



ASEAN Japan Comprehensive Economic Partnership

Annex 4

DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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Annex 4
Operational Certification Procedures

Rule 1
Definitions

For the purposes of this Annex, the term:

- (a) "competent governmental authority" means the authority that, according to the laws and regulations of each Party, is responsible for the issuing of a certificate of origin (hereinafter referred to as "CO") or for the designation of entities or bodies issuing a CO; and
- (b) "relevant authority" means the authority of the importing Party, other than the customs authority of that Party, that is responsible for verification and verification visit in the importing Party.

Rule 2
Issuance of Certificate of Origin

1. The competent governmental authority of the exporting Party shall, upon request made in writing by the exporter or its authorised agent, issue a CO or, under the authorisation given in accordance with the applicable laws and regulations of the exporting Party, may designate other entities or bodies (hereinafter referred to as "designees") to issue a CO.
2. Each Party shall provide the other Parties with a list of names and addresses, and a list of specimen signatures and specimen of official seals or impressions of stamps for the issuance of a CO, of its competent governmental authority and, if any, its designees.
3. Any CO bearing a signature not included in the list referred to in paragraph 2 shall not be valid.
4. Where the exporter of a good is not the producer of the good in the exporting Party, the exporter may request a CO on the basis of:
 - (a) a declaration provided by the exporter to the competent governmental authority or its designees based on the information provided by the producer of the good to that exporter; or

- (b) a declaration voluntarily provided by the producer of the good directly to the competent governmental authority or its designees by the request of the exporter.

5. A CO shall be issued only after the exporter who requests for its issuance, or the producer of the good in the exporting Party referred to in subparagraph 4(b), proves to the competent governmental authority or its designees that the good to be exported qualifies as an originating good of the exporting Party.

6. If, after the issuance of the CO, the exporter or producer referred to in paragraph 5 knows that such a good does not qualify as an originating good of the exporting Party, they shall notify the competent governmental authority or its designees in writing and without delay, subject to the applicable laws and regulations of the exporting Party.

7. The competent governmental authority of the exporting Party or its designees shall, if they receive notification in accordance with paragraph 6, or if they have knowledge after the issuance of the CO that the good does not qualify as an originating good of the exporting Party, cancel the CO and promptly notify the cancellation to the exporter to whom the CO has been issued, and to the customs authority of the importing Party, except in the case where the exporter has returned the CO to the competent governmental authority of the exporting Party.

8. The format of the CO and its contents shall be in the English language and shall include minimum data specified in the Attachment to this Annex.

Rule 3 Presentation of Certificate of Origin

1. For the purposes of claiming preferential tariff treatment, the following shall be submitted to the customs authority of the importing Party by the importer:

- (a) a valid CO; and
- (b) other documents as required in accordance with the laws and regulations of the importing Party (e.g. invoices, including third country invoices, and a through bill of lading issued in the exporting Party).

2. A CO shall not be required for an importation of a consignment of originating goods of the exporting Party whose aggregate customs value does not exceed two hundred United States dollars (USD200) or its equivalent amount in the Party's currency, or such higher amount as the importing Party may establish.

3. Where an originating good of the exporting Party is imported through one or more of the Parties other than the exporting Party and the importing Party, or non-Parties, the importing Party may require importers who claim preferential tariff treatment for the good to submit:

- (a) a copy of through bill of lading; or
- (b) a certificate or any other information given by the customs authorities of such one or more Parties or non-Parties, or other relevant entities, which proves that the good has not undergone operations other than unloading, reloading and any other operation to preserve it in good condition in those Parties or non-Parties.

4. (a) Notwithstanding paragraph 5 of Rule 2, where an originating good, for which a CO (hereinafter referred to in this paragraph as "original CO") was issued by the competent governmental authority or its designees of the exporting Party, is to be exported from the importing Party to another Party, the competent governmental authority or its designees of the importing Party may issue a back-to-back CO as a new CO for the originating good, if a request is made by the exporter in the importing Party or its authorised agent with presentation of the valid original CO.

- (b) Where a back-to-back CO is issued in accordance with subparagraph (a), "an originating good of the exporting Party" referred to in Chapter 3 and this Annex shall be construed as an originating good of the Party whose competent governmental authority or its designees has issued the original CO.

Rule 4 Validity of Certificate of Origin

1. A CO shall be submitted to the customs authority of the importing Party within one (1) year from the date of issuance by the competent governmental authority of the exporting Party or its designees.

2. Where the CO is submitted to the customs authority of the importing Party after the expiration of the period for its submission provided for in paragraph 1, that CO shall be accepted when the failure to observe such a requirement results from force majeure or other valid causes beyond the control of the exporter or importer.

3. An issued CO shall be applicable to a single importation of an originating good of the exporting Party into the importing Party.

Rule 5 Record Keeping

1. Each Party shall, in accordance with its laws and regulations, ensure that the exporter to whom a CO has been issued or the producer of a good in the exporting Party referred to in subparagraph 4(b) of Rule 2 keeps records relating to the origin of the good. For the purposes of this Agreement, the exporter or producer shall keep these records for three (3) years after the date on which the CO was issued.

2. Each Party shall ensure that its competent governmental authority or its designees shall keep a record of the issued CO for a period of three (3) years after the date on which the CO was issued. Such record includes all supporting documents presented to prove the qualification as an originating good of the exporting Party.

Rule 6 Verification

1. For the purposes of determining whether a good imported from another Party and claimed for preferential tariff treatment qualifies as an originating good of that Party under this Agreement, the customs authority or the relevant authority of the importing Party may request information relating to the origin of the good, provided that such a request is made to the competent governmental authority of the exporting Party on the basis of the CO.

2. For the purposes of paragraph 1, the competent governmental authority of the exporting Party shall, in accordance with its laws and regulations, provide the information requested in a period not exceeding three (3) months after the date of receipt of the request. If the customs authority or the relevant authority of the importing Party considers necessary, it may request additional information relating to the origin of the good. If additional information is requested by the customs authority or the relevant authority of the importing Party, the competent governmental authority of the exporting Party shall, in accordance with its laws and regulations, provide the information requested in a period not exceeding three (3) months after the date of receipt of the request for additional information.

3. For the purposes of paragraph 2, the competent governmental authority of the exporting Party may request the exporter to whom the CO has been issued, or the producer of the good in the exporting Party referred to in subparagraph 4(b) of Rule 2, to provide the former with the information requested.

4. The request for information in accordance with paragraph 1 shall not preclude the use of a verification visit provided for in Rule 7.

5. During the procedures provided for in this Rule and Rule 7, the customs authority of the importing Party may suspend the preferential tariff treatment while awaiting the result of verification, and shall not wait for the procedures to be completed before it releases the good to the importer unless subject to appropriate administrative measures.

6. Each Party shall provide the other Parties with the names of its relevant authority, if any.

Rule 7 Verification Visit

1. The customs authority or the relevant authority of the importing Party may request the exporting Party:

- (a) to collect and provide information relating to the origin of the good and check, for that purpose, the facilities used in the production of the good, through a visit by the competent governmental authority of the exporting Party along with the customs authority or the relevant authority of the importing Party to the premises of the exporter to whom the CO has been issued, or the producer of the good in the exporting Party referred to in subparagraph 4(b) of Rule 2; and
- (b) during the visit pursuant to subparagraph (a), to provide information relating to the origin of the good in the possession of the competent governmental authority of the exporting Party or its designees.

2. When requesting the exporting Party to conduct a visit pursuant to paragraph 1, the customs authority or the relevant authority of the importing Party shall deliver a written communication with such request to the exporting Party at least sixty (60) days in advance of the proposed date of the visit, the receipt of which is to be confirmed by the exporting Party. The competent governmental authority of the exporting Party shall request the written consent of the exporter, or the producer of the good in the exporting Party whose premises are to be visited.

3. The communication referred to in paragraph 2 shall include:

- (a) the identity of the customs authority or the relevant authority issuing the communication;
- (b) the name of the exporter, or the producer of the good in the exporting Party whose premises are requested to be visited;
- (c) the proposed date and places of the visit;
- (d) the object and scope of the proposed visit, including specific reference to the good subject of the verification referred to in the CO; and
- (e) the names and titles of the officials of the customs authority or the relevant authority of the importing Party to be present during the visit.

4. The exporting Party shall respond in writing to the importing Party, within thirty (30) days from the receipt of the communication referred to in paragraph 2, whether it accepts or refuses to conduct the visit requested pursuant to paragraph 1.

5. The competent governmental authority of the exporting Party shall, in accordance with the laws and regulations of the Party, provide within forty-five (45) days or any other mutually agreed period from the last day of the visit, to the customs authority or the relevant authority of the importing Party any additional information obtained pursuant to paragraph 1.

Rule 8

Determination of Origin and Preferential Tariff Treatment

1. The customs authority of the importing Party may deny preferential tariff treatment to a good for which an importer claims preferential tariff treatment where the good does not qualify as an originating good of the exporting Party or where the importer fails to comply with any of the relevant requirements of this Annex.

2. In cases where the verification procedures outlined in Rule 6 or 7 are undertaken, the customs authority of the importing Party may determine that a good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment, under any of the following conditions:

- (a) the competent governmental authority of the exporting Party fails to respond to the request within the period referred to in paragraph 2 of Rule 6 or paragraph 5 of Rule 7;
- (b) the exporting Party refuses to the conduct of the verification visit as requested by the customs authority or the relevant authority of the importing Party, or that Party fails to respond to the communication referred to in paragraph 2 of Rule 7 within the period referred to in paragraph 4 of Rule 7; or
- (c) the information provided to the customs authority or the relevant authority of the importing Party pursuant to Rule 6 or 7 is not sufficient to prove that the good qualifies as an originating good of the exporting Party.

3. In cases where the verification procedures outlined in Rule 6 or 7 are undertaken, the customs authority of the importing Party shall provide the competent governmental authority of the exporting Party with a written determination of whether or not the good qualifies as an originating good of the exporting Party, including findings of fact and the legal basis for the determination, in a period, unless otherwise agreed upon by the importing Party and the exporting Party, not exceeding thirty (30) days after the date of the receipt of the information last provided by the competent governmental authority of the exporting Party in accordance with Rule 6, or sixty (60) days after the last day of the visit referred to in Rule 7.

4. The competent governmental authority of the exporting Party shall notify the determination by the customs authority of the importing Party referred to in paragraph 3, to the exporter, or the producer of the good in the exporting Party whose premises were subject to the visit referred to in Rule 7. In the event that a determination is made that the good qualifies as an originating good of the exporting Party, any suspended preferential tariff treatment shall be reinstated.

Rule 9 Confidentiality

1. Where a Party provides information to another Party pursuant to this Annex and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information, protect that information from disclosure that could prejudice the competitive position of the persons providing the information, use the information only for the purposes specified by the Party providing it, and not disclose the information without the specific written permission of the Party providing it.

2. Information obtained by the customs authority or the relevant authority of the importing Party pursuant to this Annex:

- (a) shall only be used by such authority for the purposes of the verification of a CO under this Annex; and
- (b) shall not be used by the importing Party in any criminal proceedings carried out by a court or a judge, in the absence of a specific written permission of the exporting Party that provided the information.

Rule 10
Appropriate Penalties or Other Measures against
Fraudulent Acts

Each Party shall establish or maintain, in accordance with its laws and regulations, appropriate penalties or other measures against its exporters or producers who have committed fraudulent acts in connection with a CO, including submission of false declarations or documents to its competent governmental authority or its designees.

Rule 11
Implementing Regulations

The Joint Committee shall, upon the date of entry into force of this Agreement pursuant to paragraph 1 of Article 79, adopt the Implementing Regulations that provide detailed regulations pursuant to which the customs authorities, competent governmental authorities and other authorities concerned of the Parties shall implement their functions under this Annex.

Attachment to Annex 4
Minimum Data Requirement for Certificate of Origin

1. Exporter's name, address and country
2. Importer's or, if applicable, consignee's name, address and country
3. Certification number
4. Origin of good(s)
5. Invoice number and date
6. Transport details (if known)
7. HS tariff classification number
8. Marks, numbers, number and kind of packages;
Description of good(s)
9. Quantity (Unit)
10. Preference criterion (including information on CTC, RVC and accumulation)
11. Declaration by the exporter
12. Certification