

Customs Law

Amendments of No. 16/17

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The Thai Legislature has recently enacted two pieces of legislation amending the Customs Act B.E. 2469 (1926) (hereinafter, referred to as “the Act”). In this article, I will discuss the rationale behind these amendments and explain the ways in which they have reformed Thai customs law.

I. Amendment No. 16

Amendment No. 16 (The Customs Act (No.16) B.E. 2542 (1999)) came into force on November 26, 1999. It augments Section 27 and modifies Section 32 of the Act.

The rationale behind this amendment was to suppress widespread tax and customs evasion. The Thai Legislature hoped that the following changes would make life more difficult for smugglers on the sea by expanding the definition of illegal actions, as well as by creating broader measures for confiscation of vessels involved in prohibited activities.

Section 27 of the Act is generally concerned with the smuggling of goods into and out of Thailand and/or the evasion, or attempted evasion, of Thai customs duties. This provision specifically holds that it is an offence for any person to import or export (or assist in the import and/or export) any uncustomed, restricted or prohibited goods; note also that any person who receives such goods is deemed to have committed an offence.

Amendment No. 16 augments Section 27 of the Act by adding a provision that attempts to suppress suspicious types of activities (which are likely to lead to smuggling of goods) outside the port areas of Thailand (Section 27 ter). To elucidate, this section reads that no vessel shall load any goods in the sea outside port areas without (i) reasonable grounds for doing so, or (ii) permission from a competent officer. The master of the vessel or any other person involved in violating said provision faces the threat of imprisonment

and/or a hefty fine¹, whilst any goods found aboard the vessel will be liable to confiscation by the relevant authorities.

Unlike Section 27, which was merely broadened by Amendment No. 16, Section 32 was completely repealed and replaced by the amendment.² Section 32 deals with vessels used in relation to smuggling and the confiscation of offending vessels' goods. The original version exclusively referred to and specified sanctions only for those vessels **not exceeding 250 tons** in weight used in smuggling activities. The current provision prohibits the same³, yet goes even further. Under the new section, the Court is empowered to order the confiscation of a vessel used in relation to smuggling (including its goods) **over 250 tons** in weight, according to the "circumstances of the offence". This means that the weight or size of the vessel is no longer determinative, as it once was. Any vessel involved in smuggling activities and its goods, regardless of weight, may now be confiscated⁴.

Under the amendment, the new section will also hold a person accountable even though goods involved in illegal activities do not belong to him or her, so long as circumstances are such that the said person knew, or had reason to suspect, that an offence was being committed, and failed to act, or rectify the situation, or to take precautions to prevent such goods from being connected with the commission of the offence.

II. Amendment No. 17

Customs Act (No. 17) B.E. 2543 (2000) (hereinafter, "Amendment No. 17") is the most recent amendment to the Act, brought into force on January 1, 2000. It contains numerous provisions which alter various fundamental parts of the Act.

Most significantly, the definitions of "true market price" or "price" under Section 2 of the Act were repealed and replaced by Section 3 of Amendment No. 17. The Amendment

¹ The section provides that imprisonment may be for a term of up to two years, or a fine equal to quadruple the price of the goods, or a fine of Baht 100,000, whichever is higher.

² Section 32 repealed and replaced with section 4 of Amendment No. 16.

³ The section reads: "Any vessel of not more than two hundred and fifty tons burden, car, cart, vehicle, package or any other container, that is found to have been used in the removal, concealment or carriage or any uncustomed, restricted or prohibited goods, shall all be confiscated..."

⁴ Note also that all goods (even those which are not uncustomed, restricted or prohibited, so long as they are contained on the same vessel with the prohibited goods) are liable to be confiscated in the event of any violation of Section 32.

No. 17 now refers to “customs price” or “price” and provides new definitions of the terms. These amendments were required to bring Thailand’s customs laws into compliance with the *General Agreement on Trade and Tariffs 1994* (the “GATT”). Since Thailand has become a member of the World Trade Organization and a signatory to the GATT, it was necessary that our customs laws be modified accordingly. Before these changes, “true market prices”⁵ were used as the basis for the assessment of duties on imported goods in Thailand. Under the new law, “customs prices”⁶ are used in the assessment of duties on imported goods. The new law modifies procedures, bases and conditions on how to assess the duties on imported goods.⁷

In addition to these changes to fundamental definitions in the Act, Amendment No. 17 adds Section 11.⁸ Section 11 states that the customs price shall include insurance charges, as well as transport, stevedoring, and handling charges connected with the transported goods to the port or place of importation. In cases where no such charges exist, the Director General has the authority to fix the value of such items. Provision for the inclusion of insurance and other such charges into the customs price was not part of the original Customs Act.

It’s important to note that under the new laws, the Custom Department Director-General has the authority to set the prices of the customs goods as he or she deems fit, in circumstances where the price of the goods is evidently low or unlikely to be an accurate reflection of their true value, even though the price of the goods has been fixed according to the definition of “Customs Prices” in section 2 of the Act.

⁵ “True Market Value” or “Value” of any goods shall mean the wholesale cash price (exclusive of duty in the case of imports), for which goods of the like kind and quality would be sold without loss at the time and place of importation or exportation, as the case may be, without any deduction or abatement.

⁶ The word “customs price” or “price” of any goods,

(1) in the case of exportation, means cash wholesale price for the sale of goods of the same category and type without suffering a loss at the time and place of exportation without any deduction or reduction whatsoever, or

(2) in the case of importation, means price of goods with an aim to collect duty according to any of the following prices:

- (a) selling/buying price of imported goods;
- (b) selling/buying price of identical goods;
- (c) selling/buying price of similar goods;
- (d) deductible price;
- (e) computable price;
- (f) reversible price.

However, the bases, procedures and conditions regarding the application and the fixing of price under (a), (b), (c), (d), (e), and (f) shall be as prescribed in the Ministerial Regulations.

⁷ Ministerial Regulations No. 132 B.E. 2543 (2000) issued under Customs Act. B.E. 2496 (1926) governing bases, procedures and conditions respectively application and fixing of custom price.

⁸ Section 11 had been formerly repealed by the Customs Act (No. 9) B.E. 2484 (1939).

Amendment No. 17 alters another fundamental aspect of the Act - the appeal procedure for those appealing against duty assessments. Instead of lodging an appeal with the Director General of the Customs Department, as was the former practice, importers/exporters may now appeal directly to an Appeal Committee. The Appeal Committee is comprised of the Director General (Chairman), a representative from the Ministry of Finance, a representative from the Office of the Juridical Council and five to seven other members appointed by the Director General. The amendment also sets out the particulars of the Appeal Committee's administration, such as the procedures for vacating office or appointing new members, members' terms of service, Committee powers and decision making authority, etc. All things considered, the new law intends to create a more fair, efficient and transparent procedure than that formerly instituted.

Amendment No. 17 also clarifies one of the provisions relating to records keeping. Whereas under the Act, section 113 sets out the method of preparing all entries, records, books etc. relating to customs formalities, the amendment (as Section 113 bis) provides that the duty to keep and store such records (etc.) lies with the importer, exporter, ship agent, the agent of the ship agent or any other person designated by the Director General, as the case may be; that any such person must keep such record for a period of not less than five years from the date of importation or exportation in case of the need for inspection. If any of the above persons fails to comply with this provision, he or she is liable to imprisonment and/or a hefty fine.⁹

In addition, Amendment No. 17 sets out the powers of the Director General, or that person assigned by him or her, to carry out an investigation in circumstances of a violation or a failure to comply with the provisions of the Act, or where an offence relating to Customs has been committed.¹⁰ No such rules were spelled out before Amendment No. 17 came into force, and even though the Director General or his/her authorized representative may have exercised these powers in practice. It's important to note that powers of the Director General (or assignee) are now legislatively mandated.

⁹ The section provides that imprisonment may be for a term of up to six months, or a fine of Baht 50,000, or both.

¹⁰ Note that in cases where a juristic person is deemed the offender in question, in order that the responsible parties may be brought to justice, the Director General may also prescribe liability against the managing director/partner, or the person responsible for the operations of said juristic person.