Food and Beverages

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EABC Food and Beverages Working Group firmly supports the Royal Thai Government to enhance the country's competitiveness and readiness to become the hub of trade and investment in ASEAN as well as the world's investment destination. This ambition critically requires the government to reform and modernize taxation system and regulatory environment to be up to speed with global megatrends as well as complied with international best practices.

We are proud that our participation brings valuable contribution to the country's latest excise laws reform and commends the Royal Thai Government to continue working with business and investors to address the remained restrictions, both tariff and non-tariff measures, in order to bring more transparency, efficiency, fairness and ease of doing business.

1. Thailand Alcoholic Beverage Market

Total size of the Thailand alcoholic beverage market in 2016 was approximately 3.1 billion liters ranked 72nd for alcohol per capita (15 years and older) consumption in the world (please refer to Table 1). The market volume was dominated by beer (75%) followed by local white liquors or Lao Khao (12.3%) and local brown liquors (6.6%) respectively whilst imported liquors were only 1.5% to total market as illustrated in the chart on the right. The liquor tax reform in 2013 failed to address excessive consumption and harmful use of alcohol issues but indirectly encouraged consumers to trade down to cheaper liquors, same or different category, or to unpaid duty liquors evidenced by the steady growth of beer and local distilled liquors volume, the soaring counterfeit and smuggling liquors and continuously diminishing in imported liquors volume since then.
Table 1 Total alcohol per capita (≥ 15 years of age) consumption (litres of pure alcohol) reported and ranked by World Health Organization (WHO)

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Currently, safety and quality of alcoholic beverage is subjected to the Codex Alimentarius, the joint food standards program of Food and Agriculture Organization of the United Nations (FAO) and World Health Organization (WHO), in order to ensure consumer health and safety, product quality and fair practices in food trade globally. In Thailand, alcoholic beverage quality and safety have been regulated by 2 major laws including Food Act 1979 and Excise Tax Act 2017 (previously governed by Liquor Act 1950).

Recommendation:

Alcoholic beverage is food commodity consumed and traded globally. It can be part of a balanced lifestyle when consumed moderately and responsibly by adults (ages 20 years and older) who choose to drink. However, the misuse of alcohol such as excessive drinking, drunk driving and underage drinking can cause health and other issues. EABC recognizes the right of the Royal Thai Government to take measures necessary to protect public health and to address harmful use of alcohol. However, such measures shall be transparent, not create any trade barrier nor discrimination between imported and locally produced liquors and not, directly or indirectly, obstruct consumer’s right to access accurate information and freedom to access safe and high-quality products.

2. Regulatory Environment and Non-tariff Barriers to Trade

Alcoholic Beverage Control Act 2008 (ABCA) is the major law governing consumption, sales, marketing and promotional activities of alcoholic beverage. The Office of Alcohol Beverage Control Committee (OABCC) under Department of Disease Control, Ministry of Public Health (MoPH) together with anti-alcohol groups led by Thai Health Promotion Foundation (known as “Sor Sor Sor”), an autonomous governmental agency funded by the 2% of earmarked tax collected from alcoholic beverage and tobacco products (value approximately 4.3 billion baht in fiscal year 2016), have aggressively pushed through extreme and uncompromising laws and regulations. These include, but not limit to, the following:
2.1 The Labelling Regulation

Notification of the Alcoholic Beverage Control Committee Re: Rules, Procedure and Condition for Labels of Alcoholic Beverages 2015 (Labelling Regulation) came into full enforcement since 20th October 2015 aimed to prevent children and adolescents from drinking alcoholic beverage. The Labelling Regulation, however, immediately raises strong concerns among private sector and members of the World Trade Organizations (WTO), Technical Barriers to Trade (TBT) Committee that strict but unclear and impractical requirements of the Labelling Regulation may cause burdens and uncertainties to business, especially importers, as well as a risk of trade disruption.

The Labelling Regulation contains vague restrictions with the lack of clear guideline relating to the messages permitted or prohibited on the label and packaging of alcoholic beverage leading to inconsistent interpretations. The fact that this regulation prohibits the use of quality or properties claim statements such as “premium”, “reserve”, “deluxe” and “X.O. (extra old) or cartoon images regardless of whether they are true and factual supported by evidence, trademarks, geographical indicators or international standards may infringe intellectual property rights and impose unduly intrusive and trade restrictive terms for entry in Thailand, which is arguably inconsistent with WTO obligations.

EABC regrets that the Labelling Regulation itself has not been revisited or amended as stated at the consultation meeting between EABC and Ministry of Public Health (MoPH) in February 2016 when the parties unanimously agreed that this regulation as well as its technical guidelines were unclear, difficult to implement and could constitute a trade barrier. The revision of technical guidelines published at the website of OABCC in April 2017 does not bring any significant clarity but lead to discretion conferred on individual officers, on a case-by-case basis.

We welcome and support stakeholders’ consultation session on the Labelling Regulation recently organized by National Health Commission Office (NHCO) even though only a limited number of stakeholders invited (some alcohol importers and manufactures and some embassies) were invited and unclear action taken afterward.

**Recommendation:**

EABC looks forward to further consultations that include all stakeholders such as retail business, restaurant industry, and hotel industry to ensure sufficient information and recommendation are gathered to further initiate amendment to Labelling Regulation which will bring clear and practical requirements and conform with international obligations and industrial standards.

2.2 Graphic Health Warning Label (GHWL)

The draft Notification of the Alcoholic Beverage Control Committee Re: Rules, Procedure and Condition Relating to Container, Label and Warning Message for Manufactured or Imported Alcoholic Beverage (“GHWL Law”) was introduced in 2009 claiming that it would reduce consumption among children, adolescent and women as well as alcohol-related societal problems in the absence of any credible scientific evidence. The draft law seeks to impose a tobacco-style pictorial health warning graphic that covers substantial area of the labels and packaging materials.

Concerns raised by the alcohol industry include the following:
• Alcoholic beverage is “food” and its labels are regulated under Food Act 1979, therefore, it is inappropriate to introduce tobacco-style pictorial warnings without proper consideration of the fundamental differences between the two product categories which demand separate control measures;

• Requirements of the law are extreme and disproportionate that could not only negatively affect individuals who consume alcoholic beverage moderately and responsibly as part of a balanced-lifestyle, with no harm to themselves, families and community, but also impose unjustifiable restriction on international trade and other undesirable outcomes. For examples:
  - Deteriorate tourism climate and create negative impacts to related industries, especially, restaurant, hotel and entertainment;
  - Damage brands equity and trademark value;
  - Encourage illicit alcohol such as smuggled, counterfeit, and trademark infringed activities.

• The law will create unnecessary burden to businesses as well as barriers to trade. It also fails to comply with international practice.

We regrets to see that the Office of Alcohol Beverage Control Committee (OABCC) aims to implement the GHWL law in the near future by applying the awarded winning photos from the Contest organized by OABCC together with anti-alcohol NGOs for pictorial health warning label for alcoholic beverage which are not complied with international industrial practice and comments from WTO TBT members.

**Recommendation:**

EABC recognizes the need to protect the health of consumers and the legitimate objective of the Royal Thai Government to reduce level of alcohol consumption within its adolescent and women, however, there is lack of a detailed and precise explanation of the scientific evidence which led to the conclusion that GHWL measure would reduce consumption of alcohol among those target group. To ensure that such measure is prudent which will not create trade restrictive or disruption, EABC would request the Royal Thai Government to invite stakeholders including WTO TBT members for consultation and comment prior an implementation of the measure.

3. Tariff Barrier to Trade

3.1 Excise tax on alcohol

Excise tax is an indirect tax on the sale or use of specific products and services such as automobile, non-alcoholic beverages, alcoholic beverages and entertainment activities, paid indirectly by the end consumers. In Thailand, excise tax on alcohol is used by the government as a tool to achieve two majors objectives including;

1. Raising government revenue;
2. Solving the alcohol-related harm problems.

Currently, alcoholic beverage has been subjected to heavy excises and is taxed in a hybrid system whereby both specific taxation, levied on alcohol quantity, and ad valorem taxation, levied on value of product, are applied. Beside, earmarked taxes of 17.5% is also imposed on alcohol excise taxes for allocating to the communities, social activities and public health funds.

The alcohol excise taxation reform in 2013 adopted a complicated and discriminatory tax structure and imposed significantly high ad valorem to specific taxation leading to market deterioration. While imported liquors experienced substantial prices increase, volume collapse and soaring illicit liquors
issues, locally produced and lower-priced liquors such as beer and Lao Khao tended to be favored by such reform since their volumes continued to grow.

EABC supports and welcomes the Excise Tax Act 2017 that comes into effect on 16th September 2017 hoping that it can address the structural flaws of the previous alcohol tax reform, bring improvements in various areas, especially, transparency, fairness, ease of doing business and promote Thailand 4.0 policy. However, EABC remains concerned about the legal implementation and future excise tax changes as described below:

- The new excise tax rates and structure do not improve fair competition between locally produced and imported liquors nor address the excessive alcohol consumption issues since the proportion of specific to ad valorem taxation (based on Suggested Retail Price or SRP) is not changed significantly which, therefore, “Lao Khao” has still been taxed at the rate comparative lower than other liquors (please refer to tax rates set in 2.1 and 2.2 of Table 2);

Table 2 Excise tax rates and structure comparison between Liquor Act 1950 and Excise Tax Act 2017

| Source: Royal Thai Excise |
| Implementing laws as well as necessary resources, including but not limited to operational procedures, excise officials and information system linkage with the Royal Thai Customs who duties to collect excise taxes from imported goods on behalf of Royal Thai Excise, were not ready when the law came into effect caused business some delays, uncertainties and opportunities cost; |
| Requirement on certificate of analysis imposed on imported liquor may ignore an international standard and causes unnecessary burdens, both costs and times, to liquor importers. |

**Recommendation:**

EABC believes that specific taxation, with appropriate tax rates, is the most effective and international best practice methodology for taxing alcohol which improves fairness in trade and transparency. The approach brings advantages not only to the government but also to the business and consumers who choose to drink since tax leakage lessens in accordance with reduction in incentives from illicit alcohol activities such as counterfeit and smuggling production, while harmful use of alcohol is effectively tackled as alcohol players are indirectly encouraged to offer lower alcohol content but higher quality liquors. **EABC, hence, urges the Royal Thai Government to gradually phase out the use of ad valorem**
3.2 Illicit alcohol

High excise tax rate on alcoholic beverage as well as inadequate and inconsistent level of prevention and suppression by enforcement officials are among the major factors that encourages illicit alcohol activities including counterfeit, smuggling and trademark infringement. These activities damage the country’s economy and investment climate, restrict freedom to trade of legitimate products and, more importantly, being harmful to consumers’ health.

According to the global crime research, illicit alcohol ranks within the top ten high value crimes in Thailand. The more premium and fast-moving brands are, the most impacted from illicit alcohol activities. In 2016, International Wine and Spirit Research (IWSR) estimated that smuggling quantity of top three international whisky brands was 3.5 million liters, resulting in 1.57 billion baht (£35 million) of government revenue loss. Currently, counterfeit alcohol is frequently produced and sold as “duty free goods” mostly through stores along the borders and social media platform such as LINE, Facebook and Instagram.

Recommendation:

EABC respectfully requests the Royal Thai Government to consistently conduct “search and seize” of illicit alcohol, especially on social media platform and bootleggers or traditional off-trade premises along borders. We would also recommend enforcement officials, other than imposes fine penalty, to drive criminal cases further to successful prosecution by applying all relevant laws, including but not limited to trademark law, landlord liability law, money laundry law, etc., to effectively deter offenders from the crime.

4. Social Responsibility

Alcoholic beverage is part of a balanced lifestyle when consumed moderately and responsibly by adult, aged 20 years and older, who chooses to drink. However, we recognize that alcoholic beverages may be consumed irresponsibly, creating problems for individuals and for society. EABC Food and Beverage Working Group is keen to see alcoholic beverages consumed and enjoyed in the right way and does firm support the World Health Organization (WHO) target that will reduce harmful use of alcohol by 10% within 2025.

Followings are some successful campaigns that our members are proud of what we have achieved.

- **Self-regulations** that ensure alcoholic beverages are advertised and marketed responsibly.
- **Responsible Drinking Education** that aim to educate consumers of impacts from alcohol, inform their choices about consuming alcohol and promote drink responsibly culture.
- **Smashed Project** is a global theatre-in-educational program that aim to break the culture of underage drinking and reduce alcohol related harm amongst young people by partnering with the government agencies and the alcohol industry.
- **Road Safety** is a campaign by co-operation with Royal Thai Police and other government agencies which aims to reduce road accidents caused by drunk drivers especially during the New Year and Songkran festive seasons.

EABC Food and Beverages Working Group appreciates further opportunities to cooperate with the Royal Thai Government to develop alcohol proactive and preventive education for schools and communities.