

# Vietnam News Brief\*

*A special update on the ASEAN-China Free Trade Agreement*

23 September 2009

## THIRD COUNTRY RE-INVOICING STILL NOT ALLOWED UNDER THE ASEAN-CHINA FTA

Goods originating from China that are imported into Vietnam under the ASEAN – China Free Trade Agreement (ACFTA) can benefit from lower preferential import duty rates in Vietnam, provided that a valid Certificate of Origin (Form E) is submitted upon importation.

On 7 September 2009 however, the General Department of Customs (GDC) issued an Official Letter (OL 5294/TCHQ-GSQL) denying the application of the preferential import duty rate for Chinese originating goods that were imported into Vietnam with a valid Form E.

In this specific case, the Chinese originating goods were shipped directly from China to Vietnam but were re-invoiced through a company in Korea. According to the GDC, the text of the ACFTA does not specifically provide for the possibility of third country invoicing and therefore the company in Vietnam could not benefit from lower preferential import duties, even though it had a valid Form E issued by the relevant Chinese authorities.

It is understood that the possibility of including third country re-invoicing in the ACFTA is currently being negotiated between China and the member countries of ASEAN. However, once agreed this is only expected to be implemented from the beginning of 2010.

Until then, companies that have been importing goods from China using the ACFTA should carefully review their invoicing structure, especially where they have been invoicing through a principal/headquarters in a third country. Given the current position of Vietnam Customs, Customs may decide to retroactively deny the application of the ACFTA preferential import duty.

Furthermore, companies that are considering using the ACFTA should assess whether there are possibilities to avoid re-invoicing through a company in a third country in order to prevent the rejection of any preferential claims under the ACFTA in Vietnam.

For further details on this or if you would like to have a meeting to discuss the impact of the above on your business, please contact Nu To Van @ [nu.to.van@vn.pwc.com](mailto:nu.to.van@vn.pwc.com)

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