



THE LEGAL PROBLEMS FROM THAILAND'S CUSTOMS FREE ZONE

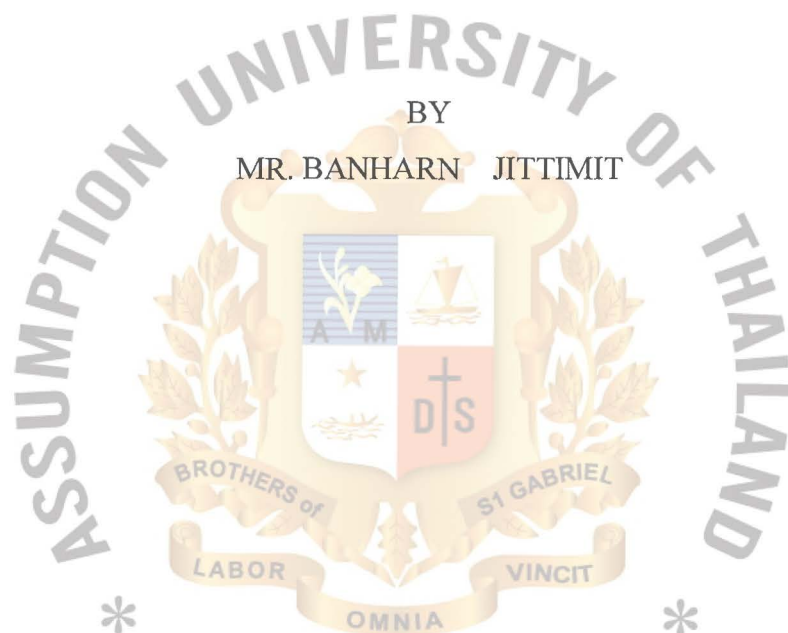
BY  
MR. BANHARN JITTIMIT

AN INDEPENDENT RESEARCH PAPER SUBMITTED IN  
PARTIAL FULFILLMENT OF THE REQUIREMENTS  
FOR THE DEGREE OF MASTER OF LAWS  
(TAXATION LAW)

GRADUATE SCHOOL OF LAW  
ASSUMPTION UNIVERSITY

NOVEMBER 2007

THE LEGAL PROBLEMS FROM THAILAND'S CUSTOMS FREE ZONE



AN INDEPENDENT RESEARCH PAPER SUBMITTED IN  
PARTIAL FULFILMENT OF THE REQUIREMENT  
FOR THE DEGREE OF MASTER OF LAWS  
(TAXATION LAW)

GRADUATE SCHOOL OF LAW  
ASSUMPTION UNIVERSITY

NOVEMBER 2007


Independent Study Title : The Legal Problems of Thailand's Customs Free Zone  
Author : Mr. Banharn Jittimit  
Major : Taxation Law (English Program)  
Advisor : Mr. Prapas Kong-ied


---


Faculty of Law, Assumption University approves this Independent Study as the partial fulfillment of the requirement for the Degree of Master of Laws.

  
\_\_\_\_\_  
(Assoc. Prof. Nattapong Posakabutra) Director of the Graduate School of Law

Committee:

  
\_\_\_\_\_  
(Mr. Charin Satchayan) Chairman

  
\_\_\_\_\_  
(Mr. Werasak Anusontivong) Committee

  
\_\_\_\_\_  
(Mr. Prapas Kong-ied) Advisor and Committee



Independent Research Paper Title : The Legal Problems from Thailand's Customs  
Free Zone  
Author : Mr. Banharn Jittimit  
Major : Taxation Law (English Program)  
Academic Year : 2007  
Advisor : Mr. Prapas Kong-ied

---

### ABSTRACT

International Trade has competition widely. In order to support and improve exportation are very important because they can increase ability for compete with other countries. From the reason above, Customs Department has to set up Customs Free Zone into Thailand to produce, mixed, compound, contain and other operate with exported goods, these methods are the one of export promotion.

But Customs Free Zone in Thailand has some problem that the importer doesn't want to invest in Customs Free Zone. First customs procedure in Thailand has many procedures and don't necessary to use within Customs Free Zone. Second the method for asking to allowance import material in to Customs Free Zone. It is essential to enact or improve the law to support the importation truly, the law that could be applied for this case should cautious and prudent in order to fix the new problems and situations which have occurred through today's importation

So Customs Department should improve that problem for develop Customs Free Zone and support the importation truly



## ACKNOWLEDGEMENT

This research would not have completed this demanding project without the support and assistance of many people. I would like to express my deepest thanks to everyone who has contributed to its completion.

I would like to express my deepest appreciation to Judge Prapas Kong-ied, advisor for my Independent Research Paper, for his bounteous guidance, invaluable advice and encouragement throughout the period of this study.

Similarly, I would like to thank Mr. Charin Satchayan and Mr. Werasak Anusontivong the members of my research committee for their constructive comments and questions, which stimulated my thinking throughout research.

I would like to thank Assoc. Prof. Nattapong Posakabutra, Director Master of Law Programs, for his constant willingness to appropriate time from his busy schedule to provide advice and consultation.

I would also like to thank to all my fellow students in LL.M. and M.A. programs, for their help, support and encouragement during the duration of this program.

Finally, I am deeply indebted to my lovely family for their understanding and support during the preparation and completion of this Independent Research Paper.

Banharn Jittimit

## TABLE OF CONTENT

	Pages
<b>Abstract</b> .....	<b>iii</b>
<b>Acknowledgement</b> .....	<b>iv</b>
<b>Table of Content</b> .....	<b>v</b>
<b>Tables Content</b> .....	<b>viii</b>
 <b>Chapter 1 Introduction</b>	
✓ 1.1 Historical Background and General Statement of the Problems.....	1
1.2 Hypothesis of the Research.....	2
1.3 Objective of the Research.....	2
1.4 Research and Methodology.....	3
1.5 Scope of the Research.....	3
1.6 Expectation of the Research.....	3
 <b>Chapter 2 Customs Free Zone under Thailand's customs law</b>	
2.1 Introduction.....	4
2.2 History of Customs Free Zone in Thailand .....	5
2.3 Principles of Customs Free Zone under Customs Law.....	5
2.4 Definition .....	6
2.5 The Advantages of Using a Free Zone.....	6
2.5.1 Relief from Import and Internal Taxes/Duties:.....	6
2.5.2 Relief from Export Duty on Re-Exports:.....	8
2.5.3 Relief from Standard/Quality Control Requirement ..	8
2.5.4 Duty Exemption on Waste, Scrap, and Yield Loss....	9
2.5.5 Eligible for Export Tax Refund/Exemption Schemes	9

## Pages

2.6	Assessment of Duties and Taxes .....	10
2.7	Establishing a Free Zone .....	12
2.8	Eligible Applicants to Establish a Free Zone .....	14
2.9	Procedures for Free Zone Licensees' Application .....	14
2.10	Eligible Free Zone Users .....	15
2.11	Procedures for Free Zone Users' Application .....	16
2.12	Responsibilities of Free Zone Licensees and Users .....	16
2.13	Role of the Thai Customs Department .....	16

### **Chapter 3 Customs Free Zone under Customs Foreign law**

3.1	Foreign-Trade Zones under US. Law .....	24
3.1.1	An Introduction to Foreign-Trade Zones .....	24
3.1.2	The Types of Zones .....	26
3.1.3	The Advantages of Using a Foreign-Trade Zone .....	27
3.1.4	Benefit to zone user .....	27
3.1.5	The Public Benefits .....	28
3.1.6	Establishing a Foreign-Trade Zone .....	29
3.1.7	Role of The U.S. Customs Service .....	30
3.1.8	What may be Placed in Zones .....	31
3.1.9	What may be Done in Zones .....	32
3.1.10	Kind of Merchandise can be Placed in a Zone .....	32
3.1.11	Entering Merchandise from a Zone into the United States for Consumption .....	33
3.1.12	Privileged Foreign Status .....	33
3.2	Free Movement of Goods: The Customs Union under European Community Law .....	35
3.2.1	The Four Freedoms .....	36



3.2.2	The Background.....	36
3.2.3	The General Provisions of the Free Movement of Goods in the EC Treaty.....	37
 <b>Chapter 4 Analyze the legal Problems from Thailand are Customs Free Zone</b>		
4.1	A Problem on Customs Procedure.....	44
4.1.1	Documentation.....	44
4.1.2	Import Clearance Procedures.....	44
4.2	Problems in Utilizing Customs Free Zone.....	46
4.3	Intention of Law to Enact Customs Free Zone.....	49
 <b>Chapter 5 Conclusion and recommendations</b>		
5.1	Conclusion.....	50
5.2	Recommendations.....	51
 <b>Bibliography.....</b>		53

## TABLES CONTENT

	Pages
<b>Table 1 Difference between Customs Free Zone and Export Processing Zone .....</b>	22
<b>Table 2 The Different of Customs Zone in Thailand .....</b>	23



# **Chapter 1**

## **Introduction**

### **1.1 Historical Background and General Statement of the Problems**

Nowadays, International Trade has competition widely. In order to support and improve exportation are very important because they can increase ability for compete with other countries. From the reason above, Customs Department has to set up Customs Free Zone into Thailand to produce, mixed, compound, contain and other operate with exported goods, these methods are the one of export promotion. The way to establish Customs Free Zone can do by allowance from Director-General of Customs Department only so it will be fast, easy and can be the method that involved with international method, described in Kyoto Convention by World Customs Organization (WCO), which improved the suitable way for export entrepreneurs. At present time, the method to support exportation, which taxation method, the Government assigned Customs Department to focus on giving tax privilege only to entrepreneur to decrease the cost of production.

It is the intent of a Free Zone Program to stimulate economic growth and development in Thailand. In an expanding global marketplace there is increased competition among nations for jobs, industries, and capital. The Free Zone Program was designed to promote competitiveness by encouraging companies to maintain and expand their operations in Thailand. The Free Zone Program encourages Thailand-based operations by removing certain disincentives associated with manufacturing in Thailand. The duty on a product manufactured abroad and imported into Thailand is assessed on the finished product rather than on its individual parts, materials, or components. The Thailand-based manufacturer finds itself at disadvantage compared with its foreign competitor when it must pay a higher rate on parts, materials, or components imported for use in a manufacturing process. The Free Zone program corrects this imbalance by treating products made in the Zone, for the purpose of tariff assessment, as if it



were manufactured abroad. At the same time, this country benefits because a Zone manufacturer uses Thai labor, services, and inputs.

Customs Free zone or Foreign Trade Zone Free Zones are designated areas for industrial or commercial operations or any other operations involving in economic growth and development. Foreign and domestic merchandise removed into Free Zones is eligible for tax and duty privileges as indicated by the Law

Customs Free Zone established for supporting investment but the problem is the producers must asked for allowance to import material into Free Zone that caused delayed and being as lost for supporting investment due to difficulty importation (heed the allowance from related department that material related) such as the importation of woods to make a furniture. The importation must ask Royal Forest Department. The Custom Department asking for not to ask for allowance because in fact a furniture will not sell in Thailand but exportation.

## **1.2 Hypothesis of the Research**

Customs Free Zone in Thailand has some problem that the importer doesn't want to invest in Customs Free Zone. First customs procedure in Thailand has many procedures and don't necessary to use within Customs Free Zone. Second the method for asking to allowance import material in to Customs Free Zone. It is essential to enact or improve the law to support the importation truly , the law that could be applied for this case should cautious and prudent in order to fix the new problems and situations which have occurred through today's importation.

## **1.3 Objective of the Research**

1. To study Custom Free Zone under Thailand's customs law.
2. To study Foreign-Trade Zones under US. Law, Free Movement of Goods: The Customs Union under European Community Law

3. To analyze the legal problems from Thailand's Customs Free Zone and compare with US Law and European Community Law.
4. To revise and improve suitable domestic laws concerning Custom Free Zone

#### **1.4 Research Methodology**

The methodology of this research is a documentary research. The primary source such as: rule and regulations of US law European Community Law: domestic laws relevant with the issue will be studied, analyzed and presented. Furthermore, related books, articles in laws journals and the internet will be studied

#### **1.5 Scope of the Research**

This research paper will focus on the problem of Customs Free Zone in Thailand. By analyzing the problem that makes the importer not wanting to invest in Thailand and improve the problem to attract the investor to invest in Customs Free Zone.

#### **1.6 Expectation of the Research**

1. To understand Custom Free Zone under Thailand's customs law
2. To know Foreign-Trade Zones under US. Law, Free Movement of Goods: The Customs Union under European Community Law
3. To know the legal problems from Thailand's Customs Free Zone and compare with US Law and European Community Law.
4. To find out and improve suitable domestic laws concerning Custom Free Zone

## **Chapter 2**

### **Customs Free Zone under Thailand's Customs Law**

#### **2.1 Introduction**

The first privilege zone and customs tax incentive was site in Ireland and expanded to other countries. The revolution from Export Processing Zone (EPZ) to bonded warehouse and the last one was Customs Free Zone.

The first in Thailand had Export Processing Zone. This zone was customs tax privilege. It was mean to support industrial business and next time the customs department allowed to establish Free Trade Zone in 1992. It was support from 3 laws.

1. Factory Act B.E. 2535 article 30 the minister has the authority to provide by making the announcement in the government gazette to Export Processing Zone.

An industrial business Process type 3 or 3 in Export Processing Zone follow bucket 1 or industrial zone must follow industrial zone Act unless one does not inform the officer then must follow article 11 or article 12 but in the case of the business that processes in the industry then must follow article 8 according to the announcement from the minister and 32(1) and another article that controls this business is compelled to follow this Act.

If it can provide processing zone follow industrial zone Act. Minister can decide by provide zone.

2. The Customs Act (No. 9), B.E. 2482 (1939). As added by article 1 of the Announcement of the National Executive Council No. 329 dated 13<sup>rd</sup> December B.E. 2515 (1972) article 8 and 8 bis provide about establish bonded warehouse in free trade and bonded ware house for process product by customs announcement 21/2539 dated 22<sup>nd</sup> April 2539.



3. Tax incentive Act. B.E. 2520 was provided to bonded warehouse zone for the business that uses tax incentive.

## 2.2 History of Customs Free Zone in Thailand

Customs Free Zone is a zone that Customs Director-General approved to establish follow article 97 ter from Customs Act B.E. 2469 that was amended from article 8 in Customs Act (issue18) B.E. 2543 to support industrial and commercial or another business that support a country for export promotion by investor that invest in this zone has a tax exemption for importing a commodity into a Customs Free Zone. Therefore Customs Free Zone is a special territory for tax exemption. A customs officer is in charged of this zone.

In Customs Act (issue18) B.E. 2543 announcement was applied on 17 September 2543 and Customs Department issued Customs Notification 55/2544 appointed the rule, role and method.

The Customs Department had consented the approval establish a first customs free zone following the customs act in Thailand which is the customs free zone hi-tech at Baan-Wha.

## 2.3 Principles of Customs Free Zone under Customs Law

### 1. An Introduction to Free Zones

It is the intent of a Free Zone Program to stimulate economic growth and development in Thailand. In an expanding global marketplace there is increased competition among nations for jobs, industry, and capital. The Free Zone Program was designed to promote competitiveness by encouraging companies to maintain and expand their operations in Thailand. The Free Zone Program encourages Thailand-based operations by removing certain disincentives associated with manufacturing in Thailand. The duty on a product manufactured abroad and imported into Thailand is

assessed on the finished product rather than on its individual parts, materials, or components. The Thailand-based manufacturer finds itself at a disadvantage compared with its foreign competitor when it must pay a higher rate on parts, materials, or components imported for use in a manufacturing process. The Free Zone program corrects this imbalance by treating products made in the Zone, for the purpose of tariff assessment, as if it were manufactured abroad. At the same time, this country benefits because a Zone manufacturer uses Thai labor, services, and inputs.<sup>1</sup>

## 2.4 Definition

Customs Free Zone is designated areas by customs department for industrial or commercial operations or any other operations involving in economic growth and development. Foreign and domestic merchandise removed into Free Zones is eligible for tax and duty privileges follow article 99 ter- 97 decem in customs Act B.E.2543 as indicated by the law and relate with World customs organization.<sup>2</sup>

## 2.5 The Advantages of Using a Free Zone

All of the advantages a Free Zone Program can offer manufacturers and processors located in Thailand are numerous. A few main benefits that account for most of the companies that use a Free Zone Program are listed below:

### 2.5.1 Relief from Import and Internal Taxes/Duties:

1. Exemption customs tax for a commodity that import to customs territory; when import a commodity in to customs free zone, in case of:

---

<sup>1</sup> Customs Department, An Introduction to Customs Free Zone, in <http://www.customs.go.th/Customs-Eng/FreeZone/FreeZone.jsp?menuNme=FreeZone>, access date July 20, 2007.

<sup>2</sup> Vinai Laohaprasert, "Export Promotion and Customs Free Zone," Tax and Business Vol. 11, No.127 (April 2005): p. 10.

1) A commodity which is machinery, equipment, tools and appliance, including component for use in industrial, commercial or other business that is profit to the economic growth; that import into the customs free zone approved by the Director-General;

2) A commodity, that imports in to the Kingdom and into a customs free zone for using in the industrial, commercial or other businesses that are beneficial to the economic of the country, or;

3) A commodity that moves from other customs duty free zones. Exemption for duty in export from a customs free zone when export to other country.<sup>3</sup>

In this analysis imported a commodity, removed into or manufactured in a Customs Free Zone for industrial or commercial operations or any other operations involving economic growth and development, is not subjected to import taxes and duties. This includes:

- (1) Machinery, equipment, and parts;
- (2) Foreign merchandise; and
- (3) Merchandise transferred from other Free Zones.

2. The importation and production of a commodity in a customs free zone. It is exempted for excise tax follows the law on excise duty.

The importation and production of a commodity in a customs free zone shall be exempted from Alcoholic Act, Tobacco Act, Playing-Card Act and uses the provisions to relate with the exemption and

---

<sup>3</sup> Customs Act B.E. 2469 (1926), section. 97 quinque.



collection follow the law in Excise Tax to Control Alcoholic Act, Tobacco Act, Playing Act and fees.<sup>4</sup>

In addition the imported merchandise removed into or manufactured in A Free Zone is also not subjected to Value Added Tax (VAT), Excise Taxes, Alcohol Tax, including tax stamp and fees under the Alcohol Act, Tobacco Act and Playing-Card Act. In addition, a “ZERO” tax rate is About Customs Free Zones applied to calculate VAT for domestic merchandise removed into a Free Zone, provided that such merchandise will be subjected to export duty or exempted from export duty under the Customs Act.

#### 2.5.2 Relief from Export Duty on Re-Exports:

Without a Free Zone, if a manufacturer or processor imports a component or raw material into Thailand, it is required to pay import taxes and duties at the time the component or raw material enters the country. However, a Free Zone is considered to be outside Thailand and Thai Customs territory. Accordingly, when foreign merchandise is brought into a Free Zone, no taxes and duties is owed until the merchandise leaves the Zone and enters Thailand for consumption. Only then is the merchandise considered imported and the duty paid. If the imported merchandise is re-exported to other countries, no Customs duty is charged.

#### 2.5.3 Relief from Standard/Quality Control Requirements:

In the case of importing a commodity into the Kingdom or transporting a material in the Kingdom into a customs free zone for producing, mixing, assembling, packing, or processing of a commodity for export to other

---

<sup>4</sup> Ibid., section 97 six.

country, the commodity shall be exempted into the law that controls in standards or quality, to stamp or other sign follow the regulation by the Director-General.<sup>5</sup>

Imported a commodity or domestic law materials removed into a Free Zone for manufacturing, mixing, assembling, packing, or any other operations is relieved from standard/quality control requirements or any other similar requirements; provided that such merchandise is re-exported to other countries.

#### 2.5.4 Duty Exemption on Waste, Scrap, and Yield Loss:

The importation a commodity into customs free zone for use or for consumption or for other benefits outside the objectives to establish the customs free zone and transport a commodity out of the customs free zone under Article 97 novem paragraph 1, unless it is the disposal or destroying of material waste, damaged articles, goods that cannot be used, or unused goods which are in the duty free zone under the permission of the Director-General.<sup>6</sup>

If the processor or manufacturer is conducting its operations within a Free Zone environment, the merchandise is not considered imported, and therefore scrap, waste, or yield loss from an imported component is exempted from import and internal taxes and duties, if applicable.

#### 2.5.5 Eligible for Export Tax Refund/Exemption Schemes:

In the case has law that enact to exempt or refund of a commodity that is exported from the Kingdom, if such a commodity is taken into a customs

---

<sup>5</sup> Ibid., section 97 septem.

<sup>6</sup> Ibid., section 97 novem.

free zone, it shall be regarded that such commodity has been exported out of the Kingdom at the time that is transported into the customs free zone. Follow the regulations prescribed by the Director-General.<sup>7</sup>

The commodity is entitled to export tax refund/exemption schemes when exporting is still qualified for such schemes after it is removed into a Free Zone.

## 2.6 Assessment of Duties and Taxes

Normally foreign commodity removed into a Customs Free Zone is relieved from import and internal taxes and duties. However, Customs also specifies the activities to be taken into consideration for the purpose of determining the value and quantity of goods and the rates of applicable duties and taxes if the merchandise is removed from the Zone for domestic consumption.

The importation of commodity out of a customs free zone for produce or use in the Kingdom or transfer a commodity into bonded warehouse, or sell to an importer follow article 19 bis of the Customs Act (No.9), B.E. 2482 (1939)<sup>8</sup> or a person who has a right to exempt the duty follow the law on customs tariff or other laws, so the importation already and duty happen when transport a commodity outside customs free zone follow the regulation that regulation of shall the Director-General.<sup>9</sup>

---

<sup>7</sup> Ibid., section 97 octo.

<sup>8</sup> Section 19 bis. If any goods have been exported to a foreign port or as stores for use on board ship proceeding to a foreign port, and proved to the satisfaction of the Director-General or the person designated by him to be produced from, mixed, assembled or packed with the imported goods, the import duty already paid on such imported goods shall be repaid as drawback to the importer, subject to the following rules and conditions:

<sup>9</sup> Customs Act B.E. 2469 (1926), section 97 novem (1).



The taking of goods in a duty free zone for use or for consumption or for other benefits other than the objectives of establishing the duty free zone shall be deemed as the taking of goods out of the duty free zone under paragraph one, unless it is the disposal or destroying of material waste, damaged articles, goods that cannot be used, or unused goods which are in the duty free zone under the permission of the Director-General and in accordance with rules and procedures prescribed by the Director-General in a Notification

3870 c-1

The following circumstances is considered as imports:

1. Entering merchandise from a Free Zone into Thailand for consumption;
2. Transferring merchandise from a Free Zone into a bonded warehouse;
3. Selling merchandise from a Free Zone to importers qualified for.

Customs privileges under Article 19 bis of Customs Act (No. 9) B.E. 2482 or those qualified for tax and duty exemption under the Customs Tariff Decree or any other relevant laws. Customs duties and internal revenue taxes, if applicable, are paid at the rate of finish products when the merchandise is removed or transferred from the Zone for domestic consumption. The merchandise, either in its original state or after manipulation or manufacture, is classified and appraised and taxes and duties are determined in its condition at the time of transferring from the Zone. In case articles transferred from the Zone are composed or derived of both foreign and domestic merchandise, the value of domestic merchandise not qualified for tax refund/exemption schemes shall be excluded when the applicable taxes and duties are determined



## 2.7 Establishing a Free Zone

The Director-General has the authority to approve the establishment of a customs free zone for the operation of industrial, commercial or other businesses that are beneficial to the economy in the country, and hold the power to prescribe rules, procedures and conditions for the application for and the approval of establishment of a customs free zone.

A person who has received an approval to establish of a customs free zone should pay an annual fee.<sup>10</sup>

When a community determines that a Free Zone Project is needed and can be feasibly established and operated, then it must address the Free Zone application rules and process. Prior to preparing the application, several rules and regulations should have already been observed.

2.7.1 Free Zones are normally private plant sites approved by the Customs Department, taking into account the suitability of the proposed sites and Facilities. The Customs Department will consider the following factors in determining whether to issue a grant of authority (license) for a Customs Free Zone Project:

1. Industrial Free Zone: Applicants for an Industrial Free Zone shall meet either of the following criteria:
  - 1) Granted authority from the Minister of Industry to establish an industrial activity zone; or
  - 2) Granted authority from the Department of Industrial Works, Ministry of Industry, to operate an industrial community zone of building or dependent factory type; or

---

<sup>10</sup> Ibid., section 97 ter.

- 3) Granted authority from the Industrial Estate Authority of Thailand to operate a general industrial zone; or
- 4) Granted authority from the Board of Investment to invest in an industrial zone or software industrial zone or ornament and jewelry industrial zone; or
- 5) Granted authority to operate any other industries involving in economic growth and development.

2. Commercial Free Zone: Applicants for a Commercial Free Zone shall carry out import/export related business as follows:

- 1) Trade, services, or international transportation;
- 2) Distribution of goods, bonded warehouses, or international goods distribution centers;
- 3) Exhibition or fair;
- 4) Repairing or engineering work;
- 5) Other operations approved by the Customs Department as involving in economic growth and development.

A Free Zone may be composed of many subzones operating either Industrial/Commercial Free Zones or any other operations involving in economic growth and development; or a combination of any type of Free Zone.

2.7.2 The key purpose of establishing a Free Zone shall not solely for advantages of any specific zone user.

2.7.3 A Free Zone shall be encircled by a fence with a secured and sturdy gate. Depending on the nature and particular characteristics of the Zone, this requirement may not be applied.

2.7.4 The licensee of a Free Zone shall provide utilities, necessary facilities and services. No residential areas are allowed in a Free Zone.

- 2.7.5 The licensee of a Free Zone shall provide an appropriate office and residence for Customs officers. In addition, office equipment, and computers interfaced to Customs EDI shall also be provided for Customs.

## **2.8 Eligible Applicants to Establish a Free Zone**

State enterprises or private co-operations may apply for a grant of authority to establish a Free Zone Project. The applicants for the Zone Project shall meet the criteria listed below:

- 2.8.1 A state enterprise or public cooperation under the Public Cooperation Act B.E. 2535 or a limited cooperation under the Civil and Commercial Code, with secure financial status. A limited cooperation under the Civil and Commercial Code shall have paid registered capital not less than 20 million bath for free zone located in Bangkok and near-by area, or not less 10 million bath for other area; or at the amount considered appropriate and secure financial status by the Customs Department.

- 2.8.2 Site ownership or applicant's right to manage the areas proposed for Approval.

## **2.9 Procedures for Free Zone Licensees' Application**

An application for a grant of authority to establish a Free Zone Project shall consist of a completed application form together with supporting documents listed below:

1. A grant of authority for operating industrial-related activities as indicated in 5.1.1 (a) – (e);
2. A site blueprint of a size not less than 40X60 CM<sup>2</sup>;
3. Juristic person registration document;



4. A list of shareholders and registration certification issued not exceeding 6 months from the date of application;
5. Title deeds or certificate of title or land lease indicating ownership or applicant's right to manage the areas proposed for approval;
6. Financial statement for at least 3 consecutive years certified by a competent auditor;
7. VAT registration documents; and
8. Operational plan indicating plans for financing capital and operating costs; estimated time schedule for construction and activation of the Zone and a future site expansion plan. All documents shall be submitted to the Office of Secretary, the Thai Customs Department. Once an authority to establish the Zone is granted, the licensees (applicants) shall start construction the Zone site, taking into account the blueprint of zone site previously approved by the Customs Department.

The licensee of the Zone is also required to give security by bond to the licensee shall pay an “Annual License Fee” at the rate regulated by the Ministerial Regulations on 31<sup>st</sup> December of every year.

## **2.10 Eligible Free Zone Users**

A Zone user is a party using a Zone under agreement with the Zone licensees or operators. The Customs Department will consider the following factors in determining whether to issue a grant of authority for a zone user:

- 2.10.1 A juristic person with an approval from a Free Zone licensee and the Customs Department to operate Free Zone activities.
- 2.10.2 Zone activities operated in a Free Zone shall be in compliance with the stated Free Zone objectives; or involving in economic growth and development. This requirement, nevertheless, is not applied to a zone user operating in the area before the establishment of the Zone.



2.10.3 No past record of committing serious Customs-related offences or violation for the past 3 years.

## **2.11 Procedures for Free Zone Users' Application**

An application for a grant of authority to be a zone user shall consist of a completed application form together with supporting documents listed below:

- 1 Juristic person registration document;
- 2 A list of shareholders and registration certification issued not exceeding 6 months from the application date;
- 3 VAT registration documents;
- 4 A grant of authority to operate a zone project from a Free Zone licensee; and
- 5 Site Plan indicating the location of the subzone within a Free Zone. Similar to a Free Zone licensee, a zone user is required to give security by bond to the Customs Department in accordance with the Form prescribed by the Customs Department within 30 days from the date of granted authority. The security is placed to ensure the zone user's compliance to Customs-related laws and regulations and to guarantee his/her responsibility for any potential damage that may occur to the Customs Department.

## **2.12 Responsibilities of Free Zone Licensees and Users**

Both a Free Zone licensee and user shall comply with Customs-related laws, rules, and regulations, both the existing ones and those to be notified in the future. They shall also strictly follow the security by bond entered with the Customs Department.

In case the Free Zone licensee and user break the rules and regulation of the Customs Department, and consequently causing any serious damages, the Customs Department is empowered to cancel the license or take any appropriate actions to remedy the damages. The cancellation shall take effect within 15 days from the date of issuing Customs' cancellation notification.

### 2.13 Role of the Thai Customs Department

The Thai Customs Department is responsible for the removal or transfer of merchandise into and out of a Free Zone and for matters involving the collection of revenue. The Tax and Duty Privilege Bureau provides interpretations of the applicable statute, Customs regulations and procedures. The Bureau is also charged with overseeing Zone activities as the representative of the Thai Customs Department. It controls the admission of merchandise into the Zone, the handling and disposition of merchandise in the Zone, and the removal of merchandise from the Zone. Free Zones are supervised by Thai Customs officers through periodic checks and visits; and the security of the zone must meet certain requirements. In addition, the Tax and Duty Privilege Bureau, through an established Board, is also responsible to review and approve applications to establish, operate, and maintain a Free Zone. The Board also regulates the administration of the Zone and approves activation of the Zone before any merchandise is admitted into the Zone.

Customs Free Zone Activities;

1. Commercial Cargo.
  - 1) Import Cargo.
  - 2) Export Cargo.
  - 3) Transit & Transshipment Cargo.
  - 4) Cargo Storage.
2. Value Added Activities
  - 1) Trading.
  - 2) Break bulking.
  - 3) Grading and Sorting.
  - 4) Repackaging and Relabeling.
  - 5) Partial clearance.
  - 6) Combined cargo.

### (1) Trading

Trading means to import raw materials or manufactured goods into the Free Zone area which await either in the warehouse or showroom to be sold either domestically or abroad.

Advantage: reduce tax burden for entrepreneur's goods in warehouse while waiting for negotiations for sale.

### (2) Break bulking

Break bulking means by importing large amounts of goods to the Free Zone and then later divided and dispatched either domestically or abroad for sale.

Advantage: the reduction in the cost of transportation via Thailand as the center for transportation of goods to be transferred to many countries in Asia as well as Europe.

### (3) Grading Sorting

It's mean import a lot of goods to free zone from a many country for sort out before trade to other country for example quality, a favor.

Advantage: reduce tax burden to import and export when entrepreneur import a goods to Thailand and export to country. It reduces a capital.

### (4) Repackaging and Relabeling

This means importing goods to the Free Zone for Repackaging and Relabeling before exporting to other country

Advantage: facilitate to import-export goods by providing tax only goods which are imported or exported for domestic use.

(5) Partial clearance

This means to initially import some of the goods (partial) to free zone while waiting for the other part of the goods to arrive later. When all of the goods arrive, then will it be traded domestically.

Advantage: this makes it convenient to check up on the goods and the importer does not have to bear the risk of tax burden with goods that are not complete.

(6) Combined cargo

It means to import a part of goods from many sources to the free zone for production before being exported to other countries.

Advantage: to reduce the of production of goods by importing a part of the goods to the free zone and exporting to other countries to reduce the cost of transport, import and export tax.<sup>11</sup>

Industrial Estate(EPZ)

There are 2 categories of industrial estate:

1. General Industrial Zone: General Industrial Zone means an area designated for industrial activities or other activities beneficial to or connected with industrial activities.
2. Export Processing Zone: Export Processing Zone means an area designated for industrial activities, trading or services or other activities beneficial to or connected with industrial activities, trading or services for the purpose of exporting products.<sup>12</sup>

<sup>11</sup> Activity in Suvarnabhun Airport, Free Zone Activity, in <http://www.freezonethaiairport.com>, access date August 29, 2007.

<sup>12</sup> Industrial Estate, in <http://www.customs.go.th/Customs-Eng/EPZ/EPZ.jsp?menuNme=FreeZone>, access date August 31, 2007.



### Advantages of Industrial Estate

All of the advantages an Industrial Estate Program can offer Industrial Operators in Export Processing Zone (EPZ) under the Industrial Estate Authority of Thailand are numerous. A few main benefits that account for most of the companies that apply for the Industrial Estate Program are listed below:

Relief from Special Surcharges and Import/Internal Taxes/Duties: Machinery, equipment, tools and supplies including parts of them removed into the EPZ for the purpose of producing goods and constructing, assembling, or installing a factory or a building in the EPZ are not subject to special surcharges under the Investment Promotion Act, Import Duty, Excise Tax, and VAT similarly, materials removed into the EPZ for the purpose of manufacturing goods are also not subject to special surcharges under the Investment Promotion Act, Import Duty, Excise Tax, and Value Added tax.

Relief from Export Duty, Excise Taxes, and Value Added Tax: Goods imported under Section 49 of the Industrial Estate Authority of Thailand Act B.E. 2522, including products and by-products arising from the manufacture in the EPZ are not subject to Export Duty, Excise Tax, and Value Added Tax, provided they are exported out of the country.

Entitled for Export Tax Refund/Exemption Schemes: Merchandise entitled to Export Tax Refund/exemption schemes when exported is still qualified for such schemes after it is removed into the EPZ.

Zero Tax Rate: A zero tax rate is applied to calculate VAT in the following circumstances:

1. Sale of services or goods among industrial operators whether in the same or different EPZs;

2. Sale of services or goods between industrial operators and bonded warehouse licensees; and
3. Domestic merchandise removed into the EPZ.

#### Location of the EPZs

Currently, there are altogether 9 EPZs in Thailand as listed below:

1. Lard Krabang Industrial Estate (Bangkok);
2. Bangpoo Industrial Estate (Samut Prakarn);
3. Northern Region Industrial Estate (Lamphun);
4. Leam Chabang Industrial Estate (Chonburi);
5. Bo-Win Industrial Estate (Chonburi);
6. Lard Krabang Industrial Estate (Bangkok);
7. Baan Wa High-Tech Industrial Estate (Ayudthaya);
8. Bangpa-In Industrial Estate (Ayudthaya);
9. Plang Yaow Industrial Estate (Gate Way City, Chachoengsao); and
10. Southern Region Industrial Estate (Chalung, Songkla).

#### Contact

For additional information in relation to the drawback under Section 19 bis, interested person may contact the Drawback and Compensation Division, the Customs Privilege Bureau and all ports of entry during office hours. For those require further information on bonded warehouses may contact the Bonded Warehouse Division, the Customs Privilege Bureau and all ports of entry during office hours.

Table 1 Difference between Customs Free Zone and Export Processing Zone

Zone	Customs Free Zone	Export Processing Zone
1. Department that control zone	Customs department	Thai processing zone
2. Law that control	Customs Act B.E.2469 (issue 18 B.E.2543)	The Industrial Estate Authority of Thailand Act B.E. 2522
3. A person has a right	Investor imports and produces in this zone for export	Investor imports and produces in this zone for export
4. Tax privilege	Exempt tax for import and material in this zone	Exempt tax for material and machine
5. VAT	Exempt	Exempt
6. Excise tax	Exempt	Exempt
7. Time line	No limit	No limit
8.important role	A person who establish customs free zone has register asset more than 20 million (in Bangkok) 5 million (another country)	EPZ is establish in the zone that department appoint

Table 2 The Different of Customs Zone in Thailand<sup>13</sup>

<b>Tax burden in case of export product</b>	<b>Customs tariff on from Export Processing Zone</b>	<b>Import to zone Bonded warehouse</b>	<b>Export from zone Custom Free Zone</b>
<b>Relative Department</b>	Thai processing zone and customs department	Customs department	Customs department
<b>Established</b>	Royal Decree	Allowance from head of customs department	Allowance from head of customs department
<b>Minimum area</b>	No provision but site in processing zone	200	NO provision
<b>Time line of export product</b>	No limit	2 years	No limit
<b>Tax burden in case of export product</b>	Customs tariff on from zone	Import to zone	Export from zone

<sup>13</sup> Yuthtasak Kanaswat, "B.O.I opens Customs Free Zone", Thailand's Investment Promotion Journal. (December2006): 31.



## **Chapter3**

### **Foreign Trade Zones under US. Law**

#### **3.1 Foreign-Trade Zone Under U.S. Law**

##### **3.1.1 An Introduction to Foreign-Trade Zones**

Foreign-trade zones (zones) are restricted-access sites in or near ports of entry, which are licensed by the Board Authority for establishing these facilities is granted by the Foreign-Trade Zones Board under the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a-81u). The Foreign-Trade Zones Act is administered through two sets of regulations, the Foreign-Trade Zone Regulations (15 CFR Part 400) and the Customs Regulations (19 CFR Part 146). The Executive Secretariat of the Board is located within the Import Administration of the U.S. Department of Commerce, Washington, D.C., 20230. Authority for establishing these facilities is granted to qualified corporations. Applications submitted to the Board for grants of authority must show the need for zone services and a workable plan that includes suitable facilities and financing.<sup>14</sup>

Zones are operated under public utility principles. Grantees usually contract with private firms to operate facilities and provide services to zone users. Zones have as their public policy objective the creation and maintenance of employment through the encouragement of operations in the United States which, for Customs reasons, might otherwise have been carried on abroad. The objective is furthered particularly when zones assist exporters and re-exporters, and usually when goods arrive

---

<sup>14</sup> Establishing a Foreign-Trade Zone. U.S., Customs and Border Protection, in [http://www.cbp.gov/xp/cgov/import/cargo\\_control/ftz/about\\_ftz.xml](http://www.cbp.gov/xp/cgov/import/cargo_control/ftz/about_ftz.xml), access date August 10, 2007

from abroad in an unfinished condition for processing here rather than overseas.

Foreign and domestic merchandise may be moved into zones for operations not otherwise prohibited by law involving storage, exhibition, assembly, manufacture or other processing. The usual formal Customs entry procedure and payment of duties is not required on the foreign merchandise unless and until it enters Customs territory for domestic consumption, in which case the importer ordinarily has a choice of paying duties either on the original foreign material or the finished product. Quota restrictions do not normally apply to foreign goods stored in zones, but the Board can limit or deny zone use in specific cases on public interest grounds. Domestic goods moved into a zone for export may be considered exported upon entering the zone for purposes of excise tax rebates and drawback. "Subzones" are a special-purpose type of ancillary zone authorized by the Board, through grantees of public zones, for operations by individual firms that cannot be accommodated within an existing zone when it can be demonstrated that the activity will result in a significant public benefit and is in the public interest. Goods in a zone for a bona fide Customs reason are exempt from state and local ad valorem taxes.

Since 1970, the number of ports of entry with zone projects has increased from 10 to 170, and the value of goods entering zones and subzones has increased from just over \$100 million to over \$75 billion. The use of zones for manufacturing activity has increased dramatically during the past decade. It now represents about 85 percent of zone activity. About 75 percent of goods currently entering zones is of domestic origin and some \$11 billion of the goods. The heightened interest in zones, both on the part of communities providing zone services as part of their economic development efforts and firms using zone procedures to help improve their international competitiveness, is

related to the increasing importance of international trade and investment to the domestic economy. While there has been little public controversy concerning the establishment of general-purpose zones, there is growing concern about manufacturing activity in zones and subzones.

Firms interested in using zones for manufacturing seek greater access and flexibility in zone procedures to help them compete against imports of finished goods and increase their exports. Those opposing zone manufacturing operations contend that zone procedures should be more restrictive for non-export operations, especially when inverted tariffs (actual or effective lower duty rate on finished product) are involved.

### 3.1.2 The Types of Zones

1. General-purpose zones are usually located at ports or industrial parks. They must be opened to multiple zone users. Although manufacturing is permitted within general-purpose zones, the most common activity use is for warehouse and distribution activity.
2. Subzones are special-purpose zones, usually at manufacturing plants. A subzone of a general-purpose zone can be approved if the company is unable to relocate existing facilities into a general-purpose zone site. Subzones are approved for use by one company for a specific activity. Applications for subzone status must demonstrate a significant public benefit for approval.<sup>15</sup>

---

<sup>15</sup> U.S. Foreign-Trade Zone Board, Glossary of FTZ terms, in <http://ia.ita.doc.gov/ftzpage/info/zonetypes.html>, access date August 12, 2007.



### 3.1.3 The Advantages of Using a Foreign-Trade Zone

Customs duty and internal revenue tax, if applicable, are paid when the merchandise is transferred from the zone for consumption.

While in the zone, merchandise is not subject to U.S. duty or excise tax. Certain tangible personal property is generally exempt from state and local ad valorem taxes. Goods may be exported from the zone free of duty and excise tax. Customs security requirements provide protection against theft. Merchandise may remain in a zone indefinitely, whether or not subject to duty.

The rate of duty and tax on the merchandise admitted to a zone may change as a result of operations conducted within the zone. Therefore, the zone user who plans to enter the merchandise for consumption to the Customs territory may normally elect to pay either the duty rate applicable on the foreign material placed in the zone or the duty rate applicable on the finished article transferred from the zone whichever is to his advantage.

Merchandise imported under bond may be admitted to a FTZ for the purpose of satisfying a legal requirement of exporting the merchandise. For instance, merchandise may be admitted into a zone to satisfy any exportation requirement of the Tariff Act of 1930, or an exportation requirement of any other Federal law (and many state laws) insofar as the agency charged with its enforcement deems it so.<sup>16</sup>

### 3.1.4 Benefit to Zone User

1. Duty Exemption. No duties on or quota charges on re-exports.

---

<sup>16</sup> Ibid.

2. Duty Deferral. Customs duties and federal excise tax deferred on imports.
3. Inverted Tariff. In situations where zone manufacturing results in a finished product that has a lower duty rate than the rates on foreign inputs (inverted tariff), the finished products may be entered at the duty rate that applies to its condition as it leaves the zone -- subject to public interest considerations.
4. Logistical Benefits. Companies using FTZ procedures may have access to streamlined customs procedures (e.g. "weekly entry" or "direct delivery").
5. Other Benefits. Foreign goods and domestic goods held for export are exempt from state/local inventory taxes. FTZ status may also make a site eligible for state/local benefits which are unrelated to the FTZ Act.<sup>17</sup>
6. Direct Delivery. This procedure expedites the movement of cargo out of the Port into an FTZ, thereby supporting just-in-time inventory methodologies.<sup>18</sup>

### 3.1.5 The Public Benefits

1. Help facilitate and expedite international trade.\*
2. Provide special customs procedures as a public service to help firms conduct international trade related operations in competition with foreign plants.
3. Encourage and facilitate exports.
4. Help attract offshore activity and encourage retention of domestic activity.
5. Assist state/local economic development efforts.<sup>19</sup>

---

<sup>17</sup> U.S. Foreign-Trade Zone Board, What are the Benefits to a Zone User?, in <http://ia.ita.doc.gov/ftzpage/info/userbenefits.html>, access date August 10, 2007.

<sup>18</sup> Foreign Trade Zone, Direct Delivery, in <http://www.visioncouncil.com/ftz/>, access date July 20, 2007.

## 6. Help create employment opportunities.

### 3.1.6 Establishing a Foreign-Trade Zone

The Foreign-Trade Zones Act of 1934 created a Foreign-Trade Zones Board to review and approve applications to establish, operate, and maintain foreign-trade zones. The Board may approve any zone or sub zone which it deems necessary to serve adequately "the public interest".

The Board also regulates the administration of foreign-trade zones and the rates charged by zone "grantees".

The U.S. Customs Service must approve activation of the zone before any merchandise is admitted under the Foreign-Trade Zones Act.

It is the intent of the U.S. foreign-trade zone program to stimulate economic growth and development in the United States. In an expanding global marketplace there is increased competition among nations for jobs, industry, and capital. The FTZ program was designed to promote American competitiveness by encouraging companies to maintain and expand their operations in the United States.

The FTZ program encourages U.S.-based operations by removing certain disincentives associated with manufacturing in the United States. The duty on a product manufactured abroad and imported into the U.S. is assessed on the finished product rather than on its individual parts, materials, or components. The U.S. based manufacturer finds itself at a disadvantage compared with its foreign competitor when it must pay a higher rate on parts, materials, or components imported for

---

<sup>19</sup> U.S. Foreign-Trade Zone, What are the public Benefits?, in <http://ia.ita.doc.gov/ftzpage/info/publicbenefits.html>, access date August 10, 2007.



use in a manufacturing process. The FTZ program corrects this imbalance by treating products made in the zone, for the purpose of tariff assessment, as if it were manufactured abroad. At the same time, this country benefits because the zone manufacturer uses U.S. labor, services, and inputs.

### 3.1.7 Role of The U.S. Customs Service

The United States Customs Service is responsible for the transfer of merchandise into and out of the FTZ and for matters involving the collection of revenue. The Office of Regulations and Rulings at Customs Headquarters provides legal interpretations of the applicable statute, Customs Regulations and procedures.

The port director of Customs in whose port a zone is located is charged with overseeing zone activity as the local representative of the Foreign-Trade Zones Board. He controls the admission of merchandise into the zone, the handling and disposition of merchandise in the zone, and the removal of merchandise from the zone. In addition to the Foreign-Trade Zones Act, he enforces all laws normally enforced by the Customs Service that are relevant to foreign-trade zones.

Zones are supervised by U.S. Customs officers through periodic checks and visits; the security of the zone must meet certain requirements.<sup>20</sup>

---

<sup>20</sup> U.S. Customs and Border Protection, Establishing a FTZ, in [http://www.cbp.gov/xp/cgov/import/cargo\\_control/ftz/about\\_ftz.xml](http://www.cbp.gov/xp/cgov/import/cargo_control/ftz/about_ftz.xml), access date August 20, 2007.

### 3.1.8 What may be Placed in Zones

Any foreign or domestic merchandise not prohibited by law or other exception listed below, whether dutiable or not, may be taken into a foreign-trade zone.

Merchandise which lawfully cannot be imported into the United States is prohibited without exception. Furthermore, a quota on importation cannot be circumvented by placing merchandise subject to such quota into a zone.

On the other hand, merchandise for which a quota is filled or for which a quota on entry is established, may be placed into a zone until the quota opens or is removed since foreign-trade zones are considered outside the Customs territory for entry purposes. Such products, with the exception of certain textiles (19 CFR 146.63(d)), may be manipulated or manufactured while in the zone into a product not subject to quota.

Some Federal agencies regulate storage and handling in the United States of certain types of merchandise, such as explosives. Depending on the nature of the requirements and the particular characteristics of the zone facility, such merchandise may be excluded. Moreover, agencies which license importers or issue importation permits may block admissions to a zone which are not properly licensed or permitted.

The Foreign-Trade Zones Board may exclude from a zone any merchandise that is in its judgment detrimental to the public interest, health, or safety. The Board may place restrictions on certain types of merchandise which would limit the zone status allowed, the kind of

operation on the merchandise in a zone, the entry of the merchandise into the commerce, or similar transactions or activities.

### 3.1.9 What may be Done in Zones

Foreign and domestic merchandise permitted in a zone may be stored, sold, exhibited, broken up, repackaged, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, otherwise manipulated, destroyed, or manufactured, without being subject to U.S. Customs laws for entry and other purposes. All manufacturing is reviewed by the Board in terms of trade policy and net economic effect.

Many products subject to an internal revenue tax may not be manufactured in a zone. These products include alcoholic beverages, products containing alcoholic beverages except domestic denatures distilled spirits, perfumes containing alcohol, tobacco products, firearms, and sugar. In addition, the manufacture of clock and watch movements is not permitted in a zone.

No retail trade of foreign merchandise may be conducted in a FTZ. However, foreign and domestic merchandise may be stored, examined, sampled, and exhibited in a zone.

### 3.1.10 Kind of Merchandise can be Placed in a Zone

1. Merchandise in a zone may be assembled, exhibited, cleaned, manipulated, manufactured, mixed, processed, relabeled, repackaged, repaired, salvaged, sampled, stored, tested, displayed and destroyed.
2. Manufacturing, processing and any activity that results in a change of the tariff classification must be specifically approved by the FTZ Board.



### 3. Retail trade is prohibited in zones

#### 3.1.11 Entering Merchandise from a Zone into the United States for Consumption.

The entry, classification, and appraisement of merchandise transferred from a foreign-trade zone is affected by the "status" of the merchandise.

#### 3.1.12 Privileged Foreign Status.

Prior to any manipulation or manufacture which would change its tariff classification, an importer may apply to the port director to have imported merchandise in the zone given privileged foreign status. The merchandise is classified and appraised and duties and taxes are determined as of the date the application is filed. When such merchandise is transferred from the zone for U.S. consumption, either in its original state or after manipulation or manufacture the applicable duties and taxes would be paid based on the rate established when foreign privileged status was granted.

##### 1. Zone Restricted Status

Merchandise transferred to a zone from the Customs territory for storage or for the purpose of satisfying a legal requirement for exportation or destruction is considered exported and cannot be returned to the customs territory for consumption unless the Foreign-Trade Zones Board rules that its return is in the public interest. The Status of merchandise transferred to a zone under these circumstances is "zone restricted." Zone restricted merchandise may not be manipulated, except to destroy it, or manufactured in a zone. As in the case of privileged status, the



zone user must apply for zone restricted status on the appropriate Customs form.

## 2. Non-Privileged Foreign Status

Non-privileged foreign status is a residual category for merchandise which does not have privileged or zone restricted status. Articles composed entirely of or derived entirely of non-privileged merchandise are classified and appraised in their condition at the time of transfer into the Customs territory for consumption or for Customs bonded warehousing.

## 3. Domestic Status

Domestic status, which may be approved upon application to the port director, is available for merchandise which is (a) the growth, product, or manufacture of the United States on which all internal revenue taxes, if applicable, have been paid, (b) previously imported merchandise on which all internal revenue taxes have been paid, or (c) merchandise previously admitted free of duty. Domestic merchandise may be admitted to a zone without a Custom permit, and also removed from a zone without a Customs permit if it has not been combined with any other merchandise of any other status.

## 4. Articles of Mixed Status

Since manipulation and manufacture generally are permitted in a zone, articles transferred to the Customs territory may be composed in part of, or derived in part from, merchandise that is privileged and non privileged, whether foreign and/or domestic. The articles are appraised according to the status of the merchandise of which

they are composed or from which they were derived as explained above. Additionally, foreign merchandise, subject to specified custom controls and conditions, may be temporarily removed from a zone without formal entry for the performance of certain limited operations and thereafter returned in the same zone status to the zone from which it is removed. This procedure is designed to remove unnecessary burdens on zone inventory and accounting procedures where, in doing so, there is no danger to the revenue.

### 3.2 **Free Movement of Goods: The Customs Union under European Community Law**

#### The Framework

The community customs law has developed within the framework of the EEC Treaty or, more precisely, within the twin areas of the Customs Union and the Common Customs Tariff (CCT). The Former, based on the freedom of movement of goods within the community, regulates the internal market of the common customs area, the latter, coupled with the Common Commercial Policy (CCP), and regulates the external trade of the common Market. The freedom of movement of goods between the Member states is one of the fundamental principles of the Common Market. Therefore exceptions have to be laid down expressly and interpreted strictly. Thus in case 199/84 the Court of Justice of the European Communities (ECJ) held that a consignment of beef from Czechoslovakia imported into Italy was in free circulation for the purpose of being re-exported to Germany and therefore the Italian ban on re-export was unlawful.

The very essence of a customs union is the elimination of customs within the territory of the union. Articles 9, 13 and 95 of the EEC Treaty purport to achieve this objective. Article 9 enumerates the measures necessary to create a customs union, Article 13 provides that customs duties on imports in force

between Member State shall be progressively abolished and Article 95 prohibits internal taxation which has a discriminatory effect.<sup>21</sup>

### 3.2.1 The Four Freedoms

The Four Freedoms: goods, persons, service, capital. As noted above, the immediate aim of the Ec Treaty was to establish a free and open common market for all forms of economic activity. These are dealt with in Titles I to IV of Part Three of the treaty under four general headings—goods, persons, services and capital. These four categories are intended to comprehend all possible forms of economic activity, but the lines of demarcation between them are not always clear-cut. Persons and services are dealt with under three headings (‘chapters’): ‘worker’, ‘right of establishment’ and ‘service’. The rule on movement of money, although it falls within the general chapter on ‘capital’, depend upon whether the movement is a self-standing investment or one connected with the movement of goods, persons or services.<sup>22</sup>

### 3.2.2 The Background

As mentioned earlier, the objective of the European Community is to establish a Common Market which is built on a Customs Union. The first basic concept of a customs union is the free movement of goods produced in Member States. Goods produced in one Member States should be able to move freely in all Member States without the payment of custom duties. The second is the common customs duties. If goods produced in third countries are imported into any Member States, they are subject to the payment of the common customs duties.

---

<sup>21</sup> D. LASOK, “The Customs law of the European Economic Community” Kluwer Law and Taxation; (1990), p. 235.

<sup>22</sup> David A O Edward and Robert C Lane, “European Community Law an introduction”, (Scotland: Butterworths Law, 1995); p. 170.



The third is the free movement of goods from a third country. Once goods are imported into a Member State, they must be allowed to move freely in all other Member States without the payment of any further customs duties.<sup>23</sup>

Thus, the free movement of goods notion is based very much on the concept of a Customs Union. It is not the end in itself, but it is rather the means to reach the end, so called a Common Market. This free movement of goods notion goes beyond the concept of Free Trade Area because it is the creation of Common Market which establishes the common external customs tariffs and abolishes the internal customs duties and other forms of trade restrictions for goods coming from one Member State to another.

### 3.2.3 The General Provisions of the Free Movement of Goods in the EC Treaty

The free movement of goods is the cornerstone of the European Community and appears at the heart of the EC Treaty. It is the important pillar of the internal market in which Article 14(formerly 7A) of the EC Treaty defines as:

The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.

Article 14(formerly 7A) provides the legal basis for the creation of internal market within the European Community. To create the internal market, it is required to remove internal barriers to allow goods(as well as persons, services and capital) to move freely within the Community.

---

<sup>23</sup> Saravuth, The Background of Free Movement of Goods, in <http://asialaw.tripod.com/articles/saravuth2.html>, access date August 31, 2007.



Barriers to free movement of goods can be divided into three categories. They are physical barriers, technical barriers and fiscal barriers. Physical barriers involve the stopping and checking system to monitor goods passing the national borders. Fiscal barriers are tariffs and other indirect taxes imposed on exports, imports, or goods in transit. Technical barriers are quantitative restrictions or measure having a equivalent effect to quantitative restrictions which impede the free movement of goods. The common examples of technical barriers are national law and regulations for marketing goods and standard measures to protection public health and safety. Of all three barriers, technical barriers seems to be the most significant barriers because they cause the real obstacles to free movement of goods and the creation of the internal market. Thus, this research will mainly focus on technical barriers and will touch upon the others when necessary.

According to the EC Treaty, the free movement of goods provisions can be broken down into four groups.

1. Articles 23(formerly 9) and 24(formerly 10): The rights of goods produced in a Member State and from a third country to move freely with the Community.

Article 23(1) (formerly 9 (1)) provides: The Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.

According to Article 23 (1)(formerly 9 (1)), the European Community shall be based upon a customs union. This union shall cover all trade in goods and shall involve the prohibition between Member States of customs duties on imports and exports and of all

charges having equivalent effect. There are two important aspects arising from this Article.

1) The meanings of "goods"

The ECJ defined goods as "products which can be valued in money and which are capable, as such, of forming the subject of commercial transactions." Therefore, art treasures fell within the meaning of "goods" under Article 9 (1) (now 23 (1)). The ECJ also extended this definition in a few cases.

2) The application of the free movement of goods provisions

The free movement of goods provisions within EC Treaty should apply to all types of movements of goods.

First and basically, they apply to movement of goods from one Member State to be sold in another Member State.

Secondly, they apply to movement of goods in transit through one Member State to be sold in another Member State or outside the European Community.

In SIOT v. Ministry of Finance case, the ECJ confirmed that the freedom of transit within the Community constituted a general principle of Community Legislation.

Thirdly, they apply to reimportation of goods which are imported from one Member State to another, where they were produced or put on the market.

Fourthly, they apply to parallel imports.

Fifthly, they apply to movement of goods by individuals

Article 24(formerly 10) of the EC Treaty recognizes the third concept of a Customs Union or the free movement of goods from a third country by providing:

Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.

Article 25(formerly 12) provides:

Member States shall refrain from introducing between themselves any new customs duties on imports or exports or any charges having equivalent effect, and from increasing those which they already apply in their trade with each other.

2. Article 90(formerly 95):

The abolition of measures of discriminatory domestic taxation

Article 90(formerly 95) provides:

No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.



According to Article 90(formerly 95), internal taxation may not be discriminatory imposed between domestic products and imports. This covers not only the finished products but also the raw materials or components of such products.

Article 28(formerly 30) provides: Quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States.

Article 29(formerly 34) provides: Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.

- 1) Quantitative Restrictions.
- 2) Measures having an equivalent effect to Quantitative Restrictions.

Measures having an equivalent effect to quantitative restrictions mean laws, regulations, administrative provisions, administrative practices, and all instruments issuing from a public authority including recommendation which have similar effect to quantitative restrictions. However, the ECJ has also clarified the concept of measures having equivalent effect to quantitative restrictions.

3. The restriction on the protection of national treasures possessing artistic, historic or archaeological value

This ground of Article 30(formerly 36) has not been found to justify restrictions in any cases.

4. The restriction on the protection of industrial and commercial property grounds.

The exceptions arising from the ECJ: Mandatory Requirements.

Non-Discrimination Principle & Proportionality Principle.

As mentioned above, the four exceptions of Article 30(formerly 36) and mandatory requirements arising from the ECJ judgments impede the free movement of goods notion within the EU. However, the ECJ has narrowly interpreted these exceptions by holding that the restriction of trade must not be discriminatory in goods originating in one Member State from those of the others. Also, it must not be discriminatory in domestic goods from the goods imported from the Member States.



## Chapter 4

### Analyze the Legal Problems from Thailand are Customs Free Zone

Economic growth is a one method to develop country and Thailand uses export promotion policy to develop the country. The export promotion is an important policy in Thailand, which determines many policies to support business such as; tax exemption, tax refund and customs free zones is a one export promotion in Thailand which reduces capital for investment.

In the part customs department is an important source of income in Thailand because customs department has a duty in collecting tax. At present customs department has a new part by facilitating businesses and collecting tax for competition with another country.

In the part of customs Free Zone in Thailand is tax incentive that supports investors that manufactures in Thailand by importing a part of a commodity to produce in Thailand and exporting a commodity that has already been produced by being exempted from tax.

The Advantage of Customs Free Zone acts as a factor for competitiveness with other neighboring Asian countries that may have an edge over Thailand due to the cost of cheaper labor

Therefore Thailand has a customs Free Zone that gives tax incentive. Thailand makes a good way to compete with Asian country. But Customs Free Zone has some problem such as a regulation that decide not conform and not facilitate to use Customs Free Zone. It's destroy a chance to competition with another country.

It has two main points.

1. The problem on customs procedure.
2. The problem in using Custom Free zone.



#### 4.1 A problem on Customs Procedure

Customs procedure is a rule, order or regulation that decides by laws or depends by a power of laws for a relate person with customs department that do and include a tradition that do in the part. Custom procedure determines to conform to international business, money exchange, prohibit an import and export some commodity transported via sea, air or rail.

When a shipment arrives or leaves Thailand, importers or exporters are required to file a goods Declaration with supporting documents to the Customs for cargo clearance. To speed up and facilitate the flow and movement of legitimate cargo, the Customs Department provides two clearance systems: manual and Electronic Data Interchange (EDI). It has 2 methods to do for import:

##### 4.1.1 Documentation

This document makes from customs department to importer send to customs department for import a commodity.

##### 4.1.2 Import Clearance Procedures

The importer must have a document that use to import a commodity.

1. File an Import Declaration: The first stage of import clearance procedure is to submit an import Declaration (Customs Form 99 or 99/1) manually or through the EDI system.
2. Prepare Supporting Documents: The second stage is to prepare the following supporting documents (as prescribed in the Customs Notification No. 38/2543):
3. Check the Declaration and Supporting Documents: The third stage is to submit the Import Declaration and all supporting documents for examination by Customs at the port of entry (in case of EDI Red Line or manual system). The Customs officials will check whether

the Declaration is properly made out, and the supporting documents required are attached. In addition, Customs tariff, tax and duty calculation, valuation of goods are also examined at this stage.

4. Collect Import Duties and Taxes: The fourth stage is payment of applicable taxes and/or depositing guarantee. There are currently four means for payment of import duties and taxes:

Customs department has a lot of rules, regulations and many procedures. This causes the importer to slow down and lose time on the production of the commodity.

Unless customs procedure determines for a profit of rule to work; and determines to protect tax evasion from customs tax. Customs procedure may be determined by an act of legislation, a royal enactment, a royal decree, ministerial regulations, announcement of ministry of finance, announcement of customs department and a rule of customs department that are used to control a customs official and a person that relate with customs department (importer, exporter, owner of customs free zone)

\* So a customs procedure determines for protection against tax evasion. The customs department supports to full tax collection, this factor furthermore acts an obstacle for investments.

In this obstacle causes the investor to lose interest in investing in Thailand and it makes “a capital that not sight” it’s means lost time to pass a customs procedure, use a lot of information. It makes a lot of fee.

## 4.2 Problems in Utilizing Customs Free Zone

When an importer wants to import a commodity to the Customs Free Zone for production and export; the importer must seek permission from the customs department. In this case is suitable for customs department that has power to permit because customs department has responsibility to control. It's suitable for secure and pass to customs procedure. But now in Thailand when importer imports a commodity; the importer must to ask customs department for customs department permit the importer import commodity and importer must to ask the other department that control about a commodity again. Follow Custom Act in Custom Free Zone doesn't have to enact the exemption about the importer exempt to ask a permit about import a commodity to use in Customs Free Zone. So in this case it must to use other laws to control the permit. Such as;

1. When the importer wants to import an alcohol to produce an alcoholic beverage follow

“Prohibition to the importer importing an alcohol more than 1 liter in Thailand unless the importer gets the license from the excise officer”.

This article explains about if importer wants to import alcoholic beverage or alcohol to produce a commodity. The importer must to ask the excise department that controls a commodity.<sup>24</sup>

“Prohibition against a person using alcohol to produce a commodity for business unless the importer gets the license from the excise officer”.

This article does not control the use of alcohol in the production of medicine under the licence of a certified doctor.<sup>25</sup>

---

<sup>24</sup> Alcoholic Beverage Act B.E. 2493. section 6.

<sup>25</sup> Ibid., section 12.



In this article is show about if importer imports alcohol to produce a commodity in customs Free Zone or produce a medicine in this zone. The importer must to ask the customs department to permit the importer import commodity and importer must to ask the excise department that control about a commodity again or

2. In case of tobacco that the importer imports to make a cigarette in Customs Free Zone

A person is prohibited from importing or exporting outside of the domain such as: tobacco seeds, a tobacco plants, a tobacco leaves, tobacco pipes or tobacco itself; unless he seeks permission from the director general of a department or the officer of the same department

The method to ask for permission or issue license of permit in this article for import or export outside of domain; following the rule or method that the director general of development assigns the regulation.

The method to ask for permit follows this article to import for a model commodity or not for business. It can ask when the commodity come to a Customs' house.

Only tobacco pipes or a tobacco that keep a stamp duty follow this Act before the customs department send to importer, exception a director general of a department permit after follow the director general of a department determine it.

If the importer wants to set up a manufactory in Customs Free Zone; for example the importer wants to import a tobacco for produce cigarette by the

importer wants to establish the factory in Customs Free Zone. In this case the importer must ask for permit 3 relates departments.<sup>26</sup>

1) Customs department

Customs department has responsibility to check a commodity that import or export pass inside or outside territory. So when the importer imports a commodity to territory; the customs department has power to check a commodity that pass to Thailand.

2) Excise department

The importer wants to import a tobacco for produce cigarette must ask for permit to a director general of a department.<sup>27</sup>

3) Industrial Ministry

When the importer pass to ask for permit in Customs department and Excise department. The importer wants to establish the manufactory for produce a commodity in the Customs Free Zone. So the importer must to ask for permit to industrial ministry for permit to establish the manufactory in Custom Free Zone.

In this part; it has the law to enact about import a commodity. Follow article 97 septem in Customs Act B.E. 2496. In the case of the importation of goods into the Kingdom or the taking of raw materials within the Kingdom into a duty free zone for producing, mixing, assembling, packing, or processing of the goods in any manner with the object of exportation from the Kingdom, the goods shall be exempted from the application of the law where related to the control of standards or quality, the affixation of any mark or sign, which shall be in accordance with the regulations prescribed by the Director-General.

---

<sup>26</sup> Tobacco Act B.E.2509. section 27.

<sup>27</sup> Ibid.

This article enacts only to “control the exemption from the application of the law where it is related to the control of standards or quality, the affixation of any mark or sign”. Likewise, this article does not enact about “the exemption seeking permit about the import of commodity”. So it should to enact exemption to ask for permit with a commodity that produces in Customs Free Zone for export but a commodity that produces in Customs Free Zone for use in domestic. It should ask to permit with the relate department for relate with article 97 septem of Customs Acts B.E. 2496.

#### **4.3 Intention of Law to Enact Customs Free Zone**

Follow Customs Act B.E. 2543 (issue18) in chapter 10 Bis. Thailand enacts customs free zone because nowadays international trade has a lot of competition, so export promotion is important in Thailand, because it is a necessary and increase competition with another country. So Thailand’s established a customs free zone for producing, mixing, assembling, packing, or processing of the goods in any manner with the object of exportation from the Kingdom. It is one method to support export. Only the Director-General of customs department shall have the power to approve the establishment of a duty free zone. This facilitates and relates with Tokyo convention of world customs organization. Customs Free Zone is a new choice for importer to choose and should amend about bonded warehouse in order to cover this business, and should amend another act that relate with customs free zone for relief and support to importer. So it is necessary to enact this law.<sup>28</sup>

---

<sup>28</sup> Royal Gazette, section 108.



## **Chapter 5**

### **Conclusion and Recommendations**

#### **5.1 Conclusion**

Customs Free Zone is a one method of export promotion that the customs department chooses for its usefulness for the importer who imports a material to Thailand for producing, mixing, assembling, packing, or processing of the goods by if the importer produces a goods and export. It is exempted from paying customs tax. But if importer produces goods to be consumed domestically; tax liability of these goods will occur.. The customs department establish customs free zones for compete with country in ASEAN that has a fast economic growth and equivalent with Thailand. Thailand has encountered some problems that make the importers not trust-worthy to invest in Thailand. There are two major problems, which are customs procedures and second from a problem from permission made the importer doesn't want to invest in Thailand because it uses a long time to import.;

##### **1. A Problem on Customs Procedure**

This problem in Thailand; the customs department has a lot of method to check a commodity that the importer wants to import. Such as; Import Clearance Procedures it uses a lot of time to pass this procedure and it doesn't necessary to use with the importer to import a commodity in Customs Free Zone. IT has effect to importer such as use a lot of time to check, importer cannot produce a commodity to export on time. So Customs department must to improve or change a form and suitable method to capacity and improve to work and suitable method for customs officer and review customs procedure that make slowly and difficult, some regulation uses a long time. It should improve to modern with country situation and remove an obstruction that make to import slow for facilitate to import.

## 2. A Problem to use Custom Free Zone

The customs department doesn't enact a law about exemption to ask for permit with a commodity that import to customs territory. Some commodity must to ask for permit many times. It makes the importer lost time to produce and export a commodity.

If Thailand can improve these problem; it makes Thailand can compete with another country and make to develop economic in Thailand. So The Customs department should add new Article in this part or improve article 97 septem about ask for permit a commodity that produces in Customs Free Zone for use in domestic. But a commodity that produces in Customs Free Zone for export; it should exempt to ask for permit for relate with article 97 septem for support the investment in Thailand and suitable in this situation

### 5.2 Recommendations

Thai Custom's Law in the part of Customs Free Zone is fairly successful because Thai Customs Free Zone wildly opens to use customs free zone. Because in article 97 six

The importation and production of goods in a duty free zone shall be exempted from excise duty as provided in the law on excise duty.

Thai Customs Free Zone exempted from excise duty when compare with another country; such as U.S. that call Customs Free Zone is "Foreign-Trade Zones" this zone is not exempted from excise duty. The product subject to an internal revenue tax may not be manufacture in a zone. These products include alcoholic beverages; products containing alcoholic beverages except domestic denature distilled spirits, perfumes containing alcohol, tobacco products, firearms, and sugar. In addition, the manufacture of clock and watch movements is not permitted in a zone.

In the part of E.U. Law the Custom Free Zone is not famous to use. Because of in the EU. Law has free movement of goods, the free movement of goods notion is based very much on the concept of a Customs Union. It is not the end in itself, but it is rather the means to reach the end, so called a Common Market. This free movement of goods notion goes beyond the concept of Free Trade Area because it is the creation of Common Market which establishes the common external customs tariffs and abolishes the internal customs duties and other forms of trade restrictions for goods coming from one Member State to another.

In Thai Customs Free Zone is a good develop for support investor to invest in Thailand. If the customs department can improve a problem that makes the investor refusing to invest, such as, a many customs procedure that makes an investor slow and loose time to import or method to use Customs Free Zone that make an investor loose time and complicates with difficult to ask for permission to import a commodity, unless the customs department can improve the situation. The investor will then be more than willing to use Thailand for the production of a commodity and Thailand, thus promoting business for the future to come.



