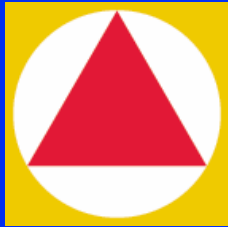


Customs Procedures, WTO Trade Facilitation Agreement and FTA's



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HS Tariff Classification, WCO Explanatory Notes, Rulings And Record - Keeping

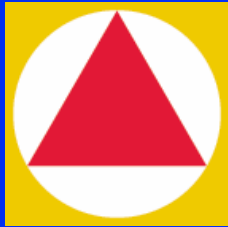
- ❖ All WTO countries and others use the WCO Harmonized System as the basis for their customs tariff nomenclatures, 206 countries and territories in all.
- ❖ The WCO maintains and updates the Harmonized System on a regular basis.
- ❖ The Harmonized System is organized in 21 Sections and 96 Chapters with classification codes involving 8 digits to the legal level and, providing an additional 2 digits for statistical reporting.

- ❖ Each Section and Chapter of the HS System contains Rules of Interpretation explaining what goods are included or excluded by the Section or individual Chapters.
- ❖ The HS System also contains General Rules of Interpretation.
- ❖ As an aid to in-depth understanding, the international version of the Harmonized System from the World Customs Organization has associated Explanatory Notes.

- ❖ Administrative and legal disputes often arise with Customs over the most accurate (or correct) HS classification of imported or exported goods.
- ❖ This has revenue consequences for Customs and possible penalty or administrative fine consequences for companies.
- ❖ Under current international best practices, such disputes are avoided through careful declarations by companies and through binding Customs Rulings.

- ❖ In Vietnam, Ministry of Finance Circular No. 128/2013/TT-BTC in Article 7 for the first time provided for advance Customs Rulings to be issued to importers and exporters or their representatives.
- ❖ The new Customs Law provides for a recordkeeping period of ten years from the date of registration of a customs declaration.
- ❖ Decree No. 127/2013/ND-CP provides for a five year time limit for imposing customs penalties, from the date of commission of a violation.

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What is the WTO Trade Facilitation Agreement ?

- ❖ The TFA is a global trade agreement for all WTO Members to improve trade facilitation and customs compliance through cooperation.
- ❖ The purpose is to increase world trade through expediting the movement, customs release and clearance of goods that are traded internationally.
- ❖ The TFA contains commitments that will also be found in TPP, the VN-EU FTA, ASEAN and other trade agreements.

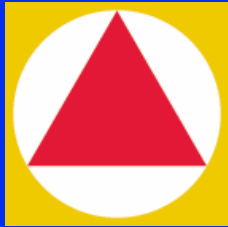
WTO Trade Facilitation Agreement Requirements, VN-EU FTA, ASEAN and TPP

- ❖ Establish “Single Window” for customs and all trade agencies requirements – WTO TFA, ASEAN and VN-EU FTA.
- ❖ TPP and the VN-EU FTA will provide for Advance Customs Rulings as in WTO TFA. The TPP will include the right for these for **foreign producers and exporters** as well.
- ❖ WTO TFA requires establishment of a National Committee for Trade Facilitation and regular consultations with the business community. The VN-EU FTA does the same.
- ❖ TPP and the VN-EU FTA will require publication of information as in the WTO TFA
- ❖ TPP and the VN-EU FTA will require automation of customs, import and export processes and procedures as does the WTO TFA and ASEAN.
- ❖ Implementation of risk management required by the WTO TFA, TPP and the VN-EU FTA.

- ❖ The new Free Trade Agreements will have more complex and technical Rules of Origin that require accuracy with HS tariff classification codes. This is because applying the rules requires knowledge of a product's HS Codes for components and materials, as well as for the finished good.
- ❖ The new Rules of Origin will also require accurate knowledge of countries of origin of components and materials, as well as, application of customs value in certain instances.
- ❖ The new FTA's will require recordkeeping for all of the above for a product for five years from certification of origin. The records will be subject to foreign customs "verifications" (inspections).

- ❖ EPE's and other companies with large volumes of products, items, components and materials will not be able to fulfill the various Rules of Origin and recordkeeping requirements by manual procedures.
- ❖ The solution for this potential issue is for use of specialized global trade management software that provides an appropriate database, rules application engine and capability to integrate with a company's ERP systems.
- ❖ Companies that adapt and prepare for the new FTA's will enjoy the privileged duty-free or reduced privileged rate statuses provided for their products in applicable countries of export.

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“Norms” (Bills of Material) Issues For Export Processing Enterprises

- ❖ Article 60 of the new Customs Law that takes effect on January 1, 2015 continues to require “informing of norms” or filing Bills of Material (“BOM’s”) with Customs.
- ❖ Many issues with filing of BOM’s for imported materials and supplies have existed for EPE’s in past years because customs procedures involved “static” instead of dynamic BOM’s.
- ❖ Circulars required modifications to BOM’s that were unrealistic due to short time frames or inability to make changes with the previous e-Customs and paper system.

“Norms” (Bills of Material) Issues For Export Processing Enterprises

- ❖ Static BOM's were often “incomplete” and could not be modified under previous procedures without subjecting companies to administrative fines for violations of declaration requirements.
- ❖ Industry ERP systems rely on “dynamic BOM's” which reflect engineering changes and changes in usage of materials, components, parts and supplies on a real time basis.
- ❖ Best international customs practices involve approval by Customs of inventory reporting and declaration systems that rely upon dynamic BOM's and inventory reporting, subject to periodic Customs audits

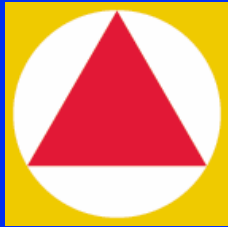
“Norms” (Bills of Material) Issues For Export Processing Enterprises

- ❖ Article 24 of new Customs Circular No. 22/2014/TT-BTC requires notification of BOM's not later than the time of submitting a report of input-output inventory. It also requires notification to Customs of amendments or supplements to the BOM's to declare “actual norms” used to produce exported goods within the same time limit.
- ❖ Previous Customs Circulars also required notification of amendments and changes to BOM's. However, due to practical issues, these were not performed on a timely basis and many EPE's today face the risk of adjusting and explaining accumulated inventory imbalances, with possible administrative fines or customs penalties.

“Norms” (Bills of Material) Solutions For Export Processing Enterprises

- ❖ Carry out internal self-assessment studies that compare actual inventory balances and usage with past customs declarations and inventory reporting. Develop explanations for Customs that are supported by adequate documentation and, request adjustments for bringing of inventory balances in line with actual, using a customs risk management methodology.
- ❖ Implement changes in timing of BOM filings and base these upon a global trade management system database that is driven by the company's ERP system. The further benefit to be gained is the ability to comply with Rules of Origin and certification for new Free Trade Agreements.

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Post Clearance Inspection (Audit)

- ❖ **New Customs Law: Article 78. Post clearance audit:**
- ❖ **1. Post clearance audit means the inspection by customs on customs files, accounting books, accounting documents and other relevant documents and data of exports, imports; where necessary and possible after the exports and imports are cleared, post clearance audit shall be conducted to verify the accuracy and integrity of the contents of documents, customs profiles which are logged by declarants, owners of the goods to customs; evaluation of compliance of customs law and other laws relevant to export and import administration of declarants and the owners of the goods.**

- ❖ **New Customs Law: Article 78. Post clearance audit:**
- ❖ **2. Post clearance audits are conducted at customs offices or the premises of the declarants and the owners of the goods.**

The premises of the declarants and the owners of the goods shall include the headquarters, branches, shops, factories, stores for exports and imports.

- ❖ **3. The time limit for Post clearance audit shall be ten (10) years from the date of registration of the customs declarations of exports and imports that are cleared.**

- ❖ **New Customs Law: Article 79. Cases Subject to Post clearance audit:**
- ❖ **1. Cases where there are indications of breach on customs law and other relevant laws on export and import administration;**
- ❖ **2. Cases where risk management,** information from an investigation by customs, and from **domestic or foreign** bodies, organizations, and individuals could be applied.

Post Clearance Inspection (Audit)

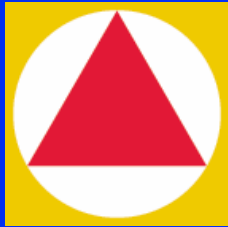
- ❖ A very important shift in Customs practice in Vietnam is occurring. In order to fulfill international trade agreements and facilitate trade, shipment-by-shipment inspections and controls will be less important and informed self-compliance by companies becomes very important.
- ❖ This is because a separation of final determination of duties and taxes from customs release of goods has occurred. More rigorous and professional inspections will occur in the future with retroactive results. Companies must prepare accordingly.

Post Clearance Inspection (Audit)

❖ How should companies prepare?

1. Carry out internal self-assessments (or “self-inspections”) with the assistance of a qualified advisor before Customs inspects you.
2. Establish strong internal controls and documented customs compliance procedures for imports and exports and train staff in these.
3. Develop integrated tools, data and documentation for demonstrating compliance to Customs.

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Authorized Economic Operator

- ❖ The WTO Trade Facilitation Agreement provides for “additional trade facilitation measures” for Authorized Operators.
- ❖ These can include:
 - ✓ Low rate of physical inspections;
 - ✓ Rapid release time for shipments;
 - ✓ Low documentation and data requirements;
 - ✓ Deferred payment of duties, taxes and fees;
 - ✓ Use of comprehensive guarantees;
 - ✓ A single customs declaration per period for all imports and exports; and
 - ✓ Clearance of goods at operator’s premises.

Authorized Economic Operator

- ❖ What kinds of companies will qualify? Those with low customs compliance risks:
- ✓ An appropriate record or compliance with customs laws and regulations;
- ✓ A system of managing records to allow for necessary internal controls;
- ✓ Financial solvency including provision of sufficient guarantees; and
- ✓ Processes and procedures for supply chain security.

Vietnam's Privileged Regime Economic Operator

❖ **Article 37. Privilege regime for economic operators:**

1. Exemption from inspection of customs files, exemption from physical inspection of export and import goods, excluding the cases of having indications of a breach of the law having been committed or random inspection is implemented in order to evaluate law compliance of the operators.

2. Customs procedures shall be performed through manifest or commercial documents; then completing declaration and customs files within limited time.

3. Having privilege regime in case of conducting duties procedures for import and export goods; criteria to have tax privilege regime shall be in accordance with tax laws.

❖ **Article 38. Criteria to have privilege regime**

Economic operators shall meet the following conditions to have privilege regime:

- ✓ ***1. Having a good compliance history on Customs Laws and Tax Laws;***
- ✓ ***2. Reaching import-export turn-over in a fiscal year;***
- ✓ ***3. Implementing e-Customs and e-Tax procedures; having information technology program on managing import-export activities of economic operators, which connects with customs;***
- ✓ ***4. Making payment via commercial bank in accordance with the law;***

❖ **Article 38. Criteria to have privilege regime**

Economic operators shall meet the following conditions to have privilege regime:

- ✓ ***5. Having internal control system in order to meet requirements of the law;***
- ✓ ***6. Good compliance of accounting laws;***
- ✓ ***7. Overseas economic operators who have business in import and export with Viet Nam, meet all criteria on privilege regime in accordance with this Law and is in a nation having mutual recognition agreement with Vietnam.***

Authorized Economic Operator – The “Gold Standard” Of Companies In Global Trade

- ❖ What will it take to reach this level?
- ❖ In addition to the other factors listed in the new Customs Law, develop an informed customs compliance program with internal self-assessments, internal controls, company procedures and recordkeeping.
- ❖ Use the appropriate information technology for global trade management.