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## Good news for Indonesian Importers of Chinese Origin Goods

### Overview

Most of Indonesia's Free Trade Area (FTAs) agreements allow FTA benefits for goods originating in the FTA partner country, even where the Indonesian importer is invoiced for the goods via a third party in another country.

Unfortunately, prior to 3 October 2011 Indonesia Customs did not allow FTA benefits under ASEAN – China FTA to flow through to importers in respect of such 3<sup>rd</sup> party invoicing arrangements.

That position has now changed, with effect from 3 October 2011, when Indonesian Customs issued a Circular Letter to give effect to the Presidential Decree of 7 July 2011, which in turn provided Indonesian ratification of changes to the ASEAN - China FTA "Second Protocol" which included amendments to the 3<sup>rd</sup> party invoicing arrangement agreed to last year, on 29 October 2010. The good news is that importers of Chinese origin goods can now enjoy full FTA benefits.

For future imports, provided a Chinese certificate of origin (COO) is available, the FTA benefit will be available, regardless of whether invoicing has been via a 3<sup>rd</sup> party.

However, it is unclear whether importers can have refund of overpaid duty for imports that occurred between the ratification of the FTA change on 7 July and

the issue of the Circular Letter on 3 October. Importers in this position may nevertheless need to consider whether it is worthwhile to pursue such refund claims.

## Detailed Analysis

On 29 October 2010, the ASEAN countries and China signed the “Second Protocol” which included amendments to the procedures and implementation to the Operational Certification Procedures comprising the following:

- a. Movement Certificate
- b. Verification Visit
- c. Third Party Invoicing
- d. Change of Definition of Issuing Authority
- e. Issuance date of Form E
- f. Format of Form E

Prior to July 2011, Indonesia Customs issued several Letters confirming that the amended Operational Certification Procedures, specifically items (a) to (e), would not be effective until the Second Protocol was ratified by the Indonesia government.

The Second Protocol was ratified by Presidential Regulation No. 37, 2011 on 7 July 2011. However, there was no accompanying implementation regulation issued by the Minister of Finance.

On 3 October 2011, Indonesia Customs issued Circular Letter No. SE-12/BC/2011, providing further detail on the guidelines for the amendment of the Operational Certification Procedures, in particular confirming that the Form E should be verified by Indonesia Customs in accordance with the ratified Second Protocol. Indonesia Customs will therefore now accept a third party invoicing arrangement for the purposes of applying preferential duty rates if the following criteria are met:

- a. The products fulfill the ASEAN-China Free Trade Agreement (ACFTA) Rules of Origin
- b. The Third Party Invoice is stated in Box 10 of the Form E
- c. Exporter and consignee of the goods are located in the ACFTA member countries
- d. A copy of the Third Party Invoice is attached to the Form E when the hard copy documents are submitted to Customs
- e. The Issuing authority has put a “tick” (“v”) mark in box 13 about Third Party Invoicing

It is still unclear whether the changes will be applicable as of 7 July 2011 or 3 October 2011, and whether an importer will be able to claim import duty drawback for imports declared prior to 3 October 2011. Based on experience, the latter is unlikely to be accepted by Indonesia Customs, but if the overpaid duty amount is significant, it may nevertheless be worthwhile seeking a refund.

At the moment, Indonesia Customs has informally indicated that the Circular Letter is effective only from 3 October 2011 and further that there should be a Minister of Finance Regulation to clarify whether or not the new Operational Certification Procedure can be retroactively applied since 7 July 2011.

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