



# China Tax Alert

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## Updates on Administrative Measures for Origin under the China-ASEAN Framework Agreement on Comprehensive Economic Co-operation

### Regulations discussed in this issue:

- *Administrative Measures of the General Administration of Customs of the PRC for the Origins of Imported and Exported Goods under the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations (ASEAN) and China (Announcement No. 136 [2019])*

### Background

On 19 August 2019, the General Administration of Customs (“GAC”) of the PRC issued its *Administrative Measures for the Origins of Imported and Exported Goods under the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations (ASEAN) and China* (hereinafter referred to as “Announcement No. 136” or the “Upgraded Administrative Measures for Origin”). It became effective on 20 August 2019.

The ASEAN-China Free Trade Agreement (ACFTA) took effect in 2005. It is the largest and most influential FTA signed by China. Negotiations to upgrade ACFTA began in 2014. After several rounds of negotiations, China and the ASEAN countries completed all the necessary domestic procedures for upgrading the FTA, and it was officially implemented on 20 August 2019.

### Main Updates in the “Upgraded Administrative Measure for Origin”

Announcement No. 136 includes updates to the Rules of Origin, changes to the guidelines for populating Form E (hereinafter referred to as the “guidelines”), and updated requirements for origin compliance management. Changes include the following:

#### 1. Rules of Origin

- The PE Criterion was newly introduced for goods produced or obtained by a party within ASEAN or China exclusively from originating material. It is applicable to industrial or processed products.
- The coverage of the Product Specific Rules List (PSR List) has expanded from 17 chapters (over 500 6-digit HS codes) to 57 chapters (over 2,000 4-digit or 6-digit HS codes).

- The Change of (the 4-digit) Tariff Heading (CTH), an origin criterion, was newly introduced. It will apply to goods not included in the PSR list. It is limited to 46 chapters, including mineral products, chemical products, plastic products, leather, textiles, apparel and footwear, steel products, aerospace aircraft, etc. The specific chapters are 25, 26, 28, 29 (29.01 and 29.02 are excluded), 31 (31.05 is excluded), 39 (39.01, 39.02, 39.03, 39.07 and 39.08 are excluded), 42-49, 57-59, 61, 62, 64, 66-71, 73-83, 86, 88, and 91-97.
- Other changes to the Rules of Origin include newly introduced De Minimis provisions and updated rules and regulations related to Packing Materials and Containers, Accessories, Spare Parts and Tools, and Fungible Materials.
- Announcement No.136 also specifies the definition of Neutral Elements and simplifies the description of Accumulation.

According to the framework for the Rules of Origin, in order to determine the applicable Rules of Origin for goods other than WO or PE products, one must first refer to the PSR list for specific rules. If the goods are not included in the PSR list, one should determine whether the products are applicable to (i.e. listed under the 46 chapters' HS codes) and satisfy CTH rules or meet the criteria of Regional Value Content (RVC) rules.

## **2. Guidelines for Populating Form E**

Following 31 August 2019, all parties under ACFTA are required to adopt the international standard white-coloured A4 size Form E. The upgraded Form E has been improved and features a simplified process for filling-in information. Major updates to the Form E are as follows:

- Prior to the upgrade, only exporters could apply for the Form E. From now on, Chinese manufacturers can apply for the Form E through an agent and fill-in the relevant information.
- The limitation of 20 items per Form E has been abolished.
- Following the upgrade, the HS codes for products on the Form E are entered at the 6-digit level. Previously, the import countries' HS codes had to be provided.
- Previously, FOB value in box 9 was required to be filled. It will now only be required when Rules of Origin indicated in box 8 is RVC (including RVC specified in PSR). Additionally, previously only the gross weight of the products could be used for the weight box, but now either gross weight or net weight is acceptable.

## **3. Others**

- Announcement No. 136 has relaxed the documentation review requirements under the Direct Consignment Rules. Documents issued or approved by the transit country's customs are no longer required when goods are transported to China through other countries or regions, as long as the whole-journey transport documents submitted by the consignee or the agent meet the relevant Direct Consignment provisions.
- Announcement No. 136 features enhanced requirements with respect to enterprises' compliance management practices. For example, rules or requirements have been introduced or specified for country of origin verification methods, the 270-day feedback period for country of origin verification, the 3-year period for documentation preservation, etc.

## KPMG's Observations

Announcement No. 136's rule updates have further improved the preferential rules of origin under ACFTA and have enhanced the implementation of the ACFTA area.

Major adjustments have been made to the Rules of Origin under the Upgraded Protocol. In addition to changes to the framework of the origin rules, a number of changes have also been made to other rules and criteria. For example, the WTO Valuation Agreement's definition of transaction price has been introduced to determine the prices of materials under the RVC measurement; encapsulation in the electronic industry has been excluded from the Minimal Operations or Processes criteria; simple assembly of products that fall under chapter 27 (mineral products) and chapters 84, 85 and 90 (mechanical and electronic products) has been excluded from originating status; and the definition of "simple" has been clarified in the PSR. Enterprises should carefully study the supplementary criteria and the influence that these changes will have on determination of origin.

In addition, major changes have been made to the guidelines on filling-in the Upgraded Form E. In addition to determining origin based on the appropriate Rules of Origin, export enterprises should also strictly comply with the Form E guidelines to make sure the products enjoy beneficial treatment in the other country.

Announcement No. 136 also added content related to origin verification. China Customs is increasingly focusing on origin compliance, so enterprises should pay special attention to mitigating the risks posed by country of origin verification. Import and export enterprises should fully understand and apply the correct origin rules, focus on the changes in the applicable rules of origin, follow the requirements in filling-in Form E, adhere to the compliance management requirements, and meet other related criteria, in order to ensure that they correctly apply the preferential rules of origin and conduct origin management in a compliant manner.

## How KPMG's Trade & Customs practice can help

- We can analyse the feasibility of applying the preferential rules of origin for enterprises, and assist enterprises in optimising trade arrangements so that they can enjoy preferential rates and save on duties.
- We can help enterprises to enhance their trade compliance management with respect to the utilisation of preferential tariff treatments, including in terms of applying the Rules of Origin, submitting applications for Certificates of Origin, and verifying whether the rules of origin the companies have applied are appropriate. In this way, we can identify issues that may impede enterprises' enjoyment of the preferential tariff treatments in a timely manner.
- The KPMG Trade & Customs team has extensive service experience with country of origin management solution, and has provided advisory and implementation services using its solution to many clients. KPMG can provide enterprises with a customised solution, assist the enterprises to formulate supply chain optimisation strategies and establish compliance management mechanism to correctly apply the rules of origin, determine origin status, manage suppliers, and conduct other processes.

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