

Summary

Chapter 1 Introduction

At present, export is very essential to economics of countries including Thailand. Hence, export is promoted by measure or policy in various aspects, i.e., monetary measure or policy by giving credit with very low rate of interest to the exporter and credit for export preparation. Export is promoted by fiscal measure or policy by reducing customs duty's rate or exempting the collection of import and export duties for goods imported for manufacturing and exportation and for the machines used in manufacturing goods for exportation. Export promotion is also extended to excise tax and other taxes. Export promotion by other measures not concerning duties is, for example, the using of trade negotiation to open the market.

For Thailand, export promotion by customs duty measure has developed and has the following problems. Customs laws and tariff law in early period have no provision of export promotion. Export promotion by customs duty measures was written in Article 3 of Customs Act (No.13) B.E. 2499 that added text to be Article 19 bis of Customs Act (No.9) B.E.2482 by repaying seven – eighth of import duty already paid on such imported goods for producing, mixing, assembling or packing to be exported goods. Later, there were many laws enacted and were in the responsibility of Customs Department and other governmental agencies. Such laws has been improved continuously by including the issue of export promotion by customs duty measure. Latest, the industrial Estate Authority of Thailand Act (No.4) B.E.2550 is enacted to be in accordance with the commitment of “the Marakesh Agreement Establishing the World Trade Organization having annexes that Thailand must follow. These annexes include the Agreement on Subsidies and Countervailing Measures and the Agreement on Implementation of article VI of the General Agreement on Tariff and Trade 1994.

At present, export promotion by customs duty measure of Thailand is in the following laws, i.e., Customs Act B.E.2469, Customs Act (No.9) B.E.2482, the Customs

Tariff Decree, B.E.2530, the Investment Promotion Act, B.E.2520, the Industrial Estate Authority of Thailand Act, B.E.2522 and the Act on Compensation of Tax and Duty Paid on Exported Goods Produced in Thailand, B.E.2524.

In principle, importation or exportation shall be prescribed by the Customs laws, the Customs Tariff Decree, B.E. 2530 and other related laws. For example, the import duty already paid on imported goods already produced and exported shall be repaid as drawback to the importer in accordance with the Customs laws. If there is importation according to specific law, it shall be prescribed by such law, i.e., the Investment Promotion Act, B.E.2520 or the Industrial Estate Authority of Thailand Act, B.E.2522. Enforcing such laws shall also consider the relationship between the Customs laws and the Customs Tariff Decree. However, in practice, the Customs Tariff Decree is used to enforce such laws in order to promote exportation even though such laws do not empower the Customs Tariff Decree to do so which causes serious problems. Considering from enforcing the Customs laws, there are many problems arising from the defect of the provisions of the Customs laws concerning export promotion with customs duty measures. In addition, there is a problem of using the Customs Tariff Decree, B.E. 2530 without power to enforce the Customs laws for export promotion and with contradiction to the Customs laws by issuing the Notification of the Ministry of Finance for the reduction and exemption of customs duty according to section 12 of the Customs Tariff Decree, B.E. 2530 dated 31 December, B.E. 2549. Therefore, it is reasonable to study problems concerning export promotion with Customs Duty measures. This will be the guideline to develop the customs laws concerning export promotion in order to suit the international trade according to the Customs laws.

This chapter will indicate the problem of export promotion with customs duty under the Customs Law of Thailand as follows.

1. The form of a bonded warehouses is too narrow.
2. The Finance Minister issues a "Notification of the Ministry of Finance, Subject : the Reduction of Tariff Rate and the Exemption of Customs Duty under section

12 of the Customs Tariff Decree, B.E. 2530,” dated 31 December, B.E. 2549. no.3 (3.5) (3.5.1) of this notification exempts customs duty for goods of section 19 bis or section 19 ter of the Customs Act (No.9), B.E. 2482 imported to Thailand not exceeding one year by permitting such goods enter customs bonded warehouse. The writer thinks that it is not able to issue the Notification of the Ministry of Finance no.3 (3.5) (3.5.1) because the Customs Act (No.9), B.E. 2482 section 19 quarter has already had the text to allow goods of section 19 bis to transfer into customs bonded warehouse.

3. The Finance Minister issues a “Notification of the Ministry of Finance, Subject : the Reduction of Tariff Rate and the Exemption of Customs Duty under Section 12 of the Customs Tariff Decree, B.E. 2530,” dated 31 December, B.E. 2549. no.3 (3.5) (3.5.2) of this notification exempts customs duty for goods imported into Thailand and get the exemption of customs import duty according to the Law of Investment Promotion and such goods must distribute to bonded warehouse of manufacturing type for using to produce goods for exportation by having the evidence from the organization from the Law of the Investment Promotion to allows Customs Department to do so. The writer thinks that the notification no.3 (3.5) (3.5.2) contradicts the Customs Act, B.E. 2469 section 8, section 8 bis, section 10 paragraph 1, section 88 paragraph 3 and section 97 ninth and the Investment Promotion Act, B.E. 2520.

4. The Finance Minister issues a “Notification of the Ministry of Finance, Subject : the Reduction of Tariff Rate and the Exemption of Customs Duty under Section 12 of the Customs Tariff Decree, B.E. 2530,” dated 31 December, B.E. 2549. no.3 (3.9) of this notification exempts customs duty for machine, machinery parts and accessories including tools and equipments used with such machines whether these are goods falling into any tariff classification that Director – General of Customs Department allows to import for using in producing goods in bonded warehouse of manufacturing type according to Customs Law. No.3 (3.9) of the notification contradicts section 8 bis (2) and section 87 of the Customs Act, B.E. 2469.

5. Customs law has no provision to allow goods that get duty exemption or duty drawback to enter bonded warehouse of manufacturing type. However, the

Customs Act, B.E.2469 section 97 octo specifics the case that brings goods into free zone.

6. According to Customs Act, B.E. 2469, there are some sections of the duty free zone, i.e., section 97 six and section 97 septem, that promote export and these sections are not written in the provisions of the bonded warehouse.

7. The Finance Minister issues a "Notification of the Ministry of Finance, Subject : the Reduction of Tariff Rate and the Exemption of Customs Duty under Section 12 of the Customs Tariff Decree, B.E. 2530," dated 31 December, B.E. 2549. no.3 (3.6) of this notification exempts customs duty for raw material scraps or damaged or unusable goods that arises or will be used in producing, mixing or assembling in the manufacturing bonded warehouse to be destroyed by complying with the formalities specified by the Customs Department. no. 3 (3.6) of the notification is contrary to the provisions and the will of Customs Act, B.E. 2469 in the case of the bonded warehouse pursuant to section 87 and sections 88 and it is also contrary to the principle of duty collection pursuant to section 10 bis.

8. The Finance Minister issues a "Notification of the Ministry of Finance, Subject : the Reduction of Tariff Rate and the Exemption of Customs Duty under Section 12 of the Customs Tariff Decree, B.E. 2530," dated 31 December, B.E. 2549. no.3 (3.7) of this notification exempts customs duty for goods being brought into the bonded warehouse of section 8 of the Customs Act, B.E. 2469 that are unusable or become quality deterioration and are destroyed in accordance with the formalities specified by Customs Department. no. 3 (3.7) of the notification is contrary to the provision of the bonded warehouse and the principles of customs duty collection of Customs Act, B.E. 2469 by the same reasons just mentioned in no. 7 above.

9. The Finance Minister issues a "Notification of the Ministry of Finance, Subject : the Reduction of Tariff Rate and the Exemption of Customs Duty under Section 12 of the Customs Tariff Decree, B.E. 2530," dated 31 December, B.E. 2549. no. 2 (10) of the notification gives the reduction of tariff rate for "goods whether is classified in any

tariff classification that is imported for producing, mixing, assembling or packing for exportation within one year from the date of importation and claims the drawback pursuant to section 19 bis of the Customs Act (No. 9), B.E. 2482 amended by the Customs Act (No. 18), B.E. 2543. Such reduction of tariff rate is contrary to the principle of duty collection pursuant to various sections of the Customs Act, B.E. 2469, i.e., section 10, section 10 bis and section 41. Thus, it is clear that in the case where no. 2 (10) (10.1) of the notification reduces the tariff rate to be 50% of the rate generally applied and the importer must have the qualification stated in (10.1) or no. 2 (10) (10.2) to reduce the tariff rate to be 5% of the rate generally applied and the importer must possess the qualification written in (10.2). Such notification is against the provisions of the Customs Act, B.E. 2469.

10. The activities of section 19 bis of the Customs Act, B.E. 2469 that are the same as the activities of section 8 bis (2) of the Customs Act, B.E. 2469 are the activities for producing, mixing, assembling and packing the goods imported. However, the activity of section 8 bis (2), i.e., the activity for performing any other procedure on the goods imported and stored in the bonded warehouse is not written in section 19 bis.

11. In the case where the raw materials within Thailand are taken into the bonded warehouse for producing, mixing, assembling or performing any other procedure with the goods imported and stored therein, if such finished products are released from the bonded warehouse for domestic consumption, the problem arises that which principle to be used to consider the price of that product. In this case, the Customs Act, B.E. 2469 has no provision to govern such case. Section 52/1 of the Industrial Estate Authority of Thailand Act, B.E.2522 writes about such case.

12. The Customs Act, B.E. 2469 section 88 paragraph 3 applies to the release of goods from a bonded warehouse for distribution to an importer under section 19 bis of the Customs Act (No.9), B.E.2482. Hence, the release of goods from a bonded warehouse for distribution to an importer under section 19 and section 19 ter of the Customs Act (No.9), B.E. 2482 is not deemed to be the release of goods for exportation and the duty shall not be exempted.

13. Section 97 octo of the Customs Act, B.E. 2469 writes about the form of taking goods into a duty free zone which is too narrow. It states that in the case where there is a law which provides for the exemption of any goods from duty or the refund of duty upon exportation from Thailand, if such goods are taken into a duty free zone, they should be exempted from duty or given a duty refund, whereby it shall be regarded that such goods have been exported out of Thailand at the time they are taken into the duty free zone. The mentioned cases means that section 97 octo applies to goods under section 19 and section 19 bis of the Customs Act (No.9), B.E. 2482 and does not cover the case of returning the guarantee as drawback under section 19 ter of the Customs Act (No.9), B.E. 2482.

14. Section 97 novem writes about the form of taking goods out of a duty free zone which is too narrow. It covers the taking of goods out of a duty free zone for distribution to an importer under section 19 bis of the Customs Act (No.9), B.E. 2482. Section 97 novem, thus, does not apply to section 19 and section 19 ter under the Customs Act (No.9), B.E.2482.

15. Section 19 ter of the Customs Act (No.9) B.E.2482 applies for goods exported to a foreign port or as stores for use on board a ship proceeding to a foreign port which are in the process of producing, mixing, assembling or packing with the goods imported. Section 19 ter is narrow in comparison with section 8 bis (2) of the Customs Act, B.E. 2469 which empowers the Director – General of Customs Department to approve the establishment of a bonded warehouse for producing, mixing, packing, or performing any other procedure on the goods imported and stored therein.

There is no technical information indicating that what is the ideal export promotion. However, it can be seen that export promotion must achieve the purpose of such export promotion. These are the increase in export volume and the ability to compete with other countries. Other countries have the same idea. Hence, the ideal export promotion falls into such concept within the framework of international agreement. The ideal export promotion with customs duty measures is the same as the ideal export promotion. The good export promotion system must be speedy and accurate. It must not

be the burden of private sector and the cost of export promotion must be low and competitive in comparison with other countries. In case of export promotion with customs duty measures, the state must accept the loss of incomes in order to provide low cost of imported raw material, etc. This will cause the exporter of the goods produced be competitive with the exported good of other countries. The movement of goods from one procedure to another procedure must be speedy as written in the Revised Kyoto Convention. The system of export promotion with customs duty measures has some deficiencies because it is inconsistent with the ideal export promotion system. The provisions of the Customs laws of Thailand and the Natification of the Ministry of Finance could not response the ideal export promotion with customs duty measures. Thai Customs laws emphasize the exemption of customs duty with less consideration of other types of taxes. The movement of goods from one procedure to another procedure is allowable with the limitation in some procedures. This is inconsistent with the Revised Kyoto Convention. It may say that such convention provides export promotion with customs duty measures which is close to the ideal export promotion with customs duty measures.

Chapter 2 The Concept Concerning Export Promotion and the Application of Foreign Countries.

In summary, export promotion of foreign countries by customs duty measures has two approaches. First approach is to promote export by customs-duty measures by customs officers of each country, for example, Japan, Jordan and Kana. Second approach is the foreign direct investment by each country by using investment laws. The laws include export promotion with customs-duty measures which is the duty right and benefit. The investment laws have also non-duty right and benefit. For example, Philippines allows the foreign nationals who are technical experts not exceeding 5% of

all workers in each category who work in the company located in the export processing zone.

The ideal export promotion system is the export promotion which use all measures or policies at the same time, whether they are monetary measures or policies, fiscal measures or policies or other measures or policies which do not concern with monetary and fiscal measures or policies. These measures or policies are to increase export and compete with other countries. In chapter 2, there are not enough information to indicate whether such countries have performed the activities to close to or to be equal to the ideal export promotion or the ideal export promotion with duty measure. However, I believe that each country must compete to reach the full of export promotion for the prosperity of his country. Thus, it could be assumed that the export promotion of each country is close to the ideal export promotion with duty measures.

Chapter 3 Customs Measures for Export Promotion under the Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures

Export Promotion has been recognized and has been implemented for a long time. There have been many international discussions. Finally, the result was the International Convention on the Simplification and Harmonization of Customs Procedures, 1974 : Kyoto Convention. This has been developed to be the Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures which is called "the Revised Kyoto Convention." It has the purpose to facilitate the trade under the same customs procedures. In addition, the Convention has some new provisions to suit the present situation of the international trade, such as, the usage of information technology and the usage of the rule of origin of goods. The Convention has also the purpose to aid customs officers to balance the trade facilitation and customs control.

The Revised Kyoto Convention has many provisions concerning export promotion. These are the duty drawback, the duty free zone, an outward processing and an inward processing.

The Revised Kyoto Convention able to be used to improve Customs laws are the followings. Guideline of the appendix 3 of the Revised Kyoto Convention, specific annex F, chapter 3, standard 2 paragraph 2, provides that customs officer may exempt the collection of internal duty or value added tax or sale tax for goods imported to perform procedure under drawback procedure. The appendix 3 of the Revised Kyoto Convention, specific annex F, chapter 1, recommended practice 8 is about the temporary importation of goods with the condition to re-export that goods or the importation of goods for inward processing with the permission to be stored in the warehouse under the condition to re-export such goods or to distribute the goods due to the power conferred or to pass to other customs procedures, such as, transit or domestic consumption. These cases deem to be the conditions to re-export the goods temporary importation or to be the condition to export the goods imported for inward processing are completely implemented when the goods are allowed to be stored in the warehouse. In addition, The appendix 3 of the Revised Kyoto Convention, specific annex F, chapter 1, standard 3 is about the importation of goods for inward processing shall not be limited to goods imported directly from abroad, but shall also be granted for goods already placed under another Customs procedure. The temporary importation of goods and transit goods are goods have already been placed under other Customs procedures. Standard 3 allows temporary imported goods and transit goods to be domestically processed. According to the Customs laws applicable now, there is no provision to apply standard 3 about the inward processing of the temporary imported goods and transit goods. Another case is the appendix 3 of the Revised Kyoto Convention, specific annex F, chapter 2 which is about the temporary export for outward processing which has the definition that "the Customs procedure under which goods which are in free circulation in a Customs territory may be temporary exported for

manufacturing, processing or repair abroad and then re-imported with total or partial exemption from import duties and taxes.”

**Chapter 4 Export Promotion Measures under the law on the
Investment Promotion, the law on the Industrial Estate Authority of Thailand and the
law on the Compensating of Tax and Duty Paid on Exported Goods
Produced in Thailand.**

There are many laws applicable to export promotion. However, this chapter will specifically concern the Investment Promotion Act, B.E. 2520, the Industrial Estate Authority of Thailand Act, B.E. 2522 and the Act on Compensating of Tax and Duty Paid on Exported Goods Produced in Thailand, B.E. 2524.

The Investment Promotion Act, B.E. 2520 and the Industrial Estate Authority of Thailand Act, B.E. 2522 are investment promotion laws to attract foreign direct investment. Therefore, these laws have the provisions that promote investment for export promotion by tax measures. They still provide other rights and benefits that do not concern taxes, such as, rights and benefits in case of immigration and working of foreign nationals, taking out foreign currency from Thailand if such currency being capital brought into Thailand by an investor and dividends or other benefits accrued there from, owning land for the activities in accordance with the mentioned investment laws. Other rights and benefits not concerning taxes are essential for the investor to send the profits in the form of foreign currency out from Thailand and to bring into Thailand foreign nationals as expert. The Act on Compensating of Tax and Duty Paid on Exported Goods Produced in Thailand, B.E. 2542 assists the exporter by reducing the burden of indirect taxes included in the production cost by compensating tax and duty paid on domestic goods for export in the form of tax card which will be used to pay the duty or tax of three departments, i.e., the Customs Department, the Revenue Department and the Excise Department.

Chapter 5 Export Promotion Policies or Measures in Thailand

Export Promotion Policies or Measures in Thailand consist of three types of policies or measures, i.e., export promotion policies or measures not concerning monetary and fiscal policies or measures, monetary policies or measures, and fiscal policies or measures. The first type of policy or measure uses, for example, trade negotiation to open the market and solve the problem of trade barrier in every level. The second type of policy or measure provides, for example, credit for exporter charged with special low interest rate. The third type covers, for example, the reduction of tariff rates of customs duty or the exemption of import duty and export duty for goods imported into Thailand for production for export or for the machine used to produce goods for export and it also covers the excise tax and other taxes.

Export promotion by fiscal policies or measures appears in many laws as the following: the Customs Act, B.E. 2469 for a bonded warehouse and a duty free zone, the Customs Act (No.9), B.E. 2482 for duty drawback under section 19, duty drawback under section 19 bis, the acceptance of guarantee under section 19 ter for goods under section 19 bis and the case of 19 quarter applies for goods imported under section 19 bis that are deemed to be exported under section 19 bis, the measure to reduce or exempt customs duty under the Notification of the Ministry of Finance issued under section 12 or section 14 of the Customs Tariff Decree, B.E. 2530, section 36 of the Investment Promotion Act, B.E. 2520, export promotion under the Industrial Estate Authority of Thailand Act, B.E. 2522, the Act on Compensating Tax and Duty Paid on Exported Goods Produced in Thailand, B.E. 2524.

Chapter 5 also explains the sizes of export promotion measures which are very large. For example, in February B.E. 2552, there were 230 bonded warehouses or the value of goods brought into the duty free zone in the fiscal year of B.E. 2549 is 357,597 million baht. Export promotion by fiscal policy or measure is very crucial to economics because it provides more employment for domestic workers which causes

good effects for trade balance, current account balance and balance of international payment.

Chapter 5 gives information about the development of export promotion by studying the First National Economic Development Plan (B.E. 2504 - B.E. 2509) and other plans including the Tenth National Economic and Social Development Plan (B.E. 2550 - B.E. 2554) which is presently applicable. The first and the second plan emphasized the protection of import-substitution industry and the policy to promote export get lower emphasis. Later, according to the third and the fourth plan, the government enhanced the promotion of industrial export. The fifth plan specified the direction of industrial development for export. This plan was clearer than the previous plans because it declared the objective to transform Thailand to be semi-industrialized country and concentrated on the promotion of industrial export. The sixth plan promoted industrial investment to be the base of export production. The seventh plan emphasized the technology policy in order to create competitiveness for export goods of Thailand. The eighth plan had a policy to support technology and production functions necessary to expand the production base and the competition without contradicting the international trade agreement. The ninth and the tenth plan do not specifically state about export promotion.

Generally speaking, all the plans mentioned use all measures, i.e., measures not concerning monetary and fiscal measures, monetary measures and fiscal measures.

Chapter 5 states about the forms and steps of economic integration as the following : the free trade zone, the customs union, the common market, the economic union and the political union. The Customs Union does not collect taxes for imported goods from the member countries but it still collect taxes for imported goods from the countries not being the members of the customs union. Therefore, it is the export promotion for the member countries. Customs Union was developed to be the European Union which is the economics union.

Chapter 5 also states that Thailand is a member of World Trade Organization under the Marakesh Agreement Establishing the World Trade Organization. This agreement has many annexes that Thailand must follow. These annexes are, for example, the Agreement on Subsidies and Countervailing Measures and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 which is the Agreement on Anti – Dumping and Countervailing Measures. In order to implement the two agreements just mentioned, Thailand enacted the Action on Countervailing the Anti – Dumping and Subsidized Imported Goods Act, B.E. 2542. The Act provides countervailing measures for anti – dumping and subsidies. This Act is to protect domestic industries and to be consistent with such international agreements.

Anti – dumping means that private sector exports goods to sell in foreign countries at price below the normal selling price in domestic market. Actionable subsidy must be specific subsidy and there is a prescribed condition for exporting goods which causes injustice to manufacturers in the country that imports the goods because they do not receive the subsidy from the government.

Section 4 paragraph 4 of the Industrial Estate Authority of Thailand Act, B.E. 2522, amended by section 3 of the Industrial Estate Authority of Thailand Act (No.3), B.E. 2539 sets a definition of “export processing zone” by giving it’s meaning that “an area designated for industrial activities, trading activities or service for the purpose of exporting goods”. From the definition, one can see that exporting goods is the condition of the export processing zone and this is the specific subsidy actionable under the Agreement on Subsidies and Countervailing Measures. Thus, the Industrial Estate Authority of Thailand Act (No.4), B.E. 2550 is enacted. The law deletes the definition of “export processing zone” and write a new definition of “free operating zone” which has no condition of exporting goods.

Chapter 6 The Problems of Export Promotion by Duty Measure under the Law of Customs and Guidelines to Solve the Problems

The study indicates that the provisions about export promotion by duty measures of the Customs Act, B.E. 2469 and the Customs Act (No.9), B.E. 2482 have some deficiencies. In addition, some numbers of the Notification of the Ministry of Finance dated 31 December B.E. 2549 to reduce the tariff rate and to exempt duty under section 12 of the Customs Tariff Decree, B.E. 2530 are against the Customs laws or other law concerned. Thus, such numbers of the notification are inapplicable.

Problems and guideline to solve the problems are as follows.

1. The Minister of Finance issued the Notification of the Ministry of Finance, Subject : the Reduction of Tariff Rate and the Exemption of Customs Duty under Section 12 of the Customs Tariff Decree, B.E. 2530 dated 31 December B.E. 2549. Some numbers of the said notification are against customs laws or other law concerned. Therefore, it should abrogate such numbers of the notification as follows.

1.1 No. (3.5) (3.5.1) of the Notification of the Ministry of Finance is against section 19 quarter of the Customs Act (No.9), B.E. 2482. Hence, it should abrogate no.3 (3.5) (3.5.1) of the Notification of the Ministry of Finance and should amend section 19 quarter to cover the case of section 19 ter according to the notification just mentioned. In addition, it should add the case of section 19 to be included in section 19 quarter.

1.2 No. (3.5) (3.5.2) of the Notification of the Ministry of Finance is against section 8, section 8 bis, section 10 paragraph 1, section 88 paragraph 3 and section 97 novem and is against the Investment Promotion Act, B.E. 2520. Hence, it should abrogate no.3 (3.5) (3.5.2) of the Notification of the Ministry of Finance and should add the text to be paragraph 2 of section 88 of the Customs Act, B.E. 2469 by covering the case according to no. 3 (3.5) (3.5.2) of the Notification of the Ministry of Finance and covering goods according to the Industrial Estate Authority of Thailand Act, B.E. 2522.

1.3 No. (3.6) of the Notification of the Ministry of Finance is against section 10 bis, section 87 and section 88 of the Customs Act, B.E. 2469. Therefore, it should abrogate the said number of the notification. Nevertheless, such number of the notification has a good purpose. It should legally convert the purpose by adding a new provision, i.e., section 88/2 of the Customs Act, B.E. 2469 to suit the situation. The text of no. 3 (3.6) of the Notification of the Ministry of Finance states about “raw material scraps or damaged or unusable goods that arises or will be used in producing, mixing or assembling in the manufacturing bonded warehouse.” Thus, no.3 (3.6) of the notification does not cover the activity of performing any other procedure on the goods imported and stored in the manufacturing bonded warehouse. Therefore, it should add a provision to be section 88/2 to cover the activity of performing any other procedure on the goods.

1.4 No. 3 (3.7) of the Notification of the Ministry of Finance is against section 10 bis, section 87 and section 88 of the Customs Act, B.E. 2469 by the same reasons just mentioned in no. 1.3 above. It should abrogate no. 3 (3.7) of the Notification of the Ministry of Finance and add a new provision, i.e., section 88/2 of Customs Act, B.E. 2469 in accordance with the will of no. 3 (3.7) of such notification.

1.5 No.3 (3.9) of the Notification of the Ministry of Finance is against section 8 bis (2) and section 87 of the Customs Act, B.E. 2469. It should abrogate no.3 (3.9) of such notification and improve the bonded warehouse provision according to the Customs Act, B.E. 2469 to be more suitable by abrogating section 8 and section 8 bis of the Customs Act, B.E. 2469 and write a new section 8 by giving power to Director – General of Customs Department to specify any goods to enter the bonded warehouse.

1.6 No. 2 (10) of the Notification of the Ministry of Finance is against section 10, section 10 bis and section 41 of the Customs Act, B.E. 2469. Hence, it should abrogate no. (10) (10.1) and no. 10 (10.2) of the notification of the Ministry of Finance notification and amend section 19 quarter of the Customs Act (No.9), B.E. 2482 by adding paragraph three in accordance with the said numbers of the mentioned numbers of the notification to cover section 19 and section 19 ter of the Customs Act (No.9), B.E. 2482.

2. According to the Customs Act, B.E. 2469, the provisions of the bonded warehouse have some defects as follows.

2.1 The form the of the bonded warehouse under section 8 and section 8 bis of the Customs Act, B.E. 2469 is too narrow. Hence, it should abrogate such provisions and should write a new section 8 by giving the Director General of Customs Department to have the power to specify the form of the bonded warehouse in accordance with the purpose of the operation of the bonded warehouse.

2.2 In the case where domestic raw materials are taken into the bonded warehouse for producing, mixing, assembling, packing or processing in any way and the goods are released from the bonded warehouse, the question is how much the price of the goods is and what principle to be used in consideration. The Customs Act, B.E. 2469 does not write about such matters but they are written in section 52/1 of the Industrial Estate Authority of Thailand, B.E. 2522. Hence, it should use such concept by writing a new section to be section 88/1 of the Customs Act, B.E. 2469.

2.3 Section 88 paragraph 3 of the Customs Act, B.E. 2469 allows the goods to be released from the bonded warehouse to distribute to an importer under section 19 bis of the Customs Act (No.9), B.E. 2482. In this case, such goods will be provided duty exemption. Thus, it should amend section 88 paragraph 3 of the Customs Act, B.E. 2469 to cover the case of section 19 and section 19 ter of the Customs Act (No.9), B.E. 2482.

2.4 Section 97 six and section 97 septem of the Customs Act, B.E. 2469 write about a duty free zone for export promotion. Such cases are not written in the provisions of the bonded warehouse. Therefore, it should write such concepts to be section 88/3 and section 88/4.

2.5 Section 97 octo of the Customs Act, B.E. 2469 allows goods that get duty exemption or get duty refund when such goods are brought into a duty free zone. However, there is no provision to allow such good to be brought into a bonded warehouse. Thus, it should be allowed to do so by writing a new provision, i.e., section 88/5.

3. The provision a duty free zone under the Customs Act, B.E. 2469 have some deficiencies as follows.

3.1 Section 97 octo of the Customs Act, B.E. 2469 allows the goods under section 19 and section 19 bis of the Customs Act (No.9), B.E. 2482 to be brought into a duty free zone. However, section 97 octo does not cover the goods under section 19 ter of the Customs Act (No.9), B.E. 2482, the goods under the Investment Promotion Act, B.E. 2520 and the goods under the Industrial Estate Authority of Thailand Act, B.E. 2522. It should abrogate section 97 octo and write a new provision to allow such goods to be taken into the a duty free zone.

3.2 Section 97 novem of the Customs Act, B.E. 2469 allows goods to be released from a duty free zone to distribute to an importer under section 19 bis of the Customs Act (No.9), B.E. 2482. Hence, section 97 novem does not cover the case of section 19 and section 19 ter of such law. In addition, section 97 novem does not allows goods to be released from a duty free zone to distribute to the person who has the right to get duty exemption under the law of Investment Promotion or under the law of the Industrial Estate Authority of Thailand. Therefore, it should amend section 97 novem to fill the gap of that case.

4. Section 19 bis of the Customs Act (No.9), B.E. 2482 has a defect. Section 19 bis has the same activities as the activities of section 8 bis (2) of the Customs Act, B.E. 2469, i.e., producing, mixing, assembling or packing with the imported goods. However, the activity of section 8 bis (2) that is not written in section 19 bis is the activity of performing any other procedure on the goods imported and stored therein. Thus, it should amend section 19 bis in line with section 8 bis (2).

5. Section 19 ter of the Customs Act (No.9) B.E.2482 applies for goods exported to a foreign port or as stores for use on board a ship proceeding to a foreign port which are in the process of producing, mixing, assembling or packing with the goods imported. Section 19 ter is narrow in comparison with section bis (2) of the Customs Act, B.E. 2469 which empowers the Director – General of customs Department

to approve the establishment of a bonded warehouse for producing, mixing, packing, or performing any other procedure on the goods imported and stored therein. It should amend section 19 ter in line with section 8 bis (2) by adding the words “or performing any other procedure on the goods imported and stored therein.”

6. The provisions of the Revised Kyoto Convention concerning the export promotion with customs duty which should use are the exemption of collecting taxes other than customs duty, the temporary importation of goods for inward processing and the temporary exportation of goods for outward processing. It should use such ideas to write a new section, i.e., section 121/1 of the Customs Act, B.E. 2469. Although the writer proposes to abrogate the numbers of the Notification of the Ministry of Finance mentioned above, the numbers of such notification have the goods intention to promote export. Thus, The writer brings the concepts and the essence of the numbers of the notification stated in no.1 of this chapter, the solving of the deficiencies of the Customs Act, B.E. 2469 mentioned in no.2 and no.3 of this chapter, the solving of the deficiencies of the Customs Act (No.9), B.E. 2482 mentioned in no.4 of this chapter and some measures of the Revised Kyoto Convention mentioned in chapter 3 to consider and proposes a draft Customs Act (No. ..), B.E. In chapter 6, the writer also proposes a table of comparison between the Customs laws applicable now and a draft of the Customs Act (No. ..), B.E. in order to simplify the understanding on such matters.

The draft of the Customs Act, B.E. 2469 is very useful and close to the export promotion under the Revised Kyoto Convention which is very close to the ideal export promotion.

Chapter 7 Summary and Recommendation

The study is consistent with the primary hypotheses which states that customs laws of Thailand concerning export promotion by customs duty measures have some deficiencies. In addition, there are some problems of applying and interpreting the

provisions of the customs laws. Hence, the problems are solved by using section 12 of the Customs Tariff Decree, B.E. 2530 for issuing the Notification of the Ministry of Finance to reduce or to exempt the customs duty to enforce the customs laws and to apply with the Investment Promotion Act, B.E. 2520. To do so is not permissible because some numbers of the such notification are against the customs laws and the Investment Promotion Act, B.E. 2520 which is a special law. Therefore, the writer proposes that the numbers of the Notification of the Ministry of Finance having been issued against the laws mentioned should be abrogated. In addition, it should amend the Customs Act, B.E. 2469 and the Customs Act (No.9), B.E. 2482 by bringing the essence of the numbers of the Notification of the Ministry of Finance that the writer proposes to abrogate the proposal to solve the deficiencies of the customs laws and the good points of the Revised Kyoto Convention to improve such customs laws by proposing the draft of the Customs Act (No. ..) B.E. which will enhance the export promotion with customs duty under the Customs laws of Thailand is comparable to the export promotion with customs duty under the Revised Kyoto Convention which is close to the ideal export promotion with customs duty. For recommendation, the writer proposes the Customs Department to broaden her roles by promoting export with the present customs duty measures which is also proposed to amend. In addition, the exporters or the investors have the choices to use the mentioned measures or new measure which will use the concept of the Investment Promotion Act, B.E. 2520 by improving it in order to successfully compete with export promotion of other countries.