

Processing Activities

A foreign-invested enterprise that already has the right to export may export goods processed according to such enterprise's order in Vietnam to a foreign country and to a separate customs area, subject to the following conditions:

- (i) Exported goods are not on the list of goods banned from export; the list of goods temporarily suspended from export; the list of goods not entitled to export in international treaties to which Vietnam is a party;
- (ii) For exported goods on the list of goods exported under permits or conditions, foreign-invested enterprises must obtain a license or fully satisfy the conditions prescribed by law.

Local companies and foreign-invested companies may process or do transition process (i.e. the processed product of this processing contract is used as a processing material for another processing contract in Vietnam, the processed product of the previous processing contract is delivered to traders designated by the ordering party for the next processing contract) of lawful goods of all kinds for foreign business entities as well as foreign-invested enterprises satisfying the above-mentioned conditions; and may not process goods on the lists of goods the export or import of which is prohibited or temporarily suspended, except for sales in foreign countries and with a permit from the PM. With respect to goods on the lists of goods of which the import and export are subject to issuance of a permit, business entities may only enter into processing contracts after they have been issued with a permit by the MOIT. The processing contract must be in writing or in another form with equivalent legal validity in accordance with the Commercial Law and minimally include certain prescribed terms.

Vice versa, Vietnamese traders can order goods to be processed

abroad for legal circulation.

Legislation

Local processing for foreigners are being governed by the Commercial Law dated 14 June 2005; Law on Foreign Trade Management dated 12 June 2017 (“Foreign Trade Management Law”); Decree No. 09/2018/ND-CP, detailing the Commercial Law and the Law on Foreign Trade Management on goods purchase and sale activities and activities directly related to the purchase and sale of goods by foreign investors and foreign-invested economic organizations in Vietnam (“Decree 09/2018”); Decree No. 69/2018/ND-CP dated 15 May 2018 of the GoV, detailing a number of articles of Law on Foreign Trade Management (“Decree 69/2018/ND-CP”); and Circular No.12/2018/TT-BCT dated 15 June 2018 of the MOIT, detailing a number of articles of the Law on Foreign Trade Management and GoV’s Decree No. 69/2018/ND-CP dated 15 May 2018, detailing a number of articles of the Law on Foreign Trade Management, as amended by Circular No. 42/2019/TT-BCT dated 18 December 2019 of the Minister of Industry and Trade, amending a number of regulations on the periodical reporting in the Circulars separately or jointly issued by the Minister of Industry and Trade (“Circular 12/2018/TT-BCT”).

Contents of the Contract

Having the similar contents of a formal economic contract, a processing contract must include: Names and addresses of contracting parties and of the party directly conducting the processing; name and quantity of processed products; price for processing; time-limit for and method of payment; list, quantity and value of imported raw materials, sub-materials and supplies and domestically produced raw materials, sub-materials and supplies (if any) for processing; levels of use of raw materials, sub-materials and supplies; level of consumption of supplies and wastage rate of raw materials in processing; list and value of machinery and equipment leased,

borrowed or donated for the purpose of processing (if any); measures to treat scrap and discharged waste and principles for dealing with leased or borrowed machinery and equipment and with left-over raw materials, sub-materials and supplies upon termination of the processing contract; location and time of goods delivery; trade mark of goods and origin appellations of goods; and duration of validity of contract. Trademark and the origin of goods in relation to the processing activities are normally falling within the responsibilities of the foreign principals.

As a matter of fact, a list defining quantities and values of input raw materials, auxiliary materials and supplies for processing activities with a defined rate of consumption and waste, and a list defining values of the machinery and equipment leased, borrowed or donated for processing service, should be present in the contract. Dealings on relevant equipment are also contracted since equipment are often leased to local processors from foreign principals in most cases. Both input materials and equipment can be imported into Vietnam based on temporary import and re-export.

Before performing the processing contract, the organization or individual shall notify the processing contract to the customs authority. When the processing contract is terminated or the processing contract expires, the parties to the processing contract must liquidate the contract and send a finalization report on the use of raw materials, supplies and periodically exported products to the customs authority.

Permitted Activities

Foreign suppliers are entitled to receive and transfer abroad finished products, machineries and equipment leased or borrowed to the processors; raw materials, auxiliary materials and supplies not yet used up; waste products and scraps after liquidation of processing contracts, except for the cases where they are allowed to be exported on the spot, destroyed,

presented or donated according to the regulations. To supervise the local processing activities and guide on production technical issues and check the quality of processed products as agreed in the processing contracts, foreign experts can be seconded to Vietnam by foreign suppliers.

Vietnamese traders which are suppliers ordering goods to be processed abroad may (i) temporarily export machinery, equipment, raw materials, auxiliary materials and supplies, or transfer machinery, equipment, raw materials, auxiliary materials and supplies from a third country to the processors to perform the processing contracts; (ii) re-import processed products. At the end of the processing contract, they may re-import redundant machinery, equipment, raw materials, auxiliary materials and supplies; (iii) sell processed products and exported machinery and equipment, raw materials, auxiliary materials and supplies to perform the processing contract in the market of the processing country or another market; and (iv) send experts and technical workers abroad to inspect and take over processed products.

Taxation

Input materials and equipment serving for the local processing activities are in principle exempted from taxes prevailing in Vietnam.

Vietnamese traders that order goods to be processed abroad are exempt from export tax and import tax in accordance with the tax laws on goods exported for processing and processed products imported under processing contracts; must pay tax according to the current regulations when selling processed products and exported machinery and equipment, raw materials, auxiliary materials and supplies for performance of a processing contract in the market of the processing country or another market; and have to fulfil tax obligations for processed products imported for domestic consumption.