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LEADING THE WAY

PWC THAILAND

There are many reasons why companies should consider using free trade agreements (FTAs) when moving goods across borders, the most obvious one being the chance to save on duties. Thailand has FTAs with many countries including all the Asean members plus Japan, China, South Korea, Australia, New Zealand, India and Peru.

Instead of paying the normal tariff rate when importing goods into Thailand, tariff rates for goods originating from these countries could be entitled to a reduced or zero tariff rate in Thailand. For example, tariff rates for most qualifying imports into Thailand from Asean members under the Asean Trade in Goods Agreement (Atiga) have been eliminated.

Trade volume during the first half of this year with FTA partners was 56% of Thailand's total trade volume. However, if we look into the details, many of these transactions have not used any preferential FTA duty scheme. At face value this seems odd, especially given the potential benefits when using FTAs.

Why wouldn't companies use FTAs that could give them a significant commercial advantage? Is it simply because they are not aware of them? What would be the concerns for companies in using FTAs?

One reason could be the complexity and high number of FTA rules. Only qualifying products can benefit from preferential FTA tariff rates. But how do you determine what a qualifying product is? Which rules of origin apply? There is no simple and short answer to these questions, but essentially only products that meet the rules of origin of that particular FTA can enjoy the preferential tariff rates. This means that depending on the exporting and importing country, different FTAs are applicable, each with its own sets of rules. As a result, companies selling their products to buyers in different countries must consider and comply with these rules.

For example, a product manufactured in Thailand and qualifying as "of Thailand origin" under Atiga could enjoy a zero rate or at least lower than normal in other Asean members. However, even though there is an FTA between Thailand and China, this does not mean that the same Thailand originating product could also benefit from preferential tariff rates when shipped from Thailand to China. In this case, the product must comply with the relevant rules under the Asean-China FTA rather than the Atiga rules, and those rules may be different.

Another reason for the low uptake by companies could be the issue of costs versus benefits. Customs authorities in the importing countries only give preferential tariff rates if the goods come with a valid certificate of origin (CO) that states the origin of the goods.

To obtain this CO — essentially a passport for the goods — the exporter/manufacturer must ensure the goods comply with the complex rules of origin, prepare and keep all the supporting documentation and submit the applications with the issuing authorities in the export country.

However, the exporter is not rewarded with the duty savings for all this work but rather the importer. Between related parties, this is typically not a big problem. However, when dealing between unrelated importers/buyers and exporters/sellers of goods, this could become more of an issue, as the seller is the one actually doing all the work but not benefiting.

Companies may also decide not to use FTAs given the potential risks of using them. The importer obtains the duty savings, but this may come with a certain risk. As customs authorities would allow importers to clear the goods and apply lower or no duty rates for qualifying goods, they need to ensure the goods actually qualify and comply with the FTA rules. This could be either at the time the goods are declared or even after a couple of years — for example, during a post-clearance audit by customs.

Typical challenges from customs could range from simple errors — for example, typos or certain boxes not properly completed or ticked in the CO — to challenges on the applied rule of origin — for example, stating the wrong rule of origin or there being different interpretations/views between the exporting and importing authorities.

All these challenges could potentially lead to a delay in granting the duty savings or, even worse, loss of preference and the clawback of duties and imposition of fines and penalties.

These reasons could at least partially explain why some companies in Thailand do not use FTA privileges. Even so, although perhaps challenging and in practice not always as simple as it seems, obtaining the duty savings may still outweigh the potential risks or compliance burden for companies. This is especially the case where the existing normal tariff rates are significantly higher than the preferential FTA tariff rates.

Where companies are using or decide to use FTAs, it is important to have a proper origin compliance programme in place to minimise non-compliance issues as well as challenges from customs. Also, using FTAs could be a good alternative for companies that cannot or don't want to use other duty suspension/exemption schemes in Thailand such as the duty drawback or duty exemption under the Board of Investment, given the relative high compliance burden of these schemes.

This column was prepared by Nu To Van, a director, and Tanarat Permpoonsap, a manager at PwC Thailand. We welcome your comments at leadingtheway@th.pwc.com