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CUSTOMS NEWSLETTER – MAZARS IN VIETNAM

Topics covered:

I. Customs duty and procedure

1. New tariff under UKVFTA for the period 2021 – 2022
2. Allowing anti-dumping tax refund in case exclusion is granted after the tax has already been paid
3. Import duty refund is not allowed if the temporarily-imported goods are not recorded in accounting books
4. Releasing goods of violating importers for preservation during the waiting time of specialized management check result
5. Mandatory radioactive testing for imports being iron and steel scrap
6. Some guidelines on imported building materials

II. HS code and Goods origin

1. Denial of HS code advance ruling if any difference between the granted ruling and the actual goods
2. Guidance on “Minimal operations and processes” in determining the origin of goods

III. Registration and use of duty-free list

1. Some guidance on the registration and application of the duty-free list (“Master list”)
2. No duty exemption for goods imported as replacement of duty-free goods imported to form fixed asset of incentivized projects

IV. Contract manufacturing / toll manufacturing for export models, and business activities of export-processing enterprises (EPE)

1. New guidance on the trading activity of EPE
2. No limitation in forwarding the product of a toll manufacturing contract
3. Clarification on tax treatment in case of disposing scraps from export-manufacturing business

I. Customs duty and procedure

1. New tariff under UKVFTA for the period 2021 – 2022

Decree no. 53/2021/ND-CP dated 21/05/2021 of the Government

On 21/05/2021, the Government has approved to release Decree no. 53/2021/ND-CP on promulgating the special-preferential export & import duty tariff of Vietnam under UKVFTA (UK-Vietnam Free Trade Agreement) for the period 2021 – 2022.

The Decree takes effect from 21/05/2021.

2. Allowing anti-dumping tax refund in case exclusion is granted after the tax has already been paid

Official letter no. 2290/TCHQ-TXNKs dated 18/05/2021 from the GDC

The Officially Letter has referred to the provisions of Article 19, Circular 37/2019/TT-BCT and emphasized that, in case exclusion from trade remedy is granted after the importer has imported goods and paid anti-dumping tax, they can request tax refund for the amount paid for the Customs declaration sheets registered during the exclusion period. The detailed refund procedures are carried out in accordance with prevailing tax administration regulations.

3. Import duty refund is not allowed if the temporarily-imported goods are not recorded in accounting books

Official letter no. 2185/TCHQ-TXNK dated 11/05/2021 of the GDC

In case the temporarily-imported goods are eligible for import duty refund upon their re-export (i.e. being machinery, tool, equipment, vehicles, etc. - under Clause dd1, Article 19 of the Law on Import & Export Tax), but the importer does not manage, monitor, and record them in the company's accounting books, there will be no basis to calculate the depreciation ratio corresponding to the usage/storage period in Vietnam. Therefore, there is no basis for the Customs to determine and perform the refund process when the Company re-exports the goods according to current regulations.

4. Releasing goods of violating importers for preservation during the waiting time of specialized management check result

Official letter no. 1987/TCHQ-GSQL dated 28/04/2021 from the GDC

In case the declarant is in the list of violators and is not supposed to bring goods to their site for preservation during the waiting time of specialized management check result, but such checking procedures cannot be performed at the border gate, the Head of Customs department can – based on the specialized management authority's request – consider allowing the company to bring goods back to their site for preservation in the waiting time.

I. Customs duty and procedure

5. Mandatory radioactive testing for imports being iron and steel scrap

Official letter no. 2050/TCHQ-GSQL dated 04/05/2021 from the GDC

This is a new request from the Customs Supervision and Administration Division of the General Department of Customs, with an aim to detect and prevent risks relating to the importation of iron and steel scrap, which are of high risk of radioactive contamination. Accordingly, all shipments of iron and steel scrap imported into Vietnam will have to undergo radiation check by handheld radioactive detector; particularly to containers imported through Cai Mep port (Ba Ria - Vung Tau) and Cat Lai port (Ho Chi Minh City), radiation testing will be carried out by using a radioactive detection system that has been fully installed.

Iron and steel shipments that are identified as contaminated with radiation shall be handled in accordance with the guidance in Circular No. 112/2015/TTLT-BTC-BKHCN dated 29/07/2015.

6. Some guidelines on imported building materials

Official letter no. 1482/BXD-KHCN dated 05/05/2021 from the Ministry of Construction

This is the response letter sending to the Construction department of Hanoi, regarding some concerns over the implementation of QCVN 16:2019/BXD. In particular:

- In case of imported building materials which are subject to quality inspection, the competent authority to carry out relevant procedures is the Construction departments of cities and provincials.
- All imports being products and goods listed in Table 1, Part II of QCVN 16:2019/BXD must be assessed by an appointed/recognized certifying organization.

The procedures of quality inspection and receipt of conformity announcement must be carried out in alignment with the provisions of Decree 132/2008/ND-CP guiding the Law on Product Quality (as amended and supplemented by Decree 74/2018/ND-CP) and Circular 28/2012/TT-BKHCN dated 12/12/2012 of the Ministry of Science and Technology.

II. HS code and Goods origin

1. Denial of HS code advance ruling if any difference between the granted ruling and the actual goods

Official letter no. 4175/TXNK-PL dated 06/05/2021 from the GDC

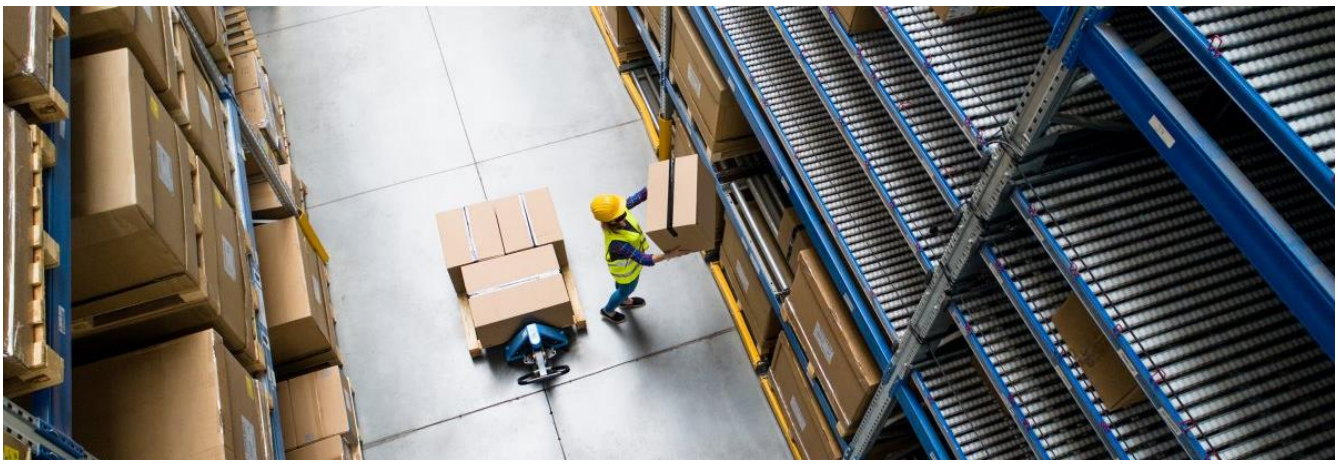
Pursuant to the Customs Law, Decree no. 08/2015/TT-BTC guiding the Customs Law, Circular no. 38/2015/TT-BTC and Circular no. 39/2018/TT-BTC of the Ministry of Finance, in case the actual exported/imported goods are different from the sample taken for advance ruling purpose, or there is difference between the notice on result of HS code advance ruling and the actual goods exported/ imported, the ruling will be not used to carry out Customs procedure. The Customs will check and determine HS code of the exported/imported goods as normal, during the process of carrying out Customs procedure.

2. Guidance on "Minimal operations and processes" in determining the origin of goods

Official letter no. 309/XNK-XXHH dated 14/04/2021 from the Ministry of Industry and Trade ("MOIT")

This is the MOIT's response letter sent to the department in charge of Customs post-clearance audit of the GDC regarding a number of issues on goods origin. Although the prevailing regulation (Decree no. 31/2018/ND-CP and guiding documents of Free Trade Agreements that Vietnam has already signed) do have provisions to define, in general terms, some cases being considered as "Minimal operations and processes", which are disregarded under the consideration of goods origin; there is, however, no specific guidance on each particular case but this definition should be interpreted case-by-case based on factual circumstances.

Therefore, when it is unclear to define on this term with regard to a specific product or group of products, companies and authorities should consult with specialized organization for further assessment – without rigidly sticking to the definition in the laws.



III. Registration and use of duty-free list

1. Some guidance on the registration and application of the duty-free list ("Master list")

Official letter no. 2370/TCHQ-TNXK dated 20/05/2021 from the GDC

This is the GDC's guidance sent to the Customs department of Ba Ria-Vung Tau province, regarding the registration and application of the Master list. In particular:

- In case the importer cannot be determined by the time of registration of the Master list, project owner shall have to make additional declaration to add the name and code of the importer to the Master list before the Customs declaration sheet (CDs) is registered.
- In case the list of exporter/importer has more than 15 companies, the project owner shall have to amend the Master list before each time of registering CDs, in order to replace exporters/importers whose shipments have not yet arrived – by those with earliest shipments to be processed.
- In case the VNACCS system cannot recognize the name/code of the importer/exporter, please contact Helpdesk via hotline 190009299 (ext. 2) and email address bophanhotrochq@customs.gov.vn
- The VNACCS system has been designed to not allow new entry in case there is any CDs on queue for Customs clearance. Therefore, if the CDs in queue is subject to quality inspection which is still pending, and the Company needs to use the Master list for another CDs, the Company shall have to follow procedure IDA01 to call back the pending CDs and then add the new CDs to this Master list. After all the quality inspection is completed, the Company can add back such CDs to the Master list as normal.

2. No duty exemption for goods imported as replacement of duty-free goods imported to form fixed asset of incentivized projects

Official letter no. 2370/TCHQ-TNXK dated 20/05/2021 from the GDC

This is the guidance from the GDC sent to Customs departments of all provinces and cities, regarding the import of goods as replacement of goods previously imported to form fixed asset of incentivized projects which have been entitled to import duty exemption. Since there is no current scheme allowing import duty exemption in such cases, once the import has already been approved for Customs clearance, and import volume has been subtracted from the registered Master list, duty exemption for goods imported as replacement of these cases will not be allowed.

IV. Contract manufacturing / toll manufacturing for export models, and business activities of export-processing enterprises (EPE)

1. New guidance on the trading activity of EPE

Official letter no. 3750/TXNK-CST dated 22/04/2021 of the GDC

This is the guidance on tax policy and Customs procedure applied in case EPE executes the right of import, export and distribution. In particular:

- **In case an EPE buys goods from a local company to resell to another EPE:** Upon the purchase, Customs procedure is not required; the local company will issue VAT invoice to the EPE as a buyer in a normal transaction among local companies. When the EPE resells these goods (executing the right of export), the seller EPE shall carry out export procedure and issue 0% VAT invoice for the sale.

- **In case an EPE buys goods from a local company to resell to another local company:** This is not the execution of the right of export of the EPE. According to Article 74 of Circular no. 38/2015/TT-BTC, the EPE and the local buyer can choose to carry out (or not) the Customs procedure for this transaction:
  - ***If the parties choose to carry out Customs procedure:*** The Customs procedure shall follow provisions in Article 86 of Circular no. 38/2015/TT-BTC.
  - ***If the parties choose to not carry out Customs procedure:*** The EPE is required to prepare and maintain all documents regarding the movement (in and out) of the goods in accordance with guidance from the Ministry of Finance on trading and accounting; such documents must clearly indicate information about the source of goods and purpose of each transaction.

- **In case an EPE imports goods from overseas into Vietnam to resell to another local company:** The EPE must carry out all Customs procedure as well as specialized management requests, pay all tax liabilities (if any) before Customs clearance. No further Customs procedure is required for the resale transaction.

IV. Contract manufacturing / toll manufacturing for export models, and business activities of export-processing enterprises (EPE)

2. No limitation in forwarding the product of a toll manufacturing contract

Official letter no. 681/GSQ:-GQ dated 13/05/2021 of the Customs department of Ho Chi Minh City

Pursuant to clause 1, Article 43 of Decree no. 69/2018/ND-CP, roll-forward toll manufacturing contract is defined as using product of a toll manufacturing contract as input for another toll manufacturing contract within Vietnam. Accordingly, there is no limitation such as the contract owners of the two contracts must be the same, etc. The processor can deliver the product to any 3rd party under the agreement with the contract owner on the original contract (the first toll manufacturing contract), to serve for the second toll manufacturing contract.

3. Clarification on tax treatment in case of disposing scraps from export-manufacturing business

Official letter no. 2552/TCHQ-GSQL dated 27/05/2021 of the GDC

This is the GDC's guidance on tax treatment in case of disposing scraps from export-manufacturing business, for the period before and after 25/04/2021 (the effective date of the new Decree no. 18/2021/ND-CP, amending and supplementing Decree no. 134/2016/ND-CP guiding the Law on Export and Import Duties)

- **Regarding import duty:**
  - Before 25/04/2021: The company must declare and pay import duty when disposing scraps from duty-free materials or any kind of product/semi-product sourced from duty-free materials.
  - From 25/04/2021: The Company is no longer required to declare and pay import duty in this case. However, please be noted that if the duty-free material is not put into use, or is actually used for another purpose rather than export manufacturing, duty exemption will not be allowed.

- **Regarding import VAT:** The applicable regulation is unchanged before and after 25/04/2021, accordingly no VAT required to declare and pay in this case. However, if the scrap collected after the disposal process can be sold, the Company will have to declare and pay VAT on the sale in accordance with prevailing regulations.

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