERTIFICATION IN ASEAN

OCP	Operational Certification Procedures
PEZA	Philippine Economic Zone Authority
POM	Port of Manila
REX	Registered Exporter
ROO	Rules of Origin
SCIMS	Self-certification Implementing and Monitoring Secretariat
SCPP 1	Self-Certification Pilot Project 1
SCPP 2	Second Self-Certification Pilot Project
SEC	Securities and Exchange Commission
URN	Unique Reference Number

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EXECUTIVE SUMMARY

The 22nd ASEAN Free Trade Area (AFTA) Council held in August 2008 mandated the development of mechanisms that will enhance the AFTA Rules of Origin (ROO) and streamline its certification procedures in line with the objectives of the ASEAN Economic Cooperation (AEC) 2015. This resulted in the initiative towards the adoption of a self-certification system in the Association of Southeast Asian Nations (ASEAN).

The ASEAN Self-Certification System, a trade facilitation initiative, is aimed at eliminating the need to go through the tedious process of obtaining a Certificate of Origin Form D (CO Form D), from the Issuing Authorities, for the purpose of claiming tariff preferences under the ASEAN Trade in Goods Agreement (ATIGA). By allowing “certified exporters” to declare that their products have satisfied the ‘ASEAN origin’ criteria, the compliance and administrative costs associated with applying and securing COs would be significantly reduced, as well as help minimize implementation issues (e.g. rejection of CO Form D by the importing Customs Authorities) that discourage traders from utilizing the FTA.

The Self-Certification Pilot Project 1 (SCPP 1) was initiated in November 2010 by Brunei, Singapore, and Malaysia. Thailand acceded to the project in October 2011. The Pilot Project 1 was envisaged to run for only a year, but the 25th AFTA Council Meeting held on 10 August 2011, in Manado, Indonesia, extended the Self-Certification Pilot Project up to 31 October 2012 and allowed other ASEAN member states to initiate their own test run under a different set of conditions and rules. Basically, allowing them to come up with another self-certification pilot project.

Following this decision, Indonesia, Laos and the Philippines developed the Second Self-Certification Pilot Project (SCPP 2). The SCPP 2 was implemented on 01 January 2014 and had a total of 15 Certified Exporters upon implementation. Following the accession of Thailand and Viet Nam to the scheme, the number of certified exporters has gone up to 87 companies. This is in stark contrast to the SCCP 1 which has 388 certified exporters. For the Philippines, there are only three (3) certified exporters with only one having actually used the scheme.

The BoC requested TRADE to conduct an assessment of its implementation of SCCP 2 and provide recommendations to increase the use of self-certification among Philippine exporters under the ATIGA.

In undertaking the assessment, the Trade-Related Assistance for Development (TRADE) Project reviewed the Operational Certification Procedures (OCP) and the Memorandum of Understanding (MOU) of Pilot Projects 1 and 2 and compared the elements, its features, including the strengths and limitations that may have affected their implementation. A review of various Customs Administrative Orders (CAOs) and Customs Memorandum Orders (CMOs) governing the procedures for the implementation of the Second Pilot Project on Self-Certification and the guidelines for accreditation of certified exporters was also completed. Meetings and consultations were convened with relevant BoC and DTI personnel involved in the implementation of the self-certification pilot project. TRADE also attended information sessions organized for exporters by the Department of Trade and Industry (DTI) and the Bureau of Customs (BoC), where discussions were held on issues relevant to the implementation of SCPP 2. Responses to a set of questions on how to improve the implementation of SCPP 2 were also used in coming up with the assessment paper. In addition, interviews were conducted with select certified exporters.

Based on the outcome of the assessment, the seemingly low uptake on applications for a certified exporter status could be attributed to the following: (i) SCPP 2 was relatively new compared to SCPP 1 and was implemented for only two years; (ii) lack of an information campaign or socialization about the second pilot project; and (iii) low volume of bilateral trade among the second pilot project participants, compared to the first pilot project; and limitations of the Operational Certification Procedures (OCP). The application process, the requirements for accreditation and for applying as a certified exporter seemed to not be a concern for participants based on the assessment as well as the information provided by the private sector/exporters.

As a way forward and to help increase participation in the self-certification pilot project, there is a need to address the limitations of the OCP by: (i) allowing traders, not only manufacturers, to participate in the self-certification pilot project; (ii) considering alternative documents instead of the commercial invoice for the origin declaration; (iii) eliminating having authorized signatories of companies to issue self-certification, including the requirement for circulation of specimen signatures; and (iv) amending Rule 23 of the OCP to allow the use of third-party invoice.

The lack of information campaign or “socialization” of the SCPP 2 could also be a factor for the rather low participation rate in the second self-certification project. To address this, a strong collaboration between BoC and DTI would be both important and critical, as well as to work with the local chambers of commerce and industry.

Strengthening the capacity of the government institutions relevant to the implementation of the self-certification is critically important. A more permanent and dedicated unit at BoC for self-certification should be established. This unit may also be responsible in undertaking other Rules of Origin (ROO) related functions, such as on advance rulings for ROO.

Self-certification under the AEC is inevitable. Hence, it would be important for the Philippines to ensure the successful implementation of the SCPP 2 because this is not only a medium to build the confidence and capacity of both the business users and the Bureau of Customs on the self-certification system, but also an opportunity to firm up the Philippines’ position in the negotiations for the region-wide self-certification OCP.

Under the EU-Globalized System of Preferences Plus (GSP+), a new self-certification system will be implemented by January 1, 2017. The system of certification of origin by public authorities will be replaced by the new self-certification system. A so-called registered exporter system (REX) will be introduced for that purpose and from 2017 onwards, exporters will directly provide their customers with statements on origin. The competent authorities in the exporting country will register exporters in order to facilitate targeted post-export controls. With this development, it is to the advantage of the Philippines to seriously consider institutionalizing a robust self-certification system, taking into account its experience from the implementation of the current self-certification system under the ATIGA pilot project and the experience of other countries implementing self-certification. BoC should start its preparation and perhaps an inventory of its resources should be undertaken to identify areas for enhancement.

With the enactment of the CMTA, there is a greater need for a strengthened unit or office at the BoC that would not only undertake the more permanent work of the SCIMS but also perform other functions related to self-certification and rules of origin. The dedicated office or unit at the BoC on self-certification could also be responsible for undertaking advance rulings on rules of origin. Further, with the explicit mandate for the BoC to utilize information and communication technology as provided in the CMTA this dedicated office could initiate the work on electronic certificate of origin issuance and the e-self-certification.

1. BACKGROUND

The ASEAN Member States have established the ASEAN Economic Community (AEC) last 31 December 2015. One of the pillars of the AEC is ASEAN as a single market and production base where there is a free flow of goods, services and investment, freer flow of capital and free flow of labor and talent. In order to realize the “free flow of goods” component of the AEC, ASEAN Member States have opened their markets through an extensive trade liberalization agenda. Trade liberalization is however meaningless unless supported by trade facilitation particularly in the area of Rules of Origin (ROO), which is crucial to the realization of the single market and production base.

In recognition of the important role of ROO in the achievement of free flow of goods within the ASEAN single market, the 22nd ASEAN Free Trade Area (AFTA) Council held in August 2008 mandated the development of mechanisms that will enhance the AFTA Rules of Origin (ROO) and streamline its certification procedures in line with the objectives of the AEC 2015. This resulted in the initiative towards the adoption of a self-certification system in ASEAN.

By allowing “certified exporters” to declare that their products have satisfied the ‘ASEAN origin’ criteria, through the ASEAN Self-Certification System, the compliance and administrative costs associated with applying and securing Certificates of Origin (COs) would be significantly reduced, as well as help minimize implementation issues (e.g. rejection of CO Form D by the importing Customs Authorities) that discourage traders in utilizing the FTA. The “Work Plan for the Development and Operationalization of an ASEAN Self-Certification Regime”, endorsed by the 23rd AFTA Council, aimed at implementing the ASEAN-wide Self-Certification Scheme by 01 January 2012 although the caveat is that this is subject to the readiness of ASEAN Member States. The self-certification scheme will be implemented in parallel with the existing CO system that is also continuously being enhanced in view of developments in the ASEAN region, such as the ASEAN Plus 1 FTAs. The “Dual Certification Regime” will be implemented to provide flexibility for those ASEAN Member States who have yet to adopt the self-certification scheme and also for the non-certified exporters.

Consistent with the Work Plan, a Self-Certification Pilot Project (SCPP 1) was initiated in November 2010 by Brunei, Singapore, and Malaysia. Thailand acceded to the project in October 2011. This pilot project was originally targeted to run for one year, i.e. 4th Quarter 2010 to 4th Quarter 2011. However, given the reservations on the technical design of the pilot project, existing domestic challenges and risk management concerns of other ASEAN Member States, the 25th AFTA Council Meeting held on 10 August 2011, in Manado, Indonesia, extended SCPP 1 up to 31 October 2012 and allowed other ASEAN Member States to initiate their own test run under a different set of conditions and rules. Basically, allowing them to come up with another self-certification pilot project.

Following the decision of the 25th AFTA Council Meeting, the Philippines and Indonesia initiated the development of a second Self-Certification Pilot Project (SCPP 2) on Self-Certification and worked jointly with Lao People’s Democratic Republic on the technical design of the Operational Certification Procedures (OCP) and the Memorandum of Understanding (MOU) to operationalize the project. The SCPP 2 was implemented on 1 January 2014 and now has 87 total Certified Exporters. The SCPP 1 on the other hand has 388 Certified Exporters as of the date of this paper.

Table 1 – Membership in the Pilot Projects

	SCPP 1	SCPP 2
Membership	Brunei, Cambodia, Malaysia, Myanmar, Singapore and Thailand	Indonesia, Laos, the Philippines, Thailand and Viet Nam
Implementation date	November 2010 (Thailand acceded in October 2011)	January 2014
Intra-ASEAN trade of SCPP participants (2014) ¹	US\$ 246.6 billion	US\$ 103.6 billion
Number of certified exporters	388	87

Source: ASEAN Secretariat

¹The data indicated for 2014 is the total intra-ASEAN trade rather than the trade among the SCPP participants. As much as the assessment wants to show actual utilization of self-certification, data being reported do not capture trade using exporter's declaration.

2. METHODOLOGY

The conduct of this assessment was made following a request from BoC for TRADE to assess the implementation of SCCP 2 and provide recommendations to increase the use of self-certification among Philippine exporters under the ATIGA. In undertaking the assessment, TRADE reviewed the Operational Certification Procedures (OCP) and the Memorandum of Understanding (MOU) of Pilot Projects 1 and 2 and compared the elements, its features, including the strengths and limitations that may have affected their implementation. A review of various Customs Administrative Orders (CAOs) and Customs Memorandum Orders (CMOs) governing the procedures for the implementation of the SCPP 2 and the guidelines for accreditation of certified exporters was also done in undertaking this assessment paper.

TRADE convened meetings and consultations with relevant BoC and DTI personnel involved in the implementation of the self-certification pilot project. Meetings were also convened and interviews conducted with members of the Self-Certification Implementing and Monitoring Secretariat (SCIMS), a group under BoC's Assessment and Operations Coordinating Group (AOCG), responsible for the supervision and management of all activities pertaining to the BoC's SCPP 2, such as evaluation and approval of certification procedures and accreditation of certified exporters, including monitoring of the invoice declarations with laws, rules and regulations relevant to exportation and rules of origin. TRADE also attended two (2) information sessions organized for exporters by DTI and BoC in socializing the self-certification pilot project where discussions were held on issues relevant to the implementation of SCPP 2. Responses to a set of questions on how to improve the implementation of SCPP 2 were also used in the assessment. In addition, interviews were conducted with select certified exporters.

3. IMPLEMENTATION OF THE SECOND SELF-CERTIFICATION PILOT PROJECT

Subsequent to the signing of the MOU on the second pilot project and the issuance of Executive Order No. (EO) 142 to implement the Philippines' commitment under the said MOU, the following Customs Orders were issued to operationalize the Philippines' participation in the Second Self-Certification Pilot Project:

- A. **Customs Administrative Order (CAO) No. 06-2013** issued on December 12, 2013 implements EO 142 ("Implementing the Memorandum of Understanding (MOU) among the Governments of the Participating Member States of the Association of Southeast Asian Nations (ASEAN) for the Implementation of a Regional Self-Certification System") (**Annex A**). The CAO provides, among others: (a) procedures to grant authority to the participants of the second pilot project to self-certify the origin of goods to be exported; (b) procedures to importers of goods from participants of the second pilot project to avail of the preferential tariffs under the ASEAN Trade in Goods Agreement (ATIGA) using invoice declaration; and (d) guidelines for customs officers in granting preferential tariff rates for eligible goods from participants of the second pilot project. Initial implementation of the SCPP 2 for exports was limited to the Port of Manila (POM), Manila International Container Port (MICP) and the Ninoy Aquino International Airport (NAIA), with possible extension to other ports within six (6) months of effective implementation.
- B. **Customs Memorandum Order (CMO) No. 02-2014** issued on January 13, 2014 provides the "Guidelines in the Implementation of the Second Pilot Project for the ASEAN Self-certification and the Accreditation of "Certified Exporters" (**Annex B**). The CMO also: (a) established the parameters and procedure in the accreditation of producers/manufacturers as certified exporters; (b) set the mechanics for invoice declaration; (c) established the Self-Certification Implementation and Monitoring Secretariat (SCIMS) under AOCG to implement, supervise and manage all activities pertaining to the SCPP 2.
- C. **Customs Memorandum Order (CMO) No. 18-2015** issued on June 15, 2015 (**Annex C**), provides for the roll-out on the implementation of BoC Self-Certification to the outports, where certified exporters can already export from those outports, instead of requiring them to export through either the Manila International Container Port (MICP), Port of Manila (POM) or the Ninoy Aquino International Airport (NAIA).
- D. **Customs Memorandum Circular (CMC) No 66-2015** issued on June 5, 2015 (**Annex D**), informing the inclusion of Thailand as an additional participant to the SCPP2 following the submission of its Instrument of Accession to the ASEAN Secretariat acceding to the Memorandum of Understanding among the Governments of the Participating Members of the ASEAN SCPP 2. The CMO issued that effective period of facilitating Thailand as a participating Member State under the SCPP 2 is on June 15, 2015.

- E. **Customs Memorandum Circular (CMC) No. 147-2015 (Annex E)** issued on October 13, 2015, informing of the inclusion of Viet Nam as a participant of the SCCP 2 starting on October 5, 2015, following the submission of its Instrument of Accession to the ASEAN Secretariat acceding to the Memorandum of Understanding among the Governments of the Participating Members of the ASEAN SCPP 2.

To be a certified exporter in the Philippines is relatively easy. As per the guidelines, manufacturers/producers would only have to apply either in writing or electronically with the SCIMS or District Collector. The application should include the following supporting documents: (i) latest income tax returns; (ii) Unique Reference Number (URN) for Philippine Economic Zone Authority (PEZA) locators and Client Profile Registration System (CPRS) for non-PEZA locators; (iii) business permits; (iv) SEC/DTI registration, where applicable; (v) list of officials authorized to sign invoice declarations (list should include their corresponding position in the company and specimen signature); (vi) illustration of the manufacturing process (for product-specific rules) and accounting process (for general rule) per good to be exported; and (vii) list of products applied for authorization to make invoice declaration. **(Annex F – Process Flow - Application and Documentary Requirements).**

The SCIMS or District Collector will forward applications for certified exporter status to the Export Coordination Division (ECD) or the Export Division (for outports) where the applications will be evaluated based on the following criteria: (i) exporter is legitimate manufacturer/producer; (ii) exporter must have been transacting with BOC for at least one (1) year; (iii) exporter must have been exporting to ASEAN countries for at least one (1) year; (iv) the officers authorized to sign the Invoice Declaration have sufficient knowledge and competence on the ATIGA ROO and have undergone training on the implementation of the self-certification system conducted by the BOC; and (v) exporter is willing to be subjected to regular monitoring and inspection. The evaluation process should be done within seven (7) days and once completed, recommendations must be submitted to the SCIMS or the District Collection. **(Annex G – Process Flow – Criteria and Approval Process).**

SCIMS grants the “certified exporter” status. If approved, SCIMS will issue a written authorization with corresponding authorization number, date of issuance and expiry date within fifteen (15) days. If disapproved, a letter of disapproval stating reasons for denial will be given to the applicant-exporter. The authorization shall be valid while the MOU on the SCPP 2 remains in effect.

COMPANIES IMPLEMENTING THE SECOND PILOT PROJECT ROO SELF-CERTIFICATION

Under BoC’s SCPP2 scheme, there are three (3) companies registered as certified exporters: (i) Swedish Match Philippines (SMPI); (ii) Toyota Tsusho Philippines Corporation; and (iii) Imasen Philippine Manufacturing Corporation. Of these three (3), only SMPI has issued invoice declaration under the self-certification pilot project.

The Swedish Match Philippines, Inc. (SPMI) is a leading manufacturer and distributor of disposable cigarette lighters and cartridges. This company which started operations in the Philippines in 1973, produces around 300 million units of disposable cigarette lighters and 7 million units of gas cartridges annually. The company exports disposable cigarette lighters to Asian countries including Indonesia, Malaysia and Myanmar, as well as to Australia, New

Zealand, USA and the EU. Of the countries involved in the SCPP 2, SMPI is only exporting to Indonesia.

Since SMPI's participation in the SCPP 2, it has issued eleven (11) self-certified invoice declaration for almost 12 million pieces/units of disposable cigarette lighters amounting to around US\$ 2.3 million, from March 5, 2015 to June 30, 2015.

Since July 2015, however, SMPI has temporarily suspended using self-certification for its export of disposable cigarette lighters to Indonesia because of concern raised by the importer. According to the importer, the Indonesian Customs did not honor earlier issued invoice declarations as the company's signatory of the invoice declaration was not an authorized signatory notified to the authorities of the participating Member States of SCPP 2. Under the OCP/MOU of the SCPP 2, certified exporters will provide the names and signatures (maximum of three (3) signatories for each company) of their authorized signatories which should be notified to the participating Member States through the ASEAN Secretariat. As a result, several invoice declarations issued by Swedish Match were not honored and preferential tariff treatment was not given to those goods. Swedish Match decided to suspend its implementation of the self-certification scheme and revert to the CO Form D issued by the BoC (issuing authority).

The other certified exporters accredited by the BoC are: Toyota Tsusho Philippines (TTPH), which manufactures motor vehicle parts and components, such as power window regulator, turn signal, dimmer, and switch windshield wiper; and Imasen Philippines Manufacturing Corporation, which also manufactures motor vehicle parts and components, such as recliner kit and seat adjuster kit. Though these companies have been exporting to Indonesia under the FTA, they have not utilized the self-certification scheme. From the information received from Toyota Tsusho Philippines, it has not utilized self-certification because SCPP 2 does not recognize third party invoicing. Under the SCPP 2, the commercial document where the declaration must be made is the commercial invoice issued by the certified exporter, thus effectively excluding companies whose invoices are coming from third Parties (usually parent company, e.g. Toyota Japan). In the case of the SCPP 1, declaration by the certified exporter may be made using other commercial documents such as packing list, thus allowing third country invoicing. Third-party invoicing under the ATIGA using CO Form D, allows the customs authority in the importing party to accept a CO in cases where the sales invoice is issued either by a company located in a third country or by an exporter for the account of a company.

In the information sessions/consultations conducted by BoC and DTI with the private sector, several companies expressed interest to participate in the SCPP 2. Some of the companies are automotive parts manufacturers who have parent companies operating in third countries. These companies effectively are excluded from participating in the SCPP 2 scheme. Other concerns raised by exporters for not participating in the SCPP 2 include the fear of non-recognition of the invoice declaration by the importing party and imposition of penalties for non-compliance of the rules and regulations under the CMO on Self-Certification and relevant domestic laws. Other exporters cited that they are already accustomed to the current practice of the CO Form D regime and without certainty or permanence of the self-certification scheme (as this is a pilot implementation), there is not much incentive to shift to the self-certification regime.

4. ASSESSMENT OF THE ASEAN SECOND SELF-CERTIFICATION PILOT PROJECT

The OCPs of the 2 self-certification pilot projects (*Annexes H and I*) have fundamental differences as shown in the table below.

Table 2 – Comparison of SCCP1 and SCCP2

	SCCP1	SCCP2
Definition of “certified exporter”	an <u>exporter</u> duly authorized to make out invoice declarations on the origin of a good exported	a <u>producer</u> duly authorized to make Invoice Declaration of a good exported
Definition of “invoice declaration”	a declaration made out by a certified exporter <u>on an invoice or any other commercial document</u>	a declaration made by a certified exporter <u>on an invoice</u>
Authorized signatories	No limitation	Limited to 3 per certified exporter
Information required in the List of certified exporters	Legal name; Registration; Location; and Authorization code	Legal name; Registration; Location; Authorization code; Specimen signature of authorized signatories; and List of products for which certified exporters are authorized to issue invoice declaration
Invoice declaration	Requirement to indicate: certified exporter number, ASEAN country of origin, and origin criteria If invoice is not available at the time of importation, invoice declaration on any of the following commercial document: <ul style="list-style-type: none"> • billing statement, • delivery order or 	Invoice declaration should be made only on the commercial invoice; HS Code has to be indicated; authorized signatory required to sign over printed name

	SCPP1	SCPP2
	<ul style="list-style-type: none"> • packing list 	
Third-country invoicing	Relevant Government authorities in the importing Member State shall accept Certificates of Origin (Form D) or Invoice Declaration 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. (Rule 23)	Relevant Government authorities in the importing Member State shall accept Certificates of Origin (Form D) 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. (Rule 23)

It was never the intention of the Coordinating Committee on ATIGA (CCA) to have 2 self-certification pilot projects. But while more ASEAN Member States were willing to participate in self-certification pilot projects, certain elements in the OCP of the SCPP 1 deterred them from doing so, most critical of which are: (i) making self-certification open to traders; and (ii) lack of transparency on the products subject of the authorization given to certified exporters. The fact that certified exporters could make use of other commercial documents in the event a commercial invoice is not available does not help in alleviating other ASEAN Member States' concern on the lack "safety nets" in the implementation of the SCPP 1 (**Annex F - OCP of Pilot 1**).

The SCPP 2 attempted to address the liberal regime of the SCPP 1 by providing that: (i) self-certification be limited to manufacturers/producers (excluding traders); (ii) exchange of information should include the list of products a certified exporter is authorized to self-certify (which the certification body confirms meets the requirements of the ATIGA ROO); (iii) signatories to the invoice declaration should be limited to three (3) per certified exporter and that their specimen signatures should also be circulated to the other ASEAN Member States participating in the pilot project; (iv) invoice declaration should strictly be made out in a commercial invoice; and (v) third country invoicing will not be covered by the pilot project (**Annex G – OCP of Pilot 2**).

Compared to SCPP 1, which already has 388 certified exporters, the SCPP 2 – participated in by Indonesia, Laos, the Philippines, Thailand and Viet Nam – only has 87 certified exporters. The Philippines has three (3) certified exporters. This seemingly low uptake on applications for a certified exporter status could be attributed to the following:

- A. The SCPP 2 is relatively new having been implemented only in January 2014 compared to SCPP 1, which is almost on its fifth year. The SMPI, the Philippine certified exporter, started using invoice declaration only in March 2015.
- B. Lack of awareness on the SCPP 1 and no proactive effort to invite and encourage potential "certified exporters"; lack of confidence to understand and apply the ATIGA ROO.

- C. The countries participating in SCPP 1 are heavily trading with each other making the volume of “intra-SCPP” of the SCPP 1 much higher than that of the SCPP 2, where the bulk of trade is Philippines-Indonesia bilateral trade. As much as the assessment wants to show actual utilization of self-certification, data being reported do not capture trade using exporter's declaration. It can only be surmised that intra-SCPP 1 trade would be much higher vis-a-vis SCPP 2 as this is relative to the overall trade among the ASEAN Member States participating in the respective pilot projects. Based on the data sourced from the ASEAN Secretariat, in 2014 for instance, the total trade among the SCPP1 countries (Brunei, Malaysia, Singapore and Thailand) amounted to US\$ 246.6 billion compared to trade among the SCPP2 countries (Indonesia, Laos, the Philippines, Thailand and Vietnam) which amounted to US\$ 103.6 billion. The latter would be even smaller if we take Thailand and Vietnam out of the configuration, which means intra-SCPP2 trade would only be US\$ 8.6 billion for 2014.
- D. The exclusion of outports in the initial phase of the Philippine implementation of the SCPP 2. It is only in June 2015 that BoC allowed the roll-out of the implementation of the SCPP 2 to the outports. According to BoC, the reason to exclude the outports in the initial implementation is to first familiarize its personnel in the implementation of self-certification pilot project before the roll-out to the other ports.
- E. Limitations in the OCP of the SCPP 2 as mentioned earlier, such as the exclusion of traders and third party invoicing.

5. RECOMMENDATIONS

To ensure the success of the SCPP 2, it will be necessary to address the reasons for the low uptake in the application for certified exporters as discussed in the previous section.

The following recommendations are submitted for consideration:

- A. Address the limitations of the OCP for the SCPP 2:
 - I. **Open participation in SCPP 2 to traders.** To assuage concerns on the possible use of self-certification for ineligible, non-originating goods, certain safety nets could be put in place. For example, a trader could only be a certified exporter of Product X sourced from Manufacturer Y. In the process of evaluating the application of a trader to be a certified exporter, documents required from a manufacturer/producer should be submitted by the trader in addition to other documents required from the trader themselves. A “manufacturer’s declaration” could be one of the requirements to be submitted by the trader where the manufacturer would indicate that the goods covered for self-certification are originating goods and have complied with the rules of origin for ATIGA. A Memorandum of Understanding (MOU) between the trader and the manufacturer could also be considered as supporting documentation for trader’s accreditation as a certified exporter. The requirement for an MOU or similar proof to support the claim for originating status of the goods is already being used by Malaysia and Thailand in implementing their self-certification pilot project schemes. The MOU would give assurance to the certifying authority, in this case the BoC, that the trader sourcing goods for export under the self-certification project are originating and eligible for tariff preference.
 - II. **Adoption of a robust system of accreditation.** As an additional safety measure to address concerns on the inclusion of traders as certified exporters, the establishment of a regional (ASEAN-wide) standard/common set of requirements for application and accreditation of certified exporters should be pursued. Each participating Member State should ensure the strict implementation of the standards and requirements when accrediting certified exporters to preserve the integrity/credibility of the self-certification system. Participating members of the self-certification scheme should agree on the minimum requirements or elements that should be provided by the trader for purposes of accreditation. In addition to the common or minimum requirements/elements, the accreditation process should be standardized such as the types of training that the certified exporter should undergo before securing the accreditation.
 - III. **Consider alternatives to the invoice declaration.** One suggestion is the use of a modified Certificate of Origin (using the company’s letter head) to be issued by the certified exporter in lieu of the commercial invoice. The modified Certificate of Origin contains pertinent information such as the authorization number of the Certified Exporter, AHTN/HS Code of the goods/products and originating criteria of the goods. The use of documents other than the commercial invoice would also address the limitation on the application of third-party invoicing.
 - IV. **Eliminate the need for authorized signatory and the requirement to circulate specimen signatures.** Although there may be wisdom for this requirement, this is an onerous requirement that could potentially lead to implementation problems. In

the event that signatories are still required in the invoice declaration, the absence of the signatures in a list of authorized signatories should not serve as a basis for rejection of the invoice declaration or similar document. The provisions under the OCP on Verification Procedures should first be applied prior to immediate rejection of the invoice declaration. Perhaps the requirement for an authorized signatory could be removed or there could be an increase in the number of authorized signatories for each company.

- V. **Amend Rule 23 of the OCP to incorporate third-party invoicing into the second pilot project.** Recognizing the presence of production networks in the region, self-certification should be a trade-facilitating arrangement made available to members of production networks. This can only be done if third-country invoicing is allowed in the SCPP 2. As pointed out in the earlier recommendation, allowing third-party invoicing would help increase the number of certified exporters as this would benefit companies like automotive parts manufacturers where their headquarters are located outside the Philippines and issuing third-party invoices.
- B. The lack of awareness efforts towards generating business sector interest in participating in the SCPP 2 should be addressed. This would entail intensifying the “socialization” process and being proactive in identifying manufacturers/producers that significantly trade with Indonesia, Lao PDR, Thailand and Viet Nam, training them on the ATIGA ROO and inviting them to be certified exporters. To carry this out, strong collaboration between the Bureau of Customs and the Department of Trade and Industry would be both important and critical. In addition to the national level outreach activities, regional workshops should also be conducted to assist in having common understanding and interpretation of the various provisions of the self-certification arrangements and rules of origin, to facilitate smooth implementation of the self-certification scheme among the participating countries. For example, there have been instances reported in forums where invoice declarations are rejected because of incorrect interpretation of the provisions provided in the MOU and OCP.
- C. Strengthen the capacity of government institutions relevant to the implementation of the self-certification. While the establishment of the SCIMS at the BoC could be deemed as a practical move, the seemingly ad-hoc nature of the SCIMS is also noted. It would therefore be necessary, as ASEAN moves towards a region-wide self-certification regime, to establish a more permanent and dedicated unit at the BoC for self-certification. Its sphere of activities would include collaborating with DTI in identifying, inviting and educating the business sector on self-certification; monitoring the progress of the self-certification; and providing advice to BoC management on how to enhance implementation.

6. CONCLUSION

Self-certification under the AEC is inevitable. Hence, it would be important for the Philippines to ensure the successful implementation of the SCPP 2 because this is not only a medium to build the confidence and capacity of both the business users and the Bureau of Customs on the self-certification system, but also an opportunity to firm up the Philippines' position in the negotiations for the region-wide self-certification OCP.

Under the EU-Globalized System of Preferences Plus (GSP+), a new self-certification system will be implemented by January 1, 2017. The system of certification of origin by public authorities will be replaced by the new self-certification system. A so-called registered exporter system (REX) will be introduced for that purpose and from 2017 onwards, exporters will directly provide their customers with statements on origin. The competent authorities in the exporting country will register exporters in order to facilitate targeted post-export controls. With this development, it is to the advantage of the Philippines to seriously consider institutionalizing a robust self-certification system, taking into account its experience from the implementation of the current self-certification system under the ATIGA pilot project and the experience of other countries implementing self-certification. BoC should start its preparation and perhaps an inventory of its resources should be undertaken to identify areas for enhancement.

With the enactment of the CMTA, there is a greater need for a strengthened unit or office at the BoC that would not only undertake the more permanent work of the SCIMS but also perform other functions related to self-certification and rules of origin. The dedicated office or unit at the BoC on self-certification could also be responsible for undertaking advance rulings on rules of origin. Further, with the explicit mandate for the BoC to utilize information and communication technology as provided in the CMTA this dedicated office could initiate the work on electronic certificate of origin issuance and the e-self-certification.

7. ANNEX A - CMO 06-2013



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS

DEC 12 2013

CUSTOMS ADMINISTRATIVE ORDER
No. 06-2013

SUBJECT: IMPLEMENTATION OF THE MEMORANDUM OF UNDERSTANDING AMONG THE GOVERNMENTS OF THE PARTICIPATING MEMBER STATES OF THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS ON THE SECOND PILOT PROJECT FOR THE IMPLEMENTATION OF A REGIONAL SELF-CERTIFICATION SYSTEM

OBJECTIVES:

- To implement Executive Order No. 142 ("Implementing the Memorandum of Understanding (MOU) among the Governments of the Participating Member States of the Association of Southeast Asian Nations (ASEAN) on the Second Pilot Project for the Implementation of a Regional Self-Certification System");
- To provide procedure on granting authority to the Participating Member States of the Second Pilot Project for the Implementation of a Regional Self-Certification System (hereinafter referred to as the "Second Pilot Project") to self-certify the origin of the goods to be exported;
- To provide procedures on how the Philippine importers of goods from the Participating Member States of the Second Pilot Project can avail of the preferential tariffs under the ASEAN Trade in Goods Agreement (ATIGA) using the Invoice Declaration of their exporters/suppliers; and
- To provide guidelines for customs officers of the Preferential Rate Unit (PRU) in the Formal Entry Division (FED) or equivalent unit in the port granting ATIGA preferential tariff rates for goods coming from the Participating Member States of the Second Pilot Project using Invoice Declaration.

COVERAGE:

- The Second Pilot Project will cover originating goods of qualified manufacturers/producers exporting to and importing from the Participating Member States.
- For exportations to the Participating Member States, the Second Pilot Project will be limited initially to Port of Manila (POM), Manila International Container Port (MICP), and Ninoy Aquino International Airport (NAIA), without prejudice to the extension of this Pilot Project to all other ports within six (6) months of its effective implementation, taking into account, but in no way limited to, the rate of utilization, the identification of the project and resolution of operational issues that may arise during the period, and the issues and concerns raised by exporters.

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- For importations from Participating Member States, the Second Pilot Project will be implemented in all ports.

DEFINITION OF TERMS:

- ATIGA** refers to the ASEAN Trade in Goods Agreement signed on 26 February 2009 in Cha-am, Thailand among ASEAN Member States to achieve free flow of goods in ASEAN as one of the principal means to establish a single market and production base for the deeper economic integration of the region towards the realization of the ASEAN Economic Community (AEC) by 2015;
- Authorization** is a privilege granted by the Bureau of Customs (BOC) to Certified Exporters;
- Certificate of Origin (Form D)** refers to the document issued by a competent authority certifying that a particular product conforms to the origin requirements under the ATIGA;
- Certified Exporter** means a producer/manufacturer duly authorized by the BOC to make out an Invoice Declaration on the origin of a good exported;
- Export Coordination Division or ECD** is the office under the BOC's Port Operations Service which is mandated to, among others, coordinate and monitor export activities in all Collection Districts, provide technical advice on export matters, and coordinate with agencies that have dealings on matters pertaining to exports;
- Exporter** means a natural or juridical person located in the territory of a Participating Member State where a good is exported from by such a person;
- Goods** shall include materials and/or products which can be wholly obtained or produced even if they are intended for later use as materials in another production process. The term "goods" and "products" can be used interchangeably (Paragraph (e), Article 25 of the ATIGA);
- Importer** means a natural or juridical person located in the territory of a Participating Member State where a good is imported into by such a person;
- Invoice Declaration** means a declaration as to the origin of goods exported made by a Certified Exporter on a commercial invoice, in accordance with Rule 12B of the Operational Certification Procedure (OCP) of the MOU on Second Pilot Project;
- Materials** means any matter or substance used or consumed in the production of goods or physically incorporated into another good or are subject to a process in the production of another good (Paragraph (g), Article 25 of the ATIGA);
- Originating goods or materials** means products that qualify as originating in accordance with the provisions of the ATIGA ROO (Paragraph (h), Article 25 of the ATIGA);
- Participating Member State** refers to the ASEAN Member State that has agreed to participate in the Second Pilot Project, which shall pertain to the Philippines, Indonesia,

Laos PDR and/or other ASEAN Member States who may accede to the MOU on the Second Pilot Project;

13. **Producer** means a natural or juridical person who carries out activities as set out in Paragraph (j), Article 25 of the ATIGA in the territory of a Participating Member State;
14. **Production** means methods of obtaining goods, including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing or assembling goods (Paragraph (j), Article 25 of the ATIGA);
15. **Preferential Rate Unit** or PRU refers to the unit under the FED or its equivalent units in all ports that shall evaluate the authenticity and validity of the Certificate of Origin (Form D)/Invoice Declaration submitted by importers;
16. **Rules of Origin** refer to the rules/criteria for determining the national source of a product, especially for the purpose of determining eligibility for preferential tariff treatment pursuant to the ATIGA; and
17. **Self-Certification** is a system which enables a Certified Exporter to make out an Invoice Declaration for the export of goods and declare, by itself, that its products have satisfied the Rules of Origin (ROO) under the ATIGA by making such declaration on the commercial invoice.

GENERAL PROVISIONS:

1. The implementation of the Second Pilot Project shall be under the direct supervision and control of the BOC's Assessment & Operations Coordinating Group (AOCG). As such, the AOCG shall determine/approve the exporters who will participate in the Second Pilot Project, and grant/confirm the "Certified Exporter" status. Likewise, the AOCG, through the ECD, shall monitor the proper use of the "Certified Exporter" status, including the verification of the authenticity and validity of the Invoice Declarations made and compliance with the law, rules and regulations pertinent to exportation and ATIGA ROO.
2. For purposes of the Second Pilot Project, only manufacturers/producers who meet the criteria as stated herein shall qualify for self-certification and be granted the "Certified Exporter" status.
3. Certified Exporters shall be authorized by the BOC to make Invoice Declarations with regard to the origin of the goods to be exported, subject to the requirements and/or conditions to be imposed under this Order.
4. The Authorization granted to the Certified Exporter shall be valid during the implementation of the Second Pilot Project, unless otherwise suspended or revoked.
5. The Authorization granted, suspended and/or revoked by the BOC shall be communicated to the Bureau of International Trade Relations under the Department of Trade and Industry, for onward transmittal to the ASEAN Secretariat.
6. For purposes of the Second Pilot Project, the BOC shall conduct orientation seminar/s for exporters/importers in the implementation thereof.

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OPERATIONAL PROVISIONS:

1. Exporters who wish to apply for a "Certified Exporter" status must pass the following criteria:
 - a. Exporter is a legitimate manufacturer/producer;
 - b. Exporter must have been exporting products to any ASEAN Member State for at least one (1) year; and
 - c. Exporter must have responsible officer/s or person/s authorized to sign the Invoice Declaration and such officer/s or person/s must have sufficient knowledge and competence in ROO application, and have undergone training on the implementation of the Second Pilot Project conducted by BOC.
2. The BOC may grant the "Certified Exporter" status, subject to the following conditions:
 - a. The exporter must grant the BOC access to records and premises for purposes of monitoring the use of the authorization and verifying the correctness of declarations made. The records and accounts must allow for the identification and verification of the origin of goods for which an Invoice Declaration was made, during at least three (3) years from the date of making the declaration, in accordance with domestic laws and regulations.
 - b. The Certified Exporter must make an Invoice Declaration only for goods being produced and manufactured that have been approved for inclusion in the Second Pilot Project and for which it has all appropriate documents proving the origin of the goods concerned at the time of making the declaration.
 - c. The Certified Exporter must ensure that the person or persons responsible for making the Invoice Declarations know/s and understand/s the ATIGA ROO and issue an undertaking on such. The Certified Exporter must issue an undertaking to this effect.
 - d. The Certified Exporter accepts the full responsibility for all Invoice Declarations made on behalf of the company, including any misuse.
 - e. The Certified Exporter shall submit a quarterly summary report of all Invoice Declarations made during the same period using the prescribed form and shall submit said report to the Port Operations Service, Attention: Export Coordination Division, within seven (7) days after the end of each quarter.
3. An exporter seeking authorization may apply either in writing or electronically and must offer to the satisfaction of the BOC, all guarantees necessary to verify the origin of the goods for which an Invoice Declaration will be made.
4. Certified Exporters shall be given written authorization by the BOC with corresponding authorization number, including the date of issuance and expiry date of the authorization, which must be included in the Invoice Declarations.
5. The Certified Exporter shall, in case of export of goods satisfying the origin criteria of the ATIGA, put the following declaration on the commercial invoice:

"The exporter of the product(s) covered by this document (Certified Exporter Authorization Code) declares that, except where otherwise clearly indicated,

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the products (HS Code/s:.....) satisfy the Rules of Origin to be considered as ASEAN Originating Products under ATIGA (ASEAN country of origin:.....) with origin criteria:

Signature over printed Name of the Authorized Signatory"

- 6. The Invoice Declaration should describe the goods in sufficient details to enable such goods to be properly identified for origin determination purposes.
7. The Invoice Declaration must be signed by hand.
8. The date indicated in the commercial invoice shall be considered as the issuance date of the Invoice Declaration.
9. If in case the space provided for in the Invoice Declaration is not sufficient to list out all the products, additional page/s could be attached, bearing the HS Codes, origin criterion and signature over printed name of the authorized signatory.
10. The BOC shall monitor the proper use of the authorization, including verification of the correctness of the Invoice Declarations made.
11. The PRU shall grant preferential tariffs only to imported goods and whose exporters are included in the lists provided by the Participating Member States of the Second Pilot Project to the ASEAN Secretariat.

GROUND FORS SUSPENSION OR REVOCATION OF ACCREDITATION AS "CERTIFIED EXPORTER"

- 1. The Certified Exporter no longer offers the guarantees referred to in Rule 12A(1) of the OCP of the MOU on the Second Pilot Project;
2. The Certified Exporter no longer fulfills the conditions referred to in Rule 12A(2) of the OCP of the MOU on the Second Pilot Project; and
3. Violation of this Order.

PENALTIES

Commission of any of the acts mentioned in the above grounds shall constitute an offense and shall be penalized, as follows:

- 1. Commission of any of the above acts for the first time shall be penalized with a suspension for three (3) months of the Accreditation as Certified Exporter;
2. Commission of any of the above acts for the second time shall be penalized with a suspension for six (6) months of the Accreditation as Certified Exporter; and
3. Commission of any of the above acts for the third time shall be penalized with a revocation of the Accreditation as Certified Exporter.

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The above penalties shall be without prejudice to the imposition of other penalties under the Tariff and Customs Code of the Philippines, as amended, and other applicable laws, rules and regulations.

EXTENSION OF THE PROJECT TO OTHER ASEAN MEMBER STATES

This Order shall be made applicable to other ASEAN Member States who may accede to the MOU on the Second Pilot Project.

EFFECTIVITY

This Order shall take effect immediately and shall remain in force until the termination of the MOU on the Second Pilot Project.

CESAR V. PURISIMA
Secretary
Department of Finance
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JOHN P. SEVILLA
Commissioner
12 DEC 2013

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MALACANAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 142

IMPLEMENTING THE MEMORANDUM OF UNDERSTANDING (MOU) AMONG THE GOVERNMENTS OF THE PARTICIPATING MEMBER STATES OF THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN) ON THE SECOND PILOT PROJECT FOR THE IMPLEMENTATION OF A REGIONAL SELF-CERTIFICATION SYSTEM ("SECOND PILOT PROJECT")

WHEREAS, ASEAN Leaders decided to establish an ASEAN Economic Community (AEC) by 2015 and adopted the AEC Blueprint at the 13th ASEAN Summit on 20 November 2007 to establish ASEAN as a single market and production base, making it more dynamic and competitive as an economic region where there is a free flow of goods, services, investment, skilled labor and capital;

WHEREAS, the Rules of Origin (ROO) play a crucial role in the achievement of a free flow of goods within the ASEAN single market;

WHEREAS, the ASEAN Trade in Goods Agreement (ATIGA), which was signed on 26 February 2009 in Cha-am, Thailand, and entered into force on 17 May 2010, provides for a framework to realize the free flow of goods in the region;

WHEREAS, Article 38 and Annexes 7 and 8 of ATIGA provide for the relevant modalities and procedures for the application of the preferential treatment to goods falling within the ASEAN Free Trade Area (AFTA);

WHEREAS, Executive Order (EO) No. 850 (s. 2009), which was issued to implement tariff reduction/elimination commitments in accordance with the obligations under Articles 19 and 21 of ATIGA, requires compliance with the applicable ATIGA ROO and its Operational Certification Procedure (OCP), including the submission of a valid Certificate of Origin (Form D), in order to avail of preferential tariff rates under ATIGA;

WHEREAS, the initiative to adopt a self-certification scheme in ASEAN emanated from the decision of the 22nd AFTA Council Meeting in August 2008 to develop mechanisms that will enhance the AFTA ROO and streamline certification procedures in line with the AEC Blueprint;

WHEREAS, pursuant to the "Work Plan for the Development and Operationalization of an ASEAN Self-Certification Regime," endorsed by the 23rd AFTA Council Meeting, the MOU on the First Pilot Project was signed on 30 August 2010 by Brunei Darussalam, Malaysia and Singapore;

WHEREAS, following the decision of the 25th AFTA Council Meeting in August 2011 to allow other ASEAN Member States to have their own self-certification pilot project under a set of rules and conditions different from the First Pilot Project, the MOU on the Second Pilot Project was signed on 29 August 2012 by the Philippines, Indonesia and Lao People's Democratic Republic;

WHEREAS, the President of the Philippines ratified the MOU on the Second Pilot Project on 14 March 2013; and,

WHEREAS, during its meeting on 26 June 2013, the NEDA Board approved the Philippine implementation of the MOU on the Second Pilot Project.

NOW, THEREFORE, I, BENIGNO S. AQUINO III, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Objective. The MOU on the Second Pilot Project, which is attached as an integral part of this Order, aims to implement a regional self-certification system within the AFTA, in preparation for the development and operationalization of an ASEAN-wide Self-Certification System by 2015.

SECTION 2. Self-Certification Scheme. Under the self-certification scheme, there shall be no need to present a Certificate of Origin (Form D) in claiming tariff preferences as it allows Certified Exporters to self-declare that their products have satisfied the ATIGA ROO by making such declaration on the commercial invoice.

SECTION 3. Procedural Arrangements. The MOU on the Second Pilot Project shall be implemented according to the modalities set out in its Annex.

SECTION 4. Obligations. Throughout the implementation of the MOU on the Second Pilot Project, the Philippines shall accord to goods originating from other participating Member States the preferential tariff treatment set out in Article 19 of ATIGA, upon the submission of either a Certificate of Origin (Form D), or an Invoice Declaration made by a Certified Exporter in accordance with the Annex of the MOU on the Second Pilot Project and the regulations of the Bureau of Customs (BOC).

SECTION 5. Implementing Agency. The BOC shall be the implementing agency for the MOU on the Second Pilot Project, and shall perform the following functions:

- a. Grant, suspend or revoke the status of Certified Exporters, subject to the qualifications/criteria/conditions it may impose;
- b. Monitor the proper use of the Certified Exporters status, including the verification of the authenticity and validity of the Invoice Declarations made;

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- c. Monitor compliance of Certified Exporters with the laws, rules and regulations pertinent to exportation and importation; and
- d. Perform other appropriate functions consistent with the implementation of the MOU on the Second Pilot Project.

A Customs Administrative Order shall be issued by BOC for this purpose after consultations with relevant stakeholders.

SECTION 6. Repealing Clause. All issuances, orders, rules and regulations, or parts thereof, which are inconsistent with this Order are hereby repealed, amended or modified accordingly.

SECTION 7. Separability Clause. If any provision of this Order is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

SECTION 8. Effectivity Clause. This Order shall take effect immediately upon publication in a newspaper of general circulation and shall remain in force until the termination of the MOU on the Second Pilot Project.

DONE, in the City of Manila, this 14th of October, in the year of our Lord, Two Thousand and Thirteen.



By the President:



PAQUITO N. OCHOA, JR.
Executive Secretary



8. ANNEX B - CMO 02-2014

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REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS



CUSTOMS MEMORANDUM ORDER NO. 02-2014

GUIDELINES IN THE IMPLEMENTATION OF THE SECOND PILOT PROJECT FOR THE ASEAN SELF-CERTIFICATION SYSTEM AND THE ACCREDITATION OF "CERTIFIED EXPORTERS".

I. OBJECTIVES

1. To implement Customs Administrative Order No. 142 Implementing the Memorandum of Understanding (MOU) among the Governments of the Participating Member States of the Association of Southeast Asian Nations (ASEAN) on the Second Pilot Project for the Implementation of a Regional Self-Certification System.
2. To establish the parameters and procedure in the accreditation of producers/manufacturers as Certified Exporters.
3. To set the mechanics for invoice declaration.

II. DEFINITION OF TERMS

1. ATIGA refers to the ASEAN Trade in Goods Agreement signed on 26 February 2009 in Cha-am, Thailand among ASEAN Member States to achieve free flow of goods in ASEAN as one of the principal means to establish a single market and production base for the deeper economic integration of the region towards the realization of the ASEAN Economic Community (AEC) by 2015;
2. Authorization is a privilege granted by the Bureau of Customs (BOC) to Certified Exporters;
3. Certificate of Origin (Form D) refers to the document issued by a competent authority certifying that a particular product conforms to the origin requirements under the ATIGA;
4. Certified Exporter means a producer/manufacture duly authorized by the BOC to make Invoice Declaration of a good exported;
5. Export Coordination Division or ECD is the office under the BOC's Port Operations Service which is mandated to, among others, coordinate and monitor export activities in all Collection Districts, provide technical advice on export matters, and coordinate with agencies that have dealings on matters pertaining to export;

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6. Exporter means a natural or juridical person located in the territory of a Participating Member State where a good is exported from by such a person;
7. Goods shall include materials and/or products which can be wholly obtained or produced even if they are intended for later use as materials in another production process. The term "goods" and "products" can be used interchangeably (Paragraph (e), Article 25 of the ATIGA);
8. Importer means a natural or juridical person located in the territory of a Participating Member State where a good is imported into by such a person;
9. Invoice Declaration means a declaration as to the origin of goods exported made by a Certified Exporter on a commercial invoice, in accordance with Rule 12B of the Operational Certification Procedure (OCP) of the MOU on Second Pilot Project;
10. Materials means any matter or substances used or consumed in the production of goods or physically incorporated into another good or are subject to a process in the production of another good (Paragraph (g), Article 25 of the ATIGA);
11. Originating goods or materials means products that qualify as originating in accordance with the provisions of the ATIGA ROO (Paragraph (h), Article 25 of the ATIGA);
12. Participating Member State refers to the ASEAN Member State that has agreed to participate in the Second Pilot Project, which shall pertain to the Philippines, Indonesia, Lao PDR and/or other ASEAN Member States who may accede to the MOU on the Second Pilot Project;
13. Producer means a natural or juridical person who carries out activities as set out in Paragraph (i), Article 25 of the ATIGA in the territory of a Participating Member State;
14. Production means methods of obtaining goods, including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing or assembling goods (Paragraph (j), Article 25 of the ATIGA);
15. PRU refers to the Preferential Rate Unit under the FED or its equivalent units in all ports that shall evaluate the authenticity and validity of the Certificate of Origin (Form D)/Invoice Declaration submitted by importers;

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- 16. Rules of Origin or ROO refer to the rules/criteria for determining the national source of a product, especially for the purpose of determining eligibility for preferential tariff treatment pursuant to the ATIGA; and
- 17. Self-Certification is a system which enables a Certified Exporter to make out an Invoice Declaration for the export of goods and declare, by itself, that its products have satisfied the Rules of Origin (ROO) under the ATIGA by making such declaration on the commercial invoice..

III. GENERAL PROVISION

- 1. Only exporters in good standing with the Bureau of Customs shall qualify for accreditation in accordance with this Order.
- 2. The Bureau of Customs may authorize an exporter who makes shipments of products to make Invoice Declarations with regard to the originating status of the goods concerned.
- 3. An exporter seeking such authorization must apply in writing or electronically or must offer to the satisfaction of the Bureau of Customs all guarantees necessary to verify the originating status of the goods for which an Invoice Declaration was made out.
- 4. A Self-Certification Implementation & Monitoring Secretariat (SCIMS) under the AOCG shall be established to implement, supervise and manage all activities pertaining to the 2nd pilot project for self certification including to process and approve the certification procedure as certified exporters and monitoring the correctness of the Invoice Declarations compliance with the law, rules, and regulations pertinent to exportation and Rules of Origin.
- 5. The AOCG shall coordinate with the Management Information and Systems Technology Group (MISTG) on the Information and Communication Technology (ICT) requirement of the Second Pilot Self Certification Project.

IV. OPERATIONAL PROVISION

A. APPLICATION FOR "CERTIFIED EXPORTERS"

- 1. Manufacturers/exporters must apply in writing or electronically addressed to the Deputy Commissioner AOCG attn: Self Certification Implementing & Monitoring Secretariat (SCIMS), his/her intention to be accredited as "certified exporter" together with the following documents, to wit:
 - a. Latest Income tax returns;

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- b. URN as exporters;
- c. Business permits;
- d. SEC/DTI registration, where applicable;
- e. List of official/s and their positions in the company authorized to sign the Invoice Declaration with their respective specimen signatures (not to exceed three (3) persons); and
- f. An illustration of the manufacturing process (for product specific rule) or the accounting process (for general rule) per good to be exported.
- g. List of products applied for authorization to make invoice declaration.

- 2. The SCIMS shall composed of the following, to wit:

Head	-	Deputy Commissioner, AOCG
Members	-	Director, POS
		Chief, ECD
		Chief, FED & ED, POM
		Chief, FED & ED, MICP
		Chief, FED & ED, NAIA

- 3. The head of SCIMS shall forward the application to the ECD who shall evaluate the same based on the following criteria:
 - a. Exporter is a legitimate manufacturer/producer, who must have been transacting with the Bureau of Customs for more than one (1);
 - b. Exporter must have been exporting products with ASEAN member states for at least one (1) year;
 - c. Exporter must have responsible officer/s or person/s authorized to sign the Invoice Declaration must have sufficient knowledge, competence in ROO application, and have undergone training on the implementation of Self-Certification System conducted by the BOC;
 - d. Exporter must be willing to be subjected to regular monitoring and inspection to determine the correctness of its declaration with respect to the goods exported.
- 4. After evaluation, ECD shall forward it's findings and recommendation to the SCIMS within seven (7) working days to SCIMS for it's consideration.
- 5. If SCIMS finds the application to be meritorious, it shall grant the "Certified Exporter" status through the issuance of a written Authorization with the corresponding authorization number including the date of issuance and expiry date of the authorization within fifteen (15) working days from the date of receipt of application with complete documentary requirements by the SCIMS. If not, it shall issue a letter of disapproval stating the reason/s for the denial.

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6. A copy of the "written authorization" shall be furnished the ECD copy furnished Bureau of International Trade Relation (BITR), Department of Trade and Industry (DTI).

B. OBLIGATIONS FOR GRANT OF "CERTIFIED EXPORTER" STATUS

The following are the obligations of a Certified Exporter:

1. Allow the Bureau of Customs access to records and premises for the purpose of monitoring the use of the authorization and of the verification of the correctness of the declarations made. The records and accounts must allow for the identification and verification of the originating status of goods for which an Invoice Declaration was made, during at least three (3) years from the date of the declaration, in accordance with domestic laws and regulations.
2. Undertake to make the Invoice Declaration only for goods that such exporter produces and for which he has all appropriate documents proving the originating status of the goods concerned at the time of the declaration.
3. Undertake to ensure that the person(s) responsible for making the Invoice Declarations know and understand the Rules of Origin.
4. Assumes full responsibility for all Invoice Declarations made out on behalf of the company, including any misuse.
5. The Certified Exporter shall submit a quarterly summary report of all Invoice Declarations made during the same period using the prescribed form and shall submit said report to the Port Operations Service, Attention: Export Coordination Division, within seven (7) days after the end of each quarter.

C. EXPORT PROCEDURES FOR CERTIFIED EXPORTERS

1. The "Certified Exporter" shall file an export declaration in accordance with the Implementing Rules and Regulations of P.D. 930, as amended and CMO 54-2010 and CMO 7-2012 on Automated Export Documentation System.
2. The Certified Exporter shall, in case of export of goods satisfying the origin criteria of the ATIGA, put the following declaration on the commercial invoice:

"The exporter of the product(s) covered by this document (Certified Exporter Authorization Code) declares that, except where otherwise clearly indicated, the products (HS

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Code/s:.....) satisfy the Rules of Origin to be considered as ASEAN Originating Products under ATIGA (ASEAN country of origin:.....) with origin criteria:

Signature over printed Name of the Authorized Signatory"

3. The Commercial Invoice should describe the goods in sufficient details to enable them to be identified for origin determination purposes.
4. The declaration on the invoice must be signed by hand.
5. The date indicated in the commercial invoice shall be considered as the issuance date of the Invoice Declaration.
6. If in case the space provided for in the Invoice Declaration is not sufficient to list out all the products, additional page/s could be attached, bearing the HS Codes, origin criterion and signature over printed name of the authorized signatory.
7. The Bureau of Customs shall monitor the proper use of the Authorization, including verification of the correctness of the Invoice Declarations made. Decisions on the frequency and depth of such action should be risk-based. Furthermore, the BOC will act on retrospective verification requests by the customs authorities of the importing Participating Member State.
8. In cases where the "Certified Exporter" may decide not to submit an invoice declaration, he may still claim tariff preference under the ATIGA by applying for the issuance of a CO Form D.

D. IMPORT PROCEDURE FOR CERTIFIED EXPORTERS

For shipments availing of the preferential rate under ATIGA from Indonesia and Laos PDR and other participating member states the existing customs import procedures shall still apply, only that for the Certified Exporters of the afore-mentioned countries they have the option to claim tariff preference under ATIGA by submitting an invoice declaration in lieu of a CO Form D.

V. VALIDITY OF THE STATUS

The authorization given shall be valid until 31 December 2015, unless the MOU on the Second Pilot Project is terminated.

SELF-CERTIFICATION IN ASEAN

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VI. GROUNDS FOR SUSPENSION OR REVOCATION

1. Certified Exporter no longer offers the guarantees referred to in Rule 12A(1) of the OCP of the MOU on the Second Pilot Project;
2. Certified exporter no longer fulfills the conditions referred to in Rule 12A(2) of the OCP of the MOU on the Second Pilot Project; and
3. Certified Exporter violates this Order.

VI. PENALTIES

Commission of any of the acts mentioned in the above grounds shall constitute an offense and shall be penalized, as follows:

1. Commission of any of the above acts for the first time shall be penalized with a suspension for three (3) months of the Accreditation as Certified Exporter;
2. Commission of any of the above acts for the second time shall be penalized with a suspension for six (6) months of the Accreditation as Certified Exporter; and
3. Commission of any of the above acts for the third time shall be penalized with a revocation of the Accreditation as Certified Exporter.

The above penalties shall be without prejudice to the imposition of other penalties under the Tariff and Customs Code of the Philippines, as amended, and other applicable laws, rules and regulations.

VII. OTHER PROVISIONS

1. Pursuant to the verification process, Certified Exporters making an invoice declaration shall keep the supporting records for not less than three (3) years from the date of the Invoice Declaration.
2. The Bureau of Customs shall retain the authorization of the Certified Exporters and all other documents related to such application for not less than three (3) years from the date of the granting of the authorization.
3. Information as to the correctness of the Invoice Declaration shall be furnished upon request of the importing Member State by the competent authority of the exporting Member State.

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4. Any information communicated between the Participating Member states concerned shall be treated as confidential and shall be used exclusively for the validation of Invoice Declaration.

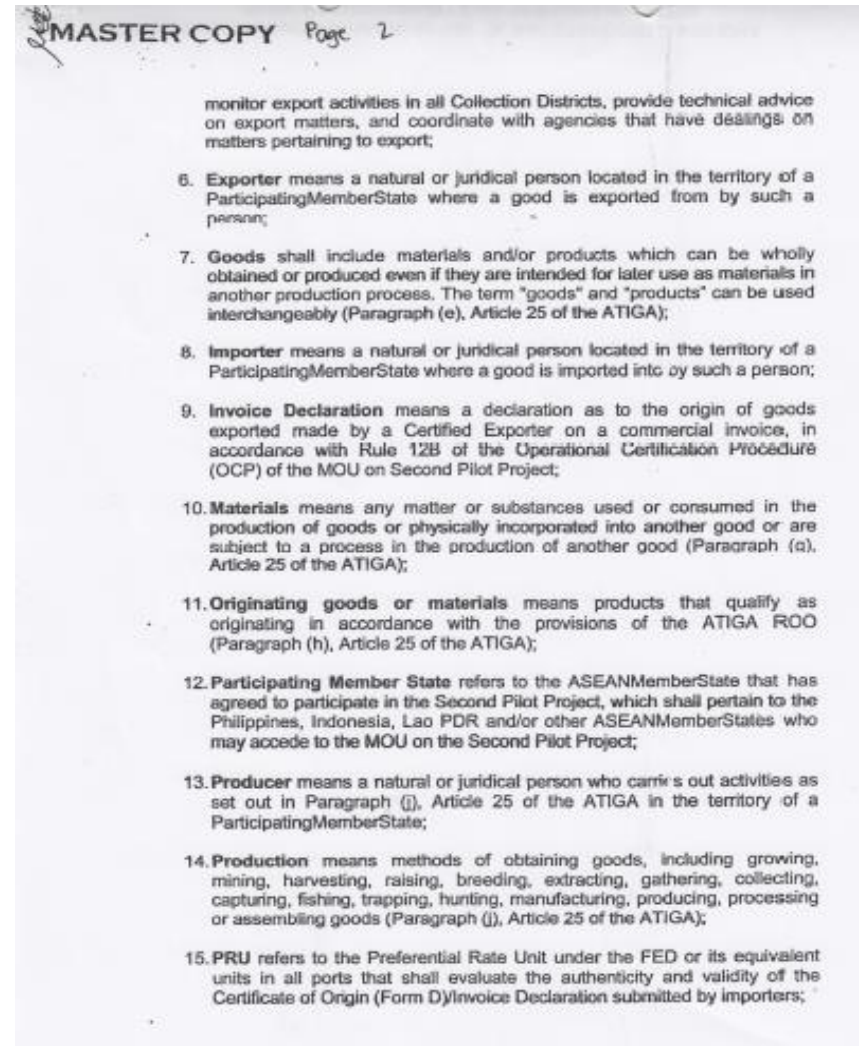
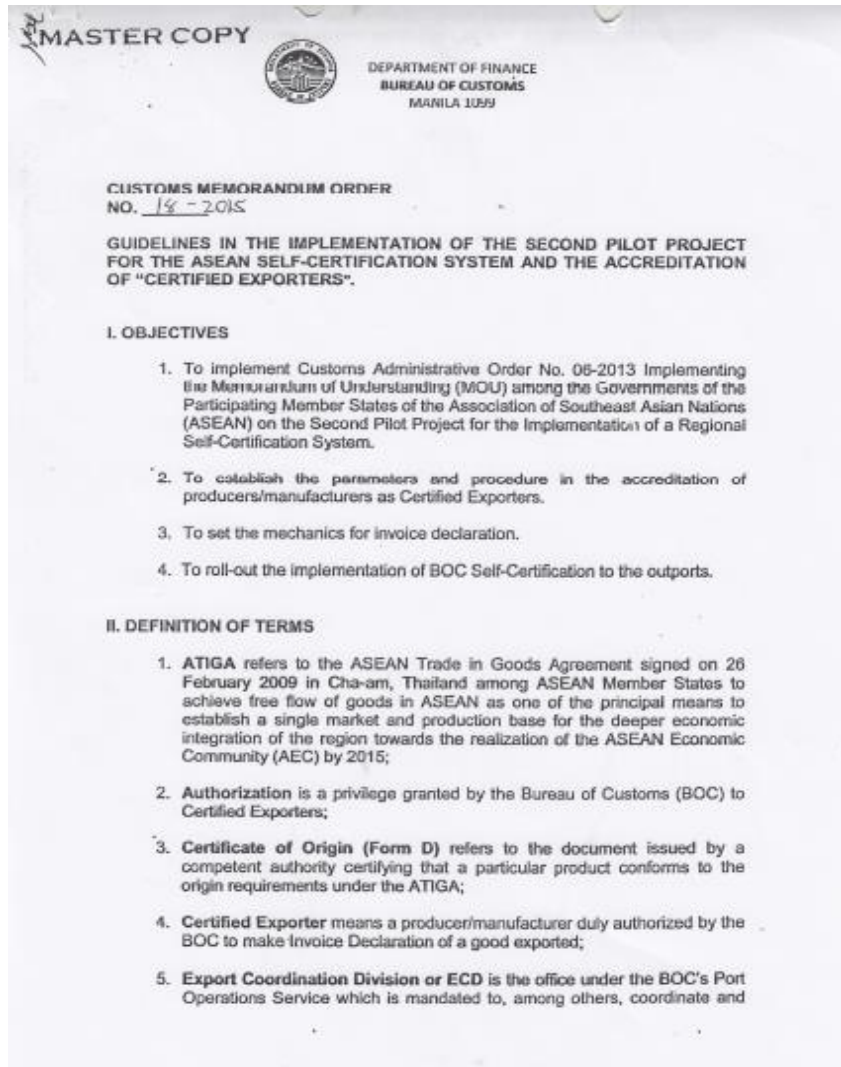
VIII. EFFECTIVITY

This Order shall take effect immediately.


JOHN PHILLIP P. SEVILLA
 Commissioner

 01-13-2014

SELF-CERTIFICATION IN ASEAN



SELF-CERTIFICATION IN ASEAN

16. Rules of Origin or ROO refer to the rules/criteria for determining the national source of a product, especially for the purpose of determining eligibility for preferential tariff treatment pursuant to the ATIGA; and

17. Self-Certification is a system which enables a Certified Exporter to make out an Invoice Declaration for the export of goods and declare, by itself, that its products have satisfied the Rules of Origin (ROO) under the ATIGA by making such declaration on the commercial invoice.

III. GENERAL PROVISION

1. Only exporters in good standing with the Bureau of Customs shall qualify for accreditation in accordance with this Order.
2. The Bureau of Customs may authorize an exporter who is engaged in exportation to make Invoice Declarations with regard to the originating status of the goods concerned.
3. An exporter seeking such authorization must apply in writing or electronically, and must offer to the satisfaction of the Bureau of Customs all guarantees necessary to verify the originating status of the goods for which an Invoice Declaration was made out.
4. A Self-Certification Implementation & Monitoring Secretariat (SCIMS) under the AOCG is established to implement, supervise and manage all activities pertaining to the 2nd pilot project for self-certification. The SCIMS shall also be responsible in evaluating and approval of the certification procedure as certified exporters and monitoring the correctness of the Invoice Declarations compliance with the law, rules, and regulations pertinent to exportation and Rules of Origin.
5. The AOCG shall coordinate with the Management Information and Systems Technology Group (MISTG) on the Information and Communication Technology (ICT) requirement of the Second Pilot Self Certification Project.

IV. OPERATIONAL PROVISION

A. APPLICATION FOR "CERTIFIED EXPORTERS"

1. Manufacturers/exporters may apply in writing or electronically, addressed to the Deputy Commissioner, AOCG, through the Self Certification Implementing & Monitoring Secretariat (SCIMS) for Metro Manila ports, or the District Collector for outports and sub-ports, its intention to be accredited as "certified exporter" together with the following documents, to wit:
 - a. Latest income tax returns;

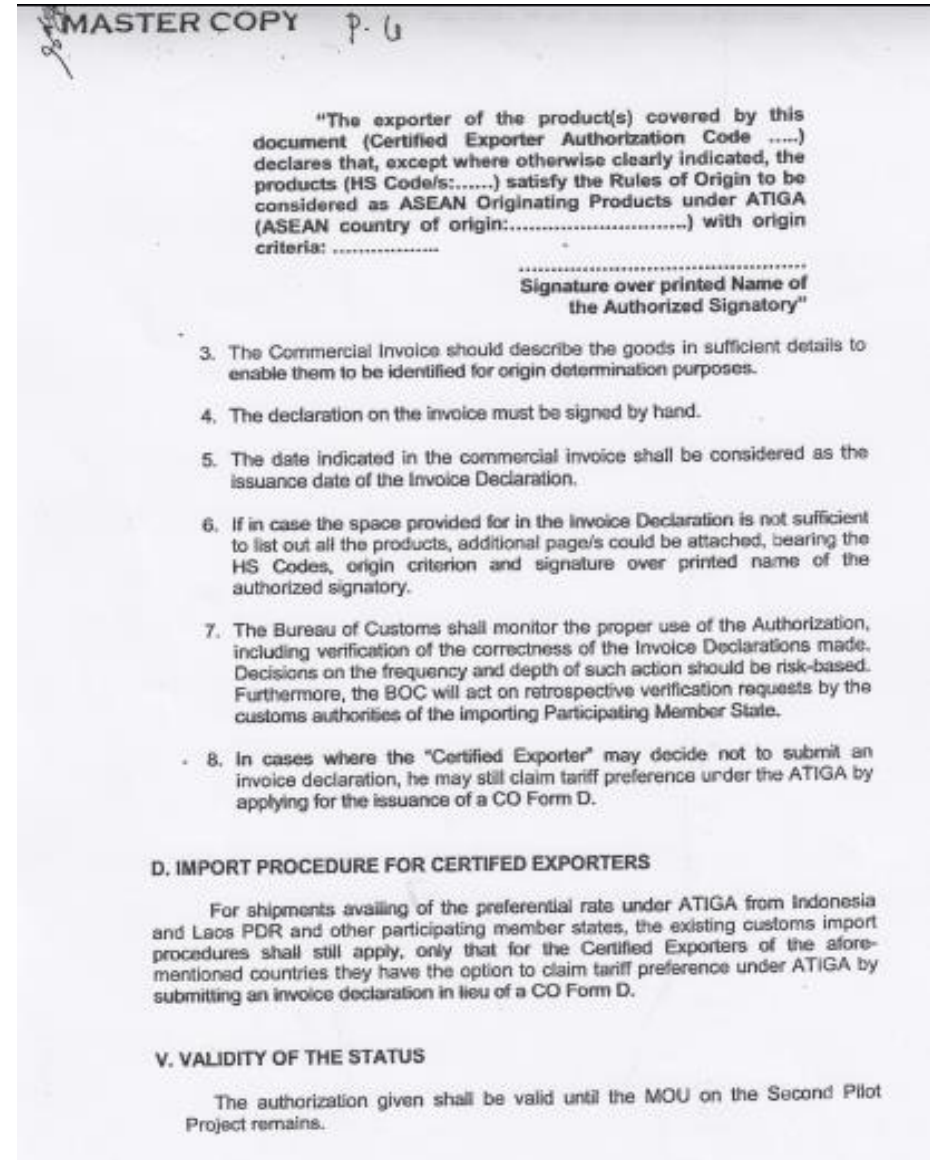
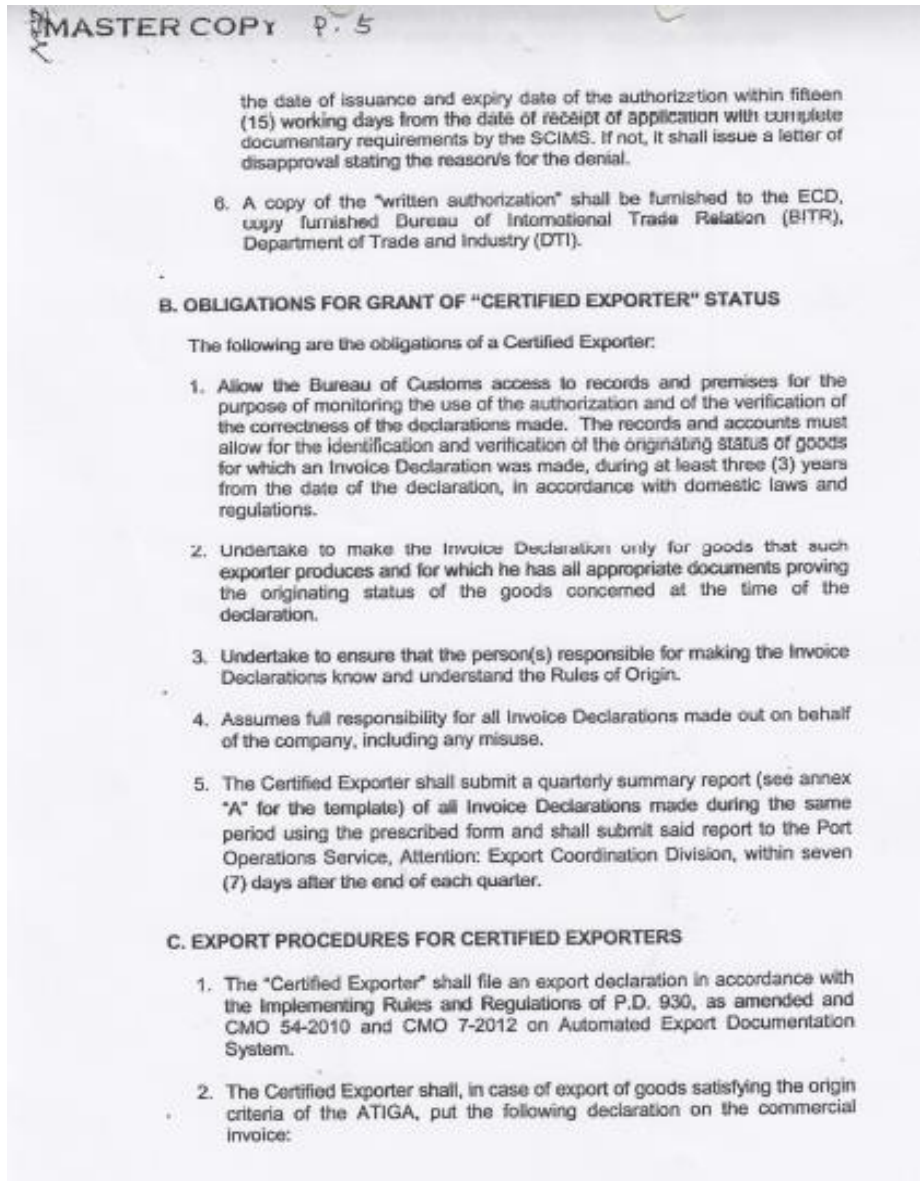
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- b. Unique Reference Number (URN) as PEZA locators and Client Profile Registrations System (CPRS) for non-PEZA locators;
- c. Business permit/s;
- d. SEC/DTI registration, where applicable;
- e. List of official/s and their positions in the company authorized to sign the Invoice Declaration with their respective specimen signatures (not to exceed three (3) persons);
- f. An illustration of the manufacturing process (for product specific rule) or the accounting process (for general rule) per good to be exported; and
- g. List of products applied for authorization to make invoice declaration.

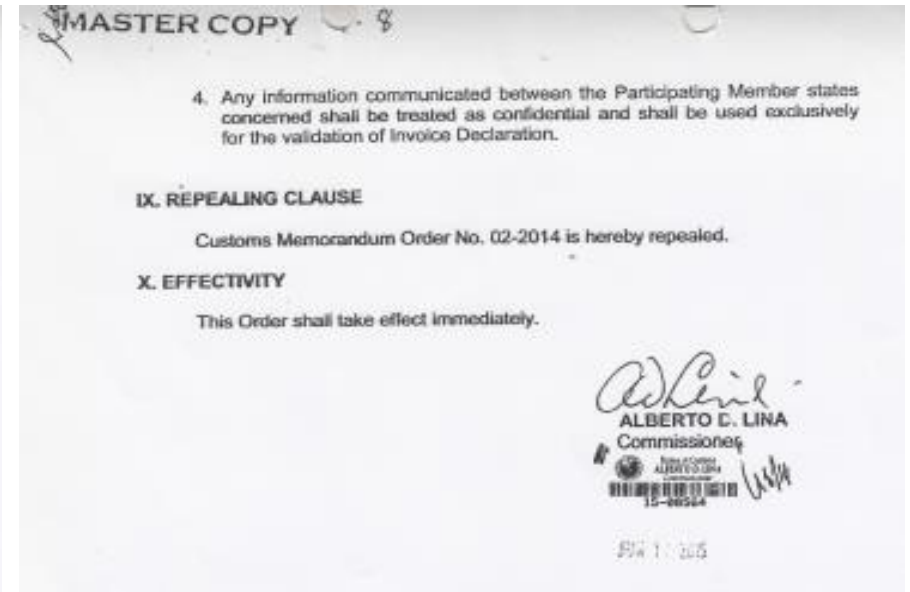
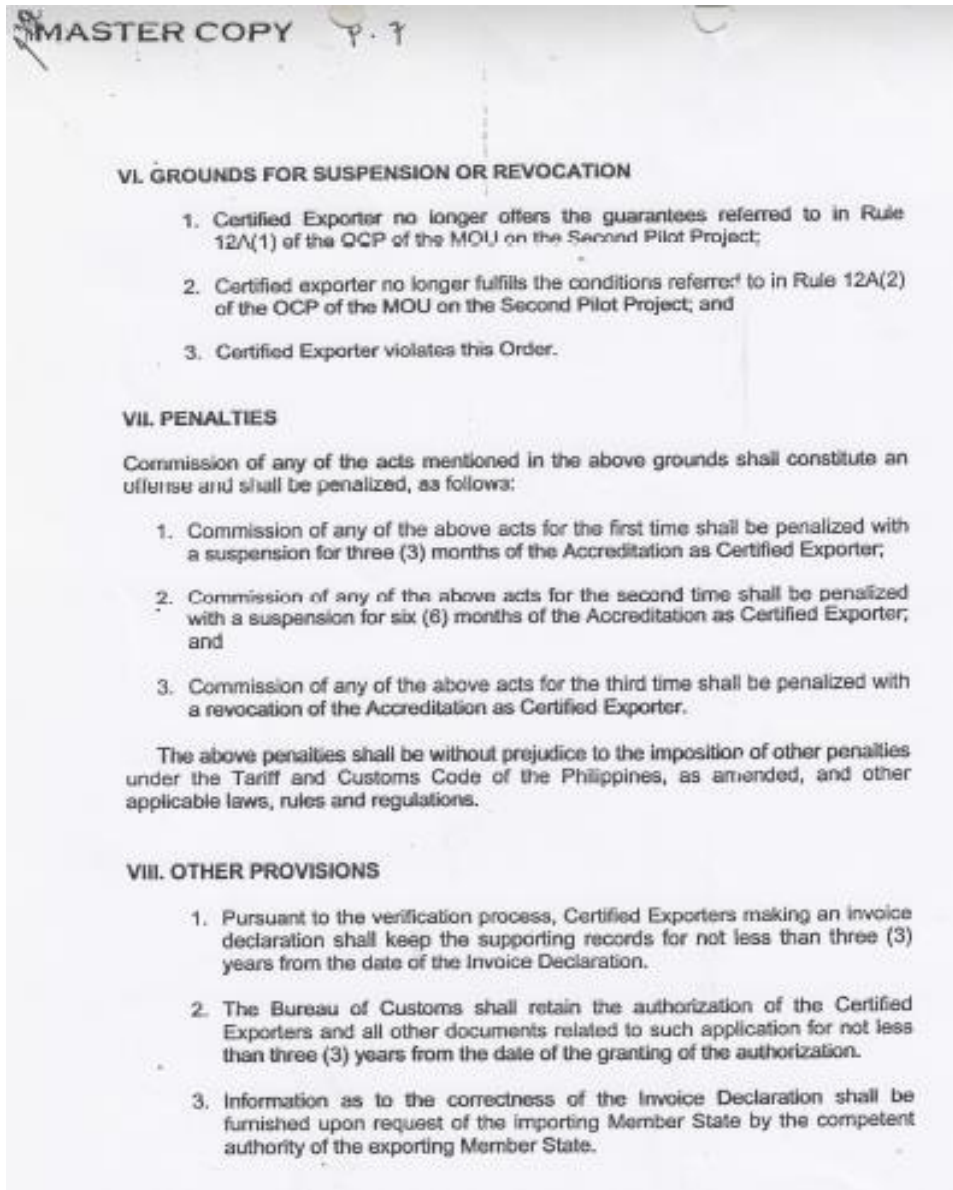
2. The SCIMS shall composed of the following, to wit:

Head	-	Deputy Commissioner, AOCG
Members	-	Director, POS
		Chief, ECD
		Chief, FED & ED, POM
		Chief, FED & ED, MICP
		Chief, FFD & FD, NAIA

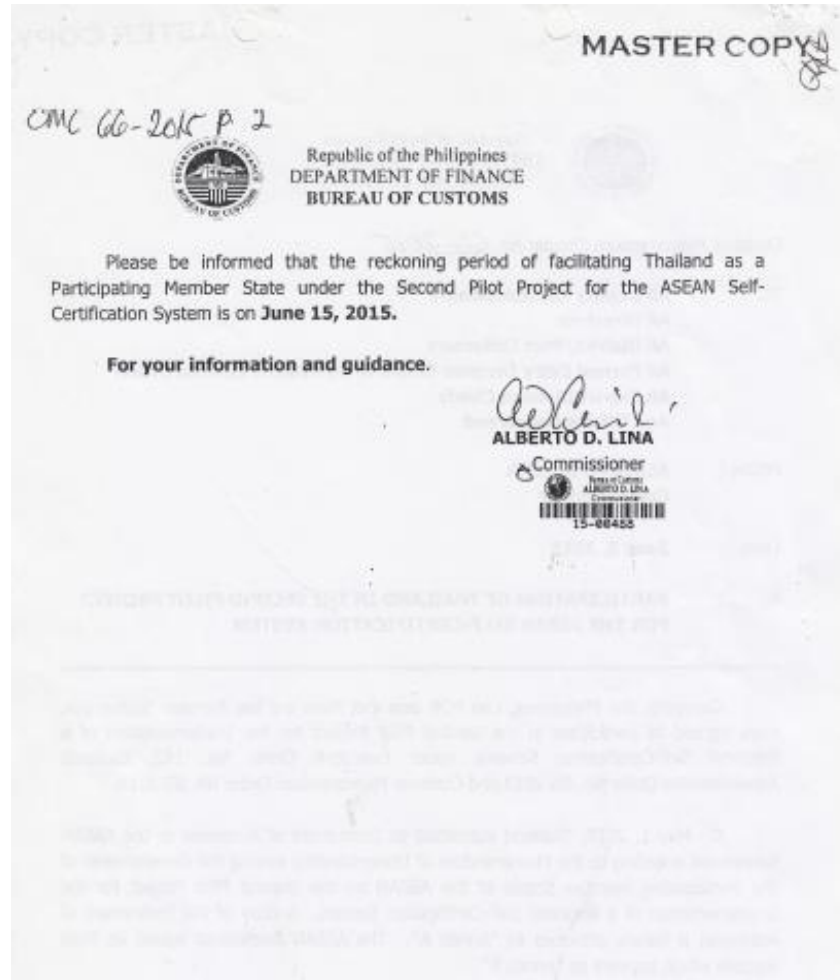
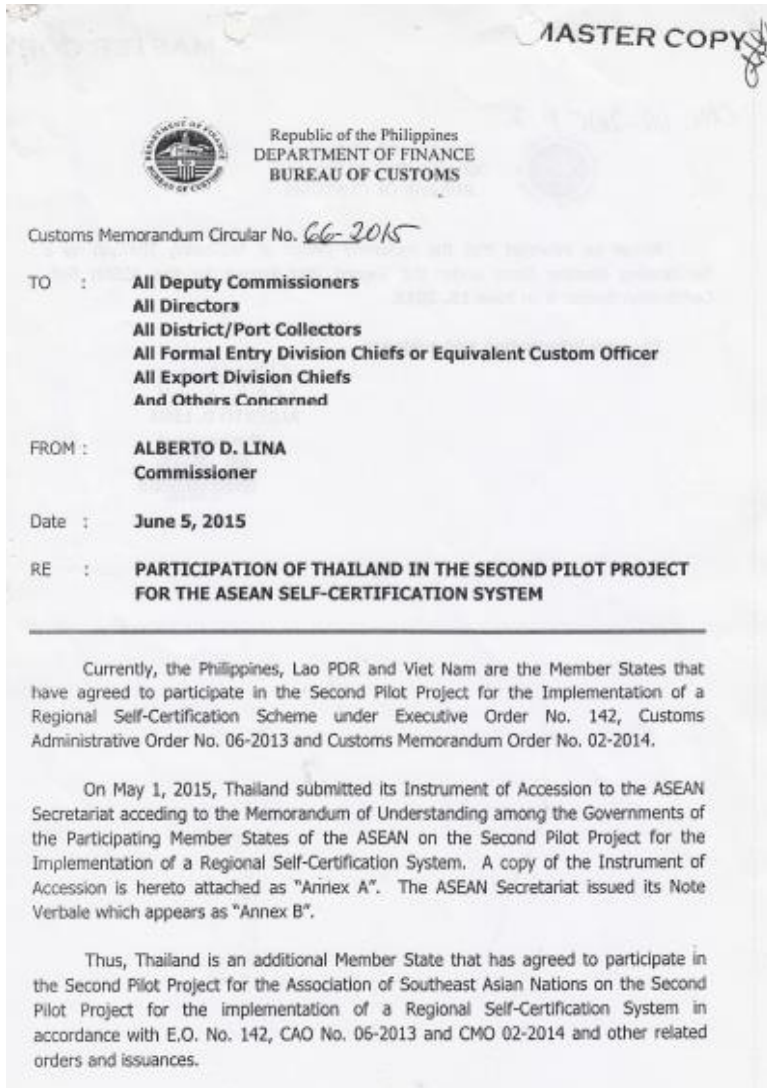
3. The head of SCIMS or the District Collector (in case of outports) shall forward the application to the Export Coordination Division (ECD) or Export Division (ED) (for outports), who shall evaluate the same based on the following criteria:
 - a. Exporter is a legitimate manufacturer/producer, who must have been transacting with the Bureau of Customs for more than one (1) year;
 - b. Exporter must have been exporting products with ASEAN member states for at least one (1) year;
 - c. Exporter must have responsible officer/s or person/s authorized to sign the Invoice Declaration must have sufficient knowledge, competence in ROO application, and have undergone training on the implementation of Self-Certification System conducted by the BOC;
 - d. Exporter must be willing to be subjected to regular monitoring and inspection to determine the correctness of its declaration with respect to the goods exported.
4. After evaluation, ECD shall forward its findings and recommendation to the SCIMS within seven (7) working days for its consideration. ED of the port concerned, on the other hand, shall forward its finding to the SCIMS, within the same period, through the District Collector, for its



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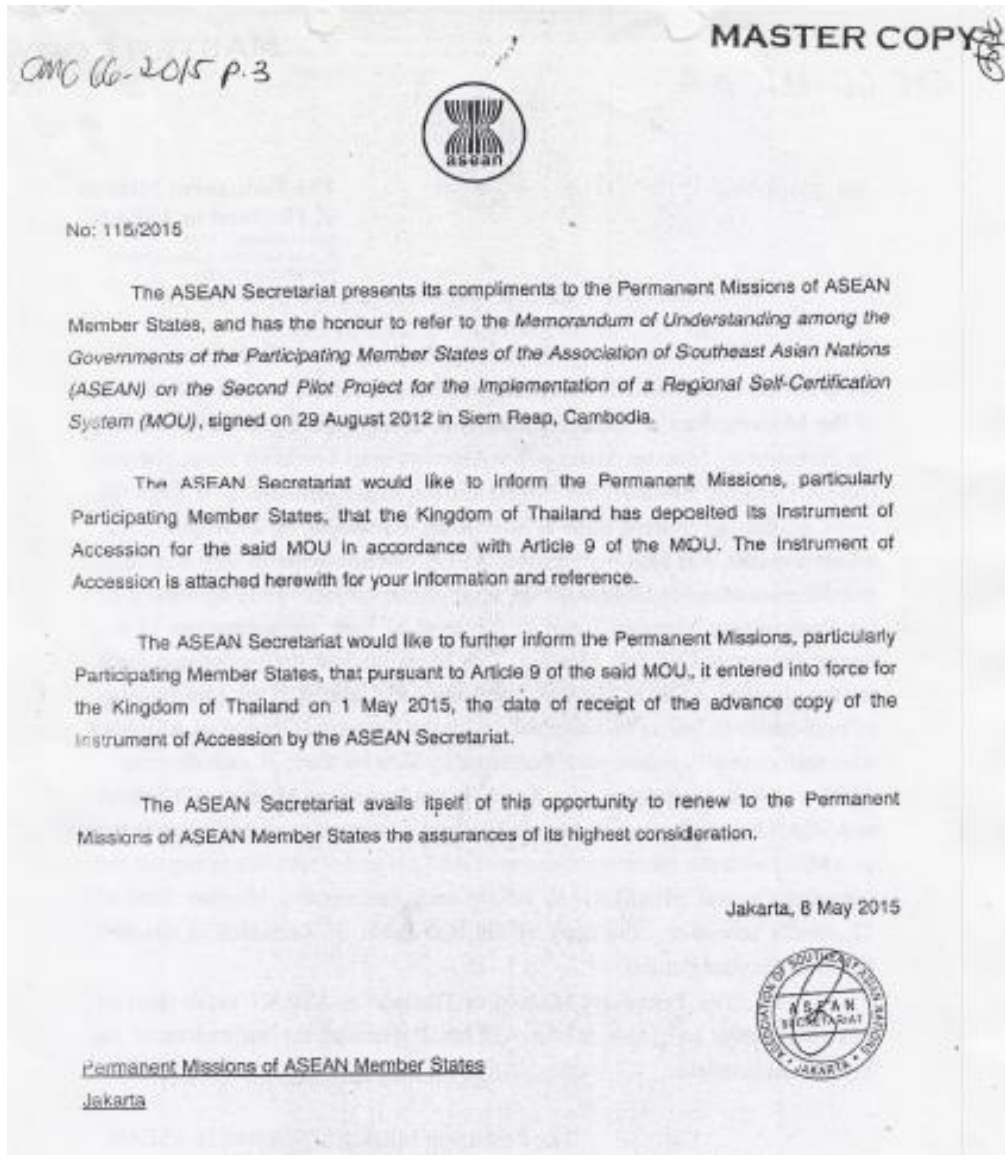


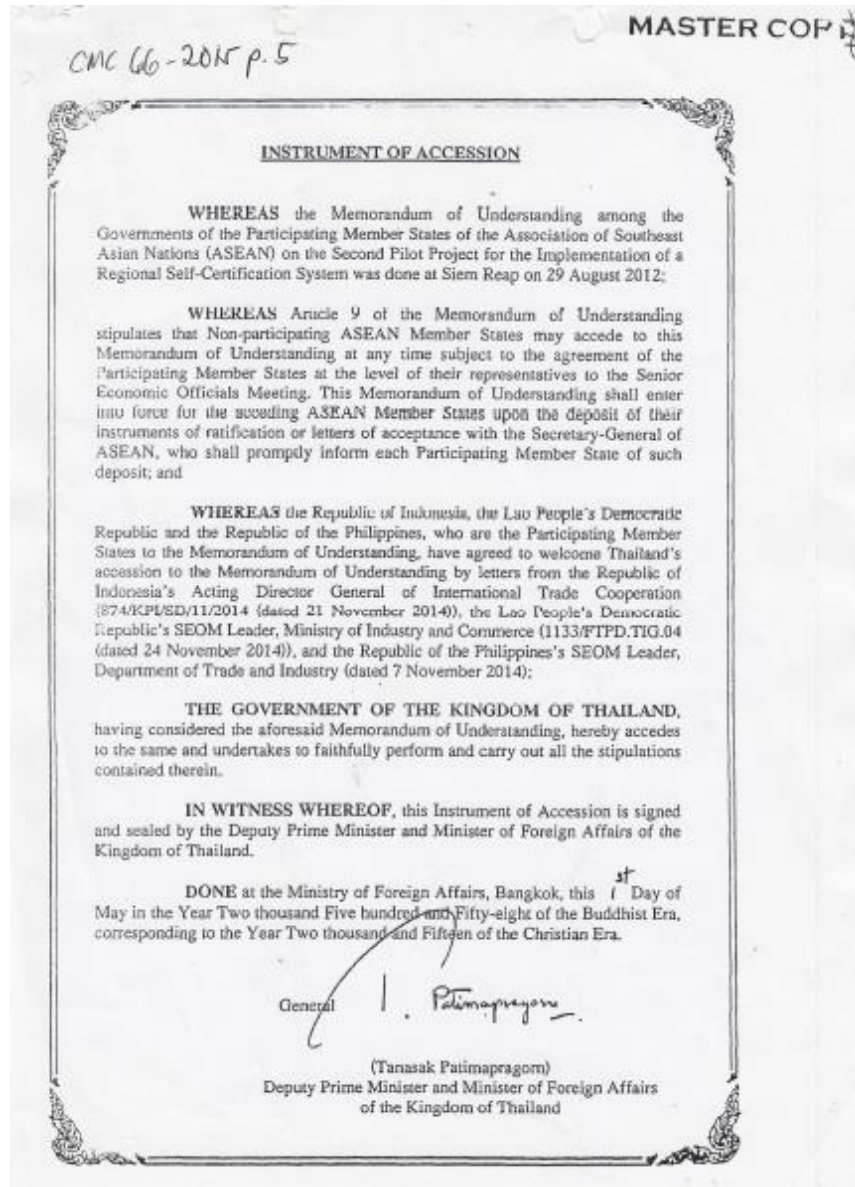
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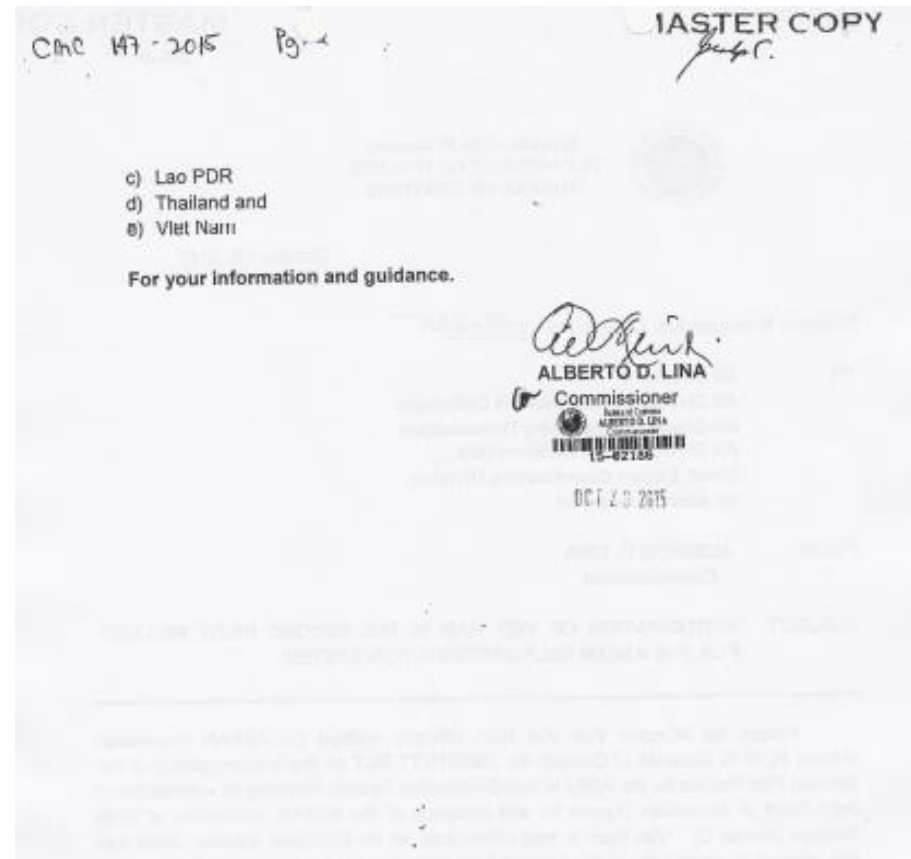
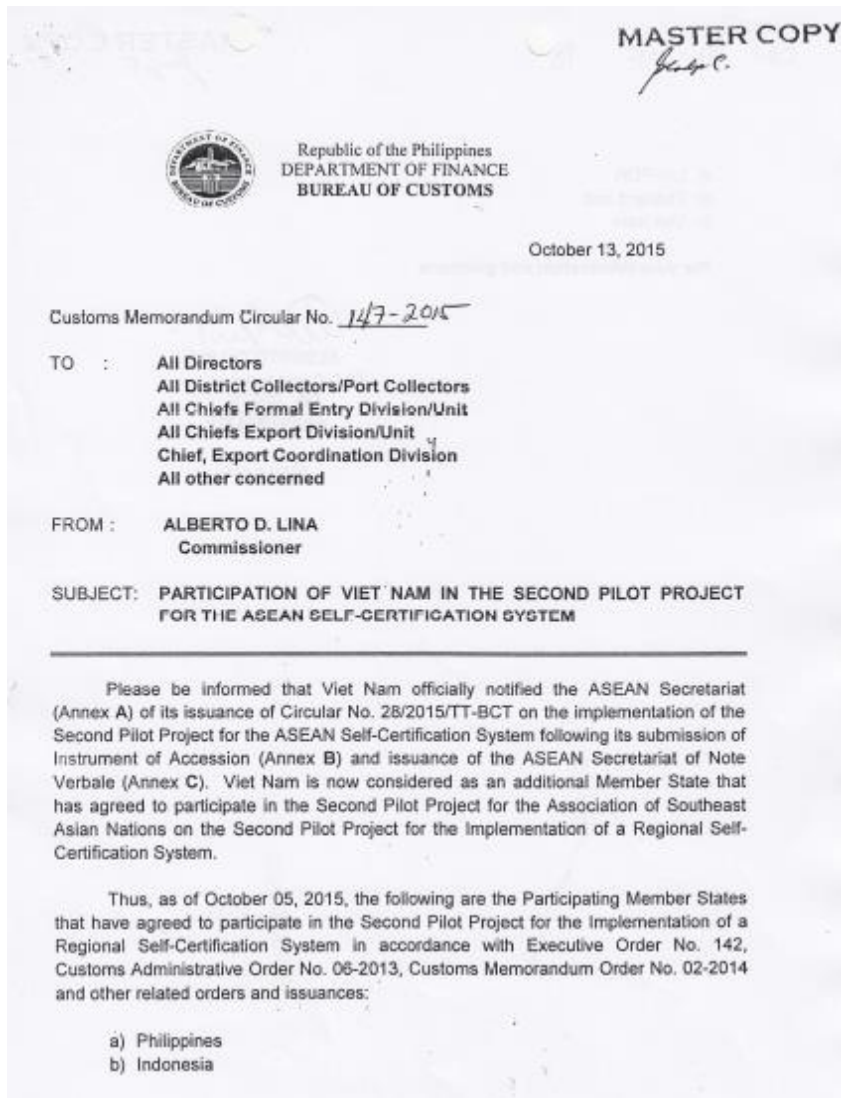
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SELF-CERTIFICATION IN ASEAN





SELF-CERTIFICATION IN ASEAN



11. ANNEX E – CMC 147-2015 VIET NAM

SELF-CERTIFICATION IN ASEAN

Cmc 147-2015 Pg. 3

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ANNEX A

Dear ASEAN Secretariats and Participating members of 2nd Self-Certification Pilot Project (SCPP),

Vietnam would like to inform that Circular No 28/2015/TT-BCT dated 20th August 2015 regarding to implementation of 2nd SCPP has been issued. This Circular will come into effect on 5th October 2015.

Following Rule 2 in Annex of Operation Certification Procedure of the MOU, ASEAN Secretariat will circulate the database of all Certified Exporters in those Participating members in 2nd SCPP so that we would like to request ASEAN Secretariat to send us information of Certified Exporters of Laos, Indonesia, Philippines and Thailand.

For Vietnam, we have been selecting exporter to join in 2nd SCPP and will inform ASEAN Secretariat and other Participating members in term of our Certified Exporter as soon as we have.

Looking forward to receiving your information soon.


Best regards,

Anh.

ASEAN Secretariat | 70 A Jalan Sisingamangaraja | Jakarta 12110 Indonesia

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ANNEX B


MINISTRY OF FOREIGN AFFAIRS
SOCIALIST REPUBLIC OF VIET NAM

INSTRUMENT OF ACCEPTANCE

WHEREAS the Memorandum of Understanding among the Governments of the Participating Member States of the Association of Southeast Asian Nations (ASEAN) on the Second Pilot Project for the Implementation of a Regional Self-Certification System (MOU) was done at Siem Reap on 29th August 2012;


WHEREAS Article 9 of the MOU stipulates that non-participating ASEAN Member States may accede to this MOU at any time subject to the agreement of the Participating Member States at the level of their representatives to the SEOM;

AND WHEREAS all the Participating Member States have welcomed Viet Nam to accede to this MOU;

NOW THEREFORE I, Pham Binh Minh, Minister of Foreign Affairs of the Socialist Republic of Viet Nam, having considered the above-mentioned MOU, accepts the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed and sealed this Instrument of Acceptance.


DONE at Ha Noi, on 03 December 2014


PHAM BINH MINH
MINISTER OF FOREIGN AFFAIRS

SELF-CERTIFICATION IN ASEAN

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"ANNEX C"



No.: 005/2015


The ASEAN Secretariat presents its compliments to the Permanent Missions of ASEAN Member States, and has the honour to refer to ASEC's Note Verbale (No. 002/2015) dated 6 January 2015 on the Memorandum of Understanding among the Governments of the Participating Member States of the Association of Southeast Asian Nations (ASEAN) on the Second Pilot Project for the Implementation of a Regional Self-Certification System (MOU), signed on 29 August 2012 in Siem Reap, Cambodia.

The ASEAN Secretariat would like to clarify that, pursuant to Article 10 (3) of the said MOU, it entered into force on 12 June 2013, when the Republic of Indonesia, the third Participating Member State, deposited its Instrument of Ratification.

The ASEAN Secretariat would like to further inform the Permanent Missions that pursuant to its Article 9, the MOU entered into force for the Socialist Republic of Viet Nam on 19 December 2014, the date of receipt of the Socialist Republic of Viet Nam's Instrument of Acceptance by the ASEAN Secretariat.

The ASEAN Secretariat avails itself of this opportunity to renew to the Permanent Missions of ASEAN Member States the assurances of its highest consideration.


Jakarta, 13 January 2015



Permanent Missions of ASEAN Member States
Jakarta

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VIETNAM PERMANENT MISSION TO ASEAN

Jakarta, 11 December 2014

No.: 57/DPDVN/2014

The Vietnam Permanent Mission to ASEAN presents its compliments to H.E. Le Luong Minh, Secretary-General of ASEAN, and has the honor to inform the latter that the Government of the Socialist Republic of Viet Nam has issued the Instrument of Acceptance for the Memorandum of Understanding among the Governments of the Participating Member States of the Association of Southeast Asian Nations (ASEAN) on the Second Pilot Project for the Implementation of a Regional Self-Certification System (MOU), done in Siem Reap on 29 August 2012.

Therefore, the Vietnam Permanent Mission to ASEAN expects to receive a notification from His Excellency on the deposit of the above-mentioned Instrument of Acceptance and the date of entry into force of the MOU for the Socialist Republic of Viet Nam.

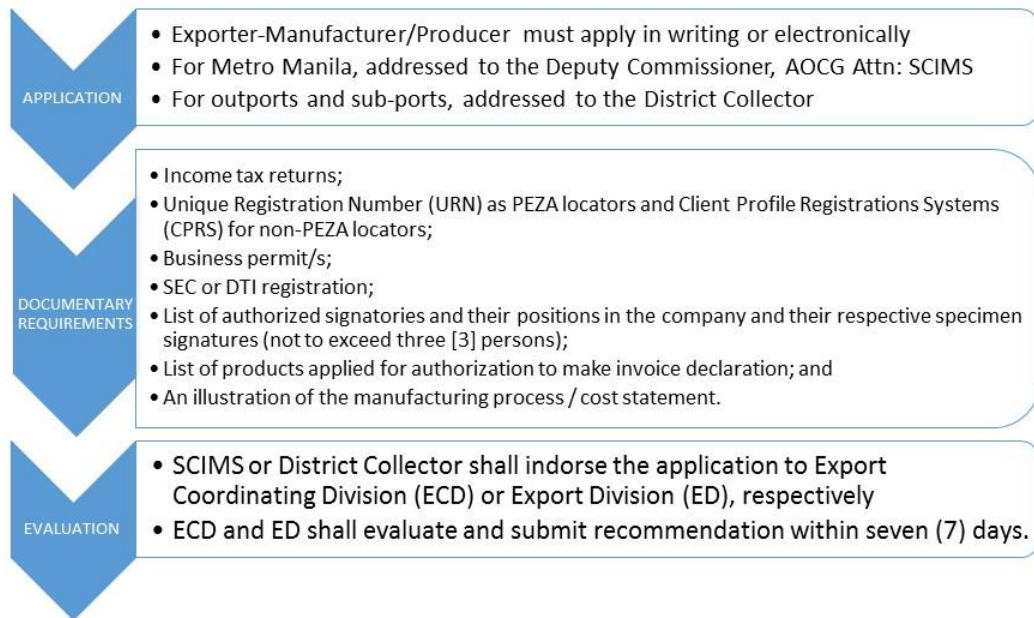
The Vietnam Permanent Mission to ASEAN avails itself of this opportunity to renew to His Excellency the assurances of its highest consideration.

The ASEAN Secretariat
Jakarta

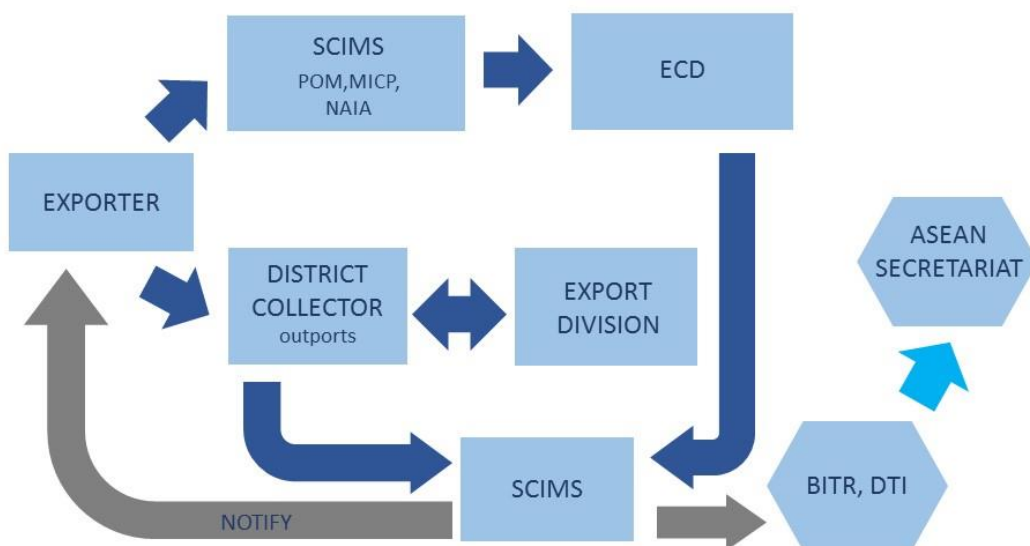
Jl. Pekalongan No. 9, Setiabudi, Jakarta Pusat 10110, Indonesia
Tel: +62 21 31907255; 31907845; Fax: +62 21 31906642; Email: pfm.vietnam@asean.org

12. ANNEXES F & G – PROCESS FLOW AND

Application and Documentation Requirements (Annex F)

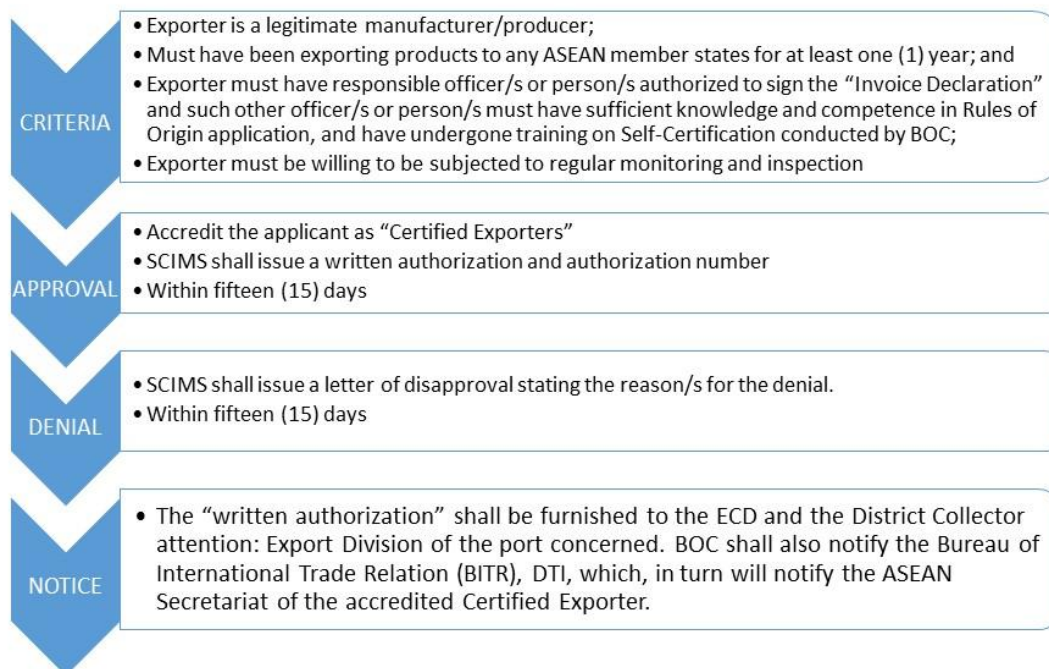


ACCREDITATION PROCESS FLOW



CRITERIA

Criteria and Approval Process (Cont. Annex G)



13. ANNEX H – FIRST SELF CERTIFICATION PILOT PROJECT

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENTS OF THE PARTICIPATING MEMBER STATES OF THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN) ON THE PILOT PROJECT FOR THE IMPLEMENTATION OF A REGIONAL SELF-CERTIFICATION SYSTEM

PREAMBLE

The Governments of Brunei Darussalam, Malaysia and the Republic of Singapore:

RECALLING the Leaders decision to establish an ASEAN Economic Community by 2015 and the adoption of the ASEAN Economic Community Blueprint at the 13th ASEAN Summit on 20 November 2007, and that the ASEAN Economic Community will establish ASEAN as a single market and production base, making ASEAN more dynamic and competitive, as an economic region in which there is a free flow of goods, services, investment and a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities;

RECOGNISING the crucial role that rules of origin play in the achievement of a free flow of goods within the ASEAN single market;

CONSCIOUS of the agreed objective of putting in place rules of origin which are responsive to the dynamic changes in global production processes so as to facilitate trade and investment among ASEAN Member States, promote a regional production network, encourage development of

Small-Medium Enterprises and the narrowing of development gaps and promote the increased usage of the AFTA CEPT Scheme, as established under the ASEAN Economic Community Blueprint;

RECALLING that, to meet this objective, the Leaders agreed to simplify the Operational Certification Procedures and to ensure its continuous enhancement, including the introduction of facilitative processes such as the electronic processing of certificates of origin and the harmonisation or alignment of national procedures to the extent possible;

AGREEING that the ASEAN Trade in Goods Agreement signed on 26 February 2009 in Cha-am, Thailand, provides for the most comprehensive framework to realise the free flow of goods in the region;

RECALLING that Article 38 and Annexes 7 and 8 of the ASEAN Trade in Goods Agreement provide for the relevant modalities and procedures for the application of the preferential tariff treatment to goods falling within the ASEAN Free Trade Area; and

RECOGNISING the need to streamline the rules of origin procedures to facilitate the trade of ASEAN originating goods, including the introduction of a regional self-certification scheme, in line with the objectives of the ASEAN Economic Community Blueprint as discussed at the 22nd AFTA Council Meeting, and by the High Level Task Force on Economic Integration, the Coordinating Committee on the Implementation of the CEPT Scheme for AFTA (CCCA) and the ASEAN Task Force on Rules of Origin;

HAVE DECIDED to enter into a Memorandum of Understanding for purposes of introducing a pilot project for the implementation of a regional self-certification system ahead of the extension of such system to all Member States of the ASEAN Free Trade Area by 2012.

MEMORANDUM OF UNDERSTANDING

Article 1

Definitions

For the purposes of this Memorandum of Understanding (MOU):

1. “ASEAN” means the Association of Southeast Asian Nations, which comprises Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, Lao PDR, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam
2. “Participating Member States” are the Member States that have agreed to participate in the pilot project for the implementation of a regional self-certification scheme;
3. “Agreement” means the ASEAN Trade in Goods Agreement;
4. “Exporter” means a natural or juridical person located in the territory of a Participating Member State where a good is exported from by such a person;
5. “Importer” means a natural or juridical person located in the territory of a Participating Member State where a good is imported into by such a person;
6. “Certified Exporter” means an exporter duly authorised to make out Invoice Declarations on the origin of a good exported;
7. “Invoice Declaration” means a declaration on the origin, according to the model established, made out by a Certified Exporter on the origin of goods covered by the invoice in question;
8. “Issuing Authority” means the Government authority of the exporting Participating Member State designated to authorise certified exporters, notified to all the other

Participating Member States in accordance with Annex I of this MOU; and

9. “Certificate of Origin” means of the Certificate of Origin (Form D) under Article 38 and Annex 7 of the Agreement.

Article 2 General Provisions

1. The Participating Member States agree to introduce a pilot project for the implementation of a regional self-certification system within the ASEAN Free Trade Area.
2. ASEAN Member States that are not Participating Member States can apply to become Participating Member States at any time, subject to the agreement of the Participating Member States at the level of their representatives to the Senior Economic Officials Meeting in line with the provisions of this MOU for the accession of new Participating Member States under paragraph 7 of Article 8.

Article 3 Obligations of the Participating Member States

Throughout the pilot project, Participating Member States shall accord to goods originating in the other Participating Member States the preferential tariff treatment set out in Article 19 of the Agreement, upon submission of either:

- (a) A Certificate of Origin as set out in Article 38 and Annex 7 of the Agreement; or
- (b) An Invoice Declaration made out by a Certified Exporter, according to the procedures set out in Annex I of this MOU.

Article 4 Procedural Arrangements

Participating Member States agree that the pilot project will be carried out according to the modalities and the procedures set forth in Annex I of this MOU.

Article 5 Suspension

Each Participating Member State reserves the right for reasons of national security, national interest, public order or public health to suspend temporarily, either in whole or in part, the implementation of this MOU which suspension shall take effect immediately after notification has been given to the other Participating Member State through diplomatic channels or the ASEAN Secretariat.

Article 6 Confidentiality

1. Each Participating Member State shall undertake to observe the confidentiality and secrecy of documents, information and other data received from, or supplied to other Participating Member States during the period of the implementation of this MOU.
2. Each Participating Member State shall not:
 - (a) directly or indirectly disclose any confidential information provided by other Participating Member States; nor
 - (b) use confidential information provided by another Participating Member State for any purpose other than for those specified in this MOU without the prior authorization of such Participating Member State.
3. Participating Member States agree that paragraphs 1 and 2, of this Article shall continue to be binding between them notwithstanding the suspension or termination of this MOU.

Article 7 Consultation/Negotiation

Any difference or dispute between the Participating Member States concerning the interpretation and/or implementation and/or application of the provisions of this MOU shall be settled amicably through consultation and/or negotiation between the participating Member States.

Article 8 Final Provisions

1. This MOU shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified true copy to each Participating Member State.
2. This MOU is subject to ratification or acceptance by all Participating Member States. The Instruments of ratification or letters of acceptance shall be deposited with the Secretary-General of ASEAN, who shall promptly inform each Participating Member State of such deposit.
3. This MOU shall enter into force upon the deposit of Instruments of ratification or letters of acceptance by all Participating Member States with the Secretary-General of ASEAN.
4. This MOU shall remain in force for a period of 1 year, unless terminated earlier by agreement of all Participating Member States. The expiry or termination of this MOU shall not prejudice the rights and obligations of all Participating Member States established under this MOU before or up to the effective date of such expiry or termination except by agreement of all Participating Member States.
5. This MOU may be extended beyond its period of validity, as stipulated in paragraph 4 of this Article, with the agreement of all Participating Member States.

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6. Any Participating Member State may propose any amendment to the provisions of this MOU. Such amendment shall be effected by written consent of all Participating Member States at the level of their representatives to the Senior Economic Officials Meeting and a certified true copy of the amended MOU shall be furnished to each Participating Member State. Any amendment to this MOU shall not prejudice the rights and obligations of the Participating Member States established under this MOU before or up to the effective date of such amendment except by agreement of all Participating Member States. The effective date of such amendment shall be the date of the written consent of all Participating Member States.

7. ASEAN Member States that are not Participating Member States can accede to this MOU at any time subject to the agreement of the Participating Member States at the level of their representatives to the Senior Economic Officials Meeting. This MOU shall enter into force for the acceding ASEAN Member States upon the deposit of their instruments of ratification or letters of acceptance with the Secretary-General of ASEAN, who shall promptly inform each Participating Member State of such deposit.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this MOU on the pilot project for the implementation of a regional self-certification system within the ASEAN Free Trade Area.

DONE at _____, this _____ day of _____ in the Year Two Thousand and Ten, in a single original copy in the English language.

For Brunei Darussalam:

LIM JOCK SENG

Second Minister of Foreign Affairs and Trade

For Malaysia:

DATO' SRI MUSTAPA MOHAMED

Minister of International Trade and Industry

For the Republic of Singapore:

LIM HNG KIANG

Minister for Trade and Industry

ANNEX I

OPERATIONAL CERTIFICATION PROCEDURE

For the purposes of implementing the Rules of Origin set out in Chapter 3 (hereinafter referred to as “ASEAN ROO”) for the Pilot Project for the implementation of a regional self-certification system, the following operational procedures on

- (i) the issuance of the Certificate of Origin (Form D);
- (ii) the Certified Exporter regime and its inherent Invoice Declaration;
- (iii) the verification of Certificates of Origin (Form D) and Invoice Declarations; and
- (iii) other related administrative matters, shall be observed.

**Rule 1
Definitions**

For the purposes of this Annex:

- (a) back-to-back Certificate of Origin means a Certificate of Origin issued by an intermediate exporting Member State based on the Certificate of Origin issued by the first exporting Member State;
- (b) 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;
- (c) certified exporter means an exporter duly authorized to make out invoice declarations on the origin of a good exported;
- (d) invoice declaration means a declaration, according to the model duly established, made out by a certified exporter on an invoice or any other commercial document, which describes the goods concerned in sufficient detail to enable them to be identified, on the origin of goods covered by the document in question;
- (e) 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;
- (f) issuing authority means the Government authority of the exporting Member State designated to issue a Certificate of Origin (Form D) and to authorize certified exporters, notified to all the other Member States in accordance with this Annex;
- (g) competent authority means the Government authority of the Member State designated to exercise the rights under Rule 12A (2)(b), Rule 12C and Rule 18; and
- (h) producer means a natural or juridical person who carries out production as set out in Article 25 of this Agreement in the territory of a Member State.

Rule 2

**Specimen Signatures and Official Seals of the Issuing Authorities;
List of Certified Exporters**

1. Each Member State shall provide a list of the names, addresses, specimen signatures and specimen of official seals of its issuing authorities, 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 authorities, 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. Each Member State shall communicate to the ASEAN Secretariat, in soft copy format, (i) Legal name of the company; (ii) Registration of the company; (iii) Location of the Company; and (iv) Authorization code issued by the issuing authorities, including date of issuance and expiry date of the authorizations, immediately after their authorization. Withdrawal or suspension of authorizations should be provided in the same manner.
4. The ASEAN Secretariat shall promptly include the information in a database containing all Certified Exporters, which can be consulted online by Member States. Any Invoice Declaration made out by an exporter not included in the database shall not be honoured by the receiving Member State.

**Rule 3
Supporting Documents**

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

Rule 4

Pre-exportation Verification for the issuance of a Certificate of Origin

1. The producer and/or exporter – other than a Certified Exporter – of the good, or its authorised representative, shall, with a view to the issuance of a Certificate of Origin (Form D), apply to the issuing authority, in accordance with the Member State’s laws and regulations, requesting pre-exportation examination of the origin of the good. 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 when applying for the issuance of the Certificate of Origin (Form D).

**Rule 5
Application for Certificate of Origin**

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 Certified Exporter may, at his own discretion, apply for a certificate of origin (Form D) in place of making out invoice declaration.

**Rule 6
Examination of Application for a Certificate of Origin**

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

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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 to 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 manually executed signature and seal of the authorised issuing authority.

5. The original copy shall be forwarded by the exporter to the importer for submission to the customs authority at the port or place of importation. The duplicate shall be retained by the issuing authority in the exporting Member State. The triplicate shall be retained by the exporter.

Rule 8 Declaration of Origin Criterion

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 in Box 8.

Rule 9 Treatment of Erroneous Declaration in the Certificate of Origin

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 authorities. 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

1. The Certificate of Origin (Form D) shall be issued by the issuing authorities of the exporting Member State at the time of exportation or soon thereafter whenever the products to be exported can be considered originating in that Member State within the meaning of Chapter 3 of this Agreement.

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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 Certificate of Origin

The issuing authority of the intermediate Member State may issue a back-to-back Certificate of Origin in an application is made by the exporter, provided that:

- (a) a valid original Certificate of Origin (Form D) is presented. In the case where no original Certificate of Origin (Form D) is presented, it's certified true copy shall be presented;
- (b) the back-to-back Certificate of Origin issued should contain some of the same information as the original Certificate of Origin (Form D). In particular, every column in the back-to-back Certificate of Origin 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;
- (c) For partial export shipments, the partial export value shall be shown instead of the full value of the original Certificate of Origin (Form D). The intermediate Member State will ensure that the total quantity re-exported under the partial shipment does not exceed the total quantity of the Certificate of Origin (Form D) from the first Member State when approving the back-to-back Certificate of Origin 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 Certificate of Origin (Form D) be submitted to their respective customs authority;

- (e) Verification procedures as set out in Rules 18 and 19 are also applied to Member State issuing the back-to-back Certificate of Origin.

Rule 12 Loss of the Certificate of Origin

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

2. The issuing authorities may grant the status of Certified Exporter subject to any conditions which they consider appropriate, including in any case the following:

- (a) The exporter must grant the competent authorities access to records for the purpose of monitoring the use of the authorisation and of the verification of the correctness of declarations made out. The records and accounts must allow for the identification and

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verification of the originating status of goods for which an invoice declaration was made out, during at least three years from the date of making out the declaration in accordance with domestic laws and regulations;

- (b) The exporter must undertake to make out Invoice Declarations only for goods for which he has all appropriate documents proving the origin status of the goods concerned at the time of making out the declaration;
- (c) The exporter must undertake to ensure that the person or persons responsible for making out the Invoice Declarations in the undertaking know and understand the Rules of Origin as laid down in the Agreement;
- (d) The exporter accepts the full responsibility for all Invoice Declarations made out on behalf of the company, including any misuse.

3. An authorisation shall be given in writing. The issuing authorities shall grant the Certified Exporter an authorisation number which must be included in the Invoice Declaration. They shall communicate the authorisation granted to the ASEAN Secretariat, in conformity with Rule 2(3).

Rule 12 B Invoice Declaration

1. The Certified Exporter shall, in the case of export of goods satisfying the origin criteria of the Agreement, put the following declaration on the invoice:

“The exporter of the product(s) covered by this document (Certified Exporter No.....) declares that, except where otherwise clearly indicated, the products satisfy the Rules of Origin to be considered as ASEAN Originating Products under

ATIGA (ASEAN country of origin:) with origin criteria:”

2. For the purpose of origin determination, in the events that the invoice made out by the certified exporter may not be available to the importer at the time of exportation, the invoice declaration can be made out by a certified exporter on any of the commercial documents as follows:

- i) Billing statements; or
- ii) Delivery order; or
- iii) Packing list

3. These documents should describe the goods in sufficient details to enable them to be identified for origin determination purposes.

4. The declaration must be signed by hand, with the addition of the name of the person.

Rule 12C Monitoring and verification

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

Rule 12D Withdrawal of the authorisation

The issuing authorities may withdraw the authorisation at any time. They shall do so where the Certified Exporter 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

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immediately communicated to the ASEAN Secretariat, in conformity with Rule 2.

Rule 13

Presentation of the Certificate of Origin or the Invoice Declaration

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:

- (i) a Certificate of Origin (Form D) including supporting documents (i.e. invoices); or
- (ii) an Invoice Declaration made out by a Certified Exporter; or
- (iii) an Invoice Declaration made out by any exporter provided that the total value of the consignment does not exceed USD 200.00 FOB;

2. In cases when a Certificate of Origin (Form D) is rejected by the customs authority 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 the case where Certificates of Origin (Form D) are not accepted, as stated in the preceding paragraph, the importing Member State should accept and consider the clarifications made by the issuing authorities and assess again whether or not the 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 14

Validity Period of the Certificate of Origin or the Invoice Declaration

The following time limit for the presentation of the Certificate of Origin (Form D) or the Invoice Declaration shall be observed:

- (a) The Certificate of Origin (Form D) and the Invoice Declaration 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 Invoice Declaration – making out, and must be submitted to the customs authorities of the importing Member State within that period.
- (b) Where the Certificate of Origin (Form D) or the Invoice Declaration is submitted to the customs authorities of the importing Member State after the expiration of the time limit for its submission, such Certificate of Origin (Form D) or the Invoice Declaration 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 authorities in the importing Member State may accept such Certificate of Origin (Form D) or the Invoice Declaration 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 Certificate of Origin (Form D) or an Invoice Declaration shall be waived and the use of a 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

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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 Certificate of Origin (Form D) or in the Invoice Declaration and those made in the documents submitted to the customs authorities of the importing Member State for the purpose of carrying out the formalities for importing the 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 Certificate of Origin (Form D), a problem encountered with one of the items listed shall not affect or delay the granting of preferential treatment and customs clearance of the remaining items listed in the Certificate of Origin (Form D). 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 exporter applying for the issuance of a Certificate of Origin (Form D) and the Certified Exporter or non-certified exporter as referred to in Rule 13(iii) making out an Invoice Declaration shall, subject to the laws and regulations of the exporting Member State, keep its supporting records for application for not less than three (3) years from the date of issuance of the Certificate of Origin (Form D) or the making out of the Invoice Declaration.

2. The application for Certificates of Origin (Form D) and for the authorization of Certified Exporters, and all documents related to such applications shall be retained by the competent authorities for not less than three (3) years from the date of issuance of the certificate or of the granting of the authorisation.

3. Information relating to the validity of the Certificate of Origin (Form D) and to the correctness of an Invoice Declaration shall be furnished upon request of the importing Member State by the appropriate Government authorities.

4. Any information communicated between the Member States concerned shall be treated as confidential and shall be used for the validation of Certificates of Origin (Form D) and Invoice Declarations purposes only.

Rule 18 Retroactive Check

The importing Member State may request the 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 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 Certificate of Origin (Form D) or the Invoice Declaration concerned and shall specify the reasons and any additional information suggesting that the particulars given on the said Certificate of Origin (Form D) or the Invoice Declaration may be inaccurate, unless the retroactive check is requested on a random basis;

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- (b) The 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 authorities 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;
 - (d) the 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 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.
- (2) the issuing authority of the Member State in whose territory the verification visit is to occur;
 - (3) the customs authorities of the Member State in whose territory the verification visit is to occur; and
 - (4) the importer of the goods subject of the verification visit.
- (ii) The written notification mentioned in paragraph (a)(i) shall be as comprehensive as possible including, among others:
 - (1) the name of the customs authorities issuing the notification;
 - (2) the name of the exporter/producer whose premises are to be visited;
 - (3) the proposed date for the verification visit;
 - (4) the coverage of the proposed verification visit, including reference to the goods subject of the verification; and
 - (5) the names and designation of the officials performing the verification visit.
 - (iii) Obtain the written consent of the exporter/producer whose premises are to be visited.

Rule 19 Verification Visit

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.

- (a) Prior to the conduct of a verification visit, an importing Member State, shall:
 - (i) Deliver a written notification of its intention to conduct the verification visit to:
 - (1) the exporter/ producer whose premises are to be visited;

- (b) When a written consent from the exporter/producer is not obtained within thirty (30) days upon receipt of the notification pursuant to paragraph (a)(i), the notifying Member State, may deny preferential treatment to the goods that would have been subject of the verification visit.
- (c) The issuing 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

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the date of such receipt, or for a longer period as the concerned Member States may agree.

- (d) 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 with a written determination of whether or not the subject goods qualify as originating goods.
- (e) Any suspended preferential treatment shall be reinstated upon the written determination referred to in paragraph (d) that the goods qualify as originating goods.
- (f) 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 within thirty (30) days from receipt of the comments/additional information from the exporter/producer.
- (g) 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 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, 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 Invoice Declaration made out by a Certified Exporter 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:

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- (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;
- (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 Certified Exporter, the Invoice 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 Certificates of Origin (Form D) or Invoice Declaration 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 Certified Exporter may make out the Invoice Declaration on a document other than the invoice

Rule 24 Action against Fraudulent Acts

1. When it is suspected that fraudulent acts in connection with the Certificate of Origin (Form D) or the Invoice Declaration 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 Certificate of Origin (Form D) and to the Invoice Declaration.

14. ANNEX I – SECOND SELF-CERTIFICATION PILOT PROJECT

MEMORANDUM OF UNDERSTANDING AMONG THE GOVERNMENTS OF THE PARTICIPATING MEMBER STATES OF THE ASSOCIATION OF SOUTH-EAST ASIAN NATIONS (ASEAN) ON THE SECOND PILOT PROJECT FOR THE IMPLEMENTATION OF A REGIONAL SELF-CERTIFICATION SYSTEM

PREAMBLE

The Governments of the Republic of Indonesia, the Lao People's Democratic Republic (Lao PDR), and the Republic of the Philippines:

RECALLING the Leaders decision to establish an ASEAN Economic Community by 2015 and the adoption of the ASEAN Economic Community Blueprint at the 13th ASEAN Summit on 20 November 2007, and that the ASEAN Community will establish ASEAN as a single market and production base, making ASEAN more dynamic and competitive, as an economic region in which there is a free flow of goods, services, investment and a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities;

RECOGNISING the crucial role that rules of origin play in the achievement of a free flow of goods within the ASEAN single market;

CONSCIOUS of the agreed objective of putting in place rules of origin which are responsive to the dynamic changes in global production processes so as to facilitate trade and investment among ASEAN Member States, promote a regional production network, encourage development of Small-Medium Enterprises and the narrowing of development gaps and promote the increased usage of the AFTA CEPT Scheme, as established under the ASEAN Economic Community Blueprint;

RECALLING that, to meet this objective, the Leaders agreed to simplify the Operational Certification Procedures and to ensure its continuous enhancement, including the introduction of facilitative processes such as the electronic processing of certificates of origin and the harmonisation or alignment of national procedures to the extent possible;

AGREEING that the ASEAN Trade in Goods Agreement (ATIGA) which was signed on 26 February 2009 in Cha-am, Thailand, and entered into force on 17 May 2010, provides for the most comprehensive framework to realise the free flow of goods in the region;

RECALLING that Article 38 and Annexes 7 and 8 of the ATIGA provide for the relevant modalities and procedures for the application of the preferential tariff treatment to goods falling within the ASEAN Free Trade Area; and

RECOGNISING the need to streamline the rules of origin procedures to facilitate the trade of ASEAN originating goods, including the introduction of a regional self-certification scheme, in line with the objectives of the ASEAN Economic Community Blueprint as discussed at the 22nd and 25th AFTA Council Meetings, and by the High Level Task Force on Economic Integration, the Coordinating Committee on the Implementation of the ASEAN Trade in Goods Agreement (CCA) and the Sub-Committee on ATIGA Rules of Origin (SC-AROO);

HAVE DECIDED to enter into a Memorandum of Understanding for purposes of introducing a second pilot project for the implementation of a regional self-certification system ahead of the adoption of such system by all Member States.

MEMORANDUM OF UNDERSTANDING

Article 1 Definitions

For the purposes of this Memorandum of Understanding (MOU) :

1. "ASEAN" means the Association of Southeast Asian Nations, which

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comprises Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, Lao PDR, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam;

2. *“Participating Member States”* are the Member States that have agreed to participate in the second pilot project for the implementation of a regional self-certification scheme;
3. *“Agreement”* means the ASEAN Trade in Goods Agreement;
4. *“Exporter”* means a natural or juridical person located in the territory of a Participating Member State where a good is exported from by such a person;
5. *“Importer”* means a natural or juridical person located in the territory of a Participating Member State where a good is imported into by such a person;
6. *“Certified Exporter”* means a producer duly authorized to make out invoice declarations on the origin of a good exported;
7. *“Invoice Declaration”* means a declaration as to the origin of the goods exported made by a certified exporter on an invoice, in accordance with Rule 12B of the Annex; and
8. *“Certificate of Origin”* means of the Certificate of Origin (Form D) under Article 38 and Annex 7 of the Agreement.

Article 2 General Provisions

1. The Participating Member States agree to introduce a second pilot project for the implementation of a regional self-certification system within the ASEAN Free Trade Area.
2. Other ASEAN Member States can apply to become a Participating Member State at any time, subject to Article 9 of this MOU.

Article 3 Obligations of the Participating Member States

Throughout the second pilot project, Participating Member States shall accord to goods originating in the other Participating Member States the preferential tariff treatment set out in Article 19 of the Agreement, upon submission of either:

- (a) A Certificate of Origin as set out in Article 38 and Annex 7 of the Agreement; or
- (b) An Invoice Declaration made out by a Certified Exporter, according to the procedures set out in Annex of this MOU.

Article 4 Procedural Arrangements

Participating Member States agree that the second pilot project will be carried out according to the modalities and the procedures set forth in Annex of this MOU.

Article 5 Suspension

Each Participating Member State reserves the right for reasons of national security, national interest, public order or public health to suspend temporarily, either in whole or in part, the implementation of this MOU, of which suspension shall take effect immediately after notification has been given to the other Participating Member States through diplomatic channels or the ASEAN Secretariat.

Article 6 Confidentiality

1. Each Participating Member State shall undertake to observe the confidentiality and secrecy of documents, information and other data received from, or supplied to other Participating Member States during the period of the implementation of this MOU.
2. Each Participating Member State shall not:

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- (a) directly or indirectly disclose any confidential information provided by other Participating Member States; nor
- (b) use confidential information provided by another Participating Member State for any purpose other than for those specified in this MOU without the prior authorisation of such Participating Member State.

3. Participating Member States agree that paragraphs 1 and 2, of this Article shall continue to be binding among them notwithstanding the suspension or termination of this MOU.

Article 7 Consultation

Any difference or dispute among the Participating Member States concerning the interpretation and/or implementation and/or application of the provisions of this MOU shall be settled amicably through consultation and/or negotiation among the Participating Member States.

Article 8 Amendments

1. Any Participating Member State may propose any amendment to the provisions of this MOU. Such amendment shall be effected by written consent of all Participating Member States at the level of their representatives to the Senior Economic Officials Meeting and a certified true copy of the amended MOU shall be furnished to each Participating Member State.
2. Any amendment to this MOU shall not prejudice the rights and obligations of the Participating Member States established under this MOU before or up to the effective date of such amendment except by agreement of all Participating Member States.
3. The effective date of such amendment shall be the date of the written

consent, referred to in paragraph 1, of all Participating Member States.

Article 9 Accession

ASEAN Member States that are not Participating Member States can accede to this MOU at any time subject to the agreement of the Participating Member States at the level of their representatives to the Senior Economic Officials Meeting. This MOU shall enter into force for the acceding ASEAN Member States upon the deposit of their instruments of ratification or letters of acceptance with the Secretary-General of ASEAN, who shall promptly inform each Participating Member State of such deposit.

Article 10 Final Provisions

1. This MOU shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified true copy to each Participating Member State.
2. This MOU is subject to ratification or acceptance by all Participating Member States. The Instruments of ratification or letters of acceptance shall be deposited with the Secretary-General of ASEAN, who shall promptly inform each Participating Member State of such deposit.
3. This MOU shall enter into force upon the deposit of Instruments of ratification or letters of acceptance by all Participating Member States with the Secretary-General of ASEAN.
4. This MOU shall remain in force unless terminated by all Participating Member States.
5. This MOU may be terminated at any time by written agreement of all Participating Member States. The termination of this MOU shall not prejudice the rights and obligations of all Participating Member States established under this

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MOU before or up to the effective date of termination except by agreement of all Participating Member States.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this MOU on the second pilot project for the implementation of a regional self-certification system within the ASEAN Free Trade Area.

DONE at _____, this _____ day of _____

_____ in the Year Two Thousand and Twelve, in a single original copy in the English Language.

For the Republic of Indonesia:

GITA IRAWAN WIRJAWAN
Minister of Trade

For the Lao People's Democratic Republic:

NAM VIYAKETH
Minister of Industry and Commerce

For the Republic of the Philippines

GREGORY L. DOMINGO
Secretary of Trade and Industry

ANNEX

OPERATIONAL CERTIFICATION PROCEDURE

For the purposes of implementing the Rules of Origin set out in Chapter 3 of the ASEAN Trade in Goods Agreement (hereinafter referred to as “ASEAN ROO”) for the implementation of a Pilot Project towards the development and operationalization of an ASEAN Self-Certification Regime, the following operational procedures shall be observed on:

- (i) the issuance of the Certificate of Origin (Form D);
- (ii) the Certified Exporter regime and its inherent Invoice Declaration;
- (iii) the verification of Certificates of Origin (Form D) and Invoice Declaration; and
- (iv) other related administrative matters.

**Rule 1
Definitions**

For the purposes of this Annex:

- (a) **back-to-back Certificate of Origin** means a Certificate of Origin issued by an intermediate exporting Member State based on the Certificate of Origin issued by the first exporting Member State;
- (b) **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;
- (c) **certified exporter** means a producer duly authorized to make Invoice Declaration of a good exported;

- (d) **invoice declaration** means a declaration as to the origin of the goods exported made by a certified exporter on an invoice, in accordance with Rule 12B;
- (e) **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;
- (f) **competent authority** means the Government authority of the exporting Member State designated to: (i) issue a Certificate of Origin (Form D), (ii) authorize certified exporters, and (iii) exercise rights under Rules 12 A (2)(a), Rule 12C and Rule 18; and
- (g) **producer** means a natural or juridical person who carries out activities as set out in Paragraph (j), Article 25 of the ASEAN Trade in Goods Agreement (hereinafter referred to as the Agreement) in the territory of a Member State.

**Rule 2
Specimen Signatures and Official Seals of the Competent Authorities;
List of Certified Exporters**

1. Each Member State shall provide a list of the names, addresses, specimen signatures and specimen of official seals of its competent authorities, 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 competent authorities, 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.

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3. Immediately after the grant of Certified Exporter status, each Member State shall communicate to the ASEAN Secretariat, in soft copy format:

- (i) Legal name of the company;
- (ii) Registration of the company;
- (iii) Location of the Company;
- (iv) list of the authorized signatories and their respective specimen signatures, not exceeding three (3) persons per company;
- (v) Authorization code issued by the competent authorities, including date of issuance and expiry date of the authorization; and
- (vi) list of products for which Certified Exporters are authorised to make invoice declarations.

Withdrawal or suspension of authorizations should be provided in the same manner.

4. The ASEAN Secretariat shall promptly include the information in a database containing all Certified Exporters, which can be consulted online by Member States. The receiving Member State shall only accept Invoice Declaration made by an exporter and on a product included in the database.

Rule 3 Supporting Documents

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

Rule 4

Pre-exportation Verification for the issuance of a Certificate of Origin

1. The producer and/or exporter – other than a Certified Exporter - of the good, or its authorised representative, shall, with a view to the issuance of a Certificate of Origin (Form D), apply to the competent authority, in accordance with the Member State's laws and regulations, requesting pre-exportation examination of the origin of the good. 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 when applying for the issuance of the Certificate of Origin (Form D).

Rule 5

Application for Certificate of Origin

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 certified exporter may, at his own discretion, apply for a certificate of origin (Form D) in place of making out invoice declaration.

Rule 6

Examination of Application for a Certificate of Origin

The competent authority shall, to the best of its competence and ability, carry out proper examination, in accordance with the laws and regulations

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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 authorized 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 to 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 manually executed signature and seal of the authorised competent authority.

5. The original copy shall be forwarded by the exporter to the importer for submission to the customs authority at the port or place of importation. The duplicate shall be retained by the competent authority in the exporting Member State. The triplicate shall be retained by the exporter.

Rule 8 Declaration of Origin Criterion

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 in Box 8.

Rule 9 Treatment of Erroneous Declaration in the Certificate of Origin

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 authorized to sign the Certificate of Origin (Form D) and certified by the competent authorities. 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

1. The Certificate of Origin (Form D) shall be issued by the competent authorities of the exporting Member State at the time of exportation or soon thereafter whenever the products to be exported can be considered originating in that Member State within the meaning of Chapter 3 of this Agreement.

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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 Certificate of Origin

The competent authority of the intermediate Member State may issue a back-to-back Certificate of Origin in an application made by the exporter, provided that:

- (a) a valid original Certificate of Origin (Form D) is presented. In the case where no original Certificate of Origin (Form D) is presented, its certified true copy shall be presented;
- (b) the back-to-back Certificate of Origin issued should contain some of the same information as the original Certificate of Origin (Form D). In particular, every column in the back-to-back Certificate of Origin 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;
- (c) For partial export shipments, the partial export value shall be shown instead of the full value of the original Certificate of Origin (Form D). The intermediate Member State will ensure that the total quantity re-exported under the partial shipment does not exceed the total quantity of the Certificate of Origin (Form D) from the first Member State when approving the back-to-back Certificate of Origin 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 Certificate of Origin (Form D) be submitted to their respective customs authority;

- (e) Verification procedures as set out in Rules 18 and 19 are also applied to Member State issuing the back-to-back Certificate of Origin.

Rule 12 Loss of the Certificate of Origin

In the event of theft, loss or destruction of a Certificate of Origin (Form D), the exporter may apply in writing to the competent authorities 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. 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 authorities 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 Invoice 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 authorities all guarantees necessary to verify the originating status of the goods for which an invoice declaration was made out.

2. The competent authorities may grant the status of Certified Exporter subject to any conditions which they consider appropriate, including in any case the following:

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- (a) The exporter must grant the competent authorities access to records and premises for the purpose of monitoring the use of the 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 invoice declaration was made out, during at least three years from the date of making out the declaration in accordance with domestic laws and regulations;
- (b) The exporter must undertake to make out Invoice Declarations only for goods such exporter produces and for which he has all appropriate documents proving the origin status of the goods concerned at the time of making out the declaration;
- (c) The exporter must undertake to ensure that the person or persons responsible for making out the Invoice Declarations in the undertaking know and understand the Rules of Origin as laid down in the Agreement;
- (d) The exporter accepts the full responsibility for all Invoice Declarations made out on behalf of the company, including any misuse.

3. An authorisation shall be given in writing. The competent authorities shall grant the Certified Exporter an authorisation number which must be included in the Invoice Declaration. Member States shall communicate the authorisation granted to the ASEAN Secretariat, in conformity with Rule 2(3).

**Rule 12 B
Invoice Declaration**

1. The Certified Exporter shall, in the case of export of goods satisfying the origin criteria of the Agreement, put the following declaration on the invoice:

“The exporter of the product(s) covered by this document (Certified Exporter Authorization Code) declares that, except where otherwise clearly indicated, the products (HS Code/s:.....) satisfy the Rules of Origin to be considered as ASEAN Originating Products under ATIGA (ASEAN country of origin:) with origin criteria: ”

.....
*Signature over Printed Name of
the Authorized Signatory”*

- 2. The Invoice should describe the goods in sufficient details to enable them to be identified for origin determination purposes.
- 3. The declaration must be signed by hand, with the addition of the name of the authorized signatory.
- 4. The date indicated in the commercial invoice shall be considered as the issuance date of the invoice declaration.
- 5. Additional page/s could be attached, bearing the HS Codes, origin criterion and signature over printed name of the authorized signatory, if necessary

**Rule 12C
Monitoring and verification**

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

Rule 12D
Withdrawal of the authorisation

The competent authorities may withdraw the authorisation at any time. They shall do so where the Certified Exporter 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 communicated to the ASEAN Secretariat, in conformity with Rule 2.

Rule 13
Presentation of the Certificate of Origin or the Invoice Declaration

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:
 - (i) a Certificate of Origin (Form D) including supporting documents (i.e. invoices); or
 - (ii) an Invoice Declaration made by a Certified Exporter.
2. In cases when a Certificate of Origin (Form D) is rejected by the customs authority 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 competent authority shall be duly notified of the grounds for the denial of tariff preference.
3. In the case where Certificates of Origin (Form D) are not accepted, as stated in the preceding paragraph, the importing Member State should accept and consider the clarifications made by the competent authorities and assess again whether or not the 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 14
Validity Period of the Certificate of Origin or the Invoice Declaration

The following time limit for the presentation of the Certificate of Origin (Form D) or the Invoice Declaration shall be observed:

- (a) The Certificate of Origin (Form D) and the Invoice Declaration 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 Invoice Declaration – making out, and must be submitted to the customs authorities of the importing Member State within that period;
- (b) Where the Certificate of Origin (Form D) or the Invoice Declaration is submitted to the customs authorities of the importing Member State after the expiration of the time limit for its submission, such Certificate of Origin (Form D) or the Invoice Declaration 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 authorities in the importing Member State may accept such Certificate of Origin (Form D) or the Invoice Declaration 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 Certificate of

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Origin (Form D) or an Invoice Declaration shall be waived and the use of a 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 Certificate of Origin (Form D) or in the Invoice Declaration and those made in the documents submitted to the customs authorities of the importing Member State for the purpose of carrying out the formalities for importing the 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 Certificate of Origin (Form D) or the Invoice Declaration, a problem encountered with one of the items listed shall not affect or delay the granting of preferential treatment and customs clearance of the remaining items listed in the Certificate of Origin (Form D) or the Invoice Declaration. 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 exporter applying for the issuance of a Certificate of Origin (Form D) and the Certified Exporter making out an Invoice Declaration shall, subject to the laws and regulations of the exporting Member State, keep the supporting records for not less than three (3) years from the date of issuance of the Certificate of Origin (Form D) or the Invoice Declaration.

2. The application for Certificates of Origin (Form D) and for the authorization of Certified Exporters, and all documents related to such applications shall be retained by the competent authorities for not less than three (3) years from the date of issuance of certificate or of the granting of the authorisation.

3. Information relating to the validity of the Certificate of Origin (Form D) and to the correctness of an Invoice Declaration shall be furnished upon request of the importing Member State by the competent authority of the exporting Member State.

4. Any information communicated between the Member States concerned shall be treated as confidential and shall be used for the validation of Certificates of Origin (Form D) and Invoice Declarations purposes only.

Rule 18 Retroactive Check

The importing Member State may request the 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 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-month timeframe, specified at the date of exportation subject to the following conditions:

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- (a) The request for retroactive check shall be accompanied with the Certificate of Origin (Form D) or the Invoice Declaration concerned and shall specify the reasons and any additional information suggesting that the particulars given on the said Certificate of Origin (Form D) or the Invoice Declaration may be inaccurate, unless the retroactive check is requested on a random basis;
- (b) The 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 authorities 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;
- (d) The 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 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

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.

- (a) Prior to the conduct of a verification visit, an importing Member State, shall:
 - (i) Deliver a written notification of its intention to conduct the verification visit to:
 - (1) the exporter/ producer whose premises are to be visited;
 - (2) the competent authority of the Member State in whose territory the verification visit is to occur;
 - (3) the customs authority of the Member State in whose territory the verification visit is to occur; and
 - (4) the importer of the goods subject of the verification visit.
 - (ii) The written notification mentioned in paragraph (a)(i) shall be as comprehensive as possible including, among others:
 - (1) the name of the customs official issuing the notification;
 - (2) the name of the exporter/producer whose premises are to be visited;
 - (3) the proposed date for the verification visit;
 - (4) the coverage of the proposed verification visit, including reference to the goods subject of the verification; and
 - (5) the names and designation of the officials performing the verification visit.
 - (iii) Obtain the written consent of the exporter/ producer whose premises are to be visited.

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- (b) When a written consent from the exporter/ producer is not obtained within thirty (30) days upon receipt of the notification pursuant to paragraph (a)(i), the notifying Member State, may deny preferential treatment to the goods that would have been subject of the verification visit.
- (c) The 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.
- (d) 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 with a written determination of whether or not the subject goods qualify as originating goods.
- (e) Any suspended preferential treatment shall be reinstated upon the written determination referred to in paragraph (d) that the goods qualify as originating goods.
- (f) 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 competent authority within thirty (30) days from receipt of the comments/additional information from the exporter/producer.
- (g) 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 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, 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 the 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 Invoice Declaration made out by a Certified Exporter established in the exporting Member State;
- (c) A copy of the original commercial invoice in respect of the goods, where applicable; and

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- (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;
 - (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 Certified Exporter, the Invoice 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 Certificates of Origin (Form D) 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).

Rule 24 Action against Fraudulent Acts

1. When it is suspected that fraudulent acts in connection with the Certificate of Origin (Form D) or the Invoice Declaration 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 Certificate of Origin (Form D) and to the Invoice Declaration.

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