

Customs & Global Trade Updates

August 2024

This update highlights the following matters:

- ▶ Draft Circular on the Rules of Origin under the ASEAN - Korea Free Trade Agreement (the AKFTA)
- ▶ Draft Circular on the Rules of Origin under the ASEAN-Australia-New Zealand Free Trade Agreement (the AANZFTA)
- ▶ Anti-dumping investigation on hot-rolled steel imported from India and China
- ▶ Official Letters (OLs) providing guidance on the following matters:
 - ▶ Value Added Tax (VAT) applicable for on-the-spot (OTS) exported goods as directed by foreign enterprises
 - ▶ Determination of foreign enterprises without a presence in Vietnam
 - ▶ Tax policies on mergers and acquisitions
 - ▶ Implementation of export rights of a foreign investment enterprises (FIEs)
 - ▶ Amendments to the Compendium of Classification Opinions of WCO - HS Committee 73rd Session

For other updates, visit [here](#).

Draft Circular on the Rules of Origin under the AKFTA

In July 2024, the Ministry of Industry and Trade (MoIT) issued a proposal to develop a Circular stipulating the Rules of Origin of goods under the AKFTA (Circular on AKFTA ROO), together with the full text of the 2nd Draft of the Circular on AKFTA ROO to solicit feedback from competent authorities, organizations, and individuals.

According to the proposal, the Product Specific Rules (PSR) List in Appendix 1 - Annex 3 of the AKFTA will be updated from HS code 2017 version to HS code 2022 version and will enter into force on 1 March 2025.

In Vietnam, the Import - Export Department (the MoIT) is assigned to preside over the development of the Draft Circular on AKFTA ROO, with an aim to internalize the current international treaty on the prevailing ROO and new amendments on international commitments within the AKFTA legal framework.

The key contents of the second Draft include:

- ▶ Carrying forward the provisions on the Rules of Origin under the framework of the AKFTA as previously issued in past Circulars, including Circular No. 20/2014/TT-BCT dated 25 June 2014 of the MoIT (Circular 20) and subsequent amendments and supplements to Circular 20
- ▶ Issuing provisions on the PSR List according to the HS 2022 version
- ▶ Replacing Circular 20 and subsequent amendments of Circular 20

It is anticipated that the Circular on AKFTA ROO will be issued no later than 15 January 2025, in order for the HS 2022 version of the PSR List to come into effect and be enforced in accordance with international commitments starting from 1 March 2025. The 2nd Draft also proposes recommendations on the application of retroactive implementation in the event that Circular on AKFTA ROO is issued after 15 January 2025.

Please see further information in the 2nd Draft Circular on AKFTA ROO.

Draft Circular on the Rules of Origin under the AANZFTA

To implement Vietnam's commitments on the ROO for goods within the framework of the 2nd Protocol amending the AANZFTA signed on 23 August 2023, the MoIT presides over the drafting of a Circular stipulating the ROO for goods under AANZFTA (AANZFTA Circular).

In July 2024, the Import Export Department (the MoIT) published the content of the 2nd Draft of the AANZFTA Circular, seeking opinions from competent authorities, associations, relevant organizations and individuals to review and contribute to the Draft AANZFTA Circular.

The AANZFTA Circular comprises of four chapters as below:

- ▶ Chapter I - General provisions
- ▶ Chapter II - Determination of the Origin of Goods
- ▶ Chapter III - Certification and Verification of the ROO

► Chapter IV - Implementation provisions

The following regulations will be replaced upon issuance of the AANZFTA Circular:

- Circular No. 31/2015/TT-BCT dated 24 September 2015 issued by the MoIT stipulating the implementation of the ROO for goods under the AANZFTA (Circular 31).
- Circular No. 07/2020/TT-BCT dated 30 March 2020 and Circular No. 02/2024/TT-BCT dated 15 January 2024 issued by the MoIT amending some articles of Circular 31.

Please see further information in Draft Circular on AANZFTA ROO.

Anti-dumping investigation on hot-rolled coils imported from India and China

- On 26 July 2024, the MoIT issued Decision No. 1985/QĐ-BCT (Decision 1985) on the anti-dumping investigation on certain hot-rolled coil products originating from India and China imported into Vietnam (case number AD20).
- The hot-rolled coil products (HRC) under investigation are classified under the following HS codes: 7208.25.00, 7208.26.00, 7208.27.19, 7208.27.99, 7208.36.00, 7208.37.00, 7208.38.00, 7208.39.20, 7208.39.40, 7208.39.90, 7208.51.00, 7208.52.00, 7208.53.00, 7208.54.90, 7208.90.90, 7211.14.15, 7211.14.16, 7211.14.19, 7211.19.13, 7211.19.19, 7211.90.12, 7211.90.19, 7224.30.90, 7225.99.90, 7226.91.10, 7226.91.90, 7226.99.19, 7226.99.99.
- The investigation period of assessment on the dumping behaviour is 1 July 2023 to 30 June 2024.
- The investigation period of assessment on the damage to domestic manufacturing sector is three years, starting from 1 July 2021 and ending on 30 June 2024.
- The investigation is expected to conclude within 12 months from the date of the investigation decision in accordance with the Law on Foreign Trade Management. In special circumstances, it can be extended, but the total duration of the investigation shall not exceed 18 months.

Please see further details in Decision 1985.

Some guidance provided in the form of OLs:

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| 3148/TCT-CS Dated 22 July 2024 558/TCT-CS Dated 20 February 2024 | The VAT applicable for OTS exported goods as directed by foreign enterprises | ► Regarding the OTS import - export customs procedures as stipulated in Point c, Clause 1, Article 35 of Decree 08/2015/NĐ-CP dated 21 January 2015 (Decree 08), the MoF (the General Department of Customs - GDC) has conducted an evaluation, summarized their findings, and reported to the Government. While awaiting directives from the Government, the OTS import - |

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| | | <p>export customs procedures shall follow the prevailing regulations.</p> <ul style="list-style-type: none"> ▶ Regarding the handling of tax for those undertaking OTS import - export customs procedures, if the customs authorities determine that the OTS export customs declarations do not adhere to Point c, Clause 1, Article 35 of Decree 08, the tax authorities will not process the VAT refund of input of OTS exported goods, given the requirements for customs declarations are not met. |
| 399/XNK-THCS Dated 22 July 2024 | Determination of foreign enterprises without a presence in Vietnam | <p>Following OL 2643/TCHQ-GSQL previously issued by the GDC on 10 June 2024 regarding the determination of foreign enterprises without a presence in Vietnam, the Import - Export Department (the MoIT) shared following opinions:</p> <ul style="list-style-type: none"> ▶ The concept of "foreign traders without a presence in Vietnam" within the management scope of the MoIT, as regulated under the Law on Foreign Trade Management and Decree No. 90/2007/ND-CP dated 31 May 2007, pertains only to regulations on export rights and import rights. That is, the definition is only applicable to cases where it is necessary to determine the export or import rights of foreign traders; it does not apply for other purposes. ▶ Decree 08 is a decree promulgating the implementation of the Law on Customs. Therefore, regarding the issues arising in relation to the determination of "organizations or individuals of foreign countries without a presence in Vietnam" as stipulated in Decree 08, the MOIT suggests that the GDC (the competent authority in-charge of drafting Decree 08) should study and clarify the connotation of this term in accordance with the Law on Customs based on its functions, tasks, and management requirements, to provide guidance for enterprises to comply. The MOIT shared no further comment on this matter. |

| No. | Subject | Content |
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| 333/TCHQ-TXNK Dated 9 July 2024 | Tax policies on mergers and acquisitions | <ul style="list-style-type: none"> ▶ When a business merger takes place, the enterprise being merged is responsible for fulfilling its tax obligations prior to the merger. ▶ If the tax obligations are not fulfilled, the acquiring enterprise in the merger is responsible for fulfilling these tax obligations. The acquiring enterprise is entitled to all legal rights and benefits, liable for the obligations, outstanding debts, employment contracts, and other asset-related obligations of the merged enterprise. ▶ The acquiring enterprise automatically inherits all rights, obligations, and legal benefits of the enterprise being merged according to the merger agreement. |
| 1238/GSQL-GQ2 Dated 29 July 2024 | Implementation of export rights of a FIE | <p>If an FIE is licensed to exercise the right of import and export pursuant to Decree 09/2018/ND-CP dated 15 January 2018 of the Government,</p> <ul style="list-style-type: none"> ▶ When importing goods under the right of import it should use the customs declaration code A41 ▶ When exporting goods under the right of export, if the exported goods were previously imported under the rights of the FIE and are then exported in their original state, without having been used, processed, or manufactured, either abroad or to a non-tariff zone, it should use customs declaration code B13 as guided in OL 695/TCHQ-GSQL dated 5 February 2021 or customs declaration code B11 as guided in OL 4032/TCHQ-GSQL dated 16 August 2021 issued by the GDC |
| 3828/TCHQ-TXNK Dated 12 August 2024 | Amendments to Compendium of classification opinions of WCO - HS Committee 73rd Session | <ul style="list-style-type: none"> ▶ In March 2024, the HS Working Party and HS Committee 73rd Session took place in Brussels, Belgium. Based on the session's outcome, the GDC announced a number of items of which the HS code has been classified by the WCO and are expected to be included in the WCO Compendium of Classification Opinions to be published in 2028. This publication will serve as a reference document to assist in the classification of exported and |

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| | | <p>imported goods according to the Vietnam Exports and Imports Nomenclature.</p> <p>▶ During the implementation, if there is any inconsistency in the description of goods between the Vietnamese and English version, the English version shall prevail.</p> |

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