



## **Customs Alert Thailand**

### **Update on the use of Free Trade Agreement (FTA) privileges**

#### **Introduction**

Thailand is a party to several FTAs, which exporters can utilize to enjoy duty privileges on their products in destination countries. Companies that wish to make use of these privileges must obtain pre-verification approval by submitting information to the Thai Department of Foreign Trade (DFT) to confirm their products' compliance with the FTA conditions (rules of origin). Upon obtaining the approval, they can subsequently request for preferential Certificates of Origin (CO) upon export to enjoy the FTA benefits in the destination countries.

What companies should also be aware of, is that government authorities can conduct retroactive verifications on exports with preferential COs, to control whether the applicable rules of origin have been applied correctly by the exporter after the pre-verification. If non-compliance issues are detected, this could result in disqualification of the duty privilege and the DFT can impose sanctions which may impact both the exporter in Thailand and their customer in the destination country.

Since the announcement in September 2019 on the DFT's practice in case of non-compliance with FTA conditions, we have seen an increased focus by the DFT on the use of FTA privileges by Thai exporters. Recently, our team has also seen an uptick in FTA post-entry origin verification queries.

#### **Post-entry origin verifications**

Customs authorities in the destination country can challenge the validity of the Thai exporter's CO and request the DFT to initiate a post-entry origin verification (e.g. due to suspicions over the product qualifications by the exporter or doubts over the certification methods by the authorities in the country of export).

What typically follows is a detailed investigation by the DFT into the qualification requirements of specific exported SKUs and exporters will be obligated to prepare and present data to support the claims that the exported SKUs meet the origin conditions.

After submitting and explaining all requested information within a specified deadline, DFT will formulate the result of post-verification and send it to the requesting customs authority overseas. The customs authority in the country of import may accept the result or decide to conduct their own on-site investigation on the exporter's site in Thailand afterwards.

### **Who are impacted**

Companies that are currently exporting or have exported products utilising FTA privileges, as well as their customers in the country of import, are the ones impacted by post-entry origin verification investigations. If exporters in Thailand cannot satisfy the DFT or the customs authority in the import country, they will lose their privileges upon export and the importer(s) would be at risk of exposure to retroactive customs duties and penalties.

### **What to know**

The DFT launched Announcement B.E. 2562 Re. "Measures and practices regarding the issuance of certificate of origin which may cause damages to international trade" to expand the coverage of investigation and sanctions against non-compliance with FTA conditions, especially in relation to the electronic Form CO issued through the self-certification system (so-called ROVERS).

Sanctions for non-compliance with the FTA conditions include the revocation of DFT's pre-verification approval to exports with FTA privileges (i.e. pre-verification) or the requirement for the exporter to present invoices supporting the raw materials of the exported product with the issuance of every Form CO to every country for the investigated products (i.e. Watch-list). Depending on the nature of misconduct, the exporter can stay longer or shorter on the Watch-list.

### **What to do**

After obtaining pre-verification approval from the DFT to use FTA privileges, exporters should continue to check internally whether the rules of origin are consistently complied with for all SKUs and whether product qualifications are accurately declared for all different product models in the Form CO. Unrealistic or standard qualification appearing in the Form CO could trigger the customs authority at the destination country to challenge such Form CO.

It is important to note that in case of an FTA post-entry origin verification, foreign customs authorities and DFT expect the exporter to be able to back up their FTA claims with accurate costing and product information and to evidence it with original documents such as invoices, supplier declarations, import declarations, manufacturing licenses etc. Failure to do so or failure to produce the supporting evidence in a timely manner could lead to a negative verification result and ultimately disqualification of the FTA duty privilege.

Therefore, it is recommended that exporters take a proactive approach in setting up a proper recordkeeping and accounting methodology in line with the actual costs. It is also important for exporters to set up internal controls and SOPs to carry out periodic sensitivity analyses to ensure that COs are only obtained for qualifying products.

Post-entry origin verifications can be carried out on COs issued up to three to five years back and the exporter is obligated to keep the necessary records to support the validity of these COs.

### **How can we help?**

Deloitte's Customs & Global Trade Advisory team can assist your company in both the pre-verification and post-verification process. Our services in this respect include:

- In-depth review on the FTA qualification of your products;
- Support with the application for the FTA pre-verification approval
- Assistance with the data and document preparation during the post-entry origin verification process;
- Assist in dealing with DFT and customs authorities; and
- Setting up guidance and internal SOPs for FTA compliance, including trainings.

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