

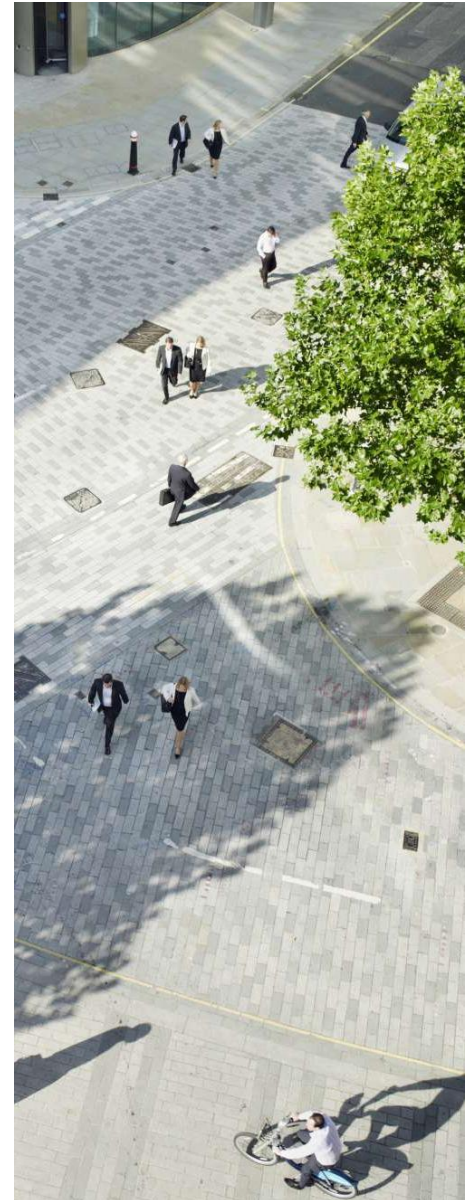
# *Third party royalties no longer dutiable in Thailand?*

At the end of 2011, the Supreme Court in Thailand ruled on the customs duty treatment of third party royalty payments. In this case the Supreme Court determined that the royalty that the importer in Thailand had to pay to its parent company in the US did not have to be added to the customs value of the imported goods which it purchased from an unrelated seller.

One of the critical factors in this case was the level of control the Intellectual Property holder (i.e. the parent company in the US) had over the unrelated manufacturer. The Supreme Court decided that the license holder had no direct control over the seller of the goods, and the sales contract did not explicitly contain a requirement for the importer in Thailand to pay the royalty. Therefore although the royalty related to the imported goods (the trademark was affixed at the time of importation), it was not a condition of sale of the goods and therefore the royalty payment was considered not dutiable.

The appropriate customs duty treatment of royalties has always been a challenge, especially in Thailand where royalties are a main focus area for customs audits or investigation. This recent ruling from the Supreme Court could be a good reason for importers in Thailand to re-visit their current royalty payments and see whether there is a possibility to argue that their royalty payments are not dutiable. It also gives importers more confidence to challenge customs rulings in Courts.

Nevertheless, royalties will continue to be a major area of contention between Customs authorities and importers. Although the recent Supreme Court ruling provides some guidance on the treatment of third party royalties, the question whether royalties are dutiable or not would always ultimately depend on the precise circumstances of each case.



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