

20 January 2010

CUSTOMS ACT (NO.17) B.E. 2543

BY COMMAND OF THE KING'S MOST  
EXCELLENT MAJESTY.

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Was promulgated on the 25th

Day of February 2543

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that

Whereas it is expedient to amend the law on customs.

This Act contains certain provisions concerning the restriction of personal rights and liberties, which, under Section 29 together with Section 48 of the Constitution of the Kingdom of Thailand, may be made by virtue of the provisions of the law.

Be it, therefore, enacted by the King, by and with the advice and consent of the Assembly of the Parliament as follows:

Section 1. This act shall be called the "Customs Act (No. 17) B.E. 2543".

Section 2. This Act shall come into force on and from the day of January 1 B.E. 2543

Section 3. The definitions of "TRUE MARKET VALUE" or "VALUE" in Section 2 of the Customs Act B.E.2469 as amended by the Customs Act (No. 9) B.E. 2482 is repealed and replaced as follows:

" "CUSTOMS VALUE" or "VALUE" of any goods

(1) In case of exportation, shall mean the wholesale cash price without deduction or abatement for which goods of the same class and kind quality would be sold without loss at the time and place of exportation; or

(2) In case of importation, shall mean the value of goods for the purposes of levying ad valorem duties of customs according to any of:

(a) the transaction value of imported goods,

(b) the transaction value of identical goods,

(c) the transaction value of similar goods,

(d) the deductive value,

(e) the computed value,

(f) the fall-back value.

The rules, procedures and conditions on the application and the valuation of the customs value under (a) (b) (c) (d) (e) and (f) shall be in accordance with the Ministerial Regulations.”

Section 4. Section 11 of the Customs Act B.E.2469 as repealed by the Customs Act (No. 9) B.E. 2482 is added as follows:

“Section 11. There shall be added to the transaction value of the imported goods the cost of insurance, the cost of transport to the port or place of importation, loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation.

If there is no cost of insurance, cost of transport to the port or place of importation, loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation, such costs shall be determined as the Director-General may specify.”

Section 5. Section 11 bis of the Customs Act B.E.2469 is added as follows:

“Section 11 bis . If the declared value is clearly low or does not reflect the true value of the goods and if the customs value is determined under the rules, procedures and conditions in accordance with the customs value or value in (2) (a) (b) (c) (d) and (e) of the definitions of “customs value” or “value” in Section 2, the price is still clearly low or does not reflect the true value of such goods, the Director-General shall have the power to determine the customs value.”

Section 6. Section 12 of the Customs Act B.E.2469 is repealed and replaced as follows:

“Section 12. If there is a disagreement as to the true customs value of any goods, the Director-General shall have the right to accept payment in kind, or purchase such goods, or any part or lot of one sort or the whole part or the whole lot, at their declared value increased by two and a half percent; or if payment in kind or such purchase is not made, the Director-General and the owner of the goods shall each have the power to call in an equal number of arbitrators not exceeding two on each side to assist them in settling the dispute.”

Section 7. Clause three of Section 112 bis of the Customs Act B.E.2469 as amended by the Announcement of the National Executive Council No. 329 dated 13th December B.E.2515 is repealed.

Section 8. Section 112 sex, Section 112 septem, Section 112 octo, Section 112 novem, Section 112 decem, Section 112 undecim, Section 112 duodecim, Section 112 tredecim, Section 112 quattuordecim, Section 112 quindecim, Section 112 sedecim, Section 112 septendecim, Section 112 octodecim, and Section 112 novemdecim of the Customs Act B.E.2469 are added as follows:

“Section 112 sex. The importer or exporter may, in the form laid down by the Director-General, lodge an appeal to the Customs Valuation Appeal Committee, against the assessment of the competent officials within thirty days after the date of receiving the notice of assessment. In the case of importation or exportation in a province other than Bangkok and in compliance of the regulations laid down by the Director-General, the appeal may be filed through a customs house or a regional customs bureau.

Section 112 septem . There shall be a Customs Valuation Appeal Committee composed of the Director-General as Chairman, a representative of the Ministry of Finance, a representative of the Office of the Council of State and not less than five but not more than seven qualified persons appointed by the Director-General to be members.

The Committee shall appoint officials from the Customs Department to serve as Secretary and Assistant Secretary. The Secretary is also a member of the Committee.

Section 112 octo. The qualified persons appointed by the Director-General shall remain in office for a term of three years.

After the completion of the term of office, if there is still no new appointment, the member who has completed his term of office shall remain in the office until a newly appointed member assumes the post.

A new member shall be appointed within thirty days after the expiration of another member’s term.

A member of the Committee having completed his term of office may be reappointed for service but not more than two consecutive terms.

Section 112 novem . Apart from leaving office upon completion of the term, a qualified person shall leave office upon:

- (1) death,
- (2) resignation,
- (3) becoming bankrupt,
- (4) becoming incompetent or quasi-incompetent,

(5) dismissal by the Director-General because of gross negligence in the performance of duties or gross misconduct,

(6) having been sentenced by a final judgement to imprisonment, unless it is a sentence for an offence committed out of carelessness or for a petty offence.

In case where a member of the Committee leaves office before the expiration of his term, the Director-General shall appoint a person to be a member in his stead and shall retain his office only for the period of time of his predecessor.

Section 112 decem. The quorum of the meeting of the Customs Valuation Appeal Committee shall be not less than one half of the total number of the members.

In case the Chairman is absent from the meeting, the Committee may elect one of the members to preside over the meeting.

Resolutions of the Committee shall be based on simple majority. Each member shall have one vote. If there is a tie, the Chairman at the meeting shall cast another vote to break the tie.

Section 112 undecim. The member having a vested interest in any issue shall not attend the meeting or cast vote in that issue.

Section 112 duodecim. For the purpose of ruling of appeals, the Customs Valuation Appeal Committee or the Competent Officer shall have the power to issue a summons requiring the presence of the appellant or a relevant person to give answers or to deliver books of accounts, documents, evidence or information in whatever form or any other relevant evidence to the appeal for examination provided that a period of at least fifteen days from the date of serving the summons shall be allowed for compliance.

In case of any appellant who, without reasonable excuse, fails to comply with the summons issued under paragraph one, or refuses to give answers when questioned, the Customs Valuation Appeal Committee may dismiss the appeal.

Section 112 tredecim. The Customs Valuation Appeal Committee may appoint a sub-committee to conduct any assignments and report to the Customs Valuation Appeal Committee.

Section 112 decem and Section 112 undecim shall be applicable for the sub-committee appointed by the Board of Appeals, *mutatis mutandis*.

Section 112 quattuordecim. The members of the Customs Valuation Appeal Committee shall be competent officials under the Criminal Code.

Section 112 quindecim. The rulings of the Customs Valuation Appeal Committee shall be final. And in the event that the rulings are changed later, these changes in the rulings shall not have retroactive effect, except where there is a final judgement causing changes to the rulings, the officials shall be empowered to take action in accordance with the judgement in respect of the unfavorable part that has the retroactive effect and apply it to only the person who is the other litigant in the case.

Section 112 sedecim. In case of additional duty or insufficient guarantee of the amount of duty, the appeal under Section 112 sex does not defer payment of the amount of duty that the Competent Officer has assessed except when the Director-General or the person designated by him deems fit to allow the delay as requested by the appellant pending the ruling of appeal or the judgement of the court, in which case he shall make payment within thirty days from the date of receiving the notice of the ruling of appeal or of the final judgement of the court.

If the ruling of an appeal results in an increase in the amount of duty, the appellant shall pay the increased amount within the time specified in the first paragraph.

Section 112 septendecim. The ruling of appeal given by the Customs Valuation Appeal Committee shall be in writing and shall be delivered to the appellant.

Section 112 octodecim. The appellant may appeal the ruling of the Customs Valuation Appeal Committee by filing a law suit within thirty days from the date of receiving the ruling of appeal except in the case that the appeal was dismissed under Section 112 duodecim.

Section 112 novemdecim. Whoever shall fail to comply with the summons of the Customs Valuation Appeal Committee or the Competent Officer under Section 112 duodecim shall be liable to imprisonment for a period not exceeding six months or a fine of not more than fifty thousand Baht or both fine and imprisonment.

Section 9. Section 113 bis of the Customs Act B.E.2469 is added as follows:

“Section 113 bis. Any importer, exporter, agent of such person or relevant person as specified by the Director-General shall have the duty to keep and maintain books of accounts, documents, evidence and any form of information relevant to the goods that is passing or passed through the customs at the place of business or at any other place as the Director-General may require for not more than five years from the date of importation or exportation.

In case that a person or a juristic person under paragraph one dissolved his business, such person or juristic person or liquidator of such juristic person shall keep and maintain such books of accounts, documents, evidence and information under his responsibility on the date of dissolution for two years thereafter.

The Director-General is empowered to lay down the type of documents that the person under paragraph one required to keep and maintain, including the rules, procedures and conditions in keeping and maintaining such books of accounts, documents, evidence and information.

Whoever shall refuse to comply with paragraph one or paragraph two, or refuse to comply with the rules, procedures and conditions in paragraph three shall be liable to imprisonment for a period not exceeding six months or a fine of not more than fifty thousand Baht or both fine and imprisonment.”

Section 10. Section 115 bis, Section 115 ter, Section 115 quarter, Section 115 quinqué, and Section 115 sex of the Customs Act B.E.2469 are added as follows:

“Section115 bis. In case there is reason to suspect that there is a violation or non-compliance of the provision under this Act or any other relevant Customs laws, the Director-General or the person designated by him, or the Competent Officer who is designated by the Director-General or the person designated by him in writing to be the examiner, is empowered as follows:

(1) to enter in the place of business of the importer, exporter, agent of a vessel, agent of such person or any other place concerned between sunrise and sunset or during business hours; for this purpose, the examiner shall have the power to order such person or any person in such place to do any act necessary for the examination,

(2) to ask for facts and to order such persons to produce any books of accounts, documents, evidence or information or any other subject relevant to the offence by such person,

(3) to seize or impound books of accounts, documents, evidence or any form of information or any other evidence which may prove an offence under this Act or other relevant Customs laws.

Whoever shall obstruct or refuse to comply with the order of the Director-General or the person designated by him or the Competent Officer in paragraph one shall be liable to imprisonment for a period not exceeding one year or a fine of not more than one hundred thousand Baht, or both fine and imprisonment.

Section115 ter. In case there is reason to suspect or a finding that there is a violation or non-compliance of the provision under this Act or any other relevant Customs laws, and for the purpose of investigation, the Competent Officer shall have the power to order any importer, exporter, agent of such person or relevant person to the importation or exportation to give a statement or give facts or produce written explanation or order such person to deliver books of accounts, documents, evidence or any form of information on any relevant subject relevant to the offence for examination, provided that a period of at least seven days from receiving such order.

Whoever shall violate or refuse to comply with paragraph one shall be liable to an imprisonment for a period not exceeding one year or a fine of not more than one hundred thousand Baht, or both fine and imprisonment.

Section115 quarter. In case the offender under this Act is a juristic person, the managing director, or the managing partner or the person who is responsible for the management of such juristic person, the offender shall be liable to the punishment prescribed for such offence unless the offender proves the offence was committed without his knowledge or consent, or he has acted as may be reasonable to prevent such offence.

Section 115 quinque. The relevant person shall reasonably facilitate the due exercise of functions of the Director-General or the person designated by him or the Competent Officer under this Act.

Whoever shall not facilitate the Competent Officer in paragraph one shall be liable to a fine not exceeding twenty thousand Baht.

Section 115 sex. In due exercising of functions under this Act, the Director-General or the person designated by him or the Competent Officer shall produce his identity card to the person concerned.

The identity card shall be in the form laid down by the Director-General as published in the Government Gazette.

Section 11. Section 10 of the Customs Act (No.9) B.E.2482 is repealed and replaced as follows:

“Section 10. On the importation or exportation of any goods, whether liable to duty or not, the importer or exporter shall in his entry state the description, quality, quantity, weight, customs value and such particulars as may be required by the Director-General, and shall subscribe in such entry a declaration of the truth of such statement. Where the customs value is not ascertainable, the importer or exporter shall state the cost at which goods of the same class and kind quality could be delivered at the place of importation or exportation, as the case may be, without any deduction or abatement, but exclusive of duty in the case of imports.”

Note: The reason for proclaiming the use of this Act is that as Thailand is a member of the World Trade Organization, it is obligated to enforce the provision in Article VII of the General Agreement on Tariffs and Trade (GATT) 1994 and such Agreement prescribes the customs value in assessment, which is different from the Customs Laws which prescribe the market value. Therefore, to be in accordance with Article VII of the General Agreement on Tariffs and Trade 1994, the true market value method for importation is abolished, and the customs value is used instead. It is also expedient to have a Customs Valuation Appeal Committee and the appeal procedure to facilitate the importer or exporter of goods who is not satisfied with the valuation of the Competent Officer, to appeal to the committee instead of to the Director-General or his proxy. The consideration of the appeal will be correct and transparent. It is also expedient that the relevant parties to importation or exportation keep books of accounts, documents, relevant evidence on importation and exportation for inspection. If there is a reasonable belief that there is a violation, or there is an act that is inconsistent with the Customs law, or there is a finding that there is an offence, the Director-General or the person assigned by him or the Competent Officer is empowered to act as he may deem proper. To expedite the investigation of such offence, it is expedient to include the responsibility of the managing directors, managing partners, managers or anyone responsible for running such juristic persons. Therefore, the Act is enacted.