



TMI Eye No. 5 Thai Customs Affair

Recently, TMI has received requests for assistance as regards customs investigations by the Thai Customs Department. In this article, TMI would like to provide basic knowledge about customs affairs in Thailand and share customs mistakes that can lead to both civil liabilities and criminal sanctions.

Thai Customs Laws Framework

Customs affairs are all about imports of goods into an importing country. Customs affairs are generally divided into three areas, i.e. tariff classification, customs valuation, and customs procedures. Further, there are other aspects, e.g. the use of preferential treatments under free trade agreements, free-zone, etc.

Thailand is alike. The Thai Customs Department has the power to control and manage all imports to ensure that goods are imported with duty properly paid. Under the Thai customs law regime, any mistakes in the customs declaration are considered civil mistakes and criminal offenses. More specifically, upon making mistakes, the importers would be liable to pay duty shortfall and surcharge, including VAT, VAT surcharge, and penalty. On top of that, the importers may also be deemed to have violated criminal laws and thus are liable to criminal sanctions, e.g. a monetary fine, and imprisonment.

In this article, TMI will point out frequent mistakes that lead to civil and criminal liabilities so that readers can perform their customs health checks and make amendments before they are audited by the Customs Department.

Frequent Mistakes

Here are some samples of the frequent customs mistakes.

1. Tariff classification errors

Tariff classifications are among the most common errors. First and foremost, all readers should note that Thai customs affairs are based on self-declaration. Importers are always responsible for their tariff classifications and declarations. Thus, importers must at least have a basic understanding of the tariff classification. The most important reference in classifying the products' tariff is the references to tariff schedules, and the General Rules for Interpretation, the Explanatory Notes to the Harmonized Commodity Description and Coding System (a.k.a. Harmonized System or HS Code).

Readers/importers must note that advice from forwarding/shipping companies/agents, or references to the tariff used by the exporting country has never been accepted by the Customs Department due to various reasons.

In case of doubt, the readers/importers may request the Customs Department for an advance ruling to confirm their understanding before importing products.

2. Customs valuation errors

There are types of customs valuation errors, e.g. failure to include expenses that form part of the customs value to the invoice price. For example, importers must add certain expenses, e.g. royalties and design fees, etc. to the imported goods where the fees are related to the imported goods. And, as mentioned in the previous article, year-end price adjustment is due to the transfer pricing policy.

Samples of expenses that are considered part of the customs value of the imported goods include:

- (1) Royalties, know-how, or technical fees related to the imported goods and paid as a condition of sale. For example, fees for trademarks/patents on imported finished products, etc.
- (2) Costs of transportation, e.g. internal freight and insurance, often charged by sellers/exporters after importation of the goods.
- (3) Value of the goods/service supplied by the importer to the seller/exporter in connection with the production, e.g. molds that the importer supplies to the seller abroad, etc.

3. Procedural errors

A notable error in the procedure is imports/exports of prohibited/restricted goods. While prohibited goods cannot be imported, importers may import restricted goods into Thailand with proper relevant/license. Restricted products are, for example, food, medicines, animals, and plants, among others.)

And, lately, importers, particularly Japanese companies, are challenged of making mistakes about using the duty privilege under the free trade agreement and JTEPA. For example, a certificate of origin is not completed, and conditions for using the privilege are not met.

Therefore, importers are urged to continuously perform self-evaluations to identify risks and prevent such errors, particularly tariff classifications of key products imported on a regular basis.

4. Liabilities

Readers should note that civil liabilities for the customs mistakes can be:

- 1) Civil liabilities: duty shortfall, etc.
 - (a) Customs duty shortfall.
 - (b) Customs surcharge of 1% per month based on the duty shortfall,
 - (c) Customs civil penalty,
 - (d) VAT shortfall, VAT penalty and VAT surcharges, and excise taxes, if any.

2) Criminal liabilities:

- (a) for false declaration and customs evasion, a fine from 0.5 - 4 times the duty shortfall or imposes maximum prison terms of 10 years, or both.
- (b) Import of prohibited goods or restricted goods is punishable by a maximum fine of Baht 500,000 or a maximum prison term of 10 years, or both. A settlement with the Customs Department may reduce the fine to the rate of one time the CIF value plus duty. The importer will be liable here, regardless of whether or not it intended to violate the law.

TMI's note:

Customs affairs are complex in all areas. Importers/readers must pay attention to it. A mistake in one issue, esp. tariff classification, can lead to significant liabilities. Importers/readers are urged to perform self-evaluations to trace possible violations or discover weaknesses in their compliance framework. Doing so can enable imports to make a voluntary payment of the duty shortfall of the mistake to be eligible for customs duty exemption (currently under the One Stop Service program, or "OSS") and also help minimize error in the future.

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