

## AKTA KASTAM 1967

### PERINTAH DUTI KASTAM (BARANG-BARANG DI BAWAH PROGRAM “EARLY HARVEST” DAN PERJANJIAN RANGKA KERJASAMA EKONOMI KOMPREHENSIF ANTARA ASEAN DAN CHINA) (PINDAAN) 2010

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

#### **Nama dan permulaan kuat kuasa**

1. (1) Perintah ini bolehlah dinamakan **Perintah Duti Kastam (Barang-Barang di bawah Program “Early Harvest” dan Perjanjian Rangka Kerja Kerjasama Ekonomi Komprehensif antara ASEAN dan China) (Pindaan) 2010**.

(2) Perintah ini mula berkuat kuasa pada 1 Januari 2011.

#### **Pindaan Jadual Pertama**

2. Perintah Duti Kastam (Barang-Barang di bawah Program “Early Harvest” dan Perjanjian Rangka Kerja Kerjasama Ekonomi Komprehensif antara ASEAN dan China) 2008 [*P.U. (A) 228/2008*], dipinda dalam Jadual Pertama dengan menggantikan Part II dengan Part yang berikut:

## “PART II

### OPERATIONAL CERTIFICATION PROCEDURES (OCP) FOR THE RULES OF ORIGIN OF THE ASEAN-CHINA FREE TRADE AREA

For the purpose of implementing the Rules of Origin for the ASEAN-China Free Trade Area (ACFTA), the following operational procedures on the issuance and verification of the Certificate of Origin (Form E) and other related administrative matters shall be followed:

#### DEFINITIONS

##### **Rule 1**

For the purposes of this Attachment:

“Movement Certificate” means a Certificate of Origin (Form E) issued by an intermediate exporting Party, based on the original Certificate of Origin (Form E) issued by the first exporting Party proving the origin status of the products in question;

“Customs Authority” means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations<sup>1</sup>;

“Exporter” means a natural or juridical person located in the territory of a Party from where a product is exported by such a person;

“Importer” means a natural or juridical person located in the territory of a Party into where a product is imported by such a person;

“Issuing Authorities” means any government authority or other entity authorized under the domestic laws, regulations and administrative rules of a Party to issue a Certificate of Origin (Form E).

#### ISSUING AUTHORITIES

##### **Rule 2**

The Certificate of Origin (Form E) shall be issued by the Issuing Authorities of the exporting Party.

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<sup>1</sup> Such laws and regulations administered and enforced by the Customs Authority of each Party concerning importation, exportation and transit of products as they relate to customs duties, charges or other taxes or prohibitions, restrictions and controls with respect to the movement of controlled items across the boundary of the Customs Authority of each Party.

### **Rule 3**

- (a) A Party shall inform all the other Parties of the names and addresses of its respective Issuing Authorities and shall provide specimen signatures and specimen of official seals, and correction stamps, if any, used by its Issuing Authorities.
- (b) The above information and specimens shall be provided to all the other Parties to the Agreement and a copy furnished to the ASEAN Secretariat. A Party shall promptly inform all the other Parties of any change in names, addresses or official seals in the same manner.

### **Rule 4**

For the purpose of verifying the conditions for preferential treatment, the Issuing Authorities shall have the right to call for any supporting documentary evidence or to carry out any checks considered appropriate. If such right cannot be obtained through the existing domestic laws, regulations and administrative rules, it shall be inserted as a clause in the application form referred to in Rules 5 and 6.

## **APPLICATIONS**

### **Rule 5**

- (a) The exporter and/or the manufacturer of the products qualified for preferential treatment shall apply in writing to the Issuing Authorities requesting for the pre-exportation verification of the origin of the products. The result of the verification, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in verifying the origin of the said products to be exported thereafter. The pre-verification may not apply to the products of which, by their nature, origin can be easily verified.
- (b) For locally-procured materials, self-declaration by the final manufacturer exporting under the ACFTA shall be used as the basis when applying for the issuance of the Certificate of Origin (Form E).

## **Rule 6**

At the time of carrying out the formalities for exporting the products under preferential treatment, the exporter or his authorized representative shall submit a written application for the Certificate of Origin (Form E) together with appropriate supporting documents proving that the products to be exported qualify for the issuance of a Certificate of Origin (Form E).

### PRE-EXPORTATION EXAMINATION

## **Rule 7**

The Issuing Authorities shall, to the best of their competence and ability, carry out proper examination of each application for the Certificate of Origin (Form E) to ensure that:

- (a) the application and the Certificate of Origin (Form E) are duly completed in accordance with the requirements as defined in the overleaf notes of the Certificate of Origin (Form E) and signed by the authorised signatory;
- (b) the origin of the product is in conformity with the Rules of Origin for the ACFTA;
- (c) the other statements of the Certificate of Origin (Form E) correspond to the supporting documentary evidence submitted;
- (d) description, quantity and weight of products, marks and number of packages, number and kinds of packages, as specified, conform to the products to be exported; and
- (e) multiple items declared on the same Certificate of Origin (Form E) shall be allowed subject to the domestic laws, regulations and administrative rules of the importing Party, provided that each item must qualify separately in its own right<sup>2</sup>.

### ISSUANCE OF CERTIFICATE OF ORIGIN (FORM E)

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<sup>2</sup> For the purposes of Rule 7(e), the number of multiple items declared on each Certificate of Origin (Form E) shall not exceed twenty (20) items.

## **Rule 8**

- (a) The Certificate of Origin (Form E) must be in ISO A4 size paper in conformity to the specimen as shown in Attachment A. It shall be made in English.
- (b) The Certificate of Origin (Form E) shall comprise one original and two (2) carbon copies of the following colours:
  - Original - Beige (Pantone color code: 727c)
  - Duplicate - Light Green (Pantone color code: 622c)
  - Triplicate - Light Green (Pantone color code: 622c)
- (c) Each Certificate of Origin (Form E) shall bear a reference number separately given by each place of office of issuance.
- (d) The original copy of the Certificate of Origin (Form E) shall be forwarded by the exporter to the importer for submission to the Customs Authority at the port or place of importation. The duplicate copy shall be retained by the Issuing Authorities in the exporting Party. The triplicate copy shall be retained by the exporter.
- (e) In cases when a Certificate of Origin (Form E) is rejected by the Customs Authority of the importing Party, the subject Certificate of Origin (Form E) shall be marked accordingly in Box 4.
- (f) In cases where a Certificate of Origin (Form E) is not accepted as stated in paragraph (e), the Customs Authority of the importing Party shall consider the clarifications made by the Issuing Authorities and assess whether or not the Certificate of Origin (Form E) can be accepted for the granting of the preferential treatment. The clarification shall be detailed and exhaustive in addressing the grounds for denial of preferential treatment raised by the importing Party.

## **Rule 9**

To implement the provisions of Rule 2 of the Rules of Origin for the ACFTA, the Certificate of Origin (Form E) issued by the final exporting Party shall indicate the origin criteria or applicable percentage of ACFTA value content in Box 8.

## **Rule 10**

Neither erasures nor superimposition shall be allowed on the Certificate of Origin (Form E). Any alteration shall be made by 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 E) and certified with official seals or correction stamps of the Issuing Authorities. Unused spaces shall be crossed out to prevent any subsequent addition.

## **Rule 11**

In principle, a Certificate of Origin (Form E) shall be issued prior to or at the time of shipment. In exceptional cases where the Certificate of Origin (Form E) has not been issued by the time of shipment or no later than three (3) days from the date of shipment, at the request of the exporter, the Certificate of Origin (Form E) shall be issued retroactively in accordance with the domestic laws, regulations and administrative rules of the exporting Party within twelve (12) months from the date of shipment, in which case it is necessary to indicate “ISSUED RETROACTIVELY” in Box 13. In such cases, the importer of the product who claims the preferential treatment for the product may, subject to the domestic laws, regulations and administrative rules of the importing Party, provide the Customs Authority of the importing Party with the Certificate of Origin (Form E) issued retroactively.

## **Rule 12**

- (a) The Issuing Authorities of the intermediate Party within the ACFTA may issue a Movement Certificate (MC) if an application is made by the exporter while the product is passing through the territory, provided that:
- (i) the importer of the intermediate Party and the exporter who applies for the MC in the intermediate Party are the same;
  - (ii) a valid original Certificate of Origin (Form E) issued by the first exporting Party is presented;
  - (iii) information on the MC includes the names of the Issuing Authorities of the Party which issued the original Certificate of Origin (Form E), date of issuance and reference number. The FOB value shall be the FOB value of the products exported from the intermediate Party; and

- (iv) the total quantity of the products covered in the MC does not exceed the total quantity of the products covered in the original Certificate of Origin (Form E).
- (b) In the case of China, the MC shall be issued by the Customs Authority. In the case of ASEAN Member States, the MC shall be issued by the Issuing Authorities.
- (c) The validity of the MC shall have the same end-date as the original Certificate of Origin (Form E).
- (d) The product which is to be re-exported using MC shall be under control of the Customs Authority of the intermediate Party. The products shall not undergo any further processing in the intermediate Party, except for repacking and logistics activities consistent with Rule 8 of the Rules of Origin for the ACFTA<sup>3</sup>.
- (e) The verification procedure in Rule 18 shall also apply to the MC. In particular, the Customs Authority of the importing Party may request simultaneously the original exporting Party and the intermediate Party to provide information regarding the original Certificate of Origin (Form E) and the MC respectively, such as the first exporter, last exporter, reference number, description of the products, country of origin and the port of discharge, within thirty (30) days from the date of receipt of the request, as the case may be.

### **Rule 13**

In the event of theft, loss or destruction of a Certificate of Origin (Form E), the exporter may apply in writing to the Issuing Authorities which issued it for the certified true copy of the original and the triplicate to be made 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 the original Certificate of Origin (Form E). The certified true copy of a Certificate of Origin (Form E) shall be issued no later than one (1) year from the date of issuance of the original Certificate of Origin (Form E) and on condition that the exporter provides to the relevant Issuing Authorities the triplicate copy or any proof on the issuance of the original Certificate of Origin (Form E).

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<sup>3</sup> The products under control of the Customs Authority of the intermediate Party shall include products that remain in free trade zones or locations approved by the said Customs Authority.

## PRESENTATION

### **Rule 14**

The original copy of the Certificate of Origin (Form E) shall be submitted to the Customs Authority at the time of lodging the import entry for the products concerned claiming for preferential treatment in accordance with the domestic laws, regulations and administrative rules of the importing Party.

### **Rule 15**

The Certificate of Origin (Form E) shall remain valid and must be submitted to the Customs Authority of the importing Party within one (1) year from the date of its issuance by the Issuing Authority of the exporting Party.

### **Rule 16**

In the case of consignments of products originating in the exporting Party and not exceeding US\$ 200.00 FOB, the production of a Certificate of Origin (Form E) shall be waived and the use of simplified declaration by the exporter that the products in question have originated in the exporting Party shall be accepted. Products sent through the post not exceeding US\$200.00 FOB shall also be similarly treated.

### **Rule 17**

- (a) Where the ACFTA origin of the product is not in doubt, unsubstantial discrepancies, such as tariff classification differences between the statements made in the Certificate of Origin (Form E) and those made in the documents submitted to the Customs Authority of the importing Party for the purpose of carrying out the formalities for importing the products, shall not ipso-facto invalidate the Certificate of Origin (Form E) if it does in fact correspond to the products submitted.
- (b) In cases where the exporting Party and the importing Party have unsubstantial discrepancies as indicated in paragraph (a), the products shall be released without any delay and subject to administrative measures, such as imposition of customs duties at the higher applied rate or its equivalent amount of deposit. Once the discrepancies have been resolved, the correct ACFTA rate is to be

applied and any overpaid duty shall be refunded in accordance with the domestic laws, regulations and administrative rules of the importing Party.

- (c) For multiple items declared under the same Certificate of Origin (Form E), 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 E). Rule 18(a)(ii) may be applied to the problematic items.

## **Rule 18**

- (a) The Customs Authority of the importing Party may request 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 products in question or of certain parts thereof.
  - (i) The request shall be made in writing, accompanied with a copy of the Certificate of Origin (Form E) and shall specify the reasons and any additional information suggesting that the particulars given on the said Certificate of Origin (Form E) may be inaccurate, unless the retroactive check is requested on a random basis.
  - (ii) The Customs Authority of the importing Party may suspend the granting of preferential treatment while awaiting the result of verification. However, it may release the products to the importer subject to any administrative measures deemed necessary, including imposition of customs duties at the higher applied rate or equivalent amount of deposit, provided that they are not held to be subject to import prohibition or restriction and there is no suspicion of fraud.
  - (iii) The Customs Authority or the Issuing Authorities of the exporting Party receiving a request for retroactive check shall respond to the request promptly and reply not later than ninety (90) days after the receipt of the request.
- (b) If the Customs Authority of the importing Party is not satisfied with the outcome of the retroactive check, it may, under exceptional cases, request for verification visits to the exporting Party.
  - (i) Prior to the conduct of a verification visit pursuant to the provisions herein, the Customs Authority of the importing Party shall notify the

competent authority of the exporting Party with an aim to mutually agree on the conditions and means of the verification visit.

- (ii) The verification visit shall be conducted not later than sixty (60) days after receipt of the notification pursuant to sub-paragraph (b)(i).
- (c) The verification process, including the retroactive check and verification visit, shall be carried out and its results communicated to the Customs Authority and/or the Issuing Authorities of the exporting Party within a maximum of one hundred and eighty (180) days. While awaiting the results of the verification visit, sub-paragraph (a)(ii) on the suspension of preferential treatment shall be applied.
- (d) The preferential treatment may be denied when the exporting Party fails to respond to the request to the satisfaction of the Customs Authority of the importing Party in the course of a retroactive check or verification process, as the case may be, within the time frame for verification under paragraphs (a), (b) and (c).
- (e) Each Party shall maintain the confidentiality of the information and documents provided by the other Party in the course of verification process. Such information and documents shall not be used for other purposes, including being used as evidence in administrative and judicial proceedings, without the explicit written permission of the Party providing such information.

#### RECORD KEEPING REQUIREMENT

##### **Rule 19**

- (a) The application for the Certificate of Origin (Form E) and all documents related to such application shall be retained by the Issuing Authorities for not less than three (3) years from the date of issuance.
- (b) Information relating to the validity of the Certificate of Origin (Form E) shall be furnished upon request by the importing Party.
- (c) Any information communicated between the Parties concerned shall be treated as confidential and shall be used for the validation of the Certificate of Origin (Form E) purposes only.

- (d) For the purposes of the verification process/retroactive check pursuant to Rule 18 the producer and/or exporter applying for the issuance of a Certificate of Origin (Form E) shall, subject to the domestic laws, regulations and administrative rules of the exporting Party, keep its supporting records for application for not less than three (3) years from the date of issuance of the Certificate of Origin (Form E).

## SPECIAL CASES

### **Rule 20**

When the destination of the products exported to a specified Party is changed, before or after their arrival in the Party, the following rules shall be observed:

- (a) if the products have already been submitted to the Customs Authority in the specified importing Party, the Certificate of Origin (Form E) shall, by a written application of the importer, be endorsed to address the situation. The original shall be kept by the Customs Authority and the photocopy of the Certificate of Origin (Form E) shall be provided to the importer; and
- (b) if the changing of destination occurs during transportation to the importing Party as specified in the Certificate of Origin (Form E), the exporter shall apply in writing, accompanied with the issued Certificate of Origin (Form E), for the new issuance of the Certificate of Origin (Form E).

### **Rule 21**

For the purpose of implementing Rule 8(c) of the Rules of Origin for the ACFTA, where transportation is effected through the territory of one or more non-ACFTA Parties, the following shall be submitted to the Customs Authority of the importing Party:

- (a) a through Bill of Lading issued in the exporting Party;
- (b) a Certificate of Origin (Form E) issued by the relevant Issuing Authorities of the exporting Party;
- (c) a copy of the original commercial invoice in respect of the product; and
- (d) supporting documents in evidence that the requirements of Rule 8(c)

sub-paragraphs (i),(ii) and (iii) of the Rules of Origin for the ACFTA are being complied with.

## **Rule 22**

- (a) Products sent from an exporting Party for exhibition in another Party and sold during or after the exhibition into a Party shall benefit from the ASEAN-China preferential treatment on the condition that the products meet the requirements of the Rules of Origin for the ACFTA, provided it is shown to the satisfaction of the Customs Authority of the importing Party that:
- (i) an exporter has dispatched those products from the territory of the exporting Party to another Party where the exhibition is held and has exhibited them there;
  - (ii) the exporter has sold the products or transferred them to a consignee in the importing Party; and
  - (iii) the products have been consigned during the exhibition or immediately thereafter to the importing Party in the state in which they were sent for exhibition.
- (b) For purposes of implementing the above provisions, the Certificate of Origin (Form E) must be submitted to the Customs Authority of the importing Party. The name and address of the exhibition must be indicated, a certificate issued by the Issuing Authorities of the Party where the exhibition took place together with supporting documents prescribed in Rule 21(d) may be required.
- (c) Paragraph (a) 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 products and where the products remain under customs control during the exhibition.

## **Rule 23**

The Customs Authority of the importing Party shall accept a Certificate of Origin (Form E) in cases where the sales invoice is issued either by a company located in a third country or by an ACFTA exporter for the account of the said company, provided that the product meets the requirements of the Rules of Origin for the ACFTA. The third party invoice number shall be indicated in Box 10 of the Certificate of Origin (Form E), the exporter and consignee must be

located in the Parties and the copy of the third party invoice shall be attached to the Certificate of Origin (Form E) when presenting to the Customs Authority of the importing Party.

## ACTION AGAINST FRAUDULENT ACTS

### **Rule 24**

- (a) When it is suspected that fraudulent acts in connection with the Certificate of Origin (Form E) have been committed, the Government authorities concerned shall co-operate in the action to be taken in the territory of the respective Party against the persons involved.
- (b) Each Party shall be responsible for providing legal sanctions for fraudulent acts related to the Certificate of Origin (Form E) in accordance with its domestic laws, regulations and administrative rules.

### **Rule 25**

In the case of a dispute concerning origin determination, classification or products or other matters, the Government authorities concerned in the importing and exporting Parties shall consult each other with a view to resolving the dispute, and the result shall be reported to the other Parties for information.

## Pindaan Jadual Kedua

3. Berhubung dengan Jadual Kedua, dalam ruang (4) bagi tahun 2010 dan 2011 berhubung dengan subkepala:

3405.90 000	4011.61 900	4012.20 910
4012.90 200	4013.10 100	4013.10 900
4013.90 200	4013.90 300	4013.90 900
5204.19 900	5204.20 000	5209.29 000
5209.39 000	5210.11 000	5210.21 000
5210.31 000	5211.32 000	5212.11 000
5212.13 000	5212.21 990	5407.51 000
5407.52 000	5508.10 200	5509.21 000
5509.22 000	5509.59 000	5509.61 000
5509.69 000	5509.99 000	5510.11 000
5510.12 000	5512.99 000	5513.21 000
5513.23 000	5513.29 000	5514.19 000
5514.22 000	5514.29 000	5516.21 000
5516.22 000	5516.41 000	5516.42 000
5516.92 000	5810.99 000	6104.49 000
6104.52 000	6104.59 000	6104.62 000
6104.63 000	6106.20 000	6107.91 000
6107.99 000	6108.19 000	6108.29 000
6108.92 000	6108.99 000	6109.10 000
6109.90 000	6111.90 000	6112.11 000
6112.12 000	6112.19 000	6113.00 000
6114.20 000	6114.90 000	6116.92 000
6116.93 000	6203.43 000	6203.49 000
6204.42 000	6204.49 000	6204.52 000
6204.53 000	6204.59 000	6204.62 000
6204.63 000	6204.69 000	6205.30 000
6206.10 000	6206.30 000	6207.21 000
6207.22 000	6207.29 000	6207.99 000
6208.11 000	6208.19 000	6208.21 000
6208.22 000	6208.29 000	6208.91 000
6208.92 000	6208.99 000	6209.90 000
6212.10 000	6212.10 900	6212.20 000
6212.30 000	6216.00 300	6401.10 000
6401.92 000	6401.99 000	6403.40 000
7303.00 000	7304.11 000	7304.19 000

7304.22 000	7304.23 000	7304.24 000
7304.29 000	7304.31 900	7304.39 900
7304.41 900	7304.49 900	7304.90 900
8508.70 100	8509.40 000	8509.80 900
8509.90 000	8516.60 200	8516.60 900
8539.22 200	8539.31 000	8544.42 210
8544.49 210	8544.49 230	8544.49 910
8544.49 920	8544.49 930	8544.60 110
8544.60 130	8544.60 910	8544.60 920
8705.10 000	8705.20 000	8705.40 000
8705.90 000		

dengan menggantikan angka “0” dengan angka “5”.

Dibuat  
[10 SULIT KE.HT(96) 515/11-10; Perb.

2010

; PN(PU2)338A/XXXVI]

DATO' SERI AHMAD HUSNI BIN MOHAMAD HANADZLAH  
*Menteri Kewangan Kedua*

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