

ASEAN-INDIA FREE TRADE AGREEMENT (AIFTA)

AIFTA was signed on August 13, 2009 and entered into force on January 1, 2010 for India, Malaysia, Singapore, and Thailand. These Parties have completed their ratification procedures and notified other Parties of their ratification in writing per the requirements of Article 23 of the Trade in Goods (TIG) Agreement. The remaining ASEAN countries, namely Brunei, Cambodia, Indonesia, Laos, Myanmar, Philippines, and Vietnam are working to ratify AIFTA at their earliest opportunity. The Agreement will enter into force for these Parties on June 1, 2010 or upon a date by which that Party notifies the completion of its internal ratification procedures, whichever is earlier.

A. Tariff Reduction and Elimination Modality

The ASEAN-India TIG Agreement covers approximately 90% of the total tariff lines traded among the Parties. Of the approximately 5,000 items traded between ASEAN and India, 10% will not be eligible for any tariff reduction and fall under the Exclusion List. The remaining 4,000 items fall into one of the following categories: the Normal Track (divided into two sub-tracks), the Sensitive Track, Special Products, and Highly Sensitive List. The base rate, or starting point for duty reduction or elimination, is indicated for each item in each Party's schedule.

Normal Track

Normal Tracks 1 and 2 cover 80% of total tariff lines. Tariffs will be completely eliminated for goods covered under the Normal Track in accordance with the schedule below:

Normal Track 1

- From January 1, 2010 to December 31, 2013 for Brunei, Indonesia, Malaysia, Singapore and Thailand, and India for these Parties.
- From January 1, 2010 to December 31, 2018 for the Philippines and India.
- From January 1, 2010 to December 31, 2013 for India, and from January 1, 2010 to December 31, 2018 for Cambodia, Laos, Myanmar and Vietnam.

Normal Track 2

- From January 1, 2010 to December 31, 2016 for Brunei, Indonesia, Malaysia, Singapore and Thailand, and India.
- From January 1, 2010 to December 31, 2019 for the Philippines and India.
- From January 1, 2010 to December 31, 2016 for India, and from January 1, 2010 to December 31, 2021 for Cambodia, Laos, Myanmar and Vietnam.

The details regarding the tariff lines under HS Chapters 84, 85 and 87 in the Normal Track can be accessed at http://commerce.nic.in/trade/international_ta_indasean.asp

Sensitive Track

Under the Sensitive Track, applied MFN tariffs that are above 5% will be reduced to 5% in accordance with the tariff reduction schedules below:

- From January 1, 2010 to December 31, 2016 for Brunei, Indonesia, Malaysia, Singapore and Thailand, and India.

- From January 1, 2010 to December 31, 2019 for the Philippines and India.
- From January 1, 2010 to December 31, 2016 for India, and from January 1, 2010 to December 31, 2021 for Cambodia, Laos, Myanmar and Vietnam.

Parties are allowed to maintain applied MFN tariff rates of 5% for up to 50 tariff lines. For the remaining tariff lines, applied MFN tariff rates must be reduced to 4.5% upon entry into force of the Agreement for ASEAN-6¹ and 5 years from entry into force of the Agreement for Cambodia, Laos, Myanmar, and Vietnam. The AIFTA preferential tariff rate for these tariff lines will be further reduced to 4% in accordance with the end-date set above.

Applied MFN tariff rates on 4% of the tariff lines placed in the Sensitive Track, as will be identified by each Party on its own accord and exchanged with other Parties, will be eliminated by:

- December 31, 2019 for Brunei, Indonesia, Malaysia, Singapore² and Thailand, and India.
- December 31, 2022 for the Philippines and India.
- December 31, 2024 for Cambodia, Laos, Myanmar and Vietnam.

The details regarding the tariff lines under HS Chapters 84, 85 and 87 in the Sensitive Track can be accessed at http://commerce.nic.in/trade/international_ta_indasean.asp

Special Products

The Agreement aims to achieve specific duty rates in the range of 37.5% to 50% by the end of 2019 for certain highly sensitive special products, including crude and refined palm oil, tea, coffee, pepper and rubber. Where the applied MFN tariff rate for crude and refined palm oil is lower than the preferential tariff under the AIFTA, the lower applied rate shall prevail.

Highly Sensitive Lists³

Tariff lines under the Highly Sensitive List are classified into three categories:

1. Category 1: reduction of applied MFN tariff rates to 50%;
2. Category 2: reduction of applied MFN tariff rates by 50%; and
3. Category 3: reduction of applied MFN tariff rates by 25%,

The above tariff reduction shall be achieved by December 31, 2019 for Indonesia, Malaysia and Thailand, December 31, 2022 for the Philippines, and December 31, 2024 for Cambodia and Vietnam.

Exclusion List

Ten percent of tariff lines are excluded from concessions. The Agreement provides that the tariff lines under the Exclusion Lists will be reviewed annually with a view to improving market access.

¹ Special arrangements apply for Thailand.

² Modality for Sensitive Track does not apply to Singapore.

³ The modality for highly sensitive list does not apply for Brunei, Laos, Myanmar and Singapore.

The details regarding the tariff lines under HS Chapters 84, 85 and 87 in the Exclusion List can be accessed at http://commerce.nic.in/trade/international_ta_indasean.asp

B. Rules of Origin

General Rules

Under the TIG Agreement, goods not wholly produced or obtained in the exporting Party will be deemed eligible for preferential concessions where they conform to the rule of origin of at least 35% Regional Value Content (RVC) plus Change in Tariff Subheading (CTSH) provided that the final process of the manufacture is performed within the territory of the exporting Party.

Method of Determining Origin	Unique Origin Criteria
1. Wholly obtained or produced	None
2. 35% RVC+ CTSH	
3. Product Specific Rules of Origin	

The calculation of RVC is as follows:

Direct Method

$$\frac{\text{AIFTA Material Cost} + \text{Direct Labor Cost} + \text{Direct Overhead Cost} + \text{Other Cost} + \text{Profit}}{\text{FOB Price}} \times 100 \geq 35 \%$$

Or

Indirect Method

$$\frac{\text{Non-AIFTA Material Cost} + \text{Cost of Materials for which origin are unknown}}{\text{FOB Price}} \times 100 \leq 65 \%$$

Product Specific Rules (PSRs) are currently under negotiation. PSRs will require that materials have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy an *ad valorem* criterion or a combination of any of these criteria.

Rules on Accumulation of Inputs

Originating goods, which are used in a Party as material for manufacture of a product which is eligible for preferential treatment under the Agreement, shall be considered as originating in that Party where the manufacturing of the product has taken place.

De Minimis

AIFTA does not provide a *de minimis* rule for CTH standard.

C. Certification Rules

General Description

AIFTA adopts a government-certification system. Rule 13 of the Rules of Origin provided under Annex 2 of the legal text requires that a product in order to receive preferential tariff treatment must be supported by a certificate of origin (Form AI) issued by a government authority designated by the exporting Party and notified to the other Parties in accordance with the Operational Certification Procedures as set out in Appendix D. The exporter must apply in writing to the Issuing Authority of the exporting Party requesting for the pre-exportation verification of the origin of the product. The exporter must submit a written application for the certificate of origin (CO) Form AI together with appropriate supporting documents proving that the products to be exported qualify for the issuance of a CO. The validity of the Form AI is one year.

Back-to-Back Certificate of Origin

AIFTA allows for the issuance of back-to-back CO Form AI subject to conditions laid down in Article 11 of Appendix D.

Third-party Invoicing

AIFTA allows for third party invoicing as provided under Article 22 of Appendix D.

Advance Rulings

Not applicable under AIFTA.

Authorized Bodies

The authorized bodies are government bodies authorized to issue COs in accordance with the laws, regulations and policies applying to that body. The CO issuing authorities are (i) the Export Inspection Council of India or any other agency authorized by the Government of India in accordance with laws and regulations, and (ii) the following ASEAN authorities:

ASEAN Member	Issuing Authority
Brunei	Ministry of Foreign Affairs and Trade
Cambodia	Ministry of Commerce
Indonesia	Ministry of Trade (Directorate General of International Trade)
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)

Document Retention Requirements

The record keeping requirement under AIFTA is two years. Article 16 of Appendix D provides that the Customs Authority of the importing Party may request an importer for information or documents relating to the origin of imported good in accordance with its domestic laws and regulations.

Where transportation is effected through the territory of one or more non-AIFTA parties, as described under Rule 8(c) of the AIFTA Rules of Origin, the Agreement requires that the documents listed below be produced before the Customs Authority of the importing Party:

- a through Bill of Lading issued in the exporting Party;
- a CO Form AI issued by the relevant Issuing Authority of the exporting Party;
- a copy of the original commercial invoice in respect of the product; and
- if any, other relevant supporting documents in evidence that the requirements of Rule 8(c) of the AIFTA Rules of Origin are being complied with.

D. Relevant FTA Provisions

- Legal Text, including individual tariff schedules:
http://commerce.nic.in/trade/international_ta_indasean.asp
- Rules of Origin, Annex 2:
<http://commerce.gov.in/trade/ASEAN-India%20Trade%20in%20Goods%20Agreement.pdf>
- Operational Certification Procedures, Appendix D:
<http://www.aseansec.org/Doc-ASEAN-India-AppendicesC&D.pdf>
- Sample Certificate of Origin, Appendix D:
<http://www.aseansec.org/Doc-ASEAN-India-OCP.pdf>