



<< Left
Kasamesunt Teerasitsathaporn
Partner
kasamesunt.t@tilleke.com

<< Right
Michael Ramirez
Counsel
michael.r@tilleke.com

Thai Customs Department Eases Certificate of Origin Submission Requirements

On April 16, 2020, the director general of the Thai Customs Department issued Notification No. 81/2563, which introduces new customs measures intended to facilitate the operations of importers during the COVID-19 pandemic. The new notification replaces and expands on a previous one (Notification No. 47/2563), issued in March 2020, which allowed importers of goods from China to submit photocopies of certificates of origin in certain circumstances, rather than originals, in order to qualify for a decrease in customs duties or duty exemption. Those who avail themselves of these measures must submit the original certificates of origin within 30 days of customs releasing their goods. However, the first notification only allowed the use of such copies for limited kinds of customs and duty exemptions, and after a month was found to be insufficiently flexible in practice to provide relief, given the unforeseeable length and severity of the crisis. The director general therefore issued Notification No. 81/2563 to replace and expand upon the older notification. Although similar in process and requirements, the new notification includes applications for exemption under numerous free trade area agreements and provides a mechanism for extension if 30 days is found to be insufficient. The measures are applicable between April 16 and September 30, 2020.

The new free trade and related agreements that are included under the scope of the new notification are as follows:

1. ASEAN-China Comprehensive Economic Cooperation Agreement;
2. Agreement on Accelerated Tariff Elimination under the Early Harvest Programme of the ASEAN-China Comprehensive Economic Cooperation Agreement;
3. Accession of Singapore to the Agreement on Accelerated Tariff Elimination under the Early Harvest Programme of the ASEAN-China Comprehensive Economic Cooperation Agreement;
4. ASEAN Trade in Goods Agreement;
5. ASEAN-Korea Free Trade Agreement;
6. ASEAN-Japan Comprehensive Economic Partnership;
7. Japan-Thailand Economic Partnership Agreement;
8. ASEAN-India Comprehensive Economic Cooperation;
9. Thailand-India Free Trade Agreement;
10. ASEAN-Australia-New Zealand Free Trade Agreement;
11. ASEAN-Hong Kong Free Trade Agreement;
12. Thailand-Chile Free Trade Agreement; and
13. Thailand-Peru Free Trade Agreement.

For practical customs clearance matters, such as obtaining duty exemptions and reductions under the new notification, the importer can present a copy of a certificate of origin from any institute that issues certificates of origin in the country of exportation. This applies to any institute that already issued an authorized certificate of origin but was unable to send the original to the importer in Thailand due to the COVID-19 pandemic. To submit a copy in these circumstances, the importer must include an explanatory remark in the import entries accompanying the goods stating that the importer “[r]equests to use [a] copy of the certificate of origin for a temporary period and will present its original thereafter.” The importer also needs to submit a petition, using the form appended to the notification, along with a copy of the certificate of origin. These should be submitted to the customs office or customs port, where officers will examine each copy of the certificate of origin and determine the customs tariffs and values applicable to the goods in light of the conditions and requirements for each relevant free trade area. If all requirements are met, customs will clear the goods for release from their custody and require importers to submit the original certificate of origin within 30 days. However, if further delays related to the COVID-19 pandemic prevent timely submission of the original certificate of origin, importers can secure an additional extension of up to 30 days by submitting a petition at least seven days in advance of the original deadline.

Further, a summary of all deadlines must be submitted by the importer within sixty days of removing the items from customs’ custody. Importers who fail to present the original certificate of origin within these deadlines will be deemed in default under the Ministry of Finance notifications for the qualifying free trade areas, and will not be entitled to duty reductions or exemptions. Failure to properly support requests for duty reductions or exemptions, even under the more liberal standards allowed under the new notification, will result in the Customs Department issuing assessment of duty letters to the importer in order to collect customs duty shortfalls. This can also result in additional liabilities for an importer and could impede resolution of the resulting customs disputes. In addition, if a certificate of origin expires before a deadline for submission expires, the importer will not be entitled to receive a reduction in customs duties or exemptions.

The COVID-19 pandemic has placed increased burdens on importers and the Thai Customs Department, and Notification No. 81/2563 seeks to lessen these burdens while providing flexibility to importers who may face uncertainty over whether they can meet documentary obligations during this time. This is a welcome accommodation, but importers and their representatives should nonetheless remain diligent to ensure that they meet all documentary and procedural requirements to qualify for duty reductions or exemptions. Failure to do so, even under the new more flexible rules, could lead to unnecessary liability, delays, and expenses. 🙏