

THAILAND

Recent Changes in Customs laws and procedures

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Major updates have recently been made to Thailand's Customs laws and procedures regarding transit of goods through Thailand and transshipment. In addition, brand owners must now record their marks to comply with the Royal Thai Customs Department's new Customs recordation procedures.

Transit and transshipment

Thailand recently passed the Customs Act (Number 21) BE 2557 (2014) – an amendment to the Customs Act BE 2469 (1926). Effective on March 5 2015, the amendment aims to rectify the lack of clarity regarding how Customs should handle goods that simply pass through Thailand and goods that are transshipped in Thailand, by adding the definitions of “border crossing” and “transshipment” to the law and detailing Customs procedures of goods in such processes.

This distinction between goods being imported into Thailand versus goods crossing the border or being transshipped is important, because it determines the applicable taxes and requirements, and also what Customs may or may not do with the goods. Before the introduction of these terms, it was unclear whether Customs officers had a duty to inspect goods that were merely passing through or being transshipped in Thailand, and as a result, Customs inspections were inconsistent, causing confusion among both Customs and business operators.

Customs now uses the term “border crossing” to refer to goods that have both an origin and a final destination outside of Thailand, but that engage in transit through the country to reach their final destination. The term “transshipment” is

used to refer to goods changing a conveyance while in transit in Thailand, whereby the starting point and the end point of transportation are outside of Thailand.

After the amendment, the law explicitly states that goods crossing the border or being transshipped are not subject to tax, and empowers Customs officers to inspect and search such goods without a search warrant, so long as there is a reason to believe that:

- the goods are connected to terrorism;
- the goods are in violation of international stability, peace, or safety;
- the place of origin of the goods has been falsely declared; or
- the goods are illicit.

If the goods match one of these criteria, they may be confiscated and then destroyed or re-exported immediately.

The term “illicit” is not defined in this law. However, as Thailand's intellectual property law only prohibits the importation of infringing products and not their transshipment – and the transshipment of goods is not considered to be an importation of goods – goods in transit that are shipped by third parties without the authorisation of the IP owner are not deemed to be illicit goods, unless there is evidence showing that such goods were imported into Thailand.

Customs recordation

Customs recordation serves as an important border protection measure in Thailand. In the past, in addition to Customs recordation through the Department of Intellectual Property (DIP), Customs allowed brand owners to record trade marks that they wanted Customs to monitor directly with Customs, along with detailed information about the trade marks and the names of authorised importers. Customs later recorded such information on their intranet to enable Customs inspectors to obtain the contact details of brand owners or their representatives if they found goods suspected to be counterfeits. Information about goods and trade mark validity, however, was not included.

After a meeting in March 2015 between the Intellectual Property Rights Coordi-

nation Center of the Royal Thai Customs Department and several private trade mark representatives, a new Customs software program was announced. The new Customs software program, developed by the Center, facilitates the filing of recordations with the DIP. Up-to-date contact details of trade mark owners and their representatives, information on trade marks including their validity, and lists of goods will be stored in a database which is accessible to Customs officers throughout Thailand. If Customs officers find suspected counterfeit goods bearing a trade mark that has been recorded through the Customs recordation procedure at the DIP, Customs will contact the brand owner's appointed representative.

This new procedure and Customs software program will allow Customs to more efficiently inspect products that bear trade marks that have been recorded with Customs, as Customs officers no longer have to inquire at the DIP to obtain information on trade marks. As a result of this change in procedure, brand owners must now submit Customs recordations only through the DIP if they would like Customs to continue monitoring their trade marks and verifying seized products. This will be a more efficient way for Customs to monitor all recorded trade marks without delay.