

Customs and Global Trade Updates

November 2022

This update highlights the following matters:

- ▶ Decision No. 2400/QD-BCT (Decision 2400) review of new exporters for applying anti-dumping measures to certain plastic products issued by the Ministry of Industry and Trade (MoIT) on 14 November 2022
- ▶ Notice No. 257/TB-BCT (Notice 257) allowing Certificate of Origin (C/O) to be printed on A4 paper by MoIT on 10 October 2022
- ▶ Decision No. 2065/QD-BTC (Decision 2065) announcing the administrative procedures under the management of the Ministry of Finance (MoF) on 6 October 2022
- ▶ Circular No. 11/2022/TT-BKHCN (Circular 11) canceling the regulations on the localization rate for automobiles by the Minister of Science and Technology (MoST) issued on 10 August 2022
- ▶ The Most-Favor-Nation import duty rate (MFN rate) proposed to be applied on certain imported automotive parts
- ▶ Circular No 32/2022/TT-BCT (Circular 32) amending the rules of origin under the RCEP issued on 18 November 2022 by MoIT
- ▶ Draft Circular on customs procedures for imported and exported goods traded via an e-commerce platform
- ▶ Draft Circular on determination of origin of imported and exported goods
- ▶ Various Official Letters (OL) issued by the GDC, regarding:
 - ▶ On-the-spot (OTS) import and export customs declaration for goods delivered to Vietnamese enterprises under instruction of a foreign enterprise
 - ▶ Importation of goods which were previously exported and delivered to a Bonded Warehouse (BW) in Vietnam
 - ▶ Guidance on C/O Form D
 - ▶ Goods labeling
 - ▶ Value-added Tax (VAT) on imported goods
 - ▶ Exportation of imported goods which have not undergone any processing by a Foreign Invested Enterprise (FIE)

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Decision 2400 review of new exporters for applying anti-dumping measures to certain plastic products

At the request of the Director of the Trade Remedies Authority (TRAV), the MoIT issued Decision 2400 to review new exporters and consider adding new exporters into the list of companies subject to anti-dumping measures in relation to plastic products originating from Malaysia, Thailand and China with an HS code: 3920.20.10 and 3920.20.91.

- ▶ The review will be conducted in accordance with the Law on Trade Remedies. The time limit for the review shall not exceed three months from the date of Decision 2400 and can be extended up to three months.
- ▶ The reviewed period is from 1 October 2021 to 30 September 2022.

▶ The current anti-dumping duty rate is from 9.05% to 23.71% depending on the exporting country and the manufacturer/exporter.

Visit the website of the TRAV and Decision 2400 for further details of anti-dumping rates and the review procedures.

Notice 257 allowing C/O to be printed on A4 paper

With the aim to reduce costs for enterprises as well as promote exports, the MoIT issued Notice 257 announcing that:

- ▶ From 15 October 2022, with respect to C/O Form D, AANZ, AK, AI, AJ, E, AHK, RCEP, CPTPP, VK, VJ, VC, VN-CU and S, the enterprises can download the C/O templates from the MoIT's Electronic Certificate of Origin Issuance System (ECOSYS) and print them on ISO-standard A4 paper for submission.
- ▶ The above Forms of C/O in the form of paper which are issued by the MoIT can be used until the end of 15 April 2023.

Decision 2065 announcing the administrative procedures under the management of the MoF

The MoF issued Decision 2065 to announce the administrative procedures under its management. The MoF introduced a total of four new customs administrative procedures, amended 28 administrative procedures and abolished 22 administrative procedures.

Decision 2065 takes effect from 6 October 2022.

Circular 11 canceling the regulations on the localization rate for automobiles

The Minister of Science and Technology (MoST) issued Circular 11 to abolish the following legal documents on the methods for determining the localization rate for automobiles:

- ▶ Decision 28/2004/QĐ-BKHCH dated 1 October 2004 (Decision 28)
- ▶ Decision 05/2005/ QĐ-BKHCH dated 11 May 2005 amending Decision 28
- ▶ Circular 05/2012/TT-BKHCH dated 12 March 2012

Circular 11 takes effect from 1 October 2022.

The MFN rates are proposed to be applied on certain imported automotive parts

In the draft Decree on the Preferential Import and Export Tariffs and the Decision of the Prime Minister on the application of the normal tariff on imported goods, the MoF proposed to include certain imported automotive parts to the group of goods with Heading 98.49 for which the MFN rate will be applicable. In particular:

- ▶ Imported automotive parts will be entitled to the tax incentive program and the MFN rate of 0% will be applicable if they are classified under Heading 98.49 and do not fall within the list of goods that can be produced locally as listed in Circular 05/2021/TT-BKHCH dated 17 August 2021 by the Ministry of Planning and Investment.
- ▶ “Engine ECU, the type used for motor vehicles” is classified under HS code 9849.46.00 and can not be produced locally as it requires high scientific and technological methods in production. The MoF proposed to add this item into the list of automotive parts with Heading 98.49 to the incentive tax program. In addition, the MoF proposed to amend the description of HS code 9849.46.00 to “Engine ECU and other controllers used for motor vehicles”.
- ▶ For unassembled loudspeakers in speaker housings with HS code 8518.29.90 which can not be produced domestically, the MoF also proposed to add it into the list of goods with heading 98.49.

Circular 32 amending the rules of origin under the RCEP

On 18 November 2022, the MoIT issued Circular 32 amending Circular 05/2022/TT-BCT (Circular 05) prescribing rules of origin under the RCEP. According to Circular 32, Annex I - Products specific rules and Annex III - C/O Form RCEP for exported goods and sample of C/O additional declaration - in Circular 05 shall be replaced by Annex I and Annex II of Circular 32.

Circular 32 takes effect on 1 January 2023.

Draft Circular on customs procedures for imported and exported goods traded via an e-commerce platform

On 15 September 2022, the MoF sent the Official letter No. 9300/BTC-TCHQ to other competent authorities to seek opinions on the draft Circular providing guidelines on the customs procedures for imported and exported goods traded via an e-commerce platform, which are

stipulated in the draft Decree on customs management applicable for goods traded via e-commerce platform (the “draft Decree”).

As of now the Government has yet to issue the Decree. Based on the draft Decree, those subject to the rules include:

- ▶ The owners of e-commerce platforms, e-commerce websites
- ▶ Enterprises supplying a transport service for goods traded via an e-commerce platform
- ▶ Customs clearance agent
- ▶ The owners of imported and exported goods sold via e-commerce platform
- ▶ The owners of BW
- ▶ Enterprises providing postal services or express delivery services
- ▶ Credit institutions, branches of foreign banks, payment intermediary service providers
- ▶ Other organizations and individuals that have rights and obligations related to imported and exported goods traded via e-commerce

Goods traded via e-commerce are categorized into the following groups:

	Imports	Exports
Group 1	<p>Goods are neither subject to tax and duty nor subject to specialized management where the following conditions are satisfied:</p> <ul style="list-style-type: none"> ▶ The goods are not specified in the list of goods subject to an import license, conditions or specialized inspection; or goods that fall within the list of goods exempted from above requirements ▶ The customs value of such goods does not exceed the maximum value for which tax and duty are exempted 	<ul style="list-style-type: none"> ▶ Goods that are not specified in the list of goods subject to import license, conditions or specialized inspection
Group 2	<p>Goods that are subject to tax and duty payments but are not subject to specialized management and the following conditions are satisfied:</p>	<ul style="list-style-type: none"> ▶ Goods are subject to import license, conditions, specialized inspection

	<ul style="list-style-type: none"> ▶ The goods are not specified in the list of goods subject to an import license, conditions or specialized inspection; or goods that fall within the list of goods exempted from above requirements ▶ The customs value of such goods exceeds the maximum value which tax and duty are exempted 	
Group 3	Other goods which are not in Group 1 or 2	Other goods which are not in Group 1 or 2

The draft Circular will provide detailed guidance on the customs declarations for the above groups of goods. It also provides the criteria which are allowed (or are not allowed) to be amended as well as the criteria for the cancellation of import and export customs declarations.

Draft Circular on the determination of the origin of imported and exported goods

On 19 September 2022, the MoIT issued an Official letter to seek the opinion of enterprises and the authorities on the draft Circular on the determination of the origin of imported and exported goods.

The draft Circular introduces certain new provisions, as follows:

- ▶ The situations where a C/O must be submitted and the timeline for C/O submission
- ▶ The dossiers and procedures for advance determination of country of origin, declaration and submission of C/O, and procedures and criterion for inspection and determination of the country of origin for imported and exported goods
- ▶ Late submission of C/O after customs clearance; C/O submission for cases goods are changed their usage purpose
- ▶ Guidance to remove obstacles in the declaration and submission of C/O that arose during the implementation of old Circulars, such as
 - ▶ The timeline of C/O validation
 - ▶ Guidance for cases where there is a difference in the unit declared on customs declarations and that indicated on the C/O
 - ▶ Criteria of origin of raw materials constituted in the exported goods

- ▶ The timeline for C/O submission and control list for goods stored in a BW

Once the draft Circular is issued, it will replace the current Circulars in determining the origin of imported and exported goods.

Please see the draft Circular for more detail.

Various Official Letters of the GDC

Subject/ No.	Contents
OTS import and export customs declaration for goods delivered to a Vietnamese enterprise at the instruction of a foreign enterprise <ul style="list-style-type: none"> ▶ Invitation No. 4875/GM-TCHQ dated 17 November 2022 ▶ OL No. 4564/TCHQ-VP dated 28 October 2022 ▶ OL No. 2409/HQBD-GSQL dated 24 October 2022 ▶ OL No. 250/HQVSIP dated 7 October 2022 	<p>According to the prevailing regulations, goods which are traded under the designation of foreign traders, OTS import and export customs procedures are only applicable if the foreign traders have no representative presence in Vietnam (i.e. no direct investment in Vietnam in any form regulated in Laws on Investment; no representative office or branch in Vietnam as regulated under Laws on Commerce).</p> <p>If the condition of “having no legal presence in Vietnam” is not satisfied, the OTS import and export customs procedures cannot be carried out. For cases that OTS import and export customs declarations have already been completed, the customs authorities are reviewing for further decisions.</p> <p>In relation to this condition, some customs departments have reported to GDC that (i) there is no basis to verify the condition of “presence in Vietnam” related to OTS imported and exported shipments and (ii) this condition cause some problems and difficulties to the enterprises.</p> <p>Therefore, the GDC has sent a number of letters to relevant agencies under the MoF and invited them to a meeting for further discussion on the application of the provision regarding “the presence in Vietnam” in order to remove any obstacles caused to the businesses.</p>
Importation of goods which were previously exported and delivered to a BW into Vietnam	<ol style="list-style-type: none"> 1. Regarding customs procedures for goods which were exported to a BW and awaiting export: <ul style="list-style-type: none"> ▶ During the period that goods are stored at a BW, the owner of the goods is allowed to transfer the ownership if the goods are intended to be imported back into the Vietnam domestic market.

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<ul style="list-style-type: none"> ▶ OL No. 4826/TCHQ-GSQL dated 14 November 2022 	<p>2. Regarding tax and duty treatment</p> <ul style="list-style-type: none"> ▶ The tax and duty treatment that applies will correspond to the type of customs declaration made by the enterprises ▶ If goods are imported from a BW into Vietnam for export production, tax and duty will be exempted if the conditions set out in Article 12 of Decree No. 134/2016/ND-CP (amended and supplemented by Clause 6 Article 1 of Decree No. 18/2021/ND-CP) are satisfied
<p>Guidance on C/O Form D</p> <ul style="list-style-type: none"> ▶ OL No. 4832/TCHQ-GSQL dated 14 November 2022 ▶ Other relevant OLs: OL No. 1568/TCHQ-GSQL dated 4 May 2022 and OL No. 1683/TCHQ-GSQL dated 12 May 2022 	<ul style="list-style-type: none"> ▶ If e-C/O form D is issued via National Single Window system or C/O form D using e-signature and the website for tracking is available, even if the format of such C/O is different from the new template of C/O Form D, such C/O will be accepted. C/O verification procedures will be carried out in accordance with current regulations. ▶ If C/O form D is issued in paper form with a wet signature and legal seal, there are two scenarios: <ul style="list-style-type: none"> ▶ If the C/O is issued during the period from 1 May 2022 to 31 October 2022, the customs authority shall accept C/O Form D in both old and new templates (according to Circular No. 19/2020/TT-BCT) ▶ If the C/O is issued after 1 November 2022, only a C/O in the new template is accepted by the customs authority
<p>Re. Goods labeling</p> <ul style="list-style-type: none"> ▶ OL No. 4823/TCHQ-GSQL dated 14 November 2022 	<p>The GDC provided guidance on the customs document check and physical check of imported and exported goods, as follows:</p> <ul style="list-style-type: none"> ▶ Regarding exported goods <ul style="list-style-type: none"> ▶ If goods are manufactured in Vietnam and on such goods or packaging they have information related to the origin, such as: “Manufactured in Vietnam”, “Made in Vietnam”, “Manufacturing country: Vietnam”, “Originated from Vietnam”, “Manufactured by Vietnam”, or “Product of Vietnam” the customs authorities will check and confirm if such goods satisfy the rule of origin as stipulated in the Free Trade Agreements (FTA), international agreements

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	<p>or Decree No. 31/2018/ND-CP dated 8 March 2018 and the Circular No. 05/2018/TT-BCT dated 4 April 2018 of the MoIT.</p> <ul style="list-style-type: none"> ▶ If goods are manufactured in Vietnam but on the goods or packaging, the origin of goods is not shown as Vietnam (e.g. Japan, Korea or Thailand, etc.), the customs declarants shall be requested to provide processing/manufacturing contracts if the labeling of goods is made according to the agreements in the contracts or to provide any documents proving that the labeling is made in accordance with the regulations of the importing country. ▶ Regarding imported goods <ul style="list-style-type: none"> ▶ For imported goods, the origin of goods either in a foreign language or Vietnamese must be indicated on the goods or the labeling for customs clearance purposes according to Article 10 Decree No. 43/2017/ND-CP (amended by Clause 5 Article 1 of Decree No. 111/2021/ND-CP). ▶ If no label is on imported goods or the labels are not attached to the imported goods, the customs authorities will not grant customs clearance for such goods according to Decree No. 128/2020/ND-CP dated 19 October 2020 and Decree No. 126/2021/ND-CP dated 30 December 2021.
<p>VAT of imported goods</p> <ul style="list-style-type: none"> ▶ OL No. 4801/TCHQ-TXNK dated 11 November 2022 ▶ This OL replaces OL No. 4139/TCHQ-TXNK dated 4 October 2022 	<p>Decree No. 15/2022/ND-CP (Decree 15) dated 28 January 2022 of the Government allows a VAT reduction to 8% for certain goods and services normally taxed at 10% applies, except the following goods and services:</p> <ul style="list-style-type: none"> ▶ Telecommunication, financial activities, banking activities, securities, insurance, trading of real estate, metal and precast metal products, mining products (excluding coal mining), coke mining, refined oil, chemical products. Further details are in Appendix I of Decree 15

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	<p>► Goods and services that subject to the excise tax. Further details are provided in Appendix II of Decree 15</p> <p>Based on the above, if imported goods are metals or products made from prefabricated metals, they are not entitled to a VAT reduction.</p>
<p>Exportation of imported goods which have not undergone any processing by an FIE</p> <p>► OL No. 643/XNK-CN dated 20 October 2022.</p>	<p>According to Clause 2 Article 13 of Decree No. 69/2018/ND-CP, FIEs are allowed to undertake a temporary import for re-export in certain cases as prescribed at Article 15. They are not allowed to temporarily import goods then export them for sales.</p> <p>The policies applicable for temporary import for re-export are different from those applicable for the exportation right of enterprises.</p>

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