

Issues and Requests Relating to Foreign Trade and Investment - ASEAN

	Category	No	Issue	Issue Details	Requests	References
9	Restrictive Export/Import Trade, Duty, and Customs Clearance	(1)	Disallowed Use of 3rd Country Invoice Scheme under the Self-Origin Certification Scheme	<p>- <u>Third country invoice gets rejected in Thailand, etc. under the pilot project of self-certification of origin prepared by the ASEAN authorised exporters in denial of the benefits under ATIGA.</u></p> <p><b>(Actions)</b></p> <p>- On 1 January 2011, "Second Protocol to Amend the Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-Operation between ASEAN and PRC" entered into force. The purpose of the Protocol is to update the operational certification procedures for the rules of origin under ACFTA. The substance of the amendments are as follows:</p> <p>(1) The definition of the issuing authority of Form E has been amended to include other institution authorized under the domestic laws of the member state, regulations and administrative rules of a party to issue a certificate of origin (Form E), in addition to "any government authority of the exporting country".</p> <p>(2) Incorporation of a provision directing the customs authority of the importing Party in all ASEAN+1 FTA to accept a certificate of origin (Form E) issued in a third country.</p> <p>(3) Approval of the use of Movement Certificate (MC), normally called "back-to-back Form E".</p> <p>(4) Provision for acceptance of verification visits to the exporting party to confirm if the products do originate from the exporting country.</p> <p>(5) Provision changing the issuance of Form E to "prior to or at the time of shipment or within three (3) days from the date of shipment".</p> <p>(6) Extension of Form E validity to one (1) year, and extension of the compulsory retention period to more than three (3)-years for the documents related to the Form E issuance.</p> <p>- In the 2nd pilot project of self-certification of origin prepared by the ASEAN authorised/certified exporters (ACEs) in which Indonesia, the Philippines, Laos, Vietnam and Chile participate prescribes that (1) only manufacturers are entitled to ACEs, (2) description of country of origin declaration is restricted to commercial Invoice only, (3) maximum 3-persons may sign the documents.</p> <p>- On 10 December 2013, Ministry of Trade selected the first 15 export enterprises that participate in the experimental introduction of 2nd Pilot Project of ASEAN self-certification of origin under ASEAN Trade In Goods Agreement (ATIGA).</p> <p>- On 9 January 2014, Indonesia, Laos and the Philippines completed the respective domestic procedures for implementation of the 2nd pilot project of self-certification of origin.</p> <p>- <u>Since 5 October 2015, Government of Vietnam (GOV) has implemented the 2nd Pilot Project of ASEAN Self-Certification of Origin, provided, however, that GOV disallows the Third Country Invoice (Re-invoicing).</u></p> <p><b>(Improvement)</b></p> <p>- <u>On 28 February 2015, Thai Customs promulgated notification, effective 1 March 2014, approving the interpretation of "Third Country Invoice" under ASEAN-PRC FTA (ACFTA), enabling application of third country invoice involving more than 2-plural third parties/countries. ("Third country invoicing can involve more than one invoicing party or country in the process. In other words, the term "third country" can refer to any number of countries other than the two countries directly involved in the process.")</u></p>	<p>- <u>It is requested that the ASEAN member states accept the active use of the self-certification in regard to invoices issued in any of the ASEAN member states third countries.</u></p>	- ASEAN Trade in Goods Agreement(ATIGA)

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	(2)	Delayed Implementation of Self-Certification of Origin	<p>- Under the ASEAN self-certification system by authorised exporters, the 1st pilot project is now under way in Singapore, Malaysia, Brunei and Thailand benefiting all. However, there have been delays in participation by other member states. Moreover another system under different rules is about to be implemented.</p> <p><b>(Actions)</b></p> <p>- On 25 August 2010, at the Meeting of ASEAN Economic Ministers and Related Meetings, it was agreed to execute the pilot project for introduction of self-certification system (SCS), with the year 2012 being set as the target year for its introduction. SCS has been introduced since November 2011 in Singapore, Malaysia and Brunei.</p> <p>- Since 1 October 2011, Thai Customs has participated in the SCS pilot project under ATIGA.</p> <p>- JETRO Business News [Tsusho Koho] of 3 October 2011 reported Thai Customs' announcement of its participation in the pilot project for self-certification scheme under ATIGA, accepting the invoice customs declaration under the preferential tariff rates, effective from 1 October 2011. However, according to JETRO's enquiry to the Foreign Trade Department of the Ministry of Commerce, its implementation from 1 October has de facto become impossible due to the procedural difficulties, requiring formal notification given to participating countries with request for provision of information on the registered authorised exporters through the ASEAN Secretariat.</p> <p>- On 30 August 2012, Brunei, Malaysia, Singapore and Thailand agreed on the extension of the 1st stage pilot system for the self-certification of origin scheme under ATIGA at the 44th ASEAN Economic Ministers (AEM)-ASEAN Free Trade Council (AFTA) Conference.</p> <p>- The 2nd Pilot Project for Self-certification System came into forth on 10 May 2013, with participation of Indonesia, the Philippines and Laos. Its actual implementation begins in the third-quarters. Vietnam will join the second pilot project. Thai will also join the 2nd pilot project, consecutively, after its participation in the 1st pilot project.</p> <p>- <u>On 24 February 2015, Protocol 7 (ASEAN Customs Transit System: ACTS) of the ASEAN Framework Agreement on the Facilitation of Goods in Transit (AFAGIT) was concluded. Accordingly, Thai Customs, together with its counterparts in Malaysia and Singapore will aim at executing ACTS Pilot-Phase (Trial Run) by October 2015.</u></p> <p>- <u>From 5 October 2015, GOV will run the 2nd Pilot Project of ASEAN Self-Certification Scheme, passing over the Onus of Country of Origin from the Administration to Authorised Exporter satisfying the Authorization Requirements.</u></p> <p>- <u>On 17 October 2015, Thai Department of Foreign Trade executed with Cambodia the 1st Pilot Project of ASEAN Self-Certification Scheme (Exporter's side), retroactive to 1 August 2015).</u></p>	<p><b>It is requested that the rest of the ASEAN Member States expedites implementation of the self-certification system under the 1st Pilot Project.</b></p>	ASEAN Trade in Goods Agreement(ATIGA)
	(3)	Problems on Delayed Issuance of Certificate of Origin	<p>- <u>Due to the short sailing time within the ASEAN member states, Form D preparation cannot catch up with the boat arrival from time to time.</u></p> <p><b>(Actions)</b></p> <p>- Master Plan on ASEAN Connectivity (MPAC), with the view to reinforce institutional connectivity, envisages smoothing the processing of origin certificate that includes electronic processing by 2012, and by 2015, aligning the domestic procedures.</p>	<p><u>It is requested that ASEAN accepts pre-shipment issuance of Form D at port of embarkation.</u></p>	ASEAN Trade in Goods Agreement(ATIGA)

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	(4)	Problems from Showing Invoice Price On Origin Certificate	<p>- <u>Gaps exist between the issuing institution and the customs at the importing port on the price to be described in Form D, ex-factory or invoice price. From the business point of view, the price description on Form D is best dispensed with.</u></p> <p><b>(Reference)</b></p> <p>- Please refer to the following URL concerning Circular No: 05/2016 21 Mar 2016, Implementation of The Revised Rules of Origin (ROO) and Operational Certification Procedures (OCP) under "the Agreement Establishing the ASEAN - Australia - New Zealand Free Trade Area (AANZFTA)" (<a href="http://www.customs.gov.sg/~media/cus/files/circulars/ca/2016/circular052016%20ver3.pdf">http://www.customs.gov.sg/~media/cus/files/circulars/ca/2016/circular052016%20ver3.pdf</a>)</p> <p><b>(Improvement)</b></p> <p>- The 25th AFTA Council approved removal of the FOB value disclosure requirement from Form D under the ASEAN Trade in Goods Agreement (ATIGA) as to ASEAN-Japan EPA (AJCEP), ASEAN Korea FTA (AKFTA), and ASEAN-Australia-NZ FTA (AANZ). When wholly obtained (WO), change in tariff classification (CTC), or specific process as origin determination criteria is applied to these FTAs, there is no longer a requirement to fill the FOB value in the Form D. On 18 August 2013, the 45th ASEAN Economic Ministers' Meeting (AEM) approved the revised ATIGA Operational Certification Procedures (OCP) that incorporate removal of the FOB. Value disclosure requirement on Form D. Revised OCP became effective from 1 January 2014.</p> <p>- Under "ASEAN + 1" FTA, inclusive of Japan/ASEAN EPA, the F.O.B. Price Disclosure Requirement has been repealed, excepting the case, where the Value-Added Criteria apply.</p> <p>- On 20 March 2014, at the 9th Rules of Origin Subcommittee under Japan-ASEAN Comprehensive Economic Partnership (AJCEP) convened in Myanmar, the AJCEP member states agreed on the amended origin rule form (Form AJ), dispensing with the requirement for filling in FOB prices on certificate of origin documents, excluding the case where regional value content (RVC) or value added criteria is used, (and made effective from 1 October 2014). The revised Form in concern will apply after the 6-months transitional period from 1 October 2014, provided, however, that as to Myanmar and Malaysia, the former practice will continue for two years so that description of FOB prices is necessary.</p> <p>-- Japan Ministry of foreign affairs (<a href="http://www.mofa.go.jp/mofaj/ecm/ep/page22_001081.html">http://www.mofa.go.jp/mofaj/ecm/ep/page22_001081.html</a>)</p> <p>- Thai Department of Foreign Trade promulgated implementing rules for issuing revised "Form AJ" for ASEAN side origin certificate under Japan-ASEAN Comprehensive Economic Partnership (AJCEP). Excepting the case where Regional Value Content (RVC) standard is used for proof of origin, it has obviated the need for disclosure of the FOB price. (Enforced from 1 October 2014).</p> <p>- Ministry of Finance promulgated decree concerning order for amending the ASEAN side origin certificate "Form AJ" under Japan-ASEAN Comprehensive Economic Partnership (AJCEP), pursuant to Customs Act 1967 (Enforced from 1 October 2014). (<a href="http://www.federalgazette.agc.gov.my/output/pua_20141001_P.U.%20(A)%20266_PERINTAH%20DUTI%20KASTAM%20(ASEAN-JEPUN)%202014.pdf">http://www.federalgazette.agc.gov.my/output/pua_20141001_P.U.%20(A)%20266_PERINTAH%20DUTI%20KASTAM%20(ASEAN-JEPUN)%202014.pdf</a>)</p> <p>- On 1 April 2016, Singapore Customs enforced the 1st Revised Protocol for ASEAN-Australia/New Zealand FTA (AANZFTA). The Protocol, among other measures, includes: 1) Amendment of Certificate of Origin "Form AANZ" pursuant to AANZFTA, 2) Repeal of Mandatory F.O.B. Price Description in Box 9 of Form AANZ, 3) Amended Product Specific Rules of Origin (PSR), shifting to HS 2012, etc.</p>	<p>- <u>It is requested that ASEAN repeals the invoice price description requirement on Form D.</u></p>	<p>- ASEAN Trade in Goods Agreement(ATIGA)</p>
	(5)	Delayed TPP Negotiation	<p>- <u>While the TPP (Transpacific Partnership Agreement) negotiation continues, its conclusion lags behind the target schedule.</u></p>		

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			<p><b>(Improvement)</b></p> <p>- Agreement on TPP Negotiation lagged behind the target schedules for several times including the March 2015 target. Following the enactment of TPA in the U.S., at long last, on 5 October 2015, the participating countries reached TPP Agreement in principle on 5 October 2015, and on 4 February 2016, all 12-countries signed the TPP Agreement.</p>		
	(6)	Differences of Import Procedures by Country on Government Designated Products	<p>- It is a matter of concern that import procedures may vary the legislation of individual Member States, for example, on Parts And Materials and Chemical Goods.</p> <p><b>(Improvement)</b></p> <p>- On 28 April 2014, Ministry of Economy, Trade and Industry (METI), by activating the framework under ASEAN Economic Ministers (AEM)-MITI Japan Economic and Industrial Cooperation Committee (AMEICC), developed Japan-ASEAN Chemical Substance Control Data Base. National Institute of Technology and Evaluation (NITE) started its full-fledged operation. The Data Base includes Chemical Regulatory Information among Japan and ASEAN Member States, Toxicity Information, GHS Classification Results, GHS Classification Results and Referential Safety Data Sheet (SDS), etc. which are available for free of charge.</p>	<p>- It is requested that the Member States will prepare ready-to-use information and review thereof through the Common Platform of the Asia Pacific countries.</p>	- Nil
17 Implementation of Intellectual Property Rights ("IPRs")	(1)	Delays in Patent Examination and Variances of Examiners' Quality Level	<p>- While legislative preparation has made a fair progress in the ASEAN member states, side by side with the economic growth, patent applications have snowballed rapidly. The delays in examination and qualitative variances have become noticeable by examiners (judgement variation and their expertise level). It affects applicants' effort to seek stable protection of their patent rights, and other IPRs.</p> <p><b>(Actions)</b></p> <p>- From 30 June to 3 July 2014, the 44th ASEAN Working Group on Intellectual Property Cooperation (AWGIPC) reviewed the region by region state of progress on each initiative under strategic target set forth in "ASEAN IPR Action Plan 2011-2015". 5-strategic targets under ASEAN IPR Action Plan 2011-2015:</p> <ol style="list-style-type: none"> <li>(1) Establishment of well balanced IPRs scheme,</li> <li>(2) Member states' participation in the International IPRs scheme through overhaul in individual member states' regional, legal, policy formulation, institutional foundation building.</li> <li>(3) Propulsion of IPRs creation, exploitation, enlightenment, and transfer of technology,</li> <li>(4) Positive participation in the international IPRs community,</li> <li>(5) Enhancement of cooperative partnership relations among the member states for personal/organisational improvement in the ASEAN IPRs authorities.</li> </ol> <p>- On 27 March 2014, "ASEAN and Europe Strengthen Cooperation on Patents".</p>	<p>- It is requested that ASEAN member states will promote inter-member states cooperation through enhanced use of "Patent Protection Highways" and ASEAN Patent Examination Co-operation (ASPEC), and dissolve the backlog of examination, while upgrading quality of examiners by providing adequate training, etc.</p>	

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			<p><b>(Improvement)</b></p> <p>- Japan Patent Office provides at its web page (<a href="https://www.jpo.go.jp/torikumi/kokusai/kokusai2/prus.htm">https://www.jpo.go.jp/torikumi/kokusai/kokusai2/prus.htm</a>) "PRUS: Patent examination Result Utilisation Scheme" that enables expeditious and accurate patent acquisition in the ASEAN Member States through utilisation of the results of foreign patent examinations such as "Modified Substantive Examination" and "Early Examination based on Examination in Foreign Countries".</p>		
	(2)	Indigested Data Base related to IPRs Information	<p>- It is difficult to grasp accurately the risk from patents of others in the up-and-coming countries with growing needs for securing patent rights, due to shortage of information on statistics and the database for pending applications.</p>	<p>- It is requested that each ASEAN member state will further advance cooperation with patent offices of developed countries and streamline the IPRs database as soon as possible.</p>	
			<p><b>(Improvement)</b></p> <p>- Japan Patent Office at its web site sets forth: (1) Information on "Intellectual Property Right Scheme/Information on IPRs in Foreign Countries" (<a href="https://www.jpo.go.jp/seido/kokusai_doukou/sangyozaisan/index.html">https://www.jpo.go.jp/seido/kokusai_doukou/sangyozaisan/index.html</a>), and (2) "Data Bank for Information on IPRs in Emerging States" (<a href="https://www.globalipdb.inpit.go.jp/">https://www.globalipdb.inpit.go.jp/</a>), providing information on Intellectual Property Right Scheme in each ASEAN Member State and Emerging Countries.</p>		
19	Industrial Standards, Approval of Safety Standards	(1) Incompatible Marking of Vehicle Identification No. Between Countries	<p>- Rough Terrain Crane (8426.41), being not classified under Chapter 87 "Special Vehicles, i.e. Vehicles other than railway or tramway rolling stock, and parts and accessories thereof", a Member Firm does not provide stamping Of Vehicle Identification Number (VIN), provided, however, that from time to time, the VIN number presentation in necessary in Vietnam and Thailand.</p>	<p>- It is requested that each ASEAN Member State clearly identifies on HS Code, if VIN is necessary.</p>	
24	Indigested Legislation, Abrupt Changes	(1) Delays of information on the progress made on AEC2015	<p>- Updating is insufficient concerning the Progress Status by the Member States made on AEC2015.</p>	<p>- It is requested that ASEAN discloses the progress made on the negotiation/consultation relative to AEC2015 as information commonly available to each Member State.</p>	
			<p><b>(Actions)</b></p> <p>- At the 27th ASEAN Summit convened on 21 November 2015, "Kuala Lumpur Declaration (KLD) on the Establishment of the ASEAN Community" was signed and adopted on 22 November 2015. It declares formal establishment of APSC, ASCC, and AEC by 31 December 2015. Notwithstanding KLD, "ASEAN2025" was jointly adopted. It comprises of 5-Instruments:</p> <p>(1) Kuala Lumpur Declaration that carries over by 10-years the completion of the ASEAN Common Progress and Community,</p> <p>(2) the ASEAN Community Vision 2025,</p> <p>(3) APSC Blueprint 2025,</p> <p>(4) AEC Blueprint 2025 and</p> <p>(5) ASCC Blueprint 2025.</p>		

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				<p>- On 20 November 2015, ASEAN released 2-Reports on Progress and Key Achievements based on the going AEC Blueprint:</p> <p><u>[1] "AEC2015: Progress and Key Achievements" (evaluated by The AEC Scorecard as of end of October 2015):</u></p> <p><u>(1) Achievement Rate of Measures under the Scorecard: 486 measures achieved out of 611 measures in total.</u></p> <p><u>(2) Major achievements in Trade In Goods includes, i) Materialised Tariff Removal on 95.99% of the Tariff Items in average in the entire ASEAN Member States, ii) Simplified ATIGA Rules of Origin, iii) A Fair Progress made on introduction of Self -Certification, iv) Signing of Protocol on introduction of Electronic Exchange of Rules of Origin geared toward construction of the ASEAN Single Window, v) Achieved development of work toward construction of ASEAN Trade Repository: in respect of Standards/Attestation/ Certification in the area of Cosmetics, Medical Equipment, Electric/Electronic Products, effectuation of Mutual Recognition Agreement, etc.</u></p> <p><u>[2] "ASEAN Integration Report 2015" addresses the Progresses and Achievements on the Major Integration Measures (MIM) since adoption of the 2007 AEC Blue Print, analyses the impact/influences given to the entire Area, and evaluates the status of MIM employment in each Member State.</u></p>		