



## **TMI EYES No. 9: Customs Affairs and the Liabilities**

Recently, TMI has received a number of requests for customs investigation assistance. And, there are cases that are subject to high liabilities. In this article, TMI will provide customs law structure and frequent mistakes that importers encounter so that importers will have awareness and implement its customs affairs procedures to minimize the liabilities.

### **Thai Customs Laws**

Thai customs are mainly governed by the Customs Act B.E. 2560 (2017), and the Emergency Decree on the Customs Tariff Decree B.E. 2530 (1987). The Customs Act provides provisions of laws governing customs valuation, procedures, and customs-free zones, including liabilities where importers fail to comply with the laws. The Decree mostly provides rules of tariff classification, tariff and rates, and exemption of customs duty.

Generally, there are three main areas of customs affairs that importers must pay attention to, i.e., customs valuation (determination of tax base for calculation of duty), customs tariff, and customs procedures.

More specifically, the readers should note the following:

- (1) Customs valuation. The customs valuation is the determination of the tax base for the calculation of customs duty. In principle, the customs value of the imported goods is the price actually paid or payable for the goods being valued when they are sold for export. Where there are certain expenses, such expenses must be added to the price to determine the customs value, e.g. royalties, selling commission, provision of engineering works, design, used in the production of the imported goods, specific container, etc. The comprehensive rules about customs valuation are under the Ministerial Regulation as regards customs valuation B.E. 2560 (2017).
- (2) Customs tariff. The readers should be aware of tariff classification rules (6 rules) and explanatory notes to the harmonized tariff system and apply them correctly.
- (3) Customs procedure. There are various customs procedures that importers must be aware of. One of the most disputed issues is the certificate of origin to claim privileges under JTEPA or free trade agreement (FTA),

It is essential for importers to note that where they fail to correctly comply with the customs laws in any aspect, the importers would likely be subject to both civil (tax) liabilities and criminal (penalty and imprisonment) liabilities.

## **Civil Liabilities**

For civil liabilities, Importers must declare the value of the imported goods, classify the correct tariff, and perform customs procedures correctly. Where the importers fail to do so, they will be liable to pay customs shortfall, customs surcharge at the rate of 1% of the duty shortfall per month (maximum of 100% of the duty shortfall, and customs penalty at the rate of 20% of the duty shortfall where the importers did not pay the duty within 30 days from the date of assessment.

In addition to the customs liabilities, the importers will have to be liable for VAT liabilities. This is because the customs value and duty are the tax base for VAT. Where the importers under-declare customs value and duty, this results in paying VAT shortfall. In such case, the importers will be liable for VAT shortfall, VAT penalty (100% of the VAT shortfall), and VAT surcharge at the rate of 1.5%/month of the VAT shortfall.

## **Criminal Liabilities**

In addition to the civil liabilities, the importers may have to be liable for criminal liabilities in the form of financial penalties (and in principle imprisonment, but in practice, it is very rarely imposed due to the statutory settlement system). The frequent offenses that lead to criminal offenses are:

<b>Offense</b>	<b>Penalty upon settlement</b>
False declaration (due to carelessness)	0 – THB 1,000, or 10% of duty shortfall not exceeding THB 100,000
Duty avoidance with intent to dodge duty	50%-200% of the duty shortfall, or 400% in case of falsifying documents or using of complex evasion strategy
Import of prohibited goods; or import of restricted goods without a license	100% of the CIF and duty.

\*Please note that there are other acts that are considered criminal offenses, and the penalties listed above are only for the most frequent mistakes.

It is very important for all readers who import goods into Thailand to be aware of customs laws, frequent mistakes, and liabilities for the mistake. A mistake can lead to very high duty and tax penalties, and in the worst case, customs criminal penalty.

Therefore, readers should occasionally review their customs practices to learn of any possible mistakes that they may have and resolve them as soon as possible. Readers should also note that where importers find mistakes and voluntarily declare such mistakes and pay all taxes, for certain mistakes, the importers may request the Customs Department to consider waving the criminal penalties.



# ASSOCIATES

*Daiki Koso, Partner and Monchai Varatthan, Partner, TMI Associates (Thailand) Co., Ltd.*

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[bangkok@tmi.gr.jp](mailto:bangkok@tmi.gr.jp)

Tokyo | Nagoya | Osaka | Kyoto | Kobe | Fukuoka | Shanghai | Beijing |  
Yangon | Singapore | Ho Chi Minh City | Hanoi | Phnom Penh | Bangkok |  
Jakarta\* | Kuala Lumpur\* | Silicon Valley | London | Paris | Brussels |  
\*ARTS based office

Sathorn Square Office Tower, 22nd Floor, unit 2212,  
North Sathorn Rd., Silom, Bangrak, Bangkok 10500

Facebook: TMI Associates – Thailand  
Instagram: tmiokk  
LinkedIn: TMI Associates (Thailand)