

CIRCULAR No. 45/2007/TT-BTC OF MAY 7, 2007, GUIDING THE APPLICATION OF PARTICULARLY PREFERENTIAL IMPORT DUTY RATES

*Pursuant to Law No. 45/2005/QH11 of June 14, 2005, on Import Duty and Export Duty;
and the Government's Decree No. 149/2005/ND-CP of December 8, 2005, detailing the
implementation of the Law on Import Duty and Export Duty;*

*Pursuant to the Government's Decree No. 154/2005/ND-CP of December 15, 2005,
detailing a number of articles of the Customs Law regarding customs procedures,
inspection and supervision;*

*Pursuant to the Government's Decree No. 77/2003/ND-CP of July 1, 2003, defining the
functions, competent, obligations and organizational structure of the Ministry of Finance;*

The Ministry of Finance guides the application of particularly preferential import duty rates as follows:

I. SCOPE, CONDITIONS AND PRINCIPLES OF APPLICATION

1. Scope of application:

Imported goods originating from a country, a group of countries or a territory which agrees with Vietnam to apply particular import duty (below referred to as country having agreement on particular preferences with Vietnam for short) in line with a free trade area institution or a table of rates alliance or in order to create favorable conditions for border trade and other particularly preferential cases (below referred to as trade agreements for short).

2. Conditions for application:

2.1. To be eligible for particularly preferential import duty rates, imported goods must meet all specific conditions in the Finance Minister's relevant decisions promulgating particularly preferential import table of rates for the implementation of trade agreements.

2.2. To be eligible for particularly preferential import duty rates promulgated by the Finance Minister, goods imported into the domestic market from non-tariff areas (including processed goods) must meet all the following conditions:

(i) Appearing on the corresponding particularly preferential import table of rates promulgated by the Finance Minister.

(ii) Satisfying requirements on the origin of goods, as manifested by certificates of origin under regulations of the Trade Ministry.

2.3. For a lot of imported goods valued (at FOB prices) not more than USD 200, a certificate of origin (below abbreviated to particularly preferential C/O) is not required.

3. Principles of application

3.1. The particularly preferential import duty rate applicable to a certain goods item shall be determined under a decision of the Finance Minister (including amending or supplementing

decisions), promulgating the particularly preferential import table of rates for the implementation of a trade agreement, under the guidance in this Circular and relevant current regulations.

3.2. When the MFN duty rate of a goods item specified in the preferential import table of rates is lower than the particularly preferential tax rate specified in Vietnam's particularly preferential import table of rates applicable to each trade agreement promulgated under the Finance Minister's decision, the import duty rate applicable to this goods item is the MFN tax rate.

3.3. The particularly preferential duty rates applicable to knockdown details and components in complete sets imported for the assembly of mechanical engineering, electric or electronic products shall be applied as follows:

Knockdown details (detail assemblies) and components (component assemblies) in complete sets are eligible for particularly preferential tax rates applicable to complete goods items if they satisfy the conditions for application of particularly preferential tax rates specified in Section I of this Circular. Other knockdown details and components without particularly preferential C/O are eligible for MFN or common duty rates applicable to complete goods items.

In order to request application of particularly preferential duty rates, enterprises shall produce one or some separate commercial invoices for details (detail assemblies) and components (component assemblies) with particularly preferential C/O.

Particularly preferential duty rates shall be applied at the duty calculation time prescribed by the law on import duty and export duty. Procedures for finalization of import duty with customs offices shall be carried out according to current regulations.

Complete or knockdown components shall be classified on the principles prescribed by current law on classification of imported goods and exported goods and relevant laws.

3.4. Particularly preferential duty rates applicable to goods processed in non-table of rates areas and imported into the domestic market are Vietnam's particularly preferential tax rates applicable to processed import goods items specified in the particularly preferential import table of rates promulgated by the Finance Minister for each trade agreement.

3.5. When customs declarants cannot submit particularly preferential C/O at the time of registration of import customs declarations but the imported goods satisfy all other conditions stipulated in Section I of this Circular, import duties shall be temporarily calculated at the MFN duty rates. When customs declarants additionally submit particularly preferential C/O which remain valid as prescribed in Section II of this Circular, customs offices shall re-calculate duty amounts at the corresponding particularly preferential duty rates.

3.6. Imported goods with C/O affixed with stamps "FOR CUMULATION PURPOSES ONLY" are not eligible for particularly preferential duty rates.

3.7. Where commercial invoices are issued by a third party other than a signer of a commercial contract, goods imported into Vietnam are still eligible for particularly preferential duty rates if they fully meet the conditions specified in Clause 2, Section I of this Circular.

II. GOODS ORIGIN AND CERTIFICATES OF ORIGIN

1. The principles for goods to be recognized as originating from countries having agreements on particular preferences with Vietnam are provided for in the regulation on the grant of certificates of origin, promulgated together with the Trade Minister's decision for each trade agreement.

2. A C/O must bear a signature and stamp compatible with the specimen signature and stamp granted by a competent agency of the country having agreement on particular preferences with Vietnam. The list of agencies competent to grant C/O in the countries having agreements on particular preferences with Vietnam is provided in the Finance Minister's decisions promulgating particularly preferential import table of rates for specific trade agreements.

3. When customs declarants produce back-to-back C/O granted by intermediary member countries and their goods meet conditions specified in Section I of this Circular, they are eligible for particularly preferential duty rates. Customs offices shall check the back-to-back C/O according to the origin inspection procedures promulgated by the General Director of Customs.

4. C/O for goods imported from non- areas into the domestic market must bear signatures and stamps compatible with official specimen signatures and stamps of competent agencies authorized by the Trade Ministry to grant C/O.

5. Regulations on the submission of C/O:

5.1. The time of submission of C/O to customs offices is the time of registration of imported goods declarations. The C/O submitted to the customs office must be the original and be valid at the submission time. The validity duration of a C/O is 6 months from the date of its issue.

5.2. When C/O cannot be submitted at the time of registration of customs declarations, if there are plausible reasons and customs declarants request in writing late submission of particularly preferential C/O and commit to submitting the C/O within the permitted time limit, the directors of the customs sub-departments shall decide to extend the C/O submission time limit for not more than 30 days from the date of registration of customs declarations.

When a customs declarant submits a C/O after the time limit of 30 days of permitted late submission, if the C/O is valid and compatible with the document set and the results of the physical inspection of goods (for goods subject to physical inspection), the customs office shall still accept it and apply particularly preferential duty rates to the imported goods lot while organizing the application of the following measures to the violator:

a/ Administratively sanctioning the act of submitting C/O beyond the extended submission time limit under the provisions of the Decree on sanctioning of administrative violations in the customs domain;

b/ Including the violator into the list of enterprises which fail to properly observe the customs law;

c/ Conducting strict post-customs clearance inspection of imported goods lots with particularly preferential C/O;

d/ Disallowing enterprises to submit tax guarantee documents for those goods lots which are eligible for particular preferences, requiring them to immediately pay the import duty.

6. If doubting the truthfulness and accuracy of a C/O, the customs office shall handle the case in the following order:

6.1. Terminating the application of the particularly preferential duty rate and temporarily collect the import duty at the MFN tax rate if the goods meet conditions for the application of the MFN tax rate; applying the common tax rate to the goods that fail to meet conditions for the application of the MFN tax rate.

6.2. Re-inspecting C/O:

- Customs offices shall express their doubts about the truthfulness and accuracy of C/O in order to request importers to supply more documents (if any) to prove that their goods truly originate from a country having agreement on particular preferences with Vietnam; or

- They shall request certification of the agency competent to grant C/O in the country of exportation (the General Department of Customs shall conduct verification based on the reports of provincial/municipal Customs Departments).

- The General Department of Customs shall send inspection teams to countries of exportation in order to verify the C/O's truthfulness.

When obtaining sufficient documents to prove that goods truly originate from countries having agreements on particular preferences with Vietnam, customs offices shall carry out procedures to refund to importers the difference between tax amounts temporarily collected at the MFN or common duty rates and duty amounts calculated at the particularly preferential duty rates.

Pending the availability of re-inspection results, the procedures for goods release shall still be carried out under general import regulations.

The process and procedures for re-inspection request shall be carried out under relevant provisions of the Regulation on the grant of C/O, promulgated by the Minister of Trade for each trade agreement.

The time limit for consideration and acceptance of a C/O must not exceed 365 days from the date the C/O is submitted to the customs office or from the date the customs office doubts that there is a fraud or violation on the origin of goods.

III. CUSTOMS DECLARATION AND INSPECTION

1. General principles:

1.1. The customs declaration and inspection of imported goods eligible for particularly preferential import duty rates shall be conducted under current regulations on customs procedures, inspection and supervision, the current process of inspection of import goods' origin and the provisions of this Circular.

1.2. Goods regulated by this Circular are subject to customs inspection under regulations of the General Department of Customs.

1.3. Provincial/municipal Customs Departments shall arrange capable customs officers to carry out customs procedures for imported goods eligible for particularly preferential duty rates at each of the stages of receiving customs declarations, inspecting goods, calculating tax or reviewing customs dossiers.

2. Customs declaration

2.1. Customs declarants shall fully, accurately and clearly fill in all items in customs declaration forms; self-determine particularly preferential import duty rates or ask customs officers in charge to give guidance before making customs declarations.

2.2. When declaring the applicable import duty rates, customs declarants shall state clearly the applicable particularly preferential import duty rates and the Finance Minister's specific decisions under which such duty rates are applied.

2.3. Customs declarants shall prepare such dossiers and papers as C/O, documents on non-stop goods transportation, etc., in order to prove that their goods are eligible for particularly preferential import duty rates.

3. Customs inspection

Customs inspection of goods eligible for particularly preferential import duty rates shall be conducted under the provisions of this Circular, the Finance Ministry's Decision promulgating the Particularly Preferential Import Table of rates for implementation of free trade agreements, the process of goods origin inspection promulgated by the General Director of Customs, and relevant legal documents.

IV. OTHER PROVISIONS

1. Duty bases, collection and remittance, reduction and exemption, refund and retrospective collection as well as complaints and handling of violations and other issues are in accordance with the Law on Import Duty and Export Duty, the Tax Administration Law, the Customs Law, and current guiding documents.

2. In case of changes in goods items in legal documents of countries having agreements on particular preferences with Vietnam, which are promulgated for implementation of relevant treaties, or other changes which may alter or affect the right to apply Vietnam's particularly preferential tax rates, the Finance Ministry shall provide appropriate guidance on a case-by-case basis.

V. ORGANIZATION OF IMPLEMENTATION

This Circular takes effect 15 days after its publication in "CONG BAO" and applies to import customs declarations registered with customs offices on its effective date; to annul the Finance Ministry's Circular No. 14/2006/TT-BTC of February 28, 2006, guiding the application of Vietnam's

particularly preferential import duty rates for the implementation of the Common Effective Preferential Table of rates (CEPT) Program of the ASEAN countries; Circular No. 16/2004/TT-BTC of March 10, 2004, guiding the implementation of the Government's Decree No. 99/2004/ND-CP of February 25, 2004, promulgating Vietnam's list of goods and their import duty rates for the implementation of the Early Harvest Program under the Framework Agreement on ASEAN-China Comprehensive Economic Cooperation; Circular No. 52/2006/TT-BTC of June 12, 2006, guiding the application of Vietnam's particularly preferential import duty rates for the implementation of ASEAN-China Agreement on Trade in Goods; and Decision No. 35/2006/QĐ-BTC of June 12, 2006, promulgating Vietnam's List of goods and their particularly preferential import duty rates applicable in 2006 for the implementation of ASEAN-China Agreement on Trade in Goods.

The previous regulations on particularly preferential import duty rates, which are contrary to the provisions of this Circular, are annulled.

Any difficulty or problem arising in the course of implementation should be promptly reported to the Finance Ministry for additional appropriate guidance.

Ministry of Finance -Trương Chí Trung