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Government of India
Ministry of Finance
(Department of Revenue)
(Central Board of Excise and Customs)

NOTIFICATION
No. 189/2009-CUSTOMS (N.T.)

New Delhi, 31st December, 2009

10 Pausa, 1931 (SAKA)

G.S.R. ... (E) – In exercise of the powers conferred by sub-section (1) of section 5 of the Customs Tariff Act, 1975 (51 of 1975), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.- (1) These rules may be called the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009.

(2) They shall come into force on the 1st day of January, 2010.

2. Definitions.- In these rules, unless the context otherwise requires,-

- (a) **“Agreement”** means the Agreement on Trade in Goods under the Framework Agreement on the Comprehensive Economic Co-operation between the Republic of India and the Association of Southeast Asian Nations (ASEAN) signed on the 13th day of August, 2009.
- (b) **“AIFTA”** means the ASEAN-India Free Trade Area under the Framework Agreement on Comprehensive Economic Co-operation between the Republic of India and the Association of Southeast Asian Nations;
- (c) **“ASEAN”** means the Association of Southeast Asian Nations which comprises of the Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the 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 and whose members are referred to in the Agreement collectively as the ASEAN Member States and individually as an ASEAN Member State;
- (d) **“CIF”** means the value of the goods imported, the cost of freight and insurance up to the port or place of entry into the country of importation;
- (e) **“FOB”** means the free-on-board value as determined in the manner as specified in paragraph 1 of the Annexure I;
- (f) **“Framework Agreement”** means the Framework Agreement on Comprehensive Economic Co-operation between the Republic of India and the

Association of Southeast Asian Nations, signed in Bali, Indonesia on the 8th October 2003;

- (g) **“identical and interchangeable materials”** means the materials being of the same kind possessing similar technical and physical characteristics, and after being incorporated into the finished product, they cannot be distinguished from one another for origin purposes;
- (h) **“material”** means raw materials, ingredients, parts, components, sub-assembly or goods that are physically incorporated into another goods or are subject to a process in the production of another goods;
- (i) **“originating products”** means products that qualify as originating in accordance with the provisions of rule 3;
- (j) **“party”** means India or an ASEAN Member State and **“parties”** means India and ASEAN member States collectively;
- (k) **“product”** means product which is wholly obtained or produced or being manufactured, even if it is intended for later use in another manufacturing operation;
- (l) **“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.

3. Origin criteria.- The products imported by a party which are consigned directly under rule 8, shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:-

- (a) products which are wholly obtained or produced in the exporting party as specified in rule 4; or,
- (b) products not wholly produced or obtained in the exporting party provided that the said products are eligible under rule 5 or 6.

4. Wholly produced or obtained products.- For the purpose of clause (a) of rule 3, the following shall be considered as wholly produced or obtained in a party:-

- (a) plant and plant products grown and harvested in the party;

Explanation.- For the purpose of this clause, “plant” means all plant life, including forestry products, fruit, flowers, vegetables, trees, seaweed, fungi and live plants;

- (b) live animals born and raised in the party;
- (c) products obtained from live animals referred to in clause (b);

Explanation 1.- For the purpose of clauses (b) and (c), “animals” means all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, and living organisms.

Explanation 2.- For the purpose of this clause, “products” means those

Explanation 2.- For the purpose of this clause , “products” means those obtained from live animals without further processing, including milk, eggs, natural honey, hair, wool, semen and dung;

- (d) products obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in the party;
- (e) minerals and other naturally occurring substances, not included in clauses (a) to (d), extracted or taken from the party’s soil, water, seabed or beneath the seabed;
- (f) products taken from the water, seabed or beneath the seabed outside the territorial water of the party, provided that that party has the right to exploit such water, seabed and beneath the seabed in accordance with the United Nations Convention on the Law of the Sea, 1982;
- (g) products of sea-fishing and other marine products taken from the high seas by vessels registered with the party and entitled to fly the flag of that party;
- (h) products processed and/or made on board factory ships registered with the party and entitled to fly the flag of that party, exclusively from products referred to in clause (g);
- (i) articles collected in the party which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts of raw materials, or for recycling purposes; and

Explanation.- For the purpose of this clause, “article” means all scrap and waste including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded packaging and all products that can no longer perform the purpose for which they were produced and are fit only for disposal for the recovery of raw materials and such manufacturing or processing operations shall include all types of processing, not only industrial or chemical but also mining, agriculture, construction, refining, incineration and sewage treatment operations;

- (j) products obtained or produced in the party solely from products referred to in clauses (a) to (i).

5. Not wholly produced or obtained products.- (1) For the purpose of clause (b) of rule 3, a product shall be deemed to be originating, if -

- (i) the AIFTA content is not less than 35 per cent. of the FOB value; and
- (ii) the non-originating materials have undergone at least a change in tariff sub-heading (CTSH) level i.e. at six digit of the Harmonized System:

Provided that the final process of the manufacture is performed within the territory of the exporting party.

- (2) For the purpose of clause (i) of sub-rule (1), the formula for calculating the 35 per cent. AIFTA content is as follows:

- (i) Direct Method

AIFTA Material Cost	Direct Labour Cost	+	Direct Overhead Cost	+	Other Cost	+	Profit
<hr/>							
FOB Price							
(ii) Indirect Method							
Value of Imported Non-AIFTA Materials, Parts or Produce		+	Value of Undetermined Origin Materials, Parts or Produce				
<hr/>							
FOB Price							
							$\times 100 \% \leq 65\%$

(3) The parties are free to adopt the method of calculating the AIFTA content, whether it is the direct or indirect method and any verification of the AIFTA content by the importing party shall be done on the basis of the method used by the exporting party.

(4) Each party shall adhere to one method of calculating AIFTA content to promote transparency, consistency and certainty:

Provided that any change in the method of calculation shall be notified to all the parties at least six months prior to the adoption of the new method.

(5) The value of the non-originating materials shall be -

- (i) the CIF value at the time of importation of the materials, parts or produce; or
- (ii) the earliest ascertained price paid for the materials, parts or produce of undetermined origin in the territory of the party where the working or processing takes place.

(6) The method of calculating for AIFTA content is as set out in Annexure I annexed to these rules.

6. Cumulative rule of origin.-Unless otherwise provided for, products which comply with origin requirements referred in rule 3 and which are used in a party as materials for a product which is eligible for preferential treatment under these rules shall be considered as products originating in that party where working or processing of the product has taken place.

7. Minimal operations and processes.- (1) Notwithstanding anything contained in these rules, a product shall not be considered originating in a party if the following operations are undertaken exclusively by itself or in combination in the territory of that party:-

- (a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine, ventilation, spreading out, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations);
- (b) simple operations consisting of removal of dust, sifting or screening, sorting,