

## CUSTOMS POSITION PAPER

*Prepared by  
VBF Customs Working Group*

On behalf of the Vietnam Business Forum Customs Working Group, we have appreciated the opportunity to have dialogue with the General Department of Customs over the past year. We believe the developing Customs/Business Partnership Program under Decision No. 448/QĐ-TTg of the Prime Minister dated 25 March 2011 will continue to enhance GDC's mutually beneficial relationship with the business community. The purpose of this letter is to begin the process for establishing a 2013/2014 GDC/VBF dialogue. In an effort to begin framing some of the discussion items VBF would like to propose some of the issues of concern for the business community in 2013 and request a proposed date for a dialogue from GDC.

### **E-customs**

In 2012, representatives from the business associations noted concern that the market based e-customs system seems to not adequately provide greater efficiency, effectiveness, and transparency. GDC replied to this concern by sharing that e-customs continues to be a "work-in-progress" and the business community should expect to see it more comprehensively rolled out in 2013.

Additionally, many enterprises this year have experienced interrupted or obstructed connections when submitting their dossiers online. Therefore, enterprises expect that the data link in local customs branches should be more stable with better bandwidth to facilitate their online customs procedures.

The VBF business community is maintaining a "wait and see" position regarding E-customs; however, we would like to have an update on the status of its implementation and would like to request that GDC gain feedback from the business community regarding its benefits and problems before closing out the project. Feedback should include the function of customs procedure, operation details, schedule of the test run, method of registration, and how to access.

### **Greater Integration between Customs and other Vietnamese Ministries and Departments**

Too often the causes of delays and confusion seem to stem not from the customs departments themselves but from other ministries and agencies such as MOIT, Ministry of Health, etc. which require GDC to enforce new laws or decrees by holding goods at the border pending licenses, payment of special taxes (such as "environmental tax") etc. Often Vietnam customs is given insufficient notice periods for these initiatives, resulting in inadequate training and preparation of the customs officers, not to mention importers, their agents and forwarders.

We recommend that whenever customs is required to enforce regulations from various ministries and agencies, that customs themselves be responsible to provide at least 90 days notice to businesses of the new regulations prior to the effective date. It should be noted that GDC should have the right to request such notice from other agencies and ministries under Vietnamese law and could and should be allowed to refuse to implement decrees whose effective date does not provide for sufficient notice and preparation.

Furthermore, we note that the Prime Minister issued Decision No. 48/2011/QĐ-TTg dated 31 August 2011 ("Decision No. 48") on Piloting the implementation of National Single

Window ("NSW") customs mechanism. The pilot program requires integration between the Ministry of Finance, the managerial ministry of the Vietnamese Customs and other Ministries including Ministry of Industry and Trade, Ministry of Transport, Ministry of Health, Ministry of Agriculture and Rural Development, Ministry of Natural Resources and Environment. Under the NSW customs mechanism, exporters or importers in Vietnam will submit export dossiers or import dossiers to a single receiving place (or NSW). Afterward, the agencies of the ministries will process data and make decisions based on the data in the system. Then the customs authority will make a final decision on the customs clearance. As planned, from January to December 2013, the pilot program must be implemented at the Ministry of Finance, Ministry of Industry and Trade and Ministry of Transport; and this program will be implemented at Ministry of Health, Ministry of Agriculture and Rural Development, Ministry of Natural Resources and Environment from January to December 2014.

We are aware that the Ministry of Finance, Ministry of Industry and Trade and Ministry of Transport issued Joint-Circular No. 84/2013/TTLT-BTC-BCT-BGTVT on 25 June 2013 ("Joint-Circular No. 84") on guiding the implementation of the pilot program among the ministries. However, Joint-Circular No. 84 just took effect on 28 August 2013.

We request that the relevant Ministries should work closer and have stronger integrations in order to implement the pilot program as the plan designated by the Prime Minister in 2013 and 2014.

#### **Integration with other customs offices within Vietnam**

Our members have reported cases where goods, which have already been tested and classified in one region of Vietnam, have had to undergo duplicate testing in other regions of Vietnam. Further, there have been instances where testing centers in different regions have reached different conclusions in regards to HS classifications.

We urge GDC to expedite integration of the testing centers and customs offices such that specific products that enter Vietnam through a variety of ports will have a single, consistent, predictable classification and that importers will be spared repeated testing of the same product only because it has come through a different port.

In addition, we are aware that the application of laws is different between the local customs branches. For instance, the customs office in Ho Chi Minh City required importers to provide Certificate of Free Sale with respect to certain goods whereas the customs office in Ha Noi did not require like that.

#### **Integration with Foreign customs offices and the WCO**

Vietnam's membership in the World Customs Organization and its pursuit of the ASEAN single window provide an excellent opportunity to access data on product classification. Additionally, it should provide the basis for integrating with certification authorities in the countries of its trading partners to ascertain the authenticity and correctness of certificates of origin and other documents.

These memberships will also offer the opportunity to know of global and regional best practices.

We ask for the cooperation of GDC in providing regular updates on the status of these integration initiatives and resulting efficiencies.

### **Informal “Facilitation Payments”**

We note increased efforts and attention toward the elimination of bribes and corruption. Most of this effort is focused on obvious bribery between importers/exporters and customs officials which cheats Vietnam from tariff's it is due and inappropriately benefits the importer/exporter. We believe that the general law abiding business community and GDC share a commitment to see corruption eliminated. However, our members note either direct pressure or pressure for their brokers/intermediaries to pay systematic, small, and standard “facilitation fees” to clear shipments. When pressed, local customs officials will say it is not required or suggest that it does not exist. These payments, although potentially believed to be necessary for supporting the infrastructure, place companies at risk with laws such as the Foreign Corrupt Practices Act (FCPA) or UK Anti-Bribery Act.

We ask that an appropriate plan would be implemented to ensure all routine payments to customs are clear and transparent to mitigate company's risk. One possible approach may be to establish an Office of Customs Ombudsman as is practiced by a number of customs services to receive and follow up on complaints received from companies, customs brokers or the public and to take remedial action.

Another is to create an online capability on the Customs website to allow for both responsive communications about such matters with Customs and anonymous reports of illegal activity through anonymous reports concerning such activities. One example of the latter which may be considered is found at the website of U.S. Customs and Border Protection at: <https://help.cbp.gov/app/forms/complaint/>

### **Role and Responsibility of Brokers**

The usage of brokers to intermediate between the importer/exporter and customs is standard for most companies and often encouraged by customs. In the case that a broker makes a mistake or engages in an inappropriate payment, it is the company that is often liable. We would ask that GDC provide further clarification on roles, responsibilities, qualifications, and appropriate training for brokers. It is a best practice internationally for customs brokers to be licensed by the customs service of the country of import by means of examinations of individuals to determine their professional qualifications and abilities to provide customs brokerage services and, to conduct background examinations of such individuals before licenses to operate are granted.

In the case of errors by either the importer or customs broker, it is a best practice for importers to be encouraged to take corrective actions by enjoying mitigation of customs penalties through procedures that allow for prior voluntary disclosure of errors to customs and the taking of prompt correction of these by the importer and broker.

### **Amending BOMs, Yields, etc.**

Many VBF members operate with Processing Contracts or as EPE entities. To maintain control over the import of materials and its subsequent usage in final products, companies submit BOMs, declare estimated yields, etc in accordance with Circular No. 194/2010/TT-BTC, Circular No. 117/2011/TT-BTC and Circular No. 196/2012/TT-BTC. Inevitably, estimations prove inaccurate and companies must request to amend their BOMs, yields, etc. Member companies find that requests to amend the filed estimates are often turned down for one of the following reasons:

- Customs' computer system cannot easily make the adjusting entries
- Customs do not want the hassle of making the adjustment
- Customs believes the company is being dishonest and outright rejects the request

- Customs does not have the manpower to investigate in order to approve the request

The result is either the company will end up having inaccurate inventory in customs database compared to actual or they will be encouraged to register new contracts, BOMs, etc. to start fresh or offset the problem. These solutions are cumbersome and at worse inaccurate compared to reality.

We ask Customs to develop a system whereby appropriate adjustments can be made so that a higher level of accuracy and trust can be created between customs and the importer/exporters.

Systems that accommodate the needs of modern high-volume manufacturing or processing activities for inventory reporting are an international best practice. One example may be the "Alternative Inventory Control System" developed by U.S. Customs that is required to be used by manufacturers in U.S. Foreign Trade Zones. Such a system is developed by the manufacturer and trade zone operator based upon the inventory reporting system used by the company involved. It is reviewed and approved by U.S. Customs and provides for:

"...(a) *Systems capability*. The operator shall maintain either manual or automated inventory control and recordkeeping systems or combination manual and automated systems capable of:

- (1) Accounting for all merchandise, including domestic status merchandise, temporarily deposited, admitted, granted a zone status and/or status change, stored, exhibited, manipulated, manufactured, destroyed, transferred, and/or removed from a zone;
- (2) Producing accurate and timely reports and documents as required by this part;
- (3) Identifying shortages and overages of merchandise in a zone in sufficient detail to determine the quantity, description, tariff classification, zone status, and value of the missing or excess merchandise;
- (4) Providing all the information necessary to make entry for merchandise being transferred to the Customs territory;
- (5) Providing an audit trail to Customs forms from admission through manipulation, manufacture, destruction or transfer of merchandise from a zone either by zone lot or Customs authorized inventory method..."

In addition, such approved systems and procedures allow for an annual reconciliation process for all inventories that assure that customs compliance requirements are fulfilled.

### **Preventing delays through monitoring, outreach and education**

Many bottlenecks and delays are admittedly due to recurring errors and/or omissions on the part of businesses. GDC should endeavor to systematically reduce these by:

1. Setting and publicizing target clearance time stated in hours or days.
2. Set a new "single submission" target, whereby customs and businesses cooperate on ensuring an increasing portion of shipments are cleared with the first application submission and that reworks, requests for additional document submissions are minimized, saving time for businesses and customs officers alike.
3. Adopting a mindset in which delays and resubmissions are seen not simply as the fault of business rather as a failure in the system. Through partnership these failures can be

addressed through simplification, consistency, transparency of the processes, and as initiatives to educate businesses in the processes. For instance, importers must make tax payments for each shipment and the customs office will only release the imported goods after the customs office see the tax payments shown in their system. The process of tax payment verification conducted by the customs office consumes a lot of time. Therefore, it can be simplified by a producing a bank guarantee or payment vouchers provided by importers.

4. Keep a data log of all shipments in which either the clearance time exceeds the target or where additional submission was required. The log will include the time of the delay, the reason for the delay and/or resubmission and this data will be consolidated into a report by each customs office showing the delays and summarizing the key reasons.
5. Based on the above log, customs will list in its website and other publications the most common causes of delays along with clear advice on how to prevent them.
6. Customs will monitor the incidence of the above causes and strive to work with business to reduce their occurrence.
7. The above data should be reported and shared among the various customs offices to create.

While it is common among customs departments around the world to have delays in clearance, these should be due to serious, classification issues rather than recurring errors or omissions in documentation that could be minimized via education.

### **Greater Transparency and Clarity in Establishing HS Codes, Customs Values and Procedure for Seeking Advance Rulings**

It is a best international practice of most WCO Member customs services to provide for procedures and a system for issuance of Advance Rulings in response to written requests by either importers in their territory or from exporters or producers in exporting countries concerning:

- HS tariff classification of goods prior to their importation, and
- The application of customs valuation criteria to a particular case, in accordance with the WTO GATT Customs Valuation Agreement.

It is usually provided that importers and customs officers may rely upon such official rulings with respect to disposition of their imports, providing their import transactions are in accordance with the matters covered by the advance ruling. Such rulings that are deemed by customs services to have precedential or guiding effects are published on the Internet to guide importers, customs brokers and other interested parties with respect to similar cases or transactions. One such examples is the U.S. CROSS system and in the EU, Binding Tariff Information documents serve a similar purpose.

International agreements require such procedures and these have provided benefits to both customs and importers or exporters in reducing the number of HS classification disputes and cases of error with declarations.

The Ministry of Finance issued Circular No. 128/2013/TT-BTC ("Circular No. 128"). Before Circular No. 128 was issued and will take effect from 1 November 2013, the Ministry of Finance issued Official Dispatch No. 8356/BTC-TCHQ ("Official Dispatch No. 8356") dated 28 June 2013 which temporarily provided the guidance on the procedures in order to obtain advance rulings as well as the guidance on the Amended Law on Tax Administration. According to the Amended Law on Tax Administration which took effect from 1 July 2013, importers/ exporters have the right to obtain advance rulings on classification, valuation

and origin if they find it necessary. However, as a matter of practice, the particular customs office refused to accept and process applications for advance rulings submitted by importers/exporters since they take the position that Circular No. 49/2010/TT-BTC ("Circular No. 49") is still valid. According to Circular No. 49 issued in 2010 importers/exporters can apply for advance rulings on classification only when the goods are not described in details under the export-import tariff table. This interpretation is not in accordance with the Amended Tax Administration Law, Official Dispatch No. 8356 and Circular No. 128. Therefore, we would like to propose that the Ministry of Finance have clearer guidance in order to avoid different interpretations in the implementation of the new regulations on seeking advance rulings.

According to Article 7 and Article 8 of Circular No. 128, when importers/exporters need to obtain advance rulings on classification and valuation of goods, they must submit to the customs office a sales and purchase contract with foreign merchants. In reality, importers/exporters can have transactions other than sales and purchase transactions and import/export under transactions other than sale and purchase are still subject to import/export duty. It should be reasonable for importers/exporters to seek advance rulings to confirm the tax and duty liability with regard to the imports/exports even if they do not sell or buy goods with foreign merchants. We recommend the Ministry of Finance amend Circular No. 128 so that importers/exporters can obtain advance rulings on classification and valuation for transactions other than sale and purchase.

Furthermore, according to Article 8 of Circular No. 128, importers/exporters can only seek advance rulings on customs valuation only if they have never imported such identical goods. This requirement indirectly forfeits importers/exporters' legitimate right to seek advance rulings on valuation for future imports/exports of the identical goods while the imports/exports in the past should not affect their right to have confirmation on customs value for future imports/exports.

In addition, according to Article 8 of Circular No. 128, importers/exports can seek advance rulings on customs value only AFTER they have already made payment via bank under L/C payment for the whole shipment. This requirement is irrelevant and restricts the legitimate right of importers/exporters to apply for customs advance rulings. This requirement also makes customs rulings no more ADVANCE customs rulings. Therefore, we recommend the Ministry of Finance abolish the requirement of having already made payments for application of advance rulings on customs value.

### **Appeals Process**

The appeals process has at times seemed unclear. We recommend that the appeals process be clearly outlined and publicized (including on the GDC website) including which bodies are involved in the appeal at each stage and the time businesses should expect for each decision.

In cases where appeals have worked in favor of a company and a refund is due, it should be paid in a timely fashion as stipulated under the law. We know of cases where refund payments are overdue by 6 months whereas Article 26 of Circular No. 128 provides the time limitation for the customs office to review a dossier of refund payment is 5 workings from the date when taxpayers submit the dossier.

Lastly, in cases where appeals rise to the level of the WCO, Vietnam should, as per its obligations under WCO, have experienced officers who are designated to address disputes prior to their being taken to the WCO.