

ASEAN AND CHINA FREE TRADE AGREEMENT (ACFTA)

The Agreement on Trade in Goods (TIG) under ACFTA was signed on November 29, 2004 and entered into force for most ASEAN members and China on July 1, 2005 and July 20, 2005, respectively. On December 8, 2006, the Parties signed the Second Protocol to Amend the TIG Framework Agreement, incorporating Vietnam. On October 16, 2009 Cambodia finally ratified ACFTA marking the full implementation of the TIG Agreement for all ASEAN Members and China.

During the AEM-MOFCOM Consultations in August 2009, ASEAN and China agreed to amend the Operational Certification Procedures (OCP) after several years of negotiation. The amendments include a revised definition of issuing authority, the acceptance of third-party invoicing, the utilization of back-to-back certificates of origin Form E (called a movement certificate), and the acceptance of country verification visits under certain conditions. The revisions are scheduled to take effect on June 1, 2010.

The Parties are also undertaking a substantive review of the TIG Agreement in order to bring it on par with other ASEAN TIG Agreements with Australia and New Zealand, India, Japan, and Korea. The Parties finalized a Work Program for the TIG Review in June 2009 and have already begun tackling key areas including: (i) updating tariff reduction schedules based upon HS 2007/AHTN with clearly identifiable Normal Track (NT) 1 and 2, Sensitive List (SL), Highly Sensitive List (HSL) and Early Harvest Program (EHP) categories (currently the Agreement utilizes HS 2002) as well as the second batch of product specific rules of origin (PSR); (ii) reviewing further liberalization of sensitive products under the FTA; (iii) monitoring Form E utilization and proposing actions for improvement; and (iv) addressing non-tariff barriers. These areas remain under discussion and are expected to be settled in 2010.

A. Tariff Reduction and Elimination Modality

On January 1, 2004, ASEAN and China implemented an Early Harvest Program (EHP) for early tariff reduction and elimination for selected products, covering most of the products from HS Chapters 1 through 8, and approximately 130 specific manufactured products (not under HS Chapters 84, 85 or 87). On November 29, 2004, the two sides signed the TIG Agreement, which formally entered into force in July 2005.

Under the TIG Agreement, China and ASEAN-6 agreed to eliminate tariffs on 90% of products by 2010, with flexibility for certain products until January 1, 2012. Cambodia, Laos, Myanmar and Vietnam agreed to eliminate tariffs on 90% of products by 2015, with flexibility for certain products until January 1, 2018. The remaining 10% of products are deemed as sensitive. The TIG Agreement covers a total of 7,000 tariff lines. The tariff reduction and elimination modality is comprised of several tracks: EHP, Normal Track 1 (NT1), NT2, and Sensitive Track, which is divided into the Sensitive List (SL) and the Highly Sensitive List (HSL).

Normal Track (NT1 and NT2)

a. ASEAN-6 and China

There is no physical list of items for products falling under NT1. If a product is not in NT2, SL or HSL, then it automatically falls under NT1 and tariffs will be reduced to zero

percent by January 1, 2010. NT2 includes products accorded flexibility in NT1 and are listed in Annex 1 of Appendix 1 of the TIG Agreement. The deadline for tariff elimination is January 1, 2012. The following table details the total number of NT2 tariff lines at the 6-digit level under HS Chapters 84, 85 and 87 for ASEAN-6 and China.

CHAPTER	BRUNEI	INDONESIA	MALAYSIA	PHILIPPINES*	THAILAND	SINGAPORE**	CHINA
Chapter 84	14	5	0	11	0	-	11
Chapter 85	0	8	14	19	2	-	26
Chapter 87	14	10	4	1	0	-	12

* Philippines' tariff concessions were published on January 12, 2006.

**All products from Singapore have zero percent tariff rates, except two types of liquor.

b. Cambodia, Laos, Myanmar, Vietnam

There is no physical list of items for products falling under NT1 for Cambodia, Laos and Myanmar. If a product is not in NT2, SL or HSL, then it automatically falls under NT1 and tariffs will be reduced to zero percent by January 1, 2015. NT2 includes products accorded flexibility in NT1 and are listed in Annex 1 of Appendix 1 of the TIG Agreement. The deadline for tariff elimination is January 1, 2018. Vietnam agreed to eliminate 45% of NT1 tariffs by January 1, 2013 and follows the same modality as the abovementioned countries for NT2 products. The following table details the total number of NT2 tariff lines under HS Chapters 84, 85 and 87 for Cambodia, Laos, Myanmar, and Vietnam.

CHAPTER	CAMBODIA	LAOS	MYANMAR	VIETNAM*	CHINA
Chapter 84	27	0	13	72	11
Chapter 85	11	0	53	91	26
Chapter 87	1	3	1	8	12

*Vietnam's data was amended on December 8, 2006 under the Protocol to Amend the TIG Agreement. Vietnam's lines are at the 8-digit level.

Sensitive Track

Products in the Sensitive Track are divided into two lists: (i) the Sensitive List (SL); and (ii) the Highly Sensitive List (HSL). These lists include sensitive products that ASEAN and China seek to protect from immediate tariff concession. For China, these products include rice, natural rubber, palm oil, chemical products, digital televisions, and board and paper products; for ASEAN, they include rubber and plastic products, ceramic ware, textiles and garments, steel products, household electrical appliances, automobiles, and motorcycles. Products in the Sensitive Track are subject to two ceilings based on tariff

lines or total import value. ASEAN-6 may include no more than 400 tariff lines at the 6-digit level, or no more than 10% of total import value based on 2001 trade statistics. CLMV countries may include no more than 500 tariff lines at the 6-digit level or no more than 10% of total import value based on 2001 trade statistics.

Sensitive List (SL)

a. ASEAN-6 and China

Products under the SL are listed in Appendix 1 of Annex 2 of the TIG Agreement. The Parties agree to reduce the applied MFN tariff rates of tariff lines placed in their respective SL to 20% not later than January 1, 2012. These tariff rates will be subsequently reduced to between 0 to 5% by January 1, 2018. The following table details the total number of SL tariff lines under Chapters 84, 85 and 87 for ASEAN-6 and China.

CHAPTER	BRUNEI	INDONESIA	MALAYSIA	PHILIPPINES	THAILAND	SINGAPORE	CHINA
Chapter 84	7	7	35	11	19	-	3
Chapter 85	28	12	9	9	49	-	5
Chapter 87	4	31	24	42	0	-	11

b. Cambodia, Laos, Myanmar, Vietnam

Products under the SL are listed in Appendix 1 of Annex 2 of the TIG Agreement (Appendix 2, Attachment 4 for Vietnam). The Parties agree to reduce the applied MFN tariff rates of tariff lines placed in their respective SL to 20% not later than January 1, 2015. These tariff rates will be subsequently reduced to between 0 to 5% by January 1, 2020. The following table details the total number of SL tariff lines under Chapters 84, 85 and 87.

CHAPTER	CAMBODIA	LAOS	MYANMAR	VIETNAM*	CHINA
Chapter 84	85	0	2	14	3
Chapter 85	45	1	2	42	5
Chapter 87	13	2	32	12	11

*Vietnam's data was amended on December 8, 2006 under the Protocol to Amend the TIG Agreement. Vietnam's lines are at the 8-digit level.

Highly Sensitive List (HSL)

a. ASEAN-6 and China

Products under the HSL are listed in Appendix 2 of Annex 2 of the TIG Agreement. The Parties agree to reduce the applied MFN tariff rates of tariff lines placed in their respective HSL to not more than 50% not later than January 1, 2015. . The majority of tariff lines in the HSL fall under Chapter 87. The following table details the total number of HSL tariff lines under Chapters 84, 85 and 87.

CHAPTER	BRUNEI	INDONESIA	MALAYSIA	PHILIPPINES	THAILAND	SINGAPORE	CHINA
Chapter 84	0	0	0	0	7	-	0
Chapter 85	0	0	1	0	0	-	1
Chapter 87	46	23	17	7	22	-	8

b. Cambodia, Laos, Myanmar, Vietnam

Products under the HSL are listed in Appendix 2 of Annex 2 of the TIG Agreement. The Parties agree to reduce the applied MFN tariff rates of tariff lines placed in their respective HSL to not more than 50% not later than January 1, 2018. The majority of tariff lines in the HSL fall under Chapter 87. The following table details the total number of HSL tariff lines under Chapters 84, 85 and 87.

CHAPTER	CAMBODIA	LAOS	MYANMAR	VIETNAM*	CHINA
Chapter 84	1	0	0	24	0
Chapter 85	0	0	0	12	1
Chapter 87	2	14	0	29	8

*Vietnam's data was amended on December 8, 2006 under the Protocol to Amend the TIG Agreement. Vietnam's lines are at the 8-digit level.

B. Rules of Origin

General Rules

To qualify for preferential tariff treatment under ACFTA, goods must meet one of the following criterion: (i) be wholly obtained or produced; (ii) contain at least 40% originating content; (iii) contain non-originating materials that account for no more than 60% of the FOB value of the final goods and provided that the final manufacturing process is performed within China or ASEAN territory; or (iv) undergo a change in tariff

classification (CTC) that satisfies the Agreement's product specific rules (PSRs). A summary of the rules of origin is as follows:

Method of Determining Origin	Unique Origin Criteria
1. Wholly obtained or produced	None
2. Regional value content (RVC) of 40% FOB of the good	
3. PSRs	

ACFTA currently applies a small set of PSRs listed in Attachment B of Annex 3 on Rules of Origin as follows: (i) material origins for wool and animal hair, (ii) CTC rules mainly for leather products, and (iii) process-definition rules for textiles products. Negotiations for PSRs commenced in January 2004, and in July 2005, the first batch of goods with PSRs from ASEAN members was announced. This first batch does not include any tariff lines from HS Chapters 84, 85 and 87. China and ASEAN have stated that they will apply new PSRs from June 1, 2010; however, the PSR details have yet to be announced.

Rules on Accumulation of Inputs

Originating material is a good qualified as an originating good in accordance with the rules of origin of this Agreement. When the material is qualified as an originating material, its total value may be included for the purpose of the RVC calculation.

De Minimis

There are no *de minimis* provisions in ACFTA.

C. Certification Rules

General Description

ACFTA adopts a government-certification system only. Under ACFTA, certificates of origin (CO) must be issued by the government authorities of the exporting Party. Provisions for COs under ACFTA are detailed in Rules 1 to 22 in Attachment A to Annex 3 of the OCP. The importer must present the CO (Form E) to qualify for preferential treatment at the time of importation. Before exportation, the exporter should submit a written application for the CO together with proper supporting documents proving that the products to be exported qualify for the issuance of a CO. Form E is valid for 12 months and for a single shipment. An importer does not need to use Form E for shipments equivalent to USD 200 and should use a simplified exporter declaration instead.

Back-to-Back Certification of Origin

Currently not applicable under ACFTA; however, in August 2009 China finally agreed with ASEAN to accept the back-to-back CO process. China notified that it had some technical problems with the use of the term "back-to-back" and proposed the term "movement certificate" instead. The new term will be used in the Form E once the revised OCP enters into effect on June 1, 2010. ASEAN members agreed to modify the term used on their respective CO Form Es in accordance with China's proposal to avoid

confusion among traders.

Third-party Invoicing

Currently not applicable under ACFTA; however, after a series of negotiations, China agreed with ASEAN to accept the process. Exporters and/or producers can utilize the process after June 1, 2010.

Advance Rulings

Currently not applicable under ACFTA.

Authorized Bodies

The CO issuing authorities are: (i) the Chinese Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) and its local branches, and (ii) the following bodies in ASEAN members:

ASEAN Member	Issuing Authority
Brunei	Ministry of Foreign Affairs and Trade
Cambodia	Ministry of Commerce
Indonesia	Ministry of Trade (Directorate Export and Import Facilitation)
Laos	Ministry of Commerce
Malaysia	Ministry of International Trade and Industry (Trade Services Division)
Myanmar	Ministry of Commerce
Philippines	Bureau of Customs (Export Coordination Division)
Singapore	Singapore Customs (Documentation Specialist Branch)
Thailand	Ministry of Commerce (Department of Foreign Trade, Bureau of Trade Preference Development)
Vietnam	Ministry of Trade (Export-Import Managing Department)

ASEAN agreed with China to revise the definition of "issuing authority" for the CO Form E. Previously, the issuing authority was defined as "the government authorities of the exporting party." The revised definition now includes "other entities authorized under the domestic legislation of a party" to issue Form E, in addition to the government authorities. With the new changes to the definition in place, it is likely that China will authorize certain private sector bodies, including chambers of commerce, to issue CO Form E. For ASEAN, each ASEAN country maintains the right to empower its current issuing authority or empower additional authorities to issue Form E.

Post-Exportation Examination

Currently not applicable under ACFTA; however, relevant provisions will be included in the revised OCP, which is scheduled to take effect on June 1, 2010.

Document Retention Requirements

Authorized authorities must maintain records relating to the goods origin for at least two years from the CO issuance date.

D. Relevant FTA Provisions

- Legal Text, including tariff schedules, rules of origin, and operational certification procedures http://www.fta.gov.sg/fta_acfta.asp?hl=2