

Customs arbitration for disputes on security amount

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When importers bring products into Thailand, the goods need to pass through customs formalities, during which officials will inspect the products to assess duties. Duties are determined based on the real market value of the product and all related taxes. This means that the amount of duty can vary in different circumstances, resulting in some importers disagreeing with the amount assessed.

When an importer disagrees with the amount of duty but needs to clear the goods from customs, the importer can post security with the Customs Department.

But this does not provide a satisfactory option for many importers because the amount of security is equal to the duty assessed. Importantly, the security kept by the Customs Department will not be released until the amount of duty is settled.

This has been an ongoing problem for importers, who have often perceived the process as being unfairly tilted against them. But a recent notification from the Customs Department grants important new rights to importers who disagree with the amount of security required to clear their goods.

Customs Department Notification 85/2555 is intended to be consistent with obligations under the General Agreement on Tariffs and Trade of 1994 and was issued under Section 3 and Section 12 of the Customs Act of 1926 and the Royal Decree on Rules and Procedures for Good Governance of 2003.

Under the Notification, if an issue arises relating to the amount of duty due to the value of the products, an importer or exporter has two options. First, they can ask the customs officials at the port of importation or exportation to issue a formal letter confirming the amount of security, after which they can submit a petition requesting reconsideration of this amount. In practice, though, importers or exporters will be unlikely to choose this approach, as their goods would then be stuck in the customs process.

Under the second alternative, the importer or exporter can begin by posting the security and clearing the goods through customs. Once this process is complete, if the importer or exporter disagrees with the security amount, they have 30 days, after import or export, to submit a written request to the officials for an official letter detailing the amount. After receiving the letter, they can file a petition to the Customs Department to reconsider it.

In a major change favourable to importers and exporters, the reconsideration of the security amount is not solely decided by the Customs Department as before. Under the new process, the petitioner (the importer or exporter) may appoint two qualified persons as arbitrators.

The Notification sets up an arbitration panel composed of two arbitrators appointed by the Customs Department and another two appointed by the petitioner. The panel has the authority to request any documents from either the importer or exporter or any divisions in the Customs Department including witnesses.

The decision of the panel is subject to a majority vote. If a decision cannot be made, the panel will select an umpire to determine the matter. The outcome of the decision will be delivered to the port of importation or exportation.

Importantly, the Notification applies only in cases where there is a dispute concerning the amount of duty arising from the value of the products. It does not apply to disputes on duty arising from tariff rates, as Section 12 of the Customs Act addresses only disputes on duty relating to the value of the products.

If the amount of security is small, it is likely that the importer or exporter will choose simply to accept the amount assessed by the customs officials rather than going to arbitration. From the perspective of importers and exporters, the current barriers to the arbitration process include:

- unfamiliarity with the procedures outlined in the notification;
- difficulty in selecting qualified arbitrators who have knowledge about the specifications of the products and customs procedures;
- cost of appointing an arbitrator.

But the benefit of this new Notification is that it provides a fairer venue in which importers and exporters can have their arguments heard. This is a significant step forward for the Customs Department, as the idea of setting up an arbitration panel is quite forward-thinking, and only a few other countries have similar processes.

This can be seen as one example of the Customs Department's commitment to alleviating organisational problems. It demonstrates a real attempt to improve management systems in a way that will help solve ongoing problems such as delays, unfair treatment and corruption.

Undoubtedly, this Notification will be a useful mechanism to help importers and exporters, who will need to keenly monitor its implementation in practice.