

QUESTIONS AND ANSWERS ON CUSTOMS/Business Consultations, Jan 24, 2018.

1. Kim Vi Inox Import Export Production JSC

Our company is currently importing stainless steel on machining and manufacturing. When doing the import customs clearance, we are required by the customs department for analysis and classification to check whether applying the right HS code and the right tax rate or not.

Our company is always in the spirit of cooperation with the customs department to check, review to make sure of applying the correct code, paying the correct tax. However, the time to have the results of classification and analysis within 6 months is too long.

So kindly recommend the customs department for shortening the analysis and classification time to 1 month or 3 months at most. We look forward to hearing from you soon.

Answer:

Pursuant to the Finance Ministry's Circular No. 14/2015 / TT-BTC of January 30, 2015, guiding the goods classification and analysis to classify goods and Decision No. 2999 / QD-TCHQ of Sept 6, 2017 of the General Department of Customs promulgating regulations on goods inspection and analysis for classification, the time limit for the notification of analysis results is within 5 working days and 8 working days at the latest. Enterprises can contact directly with the leaders of Customs Sub-Departments (where samples are sent for analysis) for results.

2. Minh Ha Company

According to the Circular No. 103/2015 / TT-BTC, the HS code of shrimp paste-mam tom (mam ruoc) is in heading 1605, which is identical to the EU code. But in Circular No. 65/2017/TT-BTC, the HS code of shrimp paste is 21039021, while the HS code of EU remains the same. When applying for C/O Form A for the EU market, do we apply the HS code of Vietnam or EU?

Our importers in the EU ask us to declare the EU HS code on the documents but the VCCI does not accept C/O form A with the EU HS code. We would like to ask if there is a document that states the application of HS code on C/O Form A? (i.e. requiring the HS code of Vietnam or imported country?)

Answer:

From January 1, 2018, the Circular No. 103/2015 / TT-BTC dated July 1, 2015 issued by the Ministry of Finance has expired and replaced by Circular No. 65/2017 / TT-BTC dated June 27, 2017 issued by the Ministry of Finance Vietnam on the list of Vietnam imports and exports.

Pursuant to the Government's Decree No. 125/2017 / ND-CP of November 16, 2017, promulgating the Preferential Import-Export Tariffs, the mam ruoc (shrimp paste-mam tom) is specifically identified in Chapter 21 , heading 2103 - code 21039021 with the preferential import tax of 30%.

The EU grants C / O Form A with heading 1605, which does not affect the declaration and tax calculation when importing into Vietnam.

3. BASF VN Company

3.1 Vietnam signed e-ATIGA application agreement in ASEAN and it takes effect on January 1, 2018. However, in practice, there are no implementation guidelines. Please share your plan to apply e-ATIGA in Vietnam.

3.2 Time to do analysis for classification is quite long. Specifically, the declaration number 101736169840, started the analysis from Nov 2017 but so far has no result.

Answer:

Pursuant to Circular No. 22/2016/TT-BTC dated Oct 3, 2016 issued by the Ministry of Industry and Trade, on the basis of confirmation by five member countries (Vietnam, Indonesia, Malaysia, Singapore and Thailand) on the implementation of electronic C / O through the ASEAN Single Window.

Electronic C/O is effective from Jan 1, 2018.

The General Department of Customs has issued Official Letter No. 78 / TCHQ-GSQL dated Jan 5,2018 guiding the declaration of electronic C/O. Please contact the Customs Department which is most convenient for you for guidance.

4. Coats Phong Phu Co., Ltd

For the process of document archive for post-clearance inspection, currently, the enterprise is archiving original documents, including: declaration forms, customs clearance lists, invoices, contracts, packing slips and other documents for clearance... within 5 to 10 years until the completion of post-clearance inspection procedures.

Proposal: Is it possible to keep scanned documents and store documents on the computer? Upon request for post-clearance inspection, the enterprise will reprint and certify that it is the correct customs declaration dossier for post-clearance inspection.

Answer:

The archive of customs dossiers is under the State archive law and other decrees and circulars of guidance, so depending of each kind of custom dossier; it will have different time and method of archive. The enterprise must follow the rules. When being post-clearance inspected by the customs office, the enterprise shall provide and present the dossier at the request of the post-customs clearance inspection team (depending on the content and scope of the inspection).

[Note: TFA, Article 10.2.1 2 Acceptance of Copies

“2.1 Each Member shall, ... accept paper or electronic copies of supporting documents required for import, export, or transit formalities.”]

5. Application of collecting information, records, documents ... on post-clearance inspection instead of the application of immediate inspection for customs clearance to avoid time-consuming for enterprises and customs. If there is a real doubt, please invite the enterprise to work, if there is no doubt, Customs only need to notify the results of inspection (the customs of Hai Phong is doing very well this method to support enterprises to avoid regular post-clearance inspection)

Answer:

Information collection is one of the steps in the post-clearance inspection process to determine whether the customs' doubt is correct or not, and then determine whether to need post-clearance inspection (in many cases, after collection if no derogation is found, the customs will not carry out post-clearance inspection).

6.

6.1 How to balance an out of balance liquidations declared with Customs once entered into VNACC? 2 yrs ago, we were told by Bien Hoa Customs informally to use shipping BOMs to balance excess materials, but now that is leading to fines and penalties. How to balance?

6.2 What is the proper way to manage and declare production waste? Is 3% the actual limit or can the waste be varied?

3) Just audited by Bien Hoa Customs. Could Dong Nai Customs or VN Customs also audit the same period? Confirm risk.

Answer:

6.1 Regarding balancing an out of balance liquidations declared on VNACC: Because the company's question is not clear whether there was any error in the declaration on the import of raw materials or the discrepancy after the post-clearance inspection, however, in cases where

there is a discrepancy, the Customs make the minutes or decide the solution as regulations, if the company still has problems, please contact directly the customs office where the dossier is processed for detailed explanation.

6.2 Method of management and declaration of production waste: According to Clause 4, Article 55 of Circular No. 38/2015 / TT-BTC, the wastage rate of raw materials (production waste) shall be calculated by and under responsibility of the company (no regulation on the limit of 3%) and the using with right norms and purpose of processing, producing goods for export; Violators shall be fined according to the provisions of law.

6.3 Post-clearance inspection (audit): The company does not specify the content of the audit (post-clearance inspection) of the two customs offices. Currently, post-clearance inspection cases is scheduled for annual inspection and the General Department of Customs will approve before implementation to avoid overlapping. However, besides the post-clearance inspection plan approved annually by the General Department of Customs, if the company is under clause 1, article 59 and point 5, clause 5, article 60 of Circular 38/2015 / TT-BTC, Customs authorities will continue to carry out inspections to ensure compliance.

7.

7.1 What is the Timeline to introduce single window process?

7.2 What is the Roadmap to reach global standards in custom clearance time?

7.2 When Vietnam will move away from expensive and time consuming custom inspections?

Answer:

7.1 Regarding single window process: The National Single Window mechanism is assigned by the Prime Minister to the Ministry of Finance (the General Department of Customs) and has implemented since the end of 2014. The Ministry of Finance (the General Department of Customs) has coordinated with ministries and agencies step by step to build, connect, improve to ensure the schedule. Up to Dec 2016, there are 10 out of 18 ministries and agencies participating in the Vietnam National Single Window portal with 36/280 administrative procedures. For more information, the company can access to the website: <https://vnsww.gov.vn>.

7.2 Roadmap to reach the global standard for clearance time: According to Decision 1614 / QD-BTC dated July 19, 2016 of the Ministry of Finance approving the plan for reform, development and modernization of customs sector in the period of 2016 - 2020, *the time for cross-border clearance of goods is less than 36 hours for exports, 41 hours for imports.*

7.3 Regarding inspection:

At present, the customs inspect enterprises according to the annual plan based on the principle of risk management through the collection of information to do the state management in the field of customs and compliance assessment for enterprises operating in the field of import and export (not fully tested); the inspection of enterprises shall comply with the current regulations.

8.

8.1 What are advantages of automatic customs supervision when it is deployed?

8.2 If we follow this new process, can customs clearance be finished fully in customs systems without signing and stamp on paper customs sheet by customs official or any other relating party? (In current practice, we used to have difficulties with customs clearance not yet updated 'done' status in customs system although we actually had completed. Without signing and stamp on paper customs sheet, we don't have any proof.)

Answer:

8.1 Advantages of automatic customs supervision:

Customs Department of Ho Chi Minh City is the first office in the South to be selected by the Ministry of Finance and the General Department of Customs for the pilot implementation of the project of automatic customs supervision and management for exports, imports and transits at seaports, airports from Jan 02, 2018 according to Decision 2722/QĐ-BTC dated Dec 29, 2017.

Implementing this project will create a new breakthrough in the management of customs at seaports and airports in order to simplify and harmonize the customs procedures with the procedures of warehouse, seaport, airport enterprises through information technology systems to update, exchange and process data with warehouse, port enterprises, thereby reducing the time and travel costs for customs declarants in comparison with the traditional supervision method; At the same time, it strengthens the management of the customs authorities in supervising, inspecting and controlling customs in a timely manner to track the movements, changes and status of goods from entry to exit of ports, warehouses, as well as transportation between customs supervised locations. For businesses there are specific benefits as follows:

*** For warehouse, port enterprises:**

+ Access to information (in electronic form) on goods supplied by customs, shipping companies, logistics companies, importers and exporters quickly, accurately and promptly;

+ Be proactive in planning and executing business activities: be proactive in arranging goods in the warehouse or port yard for shipments that is cleared or no need to be examined to be delivered to declarants, so reduce the time and cost of arranging as before;

+ Reduce labor numbers and costs by minimizing paperwork exchanges with carriers as well as customs;

+ Reduce the time of goods stored in the warehouse, thereby increase competitiveness;

*** For export-import enterprises:**

+ Reduce travel time between customs offices and port, warehouses and yards to shorten time for customs clearance and costs for businesses;

+ Carry out simple procedures for receiving goods at port, warehouses and yards, be proactive in receiving goods from port enterprises;

+ Not liquidate customs declarations through the supervisory area, which is automatically carried out through electronic systems between customs offices and port, warehouse enterprises.

8.2 When implementing electronic supervision in accordance with Decision No. 2722/QĐ-BTC, it is not necessary to present the customs declaration to the customs office for seal, processing the declaration data through the supervision area will be jointly implemented by the customs office and the port, warehouse, yard enterprises.

9.

How does the HCMC Customs Strategic Plan correspond to the National Committee on Trade Facilitation plan to implement the WTO Trade Facilitation Agreement?

<http://thuvienphapluat.vn/van-ban/Thuong-mai/Quyết-dinh-1969-QĐ-TTg-chuan-bi-hiep-dinh-tao-thuan-loi-thuong-mai-to-chuc-thuong-mai-the-gioi-2016-325846.aspx>

Answer:

To implement the Government's commitment on reforming administrative procedures, business environment and improving national competitiveness with the following targets: at least equal to ASEAN 4 for all indicators: start-up, customs, taxation; Decrease of paperwork, time, cost of procedures related to import and export of goods from 90 hours for import activities and 70 hours for export activities in 2017 to 41 hours for import activities and 36 hours for export activities in 2020.

The Customs Departments in general and the Customs Department of HCMC in particular has made the effort to implement various solutions to facilitate trade as committed in the WTO's Trade Facilitation Agreement (TFA), (which officially came into force on February 22, 2017) and the Government's commitment:

- To complete, disseminate and propagate the system of legal documents.
- Application of information technology in customs management: deploying VNACC / VCIS system nationwide; Implementing the electronic payment scheme, linking the system between the customs office and the treasury or bank; implementing the scheme on supervision management of goods at seaports and airports.
- Simplification of customs procedures through the abolition and simplification of administrative procedures; reducing the documents in the customs dossier and allowing enterprises to submit electronic files [Note: see Q&A 4 above about paper and electronic files] ; Transparency and reduction of customs clearance time, actual inspection of goods.
- Coordinate with specialized inspection agencies to inspect specialized goods at border gates in order to reduce time for customs clearance.
- To enhance modern equipment and facilities in service of the customs inspection and control of goods and transport means in the field of customs management.

10.

Please allow businesses to look up information of low value customs declarations (currently the information of this declaration type is not available on the e-customs portal)

Answer:

The principle of confidentiality for customers: business community is not allowed to know the information of other businesses.

Circular No. 39/2015 /TT-BTC dated March 25, 2015 by the Ministry of Finance stipulating that the first method of tax calculation is based on the declared price if the dossier of the enterprise is valid and satisfies all four conditions of transaction price method.

If the declared price is lower than the price in the customs database [Note: "reference prices" ...?] , the enterprise is obliged to explain the 4 conditions stipulated in Article 6, Clause 3 of Circular No. 39/2015/TT-BTC dated March 25, 2015.

11.

Many foreign companies offer their customers lower price for bulk orders. Obviously, a USD 1 million order cannot be the same as the smaller orders with only USD 10,000.

However, the company often has problems with customs valuation. Customs officials do not often believe in the company's declared price but use the reference price [Note: "reference price" ...?] to conclude not to taxing on the company's declared price.

Do customs officers do the right thing? If yes, please the Department of Customs let us know which regulations.

Answer:

The case of enterprises is international practice and is common in international trade.

Pursuant to Article 15 of the Finance Ministry's Circular No. 39/2015/TT-BTC dated on March 25, 2015, if the discount amount provided by the seller to the purchaser falls into the following:

- *quantity level,*
- *commercial level*
- *payment level*

and **satisfying the conditions stated in this Article [15]**, the customs office shall calculate the tax at the actual value already paid. Discounts of 5% or more will be considered by the General Department of Customs.

12.

The current WTO rules allow foreigners to carry out distribution activities to sell directly to customers rather than through distributors, so their prices are definitely lower because they sell to customers from the local office or purchase directly from a third party overseas. In both cases, the price will be lower than the overseas business selling to an unrelated third party. However, there are some concerns that customs do not accept such low prices.

Please advise companies on how to handle such situations.

Answer:

Vietnam is fully applying the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT).

Selling price directly from the manufacturer (genuine dealer) will definitely lower than the price for distributors, agents level 2, level 3 in Vietnam: because of increasing input cost.

Pursuant to Article 6 of the Finance Ministry's Circular No. 39/2015 / TT-BTC dated on March 25, 2015, the customs office shall accept the declared price if the enterprise's declared price satisfies all four following conditions:

Condition 1: authority of the importer;

Condition 2: The declared price does not depend on the conditions from the two buyers and sellers that do not reflect the nature of the goods being sold.

Condition 3: the buyer does not have to pay any extra money from the proceeds of the disposal of the imported goods to the seller or to the third party designated by the seller without declaring it to the customs.

Condition 4: The buyer and seller have no special relationship or, if so, that special relationship does not affect the transaction value.

13.

Between the “customs price database” [“Reference Price” ... ?] and the transaction value (satisfying Article 6 of Circular No. 39/2015 / TT-BTC), how to determine taxable value?

Example: The company imports item A with transaction value (invoice value) of USD 100. But on customs price data base for item A this is USD 120 [Note: What are the sources for the “customs price data base” ... ?]. So the taxable value of item A is USD 100 or USD 120. Based on what to determine the value of USD 120?

Answer:

1. Price databases are prices used for reference only [Note: ... ?] to identify initial suspicious signs;
2. The identical or similar value of taxable goods satisfying the conditions in Article 6 of Circular No.39/2015/TT-BTC, which is accepted on the transaction value by the customs office , exists in the database system within the maximum of 90 days;

If the imported goods are not eligible for tax calculation according to the transaction value, the customs office shall base on the price specified at Point 2 to adjust the tax calculation price.

Product of USD 10 or USD 12 is not a factor for customs' or business' interest.

The most important thing is a product of USD 10 or USD 12 whether meeting the requirements of Article 6 of Circular No. 39/2015/TT-BTC or not?

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