

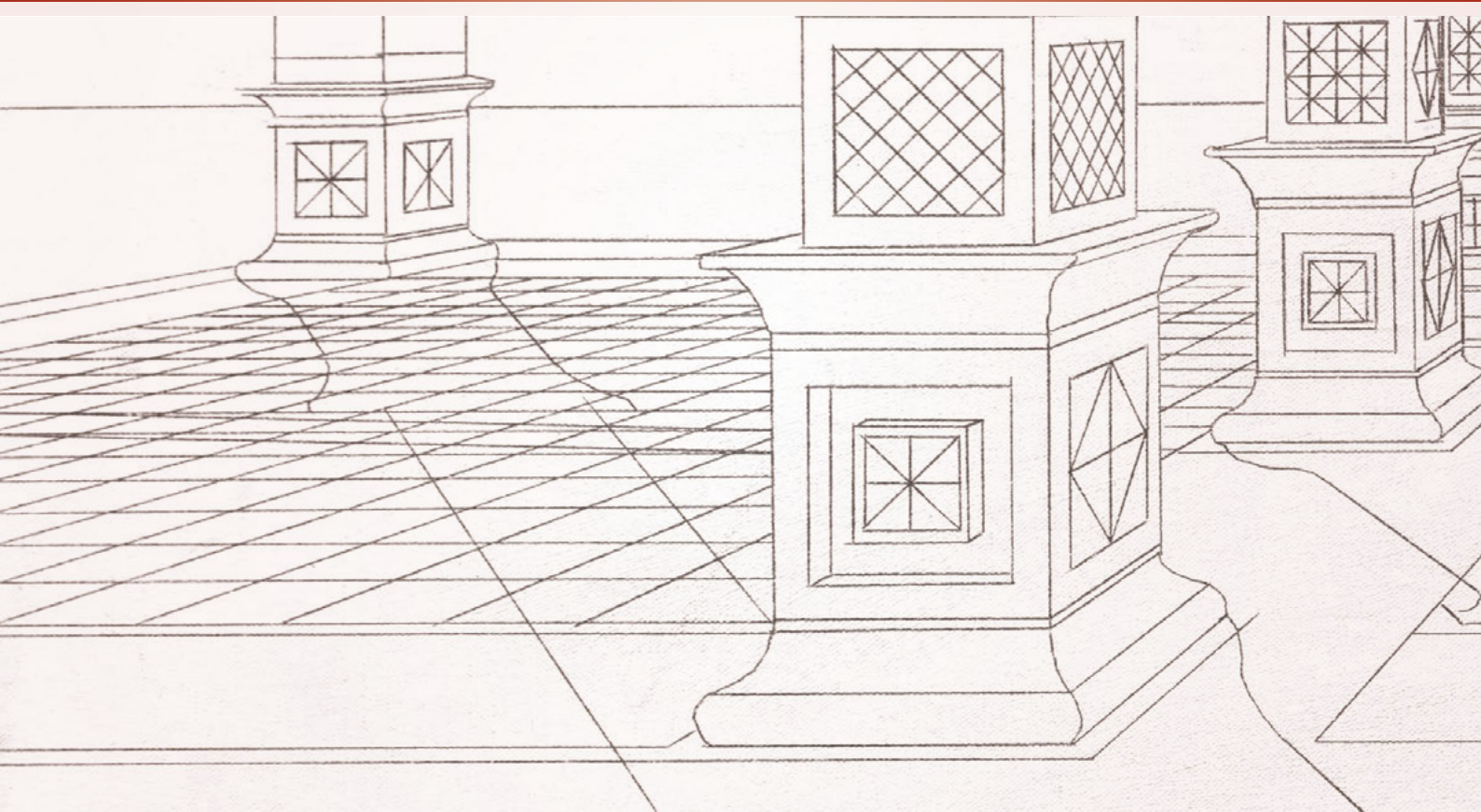
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HANDBOOK

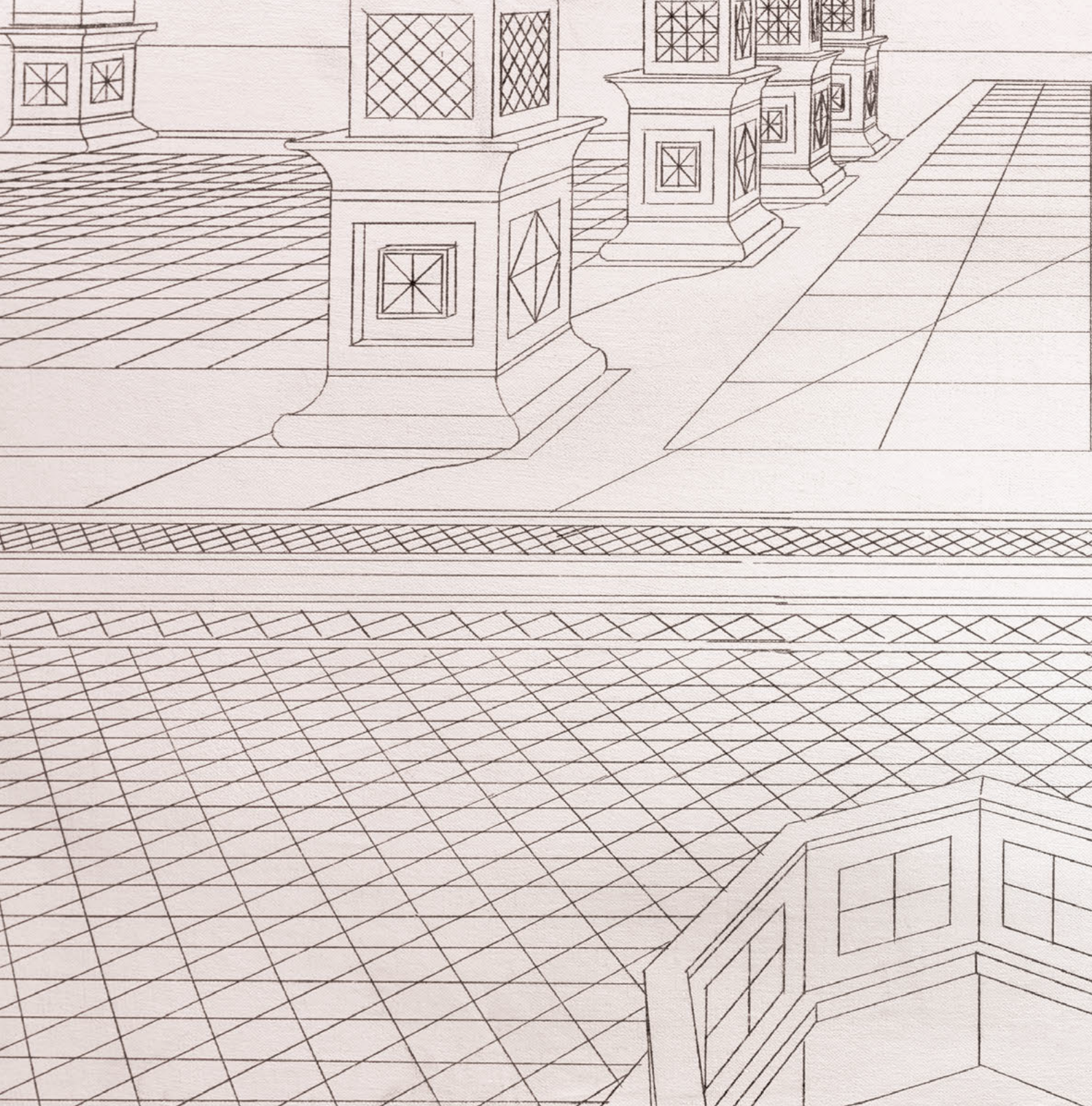
ON PREFERENTIAL MARKET ACCESS FOR ASEAN LEAST DEVELOPED COUNTRIES



Part III: ASEAN-FTA Agreements



UNITED NATIONS



“Mazzarello - geometrie del dare, nuovo futuro” is the work of Maurizio Cancelli.

Its architectural perspective emphasizes the interactions of governments, societies and economies from around the globe under the United Nations Framework. This collaboration highlights the earth, its resources and potentials, and fosters a recognition of local communities and their right to exist in their places of origin, with their own distinction and diversity. Maurizio Cancelli started his artistic research on the right to live in one’s place of birth more than thirty years ago. His work is inspired by the mountainous terrain surrounding the village of Cancelli in the heart of Umbria, Italy.

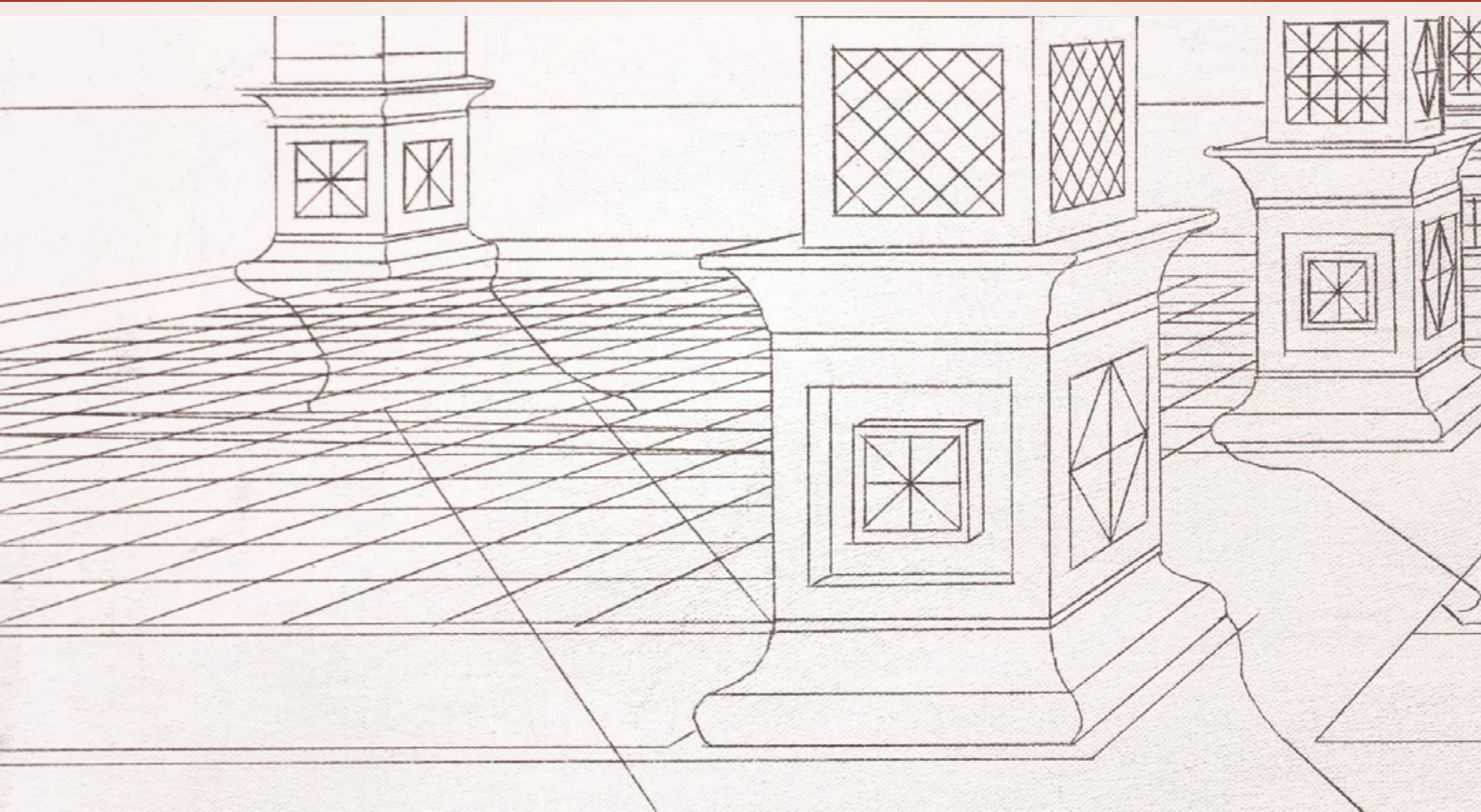
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Part III: ASEAN-FTA Agreements



UNITED NATIONS
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Contents

<i>Acknowledgements</i>	<i>iii</i>
<i>Abbreviations and acronyms</i>	<i>vii</i>
I. Preface	1
II. Introduction to the ASEAN free trade agreements	2
A. The ASEAN Trade in Goods Agreement (ATIGA)	2
B. ASEAN free trade agreements with dialogue partners	3
III. Introduction to rules of origin in the ASEAN free trade agreements	5
IV. Substantial requirements regarding rules of origin	6
A. Key concepts in the ASEAN free trade agreements	6
B. Comparison of substantial requirements under the ASEAN free trade agreements	10
V. Administrative requirements for the application of preferential treatment	27
A. Key elements in the ASEAN free trade agreements	27
B. Certificates of origin	27
C. Operational certification procedures	30
D. Back-to-back certificate of origin	31
E. Third country invoicing	32
F. Practical advice on documentary requirements	33
VI. Verification and penalties	38
A. Record keeping	38
B. Verification visits	38
C. Action against fraudulent acts	42

Figures

Figure 1	ASEAN LDC market access under ASEAN agreements with dialogue partners	3
Figure 2	Back-to-back CO.....	31
Figure 3	Third country invoicing	32
Figure 4	Specimen CO for ATIGA.....	34

Tables

Table 1	Categories of substantial requirements.....	6
Table 2	Substantial requirements: criteria for not wholly obtained products to be considered as originating.....	7
Table 3	Comparative tables on substantial requirements: ancillary rules.....	8
Table 4	Product-specific rules of origin under ASEAN FTAs.....	9
Table 5	Definitions.....	27
Table 6	Issuance of COs and notification.....	28
Table 7	Certificates of origin: format and distribution of copies.....	29
Table 8	Specific operational certification procedures.....	30
Table 9	Comparison of back-to-back CO conditions.....	31
Table 10	Third country invoicing.....	32
Table 11	Threshold for CoO requirement.....	33
Table 12	Origin criteria: entries required in box 8.....	35
Table 13	Box 13: options to tick under the different FTAs.....	36
Table 14	Comparative table on record keeping.....	38
Table 15	Provisions for verification visits in the ASEAN FTAs.....	39
Table 16	Comparative table on action against fraudulent acts.....	42

Abbreviations and acronyms

AANZFTA	ASEAN–Australia–New Zealand Free Trade Agreement
ACFTA	ASEAN–China Free Trade Area
AFTA	ASEAN Free Trade Area
AIFTA	ASEAN–India Free Trade Agreement
AJCEP	ASEAN–Japan Comprehensive Economic Partnership
AKFTA	ASEAN–Republic of Korea Free Trade Agreement
ASEAN	Association of Southeast Asian Nations
ATIGA	ASEAN Trade in Goods Agreement
CEPT	Common Effective Preferential Tariff Scheme
CIF	cost, insurance and freight
CO	certificate of origin
CTC	change in tariff classification
CTH	change in tariff heading
CTSH	change in tariff subheading
FOB	free on board
FTA	free trade agreement
GDP	gross domestic product
HS	Harmonized System
ISO	International Organization for Standardization
LDC	least developed country
OCP	operational certification procedure
PSRO	product-specific rules of origin
RVC	regional value content
VNM	value of non-originating materials
VOM	value of originating materials

I. PREFACE

This handbook is intended to help producers, traders and exporters understand and apply the preferential rules of origin available to least developed country (LDC) members of the Association of Southeast Asian Nations (ASEAN) under free trade agreements (FTAs). At the time of publication, the LDC members of ASEAN are Cambodia, the Lao People's Democratic Republic and Myanmar.

This handbook analyses and compares the following FTAs:

- (a) ASEAN Trade in Goods Agreement (ATIGA)
- (b) ASEAN – Australia – New Zealand Free Trade Area (AANZFTA)
- (c) ASEAN – India Free Trade Agreement (AIFTA)

- (d) ASEAN – China Free Trade Area (ACFTA)
- (e) ASEAN – Japan Comprehensive Economic Partnership Agreement (AJCEP)
- (f) ASEAN – Republic of Korea Free Trade Agreement (AKFTA)
- (g) ASEAN – Hong Kong, China Free Trade Agreement (AHKFTA)

(together, the ASEAN FTAs).

This publication is part III of UNCTAD's Handbooks on Duty-free Quota-free Market Access and Rules of Origin for Least Developed Countries series. Part III covers ASEAN FTAs with dialogue partners. Part I refers to QUAD countries (namely Canada, the European Union, Japan and the United States of America) and Part II covers other developing and developed countries.¹

¹ UNCTAD/ALDC/2018/5 (part I) and UNCTAD/ALDC/2018/5 (part II).

II. INTRODUCTION TO THE ASEAN FREE TRADE AGREEMENTS

A. The ASEAN Trade in Goods Agreement (ATIGA)

The Association of Southeast Asian Nations was established with the signing of the ASEAN Declaration by Indonesia, Malaysia, the Philippines, Singapore and Thailand on 8 August 1967 in Bangkok.² Brunei Darussalam joined on 7 January 1984, Viet Nam on 28 July 1995, the Lao People's Democratic Republic and Myanmar on 23 July 1997 and Cambodia on 30 April 1999.

The ASEAN Declaration states that the main purposes of ASEAN are to:

- (a) Accelerate economic growth, social progress and cultural development in the region;
- (b) Promote regional peace and stability;
- (c) Promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields;
- (d) Maintain close and beneficial cooperation with existing international and regional organizations with similar aims and purposes.

At the fourth ASEAN Summit in January 1992, the ASEAN Heads of Government agreed to establish an ASEAN FTA (AFTA) by 2008 to open up their economies in the era of globalization. The Common Effective Preferential Tariff (CEPT) Scheme was the main implementing mechanism of AFTA. The Agreement on the CEPT for AFTA was signed in Singapore on 28 January 1992.³

On 23 August 2007, the twenty-first AFTA Council Meeting agreed to transform the CEPT agreement into a comprehensive trade in goods agreement for the AFTA. The ASEAN Trade in Goods Agreement (ATIGA) was signed on 26 February 2009.⁴ It improves and consolidates all existing provisions under the CEPT Agreement and relevant ASEAN economic agreements and instruments. The objective of ATIGA is to achieve the free flow of goods among the ASEAN member

States as one of the principal means of establishing a single market and a production base for the deeper economic integration of the region, allowing for the realization of the ASEAN Economic Community by 2015. Through ATIGA, intra-ASEAN import duties have been reduced on 99.65 per cent of tariff lines for Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand. Cambodia, the Lao People's Democratic Republic, Myanmar and Viet Nam reduced their import duties to between zero and 5 per cent on 98.86 per cent of tariff lines.

ATIGA is one of the building blocks of the ASEAN Economic Community (AEC) that was established at the twenty-seventh ASEAN Summit in 2015. The AEC Blueprint 2025 provides broad strategic direction for the realization of ATIGA and forms part of the ASEAN 2025: Forging Ahead Together vision. The AEC Blueprint 2025 consists of five interlinked characteristics:

- (a) A highly integrated and cohesive Economy;
- (b) A competitive, innovative, and dynamic ASEAN;
- (c) Enhanced connectivity and sectoral Cooperation;
- (d) A resilient, inclusive, people-oriented, and people-centred ASEAN;
- (e) A global ASEAN.

The AEC 2025 Consolidated Strategic Action Plan (CSAP) summarizes how the strategic agenda will be operationalized within each sector. Updates on the implementation of the agenda have been regularly published in the ASEAN Economic Brief (AEB) since 30 June 2017.⁵

The ASEAN member States are aiming to promote regional economic cooperation, work towards implementing an ASEAN-wide self-certification scheme and broaden the facilitation of ATIGA.⁶ Most recently ASEAN member states have put in place a procedure to apply and exchange electronic certificate of origin using ASEAN single window.⁷ At the time of this writing the procedure is accessible in Singapore.⁸

² Available from <http://asean.org/the-asean-declaration-bangkok-declaration-bangkok-8-august-1967/>.

³ Available from http://www.asean.org/storage/images/2012/Economic/AFTA/Common_Effective_Preferential_Tariff/Agreement%20on%20the%20Common%20Effective%20Preferential%20Tariff%20Scheme%20for%20the%20ASEAN%20Free%20Trade%20Area.pdf.

⁴ Available from <http://investasean.asean.org/index.php/page/view/asean-free-trade-area-agreements/view/757/newsid/872/asean-trade-in-goods-agreement.html>.

⁵ Available from <http://asean.org/asean-economic-community/>.

⁶ See http://asean.org/storage/2017/11/AEIB_2nd-edition.pdf.

⁷ See for details <https://asw.asean.org/component/content/?view=featured>

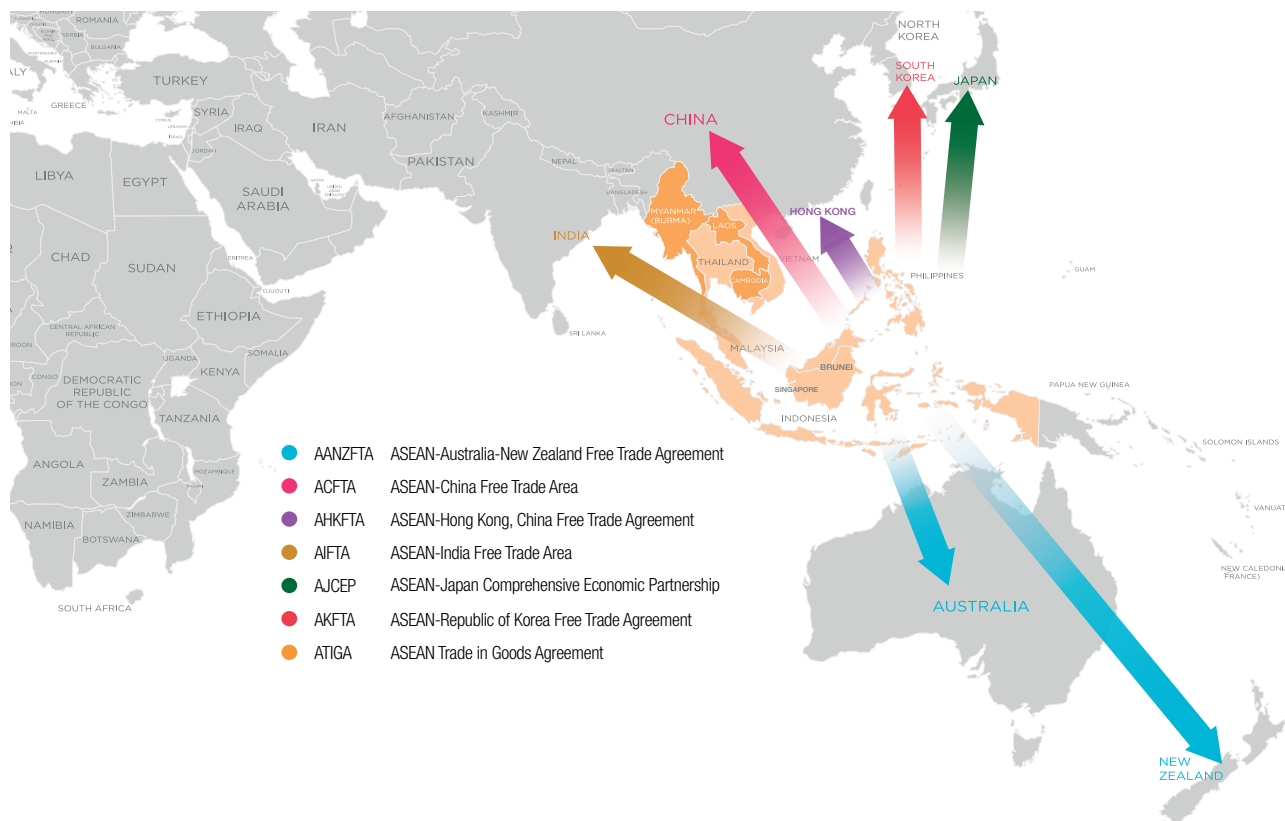
⁸ <https://www.customs.gov.sg/businesses/certificates-of-origin/awsc>

B. ASEAN free trade agreements with dialogue partners

ASEAN has free trade agreements with seven partners: Australia, China, Hong Kong, India, Japan, New Zealand and the Republic of Korea. During negotiations on each FTA, ASEAN insisted on replicating its own rules of origin. However, each

dialogue partner had its own views about how the rules of origin should be drafted. As a result, in some FTAs the parties mutually accept each other's rules of origin: see, for example, the FTA with India. In other FTAs, ASEAN has accepted the rules of origin of the partner, with some modifications: see, for example, the FTAs with Japan and the Republic of Korea.

Figure 1
ASEAN LDC market access under ASEAN agreements with dialogue partners



ASEAN – Australia – New Zealand Free Trade Agreement (AANZFTA)

The 2004 ASEAN–Australia–New Zealand Commemorative Summit launched negotiations on an FTA. The agreement establishing the AANZFTA was signed by ASEAN, Australia and New Zealand on the sidelines of the fourteenth ASEAN Summit on 27 February 2009 and entered into force on 1 January 2010.⁹

AANZFTA is a comprehensive economic agreement that covers commitments and obligations beyond trade in goods, trade in services and investment. It includes provisions on standards, sanitary and phytosanitary measures (SPS measures), electronic

commerce, intellectual property, competition policy, and movement of businesspersons.

The first Protocol to Amend AANZFTA was signed in 2014. The protocol covers chapters in trade in goods and rules of origin. A review of AANZFTA's implementation between 2010 and 2017 was published in September 2017.¹⁰ In the review, AANZFTA was found to be a “useful incubator for regional cooperation, technical building and policy dialogue”, increasing trade and investment between the 12 parties.¹¹

ASEAN – India Free Trade Agreement (AIFTA)

Relations between ASEAN and India grew from sectoral dialogue in 1992 to a full dialogue partnership

⁹ Available from <http://aanzfta.asean.org/>.

¹⁰ Available from <http://aanzfta.asean.org/general-review/>.

¹¹ General Review of AANZFTA, pp 1-2, available from <http://aanzfta.asean.org/general-review/>.

by December 1995. The ASEAN–India Framework Agreement on Comprehensive Economic Cooperation was signed at the second ASEAN–India Summit in 2003. The Framework Agreement provided a legal basis to conclude further agreements on trade in goods, services and investment, thereby forming the ASEAN–India Free Trade Area. In 2008, the ASEAN–India Free Trade Area constituted a market of almost 1.8 billion people with a combined gross domestic product (GDP) of approximately \$2.8 trillion.

The ASEAN–India Trade in Goods Agreement (AITGA) was signed in Bangkok on 13 August 2009 and entered into force on 1 January 2010.¹² The ASEAN–Indian Free Trade Area will see tariff liberalization on over 90 per cent of products traded between the two regions.

ASEAN – China Free Trade Agreement (ACFTA)

The Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China to establish ACFTA was signed in November 2002. Before ACFTA entered into force on 1 January 2010, agreements on trade in goods and trade in services were signed in November 2004 and January 2007 respectively.¹³ ACFTA is the largest free trade area by population and has eliminated tariffs on 90 per cent of goods.¹⁴

ASEAN – Japan Comprehensive Economic Partnership (AJCEP)

Informal dialogue relations were first established between ASEAN and Japan in 1973 and formalized in March 1977 when the ASEAN–Japan Forum was convened. Since then, significant progress has been made in ASEAN–Japanese relations and cooperation in the areas of political security, economics and finance, and sociocultural collaboration. ASEAN and Japan signed the AJCEP on 14 April 2008.¹⁵ AJCEP is comprehensive in scope, covering trade in goods, trade in services, investment and economic cooperation. As of May 2010, all ASEAN member States and Japan had ratified AJCEP.¹⁶ In 2011, AJCEP had a trade value of \$273 billion (2011), second only to ACFTA.¹⁷

ASEAN – Republic of Korea Free Trade Agreement (AKFTA)

ASEAN and the Republic of Korea initiated sectoral dialogue relations in November 1989. The Framework Agreement on Comprehensive Economic Cooperation between ASEAN and the Republic of Korea was signed in Kuala Lumpur on 13 December 2005. To implement this Framework Agreement, agreements were signed on dispute settlement, trade in goods and trade in services. The ASEAN–Republic of Korea Agreement on a Dispute Settlement Mechanism was signed by the parties' economic ministers at the ninth ASEAN–Republic of Korea Summit in December 2005 in Kuala Lumpur. The ASEAN–Republic of Korea Agreement on Trade in Goods came into force on 1 June 2007. A 23 per cent increase in the volume of trade was recorded in the first year of its implementation.¹⁸

Regional Comprehensive Economic Partnership (RCEP)

During the twenty-first ASEAN Summit in November 2012, ASEAN members began negotiating the RCEP with each of the six ASEAN dialogue partners. RCEP builds on the existing ASEAN+1 agreements to broaden economic collaboration with the dialogue partners.¹⁹ The RCEP negotiations ended on November 2020 and the text is publically available²⁰ A forthcoming handbook on RCEP will be made available

ASEAN – Hong Kong, China Free Trade Agreement (AHKFTA)

The ASEAN – Hong Kong, China Free Trade Agreement is the most recent FTA and entered into force on 11 June 2019 for Hong Kong, China and five ASEAN member States, namely the Lao People's Democratic Republic, Myanmar, Singapore, Thailand and Viet Nam.

The members agreed to remove tariffs, improve access for intraregional service providers and eliminate pervasive non-tariff barriers to trade. The deal was agreed and signed in 2017 as a result of three years of talks with 10 rounds of negotiations. The remaining ASEAN member States are expected to complete their ratification processes soon.²¹

¹² Available from <http://www.customs.gov.sg/~media/cus/files/insync/issue08/updates/aanzfta.html>.

¹³ Available from <http://fta.mofcom.gov.cn/topic/chinaasean.shtml>.

¹⁴ See <http://www.asean-cn.org/index.php?m=content&c=index&a=show&catid=267&id=84>.

¹⁵ An overview of ASEAN–Japan dialogue relations is available from <http://asean.org/storage/2012/05/Overview-ASEAN-Japan-Relations-As-of-8-March-2017.pdf>.

¹⁶ Available from <http://asean.org/wp-content/uploads/images/2012/resources/TABLE%20OF%20AGREEMENT%20%20RATIFICATION-SORT%20BY%20DATE-Web-October2012.pdf>.

¹⁷ See <http://investasean.asean.org/index.php/page/view/free-trade-areas/view/734/newsid/775/asean-japan-comprehensive-economic-partnership.html>.

¹⁸ An overview of the AKFTA is available from <http://akfta.asean.org/index.php?page=about-akfta>.

¹⁹ See http://asean.org/?static_post=rcep-regional-comprehensive-economic-partnership.

²⁰ <https://www.dfat.gov.au/trade/agreements/not-yet-in-force/rcep/rcep-text-and-associated-documents>

²¹ See <https://asean.org/asean-hong-kong-china-free-trade-agreement-enters-force/>.

III. INTRODUCTION TO RULES OF ORIGIN IN THE ASEAN FREE TRADE AGREEMENTS

Like all FTAs, the ASEAN FTAs are designed to increase trade and deepen economic integration between the parties by granting benefits to exporters of those parties. The benefits generally take the form of tariff-free or reduced-tariff treatment for products originating in member countries.

Goods exported from an ASEAN country will only qualify for preferential treatment if they are recognized as originating in an eligible country according to the rules of origin of the relevant FTA. Understanding the relevant rules of origin will ensure that producers and exporters optimize the preferential tariff treatment of their goods.

For the purposes of this handbook and to better understand how to comply with rules of origin, requirements for granting origin to a product are divided into two groups: substantial requirements and administrative requirements²².

Substantial requirements are criteria by which a product is considered to be or not to be originating in a member country of an FTA, and thus whether that product is entitled to preferential treatment under the FTA. Substantial requirement criteria are divided into the following six categories, as detailed in table 1:

- (a) Wholly obtained or produced products;
- (b) Not wholly obtained products;
- (c) Tolerance or de minimis;
- (d) Insufficient working or processing;
- (e) Accumulation;
- (f) Product-specific rules of origin.

Administrative requirements indicate the specific actions and documentation necessary to support a claim of eligibility for preferential treatment.

The following four categories apply to claims for preferential treatment under rules of origin:

- (a) A certificate of origin (CO) is a document attesting that a product satisfies the rules of origin of certain FTAs.
- (b) Operational certification procedures (OCPs) are procedures for issuing and using COs and for verifying that relevant origin requirements have been met.
- (c) Third country invoicing is a procedure allowing originating goods that are exported to an FTA member country to qualify for preferential tariff treatment, even if the accompanying sales invoice is issued by a company located in a non-FTA member country or by an exporter in an FTA member country for the account of the company.
- (d) A back-to-back CO is a CO issued by an intermediate exporting FTA member State based on the original CO issued by the first exporting FTA member State.

The ASEAN FTAs have different substantial and administrative requirements. This handbook compares the different rules of origin and introduces in detail the substantial and administrative requirements of each FTA.

Part IV of this handbook outlines the substantial requirements under each of the ASEAN FTAs. Part V (Administrative requirements for the application of preferential treatment) introduces the four administrative requirements and compares differences between the ASEAN FTAs. The specific OCPs of ASEAN FTAs (regarding filling in a CO, verification visits, action against fraudulent acts and record keeping) are analysed in Part VI.

²² This section draws from legal tests of various ASEAN FTAs and "ASEAN FTAs and Rules of origin" Japan External Trade Organization (JETRO) 2004, "The ASEAN rules of origin" by Stefano Inama and Edmund Sim, Cambridge University press 2015 and Rules of origin in international trade, Inama, 2009 and 2021.

IV. SUBSTANTIAL REQUIREMENTS REGARDING RULES OF ORIGIN

A. Key concepts in the ASEAN free trade agreements

The rules of origin criteria by which a product is considered to be or not to be originating in a member country of an FTA, and thus whether that product is entitled to preferential treatment under that FTA, are called substantial requirements. There are six categories of substantial requirement, outlined in table 1:

Wholly obtained or produced products

Wholly obtained or produced products are goods that are “obtained” or produced without any involvement of materials from outside the exporting country. These are generally products that are grown, harvested or extracted from the ground in the territory of a single country, as well as goods produced from such materials. While parts of the definition of “wholly obtained” can be contentious (such as fish taken from outside territorial seas), in the vast majority of cases there is no controversy as to the application of this criterion. Most of the lists of wholly obtained products provided for by different FTAs are self-explanatory. Examples of wholly obtained or produced products are mineral exports, most agricultural products and products such as seafood harvested within the territory of a State.

Not wholly obtained products

Not wholly obtained products are products containing a certain value of materials whose country of origin is not

a party to the relevant FTA (non-originated materials), or whose origin cannot be determined (undetermined origin). For most products to be considered as originating products they must either satisfy the change in tariff classification (CTC) rule or the minimum regional value content (RVC) rule. The CTC rule will sometimes require a change in tariff heading (CTH). The CTC and RVC rules are designed to ensure that the required transformation of non-originating materials contained in the product occurs within the FTA territory.

Consider, for example, a doll classified under Harmonized System (HS) heading 9502 that is produced in a beneficiary country. Imported plastics are required to manufacture the doll, so the doll is not classified as a wholly obtained product. However, according to the CTC rule, if the imported plastics are classified under a different HS heading to the doll, then the imported plastics will be considered sufficiently worked or processed during manufacture to qualify the doll as an originating product. For example, if the imported plastics are classified under HS heading 3910, the doll will qualify for preferential treatment.

The RVC rule requires that a certain percentage of the materials utilized or value added to a good originate in the beneficiary State. For example, an FTA may state that the import content of a good must not exceed a certain percentage of its ex-works price.

Table 2 compares the main origin criteria for not wholly obtained products under each ASEAN FTA. The FTAs provide for different CTC requirements, methods of calculating the RVC, and RVC percentage levels.

Table 1 Categories of substantial requirements

Wholly obtained or produced products	Goods containing no foreign parts, components or raw materials.
Not wholly obtained products	Goods containing a certain value of materials whose country of origin is other than the parties to an FTA (non-originated materials), or whose origin cannot be determined (undetermined origin).
Tolerance or de minimis	Allowance for the use of non-originating materials in the manufacture of a given product.
Insufficient working or processing	Allowance for operations that are not considered to be sufficient to confer origin due to their minor effect on the end product.
Accumulation	Allowance for imported inputs from other countries to be considered as originating content.
Product-specific rules of origin (PSRO)	Requirements for a specified good or a group of goods that must be fulfilled for the goods to be considered as originating in a member State.

Table 2 Substantial requirements: criteria for not wholly obtained products to be considered as originating

FTA	Main origin criteria	Numerator/denominator	RVC percentage at horizontal level	Method of percentage calculation
ATIGA	RVC or CTC at 4-digit level, i.e. CTH	<i>Direct method:</i> Value of originating materials (VOM) + cost of direct working or processing. Denominator: FOB price <i>Indirect method:</i> A subtraction from the FOB price of the value of non-originating materials (VNM). Denominator: FOB price	Not less than 40 per cent	<i>Direct method:</i> Value added calculation <i>Indirect method:</i> Subtraction of VNM from the FOB price
AANZFTA	RVC or CTC at 4-digit level, i.e. CTH	Direct and indirect method similar to AFTA. Denominator: FOB price.	Not less than 40 per cent	<i>Direct method:</i> Value added calculation <i>Indirect method:</i> Subtraction of value of non-originating materials from the FOB price
AIFTA	RVC or CTC at 6-digit level, i.e. change in tariff subheading (CTSH)	<i>Direct method:</i> VOM. Denominator: FOB price <i>Indirect method:</i> VNM. Denominator: FOB price	<i>Direct method:</i> Not less than 35 per cent <i>Indirect method:</i> Not to exceed 65 per cent For both cases the non-originating materials have undergone at least CTSH	<i>Direct method:</i> Value added calculation adding cost of processing and local materials <i>Indirect method:</i> Based on a maximum allowance of non-originating inputs
ACFTA	RVC	<i>Direct method:</i> RVC. Denominator: FOB price <i>Indirect method:</i> VNM + values of materials of undetermined origin. Denominator: FOB price	Not less than 40 per cent according to the direct formula and not to exceed 60 per cent of non-originating inputs according to the indirect formula	<i>Direct method:</i> Based on a 40 per cent of RVC requirement <i>Indirect method:</i> Based on a formula requiring not to exceed 60 per cent of non-originating inputs
AJCEP	RVC or CTC at 4-digit level, i.e. CTH	<i>Indirect method:</i> FOB price – VNM. Denominator: FOB price	Not less than 40 per cent	Subtraction of the VNM from the FOB price
AKFTA	RVC or CTC at 4-digit level, i.e. CTH	<i>Build-up method:</i> VOM. Denominator: FOB price <i>Build-down method:</i> FOB price – VNM. Denominator: FOB price	Not less than 40 per cent	<i>Build-up method:</i> Based on the VOM <i>Build-down method:</i> Based on the VNM
AHKFTA	RVC or CTC at 4-digit level,	<i>Direct/build-up method:</i> Value of originating materials (VOM) + cost of direct working or processing + profit. Denominator: FOB price <i>Indirect/build-down method:</i> A subtraction from the FOB price of the value of non-originating materials (VNM). Denominator: FOB price	Not less than 40 per cent	<i>Direct method:</i> Value added calculation <i>Indirect method:</i> Subtraction of VNM from the FOB price

Some ASEAN FTAs apply a “tolerance” or “de minimis” rule to not wholly obtained products. A tolerance or de minimis rule excludes from the calculation of a product’s origin a certain minimal amount of non-originating goods representing a later stage of production.

For example, consider the doll (HS 9502) from the previous example. Assume that the doll is produced within the exporting country except for the eyes, which were imported from a third country. Since dolls and doll eyes are classified under the same HS heading, the CTC rule is not satisfied. However, if the value of the doll eyes is less than the de minimis percentage threshold in the relevant FTA, the doll would still qualify for preferential treatment.

The de minimis provision is often set at about 10 per cent of the value (see table 3). However, not all the ASEAN FTAs have tolerance or de minimis provisions: see for example AIFTA and ACFTA.

Insufficient working or processing

Insufficient working or processing refers to operations not considered sufficient to confer origin, whether alone or in combination and no matter how much they are carried out, due to their minor effect on the end product. Examples of insufficient working or processing include:

- (a) Preserving operations to ensure goods remain in good condition during transport and storage;
- (b) Packaging or presenting goods for sale;
- (c) Affixing or printing marks, labels and logos on goods or their packaging;
- (d) Washing and cleaning.

There are particular exceptions to the insufficient working or processing rule in each FTA.

Accumulation

Accumulation, also known as “cumulative rules of origin,” allows parties of FTAs to produce jointly and still comply with the relevant rules of origin provisions. That is, a producer from one party can use input materials from another party without losing the originating status of that input for the purpose of rules of origin. For example, a Cambodian manufacturer is allowed to use Malaysian raw material in its

production, because under ATIGA inputs of other member States are considered as originating material. Accordingly, if the doll from the previous example was jointly produced by Cambodia and Myanmar, it would qualify for preferential treatment within the ATIGA agreement even if the not wholly originating products or de minimis criteria were not satisfied. Accumulation encourages the use of materials originating from a free trade area, deepening economic integration between member countries.

Table 3 Comparative tables on substantial requirements: ancillary rules

	<i>Excerpt</i>	<i>Accumulation</i>	<i>Diagonal accumulation*</i>	<i>De minimis</i>
ATIGA	<p>Article 30 Accumulation</p> <p>1. Unless otherwise provided in this Agreement, goods originating in a member State, which are used in another member State as materials for finished goods eligible for preferential tariff treatment, shall be considered to be originating in the latter member State where working or processing of the finished goods has taken place.</p> <p>2. If the RVC of the material is less than forty per cent (40 per cent), the qualifying ASEAN Value Content to be cumulated using the RVC criterion shall be in direct proportion to the actual domestic content provided that it is equal to or more than twenty per cent (20 per cent). The Implementing Guidelines are set out in annex 6.</p>	Accumulation of originating materials + special provision for "partial cumulation" where a good not meeting the 40 per cent RVC may nevertheless be eligible for accumulation	Yes	10 per cent in case of CTC criteria
AANZFTA	<p>Article 6 cumulative rules of origin</p> <p>For the purposes of article 2 (originating goods), a good which complies with the origin requirements provided therein and which is used in another Party as a material in the production of another good shall be considered to originate in the Party where working or processing of the finished good has taken place.</p>	Accumulation of originating materials	Yes	10 per cent with qualifications for some products
AIFTA	<p>Rule 5 cumulative rule of origin</p> <p>Unless otherwise provided for, products which comply with origin requirements provided for in rule 2 and which are used in a Party as materials for a product which is eligible for preferential treatment under the Agreement shall be considered as products originating in that Party where working or processing of the product has taken place.</p>	Accumulation of originating materials	Yes	Not applicable
ACFTA	<p>Article 6 Accumulation</p> <p>Unless otherwise provided in this ANNEX, goods originating in a Party, which are used in another Party as materials for finished goods eligible for preferential tariff treatment, shall be treated as originating in the latter Party where working or processing of the finished goods has taken place</p>	Accumulation of originating materials	Yes	Not applicable
AJCEP	<p>Article 29 Accumulation</p> <p>Originating materials of a Party used in the production of a good in another Party shall be considered as originating materials of that Party where the working or processing of the good has taken place.</p>	Accumulation of originating materials	Yes	10 per cent with qualifications for some products
AKFTA	<p>Rule 7 Accumulation</p> <p>Unless otherwise provided for in this annex, a good originating in the territory of a Party, which is used in the territory of another Party as material for a finished good eligible for preferential tariff treatment, shall be considered to be originating in the territory of the latter Party where working or processing of the finished good has taken place.</p>	Accumulation of originating materials	Yes	10 per cent with qualifications for some products
AHKFTA	<p>Article 7</p> <p>Unless otherwise provided in this Agreement, a good which complies with the origin requirements provided herein and which is used in another Party as a material for a finished good eligible for preferential tariff treatment shall be considered to be originating in the latter Party where working or processing of the finished goods has taken place.</p>	Accumulation of originating materials	Yes	10 per cent with qualifications for some products

* Diagonal cumulation operates between more than two countries provided they have FTAs containing identical origin rules and provision for cumulation between them. As with bilateral cumulation, only originating products or materials can benefit from diagonal cumulation. Although more than two countries can be involved in the manufacture of a product it will have the origin of the country where the last working or processing operation took place, provided that it was more than a minimal operation. See https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/common-provisions_en.

Product-specific rules of origin

Product-specific rules of origin (PSRO) are requirements that must be fulfilled for a specific good or group of goods to be considered as originating according to that FTA. For example, under PSRO a particular product might be required to undergo a change in tariff chapter under specific tariff headings, as well as being processed in a certain way.

PSRO apply to a particular heading (4-digit code), subheading (6-digit code). For example, PSRO usually

apply to HS chapters such as textiles and clothing, steel products, electronics and automotive products and require wholly obtained or produced products, RVC, CTSH with or without exceptions, and specific working or processing requirements.

Table 4 compares the PSRO of the different FTAs, which are usually set out in annexed or appended lists. ATIGA and AANZFTA have an extended list of PSRO, while AJCEP and AKFTA have much shorter PSRO lists. The following section introduces the specific substantial requirements of ASEAN FTAs.

Table 4 Product-specific rules of origin under ASEAN FTAs

FTA	Contained in	HS level	Length	Comment	Main calculation applied	Range of RVC level
ATIGA^a	Annex 3; annex 3 attachment 1 (textiles)	6-digit level (subheading)	176 pages plus 34 pages for textiles	2652 PSRO, plus 407 for textiles (separately listed)	CTSH RVC WO ^b Specific processing ^c	Not less than 40 per cent
AANZFTA^d	Annex 2	6-digit level (subheading)	635 pages ^e	Applied to the majority of HS chapters	CTC/ CTH/ CTSH RVC or CTC/ CTH/ CTSH WO ^f	Not less than 35 or 40 per cent
AIFTA	(To be contained in appendix B)	N/A	N/A	Currently not available	N/A	N/A
ACFTA	Attachment B to annex 1 of 2015 amendment ^g	6-digit level (subheading)	28 pages	472 PSRO, 393 of which apply to textiles and textile products (separately listed)	CTSH RVC WO ^b	Not less than 40 per cent
AJCEP^h	Annex 2	6-digit level (subheading)	63 pages	Applied to the majority of HS chapters	CC/CTH/CTSH RVC	Not less than 40 per cent
AKFTAⁱ	Appendix 2	6-digit level (subheading)	52 pages	447 PSRO	CTH/CTSH RVC WO	Mostly not less than 40 or 45 per cent of FOB; sometimes 35, 55, 60 or 70 per cent of RVC or FOB respectively
AHKFTA^k	Annex 3-2, annex 3-3	6-digit-level (subheading)	19 pages, 34 to be reviewed	237 PSRO defined at HS six digits	CC/CTH/CTSH RVC WO	Not less than 40 per cent

^a See <http://investasean.asean.org/files/upload/Annex%203.pdf>; for textiles, see <http://investasean.asean.org/files/upload/Annex%203%20-%20Attachment%201.pdf>.

^b For example, in chapters 1, 3, 4, 7, 8, 10, 14, 25, 26, 63, 71, 75, 78 and 80.

^c Limited to chapter 15.

^d See http://aanzfta.asean.org/wp-content/uploads/2016/06/Annex_2_Product_Specific_Rules_1st_Protocol.pdf.

^e In contrast to other regulations published in A4 landscape orientation. Amended 2014; available from: http://aanzfta.asean.org/wp-content/uploads/2016/06/Annex_2_Product_Specific_Rules_1st_Protocol.pdf.

^f Limited to chapters 1, 3, 4, 7, 8, 10, 12 and 13.

^g Under negotiation from 2004 to 2015; available from Protocol to Amend the Framework Agreement on Comprehensive Economic Cooperation and Certain Agreements thereunder between ASEAN and the People's Republic of China (2015), http://asean.org/?static_post=asean-china-free-trade-area-2.

^h Limited to subheadings: 151790 and 710121.

ⁱ See <http://www.customs.go.jp/roo/english/text/asean2.pdf>.

^j See http://www.fta.go.kr/webmodule/_PSD_FTA/asean/1/eng/22.pdf.

^k See [https://fta.miti.gov.my/miti-fta/resources/ASEAN%20-%20Hong%20Kong,%20China/AHKFTA_and_Annexes_AHKFTA_Agreement_\(Final\)_11.11.17_.pdf](https://fta.miti.gov.my/miti-fta/resources/ASEAN%20-%20Hong%20Kong,%20China/AHKFTA_and_Annexes_AHKFTA_Agreement_(Final)_11.11.17_.pdf).

B. Comparison of substantial requirements under the ASEAN free trade agreements

The ASEAN Trade in Goods Agreement (ATIGA)

To qualify for preferential treatment under ATIGA, products exported by a member State must satisfy the applicable rules of origin.

(a) Wholly obtained or produced products

Pursuant to article 27 of ATIGA, the following products will be considered as wholly obtained or produced in the exporting member State:

- (a) Plant and plant products, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown and harvested, picked or gathered in the exporting member State;
- (b) Live animals, including mammals, birds, fish, crustaceans, molluscs, reptiles, bacteria and viruses, born and raised in the exporting member State;
- (c) Goods obtained from live animals in the exporting member State;
- (d) Goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing conducted in the exporting member State;
- (e) Minerals and other naturally occurring substances, not included in paragraphs (a) to (d) of [article 27 of ATIGA], extracted or taken from its soil, waters, seabed or beneath its seabed;
- (f) Products of sea-fishing taken by vessels registered with a member State and entitled to fly its flag and other products taken from the waters, seabed or beneath the seabed outside the territorial waters of that member State, provided that that member State has the rights to exploit such waters, seabed and beneath the seabed in accordance with international law;

- (g) Products of sea-fishing and other marine products taken from the high seas by vessels registered with a member State and entitled to fly the flag of that member State;
- (h) Products processed and/or made on board factory ships registered with a member State and entitled to fly the flag of that member State, exclusively from products referred to in paragraph (g) of [article 27 of ATIGA];
- (i) Articles collected there 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;
- (j) Waste and scrap derived from:
 - (i) production in the exporting member State; or
 - (ii) used goods collected in the exporting member State, provided that such goods are fit only for the recovery of raw materials;
- (k) Goods obtained or produced in the exporting member State from products referred to in paragraphs (a) to (j) of [article 27 of ATIGA].²³

(b) Not wholly obtained or produced products

Goods that are not considered as wholly obtained or produced will nonetheless be deemed as originating in a member State if the following conditions are met:

- (i) First, the goods must have been worked or processed in the member State.
- (ii) Second:
 - a. The goods must have an RVC of forty per cent or more; or
 - b. All non-originating materials used to produce the goods must have undergone a CTC at the HS 4-digit level (that is, a change in tariff heading, CTH).²⁴ The exporter can decide whether the RVC rule or the CTC rule applies. RVC is calculated as follows:²⁵

²³ Footnotes omitted. In paragraph (f), "other products" refers to minerals and other naturally occurring substances extracted from the waters, seabed or beneath the seabed outside the territorial waters. For products of sea-fishing obtained from outside the territorial waters (e.g. exclusive economic zone), originating status would be conferred to that member State with whom the vessels used to obtain such products are registered with and whose flag is flown in the said vessel, and provided that that member State has the rights to exploit it under international law.

²⁴ ATIGA, article 28.

²⁵ ATIGA article 29.

Direct method:

$$\text{RVC (per cent)} = \frac{\text{ASEAN Material Cost} + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Other Cost} + \text{Profit}}{\text{FOB Price}} \times 100$$

Indirect method:

$$\text{RVC (per cent)} = \frac{\text{FOB price} - \text{Value of Non Originating Material, Parts or Goods}}{\text{FOB Price}} \times 100$$

Where:

- *ASEAN Material Cost* is the cost, insurance and freight (CIF) value of originating materials used in the production of the good.
- *Direct Labour Costs* encompass wages, remuneration and additional benefits employees receive.
- *Direct Overhead Costs* are the real property items used in the production process, costs related to equipment, utilities, research and development, licences etc.
- *FOB Price* is the free-on-board value, with the addition of material and production costs, profit and additional expenses.

(c) Tolerance or de minimis

A good that is made using non-originating materials that do not undergo a CTC will still be treated as originating in a member State as long as the value of non-originating materials (VNM) does not exceed 10 per cent of the FOB value.²⁶ The good must also satisfy all other applicable criteria for eligibility as an originating good.

The above rule only applies to non-originating materials which do not undergo a CTC. The VNM must be included when calculating any applicable RVC requirement for the good.

(d) Insufficient working or processing

ATIGA article 31 provides that the following operations are not considered sufficient to confer originating status by themselves or in combination:

- Ensuring the preservation of goods in good condition for the purposes of transport or storage;
- Facilitating shipment or transportation;
- Packaging or presenting goods for sale.

(e) Accumulation

ATIGA permits accumulation: that is, materials imported from one member State and worked or processed into finished goods in another member State will be considered as originating materials.²⁷ If the RVC of the non-originating material is less than 40 per cent, the qualifying ASEAN value content to be cumulated using the RVC criterion shall be in direct proportion to the actual domestic content provided that it is equal to or more than 20 per cent. The implementing guidelines are set out in annex 6 of ATIGA.

(f) PSRO

Article 28 of ATIGA provides PSRO as follows:

- Goods listed in annex 3 qualify as originating goods if they satisfy the annex 3 PSRO.²⁸ Where a choice of rules is provided, the exporter may decide which rule applies.²⁹
- If annex 3 specifies an RVC rule, RVC must be calculated according to the formulas for not wholly obtained or produced products (see section b) above).³⁰
- PSRO requiring CTC or a specific manufacturing or processing operation apply only to non-originating materials.
- If a good is assembled from goods covered in attachment A or B of the WTO Ministerial Conference's Ministerial Declaration on Trade in Information Technology Products,³¹ the good will be treated as originating.

ATIGA provides for PSRO for the majority of HS chapters including textiles and clothing, steel products, electronics and automotive products.

Individual PSRO include requirements that a product be wholly obtained, meets a particular RVC threshold, satisfies a CTSW with or without exceptions, and/or satisfies specific working or processing requirements.

For example, a product listed under chapter 16 is required either to have an RVC of not less than 40 per cent or change subheading from any other chapter to a chapter 16 subheading.

²⁶ ATIGA, article 33.

²⁷ ATIGA, article 30(2).

²⁸ ATIGA, article 30(2)(a).

²⁹ ATIGA, article 30(2)(b).

³⁰ ATIGA, article 30(2)(c).

³¹ See ATIGA, annex 4.

HS code	Description	Origin criteria
1604.15	Mackerel	A regional value content of not less than 40 per cent; or a change to subheading 1604.15 from any other chapter

Under chapter 61, a product must either have an RVC of not less than 40 per cent, or non-originating materials used in the product must undergo a change to a chapter 61 subheading from any other chapter. The product must also be sewn and cut in the territory of ASEAN member States. Further, some goods in chapter 61 must satisfy process rules for textile and textile products contained in attachment 1 to ATIGA.

HS code	Description	Origin criteria
6101.30	Of man-made fibres	A regional value content of not less than 40 per cent; or a change to subheading 6101.30 from any other chapter and the good is both cut and sewn in the territory of any member State; or process rules for textile and textile products as set out in attachment 1

The origin requirements for chapter 87 products vary according to the particular product. For example, the origin criterion may be an RVC of not less of 40 per cent; a CTSH; specific processing requirements; or a combination of these criteria.

HS code	Description	Origin criteria
8708.10	Bumpers and parts thereof	A regional value content of not less than 40 per cent
8708.21	Safety seat belts	A regional value content of not less than 40 per cent; or a change to subheading 8708.21 from any other heading; or process rules for textile and textile products as set out in attachment 1

The ASEAN – Australia – New Zealand Free Trade Agreement (AANZFTA).³²

AANZFTA liberalizes and facilitates trade in goods, services and investment between Australia, New Zealand and ASEAN member States (referred to in AANZFTA as the Parties). Chapter 3 contains substantial rules of origin.

Wholly obtained or produced product

Pursuant to chapter 3, article 3, the following products will be considered as wholly obtained or produced in the exporting Party:

- (a) Plants and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked, or gathered in a Party;

- (b) Live animals born and raised in a Party;
- (c) Goods obtained from live animals in a Party;
- (d) Goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering, or capturing in a Party;
- (e) Minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or beneath the seabed in a Party;
- (f) Goods of sea-fishing and other marine goods taken from the high seas, in accordance with international law, by any vessel registered or recorded with a Party and entitled to fly the flag of that Party;
- (g) Goods produced on board any factory ship registered or recorded with a Party and entitled to fly the flag of that Party from the goods referred to in Subparagraph (f);
- (h) Goods taken by a Party, or a person of a Party, from the seabed or beneath the seabed beyond the Exclusive Economic Zone and adjacent Continental Shelf of that Party and beyond areas over which third parties exercise jurisdiction under exploitation rights granted in accordance with international law;
- (i) Goods which are:
 - (i) Waste and scrap derived from production and consumption in a Party provided that such goods are fit only for the recovery of raw materials; or
 - (ii) Used goods collected in a Party provided that such goods are fit only for the recovery of raw materials;
- (j) Goods produced or obtained in a Party solely from products referred to in subparagraphs (a) to (i) or from their derivatives.³³

Not wholly obtained or produced products

Chapter 3, article 4 provides that goods not wholly obtained or produced will nonetheless be deemed as originating in a Party if:

- (a) All non-originating materials used in the production of the good undergo a CTC at the 4-digit level (CTH) in a Party; or

³² Available from <http://aanzfta.asean.org/agreement-establishing-the-aanzfta/>.

³³ Footnotes omitted. "In a Party" means the land, territorial sea, exclusive economic zone, continental shelf over which a Party exercises sovereignty, sovereign rights or jurisdiction, as the case may be, in accordance with international law.

- (b) The good has an RVC of not less than 40 per cent of FOB, provided that the final process of production is performed within a Party.

The producer or exporter of a good choose whether the CTC or RVC rule applies.

The RVC can be calculated using a direct or an indirect formula. The direct formula is based on a value-added calculation, while the indirect formula is based on subtraction of the VNM from the FOB price (see chapter 3, article 5).

Direct formula:

$$RVC \text{ (per cent)} = \frac{AANZFTA \text{ material cost} + \text{Labour cost} + \text{Direct overhead cost} + \text{Other cost} + \text{Profit}}{FOB \text{ Price}} \times 100$$

Indirect/build-down formula:

$$RVC \text{ (per cent)} = \frac{FOB \text{ price} - VNM}{FOB \text{ Price}} \times 100$$

Where:

- *AANZFTA material cost* is the VOM, parts or produce that are acquired or self-produced by the producer in the production of the good.
- *Labour cost* includes wages, remuneration and other employee benefits.
- *Overhead cost* is the total overhead expense.
- *Other costs* are the costs incurred in placing the good in the ship or other means of transport for export, including but not limited to domestic transport costs, storage and warehousing, port handling, brokerage fees and service charges.
- *FOB* is the free-on-board value of the goods.³⁴
- *VNM* is the CIF value at the time of importation or the earliest ascertained price paid for all non-originating materials, parts or produce that are acquired by the producer in the production of the good. Non-originating materials include materials of undetermined origin but do not include a material that is self-produced.

Tolerance or de minimis

A good that is made using non-originating materials that do not undergo a CTC pursuant to article 4 will

still be treated as originating in a Party to AANZFTA as long as:

- For a good, other than that provided for in chapters 50 to 63 of the HS Code, the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good;
- For a good provided for in chapters 50 to 63 of the HS Code, the weight of all non-originating materials used in its production that did not undergo the required change in tariff classification does not exceed 10 per cent of the total weight of the good, or the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good.³⁵

However, the VNM must be included when calculating any applicable RVC requirement. The good must also meet all other applicable criteria in chapter 3.³⁶

Insufficient working or processing

Chapter 3, article 7 provides that when a claim for origin is based solely on RVC, the following operations are considered to be minimal and will not be taken into account in determining whether or not a good is originating:

- Ensuring preservation of goods in good condition for the purposes of transport or storage;
- Facilitating shipment or transportation;
- Packaging or presenting goods for transportation or sale;
- Simple processes, consisting of sifting, classifying, washing, cutting, slitting, bending, coiling and uncoiling and other similar operations;
- Affixing of marks, labels or other like distinguishing signs on products or their packaging;
- Mere dilution with water or another substance that does not materially alter the characteristics of the goods.³⁷

³⁴ FOB includes the cost of transport to the port or site of final shipment abroad. The valuation shall be made in accordance with article VII of the General Agreement on Tariffs and Trade 1994 and the Agreement on Customs Valuation.

³⁵ AANZFTA, chapter 3, article 8.

³⁶ AANZFTA, chapter 3, article 8.

³⁷ Footnotes omitted. In paragraph (c), "packaging" excludes encapsulation which is termed "packaging" by the electronics industry.

Accumulation

Chapter 3, article 6 provides that a good which:

- (a) Originates in one Party according to the provisions of AANZFTA;
- (b) Is worked or processed into finished goods in another Party;

will be considered to originate in the Party where working or processing of the finished good has taken place.

Product-specific rules of origin

Annex 2 provides for PSRO, which apply to the majority of HS chapters. A good that satisfies the applicable PSRO will be treated as an originating good. PSRO under AANZFTA include wholly obtained criteria, RVC, CTSH with or without exceptions, and specific working or processing requirements as well as alternative rules. If the relevant PSRO includes a choice of rule, the producer or exporter of the good can decide which rule to use in determining if the good is originating.³⁸

For example, a chapter 16 product will be originating if:

- (i) Its RVC is not less than 40 per cent, or
- (ii) The tariff classification is changed at the 2-digit level, that is, to chapter 16 from any other chapter.

HS code	Description	Origin criteria
Chapter 16	Preparations of meat of fish or of crustaceans, molluscs or other aquatic invertebrates	
1601 1601.00	Sausages and similar products of meat, food preparations based on these products	RVC (40) or CC

Chapter 61 products must satisfy either an RVC of not less than 40 per cent or a change to chapter 16 from any other chapter. However, some products must also satisfy specific working and processing requirements, namely that the product is cut or knitted to shape and assembled in the territory of one or more Parties.

HS code	Description	Origin criteria
Chapter 61	Jerseys, pullovers, cardigans, waist-coats and similar articles, knitted or crocheted	
6110 6110.11	Of wool or fine animal hair	RVC (40) provided that the good is cut or knit to shape and assembled in the territory of one or more of the parties or CC
6110 6110.20	Of cotton	RVC (40) or CC

Chapter 87 product may be required to:

- (a) Have an RVC not less than 40 per cent; or
- (b) Have an RVC not less than 40 per cent and undergo a CTC to chapter 87 from any other chapter; or
- (c) Have an RVC of not less than 40 per cent and undergo a CTC at the 6-digit level (CTSH) (a change from one chapter 87 tariff subheading to another).

HS code	Description	Origin criteria
Chapter 87	Vehicles other than railway or tramway rolling stock, and parts and accessories thereof	
8708.95	Other parts and accessories, safety airbags with inflator system, parts thereof	RVC (40 per cent)
8708.95	Other parts and accessories	RVC (40 per cent) + CTSH
8708.95	Tanks and other armoured fighting vehicles, motorized, whether or not fitted with weapons, and parts of such vehicles	RVC (40 per cent) or CC

The ASEAN–India Free Trade Agreement (AIFTA)

AIFTA's rules of origin and OCPs are contained in annex 2 and the Appendices to AITGA. The main origin criteria under AIFTA are that products are wholly obtained or produced, have an RVC of not less than 35 per cent, have undergone a change in tariff classification at the 6-digit level (that is, CTSH), or satisfy product-specific rules (appendix B; currently not available)

Wholly obtained or produced products

Annex 2, rule 3 of AIFTA provides that the following products will be considered as wholly obtained or produced in the exporting member State:

- (a) Plant and plant products grown and harvested in the Party;
- (b) Live animals born and raised in the Party;
- (c) Products obtained from live animals referred to in paragraph (b);
- (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 paragraphs (a) to (d), extracted or taken from the Party's soil, waters, seabed or beneath the seabed;

³⁸ AANZFTA, chapter 3, article 4.

- (f) Products taken from the waters, seabed or beneath the seabed outside the territorial waters of the Party, provided that that Party has the rights to exploit such waters, 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 paragraph (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;
- (j) Products obtained or produced in the Party solely from products referred to in paragraphs (a) to (i).³⁹

Not wholly obtained or produced products

Rule 2, annex 2 provides that goods not wholly obtained or produced will nonetheless be deemed as originating if:

- (a) They have an RVC of not less than 35 per cent;
- (b) All non-originating materials used in the production of the good undergo a CTSH;
- (c) The final process of manufacture is performed within the territory of the exporting Party.

The RCV can be calculated using either a direct method (a value-added calculation adding cost of processing and local materials) or an indirect method (based on a maximum allowance of non-originating inputs).⁴⁰

Direct method: $RVC \geq ir$

$$RVC \text{ (per cent)} = \frac{\text{AFTA Material Cost} + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Other Cost} + \text{Profit}}{\text{FOB Price}} \times 100\%$$

Indirect method: $RVC \leq th$

$$RVC \text{ (per cent)} = \frac{\text{VNM, Parts \ or Produce} + \text{Value of Undetermined Origin Materials, Parts or Produce}}{\text{FOB Price}} \times 100\%$$

Where:

- *VNM* is:
 - (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;⁴¹
- *FOB Price* = *Ex-Factory Price* + *Other Costs*;
- *Other Costs* refers to the costs incurred in placing the products in the ship for export, including, but not limited to, domestic transport costs, storage and warehousing, port handling, brokerage fees, service charges, and the like;
- *Ex-Factory Price* = Production Cost + Profit;
- *Production Cost* = Cost of Raw Materials + Labour Cost + Overhead Cost;
- *Raw Materials* consists of the cost of raw materials, and freight and insurance;
- *Labour Costs* include wages, remuneration and other employee benefits associated with the manufacturing process;
- *Overhead costs* include, but are not limited to:⁴²
 - Real property items associated with the production process (insurance, factory rent and leasing, depreciation on buildings, repair and maintenance, taxes, interests on mortgage)
 - Leasing of and interest payments for plant and equipment
 - Factory security
 - Insurance (plant, equipment and materials used in the manufacture of the goods)
 - Utilities (energy, electricity, water and other utilities directly attributable to the production of the good)

³⁹ AFTA TIG Agreement, Annex 2, Rule 3 (footnotes omitted). In paragraph (a), "plant" refers to all plant life, including forestry products, fruit, flowers, vegetables, trees, seaweed, fungi and live plants. Animals referred to in paragraphs (b) and (c) covers all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, and living organisms. In paragraph (d), "products" refer to those obtained from live animals without further processing, including milk, eggs, natural honey, hair, wool, semen and dung.

⁴⁰ AFTA TIG Agreement, Annex 2, appendix A, Rule 4.

⁴¹ AFTA TIG Agreement, annex 2, rule 4(c).

⁴² AFTA TIG agreement, appendix A.

- Research, development, design and engineering
- Dyes, moulds, tooling and the depreciation, maintenance and repair of plant and equipment
- Royalties or licences (in connection with patented machines or processes used in the manufacture of the good or the right to manufacture the good)
- Inspection and testing of materials and the goods
- Storage and handling in the factory
- Disposal of recyclable wastes
- Cost elements in computing the value of raw materials, i.e. port and clearance charges and import duties paid for dutiable component

Tolerance or de minimis

AIFTA does not include de minimis criteria.

Insufficient working or processing

Annex 2, rule 7(a) provides that a product will not be considered originating in a Party merely because any of the following operations are undertaken (either alone or together) in the territory of that Party:

- 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);
- Simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting, cutting;
- Changes of packing and breaking up and assembly of consignments;
- Simple cutting, slicing and repacking or placing in bottles, flasks, bags, boxes, fixing on cards or boards, and all other simple packing operations;
- Affixing of marks, labels or other like distinguishing signs on products or their packaging;
- Simple mixing of products whether or not of different kinds, where one or more components of the mixture do not meet the conditions

laid down in [annex 2] to enable them to be considered as originating products;

- Simple assembly of parts of products to constitute a complete product;
- Disassembly;
- Slaughter which means the mere killing of animals;
- Mere dilution with water or another substance that does not materially alter the characteristics of the products.

For textiles and textile products listed in appendix C, a good will not be considered as originating in a Party by virtue of merely having undergone any of the following:

- Simple combining operations, labelling, pressing, cleaning or dry cleaning or packaging operations, or any combination thereof;
- Cutting to length or width and hemming, stitching or overlocking fabrics which are readily identifiable as being intended for a particular commercial use;
- Trimming and/or joining together by sewing, looping, linking, attaching of accessory articles such as straps, bands, beads, cords, rings and eyelets;
- One or more finishing operations on yarns, fabrics or other textile articles, such as bleaching, waterproofing, decanting, shrinking, mercerizing, or similar operations; or
- Dyeing or printing of fabrics or yarns.⁴³

Accumulation

A product which:

- Originates in one Party according to the provisions of AIFTA;
- Is worked or processed in another Party into a good which is eligible for preferential treatment under AIFTA;

will be considered to originate in the Party where the working or processing has taken place.⁴⁴

Product-specific rules of origin

AIFTA PSRO are currently not available. Annex 2, rule 6 provides that products which satisfy the PSRO shall be considered as originating from that Party where working or processing of the product has taken place.

⁴³ AIFTA TIG agreement, annex 2, Rule 7(b).

⁴⁴ AIFTA TIG agreement, annex 2, Rule 5.

Upon finalization, the list of PSRO will be contained in appendix B.

The ASEAN – China Free Trade Agreement (ACFTA)

Annex 3 of the Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between ASEAN and China sets out the rules of origin and the OCPs applicable to the products it covers.⁴⁵ In 2015 the Parties signed a Protocol by which annex 3 of the Agreement on Trade in Goods was substituted by annex 1 of the Protocol.⁴⁶

A good shall be treated as an originating good, and therefore eligible for preferential tariff treatment, if it is:

- (a) Wholly produced or obtained in a Party as provided in annex 1, article 3 of the Protocol;
- (b) Produced in a Party exclusively from originating materials from one or more of the Parties; or
- (c) Produced from non-originating materials in a Party, if it satisfies the requirements of annex 1, article 4 of the Protocol;

and it meets all other applicable requirements of annex 1 of the Protocol.⁴⁷

Wholly obtained or produced product

Pursuant to annex 1, article 3 of the Protocol, the following products are considered wholly produced or obtained:

- (a) Plants and plant products (including fruits, flowers, vegetables, trees, seaweed, fungi and live plants) grown, harvested, picked, or gathered in a Party;
- (b) Live animals born and raised in a Party;
- (c) Goods obtained from live animals in a Party without further processing, including milk, eggs, natural honey, hair, wool, semen and dung;
- (d) Goods obtained from hunting, trapping, fishing, aquaculture, gathering, or capturing in a Party;
- (e) Minerals and other naturally occurring substances extracted or taken from the soil,

waters, seabed or beneath the seabed in a Party;

- (f) Goods taken from the waters, seabed or beneath the seabed outside the territorial waters of that Party, provided that that Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with international law;
- (g) Goods of sea fishing and other marine products taken from the high seas by vessels registered with a Party or entitled to fly the flag of that Party;
- (h) Goods processed and/or made on board factory ships registered with a Party or entitled to fly the flag of that Party, exclusively from products referred to in paragraph (g) above;
- (i) Waste and scrap derived from production process or from consumption in a Party provided that such goods are fit only for the recovery of raw materials; or
- (j) Used goods consumed and collected in a Party provided that such goods are fit only for the recovery of raw materials;
- (k) Goods produced or obtained in a Party exclusively from products referred to in Subparagraphs (a) to (j) or from derivatives of the goods produced or obtained in the Party exclusively from products referred to in Subparagraphs (a) to (j).⁴⁸

Not wholly obtained or produced products

A good which is not wholly obtained or produced in a Party, and which is classified in chapters 25, 26, 28, 293, 314, 395, 42-49, 57-59, 61, 62, 64, 66-71, 73-83, 86, 88, 91-97 of the HS, will be treated as originating if all non-originating materials used in the production of the goods have undergone a CTC at the four-digit level (CTH). All other goods will be treated as originating if the good has an RVC of not less than 40 per cent of FOB and the final process of production is performed within a Party.

Annex 1, article 5 of the Protocol provides that the formula for the RVC is calculated as follows:

⁴⁵ ACFTA, article 5.

⁴⁶ See Protocol to Amend the ACFTA.

⁴⁷ ACFTA, annex 3, article 2.

⁴⁸ Footnotes omitted. For the purposes of [article 3], “in a Party” means: (i) for ASEAN member States, the land, territorial air space, territorial sea, exclusive economic zone, continental shelf, and areas beyond the territorial sea over which a member State exercises sovereign rights or jurisdiction, as the case may be, under respective domestic laws in accordance with international law, including the United Nations Convention on the Law of the Sea; (ii) for China, the entire customs territory of the People’s Republic of China, including land territory, territorial airspace, internal waters, territorial sea, and areas beyond the territorial sea within which China exercises sovereign rights or jurisdiction under its domestic laws, in accordance with international law; (iii) the above definitions are purely for the purpose of the implementation of article 3 of the annex of the rules of origin.

Where:

- *RVC* is the regional value content, expressed as a percentage.
- *VNM* is the value of the non-originating materials, determined as follows:
 - (i) In case of the imported non-originating materials, *VNM* shall be the CIF value of the materials at the time of importation;
 - (ii) In case of the non-originating materials obtained in a Party, *VNM* shall be the earliest ascertainable price paid or payable for the non-originating materials in that Party. The value of such non-originating materials shall not include freight, insurance, packing costs and any other costs incurred in transporting the material from the supplier's warehouse to the producer's location.
- If a product acquires originating status according to an *RVC* calculation, its non-originating component is not counted as non-originating material if the product is processed into another product in the same Party.
- The valuation shall be determined in accordance with the Agreement on Implementation of article VII of the General Agreement on Tariffs and Trade 1994 in annex 1A to the WTO Agreement (the Agreement on Customs Valuation).⁴⁹

Tolerance or de minimis

A good which is not wholly produced or obtained and which does not satisfy a CTC requirement, but meets all other applicable criteria in annex 1, will still be an originating good if it satisfies the following conditions:

- (a) For a good which is provided for in chapters 50 to 63 of the Harmonized System, either:
 - (i) The weight of all non-originating materials used in its production that did not undergo the required CTC does not exceed 10 per cent of the total weight of the good; or
 - (ii) The value of all non-originating materials used in the production of the good that did not

undergo the required CTC does not exceed 10 per cent of the FOB value of the good.⁵⁰

- (b) For all other goods: the value of all non-originating materials used in the production of the good that did not undergo the required CTC does not exceed 10 per cent of the FOB value of the good.

Insufficient working or processing

The following list of operations or processes, by themselves or together, are considered to be minimal and are therefore not taken into account in determining whether a good has been wholly obtained in a country:

- (a) Ensuring preservation of goods in good condition for the purposes of transport or storage;
- (b) Facilitating shipment or transportation;
- (c) Packaging or presenting goods for sale.⁵¹

Accumulation

Unless otherwise provided for in annex 1 of the Protocol, a good which originates in a Party and is used in another Party as materials for a finished good eligible for preferential tariff treatment, shall be treated as originating in the latter Party where working or processing of the finished good has taken place.⁵²

PSRO

The 472 PSRO of ACFTA are contained in attachment B to annex 1 of the Protocol. The PSRO comprise 59 exclusive rules/criteria (part A) and 413 alternative rules (part B). The exclusive rules/criteria include an *RVC* of not less than 40 per cent, *CTSH*, and other specific requirements. When applying for a *CO* for products listed under the alternative rules, an exporter can use either the general rule set out in annex article 4 of the Protocol, or the alternative rules.

Unlike the PSRO of other ASEAN FTAs, ACFTA alternative rules are sometimes clustered by the rule itself, not the HS code. The example of CTC is provided in the extracted table below.

⁴⁹ Protocol to Amend the ACFTA, annex 1, article 5 read with article 1.

⁵⁰ Protocol to Amend the ACFTA, annex 1, article 9.

⁵¹ Protocol to Amend the ACFTA, annex 1, article 7. "Packaging" excludes encapsulation, which is termed "packaging" by the electronics industry.

⁵² Protocol to Amend the ACFTA, annex 1, article 6.

Serial No.	HS chapter	Product description	Origin criteria
68	3006.10	Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or dental adhesion barriers, whether or not absorbable	Change to subheading 3006.10 from any other heading
69	4103.90	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment -dressed or further prepared), whether or not dehaired or split, other than those excluded by Note 1(b) or 1(c) to this chapter: - Other	Change to subheading 4103.90 from any other heading
70	7218.10	Ingots and other primary forms	Change to subheading 7218.10 from any other heading

Process criteria for textile and textile products are separated into the following categories:

- (a) Fibres and yarns;
- (b) Fabric/carpets and other textile floor coverings; special yarns, twine cordage and ropes and cables and articles thereof;
- (c) Article of apparel and clothing accessories and other made up textile articles.

Category (c) allows for alternative rules as follows:

- (a) Manufacture through the processes of cutting and assembly of parts into a complete article (for apparel and tents) and incorporating embroidery or embellishment or printing (for made-up articles) from:
 - raw or unbleached fabric;
 - finished fabric;

OR

- (b) Undergo a change in tariff classification at four-digit level, which is a change in tariff heading, of the Harmonized System;

The ASEAN – Japan Comprehensive Economic Partnership (AJCEP)

Rules of origin are provided for in chapter 3 of AJCEP.⁵³

Wholly obtained or produced products

Article 25 provides that the following goods will be considered as wholly obtained or produced entirely in a Party:

- (a) Plant and plant products grown and harvested, picked or gathered in the Party;

Note: For the purposes of this paragraph, the term “plant” refers to all plant life, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants.

- (b) Live animals born and raised in the Party;

Note: For the purposes of paragraphs (b) and (c), the term “animals” covers all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, bacteria and viruses.

- (c) Goods obtained from live animals in the Party;
- (d) Goods obtained from hunting, trapping, fishing, gathering or capturing conducted in the Party;
- (e) Minerals and other naturally occurring substances, not included in paragraphs (a) through (d), extracted or taken from soil, waters, seabed or beneath the seabed of the Party;
- (f) Goods taken from the waters, seabed or beneath the seabed outside the territorial waters of the Party, provided that the Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with its laws and regulations and international law;

Note: Nothing in [AJCEP] shall affect the rights and obligations of the parties under international law, including those under the United Nations Convention on the Law of the Sea.

- (g) Goods of sea-fishing and other marine products taken by vessels of the Party from outside the territorial sea of any Party;
- (h) Goods processed and/or made on board factory ships of the Party exclusively from products referred to in paragraph (g);
- (i) Articles collected in the Party which can no longer perform their original purpose or be restored or repaired, and are fit only for disposal, for the recovery of parts or raw materials, or for recycling purposes;
- (j) Scrap and waste derived from manufacturing or processing operations, including mining, agriculture, construction, refining, incineration and sewage treatment operations, or from consumption, in the Party, and fit only for disposal or for the recovery of raw materials;

⁵³ Available from <http://ajcep.asean.org/agreements/legal-text/>.

- (k) Goods obtained or produced in the Party exclusively from goods referred to in paragraphs (a) through (j).

Not wholly obtained or produced products

Article 26 provides that a good which is not wholly obtained or produced in a Party will still qualify as an originating good if:

- (a) The good has an RVC of less than 40 per cent and the final process of production has been performed in the Party; or
- (b) All non-originating materials used in the production of the good undergo a CTC at the 4-digit level (CTH) within the Party.

An exporter can decide whether to apply the RVC or CTC rule. Article 27 provides that RVC is calculated as follows:

$$RVC \text{ (per cent)} = \frac{FOB - VNM}{FOB} \times 100$$

Where:

- *FOB* is the free-on-board value of a good, inclusive of the cost of transport from the producer to the port or site of final shipment abroad:
 - If the free-on-board value of a good is unknown and cannot be ascertained, free-on-board will be the value adjusted to the first ascertainable price paid for a good from the buyer to the producer of the good.
 - If the good does not have a free-on-board value, the FOB will be determined in accordance with articles 1 through 8 of the Agreement on Implementation of article VII of the General Agreement on Tariffs and Trade 1994 in annex 1A to the WTO Agreement (the Agreement on Customs Valuation).
- *RVC* is the RVC of a good, expressed as a percentage.
- *VNM* is the value of non-originating materials used in the production of a good, determined in accordance with the Agreement on Customs Valuation:

- *VNM* includes freight, insurance, and where appropriate, packing and all other costs incurred in transporting the material to the importation port in the Party where the producer of the good is located.
- If the value of non-originating materials is unknown and cannot be ascertained, the *VNM* is the first ascertainable price paid for the material in the Party. This may exclude all the costs incurred in the Party in transporting the material from the warehouse of the supplier of the material to the place where the producer is located such as freight, insurance and packing as well as any other known and ascertainable cost incurred in the Party.
- *VNM* does not include the value of non-originating materials used in the production of originating materials of the Party which are used in the production of the good.

Tolerance or de minimis

A good which is not wholly obtained or produced, and which does not satisfy the requirements of the CTC rule, will nonetheless be considered originating if it meets all other requirements of chapter 3 and:

- (i) In the case of a good classified under chapters 16, 19, 20, 22, 23, 28 through 49, and 64 through 97 of the Harmonized System, the total value of non-originating materials used in the production of the good that have not undergone the required CTC does not exceed ten (10) per cent of the FOB;
- (ii) In the case of a particular good classified under chapters 18 and 21 of the Harmonized System, the total value of non-originating materials used in the production of the good that have not undergone the required CTC does not exceed ten (10) per cent or seven (7) per cent of the FOB as specified in annex 2; or
- (iii) In the case of a good classified under chapters 50 through 63 of the Harmonized System, the weight of all non-originating materials used in the production of the good that have not undergone the required CTC does not exceed ten (10) per cent of the total weight of the good.⁵⁴

However, the value of non-originating materials will be included in the VNM for the RVC rule.

⁵⁴ AJCEP, article 28.

Insufficient working+or processing

Article 30 provides that a good does not satisfy the CTC requirement or specific manufacturing or processing operation merely by reason of:

- (a) Operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine) and other similar operations;
- (b) Changes of packaging and breaking up and assembly of packages;
- (c) Disassembly;
- (d) Placing in bottles, cases, boxes and other simple packaging operations;
- (e) Collection of parts and components classified as a good pursuant to rule 2(a) of the General Rules for the Interpretation of the Harmonized System;
- (f) Mere making-up of sets of articles; or
- (g) Any combination of operations referred to in subparagraphs (a) through (f).

Accumulation

Originating materials of one Party used in the production of a good in another Party shall be considered as originating materials of the latter Party where the working or processing of the good has taken place.⁵⁵

PSRO

AJCEP PSRO are contained in annex 2 and apply to the majority of HS chapters. Requirements include that a product be wholly obtained and produced, an RVC of not less than 40 per cent, a CTC with or without exceptions, specific working or processing requirements and alternative rules. Where a PSRO provides a choice between an RVC rule, a CTC rule, a specific manufacturing or processing operation, or a combination of these, the exporter of the good can decide which rule to use.⁵⁶

For example, chapter 16 products must undergo a change in chapter, except for chapters 1 (live animals) and 2 (meat and edible meat offal).

HS chapter	Description	Origin criteria
Chapter 16	Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	Origin criteria
16.01	1610.00	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products
16.02		Other prepared or preserved meat, meat offal or blood
	1602.20	Of liver of any animal
		CC

Chapter 87 products must have an RVC of not less than 40 per cent.

HS chapter	Description	Origin criteria
Chapter 87	Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof	Origin criteria
8701.20	Road tractors for semi-trailers	RVC 40 per cent

Chapter 61 products must have undergone a change in tariff chapter. If the product uses non-originating materials listed in chapter 60 (knitted or crocheted fabrics) or in other specific tariff headings,⁵⁷ then such materials must meet a specific working or processing requirement – namely, they must be knitted or crocheted entirely in one or more of the AJCEP Parties.

HS chapter	Description	Origin criteria
Chapter 61	Articles of apparel and clothing accessories, knitted or crocheted	CC, provided that, where non-originating materials of heading 50.07, 51.11 through 51.13, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08.55.12 through 55.16 or chapter 60 are used, each of the non-originating materials is knitted or crocheted entirely in one or more of the parties

The ASEAN – Republic of Korea Free Trade Agreement (AKFTA)

The relevant rules of origin and OCPs under AKFTA are set out in annex 3 to the Agreement on Trade in Goods and its appendices.⁵⁸

Rule 2 of annex 3 provides that a good imported into the territory of a Party will be deemed to be originating and eligible for preferential tariff treatment if it:

- (a) Is wholly obtained or produced entirely in the territory of the exporting Party under rule 3; or
- (b) Otherwise eligible under rule 4 (not wholly obtained or produced goods), rule 5 (product-specific rules), rule 6 (treatment for certain goods) or rule 7 (accumulation).

⁵⁵ AJCEP, article 29.

⁵⁶ AJCEP article 26.

⁵⁷ For example, 50.07 (woven fabrics of silk or of silk waste); 51.11 (woven fabrics of carded wool or of carded fine animal hair); 54.07 (woven fabrics of synthetic filament yarn, and the like).

⁵⁸ See AKFTA TIG Agreement, article 5, available from http://www.customs.go.kr/kcshome/main/content/ContentView.do?contentId=CONTENT_ID_000002361&layoutMenuNo=23269.

Wholly obtained or produced products

Annex 3, rule 3 provides that the following products will be considered to be wholly obtained or produced in the territory of a Party:

- (a) Plants and plant products harvested, picked or gathered after being grown there;
- (b) Live animals born and raised there;
- (c) Goods obtained from live animals referred to in sub-paragraph (b);
- (d) Goods obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted there;
- (e) Minerals and other naturally occurring substances, not included in subparagraphs (a) through (d), extracted or taken from its soil, waters, seabed or beneath its seabed;
- (f) Products of sea-fishing taken by vessels registered with the Party and entitled to fly its flag, and other products taken by the Party or a person of that Party, from the waters, seabed or beneath the seabed outside the territorial waters of the Party, provided that the Party has the rights to exploit the natural resources of such waters, seabed and beneath the seabed under international law;
- (g) Products of sea fishing and other marine products taken from the high seas by vessels registered with the Party and entitled to fly its flag;
- (h) Goods produced and/or made on board factory ships registered with a Party and entitled to fly its flag, exclusively from products referred to in sub-paragraph (g);
- (i) Goods taken from outer space provided that they are obtained by the Party or a person of that Party;
- (j) Articles collected from there which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for the disposal or recovery of parts of raw materials, or for recycling purposes;
- (k) Waste and scrap derived from:

- (i) Production there; or
- (ii) Used goods collected there, provided that such goods are fit only for the recovery of raw materials;
- (l) Goods obtained or produced in the territory of the Party solely from goods referred to in subparagraphs (a) through (k).⁵⁹

Not wholly obtained or produced products

Goods produced from non-originating materials are deemed to be originating if the RVC is not less than 40 per cent of the FOB value or a good has undergone a CTC at the 4 digit-level (CTH).⁶⁰ Two methods for calculating RVC are allowed. The build-up method is based on the VOM and the build-down method is based on the VNM.

The build-up method is calculated as follows:

$$RVC \text{ (per cent)} = \frac{VOM}{FOB} \times 100$$

The build-down method is calculated as follows:

$$RVC \text{ (per cent)} = \frac{FOB - VNM}{FOB} \times 100$$

Where:

- VOM includes the value of originating materials, direct labour cost, direct overhead cost, transportation cost and profit.
- VNM is:
 - The CIF value at the time of importation of the materials, parts or goods; or
 - The earliest ascertained price paid for the materials, parts or goods of undetermined origin in the territory of the Party where the working or processing has taken place.
- FOB is the free-on-board value of the goods.

⁵⁹ Footnotes omitted. Under paragraph (f), the Parties understand that for the purposes of determining the origin of products of sea-fishing and other products, "rights" in sub-paragraph (f) of rule 3 include those rights of access to the fisheries resources of a coastal state, as accruing from agreements or other arrangements concluded between a Party and the coastal state at the level of governments or duly authorized private entities. "International law" in sub-paragraph (f) of rule 3 refers to generally accepted international law such as the United Nations Convention on the Law of the Sea.

⁶⁰ AKFTA TIG Agreement, annex 3, rule 4.

Tolerance or de minimis

A good which is not wholly obtained or produced and which does not undergo the required CTC will still be considered as originating if:

- (i) For a good, other than that provided for in chapters 50 through 63 of the Harmonized System, the value of all non-originating materials used in its production that do not undergo the required [CTC] does not exceed ten (10) per cent of the FOB value of the good;
- (ii) For a good provided for in chapters 50 through 63 of the Harmonized System, the weight of all non-originating materials used in its production that do not undergo the required [CTC] does not exceed 10 per cent of the total weight of the good;

and the good meets all other applicable criteria for qualifying as an originating good in annex 3. However, the value of non-originating materials will be included in the VNM for any applicable RVC requirement for the good.

Insufficient working or processing

A good is not considered as originating in the territory of a Party if the following operations are undertaken exclusively by themselves or in combination in the territory of that Party:

- (a) Preserving operations to ensure that the good remains in good condition during transport and storage;
- (b) Changes of packaging, breaking-up and assembly of packages;
- (c) Simple⁶¹ washing, cleaning, removal of dust, oxide, oil, paint or other coverings;
- (d) Simple painting and polishing operations;
- (e) Husking, partial or total bleaching, polishing and glazing of cereals and rice;
- (f) Operations to colour sugar or form sugar lumps;
- (g) Simple peeling, stoning, or un-shelling;
- (h) Sharpening, simple grinding or simple cutting;

- (i) Sifting, screening, sorting, classifying, grading, matching;
- (j) Simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (k) Affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (l) Simple mixing⁶² of products, whether or not of different kinds;
- (m) Simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (n) Simple testing or calibrations; or
- (o) Slaughtering of animals.⁶³

Accumulation

If a good originating in a Party is used in another Party as material for a finished good eligible for preferential tariff treatment, the material must be considered as originating in the latter Party where working or processing of the finished good has taken place.⁶⁴

PSRO

Goods that satisfy the PSRO provided in appendix 2 on 52 pages will be considered as originating. The PSRO include the good being wholly obtained, RVC requirements, CTSH with or without exceptions, specific working or processing requirements and alternative rules.

For example, chapter 16 products must satisfy varying requirements such as:

- (a) An RVC of not less than 40 per cent;
- (b) A CTSH from any other heading, provided that materials from chapter 1 (live animals), chapter 2 (meat and edible meat offal) and chapter 5 (products of animal origin not elsewhere specified or included) used in its production are wholly obtained or produced in the territory of the exporting Party, or

⁶¹ "Simple" generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity.

⁶² "Simple mixing" generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity. However, simple mixing does not include chemical reaction. Chemical reaction means a process (including a biochemical process) which results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

⁶³ AKFTA TIG Agreement, annex 3, rule 8. Slaughtering means the mere killing of animals and subsequent processes such as cutting, chilling, freezing, salting, drying or smoking, for the purpose of preservation for storage and transport.

⁶⁴ AKFTA TIG Agreement, annex 3, rule 7.

- (c) An RVC of not less than 40 per cent, provided that materials from chapters 1, 2 and 5 used in its production are wholly obtained or produced in the territory of the exporting Party.

HS chapter	Description	Origin criteria
Chapter 16	Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	
16.01	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products	A regional value content of not less than 40 per cent of the FOB value of the good
16.02	Other prepared or preserved meat, meat offal or blood	
1602.20	Of liver of any animal	Change to subheading 1602.20 from any other heading, provided that materials from chapters 1, 2 and 5 are wholly-obtained or produced in the territory of the exporting Party; or a regional value content of not less than 40 per cent of the FOB value of the good provided that materials from chapters 1, 2 and 5 are wholly obtained or produced in the territory of the exporting Party.

The PSRO for chapter 62 goods are also variable. They include

- (a) An RVC of not less than 40 per cent;
- (b) A CTH from any other chapter, provided that the product is both cut and sewn in the territory of the exporting Party;
- (c) A CTH from any other chapter, provided that materials under specific tariff headings used in the good's production originate in a Party and the product is both cut and sewn in the territory of the exporting Party.

HS chapter	Description	Origin criteria
Chapter 62	Articles of apparel and clothing, accessories, knitted or crocheted	
62.14	Shawls, scarves, mufflers, mantillas, veils and the like	Change to heading 62.14 from any other chapter, provided that the fabrics of 50.07, 51.11 through 51.13, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16, 58.01 through 58.02, 60.01 through 60.06 are originating and the good is both cut and sewn in the territory of the exporting Party; or a regional value content of not less than 40 per cent of the FOB value of the good
62.15	Ties, bow ties, and cravats	Change to heading 62.15 from any other chapter, provided that the good is both cut and sewn in the territory of any Party; or a regional value content of not less than 40 per cent of the FOB value of the good

Chapter 89 products must satisfy either an RVC of not less than 50 per cent (compared to the usual 40 per cent), or alternatively, a change to subheading 8907.10 from any other tariff heading.

HS chapter	Description	Origin criteria
Chapter 89	Ships, boats and floating structures	
89.07	Other floating structures (for example, rafts, tanks, cofferdams, landing-stages, buoys and beacons)	
8907.10	Inflatable rafts	Change to subheading 8907.10 from any other heading; or a regional value content of not less than 50 per cent of the FOB value of the good

The ASEAN – Hong Kong, China Free Trade Agreement (AHKFTA)

The relevant rules of origin under AHKFTA are set out in chapter 3 and annexes 3-1, 3-2 and 3-3 to the Agreement on Trade in Goods.⁶⁵

Article 3 provides that a good imported into the territory of a Party will be deemed to be originating and eligible for preferential tariff treatment if it is:

- (a) A good which is wholly obtained or produced in the exporting Party as set out in article 4 (wholly obtained or produced goods);
- (b) A good produced in the exporting Party exclusively from originating materials from one or more of the Parties; or
- (c) A good not wholly obtained or produced in the exporting Party, provided that the good is eligible under article 5 (not wholly obtained or produced goods).

Article 4 provides that the following products will be considered to be wholly obtained or produced in the territory of a Party:

- (a) Plants and plant products, including fruits, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked or gathered in a Party;
- (b) Live animals including mammals, birds, fish, crustaceans, molluscs, reptiles, bacteria and viruses, born and raised in a Party;
- (c) Goods obtained from live animals in a Party;
- (d) Goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing conducted in a Party;

- (e) Minerals and other naturally occurring substances, not included in subparagraphs (a) to (d), extracted or taken from the soil, waters, seabed or beneath the seabed in a Party;
- (f) Products of sea-fishing extracted or taken by vessels registered with the exporting Party and entitled to fly the flag of that Party, and minerals and other naturally occurring substances extracted or taken from the waters, seabed or beneath the seabed outside the waters of the exporting Party, provided that that Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with international law;
- (g) Products of sea-fishing and other marine products taken from the high seas by vessels registered with a Party and entitled to fly the flag of that Party;
- (h) Products processed or made on board factory ships registered with a Party or entitled to fly the flag of that Party, exclusively from products referred to in subparagraph (g);
- (i) Goods which are:
- (i) Waste and scrap derived from production and consumption in a Party, provided that such goods are fit only for the recovery of raw materials or for recycling purposes; or
 - (ii) Used goods collected in a Party, provided that such goods are fit only for the recovery of raw materials or for recycling purposes;
- (j) Goods obtained or produced in the exporting Party from products referred to in subparagraphs (a) to (i).

Not wholly obtained or produced products

Goods produced from non-originating materials are deemed to be originating if the RVC is not less than 40 per cent of the FOB value or a good has undergone a CTC at the 4 digit-level (CTH).⁶⁶ Two methods for calculating RVC are allowed. The build-up method is calculated as follows: the exporter can decide whether the RVC rule or the CTC rule applies, and RVC is calculated as follows:⁶⁷

Direct method:

$$RVC \text{ (per cent)} = \frac{\text{ASEAN Material Cost} + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Other Cost} + \text{Profit}}{\text{FOB Price}} \times 100$$

Indirect method:

$$RVC \text{ (per cent)} = \frac{\text{OB price} - \text{Value of Non Originating Material, Parts or Goods}}{\text{FOB Price}} \times 100$$

Where:

- *ASEAN Material Cost* is the cost, insurance and freight (CIF) value of originating materials used in the production of the good.
- *Direct Labour Costs* encompass wages, remuneration and additional benefits employees receive.
- *Direct Overhead Costs* are the real property items used in the production process, costs related to equipment, utilities, research and development, licences etc.
- *FOB Price* is the free-on-board value, with the addition of material and production costs, profit and additional expenses.

Tolerance or de minimis

- (a) A good that does not satisfy a CTC requirement shall be considered as originating if the value of all non-originating materials used in its production that do not undergo the required CTC does not exceed 10 per cent of the FOB value of the good and the good meets all other applicable criteria set forth in this chapter for qualifying as an originating good.
- (b) The value of non-originating materials referred to in paragraph 1 shall be included in the value of non-originating materials for any applicable RVC requirement for the good.⁶⁸

Insufficient working or processing

A good is not considered as originating in the territory of a Party if the following operations are undertaken exclusively by themselves or in combination in the territory of that Party:

- (a) Preserving operations to ensure that the good remains in good condition during transport and storage;
- (b) Changes of packaging, breaking-up and assembly of packages;

⁶⁶ AHKFTA Agreement, article 5.

⁶⁷ AHKFTA Agreement, article 6.

⁶⁸ AHKFTA Agreement, article 10.

- (c) Simple⁶⁹ washing, cleaning, removal of dust, oxide, oil, paint or other coverings;
- (d) Simple painting and polishing operations;
- (e) Husking, partial or total bleaching, polishing and glazing of cereals and rice;
- (f) Operations to colour sugar or form sugar lumps;
- (g) Simple peeling, stoning, or un-shelling;
- (h) Sharpening, simple grinding or simple cutting;
- (i) Sifting, screening, sorting, classifying, grading, matching;
- (j) Simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (k) Affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging.

Accumulation

Unless otherwise provided in this Agreement, a good which complies with the origin requirements provided herein and which is used in another Party as a material for a finished good eligible for preferential tariff treatment shall be considered to be originating in the latter Party where working or processing of the finished goods has taken place.⁷⁰

PSRO

Goods that satisfy the PSRO provided in appendix 3-2 on 19 pages will be considered as originating, for the most part these apply for wholly obtained goods. Appendix 3-3 contains additional PSRO to be reviewed which do not contain any origin criteria yet. The PSRO include the good being wholly obtained, CTH and RVC requirements.

⁶⁹ "Simple" means an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity.

⁷⁰ AHKFTA Agreement, article 7.

V. ADMINISTRATIVE REQUIREMENTS FOR THE APPLICATION OF PREFERENTIAL TREATMENT

A. Key elements in the ASEAN free trade agreements

Administrative requirements detail the actions and documentation necessary to support a claim of eligibility for preferential treatment. This may include the CO, the OCPs, third country invoicing and the back-to-back CO as illustrated in table 5 below.

B. Certificates of origin

A CO serves to attest that a good in a particular export shipment is wholly obtained, produced, manufactured or processed in a particular country. In other words, it is evidence that a product satisfies the rules of origin of a certain FTA.⁷¹

Every FTA specifies the entity which may issue the CO and whether notification to other Parties is required.

Table 5 Definitions

Administrative requirements	Indicate what specific actions and documentation are required to support a claim of being eligible for preferential treatment
CO	Document attesting that a product satisfies rules of origin of a certain FTA
OCPs	Sets of procedures for the issuing and use of a CO as well as for verifying that origin requirements have been met
Third country invoicing	Instrument allowing originating goods, which are exported to an FTA member country, to qualify for preferential tariff treatment, even if the accompanying sales invoice is issued by a company located in a non-FTA member country or by an exporter in an FTA member country for the account of the company
Back-to-back CO	Document issued by an intermediate exporting FTA partner country based on the original CO issued by the first exporting FTA partner country

⁷¹ Specimens of COs are available as follows: ATIGA, annex 7: <http://investasean.asean.org/files/upload/Annex%207.pdf>; AANZFTA: <https://www.homeaffairs.gov.au/Freetradeagreements/Documents/aanzftacoform.pdf>; AIFTA, annex to chapter 3 (OCP): <http://www.asean.org/wp-content/uploads/images/2012/Economic/AEM/document/Doc-ASEAN-India-OCP.pdf>; ACFTA, attachment C: <http://www.asean-cn.org/index.php?m=content&c=index&a=show&catid=274&id=97>; AJCEP: http://www.mofa.go.jp/ecm/ep/page22e_000383.html; and AKFTA: <http://akfta.asean.org/uploads/docs/akfta-certificate-of-origin-form.pdf>.

Table 6 compares administrative requirements under the ASEAN FTAs, including the issuing entities for a CO and whether notification to other member States is required.

Table 6 Issuance of COs and notification

Agreement	CO issued by	Details to be provided
ATIGA	Issuing authority means the Government authority of the exporting member State designated to issue a certificate of origin (form D) and notified to all the other member States in accordance with this annex ^a	Each member State shall provide a list of the names, addresses, specimen signatures and specimen of official seals of its issuing authorities, in hard copy and soft copy format, through the ASEAN secretariat for dissemination to other member States in soft copy format. Any change in the said list shall be promptly provided in the same manner. The specimen signatures and official seals of the issuing authorities, compiled by the ASEAN secretariat, shall be updated annually. Any certificate of origin (form D) issued by an official not included in the list referred to in paragraph 1 shall not be honoured by the receiving member State. ^b
ACFTA	The certificate of origin (form E) shall be issued by the issuing authorities of the exporting Party. ^c	A Party shall inform all the other Parties of the names and addresses of its respective issuing authorities and shall provide specimen signatures and specimen of official seals, and correction stamps, if any, used by its issuing authorities. The above information and specimens shall be provided to all the other Parties to the Agreement and a copy furnished to the ASEAN secretariat. A Party shall promptly inform all the other Parties of any changes in names, addresses, or official seals in the same manner. ^d
AANZFTA	the certificate of origin shall be issued by an issuing authority/body of the exporting Party. Details of the issuing authorities/bodies shall be notified by each Party, through the ASEAN Secretariat, prior to the entry into force of this Agreement. Any subsequent changes shall be promptly notified by each Party, through the ASEAN secretariat. ^e	the issuing authorities/bodies shall provide the names, addresses, specimen signatures and specimens of the impressions of official seals of their respective issuing authorities/bodies to the other Parties, through the ASEAN secretariat. The issuing authorities/bodies shall submit electronically to the ASEAN secretariat the above information and specimens for dissemination to the other Parties. Any subsequent changes shall be promptly notified through the ASEAN secretariat. Any certificate of origin issued by a person not included in the list may not be honoured by the customs authority of the importing Party. ^f
AIFTA	The AIFTA certificate of origin shall be issued by the government authorities (issuing authority) of the exporting Party. ^g	Each Party shall provide 11 original sets of, or through electronic means, specimen signatures and specimen of official seals used by their issuing authorities, including their names and addresses, through the ASEAN secretariat for dissemination to the other Parties. Any change in names, addresses, specimen signatures or official seals shall be promptly informed in the same manner or electronically. ^h
AJCEP	The competent governmental authority of the exporting Party shall, upon request made in writing by the exporter or its authorized agent, issue a CO or, under the authorization given in accordance with the applicable laws and regulations of the exporting Party, may designate other entities or bodies (hereinafter referred to as "designees") to issue a CO. ⁱ	Each Party shall provide the other Parties with a list of names and addresses, and a list of specimen signatures and specimen of official seals or impressions of stamps for the issuance of a CO, of its competent governmental authority and, if any, its designees. Any CO bearing a signature not included in the list referred to in paragraph 2 shall not be valid. ^j
AKFTA	Issuing authority means the competent authority designated by the government of the exporting Party to issue a certificate of origin and notified to all the other Parties in accordance with this appendix. ^k	Each Party shall provide the names, addresses, specimen signatures and specimen of official seals of its issuing authorities to all the other Parties, through the ASEAN secretariat. Any change in the said list shall be promptly provided in the same manner. ^l
AHKFTA	A claim that a good is eligible for preferential tariff treatment shall be supported by a certificate of origin (form AHK) issued by an issuing authority designated by the exporting Party and notified to the other Parties in accordance with annex 3-1 (operational certification procedures). ^m	Each Party shall inform all other Parties of the names and addresses of its respective issuing authorities and shall provide specimen signatures, specimen of official seals and specimen of correction stamps, if any, used by its issuing authorities. The information in paragraph 1 of a Party shall be provided by its contact point electronically to all other Parties through the ASEAN Secretariat and, to the extent possible, one month before they take effect. A Party shall promptly inform all other Parties of any change in names, addresses, or official seals in the same manner. ⁿ

OCPs prescribe how a CO must be issued and used, and how to verify that a product meets the applicable origin criteria. Table 7 compares the different forms used in each ASEAN FTA and table 8 specifies the location

and content of the OCPs. The OCPs of the ASEAN FTAs with respect to filling out a CO, verification visits, action against fraudulent acts and record keeping are compared below

^a ATIGA annex 8 rule 1. In addition, pilot programs for self-certification have been implemented, see: <https://www.asean.org/storage/images/2015/October/outreach-document/Edited%20ROO%20Self%20Certification.pdf>.
^b ATIGA annex 8 rule 2.
^c ACFTA appendix A attachment A rule 2.
^d ACFTA appendix A attachment A rule 3.
^e AANZFTA appendix 2 section B rule 1.
^f AANZFTA appendix 2 section B rule 2.
^g AIFTA appendix D rule 1.
^h AIFTA appendix D rule 2.
ⁱ AJCEP annex 2 rule 2.
^j AJCEP annex 4 rule 2.
^k AKFTA appendix 1 rule 1.
^l AKFTA appendix 1 rule 2.
^m AHKFTA article 15.
ⁿ AHKFTA annex 3-1, rule 2.

Table 7 Certificates of origin: format and distribution of copies

	ATIGA ^a	AANZFTA ^b	AIFTA ^c	ACFTA ^d	AJCEP ^e	AKFTA ^f	AHKFTA ^g
Name of the form	Form D	Form AANZ	Form AI	Form E	Form AJ	Form AK	Form AHK
Specimen	Annex 7 of ATIGA	Attachment of AANZFT Minimum data requirements in Appendix 2	Attachment D of AIFTA	Attachment Appendix 1 of 2015 amendment to ACFTA	Attachment to annex 4 of AJCEP, revised version published 2014	Attachment of AKFTA	Appendix to annex 3-1
Format	ISO A4 size white paper	Hardcopy; in English	ISO A4 size, white paper; in English	ISO A4 size paper; in English	In English	A4 paper; in English	Hardcopy; in English;
Copies	1 original; 2 carbon copies	1 original; 2 copies	1 original; 3 copies	1 original; 2 copies	In the case of a Party which is an ASEAN member State: 1 original, 2 copies In the case of Japan: original only	1 original; 2 copies The colours of the original and the copies shall be mutually agreed upon by the parties.	1 original; 2 copies
Distribution of copies	Original forwarded by exporter to importer for the submission to customs authority. Duplicate retained by issuing authority. Triplicate retained by exporter.	Original forwarded, together with the triplicate, by exporter to importer. The original submitted by importer to the customs authority at the port or place of importation. The duplicate retained by the issuing authority in the exporting Party. The triplicate retained by importer. The quadruplicate retained by exporter.	Original forwarded, together with the triplicate, by exporter to importer. The original submitted by importer to the customs authority at the port or place of importation. The duplicate retained by the issuing authority in the exporting Party. The triplicate retained by importer. The quadruplicate retained by exporter.	Original forwarded, by exporter to importer for submission to the customs authority Duplicate retained by issuing authority. Triplicate retained by exporter.	Original forwarded by the exporter to importer for submission to customs authority of importing Party. In the case of a Party which is an ASEAN member State, a copy of the CO is to be retained by both the exporter and the competent governmental authority of the exporting Party or its designees, respectively.	Original forwarded by the producer and/or exporter to importer for submission to the customs authority of the importing Party. The duplicate retained by issuing authority of the exporting Party. The triplicate retained by producer and/or exporter.	Original forwarded by the exporter to importer for submission to customs authority of importing Party. Copies shall be retained by the issuing authority and the exporter.

^a Annex 8, <http://investasean.asean.org/files/upload/Annex%208.pdf>.

^b Appendix 2, <http://aanzfta.asean.org/wp-content/uploads/2017/02/AANZFTA-First-Protocol-Appendix-2B2.pdf>.

^c Annex 2, Appendix D <http://www.asean.org/wp-content/uploads/images/2012/Economic/AEM/document/Doc-ASEAN-India-AppendicesC&D.pdf>.

^d See <http://www.asean.org/storage/images/archive/documents/acfta/Appendix1-101125.pdf>.

^e See <http://www.mofa.go.jp/policy/economy/fta/asean/implement.pdf>.

^f Appendix, <http://akfta.asean.org/uploads/docs/akfta-operational-certification-procedures.pdf>.

^g Annex 3-1, [https://fta.miti.gov.my/mitifta/resources/ASEAN%20-%20Hong%20Kong,%20China/AHKFTA_and_Annexes_AHKFTA_Agreement_\(Final\)_11.11.17_.pdf](https://fta.miti.gov.my/mitifta/resources/ASEAN%20-%20Hong%20Kong,%20China/AHKFTA_and_Annexes_AHKFTA_Agreement_(Final)_11.11.17_.pdf).

C. Operational certification procedures

OCPs are sets of procedures for the issuing and use of a CO and for verifying that origin requirements have been met.

Table 8 Specific operational certification procedures

ASEAN FTA	Provision	Content of OCPs	ASEAN FTA	Provision	Content of OCPs
ATIGA	Annex 8 ^a	Definitions Specimen signatures and official seals of the issuing authorities Supporting documents Pre-exportation verification Application for CO Examination of application for a CO CO (form D) Declaration of origin criterion Treatment of erroneous declaration in the CO Issuance of the CO Verification visit	AJCEP	Annex 4 ^e	Definitions Issue of certification of origin Presentation of CO Validity of CO Record keeping Verification Verification visit Determination of origin and preferential tariff treatment Confidentiality Appropriate penalties or other measures against fraudulent acts Implementing regulations
AANZFTA	Annex to chapter 3 (Operational Certification Procedures) ^b	Authorities Applications Pre-exportation examination Issuance of certification of origin Presentation Origin verification Verification visit Suspension of preferential tariff treatment Action against fraudulent acts Goods in transport or storage Settlement of disputes	AKFTA	Annex 3 ^f	Definitions Issuing authorities Issuance of certification of origin Presentation Record keeping requirement Verification (verification visit) Denial of preferential tariff treatment Special cases Action against fraudulent acts Custom contact point
AIFTA	Annex 2, Appendix D ^c	Authorities Applications Pre-exportation examination Issue of AIFTA certification of origin Presentation Verification Special cases Action against fraudulent acts	AHKFTA	Annex 3-1 ^g	Definitions Specimen signatures and official seals of the issuing authorities Supporting documents Pre-exportation verification Application for certificate of origin (form AHK) Certificate of origin (form AHK) Treatment of erroneous declaration in the certificate of origin (form AHK) Issuance of the certificate of origin (form AHK) Movement confirmation Loss of the certificate of origin (form AHK) Presentation of the certificate of origin (form AHK) Validity period of the certificate of origin (form AHK) Waiver of certificate of origin (form AHK) Treatment of minor discrepancies Record keeping requirement Retroactive check Verification visit Confidentiality Documentation for implementing Exhibition goods Third party invoicing Action against fraudulent acts
ACFTA	Amending Protocol, attachment A ^d	Definitions Issuing authorities Applications Pre-exportation examination Issue of certification of origin (form E) Presentation Record keeping requirement Special cases Action against fraudulent acts Contact points			

^a Available from <http://investasean.asean.org/files/upload/Annex%208.pdf>.

^b Available from <http://aanzfta.asean.org/annex-on-operational-certification-procedures/>.

^c Available from <https://www.iesingapore.gov.sg/~media/IE%20Singapore/Files/FTA/Existing%20FTA/ASEAN%20India%20FTA/Legal%20Text/Appendix20C20Single20List20of20Textiles2020Textile20Products20Appendix20D20Operational20Certification20Procedures.pdf>.

^d Available from <http://asean.org/storage/2012/10/Protocol-to-Amend-the-Framework-Agreement-ACFTA-Complete.pdf>.

^e Available from <http://www.mofa.go.jp/policy/economy/fta/asean/annex4.pdf>.

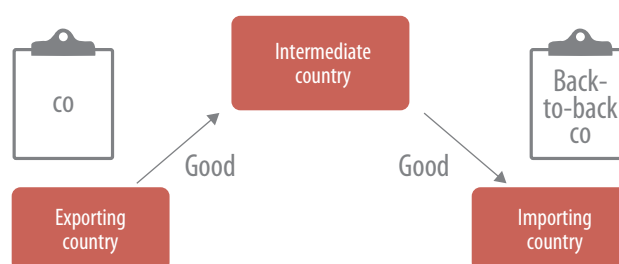
^f Available from http://www.customs.go.kr/kcshome/main/content/ContentView.do?contentId=CONTENT_ID_000002361&layoutMenuNo=23269.

^g Available from [https://fta.miti.gov.my/miti-fta/resources/ASEAN%20-%20Hong%20Kong,%20China/AHKFTA_and_Annexes_AHKFTA_Agreement_\(Final\)_11.11.17_.pdf](https://fta.miti.gov.my/miti-fta/resources/ASEAN%20-%20Hong%20Kong,%20China/AHKFTA_and_Annexes_AHKFTA_Agreement_(Final)_11.11.17_.pdf).

D. Back-to-back certificate of origin

As illustrated in figure 2 below a back-to-back CO is a new CO issued by an intermediate exporting FTA partner country based on the original CO issued by the first exporting FTA partner country. The back-to-back CO enables a company to ship its goods to an intermediate FTA partner country for trading or logistical purposes before re-exporting the goods to other FTA partner countries, while still retaining the origin status of the first exporting FTA partner country and the corresponding preferential tariff treatment of the goods. The good is allowed to undergo operations such as bulk breaking and other necessary operations to facilitate the transport without losing its originating status. Note that ACFTA and AHKFTA do not provide for the issuance of back-to-back COs.

Figure 2
Back-to-back CO



An application for a back-to-back CO is made by the exporter. If the applicable conditions under the relevant FTA are met, the issuing authority of the intermediate Party will agree to issue a back-to-back CO while the product is passing through that Party's territory. Table 9 compares the conditions for the issuance of a back-to-back CO in the different FTAs.

Table 9 Comparison of back-to-back CO conditions

ASEAN FTA	Rule/article	Back-to-back CO
ATIGA	Annex 8, rule 10	Upon application by an exporter, the issuing authority of an intermediate member State may issue a back-to-back CO if the following conditions are met: <ol style="list-style-type: none"> A valid original CO (form D) or certified true copy is presented. The back-to-back CO issued contains some of the same information as the original CO. Every column in the back-to-back CO should be completed. The FOB price of the intermediate member State in Box 9 is reflected in the back-to-back CO. For partial export shipments, the partial export value is shown instead of the full value of the original CO. The intermediate member State will ensure that the total quantity re-exported under the partial shipment does not exceed the total quantity of the CO from the first member State when approving the back-to-back CO to the exporters If information is not complete and/or circumvention is suspected, the final importing member State(s) could request that the original CO is submitted to their respective customs authority. Verification procedures (see rules 18 and 19) are applied to the member State issuing the back-to-back CO.
AANZFTA	Annex to chapter 3 (operational certification procedures), rule 10(3S)	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: <ol style="list-style-type: none"> A valid original CO or its certified true copy is presented. The period of validity of the back-to-back CO does not exceed the period of validity of the original CO. The consignment which is to be re-exported using the back-to-back CO does not undergo any further processing in the intermediate Party. Exceptions are 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. The back-to-back CO contains relevant information from the original CO in accordance with the minimum data requirements in Appendix 2 to the annex on OCPs. The FOB value is the FOB value of the goods exported from the intermediate Party. The verification procedures in rules 17 and 18 of the annex on OCPs also apply to the back-to-back CO.
AIFTA	Annex 2, appendix D, article 11	Upon application by an exporter while a product is passing through an intermediate Party's territory, the issuing authority of the intermediate Party may issue a back-to-back CO if the following conditions are met: <ol style="list-style-type: none"> A valid AIFTA CO from the original exporting Party is presented only to the Issuing Authority of the intermediate Party. The importer of the intermediate Party and the exporter who applies for the back-to-back AIFTA CO in the intermediate Party are the same. Validity of the back-to-back AIFTA CO has the same end date as the original AIFTA CO. The originating products re-exported could either be full or part of the original consignment. The consignment which is to be re-exported using the back-to-back AIFTA CO must not undergo any further processing in the intermediate Party, except for repacking and logistics activities consistent with annex 2, rule 8 of AIFTA (rules of origin). The product shall remain in the intermediate Party's customs territory, including its free-trade zones and bonded areas approved by the customs. The product shall not enter into trade or consumption in the intermediate Party. Information on the back-to-back AIFTA CO includes the name of the Party which issued the original AIFTA CO, date of issuance and reference number. Verification procedures are applied. The original exporting Party, the intermediate Party and the importing Party shall cooperate in the process of verification. The AIFTA CO issued by the original exporting Party shall be given to the customs authority of the importing Party if the customs authority requests it during the process of verification.
ACFTA	N/A	ACFTA does not provide for back-to-back COs.
AJCEP	Annex 4, rule 3(4)	An intermediate Party may issue a back-to-back CO upon request by the exporter in the importing Party or its authorized agent with presentation of the valid original CO. Where a valid back-to-back CO is issued, "an originating good of the exporting Party" shall be construed as an originating good of the Party whose competent governmental authority or its designees has issued the original CO.
AKFTA	Annex 3, appendix 1, rule 7	The issuing authority of the intermediate Party may issue a back-to-back certificate of origin, if an application is made by the exporter while the good is passing through its territory, if the following conditions are met: <ol style="list-style-type: none"> A valid original CO is presented. The importer of the intermediate Party and the exporter who applies for the back-to-back CO in the intermediate Party are the same. Verification procedures as set out in annex 3, Appendix 1, rule 14, are applied.
AHKFTA	N/A	AHKFTA does not provide for back-to-back COs.

Note that originating status of the goods can be retained for as long as 12 months with this specific arrangement; original form AK (six months) plus back-to-back form AK (six months). Available from <http://akfta.asean.org/uploads/docs/akfta-operational-certification-procedures.pdf>, <http://akfta.asean.org/uploads/docs/akfta-certificate-of-origin-form.pdf>.

E. Third country invoicing

Third country invoicing is an adaptation to business practices of trading through agents. It is a procedure which allows originating goods exported to an FTA member country with a preferential CO to qualify for preferential tariff treatment even if the accompanying sales invoice is issued by:

- (a) A company located in a non-FTA member country; or
- (b) An exporter in an FTA member country for the account of the company (see figure 3).

This arrangement helps manufacturers who have limited market access and facilitates trade among FTA member countries.

A CO accompanied by a third country invoice will only be approved if the exporter of the goods indicates

“third country invoicing” and information such as the name and country of the company issuing the invoice in the CO. Table 10 sets out the third-party invoicing provisions in each ASEAN FTA.

Figure 3
Third country invoicing

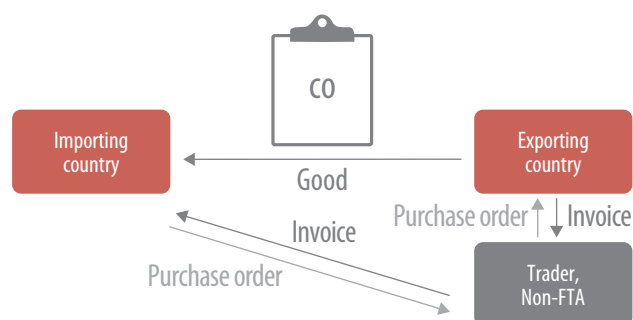


Table 10 Third country invoicing

ASEAN FTA	Rule/article	Third country invoicing
ATIGA	Annex 8, rule 23	<ol style="list-style-type: none"> 1. Relevant Government authorities in the importing member State shall accept certificates of origin (form D) in cases where the sales invoice is issued either by a company located in a third country or by an ASEAN exporter for the account of the said company, provided that the goods meet the requirements of chapter 3 of this Agreement. 2. The exporter shall indicate “third country invoicing” and such information as name and country of the company issuing the invoice in the certificate of origin (form D).
AANZFTA	Annex on OCPs to chapter 3 (rules of origin) as amended by the First Protocol, rule 22	<ol style="list-style-type: none"> 1. The customs authority of the importing Party may accept certificates of origin in cases where the sales invoice is issued either by a company located in a third country or by an exporter for the account of that company, provided that the goods meet the requirements of chapter 3 (rules of origin). 2. The words “SUBJECT OF THIRD-PARTY INVOICE (name of company using the invoice)” shall appear on the certificate of origin.
AIFTA	Annex 2, appendix D, article 22	The customs authority in the importing Party shall accept an AIFTA certificate of origin where the sales invoice is issued either by a company located in a third country or an AIFTA exporter for the account of the said company, provided that the product meets the requirements of the AIFTA rules of origin.
ACFTA	Amending Protocol, annex 1, attachment A, rule 23	The customs authority of the importing Party shall accept a certificate of origin (form E) in cases where the sales invoice is issued either by a company located in a third country or by an ACFTA exporter for the account of the said company, provided that the product meets the requirements of the rules of origin for the ACFTA. The invoice-issuing third party can be an ACFTA Party or non-ACFTA Party. The original invoice number or the third-party invoice number shall be indicated in box 10 of the certificate of origin (form E), the exporter and consignee must be located in the Parties and the third-party invoice shall be attached to the certificate of origin (form E) when presenting the said certificate of origin (form E) to the customs authority of the importing Party.
AJCEP	Annex 4, rule 3(1)	For the purposes of claiming preferential tariff treatment, the following shall be submitted to the customs authority of the importing Party by the importer: <ol style="list-style-type: none"> (a) A valid CO; (b) Other documents as required in accordance with the laws and regulations of the importing Party (e.g. invoices, including third country invoices, and a through bill of lading issued in the exporting Party).
AKFTA	Annex 3, appendix 1, rule 21	<ol style="list-style-type: none"> 1. Customs authority in the importing Party may accept certificates of origin in cases where the sales invoice is issued either by a company located in a third country or by an exporter for the account of the said company, provided that the good meets the requirements of annex 3. 2. The exporter of the goods shall indicate “third country invoicing” and such information as name and country of the company issuing the invoice in the certificate of origin.
AHKFTA	Annex 3-1, rule 22	<ol style="list-style-type: none"> 1. The competent authority of the importing Party shall accept certificates of origin (form AHK) in the case where the sales invoice is issued either by a company located in a third party or by an exporter for the account of the said company, provided that the goods meet the requirements of this chapter. 2. The exporter shall indicate “third-party invoicing” and such information as name and country/party of the company issuing the invoice in the certificate of origin (form AHK).

F. Practical advice on documentary requirements

In general, there are three conditions that a good sent to an FTA member Party must fulfil to enjoy preferential tariffs under that FTA. First, the exported good must be eligible for concessions in the country of destination. Second, it must comply with consignment conditions (direct consignment is required).⁷² Third, goods must comply with the origin

criteria provided for in the relevant agreement. In addition, each item claiming preferential tariff treatment must qualify for preferential treatment in its own right, meaning that all the goods must qualify separately. This is of particular relevance when similar articles of different sizes or spare parts are exported. Most agreements require a CO only if the consignment from the exporting member State exceeds the value of \$200 FOB. Table 11 indicates the relevant provision on documentary requirements for each ASEAN FTA.

Table 11 Threshold for CoO requirement

	<i>CoO requirement over \$200,00 FOB threshold</i>
ATIGA	Annex 8, rule 15
AANZFTA	Annex on OCPs to chapter 3, rule 14
AIFTA	–
ACFTA	Amending Protocol, attachment A, rule 16
AJCEP	Annex 4, rule 3
AKFTA	Rule 11 of appendix 1 to annex 3
AHKFTA	Annex 3-1, rule 14

Exporters must formally apply to the Issuing Authority for preferential treatment in the export process under the relevant FTA. The ASEAN Tariff Finder can provide useful information on the requirements for particular goods.⁷³ Exporters must provide supportive information on the good to be exported, such as information on the exporter, a full description of the good, shipment specifics and a declaration by the exporter about the truthfulness of the statement.

Content of a CO

A CO contains 13 boxes to be filled out by the importing country (box 4), the exporter and the certifying country (reference number, box 12). Figure 4 shows, by way of example, the ATIGA CO (form D). The issuing authority provides a reference number for each CO which indicates the place and office of issuance. In form AANZ it is referred to as the certificate number.

⁷² ATIGA: article 32 of chapter 3; AANZFTA: article 14; AIFTA: rule 8; ACFTA: rule 8; AJCEP: article 31; AKFTA: rule 9 of annex 3.

⁷³ Available from <http://tariff-finder.asean.org/>.

Figure 4
Specimen CO for ATIGA

1. Goods consigned from (Exporter's business name, address, country)		Reference No. ASEAN TRADE IN GOODS AGREEMENT/ ASEAN INDUSTRIAL COOPERATION SCHEME CERTIFICATE OF ORIGIN (Combined Declaration and Certificate) FORM D Issued in _____ (Country) See Overleaf Notes			
2. Goods consigned to (Consignee's name, address, country)					
3. Means of transport and route (as far as known) Departure date Vessel's name/Aircraft etc. Port of Discharge		4. For Official Use <input type="checkbox"/> Preferential Treatment Given Under ASEAN Trade in Goods Agreement <input type="checkbox"/> Preferential Treatment Given Under ASEAN Industrial Cooperation Scheme <input type="checkbox"/> Preferential Treatment Not Given (Please state reason/s) Signature of Authorised Signatory of the Importing Country			
5. Item number	6. Marks and numbers on packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Overleaf Notes)	9. Gross weight or other quantity and value (FOB)	10. Number and date of invoices
11. Declaration by the exporter The undersigned hereby declares that the above details and statement are correct; that all the goods were produced in (Country) and that they comply with the origin requirements specified for these goods in the ASEAN Trade in Goods Agreement for the goods exported to (Importing Country) Place and date, signature of authorised signatory			12. Certification It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. Place and date, signature and stamp of certifying authority		
13 <input type="checkbox"/> Third Country Invoicing <input type="checkbox"/> Exhibition <input type="checkbox"/> Accumulation <input type="checkbox"/> De Minimis <input type="checkbox"/> Back-to-Back CO <input type="checkbox"/> Issued Retroactively <input type="checkbox"/> Partial Cumulation					

Source: ATIGA TIG Agreement, annex 7.

Box 1 must contain the exporter details. The name, address and country of the exporter must be identified to specify where goods are consigned from. To indicate where goods are sent to, box 2 has to be filled with the consignee's name, address and country. As far as is known, the shipment details, including the departure date, vessel name/aircraft, and the like, as well as port of discharge, must be given in box 3.

Box 4 must contain the signature of the authorized signatory of the importing country. Whether preferential treatment is accorded under the specific agreement must be indicated in box 4. The item number must be inserted in box 5 and the marks and numbers on packages detailed in box 6.

The number and type of packages, and a description of the goods, must be included in box 7. The HS number (of the importing Party) and quantity must be included where appropriate. The description of products must be sufficiently detailed to enable the products to be identified by the customs officers examining them. The name of the manufacturer and any trademark must also be specified. AANZFTA and AJCEP require indication at a 6-digit level.⁷⁴

Box 8 concerns the relevant origin-conferring criteria. An exporter must indicate the origin criteria met, according to the requirements in the relevant FTA. Table 12 outlines how the indications in box 8 must be made under each ASEAN FTA.

Table 12 Origin criteria: entries required in box 8

	ATIGA	AANZFTA	AIFTA	ACFTA	AJCEP	AKFTA	AHKFTA
Goods wholly obtained or produced	WO	WO	WO	WO	WO	WO	WO
Goods entirely produced	Not included	PE	Not included	Not included	PE	Not included	Not included
Regional value content	Percentage of regional value content, e.g. 40 per cent	RVC	Not included	Percentage of single country content, ^a e.g. 40 per cent. Percentage of ACFTA cumulative content, ^b e.g. 40 per cent	RVC	RCV 40 per cent	RVC 40 per cent
Change in tariff classification	The actual CTC rule, e.g. CC, CTH or CTSH	CTC, whether on chapter, heading or subheading level, no need to place actual tariff shift	Not included	Not included	CTC	CTH	CC; CTH or CTSH
Specific processes	SP	Not included	Not included	Not included	SP	Specific processes	
Combination criteria	Actual combination criterion, e.g. CTSH + 35 per cent	CTSH + RVC, actual PSE needs to be inserted	RVC [] per cent + CTSH	Not included	CTH or RVC	CTH or RVC 40 per cent	CTC + RVC 40 per cent
Product specific requirement	Not included	"Other" for PSR included in annex 2	Appropriate qualifying criteria	PSR	Not included	CTC WO-AK ^c RVC, e.g. RVC 45 per cent Combination rule that needs to be met for good to qualify as originating, e.g. CTH + RVC 40 per cent Specific processes rule 6 ^d	
Partial cumulation (PC)	PC X per cent, where X would be the percentage of regional value content of less than 40 per cent, e.g. PC 25 per cent	Not included	Not included	Not included	Not included	Not included	Not included
De minimis Accumulation	Not included	Not included	Not included	Not included	DMI ACU	Not included	Not included

⁷⁴ AJCEP: With respect to subheading 2208.90 and 9404.90, in an exceptional case where the good is a specific product requiring a special description (for example, "sake compound and cooking sake (Mirin) of subheading 2208.90", "beverages with a basis of fruit, of an alcoholic strength by volume of less than 1 per cent of subheading 2208.90", "quilts and eiderdowns of 9404.90") such description of specific products should be indicated.

^a For the purpose of implementing the provisions of rule 2 (b) of the ACFTA rules of origin, products worked on and processed as a result of which the total value of the materials, parts or produce originating from non-ACFTA member States or of undetermined origin used does not exceed 60 per cent of the FOB value of the product produced or obtained and the final process of the manufacture is performed within the territory of the exporting Party.

^b Products which comply with origin requirements provided for in rule 2 of the ACFTA rules of origin and which are used in a Party as inputs for a finished product eligible for preferential treatment in another/other Party/Parties shall be considered as a product originating in the member State where working or processing of the finished product has taken place, provided that the aggregate ACFTA content of the final product is not less than 40 per cent.

^c Wholly obtained or produced in the territory of any Party.

^d Goods satisfying rule 6.

The gross weight or other quantity and value (FOB) must be indicated in Box 9. Box 10 is for the number as well as the date of the invoices. In box 11 the exporter (including manufacturer or producer) must declare that the goods comply with the relevant origin requirements, and provide the place, date and signature of the authorized signatory. If after reviewing the supporting documentation

the issuing authority is satisfied that the goods qualify for preferential treatment, it certifies that the exporter's declaration is correct by providing its signature and stamp and indicating the place and date. Box 13 provides a number of options which may be ticked depending on their relevance to the particular CO. Table 13 outlines the options for box 13 under each ASEAN FTA.

Table 13 Box 13: options to tick under the different FTAs

	ATIGA	AANZFTA	AIFTA	ACFTA	AJCEP	AKFTA	AHKFTA
Third country invoicing	X	X	X	X	X	X	X
Exhibition ^a	X		X	X		X	X
Accumulation	X	X	X				X
De minimis	X	X					X
Back-to-back CO	X	X	X		X	X	
Issued retroactively ^b	X	X			X		X
Partial cumulation	X						
Movement certificate				X			X

Special indications under each FTA when applying the CO

ATIGA:

Multiple items: If multiple items are declared in the same form D and preferential treatment is not granted to any of the items, indicate this in box 4 and circle or mark the item number appropriately in box 5.

Partial cumulation: If the RVC of the material is less than 40 per cent, the CO may be issued for accumulation purposes, in accordance with article 30(2) of ATIGA. The “partial cumulation” box should be ticked.

Third country invoicing: Information such as the name and country of the company issuing the invoice must be indicated in box 7.

AANZFTA:

FOB value: An exporter from an ASEAN member State must provide the FOB value of the goods in box 9. An exporter from Australia or New Zealand can complete either box 9 or provide a separate “exporter declaration” stating the FOB value of the goods.

The FOB value is not required for consignments where the origin criteria does not include an RVC requirement. In the case of goods exported from and imported by Cambodia and Myanmar, the FOB value

must be included in the CO or the back-to-back CO for all goods, irrespective of the origin criteria used, for two years from the date of entry into force of the first protocol or an earlier date as endorsed by the Committee on Trade in Goods.

Certified true copy: In case of a certified true copy, the words “CERTIFIED TRUE COPY” should be written or stamped on box 12 of the CO form with the date of issuance of the copy in accordance with rule 11 of the OCP.

Third-party invoice: The number of invoices issued by the manufacturers or the exporters and the number of invoices issued by the trader (if known) for the importation of goods into the importing Party should be indicated in box 10. In box 13, “subject of third-party invoice” should be ticked and the name of the issuing company should be provided in box 7, or in case of insufficient space, on a continuation sheet.

AIFTA:

Third country invoicing: Information such as the name and country of the company issuing the invoice must be indicated in box 7.

Back-to-back CO: For a back-to-back CO, the name of original exporting Party has to be indicated in box 11 and the date of the issuance of the CO and the reference number must be indicated in box 7.

^a In cases where goods are sent from the exporting member State for exhibition in another country and sold during or after the exhibition for importation into a member State, indicate the name and address of the exhibition in box 2.

^b In exceptional cases, due to involuntary errors or omissions or other valid causes, the CO may be issued retroactively.

AJCEP:

FOB value: The FOB value in box 9 must be reflected only when the RVC criterion is applied in determining the origin of goods. In the case of goods exported from and imported by Cambodia and Myanmar, the FOB value must be included on the CO, irrespective of the origin criteria used, for two years from the implementation of the new arrangement.

Invoices: Indicate the invoice number and date for each item. The invoice should be the invoice issued for the importation of the good into the importing Party.

Third country invoicing: The number of invoices issued for the importation of goods into the importing Party should be indicated in box 10, and the full legal name and address of the company or person that issued the invoices must be indicated in box 7. In an exceptional case where the invoice issued in a third country is not available at the time of issuance of the CO, the invoice number and the date of the invoice issued by the exporter to whom the CO is issued should be indicated in box 10. "Third country invoicing" in box 13 should be ticked, and box 7 should indicate that the goods will be subject to another invoice to be issued in a third country for the importation into the importing Party. The full legal name and address of the company or person that will issue another invoice in the third country should be identified in box 7. In such a case, the

customs authority of the importing Party may require the importer to provide the invoices and any other relevant documents which confirm the transaction from the exporting Party to the importing Party.

AKFTA:

Third country invoicing: Information such as the name and country of the company issuing the invoice must be indicated in box 7.

AHKFTA:

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

1. The competent authority of the importing Party shall accept Certificates of Origin (Form AHK) in the case where the sales invoice is issued either by a company located in a third party or by an exporter for the account of the said company, provided that the goods meet the requirements of this Chapter 2. The exporter shall indicate "Third party invoicing" and such information as name and country/party of the company issuing the invoice in the Certificate of Origin (Form AHK).

VI. VERIFICATION AND PENALTIES

A. Record keeping

After a CO is issued, the documents must be retained for a certain period of time in order to allow for potential

checks and verification. The record keeping requirements under each ASEAN FTA are indicated in table 14. In general, every document has to be kept for three years from the date of issuance.

Table 14 Comparative table on record keeping

ASEAN FTA	Rule/article	Record keeping
ATIGA	Annex 8, rule 17	The producer and/or exporter applying for the issuance of a CO must keep its supporting records for application for not less than three years from the date of issuance of the CO . The issuing authorities must retain an application for CO and all related documents for not less than three years from the date of issuance.
AANZFTA	Annex to chapter 3 (operational certification procedures), rule 16	Each Party shall require that the issuing authority/body, manufacturer, producer, exporter, importer, and their authorized representatives maintain for a period of not less than three years after the date of exportation or importation , as the case may be, all records relating to that exportation or importation which are necessary to demonstrate that the good for which a claim for preferential tariff treatment was made qualifies for preferential tariff treatment. Such records may be in electronic form. Information relating to the validity of the CO shall be furnished upon request of the importing Party by an official authorized to sign the CO and certified by the appropriate issuing authority/body.
AIFTA	Annex 2, appendix D, article 18	The application for AIFTA certificates of origin and all documents related to such application shall be retained by the issuing authorities for not less than two years from the date of issuance . Information relating to the validity of the AIFTA certificate of origin shall be furnished upon request of the importing Party.
ACFTA	Amending Protocol, attachment A, rule	The application for the CO and all documents related to such application shall be retained by the issuing authorities for not less than three years from the date of issuance . Information relating to the validity of the CO shall be furnished upon request by the importing Party. For the purposes of the verification process/retroactive check, the producer and/or exporter applying for the issuance of a CO shall, subject to the domestic laws, regulations and administrative rules of the exporting Party, keep its supporting records for application for not less than three years from the date of issuance of the CO.
AJCEP	Annex 4, rule 5	The exporter to whom a CO has been issued or the producer of a good in the exporting Party must keep records relating to the origin of the good for three years after the date on which the CO was issued . The competent governmental authority or its designees shall keep a record of the issued CO for a period of three years after the date on which the CO was issued . Such record includes all supporting documents presented to prove the qualification as an originating good of the exporting Party.
AKFTA	Annex 3, appendix 1, rule 13	The producer and/or exporter must keep its supporting records for application for not less than three years from the date of issuance of the CO . The importer shall keep records relevant to the importation in accordance with the domestic laws and regulations of the importing Party. The application for CO and all documents related to such application shall be retained by the issuing authority for not less than three years from the date of issuance .
AHKFTA	Annex 3-1, rule 16	<ol style="list-style-type: none"> For the purposes of the verification process pursuant to rule 17 (retroactive check) and rule 18 (verification visit), the producer and/or exporter applying for the issuance of a certificate of origin (form AHK) shall, subject to the internal laws and regulations of the exporting Party, keep its supporting records for application for not less than three years from the date of issuance of the certificate of origin (form AHK). The application for certificate of origin (form AHK) and all documents related to such application shall be retained by the issuing authorities for not less than three years from the date of issuance. Information relating to the validity of the certificate of origin (form AHK) shall be furnished by the issuing authority of the exporting Party upon request of the importing Party. Any information communicated between the Parties concerned shall be treated as confidential and shall be used for purpose of the validation of certificate of origin (form AHK) only.

B. Verification visits

When there is reasonable doubt as to the authenticity of the CO or the accuracy of the information regarding the true origin of the goods, an importing member State can request the issuing authority of the exporting member State to conduct a retroactive check at random. If the importing member State is not satisfied with the outcome of the retroactive check, in exceptional circumstances it may request verification visits to the exporting member State. In general, in order to conduct a verification visit, the customs authority of the importing country

must deliver a written and comprehensive request/notification. In answer, the exporter or producer must give a written consent. The issuing authority receiving the notification may postpone the proposed verification visit, but only for a defined period. The written determination of whether or not the subject goods qualify as originating is delivered by the member State conducting the verification visit. The exporter or producer can provide written comments on the determination, or additional information regarding the eligibility of the goods, for a limited period of time. Table 15 sets out the provisions for verification visits under each ASEAN FTA.

Table 15 Provisions for verification visits in the ASEAN FTAs

ASEAN FTA	Rule/article	Verification visit
ATIGA	Annex 8, rule 19	<p>1. Customs authority of the importing Party delivers a written notification of its intention to conduct the verification visit to:</p> <ul style="list-style-type: none"> (a) The exporter/producer whose premises are to be visited; (b) The issuing authority of the member State in whose territory the verification visit is to occur; (c) The customs authorities of the member State in whose territory the verification visit is to occur; (d) The importer of the goods subject of the verification visit. <p>The written notification must be as comprehensive as possible, including:</p> <ul style="list-style-type: none"> (a) The name of the customs authorities issuing the notification; (b) The name of the exporter/producer whose premises are to be visited; (c) The proposed date for the verification visit; (d) The coverage of the proposed verification visit, including reference to the goods subject of the verification; (e) The names and designation of the officials performing the verification visit. <p>2. Obtain the written consent of the exporter/producer whose premises are to be visited. When a written consent from the exporter/producer is not obtained within 30 days upon receipt of the notification, the notifying member State may deny preferential treatment to the goods that would have been subject of the verification visit.</p> <p>3. The issuing authority receiving the notification may postpone the proposed verification visit and notify the importing member State of such intention. Notwithstanding any postponement, any verification visit shall be carried out within 60 days from the date of such receipt, or for a longer period as the concerned member States may agree.</p> <p>4. The member State conducting the verification visit shall provide the exporter/producer whose goods are the subject of the verification and the relevant issuing authority with a written determination of whether or not the subject goods qualify as originating goods. Any suspended preferential treatment shall be reinstated upon the written determination that the goods qualify as originating goods.</p> <p>5. The exporter/producer will be allowed 30 days, from receipt of the written determination, to provide in writing comments or additional information regarding the eligibility of the goods. If the goods are still found to be non-originating, the final written determination will be communicated to the issuing authority within 30 days from receipt of the comments/additional information from the exporter/producer.</p> <p>6. The verification visit process, including the actual visit and determination of whether the subject goods are originating or not, shall be carried out and its results communicated to the issuing authority within a maximum of 180 days. While awaiting the results of the verification visit, suspension (according to rule 18(c)) of preferential treatment shall be applied.</p>
AANZFTA	Annex to chapter 3 (operational certification procedures), rule 18	<p>1. The customs authority of the importing Party who wishes to undertake a verification visit must issue a written request to the issuing authority/body of the exporting Party at least 30 days in advance of the proposed verification visit. If the issuing authority/body of the exporting Party is not a government agency, the customs authority of the importing Party shall notify the customs authority of the exporting Party of the written request to undertake the verification visit.</p> <p>A written request must include at minimum:</p> <ul style="list-style-type: none"> (a) The identity of the customs authority issuing the request; (b) The name of the exporter or the producer of the exporting Party whose good is subject to the verification visit; (c) The date the written request is made; (d) The proposed date and place of the visit; (e) The objective and scope of the proposed visit, including specific reference to the good subject to the verification; (f) The names and titles of the officials of the customs authority or other relevant authorities of the importing Party who will participate in the visit. <p>2. The issuing authority/body of the exporting Party must notify the exporter or producer of the intended verification visit by the customs authority or other relevant authorities of the importing Party and request the exporter or producer to permit the customs authority or other relevant authorities of the importing Party to visit their premises or factory and to provide information relating to the origin of the good. Furthermore, the issuing authority/body must advise the exporter or producer that, should they fail to respond by a specified date, preferential tariff treatment may be denied.</p> <p>3. The issuing authority/body of the exporting Party must advise the customs authority of the importing Party within 30 days of the date of the written request from the customs authority of the importing Party whether the exporter or producer has agreed to the request for a verification visit.</p> <p>4. The customs authority of the importing Party must not visit the premises or factory of any exporter or producer in the territory of the exporting Party without written prior consent from the exporter or producer.</p> <p>The customs authority of the importing Party shall complete any action to verify eligibility for preferential tariff treatment and make a decision within 150 days of the date of the request to the issuing authority/body. The customs authority of the importing Party shall provide written advice as to whether goods are eligible for preferential tariff treatment to the relevant parties within ten days of the decision being made.</p>

ASEAN FTA	Rule/article	Verification visit
AIFTA	Annex 2, appendix D, article 17	<p>1. The importing Party shall deliver a written notification of its intention to conduct the verification visit through a focal customs or any other appropriate authority simultaneously to:</p> <ul style="list-style-type: none"> (a) The producer/exporter whose premises are to be visited; (b) The Issuing Authority of the Party in the territory of which the verification visit is to occur; (c) The focal customs or any other appropriate authority of the Party in the territory of which the verification visit is to occur; (d) The importer of the good subject to the verification visit. <p>Written notification includes must be as comprehensive as possible and include:</p> <ul style="list-style-type: none"> (a) The name of the focal customs or any other appropriate authority issuing the notification; (b) The name of the producer/exporter whose premises are to be visited; (c) The proposed date of the verification visit; (d) The coverage scope/purpose of the proposed verification visit, including reference to the good subject to the verification; (e) The names and designation of the officials performing the verification visit. <p>2. The importing Party shall obtain the written consent of the producer/exporter whose premises are to be visited. When a written consent from the producer/exporter is not obtained within 30 days from the date of receipt of the notification, the notifying Party may deny preferential tariff treatment to the good referred to in the AIFTA CO that would have been subject to the verification visit and the issuing authority receiving the notification may postpone the proposed verification visit and notify the importing Party of such intention within 15 days from the date of receipt of the notification. Notwithstanding any postponement, any verification visit shall be carried out within 60 days from the date of such receipt, or for such longer period as the parties may agree.</p> <p>3. The importing Party conducting the verification visit shall provide the producer/exporter whose good is subject to the verification and the relevant issuing authority with a written determination of whether that good qualifies as an originating good. Any suspended preferential tariff treatment shall be reinstated upon a determination that the good qualifies as an originating good.</p> <p>4. If the good is determined to be non-originating, the producer/exporter shall be given 30 days from the date of receipt of the written determination to provide any written comments or additional information regarding the eligibility of the good for preferential tariff treatment. If the good is still found to be non-originating, the final written determination issued by the importing Party shall be communicated to the issuing authority within 30 days from the date of receipt of the comments/additional information from the producer/exporter.</p> <p>The verification visit process, including the actual visit and the determination whether or not the good subject to verification is originating, shall be carried out and its results communicated to the issuing authority within a maximum period of six months from the date when the verification visit was conducted.</p>
ACFTA	Amending Protocol, attachment A, rule 18	<p>1. The customs authority of the importing Party must notify the competent authority of the exporting Party with an aim to mutually agree on the conditions and means of the verification visit.</p> <p>2. The verification visit shall be conducted not later than 60 days after receipt of the notification.</p> <p>3. The verification process, including the retroactive check and verification visit, shall be carried out and its results communicated to the customs authority and/or the issuing authorities of the exporting Party within a maximum of 180 days after the receipt of the request. While awaiting the results of the verification visit, suspension of preferential treatment shall be applied. In case an extension request has been made, the period shall be extended to a maximum of two hundred days.</p> <p>Preferential treatment may be denied when the exporting Party fails to respond to the request to the satisfaction of the customs authority of the importing Party in the course of a retroactive check or verification process.</p>
AJCEP	Annex 4, rule 7	<p>1. The customs authority or the relevant authority of the importing Party may request the exporting Party:</p> <ul style="list-style-type: none"> (a) To collect and provide information relating to the origin of the good and check, for that purpose, the facilities used in the production of the good, through a visit by the competent governmental authority of the exporting Party along with the customs authority or the relevant authority of the importing Party to the premises of the exporter to whom the CO has been issued, or the producer of the good in the exporting Party; (b) During the visit, to provide information relating to the origin of the good in the possession of the competent governmental authority of the exporting Party or its designees. <p>2. When requesting the exporting Party to conduct a visit, the customs authority or the relevant authority of the importing Party shall deliver a written communication with such request to the exporting Party at least 60 days in advance of the proposed date of the visit, the receipt of which is to be confirmed by the exporting Party. The competent governmental authority of the exporting Party shall request the written consent of the exporter, or the producer of the good in the exporting Party whose premises are to be visited.</p> <p>The written communication must include:</p> <ul style="list-style-type: none"> (a) The identity of the customs authority or the relevant authority issuing the communication; (b) The name of the exporter, or the producer of the good in the exporting Party whose premises are requested to be visited; (c) The proposed date and places of the visit; (d) The object and scope of the proposed visit, including specific reference to the good subject of the verification referred to in the CO; (e) The names and titles of the officials of the customs authority or the relevant authority of the importing Party to be present during the visit. <p>3. The exporting Party shall respond in writing to the importing Party, within 30 days from the receipt of the communication referred to in paragraph 2, whether it accepts or refuses to conduct the visit requested.</p> <p>The competent governmental authority of the exporting Party shall, in accordance with the laws and regulations of the Party, provide within 45 days or any other mutually agreed period from the last day of the visit, to the customs authority or the relevant authority of the importing Party any additional information obtained.</p>

ASEAN FTA	Rule/article	Verification visit
AKFTA	Annex 3, appendix 1, rule 15	<p>1. The importing Party shall deliver a written notification of its intention to conduct the verification visit simultaneously to:</p> <ul style="list-style-type: none"> (a) The producer and/or exporter whose premises are to be visited; (b) The issuing authority of the Party in the territory of which the verification visit is to occur; (c) The customs authority of the Party in the territory of which the verification visit is to occur; (d) The importer of the good subject to the verification visit. <p>Written notification must be as comprehensive as possible and must include:</p> <ul style="list-style-type: none"> (a) The name of the customs authority issuing the notification; (b) The name of the producer and/or exporter whose premises are to be visited; (c) The proposed date of the verification visit; (d) The coverage of the proposed verification visit, including reference to the good subject to the verification; (e) The names and designation of the officials performing the verification visit. <p>2. The importing Party must obtain the written consent of the producer/or exporter whose premises are to be visited. If a written consent from the producer and/or exporter is not obtained within 30 days from the date of receipt of the notification, the notifying Party may deny preferential tariff treatment to the good referred.</p> <p>3. The issuing authority receiving the notification may postpone the proposed verification visit and notify the importing Party of such intention within 15 days from the date of receipt of the notification. Notwithstanding any postponement, any verification visit shall be carried out within 60 days from the date of such receipt, or a longer period as the parties may agree.</p> <p>4. The Party conducting the verification visit shall provide the producer and/or exporter, whose good is subject to such verification, and the relevant issuing authority with a written determination of whether or not the good subject to such verification qualifies as an originating good. Any suspended preferential tariff treatment shall be reinstated upon the written determination.</p> <p>5. The producer and/or exporter shall be allowed 30 days from the date of receipt of the written determination to provide in writing comments or additional information regarding the eligibility of the good for preferential tariff treatment. If the good is still found to be non-originating, the final written determination shall be communicated to the issuing authority within thirty 30 days from the date of receipt of the comments/additional information from the producer and/or exporter.</p> <p>The verification visit process, including the actual visit and the determination whether the good subject to such verification is originating or not, shall be carried out and its results communicated to the issuing authority within a maximum period of six months from the first day the initial verification visit was conducted.</p>
AHKFTA	Annex 3-1, rule 18	<p>If the competent authority of the importing Party is not satisfied with the outcome of the retroactive check, it may, under exceptional cases, request for verification visits to the premises of the exporter or producer through the competent authority of the exporting Party in accordance with the following conditions:</p> <ul style="list-style-type: none"> (a) Prior to conducting a verification visit, the competent authority of the importing Party shall: <ul style="list-style-type: none"> (i) Deliver a written request to conduct the proposed verification visit to: (1) the exporter or producer whose premises are to be visited; (2) the competent authority of the exporting Party; (ii) Deliver a written notification to conduct the proposed verification visit to the importer of the goods that are subject to the verification visit; (iii) The written request mentioned in subparagraph (a) (i) shall be as comprehensive as possible and includes: (1) the name and contact details of the competent authority issuing the request; (2) the name of the exporter or producer whose premises are to be visited; (3) the proposed date for the verification visit; (4) the objective and scope of the proposed verification visit, including specific reference to the goods that are subject to the verification; (5) the names and designation or title of the officials of the importing Party performing the verification visit; (iv) Obtain the written consent of the exporter or producer whose premises are to be visited; (b) Where a written consent from the exporter or producer is not obtained within 30 days upon receipt of the written request pursuant to subparagraph (a) (i), the competent authority of the importing Party may deny preferential tariff treatment to the goods that would have been the subject of the verification visit; (c) The competent authority of the exporting Party receiving the written request may postpone the proposed verification visit and notify the competent authority of the importing Party of such intention. Notwithstanding any postponement, any verification visit shall be carried out in accordance with the internal laws and regulations of the exporting Party within 60 days upon the date of receipt of the request, or for a longer period as the concerned Parties may agree. The arrangement of the verification visit shall be agreed by the competent authorities of the importing and exporting Parties; (d) The competent authority of the importing Party conducting the verification visit shall provide the exporter or producer whose goods are the subject of the verification visit, and the competent authority of the exporting Party, with a written determination of whether or not the subject goods qualified as originating goods; (e) Any suspended preferential tariff treatment shall be reinstated upon the written determination referred to in subparagraph (d) that the goods qualify as originating goods; (f) The exporter or producer shall be allowed 30 days, upon receipt of the written determination, to provide in writing additional information regarding the eligibility of the goods to the competent authority of the importing Party. If the goods are still found to be non-originating, the final written determination shall be communicated by the competent authority of the importing Party to the competent authority of the exporting Party within 30 days upon receipt of additional information from the exporter or producer; (g) The verification visit process, including the actual visit and determination of whether the subject goods are originating or not, shall be carried out and its results communicated to the competent authority of the exporting Party within 180 days upon receipt of the written request pursuant to subparagraph (a) (i). While awaiting the results of the verification visit, subparagraph (c) of rule 17 (retroactive check) on the suspension of preferential tariff treatment shall be applied.

Each Party must maintain the confidentiality of the information and documents provided by other parties in the course of the verification process. Such information and documents shall not be used for other purposes, including being used as evidence in administrative and judicial proceedings, without the explicit written permission of the Party providing such information.

C. Action against fraudulent acts

In cases where fraudulent acts in connection with the CO are suspected, the government authorities need to cooperate in taking action in the relevant member State against the parties involved. Table 16 outlines the provision against fraudulent acts in each ASEAN FTA.

Table 16 Comparative table on action against fraudulent acts

<i>ASEAN FTA</i>	<i>Rule/article</i>	<i>Protection against fraudulent acts</i>
ATIGA	Annex 8, rule 24	When it is suspected that fraudulent acts in connection with the CO have been committed, the government authorities concerned shall cooperate in the action to be taken in the respective member State against the persons involved. Each member State shall provide legal sanctions for fraudulent acts related to the CO.
AANZFTA	Annex to chapter 3 (operational certification procedures), rule 23	When it is suspected that fraudulent acts in connection with the CO have been committed, the government authorities concerned shall cooperate in the action to be taken in the respective Party against the persons involved, in accordance with the Party's respective laws and regulations.
AIFTA	Annex 2, appendix D, article 23	When it is suspected that fraudulent acts in connection with the AIFTA CO have been committed, the relevant government authorities concerned shall cooperate in any action taken against the persons involved. Each Party shall be responsible for providing legal sanctions against fraudulent acts related to the AIFTA CO.
ACFTA	Amending Protocol, attachment A, rule 24	When it is suspected that fraudulent acts in connection with the CO have been committed, the government authorities concerned shall cooperate in the action to be taken in the territory of the respective Parties against the persons involved. Each Party shall be responsible for providing legal sanctions for fraudulent acts related to the CO in accordance with its domestic laws, regulations and administrative rules.
AJCEP	Annex 4, rule 10	Each Party shall establish or maintain, in accordance with its laws and regulations, appropriate penalties or other measures against its exporters or producers who have committed fraudulent acts in connection with a CO, including submission of false declarations or documents to its competent governmental authority or its designees.
AKFTA	Annex 3, appendix 1, rule 22	When it is suspected that fraudulent acts in connection with a CO have been committed, the government authorities concerned shall cooperate in the action to be taken by a Party against the persons involved. Each Party shall provide legal sanctions for fraudulent acts related to a CO.
AHKFTA	Annex 3-1, rule 23	1. When it is suspected that fraudulent acts in connection with the certificate of origin (form AHK) have been committed, the Parties concerned shall cooperate in the action to be taken in the respective Parties against the persons involved to the extent permitted under their applicable internal laws and regulations. 2. Each Party shall provide legal sanctions for fraudulent acts related to the certificate of origin (form AHK) in accordance with its internal laws and regulations.

