

# CUSTOMS PROCEDURES FOR ON-THE-SPOT IMPORT AND EXPORT GOODS IN THE CONTEXT OF PROCESSING ACTIVITIES FOR FOREIGN TRADERS IN VIETNAM

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**Abstract:** *The processing of goods for foreign traders in Vietnam has been widely expanding and developing, providing significant "advantages" for Vietnamese enterprises. In order to maximize the benefits of processing activities for foreign traders and to encourage the development of international processing activities in Vietnam, the regulations on tax policy and customs procedures for import-export goods play a vitally critical role. The practice of on-the-spot import and export has been widely implemented in Vietnam's processing activities for foreign traders, contributing to the foundational establishment of seamless supply chains within the country. This practice significantly facilitates and benefits trading activities between Vietnamese enterprises and foreign entrepreneurs who do not physically present in Vietnam. To further streamline international processing activities in Vietnam while ensuring uniform state management in customs, it is necessary to analyze and evaluate the regulations on customs procedures for on-the-spot imported or exported goods in processing activities for foreign traders. From the researching result, proposals for improvement should ensure the alignment of these regulations with legal frameworks governing trade, foreign trade management, and import-export taxation laws.*

• Keywords: *on-the-spot export, on-the-spot import; customs procedures for on-the-spot export and import; international processing; processing activity for foreign trader.*

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## 1. Characteristics of processed goods and the importance of processing activities for foreign traders in Vietnam

### 1.1. Definition of goods processing activity for foreign traders

According to Article 178 of the Commercial Law No. 36/2005/QH11, "Processing in trade refers to a commercial activity whereby the processor uses part or all of the materials or supplies provided by the ordering party to perform one or several stages of production as required by the ordering party for remuneration."

Processing goods for foreign traders encompasses international processing activities, including production, processing, assembly, and packaging, to transform raw materials, auxiliary materials, or semi-finished products according to the ordering party's specifications. The ordering party, in this context, is a foreign legal entity or individual (including enterprises within export processing zones), while the processor is a Vietnamese enterprise (including foreign-invested

enterprises and enterprises in industrial or high-tech zones...). The ordering party may provide (rent out, lease...) machinery, equipment, raw materials, auxiliary materials, semi-finished products, and production standards to the processor. The domestic processor organizes production and delivers all finished goods to the ordering party.

### 1.2. Characteristics of processed goods for foreign traders

Processed goods for foreign traders can be approached from two perspectives; in which according to a narrow concept, "Processed goods" are the outputs of processing activities, including semi-finished or finished products, that have undergone at least one stage of production.

In broad perspective, "Processed goods" include all goods entering or leaving the customs territory for processing purposes. This includes raw materials, auxiliary materials, processed products (semi-finished or finished), waste, scrap, and machinery or equipment used in processing...

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In Vietnam, the distinctive features of processed goods for foreign traders include:

- Ownership of both raw materials and finished goods remains with the ordering party (foreign trader).
- The relationship between the processor and the ordering party is governed by a commercial processing contract. (processing contract).
- Processed goods must undergo at least one stage of production, regardless of whether the input factors of the processing process are raw materials or semi-finished products provided by the ordering party or the processing party authorized to self-supply.
- Specifications, quality standards, and material consumption rates for processed goods are determined by the ordering party and stipulated in the processing contract.
- Delivery of processed goods is subject to the ordering party's instructions as outlined in the processing contract.

### **1.2. Importance of processing activities for foreign traders in Vietnam**

Processing goods for foreign traders has been offering significant advantages for Vietnamese enterprises by leveraging abundant labor resources, existing factory infrastructure, machinery, and locally or internationally (imported) sourced materials. Vietnamese companies also benefit largely from using the established "Trademarks" and distribution networks of the foreign traders and enterprises. These advantages allow domestic processors to gain great experiences and gradually increase the proportion of self-manufactured goods for direct export. Therefore, the volume of goods processing activities are expected to continuously increase, and the proportion of processed goods may not decrease in the near future. Furthermore, processing activities are predominantly concentrated in light industries such as textiles, footwear, and electronics, which require proactive development. Hence, uniform state management of customs procedures for export and import goods within international processing activities is essential. This alignment ensures consistency with trade management, foreign trade regulation, and tax policies, thereby facilitating international processing and trade.

## **2. Regulations on export, import of goods and on-the-spot export, import goods in processing activities for foreign traders**

### **2.1. Regulations on export and import of goods**

According to Article 28 of the Vietnamese Commercial Law No. 36/2005/QH11, export and import of goods are regulated as follows:

*"1. Exportation of goods refers to goods being moved out of Vietnam's territory or into designated special zones within Vietnam's territory that are treated as separate customs territories under the law.*

*2. Importation of goods refers to goods being moved into Vietnam's territory from abroad or from designated special zones within Vietnam's territory that are treated as separate customs territories under the law."*

According to Clause 4, Article 3 of the 2017 Foreign Trade Management Law: *"A customs territory is a geographically defined area within the territory of Vietnam, established in accordance with the laws of Vietnam as a member; it engages in the buying and selling, and exchange of goods with other parts of the territory and foreign countries, which constitutes export and import activities."*

According to Clause 4, Article 26 of Decree No. 35/2022/ND-CP dated May 28, 2022, issued by the Government on the management of industrial zones and export processing zones: *"The exchange of goods between export processing enterprises and other areas within the territory of Vietnam, excluding non-tariff areas, constitutes export and import activities, except for cases specified in item c of this clause and cases not required to undergo customs procedures as prescribed by the law on customs."*

According to Clause 6, Article 4 of the Vietnamese Customs Law in 2014: *"Goods include movable assets with names and codes listed in the Vietnam Export-Import Commodity List that are exported, imported, in transit, or stored within the customs operational area."*

The scope of the customs operation territory is specifically defined in Decree No. 01/2015/ND-CP dated January 2, 2015, as amended and supplemented by Decree No. 12/2018/ND-CP dated January 23, 2018, issued by the Government.

However, in reality, existing legal documents still lack a clear definition and distinct characteristics for on-the-spot export and import, making it difficult to differentiate them from conventional export and import activities.

### **2.2. Regulations on on-the-spot export and import goods in processing activities for foreign traders**

According to current legal regulations, there is no specific provision regarding the concept of goods for on-the-spot export or import. However, related

provisions concerning on-the-spot export and import are reflected in various aspects of different legal documents such as: customs procedures for goods subject to on-the-spot export and import; the rights and obligations of the receiving party in processing, who must complete on-the-spot export procedures for certain types of goods; and tax policies regarding goods for on-the-spot export and import.

Article 182 of the Commercial Law No. 36/2005/QH11 dated June 14, 2005, regarding the rights and obligations of the receiving party in processing, states that: *"In the case of processing for foreign organizations or individuals, the receiving party is allowed to carry out on-the-spot export of processed products, leased or borrowed machinery and equipment, raw materials, accessories, surplus materials, scrap, and waste according to the authorization of the contracting party."*

Article 42 of Decree No. 69/2018/ND-CP dated May 15, 2018, on the rights and obligations of the contracting and receiving parties in processing, clearly specifies: *The receiving party in processing must complete the on-the-spot export procedures for processed products; leased or borrowed machinery and equipment; raw materials, accessories, surplus materials; scrap and waste according to the authorization of the contracting party.*

Article 35 of Decree No. 08/2015/ND-CP dated January 21, 2015, concerning on-the-spot export and import goods, states that the on-the-spot export and import goods in the processing activity for foreign traders include: goods ordered for processing in Vietnam and sold by foreign organizations or individuals to entities within Vietnam.

Clause 1, Article 86 of Circular 38/2005/TT-BTC dated March 25, 2015, mentions that on-the-spot export and import goods in the processing activity for foreign traders include: *processed products; leased or borrowed machinery and equipment; raw materials, surplus materials; scrap and waste under the processing contract.*

In conclusion, on-the-spot export and import goods in the processing activity for foreign traders are currently regulated inconsistently across various legal documents, such as the Commercial Law No. 36/2005/QH11 dated June 14, 2005; the Law on Foreign Trade Management No. 05/2017/QH17 dated June 12, 2017; the Customs Law No. 54/2014/QH13 dated June 23, 2014; the Export and Import Tax Law No. 107/2016/QH13 dated April 6, 2016; Decree No. 69/2018/ND-CP dated May 15, 2018; Decree No.

08/2015/ND-CP dated January 21, 2015; and Circular 38/2005/TT-BTC dated March 25, 2015.

### ***3. Customs procedures for on-the-spot export and import goods in the processing activity for foreign traders in Vietnam***

According to current regulations, the concept of customs procedures for on-the-spot export and import goods is not clearly defined in legal documents. Based on the concept of customs procedures as stipulated in the Customs Law No. 54/2014/QH13 dated June 23, 2014, and the regulations regarding on-the-spot export and import goods, the customs procedures for on-the-spot export and import goods in the processing activity for foreign traders can be summarized as the tasks that customs declarants and customs officers must perform according to the Customs Law for processed products; leased or borrowed machinery and equipment; raw materials, surplus materials; scrap and waste under the processing contract.

The detailed customs procedures for on-the-spot export and import goods in the processing activity for foreign traders are specified in Article 86 of Circular 38/2015/TT-BTC, amended and supplemented by Circular 39/2018/TT-BTC, which outlines:

#### *Exporter's responsibilities:*

- + Declare export customs information and transportation details, clearly stating in the "Destination for tax exemption transport" field the customs office's code for import procedures, and in the "Internal management number of the enterprise" field on the export declaration as #&XKTC or in the "Other remarks" field on the paper customs declaration;

- + Perform export procedures according to regulations;

- + Notify that export customs procedures have been completed so the importer can carry out import procedures and deliver goods;

- + Receive the import declaration after on-the-spot customs procedures are completed for further processing.

#### *Importers' responsibilities:*

- + Declare import customs information within the required time limit, indicating the corresponding export customs declaration number in the "Internal management number of the enterprise" field as #&NKTC#&export declaration number or in the "Other remarks" field on the paper customs declaration;

- + Perform import procedures as required;



+ Notify the exporter when the import procedures are completed to proceed with further customs procedures;

+ Goods may only be used in production or for sale after customs clearance for import is completed.

According to Article 10 of Decree 134/2016/ND-CP dated September 1, 2016, amended by Decree 18/2021/ND-CP dated March 11, 2021: *"Scrap and waste generated during processing, when moved for domestic consumption, are exempt from import tax. Taxpayers do not need to complete customs procedures but must declare and pay VAT, special consumption tax, and environmental protection tax (if any) to tax authorities as per tax laws."*

Therefore, scrap and waste generated during processing, when transferred for domestic consumption, are subject to on-the-spot export and import customs procedures as per Circular 38/2015/TT-BTC. However, this regulation is inconsistent with Decree 18/2021/ND-CP dated March 11, 2021.

#### **4. Evaluation of current regulations on customs procedures for on-the-spot export and import goods in the processing activity for foreign traders**

##### **4.1. Advantages**

The current regulations on customs procedures for on-the-spot export and import goods in the processing activity for foreign traders in Vietnam show the following advantages:

*Firstly, the regulations guiding customs procedures for goods ordered for processing in Vietnam and sold to entities within Vietnam by foreign organizations or individuals has significantly facilitated trade activities for foreign traders without their physical presence in Vietnam; hence, greatly benefited Vietnamese enterprises.*

In the activity of receiving processing orders from foreign traders in Vietnam, the processed products are owned by the principal overseas. When domestic businesses need to purchase products, the principal instructs the processor to deliver goods in Vietnam after the contract ends. The domestic business will make payments to the principal abroad or through the processor, and the goods do not move through Vietnamese territory. This is a common international trade activity in Vietnam. In this scenario, instead of the goods needing to be exported from Vietnam or exported to a bonded warehouse and re-imported into Vietnam, the goods are transferred directly between the processor in Vietnam and the local entity. This eliminates transportation costs associated with moving goods out of the country, optimizes logistics

costs, and shortens the transfer time of ownership, thus creating advantages for foreign traders without a physical presence in Vietnam and enhancing the competitiveness of processing activities for foreign traders in Vietnam.

*Secondly, the on-the-spot export and import have created a seamless supply chain in Vietnam.*

In cases where the principal authorizes the processor in Vietnam to purchase goods or receive goods from export-processing enterprises or businesses in bonded zones, the on-the-spot export and import procedures allow businesses to utilize available materials, shorten production time, save on costs, and ensure better quality of goods due to shorter transport distances...

*Thirdly, performing on-the-spot export and import procedures makes international payments more convenient for businesses.*

Except the cases in which the foreign trade contract specifies payment terms before delivery, completing the on-the-spot export and import procedures helps businesses with international payments, as the customs declaration for export and import has been confirmed by customs authorities.

##### **4.2. Limitations**

Despite the advantages, the current regulations on customs procedures for on-the-spot export and import goods in the processing activity for foreign traders have some limitations, including:

*Firstly, there is a lack of consistency in the general regulations regarding on-the-spot export and import goods in the processing activity for foreign traders.*

In reality, the current regulations on goods exported and imported on-site do not include provisions on: the definition of terms such as "on-the-spot export" and "on-the-spot import"; classification of on-the-spot export and import goods; characteristics of on-the-spot export and import goods; and distinguishing on-the-spot export and import goods from regular export and import goods. The absence of clear regulations on on-the-spot export and import goods in legal documents leads to dire difficulties in performing customs procedures for on-the-spot export and import goods in general, and on-the-spot export and import goods related to the processing of goods for foreign traders in particular.

*Secondly, Inconsistent regulations across legal documents such as the Commercial Law, Customs Law, Foreign Trade Management Law, and various decrees and circulars lead to unclear and conflicting*

procedures for customs. As a result, the regulations on customs procedures for on-the-spot export and import goods related to the processing of goods for foreign traders have not been developed based on a unified legal framework across the current legal documents.

*Thirdly*, customs procedures for scrap and waste generated during the processing process when transferred for domestic consumption have not been regulated and uniformly implemented according to the current legal provisions, leading to inconsistencies in the implementation by processing enterprises and customs authorities across the industry.

### **5. Proposals to enhance regulations on customs procedures for on-the-spot export and import goods in the processing activity for foreign traders in Vietnam**

In Vietnam, processing goods for foreign enterprises has consistently increased over the years, contributing to economic growth, creating more jobs for workers, increasing foreign exchange earnings, and helping businesses diversify production. Therefore, to maximize the advantages of processing activities for foreign traders in Vietnam, in addition to measures to attract foreign investment, apply modern technology in production management, and improve the skills of workers, the customs procedures for on-the-spot export and import of processing goods for foreign traders in Vietnam need to be improved promptly to facilitate customs procedures, further supporting international trade, and enhancing the integration of logistics activities.

Based on the above analysis and evaluation, the regulations on customs procedures for on-the-spot export and import of processing goods for foreign traders in Vietnam need to be updated in line with the following proposals:

*Firstly*, incorporate regulations on on-the-spot export and import activities in legal documents, including definitions for on-the-spot export and import, classification of on-the-spot exported and imported goods, and distinguishing these from regular exported and imported goods. This will create a foundation for unified customs procedures for on-the-spot export and import of goods processed for foreign traders in Vietnam, aligning with related legal documents.

*Secondly*, establish consistent regulations for on-the-spot export and import in relevant laws, such as the Commercial Law, Customs Law, Foreign Trade Management Law, Export-Import Tax Law, and lower-level legal documents (Decrees, Circulars).

This ensures a unified implementation of customs procedures for on-the-spot export and import of goods processed for foreign traders in Vietnam.

Within this proposed improvement, the unified regulations will include:

- Goods processed in Vietnam and sold by foreign organizations or individuals to entities in Vietnam.

- Processed products; rented or borrowed machinery and equipment; surplus raw materials or supplies from processing contracts when donated, sold, or given away in Vietnam. Alternatively, consider removing existing regulations on on-the-spot export and import in current laws, with these goods subject to standard export and import procedures under applicable trade and tax laws.

*Thirdly*, remove the customs procedure regulations for scrap and waste generated during processing and transferred for domestic consumption as outlined in Circular 38/2015/TT-BTC, in line with the provisions of Decree 134/2016/ND-CP. This will facilitate processing enterprises when there are cases of transferring scrap and waste for domestic consumption.

*Fourthly*, increase penalties to ensure that on-the-spot import procedures are completed within the required timeframe (within 15 working days from the date of export customs clearance, the importer must complete on-the-spot import procedures). To ensure compliance with customs procedures, additional regulations should be included to suspend customs procedures for shipments where the export declaration exceeds the 15-day deadline and there is no corresponding on-the-spot import declaration.

*Fifthly*, establish an advanced information management system for the processing of goods for foreign traders by industry, contributing to improved state management efficiency in customs for foreign processing goods, creating a healthy business environment, increasing foreign investment in Vietnam, and improving the conditions for international processing activities in the country.

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