

Customs and Global Trade Updates

December 2022

This update highlights the following matters:

- ▶ The special preferential tariff rate under the EU - Vietnam Free Trade Agreement (EVFTA)
- ▶ Second review on the application of anti-dumping measures for certain aluminum products
- ▶ Draft Circular providing guidance on goods manufactured in Vietnam
- ▶ Establishment of the ASEAN Digital Trade Standards and Conformance Working Group (DTSWG)
- ▶ Protocol amending the Customs Cooperation and Mutual Administrative Assistance Agreement between South Korea and Vietnam (Agreement in 1995)
- ▶ Suspension of Circular 31/2022/TT-BTC dated 8 June 2022 issued by the Ministry of Finance (MoF) on Vietnam's Nomenclature of imports and exports (Circular 31)
- ▶ Mandatory registration for foreign manufacturers who export food products to India
- ▶ Various Official Letters (OL) issued by the GDC, regarding:
 - ▶ Information declared on on-the-spot (OTS) import-export customs declaration (CD)
 - ▶ Releasing goods from a customs supervision area and conducting inspections by container scanner
 - ▶ Import license for fertilizer issued via the National Single Window (NSW)
 - ▶ Customs procedures for goods imported and exported via post services
 - ▶ Tax and duty exemption for goods disposed of in a Bonded Warehouse (BW)
 - ▶ Additional declaration and refund of overpaid value-added tax (VAT)
 - ▶ Tax and duty treatment for goods imported to form fixed assets after conversion

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Special preferential tariff rate under the EVFTA

On 9 December 2022, in a seminar discussing the increase of Vietnam-origin goods exported to the EU under EVFTA, number of concerns raised by enterprises on the application of Certificate of Origin (C/O) and the incentives under EVFTA were addressed.

Some notable points that arose:

- ▶ A C/O must be submitted for imported goods in order to enjoy the EVFTA special preferential tariff. A C/O can be submitted within 2 years from the date of the import CD.
- ▶ From 1 January 2023, Generalized System of Preferences (GSP) is no longer applicable. For goods exported to the EU, a C/O should be issued in accordance with origin regulations under the EVFTA. Particularly:

- ▶ For shipments valued at or below EUR6,000, the enterprise has the right to issue self-certification of origin. In this case, the written approval from the Ministry of Industry and Trade (MoIT) is not required.

If the enterprise would like to obtain C/O Form EUR.1, the enterprise shall submit a C/O application to the MoIT. The application procedure is same as is applicable for shipments valued at more than EUR6,000.

- ▶ For shipments valued at more than EUR6,000, enterprises must submit an application to the MoIT for C/O Form EUR.1 issuance.
- ▶ An enterprise must retain supporting documents which will be used to prove the origin of exported goods in the event of a post-inspection by the customs authorities in the importing country.

Second review on the application of anti-dumping measures for certain aluminum products

On 9 December 2022, the MoIT issued Decision No. 2706/QĐ-BCT on the extension of the second review for applying anti-dumping measures for certain imported aluminum products originating from China.

- ▶ Products under review: aluminum, alloyed or non-alloyed, in rods or shapes, extruded, whether surface-treated or not, whether processed or not
- ▶ HS code: 7604.10.10, 7604.10.90, 7604.21.90, 7604.29.10, 7604.29.90
- ▶ The review period is extended for 3 months and will end on 10 March 2023

The Decision took effect from 9 December 2022.

Draft Circular providing guidance on goods manufactured in Vietnam

The MoIT is collecting the opinions of enterprises on the draft Circular providing guidance on how to determine whether a good is manufactured in Vietnam. The third amendment of draft Circular was issued on 27 October 2022.

Some notable points in the draft are as follows:

- ▶ The circular is applicable for goods that will be circulated in the domestic market and is not applicable for exported goods
- ▶ “Goods manufactured in Vietnam” include: goods manufactured in Vietnam, goods invented in Vietnam, goods originated from Vietnam, goods manufactured by Vietnam manufacturers, goods that are products of Vietnam and goods produced by Vietnam. The phrase “Goods manufactured in Vietnam” must be shown on the label or packaging of goods in accordance with the regulations on goods’ labeling.
- ▶ The Circular provides a list of goods that are manufactured in Vietnam. If goods do not fall within the list, but the final processing stage is performed in Vietnam, the following rules should be considered to determine whether such goods are manufactured in Vietnam:
 - ▶ Change in tariff classification
 - ▶ Calculation of Vietnam value content (VCC (XX)%)
- ▶ Criteria that are not to be taken into account to determine whether goods are manufactured in Vietnam include: simple processing; packaging, accessories, spare parts, tools; other indirect factors.
- ▶ If goods are manufactured, exported, imported or circulated in the Vietnam market before the effective date of this Circular, and on the label or packaging of such good, the phrase “manufactured in Vietnam” is indicated, such goods may still be circulated in the Vietnam market.

Establishment of ASEAN Digital Trade Standards and Conformance Working Group

At the 58th meeting, the ASEAN Consultative Committee for Standards and Quality (ACCSQ) decided to establish the DTSCWG to promote the harmonization, standardization and assessment of the compatibility of digital trade within the ASEAN. DTSCWG will be responsible for the following:

- ▶ Harmonizing standards among ASEAN member countries based on international standards, guidance and common practices
- ▶ Coordinating with related parties and other specialized agencies within ASEAN on technical standards and conformity procedures applicable for digital commerce and e-commerce

- ▶ Cooperating with other members of the Free Trade Agreement (FTA) and other regional and international organizations who are involved in the Standards, Technical Regulations and Conformity Assessment Procedures (STRACAP) on digital commerce and e-commerce

Protocol amending the Agreement 1995 between South Korea and Vietnam

On 5 December 2022, South Korea and Vietnam signed on the Protocol amending the Agreement 1995.

The Protocol amends 4 articles on definitions of: customs law, acts of violation, customs authorities, requesting party, requested party. The Protocol supplements a number of provisions providing definitions of customs territory, FTA, competent authorities, authorized economic operator, mutual recognition agreement, information for the implementation of the FTA.

The Protocol introduces two new articles: Article 4bis - Joint efforts to implement the Mutual Recognition Arrangement (MRA) and Article 5bis - Exchange of information for the implementation of the FTA.

The Protocol gives parties certain rights and obligations in relation to the exchange of information on CDs and electronic C/O for goods traded between two countries.

Suspension of Circular 31 on Vietnam's Nomenclature of imports and exports

On 30 November 2022, the MOF issued Circular No. 72/2022/TT-BTC (Circular 72) to suspend the implementation of Circular 31 which was to take effect from 1 December 2022.

According to Circular 72, Circular 31 will not come into force from 1 December 2022 to 29 December 2022. During this period, the following regulations shall continue to be applied:

- ▶ Circular No. 65/2017/TT-BTC dated 27 June 2017 issued by the MoF promulgating the Vietnam's Nomenclature of imports and exports (Circular 65)
- ▶ Circular No. 09/2019/TT-BTC dated 15 September 2019 issued by the MoF amending and supplementing a number of articles in the Appendix of Circular 65 (Circular 09)

After 29 December 2022, Circular 31 will take effect and replace Circular 65 and Circular 09.

Circular 72 is effective from 1 December 2022.

Mandatory registration required for foreign manufacturers who export food products to India

On 14 November 2022, India announced Notice No. G/TBT/N/IDN/237 to all member countries of WTO to introduce a draft regulation in which India requires the registration of all

manufacturers who export food products to India according to the provisions of the Technical Barriers to Trade Agreement. This regulation is expected to come into effect from 1 February 2023.

According to the draft, the mandatory registration shall apply to Manufacturers who produce products categorized into 5 groups: milk and dairy products; meat and meat products (including poultry, fish and other products of poultry and fish); egg powder; food for infants and nutritious food.

The competent authority in the exporting country will provide a list of food manufacturers and the information specified in the prescribed template to the Indian authority. The Food Safety and Standards Authority of India administer the registration for the food manufacturers.

This regulation potentially affects Vietnamese enterprises who exports (or will export) goods to India.

Some guidances provided in Official Letters of the GDC

No.	Subject	Contents
3405/HQTPHCM-GSQL Dated 7 December 2022	Information declared on OTS import and export CD	<p>On an OTS import CD, enterprises must clearly state the number of the corresponding OTS export declaration.</p> <p>In order to grant customs-clearance for OTS import and export CD, the information (i.e commodity names and HS codes) declared on the OTS import CD must be consistent with those declared on the OTS export CD.</p>
5137/TCHQ-GSQL Dated 30 November 2022	Releasing goods from customs supervision area and conduct inspection by container scanner	<p>With an aim to reduce the number of cases where goods are not released from the customs supervision area, and are inspected by container scanner, the GDC provides the following guidance:</p> <ul style="list-style-type: none"> ▶ For exported goods: the customs authority will only keep goods at the customs supervision area if the customs authority detects any signs of violation during the process of customs supervision or check of relevant information of imported shipments. ▶ For imported goods: the customs authority will only keep the goods at the customs supervision area if the goods fall within the list of goods

No.	Subject	Contents
		<p>banned from import/suspended from import or the customs authority have proof of violations.</p> <p>Goods which are transported from the import border gate into the inspection area of the Customs Sub-department outside the import border gate must be sealed and supervised by the customs authorities.</p>
<p>4985/TCHQ-CNTT</p> <p>Dated 23 November 2022</p>	Import license for fertilizer issued via the NSW	<p>From 1 December 2022, if fertilizers are temporarily imported, in transit, transferred through the border gates of Vietnam, stored in a BW, or imported into an export processing zone (EPZ) an import license will be issued via the NSW.</p> <p>If fertilizers are imported for export production, an import license is no longer required.</p>
<p>4953/TCHQ-GSQL</p> <p>Dated 22 November 2022</p>	Customs procedures for goods imported and exported via post services	<p>If goods are sent by post as a gift, an enterprise can choose to make e-CD or paper-CD:</p> <ul style="list-style-type: none"> ▶ For goods categorized into group 1 (goods that will not cause any safety issue as prescribed in the Law on Product Quality 2007), customs dossiers include: paper-CD Form HQ/2015/NK, HQ/2015/XK, Form CN2/CN23 or E1QT- postal tracking number or other transportation documents and commercial invoice (if any). ▶ For goods categorized into Group 2 (goods that will cause certain safety issues as prescribed in the Law on Product Quality 2007), the customs dossiers include: e-CD and documents as prescribed Clause 5, Article 1, Circular 39/2018/TT-BTC dated 20 April 2018 issued by the MoF. <p>If goods sent by post are goods traded via an e-commerce platform, technically, the enterprise should make e-CD. If the goods are low-value and categorized into group 1, the enterprise can make</p>

No.	Subject	Contents
		a paper-CD as per the above guidance. For other goods, an e-CD must be filed.
4943/TCHQ-TXNK Dated 21 November 2022	Tax exemption for disposal goods in the BW	<p>The GDC has advised that a BW is defined as a non-tariff zone and a separate customs area, therefore if goods are imported from overseas to a BW, such goods are not subject to import duty and VAT.</p> <p>If goods are disposed inside a BW and the requirements for disposal are satisfied, tax and duty will be exempted.</p>
4942/TCHQ-TXNK Dated 21 November 2022	Additional declaration and refund of overpaid VAT	<p>Goods which are used for the purpose of teaching and learning, such as drawing models, chalkboards, compasses and specialized equipment and tools will be subject to VAT at the rate of 5%.</p> <p>If an enterprise has already declared and paid VAT at a higher rate (i.e 10%), the enterprise may make an additional declaration to revise the VAT rate and the overpaid VAT amount will be refundable.</p>
4901/TCHQ-TXNK Dated 18 November 2022	Tax treatment for goods imported to form fixed assets after non-EPE conversion	<p>If goods are imported to form fixed assets of an EPE, including goods purchased from local contractors which are exempted from import tax and duty at the time of importation, and if the EPE converts into a non-EPE, the company is required to make a new CD and settle any tax and duty.</p> <p>If the customs authority determines that after conversion, the non-EPE still meets the requirements to be entitled to investment incentives, and the fixed assets which were imported under the EPE status are still entitled to duty-exemption, the company may continue the exemption. During the process of making a new CD, the company is not required to notify the list of duty exempted goods. The company is required to submit the report of usage status to the customs authorities annually in accordance with the regulations.</p>

No.	Subject	Contents
		<p>After completing the conversion process, if the company imports new goods to form fixed assets, the company is required to provide a list of duty exempted goods to the customs authorities before importation. In that case the company will be entitled to duty-exemption.</p>

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