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THAILAND

CASE STUDY: THAI CUSTOMS CLEARANCE

Customs formalities: duties, temporary imports, and related special customs procedures, which foreign investors must report to the competent authorities

This case study is a redacted excerpt from a business feasibility for a client that imports eyeglasses nose pads into Thailand. Generally, customs clearance procedures for both imports and exports in Thailand require the submission of an export/import entry form (hereafter known as an export/import declaration). The form should be accompanied by standard shipping documents, which include a commercial invoice, packing list, bill of lading/airway bill, and letter of credit. Some products may require an import/export license and/or authorization from relevant agencies such as the Food and Drug Administration (FDA), the Ministry of Public Health, or the Ministry of Agricultural Administration. These include food products (processed or unprocessed), pharmaceuticals, medical devices, healthcare products, cosmetics, hazardous substances, animals, and some agricultural products.

Import Clearance Procedures

Under the Thai Customs Act B.E. 2560 (2017) (the "**Customs Act**") and other customs regulations, the importer is responsible for the required customs formalities and the submission of necessary documents as outlined below.

Pursuant to Section 51 of the Customs Act, prior to releasing any goods from customs custody, importers are required to: (i) submit an import declaration together with supporting documents of the importation, and (ii) pay the full amount of applicable duties and taxes or deposit a guarantee to the customs officer at the port of entry when the goods are imported into Thailand. Please find a summary of importation clearance procedures as follows:

-**Register to use e-Customs System:** Importing goods into Thailand is done via the online e-Customs system. Importers must use a digital certificate, which acts as an electronic signature, to confirm the identity of the person or entity using the system. Online operations in Thailand generally require the use of a digital certificate and import registration is no exception. Importers/exporters have the choice of registering for the e-Customs system directly through their own office or with the assistance of an agent. Once these steps have been completed, the Communication and IT Bureau will issue an e-Customs registration ID which effectuates the registration process.

-**Review Controlled Goods:** As not all goods require a permit to be imported, importers must check with the Customs Department whether the goods require a permit. For exports, there are around 50 goods categories requiring a permit including trees and seeds.

-**Submission of a Declaration:** Before or upon the arrival of cargo, an importer electronically transmits a ship or aircraft arrival report, and manifests information into the e-Customs system. If there is no error, the ship or aircraft arrival report number is automatically generated by the e-Customs system and the response message is transmitted to the importer. Accordingly, when the cargo arrives at the port or place of entry, an importer is required to submit an import declaration together with its supporting documents into the e-Customs system.

A list of supporting documents that are used as import declaration information is as follows:

- Bill of lading (B/L), air waybill (AWB);
- Invoice;
- Packing list (if any);
- Certificate of origin (in case applying for tariff preferential);
- Other documents that show information of import or trading which the sellers or exporters that are in other country make the documents, or contracts between exporters and importers or any other parties that import the goods such as container man, bank insurer, etc.;
- Import license or any other documents in case of prohibited import goods under relevant laws; and

- Other relevant documents such as catalog, product specifications, list of ingredients, technical standard certificates, etc.

- **Check and Verification of the Declaration:** The e-Customs system will validate the given data, specify the declaration to be the Green Line or Red Line, and issue a declaration and payment numbers to the importers. Thai regulations classify **red line goods** as those which are considered to be high risk or require extra verification and certification. There is currently no definitive list of red line goods, and a company will be informed if its goods are red line upon application. However, common red line goods include food products, drinks, and plants.

- **Payment of Import Duties and Taxes:** There are currently two options for the payment of import duties and taxes: (i) pay with cash or cashier cheque at the Customs Department and (ii) pay via e-Payment system. In this regard, please find below a summary of duties and taxes as applicable to the importation process.

- *Excise Tax* - Some import goods are subject to excise tax, e.g., gasoline, alcohol, and electrical appliances.
- *Value Add Tax (VAT)* - VAT is imposed at the rate of 7% based on the price of sales or services. The Revenue Code provides that persons liable for VAT are sellers, service providers, or importers who register as VAT operators. An importer shall pay VAT at customs clearance procedure when the goods are being imported. Import duty is also imposed on the importation of goods into the country.
- *Import Duty* - Calculating duty for goods imported into Thailand is made in accordance with the type of goods, the customs value, the corresponding customs tariff, and the duty rate at the time of completion of the import or at the time the goods are released from the Free Trade Zone. The applicable duty rates are dependent on the origin of the goods and a certificate of origin will need to be presented.

-**Inspection and Release of Cargo:** The importers shall submit the verified declaration along with the payment receipt to the warehouse. After this, the cargo will undergo an inspection before being released. For green line goods, all that is required is a simple online screening. However, for red line goods the HS code, price, and the export goods will be further examined, and the cargo itself will be physically inspected by customs officials. The inspected cargo must correspond with the declaration. Once this is confirmed, the cargo can be released.

Section 52 of the Customs Act provides that import declarations submitted to the customs officers shall be in the form specified by the Director-General of the Customs Department, but are required to have at least the following information:

- Type of goods;
- quantity, weight, and quality of goods;
- customs value; and
- country of departure or country of destination.

Please note that all import goods shall be released under the control of the customs officers during the official working days and time (i.e., Monday – Friday, 8.30 a.m. – 4.30 p.m.) unless permission to release the goods at other times is granted by the Director General of the Customs Department (Section 56 of the Customs Act).

Failure to comply with the Customs Act and other customs regulations may result in a fine, penalty, and additional duty assessments as follows:

Section 208 of the Customs Act provides that any importer who violates or fails to comply with Section 51 shall be liable to a fine not exceeding THB 50,000 (Fifty Thousand Baht).

Section 242 of the same provides that any person who imports goods that have not duly passed through customs formalities into Thailand without permission from the customs officer shall be liable to (i) a penalty equal to 4 times of the price of the goods including the duty; (ii) imprisonment not exceeding 10 (ten) years; or (iii) both. In addition, the smuggled goods shall be forfeited. In this case, the person who commits the offense under Section 242 shall be liable irrespective of a willful intention to commit such offense (Section 252 of the Customs Act).

Besides the aforesaid, any person who conspires to commit the offense under Section 242 shall also be liable to the equivalent penalty as the offender of such offense (Section 245 of the Customs Act).

HS Codes Interpretation

Pursuant to our review of the details and the working process of NOSE PADS provided to us in your emails dated 5 November 2021 and 8 November 2021, we opine that nose pads should be classified with HS Code 9003.90.00 in Section 18, Chapter 90 for the reasons given below:

We have researched the Explanatory Note of the WCO ("**EN**") and found that Chapter 90 describes optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatuses, including parts and accessories thereof.

This Chapter covers a wide variety of instruments and apparatuses which are, as a rule, characterized by their high finish and high precision. Most of them are used mainly for scientific purposes (laboratory research work, analysis, astronomy, etc.), for specialized

technical or industrial purposes (measuring or checking, observation, etc.) or for medical purposes. Nonetheless, there are certain exceptions to the general rule that the instruments and apparatuses of this Chapter are high precision types. For example, Chapter 90 also covers ordinary goggles, simple magnifying glasses and non-magnifying periscopes, divided scales and school rules and fancy hygrometers, irrespective of their accuracy.

The EN clarifies that goods of HS Code 9003 also includes frames and mounting, and "parts" thereof, for the spectacles or other articles of Heading 90.04 (e.g., sunglasses, corrective spectacles, and protective goggles). They are generally of base metal, precious metal, metal clad with precious metal, plastics, tortoise-shell or mother-of-pearl. They may also be of leather, rubber, or fabric, for example, frames for goggles.

According to the EN clarification, part of the frame includes spectacle side-pieces and side piece cores, hinges or joints, eye-rims, bridges, nose-pieces, spring devices for pince-nez, handles for lorgnettes, etc.

In summary, the **applicable HS Code** of NOSE PADS shall be as follows:

Suggested HS Code: 9003.90.00
Description: Part of frames and mounting for the spectacles, goggles or the like
Tariff rates of suggested HS Code: 5%

Notes:

- Under the ACFTA, part of frames imported from China will be exempted from duty, while those from non-ACFTA countries are subject to a 5% import duty.
- Importers utilizing duty privileges under the ASEAN-China Free Trade Agreement (ACFTA) must provide an original Form E to Customs upon importation in order to utilize ACFTA tariff preferential rates

Medical Device Registration and Approval in Thailand

The Medical Device Act B.E. 2551 (2008) (the "Medical Device Act"), as amended, provides the regulatory framework for the trading and post-marketing surveillance of medical devices in Thailand.

Under the Medical Device Act, any instrument, apparatus, accessory, machine, implant, in vitro reagent and calibrator, software, material or other similar or related article intended by the manufacturer or product owner to be used alone or combination, for human beings or animals for the specific purpose(s) are considered a medical device and is subject to the laws and regulations the Thai FDA.

All medical devices, whether manufactured domestically in Thailand or imported, must be registered with the Thai Food and Drug Administration (FDA) of the Ministry of

Public Health. Registrations of medical devices are submitted via the online medical device registration system called the “Pre-submission & E-submission system”.

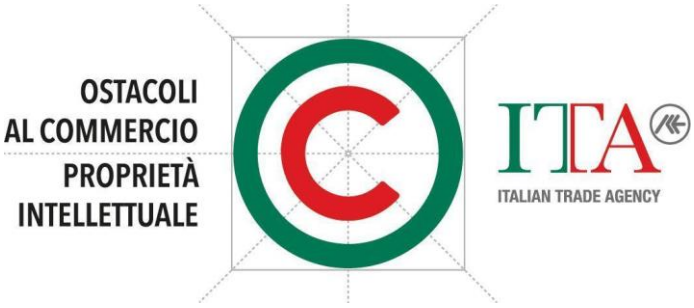
To register a medical device, manufacturers or importers must first obtain an establishment license for manufacturing or importing the medical devices. After successfully obtaining the establishment license, manufacturers or importers may then proceed to register the medical devices in order to obtain a Listing Certificate, a Notification Certificate or a License depending on their classification with the Thai FDA. Group 1 devices will require a Listing, Group 2 and 3 will require a Notification and Group 4 (highest risk) will require a License.

At the registration process, an applicant must prepare an application, together with pre-clinical studies, device labeling, instructions for use, risk analysis and existing regulatory approvals or market authorizations already obtained and manufacturer’s compliance for ISO 13485 to the Medical Device Control Division (MDCD) of the Thai FDA for consideration. Once approved, all types of registrations are valid for 5 years.

Based on our discussion with the MDCD officials, ophthalmic and optical devices (e.g., spectacle frames, spectacle lens, and magnifying spectacles) are considered medical devices. Therefore, manufacturers or importers of ophthalmic and optical devices must apply for the establishment license for manufacturing or importing the medical devices and register the medical devices with the MDCD of the Thai FDA prior to manufacturing/importing and distributing their products to dealers and customers in Thailand.

However, eyeglasses nose pads are spare parts or accessories of frames, not in the ophthalmic and optical devices; as such, the Medical Device Act does not apply. Therefore, manufacturing/importing and distributing of the NOSE PADS are not required to have an establishment license for manufacturing or importing the medical devices and medical devices registrations.

Bangkok, September 2022



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