ASEAN Economic Community: Rules of Origin

Mr Stefano Inama
Mr Edmund Sim
ASEAN Integration Through Law

Reader - Teaching Material

The ASEAN Economic Community -
Rules of origin

Stefano Inama
Chief, UNCTAD

Edmund Sim
Partner, Appleton Luff

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Notes

Course description

ASEAN leaders agreed to create an ASEAN free trade area and a single market - the ASEAN Economic Community. Rules of origin regulate the nationality of goods and their capacity to freely trade within ASEAN. This course examines how ASEAN member states and institutions have so far failed to establish a predictable and transparent set of RoO. Students will understand how ASEAN rules of origin affect the daily life of the business sector and the measures and initiatives to be undertaken to simplify them.

Course objective

The course is designed to serve as the basis for a specialization on rules of origin in ASEAN thanks to an analytical review of the ASEAN text on rules of origin, empirical evidence and business surveys. It should provide course participants with an understanding of the ASEAN rules of origin formulations in different ASEAN agreements, starting with the ASEAN Preferential Trading Arrangement (APTA), then to the ASEAN Free Trade Agreement (AFTA), and finally to the current ASEAN Trade in Goods Agreement (ATIGA) and beyond. Upon completion of the course, participants will have a greater understanding of issues related to rules of origin.

Course requirements

The course is based on lectures to familiarize course participants with the sources and literature in the field. Course discussions (based on the assigned readings and questions included in the TM) and group presentations (debates, moot exercises) are used to illustrate the key concepts and expand upon several case studies. Therefore, for interaction and pro-active learning, the assigned readings and exercises are imperative. Each course session begins with lectures and then move to discussion and group presentations. The main objective of the discussions and group exercises are to move beyond pure description and to demonstrate what we can learn cases that adds up to more in depth knowledge of the course topic.
The ASEAN Economic Community - Rules of origin

1.1 The AFTA rules of origin

The original AFTA rules of origin consisted of eight main rules (i.e., articles) and two annexes detailing some calculation methods and 23 separate rules concerning operational certification procedures for the rules of origin of the CEPT scheme for the AFTA. The overall result was that the original AFTA rules focused more on the administrative aspects of the rules rather than on the substantive rules of origin requirements per se.

Definition of Not Wholly Produced or Obtained in AFTA

(a) (i) A product shall be deemed to be originating from ASEAN Member States, if at least 40% of its content originates from any Member States.

(ii) Locally-procured materials produced by established licensed manufacturers, in compliance with domestic regulations, will be deemed to have fulfilled the CEPT origin requirement; locally-procured materials from other sources will be subjected to the CEPT origin test for the purpose of origin determination.

(iii) Subject to sub-paragraph (i) above, for the purpose of implementing the provisions of Rule I (b), products worked on and processed as a result of which the total value of the materials, parts or produce originating from non-ASEAN countries or of undetermined origin used does not exceed 60% 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 Member State.

(b) The value of the non-originating materials, parts or produce shall be:

(i) The CIF value at the time of importation of the products or importation can be proven; or

(ii) The earliest ascertained price paid for the products of undetermined origin in the territory of the Member State where the working or processing takes place.

The formula for 40% ASEAN Content is as follows:

\[
\text{Value of Imported Non-ASEAN Materials, Parts or Produce} + \text{Value of Undetermined Origin Materials, Parts Produce} \leq 60\% \times \text{FOB Price}
\]

(c) The method of calculating local/ASEAN content is as set out in Annex A of this Rules. The principles to determine cost for ASEAN origin and the guidelines for costing methodologies in Annex B shall also be closely adhered to.

As contained in box 1 the drafting of the original AFTA rules was rather ambiguous and contained a number of provisions and wording leaving too much space to interpretation and little guidance to the various actors being customs or private sector that has to implement this rule. Neither the various elements nor the definitions of the rules were laid down in a sequential manner.
Questions:

1. Where and how AFTA rules of origin were not clearly drafted?

2. Is the definition originating from ASEAN Member States, if at least 40% of its content originates from any Member States sufficiently clear and predictable?

3. Do we have a clear definition of the numerator and denominator to calculate the 40% percentage?

4. Are annexes A and B mentioned above shedding some light on how to make the calculation?

Readings:
Inama and Sim, ASEAN rules of origin: a way forward (Cambridge 2015) (pp. 1-11)

The AFTA rules of origin

1.2 The introduction of Product specific rules of origin

Product Specific Rules of origin (PSROs)

In an apparent recognition of the inadequacy of an across the board percentage criterion ASEAN elaborated a set of requirements based on a “substantial transformation text”. However it was never sufficiently clear how these rules applied in relation to the main across the board percentage criterion.

Ancillary product-specific rules were thus adopted in the area of textile and textile products by the 7th AFTA Council held in 1995:

Recognizing that the existing percentage criterion of the CEPT Rules of Origin may not be conducive towards the objective of increasing intra-ASEAN trade in textiles and textile products, the 7th AFTA Council at its meeting on 6th September 1995 decided that for the purpose of origin determination of textiles and textile products either the percentage or the substantial transformation criterion can be used by the exporting country. The 7th AFTA Council also decided that an ASEAN Single List identifying the processes for each of the textile and textile products shall be formulated to administer the substantial transformation criterion.

2. When an exporting country chooses to apply the substantial transformation criterion, the following rules of origin shall apply. The rules of origin should be read in conjunction with the attached ASEAN Single List

Questions:
1. What factors motivated ASEAN to elaborate products specific rules of origin ? Are these PSROs solving the difficulties of complying with ASEAN rules of origin?

2. What have been the subsequent actions by ASEAN to clarify ASEAN rules of origin from 1995 to ATIGA(2009)?

3. Has the work carried out by ASEAN secretariat and member states being effective to address the shortcomings of the ASEAN rules of origin during this period?
4. Have the ASEAN leaders and Trade and economic Ministers taken note of the extremely low utilization rates of ASEAN PTA included in an official document?

Readings: Inama and Sim, ASEAN rules of origin: a way forward (Cambridge 2015) (pp. 12-18)


1.3 ATIGA (2009)

ATIGA (2009) represents the culmination of the ASEAN legislative efforts to come to the establishment of a truly FTAs. However the rules of origin text still perpetuates ambiguities. The ATIGA text reproduced below contains an across the board rules of origin with two alternatives: a RVC of 40 % and a CTH.

A spontaneous comment arises on the significance of this rule since a RVC of 40 % and CTH are not co-equal. Therefore depending on the product the exporter will always chose the most lenient to the exclusion of the other i.e. an exporter of fish fillets of heading 03.04 carrying out filleting on imported fresh fish will not opt the RVC of 40 % since a CTH from heading 03.03 to 03.04 is sufficient to acquire origin. Thus one alternative makes obsolete the other alternative since they are not co-equal in terms of stringency. In addition Product specific rules of origin contained in annex 3 of ATIGA are quite difficult to locate even with a rather protracted search in internet.

Paragraph (b) is a welcomed insertion in the main text since it clarifies that the exporter should leave the exporter free in choosing the alternatives. However it would have advisable to complement this provision by adding that also the importer member states should accept the choice made by the exporter.

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1. (a) For the purposes of Article 26(b), goods shall be deemed to be originating in the Member State where working or processing of the goods has taken place:

(i) if the goods have a regional value content (hereinafter referred to as “ASEAN Value Content” or the “Regional Value Content (RVC)”) of not less than forty percent (40%) calculated using the formula set out in Article 29; or

(ii) if all non-originating materials used in the production of the goods have undergone a change in tariff classification (hereinafter referred to as “CTC”) at four-digit level (i.e. a change in tariff heading) of the Harmonized System.

(b) Each Member State shall permit the exporter of the good to decide whether to use paragraph 1(a)(i) or 1(a)(ii) of this Article when determining whether the goods qualify as originating goods of the Member State.
2.

(a) Notwithstanding paragraph 1 of this Article, goods listed in Annex 3 shall qualify as originating goods if the goods satisfy the product specific rules set out therein.

(b) Where a product specific rule provides a choice of rules from a RVC-based rule of origin, a CTC-based rule of origin, a specific manufacturing or processing operation, or a combination of any of these, each Member State shall permit the exporter of the goods to decide which rule to use in determining whether the goods qualify as originating goods of the Member State.

(c) Where product specific rules specify a certain RVC, it is required that the RVC of a good is calculated using the formula set out in Article 29

(d) Where product specific rules requiring that the materials used have undergone CTC or a specific manufacturing or processing operation, the rules shall apply only to non-originating materials.

Paragraph 2 above introduces the PSRO exceptions to the general rule of paragraph 1. Once again and as previously pointed out in previous analysis of the ASEAN legal texts it is not entirely clear from the text under (a) if the PSRO under annex 3 are to be applied as an exception to the general rule and therefore as the only applicable criteria or if they are to be understood as additional criteria to the general rule. This loophole is enough to seriously question the overall efforts of consolidation of ATIGA.

**Note: Please see the Power Point presentation for illustrative materials**

**Questions:**

1. What considerations may be raised from an analysis of ATIGA text and related PSRO list?

2. Do the ATIGA Product specific rules of origin (PSROs) list contain inconsistencies and what are they?

3. Does ATIGA contains clear and predictable rules on cumulation and intermediate materials?

4. Does ATIGA includes elements borrowed from other RoO sets without imparting the necessary predictability after more than a decade of modifying and changing RoO?

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3In the absence of a clear direction from the legal text different answers are provided depending on the web sites consulted: The Malaysian Ministry of Trade ministry suggests that the PSROs are additional to the general rules:Http://www.miti.gov.my/cms/content.jsp?id=com.tms.cms.section.Section_a788349ec0a81573-6e076e07-bdac91ac,
1.4 RoO in FTAs with ASEAN dialogue partners

ASEAN failed to modernize its own rules of origin and externalized its own problems by advocating the use of ASEAN rules of origin in the FTAs entered with different dialogue partners. This strategy did not bear many fruits as dialogue partners wanted to stick to their rules as well. The result is a Pandora’s box of different requirements since each ASEAN Dialogue partner brought in its own view and experience on rules of origin and no attempt was made to set at least some best practices. The forthcoming mega-regionals like TPP-11 and RCEP may be an opportunity or a further challenge for ASEAN.

<table>
<thead>
<tr>
<th>Main origin criteria</th>
<th>Numerator</th>
<th>Denominator</th>
<th>Percentage level</th>
<th>Method of percentage calculation</th>
<th>Product specific rules of origin</th>
<th>Administrative requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASEAN</td>
<td>RVC or CTC at 4-digit level</td>
<td>Direct Method: Value of originating materials + cost of direct working or processing Indirect method: a subtraction</td>
<td>FOB price</td>
<td>Not less than 40% of RVC</td>
<td>Direct and indirect calculation based on the case of direct calculation on kind of valued. added calculation adding cost of processing and local</td>
<td>Contained in annex 3 of 288 pages of Product specific rules of origin. They apply on the majority of HS chapters including textiles and clothing, steel</td>
</tr>
<tr>
<td>Country</td>
<td>Percentage criteria of 40% according to a direct formula and not exceeding 60% according to an indirect formula</td>
<td>FOB price</td>
<td>The direct calculation is based on a 40% requirement of “ACFTA content.” The indirect calculation is based on a formula requiring not to exceed 60% of non-originating inputs.</td>
<td>Certificate of origin required</td>
<td></td>
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<tr>
<td>ASEAN-China</td>
<td>Form the FOB price of the value of non-originating materials.</td>
<td>Not less than 40% of RVC. The direct and indirect calculation is similar to the one used under AFTA.</td>
<td>Contained in annex 3 of 23 pages. Product specific rules of origin apply mostly to leather and leather products, textiles and clothing.</td>
<td>Certificate of origin required</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ASEAN-Australia-New Zealand (AA NZ)</td>
<td>RVC of 40% or CTC at four digit level.</td>
<td>Not less than 40% of RVC. The direct and indirect calculation is similar to the one used under AFTA.</td>
<td>Contained in annex 3 of 240 pages of Product specific rules of origin. They apply on all HS chapters. Requirements vary from Wholly obtained, RVC, Change of tariff subheading with or without exceptions, specific working or processing requirements.</td>
<td>Certificate of origin required</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Main origin criteria</td>
<td>Numerator</td>
<td>Denominator or percentage level</td>
<td>Method of percentage calculation</td>
<td>Product specific rules of origin</td>
<td>Administrative requirements</td>
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<tr>
<td><strong>ASEAN-India</strong></td>
<td>35% of RVC and CTH at 6 digit level</td>
<td>In the <em>direct method</em> the cost of processing and values of originating materials. In the <em>indirect method</em> the value of non-originating materials. Similar to ACFTA.</td>
<td>FOB price</td>
<td>35% in the case of direct method, 65% in the case of indirect method</td>
<td>In the case of <em>direct method</em> is a value added calculation method similar to ASEAN. In the case of the indirect method is a calculation based a maximum allowance of non-originating inputs similar to ACFTA</td>
<td>To be negotiated</td>
</tr>
<tr>
<td><strong>ASEAN-Japan</strong></td>
<td>40% RVC or CTC at 4 digit level</td>
<td>The ASEAN – Japan FTAs provide only for <em>indirect method</em>: a subtraction from the FOB price of the value of non-originating inputs similar to ACFTA.</td>
<td>FOB price</td>
<td>40% of RVC</td>
<td>Only one method of calculation based on a subtraction from the FOB price of the value of non-originating</td>
<td>Contained in annex 3 of 63 pages of Product specific rules of origin. They apply on all HS</td>
</tr>
<tr>
<td>Country/Region</td>
<td>Percentage or Method</td>
<td>Calculation Method</td>
<td>Pages of Origin Rules</td>
<td>Other Requirements</td>
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<tr>
<td>Asean-South Korea</td>
<td>40% of RVC or CTC</td>
<td>FOB price</td>
<td>Contains in annex 3 of 63 pages</td>
<td>Certificate of origin required. Each has to provide the names, addresses, specimen signatures and official seals through the ASEAN</td>
<td></td>
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<tr>
<td></td>
<td>at 4 digit level</td>
<td></td>
<td></td>
<td>Requirements vary from Wholly obtained, RVC, Change of tariff subheading with or without exceptions, specific</td>
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<td>certificate of origin required. Each has to provide the names, addresses, specimen signatures and official seals through the ASEAN</td>
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</tbody>
</table>

Requirements vary from Wholly obtained, RVC, Change of tariff subheading with or without exceptions, specific working or processing requirements and alternative rules. In the case of the Japan-Vietnam EPAs, the product specific rules of origin are contained in annex 2 counting around 100 pages.
| Secretariat. | working or processing requirements and alternative rules |
Questions:
1. What are the lessons to be learned from the experience of ASEAN negotiating RoO with ASEAN dialogue partners?

2. What have been the efforts of ASEAN to rationalize RoO when entering into negotiations with dialogue partners? Do we see a different track in the ASEAN-China and ASEAN India FTA with respect to ASEAN-Japan and ASEAN-Australia-New Zealand?

3. As a result of the overlapping of FTAs with Dialogue partners at plurilateral ASEAN level and ASEAN-Dialogue partners bilateral level, there is now a plethora of PRSO and related COs. How ASEAN is dealing with this situation?

4. Does there are signs of convergence or divergence in RoO negotiated with ASEAN dialogue partners? How the TPP 11 RoO and ongoing RCEP negotiations on RoO may interact in this Pandora box?

Readings:

Inama and Sim, The ASEAN rules of origin: a way forward (Cambridge 2015) (pp. 86-92)

ASEAN

1.5 The silent (exorbitant) cost: Administration of ASEAN RoO

As in many other PTAs, ASEAN rules of origin are accompanied by a series of administrative requirements related to the certificate of origin. In the ASEAN context, the “Form D” certificate of origin is the documentary foundation of ATIGA and AFTA. Companies wishing to claim the zero tariff rate applicable under ATIGA must demonstrate that their goods qualify as ASEAN-origin either by achieving 40 per cent value-added from ASEAN inputs and processing, or by a change in tariff classification (CTC) at the 4-digit harmonized tariff system level through processing in ASEAN (there are some special product-specific rules for automotive, steel, chemical and other products as discussed earlier).

The administrative process of Form D has been one of the most formidable obstacles to the utilization of ASEAN AFTA trade preferences as witnessed by the list below excerpted from an official ASEAN document.4

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4See reports of 5th ASEAN SC-AROO (19 July 2011)
Form D documentation has been rejected repeatedly for a variety of apparently trivial reasons:

- The paper was 1-2 millimeters too big or too small, e.g., as not being “A4” size.
- The paper was the wrong shade of color, e.g., for not being sufficiently “violet” or being too “light”.
- The specimen signature was not updated
- The authorized signatory was not updated
- The signature was slightly different from the specimen signature (e.g., a dot was missing from an “i”) or in a slightly different location from specimen signature)
- The document used the wrong font type.
- The document used the wrong font size.
- The exporter’s name did not match the invoice documentation, or some other typographical error.

ASEAN member states agreed to adopt self-certification for use in ATIGA by 2012 but implementation has been slow and it is not sure how these reforms have improved utilization rates of ATIGA. The amount of different COs forms to be utilized to benefit from FTAs from ASEAN – Dialogue partners FTAs is staggering and the utilization rates of the FTAs with ASEAN Dialogue partners are unknown

Questions:
1. Why ASEAN secretariat and ASEAN countries do not make a concerted effort of simplifying administrative procedures related to origin?

2. What are the stumbling blocks in pursuing an obvious reform on RoO and related administrative procedures? Why there is no systemic attempt to collect and analyze utilization rates?

3. Why ASEAN countries are silent in WTO and WCO committee on rules of origin rather taking up the issue and promote greater convergence at a multilateral level that could also help at regional level?

4. In ASEAN a number of Member states are still discussing e- certificate of origin while there is not yet a precedent in any FTA at present? Is that an avenue worth pursuing?

1.6 The way forward

There are obvious lessons learned in drafting RoO from other FTAs around the world. However ASEAN has shown extreme reluctance from learning from its own mistakes and from learning from other FTAs, including those FTAs entered with ASEAN dialogue partners.

There are now a number of actions that ASEAN need to undertake to modernize and streamline the ASEAN rules of origin and the rules of origin of ASEAN with ASEAN FTA dialogue partners. It is imperative to carry out an extensive program of reform of current rules of origin with an external peer review and advise on how to proceed learning from the experience made by the EU and Canada in similar exercises. This work may focus on the following aspects:
- Systemic collection and analysis of utilization rates of ATIGA and ASEAN FTAs with dialogue partners
- Analysis of possible convergence of Rules of origin texts across FTA agreements to identify best practices
- Ways and means to enhance the drafting of the legal texts of certain FTAs in terms of accuracy and precision by aligning them to existing best practices and improve the transparency and predictability of administrative aspects of rules of origin

2 – Topics for debate:

What should the priority be for simplifying RoO in ASEAN?

What is the relevant Rules of origin model for ASEAN?

How can ASEAN negotiate RoO internally and externally? What are the tools?

How ASEAN can be more united in pursuing a cohesive negotiating objective?

What course of action should ASEAN follow?

How ASEAN negotiators could pay more attention to the quality of legal drafting of RoO?
Practicum

Introduction

You are a Senior ASEAN official representing your government at a ASEAN senior official meeting where a series of issues relevant to the utilization of ATIGA and ASEAN FTA with dialogue partners are raised. You have to 1) examine the issues at stake and identify the national trade and regional trade interests 2) make constructive proposals from the point of view of your Delegation on how to solve and address the issues at stake 3) achieve a consensus with other ASEAN delegations by facilitating the understanding of the issue and propose win solution to make progress on AEC. 4) Design and draft a way forward as an outcome of the present ASEAM meeting with a time framed roadmap taking into account past experiences.

Depending on the number of participant the class may be to be divided in groups .It is suggested that one group represent High income ASEAN member states like Singapore, Brunei or Malaysia (group 1) , another group represent a middle income ASEAN member states Indonesia, Vietnam, Philippines (group 2) and another group represents ASEAN LDCs (group 3).This group division is designed to reflect some different trade interests existing in ASEAN that may be further illustrated to the class.

1 Issues to be examined

1.1 Utilization rates of ATIGA

In an official document produced by the ASEAN secretariat for the ASEAN Official the following table is contained :

"Trade under Form D

1. Based on the available data for the year 2010, it was found that the shares of Form D imports in intra-ASEAN are 3.34%, 47.1%, 18.98%, 3.44%, 11.089%, 0.49%, 41.15%, 22.6% and 13.44% for Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand and Viet Nam, respectively. The detailed information on trade under Form D appears in Table 2.

Table 1

<table>
<thead>
<tr>
<th>Ctry</th>
<th>BRN</th>
<th>KHM</th>
<th>IDN</th>
<th>LAO</th>
<th>MYS</th>
<th>MMR</th>
<th>PHL</th>
<th>SGP</th>
<th>THA</th>
<th>VNM</th>
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<td>6,717</td>
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<td>2,927</td>
<td>3,088</td>
<td>448</td>
<td>19,523</td>
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5 Source: SEOM Chairman's report to the AEM-25th AFTA Council Meeting of 10 August 2011, Manado, Indonesia
<table>
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<th>Country</th>
<th>Period</th>
<th>Intra-ASEAN</th>
<th>Share (%)</th>
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<td>KHM</td>
<td>Jan-Dec</td>
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<td>0.00 23.50 2.58 0.00 13.90 1.24 5.34 18.67</td>
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<td>25,420</td>
<td>260,819 77 2,671 235,309 57,844 2,398 584,545</td>
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<td>Form D</td>
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<td>486</td>
<td>189 1,652,923 27,617 234,103 997,932 4,184,024 287,879 7,385,151</td>
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<td>LAO</td>
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<td>10</td>
<td>4,792 282 108 4,900 364,649 29,429 404,170</td>
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<td>981</td>
<td>1,445 534 6,704 152 9,815</td>
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<td>132 203,332 15 135,153 489 1,126,095 475,806 38,081 1,993,171</td>
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<td>2,912</td>
<td>2,696 2,399,713 12 2,562,475 13,378 5,439,478 4,098,377 1,750,771 16,269,811</td>
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Figures in thousands of US dollars.
UNCTAD has utilized the following formula to calculate utilization rates since 1976 to calculate utilization rates of the GSP schemes:

\[
\frac{\text{Value of dutiable imports covered by the preferential arrangement}}{\text{Value of dutiable imports being granted preferential duty rates}} \times 100 = \% \text{ Utilization rate}
\]

Most recently and this formula has been adopted by the WTO where the concept of utilization rates of preferential trade agreements has been summarized in the following WTO document as:

"Preference utilization" can be described simply as the extent to which imports which are eligible for trade preferences are actually imported under these preferences. In more technical terms, it is the ratio between the amount – in terms of value or quantity – of imports which actually received preferences out of the total amount of imports which are eligible for preferences. Utilization rates have been used as an indicator to assess the effectiveness of preferences in general and of preferential rules or origin in particular.

It should be noted, nonetheless, that there are also limitations to the use of utilization rates as a tool to examine the appropriateness of rules of origin. In fact, utilization rates could be very low for a specific tariff line for reasons which are not necessarily related to the design of a rule of origin. For instance, an operator (importer, exporter or the producer) could be unaware that preferences are available. Or, an operator may prefer to pay MFN duties because the preferential margin is not attractive (that is, the MFN rate is low so the preferential margin does not work as an incentive to use the preferences). Additionally, a high overall utilization on total imports may conceal big differences at the tariff line level.

According to this definition and relevant studies it appears that the utilization rates of ATIGA is low by any acceptable standard even in spite of recent updates and improvement made lastly in ATIGA.

\(^6\) G/RO/W/161 25 August 2016

\(^7\)
In addition recent analysis is showing that relatively utilization rates is also recorded in ASEAN FTAs with Japan, one of the most important trading partner as shown below:

Although this low utilization rates may be explained by the overlapping FTAs among the ASEAN comprehensive and the individual FTAs among Japan and some of the ASEAN members states these low figures are calling for further analysis and consideration by High level ASEAN officials.

1.1.1. Organization of the working groups.

It is suggested that the Groups assumes different negotiating positions and that their position are based and substantiated drawing on findings and research literature contained in annex 1.

Group 1 assumes a rather dismissive attitude of the figures contained in the ASEAN secretariat. Group 2 assumes a more proactive attitude towards adopting correcting actions to address the current low utilization rate. Group 3 assumes a much more aggressive position for a drastic change of the current rules of origin given the low utilization rates.

1.2 Product specific rules of origin in ATIGA and in FTAs dialogue partners

1.2.1 Issues to be examined

ASEAN has routinely insisted during negotiations of FTAs with Dialogue partners that ASEAN rules of origin were the model to be used. However this negotiating position has not properly worked out most of the times. One of the most glaring examples is the ATIGA RoO where ASEAN accepted the concept of Change of tariff classification (CTC) as one of the main origin criteria upon pressures from the ANZ FTA. Afterwards ASEAN introduced the concept of CTC on its ATIGA rules of origin adding to its traditional model of 40% percentage criterion the CTC criterion in rather default manner. The results of this ASEAN collective attitude is best reflected in the product specific rules of origin reproduced below:

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8 see UNCTAD Drafting rules of origin in FTAs, forthcoming 2018
• The following is an example of ATIGA PRSO for headphones: *A regional value content of not less than 40 percent; or A change to subheading 8518.30 from any other subheading*

According to the Harmonized System the finished headphones are classified in HS subheading 851830 while the parts of the headphones are classified Heading 851890 –parts of headphones. In CTC terminology this means that assembly of parts of headphones 851890 into complete headphones of heading 851830 is origin conferring as there is change of subheading from 851890 to heading 851830. Hence the 40% RCV is completely redundant since no businessman or investor consider to comply with a much more complicated rules as the 40% RVC while by merely assembling parts of headphones into a complete headphone origin could be conferred.

1.2.2 Organization of the working groups.

It is suggested that the Groups assume different negotiating positions and that their position are based and substantiated drawing on findings and research literature contained in annex 1.

Group 1 assumes a rather dismissive attitude of product specific ROO alleging that alternative RoO are business friendly. Group 2 assumes a more proactive attitude by suggesting a closer analysis of the product specific rules of origin to identify possible inconsistencies. Group 3 assumes a much more aggressive position for a drastic revision of annex 3 of ATIGA

1.3 Operational certificate procedures (OPCs)

1.3.1 A illustrated in the main text use of the ASEAN preferences is plagued by a series of different interpretation and practices used by the customs authorities in interpreting and applying ASEAN OPCs regulations. An approved exporter ASEAN pilot procedures took longtime to be approved and recent research shows that its implementation needs improvement. See USAID report: Self certification in ASEAN: An assessment of Philippines implementation of the second ASEAn self certification pilot project, 2016.

Table 2 below provide a comparative example of the different OPCs existing in ATIGA. As It can be observed the OPC vary in a distinctive manner

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9 See USAID report: Self certification in ASEAN: An assessment of Philippines implementation of the second ASEAn self certification pilot project, 2016
Based on the above comparative table a number of initiatives could be undertaken to simplify and approximate the different OPCs to facilitate trade and use of the ASEAN and ASEAN FTA.

1.3.2

It is suggested that the Groups assumes different negotiating positions and that their position are based and substantiated drawing on findings and research literature contained in annex 1.

Group 1 assumes a rather dismissive attitude of further actions on OPCs alleging that the pilot on self certification is doing relatively well and further action is not needed .. Group 2 assumes a more proactive attitude by suggesting that action should be undertaken to introduce some trade facilitating measures of the product specific rules of origin to identify possible inconsistencies. Group 3 assumes a much more aggressive position for a drastic revision of OPCs in view of lates developments.
Annex: additional literature


-Jetro, Utilisation of Free Trade Agreements by Services Industries in ASEAN, 2015

-World Bank, Preferential rules of origin, policy research report, East Asia, 2007