

1995 ASEAN CUSTOMS CODE OF CONDUCT

Adopted in Tretes, Indonesia on 18 July 1995

OBJECTIVES.....	3
PRINCIPLES.....	3
ANNEX I: CUSTOMS VALUATION	4
ANNEX II: TARIFF NOMENCLATURE.....	5
ANNEX III: CUSTOMS PROCEDURES	6
GENERAL PROVISIONS	6
ANNEX IV: MUTUAL ASSISTANCE	7
A. GENERAL PROVISIONS.....	7
B. PREVENTION AND REPRESSION.....	7
C. STUDY AND VISITS	7
D. EXCHANGE OF INFORMATION.....	7
E. INTERNATIONAL ISSUES	7
ANNEX V: INSTITUTIONAL ARRANGEMENTS	8
ANNEX VI: CONSULTATION.....	8
ANNEX VII: PRIVATE SECTOR PARTICIPATION.....	8
ANNEX VIII: AMENDMENTS AND ADDITIONS	8

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The ASEAN Directors-General of Customs of the Customs Authorities representing the Governments of the members of the Association of South East Asian Nations (ASEAN), namely Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand:

MINDFUL of the Declaration of ASEAN Concord signed in Bali on 24 February 1976 and the Manila Declaration of 15 December 1987 emphasising economic cooperation in trade to promote development, trade and growth;

RECALLING the Singapore Declaration of 28 January 1992 which recognises the importance of non-border areas of cooperation to complement tariff liberalisation to increase trade and investment liberalisation;

NOTING the Framework Agreement on Enhancing ASEAN Economic Cooperation and the Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA) of 28 January 1992 provide that Member States shall explore further measures on border and non-border areas for cooperation to supplement and complement the liberalisation of trade;

NOTING the decision of the Fifth AFTA Council and the 26th ASEAN Economic Ministers' Meeting in Chiangmai, Thailand on the 21-23 September 1994 to accelerate the implementation of CEPT for AFTA from 15 to 10 years;

RECALLING the former ASEAN Customs Code of Conduct signed in Jakarta on 18 March 1983;

RECOGNISING the need to update and revise the Customs Code of Conduct (1983) to take account of the latest developments in ASEAN and to further enhance customs cooperation;

REITERATING the commitment to the principles of the General Agreement on Tariffs and Trade (hereinafter known as GATT) or the World Trade Organisation (hereinafter known as WTO) and the World Customs Organisation (hereinafter known as WCO);

DESIRING to enhance ASEAN economic cooperation to sustain economic growth, competitiveness and dynamism of the region;

ENDEAVOURING to promote intra-ASEAN trade through customs cooperation by ensuring the smooth cross-border flow of goods and services within the region so as to support the implementation and acceleration of the CEPT for AFTA;

DESIRING to deepen and broaden cooperation in customs in ASEAN to complement ASEAN's other cooperation activities;

have agreed to revise the ASEAN Customs Code of Conduct signed in Jakarta on 18 March 1983 with the following:

OBJECTIVES

The objectives of this Code of Conduct are:

- (a) to facilitate intra-ASEAN trade by simplifying and harmonising trade procedures so as to support the implementation and acceleration of CEPT for AFTA;
- (b) to enhance ASEAN cooperation in customs so as to complement economic cooperation activities in ASEAN;
- (c) to promote the salient principles in the conduct of customs matters in ASEAN, as per the Principles of this Code;
- (d) to endeavour to harmonise tariff nomenclatures, customs valuation and procedures in ASEAN;

PRINCIPLES

Guided by the following principles:

- (a) **Transparency.** Member Countries will make all laws, regulations, administrative guidelines and policies pertaining to Customs administration in their economies publicly available in a prompt, transparent and readily accessible manner;
- (b) **Consistency.** Member Countries will ensure the consistent application of Customs determinations to different traders, and in different cities, regions or states of ASEAN;
- (c) **Appeals and Challenges.** Member Countries will ensure the availability to traders of readily accessible means of review or challenge of Customs determinations in ASEAN;
- (d) **Efficiency.** Member Countries will ensure the efficient administration and expeditious clearance of goods to facilitate intra-ASEAN trade subject to the proper enforcement of the Customs barrier and the applicable CEPT tariff rate;
- (e) **Simplicity.** Member Countries will strive to ensure the simplification and harmonisation of trade transactions and customs procedures within ASEAN;
- (f) **Mutual Assistance and Cooperation.** Member Countries will ensure the utmost cooperation and mutual assistance between Customs Authorities in complementarity with the various Declarations and Agreements on enhancing economic cooperation in ASEAN;

SUBJECT TO THE FOLLOWING

That the Code shall serve as a guide without the force and effect of a legal instrument, but ASEAN Customs Authorities shall endeavour to attain the objectives, principles and provisions in the Code.

The Code, as amended and agreed, is hereto annexed.

DONE at on One Thousand Nine Hundred and Ninety Five.

For the Brunei Darussalam Customs Authority

**PENGIRAN LELA CHETERIA SAHIBON NAJABAH PENGIRAN ANAK HAJI ABDUL AZIZ BIN
PENGIRAN JAYA NEGARA PENGIRAN HAJI ABU BAKAR**

Controller of Customs and Excise

For the Indonesia Customs Authority

SOEHARDJO

Director-General of Customs and Excise

For the Malaysia Customs Authority

DATO' MOHD. NOR BIN ABDUL HAMID

Director-General of Customs and Excise

For the Philippine Customs Authority

GUILLERMO L. PARAYNO, JR.

Commissioner of Customs

For the Singapore Customs Authority

KOH CHONG HWA

Director-General of Customs and Excise

For the Thai Customs Authority

SUPHACHAI PHISITVANICH

Director-General of Customs Department

ANNEX I CUSTOMS VALUATION

1. Member Countries, being signatories to GATT, shall implement the GATT Valuation Code as per Article VII of the General Agreement on Tariff and Trade and the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 of the Final Act of the Uruguay Round. Member Countries shall, where possible, endeavour to use a common interpretation of the GATT Valuation Code.
2. Member Countries, under Article 20 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, may delay application of the provisions of this Agreement for a period not exceeding five years from the date of entry into force of the WTO Agreement for such Members. This however, shall not prevent Member Countries from implementing Article VII on an accelerated schedule.
3. In the intervening period, the following system will be applied:
 - a. Value for customs purposes of imported or exported merchandise should be based on the actual price at which, at the time and place of importation or exportation as the case may be, such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions;

- b. When the actual price is not ascertainable, the value for customs purposes should be based on the nearest ascertainable equivalent of such price;
 - c. Values for customs purposes established for past importation or exportation may be used for assessment of values of similar merchandise imported or exported;
 - d. The basis of determining the value should be consistent, fair and equitable;
4. In the case of a dispute, the following mechanism shall apply:
- a. In any dispute, Member Countries shall enter into Consultations with other Member Countries who are party to a dispute, as per Annex VI of this Code. The importer or exporter concerned should be informed of the causes thereof, and should be accorded reasonable opportunity to explain and furnish evidence in support of his case;
 - b. After the determination of value, sufficient explanation of reasons and facts involved should be made known to the importer or exporter concerned if the declared value is not accepted;
 - c. The importer or exporter has the right to lodge an appeal within a reasonable period of time and he should be informed of the results of the appeal together with the reasons in case of dismissal;
 - d. When the importer or exporter concerned does not cooperate in furnishing relevant evidence or necessary explanations or when there exists strong indication of fraudulent practices, the Customs Authority may take appropriate action to safeguard national interests;
 - e. Should it be deemed necessary to delay final determination of the value, the importer or exporter should be allowed to clear his merchandise from Customs control on condition that he furnishes sufficient guarantee in the form of a surety or deposit or some appropriate instrument covering the ultimate payment of customs duties potentially liable;
 - f. Where deemed necessary, disputes may be raised, on a case-by-case basis, in the relevant ASEAN decision-making bodies mainly, at the Meeting of the ASEAN Directors-General of Customs as referred to in ANNEX V of this Code, and the AFTA Council.
5. Customs valuation should not be used for protective purposes but as a means for trade liberalization and facilitation in support of the CEPT for AFTA.
6. Customs Authorities should endeavour to cooperate and exchange information in the various ASEAN fora of mutual interest and benefit, and on the implementation of the Agreement on Implementation of Article VII of the GATT.

ANNEX II

TARIFF NOMENCLATURE

1. The ASEAN system of tariff nomenclature at HS 6-digit level will be based on the latest amendments to the Harmonized System of the World Customs Organisation (WCO).
2. Member Countries shall harmonise tariff nomenclature systems at the 8-digit level, based on the agreed Reference Manual for an ASEAN Harmonized Nomenclature.

3. In the intervening periods, notwithstanding products under the ASEAN Preferential Trading Arrangements (PTA), the CEPT Concessions Exchange Manual (CEEM.) shall be used as the basis for the comparability of CEPT products in ASEAN beyond the HS 6-digit level in order to determine the eligibility of a particular product for CEPT concessions. The CHEM will be produced annually, under the purview of the Experts Group Meeting on Tariff Nomenclature and the Senior Economic Officials' Meeting (SEOM).
4. The following dispute settlement mechanism applies:
 - a. where applicable, Member Countries shall hold consultations on disputes as per Annex VI of this Code. An aggrieved party should have the right to lodge an appeal within a reasonable period of time and should be informed of the result thereof together with reasons in case of dismissal;
 - b. should it be considered necessary to delay the determination of the classification of goods, the importer and exporter should be allowed to clear his merchandise from customs control on condition that he furnishes sufficient guarantee in the form of a surety or deposit or some other appropriate instrument covering the ultimate payment of customs duties potentially liable;
 - c. where deemed necessary, disputes may be raised, on a case-by-case basis, in the relevant ASEAN decision-making bodies mainly, the Meeting of the ASEAN Directors-General of Customs, as referred to in ANNEX V of this Code, and the AFTA Council.
5. A mechanism will be established by Member Countries to review, monitor the implementation and, where necessary, to reclassify tariff nomenclature, taking into account Annex V of this Code. The mechanism will, among others, provide for the preparation of draft Explanatory Notes and recommendations to be made on the interpretation of the Reference Manual and secure uniformity in the interpretation and application of the Reference Manual.

ANNEX III CUSTOMS PROCEDURES

GENERAL PROVISIONS

1. Member Countries, in harmonising customs procedures, shall attempt to simplify and harmonise procedures as far as possible for the efficient and expeditious clearance of ASEAN products.
2. As a guideline for the simplification and harmonisation of customs procedures in ASEAN, Member Countries shall use the Kyoto Convention or its latest amendments, under the Customs Cooperation Council (CCC) or WCO.
3. Member Countries shall, whenever possible, strive to make information freely available to the private sectors on their customs procedures.
4. Member Countries shall establish a mechanism, taking into account Annex V of this Code, to constantly review and monitor customs procedures in ASEAN with the objective of simplifying and harmonising them.
5. In case of dispute, Member Countries shall enter into consultations with other Member Countries who are party to a dispute, as per Annex VI of this Code.

ANNEX IV MUTUAL ASSISTANCE

A. GENERAL PROVISIONS

1. In the implementation of the various provisions of this ANNEX, the Meeting of the ASEAN Directors-General of Customs referred to in ANNEX V of this Code and related ASEAN institutions be the channels for raising the various issues for Mutual Assistance, for example in the request for assistance, exchange of information etc.

B. PREVENTION AND REPRESSION

Having due regard to ASEAN countries' constitutional, legal and administrative systems:

1. ASEAN Customs Authorities should communicate among themselves information useful in the prevention and repression of all forms of smuggling and customs frauds, and on the proper conduct of customs work.
2. ASEAN Customs Authorities should cooperate among themselves in the investigation of smuggling and other customs frauds. Evidences and other assistance necessary in any particular case should be made available when requested.

C. STUDY AND VISITS

1. Member Countries should endeavour to accommodate any requests by other Member Countries for studies and visits of Customs personnel to advance their understanding of the techniques in use by the other and learn the experiences of each other on the implementation of various customs systems.

D. EXCHANGE OF INFORMATION

1. Member Countries should notify each other at the earliest opportunity of the availability of information relating to:
 - a. circumstances that may result in the commission of an offence in this jurisdiction of another Customs administration;
 - b. methods found to have been used in committing customs offences;
 - c. observations and findings resulting from the successful application of new enforcement techniques.

E. INTERNATIONAL ISSUES

1. Member Countries shall exchange information on international Customs issues and where possible, coordinate an ASEAN position in the international Customs fora like the World Customs Organisation.

ANNEX V INSTITUTIONAL ARRANGEMENTS

1. The ASEAN Directors-General of Customs, who are hereby directed and authorized to conduct negotiations within the framework of this Code and to review, supervise and monitor the implementation of the Code, shall meet whenever necessary for this purpose. The ASEAN Secretariat shall provide the support for supervising, coordinating and reviewing the implementation of the Code and assisting the ASEAN Directors-General of Customs in all matters relating thereto.

ANNEX VI CONSULTATION

1. Member Countries shall, at the written request of another Member Country, promptly enter into consultations with a view to seeking an early, equitable and mutually satisfactory solution, if other Member Countries consider that:
 - a. an obligation under this Code has not been, is not being, or may not be fulfilled;
 - b. the achievement of any objective of this Code is being or may be frustrated.
2. Any differences between Member Countries concerning the interpretation or application of this Code shall, as far as possible, be settled amicably between the parties. If such differences cannot be settled amicably, it shall be submitted to the ASEAN Directors-General of Customs, referred to in ANNEX V of this Code.

ANNEX VII PRIVATE SECTOR PARTICIPATION

1. Member Countries, pursuant to Article 6 of the Framework Agreement on Enhancing ASEAN Economic Cooperation (1992) recognise and encourage, among others, cooperation, consultations and exchanges with the ASEAN private sector particularly for the consideration of appropriate customs policies for intra- ASEAN trade facilitation.
2. The ASEAN Directors-General of Customs meeting referred to in ANNEX V of this Code shall be used as a fora for such linkages with the private sector.

ANNEX VIII AMENDMENTS AND ADDITIONS

1. This Code and all its Annexes may be amended subject to the consensus of all Member Countries and shall become effective upon acceptance of all Member Countries.
2. Additions, in terms of Annexes may be made, subject to the consensus of all Member Countries and shall become effective upon acceptance of all Member Countries.