REGULATION (EEC) No 3107/74 OF THE COMMISSION

of 5 December 1974

derogating in respect of the countries of the Association of South East Asian Nations from Articles 1, 6 and 13 of Commission Regulation (EEC) No 3106/74 of 5 December 1974 on the definition of the concept of originating products for purposes of the application of tariff preferences granted by the European Economic Community in respect of certain products from developing countries

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Whereas for the application of the provisions concerning the tariff preferences granted by the Community for certain products originating in developing countries, the rules of origin are defined for the conditions under which these products acquire the character of originating products, the mode of proof and the terms as to verification thereof by Commission Regulation (EEC) No 3106/74 [1] of 5 December 1974;

Whereas the Association of South East Asian Nations has established very close economic cooperation between Indonesia, Malaysia, the Philippines, Singapore and Thailand (hereinafter referred to as ASEAN countries); whereas the provisions relative to the acquisition of the character of originating products laid down in Article 1 of Commission Regulation (EEC) No 3106/74 of 5 December 1974 may, with the necessary adaptations, contribute to the facilitation of this cooperation and encourage the use in one ASEAN country of products originating in the other ASEAN countries; whereas the said provisions should be amended accordingly and special rules for the proof of the character of originating products and methods of verification should be laid down; whereas for this purpose it is necessary to centralize the requests for verification to a common administrative body of the aforesaid association;

Whereas the measures provided for in this Regulation are in accordance with the Opinion of the Committee on Origin,

HAS ADOPTED THIS REGULATION:

Article 1

1. Notwithstanding the provisions of Article 1 of Commission Regulation (EEC) No 3106/74 of 5 December 1974, those products which have acquired the character of originating products in Indonesia, Malaysia, the Philippines, Singapore and Thailand (hereinafter referred to as ASEAN countries) are to be equally considered as products originating in one or another of those countries, according to the provisions of the Article 1 referred to above and which, after being exported from that country, have undergone no working or processing in any of the other ASEAN countries or have not undergone sufficient working or processing there to confer on them the character of products originating in any of those countries by virtue of the provisions of the Article 1 referred to above, provided that:

(a) only products originating in any of the ASEAN countries have been used in the course of the working or processing;

(b) when a percentage rule limits, in the Lists A and B referred to in Article 3 of the Regulation referred to above, the proportion in value of non-originating products that can be incorporated under certain circumstances, the added value has been acquired in each of the countries in accordance with the percentage rule contained in the said lists without any possibility of cumulation from one country to another.

2. For the purpose of implementing paragraph 1 (a), the fact that products other than those referred to therein are used in a proportion not exceeding in total value 5 % of the value of the products obtained and imported into the Community does not affect the determination of origin of the latter products, provided that the products so used would not have caused them to lose the status of products originating in one of the ASEAN countries from which they had been exported previously, had they been incorporated there.

[1] See page 1 of this Official Journal.

3. In the cases referred to in paragraph 1 (b) no non-originating product may be incorporated if it undergoes only the working or processing laid down in Article 3 (2) of Commission Regulation (EEC) No 3106/74 of 5 December 1974.

4. Notwithstanding the provisions of paragraph 1 and provided that all the conditions laid down in that paragraph are nevertheless fulfilled, the products obtained shall not continue to be considered as products originating in the first ASEAN country of exportation unless the value of the products worked or processed in that country represents the highest percentage of the value of the products obtained. If this is not so, the latter products are considered as originating in the ASEAN country where the added value acquired represents the highest percentage of their value.

Article 2

1. For the application of the provisions of Article 1, the provisions of Article 4 of Commission Regulation (EEC) No 3106/74 of 5 December 1974 are applicable.

2. For the application of the provisions of Article 1 (1) (b) and (4), 'added value' shall be understood as meaning the difference between the ex-works price of the goods obtained, less internal taxes refunded or refundable on exportation from the country concerned and the customs value of all the products imported and worked or processed in that country.

Article 3

1. Where Article 1 is applied, the proof of character of originating products in the case of Article 1 of Commission Regulation (EEC) No 3106/74 of 5 December 1974 of products obtained in the first ASEAN country and exported to another ASEAN country is given by a certificate of origin Form A, a specimen of which is given in the Annex to Commission Regulation (EEC) No 3106/74 of 5 December 1974. This certificate shall be issued by the governmental authorities of the country of export authorized for the issue of certificates of origin in the context of Commission Regulation (EEC) No 3106/74 of 5 December 1974.

2. Where Article 1 is applied, the proof of character of originating products — in the sense of that Article — of products that have been held or have only undergone in one of the ASEAN countries the processing laid down in that Article and exported from that country to another ASEAN country is given by the certificate referred to in paragraph 1 and issued under the conditions laid down in that paragraph, on the basis of the certificate of origin Form A issued previously.

Article 4

Notwithstanding the provisions of Article 6 of Commission Regulation (EEC) No 3106/74 of 5 December 1974, the products mentioned in Article 1 shall on import to the Community benefit from the provisions on tariff preferences set out in that Article upon submission of a certificate of origin Form A issued by the authority in the ASEAN country from which the products are exported to the Community on the basis of certificates of origin Form A issued previously.

Article 5

The certificates referred to in Articles 3 and 4 must indicate:

— in box 4 'For official use' the ASEAN country in which the goods originate as well as one of the following phrases:

'CUMUL ANASE'

'CUMULATION ASEAN'

— in box 12 'Declaration by the exporter' that the products fulfil the conditions of origin required by the generalized system of preferences in order to be exported to the 'European Economic Community'.

Article 6

1. The provisions of Articles 1 to 5 above are only applicable in so far as the rules regulating the trade between each of the countries cited above, in the context of this Regulation, are identical to the provisions laid down in Commission Regulation (EEC) No 3106/74 of 5 December 1974 as well as this Regulation.

2. In addition, each ASEAN country undertakes with the Commission of the European Communities, through the Special Coordinating Committee of ASEAN (hereinafter referred to as SCCAN), to respect, or to ensure respect for, the rules concerning the making out and issuing of certificates of origin Form A as well as those relative to the administrative cooperation contained in Articles 7 and 8 below.

Article 7

1. Retrospective verifications of the certificates Form A mentioned in Article 3 shall be carried out at random, and whenever the authorities envisaged

in that Article in the ASEAN countries where the products have remained before their re-export in the same state or are submitted to the working or processing envisaged in Article 1 have reasonable doubt as to the authenticity of the information regarding the true origin of the goods in question.

2. For the purpose of applying the provisions of paragraph 1, the customs authorities mentioned in that paragraph shall send the certificate of origin Form A to SCCAN — Special Coordinating Committee of ASEAN — indicating in each case the reasons of form or substance which justify an enquiry. They shall forward any information which may be available and which tends to show that the particulars on the certificate or on the form are inaccurate.

Article 8

1. Retrospective verification of the certificates Form A mentioned in Article 4 are to be carried out in the case envisaged in Article 13 of Commission Regulation (EEC) No 3106/74 of 5 December 1974. However, by way of derogation from the provisions of paragraph 2 of this Article the appropriate customs authorities in the Community shall return the certificate of origin Form A to SCCAN — Special Coordinating Committee of ASEAN.

2. The ASEAN countries shall communicate to the Commission the address of SCCAN — Special Coordinating Committee of ASEAN. The Commission shall comunicate this information to the customs authorities of the Member States.

Article 9

This Regulation does not apply to the products listed in the Annexes A of Council Regulations (EEC) No 3045/74 [1] and (EEC) No 3046/72 [2] of 2 December 1974.

Article 10

The Explanatory Note annexed to this Regulation forms an integral part of this Regulation.

Article 11

This Regulation shall enter into force on 1 January 1975.

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[1] OJ No L 329, 9. 12. 1974, p. 1.
[2] OJ No L 329, 9. 12. 1974, p. 9.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 December 1974.

For the Commission

The President

François-Xavier ORTOLI

ANNEX

Explanatory Note to Article 1

For the purpose of implementing Article 1 (1) (b), the percentage rule must be observed by referring, for the added value acquired, to the provisions contained in Lists A and B referred to in Article 3 of Commission Regulation (EEC) No 3106/74 of 5 December 1974. Where the products obtained appear in List A, the percentage rule therefore constitutes a criterion additional to that of change of tariff heading for any non-originating product used.