

Thailand's export control regime



Thailand has few restrictions on exports except when dealing with national security, environmental protection, or cultural issues. Kitti Thaisomboon describes the country's export control regime and details the provisions of the key governing legislation, the Import and Export Act, along with other item-specific controls.

With the recent economic downturn, Thailand's government holds a fairly liberal attitude toward international business and trade. The model for economic growth currently being pursued by the Thai government is particularly advantageous to the country's exporters and to foreign investors. For example, membership in the World Trade Organization ('WTO') and other organizations commits Thailand to the reduction and removal of tariffs, duties, non-tariff barriers, and other impediments to trade. Thailand has also ratified other trade agreements dealing either with the movement of specific goods (such as garments and textiles), or with the movements of goods between specific countries.

Thailand's government encourages export by supporting selected industries through various promotions, incentives, and programmes to improve their competitiveness in the foreign market. The Board of Investment ('BOI') has been active in promoting Thailand as a base for foreign investment and has been successful in attracting many large

multinationals and their regional operations and manufacturing facilities to Thailand. The Department of Export Promotion and the Department of Foreign Trade are active in showcasing Thai goods and exporters to the world, helping them to develop overseas markets and thus improve the quality of their goods and marketing efforts. The Export-Import Bank of Thailand is active in assisting exporters by providing them with financing options needed to expand and develop their foreign markets.

While the government promotes export through certain trade agreements and through incentives and indirect financial assistance, there are nevertheless domestic laws in place that control and restrict the exportation of certain goods outside Thailand.

Import and Export Act

The main governing legislation is the Export and Import Act B.E. 2522 (1979). The Export and Import Act was enacted to protect the economic stability, public interest, public health, national security, peace, public order, and good morals of the people of

Thailand. Other than compliance with the regulations of the respective country of destination, compliance is generally limited to the requirements under the Export and Import Act before any goods can be exported outside Thailand. The provisions of the Act can enforce the following:

- Absolute prohibition: where the importer or exporter, as the case may be, is not allowed to import or to export the goods under any circumstances;
- Restriction: where the importer or the exporter needs to have written permission from the competent authorities in order to import or export the goods;
- Standard requirements: where the importer or exporter is required to comply with the category, kind, quality, standard, quantity, volume, size, weight, price, trade name, brand, and trademark for the goods imported or exported, as well as comply with the regulations of the countries of origin/destination;
- Special duty: where the categories and kinds of goods are subject to special duty upon import or export.



The Thai government may fix special duties for importation or exportation of certain goods;

- Certificate of origin or goods quality certificate: where any goods imported or exported must be accompanied by a certificate of origin, goods quality certificate, or any other certificates in conformity with international agreements or trade practices;
- Any other measures for the benefit of systemizing importation or exportation to or from Thailand.

The Ministry of Commerce is the governmental authority in charge of overseeing the Export and Import Act. It is empowered to impose export controls on certain goods as well as issue ministerial regulations and notifications mandating that certain goods require an export licence, or that they shall be subject to restrictions for exportation. Such restrictions will vary according to the type of goods, from compulsory prohibition, licence requirements, and specification control, to quality control. Restrictions are generally limited to indigenous agricultural products, cultural and religious items, endangered wildlife, fruit, and seafood.

The Thai customs department is the designated authority that will intercept the importation and exportation of restricted goods and ensure that all relevant laws and regulations are properly followed.

At present, at least 50 items are subject to export control. These items are frequently changed through notifications issued by the Ministry of Commerce. The export controls for these goods range from express prohibition to quota programmes:

- **Express prohibition:** Natural sand and intellectual property-infringing goods (i.e., audio, cassette tapes, compact discs, computer programs, etc.) are

expressly prohibited from being exported.

- **Export licence under Export Standard Act:** Certain goods – for example, sugar and rice – are subject to export licences under the Export Standard Act B.E. 2522 (1979), administered by the Commodity Standards Office of the Ministry of Commerce, which is intended to ensure that such goods meet quality requirements.
- **Export licence under other laws:** Certain goods require an export licence under other laws; for instance, seeds, gold, cattle, trees, coffee, wood, charcoal, elephants, 317 kinds of ornamental fish, and certain kinds of fruit and vegetables.
- **Tariff:** Some goods are subject to tariffs when exported; for example, wood products, animal hides, raw silk, rubber, timber, etc., and the export duties and tariffs are levied in accordance with the Harmonized Community Description and Coding System of the Customs Department of Thailand.
- **Quota:** Some goods – for example, textiles and apparel – are subject to a quota programme for export, as administered by the Ministry of Commerce, which varies depending on the importing country.

Goods intended for export from Thailand are subject to normal export procedures under the Customs Act. Any person who imports or exports a prohibited or restricted good, as determined by the Customs Department or as listed under the Export and Import Act or other relevant laws, is committing a criminal offence, is subject to the penalties imposed under the relevant laws, and is also considered as committing a criminal offence under the Customs Act B.E. 2469 (1926), as amended. These prohibited goods include, but are not limited to, obscene objects/literature/pictures, pornographic material, narcotics, counterfeit goods, and intellectual property rights-infringing goods. The Thai Customs Department is empowered to stop importation and exportation of these restricted goods. In addition, the Customs Department is also the designated authority that will intercept the importation and exportation of restricted goods and ensure that all relevant laws and regulations are properly followed.

Other laws

Other than export control under the Export and Import Act, a number of goods are also subject to export controls under other laws. These include military equipment, plants and plant varieties, wild animals, pathogens and animal toxins, medical instruments, hazardous substances, and radio communications equipment.

Military equipment

For the safety and security of the country, arms, ammunitions and strategic materials are subject to export controls and are prohibited under the Act Controlling Exportation of Arms, Ammunition and Strategic Materials B.E. 2495 (1952) and the Royal Decree Controlling Export of Arms, Ammunitions and Strategic Materials B.E. 2535 (1992). The arms, ammunitions, and strategic materials that are subject to export controls are listed below:

- Weapons and launching apparatus, dropping apparatus, and accessories thereof (e.g. pistols, rifles, machine guns, artillery, torpedo launchers, military chemicals and biological substance launchers, rocket launchers and guided missile launchers, etc.);
- Ammunitions, explosives, and accessories (e.g. dynamite and gun powder, military cartridges, military rockets, torpedoes, military signal flares, mines, etc.);
- Land vehicles, water vehicles, and air vehicles for military use (e.g. armoured vehicles, warships, warplanes, etc.);
- Tools and utensils that may be used in war or for warfare purposes (e.g. military barriers, aerial cameras and aerial photographic equipment, communications equipment, etc.);
- Confidential military documents and pictures (e.g. pictures of places or articles which are confidential to the military, etc.);
- Chemicals.

However, some of the above items can be exported upon obtaining written approval from the Minister of Defence in the following circumstances:

- When requested by a foreign government to export or ship in transit under an agreement made with the Thai government;

- When arms, ammunitions, and strategic materials of the authorities have been approved by the Minister of Defence;
- When an action is carried out openly in the course of business as a normal trade practice, which must also be approved by the Minister of Defence.
- The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (the 'Ottawa Convention'): Thailand ratified on 27 November 1998, which became effective for Thailand on 1 May 1999.
- The Convention on the Protection of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, or the so-called Chemical Weapons Convention ('CWC'): Thailand became a signatory on 14 January 1993 and ratified it on 10 December 2002.

In addition to the above laws, the following legislation controls the import and export of arms, ammunitions and strategic materials, for which a requisite licence is required:

- Armaments Controls Act B.E 2530 (1987);
- Emergency Decree to Control Border Trade B.E. 2527 (1984);
- Firearms, Ammunition, Explosive, Fireworks, and Imitation Firearms Act B.E. 2490 (1947);
- Atomic Energy for Peace Act B.E. 2504 (1961).

Thailand has been a member state of the United Nations since 16 December 1946. Under the UN Charter, all member states agree to accept and carry out the decisions of the UN Security Council. Since 1946, there have been various resolutions issued by the UN Security Council including Resolution 1540 (2004), adopted by the Security Council at its 4956th Meeting, on 28 April 2004 (UNSCR1540). The main purpose of UNSCR1540 is to eliminate or prevent the proliferation of nuclear, chemical, or biological weapons, including arms control and disarmament.

In addition to its basic United Nations commitments, Thailand has also signed the following treaties:

- The Nuclear Non-Proliferation Treaty ('NPT'): Thailand became a signatory on 7 December 1972 with strict compliance, especially with the Safeguards Agreement entered into between the Thai government and the International Atomic Energy Agency.
- The Biological Weapons Convention: Thailand signed and ratified the convention on 28 May 1975.
- The Comprehensive Nuclear-Test-Ban Treaty: Thailand signed on 5 November 1996 (although it has not been ratified yet).

It is evident that the risks of proliferation of weapons of mass destruction are a key concern, and the related export controls are thus heavily controlled. In addition, Thailand has put significant effort into implementing UN resolutions and has tried to achieve international peace and security by supporting the process of arms control and disarmament, even through domestic laws to prevent and refrain from the development or proliferation of nuclear, chemical, and biological weapons.

Plants and plant varieties

In order to prevent the spread of pests from Thailand to other countries, and for the protection of human health, plants and plant germplasm, controlled plants, and specific controlled plants (which are declared by the Ministry of Agriculture and Cooperatives as requiring protective measures and inspection of microorganisms or other harmful articles, in compliance with the importing country's requirement prior to export) are prohibited from being exported unless a licence is obtained from the Department of Agriculture under the Plant Quarantine Act B.E. 2507 (1964), as amended in 1999 and 2008. In addition, a phytosanitary certificate is also required to accompany the exported plants to assure that they are free from pests and are in compliance with the importing country's requirements.

Moreover, the business of trading plants is growing in Thailand. Therefore, various plant varieties, seeds, controlled seeds, reserved plants, conserved plants, and prohibited plants are prohibited from being imported or exported unless

Wild animals

Wild animals, carcasses of wild animals, reserved wild animals, and protected wild animals are prohibited from being imported or exported unless permission is granted by the Department of National Wild Animal and Plant Stock under the Wild Animal Reservation and Protection Act B.E. 2535 (1992), as amended in 2003. Various kinds of animals including terrestrial, aquatic, and winged animals have been declared protected wild animals or reserved wild animals. In addition, importation or exportation of wild animals or carcasses of wild animals, which require permission in accordance with CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora), also require permission from the Department of National Wild Animal and Plant Stock.

permission is granted from the Minister of Agriculture and Cooperatives under the Plant Varieties Act B.E. 2518 (1975), as amended in 2007. In order to control plant traders, various criteria are imposed on an applicant applying for a licence to collect, sell, import, or export those plants. For example, the applicant must have reached a specified legal age, have a residence in Thailand, etc. Also, the rules and procedures for prevention of export of certain plant species, as listed in the Convention on International Trade in Endangered Spices of Wild Fauna and Flora ('CITES'), must be complied with.

Under the Plant Varieties Protection Act B.E. 2542 (1999), a breeder can register a new plant variety for protection. The right-holder of such a new plant variety has the exclusive right to sell, distribute, import, or export propagating materials for the new plant variety. To prevent diseases, promote health, maintain public welfare, and preserve and conserve the environment and biological diversity, the Minister of Agriculture and Cooperatives has the power to issue notifications prohibiting the production, sale, distribution, importation, or exportation of new plant varieties. However, the Minister

of Agriculture and Cooperatives may issue notifications authorizing any person to produce, sell, distribute, or export new plant varieties for the purpose of national security, maintenance of nutritious stability, prevention of monopoly, or public interest of Thailand.

Pathogens and animal toxins

For public health reasons, pathogens (including microorganisms, other germs, and products from both microorganisms and germs) and animal toxins (including poisonous substances produced by animals which are capable of causing diseases in human beings, livestock, beasts of burden, or other animals) are prohibited from being imported or exported unless a licence is obtained from the Department of Medical Sciences, Ministry of Public Health, under the Pathogens and Animal Toxins Act B.E. 2525 (1982). In order to export pathogens or animal toxins out of Thailand, the exporter is required to comply with the Ministerial Regulation Re: Rules, Procedures, and Conditions on Applications to Produce, Dispose, Import, Export, or Transit Pathogens or Animal Toxins B.E. 2552 (2009).

Hazardous substances

Most hazardous substances are controlled under the Hazardous Substance Act B.E. 2535 (1992) and require licences for manufacture, possession, importation, or exportation. There are various government agencies controlling the various types of hazardous substances including, but not limited to, the following:

- Industrial Works Department of the Ministry of Industry;
- Agricultural Department and Fishery Department of the Ministry of Agriculture and Cooperatives;
- Hazardous Substance Division, Food and Drug Administration of the Ministry of Public Health;
- Public Works Department of the Ministry of Interior;
- Ministry of Defence;
- Ministry of Science and Technology;
- Pollution Control Department of the Ministry of National Resources and Environment.

In general, hazardous substances

include: (1) explosives; (2) flammable substances; (3) oxidizing agents and peroxide; (4) toxic substances; (5) substances causing diseases; (6) radioactive substances; (7) mutation-causing substances; (8) corrosive substances; (9) irritating substances; and (10) other substances, chemical or otherwise, which may cause injury to persons, animals, plants, property, or the environment.

The Ministry of Industry has the power to announce the names and types of hazardous substances to be controlled under the Hazardous Substance Act.

Hazardous substances are classified according to the need for control, as follows:

- Type 1 hazardous substances: production, importation, exportation, or possession must comply with the specified criteria and procedures.
- Type 2 hazardous substances: production, importation, exportation, or possession must first be notified to the competent authority and must also comply with the specified criteria and procedure.
- Type 3 hazardous substances: production, importation, exportation, or possession must obtain a permit and a registration certificate.
- Type 4 hazardous substances: production, importation, exportation, or possession is prohibited.

The Ministry of Industry has the power to announce the names and types of hazardous substances to be controlled under the Hazardous Substance Act. As consumption of hazardous substances has been increasing globally in many industries and businesses, exportation of hazardous substances requires control, through the provision of adequate information, appropriate instructions on the use of such hazardous substance, and packaging and transportation. The exporter must

comply with various notifications issued by the relevant government agencies controlling exportation of each specific hazardous substance out of Thailand.

Radio communications equipment

At present, telecommunication business activities are controlled by, among other statutes, the Act Relating to the Conducting of Broadcasting and Television Business B.E. 2551 (2008), the Telecommunications Business Operation Act B.E. 2544 (2001), and the Act on Organization to Assign Radio Frequencies and to Regulate Broadcasting and Telecommunication Services B.E. 2553 (2010). Businesses in the industry are under the supervision of the National Broadcasting and Telecommunications Commission and the Office of the National Broadcasting and Telecommunications Commission.

However, the import or export of radio communications equipment is still controlled under the Radio Communications Act B.E. 2498 (1955) and the Notification of the National Broadcasting and Telecommunications Commission Re: Export of Radio Communications Equipment dated 15 March 2011. In order to export radio communications equipment or any part thereof, the exporter is required to obtain a licence from the licensing officer, while specifications for radio communications equipment must be in compliance with the ministerial regulations prescribed under the Radio Communications Act. 'Radio communications equipment' includes radio communications transmitters, radio communications receivers, or radio communications transceivers, but does not include radio and television broadcasting receivers, radio communications transmitters, receivers, or transceivers using Hertzian waves which have the characteristics or types of services as specified in the ministerial regulations. However, the Minister of Transport and Communications or the National Broadcasting and Telecommunications Commission has the authority to issue ministerial regulations to specify radio communications equipment of certain characteristics or radio communications equipment used in certain services, to be exempted from all or

Medical instruments

The definition of 'medical instruments' under the Medical Instrument Act B.E. 2551 (2008) is very broad and includes, but is not limited to, instruments, apparatus, machinery, objects inserted into the body of a human being or an animal, solutions used in clinical examination in laboratories, products, software, or any other material (including accessories or component parts) which a manufacturer intends to use for various purposes, including diagnosing, preventing, keeping track of, treating, relieving, or curing diseases and injuries to humans and animals. The manufacturer for exportation of medical instruments is required to obtain a licence to export and must conform to the quality, standards, label, or other details as prescribed by purchasers abroad. The manufacturer or exporter shall comply with the Notification of the Medical Instrument Commission Re: Rules, Procedures, and Conditions for Manufacturing Medical Instrument for Export B.E. 2552 (2009) and the Notification of the Ministry of Public Health dated June 17, 2552 (2009) Re: Rules, Procedures, and Conditions for Making a Record and Report of Manufacture, Import, and Sale of Medical Instruments. Before manufacturing medical instruments for export, the exporter must also obtain a licence to manufacture each medical instrument it wishes to export out of Thailand.

some licences. Failure to comply with those requirements is subject to a fine, imprisonment, or both.

Conclusion

On the one hand, some Thai exporters claim that export control in Thailand is too active and comprehensive, and in turn is discouraging the export of items which do not share risks of proliferation. To add to this, there is a perception that export controls are largely driven by Western countries, predominantly the United States. Thailand is also a contracting member to various conventions and treaties, and is subject to obligations and compliance with many rules prescribed in them. As a result, domestic laws have been adopted in line with international standards of export controls.

On the other hand, other exporters take a more positive view, on the basis that Thailand has few restrictions on exports except when dealing with national security, environmental protection, or cultural issues. Current legislation is not significantly complex; adherence is relatively straightforward, there is one predominant statute, and the list of prohibited goods is not large, nor does it have too many variants. Legal violations are likely to come about only as a result of certain conventions and their enforceability, and the knowledge local traders have of foreign import laws in the destination country.

Of course, any discussion of further reform of export control laws in Thailand needs to be set within the context of the country's integration into the global economy. Thailand must

maintain comprehensive export controls for certain goods, but export-led growth will be a key factor in Thailand's economic success in the years ahead, as much of the GDP is

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based on exports of various goods manufactured in Thailand, including mainly processed foods, seafood, or agricultural goods. With the ASEAN Economic Community set to come into effect in 2015, Thailand needs to ensure that its export control laws foster an environment that allows exporters to tap into the growing consumer markets both within the region and beyond.

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