

# **Rules of Origin in ASEAN: A Way Forward**

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## **EXECUTIVE SUMMARY**

The rules of origin (RoO) constitute a fundamental foundation for any preferential trade agreement (PTA). RoOs are similar to nationality and citizenship rules for natural persons in a nation-state. Qualifying persons may enjoy the benefits of citizenship, such as freedom of movement, permanent residency and the like. Similarly, RoOs determine the applicable duty rate and other treatment for goods in the PTA.

Taken in this context, the ASEAN RoOs, originating in the ASEAN Preferential Trade Agreement (APTA), developed in the ASEAN Free Trade Area (AFTA) agreement and purportedly refined in the ASEAN Trade in Goods Agreement (ATIGA), have created a relatively muddled and confused trading situation. The ASEAN RoOs are both ill-defined and ill-administered, resulting in less-than-optimal usage of the ASEAN trade preferences and stunting the growth of the ASEAN Economic Community (AEC). These deficiencies have been carried forward into ASEAN's free trade agreements (FTAs) with its main dialogue partners of Australia-New Zealand, China, India, Japan and Korea.

The poor definition of ASEAN RoOs dates back to the APTA and AFTA. The concept of regional value added as a qualifying RoO was not properly spelled out, with ASEAN customs authorities and practitioners having to fill out the details through trial and error, often to the detriment of the business sector. Continued underuse of the ASEAN trade preferences led further tinkering of RoOs by ASEAN authorities, such as the introduction of product-specific RoOs as well as the alternative rule of change in tariff classification. Yet despite these revisions, effected in their latest form in the ATIGA, the ASEAN RoOs remain relatively ill-defined and difficult to administer.

The poor administration of ASEAN RoOs also has been a persistent problem. Despite repeated attempts to ease administrative burdens on importers and exporters, and thereby expand use of the ASEAN trade preferences, ASEAN customs authorities remain wedded to the verification and authentication of Form D certificate of origin documents rather than using modern trade facilitation approaches that would focus on the data contained in those documents instead of the documents themselves.

After surveying both the ASEAN RoOs and their administration, the authors recommend that ASEAN leaders reform both.

The RoOs in ATIGA and ASEAN FTAs can be simplified by focusing on 1) an overall improvement of the legal texts in terms of transparency and predictability 2) applying a percentage criterion based on value of materials 3) lowering the regional value content required to qualify as ASEAN-origin. 4) clarifying the text of product specific rules of origin.

The administration of ASEAN RoOs can be improved by 1) expanding the use of self-certification, 2) moving away from document-based verification and 3) shifting to modern post-entry audit and trade facilitation approaches.

By imposing greater clarity in the RoOs and their administration, ASEAN authorities can encourage the use of the ASEAN trade preferences by all segments of the business community. Only then can all sectors participate in the AEC and enjoy its benefits.