
GUIDELINES FOR THE DEVELOPMENT OF MUTUAL RECOGNITION ARRANGEMENTS

**ASEAN Consultative Committee
on Standards & Quality**



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The ASEAN Secretariat
Jakarta

TABLE OF CONTENTS

1. Introduction	7
2. The potential uses and limitations of MRAs in relation to the AEC Blueprint target of establishing a single market and production base	8
3. Pre-conditions and preparatory processes for developing MRAs 1	10
4. MRA development processes	14
5. Implementation and maintenance of MRAs	17

Abbreviations

AEC	ASEAN Economic Community
ACCSQ	ASEAN Consultative Committee on Standards & Quality
AMS	ASEAN Member States
ATIGA	ASEAN Trade in Goods Agreement
CLMV	Cambodia, Lao PDR, Myanmar and VietNam
MRA	Mutual Recognition Arrangement
NTB	Non-Tariff Barriers
PWG	Product Working Group
SDoC	Suppliers' Declaration of Conformity
WG	Working Group



FOREWORD

ASEAN leaders have made a commitment in the ASEAN Economic Community Blueprint that necessary actions will be implemented in ASEAN towards achieving the vision of a single production base with the free movement of goods. The elimination of non-tariff barriers (NTBs) is a critical component of this target. The ASEAN Trade in Goods Agreement has tasked the ASEAN Consultative Committee on Standards & Quality (ACCSQ) to coordinate and guide its Product Working Groups towards achieving this end. These groups continue to develop and implement mutual recognition arrangements for removing a number of significant NTBs. The MRAs are one of a range of instruments available to support the establishment of the ASEAN Economic Community. These are especially useful in removing the need for multiple testing and certification for goods traded within ASEAN Member Countries. ACCSQ wishes to reiterate that the publication of these guidelines in no way diminishes the continued relevance of complementary instruments such as the harmonised regulatory regimes, harmonisation of standards and technical regulations in the removal of NTBs and establishment of an integrated ASEAN Market.

ACCSQ acknowledges and appreciates the contribution Working Group 1 on Standards and Mutual Recognition Arrangements that has overseen the development of these guidelines on the development and implementation of mutual recognition arrangements for ASEAN. ACCSQ would also record its appreciation of the support and contributions provided by the ARISE Project (ASEAN Regional Integration Support from the EU) in the development and publication of these guidelines.

These guidelines are applicable to all ASEAN Product Working Groups (PWGs) engaged in the development of MRAs. These will serve as a common reference for the PWGs developing sectoral MRAs and will aid in ensuring that the MRAs are developed in an optimum process and are effective and efficient in meeting the declared objectives of the MRAs. The Guidelines would facilitate the development of a coherent set of mutual recognition agreements that are providing a set of important instruments that underpin the establishment of the ASEAN Economic Community.

Chair
ASEAN Consultative Committee on Standards & Quality

GUIDELINES FOR THE DEVELOPMENT OF MUTUAL RECOGNITION ARRANGEMENTS

1. Introduction

- 1.1. Mutual Recognition Agreements (MRA) are one of the instruments utilised by ASEAN to remove non-tariff trade barriers and facilitate the free flow of goods in the region in order to realise the establishment of the ASEAN Economic Community. The MRAs are agreements between Member States that provide for mutual recognition of the results of conformity assessments conducted in one Member State by authorities in the other ASEAN Member States. MRAs typically provide an exporting party with the authority to test, inspect and/or certify products, against the regulatory requirements of the importing party, in its own territory and prior to export. These agreements facilitate trade and by enabling suppliers to confirm compliance with the requirements of the importing country with respect to mandatory inspection, testing or certification of products prior to import and sales.
- 1.2. The provisions of MRAs contain obligations for the recognition of inspections, tests, certifications and approvals, issued by qualified conformity assessment bodies of the exporting Member State, by the importing Member State. The establishment of an MRA is independent of harmonising standards and technical regulations, and as such the conformity assessment conducted in an exporting Member State assesses the conformity of a product to the requirements of importing Member State.

As MRAs do not necessarily prescribe harmonisation of technical requirements of ASEAN Member States or the recognition of their equivalence, each Member State is free to set its own regulations and standards. The parties to an MRA, however, mutually recognise the equivalence and results of conformity assessment procedures. The Member States thus must have confidence in the conformity assessment bodies of the other party. The recognition is usually based on confidence established through the use of international standards and guides on conformity assessment practices. These standards provide uniform criteria with regard to minimum qualifications and training requirements of the personnel engaged in conformity assessment, impartiality, independence from vested interests, technical competence to carry out certifications and tests. Each Member State must thus establish comparable and mutually acceptable systems of certification and technical infrastructure.

Accreditation of conformity assessment bodies of the exporting Member State to the importing Member States' standards is the main method adopted to confirm competency of conformity assessment bodies in assessing or certifying products on behalf of the importing Member State.

- 1.3. The ASEAN Framework Agreement on Mutual Recognition, which was concluded in 1998, was developed to provide a common basis for developing and implementing MRAs. This Agreement specifies general principles for developing sectoral MRAs amongst Member States and the general conditions under which each Member State shall accept or recognise the results of conformity assessment procedures from conformity assessment bodies of other Member States. The Framework MRA Agreement does not provide for the harmonisation of technical regulations within ASEAN or the acceptance of other Member State's technical regulations as equivalent. Each Member State's Regulator retains its full authority to grant approvals based on its own domestic regulations and standards. While regional harmonisation of standards is encouraged in the MRAs, it does not amount to a mandatory obligation.
- 1.4. The sectoral ASEAN Mutual Recognition Agreements (MRAs) benefit industry by providing better access to conformity assessment. These agreements can also reduce the costs of conformity assessment. A parallel harmonisation of standards between Member States additionally eliminates the need for multiple tests and assessments.

2. The potential uses and limitations of MRAs in relation to the AEC Blueprint target of establishing a single market and production base

- 2.1. The AEC Blueprint¹ in Article 14 on the Elimination of Non-Tariff Barriers (NTBs) sets ambitious targets for:
 - (a) Removal of all NTBs by 2018; and
 - (b) Work towards, where possible, having regional rules and regulations consistent with international best practices.

¹ It is noted that the Framework Agreement on MRAs was concluded in 1996, i.e. prior to the establishment of the ASEAN Charter and the ASEAN Economic Community (AEC) Blueprint that was adopted in 2007 and has limited targets as compared to the AEC Blueprint.

2.2. Article 19 of the AEC Blueprint, on Standards and Technical Barriers to Trade, widens the options do be adopted for market integration within ASEAN. Besides the existing MRA approaches, it calls for harmonisation of standards and technical regulations and conformity assessment procedures. Alternative and supplementary approaches for eliminating technical barriers, in addition to MRAs, are recognised and encouraged. It should be noted that not all the NTBs, as envisaged in the AEC Blueprint, can be removed solely through adoption of MRAs.

2.3. The MRAs developed by ASEAN have, inter alia, the objective of removing technical barriers through the following means:

(a) Results of testing, inspection and certification undertaken in the territory of the exporter are accepted by authorities in the importing State for regulatory purposes, when the testing, inspection and certification is performed in accordance with the requirements of the importer, by conformity assessment bodies designated according to the requirements of the MRA; and

(b) Re-assessment of the product is no longer necessary when the technical requirements² for the testing, inspection, and certification are harmonised or accepted as equivalent.

The MRAs have limitations due to differences in the standards of the Member States concerned and the fact that MRAs' confine obligations for recognition to recognition of results of conformity assessment and do not extend to recognition³ of approvals granted by regulatory authorities:

(c) When standards are not harmonised, the MRA enables suppliers to utilise testing, inspection and certification services of bodies located in their own territory or in any other Member States in addition to those in the importing Member State. Suppliers will still need to design products to comply with the standards of each member State in which they intend to market the product and subject these to tests prescribed in the standard of the importing Member State; and

² The technical requirements are normally specified in standards. In some cases the technical requirements could be directly specified in the applicable technical regulations.

³ Regulatory approval usually involves administrative measures, in addition to acceptance of the results of conformity assessment.

- (d) Suppliers need to individually obtain approvals from each authority responsible in every Member State that the product is to be marketed in. ASEAN MRAs that are based on the Framework MRA specify that each Member State retains full regulatory authority and that any approval granted is only valid in the particular Member State.

Additional or alternative actions are thus necessary if technical barriers are to be eliminated more comprehensively so as to lead to a situation where testing or certification is only to one standard and a single regulatory approval is valid across the region.

2.4. Several alternative instruments are available to ASEAN Member States in achieving the objectives of removing technical trade barriers when applied individually or in combination:

- (a) Harmonising standards that are referenced in technical regulations of Member States;
- (b) Relying on Suppliers' Declarations of Conformity (SDoC) as regulatory instruments. This eliminates the need for premarket approval. It is applicable in situations where risk is evaluated to be low and enforcement through post market surveillance is deemed to be adequate; and
- (c) Establishing harmonised regulatory regimes that oblige Member States agree to adopt harmonised regulations. This will include harmonisation of all standards that are referenced in the particular technical regulation.

3. Pre-conditions and preparatory processes for developing MRAs

3.1. Preliminary identification of sectors for MRA development.

The sectors identified for the development of MRAs should include the sectors that are within the twelve priority integration sectors⁴ and that have been identified for accelerated economic integration in the AEC Blueprint. Other sectors may be included when supported by decisions of the ASEAN Economic Ministers towards achieving the overall ASEAN economic integration targets set by ASEAN leaders.

⁴ASEAN has identified 12 priority sectors: Health care products; Automotives; Rubber-based Products; Wood-based products; Textiles; Agro-based Products; Fisheries; Electronics and Electricals; Healthcare; Air-travel; Tourism and Logistics.

Article 3(6) of the Framework MRA Agreement and the associated interpretative notes provide more specific guidance on the identification of sectors. This document serves as a concise reference to guide ASEAN Working Groups on the preliminary considerations for the development of an MRA.

<p align="center">Article 3(6), Framework Agreement on MRAs</p>	<p align="center">Article 3(6), Interpretative Notes</p>
<p>6. Member States shall identify sectors for developing MRAs based on the following criteria:</p> <p>(a) with special focus on, but not limited to, the list of 20 priority product groups identified for harmonization of standards;</p> <p>(b) the volume of intra-ASEAN trade affected;</p> <p>(c) the existence and extent of technical barriers to trade;</p> <p>(d) the readiness of technical infrastructure in the majority of Member States, which shall include the existence of Conformity Assessment Bodies that satisfy the procedures and criteria stated in Article 6, clause 1; and</p> <p>(e) the interest of the majority of Member States.</p>	<p>(1) All the criteria should be considered before developing an mRA for a particular sector;</p> <p>(2) The identification of sectors for MRAs should be a continuing process. The preparatory stages of Sectoral MRAs include the identification of appropriate sectors, consultation with relevant regulatory bodies and reaching an agreement among Member States;</p> <p>(3) Statistics on the volume of intra-ASEAN trade affected should be considered;</p> <p>(4) Technical barriers to trade experienced by Member States should be considered;</p> <p>(5) Member States should be requested to formally indicate their interest in developing an MRA in a particular sector; and</p> <p>(6) The majority of Member States means that more than half of the existing Members of ASEAN.</p>

The continuing relevance of item 6a) should be critically reviewed by the responsible product working groups, as the decision to harmonise standards for the 20 product groups⁵ was taken in 1997 and the elapsed time has changed the trade and industry profile of the region and the importance of the standards concerned with market integration.

3.2. Conducting impact assessment to identify benefits; compare alternative approaches and identifying risks.

The successful development and conclusion of an MRA requires a substantial investment in time and energy by the Member States. It is thus recommended that a demonstrable justification of the benefits is established prior to commencement of the development. The justification should be based on an investigation of the impact, costs and benefits to be derived from the intended MRAs. Such an investigation should include comparison of alternative approaches, including that of maintaining the existing status.

MRAs should be considered in the circumstances in which a majority of ASEAN Member States:

- (a) prescribe mandatory product testing or certification as requirements for placing products in the market;
- (b) there is an institutional infrastructure for conformity assessment and technical regulation in most Member States in the particular sector to support implementation of the MRA;
- (c) relevant legislation is available in Member States to support the adoption of the MRA; and
- (d) intra-ASEAN trade is sufficient to justify the efforts and that the expected cost savings of the MRA are significant.

MRAs may also be considered for sectors where there is a demonstrable potential to vastly increase trade in a sectors where existing technical barriers to trade are removed or reduced.

⁵ The 20 product groups are: Air-conditioners, Refrigerators, Monitor & Keyboard, Motors and Generators, Inductors, Loudspeakers, Video Apparatus, Telephones, Radio, Television, Part of TV and Radio, Capacitors, Resistors, Printed Circuits, Switches, Cathode Ray Tubes, Diodes, Mounted Piezo-electric crystal, Rubber Condoms and Medical rubber gloves.

On making a preliminary decision for an MRA, an investigation should be initiated by the relevant working group and the results documented. It is recommended that the working group also ensures that there is no objection from any Member State and that the MRA is conducive to the long term integration of the whole ASEAN region. It should, however, be noted that the Framework MRA Agreement prescribes that ASEAN Member States may proceed to develop an MRA based on the interest of the majority and a consensus decision of all ten Member States.

3.3. Establishing agreement on the scope of the MRA, its guiding principles and objectives

It is recommended that the development of the draft text of the MRA be deferred until the Member States have reached a consensus on the scope, guiding principles and objectives of the MRA. The premature development of draft prior to agreement on the scope, principles and objectives could lead to inefficiency in the negotiations between Member States. The absence of an agreement in principle between Member States on the scope and expected objectives of the MRA provides no common ground for the negotiations on the text of the MRA to proceed in an effective manner. The scope should define the applicable products or sectors that the MRA addresses, the principles should outline the approaches to be adopted and the objectives be defined in terms of the direct impact on trade.

3.4. Impact of differences in regulatory requirements on the development of MRAs

The impact of the differences in regulations should be considered in developing MRAs. The different situations encountered may include situations in which:

- (a) Sectors or products that are subject to an MRA are regulated in one ASEAN Member State but are not regulated in one or more of the other ASEAN Member States. In this situation, the MRA has no impact on the exports into the particular Member States that does not regulate. As the exports from this country will need to comply with the regulations other Member States, such Member State should be encouraged to participate in the MRA and its support should be sought even if it decides not to be a party to the MRA;

- (b) Member countries having major differences in the nature of technical regulations. Examples include situations in which one or more Member States have less rigorous regulation, such as the requirement for registration, and/or require self-rigorous declaration of conformity (SDoC) and another Member State requires premarket approval of products and regular surveillance. In this case, the MRA will have small or no impact on exports to the AMS with light touch regulation. It will, however, have an impact on the exports from this AMS. As in the case (i) above, the AMS concerned should be encouraged to participate in the MRA and its support should be sought even if it decides not to be a party to the MRA.
- (c) A majority of Member States have light touch regulations such as a product registration, SDoC or type approval. In such cases, there will be no significant benefits from the development of the MRA. Member States should seek alternative methods of removing the trade barriers that continue to exist in the other Members and negotiate agreements for harmonised light touch regulations and for harmonised standards.

4. MRA Development Processes

- 4.1. The recommended development process stages are elaborated in the table below:

Stage	Description
Preliminary Proposal for an MRA	The proposal may be initiated by any Member State or by the ASEAN Secretariat. Agreement to proceed would be by consensus of the concerned Working Group (WG).
Impact Assessment	The WG concerned would decide on the scope and method for conducting the assessment. Funding for the assessment will be identified and implementation coordinated by the WG responsible with the support of the ASEAN Secretariat.

Confirmation of Scope and Objectives	The WG concerned will review the results of the impact assessment and decide on the proceeding and on a positive decision; the WG will decide on the scope and objectives of the proposed MRA.
Preparation of Working Draft the MRA	A working draft will be prepared. The WG may request a Member State, the ASEAN Secretariat or any external party for this.
Deliberation of the Working Draft by WG Members Leading to the Development of a Draft for Member States' Consultation	The "draft for consultation" is a preliminary draft and does not bind Member States. It should reflect the general principles and may include alternative texts for sections in which there is no agreement. It is a document to facilitate Member States to conduct consultation with stakeholders in each Member State.
Consultation with Stakeholders within Each Member State	The consultation process is undertaken independently by each Member State. Each Member State will use the results of the consultation to formulate its position in preparation for deliberations of the MRA with other Member States.
Development of a Final WG Draft	The WG concerned will reconvene deliberations, taking note of the results of consultations. The negotiations will continue till the objective of Member States reaching agreement on the content of the MRA is achieved. On completion, the draft MRA is submitted to the ASEAN Consultative Committee on Standards & Quality (ACCSQ) or other body responsible for the WG as appropriate.
Finalisation	The finalisation will include legal vetting and approval by the appropriate ASEAN body. This will be coordinated by ASEAN Secretariat. The WG responsible will be informed of progress.

4.2. Standards Referenced in MRAs

Any MRAs developed by ASEAN can be developed independently of the initiatives for harmonisation of standards in the sector. In cases that there is a need to reference a particular standard in the MRA, the standards referenced should be those that are harmonised⁶. Suitable standards may be required to define the criteria for recognition of conformity assessment results and in special cases, for defining product characteristics. In case the required standards to be selected are not harmonised, these should be forwarded to Working Group 1 of ACCSQ to be included in the list of ASEAN harmonised standards. Only standards that are referenced in the MRA should be those that comply with ASEAN guidelines for harmonisation of standards.

4.3. Existing ASEAN Agreements

The development of the text of any MRA should commence with an examination of all existing relevant agreements on trade, standards, conformity assessment and technical regulation concluded between ASEAN Member States. The Declaration of the AEC Blueprint by ASEAN leaders, the AEC Blueprint and ASEAN Trade in Goods Agreement (ATIGA) should be key reference for all MRAs. As the MRA will not automatically override the existing agreements, it should be ensured that the commitments and obligations in the MRA are consistent with these. Repetition of previously agreed provisions should generally be avoided and a cross reference be made in its place.

4.4. Relationship with International and Regional Agreements

ASEAN Members States are Members of the World Trade Organisation and thus obliged to comply with the provisions of the General Agreement on Tariffs and Trade (GATT) and other agreements on goods trade. The Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade are significant to the development of MRAs and should be utilised as a references in the same manner as the ATIGA and the AEC Blueprint are used.

⁶ The harmonisation of standards is overseen by Working Group 1 of ACCSQ under its guidelines.

4.5. Special Considerations for CLMV

The development of MRAs should take into consideration the special provisions that ASEAN agreed for CLMV. Reference should be made to the relevant provisions of the AEC Blueprint and ATIGA to guide the special considerations that the working group responsible may decide for CLMV.

5. Implementation and maintenance of MRAs

The ASEAN Committee responsible for implementing the MRA should be defined in the MRA and its functions should include the following items:

- (a) Ensuring compatibility with Member State legislation to ensure that there is no legal obstacle to compliance with the obligations contained in the MRA;
- (b) Issues of non-participation and terminating participation are defined;
- (c) Issues dealing with the special considerations for Cambodia, Lao PDR, Myanmar and Vietnam are provided for; and
- (d) Guidance is provided on the maintenance of the MRA, including making amendments and responding to other changes.



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