

TRAINING PROGRAMME ON “NEGOTIATING PREFERENTIAL TRADE AGREEMENTS”

Session 3: ATIGA and Rules of Origin

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Rajan Sudesh Ratna
Economic Affairs Officer
Trade, Investment and Innovation Division
UNESCAP, Bangkok
Email: ratna@un.org



Structure

- **Institutional mechanism of ASEAN**
- **ATIGA – salient features**
- **Logic and rationale for maintaining sensitive or exclusive list**
- **Stakeholders**
- **Preferential Rules of Origin**

AEC

Free flows of goods

Free flows of services

Free flows of capital

Free flows of investment

Free flows of skilled labor

ASEAN

- **The goal of free flow of goods is a key element within the AEC's first pillar. The region has progressed significantly since the agreement to establish the ASEAN Free Trade Area (AFTA) was signed in 1992. Adoption of the AEC Blueprint in 2007 and the signing of the ASEAN Trade in Goods Agreement (ATIGA) in 2009 marked important milestones towards this goal.**

ATIGA

- **ASEAN Economic Ministers (AEM)**
- **AEM is supported by SEOM**
- **Coordinating Committee on the implementation of ATIGA (CCA)**
- **Technical bodies**
- **Committees**

AFTA (ASEAN Free Trade Area)

- **AFTA was initiated in 1992. It aims to enhance competitiveness of ASEAN as an important production base for global market through reduction of tariff and non-tariff barriers to trade.**
- **Goal:**
“Reduce tariffs for all imported products to 0-5% and eliminate non-tariff barriers for all products except products that affect moral, security and health of human, animals and plants. “

CEPT

- **The Common Effective Preferential Tariff Scheme (CEPT) set out the reciprocal tariff preferences to be provided by any two ASEAN members.**
- **In order to obtain tariff preferential (zero tariffs) with ASEAN, intra imported products must have local contents at least 40%**
- **Special and differential treatments are given to CLMV from six other ASEAN members by adopting ASEAN Integration System of Preferences (AISP) during CLMV transition period which is until December 31, 2009.**

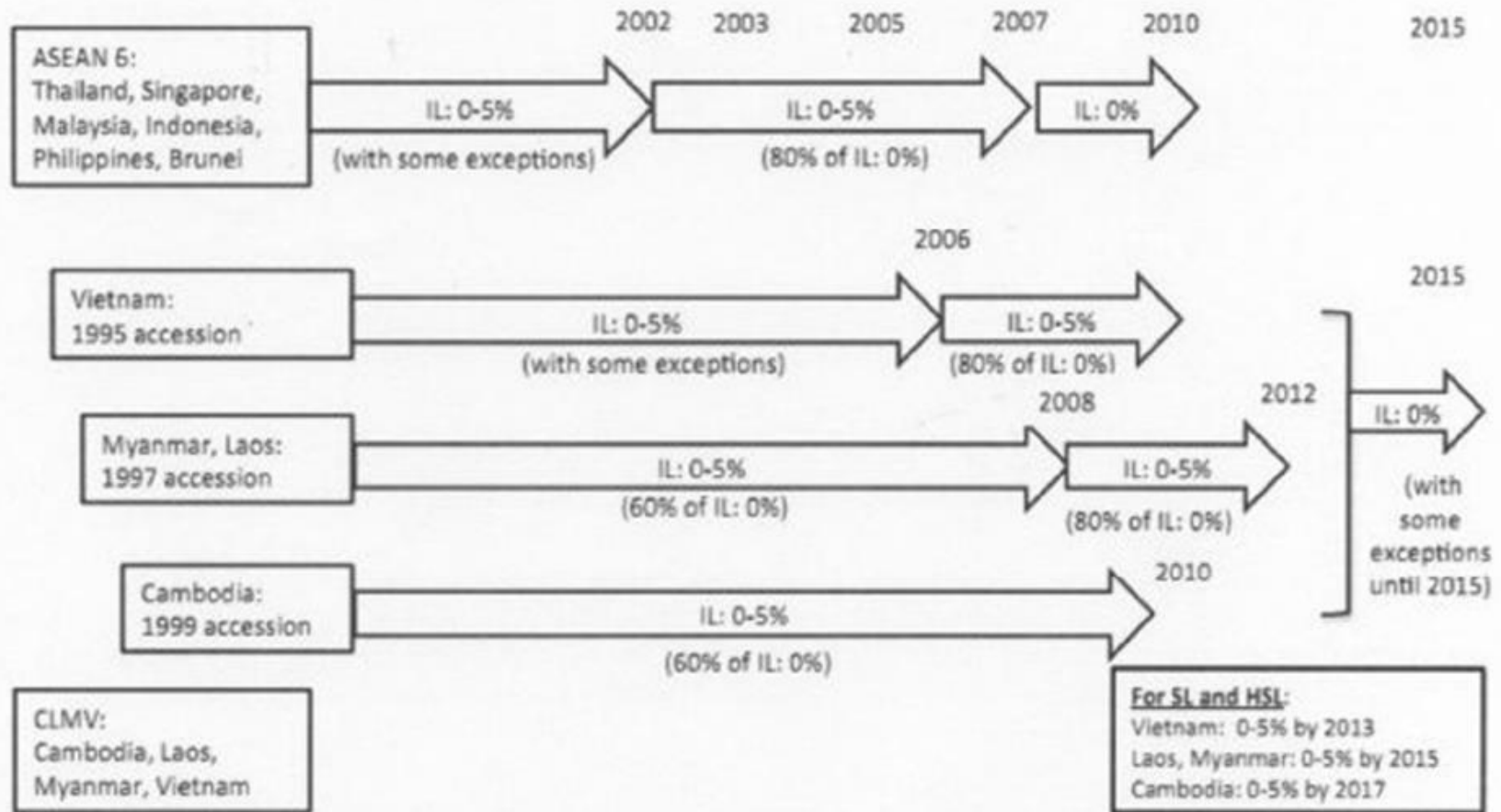
Tariff liberalisation

- **Fast Track:**
 - Tariffs on imported products were lowered to 0-5% within 2002
 - Rubber products, textiles, gems and jewelry, chemical products
- **Normal Track:**
 - Tariffs were reduced to 0-5% within 2007
- **Reciprocity principle**

Tariff liberalisation (2)

- In 2003, the Protocol to Amend the Agreement on CEPT-AFTA for the Elimination of Import Duties was adopted to push integration forward.
- Tariff lines in the Inclusion List (IL) were to be eliminated by 1 January 2010 for the ASEAN-6 (i.e. Brunei Darussalam, Indonesia, Malaysia, the Philippines, Thailand and Singapore) and by 1 January 2015 for the CLMV (i.e. Cambodia, Lao PDR, Myanmar and Viet Nam), with flexibility for some sensitive products for the CLMV by 1 January 2018.
- This timeline does not apply to products on the Sensitive List (SL) and Highly Sensitive List (HSL), which will be liberalised instead in accordance with the provisions of the Protocol

Tariff Schedule under the AFTA-CEPT



Note: IL = Inclusion List; SL = Sensitive List; and HSL = Highly Sensitive List

Source: Ngov (2011)

ATIGA

- **Introduced during the 21st AFTA Council meeting in the Philippines in August 2007**
 - **Need to improve and augment the CEPT scheme and to transform it into a comprehensive agreement**
 - **Tariff reduction alone is not enough to ensure the free flow of goods in the region**
 - **Need to address the issues of NTBs**
- **Signed in February 2009 at 14th Summit in Cha-Am Hua Hin, Thailand**

ATIGA (2)

- **Built on the AFTA-CEPT**
 - **CEPT focused on tariffs, but ATIGA contains broader and more specific provisions on RO, NTMs, trade facilitation, and SPS**
- **Emphasizes the importance of nurturing domestic economies**

Key provisions of ATIGA

- **Creation of an ASEAN Trade Repository and the ASEAN Single Window**
- **Tariff liberalization and removal of quantitative restrictions on importation**
- **Rules of Origin**
- **Non-tariff measures**
- **Sanitary and Phytosanitary Measures**
- **Trade facilitation**
- **Standards, technical regulations and conformity assessment procedures**
- **Trade remedy measure**
- **Special treatment of rice and sugar**

Tariff liberalization and removal of quantitative restrictions on importation

- **Provides for the elimination of import duties on all products traded within ASEAN by 2010 for ASEAN 6.**
- **Provides for a longer tariff elimination schedule for CLMV**
 - » Up to 2015, with flexibility up to 2018
- **Priority Integration Sectors**
 - Textiles and clothing
 - Agro-processing
 - Rubber-based products
 - Automotive
 - Healthcare
 - Fisheries
 - Wood-based products

Non-tariff measures

- **ATIGA provides for elimination of non-tariff measures.**
- **Countries are required to review ASEAN's current database on non-tariff measures with the objective of elimination of NTMs.**

| Country | Schedule of removal of NTMs (in three times) |
|--|---|
| Brunei Darussalam, Indonesia, Malaysia, Thailand and Singapore | 1 January of 2008, 2009 and 2010 |
| The Philippines | 1 January of 2010, 2010 and 2012 |
| Cambodia, Laos, Myanmar and Vietnam | 1 January of 2013, 2014 and 2015 |

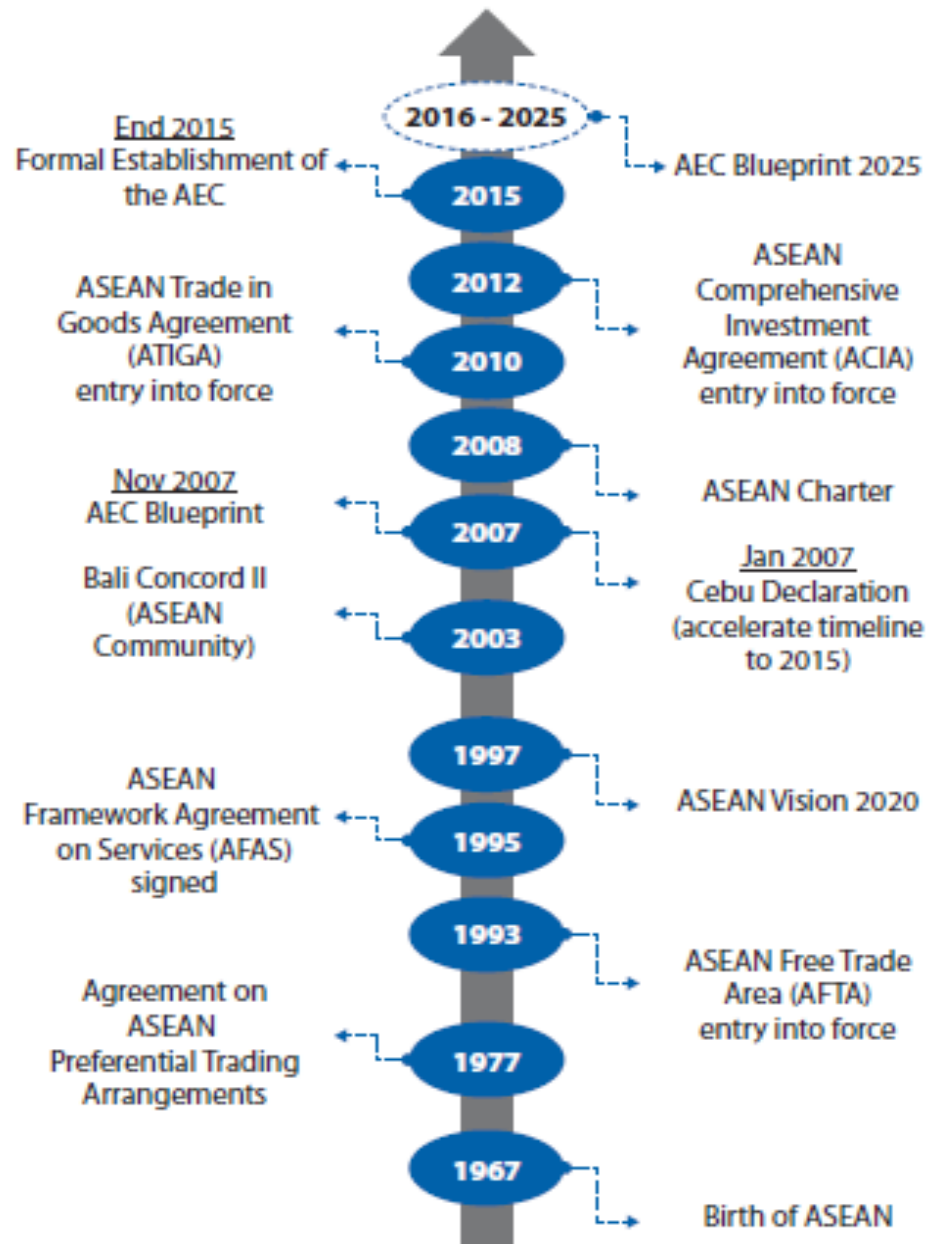
Trade remedy measure

- **The agreement retains the trade remedy measures prescribed in the various relevant agreements in WTO.**
- **It maintains members' rights to use the safeguard measures as well as the use of anti-dumping and countervailing duties provided in GATT.**

Special treatment of rice and sugar

- **Rice and sugar are highly sensitive products in many ASEAN members.**
- **A member may request for a waiver for the implementation of the liberalization schedule for any of these two commodities.**
 - **Philippines has issued a request to waive the removal of quantitative restrictions on rice, and its replacement with low tariffs. The country is allowed to maintain quantitative restriction on rice until 2012.**
- **There is a need for consultation among members**

AEC Milestones



Discussions

- **What is the reason for keeping items in exclusion list i.e. Sch – H?**
- **How effective is the Sch – H?**
- **What benefit Cambodia gets by protecting these items?**
- **How about the flexibility items?**
- **What needs to be done for future liberalisation or protection?**

Preferential Rules of Origin

Preferential Rules of Origin

- ▶ **Checking trade deflection/circumvention of third country goods.**
- ▶ **Facilitate value addition in the exporting country.**
- ▶ **Augmenting intra-regional trade and investment only if there is a cumulation provision.**
- ▶ **Should not be used to impede the trade and therefore should not be too stringent. However, it should not be too liberal so that it can create trade deflection. Therefore, a balance needs to be established.**
- ▶ **Simpler - if origin not determined from RTA partner; products are still allowed for imports on payment of applied MFN duty.**

Product Classification

- Wholly obtained
- Not wholly obtained or produced (NWOP).
- Cumulation

Origin criteria is defines in terms of:

- General Rules
- Sectoral Rules
- Product Specific Rules

CHANGE OF TARIFF HEADING

- How does it work ?
 - ✓ A product is considered to be **sufficiently worked on or processed** when the product obtained is classified in a **4-digit heading** of the HS Nomenclature which is **different** from those in which all the **non-originating materials** used in its manufacture are classified.

The calculation of **value addition** is done in the following manner:-

$$\frac{\text{FoB value of exports} - \text{Value of non-originating inputs}}{\text{FoB value of exports}} \times 100 \% = X\%$$

Value added = X%.

Non-originating = Values of imported imports + undetermined origin inputs

Calculation can be done by both Direct or Indirect method.

Local profits, transportation, handling charges etc. are included in the value addition.

Rules of origin criteria in different RTAs of Asia Pacific

| RTA | Type | Qualifying Criteria |
|----------------------|-----------------|--|
| ATIGA | Regional | <ul style="list-style-type: none"> - Value content needs to be at least 40 percent - Rules for Textiles – co-equal |
| ANZCERTA | Regional | <ul style="list-style-type: none"> - Value content needs to be at least 50 per cent |
| APTA | Regional | <ul style="list-style-type: none"> - Value content needs to be at least 45 percent (35 percent for LDCs) |
| China - ASEAN | Regional | <ul style="list-style-type: none"> - Value content needs to be at least 40% - CTH |
| SAFTA | Regional | <ul style="list-style-type: none"> - Change in Tariff Heading (CTH) - Value content needs to be at least 40 per cent (for India & Pakistan), 35 percent for Sri Lanka and 30 percent for LDCs |

| | | |
|--|------------------|---|
| Singapore – Australia | Bilateral | - Value content needs to be at least 50 percent (Product specific rule: 30 percent) |
| Singapore - New Zealand (ANZSCEP) | Bilateral | - Value content needs to be at least 40 percent |
| ASEAN – Japan | Regional | - CTH or - 40 percent regional value added content - PSRs |
| Republic of Korea - India | Bilateral | - CTSH - 35 percent value added content - PSRs allowed as derogation |
| TPP | Regional | - PSR |
| RCEP | Regional | - PSR (under negotiation) |

The box illustrates the case of ASEAN FTA.

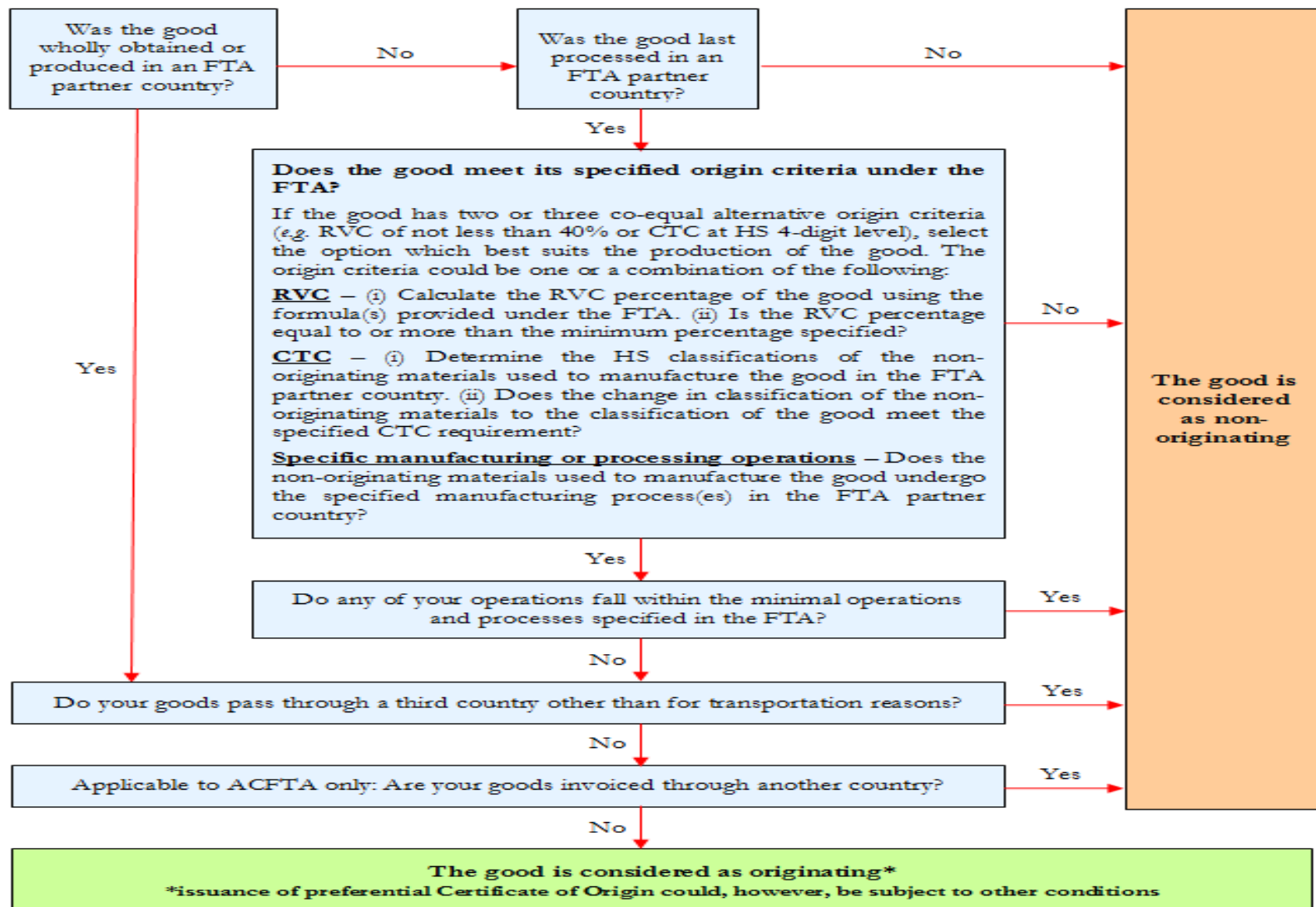
A manufacturer in Lao produces transmission line for motor vehicles. He plans to export the transmission line to ASEAN market and uses the inputs which are sourced from Indonesia (another member of ASEAN and from outside ASEAN). The process of manufacturing by using different inputs are as follows:

| Description of Materials/Others | | Origin | Origin Status | Value (US\$) |
|--|----------------------|------------------|----------------------|---------------------|
| a. | Part A | Lao | Originating | 1500 |
| b. | Part B | Indonesia | Originating | 1500 |
| c. | Part C | China | Non-originating | 2000 |
| d. | Other costs + profit | Lao | Originating | 500 |
| F.O.B Price (a + b + c + d) | | | | 5,500 |

The ASEAN FTA rules of origin prescribes for a regional value content (RVC) at least 40%. Part B which is produced in Indonesia is considered to be originating in Lao due to the cumulation rules. In this case, due to cumulation, the transmission line will be considered as originating due to the following calculation: $RVC = [(5500 - 2000)/5500] \times 100 = 63.6\%$ and thus it will get preference in ASEAN market.

However, if the cumulation was not allowed in ASEAN rules of origin, the calculations would have been: $RVC = [(5500 - 3500)/5500] \times 100 = 36.3\%$ and therefore will not get preference when exported from Lao.

ATIGA RoO Flowchart



Self Certification

- **Enables the Certified Exporter (CE) to make out an invoice declaration for the exports of goods.**
- **No need to apply for ATIGA Form D.**
- **The invoice declaration is sufficient to obtain preferential tariff concession under ATIGA.**
- **The information in the invoice declaration is less than what appears in ATIGA Form D.**
- **Pilot projects underway.**

Discussions

- **Experience of Self Certification:**
 - Are you aware of the Certified exporters?
 - How many?
 - Checks and balance – how to do?
 - What percentage of total exports going under self certification?

Product Specific Rules

Japan - ASEAN

| Tariff item number | Description of goods | Product specific rules |
|--|---|----------------------------------|
| Section I - Live animals; animal products (chapter 1-5) | | |
| Chapter 1 | Live animals | CC |
| Chapter 2 | Meat and edible meat offal | CC, except from chapter 1 |
| Chapter 3 | Fish and crustaceans, molluscs and other Aquatic Invertebrates | CC |
| Chapter 4 | Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included | |
| Chapter 5 | Products of animal origin, not elsewhere specified or included | CC |

Japan - ASEAN

Chapter 9 Coffee, tea, maté and spices

09.01 Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion.

- Coffee, not roasted:

| | | |
|----------------|-----------------------------|-----------|
| 0901.11 | -- Not decaffeinated | CC |
|----------------|-----------------------------|-----------|

| | | |
|----------------|--------------------------|-----------|
| 0901.12 | -- Decaffeinated: | CC |
|----------------|--------------------------|-----------|

-Coffee, roasted:

| | | |
|----------------|-----------------------------|----------------|
| 0901.21 | -- Not decaffeinated | RVC 40% |
|----------------|-----------------------------|----------------|

| | | |
|----------------|-------------------------|----------------|
| 0901.22 | -- Decaffeinated | RVC 40% |
|----------------|-------------------------|----------------|

| | | |
|----------------|----------------|-----------|
| 0901.90 | - Other | CC |
|----------------|----------------|-----------|

Case of Thailand

ITC series of NTMs (Thailand) found:

- Overall, the ASEAN bloc is one of Thailand's largest trading partners with ASEAN members importing 23% of Thai exports. Despite the regional economic integration among ASEAN countries, results in increased trade, the share of NTM cases originating from ASEAN countries (20.5%) is also relatively high.
- Issues related to rules of origin **or the process of obtaining certificate of origin** has also been frequently reported by exporters to be a problem (38%).
- The most common complaint relates to the time required by the Ministry to process the request, which could last from a few days to a couple of weeks. Part of the problem, especially among SMEs, is that they are not familiar with all the necessary requirements and processes.

Overlapping cases

- **Between same countries often there are different RoO which are simultaneously in place (noodle-bowl phenomena).**
- **Same manufacturing process may get different treatment on export to same market - due to different criteria.**
- **One would also need to examine the PTA RoO with the non preferential RoO in order to estimate the costs of compliance/NTM.**

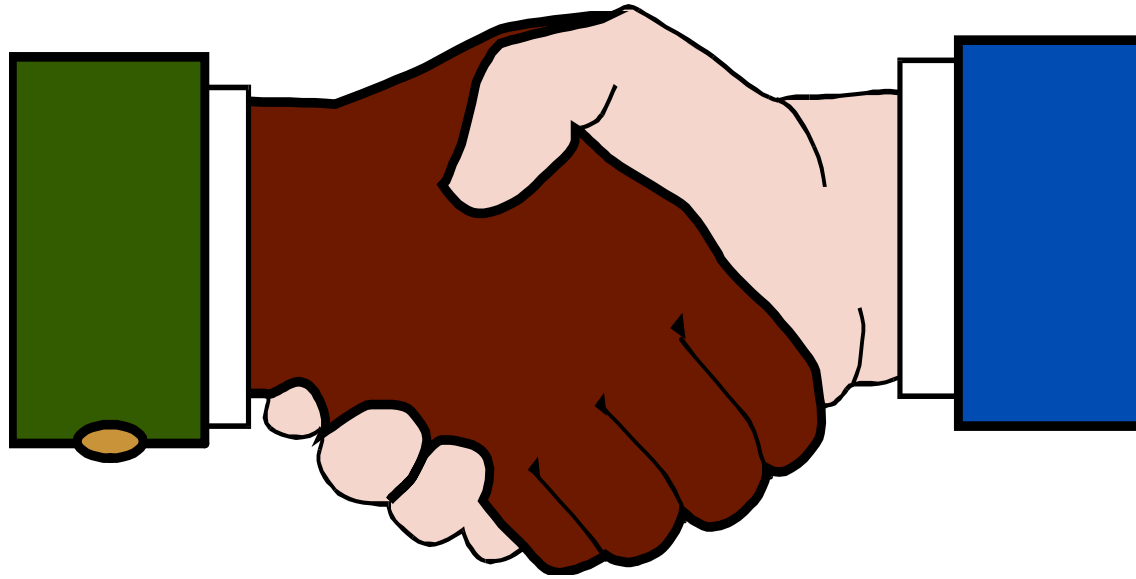
Cost of compliance

- **As RoO are by definition NTMs, even if consistent with the WTO or PTAs; they may impede trade due to high cost of compliance.**
- **The high cost is due to:**
 - **Getting information**
 - **Documentary burdens to establish origin**
 - **Procedural hassles**
 - **Lack of knowledge of exporters**
 - **Cost of verification by Customs**
- **In cases, where the MFN duties are low, the cost of compliance cost becomes relatively high and thus exporters prefer to export by paying MFN duties rather than seeking preferences.**

References

- Asia Pacific Trade and Investment Reports: 2013, 2014, 2015 and 2016 available at <http://www.unescap.org/publications/asia-pacific-trade-investment-report>
- Asia Pacific Trade and Investment Agreement Database available at <http://www.unescap.org/content/aptiad/>

<http://artnet.unescap.org/databases.html#second>



Thank You