

[insert ASEAN, Australia and New Zealand flags]

**FIRST PROTOCOL TO AMEND THE AGREEMENT
ESTABLISHING THE ASEAN-AUSTRALIA-NEW ZEALAND
FREE TRADE AREA**

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PREAMBLE

The Governments of Brunei Darussalam, the Kingdom of Cambodia (Cambodia), the Republic of Indonesia (Indonesia), the Lao People's Democratic Republic (Lao PDR), Malaysia, the Republic of the Union of Myanmar (Myanmar), the Republic of the Philippines (Philippines), the Republic of Singapore (Singapore), the Kingdom of Thailand (Thailand) and the Socialist Republic of Viet Nam (Viet Nam), collectively, the Member States of the Association of Southeast Asian Nations, and Australia and New Zealand;

RECALLING the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (hereinafter referred to as the "Agreement"), signed at Cha-am, Petchaburi, Thailand on 27 February 2009;

SEEKING to facilitate trade by incorporating the consolidated Product Specific Rules using the most recent version of the Harmonized Commodity Description and Coding System established by the *International Convention on the Harmonized Description and Coding System* signed at Brussels on 14 June 1983, as amended (hereinafter referred to as the "HS Code");

RECOGNISING the importance of a timely updating of the Product Specific Rules and the Schedules of Tariff Commitments to take account of periodic amendments of the HS Code;

RECOGNISING also the need to update the Operational Certification Procedures for the Rules of Origin of the Agreement to make it more trade facilitative, including but not limited to the removal of the requirement to reflect the FOB value in the Certificate of Origin in cases where the regional value content criteria is not used;

DESIRING to ensure the implementation of the Rules of Origin in an effective and trade facilitating manner;

NOTING that Article 6 (Amendments) of Chapter 18 (Final Provisions) of the Agreement provides for amendments thereto to be agreed in writing by the Parties;

HAVE AGREED AS FOLLOWS:

Article 1
Amendments to Chapter 2
(Trade in Goods)

1. Chapter 2 (Trade in Goods) of the Agreement shall be amended by inserting a new Article 13 (Transposition of Schedules of Tariff Commitments) as follows:

“Article 13
Transposition of Schedules of Tariff Commitments

1. Each Party shall ensure that the transposition of its schedule of tariff commitments, undertaken in order to implement Annex 1 (Schedules of Tariff Commitments) in the nomenclature of the revised HS Code following periodic amendments to the HS Code, is carried out without impairing existing tariff concessions.

2. The transposition of the schedules of tariff commitments shall be carried out in accordance with the methodologies and procedures adopted by the Committee on Trade in Goods. The procedures should, at the minimum, provide for:

- (a) the timely circulation by a Party of a draft schedule of tariff commitments in the nomenclature of the revised HS Code accompanied by a two-way transposition setting out at national tariff line level:
 - (i) a concordance between the draft schedule of tariff commitments in the nomenclature of the revised HS Code and the schedule of tariff commitments in the nomenclature of the then current HS Code; and
 - (ii) a concordance between the schedule of tariff commitments in the nomenclature of the then current HS Code and the draft schedule of tariff commitments in the nomenclature of the revised HS Code;

- (b) the provision of comments by other Parties on the draft schedules circulated in accordance with Subparagraph (a), and consultations between the Parties, as necessary, with a view to resolving any concerns raised;
- (c) the schedules of tariff commitments in the nomenclature of the revised HS Code shall be made publicly available in a timely manner, following completion of the process in Subparagraphs (a) and (b); and
- (d) for the purpose of Subparagraph (a), proposals for technical assistance shall receive positive consideration.”

2. The new Chapter 2 (Trade in Goods) is set out in Appendix 1 of this Protocol.

Article 2

Amendments to Chapter 3 (Rules of Origin)

1. Article 4 (Goods Not Wholly Produced or Obtained) of Chapter 3 (Rules of Origin) of the Agreement shall be replaced by a new Article 4 providing for Annex 2 to contain a list of consolidated Product Specific Rules that includes goods which were previously not covered in Annex 2 but are treated as an originating good if:

- (a) the good has a regional value content of not less than 40 per cent of FOB calculated using the formulae as described in Article 5 (Calculation of Regional Value Content) of Chapter 3 (Rules of Origin), and the final process of production is performed within a Party; or
- (b) all non-originating materials used in the production of the good have undergone a change in tariff classification at the four-digit level (i.e. a change in tariff heading) of the HS Code in a Party.

2. The new Article 4 referred to in paragraph 1 is set out below:

“Article 4
Goods Not Wholly Produced or Obtained

1. For the purposes of Article 2.1(b) (Originating Goods), a good shall qualify as an originating good of a Party if it satisfies all applicable requirements of the Product Specific Rules.
2. Where Annex 2 (Product Specific Rules) provides a choice of rule between a regional value content based rule of origin, a change in tariff classification based rule of origin, a specific process of production, or a combination of any of these, a Party shall permit the producer or exporter of the good to decide which rule to use in determining if the good is an originating good.”
3. Article 19 (Consultations, Review and Modification) of Chapter 3 (Rules of Origin) of the Agreement shall be replaced by a new Article 19 as set out below:

“Article 19
Consultations, Review and Modification

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently in order to achieve the spirit and objectives of this Agreement.
2. The FTA Joint Committee, upon recommendation of the Committee on Trade in Goods and the ROO Sub-Committee, may adopt a List of Data Requirements for inclusion in the Application for a Certificate of Origin and the Certificate of Origin.
3. The List of Data Requirements, and any subsequent revisions to it, adopted in accordance with paragraph 2 shall be promptly published and shall come into effect on the date determined by the Parties through the FTA Joint Committee and on the basis of a report from the ROO Sub-Committee, through the Committee on Trade in Goods.

4. The FTA Joint Committee, upon recommendation of the Committee on Trade in Goods and the ROO Sub-Committee, shall adopt the transposition of Annex 2 (Product Specific Rules) that is in the nomenclature of the revised HS Code following periodic amendments to the HS Code. Such transposition shall be carried out without impairing the existing commitments and shall be completed in a timely manner. The Parties shall promptly publish the transposition of Annex 2 (Product Specific Rules) in the nomenclature of the revised HS Code.

5. This Chapter may be reviewed and modified in accordance with Article 6 (Amendments) of Chapter 18 (Final Provisions) as and when necessary, upon request of a Party, and subject to the agreement of the Parties, and may be open to such reviews and modifications as may be agreed upon by the FTA Joint Committee.”

4. The new Chapter 3 (Rules of Origin) is set out in Appendix 2 Section A of this Protocol.

Article 3

Amendments to the Annex on Operational Certification Procedures of Chapter 3 (Rules of Origin)

1. Rules 6, 7 and 10 of the Annex on Operational Certification Procedures to Chapter 3 (Rules of Origin) of the Agreement shall be replaced by the new Rules 6, 7 and 10 as set out below:

“PRE-EXPORTATION EXAMINATION

Rule 6

The Issuing Authority/Body shall, to the best of its competence and ability, carry out proper examination, in accordance with the domestic laws and regulations of the exporting Party or the procedures of the Issuing Authority/Body, upon each application for a Certificate of Origin to ensure that:

- (i) the application and the Certificate of Origin are duly completed and signed by the authorised signatory;

- (ii) the good is an originating good in accordance with Article 2 (Originating Goods) of Chapter 3 (Rules of Origin);
- (iii) other statements in the Certificate of Origin correspond to appropriate supporting documents and other relevant information; and
- (iv) information in the List of Data Requirements is provided for the goods being exported.

ISSUANCE OF CERTIFICATE OF ORIGIN

Rule 7

1. The format of the Certificate of Origin is to be determined by the Parties and it must contain the data requirements listed in the List of Data Requirements.
2. The Certificate of Origin shall comprise one (1) original and two (2) copies.
3. The Certificate of Origin shall:
 - (i) be in hardcopy;
 - (ii) bear a unique reference number separately given by each place or office of issuance;
 - (iii) be in the English language; and
 - (iv) bear an authorised signature and official seal of the Issuing Authority/Body. The signature and official seal may be applied electronically.
4. The original Certificate of Origin shall be forwarded by the exporter to the importer for submission to the Customs Authority of the importing Party. Copies shall be retained by the Issuing Authority/Body and the exporter.

5. Multiple goods declared on the same Certificate of Origin shall be allowed, provided that each good is originating in its own right.

Rule 10

1. The Certificate of Origin shall be issued as near as possible to, but no later than three (3) working days after, the date of exportation.

2. Where a Certificate of Origin has not been issued as provided for in Paragraph 1 due to involuntary errors or omissions or other valid causes, the Certificate of Origin may be issued retroactively, but no longer than 12 months from the date of exportation, bearing the words **“ISSUED RETROACTIVELY”**.

3. An Issuing Authority/Body of an intermediate Party shall issue a back-to-back Certificate of Origin, if an application is made by the exporter while the good is passing through that intermediate Party, provided that:

- (i) a valid original Certificate of Origin or its certified true copy is presented;
- (ii) the period of validity of the back-to-back Certificate of Origin does not exceed the period of validity of the original Certificate of Origin;
- (iii) the consignment which is to be re-exported using the back-to-back Certificate of Origin does not undergo any further processing in the intermediate Party, except for repacking or logistics activities such as unloading, reloading, storing, or any other operations necessary to preserve them in good condition or to transport them to the importing Party;
- (iv) the back-to-back Certificate of Origin contains relevant information from the original Certificate of Origin in accordance with the List of Data Requirements; and

- (v) the verification procedures in Rules 17 and 18 shall also apply to the back-to-back Certificate of Origin.”

2. Appendix 1 (Minimum Data Requirements – Application for a Certificate of Origin) and Appendix 2 (Minimum Data Requirements – Certificate of Origin) of the Annex on Operational Certification Procedures (OCP) to Chapter 3 (Rules of Origin) shall be deleted. Upon entry into force of this Protocol, the List of Data Requirements as set out in Appendix 3 of this Protocol shall apply as a transitional measure until such time as a List of Data Requirements is adopted by the FTA Joint Committee in accordance with the new Article 19.2 (Consultations, Review and Modification) of Chapter 3 (Rules of Origin).

3. The new Annex on Operational Certification Procedures to Chapter 3 (Rules of Origin) is set out in Appendix 2 Section B.

Article 4

Amendment to Annex 2 (Product Specific Rules) of the Agreement to Incorporate the Consolidated Product Specific Rules

1. Annex 2 (Product Specific Rules) of the Agreement shall be replaced by a new Annex 2 (Product Specific Rules) as set out in Appendix 4 of this Protocol.

2. The new Annex 2 (Product Specific Rules) shall be implemented by the Parties in accordance with procedures adopted by the FTA Joint Committee, upon a recommendation of the Committee on Trade in Goods and the ROO Sub-Committee. These procedures shall address, inter alia, the date(s) on which the new Annex 2 (Product Specific Rules) shall be applicable to applications for, and the issuance of, Certificates of Origin in accordance with the Annex on Operational Certification Procedures.

Article 5

Entry into Force

1. This Protocol shall form an integral part of the Agreement.

2. Each Party shall notify each other Party in writing upon the completion of its internal requirements necessary for the entry into force of this Protocol. This Protocol shall enter into force 30 days after the date on which Australia, New Zealand and at least four (4) ASEAN Member States have made such notifications.

3. Where a Party does not complete its internal procedures necessary for the entry into force of this Protocol by the entry into force date set out in paragraph 2, this Protocol shall enter into force in relation to that Party on the date of its notification to other Parties of completion of such internal procedures.

Article 6

Depositary

For the ASEAN Member States, this Protocol shall be deposited with the Secretary-General of ASEAN, who shall then promptly furnish a certified true copy thereof, to each ASEAN Member State.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this First Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area.

DONE at [City], [Country], this [Day] of [Month] in the Year Two Thousand and Fourteen, in three original copies in the English language.