

Customs and Global Trade Updates

June 2023

This update highlights the following matters:

- ▶ List of scraps allowed to be imported from overseas as production materials
- ▶ Schedule of export tariff, preferential import tariff, tariffs nomenclature and corresponding absolute tariff, mixed tariff and out-of-quota tariff
- ▶ Application of ordinary duty rates for imported goods
- ▶ Circular regulating the determination of origin of exported and imported goods
- ▶ Anti-dumping tax imposed on certain plastic and plastic products made from polypropylene
- ▶ Decree amending and supplementing regulations on trading civil cryptography products
- ▶ Feedback and suggestion to amend and supplement Article 35 in Decree 08/2015/NĐ-CP dated 21 January 2015 (Decree 08)

- ▶ Various Official Letters (OL) issued by the General Department of Customs (GDC), regarding:
 - ▶ On-the-spot (OTS) import and export customs procedures for foreign traders without a presence in Vietnam
 - ▶ Customs procedures and tax policies for goods sold from domestic enterprises to Export Processing Enterprises (EPEs)
 - ▶ Goods put into storage while waiting for specialized inspection results
 - ▶ Using (Vietnam Dong) VND currency when declaring export customs declarations

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List of scraps allowed to be imported from overseas as production materials

On 22 May 2023, the Prime Minister issued Decision 13/2023/QD-TTg (Decision 13) on the list of scraps allowed to be imported from overseas as production materials (The List). The List includes the following:

- ▶ Iron, steel and cast-iron scraps
- ▶ Waste and plastic scraps
- ▶ Paper scraps
- ▶ Glass scraps
- ▶ Nonferrous metal scraps

Organizations and individuals are only permitted to import scraps as production materials in accordance with designed production capacity.

In certain circumstances, scraps are allowed to continue to be imported as below:

- ▶ Paper scraps (HS code 4707.90.00), which are imported under an environmental license issued by a competent authority before the effective date of Decision 13, are allowed to be imported until the environmental license expires.
- ▶ Waste and plastics scraps (HS code 3915.90.00), which are imported under an environmental license issued by a competent authority before the effective date of Decision 13, are allowed to be imported until the license expires, specifically for corresponding HS codes as prescribed at point 2.3 or 2.5 of the List.
- ▶ Scraps, which are imported under an environmental license, issued by competent authority before the effective date of Decision 13, have other name while the HS code is unchanged as prescribed under Decision 13, are allowed to be imported until the environmental license expires.

Decision 13 entered into force on 1 June 2023. From the effective date, the importation of granulated slag (slag sand) created from the iron or steel manufacturing industry (HS code 2618.00.00) to be used as cement production materials must follow the regulations on construction materials.

Schedule of export tariff, preferential import tariff, tariffs nomenclature and corresponding absolute tariff, mixed tariff and out-of-quota tariff

On 31 May 2023, the Government issued Decree 26/2023/NĐ-CP (Decree 26) on the Schedule of export tariff, preferential import tariff, tariff nomenclature and the absolute, mixed and out-of-quota tariff (The schedule), in which:

- ▶ Appendix I: Schedule of export tariff according to the Nomenclature
- ▶ Appendix II: Schedule of preferential import tariff according to the Nomenclature
- ▶ Appendix III: The Nomenclature and the absolute tariff, the mixed tariff imposed on used passenger automobiles with under 15 seats

- ▶ Appendix IV: The Nomenclature and out-of-quota import tariff imposed on applicable goods

In addition to the List of Goods, as prescribed in the above-mentioned Schedule, Decree 26 also prescribes tariffs for the following circumstances:

- ▶ Preferential import duty rate of 0% is applied for mechanical processing machines (under Headings from 84.54 to 84.63) if they cannot be manufactured domestically. In contrast, if such machines can be produced domestically, they are subject to preferential import duty rates as in Section I, Appendix II of Decree 26. The list of machines and equipment that can be produced domestically is issued by the Ministry of Planning and Investment.
- ▶ Different import duty rates are applied for used automobiles.
- ▶ Preferential import duty rate of 0% is applied for automobile components, under Heading 98.49, imported under the duty incentive program for manufacturing and assembling automobiles. The duty rate is applicable until 31 December 2027. If enterprises have registered to join the duty incentive program before the effective date of Decree 26, or there is a change in registered automobile groups, models or quantities, it is necessary to re-register with customs authority in accordance with Decree 26.
- ▶ Preferential import duty rate of 0% is applied for materials, supplies and components used for automotive supporting industry, which cannot be produced domestically. The duty rate is applicable until 31 December 2024. If enterprises have registered to join the duty incentive program for automotive supporting industry before the effective date of Decree 26, they are not required to re-register the Program and can continue enjoying the Preferential tariff in accordance with Decree 26.
- ▶ From 1 October 2022 to the effective date of Decree 26, conditions of the minimum degree of discreteness for imported auto parts as prescribed in point b, clause 3.1, Article 7a in clause 3, Article 2 and point b.5, clause 3, Section II, Chapter 98 of Decree 57/2020/ND-CP dated 25 May 2020 (Decree 57) is no longer applicable.
 - ▶ If enterprises have joined the duty incentive program but not claimed an import duty refund from 1 October 2022 to the effective date of Decree 26, it is eligible to claim a duty refund for imported auto components if the conditions as prescribed in the program are satisfied, except that the condition on the degree of discreteness is not applicable.
 - ▶ If enterprises import Completely Knocked Down (CKD) and Incompletely Knocked Down components set for auto manufacturing and assembling from 1 October 2022 to the effective date of Decree 26 and choose the tax calculation method applicable for individual component, parts or items under Heading 98.21, they are required to follow provisions in Decree 57, except that the condition on the degree of discreteness is not applicable.

Decree 26 comes into force on 15 July 2023. Please see more details in the Decree 26.

Application of ordinary duty rates for imported goods

On 31 May 2023, the Prime Minister issued Decision 15/2023/QD-TTg (Decision 15) on the application of ordinary duty rates for imported goods (the ordinary schedule).

For imported goods which are not included in the ordinary schedule and not eligible for a preferential import duty or special preferential import duty rate, the ordinary duty rate equal to 150% of the applicable preferential import duty rate as specified in the Schedule - Appendix II of Decree 26 applies.

Decision 15 comes into force on 15 July 2023. Please see more details in the Decision 15.

Circular regulating the determination of origin of exported and imported goods

On 31 May 2023, The Ministry of Finance issued Circular 33/2023/TT-BTC (Circular 33) regulating the determination of exported and imported goods. Circular 33 replaces certain regulations issued previously with the following notable points:

- ▶ Guidance on pre-determination of origin of exported and imported goods:
 - ▶ Before conducting customs procedures for export and import shipments, organizations and individuals who request to pre-determine the origin of exported and imported goods, must submit the requesting dossier to the GDC.
 - ▶ The GDC receives, checks the documents and proceeds the pre-determination of goods' origin as prescribed in Article 28 Law on Customs and Clause 11 Article 1 Decree 59/2018/ND-CP dated 20 April 2018.
- ▶ Guidance on the declaration, submission, inspection, determination and verification of origin of exported and imported goods
 - ▶ If the GDC has issued a notice on pre-determination of goods' origin, the customs declarant is required to declare the notice number, date and validity in the "license / permit" box in the customs declaration.
 - ▶ When conducting the customs procedures for exported goods, it is not necessary to provide the Certificate of Origin (C/O) to the customs authority. If the customs declarant wishes to submit the C/O or the notice of pre-determination of origin, the customs authority will receive and check the origin of goods as prescribed in Circular 33. If the C/O is submitted upon import customs procedures, the customs declarant is required to declare the reference number and the issuance date of the C/O and the registered code of qualified exporter in the "Note" box in customs declarations (REX code under EVFTA, EORI code under UKVFTA, CE code under ATIGA or RCEP). In case such information is not required to be declared under an applicable Free Trade Agreement (FTA), the customs declarant must declare the name, number and issuance date of C/O, the issuer of C/O and the name of the applicable FTA.
 - ▶ The C/O can be submitted to the customs authority as an electronic or scanned version of paper C/O with an e-signature via the customs system. In case the C/O is issued via the National Single Window, ASEAN Single Window or the Portal as per the notice of competent authority in exporting country, the customs declarant is not required to

submit the C/O but must declare information in the customs declarations as prescribed above.

- ▶ In relation to imported goods, if there is a requirement to submit the C/O as announced by specialized management department before the effective date of Circular 33, the customs declarants must follow such announcement.

Circular 33 enters into force on 15 July 2023. Please see more details in the Circular 33.

Anti-dumping tax imposed on certain plastic and plastic products made from polypropylene

Following the case of applying anti-dumping tax on certain plastic and plastic products made from polypropylene imported from Malaysia, Thailand and China, on 2 June 2023, the Ministry of Industry and Trade (MoIT) issued Decision 1317/QD-BCT on the result of reviewing new exporter. In which:

- ▶ Applying anti-dumping tax of 12.23% for subjected new exporters.
- ▶ Procedures of applying anti-dumping measures must be in accordance with regulations on anti-dumping for goods imported into Vietnam, regulations on import-export duty and relevant regulations.
- ▶ Other implementations follow Decision 1403/QD-BCT dated 15 July 2022 issued by the MoIT.

Decision 1317 takes effect 15 days after the issuance date.

Decree amending and supplementing regulations on trading civil cryptography products

On 9 June 2023, the Government issued Decree 32/2023/NĐ-CP (Decree 32) amending and supplementing Decree 53/2018/NĐ-CP dated 16 April 2018 (Decree 53) and Decree 58/2016/NĐ-CP dated 1 July 2016 detailing the trading of civil cryptography products and services, exportation and importation of civil cryptography products.

Decree 32 has the following notable points:

- ▶ Replace Appendix II - The list of civil cryptography products exported and imported under licenses as prescribed in Decree 53 by Appendix attached in Decree 32.
- ▶ Export and import licenses which are issued before the effective date of Decree 32 remain valid until the expiration date. The license may continue to be used during customs clearance if the name of goods is appropriate with item's description in the Nomenclature of imports and exports.

Decree 32 comes into force on the signing date. Please see more details in the Decree 32.

Feedback and suggestion to amend and supplement Article 35 in Decree 08

On 29 May 2023, the GDC issued Official Letter 2587/TCHQ-GSQL (Official letter 2587) to provide feedback and propose amendments and supplementations on Clause 1 Article 35

Decree 08. Accordingly, the GDC has reviewed, assessed and summarized the implementation of provisions on OTS import and export customs procedures and amended the following:

- ▶ Abolish all regulations on OTS import and export customs procedures as specified in Article 35 Decree 08.
- ▶ All cases in relation to processing for foreign traders and exporting/importing goods between EPEs and domestic entities (as prescribed in Point a, b, Clause 1, Article 35 in Decree 08) shall refer to other relevant Articles in Circular 38/2015/TT-BTC dated 25 March 2018 amended and supplemented by Circular 39/2018/TT-BTC dated 20 April 2018.
- ▶ Review and abolish other relevant regulations on the OTS import and export activities as prescribed in the Law on Commerce, Law on Foreign Trade Management, Law on Import - Export, Law on Value-Added Tax (VAT), etc.
- ▶ Suggest new replacement policies to conduct OTS imports and exports:
 - ▶ Suggest the tax authority to take responsibility in monitoring and collecting tax as the nature of OTS import and export transactions is within domestic market.
 - ▶ Scenario 1: goods processing for foreign traders, where foreign traders sell to another enterprise in Vietnam, is considered as transaction between two domestic enterprises. The toll manufacturer is required to change usage purposes for processing goods and pay applicable tax as for goods imported from overseas.
 - ▶ Scenario 2: goods produced from materials imported with duty exemption for export production are sold to foreigners, but the physical goods are instructed to be delivered to another enterprise in Vietnam, is considered as a transaction between two domestic enterprises. The manufacturer is required to change usage purposes and pay applicable tax for such materials imported with duty exemption.
 - ▶ With respect to the Corporate Income Tax of these two cases, foreign traders without presence in Vietnam are required to enter into agreement with an agency in Vietnam to declare and pay tax.
 - ▶ Scenario 3: relates to goods acquired from a domestic enterprise by a foreign trader without a presence in Vietnam, whom subsequently on-sells these goods to another enterprise in Vietnam and the physical goods are delivered between two domestic enterprises. This transaction is considered as pure commercial arrangement. In this case, the foreign trader should enter into an agreement with an agency in Vietnam, or use a VAT invoice that explicitly states the tax code/name of foreigner and tax code/name of enterprise in Vietnam, who is designated to receive goods.

There are pros and cons in the suggestions. Please see more details in the Official letter 2587.

Some guidance provided in OL of the GDC

No.	Subject	Contents
<p>561/QHĐNg-GSQL Dated 7 April 2023</p> <p>676/GSQL-GQ2 Dated 17 May 2023</p> <p>305/HQNKCN Dated 23 June 2023</p>	<p>OTS import and export customs procedures for foreign traders without a presence in Vietnam</p>	<p>This relates to a foreign trader without a presence in Vietnam, who:</p> <ul style="list-style-type: none"> ▶ Is a foreign business entity, which does not make a direct investment in Vietnam in the forms stipulated in the Law on Investment and the Commercial Law; and which does not have a representative office or a branch in Vietnam pursuant to the Commercial Law. (Clause 5, Article 3 in the Law on Foreign Trade Management and Clause 2 in Decree 90/2007/NĐ-CP dated 31 May 2007 of the Government) ▶ Conducts commercial activities for profit-making purposes, including purchasing and selling goods, providing services, investing, promoting and other activities for profit-making purpose (Clause 1 Article 3 in the Law on Commerce) <p>According to Point c, Clause 1, Article 35 in Decree 08, if the foreigner is identified as having a presence in Vietnam, it is not allowed to perform OTS import and export customs procedures.</p> <p>On a related note, the Customs Sub-department managing imports and exports outside the Industrial Zone has provided guidance to perform customs procedures via the scheme of bonded warehouse or sales transaction using a VAT invoice.</p>
<p>2457/TCHQ-TXNK Dated 23 May 2023</p>	<p>Customs procedures and tax policies for goods selling from domestic enterprises to EPEs</p>	<p>If a domestic enterprise imports materials for export production under customs type E31 and after production, the finished goods are not exported overseas but sold to EPEs, which then export the goods the domestic enterprise is required to change the usage purposes for such materials imported with duty exemption before selling them to the EPEs. As such, export customs</p>

No.	Subject	Contents
		<p>declarations under type E62 are not allowed in this case.</p> <p>When selling goods to EPEs, the domestic enterprises must issue a VAT invoice to EPEs with applicable VAT.</p>
1164/SB-ĐHHN Dated 30 May 2023	Goods put into storage while waiting for specialized inspection results	<p>As per the announcement of Tan Son Nhat Airport Customs Sub-department, if an enterprise wishes to bring goods into a warehouse for storage while waiting for specialized inspection results, it is required to provide information and documents evidencing the ownership of the warehouse or right to use via the system before submitting a written request to put the goods into storage.</p> <p>From 1 July 2023, for cases which have not registered warehouse information, or the information is unclear, unverified, or the submitted document cannot prove legal ownership or a right of use, the customs authority will not allow the goods into storage.</p> <ul style="list-style-type: none"> ▶ Such goods must be kept in the original state and stored in a designated place as stated in the system and the written request. ▶ Enterprises must submit to the customs authority the notice on the specialized inspection result within 30 days after bringing the goods into the warehouse. ▶ If the 30 days have been exceeded but the specialized inspection department has still not released the result, enterprises must enquire about the reasons and the date to get the results.
2737/TCHQ-TXNK	Using VND currency when declare export	<ul style="list-style-type: none"> ▶ The customs value of exported goods is the selling price to the border gate based on the selling price mentioned in the sales contract or in commercial invoice and other costs relating

No.	Subject	Contents
Dated 3 June 2023	customs declarations	<p>to exported goods in accordance with relevant documents if such costs have not been added in the selling price, excluding international freight and insurance cost.</p> <ul style="list-style-type: none"> ▶ For exported and imported goods of which the duty is paid in a foreign currency, only freely convertible currencies are used. ▶ In case the payment currency in the sale contract and commercial invoice is in VND, the enterprise must perform the customs declarations and declare the currency as VND.

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