

# The 2012 ASEAN Customs Agreement

Earlier this month the ASEAN finance ministers signed a new ASEAN Customs Agreement, which supersedes the [1997 ASEAN Customs Agreement](#). I've had a chance to review the 2012 Agreement and comment as follows:

1. Article 3 states that the Agreement applies to “*goods being imported into, exported from, in transit through, or trans-shipped through the territories of Member States in accordance with their respective laws and regulations.*” In other words, its provisions cover all goods, whether or not originating in ASEAN (e.g., qualifying for preferential treatment under the ASEAN Trade in Goods Agreement).

2. Article 7 states that “*Member States shall ensure that customs controls are limited to such extent as to ensure compliance with their respective customs laws.*” Customs controls refer to “*inter alia, control of the movement of goods; examination of goods; taking of samples; verification of declaration data and the authenticity of documents; examination of the accounts; books and records of economic operators; inspection of means of transport, luggage and other goods carried by or on persons; and carrying out of official enquiries.*” This has been a controversial issue in ASEAN, as some ASEAN national customs authorities have used customs controls as a non-tariff barrier to trade. For example, in some ASEAN countries it can take many months to get a sample taken and approved by local customs authorities.

3. Article 9 sets forth formal and substantive requirements for goods declaration. There have been frequent disputes among ASEAN member states regarding the [Form D origin document](#) and other documentation.

4. Articles 10-12 provide for electronic submission of declarations, where authorized by national customs authorities.

5. Articles 16-18 contain general principles regarding release of goods, customs clearance and free circulation of goods.

6. Article 20 explicitly adopts the WTO Customs Valuation Agreement as the basis for determining customs value in ASEAN. Notably, the 2012 Agreement does not contain the 1997 Agreement's directive that “*Member States shall not use Customs valuation for protective purposes or as a barrier to trade.*”

7. Article 27 commits ASEAN member states to use a risk management approach to customs. Customs agencies in developed countries use risk management techniques such as sampling, intelligence gathering and data analysis to subject “at risk” imports for further scrutiny and facilitate trade for the others. Some ASEAN national customs authorities have had a reputation for the traditional “gatekeeper” approach which subjects all shipments to the same level of scrutiny. Article 27 hopefully brings them closer to modern standards.

8. Article 34 provides for advance rulings by ASEAN national customs authorities.

9. Article 35 provides for “Authorized Economic Operators,” a concept commonly used in the developed world to subject qualified companies to streamlined regulation.

10. Articles 37-41 provide for electronic data interchange and usage by ASEAN national customs authorities.

11. Articles 42-45 provide for mutual assistance among ASEAN national customs authorities. The provisions specify that they shall cooperate to extent possible, but “*if the assistance sought would infringe upon a Member State's sovereignty, security or other substantial national interests or prejudice the legitimate commercial interests of any enterprise, public or private, the customs authorities of the Member State may decline to provide that assistance or give it subject to certain conditions or requirements.*”

Hence the 2012 Agreement encourages cross-border customs cooperation, extending it to areas such as IP and narcotics control, but preserves the right of ASEAN national customs authorities to reject cross-border cooperation.

12. Article 48 requires ASEAN national customs authorities to designate an official enquiry point and to publish laws and regulations on the internet.
13. Article 52 preserves the right of administrative and judicial appeal of customs decisions.
14. Article 57 provides that the ASEAN Enhanced Dispute Settlement Mechanism shall apply to any disputes.
15. Article 58 provides for confidentiality in the administration of the 2012 Agreement.

The 2012 Agreement is now being considered by the ASEAN Member States for ratification.