



Asia-Pacific Trade Facilitation Forum 2022 Side Event
Session 3: Challenges in complying with rules of origin and
administrative requirements

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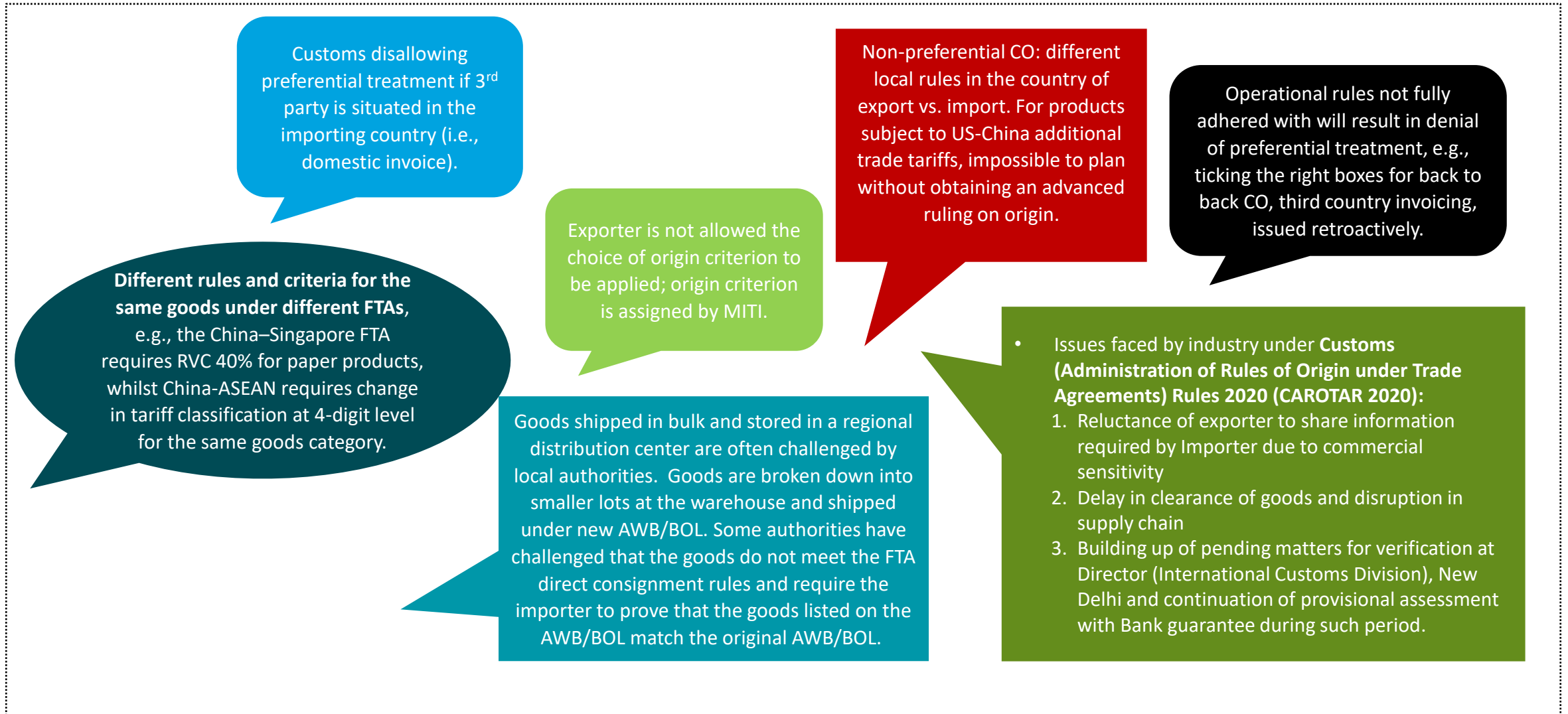
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Closing



Survey across Asia Pacific

Feedback from Deloitte Asia Pacific network on key issues faced by clients

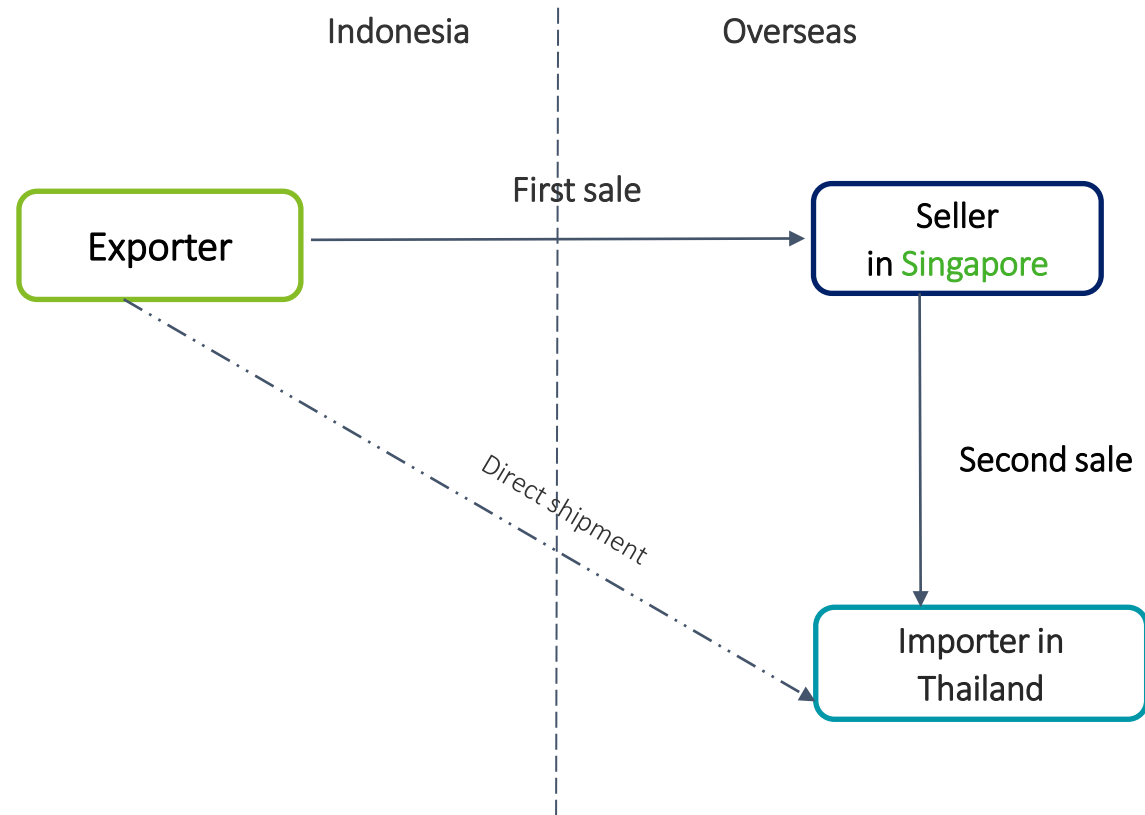


Practical challenges

Third-country/party invoicing in Thailand under ASEAN FTAs (scenario 1)



- ✓ Check the box “Third-country invoicing” on the CO
- ✓ Trading entity can be located in FTA or non-FTA country
- ✓ Name and country of trading entity must be mentioned on the CO
- ✓ Correct indication of invoice number by trading entity on the CO
- ✓ Ensure consistency between FOB value on the CO and invoice price or remove FOB value from CO
- ✓ Indirect invoicing involving multiple trading entities is now allowed



Practical challenges

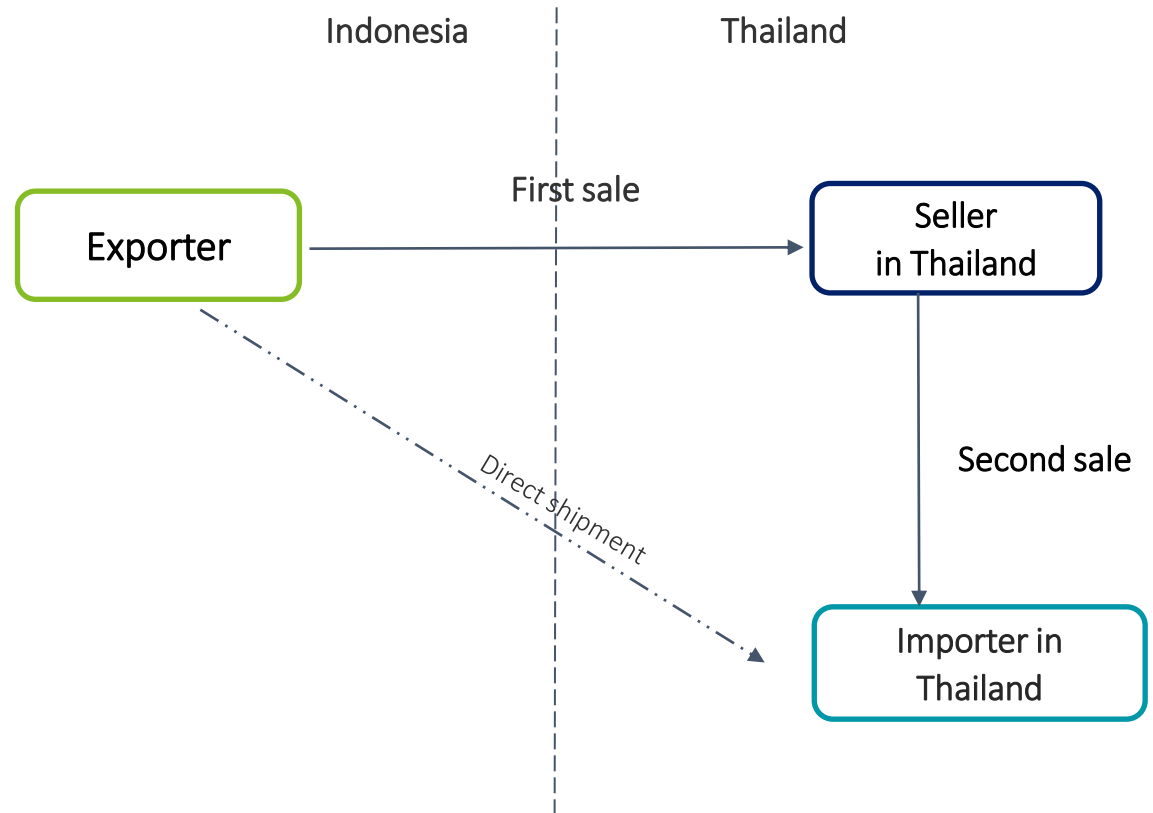
Third-country/party invoicing in Thailand under ASEAN FTAs (scenario 2)



What about third party-invoicing under the following conditions:

- Indonesian supplier invoices **intermediate trading entity in Thailand**
- Trading entity invoices Thai importer
- Thai importer imports directly from Indonesian supplier
- ✓ Thai customs: do not tick third country invoice on the CO even though it is indirect invoicing

Note: Unlike in Thailand, a Form D with a domestically issued invoice is not accepted in Malaysia. This is an on-going issued faced by importers in Malaysia.

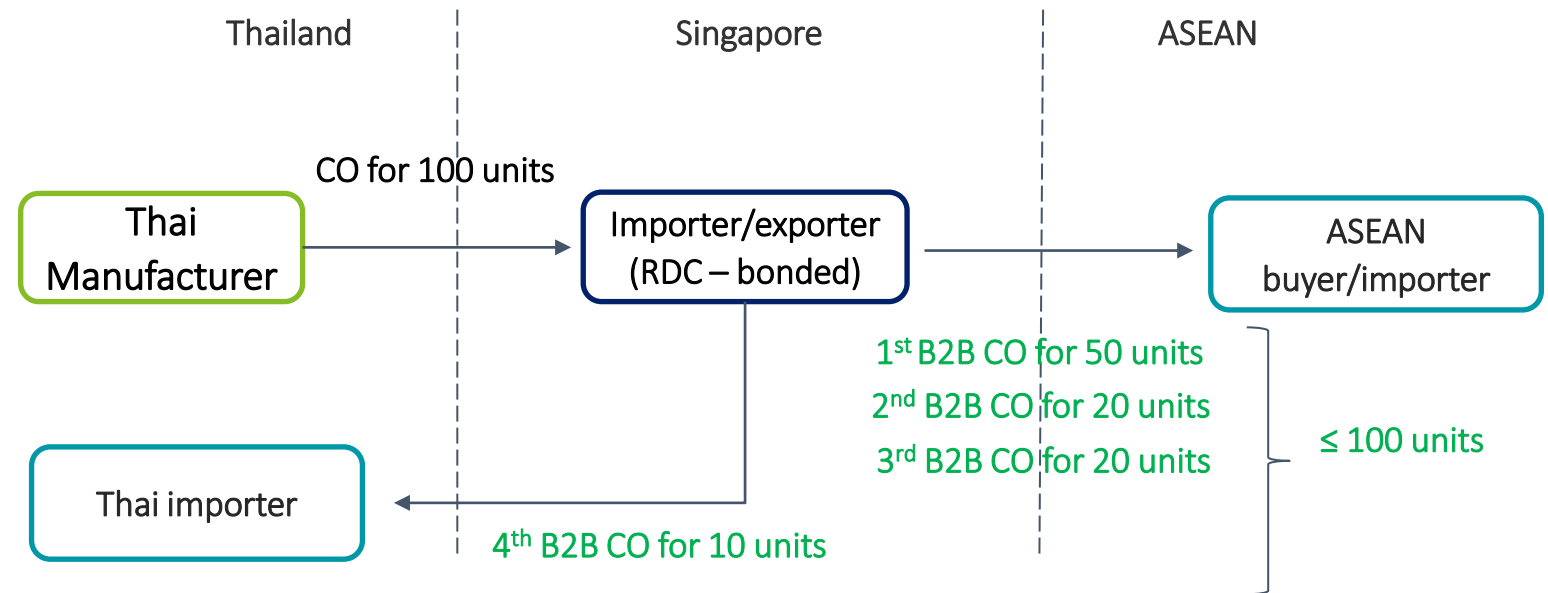


Practical challenges

Back-to-Back Certificate for break bulk transactions under ASEAN FTAs



- ✓ Check the box “ Back-to-Back” on the new CO for export
- ✓ Thai importer/exporter must present CO and customs docs for first import transaction
- ✓ No-processing rule
- ✓ Quantity on B2B CO cannot exceed quantity on original CO
- ✓ Validity period B2B CO = validity period of first CO
- ✓ Depending on the FTA: goods have to remain in bonded zone in intermediate country (ACFTA and AIFTA). ATIGA and AKFTA are silent.



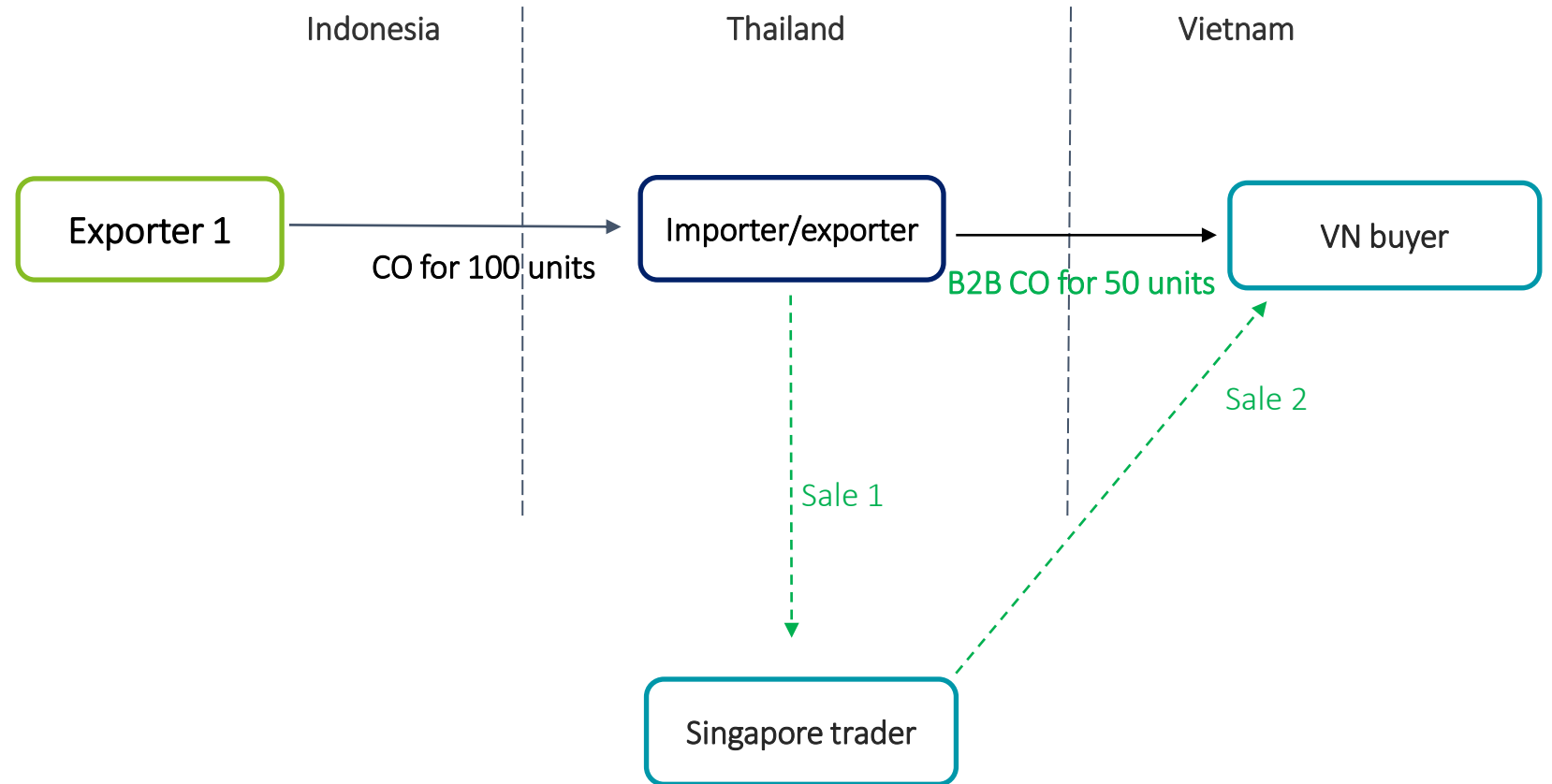
Note: For Thai-originating goods, a B2B CO issued by Singapore may not be accepted by Thai Customs when re-imported into Thailand.

Practical challenges

Back-to-Back Certificate in combination with third-country invoicing

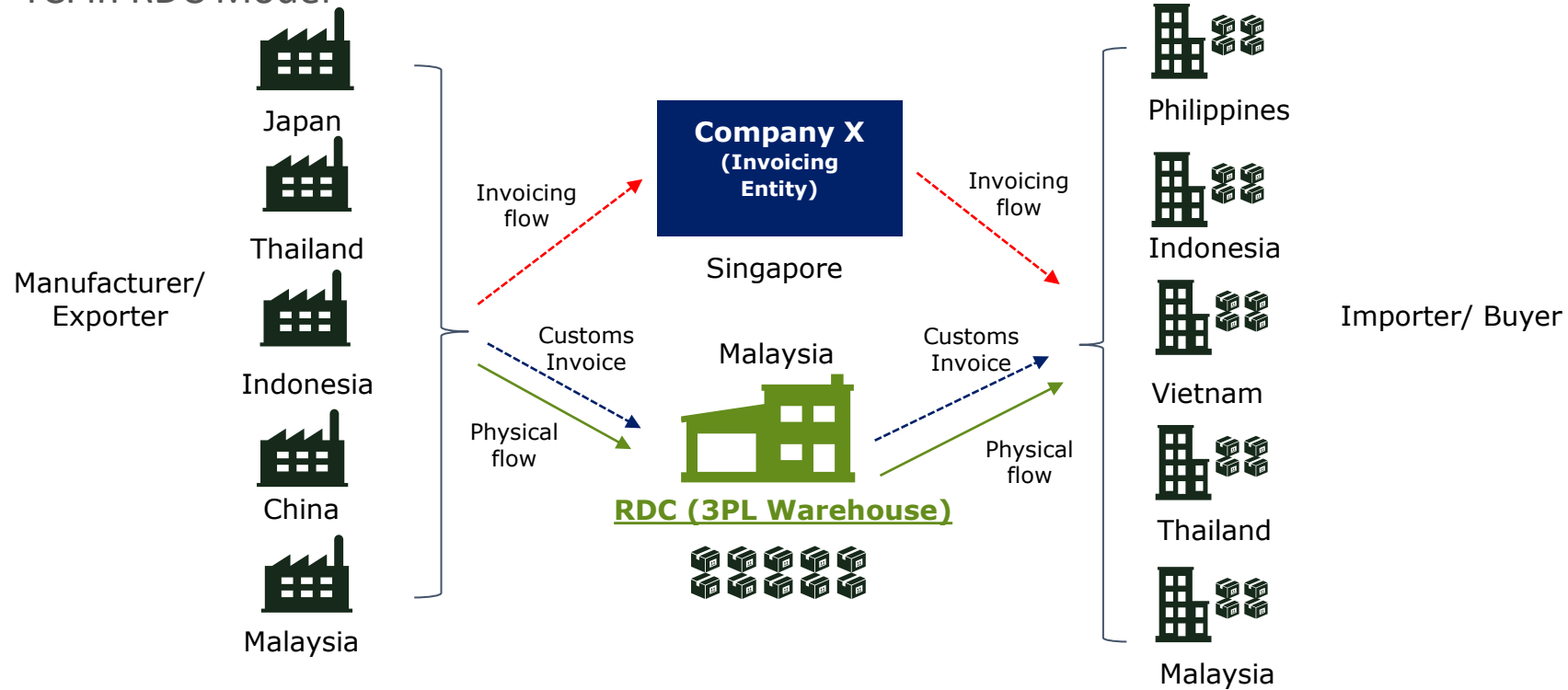


- ✓ B2B in combination with third-country invoicing: Thailand currently only allows this under ATIGA
- ✓ Check both boxes “Back-to-Back” and “Third-country invoicing” on the CO
- ✓ Meet conditions for both special schemes



Case Study 1

Use of B2B CO + TCI in RDC Model



Facts

- Principal (RHQ) entity in Singapore, acts as regional invoicing entity (buy/sell)
- Related party manufacturers in Japan, Thailand, Indonesia and China.
- All goods centralized in RDC in Malaysia (Port Tanjung Pelepas) for distribution to ASEAN market

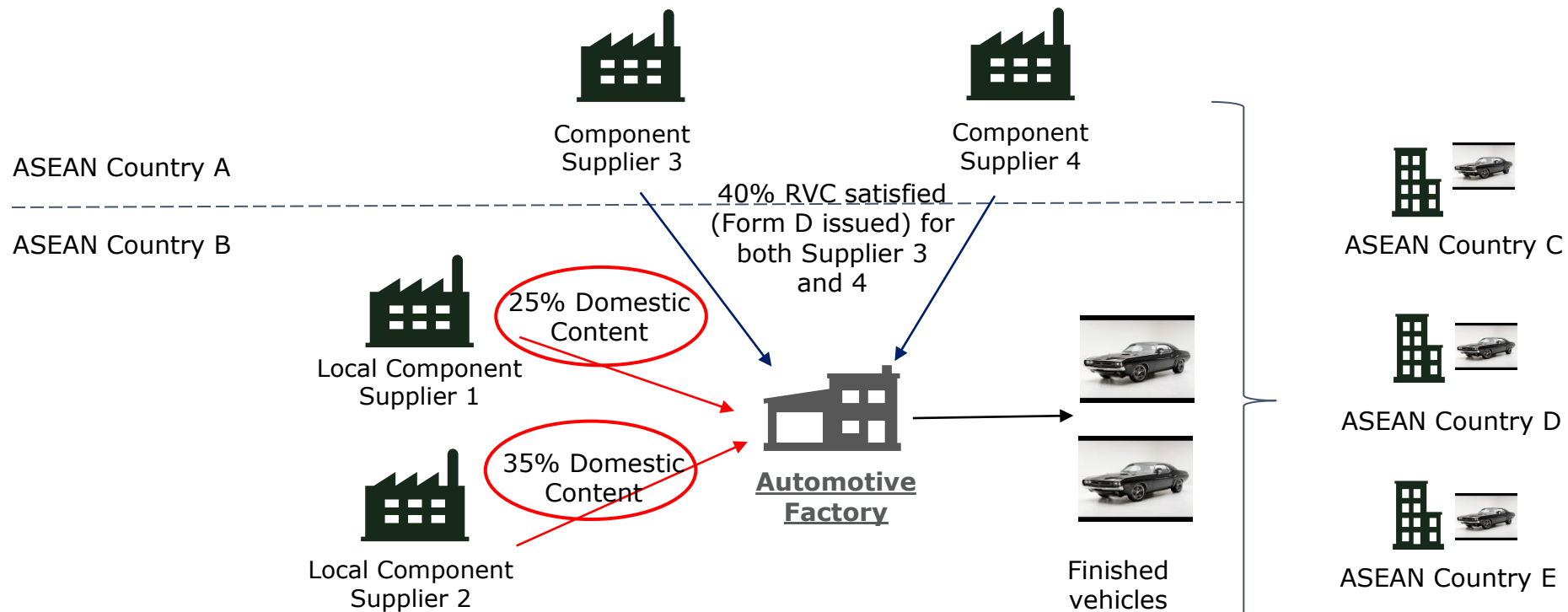
- Company X acts as non-resident IOR (c/o 3PL Warehouse) declared on import entry, and on invoicing by manufacturer to Company X.
- On export entry, EOR is Company X (non-resident) (c/o 3PL Warehouse) to importers in ASEAN.

Issues:

- (1) Ability to use B2B CO from Malaysia with TCI from Singapore to ASEAN countries?
- (2) For entries back into Malaysia, can a B2B CO be issued for re-import into the same country?
- (3) For goods originating in the same country as the RDC, what is the treatment?

Case Study 2

Treatment of 'intermediate' goods: Article 29(5) of ATIGA confers origin on local goods by 'licensed manufacturers'



Facts

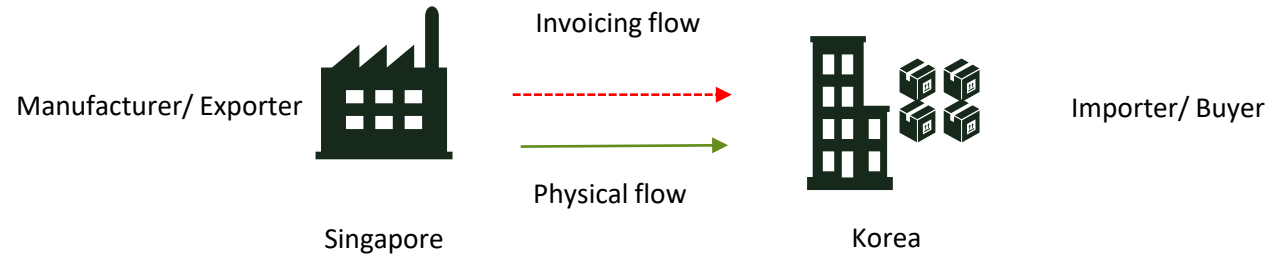
- Automotive manufacturing Plant located in ASEAN Country B.
- Sources for various components (e.g. gearbox transmission, engine block, camshaft, etc.) from both overseas sources and domestic sources.
- For imported components, only those with accompanied CO are included into origin calculation of finished vehicle for export.
- For domestic components, a local supplier declaration is requested to confirm that the goods are of the relevant country of production (stated in invoice)

Issues:

- Article 29(5) of ATIGA provides that locally-procured materials produced by "established licensed manufacturers" in compliance with domestic regulations, deemed to have fulfilled origin requirement of the Agreement.
- No domestic regulations available to clarify the definition. Do the 'intermediate' goods still need to qualify based on ROO applicable to such goods. **[Note: ATIGA different from ACFTA, which has such express condition]**

Case Study 3

Post entry origin verification



Facts:

- Manufacturer and exporter in Singapore. Sell and ship direct to related party in Korea.
- Importer has been claiming for preferential duty treatment in Korea based on preferential CO issued by Singapore Customs under various FTAs:
 - Korea-Singapore FTA (KSFTA)
 - ASEAN-Korea FTA (AKFTA)
- KCS noted irregularities to the COs:
 - Omission of origin criterion and HS code information
 - Mingled origin criterion marking – “C” or “VAC”
- Reasonable doubts to the validity and origin information of the COs
- Requested Singapore Customs to conduct a verification on the **authenticity** and **accuracy** of the COs
 - To respond with the Questionnaire within 30 days, with one opportunity to make a written request for extension

Case Study 3

Post entry origin verification (cont'd)

- Under Article 5.7 of the OCP (verification for preferential tariff treatment), for purposes of determining whether a good imported into a territory from the territory of the other Party is eligible for preferential tariff treatment, the importing Party (i.e. Korea) may, through its customs administration (i.e KCS), conduct a verification, **which may be in sequence**, by means of:
 - a) request for a certificate of origin from the importer;
 - b) request for Cost and Production Statement and information from the importer for cases where the importer is able to prepare it on the basis of the importer's own documentary evidence or information;
 - c) request for Cost and Production Statement and information from an exporter or a producer in the territory of the other Party (SG Co) through the other Party's customs administration (i.e. Singapore Customs);
 - d) visit to the premises of an exporter or a producer in the territory of the other Party (Singapore in this case) to review the records referred to in paragraph 1 of Article 5.5 and observe the facilities used in the production of the good, or to that effect any facilities used in the production of the materials; or
 - e) such other procedure as the Parties may agree to.

- On-site audit by Korea Customs in Singapore for 1-week period

Case Study 3

Post entry origin verification (cont'd)

Issues:

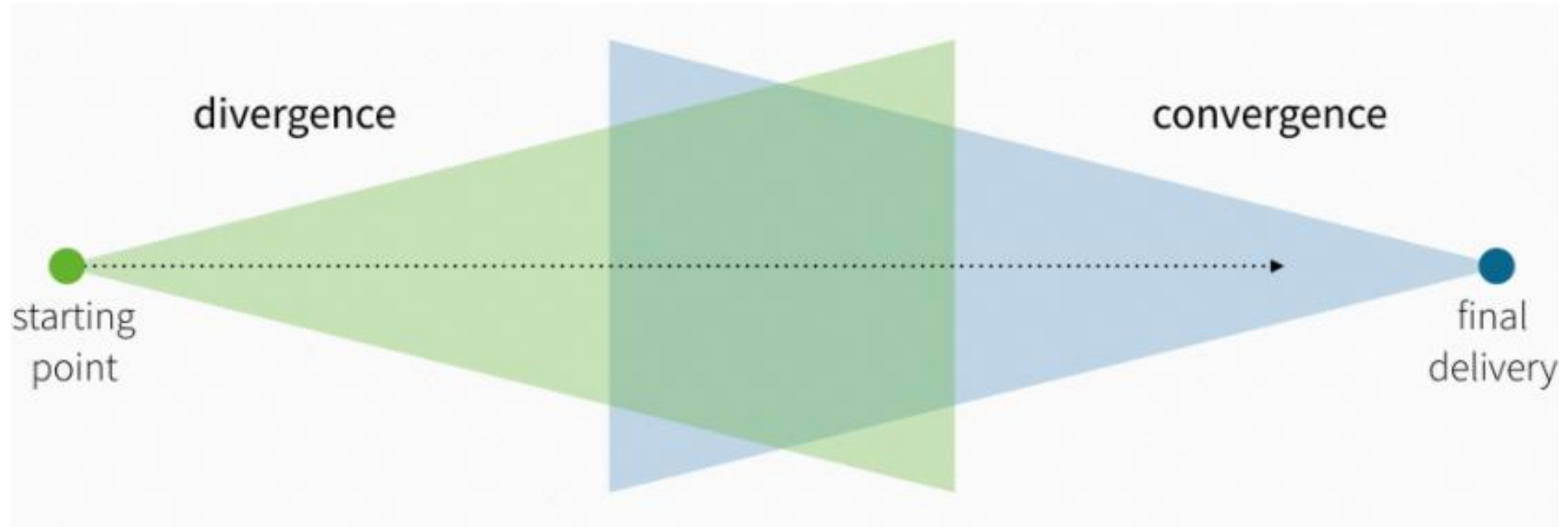
- **1st issue:** Whether qualifying processes are satisfied (i.e. sufficient manufacturing vs simple mixing)
- **2nd issue:** Determine the applicable rules of origin
 - HS codes of the products
 - RVC 55% not met – due to change in FOB selling price, incorrect accumulation of materials that are non-originating
 - Costs statements submitted does not correspond with invoices received (standard cost vs actual cost)
- **3rd issue:** Format of the COs
 - HS codes not indicated
 - Origin criterion marking (either omitted or incorrectly indicated)

Outcome:

- Findings of inconsistency as products did not qualify under AKFTA and KSFTA rules
- Denial of preferential duty, additional bill of demand + fines, penalties and interest.

Way forward

Mega-regional FTAs the way forward, or a multilateral agreement at the WTO-level the way forward?



Speaker Biography

A night cityscape, likely Kuala Lumpur, featuring the Petronas Twin Towers and other illuminated skyscrapers. The scene is overlaid with a complex digital network of glowing lines and nodes in various colors (blue, purple, pink, white), suggesting a data-driven or technological theme.

Speaker's Biography



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Felicia Gan is a Senior Manager in the SEA Global Trade Advisory practice based in Singapore. With more than 11 years of experience, Felicia has worked with various companies on a variety of trade and customs matters in supply chain, counselling companies on HS classification, valuation, trade facilitation schemes, import/export controls, FTAs, and development of internal compliance programmes for efficient management of trade operations.

In her capacity as a Senior Manager in the Asia Pacific team, Felicia has extensive experience in managing regional projects and working with cross-border teams to support multinational companies in projects involving multiple jurisdictions. In respect of market entry and customs duty planning projects, she has been involved in the roll out of various “go-direct” models, working together with internal company stakeholders from finance, tax, supply chain, logistics, legal, and trade compliance, to set up internal processes for seamless operations from a trade compliance perspective. Other areas of focus include advising on requirements relating to product safety standards, origin markings and labelling, environmental and occupational safety and health requirements, as they pertain to cross border movement of goods and intersection with Customs authorities.

In view of increasing audits in the Asia Pacific region, Felicia has spent a majority of her time supporting companies with audits by Customs authorities in the Asia Pacific region including onsite verification visits by Customs authorities (e.g., Korea customs Services) on issues pertaining to origin calculations, valuations and classifications, and helping companies defend in-country customs audits in various Asia Pacific countries including India, China, Vietnam, Thailand and Indonesia.

She also regularly conducts trade compliance training workshop for in-house teams and a frequent speaker on various customs topics.

Felicia graduated with a Bachelor of Business Administration (Honours) degree with specialisation in Finance, Operations and Supply Chain Management, from the National University of Singapore.



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