

ASEAN – China (ACFTA)

In November 2001, ASEAN and China agreed to launch negotiations for an ASEAN-China Free Trade Area (ACFTA). In the following year, ASEAN and China signed the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China.

The objectives of this Agreement are to:

- 1) strengthen and enhance economic, trade and investment co-operation between the Parties;
- 2) progressively liberalise and promote trade in goods and services, as well as create a transparent, liberal and facilitative investment regime;
- 3) explore new areas and develop appropriate measures for closer economic co-operation between the Parties; and
- 4) facilitate the more effective economic integration of the newer ASEAN Member States and bridge the development gap among the Parties.

The Agreement on Trade in Goods was signed in 2004 and implemented on 1 July 2005 by the ASEAN countries and 20 July 2005 by China. Under this Agreement, the six original ASEAN members and China have to eliminate tariffs on 90 per cent of their products by 2010, while Cambodia, Lao PDR, Myanmar and Vietnam have until 2015 to do so.

The Trade in Services Agreement entered into force in July 2007. Under this Agreement, services and services suppliers/providers in the region will enjoy improved market access and national treatment in sectors/sub-sectors where commitments have been made.

The Investment Agreement was implemented on 15 February 2010. The Agreement will help to create a more transparent and facilitative environment, and give companies from ASEAN a competitive edge to tap on thriving opportunities in China.

As of 29 October 2011, all Countries had implemented Third Party Invoicing and Movement Certificate: Brunei, Cambodia, China, Laos, Malaysia, Myanmar, Philippines, Indonesia, Singapore, Thailand, Vietnam.

Benefits to Singapore Exporters to China

The ACFTA has opened up major opportunities for ASEAN (including Singapore) and Chinese exporters, and would further strengthen trade links between ASEAN and China.

Under the ACFTA, tariffs on certain products were reduced before the onset of the FTA. This is known as the Early Harvest Programme (EHP), which came into effect on 1 January 2004.

The six ASEAN countries and China will eliminate tariffs on 90 per cent of their products by 2010, while the remaining ASEAN countries, Cambodia, Laos, Myanmar and Vietnam have until 2015 to do so.

Sectors where companies can get preferential access into the Chinese market include chemicals, electronics, food and beverage, and petrochemicals. For China, for instance, savings from these preferential tariff concessions provides cheaper inputs for businesses on a range of products and will enable exports from the region to be more competitive vis-à-vis other foreign exports to China.

Trade in Goods

The Framework Agreement on Trade in goods was signed in 2004 and implemented in 1 July 2005 by the ASEAN countries and 20 July 2005 by China.

Under this Agreement, participating countries are committed to reduce and/or eliminate tariffs under five different schedules. These products are organised into five different lists:

- 1) Early Harvest Programme (EHP)
- 2) Normal Track, which is further subdivided into
 - a) Normal Track 1
 - b) Normal Track 2
- 3) Sensitive Track, which is further subdivided into
 - a) Sensitive List
 - b) Highly Sensitive List

As part of the Framework Agreement, the EHP was negotiated. This programme allowed for the accelerated reduction of tariffs on certain products before the onset of the FTA. The programme reduced tariffs on these products over three years to 10 per cent by 2004, five per cent by 2005 and zero tariffs by 2006.

For Singapore exports to China, the EHP covers products from Chapters 1–8 of the HS code (Harmonised System), as well as 75 specific manufactured goods.

Under the Trade in Goods Agreement, the six original ASEAN members and China have to eliminate tariffs on 90 per cent of their products by 2010. The remaining ASEAN countries, Cambodia, Lao PDR, Myanmar and Vietnam, have until 2015 to do so. The remaining 10 per cent are deemed sensitive by parties and will be reduced at a slower pace. There is no physical list for products under Normal Track 1. In another words, for products that are not found in Normal Track 2, Sensitive List and Highly Sensitive List, it will automatically fall under Normal Track 1.

Rules of Origin

Under the ACFTA, products imported by a Party shall be deemed to be originating and eligible for preferential concessions if they conform to the origin requirements under any one of the following:

- 1) Products that are wholly obtained or produced as set out and defined in Rule 3, which is 'Wholly Obtained Products'; or
- 2) Products not wholly produced or obtained provided that the said products are eligible under the following:
 - a) Rule 4 'Not Wholly Produced or Obtained';
 - b) Rule 5 'Cumulative Rule of Origin'; or
 - c) Rule 6 'Product Specific Criteria'.

Under Rule 4, a product shall be deemed to be originating if:

- a) Not less than 40 per cent of its content originates from any Party; or
- b) If the total value of the materials, part or produce originating from outside of the territory of a Party (i.e. non-ACFTA) does not exceed 60 per cent of the FOB value of the product so produced or obtained provided that the final process of the manufacture is performed within the territory of the Party.

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The formula for the 40 per cent ACFTA content is calculated as follows:

$$\frac{\text{Value of Non-ACFTA materials} + \text{Value of materials of undetermined origin}}{\text{FOB Price}} \times 100\% < 60\%$$

Therefore, the ACFTA content: 100% - non-ACFTA material = at least 40%

Rule 5 which is the Cumulative Rule of Origin, refers to all 10 ASEAN countries and China value-added content (VA) of 40 per cent.

Rule 6 refers to the Product Specific Rule (PSR) whereby products have undergone sufficient transformation in a country, which shall be treated as originating goods of that Party.

In summary,

$$\begin{aligned} \text{Local/Regional VA (\%)} &= \text{Local/regional raw material cost} \\ &+ \text{Direct labour cost} \\ &+ \text{Direct overhead cost} \\ &+ \text{Profit} \\ &+ \text{Inland transport cost} \times 100\% \\ &\text{-----} \\ &\text{FOB} \end{aligned}$$

Customs Documentation

The operational procedures on the issuance and verification of the Certificate of Origin (Form E) are undertaken by the Singapore Customs.

The exporter and/or the manufacturer of the products qualified for preferential treatment shall apply in writing to the Singapore Customs requesting for the pre-exportation verification of the origin of the products. The result of the verification, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in verifying the origin of the said products to be exported thereafter. The Form E and the operational procedures are available at the Singapore Customs website.

Trade in Services

The Parties agree to enter into negotiations to progressively liberalise trade in services with substantial sectoral coverage. China has made a commitment to open up new markets to ASEAN countries in 26 branches of five service areas—commerce, construction, environmental protection, sports and transportation—on the basis of original WTO commitments. ASEAN has promised to open their markets to China in construction, education, finance, medical treatment telecommunication, and tourism.

Some of the services committed by China include the following:

- 1) Computer and Related Services
- 2) Construction and Related Engineering Services
- 3) Environmental Services
- 4) Recreational, Cultural and Sporting Services (other than audiovisual services)
- 5) Real Estate Services
- 6) Transport Services
- 7) Other Business Services

Investment

Investment Negotiations

Negotiations on the investment chapter are currently ongoing. ACFTA aims to obtain commitments on liberalising the investment regime, increasing market access as well as commitments on protection of investments in the China market. It has been agreed that the ASEAN Investment Agreement (AIA) would be used as a template for investment negotiations.

Cooperation

ASEAN and China have also agreed to co-operate focusing on five priority sectors, namely: agriculture, HRD, ICT, investment and the Mekong River Basin development, and 11 other activities, including the acceleration of the Singapore-Kunming Railway Project.

Dispute Settlement

The Parties shall, within 1 year after the date of entry into force of the ACFTA, establish appropriate formal dispute settlement procedures and mechanism.

Pending the establishment of the formal dispute settlement procedures and mechanism, any disputes concerning the interpretation, implementation or application of the ACFTA shall be settled amicably by consultations and/or mediation.

If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations or within 20 days after such date in cases of urgency, including those that concern perishable goods, the complaining party may make a written request to the party complained against to appoint an arbitral tribunal.

An appointed arbitral tribunal shall meet in closed session. The parties to the dispute shall be present at the meetings only when invited by the arbitral tribunal to appear before it.

The arbitral tribunal shall release to the parties to the dispute its final report within 120 days from the date of its composition. When the arbitral tribunal considers that it cannot release its final report within 120 days or within 60 days in cases of urgency, it shall inform the parties concerned in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. The final report of the arbitral tribunal shall become a public document within 10 days after its release to the parties concerned.

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