

# INFORMATIVE NOTE

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## PLMJ INTERNATIONAL LEGAL NETWORK - CHINA

# HOW TO IMPORT GOODS SAMPLES AND ADVERTISING MATERIALS IN CHINA

### 1. MOST UPDATED ANNOUNCEMENT ON IMPORT AND EXPORT OF GOODS SAMPLES AND ADVERTISING MATERIALS

On July 1st, 2010, the new rule on goods samples and advertising materials has come into effective, as General Administrative of Customs Announcement 2010, Number 33 ("Announcement").

This new Announcement aims to regulate the import and export trade order and strengthen the administration of imported and exported goods samples and advertising materials ("samples and materials"), which makes necessary updates in accordance with the rapid financial and economic development in China.

Imported and exported goods samples and advertising materials are clearly defined in this document as samples supplied as references exclusively for placing orders, and as materials for publicizing the content of related goods for import and export respectively in this announcement. However, all these samples and materials are subject to customs declaration, which is conducted by the import or export consignees or consignors or their agents that have been pre-registered with the Customs, no matter they are provided free of charge or not. The samples and materials which are listed on the import and export prohibition checklist by the State and the ones regulated by the license administration shall be handled in accordance with the relevant administration provisions of the State. In fact, the most distinct adjustment made by this new Announcement falls in the

aspect of customs duty and import taxes: except for those samples and advertising materials with "no commercial value", customs duties and import taxes will be burdened on every sample and material in accordance with the relevant provisions.

### 2. LEGAL PROCEDURE FOR IMPORT OF SAMPLES AND MATERIALS

#### a) Customs Clearance and Duties

As the new Announcement stipulated, all these samples and materials, no matter they are provided free of charge or not, are subject to customs declaration, which is conducted by the import consignees<sup>1</sup> or consignors that have been pre-registered with the Customs, or their agents<sup>2</sup>. The Customs Clearance is performed by personal (also qualified and registered with the Customs) that going through declaration formalities for the consignors or consignees of import and export goods and authorized customs brokers (declaring enterprise). The transmitting of the electronic declaration forms shall be within 14 days from the date of declaration for the entry of means of transport into China. The paper

<sup>1</sup> The consignees and consignors should be the foreign trade dealer who registers with the department for foreign trade under the State Council or the body it entrusts with the registration, unless otherwise prescribed by laws, administrative regulations or by the said department.

<sup>2</sup> So called as "declaring enterprise", a domestic enterprise (legal person) that has registered with relevant Provisions upon approval of the customs, and that makes customs declarations under the entrustment of consignees or consignors of import or export goods in the name of the consignees or consignors or in its own name.

"Portuguese Law Firm of the Year"  
*Chambers European Excellence Awards, 2009; Shortlisted 2010, 2011/ Who's Who Legal Awards, 2006, 2008, 2009, 2010, 2011/The Lawyer European Awards- Shortlisted, 2010, 2011*

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*Clients Choice Award - International Law Office, 2008, 2010*

"5<sup>a</sup> Most Innovative Law Firm in Continental Europe"  
*Financial Times - Innovative Lawyers Awards, 2011*

"Corporate Law Firm of the Year - Southern Europe"  
*ACQ Finance Magazine, 2009*

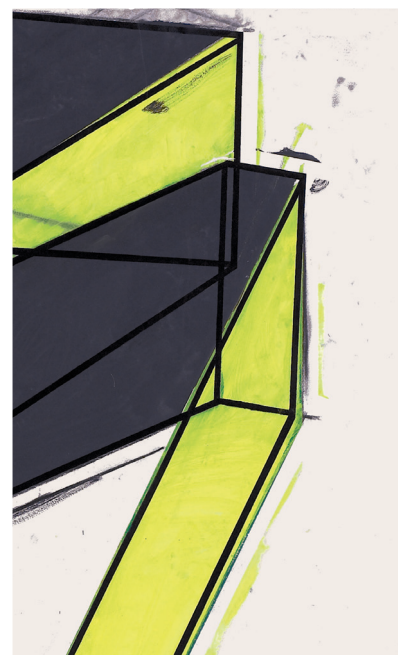
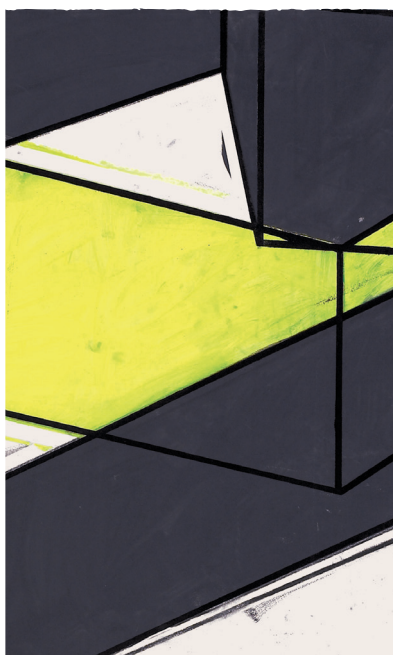
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declaration forms shall be submitted at the time of Customs Inspection to the samples and materials<sup>3</sup>, within 10 days of the approval of the electronic forms by the Customs, attached with the following documents:

- (1) contracts;
- (2) invoices;
- (3) packing lists;
- (4) carrier manifests (shipping bills);
- (5) bills of lading (waybills);
- (6) powers of attorney for authorized declarations;
- (7) import and export licenses (if the samples and materials subject to the licensing administration); and
- (8) processing trade manuals (in paper or electronic data form) and other import and export documents as required by customs.

<sup>3</sup> When goods are being inspected by customs, the consignees or consignors of imported and exported goods or their agents shall be present at inspection as they will assume responsibility to move goods around, open and reseal their package as requested by customs, faithfully answer all inquiries inspectors may have and provide necessary materials. But if the consignees or consignors or their agents fail to be present at inspection despite prior notification of such inspection by customs, the Customs may directly open the packages of imported and exported goods for inspection without the presence of the consignees or consignors or their agents.

The relevant statute regarding customs duties and import taxes levied samples and materials are most distinct different from the previous rules<sup>4</sup>. Only for those without commercial values could be exempted from customs duties and import taxes. However, it is not easy to clarify the samples and materials have “no commercial value”, which is an item that appears in PRC Customs Law and other relevant legislations without any clarifications on this. We could only have an idea through the practical experience and public letters to the clients by some international express companies about “no commercial value”: the Customs will make the evaluation based on the character and specialty of the samples and materials, such as: if the samples or materials could be sale and purchase; not subject to Licensing Administration; the quantity; only for the purpose of exhibition by attached unmovable marks and so on. Of course, samples and materials are exempted from customs duties when the taxable duties are estimated to be

<sup>4</sup> The previous rules say that samples and materials examined by the Customs will be exempted from customs duties and import taxes if the total amount is reasonable and the gross value is less than 400 RMB (for those beyond 400 RMB are subject to customs duties and import duties)

not more than RMB 50, as regulated in “Regulations of the People’s Republic of China on Import and Export Duties”.

The Customs Clearance is only accomplished when the Customs Inspection finished and Duties paid.

## b) Import and Export Commodity Inspection by the State Administration for Commodity Inspection

The commodities listed in the Catalogue of Import and Export Commodities, which is made by the State Administration for Commodity Inspection, are subject to compulsory inspection by the State Administration for Commodity Inspection (so called the “statutory inspection”), while other commodities which are out of the Catalogue would be random inspection by the relevant authorities. No import commodities specified in the Catalogue may be sold or used if they are not inspected.

However, it is stipulated that product samples, gifts, goods admitted temporarily and other nontrade articles that enter or exit the territory are exempted from inspection, unless otherwise provided by laws or administrative regulations.

Regarding the possible payment for the import of samples and materials, all these three elements are subject to the examination by the Bank which operates the payment and to supervision by the State Administration of Foreign Exchange.

### 3. COST

Despite the freight fees, insurance fees, customs duties and import taxes which are more business conditions and terms regulated in the contract, here is the possible cost for the import of samples and materials to China:

#### a) Cost Arising From Customs Clearance

##### i. Fees for declaring enterprise

For those consignees and consignors who didn't register with the department for foreign trade under the State Council or the body it entrusts with the registration, declaring enterprise must be engaged in Customs clearance. Fees may vary from places to places as there is no national guide for customs clearance fees and it needs to be negotiated with the declaring enterprises.

##### ii. Fees for Customs Inspections<sup>5</sup>

It is free of charge for the Customs inspection in principle.

#### b) Cost Arising From Commodities Inspections

The inspection items include four groups: (1) the quality and specification (size) inspection; (2) quantity and weight identification; (3) safety and sanitation examination; (4) packaging examination. The inspection fees varies due to the different inspection, such as the quality inspection will be charged based on the commodities' total value indicated in the contracts or the invoices, the quantity identification will be charged based on the gross amount of the commodities.

### 4. OTHER POSSIBLE REQUIREMENT

#### a) Express Delivery

Express delivery would be the major method for export and import of samples and materials due to the limited value

and quantity of the samples. There are three different kinds of express delivery recognized by the relevant rule in China: documents delivery, personal belongings delivery and cargos delivery. When the gross value of the personal belongings exceeds beyond 800 RMB (import from Hong Kong, Macau and Taiwan) or 1000 RMB (import from countries and places other than Hong Kong, Macau and Taiwan), they should go through cargos express delivery. As the samples and materials are subject to customs declaration conducted by the import or export consignees or consignors or their agents, and the "Measures of the Customs of the People's Republic of China on the Supervision and Administration over Import/Export Express Consignments" asks the express operator to declare the name of business entities (consignees or consignors pre-registered with the Customs) when submitting "KJ2" and "KJ3"<sup>6</sup> express customs declaration, the "PoA" between express operator and the business entity should be submitted as well. This is an additional requirement than the requirement of customs clearance of personal belongings.

For those items subject to Licensing Administration, goods express delivery is not available.

#### b) Settlement of the Payment for the Samples and Materials

Usually, when there is a payment occurred due to the transnational trade between Chinese entities and foreign entities, there are certain foreign exchange regulations and requirements to fulfill, like the examination of the contract, the invoice, the agency contract if there is an agent (declaring enterprise) involved. Regarding the possible payment for the import of samples and materials, all these three elements are subject to the examination by the Bank which operates the payment and to supervision by the State Administration of Foreign Exchange.

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<sup>5</sup> Customs shall not collect fees for inspection conducted within customs surveillance zones. If customs seals are affixed to containers, container trucks or other goods, customs shall collect cost of production for said seals in accordance with relevant provisions. The incurring fees from moving imported and exported goods, or opening or resealing the packages of said goods in the course of inspection shall be assumed by the consignees or consignors of said goods.

The consignees or consignors of imported and exported goods or their agents shall, in accordance with relevant provisions, pay stipulated fees to customs for inspection conducted outside customs surveillance zones.

<sup>6</sup> These two declaration forms are prepared for the import and export of samples and materials.