

Trade

Thailand

1. The proposed new customs act

On 21 July 2015, the Cabinet approved in principle the proposed new Customs Act to make customs procedures more transparent, flexible and efficient, and to be in line with the AEC. The draft bill will consolidate the five current customs acts. The key changes under the draft bill are as follows.

Issue	Current law	Proposed law
1. Reward sharing system	Relevant officers <ul style="list-style-type: none">– Up to 25 percent of penalties with no cap Informants <ul style="list-style-type: none">– Up to 30 percent of penalties with no cap	Relevant officers <ul style="list-style-type: none">– Up to 15 percent of penalties with a cap of Baht 5 million per case Informants <ul style="list-style-type: none">– Up to 30 percent of penalties with a cap of Baht 10 million per case
2. Customs offense	All the custom offenses for smuggled goods, evasion of duty, and evasion of prohibition have the same penalty level.	Different degrees of penalty for different offense levels.
3. Criminal penalty for duty evasion offense	Fine at four times of C.I.F price plus duty	Fine at seven to ten times of C.I.F price plus duty
4. Time period for post audit	No time limitation	Five years from the date of import or export

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Issue	Current law	Proposed law
5. Timeframe for consideration of the Appeal Committee	No timeframe	180 days from the date of receiving an appeal
6. Duty surcharge	No cap	Capped at an amount equal to duty shortfall
7. Power to seize or attach the properties of debtors	N/A	Customs officers have the authority to seize and attach the properties of debtors (like revenue officers)
8. Importation date of restricted goods	The importation date for restricted goods is identical to the time of importation of normal goods, which is at the time the vessel enters into Thai territory	It is deemed that the restricted goods are imported into Thailand when there is customs clearance of such restricted goods.

Currently, the draft bill is under consideration by the Council of State and then will be forwarded to National Legislative Assembly for consideration. It is expected that this bill will be finalized and put into effect in the near future.

2. Pre-arrival processing system

To support and promote trade and investment in Thailand and for the ease of doing business in compliance with the Agreement of Trade Facilitation, the Thai Customs Department has recently issued the Notification of the Customs Department No. 45-46/2559 to initially release the mechanism to expedite the release of commercial shipments, called the pre-arrival processing system at Laem Chabang Port Customs Bureau, which is the shipping port with the busiest export and import flow, and is the logistic and Multimodal transportation center.

To use this process, a ship agent must submit the pre-arrival manifest data (e-manifest) to the Customs Department at least six hours prior to the entrance of the vessel into the port for risk assessment to release cargo before the arrival of the vessel. If an advance notice of released cargo is issued, an importer/customs broker must submit an import declaration at least two hours prior to entrance of the vessel into the port to

receive the import declaration number and pay the duty. The use of the pre-arrival processing system is expected to decrease the time spent for release of shipment from five days to one hour.

Apart from Laem Chabang Port Customs Bureau, the Customs Department expects to expand the pre-arrival processing system to other port customs bureaus in the near future.

3. The new free zone regulation

On 23 March 2016, the Thai Customs Department issued the new Notification of the Customs Department No. 32/2559 to repeal the old Notification, which had been used for 12 years from 2003 and provide the new conditions and requirements for setting up free zones to be in line with the Special Economic Development Zone Policy of the Government . The main changes under the New Notification are as follows:

Issues	Previous Regulation	Current Regulation
1. Eligible free zone applicant	1.1. If an applicant is a company limited, the required paid up registered capital is <ul style="list-style-type: none"> – at least Baht 20 million if the free zone area is located in Bangkok and perimeter. – at least Baht 10 million if the free zone area is located outside Bangkok and perimeter 	1.1. If an applicant is a company limited, the applicant must have paid up registered capital of at least Baht 60 million, or an amount approved by the director-general (at least Baht 20 million). If the applicant is not a company limited nor a State Enterprise or government agency, said applicant must have paid up registered capital of at least Baht 10 million.
	1.2. Specifies only that the applicant must have a secure financial status.	1.2. The applicant must provide the details of a secure financial status; the financial

Issues	Previous Regulation	Current Regulation
		statement submitted to the Department of Business Development (" DBD ") must be taken into account; and the applicant must earn a net profit for three years prior to the request date.
	1.3. The applicant must have ownership rights, possessory right rights or operating rights over the requested area.	1.3. If the requested area is mortgaged, the applicant must request an approval of mortgagee for using it as requested.
2. Rules and conditions for applying for rights to establish a free zone	2.1. Business and industry operations carried on in a free zone for commerce must be in relation to import or export, or related to the industry.	2.1. Apart from import, export and any activity related to the industry, all business and industry operations carried on in a free zone for commerce, must be an international distribution center or industrial logistics or distribution center for goods related to the industry.
	2.2. A free zone shall have suitable public utility, facilities and provide necessary services.	2.2. Specify 10 basic public utilities, facilities and necessary services which the free zone is required to have, e.g. industrial

Issues	Previous Regulation	Current Regulation
		<p>waste destruction system, pollution and quality of environment tracking and inspection system.</p> <p>The applicant is additionally required to prepare the computer system linked to the computer system of other operators in the free zone for a customs official to investigate, control and research for the details of goods that are imported or released from the free zone.</p> <p>A customs official is authorized to enter into a free zone to investigate without a search warrant, if the customs official has grounds to believe that the responsible party has not paid due taxes, or has brought restricted or prohibited goods into the free zone.</p>
3. Guarantee for risk management of licensee	None	If a licensee does not carry on the business in compliance with the insurance contract and parole, or commits serious customs offenses or

Issues	Previous Regulation	Current Regulation
		<p>other related offenses and receives the notice of the Customs Department to remedy such, but fails to do so, the Customs Department is authorized to order the licensee to place the bank guarantee with the Customs Department within 15 days after receipt of the notice.</p>
<p>4. Eligible applicant for free zone users</p>	<p>A juristic entity with secure financial status which is the site owner or has the right to manage the areas proposed for approval to be a free zone.</p> <p>If the applicant is not a juristic entity, this requirement may be waived by submitting the request for relaxation letter with the application of a free zone user.</p>	<p>A juristic entity under the Civil and Commercial Code having paid up registered capital of at least Baht 5 million or such other amount approved by the director-general, the applicant that is not a juristic entity is unable to apply for eligible free zone user.</p> <p>If a free zone is based in the special economic zone, a free zone user must have paid up registered capital of at least Baht 1 million.</p> <p>The financial statement submitted to the DBD is specified to be used for proving secure financial status of a free zone user by reviewing whether the free zone user has net profits for three years prior to the request date, and is the site owner or has the right to manage the areas proposed to</p>

Issues	Previous Regulation	Current Regulation
		<p>be a free zone.</p> <p>If a free zone user is a newly set-up company, the authorized director must not have ever been the authorized director of another licensee, free zone user, or bonded warehouse licensee, which has a past record of committing serious customs-related offenses or violations over the past three years.</p>

Issues	Previous Regulation	Current Regulation
5. Guarantee for risk management of free zone users	None	<ul style="list-style-type: none"> - May be required to place the guarantee if a free zone user carries on business of warehouse for motor equipment, liquor, or tobacco, up to Baht 5 million to guarantee the duty and tax payable, charges or any other compensation related to the said goods. - Required if business of the free zone user, considered from financial statements, may affect the free zone operation, e.g. a business that has accumulated a loss of more than 50 percent of registered capital is required to place the place guarantee at a rate of 10 percent of the remaining balance of the tax payable.
6. Rules and conditions for relief from import and internal taxes/duties	None	Provide more procedures of the import of some types of goods, e.g. an importer of machinery or equipment must make the catalogue and blueprint of the said machinery.

Issues	Previous Regulation	Current Regulation
7. Appeal against the rejection order of the Customs Department to set up free zone	The Customs Department's decision on the appeal against the rejection order is final.	If the Customs Department disagrees with the appeal, the Customs Department is required to report the reasons to the Ministry of Finance and the ministry will render a decision on the appeal.

4. The amendment of customs formalities for the customs duty reduction or exemption privileges under section 12 of the Customs Tariff Decree B.E. 2530

For more transparent and flexible electronic customs procedures, the Thai Customs Department issued the new Notification of the Customs Department No. 53/2559 on 26 April 2016 to amend the conditions and procedures for utilizing the customs duty reduction or exemption privileges under section 12 of the Customs Tariff Decree B.E. 2530 (the **Customs Tariff Decree**) according to the Notification of the Customs Department No. 63/2555.

The main change under the Notification No. 53/2559 is that to apply for the customs duty reduction or exemption privileges under the aforementioned provision, an importer or exporter must submit the request electronically and the number of approval will be generated by the computer system of the Customs Department.

For the importer or exporter who was granted approval for the customs duty reduction or exemption privileges under section 12 of the Customs Tariff Decree in the previous format, this Notification requires them to submit a request in writing, together with a copy of an approval letter to the Customs Office or port, which grants such approval within 90 days from the effective date (26 April 2016) to request for the new number of approvals generated by the computer system of the Customs Department.

5. The amendment of conditions for duty exemption privilege with respect to products brought out of free zone or IEAT-free zone for domestic sale or

consumption under section 12 of the Customs Tariff Decree

On 22 December 2015, the Ministry of Finance (the **MOF**) published the MOF Notification RE: Customs Duty Reduction and Exemption under section 12 of the Customs Tariff Decree (No. 13) (the **MOF Notification No. 13**) in the *Royal Gazette*, which will come into force at the end of June 2016 to reduce the customs tariff to 0 percent for any goods undergoing production, mixing, assembling, packing, or any other activities in a free zone or an IEAT-free zone which are distributed or consumed in Thailand. It should be noted that this MOF Notification No. 13 further specifies that such goods must be wholly obtained or produced in Thailand, or be originating in Thailand where working or processing of the goods has taken place if (i) the goods have a Thai value content of not less than 40 percent calculated from Thai material cost, labor cost, other cost and profit against the ex-factory value, if (ii) the goods have a regional value content of not less than 40 percent calculated from ASEAN material cost; labor cost and other cost occurred in Thailand, and profit against the ex-factory value, or if (iii) the goods have a value content from Thailand and ASEAN of not less than 40 percent calculated from Thai and ASEAN material cost; labor cost and other cost occurred in Thailand, and profit against the ex-factory value.

Furthermore, the MOF Notification No. 13 also reduces the tariff rate of the goods which are granted the duty privilege under the international agreement and imported into a free zone or an IEAT-free zone for the distribution, selecting, packaging, labelling, repackaging, quality testing, capacity testing, sterilizing, or any other commercial activity without changing the HS Code of the goods, and such goods that do not contain any other goods from the free zone or the IEAT-free zone, as the case may be, for domestic sale or domestic consumption, to be at the rate equal to the special tariff rate according to the international agreement at the time of the importation of such goods into Thailand.

This MOF Notification No. 13 has a transitory provision for the goods which are entitled to duty reduction or duty exemption privileges prior to the effective date of this MOF Notification No. 13 to be able to enjoy the duty reduction or duty exemption privileges under the previous MOF Notification not more than two years from the effective date of this MOF Notification No. 13. We should note that the previous MOF Notification dated 6 January 2012 grants the duty reduction or exemption privilege for the goods being undergone production, mixing, assembling, packing, or any other activities in a free zone or an IEAT-free zone, which are distributed or consumed in Thailand at the identical special custom tariff rate according to the country of origin on the condition that such goods must be wholly obtained or produced in Thailand, or be originating

in Thailand where the working or processing of the goods has taken place if the goods have a value content of Thailand, a value content of the country which is entitled to a special custom tariff rate according to the country of origin, or both of not less than 40 percent compared to ex-factory price.

6. The new export control of dual-use goods

On 16 October 2015, the Ministry of Commerce ("**MOC**") issued the MOC Notification Specifying Dual-Use Items as Goods Requiring Permission and Subject to Export Measures (the "**Notification**") in the Royal Gazette. This Notification will be effective on 1 January 2018 in order to control the export of dual-use goods in accordance with United Nations Security Council requirements, and to protect Thai exports. The main points are as follows.

- Goods falling under a list attached to the Notification or goods for which it is believed or suspected that their end uses or end users will relate to weapons of mass destruction must obtain approval from the MOC before being exported out of Thailand.
- Goods falling under a second list attached to the Notification, e.g. natural graphite, uranium and thorium ore or concentrate, oil, petroleum gas, and hydrogen gas, are subject to certain export measures. For example, the exporter must register itself with the Department of International Trade according to subordinate rules and regulations, and certify before the Department of International Trade that the exported goods are not dual-use goods according to subordinate rules and regulations.

The list of dual-use goods under the Notification will be based on the EU's list 2012 (which is included in the Regulation (EU) No 388/2012 of the European Parliament and of the council of 19 April 2012 amending Council Regulation (EU) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items).

The business sectors that could be involved in the new control regime might be electronic and electrical goods, computer, chemicals and medicine, automotive components and parts, steel, telecommunications and communications, and glass industries.

Please note that some dual-use goods are subject to other export regulations under the Thai laws, and the Notification is likely not to cover such goods, e.g. Control of the Exportation of Arms, Armaments and War Implements Act, B.E. 2495 (1952), which covers weapons, explosives, ammunition and tools and implements which may be used for combat or war.

7. New trade control of weapons of mass destruction related items

In May 2016, the MOC is expected to propose the new draft trade controls of weapons of mass destruction ("**WMD**") related items act (the "**Draft Trade Control of WMD Act**") for the approval of cabinet, to be in line with the United Nations Security Council Resolution No. 1540. The key points are as follows:

- Goods controlled under the Draft Trade Control of WMD Act are WMD related items that include dual-use items, goods for which it is believed or suspected that its end use or end user are relevant to the WMD related items and armament, irrespective of whether they are tangible or non-tangible goods.
- The export, re-export, transshipment, transit, and brokering activities of WMD related items, including any activities which cause the spread of WMD related items are required to obtain approval, or certify that the said goods are not WMD related items in accordance with subordinate rules and regulations.