



## Export Control Law for Dual-Use Products Passes Cabinet Approval

Amid the domestic and international concerns caused by the recent bombings in Bangkok, attention should be given to the recent cabinet approval of the draft export control regulation for dual-use goods in June 2015. Dual-use goods are those items and technology that can be used for both commercial and military purposes, and which may also be used to produce a weapon of mass destruction (WMD) for use in a terrorist attack. Thailand's Department of Foreign Trade, the main government agency for the legislation, has provided examples of such products including carbon fiber, which can be used to produce not only tennis rackets and golf clubs but also missile components, and Triethanolamine, a chemical component that can be used to produce not only soap, detergent and lotion but also a toxic substance or toxic fumes.

Thailand has endeavored to legislate the export control law since 2010. Finally having the cabinet approval on the draft proposal on the issue is a step in the right direction although, based on various reports, it may take until 2018 for the law to be enforced. The draft legislation is largely based on the United Nations Security Council Resolution (UNSCR) 1540, adopted in 2004, which requires member states to establish an export control system for dual-use items in order to prevent the proliferation of WMD. The draft law will empower the Ministry of Commerce to control dual-use items that have yet to be regulated by existing laws. Currently, there are 5 responsible government agencies overseeing the dual-use items: the Department of Defense Industry, the Department of Industrial Works, the Department of Medical Sciences, the Office for Atoms for

Peace, and the Office of the National Broadcasting and Telecommunications Commission. However, the aforementioned agencies' control of the dual-use items is still not entirely in line with the direction of the EU Dual-Use Goods list 2009 [Council Regulation (EC) No 428/2009] on which the national control list under the new draft legislation is now based. The new draft is also expected to cover all dual-use goods in all operations, including but not limited to export, transit, transshipment, re-export and brokerage operations.

Under the draft law, exporters of dual-use items must be granted permission from the Ministry of Commerce prior to export, while the exporters of some dual-use items such as natural graphite, ore, uranium and thorium, oil, petroleum and hydrogen, must register as self-certified exporters with the Department of Foreign Trade and declare to the Department that these items are not or will not be used as dual-use goods. Those who do not follow the regulation may be fined up to four times the value of such products and subject to 10 years imprisonment.

The government hopes that the draft regulation will assure the international community of Thailand's commitment to nonproliferation and compliance with international standards. Currently, there are approximately 1,700 registered dual-use items with an export value of more than 100,000 million baht and more than 10,000 registered exporters. If implemented and monitored effectively, the new regulation will increase the confidence of trade partners and investors and will attract high-valued, dual-use goods or technology industries such as the aerospace industry or the nuclear industry, which were not permitted to set up plants in the country prior to the new regulation.



## EU and Vietnam Achieve FTA conclusion

The European Union (EU) and Vietnam recently announced the successful conclusion of negotiations on a bilateral free trade agreement (FTA) after two-and-a-half years of trade talks. The FTA is the second EU FTA with an ASEAN country following a similar agreement with Singapore. The agreement is expected to come into force by the end of 2017 or early 2018, and could have profound effects on businesses in both locations.

The agreement will remove the EU's customs duties on nearly all goods except sensitive agricultural products including rice, sweetcorn, sugar, and canned tuna, for which the EU has offered partial liberalization to Vietnamese exports via zero-duty Tariff Rate Quotas (TRQs). Some duties will be removed over the 7-year period. In turn, Vietnam will eliminate duties on 65% of imported goods from the EU once the agreement comes into force, with a transition period of 10 years for the remainder to be gradually removed. Apart from the elimination of tariffs, the agreement also creates liberalization in services and investment, including business services, financial services, telecommunications, and transport and postal services. The results of the service chapter mostly go beyond the WTO commitments or any other FTAs that Vietnam has ever signed before, largely giving EU companies easier access to the Vietnamese market.

On Government Procurement, the agreement also allows EU companies to bid for Vietnamese public and state-owned contracts. The EU and Vietnam have also agreed on disciplines in line with a Government Procurement Agreement (GPA). On Intellectual Property Rights, both parties

have committed to a high level of protection that goes beyond the TRIPs Agreement. A special annex on pharmaceutical products has also been included in this agreement, allowing EU companies to export and sell medicines to distributors and wholesalers in Vietnam, as well as allowing EU-invested companies to set up their businesses in this sector in Vietnam.

Besides the FTA negotiation between the EU and Vietnam, the EU has also initiated trade dialogue with other ASEAN member countries including Indonesia, Malaysia, and Thailand. The successful EU-Vietnam FTA will serve as an example of what can be expected of other ASEAN member countries, including Thailand, in their bilateral FTA negotiations with the EU.

## The Drafting of the New Customs Act

The current legal framework that legitimizes the Thai Customs Department of its daily functions is primarily the Customs Act of 1926. Considered to be outdated, this 90 year-old law recently received criticism on its fragmented contents across each of their amendments. However, as part of the national regulatory reformation program, the current government approved the latest draft of the entirely new version of the Custom Act on 21 July 2015. This version of the Customs Act will unify the de-fragmented cross version differences. In particular, the text underlying the draft version of the new Custom Act entails some changes to the Custom Department's jurisdictional framework. According to the official statement by the Ministry of Finance, the new Customs Act is expected to be enacted before the end of this year. Herein, eight important changes are highlighted.



(1) Incentives for officials who detect attempts of tax avoidance will be reduced from 25 percent of the fine payment value to 15 percent, and will be subjected to a ceiling of a 5 million baht maximum incentive. As for incentives for individuals who may provide useful information or leads on possible illegal conduct, the incentive remains at the same rate of 30 percent of the fine payment but will also be subjected to a ceiling of a 10 million baht maximum incentive.

(2) Article 27 of the original Customs Act, which laid out types of tax avoidance misconduct, was amended to the extent that the Misconduct for Failure to Adhere to Limitation and Restriction will have its legal coverage expanded to include goods arriving in Thailand before being transferred to other foreign destinations as well. Furthermore, the punishment framework on different acts of misconduct will be separately established, in contrast to the single punishment framework currently in use.

(3) Under the new draft, all Permission Goods will be considered to have been imported once they are cleared through Customs' custody.

(4) The new draft will now limit the Post Audit Period to 5 years from the export or import date.

(5) The time limit to which the board of appeal must conclude their hearing procedure will be 180 days from the date that all mandated documents were received. This will allow concerned parties to bring the matter directly to court, should the hearing process take too much time.

(6) The rate of fine payment on due customs amounts will remain at 1 percent per month. However, in contrast to the original Customs Act, the total fine payment will now be subjected to a ceiling equal to the value of the due customs payment.

(7) Case time limitation on excess custom payment drawback will now be 3 years from the date on which the goods were imported or exported, instead of 2 years.

(8) The new draft now empowers customs officials with the ability to confiscate debtor's assets.

Of the aforementioned changes, it can be said that the new tax avoidance detection incentives structure on fraudulent activities has been most eagerly anticipated by a large number of business entities. One concern could be pointed out, nonetheless. The foregone incentive returns are significantly lower for officials but the cost for an importer being detected avoiding custom payments remains the same. The new structure may then shift fraudulent detection return away from an oversight-able framework system into a more under-the-table system. The actual impact remains to be seen.

Stay informed with latest development in trade negotiations and changes in trade laws/regulations. Get an insight of how the latest news will affect your market and regulatory environment from our “Trade Digest”.

If you have any comments or questions regarding Trade Digest or any matters discussed herein, or if you are interested in finding out more about Bolliger & Company Consulting services, please contact any of the persons below:

**Malika Bhumivarn** | Partner  
Malika.Bhumivarn@bolliger-consulting.com

**Rachda Chiasakul** | Partner | Director, Advisory Services  
Rachda.chiasakul@bolliger-consulting.com

Tel. +66 (0) 2 625 6300  
Fax. +66 (0) 2 625 6311

## **Bolliger & Company Consulting**

Bolliger & Company Consulting Limited is a Bangkok-based consulting firm with a proven track record in advising private and public sector organizations on a wide range of issues related to trade and investment. We are fully committed to delivering the highest standard of service and bringing our expertise to bear in helping our clients move forward in today’s dynamic business environment.

Highly experienced in fields of expertise that cover customs, legal and tax, supply chain, and advisory services, we have played a key role in improving the performance of our clients in more than 15 jurisdictions including China, Japan, Indonesia, Singapore, and Thailand.

*“Clients’ success is our best interest”*

**BOLLIGER & CO**

Bolliger & Company Consulting Ltd. | Bolliger & Company (Thailand) Ltd. | Tel. +66 (0) 2 625 6300 | Fax. +66 (0) 2 625 6311

[www.bolliger-consulting.com](http://www.bolliger-consulting.com)