CONSOLIDATED ISSUES AT DISCUSSION MEETING BETWEEN GDC AND VBF TAX & CUSTOMS WORKING GROUP 13 March 2018 [1]

No.	Difficulties	VBF's comments/recommendations	GDC's responses	Agreement
1.	Some domestic enterprises sell goods to foreign customers through overseas agents. At the time of export to the agent, there is yet true value, and thus the customs value declaration is based on the provisional value. The prevailing customs regulations allow the customs declarant to declare the official value within 90 days from the date of declaration registration, and after 90 days, the declarant must submit the dossier to the Director of the Customs Department for audit, review and acceptance. Nonetheless, the time when the official value of export goods is available depends largely on the business nature of each enterprise rather than fixed by any time frame. Therefore, except for cases where the export goods have a duty rate higher than 0%, the official value declaration submitted to the Director of Customs Department for each case within a 90-day time frame is unnecessary since it does not affect the amount of duty paid to the State budget while taking up time and cost to implement. We kindly request the GDC and the MOF to consider minimizing the administrative procedures in this regards.	1. Due to the unique features of some enterprises, it's impossible to define the final value within 90 days. Thus, they will have to submit the documents to GDC's General Director to further review, which will take a lot of time. Does GDC has any measure to tackle this problem? 2. VBF kindly requests a common solution which is able to facilitate all the enterprises. Is it possible that GDC considers the amendment of Circular 39?	1. Value declaration after 90 days is stipulated at Circular 39/2015/TT-BTC, thus businesses must comply. There should be documents for unique and specific cases. 2. There is currently no plan for amending Cir 39, thus it's impossible to apply for all the cases.	- If businesses meet unique cases, they should send document to GDC for further consideration. - VBF should note down the cases with similar problems to submit GDC for their further consideration in amending the Cir 39

[1] This meeting was followed up the meeting on 8 December 2017

2	Domestic enterprises purchase goods from EPEs or from foreign suppliers and then assign the EPEs or foreign suppliers to place their goods in bonded warehouses for later exporting to other EPEs or selling to local businesses. Pursuant to Official Letter 620/XNK-CN of the Ministry of Industry and Trade, it appears that foreign invested enterprises that do have the right to distribute may not be considered to have the right to transfer ownership in the bonded warehouse; which contradicts with Article 53 of the Law on Customs. Kindly request the MOF to clarify: Are enterprises that have been licensed to exercise import and export rights, distribution rights allowed to transfer ownership in the bonded warehouse? Do EPEs that provide goods to domestic enterprises need to implement customs declaration when bringing goods into bonded warehouses?	The issue lies in the discrepancy between GDC and the Ministry of Industry and Trade: while GDC provides detailed guidelines for transferring the ownership of the goods bought overseas in the bonded warehouses, Official Letter 620 of MOIT does not allow. What is GDC's perspective, can enterprises transfer the ownership? Are processors required to make customs declarations when their goods enter bonded warehouses?	- Customs Control and Supervision Department responded to VBF as follows: Pursuant to Clause 2, Article 3 of Decree 187/2013/ND-CP dated November 20, 2013, foreign-invested traders, foreign companies and branches thereof operating in Vietnam shall be subject to the Decree and other relevant laws and international commitments to which the Republic Vietnam is a signatory and the roadmap published by the Ministry of Industry and Trade. So, if FDI enterprises purchase goods from Export Processing Enterprises (EPEs) or foreign countries and send them to bonded warehouses while awaiting to be sold to other EPEs or domestic enterprises, they will be subject to relevant regulations. Accordingly, according to Clause 1, Article 4 on the exercise of the right to import and Clause 1, Article 5 on the exercise of the right to distribute in Circular No. 08/2013/TT-BCT dated April 22, 2013 of the Ministry of Industry and Trade and under the guidance in Official Letter No. 620/XNK-CN, the Company is entitled to import and directly carry out customs procedures for the goods to enter the bonded warehouse but not to transfer ownership of goods in the bonded warehouse. - In essence, Official Letter 620 is based on Circular 05 guiding Decree 23, but now that Decree 09 has been issued in place of Decree 23, it is not clear yet	- Because these documents are regulated by the Ministry of Industry and Trade, VBF should send a written request to the Ministry of Industry and Trade requesting clarification.

			about the new Circular guiding Decree 09. Decree 09 and the Foreign Trade Administration Law does not specify whether a company import goods into the bonded warehouse for the first time needs to fulfill its tax obligations or not. The current practice is based on a nullified Decree so it is very difficult to determine.	
3	In accordance with Clause 1a Article 34 Decree 134/2016/ND-CP, imports on which import duties have been paid and that are re-exported to a foreign country or exported into a free trade zone shall be eligible for import tax refund. Accordingly, we understand that goods imported for trading purposes when exporting are eligible for import tax refund. Some local customs authority are currently denying tax refund in cases where enterprise makes declarations using Export for sale code and not allowing enterprises to make declarations using Re-exporting code. We respectfully request the GDC and the MOF to confirm whether trading activities (exercise the buy-sell activities, i.e. export goods that were imported) are be eligible for import tax refund? Which export/import code should enterprises use for declaration when selling imported goods to foreign countries or into a free trade zone?	It is necessary to clarify here that when goods are imported for commercial purpose, it must be declared under code B11, if then it is exported for commercial purpose or to free trade zone, will import tax be refunded?	- Procedures or codes for declaration are clearly specified under Official Letter 2765. - The key issue is whether it is import for commercial purpose or for return? If the goods is declared under code B11 but then reexported, tax refund will apply; otherwise if it is traded on domestic market, tax will not be refunded.	GDC (Department of Import-Export Tax) will discuss more about code B11, which types are refundable and which are not eligible for refund.
	Recently, many businesses have encountered cases where the guidance or post-clearance audit conclusions of the customs authority issued at two different times have contents/	VBF's concern is that new code and tariffs can be applied but not on a retroactive basis.	It is a principle that the timing of customs declaration is a milestone to determine all times for calculating tax refunds or misstatements.	Circular 14 (Clause 4 of Article 6) still has to be applied on a case-by-case basis.

4	guidance that are different or contradict with one another on the same issue. Customs authority often apply retrospective calculation to collect tax in these cases. For instance, the customs authority determine different HS codes for the same good at two periods, even though the good and description in the tariff schedule throughout the period do not change. Or the enterprise allegedly have applied the wrong HS code and was subject to tax assessment for a commodity during the post-clearance audit; however, when the enterprise requested the classification result for this commodity from the Department of import and export tax, this item is classified in the HS code that has been applied previously by the enterprise. How should the application of two different guidances on the same issue be carried out? What is the legal basis for such retrospective application?	It is proposed that GDC confirm whether the notification of Goods Analysis and Classification Center and post-clearance audit conclusion are legally valid or not?	The review and apply other HS code once every long while is because some items are difficult to be assigned with the right code. According to Circular 14 (Clause 4 of Article 6), no retroactive consideration shall be applied. However, in order to avoid abuse of this provision, specific cases need to be reported to the Ministry of Finance. If post-clearance audit results identify fraud, the company will be charged with retroactive taxes according to the Law on Enterprise.	As regards post-clearance audit, if the enterprise has a high degree of compliance with no historical record of fraud, the enterprise can be assured that no retroactive tax shall be applied. Enterprises must ensure that they stick to the same goods with the same HS code, same function which have been declared before, i.e. goods having the same composition, nature, function, use, physical and chemical composition, and from the same manufacturer or importer shall be subject to Clause 4, Article 6 of Circular 14.
	The regulations require adjustment of the import declarations in case of incurring additions after importing (for example: royalties, commissions) on the dutiable value of import? How should these additions be allocated to calculate the additional import duty? The adjustment of each item in each declaration is not feasible for the enterprise to	Adjustment for each declaration is not feasible. Is it possible to allocate by quantity and weight?	Circular 39/2015/TT-BTC provides guidance that calculation should be based on quantity, weight, volume, not the invoice value only.	Guidance of HCMC Tax Dept. can be used.

5.	implement. Can the additional duty amount be calculated and determined according to the average tariff rate and value of relevant imported goods in a given period. We kindly request the GDC and the Ministry of Finance to provide specific guidance on the method for the amendment, additional declarations and the allocation of additions in these cases.			
6.	100% foreign invested company of EPE status is manufacturing medical devices and components. Since the raw materials imported for manufacturing are very small in size and large in quantity, each customs declaration/ invoice includes many shipments with the quantity ranging from several thousand to several hundred thousand units/ shipments. Moreover, since the products require a high level of precision, almost perfection, the raw materials or unfinished products cannot be calculated by pieces for inventory purpose to avoid impairment of medical product quality. Besides, in practice, an invoice of imported goods will not be all manufactured in the month but rather the manufacture process lasts 3-4 months, or even one to two years. Due to the typical characteristics of the goods, when importing raw materials, the Company declares the quantity based on the invoice description (unit can be box/barrel/ weight: kg) and does not re-count each item when warehousing. The company only knows the actual quantity of raw materials used when the production is finished. Hence, the Company	Some items that are too unique and cannot be quantified upon being imported, it may take several months or several years to determine. Is it possible to redeclare goods based on stocktaking results at each period?	Customs regulations entails self-declaration. It is rarely the case that additional declaration under the guidance of Official Letter 7889 cannot be done. In case deviations/tolerances prescribed in the contract are applied, assessment by the functional agencies is still needed. Applying for assessment is also not simple. Current regulations allow for additional declarations on an annual basis, but additional content related to data must be based on declarations. Alternative mechanism to ensure transparency or some objective grounds to serve as a basis for additional declarations, if available, can also be considered.	A separate meeting between GDC and enterprises should be organized to discuss the details and procedures applicable to specific goods and resolve the issue. Instead of resorting to customs declaration, enterprises should have a transparent monitoring and management mechanism connected to the agency to ensure bases for additional declaration are available.

	can only track (according to each code of raw materials in the warehouse) by **inventory check of the materials** or after the manufacture of a product using materials exempt from inventory check finishes. In this case, when detecting the differences, can the company re-declare the amount of imports based on the amount of imports - exports - inventories recorded by the company in each period since it is impossible to make adjustments according to each item listed in each declaration?			
7.	Similarly, for materials used for packaging such as adhesive tape, wooden pallet, carton box, air bag, etc. Since the customers' orders and requirements will vary from time to time, it is very difficult to set norms for these packacking materials, and the setting of norm can not accurately reflect the consumption of packaging materials. In addition, the total value of these packaging materials is usually insignificant compared to the value of the final product. Therefore, the enterprise proposes that the monitoring should be based on the actual amount showed in the quarterly/periodic stock-take minute, instead of setting and monitoring different norms for these packaging materials. We hope that the GDC and the Ministry of Finance will provide confirmation and detailed guidance on this matter.	It is stipulated that enterprises develop the norms themselves. If they can't, is it appropriate to use the record of raw materials?	Circular 08 which is under amendment says that the enterprise which is unable to develop the norm itselt, it does not need to do that.	
	In case where there is already a Master contract between the two parties, will the	Is it appropriate if the enterprises use PO without signature?	Pusuant to the Commerce Law and Foreign Trade Law, it must be in	VBF will give the guidance that "PO with

8.	Purchase Order (PO) be deemed equivalent to Purchase/Sale Contract for customs purpose? Considering that the exchange of agreements resulting in the issuance of POs between buyers and sellers is reasonable as an expression of the offer to enter into contracts in international trading in accordance with the prevailing regulations of Commercial Law. So in case there is no Master contract, is the PO (without signature confirmation) considered equivalent to Purchase/Sale Contract for customs purpose?		detailed document and behavior. It is requested in documents in Vietnam (Decree 187, Decree 08 stipulates that it must be in contract or other similar methods). Article 25 Decree 08 mentions the PO with certain conditions.	basic information and signature"
9.	Under the current guidance of the Ministry of Finance (ruling No. 13959/BTC-TCHQ dated Oct 4, 2016) the deadline for submitting the originals of the Certificate of origins (C/O), except for the C/O form VK, is the time of registration of customs declarations (for paper declarations) and at the time of submission of customs dossiers (for electronic declarations) with extension of 30 days from customs registration for customs duty incentives; whereas, under the provisions of most Free Trade Agreements, the deadline for C/O submission is 12 months from the date of C/O issuance. Is it reasonable to require submitting the original C/O at the time of registration of the customs declaration and at the time of submission of the customs dossier? Is this favorable for enterprises implementing the regulation or not?	Enterprises asked whether it would be possible to apply 12 months as in international commitments to submit C/O.	Vietnam has 2 commitments under the framework of ASEAN + Japan and VN + Japan agreement with regard to time to submit C/O. According to these commitments, C/O must be submitted at the time of carrying out customs procedures and import procedures. The Ministry of Finance's Official Letter has also taken into account international commitments to ensure compliance. According to AFTA time limit is 6 months and ATIGA is 12 months. Can GDC consider extending to more than 30 days? Currently the time limit of 12 months is only applied under VN-Korea agreement. ATIGA: It is necessary to review carefully whether 6 months is the time limit for re-inspection after clearance to	If this is not detailed in some international commitments, domestic regulations shall apply. Vietnam has carefully considered and deemed 30 days appropriate for submitting C/O. If enterprises can prove that international commitment is better, they are encouraged to do so.

			determine the validity of the C/O. AFTA: stipulates that it should be submitted at the time of conducting customs procedures. ASEAN + Japan stipulates that it can be submitted during the validity of C/O. It is common that C/O is submitted within its validity period. VEKA: If C/O is not submitted at the time of customs clearance, redeclaration may be applied to submit C/O and be entitled to overpaid tax refund within 12 months from the date of importation.	
10.	According to the regulations, goods temporarily imported for re-exporting or temporarily exported for re-importing shall have to go through customs procedures at border-gate customs sub-department. However, EPEs must make declaration at the customs sub-department in charge of EPEs. Hence, EPEs can not carry out customs procedures for temporarily import for re-exporting, temporarily export for re-importing at the express mail customs sub-department, but rather the enterprise must use other modes of transportation to carry out this procedure even though there are some small shipments of less than 1kg. In these cases, can EPES make declarations for temporarily import for re-exporting, temporarily export for re-importing at the sub-department that is convenient for the company?		Regarding the enterprise's problem with regard to the place of conducting customs procedures for temporarily imported – re-exported, temporarily exported – re-imported goods of EPEs, GDC acknowledged the issue and changed the place of carrying out procedures at Articles 50, 52, 54, 55 in the draft Decree to amend and supplement Decree No. 08/2015/ND-CP dated January 21, 2015.	This new Decree will be adopted soon and revise Article 48.

11.	EPE purchases domestic goods as gifts for employees or customers. The supplier issues VAT invoices for EPE and EPE pays the sales price including 10% VAT. As stipulated in the regulations, we understand that in this case, EPE will be required to issue invoice for the value of the purchased goods described above. However, EPEs can not issue VAT invoice. What kind of invoice is required in this situation? Is is required to carry out customs procedureces for giving gifts to individuals and clients? if yes, how to do it?		- According to Clause 2, Article 74 of Circular 38/2015/TT-BTC, goods purchased by the EPE from the domestic market or imports from overseas on which taxes have been fully paid and regulations on management of exported or imported goods are adhered to, when goods are sold on the domestic markets are exempt from customs procedures. As such, if the domestic enterprises have issued VAT invoices at the VAT rate of 10% and the EPEs have fully paid the tax, they shall not have to carry out customs procedures. - The management of invoices rests with the General Department of Taxation, it is suggested that the enterprise contact the General Department of Taxation for more detailed guidance.	Article 74 of Circular 38 stipulates that procedures are not required.
12.	Company M conducts export processing activities for foreign partners. When the processing contract has been terminated and the liquidation of contract is being caried out, there are still some products that has not been exported and unfinished products remaining. The foreign company assigns company M to transfer the remaining finished and unfinished products to the subsequent processing contract. To our knowledge, there is currently no specific guidance on the handling and procedures for the transfer of finished or unfinished products to the next processing contract, but only guidance on how to handle		According to Article 10 of Decree No. 134/2016/ND-CP dated September 01, 2016: 1. Goods imported for export processing and processed products under processing contracts shall be exempt from export and import duty according to Clause 6, Article 16 of the Law on Import and Export Duty, including: a) Imported materials/supplies (including components, semi-finished products, packages) that form the exported products, or materials/supplies	Request the GDC to provide guidance in document on customs procedures for transferring of finished products from the previous processing contract to the subsequent one.

	and transfer raw materials to the next processing contract. In this case, can the company convert the finished and unfinished products into raw materials and then make export declaration transferring E54 to the new contract?		that are directly used for the manufacturing of exported products but do not form the finished goods, including the case when the outsourced party import materials, components and supplies themselves to perform the processing contract. ... e) Goods imported for processing but allowed to be disposed in Vietnam and actually disposed. In cases where goods imported for processing are used as gifts or presents, tax exemption shall apply according to Article 8 of this Decree. After the time limit for the processing contract, unused imported goods for processing must be re-exported. Otherwise, tax must be declared and paid as per regulations. g) Processed products for export. - According to Clause 3, Article 34 of Decree No. 187/2013 / ND-CP: "Machines, equipment leased or borrowed under processing contracts; excess raw materials, byproducts, waste, and discarded materials shall be handled according to the agreement of the processing contract, which, however, must comply with the Vietnamese law." - According to Article 64 of Decree No. 38/2015/ND-CP dated March 25, 2015: "2. Solutions Pursuant to Vietnamese laws and processing agreement, the solutions forredundant materials and supplies,	

			waste, scraps, hired machineries and equipment will be as follows: ... c) To transfer to other processing contracts in Vietnam; ... Based on the above-mentioned provisions, if after the expiry of the processing contracts, if the processing contracts or the processing contract's annexes contains a term that the hiring party agrees to transfer all raw materials, excess materials, discarded materials and faulty products for processing of old processing contracts to new processing contracts, raw materials, excess materials, discarded materials, faulty products, such materials shall be exempt from import duty as stipulated in Clause 1, Article 10 of Decree 134/2016/ND-CP.	
13.	A domestic company acts as a main contractor executing many contracts in supply purchase - design - construction for export processing enterprises in Vietnam. The tools, machineries and materials used for the construction were imported from overseas. The investor is the importer of record in the customs declarations and the buyer in the contract with the foreign suppliers. According to the contract, the main contractor will settle the payment for the whole contract. Under prevailing regulations, we understand that imports from overseas into export processing zone and only used in the export processing zone are exempted from import duty. Accordingly, the imported machineries and materials for the construction		According to Clause 4, Article 2 of the Export and Import Tax Law No. 107/2016/QH13, goods imported from overseas into the non-tariff zones and used only in non-tariff zones shall not be subject to import duty. According to Clause 20 of Article 5 of the VAT Law No. 13/2008/QH12, goods and services traded between foreign countries and non-tariff zones and between non-tariff zones shall not be subject to VAT. Based on the above provisions, cases where goods imported from foreign	GDC has sent Official Letter No. 845/TXNK-CST dated February 6, 2018 to the enterprise

	of export processing zone as explained is not subject to import duty and VAT, regardless of method of payment. We respectfully request GDC to confirm our understanding of regulations.		countries into export processing zones and used only in export processing zones and not subject to import tax shall not be subject to VAT.	
14.	Tax refund for Ban Phuc Nikel	The company submitted the documents; the Dept. of Import & Export Tax is considering response in document.	The company discussed with the GDC already.	GDC (Im/Export Tax Dept.) will issue response in official document to the company