

## Customs audits: understand the process and minimise your liability

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It is common for Thai Customs Department officials to audit companies that import or export goods. The audits are generally random, and they almost always include a surprise inspection. Importers are rarely informed in advance by customs officials.

During a customs audit, importers or exporters (companies) that deal in highly regulated products, such as chemicals and other raw materials, may be subject to increased scrutiny. The audits are conducted to ensure that the companies are complying with Thai law, and they are not necessarily indicative of suspected wrongdoing.

Many companies do not understand the audit procedure and how the results can affect a business. Knowing customs procedures is important as violations are criminal offences and can result in personal criminal liability. This article will explain the customs audit process and how issues are resolved under the law.

**Preliminary steps:** Certain steps must be undertaken before an audit is launched. Initially, a Customs Department official will assign customs personnel to conduct the audit of a specific business or in a particular geographic area. Afterwards, the department will ask the court to issue a search warrant.

At this stage, the court will only review the reasons for the request and the supporting documents used by customs officials to ask for the warrant. The officials will then conduct the audit in accordance with the warrant.

**The audit:** If the officials conducting the inspection find any suspicious documents or evidence, they have the authority to seize them. The officers will put any suspicious documents and evidence into a box with a special Customs Department seal. The company's representatives must sign on the seal.

In addition to seizing evidence, the officials have the authority to order the company to deliver documents to the Customs Department by a specified deadline. Further, they can ask the company's representatives to provide oral or written statements on suspect import transactions and documents. Again, the statements must be submitted by a deadline set by the officials.

The Customs Department will review and evaluate all of the evidence, including witness statements. Based on the evidence, customs officials will determine whether the company committed a violation of the Customs Act. If a violation is confirmed, they will issue an order to criminally prosecute the company.

**Violations under the Customs Act:** Importantly, company directors, officers and other management-level employees are presumed to be personally liable for any violations of the Customs Act. Punishments range from fines to imprisonment, depending on the nature of the violation.

Managers can successfully defend against the charges by proving that the offence was committed without their knowledge or consent. They can also argue that they acted reasonably in preventing the offence. In addition, the presumption of liability is unconstitutional and should be argued as well in a criminal customs defence.

Not all violations of the Customs Act must be resolved by criminal proceedings in court. Several offences under the Act can be resolved directly by the director-general of the Customs Department. For these offences, the director-general has the authority to waive prosecution.

To resolve a violation without court action, the alleged violator must admit guilt and pay a fine, or alternatively, sign a settlement agreement or bond or post security as the director-general deems fit. The waiver also indemnifies the violator against any further prosecution on account of the offence.

If the violator admits guilt and pays a fine to waive prosecution, the alleged violator is prohibited from submitting a civil claim against the Customs Department. This applies even if the alleged violator reserved the right to object later to the department's order.

If the offence is not resolved through this method, the case is sent to a police inquiry official and a public prosecutor for review. The authorities will then review the case to determine whether to prosecute. Decisions are made on a case-by-case basis.

**Prescription periods:** The prescription period for prosecuting a criminal customs case varies from one to 15 years, depending on the charge, as each charge carries different criminal penalties.

For example, the criminal prescription period for a charge of importing any goods with unpaid tax or duty is 15 years from the date that the offender imported the goods, and the civil prescription period for an incorrect tax and duty calculation is two years. In general, the tax and duty liability on imported goods is incurred when the importation is completed. The prescription period is also triggered at the same time.

Understanding the audit procedure, how audit results can affect a business, and the customs procedures are centrally important, as violating the Customs Act may have severe business and personal ramifications. With an astute approach, companies can avoid potentially disastrous results.