



## **Customs Alert Thailand** **Current customs and trade updates**

### **Introduction**

There have been a number of recent developments in the Thai indirect tax and trade landscape, which may impact your business at a domestic and international level. Please find here a summary of the developments.

### **Conclusion of RCEP negotiations**

During the ASEAN summit which took place in Bangkok from 31 October until 4 November 2019, the 10 ASEAN countries and China, Japan, Australia, New Zealand, South Korea announced the conclusion of text based negotiations on the Regional Comprehensive Economic Partnership (RCEP), the world's largest free trade agreement in the making. Also in the announcement was the decision of India to temporarily opt out of the agreement due to concerns over trade imbalances with other parties to the agreement and the restrictions to protecting their domestic market from import surges.

In a joint statement the remaining 15 parties confirmed that all 20 chapters of the pending agreement have been finalized as well as substantially all market access issues, allowing the agreement to move to the next phase of a technical legal review, which will commence in 2020. After that, the agreement can be signed and ratified by the parties. The parties committed to signing the agreement in 2020 with ratification and entry into force expected in 2021 or 2022.

The RCEP would further reduce import tariffs between parties, where this has not yet happened in preceding Free Trade Agreements (FTAs). The agreement will also provide importers and exporters with a single set of origin rules across the region to obtain tariff preferences whereas the rules of origin between RCEP members today still differentiate due to the existence of separate FTAs. In addition, the agreement will open up trade in services between the parties and provide better mechanisms to tackle non-tariff barriers.

## **Removal of Thai products from the United States Generalized Scheme of Preferences (US GSP)**

On Friday 25 October 2019, United States (US) President Trump announced that the US will revoke GSP privileges for 573 Thai products, including all Thai seafood products, several agricultural, electronic and steel products and more. The cancellation will take effect on 25 April 2020. The products removed from the list represent around 1.3 billion USD out of a total of 4.4 billion USD worth of Thai exports covered by the current US GSP.

Under the US GSP, certain Thai exports benefit from duty free market access in the US. Following the cancellation of GSP privileges on the identified goods, such exports from Thailand will become subject to normal import duties in the US. Products not listed in the removal, and part of the original GSP program for Thailand continue to enjoy duty privileges in the US.

The reason for the removal of the 573 products from the list was a review initiated by the United States Trade Representative's (USTR) Office in 2018 after the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) filed a complaint against Thailand's protection standards for workers. The review concluded that Thailand does not adequately protect internationally recognized workers' rights.

In the meanwhile, the review of Thailand's eligibility for US GSP remains open as other US interest groups, such as the US National Pork Producers Council, have also filed complaints against Thailand's trade practices.

It is worthwhile to note that the reasons stated by the USTR for the partial elimination of Thailand's trade preferences under the US GSP program are not in line with the usual criteria for a removal. The normal reason for products to lose GSP status is that they exceed a certain market share or value threshold in the US market, which is known as the competitive needs limitations. However, the current US administration has recently been imposing a variety of new conditions to trade partners in part to bring down trade imbalances.

### **ASEAN – Hong Kong FTA entry into force**

On 11 June 2019, the ASEAN – Hong Kong FTA (AHKFTA) was implemented between 5 countries (Thailand, Vietnam, Myanmar, Laos, and Singapore) and Hong Kong.

The Thai/ASEAN tariff rates under AHKFTA will be progressively reduced for most of Hong Kong commodities (i.e. jewelry, apparel, accessories etc.) which are in high demand in ASEAN. In return, Hong Kong grants tariff free market access for all products originating within ASEAN countries.

The rules of origin under this FTA i.e. the conditions which determine whether the goods are considered "originating" in a partner country and can benefit from the duty privileges, are the following:

- Wholly Obtained (WO);
- Produced Exclusively (PE);
- Product Specific Rules (PSR), and
- Regional Value Content (RVC) as a General Rule (GR)

Whichever rule of origin applies, depends on the HS code of your product.

In addition, negotiations on the Rules of Origin are still ongoing for a number of products under the agreement. In the meanwhile, exporters of those products have the choice to opt for any of the interim-PSR, being WO, PE, or the GR to obtain the origin of the good.

The certificate of origin used under this FTA is the Form AHK.

### **ASEAN – China FTA update**

The ASEAN – China FTA (ACFTA) which has been in place since 2010 was recently amended by the FTA parties. The main objective of the amendment was to increase the likelihood for exporters to meet the rules of origin and enjoy the duty privileges.

The General Rule of Origin under the original ACFTA was to obtain a minimum RVC. Following the amendment, exporters of some HS codes (i.e. chapter 25, 26, 28 etc.) now have the choice to either meet the RVC or to make a change in tariff heading (CTH) to obtain the origin.

The RVC calculation formula in the agreement was also changed as follows:

- Previous RVC calculation formula

$$\text{RVC} = \frac{\text{Non-ACFTA material} + \text{undetermined origin}}{\text{FOB}} \times 100\% < 60\%$$

- Current RVC calculation formula

$$\text{RVC} = \frac{\text{FOB} - \text{non-originating materials}}{\text{FOB}} \times 100\% > 40\%$$

For products that are subject to a Change in Tariff Classification rule under the ACFTA, the rule has been made more lenient by adding a secondary condition i.e. "De Minimis" provision. Exporters whose products do not meet the Change in Tariff Classification condition can still obtain origin if their products' non-originating materials do not exceed certain value or weight thresholds.

Finally, the parties to the FTA made some clarifications to the provisions regarding direct consignment, identical and interchangeable materials, accessories and spare parts as a response to differences in interpretation that occurred in the past.

It is important that exporters and importers who make use of the ACFTA understand the consequences and impact of these changes for their future business transactions.

### **Sugar Tax increase**

On 1<sup>st</sup> October 2019, the Excise Department raised the excise tax rate on non-alcoholic beverages containing sugar. This specifically affects non-alcoholic beverages which have a sugar content over 10 grams per 100 milliliters, as their tax rates get doubled from the current rate.

Below are the increased excise tax rates for the non-alcoholic beverages corresponding with their sugar content:

- Beverages with 10 to 14 grams of sugar content per 100 milliliters are subject to tax at a rate of 1 baht per 1 liter;
- Beverages with 14 to 18 grams of sugar content per 100 milliliters are subject to tax at a rate of 3 baht per 1 liter; and
- Beverages with more than 18 grams of sugar content per 100 milliliters are subject to tax at a rate of 5 baht per 1 liter.

The next increase in sugar tax will take place on 1 October 2021.

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

Deloitte can help your business optimize the use of FTAs and other preferential trade programs. We can analyze your products to determine whether they meet the applicable rules of origin and advise on how to maximize the benefits under the eligible trade preference.

We also provide services for registration and compliance under the excise tax laws including assistance in dealing with the authorities.

### **Contact**

- Stuart Simons, Partner Customs & Global Trade, [ssimons@deloitte.com](mailto:ssimons@deloitte.com)
- Sujitra Sukpanich, Director Customs & Global Trade, [ssukpanich@deloitte.com](mailto:ssukpanich@deloitte.com)
- Tom Cachet, Manager Customs & Global Trade [tocachet@deloitte.com](mailto:tocachet@deloitte.com)



Get in touch



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see [www.deloitte.com/th/about](http://www.deloitte.com/th/about) for a more detailed description of DTTL and its member firms.

Deloitte provides audit, consulting, financial advisory, risk advisory, tax and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries and territories bringing world-class capabilities, insights, and high-quality service to address clients' most complex business challenges. To learn more about how Deloitte's approximately 245,000 professionals make an impact that matters, please connect with us on [Facebook](#), [LinkedIn](#), or [Twitter](#).

#### **About Deloitte Southeast Asia**

Deloitte Southeast Asia Ltd – a member firm of Deloitte Touche Tohmatsu Limited comprising Deloitte practices operating in Brunei, Cambodia, Guam, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam – was established to deliver measurable value to the particular demands of increasingly intra-regional and fast growing companies and enterprises.

Comprising 290 partners and over 7,400 professionals in 25 office locations, the subsidiaries and affiliates of Deloitte Southeast Asia Ltd combine their technical expertise and deep industry knowledge to deliver consistent high quality services to companies in the region.

All services are provided through the individual country practices, their subsidiaries and affiliates which are separate and independent legal entities.

#### **About Deloitte Thailand**

In Thailand, services are provided by Deloitte Touche Tohmatsu Jaiyos Co., Ltd. and its subsidiaries and affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte network") is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2019 Deloitte Touche Tohmatsu Jaiyos Advisory Co., Ltd.