

RULES OF ORIGIN FOR EXPORTS FROM VIETNAM

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GLOSSARY

COO	Certificate of Origin
CPTPP	Comprehensive and Progressive Trans-Pacific Partnership agreement
CTC method	Change in Tariff Classification
EVFTA	European Union–Vietnam Free Trade Agreement
LVC method	Local Value Content method
MOIT	Ministry of Industry and Trade
PSR List	List of Product Specific Rules
ROOs	Rules of origin
RVC	Regional Value Content
RWP	List of Required Working or Processing

A. OVERVIEW

Rules of origin (“**ROOs**”) are criteria to determine the national origin of a product. National origin is important because duties and restrictions (eg, anti-dumping duties, safeguard measures, labelling requirements, etc) often depend upon the source of imports. The practice of each country with regard to ROOs varies. It is, therefore, crucial for \ importers/exporters of goods and products into/out of Vietnam to have a general understanding of ROOs from a Vietnamese law perspective.

In general, imported/exported goods between Vietnam and a country in a free trade agreement with Vietnam (“**Vietnam’s FTAs**”) are subject to a preferential set of ROOs in each FTA (or “**Preferential ROOs**”). For a country that does not have an FTA with Vietnam (or “non-preferential countries”), Preferential ROOs are unlikely to apply. In such cases, the ROOs under Vietnamese domestic law (“**Vietnamese ROOs**”) will be important to the country of the foreign importer. To be clear, non-preferential countries (like the US) may not necessarily rely on the Vietnamese ROOs documentation. However, the Vietnamese ROOs may still be used for “reasonable reliance” by foreign authorities who investigate the origin of the goods exported from Vietnam.

Of note, for goods manufactured and sold within Vietnam, there is no legal framework to determine the origin of such domestic goods. That is, there is not yet a specific set of conditions/standards to determine whether a product labelled “made in Vietnam” (which is produced for the Vietnamese domestic market) is compliant with Vietnam’s own ROOs. Interestingly, demands for a separate regulation on ROOs applicable to Vietnamese domestic goods were first raised in 2019 (in the form of a new circular by the Ministry of Industry and Trade). However, until now, no legal documents have been issued by the Vietnamese Government regarding the matter. On January 10, 2024, a specific plan to issue a new draft decree on determining “made in Vietnam” products was outlined by the Prime Minister under Official Letter No. 41/TTg-QHDP on implementing the 15th National Assembly’s resolution. The new decree is expected to be issued only toward the end of 2025. For the time being, authorities have provided a cautious signal regarding the matter. Specifically, the Ministry of Finance issued an official letter in February 2021 (Official Letter No. 1523/BTC-TCHQ dated February 18, 2021) to guide customs authorities in circumstances where a product does not qualify for a Vietnamese Certificate of origin, to the effect that the exporter will be prohibited from specifying its product as “made in Vietnam” in its customs documents.

For the purpose of this article, we discuss general rules/procedures under the Vietnamese ROOs and two notable Preferential ROOs, namely the Comprehensive and Progressive Trans-Pacific Partnership agreement (“**CPTPP**”) and the European Union–Vietnam Free Trade Agreement (“**EVFTA**”). The context is of an exporter that exports goods/products manufactured in Vietnam and sells them to different foreign countries. We will also look at some specific examples.

B. VIETNAMESE ROOs

The rules on Vietnamese ROOs are set out in the following legal documents:

- The Government's Decree No. 31/2018/ND-CP dated March 8, 2018 on guiding the Law on Foreign Trade with respect to origin of goods ("**Decree 31**");
- Circular No. 05/2018/TT-BCT dated April 3, 2018, as amended by Circular No. 44/2023/TT-BCT dated December 29, 2023, of the Ministry of Industry and Trade on origin of goods (together, "**Circular 05**"); and
- Circular No. 33/2023/TT-BTC dated May 31, 2023 of the Ministry of Finance on determining origin of exported and imported goods ("**Circular 33**").

1. General rules

Generally, Vietnamese ROOs provide that a good/product is deemed to have originated from Vietnam if:

(i) it is wholly obtained or produced wholly in Vietnam (including, for example: a plant or plant product that is grown/cultivated/harvested in Vietnam; a live animal born and raised in Vietnam or goods from such live animal; etc.);

(ii) it is not obtained or produced entirely in Vietnam, but satisfies requirements under the List of Product Specific Rules ("**PSR List**") issued by the Ministry of Industry and Trade ("**MOIT**") under Circular 05:

a. There must be a change in tariff classification (**CTC method**). This means that materials used in the production of the good must not have the same Harmonized System classification (eg, Chapter level, Heading level or Sub Heading Level) as the final goods. Depending on the product, a product would have to undergo either a change in Chapter level (first 2 digits or CC), Heading level (first 4 digits or CTH) or Sub Heading level (first 6 digits or CTHS) in order to qualify as goods which originate in Vietnam.

If a product does not meet the CTC requirement under the PSR List, it can still be considered to originate in Vietnam, provided that it qualifies under the De Minimis rule:

- If the product is not classified from Chapter 50 to Chapter 63 of the HS: total value of the non-originating materials that did not undergo the required CTC must not exceed 15% of the FOB value; or
- If the product is classified within Chapter 50 to Chapter 63 of the HS: either (a) total weight of the non-originating materials that did not undergo the required CTC must not exceed 15% of the total weight of the product, or (b) total value of the non-originating materials that did not undergo the required CTC must not exceed 15% of the FOB value.

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or

b. A certain percentage of the good's value must originate in Vietnam in order for the good to be deemed as having originated in Vietnam (**Local Value Content method or LVC**). LVC is deemed to be part of the added value when compared to the total value of the goods produced or processed in Vietnam and after subtracting the value of imported materials which do not belong to Vietnam or the value of materials whose origin is unidentified, all of which are necessary to produce the goods. The common LVC required in order to be considered to have Vietnamese origin is 30%.

There are two approaches that can be used to calculate the LVC (ie, direct and indirect formula). The manufacturer may choose a formula to calculate the LVC during each financial year, and the authorities will determine the origin of the good based on the formula it chooses.

Generally, a PSR List prescribes specific rules of origin for a certain number of products, which allow selection or a combination of the two above methods if they meet corresponding criteria specified for each product. Under Decree 31's PSR List, there are two common themes to decide the origin of a good/product:

- Only apply the CTC method; do not apply the LVC method.

For example, cereal products (HS codes 10.01 – 10.08) would have to undergo a Change in Chapter level (ie, a change of the first 2 digits in its HS code, say, from its materials' HS code of 11 or 17 to, say, 10) in order to qualify as a product "Made in Vietnam". That is, only the CTC method applies; the LVC method does not apply.

- Apply either the CTC method or the LVC method (ie, both methods can be applied, but not at the same time).

Consider a pastrycooks' product (HS code 19.05). It can be considered to originate from Vietnam if it undergoes a change in Heading level (ie, a change in the first 4 digits in its HS code; say from its material codes of 17.01 and 11.01 to 19.05). It can also be considered to originate from Vietnam if it has an LVC value of 30% (ie, 30% Vietnam-sourced contents).

Let's look at a specific example: Company A produces biscuits in Vietnam (HS code 1905.31), all from materials imported from China, except for sugar, and under the following structure:

Raw Material	HS code	Origin	Value (US\$)
Flour (non-originating)	1101.00	China	4
Sugar (originating)	1701.14	Vietnam	3
Eggs (non-originating)	0407.90	China	2
Direct Labour & Overhead			2.5

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Raw Material	HS code	Origin	Value (US\$)
Profit			1.5
FOB			13

According to the PSR List, the applied rule of origin for biscuits is either (i) LVC 30%, or (ii) CTH (ie, a change of heading level in the product's HS code).

(i) LVC method

There are two approaches that can be used to calculate the LVC value. Each approach has a different formula (ie, direct and indirect formula). The manufacturer may choose either one to calculate the LVC during each financial year. The authorities will determine the origin of the goods based on the formula the manufacturer chooses.

Let's assume that Company A chooses the indirect formula (or build-down method). That is:

$$LVC = \frac{FOB\ Value - Value\ of\ non-originating\ materials}{FOB\ Value}$$

In which, FOB value is transaction value of the product adjusted to FOB basis, including material costs, direct labour costs, overheads, profit, and other possible costs, if any (eg, transportation/shipping-related costs). Value of non-originating materials means the value of the non-originating materials used in the production of the goods/products (eg, CIF value of imported materials).

Applying the formula to the example above, we have:

$$LVC = \frac{FOB\ Value - Value\ of\ non-originating\ materials}{FOB\ Value} \times 100\% = \frac{13-4-2}{13} \times 100\% = 53.84\%$$

The LVC of Company A's biscuit is 53.84%, which is more than the required LVC of 30% in the PSR List. The biscuit, therefore, qualifies as having Vietnamese origin in accordance with the rules.

(ii) CTC method

Based on the above table, the biscuit's HS code is 1905.31 (ie, heading level is 1905) while its materials are under the following heading: flour (1101), sugar (1701), and eggs (0407). Since flour and eggs are imported from China, they are non-originating materials.

The biscuits, therefore, qualify as having Vietnamese origin, because a change from heading levels of 1101 and 0407 to heading level of 1905 has occurred.

In addition to the above general rules, there are also other concepts that may apply when determining the origin of an imported good. Specifically, one important concept is “simple operations/processes” that will not confer origin on a product. Such concept includes any operation/process which does not require specialized skills, machinery, a production line or equipment, such as simple assembly of parts of products to a complete product. That is, if a good/product undergoes only “simple” or minimal operations/processes in Vietnam, it will not be considered as having originated from Vietnam, even if in theory it satisfies the above-mentioned general rules. Another notable concept for ROOs purposes, for example, is packaging materials and containers. Accordingly, in case the CTC method is applied to a product (according to the PSR List), the product’s packaging materials and containers for the purpose of retail sale will be disregarded when determining its origin. The same applies to packaging materials and containers for the purpose of transportation. On the other hand, if the LVC method is applied to the product, the packaging materials and containers will be considered for ROOs purposes.

2. ROOs procedures

Under Vietnamese law, it is not mandatory for an exporter to obtain a Certificate of Origin (“**COO**”). The Law on Foreign Trade Management specifically provides that a COO will only be issued if requested by the importer itself, or if so required by other Vietnamese legislation (which is not the case). In fact, Circular 33 exempts exported goods from the requirement to submit a COO to the Customs authority during customs clearance.

That is, an exporter is not required to obtain a COO in order to export goods from Vietnam to a foreign country. However, prior to customs clearance, an exporter is required to file a request for pre-determination of origin (“**Pre-determination Application**”) with the Customs authorities. The application documents for the Pre-determination Application includes:

- A standard form provided under Circular 33;
- A declaration of production costs and a declaration of origin of the domestic manufacturer/supplier of raw materials (made in standard forms provided under Circular 33), in case such raw materials are used for a subsequent stage to produce another goods/product;
- An explanation document on the production process or a Certificate of component analysis (if any); and
- Catalog or images of the goods/product.

The Customs authorities will decide whether a good/product will be determined to have originated from Vietnam, or from another country, or if its origin cannot be identified, based on the documents provided in the Pre-determination Application submitted by the exporter. If the Customs authority finds that the documents provided are sufficient, no further request or verification is needed. On the other hand, after reviewing the documents, the Customs authorities may seek further evidence, if it suspects fraud. If

so, further inspection and verification by Customs can be carried out at the manufacture's site. In normal cases, it may take up to 10 working days for the inspection and verification process and another five working days for Customs to issue an inspection and verification result. In practice, this timeline may be extended, depending on the complexity of the case. Of note, customs clearance can be simultaneously processed while the result of inspection and verification of origin is prepared by Customs.

C. PREFERENTIAL ROOs

1. ROOs under the CPTPP

1.1. General rules

We start with the CPTPP. In order to implement the CPTPP, the MOIT issued Circular No. 03/2019/TT-BCT dated January 22, 2019 on guiding the ROOs set out in the CPTPP. Generally, goods exported from Vietnam to other member countries of the CPTPP will be considered as originating from Vietnam or a member state of the CPTPP if the goods meet one of the following criteria:

- a. goods wholly obtained or produced in Vietnam or other CPTPP member states: similar to the Vietnamese ROOs, save for the addition of waste or scrap that has been either (i) derived from production in one or more CPTPP member states; or (ii) derived from used goods that are collected in one or more CPTPP member states and that are fit only for the recovery of raw materials, as one of the applicable "wholly-obtained" circumstances;
- b. goods produced entirely from materials originating in Vietnam or other CPTPP member states: in this case, originating materials may include indirect materials (ie, material used in the production, testing or inspect of goods but not physically incorporated into the goods; or material used in the maintenance of buildings or the operation of equipment, associated with the production of the goods (such as: fuel, tools, safety equipment, etc.) and CPTPP originating goods (ie, goods produced from non-originating materials, but that qualify as CPTPP originating goods according to the PSR List); and
- c. in case of goods produced from non-originating materials, requirements under the CPTPP's applicable PSR List will apply, in the form of a change in tariff classification is required (CTC method), or in case the value of a product that originates from Vietnam or other CPTPP member states meets a certain percentage (ie, regional value content or "**RVC**").

In general, the above general rules are quite similar to the Vietnamese ROOs and the Preferential ROOs under other FTAs. There are, of course, some differences between the CPTPP and the Vietnamese ROOs and other Preferential ROOs in certain detailed rules. We discuss below a few of these differences.

(i). *De minimis rule*: Either the total weight or the total value of the non-originating materials that fails to satisfy the requirement or a change in tariff classification must not exceed the 10% limit¹.

(ii). *List of Product Specific Rules*: The PSR List under the CPTPP provides special origin criteria applicable to specific categories of goods (eg, textile products, recovered/remanufactured goods, etc.).² Notably, the CPTPP is the only FTA to which Vietnam is a signatory that includes a separate textile chapter, and a separate PSR List for textiles and apparel products. The CPTPP sets out a strict rule for textile products, namely the “yarn forward” or the so-called “three-stage” rule.

(iii). ROOs for goods put up in a set for retail sale: The goods are considered to originate from Vietnam or other CPTPP member states if all of the goods in the set originate from Vietnam or other CPTPP member states; or if the total customs value of the goods in the set that are not CPTPP originated goods does not exceed 10% of the customs value of the set of goods.

(iv). ROOs for recovered/remanufactured goods: Generally, recovered materials used in production and incorporated into a remanufactured good are counted as originating materials³.

(v). Calculation formula for RVC method: Apart from the direct (or build-up) and indirect (or build-down) calculation formula, the CPTPP also uses other methods, such as focused value method (which takes into account the value of certain specified non-originating materials used in the production of the good), and net cost method (which takes into account the net cost of a product, rather than the customs value of the goods; and is a highly technical and specialized method applicable only to certain automotive goods).

(vi). Other notable concepts: Similar to Vietnamese ROOs, concepts like simple or minimal operations/processes and packaging materials and containers are also

¹ For goods that are not textile or apparel products, the CTC requirement (ie, the change in tariff classification) is taken to be satisfied if the total value of the non-originating materials (used in the production of the goods) does not exceed 10 per cent of the customs value of the goods.

For textile or apparel goods, the CTC requirement is taken to be satisfied if the total weight of the non-originating materials (used in the production of the goods) does not exceed 10 per cent of the total weight of the goods. For this exception, if the goods contain elastomeric yarn, the yarn is required to be wholly formed in Vietnam or other CPTPP member states.

² Basically, the rule means that all production processes and finishing operations in relation to elastomeric yarn or goods/products containing elastomeric yarn (beginning with the extrusion of filaments, strips, film or sheet, and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn) must be carried out within CPTPP member states. However, the CPTPP does provide certain flexible exemptions for textile products, eg, the de minimis rule for textile or apparel goods as mentioned above; or in case of certain materials under the CPTPP’s Short Supply List of Products which are not commonly available in Vietnam or other CPTPP member states, regardless of their de facto country of origin, such materials will be viewed as originating in Vietnam or other CPTPP member state(s), provided that certain requirement on “end use” under the CPTPP are satisfied (ie, a short supply material must be incorporated in a specific final product, in order to qualify for this exemption).

³ Specifically, a remanufactured good will be treated as a CPTPP originating good if it is classified to a certain HS code (eg, any HS codes from Chapters 84 to 90; and heading 94.02; except for certain HS codes from headings 84.18, 85.09, 85.10, 85.16 or 87.03 or subheadings 8414.51, 8450.11, 8450.12, 8508.11 or 8517.11); and meets the requirements that the goods (i) are entirely or partially comprised of recovered materials; (ii) have a similar life expectancy and perform the same as or similar to new goods that are so classified and are not composed of any recovered materials; and (iii) have a factory warranty similar to that applicable to new goods.

recognized under the CPTPP. The CPTPP further recognizes other concepts when determining the origin of the goods, such as consignment⁴ or accumulation⁵.

Let's look at the biscuit example mentioned above. If Company A exports its biscuits from Vietnam to, say, Australia, the Preferential ROOs under the CPTPP will apply. Specifically, according to the PSR List under the CPTPP, only the CTC method may be used to determine the origin of the biscuit product. That is, a change to a good of heading 19.05 (ie, the biscuits) from any other heading (of the non-originating ingredients) is sufficient to certify that the product has a CPTPP origin. In this example, and similar to the Vietnamese ROOs, the biscuits will be viewed as originating from Vietnam by the Australian authorities, since a change from heading levels of the non-originating ingredients: flour (1101) and eggs (0407), to heading levels of 1905 has occurred.

1.2. *ROOs procedures*

To claim preferential rates of customs duty under CPTPP, a Certification of Origin (“COO”) for the goods is required at the time the goods are imported into a CPTPP member state. A producer, exporter or importer of the goods can complete a COO by way of self-certification. That is, an exporter from a CPTPP member state is allowed to self-certify the origin of goods on its commercial documents. There is, however, a requirement on the minimum information that must appear on the self-certification of origin documents. The Customs authorities (of the country of the exporter) will review the information on the self-certification documents and the customs application and make a determination on the origin of the exported goods.

1.3. *The Vietnam exception*

Vietnam, however, is an exception to the self-certification rule. Under the CPTPP, a CPTPP member state may opt out of the self-certification rule and require that a COO for a good exported from its territory be issued by a competent authority of its choice or by an exporter approved by such authority. Vietnam chose to do so, and therefore, an exporter has not been able to apply the self-certification mechanism since the time CPTPP entered into force for Vietnam (ie, January 14, 2019). For Vietnam, self-certification is subject to a certain roadmap. Accordingly, Vietnam may opt out of the self-certification mechanism for a period not exceeding five years after the date of entry

⁴ For example, with regard to consignment provisions, goods will not be considered as originating from CPTPP member states if the goods are transported through the territory of one or more non-Parties and either or both of the following occur: (i) the goods undergo any operation in the territory of a non-Party (other than unloading, reloading, separation from a bulk shipment, storing, labelling or marking or any other operation that is necessary to preserve the goods in good condition or to transport the goods to the import country, etc); (ii) while the goods are in the territory of a non-Party, the goods do not remain under the control of the customs administration of the non-Party at all times. In other words, a good/product will lose its status as a CPTPP originating good if it undergoes any process of production or other operation in a non-Party (say, the US) while en route from Vietnam to other CPTPP member states (except for certain exemptions mentioned above).

⁵ The rule of accumulation under the CPTPP provides that an originating good or material that is used in the production of a good in another CPTPP member state shall qualify as originating materials for the purposes of determining if the goods are CPTPP originating goods. For example, consider that originating inputs from a CPTPP member state, along with non-originating inputs (from, say, China), were incorporated into a good made in Vietnam. The Vietnamese good is then exported to Australia to manufacture a product. In this case, those Chinese inputs that went into the manufacture of the Vietnamese good would be treated as if the good originated in Vietnam (as long as the Vietnamese good meets the relevant requirements under the PSR List).

into force of the CPTPP for Vietnam, which can be extended upto another five years (but in all cases, the total opt-out duration may not exceed 12 years). Therefore, for the time being, Vietnam's exports to CPTPP countries are being issued with COOs issued by the Ministry of Industry and Trade, rather than by way of self-certification by exporters. This official certification can be seen as a benefit.

2. ROOs under the EVFTA

2.1 General rules

Some rules under the EVFTA are special. For the purpose of converting ROOs under the EVFTA into national law, the MOIT issued Circular No. 11/2020/TT-BCT on June 15, 2020 (as amended by Circular No. 41/2022/TT-BCT dated December 30, 2022) ("**Circular 11**"). Generally, goods exported from Vietnam to EU members are considered as originating from Vietnam if the goods meet one of the following general origin criteria:

- a. goods wholly obtained or produced in Vietnam or in EU member countries: similar to the ROOs under the CPTPP, save for the addition of more detailed definitions of the terms "vessels" and "factory ships" for the purpose of determining applicable "wholly-obtained" circumstances (eg, including vessels/factory ships that are at least half-owned by a Vietnamese person); and
- b. in case of products which have not been wholly obtained in Vietnam or other EU member countries, requirements on "sufficient working or processing" as specified in the List of Required Working or Processing under the EVFTA ("**RWP List**") will apply to such materials. Similar to the PSR List, the requirements under the RWP List appear in the form of a requirement for a change in tariff classification (ie, CTC method), or a requirement that the value of a product that originates in Vietnam or other EU member countries must meet a certain percentage (ie, RVC method). Additionally, the EVFTA introduces another type of requirement in its RWP List where non-originating materials must undergo specific working and processing operation (in Vietnam or other EU member countries), or the product must be worked or processed from certain wholly obtained materials.

There is similarity in some general rules on ROOs among the EVFTA, the CPTPP, and Vietnamese law. We discuss below some differences involving certain detailed rules.

- (i). Insufficient working or processing: Similar to the concept of "simple operations/processes" under Vietnamese ROOs, the EVFTA's ROOs introduce the concept of "insufficient working or processing". These include simple operations for which neither special skills nor machines, apparatus nor tools are required for those operations. If a good/product undergoes only "simple" or minimal operations/processes in Vietnam, it will not be considered as having originated in Vietnam.
- (ii). Cumulation of origin: Similar to the CPTPP's ROOs, a good/product shall be considered as originating in Vietnam or other EU member country if such good/product

incorporates materials originating in Vietnam or other EU member countries (provided that requirements on insufficient working or processing as mentioned above are satisfied). A notable difference between the EVFTA and the CPTPP is that, for certain products⁶, EVFTA allows the cumulation of such products even if they originate in an ASEAN country that has a preferential trade agreement with the EU. The same cumulation rule applies to fabrics that originate in the Republic of Korea⁷ and that are incorporated into certain textile products⁸. That is, for example, in case South Korean materials are incorporated into textile products made in Vietnam, those South Korean materials will be considered as originated from Vietnam (and subsequently as originating in EVFTA), despite the fact that the Republic of Korea is not an EVFTA member.

(iii). RWP List: Similar to the CPTPP's PSR List, the RWP List under the EVFTA provides special origin criteria applicable to specific categories of goods, like textile products. However, the ROOs under the EVFTA are somewhat more flexible than those of the CPTPP. For example, with regards to most textile products, a less stringent rule of "fabric forward" or "two-stage" rule, rather than the CPTPP's "three-stage" rule. Simply put, the fabric used to produce most textile and garment products must originate from Vietnam, in order to qualify for ROOs under the EVFTA. Additionally, according to the RWP List, certain working processes (eg, knitting, weaving, or cutting) are required to be carried out in Vietnam or in the EU for certain textile products in order to be considered as having originated in Vietnam or EU member countries.

(iv). Tolerance rule: Similar to the *De minimis rule* under the Vietnamese ROOs or other FTAs' ROOs, the *tolerance rule* under the EVFTA allows the producer to use non-originating materials that are normally prohibited by the RWP List, provided that either the net weight or the value of non-originating materials does not exceed certain maximum limits (in most cases, 10%)⁹. Of note, the tolerance rule cannot be used to exceed any maximum-value threshold of non-originating materials listed in the RWP List¹⁰.

Let's look, again, at the biscuit example mentioned above. If Company A exports its biscuits from Vietnam to, say, Germany, the Preferential ROOs under the EVFTA will apply. Specifically, according to the RWP List under the EVFTA, a change to a good with a heading of 19.05 (ie, the biscuits) from any other heading (of the non-originating

⁶ Applicable to products under Annex III to Protocol 1 of the EVFTA, including: live, fresh or chilled cuttlefish and squid (HS code 0307 41), and live, fresh or chilled octopus (HS code 0307 51).

⁷ This may apply to another country with which both the EU and Vietnam have a preferential trade agreement, provided that an approval by the Committee on Customs established under the EVFTA has been obtained.

⁸ Applicable to HS chapters 61 and 62.

⁹ Specifically, for products under HS Chapter 2, and from Chapters 4 to 24 (other than processed fishery products in HS Chapter 16), the maximum limit is either 10% of the weight of the product or 10% of the ex-works price (ie, the price that a buyer paid for a product when it leaves the factory, generally including the value of all the materials used and all other costs related to its production, minus any internal taxes, which are, or may be, repaid when the final product is exported).

For other products (except for textile products under HS Chapters 50 to 63), the maximum limit is 10% of the ex-works price. For textile products within HS Chapters 50 to 63, more detailed tolerances apply depending on each type of product (the tolerances range from 8% upto 30%).

¹⁰ If the RWP List allows a maximum of 40% of non-originating materials of a product's ex-works price, this is the limit that applies and not 40% + 10% (tolerance).

ingredients) is sufficient to classify the product as having originated under EVFTA, provided that:

- the weight of materials from Chapters 2, 3 and 16 used in the product does not exceed 20 % of the weight of the final product;
- the weight of materials under headings 1006 and 1101 to 1108 used in the product does not exceed 20 % of the weight of the final product;
- the individual weight of materials from Chapter 4 used does not exceed 20 % of the weight of the final product;
- the individual weight of sugar used in the product does not exceed 40 % of the weight of the final product; and
- the total combined weight of sugar and materials from Chapter 4 used in the product does not exceed 50 % of the weight of the final product.

In this example, Company A's biscuits will be viewed as originating from Vietnam by the German authorities, if:

- the weight of flour (HS code 1101) used (in the final product) does not exceed 20 % of the weight of the final product; and
- the weight of eggs (HS code 0407) used (in the final product) does not exceed 20 % of the weight of the final product.

2.2 ROOs procedures

In order for products originating in Vietnam to benefit from the EVFTA, valid proof of origin for the products must be evidenced at the point of import in the EU. As Vietnam has not yet notified the EU regarding the application of origin declaration by an exporter approved or registered by Vietnamese legislation, the proofs of origin currently applicable for goods originating in Vietnam are:

- A movement certificate EUR.1 (ie, a certificate of origin prepared in accordance with Articles 16 (Procedure for the Issuance of a Certificate of Origin) to 18 (Issuance of a Duplicate Certificate of Origin of the EVFTA) is issued by the Ministry of Industry and Trade. The Vietnamese exporter has to apply electronically for a certificate, providing all required supporting documents. Then the certificate is printed, stamped and signed manually and provided to the exporter. The exporter will also sign the certificate manually, as electronic signatures are not recognized by EU's customs authorities (according to EU's guidance). The completed movement certificate EUR.1 looks like a traditional certificate and is not an electronic certificate, and will have a term of 12 months; or
- In the case of a consignment with a total value of EUR6,000 or less, an origin declaration is prepared by an exporter (on a standard form under Circular 11). In such case, any exporter is allowed to self-certify the origin of its goods. Within three working days from self-certification, the exporter is responsible to report and post self-certification documents and documents related to the exported consignment (eg, invoice,

delivery note, and other relevant commercial documents, etc.) on the MOIT's online portal of e-certificate of origin (that is, at the following website: www.ecosys.gov.vn).

D. CONCLUSION

Vietnam has made tremendous efforts in establishing the legal framework on origin of goods, not only domestically but also by entering numerous FTAs with most of its largest trading partners and biggest economies in the world, including the “new generation” FTAs such as CPTPP and EVFTA. Thanks to this, Vietnamese exports can now enjoy tariff removal in more than 50 countries that account for over 70% of its total export turnover.

As a result, Vietnam's export industry has achieved impressive results. For example, during the 5-year implementing period, Vietnam's exports to CPTPP countries continues to grow at double digits, reaching US\$53.6 billion in 2023 (with a year-on-year increase of 17.3%). Similarly, after 4 years of implementing the EVFTA, total export turnover from Vietnam to the EU increased by nearly 50%, making Vietnam the EU's leading trading partner among ASEAN countries. According to the General Department of Vietnam Customs, in the first eight months of 2024, Vietnam's exports to the EU reached \$34.14 billion (a 17.3% increase compared to the same period in 2023). Although the growth is exponential, local authorities and experts estimate that it is still not Vietnam's full potential as it is hindered by the Vietnamese exporters' lack of knowledge on the specific rules and criteria under ROOs, and of the capacity to convert production (away from, say, China) to meet such rules.

The groundwork has been done and the benefits are obvious. It is time for Vietnamese exporters to take advantage of these FTAs by proactively utilizing the Preferential ROOs under the largest FTAs available to Vietnam.