

NEWSLETTER

No. 101 Edition September 2015

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LEGAL UPDATE

1. The Customs Department Introduces Binding Advance Rulings on Classification, Price and Origin of Goods

Every importer knows that any dispute between an importer and a customs officer largely arises from different opinions on (i) classification of goods under customs tariff, (ii) customs price of goods and (iii) origin of goods. Now the Customs Department offers binding advance ruling services to an importer prior to the importation of the goods.

1. Classification of Goods under the Customs Tariffs

All goods imported into Thailand are classified into different categories, each of which is subject to a different customs duty rate or a different customs privilege. The classification is based on form and function of each good.

An importer has to determine a category of an imported good in order to make a declaration to a customs officer in a customs clearance process. A customs duty rate of each category is obviously different from those of other categories. In other words, one category may be subject to a higher customs duty rate, while another category may be subject to a lower customs rate. Naturally, this discrepancy leads to a dispute between an importer and a customs officer because the importer tends to classify the good into a category that is subject to a lower rate of customs duty, but the customs officer classifies the good differently into another category that is subject to the higher rate of customs duty.

Previously classification disputes arose between an importer and a customs officer from time to time. The issue is whether a good in question falls under one category of customs tariff or another category. Classification is crucial here as it will determine a rate of customs duty applying to an importation of the good. Normally, the customs officer may use a threat of criminal prosecution, which carries a severe penalty (imprisonment), as a leverage in negotiating with the importer. And the importer is kind of forced into a settlement with the customs officer whether the importer likes or not.

To avoid such classification dispute, for a fee the Customs Department offers the advance ruling on classification of product under the Notification of Customs Department No. 39/2558 Re Advance Classification Service for Customs Tariff. An importer may seek the advance ruling on classification of the good to be imported from the Customs Department prior to importation of the good into the country. Once the Customs Department classifies the good into one category or another, such classification in the advance ruling will be binding to the Customs Department for two years and the importer will know exactly the rate of customs duty applicable for such category.

1. The advance ruling should be sought from the Customs Department at least 30 days prior to an importation date.
2. While the Ministerial Regulation Re Fee on Advance Ruling has not been enacted yet, the Customs Department will offer this service on a free of charge basis on an interim basis.
3. An importer has to file one application for each type of goods.
4. Unless it is revoked earlier, the advance ruling shall become effective (binding to the Customs Department) for a period of two years from an issuance date.
5. The advance ruling may be revoked if (i) there is any change to law pertaining to customs tariff and the revocation shall become effective from the date that the new law comes into force, or (ii) there is any new information i.e. any ruling of the Customs Cooperation Council that results in any change in classification and the revocation of the advance ruling due to any new information shall not apply retroactively for the goods that have been imported with customs duty being paid. But the new ruling shall apply from the date that the new ruling is issued.
6. If there is any change to the rate of customs duty rate, any goods imported on the date the new rate of customs duty becomes effective and thereafter shall be subject to the new rate.
7. If any importer disagrees with the advance ruling, the importer may request for a review of the advance ruling within 15 days after receipt of the advance ruling notice. Any decision made by the Customs Department on the review shall become final and remain effective for a period of two years from an issuance date of the first advance ruling notice.

2. Customs Price of Goods

A customs price is an obvious issue for a dispute between an importer and a customs officer. The importer tends to report a low customs price of an imported good, while the customs officer assesses the higher customs price of the imported good. Prior to 2015, the Customs Department offered the advance ruling on the customs price of an imported good on a consultative basis (nonbinding basis) to importers. Now, the Customs Department issues the Notification of the Customs Department No. 38/2558 Re Advance Determination Service for Customs Price. An importer may seek the binding advance ruling on customs price of the good to be imported from the Customs Department prior to importation of the good into the country. Once the Customs Department confirms the customs price of the good, such customs price in the advance ruling will be binding to the Customs Department for two years and the importer will know exactly the customs price of the good.

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5. The advance ruling may be revoked if (i) there is any change to law pertaining to customs price and the revocation shall become effective from the date that the new law comes into force, or (ii) there is any new information i.e. any ruling of the Customs Cooperation Council that results in any change in determination of customs price and the revocation of the advance ruling due to any new information shall not apply retroactively for the goods that have been imported with customs duty being paid. But the new ruling shall apply from the date that the new ruling is issued.
6. If any importer disagrees with the advance ruling, the importer may request for a review of the advance ruling within 15 days after receipt of the advance ruling notice. Any decision made by the Customs Department on the review shall become final and remain effective for a period of two years from an issuance date of the first advance ruling notice.

3. Origin of Goods

An importer may presume that a good has the origin in a particular country in order to claim a special privilege under a relevant free trade agreement. But a customs officer may very well have a different opinion on the origin of good in question. This leads to a dispute between the importer and the customs officer.

Previously, the Customer Department offered the advance ruling on origin of good before importation on a consultative basis (nonbinding basis) to importers. Recently, the Customs Department starts to offer the binding advance ruling on origin of good before importation by issuing the Notification of Customs Department No. 40/2558 Re Advance Determination Service for Origin of Goods. For a fee, an importer can seek Customs Department's confirmation on whether a product in question will be qualified as the good of a particular country or not for the purpose of customs privilege under an applicable free trade agreement and such determination will be binding to the Customs Department for two years from an issuance date of the advance ruling.

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2. While the Ministerial Regulation Re Fee on Advance Ruling has not been enacted yet, the Customs Department will offer this service on a free of charge basis on an interim basis.
3. Unless it is revoked earlier, the advance ruling shall become effective for a period of two years from an issuance date.
4. The advance ruling may be revoked if (i) there is any change to the rules of origin and the revocation shall become effective from the date that the new rules of origin come into force, or (ii) there is any new information, i.e. any court judgment and the revocation of the advance ruling due to any new information shall not apply retroactively for the goods that have been imported with customs duty being paid. But the new ruling shall apply from the date that the new ruling is issued.
5. If any importer disagrees with the advance ruling, the importer may request for a review of the advance ruling within 15 days after receipt of the advance ruling notice. Any decision made by the Customs Department on the review shall become final and remain effective for a period of two years from an issuance date of the first advance ruling notice.

Comparison of Advance Ruling Service

	Previous Advance Ruling Service	New Advance Ruling Service
1. Classification of Goods under Customs Tariff	Binding	Binding
2. Customs Price of Goods	Non - Binding	Binding
3. Origin of Goods	Non - Binding	Binding

Officially seeking advance rulings on (i) classification of goods for customs tariff, (ii) customs price of goods, and (iii) origin of goods is one of the ways that an importer can do to avoid or minimize any unnecessary dispute with the Customs Department.

For more information, please contact our lawyers for consultation.

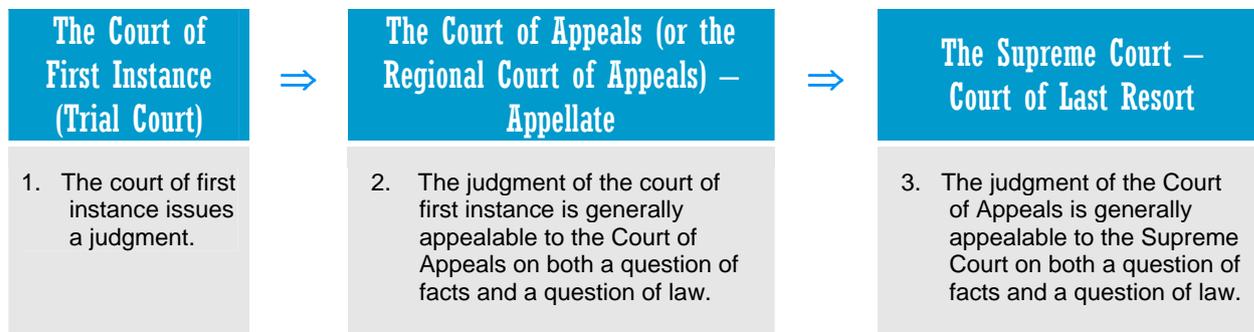
LEGAL UPDATE

2. Losing Party in the Civil Case Will Have Limited Access to the Supreme Court

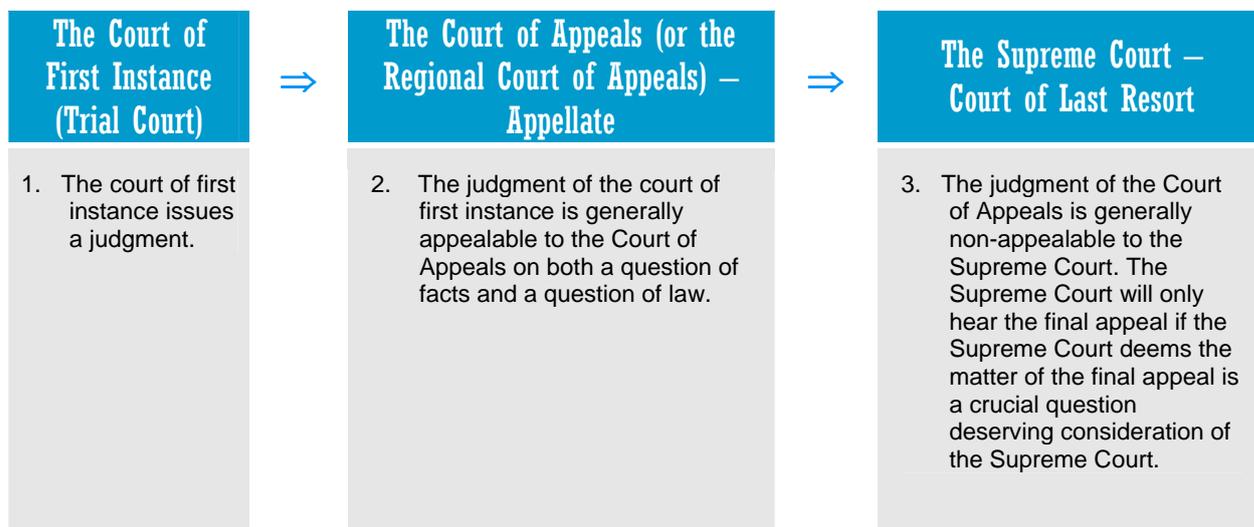
The National Legislative Assembly acting as Parliament under the Interim Constitution just passes the Bill Amending the Civil Procedural Code (the "Bill") to make a judgment of the Court of Appeals in a civil case non-appealable in most circumstances in an effort to shorten a lead time in the civil case.

The existing system affords a losing party the right to appeal any unfavorable judgment all the way to the Supreme Court. Making an appeal to the Court of Appeals and making the final appeal to the Supreme Court is a matter of right of a losing party under the existing system. If any losing party exhausts all the appeal options by making a non-meritorious appeal, technically a civil case can be dragged on appeal and final appeal for years.

Existing Court System in Civil Case



New Court System in Civil Case



Making an appeal to the Court of Appeals is a matter of right of a losing party. But an appeal (final appeal) from this level is normally at the discretion of the Supreme Court. Under the Bill, the Supreme Court will only hear the final appeal if the matter under the final appeal is a crucial question deserves its consideration.

The following matters are the crucial matters:

- (i) a question related to the public or a public order;
- (ii) a case where the Court of Appeals issues a judgment or an order that construes a crucial question of law contrary to or inconsistent with a precedent laid down by a judgment or an order of the Supreme Court;
- (iii) a judgment or an order of the Court of Appeals addresses a crucial question of law that does not have any precedent in a judgment or an order of the Supreme Court;
- (iv) a judgment or an order of the Court of Appeals is contrary to or inconsistent with a judgment or an order of another court of last resort;
- (v) to develop the interpretation of law;
- (vi) any other crucial question in accordance with the instructions of the President of the Supreme Court.

This development is most likely to significantly reduce the lead time civil litigation. There is a bottleneck at the Supreme Court since the existing system affords a losing party the right to appeal any unfavorable judgment all the way to the Supreme Court. By limiting the access to the Supreme Court only to the cases with crucial matters, in many cases the judgment of the Court of Appeals will become final under the new system and a winning party can enforce a winning judgment more quickly than the existing system affords.

For more information, please contact our lawyers for consultation.

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