

**THE MINISTRY OF INDUSTRY
AND TRADE**

No. 36/2010/TT-BCT

**SOCIALIST REPUBLIC OF VIET NAM
Independence-Freedom-Happiness**

Hanoi, November 15, 2010

CIRCULAR

**ON IMPLEMENTATION OF THE AMENDED RULE ON PROCEDURES FOR GRANT
AND INSPECTION OF ORIGIN AND THE RULE SPECIFYING OF COMMODITIES
ACCORDING TO THE 2007 VERSION OF THE HARMONIZED SYSTEM UNDER THE
GOODS TRADE AGREEMENT WITHIN THE FRAMEWORK AGREEMENT ON
COMPREHENSIVE ECONOMIC COOPERATION BETWEEN THE ASSOCIATION OF
SOUTHEAST ASIAN NATIONS AND THE PEOPLE'S REPUBLIC OF CHINA**

Pursuant to the Government's Decree No. 189/2007/ND-CP dated February 27, 2007 regulating functions, tasks, powers and organizational structure of the Ministry of Industry and Commerce;

Pursuant to the Trade Agreement of Goods within the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian nations and the People's Republic of China was officially signed in Laos, on November 29, 2004;

Pursuant to the Protocol amending the rule on procedures for grant and inspection of origin under the trade agreement of goods within the framework agreement on comprehensive economic cooperation between the association of Southeast Asian nations and the People's Republic of China was signed on October 29, 2010 in Hanoi, Vietnam;

Pursuant to the Decree No.19/2006/ND-CP dated February 20, 2006 of the Government detailing the Commercial Law regarding the origin of goods;

The Minister of Industry and Trade provides the amended rule on procedures for grant and inspection of origin and the rule specifying of commodities according to the harmonized system of 2007 version under the trade agreement of goods within the framework agreement on comprehensive economic cooperation between the association of Southeast Asian nations and the people's republic of China as follows:

Article 1. Contents of repeal, replacement and application

1. Repeal Appendix II - Rule of origin for specific products (PSR) issued together with the Decision No.12/2007/QĐ-BTM May 31, 2007 of the Minister of Trade (now be the Ministry of Industry & Trade) on the issuance of regulation granting certificate of origin goods by Form E to receive preferential treatment in accordance with the Trade Agreement on Goods under the Master Agreement on Comprehensive Economic Cooperation between the Association of

Southeast Asian nations and the People's Republic of China (hereinafter referred to as the Decision No.12/2007/QD-BTM) and replaced by Annex 1 of this Circular.

2. Repeal Appendix III – Procedures of grant and inspection C / O Form E issued together with the Decision No. 2/2007/QD-BTM replaced by Appendix 2 of this Circular.

3. Application of C / O Form E mentioned Annex 3 from January 1, 2011. C / O new form E will be declared under the guidance in Appendix 4. The C / O Form E is applied according to the Decision No.12/2007/QD-BTM may continue using to June 30, 2011.

4. The C / O Form E is applied according to the Decision No. 12/2007/QD-BTM issued from July 1, 2011 onwards will be invalid and not enjoyed the preferment in accordance to the Trade Agreement on Goods of the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian nations and the People's Republic of China.

Article 2. Effect

This Circular takes effect from January 01, 2011./.

**ON BEHALF OF MINISTER
DEPUTY MINISTER**

Tran Quoc Khanh

ANNEX 1

PRODUCT SPECIFIC RULES OF ORIGIN

(Promulgated together with the Circular No. 36/2010/TT-BCT dated November 15th 2010 of the Ministry of Industry and Trade on amended procedure for the issuance and verification of Certificates of Origin and the product specific rules according to the harmonized system 2007 in the ASEAN Trade in Goods Agreement belonging Framework Agreement on the comprehensive economic cooperation between Association of South East Asian Nations and the People's Republic of China)

1. General provisions

The products that satisfy the rules of origin in this Annex shall be considered as products that have undergone a substantial transformation and originating in the Party where such transformation process is carried out.

Where a product is manufactured by two parties or more, it shall be treated as a product originating in the Party where the final substantial transformation process is carried out.

2. Exclusive rule

The specific origin criteria in Clause 2 of this Annex are the sole criteria for determining the origins of corresponding products below. When applying for a Certificate of Origin (Form E) for these products, the exporter shall only use the specific criteria below:

ANNEX 2

PROCEDURE FOR THE ISSUANCE AND VERIFICATION OF CERTIFICATE OF ORIGIN (FORM E)

(Promulgated together with the Circular No. 36/2010/TT-BCT dated November 15th 2010 of the Ministry of Industry and Trade on amended procedure for the issuance and verification of Certificates of Origin and the product specific rules according to the harmonized system 2007 in the ASEAN Trade in Goods Agreement belonging Framework Agreement on the comprehensive economic cooperation between Association of South East Asian Nations and the People's Republic of China)

INTERPRETATION OF TERMS

Article 1.

1. Movement Certificate means a Certificate of Origin (Form E) issued by an intermediate exporting Party based on the Certificate of Origin (Form E) of the first exporting Party in order to prove the product origin;
2. Customs authority means the competent authority that is responsible for the administration of customs laws under the law of a Party;
3. Exporter means a natural or juridical person located in a Party where goods are exported by such a person;
4. Importer means a natural or juridical person located in a Party where goods are imported by such person;
5. Issuing authority is a governmental authority or an organization authorized to issue Certificates of Origin (Form E) under the law of a Party.

Issuing authority

Article 2.

Certificate of Origin (Form E) shall be issued by issuing authorities of the exporting Party.

Article 3.

1. A Party shall notify other Parties of the names and addresses of the issuing authorities, and provide the specimen signature, specimen of the official seal, and the correction stamp (if any) used by its issuing authorities.
2. The information and specimens above shall be sent to the Parties to the Agreement, and a copy shall be sent to ASEAN Secretariat. Any changes in the names, addresses, or official seals shall be immediately notified in the same manner.

Article 4.

For the purpose of verifying the conditions for preferential treatment, the issuing authority is entitled to request any proof or carry out any inspection where necessary. Where these

entitlements are not specified in the current law of a country, they must be inserted as a Clause in the application for C/O mentioned in Article 5 and Article 6 below.

APPLICATION FOR C/O

Article 5.

1. A exporter or producer eligible for incentives shall apply in writing to the issuing authority 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 proof of the origin of the products exported thereafter.

2. For locally-procured materials, self-declaration by the last producer to export shall be used as the basis when applying for the Certificate of Origin (Form E).

Article 6.

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

PRE-EXPORTATION EXAMINATION

Article 7.

The issuing authority shall examine every application for the Certificate of Origin (Form E) to ensure that:

1. The application for the Certificate of Origin (Form E) and the Certificate of Origin (Form E) are duly completed in accordance with the requirements in the overleaf notes of the Certificate of Origin, and signed by competent persons;
2. The origin of goods is conformable with Annex 1 of the Decision No. 12/2007/QD-BTM;
3. The information on the Certificate of Origin (Form E) is consistent with the papers enclosed.
4. The description of goods, their quantity, weight, marks and numbers of packages, and types of packages is consistent with the products to be exported;
5. Multiple items may be declared on the same Certificate of Origin (Form E) in accordance with the law of the importing Party, as long as all of them are conformable with the provisions for the origin of each particle.

ISSUANCE OF CERTIFICATE OF ORIGIN (FORM E)

Article 8.

1. The Certificate of Origin (Form E) is an A4 paper in accordance with the ISO standards and the template in Annex 3. The Certificate of Origin (Form E) must be made in English.

2. The Certificate of Origin (Form E) comprises one original and two carbon copies of the following colors:

- The original: beige (Pantone color code: 727c)
- Duplicate: light green (Pantone color code: 622c)

- Triplicate: light green (Pantone color code: 622c)

3. Each Certificate of Origin (Form E) shall bear a separate reference number provided by the issuing authority;

4. The exporter shall send the original copy of the Certificate of Origin (Form E) to the importer for submission to the customs authority of the importing Party at the port or the place of importation. The duplicate copy shall be retained by the issuing authority of the exporting Party. The triplicate copy shall be retained by the exporter.

5. Where a Certificate of Origin (Form E) is rejected by the customs authority of the importing Party, that Certificate of Origin (Form E) shall be marked in Box 4.

6. Where the Certificate of Origin (Form E) is rejected as prescribed in Clause 5 of this Article, the customs authority of the importing Party shall consider the clarification made by the issuing authority and assess whether or not it is qualified for preferential tax rates. The clarification of the issuing authority must be detailed and resolve the grounds for the denial of preferential treatment raised by the importing Party.

Article 9.

To implement Article 2 of Annex I of the Decision No. 12/2007/QD-BTM, the Certificate of Origin issued by the final exporting Party must indicate the origin criteria or applicable percentage of ACFTA value content in Box 8.

Article 10.

Neither erasures nor superimposition is allowed on the Certificate of Origin (Form E). Any alteration shall be made by crossing out the mistake and making necessary addition. Any alteration must be approved by the competent persons that sign the Certificate of Origin (Form E), and certified with the official seal or correction stamp (if any) of the issuing authority. Unused spaces must be crossed out to prevent any subsequent addition.

Article 11.

Certificate of Origin (Form E) may be issued prior to or at the time of exportation. Where the Certificate of Origin (Form E) is not issued by the time of exportation or within 03 days from the date of exportation at the request of the exporter, the Certificate of Origin (Form E) shall be issued retroactively as prescribed by the exporting Party within 12 months from date of loading, in which case it is necessary to indicate "ISSUED RETROACTIVELY" in Box 12. In such cases, the importer who claims the preferential treatment for his or her products may submit the Certificate of Origin (Form E) issued retroactively to the customs authority of the importing Party in accordance with the regulations of the importing Party.

Article 12.

1. The issuing authority of the intermediate Party may issue a Movement Certificate if an application for the Movement Certificate is made by the exporter while the goods are passing through the territory of that Party, provided that:

a) The importer of the intermediate Party and the exporter who applies for the Movement Certificate in the intermediate Party are the same;

- b) The applicant for the Movement Certificate presents an unexpired original Certificate of Origin (Form E);
 - c) The information on the Movement Certificate includes the name of the issuing authority that issued the original Certificate of Origin (Form E), date of issuance and reference number of the original Certificate of Origin (Form E). The FOB value on the Movement Certificate must be the FOB value of the goods exported from the intermediate Party;
 - d) The quantity of goods on the Movement Certificate must not exceed the quantity on the original Certificate of Origin (Form E).
2. The Movement Certificate of China shall be issued by the customs authority, the Movement Certificate of ASEAN Member States shall be issued by issuing authorities.
 3. The Movement Certificate comes into force from the date of its issuance and expires on the same expiry date of the original Certificate of Origin (Form E).
 4. The goods to be re-exported using the Movement Certificate must be under control of the customs authority of the intermediate Party. The goods shall not undergo any further processing in the intermediate Party, except for repacking and logistics activities consistent with Article 8 of Annex 1 of the Decision No. 12/2007/QD-BTM.
 5. The verification in Article 18 of this Annex shall also apply to the Movement Certificate. In special cases, the customs authority of the importing Party may request simultaneously the original exporting Party and the intermediate Party to provide information about the original Certificate of Origin (Form E) and the Movement Certificate within 30 days from the day on which the request is received, including the first exporter, last exporter, reference number, description of products, country of origin, and the port of discharge.

Article 13.

Where the Certificate of Origin (Form E) is lost or damaged, the exporter may submit an application for the certified true copy and the triplicate of the original Certificate of Origin to the issuing authority. The issuing authority shall issue the copy based on the export documents retained by the issuing authority. This copy must bear the words "CERTIFIED TRUE COPY" in Box 12 of the Certificate of Origin (Form E). This copy shall bear the date of the original Certificate of Origin (Form E). The certified true copy of the Certificate of Origin (Form E) shall be issued within 01 year from the date of issuance of the original Certificate of Origin (Form E), and on condition that the exporter provides the issuing authority with the triplicate copy or any documents proving the issuance of the original Certificate of Origin (Form E).

SUBMISSION OF THE CERTIFICATE OF ORIGIN

Article 14.

The original Certificate of Origin (Form E) shall be submitted to the customs authority at the time of carrying out the formalities for import in accordance with the law of the importing Party.

Article 15.

The Certificate of Origin (Form E) shall remain valid and must be submitted to the customs authority within 01 year from the date of its issuance.

Article 16.

The products that originate in the exporting Party and of which the FOB value does not exceed 200 USD are exempted from submitting the Certificate of Origin (Form E), and only simplified declaration made by the exporter that the products have originated in the exporting Party shall be accepted. Products that are sent by post and of which the FOB value does not exceed 200 USD shall also be similarly treated.

Article 17.

1. Where the origin of the products is not in doubt, minor mistakes, such as differences between the HS codes on the Certificate of Origin (Form E) and those on the documents submitted to the customs authority of the importing Party for the purpose of carrying out the formalities for importing, shall not invalidate the Certificate of Origin (Form E), if it does in fact correspond to the imported products.

2. If the importing Party and exporting Party have minor differences as prescribed in Clause 1, the products shall be released and subject to administrative measures, such as imposition of high rates of tax, or an equivalent amount of deposit paid by the importer. Once the differences in codes of products are resolved, the correct ACFTA rate shall be applied and any overpaid tax shall be refunded in accordance with the law of the importing Party

3. Where a Certificate of Origin (Form E) contains multiple items, a problem encountered with one of the items listed shall not affect or delay the application of preferential tax rates and customs clearance to the remaining items on the Certificate of Origin (Form E). Point b Clause 1 of Article 18 may be applied to the problematic items.

Article 18.

1. The customs authority of the importing Party may request the issuing authority of the exporting Party to carry out random inspections and/or when it has reasonable doubt about the accuracy of the information regarding the true origin of the products in question or of certain parts thereof.

a) The request shall be accompanied with a copy of the corresponding Certificate of Origin (Form E) and shall specify the reasons and any additional information suggesting that the details given on the Certificate of Origin (Form E) may be inaccurate, unless the random inspection is requested.

b) The customs authority of the importing Party may delay the granting of preferential treatment while awaiting the verification result. However, it may grant the importer the release of the products and take necessary administrative measures, including imposition of higher rates of tax or equivalent amount of deposit, provided that these products are not subject import prohibition or restriction, and there is not suspicion of fraud.

c) The customs authority or the issuing authority of the exporting Party shall promptly notify the receipt of the request after receiving it and reply within 90 days from the day on which the request is received

2. If the customs authority of the importing Party is not satisfied with the result of the verification, it may suggest conducting a direct verification in the exporting Party.

a) Prior to the direct verification at the exporting Party, the customs authority of the importing Party shall notify the competent authority of the exporting Party with an aim to mutually reach an consensus on the conditions and means of the verification.

b) The verification shall be conducted within 60 days from the day on which the notification is received.

3. The verification shall be carried out at the exporting Party and its results shall be notified to the customs authority and/or the issuing authority of the exporting Party within 180 days. While awaiting the result of the direct verification, Point b Clause 1 of this Article shall be applied.

4. Where the exporting Party fails to satisfy the request of the customs authority of the importing Party during the verification in the exporting Party as prescribed in Clause 1, Clause 2, and Clause 3 of this Article, the preferential tax on these products may be denied.

5. During the verification, each Party shall maintain the confidentiality of the information and documents provided by the other Party. Such information and documents shall not be used for other purposes, including being used as evidence in administrative and criminal proceedings, without the written permission of the Party that provides them.

Article 19.

1. The issuing authority shall retain the documents related to the issuance of the Certificate of Origin (Form E) within 03 years from the date of its issuance.

2. Information relating to the validity of Certificate of Origin (Form E) shall be provided at the request of the importing Party.

3. Information between the parties concerned must be kept confidential and shall only be used for the validation of the Certificate of Origin (Form E).

4. For the purpose of the verification of goods origin as prescribed in Article 18, the producer and/or exporter shall retain the documents relating to the application for the Certificate of Origin (Form E) for at least 03 years from the date of its issuance as prescribed by law of the exporting Party.

Article 20.

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

1. If the products have been declared to the customs authority of the importing Party, the Certificate of Origin (Form E) shall be accepted by the customs authority after the importer makes a written request. The original copy of the Certificate of Origin (Form E) shall be kept by the customs authority of the importing Party, and the photocopy of the Certificate of Origin (Form E) shall be given to the importer.

2. If the change of the destination of the products occurs during transportation to the importing Party, the exporter shall submit an application for a new Certificate of Origin (Form E), enclosed with the issued Certificate of Origin (Form E).

Article 21.

For the purpose of implementing Clause 3 Article 8 of Annex I of the Decision No. 12/2007/QĐ-BTM, where goods are transported through the territory of one or more non-ACFTA parties, the following shall be submitted to the customs authority of the importing Party:

1. A through bill of lading issued in the exporting Party;

2. A Certificate of Origin (Form E) issued by the issuing authority of the exporting Party;

3. The copy of the original commercial invoice of products; and
4. The documents proving that the requirements in Clause 3 Article 8 of Annex 1 of the Decision No. 12/2007/QD-BTM are complied with.

Article 22.

1. Products sent from an exporting Party for exhibition in another Party and sold during or after the exhibition in the importing Party are eligible for the ASEAN-China preferential taxation on the condition that they meet the requirements in Annex I of the Decision No. 12/2007/QD-BTM, the customs authority of the importing Party is provided with proof that:

- a) The exporter has sent those products from the territory of the exporting Party to the Party where the exhibition is held, and has exhibited them there;
- b) The exporter has sold or transferred the products to a consignee in the importing Party; and
- c) The products have been sold to the importing Party during the exhibition or immediately thereafter in the state in which they were sent for exhibition.

2. For the purpose of implementing Clause 1 of this Article, the Certificate of Origin (Form E) must be submitting to the customs authority of the importing Party. That Certificate of Origin (Form E) must indicate the name and address of the exhibition. A certificate issued by an involved organization of the Party where the exhibition is held, together with other supporting documents prescribed in Clause 4 Article 21 of this Annex may be required.

3. Clause 1 of this Article shall apply to any trade, agricultural or crafts exhibition, fair or similar display in shops or business premises for the purpose of selling the products imported, and the products remain under customs control throughout such the exhibition.

Article 23.

The customs authority of the importing Party shall accept a Certificate of Origin (Form E) in case a commercial invoice is issued by a company located in a third country or by an ACFTA exporter which represents that company, as long as that product complies the Rules of origin in Annex I of the Decision No. 12/2007/QD-BTM. The third Party invoice number must be written in box 10 of the Certificate of Origin (Form E). The exporter and consignee must be located in the; the copy of the third Party invoice shall submitted together with the Certificate of Origin (Form E) to the customs authority of the importing Party./.

ANNEX 3

CERTIFICATE OF ORIGIN (FORM E)

(Promulgated together with the Circular No. 36/2010/TT-BCT dated November 15th 2010 of the Ministry of Industry and Trade on amended procedure for the issuance and verification of Certificates of Origin and the product specific rules according to the harmonized system 2007 in the ASEAN Trade in Goods Agreement belonging Framework Agreement on the comprehensive economic cooperation between Association of South East Asian Nations and the People's Republic of China)

Original (Duplicate/Triplicate)

OVERLEAF NOTES

ANNEX 4

INSTRUCTIONS TO COMPLETE THE CERTIFICATE OF ORIGIN (FORM E)

(Promulgated together with the Circular No. 36/2010/TT-BCT dated November 15th 2010 of the Ministry of Industry and Trade on amended procedure for the issuance and verification of Certificates of Origin and the product specific rules according to the harmonized system 2007 in the ASEAN Trade in Goods Agreement belonging Framework Agreement on the comprehensive economic cooperation between Association of South East Asian Nations and the People's Republic of China)

The Certificate of Origin (Form E) must be typed in English. The information provided must be consistent with the customs declaration while carrying out the customs formalities and other documents such as the bill of lading, commercial invoices, and the Record on origin verification made by a organization that verify imported goods (where a request for verification is made). The Certificate of Origin (Form E) contents:

1. Box 1: exporter's business name, address, country (Vietnam).
 2. Box 2: consignee's name, address, country
 3. Top right box: written by the issuing authority. The reference number is composed of 13 characters and divided into 05 groups. In particular:
 - a) Group 1: 02 characters "VN" (in upper case), which stand for Vietnam.
 - b) Group 2: 02 characters (in upper case) which stand for the importing country. The abbreviations are provided below:

CN: China	TH: Thailand
BN: Brunei	LA: Laos
KH: Cambodia	ID: Indonesia
MY: Malaysia	MM: Myanmar
PH: The Philippines	SG: Singapore
 - c) Group 3: 02 characters indicating the year in which the Certificate of Origin is issued
 - d) Group 4: 02 characters indicating the issuing authority according to the list provided by the Ministry of Industry and Trade below:

dd) Group 5: 05 characters indicating the ordinal number of the Certificate of Origin (Form E).

 - e) Group 3, group 4 and group 5 are separated by slashes "/"
- Example: The Export and Import Management Office of Ho Chi Minh city issues the 6th Certificate of Origin (Form E) to a shipment to China in 2007, the reference number of this shall be: VN-CN 07/2/00006.
4. Box 3: Departure date, means of transport (specify the vessel's name if the goods are sent by sea, or type "by air" if they are sent by air) and the port of discharge.

5. Box 4: left blank After the importation, the customs authority at the port or the place of importation shall tick the appropriate box before sending it back to the issuing authority.

6. Box 5: the list of goods (01 item, 01 shipment, 01 country of destination, 01 period of time)

7. Box 6: marks and number on packages

8. Box 7: number and type of packages, description of goods (including the quantity and HS number of the importing countries).

9. Box 8:

Goods are produced in the first country named in Box 11 of this C/O, including:	Insert in Box 8:
a) Goods wholly produced in the country of exportation according to Article 3 of Annex 1 of the Decision No. 12/2007/QD-BTM	“WO”
b) Goods not wholly produced in a country according to Article 4 of Annex 1 of the Decision No. 12/2007/QD-BTM	Percentage of the FOB value of the products produced or obtained in Vietnam, for instance 40%
c) Goods not wholly produced in a country according to Article 4 and Article 5 of Annex 1 of the Decision No. 12/2007/QD-BTM (cumulative origin)	Percentage of ACFTA cumulative content at FOB price, for instance 40%
d) Goods that satisfy Article 6 of Annex I of the Decision No. 12/2007/QD-BTM	“PSR”

10. Box 9: Gross weight or other quantity and FOB value.

11. Box 10: number and date of commercial invoices.

12. Box 11:

a) Type “Vietnam” on the first line.

b) Type the full name of the importing countries in the second line.

c) Type the place and date, signature of the authorized signatory.

13. Box 12: written by the issuing authority.

14. Box 13:

a) Where the C/O is issued retroactively as prescribed in Article 11 of Annex 2, the box “ISSUED RETROACTIVELY” shall be ticked

b) Where products are sent from the exporting party for exhibition in another party and sold during or after the exhibition in the importing party as prescribed in Article 22 of Annex 2, the box “Exhibition” shall be ticked, the name and address of the exhibition must be indicated in box 2.

c) Where products are issue with a Movement Certificate as prescribed in Article 12 of Annex 2, the box “Movement Certificate shall be ticked, name of the original issuing authority, the date of issuance and reference number of the original Certificate of Origin (Form E) must be indicated in Box 13;

d) Where invoices are issued by a third Party as prescribed in Article 23 of Annex 2, the box “Third Party Invoicing” shall be ticked, the invoice number shall be indicated in Box 10, name of the company that issues the invoice and the country in which this company is located must be indicated in Box 7.