

A GUIDE TO UNDERSTANDING THE ASEAN-CHINA FREE TRADE AREA UPGRADE

ABOUT THE ASEAN-CHINA FREE TRADE AREA UPGRADE

The *Protocol to Amend the Framework Agreement on Comprehensive Economic Cooperation and Certain Agreements between ASEAN and the People's Republic of China* (hereinafter referred to as the "Upgrade Protocol") was signed on 22 November 2015 and introduces improvements and upgrades to the existing Framework Agreement for the Free Trade Area between ASEAN and China (ACFTA). This includes the Agreement on Trade in Goods, the Agreement on Trade in Services and the Investment Agreement. The Upgrade Protocol will enter into force for Singapore on **30 September 2016**.

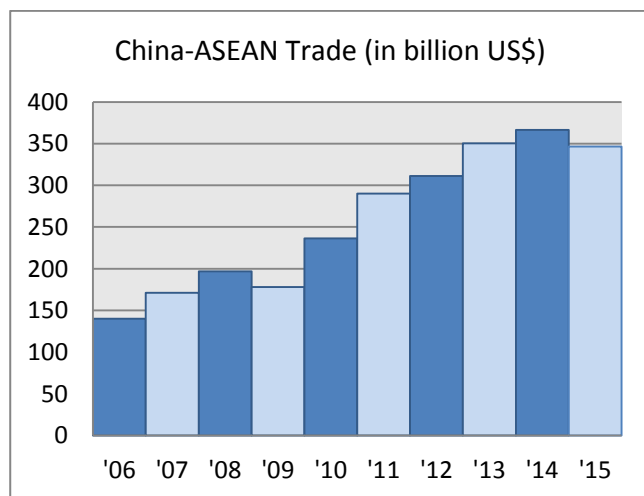
The areas covered in the Upgrade Protocol are: Product Specific Rules, a *De Minimis* rule, Operational Certification Procedures, Customs Procedures and Trade Facilitation, Liberalisation of Trade in Services, Investment Promotion and Facilitation, Economic and Technical cooperation, and commitments to further strengthen trade and investment conditions.

Singapore exporters and investors as well as Singapore-based companies can expect to benefit from the ASEAN-China Free Trade Area (ACFTA) Upgrade Protocol. For businesses, the Upgrade Protocol will open up opportunities through improved preferential access in the areas of services and investment, bring about new cost savings, reduce administrative requirements and help them build capabilities in newer areas such as e-Commerce.

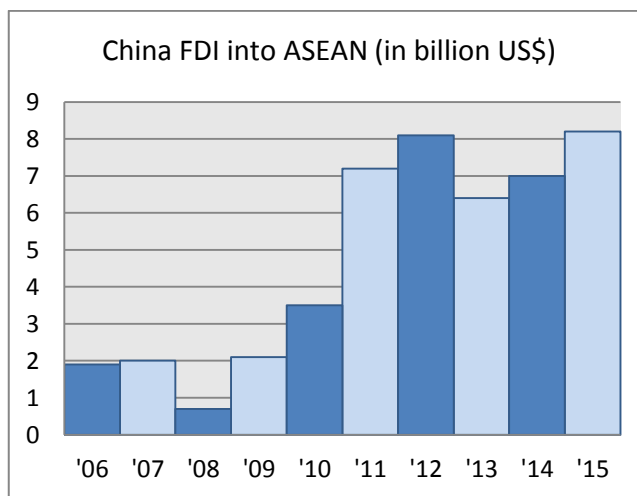
This guide provides information on the practical aspects and benefits of the Upgrade Protocol. The following sections summarises the key features of the Upgrade Protocol.

1. OVERVIEW

Over the past decade, trade and investment ties between ASEAN and China as well as Singapore and China have expanded significantly. China has consistently maintained its position as ASEAN's largest trading partner. In 2015, ASEAN's total merchandise trade with China reached US\$346.5 billion, accounting for 15.2% of ASEAN's total trade. ASEAN also received US\$8.2 billion in foreign direct investment (FDI) from China in 2015, placing China as ASEAN's fourth largest source of FDI. At the 17th ASEAN-China Summit in October 2014, leaders from ASEAN and China committed to achieving a joint target of US\$1 trillion in trade and US\$150 billion in investment by 2020.



Source: ASEAN Trade Statistics Database as of 10 June 2016



Source: ASEAN FDI Database as of 30 June 2016

2. AMENDMENTS TO THE AGREEMENT ON TRADE IN GOODS

The Upgrade Protocol improves the ACFTA's Rules of Origin (ROO) provisions and introduces a new Section on Customs Procedures and Trade Facilitation (CPTF). **Businesses will enjoy easier access to the Chinese market, reduced time-to-market and administrative burden, and greater certainty over their export and import timelines.**

The upgraded Rules of Origin (ROO) provides a clear and comprehensive set of standards and criteria that determine whether a product will be given preferential tariff treatment under the ACFTA. Goods that satisfy the ROO may be considered as originating goods and be allowed to pay lower or no import tariffs when imported into another ACFTA Party.

Some highlights include:

Transitional Arrangements

- To ensure a smooth implementation process, the existing Form E, the existing ROO and OCP Chapters will continue to be used until all Parties have affected the new regime under the Upgrade Protocol.
- Both ASEAN Member States and China are committed to work towards transitioning to the new and enhanced ROO regime by 1 July 2017. This date may be brought forward or extended depending on when all Parties are ready to implement the changes.

Operational Certification Procedures

- The Operational Certification Procedures (OCP) in the upgraded ROO provides traders with clearer procedures on how to apply for and obtain an ACFTA Preferential Tariff Certificate of Origin (CO) "Form E". The Form E officially verifies the eligibility of an export product for preferential treatment.
- The OCP also sets out other administrative requirements on the issuance and verification of CO Form E that traders would need to observe.

Product Specific Rules

- Previously, the majority of ACFTA exports would only qualify as originating when at least 40% of the value of a finished good originates from ACFTA Parties (RVC40).
- Under the Upgrade Protocol's Product Specific Rules (PSRs)*, traders will now be able to qualify more than 3500 goods as originating if they fulfil either of these rules:
 - 1) *When at least 50% of the value of a finished good originates from ACFTA Parties (RVC40);*
OR
 - 2) *When the transformation of non-originating materials to the finished good fulfils a classification change in tariff heading under the Harmonised System (HS)** (CTH).*
- With these improved rules, traders now have greater flexibility in meeting the ROO and qualifying for preferential tariff treatment under the ACFTA.

De Minimis

- The upgraded ROO contains a new *De Minimis* rule. This gives traders another opportunity to ensure their goods qualify as originating if they cannot meet the CTH criterion to qualify for preferential tariff treatment.
- Textile and apparel goods that cannot meet the CTH criterion can still be considered as an originating good provided the weight of all non-originating materials that fail to qualify for the CTH criterion does not exceed 10% of the total weight of the good.
- Other than textile and apparel goods, goods that cannot meet the CTH criterion can still be considered as an originating good provided the value of all non-originating materials that fail to qualify for the CTH criterion does not exceed 10% of the FOB value of the good.

*Product Specific Rules (PSRs) are origin tests that determine if a specific good has fulfilled the criteria in order to be considered as "originating".

**The Harmonised System (HS) is an international product nomenclature developed by the World Customs Organisation, which classifies commodities in a legal and logical structure to achieve uniform classification. For more information on HS classification of goods, you are encouraged to refer to the Singapore Customs website: <http://www.customs.gov.sg/businesses/harmonized-system-hs-classification-of-goods>

2. AMENDMENTS TO THE AGREEMENT ON TRADE IN GOODS (cont'd)

The Upgrade to the ACFTA Agreement on Trade in Goods also introduces a new Section B on Customs Procedures and Trade Facilitation (CPTF).

- > With the upgrade, Parties are committed to expediting customs clearance, reducing transaction time and costs, and providing greater clarity to businesses. This will be achieved through using electronic customs transactions, simplifying and harmonising customs procedures between the Parties, and ensuring consistency and transparency in the application of customs law.
- > In addition, businesses can now apply for advance rulings on both tariff classification and origin of goods from the customs administrations in ASEAN and China. Businesses would also be able to lodge documentation for Customs Authorities' assessments before goods arrive. With these provisions, businesses will enjoy greater certainty at the point of import.
- > ASEAN and China will also work towards establishing their respective Authorised Economic Operators (AEO) programmes, and work towards the mutual recognition of AEOs.

3. AMENDMENTS TO THE AGREEMENT ON TRADE IN SERVICES

The Upgrade Protocol builds on China's services commitments to liberalise trade in certain services sectors under the ACFTA. These commitments will expand businesses' access to China and include improved foreign equity thresholds in certain services sectors.

Services improvements from China cover the following six sectors:

- 1 Engineering Services
- 2 Integrated Engineering Services
- 3 Construction Services
- 4 Sporting & Other Recreational Services
- 5 Securities Services
- 6 Travel Agency & Tour Operator Services

- > With these improvements, businesses have access to more opportunities in sectors such as Engineering Services, Integrated Engineering Services, Construction Services, Securities Services and Travel Agency & Tour Operator Services.
- > In Engineering Services, Integrated Engineering Services and Construction Services: the qualification assessment of foreign engineering companies based in China will now take into account the company's contract performance in both China and its home country.
- > In Securities Services: foreign services suppliers which meet the requirements of China's relevant laws and regulations are now permitted to provide the following services to Chinese Qualified Domestic Institutional Investors (QDII): trading for account of QDII, providing securities trading advice or portfolio management, and providing custody for overseas assets of QDII.
- > In Travel Agency and Tour Operator Services: the upgraded services package removes the previous market access limitations for foreign services suppliers operating in China.

4. AMENDMENTS TO THE INVESTMENT AGREEMENT

The Upgrade Protocol revises the ACFTA Investment Agreement and obliges Parties to deepen their investment cooperation and create more stable, favourable, and transparent investment conditions.

The ACFTA Upgrade introduces revisions to the provisions on investment promotion and investment facilitation.

- > Parties will cooperate to promote and increase awareness of the ACFTA as an investment area. This includes organising investment promotion activities, enhancing industrial complementation and production networks, organising briefings on investment opportunities, laws, regulations and policies, and information exchanges on issues of mutual concern.
- > Parties will also cooperate to facilitate investments in the ACFTA through creating a more favourable environment for all forms of investment, simplifying procedures for investment applications and approvals, disseminating investment information, and providing assistance and advisory services through one-stop investment centres.

5. OPPORTUNITIES FROM OTHER AMENDMENTS TO THE UPGRADE PROTOCOL

The Upgrade Protocol also introduces policies aimed at building e-Commerce capabilities, with a particular focus on assisting Micro, Small and Medium Enterprises (MSMEs). It also includes ASEAN's and China's commitment to further enhance the trade and investment conditions under the ACFTA.

The ACFTA Upgrade expands the Economic Cooperation and Technical Cooperation provisions.

- > Parties will share information and expertise, and conduct dialogues on e-Commerce-related issues, including laws and regulations, rules and standards, and best practices.
- > MSMEs will have opportunities to participate in e-Commerce workshops and training programmes, which can help them gain greater access to opportunities and managing challenges related to cross-border e-Commerce.

The ACFTA Upgrade establishes a Future Work Programme to further strengthen the Parties' trade and investment commitments.

- > Parties are committed to complete their negotiations on even more flexible Product Specific Rules of Origin (PSRs) by 1 July 2017. This will better meet business needs and facilitate trade under the ACFTA.
- > Parties are also committed to enter into negotiations to explore the possibility of eliminating or progressively further reducing the remaining tariffs. This will broaden the scope of products that can access the Chinese market at low or zero tariffs, resulting in potential tariff savings.
- > Parties are also committed to complete discussions on investment liberalisation and protection by 1 July 2019. This could potentially provide investors with access to new areas for investment in China and also reassure investors of the fair treatment and protection of their investments in China.