

Thailand's customs reward system: the slow march towards reform

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In recent years, Thailand's customs regime has come under increased international and domestic scrutiny. One reason is that Thailand remains one of the few countries that presume strict criminal liability for importers and their representatives, even where an under-declaration of customs duty is the result of a mistake and/or negligence.

With penalties for customs duty avoidance including imprisonment of up to 10 years and fines of up to four times the actual value of the goods, there is widespread concern about both the constitutionality of the strict liability model and its impact on foreign direct investment in Thailand. The concern, however, does not lie merely with the legal presumption of criminal liability.

An equally significant challenge facing Thailand is its established customs reward system, which grants the director-general of the Customs Department the authority to "reward" customs officials and third-party whistleblowers for reporting or otherwise successfully pursuing instances of customs evasion (smuggling) and customs avoidance (false declarations).

The current reward-sharing system provides for a generous 55% of the penalty recovered from an "offender" to be distributed as a reward. Of this amount, 30% is provided to third-party whistleblowers, which may even include other government officers. The remaining 25% is shared between the customs officials who identified and handled the case.

The officials can include any person performing an official duty for the Customs Department such as inspectors, superintendents, and even the director-general.

Thailand's reward system is in stark contrast to that practised in many other countries. Those countries that do have a reward system as an incentive, such as Britain, India and Pakistan, impose strict limitations on the computation of rewards.

For instance, in Britain, rewards are only offered to third-party whistleblowers and not to customs officials. In India, the rewards are capped at a maximum amount over a customs official's entire career and for a single case. No such cap exists in Thailand, with rewards theoretically reaching into hundreds of millions of baht per case.

There are, of course, legitimate reasons for maintaining a customs reward system — a fact that is recognised by other Thai government offices. Rewards are considered beneficial in promoting the identification and apprehension of wrongdoers.

The goal, however, is to do so in a manner that is least likely to reduce efficiency, while, at the same time, respecting the individual rights of the accused. This can arguably be achieved through a measured approach to a rewards system. In fact, several other Thai government offices use rewards systems but with caps.

Numerous international studies have suggested that offering large rewards can create an incentive that goes beyond what is needed to effectively perform an officer's duties. The primary aim of the rewards system has been to ensure the timely identification of customs avoidance and evasion. But by failing to impose adequate limits, the current law creates an environment in which the very wrongdoing it seeks to eliminate can be indirectly facilitated.

For example, an extreme and inefficient focus on process and investigation can actually encourage importers to consider illicit means to expedite customs clearance. Further, unconstrained incentives can encourage an environment of harassment and targeting by law enforcement. With widespread recognition of the problem, efforts have been made at measured and even substantial reform of the customs reward system. The Customs Act has been amended on occasion, but efforts to alter the rewards system and the large penalties imposed for customs offences have been largely unsuccessful.

As a result of pressure from the international business community, in September 2010 the Thai cabinet agreed to allow for a more flexible penalty calculation — one that allowed for judicial discretion in establishing a penalty range from one-half to four times the actual import value. This was a positive step towards reform. Sadly, however, the amendment was not approved.

The Asean Customs Agreement and the International Convention on the Simplification and Harmonisation of Customs Procedures stress the importance of simplifying customs procedures to facilitate trade, transparency and increased professionalism in customs administration. This is an approach also recognised by the broader international community and the WTO.

Continued adherence to an inefficient rewards system not only affects the individual rights of importers, but can mar the promotion of Thailand's economic interests within Asean and the international community as a whole.

A directed focus on meaningful reform in line with international customs practice and global standards of transparency can be an important step towards promoting international investment opportunities in Thailand.

At the same time, it would still recognise the legitimate efforts of the Thai authorities to identify customs evasion and avoidance.